



HAVE WE LEARNED NOTHING?

**10 YEARS AFTER BP'S DEEPWATER
HORIZON DISASTER, TRUMP'S ACTIONS ARE
INCREASING OFFSHORE DRILLING RISKS.**

HOUSE COMMITTEE ON NATURAL RESOURCES STAFF REPORT, APRIL 20, 2020

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OFFSHORE OIL AND GAS EXPLORATION AND PRODUCTION IS A RISKY AND TECHNOLOGICALLY COMPLEX INDUSTRY THAT DEMANDS AGGRESSIVE GOVERNMENT OVERSIGHT AND REGULATION.

Prior to April 20, 2010, the oil and gas industry repeatedly claimed it had those risks under control and argued for regulation that carried a light touch. The 2010 *Deepwater Horizon* disaster, which killed 11 people and created the largest oil spill in U.S. history, vividly demonstrated the risks of lax enforcement and served as an extraordinary wake-up call to regulators and the offshore industry.

After a series of in-depth investigations, the public learned that the *Deepwater Horizon* disaster could have been prevented, and that without aggressive government and industry reforms a similar incident could very well happen again. In the ensuing years a number of reforms were made, such as new safety regulations, heightened oversight efforts, and crackdowns on conflicts of interest.

Over the last three and a half years, however, the Trump administration has prioritized “energy dominance,” which means less focus on worker safety and environmental protection and more emphasis on ensuring higher profits and lower costs for the oil and gas industry.

This administration has repeatedly expressed a commitment to “partner” with industry, rather than hold it accountable, and has rolled back a number of rules and policies implemented in the aftermath of the spill, including:

- Weakening key parts of the Well Control Rule, the major regulation enacted in 2016 to increase drilling safety, and the Production Safety Systems Rule, a regulation designed to increase safety during oil and gas production;
- Relaxing offshore inspections and enforcement; and
- Abandoning attempts to hold offshore contractors directly accountable for their safety and environmental performance.

In addition, the administration has taken a number of other steps that are not directly related to offshore safety, but demonstrate that its priorities lie with supporting the oil and gas industry, not aggressive oversight and regulation:

- Moving to open billions of acres of public waters to new offshore drilling;
- Halting efforts to ensure that offshore companies pay for the full cost of removing their unnecessary infrastructure from our oceans;
- Lowering royalty rates on shallow water drilling in order to increase industry profits; and
- Weakening the ability to hold oil and gas companies accountable under the Migratory Bird Treaty Act.





Photo from U.S. Coast Guard

In at least one case—detailed in this report—a high-ranking political appointee at the Department of the Interior took a job with an offshore company that appears to have been a major beneficiary of that appointee’s decision to help block enactment of a key financial regulation.

While it is impossible to predict the next offshore drilling disaster, and there is no way to eliminate risk completely, it is the federal government’s job to ensure that offshore operators are reducing spill risks as much as possible and are prepared to respond quickly and effectively when the next incident happens—something that did not happen 10 years ago. Unfortunately, a decade after *Deepwater Horizon*, the Trump administration has taken a different approach and has let industry call the shots on oversight and policymaking, which may one day have dire consequences.

Indeed, when pressed to explain its deregulatory agenda, the Trump administration often suggests that what’s good for oil and gas corporations is good for America, and tragedies such as the *Deepwater Horizon* spill are simply the cost of doing business. This report outlines the considerable risks of this irresponsible approach.

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The *Deepwater Horizon* Tragedy

On April 20, 2010, around 9:50 p.m., the *Deepwater Horizon* rig, drilling a well for BP in approximately 5,000 feet of water in the Gulf of Mexico, suffered a catastrophic blowout and explosion that resulted in the deaths of 11 workers, injuries to 17 others, and the largest oil spill in U.S. history.¹ Subsequent investigations concluded that the root cause of the disaster was a failure of the cement designed to keep the high-pressure oil and gas in the rocks deep beneath the seabed from entering the well, and a further failure of the blowout preventer (BOP)—the supposedly fail-safe last line of defense against such an incident—to seal the wellbore shut.

By the time the well was finally capped on July 15, 87 days of continuous leaking had resulted in an estimated 3 to 5 million barrels of oil escaping into the Gulf.² The spill caused billions of dollars in damage to coastal communities,³ oiled hundreds of miles of Gulf coastline, and caused a massive vegetation die-off that has accelerated the erosion of beaches and barrier islands that protect the coast from flood and storm events, further decreasing the long-term resilience of the ecosystem.⁴

While the *Deepwater Horizon* tragedy was the largest blowout in history, it was not the first. In January 1969, a blowout at a drilling platform off the coast of Santa Barbara spilled an estimated 80,000 barrels of oil into the Pacific Ocean, creating a 35-mile oil slick along California's coast and killing thousands of fish, birds, and marine mammals.⁵ In June 1979, Mexico's state-owned oil company was drilling the Ixtoc I exploratory well in the southwestern Gulf of Mexico when a blowout caused an explosion and fire that sank the rig and released an estimated 3.3 million barrels of oil into the Gulf.⁶ And in August 2009, Australia suffered the worst oil disaster in its history when a blowout and fire on the Montara platform off the northwest coast of the country released 30,000 barrels of oil into the Timor Sea.⁷

¹ Deepwater Horizon – BP Gulf of Mexico Oil Spill. U.S. Environmental Protection Agency. <https://www.epa.gov/enforcement/deepwater-horizon-bp-gulf-mexico-oil-spill>

² Deepwater Horizon – BP Gulf of Mexico Oil Spill. U.S. Environmental Protection Agency.

³ "Summary of Information concerning the Ecological and Economic Impacts of the BP Deepwater Horizon Oil Spill Disaster." NRDC Issue Paper. June 2015. <https://www.nrdc.org/sites/default/files/gulfspill-impacts-summary-IP.pdf>

⁴ McClenachan G, Turner RE, Tweel AW. 2013. Effects of oil on the rate and trajectory of Louisiana marsh shoreline erosion. *Environmental Research Letters* 8(4), DOI:10.1088/1748-9326/8/4/044030

⁵ Mai-Duc, Christine. "The 1969 Santa Barbara oil spill that changed oil and gas exploration forever." *Los Angeles Times*. May 20, 2015. <https://www.latimes.com/local/lanow/la-me-ln-santa-barbara-oil-spill-1969-20150520-htmstory.html>

⁶ Miglierini, Julian. "Mexicans still haunted by 1979 Ixtoc spill." *BBC*. June 14, 2010. <https://www.bbc.com/news/10307105>

⁷ "Strengthening the Safety Culture of the Offshore Oil and Gas Industry." *The National Academies of Sciences, Engineering, and Medicine*. May 25, 2016. https://www.eenews.net/assets/2016/05/26/document_ew_02.pdf

Immediately after the Montara blowout, the oil and gas industry and its supporters insisted that a similar event couldn't happen in the U.S. because of our more robust regulatory regime and higher standards.⁸ This bubble of overconfidence was punctured on April 20, 2010.

Lessons from *Deepwater Horizon*

In the aftermath of the *Deepwater Horizon* disaster, numerous investigations were started to determine its cause, identify ways to improve the country's ability to respond to spills, and recommend reforms to make offshore energy production safer. In May 2010, President Obama established the National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling (Presidential Oil Spill Commission or Commission).⁹ On January 11, 2011, the Commission released its final report, which was the subject of a January 26, 2011, House Natural Resources Committee hearing.¹⁰

In December 2011, the National Academy of Engineering released a report highlighting the lack of effective safety management among the companies involved, the lack of effective federal oversight, and fundamental engineering problems with BOPs.¹¹ The Department of the Interior's Inspector General (IG) released a similar report in December 2010, joined by the Bureau of Ocean Energy Management, Regulation, and Enforcement (BOEMRE) in September 2011 and the U.S. Chemical Safety and Hazard Investigation Board in April 2016.^{12,13, 14}

Combined, the various investigations and reports provided an extensive analysis of what contributed to the *Deepwater Horizon* disaster and made hundreds of recommendations for how the federal government and industry

⁸ Hearing before the Senate Energy and Natural Resources Committee, November 19, 2009.

⁹ Executive Order 13543 – National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling. *The White House*. May 22, 2010. <https://obamawhitehouse.archives.gov/the-press-office/executive-order-national-commission-bp-deepwater-horizon-oil-spill-and-offshore-dri>

¹⁰ Committee on Natural Resources Hearing on the National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling. *U.S. House of Representatives*. January 24, 2011.

¹¹ "Industry, Regulators Should Take 'System Safety' Approach to Offshore Drilling in Aftermath of Deepwater Horizon Accident, Says New Report." *The National Academy of Engineering and National Research Council*. Dec. 14, 2011. <https://www8.nationalacademies.org/onpinews/newsitem.aspx?RecordID=13273>

¹² "A New Horizon: Looking to the Future of the Bureau of Ocean, Energy Management, Regulation, and Enforcement." *Department of the Interior Inspector General*. December 2010. <https://www.doi.gov/sites/doi.gov/files/A-New-Horizon-Public.pdf>

¹³ Report Regarding the Causes of the April 20, 2010 Macondo Well Blowout. *The Bureau of Ocean Energy Management, Regulation and Enforcement*. September 14, 2011. <https://www.bsee.gov/sites/bsee.gov/files/reports/blowout-prevention/dwhfinaldoi-volumeii.pdf>

¹⁴ "Macondo Blowout and Explosion." *U.S. Chemical Safety and Hazard Investigation Board*. April 20, 2016. <https://www.csb.gov/macondo-blowout-and-explosion/>

could reduce the risk of a similar event occurring. A brief summary of some of the key themes and recommendations is provided below.

Restructure and Enhance Federal Oversight

The Commission emphasized the need to break up and restructure the Minerals Management Service (MMS), the agency within the Department of the Interior (DOI) that was in charge of offshore oil and gas leasing, permitting, safety regulation, and revenue collection.¹⁵ According to the Commission, “the mingling of the 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.”¹⁶

In May 2010, then-Interior Secretary Ken Salazar preempted the Commission’s recommendation by dissolving MMS and directing that it be divided into three new entities: the Bureau of Ocean Energy Management (BOEM), primarily focused on leasing; the Bureau of Safety and Environmental Enforcement (BSEE), primarily focused on permitting and safety regulation; and the Office of Natural Resources Revenue (ONRR) for collecting and auditing royalties and other payments. As a result of the reorganization, the U.S. finally had a truly independent safety regulator insulated from pressures to issue more leases or encourage additional production to collect more money.

Strengthen Rules and Regulations

Prior to the *Deepwater Horizon* disaster, government regulations were not robust or modern enough to cover current drilling techniques, and regulators often lacked the resources they needed to properly oversee the oil and gas industry.¹⁷ The Presidential Oil Spill Commission determined that “the root causes [were] systemic and, absent significant reform in both industry practices and government policies, might well recur.”¹⁸ For example, “no regulation specified basic procedures for the negative pressure test used to

¹⁵ “Deep Water: The Gulf Oil Disaster and the Future of Offshore Drilling.” Report to the President – National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling.” January 2011. <https://www.govinfo.gov/content/pkg/GPO-OILCOMMISSION/pdf/GPO-OILCOMMISSION.pdf>

¹⁶ “Deep Water: The Gulf Oil Disaster and the Future of Offshore Drilling.” Report to the President – National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling.” January 2011.

¹⁷ Testimony of Senator Bob Graham and the Honorable William Reilly before the Committee on Natural Resources. January 26, 2011. *U.S. House of Representatives*.

¹⁸ “Deep Water: The Gulf Oil Disaster and the Future of Offshore Drilling.” Report to the President – National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling.” January 2011.

evaluate the cement seal or minimum criteria for test success.”¹⁹ Such a test was conducted by the *Deepwater Horizon* drilling crew and incorrectly judged to be a success because of inadequate test procedures and poor training. This mistake turned out to be a contributing factor to the blowout.

The 2011 BOEMRE investigation determined that “stronger and more comprehensive federal regulations might have reduced the likelihood of the [disaster],” and that “MMS regulations in place at the time of the blowout could be enhanced in a number of areas, including: cementing procedures and testing; blowout preventer configuration and testing; well integrity testing; and other drilling operations.”²⁰

Following the disaster, DOI implemented multiple safety and environmental reforms to the offshore drilling program, many of which were based on recommendations from the Presidential Oil Spill Commission, the National Academy of Engineering, and an Ocean Energy Safety Advisory Committee consisting of experts from academia, industry, and the environmental community.

On April 29, 2016, BSEE finalized a major rule encompassing many of the recommendations designed to improve BOP reliability and protect against blowouts, commonly known as the Well Control Rule (WCR).²¹ On September 7, 2016, BSEE finalized the Production Safety Systems Rule (PSSR),²² which updated 1988 regulations for safety devices used during oil and gas production. Among other things, the PSSR required that a qualified, independent third-party review and certify that safety and pollution prevention equipment (SPPE) would function as designed under the conditions to which it may be exposed.

Aggressively Oversee Industry Behavior

The *Deepwater Horizon* disaster demonstrated that the oil and gas industry will take risks with potentially disastrous public consequences to save money. According to the Commission, the incident could have been prevented had

¹⁹ Testimony of Senator Bob Graham and the Honorable William Reilly before the Committee on Natural Resources. January 26, 2011. *U.S. House of Representatives*.

²⁰ Report Regarding the Causes of the April 20, 2010 Macondo Well Blowout. *The Bureau of Ocean Energy Management, Regulation and Enforcement*. September 14, 2011. <https://www.bsee.gov/sites/bsee.gov/files/reports/blowout-prevention/dwhfinaldoi-volumeii.pdf>

²¹ 84 FR 21908

²² 83 FR 49216

the three companies involved in drilling the well—BP, Transocean, and Halliburton—not made critical errors motivated by saving the companies significant time and money rather than ensuring safety.²³ The Commission identified seven decisions made by the three companies that saved time compared to the less risky available alternative and found that “none of BP’s (or the other companies’) [seven] decisions appear to have been subject to a comprehensive and systematic risk-analysis, peer-review, or management of change process.”²⁴ That conclusion was echoed by a federal judge in 2014 who ruled that BP was guilty of gross negligence in the incident, finding that several decisions made by BP were “primarily driven by a desire to save time and money, rather than ensuring that the well was secure.”²⁵

The oil and gas industry claims to have learned from the *Deepwater Horizon* incident, and its representatives have testified many times before Congress and elsewhere that offshore drilling is much safer now than it was 10 years ago, thanks largely to voluntary industry actions. The industry has made improvements since the 2010 disaster and should be acknowledged for taking certain necessary steps, such as ensuring the ready availability of “capping stacks” that can be used on top of a broken BOP to stop the flow of oil and gas (such a device was built from scratch in 2010 and used to stop the blowout). Nevertheless, *Deepwater Horizon* demonstrated that companies frequently place the bottom line ahead of environmental protection, human health and safety, and other important considerations regardless of available technology or current best practices.

Lessons Unlearned by the Trump Administration

The Trump administration’s “energy dominance” agenda has generally meant issuing orders, writing policies, weakening regulations, and enforcing laws in ways that benefit the fossil fuel industry. While this pro-fossil fuel agenda extends across the entire federal government, DOI and its agencies have been especially aggressive in carrying out industry’s wishes.

²³ Testimony of Senator Bob Graham and the Honorable William Reilly before the Committee on Natural Resources. January 26, 2011. *U.S. House of Representatives*.

²⁴ “Deep Water: The Gulf Oil Disaster and the Future of Offshore Drilling.” Report to the President – National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling.” January 2011.

²⁵ Robertson, Campbell and Clifford Krauss. “BP May Be Fined Up to \$18 Billion for Spill in Gulf.” September 4, 2014. *The New York Times*. https://www.nytimes.com/2014/09/05/business/bp-negligent-in-2010-oil-spill-us-judge-rules.html?_r=0

Industry Access to Interior Leadership

Many current and past political leaders at DOI under the Trump administration have worked for or lobbied on behalf of oil and gas companies, and several have been scrutinized for conflicts of interest and ethics violations while at DOI. Secretary Bernhardt is not alone in offering industry seemingly unfettered access, favorable treatment and lenient regulatory decisions.

BSEE Director Scott Angelle has been especially notable for his statements of support for the oil and gas industry, despite being the head of a nominally independent safety agency specifically created to reduce industry influence. Before his BSEE appointment, Mr. Angelle served on the board of an oil and gas pipeline company²⁶ and made a name for himself in 2010 by aggressively lobbying the Obama administration to end the temporary offshore drilling moratorium imposed in the immediate wake of the disaster.

After becoming BSEE Director, Angelle repeatedly made it clear that BSEE's original mission as a tough-but-fair independent safety regulator buffered from industry influence was going to fundamentally change:

"BSEE is transitioning from an era of isolation to cooperation, from creating hardships to creating partnerships." (speech to Deepwater Technical Symposium, August 23, 2017)²⁷

BSEE, he said, must "adjust its sails" to help producers — energy "partners" with the federal government, he said — to succeed.²⁸ (September 19, 2017)

That means BSEE must change course, he said, from being obstructing [sic] the 88 companies that explore and produce energy on the Outer Continental Shelf to working with them for mutual benefit.²⁹ (September 19, 2017)

²⁶ Brown, Dylan. "La. Official, industry board member to head BSEE." *E&E News*. May 22, 2017, <https://www.eenews.net/greenwire/2017/05/22/stories/1060054907>

²⁷ "BSEE Director Highlights Deepwater Contributions to America First Energy Agenda." *U.S. Bureau of Safety and Environmental Enforcement*. August 23, 2017. <https://www.bsee.gov/newsroom/latest-news/statements-and-releases/press-releases/bsee-director-highlights-deepwater>

²⁸ K. Stickney, "Angelle: Scrap 'energy independent'; U.S. can dominate," *The Daily Advertiser*, September 19, 2017.

²⁹ *Ibid.*

"I'm OK with calling you partners, and that's some of the changes we are making in DC." (speech to industry representatives at LAGCOE, October 24, 2017)³⁰

Director Angelle also made it clear that he wanted the industry to call him on his cell phone to avoid leaving evidence:

"I'd rather you call me. Everything you text me is a public record so be careful...Everything that you send to me in email is a public record...This is a business opportunity for you to engage with me on what you believe we ought to be about."³¹ (speech to LAGCOE, October 24, 2017)

The Committee requested Director Angelle's phone records³² and found that from May 2017 through March 2019, he spoke frequently with companies he was supposed to be regulating, including Shell, ExxonMobil, Chevron, Hilcorp, Arena Energy, Fieldwood Energy, Talos Energy, Seashore Petroleum, Halliburton, Cox Oil, and the American Petroleum Institute. The topics discussed on those calls are unknown.

Vincent DeVito was Counselor to former Interior Secretary Ryan Zinke for energy policy between May 2017 and August 2018, when he was in charge of implementing the "energy dominance" agenda across DOI. Before joining Interior, Mr. DeVito had a long history of representing oil and gas companies and other corporate energy clients for several law firms and businesses. When he left DOI, he was immediately hired by Cox Oil Offshore LLC, a private oil company operating in the Gulf of Mexico.

During his time at DOI, Mr. DeVito also served as the Chairman of the Royalty Policy Committee (RPC), which advised the Interior Secretary on revenue issues related to energy and mineral development on public lands. The Trump administration reconstituted the RPC to strongly favor the fossil fuel industry and pro-drilling states while leaving out public interest and environmental voices. The RPC put forward a variety of policy recommendations that would benefit extractive industries instead of taxpayers, including lowering offshore

³⁰ "LAGCOE 2017 Keynote Presentation by Scott Angelle, BSEE." October 24, 2017, available at <https://youtu.be/Oga5-zZYpo?t=1870>, beginning at 31:10. Accessed March 17, 2020.

³¹ *Ibid.*

³² Letter from Chair Raul Grijalva and Rep. Alan Lowenthal to Acting Secretary Bernhardt requesting Director Angelle phone records. March 6, 2019.

oil and gas royalty rates, accelerating oil and gas development in the Arctic National Wildlife Refuge, and reducing timelines for permit approvals. In August 2019, a federal court ruled that DOI could not rely upon or use any RPC recommendations because DOI violated the Federal Advisory Committee Act by stacking the committee so heavily with energy interests.³³

In April 2019, the DOI IG announced it was investigating whether Mr. DeVito and several other employees had interacted with former clients or employees on Interior-related business in a way that would potentially violate federal ethics rules.³⁴ The IG has not yet published the results of its investigation. However, evidence obtained by the Committee raises significant questions about Mr. DeVito's actions at the Department and his subsequent employment at Cox Oil, discussed in more detail later in the report.

Cutting Rules and Regulations

Multiple *Deepwater Horizon* investigations identified the need for significant offshore regulatory reforms. The Presidential Commission found that “the technology, laws and regulations, and practices for containing, responding to, and cleaning up spills lag behind the real risks associated with deepwater drilling,” and that “government must close the existing gap and industry must support rather than resist that effort.” Under the Obama administration, BSEE developed, implemented, and enforced a series of new and enhanced regulations governing all aspects of energy development on the Outer Continental Shelf (OCS). Emergency rules were put into place immediately after the disaster,³⁵ providing additional safety measures while BSEE developed new drilling and production regulations to address the lessons learned from the *Deepwater Horizon* disaster.

Well Control Rule

BSEE's 2016 Well Control Rule (WCR) was one of the most significant regulatory changes to result from the *Deepwater Horizon* disaster. The 2016 WCR was published following years of in-depth discussions with experts, industry,

³³ King, Pamela. “Judge blocks action on royalty panel recommendations.” *E&E News*. August 14, 2019. <https://www.eenews.net/greenwire/stories/1060951223/search?keyword=interior+%22royalty+policy+committee%22>

³⁴ Eilperin, Juliet, and Dino Grandoni. “Six Trump Interior appointees are being investigated for possible ethical misconduct.” *The Washington Post*. April 23, 2019. <https://www.washingtonpost.com/climate-environment/2019/04/23/six-trump-interior-appointees-are-being-investigated-possible-ethical-misconduct/>

³⁵ For example, “Oil and Gas and Sulphur Operations in the Outer Continental Shelf—Increased Safety Measures for Energy Development on the Outer Continental Shelf,” Interim Final Rule, 75 F.R. 63346 (October 14, 2010).

academia, and the environmental community, and incorporated many of the technical recommendations included in the various *Deepwater Horizon* investigations and reports. Among other things, the 2016 WCR:³⁶

- Established minimum baseline requirements for the design, manufacture, repair, and maintenance of BOPs.
- Adopted criteria for ensuring wells are constructed within a safe “drilling margin,” a technical parameter related to the construction of wells.
- Required more controls over the maintenance and repair of BOPs.
- Required more rigorous third-party certification of the shearing capability of BOPs.
- Increased the reporting requirements of BOP failure data.

The Trump administration moved quickly to weaken these rules, with then-Secretary Ryan Zinke signing a secretarial order on May 1, 2017, directing BSEE to review the 2016 WCR and provide recommendations on whether to suspend, revise, or rescind the rule.

The move received immediate pushback. In May 2017, the co-chairmen of the Presidential Commission wrote to Zinke stressing the importance of keeping the 2016 WCR fully intact.³⁷ In July 2017, they published an op-ed in the *New York Times* in which they warned, “Weakening or rescinding [the well control] rule would increase the risks of offshore operations, put workers in harm’s way and imperil marine waters and coastlines.”³⁸

There is strong evidence that BSEE, even prior to formally weakening the rule, freely allowed companies to ignore its requirements. In February 2019, *Politico* reported that between August 2016 and March 2018, BSEE had approved 1,679 requests from companies for departures, variances, or alternative compliance measures to the 2016 WCR. In every case, these approvals allowed companies to avoid meeting the letter of the regulation.³⁹ In September 2019, *Politico* reported that Director Angelle had formally asked career staff to look at using departures to fully exempt companies from certain provisions of the WCR, but

³⁶ “Well Control Rule Fact Sheet.” *Bureau of Safety and Environmental Enforcement*. <https://www.doi.gov/sites/doi.gov/files/uploads/FACT%20SHEET-%20Well%20Control%20Final%20Rule%20-%20FINAL.pdf>

³⁷ Letter from Senator Bob Graham and The Honorable William Reilly, Co-Chairs of the BP Presidential Commission to Interior Secretary Ryan Zinke. May 8, 2017.

³⁸ B. Graham and W.K. Reilly, *Trump’s Risky Offshore Oil Strategy*, *New York Times*, July 5, 2017. <https://www.nytimes.com/2017/07/05/opinion/trump-oil-drilling-energy-gulf.html>

³⁹ B. Lefebvre, *Exclusive: Interior hands out hundreds of offshore drilling safety rule waivers*, *Politico*, February 25, 2019.

staff refused to carry this out unless Angelle put the directive in writing, which he apparently declined to do.⁴⁰

In May 2019, BSEE finalized revisions to the 2016 WCR, which allowed for a decreased frequency of blowout preventer testing, easier exemptions to drilling margin requirements, and less transparency in near-miss safety reporting.

On February 26, 2020, the *Wall Street Journal* reported that as part of the effort to revise the 2016 WCR, Director Angelle ordered the alteration of internal decision memos authored by BSEE career staff to create the appearance that Mr. Angelle's preferred regulatory changes were supported by BSEE career staff, when in fact they were contrary to career staff recommendations.⁴¹ For example, the *Journal* article states that Director Angelle deleted a BSEE career staff recommendation to continue testing BOPs once every 14 days. According to the article, Mr. Angelle told a BSEE career staff member over the phone—but never in writing—to go forward with the 21-day testing frequency and to remove the 14-day BSEE team recommendation.

The *Journal* also reported that Director Angelle intervened to weaken the regulatory standard for drilling margin, a critical safety measure when drilling a well. Oil and gas companies lobbied BSEE to give operators more flexibility in achieving the drilling margin, which would help them drill more wells while keeping costs down at the expense of a lower level of operational safety. BSEE career experts did not want to make changes to the regulations, instead preferring to “keep proposed language as is[.]”⁴² However, Director Angelle verbally directed career experts to remove their recommendation from the decision memo and instructed them to go forward with the more relaxed requirement.

⁴⁰ B. Lefebvre, *Interior floated delays to enforcing Obama-era offshore drilling rules*, Politico, September 24, 2019.

⁴¹ Mann, Ted. “When Safety Rules on Oil Drilling Were Changed, Some Staff Objected. Those Notes Were Cut.” *Wall Street Journal*. Feb. 26, 2020. <https://www.wsj.com/articles/when-safety-rules-on-oil-drilling-were-changed-some-staff-objected-those-notes-were-cut-11582731559>

⁴² Mann, Ted. “When Safety Rules on Oil Drilling Were Changed, Some Staff Objected. Those Notes Were Cut.” *Wall Street Journal*. Feb. 26, 2020.

Reduced Transparency

The 2016 Production Safety Systems Rule (PSSR) was written in the wake of the *Deepwater Horizon* disaster to help reduce the number of incidents during oil and gas production that may cause spills or worker injuries.⁴³

Under the pre-Trump 2016 PSSR and 2016 WCR, all oil and gas operators on the OCS were required by BSEE to report failures of critical equipment directly to the agency. This requirement kept BSEE aware of the operators and equipment that experienced failures most often, providing a leading indicator that could be used to take preventive action. In September 2018, BSEE finalized revisions to the 2016 PSSR that, among other changes, removed the requirement that independent third parties certify that certain critical equipment was in good condition and would work correctly if needed.

The Trump-era 2018 PSSR and 2019 WCR allow companies to report equipment failures anonymously through the Bureau of Transportation Statistics.⁴⁴ By allowing companies to submit failure reports anonymously, BSEE loses the ability to enforce regulations and loses large amounts of information that would identify low-performing companies and potentially widespread equipment failures. Anonymously reported failures are, by design, nearly impossible for BSEE to follow up on, and are almost worthless to members of the public seeking to review them under the Freedom of Information Act.

Relaxed Enforcement

BSEE's mission is to "promote safety, protect the environment, and conserve resources offshore through vigorous regulatory oversight and enforcement." It accomplishes this, in part, through the issuance of an "incident of non-compliance" (INC).⁴⁵ If a BSEE inspector finds that an operator has violated a BSEE regulation, they issue an INC that is either a warning or a shut-in. According to the Presidential Oil Spill Commission, relaxed offshore enforcement led to a lack of accountability and was a contributing factor to the *Deepwater Horizon* disaster.

⁴³"Fact Sheet: Production Safety Systems Final Rule." *U.S. Bureau of Safety and Environmental Enforcement*. <https://www.bsee.gov/sites/bsee.gov/files/fact-sheet-for-safety-systems-proposed-rule-323.pdf>

⁴⁴"Fact Sheet: SafeOCS Confidential Reporting System," *BSEE*. <https://www.bsee.gov/sites/bsee.gov/files/fact-sheet/fact-sheet-safeocs-confidential-reporting-system.pdf>

⁴⁵"About Us: Mission Statement." *U.S. Bureau of Safety and Environmental Enforcement*. <https://www.bsee.gov/who-we-are/about-us>

An analysis of BSEE data by the Center for American Progress determined that under the Trump administration, inspections are down and offshore oil spills and worker injuries are on the rise.⁴⁶ During the first three years of the Trump administration (2017-2019), BSEE inspectors have conducted 13 percent fewer inspection visits to rigs, platforms, pipelines, and other facilities than they did during the last three years of the Obama administration (2014-2016). Furthermore, between 2017 and 2019, BSEE inspectors issued 38 percent fewer INCs to offshore oil and gas operators than they did between 2014 and 2016. The analysis also found that in 2018 and 2019, the amount of oil spilled per barrel produced on the OCS increased six-fold, and the number of injuries per hour worked on oil and gas facilities increased by 21 percent compared to 2016 and 2017.

Contractor Liability

After the *Deepwater Horizon* disaster, BSEE announced that it would start holding offshore oil and gas contractors, not just leaseholders, liable for violations. In addition to charging BP as the leaseholder, this allowed the federal government to charge Transocean and Halliburton, the other two companies responsible for the spill, with relevant violations.^{47,48} While the issue was being litigated, DOI in December 2017 quietly withdrew a crucial appeal, making it clear that BSEE would not try to hold contractors separately accountable for their actions offshore.⁴⁹

The Trump Administration's Department of the Interior: Textbook Example of Regulatory Capture

As the *Deepwater Horizon* investigations made clear, a truly independent regulatory agency is necessary to ensure proper oversight and accountability. This means independence from other missions within DOI and from the industry it regulates. The Trump administration has acted from day one, however, to put the priorities of the oil and gas industry ahead of health, safety,

⁴⁶ Lee-Ashley, Matt. "10 Years After Deepwater Horizon, Oil Spills and Accidents Are on the Rise." *Center for American Progress*. March 3, 2020. <https://www.americanprogress.org/issues/green/news/2020/03/03/481027/10-years-deepwater-horizon-oil-spills-accidents-rise/>

⁴⁷ "BSEE Issues Violations Following Investigation into Deepwater Horizon." *U.S. Bureau of Safety and Environmental Enforcement*. October 12, 2011. <https://www.bsee.gov/newsroom/latest-news/statements-and-releases/press-releases/bsee-issues-violations-following>

⁴⁸ "Issuance of an Incident of Non-Compliance (INC) to Contractors." *U.S. Bureau of Safety and Environmental Enforcement*. August 15, 2012. <https://www.bsee.gov/sites/bsee.gov/files/memos/ethics/issuance-of-an-incident-of-non-compliance-to-contractors.pdf>

⁴⁹ Motion for Voluntary Dismissal. *Island Operating Co. Inc., vs. Ryan Zinke*, in his official capacity as Secretary of the Interior. No. 17-30440. December 15, 2017. U.S. District for the Western District of Louisiana.

and environmental enforcement—a phenomenon known as regulatory capture.

New Five-Year Leasing Program

Offshore oil and gas lease sales are currently scheduled for the western and central Gulf of Mexico through 2022. The Trump administration is currently in the process of developing a new OCS Leasing Program (also known as the Five-Year Program or Plan) to supersede the existing schedule. Two fundamental principles have guided the development of the new plan: 1) give the oil and gas industry as much access as possible, and 2) reward political friends and punish political opponents.

The oil and gas industry has had its sights set on drilling in the South Atlantic and the eastern Gulf of Mexico for years; however, the eastern Gulf is under a statutory leasing moratorium until 2022. In January 2018, BOEM published its Draft Proposed Program (DPP), which proposed opening more than 90 percent of the OCS to oil and gas leasing, including the entirety of America's Atlantic, Pacific, and Arctic coasts, and the eastern Gulf once the current moratorium ends.⁵⁰ There was swift and broad opposition to BOEM's proposal, including governors from both parties in 17 coastal states, more than 300 municipalities on the East and West coasts, and Republicans and Democrats in Congress. There was especially strong opposition from Florida.

A few days after releasing the DPP, then-Secretary Zinke met with Florida Governor Rick Scott at the Tallahassee airport, tweeting afterward that he was "removing Florida from the draft offshore plan." Governor Scott pointed to his apparent ability to get Florida removed from the offshore drilling plan as a sign of influence with the administration during his campaign for U.S. Senate against incumbent Sen. Bill Nelson, a race he won in November 2018.⁵¹ However, on January 19, 2018, BOEM Acting Director Walter Cruickshank informed the House Natural Resources Committee that Florida was still under consideration for oil and gas drilling activities,⁵² and on March 13, 2018, then-

⁵⁰ "Secretary Zinke Announces Plan for Unleashing American's Offshore Oil and Gas Potential." *U.S. Department of the Interior*. January 4, 2018. <https://www.doi.gov/pressreleases/secretary-zinke-announces-plan-unleashing-americas-offshore-oil-and-gas-potential>

⁵¹ Dixon, Matt. "Records show Trump aides plotted political win for Rick Scott." *Politico*. March 27, 2018. <https://www.politico.com/states/florida/story/2018/03/26/records-zinkes-office-refute-scott-framing-of-impromptu-oil-drilling-reversal-330060>

⁵² Energy and Mineral Resources Subcommittee Hearing. *U.S. House of Representatives*. January 19, 2018. <https://naturalresources.house.gov/hearings/hearing-on-deficiencies-in-the-permitting-process-for-offshore-seismic-research>

Secretary Zinke testified before the Senate Energy and Natural Resources Committee that “Florida is still in the process.”⁵³

BOEM was expected to release the second phase (the Proposed Program) of its leasing plan in the spring of 2019. However, in an interview with the *Wall Street Journal* on April 25, 2019, Secretary Bernhardt indicated that at his direction, development of the proposed program had been placed on hold because of complications arising from a March 29, 2019, federal court decision reinstating protections for leasing in parts of the Arctic and North Atlantic oceans.⁵⁴ While this court ruling prevents BOEM from holding lease sales in those specific areas, Secretary Bernhardt clearly understands that as a general matter, there is no legal impediment to including protected regions in a leasing program. He served as DOI Solicitor during development of the 2010-2015 DPP, which included the statutorily protected eastern Gulf of Mexico and was released years before a new DPP was required.

There is reason to believe that the Proposed Program was meant to be released very close to the date of the court decision, with lease sales included for portions, if not all, of the eastern Gulf of Mexico and the South Atlantic. This is suggested by numerous comments in news reports and from DOI officials.^{55,56} Including either of these areas in the Proposed Program or eventual Final Program would come with significant political risk to the President. Rep. Ted Yoho (R-Fla.), normally a close ally of the president, said, “He would have a price to pay for that.”⁵⁷

The March 29, 2019, court decision reinstating protections for leasing in parts of the Arctic and North Atlantic oceans provided a useful excuse for DOI to delay the release of the Proposed Program until after the 2020 presidential election. This allowed President Trump to avoid paying any serious public relations costs at the small price (for him) of misleading coastal residents into believing their coastlines are safe from drilling.

⁵³ Energy and Natural Resources Committee Hearing. *U.S. Senate*. March 13, 2018.

<https://www.energy.senate.gov/public/index.cfm/hearings-and-business-meetings?ID=E3AA71C7-3A5E-4D21-AC9C-6AC17551BB7A>

⁵⁴ T. Puko, “Trump’s Offshore Oil-Drilling Plan Sidelined Indefinitely.” *Wall Street Journal*, April 25, 2019.

⁵⁵ Z. Colman and B. Lefebvre, “The confidential oil plan that could cost Trump reelection.” *Politico*. April 10, 2019.

<https://www.politico.com/story/2019/04/10/trump-florida-2020-oil-drilling-1264194>

⁵⁶ J. Tobias, “US official reveals Atlantic drilling plan while hailing Trump’s ability to distract public.” *The*

Guardian, March 14, 2019. <https://www.theguardian.com/environment/2019/mar/14/offshore-drilling-trump-official-reveals-plan-and-distractions-delight>

⁵⁷ “The confidential oil plan that could cost Trump reelection.” *Politico*.

Decommissioning and Financial Assurance Policies

Under federal regulations and by the standard terms of offshore oil and gas leases, once a lease is no longer producing, companies are required to remove the platforms, wells, pipelines, and other infrastructure that existed at the site. Unfortunately, over the last three years, Interior has increased the risk that some of these cleanup costs will be borne by U.S. taxpayers instead of the companies responsible for them.⁵⁸

BOEM has a responsibility to ensure that lessees have the capacity—either by meeting financial performance standards or by posting a bond to cover expected costs—to decommission and remove unneeded infrastructure.⁵⁹ In December 2015, the Government Accountability Office (GAO) reported that there were approximately \$2.3 billion in uncovered liabilities that would potentially need to be covered by taxpayers if offshore drilling companies went bankrupt.⁶⁰

The Obama administration took steps to address this. On July 18, 2016, BOEM released a Notice to Lessees (NTL) that proposed major changes to the way companies could demonstrate the ability to cover future decommissioning costs.⁶¹ For example, consistent with GAO recommendations made in 2015, BOEM changed the way it evaluated the financial strength of companies. In December 2016, BOEM began sending letters requiring additional bonding to operators of properties with only a single liable company, known as “sole liability” properties, which BOEM described as posing “the greatest programmatic risk to the American taxpayer.”⁶²

In February 2017, the Trump administration withdrew those orders to “allow time for the new administration to review the complex financial assurance program.”⁶³ In June 2017, BOEM announced it was indefinitely postponing the implementation of the 2016 NTL to allow the agency more time to complete its review.

⁵⁸ 30 CFR 250.1700 et seq. (Subpart Q)

⁵⁹ 30 CFR 556.53

⁶⁰ U.S. Government Accountability Office, *Offshore Oil and Gas Resources: Actions Needed to Better Protect Against Billions of Dollars in Federal Exposure to Decommissioning Liabilities*, GAO-16-40, December 2015.

⁶¹ NTL No. 2016-NO1, “Requiring Additional Security,” 81 FR 46599 (July 18, 2016).

⁶² Bureau of Ocean Energy Management, *BOEM Withdraws Sole Liability Orders*, February 2, 2017.

<https://www.boem.gov/newsroom/notes-stakeholders/boem-withdraws-sole-liability-orders>

⁶³ “BOEM Withdraw Sole Liability Orders: Further Review of Complex Financial Assurance Issues Warranted.” *U.S. Bureau of Ocean Energy Management*. February 17, 2017. <https://www.boem.gov/newsroom/notes-stakeholders/boem-withdraws-sole-liability-orders>

Certain oil and gas companies operating in the Gulf were impacted by the 2016 NTL and sole liability letters issued by BOEM more than others. These companies were generally smaller and less capitalized than large conglomerates and had fewer financial resources available to pay higher bond amounts for future decommissioning costs. These companies are especially vulnerable to going bankrupt during periods of low oil prices. In the fall of 2016, four Gulf operators that fell into this category formed the Gulf Energy Alliance (GEA) to fight BOEM's new financial assurance requirements.⁶⁴ The founding members were Fieldwood Energy, Talos Energy, Arena Energy, and Energy XXI. GEA hired Squire Patton Boggs, one of the largest lobbying firms in Washington, D.C., to lobby on its behalf.

Publicly available calendars and phone records indicate that both Vincent DeVito and Scott Angelle had multiple meetings and calls throughout 2017 and 2018 with the GEA lobbyist, GEA member companies, and executives of Cox Oil regarding Interior's financial assurance policies. In early 2018, as these meetings between high-ranking DOI officials and oil and gas companies vulnerable to more stringent financial assurance regulations were occurring, executives from Energy XXI (a founding member of GEA) and Cox Oil began discussing a potential merger.⁶⁵

Energy XXI was potentially on the hook for massive decommissioning costs. The company filed for bankruptcy in 2016, and according to BOEM, of the 490 offshore properties affected by 22 corporate bankruptcies between 2009 and 2017, Energy XXI owned 238 – close to 50 percent.⁶⁶ An investigation by Debtwire found that in 2017, Energy XXI also had 48 idle oil and gas platforms in the Gulf, the most of all Gulf operators, with an estimated total decommissioning cost of more than \$64 million.⁶⁷ Additional reports identify Energy XXI's total plugging, abatement, and decommissioning liability at several hundred million dollars.⁶⁸ This suggests that Energy XXI would not have

⁶⁴ King, Pamela. "Gulf producers form new alliance." *E&E News*. Nov. 23, 2016. <https://www.eenews.net/energywire/stories/1060046181/search?keyword=Gulf+energy+alliance>

⁶⁵ Energy XXI Gulf Coast, Inc. Proxy Statement Pursuant to Section 14(a) of the Securities Exchange Act of 1934. *U.S. Securities and Exchange Commission*. July 2018. <https://www.sec.gov/Archives/edgar/data/1404973/000114420418038273/tv498096-prem14a.htm>

⁶⁶ Document Prepared by BOEM staff provided to the Committee. "Decommissioning Liabilities and Financial Assurance Options Paper." Available upon request.

⁶⁷ Plough, Alex. "American Idle: Decommissioning costs sink offshore drillers into latest crisis." *Debtwire*. Aug. 3, 2017. <http://investigations.debtwire.com/american-idle-decommissioning-costs-sink-offshore-drillers-into-latest-crisis/>

⁶⁸ "Energy XXI Gulf Coast Announces Proposed Strategic Disposition of Non-Core Assets and Related Asset Retirement Obligations to Orinoco Natural Resources." *GlobeNewswire*. May 10, 2018. <https://www.globenewswire.com/news-release/2018/05/10/1500108/0/en/Energy-XXI-Gulf-Coast-Announces-Proposed-Strategic-Disposition-of-Non-Core-Assets-and-Related-Asset-Retirement-Obligations-to-Orinoco-Natural-Resources.html>

been a particularly attractive company to purchase if the 2016 financial assurance requirements were allowed to stand.

According to public calendars, in April 2018, Mr. DeVito had meetings with Craig Sanders, CEO of Cox Oil, and with the GEA lobbyist. Within a few weeks of these meetings, Mr. Sanders emailed an Energy XXI executive with a proposal for Cox Oil to acquire all of Energy XXI's outstanding stock for cash at a 15 percent premium.⁶⁹ In late June 2018, Energy XXI's Board of Directors approved the merger with Cox Oil for approximately \$322 million, a 21 percent premium over Energy XXI's share price as of mid-June 2018.⁷⁰ That markup is especially noteworthy because of the high potential decommissioning liabilities Energy XXI faced at the time of the takeover, which under most economic circumstances would make the company an unattractive target.

Between July and August 2018, BSEE Director Scott Angelle, a close associate of Mr. DeVito's, had four phone calls with Cox Oil CEO Craig Sanders.

Mr. DeVito's last day at DOI was August 23, 2018. His first day as an employee of Cox Oil was September 4, 2018.⁷¹

In October 2018, days before Cox Oil and Energy XXI finalized their merger, Cox had difficulty acquiring enough bonds for the decommissioning commitment it made to Exxon, the original owner of Energy XXI's Gulf platforms and wells, because multiple financial institutions were not comfortable with the decommissioning liabilities.⁷² This suggests that Energy XXI was still in a vulnerable position due to its Gulf decommissioning liabilities and that DOI's decision to rescind the 2016 financial assurance regulations may have kept the company afloat long enough for it to be acquired by Cox. BP ended up posting a letter of credit covering the liability until Exxon could approve Cox's surety bonds. Cox Oil acquired Energy XXI on October 19, 2018.⁷³

Committee staffers are concerned that, while the evidence is circumstantial, this chain of events indicates there may have been coordination between Mr.

⁶⁹ Energy XXI Gulf Coast, Inc. Proxy Statement Pursuant to Section 14(a) of the Securities Exchange Act of 1934.

⁷⁰ "Cox Oil to Buy Energy XXI Gulf Coast for \$322 Million." *Rigzone*. June 18, 2018.

https://www.rigzone.com/news/cox_oil_to_buy_energy_xxi_gulf_coast_for_322_million-18-jun-2018-155978-article/

⁷¹ King, Pamela. "Zinke's ex-energy advisor takes post in offshore drilling." *E&E News*. Sept. 4, 2018.

<https://www.eenews.net/greenwire/stories/1060095725/search?keyword=vincent+devito>

⁷² Nicholls, Mark. "Deal of the year, North America: BP." *Risk.net*. May 21, 2019. <https://www.risk.net/commodities/6631216/deal-of-the-year-north-america-bp>

⁷³ "Cox Oil Announced Completion of Energy XXI Acquisition." *AP News*. Oct. 19, 2018.

<https://apnews.com/f880857672c94ae896c83c6cc562c137>

DeVito, Director Angelle, Energy XXI, and Cox Oil Offshore that resulted in weakening financial assurance regulations and strengthened Energy XXI as an acquisition target, ultimately leading to Mr. DeVito's subsequent employment with Cox Oil.

As a larger matter, it is undeniable that DOI's actions drastically increased the likelihood that American taxpayers will have to cover billions of dollars in costs to remove old oil and gas infrastructure from the Gulf of Mexico if companies go bankrupt. Many fossil fuel corporations are expected to declare bankruptcy this year if oil prices stay near \$30 per barrel.

Reducing Royalty Payments

Offshore oil and gas reserves managed by DOI belong to the American people, and the Outer Continental Shelf Lands Act (OCSLA) requires the federal government to assure receipt of fair market value for the leased energy resources. BOEM establishes minimum bid levels, rental rates, and royalty rates by individual lease sale based on its assessment of market and resource conditions. OCSLA sets the minimum royalty rate at 12.5 percent, but since 2007 most leases have had royalty rates of 18.75 percent.⁷⁴ In July 2017, DOI lowered the royalty rate for shallow-water leases to 12.5 percent to encourage more bidding on leases—a costly move that the Department recently determined had little to no impact on bidding behavior.^{75,76}

Regulatory practice dating back to MMS emphasizes that “long-standing owners of active leases must prove that their oil and gas related projects require some form of new or added royalty reduction or suspension to make their project or continued operations economically viable.”⁷⁷

In November 2019, BOEM and BSEE issued a report laying the groundwork to lower the shallow-water royalty rate below the 12.5 percent statutory minimum

⁷⁴ Simon, Benjamin. “Royalty Policy Committee – Introduction to Royalties at DOI.” *Office of Policy Analysis*. October 4, 2017.

https://www.doi.gov/sites/doi.gov/files/uploads/economics-energy_royalty_policy.pdf

⁷⁵ “Trump administration reduces royalty rates in first U.S. oil, gas lease sale.” *Reuters*. July 13, 2017. <https://www.reuters.com/article/us-usa-oil-leasesale/trump-administration-reduces-royalty-rates-in-first-u-s-oil-gas-lease-sale-idUSKBN19Y2WI>

⁷⁶ “Gulf of Mexico Data and Analysis/ Leasing, Drilling and Production, Gulf of Mexico Shallow Water Potential Stranded Assets.” *Prepared by U.S. Bureau of Ocean Energy Management and the U.S. Bureau of Safety and Environmental Enforcement*. November 19, 2019. https://www.bsee.gov/sites/bsee.gov/files/reports/shallow-water-report-01.pdf?utm_campaign=New%20Research%20in%20Gulf%20of%20Mexico%20Shallow%20Water%20Province&utm_medium=email&utm_source=Eloqua

⁷⁷ U.S. Minerals Management Service, document provided to the House Natural Resources Committee titled, “Outer Continental Shelf (OCS) Royalty Relief Programs,” November 4, 2009.

in order to ensure that production continues from existing wells.⁷⁸ This is in direct contravention of a 1986 Interior Board of Land Appeals ruling saying such royalty reductions must be done on a case-by-case basis and that statutory language authorizing royalty cuts “cannot be read to authorize reduction of a royalty whenever doing so would promote development.”⁷⁹ Such a reduction also goes against longstanding policy dating back to MMS that requires lease owners to prove royalty reductions are needed in order to continue production.

Shallow Water Incidents

Providing blanket royalty cuts or other inducements for companies operating in shallow water to encourage them to produce more oil and gas from their leases than they would otherwise could seriously harm workers and the environment. Most of the companies operating in shallow water are smaller, with tighter financial margins and spottier safety records than the large integrated multinational companies operating in deep water. Over the past 10 years, a number of incidents in shallow water resulted in fatalities and hydrocarbon leaks, including:

- November 16, 2012: An explosion and fire on a production platform operated by Black Elk Energy in approximately 63 feet of water resulted in the deaths of three offshore workers.
- July 8, 2013: BSEE reported a loss of well control on a well being drilled by Energy Resource Technology, LLC, in 146 feet of water, resulting in a natural gas flow that continued for three days.
- July 23, 2013: A rig operated by Hercules Offshore in 154 feet of water experienced a blowout, followed by ignition of natural gas, which resulted in the partial destruction of the rig and required the drilling of a relief well to permanently kill the well.
- November 20, 2014: A explosion during maintenance operations on a production platform operated by Fieldwood Energy in 78 feet of water resulted in the death of one worker and injuries to three others.

⁷⁸ “Gulf of Mexico Data and Analysis/ Leasing, Drilling and Production, Gulf of Mexico Shallow Water Potential Stranded Assets.” Prepared by U.S. Bureau of Ocean Energy Management and the U.S. Bureau of Safety and Environmental Enforcement.

⁷⁹ Peabody Coal Company, 93 IBLA 317 (1986).

Migratory Bird Treaty Act

The Migratory Bird Treaty Act (MBTA) provides a critical tool for accountability by authorizing penalties for grossly negligent behavior that incidentally kills migratory birds. The *Deepwater Horizon* oil spill killed more than one million birds and is a prime example of how the MBTA can be used to hold bad actors accountable for their actions. BP settled with the U.S. government to pay \$100 million in fines under the MBTA – funds that were then used to restore important bird habitat.

According to an analysis by the National Audubon Society, of the 452 MBTA incidental take violations issued since the Act's enactment, 90 percent went to the oil industry, and 97 percent of the total amount of fines involving incidental take are from the *Exxon Valdez* and *Deepwater Horizon* oil spills.⁸⁰ The oil and gas industry requested that the Trump administration roll back protections for migratory birds by excluding incidental take from the MBTA.⁸¹ In December 2017, DOI issued a reinterpretation of the MBTA, stating that the prohibitions on take under the MBTA “only criminalize actions that have as their purpose the taking or killing of migratory birds, their nests, or their eggs.”⁸² Subsequently, the Fish and Wildlife Service (FWS) issued guidance on the new legal opinion, informing industries that they are no longer required to avoid incidental harm to birds. This unprecedented move reversed decades of efforts by both Republican and Democratic administrations to conserve and protect native birds. In February 2020, FWS proposed a rule to implement this new legal opinion, excluding incidental take from the scope of the MBTA and protecting the oil and gas industry from a wide swath of the law.⁸³

⁸⁰ “The MBTA Works and the Biggest Winners are Renewables.” *The National Audubon Society*. https://www.audubon.org/sites/default/files/audubon_mbta_industry_2018.pdf

⁸¹ “The Drilling and Mining Industry Wish List.” *Center for Western Priorities*. July 2019. <https://westernpriorities.org/wp-content/uploads/2019/07/IndustryWishList.pdf>

⁸² “The Migratory Bird Treaty Act Does Not Prohibit Incidental Take.” *Memorandum from the Principal Deputy Solicitor to the Interior Secretary*. December 22, 2017. <https://www.doi.gov/sites/doi.gov/files/uploads/m-37050.pdf>

⁸³ “Proposed Rule: Regulations Governing Take of Migratory Birds.” *U.S. Fish and Wildlife Service*. February 3, 2020. <https://www.federalregister.gov/documents/2020/02/03/2020-01771/regulations-governing-take-of-migratory-birds>

Conclusion

Since the *Deepwater Horizon* disaster, numerous oil and gas companies and industry advocates have lobbied against stronger federal rules and regulations. Time and again, these arguments boiled down to a single issue—industry cost-cutting. New technology costs money, and stricter standards, additional review, and updated practices frequently add time to projects. When the Trump administration swept into office in 2017, DOI used the same cost arguments to weaken rules, relax enforcement, and implement a host of other policies that companies had been demanding for years.

But as the *Deepwater Horizon* showed, lax regulation and overconfidence have costs as well. That single spill cost eleven lives; thousands of jobs, businesses, and livelihoods; untold numbers of birds, fish, marine mammals, and wildlife; billions of dollars in damage to beaches, mangroves, coastal wetlands, and marshes; and billions of dollars in lost tourism revenue. These costs had a material impact on people living in the Gulf and heavily outweigh the “burdens” on industry that this administration insists on reducing, at no discernible benefit to the public.

Actions taken by the Trump administration over the last three years have increased the odds that workers, local businesses, community members, and taxpayers will once again pay the price of an offshore disaster. It’s in the best interest of the nation – citizens and businesses alike – to act on the lessons learned from *Deepwater Horizon* and responsibly manage and regulate offshore drilling. Unfortunately, this administration seems intent on repeating the mistakes of the past.

Perspectives of Offshore Drilling Reform Leaders

The individuals quoted below were central to the investigations of the *Deepwater Horizon* disaster and the establishment of offshore drilling reforms at DOI. They were kind enough to offer their reflections, published for the first time in this report, on where U.S. offshore oil and gas development stands a decade after the worst oil spill in American history.

Senator Bob Graham: Commissioner and Co-Chair of the Presidential Oil Spill Commission, Former U.S. Senator from Florida (1987-2005); Former Florida Governor (1979-1987)

We will not know how much the current administration has effectively weakened safety and environmental protections for offshore drilling until a new administration is in place or the next oil spill occurs. But they seem to be doing their best to do so. For example, a key factor leading to the BP-Deepwater Horizon oil spill was the failure of BP and its contractors to properly maintain the rig's blowout preventer (BOP). In response, the previous administration proposed that operators be required to retain independent firms to certify that these crucial pieces of equipment are maintained and operating properly.

The new administration has eliminated this commonsense requirement. They did this in spite of the Department's Inspector General finding that other BOPs had failed because of inadequate installation and maintenance. In at least one case, the rig operator had provided false information to inspectors to cover up this failure. Undeterred by this evidence, the agency went ahead and eliminated that requirement for independent certification. This is one example of where the agency has clearly reduced safety. What is not so clear is what the agency is allowing the operators to do in the thousands of secret "waivers" from regulatory requirements it is issuing them. The appropriate Congressional Committee should investigate the extent to which these waivers are weakening safety and environmental protections.

However, my concern is not limited to the actions or inaction of the regulatory agencies. Our Commission made a number of recommendations on what Congress should do to improve safety and environmental protection. In the ten years that have elapsed since the BP-Deepwater Horizon catastrophe, Congress has not implemented one of these recommendations. They include, among others: creating an independent enforcement agency within the Department of Interior to oversee all aspects of offshore drilling safety; increasing the liability cap and removing existing limits on financial responsibility for offshore facilities to ensure that the taxpayer does not end up paying for cleaning up large oil spills; ensuring that the regulatory authorities have adequate resources to carry out their mission by requiring the offshore energy industry to cover these costs, as other regulated industries do, through increased permit fees.

The Honorable William Reilly: Commissioner and Co-Chair of the Presidential Oil Spill Commission; Former Administrator of the U.S. Environmental Protection Agency (1989-1993)

When the Trump administration announced the rollback of offshore drilling rules the Commission had recommended and the Interior Department in the previous administration had implemented, I warned White House official Gary Cohn of the risk the administration was assuming. And I placed several calls to Interior Secretary Zinke, but he neither took the calls nor called me back. I left a voice message pointing out that my information from conversations with major energy companies and their trade association was that the industry saw no merit in relaxing drilling rules. And I posed the question, why are you taking this on? If there should be a future spill, you own it.

Mr. Richard J. Lazarus: Executive Director of the Presidential Oil Spill Commission; Howard and Katherine Aibel Professor of Law, Harvard Law School

Ten years ago, I was appointed by the White House as the Executive Director of President Obama's BP Deepwater Horizon Gulf Oil Spill Commission, which the President charged with investigating and identifying the root causes of the spill and evaluating the government's response to that spill. The President urged us at the time to carry out our mission without 'fear or favor' and to let him know what worked and what did not work. We took that charge seriously.

The Macondo well blow-out on April 20, 2010, which led to the nation's greatest environmental disaster, was a bipartisan affair. Its root causes began with the systemic failings of the oil and gas industry in failing to ensure the safety of deep-water drilling, but those roots did not begin or end there. The root causes extended to decades of regulatory neglect by both Democratic and Republican Presidents in the White House and Democratic and Republican majorities in both congressional chambers. Both parties enjoyed the rising revenues received by the federal treasury from deepwater drilling and neither made any effort to address the rising risks of a blowout that inevitably followed from drilling in ever deeper and more challenging waters.

The Trump administration, by contrast, will own the potentially catastrophic consequences of any future deepwater well blowout as will Congress.

Although the Obama administration, like the Bush and Clinton administrations before it, did almost nothing to guard against the kind of blowout that happened twenty years ago in the Gulf of Mexico, President Obama responded to the disaster by putting into place a series of significant reforms that have markedly reduced the odds of a future disaster. He reorganized the Department of the Interior to make sure that revenue concerns did not override safety concerns. And, under his watch, the Department of the Interior adopted a comprehensive regime of safety measures that reduced both the risk of a future blowout as well as the adverse public health and environmental consequences in the event of a blowout. The economic benefits of all of these safety measures vastly outstripped their costs.

During the past several years, however, the Trump administration has inexplicably sought to strip away many of these protective measures, placing at risk both the lives of those who work on deepwater drilling rigs and those millions of Americans whose lives and livelihoods would be imperiled by another massive oil spill. The administration, supported by the American Petroleum Institute, has recklessly eliminated several of the important protective measures adopted during the Obama Presidency, many of which had proved successful in reducing the risk of well blowouts. They included requirements that independent, certified inspectors check out critical equipment to ensure such equipment working properly, and that certain essential safety protocols be followed during some of riskiest procedures during drilling operations. The administration has also recently proposed curtailing critically important environmental risk assessments that have been required for years by the National Environmental Policy Act. If those proposals to reduce NEPA oversight are made final, the loss of such careful risk assessment will both significantly increase the risk of future oil spills and limit the ability of government to reduce the harm caused by such spills when they occur.

Congress, however, will share some of the blame in the event of another blowout at a deepwater drilling site. President Obama's BP Deepwater Horizon Oil Spill Commission made a series of recommendations to reduce the risks of future blowouts that required congressional passage of new oil drilling safety legislation. During the past ten years, however, Congress has failed to enact any legislation directed at promoting safe drilling. One central recommendation of the Commission was to establish a federal agency independent of short-term political influence from either party that could

oversee and ensure safe operations of deepwater drilling. Congress never acted on that recommendation or a host of others. The only legislation Congress was able to pass was one designed to divide up the billions of dollars in civil and criminal penalties received from BP based on its misconduct that caused the spill. And while some of that money funded genuine restoration programs, much of it was diverted to private business interests favored by members of Congress and State officials. None of that money was directed to the prevention of future spills.

Years ago, Congress seemed ready to act only after a disaster occurred, but never in anticipation of such a disaster in an effort to prevent it from happening. Congress accordingly passed significant legislation to address risks from nuclear power plant operation and oil spills from increasingly large ships only in the immediate aftermath of the 1979 Three Mile Island nuclear power plant incident and the 1989 Exxon Valdez oil spill off the shores of Alaska. Both congressional enactments, while tardy, did significantly reduce the risks of future accidents.

Tragically, however, even a disaster as great as that caused by 2010 spill isn't enough to get Congress today to act. The 2010 oil spill caused immediate loss of life and billions of dollars in environmental and economic harm — far greater than the harm resulting from either Three Mile Island or Exxon Valdez. Yet Congress passed not one law designed to avert well blowouts as devastating as the Macondo blowout in April 2010.

The nation today more than ever is well aware of the devastating consequences that flow from the lack of responsible governmental planning for what experts have long warned were reasonably anticipated risks from a global pandemic. There are no true silver linings from the current crisis. But one can at least hope that we can learn from our present plight and plan for a better future, including the compelling need for congressional legislation and a President in the White House willing to restore the safeguards designed to prevent catastrophic oil spills that the Trump administration has irresponsibly eliminated.

Mr. Michael R. Bromwich: Led the Reorganization of the Minerals Management Service; first Director of the U.S. Bureau of Safety and Environmental Enforcement (2011); former Director of the U.S. Bureau of Ocean Energy Management, Regulation and Enforcement (2010-2011); Founder and Managing Principal of The Bromwich Group

In the immediate aftermath of *Deepwater Horizon*, the federal government mobilized quickly to enhance the safety of offshore exploration and production. The government put in place emergency rules to increase safety, embarked on a long-term effort to formulate appropriate regulations to incorporate the lessons learned from the accident, enhanced enforcement capabilities, and created an organizational structure that separated regulation and enforcement from the other responsibilities of the former Minerals Management Service. BSEE was the product of that effort to create a robust and independent offshore regulator. By the end of 2016, the agency had fully incorporated the lessons from *Deepwater Horizon* in new regulations and was led by personnel fully committed to safety and environmental protection.

Under the Trump administration, BSEE's mission has become confused and its stature as a robust and independent regulator has been weakened. The Trump administration's announced policy goal of "energy dominance" compromised BSEE's twin missions of enhancing safety and ensuring environmental protection. Its director, who is an unabashed cheerleader for the industry, announced that BSEE was seeking to be a "partner" of the industry and celebrated new achievements in offshore exploration and production, which are none of an independent regulator's concern. And such advocacy on behalf of the industry was accompanied by the weakening of regulations, at industry's urging, that were designed specifically to incorporate the lessons learned from *Deepwater Horizon*. The result is that, as we mark the 10th anniversary of *Deepwater Horizon*, we are more vulnerable to another offshore catastrophe than we should be. Vigilance has slid gradually into complacency.