



**Survey & Analysis of Impacts of Regulations  
& Federal Agency Actions on Oil & Gas  
Activities on Federal Lands**  
A Survey and Memo from HBW Resources

**DATE:** December 17, 2012

**TO:** Bipartisan Policy Center Staff

**FROM:** Jack Belcher, HBW Resources, LLC

**SUBJECT:** Memo Regarding the Survey and Analysis of Impacts of Regulations & Federal Agency Actions on Oil and Gas Activities on Federal Lands

**Disclaimer**

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**Introduction**

HBW Resources performed the following proposed scope of work in response to discussions with Bipartisan Policy Center (BPC) staff about the need for data and analysis on the impacts of ongoing reform efforts on oil and gas activities like permitting. This includes a survey of oil and gas producers, service companies and environmental consulting firms, an analysis of the results of those surveys and policy recommendations based on the survey results.

1. In consultation with BPC staff, design a comprehensive survey to distribute to a targeted list of oil and gas producers, service companies and selected environmental consulting and service firms that work on oil and gas projects both onshore and offshore in order to evaluate opportunities to improve the permitting process for projects on federal lands, as well as to identify processes that are working efficiently.
2. Develop list of target personnel and entities in consultation with BPC staff.
3. Conduct interviews with appropriate personnel within those target organizations. A total of approximately 18 producers (6 offshore and 12 onshore), 2 service companies and 1 environmental consulting and service firm will be surveyed.
4. Analyze and summarize all survey and comments in a report to BPC staff.

**Companies Surveyed**

A total of 22 companies were surveyed, including 25 producers (8 offshore and 17 onshore), 1 service company, 1 environmental consulting and service firm, and 1 infrastructure and midstream gathering and processing firm.

## Background

In recent years, the Federal Government's land management agencies have made a number of reforms to their processes for oil and gas leasing and permitting activities on federal lands (which for the purpose of this report will include both onshore and offshore leases held by the federal government).

In 2010, the Bureau of Land Management (BLM), which manages the majority of oil and gas activities on federal Lands, initiated an "Energy Management Reform" process to "better manage Americans' energy resources."

In addition, following the Deepwater Horizon oil spill, the Department of the Interior made numerous changes impacting the leasing and permitting of offshore oil and gas operations, including the reorganization that separated the Minerals Management Service into the Bureau of Safety and Environmental Enforcement and the Bureau of Ocean Energy Management and created a new and independent Office of Natural Resource Revenue.<sup>1</sup>

### **Reorganization of the Minerals Management Service**

In October, 2011, the Secretary of the Department of the Interior formally established three new and independent bureaus: the Office of Natural Resources Revenue (ONRR), the Bureau of Safety and Environmental Enforcement (BSEE) and the Bureau of Ocean Energy Management (BOEM).

These three bureaus were established to replace the Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE), which in turn had itself replaced the Minerals Management Service (MMS). The rationale for establishing these entities was to create independent agencies with clearly defined roles. The structure of MMS was determined to be fundamentally in conflict over its missions to promote resource development, enforce safety regulations, and maximize revenues from offshore operations.

The responsibilities of the newly-established entities are as follows:

- Bureau of Ocean Energy Management (BOEM). BOEM duties include managing the development of the country's offshore energy resources. Specific functions include: Leasing, Plan Administration, Environmental Studies, National Environmental Policy Act (NEPA) Analysis, Resource Evaluation, Economic Analysis and the Renewable Energy Program.<sup>2</sup>
- Bureau of Safety and Environmental Enforcement (BSEE). BSEE's major purpose is to enforce safety and environmental regulations. Specific functions include: All field operations including Permitting and Research, Inspections, Offshore Regulatory Programs, Oil Spill Response, and newly-established Training and Environmental Compliance functions.<sup>3</sup>

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<sup>1</sup> *From Crisis to Reform: Raising the Bar for Safety and Environmental Protection on Offshore Oil and Gas Operations*, Department of the Interior, <http://www.doi.gov/news/pressreleases/loader.cfm?csModule=security/getfile&PageID=45793>.

<sup>2</sup> U.S. Department of the Interior, Bureau of Ocean Energy Management, "The Reorganization of the Former MMS." <http://www.boem.gov/About-BOEM/Reorganization/Reorganization.aspx>.

<sup>3</sup> *Ibid.*

- Office of Natural Resources Revenue (ONRR). ONRR was created in order to manage the revenues from federal onshore and offshore mineral leases.<sup>4</sup>

### **Offshore Reforms (BOEM).**

In the wake of the *Deepwater Horizon* explosion, BOEM was created and underwent reforms as part of the effort to “clarify[] and separat[e]” missions that were deemed to be complex and sometimes conflicting under the former MMS organizational structure:

- A new recusal policy was implemented to address real and perceived conflicts of interest for BOEM employees.<sup>5</sup>
- Interior Secretary Ken Salazar and BOEMRE Director Michael Bromwich launched a review of the use of National Environmental Policy Act (NEPA) categorical exclusions, during which they are not allowed to be used to approve proposed deepwater drilling projects.<sup>6</sup>
- As part of the reorganization, BOEM created Implementation Teams to analyze the Bureau’s regulatory structure and implement reforms, including by reviewing the processes related to permitting, inspections, regulatory enforcement, environmental compliance and enforcement, incident investigations, and oil spill response.<sup>7</sup>

Other actions taken addressed the following:

### **Drilling Safety**

- Notice to Lessees 2010-06, the “Blowout Scenario NTL”, requires that producers operating in the OCS show that they have made preparations to address the potential for a well blowout and the associated worst-case oil and/or gas discharge.<sup>8</sup>
- The Drilling Safety Rule strengthens standards for well-design, casing and cementing, and requires permits to be certified by an independent professional engineer.<sup>9</sup>
- Notice to Lessees 2010-10, the “Statement of Compliance NTL,” requires that all lessees and operators submit a signed statement certifying that the operator will comply with all applicable regulations, including the Drilling Safety Rule, at the time that the lessee applies for a well permit.<sup>10</sup>

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<sup>4</sup> U.S. Department of the Interior, Office of Natural Resources Revenue, “Office of Natural Resources Revenue – Who We Are.” <http://www.onrr.gov/About/default.htm>.

<sup>5</sup> U.S. Department of the Interior, Bureau of Ocean Energy Management, “Regulatory Reform.” <http://www.boem.gov/About-BOEM/Reforms/Reforms.aspx>.

<sup>6</sup> U.S. Department of the Interior, Bureau of Ocean Energy Management, “Regulatory Reform.” <http://www.boem.gov/About-BOEM/Reforms/Reforms.aspx>.

<sup>7</sup> U.S. Department of the Interior, Bureau of Ocean Energy Management, “Implementation Teams.” <http://www.boemre.gov/ImplementationTeams.htm>.

<sup>8</sup> U.S. Department of the Interior, Minerals Management Service, “National Notice to Lessees and Operators of the Federal Oil and Gas Leases, Outer Continental Shelf,” NTL No. 2010-N06, June 18, 2010. <http://www.doi.gov/deepwaterhorizon/loader.cfm?csModule=security/getfile&pageid=35724>.

<sup>9</sup> U.S. Department of the Interior, Bureau of Ocean Energy Management, “Fact Sheet: The Drilling Safety Rule,” September 30, 2010. <http://www.doi.gov/news/pressreleases/loader.cfm?csModule=security/getfile&PageID=45792>.

<sup>10</sup> U.S. Department of the Interior, Bureau of Ocean Energy Management, “National Notice to Lessees and Operators of Federal Oil and Gas Leases, Outer Continental Shelf,” November 8, 2010. <http://www.doi.gov/news/pressreleases/loader.cfm?csModule=security/getfile&PageID=70560>.

- Strengthening the offshore inspections program by employing multiple-person inspection teams to conduct offshore oil and gas inspections, utilizing multi-disciplinary inspection procedures to inspect a greater number of operations more thoroughly and efficiently.<sup>11</sup>

#### Workplace Safety

- Implemented the Workplace Safety Rule, which requires operators to develop and maintain a Safety and Environmental Management System.<sup>12</sup>

#### Regulatory

- Comprehensive re-organization of the former MMS into three independent agencies (see section above titled “Reorganization of the Minerals Management Service”).
- Establishment of the Ocean Energy Safety Advisory Committee to provide the agency with guidance on improving safety, well containment, and spill response.<sup>13</sup>
- Establishment of an investigations and review team reporting directly to the BOEM director, in order to strengthen oversight, investigate allegations of misconduct, respond to high-priority issues, and implement MMS reorganization.<sup>14</sup>
- Recruitment of additional personnel in order to strengthen oversight capacity by filling new field inspector and engineer positions at the Bureau.<sup>15</sup>
- Heightened focus on obtaining public comment on environmental review and regulatory programs.

#### **Onshore Reforms (BLM & US Forest Service)**

In January, 2009, Secretary Salazar proposed a series of reforms that were aimed at providing greater certainty to the onshore leasing process while also balancing the need for responsible resource production. These reforms were implemented in 2010. Key aspects of Secretary Salazar’s reforms include:

- Comprehensive interdisciplinary reviews that take a site-specific approach for individual lease sales. Resource management plans will continue to provide programmatic-level guidance, but individual parcels nominated for leasing will be subject to increased internal and external coordination, public participation, interdisciplinary review of available information, and

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<sup>11</sup> U.S. Department of the Interior, Bureau of Ocean Energy Management, Regulation and Enforcement, “BOEMRE Strengthens Offshore Inspections Program,” June 13, 2011.

<http://www.boemre.gov/ooc/press/2011/press0613.htm>.

<sup>12</sup> U.S. Department of the Interior, Bureau of Ocean Energy Management, “Fact Sheet: The Workplace Safety Rule,” September 30, 2010. <http://www.doi.gov/news/pressreleases/upload/Fact-Sheet-Workplace-Safety-Rule-9-30-2010.pdf>

<sup>13</sup> U.S. Department of the Interior, Bureau of Ocean Energy Management, “Regulatory Reform.” <http://www.boemre.gov/Reforms.htm>.

<sup>14</sup> U.S. Department of the Interior, “Bromwich Launches Investigative/Compliance Team to Spur Reform, Restructuring of Offshore Oil and Gas Regulation,” Press Release, June 23, 2010.

<http://www.doi.gov/news/pressreleases/Bromwich-Launches-Investigative-Compliance-Team-to-Spur-Reform-Restructuring-of-Offshore-Oil-and-Gas-Regulation.cfm>.

<sup>15</sup> U.S. Department of the Interior, Bureau of Ocean Energy Management, “Regulatory Reform.” <http://www.boemre.gov/Reforms.htm>.

confirmation that they conform with resource management plans, as well as actual site visits to parcels when necessary.<sup>16 17</sup>

- Greater public involvement in developing master leasing and development plans for areas where intensive new oil and gas extraction is anticipated so that other important natural resource values can be fully considered prior to making an irreversible commitment to develop an area.<sup>18</sup> Specifically, BLM state and field offices will provide for public participation as part of the review of parcels identified for potential leasing through the NEPA compliance documentation process.<sup>19</sup>
- Leadership in identifying areas where new oil and gas leasing will occur. BLM will continue to accept industry expressions of interest regarding where to offer leases, but will emphasize leasing in already-developed areas and will plan carefully for leasing and development in new areas.<sup>20</sup>
- Require an "extraordinary circumstances" review screen before applying the categorical exclusions in the Energy Policy Act of 2005 to oil and gas drilling activities on BLM lands. Categorical exclusions are categories of actions that do not have a significant effect on the quality of the human environment, and for which the BLM is generally not required to prepare extensive environmental reviews. A review for extraordinary circumstances has been required for all administratively-established categorical exclusions, and will now apply to oil and gas categorical exclusions established by the Energy Policy Act of 2005, as well.<sup>21</sup>
- Creation of the Energy Reform Team within the Office of the Assistant Secretary for Land and Minerals Management. The reform team is tasked with:
  - o Facilitating coordination of onshore and offshore energy planning, leasing, permitting, authorizing, inspection, enforcement and revenue activities;
  - o Overseeing the identification, development and implementation of best practices and reforms to improve Interior's energy operations;
  - o Conducting planning and evaluating future energy development policies, strategies, and options for BLM, MMS, and Office of Surface Mining Reclamation and Enforcement; and

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<sup>16</sup> Bureau of Land Management News Release, "Interior Finalizes Onshore Oil and Gas Leasing Reforms," May 17, 2010. [http://www.blm.gov/wo/st/en/info/newsroom/2010/may/NR\\_05\\_17\\_2010.html](http://www.blm.gov/wo/st/en/info/newsroom/2010/may/NR_05_17_2010.html)

<sup>17</sup> BLM must coordinate with stakeholders on parcel review and NEP analysis. Examples of stakeholders include: Federal agencies (e.g., FS, NPS, FWS, BOR, and U.S. Department of Defense); adjacent BLM state and field offices, if lease nominations span or are close to administrative boundaries; National Landscape Conservation System managers; tribal governments; state and local agencies (e.g., fish and game, environmental quality, and historic preservation); local community stakeholders (e.g., managers of municipal watersheds and local parks). See Bureau of Land Management, "Instruction Memorandum 2010-117: Oil and Gas Leasing Reform – Land Use Planning and Lease Parcel Reviews," May 17, 2010.

[http://www.blm.gov/wo/st/en/info/regulations/Instruction\\_Memos\\_and\\_Bulletins/national\\_instruction/2010/IM\\_2010-117.html](http://www.blm.gov/wo/st/en/info/regulations/Instruction_Memos_and_Bulletins/national_instruction/2010/IM_2010-117.html)

<sup>18</sup> *Ibid.*

<sup>19</sup> Bureau of Land Management, "Instruction Memorandum 2010-117: Oil and Gas Leasing Reform – Land Use Planning and Lease Parcel Reviews," May 17, 2010.

[http://www.blm.gov/wo/st/en/info/regulations/Instruction\\_Memos\\_and\\_Bulletins/national\\_instruction/2010/IM\\_2010-117.html](http://www.blm.gov/wo/st/en/info/regulations/Instruction_Memos_and_Bulletins/national_instruction/2010/IM_2010-117.html)

<sup>20</sup> *Ibid.*

<sup>21</sup> Bureau of Land Management News Release, "Interior Finalizes Onshore Oil and Gas Leasing Reforms," May 5, 2010. [http://www.blm.gov/wo/st/en/info/newsroom/2010/may/NR\\_05\\_17\\_2010.html](http://www.blm.gov/wo/st/en/info/newsroom/2010/may/NR_05_17_2010.html)

- o Performing related activities aimed at improving DOI's management of energy resources on Federal lands and the OCS.<sup>22</sup>
- Interagency MOU to coordinate across DOI, USDA, and EPA to address air quality issues associated with onshore oil and gas development on public lands.
  - o The MOU establishes a common process for agencies to follow in order to increase the efficiency and certainty of the planning, leasing and permitting processes. Each agency previously used different approaches when determining air quality reviews, frequently resulting in project delays.<sup>23</sup>

To date, the reforms have resulted in significantly fewer protests of leases. Between FY1998 and FY2009, the percentage of leases that were protested increased from one percent to nearly 50 percent.<sup>24</sup> Since the implementation of the reforms, the number of protests have dropped 20 percent from 2009 levels.<sup>25</sup> Oil and gas producers, however, are reporting mixed and often negative reviews on the impact of these reforms on their operations.

### General US Oil and Gas Exploration and Production Trends

It is also important to note in this memo that the survey and trends that are being reported are taking place during a period of great change in America's energy production capabilities. The United States has seen a dramatic increase in its ability to produce onshore oil and natural gas in recent years. As a result of the onshore boom, terms like the names of major shale plays that were previously confined to the vocabulary of those who work in the oil and gas industry are now rattled off by many in the media and on Capitol Hill. Multiple sources including Goldman Sachs predict that the United States is on track to become the world's largest oil producer by 2018, while the International Energy Agency has recently concluded that the United States would surpass Saudi Arabia's oil output in the next decade.<sup>26</sup>

To illustrate the speed at which some of the plays in North America have developed, North Dakota, a state that produced very little oil just a few years ago, is already producing more oil than Ecuador, an Organization of the Petroleum Exporting Countries (OPEC) member nation.<sup>27</sup>

<sup>22</sup> The Secretary of the Interior, Order Number 3294, "Energy Management Reform," January 6, 2010. [http://www.doi.gov/news/pressreleases/upload/01-06-10-Order\\_3294.pdf](http://www.doi.gov/news/pressreleases/upload/01-06-10-Order_3294.pdf).

<sup>23</sup> Bureau of Land Management News Release, "Federal Agencies to Improve Coordination to Support Energy Development and Safeguard Air Quality," June 24, 2011.

[http://www.blm.gov/wo/st/en/info/newsroom/2011/june/NR\\_06\\_27\\_2011.html](http://www.blm.gov/wo/st/en/info/newsroom/2011/june/NR_06_27_2011.html).

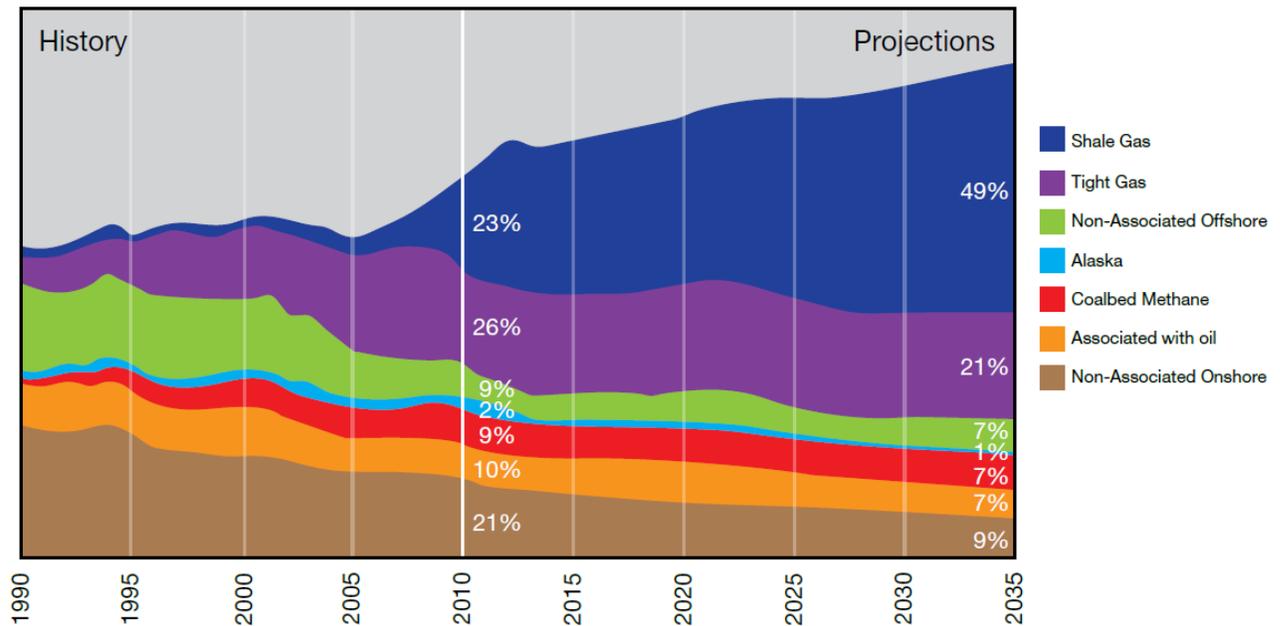
<sup>24</sup> The White House, "The Blueprint for a Secure Energy Future: Progress Report." March 2012, P. 4.

<sup>25</sup> *Ibid.*

<sup>26</sup> *U.S. Oil Output to Overtake Saudi Arabia's by 2020*, Bloomberg, <http://www.bloomberg.com/news/2012-11-12/u-s-to-overtake-saudi-arabia-s-oil-production-by-2020-iea-says.html>, November 12, 2012.

<sup>27</sup> *North America's New Energy Future: A Roadmap for energy self-sufficiency. If we choose it*, Consumer Energy Alliance, [http://consumerenergyalliance.org/wp/wp-content/uploads/2012/09/CEA-Report-North-Americas-New-Energy-Future\\_Full\\_FINAL\\_LowRes.pdf](http://consumerenergyalliance.org/wp/wp-content/uploads/2012/09/CEA-Report-North-Americas-New-Energy-Future_Full_FINAL_LowRes.pdf)

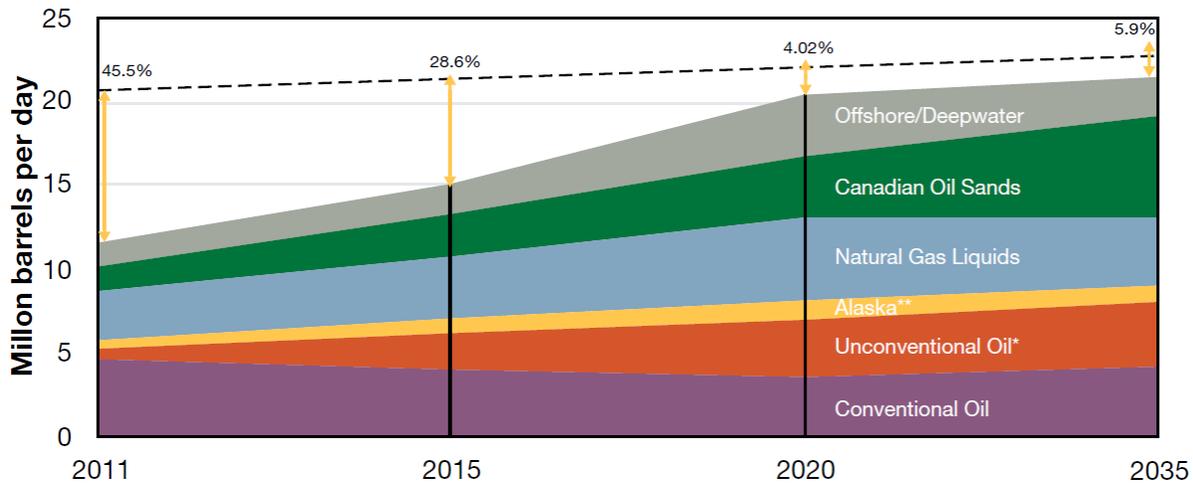
## U.S. natural gas production, 1990-2035 (trillion cubic feet)<sup>11</sup>



The impacts, however, are not limited to North Dakota and Ecuador. Across the United States, the perfection and application of existing technologies are unleashing vast new supplies of oil and natural gas.<sup>28</sup> Just a few years ago, the United States was preparing to import vast amounts of natural gas from overseas. Now, the United States is the world's top producer of natural gas and companies are seeking to build terminals to facilitate the export of liquefied natural gas.

<sup>28</sup> *North America's New Energy Future: A Roadmap for energy self-sufficiency. If we choose it*, Consumer Energy Alliance, [http://consumerenergyalliance.org/wp/wp-content/uploads/2012/09/CEA-Report-North-Americas-New-Energy-Future\\_Full\\_FINAL\\_LowRes.pdf](http://consumerenergyalliance.org/wp/wp-content/uploads/2012/09/CEA-Report-North-Americas-New-Energy-Future_Full_FINAL_LowRes.pdf), at 4.

**Future Estimated North American Oil Production, 2011-2035**



----- Canadian & U.S Consumption  
 ←→ Difference Between Canadian & U.S. Supply and Demand

\* Does not include Canadian Oil Sands  
 \*\* Does not include projected 700,000 barrels per day of new production from Chukchi & Beaufort Seas

Sources for Oil Consumption:  
 National Energy Board – Canada, “Canada’s Energy Future: Energy Supply and Demand Projections to 2035.” November 2011.  
 U.S. Energy Information Administration, “Annual Energy Outlook 2012.” June 2012.  
 Sources for Oil Production:  
 Citi GPS: Global Perspectives and Solutions, “Energy 2020: North America, the New Middle East?” March 2012.  
 National Petroleum Council, “Prudent Development: Realizing the Potential of North America’s Abundant Natural Gas and Oil Resources.” September 2011.

In addition to onshore plays like the Bakken, Eagle Ford and Marcellus shales, this New Energy Future for the United States and North America is also continuing in the deepwater Gulf of Mexico, where energy companies have perfected ways to drill and develop scores of wells in formations over 8,000 feet below the ocean surface from floating structures in 8,000 feet of water, and in the Arctic Ocean, where oil companies have begun to explore and lay the groundwork for the production of huge accumulations of hydrocarbons in remote regions under harsh conditions.<sup>29</sup>

Overall, the outlook for North American energy production is bright. According to a recent report from Citi Investments, “[t]he growing continental surplus of hydrocarbons points to North America effectively becoming the new Middle East by the next decade.” Citi went on to say that “[t]he main obstacles to developing a North American oil surplus are political rather than geological or technological.”<sup>30</sup> In other words, the United States and Canada have tremendous natural resources for energy production. The main question now is how the political and regulatory climate may affect the ability of oil and gas companies to access these resources and bring them to market.

<sup>29</sup> North America’s New Energy Future: A Roadmap for energy self-sufficiency. If we choose it, Consumer Energy Alliance, [http://consumerenergyalliance.org/wp/wp-content/uploads/2012/09/CEA-Report-North-Americas-New-Energy-Future\\_Full\\_FINAL\\_LowRes.pdf](http://consumerenergyalliance.org/wp/wp-content/uploads/2012/09/CEA-Report-North-Americas-New-Energy-Future_Full_FINAL_LowRes.pdf), at 4.

<sup>30</sup> Citi CPS: Global Perspectives & Solutions, “Energy 2020: North America, the New Middle East?” March 20, 2012.

## Analysis of Impacts the of Reforms and Other Factors

As outlined earlier, reforms at BLM, BOEM and BSSE and other federal agencies have made substantial changes to the leasing and permitting process for oil and gas activities on federal lands. Some oil and gas producers and service companies are reporting that these changes have had a negative impact on their ability to produce on federal lands. There have also been changes in the application of the National Environmental Policy Act of 1969 (NEPA), the Endangered Species Act (ESA), the Clean Air Act and other federal statutes that impact oil and gas activities. At the same time, a number of very attractive shale plays have motivated producers to invest in these opportunities, which are predominately on private or “fee” lands.

Following reductions in total federal acreage leased each year, fewer federal leases being issued, and decreases in the number of approved permits for drilling (see Figures 1, 2 and 3 for data on these trends<sup>31</sup>), stakeholders have raised several concerns regarding the s reform processes that will be described in this memo. At the same time, it is important to discuss how other trends are impacting the amount of permits and drilling taking place on federal lands and the offshore.

In many cases, onshore shale opportunities are displacing higher-priced natural gas production offshore.<sup>32</sup> In fact, many exploration and production companies have rushed to secure acreage in the most promising shale plays, such as the Bakken, the Eagle Ford and the Marcellus. These fields often produce natural gas that is less expensive to produce and closer to market than natural gas plays on federal lands. They also produce crude oil that is often of better quality than West Texas Intermediate crude, with break-even costs that are far lower than those associated with deepwater oil production.<sup>33</sup> According to one article, “[i]n the core of the Bakken, for example, producers need oil prices in the \$35 to \$40 range to earn solid returns on their drilling programs. At current (2010) oil prices, some producers enjoy internal rates of return in excess of 100 percent.”<sup>34</sup> Plays like the Bakken are therefore extremely attractive to both investors and producers for the reasons outlined above.

In 2009, according to the Energy Information Administration (EIA), the cost to produce a barrel of crude oil and natural gas offshore was 164% of the cost to produce that same barrel of oil onshore.<sup>35</sup> EIA divides the cost of to produce a barrel of crude oil and natural gas into two categories, “Lifting Costs,” or the cost to bring the oil and natural gas out of the ground, and “Finding Costs”, or the cost to locate the oil that is to be lifted. While the lifting cost is slightly lower offshore than onshore, the finding cost is much higher offshore, \$41.51 offshore versus \$18.85 onshore from 2007–2009,<sup>36</sup> Improvements in existing technologies related to hydraulic fracturing and horizontal drilling have ushered in a revolution

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<sup>31</sup> Bureau of Land Management, “Oil and Gas Statistics,” February 10, 2012.

[http://www.blm.gov/wo/st/en/info/newsroom/Energy\\_Facts\\_07/statistics.html](http://www.blm.gov/wo/st/en/info/newsroom/Energy_Facts_07/statistics.html).

<sup>32</sup> As these shales have a lower cost production than off-shore sources, shale gas production is expected to displace off-shore production. *Marcellus Shale Gas Development: Reconciling Shale Gas Development with Environmental Protection, Landowner Rights, and Local Community Needs*, School of Public Policy, University of Maryland, July 2010, p 43.

<sup>33</sup> *Rough Guide to Shale Oil*, Investing Daily, Elliott H. Gue, October 20, 2010,

<http://www.investingdaily.com/13716/rough-guide-to-shale-oil>.

<sup>34</sup> *Rough Guide to Shale Oil*, InvestingDaily, Elliott H. Gue, October 20, 2010,

<http://www.investingdaily.com/13716/rough-guide-to-shale-oil>.

<sup>35</sup> *How much does it cost to produce crude oil and natural gas?* U.S. Energy Information Administration, November 1, 2012. <http://www.eia.gov/tools/faqs/faq.cfm?id=367&t=6>

<sup>36</sup> *Ibid.*

in onshore production.<sup>37</sup> In this environment, producers are rushing toward increased onshore production in lieu of more expensive offshore production. The surveys reflected in this memo touch on some of the regulatory and permitting challenges encountered by producers who have attempted to seize this onshore shale opportunity.

So it is clear that there are some real trends that are pushing U.S. oil and gas exploration and production away from federal lands and toward the oil and gas shale plays that are predominantly on private lands. Interestingly enough, as described by EIA Administrator Adam Sieminski during recent testimony, there is currently little overlap of shale plays and federal lands.<sup>38</sup>

At the same time, several oil and gas companies appear to be quite successful on federal lands and the Outer Continental Shelf (OCS). This appears especially true for deepwater producers in the OCS who take a longer-term investment view of their prospects. Policies and actions by federal and state regulatory authorities seem to be more impactful to some producers than others. This survey and analysis is intended in part to provide more clarity about the impacts of federal policies and actions and whether they are consistent across field offices, types of operations and regions.

Onshore, oil and gas producers of federal lands (regulated by BLM and U.S. Forest Service (USFS)) are the most vocal in their frustration about recent regulatory impacts to their operations. They are reporting that the process for obtaining permits to drill is taking longer and, in some cases, impacting the attractiveness and viability of oil and gas projects. This process, which now takes far more time to complete, includes obtaining permits to drill, completions of environmental work as required under NEPA, issuance of seismic permits and approvals for rights of way. Offshore, new rules and requirements in the post-Macondo era are also impacting the timelines for the issuance of permits and completion of NEPA related work.

A recently released report by the Congressional Research Service (CRS) noted that between 2007 and 2011, 96% of oil production growth occurred on private and state lands.<sup>39</sup> During this same time, the federal share of total U.S. production fell by 2%. While these facts can be attributed in part to the proliferation of many shale plays that are not on federal lands - and the fact that production on federal lands is gas heavy at a time when natural gas prices are weak - they are also due to the fact that producers are frustrated with the pace of permit issuance and approvals.

According to a recent article in the Wall Street Journal, federal acres open for leasing and exploration have fallen 18% since 2008 and the rate of permitting has slowed by 37%.<sup>40</sup> North Dakota can issue

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<sup>37</sup> *North America's New Energy Future: A Roadmap for energy self-sufficiency. If we choose it*, Consumer Energy Alliance, [http://consumerenergyalliance.org/wp/wp-content/uploads/2012/09/CEA-Report-North-Americas-New-Energy-Future\\_Full\\_FINAL\\_LowRes.pdf](http://consumerenergyalliance.org/wp/wp-content/uploads/2012/09/CEA-Report-North-Americas-New-Energy-Future_Full_FINAL_LowRes.pdf), at 4.

<sup>38</sup> Statement of Adam Sieminski, Administrator, U.S. Energy Information Administration, before the Subcommittee on Energy and Power Committee on Energy and Commerce, U.S. House of Representatives, August, 2, 2012, p24. [http://www.eia.gov/pressroom/testimonies/sieminski\\_08022012.pdf](http://www.eia.gov/pressroom/testimonies/sieminski_08022012.pdf).

<sup>39</sup> *U.S. Crude Oil Production in Federal and Non-Federal Areas*, CRS Report for Congress prepared by the Congressional Research Service, March 20, 2012, <http://naturalresources.house.gov/uploadedfiles/crsreportcrudeproduction03.20.12.pdf>

<sup>40</sup> *Romney's Energy Play, The political illusion of 'independence,' but the reforms are on the mark*, The Wall Street Journal, August 23, 2012. [http://online.wsj.com/article/SB10000872396390444270404577607291614060730.html?mod=opinion\\_newsreel](http://online.wsj.com/article/SB10000872396390444270404577607291614060730.html?mod=opinion_newsreel).

permits in a week and a half, and Ohio in two days. Several states were mentioned as being able to issue permits much faster than federal agencies, due in part to the changing requirements and requests for information that federal agencies are asking of oil and gas producers and the various processes and personnel that are utilized in different offices.

However, it is also true that the decline in number of BLM permits is due to a decline in the number of request for permits, which according to the Department of the Interior, have been in decline since 2006.<sup>41</sup> An EIA report explains that natural gas production on federal lands has been declining since 2003 largely due to the shift to shale gas production, which is mostly on private lands.<sup>42</sup> It is clear that economics, geology and regulatory processes and permitting are all factors impacting oil and gas exploration and production on federal lands and the offshore.

In order to obtain a better understanding of the current state of onshore and offshore oil and gas permitting activities on federal lands, a comprehensive survey was distributed to a targeted list of oil and gas producers, service companies and selected environmental consulting and service firms that work on oil and gas projects in order to evaluate opportunities to improve the permitting process for projects on federal lands and to identify processes that are working efficiently.

To our knowledge, this is the most comprehensive survey ever performed within the oil and gas industry on permitting and land use issues. The results reveal a number of interesting trends for onshore and offshore operations and provide several draft recommendations based on responses from the surveyed entities.

### **General Observations on Permitting**

Onshore and offshore operators are expressing frustration about delays in permitting, approvals and completion of environmental work. Virtually all of those surveyed expressed concern about the lack of staff and resources available within federal land management agencies, and reported that the situation is growing worse in terms of the absence of experienced staff and the willingness or capacity of staff to make decisions. There is a general lack of consistency in terms of what information is required for permit applications and for other approvals. That inconsistency is leading to growing frustration and tension between producers and some federal offices and resulting in longer timeframes for permitting. Some producers appear more capable of working through these longer permitting timeframes than other.

Onshore producers on federal lands generally expressed more frustration than offshore producers. Offshore producers overall were more optimistic about the future, though they were notably frustrated about longer timeframes, duplication, more NEPA requirements and general uncertainty. Some offshore producers appear to have incorporated longer permitting timelines into their business plans, reporting that the new process if workable provided that further changes are not underway or

<sup>41</sup> U.S. Department of the Interior, "Oil and Gas Lease Utilization, Offshore and Onshore: A Report to the President," May 2012, p, 14. <http://www.doi.gov/news/pressreleases/upload/Final-Report.pdf>.

<sup>42</sup> U.S. Energy Information Administration, "Sales of Fossil Fuels Produced from Federal and Indian Lands, FY 2003 through FY 2011, March 2012, pp 3-4. <http://www.eia.gov/analysis/requests/federallands/pdf/eia-federallandsales.pdf>.

forthcoming. Due primarily to their growing frustrations, onshore producers were generally more willing to take part in the survey.

Some producers have identified creative ways in which they have been able to shorten the timeframe for receiving permits. Those practices vary greatly from company to company and are treated as strategic advantages. They are also time-consuming and involve dedicating significant resources to working with federal officials, with larger companies having more resources to commit to such strategies. Better communication between federal regulators and producers appears to be a key to success, along with the existence of clear timelines for deliverables and requests for information at the beginning of the process and rather than at the end.

Dissatisfaction and pessimism about the future for both offshore and onshore activity abound. Communications between operators and federal officials are increasingly defined by confusion and inconsistencies surrounding the information that is required from producers. While there are bright spots in some offices, producers are very frustrated with the lack of consistent requirements and see the resourcing issue growing worse over time.

**Below are some notable responses from those surveyed:**

*“The current situation has a lot of uncertainty in the process due to agency attitudes and agendas. This makes predicting a reasonable timeline difficult even though [timelines are] mandated by regulations. There are a myriad of ways to delay projects for valid and invalid reasons. Companies want predictability which is difficult to deliver in the litigious environment found in the permitting area today.”*

*“Stop moving the goalpost – decide what is regulated and give us a target to hit. Consistency across agencies would be nice too. Every field office is their own fiefdom, with their own requirements and their own set of rules. As we develop an EIS (Environmental Impact Statements) we try to be proactive and try and get the state engaged and pull in EPA early. Then it comes time to approve the draft, the EPA (Environmental Protection Agency) comes back with issues. These last minute displays of power slow things down, rather than cooperating throughout the process. They make demands at a point when we’re already committed.”*

## **Onshore Operations**

Onshore operators expressed the most frustration about permitting. The process and timeframe for obtaining a drilling permit varies greatly from office to office. For new exploration applications for a permit to drill (APD), the timing to process the permit varies from as little as 45 to 90 days in the best cases, to over two years in the worst cases. Longer timelines tend to occur where (1) human resources are constrained; (2) there is a new play with unprecedented activity; and (3) staff do not have the knowledge base or experience necessary to meet permit demand.<sup>43</sup> State drilling permit processing, on

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<sup>43</sup>A North Dakota newspaper article detailed some of the issues that the BLM has encountered in boom areas such as North Dakota. The article followed Rick Hotaling of the U.S. Bureau of Land Management's Dickinson office in North Dakota. He was on a “special detail assignment to the North Dakota Field Office to provide managerial support to that office until a new field manager is assigned. Part of his detail assignment includes performing as the field manager for the N.D. Field Office. Out of the 450 APDs (applications for permit to drill) at the Dickinson office, he said about 238 were for drilling wells on the Fort Berthold Reservation. ‘They were still pending and had not been approved. We realized that every day we were seeing more and more APDs and we did not have the

the other hand, generally ranges from a few days to a couple of months, according to producers surveyed.

Operators and service companies report that Environmental Assessments (EAs) and Environmental Impact Statements (EISs) are taking an increasing amount of time as a result of growing uncertainty about the requirements for the reviews and litigation concerns. Respondents report that an EIS can take as long as eight years, with archeological, wildlife and other environmental surveys delaying permits by two to three years.

In addition to reports that the EIS process is too burdensome, needs simplification, and contains too much duplication, the survey also revealed that it is becoming increasingly difficult to get a Record of Decision (ROD) on an EIS. Deadlines for issuing a ROD are often not met, and there is growing concern that deadlines are being ignored and are becoming irrelevant at BLM. These same concerns were echoed about USFS.

Survey participants were universally concerned about BLM being understaffed and underfunded. They report that there has been a recent surge in retirements recently, due in significant part to bad morale within the agency. Increased litigation, new requirements and a lack of clear and consistent guidance are reportedly causing frustration among BLM staff, who are opting to retire or simply quit their jobs. Many of the qualified staff are leaving BLM to work directly in the oil and gas industry.

For producers, this is occurring at a time when additional permits are needed. Near-constant litigation is cited as a primary reason for job dissatisfaction and the inability to make timely decisions. In some offices, the staff is very new and inexperienced, causing major slowdowns in activities requiring decisions. Producers believe that because federal permitting officials are afraid to make decisions without consistent guidance, they resort to asking for new and often redundant information which further slows down the process and increases frustration.

BLM will deploy “strike teams” to areas in areas where the district office staff is not able to keep up with the rate of permit applications. A strike team is a special BLM detail that is deployed to field offices where extra help is needed. BLM will send teams into booming production areas like North Dakota, where falling behind on applications is quite common.<sup>44</sup> However, it is reported that strike teams are frustrated because they are not given adequate resources and guidance to complete their work. In general, industry believes the strike teams can be effective with the right guidance and resources.

Increasing reporting requirements from the EPA on greenhouse gas emissions and meeting New Performance Standards are other areas cited by those surveyed as impacting projects and timelines. These requirements are much more problematic and daunting for the smaller operators who have fewer resources.

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capability in our office in Dickinson to efficiently process these APDs,’ ...Hotaling said the Dickinson office has *had a fairly high rate of staff turnover and those who have been hired are just learning their jobs.*” *BLM Catching Up On Drilling Applications, Mandan, Hidatsa and Arikara Nation Latest News*, [http://www.mhanation.com/main2/Home\\_News/Home\\_News\\_2012/News\\_2012\\_06\\_June/news\\_2012\\_june21\\_blm\\_drilling.html](http://www.mhanation.com/main2/Home_News/Home_News_2012/News_2012_06_June/news_2012_june21_blm_drilling.html), June 21, 2012.

<sup>44</sup> *BLM Catching Up On Drilling Applications, Mandan, Hidatsa and Arikara Nation Latest News*, [http://www.mhanation.com/main2/Home\\_News/Home\\_News\\_2012/News\\_2012\\_06\\_June/news\\_2012\\_june21\\_blm\\_drilling.html](http://www.mhanation.com/main2/Home_News/Home_News_2012/News_2012_06_June/news_2012_june21_blm_drilling.html), June 21, 2012.

Given market forces, there has been a trend toward more projects in areas that are oil-prone. These projects are becoming increasingly more complicated, requiring larger and more complex well pads. However, while the pad site is larger, there are more wells per pad and thus the footprint is smaller per well and barrel produced.

Several producers expressed concern about DOI Master Leasing Plan<sup>45</sup> requirements that are seen as a virtual moratorium on leasing.<sup>46</sup> A Master leasing plan is the process by which BLM scopes production areas and engages stakeholders in order to identify and mitigate potential negative environmental impacts from production.<sup>47</sup>

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<sup>45</sup> *Secretary Salazar Launches Onshore Oil and Gas Leasing Reforms to Improve Certainty, Reduce Conflicts and Restore Balance on U.S. Lands*, <http://www.doi.gov/news/pressreleases/Secretary-Salazar-Launches-Onshore-Oil-and-Gas-Leasing-Reforms.cfm>.

<sup>46</sup> "In June 2010, BLM unveiled its new program to reform the federal onshore oil and gas leasing process. Whereas the agency previously relied upon resource management plans (RMP) to make land use allocations and leasing decisions, BLM stated in its reform Instruction Memorandum that '*While an RMP may designate land as "open" to possible leasing, such a designation does not mandate leasing.*' Therefore, BLM must now prepare a site-specific environmental assessment (EA) on all nominated lease tracts before they are included in a lease sale notice to determine whether current land use decisions "adequately protect" important resource values. In addition to preparing a site-specific leasing EA, BLM established four criteria designed to determine whether a Master Leasing Plan (MLP) and environmental impact statement (EIS) should be prepared. In such areas, MLPs will be prepared as an RMP amendment before leases are issued, will reconsider existing leasing decisions contained in RMPs and will be subject to public involvement through the NEPA process. As part of the MLP/plan amendment process, BLM will re-examine development scenarios and protection measures. Initially, MLPs were to be considered only if an area met all four of the criteria below:

- A substantial portion of the area to be analyzed in the MLP is not currently leased
- There is a majority of federal mineral interest
- The oil and gas industry has expressed a specific interest in leasing, and there is a moderate or high potential for oil and gas confirmed by the discovery of oil and gas in the general area
- Additional analysis or information is needed to address likely resource or cumulative impacts if oil and gas development were to occur whether there are:
  - o Multiple-use or natural/cultural resource conflicts
  - o Impacts to air quality
  - o Impacts on the resources or values of any unit of the National Park System, national wildlife refuge, or National Forest wilderness area, as determined after consultation or coordination with the NPS, the FWS or the FS; or Impacts on other specially designated areas

Based upon the four original criteria, BLM State Offices determined that few areas met the criteria and only a limited number of MLPs may be prepared." <http://www.publiclandspublicuse.org/wp-content/uploads/2010/12/Dept-of-Interior-BLM-Master-Leasing-Plans.pdf>.

<sup>47</sup> "The MLP process starts with the publication of the Notice of Intent (NOI) in the Federal Register and continues with scoping. Public participation in the scoping process results in identifying issues to be addressed by developing a range of alternatives with varying mitigation levels for mineral leasing. The BLM will evaluate the potential environmental consequences associated with the likely development scenarios for each alternative in the Draft MLP/EIS. A Draft MLP/EIS is made available to the public for a 90 day comment period. Public meetings are held during this comment period. After gathering, analyzing, and incorporating public comments on the Draft into the document, the BLM will then issue the Proposed RMP/Final EIS. Following the 30 day protest period and the 60 day Governor's Consistency Review, the BLM will resolve any protest and sign a Record of Decision (ROD) and issue the Approved MLP and Plan Amendments..." , *Master Leasing Plan and Environmental Impact Statement*, Bureau of

Operators who work with a variety of federal offices expressed concern over inconsistencies in the interpretation and implementation of federal rules in general. According to those surveyed, some offices ask for new and more information throughout the permitting process. Operators stated that a list of required information should be presented upfront at the beginning of the permitting process. Although the issue varies from office to office and from person to person, one area of major concern is that producers are finding it to be exceedingly difficult to obtain clarification over what is deemed to be acceptable submitted language.

Several of those surveyed expressed concern about a looming threat from BLM's hydraulic fracturing rule and EPA's *Study of Hydraulic Fracturing and Its Potential Impact on Drinking Water Resources*.<sup>48</sup> Some complained about 14 federal agencies being involved in hydraulic fracturing rules and conveyed an increasing fatigue over these and other activities such as EPA's greenhouse gas emission reporting requirements.<sup>49</sup> Respondents report that EPA's Subpart W requirements are costly and very time intensive, requiring massive amounts of data tracking and additional manpower.

On a positive note, some producers reported that permitting delays have decreased in some field offices because they have added staff, and expressed hope that this could be done in more offices. The impact of automated drilling and leasing decisions is limited due to increased application of NEPA overall, though some did state that electronic Applications for Permits to Drill (APD) and the acceptance of credits cards for payment processing have been helpful.

In general, there was very little mention of improvements from any ongoing reforms. To the contrary, several companies mentioned that they are trying to move away from leasing on federal lands due to long delays and uncertainties. Again, the fact that many of the more liquids rich shale plays exist largely on private lands is a large contributing factor as well.

**Below are some notable responses from those surveyed:**

*"BLM is woefully understaffed. There's been a rash of retirements, increasing regulations, and land use planning requirements that are making people frustrated with their jobs and are making them retire or move on to other jobs."*

*"The staff needs a coordinated review process, rather than silo reviews. They set it up by a specific department so an APD is reviewed by one department, and on to the next and the next. It's a conveyor*

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Land Management - Canyon Country District Office, BLM, March 2012.

[http://www.blm.gov/pgdata/etc/medialib/blm/ut/moab\\_fo/mlp0.Par.36566.File.dat/MLPNewsletterNo1.pdf](http://www.blm.gov/pgdata/etc/medialib/blm/ut/moab_fo/mlp0.Par.36566.File.dat/MLPNewsletterNo1.pdf).

<sup>48</sup> EPA's *Study of Hydraulic Fracturing and Its Potential Impact on Drinking Water Resources*,

<http://www.epa.gov/hfstudy/>.

<sup>49</sup> The White Houses' Executive Order of April 13, 2012, *Supporting Safe and Responsible Development of Unconventional Domestic Natural Gas Resources* named 13 agencies / offices to participate in the "Interagency Working Group to Support Safe and Responsible Development of Unconventional Domestic Natural Gas Resources" from the Department of Defense, the Department of the Interior, the Department of Agriculture, the Department of Commerce, the Department of Health and Human Services, the Department of Transportation, the Department of Energy, the Department of Homeland Security, the Environmental Protection Agency, the Council on Environmental Quality, the Office of Science and Technology Policy, the Office of Management and Budget, and the National Economic Council. The Securities Exchange Commission has also become involved and the Chair of the Working Group may invite any other agency / office he sees fit.

*belt process, where it would be more efficient for each department to review their sections simultaneously. Coordinate wildlife, surface use, drilling and directional department reviews.”*

*“Often we are making [similar] filings and there is no consistency in the approvals we get back, and the BLM doesn’t have any type of historical system where someone can see if the sundry (proposals to perform certain well operations) was approved or not. It would be an improvement to the system to be able to track the progress of issues. Sometimes we do get reject notices of sundries for minor issues but the reason for the rejection is omitted so we have to follow up to get the reasoning.”*

*“We’re de-emphasizing operations on federal lands; not taking any new leases or proposing new activities. Just servicing what we currently have, that’s well developed, where lots of capital is invested. It takes several years to mature a project from a lease position until you’re in a position to apply for APDs because of the NEPA process, so we’re not willing to explore or actively lease on federal lands.”*

## **Offshore Operations**

According to offshore producers in the Gulf of Mexico, the most impactful regulations are those resulting from “30 CFR 250,” which outlines how exploration and development permits are administered. In the Eastern Gulf of Mexico and Alaska, the Clean Air Act permitting requirements and the National Marine Fisheries Service-issued Marine Mammal Protection Act are the most impactful. In all areas, concerns were expressed about longer delays in the issuance of permits and for the completion of NEPA-related work.

In the post-Macondo period, a much longer lead time is needed for regulatory approvals for both drilling permits and exploration plans. They are often received “just in time,” with little lead time between new operations. Producers have reported that new requirements for blowout preventers are increasing the well completion timeline by 20% to 30%. Nonetheless, the Interior Department has continued to issue new rules that are likely to encumber the process even further.<sup>50</sup>

Whereas in the past it took about 14 days to process, drilling permit applications are today being obtained in roughly 50 days for some operators and longer for others, though there has been some improvement noted in the last year by some operators. Air permits required from EPA in the Eastern Gulf of Mexico can take up to two years to obtain, versus three to five months for the same permits in the Central and Western Gulf of Mexico.

In addition, more content is now required for EISs and EAs, which are being performed on a plan-by-plan basis with a worst-case discharge analysis always included in the plan. The elimination of categorical

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<sup>50</sup> “Rather than streamlining the system in favor of needed efficiency, the rules only continue to proliferate. On May 1, 2012, for example, the Interior Department’s Bureau of Safety and Environmental Enforcement (BSEE) announced that new rules on drilling safety and environmental management systems will be issued in 2012, as well as new proposed rules to heighten requirements regarding blowout preventers and production safety systems. Clearly, the rules and programs governing offshore operations need to keep pace with ever-evolving offshore exploration and production techniques. However, regulations must be implemented efficiently to avoid constricting the very industry they govern. Today’s federal offshore regulatory regime largely falls short of that threshold test.” *The Outlook for Energy Production in the U.S. Gulf of Mexico: How the Regulatory Risk Premium is Restraining Production*, Bernard L. Weinstein, Ph.D., Associate Director, Maguire Energy Institute, Cox School of Business, Southern Methodist University, May 2012.

exclusions is the most dominant factor in the lengthier timelines that are leading to slower decisions. For example, Gulf of Mexico seismic permit processing is taking three to four months, and right of way approvals are taking two to six months and expected to take even longer due to manpower shortages and lack of experienced staff.

BSEE is increasingly asking for more information on exploration plan and drilling permit applications before they are “deemed submitted,” creating additional delays. In turn, operators are battling one another to get personnel to focus on their permits and plans.

A lack of experienced personnel is seen as a major issue for BSEE and BOEM. Existing staff is often inexperienced, which also inhibits the application of advanced technology, and is reluctant to make decisions. With actions mostly directed from Washington, D.C., the personnel issue creates an additional bottleneck.

The just-in-time approach will likely be stressed even further with increased applications for permits and approvals. A significant difference in demand is being seen amongst the BSEE districts – about 40% of permit requests are processed in one district - and resources should be applied accordingly.

In Alaska, while there is hope that a new Interagency Task Force will be effective, there is concern about continued regulatory uncertainty, litigation and the inability to obtain permits.

To address the human resource-related issues at least in part, more experienced personnel resources are needed at BSEE and BOEM, with a special need for experienced well engineers.

Broad and long-term concern was expressed about the offshore program and future leasing opportunities. The development of a National Ocean Policy has producers concerned about the creation of a new layer of bureaucracy that will impact future leasing and approvals and increase uncertainty. They report that it is already impacting access. There is also concern that no new areas were offered in the recent offshore Five-Year Plan, limiting future opportunities for growth in exploration.

On the positive side, the eWell process<sup>51</sup> for permitting is largely seen as an improvement. The states’ Coastal Zone Management approval processes have also been notably effective, with state offices seen as being much more effective in permitting offshore activities.

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<sup>51</sup> MMS issued the following press release describing its eWell system when it was initially rolled out: “The new system replaces paper versions of permits to drill, permits to modify wells, well activity reports, end of operations reports, and rig move notifications. The eWell permitting and reporting system places these forms on-line and allows industry to submit them electronically via a secure Internet site for approval or acceptance, in lieu of paper submission. ‘MMS analyses show our new eWell permitting and reporting system would reduce processing time for the 20,000 applications each year by 50 %, thus reducing costly rig waiting time. In addition to dramatically decreasing the number of steps involved in filing permits, the ability to electronically submit them eliminates the reliance on both internal and external mail, creating additional financial savings.’ There are many features incorporated into eWell that will permit greater efficiency in time and human resources and improved communication between the operator and district offices. For example, the system will automatically populate data and information in the electronic form from data previously submitted to MMS and stored in the database. This feature will save time for the reporter. Internet-based forms with automated help screens will also aid the operator in completing the forms faster and more accurately. Chris Oynes, MMS’s Regional Director for the Gulf of Mexico, noted that, “For permits and reports submitted through this system, MMS has ensured security of company proprietary data and allows public real-time access to data that are releasable by regulation. Industry has

Some producers are reporting that, while the process now takes longer, the dust is settling and they are at least more confident in the risk that they are taking. Immediately following Macondo, there was concern that the risk might be too high to pursue offshore production. Even now, some producers have left, vowing never to return. Others report that they now have to start regulatory activity earlier, submit more information for permits, and spend more money and time on contractors and personnel in order to create lengthier documents. While the prospects for successfully obtaining regulatory approvals to engage in federal offshore oil and gas activity appear to be less risky than in the immediate aftermath of Macondo, the process is still longer and expensive than before and respondents report that there is much room for improvement.

### **Analysis of the Department of Interior’s OCS Reforms and Stakeholder Issue Overview**

Stakeholders have raised several concerns regarding the DOI’s reform processes:

- Temporary moratorium on new OCS permit issuance following Deepwater Horizon oil spill and subsequent “de-facto” moratorium due to slow pace of permit issuance; situation has shown improvement in recent months
- Reduced federal acreage available for leasing and cancelled lease sales<sup>52</sup>
- Increased time to get required permits and approvals once a lease is secured; issues more acute for operations in Alaska and in deepwater regions
- Increased time associated with conducting the environmental reviews for each new lease sale
- Revenue sharing; Gulf of Mexico Energy Security Act of 2006 (GOMESA) provided four Gulf Coast States—Alabama, Louisiana, Mississippi, and Texas—and their coastal political subdivisions, with a 37.5 percent share of all federal revenues generated after FY2016 (including bonus bids, rentals, and production royalties) from all future Gulf of Mexico leases issued beginning in FY2007. GOMESA did not apply this revenue sharing to existing leases in the Gulf of Mexico or to other states, including Alaska, which is the only other US state currently included in OCS lease sales. However, many coastal states, including Virginia, North Carolina, South Carolina and Georgia, and more recently Florida, which have all contemplated oil and gas leasing activities off of their coasts, believe that they too should receive a share of bonus bids, rentals and production royalties generated from any potential future OCS leases in waters adjacent to their states.

#### **Below are some notable responses from those surveyed:**

*“We need much longer lead times for regulatory approvals on both plans and permits. Mandatory EAs for new wells have increased the time for approval. Permits are ‘just in time,’ so we literally get them*

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been a willing partner to help improve the design of the system and supports its implementation,” said Oynes. “Operators volunteered to test the system over many months, and through their input, many facets of the application were modified to enhance the ease of operation.” *MMS Improves Well Permitting and Reporting System with “eWell” New Electronic System to Simplify Data Exchange*, The NewsRoom, Release #: 3086, May 5, 2004. <http://www.bsee.gov/BSEE-newsroom/press-releases/2004/press0505b.aspx>.

<sup>52</sup> Lease sales in the Western Gulf of Mexico and the Mid-Atlantic were cancelled by President Obama on May 27, 2010.

*days or hours before we move to our next location. However, they have, up to this point, delivered what they said they would.”*

*“With the Gulf of Mexico, there has been a generally improved responsiveness as the staff has adjusted to new post-Macondo regulations. In Alaska, there have been improvements in moving air permits.”*

*“The Gulf of Mexico has been generally able to treat business as usual permits as more the same and move them through faster than offices that treat each new permit as a new challenge to the region.”*

*“Offshore they want to work with you. They are just inconsistent. The best offices are the ones that communicate with you and where they have timely communication and let you know what is going on.”*

### **Performance from Office to Office**

Among onshore and offshore field offices, there appear to be wide fluctuations in performance that are generally tied to the level of resources, presence of experienced personnel, and permit and approval demand in a given office. Several surveyed also reported that offices with more seasoned personnel tended to show a greater willingness to work through issues with producers. In addition, Western state offices were given higher praise than state offices in areas with new production, such as Pennsylvania and West Virginia. However, individual staff in all of these states was praised. Overall, while certain federal offices that are more automated, have less turnover and greater expertise are rated higher, others appear to have more paralysis, changing requirements, more turnover and less expertise.

Variations in the performance of state offices were reported as well, though in general there was unanimous agreement that the performance of state offices was far superior to federal offices. Certain states like Alaska, Wyoming, Utah and New Mexico were often cited for effectiveness. Offshore, Lafayette, LA and Lake Charles, LA were seen as helpful, strong leaders, and not overloaded, while Houma, LA and New Orleans, LA were described as being less experienced and overwhelmed.

In terms of BLM field offices, several specific complaints were raised about two specific outposts in Wyoming. The two field offices were said to be plagued by an unprofessional attitude of staff, incompetence, and an inability to process permits. High rates of staff turnover and inconsistencies in information requirements were also listed as top concerns. On the other hand, the Carlsbad, NM and Tulsa, OK offices were praised for being helpful, knowledgeable and more predictable. The higher use of automated technology and expertise in permitting and NEPA analysis were specifically cited. However, producers pointed out that in other instances, particularly among many of the New Mexico branches, BLM offices refuse to share resources or communicate with one another.

In some cases, staffing levels in offices did not appear to be sufficient to address the volume of activity, and several respondents complained that staff is not adequately dispersed.

It was also reported that field offices are generally becoming more responsive to criticism by Environmental Non-Government Organizations and efforts by such groups to obtain future Endangered Species Act listings, resulting in significantly slower decision-making.

**Below are some specific comments from those surveyed:**

*“Both Wyoming and Utah are excellent state agencies but Environmental Quality and Oil & Gas Commissions are troubling. Wyoming was the first state to do the hydrofracking rule, so they were three years ahead of the feds in terms of addressing those issues. Some states have been forward-thinking, more efficient and have addressed issues as they have come up.”*

*“First, increase the BSEE agency resources – vacancies need to be filled with experienced well engineers. Also, there’s a discrepancy between demand in the BSEE districts.”*

*“Different field offices have different workloads and an inconsistent level of review.”*

## **Litigation**

Virtually all respondents said permits and actions are increasingly more susceptible to litigation. A general expansion of NEPA requirements was reported, but these requirements are not being consistently applied. It was often expressed that the lack of uniform requirements increased vulnerability to litigation.

Overall, respondents reported that the threat of litigation is increasing paralysis and is slowing down permit and approval processes. They further reported that employing more knowledgeable and experienced staff to work on environmental documents would reduce vulnerability to litigation.

### **Below are some specific comments from those surveyed:**

*“Litigation is on the rise certainly on the onshore. And it is successful. Regulators, fearful of litigation are asking for more and more paperwork and information. This is no way to regulate – out of fear.”*

*“But on the offshore the NGOs are trying new litigation. They have not been successful yet but they are trying.”*

## **Infrastructure Permitting**

For companies building infrastructure – pipelines, gathering systems and processing facilities – the processes for obtaining grants (rights-of-way) are also becoming more onerous. Pipeline companies are performing virtually continuous reclamation activities and are required to obtain additional bonding in addition to air permits. Survey respondents reported that EAs for these projects can take as long as nine years to obtain. Consistency also remains a significant issue for these projects, and master reclamation plans which can lead to longer lead times are also required in some cases. While state offices are reportedly easier to work with, individual experiences can vary greatly.

### **Below are specific comments from those surveyed:**

*“We have additional costs and reviews with no environmental benefit. One of our biggest problems is that certain reporting requirements have changed with leadership changes, so we’ll be fined in some areas for our reporting where we weren’t told the requirement changed. This is a big problem in New Mexico.”*

### **Here is one respondents’ list of recommendations:**

*“Get rid of the master leasing plans. The NEPA process should be streamlined back so that if you’ve done an analysis you can get it out. Set hard, fixed deadlines for the offices to meet and house NEPA people in a central place within the state so the field office would be a place for inspection. The whole system should be electronic.”*

## **Policy Recommendations**

- 1) Commission Should Identify Opportunities for Regulatory Reforms and More Certainty in Permitting and Environmental/NEPA Review and Compliance** – A commission or working group should be created to review existing problems within the permitting and approval process and identify solutions that can be applied directly to the problems. This commission should be made up of current or retired federal and state agency personnel, current and retired energy producer and service company representatives, appropriate academics and ENGOS. The commission would review and assess the feasibility of various reforms and solutions such as those listed in this memo and would develop implementation recommendations and strategies. It should review the use of Master Leasing Plans and other reforms that are alleged to complicate the process. The commission would review all permits and approvals needed from agencies, including EPA, with a goal of creating a more efficient and less redundant and duplicative process. The commission should also take a look at how other countries, such as Canada, issue and approve regulations and consult with stakeholders to address local concerns.
- 2) Improve Guidance For and Use of Strike Teams** – Federal land management agencies should review current policies and guidance directed toward the use of strike teams and work to strengthen their use and effectiveness. Agencies should provide enhanced and improved guidance around the use of strike teams and provide them with clear guidance and authority to address permitting backlogs and environmental work.
- 3) Establishment of Federal Coordinator/Interagency Working Group** – Federal land managers should establish an interagency working group to coordinate the issuance of permits, perform NEPA analyses, and perform pre-leasing work and analysis. The interagency working group should include the relevant federal land management agencies responsible for permitting, leasing and NEPA, as well as state agencies relevant to the projects, and identify a clear lead agency or lead organizer to ensure the group operates efficiently. Precedent for the working group exists in Executive Order 13580, which established the Interagency Working Group on Coordination of Domestic Energy Development and Permitting in Alaska. The working groups should be organized geographically by state, and should focus on the following:
  - Timely decisions and issuance of permits;
  - Establishment of clear goals and timelines;
  - Improved communication amongst agencies and with producers/lessees/operators;
  - Creation of consistent reporting/information requirements and guidance;
  - Ensuring adequate resources for offices and sharing of resources and information; and
  - Reducing vulnerabilities to legal challenges
- 4) Consistent Requirements and Guidance** – Federal land managers should work to ensure that requirements for permits and approvals are consistent in field offices and across agencies. Requests for information should be consistent based on established criteria, understood by

operators and leaseholders, clearly communicated early in the process, based on guidance agreed upon by Washington, D.C. headquarters, and guided by statutory requirements including those under NEPA. When possible and appropriate, operators should be able to use their safety systems and in-house processes to demonstrate compliance. Federal and state regulators should work with operators/lessees to identify, consolidate, and, where necessary, eliminate duplicative processes and requirements, thereby creating a simpler and more certain regulatory environment.

- 5) **Better Application and Greater Use of Online Tools** – Federal land managers should ensure better application and greater and more consistent use of online tools for permit applications, questions, and management decisions. Timelines and the creation of NEPA processes and documents. Best practices among agencies, offices and state regulatory authorities should be reviewed. Consistent tools and processes should be established and adopted across agencies and offices. A historical database should be maintained to track all applications and inquiries to ensure consistent guidance, reviews and requests for data/information. The database should indicate why applications or sundries are not approved.
- 6) **Protocol for Communications and Timeline Management** – Clear and consistent protocols should be established for communications and timelines for coordination between land managers and operators/lessees. Agency personnel should be required to provide upfront communications about permit applications and approvals. Applicants should be given a clear written understanding of what information is required of them, with requested information based on consistent and supported guidance and with inquiries from applicants being responded to promptly. Timelines for decisions should be established early in the process, and agency personnel should work to meet established deadlines. When additional information is needed, the justification for the request should be consistent with guidance and clearly understood. Such requests should be made as close to the beginning of a project as possible.
- 7) **State Coordination and Sharing Lessons Learned** – Federal land managers and regulators should work with their state counterparts to share best practices that eliminate duplication, and provide greater efficiency and consistency that will result in a better overall process for permit issuance and other approvals. Federal agencies should evaluate processes and policies utilized by state regulators, and implement those processes when they can improve performance. When state and federal offices are performing duplicative functions or activities, federal agencies should allow those functions to be performed by states.
- 8) **Fund Federal Land Agencies in Proportion to their Permitting Load** – Federal land management agencies should be allowed to use a portion of the federal share of revenues collected by their activities (leasing, permitting, environmental reviews, etc.) through payments not subject to appropriations. This will increase individual field office funding levels more proportionally as it relates to the demands placed on each office. It will likewise enable these offices to augment their resources to keep up with the volume of demands.
- 9) **Incentivize Permitting and Other Processes** - In general, federal land management agencies (and interagency working groups) should be incentivized to perform their work efficiently and thoroughly in a timely manner, ensuring adherence to consistently established and understood guidance. Such incentives could come in the form of financial rewards or some other form of recognition to those offices that are best in class.

**10) Simplify and Strengthen Litigation Risk Assessment Process** – To reduce the vulnerability of approvals and other agency actions to litigation, a clear, consistent, thorough process needs to be developed by federal agencies for assessing the risk of such action to litigation. This process needs to be universally applied, realistic and well- understood. It should be adjusted when legal challenges and trends warrant revisions, but should ensure consistent policy and guidance and result in better confidence in the system by federal employees and stakeholders alike. Congress and the Administration should revise, improve and streamline statutory guidelines for court challenges to energy development projects, including deadlines for court decisions. Congress should adopt loser-pay policies for litigation that meet a set of criteria deemed to be frivolous and wasteful.

**11) Working with Industry and Academia, Establish Regulatory Curriculum and Continuing Education Programs** – Federal and state governments should work with industry and academia to establish programs and regulatory curriculum whereby the public and private sectors can work with faculty and students to establish a better understanding of the need for regulations, the role of all parties involved in the regulatory process, the successes of current regulatory regimes, best regulatory practices and efficiency in the establishment and application of regulations. These programs should enable various stakeholders to understand the impact that regulations and permitting processes have on one another. It should also enable public and private sector participants to take part in continuing education and provide colleagues in the regulatory community with a fresh and balanced set of perspectives.

## Appendix I - Recommendations for Industry from Federal Land Management Agencies

**HBW Resources compiled the following recommendations on how industry could improve its performance and interactions with Federal Land Management Agencies. They are based on conversations with current and former agency officials**

**1. Ensure that applications to Federal Land Management Agencies are complete.** Applicants should ensure that they are submitting complete information on drilling permit applications. This may sound like an obvious recommendation, but incomplete information submitted by industry on applications to BLM, BSEE, and BOEM is not uncommon and often adds significant delays in the approval of permits, exploration plans, development plans, etc...

**2. Collaborate with Federal Land Management Agencies on technology advancements.** Although much progress has been made since the Macondo disaster, industry should continue to look for ways to collaborate with the government on all facets of technology advancements related to the exploration and production of oil and natural gas on Federal lands and waters. It is in the best interests of both groups that advancements in technology continue and are shared with DOI. This will contribute to continued confidence in the industry to conduct its activities in the safest and most environmentally friendly manner possible.

**3. Partner with the Federal Land Management Agencies to encourage more students to pursue degrees in science and other related fields.** Given tight budgets and the unprecedented number of Federal employees retiring every month, agencies like DOI are working hard to find qualified college graduates with science-related degrees to commit to work at Federal Land Management Agencies. Since industry is facing similar issues, it should consider collaborating with Federal Land Management Agencies to encourage young people to major in science-related programs and consider working in that field. Filling positions in their respective enterprises is a significant challenge for both government and industry, and a collaboration on this issue between industry and government should benefit both groups.

**4. Encourage a better understanding of Federal Land Management Agencies as both regulators and owners.** Federal Land Management Agencies act not just as a regulator for oil and gas leasing and development of Federal lands and waters, but they are also the trustees of most of the nation's publicly-owned subsurface minerals and surface. In essence, they act as owner of both the minerals and the land above. If industry appeared to understand and respect the challenges that these roles present, the relationship might be less contentious.

## Appendix II - Recommendations from Producers and Service Companies

**From the entities HBW Resources interviewed on permitting and federal actions, we recorded the following list of recommendations made by producers, service companies and environmental consultants:**

- Use Strike teams to address permitting in difficult places, but make sure they know what they need to do to improve the process.
- More certainty is needed from Washington, D.C. for field offices. More clarity in terms of the Administration's policy.
- Agencies should do a process analysis (Japanese kaizen) and find opportunities for efficiencies.
- Provide a state implementation plan for federal lands as with Clean Air Act, Clean Water Act, etc.
- BLM should be required to meet deadlines.
- Reform the NEPA process in a way that results in more certainty and less complexity.
- Categorical exclusions should be reinstated as they were effective before they were eliminated.
- Give more decision making authority to the states and copy their permitting process.
- Make the ROW approval process more automated and electronic.
- More standardization of the process across offices and agencies.
- Share and apply best practices amongst offices.
- Use royalties to fund the agencies that issue the permits and perform environmental work.
- Attach permit approvals to performance standards.
- Get rid of Master Leasing Plans.
- Make litigators pay the defendant's legal fees if they lose.
- Cut down the size of the applications for permits. Make it consistent, clear and simple.
- Use more third party contractors where personnel resources are sparse.
- Avoid redundant submission of rig specific information.
- Allow companies to use their safety systems to demonstrate compliance.
- Establish a specialized court for permits and approvals with a high deference for agency decisions, short timelines for rulemakings, specific time periods for challenges and requirements for suits to be brought forth in the affected area or state.
- Apply a general permitting process for similar well operations.
- Require better communication amongst federal regulators and permit applicants.
- Require federal agencies to produce and adhere to project timelines for permit issuance and other federal actions impacting oil and gas operations.
- Clarify and streamline competing regulatory interests.<sup>53</sup>

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<sup>53</sup> *North America's New Energy Future: A Roadmap for energy self-sufficiency. If we choose it.* "BOEM, BSEE, EPA, NEPA, BLM, NOAA. This string is but a small taste of the alphabet soup of regulatory agencies that regulate and impact energy projects, usually before production can even begin. The government must find a way to simplify, clarify and coordinate the roles its regulatory agencies play so that companies can achieve some level of predictability in exploration and production. For example, granting oversight, timeline and ultimate decision-making authority to a single interagency task force would enable producers to better ascertain how much

**Recommendations for Executive Action**

**Recommendation:** To improve Interior's oversight of offshore oil and gas activities in the Gulf of Mexico, the Secretary of the Interior should institute controls to help ensure that Interior's environmental National Environmental Policy Act of 1969 (NEPA) analyses are based on the most current, relevant information, such as in amendments to operator-submitted exploration and development plans that would need to be considered as part of such an analysis.

**Agency Affected:** Department of the Interior

**Recommendation:** To improve Interior's oversight of offshore oil and gas activities in the Gulf of Mexico, the Secretary of the Interior should continue to evaluate ePlans and develop edit checks to improve the accuracy and completeness of operators' exploration and development plan submissions.

**Agency Affected:** Department of the Interior

**Recommendation:** To improve Interior's oversight of offshore oil and gas activities in the Gulf of Mexico, the Secretary of the Interior should track whether plan amendments were initiated at the request of Interior or the operator and, for amendments initiated at the request of Interior, the reasons for the amendments to provide Interior's managers with information needed to conduct targeted outreach with operators on how to improve plan submissions and reduce the use of amendments.

**Agency Affected:** Department of the Interior

**Recommendation:** To improve Interior's oversight of offshore oil and gas activities in the Gulf of Mexico, the Secretary of the Interior should enhance the effectiveness of Interior's inspection program by assessing how new inspection policy requirements, travel times to drilling rigs, and numbers of inspectors affect Interior's ability to conduct monthly drilling inspections and whether its monthly inspection goal is appropriate.

**Agency Affected:** Department of the Interior

**Recommendation:** To improve Interior's oversight of offshore oil and gas activities in the Gulf of Mexico, the Secretary of the Interior should enhance the effectiveness of Interior's inspection program by ensuring that both violations and correction dates are recorded in Interior's Technical Information Management System Information Technology (TIMS IT) system in a timely manner.

**Agency Affected:** Department of the Interior

**Recommendation:** To improve Interior's oversight of offshore oil and gas activities in the Gulf of Mexico, the Secretary of the Interior should ensure that operators' requests, approvals, and disapprovals for departure from regulations are recorded to provide Interior with information that would better allow it to identify when specific regulations should be considered for revision.

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time and money would be necessary to start a project. There are cases like Shell Alaska, where billions of dollars have been spent and years have gone by due to unforeseen regulatory hurdles. Such unpredictability, however unintentional it may be, is simply bad for business and bad for consumers."

<http://consumerenergyalliance.org/wp/wp-content/uploads/2012/09/CEA-Report-North-Americas-New-Energy-Future-Full-FINAL-LowRes.pdf>.

<sup>54</sup> Interior's Reorganization Complete, but Challenges Remain in Implementing New Requirements, <http://gao.gov/products/GAO-12-423>, Jul 30, 2012.

**Agency Affected:** Department of the Interior

**Recommendation:** To improve Interior's oversight of offshore oil and gas activities in the Gulf of Mexico, the Secretary of the Interior should enhance Interior's capacity for identifying and evaluating offshore oil and gas drilling operations according to risk, thereby allowing it to adjust and evaluate its oversight accordingly by (1) identifying and systematically collecting and maintaining reliable data on risk factors associated with drilling operations, (2) providing operators with clear definitions for significant events in the weekly well activity reports and developing a way to characterize and record these events systematically and reliably, and (3) using the risk factors and significant events data to develop a risk-based approach with clear criteria to prospectively evaluate and categorize drilling operations according to risk and retrospectively to evaluate the performance of oversight and risk mitigation activities in avoiding significant events.

**Agency Affected:** Department of the Interior

**Recommendation:** To improve Interior's oversight of offshore oil and gas activities in the Gulf of Mexico, the Secretary of the Interior should complete and maintain its database for tracking recommendations, so that Interior consistently tracks and responds to the results of all audits and other external reviews to ensure that findings are promptly addressed and appropriate actions are taken to respond to recommendations and improve oversight.

**Agency Affected:** Department of the Interior

**Recommendation:** To improve Interior's oversight of offshore oil and gas activities in the Gulf of Mexico, the Secretary of the Interior should direct the Bureau of Ocean Energy Management (BOEM) and the Bureau of Safety and Environmental Enforcement (BSEE) to set milestones and a completion date for developing a comprehensive IT strategic plan, including results-oriented goals, strategies, milestones, performance measures, and an analysis of interdependencies among projects and activities, and use this plan to guide and coordinate their modernization goals.

**Agency Affected:** Department of the Interior

**Recommendation:** To improve Interior's oversight of offshore oil and gas activities in the Gulf of Mexico, the Secretary of the Interior should direct BOEM and BSEE to develop a strategic workforce plan that, among other actions, determines the critical skills and competencies that will be needed to achieve current and future programmatic results and develop strategies to address gaps and human capital conditions in critical skills and competencies that need attention.

**Agency Affected:** Department of the Interior

**Recommendation:** To improve Interior's oversight of offshore oil and gas activities in the Gulf of Mexico, the Secretary of the Interior should consider reinstating the Outer Continental Shelf (OCS) Policy Committee, on a regional and national basis, or adopt an equivalent alternative to allow increased opportunities for stakeholders to provide input as it relates to offshore oil and gas leasing activities to ensure Interior fulfills its obligations under the implementing regulations of the OCS Lands Act.

**Agency Affected:** Department of the Interior