



# The Florida House of Representatives

August 31, 2010

The Honorable Larry Cretul  
Speaker, Florida House of Representatives  
Suite 420, The Capitol  
Tallahassee, Florida 32399-1300

**RE: Final Report – Deepwater Horizon Workgroup 1 – Response to current disaster and preparation for future disasters**

Dear Mr. Speaker:

It is an honor to present to you the findings and recommendations of Workgroup 1 tasked with evaluating the oil spill response to the Deepwater Horizon incident and preparing for future oil spill disasters.

The Workgroup was charged with exploring the current oil spill response system to:

- Determine whether the current oil spill response structure, with the operational changes put in place to address the need for better coordination with local governments, is effective in meeting the needs of the state and local communities in responding quickly and successfully to the current spill, or whether additional changes are needed. If additional changes are warranted, identify recommendations or establish guidelines to accomplish this. In addition, determine if any changes to the current spill response system are needed to alleviate any shortcomings identified during the response to the Deepwater Horizon spill in case of a similar oil spill in the future.
- Identify the strengths and weaknesses of the current oil spill response system to determine whether the “top down” protocol in the National Contingency Plan should be integrated into the more “bottom up” protocol in the National Response Framework, and, if so, identify and make recommendations or establish guidelines to accomplish this.

With participation from all members of the Workgroup, we have accomplished our task after receiving valuable input from various interested parties. To gain an understanding of the events

that occurred in responding to the current spill and the effectiveness of the current spill response system, as well as to identify its shortcomings and ways it could be improved, the Workgroup:

- Held conference calls with officials from the state agencies responsible for responding to the Deepwater Horizon oil spill, including the Department of Environmental Protection (DEP), the Fish and Wildlife Conservation Commission (FWCC), and the Division of Emergency Management (DEM);
- Held a conference call with representatives from the Florida League of Cities and Florida Association of Counties to gain the perspective of local governments regarding the strengths and weaknesses of the current spill response system;
- Traveled to Louisiana to meet with officials from that state's Oil Spill Coordination Office to discuss Louisiana's response protocol and gain their perspective on the strengths and weaknesses of the current spill response system, and ways it could be improved upon to alleviate any shortcomings; and
- Traveled to the Panhandle of Florida to meet with local government officials who experienced and participated in the Deepwater Horizon oil spill response, and to solicit their evaluation of the current spill response system and suggestions for improvements to the system.

This letter begins with a basic description of the current federal and state laws and protocols that govern oil spill response activities in state and federal waters. We then discuss the areas of concern identified during our research, and provide some recommendations to improve the response system, particularly when responding to a large oil spill, such as the Deepwater Horizon spill, which impacted multiple states and a large geographic area.

Because spill response activities are dictated by federal law and the federal government assumed authority over the Deepwater Horizon spill, most of the recommendations identified in this letter are directed towards the federal government and aspects of the federal spill response system. Moreover, the consistent evaluation by various Florida agency officials responsible for the oil spill response, including the state's designated On-scene Coordinator, DEP Secretary Sole, was that Florida's current emergency response laws and protocols do not need to be changed. Overall, the state's response to the Deepwater Horizon oil spill received high praise.

In addition, the recommendations made by the Workgroup pertain to improvements to the response system for future spills, and not to changes affecting the response to the current spill. Input from state and local government officials indicate most of the problems with the spill response were related to the lack of communication and coordination between the federal government and state and local governments early in the response, and that the federal government made changes to alleviate most of the problems identified early on. Nevertheless, the Workgroup believes several areas of concern and shortcomings revealed by the response to the Deepwater Horizon incident need to be addressed by permanent changes to the federal

response system to ensure they do not arise if another spill similar to the Deepwater Horizon incident should occur in the future. The overarching sentiment expressed to the Workgroup is that no state legislative action is needed with regard to the Deepwater Horizon incident response or for any future incident of a similar nature; however, the Workgroup learned of several changes to the federal response system that should be considered. These are reflected in our recommendations.

## **BACKGROUND**

### **Events of the Deepwater Horizon Incident**

On April 20, 2010, at about 6:57 p.m., the Coast Guard's 8th District command center in New Orleans received a call from the mobile offshore drilling unit Deepwater Horizon located in the Gulf of Mexico's Mississippi Canyon block 252, approximately 45 nautical miles southeast of Main Pass, LA, with 144 people aboard. A report from a rig 25 nautical miles away reported people in the water and that the rig was fully engulfed in flames. A swift and massive search and rescue effort was launched immediately and would eventually cover 5,375 square miles through 28 air and surface sorties. Despite the efforts of those on the scene, 11 people perished in the accident, and on April 22, the Deepwater Horizon was lost to the depths of the Gulf of Mexico.

This incident triggered the largest oil-spill response in the history of the United States, and was classified as a Spill of National Significance (SONS) involving more than 6,300 vessels, 35,000 personnel, 17 staging areas, 2.57 million feet of containment boom, and 4.17 million feet of sorbent boom. As the event grew in complexity and magnitude, the command structure developed and expanded proportionately, from an incident managed on the watchfloor of the command center to one managed by a National Incident Command (NIC) and a Unified Area Command (UAC).

### **National Contingency Plan**

The federal government's oil spill response framework that directs the protocols to be followed when responding to an oil spill is called the National Oil and Hazardous Substances Pollution Contingency Plan, otherwise known as the National Contingency Plan (NCP).

The NCP was developed and published in 1968 in response to a massive oil spill from the oil tanker *Torrey Canyon* off the coast of England the year before. More than 37 million gallons of crude oil spilled into the water, causing massive environmental damage. To avoid the problems faced by response officials involved in this incident, U.S. officials developed a coordinated approach to cope with potential spills in U.S. waters. The 1968 plan provided the first comprehensive system of accident reporting, spill containment, and cleanup, and established a response headquarters, a national reaction team, and regional reaction teams (precursors to the current National Response Team and Regional Response Teams).

Congress has broadened the scope of the National Contingency Plan over the years. As required by the Clean Water Act of 1972, the NCP was revised the following year to include a framework for responding to hazardous substance spills as well as oil discharges. Following the passage of Superfund legislation in 1980, the NCP was broadened to cover releases at hazardous waste sites requiring emergency removal actions. Over the years, additional revisions have been made to the NCP to keep pace with the enactment of legislation. The latest revisions to the NCP were finalized in 1994 to reflect the oil spill provisions of the Oil Pollution Act of 1990 (OPA). Under OPA, the NCP has been expanded in a three-tiered approach: the Federal government is required to direct all public and private response efforts for certain types of spill events; Area Committees – composed of federal, state, and local government officials – must develop detailed, location-specific Area Contingency Plans; and owners or operators of vessels and certain facilities that pose a serious threat to the environment must prepare their own Facility Response Plans.

The two primary legal authorities for the NCP are the Clean Water Act (CWA) (33 U.S.C. § 1251, et seq.), which establishes a fund for federal responses to oil spills, and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. § 9601, et seq.), which establishes the Superfund for federal responses to releases of hazardous substances. The NCP establishes the mechanisms for a National Response System (NRS).

The NCP establishes the NRS as the Federal Government's response management system for emergency response to releases of hazardous substances into the environment or discharges of oil into navigable waters of the United States. This system functions through a network of interagency and intergovernmental relationships and provides for coordinating response actions by all levels of government to a real or potential oil or hazardous substances incident. A primary mission of the federal system is to provide support to state and local response activities. Oil and hazardous substances response under the NRS is divided into three organizational levels: the National Response Team (NRT), Regional Response Teams (RRTs), and Federal On-Scene Coordinators (FOSC).

At the National level, the NRT is comprised of 16 federal agencies with interests and expertise in various aspects of emergency preparedness and response to pollution incidents. The NRT provides national planning and policy guidance prior to incidents, and assistance as requested during an incident.

Like the NRT, the RRTs are planning, policy, and coordinating bodies, and usually do not respond directly to the scene; rather they provide support, advice, and assistance to the FOSCs. All NRT member departments and agencies, as well as state and local participants, are represented on RRTs.

The FOSCs are the federal officials pre-designated by the Environmental Protection Agency (EPA) and the United States Coast Guard (USCG) to coordinate response resources. The FOSC, either directly or through his or her staff, monitors, provides technical assistance, and/or directs federal and potentially responsible party (PRP) resources. As the state and local responder's gateway to the resources of the NRS, it is the FOSC's responsibility to provide access to

resources and technical assistance that may not otherwise be available to a community. Under the NCP, if federal involvement is necessary because state and local resources have been exceeded, the FOSC is obligated to coordinate the use of these resources to protect public health and the environment.

#### Oil Spill Response Organizations (OSROs)

Under the OPA, all vessels and facilities are required to develop Facility Response Plans. The USCG created the Oil Spill Response Organization (OSRO) classification program to assist oil facilities and vessels in writing these required spill response plans. By listing a USCG classified OSRO in a response plan, the plan holder is exempt from providing and updating extensive lists of response resources. This remains the only regulatory benefit that plan holders receive from using a classified OSRO. An OSRO that does not have a USCG classification may still be employed by a plan holder and may be listed in the plan but must be listed along with the plan holder's entire emergency response resource inventory.

#### Federal On-Scene Coordinators (FOSCs)

During an oil or hazmat incident, EPA will usually provide FOSCs in the inland zone, and the USCG will generally provide FOSCs in the coastal zone. The FOSC coordinates all Federal containment, removal, and disposal efforts and resources during an incident under the NCP or the National Response Framework (NRF). The FOSC is the point of contact for the coordination of federal efforts with those of the local response community. EPA has approximately 200 FOSCs at 17 locations nation-wide; USCG has 35 Sectors, spread among the nine USCG Districts, each of which is headed by a Captain of the Port (COTP) who acts as an FOSC.

During an emergency, or for other response support needs, the NRS can be accessed 24-hours a day by calling the National Response Center (NRC) located in the USCG headquarters command center. The NRC immediately relays reports to the pre-designated FOSC.

In every area of the country, FOSCs are on-call and ready to respond to an oil discharge or a hazardous substance release 24-hours a day. When a discharge or release is discovered or reported, the pre-designated FOSC is responsible for immediately collecting pertinent facts about the discharge or release to evaluate the situation. Based on the evaluation, if the FOSC decides a federal emergency response action is necessary, he or she works with state and local emergency response teams, local police and firefighters, and/or other federal agencies to eliminate the danger.

The FOSC can provide the following to assist state and local agencies during an incident:

- Enforcement authorities to ensure that the responsible party (RP) cleans up the discharge or release;

- Immediate access to technical assistance and cleanup contractors if the response is beyond the RP's capabilities;
- Immediate access to Superfund and the Oil Spill Liability Trust Fund (OSLTF) to pay for responses. Federal trust funds and federal response equipment are managed by the FOSC;
- Reimbursement of expenses by state or local responders who have incurred extraordinary oil or hazmat response costs;
- Additional technical expertise and decision making capabilities via the RRTs during an incident; and
- Technical expertise from special federal teams, such as the USCG's National Strike Force, EPA's Environmental Response Team, EPA's Radiological Emergency Response Team, Scientific Support Coordinators, and the United States Navy/Supervisor of Salvage and Diving, for air monitoring, health effects advisories, radiation response, public affairs, oil slick tracking, multimedia sampling and analysis, etc.

Effective coordination between federal, state, and local responders at the scene of a response is a key factor in ensuring successful responses to major incidents. When responding to an oil spill, the federal government uses the Incident Command System (ICS)/Unified Command (UC) structure as an on-site tool to manage emergency response incidents. The ICS/UC is a necessary tool for effectively managing multi-jurisdictional responses to oil spills or hazardous substance releases. Once the Deepwater Horizon spill was designated as a Spill of National Significance, the federal government opened a Unified Area Command post in New Orleans, and four local Unified Incident Command posts in other parts of the Gulf Coast.

### Discharge Planning

As noted above, OPA requires owners and operators of vessels and offshore facilities to prepare Facility Response Plans. The United States Minerals Management Service (MMS), which had its name recently changed to the Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE), is responsible for ensuring the effective management of offshore energy development on the nation's Outer Continental Shelf, including the environmentally safe exploration, development, and production of oil and natural gas.

Under OPA, the Secretary of the U.S. Department of the Interior has authority over offshore facilities and associated pipelines, with the exception of deepwater ports. The Secretary, in turn, delegated this authority to the MMS. The resulting tasks for the MMS include responsibility for oil discharge planning and preparedness activities for regulated facilities. Oil Spill Response Plans are submitted by owners of facilities to the MMS, unless the facility is in a deepwater port, in which case it is submitted to both the USCG and MMS. The MMS is also responsible for

inspection of oil discharge response equipment cited in a plan, and oversees drills conducted by facility owners and operators seaward of the coastline.

The USCG is responsible for the regulatory oversight of the safe and environmentally sound handling and storage of petroleum products, hazmat, and certain dangerous cargoes at facilities which transfer those materials between vessels and which are located on or near navigable waters of the U.S. With this connection in mind, the USCG will also coordinate plan preparedness drills with the MMS. In addition, both the MMS and the USCG are responsible for investigations. The MMS will also participate in Area Committee meetings to the maximum extent practicable.

### Contingency Planning

The exercise and training program for the NRS is the National Preparedness for Response Exercise Program (PREP), which is a multi-agency program to exercise and evaluate government Area Contingency Plans and industry spill response plans. The exercise program meets the OPA mandate for exercises and represents minimum guidelines for ensuring overall preparedness within the response community.

According to the NCP, the area contingency planning process, which brings together appropriate representatives from federal, state, and local agencies, is the forum for working out the details of how the ICS will be applied in each area. To ensure that ICS/UC is effectively implemented, discussions occur before an incident at the Area Committee level and in the Area Contingency Planning process. This allows all responders to understand each other's roles and responsibilities and have a plan for working together, which ensures all parties are able to reach consensus on response strategies and tactics. The OSC and the Area Committee are responsible for developing, adopting, and implementing a response management system, such as ICS/UC, through the Area Contingency Plan (ACP).

Under the NCP, the FOSCs have the responsibility to oversee development of the ACP in the area of the FOSCs responsibility. The NCP states that the development of ACPs should be accomplished in cooperation with the RRT, and designated local and state representatives, as appropriate. In both contingency planning and spill response, the FOSC is responsible for coordinating, directing, and reviewing the work of other agencies, Area Committees, RPs and contractors to ensure compliance with the NCP and other plans applicable to the response. Florida has an ACP for each of the five USCG regions in the state. In USCG District VII, the USCG regions include St. Petersburg, Key West, Miami, and Jacksonville. In USCG District VIII, the USCG region is Mobile and covers the Panhandle of Florida. Florida is the only state that is divided among two different USCG Districts.

### Regional Response Teams (RRTs)

As outlined in Section 300.115 of the NCP, regional planning and coordination of preparedness and response actions are accomplished through the RRT. The RRT agency membership parallels

that of the NRT, but also includes state and local representation. The RRT provides the appropriate regional mechanism for development and coordination of preparedness activities before a response action is taken and for coordination of assistance and advice to the FOSC during response actions.

The two principal components of the RRT mechanism are a standing team and incident-specific team. The standing team consists of designated representatives from each participating local and state government and federal agency. The role of the standing RRT includes providing regional access to communications systems and procedures, planning, coordination, training, and evaluation.

### *U.S. Coast Guard Strike Force*

The USCG maintains a National Strike Force (NSF) capability that is available to assist FOSCs in their preparedness and response duties. This capability is managed by the National Strike Force Coordination Center (NSFCC). The NSFCC provides technical assistance, equipment, and resources; coordinates the use of public and private resources; and reviews ACPs. The NSFCC also maintains a national inventory listing of spill response equipment and assists with the development and implementation of an exercise and training program for the NRS. The USCG has National Strike Teams in the Atlantic, Gulf, and Pacific regions. The Strike Teams provide trained personnel and specialized equipment to assist in training, stabilize and contain spills, and monitor and direct contractors or potentially responsible party (PRP) responses. At the NSFCC, the USCG maintains a Public Information Assist Team (PIAT). The PIAT is composed of a highly skilled unit of public affairs specialists prepared to complement the existing public information capabilities of the FOSC. At each USCG District office, the USCG maintains a District Response Team. Each team consists of USCG personnel and equipment in a designated district that have ready access to pre-positioned response equipment and a District Response Advisory Team (DRAT). The DRATs assist FOSCs by providing technical assistance, personnel, and equipment as needed.

### **National Response Framework**

Occasionally, the nation experiences disasters requiring a response that cannot be fully coordinated under the NCP – often because it involves more than just oil or hazardous material pollution. The National Response Framework (NRF) was created as a result of perceived problems with the implementation of the then existing National Response Plan (NRP) during Hurricane Katrina, and led Congress to enact the Post-Katrina Management Reform Act (P.L. 109-295) to integrate preparedness and response authorities. Implemented in March 2008, the NRF establishes a new approach to coordinating federal and nonfederal resources and entities. The NRF integrates the National Contingency Plan (NCP) and other national-level contingency plans.

The NRF is part of a national strategy for homeland security. It provides the doctrine and guiding principles for a unified response from all levels of government and all sectors of

communities to all types of hazards regardless of their origin. Although the primary focus of the NRF is on response and short-term recovery, the document also defines the roles and responsibilities of the various parties involved in all phases of emergency management. The NRF is not an operational plan that dictates a step-by-step process for responding to hazards.

### Components of the NRF Document

The NRF is organized into five parts. The introductory chapter presents an overview of the entire document and explains the evolution of the NRF, and identifies the various parties involved in emergency and disaster response. The chapter also provides a list of what the Department of Homeland Security (DHS) describes as the “five key principles” of the response doctrine. These are:

- (1) **Engaged Partnership:** the NRF advocates for open lines of communication among various emergency management entities and for support partnerships during preparedness activities so that when incidents take place, these various entities are able to work together.
- (2) **Tiered Response:** responses to incidents begin at the local level. When local capacity is overwhelmed, state authorities assist the locality. Likewise, should the state be overwhelmed, assistance from the federal government is requested.
- (3) **Scalable, Flexible, and Adaptable Operational Capabilities:** as incidents change in size, scope, and complexity, there needs to be a corresponding change in the response apparatus.
- (4) **Unity of Effort through Unified Command:** a clear understanding of the roles and responsibilities of each entity is necessary for effective response. Moreover, effective response requires a unit of effort within the emergency management chain of command.
- (5) **Readiness to Act:** all emergency management agencies, to the extent possible should anticipate incidents and make preparations to respond swiftly to them.

The first chapter of the NRF, entitled “Roles and Responsibilities,” provides an overview of the roles and responsibilities of federal, state, and local governments, the nonprofit and private sectors, and individuals and households. The first chapter also discusses the roles and responsibilities of those who hold various positions within these entities.

The second chapter, entitled “Response Actions,” describes and outlines key tasks as they pertain to what DHS calls the “three phases of effective response.” These phases include “prepare,” “respond,” and “recover.” Preparing includes planning, organizing, equipping, training, exercising, and conducting evaluations. Activities related to responding include gaining and maintaining situational awareness, activating and deploying resources and capabilities,

coordinating response actions, and demobilizing. “Recover” activities are broken down into two broad categories: short-term and long-term recovery.

The third chapter of the NRF, entitled “Response Organization,” discusses the organizational structure and staffing used to implement response actions, all of which are based on the federal National Incident Management System (NIMS)/Incident Command System (ICS)/Unified Command (UC) management and command structure. The NRF describes the organization and staffing structure of every entity responsible for preparedness and response in detail.

The fourth chapter, entitled “Planning,” describes the process of planning as it pertains to national preparedness and summarizes planning structures relative to the NRF. The chapter describes the criteria for successful planning and offers example scenarios for planning.

The fifth and final chapter of the NRF, entitled “Additional Resources,” describes the Emergency Support Function (ESF) Annexes to the NRF, including eight Support Annexes and seven Incident Annexes. ESFs provide the structure for coordinating federal interagency support for responses involving multiple federal agencies. Support Annexes describe how federal, state, tribal, and local entities, as well as nongovernmental organizations (NGOs) and the private sector, coordinate and execute the common functional processes and administrative requirements for incident management. Incident Annexes are specific hazard scenarios that require specialized and specific response efforts. For disasters that include oil and hazardous waste discharges, the DHS may choose to activate ESF #10 – Oil and Hazardous Materials Response and integrates the NCP.

#### *ESF #10 – Oil and Hazardous Materials Response*

When activated, the Emergency Support Function #10 – Oil and Hazardous Materials Response (ESF #10) guides Federal support in response to an actual or potential discharge and/or uncontrolled release of oil or hazardous materials. Response to oil and hazardous materials incidents is generally carried out in accordance with the NCP, either directly, or as a supplement to the NRF through ESF #10. The NCP is an operational supplement to the NRF. It provides more detailed information regarding the roles and responsibilities, organizational structures, and procedures described in ESF #10.

The scope of ESF #10 includes the appropriate actions to prepare for, respond to, and recover from a threat to public health, welfare, or the environment caused by actual or potential oil and hazardous materials incidents. In addition, ESF #10 may be used under appropriate authorities to respond to actual or threatened releases of materials not typically responded to under the NCP but that pose a threat to public health or welfare or to the environment. Appropriate ESF #10 response activities to such incidents include, but are not limited to, household hazardous waste collection, monitoring of debris disposal, water quality monitoring and protection, air quality sampling and monitoring, and protection of natural resources.

As described in the NRF, some Federal responses do not require coordination by the DHS and are undertaken by other Federal departments and agencies consistent with their authorities. Federal responses to oil and hazardous materials incidents under the authorities of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the Clean Water Act (CWA) that do not warrant DHS coordination are conducted under the NCP. The EPA or DHS/USCG may also request DHS to activate other NRF elements for such incidents, if needed, while still retaining overall leadership for the Federal response. ESF #10 may be activated by DHS for incidents requiring a more robust coordinated Federal response, such as:

- A major disaster or emergency declared by the President under the authority granted in the Stafford Act;
- A Federal-to-Federal support request (e.g., a Federal agency, such as the Department of Health and Human Services or Department of Agriculture (USDA), requests support from ESF #10 and provides funding for the response through the mechanisms described in the Financial Management Support Annex); or
- An actual or potential oil discharge or hazardous materials release to which EPA and/or DHS/USCG respond under CERCLA and/or CWA authorities and funding, for which DHS determines it should lead the Federal response.

When ESF #10 is activated, the NCP typically serves as the basis for actions taken in support of the NRF.

#### *Problems Identified During Post-Katrina Responses*

The federal government has identified several shortcomings with the implementation of the NRF since revisions were made post-hurricane Katrina. Several of these are very similar to some of the shortcomings the Workgroup heard regarding the implementation of the NCP. According to the Congressional Research Service, concerns have been expressed over a lack of comprehensive operational plans in the NRF, and regarding the integration of input from nonfederal stakeholders, such as state and local governments, nonprofit groups, and the private sector.

#### **Overview of Florida's Role in Responding to an Oil Spill**

Section 376.031(12), F.S., designates the Florida Department of Environmental Protection (DEP) as the lead agency in responding to all discharges of pollutants that occur in coastal waters, estuaries, tidal flats, beaches, and lands adjoining the seacoast of Florida. The U. S. Coast Guard (USCG) maintains an Area Contingency Plan (ACP) for each Coast Guard sector in the state. The state has incorporated each of these ACPs into the state's overall contingency plan. The provisions of this plan apply to all state agencies and are designed to complement the established National and Regional Oil Spill Contingency Plans.

It has been the policy of the state to assist the Federal On-Scene Coordinator (FOOSC) in response to pollutant spills in Florida, and to respond immediately to all oil spills in order to control the source of any oil spill and contain any discharge to the maximum extent possible.

Whenever it is determined the responsible party for the discharge is taking adequate action to remove and mitigate its effects, the principle role of the state is to observe, monitor and provide advice and counsel, as may be necessary. The FOOSC or DEP will take steps to access the applicable state or federal funds to ensure adequate cleanup whenever it is determined:

- The responsible party for the discharge was unknown;
- The responsible party did not act promptly, take proper and appropriate actions to contain, cleanup and dispose of the oil or oily debris; or
- The total clean up costs are beyond those expected to be borne by the responsible party.

In addition, the responsible party must also protect the environment and adhere to safety practices. The option of taking no mitigating actions is always considered when such actions would cause greater environmental damage than the spilled oil alone. The use of oil spill cleanup agents is subject to the Secretary of DEP's best judgment and coordinated with the FOOSC and EPA representative to the Regional Response Team (RRT).

#### Bureau of Emergency Response

As stated above, DEP is the state's designated lead agency in responding to oil spills. Within DEP, the Bureau of Emergency Response (BER) is the lead program for coastal oil spill response. The BER has developed the Coastal Pollutant Spill Response Plan in compliance with Section 376.07(2)(e), F.S., to support this responsibility.

Under Florida's Coastal Pollutant Spill Response Plan, each oil spill incident must be evaluated to determine the level of response. The following criteria, as stated in the Florida Coastal Pollutant Spill Response Plan, are used by the State On-Scene Coordinator (SOSC) to determine an appropriate response.

- A BER SOSC will respond to all major and moderate discharges. These are discharges greater than 1,000 gallons.
- The SOSC will evaluate the need for a response to any minor discharges and potential major and moderate discharges on a case-by-case basis. This will include making telephone calls to the reporting party or the facility involved in order to obtain additional information as to volume, resources impacted, cleanup status, etc. If a response is deemed necessary, the on-call individual will determine which personnel is physically closest and has an officer available to make the initial response. Reports

in the immediate area of a BER office will be investigated by BER. Light oil sheen with no known source which does not require any cleanup may not receive a response. This determination will be made by the SOSC based on all the facts and witness statements.

- BER will coordinate the incident with the Federal On-Scene Coordinator (FOSC) and fax the completed Emergency Response Incident Report. BER will complete the Natural Resource Damage Assessment (NRDA). If no response is deemed necessary, the SOSC will close the case.
- If the discharge takes place in the water and is not accessible by land, the on-call individual may request assistance from the Fish and Wildlife Conservation Commission (FWCC). The FWCC may be needed to actually investigate the discharge, or may be requested to provide a vessel for the SOSC to conduct the investigation. If the FWCC is unavailable, many county Sheriff offices have vessels.
- If no Florida official can respond to the discharge and a response is necessary, notification must be made to the USCG District office of such inability.

In addition, Florida's Coastal Pollutant Spill Response Plan provides that if the SOSC is the first response official on scene, he/she will establish a command center and institute an Incident Command System (ICS). If a fire department or the FOSC was first on scene, the SOSC will immediately report to the incident command center to establish contact with the FOSC or the incident commander, as applicable. The FOSC is the pre-designated federal official responsible for ensuring an immediate and effective response to a discharge or threatened discharge of oil or a hazardous substance. The USCG Sector Commanders are the pre-designated FOSCs in the coastal zone. In the event of a moderate or major discharge, or threat of a discharge, a unified command consisting of the FOSC, the SOSC, and the responsible party will be established. The SOSC is there to represent the DEP and the State of Florida. It is the responsibility of the SOSC to provide technical assistance to the responsible party and/or the FOSC, assess the incident, and determine what actions must be taken. The SOSC is to coordinate all DEP activities or requests for state resources by the FOSC.

#### *The Incident Command System (ICS)*

The ICS provides the organization for responding to a multi-jurisdictional or multi-agency pollution incident. The ICS is a mechanism to coordinate the efforts of the FOSC, the SOSC and the responsible party at the command post. BER has accepted the responsibility for providing the majority of personnel that will participate in the ICS at the appropriate levels. Other DEP personnel may be called to assist, although, the SOSC must realize that other non-BER personnel may not have ICS training, therefore the BER personnel will provide guidance for any non-BER personnel assigned to the incident command center.

*DEP and SOSC Responsibilities*

There are specific actions the SOSC and other DEP and BER individuals are responsible for within the ICS. The SOSC is part of the Unified Command and coordinates all state actions. Assistant SOSC takes over for the SOSC during prolonged incidents and has all the authority of the SOSC. The State Scientific Support Coordinator works closely with the FOSC on resource related issues. Law enforcement is provided by the DEP's Park Patrol to assist with site security. The Solid Waste Coordinator comes from the DEP Regulatory District Office and assists the Unified Command with oil spill debris disposal issues. DEP's Chief Financial Officer keeps track of state expenditures and employee time.

The SOSC has numerous responsibilities at the scene of an incident. If the incident is federalized, some of the responsibilities will be taken over by the FOSC and the ICS.

*Division of Emergency Management*

In general, the Division of Emergency Management (DEM) of the Department of Community Affairs (DCA) plans for and responds to natural and man-made disasters, which range from floods and hurricanes to incidents involving hazardous materials, oil, or nuclear power. The DEM also prepares and implements a statewide Comprehensive Emergency Management Plan, and routinely conducts extensive exercises to test state and county emergency response capabilities.

The DEM is not subject to control, supervision, or direction by the Department of Community Affairs (DCA). The DEM director is appointed by the Governor, serves at the pleasure of the Governor, and is the agency head for all purposes. The DEM has a service agreement with the DCA for professional, technological, and administrative support services. In addition, the DEM collaborates and coordinates with the DCA on nonemergency response matters.

The DEM is the state's liaison with federal and local agencies on all kinds of emergencies. It also provides technical assistance to local governments with emergency plans and procedures, conducts emergency operations training for state and local government agencies, and operates mitigation programs.

After a disaster, the DEM conducts damage assessment surveys and advises the Governor on whether to declare an emergency and seek federal relief funds. The DEM maintains a primary Emergency Operations Center in Tallahassee, which serves as the communications and command center for reporting emergencies and coordinating state response activities. The DEM also operates the State Warning Point; an emergency communications center staffed 24 hours every day that maintains statewide communications with county emergency officials.

State Emergency Response Team

The State Emergency Response Team (SERT) coordinates state agency response activities to assist the SOSOC. In the event of a moderate or major oil or hazardous substance discharge, the SERT may be activated at the State Emergency Operation Center (SEOC). Notification of a spill from a public or private source will result in the State Agency Coordinator (SAC) being called. The SAC must immediately notify the National Response Center (NRC) (if that was not the source). It is the DEP's responsibility, in conjunction with the USCG, to initially determine the severity of an alleged major discharge or pollution incident within its jurisdiction. The Chairperson of the SERT makes the decision whether or not to activate the SERT or recommend to the Governor that a Declaration of an Emergency Proclamation be made.

The SERT is composed of agency-appointed Emergency Coordination Officers (ECOs) from state agencies and volunteer and non-governmental organizations that operate under the direction and control of the Governor and State Coordinating Officer. The SERT is grouped into 18 Emergency Support Functions (ESFs) that will carry out coordination and completion of response and recovery activities in the SEOC during an emergency or disaster. These ESFs are grouped by function rather than agency, with each ESF headed by a primary state agency and supported by additional state agencies.

The SEOC can be activated by any of the following methods:

- Request by the Director of the DEM; or
- Request by the lead state agency involved in an incident; or
- Declaration of an Emergency Proclamation by the Governor.

State's Response to the Deepwater Horizon Incident

The SERT was activated by the Governor pursuant to his Executive Order and the provisions of Chapter 252, F.S., to respond to the Deepwater Horizon oil spill incident. The DEP was designated lead state agency for this incident and the Director of the DEM was designated as the State Coordinating Officer.

Under the NCP, the USCG established a Unified Command (UC) in New Orleans to oversee the Gulf Coast response. They also established 3 Incident Command (IC) posts in Houma, LA, Mobile, AL, and Miami, FL. The IC in Houma is responsible for coordinating the response effort in the State of Louisiana, the IC in Mobile is responsible for operations in Mississippi, Alabama, and 15 counties in Florida, and the IC in Miami is responsible for the remaining 52 counties in Florida. The split of Florida into two separate Federal Commands is based on USCG Sector Boundaries.

Because operational response actions are directed by the USCG and BP as the responsible party, Florida deployed a forward command element to IC Mobile to help coordinate Florida actions. The SERT also deployed a forward element to IC Miami to coordinate actions in the remaining 52 counties, and sent staff to the New Orleans Unified Command. The SERT established an extensive reconnaissance element composed of air, land, and sea resources to detect possible impacts. This information was relayed to all command elements through the DEM's Geospatial Assessment Tool (GATOR) to facilitate response actions. This action was critical since the SERT and impacted counties did not have operational control of the response resources because BP and the USCG directed response operations. States can only seek reimbursement for funds spent on response activities that are consistent with the NCP and approved by BP/USCG.

### **WORKGROUP FINDINGS AND RECOMMENDATIONS**

Based on all the information compiled over the last four weeks, the Workgroup makes the following findings and recommendations:

#### **Are the National Contingency Plan and the National Response Framework Sufficiently Integrated?**

Immediately after the search and rescue mission ended at the site of the Deepwater Horizon spill, the response began with the activation of the National Contingency Plan (NCP) protocols. This included designating BP as the responsible party (RP) and the United States Coast Guard (USCG) as the Federal On-Scene Coordinator (FOSC) in charge of the spill. Partly because the spill was 40 miles from the Louisiana coast in federal waters and the amount of the spill was believed (incorrectly) to have been only occurring at a rate of 1,000 barrels a day, the government allowed BP to take control of the response with the USCG providing oversight as provided in the NCP. In the beginning, there were no immediate impacts or threats of impact to the Gulf coast states, and, therefore, the Gulf states did not have a role in the spill response. BP, as required under the Oil Pollution Act of 1990 (OPA) had a facility response plan in place, and equipment was on call to handle the clean up. Unfortunately, the magnitude of the discharge was severely underestimated and the threat to the Gulf coast quickly became apparent. By the time the oil plume began threatening the Gulf coast, estimation of the amount of oil being discharged at the wellhead increased 10 fold and every state along the Gulf coast was at risk.

The federal government and BP quickly activated Regional and Area Contingency Plans, established a Unified Command center and four Incident Command centers, and began mobilizing boom and skimmers at places where the threat of oil impacting the coastline was the most immediate. However, as the massive response effort began, one of the biggest concerns expressed by many state and local responders was the lack of communication and coordination by BP and the USCG. Local governments, in particular, felt and that the response to the oil spill could have been accomplished much more effectively and efficiently if the federal government would have allowed them to take control of the spill response instead of having the federal government and BP controlling the response effort. This led to the perception that the NCP was strictly a "top down" incident response system. Many state and local government officials in

Florida (where having to respond to an oil spill is relatively rare) had more experience responding to hurricanes under the structure and protocols of the National Response Framework (NRF) and the Federal Emergency Management Agency (FEMA), which is considered a more “bottom up” response framework because state and local governments generally take the lead in responding to the incident unless the disaster is too large and funding or other assistance is needed.

To address this concern, the Workgroup was charged with examining the perceived dichotomy between the two response frameworks and determine whether the NCP should be integrated into the NRF and implemented in a more bottom-up manner. The Workgroup found that the NCP is not strictly a “top-down” oil spill response system, and that it is fully integrated into the NRF as discussed in the background information above. When an incident consists solely of an oil spill, the NCP is activated. When any other type of disaster occurs, such as hurricane Katrina, and there are several different areas of emergency response required, the NRF is activated. If the disaster results in a discharge or threat of a discharge of oil or hazardous waste, then the NCP is activated under the ESF #10 of the NRF. The two response systems are fully integrated and have very similar control structures. Neither system is purely “top down” or “bottom up”. They both begin with notification to a pre-determined federal agency that is the federal government’s lead response coordinator, and then the federal coordinator assesses the capability of the state or local government to handle the response. If the state or local government cannot handle the incident response, then the federal coordinator assumes control in a “top down manner.” If the state or local government does have the resources to manage the response, then the federal coordinator plays a more “bottom up” oversight role. Both response systems provide that the federal government, either the Department of Homeland Security (DHS) under the NRF or the USCG under the NCP, respond to an incident and then determine whether the impacted state or local governments can manage the response effort. The main difference between the two frameworks is that under most NRF incidents, such as hurricanes or other natural disasters, there is no responsible party involved in the response as is the case in a response to oil or hazardous waste spill responses under the NCP.

The Deepwater Horizon incident was purely an oil spill incident, and the NCP was activated to respond. The USCG is under the DHS, and the Secretary of the DHS, Janet Napolitano, declared the spill a Spill of National Significance (SONS), which allowed additional disaster relief funds to be released for the response effort. Because of the large expanse of the oil spill, and the fact that it impacted or threatened to impact so many different state and local jurisdictions, it was necessary for the federal government to control the spill response activities instead of allowing the states to take control of the response. This sentiment was agreed to by several state and federal response officials that the Workgroup met with, including Florida’s lead spill response agency, the Department of Environmental Protection, Florida’s lead spill response coordinator, Secretary Mike Sole, and Louisiana’s Spill Coordination Office.

The Federal National Response Team (NRT) has stated that federal control over large spills is necessary because of the large number of stakeholders with jurisdiction over an incident. In several large spill response simulations performed by the USCG, as required in OPA, the NRT

said that over 132 entities from all levels of government had a legitimate response role in the incident, and that federal coordination helps ensure all stakeholders have a place at the table and work effectively. However, as seen in the response to the deepwater Horizon spill, that was not always the case.

One factor that contributed to the decision that the USCG along with BP should assume control of the spill response effort, instead of individual state and local governments, was that there were not enough response resources such as boom and skimmers to cover the entire Gulf coast area. The oil plume was constantly shifting and threatening to impact Louisiana one day, Alabama the next day, and Florida another day. This required constant changes in strategy, and required that limited quantities of boom be moved from one place to the next depending on where the most immediate threat existed. Having every state or local government control boom and skimmers for their particular coastline could have resulted in shortages of skimmers and boom in places where the oil was reaching the coast, and boom and skimmers sitting in areas where the oil was not an immediate threat. This possibility was seen first-hand as some local governments disagreed with the USCG/BP over the deployment of boom along their coasts (even though the oil was not projected to reach their coastline for several days) only to see winds and currents change and the oil never appear, but move and threaten other states' coastlines.

According to Secretary Sole, various state and local governments differed over the allocation of these resources early on. Furthermore, if local governments were in charge of contracting with skimmers and boom suppliers, then if federal or other state and local governments needed those resources elsewhere, where the impact was more imminent, it would be difficult to get those resources to move since the skimming vessels and boom would be under contract and not under direct control of the federal government or responsible party. The Louisiana Oil Spill Coordination Office (LOSCO), which has tremendous experience in responding to oil spills, stated that it is important to have an official at the top to direct the response. Although there have been coordination problems, the Louisiana officials felt that the response has been much better than during hurricane Katrina.

***Florida Deepwater Horizon Response and Recovery Workgroup 1 recommends:***

- ❖ To alleviate the problem of a lack of response resources in case of future spills similar in size and impact as the Deepwater Horizon incident, the federal government and companies producing oil and gas in the Gulf of Mexico should ensure there are adequate boom and skimmers in the Gulf of Mexico region to respond to an oil spill like the Deepwater Horizon spill. If enough skimmers and boom were on-hand to protect larger regions of the Gulf of Mexico, then the federal government may feel more compelled to allow individual states or local governments to increase their role in overseeing area spill response activities for large spills such as the Deepwater Horizon spill, similar to how the spill response occurs for smaller spills.

### **Is the Oil Spill Response Structure Effective in Meeting the Needs of the State and Local Communities in Responding Quickly and Successfully to a Spill?**

In most cases, spills that occur which result in the activation of the National Contingency Plan (NCP) are small and localized, and the protocols of the NCP work remarkably well, with good coordination between the federal government, responsible party (RP), and state and local governments. However, the Deepwater Horizon spill was unique in its size and number of state and local governments impacted. As a result, some shortcomings were identified with respect to the implementation of the NCP in responding to the spill. The biggest problem was the lack of coordination and communication between the USCG/BP in charge of the spill response and the local governments.

When the oil spill first occurred, a Unified Command was established in New Orleans, LA, and Incident Command centers were established in Houma, LA, Mobile, AL, and Miami, FL. The Incident Command center in Mobile, AL is responsible for the response activities occurring in Alabama and the Panhandle of Florida. The distance between the location of the federal spill response coordinators and their areas of oversight caused problems in communicating and coordinating spill response activities, and caused frustration for Florida's state and local government officials. Several county and municipal government officials who were involved in the spill response for their local jurisdiction stated that on several occasions early on, they were informed by the USCG from Mobile, AL that skimmers and boom had been deployed to the local jurisdiction, only to find that the equipment was not there.

The USCG recognized the need to have more coordination with state and local governments and to be in a closer proximity to the impacted areas where the spill response activities were occurring to make sure the response was as effective and efficient as possible. In response, the USCG opened four branch offices along the Florida Panhandle dedicated to providing coordinated and rapid oil spill response efforts to near shore and inland waterway areas. The opening of the branch offices helped tremendously and resulted in a vast improvement with the coordination between the USCG/BP and state and local governments and the spill response overall. State and local response officials in Florida stated that the response worked well once the coordination improved and that no further action is necessary, especially now that threat of a major coastal impact has lessened. In addition, the state's emergency response protocols in place to respond to all types of disasters worked extremely well in responding, to the extent possible under the federal system, to the current oil spill. This sentiment was expressed by both the Department of Environmental Protection and the Division of Emergency Management, who agreed that no changes to state law were necessary to improve the state's response protocols.

#### ***Florida Deepwater Horizon Response and Recovery Workgroup 1 recommends:***

- ❖ With the operational changes put in place to address the need for better coordination with local governments, the Workgroup agrees with the state and local government officials

that no legislative action is necessary for the current oil spill response. However, operational changes to the NCP are suggested below.

### **Are Changes to the Current Spill Response System Needed in Order to Address Problems Identified During the Response to the Deepwater Horizon Spill in Case of Future Spills?**

The Workgroup, through conference calls and meetings with various state and local government officials involved with the Deepwater Horizon spill response, identified several areas of concern with the current oil spill response system, and recommends the federal government make certain changes to the spill response system, in order to address some of the deficiencies highlighted by the Deepwater Horizon Response. As stated above, the current spill response system generally works very well, but in the case of very large spills, such as the Deepwater Horizon spill, which impacted or threatened to impact several states and local governments, shortcomings were exposed that should be addressed by the federal government.

#### *Increased Communication and Coordination*

The one comment the Workgroup heard from every person it talked with was that communication and coordination between the federal government and state and local governments were insufficient and caused delays in the response and frustration for those whose coastlines were being impacted. As stated before, this coordination and communication issue was greatly alleviated by the United States Coast Guard (USCG) establishing several local branch command offices in the Panhandle to ensure that the response resources were in place and performing effectively. This action also gave state and local government response officials a person to communicate with directly instead of having to communicate with a person in Mobile, AL. All of the people the Workgroup talked with stated that the branch offices worked well, but should have been established sooner.

#### ***Florida Deepwater Horizon Response and Recovery Workgroup 1 recommends:***

- ❖ The U.S. Congress should revise the National Contingency Plan or Unified Command structure to require that local branch Incident Command offices be established when a large spill occurs that impacts or threatens to impact multiple state and local government jurisdictions.

#### *Area Contingency Plans*

Another overarching comment the Workgroup heard from Florida and Louisiana spill response officials was that the Area Contingency Plans (ACP) did not contemplate a spill of this magnitude, and that local governments had very little participation (some by choice) with their development. It was reported to the Workgroup that Florida had to quickly prepare supplemental boom plans because the ACPs did not cover some beach areas. The lack of local government participation and knowledge of what protocols were included in the ACPs added to the confusion and coordination problems between the federal government and local governments. Secretary

Sole indicated that some local governments in areas with ports where oil and other petroleum products are transported, such as Charlotte County, did participate in the ACP development, and this participation resulted in those local governments being better prepared and knowledgeable of their role in the spill response. The USCG has authority over the development of ACPs and whether updates or revisions need to be made. The Louisiana Oil Spill Response Office (LOSCO) also discussed with the Workgroup their desire to have a detailed multi-state response plan for spills like the Deepwater Horizon that impacts several states. The LOSCO felt that this would increase coordination and combine resources resulting in a more efficient and effective response to a large oil spill.

***Florida Deepwater Horizon Response and Recovery Workgroup 1 recommends:***

- ❖ The USCG should reassess the current ACPs to ensure that they are adequate for responding to any future oil spills, including oil spills similar to the Deepwater Horizon incident. In developing new ACPs, the USCG should ensure that local governments are involved and have input in the development process. The Workgroup also recommends further discussion regarding the need for a multi-state response plan specifically tailored to responding to spills where multiple states are directly impacted by a single incident, such as the Deepwater Horizon spill. Such discussions should take place between the USCG and the Gulf states, and within the context of any federal changes in the response system.

**Role of the Responsible Party**

The Workgroup also heard from the Florida Division of Emergency Management (DEM), local government officials, and LOSCO that having BP integrally involved in approving state and local government response activities (along with the USCG) slowed the response and some felt caused a conflict of interest with BP due to its liability. In a typical spill, the responsible party is usually in the best position to control the response to a spill because they have a vessel or facility response plan in place and are usually the first on the scene. Under the National Contingency Plan (NCP), if the RP refuses or does not have the capability to respond, the USCG along with state and local officials take over the spill response. However, because of the magnitude of the spill, BP had to approve many requests by state and local governments while trying to stop the continued discharge of oil that was occurring. This led to delays and more frustration by the various state and local governments. The LOSCO expressed frustration that the approval process was unnecessarily lengthy, causing significant delay in some response activities. The state and local governments were reluctant to perform unapproved response activities because if a response activity is not in compliance with the NCP and approved by the USCG and RP, then the RP is not required to reimburse the state or local governments for the response costs. Some people felt that BP should have just focused on capping the well and paying for response activities approved by the USCG. The NCP does not require the RP to grant approval to requests to perform response activities, and it is unclear why the USCG seemed to require requests to go through them and BP.

***Florida Deepwater Horizon Response and Recovery Workgroup 1 recommends:***

- ❖ The USCG should review the role of the responsible party during large spills like the Deepwater Horizon, and examine ways to streamline the approval process for response activities so that they can occur quickly and make the response effort more effective and efficient.

**Federal Permitting Requirements During an Oil Spill**

The apparent lack of flexibility with federal permitting requirements was also identified as a shortcoming of the current spill response system. Both the Florida DEP and LOSCO discussed their frustration in this area. The DEP stated that some specific types of proven oil skimming technology that uses equipment allowing water mixed with oil to be pumped back into the ocean, a process referred to as "decanting" and international help was refused because they violated federal National Pollution Discharge Elimination System (NPDES) permitting requirements. Eventually these permits were issued or waived allowing for the use of the additional skimmers. In addition, the LOSCO stated that often times, once they got BP/USCG approval to perform certain spill response activities, federal permitting agencies required them to stop because the permit for the activity had not been approved. This lack of communication and coordination between different federal agencies caused unnecessary delays in responding to the Deepwater Horizon oil spill.

***Florida Deepwater Horizon Response and Recovery Workgroup 1 recommends:***

- ❖ The U.S. Congress should revise the Oil Pollution Act of 1990 (OPA) and ACPs to allow certain permit requirements to be relaxed or waived altogether, under certain guidelines, for activities related to an oil spill response.

**Response to Fish and Wildlife Impacted by the Oil Spill**

The Florida Fish and Wildlife Conservation Commission (FWCC) raised several concerns with the federal response system's implementation protocols with regard to responding to impacted fish and wildlife, and the coordination that exists between FWCC, the federal National Oceanic Atmospheric Association (NOAA), and U.S. Fish and Wildlife Service (FWS).

According to the FWCC, oiled wildlife response was not consistent between NOAA (lead for sea turtles and marine mammals) and the FWS (lead for migratory birds and Endangered Species Act species). NOAA approached coordination as event wide (preferred approach), whereas the approach to migratory birds was sector by sector. This meant there was a need to develop response plans for birds for each sector which led to different approaches in handling oiled birds across Florida. In addition, the FWCC was not consulted during the wildlife planning processes. For example, FWCC was not consulted initially when the location of rehabilitation and stabilization centers were established in the Panhandle. This resulted in the rehabilitation center being placed in Pensacola, hundreds of miles from the eastern end of the response area. Also,

species that were not federally listed or were not protected under the federal Migratory Bird Treaty Act were ignored by the federal agencies, leaving gaps for much of Florida's wildlife due to Florida not being included in the wildlife operations unit at Unified Command.

One reason for some of the coordination issues that arose between the state and federal agencies responsible for fish and wildlife response was the distance from Florida of the Incident Command in Mobile, AL. In addition, the FWS is not a part of the national Incident Command system and did not initially have a recognized role. They had to insert themselves into the wildlife operations unit. In addition, most of the FWS staff that rotated through the Unified Command structure were brought in from across the country and had little knowledge of Florida's wildlife and did not know staff within the state (either FWS or FWCC) who would be important partners. They would be deployed for two weeks which was enough time for them to become familiar with the system and then they would leave, frequently without being able to transfer knowledge to their successor. The FWCC also stated that no deputy incident commander was initially assigned to Florida, which had a negative impact on the FWCC's ability to prioritize many of Florida's needs and concerns. After repeated requests, a USCG deputy incident commander was eventually assigned to Florida at the State Emergency Operations Center. This significantly enhanced the FWCC's ability to have Florida's needs and concerns addressed in a timely manner.

***Florida Deepwater Horizon Response and Recovery Workgroup 1 recommends:***

- ❖ The Unified Command spill response structure should include, in addition to NOAA's National Marine Fisheries Service, the U.S. Fish and Wildlife Service. Further, a local/regional FWS staff member should be stationed at Unified Command with a knowledge and understanding of Florida's environmental issues and wildlife who can serve as a central point of contact to ensure adequate communication with the state.

**Beach and Fishery Closures**

One important issue that arose during the initial response to the Deepwater Horizon oil spill was the confusion over whether beaches and fisheries should be closed, and the impact of oil on the beach or in the water to public health and safety.

With respect to closing the fisheries, FWCC stated there did not appear to be an established protocol in place at the federal level to evaluate, coordinate, or implement federal fishery closures in response to oil. Furthermore, fishing grounds were closed based on speculative information, and it took months for them to reopen. The most significant action that could be taken would be for federal fishery managers to establish a clear process and set of criteria for determining when and how to close fisheries. Better tracking of oil and use of higher-resolution mapping of significant oil in the water could have precluded the closure of large areas of the Gulf of Mexico. An established federal process would facilitate state agency actions in response to federal actions, improve communication with Florida fishermen and businesses potentially

affected by the closure actions, and provide a more consistent mechanism to address closing adjacent state waters.

With respect to beach closures, county health officials generally had limited experience with oil impacting their beaches, and in some cases, were unsure if oil near or on the beach posed a health risk. This resulted in beaches being closed unnecessarily out of an abundance of caution, which increased the public's perception that Florida's coast was unsafe. Signage from local health departments was posted on several beaches warning swimmers to stay out of the water, even though oil had not been seen near the coast in weeks. Educating government officials on the risks posed by oil and tar balls is important in case of future spills and future impacts from the current spill.

***Florida Deepwater Horizon Response and Recovery Workgroup 1 recommends:***

- ❖ Federal fishery managers should establish specific criteria and a clear process for determining when and how to close fisheries, and establish better tracking of oil and use of higher-resolution mapping of significant oil in the water. State and local health officials should be better educated on the risks posed by oil in the water and on Florida's beaches so they can make informed decisions as to whether beaches or swimming areas should be closed.

**U.S. Coast Guard Command Structure**

According to Secretary Sole and Mike Halstead (Director, Division of Emergency Management), some of the coordination issues were the result of how states are divided up into different Districts under the NCP as compared to the structure established under the NRF. Under the NRF, state boundaries are better recognized, and a federal coordinating officer is appointed for each state to coordinate with the state coordinating officer. This allows one coordination mechanism for requesting federal support for the entire state. The Unified Command structure of the NCP is based on USCG boundaries that do not conform to the structure under the NRF and do not recognize state geographic boundaries. Under the NCP, Florida is split between two USCG Districts, the 7<sup>th</sup> and 8<sup>th</sup> USCG Districts.

***Florida Deepwater Horizon Response and Recovery Workgroup 1 recommends:***

- ❖ To provide for better statewide coordination when responding to a large spill such as the Deepwater Horizon spill, the USCG should redraw its district boundaries to include all of Florida in one district instead of being split between the 7<sup>th</sup> and 8<sup>th</sup> districts, and should designate a federal coordinating officer for each state in a USCG District.

**Current Congressional Action Pertaining to Oil Spill Response**

Under pressure to respond to the Deepwater Horizon oil disaster, both houses of Congress have been holding hearings which have led to proposed legislation to amend the spill response

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portions of the Oil Pollution Act of 1990 (OPA). The U.S. House of Representatives passed a bill on July 30, 2010, the Consolidated Land, Energy and Aquatic Resources (CLEAR) Act (H.R. 3534), that would strengthen oil response, safety, and liability provisions in current law. A companion Senate bill, the Clean Energy Jobs and Oil Company Accountability Act of 2010 (S. 3663), has been drafted and awaits action by the Senate. It is unclear whether the U.S. Senate is planning to take action on this legislation soon, but it is something that should be followed, along with any other future federal legislation related to oil spill response.

Mr. Speaker, it has been an honor and a privilege to accept your charge relating to the Deepwater Horizon oil spill response. Your leadership has given us another opportunity to serve the people of Florida.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Trudi", with a long, sweeping horizontal stroke extending to the right.

Representative Trudi Williams, Lead Member

Representative Leonard L. Bembry

Representative Oscar Braynon II

Representative Erik Fresen

Representative John Legg

Representative Kenneth L. "Ken" Roberson

## **Index of Acronyms for Deepwater Horizon Workgroup 1's Final Report**

ACP	Area Contingency Plan
BER	Bureau of Emergency Response (within DEP)
BOEMRE	Bureau of Ocean Energy Management, Regulation and Enforcement
COTP	Captain of the Port
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
CLEAR	Consolidated Land, Energy and Aquatic Resources Act
CWA	Clean Water Act
DEM	Florida Department of Emergency Management
DCA	Florida Department of Community Affairs
DEP	Florida Department of Environmental Protection
DHS	United States Department of Homeland Security
DRAT	District Response Advisory Team
EPA	Environmental Protection Agency
ESF	Emergency Support Function
ESF#10	Emergency Support Function #10
FEMA	Federal Emergency Management Agency
FOSC	Federal On-Scene Coordinator
FWCC	Florida Fish and Wildlife Conservation Commission
FWS	United States Fish and Wildlife Service
GATOR	Geospatial Assessment Tool
HHS	United States Department of Health and Human Services
ICS	Incident Command System
LOSCO	Louisiana Oil Spill Coordination Office
MMS	United States Minerals Management Service
NCP	National Contingency Plan
NIC	National Incident Command
NIMS	National Incident Management System
NGO	Nongovernmental Organizations
NRF	National Response Framework
NRS	National Response System
NRT	National Response Team
NSF	National Strike Force
NSFCC	National Strike Force Coordination Center
OPA	Oil Pollution Act of 1990
OSLTF	Oil Spill Liability Trust Fund
OSRO	Oil Spill Response Organization
NOAA	National Oceanic Atmospheric Association
NPDES	National Pollution Discharge Elimination System
NRDA	Natural Resource Damage Assessment
PIAT	Public Information Assist Team
PAVS	Preparedness Assessment Visits
PRP	Potentially Responsible Party
PREP	National Preparedness for Response Exercise Program

RP	Responsible Party
RRT	Regional Response Team
SERT	State Emergency Response Team
SEOC	State Emergency Operation Center
SONS	Spill of National Significance
SOSC	Florida's State On-Scene Coordinator
UAC	Unified Area Command
UC	Unified Command
USCG	United States Coast Guard
USDA	United States Department of Agriculture