

North Carolina's Response to the Deep Water Horizon: What Obama's OCS Strategy Could Mean for Us

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On April 20, 2010 an explosion on the oil rig the Deepwater Horizon, located in the Gulf of Mexico, caused a leak that would grow to become the worst oil leak in our nation's history.¹ The leak lasted for months, leaking nearly five million barrels of oil into the Gulf of Mexico.² When the explosion occurred, the Deepwater Horizon, a rig under contract by BP just fifty miles southeast of Venice, Louisiana, had just drilled a well and was in the process of constructing a cement casing to support and reinforce.³ The accidental explosion caused the rig to sink and left tens of thousands of barrels of oil per day flooding into the surrounding waters.⁴ The Deepwater Horizon oil spill has affected the coast lines of Florida, Louisiana, Alabama, Mississippi, and Texas.⁵ The oil has not only interrupted the marine life in these regions but also created devastating effects on the humans who rely on those natural resources.⁶ The long-term environmental effects of the Deepwater Horizon are yet unknown. However, this report seeks to track the legislative response to the Deepwater Horizon and its lasting effects on potential drilling off North Carolina's Crystal Coast. Part I of this paper briefly outlines President Obama's Outer Continental Shelf Strategy. Part II explores new regulation, developed as a result of the DeepWater Horizon explosion and oil leak. Part III will investigate North Carolina's

¹ RESTORE THE GULF, *Officials brief Louisiana Parish Presidents Spill Response*, <http://www.restorethegulf.gov/release/2010/10/29/officials-brief-louisiana-parish-presidents-spill-response> (last visited Oct. 31, 2010).

² NAT'L OCEANIC & ATMOSPHERIC ADMIN., *About the Deepwater Horizon Spill*, <http://www.gulfspillrestoration.noaa.gov/oil-spill/> (last visited Oct. 26, 2010).

³ Campbell Robertson, *Search Continues After Oil Rig Blast*, N.Y. TIMES, Apr. 21, 2010, <http://www.nytimes.com/2010/04/22/us/22rig.html?scp=1&sq=oil+righ+explosion&st=nyt>.

⁴ *Id.*

⁵ NAT'L OCEANIC & ATMOSPHERIC ADMIN., *supra* note 2.

⁶ *See* RESTORE THE GULF, *Get Assistance*, <http://www.restorethegulf.gov/assistance> (last visited Dec. 29, 2010).

response to Obama's Outer Continental Shelf Strategy and will look at North Carolina's response in light of the DeepWater Horizon.

I. Obama's Outer Continental Shelf Strategy

On March 31, 2010 President Obama and Secretary of the Interior Salazar announced an end to a moratorium on offshore drilling off the coast of North Carolina and much of the Atlantic Coast.⁷ The President's strategy along the Outer Continental Shelf (OCS), including "all submerged lands lying seaward and outside of the area of the lands beneath navigable waters . . . [o]f which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control,"⁸ calls for thorough environmental Impact Statements (EIS) to assess the effect of seismic exploration in those areas.⁹ Seismic exploration employs the use of sound waves directed at the ground to determine whether oil or natural gas deposits may exist underground.¹⁰ By interpreting how the sound waves reflect and rebound, geologists can create a map of subsurface deposits.¹¹

This information regarding the presence of oil and natural gas will determine which OCS lands should or should not be included in the 2012-2017 five-year program.¹² A five-year program is the Department of the Interior's strategic plan outlining the size, location, and timing of offshore oil and gas land-leases needed to best satisfy the nation's energy needs for the five-

⁷ John Broder, *Obama to Open Offshore Areas to Oil Drilling for First Time*, N.Y. TIMES, Mar. 31, 2010, http://www.nytimes.com/2010/03/31/science/earth/31energy.html?ref=offshore_drilling_and_exploration.

⁸ Outer Continental Shelf Land, 43 USCA § 1337.

⁹ US DEP'T OF THE INTERIOR, Outer Continental Shelf, Atlantic Region, http://www.doi.gov/whatwedo/energy/ocs/Atlantic_Region.cfm, (last visited on October 29, 2010).

¹⁰ US FISHERIES & WILDLIFE SERVICE, *Seismic Trails*, <http://arctic.fws.gov/seismic.htm>, (last visited October 29, 2010).

¹¹ *Id.*

¹² BUREAU OF OCEAN ENERGY MGMT., REGULATION & ENFORCEMENT, *Introduction~ 5-Year Program*, <http://www.boemre.gov/5-year>, (last visited October 29, 2010).

year term after it is approved.¹³ The Secretary of the Interior is “authorized to grant to the highest responsible qualified bidder or bidders by competitive bidding . . . any oil and gas lease on submerged lands of the outer Continental Shelf which are not covered by leases.”¹⁴ The lease may be for a tract of land no larger than 5,760 acres, unless a larger tract of land is necessary for economic efficiency.¹⁵ All leases must be carried out such that safety, protection of the environment, and conservation of the natural resources on the OCS is assured.¹⁶ Section 1344 (a)(H)(3) of the Outer Continental Shelf Lands Act states that “the Secretary shall select the timing and location of leasing . . . so as to obtain a proper balance between the potential for environmental damage, the potential for the discovery of oil and gas, and the potential for adverse impact on the coastal zone.”¹⁷

On October 12, 2010, the Obama administration lifted the moratorium on deepwater oil and gas drilling.¹⁸ This moratorium, put in place following the Deepwater Horizon explosion, temporarily halted all applications for new drilling permits until the Department of the Interior could review safety procedures.¹⁹ Secretary of the Interior, Ken Salazar, recommended the end of the moratorium after reviewing a report from the Bureau of Ocean Energy Management and Enforcement, BOEM, director Michael Bromwich.²⁰

¹³ *Id.*

¹⁴ Outer Continental Shelf Land, 43 USCA § 1337 (a)(1).

¹⁵ 43 USCA §1337(b).

¹⁶ 43 USCA §1337(p)(4).

¹⁷ Outer Continental Shelf Land Act 43 USCA §1344 (a)(H)(3).

¹⁸ Peter Baker & John Broder, *White House Lifts Ban on Deepwater Drilling*, N.Y. TIMES, October 12, 2010, http://www.nytimes.com/2010/10/13/us/13drill.html?_r=1&ref=gulf_of_mexico_2010.

¹⁹ US DEP’T OF THE INTERIOR, *The Ongoing Administration-Wide Response to the Deepwater Oil Spill*, (May 7, 2010, 9:00 PM) <http://www.doi.gov/news/doinews/The-Ongoing-Administration-Wide-Response-to-the-Deepwater-BP-Oil-Spill.cfm>.

²⁰ US DEP’T OF THE INTERIOR, *Salazar: Deepwater Drilling May Resume for Operators who clear Higher Bar for Safety and Environmental Protection*, (Oct. 12, 2010), <http://www.doi.gov/news/pressreleases/Salazar-Deepwater-Drilling-May-Resume-for-Operators-Who-Clear-Higher-Bar-for-Safety-Environmental-Protection.cfm>.

When the moratorium was enacted, it was met with some resistance.²¹ For example, those in the oil industry feared that the moratorium would result in significant loss of income and employment.²² Louisiana Senator Mary Landrieu said that the moratorium has left more people unemployed than the explosion in the Gulf of Mexico.²³ Senator Landrieu's biggest complaint about the moratorium is the ban on new permits created a "de facto" ban on shallow water drilling. Landrieu says that only seven shallow water drilling permits have been issued in the past six-months, compared with forty-nine during the same period in 2009.²⁴ Interestingly, other reports indicate that "the worst of the predicted economic impacts have not been felt."²⁵ The oil spill clean-up effort created thousands of temporary jobs and oil companies continued to pay their high earning employees despite the moratorium.²⁶

II. New Regulations: Drilling Safety Rule and Work Place Safety Rule

The Obama administration lifted the moratorium on the deep water drilling permits following the safety reviews conducted by the Bureau of Ocean and Energy Management, a division of the Department of Interior.²⁷ The BOEM submitted two new rules to the Federal Register.²⁸ The Work Place Safety Act requires offshore drilling employers to develop a Safety and Environmental Management System, (SEMS).²⁹ The BOEM describes a SEMS as a "comprehensive management program for identifying, addressing, and managing operational safety hazards and impacts with the goal of promoting both human safety and environmental

²¹ Baker & Broder, *supra* note 18.

²² *Id.*

²³ Lynn Garner, *Salazar Expected to Unveil Interim Rule for Overhaul of Offshore Drilling Program*, 188 DEN A-15 (2010).

²⁴ *Id.*

²⁵ Baker & Broder, *supra* note 18.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ BUREAU OF OCEAN ENERGY MGMT., REGULATION & ENFORCEMENT, *Fact Sheet: The Workplace Safety Rule*, <http://www.doi.gov/news/pressreleases/loader.cfm?csModule=security/getfile&PageID=45791>, (last visited on October 29, 2010).

protection.”³⁰ The new Workplace Safety Rule applies to all off-shore drillers in Federal waters.³¹ The Rule makes American Petroleum Institute’s voluntary practices mandatory practices.³² The Workplace Safety rule mandates thirteen elements of the SEMS reporting: General Information, Safety and Environmental Information, hazard analysis, management of change, operating procedures, safe work practices, training, mechanical integrity, pre-startup review, emergency response and control, Investigation of Incidents, Audits, and Records and documentation.³³

The Drilling Safety Act provides standards and protocol for increased well-bore integrity, which defends against blow-out by trying to prevent loss of well control.³⁴ Some of the provisions in the Drilling Safe Act make currently voluntary practices, recommended by the American Petroleum Institute mandatory.³⁵ Other provisions require an engineer’s certification of the well-casing’s strength and sound construction and also greater training for deep-water rig employees on well-control.³⁶ The rule also sets forth equipment standards, mandatory testing, and BOEM oversight and review.³⁷

III. North Carolina’s response to the opening of the Outer Continental Shelf and the DeepWater Horizon Oil Spill

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ BUREAU OF OCEAN ENERGY MGMT., REGULATION & ENFORCEMENT, *Fact Sheet: The Workplace Safety Rule*, <http://www.doi.gov/news/pressreleases/loader.cfm?csModule=security/getfile&PageID=45791>, (last visited on October 29, 2010).

³⁶ *Id.*

³⁷ *Id.*

The lands off the coast of North Carolina are being considered for inclusion in the developing five-year plan for leasing.³⁸ In anticipation of this pressing reality, the North Carolina General Assembly appointed a study committee to examine the effects of drilling for natural gas and oil in the Outer Continental Shelf lands, which extend 50 miles westward from the coast.³⁹

The North Carolina General Assembly responded to the opening of her coasts to oil and gas exploration and the wake of the DeepWater Horizon by removing the cap on the amount of monetary damages for oil and natural gas spills affecting North Carolina's coast.⁴⁰ On August 2, 2010 Democratic Governor Beverly Perdue signed SB 836 into law. Senator Charlie W. Albertson, a Democrat representing Lenoir, Duplin, and Sampson counties, sponsored the bill. Albertson filed SB 836 on March 24, 2010, one week before President Obama and Secretary Salazar's announcement.⁴¹ The bill went to the Standing Committee of Agriculture, Environment, and Natural Resources. The House of Representatives passed SB 836 unanimously on June 23, 2010, and the Senate passed the bill on July 8, 2010 in a 46-2 vote.⁴² Senator Blake, a Republican representing District 22 in Harnett and Moore counties and Senator Rucho, a Republican representing District 39 in Mecklenburg county, both voted no. Senator Shaw abstained. Senator Hoyle was absent the vote.⁴³

Additionally, the North Carolina General Assembly passed legislation as a part of an oil spill contingency plan that directs the North Carolina State Emergency Response Commission to develop a contingency plan relating to undersea oil and gas exploration, including exploration on

³⁸ N.C. GEOLOGICAL SURVEY, *Information Circular 36: Natural Gas and Oil in North Carolina*, (Mar. 12, 2009), http://www.geology.enr.state.nc.us/pubs/PDF/NCGS_IC_36_Oil_and_Gas.pdf.

³⁹ *Id.*

⁴⁰ Andrew M. Ballard, *Oil Spills: North Carolina toughens Spill Liability, Amends Other Environmental Measures*, 149 DEN A-3 (2010).

⁴¹ Oil Spill Liability, Response, and Preparedness, S.B. 836, 2009-2010 Sess. (N.C. 2010).

⁴² Ballard, *supra* note 40.

⁴³ S.B. 836.

the Outer Continental Shelf.⁴⁴ This legislation, the Oil Spill Contingency Plan, also calls for the Secretary of Crime Control and Public Safety to begin development of an “oil spill control network.”⁴⁵ This network will include an inventory of equipment that is owned by municipal, county, and state government available to be deployed in the face of an oil spill threatening the coast of North Carolina.⁴⁶ The deployment of this network will be at the discretion of the Secretary of Crime Control and Public Safety.⁴⁷ Furthermore, the legislation authorizes the Secretary of Environment and Natural Resources to reimburse the governmental owners of the equipment from monies sourced from the “Oil or Other Hazardous Substances Pollution Protection Fund,”⁴⁸ created by N.C. Gen. Stat. § 143-215.87.⁴⁹ Section 143-215.87 establishes an “Oil or Other hazardous Substance Pollution Protection Fund.”⁵⁰ The fund is a revolving fund of North Carolina General assembly appropriated monies intended to “defray the expenses of any project or program for the containment, collection, dispersal or removal of oil or other hazardous substances discharged to the land or waters of this State, or discharged into waters outside the territorial limits of the State which affect land and waters or related uses within the State. . . .”⁵¹ The Oil and Other Hazardous Substance Pollution Protection Fund will also assess any oil pollution damages to the state’s natural resources and to develop plans for remediation and rehabilitation.⁵²

⁴⁴ N.C. Gen. Stat. § 143-215.94HH(a) (2010).

⁴⁵ *Id.* at § 143-215.94HH(b).

⁴⁶ *Id.* at § 143-215.94HH(b)(1).

⁴⁷ *Id.* at § 143-215.94HH(b).

⁴⁸ *Id.* at § 143-215.94HH(b)(3).

⁴⁹ N.C. Gen. Stat. § 143-215.87 (2010).

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

With these legislative contingencies following in the wake of the Deepwater Horizon, North Carolina should be better positioned to respond to the realities of any potential leases in the Outer Continental Shelf Lands.