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Blowout: Legal Legacy of the Deepwater Horizon Catastrophe

After the Spill:

Protecting the Public, the Environment, and the Economy from Drilling Disasters

Senator Jack Reed*

This conference was both important and timely in marking

* U.S. Senator Jack Reed (D-RI), is the Chairman of the Senate Appropriations Subcommittee on the Interior and Environment, which oversees the U.S. Department of the Interior and the Environmental Protection Agency (EPA). Save the Bay honored Senator Reed for his long-standing commitment to preserving the environment, noting that “Senator Reed has been a staunch advocate for protecting Rhode Island’s coastal environment and preserving Narragansett Bay. Senator Reed has secured millions of dollars to help restore the Bay and its ecosystems, educate the public about marine conservation, protect coastal property, and reduce pollution into the Bay from combined sewer overflows.” In the wake of the BP Gulf Oil spill, Senator Reed was among the first to call on BP to set up a twenty billion dollar account, administered by an independent trustee, to pay for cleanup and economic damages. Throughout his career, Reed has championed initiatives to improve America’s energy efficiency. He has fought for stronger oversight of energy companies drilling in public lands and waters and sought to ensure oil and gas companies pay their fair share of royalties to the American people. In addition, he is a cosponsor of the Close Big Oil Tax Loopholes Act to end taxpayer subsidies for big oil companies.

the almost one year anniversary of the explosion on the Deepwater Horizon. This disaster tragically took the lives of eleven people, spilled over four million barrels of oil into the Gulf of Mexico, and caused tens of billions of dollars in economic damages.

Our communities still feel the impacts from that disaster, and it is important that we hold accountable those who are responsible for the devastation as well as learn from the mistakes so that history does not repeat itself.

In Rhode Island we know first-hand the devastating impacts of an oil spill on our economy and coastal resources. In 1996, our state suffered after the North Cape oil spill off southern Rhode Island. The 1996 North Cape oil spill occurred when the 340 foot North Cape oil barge ran aground off Moonstone Beach, after its tug caught fire during a severe winter storm. Over 828,000 gallons of home heating oil spilled into local waters, killing millions of lobsters, surf clams, fish, birds, and other organisms.¹ Scientists from the Rhode Island Department of Environmental Management and the National Oceanic and Atmospheric Administration worked together on a plan to eventually replace the estimated nine million lobsters killed by the oil spill.²

Through the collaborative effort by Rhode Islanders and federal agencies, our coastal environment was cleaned up and our state's lobster and shellfish populations have been built back up. I hope that the experience gained in Rhode Island can help with the efforts in the Gulf of Mexico, and I am pleased to note that scientists and researchers from Rhode Island and the New England region, including the University of Rhode Island's research vessel, the Endeavor, assisted with the assessment of the spill in the Gulf of Mexico.

The Deepwater Horizon oil spill was a national wake-up call to improve the government's oversight of the drilling industry and I was pleased that the Minerals Management Service (MMS) has since been broken up, separating the inspection and permitting

1. NAT'L OCEANIC AND ATMOSPHERIC ADMIN., R.I. DEP'T OF ENVTL MGMT, & U.S. FISH AND WILDLIFE SERV., DRAFT SHELLFISH RESTORATION PLAN AND SUPPLEMENTAL ENVIRONMENTAL ASSESSMENT FOR THE NORTH CAPE OIL SPILL 1-2 (2002), available at http://www.darrrp.noaa.gov/northeast/north_cape/pdf/ncshlea.pdf.

2. See *id.*

divisions from the royalty collection division.

In order to ensure better oversight and improve the safety of their operations, I believe that the companies that tap oil and gas reserves on federal taxpayer property should pay their fair share of drilling royalties and inspection fees. These were among the first recommendations in the National Commission's report on the oil spill,³ and are important steps to further the effort to protect taxpayers, the economy, and the environment.

These natural resources belong to the American people, and we need to ensure that big oil companies are paying fair-market value for the right to drill on public lands. Modest user-fee increases would help prevent future oil spills and ensure the American people are fairly compensated. The Administration's proposed budget for Fiscal Year 2012 included a six-fold increase in the fees oil companies pay for deep water rig inspections. For example, fees on facilities with one to ten wells would increase from \$3250 to \$17,000.⁴ This additional funding would enable the agency to hire new inspectors and engineers to help ensure the safe and secure production of offshore resources.⁵

During a hearing I chaired in March 2011 on the Department of Interior's 2012 budget, I noted how modest those increases would be for the big oil companies and my surprise that this proposal would be greeted by opposition.⁶ Just as a comparison, BP, which had Outer Continental Shelf (OCS) revenues last year of \$10.9 billion, would be asked to pay about \$1.5 million under this new scheme. That is 0.01% of its gross revenues. Similarly, Shell Oil, which made \$6.1 billion on the OCS last year, would be

3. NAT'L COMM'N ON THE BP DEEPWATER HORIZON OIL SPILL AND OFFSHORE DRILLING, *DEEP WATER: THE GULF OIL DISASTER AND THE FUTURE OF OFFSHORE DRILLING*, REPORT TO THE PRESIDENT 256 (2011), available at http://www.oilspillcommission.gov/sites/default/files/documents/DEEPWATER_ReporttothePresident_FINAL.pdf

4. See U.S. DEP'T OF THE INTERIOR, BUREAU OF OCEAN ENERGY MGMT., REGULATION AND ENFORCEMENT, BUDGET JUSTIFICATIONS AND PERFORMANCE INFORMATION, FISCAL YEAR 2012, at 144 (2011), available at <http://www.boemre.gov/adm/PFD/2012BudgetJustification.pdf>.

5. *Id.* at 89-90.

6. *Hearing on FY 2012 Dept. of Interior Budget Before the S. Subcomm. on Interior, Environment, and Related Agencies* at 54:15, 112th Cong. (Mar. 9, 2011) (statement of Sen. Jack Reed, Chairman, S. Subcomm. on Interior, Environment, and Related Agencies), <http://appropriations.senate.gov/sc-interior.cfm>.

asked to pay \$1.8 million, or 0.03% of its gross revenues.⁷ These fees accrue benefits to these companies and to the American public by providing for more thorough inspections and more confident leasing, and yet my colleagues in the House rejected the request to increase the inspection fees in the FY2012 Interior Appropriations bill reported out of committee.⁸ I think increasing these fees is a sensible business-like way of getting the job done, and I will continue to press for these changes.⁹

On an equally important note, although the reorganization of the former MMS was completed on October 1, 2011, I remain concerned that much of the attention is being focused on the leasing and enforcement side of the ledger, and not as much on fixing the problems associated with revenue collection.

In the past, the federal government has not done enough to ensure that it is assessing and collecting the appropriate amount of royalties from oil companies drilling in public waters. In 2008, the Department of Interior Inspector General's office discovered that lax oversight of the MMS had created a "culture of ethical failure," and that MMS employees who were supposed to oversee management of oil and gas royalties were instead breaking rules and accepting gifts from the oil and gas lobby.¹⁰ In February, the U.S. Government Accountability Office (GAO) added the revenue collection program to its "High-Risk" program list, in part due to the Department of Interior not providing "reasonable assurance that it is collecting its share of revenue from oil and gas produced

7. Press Release, Sen. Jack Reed, Reed Wants New Energy Measures to Protect Consumers and Taxpayers (March 11, 2011), available at <http://reed.senate.gov/press/release/reed-wants-new-energy-measures-to-protect-consumers-and-taxpayers>. (based on data supplied to the U.S. Senate, Committee on Appropriations, from the Bureau of Ocean Energy Management, Regulation and Enforcement, U.S. Department of the Interior on March 7, 2011).

8. H.R. REP. NO. 112-151, at 38 (2011), available at <http://www.gpo.gov/fdsys/pkg/CRPT-112hrpt151/pdf/CRPT-112hrpt151.pdf>.

9. As this essay was going to print, Congress passed and the President signed into law the Fiscal Year 2012 Consolidated Appropriations Act, which included the increased offshore drilling fees. See *Subcommittee on Interior, Environment, and Related Agencies*, U.S. SENATE COMMITTEE ON APPROPRIATIONS, <http://appropriations.senate.gov/sc-interior.cfm> (last visited Jan. 4, 2011).

10. Memorandum from Earl E. Devaney, Inspector General, U.S. Dep't of Interior to Dirk Kempthorne, Sec'y of Interior (Sep. 9, 2008), available at http://www.eenews.net/features/documents/2008/09/10/document_pm_02.pdf.

on federal lands.”¹¹

So while oil companies are reaping enormous profits, and consumers continue to pay sky-high prices at the pump, taxpayers may be getting fleeced and that must stop. That is why I have called for better auditing of the resources that energy companies are taking out of the ground to ensure that taxpayers are fairly compensated. We need to fix this system and recoup billions of tax dollars from the oil companies.¹²

We also need to make sure that oil companies pay for the damages they cause. That is why I have cosponsored bills that would eliminate the liability cap on the amount of damages an oil company is responsible for paying for an oil spill involving its facilities, and eliminate the per-incident payout limit from the Oil Spill Liability Trust Fund, which is financed by a per barrel charge on imported and domestic oil and helps cover the government's costs for its emergency response activities.¹³ Both of these measures are directly related to key recommendations from the National Commission's report and are important ways to hold accountable those who are responsible for spills, and make them pay the full costs of recovery.¹⁴

It is also important to note that the moratorium on offshore drilling has not stopped the overall increase in domestic oil production. In fact, in 2010, domestic oil production reached its highest level since 2003,¹⁵ and is projected to have continued to increase in 2011.¹⁶

There may be some modest temporary decline in the

11. U.S. GOV'T ACCOUNTABILITY OFFICE, HIGH-RISK SERIES: AN UPDATE 36 (2011), available at <http://www.gao.gov/new.items/d11278.pdf>.

12. *Id.* at 38.

13. See Big Oil Bailout Prevention Unlimited Liability Act of 2011, S. 214, 112th Cong. § 2 (2011); Big Oil Bailout Prevention Trust Fund Act of 2011, S. 215, 112th Cong. § 2 (2011).

14. See NAT'L COMM'N ON THE BP DEEPWATER HORIZON OIL SPILL AND OFFSHORE DRILLING, *supra* note 3, at 283-286.

15. BLUEPRINT FOR A SECURE ENERGY FUTURE, WHITE HOUSE 9 (2011), available at http://www.whitehouse.gov/sites/default/files/blueprint_secure_energy_future.pdf.

16. Table 4a: U.S. Crude Oil and Liquid Fuels Supply, Consumption, and Inventories, Supply, Crude Oil Supply, Domestic Production, U.S. ENERGY INFO. ADMIN., www.eia.gov/forecasts/steo/tables/?tableNumber=9 (select "Annual" in the "Frequency" pull-down menu, and "2000" to "2012" in the "Period" pull-down menu) (last visited Dec. 20, 2011).

production from the Gulf of Mexico as a result of the Deepwater Horizon spill, as Interior Secretary Ken Salazar testified at the hearing I held last March,¹⁷ but this is due to the need to ensure safe exploration and production. The Interior Department-commissioned forensic report released in March found that the blowout preventer's blind shear rams – the equipment's final line of defense against an oil gusher – could not seal off BP's well as designed because the drill pipe had buckled in the initial blast.¹⁸ Therefore, it is important to develop new rules to improve the performance of sub-sea blowout preventers to avoid a repeat of the 2010 spill.

The discussion over drilling will continue, especially when gas prices stay near four dollars per gallon, as they did last spring and summer. And in response, the oil industry will likely continue to push increased drilling as the solution for rising gas prices, even though the U.S. Energy Information Administration (EIA) has stated that expanded access to offshore drilling “would not have a significant impact on domestic crude oil and natural gas production or prices.”¹⁹

According to the EIA, even with increased drilling, there would be no impact on prices at the pump by 2020 and only a three cent per gallon difference by 2030.²⁰

We cannot drill our way to cheaper gasoline or to achieving oil independence. The United States consumes twenty-two percent of the world's oil production, but with only 1.5% of the world's oil reserves, we cannot meet our needs by simply producing more.²¹

17. *Hearing on FY 2012 Dept. of Interior Budget Before the S. Subcomm. on Interior, Environment, and Related Agencies* at 43:54, 112th Cong. (Mar. 9, 2011) (statement of Hon. Ken Salazar, Sec'y of Int.), <http://appropriations.senate.gov/sc-interior.cfm>.

18. DET NORSKE VERITAS, FINAL REPORT FOR U.S. DEPARTMENT OF INTERIOR BUREAU OF OCEAN ENERGY MANAGEMENT, REGULATION, AND ENFORCEMENT: FORENSIC EXAMINATION OF DEEPWATER HORIZON BLOWOUT PREVENTER 5 (2011), available at http://www.boemre.gov/pdfs/maps/DNV_ReportVoll.pdf.

19. *Impacts of Increased Access to Oil and Natural Gas Resources in the Lower 48 Federal Outer Continental Shelf*, U.S. ENERGY INFO. ADMIN. (2007), <http://205.254.135.24/oiaf/aeo/otheranalysis/ongr.html>.

20. *Impact of Limitations on Access to Oil and Natural Gas Resources in the Federal Outer Continental Shelf*, U.S. ENERGY INFO. ADMIN. (2009), http://www.eia.gov/oiaf/aeo/otheranalysis/aeo_2009analysispapers/aongr.html

21. See *International Energy Statistics, Total Petroleum Consumption and Crude Oil Proved Reserves*, U.S. ENERGY INFO. ADMIN.,

This point is further highlighted by the fact that even during times of ample domestic supply, demand in China and India, and the unrest in the Middle East, continue to push U.S. oil and gas prices higher.²²

We must continue to pursue viable long-term solutions to reduce the overall cost of driving our cars, heating our homes, and powering our businesses. One of the most effective ways is improving energy efficiency through weatherization and increased fuel efficiency standards.

For example, last year's vehicle efficiency and emissions standards will save consumers more than \$3000 in fuel costs over the lifetime of new vehicles.²³ According to the Obama Administration, increasing the standard to 54.5 miles per gallon by 2025 could result in an estimated \$8000 in per vehicle savings.²⁴ Our competitors in China and Europe already have higher efficiency standards.²⁵ It is time that we create manufacturing jobs here in America by producing cars that save consumers money at the pump. I have been heartened to see our auto industry partner with states and the federal government to begin to do just that, and the recent announcement of the agreement to establish new fuel economy standards at 54.5 miles per gallon by 2025 is an important next step.²⁶

Investing in clean, energy efficient technology over the long-

<http://www.eia.gov/cfapps/ipdbproject/IEDIndex3.cfm?tid=5&pid=57&aid=6> (select "Petroleum"; select "Consumption"; then select both "World" and "North America" in the "Country" pull-down menu) (last visited Dec. 2, 2011).

22. See, e.g., FED. TRADE COMM'N BUREAU OF ECONOMICS, GASOLINE PRICE CHANGES AND THE PETROLEUM INDUSTRY: AN UPDATE i (2011), available at <http://www.ftc.gov/os/2011/09/110901gasolinepricereport.pdf>.

23. Regulatory Announcement, U.S. Env'tl. Protection Agency, EPA and NHTSA Finalize Historic National Program to Reduce Greenhouse Gases and Improve Fuel Economy for Cars and Trucks 3 (April 2010), available at <http://www.epa.gov/otaq/climate/regulations/420f10014.pdf>.

24. *Driving Efficiency: Cutting Costs for Families at the Pump and Slashing Dependence on Oil*, WHITE HOUSE, http://www.whitehouse.gov/sites/default/files/fuel_economy_report.pdf (last visited Dec. 2, 2011).

25. *Global Passenger Vehicle Standards*, INTERNATIONAL COUNCIL ON CLEAN TRANSPORTATION, <http://www.theicct.org/passenger-vehicles/global-pv-standards-update/> (last visited Dec. 2, 2011).

26. Press Release, White House, President Obama Announces Historic 54.5 mpg Fuel Efficiency Standard (July 29, 2011), available at <http://www.whitehouse.gov/the-press-office/2011/07/29/president-obama-announces-historic-545-mpg-fuel-efficiency-standard>.

term will strengthen our security, help families save on their energy bills, and create jobs here in Rhode Island. It is a question of competitiveness and making smart investments. On a bipartisan basis, we need to establish a balanced, well thought-out national energy policy, and I look forward to continuing to work with my colleagues in the Senate to accomplish that goal.