



Deepwater Horizon Oil Spill: Highlighted Actions and Issues

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Summary

This report highlights actions taken and issues raised as a result of the April 20, 2010, explosion on the *Deepwater Horizon* offshore drilling rig, and the resulting oil spill in the Gulf of Mexico. Readers can access a more extensive discussion in CRS Report R41262, *Deepwater Horizon Oil Spill: Selected Issues for Congress*.

Congressional responses to the oil spill include at least 32 hearings in 10 committees in the House of Representatives and at least 27 hearings in 8 committees in the Senate. Members have introduced over 150 legislative proposals that would affect policies related to oil spills. As of the date of this report, one bill has been enacted into law (P.L. 111-191), which allows the Coast Guard to advance additional funds from the Oil Spill Liability Trust Fund for response efforts.

Executive branch actions involve multiple agencies working within the framework of the National Contingency Plan. For example, the U.S. Coast Guard plays a key role in response efforts, because the spill occurred in the coastal zone. In addition, the Bureau of Ocean Energy Management, Regulation, and Enforcement (BOEMRE), formerly known as the Minerals Management Service (MMS), has initiated an internal review of agency regulatory parameters for safety inspections of deepwater rigs and platforms.

As a responsible party for the spill, BP has worked to control the well and perform cleanup measures at the direction of the federal government. According to BP, the company's spill-related costs amount to approximately \$6.1 billion, including spill response and containment actions, and economic damage claims. In addition, BP is financing a \$20 billion fund, managed by an independent claims facility, to award further claims. However, it is uncertain how the scope of the voluntary fund interacts with the existing legal obligations to a claims process.

Some Members of Congress and stakeholders have raised a range of issues after observing the Gulf oil spill and response efforts. Selected areas of concern include:

- the regulatory regime for outer continental shelf (OCS) oil exploration and development activities;
- the liability and compensation framework created by the 1990 Oil Pollution Act;
- technological challenges involved with deepwater activities;
- response activities (e.g., the use of chemical dispersants) and decision-making.

Future congressional activity may be influenced by several factors, including evolving conditions in the Gulf region, independent inquiries, judicial review of Administrative actions, and the availability of data for further study.

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Overview of Spill Response Efforts

In the aftermath of the explosion of the *Deepwater Horizon* offshore drilling rig on April 20, 2010, the federal government and responsible parties faced an unprecedented challenge in the Gulf of Mexico. Never before had a subsea drilling system blowout of this magnitude, or an oil spill of this size (estimated at approximately 206 million gallons), occurred in U.S. waters.

As of the date of this report, the uncontrolled flow of oil appears to be contained, but response activity will continue for some time. Federal and private-sector responses are intended to protect communities, coasts, jobs, and wildlife from adverse conditions resulting from the explosion and oil spill.

This material is covered in greater detail in the CRS reports listed in the “Further Reading” section at the end of this report. Citations and footnotes are available in each of these reports, but are not included in this abridged version.

Congressional Actions

Some Members of Congress have raised a wide range of concerns as a result of the Gulf oil spill. The House of Representatives has conducted at least 32 hearings in 10 committees. The Senate has conducted at least 27 hearings in 8 committees.¹ Hearing topics have included (among others):

- the role of industry and federal decision-making in the incident;
- the advantages and disadvantages of offshore drilling;
- the liability and compensation framework;
- the offshore drilling regulatory framework and its implementation.

Members have introduced over 150 legislative proposals that would affect policies related to oil spills. As of the date of this report, one bill has been enacted into law (P.L. 111-191), which allows the Coast Guard to advance additional funds from the Oil Spill Liability Trust Fund for response efforts.

Executive Branch Actions

Pursuant to the framework of the National Contingency Plan (discussed below), the Administration’s response involves multiple agencies. The Department of Homeland Security (DHS) Secretary, Janet Napolitano, coordinates federal efforts and chairs the National Response Team, an organization of 16 federal departments and agencies. Upon classifying the event as a spill of national significance (SONS), Secretary Napolitano appointed retired Coast Guard Admiral Thad Allen as the National Incident Commander. As this spill occurred in the coastal zone, an on-scene coordinator (OSC) from the U.S. Coast Guard directs and coordinates the on-site activities of federal, state, local, and private entities (e.g., BP).

¹ CRS updates legislative activity involving the Gulf spill on its website, at http://crs.gov/analysis/researchsources/Pages/OilSpill_Hearings.aspx?source=homepage.

Secretary of the Interior Ken Salazar deployed Deputy Secretary David J. Hayes as the Department's liaison to the Gulf for response efforts. As discussed below, Secretary Salazar has issued an administrative order to restructure the Bureau of Ocean Energy Management, Regulation, and Enforcement (BOEMRE)—formerly known as the Minerals Management Service (MMS) and hereafter referred to as BOEMRE/MMS. In addition, the Secretary called for a suspension of OCS activity until safety inspections of deepwater rigs and platforms were conducted.

Responsible Party Actions

As an identified responsible party (others may also be legally responsible), BP is liable for cleanup costs, natural resource damages, and various economic damages. As a member of the Unified Command, which includes the federal government, state governments, and the responsible parties, BP has played a key role in response actions. Although efforts by BP to stop the uncontrolled oil flow from the well included a series of failed engineering and re-engineering methods, BP contained the well on July 15, 2010. In addition, BP has worked at the direction of the Coast Guard to mitigate the oil spill and its impacts.

According to BP (as of August 9, 2010), the company's spill-related costs amount to approximately \$6.1 billion, including spill response and containment actions, economic damage claims (approximately \$399 million as of August 23, 2010), grants to the Gulf states, and reimbursement for federal response costs. In addition, on June 16, 2010, BP agreed to set aside \$20 billion to establish an independent claims facility to continue paying economic damage claims to people and businesses affected by the oil spill (discussed below).

Issues Raised by the Gulf Spill

This section briefly highlights some of the issues raised by some Members of Congress and stakeholders observing the response to the Gulf oil spill. For more information, see CRS Report R41262, *Deepwater Horizon Oil Spill: Selected Issues for Congress*.

Statutory and Regulatory Framework

Some have raised concerns about who is in charge of the oil spill response and under what statutory authority decisions are made. The Oil Pollution Act (OPA) and the Clean Water Act (CWA) are the primary federal statutes governing the federal response to oil spills. These laws provide the President with broad authority to direct or monitor all federal, state, local, and private activities in response to an oil spill. Pursuant to these (and other) laws, the executive branch developed a National Contingency Plan (NCP) to specify the federal response actions and authorities related to an oil spill. The NCP is the operative framework for response efforts. As the cleanup efforts are still underway, a comprehensive analysis of federal activities would be incomplete.

In the aftermath of the Gulf spill, the regulatory framework for outer continental shelf (OCS) activities continues to be subject to heightened scrutiny. OCS activities are primarily regulated by BOEMRE/MMS and the U.S. Coast Guard. The Coast Guard generally oversees the safety of systems and worker safety at the platform (or surface) level of mobile offshore drilling units

(MODUs) such as the *Deepwater Horizon*, as opposed to the sub-platform (i.e., underwater or sea floor) drilling systems, which are overseen by BOEMRE/MMS.

Prior to the 2010 Gulf spill, some raised concerns about management shortcomings and mission conflicts at BOEMRE/MMS and, in some instances, perceived capture of portions of the agency by the industry it has regulated. Such claims have increased since the Gulf incident. To address such concerns, on May 19, 2010, the Secretary of the Department of the Interior issued an administrative order dividing MMS into three new offices, in an attempt to separate three of the agency's functions: enforcement, energy development, and revenue collection. The Secretary issued the MMS name change one month after the reorganization order. In addition, Members of Congress have offered legislation that would alter federal agency organization of BOEMRE/MMS.

Prevention and Containment Technology for Deepwater Oil Spills

After observing recent operations in the Gulf, many have questioned the ability of industry and the federal government to prevent or respond to a significant blowout at substantial water depths. Although a blowout preventer (BOP) is designed as the last line of defense, and is built to include multiple backup mechanisms to stop an uncontrolled release, the Gulf incident demonstrated that BOPs are not failsafe. The Gulf response highlighted the technological challenges involved with containing an oil release 5,000 feet below the ocean. At these depths, equipment must be controlled by operators thousands of feet above and be able to withstand high pressures and low temperatures, which pose multiple engineering problems. For example, when BP first attempted to intercept the oil and gas and divert it to the surface, solid methane hydrates formed and clogged the equipment intended to divert oil to the surface.

Relief Wells

Establishing a policy for relief wells is of interest to the Administration and some Members of Congress. A relief well is drilled to intersect a well that has suffered a blowout and its construction is similar to an exploration well. As the Gulf incident has demonstrated, deep relief wells can take months to reach their target. Drilling a relief well concurrently with drilling an exploration or development well would shorten the time between a blowout and when a leak is plugged. However, requiring a concurrent relief well is not a risk-free proposal: a possibility would exist for a blowout from the relief well itself; and a concurrent well would increase costs and impact project schedules.

Dispersants

Dispersants are chemical agents that enhance the breakup of an oil slick into small oil droplets that mix with the water column. Federal responders have allowed for the use of approximately 1.8 million gallons of dispersants in the Gulf. While dispersants have proven effective in breaking up the oil on the surface, questions remain (e.g., concerning short- and long-term environmental impacts) about the fate of the dispersed oil and the chemical dispersants.

Liability and Compensation Framework

The Gulf spill placed a spotlight on the liability and compensation framework established by OPA in 1990. With some exceptions (whose applicability in the *Deepwater Horizon* incident has not been determined), the liability of a party responsible for an oil spill is limited. For example, the lease or permit holder of an offshore facility (e.g., BP) is liable for all removal (i.e., cleanup) costs, but liability for other damages/costs is capped at \$75 million. If a party's liability limit is met (and the party denies claims above its limit), claims for compensation may be awarded up to a per-incident cap of \$1 billion through the Oil Spill Liability Trust Fund, which is managed by the Coast Guard.

As noted above, BP has already awarded claims exceeding its (conditional) liability limit. Further, BP has agreed to finance (with incremental payments to eventually total \$20 billion) the Gulf Coast Claims Facility (GCCF), an independent claims facility administered by Kenneth Feinberg. As of August 23, 2010, the GCCF processes all claims for individuals and businesses. BP will continue to process claims from government entities. Some have raised questions about the GCCF claim protocols and whether they comply with the OPA compensation framework.

Factors Influencing Future Congressional Action

Primary factors that may influence future congressional action are the environmental and economic conditions in the Gulf region. Other factors may also have an influence: the outcome of various inquiries and investigations; judicial decisions resolving disputes about economic or environmental aspects of the conditions in the Gulf region; and the availability of data for further study of many issues.

Environmental and Economic Conditions in the Gulf

Reports of adverse environmental or economic conditions in the Gulf region may spur future legislative activity. Conversely, reports documenting minimal contamination could have the opposite effect. Regardless, the perceived state of conditions will likely be as influential as the actual conditions, which may be difficult to assess. For example, the National Incident Command's August 2, 2010, report on the fate and disposition of the spilled oil was criticized by some scientists. But a comprehensive prognosis is challenging, because (among other reasons) conditions are evolving. In particular, weather events, such as hurricanes, could rapidly alter the conditions in the region or in localized areas.

A related issue is how one defines the scope of the oil spill cleanup. For example, should the objective be to return the impacted areas to pre-spill conditions or to attempt a more comprehensive restoration of the region? These different perspectives may influence policymakers.

Independent Inquiries

Several investigations and commissions—both federal and private—have been initiated to examine issues surrounding the Deepwater Horizon incident. For example, the Bipartisan National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling was

established by the President (May 22, 2010) to provide recommendations on how to prevent—and mitigate the impact of—any future spills that result from offshore drilling. For the most part, the various investigations are in their early stages. The potential outcomes of these inquiries are not yet known, and the findings and recommendations may influence future congressional action.

Judicial Proceedings

Judicial proceedings regarding oil and gas activity in the Gulf region may impact congressional action to some degree. An example of judicial attention to events in the Gulf is the lawsuit concerning the Administration's May 28, 2010, measure to suspend certain OCS activities pending attention to safety conditions of deepwater rigs and platforms. On June 22, 2010, a U.S. district court issued an order blocking enforcement of the Administration's suspension. The Administration issued a revised suspension July 12, 2010. Further court proceedings, if any, addressing the moratorium and other issues could be a factor that would influence future congressional action.

Further Research²

An accident or natural disaster of national interest poses immediate demands for research, data, and statistics. In the case of the *Deepwater Horizon* incident, data on deepwater activities and vicinities are generally not viewed as robust. Most observers anticipate that further research on these matters will be a useful tool for policymakers. Some Members of Congress tend to seek a variety of research materials, including statistics about oil well flow rates, equipment performance, and environmental or economic conditions in the Gulf region. The availability of data about federally regulated offshore activities, particularly in deepwater areas, seems to be a factor that would influence future congressional action.

CRS Reports for Further Reading

CRS Report R41262, *Deepwater Horizon Oil Spill: Selected Issues for Congress*, coordinated by Curry L. Hagerty and Jonathan L. Ramseur.

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

CRS Report R40883, *Oil Spill in the Gulf of Mexico: CRS Experts*, by Jonathan L. Ramseur.

CRS Report R41266, *Oil Pollution Act of 1990 (OPA): Liability of Responsible Parties*, by James E. Nichols.

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

CRS Report R41311, *The Deepwater Horizon Oil Spill: Coastal Wetland and Wildlife Impacts and Response*, by M. Lynne Corn and Claudia Copeland.

² Authors acknowledge the assistance of CRS Knowledge Services Group on topics related to data availability, data integrity, and other aspects of the scope of authoritative resources for *Deepwater Horizon* topics.

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

CRS Report R41320, *Deepwater Horizon Oil Spill Disaster: Risk, Recovery, and Insurance Implications*, by Rawle O. King.

CRS Report R41396, *The 2010 Oil Spill: Natural Resource Damage Assessment Under the Oil Pollution Act*, by Kristina Alexander.

CRS Report RS22022, *Disaster Unemployment Assistance (DUA)*, by Julie M. Whittaker and Alison M. Shelton.

CRS Report R41323, *Tax Issues and the Gulf of Mexico Oil Spill: Legal Analysis of Payments and Tax Relief Policy Options*, by Molly F. Sherlock, Erika K. Lunder, and Edward C. Liu.

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

CRS Report R41308, *The 2010 Oil Spill: Criminal Liability Under Wildlife Laws*, by Kristina Alexander.

CRS Report R41265, *The 2010 Oil Spill: MMS/BOEMRE and NEPA*, by Kristina Alexander.

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

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

CRS Report R41132, *Outer Continental Shelf Moratoria on Oil and Gas Development*, by Curry L. Hagerty.

CRS Report RS22145, *Environmental Activities of the U.S. Coast Guard*, by Jonathan L. Ramseur.

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