

NATIONAL COMMISSION ON THE BP DEEPWATER HORIZON OIL SPILL AND OFFSHORE DRILLING

SUBCOMMITTEE ON REGULATORY OVERSIGHT

POTENTIAL GENERAL FINDINGS

OCTOBER 13, 2010

Group A

1. Roles and Responsibilities: MMS had four distinct responsibilities requiring different skill sets and cultures: 1) offshore leasing; 2) revenue collection and auditing; 3) permitting and operational safety; and environmental protection.

The language of the Outer Continental Shelf Lands Act (OCSLA) has been interpreted as elevating the goal of “expeditious and orderly development” above the requirements of safety and environmental protection. Every former MMS Director from the past 15 years has stated that the royalty issues have taken most of the Director’s time at the expense of the other components of the offshore program.

2. Regulatory Coordination: The regulation of high risk activities on the Outer Continental Shelf (OCS) has been divided among a number of regulators (DOI, DOT, USCG, OSHA) for producing platforms, pipelines and different types of drilling rigs. The negotiation and renegotiation of multiple and sequential Memoranda of Understanding to coordinate and carryout these federal responsibilities has led to inefficiencies and gaps in oversight affecting worker safety and environmental protection.

Group B

3. Technology and Operational Complexity: The federal approach to management and oversight of the leasing and development of offshore resources has not kept up with rapid changes in technology, practices, and risks in different geological and ocean environments. The lack of knowledge and understanding of such basic technologies as cementing and use of centralizers on the part of agency engineers and inspectors points to seriously mismatched expertise relative to industry operators.
4. Risk Management: MMS failed to embrace a proactive risk management approach to the oversight and regulation of offshore drilling. Neither the MMS nor the industry had systems in place to track and analyze offshore incident data for lagging and leading indicators and trends. The regulatory review and approval process for exploration plans, permits for deep water wells, and oil spill response did not require adequate risk evaluation and management planning.
5. Oil Spill Planning: MMS approved Oil Spill Response Plans and MMS developed oil spill risk analyses are integrated into the environmental review and consultation process at all stages of OCS oil and gas development. Underestimation of the worst case scenario for oil discharge in the Gulf of Mexico oil spill risk analyses distorted the estimations of potential environmental impacts in subsequent environmental reviews. The Oil Spill Response Plans were also problematic, because they were included in some of the environmental reviews as a mitigation measure to address the threat of oil discharge. Although the BP Oil Spill Response Plan for the Gulf of Mexico met the MMS regulatory requirements for such a plan, it lacked rigor and

specificity. The approval process for these plans also lacks transparency, and fails to include either a process for interagency consultations or public review.

6. Science for Decision-Making: Although there is a significant amount of scientific research that has been conducted relevant to OCS oil and gas activities, there is a need to continue strengthening and expanding this science, as well as ensuring that it is relevant to decision-making and the environmental review of oil and gas activities. *Note: After ongoing staff research is completed, additional findings regarding the NEPA process, Environmental Studies Program, and use of science in the OCS oil and gas decision-making process will be proposed.*

Group C

7. Political Pressure: The regulatory and inspection process has been subject to political and industry pressure. The industry has successfully sought Congressional intervention to prevent implementation of MMS rulemakings. The time frames allowed for regulatory approvals for complex operations are inadequate, the 30 day requirement to approve exploration plans set by statute to expedite operations has limited the opportunity for critical technical review.
8. Oversight and Inspection: The MMS management systems and regulatory philosophy have seriously lagged offshore peer regulators in not requiring companies to have a documented Safety and Environmental Management System, a fundamental tool for hazardous operations.
9. Resources (Budget): Inadequate budget and management oversight by the Congress and successive Administrations have left MMS without the resources to carry out its responsibilities. The Secretary of the Interior's appointed Safety Oversight Board reported a serious lack of ongoing training and workforce development. Reliance on "on the job" training for inspectors is inadequate and unacceptable for such high risk, technical operations.
10. Transition: The fundamental shift necessary in the regulatory regime applicable to the offshore oil and gas industry will require additional resources and capacity, including staff hiring and training. In addition to the interim regulations imposed in recent months, the agency will have to propose for public comment a number of more comprehensive changes, including policies and procedures for third party certifications. A transition with adequate resources, specific benchmarks and timetables will be necessary to ensure activities are not unduly disrupted.