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A Rational Post-Spill Policy That Allows Offshore Drilling

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The people of Louisiana are speaking loudly and clearly as to what they want in response to the oil spill. Louisianans are the ones bearing the brunt of the environmental and economic damage from Deepwater Horizon, yet they overwhelmingly support continued offshore oil and gas production in the Gulf of Mexico.¹ Even Louisiana fishermen and shrimpers harmed by the spill see the merits of continued offshore energy production.²

The federal government should follow Louisiana's example and focus on adding reasonable safety measures for offshore drilling within the context of a robust pro-domestic production policy. Most importantly, the Obama Administration and Congress should abandon ongoing efforts to parlay the spill into a moratorium on offshore energy.

Good and Bad Ideas from the Feds. The right and the wrong approach to formulating a post-spill drilling policy can be seen in the Department of the Interior's May 27 report, "Increased Safety Measures for Energy Development on the Outer Continental Shelf."³ This report was conducted pursuant to President Obama's request for a 30-day review to determine "what, if any, additional precautions and technologies should be required to improve safety of oil and gas exploration and production operations on the outer continental shelf."

Among the sensible recommendations in the report are improved requirements for blowout preventers, the devices designed to stop the flow of oil from an offshore well that failed in the case of Deepwater Horizon. These include both improvements

in the blowout preventers themselves as well as more robust testing and inspection procedures. The report also suggests tougher requirements for offshore well designs.

It is still too soon to enact a detailed bill, as there are many questions about the spill that are not yet answered. But such specific reforms, based on what is learned, make sense in order to reduce the likelihood of a repeat spill. No doubt, the substantive and process reforms will add at least somewhat to the cost of future offshore drilling, but if done with an eye toward keeping those costs as low as possible consistent with improved safety, there should be no objection.

However, the report did not stop with these sensible recommendations. It also included a blanket six-month moratorium on all ongoing deepwater drilling activity, with *deepwater* broadly defined as anything over 500 feet. The report conceded that such a moratorium would halt ongoing activity on 33 permitted wells but did not explain why this activity posed a similar risk to Deepwater Horizon. The report claims that "the recommendations contained in this report have been peer-reviewed by seven experts identified by the National Academy of Engineering."

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<http://report.heritage.org/wm2958>

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This was false. A majority of those seven experts immediately informed Louisiana Governor Bobby Jindal and its two U.S. Senators that the blanket moratorium was added later and went far beyond anything they had agreed to. “We believe the report does not justify the moratorium as written and that the moratorium as changed will not contribute measurably to increased safety and will have immediate and long term economic effects,” they said.⁴

The Defeat of the Moratorium in Federal Court. Fortunately, a federal district court issued a preliminary injunction blocking the moratorium.⁵ In doing so, Judge Martin Feldman pointed out the lack of expert agreement or any other support within the report. He concluded that “the Court is unable to divine or fathom a relationship between the findings and the immense scope of the moratorium” and added that “the report patently lacks any analysis of the asserted fear or threat of irreparable injury or safety hazards posed by the thirty-three permitted rigs also reached by the moratorium.”⁶

The court took into consideration the significant harm to the smaller oil companies who filed the

lawsuit and their employees. Judge Feldman concluded that “the effect on employment, jobs, loss of domestic energy supplies caused by the moratorium as the plaintiffs (and other suppliers, and the rigs themselves) lose business, and the movement of the rigs to other sites around the world will clearly ripple throughout the economy in this region.”⁷

The Obama Administration immediately appealed the decision. Those appeals have not been successful, but the government’s litigation is ongoing. The Administration has also come out with a new moratorium that it believes will be upheld. This revised moratorium has been criticized as being very nearly if not as stringent as the original one.⁸ Legal challenges are expected.

The Administration’s actions have created uncertainty regarding the possibility of renewed drilling—a chilling effect. Oil rig operators must hold off on operations until it is clear they will have the permission to finish the job.⁹ The impact on employment is already significant and may be long term, as some companies are considering relocating their rigs to other parts of the world where governments are not as hostile to energy production.¹⁰

1. Rasmussen Reports, “Louisiana Voters Strongly Support Offshore Drilling, Deepwater Drilling,” June 28, 2010, at http://www.rasmussenreports.com/public_content/politics/general_state_surveys/louisiana/louisiana_voters_strongly_support_offshore_drilling_deepwater_drilling (July 13, 2010). Seventy-nine percent of Louisianans surveyed believe offshore drilling should be allowed, with 15 opposed and 6 percent unsure.
2. Nick Loris, “Live from the Gulf: Shrimpers and Fishers Want Drilling Ban Lifted,” *The Foundry*, July 8, 2010, at <http://blog.heritage.org/2010/07/08/live-from-the-gulf-shrimpers-and-fishers-want-drilling-ban-lifted>.
3. U.S. Department of the Interior, “Increased Safety Measures for Energy Development on the Outer Continental Shelf,” May 27, 2010, at <http://www.doi.gov/deepwaterhorizon/loader.cfm?csModule=security/getfile&PageID=33598> (July 13, 2010).
4. Kenneth E. Arnold, National Academy of Engineering, letter to Governor Bobby Jindal, Senator Mary Landrieu, and Senator David Vitter, at http://www.instituteforenergyresearch.org/pdf/Fax_to_Governor_Jindal,_Senator_Landrieu_and_Senator_Vitter.pdf; http://www.instituteforenergyresearch.org/pdf/Our_Views_Are_Not_Appropriately_Represented_-_Rev_1.pdf (July 13, 2010).
5. *Hornbeck v. Salazar*, United States District Court, Eastern District of Louisiana, June 22, 2010.
6. *Id.* at 17.
7. *Id.* at 22.
8. See U.S. Chamber of Commerce, “U.S. Chamber Statement on New Offshore Exploration Moratorium,” July 12, 2010, at http://www.energyxxi.org/articles/US_Chamber_Statement_on_New_Offshore_Exploration_Moratorium.aspx (July 13, 2010).
9. Fergus Hodgson, “The Stealth Moratorium: Regulatory Barriers and Legal Uncertainties Keep Deepwater Operators on Hold,” Pelican Institute, June 30, 2010, at <http://www.pelicaninstitute.org/moratorium> (July 13, 2010).
10. Representative Darrell Issa (R-CA), “How the White House Public Relations Campaign on the Oil Spill Is Harming the Actual Clean-up,” Committee of Oversight and Government Reform, U.S. House of Representatives, July 1, 2010, pp. 2, 13–14, at http://republicans.oversight.house.gov/images/stories/Reports/7-1-10_OGR_Report_-_How_the_White_House_Public_Relations_Campaign_on_the_Oil_Spill_is_Harming_the_Actual_Clean-up.pdf (July 13, 2010).

Indeed, Don Briggs, president of the Louisiana Oil and Gas Association, estimates that up to 32,000 jobs could be lost.¹¹

Legislation on the Way. Some in Congress are also trying to crack down on offshore oil drilling. Rather than focus on reasonable reforms designed to allow continued offshore energy production but make it safer, several bills are designed to shut the door on offshore production. For example, H.R. 5626, the Blowout Prevention Act of 2010 would create impossibly high and unnecessary requirements before obtaining a federal permit—a *de facto* ban on new offshore drilling. It requires operators of offshore wells to essentially prove that there is no chance whatsoever of a leak—both that the blowout preventer is failsafe and that in event of a failure the leak will be promptly stopped. This is a burden of proof that could never be met and would preclude the issuance of any more offshore permits.

Similarly, several bills have been introduced to change the liability provisions applicable to BP and other companies involved in offshore drilling. While some changes to the liability limits in the 1990 Oil Pollution Act make sense, some of these bills, such as S. 3305, the Big Oil Bailout Prevention Liability Act of 2010, go too far. They seek to raise liability to levels so high as to make offshore activity prohibitively expensive, especially for smaller operators who would no longer be able to afford insurance.

The Effects of an Offshore Drilling Ban. A complete shutdown of offshore oil and gas production would have a devastating economic

impact. According to a Heritage analysis, such as shutdown would reduce gross domestic product by \$5.5 trillion by 2035, cost each family of four an average of \$2,381 annually, and reduce job growth by more than a million jobs by 2015 and 1.5 million by 2030.¹²

Nor would such a policy necessarily reduce environmental risks. Every barrel of petroleum not produced nearby must be transported great distances via tanker, where the risk of oil spills is greater than that from offshore wells.¹³

Compounding the Problem. The Deepwater Horizon spill is the first significant spill from a well in American waters since 1969. In the meantime, offshore oil production has become a significant source of domestic energy and jobs. Fully a third of American oil comes from offshore, and the potential for additional growth is great.¹⁴ The U.S. can and should respond to the spill but in ways that do not jeopardize the benefits of tapping America's offshore energy.

The Deepwater Horizon spill is already a tragedy—for the 11 workers killed, for the fisherman and others who have lost their jobs, and for the damaged environment of the Gulf. Washington should not compound the tragedy by imposing an unnecessary and costly offshore ban.

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11. Press release, "Shutting Down Gulf of Mexico Deepwater Drilling Will Be Costly," Louisiana Oil and Gas Association, June 2, 2010, at http://loga.la/presidentsarticles/?p=212&utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+PresidentsArticles+%28President%27s+Articles%29 (July 13, 2010).
12. David W. Kreutzer and John Ligon, "The Economic Impact of an Offshore Drilling Ban," Heritage Foundation *WebMemo* No. 2945, July 1, 2010, at <http://www.heritage.org/Research/Reports/2010/06/The-Economic-Impact-of-an-Offshore-Drilling-Ban>.
13. The National Academies, "Oil in the Sea III," 2002, at http://dels-old.nas.edu/dels/rpt_briefs/oil_in_the_sea_final.pdf (July 13, 2010).
14. U.S. Department of the Interior, Minerals Management Service, "Report to Congress: Comprehensive Inventory of U.S. OCS Oil and Natural Gas Resources," February 2006, at <http://www.mms.gov/revaldiv/PDFs/FinalInventoryReportDeliveredToCongress-corrected3-6-06.pdf> (July 13, 2010); Joseph Mason, "The Economic Contribution of Increased Offshore Oil Exploration and Production to Regional and National Economies," American Energy Alliance, February 2009, at http://www.americanenergyalliance.org/images/aea_offshore_updated_final.pdf (July 13, 2010).