

- [Home](#)
- [About Us](#)
- [Site Map](#)
- [Contact](#)

[Water Log](#)

[Other Publications](#)

[Advisory Services](#)

[Slide Shows](#)

[Coastal Links](#)



## BOEM to Tighten NEPA Oversight for Offshore Drilling

**Nicholas Lund, J.D.**

The Bureau of Ocean Energy Management, Regulation and Enforcement (BOEM), then operating as the Mineral Management Service (MMS), has been roundly criticized in the wake of the BP Oil Spill for its cursory and uncoordinated application of National Environmental Policy Act (NEPA) procedures to offshore drilling activities.<sup>1</sup> The criticism focused on MMS's use of "categorical exclusions" to relieve offshore drilling operations of the burden of comprehensive environmental review. The White House Council on Environmental Quality (CEQ) released a report on August 16th recommending changes BOEM should adopt to "promote more robust and transparent implementation of NEPA practices, procedures and policies."<sup>2</sup>

NEPA requires environmental reviews whenever a federal project would have significant impacts on the human environment. The law allows agencies to determine activities that don't significantly effect the human environment and exclude them from NEPA review.<sup>3</sup> Among these "categorical exclusions" defined by MMS were exploratory drilling and extensions of the five or ten-year leases typically offered to offshore drilling projects.<sup>4</sup> In exploration and lease renewal situations, MMS allowed a "tiered" NEPA response: applying previously developed environmental assessments to new actions. When BP applied to drill an exploratory well that would later become the ill-fated Macondo well, it filed just 13 pages of environmental analysis in which no alternatives were considered, no mitigation measures were proposed and "[n]o agencies or persons were consulted regarding potential impacts associated with the proposed activities."<sup>5</sup>

In the wake of the spill, several lawsuits were filed by environmental groups challenging the use of categorical exclusions by MMS. Defenders of Wildlife sued the MMS, DOI and Secretary Salazar in a federal district court in Alabama, claiming the agencies were arbitrary and capricious in their allowance of CEs for exploratory drilling. The suit was stayed while the parties negotiated, and the CEQ reconsidered the application of NEPA to offshore drilling activities. In their August report, CEQ recommended that BOEM adopt several revisions to their NEPA practices in order to sufficiently evaluate potential environmental risks. Several recommendations address specific criticisms of the Macondo review. For instance, one recommendation asks applicants to consider impacts associated with low-probability catastrophic spills, events that had previously been excluded as not being reasonably foreseeable. Another asks the BOEM to review the use of categorical exclusions "in light of the increasing levels of complexity and risk – and the consequent potential environmental impacts – associated with deepwater drilling."<sup>6</sup>

The recommendations orbit around the premise that relying on old NEPA procedures in a new world of deepwater drilling will only lead to more catastrophe. The potential dangers of deepwater offshore drilling are no longer out of mind because they are out of sight. BOEM immediately agreed to adopt the CEQ's recommendations, and began its review of categorical exclusions in early October.<sup>7</sup>

### Endnotes

1. See Juliet Eilperin, *U.S. Exempted BP's Gulf of Mexico Drilling from Environmental Impact Study*, Washington Post, May 5, 2010, at A04.

2. Press Release, CEQ, Council on Envtl. Quality Releases Report on its Review of Mineral

2. Press Release, CEQ, Council on Envir. Quality Releases Report on its Review of Minerals Management Service NEPA Procedures (Aug. 16, 2010) (on file with author).
3. 40 C.F.R. § 1508.4.
4. DOI, Dep't Manual, Chapter 15: Managing the NEPA Process – Minerals Management Service (2004).
5. BP Exploration & Production, Initial Exploration Plan – Mississippi Canyon Block 252 (2009).
6. CEQ, Report Regarding the MMS's NEPA Policies, Practices, and Procedures as They Relate to Outer Continental Shelf Oil and Gas Exploration and Development, 4-5 (2010).
7. Press Release, BOEM, BOEM Begins Review, Invites Public Comment on Categorical Exclusions (Oct. 7, 2010) (on file with author).

**Recommended citation:** Nicholas Lund, *BOEM to Tighten NEPA Oversight for Offshore Drilling*, 30:4 WATER LOG 12 (2010).

Phone (662) 915-7775 • Fax (662) 915-5267 • 256 Kinard Hall, Wing E, University, MS 38677-1848

[Sitemap](#) • Please report any broken links or other problems to the [Webmaster](#)

[University of Mississippi](#)