



# MARINE MAMMAL COMMISSION

13 December 2010

Mr. William Hauser, Chief  
Regulations and Standards Branch  
Bureau of Ocean Energy Management, Regulation, and Enforcement  
Department of the Interior  
381 Elden Street, MS-4024  
Herndon, Virginia 20170-4817

Re: Increased Safety Measures for Energy Development on the  
Outer Continental Shelf, 1010-AD68

Dear Mr. Hauser:

The Marine Mammal Commission, in consultation with its Committee of Scientific Advisors on Marine Mammals, has reviewed the Bureau of Ocean Energy Management, Regulation, and Enforcement's Interim Final Rule on Increased Safety Measures for Energy Development on the Outer Continental Shelf (14 October 2010; 75 Fed. Reg. 63346). The Commission supports the interim final rule and other efforts by the Bureau to enhance the safety of offshore energy development and offers the following recommendations and rationale.

## RECOMMENDATIONS

The Marine Mammal Commission recommends that the Bureau of Ocean Energy Management, Regulation, and Enforcement—

- fully implement the interim final rule;
- conduct a systematic review and risk assessment of each offshore oil and gas operation and identify additional safety measures needed to address shortcomings in all aspects of operations, including the equipment and technology used in oil and gas development and production; the decision-making processes and procedures that may contribute to human error or faulty judgment; the regulatory requirements for review, inspection, training, certification, and compliance with safety measures; and the economic and social incentives that affect compliance;
- devise and implement new and creative techniques for promoting, tracking, and enforcing compliance with safety measures and regulations, including incorporation of non-regulatory incentives for compliance ; and,
- establish apprenticeships, internships, training programs, partnerships with academia and industry, and/or international exchange programs to recruit, train, and maintain the highly skilled workforce needed to oversee the offshore oil and gas industry, enforce regulations, and ensure strict adherence to safety measures and procedures.

## **RATIONALE**

### Adoption of Strong Safety Measures

The exploration, extraction, and transport of oil and gas involve risks that vary from minor to major, with potentially severe consequences for both workers and the environment. The growing demand for hydrocarbons and recent advances in drilling technology have led to increased drilling in deep water and in more remote and harsher environments. This trend exacerbates the challenges of monitoring drilling operations to ensure that the industry complies with safety requirements. The April 2010 explosion of the BP Deepwater Horizon oil rig exposed inadequacies in drilling safety practices and the difficulty of preventing and responding to a deepwater accident. The resulting oil spill was unprecedented, both in its duration and in the volume of oil spilled. It was a stark reminder of the risks associated with offshore drilling, particularly in deep water, and the need to ensure that safety practices and equipment are sufficient to reduce those risks to an acceptable level. It also raised fundamental questions regarding the adequacy of existing regulations and underscored the need for stronger safety standards for offshore drilling.

The Commission commends the Department of the Interior and the Bureau for their swift action to investigate and address the potential causes of the BP oil spill. On 30 April 2010 President Obama recognized that the factors that may have caused the Deepwater Horizon oil spill were not necessarily unique to that rig and he directed the Secretary of the Interior to determine whether additional precautions and technologies should be required to improve the safety of oil and gas exploration and production operations on the outer continental shelf. The Department responded with a report, issued on 27 May 2010. The report, entitled “Increased Safety Measures for Energy Development on the Outer Continental Shelf,” identified several areas where improvements could be made to enhance the safety of offshore oil and gas drilling operations, including certification that operators are in compliance with existing regulations for offshore oil and gas operations, inspecting and testing of mechanical systems used in drilling (blowout preventer, well design, and well control systems), and requiring a systems-based approach to safety. The Department also recommended a temporary suspension of all deepwater drilling and permitting activities. The Bureau immediately implemented the deepwater drilling moratorium, new safety requirements, and new permitting procedures for offshore oil and gas through a series of Notices to Lessees<sup>1</sup>. The temporary suspension of all new deepwater drilling provided a much-needed time-out so that the Department could focus on responding to the ongoing oil spill and further investigate its causes, while also allowing time for operators to comply with the new safety measures and information requirements.

Although the proximate cause or causes of the explosion have yet to be determined, ongoing investigations by the Bureau, the Coast Guard, and the National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling indicate that equipment failure and faulty judgment were

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<sup>1</sup> NTL No. 2010-N04 “Notice to Lessees ... to Implement the Directive to Impose a Moratorium on All Drilling of Deepwater Wells”; NTL No. 2010-N05 “Increased Safety Measures for Energy Development on the OCS”; and NTL No. 2010-06 “Information Requirements for Exploration Plans, Development and Production Plans, and Development Operations Coordination Documents on the OCS.”

key factors in the explosion and subsequent oil spill. The subject interim final rule includes provisions for preventing or responding to equipment failures, specifically those associated with well-bore integrity and well control, as well as stronger provisions for personnel training. These measures, combined with new requirements for the development and maintenance of safety and environmental management systems for all oil and gas operations on the outer continental shelf (75 Fed. Reg. 63610, 15 October 2010), should improve the safety of drilling operations and reduce significantly the likelihood of future oil spills and consequent major disruptions of marine ecosystems. Therefore, the Marine Mammal Commission recommends that the Bureau of Ocean Energy Management, Regulation and Enforcement fully implement the interim final rule.

#### Need for a Systematic Review and Risk Assessment

In its efforts to improve the safety of offshore oil and gas operations, the Bureau must be careful not to limit itself to measures that address only the immediately apparent causes of the Deepwater Horizon spill. If the Bureau had conducted a review of the risks associated with the Deepwater Horizon project prior to the spill, would it have identified the well control system as a potential source of concern or anticipated the shortcomings in human judgment or regulatory oversight that led to the explosion? If events like this are to be prevented, the Bureau must strive to identify and address all potential causes of accidents associated with offshore oil and gas operations. The process for regulatory review and risk assessment must be ongoing, dynamic, and responsive to new information gained, lessons learned, and advances in technology. To that end, the Marine Mammal Commission recommends that the Bureau of Ocean Energy Management, Regulation, and Enforcement conduct a systematic review and risk assessment of each offshore oil and gas operation and identify additional safety measures needed to address shortcomings in all aspects of operations, including the equipment and technology used in oil and gas development and production; the decision-making processes and procedures that may contribute to human error or faulty judgment; the regulatory requirements for review, inspection, training, certification, and compliance with safety measures; and the economic and social incentives that affect compliance. The Marine Mammal Commission made specific recommendations for addressing these issues in its 1 November 2010 letter to the National Oil Spill Commission (enclosed).

#### Implementation Challenges

Compliance with Regulations and Incentives: The oil and gas industry has an obvious incentive to avoid accidents like the BP Deepwater Horizon oil spill. However, the industry also is motivated by economic and other incentives that may conflict with best safety practices. One of the main objectives of government regulators is to provide a check on the industry to ensure that it conducts its activities in a safe manner consistent with the laws and regulations pertaining to oil and gas exploration and development, as well as other applicable statutes and regulations.

Regulations for offshore oil and gas operations frame the oversight process for industry activities to ensure safe operations and environmental protection. Enforcement of new and existing regulations is a significant challenge, and compliance tracking must go beyond reliance on self-

reporting by the industry. Third-party inspection and certification by competent authorities are needed to ensure that each stage of the drilling, extraction, and transport process is evaluated objectively. The Commission believes that non-regulatory mechanisms are needed to provide additional incentives for the industry to adhere to safety measures, such as reductions in fees or preferred access to leases for firms with exemplary safety records. Conversely, strong economic disincentives might be used to discourage non-compliance, such as restricted access to lease sales, timely application of penalties that increase in size for repeat offenders, and transparent, publicly available information on the safety records of all oil and gas companies operating on the outer continental shelf. The Marine Mammal Commission recommends that the Bureau of Ocean Energy Management, Regulation, and Enforcement devise and implement new and creative techniques for promoting, tracking, and enforcing compliance with safety measures and regulations, including incorporation of non-regulatory incentives for compliance.

Training and Expertise: With the implementation of stronger regulations comes the need for more staff to ensure that industry is aware of and compliant with the new requirements. The Bureau has stated<sup>2</sup> that over the coming year, it anticipates adding as many as 200 new inspectors, engineers, environmental scientists, and other key staff to support its oversight functions. Although this influx of new professionals may start to build technical capacity and address the Bureau's longstanding resource deficiencies, the limited availability of highly trained, qualified, and experienced inspectors, engineers, and scientists may delay the Bureau's ability to achieve the robust inspection and oversight process it envisions. To address this concern, the Marine Mammal Commission recommends that the Bureau of Ocean Energy Management, Regulation, and Enforcement establish apprenticeships, internships, training programs, partnerships with academia and industry, and/or international exchange programs to recruit, train, and maintain the highly skilled workforce needed to oversee the offshore oil and gas industry, enforce regulations, and ensure strict adherence to safety measures and procedures.

Many of the Commission's concerns regarding compliance with safety measures and recruitment of trained and experienced personnel were identified by the Outer Continental Shelf Safety Oversight Board in its 1 September 2010 report to Secretary Ken Salazar. The Commission is encouraged that the Bureau has outlined a plan<sup>3</sup> to implement the Board's recommendations.

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<sup>2</sup> Bureau Press Release "Remarks as Prepared for Bureau of Ocean Energy Management, Regulation and Enforcement Director Michael R. Bromwich to the International Regulators Forum Conference" (18 October 2010)

<sup>3</sup> Bureau Implementation Plan in response to the Outer Continental Shelf Safety Oversight Board's September 1, 2010 Report to the Secretary of the Interior (4 September 2010)

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Please contact me if you have any questions about the Commission's recommendations and comments.

Sincerely,

A handwritten signature in blue ink that reads "Timothy J. Ragen". The signature is written in a cursive style with a large initial 'T' and a long, sweeping underline.

Timothy J. Ragen, Ph.D.  
Executive Director

Enclosure

cc: Michael Bromwich, Esq.