

Written Testimony of Jacqueline Savitz, Vice President for U.S. Oceans, Oceana

Senate Committee on Energy and Natural Resources

Full Committee Hearing: To Consider the Transboundary Hydrocarbon Agreement

October 1, 2013

Introduction

Good morning Mr. Chairman and members of the committee. Thank you for the opportunity to testify today. My name is Jacqueline Savitz, and I am Vice President for U.S. Oceans for Oceana, a global ocean conservation organization based here in Washington, D.C., that works to restore and protect the world's oceans. Besides our headquarters in Washington D.C., Oceana has international operations in Belgium, Denmark, Spain, Belize and Chile. Here in the U.S. beyond our D.C. operations, we have staff located in Alaska, Oregon, California, Maine, New York, Virginia, South Carolina and Florida. We have 750,000 members and supporters from all 50 states and from countries around the globe. Our mission is to protect our oceans and the fish and wildlife that depend on them.

Oceana opposes S.812, and its counterpart in the House, H.R.1613, for three reasons.

First, we do not believe that drilling operations should be expanded. Expanding offshore drilling is unnecessary and dangerous, especially when we haven't yet fully addressed the risks. Besides the obvious impacts of oil exploration, production, refining, and transportation, the use of oil and gas is also problematic as these fossil fuels are contributing to climate change. Our continued expansion of their use is unnecessary and wrong-headed. In order to combat global climate change, we should be transitioning off of fossil fuels in favor of clean, renewable energy development.

Second, our continued emphasis on expanding offshore drilling is slowing the necessary investment in clean energy projects that will stimulate the economy without the attendant risks, and help to alleviate the worst impacts of climate change.

Lastly, the "Agreement between the United States and Mexico Concerning Transboundary Hydrocarbon Reservoirs in Gulf of Mexico" ("Agreement") fails to satisfy a basic cost-benefit analysis, as it brings a tremendous amount of risk of devastating spills, and climate impacting results, with little concomitant benefit. The Agreement itself does not adequately address the safety risks associated with oil and gas development, and current federal requirements do not provide an effective backstop. The agreement also fails to provide significant benefits to the United States, beyond what we can be getting from clean energy. The risks of the expanded

drilling called for in the Agreement far outweigh the rewards. Rather than opening this area to new and expanded oil and gas production, we believe that the moratorium on drilling in the transboundary area should be continued, and that the U.S. should invest further in stimulating the development of offshore wind and other clean energy opportunities.

WE SHOULD NOT EXPAND OFFSHORE DRILLING

The proposed expansion of offshore drilling is unnecessary and dangerous, and we haven't yet fully addressed the risks. The federal government's most recent Five-Year Plan allows access to more than 75% of estimated undiscovered technically recoverable oil and gas resources on the U.S. Outer Continental Shelf. At the same time, the oil and gas industry is sitting on a large number of non-producing leases in federal waters. According to a July 2013 U.S. Department of the Interior report, oil and gas companies hold almost 6,000 active leases in the Gulf, 82% of which are non-producing leases. This represents more than ample opportunity for exploration and development and certainly more than we would get by expanding drilling to the transboundary area. Additionally, even if all of the oil available in the transboundary area were to be extracted and the U.S. recovered the entirety of the reserve, this amount would be less than one-half percent of the total amount of technically recoverable oil currently available in the Gulf of Mexico (specifically, 0.37%). Couple this with the fact that our continued reliance on fossil fuels is exacerbating global climate change and it is hard to find the logic in expanding offshore drilling to the transboundary area when there is so little benefit for us in return.

DRILLING IS NOT SAFE

Following the *Deepwater Horizon* disaster, the newly created Bureau of Offshore Energy Management, Regulation and Enforcement ("BOEMRE") issued three sets of new safety regulations in an effort to increase offshore drilling safety and to prevent a similar disaster from happening again. Following the initial release of the new safety regulations, Oceana conducted an exhaustive review which looked at every new requirement to assess the degree to which they would improve safety. We found that these new rules simply did not take necessary steps to minimize risks, and further, would not prevent us from having another catastrophic spill.

The new rules suffer from their own shortcomings, and any positive benefit new safety regulations might offer are undermined by systemic problems that have yet to be corrected. These include an inadequate inspection capacity and an insufficient penalty structure which leads to continued economic incentives to cut corners and ignore requirements.

SAFETY MEASURES PUT IN PLACE SINCE *DEEPWATER HORIZON* FAIL TO MAKE DRILLING SAFE

The Final Drilling Safety Rule

The provisions of the Final Drilling Safety Rule can be divided into three categories: training and maintenance, equipment testing, and well design and equipment. While many of these regulations represent positive reforms that are an improvement over the regulations in place during *Deepwater Horizon*, the Final Drilling Safety Rule's effort to increase safety is undermined by systemic problems in offshore regulation and by serious shortcomings in the rule itself.

Training Maintenance

Improved maintenance and training are both positive reforms that can reduce chances of equipment failure and operator error and thus increase safety. Yet of all the provisions in the Final Drilling Safety Rule, training and maintenance regulations are the most dependent on the robustness of BSEE's oversight and inspection capabilities. Maintenance is an ongoing concern that necessitates being frequently checked and inspected and training is only valuable if it translates into appropriate actions, which also requires continuous oversight to ensure safety regulations are properly met. Unfortunately, BSEE's oversight and inspection programs are woefully inadequate and civil penalties are far too small to ensure compliance and deter risk-taking by the industry. These systemic problems undermine the Final Drilling Safety Rule's efforts to increase offshore safety through new training and maintenance requirements. Ensuring the efficacy of many of the new rules would require a much stronger inspection and oversight program than what currently exists.

Equipment Testing

BSEE has implemented numerous new equipment testing requirements that apply to various stages in offshore drilling. These testing requirements might seem to improve the safety of offshore drilling; however, they are also undermined by BSEE's inadequate inspection program and by insufficient civil penalties that create a perverse economic incentive to skip or ignore tests to save time.

Well Design and Equipment

The Final Drilling Safety Rule requires drilling wells to be equipped with two independent barriers to flow. If correctly installed, these barriers could in fact protect against blowouts. However, the requirements for two barriers to flow can easily be undermined by operator error. This problem is illustrated by the *Deepwater Horizon* disaster, where a cement job, a common barrier to flow, was compromised by numerous operator errors. With limited funds for inspection and oversight, and perverse economics that incentivize project speed over safety, it is likely that not all barriers will be properly installed.

No New Blowout Preventer Rule

BSEE still has yet to implement its new safety rule on blowout preventer technology. Blowout preventers are used to seal a well in the case of a blowout or a loss of well control. They provide the last line of defense against offshore drilling blowouts. Both the National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling and the National Academy of Engineering have recommended that blowout preventers be redesigned in light of flaws uncovered by the *Deepwater Horizon* oil spill. Unfortunately, this has not been done. While some new testing and maintenance regulations for blowout preventers have been enacted, these neither address nor fix the underlying design flaws. Furthermore, simple requirements that would improve the odds that a blowout preventer functions correctly and seals the well – such as requiring redundancy in its shearing rams or testing blowout preventers under real-life conditions – have not been required. As a result of the government's inaction in this area, blowout preventers being used throughout the Gulf of Mexico and elsewhere are at risk of failing just as

the *Deepwater Horizon*'s did. Failure by the government and the industry to ensure the effectiveness of blowout prevention technology is problematic, but continuing to allow and even expand drilling, especially in deep water, in spite of this failure is absolutely unacceptable.

Oversight and Inspection Levels are Paltry Relative to the Scale of Drilling Operations

Since the *Deepwater Horizon* disaster there has not been a sufficient increase in the number of federal inspectors or the size of penalties. While the Bureau of Safety and Environmental Enforcement ("BSEE") has attempted to strengthen its inspection and oversight capabilities, funding levels remain far below what would be needed for frequent and thorough inspections that would reduce instances of equipment failure and operator error. Low inspection rates not only undermine regulatory compliance by reducing the odds that violations will be observed, but also limit real-time monitoring of operations by inspectors, a necessary prerequisite to avert disasters as problems are difficult to foresee even a few days before they occur. This creates a perverse incentive for operators to risk violations when doing so can save them time and/or money, rather than properly following the new safety regulations, because they are unlikely to be caught.

The United States is far behind the rest of the developed world when it comes to inspectors available and trained to inspect the oil and gas rigs off our coasts. The number of inspectors per offshore oil rig in other developed countries is as follows: in the U.K., the inspector to rig ratio is 1: 2.78; in Norway, the inspector to rig ratio is 1:1.05; in the U.S., the inspector to rig ratio is **1:29**. We are playing Russian roulette with our offshore drilling operations by not having a sufficient inspection program and thus, even BSEE's new safety requirements cannot make offshore drilling significantly safer or decrease the chances of an oil spill.

Violating Rules Can be Lucrative Because Penalties Remain Small

BSEE's civil penalties are too small to ensure compliance and deter risk taken by the oil and gas industry. The maximum penalty BOEM can assess for civil violations is \$40,000 per day per violation. In comparison, BP was paying over \$500,000 per day to use the *Deepwater Horizon* rig, and total estimated daily operating costs of the operation were approximately \$1 million. This disparity between penalties for violating regulations and operating costs creates a perverse incentive for drillers to cut corners and complete operations in a timely rather than safe manner. Indeed, Former Director of BOEMRE Michael Bromwich expressed a similar sentiment in testimony delivered to the House Natural Resources Committee, stating that "the current enforcement framework, which permits maximum fines of only \$40,000 per day, per incident, is patently inadequate to deter violations in an environment where drilling operations can cost more than a million dollars a day."

The driller can risk a violation in part because they are unlikely to be caught and penalized, in part due to BSEE's inadequate inspection capabilities, and also because even if they are caught, the penalty is so low that it may pay to break the rules. Raising the maximum fine BSEE can assess for civil penalties to a level comparable with operational costs would eliminate the perverse financial incentive for corner-cutting and increase the likelihood offshore operators comply with the new safety regulations. Raising the penalty would have to be done by Congress,

as BSEE is legally constrained in how many times and to what extent it can raise penalty sizes. As long as rule-breaking pays, new rules cannot protect us from a spill.

At the time of the disaster, the Administration stated that it would not allow drilling to resume unless safety concerns were addressed. Yet drilling was allowed to resume in spite of the lack of sufficient safety regulations. We believe this was a mistake in itself. However, further expansion of oil and gas development, as is envisioned by H.R.1613 and S.812, is clearly wrong-headed, and is a set up for another drilling disaster like the *Deepwater Horizon* or IXTOC events.

CLIMATE CONSIDERATIONS

In May, for the first time in history, the Earth's atmospheric carbon dioxide levels reached 400 parts per million (ppm). This ominous milestone is a stark reminder of what our continued dependence on fossil fuels is doing to our planet. Such dangerous levels of carbon dioxide in the atmosphere are bringing us ever closer to the point of no return and we are already witnessing its disastrous effects. Hurricanes, tornados, tropical storms, and "superstorms" have increased in both severity and frequency. Not only have these storms resulted in the loss of human life and irrevocable property damage, but they have also gotten increasingly expensive, costing billions of dollars in taxpayer money to clean up devastated towns and cities in the U.S. and elsewhere.

These storms are the alarm bells of climate change. We need to act swiftly and immediately to drastically reduce the level of carbon dioxide we are pumping into the Earth's atmosphere. A 2012 report from the International Energy Agency (IEA) held that extreme consequences of climate change would be associated with a 2 degree Celsius warming. As the world's authority on global energy trends, the IEA concluded that in order to achieve a goal of keeping warming under 2 degrees Celsius, two-thirds of our fossil fuel reserves – oil, natural gas and coal – need to stay in the ground as opposed to being released into our atmosphere through production and use as fuel. Instead of doubling down on drilling which will push us past these climatic tipping points, we should heed the warnings of these experts and begin the swift transition from fossil fuels to clean, renewable energy.

Offshore wind can be a big part of this transition, as the scale of America's offshore wind energy resource is truly staggering, with literally thousands of gigawatts (GW) of clean energy available off our shores. For over 20 years, Europe has been generating clean energy and jobs from its offshore wind resource. In fact, there are 1,700 offshore turbines spinning at 55 offshore wind farms overseas, generating approximately 5 GW of electricity. Yet, the U.S. remains stalled with no wind farms in the water at all to date.

According to the DOE's 2011 report, "A National Offshore Wind Strategy: Creating an Offshore Wind Energy Industry in the United States," the U.S. has over 4,000 GW of gross offshore wind energy potential off its coasts. As former Secretary of the Interior Ken Salazar has repeatedly noted, that is enough energy to power the U.S. four times over.

Also according to the DOE, a U.S. offshore wind industry that takes advantage of this abundant domestic resource could support up to 200,000 manufacturing, construction, operation and supply chain jobs across the country and drive over \$70 billion in annual investments by 2030. Offshore wind represents an economic and energy opportunity that could mirror, and even surpass, the success of land-based wind development. If the U.S. develops even 10% of this

clean energy resource for one year, we would produce about 25 times more energy than we would if we developed all of the oil and gas in the transboundary area, and unlike oil, offshore wind will continue to produce clean energy year after year after year.

WE MUST MAKE A SWIFT TRANSITION FROM FOSSIL FUELS TO CLEAN ENERGY

Our continued emphasis on expanding drilling is preventing us from the needed investment in clean energy that would stimulate the economy without the risks associated with drilling and would also help to alleviate the worst impacts of climate change. As I said earlier, in order to combat global climate change, we need to focus on transitioning off of fossil fuels in favor of clean, renewable energy development. Offshore wind can be a big part of this transition, though as with all burgeoning industries, one of the biggest impediments to this clean energy development is financing. In order for a domestic offshore wind industry to get up and running, a long-term extension of the Investment Tax Credit (ITC) is needed. To that end, Senators Tom Carper and Susan Collins have introduced S.401, the *Incentivizing Offshore Wind Power Act*, bipartisan legislation that will extend the ITC to the first 3,000 MW of offshore wind installed. This extension will provide much-needed certainty to investors, which will make offshore wind an affordable, viable investment and will ultimately help to catapult this burgeoning industry into the mainstream. This is the type of legislation that can help solve our energy and environmental challenges, without risking lives and livelihoods, as well as marine ecosystems. A focus on promoting clean energy could get us all the benefits of the Agreement and more, without the risks.

THE AGREEMENT FAILS TO ADDRESS ENVIRONMENTAL CONCERNS

The Agreement fails to adequately address the safety risks of drilling and is effectively silent on environmental protection. As such, this agreement provides little to no additional benefit to the U.S., especially compared to what we could be getting from clean energy. In a recent Congressional Research Service (CRS) report done on this topic, entitled, “Proposed U.S.-Mexico Transboundary Hydrocarbons Agreement: Background and Issues for Congress,” BOEM estimates that there are 172 million barrels of oil and 304 billion cubic feet of natural gas in the transboundary area. As this is the total amount of oil and gas in the transboundary area, the U.S. would only be entitled to half. According to the EIA, the U.S. consumed 18.83 million barrels of oil per day in 2011 and consumed 25.46 trillion cubic feet of natural gas per day in 2012. Therefore, at maximum extraction and assuming the U.S. and Mexico split these reserves evenly, the oil that the U.S. would get as a result of this agreement would supply only about **4 ½ days** of our total oil demands and the natural gas that the U.S. would get would supply only about **2 days** of our natural gas demands. Additionally, the same CRS report states that the U.S. would only bring in \$50 million from energy activities projected to take place in the transboundary area, as compared to \$6.9 billion in revenue the U.S. got from offshore energy production in 2012 alone. To put this in perspective, this paltry sum would represent less than 1% (0.72%, to be exact) of the total offshore revenues of the U.S.

Lastly, there seems to be little to no thought put into what kind of environmental protections would be required in the transboundary area. For instance, both H.R.1613 and S.812 are silent on environmental protections for the area and the Agreement merely suggests protections “where

appropriate” or “where necessary,” which provides absolutely no mandate and is totally open to interpretation. Expanding the risky and dangerous practice of offshore drilling to an area where no thought or consideration is given to environmental protections is a recipe for disaster. It is unacceptable to move forward with such an endeavor when even the safety regulations we currently have in place would not adequately prevent another *Deepwater Horizon* oil spill disaster.

CONCLUSION

Oceana opposes implementation of the Agreement because: (1) we do not believe that drilling operations should be expanded; (2) the continued emphasis on expanded offshore drilling is slowing the necessary investment in clean energy projects that would stimulate the economy and help to alleviate the worst impacts of climate change; and (3) the Agreement fails to satisfy a basic risk/benefit analysis, as it brings a tremendous amount of risk of devastating spills and climate impacting results, with relatively little concomitant benefit.

The risks of the expanded drilling called for in the Agreement far outweigh the rewards. Rather than opening this area to new and expanded oil and gas production, we believe that the moratorium on drilling in the transboundary area should be extended, and that the U.S. should invest further in stimulating the development of offshore wind and other clean energy opportunities.

Thank you for your time. I’m happy to answer any questions you may have.