

**THE GULF OF MEXICO OIL SPILL: ENSURING
A FINANCIALLY RESPONSIBLE RECOVERY
PART I AND II**

HEARINGS

BEFORE THE

FEDERAL FINANCIAL MANAGEMENT, GOVERNMENT
INFORMATION, FEDERAL SERVICES, AND
INTERNATIONAL SECURITY SUBCOMMITTEE

OF THE

COMMITTEE ON
HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

OF THE

ONE HUNDRED ELEVENTH CONGRESS

SECOND SESSION

JUNE 16 AND JULY 22, 2010

Available via the World Wide Web: <http://www.fdsys.gov>

Printed for the use of the
Committee on Homeland Security and Governmental Affairs



U.S. GOVERNMENT PRINTING OFFICE

58-035 PDF

WASHINGTON : 2011

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512-1800; DC area (202) 512-1800
Fax: (202) 512-2104 Mail: Stop IDCC, Washington, DC 20402-0001

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

JOSEPH I. LIEBERMAN, Connecticut, *Chairman*

CARL LEVIN, Michigan	SUSAN M. COLLINS, Maine
DANIEL K. AKAKA, Hawaii	TOM COBURN, Oklahoma
THOMAS R. CARPER, Delaware	SCOTT P. BROWN, Massachusetts
MARK L. PRYOR, Arkansas	JOHN McCAIN, Arizona
MARY L. LANDRIEU, Louisiana	GEORGE V. VOINOVICH, Ohio
CLAIRE McCASKILL, Missouri	JOHN ENSIGN, Nevada
JON TESTER, Montana	LINDSEY GRAHAM, South Carolina
ROLAND W. BURRIS, Illinois	
EDWARD E. KAUFMAN, Delaware	

MICHAEL L. ALEXANDER, *Staff Director*
BRANDON L. MILHORN, *Minority Staff Director and Chief Counsel*
TRINA DRIESSNACK TYRER, *Chief Clerk*
PATRICIA R. HOGAN, *Publications Clerk and GPO Detailee*

SUBCOMMITTEE ON FEDERAL FINANCIAL MANAGEMENT, GOVERNMENT
INFORMATION, FEDERAL SERVICES, AND INTERNATIONAL SECURITY

THOMAS R. CARPER, Delaware, *Chairman*

CARL LEVIN, Michigan	JOHN McCAIN, Arizona
DANIEL K. AKAKA, Hawaii	TOM COBURN, Oklahoma
MARK L. PRYOR, Arkansas	GEORGE V. VOINOVICH, Ohio
CLAIRE McCASKILL, Missouri	JOHN ENSIGN, Nevada
ROLAND W. BURRIS, Illinois	

JOHN KILVINGTON, *Staff Director*
BRYAN PARKER, *Staff Director and General Counsel to the Minority*
DEIRDRE G. ARMSTRONG, *Chief Clerk*

CONTENTS

Opening statements:	Page
Senator Carper	1, 35
Senator McCain	3
Prepared statements:	
Senator Carper	61, 66
Senator McCain	64, 68

WITNESSES

WEDNESDAY, JUNE 16, 2010

Hon. Frank R. Lautenberg, a U.S. Senator from the State of New Jersey	4
Darryl Willis, Vice President for Resources, BP America, Inc.	6
Steven Newman, Chief Executive Officer, Transocean Ltd.	8
Craig Bennett, Director, National Pollution Funds Center, U.S. Coast Guard .	11
Susan A. Fleming, Director, Physical Infrastructure, U.S. Government Ac- countability Office	12

THURSDAY, JULY 22, 2010

Kenneth R. Feinberg, Administrator, Gulf Coast Claims Facility	37
James T. Hackett, President and Chief Executive Officer, Anadarko Petroleum Corporation	38
Naoki Ishii, President, MOEX Offshore 2007 LLC, accompanied by Fujiko Sato, Interpreter	39

ALPHABETICAL LIST OF WITNESSES

Bennett, Craig:	
Testimony	11
Prepared statement	83
Feinberg, Kenneth R.:	
Testimony	37
Prepared statement	115
Fleming, Susan A.:	
Testimony	12
Prepared statement	90
Hackett, James T.:	
Testimony	38
Prepared statement	117
Ishii, Naoki:	
Testimony	39
Prepared statement	120
Lautenberg, Hon. Frank R.:	
Testimony	4
Prepared statement	70
Newman, Steven:	
Testimony	8
Prepared statement	78
Willis, Darryl:	
Testimony	6
Prepared statement	72

APPENDIX

Notes requested by Senator Tester appears in the appendix on page	122
---	-----

(III)

IV

	Page
James W. Ferguson, Sr. Vice President and Deputy General Counsel, Halliburton, prepared statement for June 16, 2010 hearing	123
Responses to Senator Carper's letter of June 10, 2010 from David C. Nagel, Executive Vice President, BP America Inc., with attachments	126
Questions and responses from the Congressional Research Service (CRS) for the June 16, 2010 hearing	149

**THE GULF OF MEXICO OIL SPILL:
ENSURING A FINANCIALLY RESPONSIBLE
RECOVERY—PART I**

WEDNESDAY, JUNE 16, 2010

U.S. SENATE,
SUBCOMMITTEE ON FEDERAL FINANCIAL MANAGEMENT,
GOVERNMENT INFORMATION, FEDERAL SERVICES,
AND INTERNATIONAL SECURITY,
OF THE COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS,
Washington, DC.

The Subcommittee met, pursuant to notice, at 3:31 p.m., in room SD-342, Dirksen Senate Office Building, Hon. Thomas R. Carper, Chairman of the Subcommittee, presiding.

Present: Senators Carper, McCaskill, and McCain.

Also Present: Senator Pryor, McCaskill, and Tester.

OPENING STATEMENT OF SENATOR CARPER

Senator CARPER. The Subcommittee will come to order. I want to welcome our colleague, Senator Frank Lautenberg from New Jersey, my neighbor across the Delaware River. Before I call on him as the first witness to address us on the first panel, I would like to give an opening statement, and once we are joined by other colleagues, if Senator McCain joins us before I recognize Senator Lautenberg, Senator McCain will be asked to give his opening statement. I will then call on Senator Lautenberg, and then as other Members of our Subcommittee show up, if they show up before our second panel, they will have an opportunity to give opening statements. Otherwise, they can submit their statements for the record.

Welcome, one and all. For 58 days, the American people have watched a tragedy unfold in slow motion before our eyes. It was nearly 2 months ago when we first heard the horrific news of an explosion on an oil rig in the Gulf of Mexico and the loss of 11 American citizens. While today we will be discussing the financial costs of the oil spill to the American taxpayers, there is no value that one can place on the tremendous loss of human life in this catastrophe. These were sons, these were brothers, these were husbands and fathers, and for those who they left behind, my colleagues and I extend our most sincere and heartfelt prayers.

While there is nothing we can do, unfortunately, to bring back these men to their families and friends who love them, we can make sure that the communities and industries that they helped to build survive and again thrive.

(1)

As we all know, the coasts and wetlands, the bogs and fisheries of much of the Gulf have sustained enormous damages. These vital natural resources are the lifeblood of an economy and a way of life. They are national treasures that must be protected, and we will demand that they be fixed, if you will, by those who broke them.

Today this Subcommittee will explore how we can ensure that America is made whole again without putting a hole in our pockets. From the beginning, President Obama and senior members of his Administration took this disaster seriously, as they should. The White House deployed Cabinet members to help manage the response, dispatched the Coast Guard and in some cases the National Guard, and brought together stakeholders and industry experts in an ongoing effort to get the damaged well plugged as quickly as possible and to coordinate the clean-up response.

As I like to say, however, if it is not perfect, let us make it better. And it is clear that there is more that the Federal Government can do to make things right in the Gulf. There is also more that BP and others can do as well.

I hope today that we will gain a better understanding of how much the BP Deepwater Horizon oil spill has cost and may continue to cost American taxpayers and how we intend to recover the money from those responsible for this disaster.

Earlier today, the President and BP officials announced the establishment of a \$20 billion independent trust fund to ensure that BP continues to pay claims in the future as they have to date. This is something that my colleagues and I called for, and I look forward to exploring how such a fund might work today at this hearing.

It is clear that the financial mechanisms we have in place, including the Oil Spill Liability Trust Fund, were simply not designed to handle something of this magnitude. I look forward to hearing from the Government Accountability Office (GAO), about the risks and vulnerabilities of the trust fund that they have found in the past and how this spill encompasses a perfect storm of factors that will easily make it the most expensive ever.

In addition to the enormous financial burden the spill has placed on citizens and businesses in the Gulf, the Federal Government has been incurring costs in other government units, too.

To date, over \$120 million has been spent by the Federal Government on ships and personnel to respond to this incident, and much of it has been billed to BP and the other responsible parties.

This past Friday, I understand that BP wired their second payment of over \$69 million to the Federal Government. I also understand that the Coast Guard will be sending their third bill—this one for roughly \$50 million—to BP and to the other responsible parties perhaps even today. I am sure that American taxpayers appreciate BP's prompt notice and payment, and I hope we will continue to see similar responses as those costs mount.

While we have seen several checks from BP and others, I hope to find out today how the other responsible parties view themselves—and one another—when it comes to paying for this disaster. We are pleased to see Mr. Newman of Transocean here today. I understand he has come all the way from Geneva, Switzerland, and we are grateful. I look forward to hearing about how he views Transocean's role in these ongoing efforts.

We also invited Anadarko Petroleum to today's hearing, which owns a 25-percent stake in the Gulf well, and MOEX Offshore, which owns, I believe, a 10-percent stake in the well. Their names are also on the bill from the Federal Government. Unfortunately, they declined to send witnesses today. I am disappointed that they chose not to attend. It was my hope to have all the responsible parties at our table. We hope that they can find some time in the very near future to come to discuss these issues with us and with the American people.

The hole we are trying to plug is, as you know, some 5,000 feet under the surface of the water, but men and women whose livelihoods and communities have been disrupted by this disaster live in many cases right down the street. Surely we can do a better job of protecting not only the Gulf, but our entire Nation from the costs and impacts of this spill.

The spill has now lasted, as I said earlier, 58 days—nearly 3 weeks longer than it rained during Noah's flood in the Book of Genesis. If the story of Noah tells us anything, it tells us that with faith, a dedication to do what is right, and hard work, we too will find something akin to a rainbow at the end of this calamity. I do not know that we will find a rainbow, but my hope is that at the end of the day we will find the end, and my hope is that at the end of the day this sad chapter in our Nation's history will somehow serve as a catalyst to convince us to change course as a Nation and to focus our energy maybe less on recovering petroleum and more on finding ways to become independent of petroleum, independent of foreign oil, independent of fossil fuels, to make ourselves more energy independent and enhance our security and maybe launch a whole new generation of technologies and innovations in business that will enable us to build a different kind of economy for our country as we go forward.

We have been joined by our Ranking Member, Senator McCain. Senator, you are recognized, and after you have spoken, we will turn to Senator Lautenberg for his comments, and then we will recognize others on our Subcommittee. Thank you all for joining us.

OPENING STATEMENT OF SENATOR MCCAIN

Senator MCCAIN. Well, thank you, Mr. Chairman, and thank you for holding this hearing today. I do not need to repeat how outraged and saddened all of us are by the Deepwater Horizon rig explosion that killed 11 people and spewed millions of gallons of oil into the Gulf of Mexico. I think every American is aware of that situation now and the catastrophe.

As of June 14, BP estimated that the cost of the oil spill had reached \$1.6 billion, including the cost of the spill response, containment, relief well drilling, grants to Gulf States, claims paid, and Federal costs. The company's CEO, Tony Hayward, has publicly assured the Federal Government and the American people that BP will fully meet its obligations from the spill and pay all legitimate claims even if aggregate claims exceed the \$75 million legal liability limit.

Despite the government's unfortunate response at the outset of the oil spill, it has incurred substantial costs in recovery and response operations. Since the explosion, the Federal Government

has sent two invoices totaling nearly \$71 million for reimbursement to responsible parties. Another invoice of approximately \$50 million is expected to be issued imminently.

The disaster should provide many lessons for all of us, including the Administration and Congress, including a reminder that the Jones Act should be repealed. Within a week of the explosion, 13 countries, including several European nations, offered assistance from vessels and crews with experience in removing oil spill debris. However, the Jones Act, a protectionist law enacted in the 1920s, prevents foreign-flagged vessels from operating and transporting merchandise between points abroad and the United States. The Administration may grant a waiver to any vessel, just as the previous Administration did during Hurricane Katrina so the international community could assist in recovery efforts. But they have not done so.

There are other concerns. For example, U.S. Attorney General Eric Holder also made an unprecedented announcement 2 weeks ago that the Department of Justice (DOJ) has opened criminal and civil investigations on the Gulf of Mexico oil spill. However, if a civil settlement results from the investigations, the settlement charges may receive favorable tax treatment depending on how the settlement is drafted. Effectively, the Federal Government and the American taxpayers could indirectly pick up a portion of the tab for the responsible parties' mess. Obviously, that is unacceptable.

BP failed to prevent this catastrophic disaster from occurring while the Minerals Management Service failed to exercise robust enforcement of safety standards. We cannot allow the cost of their failures to be placed on the backs of American taxpayers.

I am pleased—and I think you may have noted, Mr. Chairman, a recent wire story, “BP OKs \$20 billion escrow fund.” That is certainly a step in the right direction.

I thank you, Mr. Chairman. I thank you for holding this hearing.

Senator CARPER. I am delighted that we could be here together, Senator McCain.

Let me turn to our first witness, our colleague from New Jersey, someone who serves on the Environment and Public Works Committee, a senior member, and we are delighted to welcome him here today for his comments. Then we will turn to our other colleagues for their opening statements.

Senator Lautenberg, please proceed.

**TESTIMONY OF THE HON. FRANK R. LAUTENBERG,¹ A U.S.
SENATOR FROM THE STATE OF NEW JERSEY**

Senator LAUTENBERG. Thanks, Mr. Chairman and Senator McCain. I join you to express my condolences to those families who lost loved ones in this horrendous catastrophe, and I thank you for giving me the opportunity to appear before the Subcommittee on this critical issue.

Last night, the President spoke to the country, and he could not have been clearer. The needs of Gulf families, fishermen, business owners, must not and will not take a back seat to BP's bottom line. That is why I am pleased that earlier today President Obama se-

¹The prepared statement of Senator Lautenberg appears in the Appendix on page 70.

cured an agreement for BP to put \$20 billion into an escrow account to pay for the damage from the spill and to remove BP from deciding which claims are valid. I commend the President for his strong leadership on this disaster, and I know he is determined to do everything in his power to hold BP accountable.

The behavior of this company and its executives could not be more reprehensible. Their greed led them in the first place to gamble with the lives of workers on a rig, the marine life in the Gulf, and the economy and culture of the entire region. And when the inevitable happened and the Deepwater Horizon exploded, burned, and sank, BP's leaders downplayed the true size of the spill, and we learned that they lied about their ability to contain it.

Mr. Chairman, we have seen this kind of catastrophe before. It has been more than 20 years since the Exxon Valdez went aground, and oil is still contaminating the soil there. Now, I was in Alaska within 3 days of the Exxon Valdez crash, and I saw the destruction caused by that oil spill firsthand.

When the press coverage was intense, Exxon issued a string of apologies. It promised to do the right thing by the communities, and it vowed to make sure that the way of life these Alaskans knew would resume. But as soon as the cameras were turned off, Exxon changed its tune, and it fought the communities, the families, and the fishermen over every penny. Instead of making those victims whole, Exxon chose to make its lawyer rich. Exxon drew things out for years and knocked down a punitive damage claim from \$5 billion to \$500 million, and we cannot let history repeat itself. And every 4 days—we are just reminded that the spill the size of the Exxon Valdez spill occurs every day—every 4 days. Every 4 days we are witnessing the size of a spill that took place at Exxon Valdez.

And that is why I proposed an amendment to last month's emergency supplemental bill to make it clear that companies responsible for the oil spill must reimburse the American taxpayer for every dollar the government spends on clean-up. And while the amendment was not considered on the floor, the Administration made it clear that BP will pay the bill. Americans are fed up with hollow words and false assurances and broken promises, and that is why we also must pass legislation to eliminate a measly \$75 million liability cap on monetary damages from these spills. Big oil, with enormous profits every month, can afford to pay for their recklessness.

I want to thank you, Mr. Chairman, and the rest of the Subcommittee for inviting me to speak today and, more importantly, for holding this critical hearing. I hope that we are going to hear honest and candid answers from BP and the other executives about how they are going to live up to their obligations.

Thank you again, Mr. Chairman.

Senator CARPER. Senator Lautenberg, thank you. Thanks for joining us. Thank you for lending your voice to this hearing as well.

I think in terms of who should go first—Senator Tester?

Senator TESTER. I will make it easy for you, Mr. Chairman. I am going to forgo opening remarks for the questions. I will defer to the good Senator from Arkansas.

Senator CARPER. All right. Fair enough. Thanks so much. Thanks for coming.

Senator PRYOR. Mr. Chairman, thank you. I do not have an opening statement.

Senator CARPER. I think with that we can turn to our second panel, and if the witnesses will make their way to the table, that would be good.

[Pause.]

Senator CARPER. I have had a chance to already welcome the witnesses individually, and now I am pleased to welcome you collectively to testify. I will just provide a very brief introduction for each of you. Our lead-off witness will be Darryl Willis. Mr. Willis is Vice President for Resources for BP America. He has been with BP for 18 years and is currently leading the claims process efforts for BP. Thank you for joining us.

Steve Newman is our second witness. He is the President and Chief Executive Officer for Transocean, Ltd. Mr. Newman has worked, I am told, for Transocean for 14 years and first served in his current position as President and CEO in 2008. Welcome.

Our third witness is Craig Bennett. Mr. Bennett is the Director of the U.S. Coast Guard's National Pollution Funds Center. The National Pollution Funds Center oversees the Oil Spill Liability Trust fund and tracks the direct Federal costs of the oil spill. Mr. Bennett has served in the U.S. Coast Guard for over 20 years, and prior to his appointment as Director, he served as the Chief of the Financial Management Division of the National Pollution Funds Center.

Finally, our final witness is Susan Fleming, Director of the Physical Infrastructure team at the Government Accountability Office. Before joining GAO, Ms. Fleming served as a financial analyst for General Electric. Good to see you. Thank you for joining us.

Your entire statements will be made a part of the record. We invite you to proceed. I would ask you to try to stay fairly close to 5 minutes. If you run a little bit over that, that is OK. If you run a lot over that, it is not OK.

Mr. Willis, if you will just lead us off, please. Thank you. Thank you all for coming.

**TESTIMONY OF DARRYL WILLIS,¹ VICE PRESIDENT FOR
RESOURCES, BP AMERICA, INC.**

Mr. WILLIS. Thank you, Mr. Chairman. Chairman Carper, Ranking Member McCain, Members of the Subcommittee, I am Darryl Willis, Vice President of Resources for BP America. On April 29, I accepted the role of overseeing BP's claims process, which was established in the wake of the explosion and fire aboard the Deepwater Horizon drilling rig and ensuing oil spill. I am here to share information with you about the claims process.

This horrendous incident, which killed 11 workers and injured 17 others, has profoundly touched all of us. There has been tremendous shock that such an accident could have happened and great sorrow for the lives lost and the injuries sustained.

¹The prepared statement of Mr. Willis appears in the Appendix on page 72.

I would like to make one thing very clear. BP will not rest until the well is under control and we discover what happened and why in order to ensure that it never, ever happens again. As a responsible party under the Oil Pollution Act of 1990, we will carry out our obligations to mitigate the environmental damage and economic impact of this incident.

I would also like to underscore that the causes of the accident remain under investigation, both by the Federal Government and by BP itself. So I am prepared today to answer your questions regarding the claims process and our reimbursement of Federal response costs. I cannot, however, respond to inquiries about the incident itself or the investigation.

Above all, I want to emphasize that the BP claims process is integral to our commitment to do the right thing. We will be fair and expeditious in responding to claims. We have already paid out over \$90 million in claims as of today, and we understand how important it is to get this right for the residents and businesses as well as for State and local governments.

To that end, we have established 33 walk-in claims offices operating in Louisiana, Mississippi, Alabama, and Florida. And we have a call center that is operated 24 hours a day, 7 days a week. We have also established an online claims filing system to further expand and expedite our capacity to respond to potential claimants. Altogether we have approximately 1,000 people handling claims and over 660 experienced claims adjusters on the ground working in the impacted communities. We will continue adding people, offices, and resources as required and are committing the full resources of BP to making this process work for the people of the Gulf coast.

Our early focus was on individuals and small businesses whose livelihoods have been directly impacted by the spill and who are temporarily unable to work. These are the fishermen, the crabbers, the oyster harvesters, and shrimpers with the greatest immediate financial need. BP is providing expedited interim payments to those whose income has been interrupted. Approximately 18,000 claims have already been paid, as I said, totaling \$90 million to date. And we have recently begun sending out second advance payments to individuals and businesses.

We are also working hard to address business loss claims. Over the last few days, we have paid out over \$16 million in business claims.

The claims process was established to fulfill our obligations as a designated responsible party under the Oil Pollution Act of 1990 (OPA). Thus, we are guided by the provisions of OPA 90 as well as the U.S. Coast Guard regulations when assessing claims. I am not an attorney and, therefore, cannot speak to the particular legal interpretations or applications of OPA 90. I can, however, reiterate that BP does not intend to use the \$75 million cap in the OPA 90 statute to limit our obligation to pay these claims. We have already exceeded it and will not seek reimbursement from the Oil Spill Liability Trust Fund.

As an additional means of ensuring a fair and transparent process, today an independent mediator, Kenneth Feinberg, has been

appointed to oversee the claims process, and BP has committed to setting aside \$20 billion in an escrow fund to pay legitimate claims.

I would also like to briefly discuss the reimbursement of the Federal Government response costs. To date, the Coast Guard has sent BP and other responsible parties two invoices for Federal Government costs totaling slightly more than \$70 million. BP has paid these invoices promptly by wire transfer.

In closing, I would like to add a personal note. My ties to the Gulf coast run deep. I was born and raised in Louisiana. I went to high school there, college there, and graduate school there. My family spent many summers on the Gulf coast. My mother lost her home of 45 years in Hurricane Katrina, and the recovery process was sometimes time-consuming, and at many times it was incredibly frustrating. I know firsthand that the people in this region cannot afford lengthy delays in addressing economic losses caused by this spill.

I volunteered for this assignment because I am passionate about the Gulf coast. It is the place I call home, and I want to be a part of the solution. With that, I welcome your questions.

Senator CARPER. Thank you for adding that to the close of your testimony. Thanks very much.

Mr. Newman, welcome. Please proceed.

TESTIMONY OF STEVEN NEWMAN,¹ CHIEF EXECUTIVE OFFICER, TRANSOCEAN LTD.

Mr. NEWMAN. Chairman Carper, Ranking Member McCain, and other Members of the Subcommittee, I want to thank you for the opportunity to speak with you today. My name is Steven Newman. I am the Chief Executive Officer of Transocean. Transocean is a leading offshore drilling contractor with more than 18,000 employees worldwide and more than 4,500 employees in the United States. I am a petroleum engineer by training, and I have spent considerable time working on and with drilling rigs. I have been with Transocean for more than 15 years.

Since April 20, 2010, the heartache I and my company feel for the 11 crew members who died, including nine Transocean employees, and their families is with us constantly. The safety of our employees and crew members is of the utmost importance to us, and the loss of lives on the Deepwater Horizon is devastating to us and to their families. I also salute the courage of the 115 crew members who were rescued from the rig and the extensive response team that has worked tirelessly since the event.

Transocean has been actively involved in the activities since April 20, including providing support and comfort to the families of the lost men, and I would like to provide the Subcommittee with more details about these efforts.

Transocean is a people-focused company. Since the events of April 20, our human resource (HR) teams have focused on providing grief counseling and a range of benefits and employee services to those directly and indirectly affected. We are currently taking a number of steps, including providing the families of the nine Transocean men who were lost continued full pay and benefits, pro-

¹The prepared statement of Mr. Newman appears in the Appendix on page 78.

viding injured crew and those receiving ongoing counseling continued full pay and benefits. Compensation for personal possessions lost in the incident was offered to all crew and families and accepted by most.

On May 25, we held a memorial service in honor of the men lost in the Horizon tragedy. It was attended by all 11 families, by many Transocean personnel, and by people from across the industry. It was a moving event and an opportunity for all of us to celebrate the lives of these exceptional men. Our goal is to continue our support of the families and our employees as we all move forward.

As I have said many times in the past, we believe that we have the most advanced equipment in the offshore drilling industry, but our people are the real reason for the success of Transocean. This belief has been articulated through the guiding principles of our company which go by the acronym FIRST (Forum of Incident Response and Security Teams). My written testimony provides additional details about these principles, so today I will focus on the R, which stands for respect for employees, customers, and suppliers, and the S, which stands for safety.

Our respect for our employees and our goal to be a responsible employer guided our actions before April 20, and will continue to do so in the future. This respect is borne out in a number of ways.

For example, Transocean provides our employees with extensive training for all offshore and shore-based activities. We work with employees who seek supervisory positions and management roles and provide flexible work hours and monetary assistance for education to maintain or improve job skills, to increase competencies and qualifications for future opportunities.

Our company's culture of safety has long guided our actions. Transocean was a key partner in developing the U.K. North Sea's Safety Case methodology and then in developing the IADC's Safety Case guidelines. We subsequently applied what we learned to our operations around the world, even where no formal Safety Case is required. We have also implemented a Major Accident Hazard Risk Assessment across all Transocean operations.

Transocean's full commitment to environmental and social stewardship is demonstrated by our active participation in a range of scientific, social, and conservation research programs around the world, including the Gulf of Mexico. We have invested millions of dollars over the past few years in projects aimed at better understanding the environment in which we work and the communities that support our operations.

One such example is our support of a global program addressing scientific and environmental issues associated with remote-operated vehicles. For over 7 years, we have been using our rigs as places of research to allow scientists to explore the deepwater environments with cutting-edge technology to better understand the largely underexplored deepwater area of the ocean.

Another example is our membership in the Gulf of Mexico Foundation through which Transocean supports a range of coastal restoration projects and educational efforts across all five Gulf States, Mexico, and the U.S. Virgin Islands. Many of these projects are in collaboration with NOAA's Coastal Restoration Program along with other federally funded programs.

With respect to the events of April 20, immediately after the explosion Transocean began working with BP and the Unified Command in the effort to stop the flow of hydrocarbons. Our operations and engineering teams have been working around the clock under BP to identify and pursue options for stopping the flow as soon as possible. Our drilling rigs are actively engaged in drilling the relief wells at the site, and our drill ship is involved in crude oil recovery operations. We will continue to support BP and the Unified Command in all of these activities.

Throughout this time we have also been working hard to get to the bottom of what happened on the night of April 20. There are critical questions that need to be answered in the coming weeks and months, but we simply do not have all of the data to know the answers at this point. To understand what led to the April 20th explosion, we must work together in a collaborative effort to collect information and to recommend any corrective measures. We remain committed to this effort.

As the Subcommittee Members are likely aware, the Oil Pollution Act of 1990 makes clear that we are responsible for fluids originating from the rig above or below the waterline, but not for fluids emanating from the well. Once the extent of these liabilities for any materials or substances allocated to the rig are understood, Transocean will continue our cooperation with the National Pollution Funds Center to fulfill any OPA obligations applicable to our operations and to process any relevant claims.

To support this effort, we have conducted sampling to determine the potential presence and any potential impacts that may have been caused by diesel released from the rig. At this time the presence of diesel released from the rig has not been detected. However, we will continue to work to verify this as well as to determine whether or not there is any diesel fuel still contained in the rig's tanks on the bottom of the ocean.

Additionally, as the National Resource Damage Assessment has barely begun, it is too early to ascertain the company's responsibilities in that context. As that process advances, we will cooperate with the NRDA trustees and will stand ready to fulfill any potential obligations that may be found to originate from our duties under OPA.

Regardless, Transocean will continue to lend our expertise to the spill containment and relief well drilling efforts currently underway. The foundation of our company's strengths has always been the people who work at Transocean and the communities where we live and operate. Our commitment to both has been regularly demonstrated over the years, and I believe our continued commitment throughout this incident is evident. We remain ready and willing to assist the Subcommittee and all involved as the work progresses.

Thank you for the opportunity to speak to you today, and I am happy to answer your questions.

Senator CARPER. Thank you very much for coming today and for your testimony.

Mr. Bennett, please proceed.

**TESTIMONY OF CRAIG BENNETT,¹ DIRECTOR, NATIONAL
POLLUTION FUNDS CENTER, U.S. COAST GUARD**

Mr. BENNETT. Good afternoon, Chairman Carper and distinguished Members of the Subcommittee. I am grateful for the opportunity to testify today about the Oil Pollution Act of 1990 and financial responsibility. As someone who graduated from high school in southern Louisiana, who met his wife and was married in Houston, Texas, and who later raised two children for a while in St. Petersburg, Florida, I have a deep appreciation for the people and environment of the Gulf coast.

My role as the Director of the National Pollution Funds Center (NPFC), in this response covers four areas:

First, I fund Federal response using amounts Congress has made available from the Oil Spill Liability Trust Fund, the so-called emergency fund.

Second, I ensure the responsible parties are advertising its availability to pay claims for removal costs and damages. If claimants are not fully compensated by a responsible party, they may present their claims to the NPFC for payment from the fund.

Third, I recover Federal response costs and claims paid by the fund from any and all responsible parties.

Finally, I administer the Certificate of Financial Responsibility Program which ensures that vessels operating in U.S. waters have demonstrated that they are financially able to pay their obligations under OPA.

With respect to response costs, the cost of the Federal response to this event as of this morning was \$217 million. These costs include the funding of over 27 Federal entities as well as over \$12 million that has been given to States for their response efforts.

A key element of the OPA liability and compensation regime is that the polluter pays, not the taxpayer. All of the costs incurred against the fund will be billed to the responsible parties. As has been mentioned, two bills for a total of \$70.9 million have been sent, and both have been paid by BP and both were paid in less than 5 days. A third bill for over \$50 million is being sent this afternoon. At the end of the event, the fund balance will not be impacted because all response costs will have been reimbursed by the responsible parties.

With respect to claims, the National Incident Commander, Admiral Thad Allen, met with BP executives at the National Pollution Funds Center last Wednesday to direct faster progress and more transportation regarding the claims process. I met with BP officials in Louisiana last Thursday, and my staff has worked with the BP claims people over this past weekend to oversee the progress on the expectations set forth by Admiral Allen. These expectations included getting more detail and context in the reports that we receive from BP, as well as acceleration of the payment for business claims. Progress has been made, and as Mr. Willis said, BP has in the last week paid \$17 million in 337 checks to small businesses.

Also, based on the operational concept of no wrong door, the National Incident Commander has established an integrated services team to monitor BP claims and coordinate delivery of Federal pro-

¹The prepared statement of Mr. Bennett appears in the Appendix on page 83.

grams that can provide social services and small business assistance to individuals, families, and small businesses affected by the oil spill. The team is made up of two parts: A national-level team located in Washington, DC, to coordinate strategic policy-level issues, as well as to provide support and issue resolution for the field-based teams.

Field-based teams are established in each impacted Gulf coast State to identify gaps in the claims process for resolution by BP and to provide residents with full, streamlined access to all Federal assistance programs. Each field team is led by a Federal resource coordinator with a State point of contact identified by the governor.

Individuals, communities, and businesses have suffered as a result of this spill. The OPA liability and compensation regime is working to ensure a robust Federal response that those damaged from the spill are compensated and that the polluter pays. The Department and the Administration are working to ensure a full recovery throughout the affected States.

Thank you for the opportunity to testify today, and I look forward to your questions.

Senator CARPER. Mr. Bennett, we thank you for joining us. Thanks for your work and for your comments. Ms. Fleming, please proceed.

TESTIMONY OF SUSAN A. FLEMING,¹ DIRECTOR, PHYSICAL INFRASTRUCTURE, U.S. GOVERNMENT ACCOUNTABILITY OFFICE

Ms. FLEMING. Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to discuss the costs of major oil spills. The recent disaster in the Gulf coast not only caused the tragic loss of 11 lives, but also untold economic and environmental damage to Gulf coast communities. This spill has reminded us that, despite the fact that major oil spills are infrequent, they can happen at any time across coastal and inland waters of the United States. It has also reminded us that vessels involved in the petroleum industry are not the only risk. Cargo, fishing, and other types of vessels also carry substantial fuel reserves, and as we are now keenly aware, mobile offshore drilling units like the Deepwater Horizon also represent a threat. Besides being potentially lethal and damaging the environment, spills can be expensive, with considerable costs to the Federal Government and the private sector.

My testimony today has three parts: I will discuss the factors that affect major oil spill costs, how oil spills are paid for, and the implication of major oil spill costs on the Oil Spill Liability Trust Fund.

First, there are a number of factors that combine in unique ways and affect the cost of spills: Location, time of year, and type of oil. Although we have not evaluated the current spill or the factors affecting its costs, some of these and the magnitude of the spill will likely drive costs.

For example, the spill occurred in the spring in an area of the country, the Gulf coast, that relies heavily on tourism as well as commercial fishing industry revenues. One estimate puts the loss

¹The prepared statement of Ms. Fleming appears in the Appendix on page 90.

of revenue from suspended commercial and recreational fishing at about \$144 million a year. In addition, spills that occur in proximity of tourism destinations, like beaches, can result in additional removal costs in order to expedite spill clean-up or because there are stricter standards for clean-up which increases the cost.

Another factor affecting spill cost is the type of oil. The oil that continues to spill into the Gulf of Mexico is a light oil, specifically a light sweet crude oil, that is very toxic and can create long-term contamination of the shorelines and also, as we have seen, harm waterfowl and fur-bearing mammals. According to the U.S. Fish and Wildlife Service, many species of wildlife face grave risk from this spill as well as 36 wildlife refuges that may be affected. In recent testimony the EPA Deputy Administrator described the Deepwater Horizon spill as a “massive and potentially unprecedented environmental disaster.”

I will now turn to my second point. The Oil Pollution Act established a “polluter pays” system that places the primary burden of liability and the cost of oil spills on the responsible party. Under this system, the responsible party assumes up to a specified limit the burden of paying for spill costs, which can include both removal costs and damage claims. Above the specified limit, the responsible party is no longer financially liable. The fund was established to pay the costs above this limit or potentially all costs a responsible party does not pay or cannot be identified. The fund, as you know, is financed primarily from a per barrel tax on petroleum products.

Now I will move on to my final point, the implications of major oil spills for the trust fund. To date, the fund has been able to cover the costs not paid for by responsible parties, but the fund’s future viability may be at risk. In particular, the fund is at risk from claims that significantly exceed responsible parties’ liability limits. We reported, in 2007, that the current liability limits for certain vessel types, such as tank barges, are disproportionately low relative to costs associated with such spills.

The fund faces other potential drains on its resources, including ongoing claims from existing spills, claims related to sunken vessels that could leak oil, and as in the case with the Deepwater Horizon, the threat of a catastrophic spill. As of early June, the response costs for this spill had already tolled over \$1 billion, and to date, the spill has not been fully contained. As a result, the Gulf spill is likely to eclipse the Exxon Valdez, becoming the most costly offshore spill in U.S. history.

The fund is currently authorized to pay up to \$1 billion per spill with up to \$500 million for damage claims. Its current balance of about \$1.6 billion may not be sufficient to pay such costs for a spill that is likely to have catastrophic consequences.

While BP has said—and we heard it today—that it intends to pay all legitimate claims associated with the spill, should the company decide it will not or cannot pay for these costs exceeding its limit of liability, the fund will have to bear these costs. Given the magnitude of the spill, the cost could result in a significant constraint on the fund.

In closing, major oil spills are rare, but the risk of such spills exists daily. Further, spills are expensive, with significant costs to the Federal Government, the private sector, the environment, the

economy, and the public at large. Although the fund has been able to cover non-catastrophic liabilities, the uncertainties and unprecedented nature of the current spill and potential future spills could threaten the fund's viability.

Mr. Chairman, this concludes my statement. I look forward to our discussion and would be pleased to answer any questions you or Members of the Subcommittee have.

Senator CARPER. Good. We look forward to it as well. Thank you so much for coming today.

We will be providing each member 7 minutes for questions in this first round, and we will take it from there on a second round.

I want to start off with a couple questions—or at least one question, if I could, for Mr. Willis and for Mr. Newman. And then my next question will probably be for you, Mr. Bennett, and then one for Ms. Fleming.

Mr. Willis, as you and Mr. Newman, I think, know we invited representatives from Anadarko and from MOEX Offshore here today. They declined to join us. This is an invoice, a bill that the Federal Government sent to the responsible parties on June 2, asking for the reimbursement of some \$69 million. Anadarko's and MOEX's names are right here on the front alongside of BP and Transocean.

How do your companies view Anadarko's and MOEX's role in helping to pay for this disaster? That is the first part of my question. How do you view their role in helping to pay for this disaster? Have you communicated with these companies to clarify what they feel is their role in paying for this disaster? Mr. Willis, do you want to go first?

Mr. WILLIS. Mr. Chairman, our commitment from the very beginning of this incident was to make sure that any legitimate claim or costs associated with this spill, that we honor that obligation and our commitment to make those payments. My focus since being involved in the claims process has been on making sure that when something is submitted to us and when it is substantiated, that we pay those bills quickly. The focus has not been at this point on working through any issues with partners, but making sure that we, as BP, do the right thing and live up to the commitment we have made, which is to honor our legitimate claims and to pay them quickly.

Senator CARPER. That is commendable. Let me just go back to my question. How does your company view Anadarko's and MOEX's role in helping to pay for this disaster? Have you communicated with these companies to clarify what they believe to be their role in paying for it?

Mr. WILLIS. Our view is that there will be plenty of time to sort that out, but in the meantime, when the bills come in and we look them over and they are legitimate and associated with the spill, they need to be paid, and we are going to pay those bills.

Senator CARPER. Thank you. Mr. Newman.

Mr. NEWMAN. Senator, my understanding of the framework that Congress has established would put the well owner and the well owner's partners—in this case, Anadarko and MOEX—in line as responsible parties for damage resulting from fluids emanating from the well bore. And so if I apply that framework to BP, Anadarko,

and MOEX, I think they are all in that comparable tier. Transocean is a member of the subcontractor community that BP hired to carry out the well construction process, and so we are subordinate to BP in their role as responsible party for the fluids emanating from the well bore.

Senator CARPER. OK. And when you say "we," that includes Anadarko and MOEX?

Mr. NEWMAN. No. I put Anadarko and MOEX and BP all as well owners or partners of the well owner. Transocean is one of the many subcontractors that BP hired to carry out the well construction process.

Senator CARPER. Before I turn to Mr. Bennett, Mr. Newman, let me just ask you a follow-up. Can you explain to us how does Transocean view itself in terms of responding financially to the costs associated with this oil spill? I think you alluded to that in your comments. What sort of discussions have you had between your company and BP to discuss what Transocean might or might not be liable for?

Mr. NEWMAN. Transocean's liability under the Oil Pollution Act, as I understand it, relates to fluids that emanate from the rig, either above or below the surface of the water. And so we continue to monitor the drilling rig on the seabed, and so far there has been no indication of any fluids escaping from the drilling rig. But we will continue to monitor the drilling rig, and we stand ready to meet our obligation for any fluids that emanate from the drilling rig.

Senator CARPER. Mr. Willis, do you share that view with respect to Transocean's liabilities?

Mr. WILLIS. Mr. Chairman, honestly, we are focused on making sure that the costs associated with this clean-up and spill in the Gulf of Mexico are paid and that the people who have been hurt along the Gulf coast are compensated for their losses and any Federal costs that are associated with the clean-up are paid back to the American people. And that is what we are going to do.

Senator CARPER. All right. Thank you.

Mr. Bennett, the next question for you. Again, I hold up the invoice, the first one I believe to be sent to the responsible parties, including BP and Anadarko and MOEX all received this invoice. Let me just ask, how does your office view these two companies and what communications have you had with them to ensure that they understand their responsibility here? And perhaps a more important question is: What is their responsibility here?

Mr. BENNETT. Mr. Chairman, I would be glad to answer that question. When we go to issue bills during a response or after a response to reimburse the fund for any costs that come out of the fund, we send the bill to any and all of the responsible parties that have been identified up to that point in time. As you know, it is joint and several liability, although in this case there is sort of tiered liability, as has been mentioned, and there could be different amounts of liability that different partners might have, depending on their relationship. The lessees are generally in this case responsible for the ocean floor release, which is clearly the biggest part of the release in this case, so that is why BP and the minority lessees would probably have the most liability. But early on we do not

worry about trying to sort it out. We send the bill to all responsible parties. It is not uncommon in a case like this for the majority responsible party or major insurance company to set up, pay the bills, and then they work it out behind the scenes amongst themselves, and we do not really typically have a lot of visibility on that as long as somebody is paying the bill. If one person pays it or if they all decide to split it up, as long as I get repaid, that is what we care about.

Senator CARPER. All right. Thank you.

Mr. Willis, one more quick question for you and then I will turn to Senator McCain. A little over an hour or two ago, the President and BP announced the creation of a \$20 billion fund, an independent escrow fund, out of which claims would be paid to those damaged by the oil spill, and we commend you for that. This fund will be administered by Ken Feinberg, who oversaw the September 11, 2001, victim compensation fund, and he has done a number of other things as well. It would seem that this new fund and claims process would replace the current BP claims process of which you are, I believe, in charge.

What discussions, if any, have you had with your colleagues at BP and with the Federal Government about this proposal, how it might work, and how your team would transition to this new process?

Mr. WILLIS. As you mentioned, Mr. Chairman, this was recently announced after conversations between our executive team and the Administration. There are lots of discussions that will be taking place over the next few days and weeks to determine how the transition will take place. But at this time, I do not have those details.

Senator CARPER. I understand. All right. Senator McCain, thank you.

Senator MCCAIN. Thank you, Mr. Chairman.

Just to follow up on the Chairman's question, Mr. Newman, you stated that you feel that your liability is only that may have been caused by diesel released from the rig, either above or below the surface. Is that correct?

Mr. NEWMAN. Yes, sir, that is my understanding of the company's responsibility under the OPA.

Senator MCCAIN. Ms. Fleming, do you have a view of that?

Ms. FLEMING. This is beyond my level of expertise, but it is our understanding that the Coast Guard interprets BP and Transocean to be responsible parties. However, there may be contractual relationships as well that come into play. But it is definitely beyond my level of expertise.

Senator MCCAIN. Mr. Bennett.

Mr. BENNETT. Senator, that is correct. They are all responsible parties, but ultimately how much each of them might be liable for will be determined as a result of really the investigations and how it all settles out. They might not all be equally responsible for all the damages, and it is too early to know what that might be.

Senator MCCAIN. Well, since we are paying claims, it might be nice to try to start figuring that out pretty quick, because BP is paying all the bills right now. Is that right, Mr. Willis?

Mr. WILLIS. That is correct.

Senator MCCAIN. So there are other entities, including two who refused to testify here today, that may have some liability. So what do we have to go through to find out who is responsible and the extent of their responsibility? Mr. Newman, if his position holds, then they really are not going to be liable for anything, so to speak.

Mr. BENNETT. Senator, under OPA they are all joint and several liable, so if we get the payment, we do not typically look beyond that. Now, in this case—

Senator MCCAIN. Who is supposed to determine it then?

Mr. BENNETT. I suspect the Administration and Department of Justice will be following up with the investigation on all those questions and looking at that.

Senator MCCAIN. Well, Mr. Chairman, I think we ought to get some readout of the liability here. I am not holding any brief for BP, but if they are the only ones paying the bills and there are others who were involved, maybe some of them should be paying some of the bills, too.

Do you share that view, Ms. Fleming? Or is that above your pay grade as well?

Ms. FLEMING. Well, I mean, I think that the biggest concern is we do not know what the true costs of this spill are going to be. We are dealing with an unprecedented spill.

Senator MCCAIN. That was my next question.

Ms. FLEMING. And the impact of the spill on the fund, how it is going to affect the fund's ability to pay for future spills, as well as some of the ongoing claims. So there is a lot at stake here.

Senator MCCAIN. Well, you did not answer my question, but it does not matter. The Oil Spill Liability Fund, henceforth known as "the fund," that is clearly going to be exhausted. Right?

Ms. FLEMING. Well, I think that this oil spill's catastrophic consequences could have a severe strain to the fund. There are other risks that come into play as well. However, as we heard today, if BP honors its commitment to pay all those costs, even those above the liability limits, then the risk to the fund could be minimal. But if they will not or cannot pay, and/or if the other responsible parties will not or cannot pay, then that could threaten the fund's viability, quite frankly.

Senator MCCAIN. In your statement, you mentioned that in 2007 you identified areas which further attention to the liability limits appear warranted and made recommendations to the Commandant of the Coast Guard regarding both to adjust limits periodically in the future to account for significant increases in inflation and the appropriateness of some current liability limits, but nothing was ever done on that?

Ms. FLEMING. The limits were adjusted for inflation. However, in the Coast Guard's recent report, which was very much in line with our findings as well, they note that for certain vessel types, notably tank barges and cargo vessels, the limits of liability are disproportionately low relative to their historic spill costs. But they stopped short of making recommendations as to how the limits should be adjusted. Obviously, having the limits out of whack costs tens of millions of dollars to the fund, and now we are dealing with an unprecedented spill on top of those additional risks.

Senator MCCAIN. Mr. Willis, I think you were asked this, but you do not know whether your company has the ability to deduct from taxable U.S. income payments resulting from civil claims?

Mr. WILLIS. Senator McCain, I will preface my comments by saying that I am not a tax attorney. My understanding is that there are deductions that are available to us, and we will take them within the constraints of the law.

Senator MCCAIN. Well, maybe you could have your legal department provide for the record what your corporation's view is on the ability to deduct from taxable U.S. income payments that result from civil claims. Could you provide that for the record for us?

Mr. WILLIS. I will definitely take that away as an action, sir.

INFORMATION FOR THE RECORD

Section 162 of the Internal Revenue Code (the "Code") provides that ordinary and necessary expenses that arise out of the conduct of a trade or business are currently deductible when paid or incurred, including payments made pursuant to a settlement or judgment relating to the conduct of such trade or business activities. *See* 26 U.S.C. § 162(a). Exceptions to this general principle of immediate deductibility include expenses that are (1) disallowed as deductions, such as fines or penalties, or (2) capitalized, for example inventory costs, in which case they are deductible over time. *See* 26 U.S.C. § 162(f), 263 and 263A. BP believes that payments of alleged costs and damages pursuant to Section 1002 of the Oil Pollution Act relate to the conduct of its trade or business activities and are thus deductible under the Code. Whether any particular expense must be capitalized is a separate, and extremely fact-specific, inquiry that BP will determine in accordance with applicable federal and state laws.

Senator MCCAIN. So, obviously, even though this is the 57th or 58th day, you still have not sorted out the liability issue of the various entities who were associated with the rig. Is that a correct statement?

Mr. WILLIS. What I can tell you is that what we have been focused on over the last 50-plus days is making sure that we got a claims process that was up and running, making sure that we got money into the hands of the folks along the Gulf coast who needed it the most—the fishermen, the shrimpers, the folks who work in the restaurants, the seafood processors. That has been the primary focus.

Senator MCCAIN. I understand that. The answer I guess is no. Mr. Bennett, have we made any progress in that area?

Mr. BENNETT. Sir, I want to make sure I have the question right. Is it the area of identifying who is liable for what?

Senator MCCAIN. Yes.

Mr. BENNETT. No, sir. As I said, we bill them all, we get payment, and we expect them to sort it out in court if they do not agree on how those payments came.

Senator MCCAIN. Ms. Fleming, do you have a view on that?

Ms. LAUFE. We have done some preliminary research in this area—

Senator CARPER. I am sorry. Would you identify yourself, please? Ms. Fleming, will you introduce her?

Ms. FLEMING. She is general counsel at GAO, Hannah Laufe.

Senator CARPER. Go ahead and just have a seat for a moment, please, and identify yourself again with your name.

Ms. LAUFE. My name is Hannah Laufe. I am an assistant general counsel at GAO.

Senator CARPER. And the last name?

Ms. LAUFE. Laufe.

Senator CARPER. Thank you.

Ms. LAUFE. We have been doing some investigations in this area, but it is preliminary to really say anything for certain because there are a lot of legal implications to this. And we have contacted MMS, and we are going to be looking at the lease to identify the names on the lease, and that will help us make some determinations about responsible parties. But it is very preliminary to say anything at this point.

Senator MCCAIN. Do you have any preliminary conclusions?

Ms. LAUFE. No, I do not. It is my understanding that Anadarko and MOEX are partners, but I really cannot say more at this point.

Senator MCCAIN. Well, thank you. When you do, again, I hope you will provide the Subcommittee with that.

Ms. LAUFE. We definitely are working on that and we will do that.

Senator MCCAIN. When we are talking about the extent of the costs here, which, as we all know, are unprecedented, I think that should be sorted out fairly quickly so that we can expedite the claims for all the reasons that I do not have to explain. I thank you very much. Thank you, Mr. Chairman.

Senator CARPER. Thank you to both witnesses from GAO.

Senator Tester, welcome.

Senator TESTER. Thank you, Mr. Chairman. I do not want to go back to this, but I have just got to—whose responsibility is it to determine liability? Is it the GAO's responsibility? Whose responsibility is it?

Ms. FLEMING. No, not GAO's.

Senator TESTER. It is not GAO's?

Ms. FLEMING. No.

Senator TESTER. Is it the Coast Guard?

Mr. BENNETT. I believe we do it. I mean, when there is a spill, my staff will—

Senator TESTER. Determine liability and the percentage that the liability applies to which company?

Mr. BENNETT. I do not determine percentage.

Senator TESTER. Who determines percentage?

Mr. BENNETT. We will bill them all for all costs.

Senator TESTER. I know. But if BP says, "Forget it, I am not paying anymore," who determines percentage?

Mr. BENNETT. A judge will.

Senator TESTER. A judge will?

Mr. BENNETT. If we do not get paid, then the Department of Justice takes them all to court, and a judge will decide.

Senator TESTER. OK. Just for clarity. There are a couple of things I have to ask, and, Mr. Bennett, I will just ask you.

Mr. BENNETT. Yes, sir.

Senator TESTER. There are about 51,000-plus claims; 26,000 have been paid in regards to this event as of June 14. Are you familiar—does that sound about right?

Mr. BENNETT. Yes.

Senator TESTER. Now, those folks who got paid, is their legal recourse done?

Mr. BENNETT. No. Nobody that has been paid has been asked to do a release for any payments or give away any right. Most of those payments are interim payments for loss of wages or incomes, primarily to fishermen. They can continue to get interim payments, and they can continue to make other claims as it goes on.

Senator TESTER. OK, thank you.

Mr. Willis, there is a whole bunch of information out there on BP and violations with OSHA and previous incidences that have happened. Could you tell me if there were any shortcuts that were taken because this project was over budget?

Mr. WILLIS. Senator Tester, I am actually over the claims process, and that has been my focus for the last 50 days, and I can answer any questions you might have about the claims process.

Senator TESTER. But not about this issue? Mr. Newman, maybe you can answer the question. You were punching the hole, right? Ocean Energy was punching the hole?

Mr. NEWMAN. Transocean was hired—

Senator TESTER. Transocean. I am sorry.

Mr. NEWMAN. That is all right. Transocean was hired to provide the drilling rig and the people to operate the rig's machinery.

Senator TESTER. OK. Are you aware if this project was over budget?

Mr. NEWMAN. I received a copy of a letter written by Congressman Waxman and Congressman Stupak that did make reference to a concern about the financial status of the project, yes.

Senator TESTER. So it was over budget.

Mr. NEWMAN. That was referenced in Chairman Waxman's letter.

Senator TESTER. OK. I am not asking whether Senator Waxman or Representative Waxman said it.

Mr. NEWMAN. Senator, the budget is not Transocean's. It is a BP budget. And so I cannot comment on what the original budget was, and I have no idea where they were with respect to that.

Senator TESTER. OK. So that is a different issue for BP.

Mr. Willis, can you tell me—I mean, there are all sorts of stuff out here that needs to be cleared up. For example—and this, by the way, it would not point a finger at you guys—well, it kind of would, but not in a real bad way. There were inspectors out there, and maybe pay attention to this, too, Mr. Newman, because it might end up in yours. But there were inspectors—or maybe even Mr. Bennett's. I do not know. But there were inspectors out there that I have been told were on fishing trips, going to LSU games, college football games, that were not doing their job. Can you shed any light on that?

Mr. WILLIS. Senator Tester, I am the claims guy, and I have been involved in—

Senator TESTER. That is OK. I understand. Mr. Newman, can you shed any light on that? Because if you are out there drilling a well if the inspectors are doing their job or not. Were they doing their job?

Mr. NEWMAN. From Transocean's perspective, the MMS regularly visits our drilling rigs. They conduct inspections of those drilling rigs. They leave notes with our people that result from those in-

spections, and that is the nature of the relationship between Transocean and the MMS.

Senator TESTER. Did they inspect your drilling rig?

Mr. NEWMAN. They were last on the Deepwater Horizon on April 1.

Senator TESTER. Did they leave any notes?

Mr. NEWMAN. I do not know whether they left a visit report from the April 1 visit.

Senator TESTER. Who would know?

Mr. NEWMAN. Certainly somebody in our operations group would know the answer to that question. We can certainly provide that information back to the Subcommittee.

Senator TESTER. That would be great. Can you tell us what is on those notes?¹ You can tell me when they get back to the contact—

Mr. NEWMAN. We will make the results of those visits available.

Senator TESTER. That would be great.

Ms. FLEMING, we have \$20 billion, which seems like a lot of dough, in an escrow account now, and you talked about we do not know what the damages are. I believe it was you who said ultimately we do not know what the extent of the damage is. In your expert opinion, do you think that is going to be adequate?

Ms. FLEMING. I think it is going to take months or even years until we really have a good sense of the total economic and environmental impact to the gulf coast. So we do not know. Also, I think the devil is in the details, too, in terms of how this escrow account will work, and how it will be administered, and implemented.

Senator TESTER. As long as you are going down that line, it is supposed to be implemented by a third-party administrator?

Ms. FLEMING. Yes.

Senator TESTER. Right now the money that is—with the question I asked Mr. Bennett, BP has claims processors on the ground now doing it. Is it going to be BP's claims processors that deal with this \$20 billion escrow account?

Ms. FLEMING. I do not know.

Senator TESTER. Does anybody know?

Ms. FLEMING. We have not looked in great detail on this.

Senator TESTER. Mr. Willis, maybe you know.

Mr. WILLIS. Senator Tester, this information is hot off the press. These are the conversations that will be taking place over the next few days and weeks to work out the details of how the process is actually going to be run.

Senator TESTER. OK. Are you going to advocate for BP to have their claims processors? Or is BP going to allow a third-party administrator to determine that?

Mr. WILLIS. I would like to start by saying, Senator Tester, that the primary concern we have is making sure that the resources are available and that the people who need the money get the money as quickly as they can.

Senator TESTER. Yes.

¹Notes requested by Senator Tester appears in the appendix on page 122.

Mr. WILLIS. And we will work with the details around how and who is going to do the actual on-the-ground management of the—how the on-the-ground management of the claims process is going to work.

Senator TESTER. OK. One last question, because I have only about 15 seconds left. You talked about an investigation. You cannot talk about the investigation. You can talk about the claims process. Can you tell me where they are at in the investigation?

Mr. WILLIS. I cannot. I am 100 percent focused on cutting checks for the folks of the Gulf Coast.

Senator TESTER. OK. Sounds good. I appreciate your commitment to that. I appreciate all the people being here to testify today. This is one hell of a mess that we need to get our arms around, get cleaned up, and get the people held harmless as soon as possible. Thank you all for being here.

Senator CARPER. Senator Tester, thank you very much for being here.

Mr. Willis, in our business we like to say that you are on message. [Laughter.]

That is not a bad thing. I spoke with the U.S. claims monitoring team this morning, the integrated services team. They were appointed by Admiral Allen, and this team has been working hard to oversee BP's claims process on behalf of the Federal Government and the American people.

I was concerned to find out, however, that BP still has not provided Admiral Allen and his team the entire claims databases they have requested. In fact, I am told that they requested this information over a week ago, and without this information we are told that they are unable to determine the extent of the claims or what the waiting period is for those who have asked for and who need assistance.

Mr. Willis, can you just share with us, if you know, why hasn't this data been provided to the government? And when can we expect it to be provided?

Mr. WILLIS. Mr. Chairman, I can tell you that I actually attended that meeting last Wednesday with Admiral Allen and was a part of that conversation. And on Thursday, members from the integrated services team and from our claims team met via phone to talk about how and what data we needed to make sure was captured and incorporated into future claims reports.

In addition, our software engineers worked over the weekend to reconfigure systems to make sure we can extract the appropriate data. Some of that date we are already capturing, but in many cases, based on a letter that the Admiral sent to our chairman, our CEO, the new data that will have to capture.

On Monday of this week, I was in Biloxi, Mississippi, with members from the integrated services team, and our groups got together again to finalize the details, and I can tell you they are working hard to get that completed and into the hands of the appropriate people ASAP. That work is underway, and the teams are working closely together.

Senator CARPER. OK. So I think you responded to the first half of the question, and I appreciate that. I think your response to the

second half of the question—And when can we expect it to be provided?—you are saying ASAP.

Mr. WILLIS. If that has not happened, I would expect it within this week.

Senator CARPER. All right. Thank you.

A question, if I could, both for you, Mr. Willis, and this one you can share with Mr. Bennett. I understand that any claims denied by BP or that have not been handled in, I think, 90 days can then be brought to the government's Oil Spill Trust Fund. I believe no claims have been denied to date, which really I find hard to believe. Are you telling us that no one person has tried to take advantage of this system, that no one has put forth some sort of false claim? If they have, can you provide us with some examples and tell us why they have not been denied?

Mr. WILLIS. What I can tell you is that we have not denied any claims to date. We have had thousands of claims put into the system. We have paid, as I mentioned in my testimony, \$91 million worth of claims, and no claim has been denied. We have a variety of claims in the system, everything from a boat captain to a deckhand to a waitress to a lawn man, and we are looking at every claim we get carefully, and we are being fair and reasonable and practical in our evaluation of those claims.

I also can tell you, Mr. Chairman, that you are right that we have up to 90 days to pay a claim, but so far, from the time a person calls our 1-800 number to the time they receive a check, once they have provided us with the documentation that substantiates their income or loss, for an individual it is running about 4 days on average, and for a business that has a claim less than \$5,000, it is running about 6 days from phone call to actually walking out of the claims center with a check.

So we are working hard to make sure the process is fair and expeditious, and I always preface my comments by saying that we have not denied any claims yet, because I suspect with the number of claims in our system that there will be some denials. But none have been denied to date.

Senator CARPER. All right. Thanks.

Ms. FLEMING. Mr. Chairman, may I add to that?

Senator CARPER. Yes, Ms. Fleming, please do.

Ms. FLEMING. I just wanted to note that for our ongoing work for you, we will be delving more deeply into the claims process. However, it is not unusual, when you are dealing with large catastrophes such as Hurricane Katrina, that the likelihood of improper payments and claims can occur. So it is really important that you have a framework in place so that you have reasonable assurance that an improper payment could be identified or detected. But at the same time, you also have to balance the need to have that structure with the need to try to make sure that your claims process is working effectively and efficiently. So you have to have that balance. We are going to delve deeply into this for you.

Senator CARPER. Well, good. There is a tension—

Ms. FLEMING. There is a tension.

Senator CARPER. One, trying to be responsive; second, trying not to be foolish.

Ms. FLEMING. Yes.

Senator CARPER. Mr. Bennett, could you respond to this question I have asked of Mr. Willis?

Mr. BENNETT. Mr. Chairman, I would like to do that, because I have been asking BP as well—I would like to see some denials because I know that with 56,000 claims, there has got to be some. And what I found, my staff working with their staff and also information that comes in to us, we have a 1-800 number that is out there. Also, it is communicated to claimants when they get information from BP, if they have questions or concerns.

Interesting to note, out of the 56,000 claims that have been submitted, we have had 256 calls in the last 5 weeks; 210 of those calls were really not about claims. They were about people's opinions about how the response is going. The 40 of the calls that were about claims, we contacted BP or we followed up with the people that called. We have been able to reach about half of them, about 20 of the 40 people, and then we worked with BP to find out what the situation is. What we are finding working with BP is that in most cases there is either an incomplete claim or not all the information is there, and it would appear to us that BP is trying to give the claimant every opportunity to get the right information and to understand how the process works before they deny. But I had a conversation this morning with some of Mr. Willis' folks about I want to see some denials because I want to understand it, because certainly when we start getting claims, if we get any, we will have the internal controls to make sure there is no waste, fraud, or abuse. And I have encouraged BP to do the same thing. I know they are.

So I do not think it is an indication that they are not acting on it. They are just bending over backwards to make sure that before they deny, the claimant really did understand and had all their ducks in the row.

Senator CARPER. All right. Thank you. Thanks for that clarification.

Mr. Willis, back to you, if I might. Going back to the conversation I had this morning with the folks in the U.S. claims monitoring team earlier today, they told me of some concerns they had involving the reported lack of denials, and we talked a little bit about this here. Specifically, there have been reports of individuals who come to BP with a claim that are being told that the claim—just are sort of told up front that the claim will not be covered, and so they never file it. In some of these, there might be claims that are actually coverable. And if so, maybe we are not really getting an accurate picture of the claims that are being accepted or denied, because ultimately people hearing that their claim is not coverable, they just do not make the claim.

Have you heard of any such reports? And to what extent do you think this might be happening or not happening? And, Mr. Bennett, I would really appreciate it if you would sort of chime in on this as well.

Mr. WILLIS. Mr. Chairman, I have not heard any reports like that, but I can tell you, given the fact that we have gone in the last 50 days from zero to 33 claims offices and from zero checks cut to thousands of checks cut and from zero to \$90 million, that the process we have put in place is not perfect. And we have taken

some steps to make sure people are aware in our offices that fraud is not going to be tolerated. We have posted signs in offices in English, Vietnamese, Spanish, and Khmer languages. And the process is not perfect, but I have not heard of any instances.

I can also tell you that our process is an open claims process, and anyone who feels like they have been damaged, have property that has been damaged, or if they feel like they have lost income or wages as a result of the spill has a right to call our 1-800 number, go onto our Web site, or walk into one of those 33 offices and file a claim. And they should not be denied that right.

Senator CARPER. All right. Thank you.

Mr. Bennett, do you want to take a shot at this again?

Mr. BENNETT. Yes, Mr. Chairman. One thing I would add, in addition to my earlier comments, is when we started asking about the number that was claimed, it is really cases opened, because you see this 56,000 number and then you see that there has only been 27,000 that have been paid. And the question that jumps to your mind is that there must be a lot of claims that have not been acted on. What we are finding is—and I do not know the number, and that is why we are working with BP to get more transparency. But what we are finding is that a number of claims—and we are finding this from the people that call us—the claimants do not even—have not provided in some cases a dollar amount for what their damage is, so they filed the claim, but under OPA, if the claim were to come to us, there has to be a sum certain. You have to say what the dollar amount was, and you have to document what the loss was.

So a certain number—and I do not know what the percent is—of those open claims are really—they are kind of tickets that somebody took, and a good example I know of is a hotel early on thought that you have to get in early because the \$75 million is going to run out. So they took a ticket, they called the claims center to submit a claim. They are actually full from responders, so they have not suffered any loss yet. But they are holding, in case the response winds down and maybe later in the season they do suffer, then they can submit a claim for the actual demonstrated losses later in the season. But that ticket is sitting there open on the books, and that is why we are working really hard to try to get better transparency on what is happening with those claims and those tickets.

Senator CARPER. OK. Thanks.

A question, if I could, both for Ms. Fleming and for Mr. Bennett. I do not know if it was Mr. Bennett or Ms. Fleming, but in the testimony of one of you, you state that BP may also choose to pay a claim with less documentation than the government would be required to obtain. I would like you to both take a moment and explore that comment a bit further. If that statement is true that BP is providing payments for claims that the government would not pay, what might that mean for the independent trust fund? And could this third-party process, following your office's guidelines, actually be maybe less liberal in its payments than BP?

Mr. BENNETT. Mr. Chairman, I can first address that, and we do know that BP is paying for things that are not necessarily OPA-compensable. They are entertaining personal injury claims, which

are specifically precluded, and also because it is a private entity, they are not bound to the same Federal laws and even OPA. If they want to pay a claim, they can pay a claim. So they are leaning forward very hard, and if people are harmed from the event, whether it is really strictly OPA or not, it would appear that BP is being liberal. And at least in some cases, I am sure there are people that are not happy and getting paid. So we know that there are claims that have been paid that we probably could not pay under OPA.

Senator CARPER. All right. Ms. Fleming, do you want to comment on what Mr. Bennett has said in any way?

Ms. FLEMING. Well, he certainly has more insight into the current claims process, but it is my understanding that it is certainly within BP's prerogative to pay beyond the OPA-compensable costs. But as I highlighted earlier, BP has said that they will pay for all legitimate claims. But if for some reason that changes and they cannot or will not, then the trust fund could be threatened because we do not really know at this point the true costs of the spill. We will not know for many months or years to come. The spill has still not been contained, and we already know that the number keeps growing each day, in terms of the volume that is being spilled. So this is obviously an unprecedented spill, where the costs are already in the billions.

Senator CARPER. OK. Another question just for you, Ms. Fleming. How does the Deepwater Horizon spill compare to prior spills in terms of its special circumstances and sheer magnitude?

Ms. FLEMING. Well, I just highlighted a couple. It is my understanding that this has been the worst offshore platform spill in U.S. history. It still has not been contained. Exxon Valdez, by comparison, spilled about 11 million gallons and took a little over about \$2.2 billion just to clean up. BP is at about \$1.6 billion already, in terms of response costs as well as damage claims. It is going to take many months and years to really have a sense of the true costs of this spill and the impact to the environment and economy in those areas, as I do not think we have a good grasp on the full effects of this spill. However, but it is definitely unprecedented, and the magnitude will drive these costs. And as I said earlier in my opening remarks, there are so many factors besides the magnitude that come into play, including the location of the spill—which may have affected many species since it is the time of year when they migrate and breed. Additionally, the type of oil is a factor that affects costs. It is the type of oil that is very toxic and creates long-term contamination to the shores. So all these factors will influence and drive the costs of this spill.

Senator CARPER. I think your statement discussed factors that can affect the cost of cleaning up an oil spill like this. How do these factors come into play in the Deepwater Horizon spill?

Ms. FLEMING. Well, again, I think it is the location, along the Gulf Coast. It is an area that is in proximity to about 36 wildlife refuges. It is at a time of year when many birds migrate. Also, the location and the time of year are going to have and are already impacting the fishing and the tourism communities. Another factor is the type of oil that is being spilled, it is a light sweet crude oil, which is very highly toxic and long-term contamination effects. And

top of it, you have just this unprecedented magnitude of oil and the fact that it still has not been contained.

So all of these factors will interplay and will ultimately impact the final costs of the spill, which, again, may take us a long time to determine.

Senator CARPER. How much did you say was spilled in the Valdez accident?

Ms. FLEMING. It is my understanding that it was 11 million gallons, but—

Senator CARPER. Does that sound about right, Mr. Bennett?

Ms. FLEMING. Mr. Bennett has confirmed—

Mr. BENNETT. That is correct.

Senator CARPER. All right. And how much money was ultimately paid out?

Ms. FLEMING. Well, my understanding is that it is about \$2.2 billion for the clean-up costs. I am not sure what the claims amount is. Mr. Bennett may have a better handle on this, and I am not sure if it is fully settled, quite frankly.

Mr. BENNETT. Yes, Mr. Chairman, Exxon has reported that they spent \$3.5 billion for the response and claims and damages. And we would not know the details because since they paid the bill and did not submit a claim for any kind of limit, all we know is what they report.

Senator CARPER. All right. So that was, I think you said, 11 million gallons. And do you know in terms of the amount of oil that has leaked to date—can anybody help me with how much we believe has actually leaked today? It seems like the amount of the leak has grown, as you know, over time. Now at least it looks pretty small from the first day, but now it is going to be enormous, and despite our efforts, despite BP's and other efforts. But somebody help me out. In terms of comparing this to the Valdez, 11 million from Valdez, 11 million gallons, and where are we today, with the meter still running? Anybody know? No. All right.

So \$3.5 billion from Exxon Valdez. Was that everything all in?

Mr. BENNETT. That is what has been reported by Exxon according to our records, yes, Senator.

Senator CARPER. And they paid that?

Mr. BENNETT. They paid that.

Senator CARPER. They paid that.

Mr. BENNETT. Yes, that was Federal response cost then, as now, and Exxon reimbursed the Federal Government for those costs.

Senator CARPER. All right. That was about 20 years ago, and we are 20 years later with a different amount of oil, and most people are saying more this time than last time, maybe even in more fragile areas of our country.

I would just ask Ms. Fleming—and others are welcome to respond, if they would like—do you find comfort in a \$20 billion independent fund? That seems like a lot of money. Is your reaction that ought to be enough, that might be enough? Do you have any thoughts?

Ms. FLEMING. Well, I think when we are dealing with such an unprecedented spill that it is likely to have catastrophic consequences, all options needs to be considered. And I think that anything that will both make the communities whole and at the same

time to try to preserve the viability of the trust fund is certainly a step in the right direction. But I would say that it is going to be important with the details how it is implemented. I think the legal structure in terms of the laws and regulations and whether or not the liabilities are impacted, all these things are still questions that need to be addressed and answered. How this new process will interact with the existing process that is in place that BP and NPFC have established, I think these are all questions that probably need to be explored and addressed.

Senator CARPER. All right. Anybody else want to take a shot at that one?

Mr. BENNETT. Mr. Chairman, I would just say that over the last 19 years since the National Pollution Funds Center was stood up after the Exxon Valdez, there has been over 11,000 spills that have accessed the fund. In every single one of those until now, there was a defined amount. A container, a ship can only hold so much oil. So in every single one of those, there was an event, there was a spill, and then we commenced the clean-up.

This is unprecedented because we are still in the middle of the spill. It is still spilling. So this is really more than an event. This is a campaign. And that is what really makes this so different and so hard to anticipate and measure and forecast because it is unprecedented. And I would say the \$20 billion that the President got in an agreement with BP last night is—I would say it is a very good assurance to the American people that BP intends to stay in this for the duration. Whether it is enough or not, I think it is too early to tell.

Senator CARPER. Yes. All right. Thank you.

Mr. Willis, BP has promised, I think since the beginning, that the \$75 million liability cap that we have been talking about here would essentially be irrelevant. And with the discussions and negotiations at the White House, I guess yesterday and today, do you know if BP and the Federal Government entered into any kind of contractual agreement to this effect?

Mr. WILLIS. Mr. Chairman, I do not know.

Senator CARPER. All right. A question, if I could, for Mr. Newman. Last month, Mr. Newman, you filed a petition in Federal court under the Shipowners' Limitation of Liability Act to limit your liability for the Deepwater Horizon accident to \$27 million. As the owner of this facility, shouldn't you bear some more, some additional responsibility greater for the cleaning up of the damage that is being caused by the oil spill? We talk, on the one hand, about a trust fund of as much as \$20 billion, and that BP and the other owners of the well would be assuming. And your company has suggested that your liability is limited to \$27 million.

Mr. NEWMAN. If I could offer a couple of comments to clarify that, Mr. Chairman.

Senator CARPER. Please.

Mr. NEWMAN. First of all, the filing of the limitation of liability action was done as a result of two things:

First of all, a direct instruction from our insurance underwriters to file that action; and in terms of the company's ability to meet our obligations, the preservation of our insurance program is a

vital asset of the company. And so we responded, we complied with our insurance underwriters' directive to file that limitation action.

The second reason we filed the action was to consolidate all of the non-environmental claims, all of the numerous personal injury lawsuits that are being lodged against the company in multiple venues, from States, Federal court. The limitation of liability action serves to consolidate all of those non-environmental claims into one venue.

So there were two reasons we filed that. The number that the Chairman referred to, the \$27 million, is a calculation, according to the statute, and so we applied the statute and we applied the methodology in the statute to calculate that number, and that \$27 million is an outcome of that calculation.

Senator CARPER. All right. I am not quick enough on my feet to be able to figure out what percent of \$20 billion \$27 million would be, but it has got to be a small percentage.

Mr. NEWMAN. The limitation of liability applies to non-environmental claims, so it is only in response to personal injury claims. The environmental claims are handled under the OPA process that Mr. Bennett has laid out.

Senator CARPER. All right. Thank you.

Mr. Bennett, another one for you, if I may. Your office is in charge of the government's Oil Spill Liability Trust Fund and manages any claims made to that fund. I understand you have been in pretty much constant contact with BP claims officials since the whole process began. Is that a fair statement?

Mr. BENNETT. That is a fair statement.

Senator CARPER. What instructions has the White House given you about how this newly created independent trust fund might interact with your office and with the current claims process being led by BP?

Mr. BENNETT. Mr. Chairman, we are still working the details of that out, so we do not have anything to say about that right now because that was done at a pretty high level and just in the last day or two. I think in the coming days we will be meeting and working out the details.

Senator CARPER. OK. Do you expect that process to start right away?

Mr. BENNETT. I cannot say.

Senator CARPER. All right. Thank you.

Mr. Newman, if I could for you, please. I understand that Transocean has rejected a claim of, I think it is called, force majeure from Anadarko yesterday. As I understand it, force majeure relieves a company from liability when it cannot fulfill contractual obligations because of natural and unavoidable catastrophes. Could you just go back and explain for us why Anadarko made this claim and why Transocean rejected it?

Mr. NEWMAN. I believe, Chairman, that Anadarko's claim of force majeure would be in response to the Administration's moratorium on deepwater drilling activity in the Gulf of Mexico. And, because those are ongoing discussions between Transocean and Anadarko, I would prefer to let those conversations carry through to their conclusion, before I comment too freely on the current state of those conversations.

Senator CARPER. All right. Another question for you, and then I have one for Ms. Fleming, and then maybe a closing statement.

You have heard your colleagues at this panel give their testimony. You have heard them respond to the questions that have been asked of them, and you have given an opening statement. I am going to ask you to give just a very brief closing statement and any reflections or any additional comments you would like to bring, particularly in response to what you have heard others say, or not say. But be thinking about that, please.

Meanwhile, for Mr. Newman, I understand that State lawmakers both I think in Louisiana, I think in Mississippi have invited officials from Transocean to participate in hearings that they are holding to examine the spill's effects on residents in those States. I also understand that Transocean has declined to send any representatives to those hearings. And while I understand how busy you and your team have to be right now and I appreciate very much your appearance before our Subcommittee today. Why has Transocean decided not to send representatives to those hearings? And could you commit for us today to work with local lawmakers to provide the answers that they are seeking from Transocean?

Mr. NEWMAN. Mr. Chairman, we were unable to participate in the Mississippi hearing, and despite our inability to participate, we have been responsive to the Mississippi lawmakers' request for information. We have provided them with all the same documentation that we have provided to the Federal Administration and to Congress.

We have a representative who is attending the Louisiana hearing, which I believe is taking place tomorrow. So we are able to participate in the Louisiana hearing. We were unable to participate in Mississippi.

Senator CARPER. Well, again, we appreciate your being here today. You said you have somebody at the Louisiana hearing?

Mr. NEWMAN. We will have somebody at the Louisiana hearing tomorrow.

Senator CARPER. We appreciate that, and I am sure they appreciate that in Louisiana. I would urge you to continue to work with the local folks down there to provide the answers that they are seeking.

Finally, a question for Ms. Fleming. How does the Deepwater Horizon spill—no, I am not going to ask that. I think we have beaten that one enough.

I would just ask you to think, reflect back on the conversation we have had here today, the questions that have been asked, some of the responses given, maybe some of the questions not asked, and just make some short closing thoughts for us before I close it out.

Ms. FLEMING. I think we have covered the fact that we are dealing with a spill that is—

Senator CARPER. Let me just interrupt. For you especially, a question that my colleagues and I should have asked that we did not, if you can think of that before we adjourn here, that would be good, too. But go ahead. I am sorry I interrupted you.

Ms. FLEMING. OK. Sure. I think we basically have covered the fact that we are dealing with a spill that is unprecedented in nature. It is clear that it is going to take many years until we have

a real good sense of the costs. We already have determined that it is probably going to be of greater magnitude than we have seen in history.

The trust fund is in place to cover liability costs for parties, responsible parties that cannot be identified or cannot pay costs. We have heard and BP continues to say that it will honor and pay all legitimate claims, the \$20 billion escrow account is certainly a step that can be a vehicle for that and to try to make the communities whole. If for some reason the costs just get to be a point where they cannot or will not, I think the trust fund is threatened or could be threatened, and that obviously comes into play in terms of future spills or even being able to pay the claims that we are still seeing from the 2007 San Francisco spill and others.

Senator CARPER. All right. Thanks. Mr. Bennett, any closing thoughts you would like to leave us with?

Mr. BENNETT. Mr. Chairman, I would just like to say that the Coast Guard and all of our Federal partners and State and county and parish partners on this response are unrelenting. I spent 4 days down in the Gulf at the end of last week and through the weekend. The work is phenomenal. We know the American people are not happy. We know not everybody feels that they have been treated well and that the right thing is happening. The National Incident Commander, Admiral Allen, is moving heaven and earth to respond to these things, to be more transparent, to get answers to questions that people have. We know we owe it to the American public, and we are doing what we can to do that.

Senator CARPER. All right. Thank you.

Mr. Newman, a closing thought, please?

Mr. NEWMAN. Thank you, Mr. Chairman. The closing thought I would like to leave is the way business is conducted on the outer continental shelf is pretty fundamental. And it is a result of the statutory framework that Congress has established, it is a result of historical industry practices, and it is a result of the contractual relationships between the parties. So if you think about the process that the well owner goes through in identifying and securing the lease through an arrangement with the Federal Government, in developing an exploration program for that lease, in designing a well or wells to carry out that exploration program, in hiring a number of subcontractors to help them execute that well design, and then benefiting from assessing the commercial quantity of hydrocarbons in those wells, and then benefiting from the production of those hydrocarbons—all of that creates a process of ownership and control for the well owner. And the well owner derives all the benefits from that ownership and control.

So in terms of establishing that framework as it applies to liabilities, I think it is appropriate for the well owner who derives benefit from the production to also bear the risk if those hydrocarbons are released into the environment inadvertently.

Senator CARPER. OK. Thank you. Mr. Willis.

Mr. WILLIS. Mr. Chairman, what I would say is that I am here as a representative of BP, but I am also here as a representative of the Gulf Coast. And as much as BP is counting on me, the members and citizens of the Gulf Coast are counting on me as well. And we have said from the beginning that we would do the right thing,

and I am confident that we will. We have an obligation to pay for the damage that has been caused by this spill, and we will. And we are serious, and we have to continue to demonstrate a seriousness to the response that we have underway in the Gulf of Mexico. And hopefully through things like the block grants that were given to the States, for \$175 million, the \$70 million for tourism, the \$90 million in claims we paid to date, and today the announcement of the \$20 billion escrow fund, we are demonstrating our seriousness to fixing the challenges that have been created as a result of this spill along the Gulf Coast. We will do the right thing. We will do the right thing not only because it is the right thing to do, but because the folks of the Gulf Coast are counting on us to do the right thing. And we realize at the end of the day our company will be judged by how we respond to this spill.

Senator CARPER. I expect you are right.

I will close with just reflecting, if I could, what you just said that caused me to think of this. The four core values that I have tried to instill in any organization I have been privileged to lead, whether it was in the U.S. Navy or State government or the Federal Government, really fourfold: One, figure out the right thing to do and just do it; Two is to treat other people the way we would want to be treated if we were in their place; the third is really to focus on excellence. I like to say if it is not perfect, make it better. I know everything I do I can do better. And, last, just do not give up. And I think those are actually four pretty good core values to bring to bear to this catastrophe that we face and are dealing with in the Gulf of Mexico today.

We have, sadly, in this country an enormous dependence on foreign oil. We have, I guess, 60 percent or so of our oil that we consume in this country, use in this country, comes from other places around the world, some of it from unstable nations, undemocratic nations, and I fear as we fill up our gas tanks in our cars, trucks, and vans every week that we end up inadvertently sending money to some places, some people, leaders like Ahmadinejad in Iran and Chavez down in Venezuela. And I am convinced some of those countries use our money to hurt us. We have found in this country that some of the low-hanging fruit, some of the easier-to-recover oil, we have extracted that. And a lot of the oil that is available today is in hard-to-reach places, as we found out all too dearly here in the Deepwater Horizon spill and some places where we invite not just danger but calamity, disaster.

We have to be smarter than this, and I realize that we are going to be dependent on petroleum in this country for some time, but I hope, if nothing else, that we will use this awful experience to do what Einstein encouraged when he said, "In adversity lies opportunity." And in the midst of all this adversity, to find the opportunity not just to stand up and meet your obligations, as I think, Mr. Willis, you are attempting to do on behalf of BP, but that we will find a way to move away from our dependence on fossil fuels, on petroleum, especially the stuff that is in these unstable countries around the world and in place where it is hard to extract, and that we will find some opportunity and a way to move our economy in a new direction. I think there is that opportunity, and we just

have to be smart enough, as we like to say in Delaware, *carpe diem*, to seize the day. We need to seize the day.

First, we have to get through this day, through these days and these weeks and these months in a way that gives not just the people in the Gulf of Mexico but the people of this country the satisfaction that our best has been done and will continue to be done on behalf of those who have been harmed and that we do our dead level best to make sure this just does not happen again.

Our thanks to each of you for joining us today, for your testimony, and for your responses to our questions, and some other Members of our Subcommittee will want to ask questions for the record. They will have that opportunity. They have 2 weeks to submit those questions, and we would ask that you respond to them promptly.

Again, our thanks, and with that this hearing is adjourned. Thank you.

[Whereupon, at 5:12 p.m., the Subcommittee was adjourned.]

**THE GULF OF MEXICO OIL SPILL:
ENSURING A FINANCIALLY RESPONSIBLE
RECOVERY—PART II**

THURSDAY, JULY 22, 2010

U.S. SENATE,
SUBCOMMITTEE ON FEDERAL FINANCIAL MANAGEMENT,
GOVERNMENT INFORMATION, FEDERAL SERVICES,
AND INTERNATIONAL SECURITY,
OF THE COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS,
Washington, DC.

The Subcommittee met, pursuant to notice, at 2:30 p.m., in room SD-342, Dirksen Senate Office Building, Hon. Thomas R. Carper, Chairman of the Subcommittee, presiding.

Present: Senators Carper, McCaskill, McCain, and Ensign.

OPENING STATEMENT OF SENATOR CARPER

Senator CARPER. The Subcommittee will come to order, please. Well, good afternoon, or as we say in Delaware, konnichiwa.

A week ago today, BP successfully placed a containment cap on the Gulf of Mexico oil well which had blown out nearly 86 days before. It is a welcome development and one which many in our Nation were probably beginning to doubt they would ever see. While this accomplishment brings us cautious hope, that cautious hope is tempered by the harsh reality of what is left in the wake of this disaster: The 11 men who lost their lives on the Deepwater Horizon rig and who leave behind families who are forever altered by this horrific accident; the over 185 million gallons of crude oil dumped into the Gulf of Mexico, which blackened beaches and damaged countless wildlife habitats; and the businesses and communities which some fear may not be fully rebuilt for a generation or more.

Indeed, while we may have removed the bull from the china shop with the capping of this well, we have a lot of pieces left to pick up. Last month, our Subcommittee held a hearing to explore how we were ensuring America would be made whole again following this disaster—without putting a hole in our pockets.

We learned that the U.S. Coast Guard has been tracking the Federal costs in responding to the oil spill and sending bills to the responsible parties for reimbursement. To date, the Federal Government has billed the responsible parties for over \$222 million in incurred costs. The most recent bill—totaling over \$99 million—was sent last week. At our hearing last month, we learned that BP had been cutting the checks for these invoices, and they promised

us that they would continue to do so for as long as we continued to send them.

While BP is the principal owner and operator of the oil well and is recognized by the government as the primary responsible party, there are other companies who have also received these bills and have obligations under Federal law—among them, Anadarko Petroleum Corporation, which owns a 25-percent stake in the oil well, and MOEX Offshore, which owns a 10-percent stake. But while the Federal Government has received payments from BP for taxpayers' costs, we still have not heard back from Anadarko or MOEX.

This Subcommittee has obtained invoices that BP sent these two companies asking them to share in the costs of responding to the spill so far. We have also received the companies' responses to those bills, and it is clear that they have declined to date to pay them. In the event that BP is unwilling or unable to continue carrying the full weight of this spill's costs, the American people will want to know who else is responsible.

Under the law, Anadarko and MOEX are responsible and liable for this spill. Today I hope to hear more from them about how they view their relationship with BP and their roles in responding to and helping to pay for this disaster. Our hearing last month also featured testimony from the Government Accountability Office, which reported significant ongoing risks and vulnerabilities related to the Oil Spill Liability Trust Fund. This fund is responsible, as you know, for claims made by individuals and businesses who are denied or left unsatisfied by BP's claims process.

Since that time, President Obama and senior BP officials have announced a new independent claims process that would be created and funded by a \$20 billion escrow fund established by BP. Kenneth Feinberg, who joins us here today—former Special Master of the 9/11 Victim Compensation Fund, among other distinctions—was named by the Administration to be the Administrator of this new claims regime. Today I look forward to hearing from Mr. Feinberg about his progress to date and how the fund he manages will interact with the statutory framework that already exists within the Oil Spill Liability Trust Fund.

Our collective sigh of relief due to the good news coming from the Gulf in recent days should not distract us from the significant challenges that lie before us. And while the well may now be capped, this spill will continue to play out at the kitchen table of every American whose livelihoods and way of life have been affected by this calamity. My colleagues and I will do whatever it takes to get residents of the Gulf Coast back on their feet again, to protect our Nation from the costs and impacts of this spill, and to make sure that those who are responsible for this disaster are held to account.

As my friends at the witness table may have noticed, we were joined briefly by Senator McCaskill, and my guess is she is going to be rejoining us here in just a moment. And rather than wait until that moment occurs, what I am going to do is begin the process of witness introduction, and this will not take too long, so hopefully she will beat the clock and be ready to make a statement, if she would like, before witness statements begin.

On panel one our first witness today is Kenneth Feinberg, Administrator of the Gulf Coast Claims Facility. The Gulf Coast

Claims Facility site the new independent claims process funded by a \$20 billion escrow fund established by BP. Prior to his appointment as Administrator, Mr. Feinberg served as Special Master of the September 11th Victim Compensation Fund and Special Master for Compensation. Welcome.

Mr. FEINBERG. Thank you, Mr. Chairman.

Senator CARPER. Our next witness is James Hackett. Mr. Hackett is Chairman and Chief Executive Officer of Anadarko Petroleum Corporation. Anadarko, as many know, is one of the world's largest independent oil and natural gas exploration and petroleum companies and owns a 25-percent interest in the Deepwater Horizon oil well.

And our final witness today is Naoki Ishii, President of MOEX Offshore 2007. Mr. Ishii has worked with Mitsui Oil Exploration, MOEX's parent company, for nearly 20 years. MOEX Oversight owns a 10-percent interest in the Deepwater Horizon oil well, and we welcome you to our country and particularly to this hearing today. Thank you for coming. Domo arigato.

All right. Mr. Feinberg, and to our witnesses, I am going to ask you to lead off for us. Each of you will be given roughly 5 minutes. If you go a little bit beyond that, I will not complain, but I would ask you to try to stick fairly close to that. If you go way over that, we will have to rein you back in. But your entire statement will be made part of the record, and I would ask you to proceed at this time.

**TESTIMONY OF KENNETH R. FEINBERG,¹ ADMINISTRATOR,
GULF COAST CLAIMS FACILITY**

Mr. FEINBERG. Thank you, Mr. Chairman. I understand the rules governing the 5 minutes. As a former special counsel to the Senate Judiciary Committee and former chief of staff to a colleague of yours, Senator Edward Kennedy, it is good to return to the Senate to testify.

I want to thank you for this opportunity to testify. Yes, I am the independent—and I want to emphasize “independent”—Administrator of the Gulf Coast Claims Facility. Now, that was a facility established by agreement between the Administration and BP to set up a process, a voluntary process to invite any claimant in the Gulf, or elsewhere, that has an eligible claim arising out of the spill to voluntarily come in, have their claim evaluated, and if it is found eligible and calculated correctly, that individual or that business would be entitled to compensation out of a \$20 billion escrow fund that was established by BP and the Administration. I am not part of that escrow fund. I did not create it. I have not negotiated it. I am strictly drawing on it, beginning next month, in order to pay all eligible claims.

Now, hopefully the \$20 billion will be sufficient to cover all claims not only from my facility but also government claims—Federal, State, local—which I have no jurisdiction over. Any government claim must be filed by that governmental entity against BP. The facility that I have been asked to administer will deal with individual claims—wages, etc.—small and large private businesses—

¹The prepared statement of Mr. Feinberg appears in the Appendix on page 115.

business interruption, lost profits, etc. So I am in charge of a facility that will draw on the \$20 billion, but I am not the exclusive distributee. Governments will also draw on it.

Now BP has stated, as you know, Mr. Chairman, that if the \$20 billion is insufficient, it has stated publicly that it will honor any and all eligible financial obligations above the \$20 billion. So it is not a capped amount in terms of BP's financial obligation to pay claims.

Now, as I get ready to transition from the BP claims process, I note with some degree of credit that BP has already paid over \$200 million in claims without my involvement, without this new facility. So they have set up 35 claims offices throughout the four-State Gulf region to process claims and have been doing so. I believe we will do better. I think we will accelerate the claims process, make it more efficient, allow people to file online on the Internet without ever even visiting a claims process. But I am confident that when the claims facility is up and running next month, it will have a seamless transition from BP, which will be out of the private claims business and will be part of this facility.

There are difficult challenges ahead. What constitute eligible claims for damages? How are those damages going to be proven? I mean, you cannot just file a claim without any corroboration. But I will work with the people of the Gulf. I am not beholden to the Administration. I am not beholden to BP. I am working for the people and the businesses in the Gulf to try and make sure that equity is done, that justice is done, and that I distribute the funds that are available as soon as I can.

I want to note with gratitude the staff of this Subcommittee. I have been working with the staff of this Subcommittee over the past few weeks in trying to listen to concerns that have been expressed by you and other Members of the Subcommittee, by citizens of the Gulf. I have been coordinating with the staff and will continue to do so.

So I am fairly confident that, despite the challenges ahead, we will be able to make this facility function the way it should independently so that the citizens of the Gulf are served by this program.

Thank you, Mr. Chairman.

Senator CARPER. Thanks very much, and I think I speak for my colleagues to say thank you for taking on this responsibility.

Mr. Hackett, welcome. We are delighted that you are here. Please proceed. Thank you for joining us.

Mr. HACKETT. Thank you, Mr. Chairman.

Senator CARPER. Again, your full statement will be made part of the record, and feel free to summarize.

TESTIMONY OF JAMES T. HACKETT,¹ PRESIDENT AND CHIEF EXECUTIVE OFFICER, ANADARKO PETROLEUM CORPORATION

Mr. HACKETT. Thank you. I am eager to be here to answer questions. I am Jim Hackett. I serve as Chairman and Chief Executive Officer of Anadarko Petroleum. I just wanted to make some brief

¹The prepared statement of Mr. Hackett appears in the Appendix on page 117.

oral comments that are consistent with the written comments that we gave to your Subcommittee.

The Deepwater Horizon explosion has been an unprecedented environmental disaster, as well as has impacted many families of the 11 men lost. And our feeling is that this pain continues in terms of the Gulf Coast region and the communities in that region. And while BP's capping of the well has, I think, brought guarded hope that the situation may soon be brought under control, we must continue to keep the people of the Gulf in our hearts and prayers until the environment and the economy there have recovered.

We, along with others in the industry, have continued to support the response effort of the Unified Area Command, offering technical expertise, providing specialist equipment, and pledging to donate any net revenues from any oil we receive to local charities and civic organizations in the Gulf region.

We share the desires of all Americans that we are arriving at a point where efforts can now turn to restoring the Gulf region as quickly as possible. The Gulf has already suffered significance losses, and the Subcommittee is rightly concerned that American taxpayers must not pay the costs associated with the spill.

We appreciate BP's recognition of its central role as operator of the well and its frequently stated public commitment to continue to pay all legitimate claims in order that the American taxpayers are not burdened.

To prevent that from happening as well, we are committed to meeting our obligations under the Oil Pollution Act. Let me reemphasize the central point for the Members of the Subcommittee and you today. I strongly believe that the taxpayers of America should not be stuck with the bill for the tragedy in the Gulf. I am before you today because Anadarko was a non-operating investor in the Macondo well. According to longstanding industry practice and standard contractual arrangements, as a non-operator we are essentially a passive investor in the Macondo well. Although we receive some limited information regarding plans and progress, all day-to-day operational decisions were made by the operator, BP.

Our company and our industry have many highly skilled and committed individuals that work hard every day to safely deliver the energy resources America needs. All energy resources must be found, developed, and produced safely and in a manner that protects the environment. We all agree the well must be plugged, those that have suffered related losses must be compensated, and the Gulf must be restored. I and the 4,300 employees of Anadarko are eager to help make that happen.

I look forward to your questions.

Senator CARPER. Good. Mr. Hackett, thanks for that testimony. Mr. Ishii, please proceed.

**TESTIMONY OF NAOKI ISHII,¹ PRESIDENT, MOEX OFFSHORE
2007 LLC, ACCOMPANIED BY FUJIKO SATO, INTERPRETER**

Mr. ISHII. Chairman Carper, Ranking Member McCain, thank you for the opportunity to testify at today's hearing. I am Naoki Ishii, President of MOEX Offshore 2007 LLC, based in Houston,

¹The prepared statement of Mr. Ishii appears in the Appendix on page 120.

Texas. MOEX Offshore 2007 LLC has a 10-percent non-operating interest in the lease on which the Deepwater Horizon rig was drilling.

We are deeply saddened by the tragedy of the Deepwater Horizon accident. Our thoughts and prayers go out to the families of those who were lost and to all of those who have been affected by this spill. We understand the significance of this matter to the people of the Gulf Coast. MOEX Offshore will continue to cooperate with all of the parties who are responding to and investigating this accident.

MOEX Offshore does not conduct actual field operations or activities to develop oil and gas. MOEX Offshore had no role in the selection or operation of the Deepwater Horizon rig. We are a minority non-operating investor.

MOEX Offshore shares the Subcommittee's concerns about these tragic events. We are closely monitoring the ongoing investigations. We look forward to working in good faith with Congress. MOEX Offshore will work with all levels of government to assist in their efforts to restore the Gulf Coast.

I have submitted written testimony to the Subcommittee that supplements this statement. I look forward to answering your questions.

Thank you again for the opportunity to share MOEX Offshore's view. Thank you very much.

Senator CARPER. Thank you for your oral testimony and for your written testimony. I have been joined by Senator McCain and Senator Ensign. I have asked Senator McCain if he wanted to make any brief statements, and he has declined. And, Senator Ensign, would you like to as well? OK.

Mark this day as an unusual day when we have my colleagues on either side declining that opportunity, but we will get right into the questions. I am glad my colleagues are here. I will just lead off with a question for Mr. Hackett and Mr. Ishii. Let us do 7 minutes for questions, if we could, for each Member.

Mr. Hackett and Mr. Ishii, as you both know, your companies, Anadarko and MOEX, have received, I believe, four bills from the Federal Government for costs related to this spill. It appears under the law that your companies are liable for these costs. However, we have yet to see any reimbursement for these costs from your companies.

Could you please tell the Subcommittee and the American taxpayers watching us today why Anadarko and why MOEX believe that you do not have to pay? Mr. Hackett, would you like to go first?

Mr. HACKETT. I would be happy to, Senator Carper. The important thing to note is that the taxpayers are being paid, and this operates very similar to the Superfund legislation on which the Oil Pollution Act was based or formed from, and that is that the operator or the lessee is the primary payer, and then the allocation of liability occurs behind that payment. So we view this as a very good process, a very standard process in terms of billing, and the important thing is the American taxpayer is being kept whole.

Senator CARPER. Let me ask you again: Why do you feel you do not have to pay? Just one more time explain it. Why do you feel

that Anadarko does not have to pay in response to billings from the Federal Government?

Mr. HACKETT. The Federal Government is being paid. BP is paying the Federal Government, has stated that they want to continue to do that. Should the American taxpayer be paid double? As long as there is a paying party—and this is the same way it works under the Superfund regulation as well, and the Administration. And I think even the testimony from the government witnesses to your Subcommittee in the earlier hearing ascribed to the same principle. As long as the American taxpayer is kept whole, that is the key. And then the allocation of reimbursement is done behind that payment between the parties involved.

Senator CARPER. All right. Mr. Ishii, the same question, if I can. Can you please explain to our Subcommittee and to the American taxpayer watching us today why you feel that MOEX does not have to pay in response to the billings presented to it by the Federal Government? And we understand, to those who have joined us in person here or through the media, that Mr. Ishii gave his testimony orally in English. He will be working through an interpreter to respond to our questions.

Mr. ISHII [through interpreter]. Mr. Chairman, regarding the invoice from the Coast Guard, there is a contract in place among the partners, and that contract states that BP, as the operator, would make the payments in the first instance. And, therefore, based on that contract provision, BP has been making the payments.

Senator CARPER. All right. A question again to follow up, if I could, for you, Mr. Hackett, and for you, Mr. Ishii. Have either of your companies contacted the National Pollution Fund Center to contest what we describe or call a Notice of Designation? In other words, have you told the Federal Government really to stop sending you these bills? Mr. Hackett.

Mr. HACKETT. We have not, Senator.

Senator CARPER. Could you explain why or do you anticipate what your anticipation is in terms of contesting this notice or reaching out to the Federal Government to ask them to stop sending the bills?

Mr. HACKETT. No. We actually have stated publicly that we view ourselves as being a responsible party under the Oil Pollution Act, so we do not see a need to send that note.

Senator CARPER. All right. Mr. Ishii, if I may, the same question. Has your company, has MOEX contacted the National Pollution Fund Center to contest the Notice of Designation? And have you told the Federal Government to stop sending your company these billings?

Mr. ISHII [through interpreter]. Mr. Chairman, I do not have any recollection that we have been contacted by them, nor of any response that we made to them.

Senator CARPER. I see. May I ask you to go beyond your recollection and respond to us in writing for the record, please?

Mr. ISHII [through interpreter]. Mr. Chairman, I understand. I will do that.

Senator CARPER. Thank you.

Next question, again for Mr. Hackett and Mr. Ishii. Our Subcommittee received documents, I am told, this week that show BP

has now sent your companies two bills for a share of the costs that have been incurred. I believe that the most recent bill to Anadarko totaled some \$900 million and to MOEX I believe about \$400 to \$450 million. I think I know the answer to this question, but I will ask it anyway. Will either of your companies be paying these bills?
Mr. Hackett.

Mr. HACKETT. Senator Carper, as has been reported, we have withheld reimbursement to BP. Again, the taxpayer is being kept whole, which is the important thing. We have a dispute behind our own agreement between the parties that I think is better left to the parties, and that is where we stand, and we are in discussions with BP on that.

Senator CARPER. All right. Mr. Ishii, same question, please.

Mr. ISHII [through interpreter]. Mr. Chairman, regarding the invoice from BP, what we are most interested in is, first, to try to find out why this tragic accident occurred, and so we need to first clarify the cause of the accident. I think it is a little too early to talk about things that would follow because we have to wait for the cause to be clarified.

However, we have properly stated that any proceeds that would be obtained from the recovered crude oil should be used for the people in the Gulf Coast impacted by this accident. And, therefore, we have relinquished our rights to those proceeds.

Senator CARPER. All right. To my colleagues, I indicated we would go 7 minutes. I am going to go one more minute, and then everyone will have at least 10 minutes.

Just to follow up, if I could, again, for Mr. Hackett and Mr. Ishii, as a responsible party under the Oil Pollution Act, your companies are joint and severally liable for damages relating to the Deepwater Horizon incident. If BP begins to pay only their share, what they believe to be their share of the bills received from the Federal Government, will Anadarko and MOEX pay their respective shares in the interim? Or will you wait to litigate this issue with BP? Mr. Hackett.

Mr. HACKETT. Senator, I think that the arrangement that is currently underway, as I mentioned, is very typical and I think the right arrangement for the government to have with the operator. We expect, as BP has committed to and as the government has suggested they will do, that those arrangements will stay in place. We think it is the best thing for the American public. We think it is the best thing for the taxpayer. And I think that the contractual issues between the parties can be sorted out separately.

Senator CARPER. Have there been communications between Anadarko and BP on this issue as to whether or not they intend to continue to pay 100 percent of the billing or if at some point in time they anticipate saying that is enough and to invite their partners to pay their share?

Mr. HACKETT. We understand—we have not asked them for any modification of their public, frequently repeated commitment to pay all bills first.

Senator CARPER. All right. I will stop there and yield, if I could, to Senator McCain. Thanks for joining us today, Senator McCain.
Senator MCCAIN. I thank the witnesses.

Mr. HACKETT, BP has set aside \$20 billion in an escrow fund. Has your company set aside any funds?

Mr. HACKETT. We have not, Senator McCain.

Senator MCCAIN. Why not?

Mr. HACKETT. We do not think it is necessary to do so.

Senator MCCAIN. Look, here are the following facts: The Federal Government has named four companies as "responsible parties": Deepwater Horizon/Transocean, BP, Anadarko, and MOEX. And under the Oil Pollution Act, responsible parties, which you have been named one of, are obligated to pay all cleanup costs and economic damages. So right now, my understanding of the law is that responsible parties have to pay. But you are not paying. Is that right?

Mr. HACKETT. Senator McCain, if I can go back again, the issue is one—

Senator MCCAIN. Are you paying or not paying?

Mr. HACKETT. We are not paying.

Senator MCCAIN. And you have not set any money aside.

Mr. HACKETT. We have not set any money aside, but we have substantial assets.

Senator MCCAIN. You have been billed for \$900 million. What would be wrong with going ahead and paying that, and then if you can prove gross negligence or willful misconduct from BP, you would then get that money back? Because right now the people who are in the Gulf need the money, not the litigation.

Mr. HACKETT. Senator, as I understand it, nobody is being disadvantaged today from our lack of setting up that sort of fund.

Senator MCCAIN. Because BP is paying the whole bill.

Mr. HACKETT. BP is paying the bill, and they have committed to doing that, and—

Senator MCCAIN. Even though you are designated as a responsible party.

Mr. HACKETT. We may be confusing two different issues. Under that Oil Pollution Act, I think that any proceedings there, as I mentioned, traditionally have occurred similar to the Superfund where the operator pays the bills first, and then they allocate the responsibility amongst the parties.

Senator MCCAIN. Well, let me turn to Mr. Feinberg. By the way, thanks for all your good work. Your reward will be in heaven, not here on Earth, Mr. Feinberg. We thank you for all your great work.

Mr. FEINBERG. Well, your praise helps heaven. Thanks. [Laughter.]

Senator MCCAIN. Mr. Feinberg, do you agree with me that there are "responsible parties" here under the Oil Pollution Act?

Mr. FEINBERG. I do not know. All I know is that the Administration and BP entered into an agreement to set up an escrow account for \$20 billion, which I will draw on. I do not know. And it can be on that.

Senator MCCAIN. You do not know anything—do you want to venture an opinion?

Mr. FEINBERG. No, I am not an expert in the field, and I would not dare venture an opinion.

Senator MCCAIN. Now, Mr. Feinberg, you have ventured many opinions of which you are—and so have I, on which we are not ex-

perts. But, anyway, let me, Mr. Feinberg, again thank you and thanks for going down and meeting with the people and talking with them. I think that is really vital, and I thank you for doing that. I have seen a lot of clips of you because they not only need support, financial support, but they need sympathy and understanding, so thank you for doing that.

Mr. FEINBERG. Thank you.

Senator MCCAIN. Do you believe that local government should be compensated for lost tax revenue and reimbursed for additional expenditures related to the response and cleanup efforts?

Mr. FEINBERG. Yes.

Senator MCCAIN. You do.

Mr. FEINBERG. Yes, I do.

Senator MCCAIN. And where should that come from?

Mr. FEINBERG. Under the arrangement entered into on this Gulf Coast Claims Facility Center that I am setting up, any government claim—local, State, Federal—does not go to me. By agreement, it goes to BP. I have no jurisdiction yet—maybe it will change, but I have no jurisdiction over reviewing and authorizing payment for government claims, but they do come out of the \$20 billion escrow account.

Senator MCCAIN. OK. During one of your town hall meetings, you were asked about claimants who work or operate in all-cash businesses and do not necessarily have tax returns, profit and loss statements, and check stubs. You were quoted in a July 16 article as saying, “Well, tell the captain of the boat or your priest to vouch for you.” Does that maybe open the door for a little bit of fraud here?

Mr. FEINBERG. I have reminded everybody down there I will bend over backwards to try and authorize emergency payments to people in need down there. Now, I agree with you, Senator, as I usually do, that it does raise a real serious question. I have told everybody in the Gulf that even if I authorize payments, I must send them by law a 1090, tax verification. Hopefully we will find a way to prove those claims without at the same time encouraging fraud. That is a challenge.

Senator MCCAIN. And so do you have a policy or a way that you could preemptively take measures or steps to prevent fraud?

Mr. FEINBERG. Yes. First, we have been in constant communication with the Department of Justice, Criminal Fraud Division. As you will recall, Senator, in the 9/11 Victim Compensation Fund, there were 7,300 applications, and there were only 35 fraudulent applications. It worked. With the help of the Department of Justice and with my own internal auditing program, I am confident that we will be able to prevent or deter fraudulent claims. We have to do that.

Senator MCCAIN. Have you got a handle on yet or a rough estimate of what the costs are going to be here?

Mr. FEINBERG. No, because the oil just stopped. We will have in the next 30 days for you, Senator, a budget as to what we think the infrastructure will cost to administer the program and how many claims there will be and how many eligible claims, whether the \$20 billion will be sufficient—unclear as yet until we see the claims.

Senator MCCAIN. Have you got a guess as to whether \$20 billion is sufficient? You have no guess?

Mr. FEINBERG. I have no guess. I would hope \$20 billion would be sufficient. I would hope so. But, fortunately, as you know, BP has stated that if \$20 billion is not sufficient, they will step up and honor all additional claims that may be eligible and compensable.

Senator MCCAIN. Mr. Ishii, do you have a contingency fund, an escrow fund set aside for payment of damages as a result of the oil spill?

Mr. ISHII [through interpreter]. Senator, MOEX has not established a fund.

Senator MCCAIN. Well, look, let me just say, here we have a situation where at least the Federal Government has named both of you as “responsible parties.” Obviously, BP feels that you should pay a share of the repayments that are necessary to try to fix and repair the damages from this terrible disaster. You have not paid anything, and you have not even put any money aside. I do not think that is the right thing to do. It is pretty clear what you are going to do is litigate as to whether BP had gross negligence or willful misconduct caused by the accident. So I strongly recommend that you step forward, frankly, as BP has—I did not think very often I would be praising BP. But I strongly recommend that you set aside funds and that you start paying some bills so that the people will know that you are a responsible organization whose first obligation is—if indeed you are responsible parties, which is what you have been designated and you are going to have to prove that you are not—that you start paying some of these bills and set up an escrow fund. And I think it would be in the best interest of the people of this country and, frankly, the image of your corporations.

I thank you, Mr. Chairman.

Senator CARPER. Thank you, Senator McCain. Welcome, Senator McCaskill.

Senator MCCASKILL. Thank you very much.

Mr. Feinberg, I am curious about what is compensable and what is not, and it is not clear to me what is compensable and what is not in this situation. Let me draw on your experience, and I do think that you are a remarkable, talented lawyer. And lawyers hardly get any praise around these parts, so let me just tell you that I think you are a remarkable lawyer.

Mr. FEINBERG. Thank you.

Senator MCCASKILL. Tell me, after the tragedy of September 11, 2001, as you administered that claim fund, were there non-pecuniary damages available to the surviving spouses? Were they able to access loss of consortium—which for lay people means the value of your loss of companionship, your inability to have more children, those kinds of damages—and punitive damages? Was that available to the surviving spouses of the tragedy in New York?

Mr. FEINBERG. By statute, punitive damages, no, unless you opted out of the fund and wanted to litigate.

Senator MCCASKILL. Right.

Mr. FEINBERG. Virtually 97 percent came into the fund voluntarily. No punitive damages.

Pain and suffering, emotional distress, yes, if and only if that pain and suffering and emotional distress was accompanied by either: A, death of a loved one; or, B, physical injury. You could not recover by statute just for loss of consortium, pain and suffering, emotional distress. It had to be part of a physical injury or death arising out of the attacks.

Senator MCCASKILL. I am sure you are aware, because I am sure you have researched and had lots of folks help you get a handle on the law, that we have what I think is a terribly unfair situation here in that the Jones Act limits the liability for the surviving spouses of the men who lost their lives in this tragedy. And I think, if my research is correct, I think Senator McCain helped take the airplane exemption out after a tragedy air crash. This used to apply to the seas, the air, all kinds of methods of transportation that were not landlocked. But we did not remove this unfair limit for vessels, and so these women, many of them with small children, many of them who live day in and day out knowing that their spouses were engaged in—and, frankly, I think some of them even have some evidence that will come to light that some of their spouses were worried about this particular rig and the problems they were having. I am curious as to your take on that limit. And is it fair that, depending on where you lose your spouse, if it is on the water, you cannot recover, but if it was on land you could?

Mr. FEINBERG. I would urge the survivors of those who lost their lives to first voluntarily come into this fund. They are eligible to come into the Gulf Coast Claims Facility. Deaths are included, as well as physical injury. I am not limited by the Jones Act or any other law in terms of my ability to at least calculate damage, if eligible, and to offer voluntarily some sort of compensation. No one is obligated to take that compensation, so it is sort of a free preview.

So I am sure that all of these widows that you reference have excellent lawyers who are well regarded, but I would urge them to first consider voluntarily providing an application to me to review, which could take into account not only existing law but equity and what would be fair and just.

Senator MCCASKILL. So you can do a complete equitable decision without any limitations of existing Federal law?

Mr. FEINBERG. That is correct.

Senator MCCASKILL. Well, would you think that if someone who—it is certainly their right. If they decide that they want to go into the courts and have justice the old-fashioned way that we do it in this country, is it fair that their limit on damages would be in place, whereas if there was an airplane crash or if there was a building that was blown up, they would not have that limitation, do you think?

Mr. FEINBERG. I am not an expert in the Jones Act, but I would question the legitimacy of making that distinction.

Senator MCCASKILL. And I question it also. I think it is something that we need to look at quickly in Congress just as a matter of pure fairness that these women should not have that limitation. I understand the point you are making about a free preview. It is almost like a non-binding dispute resolution—in fact, it is a non-binding dispute resolution. That is exactly what it is, and I think

that would be something that is available to them. But at the same time, I think they should have every mechanism in the law that any other surviving spouse would have after this kind of problem, regardless of the location of the tragedy.

Mr. FEINBERG. I would also say that under the facility as it currently is planned, anybody who is eligible can receive immediately from this facility up to 6 months of emergency payments without any obligation, without any requirement to waive any legal rights. If you are eligible and we calculate that loss and it is provable, we will immediately issue up to 6 months' emergency compensation.

Senator MCCASKILL. For businesses that have gone out of business as a result of this crisis, that have actually lost their businesses, are you able to do blue sky value also?

Mr. FEINBERG. I would consider it. I am not sure how blue sky value exactly would apply here, but such businesses who are now defunct are certainly eligible.

Senator MCCASKILL. OK. Mr. Hackett, I am curious. You had to know going into this hearing that you were going to get some tough questions, both you and Mr. Ishii, about the failure to set up a fund or to set aside any money to address whatever part of this you may have some responsibility for. And if you say you have plenty of resources to do that, and if it is never tapped into, I am just curious why, just from a public perception, would you resist this. I mean, you look like that you are not stepping up. It looks like you are not taking responsibility to the members of this panel and to the American people. Why would you suffer that kind of public relations disaster if it is not going to make a difference in terms of how much money you might be called upon to pony up for your share of any responsibility for this occurrence?

Mr. HACKETT. Senator, I think we start with the fact that the American taxpayer is being kept whole, so we do not view it as a situation where they are not being kept whole.

The second place we start is what legal position we should take.

The third position is, frankly, to do what is right, and we feel very strongly about this, for our shareholders, our employees, and our industry.

What we have learned in public testimony—and we withheld any opinions for 2 months—causes us grave concern. We have contractual dispute mechanisms within the joint operating agreement that we think we are entitled to exercise. We understand from many decades of practice that the Oil Pollution Act, modeled after the Superfund legislation, operates in a fashion where the operator pays the bills, and then we apportion liability.

We do not feel it is right for us to have to pay first. We think it is right that BP pay first. They publicly stated they are committed to doing it.

Senator MCCASKILL. Well, nobody is asking you to pay anything. I mean, I guess what I am saying is obviously the lawyer department won out over the public relation department.

Mr. HACKETT. I think I said what is right, ma'am. I did not say that the lawyers won out.

Senator MCCASKILL. Well, no one here is saying that you should have to be paying something right now. I understand that there are liability issues that have to be determined, and there are going

to be some real cat fights among lawyers, among all of the four parties, as to how that liability ultimately plays out. BP knows that they have primary liability. They have stepped up—after the President asked them to, I think, in a show of strong leadership—and they put \$20 billion cash on the nose. I think that is appropriate, and I think frankly it has gone a long way with the American people that they understand this.

I guess what I am saying is, if no one is asking you to pay anything, if all we are asking you to do is to acknowledge somewhere in your corporate accounting that there may be a day that you might have to pay something, and to show the American people and to show these Senators and to show the people in the Gulf that, if that day came, you are prepared to address it. If it is not going to make any difference in your bottom line right now, why on God's green Earth wouldn't you do it?

Mr. HACKETT. Just as a piece of information on the Department of Justice, as you know, they had sent us a letter regarding any extraordinary transactions that would compromise that asset position. We have committed to them that we will fully inform them of that. We have a very strong balance sheet. There is cash on hand. We do not believe that an escrow fund is required for us to show bona fides with regard to our ability to pay.

We are going to be very careful about not compromising that position because we understand the concern you have.

Senator MCCASKILL. Well, I do not think you completely understand it because I think you are so focused on what it might signal in terms of liability that you are losing sight of what it might signal in terms of acknowledging that there may be a day that others might have to pay something besides BP. I think you have made a mistake. I think you have come to this hearing in a much weaker position because of it. I think both of your companies have. And I would certainly ask you to reconsider that.

No one is going to make you pay anything unless you are liable for something. BP is paying because they know they would be liable, and they believe that what they are gaining in the short run by a cooperative agreement and by working with Mr. Feinberg in long run is going to serve their company, and I think they are spot on. And I think both of your companies have made a mistake, but we do appreciate you being here today. And, Mr. Feinberg, wherever that place is in heaven that you find, I hope there is someone there that has a dispute that you can negotiate.

Mr. FEINBERG. Thank you.

Senator CARPER. Senator Ensign.

Senator ENSIGN. Thank you, Mr. Chairman. Thanks for holding this important hearing. I want to start with Mr. Feinberg.

You mentioned before that the local governments and State governments do not have jurisdiction over those payments. Who has jurisdiction over those payments? It comes out of the \$20 billion, correct?

Mr. FEINBERG. It comes out of the \$20 billion, but those claims should be submitted, right now at least, directly to BP.

Senator ENSIGN. And then BP would draw from that money, and they would authorize the payments? The point of the question is, if we are getting down toward the end of that money and you have

governments over here claiming they are owed money and you have the private sector over here claiming they need the money, who gets that money?

Mr. FEINBERG. Well, there is \$20 billion to hopefully defer any argument. There is no priority. Whoever has a claim, first in, first considered. The claims have to be proven, of course. And finally, BP has, again, made it clear that if the \$20 billion proves to be insufficient—and I hope it will not be insufficient. But if it is, BP has stated publicly it will honor any additional financial obligations that are proven.

Senator ENSIGN. OK. Taxes will be owed, I would imagine, on those if they have State and local income taxes on that money to be paid.

Mr. FEINBERG. Sales taxes—oh, I see. Yes, it is the equivalent of wages or lost income, yes.

Senator ENSIGN. These are questions that probably need to be answered. What if you have a hotel and part of that lost revenue is from rooms, but now that local government does not get room tax?

Mr. FEINBERG. I assume that local government is going to submit a claim for lost room taxes, sales taxes, ad valorem real estate taxes. I can see some innovative claims.

Senator ENSIGN. Right. The reason for the question is, if they submit that to BP, then do you deduct that value because the hotel would have had to pay those taxes? In other words, are you just going to be looking at the net?

Mr. FEINBERG. That is right. I think I have to mitigate if there are other sources of income, yes.

Senator ENSIGN. OK. One of the concerns you always have during these times, when you have massive potential lawsuits and things like that—and I know you are a lawyer, so maybe you are going against your own interests here—but, how do we minimize fees going to lawyers so that the money actually gets to the victims?

Mr. FEINBERG. Well, that is a controversial question. I am a lawyer. First of all, I want to remind—Senator McCain will recall that in the September 11, 2001 fund, we had over 1,500 lawyers who worked pro bono to help September 11, 2001 victims. I am committed to setting up in this program some sort of pro bono program so that lawyers can represent claimants without fee.

When it comes to any private arrangement that a claimant has with a lawyer, that is not on my watch. That is a private contractual understanding.

I would say that when I calculate awards under the \$20 billion, those awards are the damage awards that are owed the claimant, and there will be no add-on or gross-up for lawyers' fees.

Senator ENSIGN. OK. Try to give us some idea how you determine who is eligible. This is very difficult, and I understand you have a monumental task ahead of you. There is no question, you are probably going to get criticized some day because there will be some fraud.

Mr. FEINBERG. You say "some day"?

Senator ENSIGN. Yes. It is impossible not to have some fraud in there, and you have to try your best to minimize that. There are

going to be some shysters out there and people trying to take advantage, and there will be stories on cable news and the Internet and blogs and you will be made to look bad because you were not doing your job. I think it is impossible to not have that.

But try to give this Subcommittee an idea of some of the criteria that you are going to be looking at for legitimate claims.

Mr. FEINBERG. Let us start as a base point, what does the law of Louisiana, Alabama, Mississippi, Florida, and especially the Federal Pollution Control Act say about who is eligible? That is the first question. That is a base point. "Mr. Claimant, you are ineligible and, frankly if you litigate, you will be declared ineligible." So I am trying to use as a base point what the law would say. Then, above that, I want to try and do better. I think equitably I want to try and do better.

So the problem is going to come, there are the easy cases, Senator, the easy cases. Oil on the beach, I cannot fish in these waters, I cannot shrimp, I cannot harvest oysters—those claims are relatively straightforward, pay them 100 percent under any fair reading of law.

Senator ENSIGN. Except that you do not know how long this is going to last.

Mr. FEINBERG. Well, that is a separate question, which is there is no oil on the beach yet. Now, fortunately, the well is capped, so we are starting to get a handle on where that oil may be—

Senator ENSIGN. No, but what we do not understand is maybe the damage that was done by the dispersants and some of the other things on the oyster beds, on the shrimp, and we do not know 2 years from now, 3 years from now, the potential damage that could be done to the industry.

Mr. FEINBERG. I am going to have to get some expertise and some help on that. This program will be up and running for 3 years. Hopefully we will have a pretty good handle on that.

You have focused exactly on one of the big problems: The indirect claims: "Mr. Feinberg, I have a motel four blocks from the beach. There is no oil on the beach. None. But because of the publicity and the tourism, I am off 30 percent. Here are my records from the past. Here are my records post-spill. I have a claim. Pay me."

You are absolutely right, I am going to have to draw some lines and some distinctions, make those distinctions well known, and try and do equity as best I can.

Senator ENSIGN. Are there types of businesses that you will not give claims to?

Mr. FEINBERG. Well, I do not know off the top what those businesses might be. There are some types of businesses I obviously will pay: Fishermen, shrimpers, oyster harvesters, motels right on the beach. The problem is going to be—there may be a restaurant that is right on the beach that is dependent for its livelihood on the shrimp from the Gulf. What do I do with a restaurant in Las Vegas who writes a claim and says, "We have lost 30 percent of our business because here in Vegas we are the only restaurant that has that Gulf shrimp," and now it is gone and people are not coming to that restaurant? Where the proximity is so far removed from the Gulf, where do you draw the line? And I am trying to figure that out now.

Senator ENSIGN. One of the reasons I ask, I actually just thought of this. Some people might have a problem with you because you have casinos in Gulfport and down in Biloxi and everything that can be affected by this. Do you have a problem with reimbursing if a casino is down 20 percent of their revenues?

Mr. FEINBERG. Not if they can demonstrate that they are on the beach, that they are down 20 percent, that people come to gamble but they also use the beach, they go on fishing charters, they sight-see. I mean, I will look at each claim. But I do not have a problem with tourism being compensable under this program. The question is: What tourism? And exactly what you are saying, where do you draw that eligibility line?

Senator ENSIGN. OK. Thank you, Mr. Chairman.

Senator CARPER. I have one question, if I could, for Mr. Feinberg.

Mr. Feinberg, I want to go back to a point by Senator McCain, if I could. The President signed in a signing ceremony today at the White House legislation that I had introduced with the support of a number of my colleagues, Democrat and Republican, on this Subcommittee, and that legislation is called the Improper Payments Act of 2010. Last year, we learned that almost \$100 billion of Federal funds were improperly paid to payees—in some cases mistakes, honest mistakes; in other cases, fraud. And the legislation that the President just signed into law today says, Federal agencies across the board from A to Z, we want you to: One, report improper payments; two, we want you to stop making improper payments; and three, for the improper payments that have been made, we want you to go out and recover as much of that money as you can for the Treasury Department or in some cases for the Medicare Trust Fund.

I just want to underline again the concern that we have, especially on the same day that this law has been signed into effect, that you be diligent. And there is a tension here between being diligent and trying to make sure that we protect ultimately the fund from which these monies are going to be paid, but at the same time trying to be fair.

You spoke to this once before, but could you just respond to it again?

Mr. FEINBERG. Mr. Chairman, nothing will undercut the credibility of this fund that I am administering more than fraud. Nothing. And if it gets around that \$20 billion is being wasted, there are fraudulent payments, it will destroy the credibility of the program in the eyes of the public, and frankly, in the eyes of the claimant.

So I am determined, as I was with the 9/11 Victim Compensation Fund, to make sure that fraud is addressed promptly, quickly, efficiently, that we deter any fraudulent payments. And I have the cooperation of the Department of Justice, Criminal Division—no better than them—and also we will have internally in the infrastructure that I am designing, we will have anti-fraud mechanisms to deal exactly with the problem you are raising.

Senator CARPER. Good. Thanks. Eternal vigilance. Continue to be vigilant. Thank you.

Mr. Hackett, again for you, please, you have said publicly that you believe BP may have acted with willful misconduct or with

gross negligence as the operator of the Deepwater Horizon rig. This has been Anadarko's primary argument for withholding payments, I believe, to BP. Could you please take a moment and tell us what evidence or information you have that has led Anadarko to that conclusion?

Mr. FEINBERG. Yes, Senator. The information we have gathered has been through testimony and investigations and through public disclosures, because we have not received any root causes directly from the operator.

The majority of the things that we make that likely gross negligence statement surrounding were covered in Congressman Waxman-Stupak letter to BP prior to Tony Hayward's testimony.

Senator CARPER. All right. A question again, if I could, for you and also for Mr. Ishii, please. The joint operating agreement between your companies and BP spells out, I believe, certain data, certain information about the well's operation that Anadarko and MOEX were to be given access to on a regular basis. In fact, some information was to be provided, I am told, on a real-time basis.

In addition to this information that your companies received or should have received, you also had to approve, I believe, certain expenditures for work on the well. It would seem that if BP had been doing something wrong, you would have known about it, and I would just ask am I correct in that assumption.

Mr. HACKETT. Would you like me to answer, Senator?

Senator CARPER. Please.

Mr. HACKETT. The standard industry practice is that you do get a budget description of a model or template well design. That is then altered, depending on what the drilling results are. You also get real-time on the geological prognosis so that once you have TD'd a well, which occurred on April 9 in this case, you then have logging runs which occurred, I think, up to the middle of April, or around April 13.

At that point the real-time data is not—we do not go to the real-time data because the geological prognosis is done, and it should be a fairly routine process at that point then to finish the well.

What you then get up until they no longer give you reports is a daily drilling report which is generally very broad, very high level, about actual events as opposed to procedures used or designs that were used. The last one of those we received was on the morning of April 20 for the activities on April 19.

Senator CARPER. All right. Mr. Ishii.

Mr. ISHII [through interpreter]. Mr. Chairman, we receive daily reports from BP, and these reports are received with a 1-day delay. And in addition, we have the right to access some of the technical or detailed data.

We are committed to complying with all of our legal obligations. When we made the decision to participate in this well, the drilling had already started at that time, and that drilling was started based on the government approving the drilling plan. We felt that BP, as the operator, would properly operate the well, and based on that information, we decided to participate in this project. And, therefore, we feel the same as all of the people who have suffered in this great tragedy in that we would like to know and determine why this accident occurred, and we would like to have that prop-

erly clarified. Until that is investigated and determined, we feel that it is too early to discuss anything further.

Senator CARPER. All right. Mr. Ishii, in America we like to play baseball. As it turns out, in your country your people like to play baseball, too. Some of your best players actually end up playing here in this country, as you know. We have a term in baseball that we use outside of baseball, and it is called a pitch that is well telegraphed. The idea behind the concept of a pitch well telegraphed is that you kind of know what the pitch—fast ball, curve ball, split-fingered, change-up—you know what the pitchers are going to pitch because he has telegraphed that in the past.

I want to kind of drill down, if I can, on the communications between BP with Anadarko and with MOEX in the days leading up to April 20. Were you taken by surprise on April 20 when the accident occurred? Was this a pitch well telegraphed? Had you been receiving updates from the primary operator of the well that there were problems?

We have received, as you may know, communications between BP and I believe in this case Anadarko that indicate, according to one on April 9, “We have been aggressively fighting losses as the drilling has gone forward.” Another one: “I will try to post a well space shortly. We are troubleshooting some MDT issues this morning, having a difficult time getting a good seal around the well bore wall.” And, “It looks like LCM”—what is LCM?

Mr. HACKETT. Senator, it is loss circulation material.

Senator CARPER. Loss circulation material “may be the culprit.” That was 8 days before the blowout. Just characterize for us, please, the kind of communications flowing back from BP, the primary operator of the well, to your companies as to how things were going in the days leading up to the incident. Mr. Hackett, do you want to go first? And then we will go to Mr. Ishii, please.

Mr. HACKETT. Certainly. As you state in the dates on the documents, that is that period when we were talking real time about the well. None of those pressure issues are unique to this particular part of the Gulf of Mexico. Again, this was not an extraordinary well either in terms of depth or complexity.

What then happens is the most critical—

Senator CARPER. You are saying a well at 5,000 feet below the surface of the water with this great distance under the sub-surface is not a unique or unusual circumstance?

Mr. HACKETT. I apologize if I am underestimating that in the American people’s minds because it appears, as one person said, like NASA science to many people. But Anadarko itself is one of the most active deepwater drillers in the world. We have drilled in water depths twice this deep, wells that are nearly twice as deep, in terms of total depth. So this, again, is not an extraordinary well for the industry.

The activities that occur after the period in which you spoke to are really the ones that are very critical, and that is, when you actually go to finish the well. Again, pressure response is not an issue with regard to our business. It is something you control and take care of when you go to finish that well.

Senator CARPER. Mr. Ishii, please.

All right. Ms. Sato, if you got all that, you are pretty good. [Laughter.]

Ms. SATO. Thank you.

Mr. ISHII [through interpreter]. Mr. Chairman, when we decided to participate in this project, BP had already obtained government approval for the drilling plan and the drilling had already started based on this approved plan.

About 1 week before April 20, BP sent an email, and in that email BP said that, based on some safety concerns, they thought it would be difficult to continue further drilling in this well, so they were going to stop the drilling.

Now, this Deepwater Horizon project was the first Gulf of Mexico project that we were involved in; whereas, BP is the largest operator in that area and the largest producer. So they have a lot of experience and a track record in that area. And, therefore, since BP started the drilling based on the government-approved plan, we placed trust in that and in them when we participated. And then we received that notice about 1 week prior to the accident. And since we are a 10-percent minority interest investor, we were not involved in any direct decisionmaking with BP. So we relied on BP's experience, and we trusted that they had been operating properly.

Senator CARPER. All right. Thank you. Senator McCain, thank you for your patience.

Senator MCCAIN. Thank you.

Mr. HACKETT, have you provided personnel to help clean up the shores?

Mr. HACKETT. We have offered to do so, Senator. We have also provided technical expertise to the well control efforts. We have provided specialized equipment from other fields for the control efforts of the well as well.

Senator MCCAIN. Those assets have been committed or offered?

Mr. HACKETT. They have been offered and in some cases committed.

Senator MCCAIN. Have you sent boats or skimmers to the affected waters?

Mr. HACKETT. We have not been asked to do so. And we do not control those, Senator. Those would be provided by their people. They are usually contracted for.

Senator MCCAIN. You have not been asked to send boats or skimmers?

Mr. HACKETT. No, sir.

Senator MCCAIN. Mr. Feinberg, you mentioned that you had 1,500 lawyers volunteer their services in the compensation issue associated with September 11, 2001. And how much money was that?

Mr. FEINBERG. For September 11, 2001, we expended, taxpayer money, a little over \$7 billion.

Senator MCCAIN. And here we are talking about considerably more.

Mr. FEINBERG. Yes.

Senator MCCAIN. Have you sent out the call yet for volunteers to come and assist you in this project?

Mr. FEINBERG. Yes. We are working right now with the ABA, with the Alliance of Trial Lawyers, with local bar associations, and law schools in the region in an effort to make sure there is plenty of pro bono assistance.

Senator MCCAIN. And the response has been?

Mr. FEINBERG. Positive. We are setting it up now.

Senator MCCAIN. So you are confident that you will have sufficient legal assistance, because as you mentioned, fraud is always a very significant issue but not the most significant issue. So we thank you for your hard work. It is great to have the opportunity to see you again, and I am sorry we took you away from your very busy schedule. And we feel very confident, Mr. Feinberg, with this issue under your stewardship, and I think I speak for the American people when I say that. Thank you.

Mr. FEINBERG. Thank you.

Senator MCCAIN. Thank you, Mr. Chairman.

Senator CARPER. Thank you, Senator McCain.

Mr. HACKETT, as I understood one of your earlier comments, Anadarko in this case is a partner with MOEX and also with BP. In this case, the primary operator is BP. And there are other instances where Anadarko is presumably the primary partner in some cases. I presume you drill these wells and you are the only participant in other cases. Did you ever partner with others, other companies?

Mr. HACKETT. We do that as a normal course of business, Senator. It is actually very atypical to drill a well 100 percent in our business. It is a way of managing financial and technical risk. So most of the deepwater, there are partners. And there is a very distinct relationship with the operator being the decisionmaker.

Senator CARPER. And are there other situations in these deep wells Anadarko has drilled where you may have a couple of other partners?

Mr. HACKETT. Yes, sir.

Senator CARPER. In most of those situations, would Anadarko be the majority partner, and you may have a couple of others, like we have here, with a 25-percent participant and a 10-percent participant?

Mr. HACKETT. Yes. In fact, we might have less interest than BP had in this well, in fact, as an operator.

Senator CARPER. Do you have many situations where you are the lead but you do so not as the majority but, if you will, in our terms here, a plurality, have a 45-percent stake or 40-percent stake rather than a 50- or 51-percent stake?

Mr. HACKETT. Yes, we do have situations like that where we have multiple partners, but that 40 or 45 percent is usually determinant as being the primary interest.

Senator CARPER. OK. In a situation—let us sort of put the shoe on the other foot here for a moment. Let us say in this case Anadarko was the lead and that you were the primary party, the primary responsible party. And we will just say you were a 65-percent participant. In a situation where they ran into trouble and had this kind of blowout and accident, and you were called upon to help set up a fund, a \$20 billion fund in this case, to meet the demands by the government for reimbursement by individuals, by

families, by businesses, and you were being billed by the Federal Government, and so were your partners, and you were ponying up and they were not, sort of putting the shoe on the other foot and keeping in mind the Golden Rule—I know you are a person of faith, but treating other people the way we would want to be treated—how does that mesh with treating other people the way we would want to be treated?

Mr. HACKETT. Senator, I think it is very consistent. I do not think my beliefs are at all compromised in this instance. We were not consulted on the escrow agreement that was set up. It was very particular to BP's circumstances, I suspect both corporately and on this well. We stand ready to honor our obligations. If BP fails, we are a responsible party under the Oil Pollution Act. We do not want the taxpayers to be on the hook for this, and we stay committed to that, sir.

Senator CARPER. All right. I do not pretend to understand well the financial condition or strength of both of your companies. I believe you are successful companies and profitable companies. Are you both publicly traded companies?

Mr. HACKETT. We are a publicly traded company, yes, sir.

Senator CARPER. Mr. Ishii.

Mr. ISHII [through interpreter]. MOEX is not a publicly traded company.

Senator CARPER. I see. Since you are a publicly traded company, Mr. Hackett, could I just follow up with this question? BP, looking at the prospect of if the full \$20 billion were drawn down upon, looking for an—maybe the obligation to pay the whole bill, to foot the whole \$20 billion, if this apportionment would occur, 25 percent to Anadarko and 10 percent to MOEX, their obligation would be—what?—\$13 billion. Their thinking would say, well, Anadarko should handle \$5 billion and MOEX would handle, I guess, about \$2 billion. I think that is the way it would work out.

Could you just talk with us about the ability of your company to meet that kind of demand for payment over a period of time?

Mr. HACKETT. Yes, sir. Understanding that those payments, as you mentioned, would be over a period of time, we generate as a company somewhere around \$5 billion a year.

Senator CARPER. Is that gross revenue?

Mr. HACKETT. No. That is cash flow, sir, that is available for spending, and what we generally do is put that right back into drilling for more resources for America. That is typical of the independents in this country. And we are doing so again this year. The cash on the balance sheet at the end of the first quarter was over \$3 billion, and we also had an undrawn credit facility of over \$1 billion. We also have net book equity of about \$20 billion.

Senator CARPER. All right. Thank you.

Mr. Ishii, could you respond as well, to the extent that you are able to, given the fact that you are not a publicly traded company?

Mr. ISHII [through interpreter]. Mr. Chairman, first of all, I would like to say that we will honor all of our legal obligations. However, before we discuss that any further, it is important that we properly investigate and find out why this accident occurred. And, therefore, any discussion about that is, I think, a bit too early now.

Senator CARPER. All right.

Mr. Hackett, can you just share with us how—what role does insurance play in this, and to what extent can your company or another company in a similar situation cover these kinds of expenses through insurance or reinsurance?

Mr. HACKETT. I think it is a critical issue with regard to where we craft legislation going forward, Senator, that if, in fact, we have pilot error like this occur again, we have to make certain, obviously, for the American public and probably for global society that we are prepared to answer this in a better way than we were this time. So I think a number of us have learned lessons in that regard.

The insurance market historically has not been terribly deep. You and I had a conversation about that not too long ago. We had probably per revenue unit for our company as much as anybody in our industry, and we might have been able to get another—more than that, as it turns out, maybe double that. But as we have publicly stated, that amounts to about \$176 million per incident on a 25-percent work interest, about \$776 million gross. And what you have to do then is make certain that people have balance sheets to back it up beyond that, which we do. And so I think we have to be, crafting the oil spill legislation properly where we both have liability limits, properly determined contributions to the fund, and also an ability to get an insurance exchange working that makes this very important resource for domestic production available to all of us long term.

Senator CARPER. I am going to come back on that point in just a moment, if I could.

Mr. Feinberg, we are going to have the opportunity in the Senate to take up, perhaps next week, energy legislation that will attempt to conserve energy, will attempt to reduce somewhat our independence on petroleum and fossil fuels, especially on foreign oil. And we will attempt to do something with respect to addressing the cap, this cap for oil spill liabilities.

Let me just ask you your recommendation or your advice, if you feel comfortable in giving it. As we take up looking at the current law on the oil spill liability cap, the actually rather modest liability that exists under the current law, then a larger fund contributed to by companies like Anadarko, like MOEX—I think it is about a billion and a half dollars where the fund is, and then beyond that it is basically, I think, on the taxpayer. BP, to their credit has stepped forward and said, “no, we are good for at least \$20 billion,” and they certainly want to have other partners to share in that. But as we try to craft in the next week or two legislation revisiting the Oil Spill Liability Fund, what should we keep in mind?

Mr. FEINBERG. Well, I cannot really speak to the legislation. I am not aware of it, so I do not know the language, I do not know the public policy.

Senator CARPER. If you will, just keep in mind what the current law calls for in trying to say what is good or bad about that and what might we think about in changing it. Because I think it is pretty clear we are going to change it.

Mr. FEINBERG. All I can say—and it probably is not very helpful, Senator—is that at least in this case the cap is sort of irrelevant

because BP on its own has stepped up to make the cap sort of an irrelevant consideration. Whether the cap ought to be raised—I remember I was on a commission that looked at Price-Anderson involving nuclear power years ago. That is for others to think about, but I think that at least in this case, fortunately, the cap has not been a barrier to compensation.

Senator CARPER. Mr. Hackett, any advice for us as we revisit this issue legislatively?

Mr. HACKETT. Again, I would just restate that—and I think Mr. Feinberg's reference to the nuclear industry and perhaps the marine industry is relevant. We have to, for this very important American source of energy, come up with a workable plan that allows us to have liability caps that work for the public, that have insurance capability that works for the public, oil spill response capability that works for the public, and there is a lot of detail and complexity around that, but none of them should be dealt with in isolation, in my view.

Senator CARPER. All right. Mr. Ishii, would you like to respond briefly to my question, please?

Mr. ISHII [through interpreter]. Mr. Chairman, I am very sorry, but could I have you repeat your question?

Senator CARPER. Yes. A number of years ago, legislation was enacted that established an Oil Spill Liability Fund that called for oil companies to pay into that fund and set a cap or a limit out of which monies could be paid from that fund, but said if there is a party that is primarily responsible, that they would have first responsibility to pay, and I am trying to remember what the amount was—yes, \$75 million. In a situation like this, obviously \$75 million does not go very far. Frankly, neither does one and a half billion. We are going to change that law, and we are going to start working on it very seriously probably on the Senate floor next week. And I was asking Mr. Feinberg and Mr. Hackett if they had any advice for us as we assume that legislative responsibility, and if you have a thought on that, we would welcome hearing it. And you may not. That is OK.

Mr. ISHII [through interpreter]. Mr. Chairman, I believe that is a political issue, and so we are not in a position to comment on it.

Senator CARPER. All right. Fair enough.

I have referred to this already, but while there was some communication information exchanged between BP and Anadarko and MOEX related to the well drilling and the challenges that were being encountered in the days before the accident, there also appear to be some lapses on BP's part. I am told on April 19—that is the day before the rig exploded—a geological adviser for Anadarko emailed a BP official asking why they were no longer receiving any drilling reports. In fact, they said that they had not received reports for 5 days.

Mr. Ishii, I think you personally appeared to have had problems communicating with BP exactly what was going on with the well in the days leading up to this disaster.

Let me ask both of you, Mr. Hackett and Mr. Ishii, to please give us a sense of the problems that your companies had in receiving information in the days prior to the accident. And if you do not mind starting off, Mr. Hackett, I would appreciate it. Thank you.

Mr. HACKETT. Senator, I am not aware of that particular issue, but in my review of the drilling reports myself, there is nothing that we would have received through that final report on April 19, that would have been a red flag for us to warn BP about. We did not have anybody on the rig, we were not consulted, and there was nothing in the materials that I have read all the way through April 19, that would have been a red flag for us.

Senator CARPER. Is it common or uncommon for a minority partner, in this case a 25-percent partner, not to have someone on the rig? Is that common practice?

Mr. HACKETT. It is very common practice to not have someone on the rig.

Senator CARPER. All right.

Mr. HACKETT. It is rare that anybody has somebody on the rig.

Senator CARPER. Fair enough. Mr. Ishii, would you care to respond to the same question, please?

Mr. ISHII [through interpreter]. Mr. Chairman, we have the right to access the technical data from BP. However, I do not have an engineering background, and, therefore, we had a service agreement with our parent company whereby the engineers from our parent company would receive the reports from BP and monitor their progress. And, therefore, today I am not in a position to comment on that.

Senator CARPER. All right. The last question I will have is this: I used a baseball analogy earlier, a pitch well telegraphed. I will use a football analogy. They do not play much football in Japan, I am told, but I will use a football analogy. The concept of being a Monday morning quarterback is something that we talk about here in this country. We play college football games usually on Saturdays, we play professional football games on Sundays, and we talk about being Monday morning quarterbacks. It is a lot easier to be a quarterback on Monday morning looking back than it was to be that quarterback on Saturday or Sunday.

I want to ask you to put on your Monday morning quarterback hats for us, and knowing now what you know, what might you have done differently, what should have been done differently to have averted this disaster that we are facing and are going to be facing for some time? Mr. Hackett.

Mr. HACKETT. Senator, I think proper procedures and practices need to be followed, and our view is that this accident was preventable, this tragic accident. Our answer to that is that you need to use the proper engineering practices and procedures, and it is clear that we have lessons learned from this for the industry, where if we do have, in fact, this series of bad engineering decisions ever happen again—and we hope to goodness we never do—is that we are in a position to assure the public that there is a better response capability.

Senator CARPER. All right. Mr. Feinberg, do you want to venture anything on that one?

Mr. FEINBERG. Just that what this tragedy has led to is one more example, fortunately rare, where policymakers and private individuals think out of the box and come up with a remedy, like this fund that I am administering, which will work in a way that hopefully will avoid protracted uncertainty and litigation and overhead costs

and will provide a quick, efficient remedy for people in need down in the Gulf.

Senator CARPER. Mr. Ishii.

Mr. ISHII [through interpreter]. Mr. Chairman, as I said before, when we participated in this project, the drilling had already been started based on the government-approved plan, and for us this was the first deepwater drilling project. However, BP is the largest player and had experience in this area, whereas we are only a 10-percent minority interest non-operator. Therefore, we were not involved in any of the decisionmaking. We relied on BP because BP has the experience and the drilling technology, so we placed trust in them and participated.

Senator CARPER. All right. Any closing comments from our witnesses? Mr. Feinberg, just a brief closing comment? No? All right. Mr. Hackett, a brief closing comment?

Mr. HACKETT. No, sir. Thank you.

Senator CARPER. Mr. Ishii, a brief closing comment? All right.

Well, let me close, if I may. First of all, thank you all for taking this much time in your day to travel here and to be with us today to testify.

Mr. Feinberg, our thanks to you for taking on this responsibility.

Mr. Hackett, we are somewhat comforted by the fact that you have the wherewithal to—your company appears to have the wherewithal, if called upon, to participate in providing the resources needed to help not in cleanup but pay damages. It sounds like you are in a position to do that. I know you probably do not want to, but it sounds like it is comforting to know that you do have that wherewithal.

And, Mr. Ishii, it means a lot to us that you would travel this far and to participate today in this testimony.

This challenge is not going to go away. A lot of lessons learned and legislation to be worked on next week and probably implemented in the months to come.

Again, our thanks to each of you, and we look forward to working with you on this to make sure it does not happen again, and to try to make sure that the right thing is done to those who are affected by this disaster.

Thank you very much, and with that, this hearing is concluded. [Whereupon, at 4:07 p.m., the Subcommittee was adjourned.]

APPENDIX

FOR IMMEDIATE RELEASE



TOM CARPER

UNITED STATES SENATOR · DELAWARE



FOR RELEASE: June 16, 2010
CONTACT: Emily Spain (202) 224-2441

**SUBCOMMITTEE ON FEDERAL FINANCIAL MANAGEMENT, GOVERNMENT
INFORMATION, FEDERAL SERVICES, AND INTERNATIONAL SECURITY**

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

HEARING: "The Gulf of Mexico Oil Spill: Ensuring a Financially Responsible Recovery"

Opening Statement of Senator Thomas R. Carper, Chairman

"For fifty-eight days, the American people have watched a tragedy unfold in slow motion before their eyes.

"It was nearly two months ago when we first heard the horrific news of an explosion on an oil rig in the Gulf of Mexico and the loss of eleven American citizens.

"While today we will be discussing the financial costs of the oil spill to the American taxpayer, there is no value one can place on the tremendous human loss of this catastrophe.

"These were sons, brothers, husbands, and fathers - and to those they left behind, my colleagues and I extend my most sincere and heartfelt prayers.

"While there is nothing we can do to bring these men back to the families and friends who love them, we can make sure that the communities and industries they built, survive and thrive.

"The coasts and wetlands, bogs and fisheries have all sustained enormous damages. These vital natural resources are the lifeblood of an economy and a way of life. They are national treasures that must be protected and we will demand that they are fixed by those who broke them.

"Today, this subcommittee will explore how we can ensure that America is made whole again - without putting a hole in our pockets.

"From the beginning, President Obama and senior members of his Administration took this disaster seriously.

"The White House deployed cabinet members to help manage the response, dispatched the National Guard, and brought together stakeholders and industry experts to get the damaged well plugged as quickly as possible and to coordinate the clean up response.

“As I like to say, however, if it’s not perfect – make it better. And it’s clear that there is more the federal government can do to make things right in the Gulf.

“I hope to find out how much the BP Deepwater Horizon oil spill has cost - and may continue to cost American taxpayers – and how we intend to get the money back from those responsible.

“Earlier today, the President and BP officials announced the establishment of a \$20 billion independent trust fund to ensure BP continues to pay claims in the future.

“This is something my Democratic colleagues and I called for – and I look forward to exploring how such a fund might work today at our hearing.

“It’s clear that the financial mechanisms we have in place – including the Oil Spill Liability Trust Fund – were simply not built to handle something of this magnitude.

“I look forward to hearing from GAO about the risks and vulnerabilities to the Trust Fund they have found in the past – and how this spill encompasses a “perfect storm” of factors that will likely make it the most expensive ever.

“In addition to the enormous financial burden this spill has placed on citizens and businesses in the Gulf, the Federal government has been incurring costs as well.

“To date, over \$120 million dollars has been spent by the federal government on ships and personnel to respond to this incident, and much of it has been billed to BP and the other responsible parties.

“This past Friday, I understand BP wired over their second payment of over \$69 million dollars to the federal government.

“I also believe that the Coast Guard will be sending their third bill – for roughly \$50 million dollars – to BP and the other responsible parties today.

“I’m sure American taxpayers appreciate BP’s prompt notice and payments, and I hope we can expect similar responses as these costs continue to mount.

“While we have seen several checks from BP, I hope to find out today how the other responsible parties view themselves - and one another - when it comes to paying for this disaster.

“I am pleased to see Mr. Newman of Transocean here today, all the way from Geneva, Switzerland, I understand. I look forward to hearing about how he views Transocean’s role in these ongoing efforts.

“We also invited Anadarko Petroleum, who owns a 25% stake in the Gulf well and MOEX Offshore, who owns a 10% stake in the well. Their names are also on the bill from the federal government and unfortunately they declined to send representatives today.

“I am disappointed that they chose not to attend. It was my hope to have all of the responsible parties at the table. We hope they can find some time in the future to come discuss these issues with us and the American people.

“The hole we are trying to plug is 5,000 miles underwater – but the men and women whose livelihoods and communities have been disrupted by this disaster live right down the street.

“Surely, we can do a better job of protecting not only the Gulf – but our entire nation – from the costs and impacts of this spill.

“This spill has now last 58 days – that’s nearly three weeks longer than it rained during Noah’s flood in the Book of Genesis. If the story of Noah tells us anything, it tells us that with faith, a dedication to what is right, and hard work – we too will find that rainbow at the end of this calamity.”

STATEMENT OF SENATOR JOHN MCCAIN, RANKING MEMBER

**SUBCOMMITTEE ON FEDERAL FINANCIAL MANAGEMENT,
GOVERNMENT INFORMATION, FEDERAL SERVICES AND
INTERNATIONAL SECURITY**

**COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL
AFFAIRS**

“The Gulf of Mexico Oil Spill: Ensuring a Financially Responsible Recovery”

June 16, 2010

Senator Carper, thank you for holding this hearing today. We are all outraged and saddened by the Deepwater Horizon rig explosion that killed 11 people and spewed millions of gallons of oil into the Gulf of Mexico. This tragic event has led to the worst environmental disaster in U.S. history. We are now at day 58, and oil continues to leak from the well that has yet to be fully contained.

This catastrophe is wreaking havoc not only on marine life and the environment, but it is also causing tremendous economic damage to residents and businesses in the Gulf States. Despite the devastating losses and damage already suffered, the full impact of this disaster is yet to be realized. It will be some time before the entirety of the damage – economic, environmental and other – can be assessed.

As of June 14th, BP estimated that the cost of the oil spill had reached \$1.6 billion, including the cost of the spill response, containment, relief well drilling, grants to Gulf states, claims paid, and federal costs. The company’s CEO, Tony Hayward, has publicly assured the federal government and the American people that BP will fully meet its obligations from the spill and pay all legitimate claims, even if aggregate claims exceed the \$75 million legal liability limit.

Despite the federal government's lackluster response at the outset of the oil spill, it has incurred substantial costs in recovery and response operations. Since the Deepwater Horizon explosion, the federal government has sent two invoices totaling nearly \$71 million for reimbursement to responsible parties. Another invoice of approximately \$50 million is expected to be issued imminently.

This horrific disaster should provide many lessons for the Administration and Congress, including a reminder that the Jones Act should be repealed. Within a week of the explosion, 13 countries, including several European nations, offered assistance from vessels and crews with experience in removing oil spill debris. However, the Jones Act, a protectionist law passed in the 1920s, prevents foreign-flagged vessels from operating and transporting merchandise between points abroad and the United States. The Administration may grant a waiver to any vessel, just as the previous Administration did during Hurricane Katrina, so the international community could assist in recovery efforts, but has not done so.

There are other concerns associated with the Administration's response. For example, U.S. Attorney General Eric Holder also made an unprecedented announcement two weeks ago that the Department of Justice has opened criminal and civil investigations on the Gulf of Mexico oil spill. However, if a civil settlement results from the investigations, the settlement charges may receive favorable tax treatment depending on how the settlement is drafted. Effectively, the federal government and the American taxpayers could indirectly pick up a portion of the tab for the responsible parties' mess. Absolutely unacceptable.

Mr. Chairman, BP failed to prevent this catastrophic disaster from occurring while the Minerals Management Service failed to exercise robust enforcement of safety standards. We cannot allow the costs of their failures to be placed on the backs of American taxpayers. I look forward to hearing from our witnesses today on how we can ensure a financially responsible recovery.

FOR IMMEDIATE RELEASE



TOM CARPER

 UNITED STATES SENATOR · DELAWARE


 FOR RELEASE: July 22, 2010
 CONTACT: Emily Spain (202) 224-2441

**SUBCOMMITTEE ON FEDERAL FINANCIAL MANAGEMENT, GOVERNMENT
 INFORMATION, FEDERAL SERVICES, AND INTERNATIONAL SECURITY**
COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
**HEARING: "The Gulf of Mexico Oil Spill: Ensuring a Financially Responsible Recovery
 Part II"**
Opening Statement of Senator Thomas R. Carper, Chairman
(As prepared for delivery)

A week ago today, BP successfully placed a containment cap on the Gulf of Mexico oil well which had blown out nearly 86 days before. This is a welcome development and one which many in our nation were probably beginning to doubt they'd ever see. While this accomplishment brings us cautious hope, it is tempered by the harsh reality of what is left in the wake of this disaster:

The eleven men who lost their lives on the Deepwater Horizon rig and who leave behind families who are forever altered by this horrific accident; the over 185 million gallons of crude oil dumped into the Gulf of Mexico, which blackened beaches and damaged countless wildlife habitats; and the businesses and communities which some fear may not be fully rebuilt for a generation or more.

Indeed, while we may have removed the bull from the China shop with the capping of this well, we've got a lot of pieces left to pickup. Last month, our subcommittee held a hearing to explore how we were ensuring America would be made whole again following this disaster – without putting a hole in our pockets.

We learned that the United States Coast Guard had been tracking the federal costs in responding to the oil spill and sending bills to the responsible parties for reimbursement. To date, the federal government has billed the responsible parties for over \$222 million in incurred costs. The most recent bill – totaling over \$99 million – was sent last week. At our hearing we learned that BP had been cutting the checks for these invoices and they promised us that they would continue to do so for as long as we continue to send them.

While BP is the principal owner and operator of the oil well and is recognized by the government as the primary responsible party, there are other companies who have also received these bills and have obligations under federal law. Among them, Anadarko Petroleum Corporation, which owns a 25-percent stake in the oil well, and MOEX Offshore

which owns a 10-percent stake. But while the federal government has received payment from BP for taxpayers' costs, we still haven't heard back from Anadarko or MOEX.

This subcommittee has obtained invoices that BP sent these two companies asking them to share in the costs of responding to the spill so far. We've also received the companies' responses to those bills and it's clear that they have declined to date to pay for these bills. In the event that BP is unwilling or unable to continue carrying the full weight of this spill's costs, the American people will want to know who else is responsible.

Under the law, Anadarko and MOEX are responsible and liable for this spill. Today, I hope to hear more from them about how they view their relationship with BP and their roles in responding to and paying for this disaster. Our hearing last month also featured testimony from the Government Accountability Office, which reported significant ongoing risks and vulnerabilities related to the Oil Spill Liability Trust Fund, the Fund responsible for claims made by individuals and businesses who are denied or left unsatisfied by BP's claims process.

Since that time, President Obama and senior BP officials announced a new independent claims process that would be created and funded by a \$20 billion escrow fund established by BP. Mr. Kenneth Feinberg – former Special Master of the 9/11 Victim's Compensation Fund, among other distinctions – was named the Administrator of this new claims regime. Today, I look forward to hearing from Mr. Feinberg about his progress to date and how the fund he manages will interact with the statutory framework that already exists within the Oil Spill Liability Trust Fund.

Our collective sigh of relief due to the good news coming from the Gulf in recent days should not distract us from the significant challenges that lie before us. While the well may now be capped, this spill will continue to play out at the kitchen table of every American whose livelihoods and way of life have been affected by this calamity. My colleagues and I will do whatever it takes to get residents of the Gulf Coast back on their feet again, to protect our nation from the costs and impacts of this spill, and make sure that those who are responsible for this disaster are held to account.

STATEMENT OF SENATOR JOHN MCCAIN, RANKING MEMBER

**SUBCOMMITTEE ON FEDERAL FINANCIAL MANAGEMENT,
GOVERNMENT INFORMATION, FEDERAL SERVICES AND
INTERNATIONAL SECURITY**

**COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL
AFFAIRS**

**“The Gulf of Mexico Oil Spill: Ensuring a Financially Responsible Recovery
Part II”**

July 22, 2010

Senator Carper, thank you for holding a second hearing on the financial impact of the Gulf oil spill. The effects of the Deepwater Horizon oil rig explosion have been devastating, and the ensuing oil spill has wreaked havoc on the lives of millions of Americans.

Fortunately, progress has been made since our first oil spill hearing in June. Just last week, Gulf Coast residents and businesses were given a glimmer of hope when an experimental cap appeared to stop the flow of oil. If the cap can prevent more spillage until a permanent relief well is completed next month, we may be able to focus 100 percent of our resources to the cleanup and restoration of the Gulf Coast.

BP has publicly stated that it will pay for all claims related to the spill, but the question remains whether the \$20 billion escrow fund will be enough. As of yesterday, BP has paid out \$226 million in claims to residents and businesses along the Gulf Coast. Additionally, it has reimbursed the federal government \$122.3 million and will pay another \$99.7 million shortly. To date, BP's total costs for the oil spill have reached over \$4 billion. Some analysts estimate that the total costs of this environmental disaster could reach as high as \$60 billion.

The federal government has also designated Anadarko and MOEX, financial partners in the blown-out well with BP, as responsible parties obligated to pay response and recovery costs and related claims. Despite receiving joint interest bills from BP for their share of the oil spill costs, Anadarko and MOEX have yet to contribute financially. Anadarko's June 18, 2010 press release states "*BP's behavior and actions likely represent gross negligence or willful misconduct and thus affect the obligations of the parties under the operating agreement.*" Meanwhile, MOEX also deferred payment to BP until its own independent review of the incident is complete.

The reluctance of these two parties to proactively take financial responsibility gives me significant pause. While they may have legitimate claims against BP, they are still financially liable under federal law for cleanup costs and damages. Whatever the outcome of Anadarko and MOEX's dispute with BP, I would like assurances from each of the CEOs present today that the American taxpayer will not be left with the responsibility of paying for cleanup costs and damages related to this disastrous incident.

I also look forward to hearing from Kenneth Feinberg, who was appointed to oversee the \$20 billion escrow fund, on how he plans to execute a seamless transition from the existing BP claims process to the one set up at his Gulf Coast Claims Facility. Also, I am interested in how he plans to address many of the challenges faced by BP, including payment policy, communications with claimants, public outreach, and data transparency.

Mr. Chairman, thank you again. I look forward to hearing from our witnesses today on how we can ensure a financially responsible recovery.

PREPARED STATEMENT OF SENATOR LAUTENBERG

Mr. Chairman, Thank you for giving me the opportunity to appear before this Subcommittee on this critical issue.

Last night, the President spoke to the country, and he could not have been clearer: The needs of Gulf families, fishermen and business owners must not and will not take a backseat to BP's bottom line.

I commend the President for his strong leadership on this disaster, and I know he will do everything in his power to hold BP accountable.

The behavior of this company and its executives could not be more reprehensible.

Their greed and impudence led them to cut corners and gamble with the lives of workers on the rig, the marine life in the Gulf, and the economy of an entire region.

And when the inevitable happened and the Deepwater Horizon exploded, burned, and sank, BP's leaders downplayed the true size of the spill and lied about their ability to contain it.

So we cannot trust them when they promise to pay for all the damage they have done.

We cannot simply take their word—not when BP's CEO has repeatedly said the spill isn't that serious, calling the environmental impact "very, very modest."

Not when BP said before the spill that they had the tools to stop a leak at this well.

and not when the company's top executives promise to pay only for "legitimate claims."

Since the Deepwater Horizon rig exploded, as much as 50 million gallons of oil have poured into the Gulf of Mexico—it's threatening to turn the beaches, marches and coastlines of the Gulf into toxic waste sites.

We've seen this kind of catastrophe before.

It's been more than 20 years since the Exxon Valdez went aground, and oil is still contaminating the soil there.

That contamination does not only continue to hurt the fishermen there—it is still damaging the area's ground, water, and marine life to this very day.

I was one of the first senators to visit Alaska after the Exxon Valdez crash, and I saw the destruction caused by that oil spill firsthand.

When the press coverage was intense, Exxon issued a string of apologies, it promised to do right by the communities, and it vowed to make sure the way of life these Alaskans knew would resume.

But as soon as the cameras were shut off—Exxon changed its tune.

It fought the communities, the families, and the fishermen over every penny.

Instead of making those victims whole, Exxon chose to make its lawyers rich.

Exxon drew things out for years and knocked down claims from \$5 billion to \$500 million.

We cannot let history repeat itself.

That is why I proposed an amendment to last month's emergency supplemental bill to make it clear that the companies responsible

for the oil spill must reimburse the American taxpayer for every dollar the government spends on cleanup.

While the amendment was not considered on the floor, the Obama Administration has made it clear that it will send BP the bill.

Polluters—not taxpayers—should pay these government expenses.

When you make a mess, you have to pay to clean it up—it's that simple.

I want to put the oil executives here on notice: We will not accept any answer from you that smacks of something like the check is in the mail.

Americans are fed up with hollow words, false assurances and broken promises.

That is why BP should start putting money into an escrow account to pay for the damage from this spill—and not pay over \$10 billion in dividends to its shareholders.

And that is why we've got to take the critical step of eliminating the measly \$75 million liability cap on monetary damages from oil spills.

I joined Senator Menendez right after the Deep Horizon rig exploded to lift that cap—and it's time our colleagues on the other side of the aisle let us move that legislation forward.

Big Oil makes so much in profit every month—they can afford to pay for their recklessness.

I want to thank the Chairman and the rest of the Subcommittee for inviting me to speak today, and more importantly, for holding this critical hearing.

And I hope we will hear honest and candid answers from BP and the other executives about what they are going to do to live up to their obligations.

**United States Senate
Committee on Homeland Security and Governmental Affairs
Subcommittee on Federal Financial Management, Government Information,
Federal Services and International Security**

**Darryl Willis
Vice President, Resources, BP America
June 16, 2010¹**

Chairman Carper, Ranking Member McCain, members of the subcommittee. I am Darryl Willis, Vice President, Resources, BP America.

On April 29, 2010, I accepted the role of overseeing BP's claims process, which was established in the wake of the explosion and fire aboard the Transocean Deepwater Horizon drilling rig and the ensuing oil spill. I am here to share information with you about that claims process and the reimbursement of federal government response costs.

This horrendous accident, which killed 11 workers and injured 17 others, has profoundly touched all of us. There has been tremendous shock that such an accident could have happened, and great sorrow for the lives lost and the injuries sustained.

I would like to make one thing very clear: BP will not rest until the well is under control and we discover what happened and why, in order to ensure that it never happens again. As a responsible party under the Oil Pollution Act of 1990, we will carry out our responsibilities to mitigate the environmental and economic impact of this incident.

I would also like to underscore that the causes of the accident remain under investigation, both by the federal government and by BP itself. I am not involved in the investigation process and have no independent knowledge of it. I thus am not in a position to answer questions about the incident itself or the investigation.

The BP claims process is integral to our commitment to do the right thing. We will be fair and expeditious in responding to claims. We have already paid out approximately \$71 million in claims, and we will continue to operate the claims process for as long as economic losses caused by the oil spill continue. We understand how important it is to get this right for individuals and businesses, as well as for state and local governments.

Before describing our process to you, however, I'd like to add a personal note. My ties to this Gulf Coast run deep. I was born and raised in Louisiana, and I went to college and graduate school there. At age 70, my mother lost her home of 50 years in Hurricane Katrina, and the recovery process was time-consuming and sometimes frustrating. I know firsthand that people in this region cannot afford lengthy delays in addressing economic losses caused by this spill. BP is committed to ensuring that they do not experience them.

¹ The data described throughout this testimony is accurate to the best of my knowledge as of 9 a.m., Tuesday, June 15, 2010 when this testimony was prepared. The information that we have continues to develop as our response to the incident continues.

Over the last several weeks, I have been traveling to communities affected by the spill. I have been to the parishes along the Gulf Coast in Louisiana and I have been in Mississippi, Alabama, and Florida. I have participated in town halls, talked to people impacted by the spill, and fielded numerous inquiries about the claims process. I wish circumstances were different, but it has been a privilege to live and work again among the residents of the Gulf Coast.

Establishing the claims process

Let me now tell you about our claims process.

The explosion occurred late on April 20, and the Transocean Deepwater Horizon rig sank late on the morning of April 22. BP initiated the claims process on April 24 and had a toll-free call center in place on April 25. As noted, I personally became involved on April 29.

On April 30, I traveled to Venice, Louisiana, a coastal community on the front lines. I spoke with local fishermen and shrimpers. Although BP had two claims offices open by that time, we did not yet have an office in Venice. I committed to stay in Venice until a BP claims office was opened.

On Saturday, May 1, at 8 a.m., we opened the doors to our new Venice claims office. We had approximately 100 claimants come through that same day. Since that time, we have paid 2,856 claims in Plaquemines Parish totaling \$6,872,985.

That we were able to stand up a Venice claims center so quickly, I think, illustrates the tone and standard for our operations going forward: we will expand our claims process as expeditiously as possible and avoid any unnecessary delay. The pace and scale of our claims effort is unprecedented. It is larger and has grown more quickly than any before or since the passage of the Oil Pollution Act of 1990.

Even before this event, BP had a relationship with a company called ESIS – they are trained to respond quickly and professionally to significant events. Organized in 1953, ESIS is part of the ACE Group, headed by ACE Limited. The ESIS Claims team assisting BP was developed in 1995 and has extensive experience. ESIS has handled over 200 incidents, both small and large. The company is well known as a leader in its field. Speaking personally, I have been impressed by the professionalism and dedication of our ESIS colleagues in providing the backbone of our claims process.

Claims operations

We now have a call center operating 24 hours a day, seven days a week. Potential claimants can call 1-800-440-0858 for instructions on documentation needed to support a claim and to receive an in-person appointment time at one of our claims office. We now have nearly 800 people assigned to handle claims, with over 650 experienced claims adjusters on the ground working in the impacted communities.

Thirty two walk-in claims offices are operating in Louisiana, Mississippi, Alabama and

Florida. They are located in:

Alabama: Bayou La Batre; Dauphin Island; Foley; Mobile; Orange Beach.

Florida: Apalachicola; Crawfordville; Fort Walton Beach; Gulf Breeze; Key West; Marathon; Panama City; Pensacola; Port St. Joe; Santa Rosa Beach.

Louisiana: Belle Chasse; Chauvin; Cut Off; Grand Isle; Houma; Lafitte; New Orleans East; Morgan City; New Iberia; Pointe-a-La-Hache; St. Bernard; Slidell; Venice; Westwego.

Mississippi: Bay St. Louis; Biloxi, Pascagoula.

This week, we will be opening an additional office in Naples, Florida.

Spanish and Vietnamese translators are available in several offices.

We have also established an on-line claims filing system to further expand and expedite our capacity to respond to potential claimants. It is available at www.bp.com/claims. Materials are available in four languages-English, Spanish, Vietnamese, and Khmer.

We will continue adding people, offices and resources as required and are committing the full resources of BP to making this process work for the people of the Gulf Coast states.

Lost income claims

Our early focus was on the individuals and small businesses whose livelihoods have been directly impacted by the spill and who are temporarily unable to work because of it. These are the fishermen and shrimpers with the greatest immediate financial need – they often have minimal savings and rely on their monthly income to pay bills and feed their families.

BP is providing expedited interim payments to those whose income has been interrupted. Within 48 hours of receiving supporting documentation, the claim will be evaluated, and the claimant will be notified if an advance payment will be provided.

The interim payment is intended to replace roughly one month's lost income, based on the documentation provided by the claimant. This interim payment will be adjusted based on additional documentation. The check for the advance payment will be available at the nearest BP Claims Center, the location of which will be communicated to the claimant. Alternative arrangements can be made if this method of check delivery is not feasible.

Claimants will continue receiving income replacement for as long as they are unable to earn a living as a result of injury to natural resources caused by the spill. Subsequent checks will be generated automatically and mailed in a manner similar to a payroll system. So a claimant receiving income replacement need only go through the claims

process at the beginning, and will not need to return to the claims center to get subsequent checks. We have recently begun sending out second advance payments to individuals and businesses.

Over 54,000 claims have been filed and more than 18,900 have been paid, totaling over \$71 million, mostly in the form of lost income interim payments. We intend to continue replacing this lost income for those impacted for as long as the situation prevents them from returning to their work.

Of course, these interim lost income payments are just one element of the economic loss for which we are taking responsibility. For example, we are working hard to address business loss claims. Over the last few days, we have paid over \$16 million in business claims. I would now like to address other types of claims that BP will pay and how we will assess them.

Guiding principles

We have stated clearly and repeatedly that BP will pay all "legitimate" claims. Members of Congress and the general public have been asking what that means. I'd like now to outline the guiding principles around assessing a legitimate claim.

The claims process was established to fulfill our obligations as a designated "responsible party" under the Oil Pollution Act of 1990 ("OPA"). Thus, we are guided by the provisions of OPA '90 — as well as by US Coast Guard regulations — when assessing claims.

I am not an attorney and therefore cannot speak to particular legal interpretations or applications of OPA '90. I can, however, reiterate that BP does not believe that the \$75 million cap in the OPA '90 statute is relevant. We expect to exceed it, and we will not seek reimbursement from the Oil Spill Liability Trust Fund.

The law defines the types of claims that a "responsible party" must cover. Under OPA '90, BP must pay specific categories of damages caused by the spill:

- Removal and cleanup costs;
- Property damage;
- Loss of subsistence use of natural resources;
- Net lost government revenue due to injury, destruction or loss of property or natural resources;
- Lost profits/earnings due to injury, destruction or loss of property or natural resources;
- Increased or additional public services.

The Coast Guard has a significant role in overseeing our claims process, in addition to being responsible for the National Pollution Fund. The Coast Guard has nearly 20 years' experience in deciding OPA claims, and it has developed detailed specific guidance for determining whether a claim is legitimate under OPA. We will rely on its experience and guidance in determining which claims are legitimate. But throughout, our intent is to be efficient, practical and fair. We have accelerated payments to cover immediate cash flow needs.

Documentation

I would now like to discuss the documentation of claims.

The majority of our claims paid to date have related to lost income. For these claims, we have generally requested the previous year's tax returns to estimate lost income – without question this is the most reliable verification of income. If that documentation is not available, we have accepted other forms of documentation that should be reasonably available, such as a fishing license, boat registration (in the case of a boat owner), trip tickets or some other proof of income.

As claims become more complex, documentation requirements will increase. But larger businesses and state and local governments should have the ability to satisfy enhanced documentary requirements.

We are trying to make sure that people with legitimate claims are paid quickly.

We have not required and will not require any claimant to waive any legal rights where we make an interim payment on a claim. That is, where we make an interim payment for a claim pursuant to OPA, we will not require or request a release or any other waiver of liability.

Independence of the process

As stated earlier in my testimony, the entire process is overseen by the Coast Guard, as required by law. In addition, OPA provides for the National Pollution Fund, also overseen by the Coast Guard.

Any claim that we deny or that a claimant believes has been underpaid can be submitted to the federal Oil Spill Liability Trust Fund (the "NPF"). If the Coast Guard determines that the claim should be paid, the Coast Guard will pay the claimant out of the NPF — and the Coast Guard will then have a right to seek reimbursement from BP. Second, claimants do not give up any rights to pursue litigation or participate in litigation against BP. While we hope to avoid such outcomes, this option also serves as an independent check on our process.

I have personally received extensive positive responses about our claims process. It is not a perfect process and likely never will be perfect. We are committed to improving this process, and we will continue to do so.

As previously announced, we will be appointing an independent mediator to oversee the claims process and as an additional means of ensuring a fair and transparent process.

Reimbursement of Federal Response Costs

The United States Coast Guard has sent BP and other responsible parties two invoices to date seeking reimbursement for response costs incurred by the federal government in connection with the Deepwater Horizon incident. The two invoices, totaling \$70,911,683.93, were paid by BP by wire transfer.

Conclusion

In closing, let me make clear once more our intention to do the right thing. This is a very difficult situation – I volunteered for this assignment because I'm passionate about the Gulf Coast. It's my home and I want to be part of the solution. No one is more invested than I am in making sure that we respond to claims in a fair, reasonable, and expeditious manner.

The residents, businesses, and state and local governments in the Gulf are key to our operations.

Moreover, the eyes of the world are upon us. President Obama and members of his Cabinet have visited the Gulf region and made clear their expectations of BP. So have members of Congress, as well as the general public.

We know that we will be judged by our response to this crisis, and our claims process is a critical aspect of this. I am confident that we will meet this challenge. As our senior management has made clear, the entire resources of the company are behind us.

Thank you, and I look forward to taking your questions.

Testimony
Before The Subcommittee on Federal Financial Management, Government
Information, Federal Services, and International Security
of The Committee on Homeland Security and Governmental Affairs
United States Senate
June 16, 2010

Response Efforts to the Gulf Coast Oil Spill

Steven Newman, Chief Executive Officer, Transocean, Ltd.

Chairman Carper, Ranking Member McCain, [Chairman Lieberman, Ranking Member Collins] and other members of the Subcommittee, I want to thank you for the opportunity to speak with you today.

My name is Steven Newman, and I am the Chief Executive Officer of Transocean, Ltd. Transocean is a leading offshore drilling contractor, with more than 18,000 employees worldwide and more than 4,500 employees in the U.S. I am a petroleum engineer by training. I have spent considerable time working on drilling rigs, and I have worked at Transocean for more than 15 years.

Since April 20, the heartache I and my Company feel for the 11 crew members who died – including 9 Transocean employees – and their families is with us constantly. The safety of our employees and crew members is of the utmost importance, and the loss of lives on the *Deepwater Horizon* rig is devastating to us and to their families. As I will discuss further, we remain committed to providing support and comfort to the families of the lost men.

I also salute the courage of the 115 crew members who were rescued from the *Deepwater Horizon* and who deeply feel the loss of their colleagues, and the extensive response team who has worked tirelessly since this tragedy occurred. This includes the brave men and women of the U.S. Coast Guard, as well as other federal and state officials, non-governmental organizations, and volunteers. Transocean also has been actively involved in the activities since April 20th, and I would like to provide the Subcommittee with more information about these efforts.

Transocean is a people focused company. After the events of April 20th, our HR teams at both the North America and Corporate level focused on providing

grief counseling and a range of benefits and employee services to those directly and indirectly affected. We are currently taking a number of steps, including:

- providing the families of the nine Transocean fatalities continued full pay and benefits;
- providing injured crew and those receiving ongoing counseling (45 in total) continued full pay and benefits, in addition to any statutory benefits that may be owed under Workers Compensation, the Jones Act, or the Longshore and Harbor Workers Compensation Act; and
- providing uninjured crew not currently receiving counseling (25 in total) continued full pay and benefits.

Compensation for personal possessions lost in the incident was offered to all crew and families and accepted by most.

On May 25th, we held a Memorial Service in honor of the men lost in the Horizon tragedy. It was attended by all 11 families, many Transocean personnel, and people from across the industry, and I believe was a moving event for those families and an opportunity for all of us to celebrate the lives of these exceptional men.

Our goal is to continue our support of these families and our employees as we all move forward. As I have said many times in the past, we believe that we have the most advanced equipment in the offshore drilling industry, but our people are the real reason for the success of Transocean. This belief has been articulated through the guiding principles for our company, which go by the acronym "FIRST." FIRST stands for:

- Financial Discipline
- Integrity and Honesty
- Respect for Employees, Customers and Suppliers
- Safety
- Technical Leadership

Our respect for our employees and our goal to be a responsible employer guided our actions before April 20th and will continue to do so in the future. Transocean provides our employees intensive training for all off-shore and shore-based activities. This comprehensive training program reflects our focus on safety,

with induction courses, safety leadership training, health, safety, and environment masters' classes, and regular periodic refresher courses. We work with employees who seek supervisory and management positions, provide flexible work hours and monetary assistance for education to maintain or improve job skills or to increase competencies and qualifications for future opportunities.

Our Company's culture of safety has long guided our actions. Transocean was a key partner with the UK Health and Safety Executive in developing the Safety Case methodology following the Piper Alpha disaster in the North Sea, although our Company was not involved in the incident. We subsequently applied what we learned in the North Sea to our operations around the world, even where no Safety Case is required. We played a lead role with the IADC in developing IADC's Safety Case guidelines, and we have implemented a Major Accident Hazard Risk Assessment across all Transocean operations.

Transocean's serious commitment to environmental and social stewardship arises directly from FIRST, the Company's guiding principles, through active participation in a range of scientific, social and conservation research programs around the world, including the Gulf of Mexico. We have invested millions of dollars over the past few years in projects aimed at better understanding the environment in which we work and the communities that support our operations.

One such example that is likely to play a significant role in understanding the potential effects of this event in deepwater is our support of a global scientific partnership program addressing scientific and environmental issues associated with ROVs, of which Transocean was a founding member. For over seven years, we have been using our rigs as places of research to allow scientists to explore the deepwater environments with cutting edge technology to better understand the largely under-explored deepwater area of the ocean, and our rigs working in the Gulf of Mexico have been responsible for several important discoveries. As a member of the Gulf of Mexico Foundation, Transocean supports a range of coastal restoration projects and educational efforts across all five Gulf States, Mexico and the U.S Virgin Islands. Many of these projects are in collaboration with NOAA's coastal restoration program along with other federally funded programs.

Our environmental efforts are not limited only to the Gulf of Mexico, and neither is our respect for the people and communities around us. Accordingly, we support a range of community programs around the world. We believe our

commitment today is an extension of how we have operated our business in the past and intend to continue into the future.

With respect to the events of April 20, immediately after the explosion, Transocean began working with BP (in BP's role as operator/leaseholder of the well) and the "Unified Command" (which includes officials from the U.S. Coast Guard, the Department of the Interior's Minerals Management Service (MMS), and the National Oceanic and Atmospheric Administration (NOAA)) in the effort to stop the flow of hydrocarbons. Our operations and engineering teams have been working around the clock under BP to identify and pursue options for stopping or containing the flow as soon as possible. Our drilling rigs, the *Development Driller III* and the *Development Driller II*, are actively engaged drilling the relief wells at the site, and our drillship, the *Discoverer Enterprise*, is involved in the unique oil recovery operations in the Gulf.

We will continue to support BP and the Unified Command in all of these efforts.

Throughout this time, we have also been working hard to get to the bottom of what happened the night of April 20th. There are critical questions that need to be answered in the coming weeks and months, but that we simply do not have all of the data to know the answers at this point. As the investigations continue, including our own internal investigation, it is important to keep in mind that the well construction process involves various entities and many personnel – the well operator, government officials, the drilling contractor, the mud contractor, the casing contractor, the cement contractor and others. Therefore, to understand what led to the April 20 explosion, we must work together to collect information and to recommend any corrective measures.

As the Subcommittee members are likely aware, the Oil Pollution Act of 1990 (OPA) makes clear that we are responsible for fluids originating from the rig above or below the water line, but not for fluids emanating from the well. Once the extent of these liabilities for any materials or substances allocated to the rig are understood, Transocean will continue our cooperation with the National Pollution Funds Center to fulfill any OPA obligations applicable to our operations and process any relevant claims. To support this effort we have conducted sampling to determine the potential presence and any potential impacts that may have been caused by diesel released from the rig. At this time, the presence of any such diesel fuel released from the rig has not been detected; however, we will continue

to work to verify this as well as determine whether or not there is any diesel fuel still contained in the rig's tanks at the bottom of the ocean.

Additionally, as the National Resource Damage Assessment (NRDA) has barely begun, it is too early to ascertain the Company's responsibilities in that context. As that process advances, we will cooperate with the NRDA Trustees and will stand ready to fulfill any potential obligations that may be found to originate from our duties under the OPA.

Regardless, Transocean will continue to lend our expertise to the spill containment and relief well drilling efforts currently underway. The foundation of our company's strength has always been the people who work at Transocean and the communities where we live and operate. Our commitment to both has been regularly demonstrated over the years, and I believe our continued commitment throughout this incident is evident. We remain ready and willing to assist the Subcommittee and all involved as the work continues.

U. S. Department of
Homeland Security

United States
Coast Guard



Commandant
United States Coast Guard

2100 Second Street, S.W.
Washington, DC 20593-0001
Staff Symbol: CG-0921
Phone: (202) 372-3500
FAX: (202) 372-2311

**TESTIMONY OF
MR. CRAIG BENNETT
DIRECTOR, NATIONAL POLLUTION FUNDS CENTER**

**ON LIABILITY AND FINANCIAL RESPONSIBILITY FOR OIL SPILLS UNDER THE
OIL POLLUTION ACT OF 1990 AND RELATED STATUTES**

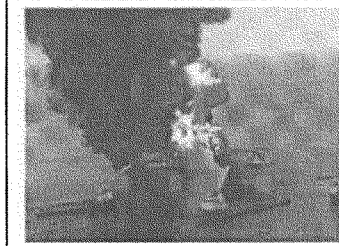
**BEFORE THE
SENATE COMMITTEE ON HOMELAND SECURITY & GOVERNMENTAL AFFAIRS
SUBCOMMITTEE FINANCIAL MANAGEMENT, GOVERNMENT
INFORMATION, FEDERAL SERVICES, AND INTERNATIONAL SECURITY**

JUNE 16, 2010

Good afternoon Chairman Carper and distinguished members of the committee. Thank you for the opportunity to testify before this committee on the BP/Deepwater Horizon oil spill.

On the evening of April 20, 2010, the Transocean-owned, BP-chartered, Marshall Islands-flagged Mobile Offshore Drilling Unit (MODU) DEEPWATER HORIZON, located approximately 72 miles Southeast of Venice, Louisiana, reported an explosion and fire onboard. This began as a Search and Rescue (SAR) mission—within the first few hours, 115 of the 126 crewmembers were safely recovered; SAR activities continued through April 23, but the remaining 11 crewmembers were never found.

Concurrent with the SAR effort, the response to extinguish the fire and mitigate the impacts of the approximately 700,000 gallons of diesel fuel onboard began almost immediately. After two days of fighting the fire, the MODU sank into approximately 5,000 feet of water on April 22. On April 23, remotely operated vehicles (ROVs) located the MODU on the seafloor, and, on April 24, BP found the first two leaks in the riser pipe and alerted the federal government. Within the first 24 hours, the Coast Guard's Federal on Scene Coordinator (FOSC) accessed the Oil Spill Liability Trust Fund (OSLTF) to ensure funds were available to speed the federal response to the threat of an oil spill. ROVs continue to monitor the flow of oil.



As the event unfolded, a robust Incident Command System (ICS) response organization was stood up April 23 in accordance with the National Response Framework (NRF) and the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). ICS is utilized to provide a common method for developing and implementing tactical plans to efficiently and effectively manage a multi-agency response to an emergency, such as an oil spill. The ICS organization for this response includes Incident Command Posts and Unified Commands at the local level, and a Unified Area Command at the regional level. It is comprised of representatives from the Coast Guard (FOSC), other federal, state, and local agencies, as well as BP as a responsible party.

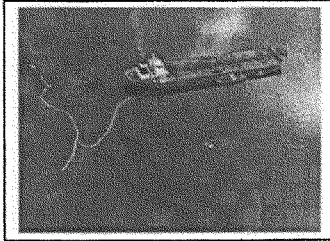
The federal government has addressed the BP/Deepwater Horizon Oil Spill with an all-hands-on-deck approach from the moment the explosion occurred. During the night of April 20—the date of the explosion—a command center was set up on the Gulf Coast to address the potential environmental impact of the event and to coordinate with all state and local governments. After the MODU sank on April 22, the National Response Team (NRT)—led by the Secretary of Homeland Security and comprised of 16 federal agencies including the Coast Guard, other DHS offices, Department of Interior (DOI), the Environmental Protection Agency (EPA), National Oceanic and Atmospheric Administration (NOAA),—as well as Regional Response Teams (RRT), were activated.

On April 29, Secretary Napolitano declared the event a Spill of National Significance (SONS), which enhanced operational and policy coordination at the national level and concurrently allowed the appointment of Admiral Thad Allen as the National Incident Commander (NIC) for the Administration's continued, coordinated response. The NIC's role is to coordinate strategic communications, national policy, and resource support, and to facilitate collaboration with key parts of the federal, state and local government.

LESSONS LEARNED FROM PAST RESPONSES

The Coast Guard has been combating oil and hazardous materials spills for many years; in particular, the 1989 major oil spill from the EXXON VALDEZ yielded comprehensive spill preparedness and response responsibilities.

In the 20 years since the EXXON VALDEZ, the Coast Guard has diligently addressed the nation's mandates and needs for better spill response and coordination. For example, a SONS Exercise is held every three years. In 2002, the SONS Exercise was held in New Orleans to deal with the implications of a wellhead loss in the Gulf of Mexico. In that exercise, the SONS team created a vertically integrated organization to link local response requirements to a RRT. The requirements of the RRT are then passed to the NRT in Washington, D.C, thereby integrating the spill management and decision processes across the federal government. The response protocols used in the current response are a direct result of past lessons learned from real world events and exercises including SONS.



Although the EXXON VALDEZ spill shaped many of the preparedness and response requirements and legislation followed to this day, other significant events since 1989 have generated additional lessons learned that shape our response strategies. The Coast Guard and EPA FOSCs have accessed the OSLTF to respond to over 11,000 oil spills or significant threats of an oil spill in the 19 years since the establishment of the Fund. The liability and compensation regime contained in Title I to the Oil Pollution Act of 1990 is well rehearsed and integrated into the FOSC's daily operations. Use of the Fund, oversight of the responsible party's obligation to advertise for and receive claims from those damaged by oil pollution, and cost recovery from the responsible party of all federal funds expended are all part of the pollution response exercise cycle. These functions were most recently exercised during the Spill of National Significance (SONS) 2010 exercise that took place in Maine in March 2010.

ROLE OF THE OIL SPILL LIABILITY TRUST FUND

The Oil Spill Liability Trust Fund (OSLTF), established in the U.S. Treasury, is available to pay the expenses of federal response to oil pollution under the Federal Water Pollution Control Act (FWPCA)(33 U.S.C. § 1321(c)) and to compensate claims for oil removal costs and certain damages caused by oil pollution as authorized by the Oil Pollution Act of 1990 (OPA) (33 U.S.C. § 2701 *et seq.*). These OSLTF expenditures will be recovered from responsible parties liable under OPA when there is a discharge of oil to navigable waters, adjoining shorelines, or the Exclusive Economic Zone (EEZ).

The United States established an exclusive economic zone, the outer limit of which is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the breadth of the territorial sea is measured. The U.S. EEZ is the largest in the world, containing 3.4 million square miles of ocean and 90,000 miles of coastline.

The OSLTF is established under section 9509 of the Internal Revenue Code (26 USC § 9509), which also describes the authorized revenue streams and certain broad limits on its use. The principal revenue stream is an 8 cent per barrel tax on oil produced or entered into the United States (see the tax provision at 26 U.S.C. § 4611). The per barrel tax increases to 9 cents for one year beginning on January 1, 2017, and the per barrel tax expires at the end of 2017. Other revenue streams include oil pollution-related penalties under 33 U.S.C. § 1319 and § 1321, interest earned through Treasury investments, and recoveries from liable responsible parties under OPA. The current OSLTF balance is approximately \$1.5 billion. There is no cap on the fund balance but there are limits on its use per oil pollution incident. The maximum amount that may be paid from the OSLTF for any one incident is \$1 billion. Of that amount, no more than \$500 million may be paid for natural resource damages (26 U.S.C. § 9509(c)(2)).

OPA further provides that the OSLTF is available to the President for certain purposes (33 U.S.C. § 2712(a)) including federal removal costs, claims for uncompensated removal costs and damages, and payment of select federal administrative, operating and personnel costs addressed by the OPA.

NATIONAL POLLUTION FUNDS CENTER FUNDING AND COST RECOVERY

The National Pollution Funds Center (NPFC) is a Coast Guard unit that manages use of the OSLTF, making available the emergency fund for federal removal as well as trustee costs to initiate natural resource damage assessment. The NPFC also pays qualifying claims against the OSLTF that are not compensated by the responsible party. Damages include real and personal property damages, natural resource damages, loss of subsistence use of natural resources, lost profits and earnings of businesses and individuals, lost government revenues, and net costs of increased or additional public services that may be recovered by a state or political subdivision of a state.

In a typical scenario, the FOSC, Coast Guard, or EPA accesses the emergency fund to carry out 33 U.S.C. § 1321(c), that is, to remove an oil discharge or prevent or mitigate a substantial threat of discharge of oil to navigable waters, the adjoining shoreline or the EEZ. Costs are documented and provided to NPFC for reconciliation and eventual cost recovery against liable responsible parties. Federal trustees may request funds to initiate an assessment of natural resource damages and the NPFC will provide those funds from the emergency fund as well.

OPA provides that all claims for removal costs or damages shall be presented first to the responsible party. Any person or government may be a claimant. If the responsible party denies liability for the claim, or the claim is not settled within 90 days of being presented, a claimant may elect to commence an action in court against the responsible party or to present the claim to the NPFC for payment from the OSLTF. OPA provides an express exception to this order of presentment for state removal cost claims. Such claims are not required to be presented first to the responsible party and may be presented directly to the NPFC for payment from the OSLTF. These and other general claims provisions are delineated in 33 U.S.C. § 2713 and the implementing regulations for claims against the OSLTF in 33 CFR Part 136. NPFC maintains information to assist claimants on its website at www.uscg.mil/npfc.

NPFC pursues cost recovery for all OSLTF expenses for removal costs and damages against liable responsible parties pursuant to federal claims collection law including the Debt Collection Act, implementing regulations at 31 CFR parts 901-904 and DHS regulations in 6 CFR part 11.

Aggressive collection efforts are consistent with the "polluter pays" public policy underlying the OPA. However, the OSLTF is intended to pay even when a responsible party does not pay.

THE EMERGENCY FUND AND DEEPWATER HORIZON

The OSLTF consists of two major components, the main fund, or Principal Fund, and an Emergency Fund.

The Emergency Fund is available for Federal On-Scene Coordinators (FOSCs) to respond to oil discharges and for Federal natural resource trustees to initiate natural resource damage assessments, pending reimbursement by the Responsible Party. The Emergency Fund is authorized to receive an annual \$50 million infusion of funds through an apportionment from the OSLTF Principal Fund. In addition, the Emergency Fund may receive an advance of \$100 million from the Principal Fund to supplement Emergency Fund shortfalls. (See 33 U.S.C. § 2752(b)).

In FY2010, the Emergency Fund has already received its annual \$50 million apportionment. On May 3, 2010, since the initiation of the BP/Deepwater Horizon response, it received the statutorily authorized \$100 million advance. These funds have been used to support the ongoing response efforts of 27 federal entities as well as response funding provided directly to the affected states.

While all funds expended will be billed to BP and, ultimately, recovered, these funds are deposited into the principal fund, not the emergency fund. As of June 1, 2010, obligations against the Emergency Fund for Federal response efforts totaled \$93 million. At the current pace of BP/Deepwater Horizon response operations, funding available in the Emergency Fund will be insufficient to sustain Federal response operations within two weeks. Should this occur, the FOOSC will not be able to commit additional funds for the agencies involved to provide critical response services, including for logistical, scientific and public health support.

On May 12, the Administration proposed a legislative package that will: enable the Deepwater Horizon Oil Spill response to continue expeditiously; speed assistance to people affected by this spill; and strengthen and update the oil spill liability system to better address catastrophic events.

The bill would permit the Coast Guard to obtain one or more advances—up to \$100 million each—from the Principal Fund within the OSLTF to underwrite federal response activities taken in connection with the discharge of oil associated with the BP Deepwater Horizon spill. This provision would ensure that the Emergency Fund has sufficient resources to support the Federal response. To enhance the ability to address generally the harms created by oil spills as well as to strengthen and update these laws, the bill would, for any single incident, raise the statutory expenditure limitations for the OSLTF from \$1 billion to \$1.5 billion and for natural resource damage assessments and claims from \$500 million to \$750 million.

LIABILITY LIMITS AND FINANCIAL RESPONSIBILITY

The Administration's May 12 legislative package also includes significant increases to OPA liability limits for vessel and facility source oil discharges, particularly relating to liability for oil removal costs.

Current law provides that a vessel's liability limit for oil removal costs and damages is a single fixed amount based on the vessel gross tonnage and vessel type. There are also certain fixed minimum amounts that may apply. Beginning in January 2007, the Coast Guard has annually reported on the adequacy – or rather, the inadequacy - of vessel liability limits. In the most recent 2009 Report on Oil Pollution Act Liability Limits, the Coast Guard's NPFC concluded as follows:

The NPFC continues to anticipate the OSLTF will be able to cover its projected non-catastrophic liabilities, including claims, without further increases to liability limits. However, **increases to liability limits for certain vessel types would result in a more equitable division of risk between the Fund and responsible parties, have a positive impact on the balance of the Fund, and reduce the Fund's overall risk position [emphasis added].**

The limited data available indicates, as in previous reports, that increasing liability limits per incident for single hull tank ships, tank barges and non-tank vessels greater than 300 gross tons in particular would result in a more balanced cost share between responsible parties and the Fund while positively impacting the Fund's balance.¹

Companies participating in offshore drilling, shipping, and other activities currently covered by Oil Pollution Act liability caps must demonstrate that they have the financial capacity to address anticipated clean-up costs and damages from their operations. Oil and other companies participating in offshore drilling activities should be strictly liable (jointly and severally) and responsible for all of the damages their activities could impose on persons, businesses, and the environment, thereby not only ensuring full compensation in the event of a spill, but also greatly aiding the prevention of future spills in the first place. Similarly, oil spill liability caps established by the Oil Pollution Act of 1990 for activities other than offshore drilling activities, such as shipping, should be reviewed and increased as appropriate to more fully reflect the spill risk associated with those activities. We look forward to working with Congress to change liability rules going forward and implement those changes within a reasonable transition period.

¹ The full Limit of Liability report is available on the NPFC web site at: http://www.uscg.mil/npfc/docs/PDFs/Reports/Liability_Limits_Report_2009.pdf

OPA CLAIMS PROCESS AND DEEPWATER HORIZON

BP and Transocean acknowledged in writing on May 10 their responsibility to advertise to the public the process by which claims may be presented; the NPFC has directed the responsible parties to use one phone number and one process so as not to confuse claimants, and all claims are being processed centrally through BP. As of May 31, 30,619 claims have been opened with BP, and more than \$39 million has been disbursed; no claim has been denied, though many have yet to be processed.

So far, the majority of claims have been for lost income and lost profits for individuals and small businesses; as more oil comes ashore, property damage claims will likely increase. The interagency community continues to oversee BP's claims process. BP has set up 30 claims processing centers throughout the affected region, with over 480 managers and claims adjusters in the field. BP has also established a 1-800 number that is available 24/7, as well as web-based claims submission capabilities. While OPA 90 requires the responsible party to advertise and accept claims, NPFC has asked BP to be responsive to requests for information or action to ensure the claims process is meeting the needs of the citizens of the Gulf. The NPFC is in daily communication with BP regarding its claims administration and is raising concerns as they emerge. For example, in response to an NPFC request, BP is now providing translation services in Vietnamese and Spanish in certain communities, as well as on the 1-800 phone line. BP has also established a mediation capability for claimants who desire.

That said, we do not yet have complete, ongoing transparency into BP's claims process including detailed information on how claims are being evaluated, how payment amounts are being calculated, and how quickly claims are being processed. We are working with BP's senior executives to make sure we have the information we and appropriate representatives of State governments need to meet our responsibilities to the public.

BP's current claims capacity can take in 6,000 claims per day, while the current rate is well under 2,000. BP reports that it can surge to a capacity of taking in 15,000 claims per day, with over 2,500 adjusters and managers in the field in a matter of days. However, BP has not responded to all of NPFC's requests for data. BP currently provides daily summary data on claims that does not provide enough visibility into the claims process to fully view claims amounts and processing times.

Claims can be paid for the following damages (33 U.S.C. § 2702(b)):

- Unreimbursed Removal Costs
- Real or Personal Property Damage
- Loss of Profits or Earning Capacity
- Loss of Government Revenue
- Cost of Increased Public Services
- Natural Resource Damages
- Loss of Subsistence Use of Natural Resource Damages (NRD)

Claims can be submitted within the following statute of limitation:

- For Removal Costs: six years after date of completion of all removal actions.
- For Damages: three years after the date on which the injury and its connection with the discharge are reasonably discovered with due care.
- For NRD: three years from the date of completion of the NRD assessment.

As stated earlier, claimants who are denied by a responsible party can bring their claims directly to the NPFC for adjudication. If the NPFC finds the damage to be OPA-compensable and pays it, the cost of that claim will be billed to BP and recovered. In enacting these provisions, Congress made it clear that the Fund was available to pay so that claimants would not be required to go through costly litigation to be compensated. Fund payments are aggressively recovered from responsible parties to the fullest extent of the law consistent with the "polluter pays" policy underlying OPA, but the Fund remains available as the ultimate insurer for compensation of removal costs and damages under the OPA.

There are a number of advantages to claimants of having a responsible party pay the claims. BP can pay for more than just OPA compensable damages if it chooses, and BP may be liable for other damages, such as personal injury, covered by other laws. BP may also choose to pay a claim with less documentation than the government would be required to obtain. Further, BP can negotiate claim settlement, and is offering mediation services.

CONCLUSION

Through the National Incident Command, we are ensuring all capabilities and resources—government, private and commercial - are being leveraged to protect the environment and facilitate a rapid, robust response effort. OPA and its claims provisions provide a cornerstone to the relief and recovery of the tens of thousands of residents of the Gulf region affected by this tragedy. Every effort is being made to ensure that those damaged by the oil spill are compensated, and that the polluter pays. Thank you for the opportunity to testify today. I look forward to your questions.

United States Government Accountability Office

GAO

Testimony

Before the Subcommittee on Federal Financial Management, Government Information, Federal Services, and International Security, Committee on Homeland Security and Governmental Affairs, U.S. Senate

For Release on Delivery
Expected at 3 p.m. EST
Wednesday, June 16, 2010

OIL SPILLS

Cost of Major Spills May Impact Viability of Oil Spill Liability Trust Fund

Statement of Susan A. Fleming, Director
Physical Infrastructure



GAO-10-795T

June 16, 2010

OIL SPILLS

Costs May Impact Viability of Oil Spill Liability Trust Fund


Highlights

Highlights of GAO-10-795T, a testimony before the Subcommittee on Federal Financial Management, Government Information, Federal Services, and International Security, Committee on Homeland Security and Governmental Affairs, U.S. Senate

Why GAO Did This Study

On April 20, 2010, an explosion at the mobile offshore drilling unit *Deepwater Horizon* resulted in a massive oil spill in the Gulf of Mexico. The spill's total cost is unknown, but may result in considerable costs to the private sector, as well as federal, state, and local governments. The Oil Pollution Act of 1990 (OPA) set up a system that places the liability—up to specified limits—on the responsible party. The Oil Spill Liability Trust Fund (Fund), administered by the Coast Guard, pays for costs not paid for by the responsible party.

GAO previously reported on the Fund and factors driving the cost of oil spills and is beginning work on the April 2010 spill. This testimony focuses on (1) how oil spills are paid for, (2) the factors that affect major oil spill costs, and (3) implications of major oil spill costs for the Fund. It is largely based on GAO's 2007 report, for which GAO analyzed oil spill cost data and reviewed documentation on the Fund's balance and vessels' limits of liability. To update the report, GAO obtained information from and interviewed Coast Guard officials.

What GAO Recommends

In 2007, GAO recommended that the Coast Guard (1) adjust liability limits for inflation and (2) determine whether liability limits should vary by vessel type. The Coast Guard agreed with both recommendations and implemented the former but not the latter recommendation.

View GAO-10-795T or key components. For more information, contact Susan Fleming at (202) 512-2834 or flemings@gao.gov.

What GAO Found

OPA places the primary burden of liability for the costs of oil spills on the responsible party in return for financial limitations on that liability. Thus, the responsible party assumes the primary burden of paying for spill costs—which can include both removal costs (cleaning up the spill) and damage claims (restoring the environment and compensating parties that were economically harmed). To pay both the costs above this limit and costs incurred when a responsible party does not pay or cannot be identified, OPA authorized use of the Fund, up to a \$1 billion per spill, which is financed primarily from a per-barrel tax on petroleum products. The Fund also may be used to pay for natural resource damage assessments and to monitor the recovery activities of the responsible party, among other things. While the responsible party is largely paying for the current spill's cleanup, Coast Guard officials said that they began using the Fund—which currently has a balance of \$1.6 billion—in May 2010 to pay for certain removal activities in the Gulf of Mexico.

Several factors, including location, time of year, and type of oil, affect the cleanup costs of noncatastrophic spills. Although these factors will certainly affect the cost of the Gulf spill—which is unknown at this time—in this spill, additional factors such as the magnitude of the oil spill will impact costs. These factors can affect the breadth and difficulty of recovery and the extent of damage in the following ways:

- Location. A remote location can increase the cost of a spill because of the additional expense involved in mounting a remote response. A spill that occurs close to shore can also become costly if it involves the use of manual labor to remove oil from sensitive shoreline habitat.
- Time of year. A spill occurring during fishing or tourist season might carry additional economic damage, or a spill occurring during a stormy season might prove more expensive because it is more difficult to clean up than one occurring during a season with generally calmer weather.
- Type of oil. Lighter oils such as gasoline or diesel fuels dissipate and evaporate quickly—requiring minimal cleanup—but are highly toxic and create severe environmental impacts. Heavier oils such as crude oil do not evaporate and, therefore, may require intensive structural and shoreline cleanup.

Since the Fund was authorized in 1990, it has been able to cover costs not covered by responsible parties, but risks and uncertainties exist regarding the Fund's viability. For instance, the Fund is at risk from claims resulting from spills that significantly exceed responsible parties' liability limits. Of the 51 major oil spills GAO reviewed in 2007, the cleanup costs for 10 exceeded the liability limits, resulting in claims of about \$252 million. In 2006, Congress increased liability limits, but for certain vessel types, the limits may still be low compared with the historic costs of cleaning up spills from those vessels. The Fund faces other potential risks as well, including ongoing claims from existing spills, claims related to sunken vessels that may begin to leak oil, and the threat of a catastrophic spill—such as the recent Gulf spill.

United States Government Accountability Office

Mr. Chairman, Ranking Member McCain, and Members of the Subcommittee:

I appreciate the opportunity to be here today to discuss the costs of major oil spills and the potential impacts on the Oil Spill Liability Trust Fund (Fund). On April 20, 2010, an explosion from a well site at which the mobile offshore drilling unit (MODU), *Deepwater Horizon*, had been drilling resulted in a spill of national significance in the Gulf of Mexico, which is, to date, only partially contained. Since the explosion occurred, oil has been leaking into the Gulf of Mexico at an estimated rate of between 12,000 and 19,000 barrels per day, according to the National Incident Command's Flow Rate Technical Group, making this one of the largest, if not the largest spill in U.S. waters to date.¹ BP, which leased the *Deepwater Horizon* at the time of the explosion, continues to try to contain the leak. The total cost of cleaning up this massive and potentially unprecedented spill, the untold damage to the environment, as well as the potential impact to the livelihood and the economic status of the region, will be undetermined for some time. However, current estimates suggest that spill cleanup and related damages claims will be in the tens of billions of dollars—well beyond the costs of the *Exxon Valdez*. This spill and future spills all have the potential to result in considerable costs to the private sector, as well as federal, state, and local governments.

The Oil Pollution Act of 1990 (OPA),² which was enacted after the *Exxon Valdez* spill in 1989, established a "polluter pays" system that places the primary burden of liability for the costs of spills up to a statutory maximum, on the party responsible. OPA also established the Fund to pay for oil spill costs when the responsible party cannot or does not pay.³ The Fund is financed primarily from a per-barrel tax on petroleum products either produced in the United States or imported from other countries and administered by the National Pollution Funds Center (NPFC) within the

¹The Flow Rate Technical Group is comprised of federal scientists, independent experts, and representatives from universities around the country. It includes representatives from U. S. Geological Survey, National Oceanic and Atmospheric Administration, Department of Energy, Coast Guard, Department of the Interior's Minerals Management Service, the national labs, National Institute of Standards and Technology, University of California-Berkeley, University of Washington, University of Texas, Purdue University, and several other academic institutions. BP is not involved in the Flow Rate Technical Group except to supply raw data for the scientists and experts to analyze.

²Pub. L. No. 101-380, 104 Stat. 489 (1990).

³The Fund also pays for the costs of certain federal agency operations.

U.S. Coast Guard. While this system is well understood, the total costs involved in responding to oil spills are less clear. Costs paid by the Fund are required to be documented and reported, but the costs paid by the party responsible for the spill are not required to be reported.⁴ The resulting lack of information about the total cost of spills, the significant claims made on the Fund to cover the costs beyond the established OPA liability limits borne by the responsible party, and the potential impact of a catastrophic spill of unprecedented costs, have all raised concerns about the Fund's long-term viability.

Mr. Chairman, in response to your request, we are just beginning work related to the April 2010 spill and its implications for the Fund. However, we have done considerable work looking at the cost of major spills in recent years and the factors that contribute to making spills particularly expensive to clean up and mitigate. While our previous work focused on spills from vessels and not offshore facilities, it is likely that many of the same factors that we identified that affect the cost of the oil spills will apply to the current oil spill. Additionally, our previous work identified several potential risks to the Fund and made recommendations to the Commandant of the Coast Guard to address some of the risks.

My remarks today are intended to provide a context for looking at the nation's approach to paying the costs of such spills. Specifically, my testimony focuses on (1) how oil spills are paid for, (2) the factors that affect major oil spill costs, and (3) the implications of major oil spill costs for the Oil Spill Liability Trust Fund.⁵ My comments are based primarily on our September 2007 report on oil spill costs, which was issued to the Senate Committee on Commerce, Science, and Transportation, and the

⁴The financial activities of the Fund and the resulting fund balance are included in the financial statements and disclosures for the Department of Homeland Security.

⁵The National Oil and Hazardous Substances Pollution Contingency Plan states that any oil discharge that poses a substantial threat to public health or welfare of the United States or the environment or results in significant public concern shall be classified as a major spill. For the purposes of our 2007 report, however, we defined major spills as spills with total removal costs and damage claims that exceed \$1 million.

House Committee on Transportation and Infrastructure.⁶ In our 2007 report, we determined that there were 51 major oil spills— with removal costs and damage claims totaling at least \$1 million— that occurred in U.S. waters from 1990 through 2006.⁷ Collectively, from public and nonpublic sources, we estimated that responsible parties and the Fund have paid between approximately \$860 million and \$1.1 billion to clean up these spills and compensate affected parties. Responsible parties paid between about 72 to 78 percent of these costs. The 51 major spills (exceeding \$1 million in total costs) we identified, which constituted about 2 percent of the 3,389 vessel spills that occurred from 1990 to 2006, varied greatly from year to year in number and cost and showed no discernible trends in frequency or size.⁸

In preparing our September 2007 report we analyzed oil spill removal cost and claims data from NPFC, the National Oceanic and Atmospheric Administration's (NOAA) Damage Assessment, Remediation, and Restoration Program, and the Department of the Interior's (DOI) Natural Resource Damage Assessment and Restoration Program and U.S. Fish and Wildlife Service. We also analyzed cost data obtained from vessel insurers

⁶ GAO, *Maritime Transportation: Major Oil Spills Occur Infrequently, but Risks to the Federal Oil Spill Fund Remain*, GAO-07-1085 (Washington, D.C.: Sept. 7, 2007). The Coast Guard and Maritime Transportation Act of 2006, Pub. L. No. 109-241, 120 Stat. 516 (2006), directed us to conduct an assessment of the cost of response activities and claims related to oil spills from vessels that have occurred since January 1, 1990, for which the total costs and claims paid was at least \$1 million per spill. The mandate required that the report summarize the costs and claims for oil spills that have occurred since January 1, 1990, that total at least \$1 million per spill, and the source, if known, of each spill for each year. We were not directed to look at spills from offshore facilities.

⁷ Our analysis excluded spills for which final costs were not yet known because all claims had not been addressed.

⁸ In order to determine the spill cost estimates for the 51 spills in our 2007 report, we obtained the best available cost data from a variety of sources because private-sector and total costs for cleaning up spills and paying damages are not centrally tracked and maintained. We then combined the information that we collected from these various sources to develop cost estimates for the oil spills. However, because the cost data are somewhat imprecise and the data we collected vary somewhat by source, we presented the cost estimates in ranges. The lower and higher bounds of the range represent the low- and high-end of cost information we obtained. Based on reviews of data documentation, interviews with relevant officials, and tests for reasonableness, we determined that the data were sufficiently reliable for the purposes of our report.

and through contract with Environmental Research Consulting.⁹ We also interviewed NPFC, NOAA, and state officials responsible for oil spill response, as well as industry experts and representatives from key industry associations and a vessel owner. In addition, we reviewed documentation from the NPFC regarding the Fund balance and vessels' limits of liability. Earlier this month, we obtained updated information from and interviewed NPFC officials to update our September 2007 report's findings and to gather information on the recent oil spill in the Gulf of Mexico. In addition, we have just started work on the Oil Spill Liability Trust Fund at the request of the Chairman of this Subcommittee and other congressional members.

Summary

OPA establishes a "polluter pays" system that is intended to act as a deterrent by placing the primary burden of liability¹⁰ for the costs of spills on the party responsible for the spill in return for financial limitations on that liability.¹¹ Under this system, the responsible party assumes, up to a specified limit that is subject to certain conditions, the burden of paying for spill costs—which can include both removal costs (cleaning up the spill) and damage claims (restoring the environment and payment of compensation to parties that were economically harmed by the spill). Above the specified limit, which varies depending on the type of vessel or facility, the responsible party is no longer financially liable. Responsible parties are liable without limit, however, if the oil discharge is the result of gross negligence or willful misconduct, or a violation of federal operation, safety, or construction regulations. To pay costs above the limit of liability, as well as to pay costs when a responsible party does not pay or cannot be

⁹Environmental Research Consulting is a private consulting firm that specializes in data analysis, environmental risk assessment, cost analyses, expert witness research and testimony, and development of comprehensive databases on oil and chemical spills in service to regulatory agencies, nongovernmental organizations, and industry.

¹⁰In the case of a vessel, the responsible party is "any person owning, operating, or demise chartering the vessel." 33 U.S.C. § 2701(32)(A). In the case of an offshore facility the responsible party is the lessee or permittee of the area in which the facility is located or the holder of a right of use and easement granted under applicable State law or the Outer Continental Shelf Lands Act ... for the area in which the facility is located (if the holder is a different person than the lessee or permittee) ... 33 U.S.C. § 2701(32)(C). NPFC has designated the source of the discharges for this incident as BP Exploration and Production, Inc. as lessee for the area, and Transocean Holdings, Inc., as the owner of the mobile offshore drilling unit, and as such, are responsible parties. To date, only BP is paying costs associated with this spill.

¹¹This testimony focuses only on the liability imposed by OPA.

identified, OPA authorized use of the Fund, which is financed primarily from a per-barrel tax on petroleum products either produced in the United States or imported from other countries. Offshore facilities' limit of liability is all removal costs plus \$75 million for damage claims.¹² The Fund also may be used to pay for natural resource damage assessments and to monitor the recovery activities of the responsible party, among other things. Coast Guard officials said that they began using the Fund in May 2010 to pay for removal activities in the Gulf of Mexico.

Several factors affect the costs of a noncatastrophic spill, according to industry experts and agency officials and the studies we reviewed—the spill's location, the time of year it occurs, and the type of oil spilled. Additionally, the magnitude of the oil spill will also impact costs of the *Deepwater Horizon* spill. A remote location, for example, can increase the cost of a spill because of the additional expense involved in mounting a remote response. Similarly, a spill that occurs close to shore rather than further out at sea can become more expensive because it may involve the use of manual labor to remove oil from sensitive shoreline habitat. Time also has situation-specific effects, in that a spill that occurs at a particular time of year might involve a much greater cost than a spill occurring in the same place but at a different time of year. For example, a spill occurring during fishing or tourist season might carry additional economic damage, or a spill occurring during a typically stormy season might prove more expensive because it is more difficult to clean up than one occurring during a season with generally calmer weather. The specific type of oil affects costs because the type of oil can affect the amount of cleanup needed and the amount of natural resource damage incurred. Lighter oils such as gasoline or diesel fuels dissipate and evaporate quickly—requiring minimal cleanup—but are highly toxic and create severe environmental impacts. Heavier oils such as crude oil do not evaporate and, therefore, may require intensive structural and shoreline cleanup; and while they are less toxic than light oils, heavy oils can harm waterfowl and fur-bearing mammals through coating and ingestion. Each spill's cost reflects the particular mix of these factors, and no factor is clearly predictive of the outcome. Although the total costs of the Gulf Coast spill will be unknown for some time, many of the same key factors such as location, time of year, oil type, and the magnitude of the oil spilled, will certainly impact the

¹²When responsible parties' costs exceed their limit of liability and the limit is upheld—because there was no gross negligence willful misconduct, or violations of federal regulations by the vessel owner or operator—the responsible party is entitled to file a claim on the Fund to be reimbursed for costs in excess of the limit.

costs of this spill. For example, the spill occurred in the spring in an area of the country—the Gulf Coast—that relies heavily on revenue from tourism and the commercial fishing industry. According to one expert, the loss in revenue from suspended commercial and recreational fishing in the Gulf Coast states is currently estimated at \$144 million per year.¹³

Since it was authorized in 1990, the Fund has been able to cover costs that responsible parties have not paid from noncatastrophic spills, but risks and uncertainties exist regarding the Fund's viability. In particular, the Fund is at risk from claims resulting from spills that significantly exceed responsible parties' liability limits. The effect of such spills can be seen among the 51 major oil spills we identified in 2007: 10 of them exceeded the limit of liability, resulting in claims of about \$252 million on the Fund. In the Coast Guard and Maritime Transportation Act of 2006, Congress increased these liability limits,¹⁴ but additional attention to the limits appears warranted because the liability limits for certain vessel types may still be disproportionately low compared with their historic spill cost. For example, of the 51 major spills since 1990, 15 resulted from tank barges. The average cost for these 15 tank barge spills was about \$23 million—more than double the average liability limit (\$10.3 million) for these vessels. In its August 2009 report examining oil spills that exceeded the limits of liability, the Coast Guard had similar findings on the adequacy of some of the current limits and their potential effect on the the Fund. Aside from issues related to limits of liability, the Fund faces other potential drains on its resources, including ongoing claims from existing spills, claims related to already-sunken vessels that may begin to leak oil, and the threat of a catastrophic spill—such as the *Deepwater Horizon*—which could have a significant impact on the Fund's viability.

In our September 2007 report, we recommended that the Commandant of the Coast Guard (1) determine whether and how liability limits should be changed, by vessel type, and make recommendations about these changes to Congress and (2) adjust the limits of liability for vessels every 3 years to reflect changes in inflation, as appropriate. The Department of Homeland Security (DHS), including the Coast Guard, generally agreed with the report's contents and agreed with the recommendations. In July 2009, the

¹³McKinney, Larry, *The Deepwater Horizon Oil Spill—Putting a Price on the Priceless*, Harte Research Institute for Gulf of Mexico Studies (Corpus Christi, Tex.: 2010).

¹⁴33 U.S.C. § 2704(b). The estimate of \$65 million is based on Pub. L. No. 109-241, § 603, 120 Stat. 516, 563 (2006).

Commandant of the Coast Guard implemented our recommendation to adjust limits of liability for vessels every 3 years to reflect changes in inflation,¹³ but to date, has not implemented our recommendation to determine whether and how liability limits should be changed by vessel type and make recommendations about these changes to Congress. We continue to believe that adjusting liability limits for particular vessel types, notably tank barges, would ensure that the “polluter pays” principle is carried out in practice.

The Primary Burden of Liability for the Costs of Oil Spills Is on the Responsible Party, up to Specified Limits

OPA establishes a “polluter pays” system that places the primary burden of liability for the costs of spills on the party responsible for the spill in return for financial limitations on that liability. Under this system, the responsible party assumes, up to a specified limit, the burden of paying for spill costs—which can include both removal costs (cleaning up the spill) and damage claims (restoring the environment and payment of compensation to parties that were economically harmed by the spill). Above the specified limit, the responsible party generally is no longer financially liable. Responsible parties are liable without limit, however, if the oil discharge is the result of gross negligence or willful misconduct, or a violation of federal operation, safety, and construction regulations. OPA’s “polluter pays” system is intended to provide a deterrent for responsible parties who could potentially spill oil by requiring that they assume the burden of responding to the spill, restoring natural resources, and compensating those damaged by the spill, up to the specified limit of liability. (See table 1 for the limits of liability for vessels and offshore facilities.)

In general, liability limits under the OPA depend on the kind of vessel or facility from which a spill comes. For an offshore facility, liability is limited to all removal costs plus \$75 million. For tank vessels, liability limits are based on the vessel’s tonnage and hull type. In both cases, certain circumstances, such as gross negligence, eliminate the caps on liability altogether. According to the Coast Guard, the leaking well in the current spill is an offshore facility. As noted earlier, pursuant to OPA, the liability limit for offshore facilities is all removal costs plus \$75 million for damage claims. The Coast Guard also notes that liability for any spill on or above the surface of the water in this case would be between \$65 million

¹³74 Fed. Reg. 31358, July 1, 2009. This interim rule was finalized in January 2010. 75 Fed. Reg. 750, January 6, 2010.

and \$75 million. The range derives from a statutory division of liability for mobile offshore drilling units.¹⁶ For spills on or above the surface of the water, mobile offshore drilling units are treated first as tank vessels up to the limit of liability for tank vessels and then as offshore facilities.¹⁷

Table 1: Description of Vessels and Offshore Facilities and Current Limits of Liability

Vessels	Description	Limit of liability
Oil tanker	An oil tanker is a ship designed to carry oil in large tanks.	Single hull: Vessels greater than 3,000 gross tons: the greater of \$3,200 per gross ton or \$23,496,000 million. Vessels less than or equal to 3,000 gross tons: the greater of \$3,200 per gross ton or \$6,408,000 million.
Tank barge	A tank barge is a non-self-propelled vessel that carries liquid, solid, or gaseous cargos in bulk in tanks primarily through rivers and inland waterways.	Double hull: Vessels greater than 3,000 gross tons: the greater of \$2,000 per gross ton or \$17,088,000 million. Vessels less than or equal to 3,000 gross tons: the greater of \$2,000 per gross ton or \$4,272,000 million.
Cargo ship or freighter	A cargo ship or freighter is a vessel that transports non-oil goods and materials.	The greater of \$1,000 per gross ton or \$854,400.
Fishing vessel	A fishing vessel is a ship that is used to catch fish for commercial use.	
Offshore facility	An offshore facility is any facility of any kind located in, on, or under any of the navigable waters of the U.S., and any facility of any kind that is subject to the jurisdiction of the U.S. and is located in, on, or under any other waters, other than a vessel or a public vessel.	All cleanup costs plus \$75 million.
Mobile offshore drilling unit (MODU)	A mobile offshore drilling unit is a vessel (other than a self-elevating lift vessel) capable of use as an offshore facility.	For a discharge on or above the surface of the water, a MODU is first treated as a tank vessel up to the limit of liability for tank vessels. For costs above the vessel liability limit, the MODU is treated as an offshore facility.

Source: GAO.

¹⁶A MODU is a vessel capable of use as an offshore facility.

¹⁷The estimate of \$65 million is based on the tonnage of the *Deepwater Horizon* and thus the liability that would be calculated for it as a tank vessel, and \$75 million is the cap on liability for offshore facilities.

For example, if an offshore facility's limit of liability is \$75 million (not counting removal costs, for which there is unlimited liability for offshore facilities) and a spill resulted in \$100 million in costs, the responsible party has to pay up to \$75 million in damage claims—leaving \$25 million in costs beyond the limit of liability.¹⁸ Under OPA, the authorized limit on federal expenditures for a response to a single spill is currently set at \$1 billion, and natural resource damage assessments and claims may not exceed \$500 million. OPA requires that responsible parties must demonstrate their ability to pay for oil spill response up to statutorily specified limits. Specifically, by statute, with few exceptions, offshore facilities that are used for exploring for, drilling for, producing, or transporting oil from facilities engaged in oil exploration, drilling, or production are required to have a certificate of financial responsibility that demonstrates their ability to pay for oil spill response up to statutorily specified limits. If the responsible party denies a claim or does not settle it within 90 days, a claimant may commence action in court against the responsible party, or present the claim to the NPPFC.

OPA also provides that the Fund¹⁹ can be used to pay for oil spill removal costs and damages when those responsible do not pay or cannot be located. This may occur when the source of the spill and, therefore, the responsible party is unknown, or when the responsible party does not have the ability to pay. In other cases, since the cost recovery can take a period of years, the responsible party may become bankrupt or dissolved.

NPPFC manages the Fund by disbursing funds for federal cleanup, monitoring the sources and uses of funds, adjudicating claims submitted to the Fund for payment, and pursuing reimbursement from the responsible party for costs and damages paid by the Fund. The Coast Guard is responsible for adjusting vessels' limits of liability for significant increases in inflation and for making recommendations to Congress on

¹⁸When responsible parties' costs exceed their limit of liability and the limit is upheld—because there was no gross negligence or violations of federal regulations by the vessel owner or operator—the responsible party is entitled to file a claim on the Fund to be reimbursed for costs in excess of the limit. The NPPFC reviews the claim to determine which costs are entitled to compensation under and the responsible party is reimbursed from the Fund.

¹⁹The Fund was originally established under the Omnibus Budget Reconciliation Act of 1986, Pub. L. No. 99-509, title VIII, § 8033 (Oct. 21, 1986) (*codified at* 26 U.S.C. § 9509), to fund oil spill response activities, but Congress did not authorize its use until enactment of OPA in 1990.

whether other adjustments are necessary to help protect the Fund.²⁰ DOI's Minerals Management Service is responsible for adjusting limits of liability of offshore facilities.

Response to large oil spills is typically a cooperative effort between the public and private sector, and there are numerous players who participate in responding to and paying for oil spills. To manage the response effort, the responsible party, the Coast Guard, EPA, and the pertinent state and local agencies form the unified command, which implements and manages the spill response.²¹

OPA defines the costs for which responsible parties are liable and the costs for which the Fund is made available for compensation in the event that the responsible party does not pay or is not identified.²² These costs, or "OPA compensable" costs, are of two main types:

- **Removal costs:** Removal costs are incurred by the federal government or any other entity taking approved action to respond to, contain, and clean up the spill. For example, removal costs include the equipment used in the response—skimmers to pull oil from the water, booms to contain the oil, planes for aerial observation—as well as salaries and travel and lodging costs for responders.
- **Damages caused by the oil spill:** Damages that can be compensated under OPA cover a wide range of both actual and potential adverse effects from an oil spill, for which a claim may be made to either the responsible party or the Fund. Claims include natural resource damage claims filed by trustees, claims for uncompensated removal costs and

²⁰33 U.S.C. § 2704(d).

²¹The Incident Command System (ICS) is a standardized response management system that is part of the National Interagency Incident Management System. The ICS is organizationally flexible so that it can expand and contract to accommodate spill responses of various sizes. The ICS typically consists of four sections: operations, planning, logistics, and finance/administration.

²²33 U.S.C. § 2702(b). In the case of a vessel, the responsible party is "any person owning, operating, or demise chartering the vessel." 31 U.S.C. § 2701(32)(A). In the case of an offshore facility the responsible party "is the lessee or permittee of the area in which the facility is located or the holder of a right of use and easement granted under applicable State law or the Outer Continental Shelf Lands Act. ... for the area in which the facility is located (if the holder is a different person than the lessee or permittee) ..." 31 U.S.C. § 2701(32)(C).

third-party damage claims for lost or damaged property and lost profits, among other things.²³

The Fund has two major components—the Principal Fund and the Emergency Fund. The Principal Fund provides the funds for third-party and natural resource damage claims, limit of liability claims, reimbursement of government agencies' removal costs, and provides for oil spill-related appropriations. A number of agencies—including the Coast Guard, EPA, and DOI—receive an annual appropriation from the Principal Fund to cover administrative, operational, personnel, and enforcement costs. To ensure rapid response to oil spills, OPA created an Emergency Fund that authorizes the President to spend \$50 million each year to fund spill response and the initiation of natural resource damage assessments, which provide the basis for determining the natural resource restoration needs that address the public's loss and use of natural resources as a result of a spill.

Emergency funds not used in a fiscal year are carried over to the subsequent fiscal years and remain available until expended. To the extent that \$50 million is inadequate, authority under the Maritime Transportation Security Act of 2002 grants authority to advance up to \$100 million from the Fund to pay for removal activities. These emergency funds may be used for containing and removing oil from water and shorelines, preventing or minimizing a substantial threat of discharge, and monitoring the removal activities of the responsible party. NPPC officials told us in June 2010 that the emergency fund has received the advanced authority of \$100 million for the Federal On-Scene Coordinator to respond to the spill and for federal trustees to initiate natural resource damage assessments along with an additional \$50 million that had not been

²³OPA authorizes the United States, states, and Indian Tribes to act on behalf of the public as natural resource trustees for natural resources under their respective trusteeship. Trustees often have information and technical expertise about the biological effects of pollution, as well as the location of sensitive species and habitats that can assist the federal on-scene coordinator in characterizing the nature and extent of site-related contamination and impacts. Federal Trustees include Commerce, DOI, the Departments of Agriculture, Defense, and Energy, and other agencies authorized to manage or protect natural resources.

apportioned in 2006. Officials said they began using emergency funds at the beginning of May to pay for removal activities in the Gulf of Mexico.²⁴

The Fund is financed primarily from a per-barrel tax on petroleum products either produced in the United States or imported from other countries. The balance of the Fund (including both the Principal and the Emergency Fund) has varied over the years (see fig. 1).²⁵ The Fund's balance generally declined from 1995 through 2006, and from fiscal year 2003 through 2007, its balance was less than the authorized limit on federal expenditures for the response to a single spill, which is currently set at \$1 billion. This was in part because the Fund's main source of revenue—a \$0.05 per barrel tax on U.S. produced and imported oil—was not collected for most of the time from 1995 through 2006.²⁶ However, the Energy Policy Act of 2005 reinstated the barrel tax beginning in April 2006.²⁷ Subsequently, the Emergency Economic Stabilization Act of 2008 increased the tax rate to \$0.08 per barrel through 2016.²⁸ The balance in the Fund as of June 1, 2010, was about \$1.6 billion.²⁹ With the barrel tax once again in place, NFFC anticipates that the Fund will be able to cover

²⁴Under 33 U.S.C. § 2702, the responsible party is liable for the removal costs and damages that result from an oil spill and thus will be responsible for reimbursing the Fund for these expenses.

²⁵OPA consolidated the liability and compensation provisions of four prior federal oil pollution initiatives and their respective trust funds into the Oil Spill Liability Trust Fund and authorized the collection of revenue and the use of the money, with certain limitations, with regards to expenditures. The prior federal laws regarding oil pollution included the Federal Water Pollution Control Act, the Deepwater Port Act of 1974, the Trans-Alaska Pipeline Authorization Act, and the Outer Continental Shelf Lands Act Amendments of 1978. Congress created the Fund in 1986 but did not authorize collection of revenue or use of the money until it passed OPA in 1990.

²⁶The tax expired in December 1994. Besides the barrel tax, the Fund also receives revenue in the form of interest on the Fund's principal revenues from amounts recovered from responsible parties for damages resulting from oil spills, from penalties paid pursuant to the Federal Water Pollution Control Act, the Deepwater Port Act of 1974, or the Trans-Alaska Pipeline Authorization Act, and from certain other sources.

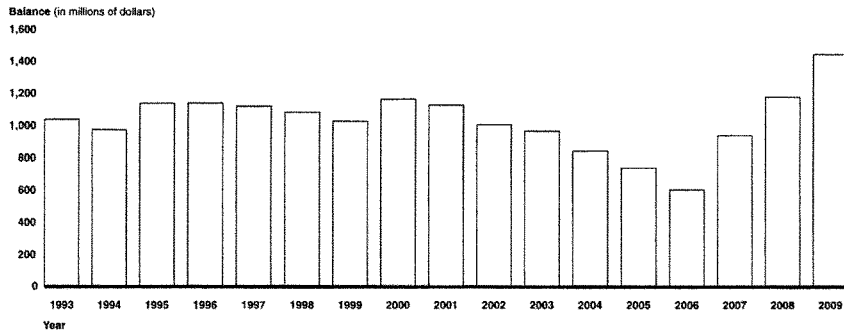
²⁷Pub. L. No. 109-58, §1361, 119 Stat. 594 (2005).

²⁸Pub. L. No. 110-343, § 405, 122 Stat. 3765, 3860. In 2017, the per-barrel tax increases to \$0.09. The tax is scheduled to terminate at the end of 2017.

²⁹In 2007, we reported that the balance of the Fund was about \$600 million at the end of fiscal year 2006, which at the time, was well below its peak of \$1.2 billion in 2000. The decline in the Fund's balance primarily reflected an expiration of the barrel tax on petroleum in 1994. However, the tax was reinstated in 2005 and increased to \$0.08 per-barrel in 2008; as a result, the Fund is now at its highest balance.

potential noncatastrophic liabilities.³⁰ In 2007 we reported several risks to the Fund, including the threat of a catastrophic spill. Although the Fund's balance has increased, significant uncertainties remain regarding the impact of a catastrophic spill—such as the *Deepwater Horizon*—or multiple catastrophic spills on the Fund's viability.

Figure 1: Oil Spill Liability Trust Fund Balance, Fiscal Years 1993-2009



Source: GAO analysis of NPPFC data.

Note: The Fund balance increase in 2000 was largely due to a transfer of \$181.8 million from the Trans-Alaska Pipeline Liability Fund.

³⁰Related GAO products include GAO, *U.S. Coast Guard National Pollution Funds Center: Improvements Are Needed in Internal Control Over Disbursements*, GAO-04-340R (Washington, D.C.: Jan. 13, 2004); and GAO, *U.S. Coast Guard National Pollution Funds Center: Claims Payment Process Was Functioning Effectively, but Additional Controls Are Needed to Reduce the Risk of Improper Payments*, GAO-04-114R (Washington, D.C.: Oct. 3, 2003).

Several Factors, including Location, Time of Year, and Type of Oil, Combine in Unique Ways and Affect the Cost of Each Oil Spill

Location, time of year, and type of oil are key factors affecting oil spill costs of noncatastrophic spills, according to industry experts, agency officials, and our analysis of spills. Given the magnitude of the current spill, however, the size of this spill will also be a factor that affects the costs. Officials also identified two other factors that may influence oil spill costs to a lesser extent—the effectiveness of the spill response and the level of public interest in a spill. In ways that are unique to each spill, these factors can affect the breadth and difficulty of the response effort or the extent of damage that requires mitigation.

Location Affects Costs in Different Ways

According to state officials with whom we spoke and industry experts, there are three primary characteristics of location that affect costs:

- **Remoteness:** For spills that occur in remote areas, spill response can be particularly difficult in terms of mobilizing responders and equipment, and they can complicate the logistics of removing oil from the water—all of which can increase the costs of a spill.
- **Proximity to shore:** There are also significant costs associated with spills that occur close to shore. Contamination of shoreline areas has a considerable bearing on the costs of spills as such spills can require manual labor to remove oil from the shoreline and sensitive habitats. The extent of damage is also affected by the specific shoreline location.
- **Proximity to economic centers:** Spills that occur in the proximity of economic centers can cost more when local services are disrupted. For example, a spill near a port can interrupt the flow of goods, necessitating an expeditious response in order to resume business activities, which could increase removal costs. Additionally, spills that disrupt economic activities can result in expensive third-party damage claims.

Time of Year Affects Local Economies and Response Efforts

The time of year in which a spill occurs can also affect spill costs—in particular, affecting local economies and response efforts. According to several state and private-sector officials with whom we spoke, spills that disrupt seasonal events that are critical for local economies can result in considerable expenses. For example, spills in the spring months in areas of the country that rely on revenue from tourism may incur additional removal costs in order to expedite spill cleanup, or because there are stricter standards for clean up, which increase the costs. The time of year

in which a spill occurs also affects response efforts because of possible inclement weather conditions such as harsh winter storms and even hurricanes that can result in higher removal costs because of the increased difficulty in mobilizing equipment and personnel to respond to a spill in adverse conditions.

Type of Oil Spilled Affects the Extent of the Response Effort and the Amount of Damage

The different types of oil can be grouped into four categories, each with its own set of effects on spill response and the environment. Lighter oils such as jet fuels, gasoline, and diesel fuel dissipate and evaporate quickly, and as such, often require minimal cleanup. However, these oils are highly toxic and can severely affect the environment if conditions for evaporation are unfavorable. For instance, in 1996, a tank barge that was carrying home-heating oil grounded in the middle of a storm near Point Judith, Rhode Island, spilling approximately 828,000 gallons of heating oil (light oil). Although this oil might dissipate quickly under normal circumstances, heavy wave conditions caused an estimated 80 percent of the release to mix with water, with only about 12 percent evaporating and 10 percent staying on the surface of the water.³¹ Natural resource damages alone were estimated at \$18 million, due to the death of approximately 9 million lobsters, 27 million clams and crabs, and over 4 million fish.

Heavier oils, such as crude oils and other heavy petroleum products, are less toxic than lighter oils but can also have severe environmental impacts. Medium and heavy oils do not evaporate much, even during favorable weather conditions, and can blanket structures they come in contact with—boats and fishing gear, for example—as well as the shoreline, creating severe environmental impacts to these areas, and harming waterfowl and fur-bearing mammals through coating and ingestion. Additionally, heavy oils can sink, creating prolonged contamination of the sea bed and tar balls that sink to the ocean floor and scatter along beaches. These spills can require intensive shoreline and structural clean up, which is time-consuming and expensive. For example, in 1995, a tanker spilled approximately 38,000 gallons of heavy fuel oil into the Gulf of Mexico when it collided with another tanker as it prepared to lighten its oil to another ship.³² Less than 1 percent (210 gallons) of the oil was

³¹National Research Council of the National Academies, *Oil in the Sea III: Inputs, Fates, and Effects* (Washington, D.C.: 2003). Numbers do not add to 100 percent due to rounding.

³²Lightering is the process of transferring oil at sea from a very large or ultra-large carrier to smaller tankers that are capable of entering the port.

recovered from the sea, and, as a result, recovery efforts on the beaches of Matagorda and South Padre Islands were labor intensive, as hundreds of workers had to manually pick up tar balls with shovels. The total removal costs for the spill were estimated at \$7 million.

Other Factors also Affect Spill Costs

In our 2007 report, we also reported that industry experts cited two other factors that also affect the costs incurred during a spill.

- **Effectiveness of Spill Response:** Some private-sector experts stated that the effectiveness of spill response can affect the cost of cleanup. The longer it takes to assemble and conduct the spill response, the more likely it is that the oil will move with changing tides and currents and affect a greater area, which can increase costs. Some experts said the level of experience of those involved in the incident command is critical to the effectiveness of spill response. For example, they said poor decision making during a spill response could lead to the deployment of unnecessary response equipment, or worse, not enough equipment to respond to a spill. Several experts expressed concern that Coast Guard officials are increasingly inexperienced in handling spill response, in part because the Coast Guard's mission has been increased to include homeland security initiatives.
- **Public interest:** Several experts with whom we spoke stated that the level of public attention placed on a spill creates pressure on parties to take action and can increase costs. They also noted that the level of public interest can increase the standards of cleanliness expected, which may increase removal costs.

Key Factors Will Likely Influence Cost of Gulf Coast Spill

The total costs of the *Deepwater Horizon* spill in the Gulf of Mexico are currently undetermined and will be unknown for some time even after the spill is fully contained. According to a press release from BP, as of June 7, 2010, the cost of the response amounted to about \$1.25 billion, which includes the spill response, containment, relief well drilling, grants to the Gulf states, damage claims paid and federal costs. Of the \$1.25 billion, approximately \$122 million (as of June 1, 2010) has been paid from the Fund for the response operation, according to NPFC officials.³³ The total

³³Of the \$122 million, \$4.2 million has been used to by the federal trustees to initiate natural resource damage assessments. Under 33 U.S.C. § 2702, the responsible party is liable for the removal costs and damages that result from an oil spill and thus will be responsible for reimbursing the Fund for these expenses.

costs will not likely be known for a while, as it can take many months or years to determine the full effect of a spill on natural resources and to determine the costs and extent of the natural resource damage. However, the spill has been described as the biggest U.S. offshore platform spill in 40 years, and possibly the most costly.

Our work for this testimony did not include a thorough evaluation of the factors affecting the current spill. However, some of the same key factors that have influenced the cost of 51 major oil spills we reviewed in 2007 will likely have an effect on the costs in the Gulf Coast spill. For example, the spill occurred in the spring in an area of the country—the Gulf Coast—that relies heavily on revenue from tourism and the commercial fishing industry. Spills that occur in proximity of tourist destinations like beaches can result in additional removal costs in order to expedite spill cleanup, or because there are stricter standards for cleanup, which increase the costs. In addition, according to an expert, the loss in revenue from suspended commercial and recreational fishing in the Gulf Coast states is currently estimated at \$144 million per year.³⁴ Another factor affecting spills' costs is the type of oil. The oil that continues to spill into the Gulf of Mexico is a light oil—specifically “light sweet crude” oil—that is toxic and can create long-term contamination of shorelines, and harm waterfowl and fur-bearing mammals. According to the U.S. Fish and Wildlife Service, many species of wildlife face grave risk from the spill, as well as 36 national wildlife refuges that may be affected. In recent testimony, the EPA Deputy Administrator described the *Deepwater Horizon* spill as a “massive and potentially unprecedented environmental disaster.”

The Fund Has Been Able to Cover Costs Not Paid by Responsible Parties, but Risks and Uncertainties Remain

To date, the Fund has been able to cover costs from major spills that responsible parties have not paid, but risks and uncertainties remain. We reported in 2007 that the current liability limits for certain vessel types, notably tank barges, may have been disproportionately low relative to costs associated with such spills. In addition, the Fund faced other potential risks to its viability, including ongoing claims from existing spills and the potential for a catastrophic oil spill. The current spill in the Gulf of Mexico could result in a significant strain on the Fund, which currently has a balance of about \$1.6 billion.

³⁴McKinney, Larry, *The Deepwater Horizon Oil Spill—Putting a Price on the Priceless*, Harte Research Institute for Gulf of Mexico Studies (Corpus Christi, Tex.: 2010).

Further Attention to Limits of Liability Is Needed

The Fund has been able to cover costs from major spills that responsible parties have not paid, but additional focus on limits of liability is warranted. Limits of liability are the amount, under certain circumstances, above which responsible parties are no longer financially liable for spill removal costs and damage claims, in the absence of gross negligence or willful misconduct, or the violation of an applicable federal safety, construction, or operating regulation.³⁵ If the responsible party's costs exceed the limit of liability, the responsible party can make a claim against the Fund for the amount above the limit. Major oil spills that exceed a vessel's limit of liability are infrequent, but their effect on the Fund can be significant. In our 2007 report, we reported that 10 of the 51 major oil spills that occurred from 1990 through 2006 resulted in limit-of-liability claims on the Fund.³⁶ These limit-of-liability claims totaled more than \$252 million and ranged from less than \$1 million to more than \$100 million. Limit-of-liability claims will continue to have a pronounced effect on the Fund. NPFC estimates that 74 percent of claims under adjudication that were outstanding as of January 2007 were for spills in which the limit of liability had been exceeded. The amount of these claims under adjudication was \$217 million.

In 2007, we identified two key areas in which further attention to these liability limits appeared warranted and made recommendations to the Commandant of the Coast Guard regarding both—the need to adjust limits periodically in the future to account for significant increases in inflation and the appropriateness of some current liability limits. Regarding the need to adjust liability limits to account for increases in inflation, we reported that the Fund was exposed to about \$39 million in liability claims for the 51 major spills from 1990 through 2006 that could have been saved if the limits of liability had been adjusted for inflation as required by law, and recommended adjusting limits of liability for vessels every 3 years to reflect significant changes in inflation, as appropriate.³⁷ Per requirements

³⁵See 33 U.S.C. § 2704 for a more complete discussion of the liability limits and exceptions.

³⁶Additional spills had costs in excess of the vessel's limit of liability, but either the limit was not upheld or no claim was filed by the responsible party.

³⁷OPA requires the President, who has delegated responsibility to the Coast Guard, through the Secretary of Homeland Security, to issue regulations not less often than every 3 years to adjust the limits of liability to reflect significant increases in the Consumer Price Index. Congress reiterated this requirement in the Coast Guard and Maritime Transportation Act of 2006 by requiring that regulations be issued 3 years after the enactment of the act (July 11, 2006) and every 3 years afterward to adjust the limits of liability to reflect significant increases in the Consumer Price Index.

in OPA as amended by the Delaware River Protection Act, the Coast Guard published an interim rule in July 2009—made final in January 2010—that adjusted vessels' limits of liability to reflect significant increases in the Consumer Price Index, noting that the inflation adjustments to the limits of liability are required by OPA to preserve the deterrent effect and polluter-pays principle embodied in the OPA liability provisions.³⁸ DOI has been delegated responsibility by the President to adjust the liability limits for offshore facilities and this responsibility has been redelegated by DOI to the Minerals Management Service.³⁹ To date, these liability limits have not been adjusted for inflation.

The Coast Guard and Maritime Transportation Act of 2006 significantly increased the limits of liability.⁴⁰ Both laws base the liability on a specified amount per gross ton of vessel volume, with different amounts for vessels that transport oil commodities (tankers and tank barges) than for vessels that carry oil as a fuel (such as cargo vessels, fishing vessels, and passenger ships). The 2006 act raised both the per-ton and the required minimum amounts, differentiating between vessels with a double hull, that helps prevent oil spills resulting from collision or grounding, and vessels without a double hull.⁴¹ For example, the liability limit for single-hull vessels larger than 3,000 gross tons was increased from the greater of \$1,200 per gross ton or \$10 million to the greater of \$3,000 per gross ton or \$22 million.

³⁸74 Fed. Reg. 31358, July 1, 2009.

³⁹Executive Order 12777, October 18, 1991, and *Department of the Interior Organization Manual*, Part 118, Chapter 1, Section 1.2, June 18, 2008.

⁴⁰Pub. L. No. 109-241, § 603, 120 Stat. 516, 554. Vessels' liability limits were raised again in 2009 by the Coast Guard to reflect significant increases in inflation, as required by OPA. However, the 2006 adjustment in liability limits, which increased an average of 125 percent for the 51 vessels involved in major oil spills, were substantially higher than the rise in inflation during the period.

⁴¹OPA requires that all tank vessels (greater than 5,000 gross tons) constructed (or that undergo major conversions) under contracts awarded after June 30, 1990, operating in U.S. navigable waters must have double hulls. Of the 51 major oil spills, all 24 major spills from tank vessels (tankers and tank barges) involved single-hull vessels.

However, our analysis of the 51 major spills showed that the average spill cost for some types of vessels, particularly tank barges, was higher than the limit of liability, including the new limits established in 2006.⁴² Thus, we recommended that the Commandant of the Coast Guard determine whether and how liability limits should be changed by vessel type, and make specific recommendations about these changes to Congress. In its August 2009 Annual Report to Congress on OPA liability limits, the Coast Guard had similar findings on the adequacy of some of the new limits.⁴³ The Coast Guard found that 51 spills or substantial threats of a spill have resulted or are likely to result in removal costs and damages that exceed the liability limits amended in 2006. Specifically, the Coast Guard reported that liability limits for tank barges and cargo vessels with substantial fuel oil may not sufficiently account for the historic costs incurred by spills from these vessel types. The Coast Guard concluded that increasing liability limits for tank barges and non tank vessels—cargo, freight, and fishing vessels—over 300 gross tons would increase the Fund balance. With regard to making specific adjustments, the Coast Guard said dividing costs equally between the responsible parties and the Fund was a reasonable standard to apply in determining the adequacy of liability limits.⁴⁴ However, the Coast Guard did not recommend explicit changes to achieve either that 50/50 standard or any other division of responsibility.

Other Challenges Could also Affect the Fund's Condition

The Fund also faces several other potential challenges that could affect its financial condition:

- *Additional claims could be made on spills that have already been cleaned up:* Natural resource damage claims can be made on the Fund for years after a spill has been cleaned up. The official natural resource damage assessment conducted by trustees can take years to complete,

⁴²The 15 tank barge spills and the 12 fishing/other vessel spills in our review had average costs greater than both the 1990 and 2006 limits of liability. For example, for tank barges, the average cost of \$23 million was higher than the average limit of liability of \$4.1 million under the 1990 limits and \$10.3 million under the new 2006 limits.

⁴³U.S. Coast Guard, *Oil Pollution Act Liability Limits: Annual Report to Congress, Fiscal Year 2009* (Aug. 18, 2009).

⁴⁴We did not assess the reasonableness of adopting such a standard in determining liability limits.

and once it is completed, claims can be submitted to the NPFC for up to 3 years thereafter.⁴⁵

- *Costs and claims may occur on spills from previously sunken vessels that discharge oil in the future:* Previously sunken vessels that are submerged and in threat of discharging oil represent an ongoing liability to the Fund. There are over 1000 sunken vessels that pose a threat of oil discharge.⁴⁶ These potential spills are particularly problematic because in many cases there is no viable responsible party that would be liable for removal costs. Therefore, the full cost burden of oil spilled from these vessels would likely be paid by the Fund.
- *Spills may occur without an identifiable source and, therefore, no responsible party:* Mystery spills also have a sustained effect on the Fund, because costs for spills without an identifiable source—and therefore no responsible party—may be paid out of the Fund. Although mystery spills are a concern, the total cost to the Fund from mystery spills was lower than the costs of known vessel spills in 2001 through 2004. Additionally, none of the 51 major oil spills was the result of discharge from an unknown source.
- *A catastrophic spill could strain the Fund's resources:* In 2007, we reported that since the 1989 *Exxon Valdez* spill, which was the impetus for authorizing the Fund's usage, no oil spill has come close to matching its costs—estimated at \$2.2 billion for cleanup costs alone, according to the vessel's owner.⁴⁷ However, as of early June, the response for the *Deepwater Horizon* spill had already totaled over \$1 billion, according to BP, and to date, the spill has not been fully contained. As a result, the Gulf of Mexico spill could easily eclipse the *Exxon Valdez*, becoming the most costly offshore spill in U.S. history.

⁴⁵33 U.S.C. § 2712(h)(2). Federal response costs for spills that resulted from hurricanes Katrina and Rita were paid from the Stafford Act Disaster Relief Funds. However, private parties can seek reimbursement from the Fund for cleanup costs and damages in the future. According to NPFC, as of June 2010, claims related to Katrina and Rita have been relatively minor.

⁴⁶Michel, J., D. Etkin, T. Gilbert, J. Waldron, C. Blocksidge, and R. Urban; 2005. *Potentially Polluting Wrecks in Marine Waters: An Issue Paper Prepared for the 2005 International Oil Spill Conference*.

⁴⁷The *Exxon Valdez* only discharged about 20 percent of the oil it was carrying. A catastrophic spill from a vessel could result in costs that exceed those of the *Exxon Valdez*, particularly if the entire contents of a tanker were released in a 'worst-case discharge' scenario.

The Fund is currently authorized to pay out a maximum of \$1 billion on a single spill for response costs, with up to \$500 million for natural resource damage claims. Although the Fund has been successful thus far in covering costs that responsible parties did not pay, it may not be sufficient to pay such costs for a spill—such as the *Deepwater Horizon*—that are likely to have catastrophic consequences. While BP has said it will pay all legitimate claims associated with the spill, should the company decide it will not or cannot pay for the costs exceeding their limit of liability, the Fund may have to bear these costs. Given the magnitude of the *Deepwater Horizon* spill, the costs could result in a significant strain on the Fund.

Options for Addressing the Fund's Vulnerabilities

Recently, several options have been identified to address the Fund's vulnerabilities. In particular, the Congressional Research Service (CRS)⁴⁸ has identified options to address the vulnerabilities, and Members of Congress have also introduced legislation that would address the risks to the Fund.⁴⁹ These options include:

- **Increasing liability limits.** CRS proposes raising the liability caps for vessels so that the responsible party would be required to pay a greater share of the costs before the Fund is used. In addition, S. 3305 proposes raising the liability limit for damage claims related to offshore facilities from \$75 million to \$10 billion.
- **Increasing the per-barrel tax.** CRS and congressional options include increasing the current per-barrel tax used to generate revenue for the Fund in order to raise the Fund's balance—H.R. 4213 proposes raising the tax from the current \$0.08 per barrel to \$0.34. According to CRS, this option would increase the likelihood that there is sufficient money available in the Fund if costs exceed the responsible party's liability limits.
- **Including oil owners as liable parties.** CRS suggests expanding the definition of liable parties to include the owner of the oil being transported by a vessel.

⁴⁸Congressional Research Service, *Oil Spills in U.S. Coastal Waters: Background, Governance, and Issues for Congress* (Washington, D.C.: 2010).

⁴⁹S. 3305, S. 3306, and H.R. 4213, 111th Cong. 2010.

In addition, the Administration announced a proposal on May 12, 2010, that addresses several aspects of the response to the *Deepwater Horizon* spill, primarily by changing the way the Fund operates. It includes, among other things, proposals to increase the statutory limitation on expenditures from the Fund for a single oil spill response from \$1 billion to \$1.5 billion for spill response and from \$500 million to \$750 million per spill for natural resource damage assessments and claims. In addition, similar to the CRS and congressional proposals, the Administration is proposing an increase on the per-barrel tax to \$0.09 this year, 7 years earlier than the current law requires.

Mr. Chairman, this concludes my statement. I would be pleased to respond to any questions you or other Members of the Subcommittee may have.

GAO Contact and Staff Acknowledgments

For questions about this statement, contact Susan Fleming at (202) 512-2834 or flemings@gao.gov. Individuals making key contributions to this testimony include Jeanette Franzel, Heather Halliwell, David Hooper, Hannah Laufe, Stephanie Purcell, Susan Ragland, Amy Rosewarne, Doris Yanger, and Susan Zimmerman.

Testimony of Kenneth R. Feinberg
Administrator, Gulf Coast Claims Facility

United States Senate
Committee on Homeland Security and Governmental Affairs
Subcommittee on Federal Financial Management

July 22, 2010

Mr. Chairman:

I thank this Subcommittee for the opportunity to testify concerning the design, implementation and administration of the new Gulf Coast Claims Facility, with a mandate to compensate all eligible claims arising out of the oil discharges from the Deepwater Horizon spill on April 20, 2010. I have been asked by both the Administration and BP to administer a totally independent Claims Facility, which will evaluate, process and decide any and all claims from individuals and businesses impacted by the spill. I have been assured by both the Department of Justice and BP that the Facility will be, in fact, totally independent.

As you know, \$20 billion has been set aside by BP in an escrow fund to pay all eligible claims that are submitted to the Claims Facility. Hopefully, this \$20 billion will be sufficient to pay such claims. If it is not, it is my understanding that BP has agreed to pay additional eligible claims as needed to assure full and fair compensation to all individuals and businesses that are found to be eligible for payment. The entire cost of the Gulf Coast Claims Facility will be borne by BP, without any cost to the taxpayers or the citizens of the Gulf region.

I am now in the process of establishing the Claims Facility and hope to complete this initial phase of my work within the next few weeks. In the meantime, credit is due BP for its initial efforts in establishing an emergency claims process that has already paid over \$200 million in emergency payments to the victims of the spill living in Alabama, Florida, Louisiana,

Mississippi and Texas. My job will be made much easier because of these preliminary efforts by BP. There are already in place 36 regional claims offices to handle claims, and over 1,500 individuals currently working to process such claims. I believe the claims process can be accelerated and made more efficient and transparent; but BP has provided an important beginning on which to build a more effective Claims Facility.

I anticipate a diverse number of claims: removal and clean up costs by individuals or businesses; claims for damages due to physical injury to real or personal property; lost profits and lost earning capacity; loss of subsistence use of natural resources; and claims for physical injury/death. All of these claims will be considered on their individual merits and decisions concerning both eligibility and the calculation of awards will be made promptly, with maximum efficiency. It should be noted, however, that I am not presently authorized to consider and resolve any government claims, whether they be filed by federal, state or local governments or government agencies. These claims currently remain outside the scope of the Gulf Coast Claims Facility and continue to remain within the province of BP itself.

I have already been coordinating with the staff of this Subcommittee on a variety of issues: eligibility, calculation of damages, proving the submitted claim and the transparency of claims data. I have benefited from this staff input and look forward to working with this Subcommittee as I move forward in administering the claims process.

This written testimony is merely a summary of the work in which I am currently engaged. I will be pleased and honored to answer any questions from the members of this distinguished Subcommittee.

Testimony

Before the Subcommittee on Federal Financial Management, Government Information, Federal
Services, and International Security
Committee on Homeland Security and Governmental Affairs
United States Senate
July 22, 2010

The Gulf of Mexico Oil Spill: Ensuring a Financially Responsible Recovery Part II

James T. Hackett, Chairman and Chief Executive Officer, Anadarko Petroleum Corporation

Chairman Carper and Ranking Member McCain, my name is Jim Hackett, and I serve as the Chairman and Chief Executive Officer of Anadarko Petroleum Corporation.

The events surrounding the Deepwater Horizon explosion represent an unprecedented environmental disaster and a terrible tragedy, especially in terms of the 11 men who lost their lives and the families they left behind. Sadly, it continues to have a tremendous impact on the livelihoods of so many Gulf Coast families and communities. And while last week's development with BP's capping of the well has brought guarded hope that the situation may soon be under control, we must continue to keep the people of the Gulf in our hearts and prayers until their nightmare is truly over and the environment and regional economy have recovered. I know that all the men and women of Anadarko, indeed those of all of the companies associated with this well, feel a profound sense of sorrow over this tragedy. We are truly sorry this spill has caused so much pain and anxiety for so many people.

We, along with others in the industry, will continue to support the response efforts of the Unified Area Command with technical expertise and specialized equipment. We will also make sure that any of the net revenue Anadarko might receive from any captured oil will be given to the people of the Gulf.

I am here today on behalf of Anadarko's forty-three hundred employees, the many thousand contractor personnel and the other stakeholders of our company. While Anadarko has worldwide interests, we are a U.S.-based company, providing much of the nation's energy needs. Our portfolio of assets encompasses significant positions in seven U.S. states and in nearly a dozen major U.S. onshore natural gas resource ventures, making us one of the nation's largest producers of natural gas. We are also one of the largest holders of leases in the deepwater Gulf of Mexico, and one of the Gulf's largest producers of natural gas. We are proud of the jobs we create, our track record of operational excellence, and our environmental and safety record, not just in the Gulf, but worldwide.

Anadarko is appearing before you because we are a non-operating investor in the Macondo well, holding a twenty-five percent interest in the underlying lease. The relationship between the well's operator and non-operating investors is governed by the terms of a Joint Operating Agreement, which was executed by BP, Anadarko, and MOEX 2007 Offshore LLC (MOEX),

which has a ten percent interest in the well and is also represented here today. BP, as owner of the sixty-five percent majority interest, is the exclusive operator of the well. Majority operating interests and minority non-operating interests are common in oil exploration, primarily because of the enormous investments required to find and develop these vital resources.

This Subcommittee is rightly concerned that American taxpayers not be on the hook for costs related to the Gulf of Mexico oil spill. We completely agree. We are committed to meeting our obligations under the Oil Pollution Act to prevent that from happening. And we have agreed, in a letter sent to the Department of Justice earlier this month, to provide advance notice of substantial transfers of cash or assets from our company that are outside the ordinary course of our business to make clear that we will take no unilateral action that might adversely affect our ability to meet these obligations.

As Administration officials have noted, it is the government's practice to obtain recovery from the primary responsible party, in this case BP, and leave the allocation of that payment to the parties involved. We are in agreement with that approach, and will work with all to ensure that the government and the people affected by this tragedy continue to be reimbursed. We appreciate BP's recognition of its central role, and its publicly oft-stated agreement to pay all legitimate claims, so that the taxpayers do not get hurt. We expect BP will continue to honor that commitment.

Under the Joint Operating Agreement signed by the three owners of the Macondo well, BP is, as the exclusive operator of the well, the sole decision maker with respect to all operations. The operator of a well determines the detailed planning and execution of the well, and is responsible for the day-to-day activities of, and decisions executed by, personnel on the rig. Consistent with standard industry practice around the world, non-operating investors rely upon the operator to make the appropriate decisions affecting all operations on the rig. I am sure you agree that it would be impractical to drill a well by committee, and this is one of the reasons a single party is designated by the others as the operator. The operations of the Macondo well were conducted in this fashion, with BP controlling all operating decisions. As non-operating investors, Anadarko's and MOEX's involvement was, by contract, limited to the receipt of operational updates, budget documents and drilling reports. These documents did not contain and, under industry standards, would not have contained, the detail necessary for an investor to analyze the bases of the operational decisions made by BP on a real-time basis. Also under the Joint Operating Agreement, no party is required to pay any costs or damages to the operator to the extent that they are incurred as a result of the operator's gross negligence or willful misconduct. This language is normally found in these kinds of agreements.

Of course, we are all still learning new facts about what caused this tragedy, and it may be too early to draw any definitive conclusions, but the facts disclosed so far are very disconcerting. Therefore, we have advised BP that, in light of the information that has been released to date regarding BP's operation of the well and the multiple ongoing investigations into the cause of the tragedy, we are deferring reimbursement to BP under the terms of the Joint Operating Agreement. At the appropriate time, we expect to have productive meetings with BP and MOEX, so that we may work towards a solution that addresses our concerns without resorting to litigation. Nonetheless, I want to assure you that any actions Anadarko may take under the

Agreement to protect its rights relative to BP's failures as operator in the drilling of the well shall in no way affect our commitment to meet our obligations under applicable laws.

While the ultimate liabilities among the various parties are sorted out, the focus must remain on securing the leak, restoring the environment, compensating victims, concluding investigations and making sure that all information is released, so that the various causes of this tragedy can be clearly identified, fixed and not repeated. We need to get the Gulf Coast and our industry back to work so as to prevent further economic distress. As the Administration and many in Congress have recognized, the Gulf of Mexico deep water production remains a crucial part of our nation's energy supply today and in the future, yet it must be safely produced. We appreciate what this subcommittee and the Congress are doing to help in all these efforts, and we pledge our continued cooperation as well. Thank you.

Mr. Naoki Ishii
President
MOEX Offshore 2007 LLC
Statement Prepared for the Hearing on
"The Gulf of Mexico Oil Spill: Ensuring a Financially Responsible Recovery
(Part II)"
Subcommittee on Federal Financial Management, Government Information,
Federal Services and International Security of the U.S. Senate Committee on
Homeland Security and Governmental Affairs
July 22, 2010

Chairman Carper, Ranking Member McCain, distinguished members of the Subcommittee, thank you for the opportunity to testify at today's hearing. I am Naoki Ishii, President of MOEX Offshore 2007 LLC ("Offshore"), based in Houston, Texas. Offshore holds a 10 percent minority non-operating interest in the Block 252 Mississippi Canyon lease on which the Deepwater Horizon rig was drilling.

We are deeply saddened by the tragedy of the Deepwater Horizon accident. Our thoughts and prayers go out to the families of those who were lost during the explosion and to all of those who have been affected by this spill. We understand the significance of this matter to the Gulf Coast and we will continue to cooperate with all of the parties who are responding to and investigating this accident.

Offshore is a non-operating minority investor in the Mississippi Canyon Block 252 lease. Our expertise lies in evaluating and investing in promising geologic formations for the production of oil and gas. We do not conduct actual field operations or activities to develop oil and gas. Drilling arrangements throughout the Gulf usually charge the operator of the project, BP in this case, with responsibility for all operational aspects of the project including selecting and managing contractors, planning and implementation, and making all engineering and design decisions, stopping the flow of oil in the event of a blowout, and otherwise responding to oil spills and managing the payment of claims that might arise in connection therewith.

When deciding to invest in the project, Offshore placed confidence in BP's expertise and experience in drilling deepwater wells in the Gulf. Offshore had no role in the selection or operation of the Deepwater Horizon rig. When Offshore made its investment in the project, the government approvals for the drilling plan were in place, and drilling operations had already commenced. As a minority non-operating investor, Offshore had no right or ability under the parties' contracts to alter the drilling plan, and further, Offshore was not aware of any reason to doubt the sufficiency or competency of the drilling plan.

During the drilling activities, BP provided us with some information regarding its progress and we monitored the project's costs consistent with our non-operating role. At no time did Offshore seek to influence any of BP's operational decisions. In addition, pursuant to the parties' contracts, Offshore had no right to control or direct the activities or operations which were being conducted.

Offshore has numerous concerns relating to the circumstances surrounding these extraordinary events and we are closely monitoring the ongoing investigations. In the interim, we have announced that we will relinquish all right, title, or interest that we might have to oil captured from the blown out well. It is our position that proceeds from the sale of the captured oil should go to assist those who have been affected by this tragic accident and to help restore the natural resources across the Gulf Coast.

Offshore looks forward to working in good faith with Congress, the Executive Branch, and with state and local governments to restore the Gulf Coast and to put the people of the Gulf region back to work.

I look forward to answering any questions you may have during this hearing. Thank you again for the opportunity to share our views.



**MMS/USCG RIG Inspection
Summary Report
Deepwater Horizon**

Type of Visit: (Select One)

 MMS USCG

MMS/USCG Inspector(s)

Eric Neal

Inspection Completion Date:

4-1-2010

Number of Components Inspected:
(Required only for MMS Production Inspections)

n/a

Number of MMS INCs / USCG 853s Issued:

None issued

Form Completed by:

Bo Votaw

Comments:

Eric Neal of the New Orleans District arrived on the rig at 08:37 hours. He reviewed the following documentation EPA/MMS check sheet, Revised APD, casing test, BOP function tests, BOP test charts, and IADC reports. Inspectors departed the rig at 11:06 leaving no INC's.

Confidential Treatment Requested by Transocean Holdings LLC

TRN-HCEC-00066722

CONFIDENTIAL

TRN-MDL-00108459

Prepared Statement

James W. Ferguson
Sr. Vice President and Deputy General Counsel
Halliburton

Before the

Subcommittee on Federal Financial Management, Government Information,
Federal Services, and International Security

Committee on Homeland Security and Governmental Affairs

U.S. Senate

June 16, 2010

Thank you for the opportunity to share Halliburton's perspective as you review "how much the Gulf of Mexico oil spill has cost—and may continue to cost—American taxpayers, and how the federal government will achieve reimbursement for any funds spent to respond to the spill."

Halliburton looks forward to continuing to work with the U.S. Congress, the Obama Administration, and the National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling to understand what happened and what we can collectively do in the future to ensure that oil and gas production in the United States is undertaken in the safest, most environmentally responsible manner.

The April 20th catastrophic blowout, explosions and fire on the Deepwater Horizon rig and the spread of oil in the Gulf of Mexico are tragic events for everyone. The deaths and injuries to personnel working in our industry cannot be forgotten. Halliburton extends its heartfelt sympathy to the families, friends and colleagues of the 11 people who lost their lives and those workers injured in the tragedy. Halliburton had four employees stationed on the rig at the time of the incident. We are grateful that they returned to shore safely. Each has and will continue to be made available to assist the investigative efforts underway, as will other members of our staff and management as required.

Background on Halliburton

As a global leader in oilfield services, Halliburton has been providing a variety of services to the oil and natural gas exploration and production industry for more than 90 years. Halliburton's areas of expertise are primarily in the upstream oil and gas industry. They include providing products and services for clients throughout the life cycle of the hydrocarbon reservoir—from locating

hydrocarbons and managing geological data, to directional drilling and formation evaluation, well construction and completion, to optimizing production through the life of the field. The company is also engaged in developing and providing technologies for carbon sequestration and in providing services to the geothermal energy industry.

With respect to the Mississippi Canyon 252 well, Halliburton was contracted by the well owner to perform a variety of services on the rig. These included cementing, mud logging, directional drilling, and measurement-while-drilling services. In addition, Halliburton provided selected real-time drilling and rig data acquisition and transmission services to key personnel both on board the Deepwater Horizon and at various onshore locations. Halliburton is confident that the cementing work on the Mississippi Canyon 252 well was completed in accordance with the specifications provided by the well owner pursuant to the requirements of its well construction plan.

Since the blowout, Halliburton has been working at the direction of the well owner to provide assistance in the effort to bring the well under control. This includes intervention support to help secure the damaged well and planning and services associated with drilling relief well operations. Halliburton has deployed survey management experts to assist in planning the path of the relief wells and has mobilized its technology group to work in collaboration with another industry partner to combine our technologies in an effort to develop an integrated ranging system to expedite the intersection of the original well.

Damages and Indemnification

To help you evaluate how the government will achieve reimbursement for funds spent in responding to the spill, we offer the following to help you better understand the issues that generally arise for work done on deepwater wells in the Gulf of Mexico. It is important to understand the structure of the oil and gas exploration and production business and in particular the roles and responsibilities of the various parties involved in drilling a deepwater well.

In the Gulf of Mexico, an oil company obtains from the federal government the rights to hydrocarbons that might be found and produced from reservoirs below the ocean floor. After meeting applicable regulatory requirements, the oil company (as the well owner) will then drill wells to search for and, where successful, extract oil and gas from beneath the seabed. To do that, the well owner will engage a drilling contractor and a number of other service and/or equipment companies for work on the well. The construction of a deepwater well is a complex operation involving the performance of numerous tasks by multiple parties led by the well owner's representative, who has the ultimate authority for decisions on how and when various activities are conducted.

Halliburton, as a service provider to the well owner, is contractually bound to comply with the well owner's instructions on all matters relating to the performance of all work-related activities. That

does not extend, however, to acts that would create an imminent safety hazard. Our employees are authorized to stop work in such a situation.

Over the years, certain industry practices have developed with respect to the allocation of potential liabilities that may arise from these operations. Since it is the well owner that is entering into agreements with the drilling contractor and with the various contractors and suppliers that will be working on the rig, the well owner will often establish a system of reciprocal indemnity obligations through those contracts, the effect of which is that each party will take responsibility for and hold the other parties harmless against liability to that party's own employees and property. Also, it is customary for the well owner to take responsibility for certain potentially catastrophic events, such as loss of control of the well, pollution emanating from the well, reservoir damage, and loss of production. Accordingly, the well owner assumes the obligation to indemnify the contractors for liability arising from such occurrences. Thus, in looking to ensure that the American public does not bear the cost of addressing the economic consequences of a spill, the federal government would be expected to seek recovery from the well owner. Our understanding is that this is accomplished through the functioning of the Oil Pollution Act of 1990.

Although we are not familiar with the terms of the well owner's contracts with the other contractors that worked on the Deepwater Horizon, we do know that the terms of the applicable Halliburton contract are consistent with this common liability allocation arrangement. Therefore, it appears that Halliburton is obligated to indemnify and hold the well owner and the other contractors harmless with respect to claims by our employees and with respect to loss or damage to our property and equipment. In like manner, the well owner and each of the other contractors (assuming their contracts have provisions similar to that of Halliburton's) are bound to hold Halliburton harmless against claims by their employees and for loss or damage to their property. Finally, the well owner has assumed the obligation to hold Halliburton, and other parties with similar terms in their contracts, harmless against the costs for controlling the well, as well as for cleanup of and damages caused by the associated oil pollution from the blowout.

Thank you for the opportunity to share our views.

bp

David C. Nagel

Executive Vice President
BP America Inc.

June 14, 2010

BP America Inc.
1101 New York Avenue, NW
Suite 700
Washington, DC 20005Direct (202) 457-6581
Main (202) 785-4888
Fax (202) 457-6597

Honorable Thomas R. Carper
Chairman
Subcommittee on Federal Financial
Management, Government Information,
Federal Services, and International Security
Committee on Homeland Security and
Governmental Affairs
United States Senate
Washington, D.C. 20510-6250

Re: Response to Your Correspondence Dated June 10, 2010, to Mr. Tony Hayward,
Chief Executive Officer of BP PLC

Dear Chairman Carper:

I am writing on behalf of BP America, Inc. ("BPA") in response to your June 10, 2010 letter to Mr. Tony Hayward of BP plc, in which you requested copies of invoices BPA had received from the federal government and information regarding BPA's plan for payment of those invoices.

In response to your request, we are producing the two invoices we have received to date. Both invoices are from the United States Coast Guard and seek reimbursement for federal funds expended or obligated in the response effort. The May 27, 2010 invoice requests payment of \$1,820,725.36. The June 2, 2010 invoice requests payment of \$69,090,958.57. [BP-HZN-SHS00000001-23]

Both invoices have been paid by BPA by wire transfer. The May 27, 2010 invoice was paid on June 1, 2010. The June 2, 2010 invoice was paid on June 11, 2010. Confirmations of those transfers are attached. [BP-HZN-SHS000000024-25]

If you have any questions please contact me or have your staff contact Liz Reicherts at (202) 457-6585.

Sincerely,

David Nagel

01-Jun-10	01-Jun-10	<p>495 Outgoing Money Xfr</p> <p>SAME DAY DR</p> <p>TRANSFERGID:LCT01521607700FED20100601B1Q8021C039124USER</p> <p>REF:C035765058000000REF:C035765058000000 CR BK</p> <p>ID:021030004CR BK:TREAS NYC/FUNDS TRANSFER</p> <p>DIVISIONDETAILS:OBO BP AMERICA PRODUCTION COBILL NO.</p> <p>NI0036-001-10BENEF:70060000UNITED STATES COAST</p> <p>GUARDINSTRUCT DATE:06/01/10 ADVICE TYPE:NONE</p> <p>Bank Ref:31015214391 Cust Ref:</p>	.00	1,820,725.36
-----------	-----------	---	-----	--------------

Confidential Treatment Requested

BP-HZN-SHS00000025

11-Jun-10	11-Jun-10	<p>495 Outgoing Money Xfr</p> <p>SAME DAY DR</p> <p>TRANSFERID:LC016216800FED20100611B1Q8021C017636USER</p> <p>REF:C035888935000000REF:C035888935000000 CR BK</p> <p>ID:021030004CR BK:TREAS NYC/FUNDS TRANSFER</p> <p>DIVISIONDETAILS:EXPLORATION AND PRODUCTIONFPNN10036</p> <p>002 10DEEPWATER HORIZONBPBENEF:70060000UNITED STATES</p> <p>COAST GUARDINSTRUCT DATE:06/11/10 ADVICE TYPE:NONE</p> <p>Bank Ref:31016215386 Cust Ref:</p>	.00	69,090,958.57
-----------	-----------	--	-----	---------------

Confidential Treatment Requested

BP-HZN-SHS0000024



DIRECTOR
NATIONAL POLLUTION FUNDS CENTER

US COAST GUARD STOP 7100
4200 WILSON BLVD STE 1000
ARLINGTON, VA 20508-7100
Staff Symbol: Cm
Phone: 202-493-8745
Toll-Free: 1-800-358-2897 Ext. 3-6745
FAX: 202-493-8896
Email: jonathan.a.abramson@uscg.mil

16480
June 2, 2010

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

BP Exploration & Production, Inc.
Attn: Mr. Dave Odermatt
200 Westlake Park Blvd.
Houston, TX 77079

BP Corporation North America, Inc.
501 Westlake Park Blvd.
Houston, TX 77079

Anadarko E&P Company, LP
P.O. Box 1330
Houston, TX 77251-1330

Anadarko Petroleum Corporation
P.O. Box 1330
Houston, TX 77251-1330

MOEX Offshore 2007 LLC
9 Greenway Plaza, Suite 1220
Houston, TX 77046

Transocean Holdings Incorporated
P.O. Box 2765
Houston, TX 77252-2765

QBE Underwriting, LTD
Lloyds Syndicate 1036
Attn: Messrs. Mendes & Mount
750 Seventh Avenue
New York, NY 10019-6829

RE: DEEPWATER HORIZON
FPN: N10036

Dear Sir or Madam:

On April 21, 2010, the Federal On-Scene Coordinator determined that the DEEPWATER HORIZON and undersea well at Mississippi canyon 252 discharged oil into the Gulf of Mexico. The U.S. Coast Guard initiated pollution removal actions and the Federal Government has obligated funds to respond to the incident. The Oil Pollution Act of 1990 (33 USC 2701 et seq.) provides that the Owner and/or Operator are responsible for the costs incurred. This is a demand for full payment. Enclosed is the second bill associated with this project. This bill represents obligated costs that were not previously billed and an explanation of those costs is enclosed. This bill is in addition to bill N10036-001-10, which was issued to you on May 27, 2010. The total amount now due to the Federal Government is \$70,911,683.93. This total includes \$0.00 of accrued interest. This is a demand for full payment of both bills. You can expect additional billings as other response costs are finalized.

Confidential Treatment Requested

BP-HZN-SHS00000014

Subj: DEEPWATER HORIZON

16480
June 2, 2010

If you do not pay in full, you will be charged for interest. Your unpaid debt will be referred to the Department of Justice for litigation or to the Department of Treasury, Debt Management Service, which will collect and charge you additional fees. See the enclosed explanation of rights, collection alternatives and the attendant fees that may be charged to you.

Liability for removal costs is in addition to other liabilities which may result from this incident, including, but not limited to, any damages or other removal costs or any civil or administrative penalties arising from the incident.


Payment should be made by check or money order payable to the U.S. Coast Guard.

Send your payment to: U.S. Coast Guard - Oil Pollution
RE: N10036
P.O. Box 70959
Charlotte NC 28272-0959

For wire or bank transfers, please refer to the attached Methods of Payment sheet.

If you have any questions regarding this debt on your rights in connection with this bill, you may contact me at the National Pollution Funds Center, 1-800-358-2897 ext. 3-6745. Your cost to close this matter will only increase over time. Please note the Federal Project Number (N10036) on all correspondence to insure proper credit to your account and a timely and accurate resolution of this matter.

Sincerely,



JONATHAN A. ABRAMSON
Case Officer
U.S. Coast Guard

Enclosure: (1) BILL # N10036-002-10
(2) Explanation of Costs
(3) Rights and Collections Alternatives

Keep this portion of the statement for your records. Return receipt at bottom with payment.

NATIONAL POLLUTION FUNDS CENTER
 Federal Project/Bill Number: N10036-002-10 Original Bill Date: ~~01 June 2010~~ JUN 2 2010
 Date of this Statement (if different): 01 June 2010
 TAX I.D. NUMBER 54-8010204

To: BP EXPLORATION & PRODUCTION INC
 200 WESTLAKE PARK BLVD
 HOUSTON TX 77079

UNITED STATES

DESCRIPTION	AMOUNT
FPN: N10036 This is a bill for U.S. Government costs. See second page for list of charges. This bill does not include, among other things, any other removal costs, damages, or any administrative or civil penalty which has been or may be assessed. Interest is charged on balances over 90 days past due. Interest rate is market-based and is subject to change pursuant to OPA §1005, 33 USC 2705; current rate is .27% per annum. The terms of this bill are controlling; no other terms affixed to any payment are acceptable.	
Principal Due	\$69,090,958.57
Accrued Interest	\$0.00
Total Due	\$69,090,958.57
This invoice reflects collections received to date totaling:	\$0.00

Send Payment To: U.S. COAST GUARD - Oil Pollution
 RE: FPN N10036-002-10
 P.O. Box 70959
 Charlotte, NC 28272-0959

Tear along perforation ...

Federal Project/Bill Number: N10036-002-10
 Case Officer: Abramson
 Your billing address (please pen-and-ink any errors or changes):

Billed on ~~01 June 2010~~
JUN 2 2010

BP EXPLORATION & PRODUCTION INC
 200 WESTLAKE PARK BLVD
 HOUSTON TX 77079

Amount Due as of 01 June 2010

\$69,090,958.57

UNITED STATES

Please send this remittance advice with your payment in the enclosed envelope. Make check payable to "U.S. Coast Guard" & write FPN N10036-002-10 on the check. To avoid additional late fees, we must receive payment by July 1, 2010

U.S. Coast Guard - Oil Pollution
 RE: FPN N10036-002-10
 P.O. Box 70959
 Charlotte, NC 28272-0959

Amount Paid
\$ _____

Confidential Treatment Requested

BP-HZN-SHS00000016

Agency	Ceiling	Billed Amount
DOI - MMS	\$3,000,000.00	\$2,250,000.00
DOI - USFWS	\$7,077,473.00	\$5,308,104.75
NOAA	\$9,119,027.00	\$6,839,270.25
USDA Wildlife	\$273,785.00	\$205,338.75
EPA Region 6	\$7,178,429.10	\$5,383,821.83
LA GOHSEP	\$1,250,000.00	\$937,500.00
DOI - NPS	\$2,025,000.00	\$1,518,750.00
LA - DOC	\$349,290.00	\$261,967.50
U.S. Customs & Border Patrol	\$2,250,000.00	\$1,687,500.00
LA Dept. Public Safety	\$1,500,000.00	\$1,125,000.00
LA Military Affairs	\$372,800.00	\$279,600.00
LA Dept. Natural Resources	\$541,822.00	\$406,366.50
LA Dept. of Wildlife & Fisheries	\$3,017,000.00	\$2,262,750.00
LA Dept. of Transportation	\$97,058.00	\$72,793.50
LA DEQ	\$767,364.00	\$575,523.00
NIOSH	\$325,000.00	\$243,750.00
LA Dept. of Health & Hospitals	\$692,427.00	\$519,320.25
LA Agriculture & Forestry	\$9,152.29	\$6,864.22
U.S. Dept. of Labor	\$500,818.12	\$375,613.59
Office of Coastal Protection & Restoration	\$353,600.00	\$265,200.00
U.S. Dept. of Agriculture	\$433,130.00	\$324,847.50
EPA Region 4	\$5,725,000.00	\$4,293,750.00
MS DEQ	\$50,000.00	\$37,500.00
AL EMA	\$150,000.00	\$112,500.00
MS State Port Authority (Gulfport)	\$200,000.00	\$150,000.00
NAVSUPSALV	\$3,500,000.00	\$2,625,000.00
National Guard Bureau (LA)	\$6,600,000.00	\$4,950,000.00
National Guard Bureau (MS)	\$1,062,097.78	\$796,573.34
National Guard Bureau (AL)	\$580,250.00	\$435,187.50
National Guard Bureau (FL)	\$18,500.00	\$13,875.00
National Guard Bureau	\$2,133,250.00	\$1,599,937.50
National Guard Bureau	\$130,000.00	\$97,500.00
National Guard Bureau	\$455,947.00	\$341,960.25
National Guard Bureau (FL)	\$14,961.00	\$11,220.75
National Guard Bureau (AL)	\$16,420.00	\$12,315.00
National Guard Bureau (LA)	\$7,914,114.00	\$5,935,585.50
National Guard Bureau (AL)	\$109,621.02	\$82,215.77
National Guard Bureau (MS)	\$437,700.00	\$328,275.00
National Guard Bureau (FL)	\$18,500.00	\$13,875.00
Army Air NG	\$90,000.00	\$67,500.00
LA Army NG	\$4,530,000.00	\$3,397,500.00
LA Army NG	\$2,900,832.00	\$2,175,624.00
LA Army NG	\$7,785,240.00	\$5,838,930.00
Army Air NG (LA)	\$166,830.00	\$125,122.50

Confidential Treatment Requested

BP-HZN-SHS00000017

Army Air NG (AL)	\$63,000.00	\$47,250.00
Army Air NG (MS)	\$370,950.00	\$278,212.50
Army Air NG (LA)	\$185,000.00	\$138,750.00
Mississippi Air NG	\$1,225,481.82	\$919,111.37
Alabama Air NG	\$1,968,492.00	\$1,476,369.00
Alabama Air NG	\$30,000.00	\$22,500.00
Alabama Air NG	\$5,000.00	\$3,750.00
Commander, HQ, USAF CAP	\$152,780.00	\$114,585.00
MS National Guard	\$45,000.00	\$33,750.00
Scott AFB - TRANSCOM	\$1,720,000.00	\$1,290,000.00
USARNorth, Ft. Sam Houston	\$208,392.00	\$156,294.00
Commander Navy Region Southeast	\$15,000.00	\$11,250.00
DOI - NMC (Repair NSFCC Equipment)	\$381,004.00	\$285,753.00
Naval Air Station Jacksonville	\$17,279.92	\$12,959.94
Naval Air Station Jacksonville	\$2,926.40	\$2,194.80
Naval Air Station Jacksonville	\$6,400.20	\$4,800.15
Navy Facility NAS Jacksonville	\$2,133.44	\$1,600.08
Total:	\$92,121,278.09	

TOTAL AMOUNT ON THIS INVOICE: \$69,090,958.57

Confidential Treatment Requested

BP-HZN-SHS00000018

METHODS OF PAYMENT
 TO PAY OIL SPILL CLEAN UP COST TO THE NATIONAL POLLUTION FUNDS CENTER

WIRE TRANSFER / BANK TRANSFER

1. SEND TO: Federal Reserve Bank, New York City, NY [via any U.S. bank]

Only U.S. banks can wire directly to the Federal Reserve Bank. Foreign banks cannot wire directly to the Federal Reserve Bank but must go through an intermediary U.S. bank. Foreign banks may send the wire transfer to the U.S. bank of their choice, who, in turn, forwards the wire transfer to the Federal Reserve Bank.

2. BENEFICIARY (B.N.F.): 70 06 0000
 The U.S. Treasury's Agency Location Code for the U.S. Coast Guard.

3. ABA #: 021030004 Treas NYC
 The Receiver's Financial Institution (FI) -- American Banking Association (ABA) Number (#) for the U.S. Coast Guard.

4. TYPE / SUBTYPE CODE: 10 00 (Type / Subtype Code is Mandatory.)

5. ORIGINATOR TO BENEFICIARY (O.B.I.): For description. *SWIFT CODE!*
 Cite the Bill Number(s) in the description. *FRNYUS33FX1*
(Foreign Transfer)

BY MAIL (BANK DRAFT OR CHECK)

PAYMENT SHOULD BE MADE PAYABLE TO: U.S. COAST GUARD

IF PAYMENT IS SENT BY MAIL, SEND TO:

BANK DRAFT ON FOREIGN BANK

U. S. Coast Guard
 Finance Center
 P.O. Box 4121
 Chesapeake, VA 23327-4121

BANK DRAFT ON U.S. BANK

U. S. Coast Guard-Oil Pollution
 RE: *FPN Bill Number*
 P. O. Box 70959
 Charlotte, NC 28272-0959

USCG/NPFC TAX ID (TIN): 54-6010204
 USCG/NPFC DUNS: 806754677

Methods of Payment

Rev. 1/19/2007

Confidential Treatment Requested

BP-HZN-SHS00000019

Explanation of Costs

"CG Equipment" Total cost of Coast Guard-owned equipment used during the removal action based on standard hourly rates published in Commandant Instruction 7310.1 (series). Standard rates typically include crew complement, fuel, maintenance, field operational support, administrative support and depreciation.

"CG Personnel" Total cost of Coast Guard personnel (both military and civilian employees), other than crew complements, used to conduct, direct and/or monitor the removal action or settle claims based on standard hourly rates published in Commandant instruction 7310.1 (series). Standard rates reflect average pay, allowances, government contribution to employee benefits (e.g. FICA, medical), training, change of station, and unfunded retirement costs. Actual costs of travel or per diem are not included - see "CG Travel".

"CG Personnel – Reserve" Total cost of Coast Guard Reserve personnel, other than crew complements, used to conduct, direct, and/or monitor removal actions or settle claims (similar to "CG Personnel" explained above). Coast Guard Reserve personnel frequently augment regular Coast Guard military and civilian in all facets of response operations especially on large and or long-term pollution incidents.

"TAD/IDY" Total cost of travel and per diem for Coast Guard personnel employed to conduct, direct and/or monitor the removal action or settle claims. Per diem (meals and lodging) rates are specified in the Joint Federal Travel Regulations but only actual lodging expenses are reimbursed. Travel costs are based on federal contract carrier rates on commercial aircraft or actual costs of rental cars, etc.

"CG Purchases" Total cost of purchases of materials or services by the Federal On-Scene Coordinator (FOSC) in support of the removal action or to settle claims. Actual costs without sales tax. Examples of typical purchases: replacement of damaged equipment or consumables, lodging and meals for CG personnel at the removal action (in lieu of per diem), transportation of CG equipment (GBL), film used to photograph the oil discharge and damage. Purchase Orders are prepared by a CG Contracting Officer.

"Marine Safety Lab" Total cost for oil samples tested by the CG Marine Safety Lab at Groton, CT to determine the source of a discharge. Costs are based on standard charges for each test and depend on the number of samples.

"EPA Personnel" Total cost of EPA personnel used to conduct, direct and/or monitor the removal action based on actual hourly salary and benefits costs.

"EPA Travel" Total cost of EPA travel to conduct, direct and/or monitor the removal action. Per diem (meals and lodging) rates are specified in the Joint Federal Travel Regulations but only actual lodging expenses are reimbursed. Travel costs are based on federal contract carrier rates on commercial aircraft or actual costs of rental cars, etc.

"EPA Indirect Costs" EPA's indirect costs consist of the administrative costs of EPA's Headquarters and Regional offices that provide administrative support to the rest of the Agency. Also included are depreciation costs as well as the costs of fringe benefits funded by the Office of Personnel Management. Also included are the Regional administrative support costs that are incurred on a regional level.

"EPA or CG Contract" Total costs for equipment, labor and materials used by a commercial cleanup contractor hired by the Federal On-Scene Coordinator (FOSC) for the removal action or to settle claims. Also, total costs of Technical Assist Team (TAT) or Superfund Technical Assist and Response Team (START) contract support based on rates approved by the EPA Contracting Official. Each EPA region has its own TAT/START contractor. The contractor's invoice is based on rates agreed to by the Contracting Officer. The FOSC certifies on each invoice that the work was performed and that it was consistent with the National Contingency Plan (NCP) 40 CFR 300.

"Site Specific IAG" (Inter-Agency Agreement) A financial instrument that provides funding to EPA FOSCs (Federal On-Scene Coordinators) for certain oil spill incidents. These financial agreements may be used for cases that involve: lengthy removal actions; large project ceilings; multiple agencies; complex contracting mechanisms; or some other condition that requires extra management attention.

Confidential Treatment Requested

BP-HZN-SHS0000020

"PRFA" (Pollution Removal Funding Authorization) An agreement and financial obligation by the Federal On-Scene Coordinator (FOSC) to reimburse another government agency (federal, state or local) for assistance during the removal action. The PRFA specifies which removal activities will be reimbursed and establishes a dollar limit. The agency that is subject to a PRFA becomes a "contractor" for the FOSC but may hire a commercial cleanup contractor to perform the actual work. Each reimbursement under a PRFA is a separate line item on the billing.

"Claim Paid" Payment made by the National Pollution Funds Center (NPFC) by type of claim and claimant. Types of claims: (A) natural resources, (B) real or personal property, (C) subsistence use, (D) revenues, (E) profits and earning capacity, (F) public services, or (G) removal costs. The Responsible Party (RP) is liable for damages resulting from the oil discharge or substantial threat of a discharge 33 USC 2702 and 2715. Example: Claim Paid (B) - ABC Resort Hotel, this is a property damage claim paid to ABC Resort Hotel for which the NPFC is seeking reimbursement from the RP.

"INRDA" (Initiate the Assessment of Natural Resource Damages) Payment made by the National Pollution Funds Center (NPFC) via an Inter-Agency Agreement (IAG) with a Federal Lead Administrative Trustee per Executive Order 12777 to initiate the assessment of natural resource damages. This funding is made available per Section 6002(b) of the Oil Pollution Act of 1990 and covers Pre-assessment Activities as outlined in 15 CFR 990, Subpart D.

Confidential Treatment Requested

BP-HZN-SHS00000021

RIGHTS, RESPONSIBILITIES, COSTS AND COLLECTION ALTERNATIVES

YOUR RIGHTS. You have the right to an explanation of the basis and nature of the debt, an accounting and how we calculated the debt.

If you would like to inspect the documents that form the basis of the debt, please request a copy from the Case Officer assigned to your case. Copies will be provided free of charge. The Case Officer's contact information can be found on the billing letter.

You may dispute the information in the documents, submit additional material for consideration and request that we review or reconsider the determination of the debt.

You may request a written repayment agreement in lieu of paying the entire balance of your debt at one time. Reconsideration for other than prompt full payment requires a review of your financial condition, including access to recent income tax returns. If funds are collected in excess of the debt, they will be promptly refunded to you, unless prohibited by law.

INSURANCE COVERAGE. If you have insurance coverage, contact your insurance agent to determine whether your policy covers any of the costs you are being billed.

BANKRUPTCY. If you file for bankruptcy, or if you were in bankruptcy at the time of the incident and an automatic stay is in effect, you are not subject to any offset during the stay. Please notify us of the stay by sending evidence about the bankruptcy proceedings.

JOINT INCOME TAX RETURN. If you file a joint income tax return, contact the Internal Revenue Service before filing your return to protect the share of your spouse's tax return refund, IRS Form 8379 is required.

INTEREST. Any balance not paid within 30 days of the original bill notice is a delinquent balance. A delinquent balance will subject you to additional charges for interest from the date of delinquency.

TREASURY DEPARTMENT DEBT MANAGEMENT SERVICE (DMS). We are required to refer debts that are delinquent for 180 days to the DMS for further collection. If the delinquent debt is referred to DMS for collection, additional fees will be added to the amount due. Those fees will vary based on whether DMS collects the debt directly or through a private collection agency. Debts may be referred to the Justice Department for collection by litigation at any time.

TREASURY OFFSET PROGRAM (TOP). In addition to the above fees, you may be charged a fee for tax offset or federal salary offset if collection is made through TOP. A separate fee is charged each time a collection is made. The U.S. Treasury is not required to send notice to debtors before it offsets payments.

ADMINISTRATIVE OFFSET. The DMS may collect your debt through administrative offset. DMS may withhold money owed to you by the United States Government. The offset includes:

- Income tax refunds
- Certain Social Security benefits
- Black Lung benefits
- Salaries of Federal employees (up to 15% of current net disposable pay per pay period). The debtor may request a hearing
- Retirement benefits, including Railroad, Federal and military benefits
- Vendor or contractor payments
- Travel reimbursements and advances

Confidential Treatment Requested

BP-HZN-SHS0000022

ADMINISTRATIVE WAGE GARNISHMENT (AWG). The DMS may also collect the debt through administrative wage garnishment (AWG) without a court hearing. The DMS may contact your employer and garnish a portion of your net disposable pay. If AWG is used in the collection of the debt, you may request a hearing to review the debt by notification to the agency on or before the 15th business day following the mailing of the administrative wage garnishment notice. The notification will stay the withholding order until the debtor has been provided the requested hearing. Failure to timely request a hearing by notification to the agency on or before the 15th business day following the mailing of the administrative wage garnishment notice will still entitle you to a hearing upon request, but will not delay the withholding order. 31 CFR § 285.11(f).

CONSUMER REPORTING AGENCIES. The debt may be reported to consumer reporting agencies. The information that may be disclosed to consumer reporting agencies includes the debtor's:

- Name and Address
- Social Security Number
- Taxpayer Identification Number
- Amount, Status, and History of the debt
- The Program under which the debt arose

DELINQUENT DEBTS ARE A BAR TO CERTAIN FEDERAL PROGRAMS. Debtors owing money to the U.S. Government are barred from obtaining federal loans, including student loans and FHA mortgages, federal loan insurance, federal grants, or federal guarantees.

PENALTIES FOR MAKING FALSE STATEMENTS. Information provided by you must represent all material facts and must be true to the best of your knowledge and belief. Misrepresentation of facts in this matter is subject to prosecution under Federal law, including but not limited to 18 USC § 1001, and 31 USC § 3729.

Confidential Treatment Requested

BP-HZN-SHS0000023



Director
National Pollution Funds Center

US COAST GUARD STOP 7100
4200 WILSON BLVD STE 1000
ARLINGTON VA 20598-7100
Staff Symbol: Cm
Phone: 202-493-6745
Toll-Free: 1-800-353-2897 Ext. 3-6745
FAX: 202-493-6896
Email: jonathan.a.abramson@uscg.mil

16480

~~May 19, 2010~~**MAY 27 2010**

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

BP Exploration & Production, Inc.
Attn: Mr. Dave Odermatt
200 Westlake Park Boulevard
Houston, TX 77079

BP Corporation North America, Inc.
501 Westlake Park Boulevard
Houston, TX 77079

Anadarko E&P Company, LP
PO Box 1330
Houston, TX 77251-1330

Anadarko Petroleum Corporation
P.O. Box 1330
Houston, TX 77251-1330

MOEX Offshore 2007 LLC
9 Greenway Plaza, Suite 1220
Houston, TX 77046

Transocean Holdings Incorporated
P.O. Box 2765
Houston, TX 77252-2765

QBE Underwriting, LTD
Lloyds Syndicate 1036
Attn: Msrs. Mendes and Mount Inc.
750 Seventh Avenue
New York, NY 10019-6829

RE: DEEPWATER HORIZON
FPN: N10036

Dear Sir or Madam:

On April 21, 2010, the Federal On-Scene Coordinator determined that the DEEPWATER HORIZON and the undersea well located at Mississippi Canyon 252 discharged oil into the Gulf of Mexico. The U.S. Coast Guard initiated pollution removal actions and the Federal Government has incurred and continues to incur costs. Under the Oil Pollution Act of 1990 (33 USC 2701 et seq.), responsible parties and guarantors are jointly and severally liable for the costs incurred.

Based on our currently available information, the National Pollution Funds Center (NPFC) has determined that each of you is jointly and severally liable for the costs incurred in this case as either a responsible party or a guarantor. A bill for these costs is attached to this letter as Enclosure 1. This letter constitutes demand for payment of the costs in Enclosure 1. As Enclosure 1 is an interim bill, it includes some, but not all of the removal costs for this response. Additional removal costs will be billed as the response continues to progress. Also, the removal costs in Enclosure 1

Confidential Treatment Requested

BP-HZN-SHS00000001

Subj: DEEPWATER HORIZON

16480
~~MAY 19 2010~~
MAY 27 2010

are separate from and in addition to any other type of liability that you may incur including, but not limited to, damages, fines, and penalties.

Payment should be made by check or money order payable to the U.S. Coast Guard. Please write the amount paid in the space indicated on the enclosed tear-off portion at the bottom of the invoice. Enclose this tear-off strip with your check, and mail in the enclosed windowed envelope.

Send your payment to: U.S. Coast Guard - Oil Pollution
RE: N10036
P.O. Box 70959
Charlotte NC 28272-0959

For wire or bank transfers, please refer to the attached Methods of Payment sheet.

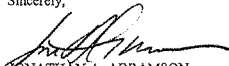
The Oil Pollution Act requires that any unpaid portion of the bill is subject to interest which will begin to accrue 30 days after the date of the bill. Any payments received after this date will be first applied to the interest and then to the principal.

Federal law requires that we forward unpaid debts to the Department of Justice for potential litigation or to the Department of Treasury's Debt Management Services (DMS) for collection. If this debt is not paid promptly, it will be processed for enforcement. I encourage you to read the "Explanation of Costs" (Enclosure 2) and "Rights and Collection Alternatives" (Enclosure 3). These enclosures explain in greater detail some issues that may have been raised by this letter.

The Internal Revenue Service requires that we collect your Tax Payer Identification Number as part of collection process. Form W-9 (Enclosure 4) is provided for this purpose. Please return this with any correspondence that you send us.

If you have any questions regarding this debt or your rights in connection with this bill, you may contact me at the National Pollution Funds Center, 1-800-358-2897 ext. 3-6745. Please note the Federal Project Number (N10036) on all correspondence to insure proper routing.

Sincerely,


JONATHAN A. ABRAMSON
Case Officer
U.S. Coast Guard

- Enclosure: (1) BILL # N10036-001-10
(2) Explanation of Costs
(3) Rights and Collections Alternatives
(4) IRS Form W-9

Explanation of Costs

"CG Equipment" Total cost of Coast Guard-owned equipment used during the removal action based on standard hourly rates published in Commandant Instruction 7310.1 (series). Standard rates typically include crew complement, fuel, maintenance, field operational support, administrative support and depreciation.

"CG Personnel" Total cost of Coast Guard personnel (both military and civilian employees), other than crew complements, used to conduct, direct and/or monitor the removal action or settle claims based on standard hourly rates published in Commandant instruction 7310.1 (series). Standard rates reflect average pay, allowances, government contribution to employee benefits (e.g. FICA, medical), training, change of station, and unfunded retirement costs. Actual costs of travel or per diem are not included - see "CG Travel".

"CG Personnel - Reserve" Total cost of Coast Guard Reserve personnel, other than crew complements, used to conduct, direct, and/or monitor removal actions or settle claims (similar to "CG Personnel" explained above). Coast Guard Reserve personnel frequently augment regular Coast Guard military and civilian in all facets of response operations especially on large and or long-term pollution incidents.

"TAD/TDY" Total cost of travel and per diem for Coast Guard personnel employed to conduct, direct and/or monitor the removal action or settle claims. Per diem (meals and lodging) rates are specified in the Joint Federal Travel Regulations but only actual lodging expenses are reimbursed. Travel costs are based on federal contract carrier rates on commercial aircraft or actual costs of rental cars, etc.

"CG Purchases" Total cost of purchases of materials or services by the Federal On-Scene Coordinator (FOSC) in support of the removal action or to settle claims. Actual costs without sales tax. Examples of typical purchases: replacement of damaged equipment or consumables, lodging and meals for CG personnel at the removal action (in lieu of per diem), transportation of CG equipment (GBL), film used to photograph the oil discharge and damage. Purchase Orders are prepared by a CG Contracting Officer.

"Marine Safety Lab" Total cost for oil samples tested by the CG Marine Safety Lab at Groton, CT to determine the source of a discharge. Costs are based on standard charges for each test and depend on the number of samples.

"EPA Personnel" Total cost of EPA personnel used to conduct, direct and/or monitor the removal action based on actual hourly salary and benefits costs.

"EPA Travel" Total cost of EPA travel to conduct, direct and/or monitor the removal action. Per diem (meals and lodging) rates are specified in the Joint Federal Travel Regulations but only actual lodging expenses are reimbursed. Travel costs are based on federal contract carrier rates on commercial aircraft or actual costs of rental cars, etc.

"EPA-Indirect Costs" EPA's indirect costs consist of the administrative costs of EPA's Headquarters and Regional offices that provide administrative support to the rest of the Agency. Also included are depreciation costs as well as the costs of fringe benefits funded by the Office of Personnel Management. Also included are the Regional administrative support costs that are incurred on a regional level.

"EPA or CG Contract" Total costs for equipment, labor and materials used by a commercial cleanup contractor hired by the Federal On-Scene Coordinator (FOSC) for the removal action or to settle claims. Also, total costs of Technical Assist Team (TAT) or Superfund Technical Assist and Response Team (START) contract support based on rates approved by the EPA Contracting Official. Each EPA region has its own TAT/START contractor. The contractor's invoice is based on rates agreed to by the Contracting Officer. The FOSC certifies on each invoice that the work was performed and that it was consistent with the National Contingency Plan (NCP) 40 CFR 300.

"Site Specific IAC" (Inter-Agency Agreement) A financial instrument that provides funding to EPA FOSCs (Federal On-Scene Coordinators) for certain oil spill incidents. These financial agreements may be used for cases that involve: lengthy removal actions; large project ceilings; multiple agencies; complex contracting mechanisms; or some other condition that requires extra management attention.

Confidential Treatment Requested

BP-HZN-SHS0000003

"PRFA" (Pollution Removal Funding Authorization) An agreement and financial obligation by the Federal On-Scene Coordinator (FOSC) to reimburse another government agency (federal, state or local) for assistance during the removal action. The PRFA specifies which removal activities will be reimbursed and establishes a dollar limit. The agency that is subject to a PRFA becomes a "contractor" for the FOSC but may hire a commercial cleanup contractor to perform the actual work. Each reimbursement under a PRFA is a separate line item on the billing.

"Claim Paid" Payment made by the National Pollution Funds Center (NPFC) by type of claim and claimant. Types of claims: (A) natural resources, (B) real or personal property, (C) subsistence use, (D) revenues, (E) profits and earning capacity, (F) public services, or (G) removal costs. A Responsible Party (RP) is liable for damages resulting from the oil discharge or substantial threat of a discharge 33 USC 2702 and 2715. Example: Claim Paid (B) - ABC Resort Hotel, this is a property damage claim paid to ABC Resort Hotel for which the NPFC is seeking reimbursement from an RP.

"INRDA" (Initiate the Assessment of Natural Resource Damages) Payment made by the National Pollution Funds Center (NPFC) via an Inter-Agency Agreement (IAG) with a Federal Lead Administrative Trustee per Executive Order 12777 to initiate the assessment of natural resource damages. This funding is made available per Section 6062(b) of the Oil Pollution Act of 1990 and covers Pre-assessment Activities as outlined in 15 CFR 990, Subpart D.

Confidential Treatment Requested

BP-HZN-SHS00000004

RIGHTS, RESPONSIBILITIES, COSTS AND COLLECTION ALTERNATIVES

YOUR RIGHTS. You have the right to an explanation of the basis and nature of the debt, an accounting and how we calculated the debt.

If you would like to inspect the documents that form the basis of the debt, please request a copy from the Case Officer assigned to your case. Copies will be provided free of charge. The Case Officer's contact information can be found on the billing letter.

You may dispute the information in the documents, submit additional material for consideration and request that we review or reconsider the determination of the debt.

You may request a written repayment agreement in lieu of paying the entire balance of your debt at one time. Reconsideration for other than prompt full payment requires a review of your financial condition, including access to recent income tax returns. If funds are collected in excess of the debt, they will be promptly refunded to you, unless prohibited by law.

INSURANCE COVERAGE. If you have insurance coverage, contact your insurance agent to determine whether your policy covers any of the costs you are being billed.

BANKRUPTCY. If you file for bankruptcy, or if you were in bankruptcy at the time of the incident and an automatic stay is in effect, you are not subject to any offset during the stay. Please notify us of the stay by sending evidence about the bankruptcy proceedings.

JOINT INCOME TAX RETURN. If you file a joint income tax return, contact the Internal Revenue Service before filing your return to protect the share of your spouse's tax return refund, IRS Form 8379 is required.

INTEREST. Any balance not paid within 30 days of the original bill notice is a delinquent balance. A delinquent balance will subject you to additional charges for interest from the date of delinquency.

TREASURY DEPARTMENT DEBT MANAGEMENT SERVICE (DMS). We are required to refer debts that are delinquent for 180 days to the DMS for further collection. If the delinquent debt is referred to DMS for collection, additional fees will be added to the amount due. Those fees will vary based on whether DMS collects the debt directly or through a private collection agency. Debts may be referred to the Justice Department for collection by litigation at any time.

TREASURY OFFSET PROGRAM (TOP). In addition to the above fees, you may be charged a fee for tax offset or federal salary offset if collection is made through TOP. A separate fee is charged each time a collection is made. The U.S. Treasury is not required to send notice to debtors before it offsets payments.

ADMINISTRATIVE OFFSET. The DMS may collect your debt through administrative offset. DMS may withhold money owed to you by the United States Government. The offset includes:

- Income tax refunds
- Certain Social Security benefits
- Black Lung benefits
- Salaries of Federal employees (up to 15% of current net disposable pay per pay period). The debtor may request a hearing
- Retirement benefits, including Railroad, Federal and military benefits
- Vendor or contractor payments
- Travel reimbursements and advances

Confidential Treatment Requested

BP-HZN-SHS0000005

ADMINISTRATIVE WAGE GARNISHMENT (AWG). The DMS may also collect the debt through administrative wage garnishment (AWG) without a court hearing. The DMS may contact your employer and garnish a portion of your net disposable pay. If AWG is used in the collection of the debt, you may request a hearing to review the debt by notification to the agency on or before the 15th business day following the mailing of the administrative wage garnishment notice. The notification will stay the withholding order until the debtor has been provided the requested hearing. Failure to timely request a hearing by notification to the agency on or before the 15th business day following the mailing of the administrative wage garnishment notice will still entitle you to a hearing upon request, but will not delay the withholding order. 31 CFR § 285.11(f).

CONSUMER REPORTING AGENCIES. The debt may be reported to consumer reporting agencies. The information that may be disclosed to consumer reporting agencies includes the debtor's:

- Name and Address
- Social Security Number
- Taxpayer Identification Number
- Amount, Status, and History of the debt
- The Program under which the debt arose

DELINQUENT DEBTS ARE A BAR TO CERTAIN FEDERAL PROGRAMS. Debtors owing money to the U.S. Government are barred from obtaining federal loans, including student loans and FHA mortgages, federal loan insurance, federal grants, or federal guarantees.

PENALTIES FOR MAKING FALSE STATEMENTS. Information provided by you must represent all material facts and must be true to the best of your knowledge and belief. Misrepresentation of facts in this matter is subject to prosecution under Federal law, including but not limited to 18 USC § 1001, and 31 USC § 3729.

Confidential Treatment Requested

BP-HZN-SHS0000006

W-9 Request for Taxpayer Identification Number and Certification

Name (as shown on your income tax return)
Business name, if different from above
Check appropriate box: Individual/Sole proprietor, Corporation, Partnership, Other
Address (number, street, and apt. or suite no.)
City, state, and ZIP code
List account number(s) here (optional)

Part I Taxpayer Identification Number (TIN)
Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding.
Social security number
Employer identification number

Part II Certification
Under penalties of perjury, I certify that:
1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. person (including a U.S. resident alien).

Sign Here
Signature of U.S. person
Date

Purpose of Form
A person who is required to file an information return with the IRS, must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.
U.S. person. Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:
1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee.
Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

• The U.S. grantor or other owner of a grantor trust and not the trust, and

• The U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

Foreign person. If you are a foreign person, do not use Form W-9. Instead, use the appropriate Form W-8 (see Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities).

Nonresident alien who becomes a resident alien.

Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the recipient has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items:

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

Example. Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity not subject to backup withholding, give the requester the appropriate completed Form W-8.

What is backup withholding? Persons making certain payments to you must under certain conditions withhold and pay to the IRS 28% of such payments (after December 31, 2002). This is called "backup withholding." Payments that may be subject to backup withholding include interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

Payments you receive will be subject to backup withholding if:

1. You do not furnish your TIN to the requester,
2. You do not certify your TIN when required (see the Part II instructions on page 4 for details),

3. The IRS tells the requester that you furnished an incorrect TIN.

4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or

5. You do not certify to the requester that you are not subject to backup withholding under 4. above (for reportable interest and dividend accounts opened after 1999 only).

Certain payees and payments are exempt from backup withholding. See the instructions below and the separate instructions for the Requester of Form W-9.

Also see *Special rules regarding partnerships* on page 1.

Penalties

Failure to furnish TIN. If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

Civil penalty for false information with respect to withholding. If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

Criminal penalty for falsifying information. Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

Misuse of TINs. If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

Specific Instructions

Name

If you are an individual, you must generally enter the name shown on your income tax return. However, if you have changed your last name, for instance, due to marriage without informing the Social Security Administration of the name change, enter your first name, the last name shown on your social security card, and your new last name.

If the account is in joint names, list first, and then circle, the name of the person or entity whose number you entered in Part I of the form.

Sole proprietor. Enter your individual name as shown on your income tax return on the "Name" line. You may enter your business, trade, or "doing business as (DBA)" name on the "Business name" line.

Limited liability company (LLC). If you are a single-member LLC (including a foreign LLC with a domestic owner) that is disregarded as an entity separate from its owner under Treasury regulations section 301.7701-3, enter the owner's name on the "Name" line. Enter the LLC's name on the "Business name" line. Check the appropriate box for your filing status (sole proprietor, corporation, etc.), then check the box for "Other" and enter "LLC" in the space provided.

Other entities. Enter your business name as shown on required federal tax documents on the "Name" line. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on the "Business name" line. Note: You are requested to check the appropriate box for your status (individual/sole proprietor, corporation, etc.).

Exempt From Backup Withholding

If you are exempt, enter your name as described above and check the appropriate box for your status, then check the "Exempt from backup withholding" box in the line following the business name, sign and date the form.

Confidential Treatment Requested

BP-HZN-SHS0000008

Generally, individuals (including sole proprietors) are not exempt from backup withholding. Corporations are exempt from backup withholding for certain payments, such as interest and dividends.

Note. If you are exempt from backup withholding, you should still complete this form to avoid possible erroneous backup withholding.

Exempt payees. Backup withholding is not required on any payments made to the following payees:

1. An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2),
2. The United States or any of its agencies or instrumentalities,
3. A state, the District of Columbia, a possession of the United States, or any of their political subdivisions or instrumentalities,
4. A foreign government or any of its political subdivisions, agencies, or instrumentalities, or
5. An international organization or any of its agencies or instrumentalities.

Other payees that may be exempt from backup withholding include:

6. A corporation,
7. A foreign central bank of issue,
8. A dealer in securities or commodities required to register in the United States, the District of Columbia, or a possession of the United States,
9. A futures commission merchant registered with the Commodity Futures Trading Commission,
10. A real estate investment trust,
11. An entity registered at all times during the tax year under the Investment Company Act of 1940,
12. A common trust fund operated by a bank under section 584(a),
13. A financial institution,
14. A middleman known in the investment community as a nominee or custodian, or
15. A trust exempt from tax under section 664 or described in section 4947.

The chart below shows types of payments that may be exempt from backup withholding. The chart applies to the exempt recipients listed above, 1 through 15.

IF the payment is for . . .	THEN the payment is exempt for . . .
Interest and dividend payments	All exempt recipients except for 9
Broker transactions	Exempt recipients 1 through 13. Also, a person registered under the Investment Advisers Act of 1940 who regularly acts as a broker
Barter exchange transactions and patronage dividends	Exempt recipients 1 through 5
Payments over \$500 required to be reported and direct sales over \$5,000 ¹	Generally, exempt recipients 1 through 7

¹See Form 1099-MISC, Miscellaneous Income, and its instructions.

²However, the following payments made to a corporation (including gross proceeds paid to an attorney under section 6045b), even if the attorney is a corporation and reportable on Form 1099-MISC, are not exempt from backup withholding: medical and health care payments, attorney's fees, and payments for services paid by a federal executive agency.

Part I. Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see *How to get a TIN* below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN. However, the IRS prefers that you use your SSN.

If you are a single-owner LLC that is disregarded as an entity separate from its owner (see *Limited liability company (LLC)* on page 2), enter your SSN (or EIN, if you have one). If the LLC is a corporation, partnership, etc., enter the entity's EIN.

Note. See the chart on page 4 for further clarification of name and TIN combinations.

How to get a TIN. If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local Social Security Administration office or get this form online at www.socialsecurity.gov. You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at www.irs.gov/businesses and clicking on Employer ID Numbers under Related Topics. You can get Forms W-7 and SS-4 from the IRS by visiting www.irs.gov or by calling 1-800-TAX-FORM (1-800-829-3676).

If you are asked to complete Form W-9 but do not have a TIN, write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

Note. Writing "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

Caution: A disregarded domestic entity that has a foreign owner must use the appropriate Form W-8.

Confidential Treatment Requested

BP-HZN-SHS00000009

Part II. Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if items 1, 4, and 5 below indicate otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). Exempt recipients, see *Exempt From Backup Withholding* on page 2.

Signature requirements. Complete the certification as indicated in 1 through 5 below.

1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983. You must give your correct TIN, but you do not have to sign the certification.

2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983. You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

3. Real estate transactions. You must sign the certification. You may cross out item 2 of the certification.

4. Other payments. You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions. You must give your correct TIN, but you do not have to sign the certification.

What Name and Number To Give the Requester

For this type of account	Give name and SSN or:
1. Individual	The individual
2. Two or more individuals (joint account)	The actual owner of the account or, if combined funds, the first individual on the account ¹
3. Custodian account of a minor (Uniform Gift to Minors Act)	The minor ²
4. a. The usual irrevocable savings trust (grantor is also trustee)	The grantor-trustee ¹
b. So-called trust account that is not a legal or valid trust under state law	The actual owner ¹
5. Sole proprietorship or single-owner LLC	The owner ³
For this type of account	Give name and EIN or:
6. Sole proprietorship or single-owner LLC	The owner ³
7. A valid trust, estate, or pension trust	Legal entity ⁴
8. Corporate or LLC electing corporate status on Form 9552	The corporation
9. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
10. Partnership or multi-member LLC	The partnership
11. A broker or registered nominee	The broker or nominee
12. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity

¹List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

²Circle the minor's name and furnish the minor's SSN.

³You must show your individual name and you may also enter your business or "DBA" name on the second name line. You may use either your SSN or EIN if you have one. If you are a sole proprietor, IRS encourages you to use your SSN.

⁴List first and circle the name of the legal trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.) Also see Special rules regarding partnerships on page 1.

Note. If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons who must file information returns with the IRS to report interest, dividends, and certain other income paid to you, mortgage interest you paid, the acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA, or Archer MSA or HSA. The IRS uses the numbers for identification purposes and to help verify the accuracy of your tax return. The IRS may also provide this information to the Department of Justice for civil and criminal litigation, and to cities, states, the District of Columbia, and U.S. possessions to carry out their tax laws. We may also disclose this information to other countries under a tax treaty, to federal and state agencies to enforce federal nontax criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism.

You must provide your TIN whether or not you are required to file a tax return. Payers must generally withhold 28% of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to a payer. Certain penalties may also apply.

Confidential Treatment Requested

BP-HZN-SHS00000010

**MEMORANDUM**

June 14, 2010

To: Senate Committee on Homeland Security and Governmental Affairs
Attention: John Collins, Alice Joe

From: Robert Meltz
Legislative Attorney
7-7891
Jonathan Ramseur
Specialist in Environmental Policy
7-7919
Carol Pettit
Legislative Attorney
7-9496

Subject: **Questions Regarding Liability Under the Oil Pollution Act and the Oil Spill Liability Trust Fund**

This memorandum responds to various questions posed to CRS by Chairman Carper and Ranking Minority Member McCain of the Subcommittee on Federal Financial Management, Government Information, Federal Services, and International Security, Senate Committee on Homeland Security and Governmental Affairs. It is our understanding that CRS' answers will be part of the subcommittee's preparations for a June 17, 2010 hearing titled "Gulf of Mexico Oil Spill: Ensuring a Financially Responsible Recovery."

Your questions, some paraphrased, are indicated below in boldface. For purposes of this memorandum, it is assumed that BP Exploration & Production Inc. (BP), the lessee of the Outer Continental Shelf (OCS) area in the Gulf of Mexico where the Deepwater Horizon oil spill is occurring, is a "responsible party" under the Oil Pollution Act (OPA).

1. Under current law, could BP seek federal reimbursement for any damages claims it pays over the Oil Pollution Act's \$75 million cap for damages liability resulting from an oil spill at an offshore facility?

OPA section 1008(a)¹ makes clear that the answer is yes: BP may seek reimbursement from the Oil Spill Liability Trust Fund for damages BP pays over the \$75 million liability cap,² up to the \$1 billion per incident available from the Fund.³ Section 1008(a) states that –

¹ 33 U.S.C. § 2708(a).

² OPA § 1004(a)(3); 33 U.S.C. § 2704(a)(3).

[T]he responsible party for a ... facility from which oil is discharged ... may assert a claim for removal costs and damages under section 1013 [that is, against the Oil Spill Liability Trust Fund] only if the responsible party demonstrates that ... the responsible party is entitled to a limitation of liability under section 1004.

The foregoing assumes that none of the OPA exemptions that eliminate the \$75 million damages cap will be found to apply. OPA § 1004(c).⁴

2. BP has promised not to seek reimbursement from the federal government for claims that it pays over the \$75 million damages liability cap. What, if any, legal status do these promises have?

It would appear unlikely that BP's statements not to seek federal reimbursement for payments it makes above the cap (again, assuming the cap applies) would be viewed by a court as binding. As far as CRS is aware, none of the traditional elements of contract formation—mutual assent (offer and acceptance) and consideration⁵—exist between BP and the United States: that is, no bargain was struck by BP with the federal government in which BP asserted it would not seek reimbursement from the United States above the cap in return for the United States promising to act, or not act, in a certain way. Of course, BP's statements may be self-enforcing in the event that the Oil Spill Liability Trust Fund reaches its per-incident cap on payment of claims before BP changes its mind and seeks reimbursement (perhaps an unlikely scenario if BP is paying all claims). As noted under question 11, claims submitted to the fund are processed in the order received.

However, in a related vein, BP's statement that it will reimburse "legitimate" claims above the cap conceivably may be enforceable by entities reasonably relying thereon under the contract law doctrine of promissory estoppel. Again, as far as CRS knows, not all the traditional elements of contract formation are present: no bargain was struck by BP in which BP undertook to pay claims above the OPA liability cap in return for another party taking some action, or forbearing to act, in a certain way. Notwithstanding the absence of a bargain, the common law recognizes that an enforceable contract may still be formed through promissory estoppel. According to the Restatement (Second) of Contracts section 90(1), promissory estoppel may be applicable when four elements are present: (1) a promise, (2) which the promisor should reasonably expect to induce action or forbearance on the part of the promisee or third person, (3) which does in fact induce such action or forbearance, and (4) injustice can be avoided only by enforcement of the promise. The extent to which BP's statements as to reimbursement satisfy these elements would be evaluated by a court under state law.

Seemingly, promissory estoppel applies only to damages that are incurred *in reliance on* the promisor's statement, rather than damages that would have occurred *in any event*. For example, a Gulf of Mexico coastal town might choose to provide spill-related public services (e.g., financial assistance to families for income lost as a result of the spill) at a time well after the spill began when total disbursements from the Oil Spill Liability Trust Fund were nearing, or past, the Fund's statutory limit on disbursements per incident. The town might reason that it would not provide such services without the strong prospect of reimbursement, and that even if the Fund is no longer available, the town could rely on BP's reimbursement statement. If, following the town's expenditures and presentation of its claim therefor to

(...continued)

³ 26 U.S.C. § 9509(c)(2)(A).

⁴ 33 U.S.C. § 2704(c).

⁵ See generally Restatement (Second) of Contracts.

BP, the company refused to honor its undertaking to pay this “legitimate” claim,⁶ the town might have a viable promissory estoppel claim against BP for reimbursement. In contrast, spill-related harm to natural resources, real or personal property, or earnings capacity would seem to have been incurred regardless of the harmed party’s expectations of reimbursement, and so would not be recoverable through promissory estoppel.

There are a few cautions that should be noted as to promissory estoppel. For one thing, it is a doctrine of equity and thus is subject to wide judicial discretion in its application. This is particularly likely to be true as to element (4) above, requiring that “injustice” can be avoided only by enforcement of the promise. For another thing, there is an issue whether BP’s reimbursement statement is a promise or merely a statement of intent (the reason we have thus far not characterized BP’s statement as a “promise”).⁷ A statement of intent falling short of a promise is insufficient to base a promissory estoppel claim.⁸ Language can be found in BP’s May 16, 2010 letter to Secretaries Napolitano and Salazar to support *both* the promise and mere-statement-of-intent arguments.

3: If BP is purchased by another entity or liquidates through bankruptcy, how might this affect the statutory liability or fiduciary promises made by BP?

If BP were to be purchased by another entity, the effect on its liabilities would depend in large part on how the sale was structured. Generally, if a corporation itself is sold, the liabilities, both known and unknown, transfer along with the assets. If, however, only the assets are sold, the liabilities do not transfer except to the extent that the buyer agrees to purchase assets subject to specific liabilities. In a non-bankruptcy context, assets might be purchased subject to the liabilities the assets secured simply as a matter of convenience and cost savings—there would be no need to clear purchase money liens before transferring assets and the buyer might save money by not having to initiate financing to purchase the asset. In bankruptcy, with the court’s permission, assets often may be purchased free and clear of any third party’s interest in the property.⁹

In bankruptcy, to the extent they were considered prepetition obligations,¹⁰ BP’s statutory liabilities would generally be considered nonpriority,¹¹ unsecured claims, which could be shed in whole or in part. Any legal liabilities that were the result of BP’s fiduciary promises would probably also be treated as nonpriority, unsecured claims. Such claims are frequently referred to as discharged in bankruptcy even though, technically, discharge in chapter 7 of the Bankruptcy Code¹²—the chapter dealing with

⁶ BP’s letter of May 16, 2010 to Secretaries Napolitano and Salazar implies that the company views “legitimate” claims to include those covered by OPA section 1002. Section 1002 asserts “net costs of providing increased or additional public services,” such as the hypothetical public service in the text, as an OPA-covered category of damages. Thus, our fictional town could have reasonably concluded that its spill-related public service was within the scope of BP’s reimbursement statement.

⁷ Restatement (Second) of Contracts § 2(1) defines a “promise” as “a manifestation of intention to act ... in a specified way, so made as to justify a promisee in understanding that a commitment has been made.”

⁸ As noted by one court, “[a]lthough it is recognized that no special form of words is necessary to create a promise, the mere expression of an intention is not a promise.” *Security Bank & Trust Co. v. Bogard*, 494 N.E.2d 965, 968-969 (Ind. App. 1986). See generally Williston on Contracts § 114 (4th ed.) (“A promise must also be distinguished from a mere statement of intention.”).

⁹ See 11 U.S.C. § 363(f). For examples of such sales, review the recent sales of assets in the bankruptcies of both General Motors Corporation and Chrysler, LLC.

¹⁰ Debtors may receive greater relief from claims that are considered prepetition obligations than from those that are considered postpetition claims. Postpetition claims generally are considered administrative expenses and are priority claims under 11 U.S.C. § 507.

¹¹ See 11 U.S.C. § 507 for the list of priority claims and expenses.

¹² 11 U.S.C. §§ 7701 *et seq.*

liquidation of the debtor rather than reorganization—is not available to debtors who are not individuals.¹³ Nonetheless, since a corporate debtor ceases to exist after liquidation, the effect of a chapter 7 liquidation is that the debtor is no longer liable for any debts that remain after all assets are distributed. In a chapter 7 liquidation, nonpriority, unsecured liabilities would be paid only if assets remained after all secured claims and all priority claims had been paid in full. In that case, the remaining unsecured claims would be paid on a pro rata basis, apportioning the remaining assets among all remaining unsecured creditors.

If BP were to file for reorganization under chapter 11,¹⁴ it would have the opportunity to negotiate with creditors and propose a plan of reorganization. Generally, for a chapter 11 reorganization plan to be confirmed, each class of creditors must have accepted the plan if it will not receive the full value of its claims.¹⁵ However, if all other requirements¹⁶ have been met, the court may confirm the plan without unanimous consent so long as at least one impaired class has accepted the plan and the court determines that the plan does not discriminate unfairly and is fair and equitable to those impaired classes that have not accepted the plan.¹⁷

If BP were to file for bankruptcy under either chapter 7 or chapter 11, it may be able to use section 365 to reject the unexpired lease for the Deepwater Horizon drilling site. By doing so, it could guard against the possibility of any postpetition expenses since damages for breaking the lease would be considered prepetition claims.

While most of BP's liabilities would be dischargeable in a chapter 11 bankruptcy if they are considered prepetition claims, there is at least one potential liability that would not be dischargeable. If a fine were imposed on BP by the federal government or any governmental unit, it would not be dischargeable in bankruptcy so long as it was not compensation for any actual pecuniary loss.¹⁸ In a chapter 11 reorganization where the debtor survives the reorganization, a nondischargeable debt would live on as a liability to the company. Another possible debt that would be nondischargeable is a debt for "willful and malicious injury by the debtor to another entity or to the property of another entity."¹⁹ However, since "willful and malicious" is a standard beyond simple negligence, such a debt appears to be improbable based on currently available information.

4. What ability does the federal government have to enforce BP's statements that it will pay for federal response costs?

The federal government would have no need to invoke any representations by BP that BP will reimburse for governmental response costs, if BP is found to be a "responsible party" as defined in OPA. Under OPA sections 1002(a) and 1002(b)(1)(A),²⁰ responsible parties are strictly liable, without limit, for "all removal costs incurred by the United States" under Clean Water Act section 311,²¹ regardless of what representations they may make after the event. Section 311 grants the President broad authority to

¹³ 11 U.S.C. § 727(a)(1).

¹⁴ 11 U.S.C. § 1101 *et seq.*

¹⁵ 11 U.S.C. § 1129(a)(8).

¹⁶ 11 U.S.C. § 1129(a). Notably, those holding a claim or interest who do not accept the plan must receive at least as much under the plan as would have been received in a chapter 7 liquidation. 11 U.S.C. § 1129(a)(7).

¹⁷ 11 U.S.C. § 1129(b)(1).

¹⁸ 11 U.S.C. § 523(a)(7).

¹⁹ 11 U.S.C. § 523(a)(6).

²⁰ 33 U.S.C. §§ 2702(a) and 2702(b)(1)(A), respectively.

²¹ 33 U.S.C. § 1321.

respond to oil spills such as the Deepwater Horizon event, consistent with the National Contingency Plan and any appropriate Area Contingency Plan.

5. The Obama Administration has made several legislative proposals, including creating a new program of unemployment assistance to workers who are unemployed as a result of a spill of national significance, to respond to the spill. While a request has been made for Congress to fund these programs, what ability does the Federal government have to pass these program costs to BP?

In a May 12th budget amendment proposal, the Administration requested additional funds in FY2010 for several federal agencies to respond to the Deepwater Horizon oil spill. The Administration noted in its request that some of the discretionary appropriations may not be recoverable from the responsible parties under existing OPA liability provisions. However, the Administration did include legislative language specifically in its proposal for unemployment assistance to individuals affected by the oil spill, which would make federal funds made available for this purpose reimbursable from individuals or entities identified as responsible parties under OPA. In effect, this particular Administration legislative proposal would be intended to augment OPA's liability scheme to ensure that the costs of this dedicated unemployment assistance would not be borne by the federal taxpayer.

Under the liability and compensation framework established by OPA,²² the federal government does not have the authority to *directly* pass these program costs to BP. Although BP, as a responsible party, is liable—subject to possible defenses and limitations²³—for certain economic losses, OPA created a specific process through which parties could seek compensation for damages associated with an oil spill.

Pursuant to OPA Section 1002,²⁴ responsible parties are liable for several categories of damages. The most relevant categories pertaining to this question include:

- “Damages for injury to, or economic losses resulting from destruction of, real or personal property, which shall be recoverable by a claimant who owns or leases that property”²⁵
- “Damages equal to the loss of profits or impairment of earning capacity due to the injury, destruction, or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant”²⁶

The compensation procedure established by OPA generally requires claimants to first present their claims to the responsible party.²⁷ If (1) the responsible party denies liability for a claim, or (2) the claim is not

²² Under OPA, the terms “liable” and “liability” are “construed to be the standard of liability which obtains under section 311 of the [Clean Water Act].” Courts have interpreted section 311 of the Clean Water Act as imposing strict liability for response costs and natural resource damages on parties responsible for the discharge of oil or other hazardous substances into the waters of the United States. *See, e.g.,* Steuart Transportation Co. v. Allied Towing Corp., 596 F.2d 609, 613 (4th Cir. 1979).

²³ These conditions include the liability defenses and liability limitations. Responsible parties have three narrow defenses from liability: act of God, act of war, and acts or omissions of certain third parties. 33 U.S.C. § 2703(a). Liability is limited, based on the source of the oil spill. However, liability limits do not apply if, among other things, the incident was “proximately caused” by “gross negligence or willful misconduct” or “the violation of an applicable Federal safety, construction, or operating regulation.” 33 U.S.C. § 2704(c)(1).

²⁴ 33 U.S.C. § 2702.

²⁵ 33 U.S.C. § 2702(b)(2)(B) (emphasis added).

²⁶ 33 U.S.C. § 2702(b)(2)(E) (emphasis added).

²⁷ Several exceptions allow parties to make claims directly to the Oil Spill Liability Trust Fund without first presenting a claim to a responsible party (33 U.S.C. § 2713(b)). However, these exceptions would not likely apply in the context of this question.

settled within 90 days after claim presentation, the claimant may seek compensation from the Oil Spill Liability Trust Fund (OSLTF).²⁸ Regulations governing this process are found in 33 CFR Part 136.

OPA authorizes the Attorney General (at the request of the Secretary of Homeland Security) to recover compensation—and “all costs incurred by the Fund by reason of the claim”²⁹—paid by the OSLTF to any claimant.³⁰ Thus, a responsible party may ultimately pay for a claim that was initially denied or unsettled by the responsible party.

6. Under current law, federal response costs for this oil spill are being paid out of the Emergency Relief Fund component of the OSLTF. While BP is reimbursing the federal government for those costs, we understand that the reimbursement monies cannot be deposited back into the Emergency Relief Fund. Rather, the monies can only be deposited back into the Principal Fund component of the OSLTF. This necessitates new appropriated dollars to be placed in the “Emergency Fund” or for a congressionally allowed advance up to \$100 million, to be transferred from the Principal Fund, in the event the Emergency Fund is exhausted (Maritime Transportation Security Act of 2002). Why are these reimbursements made by BP not allowed to be deposited directly back into the Emergency Fund?

In addition to the amendment to OPA section 6002³¹ authorizing the \$100 million advance from the trust fund, the Maritime Transportation Security Act of 2002³² added a provision that states: “amounts advanced shall be repaid to the Fund when, and to the extent that, removal costs are recovered by the Coast Guard from responsible parties for the discharge or substantial threat of discharge.” OPA defines the “Fund” as the OSLTF.³³ Under the existing OPA framework, no authority exists to replenish the Emergency Fund with costs recovered from responsible parties. Unlike the OSLTF, which was established through statute, the Emergency Fund is an administrative account that was created by the executive branch.³⁴

An issue that may arise concerns the preface to your question, in which you highlight two approaches to replenishing the Emergency Fund: “new appropriated dollars” or “a congressionally allowed advance up to \$100 million.” Under current law, once the \$150 million limit on annual advances is reached in FY2010, the Coast Guard would be required to wait until the beginning of FY2011 (i.e., October 1, 2010), to advance additional monies (up to \$150 million in that fiscal year) from the OSLTF to support the Emergency Fund. S. 3473, which was recently passed by both chambers (and sent for presidential signature June 10, 2010), would authorize additional (\$100 million) advances up to the per-incident cap in current law (\$1 billion).

Alternatively, Congress could appropriate monies (categorized as a “discretionary”) from the OSLTF or general Treasury revenues to replenish the Emergency Fund. These approaches are different and some may argue that choosing one over the other may yield different consequences.

²⁸ 33 U.S.C. § 2713(c). Alternatively, the claimant may pursue compensation in court.

²⁹ This may include interest, administrative costs, and attorney fees.

³⁰ 33 U.S.C. § 2715(c).

³¹ 33 U.S.C. § 2752.

³² P.L. 107-295.

³³ 33 U.S.C. § 2701(11).

³⁴ The companion account to the Emergency Fund is the Principal Fund. For more information on the administrative accounts, see National Pollution Funds Center, *Oil Spill Liability Trust Fund (OSLTF) Funding for Oil Spills*, 2006, at http://www.uscg.mil/npfc/docs/PDFs/OSLTF_Funding_for_Oil_Spills.pdf.

7. If the federal government were to order BP to take specific actions as to the Gulf cleanup, would the government expose itself to legal liability if events worsen? If so, how might this affect BP's liability for the spill?

These questions cannot be answered fully in the absence of specifics, but the following touches on some high points. As long as actions ordered by the United States bear some relation to the National Contingency Plan (NCP),³⁵ it would seem that the United States would incur no OPA liability. OPA section 1002(b)(1) makes BP liable for removal costs under Clean Water Act section 311(c), (d), (e), or (l),³⁶ and 311(c)(1), in turn, says that the President shall “in accordance with the [NCP]” ensure removal of the oil. More flexibly, Clean Water Act section 311(d) says that removal shall “to the greatest extent possible” accord with the NCP. Thus, whether specifically directed by the President (through the On-Scene Coordinator) or not, there would appear to be limited basis in federal law for a claim against the United States based on an action taken by a private party consistent with the NCP. Bear in mind that the Federal Tort Claims Act, waiving federal sovereign immunity for certain tort claims against the United States, has a broad “discretionary function exemption.”³⁷ The elements of the NCP would almost certainly be beyond challenge under that act as a discretionary policy determination falling under that exemption.

Though the Superfund Act³⁸ does not cover petroleum, the use of oil dispersants in the Gulf may provide some role for this statute's stringent liability scheme if such dispersants constitute “hazardous substances” under the act.³⁹ The argument might be that the United States, by directing the release of dispersants and specifying the details of how that release is carried out, becomes, in effect, the “operator of a vessel or facility” subject to liability for cleanup under Superfund.⁴⁰ Moreover, the Superfund Act explicitly states that federal agencies are liable under the statute to the same extent as any nongovernmental entity.⁴¹ Nonetheless, the large majority of Superfund cases attempting to hold the United States liable as an “operator” of a private facility or vessel have not succeeded.

8. If a small business or individual experiences property damage due to the oil spill and their insurance company tells them BP is responsible for the claim, but BP claims it's a matter for the respective insurance company, what government agency has oversight authority over the matter? What specific authority does that agency have?

OPA does not authorize any federal agency to oversee or interfere in such a disagreement. However, if (1) a responsible party denies liability for a claim, or (2) a claim is not settled within 90 days after claim presentation, the claimant may seek compensation from the trust fund.⁴² Having compensated the claimant, the fund is subrogated to all rights the claimant has under other law – including an action against the claimant's or responsible party's insurer. OPA authorizes the Attorney General (at the request of the Secretary of Homeland Security) to recover compensation—and “all costs incurred by the Fund by reason of the claim”⁴³—paid by the trust fund to any claimant.⁴⁴

³⁵ 40 C.F.R. part 300.

³⁶ 33 U.S.C. §§ 1321(c), (d), (e), or (l).

³⁷ 28 U.S.C. § 2680(a).

³⁸ 42 U.S.C. §§ 9601-9670. The Superfund Act is more formally titled the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

³⁹ The act's definition of “hazardous substance” is at 42 U.S.C. § 9601(14).

⁴⁰ CERCLA § 107(a)(1); 42 U.S.C. § 9607(a)(1).

⁴¹ CERCLA § 120(a)(1); 42 U.S.C. § 9620(a)(1).

⁴² OPA § 1013(c); 33 U.S.C. 2713(c). *See* 40 C.F.R. part 136. Alternatively, the claimant may pursue compensation in court.

⁴³ This may include interest, administrative costs, and attorney fees.

The insurance policy (contract) between the small business or individual and their insurance company is subject to state insurance regulation under the McCarran-Ferguson Act of 1945,⁴⁵ which declares a federal policy that the regulation and taxation of insurance should be left to the states. Consequently, a demand to recover under an insurance policy for a loss covered by that policy, and the conduct of the issuing insurance company in settling this claim, is subject to state law. Most states have adopted, in one variation or another, the model Unfair Claims Settlement Act developed by the National Association of Insurance Commissioners. These provisions are enforced by state insurance regulators.

9. Why does the per barrel tax used to fund the Oil Spill Liability Trust Fund terminate in 2017?

The per-barrel tax that funds the OSLTF has been amended on several occasions. As with the most recent amendment, prior amendments to the tax rate included dates on which the tax would cease to apply, often described as “sunset dates.” Sunset dates for environmentally related taxes are not uncommon. For example, Congress included a sunset date for the taxes that initially supported the Superfund trust fund.⁴⁶

Although Congress created the OSLTF in 1986,⁴⁷ Congress did not authorize its use or provide taxing authority to support it until after the *Exxon Valdez* incident in 1989. In 1990, OPA provided the statutory authorization necessary to put the fund in motion. In complementary legislation, Congress imposed a 5-cent-per-barrel tax on the oil industry to support the fund.⁴⁸ Collection of this tax ceased on December 31, 1994, due to a sunset provision in the law. Twelve years later in April 2006, the tax resumed as required by the Energy Policy Act of 2005,⁴⁹ with a sunset date of December 31, 2014. In 2008, the Emergency Economic Stabilization Act of 2008⁵⁰ increased the tax rate to 8 cents through 2016 (in 2017, the rate increases to 9 cents) with a sunset date of December 31, 2017.⁵¹

The version of H.R. 4213 (the American Jobs and Closing Tax Loopholes Act of 2010) that passed the House May 28, 2010, would increase the per-barrel tax to 34 cents and extend the tax rate to December 31, 2020.⁵² As of June 11, 2010, the Senate was considering this legislation. Senators have offered several oil-spill-related amendments.

(...continued)

⁴⁴ 33 U.S.C. § 2715(c).

⁴⁵ 15 U.S.C. §§ 1011-1015.

⁴⁶ CRS Report R41039, *Comprehensive Environmental Response, Compensation, and Liability Act: A Summary of Superfund Cleanup Authorities and Related Provisions of the Act*, by David M. Bearden.

⁴⁷ Omnibus Budget Reconciliation Act of 1986 (P.L. 99-509).

⁴⁸ Omnibus Budget Reconciliation Act of 1989 (P.L. 101-239).

⁴⁹ P.L. 109-58.

⁵⁰ P.L. 110-343.

⁵¹ Section 405 of P.L. 110-343.

⁵² On December 9, 2009, the House passed H.R. 4213, the Tax Extenders Act of 2009. H.R. 4213 was amended by the Senate in the nature of a substitute (S. Amdt. 3336; the American Workers, State, and Business Relief Act of 2010), passed by that chamber on March 10, 2010, and returned to the House. The House amended H.R. 4213 again, passed it on May 28, 2010, and sent the bill back to the Senate for consideration.

10. With respect to the Emergency Relief Fund within the Oil Spill Liability Trust Fund, what happens to the \$50 million appropriation if it is not obligated or spent in that fiscal year? If not obligated or spent, is the appropriation simply lost or does it roll over to the next fiscal year?

OPA Section 6002⁵³ authorizes this “mandatory” annual appropriation, stating that “sums to which this subsection applies shall remain available until expended.” In other words, the monies would “roll over for” and be available for use in subsequent fiscal years.

11. In the event that the Oil Spill Liability Trust Fund is depleted, or the \$1 billion per-incident cap is reached, how are subsequent claims made against the fund paid? Are they simply denied or are General Treasury Funds used?

Pursuant to the Omnibus Budget Reconciliation Act of 1986⁵⁴ Congress established the Oil Spill Liability Trust Fund, codified in 26 U.S.C. § 9509.⁵⁵ Section 9509(e)(1) states that “any claim filed against the Oil Spill Liability Trust Fund may be paid only out of such Trust Fund.” Further, section 9509(e)(3) states that “if at any time the Oil Spill Liability Trust Fund has insufficient funds...to pay all of the claims out of such Trust Fund at such time, such claims shall...be paid in full in the order in which they were finally determined.”

The U.S. Coast Guard’s National Pollution Funds Center (NPFC) manages the OSLTF. The NPFC states in its “Claimant’s Guide” that the NPFC processes claims in the order received and pays claims in the order that they are approved.

Reaching the OSLTF’s per-incident (\$1 billion) cap would be an unprecedented event in the fund’s history. Federal statutes and relevant regulations neither specifically address the consequences of such a scenario nor provide authority for further compensation. However, OPA’s legislative history may be instructive. Statements from OPA’s legislative history suggest that drafters intended the fund to cover “catastrophic spills.”⁵⁶ Additional statements from OPA drafters indicate that state laws and analogous state trust funds would supplement (if necessary) the federal liability framework under OPA.⁵⁷

The Administration and Members have offered legislative proposals that would increase the OSLTF’s per-incident cap. For example, the Administration proposed to raise the cap to \$1.5 billion.⁵⁸ The version of H.R. 4213 (the American Jobs and Closing Tax Loopholes Act of 2010) that passed the House May 28, 2010, would raise the per-incident cap to \$5 billion and increase the per-barrel tax to 34 cents.⁵⁹ As of June 14, 2010, the Senate was considering this legislation. Senators have offered several oil-spill-related amendments.

⁵³ 33 U.S.C. § 2752.

⁵⁴ P.L. 99-509.

⁵⁵ Other sections of the U.S. Code contain provisions regarding the OSLTF, including 26 U.S.C. § 4611 and multiple sections in 33 U.S.C. chapter 40, subchapter I (“Oil Pollution Liability and Compensation”).

⁵⁶ U.S. Congress, House Committee on Merchant Marine and Fisheries, Report accompanying H.R. 1465, Oil Pollution Prevention, Removal, Liability, and Compensation Act of 1989, 1989, H. Rept. 101-242, Part 2, 101st Cong., 1st Sess., p. 36.

⁵⁷ See George Mitchell, “Preservation of State and Federal Authority under the Oil Pollution Act of 1990,” *Environmental Law*, Vol. 21, no. 2 (1991).

⁵⁸ The Administration submitted its request for supplemental appropriations to respond to the Deepwater Horizon oil spill in the Gulf of Mexico in a budget amendment on May 12, 2010 (OMB, “Oil Spill Request,” at www.whitehouse.gov/omb/assets/budget_amendments/supplemental_05_12_10.pdf.)

⁵⁹ See note 52 *supra*.

12. When mobile offshore drilling units (MODUs) operate as offshore facilities and a discharge occurs “on or above the surface of the water,” the MODU is considered a tank vessel for determining any liability limit. OPA § 1004(b)(1). However, if costs resulting from a spill exceed the applicable tanker liability limit, the MODU is deemed an offshore facility. OPA § 1004(b)(2). How does OPA deal with MODUs that discharge below the surface of the water?

OPA section 1004(b)(1) arguably implies a general rule, and an exception to that rule. The implied general rule is that a MODU “which is being used as an offshore facility” is to be treated as an offshore facility. The general rule applies when its exception – treatment as a tank vessel for “discharge[s] ... on or above the surface of the water” – does not apply. Thus, MODU discharges *below* the surface of the water, not within the exception, would seem to require treatment of the MODU under the general rule as an offshore facility.

The Senate legislative history of OPA offers some support for this interpretation. To be sure, the MODU language in OPA section 1004(b) derives from the House bill,⁶⁰ and the relevant House reports do little more than restate the bill language. However, though the Senate bill uses different terminology, the Senate report does state –

The bill ... defin[es] “owner or operator” for OCS facilities to mean the lessee or permittee of the area in which the facility is located Where a [MODU] is being used as an OCS facility, and there is a discharge of oil on or above the surface of the water, the owner or operator of the unit is liable, up to the limits established by the reported bill for tankers. If costs exceed that limit, the excess costs must be borne by the lessee or permittee. *If a discharge of oil from a [MODU] occurs below the surface of the water, the lessee or permittee is liable.*⁶¹

The direct implication of the italicized sentence is that if a MODU discharge is below the surface of the water, it is to be treated as an offshore facility, since the first sentence of the quote associates lessee or permittee liability with “OCS facilities.” Arguably, then, the italicized sentence in the quote merely makes explicit what the House bill and the enacted language implies.

⁶⁰ H.R. 1465, 101st Cong., 1st Sess. (1989). As the conference report states: “Conferees also adopted House provisions on MODU discharges” H.R. Rep. 101-653 at 106 (1989).

⁶¹ Sen. Rep. 101-94 at 12 (1989) (emphasis added).

