

FEDERAL RESPONSE TO THE RECENT OIL SPILL IN THE GULF OF MEXICO

HEARING BEFORE THE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS UNITED STATES SENATE ONE HUNDRED ELEVENTH CONGRESS

SECOND SESSION

MAY 18, 2010

Printed for the use of the Committee on Environment and Public Works



Available via the World Wide Web: <http://www.gpo.gov/fdsys>

U.S. GOVERNMENT PUBLISHING OFFICE

22-445 PDF

WASHINGTON : 2017

For sale by the Superintendent of Documents, U.S. Government Publishing 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 ENVIRONMENT AND PUBLIC WORKS

ONE HUNDRED ELEVENTH CONGRESS
SECOND SESSION

BARBARA BOXER, California, *Chairman*

MAX BAUCUS, Montana	JAMES M. INHOFE, Oklahoma
THOMAS R. CARPER, Delaware	GEORGE V. VOINOVICH, Ohio
FRANK R. LAUTENBERG, New Jersey	DAVID VITTER, Louisiana
BENJAMIN L. CARDIN, Maryland	JOHN BARRASSO, Wyoming
BERNARD SANDERS, Vermont	MIKE CRAPO, Idaho
AMY KLOBUCHAR, Minnesota	CHRISTOPHER S. BOND, Missouri
SHELDON WHITEHOUSE, Rhode Island	LAMAR ALEXANDER, Tennessee
TOM UDALL, New Mexico	
JEFF MERKLEY, Oregon	
KIRSTEN GILLIBRAND, New York	
ARLEN SPECTER, Pennsylvania	

BETTINA POIRIER, *Staff Director*

RUTH VAN MARK, *Minority Staff Director*

C O N T E N T S

Page

MAY 18, 2010

OPENING STATEMENTS

Inhofe, Hon. James M., U.S. Senator from the State of Oklahoma	71
Cardin, Hon. Benjamin L., U.S. Senator from the State of Maryland	75
Voinovich, Hon. George V., U.S. Senator from the State of Ohio	80
Klobuchar, Hon. Amy, U.S. Senator from the State of Minnesota	83
Alexander, Hon. Lamar, U.S. Senator from the State of Tennessee	87
Lautenberg, Hon. Frank R., U.S. Senator from the State of New Jersey	90
Udall, Hon. Tom, U.S. Senator from the State of New Mexico	95
Baucus, Hon. Max, U.S. Senator from the State of Montana	101

WITNESSES

Jackson, Hon. Lisa, Administrator, U.S. Environmental Protection Agency	1
Prepared statement	4
Responses to additional questions from:	
Senator Boxer	13
Senator Carper	17
Response to an additional question from Senator Cardin	18
Responses to additional questions from Senator Whitehouse	19
Sutley, Hon. Nancy, Chair, Council on Environmental Quality	22
Prepared statement	24
Responses to additional questions from:	
Senator Boxer	30
Senator Carper	33
Salazar, Hon. Ken, Secretary, U.S. Department of the Interior	38
Prepared statement	42
Responses to additional questions from:	
Senator Boxer	52
Senator Carper	60
Senator Cardin	66
Neffenger, Peter V., Rear Admiral, Deputy National Incident Commander, Deepwater Horizon Oil Spill Response, U.S. Coast Guard	112
Prepared statement	115
Responses to additional questions from:	
Senator Boxer	123
Senator Carper	141
Senator Whitehouse	146
Senator Inhofe	156
Darcy, Hon. Jo-Ellen, Assistant Secretary of the Army (Civil Works)	158
Prepared statement	160
Responses to additional questions from Senator Carper	163
Fernandez, Hon. John, Assistant Secretary of Commerce for Economic Devel- opment, Economic Development Administration	168
Prepared statement	170
Responses to additional questions from Senator Carper	178

FEDERAL RESPONSE TO THE RECENT OIL SPILL IN THE GULF OF MEXICO

TUESDAY, MAY 18, 2010

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
Washington, DC.

The full Committee met, pursuant to notice, at 2:30 p.m. in room 106, Dirksen Senate Office Building, Hon. Barbara Boxer (Chairman of the full Committee) presiding.

Present: Senators Boxer, Inhofe, Baucus, Voinovich, Carper, Lautenberg, Alexander, Vitter, Cardin, Klobuchar, Whitehouse, Barrasso, and Udall.

Senator BOXER. Good afternoon. I believe we have our witness; I want to say Senator Salazar, Interior Secretary Salazar should be here shortly.

We are going to have a little bit of a difficult start to the hearing because we have a vote scheduled, a couple of votes. I am going to tag team with Senator Cardin on this going back and forth. But what we want to do is we have all decided that we are going to forego any opening statements and each of us have 10 minutes to question, because we feel that is the key issue. And we just want to get your statements out there, and then we have a lot of questions.

So why don't we start with Hon. Lisa Jackson of the Environmental Protection Agency. We will move to Hon. Nancy Sutley, Council on Environmental Quality.

Go ahead.

STATEMENT OF HON. LISA JACKSON, ADMINISTRATOR, U.S. ENVIRONMENTAL PROTECTION AGENCY

Ms. JACKSON. Thank you.

Thank you, Chairman Boxer, Ranking Member Inhofe, and members of the Committee. Thank you for inviting me to testify about EPA's role in responding to the BP Deepwater Horizon rig explosion.

As we all know, efforts by BP to stop the oil release continue. While there is no perfect solution to the environmental disaster that the Gulf of Mexico is facing right now, EPA is committed to protecting our communities, the natural environment, and human health. That commitment covers both the risk from the spill itself as well as any concerns resulting from the response to the spill.

Let me begin by recognizing the extraordinary effort put in by our responders. These are people that have maintained their re-

solve in the face of often overwhelming challenges. They have gone above and beyond, and we certainly owe them a debt of gratitude.

In the last 3 weeks EPA has dispatched more than 120 staff scientists, engineers, and contractors to Alabama, Florida, Louisiana, and Mississippi to perform rigorous testing and monitoring of air and water quality. We are tracking any possible adverse impacts stemming from controlled burning of surface oil, possible chemicals rising from the oil itself, and any issues caused by the use of dispersants.

We are working with State officials, with local university scientists, and other Federal agencies to get the best available data, share that data in a timely fashion and to ensure proper response for the Gulf Coast people and their environment. At the President's direction, I have personally traveled to the region—the region I grew up in and still consider my home—twice over the past weeks to personally oversee EPA's efforts and to meet with the local community to ensure that their questions and concerns are addressed.

For weeks, EPA responders have been monitoring air pollutants, including particulate matter, hydrogen sulfide, and total volatile organic compounds, or VOCs, from the oil in the Gulf as well as from the controlled burning of oil. These pollutants could pose a health risk to local communities, and this monitoring is essential to ensure that communities are protected as BP takes direct response actions.

EPA is also monitoring water quality by conducting surface water testing along the Gulf Coast, both in areas that have been impacted and those not yet affected. All of this information is being made public as quickly as we can compile it. We have been posting regular updates to our Web page, www.epa.gov/bpspill, which has been a critical resource since the beginning of this event.

A primary concern is to ensure the safe application of chemical dispersants. Oil dispersants are chemicals applied to the spilled oil to break down the oil into small droplets below the surface. Ideally the dispersed oil mixes into the water column and is rapidly diluted. Bacteria and other microscopic organisms then act to degrade the oil within the droplets.

However, in the use of dispersants we are faced with environmental tradeoffs. We know that surface use of dispersants decreases the environmental risk to shorelines and organisms at the surface, and we know that dispersants break down over weeks, rather than remaining for several years as untreated oil might.

But we are also deeply concerned about the things we don't know. The long-term effects on aquatic life are still unknown, and we must make sure that the dispersants that are used are as non-toxic as possible. We are working with manufacturers, with BP, and with others to get less toxic dispersants to the response site as quickly as possible.

EPA has previously authorized use of several dispersant chemicals under the National Contingency Plan. In order to be placed on this list, each dispersant chemical must undergo a toxicity and effectiveness test. However, I am increasingly concerned that EPA can and should do more.

As we emerge from this response, I commit to reviewing the regulations regarding dispersant registration and listing. I commit to

sharing the results of that review with this Committee and working to tighten the law if it is necessary in order to ensure protection of human health and the environment.

On Friday, EPA and the on-scene coordinator authorized the application of dispersant under water at the source of the leak. The goal of this novel approach is to break up and degrade the oil before it reaches the water's surface and comes closer to our shorelines, our estuaries, and our nurseries for fishing. Based on our testing this can be done by using less dispersant than is necessary on the surface. But let me be clear that EPA reserves the right to halt the usage of sub-surface dispersant if we conclude that at any time the impact to the environment outweighs the benefits of dispersing the oil.

As with our other monitoring initiatives, EPA and the Coast Guard have instituted a publicly available monitoring plan for sub-surface dispersant application to understand impacts to the environment. This data will come to EPA once a day.

EPA is also preparing to support any necessary shore line assessment and clean up. EPA, in coordination with the States, will continue to provide information to both workers and the public about test results as well as assisting communities with potential debris disposal and hazardous waste issues.

Madam Chairman, as a New Orleans native I know first-hand the importance of the natural environment to the economy, the health, and the culture of the Gulf Coast. As I mentioned, since the accident I have been to the region twice. I have listened to people in numerous town halls from Venice, Louisiana, to Waveland, Mississippi, and other communities in between. I have learned in those meetings that the people of the Gulf Coast are eager to be part of this response. They also want to be informed, and where possible, empowered to improve their situation on their own.

We have a great deal of rebuilding to do, both in material terms and in terms of restoring this community's trust that Government can and will protect them in a time of need. This is one of those times. I urge that we do everything within our power to ensure a strong recovery and future for the Gulf Coast.

EPA will continue to fully support the U.S. Coast Guard and play a robust role in monitoring and responding to potential public health and environmental concerns. As local communities assess the impact on their economies, EPA, in partnership with other Federal, State, and local agencies, will provide all assets to assist in the recovery.

At this time, I welcome any questions you may have.

[The prepared statement of Ms. Jackson follows:]

**TESTIMONY OF
LISA P. JACKSON
ADMINISTRATOR**

**U.S. ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
UNITED STATES SENATE**

May 18, 2010

Chairman Boxer, Ranking Member Inhofe, and members of the Committee, thank you for the opportunity to testify today about oil spill prevention and response measures and natural resource impacts. The U.S. Environmental Protection Agency (EPA), in coordination with our federal, state, and local partners, is committed to protecting Gulf Coast communities from the adverse environmental effects of the Deepwater Horizon oil spill. My testimony today will provide you with an overview of EPA's role and activities in the affected Gulf Coast region following the April 20, 2010 Deepwater Horizon mobile offshore drilling unit explosion and resulting oil spill as well as a summary of our primary environmental concerns. I also want to express my condolences to the families of those who lost their lives and those injured in the explosion and sinking of the Deepwater Horizon.

BACKGROUND

EPA's Oil Spill Program focuses on activities to prevent, prepare for and respond to oil spills from a wide variety of facilities that handle, store, or use various types of oil. EPA regulates approximately 620,000 of these facilities, including oil production, bulk oil storage,

and oil refinery facilities that store or use oil in above-ground and certain below-ground storage tanks. Additionally, EPA is the principal federal response agency for oil spills in the inland zone, including inland waters. Such inland zone oil spills may come from, oil pipeline ruptures, tank spills, and other sources.

EPA shares the responsibility of responding to oil spills with the U.S. Coast Guard (USCG). Further, we share the responsibility for prevention and preparedness with USCG and several other federal agencies. The USCG leads the response to spills that occur along the coast of the United States, or in the coastal zone, and EPA leads the response to spills that occur in the internal United States, or the inland zones. The exact lines between the inland and coastal zones are determined by Regional Response Teams (RRTs) and established by Memoranda of Agreement (MOAs) between regional EPA and USCG offices. EPA and USCG have a strong relationship and work closely on oil spill response activities regardless of where the spill occurs.

EPA'S OIL SPILL RESPONSE PROGRAM

Each year, billions of gallons of petroleum and other oils are transported and stored throughout the country, creating a significant potential for oil spills and serious threats to human health and the environment. Approximately 20,000 oil spills are reported each year to the federal government. While the severity of these spill reports varies widely, EPA evaluates as many as 13,000 spills to determine if its assistance is required. Usually, EPA either manages the oil spill response or oversees the response efforts of private parties at approximately 300 spills per year. After an oil spill occurs, EPA frequently provides technical assistance which may include air and water monitoring support, mobilizing our On-Scene Coordinators (OSCs) and EPA's Special Teams including the Environmental Response Team and the National

Decontamination Team to assist with the response. The Special Teams are comprised of highly-skilled environmental experts and utilize modern, sophisticated, and innovative technologies for oil spill response.

EPA'S OIL SPILL RESPONSE COORDINATION WITH THE USCG

The National Contingency Plan (NCP) is the federal government's blueprint for responding to both oil spills and hazardous substance releases. Additionally, it provides the federal government with a framework for notification, communication, and responsibility for oil spill response. The NCP established the National Response Team (NRT), comprised of fifteen federal agencies, to assist responders by formulating policies, providing information, technical advice, and access to resources and equipment for preparedness and response to oil spills and hazardous substance releases. EPA serves as chair of the NRT and the USCG serves as vice-chair. However, the USCG is the incident-specific Chair for the Deepwater Horizon oil spill response.

In addition to the NRT, there are thirteen RRTs, one for each of EPA's ten regional offices and one each for Alaska, the Caribbean, and the Pacific Basin. RRTs are co-chaired by each EPA Region and its USCG counterpart. The RRTs are also comprised of representatives from other federal agencies and state representation, and frequently assist the federal OSCs who lead spill response efforts. The RRTs help OSCs in their spill response decision making, and can help identify and mobilize specialized resources. For example, through the RRT, the OSC can request and receive assistance on natural resource issues from the Department of the Interior, or borrow specialized equipment from the Department of Defense. Involvement of the RRT in

these response decisions and activities helps ensure efficient agency coordination while providing the OSC with the assistance necessary to conduct successful spill response actions.

Each spill has only one OSC, designated from either the USCG or the EPA. EPA is responsible for maintaining the NCP Product Schedule, which lists chemical and biological products available for federal OSCs to use in spill response and cleanup efforts. Due to the unique nature of each spill, and the potential range of impacts to natural resources, OSCs help determine which products, if any, should be used in a particular spill response. If the application of a product is pre-authorized by the RRT, then the OSC may decide to use the product in a particular response. If the product application does not have pre-authorization from the RRT, then the OSC must consult with the RRT regarding its use.

THE DEEPWATER HORIZON OIL SPILL

On April 22, 2010, the mobile offshore drilling unit (MODU) Deepwater Horizon, owned and managed by Transocean and contracted by BP P.L.C., sank after an explosion and a severe fire. Since that time, several thousand barrels per day of crude oil is being released into the Gulf of Mexico. The USCG, as the federal On-Scene Coordinator for the oil spill response, is implementing its responsibility to lead the federal environmental response actions in the coastal zone and is overseeing all response operations, including those made by BP.

The Secretary of the Department of Homeland Security has classified this oil discharge as a Spill of National Significance (SONS) and the USCG Commandant has been designated the National Incident Commander (NIC). EPA has integrated some of its staff into the Unified Area Command (UAC) as well as the local incident command posts. We have developed monitoring and assessment plans for surface and subsurface dispersant application, and we are providing

technical assistance, air monitoring, and water quality sampling at several locations in Louisiana, Mississippi, and Alabama to assist in the oil spill response.

Air quality monitoring

EPA responders are monitoring for particulate matter, hydrogen sulfide, and total volatile organic compounds (VOCs) associated with the oil as well as the in situ burns. We are also monitoring ozone levels and testing for specific VOCs that are present in crude oil: benzene, toluene, ethylbenzene, xylene and naphthalene. We are operating a network of fixed air quality monitoring stations in the Gulf Coast region and specially deployed monitoring and sampling equipment. In addition, EPA has deployed its twin engine aircraft, the Airborne Spectral Photometric Collection Technology (ASPECT), to detect chemical constituents associated with the oil spill, as well as to monitor for particulates over the in situ burns. We have also brought in two Trace Atmospheric Gas Analyzers (TAGA) mobile laboratory “buses” which are capable of real-time sampling and analysis, and can detect a range of chemical contaminants at very low levels. The TAGA mobile labs have specialized sampling equipment that can be used at remote locations to measure air quality. Additional response air monitoring and sampling sites have been set up by EPA response teams near Venice and Chalmette, LA, Mobile, AL and Ocean Springs, MS. In addition, we are also coordinating data collected from state monitors, and we are analyzing and tracking this information daily to note any unusual readings that might indicate changes in air quality that could trigger a call for action to protect public health.

Water quality monitoring

EPA teams are conducting surface water monitoring activities along the Gulf Coast. EPA is also collecting water quality and sediment samples in areas not yet affected by the oil release, in order to establish a data baseline. Based on the tests at the shoreline completed to date, water quality does not currently pose an increased risk to aquatic life in tested areas; however, EPA will continue to sample and test water to more fully assess water quality. We are currently developing post-impact water quality monitoring plans which will enable us to analyze water and sediment samples to detect chemicals found in oil as well as the chemical constituents of the dispersants that are being used in the oil spill response.

Use of Dispersant

When this crisis occurred, the federal OSC granted BP authorization to use approved dispersant on oil on the surface of the water in an effort to mitigate the shoreline impacts of the oil spill on fisheries, nurseries, wetlands and other sensitive environments. The OSC's authorization includes water quality monitoring and the dispersant being applied in order to ensure the protection of the environment and public health in affected areas. Dispersants contain a mixture of chemicals, that, when applied directly to the spilled oil, can break down the oil into smaller drops that can sink below the water's surface. Dispersed oil forms a "plume" or "cloud" of oil droplets suspended in the water. The dispersed oil mixes vertically and horizontally into the water column and is rapidly diluted. Naturally occurring bacteria and other microscopic organisms' biological processes can degrade the oil droplets over time. At this time, BP is authorized to continue aerial application of dispersants on the oil slick afloat on the water. Each aerial application is capable of treating a surface area of up to 250 acres. EPA is constantly monitoring air and water quality in the Gulf Coast area to ensure the health of nearby residents in protected. The results are posted on EPA's web site as it becomes available.

Because of the magnitude of the Deepwater Horizon Oil Spill, the RRT authorized BP to conduct tests of a new approach to use dispersants underwater, at the source of the oil leaks. The test data was evaluated to determine the efficacy of subsurface application and it was determined that BP can move forward with full-scale application contingent upon following an adaptive monitoring plan. An EPA/USCG joint directive specifies requirements for BP to follow for subsurface dispersant applications and includes evaluation criteria for the RRT to shut-down subsurface application. As we learn more we can adjust our criteria. We will closely monitor the data, and adjust the plan as appropriate.

Under the current directive, the RRT will evaluate the conditions above, in addition to all relevant factors including surface water data and other human health and ecological impacts, to determine whether subsurface dispersant application should be shut down. Additionally, EPA will also be conducting independent surface water and air monitoring for petroleum and dispersant constituents. Since the subsurface application was initiated, dissolved oxygen levels are within normal ranges. Initial studies indicate that the subsurface application of approximately 10,000-15,000 gallons of dispersants have the equivalent effect on the oil as the surface application of approximately 50,000 gallons of dispersant. Thus, the subsurface application of dispersants is much more efficient and could result in far less dispersants being released into the environment.

It is important to understand that the use of dispersants has environmental trade-offs. Dispersants are generally less toxic than the oils they break down. We know that surface use of dispersants decreases the environmental risks posed by oil spills to shorelines and organisms that live in surface waters. When used this way, dispersants usually break down over the course of weeks. However, the long term effects of dispersants on aquatic life are unknown, which is why

EPA and the Coast Guard are requiring BP to implement a sampling and monitoring plan. The federal oil spill response ensures that dispersant operations are constantly monitored to detect any adverse environmental effects that may outweigh the expected benefits of applying dispersants to the BP oil spill.

NEXT STEPS

The Deepwater Horizon Oil Spill is a massive and potentially unprecedented environmental disaster that has already impacted the lives and the livelihoods of countless people in the Gulf Coast region. While BP is a responsible party for this oil spill, EPA has been working alongside many federal and state agencies to implement emergency oil spill response actions since day one of the incident. EPA's Headquarters Emergency Operations Center is fully operational and is monitoring the overall oil spill response operation.

EPA is also preparing for a potential support role in shoreline assessment and cleanup operations. EPA's support work may include continued sampling and analysis, identifying and prioritizing sensitive resources, and determining the need for cleanup and recommending cleanup methods and endpoints. We are working within the Unified Command to promote oil recovery and recycling and also to identify landfill locations for any collected oil, oil contaminated booms and other contaminated response materials. EPA, in coordination with the Gulf Coast states, will continue to provide information to both workers and the public about monitoring results and will help to address local community concerns.

CONCLUSION

EPA will continue to provide full support to the USCG and the UC, and will continue to take a proactive and robust role in monitoring, identifying, and responding to potential public

health and environmental concerns. As local Gulf Coast communities assess the impact of the Deepwater Horizon oil spill on their economies, EPA, in partnership with other federal, state, and local agencies, as well as other community stakeholders, will devote its efforts necessary to assist in the oil spill response. At this time I welcome any questions you may have.

May 18, 2010
Hearing on Oil Spill Prevention and Response
Before the Senate Environment and Public Works Committee
Questions for the Record

Senator Barbara Boxer:

1. Describe the Environmental Protection Agency's legal responsibilities to review, comment on the adequacy of, and approve or deny any documents, including applications, plans, tests, and revisions or modifications to any such materials, related to the BP Deepwater Horizon drilling operation.

When answering this question, provide a list of any documents that the Agency reviewed, commented on or approved or denied related to the BP Deepwater Horizon drilling operations and a description of federal or state agencies that EPA coordinated with in any such activities, as well as the role and responsibilities of each such agency.

Response: EPA issues general National Pollutant Discharge Elimination System (NPDES) permits for discharges from offshore oil and gas extraction operations in accordance with Section 402(a) of the Clean Water Act. EPA Region 6 issued a NPDES general permit (GMG290000) for discharges from offshore oil and gas extraction operations in the western portion of the Outer Continental Shelf of the Gulf of Mexico in 2007. This permit authorizes certain discharges from exploration, development, and production facilities located in and discharging to the Gulf of Mexico off the coasts of Louisiana and Texas in accordance with its terms and conditions. The general permit also imposes limitations, prohibitions, reporting requirements, and conditions with respect to such discharges. BP submitted its notice of intent to be covered by this general permit for its operations on lease block Mississippi Canyon 252 to EPA on February 23, 2009. BP's permit coverage has included certain discharges associated with its operation of the Deepwater Horizon drilling rig consistent with the terms and conditions of the general permit.

2. Describe the Environmental Protection Agency's legal responsibilities and activities in responding to the BP Deepwater Horizon drilling rig disaster, including, where applicable, the Agency's:

a. Evaluation of each measure to stop the discharge of oil into the Gulf (including activating the blowout preventer and deploying a riser insertion tube, top kill, junk shot, top cap, or relief wells), assessment of the potential effectiveness of each measure prior to use, and decision to use each such measure.

i. Describe in detail the date the decision was made to deploy each measure, the date when a determination was made that the measure was not achieving its intended outcome, and any statements made to the public before or after such decisions and determinations were made.

ii. Provide all documents, including any draft and final memos, emails, notes, logs from electronically-conducted meetings, correspondence, reports, press releases, public statements, test results, and other documents related to the measures employed to stop the well blowout and the decision-making process for deploying these measures.

Response: The U.S. Coast Guard (USCG), as the Federal On-Scene Coordinator (FOSC) for response activities for the Deepwater Horizon oil spill, is the federal agency responsible for directing the response to the discharge of oil into the Gulf. We defer to the USCG to address these issues.

b. Oversight authorities over BP, Transocean, Halliburton and other private entities involved in response planning, decision-making, approval or rejection of potential response activities, implementation of response activities, verification that response activities have been completed, and verification that such activities meet all legally applicable and relevant standards of completion or effectiveness;

Response: The USCG, as the FOSC for response activities for the Deepwater Horizon spill, is the federal agency responsible for oversight over all spill response activities, including those conducted by the responsible parties. EPA provided limited oversight for two specific activities: (1) the cleanup and disposal of wastes by the responsible parties and governmental entities involved in the response effort and (2) the use of dispersants on the surface and subsea.

Waste disposal is governed by applicable Federal, State and local laws and regulations, including the Resource Conservation and Recovery Act, 42 USC 6901-6992k, and the National Oil and Hazardous Substances Pollution Contingency Plan or National Contingency Plan (NCP), 40 CFR 300 et seq. The USCG, in consultation with EPA and the states, approved waste management plans outlining how recovered oil and waste generated as a result of the Gulf oil spill was managed. These plans can be found at: <http://www.epa.gov/bpspill/waste.html#plans>. EPA reviewed and commented on BP Waste Management Plans submitted to the USCG Incident Commanders at the Mobile Sector and Houma Sector Incident Commands, and development of Waste Management Directives that were issued by the FOSC to BP requiring their compliance with applicable Federal, State and local waste management requirements and oversaw the implementation of those plans throughout the response effort.

In addition, EPA, pursuant to its responsibilities under Subpart J of the NCP, reviewed and either concurred or non-concurred on the use of chemical countermeasures such as dispersants in consultation with USCG, the National Oceanic and Atmospheric Administration (NOAA) and the Department of the Interior (DOI). On May 10, 2010, EPA and USCG issued a directive requiring BP to implement a monitoring and assessment plan for both subsurface and surface applications of dispersants. Additionally, on May 26, 2010, EPA and USCG directed BP to significantly decrease the overall volume of dispersant used.

EPA scientists participated in the identification and development of sampling plans and provided oversight on board the sampling vessels. EPA also reviewed and approved or disapproved the use of sorbents when proposed to be used in an unrecoverable manner. During the course of the Deepwater Horizon response, the U.S. Coast Guard never proceeded in the face of an EPA non-concurrence with chemical countermeasures or disapproval of use of sorbents.

c. Oversight authorities over other state or federal agencies involved in actual or potential response planning, decision-making, approval or rejection of response activities, implementation of response activities, verification that response activities have been completed, and that such activities meet all legally applicable or relevant standards of completion or effectiveness;

Response: The USCG, as the FOSC for response activities for the Deepwater Horizon oil spill, is the federal agency responsible for oversight of state or federal agencies involved in the listed activities. EPA, as a support agency, has provided oversight of the cleanup and disposal of wastes in conjunction with the Coast Guard. EPA activities include coordination of State review and comment of BP Waste Management Plans, coordinating and conducting EPA and State assessments and site visits to waste management facilities (e.g., landfills and staging areas) being utilized by BP in its response, as well as independent waste sampling to ensure proper characterization and disposal of waste and materials associated with Deepwater Horizon spill response. EPA concurrence is required for the use of dispersants as per the Clean Water Act Section 311 and the NCP.

d. Role in coordinating with state and federal agencies and private entities involved in response planning, decision-making, approval or rejection of potential response activities, implementation of response activities, verification that response activities have been completed, and verification that such activities meet all legally applicable and relevant standards of completion or effectiveness;

Response: The USCG, as the FOSC for response activities for the Deepwater Horizon oil spill, is the federal agency responsible for coordinating with state and federal agencies and private entities involved in the listed activities. EPA, as a support agency and member of the Unified Command, was consulted on response activities based upon its areas of expertise. As mentioned above, these areas included the use of dispersants, chemical countermeasures, and sorbents to be left in place, as well as waste disposal activities and certain alternative response technologies being proposed by the public. EPA was also consulted and provided opinions on NEPA analyses for response and interim restoration activities that may have had potential environmental impacts and reviewed and approved water, sediment, and air sampling plans and public safety protocols.

e. Specific legal authorities and activities related to the use of oil dispersants, including the:

i. Assessment of potential environmental and public health effects from such use:

ii. Factors used to determine whether the use of specific dispersants meet all legal requirements;

iii. Results of any tests that the Agency conducted or relied on in determining whether the use of specific dispersants meet all legal requirements;

iv. Specific actions taken and legal authorities used to approve or disapprove the use of any dispersant;;

v. Any actions that the Agency has not yet taken but could take to ensure that dispersants used to address the discharge of oil complies with all legal requirements and does not present a threat to environmental quality and human health; and

Response: Dispersants must meet certain effectiveness thresholds under the NCP to be added to the NCP Product Schedule. In addition, the dispersant manufacturer must conduct a set of toxicity tests and submit the results to EPA for review before a dispersant is placed on the Product Schedule. Only products listed on the Product Schedule may be used in a response, absent exceptional circumstances. Pursuant to its responsibilities under Subpart J of the NCP, EPA verified that dispersants authorized for use by the FOSC were listed on the NCP Product Schedule.

Regional Response Teams determine whether, and under what conditions, a dispersant may be preauthorized for use. Absent preauthorization, EPA must concur on the use of a dispersant absent exceptional circumstances. See 40 CFR 300.910 and 300.915(7). Given the unprecedented nature of the Gulf oil spill and the large quantity of dispersants used, EPA worked within the Unified Command to direct BP to conduct certain sampling and monitoring while dispersants were applied to ensure that environmental quality and human health were not threatened. Pursuant to its responsibilities under Subpart J of the National Contingency Plan, EPA reviewed USCG and NOAA monitoring data to verify that dispersants used in the response effectively dispersed the oil. EPA and NOAA also monitored subsea data daily to ensure that dissolved oxygen and rotifer tests were above the shut-down criteria in the May 10, 2010 USCG/EPA Directive. The EPA representative to the RRT and the RRT representative from the state with jurisdiction over the navigable waters threatened by the discharge, in consultation with the DOC and DOI natural resource trustees, reviewed and concurred or non-concurred on the use of dispersants and other chemical countermeasures.

EPA initiated its own scientific testing of eight dispersant products on the National Contingency Plan Product Schedule to ensure that decisions about dispersant use in the Gulf of Mexico were grounded in the best available science and data. The results indicated that the dispersants, when tested alone and in combination with oil, displayed roughly the same toxicities, and that dispersant alone was less toxic than the dispersant-oil mixture for all eight products tested. The results also confirmed that the dispersant used in response to the Gulf oil spill, Corexit 9500A, is generally no more or less toxic than the other available and tested alternatives. These externally peer-reviewed results are publicly available on EPA's website at: <http://www.epa.gov/bpspill/dispersants-testing.html>.

EPA also conducted air and water sampling for dispersant related chemicals, and the data showed pollution levels well below levels of concern.

vi. Consideration of any alternatives to chemical-based dispersants, including inert materials and sorbents.

Response: The Federal On-Scene Coordinator (USCG) determines the specific approaches to be used during an oil spill on a case-by-case basis. During the Gulf oil spill response, EPA and the RRT assisted with evaluation of several different alternatives including: skimming, use of absorbent booms, and-situ burning, which were all implemented during the response.

f. Oversight authorities and activities involving BP, Transocean, Halliburton and other private entities and federal agencies who are involved in estimating the volume of discharge of oil into the Gulf, including the review, approval and modification of any methodologies and technologies used to create any such estimate;

Response: EPA does not have an oversight role regarding the above issues and defers to the USCG and USGS to address these issues.

g. Oversight authorities and activities involving BP, Transocean, Halliburton and other private entities who have engaged or may have engaged in any activity involving an individual's waiving of any right as a condition of participation in any response action or as a condition of any compensatory payment. If the Agency has any information that any such activity may have occurred:

- i. Provide a list of each instance in which any such activity may have occurred; and*
- ii. Describe the actions that the Agency has taken or plans to take to investigate, address, or alert other federal or state agencies to any instance in which a private entity has engaged or may have engaged in any activity involving an individual's waiving of any right as a condition of participation in any response action or as a condition of any compensatory payment;*

Response: EPA does not have an oversight role regarding these issues.

h. Oversight authorities and activities in any decision-making process involving prohibiting, limiting or otherwise conditioning any media access to shorelines or other areas containing or potentially containing any oil, wildlife exposed to oil, or threat to environmental quality or human health related to the discharge of oil;

Response: While EPA does not have oversight authority for this issue, we supported, and continue to support, the Federal On-Scene Coordinator (USCG) in its continued efforts to provide media access.

i. Oversight authorities and activities in any assessment of damages to natural resources as a result of the discharge of oil into the Gulf.

Response: EPA is not a natural resources trustee and does not have oversight authorities in any assessment of damages to natural resources. EPA is committed to providing support to the natural resource trustees when, and if, it becomes necessary and appropriate.

Senator Thomas R. Carper

1. What is the Environmental Protection Agency doing to ensure that chemical dispersants used by British Petroleum are not harmful to the environment, and what does EPA need to be doing on an ongoing, non-emergency basis moving forward to ensure that oil and gas companies know and use the least environmentally damaging chemical dispersant?

Response: EPA worked with BP and the U.S. Coast Guard (USCG) to ensure that only the amount of dispersant necessary was applied in the Gulf. In addition, EPA and USCG consulted with the National Oceanic and Atmospheric Administration (NOAA) to monitor conditions in the Gulf on a daily basis while dispersant was applied. The presence of hydrocarbons, the level of dissolved oxygen and a screening toxicity test were measured daily. Any concerns raised by this monitoring formed the basis for decisions to continue or stop dispersant application. EPA's research scientists conducted comparative toxicity tests on eight of the dispersants on the NCP Product Schedule and will be further studying the potential health and environmental effects of dispersants with funding received through the Supplemental Appropriations Act of 2010. A research strategy is being developed to address longer term effects and the identification of innovative and greener technologies to address environmental problems. Moving forward, EPA is examining the regulatory framework and criteria used to test and list dispersants on the NCP Product Schedule.

2. What is EPA doing to protect workers cleaning up the spill from harmful air?

Response: EPA's emergency response workers are required to wear the proper personal protective equipment during clean up operations. Workers must follow personal protective equipment and exposure control requirements established by the Unified Area Command, with technical assistance from the Occupational Safety and Health Administration (OSHA). OSHA monitored worker safety and exposure to dispersants and volatile components in the air from the crude oil. OSHA made more than 4,000 site visits to staging areas, clean up areas and on boats to ensure that BP and its contractors implemented safety precautions and procedures. They also made sure that workers were trained, and monitored the ongoing training program. OSHA reviewed more than 100,000 worker exposure measurements both on and off shore from BP and took an additional 7,000 exposure measurements. Dispersants are applied by aerial spray away from worker locations. More detailed questions regarding worker exposure should be directed to OSHA.

Senator Benjamin L. Cardin

1. In your testimony before the committee, you committed to reviewing the regulations regarding dispersant registration and listing. What is the expected scope and time line for that review? Will that review cover regulations governing the choice and use of dispersants? Will the Agency review the adequacy of existing toxicity tests as well as the benefits of short and long-term effectiveness tests? Will that review include the registration, listing, choice and use of bioremediation products, surface washing agents, sorbents and surface-collecting agents?

Response: EPA expects to review the regulatory requirements, testing procedures and protocols, and listing criteria for placing dispersants as well as the other oil spill remediation agents on the NCP Product Schedule in the coming year. The Agency is also working on the development of recommendations to Area Contingency Planners and Regional Response Teams in coordination with the National Response Team (NRT) on dispersant use.

Senator Sheldon Whitehouse

1. After EPA directed BP to use different chemical dispersants, BP explained in a May 23 letter that it had to use what was available. How is EPA planning to respond? Does EPA have the authority to remove its approval for the use of Corexit, at the surface or subsurface? If so, why hasn't EPA exercised this authority?

Response: EPA responded to BP's letter by conducting its own tests to verify and compare information about the toxicity of the dispersants on the NCP Product Schedule, the toxicity of the oil spilled into the Gulf, and the toxicity of dispersant/oil mixtures. These tests were conducted to compare the aquatic toxicity of dispersants listed on the NCP Product Schedule, alone and in combination with Louisiana Sweet Crude Oil, and to determine the toxicity of the oil itself. These tests did not provide data to justify changing the dispersant used. However, EPA, in collaboration with the National Oceanic and Atmospheric Administration (NOAA) and the USCG, continued to monitor the use of dispersants. Listing a product on the Product Schedule does not constitute approval for a particular situation; products are authorized for use at the direction of the Federal On-Scene Coordinator (FOSC – in this case, the U.S. Coast Guard) in coordination with the Regional Response Team (RRT) and Unified Command. EPA is a member of the RRT and can make recommendations with respect to the products on the Product Schedule that should be considered for use on an oil spill.

2. Has the EPA determined whether the symptoms being reported by fishermen and response workers (dizziness, coughing, etc.) are being caused by dispersant use? What safety precautions are being taken with workers when dispersant is used?

Response: Dispersants are applied by aerial spray away from worker locations. Workers must follow personal protective equipment and exposure control requirements established by the Unified Area Command, with technical assistance from the Occupational Safety and Health Administration (OSHA). OSHA monitored worker safety and exposure to dispersants and volatile components in the air from the crude oil. OSHA made more than 4,000 site visits to staging areas, clean up areas and on boats to ensure that BP and its contractors implemented safety precautions and procedures. They also made sure that workers were trained, and monitored the ongoing training program. OSHA reviewed more than 100,000 worker exposure measurements both on and off shore from BP and took an additional 7,000 exposure measurements. More detailed questions regarding worker exposure should be directed to OSHA.

3. What does it mean to have a dispersant on the Schedule? My reading of Subpart J of the National Contingency Plan is that having a product on the Schedule does not constitute approval. And yet, many Regional Response Teams, including Region 6 where the Gulf spill is happening, pre-authorize every dispersant on the Schedule.

Response: When a product is listed on the NCP Product Schedule, it is "authorized for use" by FOSC. The FOSC determines the chemical countermeasure to be deployed at the time of the spill. Only the FOSC may authorize deployment of a chemical countermeasure. In many cases, there may be a Regional Response Team or Area Contingency Plans already in place in "pre-approval" zones. In pre-approval zones, use of a dispersant may be "pre-authorized" if certain

conditions are met (e.g. greater than 3 nm from shore, water at least 100 ft deep). Monitoring and testing of dispersants used in the Gulf oil spill was conducted without regard to whether or not the area fell under a pre-approved zone.

4. Can EPA compare the process a dispersant goes through to be listed on the Schedule, to the process a pesticide goes through to be registered by the EPA?

Response: The two processes are different. The process for listing a dispersant on the NCP Product Schedule is comparable to registering a pesticide only from the standpoint that certain tests are required and that manufacturers must submit comprehensive data about the product to the Agency for review. The process for registering a pesticide is much more comprehensive and rigorous than that for listing a dispersant on the NCP Product Schedule primarily because the scientific data provided by the manufacturer must demonstrate that a pesticide will not cause unreasonable risks to human health, workers, or the environment when used as directed on product labeling. With respect to pesticides, EPA must ensure that the pesticide, when used according to label directions, can be used without posing unreasonable risks to the environment. To make such determinations, EPA requires more than 100 different scientific studies and tests from applicants. Where pesticides may be used on food or feed crops, EPA also sets tolerances (maximum pesticide residue levels) for the amount of the pesticide that can legally remain in or on foods that provide for a reasonable certainty of no harm to human health. Depending on the class of pesticide and the priority assigned to it, the review process can take several years.

To list a dispersant on the NCP Product Schedule for use on oil spills, the product manufacturer must follow the requirements and instructions detailed in Subpart J of the NCP. These requirements and instructions specify the tests that are to be conducted by qualified laboratories on the product and the details about a product to be collected by the manufacturer. For example, a dispersant must be tested for efficacy and toxicity; product information includes the chemical components, formula, shelf life, certain physical/chemical properties, and safe handling practices.

Under normal circumstances, when submissions are received for listing on the NCP Product Schedule, EPA completes its review and responds to the manufacturer within 60 days. If all testing and data requirements have been met, the new product is listed. During the Gulf oil spill response, EPA reviewed the significant number of new product submissions as expeditiously as possible.

5. On my May 24 visit to the Gulf, I was repeatedly told by government officials that Corexit was "approved." Does EPA consider listing on the Schedule to constitute approval of a dispersant? If not, has EPA considered actually subjecting the dispersants on the Schedule to an approval process?

Response: As noted above, when a product is listed on the NCP Product Schedule, it is not "approved" for a particular situation; rather it is "authorized for use" by the FOSC. In each situation, the FOSC determines the chemical countermeasure to be deployed at the time of the spill. Only the FOSC may authorize deployment of a chemical countermeasure.

6. According to NOAA testimony in June 2009 before the House Committee on Science and Technology, Doug Helton also noted that, "Dispersants are rarely used in spill response, mainly due to our lack of understanding of the environmental impacts of dispersants." How and when did EPA evaluate the use of dispersants at depth, and what information did EPA rely on in evaluating the use of dispersants below the surface of the water?

Response: To clarify, the statement, "Dispersants are rarely used in spill response, mainly due to our lack of understanding of the environmental impacts of dispersants" was from a hearing in 2009 and was a broad statement in relation to why dispersants were not used in the Selendang Ayu spill, a coastal spill in Alaskan waters where conditions and baseline information varies greatly from the Gulf of Mexico.

In the late April/early May 2010 timeframe, EPA, in coordination with the FOSC (USCG), NOAA, and BP, ran three trials to determine whether dispersant application subsea would be effective and would not adversely affect the marine ecosystem. Not only did the dispersant application at depth show a reduction in oil particle size (indicating dispersion), but there was also an indication that dispersant application at depth would not result in an adverse level of aquatic toxicity or a significant reduction in the amount of dissolved oxygen in the water that could harm sea life. These trials showed that the dispersant appeared to be effective and there was not a significant oxygen reduction in the water column. In addition, a reduced volume of dispersant could be used subsea versus surface application. The dispersant application used in the Gulf appeared to be effective in helping to protect the shoreline by dispersing oil at sea.

7. On EPA's website, it says that, "while BP pursues the use of subsurface dispersants, the federal government will require regular analysis of its effectiveness and impact on the environment, water and air quality, and human health through a rigorous monitoring program." What information has BP provided to EPA on the subsurface use of dispersant?

Response: BP provided information on the rate of dispersant application on a daily basis. EPA scientists participated in the identification and development of water quality sampling plans and provided oversight on board the sampling vessels. In addition, EPA conducted its own near shore sampling and NOAA conducted off-shore sampling.

Senator BOXER. Thank you very much.

We will go to Hon. Nancy Sutley.

The Secretary of the Interior has joined us, and we are so glad. I know you have been working non-stop, but we are just really glad to have you here.

We will proceed to Hon. Nancy Sutley.

STATEMENT OF HON. NANCY SUTLEY, CHAIR, COUNCIL ON ENVIRONMENTAL QUALITY

Ms. SUTLEY. Thank you, Chairman Boxer, Ranking Member Inhofe, and members of the Committee. I appreciate the opportunity to testify today and ask that my written testimony be included in the record.

Senator BOXER. Without objection.

Ms. SUTLEY. Thank you.

Before I move to discuss the National Environmental Policy Act, I want to express my condolences to the families of the 11 workers who lost their lives in the explosion and sinking of the Deepwater Horizon. I also want to stress that the Administration is committed to aggressively responding to the environmental crisis in the Gulf and to protecting the lives and livelihoods of the people of the region.

Last week the President sent Congress a legislative proposal that would enable the Federal Government to speed assistance if the spill gets worse and if the responsible parties are not paying claims quickly and fairly. The Administration looks forward to working with Congress to implement the proposal.

The President is also forming an independent bipartisan commission to look at improvements to offshore drilling infrastructure and related measures to better protect workers and the environment.

Today I will focus on NEPA and how it relates to agency actions. President Nixon signed the National Environmental Policy Act into law in 1970, and in 1978 the Council on Environmental Quality issued regulations implementing the procedural provisions of NEPA that apply to all Federal agencies. Every agency in the Federal Government has an affirmative obligation to comply with NEPA.

Agencies establish their NEPA implementing procedures, which tailor the CEQ requirements to a specific agency's authorities and decisionmaking processes. CEQ provides assistance in this process, and an agency's NEPA procedures are not finalized until CEQ determines that they are in conformity with NEPA and CEQ regulations.

In February 2010 the Administration moved to update NEPA practices. CEQ released draft guidance that will assist Federal agencies to meet the goals of NEPA, enhance public involvement, increase transparency, and ease implementation. This draft guidance specifically addresses categorical exclusions, or CEs which have been used since the 1970s. Agencies can establish CEs when experience shows that certain groups of activities are unlikely to have significant environmental effects.

In recent years, the expansion of the number and range of activities categorically excluded combined with the extensive use of categorical exclusions and limited opportunity for public involvement

in CE applications have underscored the need for additional guidance. In the proposed guidance, CEQ has made it clear that it will increase its review of agencies' use of CEs.

When it comes to oil and gas development, the Minerals Management Service is required to apply NEPA to drilling decisions on the Outer Continental Shelf. Specifically in the case of the Gulf of Mexico leases, the Minerals Management Service prepared several NEPA analyses. In April 2007 MMS prepared a broad programmatic environmental impact statement on the Outer Continental Shelf Oil and Gas Leasing Program, which includes the 5-year lease plan.

Also in April 2007, MMS prepared an environmental impact statement for the Gulf of Mexico OCS oil and gas sales in the western and central planning areas. In October 2007 MMS completed another environmental assessment tiered off of the multi-sale EIS for the central Gulf of Mexico's lease sale 206. This is the sale in which the lease was issued for the location that includes the Deepwater Horizon well.

In addition, MMS approved BP's development operations based on a programmatic environmental assessment that MMS prepared in 2002. In the decision to approve the exploration plan that included the Deepwater Horizon well, MMS applied its existing categorical exclusion review process.

The categorical exclusion that was used by MMS for Deepwater Horizon was established more than 20 years ago. Under the Outer Continental Shelf Lands Act, MMS has 30 days to complete its environmental review and act on the exploration plan. In the legislation we sent up, the Administration seeks to change that timeline to a minimum of 90 days.

Last week CEQ and the Department of the Interior announced a review of MMS's NEPA procedures. This review is to ensure that NEPA is being applied in a rigorous way that meets its intent, and we expect it to be completed by mid-June.

In closing, Federal agencies have an affirmative obligation to comply with NEPA, and the Administration is committed to making sure that agencies meet this obligation. The Deepwater Horizon event reminds us of the need for a thorough environmental review of offshore oil and gas drilling projects, and I am committed to working with the Department of Interior to ensure the application of NEPA in a manner that meets the goals of the Act.

Thank you for the opportunity to testify here today, and I look forward to your questions.

[The prepared statement of Ms. Sutley follows:]

Written Testimony of Nancy H. Sutley
Chair of the Council on Environmental Quality
Before the U.S. Senate Environment and Public Works Committee
May 18, 2010

Thank you Chairman Boxer, Ranking Member Inhofe, and members of the Committee.
I appreciate the opportunity to testify today on the National Environmental Policy Act (NEPA).

Before I move to discuss NEPA, I want to express my condolences to the families of the 11 people who lost their lives in the explosion and sinking of the Deepwater Horizon.

I also want to stress that the Administration is committed to aggressively responding to the environmental crisis in the Gulf, and to protecting the lives and livelihoods of the people in the region.

Last week, the President sent Congress a legislative package proposal that would help individuals manage the claims process and enable the Federal government to speed assistance in the event that the spill gets worse and if the responsible parties are not paying claims to affected individuals quickly and fairly. The legislation provides states with additional help to provide one-stop services for those affected by the oil spill, including filing claims with BP, and seeking other assistance that may be available, including Small Business Administration Disaster Loans. The Administration's proposal enables the President to trigger and mobilize, in partnership with states, new forms of assistance – such as Unemployment and Nutrition Aid – if the claims process established by the Oil Pollution Act is not sufficient to meet the needs of affected individuals. It also enables the government to recoup the expenses of providing these services from the responsible parties.

National Environmental Policy Act (NEPA)

In 1970, President Nixon signed the National Environmental Policy Act into law, which passed Congress with overwhelming bipartisan support. In passing NEPA, Congress recognized that nearly all Federal activities affect the environment and created an affirmative obligation for

Federal agencies to consider the effects of their actions on the quality of the human environment. As part of NEPA, Congress established the White House Council on Environmental Quality (CEQ) within the Executive Office of the President to work across the Federal government on agency implementation of the environmental impact assessment process.

Today I will provide you with an overview of the NEPA process and discuss how it relates to agency actions and informs Federal decision-making. I will discuss CEQ's oversight role and the Minerals Management Service's (MMS) application of NEPA to offshore drilling decisions. I will also discuss how CEQ is moving to update its oversight of agency NEPA processes and practices.

Overview of NEPA Process

NEPA provides a tool for informed agency decision-making. Every agency in the Federal Government has an affirmative obligation to comply with NEPA. The NEPA environmental review process begins when an agency proposes an action. The agency must determine if the action has the potential to affect the quality of the human environment. Agencies may apply one of three levels of NEPA analysis. They may: prepare an Environmental Impact Statement (EIS); prepare an Environmental Assessment (EA); or apply a Categorical Exclusion (CE).

Under NEPA, when the proposed action has the potential for significant environmental effects, agencies are required to prepare an Environmental Impact Statement. In those situations where there is uncertainty over whether there will be significant effects, the agency can prepare an Environmental Assessment to determine whether to prepare an EIS or make a Finding of No Significant Impact. Categorical Exclusions are used for the categories of actions that an agency has found do not typically result in individual or cumulative significant environmental effects or impacts, and are based on agencies' past experience with similar actions.

NEPA charges the Council on Environmental Quality (CEQ) with working with Federal agencies on their implementation of the Act.

In 1978, CEQ issued regulations implementing the procedural provisions of NEPA. Those regulations apply to all Federal agencies and put into place the basic framework for all NEPA analyses. The regulations required Federal agencies to establish their own NEPA implementing procedures, and to ensure that they have the capacity, in terms of personnel and other resources, to comply with NEPA. Agencies have more than 30 years experience in implementing NEPA. CEQ periodically issues guidance and other documents, such as guides and handbooks. CEQ also convenes meetings with Federal NEPA contacts to provide CEQ's interpretation of NEPA requirements and focus on how agencies can improve their NEPA analyses and documents. Through case law, the Federal courts and the Supreme Court have established that the agencies can rely on CEQ's interpretation of, and guidance on, NEPA.

Agencies establish their NEPA implementing procedures, which tailor the CEQ requirements to a specific agency's authorities and decision making processes. CEQ provides assistance when agency-specific procedures are developed. An agency's NEPA procedures are not finalized until CEQ reviews proposed procedures and determines that they are in conformity with NEPA and the CEQ regulations. Any subsequent revisions or changes to the agency procedures are subject to the same CEQ oversight. Periodically, CEQ also reviews agency's NEPA implementing regulations and procedures.

On occasion, CEQ engages with Federal agencies on specific NEPA reviews. This typically occurs when an agency requests assistance, or when stakeholders raise concerns with the NEPA process as it applies to a particular project or interest. For example, in the recent Corporate Average Fuel Economy (CAFE) rulemaking, CEQ worked with National Highway Traffic Safety Administration and the Environmental Protection Agency to ensure NEPA compliance for the decision making that led to the rule.

More recently, CEQ has been actively engaged in ensuring agency NEPA compliance for projects and activities funded under the American Recovery and Reinvestment Act. On behalf of the President, CEQ submits quarterly reports on NEPA and the Recovery Act to this Committee and to the House Natural Resources Committee. Currently, the agencies have completed more

than 95 percent of the NEPA reviews required for projects and activities funded under the Recovery Act.

CEQ provides informal and formal advice and review of NEPA analyses. Occasionally, CEQ receives formal referrals for inquiry based on either an alleged violation of NEPA, the environmentally unsound nature of a proposed action, or a combination of those. The referral process was established in the Clean Air Act and the CEQ NEPA regulations. In the forty years since NEPA was enacted, CEQ has handled 27 formal referrals. In all its interactions with the agencies, CEQ takes into account the extensive body of law developed over the years as courts interpret NEPA in fact-specific cases.

Updating NEPA Practice

On February 18, 2010, the Obama Administration moved to update NEPA practice. CEQ released draft guidance that will assist Federal agencies to meet the goals of NEPA, enhance the quality of public involvement in governmental decisions relating to the environment, increase transparency and ease implementation. The draft guidance clarifies: 1) when and how Federal agencies must consider greenhouse gas emissions and climate change in their proposed actions; 2) the appropriateness of “Findings of No Significant Impact” and when there is a need to monitor environmental mitigation commitments; and 3) the use of Categorical Exclusions. CEQ is also enhancing public tools for reporting on NEPA activities.

I would like to specifically discuss CEQ’s draft guidance as it relates to Categorical Exclusions. Categorical Exclusions have been used by Federal agencies since the 1970s. When experience has shown that certain groups of actions are unlikely to have significant environmental effects, agencies can establish CEs. In recent years, the expansion of the number and range of activities categorically excluded, combined with the extensive use of CEs and the limited opportunity for public involvement in CE application, has underscored the need for additional guidance about the development and use of CEs. Categorical Exclusions are the most frequently employed method of complying with NEPA, underscoring the value for guidance on CE development and use.

The draft guidance clarifies when it is appropriate for agencies to establish CEs, how agencies should apply existing CEs, and that agencies should conduct periodic reviews of CEs to assure their continued appropriate use and usefulness. It also recommends greater documentation and public involvement in the process.

In the proposed guidance, CEQ made clear that it will increase its review of agencies' use of CEs. Many have commented on this proposed guidance, and CEQ is reviewing and considering all public comments as we finalize that guidance.

NEPA and Offshore Drilling

NEPA applies to every stage of Federal decision making related to offshore oil and gas exploration and development.

The Mineral Management Service (MMS) is required to apply NEPA to drilling decisions in the outer continental shelf, beginning with the initial planning of outer continental shelf leasing, and ending with a decision on a specific well.

In the case of the Gulf of Mexico leases, MMS prepared several NEPA analyses. Environmental Impact Statements (EIS), the most intensive level of analysis, were prepared at two decision points. First, in April 2007, MMS prepared a broad "programmatic" EIS on the Outer Continental Shelf Oil and Gas Leasing Program, which includes the five-year lease plan for 2007-2012. Also, in April 2007, MMS prepared an EIS for the Gulf of Mexico OCS Oil and Gas Lease Sales in the Western and Central Planning Areas, the "multi-sale" EIS.

In October 2007, MMS completed another NEPA analysis, an Environmental Assessment (EA), tiered off the multi-sale EIS, for Central Gulf of Mexico Lease Sale 206. This is the sale in which the lease was issued for the location that includes the Deepwater Horizon well.

In addition, companies wishing to explore and develop oil and gas offshore submit their offshore operations plans for MMS approval. MMS approved BP's development operations based on a programmatic EA that MMS prepared in December 2002.

In the decision to approve the Exploration Plan that included the drilling of the Deepwater Horizon well, MMS applied its existing Categorical Exclusion (CE) review process.

Under section 11 of the Outer Continental Shelf Lands Act, 43 U.S.C. section 1340, MMS has 30 days to complete its environmental review and act on the application to permit drilling. The Administration, in its supplemental budget request sent to Congress on May 12, 2010, seeks to change that timeline to a minimum of 90 days.

Review of MMS Application of NEPA Procedures

The Categorical Exclusion used by MMS for Deepwater Horizon was established more than 20 years ago. At that time, CEQ reviewed and provided a conformity letter stating CEQ's determination that establishing the CE was in conformity with NEPA and the CEQ regulations. CEQ does not review every application of a Categorical Exclusion, every agency project, or the NEPA review for every agency project.

To ensure that NEPA is being properly applied, CEQ and the Department of the Interior announced last week a review of MMS's NEPA procedures. CEQ has begun reviewing MMS NEPA procedures for OCS oil and gas exploration and development, including the five-year plan, the oil and gas lease sales, and the exploration well permitting process. This review is to ensure that NEPA is being applied in a rigorous way that meets its intent. I expect this review to be completed by mid-June.

Conclusion

In closing, NEPA is a useful tool that has served the nation for the past 40 years. The Deepwater Horizon event reminds us of the need for thorough environmental review of offshore oil and gas drilling projects, and I am committed to working with MMS to ensure it applies NEPA in a manner that meets the goals of the Act.

Thank you for the opportunity to testify today, and I look forward to your questions.

Post-Hearing Questions for the Record
The Honorable Nancy Sutley, Chair, Council on Environmental Quality,
The Executive Office of the President
Hearing on the Federal Response to the Recent Oil Spill in the Gulf of Mexico
May 18, 2010

Questions from Senator Barbara Boxer

1. *Describe the Council on Environmental Quality's legal responsibilities to review, comment on the adequacy of, and approve or deny any documents, including environmental impact analyses, applications, plans, tests, and revisions or modifications of any such materials, related to the BP Deepwater Horizon drilling operation. When answering this question, provide a list of any documents that the Council reviewed, commented on or approved or denied related to the BP Deepwater Horizon drilling operations and a description of federal or state agencies that CEQ coordinated with in any such activities, as well as the role and responsibilities of each such agency.*

The Council on Environmental Quality (CEQ) was established under the National Environmental Policy Act (NEPA) to guide Federal agencies in their implementation of NEPA environmental review. Under NEPA and the CEQ Regulations Implementing the Procedural Provisions of NEPA (CEQ Regulations), promulgated in 1978, CEQ has the authority to review agencies' NEPA implementing regulations and procedures, and their overall program implementation.¹ The CEQ Regulations, together with guidance documents periodically issued by CEQ, establish a basic framework for NEPA reviews, applicable to all Federal agencies. They require that Federal agencies establish their own NEPA implementing procedures and maintain the capacity, in terms of personnel and other resources, to comply with NEPA.

Each agency's NEPA implementing procedures must tailor the CEQ Regulations to the agency's particular missions and authorities. An agency's procedures must identify categories of actions that normally have individually or cumulatively significant environmental impacts; categories of actions that normally do not have individually or cumulatively significant environmental impacts (called categorical exclusions); and actions for which there is uncertainty about whether they will result in individually or

¹ See the CEQ Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act, 40 C.F.R. § 1500 et seq. available at ceq.hss.doe.gov/ceq_regulations/regulations.html.

cumulatively significant environmental impacts. When an agency proposes new NEPA implementing procedures, it must consult with CEQ and provide the public an opportunity to review and comment on the proposed procedures. Before the procedures can be finalized, CEQ must review them and determine whether the agency's implementing procedures are in conformity with NEPA and the CEQ Regulations. Any subsequent revision to an agency's procedures is subject to the same CEQ oversight process.

Once CEQ has reviewed an agency's NEPA procedures, as described above, CEQ is not required to review, comment on, or approve agencies' determinations of whether or how NEPA applies to every agency proposed plan, policy, program, or project. Likewise, CEQ is not required to review every NEPA analysis or document prepared by an agency to evaluate the environmental impacts of proposed activities.

Prior to the Department of the Interior's Minerals Management Service (MMS) actions on the Macondo well, CEQ did not review, comment on, approve, or deny any of the particular NEPA environmental review documents that MMS produced in the exercise of its authority to execute the lease sale, approve the exploration plans, and issue the drilling permits. This includes MMS's application of NEPA categorical exclusions—established as part of MMS's NEPA implementing procedures more than twenty years ago—to approve BP's Exploration Plans and drilling permits.

CEQ exercised its NEPA oversight authority when it conducted a special review of MMS's NEPA procedures, which culminated in release of the August 16, 2010, "Report Regarding the Minerals Management Service's National Environmental Policy Act Policies, Practices, and Procedures as They Relate to Outer Continental Shelf Oil and Gas Exploration and Development". Per the recommendations of that report, BOEM, as the successor agency to MMS, has undertaken a review of many of the NEPA procedures applied to oil and gas exploration and development on the Outer Continental Shelf.

As part of a broader effort to modernize the implementation of NEPA, CEQ issued draft guidance in February of 2010 that would help to remedy some of the issues identified in the August 16, 2010, report. Specifically, CEQ's draft guidance on categorical exclusions recommends that agencies review their existing categorical exclusions at regular intervals to ensure that they continue to be appropriate to use in light of changed circumstances.

2. *Describe the Council on Environmental Quality's legal responsibilities and activities in responding to the Deepwater Horizon drilling rig disaster.*

Consistent with CEQ's legal responsibilities, discussed above, CEQ has responded to the Deepwater Horizon drilling rig disaster with the oversight activities described below.

On May 14, 2010, CEQ Chair Nancy Sutley joined Secretary of the Interior Ken Salazar in announcing that CEQ would undertake an independent review of the NEPA policies, practices, and procedures applied by the Department of the Interior's Minerals Management Service (MMS) to their agency's decisions leading up to the approval of drilling permits for the Macondo exploratory well.² CEQ issued its findings and recommendations in a "Report Regarding the Minerals Management Service's National Environmental Policy Act Policies, Practices, and Procedures as They Relate to Outer Continental Shelf Oil and Gas Exploration and Development," released on August 16, 2010.³ In preparing this report, CEQ reviewed relevant MMS NEPA documents (see pages 11-14 of the report for a full list of documents reviewed) and consulted with experts within the agency. CEQ also considered comments submitted during the review, which are posted on CEQ's website and summarized in its report.⁴ The report includes several recommendations, which the Department of the Interior's Bureau of Ocean Energy Management, Regulation and Enforcement (BOEM), as the successor agency to MMS, agreed to adopt as guideposts for reforms of the NEPA procedures applied to oil and gas exploration and production activities on the Outer Continental Shelf.

Specifically, BOEM will improve its use of tiering for site-specific NEPA analyses by (1) performing comprehensive NEPA review of individual deepwater activities, including consideration of site-specific environmental impacts and (2) ensuring that all mitigation commitments made in programmatic NEPA and decision documents are carried forward into site-specific NEPA analyses and decisions. BOEM will also improve the transparency of its decisionmaking by (3) ensuring that NEPA analyses fully inform all relevant decisions and are transparently integrated in a manner that is accessible to public understanding, and (4) ensuring that NEPA documents include a robust analysis of reasonably foreseeable impacts, including those associated with what were considered to be low probability catastrophic spills in analyses and studies conducted before April 20, 2010. BOEM will (5) reconsider the use of existing categorical exclusions (CEs) for OCS oil and gas activity in

² Council on Environmental Quality (CEQ), "Review of MMS NEPA Procedures for OCS Oil and Gas Exploration and Development," *available at* www.whitehouse.gov/administration/eop/ceq/initiatives/nepa/mms-review.

³ A summary and link to the full Report is available on the CEQ website at www.whitehouse.gov/administration/eop/ceq/initiatives/nepa/mms-review.

⁴ Comment letters are available at www.whitehouse.gov/administration/eop/ceq/initiatives/nepa/mms-review.

light of the increasing complexity and risk associated with deepwater drilling, and (6) continue to seek amendments to OCSLA to eliminate a provision that currently requires the Secretary of the Interior to decide whether to approve Exploration Plans within 30 days of their submission. Finally, BOEM will (7) consider supplementing its existing NEPA procedures to reflect changed assumptions and environmental conditions, due to circumstances surrounding the Deepwater Horizon oil spill.

In February 2010, prior to the Deepwater Horizon Oil Spill, CEQ issued new draft guidance documents to assist Federal agencies in meeting the procedural requirements of NEPA.⁵ Among other things, the draft guidance on categorical exclusions (CEs) clarifies when it is appropriate for agencies to establish CEs; how CEs should be properly applied; and when and how agencies should conduct periodic reviews of CEs to assure their continued appropriate use. The guidance also recommends improved documentation and public involvement in the establishment and use of CEs. This guidance will assist Federal agencies as they review the appropriate use of CEs going forward. Following release of the final guidance, CEQ will work with BOEM and other Federal agencies to provide advice and oversight, so as to ensure that the guidance is properly implemented. In accordance with CEQ regulations, CEQ will review any new or revised NEPA procedures proposed by BOEM to ensure their conformity with NEPA and the CEQ Regulations.⁶

Questions from Senator Thomas R. Carper

1. *Please explain why the Council on Environmental Quality and the Department of the Interior have recently decided to review the National Environmental Policy Act, and what your agency expects to find in this review process.*

In a joint announcement on May 14, 2010, CEQ Chair Nancy Sutley and DOI Secretary Ken Salazar explained that CEQ would undertake a review of MMS NEPA policies, practices, and procedures, as part of the comprehensive and thorough investigation of the Deepwater Horizon oil spill, and to inform continued reforms underway at MMS.⁷ The report, released on August 16, 2010, found that MMS had conducted numerous levels of environmental

⁵ The draft guidance documents are available on the CEQ website at www.whitehouse.gov/administration/eop/ceq/initiatives/nepa.

⁶ The CEQ Regulations provide that agency NEPA "procedures shall be adopted only ... after review by [CEQ] for conformity with [NEPA] and [the CEQ Regulations]." 40 C.F.R. § 1507.3(a).

⁷ Press Release, Council on Environmental Quality and Department of the Interior Announce Review of Minerals Management Service NEPA Procedures (May 14, 2010), available at www.whitehouse.gov/administration/eop/ceq/Press_Releases/May_14_2010.

review to inform several levels of decisionmaking, from the development of a five-year program for offshore oil and gas development, to decisions to permit drilling in particular lease blocks.⁸ In carrying out these reviews, MMS relied upon the “tiering” process to incorporate prior, programmatic reviews into subsequent, site-specific analyses. When relying on tiering under NEPA, agencies must ensure that the environmental impacts are sufficiently evaluated and disclosed.

Concurrent with the preparation of the CEQ report, the Bureau of Ocean Energy Management, Regulation and Enforcement (BOEM), as the successor agency to MMS, has undertaken a review of the NEPA procedures applied to oil and gas exploration and development on the Outer Continental Shelf. CEQ identified recommendations in its report, which BOEM has committed to using as guideposts for improving its NEPA implementation.

Specifically, BOEM will improve its use of tiering for site-specific NEPA analyses by (1) performing comprehensive NEPA review of individual deepwater activities, including consideration of site-specific environmental impacts and (2) ensuring that all mitigation commitments made in programmatic NEPA and decision documents are carried forward into site-specific NEPA analyses and decisions. BOEM will also improve the transparency of its decisionmaking by (3) ensuring that NEPA analyses fully inform all relevant decisions and are transparently integrated in a manner that is accessible to public understanding, and (4) ensuring that NEPA documents include a robust analysis of reasonably foreseeable impacts, including those associated with what was considered a low probability catastrophic spill in studies and analyses conducted prior to April 20, 2010. BOEM will (5) reconsider the use of existing categorical exclusions (CEs) for OCS oil and gas activity in light of the increasing complexity and risk associated with deepwater drilling, and (6) continue to seek amendments to OCSLA to eliminate a provision that currently requires the Secretary of the Interior to decide whether to approve Exploration Plans within 30 days of their submission. Finally, BOEM will (7) consider supplementing its existing NEPA procedures to reflect changed assumptions and environmental conditions, due to circumstances surrounding the Deepwater Horizon oil spill.

CEQ staff will continue to work with BOEM staff to provide advice and oversight as BOEM proceeds with reform of its NEPA procedures.

⁸ A summary and link to the full report is available on the CEQ website at www.whitehouse.gov/administration/eop/ceq/initiatives/nepa/mms-review.

2. *Do you believe that the National Environmental Protection Act as it is today compels adequate review of offshore drilling projects before they are approved for permitting and while drilling is occurring?*

Under NEPA, the Department of the Interior must review the environmental consequences of its decisions to approve drilling, how that drilling will be conducted, and any modifications to the drilling operations, before an application for a permit to drill is approved. The report CEQ issued ("Report Regarding the Minerals Management Service's National Environmental Policy Act Policies, Practices, and Procedures as They Relate to Outer Continental Shelf Oil and Gas Exploration and Development") identified several key improvements in NEPA reviews that will better inform BOEM's decisionmaking with respect to future offshore drilling activities.

The CEQ Regulations and the BOEM NEPA implementing procedures encourage the use of "tiering" to carry forward general information from one level of environmental review into subsequent, site-specific reviews.⁹ To be properly tiered, relevant information in programmatic NEPA reviews of multi-year oil and gas leasing on the Outer Continental Shelf (OCS) must be effectively and transparently incorporated into the subsequent NEPA reviews that inform approvals of site-specific activities, such as Exploration Plans and Applications for Permits to Drill. Relevant information can also include studies and analyses, such as those prepared in response to the Deepwater EA prepared by MMS, as well as the reviews and documents prepared to satisfy parallel permitting requirements, such as the oil spill response plans submitted by BP to MMS's Office of Field Operations for the Macondo well. Going forward, CEQ recommends more transparent integration of relevant information and analyses, including oil spill response analyses, into NEPA reviews for site-specific offshore drilling activities.

MMS established the categorical exclusions and their "extraordinary circumstances" for decisions on drilling more than 20 years ago.¹⁰ As mentioned above, BOEM, as the successor agency to MMS, has undertaken a review of the NEPA procedures applied to oil

⁹ The Department of the Interior (DOI) NEPA implementing procedures, applicable to BOEM, are published in the DOI Departmental Manual which is available online at www.elips.doi.gov/app%5FDM. Chapter 15 of Part 516 of the Manual sets forth additional NEPA implementing procedures specific to the Minerals Management Service (Departmental Manual, Part 516, Chapter 15, Managing the NEPA Process-MMS), available at elips.doi.gov/app_DM/act_getfiles.cfm?relnum=3625. BOEM, as the successor to MMS, will use the MMS NEPA implementing procedures until they are revised or replaced.

¹⁰ If an action includes extraordinary circumstances, further analysis in an Environmental Assessment or Environmental Impact Statement is necessary to comply with NEPA.

and gas exploration and development on the Outer Continental Shelf. The CEQ Regulations direct Federal agencies to periodically review their NEPA policies and procedures to ensure they comply with the purposes and procedural requirements of NEPA.¹¹ CEQ's draft guidance on categorical exclusions, announced in February of this year and currently being finalized, recommends that agencies review their existing categorical exclusions at regular intervals to determine whether they are still appropriate to use in light of changed circumstances. In the years since MMS established its NEPA implementing procedures for offshore drilling activities (including the categorical exclusions and extraordinary circumstances that were used for the Macondo well), deepwater exploration and development activities have become more prevalent and more complex. Deepwater operations and technologies, along with associated environmental risks, have also changed. It is CEQ's understanding that BOEM will reconsider whether its categorical exclusions are still appropriate in light of the Deepwater Horizon oil spill and will include environmental consequences of such a catastrophic spill in its subsequent NEPA analyses.

BOEM has announced it will review two of its categorical exclusions, established over 20 years ago, for OCS oil and gas exploration and development activities.¹² Those categorical exclusions can be used by BOEM, in the absence of any extraordinary circumstances associated with a specific proposed activity:

- Approval of an offshore lease or unit exploration development/production plan or a Development Operation Coordination Document in the central or western Gulf of Mexico (30 CFR 250.2) except those proposing facilities: (1) In areas of high seismic risk or seismicity, relatively untested deep water, or remote areas; (2) within the boundary of a proposed or established marine sanctuary, and/or within or near the boundary of a proposed or established wildlife refuge or areas of high biological sensitivity; (3) in areas of hazardous natural bottom conditions; or (4) utilizing new or unusual technology; and
- Approval of minor revisions of or minor variances from activities described in an approved offshore exploration or development/production plan, including pipeline applications.¹³

¹¹ 40 C.F.R. § 1507.3.

¹² The announcement and the memorandum directing this review are available at <http://www.doi.gov/news/pressreleases/Categorical-Exclusions-for-Gulf-Offshore-Activity-to-be-Limited-While-Interior-Reviews-NEPA-Process-and-Develops-Revised-Policy.cfm>.

¹³ Those categorical exclusions are set forth in paragraphs 15.4.C(10) and (11) of the DOI Departmental Manual, Part 516, Chapter 15, Managing the NEPA Process-MMS, available at elips.doi.gov/app_DM/act_getfiles.cfm?relnum=3625.

BOEM has also announced that it will limit its use of categorical exclusions for these activities and subject more decisions to environmental assessments while it undertakes this review.

Finally, it is essential that the statutory framework for permitting offshore drilling activities not undercut meaningful NEPA reviews. Accordingly, the Administration has requested that Congress consider legislative amendments to those provisions of the Outer Continental Shelf Lands Act that require the Secretary of the Interior to approve or disapprove of Exploration Plans within thirty days of their submission. This short review period compromises DOI's ability to conduct adequate NEPA reviews of the environmental impacts associated with Exploration Plans. Exploration Plans contain specific information such as the location of the well within the lease block, the type of equipment used, and the results of remotely operated vehicle surveys undertaken on the sea floor. A more informed environmental analysis would enable more meaningful recommendations to ensure the spirit of NEPA is upheld.

Senator BOXER. Thank you very much.
Secretary Salazar, welcome.

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

Mr. SALAZAR. Thank you very much, Chairman Boxer and Ranking Member Inhofe and distinguished Senators and members of this Committee, my former colleagues.

I thought I would first just give you a quick update on what is going on with respect to the efforts to stop the flow of oil in the Gulf of Mexico from this horrific tragedy. From day one, there has been an effort to move forward with flow mitigation, with flow stoppage, and ultimately with sealing the well strategies. Let me just take a second and speak about those things because I think they are matters of interest to the members of this Committee.

First with respect to flow mitigation, whether it was the dome that was tried last week or the current insertion tube that is in there, it has been recognized that those are simply Band-Aids that will contain some of the oil but probably will not contain all of the oil. In fact, it won't contain all of the oil.

The current flow mitigation strategy which is underway is the riser insertion tube. You have seen a lot about it on television and newspaper reports. As of this morning the collection from the riser insertion tube is somewhere between 1,500 barrels per day to 2,000 barrels per day. It is being ramped up every 2 hours, approximately, and the hope is that additional oil will be captured through this flow mitigation strategy.

Second, and more effectively, will be the efforts to essentially kill the well. There have been three different approaches which BP and the group of scientists that have been examining the way of killing the well have been looking at over the last several weeks. They have now come to a conclusion that the best way forward, given the diagnostics that have been done, is to move forward with the dynamic kill of the well. The so-called dynamic kill of the well is essentially killing the well through the insertion of mud. That procedure, according to the latest schedule, is for this Sunday.

So hopefully those efforts will contain the oil. They will stop the flow of oil and then move forward to what will be the ultimate demise of this well, and that is through the construction of the relief wells. There are two relief wells that are being drilled. Just in case something goes wrong with the first one, there is redundancy in all these procedures. So the second relief well, then, that has to be drilled would be used to seal the well.

That is the permanent solution. That solution is probably something that will not happen until August. And so hence the importance of both the flow mitigation and the full stoppage efforts that are underway.

Second, let me just make a comment about the comprehensive response that the President ordered from the beginning on this effort. It has been a comprehensive command and control effort on the part of the U.S. Government. In that effort, EPA Administrator Lisa Jackson, Nancy Sutley and many others have been involved, Secretary of Homeland Security Janet Napolitano and our National Incident Commander Thad Allen and many others.

It is a directive that the President has given to all of us that we shall not rest until we have this matter resolved. And I can guarantee you that none of us are resting. It has been relentless 18-hour days, 7 days a week, and we will continue this effort until we get the problem resolved.

An illustration of the muscle that is going into this effort today, and in terms of the effectiveness of the response plan that had been put into place that is being actuated can be told in a simple set of numbers: 20,000 people, an army that essentially is combating the oil spill on the Gulf Coast today; over 750 vessels that are out there, ships from some of the most sophisticated ships in the world, the skimming ships, the other vessels that have been commissioned to move forward with this effort.

In a word, nothing really is being spared to move forward and to resolve this issue, and that is the directive that we have from the President.

The third point I want to make, there have been other hearings that have been held here in the Congress. There will be many more hearings in the future. The President has been clear. There is responsibility to go around with respect to this major environmental disaster that has happened. That collective responsibility should lead us to do two things. First, fix the problem that we find ourselves in in the Gulf of Mexico today. And second of all, make sure that this never happens again. That should be our collective responsibility.

Instead of doing the finger pointing that sometimes happens when you get into these kinds of incidents, my own view is that it is a matter of collective responsibility. It is a responsibility which we assume at the Department of Interior and its Minerals Management Services for a job that we believe can in fact be done better.

We have been working hard on a reform agenda which many of you are aware of for renewable energy, to new safety measures, to additional inspectors, and a whole host of other things. But that reform agenda is not yet complete. There is a lot more to go, and obviously this incident solidifies the conclusion that the reformation that needed to happen at MMS will in fact happen.

Second, it is not just about the executive branch. It is also about the U.S. Congress. I had the honor of being a Member of this distinguished body and friends with the members of this Committee. The national framework which we are operating on, which is part of the National Energy Program with respect to development of oil and gas on the Outer Continental Shelf is one that has been forthcoming over the last 40 years.

There are parts of the congressional requirements and the congressional effort here which you have to assume responsibility for. A couple of quick examples. First, the President's package which he sent to Congress a few days ago would require MMS to have more than just the 30 days, which now is required to act on expiration plans, is a good step forward. There are many other measures I am certain that this body will be considering to make oil and gas production more safe.

Among some of those that I would urge this Committee, working along with Senator Bingaman's and Senator Murkowski's Committee on Energy, is to move forward with the enactment of com-

prehensive organic legislation for the Minerals Management Service. It is to me, frankly, a troublesome reality that we find ourselves in in 2010, where you have an agency with the responsibilities of the Minerals Management Service without an organic act of this Congress. It exists by virtue of secretarial order that was signed now some 30 years ago. An agency that has the responsibility of getting \$13 billion on average a year for the American taxpayer-owned property that helps fund the operations of this Government needs to have a higher stature.

An agency with 1,700 people that has the responsibility for protecting our oceans and for developing energy resources, both conventional and renewable energy resources, needs to have a higher stature, and so the organic legislation that I am hopeful this Congress considers is something that we are looking forward to.

Third, as we speak about collective responsibility it is important to note that from day one BP, under the laws of the United States and our initiatives within the U.S. Government, is the responsible party. That is what the law says. That is what the lease requires. They are responsible for stopping the leak. They are responsible for containing the oil on the ocean. They are responsible for protecting our beaches and our coastal areas and our ecological resources. And they are responsible as well for paying whatever damages occur from this incident to the environment of the Gulf Coast. And in addition to that, responsible for compensating those who will be harmed from this incident.

They have confirmed that that is their responsibility. They will not hide behind the Oil Act pollution liability limitations, but will assume that responsibility, and they have confirmed that in a letter to Secretary Napolitano and me which we received just a few days ago.

Beyond BP and the collective responsibility here, there are other companies that certainly will be part of the investigations and which will be held accountable for whatever action those facts show us they should be held accountable for, but they will include Cameron, the manufacturer of the blowout prevention valve; Halliburton, the cementing company; Transocean, the owner of the rig; and many others that will be involved.

Fourth, what I would say, when we think about collective responsibility, I look at each of the members of this Committee with whom I have worked, and we have talked about national security for the United States of America. We have talked about energy security for the United States of America. I know Senator Voinovich has said it is one of his huge legacy issues.

There is a statement here to be made from this awful tragedy in the Gulf Coast, and that is we need to move forward with a new energy frontier. Yes, oil and gas will be a part of our future. The President has said from day one that a comprehensive energy plan is something that we need, but we need to bring other streams of energy into the security part of our country.

And if I may, Madam Chairman, just a couple of other quick points. With respect to Interior reform of the Minerals Management Services, we have done a cleaning house of this agency from day one. There have been people who have been let go. There have been people who have been referred for prosecution. And we will

continue on that vein as we move forward with these investigations.

We have eliminated the Royalty-in-Kind Program because we felt that that was an area in the agency that was subject to fraud and abuse. We have beefed up enforcement, including in the budgets that this Congress has approved. And we are separating the functions of MMS between those relating to revenue and those related to safety and enforcement, and there will be some additional announcements of that that will be made later on.

And the final point, just to bring the members of the Committee up to speed in a comprehensive way relative to investigations that are underway, the President's commission will be the kind of commission that we saw during Challenger and Three Mile Island. And through that kind of commission, you will also see other investigations that will inform the work of that commission.

I want to make two quick points, if I may, and I know I am running a little beyond my time.

Senator BOXER. The problem is we have a vote starting momentarily.

Mr. SALAZAR. Let me then just be very quick. With the Three Mile Island Commission, you will recall there were two reactors on which shut down for 6 months, and you know what the rest of that legacy was. With respect to the Challenger Commission, there was a 2 and a half year delay with respect to the Space Shuttle Program.

We have three investigations that are already underway with Coast Guard and MMS trying to get to the root cause of the accident. We have a National Academy of Engineering investigation which we have initiated. And we have an investigation which I have directed from the Inspector General as well. Those investigations will all lead to the Presidential Commission, which will then get us the findings and the lessons learned so that we know the truth.

Thank you, Madam Chairman.

[The prepared statement of Mr. Salazar follows:]

**STATEMENT OF KEN SALAZAR
SECRETARY OF THE INTERIOR
BEFORE
THE SENATE COMMITTEE ON
ENVIRONMENT AND PUBLIC WORKS
REGARDING
OFFSHORE OIL AND GAS DEVELOPMENT**

MAY 18, 2010

Thank you, Chairman Boxer, Senator Inhofe, and Members of the Committee, for the opportunity to discuss current activities at the Department of the Interior related to oil and gas exploration on the Outer Continental Shelf, particularly about the ongoing response to the explosion of the Deepwater Horizon drilling rig.

This massive and potentially unprecedented environmental disaster, which has resulted in the tragic loss of life and many injuries, is commanding our time and resources as we work to ensure that the spill is stopped; that our great natural resources along the Gulf Coast are protected and restored; and that we get to the bottom of what happened and hold those responsible accountable. Understanding the causes of this tragedy will help prevent similar events in the future.

We are fighting the battle on many fronts. At the President's direction, his entire team will not rest until the oil spill is stopped, the cleanup is completed, and the people, the communities, and the affected environment are made whole.

Let me be very clear: BP is responsible, along with others, for ensuring that –

- the flow of oil from the source is stopped;
- the spread of oil in the Gulf is contained;
- the ecological values and near shore areas of the Gulf are protected;

- any oil coming onshore is cleaned up;
- all damages to the environment are assessed and remedied; and
- people, businesses, and governments are compensated for losses.

From day one my job has been to make BP and other responsible parties fully accountable. That is why I have been to Houston three times to see firsthand that BP – and all of industry – is doing everything within its power to effectively and expeditiously address the spill. I have also met with BP executives many times here in Washington to deliver this same message and have required them to provide daily updates on all fronts related to this disaster.

I have made absolutely clear in those meetings that BP, as a responsible party, will be held accountable for paying costs associated with this spill. BP will be held accountable for all costs of the government in responding to the spill and compensation for loss or damages that arise from the spill.

In a letter to Homeland Security Secretary Janet Napolitano and me that we received this past weekend, BP has confirmed that it will pay for all of these costs and damages regardless of whether the statutory liability cap contained in the Oil Pollution Act applies. The bottom line is that the United States and the affected Gulf Coast communities will be made whole. There should be no doubt about that. And while the investigations as to the cause are still underway, we will ensure that those found responsible will be held accountable for their actions.

To see that BP carries through on its responsibilities, I have made sure that the best science and engineering minds in the United States place fresh eyes on the BP response and various efforts underway to stop the flow. In that regard, I asked Secretary Chu to go to Houston with me to meet with BP executives, their scientists, and engineers to make sure they were considering every conceivable option to address this problem.

I also deployed to Houston Dr. Marcia McNutt, Director of the U.S. Geological Survey, who is one of the nation's most preeminent marine geophysicists, to provide oversight and to monitor the effectiveness of the BP command center's activities. Dr. McNutt and the personnel assigned to the Houston Command Center by Secretary Chu, along with the Commanders of the U.S. Coast Guard, are there to ensure that no stone is left unturned as we search for solutions to the problem.

The President has been clear: we will not rest until this leak is contained and we will aggressively pursue compensation for all costs and damages from BP and other responsible parties.

Action From Day One

The Department has been actively and aggressively engaged in this spill from the first events. The morning after the explosion, I sent Deputy Secretary David J. Hayes to the Gulf to assist with coordination and response and to provide hourly reports to me and other administration officials of the ongoing events.

In addition, I have dispatched the top leadership from my natural resources and science team to the Gulf incident command centers, including the Assistant Secretary for Fish

and Wildlife and Parks, Tom Strickland; the Director of the National Park Service, Jon Jarvis; the Acting Director of the U.S. Fish and Wildlife Service, Rowan Gould; and the Director of the Bureau of Land Management, Bob Abbey. They are helping to lead the efforts to protect the ecologically complex and fragile Gulf Coast, including a number of National Wildlife Refuges, National Parks, and National Seashores under the Department's jurisdiction.

These leaders, along with public servants from the Department's various bureaus and offices, are putting in long hours as they work alongside other federal, state, and local partners to monitor and respond to immediate threats to fragile habitat; assess and address long-term damage to impacted resources; and develop and provide data and information for use by the Unified Command.

I also ordered immediate inspections of all deepwater oil and gas drilling operations in the Gulf of Mexico. We issued a safety notice to all rig operators reminding them of their responsibilities to follow our regulations and to conduct full and thorough tests of their equipment.

I established a new Outer Continental Shelf Safety Oversight Board within the Department. Composed of top Departmental officials, it will strengthen safety and improve overall management, regulation, and oversight of operations on the Outer Continental Shelf (OCS). It will also help us evaluate the broader questions that this spill raises about those activities.

And I have announced that no applications for drilling permits will go forward for any new offshore drilling activity until we complete the safety review process ordered by the President.

Reform During the Obama Administration

I came to the Department of the Interior to change the direction of the Department and to restore the confidence of the American people in the ability of their government to carry out the functions under my charge. That confidence had been seriously eroded by well-publicized examples of misconduct and ethical lapses. This kind of fundamental change does not come easily, and many of the changes we have made have raised the ire of industry. In the past 16 months our efforts at reform have been characterized as impediments and roadblocks to the development of our domestic oil and gas resources.

But we have not, and we will not, back down on our reform agenda. We have been making major changes at MMS, and we will continue to do so.

Under MMS's management, the OCS currently provides 31 percent of the Nation's domestic oil production and almost 11 percent of its domestic natural gas production. The MMS is one of the largest collectors of non-tax and non-trust revenue for the Treasury, and has collected an average of more than \$13 billion annually for the past 5 years. An agency with responsibilities of this magnitude should be governed by thoughtfully considered organic legislation.

I have already announced plans to restructure MMS to establish an independent safety and environmental enforcement entity. I have solicited the views of Members of

Congress and my staff is working now to develop a proposal. In addition, we will aggressively look at broader options that may require new legislation.

We have made MMS a major part of our vision for a new energy future by balancing its portfolio to include offshore wind and renewable energy production. Within months of my confirmation, we issued new regulations governing the establishment of offshore wind generation facilities, and concluded an historic Memorandum of Understanding with the Federal Energy Regulatory Commission to end a bureaucratic dispute that had delayed the introduction of renewable energy projects on the OCS.

Earlier this year, I gave final approval to the Cape Wind project off Massachusetts' coast. And we have taken the first steps to stand up major wind projects off the coasts of New Jersey and Delaware. I am working with the Atlantic Coast Governors to give renewed impetus to developing the potential for offshore wind projects.

In addition to changing the direction of MMS, we have implemented reforms to change the agency's culture of doing business. We began by issuing new ethics standards for all MMS employees, effective January 2009, that require all MMS employees to receive ethics training and to certify compliance to a Code of Ethics that exceeds general government employee requirements.

Responding to ethical lapses and criminal behavior uncovered during the previous Administration in connection with the MMS's Royalty-in-Kind program, I terminated that outdated and flawed program. We have also implemented recommendations to improve MMS's royalty collection program. These recommendations have come not

only from our Inspector General but also from the Royalty Policy Committee Subcommittee on Royalty Management, a committee chaired by former Senators Bob Kerrey and Jake Garn.

I had previously asked the National Marine Board, also within NAS, to direct an independent review of MMS's inspection program for offshore facilities. The results of that review are due to us this Fall.

The Department's fiscal year 2011 budget request has carried through on this theme of reform. It provides funding for an additional 6 inspectors for offshore oil and gas facilities in the Gulf, an increase of more than 10 percent.

Additional Reforms Now

This tragedy and the massive spill for which BP and others are responsible have made the importance and urgency of this reform agenda ever more clear. With this in mind, I announced last week a set of reforms that will provide federal inspectors more tools, more resources, more independence, and greater authority to enforce laws and regulations that apply to oil and gas companies operating on the OCS.

As I mentioned above, I intend to restructure MMS to establish 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 holding energy companies accountable and in compliance with the law of the land.

The Administration has also submitted to Congress legislation that requests an additional \$29 million for the Department of the Interior to inspect offshore oil and gas platforms, draft enforcement and safety regulations, and carry out studies needed in light of this event. The funds will allow the USGS and the Fish and Wildlife Service to conduct general environmental studies related to the spill. The legislation would also extend the time allowed by statute for MMS to review and approve oil and gas exploration plans from 30 to 90 days.

This legislative package is multi-Department and comprehensive and also addresses the funding of federal response activities through the Oil Pollution Act, food safety programs, unemployment and nutritional assistance, and other help for communities and individuals affected by the oil spill.

Active Investigation and Independent Review

We are carrying out, with the Department of Homeland Security, an investigation into the causes of the April 20th explosion, and will hold public hearings, call witnesses, and take any other steps needed to determine the cause of the spill. In addition, the 30-day safety review that President Obama ordered us to undertake will help us understand what safety measures could and should be immediately implemented.

Last week the National Academy of Engineering agreed to my request to review the Deepwater Horizon spill. This highly respected organization is a part of the National Academy of Sciences, will bring a fresh set of eyes to this tragedy, and will conduct an independent, science-based analysis of the causes of the oil spill. The NAS has carried

out similar independent investigations into events like the space shuttle Challenger accident.

We will get to the bottom of this disaster and will hold those responsible accountable.

Informed Energy Strategy

Much of my time as Secretary of the Interior has been spent working to advance the President's vision of a new energy future and moving away from spending hundreds of billions of dollars each year on imported oil. During the past year we have offered new areas for oil and gas development, but instituted reforms to ensure we are offering leases in the right places and in the right way.

Offshore development is a necessary part of that future, and on March 31st we announced a new, balanced, and science-based strategy for exploring and developing our oil and gas resources on the OCS – in the right ways and in the right places, providing order and certainty to industry and investors, and delivering a fair return to American taxpayers for the use of their resources. This strategy would use science and new technologies to expand oil and gas production on the OCS in new areas; provide for exploration in frontier areas; and protect areas that are simply too special to drill, such as Alaska's Bristol Bay.

As we evaluate new areas for potential exploration and development on the OCS, we will conduct thorough environmental analysis and scientific study, gather public input and comment, and carefully examine the potential safety and spill risk considerations. The findings of the Joint Investigation and the independent National Academy of Engineering

will provide us with the facts and help us understand what happened on the Deepwater Horizon. Those findings, and the work of the Outer Continental Shelf Safety Oversight Board, will help inform the implementation of the Administration's comprehensive energy strategy for the OCS.

At the same time, we are taking aggressive action to verify the safety of other offshore oil and gas operations, further tighten our oversight of industry's practices through a package of reforms, and take a careful look at the questions that this disaster is raising.

Conclusion

Neither time nor space allow for a detailed description of what our employees and our partners are doing every day on the ground on the Gulf Coast to respond to the spill and protect and restore affected natural resources. This Administration is committed to helping the people and communities of the Gulf Coast region persevere through this disaster, to protecting our important places, and to learning valuable lessons that will help prevent similar spills in the future.

**Questions for the Record
Senate Environment and Public Works
Deepwater Horizon Hearing
May 18, 2010**

Chairman Boxer

1. Describe the Department of the Interior's legal responsibilities to prepare, review, comment on the adequacy of, and approve or deny any documents, including applications, plans, tests, and revisions or modifications to any such materials, related to the BP Deepwater Horizon drilling operation.

When answering this question, provide a list of any documents that the Department reviewed, commented on or approved or denied related to the BP Deepwater Horizon drilling operations and a description of federal or state agencies that the Department of the Interior coordinated with in any such activities, as well as the role and responsibilities of each such agency.

Response: All leasing and drilling operations on the federal offshore are governed by laws and regulations that strive to ensure safe operations and preservation of the environment. The Department's activities there are primarily guided by the **Outer Continental Shelf Lands Act (OCSLA)**, which provides the Secretary with authority to administer mineral exploration and development on the Outer Continental Shelf. Under the OCSLA, the Secretary is authorized to grant leases to the highest qualified responsible bidder under sealed competitive bids and to develop and promulgate regulations to carry out the Act. Within the Department, responsibility for management of this program has been delegated to the Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE).

Generally, the leasing process begins when the Secretary prepares, through a public process, a **5-year oil and gas leasing program** that includes a schedule of proposed lease sales and that provides the size, timing, and location of leasing activity for the 5-year period covered. The Proposed Final Program – usually the result of about two and a half years of work – is transmitted to Congress and the President. After a waiting period of at least 60 days, the Secretary may approve the final program.

After adoption of a 5-Year Program, the first step in the sale process for an individual area is usually publication in the Federal Register of a Call for Information and Nominations and a Notice of Intent to Prepare an environmental impact statement. The entire process from the Call to the sale may take two or more years and includes publication of Proposed and Final Notices of Sale.

Leasing and operations activities on the OCS are subject to the requirements of approximately 30 federal laws, including:

- National Environmental Policy Act (including scoping meetings and other public processes during development of an Environmental Impact Statement for leasing);
- Endangered Species Act (under which BOEMRE interacts with the U.S. Fish and Wildlife Service (FWS) in the Department and the National Marine Fisheries Service in the Department of Commerce);
- Coastal Zone Management Act (including developing and providing to states for concurrence a consistency determination of the proposed lease sale with state coastal zone policies);
- Clean Water Act;
- Ports and Waterways Safety Act;
- Marine Mammal Protection Act (interactions with the FWS and NMFS);
- Clean Air Act; and
- National Historic Preservation Act (interactions potentially with states and other Departmental bureaus).

Regulations found at **30 CFR Part 250** also cover the day-to-day operations of oil and gas activities, and are a combination of performance-based and prescriptive requirements to ensure safety, protect the environment, and conserve natural resources.

After a lease is acquired, an **Exploration Plan (EP)** and supporting information must be submitted for approval to BOEMRE before an operator can begin exploratory drilling. The EP is the document that sets out how the operator will explore the lease and describes the planned exploration activities, the timing of these activities, information concerning drilling, the location of each well, and other information relevant to exploration on the lease. In addition, an **Application for Permit to Drill (APD)** must be filed before drilling can begin on a lease, and BOEMRE will often attach site-specific conditions of approval to these permits to address any administrative, technical, and environmental issues that are identified based on the conditions in the lease area.

If after exploration an operator decides to develop oil or natural gas from a lease, it must submit to BOEMRE a plan on how the prospect will be developed. This **Development Plan** includes information such as how many wells will be drilled and where these wells will be located, what type of structure will be used, and how the production will be transported to shore.

BOEMRE conducts in-depth reviews along the way, as these plans are approved. An operator cannot conduct any of these operations until it receives BOEMRE approval.

When Exploration or Development Plans are submitted, lessees are also required to submit **Oil Spill Response Plans** to the BOEMRE for approval (30 CFR 254). As discussed in

more detail in the response to question 5, response plans outline the availability of spill containment and cleanup equipment and personnel trained to respond to such events. Response plans are also to include specifications for appropriate equipment and materials, the availability of this material, and the time needed for deployment, and must include provisions for varying degrees of response effort, depending on the severity of a spill (30 CFR 250.300).

2. **Provide all documents, including any draft and final memos, emails, notes, logs from electronically-conducted meetings, correspondence, reports, press releases, public statements, test results, and other documents related to the Department's inspections of the Deepwater Horizon oil rig.**

Response: Any responsive material will be processed and forwarded under separate cover.

3. **Provide all documents, including any draft and final memos, emails, notes, logs from electronically-conducted meetings, correspondence, reports, press releases, public statements, test results, and other documents related to the Department's inspection of the blowout preventer used by the Deepwater Horizon oil rig.**

Response: Any responsive material will be processed and forwarded under separate cover.

4. **Provide all documents, including any draft and final memos, emails, notes, logs from electronically-conducted meetings, correspondence, reports, press releases, public statements, test results, and other documents related to the Department's inspection of the well design, drilling and completion by BP of the Macondo well.**

Response: Any responsive material will be processed and forwarded under separate cover.

5. **Describe the Department of Interior's legal responsibilities and activities in responding to the Deepwater Horizon drilling rig disaster, including the Department's:**

- a. **Oversight authorities over BP, Transocean, Halliburton and other private entities involved in response planning, decision-making, approval or rejection of potential response activities, implementation of response activities, verification that response activities have been completed, and verification that such activities meet all legally applicable and relevant standards of completion or effectiveness;**

Response: As noted in the response to question 1, the OCSLA provides the Department of the Interior with authority to manage access to and development of energy and mineral resources on the OCS and to ensure that operations on the OCS are safe and protective of the environment. Under its provisions, the Department has the authority to, among other things, promulgate and enforce safety and environmental regulations; investigate and report on major fires, oil spills, death or serious injury; review allegations of any violation of safety regulations under the Act;

and summon witnesses and require the production of information. In order to determine whether an operator's performance on the OCS is in compliance with applicable laws and regulations, the OCSLA provides for scheduled onsite inspections at least once a year of each facility on the OCS and also periodic unannounced onsite inspections where no advance notice is given. If those inspections find noncompliance with applicable requirements, a wide range of administrative enforcement actions can be taken, depending on the circumstances, ranging from written warnings to financial penalties, to drilling and/or production shut-ins of platforms, wells, equipment, or pipelines. Evidence of serious non-compliance may result in the assessment of civil or criminal penalties for failure to comply with requirements under the law, a license, a permit, or any regulation or order issued under the OCSLA.

The Oil Pollution Act of 1990, enacted after the *Exxon Valdez* spill, initiated an effort to formalize planning, preparedness, and response for oil and hazardous material spills that occur both onshore and offshore. Implemented through Executive Order 12777, OPA 90 gives the Secretary of the Interior authority to regulate spill planning and preparedness activities for facilities seaward of the coastline other than deepwater ports that handle, store or transport oil. Under this authority, the Department's responsibilities include enforcing spill prevention measures; reviewing oil spill response plans; inspecting spill containment and cleanup equipment; reviewing financial liability limits; and certifying financial responsibility.

Generally, under the requirements of OPA 90 oil spill response plans must be consistent with the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which falls under the jurisdiction of the National Response Team (NRT), the interagency body given oversight responsibility under OPA 90. The Department, through BOEMRE, reviews and approves these plans every two years unless there is a significant change that requires that the plan be revised immediately. As a general rule, a plan must be approved before a lessee may use a particular facility, and there are various requirements for review, update, and amendment of plans.

Under Departmental regulations, lessees and operators of facilities in state waters with plans approved by the state are required to submit to BOEMRE a copy of the plan and information pertaining to the state approval. While BOEMRE determines compliance with Departmental regulations and approval, other agencies and states have access to and may provide input to oil spill response plan reviews. In the Gulf of Mexico, for example, digital copies of the BOEMRE-approved plans are maintained at the BOEMRE office in New Orleans and are available for review by request. Various Memoranda of Understanding or Agreement allow for Gulf coast states and the U.S. Coast Guard (USCG) to review such plans.

After a spill occurs, coordinated response activities by government agencies and private entities are guided by the National Response System, which comprises a set of interrelated plans, including National, Regional, and Area Contingency Plans. The statutory bases for this system are the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

and the Clean Water Act. The National Contingency Plan (NCP) is published by the Environmental Protection Agency (EPA) in consultation with the National Response Team (NRT), comprised of representatives from fourteen federal agencies, including the Department, that have interests in various aspects of emergency response to pollution incidents. The NCP is the federal government's blueprint for responding to both oil spills and hazardous substance releases, and it serves as a framework for notification, communication, and responsibility for oil spill response. As the statutorily-designated lead agencies, the NRT is chaired by EPA and vice-chaired by the USCG. Representatives from these agencies also generally serve as federal on-scene coordinators who direct and coordinate response resources and efforts. In this instance, USCG provided the on-scene coordinators for the spill response, and on April 29, Secretary of Homeland Security Napolitano declared the event a Spill of National Significance, which enhanced operational and policy coordination at the national level and concurrently allowed USCG Admiral Thad Allen's appointment as the National Incident Commander (NIC) for the Administration's continued, coordinated response. The NIC's role is to coordinate strategic communications, national policy, and resource support, and to facilitate collaboration with key parts of the federal, state and local government.

- b. Oversight authorities over other state or federal agencies involved in potential response planning, decision-making, approval or rejection of response activities, implementation of response activities, verification that response activities have been completed, and verification that such activities meet all legally applicable or relevant standards of completion or effectiveness;**

Response: In addition to the information provided in response to question 5a, the Department provided support to the on-scene coordinator including consultation on a number of environmental compliance requirements to help guide response. The Department's Office of Environmental Policy and Compliance (OEPC) provided technical assistance to the Department's bureaus and offices that mobilized to support the federal response, in accordance with the Department's *Environmental Safeguards Plan for All-Hazards Emergencies*, and as part of the National Response System following the *National Oil and Hazardous Substances Pollution Contingency Plan (NCP)*.

OEPC's Regional Environmental Officers successfully drew on their contacts, knowledge, and experience with the U.S. Coast Guard, Regional Response Teams, and Interior bureaus to provide on-scene support to the federal oil spill response to devise strategies to protect natural and cultural resources and tribal interests, enabling more timely and informed decision-making and improved response operations. Among the authorities for which the Department provided consultation to the federal oil spill response were the National Historic Preservation Act, Endangered Species Act, Migratory Bird Treaty Act, Native Graves Protection and Repatriation Act, and the Archeological Resources Protection Act. The Department also consulted on response actions and countermeasures undertaken by the federal response on Gulf Islands National Seashore and a number of National Wildlife Refuges (NWR) including Delta NWR, Breton NWR, and Grand Bay NWR.

OEPC negotiated Pollution Removal Funding Authorizations (PRFAs) with the USCG to direct Departmental bureaus' and offices' oil spill response activities in support of the federal response, and is working to achieve subsequent reimbursement by the USCG National Pollution Fund Center which will ultimately recover those costs from BP and other responsible parties.

- c. Role in coordinating with state and federal agencies and private entities involved in response planning, decision-making, approval or rejection of potential response activities, implementation of response activities, verification that response activities have been completed, and verification that such activities meet all legally applicable and relevant standards of completion or effectiveness;**

Response: In support of the NCP, discussed above, in general OEPC represents the Department on the National Response Team, thirteen Regional Response Teams (RRT), and two Joint Response Teams (with Mexico and Canada) and various Area Committees, and coordinates the Department's bureau participation in developing Area Contingency Plans, Geographic Response Plans, and Regional Contingency Plans for emergency preparedness and response to oil spills and hazardous substances releases. Such contingency plans contain approved guidance for conducting federally-managed responses. The RRTs and Area Committees impose strict requirements for dispersant applications for oil spills and in-situ burning of oil as a response tool. The requirements are generally (but not always) contained in long-established interagency Memoranda of Understanding governing preauthorization, case-by-case review, decision-making, monitoring and oversight. The MOUs generally accord the Department with consultative responsibilities, while the states enjoy responsibilities for concurrence.

- d. Oversight authorities and activities involving BP, Transocean, Halliburton and other private entities and federal agencies who are involved in estimating the volume of discharge of oil into the Gulf, including the review, approval and modification of any methodologies and technologies used to create any such estimate;**

Response: National Incident Commander Admiral Thad Allen convened the Flow Rate Technical Group under the auspices of the Unified Command to develop updated, independent and scientifically grounded estimates of the amount of oil flowing from the Macondo well. Dr. Marcia McNutt, Director of the U.S. Geological Survey (USGS) and Science Advisor to the Secretary of the Interior, was Chair of the Flow Rate Technical Group. The Flow Rate Technical Group was composed of federal scientists, independent experts and representatives from universities around the country, and included representatives from the USGS, the Bureau of Ocean Energy Management, Regulation and Enforcement, the National Oceanic and Atmospheric Administration, the Department of Energy, the USCG, the National Labs, the National Institute of Standards and Technology, UC Berkeley, University of Washington, the University of Texas, Purdue University and several other academic institutions. Neither BP nor the other responsible parties were involved in those efforts other than to supply raw data for analysis.

- e. **Oversight authorities and activities involving BP, Transocean, Halliburton and other private entities who have engaged or may have engaged in any activity involving an individual's waiving of any right as a condition of participation in any response action or as a condition of any compensatory payment. If the Agency has any information that any such activity may have occurred:**
- i. **Provide a list of each instance in which any such activity may have occurred, and**
 - ii. **Describe the actions that the Agency has taken or plans to take to investigate, address, or alert other federal or state agencies to any instance in which a private entity has engaged or may have engaged in any activity involving an individual's waiving of any right as a condition of participation in any response action or as a condition of any compensatory payment;**

Response: The Department has had no involvement in payments for compensation from the Gulf Coast Claims Facility and we respectfully defer questions related to that matter to the Claims Administrator.

- f. **Oversight authorities and activities in any decision-making process involving prohibiting, limiting or otherwise conditioning any media access to shorelines or other areas containing or potentially containing any oil, wildlife exposed to oil, or threat to environmental quality or human health related to the discharge of oil;**

Response: The policy for media access to response operations in the Gulf of Mexico was established in a May 31, 2010, memorandum by the National Incident Commander Admiral Allen. That policy indicates, generally, that the media is to be afforded access to response operations and would only be asked to leave an area if their presence is in violation of existing law or regulation, clearly violates the written site safety plan for the area, or interferes with effective operations. Any members of the press who encounter response personnel restricting their access or violating the media access policy set forth by Admiral Allen have been regularly advised to contact the Joint Information Center.

- g. **Oversight authorities and activities in any assessment of damages to natural resources as a result of the discharge of oil into the Gulf.**

Response: The Department is trustee for a large part of our nationally owned public lands and many natural resources. In the Gulf Coast Region, these include lands such as National Parks and National Wildlife Refuges; tribal lands and natural resources held in trust by the federal government; and federally protected plants and animals such as migratory birds, marine mammals, marine turtles, and federally-listed threatened and endangered species.

When an oil spill occurs, response efforts and the natural resource damage assessment and restoration (NRDAR) process under the OPA90 and its implementing regulations begin immediately. Other key response authorities include CERCLA and the CWA. These three statutes together provide trustees the authority to carry out the responsibilities of the Restoration Program. The USCG leads response activities related to marine and coastal oil spills and EPA leads those activities for inland or hazardous waste spills. These agencies are supported by U.S. Department of the Interior through its bureaus; the U.S. Department of Commerce through the National Oceanic and Atmospheric Administration; and agencies or officials from Louisiana, Mississippi, Alabama, Florida and Texas. The U.S. Fish and Wildlife Service (FWS), which serves as the Department's lead bureau in more than 95 percent of these matters, coordinates with these other federal and state agencies and is involved in evaluating these projects with the intent of ensuring that adverse impacts are avoided to the maximum extent practicable.

Under these authorities, federal and state entities with natural resource trust responsibilities have initiated an NRDAR process to assess natural resource injuries caused by the spill and to identify appropriate restoration actions. To guide this process through the preliminary stages, the trustees have formed a Trustee Steering Committee to facilitate cooperation and coordination among the participating state and federal agencies. The committee includes representatives from Texas, Louisiana, Mississippi, Alabama, Florida, the Department of Commerce, and the Department of the Interior. The Departments of Defense and Agriculture, along with affected tribes in the Gulf have also been invited to participate in the NRDAR action.

A Notice of Intent to conduct restoration planning was published in the Federal Register on September 29, 2010, and a memorandum of understanding establishing the Deepwater Horizon Oil Spill Trustee Council that will ultimately oversee the steering committee and the NRDAR process has been finalized. Thirteen technical working groups have been established by the trustees based on broad resource categories that include natural resources, human use of impacted natural resources, and cultural sites. Each group is developing studies to assess injuries pertaining to its resource area taking into account impacts from the oil spill and response actions. In addition to these studies, the trustees are reviewing and, as appropriate, incorporating the vast amount of monitoring data on the Gulf of Mexico to better understand and assess injuries that may potentially result from the *Deepwater Horizon* oil spill.

More information on the Department's role in the NRDAR process is available at <http://www.fws.gov/home/dhoilspill/>

Sen. Carper**1. Please describe how the Minerals Management Service carries out day-to-day inspections and monitoring of offshore drilling units.**

Response: In order to determine whether an operator's performance on the OCS is in compliance with applicable laws and regulations, the OCSLA provides for scheduled onsite inspections at least once a year of each facility on the OCS and also periodic unannounced onsite inspections.

BOEMRE conducts thousands of inspections of facilities and operations on the OCS every year, including coverage of tens of thousands of safety and pollution prevention components to prevent offshore accidents and spills and to ensure a safe working environment. Inspections of all oil and gas operations on the OCS are performed annually to examine safety equipment designed to prevent blowouts, fires, spills, and other major accidents. In 2009 alone, inspectors completed approximately 27,000 compliance inspections.

BOEMRE strives to conduct an announced inspection of each of the roughly 3,600 OCS production facilities every year, which range from large multi-well production hubs to small single well caissons. Because inspectors travel to these facilities by helicopter, it is not uncommon for poor weather conditions to impact this goal; yet the bureau routinely inspects 95 to 98 percent of all production facilities per year. BOEMRE also conducts unannounced inspections generally targeting operators for whom compliance concerns exist or who are conducting inherently dangerous operations, such as welding, construction activities, and normal production activities at the same time. BOEMRE staff inspects safety devices and environmental standards for drilling activities approximately once a month while drilling rigs are on location.

If safety or environmental violations are found, BOEMRE will issue a citation requiring that the violation be fixed within 14 days. On average about 24,000 inspections per year are conducted and 2,500 Incidents of Non-Compliance are issued. Many of these INCs are for minor non-compliance issues such as marking equipment improperly, but some are for serious non-compliance issues such as unauthorized bypassing of safety devices. A wide range of administrative enforcement actions can be taken for noncompliance, depending on the circumstances, ranging from written warnings to financial penalties, to drilling or production shut-ins of platforms, wells, equipment, or pipelines. Evidence of serious non-compliance may result in the assessment of civil or criminal penalties for failure to comply with requirements under the law, a license, a permit, or any regulation or order issued under the OCSLA.

The President's 2011 budget amendment includes an additional \$100 million for BOEMRE reform efforts, including funding for more inspectors and engineers. Our restructuring of the OCS program will require additional resources to implement the aggressive reforms we are

pursuing, and these amendments will provide this necessary funding. We are currently hiring an additional 12 inspectors and taking other actions that are outlined in the 30-day report to the President. Our restructuring of a more robust OCS regulatory and enforcement program will dictate the need for engineering, technical, and other specialized staff. The President's enacted Fiscal Year 2010 supplemental request included \$27 million to fund near term resources for these activities. We are also working to implement recommendations made in the OCS Safety Oversight Board's recently-issued report, available at <http://www.doi.gov/news/pressreleases/loader.cfm?csModule=security/getfile&PageID=43677>, which provides recommendations to strengthen inspections and enforcement, among other things.

The Oil Pollution Act of 1990 established requirements for periodic inspection of equipment used to contain and remove discharges from offshore facilities, including associated pipelines. Under this authority, BOEMRE conducts periodic drills of spill discharge removal capacity under relevant response plans for offshore facilities located in both state and federal waters, and conducts both announced and unannounced oil spill drills to determine preparedness. OPA 90 also expanded the Department's responsibility and authority for oil spill prevention and response for both platforms and pipelines in federal and state coastal waters, and BOEMRE carries out inspections of response equipment at least monthly; last year the bureau's Oil Spill Removal Organization Equipment Inspection Team conducted nearly forty inspections of spill response equipment stockpiles.

2. Please provide an analysis of how the MMS regulates offshore drilling units compared to how the Nuclear Regulatory Commission regulates our nation's nuclear reactors.

Response: Given the technical complexity and very specific nature of the Nuclear Regulatory Commission's work, and the fact that the Department has no expertise in this area, we offer the following general comparison of the two programs.

An initial and important factor influencing the two regulatory programs is the number of major entities regulated by each agency. In 2008, there were 124 operators producing oil and 119 operators producing gas on the OCS. In the Gulf of Mexico, where most OCS facilities are located, there are nearly 4,000 facilities, including 3,403 active platforms producing at depths less than 1,000 feet and 25 active platforms producing at depths greater than 1,000 feet. Prior to the Deepwater Horizon incident, there were 86 rigs drilling in the Gulf of Mexico; 44 in shallow water and 42 in deepwater. In December, there are 49 rigs drilling; 35 in shallow water and 14 in deepwater. The number of drilling rigs in use in the Gulf of Mexico at any given time can change considerably. The Nuclear Regulatory Commission oversees approximately 104 commercial nuclear power reactors and a small number of major fuel cycle facilities, far fewer than the total OCS facilities.

To provide effective regulation, BOEMRE's regulatory framework is designed with a mix of performance-based and prescriptive rules. Statutory authority for BOEMRE's OCS program is found in the OCSLA, which requires both annual, scheduled inspections as well as periodic unannounced inspections of OCS operations. BOEMRE also carries out both scheduled and unscheduled health and safety inspections for the USCG under the Fixed Platform Self-Inspection Program.

Where these inspections result in findings of noncompliance, enforcement actions are taken that may consist of written warnings; shut-ins of platforms, wells, equipment, or pipelines; suspension of operations; or even cancellation of leases. Civil or criminal penalties may also be assessed in appropriate circumstances. The OCSLA and BOEMRE regulations also contain financial guarantee requirements that are applicable to operators on the OCS. The inspection program is currently funded through yearly appropriations, and in fiscal year 2010 the bureau initiated an inspection fee to be paid by producers that would help offset the costs of inspections. The President's 2011 budget amendment, released on September 13, includes an additional \$100 million for BOEMRE reform efforts, including funding for additional inspectors and other key technical staff. The amendment proposes raising the inspection fee to \$45 million to provide additional funding.

We understand that the NRC regulatory program uses a mix of risk-informed, performance-based and prescriptive regulations. Fines and penalties may be issued for non-compliance and while liability insurance is required, liability for nuclear accidents is capped by the Price-Anderson Act. The NRC program also includes a system of self-reporting with correction of violations verified by inspections. The relatively small number of power reactors and fuel facilities regulated by the NRC allows that agency to employ a resident inspector model: inspectors reside at each facility and rotate to different plants at periodic intervals. The NRC's program is funded by annual appropriations acts, and by statute industry fees cover 90 percent of NRC's budget authority.

Both BOEMRE and NRC have programs in place to investigate and learn lessons from accidents or other events. On the OCS, responsibility for post-accident investigation is shared among BOEMRE and the U.S. Coast Guard. BOEMRE investigates accidents based on an initial assessment of severity, complexity, and likelihood of similar incidents occurring. Final investigation reports are made publicly available and include recommendations, which could address the need for industry-wide alerts and possible regulatory adjustments. NRC also conducts post-accident investigations in response to an event or degraded conditions and makes its final reports and recommendations publicly available.

It is also important to note that the Department has been implementing, and is continuing to develop, significant reforms to the OCS program, including new regulations, safety requirements, and a strengthened inspection program. We are committed to building a program

with a focus on worker and environmental safety administered by an agency that has the authorities, resources, and support to provide strong and effective regulation and oversight.

3. My understanding is that the Oil Pollution Act mandates an owner of an offshore oil rig to provide MMS a plan of how it will respond to a "worst-case" scenario.
- a. Given that British Petroleum testified in the Environment and Public Works Committee on May 11, 2010 that none of the procedures it is using to try to stop the oil spill have ever been used in waters at 5,000 ft, how does the Minerals Management Service currently determine that an oil and gas company has the capacity necessary to respond to a worst-case accident?
 - b. Does the Minerals Management Service's current determination of this capacity include an assessment of tools and technologies readily available to oil and gas companies to deal with worst-case accidents?
 - c. Does the Minerals Management Service currently require that companies run annual or biannual tests to demonstrate that they have the ability to respond to worst-case accidents?
 - d. Please provide British Petroleum's documentation sent to the Minerals Management Service during the licensing process, which described their plans to respond to a "worst-case" scenario for the Deepwater Horizon facility.

Response: BOEMRE Director Michael Bromwich's October 1, 2010, report to Secretary Salazar details information gathered in recent months that shows significant progress on reforms to drilling and workplace safety regulations and standards, increased availability of oil spill response resources since the Macondo well was contained on July 15 and killed on September 19, and improved blowout containment capabilities. The report specifically notes that the experience gained in controlling the Macondo well, coupled with a new commitment by industry to develop new equipment and systems for well containment, has better equipped both industry and government to contain an oil well blowout in deepwater.

As detailed in that report, available at <http://www.doi.gov/news/pressreleases/loader.cfm?csModule=security/getfile&PageID=64703>, key developments with respect to well containment include:

- Containment and subsequent killing of the Macondo well after the successful installation of a capping stack, followed by intersection by the relief well operations and cementing of the wellbore;
- Substantial technological innovation and development with respect to deepwater well containment equipment; this remains available in the event of another deepwater well control incident;

- Major advantages in both industry's and the government's knowledge base with respect to the challenges associated with deepwater well containment and the techniques and strategies that worked, as well as those that didn't work, in gaining control of the well;
- A substantial commitment by industry, in cooperation with government, to invest in the development of new, effective, and versatile well control equipment and deepwater well containment response infrastructure; and
- Improvements in the use of spill response resources, such as oil detection and tracking; skimming capacity and techniques for recovery; in-situ burning methods; use of dispersants; and shoreline response activities.

BOEMRE was proactive in ensuring that operators were able to respond in the event of another spill in the Gulf of Mexico Region. On May 19, 2010, BOEMRE inspected the Marine Spill Response Corporation and the National Response Corporation spill response equipment stockpiles in Tampa, Florida to ensure its operational status and contractor training. BOEMRE continuously tracks the spill response equipment inventory for the three major equipment providers in the Gulf. BOEMRE also worked with the USCG concerning allocation of response assets in the event of another spill, and consulted with USCG and the Environmental Protection Agency regarding the emergency rule for Temporary Suspension of Certain Oil Spill Response Time Requirements to support the Deepwater Horizon Oil Spill Response, which allowed release of response equipment and vessels from around the country for response to the Deepwater Horizon Spill of National Significance.

BOEMRE developed a method to verify the worst case discharge volumes for wells in NTL 2010-N06, Information Requirements for Exploration Plans, Development and Production Plans and Development Operations Coordination Documents on the OCS, and is reviewing its ability to plan, implement, verify, and adjust OSRPs given existing regulations, in particular 30 CFR 254.30(e)(2), when relevant staff has identified potential inadequacies based on the *Deepwater Horizon* response.

We are awaiting the results of the ongoing investigations into the root cause of this tragedy. However, we must acknowledge that this extraordinary event has caused all parties to reexamine the processes they manage. At the Department, we are and have been actively working to determine the best strategies to ensure enhanced health and environmental safety standards for offshore operations, including an evaluation of how oil spill response planning has to change.

An electronic copy of BP's oil spill response plan for the Gulf of Mexico region can be found http://www.boemre.gov/DeepwaterHorizon/BP_Regional_OSRP_Redactedv2.pdf.

- 4. With President Obama proceeding with his announced plans to restructure the Minerals Management Service, where would permitting for alternative energy projects - such as offshore wind - occur within the agency?**

Response: As outlined in the Department's implementation plan for this restructuring, issued in July, the Bureau of Ocean Energy Management will be charged with managing the development of both conventional and renewable resources and minerals on the OCS.

- 5. Please explain why the Council on Environmental Quality and the Department of the Interior have recently decided to review the National Environmental Policy Act, and what your agency expects to find in this review process.**

Response: The review was carried out as part of the ongoing efforts to reform how oil and gas exploration and production activities on the OCS are conducted. The Council on Environmental Quality worked closely with the Department in the review of the Bureau's NEPA policies, practices, and procedures relating to OCS oil and gas exploration and development decisions. The results of the review were released on August 16, 2010, and found that the bureau conducted numerous levels of extensive environmental reviews, relying on the "tiering" process – in which prior reviews should be incorporated into subsequent, site-specific analyses. The report, which can be found at <http://www.doi.gov/news/pressreleases/loader.cfm?csModule=security/getfile&PageID=42036>, offered several recommendations intended to promote a more robust and transparent implementation of NEPA practices.

BOEMRE has committed to using these recommendations as guideposts as it continues its reform and reorganization activities. At the same time, the Department announced that it will restrict the use of categorical exclusions for offshore oil and gas development to activities involving limited environmental risk during a comprehensive review of its NEPA process and the use of categorical exclusions for exploration and drilling on the OCS. We also announced that we will conduct a new environmental analysis in the Gulf of Mexico that will help provide information to guide future leasing and development decisions there.

- 6. Do you believe that the National Environmental Protection Act as it is today compels adequate review of offshore drilling projects before they are approved for permitting and while drilling is occurring?**

Response: As noted in the response to the previous question, we are committed to using the CEQ recommendations as guideposts as we continue our reform and reorganization activities. The Department has also announced that we are limiting the use of categorical exclusions under NEPA as we undertake a comprehensive review of our NEPA process and the use of categorical exclusions for exploration and drilling on the OCS.

Sen. Cardin

1. The deepwater drilling moratorium described in a Notice to Lessees on May 30, 2010 cites 30 C.F.R. § 250.172(b) and 30 C.F.R. § 172(c) as providing the Secretary the necessary authority to suspend operations. Section 250.172(b) allows MMS to require operators conduct a site-specific study and, under § 250.177(a), a revised exploration plan. Do you intend to exercise this authority to require deepwater operators provide a site-specific study and a revised exploration plan before drilling operations are allowed to proceed?

Response: The suspensions, announced in July, were lifted on October 12, 2010, and these measures were essential to protect communities, coasts, and wildlife from the risks that deepwater drilling had posed and provided us with the time for investigation and implementation of needed new safety, containment and oil spill response capability measures. The decision to lift the deepwater drilling suspensions was based on information gathered in recent months, including a report from BOEMRE Director Michael Bromwich on October 1 that shows significant progress on reforms to drilling and workplace safety regulations and standards, increased availability of oil spill response resources since the Macondo well was contained on July 15 and killed on September 19, and improved blowout containment capabilities.

On June 18, 2010, the Department issued a Notice to Lessees, NTL No. 2010-N06, requiring oil and gas operators to submit information for new Exploration Plans, Development and Production Plans, and Development Operations Coordination Documents that includes:

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

In short, all proposed exploration plans must meet new requirements to show the operator is prepared to deal with a potential blowout and the potential worst-case discharge scenario and the operator's ability to respond to such a discharge. In addition, lessees/operators must submit the additional information with a previously-approved or pending plan under the following circumstances:

- Those pending or approved plans or documents that propose to conduct an activity that requires approval of an APD, and the APD is submitted after June 18, 2010 or was filed but had not been approved by that date; and
- Those plans or documents that propose to conduct an activity that requires approval of an APD, and the initial, supplemental, or revised EP, DPP, or DOCD that covers the activity is submitted after June 18, 2010.

In addition, pursuant to applicable regulations, each operator must demonstrate that it has enforceable obligations that ensure that containment resources are available promptly in the event of a deepwater blowout, regardless of the company or operator involved. Future rulemakings will of course be informed by the ongoing investigations into the Deepwater Horizon oil spill.

2. **In response to a GAO report issued this past March entitled "Offshore Oil and Gas Development: Additional Guidance Would Help Strengthen Minerals Management Service's Assessment of Environmental Impacts in the North Aleutian Basin," the Department promised that it would release NEPA guidelines for analysts to use in reviewing company submissions by December 31, 2010. Is that still the expected schedule given the joint Council for Environmental Quality/Department of the Interior review of NEPA procedures?**

Response: Addressing key reforms of the offshore program, including a review of the NEPA program, are an important goal at the Department as we work to create a program that the public can trust to protect and responsibly develop the resources entrusted to it. We are striving to ensure that all of these issues are addressed in a comprehensive and coordinated fashion, and we hope to have guidelines available soon. We have already established a NEPA guidance handbook for employees on the BOEMRE intranet. Additional guidance, i.e., how determinations of significance are to be made and scientific findings are to be reviewed are scheduled for completion in Spring of 2011.

3. **Director Abbey announced on June 2, 2010 that after the deep water drilling moratorium, any new drilling must be under an exploration plan or development plan that takes into account new safety and environmental requirements and the recommendations of the Presidential Commission on the BP Deepwater Horizon Oil Spill. Further, Director Abbey announced that oil and gas operations in waters less than 500 feet deep must be under an exploration plan or development plan that includes information demonstrating compliance with new safety standards. Do you anticipate that agency employees will have a NEPA guidelines handbook and training in all new policies and procedures ahead of any approval of these new exploration and development plans?**

Response: We are working to ensure that these issues are addressed in a comprehensive and coordinated fashion. NTL No. 2010-N06 requires that operators ensure that all new exploration,

development and production plans meet new requirements to show the operator is prepared to deal with a potential blowout and the potential worst-case discharge scenario and the operator's ability to respond to such a discharge. We are committed to using the CEQ recommendations as guideposts as we continue our reform and reorganization activities. We have also announced that we are limiting the use of categorical exclusions under NEPA as we undertake a comprehensive review of our NEPA process and the use of categorical exclusions for exploration and drilling on the OCS. And as we work to finalize the reorganization of the offshore program, we have committed to the development of updated policy and practices material, as well as new training program and curricula, for our employees. We have already established a NEPA guidance handbook for employees on the BOEMRE intranet. Additional guidance, i.e., how determinations of significance are to be made and scientific findings are to be reviewed are scheduled for completion in Spring of 2011.

Senator BOXER. Thank you very much.

So each of us is going to have 10 minutes to use as we wish, either a statement, or a statement and questions, or just questions.

As many of you know, some of us have been seeking releases of the video of this spill. And at our hearing last week, we asked BP. Essentially, BP said, oh, we have sent this all to the Incident Command over at the Coast Guard. The Coast Guard informed us that wasn't the fact, and the Coast Guard was very much in favor of getting all of the hard drives and getting all this material. They were just getting streaming video.

So this morning, we got a breakthrough. BP agreed to release all the video of the spill. And I want to show a video clip of one of these interim technologies that was discussed here today, the insertion tube. And before you put it on, I think the thing to look for here is that this insertion tube may be capturing some oil, but it is not capturing most. And you will be shocked. As a matter of fact, I was nervous about showing it because I said, are you sure? And my chief of staff said, yes, we have this from BP showing the RITT, which is the riser insertion tubing and the dispersement tools in operation. So if you can show that.

[Video]

Senator BOXER. See it? Look. There is the oil after the insertion tube. And at the bottom it looks like a little flame. That is the dispersant at work down there.

So I just felt it was important for us to note that this interim step, if you look at the other picture of before they put it in, you can't really tell the difference that much. So it is an interim step. It is not doing what a lot of us were hoping that it would do.

And we are getting all these records tomorrow, Mr. Secretary, and we will get them to everybody because it is so important to us on this Committee on both sides. We want to make sure that scientists who are quite objective and have nothing else on their agenda can take a look at this and let us know what are the true volumes. And as we move forward to other fixes we want to see whether they are really doing the job.

Secretary Salazar, yesterday I sent a letter to the Attorney General with several other Senators from this Committee asking that he investigate whether BP has violated any criminal or civil laws in its actions related to the Deepwater Horizon oil spill. And I want to show all three of you some of the statements that they made.

This is what was on their initial permit request: "In the event of an unanticipated blowout resulting in an oil spill, it is unlikely to have an impact based on the industry-wide standards for using proven equipment and technology for such responses." And they also said, "Due to the distance to shore, 48 miles, and the response capabilities that would be implemented, no significant adverse impacts are expected."

And then after the spill occurred, this is what they said, after they assured us that they had all the equipment necessary: "All the techniques being attempted or evaluated to contain the flow of oil on the sea bed involve significant uncertainties because they have not been tested in these conditions before." This is stunning. This is the before and after statements that it is as if they were written in different worlds and different realities.

And so I wanted to ask you. You have announced that you are going to have an investigation, which I hope I speak for everybody, I think it is totally appropriate. I am very supportive of it. But I feel that the Justice Department ought to take a look to see whether false statements were made.

Do you support the Justice Department taking a look at this? I would start with Lisa Jackson.

Ms. JACKSON. I would certainly defer to the Attorney General, who is a lawyer, and I am certainly not one, as to whether they meet the standards for criminality in the case. Certainly, investigations are warranted.

Mr. SALAZAR. Let me respond to that, if I may, Chairman Boxer. The fact of the matter is that the investigations that are underway, including the Presidential Commission, when the facts are known, the truth shall be known as well, and whatever actions have to be taken will be taken. Whatever the level of culpability is with respect to civil liability, or wherever the facts take us, that is the action that the Federal Government will take. We will hold those accountable under the law.

At this point in time, Chairman Boxer and members of the Committee, there are many facts which are still unknown. And it will be time before we are able to get to the bottom of all of this, but I can assure you that from the President's point of view and my point of view having been involved in helping direct this effort, one, transparency is important, which relates to your video and getting whatever information available to you.

And second of all, accountability. So accountability will be there in whatever shape it will take.

Senator BOXER. OK.

Ms. Sutley.

Ms. SUTLEY. I would just agree with the comments of my colleagues that it is important that we go where the facts take us and look into both the causes and the implications of the actions that were taken and take appropriate action.

Senator BOXER. OK. I just want to reiterate, I am going to push hard on a DOJ investigation because I know what was said. What was said is we can handle this. And what was said after it was essentially we can't handle this. And if you believe that people are supposed to tell the truth on a permit in a situation like this where so much is at stake, so I am going to push separately for a DOJ investigation.

And I think, Administrator Jackson, you are right. We will see. Because the other investigation is a little bit different than this. This is about what people are saying on their permit applications and what they really have in their backpack, so to speak, to deal with this once it happens.

And so I am very glad that the President is doing this commission. I don't want to understate how pleased I am at that. I am also very pleased that, Mr. Secretary, you have cleaned house over there. I assume there is more to be done, but I am also very pleased that you talked about a separate agency to look at safety as opposed to an agency that is pushing the drilling.

I am a little concerned—and I know I was talking to Senator Voinovich about this. He was using some examples. I don't want

to take his point of view and try to express it. He will do that on his own.

But are you concerned that if we just have an agency within MMS, rather than outside MMS, that you are going to really crack this culture of the good old boys, and girls, I assume, I don't know if there are any girls over there, just taking each other out to dinner and this cozy relationship, if you have it within the MMS?

Mr. SALAZAR. I am confident that we will be able to address the problem, Chairwoman. The first thing that we did when we came in was to deal with a new code of ethics that we have installed in MMS. We have done away with programs like the Royalty-in-Kind Program and other measures.

We have just begun our efforts. There is a lot more to be done, and we will get it done to make sure that the Government operates in a manner that we can all be proud of and that is doing its job.

Senator BOXER. Well, I am going to ask one more time. Will you consider a separate entity outside of MMS, as opposed to a safety agency located within MMS? It gives me a little bit of concern. You have the safety people around the corner from the other folks, and again, I don't know whether we are playing into this all too cozy relationship.

Mr. SALAZAR. Madam Chairwoman Boxer, we have done a lot to reorganize this agency. We will be announcing some more reorganization efforts in the days ahead with respect to MMS. Many of the issues that you raise will be taken into account in that reorganization. But in addition to that, as I said earlier, the responsibility is a broadly shared one, and I think it is important for this Congress to also put together organic legislation for this agency that conducts such an important set of functions for the United States.

Senator BOXER. Yes, well, I look forward to sharing that. From my perspective, I think it is important. This is an ongoing nightmare, and if ever we are going to reform, it is now because it is fresh in people's minds. And I would feel so much more confident, as I do with other issues in the Federal Government when we have a true independent check and balance. And so I look forward to working with you on that.

With that, I will call on Senator Inhofe, and I think you will have time to go through your statement.

Senator INHOFE. And then we will vote. The vote has started, and then we will come back.

Senator BOXER. Yes, for the benefit of the panel, a vote has started.

OPENING STATEMENT OF HON. JAMES M. INHOFE, U.S. SENATOR FROM THE STATE OF OKLAHOMA

Senator INHOFE. Let me first of all say what I said on the floor yesterday. I was very complimentary of President Obama, as well as you, Administrator Jackson, in the way you have handled this. I was very proud of the President when he said, "The most important order of business is to stop the leak and we need to stop it as soon as possible." He went on to say, "We must contain this spill and protect the Gulf Coast and the people who live there." And he went on to say, "mitigate the damage caused by the spill."

We all agree with that. And what I was going to say in an opening statement, but I will paraphrase it now, I think we should be very careful not to allow people to take this to advance a personal agenda. I happened to be around 20 years ago when the *Exxon Valdez* happened. In fact, I was in the House and serving on the Transportation Committee. And several people at that time made the public statement, actually these are some of the extremist environmentalists who said we are going to parlay this into stopping all drilling on the North Slope.

My response was this is mostly a transportation accident, and if you stop it, that would make us more dependent upon foreign oil. Therefore, transportation would increase and the likelihood would increase of something else like this.

And I am seeing some of the same things happening today, and I just hope that we could all guard against this and keep in mind that we have something to do. That is clean this mess up and do all we can to make sure it doesn't happen again.

[The prepared statement of Senator Inhofe follows:]

STATEMENT OF HON. JAMES M. INHOFE,
U.S. SENATOR FROM THE STATE OF OKLAHOMA

It might come as a surprise to some people in this room, but I want to commend President Obama for his speech on the oil spill last Friday. He didn't waste time pointing fingers, assigning blame, or issuing irresponsible statements against domestic energy production. He said what I've said from the very start. Let me quote him. The "most important order of business," he said, "is to stop the leak ... and we need to stop it as soon as possible."

The President went on to say that we must "contain the spill and protect the Gulf Coast and the people who live there." Again, that's exactly what we should be doing. He also mentioned the need to "mitigate the damage caused by the spill" and to put in place "every necessary safeguard and protection so that a tragedy like this oil spill does not happen again."

This is very similar to what I said at our last hearing on the spill. I said that we need to:

- Mitigate and contain the environmental impacts;
 - Provide assistance to the Gulf's commercial and recreational fishing industries;
- and
- Investigate the causes so we can prevent a disaster of this kind from happening again.

Administrator Jackson, I have great respect for you—and I was pleased with what you said recently about the spill. You said we need a thoughtful response to ensure this doesn't happen again. You said the focus must be on stopping the oil spill and helping the people affected. I couldn't agree more.

I also appreciate your hard work, along with the Coast Guard and NOAA, in approving the testing on the subsea use of dispersants. The early results are encouraging. I also support your diligence in monitoring to ensure that the use of dispersants is effective and environmentally sound.

Based on what I've seen thus far, we have agreement on what needs to get done, and I hope we can agree on the path forward. Unfortunately, I'm afraid that this spill has occasioned some fatally misguided legislation, which will make us more dependent on foreign oil.

This Committee exercises primary jurisdiction over the Oil Pollution Act (OPA) of 1990. Senator Menendez's bill, S. 3305, would amend the OPA. He may not know it, but his bill is a big help for big oil companies, such as BP, and for foreign and state-owned oil companies.

S. 3305 would make offshore production for small- and medium-sized independent producers economically infeasible—they would be forced out of the Gulf. We can't forget that the independents produce 63 percent of the Gulf's natural gas and 36 percent of its oil. If S. 3305 became law, their business would be swallowed up by the likes of BP and the China National Offshore Oil Corporation. How would that help address the spill? How would that lessen our dependence on foreign oil?

We experienced something like this in 1989 with the *Exxon Valdez* oil spill. Remember that that incident was different from what are dealing with now. *Exxon*

Valdez was the name of the tanker that crashed in Prince William Sound. It was a transportation accident.

I was on the House Transportation Committee at the time. Much to my dismay, environmental groups politicized the accident; they exploited it to achieve their goal of shutting down domestic oil production. Of course, the irony is that we are more dependent on foreign oil. Companies moved their operations overseas. What's more, we now have more tankers coming to port, which increases our risk of oil spills.

Yesterday, President Obama announced plans to establish an independent commission to comprehensively investigate the causes of this spill. Madam Chairman, let's address the urgent needs of the moment. And then, after that, when we have all the facts, we can draft the appropriate response, one that will protect the environment and lessen our dependence on foreign oil. We can do both, and I hope we will do both.

Senator INHOFE. Administrator Jackson, first of all, thank you for your availability. I did bother you a few times, and each time I called you down there, you were in a different State on the coast meeting with different people. So I know you are on the job.

I was going to ask you something about dispersants, but I think you covered it pretty well in your opening statement, except for one thing, and that is in terms of the toxicity of the dispersants as compared to the toxicity of the oil itself. Do you have any comments you could make about that?

Ms. JACKSON. Certainly, Senator. In general the toxicity of the dispersants is far less than the toxicity of the crude oil itself. And in general they are shorter-lived in the environment than oil alone.

Senator INHOFE. So it would actually be less, but also more temporary. This is not what some of the things that have come out through the media, and I appreciate that.

Ms. JACKSON. I think the only unknown here is that there are very large unprecedented volumes of dispersants being used both at the surface, and of course now this sub-sea injection is a totally new technology.

Senator INHOFE. Right, right. The other thing I was going to ask you about, more to my benefit than anyone else's, we have been hearing a lot of talk about a large orange plume under the ocean surface approaching the loop current. The EPA and NOAA have confirmed whether this plume is related to the oil spill. What more can you tell us about the big orange plume that we have been hearing about?

Ms. JACKSON. Senator, I would certainly defer to NOAA, whose job is to predict where this dispersed oil will move. The concern I had was on Sunday when we had an article in the New York Times that said that there was a dispersed plume of oil, and there was at least the implication that dispersants were to blame for it, and in fact sub-sea dispersants.

And on Sunday afternoon at 4 o'clock Jane Lubchenco and I got on the phone with the scientists on the Pelican research ship, and they don't yet have the data to show whether all or most of what they are seeing as anomalies are indeed oil. Certainly, some of them are likely to be, but they are waiting for that data.

There was a lot of talk about dissolved oxygen, and in fact their dissolved oxygen numbers are not uncharacteristic of what you would expect to find. They said to me when I asked them that they hadn't seen any dissolved oxygen levels that were of concern.

And they also said quite clearly when I asked them that they had no data to show that this was due to dispersant use. It could

be natural dispersion of oil. Oil is going to disperse in the atmosphere. So there is so much we don't know at this point.

Senator INHOFE. OK.

And Secretary Salazar, in what was going to be my opening statement, yesterday we talked about the Menendez bill on the floor of the Senate. I actually took the position of President Obama in that for us to right now raise these limits as they are trying to do in Senate bill 3305, I felt at that time that that is premature, as the President stated also. That if we do that, there are other unintended consequences, and we don't know. Later on we may have a better idea as to what level of liability should be set in terms of the change.

Now, one of the things that is of interest to me colloquially, and I will read a paragraph out of this letter. This letter is from the Executive Vice President of the Alliant Insurance Group. We have a similar one from Lloyds of London. They said, "If the liability cap is increased to levels we understand are under consideration, in our view only major oil companies and NOCs," that is the national oil companies, "will be financially strong enough to continue current exploration and development efforts."

Our analysis of this is it would be the five majors, plus perhaps NOCs of Venezuela, China. I guess the question I would ask of you, do you think that is good? Do you think that is healthy? And have you given it thought to limits of liability at this time? Or do you think it is premature?

Mr. SALAZAR. The President has sent a request to the Congress to lift the amounts on the liability limitation. What that exact amount should be should take into consideration the kinds of facts that you are alluding to here, Senator Inhofe.

And so that is why the Administration will engage with the Congress and will figure out where the appropriate limit should be set. That is why there was not a specific number that was sent forth.

Second, if I may, there has been a lot of questions about the BP responsibility here and the liability limitation. In our view, and BP has confirmed this in writing, that liability limitation does not apply to this incident because BP has affirmatively stated and has memorialized in writing that they will pay for all damages resulting from this incident.

Senator INHOFE. Last night, I saw the rerun, in fact I saw it three times, of Mike Williams on 60 Minutes. I am sure all of you saw that. He had some pretty shocking things to say and conclusions in terms of who was at fault, why it was, and all that.

I would like to ask all three of you if you have any thoughts about the testimony of Mike Williams as it was portrayed on 60 Minutes, starting with you, Mr. Secretary.

Mr. SALAZAR. I did not watch it because I have been working on the Gulf incident non-stop, so I did not watch it.

Senator INHOFE. This is the Gulf incident we are talking about.

Mr. SALAZAR. But I did not watch the 60 Minutes program. But I will say this, the reality of it is, Senator Inhofe, that there are many facts that will see the light of day as these investigations move forward. Anyone who has the responsibility for not having done what they said they were going to do, whether that is the private companies that were involved, including BP and others, or

whether it was people in the public sector, they will be held accountable.

Senator INHOFE. OK.

For the other two, just for the record, if you would give your response, I would appreciate it very much.

I am going to go vote.

**OPENING STATEMENT OF HON. BENJAMIN L. CARDIN,
U.S. SENATOR FROM THE STATE OF MARYLAND**

Senator CARDIN [presiding]. As has been pointed out, there is a vote currently on the Senate floor. There is another vote following, so I voted early in order to keep the hearing going.

So with that in mind, I don't take it personally that I don't have too many of my colleagues to hear my questioning.

Mr. SALAZAR. It is the first time I have seen you in your position as Chairman, Chairman Cardin.

Senator CARDIN. Right. I appreciate that, former Senator Salazar.

Mr. SALAZAR. But you are alone.

Senator CARDIN. Let me thank all three of you, though, for your service, and thank you for being here. I know that these are extremely difficult days, and the inadequacy of the regulatory process for approving drilling sites pre-dates the Obama administration. So I fully understand that, but you have the responsibility to set into motion the type of changes that will correct this failed system.

And I say that because we had a hearing, and we went over it with the BP oil executive and the others that were related to what happened at Deepwater Horizon. And the Department of Interior needs adequate information in order to judge the applications that are being filed.

And when you look at BP's exploration plan that was filed for the Deepwater Horizon, it said that—and this was the basis, as I understand it, for the Department granting an environmental exception—BP said the “unlikely event of an oil spill as having little risk of contact or impact to the coastline or associated environmental resources.”

Little chance, virtually no impact on the coastline, and they noted proven response technologies, citing the blowout preventer, which they claim was basically fail safe for this particular episode, when in reality the Minerals Management Services shows that the blowout preventers had failed or otherwise played a role in at least 14 accidents.

So I guess my first point is, the application that was filed that was the basis for the environmental exception was hard to understand how the regulators would have accepted that because it is so far from reality.

Second, when you take a look as to what is going on now, it has me concerned that the Department of Interior might be granting further environmental waivers based upon the same process that gave us the failed results in the Deepwater Horizon.

So I hope that the review process is different today. The Department of Interior needs adequate staff to do an independent review. And Mr. Secretary, we welcome your thoughts as to whether you have adequate resources, and we certainly want you to rely upon

other Federal agencies that are more expert on the environmental impact in making your recommendations as to whether permits are granted in the future. There have been reports that drilling permits without NOAA were granted without the NOAA impact or ecological impact.

So I think this Committee is going to be interested in finding out what changes are being placed in practice now to make sure we don't have another disaster and that the regulatory process has learned from this experience and has put in place a process that will protect us in the future.

No. 2, the Government has a responsibility to make sure that we have an independent assessment of the damages caused by the leak. I say that because BP originally said there was 1,000 gallons. Then they changed it to 5,000 gallons. Now you are saying we are capturing 1,500 to 2,000 gallons. So is that 40 percent, or do we know how much of the leak is actually coming out? I know that there has been a great deal of press accounts as to the methodology used by BP Oil in assessing the amount of leak. There have been those who have said that the process that was used is not really the right process to use for a leak of this magnitude.

And they said that if this estimate was given, it should be a range, not a single point estimate, and they just came up with 5,000. And as you know, we need to know an accurate account if we are going to be able to assess the impact to the environment and what we should do to mitigate the impact if we don't have an accurate assessment.

And quite frankly, BP lacks credibility on this. I know that Woods Hole experts have been willing to go to the site and do a more scientific estimate that would not detract at all from BP Oil's efforts to stop the leak, which is certainly their first priority, and we don't want them to be distracted. But we have independent scientists who are prepared to give us that information. It seems to me that we as a Government have the responsibility to know.

I also appreciate Secretary Jackson's point as to the dispersant agents. I agree with you. That is the lesser evil right now, at least that is what we believe it is, but it is still causing damage, including the release of so much dispersants, and No. 2, the oil still stays there. It just doesn't come to the surface and it does cause dead zones in the ocean. So we still have problems. And we have a responsibility to fully understand that as part of the process.

So I want to get to one specific question to Secretary Salazar, and it deals with the current expansion of sites. When the President announced that he was going to protect the north Atlantic, the Pacific, and parts of Alaska because of their environmental sensitivity, as you know, I took exception to that. And I took exception to that mainly because of the area that I represent, the mid-Atlantic.

I quite frankly didn't understand this. The 2006 MMS assessment as to the amount of oil and gas in the mid-Atlantic was between 26 days and 52 days for our Nation's use in oil; 1 to 4 months in natural gas. In the Lease Sale 220, the Virginia site, which is under active consideration, it is 1 week of oil for our Nation and that is located 60 miles from Assateague Island, and 50 miles from the mouth of the Chesapeake Bay.

So I guess my first question to you, Mr. Secretary, is I hope that you are reconsidering because I listen to you. And I was very much motivated by your, and I think this is an exact quote, saying that there are "protecting places that are too special to drill." And you said the Pacific. You said the north Atlantic.

Well, I am going to invite you to the Chesapeake Bay, because I can tell you the way that currents run off the mid-Atlantic, the way the wind blows, any oil spill will affect the Chesapeake Bay, which from President Reagan to President Obama has been declared to be a national treasure. The Ramsar Convention has said it is a body of water of international significance.

So I would hope that you are reconsidering the classification of the areas that you have opened for new exploration, where there is not currently drilling, and I certainly urge you to do that.

Mr. SALAZAR. If I may, Chairman Cardin, respond to a few of your questions.

First, with respect to the NEPA analysis in your opening statement, I think Director Sutley went through the very extensive NEPA analysis that has been performed with respect to the Gulf and with respect to this particular lease sale. It has been expansive.

Second, you asked the question about limitations. There are limitations, including the 30-day requirement which says by law, by this Congress, signed off as a national framework of these United States, that MMS must approve an exploration plan within 30 days from the day it is submitted. And so that is one of those opportunities of responsibility that we hope that the Congress helps us with in terms of changing the law with respect to that 30-day requirement.

Three, additional resources to enhance inspections at Minerals Management Service. We welcome those. We have requested those in our budgets for 2010, 2011. The President's submission to the Congress in the last week has also requested additional resources for those inspection measures to take place.

Fourth, relative to safety issues on the well prevention mechanisms and moving forward with that, there will be a set of comprehensive recommendations will be delivered to the President at his direction by the end of this month. I think you will find those very informative.

Fifth, with respect to the amount of oil, it is very difficult in this environment to actually grasp how much oil is being leaked. It has been a very difficult process, but we are not relying on what BP is telling us. We have our own independent responsibility to go and do that. And so even as we speak today, NOAA, along with the United States Geological Survey, along with Admiral Allen who is working on this issue, are coming up with an oil budget to basically be able to determine how much oil has been spilled, how much has been cleaned up, and that information will be important to this Committee. It will be important to the executive branch as we deal with issues such as natural resources damages.

Senator CARDIN. When will that information be made available, do you know?

Mr. SALAZAR. Yes, they are working on it very hard. I can just tell you right now that there are planes flying over the oil slick

doing the kind of analysis that will allow the quantification of the oil not only on the surface, but also that that may be below the surface. So these efforts are extensive, and they will be correct, and the conclusions will be correct.

The final point you raised has to do with the Atlantic and Virginia Lease Sale 220. Let me just say, we went through a very extensive process. You might remember when I came on board as Secretary of Interior that there had been a proposal to open up all of the Atlantic, most of the Pacific, all of Alaska, everything else within the Gulf Coast.

What we did is I called a time out under very significant criticism from the oil and gas industry and others about what we were doing. That was because we wanted to make sure that when we finished the process that we would have gone through a thoughtful analysis that came up with the best way forward.

Specifically with respect to the Atlantic, the information on what is out in the Atlantic is very old, more than 30 years old. So this Congress may have been waging a war about Atlantic resources without knowing at all what it is that we are waging a war about. And so the seismic efforts that are underway in the Atlantic are something that we are looking at with respect to moving forward into the future. The Virginia resale plan itself, though, Senator Cardin, it is still more process underway with respect to that Virginia lease sale, including dealing with issues that we know from the Department of Defense.

So there will be more that will be coming from that, but I will assure you of this, that the President has made it very clear, and I have made it very clear as well, that we will not move forward unless we can be absolutely safe with respect to the future of OCS oil and gas production.

Senator CARDIN. Well, I appreciate that statement, and I am going to come back to it in a moment. But you still haven't quite answered to me, and I am against drilling off the Pacific. And I am against the North Atlantic drilling. So let me make it clear, I have enjoyed both of those coastlines and know how precious they are. Don't get me wrong.

But I am still puzzled as to why you believe they are environmentally so sensitive that no drilling can take place, whereas the Chesapeake Bay, which is truly a unique treasure not only of our Nation, but an international treasure that happens to be located in the mid-Atlantic, how you could recommend using the too sensitive to drill standard, how you could recommend that we even look at the mid-Atlantic?

Mr. SALAZAR. Let me answer the question. First, let me say that on the Chesapeake Bay, we all agree with you that it is a crown jewel of our Nation and Administrator Jackson, Nancy Sutley and myself, Secretary Vilsack, have been moving forward with hopefully what will be a new beginning for the Chesapeake Bay, but they can speak more about that.

Senator CARDIN. I am very much in support of that.

Mr. SALAZAR. But let me answer your question specifically to the Virginia lease sale. One of the legal factors that I must consider as Secretary of Interior is what the positions of the States are vis-à-vis drilling in the Outer Continental Shelf. You know well, Sen-

ator Cardin, as I do, that the Governor of Virginia and the law of the State of Virginia contemplate that there will be oil and gas drilling 50 miles off the shore of Virginia. The two Senators of that State who sit with you in this body have that same position. That is a factor for us to consider as we move forward, and that is why that lease sale was included in that announcement.

Senator CARDIN. I would just point out, though, as Senator Kerry and Senator Lieberman and Senator Graham have looked at this issue, they understand the impact on surrounding States. A spill in lease sale site 220, if we had a spill there, is very likely it would affect the Maryland coastline. So it is not fair to say this is a Virginia decision. It affects Maryland. And I think that we are going to revisit this, and I can assure you that this issue is going to continue to be raised. And I am all for an energy policy that makes sense, but I am not for going in an area that has such little potential with such high risk. And I just for the life of me cannot understand.

You didn't say that California didn't want drilling, and that is why you didn't use California. You said there are some areas that are too sensitive to drill. That is your language, not my language. And I find it somewhat offensive to the Chesapeake Bay and the State I represent for us to be considered less worthy for protection than the West Coast of the United States or the north Atlantic.

Now, let me just see if I understand your position on the moratorium on new site areas. Are you committed to suspending any new offshore oil or gas development until structural, procedural and quality problems with the environmental review and permitting process for offshore oil and gas activities have been fixed and agency employees have been properly trained on the new procedures?

Mr. SALAZAR. First, Senator Cardin, the President has been very clear. He has directed us to develop a report to him on safety measures. Those will be done by the end of the month. And that will inform our decisions about how we will move forward.

Second of all, with respect to the moratorium, it is widely misunderstood, but it was the Congress and the prior Administration that lifted the moratorium in the face of foreign \$5 gas prices just a few years ago. And so the only place that is currently under moratorium legally in the United States is the area in the eastern Gulf off of Florida.

Senator CARDIN. I understand the legal, but it was my understanding that the President has ordered that there will be no new exploration sites until the review has been done as a result of this current spill. Am I wrong in that?

Mr. SALAZAR. The President's order, they just put it in the most simple of terms, is we have hit the pause button as is the correct and appropriate thing to do. Until we get those reports up to the President at the end of the month, we will not be making further decisions.

Senator CARDIN. All right. So my question is, how do you start or move off the pause button? The release of a report could bring out structural problems in the review process. Are you telling us now that all it takes is this report to be issued, and then all of a sudden we are going to be getting new sites that are going to be

permitted for drilling, even though we don't have an adequate system in place?

Mr. SALAZAR. Senator Cardin, I would just have to tell you that the report that will be delivered to the President will be one that I am proud of, one that I will stand behind. The President and I will take into consideration the information that is set forth in that report. So my suggestion to you is stay tuned.

Senator CARDIN. Or get some congressional action here to give you clearer direction.

I understand your position, but that doesn't give us comfort here. Making it as clear as I possibly can be, I am against drilling off the mid-Atlantic, and I am going to do everything I can to prevent drilling off the mid-Atlantic. So that is not going to come as a surprise to you.

But from the point of view of where new drill sites should be located, I would hope at least there is a process in place before you move forward, so the public and the drilling companies and all of us understand what protections are in place before you issue new permits.

I would hope it is more than just receiving a report, but instituting the changes that are necessary to prevent this type of catastrophe from happening again. And I very much appreciate the fact that you are there, and I know that you will do the right thing, and I hope part of that is taking the mid-Atlantic off the table.

With that, let me turn the gavel back to our Chairman so I can go vote. I know you are disappointed about that.

[Laughter.]

Senator BOXER [presiding]. They are waiting for you, Senator.

Mr. SALAZAR. He is a great Chairman, Senator Boxer.

Senator BOXER. Yes, I know, and I am fortunate I have wonderful, wonderful reinforcements here if I have to leave.

Senator Voinovich, the floor is yours for 10 minutes.

**OPENING STATEMENT OF HON. GEORGE V. VOINOVICH,
U.S. SENATOR FROM THE STATE OF OHIO**

Senator VOINOVICH. Thank you, Madam Chairman.

First of all, I appreciate the witnesses' being here, and I can tell, Mr. Salazar, that you are under a lot of pressure. You look tired, and thank you for being here.

Mr. SALAZAR. I don't feel tired. I feel confident, and I feel resolute in what we are doing.

Senator VOINOVICH. Great. As Secretary of the Interior, you are in charge of the MMS, which oversees the activities in the Gulf of Mexico. I watched 60 Minutes on Sunday, and there were three people that talked: Mike Williams; Transocean's Chief Electronics Technician on Deepwater Horizon, Professor Bob Bea of U.C. Berkeley; and Ken Abbott, a former engineer at BP.

In the interview Mr. Williams, who worked for Transocean, describes three possible technological failures that occurred leading up to the disaster: damage to the rubber gasket, called an annular, at the mouth of the blowout preventer; a device on the ocean floor that is supposed to prevent an uncontrolled surge of pressure reaching the oil rig; a hydraulic leak; and an unreliable control pod that may have prevented the emergency disconnect from kicking in

that should have severed the pipe leading from the out valve to the oil rig.

He also described a chain of command problem where he claims that they were pressured by BP to move forward with it.

Professor Bea of Berkeley, I think you made reference to this, he did Katrina. He did the space shuttle Columbia disaster. He argued that damage to the annular was of significant concern and that it prevented rig operators from correctly gauging the amount of pressure that had built up inside the well. He stated that standard operating procedure is when control pods fail it should be immediately replaced.

And then Mr. Abbott, he worked for BP, managed the engineering drawings for BP. He claims that 89 percent of engineering drawings had not been inspected or approved by BP engineers and that 95 percent of the welding plans have never been approved. This is supposedly backed up by BP internal mail.

The question I have is, what kind of regulation does MMS have? I worked for 10 years on the Nuclear Regulatory Commission, and we have it now. We have the Davis-Besse problem, and we have unbelievable changes. But they take 3 years to go through to look at all of the stuff that is necessary in terms of building a new nuclear reactor, a new facility. And the question is, what kind of inspection do you have? How many people from your shop were on the rig? How many of your people oversee the plans to make sure that they are complied with?

I cannot believe that with this kind of a rig—you know, we had Three Mile Island. It cost \$1 billion to fix it. We didn't lose 11 people. We lost 11 people on this rig. And only God knows what the ecological damage is going to be here. Quite frankly, it could be a lot more than any Three Mile Island problem.

I think that this is significant. There are people out there, environmental groups now that say we have to stop doing this. Well, the fact of the matter is we have to continue to do this, but the issue is how do you do the job? And from my point of view, the agency did not do the job.

How many people do you have working for the agency? What are their competencies? How many did you have a year ago or 2 years ago? Then there is another one that they talked about, the Atlantis, that one of the witnesses or one of the people said that that is a disaster ready to occur.

So I am just wondering what the devil does MMS do? And ought now we look at maybe the Nuclear Regulatory Commission to look at the kind of approval that needs to be made in terms of the gizmos that they use, they have to prove that; the design of the facility; the safety things that are in place and so on.

Mr. SALAZAR. Senator Voinovich, we will make sure that the United States of America, including this Congress and the agencies in the executive branch learn every lesson to be learned from this incident. That I can promise you.

I did not watch the 60 Minutes episode that you refer to, but the fact of the matter is that I do know that there are 1,000 different stories out there about what happened and what the facts were. We will learn the truth. The Presidential Commission, along with

the other investigations that are underway, will be able to pinpoint it.

Senator VOINOVICH. Our problem always around here is something happens, and we spend all our time going back over it rather than saying here we are today, and what do we need to go forward. We have Davis-Besse. It was a problem. They changed the whole operation in terms of inspection, in terms of the people that were on at the facilities. The NRC changed the way they did things. Businesses changed things.

What I want to know is what kind of an organization are we going to put together so that this kind of thing doesn't happen and we can assure the public that if we do another one of these, which I think we need to do, the same thing is not going to happen again.

Mr. SALAZAR. The answer to that, Senator Voinovich, is that it will happen, and it is going to happen through two ways. First, we are taking action within the executive branch to make sure that this problem never occurs again. Second, this Congress needs to take some action to support some of the efforts that we will be undertaking to make sure that this incident doesn't happen again.

Senator VOINOVICH. For example, did you have anybody on the rig? Was anybody from MMS on the rig?

Mr. SALAZAR. No one was on the rig that day of the explosion, but the facts are whether it is 60 Minutes or any other anecdotes or comments or stories that you are hearing here, there is a lot more to this investigation, much of which is yet to be uncovered.

Senator VOINOVICH. Why wasn't somebody from MMS on that rig 24 hours a day overseeing what they were doing to make sure that they were doing this according to what they were supposed to be doing? Why didn't you have somebody on there?

Mr. SALAZAR. Senator Voinovich, we have, as I recall, 62 Inspectors in the Outer Continental Shelf. We have overseen and have had over 36,000 wells alone drilled in the Gulf of Mexico. There is a significant and robust enforcement and inspection mechanism.

The question I think is an appropriate one relative to can it be done better. The answer to that is yes. How we do that, we will be doing our own reorganization, much of which we have been working on very hard since I became Secretary of Interior, but there will be more to do.

The proposal that is in front of you asks for additional inspectors so that the job can be enhanced. The budget, which is before you for 2011, did the same thing a long time ago. Safety measures that were supposed to be enhanced have been proposed multiple times over the years. Some of them have been adopted. The National Academy of Engineers, which is the equivalent of the National Academy of Sciences, we brought them on in September of last year to put forward for us what were the safety measures so they would not—

Senator VOINOVICH. I am running out of time. I would suggest to you that you or somebody in your shop get together with the NRC to find out how they go about doing their work and the kind of regime that they have in place to see how much of that kind of thing is relevant to what you are doing.

Second of all, we have another example of where we have asked an agency to do a job, having the right people with the right knowl-

edge and skills at the right place at the right time, and we haven't given you the wherewithal for you to do your job.

You are going to be asking for more people, but the fact is that too often what we do around here—and Lisa, the same thing in your shop—how many people do you need to get the job done? So I am saying I think those things will do more to give the public comfort than to go back and spend, and I mean we ought to hold these people responsible. We ought to fine them or whatever should be done.

But the real issue is how do we go forward? And if we don't go forward the right way, we are going to have another situation like we had with Three Mile Island where nothing got done in the nuclear area, and the rest of the world took the leadership in this area, and we lost out.

I think we need to go forward, but we can't go forward unless you have a new protocol and you have the people that you need. Twenty-four hours a day, I would have somebody on that thing, or two people, to get the job done.

Mr. SALAZAR. If I may, Senator Voinovich, first, you will have a report to the President by the end of the month, which will set out some interim measures, and there will be a lot more coming from that.

Two, we are not afraid of science. We are not afraid of the best technology. And so Marcia McNutt, who is the head of USGS and who is one of the best scientists in the world, along with Steven Chu and the Energy Labs are helping us in terms of dealing with the immediate problem in the Gulf. But I also have asked them to help us in terms of dealing with safety measures. So we are on the case, sir.

Senator VOINOVICH. Thank you. And last but not least, I sent you a letter on April 19th in regard to leases and so forth. I know you have been busy, but I certainly would like to have somebody look at my letter and get back to me with the answers.

Mr. SALAZAR. Will do, sir.

Senator VOINOVICH. Thank you.

Senator BOXER. Thank you, Senator.

Senator Klobuchar.

**OPENING STATEMENT OF HON. AMY KLOBUCHAR,
U.S. SENATOR FROM THE STATE OF MINNESOTA**

Senator KLOBUCHAR. Thank you, Madam Chairman. Thank you for convening this hearing.

Thank you to our witnesses.

A few weeks ago I saw first-hand the oil slick covering the Gulf of Mexico. As everyone who has seen it knows, it is worse than what you see on TV, and that on TV you may just see one shot, but you see when you are there the miles and miles of orange.

We met with Mr. Strickland. Secretary Salazar, he was very helpful. It was clear to me, as you noted at the beginning of your testimony, Secretary Jackson, that people are working as hard as they can.

But last week in this room we listened to the leaders of BP, Transocean, and Halliburton testify about how each of their companies may not be at fault for this disaster. It reminded me of a

group of kids who knock a baseball through a neighbor's window, and then they are all pointing at each other.

We all know that the consequences of this action go far beyond repairing a window. The lives of 11 families cannot be repaired. The lives of thousands of families on the Gulf Coast have already been turned upside down. A month after this disaster we still don't know how much oil is spewing from the sea bed. Recent estimates range from a few thousand barrels per day to as much as 70,000 barrels per day.

I know that your offices and your staffs have been focused on this terrible tragedy, but I also know that when these tragedies occur, people want answers. I know this from my former job as Prosecutor. I know you know that as well, Secretary Salazar, from your work as Attorney General.

The American people first want to know how and when the disaster will end. And second they want to know how we will prevent from ever happening again. And finally they want the responsible parties to be held accountable and to ensure that the victims' families and the American taxpayers are compensated.

At our hearing last week there were many questions posed to the companies that went unanswered. I am hopeful that we can get some answers today.

I am pleased that the President has called for the creation of an independent panel along the lines of the Three Mile Island Commission and the Space Shuttle Challenger Commission, and I am glad that it will be made up of experts.

Today, I specifically look forward to hearing from my questions as well as others about how bad the leak is right now, what the plan is to finally stop the leak, what the Federal Government is doing to prevent future disasters like this, specifically related to polluter liability. And then finally I would like to know how you are preparing to enforce our existing laws.

So my first question will be to you, Secretary Salazar. You recently announced proposals to reform the Minerals Management Service, which includes separating the inspection arm of MMS with the royalty collection arm of the agency. You also called for increased funding for the inspections.

Although BP, Transocean, and Halliburton, among others, should be held responsible for the oil tragedy, I agree with the President's statements and your statements, including what you made here today, that our Government officials should also be held accountable in terms of how we are going to make this work for the taxpayers today and in the future.

In addition to the reforms that you have suggested in splitting the agency, have you reviewed the staff in place at MMS? I know there was a change made yesterday. Have you reviewed the staff to make sure we have the right people in place to implement your reforms? And which of the reforms that you have proposed are being implemented today as opposed to being implemented later by Congress?

Mr. SALAZAR. Thank you, Senator Klobuchar. Let me first say that you are correct in your framing this as a collective responsibility because it is a responsibility, yes, first, of the companies, BP and others involved, but there is also responsibility to be shared

with the Federal Government, with the executive branch, the Department of Interior, my department, and MMS, as well as with this U.S. Congress and the national legal framework that has been created with respect to the OCS.

There is much work to be done, including the creation of organic legislation for an agency that has such a robust and important mission for the United States of America. We have announced many reforms over the last 16 months, ranging from ethics reforms, ending the Royalty-in-Kind Program, to separating the revenue functions from the inspection and enforcement functions of MMS and the Department of Interior.

We are not resting there. Our work will continue, and in the days ahead you will see additional reforms that will be announced relative to the organization.

Senator KLOBUCHAR. And that includes looking at the staffing of the organization?

Mr. SALAZAR. I would say there are 1,700 people, Senator Klobuchar, within MMS. About half of them are involved in the revenue collection program at MMS. Within those 1,700 people, I would say most of them are good people. They are good public servants, just like you, and just like all of the other public employees that we do have.

But just like with any other organization, there are bad apples. In this particular agency, which I inherited, you know the well publicized sex and drug scandal where people were prosecuted, people who were fired and let go. We have tried to take that out, as Justice Warren would say in one of his famous decisions, root and branch. But it is a difficult process.

To the extent that there are those kinds of ethical lapses that are going on, we will make sure that we root them out. We have the Inspector General already as part of the coherent investigations that we are making, looking specifically at personnel issues within MMS.

Senator KLOBUCHAR. Are you going to look at the revolving door issue of people who are too close with the oil industry?

Mr. SALAZAR. That has been clearly one thing that has been going on from day one. There are prohibitions that have been put into place with respect to the revolving door. I think we are in much better shape today than we were 16 months ago. It doesn't mean that there isn't room for improvement, and to the extent there are major changes that have to be made and minor changes, we will not turn away any good idea.

Senator KLOBUCHAR. Thank you.

Secretary Jackson, could you give us some idea of after nearly a month when you think the leaks will be plugged and if there are barriers that are preventing the quickest and most effective solutions here?

Ms. JACKSON. Yes, I am happy to, Senator, although I would probably defer to Ken. MMS's responsibility is also operationally now dealing with wellhead, and EPA is focused more on the environmental impacts and trying to at least get data to begin to document and answer questions about public health and environmental impacts over time.

But I think we heard Secretary Salazar earlier say that in addition to the riser insertion, which has been done, the next step will be this top-kill approach. My understanding is that is over the next several weeks. Is it, Ken? Projected data for the kill is Saturday and Sunday, May 22 through May 23.

Senator KLOBUCHAR. OK. Do you understand—and maybe this is more in your area. If it is Secretary Salazar's, that is fine. How much oil is really gushing out? And why don't we know that?

Ms. JACKSON. I think I would agree with you that we do not know it at this time. I think that the initial estimates were made based on images and on scenarios that turned out over time to be changing at best. I think that it is an important piece of information for us to have, if not right this second, certainly going forward because it will shape, I am sure, damage assessments if nothing else.

Mr. SALAZAR. If I may just add to that, because it is an ongoing effort, and it is a very important question which several Senators have already raised, to have an independent and truthful number relative to what has come out of this pipe. It is something that we take very seriously. That is why a number of agencies, including the United States Geological Survey, NOAA, as well as outside scientists have been working on trying to come up with something that we can have confidence in in terms of a number.

Senator KLOBUCHAR. Chair Sutley, in your testimony you state that the MMS applied an existing categorical exclusion review process for the Deepwater Horizon project. This exclusion for Deepwater Horizon was established more than 20 years ago. Are you aware of how many existing projects MMS applied the same categorical exclusion to? And are you working with other department heads to ensure the projects that received a categorical exclusion are indeed safe?

Ms. SUTLEY. Thank you, Senator. As I said in my testimony, my understanding is that MMS applied an existing categorical exclusion. These are widely used throughout the Government, and they are intended to be used in circumstances where we have a lot of experience with activities and we know that they are likely to have little or no significant environmental effect either individually or cumulatively.

We are working closely with the Department of Interior supporting the MMS reform efforts.

Senator KLOBUCHAR. But you don't know how many other projects got this exclusion?

Ms. SUTLEY. I do not know.

Senator KLOBUCHAR. Do you think we should be reviewing them now that we see that this wasn't safe?

Ms. SUTLEY. We announced on Friday that with the Department of Interior we would be reviewing MMS's NEPA procedures, including their use of categorical exclusions. As I said earlier in my testimony we proposed in February to update our guidance to the agencies about the use of categorical exclusions to ensure that agencies are applying them in the proper way, that agencies are reviewing their own use of categorical exclusions, and that CEQ would review agencies' use of categorical exclusions.

Senator KLOBUCHAR. I see my time is up, but thank you. Clearly, something went wrong here and the process has to change.

Thank you.

Senator BOXER. Thank you, Senator.

I just wanted to let people know what is happening. The order of questioners is as follows. We are going to go to Senator Alexander next, and then Lautenberg, then Barrasso, then Udall, then Vitter, then Whitehouse.

And Senator Lautenberg and I have to go together to a very important meeting, so we are going to leave together. I have asked Senator Whitehouse if he would take the Chair. So Senator, as soon as we leave, if you would take the Chair.

So we will proceed with Senator Alexander.

**OPENING STATEMENT OF HON. LAMAR ALEXANDER,
U.S. SENATOR FROM THE STATE OF TENNESSEE**

Senator ALEXANDER. Thank you, Madam Chair.

I want to thank the witnesses for being here. I know this has been a very busy and difficult time for the three of you, and I thank you for your time today.

I want to talk first—or discuss with you first—a little bit about putting all this in perspective. It is difficult to put a tragedy in perspective. I was thinking of a terrible airplane crash with many people killed. That happens in the United States, unfortunately. And what do we do? We immediately have highly professional people go see if we can find out what went wrong, what we can do to prevent it again, and we have come up with a number of safety improvements, and we have black boxes and other things to try to find out things.

But one thing we don't do is we don't ground all the airplanes. We don't stop flying because that would be I think about 1.6 million Americans a day fly, and it would bring our country to a halt if we stopped flying.

I think it is important—and I believe the President has tried to do this—is the first job in putting this into perspective is to help Americans to understand just how much we rely on oil from the Gulf. If my figures are about right about 30 percent of all the oil that we produce in the United States comes from the Gulf region. You mentioned a few minutes ago that there were more than 30,000 wells.

We haven't talked much about it, but our natural gas comes from there as well. It is hard to drill for oil without finding natural gas or drill for natural gas without finding oil. About 25 percent of all our natural gas comes from wells in the Gulf of Mexico, and we produce almost all the gas that we use. So that is an even more important part of what we use than oil.

So isn't it true, Mr. Secretary, that as terrible as the tragedy is, that unless we want \$14, \$16, \$18, \$20 a gallon gasoline, that it is not realistic to think that we would actually stop drilling for oil and natural gas in the Gulf of Mexico in the foreseeable future?

Mr. SALAZAR. The answer to that is, you are correct, Senator Alexander, and that is why the President's reaction to this has been one of thoughtfulness and being calm and not making decisions in the eye of the storm. That is when you make bad decisions. And

so his direction to us is to move forward with developing the kind of information on safety and on environmental protection and being thoughtful relative to how we move forward on the OCS.

Senator ALEXANDER. I appreciate his leadership in that way, and I appreciate the tone of his leadership.

The second aspect of perspective, it seems to me, and you mentioned this a little bit, as others have, what can we do instead in terms of alternative forms of energy? I have heard people say we need more wind. We need more solar. We need more biomass. I hope we do use more biomass. I would like to get the cost of solar cut by a factor of four, as Dr. Chu has suggested, so we can actually use it in a competitive way on rooftops across the country. I am less enthusiastic about wind turbines than you are, but we have discussed that many times.

The truth is that we don't need wind. We don't need solar. We don't need biomass to reduce our oil use because we don't need extra electricity to run electric cars. Mr. Sandalow, who is in the Department of Energy, has said that we could electrify half our cars and trucks in America without building one new power plant of any kind simply by plugging our electric cars and trucks in at night and using this vast amount of unused electricity we have.

Now, the President has been very strong on electric cars and trucks, and there is bipartisan support for that in the Congress. Wouldn't an important part of putting this into perspective be for you and the President and others to say of the clear alternative we have, the best alternative we have for reducing oil over the next 15 or 20 years is to have as a goal electrifying half our cars and trucks? That is a very ambitious goal.

Even if we did that, we would still be using about 12 million barrels of petroleum products a day, but it would cut by a third the amount of oil that we are using and greatly reduce the foreign oil we use. Isn't this an opportunity to encourage more use of electric cars and trucks as the most viable option for reducing oil?

Mr. SALAZAR. Senator Alexander, you know well the President has spoken many times about the need for a comprehensive energy program. In that comprehensive energy program, electric cars and the new technology that is unfolding here in the United States have been very much a robust part of that, which he and Secretary Chu have championed, along with the portfolio of energy resources that will move our economy and will move the energy needs of the Nation.

The exact number in terms of electrical cars, I don't have an answer to you on that, but I am sure that we get back to you on exactly what it is that the Department of Energy is projecting is going to happen in that arena.

Senator ALEXANDER. I appreciate your answer, and it is properly diplomatic, befitting a Secretary, but I guess what I am trying to do is discourage the talk that if we just build more windmills, we can reduce the use of oil because it doesn't have anything to do with our use of oil when in fact we have plenty of electricity for electric cars and trucks, which is our best option, and the President is a chief proponent of electric cars and trucks. I would like to encourage him to push it more.

I would like to shift to one other area which has come up, in the time I have remaining. I remember when I was a young Governor, I had a cabinet meeting, and we wanted to pass a bill in the legislature. I said, well, we all agree with this. Everybody agreed. We went out and came back the next week, and nothing had happened.

I said this obviously isn't going to work. So we put one person, as we said, on the flagpole. We called him Granny Hinton. He was on the flagpole. He came back the next week. The bill had been passed because he was accountable.

I thought about that the other day when Captain Bill Ostendorff testified. He is a former Navy sub commander. He is one of the President's appointees to the Nuclear Regulatory Commission, one of several very good appointments the President has made. He testified that 4 of his 11 commanding officers were disciplined at some point in their career for a problem with their nuclear reactors in the Navy subs.

Now, no one has ever died in a Navy sub. People have been living on top of nuclear reactors since the 1950s. I suspect one reason is the word accountability. If there is a problem with the reactor, the answer to the question of who is on the flagpole, is it is the captain's problem. He can't buck it to anybody else.

We watched several people from industry suggesting that others from industry were responsible for the oil spill. We have 14 agencies in the Federal Government who have something to do with oil drilling and regulation.

So I am wondering, isn't there a lesson perhaps to learn from the nuclear industry, and particularly from the nuclear Navy about accountability as we go forward? We have the answer to the question of who is going to pay. It sounds like BP is going to pay. They are the responsible party. But on the whodunnit question, I mean who did it, who is on the flagpole for that, it seems to me that we don't have an answer to the question of who is on the flagpole when there is an oil spill or an oil gush at the bottom of the Gulf of Mexico.

Would you agree with that? And would you think that that might be a good direction for the investigation and the commission's work to help us identify an answer to the question of who is on the flagpole for an oil spill or oil gush?

Mr. SALAZAR. Senator Alexander, let me say three things. First, I think there is a lot to learn from the nuclear world relative to safety issues here, which is part of the reason why Secretary Chu has been so involved with us as we look at safety measures that we will be recommending to the President.

Second, the facts here still need to be known. And once the facts are known, we will look at the range of civil as well as criminal culpability that may have in fact be inherent in this incident. No one will be spared. That includes Government officials. So that will be something that will be looked at, and that is why there is such an inherent importance in what the President has done in pulling together a Presidential Commission so that we can get to the bottom of the story.

Third, there will be significant reform, some of which we will take on and have been taking on within the executive branch, and

new organizations that address some of the issues which Chairman Boxer alluded to in her statements and in her questioning.

But there also will be an opportunity for this Congress to help us figure out how we move forward to achieve the goals which I heard Senator Klobuchar and others speak about, and that is to fix a problem and prevent the problem from ever happening again.

Senator ALEXANDER. Thank you. If I could take my last 10 seconds, I think we know who is on the flagpole for paying the bill for the oil spill. That is BP. That is in the law. I think we know who is on the flagpole if there is a problem with a nuclear reactor in the Navy. It is the captain. I think we don't know who is on the flagpole for the next oil spill, and I think that would be the very best way to do this. That would be better, knowing who is on the flagpole, than this idea of collective responsibility.

Mr. SALAZAR. If I may just on responsibility, because I think one of the things that in the heat of the moment there also is a huge effort that is underway in the Gulf. I can tell you what this Congress has done with respect to homeland security and the processes that are set out there. You have a very massive program that is underway to protect the Gulf and to deal with this problem, which is being led by the National Incident Commander under a National Unified Command that has 20,000 people out on the ground. It has 700 vessels out trying to deal with the spill. It has this massive effort undersea.

So it is clear with respect to the oil spill response responsibility for that lies within the law. But I do agree with you, Senator Alexander, much in the same way as other commissions you and I have talked about, that there are tremendous lessons to be learned here organizationally.

Senator ALEXANDER. Thank you, Madam Chairman.

Senator BOXER. Thank you, Senator.

Senator Lautenberg.

**OPENING STATEMENT OF HON. FRANK R. LAUTENBERG,
U.S. SENATOR FROM THE STATE OF NEW JERSEY**

Senator LAUTENBERG. Thanks, Madam Chairman.

I want to present part of my statement just to say thank you for conducting this hearing. We have been through several hearings, and we keep finding out that we are disappointed in responses from the oil companies. But we are here to discuss the Federal response to the tragedy, and it is crystal clear what the Federal response ought to be: bring dangerous offshore drilling pursuit to an end. Should we say no more special favors and special treatments given to big oil. And it should end up here with our search for reliable, sustainable sources of energy and not take our eye off the ball.

I introduced a piece of legislation, the Beyond Petroleum Act, to move us in the right direction, and that is to charge a fee on offshore drilling leases and generate nearly \$2 billion a year. Even that is a drop in the bucket for oil companies that made more than \$23 billion in profit in just the first quarter of this year and still want to duck their responsibilities.

These funds should be directly invested in research and development of next generation engines, clean and safe fuels, tools and in-

novative approaches to transportation. We also need to pass a comprehensive energy and climate bill that focuses on clean energy jobs, at reducing pollution, and protecting our vibrant coastal economies from the menace of offshore drilling. These should be our priorities as we look to the future.

Let's be clear. Big oil doesn't deserve our trust. We all saw that sad spectacle last week. At Senate hearings oil company executives were so determined to dodge responsibility, they almost broke their fingers pointing at one another. They were bobbing and weaving and dodging and pointing to the other guy.

That is why I joined with Senator Menendez and Senator Nelson to end the big oil bailouts by raising the liability cap for all companies, from a piddling \$75 million to \$10 billion. And we hear arguments about companies that can't afford it. If they make a big mistake, they owe a big bill, and they are going to have to pay it somehow, either they or their insurance companies. They shouldn't be excused.

But we are not going to rest until every last cent of the Administration's response is paid for by the oil companies. You called for that, Mr. Secretary, and we salute that. So we can't continue to gamble with these precious resources by allowing more offshore drilling.

What I want to confirm here now is the fact that NOAA has accused the M.M. Service of a pattern of understanding the likelihood and potential consequences of a major spill in the Gulf and the frequency of spills that have already occurred there. NOAA points out that several of your Department's conclusions on oil impacts "directly conflict with studies of major spills."

Why did Interior continue to push for an expansion of offshore drilling even though there was a question raised by NOAA scientists who found major flaws in the analysis?

Mr. SALAZAR. Thank you, Senator Lautenberg.

Let me just say that we—before we got to the end of March announcement on the future of the OCS—took into account the comments and input that we received from many different places. It was in fact in part because of comments, not principally from NOAA, but from others like the Coast Guard and others, that you do not have the five lease sales that were planned to be taking place in the Arctic Ocean and the Beaufort and Chukchi Seas and in Bristol Bay.

We counseled them. We said that Bristol Bay ought to move forward with some kind of permanent protection. We said that with respect to Chukchi and Beaufort that the oil spill response capabilities and other science that we needed to have before allowing the development to take place there was something that required us to cancel those leases. And so those were canceled. We did the same thing with respect to the Pacific because of a whole host of issues in the Pacific.

So we did take into account comments and information that we received from organizations like NOAA. More importantly, however, let me also say that if I ever hear that one of the employees of the MMS is essentially throwing science under the bus, heads will roll because that would not be appropriate for people who work within the Department of Interior.

Senator LAUTENBERG. You have called for a pause in new drilling permits until a complete investigation of the cause of the Gulf spill is done. Even if we identify the cause of this spill, will that information really allow you to guarantee that another massive oil spill will not threaten our coast? The executives who appeared before us in the hearing last week said they would not guarantee that there couldn't be another spill like the one that they have had.

Mr. Secretary, I can't imagine that we would permit anything to take place, at least I hope not, that might cause a spill something like the ones that we have or any of them. I think we ought to avoid oil spills at any price because when they spill they seem to get worse and worse and worse in their intensity.

Mr. SALAZAR. Just two quick things. Nothing in life is risk-free, and no development ever in the OCS—whether it is for wind power or whether it is for oil and gas—will be completely risk-free. Those are the facts of life.

Two, there are significant safety enhancements which I am sure will be put on the table as we move forward with the safety reviews. The report to the President from my Department is due at the end of May. There will be additional information after that time as well. And so we will move forward to having a regime which is a much safer regime than we have had in the past.

Senator LAUTENBERG. Mr. Secretary, should these spills that we have seen demand a halt to all new drilling, shift to an all hands on deck policy in an effort to develop and deploy technologies that will end our dependence on oil and fossil fuels, and especially doing business with those who are not friends of ours but are involved in a conspiracy to take advantage of us?

Mr. SALAZAR. Senator Lautenberg, I think you and members of this Committee have been working very hard on moving us forward with a new energy future for the United States of America. The President has been pushing hard for a comprehensive energy plan. This incident in the Gulf Coast I think is another clarion call as to why we need to move forward in that direction.

But we should also be very frank with ourselves in this Committee and in this country that we are dependent on oil and gas, and our economy is dependent on oil and gas, whether it is New Jersey or whether it is California. And how we incorporate those fossil fuels in what is a new energy economy and in transition is something that we are going to have to do.

So we need to be balanced about it, and that is why the comprehensive nature of an energy approach that deals with energy independence and the national security issues that are at stake, the economic security of the country, and the environmental security of the country from the dangers of pollution that come from the emissions are something that we need to deal with.

Part of the shared responsibility here, Senator Lautenberg, ought to be not to kick those issues on down the road for another Congress or another time.

Senator LAUTENBERG. I want to thank each one of you for your excellent testimony. I would ask, Administrator Jackson, are you concerned that the EPA has such a small, almost nonexistent role in our Government's action on oil drilling off our coast?

Ms. JACKSON. Senator, I wouldn't say it is nonexistent, but I am concerned with what I see in terms of our role, even in our performance of the role we have. We have a very important role on preparedness, and we have a very important role under the National Contingency Plan on response. And even though we aren't in the lead, I will be the first to say that I believe my staff are working very hard, but that we will learn lessons from this entire incident, which is far from over, that will I think possibly mean we need some changes, possibly in the law, certainly in the regulations.

Senator LAUTENBERG. How about on a longer-term solution, should oil companies play a part in more funding on the research and development of new technologies that get us, to use BP's own expression, "beyond petroleum" ?

Ms. JACKSON. I certainly think that there is a need. The one thing I have taken away so far is that the ability to get this oil out of the ground has far surpassed our ability to respond to the worst case scenario. And so for us, I am concerned. Dispersants has been an issue. I spent the better part of the last 3 weeks working on it, and I am amazed at how little science there is on that issue for something that is such a primary tool in this response.

So we are on the ground trying to minimize and make the best decisions we can, but there are a range of issues that I think even if you look at the petroleum response itself and the cleanup response, haven't moved along.

Senator LAUTENBERG. And I remind our colleague from Tennessee that we do stop flying when we know that there is imminent danger, whether it is volcano ash or whether it was an attack on our financial center by others. We stop flying, and what we ought to do is stop drilling.

Thank you.

Senator BOXER. Senator, tell us what you really think.

[Laughter.]

Senator BOXER. Senator Whitehouse, if you would do me the honor of taking the seat here. We are going to continue hearing from, in this order, Barrasso, Udall, Vitter, and Whitehouse. And I would ask if you would stay and run this hearing. We then will hear from the Coast Guard, the Assistant Secretary of the Army for Civil Works, and the Assistant Secretary of Commerce for Economic Development.

And so, Senator Barrasso, I look forward to reading about your comments. Why don't you wait until it all calms down.

Senator BARRASSO. Thank you, Madam Chairman.

Senator BOXER. And I want to thank everybody on the panel.

Senator WHITEHOUSE [presiding]. Senator Barrasso.

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

Ms. Jackson, Senator Boxer showed a video early on with that new deep-sea straw in place. I am still trying to quantify the level of this. In the first week that this happened, it was thought it was about 1,000 barrels a day. Then it was up to about 5,000 barrels. Now some scientists are saying possibly 25,000 barrels a day. Secretary Salazar mentioned the possibility that this straw is about 1,500 to 2,000 barrels possibly.

But looking at that, if that straw is in place, taking 1,500 to 2,000 barrels out, that made me think that maybe our estimate of 5,000 barrels may be low because it looks like still massive amounts are spewing forth.

Is that how you looked at it, too? Or any of you?

Ms. JACKSON. I think Secretary Salazar is probably more qualified than I to speak on that. I will say that the agency within the Government that has most of the expertise on estimating the release is NOAA. And so that is the only reason I am not going to take the question.

Mr. SALAZAR. The only thing I would say, Senator Barrasso, is this is an ongoing operation, and this Committee should know that the emergency nature that we are in means that we are relentless and not resting and trying to stop the problem at the source.

I think the video that you saw is actually a video before the operationalization of the riser insertion tube had been inserted, but it was ramped up through the day and overnight. And so the amount of oil which is currently being captured is at approximately the 2,000 barrel a day number. This is an evolving situation that will take place through not only tonight but also through tomorrow.

At the end of the day what is more important than the optics of the visual are an independent quantification of the amount of oil that has flown from this well. That is something which is of the highest order of importance to the National Incident Commander and to all of the agencies that are involved, NOAA, EPA, USGS and others.

Senator BARRASSO. Thank you.

Following up on some of the other discussion about the fact that over about a quarter of America's oil production comes from the Gulf, and with the nationwide halt of permits for new exploration, we need to get the energy from somewhere. So I want to visit a little bit about some of the things that are going on onshore.

We have seen in Wyoming that investment in energy development on public lands in the West has dropped precipitously. In Wyoming revenues paid by private companies to the Bureau of Land Management for oil and gas, bonus bids, rental fees, were down from \$93 million to \$10 million between 2008 and 2009; significant loss of revenue both to the country and to our State. Capital investment has shifted away from the Rocky Mountains, but we need to get the energy from somewhere.

So I am concerned that the Administration's onshore policies are going to hurt rural economies in the West and leave Americans even more vulnerable to higher gas prices.

The Governor of Wyoming has said the proposed changes in onshore potentially hand significant control over oil and gas exploration, development, and production to the whims of those that profess—and these are his words—“a nowhere, not ever philosophy to surface disturbance of any kind.”

So my question to you is with regard to onshore leasing reforms. Were there any economic analyses performed on onshore leasings? Did you consult with State and local officials before finalizing the reforms? And in light of what has happened in the Gulf, are you thinking about reconsidering the changes to onshore in light of what we are dealing with offshore?

Mr. SALAZAR. Senator Barrasso, there has been significant consultation with the Western Governors and the States and others concerning the onshore leasing reforms. But let me say that they have been part of the reform agenda from day one. It has met the same kind of resistance that we have met with the reform agenda on the Outer Continental Shelf and MMS.

At the advent of my administration I canceled 77 leases that had been issued in the State of Utah. Well, I did it because we wanted to do it right and protect the environment and protect our national parks. We issued instruction memoranda that went out to redo the way categorical exclusions are done on the onshore.

That is part of the reform agenda to make sure that we are doing it right, drilling in the right places, but also providing certainty to the industry. The onshore, as I have shared with you in the past, Senator Barrasso, the issues had become so difficult in allowing leases to go forward that most of them were being protested before they even got to the lease stage.

So what we have done under the leadership of Director Abbey and Assistant Secretary Wilma Lewis is to move forward with a kind of proactive planning process that hopefully will provide certainty and will make sure the right environmental analysis is in place, and that we avoid the litigation that occurs when you don't follow those kind of processes.

Senator BARRASSO. It has been my impression, Mr. Secretary, that the reforms were undertaken really without going through the regulatory process. I know the Governor of Wyoming wrote you a 5-page letter in response to your proposal. So I would be interested to seeing how you addressed his concerns ultimately.

Thank you, Mr. Chairman.

I appreciate your comments, Mr. Secretary.

Mr. SALAZAR. Thank you, Senator.

Senator WHITEHOUSE. Senator Udall.

**OPENING STATEMENT OF HON. TOM UDALL,
U.S. SENATOR FROM THE STATE OF NEW MEXICO**

Senator UDALL. Thank you, Chairman Whitehouse.

And thank you to all the panel here today.

While the exact details of this manmade disaster are still unknown, a few things have become clear. Industry told Congress and the public we could rely on them for safety. Now, the era of self-regulation is over for the offshore oil industry. MMS, EPA, the Coast Guard, and the Council on Environmental Quality need to move swiftly to put responsible regulation in place.

Another thing that we know, blowout preventers are not and never were a fail-safe. They are a last ditch measure when the well has had a major failure. The failure on the Deepwater Horizon was not unique. The record shows they often fail.

As a result, we need solid regulatory standards to prevent operators from cutting corners on well control. Producers want to drill fast and move fast to save time and money, and Secretary Salazar, you know that behavior very well. Safety requires carefulness instead. Time is money on an offshore oil rig, and there is always an incentive to put profit over safety. This is a classic case for strong regulation.

And so I guess this is a question to the whole panel, but Secretary Salazar focusing on you, and first of all let me say I have confidence that you are pushing BP as hard as you can to stop the spill and protect ecosystems. What I am wondering is the timeline. We have so many, as has been mentioned in the hearing, of the studies that are going on and investigations that are going on. And now the President has a comprehensive commission.

Could you talk a little bit about the time table on how you see putting regulations in place, when this is going to happen? Because it is clear from the questioning here that we have a significant number of oil wells that are out there and that are operating. We don't know how many this could happen to tomorrow.

So I think it is important that we get a regulatory hold on this. So please, Mr. Secretary.

Mr. SALAZAR. Thank you very much, Senator Udall. Let me just answer that I think there are matters that will happen sequentially here. There have been numerous reforms which we have already initiated within the Department of Interior and MMS. Those will continue even in this week and the weeks ahead.

No. 2, at the end of this month, the President will receive the report on safety recommendations. We are working very hard with scientists and experts to come up with the best report. The President will make announcements on how we will move forward on that.

And then third, the longer-term investigations, they will be overseen by the Presidential Commission which he has announced and he will appoint the members of, and into that commission will flow the investigations that are underway, including the root cause investigation that is being conducted by the Coast Guard and MMS, with an oversight panel, the investigations and reports from the National Academy of Engineering, the investigations which I have ordered through the Inspector General, and other investigations that may be out there.

But they should all be funneled into one place so in a similar vein that happened in the commission related to the Challenger, there will be a report, first of all, about what happened so the whole truth and nothing but the truth is told. And second that the lessons learned are the best lessons that can be learned from this horrific tragedy.

Senator UDALL. One of the things that has hit me in a way in the past in terms of regulations is if you look at MMS and you ask how do they promulgate regulations, many offshore regulations originate at the American Petroleum Institute and then are reviewed by MMS.

Will MMS take more control over this process in the future, as you see it? And how is that going to work?

Mr. SALAZAR. Senator Udall, the input that comes in comes not only from API but also from a whole number of professional organizations and scientific organizations. But ultimately it is the responsibility of MMS as an independent body to decide what those regulations should be.

I expect that you are going to be seeing significant changes to some of those regulations based on the review that is being conducted and based on some of the information that I have been

gathering as I have gone to visit blowout prevention manufacturers and the like.

So this is a time of change, and I think it will be positive change. It will help us move forward with the right kind of safety measures in place with respect to development of oil and gas.

Senator UDALL. Thank you. I hope that all of you together move forward sooner rather than later in terms of getting some good solid regulations in place.

Administrator Jackson, you used the term in your testimony here when you were referring to dispersants, when you were answering a question, amazed how little science there is on dispersants. The New York Times reported that the dispersants being used in the Gulf were banned in Britain. Is that correct? And if so, do we have any alternatives?

Ms. JACKSON. That is correct, but if I may I would just like to get a little bit more information because we had looked into that. There were tests done in Britain called rocky shore tests, and it appears from what we have learned so far that the reason for the ban had less to do with inherent toxicity and more to do with the near-shore impacts on certain clams and their ability to adhere to the rocky shores. We are still looking into it, but I think the answer would be yes, perhaps for different reasons and certainly in a different application than here.

Senator UDALL. How did we get ourselves in a position where we know so little about the science of dispersants? What do you expect we will be doing in the future in terms of dispersants, the science tackling these kinds of oil spills with these kinds of technologies?

Ms. JACKSON. Yes, just so I can be clear. There is certainly some science on dispersants. I don't want to dismiss good work that has been done. But in this incident so far an unprecedented volume of dispersants have been used in the Gulf of Mexico. And I think what that means is that lacking any other tools during this time when the release is continued there has been a real reliance on them, maybe more so than anyone ever thought would happen.

And I think that the science hasn't continued along to show whether or not we are having a potential impact. There is nothing to indicate that, Senator. If I thought there were, we would stop it immediately. I have been very hesitant to take it out of the tool kit altogether, but I think long-term impacts to ensure that this stuff does not bioaccumulate, we have no data that shows it does. The MSDS says it doesn't.

There have been some valid questions raised about the impact on the water column and the fate in transport. What happens to these dispersed particles? Do they really biodegrade quickly, or do they take a long time? And I think that is fair ground for research.

Senator UDALL. When you said it doesn't bioaccumulate, was that the MSDS? Could you tell me what the acronym is?

Ms. JACKSON. So sorry, Senator. MSDS stands for material safety data sheet. If you look on the Deepwater Horizon response.com Web site, that is one of the things that are posted for both the Corexit products that have been used.

Senator UDALL. If we find that the use of dispersants has had a damaging impact on natural resources, would BP be responsible for those damages as well, based on your understanding or Sec-

retary Salazar's understanding with them, or Nancy Sutley's understanding?

Ms. JACKSON. My understanding is the response itself and the actions that are taken are part of the liability and part of the assessment that will be done. So just again, no one has ever argued that dispersants don't have an impact. We believe it lessens the impact to the marshes, which are so ecologically and economically important, but they are not without any impact. And so that would certainly be part of a damage assessment, I would think.

Senator UDALL. Yes.

Secretary Salazar, I don't know if you have any final thoughts on that, with just a couple of seconds left here.

Mr. SALAZAR. I don't have anything to add.

Senator UDALL. Thank you.

Mr. Chairman, thank you very much, and thank you for chairing this hearing and being so instrumental.

Senator WHITEHOUSE. Thank you, Senator Udall.

Senator VITTER.

Senator VITTER. Thank you, Mr. Chairman, and thank you all for your ongoing work.

I have been here as well as at a Commerce Committee hearing on the oil spill. I serve on that committee, too. So trying to bridge that divide, I am going to focus on exactly the same five questions and points I also focused on there.

The first is under the Magnuson-Stevens Act, the Administration can and should in appropriate circumstances declare a fisheries failure, a disaster regarding fisheries when there is a God-caused or a man-caused event with a significant negative impact on fisheries.

I have asked for that declaration. The Governor of Louisiana has asked for that declaration. This is obviously a huge event impacting fisheries. Why hasn't that been declared, and when will it be?

Mr. SALAZAR. Let me just say that is a matter which the National Incident Commander would have under his review. I don't have the answer to that today, Senator Vitter, and I don't know that Nancy or Lisa do either. We will be happy to get back to you on that.

Senator VITTER. If anyone on the second panel could answer that, or if you could get a written response as quickly as possible from the appropriate Administration official, I would appreciate it. Again, the point is simple. This is obviously a historic event with a big negative impact on fisheries. If this doesn't qualify, I don't know what does. And this would help trigger some immediate help to folks in the fisheries sector. BP will ultimately pay the bill, but timing is everything, and this can hasten some help to that sector.

Second, and it is sort of similar, under OPA, the Oil Pollution Act, section 2713(f) doesn't simply allow—it mandates for the President to set up a loan program for fishermen and fishery dependent businesses. In fact, I will read it to you: "The President shall establish a loan program under the fund," that is the trust fund, the OPA trust fund, "to provide interim assistance to fishermen and aquaculture producer claimants during the claims procedure."

Again, I have asked for that specifically. Why hasn't that happened, and when can we expect that to happen?

Mr. SALAZAR. Again, I think that is a question for the National Incident Commander, and I would be happy to look into it and get back to you.

Senator VITTER. OK. Thank you.

Again, the point is similar. BP is going to pay the bill. BP is on the hook for economic damages. That is not a debate. But this can help provide immediate assistance to fishermen and folks in that sector, as can the disaster declaration because, as you know, paying those claims is going to take some amount of time, so this can be done more immediately.

Third point is about a boom and other related supplies. I will direct that to the second panel and the Coast Guard Admiral because I am going to have to leave. According to the initial metrics, Louisiana was being shortchanged boom, quite frankly, as a ratio of mile of boom to mile of vulnerable coast, while Mississippi and Alabama were getting a ratio of something like 1 mile of boom to every 1.8 miles of vulnerable coastline. Louisiana was on a different planet, getting about 1 mile of boom to over 10 miles of vulnerable coastline.

I have sent a letter about this to Admiral Allen. I have talked to Admiral Allen three times. I believe that is moving in the right direction. I thank him for that, but my question for the appropriate panelist, perhaps on the second panel, from the Coast Guard would be what is the update on that, and when will that disparity be completely resolved.

Fourth question, again, is probably for the second panel, and I apologize. I am going to have to leave.

Mr. SALAZAR. I like this line of questioning, Senator Vitter.

Senator VITTER. Right.

Mr. SALAZAR. It is for the second panel.

Senator VITTER. Right.

[Laughter.]

Senator VITTER. The State of Louisiana and local parishes have made a proposal to do emergency dredging and use the dredged material to build up the barrier islands and to plug certain gaps that have grown in some of the barrier islands. I know Administrator Jackson is somewhat familiar with the proposal.

Obviously, time is of the essence, and so I wanted an update on the Administration's response to that proposal so it can get underway. And I would invite the Administrator to make any comments, and then on the second panel Assistant Secretary Darcy I know can respond to that.

Ms. JACKSON. Yes, I think the second panel and the Federal on-scene coordinator and of course the Admiral from the Coast Guard are ultimately going to have to make judgments regarding feasibility and efficacy. I would simply say that the environmental community for a long time has been trying to rebuild the coastline down there, and barrier islands are certainly an important part of that.

The question that lies before the Commander and the Incident Commander will be the efficacy of that approach to deal with this particular emergency. That is going to have everything to do with time and ability to get it done. But I will defer to Jo-Ellen, I am

sorry, the Assistant Secretary and the Admiral for their comments as well.

Senator VITTER. OK. You are certainly right. Timing is the big issue, and this request has been out there for a week or more. So I look forward to that answer from the Assistant Secretary and encourage a concrete decision as soon as possible because timing is huge.

The fifth and final point is for the Interior Secretary. Mr. Secretary, this goes to Senator Barrasso's question and some others. Many people I talk to are confused because this pipe is now hooked up, because we are now collecting some of the product, maybe 20 percent through that. Many people I speak to have the same reaction I do, which is that should be a major step forward in better calculating the amount of the flow, not that it can be done precisely now, but it should be a big tool so that you would think we can have a much better calculation than we could have 4 days ago.

Is that correct? And if so, when are we going to get that more precise calculation?

Mr. SALAZAR. It is absolutely correct, Senator Vitter, that that will give us a better sense of what has been flowing out. In addition to that, there are a whole variety of efforts that are underway to try to get a more precise and independent determination as to what these numbers are, because right now they are all over the place. The number that had been used was I think the best-considered number at 5,000 barrels per day. Whether it is more, whether it is less, we will have I think a lot more information on that as the week goes on.

Senator VITTER. OK. Do you have a more precise timeframe? The pipe has been hooked up for several days, so as a layman, admittedly not an engineer, I would have thought we would have more precise estimates by now. But what is your timeframe for that?

Mr. SALAZAR. Senator Vitter, what is happening in fact as we speak here is that the pressures are being adjusted. As the pressures are adjusted to bring up the production, they have to be very careful so that they don't essentially blow up this process and have to go back to the beginning or to essentially annihilate what is this very essential mitigation measure.

And so there are a number of things that could happen if that is not done right, including you could have the stream of petroleum that is coming up essentially form hydrates if seawater is allowed to go in there. So it is a very delicate process, and that is why they are taking their time to wrap it up by adjusting the pressures generally about every 2 hours, which then increases the flow.

When they will get to maximum containment under this mitigation flow regime, I still don't know. I asked exactly the same very question of Andy Inglis, who is the executive at BP in charge of the whole operation this morning, and we still don't know. But there will be a lot more information I would expect over the next couple of days.

Senator VITTER. OK. Just to clarify, part of my question is a little different, even though we are not at maximum capture right now, and I will wrap up. Even though we are not at maximum product capture right now I would have thought connecting the

pipe would give us a much better guesstimate of the flow even now. Is it not doing that?

Mr. SALAZAR. I wasn't sure of the timing of the video that was shown here, but there is still product that is escaping. It is not controlling 100 percent of the leak, nor will it at the end. But as the process ramps up to a higher level of production, it will give us a much better sense of the numbers.

What I will say, Senator Vitter, and to all the members of this Committee, is that you have the best engineering and science minds of the entire globe that are focused in on this problem. It includes the leadership of Secretary Chu and the Department of Energy and the National Labs and the Department of Commerce and NOAA and USGS.

Dr. Marcia McNutt, who I think is one of the most renowned ocean marine scientists in the world, has actually been at Houston watching exactly what is going on. It is part of pulling together a group of the leadership of the scientific community to help address some of these issues which you are raising.

Senator VITTER. Thank you.

Senator WHITEHOUSE. Senator Baucus.

**OPENING STATEMENT OF HON. MAX BAUCUS,
U.S. SENATOR FROM THE STATE OF MONTANA**

Senator BAUCUS. Thank you, Mr. Chairman.

Today we are gathered for one reason, and that is we need to answers to the question what went wrong. Eleven people lost their lives. Oil is gushing into the Gulf of Mexico. The Gulf Coast economies are at risk. Environmental damage will be severe.

I have supported offshore oil and gas development for many years, and I expect to continue to do so. But with that support comes responsibility to ensure that people are safe, our communities are protected, and our natural resources preserved.

The catastrophic consequences of this incident compel us to pause, to evaluate what happened, and to make corrections so this does not happen again.

A few key questions come to mind. First, the response. Have appropriate actions been taken, and are they continuing to stop the spill and mitigate the damage to the environment and the economy?

Second, the cause. What exactly happened? Was this human error, equipment failure, or both? Was there failure to plan for the worst case scenario? Were appropriate environmental reviews conducted? Were adequate preparations made for rapid response in the event of an incident?

Third, are there systemic changes we need to make to be sure this never happens again? Is there an appropriate level of redundancy in the safety systems on these offshore rigs, given the potential for damage? Are the Federal safety environmental requirements for offshore drilling adequate, and are they being followed?

One item I would like to highlight on this last point. I understand that under current regulations a full environmental assessment may be avoided at a particular site unless a project has the potential to harm things like "parks, recreation or refuge lands and wetlands."

In Montana these words have very clear meaning that brings to mind places like the North Fork of the Flathead River, Glacier National Park in northwestern Montana. We have higher expectations for these lands already in protected status. Given the nature of the resources in the Gulf, I cannot understand why a more detailed environmental review was not conducted that might have led to extra precautions.

The true impact of this ever growing disaster on the people of the Gulf Coast, the economy, and our Nation's natural resources will emerge over time. It is our responsibility to make sure that as we move forward with offshore oil and gas developments we are doing so with the utmost care to preclude this type of catastrophe.

I very much look forward to a hearing from the Committee. We have a long ways to go yet in order to get to the bottom of this.

Mr. Secretary, I have a question for you. We are both from the West. When we see the words park, wilderness areas, or wildlife refuge, we know what they mean. They mean places like Glacier National Park or the North Fork of the Flathead River which you and I visited last year.

These words also mean the six refuges in the Gulf or the Florida Keys National Marine Sanctuary. When these resources are present MMS regulations require environmental assessments that preclude the use of a categorical exclusion to avoid environmental review. With the Deepwater Horizon case exactly the opposite occurred. Why then was a categorical exclusion used at this site, and what is MMS doing to ensure that our most special places are protected?

Mr. SALAZAR. Senator, Chairman Baucus, let me just say first, as I alluded to earlier in the testimony, the response here has been robust. The President has directed us to make sure that we do not rest until we get this problem solved. To the cause, the Commission, especially the Presidential Commission will get us down to the root causes of what happened here and will answer the question that you had in your opening comment.

Systemic changes, some of those we will move forward with, and we have moved forward with some of those over the last year, and we will continue to move forward with them now. But also as the lessons learned emerge, we will be moving forward with additional systemic changes.

On the EISs and what happened here relative to the refuges, I will have Nancy Sutley comment, if she will in just a minute, on the environmental reviews that do happen. But I will say this—there are 40 units of very spectacular areas in the entire Gulf Coast. They include 33 National Wildlife Refuges and seven units of the National Park System. That is an agenda of protection that I take as seriously as I do Glacier National Park.

We will, as we investigate what happened here, make sure that we understand whether or not there were shortcuts that were taken that should not have been taken. I think on the environmental categorical exclusion on the exploration plan itself, there is, as I have understood it, a 30-day mandate under our national framework for approval of those plans. And so that is what has driven a number of the categorical exclusions that have been given over time in the Gulf.

But Director Sutley actually is very eloquent on this subject, so she should probably respond to that specific one.

Senator BAUCUS. So there is the question, why was the categorical exclusion provided for in this case given the sensitivity of the area? Well, that is the basic question, which would preclude a deeper environmental assessment.

Ms. SUTLEY. Thank you, Senator. We know something needs to be done here. We have announced with the Department of Interior a review of the environmental review process at MMS so we can get answers to exactly those questions.

We will also propose to strengthen the guidance that we give to agencies with respect to their use of categorical exclusions, clarifying when they should use them, requiring them to review them, requiring CEQ to review the use of categorical exclusions.

But as the Secretary alluded to, one of the real constraints that MMS faces is this 30-day requirement to act on permits within 30 days. And so in the legislation that we sent up here last week, we have asked to extend that to 90 days to ensure that there is adequate time to do a thorough environmental analysis when it is required.

Senator BAUCUS. What is the 30 days? Is that a statutory requirement?

Ms. SUTLEY. My understanding is that it is.

Mr. SALAZAR. It is a statutory requirement that I understand has been in place since 1978 that MMS has to respond with a decision on an exploration plan within 30 days from its submission.

Senator BAUCUS. But that doesn't necessarily mean that it has to be, maybe it does, a categorical exclusion, does it?

Mr. SALAZAR. There are a number of environmental reviews that take place before you get to the point of actually granting a permit to drill a particular well. They include the very extensive environmental impact statements in preparing an Outer Continental Shelf plan. They include another environmental impact statement with respect to a particular lease sale. And then additional environmental analysis that occurs.

At the point in the window of this process where the company submits an exploration plan, there is a requirement, as I understand it, that says that the exploration plan must be approved or disapproved within 30 days.

We have asked for that to be changed in the submission by the President on legislative changes. There will be other things like that that will be looked at. But I think, Chairman Baucus, if I may, the most important thing that is going on here is that it is time to learn from this tragedy. Director Sutley, along with our Department, along with Administrator Jackson and others, will take a look at these environmental reviews, and whatever changes need to be made, they will be made.

Senator BAUCUS. I understand that. It sort of baffles me, frankly, that based on what I know at this point. There does not seem to be redundancy plans. There does not seem to be testing, particularly a mile down, of some of these procedures, like the preventer, at that depth.

And just lots of questions that come to my mind. I am just curious. It just seems that they were not looked at adequately in ad-

vance. I know this is hindsight, but it is baffling to me the degree to which there is almost a cavalier attitude by the Government in its failure to protect resources here.

If I might change subjects here, my time is about to expire.

Administrator Jackson, thanks for all the work that you do. As you recall I wrote you a letter recently regarding clean up at Libby, Montana. And I asked you to affirm a series of commitments related to public involvement in the cleanup process and updating records of decisions upon completion of a risk assessment. I just wondered if you could confirm that EPA will take the actions outlined in my letter by May 12 of this year.

Ms. JACKSON. Yes, your letter was dated May 12, Senator, and I do have it and I am happy to affirm those commitments that staff have made and will also get you a written response to your letter.

Senator BAUCUS. I thank you. And just while we are here, I also want to just thank you and Secretary Sebelius and the Administration for the declaration of public health urgency. It has made a huge difference to those people in that part of our State. So I just want to thank you on their behalf.

Ms. JACKSON. And I am still looking to visit with you.

Senator BAUCUS. Good. Thank you.

Thanks, Mr. Chairman.

Senator WHITEHOUSE. Thank you, Chairman.

Senator Carper.

Senator CARPER. It is always nice to see you. Thank you for coming today. Thank you for bringing with you Secretary Salazar and Administrator Jackson. We miss one of you very much here in the U.S. Senate. It is nice that you come back from time to time and still try to play a constructive role at reaching out to all sides and working through these difficult issues.

My first question is for our old colleague, Secretary Salazar. First of all, let me say, this question could be for any of you.

A week or so ago we had a number of witnesses from the industry. I think from the folks from BP and the other witnesses from the industry side. And one of the questions I asked to our senior witness from BP was about their willingness to really pay the piper, for their willingness to cover the costs that were being incurred.

I believe under current law they have a \$75 million obligation beyond which they can ask that we tap this fund that is now grown to about \$1.7 billion. I think under current law, as I understand it, about \$1 billion of that can be used per incident. I think there has been a proposal to lift that \$1 billion to \$1.5 billion.

The witness from BP, again a very senior member of their team, responded that they had no interest or intention to foisting any of this obligation off onto the taxpayers. This was something they wanted to pay for with their dime beyond the \$75 million they are good for. I even understood him to say they weren't interested in taking money out of the \$1.7 billion trust fund.

We have asked GAO to look at this to make sure that what we are hearing from the witness and witnesses from BP actually is credible.

Let me just ask, what have you been told by BP or other liable parties in terms of picking up the tab, making sure we make whole

those who need to be made whole without putting the taxpayers on the hook?

Mr. SALAZAR. Senator Carper, thank you for your hard work in the U.S. Senate on behalf of Delaware and the country.

Let me just say that we have had multiple meetings with the senior executives of BP, including Tony Hayward, on the issue of liability and what they will pay for. It has included meetings with Secretary Napolitano and me, Director Browner of the White House, and others. They have communicated to us, first orally, that was in fact the case that they were going to pay for all of the consequences of this incident, including damages and compensation for businesses and people who will be affected.

We asked them to put that in writing in a letter that Secretary Napolitano and I sent to BP. They have done so, and it comports with the statement, as you have understood it, that they are not going to access the oil spill fund, nor will they take advantage of the \$75 million liability cap that is in the statute right now.

Senator CARPER. Great. Thank you.

Ms. Jackson, do you or Ms. Sutley have a different view? Feel free to speak.

I see you don't. That is good.

A question, if I could, for our Administrator, Lisa Jackson. We know that the impacts of this oil spill on our ocean and our ecosystem may well be devastating. We hope not, but they may well be. As Chairman of the Subcommittee on Clean Air and Nuclear Safety here in the Senate, I am also concerned about the impact on air quality that may emanate from this spill.

My question is: Has EPA found thus far that the spill is causing impairments in air quality? And second, what is EPA doing to protect workers who are cleaning up this spill from breathing harmful air?

Ms. JACKSON. EPA has been sampling since fairly early on. It was actually the day that BP started the in situ burning of the oil that was on the surface that EPA began air sampling. We have gotten more robust over time. I aspire that we will continue to improve.

We have made a second commitment, which is anything that we sample, any sampling results we get, we will put them up on our Web site. We have been doing that, although admittedly I wish we could do it faster, but we think data integrity is very important.

Here is the basics of what we know. So far, we can get quicker data when we look at big indicators, total particulate matter, which is important when you are looking at a fire. We haven't seen elevations in those levels into zones that would be a problem for public health. That is based on sampling that we do on the shoreline as well as near the incident.

We look at total volatile organics, because that would be the stuff that would be likely to volatilize into the air. There have been numerous reports of odors, some reports of irritation. What we found is that while total VOC levels are within levels that we would consider to be protective of human health, we have not yet reviewed individual volatile organic contaminant data. We need about 2 weeks' worth of data for the scientists to be able to speak with any clarity on that issue.

I think it is probably due to a large extent to the sheen and the wave action in a pretty active Gulf that from very early on there was some supposition that there could be an aerosol forming. As you know, an aerosol can be very irritating, at the least, to your lungs. If you ever spray a can, and then try to walk through it, that can really irritate you. We have seen incidents like that.

We have also measured for hydrogen sulfide, and we have seen some hits, but we have seen them only at certain monitors. So when you monitor along the shoreline, you may see them one place but not another. So that leads us to wonder whether it is related directly to the spill or perhaps some other issues in the marsh. They haven't been particularly high levels, but they are certainly higher than, if you will, background.

So there is a lot more data coming in. We have a plane in the air. We have two mobile labs out front. But I am trying to be very careful not to overstate what we know, but my commitment has been to people when I talk to them that we are going to get the data, and we are going to give it to you. And we are going to give it to you in a way that is responsible and hopefully that will add to the knowledge of what we are learning about this spill.

Senator CARPER. Thank you. It sounds like you are on it. As a Vietnam veteran, I remember all too well the exposure not just to folks in Vietnam, but to our military personnel, the exposure to Agent Orange and the unanticipated consequence of health damages really to both groups. I think we are all more recently mindful of the exposure of the men and women who were involved in the clean up and searching for survivors in the ruins of the Twin Towers on 9/11 and the health impairments that a number of them have. Let's just keep that in mind. It sounds like you are as we go forward.

Ms. JACKSON. Thank you, Senator. You did ask about workers, and of course that is a Department of Labor, Occupational Safety and Health, OSHA. We all know OSHA. We have heard from several people their concerns, though, and OSHA has really stepped up their presence down in the area of the paid volunteers, if you will, the fishermen and vessels of opportunity that have been pressed into service on boom.

I know the other concern has been whether the dispersants, which are applied aurally, are any concern. We have added now to our suite of chemicals looking for those constituents in the dispersants that are most likely to be volatile, recognizing that they are not particularly volatile mixtures to start with.

So we will have some information.

Senator CARPER. Thanks.

And one last question for Mr. Secretary, if I could. Last week, you announced your intention to restructure MMS in order to establish a separate and independent safety environmental enforcement entity for oil drilling. I believe currently that the Minerals Management Service collects energy revenues on behalf of American taxpayers and enforces laws and regulations that apply to offshore energy operations. Is that a basically correct division of labor?

Mr. SALAZAR. Yes.

Senator CARPER. OK. My understanding is that MMS is already partially separated. The Royalties Division is mainly in Denver, and the Regulatory Division, I am told, is mainly in New Orleans. Is that correct?

Mr. SALAZAR. That is generally correct.

Senator CARPER. OK. How do you see your reorganization changing the status quo? Have you thought that far down the road?

Mr. SALAZAR. Senator Carper, the reform effort that we have had underway throughout the Department has included MMS from day one, and that has included the elimination of programs like the Royalty-in-Kind Program, the institution of a new ethics code, investigations that ultimately have been referred over to the U.S. Attorney, a number of different things like that that have been an effort on our part to bring competence and trust in the functioning of MMS.

Our work is not yet finished. In the days ahead there will be additional orders that we will issue with respect to the restructuring of MMS.

Senator CARPER. OK.

Mr. Chairman, I know my time has expired. Something you and I are very much interested in is alternative energy. If I could just ask one last quick follow up on the same point with Secretary Salazar. Where do you see the alternative energy permitting folks ending up in this reorganization? Have you thought that far down the line?

Mr. SALAZAR. We have indeed. There will be a continuing significant effort on our part to capture energy in the ocean that is renewable energy. As you well know, the State of Delaware, along with the State of Rhode Island, are two of the key leaders in the Atlantic. We have formed an Atlantic Consortium with respect to offshore wind. We have developed the regulations with respect to that.

I expect that even in the weeks ahead, even as we deal with this turmoil down in the Gulf, you will be seeing additional information with respect to the efforts on the offshore wind related specifically to the Atlantic.

Senator CARPER. All right. Thanks so much.

Thanks, Mr. Chairman.

Senator WHITEHOUSE. Thank you, Senator Carper.

And thank you to all the witnesses for being here. We are down to the bitter end of your time here. I wanted to ask a number of questions. The first has to do with a statement made by Transocean's lawyers, who have said that strengthened regulations are not needed because companies have the financial incentive to do this kind of job right.

That is the Greenspan rule. That is exactly the theory that Alan Greenspan used to justify deregulation of the financial regulatory structure that we had. We saw the destruction that ensued from that. Please assure me that you are not buying into this theory that under certain circumstances there may be a financial disincentive to a company from having a disaster means that the Government doesn't need to do any regulation to prevent that disaster from happening.

Mr. SALAZAR. Senator Whitehouse, I very much agree with your position, and I think that kind of a statement from Transocean is wrong.

Senator WHITEHOUSE. I appreciate it.

In terms of MMS's role, I have seen news reports saying that they were highly encouraging companies to take certain steps, but not requiring them to; that they issue guidelines and recommendations but that their provisions weren't mandatory. If a regular American is trying to electric work on their house, and they need to have the electrical inspector come and sign off on what they did or didn't do, they are subject to pretty clear requirements. You have either done it right, or you haven't.

Why is it that for something that is so complicated and so dangerous as this offshore drilling that the similar level of mandatoriness that you and I have to face with the electrical inspector in our homes doesn't apply to these giant industries? What is with regulation by suggestion?

Mr. SALAZAR. Senator Whitehouse, the MMS has a comprehensive regulatory program that has been in place and is the creature of 40 years of development. It is under that regime that some 36,000 wells in the Gulf alone have been constructed without this kind of an incident. Many of the rules at MMS are in fact mandatory.

Now, that doesn't mean that these rules are what they ought to be. I would imagine that one of the things that you will see in the coming report to the President on safety issues has to do with significant enhancements.

I have seen the blowout prevention mechanisms. They are required on wells. They are not the first line of defense. There are other lines of defense. It is first the mud in the well, and that is never supposed to happen, and there are a whole bunch of shutoffs with respect to blowout preventions. This particular BOP program had a number of different closures that were supposed to take place. Lots of things probably happened that kept them from closing in and stopping the flow.

We will learn a lot from what happened here, and that is why the President's Commission and the investigations are so important so we can get to the root causes and so that we can learn all the lessons that can be learned from this horrible tragedy.

Senator WHITEHOUSE. I appreciate that. I am delighted that the President made that decision. As you know, Congresswoman Capps on the House side and me on the Senate side have filed legislation to push that to happen. I think the President's choice obviously was the right one.

In terms of the culture at MMS, we have seen horrifying stories. We have seen regulation by suggestion, I call it. I haven't seen that in any other regulatory environment I have ever been in. On the other hand, it is a big organization. You see it, although only for a brief period of time now, more closely than I do. To what extent is this a captive regulator where, to use your earlier phrase, really root and branch changes need to be made? And to what extent is this a legitimate, honest regulator that has only pockets of malfeasance or nonfeasance? What is your view of the scope of the problem within MMS?

Mr. SALAZAR. Let me say first there are 1,700 employees at MMS, and today I would say most of them, the very, very vast majority of them, are good public servants doing their job, collecting \$13 billion for the taxpayers of America; helping produce the energy which you and I consume and the constituents of Rhode Island and Colorado consume every day.

So I am proud of the work that they do, but I also recognize that there are pockets of problems, and we have taken them on, including with appropriate personnel actions, and whenever necessary, referrals for other more significant sanctions under the law. That has continued and will continue unabated into the future.

Senator WHITEHOUSE. Do you think an adequate spirit of skepticism about the assertions of the industry it is intended to regulate exist within the agency? Or do you think they are willing to more or less take what they are told?

Mr. SALAZAR. Senator Whitehouse, the reform agenda which we have tried to put into the Department of the Interior has not come without any cost. There was an exchange between myself and industry where I said the days of them treating the Federal domain as essentially part of a candy store were over. We have made it clear that those days of the prior Administration are over.

So those changes are changes that we have implemented from the very beginning of my coming into the Department of the Interior. It has come at the cost of significant criticism, including members of this Committee and the Senate. But it is the right agenda that we are on, the agenda of reform. It is an agenda which is not yet complete, and that is why we will not rest until we get it done and we achieve the President's goal of having the highest safety possible with respect to any development in the Outer Continental Shelf.

Senator WHITEHOUSE. If you look for a minute at the categorical exclusion question, which I know has been touched on a few times already, under the 2004 changes to your NEPA manual, National Environmental Protection Act manual, the categorical exclusion from the full blown NEPA process for approval of an offshore lease or unit exploration in the central or western Gulf of Mexico provides a number of exemptions: No. 1, in areas of high seismic risk or seismicity, relatively untested deep water, or remote areas; two, within the boundary or near the boundary of a proposed or established wildlife refuge or area of high biological sensitivity; three, in areas of hazardous natural bottom conditions. I don't know if the natural bottom conditions were there; four, utilizing new or unusual technology.

The press is full of reports about the novelty of using this technology at this depth; the use for the first time of nitrogen cement instead of regular cement; the use of the device of displacement of the mud before the plugs were in; and obviously they went into a scramble mode once things really went wrong and they had to begin to try to address the spill because clearly it was being made up as they went along at that point: trying the dome, no; ice crystals, that didn't work; what are going to do next, try the straw, no; well, I guess that is working; maybe we will try the relief wells.

It looks like a very ad hoc effort. And when I look at these exemptions from the requirement, here we were in very deep water.

I don't know how near we were to the boundaries of a wildlife refuge or areas of high biological sensitivity, but clearly there would seem to be elements of new and unusual technology being used here, particularly at this depth.

Do you feel that the decision that was made to go ahead with the categorical exclusion, when these exemptions seem to me rather plainly to apply, was taken correctly and in good faith?

Mr. SALAZAR. Senator Whitehouse, there has been significant environmental review, including environmental impact statements that have been conducted with respect to this activity in the Gulf of Mexico. It is an area where we know a lot about the environment. We know a lot about the infrastructure that is there.

The question of the categorical exclusions in part relates to the congressionally mandated 30-day requirement that MMS has to approve or disapprove an exploration plan. But it is an appropriate area for questions, and that is why Director Sutley and Interior are leading a review of all these environmental issues. I would, with your indulgence, ask her to comment on the review of all these environmental issues at MMS.

Senator WHITEHOUSE. I would be delighted. Just to sort of provoke the conversation a little further, here is BP's Chief Executive Officer, Tony Hayward, saying this is the first time the industry has had to confront this issue in this water depth, and there is a lot of real-time learning going on; BP's release that the Chairman showed earlier, that significant uncertainties exist because they have not been tested in these conditions before; and now you have a new or unusual technology exemption to the categorical exclusion, and everybody is running around saying his is new, this is unusual.

Why was that not apparent back when the categorical exclusion was being issued?

Mr. SALAZAR. Let me just say, Senator Whitehouse, those are from 2004. That was a long time ago, a different Administration. We are taking a new look at that. We have been taking a new look at a lot of different things. But importantly, the effort that Director Sutley and I have underway to look at all these environmental issues is very important. So I think it would be appropriate for her to comment.

Senator WHITEHOUSE. No, and I don't mean to suggest that any of you three individually had any responsibility for that. I mean, if these technologies are new and unusual now, think how new and unusual they were years ago when this application was being considered. There is the new and unusual exemption right in the middle. There is the deep water exemption right in the middle of it. Who was watching to oversee that determination?

It is hard for me to see that that is a determination that could have been made in good faith back then. So I hope you will look back and take a look at the extent to which there might have been improper or undue influence in the early stages of this approval to allow this to go through the categorical exclusion, given those very clear exemptions that seem to be plainly pertinent.

Chairman Sutley.

Ms. SUTLEY. Thank you, Senator. The Secretary is exactly right. We intend to do something about this. We are engaged in this re-

view of MMS's NEPA procedures and their environmental review procedures, recognizing that there is an expanding use of categorical exclusions across the Government. We proposed in February to update our guidance with respect to categorical exclusions, including the requirement that agencies review their own use of categorical exclusions and that CEQ will do, as we are launching with the Department of Interior review not only MMS's overall NEPA procedures, but the use of categorical exclusions. So we think there are definitely areas for improvement in the application of categorical exclusions.

Senator WHITEHOUSE. OK. I appreciate that.

My time has expired, and even though I am not inconveniencing any other Senators, because we are here now alone, I am inconveniencing the three of you, so I will conclude. But I am glad that you are taking such a serious look at it. Just from what I have seen in the newspapers, we read about dead batteries in the control pod; test parts in the blowout preventer instead of the reel rams; even the reel rams not able to actually shear the pipe the way they are supposed to at joints; hydraulic leaks that preexisted all of this; pressure readings that were missed.

And on the Government side, inspections missed, warnings ignored, regulation by recommendation, I call it. I don't envy you having to go back and clean this up. I know the problems predated your arrival, but I really think it is important that you do that. I would urge you to take a particular look at what this means for Arctic drilling. Because if it is this hard to clean this up in the relatively benign conditions of the Gulf of Mexico, good luck trying to implement this sort of a clean up in Arctic oceans.

Thank you all very much for being here. I appreciate your testimony and will take a 2-minute recess to allow the second panel to come forward. I am very grateful for your service. I know you have put in enormously long hours and put in a wonderful effort on this.

Secretary Salazar, as a former colleague of yours here, I am just always very proud of you. So keep up the good work. Thank you.

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

[Recess.]

Senator WHITEHOUSE. The hearing will come back to order.

I am delighted to welcome panel two. In addition to being very distinguished, they are also very patient. I think I will read everybody's introductions, and then we will go through the statements one after another.

Admiral Peter F. Neffenger of the United States Coast Guard is the Deputy National Incident Commander for the Deepwater Horizon oil spill response. The Coast Guard is responsible for the response and clean up of oil spills in coastal waters under the Clean Water Act, Oil Pollution Act and the National Contingency Plan. The Coast Guard is also a co-lead, along with the Minerals Management Service, in the ongoing investigation into the causes of the explosion and spill.

Jo-Ellen Darcy is Assistant Secretary of the Army for Civil Works. The U.S. Army Corps of Engineers, which Ms. Darcy oversees, is responsible for maintaining navigation on the river systems and waterways along the Gulf Coast, some of which could be affected by the spill. The Corps will also have responsibility for re-

viewing Louisiana's proposal to construct barrier islands in coastal waters to prevent the oil spill from reaching coastal wetlands.

John Fernandez is the Assistant Secretary of Commerce for Economic Development. The Economic Development Administration, which he oversees, will play a role in assisting Gulf Coast communities in coping with impacts to local economies as a result of the oil spill. The EDA has a proven track record in helping communities recover after disasters, and we look forward to hearing how EDA can assist in the wake of this spill.

I will call first on Admiral Neffenger. Let me just tell you how grateful I am for the work that the Coast Guard has done in this particular instance. I think both as active participants in the response and as regulators and questioners of other agencies has been in the best traditions of the Coast Guard. I, for one, remember the North Cape-Scandia incident off of Rhode Island and the extraordinary heroism of the Coast Guard folks who made very hazardous rescues that night and brought everyone to safety in really appalling weather conditions. So I just wanted to take that moment to thank you for what an impressive and professional organization you are a part of.

Admiral.

STATEMENT OF PETER V. NEFFENGER, REAR ADMIRAL, DEPUTY NATIONAL INCIDENT COMMANDER, DEEPWATER HORIZON OIL SPILL RESPONSE, U.S. COAST GUARD

Admiral NEFFENGER. Thank you, Mr. Chairman, and thank you for those kind comments about the men and women of the Coast Guard. And thank you for the opportunity to testify today about the ongoing response and investigation into the explosion and subsequent oil spill from the Deepwater Horizon incident.

I have written comments that I will provide for the record and make a brief opening statement.

On the evening of April 20, 2010, the Coast Guard and other mariners immediately responded to the explosion and fire which engulfed the Deepwater Horizon. Within the first few hours, 115 of the 126 crewmembers aboard the rig were rescued, with the Coast Guard medically evacuating 17 of those most seriously injured. Eleven crew members remain missing despite intensive multi-day search efforts, and our deepest sympathies remain with their families and friends as they cope with their losses.

On the morning of April 22rd the Deepwater Horizon sank in 5,000 feet of water, resulting in a major oil spill from the continuous release of oil and gas from an open wellhead riser and drill pipe. The complexity of this event is unprecedented. With the spill emanating at a depth of 5,000 feet of water we are operating in inner-space where there is no human access, and we must depend upon remotely operated vehicles and tools with which extensive efforts continue to stem the flow and secure the source of the spill.

To meet this challenge, organizations at the local, regional and national level immediately initiated a massive response. This has been led regionally by the Federal on-scene coordinator, Rear Admiral Mary Landry, nationally by Admiral Thad Allen, to whom I am the Deputy National Incident Commander, and Secretary

Napolitano as the principal Federal official under the authority given her by HSPD-5.

On the day the rig sank the President convened a principals meeting to direct that the whole of Government be brought to bear on this effort, working closely with State and local government authorities. The National Contingency Plan provides the organizational structure and the operational framework to implement the family of response plans that are developed and exercised in advance of a spill such as this.

Unified commands consisting of Federal, State and local authorities, the responsible party, and oil spill removal organizations and other key stakeholders were established within the Gulf region to coordinate and direct the response operations. These unified commands implement the area contingency plans, which include response strategies and organizational responsibilities previously agreed upon by stakeholders for the anticipated most probable and worst case oil spills.

These plans prioritize cleanup sites and protection areas for booming and pre-staging of other resources. The projections of spill trajectory based on forecasted winds, currents, and sea states require continued tactical flexibility as we move stocks and booms around and such and direct resources accordingly.

BP is the responsible party, and it is their responsibility to plan for and to respond with sufficient capability. They are also responsible for the clean up of the oil, remediation of all damages, and the restoration of impacted natural resources. They have acknowledged and accepted this responsibility, but as the Federal on-scene coordinator the Coast Guard is ensuring that they continue to meet their obligations by providing constant oversight and direction of their actions.

In addition, we continue to monitor the claims process to ensure it is robust and fair.

The severity, size and location, and potential impact of this brought Secretary Napolitano to declare it a spill of national significance. As part of that designation, Admiral Thad Allen, as I said, was named the National Incident Commander. The role of the National Incident Commander is to coordinate national policy, ensure provision of necessary resources, facilitate collaboration between Federal, State and local government, and coordinate strategic communications throughout the whole of government.

The magnitude and location of the spill has required a combination of traditional spill response equipment and methodologies coupled with newer technologies employed in unconventional ways. The use of dispersant deep below the surface, remote operating vehicles to access the site and secure the source, and satellite imagery to better determine the location of oil are just a few examples of these.

The efforts so far have been extensive and without precedent. As of today, we have recovered over 7.6 million gallons of oil-water mix, applied over 588,000 gallons of surface dispersant and over 47,000 gallons of sub-sea dispersants, deployed over 1.3 million feet of boom, staged over 350,000 feet of boom, and have another 1.4 million feet arriving. And as noted there are over 19,000 personnel and 950 vessels involved.

We understand the impacts of this spill on the local communities whose livelihood and quality of life depends on the health of the Gulf. I have personally spent the better part of the past few weeks in the Gulf region over-flying the spill site, visiting the various command posts, and observing first-hand the efforts underway.

In closing, the National Incident Command will continue coordinating the aggressive whole of government response to this spill while ensuring that BP meets their obligations.

Mr. Chairman, thank you for the opportunity, and I welcome any questions you may have.

[The prepared statement of Admiral Neffenger follows:]

U. S. Department of
Homeland Security

United States
Coast Guard



Commandant
United States Coast Guard

2100 Second Street, S.W.
Washington, DC 20593-0001
Staff Symbol: CG-0921
Phone: (202) 372-3500
FAX: (202) 372-2311

**TESTIMONY OF
REAR ADMIRAL PETER NEFFENGER
DEPUTY NATIONAL INCIDENT COMMANDER**

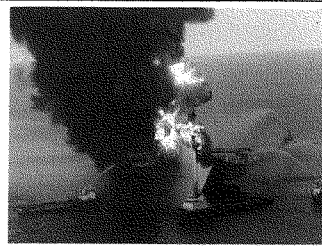
**ON THE
DEEPWATER HORIZON FIRE AND MC 252 OIL SPILL**

**BEFORE THE
SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
MAY 18, 2010**

Good afternoon Chairman Boxer, Senator Inhofe, and distinguished members of the committee. I am grateful for the opportunity to testify before this committee on the subject of the BP Deepwater Horizon oil spill currently ongoing in the Gulf of Mexico.

On the evening of April 20, 2010, the Transocean-owned, British Petroleum-chartered, Marshall Islands-flagged Mobile Offshore Drilling Unit (MODU) DEEPWATER HORIZON, located approximately 72 miles Southeast of Venice, Louisiana, reported an explosion and fire onboard. This began as a Search and Rescue (SAR) mission—within the first few hours, 115 of the 126 crewmembers were safely recovered; SAR activities continued through April 23rd, though the other 11 crewmembers remain missing.

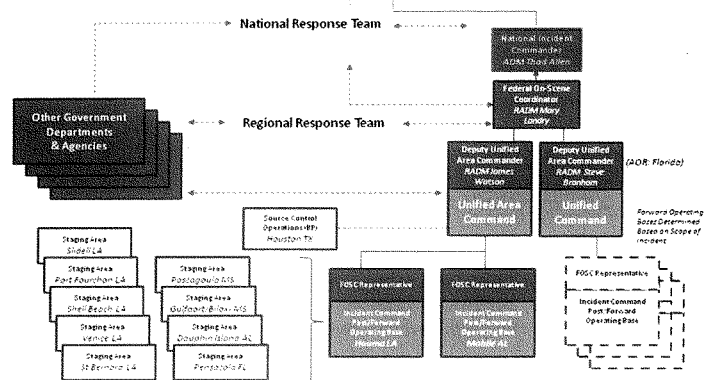
Concurrent with the SAR effort, the response to extinguishing the fire and mitigating the impacts of the approximate 700,000 gallons of diesel fuel onboard began almost immediately, in accordance with the operator's Minerals Management Service (MMS)-approved Response Plan, oil spill response resources, including Oil Spill Response Vessels (OSRVs), were dispatched to the scene. After two days of fighting the fire, the MODU sank into approximately 5,000 feet of water on April 22nd. On April 23rd, remotely operated vehicles (ROVs) located the MODU on seafloor, and, on April 24th, BP found the first two leaks in the riser pipe and alerted the federal government. ROVs continue to monitor the flow of oil.



As the event unfolded, a robust Incident Command System (ICS) response organization was stood up in accordance with the National Response Framework (NRF) and the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). ICS is utilized to provide a common method for developing and implementing tactical plans to efficiently and effectively manage the response to oil spills. The ICS organization for this response includes Incident Command Posts and Unified Commands at the local level, and Unified Area Commands at the regional level. It is comprised of representatives from the Coast Guard (Federal On-Scene Coordinator (FOSC)), other federal, state, and local agencies, as well as BP as a Responsible Party.

U.S. Government Response Structure

*Principal Federal Official for Domestic Incident Response
(Secretary of Homeland Security) Pursuant to HSPD-5
Hon. Janet Napolitano*



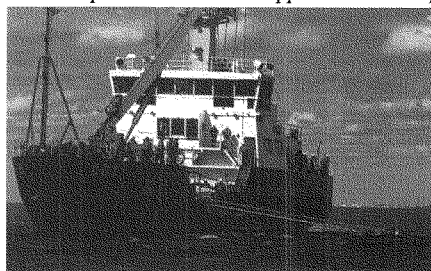
The federal government has addressed the Gulf Oil Spill with an all-hands-on deck approach from the moment the explosion occurred. During the night of April 20th—the date of the explosion—a command center was stood up on the Gulf Coast to address the potential environmental impact of the event and to coordinate with all state and local governments. After the MODU sank on the 22nd, the National Response Team (NRT), led by the Secretary of Homeland Security and comprised of 16 Federal agencies including the Coast Guard, other DHS offices, the Environmental Protection Agency (EPA), National Oceanic and Atmospheric Administration (NOAA), Department of Interior (DOI), as well as Regional Response Teams (RRT), were activated.

On April 29, Secretary Napolitano declared the event a Spill of National Significance (SONS), which enhanced operational and policy coordination at the national level and concurrently allowed Admiral Allen's appointment as the National Incident Commander (NIC) for the Administration's continued, coordinated response. The NIC's role is to coordinate strategic communications, national policy, and resource support, and to facilitate collaboration with key parts of the federal, state and local government.

The NIC staff is comprised of subject matter experts from across the federal government, allowing for immediate interagency collaboration, approval and coordination. While the FOSC maintains authorities for response operations as directed in the National Contingency Plan, the NIC's primary focus is providing national-level support to the operational response. This means providing the Unified Command with everything that they need – from resources to policy decisions – to sustain their efforts to secure the source and mitigate the impact. This will be a sustained effort that will continue until the discharges are permanently stopped and the effects of the spill are mitigated to the greatest extent possible. Beyond securing the source of the spill, the Unified Command committed to minimizing the economic and social impacts to the affected communities and the nation.

UNIFIED RECOVERY EFFORTS

The Unified Command continues to attack the spill offshore. As of May 13, 2010, over 5 million gallons of oily water have been successfully recovered using mechanical surface cleaning methods. Further, approximately 475,000 gallons of dispersants have been applied to break up the slick, and controlled burns have been used as weather conditions have allowed. In addition to the ongoing offshore oil recovery operations, significant containment and exclusion booms have been deployed and staged strategically throughout the Gulf region. These booms are used to protect sensitive areas including: environmental and cultural resources, and critical infrastructure, as identified in the applicable Area Contingency Plans (ACPs). To date, more than a million feet of boom have been positioned to protect environmentally sensitive areas. Fourteen staging areas have been established across the Gulf Coast states and three regional command centers. The Department of Defense has activated National Guard troops; over 1,000 are currently deployed, and up to 17,500 have been approved for deployment.



VOLUNTEERISM AND COMMUNICATION WITH LOCAL COMMUNITIES

A critical aspect of response operations is active engagement and communication with the local communities. Several initiatives are underway to ensure regular communications with the local communities.

1. Active participation and engagement in town hall meetings across the region with industry and government involvement.
2. Daily phone calls with affected trade associations.
3. Coordination of public involvement through a volunteer registration hotline (1-866-448-5816), alternative technology, products and services e-mail (horizonsupport@aol.com), and response and safety training scheduled and conducted in numerous locations.
4. More than 7,100 inquiries received online via the response website (www.deepwaterhorizonresponse.com) with more than 6,121 inquiries completed, with 4-hour average time of response.
5. Over 568,000 page hits on response website.
6. Over 110 documents created/posted to response website for public consumption.
7. News, photo/video releases, advisories to more than 5,000 media/governmental/private contacts.
8. Full utilization of social media including Facebook, YouTube, Twitter and Flickr.

9. Establishment of Local Government hotlines in Houma, LA (985-493-7835), Mobile, AL (251-445-8968), Robert, LA (985-902-5253).

MODU REGULATORY COMPLIANCE REQUIREMENTS

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

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

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

The DEEPWATER HORIZON had a valid COC at the time of the incident, which was renewed July 29, 2009 with no deficiencies noted. The COC was issued based on compliance with number three, stated above. COCs are valid for a period of two years.

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

COAST GUARD / MMS JOINT INVESTIGATION RESPONSIBILITIES

On April 27th, Secretary Napolitano and Secretary of the Interior Ken Salazar signed the order that outlined the joint Coast Guard-MMS investigation into the Deepwater Horizon incident.

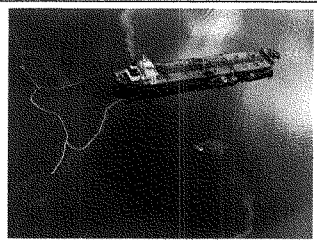
Information gathering began immediately after the explosion—investigators from both agencies launched a preliminary investigation that included evidence collection, interviews, witness statements from surviving crew members, and completion of chemical tests of the crew. The aim of this investigation is to gain an understanding of the causal factors involved in the explosion, fire, sinking and tragic loss of 11 crewmembers.

The joint investigation will include public hearings, which - have already begun in Kenner, LA. The formal joint investigation team consists of equal representation of Coast Guard and MMS members. The Coast Guard has also provided subject matter experts and support staff to assist in the investigation.

LESSONS LEARNED FROM PAST RESPONSES

The Coast Guard has been combating oil and hazardous materials spills for many years; in particular, the 1989 major oil spill from the EXXON VALDEZ yielded comprehensive spill preparedness and response responsibilities.

In the 20 years since the EXXON VALDEZ, the Coast Guard has diligently addressed the Nation's mandates and needs for better spill response and coordination. For example, a SONS Exercise is held every three years. In 2002, the SONS Exercise was held in New Orleans to deal with the implications of a wellhead loss in the Gulf of Mexico. In that exercise, the SONS team created a vertically integrated organization to link local response requirements to a RRT. The requirements of the RRT are then passed to the NRT in Washington, D.C, thereby integrating the spill management and decision processes across the federal government. The response protocols used in the current response are a direct result of past lessons learned from real world events and exercises including SONS.



Although the EXXON VALDEZ spill shaped many of the preparedness and response requirements and legislation followed to this day, other significant events since 1989 have generated additional lessons learned that have informed our response strategies. For example, the M/V COSCO BUSAN discharged over 53,000 gallons of fuel oil into San Francisco Bay after colliding with the San Francisco-Oakland Bay Bridge in heavy fog. Through the recovery of over 40 percent of the spilled product, the Unified Command recognized improvements were needed in some areas. As a result, new guidance and policy was developed to better utilize volunteers in future responses. Additionally, standard operating procedures for emergency notifications were improved to ensure better vertical communications between the federal responders and local governments. Furthermore, steps were taken to pre-identify incident command posts (ICPs) and improve booming strategies for environmentally sensitive areas.

Most recently, the Coast Guard led a SONS exercise in March, 2010. Nearly 600 people from over 37 agencies participated in the exercise. This exercise scenario was based on a catastrophic oil spill resulting from a collision between a loaded oil tanker and a car carrier off the coast of Portland, Maine. The exercise involved response preparedness activities in Portland, ME; Boston, MA; Portsmouth, NH; Portsmouth, VA.; and Washington, DC. The response to the SONS scenario involved the implementation of oil spill response plans, and response organizational elements including two Unified Commands, a Unified Area Command, and the NIC in accordance with the National Contingency Plan and national Response Framework. The exercise focused on three national-level strategic objectives:

1. Implement response organizations in applicable oil spill response plans
2. Test the organization's ability to address multi-regional coordination issues using planned response organizations
3. Communicate with the public and stakeholders outside the response organization using applicable organizational components

The SONS 2010 exercise was considered a success, highlighting the maturity of the inter-agency and private oil spill response capabilities and the importance of national-level interactions to ensure optimal information flow and situational awareness. The timely planning and execution of this national-level exercise have paid huge dividends in the response to this potentially catastrophic oil spill in the Gulf of Mexico.

ROLE OF THE OIL SPILL LIABILITY TRUST FUND

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

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

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

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

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

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

National Pollution Funds Center (NPFC) Funding and Cost Recovery

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

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

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

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

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

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

On May 12th, the Administration proposed a legislative package that will: enable the Deepwater Horizon Oil Spill response to continue expeditiously; speed assistance to people affected by this spill; and strengthen and update the oil spill liability system to better address catastrophic events. The bill would permit the Coast Guard to obtain one or more advances -- up to \$100 million each -- from the Principal Fund within the Oil Spill Liability Trust Fund to underwrite federal response activities taken in connection with the discharge of oil that began in 2010 in connection with the explosion on, and sinking of, the mobile offshore drilling unit Deepwater Horizon. To

deal more generally with the harms created by oil spills as well as to toughen and update these laws, the bill would, for any single incident, raise the statutory expenditure limitation for the Oil Spill Liability Trust Fund from \$1 billion to \$1.5 billion and the cap on natural resource damage assessments and claims from \$500 million to \$750 million.

The emergency fund has been accessed by the FOSC for \$65 million as of May 11, 2010. BP, a responsible party, is conducting and paying for most response activities. The Coast Guard requested and received an advance of \$100 million from the OSLTF principal fund to the emergency fund as authorized by 33 USC §2752(b), because the balance remaining in the emergency fund was not adequate to fund anticipated federal removal costs. The BP and Transocean have been notified of their responsibility to advertise to the public the process by which claims may be presented. As of May 13th, 8160 claims have been opened with BP, and nearly \$5.3 million has been disbursed; though Transocean has also already been designated as a responsible party, all claims are being processed centrally through BP.

CONCLUSION

Through the National Incident Command, we are ensuring all capabilities and resources—government, private, and commercial—are being leveraged to protect the environment and facilitate a rapid, robust cleanup effort. Every effort is being made to secure the source of the oil, remove the oil offshore, protect the coastline, include and inform the local communities in support of response operations, and mitigate any impacts of the discharge.

Thank you for the opportunity to testify today. I look forward to your questions.

Question#:	1
Topic:	review
Hearing:	Federal Response to the Recent Oil Spill in the Gulf of Mexico
Primary:	The Honorable Barbara Boxer
Committee:	ENVIRONMENT (SENATE)

Question: Describe the Coast Guard's legal responsibilities to review, comment on the adequacy of, and approve or deny any documents, including applications, plans, tests, and revisions or modifications to any such materials, related to the BP Deepwater Horizon drilling operation. [When answering this question, provide a list of any documents that the Agency reviewed, commented on or approved or denied related to the BP Deepwater Horizon drilling operations and a description of federal or state agencies that EPA coordinated with in any such activities, as well as the role and responsibilities of each such agency.]

Response: The Coast Guard had no regulatory or oversight responsibility for drilling operations aboard the Deepwater Horizon.

The Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE) is the agency responsible for regular oversight of the drilling operation process. The Memorandum of Agreement between the Coast Guard and BOEMRE (formerly MMS) identifies those systems/subsystems the Coast Guard is responsible for, none of which are related to drilling operations. In addition, our regulations do not address/impose requirements related to drilling operations.

Also, the Coast Guard is not the responsible agency for approving spill response plans for offshore facilities (including mobile offshore drilling units when engaged in drilling operations).

The National Oil and Hazardous Substances Pollution Contingency Plan (NCP) establishes a comprehensive, flexible national response capability that promotes coordination among the Federal government, state and local governments, responsible parties, and other stakeholders. The NCP's reliance on a Federal On-Scene Coordinator (FOSC), working with a unified command, advised by the National Response Team, ensures unity of effort. Under the umbrella of the NCP, the Coast Guard provides the pre-designated FOSC for discharges within or threatening the Coastal Zone, and remains the Federal On-Scene Coordinator for this response.

Question#:	2
Topic:	documents
Hearing:	Federal Response to the Recent Oil Spill in the Gulf of Mexico
Primary:	The Honorable Barbara Boxer
Committee:	ENVIRONMENT (SENATE)

Question: Provide the Committee with all documents, including any draft and final memos, emails, notes, logs from electronically-conducted meetings, correspondence, reports, press releases, public statements, test results, and any other documents relating to the Coast Guard's efforts to accurately estimate and report the volume and measurements of the spill at the Deepwater Horizon site.

Response: The Flow Rate Technical Group (FRTG), a group of scientists and engineers from the Federal government, universities, and research institutions, was charged with quickly producing a preliminary estimate of the oil discharge from the Deepwater Horizon oil spill, and then to refining that estimate over time based on additional data and analyses. Due to the complexity of making these estimates and changes in the available data, the FRTG issued a series of preliminary flow estimates.

May 27: The NIC issued a press release on the FRTG preliminary flow results. The press release can be viewed at: <http://www.restorethegulf.gov/release/2010/05/27/flow-rate-group-provides-preliminary-best-estimate-oil-flowing-bp-oil-well>. The preliminary FRTG report describing the results above was released for distribution on June 2 (see Appendix H).

June 10: The NIC issued a press release of updated FRTG flow estimates, based on additional analysis of May 17 plume video. No formal report was issued in conjunction with the press release, which can be found at: <http://www.deepwaterhorizonresponse.com/go/doc/2931/627011/>.

June 15: The NIC issued a press release on updated FRTG flow rates that were calculated for the period immediately after the riser was cut from the BOP (June 3). No formal report was issued in conjunction with the press release, which can be found at: <http://www.deepwaterhorizonresponse.com/go/doc/2931/661583/>.

July 30-31: The FRTG, Department of Energy, and other experts worked together to evaluate new data and develop a revised flow estimate. The new estimates were released to the public via press release on August 2. These estimates can be found at: <http://www.restorethegulf.gov/release/2010/08/02/us-scientific-teams-refine-estimates-oil-flow-bps-well-prior-capping>.

On August 2, 2010, the FRTG revised their estimates; details are contained in a web posting at <http://www.deepwaterhorizonresponse.com/go/doc/2931/840475/>.

Question#:	2
Topic:	documents
Hearing:	Federal Response to the Recent Oil Spill in the Gulf of Mexico
Primary:	The Honorable Barbara Boxer
Committee:	ENVIRONMENT (SENATE)

Additional information is located and readily accessible at
<http://www.deepwaterhorizonresponse.com/go/site/2931/> .

Question#:	3
Topic:	draft
Hearing:	Federal Response to the Recent Oil Spill in the Gulf of Mexico
Primary:	The Honorable Barbara Boxer
Committee:	ENVIRONMENT (SENATE)

Question: Provide all documents, including any draft and final memos, emails, notes, logs from electronically-conducted meetings, correspondence, reports, press releases, public statements, test results, and any other documents relating to the Coast Guard's assessment of the adequacy of BP's processing of claims for damages arising out of the Deepwater Horizon oil spill. Also provide copies of any complaints that the Coast Guard is aware of concerning BP's processing of such claims.

Response: Prior to standup of the Gulf Coast Claims Facility (GCCF), the Integrated Services Team (IST) monitored the BP claims process. Attached is a letter dated June 8, 2010 from the National Incident Commander to BP identifying this role and addressing the need for detailed claim information and full transparency on claims processing.

The attached July 2, 2010 document is a summary of the key issues, recommendations and challenges raised about the claims process.

The attached August 26, 2010 document provides an overview of the mission of the IST; key objectives and accomplishments of the IST; as well as status updates on the transition to the independent GCCF managed by Kenneth Feinberg; the establishment of the \$20 billion Claims Fund; and the \$100 million Rig Worker Assistance Fund.

On August 23, 2010, the GCCF started accepting claims from individuals and businesses impacted by the Deepwater Horizon Oil Spill. BP is still handling government claims, which the IST continues to monitor.



National Incident Commander
Deepwater Horizon Response

2100 Second Street, S.W.
Washington, DC 20593-0001
Staff Symbol: NIC
Phone: (202) 372-1710
Fax: (202) 372-1933

5115
8 June, 2010

Dr. Anthony Hayward
Group Chief Executive
BP
1 St. James's Square
London SW1Y 4PD
United Kingdom

Dear Dr. Hayward:

The BP Deepwater Horizon oil spill is having a devastating impact on the environment and the economy of the Gulf Coast states and their communities. As one of the responsible parties for this event, BP is accountable to the American public for the economic loss caused by the spill and related events. I recognize that you have accepted responsibility for the spill and that you are committed to paying all related expenses. At the same time, the Federal Government and our State partners need to ensure that all affected individuals, families, and businesses receive just and timely reimbursement for their economic damages. As you know, we asked to meet with your senior claims team and appreciate that we will sit down this Wednesday for an ongoing conversation. We need complete, ongoing transparency into BP's claims process including detailed information on how claims are being evaluated, how payment amounts are being calculated, and how quickly claims are being processed. To that end, I am directing that you provide the National Incident Command (NIC) and appropriate representatives of the State governments with information we need to meet our responsibilities to our citizens.

To date, BP has provided public statements on claims eligibility and summary data on claims processing. However, we need additional information to assess how well the process is meeting the critical needs of individuals, families, and businesses whose livelihoods are being impacted by the spill. The NIC and our State counterparts have made several requests for additional information which we have not received. Through the National Pollution Funds Center (NPFC), we requested access to the BP claims database with personally identifiable information removed (specific data and field requests attached). In order to be able to monitor the status of individual claims, this request includes unique identifiers like the claim number and last 4 digits of social security numbers to assist with monitoring amounts and timing of claims payments. Access to this level of detail is critical to informing the public as to how BP is meeting its obligations as a responsible corporation. I expect a response from BP on this critical issue as soon as possible.

At the June 9, 2010 meeting we plan to discuss ongoing concerns related to delayed processing time for large loss claims, claims pending with no action taken, payment calculations for individual loss of income claims (particularly for seasonal workers), translation of claims

material, and accessibility for the hearing impaired. Additionally, we would like more information about BP's plan for continuing to pay monthly loss of income claims, the mediation program BP is putting in place, and BP's placement of claims coordinators in each state and how these liaisons will engage with local officials.

I have appointed Tracy Wareing, Lead for the Integrated Services Team within the National Incident Command, to oversee the claims process and the provision of human services and economic assistance. Ms. Wareing will be joining me at the June 9, 2010 meeting. Please identify a senior official to work with Ms. Wareing as well as with senior representatives from the impacted States to provide increased visibility into the claims methodology and process.

The Federal Government and the public expects BP's claims process to fully address the needs of impacted individuals and businesses. We need more detail and openness from BP to fulfill our oversight responsibilities to the American people and ensure that you are meeting your commitment to restore the Gulf Coast. I appreciate your attention to this matter.

Sincerely,


 Admiral Chad Allen
 National Incident Commander

cc: Secretary Janet Napolitano
 Lamar McKay, Chairman and President, BP America
 Darryl Willis, Claims Operations, BP

Attachment:
 Claims Data

Claims Data

BP's claims database access, with personally identifiable information removed, including the following fields:

- Customer Identification number/Claim Number
- Last 4 digits of the social security number
- Tax Identification number
- Type of claimant (individual/business/government(level))
- State
- County/Parish
- Date of claim
- Date claimant contacted by adjuster
- Date documentation received from claimant
- Date claim was adjudicated
- Individual or Commercial
- Claim Type (Bodily Injury, Loss of Income, Property Damage)
- Claim Factor (Oyster Harvester, Rental Property, Boat)
- Claim status (open/closed)
- Claim payment status (fully paid/denied/receiving continuing payments)
- Check(s) disbursed date
- Check(s) amount
- Payment sequence number (first check claimant received, second check claimant received, etc.)
- Date claim was denied

Types of claims statistical information by State, County/Parish, and claim type:

- Claims that received partial payment where additional payments are expected (example: loss of income compensation paid on a monthly basis) by the date the claim was opened
- Open claims that have received no payments or are awaiting adjudication by the date the claim was opened
- Denied claims by the date the claim was opened
- Claims that have been fully paid by the date the claim was opened (example: property damage clean-up)
- Average number of days from date of filing to date first payment
- Average age of open claims with no payments to date
- Average number of days from date of filing to date of closure
- Overall amount unsettled (open with an unpaid amount) and amount requested by the claimant (sum certain)
- Claims by open date of claims first payment, then subsequent time between payments
- Loss period (may be multiple loss periods per claim whether by week, month, etc) and the amount of money unpaid/unsettled per loss period broken down

**Deepwater Horizon Integrated Services Team
Key Issues for Claims Process
July 2, 2010**

The purpose of this paper is to provide the Gulf Coast Claims Facility (GCCF) and BP a comprehensive summary of the claims process issues that have been raised to the Deepwater Horizon National Incident Command, Integrated Services Team (IST) in its ongoing dialogue with federal agencies, state and local governments, businesses, and individuals who have been impacted by the Deepwater Horizon oil spill. As you know, the IST was established to monitor BP's claims process and focus on the overarching claims challenges of: timely claims processing and payments; creating confidence in the process through greater clarification and transparency; identifying the service gaps that exist in each state and community, and coordinating the delivery of services and benefits to meet those gaps. With the standup of the GCCF, the IST is now also focusing on the smooth transition to the new claims facility, and ensuring that many of the ongoing challenges and issues that have been raised over the past two months continue to be brought to the attention of both GCCF and BP for resolution.

Below is a summary of the key issues, recommendations and challenges that have been raised to the IST. Many of these issues have been under discussion with BP for a number of weeks and in some cases BP is working toward resolution. We have also shared many of these issues with the GCCF since the President's June 16th announcement of the new independent claims facility. We expect that many of these issues will likely be addressed by the new GCCF guidelines and protocols, and any additional guidelines developed by BP for access to the \$20 billion Escrow Account. However, we felt it was important to summarize and present them to both GCCF and BP individually, in this consolidated format for continued visibility and resolution.

This summary of key issues is grouped in the following five categories:

- 1) Payment Policy Clarity for Claimants;
- 2) Claims Processing and Communications with Claimants;
- 3) Public Awareness and Outreach;
- 4) Data Access and Reporting;
- 5) Continuity of Operations during Hurricane Season;

1) Payment Policy Clarity for Claimants

Clear, detailed policies and procedures should be established and announced on what types of claims for individuals, businesses, state and local governments, and non-profit organizations will be paid by either the GCCF or BP, what level of documentation is required for each type of claim, and how those claims will be measured. Additional questions/issues for each category of claimant are provided below:

Individuals and Businesses:

What eligibility criterion is being used to pay claims related to wage loss? If a company goes out of business because of the impacts of the oil spill, how long will wages for the former employees of that company be paid? What is the longest period of time that a claim for wage loss will be paid? What triggers a claimant to no longer be eligible? How will supplemental wages from a part time job or a job

that pays less than their prior job be factored in? How will future income loss be calculated and compensated? What impact will reductions in fish stock have on measurement?

Will advance payment to individuals for loss of income in set amounts of \$5,000, \$2,500 or other amounts continue and for how long?

More clarity is needed on the distinction between Individual and Commercial claimants and the definition and process for Large Loss claims. A separate, well managed process for large loss claims is necessary.

Many claimants (particularly vessel owners/crew) do not have receipts or documentation for their business/salaries. Low income populations are disproportionately impacted but also have the hardest time documenting their income. Will notarized documentation verifying employment and income be accepted?

There is concern about the ability to provide tax returns for both business and individual claims given the cash basis of many of the industries impacted. Concerns have been raised about filing a claim, reports to IRS on 1099, and subsequent audits that might be triggered.

There are concerns about adjuster inexperience in the business and industry models impacted. Consideration should be given to claims clustering to educate adjusters and expedite the process.

Will innovative claims compensation strategies be considered that may assist with local economic recovery? For example, hotel rooms are offered for \$50 and claims payments would cover the difference from the normal room rate.

How will indirect losses be calculated and compensated given varying degrees of direct connection to the oil spill – direct (such as a commercial fishermen) versus more indirect (such as third party vendors/suppliers to coastal businesses)?

Subsistence loss is listed as an eligible loss under the Oil Pollution Act of 1990 (OPA) but it is not included in the claim form.

The difference between Natural Resource Damages and Subsistence claims needs to be clarified in guidance.

Need clear information on compensation for bodily injury claims and the extent of coverage and documentation required.

States/Local Governments:

States have requested clarification on whether state economic and other job related assistance, including such programs as unemployment compensation, economic development, workforce training and job placement services (including increased administrative costs) may be recovered under the Oil Pollution Act of 1990 (OPA) and what level of recordkeeping is required.

States/local governments should be provided clarification on how the advance payments BP has made to states and some localities are to be used, and how they will relate to future claims by the states and localities.

Localities are very concerned about the loss of tax revenue, and their inability to pay for the tremendous expenditures they are making to support additional services, and to maintain on-going, long-term response and clean-up efforts. They have expressed a need to receive advance payments (similar to states/LA parish grants) to cover these increased costs. They have also requested that BP clarify policy on reimbursement of response costs not pre-authorized by the Unified Command/Federal On-Scene Coordinator/BP.

Local Government and states have expressed that they are not in a position to negotiate with BP on an individual basis to secure repayments of lost tax dollars.

Guidance for the local government claims process needs to be improved and expanded to address many of the questions and confusion surrounding the process.

Private Non-profit Organizations:

It is unclear whether voluntary agencies providing services in the affected area can be compensated for their increased costs of services provided, and whether they should apply to the GCCF or to BP directly.

2) Claims Processing and Communications with Claimants

Claimants need clear information up front about whether multiple payments over time will be provided to ensure necessary financial planning.

Currently there is no ability to transfer between the two 800 call-in systems. Many claimants are experiencing problems getting through on the 800 number. The existing claims number appears to be overwhelmed with some people waiting more than 30 minutes to speak to someone.

Frustration has been raised over the level of communication from BP on process and requirements – claimants having to deal with different adjusters each time they go to a claim center, and receiving conflicting guidance on what is acceptable documentation.

Claims centers in fixed locations on the coast are not necessarily accessible to the impacted populations as many live further inland and in more rural areas where transportation to the claim center may be problematic. Additional centers closer to communities and mobile capability would be welcomed solutions.

Recommend performance measurements be established for tracking follow-up on inquiries and claims where documentation is pending.

Recommend key points be established in the adjustment process to measure performance and claims cycle time.

Documents dropped off at local claims centers for transportation to large loss center are being lost by the adjusters. Lack of trust in proper handling of documentation has led some claimants to request the adjusters sign non-disclosure agreements.

Adjusters assigned to a claimant have changed without notification to claimant and without proper transition of information.

3) Public Awareness and Outreach

Recommend comprehensive outreach strategy to communicate with federal, state and local agencies as well as individual claimants and businesses.

Effective service delivery in each will require strategic outreach, cultural competence, and cultivation of trust. Services must be publicized at basic reading levels and in locally used languages through community organizations, places of worship, public service announcements, and use of ethnic media.

4) Data Access and Reporting

Transparency and timeliness in sharing of key data points and trends is critical for re-establishing trust among potential claimants and key stakeholders, such as the states. It is also important for our ability to identify and address potential gaps in services or assistance.

Consolidation of all data into one database system to include additional data fields needed for full reporting, measurement, and tracking. System should capture claims status history in order to measure time in each phase of the process to determine resource needs. Recommend tracking inquiries separately from actual claims and noting in system the point at which an inquiry becomes an official claim.

Establishment of a claims matching clearinghouse capability that protects personally identifiable information while enabling cross-matching of GCCF claims data with claims on government benefits and services to avoid duplicate-payment (e.g., Department of Labor needs for claims payment data to cross-match unemployment compensation benefits).

Official proof of claimant payments for their use in applying for government assistance programs (e.g., U.S. Department of Agriculture Supplemental Nutritional Assistance Program - SNAP).

5) Continuity of Operations During Hurricane Season

Concerns about the stability of BP continuity plans, and particularly during transition to the GCCF.

If a hurricane or storm does strike and results in a Presidential disaster declaration, FEMA, other agencies, and insurance companies will be providing disaster recovery assistance in the area. It is important to coordinate, in advance, how BP/GCCF will pay increased disaster recovery, repair, or debris removal costs due to presence of BP oil.

Deepwater Integrated Services Team Update (As of 8/26/10)

This document provides an overview of the mission of the Deepwater Horizon National Incident Command Integrated Services Team (IST), key objectives and accomplishments of the IST, as well as status updates on the transition to the new independent Gulf Coast Claims Facility under Kenneth Feinberg, the establishment of the \$20 billion Claims Fund, and the \$100 million Rig Worker Assistance Fund.

Overview

- The Deepwater Integrated Services Team is coordinating the efforts of Federal Departments and Agencies on issues related to supportive services and claims monitoring in response to the Deepwater Horizon Oil Spill. The Team is under the direction of the National Incident Command (NIC).
- This interagency team is made up of two primary groups: the National Level Team led by Tracy Waring and comprised of Senior Interagency Officials, and the Field-Based Teams stationed in each affected state led by a Federal Resource Coordinator (FRC), which come from FEMA's regional offices, to coordinate the Team's work in support of the State. The FRCs and their respective State Points of Contact (POCs) are supported by designated Federal and state departments and agencies to ensure coordination of information, issue resolution, and service delivery to those impacted by the spill.
- The focus of this interagency team is to monitor the claims process and coordinate the delivery of Federal programs that can provide social services and small business assistance for individuals, families, and businesses affected by the oil spill. This is based on the operational concept of "no wrong door" to ensure these individuals and small business can easily access the claims process, benefits, and other services with minimal difficulty.

Participating Departments & Agencies

Executive Office of the President	Department of Justice
Corporation for National & Community Service	Department of Labor
Department of Agriculture	Department of the Treasury
Department of Commerce	Department of Veteran Affairs
Department of Education	Environmental Protection Agency
Department of Health and Human Services	Federal Mediation & Conciliation Service
Department of Homeland Security	Small Business Administration
Department of Housing & Urban Development	Social Security Administration
Department of the Interior	

Objectives

- Coordinate interagency and intergovernmental efforts to monitor BP Claims status and claims process effectiveness and efficiency by raising awareness of concerns related to:
 - Payment policy clarity for claimants

- Efficient claims processing and communications with claimants
- Public awareness, outreach and Limited English Proficiency
- Data access and reporting
- Coordination of Federal/state benefits and services to avoid duplicate payments
- Ensure smooth transition from BP claims process to the independent Gulf Coast Claims Facility (GCCF) by:
 - Raising awareness of above concerns to GCCF
 - Connecting stakeholders with GCCF officials to provide for direct discussions
 - Sharing information with stakeholders regarding the GCCF and its processes
 - Facilitating dialogue between GCCF, BP, and stakeholders
 - Soliciting and conveying the views of affected parties and stakeholders to the GCCF
 - Ensuring sufficient reporting from the GCCF to allow parties and stakeholders to evaluate its operation
- Help identify government programs available, and facilitate funding assistance, to help with unmet needs to address emerging issues and potential difficulties encountered by individuals, families, and small businesses affected by the oil spill, and ensure they have access to the services and assistance they need to recover. This focus goes beyond claims issues and includes services and assistance such as:
 - Unemployment Insurance
 - One-Stop Career Center Initiative
 - Supplemental Nutrition Assistance Program (SNAP)
 - Temporary Assistance for Needy Families
 - Business Disaster Loans
 - Behavioral Health assistance and services
- Provide support and strategic guidance to Field Based Teams/Federal Resource Coordinators in order to effectively coordinate secondary Federal assistance to affected citizens and businesses, as well as leverage existing non-Federal services and providers in the Gulf region, connecting them with residents to maximize the delivery of assistance as quickly as possible.
- Support Federal Gulf Coast economic recovery and restoration initiatives underway, including coordination with Secretary Mabus' team and the NIC Economic Solutions Team.
 - Provide programmatic and historical information and issues summaries regarding claims, social services, limited English proficiency, and small business assistance.
 - Field-Based teams assist with local contacts, briefings on local conditions, and preparations for local meetings.
 - Provide continuing liaison for claims issues with BP and the GCCF.

Accomplishments

Strengthening BP/GCCF Claims Process

- Ongoing coordination with BP and GCCF to raise awareness of issues and concerns, including providing a consolidated list of *Key Issues for Claims Process* and *Coordination of Benefits and Services* paper.
- Interagency coordination of comments on GCCF draft Protocols and Documentation Requirements.

- Attended and supported meetings with State officials and top BP claims officials in LA, MS and FL to ensure that BP's claims process is transparent, prompt, and responsive to the unique needs of the impacted communities citizens and businesses.
- Attended Ken Feinberg Town Halls in LA, MS, AL and FL to ensure full understanding of timing, process and protocols for rollout of GCCF in order to continue to facilitate resolution of claimant issues and smooth transition to GCCF.
- Ongoing support from Federal Resource Coordinators (FRCs) in each state, to continue to bring claims specific issues to BP's claims contractors, ESIS and Worley, for issue resolution; to identify service gaps and other needs, and to identify volunteer, local, state and/or Federal programs that can help fill those gaps.
- Modifications to DisasterAssistance.gov website to include a page on the oil spill that, in addition to directing people to the BP claims process, links visitors to important Federal programs including SBA Disaster Loans.
- Published Claims Fact Sheet for Individuals and Businesses.
- Published Claims Fact Sheet for State and Local Government Entities.
- Published Claims Fact Sheet for Non-Profit and Non-Government Organizations (NGOs)
- Published Claims Fact Sheet for Indian Tribes.
- Identified the need for, and helped facilitate:
 - An online BP claims form.
 - Improvement of BP's claims fact sheet to enhance clarity and readability.
 - Creation of BP guidance for the local government claims process.
 - Translation of BP claims forms into additional languages, including Vietnamese and Spanish.
 - Placement of interpreting services in BP claims centers.
 - Establishment of a TTY call center to allow hearing impaired individuals to be able to report their claims.
 - Clarification of second month payment issues through the release of additional information by BP.
 - Implementation of a more expedited claims process for "large losses" to provide businesses with the funds they need to pay their expenses for the next month, not the prior month.
 - BP and GCCF reporting of daily claims statistics and revisions to their claims database to help State and local officials understand the claims process and better support individuals, families, and small businesses in their States and communities.

Social Services and Assistance Coordination

Development of Coordination Plan - In partnership with tribal, state, and local organizations, the IST developed and is currently implementing the Social Services and Small Business Assistance Coordination Plan, which includes:

- A strategy for Federal, tribal, state, and local organizations to effectively manage the flow of information with each other and the Responsible Parties, to avoid duplication, identify emerging issues and enable rapid decision making.
- A state and local support strategy for Federal Agencies to support the efforts of states to meet evolving requirements.
- An operational concept of a “no wrong door” that enables individuals, families, and small businesses to easily access the claims processes, benefits, and resources they may need.
- Contingency strategies that will enable the Federal government to rapidly and effectively meet surges in demand in coordination with State specific plans.
- Established a Domestic Violence Awareness sub-group to focus on sharing information regarding domestic violence and raising awareness throughout Federal, state and local entities.
- Established a Language and Communication Accessibility sub-group to ensure all persons affected by the oil spill, including individuals with Limited English Proficiency (LEP), are properly and accurately kept informed of information regarding the oil spill.

Transition from BP to Independent Gulf Coast Claims Facility

President/BP Announcement and Establishment of Escrow Account

- Independent claims facility announced by the President and BP on June 16, 2010. Ken Feinberg named Administrator. Now being called the Gulf Coast Claims Facility (GCCF). Claimants maintain all current rights under law, including the right to go to court or to the Oil Spill Liability Trust Fund, through the National Pollution Funds Center.
- BP has agreed to contribute \$20 billion to a Claims Fund over a four-year period at a rate of \$5 billion per year, including \$5 billion within 2010. The amount of the fund represents neither a floor nor a ceiling. The fund will be used to pay individual, business, and NGO claims adjudicated by the Gulf Coast Claims Facility under the administration of Mr. Feinberg, as well as claims paid by BP to state and local government entities and tribes, federal and non-federal natural resource trustees, and claims arising out of certain oil spill-related litigation.
- On August 9th BP announced that it had established the Oil Spill Escrow Trust, with an initial deposit of \$3B. An additional \$2B deposit will be made in the 4th quarter of 2010, with \$1.25B deposited per quarter thereafter until a total of \$20B has been deposited. Two trustees have been named to the newly-established trust to administer the account: the Honorable John S. Martin, a former U.S. District Judge for the Southern District of New York, and Kent Syverud, Dean of the Washington University School of Law. Citigroup will serve as corporate trustee and paying agent for the account. Arrangements have been made for checks drawn on the fund to be cashed

free of charge at any of the 160 Whitney National Bank branches across the Gulf Coast Region. A BP press release announcing the new Escrow Trust can be found at: [Oil Spill Escrow Trust](#).

GCCF Start-Up

- On Tuesday the 17th the GCCF began to release specific details on their new process through advertising, press releases, local media outlets, Town Halls, FAQ's, direct communications with claimants, and on-line resources.
- On Monday, August 23rd the GCCF opened their doors to individuals and business claimants impacted by the Deepwater Horizon Oil Spill. Government claims are still being handled by BP. GCCF has 35 Claims Site Offices open where they are providing on site assistance to claimants. Their website is now operational at www.GulfCoastClaimsFacility.com. GCCF is providing a number of ways for claimants to file claims including online through their website, by mail, fax, email, or by visiting a GCCF Claims Site Office.
- Emergency Advance Payment applications, for up to six months of damages, may be submitted during the period August 23 – November 23, 2010. Claims for final payments may be submitted through August 23, 2013.
- GCCF has named National Catastrophe Adjusters to oversee a \$60 million fund that they established to pay Realtors for lost residential sales during the Gulf oil spill. Other real estate losses will go through the regular GCCF claims process.
- Our message to Mr. Feinberg is that his success will be measured by what the States say regarding how well the GCCF works for them and their citizens.

GCCF Protocols

- Mr. Feinberg provided GCCF draft Protocols to Gulf Coast Governors, Gulf Coast Attorney Generals, and DOJ/Federal agencies for review and comment. He met with each of the Governors and Attorney Generals and hosted a series of Town Halls.
- DOJ/Federal agency comments were submitted to Mr. Feinberg on July 16th. The IST provided additional comments on GCCF operations, coordination of benefits, and reporting and data access requirements.
- GCCF released Emergency Advance Payments Protocols on August 19th. These protocols will only address the procedures for submission and resolution for Emergency Advance Payments for individuals and businesses.
- Final Protocols, which will address the process for submission of final claims and full settlement, will be issued at a later date.

Reporting and Data Access

- Based on his experience administering the 9/11 Fund, Mr. Feinberg is striving to balance transparency with the need to protect the private information of individuals and the confidential information of businesses.
- Mr. Feinberg has indicated that he considers the claims data provided by BP to be insufficient, that the BP process lacked sufficient transparency, and that this situation would change when the GCCF became operational.

- GCCF is providing daily reports (on claims filed with GCCF only) to key Federal and state stakeholders, including the Integrated Services Team. As of August 25th, GCCF reported **14K claims filed, and \$0 paid**. Reports which include historical BP claims data will be provided by GCCF shortly.

Status of BP Claims Process

- As of August 22nd, BP is no longer accepting individual and business claims. Their final claims report on August 23rd, reported **\$398M paid, 154K claims filed, and 126K checks written**.
- BP is still handling government claims and has implemented changes in its government claims process to streamline operations, and improve communications, accountability and tracking of claims. They are establishing a new online filing capability and tracking system for government claims, and are also planning a series of workshops with government officials from Gulf states to better understand state and local concerns and educate officials on the process.
- The IST continues to work with BP to discuss process improvements and summary reporting needs for government claims, as well as agency specific data coordination requirements. They have committed to providing weekly reports on government claims filed with BP to key Federal and state stakeholders, including the Integrated Services Team.

Unemployed Oil Rig Workers

- BP announced on July 30th that it is making a voluntary contribution of \$100 million to a charitable fund to support unemployed oil rig workers experiencing economic hardship as a result of the moratorium on deepwater drilling imposed by the United States federal government. This voluntary donation fulfills the commitment BP announced on June 16 to provide \$100 million in assistance as a gesture of good will for the people of the Gulf Coast region.
- The Rig Worker Assistance Fund will be administered through the Gulf Coast Restoration and Protection Foundation, a supporting organization of The Baton Rouge Area Foundation (BRAAF). The Baton Rouge Area Foundation is among the 20 largest community foundations in the country and the largest on the Gulf Coast, and has responded quickly after disasters.
- According to John G. Davies, Foundation president and CEO, BRAAF is committed to moving as quickly they can to write grants from this donation by BP, and are moving rapidly to create the guidelines related to this grant program. They expect to release all the details of the program within two weeks, and begin taking applications for grants by Sept. 1. The application period will end Sept. 30, and all checks are scheduled to be mailed by Oct. 31. A Press Release announcing the \$100M Fund can be found at: [Rig Worker Assistance Fund](#).

Question#:	4
Topic:	waiver
Hearing:	Federal Response to the Recent Oil Spill in the Gulf of Mexico
Primary:	The Honorable Barbara Boxer
Committee:	ENVIRONMENT (SENATE)

Question: Describe whether the Coast Guard is aware of BP or any other responsible party requesting that any individual sign a waiver or otherwise agree to waive any right as a condition for receiving compensation for damages related to the Deepwater Horizon oil spill. Also describe the steps that the Coast Guard has taken to address any such request by a responsible party.

Response: The Coast Guard is not aware of BP or any other responsible party requesting that any individual sign a waiver or otherwise agree to waive any right as a condition for receiving compensation.

The Gulf Coast Claims Facility (GCCF) has signaled that it plans to require compensated claimants to waive all rights to sue the responsible party in return for generous compensation of final claims. However, more recent statements by GCCF that interim (not final) claims may continue to be accepted indicate that waivers of rights to sue the responsible party will not be required for all compensation.

Question#:	5
Topic:	NEPA
Hearing:	Federal Response to the Recent Oil Spill in the Gulf of Mexico
Primary:	The Honorable Thomas R. Carper
Committee:	ENVIRONMENT (SENATE)

Question: During the National Environmental Protection Act (NEPA) review process for an oil rig, what categories of issues does your agency address? Has the recent oil spill in the Gulf of Mexico made you reassess the issues that your agency addresses in the NEPA process?

Response: The Coast Guard serves as a cooperating agency by virtue of its expertise in navigation issues and matters identified in the Memorandum of Agreement with BOEMRE. In that regard, Coast Guard might consider impacts of movement of the rig to and from the site as well as any other related impacts the lead federal agency asks Coast Guard to consider (these may include vessel traffic safety, collision and related damage to the environment)5. The recent Deepwater Horizon Oil Spill has not caused the Coast Guard to reassess the issues it addresses as a cooperating agency in the NEPA process.

Question#:	6
Topic:	strategy
Hearing:	Federal Response to the Recent Oil Spill in the Gulf of Mexico
Primary:	The Honorable Thomas R. Carper
Committee:	ENVIRONMENT (SENATE)

Question: How is the Coast Guard's strategy for dealing with the April 2010 British Petroleum oil spill in the Gulf of Mexico different from the Coast Guard's strategy for dealing with the 1989 Exxon Valdez oil spill in the Prince William Sound in Alaska?

Response: The Coast Guard's strategy for responding to the Deepwater Horizon Oil Spill differed significantly from the 1989 Exxon Valdez Oil Spill. In the aftermath of the Exxon Valdez Oil Spill, the Oil Pollution Act of 1990 provided for a system of collaborative government and industry preparedness activities requiring vessel and facility response plans as well as creating Area Committees and Area Contingency Plans. While not mandated by OPA 90, another lasting improvement since the Exxon Valdez oil spill is the use of the Incident Command System. It is now the incident management system in the United States, providing a common framework for federal, state, local and non-government entities to manage complex, multi agency, public-private incidents.

The following table illustrates the differences between the M/V Exxon Valdez oil spill in 1989 and the MODU Deepwater Horizon oil spill in 2010.

Deepwater Horizon was the first spill designated as a Spill of National Significance (SONS) and the first to use a National Incident Commander. Within the National Incident Command organization, there were several elements established to ensure the integrity of communications between the field, the interagency and the Federal On-Scene Coordinator. These elements included the Interagency Solutions Group, and the Unified Area Command. These organizational structures were a significant improvement over the response used during the Exxon Valdez.

In addition to the existing strategies, the Coast Guard's Research and Development Center, in collaboration with interagency partners, established the Interagency Alternative Technology Assessment Program. This program collected and reviewed oil spill response solutions from scientists and vendors on topics such as oil sensing improvements to response and detection, oil wellhead control and submerged oil response, traditional oil spill response technologies, alternative oil spill response technologies, and oil spill damage assessment and restoration.

Question#:	6
Topic:	strategy
Hearing:	Federal Response to the Recent Oil Spill in the Gulf of Mexico
Primary:	The Honorable Thomas R. Carper
Committee:	ENVIRONMENT (SENATE)

	Exxon Valdez (3/24/1989-6/12/1992)	BP Deepwater Horizon (4/21/2010-8/30/2010)
Discharge Source	Tank Ship	MODU/Oil Well
Capacity/Potential	1,264,155 barrels	Uncontrolled source
Quantity Discharged	261,905 barrels	4,928,100 barrels (estimated)
Water Depth of Spill	Grounded on Bligh Reef inside Prince William Sound	5,000 feet (1,500 meters)
Distance Offshore	Approximately 3 miles	41 miles (66 km) off Louisiana
Countries Whose Shorelines Border Spill	USA	USA, Mexico, Cuba, Caribbean Nations
States Whose Shorelines Border Spill	Alaska	Texas, Louisiana, Mississippi, Florida, Alabama
Organization	FOSC Valdez AOSC-Prince William Sound ISCC Valdez AOSC-Western Alaska ICP Seward ICP Homer ICP Kodiak	NIC Washington DC UAC Roberts, LA (FOSC) ICP Houma ICP Houston ICP Mobile ICP St. Petersburg ICP Galveston ICP Miami
Personnel	11,000	48,000 (At peak: 7/5/2010)
Response Vessels	Total: 1,400	Total: 7,200
Aircraft	Total: 80	Total: 119
Boom		
Containment	500,000 feet	1,811,940 feet
Sorbent	345,000 feet	9,168,105 feet
Total boom	845,000 feet	10,980,045 feet
Peak:		3,800,000 (7/25/2010)
Response Strategies	Control the source Dispersants In Situ Burning Booming Skimming Hatchery protective booms Chemical shoreline cleaners Bioremediation Wildlife recovery Fishery recovery	Source control Sub-sea & surface dispersants In Situ Burning Booming Skimming Protect environmentally sensitive areas Remove oil from impacted areas Recover/rehabilitate wildlife
Dispersants	Surface 27,500 gallons (estimate of 5 trials @ 5,500 gallons per trial)	Surface: 1,072,514 gallons Subsurface: 771,272 gallons Total 1,843,786 gallons
In Situ Burning	1 burn	411 burns; 265,450 bbls
Oil Recovery, Dispersion, and Evaporation (bbls)	26,000 (estimated that only 10% of discharge was recovered)	Via RRT & Top Hat: 827,046 (estimate) Dispersed Naturally: 763,948 (estimate) Evaporated or Dissolved: 1,243,732

Question#:	6
Topic:	strategy
Hearing:	Federal Response to the Recent Oil Spill in the Gulf of Mexico
Primary:	The Honorable Thomas R. Carper
Committee:	ENVIRONMENT (SENATE)

		Total: 2,834,726 (estimate)
Total Shoreline Length	8,646 miles	4,000 miles
Shoreline Impacted by Oil	1,300 miles	2,782.7 miles
Fishery Closures	In Prince William Sound, Cook Inlet, outer Kenai coast, Kodiak and Alaska Peninsula. (approx 12,300 square miles)	Gulf of Mexico Peak: 88,522 sq. miles Currently: 52,395 sq. miles
Wildlife Impacts due to Oil	Estimates based on recovered carcasses Birds 250,000 Otters 2,800 Harbor Seals 300 Bald Eagles 250 Killer Whales 22	 Total: Released: Birds 7,015 997 Sea Turtles 1,065 162 Mammals 88 3
Costs (millions)	Coast Guard \$38.7 Other Federal \$71.4 Exxon \$2.4 Billion	Coast Guard \$183 (8/24/2010) OSLTF \$492 (8/26/2010) BP \$930 (5/24/2010)

Question#:	7
Topic:	preparing
Hearing:	Federal Response to the Recent Oil Spill in the Gulf of Mexico
Primary:	The Honorable Thomas R. Carper
Committee:	ENVIRONMENT (SENATE)

Question: How is the Coast Guard preparing for the possibility that a loop current might bring oil onto the shores of Florida and up the Atlantic Coast?

Response: Throughout the response, the Unified Area Command (UAC) has closely monitored the movement of oil to help guide effective preparedness, response, and cleanup efforts.

In addition to physical monitoring activities, NOAA used computer modeling to project potential oil impacts to the East Coast. Based upon historical wind and ocean current records, NOAA's model indicated a very low probability of shoreline impact from eastern central Florida up the eastern seaboard.

The Coast Guard engaged with Regional Response Teams, Area Committees, Oil Spill Response Organizations, and other stakeholders to review Regional Contingency Plans, Area Contingency Plans, Vessel and Facility Response Plans, and state and local emergency response plans to enhance preparedness for managing an oil spill and address the potential impacts from the Deepwater Horizon spill.

Consistent with similar outreach with Gulf State Governors, the Coast Guard sponsored a series of calls to East Coast Governors to inform them of the latest efforts to track and plan for possible impacts from the spill.

The Coast Guard also worked with communities along the Eastern seaboard through the Regional Response Teams, in conjunction with the Captains of the Ports, to ensure readiness to respond to potential impacts related to the spill.

Question#:	8
Topic:	oversight
Hearing:	Federal Response to the Recent Oil Spill in the Gulf of Mexico
Primary:	The Honorable Sheldon Whitehouse
Committee:	ENVIRONMENT (SENATE)

Question: In your verbal testimony on May 18, 2010, you stated that, " ... as the Federal On-Scene Coordinator, the United States Coast Guard is ensuring that BP is continuing to meet their obligation ... providing constant oversight and direction of their action."

Are BP officers, employees, contractors or representatives filling leadership positions in any of the National/Area/Incident Command Posts, including (but not limited to) positions such as incident commanders, section chiefs, and branch directors?

Response: BP personnel are not staffing positions at the National Incident Command. Consistent with Title 40 Code of Federal Regulations (CFR) 300.105, the response management structure brings together the functions of Federal, state, and local governments, and a responsible party or parties to achieve an effective and efficient response, where the Federal On-Scene Coordinator maintains authority. In the case of Deepwater Horizon, BP as a responsible party is represented within the Unified Area Command and Incident Command Posts. However, the Federal On-Scene Coordinator is the decision making authority and provides the leadership.

Question#:	9
Topic:	protections
Hearing:	Federal Response to the Recent Oil Spill in the Gulf of Mexico
Primary:	The Honorable Sheldon Whitehouse
Committee:	ENVIRONMENT (SENATE)

Question: What specific protections have been put into place to ensure that the BP does not control or have access to information that will undermine law enforcement actions and future claims?

Response: The Coast Guard has been working closely with document and evidence preservation experts at Department of Justice (DOJ) since April 2010 to properly preserve material generated by Coast Guard personnel. BP does not have access to the agency's databases or e-mail exchange servers which are preserved and backed-up by agency information technology personnel. The Coast Guard has undertaken efforts to preserve the data generated and stored on BP-provided servers throughout the Unified Command. That data is being downloaded onto Coast Guard servers, verified by a third party contractor as an accurate and forensically sound copy and preserved behind a Coast Guard firewall.

Hard copy documents generated by the Unified Command are being collected and stored by the Coast Guard at a secure central archive facility in Mandeville, Louisiana. The documentary evidence gathered through the Joint Coast Guard/BOEM Marine Investigation is currently stored by the BOEM.

Various government agencies and investigations have evidence protocols, subpoenas, preservation orders, and chain of custody protocols in place to ensure that evidence is collected soundly and stored securely. The Joint Investigation is receiving assistance from the FBI Evidence Recovery Team in their collection and preservation efforts.

Question#:	10
Topic:	decision-maker
Hearing:	Federal Response to the Recent Oil Spill in the Gulf of Mexico
Primary:	The Honorable Sheldon Whitehouse
Committee:	ENVIRONMENT (SENATE)

Question: Who is the ultimate decision-maker in the Unified Command, BP or the Coast Guard? What is a statutory/regulatory basis for this authority?

Response: The Federal On-Scene Coordinator (FOSC) is the ultimate decision-maker (the Incident Commander within the Unified Command (UC). Consistent with Title 40 Code of Federal Regulations (CFR) 300.105, the response management structure (Unified Command) includes representatives from the Federal, State and local governments and responsible parties to coordinate response efforts where the FOSC maintains authority. Per the National Contingency Plan (NCP), for a coastal oil spill such as the Deepwater Horizon, the FOSC position is held by the Coast Guard 40 CFR 300.120 (a)(1). In this case as responsible parties, BP, Transocean and Halliburton are represented in the UC.

The statutory basis of the NCP is Section 311(d) of the Clean Water Act, as amended by the Oil Pollution Act of 1990 - 33 U.S.C. 1321(d).

Question#:	11
Topic:	Corexit
Hearing:	Federal Response to the Recent Oil Spill in the Gulf of Mexico
Primary:	The Honorable Sheldon Whitehouse
Committee:	ENVIRONMENT (SENATE)

Question: Who proposed the use of Corexit 9500A and 9527 A for surface use?

Response: Industry has long maintained a supply of both dispersants in the Gulf region as well as contracts to ensure manufacture of additional quantities during significant spill events. At the time of the Deepwater Horizon oil spill Corexit 9527 and Corexit 9500A were both preapproved for such mitigation activities, in accordance with the Region VI Regional Response Team Dispersant Pre-Approval Plan.

Question: Who approved the use of these Corexit products for subsurface use?

Response: The FOSC directed subsurface application of these dispersant products in accordance with 40 CFR 300.910(b), and in close coordination and consultation with the EPA, the State and the DOI and DOC trustees.

Question: Does the Coast Guard have the authority to order BP to stop using these products for subsurface use?

Response: Yes.

Question: Does the Coast Guard have the authority to order BP to replace these products with other, less toxic dispersants? If so, why hasn't the Coast Guard exercised this authority?

Response: The Coast Guard has the authority to order a responsible party to replace an approved dispersant with a less toxic product when an approved less toxic product is determined to be available and appropriate to conditions. Toxicity testing conducted by the EPA concluded that the multiple dispersants tested have relatively the same toxicity and that all the dispersants are no more toxic than the oil itself.

Dispersants have not been used since July 19th, 2010.

Question#:	12
Topic:	consultation
Hearing:	Federal Response to the Recent Oil Spill in the Gulf of Mexico
Primary:	The Honorable Sheldon Whitehouse
Committee:	ENVIRONMENT (SENATE)

Question: Was an Endangered Species Act Section 7 consultation performed by the National Marine Fisheries Service and the U.S. Fish and Wildlife Service for this unprecedented use of surface and undersea use of dispersants? What was the result of these consultations?

How can an appropriate dispersant-to-oil ratio be determined, if the amount of oil that is gushing out of the broken pipes is unknown?

Response: Yes, the Coast Guard initiated an Endangered Species Act (ESA) Section 7 emergency consultation with NOAA's National Marine Fisheries Service (NMFS) in connection with the Deepwater Horizon response activities under the auspices of the Region 6 Regional Response Team (Louisiana and Texas). During an emergency as specified in 50 CFR 402.05, ESA regulations permit an alternative consultation procedure so the ESA wildlife services can provide guidance on endangered species in a timely manner. This differs from a typical consultation, which follows an established process and may take months. Consistent with the ESA emergency consultation regulation, various federal agencies including the Coast Guard, NMFS, and the U.S. Fish and Wildlife Service signed an interagency memorandum of agreement in 2001 describing certain procedures that would be used to conduct ESA consultation during pre-spill planning as well as during emergency situations in the event of an oil spill. The Coast Guard followed these procedures in implementing emergency consultation in connection with the Deepwater Horizon response.

Specifically with regard to the use of dispersants, response teams initially followed the Regional Response Team 4 (Alabama, Mississippi, and Florida) Dispersant Use Plan developed by the Coast Guard and NMFS during a consultation in 1996. As a result of that consultation, several endangered species protection measures were implemented including the use of aircraft to survey for endangered and threatened species, the application of dispersants in daylight hours with good visibility and a no spray zone around aquatic species.

With regard to the current consultations, the NMFS provided recommendations regarding dispersants, controlled burns, and the effects of other clean up operations on sea turtles and marine mammals along with reiterating the findings of previous consultations. As a result of the emergency consultations, the no-spray zone for sea turtles and marine mammals was increased to three nautical miles for aircraft application of dispersants, and to two nautical miles for the application of dispersants from vessels. Another outcome

Question#:	12
Topic:	consultation
Hearing:	Federal Response to the Recent Oil Spill in the Gulf of Mexico
Primary:	The Honorable Sheldon Whitehouse
Committee:	ENVIRONMENT (SENATE)

was the use of observers to protect sea turtles when performing *in situ* burning. The Federal On-Scene Coordinator along with the Governors of the affected states will continue the consultations until the removal is complete.

As part of the Flow Rate Technical Group established by the National Incident Commander, government and independent scientists estimated the most likely flow rate of oil was 53,000 barrels per day immediately preceding well closure via the capping stack. Based on these measurements and modeling, the scientific teams estimate that 62,000 barrels of oil per day were leaking from the well at the beginning of the incident. Given that the maximum allowable dispersant application at the well head was 15,000 gallons a day per the May 26, 2010 USCG/EPA directive to BP, the dispersant to oil ratio was in the range of approximately 1:100, this is well below the recommended optimum of 1:20 to 1:50. In the end, it was the constraint in the directive that limited the dispersant to oil ratio, rather than the recommended dispersant to oil ratio targets. For surface application, response personnel identify targets for dispersant operations based on observations from spotter aircraft and surface oil forecasts. Potential targets are then analyzed by size, location and, dispersible oil composition which provides a basis for the amount of dispersant needed. The overall use of dispersants is also influenced by the availability, on a given day of other response mechanisms, such as mechanical recovery or in situ burns.

Question#:	13
Topic:	Rule
Hearing:	Federal Response to the Recent Oil Spill in the Gulf of Mexico
Primary:	The Honorable Sheldon Whitehouse
Committee:	ENVIRONMENT (SENATE)

Question: On August 31, 2009, the Coast Guard finalized regulations amending 33 CFR Parts 154 and 155, Vessel and Facility Response Plans for Oil.

The Final Rule states: "The Coast Guard agrees that requiring dispersant ... capability in remote areas of Alaska may impose an undue burden on plan holders."

Why is having the necessary response equipment on hand considered an "undue burden?"

Response: The quote above is made with reference to "dispersant and ISB (in-situ burn) capability". The full quotation from the final rule is: The Coast Guard agrees that requiring dispersant and ISB capability in remote areas of Alaska may impose an undue burden on plan holders. This concern was one of many factors in the decision not to require ISB response equipment. As dispersant response equipment is only required for plan holders operating in pre-authorization areas, and because Alaska has no pre-authorizations as of September 27, 2008, this concern is not an immediate issue. This situation may change, and when it does, vessel/operators will need to contract for dispersants. Plan holders may also be exempted from complying with the requirement to contract for dispersants in accordance with the provisions of 33 CFR 154.108 for facilities or 33 CFR 155.130 for vessels. As part of the exemption request, alternative procedures, methods, and equivalent standards must be evaluated and implemented if available.

Question: Given how remote many Alaska wells are, how does the Coast Guard plan to get response equipment to an Alaska spill in timely fashion?

Response: The Coast Guard, as chair of the Area Committee, is working with stakeholders, including industry representatives and OSROs, to develop strategies to improve the availability and use of spill response resources in Alaska. This includes revisions to the Area Contingency Plan (ACP), re-examining the roles of the Regional Response Teams (RRTs), and partnering with the Arctic Council to provide best practice input.

Question: The rule also seems to say that if there is no pre-authorization granted to use dispersant, then the oil company is under no obligation to have any dispersant capabilities on hand. Is that a fair reading of the rule?

Question#:	13
Topic:	Rule
Hearing:	Federal Response to the Recent Oil Spill in the Gulf of Mexico
Primary:	The Honorable Sheldon Whitehouse
Committee:	ENVIRONMENT (SENATE)

Response: Yes, when vessels operate in waters where no pre-authorization agreements exist, dispersant capability response resource requirements do not apply. To compensate, mechanical resources are required.

Question: Why is dispersant response equipment only required for plan holders operating in pre-authorization areas?

Response: Dispersants have a very short window of opportunity for effective use. Oil emulsifies quickly, at which point it is no longer dispersible. Most oil spills from vessels and facilities are short-term and immediate, and therefore pre-authorization is critical for effective dispersant application. Pre-authorization would ensure that responsible parties have the dispersant on hand and can apply it in appropriate quantities to reduce the environmental effects of the spill.

Question: What happens when an oil spill happens?

Response: The Vessel Response Plan is activated when an oil spill happens. The responsible party is required to notify the National Response Center. Under the National Contingency Plan, the responsible party is a member of the Unified Command, with the Incident Commander and State representatives. In accordance with the National Incident Management System Incident Command System response protocols, an incident action plan is created to address the oil spill and response activities.

Question: How will the Coast Guard and the responsible party respond quickly, if there are no dispersant capabilities on hand?

Response: In all pollution responses, a combination of response strategies that includes mechanical recovery and in situ burning should be employed to maximize mitigation impact. In a situation where pre-authorization to use dispersants exists and there are no dispersant capabilities on hand, the vessel owner/operator would be responsible to contract for dispersants and deploy them to the spill site. This would require time to locate, contract, transport, and deploy the capability.

Question: Will the Coast Guard revisit this rule, given its experience in the Gulf this spring?

Response: Investigations into the response to the Deepwater Horizon oil spill are ongoing and several federal reviews are underway. Updates to policies and regulations will be informed by the findings and recommendations.

Question#:	14
Topic:	plumes
Hearing:	Federal Response to the Recent Oil Spill in the Gulf of Mexico
Primary:	The Honorable Sheldon Whitehouse
Committee:	ENVIRONMENT (SENATE)

Question: I was told by a representative of the Coast Guard, when I visited the Gulf on May 24, 2010, that there were no underwater plumes of oil, or of a mixture of oil and dispersant.

When did the Coast Guard first recognize that there were substantial oil plumes in the water column? Why was I told on my visit that there were none and that the water column was "clear?" What tracking and monitoring efforts have been made to determine the size, shape and nature of these plumes. When have these efforts been undertaken, and by whom?

Does the Coast Guard believe that subsurface dispersant use is contributing to the creation of the giant underwater plumes that have been observed?

Response: Since the beginning of May 2010, the National Oceanic and Atmospheric Administration (NOAA) has been conducting and coordinating sampling of the sub-surface region around the well-head and beyond. The sub-surface search involves the use of sonar and ultra-violet (UV) instruments called fluorimeters, which can detect the presence of oil and other biological compounds.

NOAA undertook, through a certified testing laboratory, an independent analysis of 25 water samples provided from the cruise of the R/V WEATHERBIRD II during its mission to sample for hydrocarbons. NOAA's analysis of the presence of subsurface oil determined that the concentration of oil in these samples is in the range of less than 0.5 parts per million, and Polycyclic Aromatic Hydrocarbons (PAH) levels in range of parts per trillion. This analysis found that the PAH levels in all samples were below ecotoxicological benchmarks for marine waters. NOAA assets, in addition to considerable numbers of BP and academic assets, are devoted to this subsurface monitor. The GORDON GUNTER and the THOMAS JEFFERSON deployed to continue the water column sampling effort in the region around the well-head.

While a spill of this magnitude has not occurred in U.S. waters, smaller events have occurred where releases of oil have mixed within the water column. Dispersant use is one of several tools that may be employed to minimize surface and on-shore consequences of an oil spill. Dispersed oil forms a "cloud" of oil droplets just below the water surface. The dispersed oil mixes vertically and horizontally into the water column and is rapidly diluted. Bacteria and other microscopic organisms are then able to act

Question#:	14
Topic:	plumes
Hearing:	Federal Response to the Recent Oil Spill in the Gulf of Mexico
Primary:	The Honorable Sheldon Whitehouse
Committee:	ENVIRONMENT (SENATE)

more quickly than they otherwise would to degrade the oil within the droplets. Dispersants are generally less toxic than oil.

When this crisis occurred, the Coast Guard, as the Federal On-Scene Coordinator, in consultation with EPA, DOI, NOAA, and the State of Louisiana, granted BP authorization to use a dispersant on the National Contingency Plan Product Schedule surface of the water in an effort to mitigate the impact of the spill. On May 10, 2010, EPA and USCG issued a directive requiring BP to implement a monitoring and assessment plan for both subsurface and surface applications of dispersants. Results indicate that subsurface use of the dispersant is also effective at reducing the amount of oil from reaching the surface and can do so with the use of less dispersant than is needed when the oil does reach the surface.

Question#:	15
Topic:	UAV's
Hearing:	Federal Response to the Recent Oil Spill in the Gulf of Mexico
Primary:	The Honorable James M. Inhofe
Committee:	ENVIRONMENT (SENATE)

Question: General McInerney, who directed DOD's response to the Exxon Valdez spill, was before our Committee and suggested greater use of the latest imagery assets, such as UAV's like Global Hawk and Reaper aircraft. Do you believe that assets such as these could aid in providing real time situational awareness to those directing the response?

Response: Yes. Real time imagery, particularly full motion streaming video and radar images, are critical to provide situational awareness for responders. However, this imagery is sensor dependent, not asset dependent and can be provided by manned aircraft or unmanned aircraft. Unmanned aircraft systems are able to provide endurance in situations that require continuous monitoring and imagery. Effectiveness of unmanned aircraft systems would be dependent on sensor package and airspace access. Other unmanned aerial surveillance and sensor payloads may prove more effective, and should be considered in this capacity.

Question#:	16
Topic:	MOU's
Hearing:	Federal Response to the Recent Oil Spill in the Gulf of Mexico
Primary:	The Honorable James M. Inhofe
Committee:	ENVIRONMENT (SENATE)

Question: The Coast Guard currently has Memorandums of Understanding (MOU's) with the Air Force and Navy which facilitated the use of C-130's and naval assets. What additional MOU's could be needed to include the use of ISR (Intelligence, Surveillance, and Reconnaissance) assets?

Response: The following MOUs with Department of Defense elements could be needed for the use of ISR assets in the future:

- Agreements for airspace control, aircraft deconfliction during significant pollution response incidents.
- Agreements with elements having the following capabilities for use in oil spill and natural disaster response assessment and operations:
 - Aircraft equipped with Side Looking Airborne Radar and video capability that can be streamed to incident command planners in near real time;
 - Manned or unmanned airships as high-altitude reconnaissance and surveillance platforms;
 - RADARSAT, for access to imagery feeds from radar satellites for the collection of surface oil imagery in impacted areas;
 - Pre-determined data formats for remote sensor feeds and standardized geographic information system overlays to promote development of a Unified Command Common Operating Picture; and
 - The Distributed Common Ground System (DCGS) as the integrated architecture to consolidate and unify the processing, dissemination, and storage of remote sensor data.

Senator WHITEHOUSE. Thank you, Admiral.

We will hold questions until the end, and we will go to Assistant Secretary Darcy.

**STATEMENT OF HON. JO-ELLEN DARCY, ASSISTANT
SECRETARY OF THE ARMY (CIVIL WORKS)**

Ms. DARCY. Thank you, Senator Whitehouse. I want to thank you for the opportunity to be here today to discuss the Army's ongoing efforts to support the oil spill response in the Gulf and to provide an assessment of impacts to navigation and the ecosystem.

In the midst of the response to this tragic Deepwater Horizon oil spill, the Corps of Engineers continues to provide reliable navigation on the river system and waterways along the Gulf Coast.

In addition, the Corps has provided modeling support for river discharges and is offering emergency review under section 404 and section 10 authorities of a proposed barrier plan developed at the local level intended to prevent the oil from reaching the coastal wetlands.

Currently the oil spill is not affecting dredging operations or navigation in any rivers or waterways along the Gulf. So far there have been no incidents of deep-draft vessels getting oil on their hulls as they approach the southwest pass of the Mississippi River.

The U.S. Coast Guard, working with navigation interests, has established a clearing station in the Lower Mississippi River to clean those vessels before they proceed up the river to New Orleans. This is similar to what was done in the Mississippi River in the 2009 oil spill.

The Corps continues daily monitoring of any impacts to navigation and dredging operations as a result of the oil spill and maintains continued coordination with navigation interests and appropriate agencies.

The Corps' New Orleans District, Mississippi Valley Division, and the Engineer Research and Development Center Coastal and Hydraulic Laboratory have analyzed a number of water management conditions and possible actions to determine whether we could modify river flows to keep oil away from the mouth of the Mississippi River and wetlands on either side of the river.

This analysis included the possible deviations from what is currently a 70-30 split at what is called the old river control structure between the Mississippi River and the Atchafalaya Basin. Numerical modeling analysis has shown that diverting water from the Atchafalaya Basin to the Mississippi River at this control structure would have minimal influence on the movement of the oil in the Mississippi River Delta region.

Due to the extreme flooding of the Tennessee and the Cumberland Basins earlier this month, Mississippi River discharges below New Orleans will nearly double. However, even with these forecasted increases in discharges, we do not anticipate increased flows that would allow opening the Bonnet Carre spillway to reduce oil entering the Mississippi Sound area.

With respect to some of our smaller freshwater diversion structures, those structures are currently operating near design capacity, and the modeling suggests that this may help slow the movement of the oil into the project marshes from the marsh and the

open water boundaries in the immediate vicinity of these structures.

This team continues to evaluate other water management scenarios to determine if they will help address the oil spill issues. The Corps of Engineers' Research and Development Center, which we refer to as ERDC, is also working with the U.S. Geological Survey Program to collect and analyze baseline sediment samples in the wetlands and in the navigation areas. These pre-oil spill samples will provide critical comparisons to post-emergency sediment that will be required for efforts to continue with Louisiana coastal restoration through the beneficial uses of dredge materials.

On May 11, 2010, the Corps received a permit request from the State of Louisiana for construction of an approximately 100-mile-long barrier intended to intercept the oil before it enters the marshes. The Corps is reviewing the permit request under section 404 of the Clean Water Act and section 10 of the Rivers and Harbors Act.

As this request was rendered in the context of the British Petroleum oil spill, the Corps is working with the National Incident Commander to evaluate this request.

In addition to ERDC's Coastal and Hydraulic Laboratory support, seven people have been deployed from ERDC Environmental Laboratory to support the U.S. Fish and Wildlife Service's natural resources damage assessment activities. Activities include development of bird injury study plans, global positioning systems collection, and integration of field data, as well as primary GIS and mapping support.

As the Department of Army lead for environmental restoration, research and development, ERDC is prepared to assist in formulating and implementing strategies for long-term monitoring and remediation of wetland and barrier island areas affected by the oil spill.

ERDC is also prepared to provide analysis for the eventual remediation of contaminated barrier sediment and material removal and ecological restoration.

Thank you, Senator Whitehouse, and I am happy to answer any questions.

[The prepared statement of Ms. Darcy follows:]

160

DEPARTMENT OF THE ARMY

COMPLETE STATEMENT

OF

HONORABLE JO-ELLEN DARCY
ASSISTANT SECRETARY OF THE ARMY (CIVIL WORKS)

BEFORE THE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
UNITED STATES SENATE

ON

FEDERAL RESPONSE TO THE RECENT OIL SPILL
IN THE GULF OF MEXICO

May 18, 2010

Introduction

Madam Chairman and other Members of the Committee, I am Jo-Ellen Darcy, Assistant Secretary of the Army (Civil Works). Thank you for the opportunity to be here today to discuss the U.S. Army Corps of Engineers' (Corps) ongoing efforts to support the oil spill response in Coastal Louisiana and assessment of impacts to navigation and the ecosystem. In the midst of the response to the tragic Deepwater Horizon oil spill, the Corps of Engineers continues to provide reliable navigation on the river systems and waterways along the Gulf coast as it maintains vigilant monitoring and assessment of the oil impacts. In addition, the Corps has provided modeling support for river discharges and is offering emergency review under Section 404 and Section 10 authorities of a proposed barrier plan, developed at the local level, intended to prevent the oil from reaching the coastal wetlands. The Corps has also reviewed and provided input to an interim Environmental Protection Agency (EPA) Region 6 Oil Solidifier Policy and supports its implementation.

Navigation Assessment

Currently, the oil spill is not affecting dredging operations or navigation in any rivers or waterways along the Gulf. So far there have been no incidences of deep-draft vessels getting oil on their hulls as they approach the southwest pass on the Mississippi River. The U.S. Coast Guard, working with navigation interests, has established cleaning stations in the Lower Mississippi River to clean those vessels before they proceed up the River to New Orleans, similar to what was done in the 2009 Mississippi River oil spill. The Corps continues daily monitoring of any impacts to navigation and dredging operations as a result of the oil spill and maintains continued coordination with navigation interests and appropriate agencies.

Modification of Mississippi River Flows

The Corps New Orleans District, Mississippi Valley Division, and the Engineer Research and Development Center Coastal and Hydraulics Laboratory have analyzed a number of water management conditions and possible actions to determine whether we could modify river flows to keep oil away from the mouth of the Mississippi River and wetlands on either side of the River. This analysis included possible deviations from the statutory 70/30 split at the Old River Control Structure between the Mississippi River and the Atchafalaya Basin. Numerical modeling analysis has shown that diverting water from the Atchafalaya Basin to the Mississippi River at the Old River Control structure would have minimal influence on the movement of the oil in the Mississippi River Delta region. Due to the extreme flooding of the Tennessee and Cumberland basins early this month, Mississippi River discharges below New Orleans will nearly double. However, even with these forecasted increases in discharge we do not anticipate increased flows that would allow opening the Bonnet Carre' spillway to reduce oil entering the Mississippi Sound area. With respect to the smaller freshwater diversion structures, those structures are currently operating near design capacity and the modeling suggests that this may help slow the movement of oil into the project marshes from the marsh/open water

boundaries in the immediate vicinity of the structures. This team continues to evaluate other water management scenarios to determine if they will help address the oil spill issues.

Participation in baseline sediment sampling

The Corps Engineering Research and Development Center is also working with the United States Geological Survey program to collect and analyze baseline sediment samples in the wetlands and navigation areas. These pre-oil spill samples will provide critical comparisons to post-emergency sediments that will be required for efforts to continue with Louisiana coastal restoration through the beneficial uses of dredged material.

Review of Permit from Louisiana to create a barrier to Intercept Oil

On May 11, 2010, the Corps received a permit request from the State of Louisiana for the construction of an approximately 100 mile long barrier intended to intercept the oil before it enters the marshes. The Corps is reviewing the permit request under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act. As this request was rendered in the context of the British Petroleum Oil spill, the Corps is working with the National Incident Commander to evaluate the request.

Engineer Research and Development Center (ERDC) Support

In addition to ERDC Coastal and Hydraulics Laboratory support, seven people have deployed from the ERDC Environmental Laboratory to support U.S. Fish and Wildlife Service's Natural Resource Damage Assessment (NRDA) activities. Activities include, but are not limited to, providing expert NRDA strategy development, development of bird injury study plans, global positioning systems collection and integration of field data, primary GIS and mapping support.

ERDC stands ready to assist in the development of a common operating plan for the multi-agency oil spill response. As the Department of Army lead for environmental restoration research and development, ERDC is prepared to assist in formulating and implementing strategies for long-term monitoring and remediation of wetland and barrier island areas affected by the oil spill. ERDC is also prepared to provide analysis for the eventual remediation of contaminated barrier sediment and material, removal and ecological restoration.

Conclusion

This concludes my testimony, Madam Chairman. Again, thank you for allowing me to testify on the ongoing efforts of the Corps of Engineers in response to the oil spill. I will be happy to answer any questions you or the other Members of the Committee may have.

Question for the Record From Senator Carper
May 18, 2010

Question 1: During the National Environmental Protection Act (NEP A) review process for an oil rig, what categories of issues does your agency address? Has the recent oil spill in the Gulf of Mexico made you reassess the issues that your agency addresses in the NEPA process?

Answer: If a rig is located in State waters, the decision whether to issue a permit is based on an evaluation of the probable impacts, including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership and, in general, the needs and welfare of the people.

If the rig is located in Outer Continental Shelf (OCS) waters, the NEPA documentation is the responsibility of BOEMRE. Our responsibility is limited to navigation safety and national security.

The oil spill has not changed the factors that we consider in our evaluation.

Question 2: Please elaborate on the request from the State of Louisiana to the U.S. Army Corps of Engineers for the construction of a 100-mile long barrier to intercept the oil before it enters the marshes, and whether you think such a barrier is needed and helpful and what the environmental impacts of such a barrier might be.

Answer:

Overview summary of proposed berm project

The US Army Corps of Engineers, New Orleans District (USACE), coordinated a pre-application teleconference with state and federal agencies on morning of May 11, 2010. The State of Louisiana, Coastal Protection and Restoration Authority, submitted an application requesting Department of the Army (DA) emergency authorization at 11:00 p.m. May 11, 2010. The permit request was for a proposed restoration project which the applicant contended would also provide protection to barrier islands and landward wetlands from contamination caused by the Deepwater Horizon oil spill. Upon initial review of the application and comments received from the federal and state agencies, USACE determined that the project, as proposed (coastal restoration) would not qualify for USACE emergency authorization procedures. That determination was made clear

Question for the Record
May 18, 2010

to the applicant during a coordination teleconference on May 12, 2010. The applicant submitted revised drawings specifically proposing construction of an oil spill protection berm late on Friday, May 14, 2010. Subsequently, the revised permit application was submitted to federal and state agencies for their review and comment on May 15, 2010. The revised application was coordinated with federal and state agencies on Monday May 17, 2010 in a teleconference. During that teleconference, USACE requested that all agencies in attendance submit their comments in writing by close of business that same afternoon. The USACE technical team (Engineer Research and Development Center (ERDC), the Mississippi Valley Division (MVD), and the New Orleans District (MVN)) conducted engineering analysis and assessments throughout the permitting process. On Friday, May 21, 2010, USACE forwarded comments from an internal technical assessment to the applicant regarding the barrier plan. Following discussions between the state and USACE regarding the technical analyses, the state submitted additional information on May 21 and May 24.

Applicant's Proposal:

The applicant proposed to construct a sand berm approximately 300-foot wide at the base, approximately 25-foot wide at the crown and approximately 6-foot above the mean high water line (MHWL). East of the Mississippi River, the berm would be constructed on the seaward side of Chandeleur Island westward to Baptiste Collette Bayou; west of the Mississippi River, it would be constructed from Timbalier Island eastward to Sandy Point. All fill placement for sand barrier construction would occur in the Gulf of Mexico of southeastern coastal Louisiana. Gaps are to be maintained in the berm for tidal exchange. Material to construct the berms would be dredged from Ship Shoal, South Pelto, the Mississippi River Offshore Disposal Site, Pass a Loutre, St. Bernard Shoal, and Hewes Point. Total length of the berm structure is approximately 128 miles, requiring approximately 102 million cubic yards of dredged material to construct an estimated 9,800 acres of sand barrier in waters of the U.S.

Major Agency Comments Received (summary):

Much effort over a relatively long construction period for a limited benefit; could impact endangered species, critical habitats, sustainable fishery stocks, and migratory birds; may use borrow material intended to support future coastal restoration projects; clearance of pipelines and infrastructure during dredging and material placement may require full geophysical survey; would require a Special Use Permit from US Fish and Wildlife Service due to National Refuge Administration Act and a Sand & Gravel Lease for uncleared borrow sites; should do a complete pilot study to validate concept; could adversely impact national navigation; possible disposal of contaminated sediment (dredging, placement, and on islands).

Engineering Review Conclusions:

Proposed barrier could cause a change in the net current pattern and the movement of water in the area of Mississippi Sound and the Mississippi barrier islands. These changes could actually push/trap the oil into these areas and could also cause impacts to the salinity regime in the sound which is of great concern. The characteristics of the borrow material could inhibit retention and stacking at the 1:25 side slope. There is the

Question for the Record
May 18, 2010

possibility that hydrologic conditions and tidal flows will inhibit construction of certain project features. Potential of unintended consequences exists for Lake Borgne and Western Mississippi Sound in terms of altered tidal dynamics, salinity intrusion, and oil penetration. USACE will need to monitor impacts of barrier – short and long term.

Alternatives Considered:

Three project alternatives were considered: the applicant's revised permit, variations on the applicant's revised permit, and a "no action" alternative. The no action alternative did not meet the permit application's purpose and need and was therefore eliminated. The applicant's revised permit was found to have potential significant environmental impacts. After an environmental and cultural resources evaluation and consultation and coordination with state and Federal agencies, a portion of the applicant's proposal was found to provide positive environmental impacts, be in the overall public interest, and was permitted.

Partial Project Authorization: Selection of this alternative entails issuing a permit authorizing reaches E3 and E4 to the east, and W8, W9, W10, and W11 to the west of the applicant's revised permit. These areas have been identified by USACE staff assessment as critical locations where greater immediate benefit is likely to be achieved with minimal adverse disruption of coastal circulation patterns. This provides a strategic approach wherein information on success can be obtained from site monitoring, and allows for more careful evaluation of the remaining, more difficult areas, in formulating a construction plan for the reaches not authorized in this permit, should the state maintain interest in addressing those specific areas.

Emergency Permit Offered:

The permit authorizes 6 reaches of the applicant's original proposal. Forty-five miles of barrier berms are authorized by the permit. In order for the applicant to proceed with the project, it must obtain a Coastal Use Permit, and coordinate its activities with the Breton National Wildlife Refuge and the Minerals Management Service. Further, the permit contains the following provisions and Special Conditions (summarized):

Provisions:

1. Limited to specific proposed segments: Only authorized reaches (E3-4, W8-11) in a manner to minimize adverse impacts.
2. Subject to emergency permit terms: Subject to emergency permit terms, with formal application in 30 days.

Special Conditions:

1. Property Rights: No property rights conveyed, or injury to property rights authorized.
2. No federal liabilities: Excepting federal actions taken under Oil Pollution Act (OPA) in Deep Water Horizon (DWH) response.
3. Water Quality Standards: Meet standards, laws, and Best Management Practices.
4. Permit may be revoked: For the public interest or if terms/conditions revoked.
5. Data accuracy: Federal government will rely on data, inaccurate data may

Question for the Record
May 18, 2010

result in permit being revoked.

6. Damages for permit change/revocation: Change or revocation of permit no basis for claim against federal government.

7. All other laws/regulations: Must be followed.

8. USACE inspection: Periodic inspection allowed.

9. Navigation: No interference; installation of lights, signals, signs for safety is responsibility of permittee.

10. Borrow site limitations: Currently, only a segment of the Pass a Loutre borrow site is approved and environmentally cleared.

11. Borrow site coordination: Coordinated with MMS, USGS, USACE (MVN Regulatory), EPA, USFWS, NMFS, and other concerned federal/state agencies.

12. Notice to Mariners: Coordinate with USCG for BNTM for vessel activities.

13. Pipelines and Submerged Objects: Permittee must identify and avoid.

14. Berm Removal/Relocation: May be required at permittee's expense if interferes with navigation.

15. Cannot substantially interfere with aquatic movement/migration of indigenous or migratory species.

16. Piping plover intertidal foraging habitat avoidance: 100 foot setback required from mean low-low water to foot of berm when practicable.

17. Equipment out of intertidal to dune/vegetation line as required by the Breton National Wildlife Refuge manager.

18. Best Management Practice to protect seagrass beds on landward side of island.

19. Minimize impacts to natural sediment transport, fish migration, salinity regimes.

20. No blockage of tidal inlets to maximum extent practicable. Temporary oil booms or appropriate containment devices may be used in this area.

21. Bird rookery setbacks: Rookeries of specific species require 650-2000' setbacks from Sept – Mar/April (specified by species) with monitoring by USFWS observer.

22. Trustee/Service Consultations: Required before/during/after project with NMFS, USFWS, and USGS for Essential Fish Habitat and Endangered Species Act.

23. Cultural Resource Protection: Consultation required, and work must cease if new historic/prehistoric cultural resources discovered.

24. Historic Protection: Reporting of unknown historic or archeological items.

25. Tribal cultural materials: Area is aboriginal Chitimacha homelands, Tribe contact required if cultural materials are discovered.

26. No state boundary change: No new claims authorized, no boundary changes.

27. No statement on Oil Pollution Act applicability: Permit does not address applicability to oil spill response.

28. Construction schedule and timeline: Due prior to commencing work.

29. Weekly conference call: With interested parties to report progress.

30. Survey of berm alignment: Due prior to initiating work.

31. Monitoring plan: Specific requirements in consultation with USACE and other interested parties. The permittee is responsible for implementing this monitoring plan.

Question for the Record
May 18, 2010

- 32. Aerial photography: Required every two weeks following project commencement.
- 33. Effective date of permit: Upon receipt by USACE of copy signed by permittee agreeing to and accepting conditions.

Senator WHITEHOUSE. Thank you, Assistant Secretary Darcy. Assistant Secretary Fernandez, welcome.

STATEMENT OF HON. JOHN FERNANDEZ, ASSISTANT SECRETARY OF COMMERCE FOR ECONOMIC DEVELOPMENT, ECONOMIC DEVELOPMENT ADMINISTRATION

Mr. FERNANDEZ. Thank you, Mr. Chairman.

Before I talk about EDA's response to the oil spill, I, too, want to express our sincere condolences to the families who lost their family members after the explosion. I also want to say thank you and express our gratitude to the incredible work of all the first responders and their extraordinary efforts to actually rescue over 100 other survivors.

While the responsible parties, rather than EDA, will ultimately be responsible for the economic damage caused by this spill, EDA will play a role in helping the affected communities recover. Though not a first responder, EDA facilitates delivery of Federal assistance to local governments' recovery efforts through technical assistance, strategic planning, and economic redevelopment grants.

Shortly after the spill I asked our staff in the Austin and Atlanta Regional Offices, who are on the front line of this disaster, to reach out to our local partners. Regional office staff have contacted our network of local government partners in those affected areas to offer our agency's assistance. We deployed staff throughout the region to meet with local and State leaders as well our colleagues in other Federal agencies.

On May 6 Secretary of Commerce Gary Locke, along with EDA leadership, met with local government and economic leaders in Biloxi and Pensacola. Our staff remain in regular contact with local, State and Federal partners.

While in the short term EDA's regional staff is already providing some technical assistance, our focus will remain on promoting long-term economic recovery and we will continue to work closely with affected communities long after the clean up is complete.

Successful long-term recovery based upon well developed planning efforts can help a community not only get back to where they started prior to a disaster, but also develop new economic opportunities, make improvements to their infrastructure, and be better prepared for future disasters.

In my written testimony I have set out some of the technical frameworks for EDA's engagement in disaster recovery efforts. In the time I have left with my statement I would like to just provide a real simplified overview.

Economic disasters, whether they are caused by forces of nature or if they are man-made, each bring their own unique set of challenges. Rather than pursuing a one size fits all approach EDA works directly with State and local leadership to develop customized responses.

The key to EDA's success in responding quickly and effectively to disasters and economic disruptions is its Economic Adjustment Assistance Program. This program allows for a wide range of technical assistance, strategic planning, gap financing, and infrastructure assistance. It is a complete toolbox of development tools which EDA can leverage.

Most importantly the Economic Adjustment Investment Program can select projects that are multifaceted, which allows us to develop an integrated response with a single grant application. In order to assist communities impacted by the oil spill, the President last week sent Congress a legislative package that included \$5 million for EDA's Economic Adjustment Assistance Program.

EDA's long involvement with communities before and after a disaster has taught us a few truths. First and foremost, the communities that emerge strongest from these catastrophic events are those that have a detailed strategic plan in place before the event ever occurred. That is a significant reason why the Obama administration is working to ensure that the Federal Government is prepared for a swift and coordinated response to future large or catastrophic disasters. Through advanced planning and strong coordination, the Federal Government can help affected communities respond faster and recover more fully through new economic opportunities that will result in sustainable and economically viable communities.

Mr. Chairman, again, I thank you for the opportunity to address EDA's role in the economic disaster response. I can tell you I have spent the last several weeks visiting communities where EDA has helped in recovery efforts. I can tell you I am very proud of the work that the agency does in this area.

EDA is ready and prepared to do our best to assist with the devastating impact of this oil spill in the Gulf Coast region. We certainly look forward to working with Congress to strengthen the Federal Government's coordinated response, and I certainly welcome any questions that you might have.

[The prepared statement of Mr. Fernandez follows:]



Statement by
JOHN R. FERNANDEZ
ASSISTANT SECRETARY OF COMMERCE FOR ECONOMIC
DEVELOPMENT
U.S. Senate Committee on Environment and Public Works

May 18, 2010 at 2:30pm

Introduction

Chairwoman Boxer, Ranking Member Inhofe, and members of the Committee, thank you for the opportunity to testify today on behalf of the Economic Development Administration (EDA) to discuss EDA's response to the Oil Spill in the Gulf.

Before I move to discuss EDA's efforts, I want to express my condolences to the families of the 11 people who lost their lives in the explosion and sinking of the Deepwater Horizon and to express my gratitude to all those individuals who assisted in the rescue of the over 100 survivors.

Throughout the agency's 45 year history, EDA has been called upon many times to respond to adverse changes in economic conditions. While the current economic impact is not yet fully known due to ever-changing nature of this disaster one thing is certain – real economic damage has already been done to many coastal communities. In fact, even the impression that the Gulf Coast could be closed has had, and may continue to have, an adverse effect on

the local economies for everyone from shrimpers to recreational boaters to hotel operators and restaurant employees.

Local newspapers like the Pensacola News Journal are already reporting that people were staying away from the beaches even though no oil was present. The beach restaurants are telling staff to stay home, the beach communities are losing tax revenue since fewer cars are crossing the bay bridge, and hotels rooms are going empty. We know through local contacts that in Alabama, Louisiana, Florida and Mississippi, entire coastal communities are uncertain about their future because their livelihood is based on fishing, aquaculture, and tourism, all of which have a significant impact on the local, regional, and national economy.

While the responsible parties, rather than EDA, will ultimately be responsible for remedying the economic damage caused by the spill, EDA will play a role in helping the affected communities recover. Though not a “first responder,” EDA’s facilitates delivery of Federal assistance to local governments’ recovery efforts through strategic planning and economic redevelopment. Two weeks ago, I asked staff from EDA’s Austin and Atlanta regional offices who are on the frontline of this man-made disaster to actively reach out to our local partners to begin to assess their concerns and potential needs. Regional office staff contacted our network of local government partners in those effected areas to offer the agency’s assistance and staff deployed throughout the region. Secretary of Commerce Gary Locke met with local government and economic leaders, as well as EDA staff, on May 6th in Biloxi and Pensacola. While in the short term, EDA regional staff is already providing technical assistance; our focus will remain on promoting long-term economic recovery and we will continue to work closely with the affected communities long after the cleanup is complete.

EDA's Disaster Activity

Following an incident, EDA responds by first coordinating with its sister bureaus and other agencies who are engaged in disaster recovery efforts to share information and data on the associated ramifications of the disaster. In addition, EDA reaches out to its economic development practitioner network, particularly its network of Economic Development Districts, to collect on-the-ground information on the economic impacts of the disaster event. This is currently underway in the Gulf Coast, as I mentioned earlier.

In addition, in areas where a major disaster or emergency has been declared under Robert T. Stafford Disaster Relief and Emergency Act (42 U.S.C. 5121 et seq.), EDA has authority under sections 209 and 703 of the Public Works and Economic Development Act of 1965 (PWEDA) (42 U.S.C §§3149, 3233) to make grants for economic recovery activities. In this situation, the oil spill, a Stafford Act declaration has not been made. EDA also has authority to respond to fishery failures in areas where a determination has been made under section 312(a) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. § 1861a(a)) to support economic recovery.

In the case of an actual Stafford Act disaster declaration, ESF #14 (Emergency Support Function, for Long-Term Community Recovery) protocols are initiated to facilitate coordination between the Federal Emergency Management Agency (FEMA) and other federal agencies, including EDA. Under the National Response Plan, the Department of Commerce (DOC) has a response role and under ESF 14, EDA represents the DOC as a primary support agency. ESF #14 provides a framework for federal government support to state, regional, local and tribal governments, non-governmental organizations and the private

sector designed to enable community recovery from the long-term consequences. In the case of the oil spill, because this is not a disaster under the Stafford Act, ESF #14 protocols have not been activated.

As part of ESF #14, EDA will often be tasked by FEMA to help evaluate the economic impact of a disaster. FEMA may ask EDA to perform economic impact evaluations or carry out other specific tasks through special “mission assignments.” These economic impact assessments include information on infrastructure, businesses, overall damage, etc. Past FEMA mission assignments have tasked EDA to perform Economic Impact Assessments in North Carolina, Virginia and New Jersey resulting from Hurricane Floyd, and in Texas following Hurricane Ike.

Fisheries disasters declared under the Magnuson Stevens Act operate in a different manner because unlike under a Stafford Act declaration, FEMA is unlikely to coordinate the Federal response. EDA has a long history responding to economic fishing disasters, and we stand prepared to assist in the long term economic recovery of the Gulf Coast as soon as economic impacts are known.

In order to assist communities impacted by the oil spill, the President last week sent Congress a legislative package that package includes \$5 million for the Economic Development Administration's Economic Adjustment Assistance program. This program will award grants to state, local, and non-profit entities in the affected region for strategic planning and technical assistance. Potential activities to be funded include (but are not limited to) short- and long-term economic recovery plans, and state and local economic recovery coordinators.

EDA's Economic Adjustment Assistance Program

Economic disasters and adversity — whether caused by forces of nature like hurricanes or flooding or be they man-made, such as a plant or military base closure — each bring their own unique set of challenges and opportunities. Rather than pursuing a one-size-fits-all approach, EDA funds customized solutions such as traditional infrastructure investments, business incubation, revolving loan funds, planning grants, and other resources. EDA's unique portfolio of flexible programs allows us to respond to changing economic conditions faced by our local government and regional partners.

The key to EDA's success in responding quickly and effectively to disasters and economic disruptions is its Economic Adjustment Assistance (EAA) program. This program allows for a wide range of technical, strategic planning, gap financing, and infrastructure assistance—a complete toolbox of development programs which EDA can leverage to create customized recovery packages. Furthermore, the inherent flexibility in EAA allows the agency to fund innovative development initiatives, such as projects promoting entrepreneurial activities, microfinance opportunities, and technology commercialization. Most importantly, EAA investments can be multifaceted, allowing EDA to develop an integrated response with a single application.

Through EAA, the agency can assist State and local economic development partners in three crucial ways:

Strategic Planning

EDA funds comprehensive strategic planning activities to help create a coordinated, long-term recovery strategy following an economic disruption. EDA also offers financial resources and technical assistance to perform pre-disaster planning to increase resiliency and immediate recovery.

Infrastructure Development

EDA provides grant funds to build new infrastructure, such as business incubators, technology parks, research facilities, and basic utilities, to retain or attract jobs to the region.

Financing

Addressing another critical need—access to capital—EDA provides funding through EAA to establish Revolving Loan Funds (RLF). These funds can make below market-rate loans to businesses to help provide gap financing for operations and to support new business development.

Recent EDA Disaster Experience:

To truly understand EDA's unique role in disaster recovery, we need to examine some recent examples.

In response to a string of devastating natural disasters in 2008, Congress appropriated \$500 million to our Economic Adjustment Assistance (EAA) fund in two supplemental appropriations to provide economic recovery assistance. Through that funding, EDA funded recovery coordinators has added staff for all the disaster-impacted regional councils of government (COGs) in Iowa. These critical staffers were on the job quickly, giving the COGs the capacity to address a series of vital needs including:

- gathering data on the physical and economic impacts of the disaster
- assembling and feeding these data to State and Federal agencies involved in resourcing the recovery (including EDA)
- assisting individual businesses and local governments as recovery work proceeded to access loans, grants, and other assistance
- and later, assessing and reporting on the progress on the recovery work.

One of the most important things that the leaders in Iowa learned from the flood disasters of the 1990s was that recovery must begin with good data on the physical and economic impacts and that this is the foundation for an effective recovery strategy.

Lessons Learned

EDA's long involvement with communities both before and after a disaster or significant economic dislocation has taught us a few truths. First and foremost, the communities that emerge strongest from these catastrophic events are those that had a detailed strategic plan in place before the event ever occurred. That's a significant reason why the Obama Administration is working to ensure the federal government is better prepared for a swift and coordinated response to future large or catastrophic disasters. Through advanced planning and stronger coordination, the federal government can help affected communities respond faster and recover more fully through new economic opportunities that will result in sustainable and economically viable communities.

Closing

Chairwoman Boxer, Ranking Member Inhofe, and members of the Committee, thank you for the opportunity to address EDA's role in economic disaster response. I am proud of the agency's continued leadership on this issue and firmly believe that EDA will continue to be a driver for growth in distressed areas of our country. EDA is ready and prepared to do our best to assist with the devastating BP oil spill in the Gulf Coast region. I look forward to working closely with Congress to strengthen the Federal government's coordinated response to economic disasters, and I welcome any questions you may have.

John Fernandez
Assistant Secretary of Commerce for
Economic Development Administration (EDA)
Responses to Questions for the Record
Hearing Date: May 18, 2010
Questions from Senator Carper

Question:

During the National Environmental Protection Act (NEPA) review process for an oil rig, what categories of issues does your agency address? Has the recent oil spill in the Gulf of Mexico made you reassess the issues that your agency addresses in the NEP A process?

Response:

The National Environmental Policy Act (NEPA) requires federal agencies to assess the expected environmental impacts associated with proposed federal actions. EDA cannot make an award unless it has received sufficient information to make a determination regarding a project's environmental impact.

EDA requests detailed information from the applicant (generally referred to as an 'environmental narrative') in the course of the agency's review to obtain an understanding of the present environmental condition and the project's elements that will affect the environment. The agency has a well-established and thorough environmental assessment process led by a team of Environmental Officers in the regions.

During its 45 year history, EDA has never awarded a grant to fund oil rig projects, nor is the agency likely to do so as an oil rig project would not compete favorably against EDA's established investment priorities. Should EDA receive an application for funding to support the construction of an oil rig in the future, the agency would apply the same stringent NEPA assessment required for all projects.

Question:

What is your agency doing to ensure that economic damages claims are not fraudulent?

Response:

As a discretionary grant-making agency, EDA does not handle direct claims. EDA works in partnership with state and local governments, regional economic development districts, public and private nonprofit organizations, and Indian tribes.

Senator WHITEHOUSE. Thank you very much, Assistant Secretary Fernandez.

Admiral Neffenger, the New York Times and others have reported that there are enormous oil plumes now in the deep waters of the Gulf, including one 10 miles long, 3 miles wide, and 300 feet thick in spots. This spill didn't happen at the surface. It happened in the depths of the Gulf. We have a pretty good sense from visual observation of how far it has reached at the surface level. How good do you believe our country's modeling is of the shape, size, and location of the undersea oil?

Admiral NEFFENGER. As you know, the National Oceanic and Atmospheric Administration is the primary agency responsible for doing spill trajectory models and the like. They have been looking very carefully at that question.

I can tell you that there is still some uncertainty as to what was actually seen there. Dr. Jane Lubchenco—I believe it was yesterday—issued a statement that the scientific evidence is inconclusive right now as to what that actually was that they have seen.

Nonetheless there is some concern that there is an underwater plume that might be forming. So there is a team working on that right now. It is a technical team that is looking at all the data that we are collecting right now, as well as collecting data to determine really what they are seeing out there and why it might mean with respect to the extent of this oil spill.

Senator WHITEHOUSE. So it would be not accurate to think that there is a sort of a 3-D model on a computer someplace that shows where this enormous blob of oil has traveled to under the water. We don't have that kind of situational awareness as to the oil that is still in the water column.

Admiral NEFFENGER. Well, I think that it would be accurate to say that, but I would qualify it by saying that until there is some certainty as to what is actually being seen underwater it is difficult to model what it might be doing. So I would qualify it by that. It is not so much that there is not an accurate model but that you need more data to determine what that model might look like.

Senator WHITEHOUSE. Do you have a sense of how much of the oil that has been spilled in this incident has stayed in the water column as opposed to rising to the surface and making itself more apparent to the human eye?

Admiral NEFFENGER. As you know, we have dispersed oil in the water column as well as oil that may be naturally dispersing from the flow. I don't have a good set of numbers for how much in terms of relative percentage would be sub-surface as opposed to on the surface. Again, these technical teams are looking at that data now, so we are bringing in not only just NOAA scientists but setting up a peer review process to take a look at that. These are important questions to answer.

Senator WHITEHOUSE. Are you at the point where you know that it is more than half or less than half that went to the surface?

Admiral NEFFENGER. I don't believe I could quantify it right now, sir.

Senator WHITEHOUSE. OK. So it is really a huge question mark at this point.

Admiral NEFFENGER. It is a question mark for us at this point.

Senator WHITEHOUSE. OK. That is a very big unknown, isn't it? I read a story in The Wall Street Journal this morning that said that in 2004, managers of BP plc, the oil giant involved in this incident and another oil rig incident that they described in the article, warned in a trade journal that the company wasn't prepared for the long-term, round the clock task of dealing with a deep sea spill.

I was a little bit surprised that nobody picked up on that. You would think that unless this is a trade journal with no readership whatsoever somewhere somebody within the Coast Guard or within NOAA or within MMS would have been pinged to the fact that here was this enormous corporation with a considerable deep sea drilling footprint basically confessing that it is not ready to deal with an emergency that might ensue if something went wrong.

Do you have any sense of why that might have been missed? That would seem like kind of a telltale moment.

Admiral NEFFENGER. What I can say, Senator, is with respect to this spill as well as with respect to our interaction with companies like BP for oil spill response plans, and I will clarify that our interaction has to do with vessel spill response plans, tank vessel. So we deal with the shipping side of the world, if you will, so the mobile offshore units and the vessels.

Senator WHITEHOUSE. Do you consider a floating rig to be a vessel?

Admiral NEFFENGER. In this case, this one was. Yes. This was a self-propelled offshore drilling unit, so it was classified as a vessel.

Senator WHITEHOUSE. But if they stand on legs, they are not. And if they are floating like this one, they are.

Admiral NEFFENGER. It depends on what kind of action they are taking. Some rigs that stand on legs can be classified as vessels as well.

Senator WHITEHOUSE. But in any event this was a vessel.

Admiral NEFFENGER. This was a vessel. Right. So it was required to have and did have a non-tank vessel response plan for response to a spill generated by the vessel. In this case that MODU had some 700,000 gallons of fuel oil and other oils on board.

So we were satisfied that they had the response assets in place and the oil spill removal organization contracts in place to deal with a spill from that vessel should it have occurred. And that would be for a worst case discharge from that vessel, which would have been a complete loss of its fuel oil.

I am not familiar with the article that you are mentioning, so I can't really speak to what it says.

Senator WHITEHOUSE. OK. We will follow up on that.

The dispersants that were used were at some level approved by the Coast Guard as the Incident Commander, correct?

Admiral NEFFENGER. Actually the way that works is there is a regional response team which is co-chaired by the Coast Guard and EPA. This is a collection of government agencies and stakeholders and resource trustees that pre-approve the use of alternative technologies. In this case there was a pre-approval existing that had been vetted through that interagency work group for the use of dispersants that made that available to the Federal on-scene coordinator for use during this spill.

Senator WHITEHOUSE. So who selected Corexit 9500A and Corexit 9527A as the dispersants?

Admiral NEFFENGER. I would assume that that was pre-approved by that regional response team so they would have approved those types of dispersants in their pre-approval process.

Senator WHITEHOUSE. Do you think those were the only two dispersants that were pre-approved?

Admiral NEFFENGER. I can check on that for you, Senator. I don't know exactly, but we can provide for the record a copy of the pre-approval checklist that was provided to the FOSC.

[The information follows:]

The Federal On-Scene Commander, with the concurrence of the Environmental Protection Agency (EPA) representative to the Regional Response Team (RRT), and in consultation with the Department of the Interior, Department of Commerce, and where appropriate the State and tribal representatives to the RRT, authorizes the responsible party to use dispersants that are listed on the National Contingency Plan Product Schedule.

In accordance with 40 CFR 300 subpart J, the Environmental Protection Agency (EPA) approves dispersants for use in U.S. waters based on tests for toxicity and effectiveness. Any product listed on the schedule must meet a threshold minimum for effectiveness and test for and report on toxicity. No States have expressed reservations about the use of these dispersants in the past as long as the dispersant is employed in accordance with the Regional Response Team Dispersant-Use pre-authorizations agreements established between the States and their Federal partners at the regions around the country.

The toxicity data table at http://www.epa.gov/emergencies/content/ncp/tox_tables.htm provides toxicity data for the 18 dispersants listed. Toxicity values should not be interpreted as absolute values but rather relative to one another in a general sense. For example, an LC50 of 4.49 should not be viewed as significantly different from an LC50 of 5.95. But the LC50 of 4.49 can be viewed as significantly different from the LC50 of 42.00. Therefore, the toxicity values can be used to group dispersants (two or three groups of similar toxicity) but should not be used to list dispersants according to toxicity (1 to 20).

All 18 products on the National Contingency Plan Product Schedule are selected based on volume availability, specifics of the site, and concerns of the Federal On-Scene Coordinator. Toxicity tests are methods for determining the impact of a chemical or an effluent on living organisms and measure the degree of response using commonly tested species. Many different kinds of tests can be used to identify potential toxic effects, but since toxic effects differ, comparing the toxicity of one to another may not be appropriate.

Senator WHITEHOUSE. OK. That would be of interest, and I appreciate that.

Mr. Fernandez, could you describe a little bit more the role of the Economic Development Administration in this circumstance a little bit more tangibly? Here is the disaster. You come in. Who do you first talk to? What is your goal? How do you know when you have succeeded?

Mr. FERNANDEZ. I can. Speaking specifically to the Gulf spill or generally?

Senator WHITEHOUSE. Generally. We have just recently had flooding in Rhode Island, for instance, so make your answers germane to that as well. That would be helpful.

Mr. FERNANDEZ. I can tell you how we would respond in most cases, and I will use the Rhode Island one as a specific example.

I know that representatives from our field office get engaged with local officials, county and municipal officials, city officials. There are economic development organizations that we fund to do long-term planning. Those economic development districts, we will engage with them. And what we try and do early on is have as

many conversations as we can to get a sense of what the damage is on the ground, what resources are in place in terms of any prior disaster planning or resiliency work that the community may have done in advance, which can accelerate the response.

And as we collect information it really depends on whether or not there has been a formal trigger or not of the Stafford Act.

Senator WHITEHOUSE. Assume there has been the disaster declaration.

Mr. FERNANDEZ. If the declaration has been enacted that means that the community can have immediate access to our existing EDA programs in the event that they were not otherwise eligible. That is an important trigger in some regards to the fisheries as well.

Senator WHITEHOUSE. This is primarily a planning function? Or is this an actual relief function?

Mr. FERNANDEZ. Both. What it does is that it means that if you are in an eligible area, or regardless of eligibility if you are in an area that has been triggered by Stafford, you have access to our implementation grants as well as planning grants. And you also have the ability to dispense with the traditional matching requirement, which turns out to be a big deal in most disaster recovery efforts.

Senator WHITEHOUSE. But the ultimate function of that exercise is a planning process, not providing relief to particular individual businesses.

Mr. FERNANDEZ. There are two things that can happen. There is certainly the planning component. Often what we find to be the most important request is that we actually fund disaster relief coordinators, folks who can come into the community, work with others to help them best access not just EDA assistance, but the full Federal portfolio. That can be a very important immediate investment that we make through our grant dollars.

Then certainly the planning component is important. Once those plans are in place, if there are specific implementation investments we can consider those as well.

Senator WHITEHOUSE. Very good.

I see that my time has expired, and I know you have been here. It has been a long afternoon for all of you. I appreciate very much our efforts to facilitate the resolution of the Gulf spill, and again a particular salute to the Coast Guard.

But to all of you, thank you very, very much.

The hearing is adjourned. We will stay open for 2 weeks for anything anybody cares to add to the record of the hearing.

Thank you again.

[Whereupon, at 5:55 p.m. the Committee was adjourned.]

