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Commissioner
National Commission on the BP Deepwater Horizon Oil Spill and the Future of Offshore
Drilling

Testimony on “DISCUSSION DRAFT LEGISLATION TO REORGANIZE THE INTERIOR
DEPARTMENT’S OFFSHORE ENERGY AGENCIES”
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Chairman Lamborn, Ranking Member Holt, and members of the Subcommittee, I am pleased to offer the perspectives of the National Commission on the BP Deepwater Horizon Oil Spill and the Future of Offshore Drilling on legislation to reorganize the Department of the Interior’s offshore energy agencies. I served as one of the seven members of this Commission that delivered its report to the President, Congress and the American people on January 11 of this year. In my regular employ, I am the President of the University of Maryland Center for Environmental Science, but I brought to my service on the Commission previous experience with offshore oil and gas exploration and production issues in the Gulf of Mexico.

As I know you are aware, the Commission’s report contains numerous recommendations for improving the safety of offshore operations, safeguarding the environment, strengthening oil spill response, advancing well containment capabilities, overcoming the impacts of the spill and restoring the Gulf, ensuring financial responsibility, and moving to frontier areas. Among those recommendations are recommendations for promoting congressional engagement to ensure responsible offshore drilling. In that light, the former Commissioners are pleased that the Subcommittee is having this hearing to consider draft legislation that addresses important Commission recommendations regarding reorganization of the former Minerals Management Service (MMS).

Prior to the *Deepwater Horizon* accident MMS was not only responsible for offshore leasing and resource management; it also collected and disbursed revenues from offshore leasing, conducted environmental reviews, reviewed plans and issued permits, conducted audits and inspections, and enforced safety and environmental regulations. The Commission found that the mingling of distinct statutory responsibilities—each of which required different skill sets and fostered different institutional cultures—led inevitably to internal tensions and a confusion of goals that weakened the agency’s effectiveness and made it more susceptible to outside pressures.

At the core of this tension was a trade-off between, on the one hand, promoting the “expeditious and orderly development” of offshore resources, as mandated by the Outer Continental Lands Act of 1978, while also ensuring, on the other hand, that offshore development proceeded in a manner that protected human health, safety, and the environment. Demand for lease revenues and pressure to expand access and expedite permit approvals and other regulatory processes often combined to push MMS toward elevating the former goal over the latter. MMS lacked either a clearly articulated mission or adequate guidance for balancing its different missions leading to inefficient management and a tendency to defer to industry, which intervened to shorten time frames for plan and permit reviews, block rulemaking concerning royalty valuation, and delay and weaken rules aimed at improving the safety management of operations.

All of these problems were compounded by an outdated organizational structure, a chronic shortage of resources, a lack of sufficient technological expertise, and the inherent difficulty of coordinating effectively with all the other government agencies that had statutory responsibility for some aspect of offshore oil and gas activities. Besides MMS, other offices of the Department of the Interior as well as the Departments of Transportation, Commerce, Defense, and Homeland Security, and the Environmental Protection Agency (EPA) were involved in some aspect of the many faceted facilities and operations, from workers on production platforms to pipelines, helicopters, drilling rigs, and supply vessels.

In the weeks and months following the Macondo well failure the Secretary of the Interior renamed MMS the Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE) and he and the Bureau's new director began to implement a plan to split its responsibilities into three separate offices. The Office of Natural Resources Revenue was moved into the Department's Office of Policy and Budget and BOEMRE was organized into the Bureau of Ocean Energy Management (BOEM) and the separate Bureau of Safety and Environmental Management (BSEE). Our Commission, after considering the views of many parties, including those who argued that the safety and environmental management functions must be placed in a separate department of the government, concluded that they should remain in Interior, but be independent of BOEM and insulated from the pressures to increase production and maximize lease revenues by having this independent authority report to the Secretary.

The Commissioners are pleased to see that the discussion draft legislation by Chairman Hastings codifies in law the executive actions taken to segregate the revenue (Office of Natural Resources Revenue), ocean energy management (Bureau of Ocean Energy) and safety and environmental enforcement (Ocean Energy Safety Service) functions. However, the legislation would not take the step of separating the reporting line of the Ocean Energy Safety Service from the Assistant Secretary of Ocean Energy and Safety, leaving that office the functional equivalent of the present BOEMRE Director. We urge the authors and members of the subcommittee to consider that step in order to provide the level of insulation that the Commission felt necessary. We suggest consideration of our recommendation that the director of the Ocean Energy Safety Service be a qualified executive appointed by the President for a five-to-six year term and confirmed by the Senate. And, we further urge the members to consider that if we are to learn from the painful lesson of the Macondo blowout, environmental protection, as well as energy resources management, should be an important responsibility of the Bureau of Ocean Energy.

While the Commission did not consider the appropriate organizational level (e.g. Assistant Secretary versus Bureau director) within the Department of the Interior, it is not clear to us what is gained by elevation of the present BOEMRE to an Assistant Secretary level and the elevation of the Assistant Secretary for Land and Minerals to an Undersecretary for Energy, Lands and Minerals. These pairs of units seem functionally equivalent.

The former Commissioners are pleased to see the establishment of a National Offshore Energy Health and Safety Academy [Section 3 (d) (10)] and an Outer Continental Shelf Safety Advisory Board under the Federal Advisory Committee Act (Section 5). The advisory board seems similar to the Ocean Energy Safety Advisory Committee that has been established by the BOEMRE

Director under FACA. Perhaps some cross-comparison would help sharpen its organization and function.

The Oil Spill Commission made another recommendation that seems germane to the scope of the discussion draft legislation: providing appropriate resources for the reorganized programs. Mindful of the federal budget pressures, the Commission recommended that the budgets for these new offices as well as existing agencies come directly from fees paid by the offshore industry, akin to how fees charged to the telecommunications industry pay for the expenses of the Federal Communications Commission, which is essentially fully funded by such regulated industry payments. Under existing law, while the industry pays substantial amounts for leases and royalties to compensate the American public for the extraction of their resources, it pays modest inspection fees that contribute only about 3 percent of BOEMRE's annual budget. By our estimation the cost of essential management, including environmental assessments and regulatory functions, could be covered by fees that amount to a few cents per barrel of oil produced, scarcely enough to affect the price of oil on the world market or the price of gasoline at the pump.

Finally, while the proposed legislation is a positive first step, there are many other recommendations of the Oil Spill Commission that merit consideration of legislation by the Congress. These range from ensuring the statutory authority of the safety and environmental management program, to improving interagency oil spill prevention and response, and to environmental restoration. We urge the Natural Resources Committee and other committees with appropriate jurisdiction to keep the Commission's report on the top of the desk and firmly in mind in addressing these issues.