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**DHS Planning and Response:
Preliminary Lessons
from Deepwater Horizon**

**House Committee on Homeland Security
U.S. House of Representatives**

The following testimony is offered at day 152 following the Deepwater Horizon Oil Spill crisis. The testimony offered herewith is done so from a perspective of the local community of St. Bernard Parish, Louisiana as both an individual parish which experienced significant impact from the BP Oil Spill as well as a member of the Louisiana coastal parishes working as a coastal group. The statements and comments contained herein are limited to the scope of information that was requested relative to perceived areas which are in need of improvement and/or further procedural or operational adjustment. While the request to identify this information guided this submission, it should be noted that in many aspects of branch functioning, the St. Bernard Branch was noted as implementing response “best practices” and upon evaluation of the branch operations, it was revealed that several functions were actually setting region standards.

PRELIMINARY LESSONS LEARNED

Of significant importance was the clear indication that the response to the Deepwater Horizon Oil Spill crisis started from a position of playing catch up. From the breaking notice that an explosion had occurred to even today, the information flow to the local branch has been wrought with inconsistency, fragmented messaging, and stove-piped communication patterns. Both the United States Coast Guard and BP were at a distinct disadvantage in the Gulf Coast Region of Louisiana as the Louisiana Governor’s Office of Homeland Security and Emergency Preparedness together with the individual parishes have been operating at a higher state of readiness than most other local municipalities throughout the United States. This increased level of readiness to respond comes with being engaged on a daily basis in the long term recovery process and annual preparation activities following the overwhelming experiences of Hurricanes Katrina, Rita, Gustav, and Ike. Additionally, the region has experienced the largest domestic land oil spill in United States history with the Murphy Oil, USA spill in conjunction with Hurricane Katrina and an additional Mississippi River Oil Spill in 2009 which impacted the St. Bernard community as well. When totaled, St. Bernard Parish has been directly engaged in five Type 1 disasters in the last five years, a statistic that has produced a rather robust appetite for response management.

In retrospect, the information flow relative to the Deepwater Horizon Oil Spill crisis had similar markings as several of the other disasters experienced in the St. Bernard community, namely poor factual information about the event, a downplaying of available resources and the mechanism to obtain such, and a lack of local engagement to the response coordination. Complicating this event was the differing authorizing legislation for Louisiana verses the other coastal states involved. Louisiana law specifically states and grants emergency powers to the local authorities (primarily the parish president/mayor) during times of declared disasters. This construct seemed to create a bureaucratic obstacle that has plagued the coordination of the response effort throughout. Instead of embracing the local authorities’ involvement and resource capacity, local authority was met with resistance, exclusion, and power struggles. This decision, whether contemplated or not, resulted in adversarial relationships between the local agencies, the state and Governor’s office, and BP and the United States Coast Guard. The immediate perception and experience of the local parishes was that the very agency, the United States Coast Guard, that was to have ultimate authority according to OPA 90 and the Clean Water Act

In the midst of the activation of the Transition Plan, it was an apparent expectation that each branch would lean forward in the Transition Plan, despite certain triggers to do so not being reached.

This push was indicative of a common belief that the incident was all but over and that the focus on long term recovery was the order of the day. The belief of such seemed to undermine the enthusiastic support to find and treat oil impacted areas. Sightings were now limited on the water surface, but signs of the water bottoms being impacted and the marsh literally washing away were largely ignored and referred to the NRDA (Natural Resources Damage Assessment) process. The gap between response and NRDA has proven to be a difficult crevasse to cross. The USCG does not recognize their role in the NRDA process and has a difficult time asserting itself as an authority to go beyond established STRs (Shoreline Treatment Recommendations). This gap in responsible party identification has resulted in acres of loss marsh land that is so critical to the coastal protection of St. Bernard Parish and the surrounding areas, including the City of New Orleans. Further intervention is necessary in addition to the identification of the critically damaged sights, but funding to accomplish this task has been rejected.

It is noted that the interaction between the St. Bernard Branch and the Department of Homeland Security was non-existent. Parish leadership did have the opportunity to communicate with an assigned PPLO (Parish President Liaison Officer) who did participate in a daily conference call with the secretary's staff. The Department of the Interior was referenced throughout the response, primarily in conjunction with the focus on the barrier islands of the coast of Louisiana. Interestingly enough, these are the same islands that had been neglected for some 25 years and received intense "protection" in the objection to build berms to assist in capturing oil. The Department representative communicated directly with BP representatives regularly but as the Parish President, I did not have one conversation with any DOI representative. This exterior input to the Branch Action Plan was responded to without question and created confusion in who was actually coordinating the response. This type of disjointed influence was not limited to the DOI but it also included other agencies which often operated without coordination or notification to the local Branch. NOAA, FDA, EPA, and specialized response teams within the incident command would regularly engage in the St. Bernard Area of Operation unbeknownst to the local command. This was indicative of the disconnected response efforts at all levels. There were literally multiple layers of responders who never coordinated with each other, nor shared data of their respective activities.

What worked for one community may or may not have worked in another community. The challenge to share information operationally, logistically, or resource assignment was never conquered. Having the ability to use best practices seemed to be lost as the resources reviewing information from branch to branch often did not return calls for clarification or direction. Branch to branch discussion was more apt to occur and often did, but did not result in the adoption of similar interventions, even when sought to do so.

legislation had partnered with the responsible party, BP, in a protective role rather than an enforcement role to oversee that every resource and activity needed was brought to bear. While the description that the Oil Spill was analogous to fighting a war was pronounced, the soldiers in the field and on the battle grounds were met with consistent resistance of resource supply, restrictive procurement processes, and a lack of follow through. While operational discussions and decisions were being made in Houma, LA, some 90 minutes or more from most of the impacted areas, input and coordination from the local communities was ignored in many cases and patronizingly accepted in others. The responsible party operations lead either interpreted directives or were instructed to actually hide information from the local incident command personnel by covering up maps, information, and assignments when local personnel entered the separate command post established by BP. For the first six weeks of the response, despite an approved joint command and incident command team being built, a separate and uncoordinated effort was the norm. A build up of OSRO (Oil Spill Response Organizations) assets was clearly underway and the request to use the local commercial fishing fleet, the very industry that was under siege in this “war” had to fight their way into the response. BP created a Vessel of Opportunity program which was mismanaged in fulfilling the goal of putting local vessels in local waters to assist in the local response efforts. St. Bernard Parish established a modified version of the Vessels of Opportunity program that to BP’s credit was funded. The local vessels were eventually placed into a rotation and, side by side with the OSRO vessels, were utilized in the response effort and given daily assignments in boom deployment, oil detection and recovery, support activity, rapid assessment, etc. The local fleet proved to be a critical asset in the mission response sharing invaluable information of tidal activity, strength of currents, and marsh detection and impact.

Very early on in the response, St. Bernard Parish requested BP to allow for and support the establishment of a local environmental planning and assessment team. This was disallowed by BP only to be told some three and a half months later by a visiting Coast Guard authority that St. Bernard should have been involved in environmental assessment from the start.

This lack of continuity was addressed by the local community by establishing a deputy or lead in all ICS sections, which was also attempted to be undone at various times throughout the rotation of BP and USCG personnel. As branch directors, deputies, PPLOs, and other subject matter experts from the USCG and/or BP contractors rotated into the St. Bernard Parish Branch a constant learning curve was experienced and a re-tooling of operational, logistical, planning, and resourcing activities became the norm. While individuals who were deployed to St. Bernard varied in his/her level of oil spill expertise, the discontinuity between those leaving and those arriving continues, even today, to be an issue.

Simply balancing the rather contentious dynamics that have existed in many local branches became a major endeavor as relationships that were established and boundaries understood were changed with the starting of each new relationship. Local frustrations certainly added to the contentious atmosphere between local leadership and the USCG and BP. The issuing of Executive Orders, which created power struggles over resources, hurricane planning, and local authority tainted the trust level in the joint command structure and often left the local parish on the outside of the BP/USCG dyad.

This contention often was the result of an Incident Command in Houma not recognizing the operational input and planning of the local branch in St. Bernard Parish. Despite the use of local experts, BP personnel, and deployed USCG personnel, and despite Branch Action Plans being submitted and no objection being communicated activities and implemented assignments were often criticized and rejected after the fact. Most disturbing in this pattern of retroactively rejecting sound operational practices was and is BP's financial hostage program. After services have been rendered, resources used and expended, equipment activated, and often after successful completion of tasks, BP has undertaken a program to disallow costs, reject approval of previously approved processes, and financially strangle the local small businesses which have acted in good faith efforts in the oil spill response, many times financing the activity themselves. It is not lost in this discourse the fact that local companies and brokers were positioning themselves to make a profit within this structure, but agreed upon transactions should be supported, not cancelled. Modifications of agreements, a review of reasonable costs, and the elimination of unneeded resources have been and continue to be supported by the local branch. However, leaving unpaid vendors to scramble to stay afloat with millions of dollars in unpaid bills because BP has changed their rules multiple times over the course of five months is unacceptable. Underscoring the contentions that existed as BP attempted to paint the St. Bernard Branch as a rogue operation and that their personnel needed to be protected from intimidation and influence from the local leadership, BP personnel who have multi-million dollar signature authority in their non-oil spill positions were reduced to having absolutely no authority at all. This action significantly stifled the ability of the branch to operate efficiently.

During these operational disputes, the USCG chose to sit on the fence, claiming that business contractual arrangements and engaging in directives on such topics were outside of their legal purview and authority. This dynamic only strengthened the uncontested authority of BP as the perpetrator of the disaster and the responsible party which was able to usurp the 51% authority of the USCG. If BP disagreed with a decision, they simply would choose not to pay, in essence daring the USCG to use its ability to reach into the oil spill fund. Because most of these decisions were reflective of a disconnect between the multiple layers of the operational ICS structure, enough doubt was cast or enough time had passed that an argument be made that BP had the right to use their discretion in paying for services, personnel, or equipment which had already been engaged and used. If the immediate operational need had ceased by the time the dispute was brought to awareness, the USCG simply bowed out of the dispute, attributing it to a business/contractual issue.

In the immediate past, there was a constant discussion over the appropriate level of demobilization and the pace of such as it related to an agreed to and established Transition Plan. Every oil spill has a response phase and a recovery phase. Although these vary from incident to incident, the basic frame work exists. Within the communication of the well being capped, it was clearly the start of a different focus by BP with the USCG at least providing complicit support, if not active leadership in this shift. Requests immediately became rejected or denied at a higher rate, payments to vendors began to slow, sightings became more and more unrecoverable, and the constant debate over the need for continued operations commenced. While the discussion relative to these topics is appropriate throughout the response, arbitrary decisions to demobilize or attempt to demobilize basic features of the response began in earnest.

COMMUNICATION

The flow of information was poor. The information presented by BP in print and broadcast media often erupted into episodes of frustration and disbelief as the disconnect between the reality of a local experience and the stated information was clearly displayed. The local chastisement of the response seemed to serve as an obstacle to adjustment as the focus continued to be on correcting media releases rather than hearing and adjusting the problem that may have been referenced. It became evident that a negative response in the media would be met with a slowed response and additional power struggles.

The local branch was rarely forwarded information that was collected and used in decision making by higher authorities. This continued to create a sense of distrust as the experience at the local level was often inconsistent with the information released by higher authorities. Requests to integrate the various scientific communities with local authorities and the local fleet who held significant historical knowledge was met with dismissal and a lack of interest. This resulted in the scientific community losing critical credibility within the local populations that needed to buy in for the overall success of this response. NOAA couched their information so as not to contraindicate the decision to follow the methods and approach of dispersant but frequently offered limited valid scientific specifics to this spill and its related activities. Instead of revealing that there would be significant amounts of follow up testing that would be required to document the effects of the approach used, the information was released in manners to suggest conclusions that could not be supported. Predicting conclusions of future and untested protocols only exacerbated the lack of trust between the scientific community and the commercial fishing industry.

Understanding that BP has a business need to promote a positive image of the company and the shareholders of the company do enter into the equation of the response, marketing efforts to manage expectations must be a focus of the communication strategy. Again, pushing out images that are inconsistent with the actual experience of the local community only serves to widen the disconnect between the responsible party and those affected by the incident.

Overall, there were significant positives interspersed within the response. As mentioned, the use of the local commercial fishing fleet was a major positive impact for the St. Bernard Parish community.

While now outside the direct control of BP, the claims process has created unnecessary anxiety and distress within the community that was most directly impacted by the spill itself. The members of the commercial fishing fleet find themselves being matriculated out of the response activities with no market to fish their respective products and little assurances that their future is any more promising than their last five months. While there is no argument that there is some product to be harvested, the ongoing need for longer term and more comprehensive testing to promote the industry continues to be unmet. Furthermore, incentive programs and shared liability programs for the product that is caught have not gotten any traction. Questions of BP using earned money by the fishing community to reduce damages continues to be a point of

contention, leaving the local community with the belief that they were duped into working for the enemy and cleaned up the mess for free.

It is most important to recognize that the federal legislation as interpreted and applied leaves the very community and citizenry impacted by such an event to be continuously victimized throughout the response by allowing the “responsible party” the gatekeeper of funds for the response effort. Despite a 51% role, the USCG continuously referenced legal limitations that forced their command to stop short of implementing operational decisions that would have been beneficial but could not identify a clear authority to do so.

At some point, responsible party has to be redefined to mean financially responsible and be prohibited from having operational input to the response effort. This change in application of the existing legislation would allow the USCG to partner with the local community and/or state in which an incident occurs instead of partnering as an operational partner with the responsible partner. The current situation is likened to putting a rape victim in counseling with her perpetrator.

It must be recognized that any incident will create competing interests by the parties involved in the response. The responsible party will obviously have a much different commitment than the objective enforcer of the spill response. Additionally, in this situation, the USCG in its role as the Federal On-Scene Coordinator must have the latitude to act and enforce without financial repercussions. Current legislation allows for reimbursement by the USCG and local municipalities for their expenses in the response. When the responsible party is at the decision making table with financial veto authority it sets up a significant potential for a conflict of interest. This is further underscored in our current situation both on the national level with recent cuts to the USCG and at a time when local revenues are struggling to keep pace with service needs and operational expenses.

SUMMARY

In delivering a concise review of the response to date to the Deepwater Horizon Oil Spill, the following summary points are offered.

- Recognize that current legislation generally is crafted based on the most recent experiences. Reactive legislation without expansive application of industry experiences and in-depth analysis of real “worse case” scenarios is negligent. Just as we learned in the Hurricane Katrina response, there must be legislation that allows for flexible response decisions in the face of disasters which transcend the boundaries of existing legislation.
- Recognize that a basic tenet of disaster response is that disasters are local. To exclude local engagement curtails critical information and hinders the process of an expedited response. While following a National Contingency Plan may set the specific command parameters and structure, if implemented without local buy-in initiates significant but

unnecessary power struggles, stifles valuable information exchange, breeds distrust, and ultimately interferes with the effective completion of the mission at hand via distractions which focus on personality and authority dynamics.

- Establish a national downstream logistics program which accounts for real time resource availability and a pre-event awareness of potential shortfalls and pre-planned alternatives to address such shortfalls.
- Redefine the role of “responsible party” from the manager of the disaster to the required financier of reasonable response efforts. Require the participation of all operating oil and gas companies to contribute to the oil spill fund at a level that allows the ability to cover costs of a response. In times of a specific incident, create a pre-established evaluation team to provide a cost estimate for the response associated with a specific disaster and require those funds to be deposited into escrow to be drawn on for response costs. Oversight of the escrow should be administered by an independent agency that will account for cost reasonableness and response vendor payments.
- Eliminate the operational practice that isolates data used for decision making at all levels of the response from the local branches and establish a network of information sharing and concurrence that integrates actual “on the ground” experiences with scientific theory and data interpretation.

In recognition of the magnitude of the Deepwater Horizon Oil Spill crisis, the after action reporting process will be ongoing for some years to come. Reviewing processes along the way is certainly a necessary step in improving efficiency.

There must be a recognition that the driving force in the current structure is funding. From a litigious minded management approach to a legislatively restricted enforcement capability, the common denominator in the decision making model has been who pays for what. As long as this dichotomous structure is in place the actual response and focus to cleaning any environmental crisis governed by OPA 90 and the Clean Water Act will twist upon itself. The establishment of partnerships is extremely important, but there must be a clear and decisive understanding of who has the ability to turn processes on and who has the ability to shut operations down. As long as the check book governs the decision makers, there will be a less than optimum response achieved.

Thank you for your attention and interest in this matter. It certainly has been an incident that no one has enjoyed. The responsibility of all involved is to identify how to improve the system in the next disaster.

Respectfully submitted,



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