“I CANNOT SEE THAT ANY OTHER FORM OF ORGANISATION WOULD STAND A BETTER CHANCE”

I’ve been thinking a lot during the last month about the fact that 50-some years ago, the United States overthrew the democratically-elected government in Iran because the country nationalized BP’s assets in the country. Take this FT interview with the Chairman of BP, Carl-Henric Svanberg, that Yves Smith linked to.

As Yves points out, Svanberg discusses its relationship with the United States (remember—the country that overthrew a government for BP) as mutually beneficial, or perhaps mutually dependent, and certainly equal.

> He said: “The US is a big and important market for BP, and BP is also a big and important company for the US, with its contribution to drilling and oil and gas production. So the position goes both ways.
>
> “This is not the first time something has gone wrong in this industry, but the industry has moved on. Of course our reputation will be tarnished, but let’s wait and see how we do with plugging the well and cleaning up the spill.”

Yves points out that BP “was far from the only major oil company that does deep water drilling.” And that’s undoubtedly true. But it’s worth recalling a few details I pointed out in this post. BP has a significant share—perhaps a third—of the deepwater drilling in the Gulf and is involved in several of the most ambitious projects in terms of depth and complexity. BP also does significantly more deepwater drilling

than its competitors (see slide 30)—more than Exxon and Mobil combined; Shell is a distant second to BP. Not that that should make the US subservient to BP; ultimately Shell or Exxon or Andarko (which has a stake in the Macondo well) should be able to come in and take over this well. But BP is the company that is most pushing the limits of deepwater drilling at the moment, and because of that has the ability to best exploit the oil reserves in the deepwater Gulf.

So to the extent that the US feels a strategic need to develop some US sources of oil—and frankly, to the extent that the US feels a need to develop a non-nationalized source of oil anywhere in the world—the Gulf is going to be a part of that. Apparently, 4 US locations are in the top 20 sources of non-nationalized sources of oil.

> For example, once reserves that are entirely owned by governments are removed from the analysis, of the 104 remaining fiscal regimes ranked by Wood Mackenzie that allow some participation by international oil companies and that have remaining oil and gas reserves, the deep water U.S. Gulf of Mexico ranked 18th highest in terms of remaining oil and gas reserves. Three other U.S. regions were ranked in the top 18 in terms of reserves. These were the U.S. Rocky Mountains (8th), Alaska (14th), and U.S. Gulf Coast (15th), but these regions are not uniquely covered by the federal fiscal regimes, as state and private resource owners may also exist.

Of course, the reason we need to retain sources of oil not owned by national governments is to prevent countries like Venezuela and Iran from attaining too much power to use their oil as a weapon. (And to ensure that if, say, Israel decided to launch a war against Iran, there would be sufficient supply in our control for us to join in the belligerence.)

So while BP is not irreplaceable, the drilling it does in the Gulf does play a key role in the US strategy for maintaining its global hegemony. That doesn't mean that's the way it should be. But that's the way it is.

Now, Svanberg actually goes on to consider whether or not a corporation is the proper "form of organization" to respond to a crisis like this.

> He also rejected calls for the US government to take direct control of the clean-up operation.
>
> "While the well is still leaking, it is natural for people to be frustrated that efforts to cap it have failed," he said.
>
> "I am positive we have all the resources needed to tackle it, working along with competitor companies, scientific experts and others, and I cannot see that any other form of organisation would stand a better chance. We think we have what is needed to do it, and we will see it through."

Frankly, Svanberg is right about a lot of this. The US government is amply prepared to run wars in multiple countries, but it is totally unprepared to respond to predictable environmental disaster at home. As Thad Allen said on Sunday, our technological expertise doesn't extend to monitoring deepwater wells.

> ALLEN: I don't think it's an issue of control. What makes this an unprecedented anomalous event is access to the discharge site is controlled by the technology that was used for the drilling, which is owned by the private sector.
>
> They have the eyes and ears that are down there. They are necessarily the modality by which this is going to get solved. Our responsibility is to

> conduct proper oversight to make sure they do that. And with the top kill that will be coming up later on this week, that's exactly what is happening.

That doesn't mean that BP has all the scientific expertise it needs and it's clear from the Corexit dispute that BP isn't working with the right competitor companies. But it has more of the oil-specific technology needed for a response like this than the Coast Guard does, and because it has that technology it controls access to the disaster site.

I'm most fascinated, though, by Svanberg's assumption that the question is about the proper "form of organization" to respond to this disaster. Setting aside the way he fails to consider the big question of conflict of interest a corporation has—the way that BP may serve other agenda, like limiting its financial liability and hiding the more visual aspects of the spill, than the US or another large entity might have. But Svanberg seems to be arguing that a corporation, as an organization, is as appropriate an entity to respond to a disaster of this scale as the most powerful country in the world.

And our government seems to agree with Svanberg on that point.

Fifty-some years ago, the UK recruited America's help to overthrow the government of Iran to protect BP's stake in that country because that was seen as the appropriate role for government by those mid-century Anglo-American Masters of the Universe. Now, we're at that point where our government and BP appear to agree that it is the appropriate role of the corporation that caused a massive disaster to take charge of cleaning up that disaster. There are real reasons for that—to make sure that BP, rather than the government, retains liability for anything that goes wrong during cleanup, and because our country has a myopic view of national security which means it doesn't have technology to

environmentally protect the country that it does to make war on other countries.

But it's also a testament to the ongoing troubled relationship between corporations and government.

BP FIXED A NEGATIVE PRESSURE TEST BEFORE THE WELL BLEW

Back when the House Commerce Committee had its first hearing on the BP Disaster, Henry Waxman revealed some inconsistencies about the negative pressure test BP did on the well before it moved to close off the well.

> The next bullet says: "After 16.5 hours waiting on cement, a test was performed on the wellbore below the Blowout Preventer." BP explained to us what this means. Halliburton completed cementing the well at 12:35 a.m. on April 20 and after giving the cement time to set, a negative pressure test was conducted around 5:00 p.m. This is an important test. During a negative pressure test, the fluid pressure inside the well is reduced and the well is observed to see whether any gas leaks into the well through the cement or casing.
>
> According to James Dupree, the BP Senior Vice President for the Gulf of Mexico, the well did not pass this test. Mr. Dupree told Committee staff on Monday that the test result was "not satisfactory" and "inconclusive." Significant pressure discrepancies were recorded.
>
> As a result, another negative pressure

> test was conducted. This is described in the fourth bullet: “During this test, 1,400 psi was observed on the drill pipe while 0 psi was observed on the kill and the choke lines.”
>
> According to Mr. Dupree, this is also an unsatisfactory test result. The kill and choke lines run from the drill rig 5,000 feet to the blowout preventer at the sea floor. The drill pipe runs from the drill rig through the blowout preventer deep into the well. In the test, the pressures measured at any point from the drill rig to the blowout preventer should be the same in all three lines. But what the test showed was that pressures in the drill pipe were significantly higher. Mr. Dupree explained that the results could signal that an influx of gas was causing pressure to mount inside the wellbore.
>
> Another document provided by BP to the Committee is labeled “What Could Have Happened.” It was prepared by BP on April 26, ten days before the first document. According to BP, their understanding of the cause of the spill has evolved considerably since April 26, so this document should not be considered definitive. But it also describes the two negative pressure tests and the pressure discrepancies that were recorded.
>
> What happened next is murky. Mr. Dupree told the Committee staff that he believed the well blew moments after the second pressure test. But **lawyers for BP contacted the Committee yesterday and provided a different account. According to BP’s counsel, further investigation has revealed that additional pressure tests were taken, and at 8:00 p.m., company officials determined that the additional results justified ending the**

> **test and proceeding with well operations**. [my emphasis]

Today, Waxman is out with an interim report on what happened. And here's what that report says about this negative pressure test.

> Further, BP's preliminary findings indicate that there were other events in the 24 hours before the explosion that require further inquiry. As early as 5:05 p.m., almost 5 hours before the explosion, an unexpected loss of fluid was observed in the riser pipe, suggesting that there were leaks in the annular preventer in the BOP. Two hours before the explosion, during efforts to begin negative pressure testing, the system gained 15 barrels of liquid instead of the 5 barrels that were expected, leading to the possibility that there was an "influx from the well." A cementer witness stated that the "well continued to flow and spurted." **Having received an unacceptable result from conducting the negative pressure test through the drill pipe, the pressure test was then moved to the kill line** where a volume of fluid came out when the line was opened. **The kill line was then closed and the procedure was discussed**; during this time, pressure began to build in the system to 1400 psi. At this point, the line was opened and pressure on the kill line was bled to 0 psi, while pressure on the drill pipe remained at 1400 psi. **BP's investigator indicated that a "fundamental mistake" may have been made here because this was an "indicator of a very large abnormality." The kill line then was monitored and by 7:55 p.m. the rig team was "satisfied that [the] test [was] successful."** At that time, the rig started displacing the remaining fluids with seawater, leading to the three flow

> indicators described above.
>
> [snip]
>
> Negative pressure testing was initially done on the drill pipe rather than the kill line, even though **the drill plan specified that it would be done on the kill line**. After anomalous results, the negative pressure testing was conducted on the kill line and ultimately accepted. Evidence suggests that spacer fluid used during the displacement of drilling fluid with seawater did not rise above the BOP to the level required by the drilling plan; this increased pressure in the drill pipe and may have interfered with later pressure testing. [my emphasis]

Click through to read the whole memo. You'll see that before BP played this little game with the negative pressure test, there were already indications that something was amiss. Yet they still used procedures that violated their drill plan. And in spite of indications of a "very large abnormality," they kept testing until they got something they could claim fulfilled the test. And then, kaboom!

I'm most disgusted by the description of some discussion of the procedure they were using for the test. Remember—there were a bunch of BP bigwigs on the rig, celebrating its spotless safety record! It sort of makes you wonder who took part in those discussions that ultimately led them to ignore two contrary tests and do another one?

And I'm wondering about Mr. Dupree. Did he deliberately forget to tell the Committee about the third test, the one they miraculously declared adequate?

You almost get the feeling BP didn't know precisely what it wanted to tell Congress about these multiple and contradictory tests, huh?

BP: WE HAVE TO USE COREXIT BECAUSE NO ONE TESTS FOR ENDOCRINE DISRUPTORS

As Scarecrow reported on Saturday, BP told EPA it would not switch from Corexit to another less toxic dispersant. BP admits that five approved dispersants are less toxic than Corexit; it dismisses four of those because the manufacturers cannot get enough product in place immediately.

> BP does not have a stockpile of the other dispersants that meet the criteria in the May 19th Directive [of being less toxic], and the manufacturers tell us that they cannot produce the requested volume for 10 to 14 days or more.

So what about the fifith dispersant, Sea Brat #4, which is both less toxic and—BP tells us—and which BP has 100,000 gallons in its inventory? BP explains that Sea Brat #4 may degrade into an endocrine disruptor.

> Sea Brat #4 contains a small amount of a chemical that may degrade to a nonylphenol (NP). The class of NP chemicals have been identified by various government agencies as potential endocrine disruptors, and as chemicals that may persist in the environment for a period of years. The manufacturer has not had the opportunity to evaluate this product for these potential effects, and BP has not had the opportunity to conduct independent tests to evaluate this issue either. BP learned of this

> issue after it applied to use Sea Brat #4 at the incident site.
>
> With this additional information in hand, we believe it would be prudent to evaluate the potential NP issue more carefully before EPA or the FOSC require Sea Brat to be used at the incident site, and in particular, before it is applied underwater near the ocean floor.

BP latches onto a reality of the great test tube that is our everyday environment to explain why it is not using a competitors product. And the concern about the effect of possible endocrine disruptors is real. Endocrine disruptors have been associated with a range of biological problems, particularly with normal reproduction and cancers.

But that sort of raises a larger point, doesn't it? These chemicals **have been approved for use by the EPA** but haven't been tested to see if they degrade into endocrine disruptors. Not only does that mean we can't choose a less toxic dispersant in time of emergency. But it also means this stuff is already being used, with no clear idea of the consequences of its use.

Of course, all this doesn't answer the other question: whether we should be using dispersants at all, or whether BP is using it just to hide the effects of the spill underwater.

HOW MUCH DOES BP PAY US FOR PRIVILEGE OF SOILING OUR

SHORES?

The Mineral Management Service claims that revenues from oil production once became the country's second largest source of revenue after income tax.

> As the industry continued to evolve through the 1950s, oil production became the second-largest revenue generator for the country, after income taxes.

That's a historical claim, though the American Petroleum Institute still pitches a version of it: "one of the federal government's largest sources of non-tax income." But it got me thinking about how much we're actually getting from the oil companies, like BP, in exchange for them soiling our shores.

Last year, the Minerals Revenue Management department of the Mineral Management Service reported $9.9 billion in royalties from all mineral exploitation. Of that, MRM collected $5.8 billion for all federal offshore drilling of oil and gas.

$5.8 billion for exposing an ecosystem like the Gulf to the risk of the catastrophe that is now playing out. BP will pay more in liability or cleanup than that.

Of the $5.8 billion MMS brought in from offshore oil and gas drilling, $3.1 billion appears to come from oil, which is our share of the $23.5 billion in revenues for 425,199,067 BBL of oil drilled off shore.

Do the math. If I'm doing **my** math correctly, that means we're getting less than $7.60/BBL for royalties the oil. That's not all the money we get, mind you. There's the actual bonus bid for the drilling rights and rent up until oil starts flowing; BP paid $34 million to the rights to this particular site. And starting in 2008, royalty percentages for Gulf leases were raised to 18.75%, but a lot of those leases aren't

producing yet. But using the $7.60 we've been getting for oil, taking the highest estimates for the rate of spill—70,000 BBL/day—and assuming it will spill for a total of 90 days, taxpayers would get **less than $48 million** in oil revenues for all that oil, enough to ruin the Gulf ecosystem for a generation, not to mention the serious damage to the fishing and tourist industries. While not all of the fishing and tourist industries will be destroyed, in 2008 all Gulf states brought in over $1 billion in fish, shrimp, and oysters, and $20 billion in tourism.

I realize weighing the oil gushing into the Gulf this way doesn't account for the jobs the oil industry supports in the Gulf, but it is a testament to how cheaply we've exposed ourselves to the enormous environmental risk of oil drilling.

Now put BP's presence in context. Last year, BP produced 387,000 BBL/day of oil in the deepwater Gulf (though more recent reporting says this has gone up to 450,000 BBL/day), and 665,000 BBL/day of oil total in the US. 15% of all of BP's oil development last year came from deepwater drilling in the Gulf (though note, it partners with others on much of this driling). On top of that, it produced 303 million cubic feet/day in gas in the deepwater Gulf. It appears that Atlantis, the rig some are trying to shut down because of safety allegations, produced 2% of BP's oil production last year, with the capability to go much higher. Here's a description of the big projects BP has in the Gulf.

I'm having a tougher time figuring out how much of the drilling in the Gulf is BP's. The Energy Information Administration says the US produced 1.6 million BBL/day in the Gulf last year, including drilling on state and federal lands. Which would mean BP's 387,000 BBL/day coming out of the Gulf amounted to 24% of all Gulf production. But BP's production would make a bigger percentage of the total offshore revenues

MMS brings in—perhaps up to 33%. (Again, both these figures must include the caveat that BP partners with others on most of this volume.)

Whatever the number, BP accounts for a huge portion of the exploration going on in the Gulf right now. It's by far the leader in the industry on this kind of deepwater drilling (see slide 30). Which may be a big factor in any discussion of what to do to BP.

Then there's the other problem when considering how little money we get for letting BP soil our shores. MMS isn't all that good at collecting the money that's due taxpayers (though presumably far better than Department of Interior does for Native Americans). GAO testified in April 2009 that there were "questions about whether the federal government is collecting an appropriate amount of revenue for the rights to explore for, develop, and produce oil and gas on federal lands and waters." In one study done in 2007, "the government take in the deep water U.S. Gulf of Mexico ranked as the 93rd lowest out of 104 oil and gas fiscal systems evaluated in the study." Both of these GAO reports are worth reading in detail, for the explanation they give of how the finances for drilling works, and the description of what MMS is not doing that it could be to exert more control over the drilling.

I realize there's a danger in looking at the dollars involved in federal royalties and drilling. It suggests there is a market price to put on potentially destroying the Gulf. But it highlights the way that oil companies are screwing Americans the same way they screw residents of oil countries around the world.

DR. SLUDGELOVE: OR HOW I LEARNED TO STOP JUNK SHOTTING AND LOVE TEH BOMB

The solution ideas to date by BP to shut off their Gulf killing oil gusher have been straight out of the Wile E. Coyote Acme School School of idiocy. There is only one real solution: Bomb the sucker!

THE EPA'S HISTORY OF WILLIAM REILLY

I was going to go clean the house and forget about the BP disaster for a few hours. But then I saw the EPA files on William Reilly, the Republican Obama appointed to co-chair his BP Disaster "Looking Forward" Commission.

From the EPA's institutional perspective, he sounds like a nice guy: a Republican conservationist of the sort that went the way of the NE Republican. Here's a fairly interesting policy piece from him.

But I wanted to highlight just a few parts of EPA's institutional history of Reilly for what they say about Obama and this commission.

First, there's the description of Reilly as a broker of compromise.

> Reilly's proclivity for drawing people together will not just be directed outward, toward the regulated community: it can also be expected to bring new cohesion to the internal operations of EPA.

> [snip]
>
> Reilly's personal style—gentlemanly and soft-spoken—makes him the ideal mediator, effective at bridging differences even when antagonisms are intensely felt and there seems to be no common ground for agreement.
>
> [snip]
>
> In recent years, Reilly has scored successes with his efforts to secure dialogue and cooperation among frequently polarized business and environmental leaders. One such widely applauded breakthrough occurred in November 1988 when 25 previously warring environmentalists, industrialists, and developers made a public commitment to a "no net loss" goal for U.S. wetlands, a resource heretofore subject to dangerously rapid depletion. These same people, so harmonious by late 1988, had scarcely been on speaking terms when Reilly first coaxed them to convene for a meeting in July 1987.

This is a guy with Obama's instinct for the mushy middle, right there between corporations and environmentalists.

Perhaps most telling, though, are the lessons in a report for President Poppy Bush on the Exxon Valdez spill completed under Reilly and then-Transportation Secretary Samuel Skinner's guidance two months after the spill (that's a picture of Reilly at the cleanup site—the picture above is Reilly at the Kuwait oil fires during Poppy Bush's Saddam war). I expect he'll write something similar for Obama's commission six months from now.

- **Preparedness must be strengthened.** Exxon was not prepared for a spill of this magnitude—nor were Alyeska,

the State of Alaska, or the federal government. It is clear that the planning for and response to the *Exxon Valdez* incident was unequal to the task. Contingency planning in the future needs to incorporate realistic worst-case scenarios and to include adequate equipment and personnel to handle major spills. Adequate training in the techniques and limitations of oil spill removal is critical to the success of contingency planning. Organizational responsibilities must be clear, and personnel must be knowledgeable about their roles. Realistic exercises that fully test the response system must be undertaken regularly. The National Response Team is conducting a study of the adequacy of oil spill contingency plans throughout the country under the leadership of the Coast Guard.

- **Response capabilities must be enhanced to reduce environmental risk.** Oil spills—even small ones—are difficult to clean up. Oil recovery rates are low. Both public and private research

are needed to improve cleanup technology. Research should focus on mechanical, chemical, and biological means of combating oil spills. Decision-making processes for determining what technology to use should be streamlined, and strategies for the protection of natural resources need to be rethought.

- **Some oil spills may be inevitable.** Oil is a vital resource that is inherently dangerous to use and transport. We therefore must balance environmental risks with the nation's energy requirements. The nation must recognize that there is no fail-safe prevention, preparedness, or response system. Technology and human organization can reduce the chance of accidents and mitigate their effects, but may not stop them from happening. This awareness makes it imperative that we work harder to establish environmental safeguards that reduce the risks associated with oil production and transportation. The

infrequency of major oil spills in recent years contributed to the complacency that exacerbated the effect of the *Exxon Valdez* spill.

- **Legislation on liability and compensation is needed.** The *Exxon Valdez* incident has highlighted many problems associated with liability and compensation when an oil spill occurs. Comprehensive U.S. oil spill liability and compensation legislation is necessary as soon as possible to address these concerns.
- **The United States should ratify the International Maritime Organization (IMO) 1984 Protocols.** Domestic legislation on compensation and liability is needed to implement two IMO protocols related to compensation and liability. The United States should ratify the 1984 Protocols to the 1969 Civil Liability and the 1971 Fund Conventions. Expeditious ratification is essential to ensure international agreement on responsibilities associated with oil spills around the world.

- **Federal planning for oil spills must be improved.** The National Contingency Plan (NCP) has helped to minimize environmental harm and health impacts from accidents. The NCP should, however, continue to be reviewed and improved in order to ensure that it activates the most effective response structure for releases or spills, particularly of great magnitude. Moreover, to the assure expeditious and well-coordinated response actions, it is critical that top officials—local, state, and federal—fully understand and be prepared to implement the contingency plans that are in place.
- **Prevention is the first line of defense.** Avoidance of accidents remains the best way to assure the quality and health of our environment. We must continue to take steps to minimize the probability of oil spills.
- **Studies of the long-term environmental and health effects must be undertaken expeditiously and carefully.** Broad gauge and carefully

> structured environmental recovery efforts, including damage assessments, are critical to assure the eventual full restoration of Prince William Sound and other affected areas. [underline emphasis mine]

Again, I include this not because I think Reilly is a bad choice: Obama seems to have found one of the rare remaining Republicans who cares about the environment.

I raise it to point how little progress we've made since the last unimaginable petroleum catastrophe. Do we really think the lessons that will come out of Obama's commission will be any different? Reilly told us 21 years ago we've got to have worst-case planning in place; yet BP grossly underestimated the potential worse case here (probably by design, given the environmental regulations involved). 21 years ago, Reilly told us we need to improve clean up technologies, yet we're still relying on the same kind of booms used in the Santa Barbara spill 40 years ago. We've twice failed already (Thanks Murkowski! Thanks Inhofe!) trying to fix the existing liability and compensation law to account for this kind of disaster—precisely the liability and compensation scheme put into place in response to the Valdez. And we're still talking a good game about prevention, but not putting the regulatory regime into place to make sure prevention happens.

In any case, Reilly will probably conclude the same thing he did the last time he advised a President about lessons learned in response to an oil disaster: "Some oil spills may be inevitable. Oil is a vital resource that is inherently dangerous to use and transport. We therefore must balance environmental risks with the nation's energy requirements." 21 years, and we never learned any of the lessons about

prevention and clean-up technology. What makes anyone think we will do so in the next 21 years?

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.

CONGRESS' 30-DAY DEADLINE FOR RUBBER-STAMPING EXPLORATION PLANS

The other day, when Sheldon Whitehouse asked Secretary of Interior Ken Salazar why BP had gotten an exemption from the full-blown NEPA process from which it presumably should have been categorically excluded, Salazar referenced a 30-day deadline from Congress to approve exploration plans.

> Senator, there has been significant environmental review, including Environmental Impact Statements that has been conducted with respect to this activity in the Gulf of Mexico. It is an area where we know a lot about the environment, we know a lot about the infrastructure that is there. **The question of the categorical exclusion in part relates to the Congressional 30-day requirement that MMS has to approve or disapprove an exploration plan**. [my emphasis]

Mineral Management Service Director Elizabeth Birnbaum elaborated on this 30-day deadline on Wednesday.

> Under the National Environmental Policy Act we're required to examine the environmental impacts of any major federal actions, certainly the oil and

> gas leasing is a major federal action. We have conducted many Environmental Impact Statements before we get to the point of an individual well drilling decision. We conduct an EIS on the full 5-Year Plan for oil and gas drilling, We have conducted EIS on the lease sales in the Gulf and then separately in Alaska. We also conducted some separate Environmental Impact Reviews on leasing in the particular area—drilling in the particular area in the Mississippi Canyon here in the Gulf. When we get to the point of deciding on an individual exploration plan for a particular permit, we are under a statutory obligation under the Outer Continental Shelf Lands Act to make a decision within 30 days. That very much limits our ability to conduct environmental reviews. Many of our environmental reviews are categorical exclusions. We review that to determine whether there's a trigger for us to do a full Environmental Assessment, which we did actually on exploration plans for Arctic drilling. But we're still limited to that 30-day decision, and we have to still make a decision on whether to go forward with an exploration plan within 30 days, which limits the amount of environmental review we can conduct. In the package that the Administration sent up to provide additional appropriations, we also asked to lift that limit in the Outer Continental Shelf Lands Act to allow 90 days or more to provide more full analysis of exploration plans before drilling.

Here's a history of the OCSLA. The 30-day requirement itself is described in the plan approval process of the OCSLA.

> (1) Except as otherwise provided in this subchapter, prior to commencing

> exploration pursuant to any oil and gas lease issued or maintained under this subchapter, the holder thereof shall submit an exploration plan to the Secretary for approval. Such plan may apply to more than one lease held by a lessee in any one region of the outer Continental Shelf, or by a group of lessees acting under a unitization, pooling, or drilling agreement, and shall be approved by the Secretary if he finds that such plan is consistent with the provisions of this subchapter, regulations prescribed under this subchapter, including regulations prescribed by the Secretary pursuant to paragraph (8) of section 1334 (a) of this title, and the provisions of such lease. The Secretary shall require such modifications of such plan as are necessary to achieve such consistency. **The Secretary shall approve such plan, as submitted or modified, within thirty days of its submission, except that the Secretary shall disapprove such plan if he determines that**
>
> (A) any proposed activity under such plan would result in any condition described in section 1334 (a)(2)(A)(i) of this title, and
>
> (B) such proposed activity cannot be modified to avoid such condition. If the Secretary disapproves a plan under the preceding sentence, he may, subject to section 1334 (a)(2)(B) of this title, cancel such lease and the lessee shall be entitled to compensation in accordance with the regulations prescribed under section 1334 (a)(2)(C)(i) or (ii) of this title. [my emphasis]

And that sets the standard for rejecting an application in 1334 (a)(2)(A)(i) this way:

> (i) continued activity pursuant to such lease or permit would probably cause serious harm or damage to life (including fish and other aquatic life), to property, to any mineral (in areas leased or not leased), to the national security or defense, or to the marine, coastal, or human environment;

Now, I would have to do a lot more review of legislative history of the OCSLA to see where that 30-day deadline came from, though so many of the deadlines in the OCSLA are set at 30 days, it might just have been arbitrary (or, it might have been what appeared to be a reasonable deadline to make sure the process kept moving forward—you gotta Drill Baby Drill, dontcha know).

But given Salazar's and Birnbaum's statements, the effect appears to be clear. That 30-day deadline appears to ensure that the MMS only looks closely at these exploration plans if there's a blinking red flag in the plan, and not something trivial like drilling in extremely deep waters and/or innovative drilling plans—the things Whitehouse noted that should have prevented this exploration plan from being exempted from an individual assessment, the things that are causing such acute problems now.

And of course, to actually change this 30-day rubber stamp process, the legislation is going to have to get by industry shills like Lisa Murkowski and James Inhofe. Something to look forward to, I guess.

Oh, one more thing. The Congressman who raised concerns about the Arctic drilling? That's the normally loathsome Heath Shuler. Just an indication of how a giant disaster can turn even the bluest of dogs into hippie environmentalists.

BP GOES THERE: “NO ONE COULD HAVE PREDICTED…”

Yeah, I know. Of course BP is saying, “no one could have predicted.”

Of course, BP had a big incentive not to predict these things: one of the reasons it was able to get an exemption from an individualized Environmental Impact Study is that it estimated the largest possible spill from this well to be 162,000 BBLs, making it less than the 250,000 BBLs estimated in its regional drilling plan. You see, BP had an incentive not to predict this catastrophe.

Update: See ThinkProgress’ compendium of “No one could have predicted” claims from early in this disaster.

JOHN HALL QUESTIONS BP’S GREENWASHING CAMPAIGN

In yesterday’s Transportation Committee hearing, John Hall hammered BP American President Lamar McKay about something a number of others have, as well: the amount of money BP has spent on greenwashing of late.

The answer? $10-12 million last year and $20 million this year.

> So it’s roughly probably about the same or maybe a little more than the cost of

> a blowout preventer.

Sounds like Hall would like to prevent businesses from deducting such expenses in the future.