

# 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



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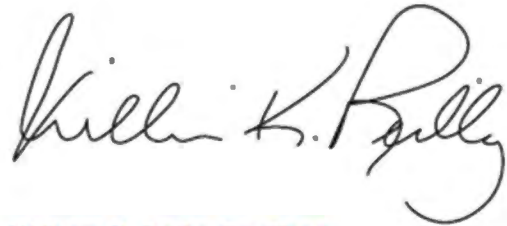
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# Part I

## The Path to Tragedy

**On April 20, 2010, the 126 workers on the BP *Deepwater Horizon* were going about the routines of completing an exploratory oil well—unaware of impending disaster. What unfolded would have unknown impacts shaped by the Gulf region’s distinctive cultures, institutions, and geography—and by economic forces resulting from the unique coexistence of energy resources, bountiful fisheries and wildlife, and coastal tourism. The oil and gas industry, long lured by Gulf reserves and public incentives, progressively developed and deployed new technologies, at ever-larger scales, in pursuit of valuable energy supplies in increasingly deeper waters farther from the coastline. Regulators, however, failed to keep pace with the industrial expansion and new technology—often because of industry’s resistance to more effective oversight. The result was a serious, and ultimately inexcusable, shortfall in supervision of offshore drilling that played out in the Macondo well blowout and the catastrophic oil spill that followed. Chapters 1 through 3 describe the interplay of private industry and public oversight in the distinctive Gulf deepwater context: the conditions that governed the deployment of the *Deepwater Horizon* and the drilling of the Macondo well.**



its responsibility for fixed platform safety to MMS in 2002<sup>114</sup>—erily echoed earlier cycles of expanding MMS's mandate in the face of inadequate resources, stretching its capabilities thinner still. The practical effect of the Coast Guard and MMS's shared responsibility for offshore safety has been the presence of "overlaps" in jurisdiction that have required the renegotiation of informal interagency agreements ever since 1989—the continuance of which has left MMS with "underlaps" in resources.<sup>115</sup>

### The Culture of Revenue Maximization

When Interior Secretary Watt moved regulatory oversight of offshore energy exploration and production to a new entity that was also responsible for collecting revenue from the activity it regulated, he created a new agency that inexorably came to be dominated by its focus on maximizing that revenue.

For at least the past 15 years, every former MMS Director has freely acknowledged that the royalty issues have taken most of the Director's time—at the expense of offshore regulatory oversight.<sup>116</sup> In 1995, as the United States faced global competition for oil exploration and development capital during a period of low prices, Congress enacted the Deep Water Royalty Relief Act.<sup>117</sup> It provided a suspension of royalty payments on a portion of new production from deepwater operations.

But when prices and volumes increased, the sheer amount of money at stake—literally billions of dollars (MMS total onshore and offshore revenues for 2008 were \$23 billion<sup>118</sup>)—compelled even greater attention, as the White House, members of Congress, and certainly the states each advanced competing notions of how those sums might best be spent.\* Litigation, new regulations, and legislation designed to increase one party's relative share of such massive sums have been a constant feature of managing the flow of royalties from onshore and offshore energy production. Such disputes have invariably been controversial, politically sensitive, and time-consuming for MMS decisionmakers.<sup>119</sup>

**Agency leadership and technical expertise.** Agency personnel naturally look to agency leadership to signal what constitutes their primary mission, including the expertise and experience that such leaders bring with them. In the case of MMS, those signals were profoundly disturbing, yet nonetheless consistent over time. No one who has led MMS since it was created almost 30 years ago has possessed significant training or experience in petroleum engineering or petroleum geology, or any significant technical expertise related to drilling safety.

In the absence of a clear statement from the top about the necessity for such expertise to ensure drilling safety, it should be no surprise that MMS personnel have suffered from the loss of essential expertise throughout their ranks. Indeed, the lack of requisite training is abysmal. According to a recent survey conducted at the request of the Secretary of the Interior, "[a]lmost half of the [MMS] inspectors surveyed do not believe they have received sufficient training." MMS, unlike Interior's Bureau of Land Management (which

\* Because of a bureaucratic mistake within Interior, however, federal lease sales held in 1998 and 1999 failed to include price thresholds in each lease, meaning that the government received no relief from royalty payments even though higher oil prices made such relief wholly unnecessary. The Government Accountability Office has estimated that the error could cost the government at least \$10 billion and perhaps as much as \$80 billion. Government Accountability Office, "Oil and Gas Royalties – Royalty Relief Will Likely Cost the Government Billions, but the Final Costs Have Yet to Be Determined" (January 18, 2007), 3, 5.

inspects onshore oil and gas drilling operations), has no “oil and gas inspection certification program” and no exam “is required of each inspector in order to be certified.” MMS “does not provide formal training specific to the inspections process, and does not keep up with changing technology. Some inspectors noted that they rely on industry representatives to explain the technology at a facility.”<sup>120</sup>

The Macondo well blowout makes all too clear the cost of such a departure from the standards of excellence that the nation expects from its public servants. As described in Chapter 4, the MMS personnel responsible for reviewing the permit applications submitted to MMS for the Macondo well were neither required nor prepared to evaluate the aspects of that drilling operation that were in fact critical to ensuring well safety. The regulations did not mandate that MMS regulators inquire into the specifics of “rupture disks,” “long string” well designs, cementing process, the use of centralizers, lockdown sleeves, or the temporary abandonment procedures (see Chapter 4). And, no doubt for that same reason, the MMS personnel responsible for deciding whether the necessary drilling permits were granted lacked the expertise that would have been necessary in any event to determine the relative safety of the well based on any of these factors.\*

**Agency integrity and pockets of corruption.** The preoccupation with revenues did not merely divert MMS leaders’ attention from drilling safety. It also allowed the ethical culture to degenerate in a few isolated offices, leading to serious charges of abuse of government authority and even charges of criminal misconduct by a few individuals. This conduct was far removed from the daily work of almost all those agency personnel who performed regulatory oversight of offshore drilling. But the conduct of a few working elsewhere in the agency unfairly cast a cloud over the agency as a whole, especially in the immediate aftermath of the Macondo well blowout, providing a ready reminder of the critical importance of public trust in the management of the nation’s resources.

The most notorious example arose from the “royalty in kind” program, based in Denver, Colorado. Under the program, MMS exercised its option to accept royalty payments “in kind” rather than in cash.<sup>7</sup> A September 2008 Inspector General’s report implicated more than a dozen employees in the Denver royalty-in-kind office in unethical and criminal conduct.<sup>121</sup> Those MMS staff had also socialized with, and received a wide array of gifts from, companies with whom they were conducting business. The Inspector General further acknowledged that although “99.9 percent of [Interior] employees are hard-working, ethical, and well-intentioned[,] . . . the conduct of a few has cast a shadow on an entire bureau.”<sup>122</sup>

Nor was unethical conduct limited to MMS’s revenue collections. It extended to some of those who worked on overseeing offshore oil and gas activities in the Gulf of Mexico. An Inspector General’s investigation in 2010 revealed that prior to 2007, “a culture of

\* See, e.g., Written submission to the National Commission from MMS permitting official, November 5, 2010 (“I did not know they were using nitrogen foamed cement. . . . [I]t would not have mattered under the regulations. We do not do any evaluations of types of cement.”) *id.* (“I do not recall them informing me as to why they decided not to drill to that length. . . . We do not need an explanation as to why a well is not drilled to the proposed depth.”); *id.* (“At the time I reviewed the APD [drilling permit application], my knowledge of rupture disks was limited to what I had learned from the previous drilling engineer when working with him learning the review process.”); *id.* (“I did not receive training on lock down sleeve setting procedures.”).

<sup>7</sup> The royalty-in-kind program allowed MMS to market the natural gas or oil to establish a reference against which it could evaluate industry reports of their market value.



accepting gifts from oil and gas companies was prevalent throughout the MMS Lake Charles[, Louisiana] office." "[A] number of MMS employees at th[at] district office admitted to attending sporting events prior to 2007 in which oil and gas production companies sponsored teams, as well as receiving lunches and accepting gifts." The investigation found that one employee had conducted inspections on a company's oil platforms while in the process of negotiating (and later accepting employment) with the company.<sup>123</sup> Here again, the actions of a few damaged the reputation of the agency as a whole, and demoralized the vast majority of MMS employees who avoided such conflicts.<sup>124</sup> In January 2009, only days after taking office, Secretary Salazar met with MMS employees and announced an ethics reform initiative in response to the problems identified at MMS and elsewhere in the agency.<sup>125</sup>

### Mismanagement and Misdirection

Perhaps because of the cumulative lack of adequate resources, absence of a sustained agency mission, or sheer erosion of professional culture within some offices, MMS came progressively to suffer from serious deficiencies of organization and management: the fundamental traits of any effective institution. According to the Outer Continental Shelf Safety Oversight Board,\* MMS lacks "a formal, bureau-wide compilation of rules, regulations, policies, or practices pertinent to inspections, nor does it have a comprehensive handbook addressing inspector roles and responsibilities." As a result, the Board concluded, "policies and enforcement mechanisms vary among the [Gulf of Mexico] districts and the regions, and there is no formal process to promote standardization, consistency, and operational efficiency."<sup>126</sup>

The Safety Oversight Board singled out MMS's handling of inspections for pointed criticism. For example, management promoted inspections by single inspectors in order to increase the total number of inspections, even though "most inspectors interviewed said that two-person teams would increase efficiencies, eliminate reliance on an operator representative for observations on safety tests, improve the thoroughness of the inspection, and reduce the ability of operators to successfully pressure an inspector not to issue [a citation]." The Board's interviews revealed "staff concerns regarding a perceived emphasis on the quantity rather than quality of inspection."<sup>127</sup>

The agency's management shortcomings were underscored, and compounded, by lack of communication and inconsistencies among its three regional offices for the Gulf of Mexico, the Pacific, and Alaska. The directors of each regional office naturally adapted practices to best suit the specific characteristics and needs of the region. But by acting in parallel fashion, with little coordination in decisionmaking and resource allocation, program implementation, regulatory interpretation, and enforcement policies became inconsistent, undermining the integrity of MMS's work.<sup>128</sup> For example, the Safety Oversight Board found that "the Pacific Region employs 5 inspectors to inspect 23 production facilities—a ratio of 1 inspector for every 5 facilities. By contrast, the [Gulf of Mexico Region] employs 55 inspectors to inspect about 3,000 facilities—a ratio of 1 inspector for every 54 facilities."<sup>129</sup>

Ultimately, MMS was unable to ensure that its staffing capabilities and competencies kept pace with the changing risks and volume of offshore activity. As the Safety Oversight Board concluded, the Gulf of Mexico “district offices did not have a sufficient number of engineers to efficiently and effectively conduct permit reviews.”<sup>130</sup> As the Chief of the U.S. Geological Survey’s Conservation Division had warned nearly 30 years earlier,<sup>131</sup> salaries—for engineers stuck in the midranges of the federal pay scale—were far too low to attract individuals possessing the experience and expertise needed to oversee the increasingly complicated oil and gas drilling activities in the deepwater Gulf.<sup>132</sup> At the most elementary level, MMS frequently lacked defined qualifications that new employees must meet before they start performing their jobs, or clear procedures for on-the-job training. The Board report further observed that the “amount of time and the structure of this training vary from office to office and from inspector to inspector,” and it concluded that the on-the-job training “does not address the need for substantive, consistent training in all aspects of the job.”<sup>133</sup>

## An Environment Unfavorable to Responsible Drilling

### Erosion of Environmental-Protection Safeguards in the Gulf of Mexico

Even as oversight of drilling safety became less effective while the industry pursued more demanding deepwater plays in the Gulf of Mexico, environmental safeguards eroded, too—putting the rich natural resources of the Gulf waters and the surrounding coasts at increasing risk.

**The legislative promise.** The 1978 Outer Continental Shelf Lands Act Amendments promised full consideration of concerns for environmental protection. The Act provides that “[m]anagement of the outer Continental Shelf shall be conducted in a manner which considers economic, social, and environmental values of the renewable and nonrenewable resources contained in the outer Continental Shelf, and the potential impact of oil and gas exploration on other resource values of the outer Continental Shelf and the marine, coastal, and human environments.”<sup>134</sup> It further requires that the timing and location of exploration, development, and production of oil and gas take environmental factors into consideration, including: existing ecological characteristics; an equitable sharing of development benefits and environmental risks among the regions; the relative environmental sensitivity and marine productivity of areas; and relevant environmental and predictive information.<sup>135</sup> Based on an evaluation of these and other factors, the Act directs the Secretary of the Interior to select the “timing and location of leasing, to the maximum extent practicable, so as to obtain a proper balance between the potential for environmental damage, the potential for the discovery of oil and gas, and the potential for adverse impact on the coastal zone.”<sup>136</sup>

A host of other laws, many enacted by Congress during the 1970s surge of environmental legislation, buttress these promised priorities. Of particular relevance to oil and gas leasing on the outer continental shelf is the National Environmental Policy Act requirement that

significantly affecting the human environment.<sup>137</sup> Those detailed statements must include not only discussion of the immediate adverse impacts on the natural environment that might result from the federal action, but also the “socio-economic” effects of those impacts.<sup>138</sup> The Magnuson-Stevens Fishery Conservation and Management Act requires agencies to analyze the potentially adverse impacts of oil and gas activities on fish habitat and populations, and provide conservation measures to mitigate those impacts.<sup>139</sup> The Endangered Species Act requires federal agencies to determine the potential adverse impact of oil and gas activities on endangered and threatened species, limits activities that harm individual members of such species, and bars altogether activities that place such species in jeopardy.<sup>140</sup> The Marine Mammal Protection Act imposes limits on activities that injure or even harass marine mammals.<sup>141</sup> The National Marine Sanctuaries Act requires consultations to guard against harm to marine sanctuary resources from oil and gas leasing activities.<sup>142</sup> The federal Clean Water Act imposes permitting requirements on any discharge of pollutants into navigable waters from such activities.<sup>143</sup> And, the Oil Pollution Act of 1990,<sup>144</sup> supplemented by a Presidential Executive Order,<sup>145</sup> imposes a panoply of oil-spill planning, preparedness, and response requirements on fixed and floating facilities engaged in oil and gas exploration, development, and production on the outer continental shelf.

**Promise vs. practice.** But some of these apparent statutory promises dim upon closer examination. The Outer Continental Shelf Lands Act routinely requires consideration of environmental protection concerns in leasing location and timing—but ultimately gives the Secretary of the Interior tremendous discretion in deciding what weight to give those concerns.<sup>146</sup> The balance ultimately struck depends largely on the politics of the moment. The Secretary can assign significant weight to environmental protection concerns—or not.

And in fact, parts of the 1978 Act arguably stack the deck *against* full consideration of environmental concerns. For instance, the law provides that the Secretary must approve a lessee’s exploration plan within 30 days of submission.<sup>147</sup> If environmental review is to occur after plan submission, that timetable effectively precludes the kind of exacting review necessary to ensure that the Act’s environmental safeguards can be achieved. It would, in effect, be a statement by Congress that the rush to energy exploration is too important to be delayed.

The Act also expressly singles out the Gulf of Mexico for less rigorous environmental oversight under NEPA. As a result of political compromise with oil and gas interests, the Act exempts lessees from submitting development and production plans (which include environmental safeguards) for agency approval. Accordingly, Gulf leases, unlike those applicable to other offshore areas, are not subject to the requirement of at least one NEPA environmental impact statement for development plans for a particular geographic area.<sup>148</sup>

None of the other statutes includes such a stark exception, but their effects still are more limited than it might at first seem. For instance, both the Endangered Species Act and the

Clean Water Act impose tough substantive limits on activities. But each has only a narrow, discrete focus and statutory trigger: threats to endangered or threatened species or their critical habitat under the Endangered Species Act or, under the Clean Water Act, only the incidental aspects of oil and gas activities that discharge pollutants into navigable waters (unless, of course there is an oil spill).

Neither the Magnuson-Stevens Act nor the Marine Sanctuaries law imposes any mandatory substantive limitation on oil and gas activities offshore. Each instead authorizes the National Oceanic and Atmospheric Administration (NOAA) to make recommendations to MMS about possible adverse environmental impacts (to fish habitat and marine sanctuaries) and appropriate conservation measures. Congress clearly assigned NOAA this central role because it is the federal agency most expert on ocean science and has a clear mission to serve as the steward safeguarding the nation's ocean resources. But, notwithstanding that assignment, neither law provides any corresponding obligation on the part of MMS to heed NOAA's advice. MMS can, and has, on occasion given little or no weight to NOAA's views; according to NOAA officials, that causes some NOAA scientists to expend fewer resources on generating such views.

As a result, although the various laws create the potential for comprehensive environmental protection in oil and gas drilling on the outer continental shelf, neither alone nor in combination do any of the laws come close to *ensuring* a reasonable level of overall environmental protection applicable to all aspects of oil and gas activities on the outer continental shelf. Whether they have achieved their statutory objectives has therefore historically depended instead entirely on the discretionary determinations of MMS officials.

**Limiting NEPA.** The Department of the Interior and MMS also took a series of steps that further limited the potential for NEPA to ensure government decisions were based on full consideration of their environmental consequences. Erosion of NEPA's application to offshore oil and gas activities began, as noted, when Congress exempted a category of leasing activities in the Gulf of Mexico from NEPA review. The Interior Department, however, subsequently took that legislative exemption and unilaterally expanded its scope beyond those original legislative terms.

Although the 1978 Act exempted only the Interior Department's review of a lessee's "development and production plan" from the environmental impact statement process, Interior unilaterally extended that exemption. In January 1981, the Department promulgated final rules declaring that exploration plans in the central and western Gulf of Mexico were "categorically excluded" from NEPA review.\* At that same time, the Department also categorically excluded from NEPA review applications to drill wells (for exploration or subsequent development and production of oil and gas) "when said well and appropriate mitigation measures are described in an approved exploration plan, development plan, or production plan."<sup>149</sup> In 1986, MMS scaled back the categorical

## BP Thunder Horse Platform



BP's mighty Thunder Horse platform was out-muscled by Hurricane Dennis in 2005 as it was being readied for service. Evacuated crews returned to find the semi-submersible production facility listing badly. After repairs and thorough analysis, additional problems were discovered that put the platform further behind schedule. For BP it was worth the wait: By 2009 Thunder Horse was producing a whopping quarter-million barrels a day.

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Getty Images/U.S. Coast Guard photo/PA3 Robert M. Reed/digital version by Science Faction

exclusion to account for the possibility that NEPA review would be needed for these activities in certain narrowly defined “extraordinary circumstances.” Extraordinary circumstances include those actions that have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks.<sup>150</sup>

But because MMS personnel were apparently reluctant to conclude that such extraordinary circumstances were present, the rule in practice in the Gulf of Mexico was the categorical *exclusion*—rather than the *exception* to that exclusion. MMS staff have reported that leasing coordinators and managers discouraged them from reaching conclusions about potential environmental impacts that would increase the burden on lessees, “thus causing unnecessary delays for operators.” The Safety Oversight Board also noted that “[s]ome [MMS] environmental staff also reported that environmental assessments for smaller operators may be minimized if the [Regional Office of Field Operations] manager determines that implementing the recommendation may be too costly.”<sup>151</sup>

With regard to NEPA specifically, some MMS managers reportedly “changed or minimized the [MMS] scientists’ potential environmental impact findings in [NEPA] documents to expedite plan approvals.” According to several MMS environmental scientists, “their managers believed the result of NEPA evaluations should always be a ‘green light’ to proceed.” In some cases, there may also have been built-in employee financial incentives that “distort[ed] balanced decision-making” to the extent that “[e]mployee performance plans and monetary awards [were] . . . based on meeting deadlines for leasing or development approvals.”<sup>152</sup>

Finally, just as a matter of sheer practicality, MMS personnel plainly lacked the substantial resources that would have been required to engage in meaningful NEPA review in light of the extraordinary expansion of leasing activity in the Gulf. There were literally hundreds of exploration, development, and production plans, as well as individual permit drilling applications to be processed. No President ever sought for MMS the level of resources that would have been required to prepare individual assessments concerning whether each of those activities required an environmental impact statement, let alone such a statement for those that did. Nor did Congress. It should be no surprise under such circumstances that a culture of complacency with regard to NEPA developed within MMS, notwithstanding the best intentions of many MMS environmental scientists.

### The Macondo Well

The gap between the protections promised by environmental statutes and regulations and actual practice is fully illustrated in the review and permitting of the Macondo well itself. MMS engaged in no NEPA review of the well’s permitting, and neither MMS nor other federal agencies gave significant attention to the environmental mandates of other federal laws.

NEPA. MMS performed no meaningful NEPA review of the potentially significant adverse environmental consequences associated with its permitting for drilling of BP’s exploratory Macondo well. MMS categorically excluded from environmental impact review BP’s initial and revised exploration plans—even though the exploration plan could have qualified for

an “extraordinary circumstances” exception to such exclusion, in light of the abundant deep-sea life in that geographic area and the biological and geological complexity of that same area.<sup>153</sup> MMS similarly categorically excluded from any NEPA review the multiple applications for drilling permits and modification of drilling permits associated with the Macondo well. The justification for these exclusions was that MMS had already conducted NEPA reviews for both the Five-Year Program and the Lease Sale that applied to the Macondo well. The flaw in that agency logic is that both those prior NEPA reviews were conducted on a broad programmatic basis, covering huge expanses of leased areas of which the Macondo well was a relatively incidental part. Neither, moreover, included a “worst case analysis” because the President’s Council on Environmental Quality had eliminated the requirement for such analysis under NEPA for all federal agencies in 1986.<sup>154</sup> As a result, none of those prior programmatic reviews carefully considered site-specific factors relevant to the risks presented by the drilling of the Macondo well.\*

**Fishery conservation and management.** Under the Magnuson-Stevens Fishery Conservation and Management Act, federal agencies must consult with NOAA on all activities (or proposed activities) authorized, funded, or undertaken by the agency that may adversely affect essential fish habitat. For the Gulf of Mexico, accordingly, NOAA prepared a “programmatic” Essential Fish Habitat Consultation for the entire Gulf.<sup>155</sup> To similar effect, MMS complied with the Magnuson-Stevens consultation requirement by preparing Essential Fish Habitat Assessments that looked at offshore oil and gas leasing activities in the Gulf broadly.<sup>156</sup> Neither NOAA nor MMS considered the possible adverse impacts of any one well, such as the Macondo well, in isolation. Nor would it have been practical for them to do so in light of their understandable focus on possible cumulative impacts on fish populations from many offshore leasing activities. What is more telling, however, is that to the extent that the MMS Assessment identified potential threats to essential fish habitat and marine fishery resources from oil spills, both NOAA and MMS ultimately relied exclusively on conservation measures included in oil-spill response plans prepared by the oil and gas industry pursuant to the Oil Pollution Act of 1990 to address those threats.<sup>157</sup> For the Macondo well, both agencies assumed that BP’s plan would adequately address those threats and therefore there was no need to seek to do so directly through the Magnuson-Stevens Act. There was, however, little reason to assume that those plans were in fact up to the task.

**Oil Pollution Act of 1990 and Oil Spill Response Plans.** Under the Oil Pollution Act of 1990, as supplemented by a Presidential Executive Order, MMS is responsible for oil-spill planning and preparedness as well as select response activities for fixed and floating facilities engaged in exploration, development, and production of liquid hydrocarbons and for certain oil pipelines. The agency requires all owners or operators of offshore oil-handling, storage, or transportation facilities to prepare Oil Spill Response Plans. MMS regulations detail the elements of the response plan (an emergency-response action plan, oil-spill response equipment inventory, oil-spill response contractual agreements, a

\* For instance, bluefin tuna are both commercially vital and biologically significant as predators in the Gulf. But in the relevant Five-Year (2007–2012) Programmatic Environmental Impact Statement on the entire offshore leasing program—covering the entire outer continental shelf of the United States—MMS discusses potential impacts of leasing activities on bluefin tuna in one sentence. Subsequent MMS environmental impact statements for lease sales within the Gulf of Mexico contained no such analysis. And, in finally permitting the drilling of the Macondo well, MMS categorically excluded the action from any NEPA review, and thus conducted no analysis of the potential impacts of drilling on bluefin tuna, based on the rationale that it had already adequately reviewed environmental impacts in its prior reviews.

calculation of the worst-case discharge scenario, plan for dispersant use, in-situ burning plan, and information regarding oil-spill response training and drills).<sup>158</sup> The emergency-response plan is supposed to be the core of the overall plan, and in turn is required to include information regarding the spill-response team; the types and characteristics of oil at the facilities; procedures for early detection of a spill; and procedures to be followed in the case of a spill.<sup>159</sup>

But neither BP, in crafting its Oil Spill Response Plan for the Gulf of Mexico applicable to the Macondo well, nor MMS in approving it, evidenced serious attention to detail.<sup>160</sup> For instance, the BP plan identified three different worst-case scenarios that ranged from 28,033 to 250,000 barrels of oil discharge and used identical language to “analyze” the shoreline impacts under each scenario.<sup>161</sup> To the same effect, half of the “Resource Identification” appendix (five pages) to the BP Oil Spill Response Plan was copied from material on NOAA websites, without any discernible effort to determine the applicability of that information to the Gulf of Mexico. As a result, the BP Oil Spill Response Plan described biological resources nonexistent in the Gulf—including sea lions, sea otters, and walrus.\*

Even more troubling, the MMS Gulf of Mexico Regional Office approved the BP plan without additional analysis. There is little in that approval to suggest that BP and MMS gave close scrutiny to the contents of the Oil Spill Response Plan. The Regional Office’s routine practice was to review and approve oil-spill response plans within 30 days of their receipt. Absent any legal requirement to do so, the office did not distribute submitted plans to other federal agencies for review or comment, nor did it seek public review or comment.

The inescapable conclusion is striking, and profoundly unsettling. Notwithstanding statutory promises of layers of required environmental scrutiny—by NEPA, the Magnuson-Stevens Act, the Outer Continental Shelf Lands Act, and the Oil Pollution Act—and the potential application of some of the nation’s toughest environmental restrictions—the Endangered Species Act and Clean Water Act—*none* of these laws resulted in site-specific review of the drilling operations of the Macondo well. The agency in charge, MMS, lacked the resources and committed agency culture to do so, and none of the other federal agencies with relevant environmental expertise had adequate resources or sufficient statutory authority to make sure the resulting gap in attention to environmental protection concerns was filled.<sup>†</sup>

Federal oversight of oil and gas activities in the Gulf of Mexico—almost the only area where substantial amounts of drilling were taking place—took a generally minimalist approach in the years leading up to the Macondo explosion. The national government failed to exercise the full scope of its power, grounded both in its role as owner of the natural resources to be developed and in its role as sovereign and responsible for ensuring the safety of drilling operations. Many aspects of national environmental law

\* The BP plan does not appear to be an aberration. It was prepared by a contractor who also prepared the Gulf of Mexico plans for Chevron, ConocoPhillips, ExxonMobil, Shell, and other companies operating in the Gulf. The result is four nearly identical plans that repeat the same mistakes found in the BP plan applicable to the Macondo well.

† The President’s decision in March 2010 to expand offshore oil and gas leasing is a more recent example of the absence of full consideration of environmental protection. According to their testimony before the Commission in August 2010, the White House did not ask either the Chair of the President’s Council on Environmental Quality or the Administrator of NOAA to be directly involved in reviewing the plans before the President’s decision. See Testimony of The Honorable Nancy Sutley, Chair, Council on Environmental Quality, and The Honorable Jane Lubchenco, Administrator, NOAA, Hearing before the National Commission, August 23, 2010.



were ignored, resulting in less oversight than would have applied in other areas of the country. In addition, MMS lacked the resources and technical expertise, beginning with its leadership, to require rigorous standards of safety in the risky deepwater and had fallen behind other countries in its ability to move beyond a prescription and inspection system to one that would be based on more sophisticated risk analysis.

In short, the safety risks had dramatically increased with the shift to the Gulf's deepwaters, but Presidents, members of Congress, and agency leadership had become preoccupied for decades with the enormous revenues generated by such drilling rather than focused on ensuring its safety. With the benefit of hindsight, the only question had become not whether an accident would happen, but when. On April 20, 2010, that question was answered.