

**STATEMENT OF
MICHAEL R. BROMWICH
MANAGING PRINCIPAL, THE BROMWICH GROUP**

BEFORE THE

**HOUSE SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES
OF THE
HOUSE NATURAL RESOURCES COMMITTEE
ON
DISCUSSION DRAFT LEGISLATION
“ACCESSING STRATEGIC RESOURCES OFFSHORE ACT” (“ASTRO ACT”)**

October 11, 2017

Mr. Chairman and Members of the Committee, I appreciate the opportunity to be here today to testify about aspects of the discussion draft of “Accessing Strategic Resources Offshore act.”

My name is Michael R. Bromwich. I served in the federal government for a total of 14 years, including as a federal prosecutor and as the inspector general for the Department of Justice. Most recently and most relevant to this hearing, I served in the Department of the Interior (“Interior,” or “DOI”) from June 2010 through the end of December 2011 as the country’s top offshore drilling regulator. I am here today primarily to discuss the provision of the draft bill that addresses the possible recombination of BOEM and BSEE, the two principal agencies within Interior responsible for regulating offshore exploration and production. As you probably know, this is an idea that is currently under serious consideration at DOI. I think such a recombination is not just a profoundly bad idea that would be unnecessarily disruptive for the agencies and the industry and for which no clear case has been made, but it is also a dangerous idea that would significantly raise the risk of a catastrophic offshore accident.

First, a bit of background familiar to most of you. In late April 2010, the *Deepwater Horizon* rig, which was conducting exploratory drilling in the Macondo well in the Gulf of Mexico, experienced a violent blowout that killed 11 people working on the rig and injured many others. It was a human tragedy of major proportions. It was also an environmental tragedy because the accident released more than 3 million barrels of oil into the Gulf over the course of nearly 90 days before the well was finally capped. More than six years later, the extent of the environmental damage is still being determined through a broad range of scientific studies.

In early June 2010, I was asked by President Obama to re-enter the government to deal with the crisis caused by the oil spill and its aftermath, and to lead the agency responsible for the oversight of offshore drilling - at the time known as the Minerals Management Service, or MMS. The task was two-fold: to help the Administration deal with the crisis and its after-effects, and to undertake efforts to reduce the risk of future explosions and spills.

Our work to reduce the risk of a major offshore incident in the future involved (1) raising the bar on safety and emergency response by modernizing standards for the offshore oil and gas industry, and (2) establishing stronger, more independent, and better-resourced federal regulators overseeing this extremely important, but inherently challenging, activity. First, we promptly implemented, and then through extended and inclusive rulemaking processes, a set of tighter rules and requirements designed to reduce the risks of deepwater drilling. Second, in addition to modernizing the rules and regulations to better match the nature of the challenges of deepwater drilling, we also examined whether the government's structure for managing and regulating offshore drilling was well-suited to the nature of its challenges and risks. We concluded that it was not. Through no fault of its personnel, MMS was a victim of lost credibility because of massive mission confusion and questions about structural conflicts of interest, a shortage of resources, and a misallocation of those resources.

This was not a new problem - the same structures had been in place for almost 30 years - but the spill focused long overdue attention on the relationship between agency structure and agency mission. Since its creation in 1982 by DOI administrative order, MMS had been responsible for three related but distinct aspects of offshore exploration and production. First, the agency was responsible for collecting royalties and revenues for the offshore program, including from lease sales and oil and gas production. Second, it was responsible for making resource decisions concerning where, when, and to what extent offshore regions should be opened to exploration and production. By law, those decisions were required to be based on striking the appropriate balance between satisfying the country's energy needs and protecting the environment. Third, MMS was responsible for developing appropriate regulations governing offshore activity and enforcing those regulations to ensure that such operations were conducted as safely as possible.

On paper, these three missions had the potential to be in conflict - and in fact they were. Over time, the assessment and collection of money from lease sales and oil and gas production determined the priorities of the agency. The federal government's appetite for revenues and royalties drove decisions that

were consistently pro-exploration and production. Very little time and attention was devoted to developing appropriate regulations that kept pace with technological developments in offshore drilling. Even less attention was devoted to enforcing those regulations and holding companies and individuals accountable for violations. When the President's Oil Spill Commission interviewed the former directors of MMS following the 2010 spill, and asked them to identify what had been their top priority when they managed MMS, their near-unanimous answer: to maximize revenue for the federal treasury. And that was not surprising because offshore activity generated massive sums of revenue for the federal government, in many years second only to the individual income tax. But the priority given to generating revenue meant a bias in favor of development over environmental protection, and the virtual neglect of the agency's regulatory and enforcement functions.

In the immediate wake of the spill, the structure of MMS received the scrutiny that it deserved. Although the blame for *Deepwater Horizon* fell squarely on the shoulders of three companies who collaborated on drilling the Macondo well, leaders in the Administration, Congress, and industry began discussing ways to strengthen the ability of the federal government to regulate offshore drilling. By the time I arrived at DOI six weeks after the initial explosion, discussions had already begun about the possibility of reorganizing MMS to eliminate the structural conflicts, and Secretary Salazar was on record as favoring a restructuring. Even so, I was given the discretion to decide, after my team's own review and analysis, whether to maintain the existing structure or undertake a reorganization.

I do not take lightly reorganization proposals. Indeed, I have a bias against them. They are disruptive, expensive, and tend to have an adverse effect on morale. They create uncertainty and divert resources from the mission. They frequently fail to achieve their objectives. In my experience, reorganizations are too often undertaken for reasons of executive vanity, as a way for a new executive or team of executives to put their immediate imprint on an organization, whether the changes make management and organizational sense or not. Needless to say, those are bad reasons for undertaking a reorganization.

In the case of MMS, we became convinced that a reorganization was necessary and appropriate. I learned of the various ways that agency priorities had historically been distorted by having the three separate missions combined in a single agency. I learned most specifically about how the bias towards developing offshore resources and generating revenue had stunted the development of the agency's regulatory and enforcement capabilities. Candidly, I was shocked by the lack of aggressiveness – and the shortage of resources – that had been allocated to the development of appropriate regulations and

enforcement. The number of inspectors and accident investigators was completely inadequate to the scope of the agency's safety and enforcement responsibilities. Although there was no direct link between these weaknesses and *Deepwater Horizon*, these were shortcomings that needed to be fully and promptly addressed.

We made the decision to go forward with the reorganization because we concluded that the agency as then configured was a very poor match for its multi-faceted mission. We reviewed the issue carefully, deliberately, and transparently. We brought on board, at very substantial cost to the government, advisers from McKinsey & Company. McKinsey worked closely with the agency's leadership team and field personnel through the 15 months it took to complete the reorganization. We consulted extensively with field personnel at every level and at every key decision point to ensure we anticipated the potential problems and complications with separating the agencies.

We also examined closely the offshore regulatory regimes of other nations, including those of the United Kingdom and Norway, which underwent similar organizational reforms following their own offshore accidents. We collected and analyzed data relating to the Bureau's processes, systems and regulatory metrics; and we developed a number of alternative models and options, which we discussed with career leadership in the agency, for restructuring and reforming the agency. We refused to be rushed. At one point, I was told that the White House wanted us to complete the reorganization faster. Our response was that we had only one chance to get it right and that we were not going to depart from our carefully developed timeline in response to pressure.

The premise of the reorganization, which we began implementing in the summer of 2010, was to remove the conflicts embedded in MMS by providing separate, defined missions for three new agencies, and providing each of the new agencies with the clarity of mission and resources adequate to fulfill their responsibilities. The design and implementation of these organizational changes respected the crucial need for information-sharing and the other links among the functions of the former MMS. In fact, recognizing and respecting these operational issues was essential to ensuring that the regulatory processes related to offshore leasing, plan approval, and permitting worked smoothly and seamlessly. Our ideas and plans for the reorganization were shared with Congress, in numerous public speeches, and in other venues. We could not have been more public about the process we followed.

The first step of the reorganization was completed on October 1, 2010. At that time, the revenue collection arm of MMS was moved to a different part of the Interior Department with reporting responsibilities and a chain of command

completely separate from the onshore and offshore regulators. The establishment of this new agency – the Office of Natural Resource Revenue (ONRR) – was the first step in addressing the fundamental conflict between revenue collection and the offshore regulator’s resource development and safety responsibilities.

Effective one year later, on October 1, 2011, we completed the final and more complex step of the reorganization: separating the agency’s resource management and leasing functions from its safety and environmental enforcement responsibilities. We established the Bureau of Ocean Energy Management (BOEM) and the Bureau of Safety and Environmental Enforcement (BSEE). This structure separated the agency responsible for the promotion of offshore energy development and environmental analysis from the responsibility for ensuring that offshore operations are conducted safely and with appropriate protection for the environment. We believed that the separation of these missions was essential to reforming the government’s oversight of offshore energy development.

As a result of the re-organization, BOEM became responsible for promoting and managing the development of the nation’s offshore resources, including oil, gas and renewable resources – balancing the need for economically sound development with the need to develop and maintain appropriate protections for the environment. BSEE became responsible for overseeing issues relating to offshore safety and environmental and regulatory compliance and enforcement. By separating resource management from safety oversight, we afforded the agency’s engineers who review permit applications and the inspectors who ensure compliance with workplace and drilling safety regulations with greater independence, more budgetary autonomy, and clearer mission focus. The goal was to create a tough-minded but fair regulator, able to keep pace with the risks of offshore drilling and promote the development of a safety culture in offshore operators. We also established within BSEE a strong environmental compliance and enforcement function, which had not previously existed.

The broad contours and most of the specifics of the reorganization were embraced by members of Congress, and the President’s Oil Spill Commission. I testified at hearings on the reorganization and on then-Chairman Doc Hastings’ proposal to codify the reorganization, H.R. 2231, which he and the other members of this Committee who spoke to the issue seemed to agree was necessary and appropriate. According to Chairman Hastings,

“In the wake of the Deepwater Horizon accident it became apparent that the structure of the regulatory agency charged with oversight of offshore energy production was inadequate. While the Department of the Interior has

reorganized their offshore agencies, reforms need to be codified into law...This bill separates agencies with conflicting interests, provides a strong safety and ethical environment, and promotes robust American energy development by placing energy production in a more prominent role within the Interior Department. It's absolutely vital that American offshore energy production remains the safest in the world with the highest environmental standards and I believe this bill helps achieve that goal."
<https://naturalresources.house.gov/newsroom/documentsingle.aspx?DocumentID=269447>

In the same vein, commenting on then-Chairman Hastings' bill in 2013, Congressman Douglas Lamborn stated, "The bill also includes several much-needed reforms that this administration has requested, including organic legislation to codify the reorganization of the former Minerals Management Service."

In the six years since the reorganization was completed, the wisdom of the reorganization has been clearly demonstrated. The agencies function separately and independently, with their own distinct and separate missions. They are free of the conflicts and questions about independence and technical expertise that previously plagued MMS. The agencies have established and maintained strong relationships with each other that have kept the processes of the two agencies operating effectively. The extraordinary expertise that exists within each agency, that was once buried under layers of bureaucracy, is now front and center in the Department and for the public. Each agency has its own management that is able to maintain focus on that agency's mission and performance, and to advocate for its personnel and resources. Personnel within both agencies have clearer career paths and opportunities for professional development, which ultimately benefits the public.

The success of the two agencies has been made possible by generous funding provided by Congress, which recognized that many of the deficiencies of MMS were explained by the historical lack of adequate resources. Most importantly, offshore operations have taken place without another serious oil spill. There is no doubt in my mind that the combination of more stringent regulations, additional resources for BOEM and BSEE, and clarity of mission for those two agencies have reduced the risks of such a spill. Government action cannot eliminate the risks of a catastrophic oil spill, but it can certainly help reduce that risk.

Has the implementation of the reorganization been perfect? Of course not. And in fact, the GAO has been critical of certain aspects of BSEE's operations. But the appropriate response to those problems is to devote careful

management attention to fixing them, not to compound them by layering on top the additional management challenges of a restructuring. The truth is I am puzzled by the impetus to undo the reorganization that was so broadly supported a few short years ago. I am unaware of any pressure to do so from industry or from any other stakeholder. If there is any such pressure, and it is based on evidence of structural problems with the reorganization, let's hear what it is and let's fix the problems. The Administration has certainly not made the case for recombining BOEM and BSEE and I don't believe there is a convincing case to be made. Because the discussions on this issue have so far taken place behind closed doors, there has been no opportunity for informed debate on the issue. This is the opposite of transparency.

The recombination of BOEM and BSEE is an ill-conceived proposal that is fraught with risk. It will cause the diversion of scarce resources, it will create confusion among personnel in the two agencies, it will depress morale – and if undertaken, it would create precisely the type of mission confusion the reorganization was meant to eliminate. In a recombined agency, and with this Administration's commitment to aggressive energy development – indeed, “energy dominance” – it is almost inevitable that the bias towards development at the expense of safety and environmental protection would return at the expense of tough but fair regulation and enforcement. When the next offshore accident takes place, people would inevitably look to the recombination of BOEM and BSEE and its related consequences as one of the factors that raised the risks of an oil spill and allowed it to happen. And chances are they would not be wrong.

I urge this Committee to carefully examine any proposal to recombine BOEM and BSEE and challenge the Administration to make the case to the Congress and the American people that it is in the national interest. I don't believe it can.

Thank you for your time and attention. I am happy to answer your questions.