



Investigative Report of Federal Moratorium on Deepwater Drilling

Report Date: November 8, 2010

This report contains information that has been redacted pursuant to 5 U.S.C. §§ 552 (b)(6) of the Freedom of Information Act. Supporting documentation for this report may be obtained by sending a written request to the OIG Freedom of Information Office.

SYNOPSIS

On June 16, 2010, the U.S. Department of the Interior (DOI) Office of Inspector General (OIG) received a request from Senator David Vitter and Congressman Steve Scalise requesting that the OIG conduct an investigation into the allegation that DOI senior officials, in an effort to help justify their decision to impose a 6-month moratorium on deepwater drilling in the Gulf of Mexico, misrepresented that the moratorium was reviewed and supported by a group of scientists and industry experts.

We also received an additional request on July 20, 2010, for an investigation into the same matter by seven members of the U.S. House of Representatives' Committee on Natural Resources, including Doc Hastings (R-WA), Doug Lamborn (R-CO), John J. Duncan, Jr. (R-TN), Bill Cassidy (R-LA), Paul Broun (R-GA), Jason Chaffetz (R-UT), and John Fleming (R-LA).

The scientists and industry experts expressed concern that the Executive Summary to the 30-Day Report – which contained a policy decision by the Secretary of the Interior to recommend a 6-month moratorium on deepwater exploratory drilling – was worded in a manner that implied that the experts peer reviewed and supported this policy decision, when in fact they had neither reviewed nor supported such a policy decision and had never been asked to do so.

All DOI officials interviewed stated that it was never their intention to imply the moratorium was peer reviewed by the experts, but rather rushed editing of the Executive Summary by DOI and the White House resulted in this implication. After reviewing different drafts of the Executive Summary that were exchanged between DOI and the White House prior to its final issuance, the OIG determined that the White House edit of the original DOI draft Executive Summary led to the implication that the moratorium recommendation had been peer reviewed by the experts.

BACKGROUND

On April 20, 2010, the Deepwater Horizon deepwater drilling rig exploded in the Gulf of Mexico and caused a massive oil leak in a deepwater well being drilled by BP. In response to the explosion, the U.S. Department of the Interior (DOI) declared a moratorium on deepwater drilling, which it extended for 6 months on May 27, 2010, in conjunction with a 30-Day Report issued by DOI, titled Increased Safety Measures for Energy Development on the Outer Continental Shelf (Report).

DETAILS OF INVESTIGATION

Steve Black is the Counselor to Secretary of the Interior Ken Salazar. Black provided background information concerning the creation of the 30-Day Report. He said that in late April 2010, President Obama directed DOI Secretary Salazar to prepare a report that would review current industry practices and standards for deepwater oil drilling and make recommendations as to how those practices and standards could be improved. Black said that Secretary Salazar placed him in charge of a team responsible for producing the Report.

Black said the Report was prepared with the help of scientists and engineers from DOI and the Department of Energy. He said that he also collaborated closely with the White House in preparing the Report, specifically the staff of Carol Browner, Assistant to the President for Energy and Climate Change.

According to Black, the President asked the National Academy of Sciences (NAS) and the National Academy of Engineering (NAE), a subdivision of NAS, to conduct a separate, distinct study to determine the root causes of the accident. When meeting with NAS and NAE, Black said that he asked them to recommend several experts in offshore drilling to peer review the recommendations that would be made in the Report he was tasked to prepare. A member of NAE subsequently provided a list of seven names. Black contacted all seven experts and asked them for their voluntary assistance, which they agreed to provide. In addition to the seven NAE experts, Black said that DOI also sought peer reviewers from industry and academia to assist in the effort to produce the recommendations in the Report, including a professional engineer.

According to Black, a member of NAE facilitated the interactions of the peer reviewers, meetings with whom were held via teleconference. Black said that the peer reviewers did not draft any portions of the Report or the recommendations themselves, but rather they reviewed the recommendations and provided valuable oral and written feedback.

Black said that he held a final conference call with the peer reviewers on Tuesday, May 24, 2010, in which they discussed a draft of the Report, not the final Report. According to Black, the peer reviewers knew that it was only a draft Report and they knew that they were not being consulted concerning "policy decisions." Black then explained that the decision to invoke the moratorium on current deepwater drilling projects was a policy decision made by Secretary Salazar and President Obama. Black further stated that there were some discussions about various parameters of a potential moratorium with the peer reviewers; the moratorium recommendation, however, as ultimately issued by DOI, was never peer reviewed by the experts.

According to Black, Secretary Salazar sent a Decision Memorandum to President Obama outlining the findings in the Report and his recommendation for a 6-month moratorium on current deepwater offshore drilling prior to meeting with the President on the evening of Wednesday, May 25, 2010. Black said that he was not a part of that meeting, but that after the meeting Secretary Salazar told him that the President wanted to "sleep on [the idea of the moratorium]" overnight before making a final decision. Accordingly, Black said that Secretary Salazar instructed him to draft two different Executive Summaries to the Report; one including the decision to invoke the moratorium and a second not including the moratorium. Black said that the next morning Secretary Salazar directed him to begin working closely with a member of Carol Browner's staff at the White House to draft the Executive Summary to include the moratorium.

According to Black, there was "a little disconnect" about the definitions used in the Report and the final parameters of the moratorium that was ultimately issued (e.g., the Report defined deepwater drilling as 1,000 feet while the moratorium defined deepwater drilling as 500 feet).

Black said that he initially drafted the Executive Summary, which included, at the behest of

Salazar, the mention that the recommendations contained in the Report were peer reviewed by experts outside of the Government. Black said that Salazar felt it was very important to have the recommendations undergo the peer review process and he wanted this stressed in the Executive Summary.

After he drafted the Executive Summary, Black sent it to a member of Browner's staff at the White House. According to Black, Browner was concerned that the Executive Summary did not summarize the recommendations and the associated timetables well enough; therefore, Browner's staff drafted some of the text to be included in the Executive Summary themselves. After several iterations between him and Browner's staff, Black said that he received a final version of the Executive Summary from the White House "around 2 or 3am" the morning it was ultimately finalized. After receiving the final product from the White House, Black said that he reviewed the final draft; he did not have any issues with the text added by the White House.

A registered Professional Engineer was elected to the National Academy of Engineering in 2005 due to his work on offshore safety; the engineer was asked to participate in a peer review of the Report's recommendations. Following issuance of the final Report and the concomitant Executive Summary, the engineer sent a letter to Louisiana Governor Bobby Jindal and U.S. Senators Mary Landrieu and David Vitter, expressing concern that his name, along with other peer reviewers, was used by Secretary Salazar to justify the 6-month deepwater drilling moratorium. The letter was co-signed by several other peer reviewers.

In the letter he faxed to Landrieu, Vitter, and Jindal, the engineer stated:

A group of those named in the Secretary of Interior's Report, "**INCREASED SAFETY MEASURES FOR ENERGY DEVELOPMENT ON THE OUTER CONTINENTAL SHELF**" dated May 27, 2010 are concerned that our names are connected with the [deepwater drilling] moratorium as proposed in the executive summary of the report. There is an implication that we have somehow agreed to or "**peer reviewed**" the main recommendation of that report. **This is not the case.** (emphasis included in original)

The material paragraphs in the Executive Summary that the engineer and the other peer-reviewers were concerned about are the following:

The Secretary further recommends an immediate halt to drilling operations on the 33 permitted wells, not including the relief wells currently being drilled by BP, that are currently being drilled using floating rigs in the Gulf of Mexico. Drilling operations should cease as soon as safely practicable for a 6-month period.

The recommendations contained in this report have been peer-reviewed by seven experts identified by the National Academy of Engineering. Those experts, who volunteered their time and expertise, are identified in Appendix 1. The government also consulted with a wide range of experts from government, academia and industry.

Black stated that it was no one's intention to imply that the peer reviewers reviewed the 6-month moratorium on deepwater drilling policy decision. He explained that the "recommendations" the Executive Summary was referring to were the formal recommendations contained in the body of the Report, not the moratorium. When asked if an objective reader of the Executive Summary might conclude that the peer reviewers reviewed the moratorium recommendation, due to the organization of the text, Black stated again that it was not the intention of DOI or the White House to imply this was the case. He explained that due to the rush to complete the Report and the Executive Summary, time did not allow for careful editing and review of the Executive Summary. He then said that the Report itself and the draft Executive Summary did undergo the surnaming process, but the final Executive Summary did not.

Following release of the Report and the Executive Summary, Black said he received a telephone call from the engineer. He said that the engineer told him the peer reviewers were concerned that the Executive Summary misrepresented that the peer reviewers had reviewed and supported the moratorium recommendation made by Secretary Salazar to the President. The engineer also told him at that time that the peer reviewers were in the process of drafting a letter to various members of Congress explaining their concerns. Black said that until the engineer told him about these concerns, Black had never considered the possibility that an objective reader of the Executive Summary may believe that the peer reviewers had reviewed the 6-month moratorium policy decision.

Black said that he informed the Secretary about the peer reviewers' concerns immediately after speaking with the engineer, even though the Secretary was very busy at that time with travel due to the oil spill crisis in the Gulf of Mexico. During this time frame, according to Black, the letter drafted by the peer reviewers had been sent to Congressional members and was subsequently released to the media.

Black stated that Secretary Salazar directed him to draft and issue a formal letter to the concerned peer reviewers apologizing for the misunderstanding and stating that the peer reviewers did not in fact peer review and support the moratorium ultimately decided upon by DOI and the White House. Specifically, the letter issued by DOI to the concerned peer reviewers on June 3, 2010, stated:

By listing you as a member of the NAE panel that peer-reviewed the 22 safety recommendations contained in the Report, we did not mean to imply that you also agreed with the decision to impose a moratorium on all new deepwater drilling. We acknowledge that you were not asked to review or comment on the proposed moratorium. The recommendation and decision were based on the Report's safety recommendations, in particular the need for new blowout preventer and other safety equipment on subsea BOP stacks used on floating drilling rigs and the need for better wild-well intervention techniques in the event of future emergencies like the BP oil spill, particularly in deepwater. We regret any misunderstanding or confusion related to the inclusion of the recommendation to impose a 6-month moratorium on all new deepwater wells in the executive summary of the final report.

Black said that sometime in mid-June, Secretary Salazar held a teleconference call with the concerned peer reviewers and apologized for any misunderstanding resulting from the text of the Executive Summary. Secretary Salazar then had a personal meeting with the concerned peer reviewers in Washington, DC, the following week and apologized once again to them for the misunderstanding. Black said that he was not present at this personal meeting between Secretary Salazar and the peer reviewers, although a member of his staff was present during both the conference call and personal meeting Secretary Salazar had with the concerned peer reviewers.

According to Black's staff member, after Secretary Salazar was tasked by the President to prepare the Report, he assisted Black in preparing the Report by helping collect and compile the background information related to deepwater offshore drilling. Black's staff member said that he did not assist in drafting any of the recommendations in the Report because he is not an engineer, and they were too technical.

Black's staff member stated that he participated in the conference calls with the peer reviewers when they were asked to peer review the recommendations, including the final conference call on Tuesday, May 24, 2010. He said that he emailed the draft Report, including the draft recommendations to the peer reviewers that morning, and that was the first time the peer reviewers had seen the entire Report. He echoed Black by stating that the peer reviewers understood that the Report was still only a draft and there was no discussion about the 6-month moratorium.

Black's staff member said that he was tasked to assist Black in editing the Executive Summary to the Report that discussed the moratorium. According to him, he and Black eventually sent a draft of the Executive Summary to the White House for edits, specifically to a member of Browner's staff. He confirmed Black's statement that the White House made several edits and eventually returned the Executive Summary back to DOI sometime "after 3 am" on the morning of May 27, 2010.

Black's staff member noted that he did review the final Executive Summary after it was returned by the White House, but it never occurred to him that, based on the final text, an objective reader may believe that the peer reviewers had reviewed and supported the 6-month moratorium rather than only reviewing the formal recommendations contained in the body of the Report. He said that he first learned of the peer reviewers' concerns, after he returned from a short vacation, when he read the letter the NAE engineer sent to Governor Jindal and Senators Landrieu and Vitter. Upon reading the letter, Black's staff member said that he was "jarred" by the tone of the letter because he believed that DOI had formed an excellent relationship with the peer reviewers during the Report writing process.

Black's staff member said that he never participated in any discussion with other DOI staff or White House staff about trying to draft the Executive Summary in a manner that would imply that the peer reviewers had reviewed the 6-month moratorium.

The NAE engineer acknowledged that after he sent the letter to the Governor and Senators, DOI issued formal letters to each of the peer reviewers of the Report apologizing for any misunderstanding or confusion. He also confirmed that Secretary Salazar conducted a

teleconference with those who reviewed the Report in order to apologize for any misunderstanding surrounding the representations made in the Executive Summary for the Report. According to the NAE engineer, Secretary Salazar stated that the Executive Summary was not meant to imply that the decision to invoke a 6-month moratorium on deepwater drilling was peer reviewed by the engineer and others, but rather the moratorium was an independent decision of Secretary Salazar and the White House.

Based upon the teleconference that Secretary Salazar conducted regarding the matter, along with the letters DOI issued to the peer reviewers, the NAE engineer said that he has accepted Secretary Salazar's explanation that the language in the Executive Summary was a mistake rather than an intentional attempt to use the peer-reviewers' names to justify a political decision. As a result, he said that he considers the matter a "non-issue" and he is focusing on trying to assist DOI in instituting a moratorium that is supported by sound science and engineering, rather than a blanket moratorium.

A principal for Petroskills, a petroleum training alliance, and was also a peer reviewer of the Report. He co-signed the letter that the NAE engineer sent to Louisiana Governor Jindal and Senators Landrieu and Vitter, expressing concern that their names were being used by Secretary Salazar to justify a deepwater drilling moratorium.

The Petroskills principal, similar to the NAE engineer, confirmed that he received the formal letter from DOI apologizing for the misunderstanding and that Secretary Salazar held both a conference call and personal meeting to do the same. Based upon these actions by Secretary Salazar, he said that he also believed that the misrepresentation was an editing "mistake" and not intentional. He said, however, that he was still concerned about the "process" the Government was following in pursuing the moratorium. He explained that he believes DOI should not make such a blanket decision without first seeking expert peer review, but rather DOI should seek such peer review and then make a moratorium decision based on that review.

Another peer reviewer, from the Center for Catastrophic Risk Management at the University of California, stated that he first heard of the moratorium recommended by DOI in the Executive Summary of the May 27, 2010 Report when Senator Landrieu asked him about it on May 29, 2010. He said the proposed moratorium had not been discussed with the peer reviewers prior to issuance of the Report.

Similar to both the NAE engineer and the Petroskills principal, this peer reviewer confirmed that DOI issued a formal letter of apology and that Secretary Salazar held a conference call and personal meeting with the concerned peer reviewers to tell them it was never the intention of DOI and the White House to imply that the peer reviewers reviewed and approved the moratorium. Following these actions by Secretary Salazar, he also said that he believes that the misrepresentation was a "mistake" and not intentional because he always tries to believe people mean well and tell the truth, unless proven otherwise. He explained that he simply does not know whether it was a mistake or intentional, but he was not interested in speculating one way or the other because he was focused on trying to persuade DOI to institute a moratorium that is supported by sound science and engineering, rather than a blanket moratorium.

This peer reviewer also expressed concern that DOI is proposing the moratorium without any input from expert peer reviewers. He questioned why DOI would not peer review such an important, far-reaching decision in light of the fact that DOI had all of the safety recommendations listed in the Report undergo peer review.

S. Elizabeth Birnbaum is the former Director of the Minerals Management Service (MMS). Birnbaum said that she did not personally work on preparing the Executive Summary containing the moratorium recommendation. According to Birnbaum, Black was the principal person responsible for preparing the 30-Day Report on deepwater drilling safety and that her participation was limited to surnaming the Report.

Birnbaum said that there were general discussions about extending a moratorium on deepwater drilling and its associated parameters, although she had no knowledge that Secretary Salazar planned on recommending the moratorium in the Executive Summary of the 30-Day Report to the President. She stated that she learned of the recommendation only when MMS Deputy Director Mary Katherine Ishee told her about it as she delivered the Report and Executive Summary to Birnbaum for surnaming. According to Birnbaum, she asked Ishee why the moratorium recommendation had been inserted in the Executive Summary; Ishee told her that Black had inserted the moratorium recommendation based upon an agreement with the White House to do so.

Birnbaum said that she has no knowledge whether the implication that the moratorium had been peer reviewed was intentional or not. Birnbaum opined that the implication was probably a product of editing and a review of the email trail related to the creation of the Executive Summary would be the best way to identify who may have edited the document that resulted in the implication.

Birnbaum also stated that she does not believe that Secretary Salazar's request for her resignation was in any way related to the issuance of the 6-month moratorium on deepwater drilling, regardless of the fact that both events occurred on May 27, 2010.

The OIG reviewed the final email exchanges regarding the Executive Summary between the DOI and the White House. The Department has claimed privilege for these documents.

The language in the Executive Summary to which the experts objected was this:

The recommendations contained in this report have been peer-reviewed by seven experts identified by the National Academy of Engineering. Those experts, who volunteered their time and expertise, are identified in Appendix 1. The Department also consulted with a wide range of experts from government, academia and industry.

A review of the emails that Black sent to the White House at 11:38 p.m. on May 26, 2010, reflects that in DOI's draft of the Executive Summary the moratorium was discussed on the first page of the Executive Summary, while the peer review language was on the second page of the Executive Summary, immediately following a summary list of the safety recommendations contained in the body of the 30-Day Report, which had been peer reviewed.

At 2:13 a.m. on May 27, 2010, Browner's staff member sent an email back to Black that contained two edited versions of the Executive Summary. Both versions sent by the staff member contained significant edits to DOI's draft Executive Summary but were very similar to each other. Both versions, however, revised and re-ordered the Executive Summary, placing the peer review language immediately following the moratorium recommendation causing the distinction between the Secretary's moratorium recommendation – which had not been peer reviewed – and the recommendations contained in the 30-Day Report – which had been peer reviewed – to become effectively lost. Although the Executive Summary underwent some additional minor editing, it was ultimately published on May 27, 2010, with the peer review language immediately following the moratorium recommendation.