



**U.S. House of Representatives**  
**Committee on Transportation and Infrastructure**  
**Washington, DC 20515**

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February 9, 2011

**MEMORANDUM**

**TO:** Members, Subcommittee on Coast Guard and Maritime Transportation  
Members, Subcommittee on Water Resources and the Environment

**FROM:** Staff, Subcommittees on Coast Guard and Maritime Transportation and  
Water Resources and Environment

**RE:** Hearing on “Improving Oil Spill Prevention and Response, Restoring Jobs, and  
Ensuring Our Energy Security: Recommendations from the National  
Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling”.  
FRIDAY, FEBRUARY 11, 2011  
10:00 a.m., 2167 RAYBURN HOUSE OFFICE BUILDING

**PURPOSE**

The Subcommittee on Coast Guard and Maritime Transportation and the Subcommittee on Water Resources and Environment will hold a joint hearing to examine the recommendations from the members of National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling (Commission) to improve oil spill prevention and response. The Subcommittees will also receive testimony from the spill’s former National Incident Commander, United States Coast Guard Admiral Thad Allen (Ret.) on lessons learned from the spill. The prevention of, and response to, oil spills is governed by the Oil Pollution Act of 1990 and the Federal Water Pollution Control Act of 1972 (commonly known as the Clean Water Act).

## BACKGROUND

### Explosion and Sinking of the DEEPWATER HORIZON

The DEEPWATER HORIZON was a dynamically positioned mobile offshore drilling unit (MODU) owned by Transocean Ltd. Transocean was under contract with British Petroleum (BP) to use the DEEPWATER HORIZON to drill an oil and natural gas well at the Macondo exploration site in an area of the Gulf of Mexico known as the Mississippi Canyon Block 252 (MC 252). BP purchased the lease rights to MC 252 in 2008 for \$34 million and became the legal “operator” for any activities on that block. For the purposes of the Macondo site, BP partnered with two other companies, Anadarko Petroleum Corporation and MOEX Offshore to drill the well. BP owns a 35 percent share of the well, followed by 25 percent for Anadarko Petroleum, and 10 percent for MOEX Offshore.

On the evening of April 20, 2010, workers aboard the DEEPWATER HORIZON had completed the process of drilling the well and were conducting “temporary abandonment” procedures. The temporary abandonment process involves stabilizing the pressure in the drilled well, testing the integrity of the well and its casement, installing a cement plug, and in the case of the Macondo well, setting a lockdown sleeve over the well head. Once this process is complete, the MODU is free to remove its blow out preventer (BOP) and detach from the well. Later, a production rig is moved into place over the well to begin the extraction of oil and natural gas.

According to the Commission’s findings, as workers were conducting integrity tests, pressure readings indicated problems with the well. At approximately 9:40 p.m. drilling mud began spewing into the DEEPWATER HORIZON followed shortly thereafter by natural gas. Efforts to close off the well by activating the rams and annular preventers on the BOP failed. At 9:49 p.m. the first explosion occurred. Eleven workers who were aboard the MODU at the time of the blowout and explosion were killed.

The United States Coast Guard (USCG) and Department of Interior’s Bureau of Ocean Energy Management and Regulatory Enforcement (BOEMRE) are currently conducting a joint investigation into the causes of the blowout, explosion and subsequent sinking of the DEEPWATER HORIZON. The results of the joint investigation are expected to be released by April 2011.

### BP Response and Containment Efforts

On April 22, 2010, the DEEPWATER HORIZON sank and oil and natural gas began spewing from the uncontained well. The evening before, BP began efforts to contain the well by trying to activate the rams, annular preventers and deadman switch on the BOP using remotely operated underwater vehicles. For reasons that are still under investigation, these efforts failed.

Over the course of the next 87 days, BP followed these efforts with attempts to place a containment dome over the leaking riser pipe, inserting a tube into the riser pipe to collect some of the oil, pumping heavy drilling mud and other material into the BOP in a “top kill” procedure, and placing a “top hat” over the riser pipe. Each of these efforts failed to completely cut off the flow of oil into the Gulf.

On July 15, 2010, BP was successful in bolting a capping stack to the top of the BOP which finally shut in the well. The well was finally “killed” on September 10, 2010 when a separately drilled relief well was complete and the Macondo well was filled and sealed with cement.

In addition to the subsurface efforts to shut in the well, BP initiated a “vessel of opportunity” program and hired local fishermen and other workers displaced by the oil spill to aide in the skimming and clean up process. The program augmented the response efforts of the BP contracted Oil Spill Response Organizations, Federal, state, and local government employees and contractors. More than 5,000 vessels were contracted to participate in the vessel of opportunity program.

The Federal government estimates a total of 4.9 million barrels of oil were released into the Gulf of Mexico during the 87 days the well went uncontained (a barrel of oil is equivalent to 42 U.S. gallons).

### **Federal Government Response**

#### **United States Coast Guard:**

The Coast Guard was the first federal entity to respond to the DEEPWATER HORIZON incident and subsequent spill. In total, the Coast Guard deployed over 70 aircraft, 46 cutters, and 37 boats to respond the spill. Dozens of vessels and aircraft were “surged” to the Gulf from other areas of the country to augment the Service’s assets stationed in the area. In addition, over 7,500 Coast Guard personnel were deployed to support operations. This includes two separate call ups of Coast Guard Reservists.

After initially focusing efforts on the search and rescue of survivors of the explosion and sinking of the DEEPWATER HORIZON, the Coast Guard began managing the spill response. The Coast Guard primarily focused on managing surface clean up operations: directing the deployment of containment boom, managing the safety and operations of oil skimming vessels, conducting controlled burns of collected oil, reviewing the safety and efficacy of new response technology, and maintaining a safe operating environment in the spill area.

Under the National Contingency Plan (NCP), the Coast Guard is charged with directing the response efforts for spills occurring in coastal waters (including all waters of the United States subject to the tide, the Great Lakes, specified ports and harbors, and the waters of the exclusive economic zone). The Coast Guard was designated the Federal On-Scene Coordinator (FOSC) for the Gulf oil spill. The FOSC is a Coast Guard officer

invested with the authority to direct and coordinate the response efforts of the unified command (the federal and state agencies and the responsible party). On April 21, 2010, Rear Admiral Mary Landry was named the first FOSC for the DEEPWATER HORIZON oil spill. On May 1, as the size and complexity of the spill grew, the spill was designated a Spill of National Significance (SONS) and Admiral Thad Allen was named National Incident Commander. Admiral Allen had ultimate authority over the response effort of Federal and state government, as well as the response and well containment activities of BP.

**Environmental Protection Agency (EPA):**

While the U.S. Environmental Protection Agency (EPA) is responsible for directing the response efforts for spills occurring in inland waters and onto land, the Coast Guard has the lead for the BP spill, since the spill had occurred offshore. Therefore, EPA's role was one of providing support to the Coast Guard-led Federal response to the spill.

EPA's response efforts included monitoring air, water, sediment, and waste generated by the cleanup operations. EPA collected samples along the shoreline and beyond for chemicals related to oil and dispersants in the air, water, and sediment; supported and advised Coast Guard efforts to clean the reclaimed oil and waste from the shoreline; and monitored the effects of dispersants in the subsurface environment. EPA also approved waste management plans and oversaw the disposal of solid wastes, recovered oil, oily fluids, oiled debris, and other wastes and recyclable materials collected during the response. EPA lists, on the National Contingency Plan (NCP) Product Schedule, all dispersants and other chemicals that have been authorized for use in responding to an oil spill, and approved the dispersants used in responding to the BP oil spill.

EPA's monitoring and sampling activities provided the Coast Guard, states, and local government with information about the potential impacts of the oil spill and response on human health of residents and aquatic life along the shoreline. The data EPA collected also was used to inform decisions by the Coast Guard, Food and Drug Administration (FDA), National Oceanic and Atmospheric Administration (NOAA), and state and local agencies, among others, about seafood, habitat, and beach closure issues.

**Minerals Management Service (MMS) (now Bureau of Ocean Energy Management Regulation and Enforcement (BOEMRE)):**

MMS's primary role is the issuance of drilling permits to offshore rigs operating in the Outer Continental Shelf (OCS) and the maintenance of safety regulations through inspections. As such, the MMS is not directly involved in oil spill cleanup, but rather in future rulemaking and other efforts to ensure that an oil spill in the OCS does not happen again. However, in response to the DEEPWATER HORIZON incident, MMS was the primary source of government oversight and expertise in controlling the spill at the well head. MMS is the agency with the best understanding of deepwater drilling technology including the BOP functions. Thus, MMS focused on analyzing and minimizing the risks associated with BP's early efforts to contain the well.

### **National Oceanic and Atmospheric Administration (NOAA):**

NOAA had several roles in response to the DEEPWATER HORIZON incident. The agency projected the trajectory and size of the oil spill on a day-to-day basis, providing satellite maps that detailed the location of the oil. NOAA's Office of Response and Restoration provided daily estimates on damage and potential damage to wildlife and natural resources. NOAA's National Marine Fisheries Service determined which areas of the Gulf needed to be closed to fishing. Finally, the National Weather Service provided daily weather updates to all organizations involved with the oil spill cleanup. NOAA is currently one of the Federal government agencies designated as a "Trustee" and charged with developing a natural resources damages restoration plan.

### **Fish & Wildlife Service (FWS):**

The FWS deployed hundreds of personnel to the Gulf during the spill to assess the damage to critical habitat, including the 36 National Wildlife Refuges along the Gulf coast. The FWS also oversaw the recovery and rehabilitation of oiled or injured wildlife. FWS is currently one of the Federal government agencies designated as a "Trustee" and charged with developing a natural resources damages restoration plan.

### **United States Geological Survey (USGS):**

The USGS provided scientists that assisted with NOAA's primary role of charting the progress of the oil spill. Specifically, USGS scientists were responsible for developing maps that interfaced the NOAA oil spill projections with maps showing Department of Interior lands, thus allowing the best estimation of the effects of the oil on wildlife and natural resources along the Gulf Coast. USGS scientists also conducted tests to determine the effect of the tides on the advancement of oil over barrier islands and onto Gulf Coast beaches.

### **Department of Energy (DoE):**

The DoE has no formal role in the Federal government's oil spill response system. However, DoE Secretary Chu was directed by the President to lead a team of scientists to work with BP on source control. Once established into the command structure, the DoE's advisory team reviewed efficacy of BP's source control efforts and advised the NIC on whether the government should authorize BP to move forward with source control efforts. The advisory team also helped the government develop a flow rate and spill volume estimate.

## **Federal Oil Spill Laws and Regulations**

### **Clean Water Act**

The Federal Water Pollution Control Act (commonly known as the "Clean Water Act" or "CWA") is the principal Federal statute for protecting navigable waters and adjoining shorelines from pollution. Since its enactment, the CWA has formed the foundation for regulations detailing specific requirements for pollution prevention and response measures. Section 311 of the CWA addresses pollution from oil and hazardous

substance releases, providing EPA and the U.S. Coast Guard with the authority to establish a program for preventing, preparing for, and responding to oil spills that occur in navigable waters of the United States. EPA implements provisions of the Clean Water Act through a variety of regulations, including the National Contingency Plan and the Oil Pollution Prevention regulations.

**1. Prohibition of Discharges:** Clean Water Act Section 311(b) prohibits the discharge of oil or hazardous substances into the navigable waters of the United States and adjoining shorelines, except where permitted under international protocol or under conditions that the President determines not to be harmful. EPA issued regulations as to the quantities of oil and hazardous substances that may be harmful to the public health or welfare or the environment.

**2. Penalties:** Section 311(b) authorizes EPA to assess Class I or Class II administrative penalties for violations of Section 311. A Class I penalty may be assessed in an amount of up to \$10,000 per violation, not to exceed \$25,000. A Class II penalty may be assessed in an amount of up to \$10,000 per day of violation, not to exceed \$125,000. Each violation may be tabulated on a daily basis.

Judicial sanctions also may be assessed. A person who violates Section 311 of the Act is subject to a civil penalty of up to \$25,000 per day of violation, or up to \$1,000 per barrel of oil discharged. In instances of gross negligence or willful misconduct, these penalties increase to a \$100,000 minimum and a maximum of \$3,000 per barrel discharged.

Section 309(c) authorizes criminal penalties for knowing or negligent violations of Section 311. Criminal penalties may include fines of between \$2,500 - \$25,000 per day of violation, or by imprisonment for up to one year, or both.

(The forgoing statutory penalty amounts have increased since enactment to account for inflation, pursuant to the Debt Collection Improvement Act of 1996.)

Any penalties paid pursuant to Section 311 of the Clean Water Act, or criminal penalties paid pursuant to Section 309(c) of the Clean Water Act as a result of violations of Section 311, are to be paid into the Oil Spill Liability Trust Fund, and not into the general Treasury. (*See* 26 U.S.C. §9509(b)(8).)

The issues of how many barrels of oil were discharged during the BP DEEPWATER HORIZON oil spill, and whether the discharge was the result of gross negligence or willful misconduct, will be important in the determination of possible penalties for the discharge.

**3. Federal Removal Authority:** Section 311(c) requires the President to institute means for the removal of an oil discharge and mitigation or prevention of the threat of a discharge (a) into the navigable water of the U.S. or adjoining shorelines; (b) into or on the waters of the exclusive economic zone; or (c) that may affect natural

resources of the U.S. In doing so, the President has the authority to make any arrangements for removal or prevention, direct removal actions, and remove or destroy a vessel releasing or that has the threat of releasing. The President also has the authority to direct all Federal, state, and private actions to remove a discharge or mitigate or prevent the threat of a discharge from onshore or offshore facilities which is determined to be a substantial threat to the public health or welfare of the United States.

Under Section 311(d), the President is required to prepare and publish a National Contingency Plan (NCP) for the containment, dispersal, and removal of oil and hazardous substances discharged into jurisdictional waters. The National Contingency Plan is published at 40 C.F.R. Part 300. The NCP places responsibility for command and control in managing serious disaster response with the Federal government and not a private company. The NCP played a major role in the Federally-coordinated response to the BP oil spill.

**4. National Response System:** Under Section 311(j), the President is required to establish methods and procedures for the removal of discharged oil and hazardous substances as part of a National Response System, and is authorized to issue regulations establishing procedures, methods, equipment, and other requirements to prevent discharges of oil from vessels and facilities. EPA and the Coast Guard have developed a series of regulations for facility and vessel response plans, and for preventing and responding to discharges. The President also is authorized to establish Area Committees. These committees are to prepare Area Contingency Plans that detail methods and procedures for responding to a worst case discharge, including the division of responsibilities among various authorities in a response. Location-specific area plans have been developed along the Gulf Coast.

### **Oil Pollution Act of 1990 (OPA)**

OPA was enacted in response to the EXXON VALDEZ oil spill in 1989. OPA consolidated existing laws and enacted new provisions to create a comprehensive Federal legal framework to govern liability and bolster the national response to oil spills. OPA ensured instant response to oil spills by designating either the Coast Guard for marine spills or EPA for land based spills has the authority to perform cleanup immediately using Federal resources, monitor the response efforts of the spiller (responsible party), or direct the responsible party's cleanup activities.

**1. Response Plans:** OPA requires U.S. tank vessels, offshore facilities, and certain onshore facilities prepare and submit oil spill response plans to the relevant federal agency. The Coast Guard is responsible for the review and approval of response plans from vessels. BOEMRE reviews and approves response plans from offshore facilities. In the case of MODUs like the DEEPWATER HORIZON, operators are required to file two response plans: one to the Coast Guard for when the MODU operates as a vessel, and one to BOEMRE for when the MODU acts as an offshore facility. In general, vessels and facilities are prohibited from handling, storing, or transporting oil if they do not have a plan approved by the appropriate agency. The plans require the owner

or operator of a vessel or facility to identify how it would respond to a worst-case scenario spill.

**2. Liability Limits:** Under OPA, responsible parties are liable for all cleanup costs incurred, not only by a government entity, but also by a private party. In addition to cleanup costs, responsible parties are liable for injuries to natural resources; loss of personal property; lost revenues, profits and earning capacity resulting from destruction of property or natural resource injury; and costs of providing extra public services during or after spill response. OPA provided limited defenses from liability: act of God, act of war, and act or omission of certain third parties.

Except for certain behavior, including acts of gross negligence or willful misconduct, OPA set liability limits for cleanup costs and other damages. However, OPA liability limits do not affect liabilities that may be owed under states laws. The current OPA liability limits are as follows:

|                       |  |
|-----------------------|--|
| Single-Hulled Vessels | \$3,200/gross ton                            |
| Double-Hulled Vessels | \$2,000/gross ton                            |
| Other Vessels         | \$950/ gross ton                             |
| Onshore Facility      | \$350 million                                |
| Deepwater Port        | \$350 million                                |
| Offshore Facility     | Total of all removal costs plus \$75 million |

MODUs, like the DEEPWATER HORIZON are first treated as tank vessels for its liability cap. If removal and damage costs exceed this liability cap, a MODU is deemed to be an offshore facility for the excess amount.

Under amendments to OPA made in 2006, the President is required to update liability limits every three years to reflect changes in the Consumer Price Index. In 2009, the Coast Guard updated the liability limits for vessels and deepwater ports. BOEMRE has yet to update the liability limits for offshore facilities.

In the case of the DEEPWATER HORIZON, BP is liable for all removal costs plus \$75 million. BP has publicly stated they will not exercise the \$75 million limit and will continue to pay “all legitimate claims”. The \$75 million cap would not apply if the responsible parties are found grossly negligent or have engaged in willful misconduct.

**3. Financial Responsibility:** OPA requires vessels and offshore facilities maintain evidence of financial responsibility (e.g., insurance). The Coast Guard implements the financial responsibility provisions for vessels; BOEMRE implements this requirement for offshore facilities.

In the case of vessels and deepwater ports, current law requires responsible parties to demonstrate the sufficient financial responsibility to meet its liability limit. Responsible parties for offshore facilities in Federal waters must demonstrate \$35 million in financial responsibility (\$10 million for facilities in state waters), unless the President determines a greater amount (not to exceed \$150 million) is justified based on the volume of oil that could be released in a worst case spill.

Responsible parties are able to demonstrate financial responsibility through the purchase of insurance, surety bond, letter of credit or self insurance. In the case of the DEEPWATER HORIZON incident, BP was self-insured for \$150 million.

**4. Oil Spill Liability Trust Fund (OSLTF):** Congress first authorized the use of the OSTLF in OPA, and in complimentary legislation enacted a barrel tax on the oil industry to capitalize the fund. Currently, the OSTLF is funded through an industry paid 8 cent per-barrel tax which is scheduled to rise to 9 cents per-barrel in 2017 before expiring at the end of 2017. The fund currently has a balance of approximately \$1.7 billion.

The OSTLF is authorized to provide reimbursement for the following activities:

- payment of costs for responding to and removing oil spills;
- payment of the costs incurred by the federal and state trustees of natural resources for assessing the impacts to natural resources caused by an oil spill, and developing and implementing the plans to restore or replace the injured natural resources;
- payment of individual claims for uncompensated removal costs, and for uncompensated damages (e.g., financial losses of fishermen, hotels, and beachfront businesses);
- payment for the net loss of government revenue, and for increased public services by a state or its political subdivisions; and
- payment of certain Federal administrative and operational costs, including Coast Guard oil spill research and development and operating expenses.

Under the OSLTF claims process, individuals seeking reimbursement for eligible costs must first attempt reimbursement from the responsible party. If the responsible party refuses to pay or fails to provide sufficient payment within 90 days, individuals may seek reimbursement from the Coast Guard's National Pollution Funds Center (NPFC) which administers the OSLTF.

In the case of the DEEPWATER HORIZON incident, BP established a \$20 billion escrow fund to pay claims arising from the oil spill. President Obama named Kenneth Feinberg as the fund's administrator. As of February 1, 2011, BP has paid more than 250,000 claims totaling more than \$3.3 billion. Individuals who believe they are subject to reimbursement from the OSLTF due to the failure of BP to pay or provide sufficient payment may apply to the OSLTF for reimbursement. However, they may not

receive OSLTF reimbursement for damages already compensated by the responsible party. As of February 1, 2011, NPFC has 307 claims pending from individuals.

Current law limits the per incident exposure to the fund to \$1 billion which includes no more than \$500 million for natural resource damages. Reimbursements of expenses paid out of the OSLTF by the responsible party are not credited against the \$1 billion cap. As a result of the DEEPWATER HORIZON incident, the Coast Guard has paid approximately \$685 million in claims out of the OSLTF to date which count against the cap. The Coast Guard anticipates it may reach the \$1 billion cap in FY2011.

Finally, OPA authorizes the Coast Guard to spend up to \$50 million annually from the OSLTF to pay for response costs and claims arising from a spill without seeking an appropriation from Congress. The Coast Guard may seek one additional \$100 million advancement from the OSLTF after providing notification to Congress. In the case of the DEEPWATER HORIZON incident, the Coast Guard approached its \$150 expenditure limit by June 2010. On June 15, 2010, S. 3473 was signed into law (P.L. 111-191) which provided authority for the Coast Guard to seek unlimited additional \$100 million advancements from the fund to pay for costs associated with the DEEPWATER HORIZON incident. To date, the Coast Guard has used the authority six times.

**5. Natural Resource Damages:** Under OPA's Natural Resources Damage Assessment (NRDA) process, Federal and state government officials known as "Trustees" survey and collect data on damages to natural resources occurring as a result of an oil spill. The Trustees develop a plan to restore, replace or rehabilitate the damaged natural resources. Under OPA, responsible parties are required to pay the costs of natural resource damages to the extent they do not exceed responsible parties' limit on liability. The responsible parties may contest the Trustees' plan in court. If a responsible party exercises its liability limit, or otherwise fails to pay for the cost of NRDA process, the Trustees may seek reimbursement from the OSLTF.

In the case of the DEEPWATER HORIZON incident, the Trustees are currently in the preassessment phase of the NRDA process and are expected to begin the restoration planning process in FY2011. BP has publicly committed to paying natural resource damages.

### **National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling**

#### **Commission Background:**

On May 22, 2010, the President signed an executive order creating the National Commission on BP Deepwater Horizon Oil Spill and Offshore Drilling. The bipartisan Commission was charged with examining the relevant facts and circumstances concerning the root causes of the Deepwater Horizon oil disaster, developing options for guarding against oil spills associated with offshore drilling, as well as making recommendations for changes to Federal laws, regulations and industry practices to

improve the safety of the offshore drilling industry. On January 11, 2011, the Commission presented its report to the President.

The Commission is co-chaired by former Senator Bob Graham (D-FL) and former Environmental Protection Administration Administrator William K. Reilly. Other members of the Commission include Frances Beinecke, President of the Natural Resources Defense Council; Donald Boesch, President of the University of Maryland Center for Environmental Science; Terry Garcia, Executive Vice President for Mission Programs for the National Geographic Society; Dr. Cherry Murray, Dean of the Harvard School of Engineering and Applied Sciences; and Fran Ulmer, Chancellor of the University of Alaska Anchorage.

### **Commission Recommendations:**

The Commission made several recommendations to change offshore oil drilling industry practices and revise Federal government oversight of the industry through amendments to existing laws and regulations. The following recommendations fall within the jurisdiction of the Transportation and Infrastructure Committee:

- 1. Congress should create an independent agency within the Department of Interior with enforcement authority to oversee all aspects of offshore drilling safety....:*

The Commission recommends consolidating the responsibility for offshore drilling safety, as well as spill prevention and response into one agency housed at the Department of Interior. Under current law, the Coast Guard is responsible for inspecting and ensuring compliance with regulations governing the structural integrity and safety of life at sea systems aboard vessels and MODUs. The Coast Guard also reviews and approves oil spill response plans for vessels and MODUs operating as vessels. Finally, the Coast Guard is the lead federal agency in charge of oil spill response. BOEMRE is responsible for conducting inspections of the drilling apparatus and related components aboard MODUs and offshore facilities. BOEMRE also reviews and approves oil spill response plans for offshore facilities and MODUs operating as offshore facilities. The Coast Guard has an MOU with BOEMRE, enabling BOEMRE inspectors to check certain life saving systems aboard offshore facilities when conducting its regular inspections. The Commission does not specify which Coast Guard functions should be transferred to this proposed new agency.

- 2. Congress should enact legislation creating a mechanism for offshore oil and gas operators to provide ongoing and regular funding of the agencies regulating offshore oil and gas development:*

The Commission recommends increasing current inspection fees on industry or imposing new fees or lease provisions to raise revenue which would be used by

regulating agencies, including the Coast Guard to ensure the safety of the offshore drilling industry. According to the Commission, current inspection fees paid by industry offset approximately 3 percent of BOEMRE's annual budget. None of these fees are currently available directly to the Coast Guard to conduct its regulatory activities.

3. *Congress should significantly increase the liability cap and financial responsibility requirements for offshore facilities:*

The Commission finds the liability cap for offshore facilities (the total of all removal costs plus \$75 million), as well as the current levels of financial responsibility (\$35 to \$150 million) are inadequate. While the Commission recommends a "significant" increase in both, it does not propose a specific level for either. The Commission does encourage Congress to consider authorizing the use of mutual insurance pools when increasing financial responsibility levels to "keep competent independents in the market".

4. *Congress should increase the limit on per-incident payouts from the Oil Spill Liability Trust Fund:*

In order to avoid a situation where the taxpayer would have to foot the bill of the response to an unprecedented oil spill like the DEEPWATER HORIZON, the Commission recommends raising the current \$1 billion per incident cap on the payment of response costs from the industry funded OSLTF. The Commission does not propose a specific level of increase.

5. *Congress should dedicate 80 percent of the Clean Water Act penalties to long-term restoration of the Gulf of Mexico:*

The Commission contends that dedicated, sustained funding is necessary to accomplish long-term Gulf of Mexico ecosystem restoration after the oil spill. Therefore, the Commission recommends directing additional funds to the Gulf region to support a region-wide restoration strategy by dedicating, for that purpose, 80 percent of Clean Water Act penalties that may be collected from responsible parties.

Any penalties paid pursuant to Section 311 of the Clean Water Act, or criminal penalties paid pursuant to Section 309(c) of the Clean Water Act as a result of violations of Section 311, are to be paid into the Oil Spill Liability Trust Fund, and not into the general Treasury. (*See* 26 U.S.C. §9509(b)(8).) The net effect of this Commission recommendation would be to deprive the Oil Spill Liability Trust Fund of this revenue to respond to oil spills.

The Commission also recommends that, should Clean Water Act penalties not be redirected toward Gulf ecosystem restoration, Congress should consider other mechanisms for a dedicated funding stream not subject to annual appropriations.

6. *EPA and Coast Guard should establish distinct plans and procedures for responding to a "Spill of National Significance" (SONS):*

The National Contingency Plan defines a SONS as a "spill that due to its severity, size, location, actual or potential impact on the public health and welfare or the environment, or the necessary response effort, is so complex that it requires extraordinary coordination of federal, state, local, and responsible party resources to contain and clean up the discharge." It can be declared by the Commandant of the Coast Guard or the Administrator of the EPA. Under the NCP, the only additional authority provided under a SONS declaration is the creation of a National Incident Commander, whose duties appear to duplicate those of the Federal On-Scene Commander. The Commission recommends amending the NCP to better define roles and procedures when a SONS declaration is made.

7. *The Department of Interior should create a rigorous, transparent, and meaningful oil spill risk analysis and planning process for the development and implementation of better oil spill response:*

The Commission recommends implementing a new process for reviewing oil spill response plans for offshore facilities which include robust examination of source control measures. Currently BOEMRE is responsible for the review and approval of offshore facility oil spill response plans. The Commission recommends an interagency review process which includes the Coast Guard, EPA, and NOAA.

8. *EPA and the Coast Guard should bolster state and local involvement in oil spill contingency planning and training and create a mechanism for local involvement in spill planning and response similar to the Regional Citizens' Advisory Councils mandated by OPA:*

The Commission recommends the Coast Guard include representatives of local government in oil spill response planning and training activities, as well as establish liaisons between the Unified Command and local communities at the outset of a spill. Under the NCP, local government is already eligible to take part in these in spill training and response activities.

The Commission further recommends the establishment of citizen advisory councils similar to the Prince William Sound and Cook Inlet Citizens Council which was created by OPA in the wake of the EXXON VALDEZ spill. The Commission

recommends the oil industry fund the activities of the councils and the Coast Guard regularly consult with them on spill planning and response.

9. *Congress should provide mandatory funding for oil spill research and development and provide incentives for private sector research and development:*

Federal funding for oil spill research and development is discretionary (subject to annual appropriations) and is appropriated predominantly from the OSLTF. The Commission notes the level of funding for research has decreased from \$13.4 million in FY 1993 to approximately \$7.4 million in FY 2010. The Coast Guard spent approximately \$500,000 on oil spill related research and development in FY10 and the EPA spent approximately \$600,000. The remaining \$6.3 million was spent by BOEMRE to conduct joint research with industry on oil spill response and containment techniques and technology. The Commission recommends mandatory funding for oil spill research at a level equal or greater than the amount authorized by OPA (\$22 million annually).

The Commission also recommends the EPA revise its oiled-water discharge permitting regulations to allow more open water testing of oil spill response technology. It further recommends the Coast Guard update its Effective Daily Recovery Capacity regulations (baseline spilled oil recovery standards for response technology such as booms to meet) to promote research investment by industry. Finally, the Commission recommends incentivizing private oil spill research and development through public private partnerships and tax credits.

10. *The Coast Guard should issue guidance that offshore barrier berms and similar dredged material barriers generally will not be authorized as an oil spill response measure in the National Contingency Plan or any Area Contingency Plan:*

Offshore barrier berms were constructed off the shores of Louisiana in response to the BP oil spill. The Louisiana berms project was one of the most controversial response measures deployed. Many felt that the Louisiana berms project was expensive and not very effective. The Commission concluded more generally that offshore barrier berms do not constitute a viable spill response measure because of the time and cost of construction, and the highly variable and dynamic marine environment that limits effectiveness and poses the potential for negative environmental impacts resulting from dredging and filling.

The Commission recommends that offshore barrier berms and similar dredged material barriers generally should not be authorized as an oil spill response measure in the National Contingency Plan or any Area Contingency Plan.

*11. The National Response Team Should develop and maintain expertise within the Federal government to oversee source-control efforts:*

The National Response Team consists of 16 federal agencies with expertise in various aspects of emergency response to pollution incidents. It is co-chaired by the Coast Guard and EPA. The NRT is a planning, policy, and coordinating body; providing national level policy guidance prior to an incident and does not respond directly to an incident. The Commission found that, at the time of the well blowout, the Federal government had inadequate expertise and resources, and thus was unprepared, to oversee a deepwater source-control response and supervise BP's well-containment efforts. The Commission recommends EPA amend the NCP to boost the NRT's expertise in source-control technology and procedures, and to create a mechanism for involving outside experts in source control technology.

*12. The National Response Team should develop and maintain expertise in the federal government to obtain accurate estimates of flow rate or spill volume early in a source-control effort:*

The Commission noted that early flow rate estimates were highly variable and difficult to determine accurately, and concluded that the understated estimates of the amount of oil spilling from the well appear to have impeded planning for and analysis of source-control efforts. The Commission recommends EPA should amend the NCP to create a protocol for the government to obtain accurate estimates of flow rate or spill volume from the outset of a spill, and that this protocol should require the responsible party to provide the government with all data necessary to estimate flow rate or spill volume.

*13. EPA should update and review its dispersant testing protocols for product listing or pre-approval, and modify pre-approval process to include temporal duration, spatial reach, and volume of the spill:*

Considerable controversy arose during the BP oil spill response regarding the use of, and ingredients in, dispersants. The decision to use dispersants involves difficult tradeoffs: If dispersants are effective, less oil will reach shorelines and fragile marsh environments, but more dispersed oil will be spread throughout the water column. The Commission recommends that EPA update its dispersant testing protocols and require more comprehensive testing prior to listing or pre-approving dispersant products. The Commission also recommends that the Coast Guard and EPA, as co-chairs of the Regional Response Teams and leaders of the Area Contingency Plan drafting process, should modify preapprovals of dispersant use under the National Contingency Plan to establish procedures for further consultation based on the temporal duration, spatial reach, or volume of the spill and volume of dispersants that responders are seeking to apply. The Commission further recommends that EPA and NOAA should conduct and encourage further research on dispersants, including research on the impacts of high-

volume and subsea use of dispersants, the long-term fate and effects of dispersants and dispersed oil, and the development of less toxic dispersants.

*14. The Coast Guard should provide scientists with timely access to the response zone so that they can conduct independent scientific research during an oil spill response and long-term monitoring in the future:*

The Commission recommends a more rapid approval process for the Coast Guard to establish which would enable private scientists access to an oil spill zone to conduct research immediately after the spill.

### WITNESSES

The Subcommittees will hear testimony from the following witnesses:

- Dr. Donald F. Boesch  
Member, National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling
  
- Mr. Terry D. Garcia  
Member, National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling
  
- Admiral Thad Allen (Ret.)  
National Incident Commander  
BP DEEPWATER HORIZON Oil Spill