

# OBAMA'S BP DISASTER COMMISSION: LOOKING FORWARD WITH NO SUBPOENAS

As promised Obama signed an executive order forming a presidential commission to study the BP disaster today. I thought it'd be instructive to compare what he just formed with what Edward Markey and Lois Capps proposed. Starting with this detail:

Sec. 4. Administration. (a) The Commission shall hold public hearings and shall **request** information including relevant documents from Federal, State, and local officials, nongovernmental organizations, private entities, scientific institutions, industry and workforce representatives, communities, and others affected by the Deepwater Horizon oil disaster, as necessary to carry out its mission. [my emphasis]

Obama's envisioning this Commission "requesting" information from entities like BP and Halliburton. Capps and Markey, however, envision subpoenas:

(b) Subpoenas-

(1) ISSUANCE-

(A) IN GENERAL- A subpoena may be issued under this subsection only—

(i) by agreement of the Chairman and the Vice Chairman; or

(ii) by the affirmative vote of eight members of the Commission.

(B) SIGNATURE- Subject to subparagraph (A), subpoenas issued under this subsection may be issued under the

signature of the Chairman or any member designated by a majority of the Commission, and may be served by any person designated by the Chairman or a member designated by a majority of the Commission.

(2) ENFORCEMENT-

(A) IN GENERAL- In the case of contumacy or failure to obey a subpoena issued under paragraph (1), the United States district court for the judicial district in which the subpoenaed person resides, is served, or may be found, or where the subpoena is returnable, may issue an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt of that court.

(B) ADDITIONAL ENFORCEMENT- In the case of a failure of a witness to comply with a subpoena or to testify when summoned under authority of this section, the Commission may, by majority vote, certify a statement of fact constituting such failure to the appropriate United States attorney, who may bring the matter before a grand jury for its action, under the same statutory authority and procedures as if the United States attorney had received a certification under sections 102 through 104 of the Revised Statutes of the United States (2 U.S.C. 192 et seq.).

Obama also has a different idea of who should serve on this committee, specifically providing for industry participation (which is good, because the Republican co-Chair of the commission, William Reilly, is a Director at DuPont and ConocoPhillips).

Sec. 2. Membership. (a) The Commission

shall be composed of not more than 7 members who shall be appointed by the President. The members shall be drawn from among distinguished individuals, and may include those with experience in or representing the scientific, engineering, and environmental communities, **the oil and gas industry**, or any other area determined by the President to be of value to the Commission in carrying out its duties.  
[my emphasis]

Whereas Capps and Markey specifically prohibited those with a conflict of interest from serving on the commission.

(d) Prohibition on Appointment of Certain Individuals-

(1) IN GENERAL- Not more than two members of the Commission may be either of the following:

(A) An officer or employee of the Federal government.

(B) An individual who has ever had, or has pending, a contractual relationship with the Minerals Management Service.

(2) CONFLICTS OF INTEREST- No member of the Commission shall have ever had a relationship with the Department of the Interior or the Department of Homeland Security that the President determines to constitute a conflict of interest.

Finally, not surprisingly, Obama's commission is rather, um, forward-looking as compared to Capps and Markey's envisioned commission. Capps and Markey described the scope of the commission's investigation this way (click through to see the very detailed bullet points laying out the scope of the investigation):

(1) INVESTIGATION OF CAUSES- The Commission shall conduct an

investigation of the causes of the oil disaster, including an investigation of the following:

(A) The performance of BP Exploration and Production, Inc., Transocean, Ltd., and other entities affiliated with the Mobile Drilling Unit Deepwater Horizon.

(B) The compliance of such entities with Federal, State, and local laws and regulations, and their conformance with their own practices and industry practices.

(C) The performance of Federal, State, and local agencies responsible for oversight, inspection, and enforcement.

(D) The compliance of such agencies with Federal, State, and local laws and regulations governing their actions.

(2) EVALUATION OF IMPACT- The Commission shall evaluate the current and future impact of the oil disaster on the environment, economy, and public health.

(3) EVALUATION OF RESPONSE- The Commission shall evaluate the adequacy of the response to the oil disaster, including an evaluation of the following:

*[snip]*

(4) DEVELOPMENT OF RECOMMENDATIONS- The Commission shall develop recommendations—

*[snip]*

(5) EVALUATION OF IMPLICATIONS FOR OFFSHORE OIL AND GAS ACTIVITIES- The Commission shall evaluate the implications of the oil disaster, and any risk of other such disasters, for current and future offshore oil and gas activities by the United States. [my emphasis]

Whereas President “Looking Forward” Obama focuses primarily on ways to make drilling safer in the future—with no consideration of whether this massive catastrophe ought to make us reconsider our commitment to drilling in the first place.

(a) examine the relevant facts and circumstances concerning the root causes of the Deepwater Horizon oil disaster;

**(b) develop options for guarding against, and mitigating the impact of, oil spills associated with offshore drilling,** taking into consideration the environmental, public health, and economic effects of such options, including options involving:

(1) improvements to Federal laws, regulations, and industry practices applicable to offshore drilling that would ensure effective oversight, monitoring, and response capabilities; protect public health and safety, occupational health and safety, and the environment and natural resources; and address affected communities; and

(2) organizational or other reforms of Federal agencies or processes necessary to ensure such improvements are implemented and maintained. [my emphasis]

I’ve got a lot of respect for former Senator Bob Graham, the co-Chair of this commission, and hope he will insist on the independence and efficacy of this commission. Yet it looks to be, on its face, another one of those classic Presidential commissions designed to limit review, in this case, of our oil addiction and the problems it causes.