



# *Deepwater Horizon* Oil Spill: Recent Activities and Ongoing Developments

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## Summary

In the wake of the explosion of the *Deepwater Horizon* offshore drilling rig in the Gulf of Mexico on April 20, 2010, the federal government, state governments, and responsible parties faced an unprecedented challenge. An oil discharge continued for 84 days, resulting in the largest oil spill in U.S. waters—estimated at approximately 206 million gallons (4.9 million barrels).

Response activities, led by the U.S. Coast Guard, continue but have diminished substantially.

- At the height of operations (summer of 2010), response personnel numbered over 47,000; as of January 2013, that figure has dropped to about 935.
- As of December 2012, approximately 339 miles of oiled shoreline remain subject to evaluation and/or cleanup operations.
- As a responsible party, BP has spent over \$14 billion in cleanup operations.

To date, BP has paid over \$10 billion to the federal government, state and local governments, and private parties for economic claims and other expenses, including response costs, related to the oil spill. BP estimates that a recently approved settlement will lead to an additional \$7.8 billion in payments to private parties.

BP and other responsible parties have agreed to civil and/or criminal settlements with the Department of Justice (DOJ). Although some are awaiting court approval, settlements from various parties, to date, total almost \$6 billion. BP's potential civil penalties under the Clean Water Act, which could be considerable, are not yet determined.

The natural resources damage assessment (NRDA) process, conducted by federal, state, and other trustees, is ongoing, now in its restoration planning phase. BP agreed to pay \$1 billion to support early restoration projects. Ten such projects have been funded to date, with aggregate estimated costs of approximately \$71 million.

The 112<sup>th</sup> Congress enacted two oil spill-related legislative proposals, including the following:

- The RESTORE Act: enacted on July 6, 2012, as a subtitle in P.L. 112-141 (MAP-21), it directs 80% of any administrative and civil Clean Water Act Section 311 penalty revenue into a newly created trust fund, which supports environmental and economic restoration projects in the Gulf states.
- The Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011: enacted on January 3, 2012 (P.L. 112-90), the act increases civil penalties for pipeline violations and requires a study of leak detection systems, a review of the regulations that apply to pipeline transport of “diluted bitumen” (i.e., oil sands), and an analysis whether such oil presents an increased risk of release.

In 2011, the Secretary of the Department of the Interior (DOI) redefined the responsibilities previously performed by the Minerals Management Service (MMS) and reassigned the functions of the offshore energy program among three separate organizations: the Bureau of Ocean Energy Management (BOEM), the Bureau of Safety and Environmental Enforcement (BSEE), and the Office of Natural Resources Revenue (ONRR). These agencies have promulgated several rulemaking changes, some of which are based on issues raised by the *Deepwater Horizon* spill.

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## Introduction

In the wake of the explosion of the *Deepwater Horizon* offshore drilling rig on April 20, 2010, the federal government, state governments, and responsible parties faced an unprecedented challenge in the Gulf of Mexico. Never before had a subsea drilling system discharge of this magnitude, or an oil spill of this size—estimated at approximately 206 million gallons (4.9 million barrels)—occurred in U.S. waters.<sup>1</sup>

The incident tested the response capabilities of the federal government, state governments, and private industry, as well as the legal framework of liability and compensation. Both the response (i.e., cleanup) and compensation process continue today.

This report provides a summary update of selected issues related to the 2010 *Deepwater Horizon* oil spill:

- Oil Spill Response
- Fate of the Oil
- Economic Claims and Other Payments
- Civil and Criminal Settlements
- NRDA and Gulf Coast Restoration
- Congressional Activity
- Executive Branch Activities
- Independent Inquiries

More detailed analysis of these and other issues is addressed in other CRS products, some of which are listed at the end of this report.

## Oil Spill Response

The uncontrolled discharge from the *Deepwater Horizon* continued for approximately 84 days until, following several attempts, responders gained control of the release on July 15, 2010. The response involves multiple agencies. As this spill occurred in the coastal zone, an on-scene coordinator (OSC) from the U.S. Coast Guard continues to direct and coordinate the on-site activities of federal, state, local, and private entities (e.g., BP and its contractors). This framework of multiple parties working together under the leadership of the federal government is referred to as the Unified Command.

Response activities continue to date but have diminished substantially compared to the height of operations. Response highlights and updates include the following:

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<sup>1</sup> An estimated 17% of this oil did not enter the Gulf environment, but was directly recovered from the wellhead by BP. See the Federal Interagency Solutions Group, Oil Budget Calculator Science and Engineering Team, *Oil Budget Calculator: Deepwater Horizon-Technical Documentation*, November 2010. See also CRS Report R41531, *Deepwater Horizon Oil Spill: The Fate of the Oil*, by Jonathan L. Ramseur.

- During the summer of 2010, response personnel levels rose to 47,000; response vessel numbers approached 7,000.<sup>2</sup>
- As of January 2013, approximately 935 response personnel remain in the Gulf region, including federal, state, and local government officials, and responsible party personnel and their contractors.<sup>3</sup>
- Federal government response costs approached \$850 million as of October 3, 2012, most of which BP has reimbursed.<sup>4</sup>
- According to National Oceanic and Atmospheric Administration (NOAA) shoreline survey data, the maximum extent of shoreline oiling involved almost 1,100 miles of shoreline.<sup>5</sup>
- As of December 21, 2012, approximately 339 miles of oiled shoreline remain subject to evaluation and/or cleanup operations.<sup>6</sup>
- In December 2012, the Coast Guard investigated a recurring surface oil sheen near the site of the *Deepwater Horizon* incident that “correlated” to oil from the 2010 spill. After conducting a subsurface investigation, the source of the sheen remains unknown.<sup>7</sup>

## Fate of the Oil

In November 2010, the federal government released a peer-reviewed publication that provided an estimate of what happened to the oil.<sup>8</sup> At the time these calculations were made (July 14, 2010), approximately 50% of the oil had evaporated, dissolved, or been effectively removed from the Gulf environment through human activities. Therefore, a substantial portion—over 100 million gallons—remained, in some form, in the Gulf.<sup>9</sup>

It is debatable whether the fate of the remaining oil will ever be established conclusively. Multiple challenges hinder this objective, and as time progresses, determining the fate of the oil will likely become more difficult. Researchers are continuing to study and publish results

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<sup>2</sup> See “Operational Updates,” which were issued daily during the height of the oil spill response. Archived updates are available at <http://www.restorethegulf.gov>.

<sup>3</sup> Data from Coast Guard, provided through personal communication (January 23, 2013).

<sup>4</sup> Captain Duke Walker, U.S. Coast Guard Federal On-Scene Coordinator, *Deepwater Horizon Status Brief* before the Florida Oil Spill Commission, October 3, 2012, at [http://www.dep.state.fl.us/deepwaterhorizon/files2/corc/100312\\_uscg\\_district8.pdf](http://www.dep.state.fl.us/deepwaterhorizon/files2/corc/100312_uscg_district8.pdf).

<sup>5</sup> Data from personal communication (October 3, 2011) with NOAA Office of Response and Restoration officials.

<sup>6</sup> Data from Coast Guard, provided through personal communication (January 23, 2013). Data include shoreline segments in the “Shoreline Treatment Recommendation (STR)” and “Shoreline Clean-up Completion Plan (SCCP)” processes, as well as segments deemed complete, but pending approval.

<sup>7</sup> See Unified Command Press Release, “ROV wraps up investigation,” December 18, 2012, at <http://www.restorethegulf.gov>.

<sup>8</sup> The Federal Interagency Solutions Group, Oil Budget Calculator Science and Engineering Team, *Oil Budget Calculator: Deepwater Horizon-Technical Documentation*, November 2010.

<sup>9</sup> For a more extensive analysis, see CRS Report R41531, *Deepwater Horizon Oil Spill: The Fate of the Oil*, by Jonathan L. Ramseur.

addressing various aspects of the spill. Results from several studies suggest that microbial organisms (bacteria) consumed a considerable amount of the oil in the water column.<sup>10</sup>

## Economic Claims and Other Payments

As an identified responsible party,<sup>11</sup> BP is liable for cleanup costs, natural resource damages (discussed in a subsequent section), and various economic damages.<sup>12</sup> The total payments associated with the 2010 Gulf spill have already surpassed those of the 1989 *Exxon Valdez* oil spill.<sup>13</sup>

As of January 2013, BP has spent over \$14 billion in cleanup operations.<sup>14</sup> Further payments made by BP to different parties for various purposes are identified in **Table 1**.

As noted in the table, several of the payment mechanisms are still ongoing, namely the “Court Settlement Program.” In August 2010, multiple lawsuits, involving over 100,000 private claims against BP and the other defendants (e.g., Transocean and Haliburton) were consolidated before the United States District Court in New Orleans. On April 18, 2012, BP and many of the plaintiffs reached a settlement agreement, which was approved by the Court on December 21, 2012. The settlement establishes a court-supervised program to evaluate and award various economic claims from individuals and businesses, but does not involve governments, shareholders, or claims related to the drilling moratorium. Except for a limit of \$2.3 billion for seafood compensation, the settlement is not capped. BP estimates that the ultimate cost of the proposed settlement will reach approximately \$7.8 billion.<sup>15</sup>

In addition, the ongoing “BP Claims Program” refers to claims to eligible parties not subject to the class action settlement or for those who choose to opt out of the class settlement.

Other components of the consolidated litigation are still pending, such as claims against BP not included in the above settlement and claims involving the other defendants, including Transocean and Haliburton.

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<sup>10</sup> See, e.g., David Valentine *et al.*, “Dynamic autoinoculation and the microbial ecology of a deep water hydrocarbon eruption,” *Proceedings of the National Academy of Sciences*, January 2012; Bethanie Edwards *et al.*, “Rapid Microbial Respiration of Oil from the Deepwater Horizon Spill in Offshore Surface Waters of the Gulf of Mexico,” *Environmental Research Letters*, Vol. 6, August 2011.

<sup>11</sup> For the purpose of this report, BP is discussed as if it is the sole responsible party—a key term in the existing liability and compensation framework. However, other parties are also considered responsible parties. The Department of Justice named 9 defendants in a civil suit filed December 15, 2010. See Press Release at <http://www.justice.gov/opa/pr/2010/December/10-ag-1442.html>.

<sup>12</sup> Oil Pollution Act, 33 U.S.C. §2702.

<sup>13</sup> The *Exxon Valdez* was a U.S.-flagged tanker that grounded in Prince William Sound, AK, in March 1989 spilling approximately 11 million gallons of oil. The oil spill sparked regional and nation-wide interest in oil spill prevention, response, clean-up, and liability. In association with the 1989 oil spill, Exxon paid approximately \$4.9 billion. Payments were made voluntarily and pursuant to several different legal proceedings at different times over approximately 20 years.

<sup>14</sup> Personal communication with BP (January 16, 2013) and BP Press Release, September 13, 2012, at <http://www.bpgulfupdate.com/go/doc/4699/1543703/BP-Provides-Post-Isaac-Gulf-Coast-Operations-Update>.

<sup>15</sup> For more information, see <http://www.deepwaterhorzoneconomicsettlement.com>.

**Table I. Selected Payments from BP Associated with the 2010 Oil Spill**

As of December 30, 2012, Unless Noted Otherwise

Recipient(s)	Purpose	Amount of Payment (\$ millions)
<b>Federal government</b>	Reimbursements for oil spill response costs <sup>a</sup>	\$705
	Behavioral health	\$10
	Contributions	\$22
<b>States</b>	Reimbursements for response costs and other claims	\$671
	Tourism promotion	\$174
	Seafood marketing	\$29
	Seafood testing	\$19
	Behavioral health	\$42
	Contributions	\$5
	<b>Individuals and/or businesses</b>	Economic claims
- BP Claims Program May 3, 2010 - August 23, 2010		\$396
- Gulf Coast Claims Facility August 23, 2010 – June 4, 2012		\$6,667
- Court Settlement Program June 4, 2012 – Present		\$1,079 <i>Ongoing</i>
- BP Claims Program June 4, 2012 – Present		\$4 <i>Ongoing</i>
Vessels of Opportunity Program <sup>b</sup>		\$626
Real Estate Fund <sup>c</sup>		\$54
Gulf of Mexico Research Initiative <sup>d</sup>		\$500
<b>TOTAL</b>		<b>\$11,003</b>

**Source:** Prepared by CRS; unless specified below, data from BP, Gulf of Mexico Oil Spill Claims and Other Payments Public Report, December 2012, at <http://www.bp.com>.

**Notes:** More information about the above payments is available at <http://www.bpgulfupdate.com>.

- a. The reimbursed response costs to federal and state governments is likely included in BP's estimate of total response costs (over \$14 billion).
- b. During the oil spill response, BP employed private vessels to conduct response efforts such as skimming, booming, and transporting supplies. According to the final report from National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling, vessels made between \$1,200 and \$3,000 per day. Payment data from Gulf Coast Claims Facility, Overall Program Statistics, May 14, 2012.
- c. BP established a separate fund and process to award claims to real estate agents affected by the incident. Claims data from Gulf Coast Claims Facility, Overall Program Statistics, May 14, 2012.
- d. On May 24, 2010, BP announced a commitment of up to \$500 million over 10 years to fund an independent research program to study the impact of the oil spill and its associated response on the environment and public health in the Gulf of Mexico. More information is available at <http://gulfresearchinitiative.org>.

## **Civil and Criminal Settlements**

The Department of Justice (DOJ) has announced criminal and/or civil settlements with several parties involved in the 2010 oil spill.<sup>16</sup> Although some are awaiting court approval, settlements from various parties, to date, total almost \$6 billion. When collected, the settlement payments will support several objectives. These settlements are discussed below.

### **BP Criminal Settlement**

On November 15, 2012, BP and DOJ announced a criminal penalty settlement of approximately \$4 billion, which was approved by the U.S. District Court in the Eastern District of Louisiana on January 29, 2013. In accordance with the settlement, BP has agreed to plead guilty to 11 felony counts of Misconduct or Neglect of Ships Officers for the deaths of 11 people in the disaster, as well as misdemeanor counts under the Clean Water Act and the Migratory Bird Treaty Act, and a felony count of obstruction of Congress.<sup>17</sup>

The \$4 billion would be distributed as follows:

- \$2.394 billion to the National Fish and Wildlife Foundation (NFWF) to support restoration efforts in the Gulf states.
- \$1.15 billion to the Oil Spill Liability Trust Fund.
- \$350 million to the National Academy of Sciences for oil spill prevention and response research.
- \$100 million to the North American Wetlands Conservation Fund.
- \$6 million to the General Treasury.

### **BP Civil SEC Settlement**

On November 15, 2012, BP and the Securities and Exchange Commission (SEC) announced a settlement involving civil securities fraud charges, including statements concerning the estimated flow rate of the leaking well. The U.S. District Court in the Eastern District of Louisiana approved the settlement on December 10, 2012. The BP agreed to pay \$525 million to settle the charges. The SEC stated it would use this payment to establish a fund to provide harmed investors with compensation for losses they sustained in the fraud.<sup>18</sup>

### **Transocean Civil and Criminal Settlement**

On January 3, 2013, the Department of Justice announced a civil and criminal penalty settlement with Transocean, the company that owned and operated the Deepwater Horizon drilling rig. The

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<sup>16</sup> DOJ also filed charges against individuals for various actions.

<sup>17</sup> See <http://www.justice.gov/iso/opa/resources/43320121115143613990027.pdf>.

<sup>18</sup> See SEC Press Release, November 15, 2012, at <http://www.sec.gov/news/press/2012/2012-231.htm>.



proposed settlement is subject to a public comment period and final approval from the U.S. District Court in the Eastern District of Louisiana.

In the civil settlement, Transocean agreed to pay \$1 billion, of which 80% will go into the newly created Gulf Coast Restoration Trust Fund (pursuant to the “RESTORE Act” in P.L. 112-141). The remaining 20% goes into the Oil Spill Liability Trust Fund.<sup>19</sup>

In the Transocean Guilty Plea agreement for criminal charges, Transocean agreed to pay \$400 million.<sup>20</sup> The amount is to be distributed as follows:

- \$150 million to the NTWF;
- \$150 million to the National Academy of Sciences for oil spill prevention and response research; and
- \$100 million in fines would go to the Oil Spill Liability Trust Fund.<sup>21</sup>

## **MOEX Civil Settlement**

On February 17, 2012, DOJ and MOEX Offshore 2007 LLC, agreed to a \$70 million civil penalty settlement, with an additional \$20 million in supplemental environmental projects. The U.S. District Court in the Eastern District of Louisiana approved the settlement on June 8, 2012. At the time of the 2010 oil spill, MOEX owned approximately 10% of the lease for the Macondo well. Of the penalty amount,

- \$45 million goes to the Oil Spill Liability Trust Fund, and
- \$25 million is to be distributed in various amounts among the five Gulf states.<sup>22</sup>

## **NRDA and Gulf Coast Restoration**

When a spill occurs, natural resource trustees conduct a natural resource damage assessment (NRDA) to determine the extent of the harm. Trustees may include officials from federal agencies designated by the President, state agencies designated by the relevant governor, and representatives from tribal and foreign governments. Natural resource damages are compensatory, not punitive. Collected damages cannot be placed into the general treasury revenues of the federal or state government, but must be used to restore or replace lost resources.

The trustees’ work occurs in three steps: a Pre-assessment Phase, the Restoration Planning Phase, and the Restoration Implementation Phase. The *Deepwater Horizon* NRDA process is in the restoration planning phase.<sup>23</sup>

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<sup>19</sup> The civil settlement consent decree is available at <http://www.justice.gov/iso/opa/resources/915201313122945254063.pdf>.

<sup>20</sup> The Guilty Plea Agreement is available at <http://www.justice.gov/opa/documents/transocean-plea-agreement.pdf>.

<sup>21</sup> Although the agreement does not explicitly state this allocation, penalties paid pursuant to Clean Water Act Section 309 (33 U.S.C. §1319) would go to the Fund (26 U.S.C. §9509(b)(8)).

<sup>22</sup> For further information, see EPA’s website, which includes the Consent Decree, at <http://www.epa.gov/enforcement/air/cases/moex.html>.

On April 21, 2011, the trustees for the *Deepwater Horizon* oil spill announced that BP has agreed to provide \$1 billion toward early restoration projects in the Gulf of Mexico to address injuries to natural resources caused by the spill. “Early Restoration” projects may be developed prior to the completion of the injury assessment to achieve restoration faster. According to NOAA, 10 such projects have been funded to date with aggregate estimated costs of approximately \$71 million.<sup>24</sup>

The *Deepwater Horizon* oil spill raised issues regarding restoration of natural resources in the spill’s path and the region at large. On June 15, 2010, the Administration committed to developing a long-term Gulf of Mexico restoration plan for post-spill recovery needs as well as long-term restoration. In contrast to the environmental damages addressed by NRDA, the Administration’s plan would address a broader array of restoration needs,<sup>25</sup> many of which predate the oil spill.<sup>26</sup> To further this objective, the President established the Gulf Coast Ecosystem Restoration Task Force in October 2010 to develop a restoration strategy and ecosystem restoration agenda.<sup>27</sup> The Task Force released its restoration strategy in December 2011.<sup>28</sup> With the enactment of the RESTORE Act (discussed below) in July 2012, and the creation of the Gulf Coast Ecosystem Restoration Council, the President disbanded the Task Force.<sup>29</sup>

## Congressional Activity

Although interest arguably diminished in the 112<sup>th</sup> Congress (relative to interest in the 111<sup>th</sup> Congress—see text box below), some Members continued to express concerns regarding various oil spill-related policy matters.<sup>30</sup> The 112<sup>th</sup> Congress enacted two statutes that contain oil spill-related provisions.

On January 3, 2012, the President signed P.L. 112-90 (the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011), which

- increases civil penalties for violating safety requirements and requires automatic and remote-controlled shutoff valves on newly constructed transmission pipelines;
- directs the Department of Transportation to analyze leak detection systems, and after a review by Congress, issue requirements based on this analysis; and

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<sup>23</sup> For more information, see CRS Report R41972, *The 2010 Deepwater Horizon Oil Spill: Natural Resource Damage Assessment Under the Oil Pollution Act*, by James V. DeBergh.

<sup>24</sup> See Phase I (April 2012) and Phase II (October 2012) Early Restoration Plans, at <http://www.gulfspillrestoration.noaa.gov/>.

<sup>25</sup> See the Obama Administration’s *America’s Gulf Coast: A Long Term Recovery Plan after the Deepwater Horizon Oil Spill* (sometimes referred to as the “Mabus Report”), September 2010.

<sup>26</sup> See CRS Report R41640, *The Deepwater Horizon Oil Spill and the Gulf of Mexico Fishing Industry*, by Harold F. Upton.

<sup>27</sup> Executive Order 13554 in 75 *Federal Register* 62313 (October 8, 2010).

<sup>28</sup> See [http://epa.gov/gulfcoasttaskforce/pdfs/GulfCoastReport\\_Full\\_12-04\\_508-1.pdf](http://epa.gov/gulfcoasttaskforce/pdfs/GulfCoastReport_Full_12-04_508-1.pdf).

<sup>29</sup> Executive Order 13626 in 77 *Federal Register* 56749 (September 13, 2012).

<sup>30</sup> See CRS Report R41684, *Enacted and Proposed Oil Spill Legislation in the 112th Congress*, by Jonathan L. Ramseur.

- requires the Pipeline and Hazardous Materials Safety Administration to review whether current regulations are sufficient to regulate pipelines transmitting “diluted bitumen,” and analyze whether such oil presents an increased risk of release.

On July 6, 2012, the President signed P.L. 112-141 (MAP-21), which includes a subtitle referred to as the RESTORE Act. The RESTORE Act establishes the Gulf Coast Restoration Fund in the General Treasury. Eighty percent of any administrative and civil Clean Water Act Section 311 penalties paid by responsible parties in connection with the 2010 Deepwater Horizon oil spill will provide the revenues for the fund. Amounts in the fund will be available for expenditure without further appropriation.

The RESTORE Act distributes monies to various entities through multiple processes:

- 35% divided equally among the five Gulf of Mexico states to be applied toward one or more of 11 designated activities;
- 30% provided to a newly created Gulf Coast Ecosystem Restoration Council to finance ecosystem restoration activities in the Gulf Coast region;
- 30% disbursed by the Council to the five Gulf states, based on specific criteria: shoreline impact, oiled shoreline distance from the Deepwater Horizon rig, and coastal population. Each state must submit a plan for approval, documenting how funding will support one or more of the 11 designated activities; and
- 5% to support marine research and related purposes.

### **Activity in the 111<sup>th</sup> Congress<sup>31</sup>**

During the immediate aftermath of the oil spill, Senate and House committees in the 111<sup>th</sup> Congress held more than 60 hearings on a variety of issues.<sup>32</sup> Members introduced more than 150 legislative proposals related to oil spill matters. The 111<sup>th</sup> Congress enacted three of these proposals into law (P.L. 111-191, P.L. 111-212, and P.L. 111-281). Provisions in these laws generally concerned short-term matters that will not have a lasting impact on oil spill governance. However, H.R. 3619, the Coast Guard Authorization Act for Fiscal Years 2010 and 2011, which the President signed October 15, 2010 (P.L. 111-281), includes more substantial changes. In addition to the enacted legislation, the House in the 111<sup>th</sup> Congress passed several bills, including H.R. 3534 (the Consolidated Land, Energy, and Aquatic Resources Act, or CLEAR Act), that included multiple oil spill provisions. The Senate had comparable bills on its legislative calendar, but did not vote on their passage.

In the 112<sup>th</sup> Congress, the House passed several bills that intended to encourage oil and gas development on the OCS: H.R. 1230, H.R. 1229, H.R. 1231, and H.R. 2021. The Senate did not report analogous legislation. Moreover, the 112<sup>th</sup> Congress enacted one bill with provisions that arguably encourage OCS development: P.L. 112-74 (Consolidated Appropriations Act, 2012), enacted on December 23, 2011. Among other provisions, this act transferred air emission regulatory authority in the OCS off Alaska’s north coast from the U.S. Environmental Protection

<sup>31</sup> CRS Report R41453, *Oil Spill Legislation in the 111th Congress*, by Jonathan L. Ramseur (archived).

<sup>32</sup> In some cases, investigatory reports followed. For example, see reports by the House Committee on Energy and Commerce Oversight and Investigations Subcommittee and Energy and the Environment Subcommittee, at <http://democrats.energycommerce.house.gov/>; and the House Committee on Natural Resources, at <http://naturalresources.house.gov/calendar/archives/list.aspx?EventTypeID=158:165>.

Agency (EPA) to the Department of the Interior (DOI). Some stakeholders would contend that DOI's program has less stringent requirements than EPA's program.<sup>33</sup>

## Executive Branch Activity

Multiple federal agencies participated in some fashion in the oil spill response, and some (e.g., Coast Guard and NOAA) continue to conduct activities related to the incident. The following sections highlight selected actions of DOI and EPA that resulted, at least in part, from the *Deepwater Horizon* incident.

### Department of the Interior

Prior to the oil spill, DOI and congressional investigations had identified a number of management shortcomings, ethical lapses among personnel, and conflicts of interest in the former Minerals Management Service (MMS). Specific concerns involving agency reorganization and regulatory policies toward safety reforms had been raised in oversight hearings and in reports, including reports by the DOI inspector general.<sup>34</sup>

On May 19, 2010, the DOI Secretary replaced the MMS with the Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE). On October 1, 2011, DOI divided BOEMRE into three separate entities: the Bureau of Ocean Energy Management (BOEM), the Bureau of Safety and Environmental Enforcement (BSEE), and the Office of Natural Resources Revenue (ONRR).<sup>35</sup>

These DOI agencies have issued several regulatory and policy changes related to offshore activities, including the following:

- October 14, 2010: interim final rule<sup>36</sup> that implements certain safety measures that were identified in a June 2010 report from the Secretary of the Interior.<sup>37</sup>
- October 15, 2010: final rule requiring OCS operators to implement a Safety and Environmental Management System (SEMS) program.<sup>38</sup>
- September 14, 2011: proposed rule revising requirements associated with the SEMS proposed rule that would “expand, revise, and add several new requirements necessary for more thorough SEMS programs.”<sup>39</sup>

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<sup>33</sup> For more information, see CRS Report R42123, *Controlling Air Emissions from Outer Continental Shelf Sources: A Comparison of Two Programs—EPA and DOI*, by Jonathan L. Ramseur.

<sup>34</sup> See, for example, DOI, Office of Inspector General, *Evaluation Report: Minerals Management Service Royalty-In-Kind Oil Sales Process*, 2008; DOI, Office of Inspector General, *Investigative Report: Island Operating Company et al*, 2010; DOI, Office of Inspector General, *Investigative Report: MMS Oil Marketing Group - Lakewood*, 2008.

<sup>35</sup> For more information see CRS Report R42599, *Department of the Interior (DOI) Reorganization of Ocean Energy Programs*, by Curry L. Hagerty.

<sup>36</sup> 75 *Federal Register* 63345 (October 14, 2010).

<sup>37</sup> On June 8, 2010, BOEMRE issued a Notice to Lessees (NTL) addressing those recommendations identified in the Safety Measures Report as warranting immediate implementation (NTL No. 2010-N05—Increased Safety Measures for Energy Development on the OCS).

<sup>38</sup> This rule (75 *Federal Register* 63609) was first considered in an advanced notice of proposed rulemaking in 2006.

- August 22, 2012: final rule amending and clarifying several provisions in the October 14, 2010 interim final rule.<sup>40</sup>

In addition to rulemaking activity, DOI agencies issued several notices to lessees (NTLs) to address related issues through policy guidance.<sup>41</sup>

DOI regulatory and policy changes will impact oil and gas development efforts outside of the Gulf of Mexico region. For example, oil and gas exploration activity in the U.S. Arctic region has received considerable attention, due in part to the 2010 Gulf spill.

## **Environmental Protection Agency**

On November 27, 2012, EPA announced suspension of BP Exploration and Production Inc. (and a number of affiliated companies) from certain future government contracting activities, including government procurement contracts.<sup>42</sup> As grounds for this suspension, EPA cited BP's lack of business integrity, particularly information that reportedly came to light during settlement discussions with DOJ (discussed above).<sup>43</sup>

EPA's action raised questions concerning BP's ability to participate in offshore lease sales for oil and gas production. BP did not participate in a November 28, 2012 lease sale administered by DOI, leaving many to question whether EPA's action barred BP from bidding, or whether BP decided to sit it out.

## **Independent Inquiries**

Several investigations and commissions—both federal and private—were initiated to examine issues surrounding the *Deepwater Horizon* incident. These include the following (listed in order of report publication date):

- Thad Allen, *National Incident Commander's Report: MC252 Deepwater Horizon*, October 2010.<sup>44</sup>
- U.S. Coast Guard, *BP Deepwater Horizon Oil Spill: Incident Specific Preparedness Review*, January 2011.<sup>45</sup>

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<sup>39</sup> 76 *Federal Register* 56683 (September 14, 2011).

<sup>40</sup> 77 *Federal Register* 50856 (August 22, 2012).

<sup>41</sup> The NTLs are available at <http://www.boem.gov/reforms.htm>.

<sup>42</sup> For more information on this issue, see CRS Report RL34753, *Debarment and Suspension of Government Contractors: An Overview of the Law Including Recently Enacted and Proposed Amendments*, by Kate M. Manuel.

<sup>43</sup> The full announcement of this suspension can be found at <http://yosemite.epa.gov/opa/admpress.nsf/d0cf6618525a9efb85257359003fb69d/2aaf1c1dc80c969885257abf006dafb0!opendocument>.

<sup>44</sup> See <http://www.nrt.org>

<sup>45</sup> See <http://www.uscg.mil/foia/docs/DWH/BPDWH.pdf>.

- National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling, *Deep Water: The Gulf Disaster and the Future of Offshore Drilling*, Report to the President, January, 2011.<sup>46</sup>
- Joint Investigation of Bureau of Ocean Energy Management, Regulation, and Enforcement and U.S. Coast Guard
  - Volume I: U.S. Coast Guard, Report of Investigation into the Circumstances Surrounding the Explosion, Fire, Sinking and Loss of Eleven Crew Members Aboard the Mobile Offshore Drilling Unit Deepwater Horizon, April 2011<sup>47</sup>
  - Volume II: Bureau of Ocean Energy Management, Regulation, and Enforcement, *Report Regarding the Causes of the April 20, 2010 Macondo Well Blowout*, September 2011.<sup>48</sup>
- U.S. Coast Guard, *On Scene Coordinator Report: Deepwater Horizon Oil Spill*, September 2011.<sup>49</sup>
- National Academy of Engineering and National Research Council, *Macondo Well—Deepwater Horizon Blowout: Lessons for Improving Offshore Drilling Safety*, December 2011.<sup>50</sup>
- Government Accountability Office, *Interior Has Strengthened Its Oversight of Subsea Well Containment, but Should Improve Its Documentation*, February 2012.<sup>51</sup>
- Oil Spill Commission Action, *Assessing Progress: Implementing the Recommendations of the National Oil Spill Commission*, April 2012.<sup>52</sup>
- U.S. Chemical Safety and Hazard Investigation Board: report forthcoming.<sup>53</sup>

## Selected CRS Reports for Further Reading

### *Legislation*

CRS Report R41684, *Enacted and Proposed Oil Spill Legislation in the 112th Congress*, by Jonathan L. Ramseur.

CRS Report R41453, *Oil Spill Legislation in the 111th Congress*, by Jonathan L. Ramseur.

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<sup>46</sup> See <http://www.oilspillcommission.gov/>.

<sup>47</sup> For cover letter, see <http://www.boemre.gov/pdfs/maps/JointMemo092011.pdf>; Volume I available at <https://homeport.uscg.mil>.

<sup>48</sup> See <http://www.boemre.gov/pdfs/maps/DWHFINAL.pdf>.

<sup>49</sup> See <https://homeport.uscg.mil>.

<sup>50</sup> See <http://www.nae.edu/default.aspx?id=19649>.

<sup>51</sup> GAO-11-394T, February 2012. See <http://www.gao.gov/assets/130/125519.pdf>.

<sup>52</sup> See <http://oscaction.org>.

<sup>53</sup> See <http://www.csb.gov/investigations>.

## **2010 Deepwater Horizon Oil Spill**

CRS Report R41679, *Liability and Compensation Issues Raised by the 2010 Gulf Oil Spill*, by Jonathan L. Ramseur.

CRS Report R41531, *Deepwater Horizon Oil Spill: The Fate of the Oil*, by Jonathan L. Ramseur.

CRS Report R41972, *The 2010 Deepwater Horizon Oil Spill: Natural Resource Damage Assessment Under the Oil Pollution Act*, by James V. DeBergh.

CRS Report R41234, *Potential Stafford Act Declarations for the Gulf Coast Oil Spill: Issues for Congress*, by Francis X. McCarthy.

## **Background**

CRS Report RL33705, *Oil Spills in U.S. Coastal Waters: Background and Governance*, by Jonathan L. Ramseur.

CRS Report R41266, *Oil Pollution Act of 1990 (OPA): Liability of Responsible Parties*, by Robert Meltz.

CRS Report R41370, *Federal Civil and Criminal Penalties Possibly Applicable to Parties Responsible for the Gulf of Mexico Oil Spill*, by Robert Meltz.

CRS Report RL34209, *Commercial Fishery Disaster Assistance*, by Harold F. Upton.

CRS Report RL33404, *Offshore Oil and Gas Development: Legal Framework*, by Adam Vann.

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CRS Report R40645, *U.S. Offshore Oil and Gas Resources: Prospects and Processes*, by Marc Humphries and Robert Pirog.

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