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Today the White House Council on Environmental Quality [issued a report](#) on the NEPA analysis that preceded exploratory drilling at the ill-fated Macondo well in the Gulf of Mexico, together with recommendations for improving NEPA analysis in the future. According to CEQ, the [Bureau of Ocean and Energy Management](#) (successor to the disgraced Minerals Management Service) has already agreed to implement the recommendations.

The report offers a detailed look at the chaotic and uncoordinated NEPA procedures that were apparently routine at the old MMS. The major outlines of the story were already well known: MMS did a cursory, over-optimistic oil spill analysis at the 5-year program and lease sale stages, then applied a categorical exemption to applications for exploration plans. Separately from that environmental analysis, BP prepared an oil spill response plan which considered the possibility of a much larger catastrophic spill, but assured regulators that the company would be able to quickly and effectively clean up such a spill. There was never a thorough, realistic, transparent analysis of the probability and potential impacts of a blowout.

Even before it gets to recommendations, this report adds three very useful things to the ongoing conversation. First, it provides a much-needed dose of transparency, providing web links to a number of key environmental documents which have been available, but not easy to locate, through the former MMS. Second, it notes yet another environmental review which has not gotten much attention: a [2000 Environmental Assessment of deepwater operations in the Gulf](#). I'm just beginning to work through that one, which I hadn't known existed. And third, it provides the clearest description so far of the unnecessary gaps in the analytical sequence. For example, it describes the Deepwater EA as including a "robust" discussion of the challenges of dealing with a deepwater blowout, but that discussion did not inform the subsequent programmatic or lease sale EIS. And at the same time that MMS was approving the exploration plan under a categorical exclusion, it was separately reviewing the company's response plan, which acknowledged the possibility of a worst-case spill of up to 162,000 barrels per day. The agency's left hand apparently did not know (or care) what the right hand was doing.

The recommendations are good, especially when they get down to specifics. BOEM is told to stop assuming that a catastrophic oil spill is an unforeseeable event, to "identify potentially catastrophic environmental consequences and accurately assess them as part of its decisionmaking," and to reconsider its widespread use of

categorical exclusions at the exploration plan stage. “For the foreseeable future,” CEQ says, it expects BOEM to prepare environmental assessments at that stage. Furthermore, CEQ points out that the Macondo blowout (which it characterizes more neutrally in one respect, less so in another, as the “BP Oil Spill”) “constitutes significant new information and circumstances that may require reevaluation of some conclusions reached in prior NEPA reviews and other environmental analyses and studies.” Finally, CEQ gingerly approaches criticism of the other agencies that were supposed to review MMS’s environmental analyses but didn’t raise objections, or didn’t raise them forcefully enough to matter. Without naming names, CEQ notes:

The Administration encourages Federal agencies to review their NEPA programs to ensure that they have the resources and institutional support needed to maintain a strong involvement in Federal action agency decisionmaking and that those Federal agencies ensure that NEPA resources are available to fulfill this effort.

Are you listening, National Marine Fisheries Service, Fish and Wildlife Service, National Park Service, Coast Guard, and EPA? All have a stake in protecting the Gulf environment, and all allowed MMS to get away with its shoddy estimates of the likelihood and magnitude of a catastrophic spill.

There are two points I would like to have seen this report make more emphatically.

First, the Outer Continental Shelf Lands Act, the law that regulates offshore oil and gas leasing, makes the kind of comprehensive and site-specific environmental review CEQ rightly calls for difficult to achieve. The key decisions are made at the programmatic and lease-sale stage. Exactly where and how exploration and development will occur aren’t known until later, when those applications are submitted. But at that point, the government must surmount a high hurdle to block drilling: it has to show that going ahead “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.” Environmental studies that reveal significant potential impacts that don’t rise to that level of probability or seriousness can’t change the decision. CEQ’s report glances at this problem, explaining that MMS/BOEM views OCSLA as emphasizing resource development over environmental

protection, but doesn't grapple explicitly with the extent to which that view is in fact embedded in the current law. The administration has made a big point of pushing for more time to review exploration plans (a position repeated here) but hasn't pushed for greater discretion to deny exploration or development permits.

Second, NEPA review will only be effective going forward if it is continually updated to reflect new information about exploration technologies and risks. CEQ makes a point of calling for supplemental environmental review in light of information gained from the Macondo disaster, but doesn't explicitly address the more general point, or suggest how continual updating could be institutionalized.

While it's not perfect, this report, with its declaration that BOEM will follow the recommendations, represents a big step forward. It shows that CEQ in this administration is committed to its environmental protection mandate, and that it's got enough support (at least in the wake of high-profile disaster) to impose its views on an agency that has historically put environmental protection well below mineral production on the priority list.