

Outer Continental Shelf Moratorium Update

Plano Luncheon – October 11, 2010

On April 20th the explosion and fire that occurred on the Deepwater Horizon changed the way the oil and gas industry will be allowed to conduct its offshore operations in the future. The incident has impacted the industry's ability to secure required approvals and permits necessary to conduct operations in federal waters. The Bureau of Ocean Energy Management, Regulation and Enforcement (formerly known as the Minerals Management Service) have changed significantly since the incident and the entire offshore industry has been impacted as a result.

I. Deepwater Horizon Incident OCS Related Activity Summary

Below is a brief summary of the actions/activities that have occurred as a result of the Horizon incident:

- 6-month moratorium on deepwater (>500') drilling, sidetrack and by-pass operations was created on May 30th but suspended on June 22nd
- Directed suspensions issued by BOEM basically creating a new moratorium on deepwater drilling from July 12th through November 30th
- 3 incident related Notices To Lessees (NTL) issued to date:
 - NTL 2010 – N04 (Creating original Moratoria)
 - NTL 2010 – N05 (New Safety Measures and Certifications – aka “Drilling Safety NTL”)
 - NTL 2010 – N06 (New Exploration Plan and DOCD Requirements - aka “Environmental NTL”)
- National Oil Spill Commission created to review Horizon Incident and offshore drilling and make recommendations for improvements
- Gulf of Mexico Ecosystem Restoration Task Force – October 5th
- Moratorium lifted – October 12th
- Predictability and certainty lost with the plan and permit approval process
- Increase in the time BOEM will take in issuing new, revised or supplemented Exploration and Development Plans and well as drilling permits

Chronology of Events and Actions

- **April 20th** – Macondo well control incident began
- **April 30th** – President Obama directs DOI Secretary Salazar to conduct a review of the incident and issue a report
- **May 19th** – Secretary Salazar announces plans to restructure MMS dividing it into three new Bureaus

- **May 21st** – President Obama executes an executive order creating the “National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling”
- **May 27th** – Secretary Salazar issues report entitled “Increased Safety Measures for Energy Development on the Outer Continental Shelf” (Buffalo Report)
- **May 28th** – Secretary Salazar issues Memorandum covering “Suspension of OCS Drilling of New Deepwater Wells”
- **May 30th** – NTL 2010-N04 – Impose Moratorium on all Drilling of Deepwater Wells
- **June 4th** – MMS Suspends all existing deepwater drilling permits
- **June 8th** – NTL 2010-N05 - Increased Safety Measures for Energy Development on the OCS
- **June 18th** – NTL 2010-N06 Information Requirements for Exploration Plans, Development and Production Plans, and Development Operations Coordination Documents
- **June 18th** – BOEM clarification letter issued to James Noe on NTL 2010- N05
- **June 21st** - Salazar Swears-In Michael R. Bromwich to Lead Bureau of Ocean Energy Management, Regulation and Enforcement
- **June 22nd** – Federal District court issues preliminary injunction suspending original moratoria
- **June 23rd** – BOEM (formerly MMS) rescinds well permit suspensions
- **June 23rd** – Director Bromwich creates a new BOEM internal Investigations and Compliance Team
- **July 8th** – 5th Circuit refuses to stay preliminary injunction covering moratoria
- **July 9th** – BOEM issues Frequently Asked Questions clarifying NTL 2010- N05
- **July 12th** – Secretary Salazar issues Memo to Director Bromwich advising to suspend deepwater well permits until November 30th
- **July 12th** – Directed SOOs issued by BOEM to impacted operators
- **July 12th & 13th** – First National Commission Public Hearings in New Orleans
- **July 14th** – DOI issues MMS Reorganization Implementation Plan
- **July 15th** – BP caps Macondo well and stops oil flowing into Gulf at approximately 2:35 p.m. Central Time
- **July 15th** – BOEM issues Frequently Asked Questions (1) clarifying NTL 2010- N06
- **August 4th** - Director Bromwich to Host Forum in New Orleans, Louisiana
- **August 10th** - Director Bromwich to Host Forum in Mobile, Alabama
- **August 10th** - BOEM issues Frequently Asked Questions (3) clarifying NTL 2010- N06
- **August 11th** - Director Bromwich to Host Forum in Pensacola, Florida
- **August 16th** – Director Bromwich internal memo restricting use of Categorical Exclusions
- **August 24th** - Director Bromwich to Host Forum in Santa Barbara, California
- **August 26th** - Director Bromwich to Host Forum in Anchorage, Alaska
- **September 4th** – BP raises Macondo BOP out of the water.
- **September 7th** - Director Bromwich to Host Forum in Houston, Texas
- **September 10th** - Director Bromwich to Host Forum in Biloxi, Mississippi
- **September 18th** – Macondo well permanently plugged and abandoned
- **October 12th** – Salazar lifts Moratorium - Directed Suspensions rescinded
- **October 14th** – Interim Final Rule (Drilling Safety Rule) Published in the Federal Register

- **October 15th** – Safety and Environmental Management System Rule (SEMS) published in the Federal Register

II. Collateral Damage – These are some of the federal actions that have impacted by the Horizon Incident:

- OCS Lease Sale 215 (August 2010 -Western Gulf of Mexico) Cancelled
- OCS Lease Sale 220 (Virginia) Cancelled
- Alaskan Drilling Permits Deferred
- Future Lease Sales ????
- 28 Congressional Hearings on incident related topics
- **Minerals Management Service Reorganization** - The new BOEM organization will be divided into 3 new Bureaus. All new Bureaus are anticipated to be in place by year end 2011. The Bureaus will be:
 - Bureau of Ocean Energy Management (BOEM)
 - Bureau of Safety and Environmental Enforcement (BSEE)
 - Office of Natural Resource Revenue (ONRR)

III. Joint Industry Task Forces

In response to the Horizon Incident and Secretary Salazar’s statements that industry was not prepared for a deepwater spill, industry has mobilized the creation of four industry task forces to address gaps in offshore operations as identified by the BOEM. Improvement areas identified were **Prevention** of another blowout, demonstrate increased **intervention** capability, and Demonstrate increased oil **spill response** capability. The Task Forces created are:

- Prevention
 - **Equipment Task Force**
 - **Procedures Task Force**
- Intervention
 - **Subsea Intervention Task Force & Containment**
- Spill Response
 - **Oil Spill Response Task Force**

What is a Joint Industry Task Force?

- Method to bring industry experts together to identify and agree on best practices across the industry.

- Based on broad industry participation.
- JITF recommends on industry best practices to DOI/BOEM
- Intended and designed to be a benefit to BOEM as BOEM moves forward in adopting regulations and issuing Notices to Lessees (NTLs) to improve prevention, mitigation, and spill response

Progress to Date

- Prevention
 - May submittal from Equipment and Procedures JITFs
 - NTL 05
- Mitigation
 - NTL 06 (Worst Case Discharge)
 - Marine Well Containment Company
 - Leak stopped, well killed – equipment developed and soon to be available
 - July 6 submittal from Subsea JITF
 - August submittal from Subsea JITF
- Spill Response
 - Lessons learned (preliminary)
 - Leak stopped, well killed – equipment soon to be available
 - July 6 submittal from Oil Spill JITF
 - August submittal from Oil Spill JITF

Future Work Planned/Expected Work Products

- Prevention (equipment & Procedures)
 - Additional recommendations from the Equipment JITFs on issues not covered by the DOI 30-day report (early September)
 - BOEM rulemaking on issues not covered by the DOI 30-day report
 - BOEM rulemaking on safety management systems
 - Final reports of the Equipment and Procedures JITFs (1Q11)
- Mitigation (Intervention /Containment)
 - Execute MOU with BP on existing equipment for immediate use
 - Consensus on method to calculate Worst Case Discharge under NTL 06
 - Final report of the Subsea JITF (2Q11)
- Spill Response
 - Lessons learned report (USCG/BOEM?)
 - BOEM rule making or NTL
 - Revised Oil Spill Response Plans
 - Final report of the Oil Spill JITF (3Q11)

Summary

- Significant progress made to improve prevention, mitigation and spill response
- We believe enough progress has been made to lift the drilling suspension now
- We believe enough progress has been made to accelerate the issuance of drilling permits
- We are committed to making further progress in each of the areas

IV. Marine Well Containment Company

On July 22, 2010, Chevron, ConocoPhillips, ExxonMobil and Shell announced a plan to build and deploy a rapid response system that will be available to capture and contain oil in the event of a potential future underwater well blowout in the deepwater Gulf of Mexico.

The new system will be flexible, adaptable and able to begin mobilization within 24 hours and can be used on a wide range of well designs and equipment, oil and natural gas flow rates and weather conditions. The new system will be engineered to be used in deepwater depths up to 10,000 feet and have initial capacity to contain 100,000 barrels per day with potential for expansion.

The companies have committed \$1 billion to fund the initial costs of the system. Additional operational and maintenance costs for the subsea and modular processing equipment, contracts with existing operating vessels in the Gulf of Mexico and any potential new vessels that may be constructed will increase this cost commitment.

This system offers key advantages to the current response equipment in that it will be pre-engineered, constructed, tested and ready for rapid deployment in the deepwater Gulf of Mexico. It is being developed by a team of marine, subsea and construction engineers from the four companies.

The system will include specially designed subsea containment equipment connected by manifolds, jumpers and risers to capture vessels that will store and offload the oil. Dedicated crews will ensure regular maintenance, inspection and readiness of the facilities and subsea equipment.

The four companies will form a non-profit organization, the Marine Well Containment Company, to operate and maintain this system. Other companies will be invited and encouraged to participate in this organization.

V. Worst Case Discharge

NTL 2010 No. 6 mandates new worst case discharge (WCD) calculations be submitted with new Exploration and Development Plans. The calculations have been the subject of numerous debates and discussions over the last month and will continue to be until BOEM provides specific guidance on what it really wants. Below is an excerpt from the current regulations as to what is required for WCD when plans are submitted to BOEM.

30 CFR 254.47(3)(b) "For exploratory or development drilling operations, the size of your worst case discharge scenario is the daily volume possible from an uncontrolled blowout. In determining the daily discharge rate, you must consider any known reservoir characteristics. If reservoir characteristics are unknown, you must consider the characteristics of any analog reservoirs from the area and give an explanation for the selection of the reservoir(s) used. Your scenario must discuss how to respond to this well flowing for 30 days as required by 254.26(d)(1)."

VI. Rulemaking

On May 27th Secretary Salazar forwarded a report to President Obama recommending a series of safety measures be taken to ensure an incident similar to the Horizon never happened again. This report has become known as the 30 Day Report or the Buffalo Report. (The Department of the Interior's logo is on the front page of the Report. The logo has a buffalo on it.) Notice to Lessees 2010 - N04, N05 and N06 were issued as a result of this report. On October 14th BOEM published in the Federal Register an Interim Final Rule (Drilling Safety Rule) codifying some of the guidance listed in NTL N05 and some of the other drilling safety recommendations found in the 30 Day Report. On October 15th BOEM published in the Federal Register the final Safety and Environmental Management (SEMS) Rule. Additional rules will be issued by BOEM covering various recommendations found in the 30 Day Report but not codified to date.

VII. Pending General Lawsuits

Numerous lawsuits have been filed against the Department of the Interior as a result of the Horizon Incident. These lawsuits are listed below:

- ***Defenders of Wildlife v. MMS (S.D. Al. May 17, 2010)***, a lawsuit brought by the Defenders of Wildlife (DOW) asserting that the MMS violated the National Environmental Policy Act (NEPA) and the Administrative Procedure Act (APA) in granting categorical exclusions for central or western Gulf of Mexico (GOM) offshore exploration and production, and in failing to prepare a Supplemental Environmental Impact Statement (SEIS) in response to the *Deepwater Horizon* incident.
- ***Center for Biological Diversity v. Salazar (D.D.C. May 18, 2010)***, a lawsuit brought by the Center for Biological Diversity (CBD) challenging MMS's use of a categorical exclusion from certain NEPA requirements for central or western GOM offshore exploration and production.
- ***Gulf Restoration Network and Sierra Club v. Salazar (E.D. La. May 18, 2010)***, a lawsuit brought by environmental groups challenging the MMS's issuance of a Notice to Lessees (NTL) that exempted GOM Exploration Plans from certain MMS regulations.
- ***CBD v. Salazar (5th Cir. May 27, 2010)***, a petition for review of MMS's approval of twenty-five Exploration Plans and DOCDs in the Gulf of Mexico. In its petition, CBD has asserted that MMS, in approving these plans, failed to comply with NEPA, the Outer Continental Shelf Lands Act (OCSLA), and the APA. CBD seeks a declaration by the court that by approving the EPs and DOCDs, the MMS is in violation of NEPA, OCSLA and the APA. The petition has been amended eliminating some of the Plans from consideration.
- ***Hornbeck v. Salazar (US Eastern District Court Louisiana June 7, 2010)***, a lawsuit brought by a service boat provider claiming the moratoria was arbitrary, capricious, and issued as an abuse of discretion under OCSLA and APA.

- **CBD v. Salazar (Eastern District of Louisiana –June 30, 2010)** – a lawsuit brought by the Center for Biological Diversity (CBD) challenging MMS for failing to properly comply with NEPA in permitting geophysical operations in the OCS
- **EnSCO Offshore Co. v. Salazar (E.D. La. filed July 9, 2010)** This lawsuit is similar to Hornbeck. EnSCO is an offshore drilling services company that seeks to enjoin and set aside not only NTL 2010-N04 (the 6-month moratorium), but also NTL 2010-N05 (the certification and additional safety requirements) and BOEMRE's delays in approving new drilling applications.

VIII. New Legislation (Over 50 Bills/Amendments Proposed)

This summer Congress was focused on legislation aimed at the offshore oil and gas industry. With over 50 pieces of oil and gas industry legislation discussed, only House Bill 3534 was acted upon. The Senate lacked consensus and failed to pass any bill. After the mid-term elections we cannot predict what will happen. Below are the House Bill that passed and the one of the Senate Bills being promoted:

- H.R. 3534 (Rahall) “Consolidated Land, Energy, and Aquatic Resources Act of 2009” (CLEAR Act)* Passed House on July 31st
- S. 3663 (Reed) Senate version of an Oil Spill Bill – No Action

IX. National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling

President Barack Obama established the National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling through Executive Order 13543 on May 21, 2010. The Commission will be examining the relevant facts and circumstances concerning the root causes of the Deepwater Horizon explosion and developing options to guard against, and mitigate the impact of, any oil spills associated with offshore drilling in the future. This may include recommending improvements to federal laws, regulations, and industry practices.

Key areas of inquiry for the Commission include:

- The Macondo Well Explosion and Drilling Safety
- The Role of Offshore Oil Drilling in Domestic Energy Policy
- Regulatory Oversight of Offshore Drilling
- Oil Spill Response
- Spill Impacts and Assessment
- Restoration Approaches and Options

The Commission is co-chaired by Senator Bob Graham and former EPA Administrator William K. Reilly. The other Commissioners are Frances Beinecke, Donald Boesch, Terry Garcia, Cherry Murray, and

Frances Ulmer. Over the course of its work, the Commission will be holding public meetings, producing staff working papers, meeting with stakeholders, interviewing key players, and analyzing the evidence related to the spill and its aftermath.

A final report on the Commission's findings is due to the President on January 12, 2011.

X. National Environmental Policy Act

On April 16th, Secretary of the Interior Ken Salazar and Bureau of Ocean Energy Management, Regulation and Enforcement (BOEM) Director Michael R. Bromwich announced that the department will restrict its use of categorical exclusions for offshore oil and gas development to activities involving limited environmental risk, while it undertakes a comprehensive review of its National Environmental Protection Act (NEPA) process and the use of categorical exclusions for exploration and drilling on the Outer Continental Shelf.

Director Bromwich and Secretary Salazar also announced that the Department of the Interior intends to conduct a new environmental analysis in the Gulf of Mexico that will help provide information to guide future leasing and development decisions. BOEM will publish a notice in the *Federal Register* of its intent to complete a supplemental environmental impact statement for the Gulf.

XI. Miscellaneous Risks & Opportunities

- a. Non-Operators cannot meet new OCS operating standards
- b. New mandated liability coverage (e.g. Insurance, bonding, etc...) eliminates certain entities from holding interest in OCS leases
- c. AFE/Project approval are delayed as a result of enhanced partner engagement
- d. New operating agreement contract provisions
- e. Ocean Policy (Marine Spatial Planning - MSP)

XII. What it will take to go "Back to Work"

- a. Rebuilding government confidence
- b. Assurance future incidents will be minimized
- c. Greater worker and environmental safety
- d. Enhanced well containment and spill response