

Florida Deepwater Horizon Response and Recovery Workgroup #1: Response to Current Disaster and Preparation for Future Disasters

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Task: To explore the current oil spill response system and determine whether the current oil spill response structure, with the operational changes put in place to address local government concerns, is effectively meeting the needs of the state, local communities, and others in responding quickly and successfully to the spill, or whether additional changes are needed. If additional changes are warranted, identify recommendations or establish guidelines to accomplish this. Further, explore changes that may enable all levels of government to better prepare for and respond to future disasters.

Summary of 8/9/10 Meeting with Louisiana Officials

On Monday, August 9, 2010, Representative Gary Aubuchon and members of Workgroup 1 (Representatives Trudi Williams, Leonard Bembry, Oscar Braynon, and Ken Roberson) traveled to Baton Rouge, LA, to discuss oil response issues with members of the Louisiana Oil Spill Coordinator's Office (LOSCO), representatives from the Louisiana Governor's Office, and state agency designees for oil spill response, at the Department of Public Safety & Corrections in Baton Rouge, Louisiana.

In attendance for LOSCO:

- Karolien Debusschere, Deputy Oil Spill Coordinator
- Stephanie Morris, Legal Counsel, Oil Spill Coordinator's Office
- Kristy Nichols, Deputy Chief of Staff, Office of the Governor
- Michael Dailey, Senior Policy Advisor, Department of Children & Family Services
- Kyle Graham, Deputy Director for Planning and Programs Coastal Activities
- Colonel Michael D. Edmonson, Superintendent, Louisiana State Police and Deputy Secretary, Department of Public Safety & Corrections
- Frank Blackburn, Assistant Secretary and General Counsel, Department of Public Safety & Corrections

The discussion highlighted two challenges Louisiana has dealt with while the Deepwater Horizon incident continues to unfold: command structure and the claims approval process.

Command Structure

Louisiana has a robust oil industry and, consequently, the state has much experience with oil spill response. The year after the enactment of the Oil Pollution Act of 1990 (OPA), the Louisiana state legislature created the Louisiana Oil Spill Coordinator's Office (LOSCO).

LOSCO was made part of the Governor's Office so that it could serve as the single point of contact for all programs related to oil spills in Louisiana. The National Response Center receives approximately 4,000 spill alerts in the state each year; although more than half of these spills are less than six barrels (one barrel equals 42 gallons). LOSCO responds to approximately 15 significant spills annually.

Louisiana's State Contingency Plan provides a detailed chain of command for oil spill cleanups, including a description of each agency's responsibilities in accordance with the Incident Command System.

Member agencies include the following:

- Louisiana Department of Environmental Quality
- Louisiana Department of Natural Resources
- Louisiana Department of Wildlife & Fisheries
- Louisiana Department of Public Safety & Corrections
- Louisiana Office of Homeland Security and Emergency Preparedness
- Louisiana Department of Health & Hospitals, and
- Louisiana Department of Culture, Recreation & Tourism

Notwithstanding LA's experience with spill response, the command structure that was established pursuant to the National Contingency Plan (NCP) after the Deepwater Horizon sank became, in certain circumstances, more of an obstacle for LOSCO.

The Oil Protection Act of 1990 requires the Responsible Party, in this case, BP, to take charge cleaning up the spill, although the US Coast Guard has "operational command" pursuant to the NCP. However, OPA was enacted after the Exxon Valdez oil spill, which involved a definable amount of oil that was spilled fairly close to shore. OPA was not drafted to address a situation like Deepwater Horizon; a blowout located two miles below the surface of the Gulf and 120 miles from shore, spewing an indeterminate amount of product for an indeterminate time. In fact, oil rigs of this nature are required to plan for and prepare for 'worst case' contingencies. However, according to representatives from LOSCO, no plan envisioned a well blowout in deep water and oil reaching the coastline.

It appears that while the USCG was in command of the spill response, BP, as responsible party, had authority to approve or deny authorization for spill response activities of local and state governments. BP controlled information (to some extent), response logistics, resources and infrastructure, and the location of response command centers. LOSCO provided some anecdotal evidence for this proposition: neither LA's State Contingency Plan nor coastal Parrish plans specifically addressed responses to this unique situation and proposals of creative and adaptive responses were typically denied by BP as being "outside the Plan," although eventually BP adopted some proposals. In addition, LOSCO has a state-of-the-art command center from where they coordinate and direct resources for oil spill response, but BP chose to set up their own command centers with their own hardware in other cities. When the scale of the incident and response needs outstripped BP's infrastructure, BP's response was to bring in more people. LOSCO recognizes that the uniqueness of the disaster created a power imbalance and stressed that changes would need to be made to OPA to address such a long-term and far reaching

incident such as Deepwater Horizon. Several of the Louisiana officials that we spoke with felt that one of the major shortcomings of the current spill response system, when activated to respond to a large spill such as the Deepwater Horizon, was having the responsible party be so involved in the decision making process. They felt that having to go through the Coast Guard and BP for approval significantly slowed and frustrated the response effort in Louisiana.

Louisiana's coastal, local governments are used to responding to localized spills in accordance with their emergency management protocols, and similar to Florida's experiences, they were frustrated by conflicting messages from BP and Unified Command in Mobile, AL, and BP's authority in approving or denying operations and logistical plans for local government's responses to the threat.

Claims Approval Process

During the meeting with the Louisiana officials, the conversation turned to some of the frustrations with the claims process. According to the Louisiana officials, BP is paying some claims for damages but has denied repeated requests for details regarding who they have paid and how much they have paid for each claim. The lack of accountability and dearth of details (e.g., methodology) concerns the state. As this payment "process" is poised to be turned over to a third party (who is paid by BP) by the end of August, there is still no information being shared by BP to the states.

One proposal mentioned by the Louisiana officials in the meeting included using the existing structure of the U.S. Coast Guard's National Pollution Funds Center (NPFC) that was created to implement Title I of OPA, which addressed issues associated with preventing, responding to, and paying for oil pollution. Under Title I of OPA, the Oil Spill Liability Trust Fund (OSLTF) was established to pay for expeditious oil removal and uncompensated damages. The OSLTF might be utilized to meet the more immediate needs of people impacted by a major spill, such as compensation for lost wages, mortgage relief, and crises counseling. While the Energy Policy Act of 2005 increased the maximum size of the Fund to \$2.7 billion, it is clear that this cap would need to be increased.

The Louisiana officials also discussed the quality of life and mental health needs of those affected by the spill, and how Louisiana is reaching out to BP to get compensation and funding to meet the increased demand for these types of social services. The duration of the event has resulted in diminished quality of life for many people dependent on the Gulf of Mexico, which has led to increased need for local mental health programs. Knowledge of how the constituency is faring will determine when and which agencies need to be activated to help. Issues with employment, housing, and mental health, if acted upon quickly by the state and local authorities, will lessen the long-term impact of the event, but funding is also an issue.