

**Samuel A. Giberga
Senior Vice President and General Counsel
Hornbeck Offshore Services, Inc.**

**Natural Resources Committee
United States House of Representatives**

**OBAMA ADMINISTRATION'S
DE FACTO MORATORIUM IN THE GULF OF MEXICO:
COMMUNITY AND ECONOMIC IMPACTS**

March 16, 2011

Mr. Chairman and Members of the Committee:

As the Senior Vice President and General Counsel of Hornbeck Offshore Services, Inc. (Hornbeck), and on behalf of the member companies of the Offshore Marine Service Association (OMSA), I appreciate the opportunity you have provided today to address the devastating short and long-term impacts resulting from the decisions made by the Obama Administration to shut down oil and gas production activities in the Gulf of Mexico.

Mr. Chairman, on behalf of the employees of my company and thousands of others who make their living in the offshore oil and gas industry, I am simply here to ask for your help. We have fought this Administration in the Federal courts. We have fought this Administration in Congress. We have fought this Administration in the media. And, yet as we sit here today, in defiance of Federal court orders and repeated bipartisan requests from Congress, this Administration continues to pursue a destructive policy – a policy that has been struck down by a Federal court and has led to the Department of the Interior being held in contempt. Their strategy is cynical, but so far, amazingly successful. Secretary of the Interior Ken Salazar tells your Committee that he is in favor of a “robust” oil and gas industry in this country – but then aggressively blocks the issuance of drilling permits. Secretary Salazar tells your Committee that drilling rigs are not leaving the Gulf of Mexico – but at least 12 rigs have left and more are expected to follow, and one drilling company has been forced into bankruptcy. Secretary Salazar tells your Committee that oil and gas production in the Gulf of Mexico is at an all-time high – but the fact is that, as a result of Administration policies, production in the Gulf has fallen by over 300,000 barrels per day. So, for public consumption, this Administration paints a rosy scenario and hopes that nobody will take notice that an entire industry is being dismantled, rig by rig, vessel by vessel, employee by employee.

Mr. Chairman, I can assure you that we have noticed. And, we need your help before it is too late. We need your help to make sure the American people understand the outrageous and illegal behavior of this Administration as it pursues an extreme philosophy despite the country’s need for domestic oil and gas resources. We need your help to make the Administration realize that the oil and gas resources in the Gulf of Mexico are the real strategic petroleum reserve of our Nation. We need your help to take whatever steps are necessary to stop this Administration before it completely destroys our industry while putting our national and economic security at

great risk. Those risks are readily evident – all one has to do is turn on the television to any news broadcast. The price of oil has skyrocketed to over \$100 per barrel. The price of gas at the pump is rapidly approaching \$4.00 per gallon. The Middle East and North Africa remain in turmoil. And what is our Administration's response? It turns a blind eye to these risks. It pursues an extremist policy designed to eliminate our industry. Mr. Chairman, we cannot let that happen.

Hornbeck Offshore Services is one of the many proud participants in that offshore industry. The Hornbeck story is not unlike that of many companies that have been formed over the last 50 years to serve the needs of the offshore oil and gas industry. Todd Hornbeck, the founder of the company, was 27 years old when he started Hornbeck in 1997. After gaining experience through working with his father's offshore service company, Mr. Hornbeck formed our company in order to provide support services to meet the needs in the next expanding phase of offshore drilling – in the deepwater regions of the Gulf of Mexico. Today, Hornbeck is the second largest deepwater supply vessel company in the Gulf of Mexico with a fleet of new generation offshore supply vessels operating off the United States and other locations around the world. Additionally, Hornbeck owns and operates the two largest supply vessels and two of the most advanced deepwater construction vessels in the world. These four vessels alone represent nearly a \$500 million capital investment by Hornbeck, and were vital components in the operational response to the DEEPWATER HORIZON incident. Hornbeck directly and indirectly employs thousands of workers and mariners, has spent billions of dollars in U.S. shipyards, and like many other companies in our industry, has invested millions of dollars to ensure safe and environmentally sound operations. Indeed, Hornbeck has consistently added jobs within the company since its founding in 1997, and had planned to increase company employment in 2010 and 2011. With the *de facto* moratorium in place, not only has Hornbeck been unable to add any jobs in the last year, but it has been forced for the first time to reduce its workforce as a result of the significant slowdown in offshore drilling activity in the Gulf.

The DEEPWATER HORIZON incident and the current (and completely avoidable) offshore energy crisis in the Gulf of Mexico are unprecedented events for our country and for companies like Hornbeck that strive each day to work in a safe and environmentally sound manner in the offshore industry. We understand that changes must be made, but the Administration's response to the Gulf oil spill has been unreasonable, unwarranted, unfair, and unlawful. The resulting *de facto* moratorium on drilling activities in the Gulf threatens the livelihood of hundreds of thousands of American workers and significantly undermines critical energy, security, economic and other national policy interests.

The Administration repeatedly tells us that the offshore drilling moratorium has been lifted and that there is no *de facto* moratorium. On the contrary, the moratorium on offshore drilling is alive and well. Since its implementation in May 2010, there has only been one permit issued to resume the drilling of a deepwater well, and shallow water activity has been drastically curtailed. As a result, the Administration's policies have already taken a terrible economic toll on the Gulf Coast. This industry supports 150,000 high paying jobs. At least 8,000 jobs have already been lost and more layoffs are being made each week. Seahawk Drilling, the second largest shallow water drilling company in the Gulf of Mexico, declared bankruptcy a few weeks ago for one overriding reason – a lack of drilling permits. Bear in mind, Mr. Chairman, that

Seahawk only drills in the shallow waters of the Gulf and had absolutely nothing to do with the DEEPWATER HORIZON spill. Yet, the Administration has forced that company and its 1,000 employees out of business. We fear that more bankruptcies will follow if the Administration does not immediately change course.

And yet, the Administration continues to ignore the truth. Mr. Chairman, your Committee observed that first-hand when Secretary Salazar testified that Gulf of Mexico production has “remained at an all time high”. Hornbeck was pleased that your Committee quickly corrected the Secretary and advised the public that Department of Energy data tells a drastically different story about declining production in the Gulf. Without a change in the Administration’s policies, production levels will continue to plummet, rendering Americans even more vulnerable than they are today to political instability in the Middle East and higher fuel prices at the pump.

It is clear that terrible mistakes were made concerning the DEEPWATER HORIZON well. And lessons must be learned from those mistakes. But that does not mean that the industry has been “lucky” up to this point after drilling thousands of wells in the Gulf of Mexico without a significant environmental incident. The characterization of our industry as having been “lucky” is one that I want to refute because it was made by Michael Bromwich, the Director of the Bureau of Ocean Energy Management, Regulation and Enforcement (formerly the Minerals Management Service) and the principal regulator of offshore oil and gas exploration and production activities. The truth is this – our industry has an impressive safety record and it has worked hard and diligently to attain that record. Since the 1950’s, over 40,000 wells have been drilled in the Gulf of Mexico, with only one DEEPWATER HORIZON-type event. The extrapolation of this single event into an industry-wide failure is breathtaking in its lack of regard for the facts and vital economic, energy, security and other national priorities.

When the Administration’s offshore drilling moratorium was first announced in May 2010, Hornbeck quickly reached three basic conclusions:

- Notwithstanding the stated six-month period for the moratorium, the halt in offshore drilling activities was likely to extend well beyond that time period.
- The moratorium policy, if left unchecked, could cripple the web of physical and human capital required to support safe deepwater offshore exploration and production operations. In other words, a working Gulf is a safe Gulf. Without the work, people and assets would soon leave the region, rendering the offshore industry less capable in its pursuit of safe and environmentally-sound deepwater operations.
- And, most importantly, the moratorium was not legal. The Administration’s actions were based upon the erroneous premise that the DEEPWATER HORIZON event itself proved the existence of a systemic, industry-wide problem. Hornbeck knew that was not the case.

Hornbeck and other service companies take seriously their obligations to work in a safe and environmentally sound manner. We dedicate significant financial and personnel resources

to industry safety and training. Consequently, we intuitively understood that the Administration's premise for its industry-wide shutdown was wrong. Hornbeck concluded, together with other offshore industry companies, that there was no choice but to sue the Federal government. With the Gulf of Mexico as the company's principal operating theater, the government's actions threatened the very viability of Hornbeck, and could lead to the dismantling of an industry that employs hundreds of thousands of people and upon which the Nation depends for its energy security. Thus on June 7, 2010, Hornbeck filed suit against the Department of the Interior (DOI) seeking an injunction to bar the enforcement of the moratorium. We did not take this step lightly. But, we felt an obligation to our country, our industry, and our employees to stand up and fight this injustice.

In the course of this litigation, Hornbeck uncovered information calling into question the Federal government's good faith in the imposition of the offshore drilling moratorium. We learned that some experts from the National Academy of Engineers claimed, contrary to reports from the Administration, that they had not peer reviewed or recommended the six-month moratorium announced by DOI. The experts further informed Hornbeck that the suspension of ongoing drilling operations could actually compromise safety. They were extremely embarrassed that their views were being misrepresented to the American public as having been in support of a drilling moratorium.

This distortion by the Administration became a central fact in the Federal litigation brought by Hornbeck. In his decision striking down the moratorium on June 22, 2010, Federal Judge Martin Feldman, of the U.S. District Court for the Eastern District of Louisiana, expressed his apprehension about the integrity of the Administration's review and "misleading text in the Executive Summary [of its report] that seem[ed] to assert that all the experts agree[d] with the Secretary's recommendation" to impose the drilling moratorium. Not only was a peer review of the moratorium decision not obtained, but the Administration at its highest levels appeared to have misrepresented to the public that expert peer review of the decision had in fact occurred. These facts caused Judge Feldman to question the "probity" of the process followed by DOI in issuing a moratorium that was, in essence, an industry-wide shutdown. Notably, in a subsequent investigation by the DOI Inspector General on this point, Secretary Salazar's counselor explained to investigators that "[t]he decision to invoke the moratorium on current deepwater drilling projects was a policy decision made by Secretary Salazar and President Obama . . . the moratorium was never peer reviewed by the experts".

Additionally, based upon a review of the administrative record, Judge Feldman determined that the Administration "failed to cogently reflect the decision to issue a blanket, generic, indeed punitive, moratorium with the facts developed during the thirty-day review", and that Hornbeck and the other parties had "established a likelihood of successfully showing that the Administration acted arbitrarily and capriciously in issuing the moratorium." With the moratorium struck down, Hornbeck expected an immediate resumption of at least some offshore drilling activities while the industry and its governmental oversight agencies worked to learn from the mistakes of the DEEPWATER HORIZON incident. Unfortunately, the Administration's response to Judge Feldman's ruling did just the opposite. Notwithstanding the fact that Judge Feldman enjoined the enforcement of the blanket, generic and punitive moratorium, Secretary Salazar set about almost immediately to defy the Court's order.

Within hours of Judge Feldman's ruling, the Secretary issued a written statement announcing his intention to issue a second moratorium. In testimony before a Senate hearing the very next day, the Secretary characterized the enjoined moratorium as the "moratorium in place" and he promised that DOI would impose shortly a new moratorium. And in fact, the second moratorium was issued by Secretary Salazar on July 12, 2010. All the while, DOI subjected Hornbeck and the other litigants in the Hornbeck case to considerable expense through its posturing and other litigation tactics that have since been criticized by the courts.

While Hornbeck did not participate in a legal challenge to the second moratorium, Ensco plc (Ensco) did. It is important to note that the Administration's ultimate decision to lift the second moratorium in October 2010 occurred the same day that parties were to submit additional briefing before Judge Feldman. Judge Feldman remarked during the Ensco case that the Administration's conduct in the Hornbeck matter could well be contemptuous. Later on February 2, 2011, finding that the "second moratorium disabled precisely the same rigs and deepwater drilling rigs and activities in the Gulf of Mexico as did the first one", Judge Feldman took the highly extraordinary step of holding the Federal government in contempt for having defied his order in the Hornbeck case. This ruling is notable in that it identifies conduct, at the highest levels of the Federal government, to have been deliberately defiant and dismissive of a co-equal branch of the government. In a Nation of laws, even the President must accept the rulings of a Federal court.

Against that backdrop, and with the issuance of new DOI safety, equipment and other requirements within weeks of the DEEPWATER HORIZON incident, offshore drilling operators have had significant difficulties in deciphering the steps needed to receive a drilling permit. The DOI notices and regulations, none of which have been implemented with public input, contain enormous areas of ambiguity that operators have legitimately claimed cannot be met.

At a time when significant regulatory, environmental compliance, and other hurdles have been placed in the path of the resumption of offshore drilling activity, instability within foreign countries in North Africa and the Middle East further threatens the national and economic security of our country. Our Nation should be using every opportunity to safely develop its oil and gas resources to ensure that we are not dependent upon foreign oil and the tangled obligations that go with it. That said, in one of the most astounding pronouncements from the Administration, DOI in October of last year specifically stated that:

Currently, there is sufficient spare capacity in OPEC to offset a decrease in [Gulf of Mexico] deepwater production that could occur as a result of this rule. ... However, more of the oil for domestic consumption may be purchased from overseas markets because the cost of OCS oil and gas production will rise relative to other sources of supply.

75 Fed. Reg. 63366 (Oct. 14, 2010). The Administration so much as admits that it prefers to rely on foreign markets, even those hostile to United States interests, rather than to encourage and incentivize domestic resource development and production.

Hornbeck and other industry participants recognize that there will be changes in the post-DEEPWATER HORIZON world. That said, the industry needs to be a participant in a meaningful dialogue about those changes and how best to achieve the shared goal of a safer deepwater oil and gas industry. Instead, there has been nothing more than one-way, uninformed pronouncements from the Administration with little or no regard for the enormous economic and national security contributions made by this industry. Even when faced with multiple losses in the Federal courts and a contempt citation, this Administration has remained “dug-in” to a policy that is harming our Nation on a daily basis.

Mr. Chairman, through this hearing and your continuing oversight, Hornbeck very much appreciates your efforts to illuminate these major issues confronting the offshore industry. The discussion must include the costs to the economy and the Nation in losing a key component of the energy industry. And, we need to discuss all relevant costs, including those associated with greater dependence on foreign oil. We need to consider, as the industry is dismembered rig by rig, the loss of human capital and expertise that truly jeopardizes any advancement of safety in the Gulf. We need to talk about the ability to deliver economic and self-sustaining prosperity to the Nation without tripling – or more – the cost of energy.

Mr. Chairman, our employees do not want an unemployment check. We are not asking for a bailout. We simply want to go back to work. We urge you and the Committee to continue to use every opportunity and all options at your disposal to compel this Administration to reverse its dangerous energy policies and restore oil and gas production in the Gulf of Mexico.

Mr. Chairman, thank you for allowing me to appear before you today.