

## Effective Oversight Requires Key Legislative, Regulatory, Enforcement and Transparency Upgrades

Analysis by Lois N. Epstein, P.E.  
Engineer and Arctic Program Director  
The Wilderness Society  
Anchorage, Alaska  
[lois\\_epstein@tws.org](mailto:lois_epstein@tws.org)

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Without an adequate legislative and regulatory framework, effective enforcement, and public transparency, the federal Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE) is a toothless overseer of offshore oil and gas operations and cannot prevent major oil spills. Effective oversight of the offshore industry is an ongoing and iterative task and at no point will all needed measures be in place. Nevertheless, currently there are many well-recognized deficiencies in the industry's oversight that need to be addressed *before* the public would feel confident in the safety of offshore operations. Because significant regulatory changes require research and public notice and comment, it likely will take several years – perhaps as long as 5-10 – until necessary changes are fully enacted. Additionally, it could take years before BOEMRE has sufficient numbers of trained staff. In this section, we discuss the key upgrades needed to increase offshore safety and environmental protection..

As background, one month after the *Deepwater Horizon* spill the Department of the Interior issued non-legislative, technical recommendations to the President on changes needed in the near- and long-term in a report entitled *Increased Safety Measures for Energy Development on the Outer Continental Shelf*<sup>1</sup> (Interior report). These recommendations – some of which have been implemented - are only a starting point, however. Since then, the National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling (Oil Spill Commission) and the BOEMRE/U.S. Coast Guard Joint Investigation Team have made numerous additional recommendations for oversight, and it's likely that additional investigations (e.g., the Chemical Safety and Hazard Investigation Board and the National Academy of Engineering analyses) and other research following the spill will result in more recommendations.

### Legislative Upgrades

The Oil Spill Commission recommendations included the following key statutory upgrades. The Commission recommended that Congress:

- “[P]rovide a mechanism...for adequate, stable, and secure funding to the key regulatory agencies – Interior, Coast Guard, and NOAA.”<sup>2</sup>

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<sup>1</sup> Department of the Interior, *Increased Safety Measures for Energy Development on the Outer Continental Shelf* (May 27, 2010), *available at* <http://www.doi.gov/deepwaterhorizon/loader.cfm?csModule=security/getfile&PageID=33598>.

<sup>2</sup> National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling, *Deep Water: The Gulf Oil Disaster and the Future of Offshore Drilling, Recommendations at 8* (January 2011), *available at* <http://www.oilspillcommission.gov/final-report>.

- Develop a new statute for offshore safety-related responsibilities.<sup>3</sup>
- “Significantly increase the liability cap and financial responsibility requirements for offshore facilities.”<sup>4</sup>
- “Provide protection for “whistleblowers” who notify authorities about lapses in safety...[by amending] the Outer Continental Shelf Lands Act or specific statutes to provide the same whistleblower protection that workers are guaranteed in other comparable settings.”<sup>5</sup>

These common-sense legislative recommendations need to be implemented to ensure that: 1) there are sufficient oversight personnel for offshore operations, 2) there’s a clear mandate to ensure safety and environmental protection and not to just promote drilling among oversight staff, 3) offshore operators have access to the funds needed for cleanup and compensation should a major spill occur, and 4) those who choose to be whistleblowers would not place their livelihoods in jeopardy to ensure the safety of offshore operations.

### Regulatory Upgrades

Since the *Deepwater Horizon* spill, BOEMRE has finalized two key rulemakings and several important Notices to Lessees,<sup>6</sup> which are not considered as enforceable as rulemakings. One of the rulemakings addresses several aspects of drilling safety and the other requires offshore operators to develop and maintain a Safety and Environmental Management System. While these rules are needed, they do not represent all the regulatory reforms recommended in the Interior report and by the National Commission on the *Deepwater Horizon* Oil Spill. These two reports include the following key regulatory upgrades that have not yet been implemented by BOEMRE:

- Require blowout preventer (BOP) equipment certification and initiate other, needed BOP upgrade rulemakings;<sup>7</sup>
- Institute personnel training requirements for safety training including for casing and cementing operations.<sup>8</sup> While not in the Interior report, The Wilderness Society urges BOEMRE to enact related operator qualification requirements, as is the case for pipeline safety (see 49 CFR 195, Subpart G – Qualification of Pipeline Personnel);
- Require that all offshore operators utilize state-of-the-art casing and cementing practices;<sup>9</sup>
- “Engage a competent, independent engineering consultant to review existing regulations for adequacy and “fit for purpose” as a first step toward benchmarking U.S. regulations against the highest international standards. Following this review, develop and implement

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<sup>3</sup> *Ibid.* at 9.

<sup>4</sup> *Ibid.* at 45-47.

<sup>5</sup> *Ibid.* at 6.

<sup>6</sup> See Offshore Drilling Safety Reforms at <http://www.boemre.gov/ReorganizationRegulatoryReform.htm>.

<sup>7</sup> Department of the Interior, Increased Safety Measures for Energy Development on the Outer Continental Shelf, at 19-22.

<sup>8</sup> *Id.* at 24.

<sup>9</sup> *Id.* at 23-25.

regulations for safety and environmental protection that are at least as rigorous as the regulations in peer-oil-producing nations.”<sup>10</sup>

- “Require operators to develop a comprehensive “safety case” as part of their exploration and production plans”<sup>11</sup> for certain high-risk areas including the Arctic.
- “Develop more detailed requirements for incident reporting and data concerning offshore incidents and “near misses”...such reporting should be publicly available...”<sup>12</sup>

The recently-issued BOEMRE/U.S. Coast Guard Joint Investigation Team Report of Investigation on the *Deepwater Horizon* event contains extensive regulatory and other types of technical recommendations for BOEMRE to implement. The report states that -

MMS regulations in place at the time of the blowout could be enhanced in a number of areas, including: cementing procedures and testing; BOP configuration and testing; well integrity testing; and other drilling operations. In addition, the [BOEMRE panel of investigators or the Panel] found that there were a number of ways in which the MMS drilling inspections program could be improved. For example, the Panel concluded that drilling inspections should evaluate emergency disconnect systems and/or other BOP stack secondary system functions.<sup>13</sup>

The Report of Investigation includes additional, specific recommendations including improved definitions in Notices to Lessees and in regulations, enhanced incident and well activity reporting, better interpretation guidance on negative test procedures, and needed research.<sup>14</sup>

### **Enforcement and Transparency Upgrades**

Last, enforcement by government and governmental accountability and transparency are essential to ensure good performance by operators and regulatory agencies, respectively. Effective enforcement by government ought to focus on the most serious violations of requirements, ongoing violations even if they are of minor requirements, and violations that result in harm to human health and the environment. Fair, clear, consistent and attention-getting enforcement is critical to a well-functioning regulatory system

To ensure good performance by government, BOEMRE will need to post on the web in a sortable form information on its inspections and enforcement actions. And building on the Oil Spill Commission’s incident reporting recommendation listed above, BOEMRE needs to post extensive user-friendly and sortable information on releases and their causes.

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<sup>10</sup> National Commission on the *Deepwater Horizon* Oil Spill, *Deep Water: The Gulf Oil Disaster and the Future of Offshore Drilling, Recommendations*, at 5.

<sup>11</sup> *Id.* at 5.

<sup>12</sup> *Id.* at 6.

<sup>13</sup> The Bureau of Ocean Energy Management, Regulation and Enforcement report regarding the causes of the April 20, 2010 Macondo well blowout, Executive Summary at 7 (September 14, 2011), *available at* <http://www.boemre.gov/pdfs/maps/DWHFINAL.pdf>.

<sup>14</sup> *Id.* at 202-210.