



**TESTIMONY OF CAPTAIN HUNG NGUYEN
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UNITED STATES COAST GUARD/BUREAU OF OCEAN ENERGY
MANAGEMENT, REGULATION AND ENFORCEMENT
JOINT INVESTIGATION**

“BOEMRE/U.S. COAST GUARD JOINT INVESTIGATION TEAM REPORT”

BEFORE THE HOUSE COMMITTEE ON NATURAL RESOURCES

OCTOBER 13, 2011

Good Morning Chairman Hastings, Ranking Member Markey, and distinguished members of the Committee. I am honored to appear before you today to discuss the Coast Guard’s contributions to the Deepwater Horizon Joint Investigation Team Report.

Immediately following the April 20, 2010 distress notification of an explosion and fire onboard the Mobile Offshore Drilling Unit *DEEPWATER HORIZON*, a coordinated preliminary marine casualty investigation was launched. Investigators from both the U.S. Coast Guard (USCG) and the Minerals Management Service (MMS) (predecessor to the Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE)) were dispatched by helicopter and ultimately boarded the Offshore Supply Vessel (OSV) *DAMON B. BANKSTON*, where they initiated interviews of the surviving crew and witnesses. The investigators also began gathering documentary and physical evidence.

On April 27, 2010, the Department of Homeland Security (DHS) and the Department of the Interior (DOI) determined that a joint investigation was the best strategy for determining the events, decisions, actions, and consequences of this marine casualty and entered into a Statement of Principles and Convening Order. The Convening Order stated that a Joint Investigation was to be conducted and Co-Chaired by equal representation from both the USCG and MMS. This endeavor was classified under 46 U.S.C. 6308 and the governing rules for both agencies and was defined as a Coast Guard Marine Board of Investigation within the meaning of 46 C.F.R. § 4.09 and a Panel Investigation within the meaning of 30 C.F.R. § 250.191.

The Commandant of the U.S. Coast Guard convenes a Marine Board of Investigation when necessary to promote safety at sea or when in the public interest. This formal process includes maintaining a record of the proceedings and the transcription of witness testimony. The Convening Order directed that the public hearing portions of the investigation follow the policies and procedures of a Marine Board of Investigation. Where the procedures of a Marine Board of Investigation differed from those of a Panel Investigation, the Convening Order further directed that Marine Board of Investigation procedures govern.

A Joint Investigation Team (JIT) was then formed and tasked with carrying out the investigation. The team used the combined investigative powers and authorities afforded to the USCG and MMS. Personnel from each agency were assigned to the JIT based on their background and experience in order to facilitate the most effective and efficient collection of evidence, to conduct public hearings and inquiries, and to coordinate forensic testing. Pursuant to 46 U.S.C. § 6304, the JIT held subpoena authority that was consistent with that of a U.S. district court in civil matters, and could administer oaths.

The agencies operated under the 2009 Memorandum of Agreement (MOA) that identifies responsibilities of the MMS and the USCG. The USCG and MMS entered this agreement under the authority of 14 U.S.C. § 141 – USCG Cooperation with other Agencies; 43 U.S.C. §§ 1347, 1348(a) – the Outer Continental Shelf Lands Act (OCSLA), as amended; 33 U.S.C. § 2712(a)(5)(A) – the Oil Pollution Act of 1990 (OPA); 43 U.S.C. §§ 1301-1315 – the Submerged Lands Act (SLA), as amended; and the Energy Policy Act of 2005, Pub L. 109-58, 119 Stat. 594 (codified in scattered sections of 7 U.S.C., 15 U.S.C., 16 U.S.C., 26 U.S.C., and 42 U.S.C.).

Additionally, the USCG and MMS had formerly signed a Memorandum of Understanding (MOU) to delineate inspection responsibilities between both agencies. The MOU is further broken down into five MOAs: OCS-01 Agency Responsibilities, OCS-02 Civil Penalties, OCS-03 Oil Discharge Planning, Preparedness and Response, OCS-04 Floating Offshore Facilities and OCS-05 Incident Investigations. OCS-01 established responsibilities for each agency and clarified overall responsibility where jurisdiction overlapped.

Under the MOAs, BOEMRE, as MMS's successor, is responsible for investigating incidents related to systems associated with exploration, drilling, completion, work over, production, pipeline and decommissioning operations for hydrocarbons and other minerals on the Outer Continental Shelf (OCS). The USCG is responsible for investigating marine casualties involving deaths, injuries, property/equipment loss, vessel safety systems, and environmental damage resulting from incidents aboard vessels subject to U.S. jurisdiction. The MOA assigns responsibility in joint investigations according to these responsibilities. Volume I of the JIT report addresses the areas of USCG responsibility and Volume II addresses the areas of BOEMRE responsibility.

The joint investigation was conducted under the April 27, 2010, Statement of Principles and Convening Order which ensured that the investigative process was rigorous, comprehensive, independent and transparent. The JIT was composed of four lead members and supporting technical staff from each agency. The JIT held seven public hearings governed by the policies and procedures for a Marine Board of Investigation contained in 46 C.F.R. § 4.09 and the USCG Marine Safety Manual, Volume V. The JIT recorded the testimony of more than 80 witnesses; conducted multiple interviews with more than 25 individuals; received, processed, and analyzed hundreds of thousands of pages of documents; and maintained custody of hundreds of pieces of physical evidence, ranging from small rock samples to the actual blowout preventer that had been in place at the Macondo wellhead. Taking into consideration their status as the Flag State, the Republic of Marshall Islands Maritime Administrator was accorded the rights of a Party in Interest in addition to certain procedural rights. The JIT also designated Parties in Interest, who were afforded their statutory rights specified in 46 U.S.C. § 6303. Those

rights are to: (1) be represented by counsel; (2) cross-examine witnesses; (3) introduce evidence; and, (4) ask the Board to call witnesses on their behalf.

On April 22, 2011, the USCG members of the JIT submitted Volume I of their report of investigation to the Commandant, USCG for their comments on the findings, conclusions and action on the JIT's safety recommendations. Additionally, Volume I of the report was disseminated to the Next of Kin of those lost in the marine casualty, members of Congress, all Parties in Interest, and the general public via the internet on or before that date.

As prescribed by Coast Guard policy, Volume I, which is the Coast Guard portion of the investigation, was submitted to the Commandant for review, endorsement, and determination of Final Action. The Commandant took Final Action on Volume I on September 9, 2011. Also on September 9, 2011, the Commandant and Director Bromwich of BOEMRE signed a joint cover memo on the Joint Investigation Team Report of Investigation. Volume I, as accepted by the Commandant's Final Action, and Volume II together provide a comprehensive assessment of the incident and comprise the completed joint report of investigation.

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