



## Deepwater Horizon Ten Years Later: Reviewing agency and regulatory reforms

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Exactly two weeks ago (April 20<sup>th</sup>) was the tenth anniversary of the explosion of the Deepwater Horizon oil rig and blowout of the Macondo well it was drilling in the Gulf of Mexico. The explosion killed eleven workers, sent oil and natural gas flowing into the Gulf for 87 days, and proved to be one of the most challenging technical emergencies industry and government response teams have faced. The emergency required a massive response from the government, industry, and the public and had immediate and lasting impacts on coastal communities across the Gulf.

Government, research centers, and industry worked together (not always smoothly) to stop the flow of oil and gas into the Gulf, a massive undertaking, followed by a heroic cleanup effort. The disaster sparked significant litigation and a [record settlement](#) in 2015. It also sparked a series of regulatory actions. These started with immediate emergency actions to halt production and provide space and time to deal with the emergency, followed by investigations of the incident and various reviews of the regulatory structures that contributed to the missteps leading to this disaster. These reviews resulted in further reforms designed to have a more lasting impact on the safety of future operations, including a major agency reorganization and ultimately new safety and environmental requirements.

At EELP, we track a wide range of environmental [regulatory rollbacks](#) pursued by the current administration. We've been documenting the relentless march of deregulatory activity in the Trump administration as various agencies systematically work to unravel environmental protections developed during President Obama's two terms. But tracking these individual changes happening now tells only part of the story. To understand the full impact of the Trump administration's deregulatory agenda it helps to step back and look at how and why rules being changed were developed in the first place.

In honor of both the 10<sup>th</sup> anniversary of the explosion and the 50<sup>th</sup> anniversary of Earth Day (both falling in the same week), I started re-reading the [report](#) released six months after the explosion by the National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling (National Commission or Deepwater Horizon Commission), realizing as I did that I never read the full report. I finished law school less than a month after the explosion and in the fall of 2010 began practicing with the environmental practice group of a Houston-based firm whose client base relied heavily on the energy sector. As someone who grew up on the Gulf Coast, I watched with horror as the disaster unfolded, finding it hard to look away from the [live stream](#) of the [wellhead](#) as it spewed crude from the ocean floor. The firm did not participate in the litigation related to the spill but my early years as an associate included learning about offshore development and regulation and closely following regulatory changes after the explosion and spill.

The [Commission's report](#) provides context for the event by recounting the history of the industry (Chapter 2), discussing the regulatory structures in place at the time (Chapter 3), taking a close look at the causes and consequences of the Deepwater Horizon disaster (Part II) and providing detailed recommendations (Part III). The Commission did not forget the human element, starting the report with a harrowing account of what the crew lived that day, told by the crewmembers themselves

(Chapter 1). (Harvard Law Professor Richard Lazarus served as the Executive Director of the Commission.)

Within this broader context, you can see how a six-year arc of improved regulatory oversight following the Deepwater Horizon event—designed to better balance environmental and safety concerns with energy development—peaked at the end of the Obama administration, turning downward with the arrival of the Trump administration, and descending in a steady slope over the next four years. The hard-fought move towards a more equal balance between development and protection achieved through the reforms undertaken after the Deepwater Horizon disaster has once again become uneven, favoring development without adequate environmental and safety safeguards.

In order to better understand the context in which the Trump administration efforts to expand offshore drilling and loosen environmental and safety regulations for those operations are occurring, I explain below how the Deepwater Horizon event sparked a comprehensive reevaluation of how we govern oil and gas development in the outer continental shelf. In this piece, I outline the immediate actions taken after the Deepwater Horizon disaster, explain the agency reorganization and regulatory reforms undertaken by the Obama administration, and discuss the efforts to revise or rescind many of these reforms under the Trump administration.

Last month's dramatic oil price drop and its continued volatility in the midst of a pandemic as well as coinciding with the 50<sup>th</sup> anniversary of Earth Day has siphoned attention from the anniversary. Even so, many [news organizations have released retrospectives](#), advocacy groups have released [reports](#), and science organizations have held [events](#) looking back at the disaster. Commemorations of the loss of life and environmental degradation from the spill generally have not gone into great detail about the agency reorganization and environmental and safety regulatory actions that resulted. But in order to fully understand the potential impact of the current administration's changes, it is important to understand the context in which the earlier reforms were made, the history that led to them, and broader deregulatory mindset with which this administration has approached its regulatory responsibilities regardless of the particular concerns related to any individual area of regulation.

But there is hope as well in the lessons we can learn from the last ten years. As you will see, a dedicated administration took the risks inherent in an important industry seriously and the failures in the regulatory structure that an individual, devastating incident laid bare and did the hard work of evaluating the underlying problems, designing a better system of oversight both in the structure of the oversight agency itself and by examining the rules they had to enforce. Their six-year effort was not in vain. The reorganization of the agencies has held, providing a structural backstop to an administration that seeks to heavily weight the scale in favor of development over environmental protection and worker safety. The deregulatory efforts have seen strong response from many stakeholders in comments on changes to regulations and in litigation challenging final actions. These efforts will ultimately have mixed results but will prevent some of the worst outcomes. In fact, litigation has all but stopped this administration from achieving one of President Trump's early campaign promises to open up all federal waters to drilling. Unless he is given a second term, he will not be able to do so.

Now, let's start by taking a look at the immediate regulatory responses occurring after the Macondo well blew out on April 20<sup>th</sup>, 2010 in the Gulf of Mexico, exploding the Deepwater Horizon exploratory drilling rig, and killing ten people.

## Early actions were taken to prevent similar accidents, allow for proper investigation, and evaluate existing safety and environmental regulations.

The federal government took quick action to halt drilling operations in the Gulf to provide time for evaluation and response.<sup>1</sup> Secretary of the Interior Ken Salazar and Secretary of Homeland Security Janet Napolitano announced a [joint investigation](#) on April 27, 2010. The Minerals Management Service (MMS), the part of the Department of the Interior that managed leasing, permitting, and oversight of offshore development at the time, suspended approval of all drilling permits pending a [30-day safety review](#). DOI also [initiated](#) an internal [reorganization](#) of MMS to improve the independence and strength of its inspection capabilities.

Following the review, on May 30<sup>th</sup>, 2010, Sec. Salazar [announced](#) a six-month [moratorium](#) on *deepwater* drilling, [issuing](#) a Notice to Lessees (Moratorium NTL, [NTL No. 2010-N04](#)) that required operators to cease operations and temporarily abandon wells at depths greater than 500 feet. Sec. Salazar also announced in May that he would split the MMS into three separate DOI bureaus. An interim bureau, the Bureau of Energy Management, Regulation, and Enforcement (BOEMRE), was created to replace MMS during the reorganization process with the full separation not achieved for another eighteen months. In May 2010, President Obama also [created the National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling \(National Commission or Deepwater Horizon Commission\)](#), initiating a process for more studied assessment of the causes of the disaster and preparation of recommendation for deeper reforms, the results of which are discussed later in this piece. Numerous other investigations examined aspects of the Deepwater Horizon incident as well.

Following these initial actions and completion of the 30-day review, BOEMRE put a series of new safety measures in place. The most significant of these, the Safety NTL ([NTL No. 2010-N05](#)), implemented recommendations of the 30-day safety report and applied to both shallow- and deep-water operations. The NTL imposed new certification requirements, new requirements for blowout preventer systems and secondary systems, additional inspection and testing after well control events, and new well design, casing, and cementing requirements. The Safety NTL required operators to submit additional information about their blowout preventer systems, recertify the blowout preventers for floating drilling operations with an independent third party, and obtain independent third party verification that the BOP stack is designed for the specific equipment on the rig. Further requirements covered maintenance and availability of maintenance and inspection records. It mandated additional backup systems including remote intervention capabilities, safety systems, and new testing requirements.

BOEMRE followed the Safety NTL with the Blowout Scenario NTL (also referred to as the Environmental NTL, [NTL No. 2010-N06](#)), effective June 18, 2010. This NTL required operators to submit new blowout scenario and oil spill response descriptions for their Exploration Plans, Development and Production Plans, and Development Operations Coordination Documents that included calculations of a worst case-discharge scenario, rescinding previous limits on the information required. In August 2010, Sec. Salazar [directed](#) the agency to limit the use of categorical exclusions in the NEPA process for offshore drilling

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<sup>1</sup> A White House blog documented the early federal coordinated response: <https://obamawhitehouse.archives.gov/blog/2010/05/05/ongoing-administration-wide-response-deepwater-bp-oil-spill>.

activities and BOEMRE [initiated](#) a [review](#) in coordination with CEQ of the MMS NEPA process. BOEMRE published a [notice of intent](#) to review its categorical exclusions in October and the CEQ released new guidance for categorical exclusions in [November 2010](#).

On September 30, 2010, Secretary Salazar [announced](#) the Drilling Safety Rule and Workplace Safety Rule, which were both published in the federal register in mid-October. The [Drilling Safety Rule](#) was issued under an emergency process as an interim final rule with a request for public comment. It imposed new well bore integrity requirements and requirements related to the blowout preventer and control systems. It adopted many recommendations of the 30-day report and codified requirements initially imposed in NTL 2010-N05. The agency issued the [Workplace Safety Rule or SEMS I Rule](#) as a direct final rule requiring operators to have a Safety and Environmental Management System (SEMS) and making mandatory the voluntary American Petroleum Institute (API) Recommended Practice 75, a program to identify, address and manage safety hazards and environmental impacts in drilling operations. BOEMRE reiterated that operators must report SEMS data on an annual basis five months later in a February 2011 notice to lessees (NTL No. 2011-N01). BSEE later issued guidance on developing and implementing SEMS in October of that year (NTL No. 2011-N09).

Secretary Salazar [announced](#) he would lift the deepwater drilling moratorium on October 12, 2010 but drillers were not allowed to resume drilling until they could show compliance with all new safety and environmental requirements. Shortly thereafter, the agency [released guidance](#) in NTL No. 2010-10 (NTL 10) about how to do this. [NTL No. 2010-10](#), issued in November 2010, required operators using underwater blowout preventers or blowout preventers on floating structures to demonstrate in their applications that they could deploy adequate containment resources to respond to a blowout or loss of well control. It also required them to submit a Statement of Compliance and Evaluation of Spill Response and Containment Resources stating that they had complied with all regulations, including the new Drilling Safety Rule.

BOEMRE provided additional [guidance](#) on the requirements for complying with NTL 10 and obtaining approval to resume deepwater drilling in [December 2010](#). BOEMRE emphasized that all Oil Spill Response Plans (“OSRPs”) must include a “Containment Plan” that demonstrates “that the operator has access to and can deploy containment resources that would be adequate to properly respond to a blowout or other loss of well control.” This requirement proved a significant source of delay in the return to drilling as operators struggled to demonstrate adequate resources.

## MMS became BOEMRE, which became BOEM and BSEE and ONRR.

The MMS managed two “conflicting priorities”<sup>2</sup>, creating conflicts of interest within the agency and incentives that undermined its environmental, safety, and enforcement priorities. The Reagan administration created the MMS in 1982 under Department of the Interior Secretary James Watt. The administration merged royalty collection from offshore oil and gas production, leasing, permitting, and environmental and safety oversight in the single agency—prior to this royalty collection and regulation had been handled by separate entities. The Commission report notes that this “built-in incentive to

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<sup>2</sup> Deepwater Commission Report, Chapter 3, p. 56 (“The regulatory context for the leasing procedures and safety and environmental oversight that led up to the Macondo blowout took shape in the 1970s, when two conflicting priorities dominated the political landscape. The first to appear, in the early 1970s, was the public mandate for environmental protection . . . . The second was the nation’s drive for energy independence . . .”).

promote offshore drilling” was in “sharp tension” with its oversight responsibilities and that “revenue generation . . . became the dominant objective” as a result.<sup>3</sup>

Amendments to the Offshore Continental Shelf Lands Act in 1978 had attempted to balance encouraging production and ensuring environmental protections (see Chapter 3 of the Commission report for a good description of how the amendments attempted to find a balance). However, as the Commission report describes, structural and resource problems plagued MMS throughout its history and it failed to keep up with the industry’s technology and pace of exploration and development. Other agencies responsible for oversight, safety, and response of offshore development also faced resources problems, such as the Coast Guard. Chapter 3 of the Commission report explains in detail the lack of technical expertise among MMS inspectors, an incentive structure that favored production over environmental protections, and other serious flaws in how MMS and DOI managed the competing priorities of the agency.

Secretary Salazar had already initiated reform efforts within MMS before the Deepwater Horizon event to address lax ethics policies. After the explosion, he announced a review and reorganization of the structure that would separate the royalty collection, leasing, and enforcement functions of the agency. He eliminated MMS, creating an interim replacement for MMS, BOEMRE, which was fully supplanted by three new bureaus over the course of the next eighteen months. On October 1, 2010, the Office of Natural Resource Revenue (ONRR) was created and took over the handling of royalties from offshore development. The remaining responsibilities of MMS were then slowly reorganized within BOEMRE until the new entities were ready to exist on their own and the regulations they covered were re-codified. On [October 1, 2011](#), BOEMRE split into two new bureaus: the Bureau of Ocean Energy Management (BOEM) that became responsible for “resource evaluation, planning, and leasing, environmental science, and environmental analysis” and the Bureau of Safety and Environmental Enforcement (BSEE), responsible for safety and environmental enforcement.

The reorganization was intended to minimize conflicting priorities and allow each bureau to develop the procedures, expertise, and culture necessary to fully realize their missions.

## Deeper reforms strengthened environmental and safety regulations.

A series of reviews and reports laid the groundwork for deeper regulatory reforms in the wake of the Deepwater Horizon disaster. Secretary Salazar created the Outer Continental Shelf Safety Oversight Board on April 30, 2010 to provide recommendations on the management, regulation, and oversight of OCS operations. The [Safety Oversight Board released a report](#) detailing its findings and recommendations about four months later. A month after the explosion, on May 21, 2010, President Obama issued [Executive Order 13543](#) creating a national commission to examine the root causes of the disaster and prepare a report with recommendations for reforms. The Deepwater Horizon Commission issued its [report](#) to the President in January 2011. A [Joint Investigative Team](#) review conducted by the Coast Guard and BOEMRE resulted in a report on [vessel safety](#) by the Coast Guard and [well design, construction, and operation](#) by BOEMRE, jointly released in September 2011. These were not the only reviews conducted but are some of the most significant for understanding the executive branch reform efforts.

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<sup>3</sup> Id.

Many of the early revisions to safety and environmental rules governing offshore operations that first appeared in notices to lessees worked their way into more formal and developed regulations. These and additional regulatory changes recommended by the various commissions, boards, and investigative teams were pursued between 2012 and 2016.

### *2012 updated Drilling Safety Rule*

In August 2012, BSEE finalized its revised [Drilling Safety Rule](#) that incorporated changes resulting from comments to the Interim Final Drilling Safety Rule published by BOEMRE in October 2010 (75 FR 53346) and the Deepwater Horizon Joint Investigative Team Report and the Safety Measures Report that the Department of the Interior submitted to the president in May 2010.

The new rule made a wide range of adjustments to requirements to improve the safety of offshore drilling operations. It amended “drilling, well completion, well-workover, and decommissioning regulations related to well-control, including: subsea and surface blowout preventers, well casing and cementing, secondary intervention, unplanned disconnects, recordkeeping, and well plugging.” More specifically:

- It established new casing and cementing requirements;
- required independent third-party verification of blind-shear ram capability and of subsea blowout preventer stack compatibility;
- required new casing and cementing integrity tests;
- established new requirements for subsea secondary blowout preventer intervention; required function testing for subsea secondary blowout preventer intervention;
- required documentation for blowout preventer inspections and maintenance and that a registered professional engineer certify casing and cementing requirements;
- established new well control training requirements for deepwater operations;
- revised requirements on the installation of dual mechanical barriers in addition to cement for the final casing string; and
- extended requirements for blowout preventers and well-control fluids to well-completion, well-workover, and decommissioning operations.

It also updated the incorporation of API Standard 65 to reference the December 2010 edition of the standard and revised the Interim Final Rule’s requirement that the operator perform a negative pressure test to limit it to only those wells that use a subsea BOP stack or that have a mudline suspension system.

### *2013 SEMS II / enhanced Workplace Safety Rule*

BSEE also [updated](#) the 2010 Workplace Safety Rule (SEMS I rule) in 2013 to provide “greater protection by supplementing operators’ SEMS programs with greater employee participation, empowering field level personnel with safety management decisions, and strengthening oversight by requiring audits to be conducted by accredited third-parties.” The [2013 rule](#) added new requirements for operators’ Safety and Environmental Management Systems (SEMS), including around employee



participation and reporting of unsafe working conditions, and required that operators have an accredited audit service provider audit their SEMS program.

### *2016 Blowout Preventer and Well Control Rule*

The 2016 Blowout Preventer and Well Control Rule ([Well Control Rule](#)) consolidated blowout preventer and well control requirements in one place. It incorporated ten newer industry standards and adopted reforms in well design, well control, casing, cementing, real-time well monitoring, and subsea containment. It implemented recommendations from various Deepwater Horizon investigations, incorporated guidance from Notices to Lessees, and revised provisions related to drilling, workover, completion, and decommissioning operations. New requirements included those related to system design, performance, and reliability.

- Operators had to use dual bore risers for surface BOPs on floating production facilities for any risers installed 90 days after the rule was published.
- The rule required all operators to start using BSEE-approved third-party verification organizations for certain certifications and verifications. BSEE was to publish a list of approved providers that operators would have to begin using within a year. Before the list was published, they were still required to use independent third-parties.
- The rule gave operators two years to install a gas bleed line with two valves for the annular preventer and to have the capability to shear and seal tubing with exterior control lines. Within two years, operators had to have BOPs that could shear electric-, wire-, and slick-lines.
- Operators had to comply with real-time monitoring requirements, install remotely-controlled locks on surface BOP sealing rams, and surface BOPs on floating facilities had to comply with the BOP requirements no later than three years after the rule was published.
- Operators had to have dedicated subsea accumulator capacity for autoshear and deadman functions on subsea BOPs and install dual shear rams on subsea BOPs within 5 years.
- The rule required operators to install shear rams that center the drill pipe during shearing within 7 years.

The ten industry standards incorporated into the regulations by this rule included:

- API Standard 53 – requirements for the installation and testing of blowout prevention equipment systems;
- API RP 2RD – on structural analysis procedures, design guidelines, component selection criteria, and designs for new riser systems used on floating production systems and tension-leg platforms;
- API Spec. Q1 – established minimum quality management system requirements for organizations that manufacture products or provide manufacturing-related processes under a product specification for use in the petroleum and natural gas industry;
- API Spec. 6A – defined minimal requirements for design of valves, wellheads, and Christmas tree equipment used during drilling and production operations;



- ANSI/API Spec. 11D1 – provided minimum requirements and guidelines for packers and bridge plugs used downhole in operations;
- ANSI/API Spec. 16A – defined requirements for performance, design, materials, testing and inspection, welding, marking, handling, storing and shipping of BOPs and drill-through equipment;
- API Spec. 16C – provided specifications for subsea choke and kill systems;
- API Spec. 16D – established design standards for systems used to control BOPs and associated valves that control well pressure during drilling;
- ANSI/API Spec. 17D – provided specifications for subsea wellheads, mudline wellheads, drill-through mudline wellheads, and vertical and horizontal subsea trees; and
- API RP 17H – provided general recommendations and guidance for the design and operation of remotely operated tools and remotely operated vehicle tooling used on offshore subsea systems.

The rule also consolidated BOP requirements previously repeated in multiple locations throughout the subpart and restructured the regulations.

### *2016 Exploratory Arctic Drilling Rule*

On July 15, 2016, BOEM and BSEE jointly finalized new requirements for exploratory drilling in the Beaufort and Chukchi seas off the coast of Alaska. Given the extraordinary challenges of operating in Arctic environments and limited response capabilities available, the agencies determined that additional equipment and operations requirements were necessary to ensure adequate safety and environmental protections. The rule imposed heightened requirements for exploratory drilling operations in the Arctic designed to ensure operators account for local conditions such as requiring that they:

- develop integrated operations plans;
- can deploy source control and containment equipment while drilling or working below the surface casing;
- have access to a relief rig able to drill a relief well in a timely manner in the case of a loss of well control;
- can predict, track, report, and respond to icy conditions and adverse weather events;
- effectively manage and oversee contractors; and
- have an Oil Spill Response Plan designed for the Arctic environment as well as all necessary equipment, training, and personnel required to implement it.

The decision to enhance regulatory requirements for operations in the Arctic followed research efforts on technical aspects of Arctic operations and their environmental effects and the creation of an Interagency Working Group on Coordination of Domestic Energy and Permitting in Alaska by President Obama's [Executive Order 13580](#) on July 12, 2011. It also followed a costly and challenging exploratory Arctic drilling effort by Shell that was [suspended in 2015](#). Shell faced delays due to the local conditions,



additional operational requirements built into the permitting structure, and litigation that made progress difficult during the short window of the year in which operations are possible. Ultimately, Shell was able to drill a single exploratory well but did not achieve results it believed were worth the cost of development.

### *2016 Production Safety Regulations Update*

On September 7, 2016 BSEE updated its [requirements for production safety equipment](#) used “to ensure safety and the protection of the human, marine, and coastal environments.” After an operator drills a well, it must get BSEE’s approval before beginning production of that well. Part of that approval process involves review of a production safety system application and a preproduction inspection. BSEE issued its proposed rule in 2013 and the final 2016 rule reflects various comments from industry and stakeholders.

Most significantly, the rule updated safety and pollution prevention equipment (SPPE) design, maintenance, and repair requirements to reflect a lifecycle approach that raises the importance of vigilance throughout the life of the equipment. These requirements included that independent third-parties review and certify that SPPE devices are designed to and will function in the most extreme conditions they are exposed to.

BSEE also revised the regulations to specify different requirements for production platforms with surface (or dry tree) completions and subsea tree completions. Platforms with surface / dry tree completions allow for more easily accessible equipment on the production platform while subsea / wet tree completions place this equipment that controls production and flow on the seafloor. Deepwater production often relies on subsea completions. The revisions incorporated newer industry standards, giving them the force of law, and added requirements for firefighting systems, shutdown valves and systems, valve closure and leakage, and high pressure/high temperature (HPHT) well equipment.

### *Financial assurance requirements*

On September 12, 2016, BOEM issued a [Notice to Lessees and Operators](#) (NLT No. 2016-N01) that provided new guidance for when BOEM would require additional financial assurance for leases, pipeline rights-of-way, and rights-of-use and easements. Additional financial security is often required by BOEM to ensure operators can meet decommissioning costs. The NLT revised guidance around when additional security should be required so that BOEM would consider 100 percent of decommissioning costs and other liabilities when deciding whether to require assurance. BOEM still allowed self-insurance for some or all of the additional security obligations but the new NLT replaced prior guidance allowing for the exclusion of certain liabilities from the calculation of financial assurance. NLT 2016-N01 also established new criteria for determining a lessee, owner, or operator’s financial ability to carry out their obligations, replacing outdated formulas for determining financial strength and reliability.

### *Limiting areas available for offshore development*

In addition to revising regulations governing offshore drilling and production operations and equipment, President Obama reassessed whether certain areas of the OCS should be available for drilling. On December 20, 2016, he issued two Presidential Memoranda withdrawing [3.8 million acres of OCS oil and gas development in the Atlantic](#) and [115 million acres in the Arctic](#). This followed his earlier withdrawal of [areas of the Beaufort and Chukchi Seas](#) off of the Alaskan coast from consideration for oil and gas

drilling on January 27, 2015. Through these efforts President Obama protected a combined 125 million acres of the Arctic offshore.

BOEM then [denied six pending geophysical and geological permit applications](#) to conduct airgun seismic surveys in the Mid- and South Atlantic on January 6, 2017. BOEM noted there is “no immediate need” for the surveys because President Obama had removed those areas from leasing consideration.

All of these revised regulations along with significantly reorganizing the agencies responsible for oversight fostered a safer offshore oil and gas industry. They did not represent all of the changes recommended by the Deepwater Horizon Commission and other reviews, who also recommended actions that could only be taken by Congress and never came to pass. But they did represent a significant revamping of the regulatory environment and realignment of incentives for regulators

## The Trump administration has loosened post-Deepwater Horizon regulations and sought to expand offshore development.

Trump came into office promising an energy policy that would prioritize expanding exploration and production on federal lands and in federal waters. In a March 2017 Executive Order (EO 13783), President Trump [ordered agencies](#) to review their rules and consider revising or rescinding any rules or agency actions that impede energy production. On April 28, 2017 he issued [Executive Order 13795](#), “Implementing an America-First Offshore Energy Strategy.” In this order, President Trump [detailed specific rules and orders](#) he wanted to revise or rescind. The Secretary of the Interior issued [Secretarial Order 3350](#) a few days later ordering specific actions to implement President Trump’s requests. These directives targeted nearly all of the reforms enacted following the comprehensive reviews spurred by the Deepwater Horizon incident. (The EELP Regulatory Rollback Tracker’s [Offshore Oil and Gas page](#) provides more detail on the specifics of these orders.)

### *Attempting to expand leasing in federal waters*

EO 13795 directed the Department of Interior to expand the areas available for leasing in federal waters and attempted to reverse President Obama’s withdrawals of areas of the Arctic and Atlantic OCS from leasing. DOI Secretary Zinke’s Order 3350 then instructed BOEM to develop a new 5-Year Plan for OCS leasing. Despite operating under a 5-year plan only issued in 2017, BOEM released a [draft proposed program](#) for 2019-2024 in January 2018 that would open nearly all federal waters to offshore drilling. Secretary Zinke followed in the footsteps of President Reagan’s first and much maligned Interior Secretary, James Watt, who was the last Secretary to attempt to open the entire OCS to oil and gas development. The release of the draft proposal kicked off a firestorm of opposition, including among Republican elected officials in coastal states concerned about the prospect of oil and gas drilling harming their existing fishing and tourism industries (this opposition is described in more detail in our [offshore leasing Rollback Tracker page](#)).

However, the administration’s plan to drastically expand leasing has been in stasis since March 29, 2019 when a federal judge in Alaska [vacated](#) the portion of President Trump’s executive order that overturned Obama’s withdrawal of large sections of the Atlantic and Arctic OCS from leasing. The administration has appealed the decision to the 9<sup>th</sup> Circuit but also had to put on hold its plans to move forward with a new, expanded 5-year plan in the meantime.

Despite the hold up on its revised 5-year leasing plan, the Trump administration has taken other preliminary actions to move towards expanded oil and gas development. It began issuing geological and geophysical permits to conduct seismic airgun surveys in the Atlantic, something BOEM under the prior administration had stopped after withdrawing the Atlantic from availability for leasing. BOEM [announced it would resume](#) issuing these seismic survey permits in May 2018, NOAA published [technical guidance](#) and a [proposed rule](#) establishing a framework under the Marine Mammal Protection Act to allow for authorization for such surveys in the Gulf of Mexico in June 2018.

### *Rolling back safety and environmental rules put in place after Deepwater Horizon*

As [Lisa Friedman reported](#) for the New York Times, many recommendations made by the Deepwater Horizon Commission requiring Congressional action never came to fruition. These included whistleblower protections, more time for the agency to review exploration plans, and charging the industry fees to support environmental science and regulatory review. The Commission also recommended strengthening NEPA. The Obama administration did what it could to act on that recommendation absent congressional action by reviewing how NEPA was being applied to offshore activities. The Trump administration is instead [revising NEPA regulations](#) in ways that could reduce the effectiveness of NEPA. It has also shown itself unable to properly protect whistleblowers in contexts unrelated to offshore drilling.

In his May 2017 secretarial order, Secretary Zinke instructed BOEM to complete a review of the increased financial assurance requirements in NTL 2016-N01 and provide a report with options for revising or rescinding it. After an initial review of the NTL, BOEM extended the timeline for implementation of the NTL in June 2017, [withdrew earlier orders](#) made as a result of the NTL, and later determined it would prepare a [propose a rule](#) to revise it. NTL 2016-N01 is listed as [rescinded](#) on BOEM's website but it is unclear whether the agency has completed its review.

On September 28, 2018, BSEE [finalized revisions to the Production Safety Systems Rule](#). Its new rule revised or removed 2016 provisions it determined were "unduly burdensome" on the industry. Of particular importance was its removal of the requirement for an independent third-party certification that equipment will function in extreme conditions. BSEE followed these operational requirement revisions by [significantly revising the 2016 Blowout Preventer and Well Control Rule](#) on May 15, 2019, responding to [industry pressures](#) to revise the rule. BSEE [reportedly](#) had granted 1,700 waivers to safety requirements by then, including many to the Well Control Rule requirements. Environmental groups [have sued](#) BSEE for its rollback of the 2016 Well Control Rule, arguing BSEE disregarded the evidence and expert findings that went into the original rule without a reasoned explanation and did not provide a rational connection between the facts and its choice. They also argued that BSEE failed to provide adequate notice and comment under the Administrative Procedure Act when incorporating by reference API Bulletin 92L, did not adequately consider environmental effects, and failed to consider how the rollbacks could harm offshore safety.

The Trump administration also plans to make revisions to the 2016 Arctic Drilling Rule, another target of the 2017 executive and secretarial orders. Secretary Zinke ordered BOEM and BSEE to jointly review the exploratory Arctic drilling rule and submit a report with recommendations as to whether to suspend, revise, or rescind the rule. A proposed rule was listed on the administration's [Fall 2019 Unified Regulatory Agenda](#), indicating they had planned to send a proposal to the Office of Management and Budget for review in early 2020. However, the administration has not yet released a rule. This may be

less of a priority than the other rule revisions because no companies currently have plans to pursue exploratory drilling in the Arctic.

### *Pursuing additional regulatory changes that could increase the impact of offshore oil and gas operations on the environment*

This administration is also pursuing changes to environmental regulations that go well beyond targeting the reforms enacted specifically in response to the Deepwater Horizon event. For example, the [Offshore Air Quality Control, Reporting, and Compliance Rule](#) proposed by Obama-era BOEM on April 5, 2016 would have tightened pollution standards for offshore operations and required improved pollution control technology. President Trump [ordered](#) the Department of Interior to reconsider the rule and Interior Secretary Zinke then ordered the department to [stop work](#) on the rule.

The Department of Interior in the current administration has likewise [reinterpreted the Migratory Bird Treaty Act](#) to limit its protections in ways that could benefit oil and gas operations by lowering the possibility of liability. The solicitor for the Department of the Interior first did this by issuing [an opinion](#) withdrawing a memorandum on the subject issued during the prior administration, thereby changing the interpretation and policy within the agency. It also [announced](#) in January 2020 intentions to memorialize this interpretation in regulation and the [US Fish and Wildlife Service proposed revised regulations](#) in early February 2020 to do just that.

### Conclusion: Lessons learned after ten years of regulatory wrangling.

The Trump administration has once again shifted the balance between environmental and safety oversight on one side and encouraging energy development on the other in favor of the latter. Trump's "energy dominance" agenda and seeming disdain for the prior administration's accomplishments have converged to create an agenda focused on unravelling much of the common sense, studied reforms that arose out of the hard lessons learned from the Deepwater Horizon disaster. Even the agency reorganization can't withstand these pressures as BSEE, whose stated purpose is to focus on environmental and safety oversight, points to economic burdens on the industry to explain its reversal on established safety regulations.

Looking back ten years later, it is hard not to be discouraged by seeing six years of steady, thoughtful reform efforts systematically undermined over the last four years. This progression highlights the importance of legislative action to solidify progress. However, the story of these efforts also highlights the importance of our strong administrative procedures and judicial review. Significant groundwork has been laid for future administrations in the response to these proposals, whether in building an administrative record that lays the groundwork for judicial review of these changes—many of which are currently or will be in litigation once finalized—or in providing thoughtful commentary that can help guide a future administration in repairing much of the damage through regulatory revisions.

Efforts to drastically expand leasing in areas that have never experienced oil and gas development are largely stalled and unlikely to be finalized unless President Trump secures a second term, and then only if the ongoing litigation resolves in the administration's favor. Likewise, the prudent agency restructuring remains in place and helps hinder mission creep and conflicting incentives even where the overall thrust of the administration interest moves toward expanding development at the expense of safety and environmental protection.

Regulatory oversight is a complex balancing of interests, missions, and needs that requires constant vigilance. There is not a single hill that once climbed results in a perfect regulatory structure but rather a continuous set of obstacles to be navigated. It requires regularly updating rules and oversight methods in light of new technologies, operations, and other developments, particularly when it comes to highly technical and sophisticated industries often driven by great rewards but involving significant risks. The story of offshore oil and gas oversight is one that demonstrates the grave risks that result from not properly maintaining strong and responsive regulatory bodies, but also one that demonstrates the power of a coordinated, researched effort to reform those bodies. The current administration has disrupted the balance between energy development and environmental and safety oversight, but the competitive processes between advocates, industry, and regulators continues. For now, the efforts of vigilant stakeholders must provide both the current counterweight and the hope for future successes in protecting our environment and the safety of our coastal communities, oceans, and workers.