The Policy and Regulatory Response to Deepwater Horizon: Transforming Offshore Oil and Gas Leasing?

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Since the mobile offshore drilling unit Deepwater Horizon exploded and sank into the Gulf of Mexico in late April 2010, the resulting oil spill and the events that may have contributed to the disaster have captured the attention of the general public, as well as government officials, on a historic scale. Despite the length of time that has passed since the incident, the environmental, operational, and regulatory impact of the spill, and the full range of public and private-sector responses, remains to an extent uncertain. However, it is apparent from the key issues that have emerged from the various investigations and reports, congressional hearings, and public debate relating to the spill that the federal policy and regulatory response to this incident will have significant implications, not only for those entities that engage in or support offshore drilling, but perhaps also for the broader energy industry and the manner in which the United States produces, transports, and consumes energy.

While cleanup and restoration efforts continue, administrative and congressional action to reform the offshore oil and gas leasing program in the United States is already well underway. In the wake of the Deepwater Horizon incident, more than 40 U.S. House of Representatives and U.S. Senate hearings have been held, and multiple congressional committees have developed and advanced proposals to address a breadth of issues relating to offshore oil and gas development activity. At the same time, the Administration, and particularly the U.S. Department of the Interior (DOI), has moved forward with its own efforts at reform. On May 19, in a change later echoed by legislative proposals, the Administration restructured the Minerals Management Service (MMS)—the division of the DOI that, in the past, has managed federal oil and gas leasing, exploration, development, and production on the U.S. Outer Continental Shelf (OCS), as well as been responsible for the collection of revenues from leasing—in order to address perceived conflicts of interest that some believe have compromised the agency's effectiveness. Both the Administration and the U.S. Congress have explored, and continue to evaluate, a broad range of measures to address environmental and safety concerns raised by the Deepwater Horizon incident and to change liability requirements for those who engage in oil and gas exploration and drilling. Most new deepwater offshore exploration and drilling in the Gulf of Mexico remains under a highly controversial moratorium until new standards can be fully implemented.

The attention directed toward the spill reflects the importance of offshore oil and gas resources, and the Gulf of Mexico, to U.S. energy supplies. Over the last decade, oil and gas production from the OCS has contributed between 25-30% of total domestic oil production and about 15% of total domestic natural gas production.[1] In 2009, more than 530 million barrels of oil and more than 2.2 trillion cubic feet of natural gas were produced from the OCS.[2] Of these totals, the overwhelming majority is produced from the Gulf of Mexico region, with some additional current production coming from offshore Alaska and the Pacific Coast. Major producers in the Gulf include Anadarko, BP, Chevron, ExxonMobil, and Royal Dutch Shell. In addition to representing a sizable portion of U.S. domestic production, the Gulf of Mexico is believed to contain some of the largest undiscovered, technically recoverable oil and gas resources in the United States.[3]

Given the broad economic, environmental, safety, and energy security implications of the Deepwater Horizon incident, policy and regulatory proposals to address the impacts of the spill and reform the offshore oil and gas leasing program vary widely. Generally, administrative and congressional responses to the oil spill fall into two broad categories. The first category consists of incident-specific responses, addressing claims, injuries, liability, investigations, and other matters specific to the Deepwater Horizon incident. The sec-

1. Minerals Management Service (MMS), U.S. Department of the Interior (DOI), Federal OCS Oil and Gas Production as a Percentage of Total of U.S. Production: 1954-2006 (2008), *available at* http://www.mms.gov/stats/PDFs/June2008/AnnualProductionAsPercentage1954-2006AsOf6-2008.pdf.
2. MMS, U.S. DOI, Federal OCS Oil and Gas Production (2010) (spreadsheet), *available at* http://www.mms.gov/stats/xlsExcel/OCSproduction2010.xls.
3. Curry L. Hagerty & Jonathan L. Ramseur, Cong. Research Serv., Publ'n No. R41262, Deepwater Horizon Oil Spill: Selected Issues for Congress 2 (2010), *available at* http://www.fas.org/sgp/crs/misc/R41262.pdf.

ond category, which forms the focus of this Article, consists of generally applicable structural reforms, such as leasing program reforms, agency restructuring, environmental and safety standards, and liability with respect to future development activities. Policy and regulatory actions relating to this second category can be expected to have significant impacts on offshore oil and gas development and potentially even alternative energy development on the OCS.

The remainder of this Article addresses some of the many aspects of offshore oil and gas development and other coastal and marine activities that have been or are likely to be impacted in the response to the spill.

I. Structural and Other Changes at the DOI

As noted above, the MMS, within the DOI, historically has been responsible for managing offshore oil and gas and renewable energy leasing and development on the OCS, including ensuring that such offshore energy development is done safely and in an environmentally responsible manner. In recent years, the MMS has received widespread criticism, with claims ranging from inappropriate interactions and relationships with oil and gas representatives to perceived bias toward the industry, leading to the agency's alleged failure to enforce rigorous environmental and safety standards. Most notably, the DOI's Inspector General identified a series of problems within the agency in a May 2010 report that received widespread media attention.[4] This report followed a 2008 memorandum documenting widespread misconduct in the MMS' Denver field office.[5]

On May 19, 2010, pointing to the inherent conflict between effective regulation and revenue collection, Secretary of the Interior Ken Salazar issued a Secretarial Order to set the groundwork for the "fundamental restructuring" of the MMS and the division of the MMS into three separate agencies: a Bureau of Ocean Energy Management, with responsibility over the OCS oil and gas and renewable energy-related management functions of the MMS, such as resource evaluation, planning, and other leasing-related activities; a Bureau of Safety and Environmental Enforcement, with responsibility for safety and environmental enforcement relating to offshore energy activities, including inspections, investigations, safety and response preparedness, and cancellations and suspensions; and an Office of Natural Resources Revenue, responsible for MMS' royalty and revenue management functions for both onshore and offshore activities.[6] "With this restructuring," the Secretary stated, "we will bring greater clarity to the roles and responsibilities of the Department while strengthening oversight of the companies that develop energy in our nation's waters."[7]

In a further step to implement the restructuring effort, on June 18, 2010, the Secretary issued a subsequent Secretarial Order changing the name of MMS to the Bureau of Ocean Energy Management, Regulation, and Enforcement (BOEMRE) and vesting the BOEMRE with all authorities previously vested in the MMS, as the agency undergoes further reorganization and reform.[8] And three days later, further emphasizing the DOI's focus on reforming the agency, the Secretary swore in Michael R. Bromwich, who had previously served as Inspector General for the U.S. Department of Justice and specialized in conducting internal investigations for companies and other organizations, as Director of the renamed agency and the individual responsible for leading the reforms.[9]

In the early days following the Deepwater Horizon incident and after these internal DOI steps to restructure the Department's offshore oil and gas regulatory functions, some in and outside of Congress raised questions concerning whether the Secretary possesses sufficient authority to accomplish the restructuring. In addition, reform advocates floated proposals to move components of the offshore drilling program to the U.S. Department of Energy, the U.S. Environmental Protection Agency (EPA), or elsewhere in the federal government. These noises have for the most part quieted, with Congress' oil spill response measures promoting a similar reorganization to that set forth by Secretary Salazar.[10]

Under the circumstances, substantial restructuring of the agency formerly known as the MMS appears to be inevitable. What is unclear is the extent to which the structural reorganization will accomplish the objectives set forth by the Secretary and create a cultural change at the agency. In addition to the structural changes, pending legislative proposals would increase the amount of consultation with other federal agencies, place a priority on data gathering and real-time

4. Office of the Inspector Gen. (OIG), U.S. DOI, Investigative Report: Island Operating Company et al., (2010), *available at* http://www.doioig.gov/images/stories/reports/pdf//IslandOperatingCo.pdf.
5. Memorandum from Earl E. Devaney, Inspector Gen., U.S. DOI, to Sec'y Dirk Kempthorne, U.S. DOI, OIG Investigations of MMS Employees (Sept. 9, 2008).
6. Secretary of Interior (SOI) Order No. 3299, Establishment of the Bureau of Ocean Energy Management, the Bureau of Safety and Environmental Enforcement, and the Office of Natural Resources Revenue (May 19, 2010), *available at* http://www.doi.gov/deepwaterhorizon/loader.cfm?csModule=security/getfile&PageID=32475.
7. Press Release, U.S. DOI, Salazar Divides MMS's Three Conflicting Missions (May 19, 2010), *available at* http://www.doi.gov/news/pressreleases/Salazar-Divides-MMSs-Three-Conflicting-Missions.cfm.
8. SOI Order No. 3302, Change of the Name of the Minerals Management Service to the Bureau of Ocean Energy Management, Regulation, and Enforcement (June 18, 2010), *available at* www.doi.gov/deepwaterhorizon/loader.cfm?csModule=security/getfile&PageID=35872.
9. Press Release, U.S. DOI, Salazar Swears In Michael R. Bromwich to Lead Bureau of Ocean Energy Management, Regulation, and Enforcement (June 21, 2010), *available at* http://www.doi.gov/news/pressreleases/Salazar-Swears-In-Michael-R-Bromwich-to-Lead-Bureau-of-Ocean-Energy-Management-Regulation-and-Enforcement-Secretarial-Order-Begins-Reorganization-of-Former-MMS.cfm.
10. *See* Consolidated Land, Energy, and Aquatic Resources Act of 2009, H.R. 3534, 111th Cong. §101 (2009).

information disclosure, and impose heightened new ethics requirements on agency employees.[11] How these reforms impact the agency and its administration of the leasing program, and how this in turn results in changes for those who engage in oil and gas exploration, development, and production activity on the OCS, remains to be seen.

II. Tighter Safety and Environmental Requirements

Regardless of the specific outcome in Congress, it seems reasonably certain that federal regulation of offshore drilling for both the safety of the workers involved in the operations and protection of the environment will become tighter and more rigorous. The past application of the National Environmental Policy Act (NEPA)[12] to leasing activities is likely to change. Current regulations will be enforced more rigorously than in the past, and new regulations surely will be forthcoming, the only question being their strength and reach. The facts revealed to date about practices in the current offshore program, as well as a political atmosphere in which few elected or appointed officials will rise to the defense of the oil industry (one need only look at the reaction to Rep. Joe Barton's (R-Tex.) apology to BP in June), almost ensures that the forthcoming regulations are likely to be more aggressive than not.

Shortly after the Deepwater Horizon explosion, President Barack Obama directed the DOI to make a report, within 30 days, regarding increased safety requirements to improve operations on the OCS. On May 27, responding to the president's request, the DOI issued a report entitled "Increased Safety Measures for Energy Development on the Outer Continental Shelf."[13] This report recommended a series of short-term safety measures, including an immediate recertification of all blowout preventer equipment and emergency systems, new deepwater well-control and fluid-displacement procedures, new well-casing and cement-design requirements, and a significant increase in federal testing, inspection, and intervention capabilities.

On June 8, the DOI issued a Notice to Lessees (NTL), imposing significant new safety standards on offshore operations in shallow and deep waters, based on the findings of the May 27 report.[14] The NTL required all lessees and operators to submit a certification from the Chief Executive Officer by June 28, affirming that offshore activities are being conducted in compliance with DOI safety requirements, including certifying that well designs and systems have been thoroughly reviewed and are capable of operating properly in an emergency.[15] In the event that operations are not in compliance, it required that a plan for curing identified defects be submitted.[16] The NTL established detailed new requirements for blowout preventers, including independent third-party inspection and certification that blowout preventers will operate as they are intended.[17] It also established specific well-design and construction requirements, along with new testing requirements for emergency equipment.[18]

The Administration has suggested that the NTL and the Safety Report are the first steps to reforming the OCS leasing program, with more detailed reforms to safety and environmental requirements to be established based on additional investigation and review. The president has formed a commission, led by former Florida Senator Bob Graham and former EPA Administrator William Reilly, to investigate the spill and provide recommendations on reform later this year.[19] Additional drilling safety recommendations are expected later this year based on any conclusions or recommendations made by the presidential commission, as well as response to the results of additional internal DOI reviews of the leasing program at the direction of Secretary Salazar.

Both chambers of Congress also have developed and considered a broad range of proposals to address environmental and safety concerns. As an initial matter, such proposals generally would clarify that the OCS should be managed to balance its multiple values and resources, and shift policy from making the OCS available to development to allowing energy and mineral exploration, development, and production on the OCS only when those activities can be accomplished in a manner that sufficiently protects against harm to life, health, the environment, property, or other users of the OCS.[20] Some of these proposals—including the CLEAR Act,[21] passed by the House on July 30—also would impose detailed new safety and environmental requirements. They would, for instance: impose new minimum standards, and require independent third-party certification, for blowout preventers, well design, and cementing; require operators to demonstrate their ability to respond to future blowouts and major spills; require more frequent and stringent facility inspections; and increase penalties for violations.

These proposals would require the DOI to issue regulations identifying "best available technologies" for well design and operation, and requiring applicants for permits to drill on the OCS to submit comprehensive safety documentation, called a "safety case," providing a site-specific analysis that demonstrates the safety of the systems (including spill response) that will be used in the operations.[22] They would further limit eligibility for new leases, prohibiting entities who are not meeting safety or environmental requirements on other leases, or who have not met their obligations to pay

11. *See, e.g.*, H.R. 3534; Clean Energy Jobs and Oil Company Accountability Act of 2010, S. 3663, 111th Cong. (2010); Oil Spill Response Improvement Act of 2010, S. 3643, 111th Cong. (2010).
12. 42 U.S.C. §§4321-4370h, ELR Stat. NEPA §§2-209.
13. *See generally* U.S. DOI, Increased Safety Measures for Energy Development on the Outer Continental Shelf (2010), *available at* http://www.doi.gov/deepwaterhorizon/loader.cfm?csModule=security/getfile&PageID=33598.
14. U.S. DOI, Notice to Lessees No. 2010-N05, Increased Safety Measures for Energy Development on the OCS (June 8, 2010), *available at* http://www.doi.gov/deepwaterhorizon/loader.cfm?csModule=security/getfile&PageID=34536.
15. *Id.* at 2.
16. *Id.*
17. *Id.* at 3.
18. *Id* at 5-6.
19. Exec. Order No. 13543, 75 Fed. Reg. 29397 (May 21, 2010).
20. H.R. 3534, §203; S. 3663, §304.
21. *See* H.R. 3534.
22. H.R. 3534, §211; S. 3663, §306.

compensation for covered removal costs and damages relating to an oil spill under the Oil Pollution Act (OPA) of 1990,[23] from bidding on new leases. And, in order to improve the consideration of environmental issues relating to operators' leasing plans, they would eliminate the use of categorical exclusions for purposes of NEPA compliance on exploration plans and development and production plans (which the bills would make mandatory for leases in the Gulf of Mexico), impose new requirements on these plans, and provide the agency additional time (beyond the current 30 days) to consider whether to approve an exploration plan.

III. Shrinking the Pool of Players Through Liability Reform?

Depending on the scope of administrative and legislative action, one major impact of offshore drilling reform could be a substantial narrowing of the pool of players in the U.S. offshore oil and gas development industry. Certainly, various elements of whatever policy response emerges from Washington—new environmental safety obligations, increased permitting and environmental review requirements, and potential new fees that may be required—can be expected to increase costs for those engaged in the exploration, development, and production of oil and gas on the OCS, potentially affecting the viability of undertaking oil and gas operations on the OCS. But perhaps most critical is the issue of liability reform and its potential impact on insurability.

In response to the spill, the DOI is undertaking a review of liability issues related to OCS oil and gas activity. In Congress, multiple bills have been introduced to increase the liability limit for economic damages under the OPA from $75 million to as high as $10 billion, or to eliminate the cap entirely.[24] Under existing law, the OPA's liability cap relates to the extent to which a drilling vessel owner or lessee may be held strictly liable and financially responsible for natural resource damages and property damages from an oil spill. However, there are various exceptions to the cap, including: direct cleanup costs; spills caused by "gross negligence or willful misconduct" or in violation of federal regulations; damage claims under state law; penalties under criminal law; and damages under other federal laws, such as the Migratory Bird Treaty Act[25] and National Marine Sanctuaries Act.[26]

Many in the industry and others have expressed concern that these controversial proposals will lead to an increase in insurance rates and otherwise limit insurance availability, pushing small and medium (and independent) producers out of the industry, and leaving only the largest oil and gas-producing companies able to participate in domestic offshore oil and gas leasing in the Gulf of Mexico and elsewhere in the OCS.[27] Some lawmakers have responded to this argument by expressing concerns about the ability of smaller producers to respond to an event similar to that of the Deepwater Horizon spill, suggesting that only those entities able to bear consequences of drilling should be permitted. Some congressional Democrats also have expressed concerns that the existing liability provisions encourage risky behavior in the offshore drilling industry.[28] Others in Congress, however, including some who believe that some increase in the liability cap is appropriate, share industry's concerns that setting the cap too high could squash competition in the offshore oil and gas development industry, leaving only the largest oil companies able to operate offshore. Various options remain under consideration to address these liability issues.

In the midst of these congressional efforts to address liability issues, judicial action is likely to shape this debate. Dozens of lawsuits have been filed against BP, Transocean, and related contractors in state and federal court. Judicial responses to requests from potentially liable parties to limit the scope of legal exposure could shape the congressional discussion on appropriate accountability schemes, impacting liability reform and its effects on the availability of insurance for those who engage in offshore oil and gas activities.

IV. Location of U.S. Offshore Energy Development

The Deepwater Horizon spill has reignited and inflamed long-standing debate over whether and where domestic offshore drilling should be allowed to take place—a debate that will not be resolved anytime soon. OCS offshore oil and gas-leasing activity has been limited by federal law only to much of the Gulf of Mexico and parts of Alaska. Oil and gas leasing has been prohibited on most other areas of the OCS since the 1980s, as a result of congressional moratoria reflecting concerns that offshore oil and gas development would pose unacceptable environmental risks and threaten coastal interests, including, but not limited to, tourism, fishing, and vacation housing.

Over the years, these moratoria were expanded to include New England, the George Bank, the mid-Atlantic, the Pacific Northwest, parts of Alaska, and part of the eastern Gulf of Mexico. President George H.W. Bush, in 1990, responding to pressure from the states of California and Florida and others concerned about the environmental impacts of OCS leasing activity, issued a presidential directive ordering the DOI not to conduct offshore leasing or pre-leasing activity in areas covered by the annual legislative moratoria until 2000.[29] In 1998, President William J. Clinton extended the offshore leasing prohibition until 2012.[30] In 2008, President George W. Bush lifted the executive moratorium, and Congress elected not to renew the moratoria for the Atlantic and

23. 33 U.S.C. §§2701-2761, ELR Stat. OPA §§1001-7001.
24. *See, e.g.*, Big Oil Bailout Prevention Unlimited Liability Act of 2010, S. 3305, 111th Cong. (2010); H.R. 5355, 111th Cong. (2010).
25. Pub. L. No. 65-186, 40 Stat. 755 (1918).
26. Pub. L. No. 92-532, 86 Stat. 1061 (1972).
27. Bruce Alpert, *Raising Industry Liability Cap in Wake of Gulf Oil Spill Becomes Partisan Issue*, Times-Picayune, June 7, 2010, *available at* http://www.nola.com/news/gulf-oil-spill/index.ssf/2010/06/raising_liability_cap_in_wake.html.
28. *Id.*
29. Rudy Abramson, *Bush Slaps Wide Ban on Offshore Drilling*, L.A. Times, June 27, 1990.
30. John M. Broder, *President Extends an Oil Drilling Ban Along Coastlines*, N.Y. Times, June 13, 1998.

Pacific Coasts legislatively (the eastern Gulf of Mexico and a portion of the central Gulf of Mexico remain subject to a separate moratorium).[31]

Even with the recent Gulf oil spill, and although proposals have been floated anew to ban drilling in the Gulf and off various portions of the Pacific and Atlantic Coasts, it seems unlikely that Congress will return to the broad leasing moratoria that it had kept in place until only a year or two ago. However, over the coming months and years, Congress and the Administration will continue to be pressed to respond to the competing pressures to expand domestic oil and gas supplies to meet the nation's ever-growing energy needs and to protect sensitive coastal and marine environments and communities. And, they will not do so in a vacuum, but in view of other related ongoing policy and regulatory activities, not the least of which involves efforts to craft a national oceans policy and a framework for "marine spatial planning."

In this regard, on July 19, 2010, President Obama issued an Executive Order creating a national policy to promote stewardship of the ocean, coasts, and Great Lakes, to be implemented by federal agencies under the guidance of a new National Ocean Council.[32] Although its primary driver appears to have been the completion of the Final Recommendations of the Interagency Ocean Policy Task Force, released simultaneously with the Executive Order and which the Executive Order adopts in full, the Executive Order nonetheless drew a nexus to the Deepwater Horizon spill, referring to the spill and "the resulting environmental crisis" as "a stark reminder of how vulnerable our marine environments are, and how much communities and the Nation rely on healthy and resilient ocean and coastal ecosystems."[33]

Of relevance to the future of offshore oil and gas drilling on the OCS, the Executive Order provides for the development of coastal and marine spatial plans (CMS Plans) based on ecosystem management to analyze current and future uses of ocean, coastal, and Great Lakes areas. The CMS Plans would identify areas most suitable for various types of activities in order to reduce conflicts among uses, reduce environmental impacts, facilitate compatible uses, and preserve critical ecosystems to meet economic, environmental, security, and social objectives. The planning process would broaden the scope of considerations in existing permitting for competing offshore uses, e.g., oil and gas development, renewable energy development, commercial fishing, and recreational purposes like boating and beach access, to permit a more integrated, comprehensive, ecosystem-based, flexible, and proactive approach to planning and managing these uses and activities.

At this preliminary stage of development, the impacts of the new national policy and the new spatial planning process are uncertain; much will depend upon how the process works and what the substance of the plans ultimately looks like. On the one hand, the program's efforts to increase public and stakeholder input can improve the agency decisionmaking process by developing a more complete record on which decisions can be based. On the other hand, the determination of which activities are suitable for specific areas may be controversial, and unless reasonable rules are established, the process can easily become more complex and lengthy, and bogged down by disputes that may delay agency decisions. Depending upon how the Executive Order is implemented, the national policy and these plans could have substantial impacts on existing and future commercial uses of coastal and offshore areas, including oil and gas exploration, development, and production, as well as renewable wind and marine hydrokinetic projects, commercial and recreational fisheries, and land-based industries that produce industrial runoff that could degrade water quality and coastal and marine resources.

V. Participation by Coastal States and Municipal Governments in a Reformed Offshore Program

Historically, the current offshore oil and gas-leasing program has been administered primarily by the federal government without a meaningful role for the states—and no role at all for coastal counties, parishes, and boroughs. The Deepwater Horizon disaster has underscored the fact that coastal communities and economies suffer the brunt of offshore drilling accidents that result in the release of crude oil into the water. Today, despite the obvious impacts that coastal communities and economies face from the exploration, development, and production of oil and gas off their shores, coastal states and counties do not receive any of the revenue from federal offshore drilling.

Congress, led by Sen. Mary Landrieu (D-La.), has enacted legislation that will provide a share of offshore revenue to Alabama, Louisiana, Mississippi, and Texas, but not until 2017. A number of legislative proposals moving through the House and Senate envision new regional planning councils that engage state, local, and Tribal governments in new ways. As the offshore program is revised by both congressional and executive branch action, coastal states and, perhaps, coastal counties, parishes, and boroughs can be expected to continue to demand a greater role in an offshore program in which they clearly have an interest.

VI. Offshore Alternative Energy Development

Finally, often overlooked in the current policy debates is the extent to which the Deepwater Horizon spill could impact offshore alternative energy development, such as wind and marine hydrokinetic projects. Offshore renewable energy projects differ from offshore oil and gas development in important ways, including the maturity of the industry—the U.S. offshore renewable energy industry is a fledgling industry compared to the oil and gas industry—and the nature and scope of potential impacts to the environment

31. Gulf of Mexico Energy Security Act of 2006, Pub. L. No. 109-432, 120 Stat. 3000.
32. Exec. Order No. 13547, 75 Fed. Reg. 43023 (July 19, 2010).
33. 75 Fed. Reg. at 43023.

and safety. Moreover, compared to the OCSLA oil and gas-leasing program, last overhauled more than 30 years ago, the DOI's offshore renewable energy program is relatively new, with the department's Final Renewable Energy Framework completed only in April 2009.

With the industry (and regulators) finally able to enjoy at least some degree of regulatory certainty with respect to the framework that will govern the development of renewable energy on the OCS, other than continuing efforts by industry to further streamline the regulatory process, there appears to be little interest in revisiting aspects of the program at this time. Yet, it is possible that some of the reform efforts in response to the spill, including the agency reorganization at the DOI, nonetheless could impact offshore renewable energy development. Congress and the DOI will have to take some degree of care to ensure that these reform efforts do not overreach their objectives and inadvertently inhibit investment in offshore wind and marine hydrokinetic projects.

VII. Conclusion

The Deepwater Horizon incident and the resulting oil spill have captured the close attention of the industry and other stakeholders and policymakers perhaps on an unprecedented scale. These events and the responses thereto raise a multitude of issues for the future of offshore energy development, with potential ripple effects throughout the energy industry and perhaps for other industries that have impacts on coastal and marine resources. Moreover, the Deepwater Horizon oil spill provides a political opportunity for the first major overhaul of offshore drilling regulation since 1978. Some significant developments already have taken place in response to the incident, but further responses continue to evolve, and key questions still remain unanswered. Those with interests in offshore oil and gas development and other uses of marine resources will continue to engage in the debate and watch closely as these policy and regulatory responses continue to evolve.