

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA**

HORNBECK OFFSHORE SERVICES, LLC,

Plaintiff,

v.

**KENNETH LEE “KEN” SALAZAR, in his
official capacity as Secretary, United States
Department of the Interior; UNITED
STATES DEPARTMENT OF THE
INTERIOR; ROBERT “BOB” ABBEY, in his
official capacity as Acting Director, Mineral
Management Service; and MINERALS
MANAGEMENT SERVICE,**

Defendants.

CIVIL ACTION No. 10-1663(F)(2)

SECTION F

JUDGE FELDMAN

MAGISTRATE 2

MAGISTRATE WILKINSON

DECLARATION OF DAVID J. HAYES

I, David J. Hayes, do hereby declare as follow:

1. I am the Deputy Secretary of the Department of the Interior (“Department”). By statute, I have responsibility to serve as the Chief Operating Officer for the Department.
2. In my capacity as Deputy Secretary, I have been charged by the Secretary with primary responsibility for overseeing, directing, and coordinating the implementation of decisions by Departmental bureaus, offices, and staff in response to the BP Oil Spill. I also have participated in extensive briefings, meetings, deliberations, and decisions regarding the United States’ policy and response to this catastrophic event.
3. I have testified on a number of occasions before various congressional committees in the Senate and House of Representatives regarding the Department’s response to the BP Oil Spill.

4. The BP Oil Spill is an unprecedented tragedy that has caused the death of 11 individuals and may constitute the worst environmental disaster in United States history. The BP Oil spill has highlighted the risks associated with drilling activities in deep water, particularly with regard to the serious challenges in responding to an uncontrolled blow out of a well in 5,000 feet of water.

5. I have witnessed the unparalleled response of the Department to this major disaster. The Department has been engaged in an emergency-response mode since April 20, 2010, and has been working around the clock to make critical decisions to deal with this catastrophic event.

6. Through my daily involvement in efforts to stem the flow of oil from the seafloor and to contain the damage caused by the BP Oil Spill, I became acutely aware of the risks associated with drilling in deep water and in responding to the loss of well control in deep water. I also have received briefings regarding the events that led to the loss of the well control at the Macondo well, and have learned that the loss of well control can result from a large number of failures that can occur singly, or in combination, including well design, drilling practices, operator errors, and equipment failures. When these failures occur in deep water situations, the impact can be catastrophic due to the severe limitations on the operator's ability to effectively respond to an uncontrolled well in the deep water environment, including the inability to access the well and an extraordinarily difficult operating environment. In that regard, I was, and continue to be, involved in daily discussions with BP officials responsible for ongoing efforts to plug the well and I conferred more broadly with industry officials, government officials, and others regarding the efforts to plug the Macondo well. I have traveled to the Gulf of Mexico to witness firsthand the massive nature of this disaster and the response effort to contain the spill.

7. Staff at all levels of the Department have similarly been engaged from the start in these daily efforts and have applied their specialized expertise to provide guidance and support to the decision making process. From the unparalleled scientific expertise of the United States Geological Survey to the wildlife conservation knowledge of the Fish and Wildlife Service and the National Parks to the legal acumen of the Solicitor's Office and the Department's technical expertise in offshore mineral management – all of the Department's resources and expertise have been brought to bear in responding to this spill.

8. The Department has sought the expertise of other federal agencies and has consulted with experts in industry, academia, and policy think tanks to better inform efforts to contain the spill and the Department's decision making process. By way of example, Secretary Salazar sought the expertise of Secretary Stephen Chu of the Department of Energy and has worked closely with scientists in our National Laboratories to help in efforts to contain the spill.

9. Similarly, I was involved in overseeing the preparation of the Safety Report that the Department prepared in response to the President's request to identify recommendations to enhance the safety of offshore drilling activities. See 30-day Safety Report which Plaintiffs submitted to this Court as Exhibit A to their Motion for Preliminary Injunction (hereinafter "Safety Report"). In preparing the Safety Report, the Department consulted experts from industry, academia, the NGO community, and others.

10. At present, there are a number of efforts underway to determine the root cause of the BP oil spill. The Department is engaged in a Joint Investigation with the U.S. Coast Guard to determine the root cause of the disaster. See a true and correct copy of the Joint Investigation Convening Order, attached herein as Exhibit A. The Secretary also established a Safety Oversight Board to oversee and support the Minerals Management Service in the Joint

Investigation as well as to provide recommendations on improving the oversight, regulation, and management of offshore operations. See a true and correct copy of Secretarial Order No. 3298, establishing the Outer Continental Shelf Safety Oversight Board dated April 30, 2010, attached hereto as Exhibit B. In addition, the President established the National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling on May 22, 2010, with the charge to examine the facts and circumstances of the disaster and to guard against and mitigate the impact of oil spills associated with offshore drilling.

11. While these investigations are ongoing, it was vital that the Department minimize the possibility of another catastrophic event on the outer continental shelf. The Department is responsible for ensuring that operations on the outer continental shelf are safe, protective of the environment, and do not result in harm to persons, property, or wildlife. The suspension that the Secretary issued on May 28, 2010, was for the purpose of ensuring that operators that were similarly situated to the Deepwater Horizon were operating in a safe manner. The decision to invoke the Department's suspension authority was based in part on the following considerations and findings:

- a. The need to raise the bar for safety and to ensure that operators consistently employ the best available and safest technologies: The extensive research conducted in preparation of the Safety Report is described in the concurrently filed declaration of Steven Black. Also considered were numerous documents and briefings provided by BP. The BP documents and briefings provided preliminary findings regarding apparent equipment failures in the blowout preventer and emergency systems as well as a loss of well casing integrity. This, together with the research conducted in preparation of the Safety Report, revealed a need to implement new safety measures

and to install additional safety equipment. As the Executive Summary to the Safety Report explains, the suspension of operational drilling in deepwater allows the Department to ensure that operators install this additional safety equipment before more drilling can take place. The Safety Report also explains that the suspension will allow the Department to implement new safety measures and regulations through the use of various regulatory mechanisms, including Notices To Lessees, interim final rules, and notice and comment rulemaking. Safety Report at 18-19; see also id. at Executive Summary page 2.

- b. The ongoing efforts to learn more about the risks revealed by the Deepwater Horizon incident: The BP Oil Spill is firsthand proof of the great risks and harm that can result from a blowout and loss of well control at deep water depths. The suspension provides time for the Department to establish technical working groups that would provide recommendations on issues such as wild-well intervention techniques and additional safety and training requirements. For example, the Safety Report describes several ongoing studies and technical working groups that are expected to improve the Department's understanding of the risks associated with deepwater drilling, including the National Commission and other working groups. See Safety Report at 1-3; see also Paragraph 9, supra. The suspension will allow the Department to refine and supplement its safety measures and regulations based on the reports and information produced by these groups.
- c. Numerous briefings and internal, pre-decisional memoranda prepared by Department staff were also reviewed and considered in rendering the decision to temporarily suspend deepwater drilling. In addition, economic and technical data was considered

in making this decision. Confidential, investigative information also informed the Department's decision making.

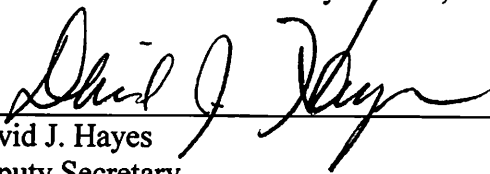
12. In sum, the Department reviewed the changed circumstances and new information available in the aftermath of the BP Oil Spill, and determined that it must suspend new drilling activity for a limited period of time to allow the Department to obtain further information and recommendations from the Presidential Commission and other ongoing investigations as well as to allow similarly situated operators to implement important safety measures, conduct testing, and install new equipment to mitigate the now apparent risk associated with deepwater drilling. This prudent approach is necessary because the BP Oil Spill demonstrates that the Department must require operators to take every precaution necessary to avoid a similar event from occurring in the future. The Department weighed the risks and benefits of a temporary suspension and concluded that the risk of a similar event was too great to ignore and that interim safety measures were reasonable, prudent, and justified under the circumstances.

13. I was involved in deliberations at the Department of the Interior on the decision to not suspend operators drilling at depths below 500 feet. This decision was based on information received by Department of Interior Officials from industry representatives, both directly and from briefings to Congressional members and staff. Attached as Exhibit C is a true and correct copy of the Shallow Water Energy Security Coalition Presentation that was received at a briefing. This document illustrates the differences between jack up rigs, which are used in shallow waters up to 500 feet, and floating rigs, which are used in deeper waters. The document also illustrates the surface placement of BOPs, which results in easier inspection, maintenance and repair and dispenses with the need for a marine riser. Use of jack up rigs and the

corresponding surface placement of BOPs allow operators to avoid the complications associated with deep subsea currents and conditions.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on this the 16th day of June, 2010,



David J. Hayes
Deputy Secretary
U.S. Department of the Interior

**JOINT DEPARTMENT OF THE INTERIOR
AND
DEPARTMENT OF HOMELAND SECURITY
STATEMENT OF PRINCIPLES AND CONVENING ORDER
REGARDING
INVESTIGATION INTO THE MARINE CASUALTY, EXPLOSION, FIRE,
POLLUTION, AND SINKING OF MOBILE OFFSHORE DRILLING UNIT
DEEPWATER HORIZON, WITH LOSS OF LIFE
IN THE GULF OF MEXICO 21-22 APRIL 2010**

1. The Department of the Interior and the Department of Homeland Security (collectively, "the Agencies") have determined that a joint investigation ("Joint Investigation") of the April 21-22, 2010 explosion and sinking of the mobile offshore drilling unit DEEPWATER HORIZON is warranted. Therefore, the Agencies hereby adopt the following statement of principles and convening order regarding the Joint Investigation. Each Agency, at its discretion, may elect to adopt additional internal measures to govern direction and oversight of their respective portion of the Joint Investigation.

2. The Outer Continental Shelf Lands Act ("OCSLA") grants the Secretaries of the Agencies the authority to investigate incidents resulting from operations on the U.S. Outer Continental Shelf ("OCS"). 43 U.S.C. § 1348. The Minerals Management Service ("MMS"), a unit of the Department of the Interior, and the United States Coast Guard ("USCG"), a component of the Department of Homeland Security, have identified a process for conducting investigations under the authority of the OCSLA in a Memorandum of Agreement ("MOA"), dated 27 March 2009. As set forth in the MOA, the MMS investigates incidents associated with, *inter alia*, exploration and drilling operations for hydrocarbons on the OCS, and the USCG investigates, *inter alia*, deaths, injuries, property loss, and environmental damage arising from such incidents.

3. A Joint Investigation is hereby convened in accordance with the MOA, as modified herein. The Joint Investigation is classified as a Coast Guard Marine Board of Investigation within the meaning of 46 C.F.R. § 4.09 and a Panel Investigation within the meaning of 30 C.F.R. § 250.191. The Joint Investigation is convened pursuant to agency authorities and will be conducted pursuant to the procedures contained in 43 U.S.C. § 1348, 14 U.S.C. § 141, 46 U.S.C. §§ 6301 *et seq.*, 33 C.F.R. § 140, Subpart C; 30 C.F.R. §§ 250.186-191, and 46 C.F.R. Part 4.

4. The Agencies intend to conduct the Joint Investigation as follows: The MMS and the USCG will co-chair the Joint Investigation. The Joint Investigation team will investigate thoroughly the matter hereby submitted to it in accordance with the provisions of 43 U.S.C. § 1348, 46 U.S.C. § 6301 *et seq.*, and the applicable regulations thereunder. The Joint Investigation shall have the powers of both Agencies, and, for the public hearing portions of the Joint Investigation, shall follow the policies and procedures for a Marine Board of Investigation contained in 46 C.F.R. § 4.09 and the Coast Guard Marine Safety Manual, Volume V. In cases where the procedures of a Marine Board of Investigation and a Panel Investigation appear to differ, the procedures for a Marine Board of Investigation shall govern. Any issue involving procedure may be referred to



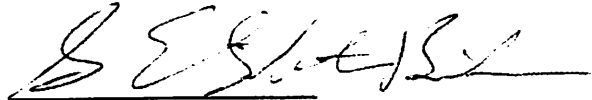
THAD W. ALLEN
Admiral, U.S. Coast Guard
Commandant

Date: **APR 26 2010**



JANET MAPOLITANO
Secretary
Department of Homeland Security

Date: **APR 27 2010**



S. ELIZABETH BIRNBAUM
Director
Minerals Management Service

Date: **APR 27 2010**



KEN SALAZAR
Secretary
Department of the Interior

Date: **APR 27 2010**



THE SECRETARY OF THE INTERIOR
WASHINGTON

ORDER NO. 3298

Subject: Establishment of the Outer Continental Shelf Safety Oversight Board

Sec. 1 Purpose. This Order establishes within the Department of the Interior the Outer Continental Shelf (OCS) Safety Oversight Board which shall report to the Secretary and the Deputy Secretary jointly. The purpose of this action is to ensure timely, high-level review and implementation, as appropriate, of recommendations to address the Department's current and future responsibility for management and administration of the OCS program.

Sec. 2 Background. The proper management, administration, regulation and oversight of exploration and drilling operations for hydrocarbons on the OCS are among the Department's most significant responsibilities. These complex exploration and drilling operations affect important human and environmental considerations and warrant the highest level of oversight within the Department. To address these issues, the Department is establishing a high-level team to review and oversee OCS operations to support reasoned and fact-based recommendations for potential improvements.

Sec. 3 Authority. This Order is issued under the authority of Section 2 of the Reorganization Plan No. 3 of 1950 (64 Stat. 1262) and 43 U.S.C. § 1348, the Outer Continental Shelf Lands Act.

Sec. 4 Establishment of the OCS Safety Oversight Board.

a. **Membership.** The members of the OCS Safety Oversight Board shall be the Assistant Secretary - Policy, Management Budget, the Assistant Secretary - Land and Minerals Management, and the Inspector General.

b. **Leadership.** The Assistant Secretary - Land and Minerals Management shall serve as the Chair of the OCS Safety Oversight Board.

c. **Duties.** The duties of the OCS Safety Oversight Board shall include:

(1) Providing oversight, support, and resources to the Minerals Management Service (MMS) regarding its responsibilities in the Joint Investigation into the marine casualty, explosion, fire, pollution, and sinking of the mobile offshore drilling unit Deepwater Horizon which included loss of life in the Gulf of Mexico on April 21-22, 2010 (Joint Investigation); see *Joint Department of the Interior and Department of Homeland Security Statement of Principles and Convening Order*, dated April 27, 2010, and attached hereto as Exhibit A.

(2) Providing the Secretary and the Deputy Secretary with periodic progress reports regarding the Joint Investigation as appropriate.

Declaration of David Hayes
Exhibit B

(3) Providing recommendations regarding interim measures that may enhance OCS safety including, but not limited to, issues of concern identified by the Joint Investigation or other investigations.

(4) Making recommendations to the Secretary and the Deputy Secretary to improve and strengthen the Department's overall management, regulation, and oversight of OCS operations including, but not limited to, undertaking further audits or reviews, and reviewing existing authorities and procedures.

d. To support the operation of the OCS Safety Oversight Board, the Board members are authorized to assign subordinate staff to perform specific work in support of the Board's duties and to procure the services of outside resources and experts as necessary.

Sec. 5 Implementation. The Deputy Secretary is responsible for ensuring implementation of this Order.

Sec. 6 Effective Date. This Order is effective immediately and shall remain in effect until it is amended, superseded, or revoked, whichever occurs first. The termination of this Order shall not nullify implementation of the requirements and responsibilities set forth herein.


Secretary of the Interior

Date: **APR 30 2010**