

November 19, 2012

Recommendations for Improving Oil Spill Planning and Response Capabilities in Florida

- DRAFT



SUBMITTED TO:
Board of Trustees of the
Internal Improvement Trust Fund

PREPARED BY:
Florida Commission on Oil Spill
Response Coordination



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Okaloosa County Board of County Commissioners



Executive Office of the Governor



Bay County Board of County Commissioners



Florida Department of Agriculture and Consumer Services



Escambia County Board of County Commissioners



Florida Department of Environmental Protection



Franklin County Board of County Commissioners



Florida Fish and Wildlife Conservation Commission



Gulf County Board of County Commissioners



Florida Department of Financial Services



Santa Rosa County Board of County Commissioners



Florida Department of Health



Wakulla County Board of County Commissioners



Florida Division of Emergency Management



Walton County Board of County Commissioners



Florida Department of Economic Opportunity



Florida Office of the Attorney General



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Executive Summary

[To be developed after contents are finalized.]

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1 Introduction

The explosion and loss of the Deepwater Horizon (DWH) drilling rig on April 20, 2012, and subsequent failure to control the well under development in the Gulf of Mexico (Gulf) led to the deaths of 11 people and the largest, longest oil spill in U.S. history. Federal, state, and local governments and the responsible parties (RPs; i.e., BP and others) faced a series of unprecedented challenges in stopping the flow of oil, tracking and removing oil from the Gulf, and protecting and cleaning up coastal areas. The incident strained the existing governing frameworks for offshore activities and disaster response, both of which cut across every level of governance.

The complex response to the spill in Florida and four other Gulf states had many moving parts and multiple stakeholders at the federal, state, and local levels. The threat of millions of gallons of oil moving in the sea—and potentially toward environmentally sensitive coastal and beach recreational areas in northwest Florida—generated intense public concern and almost continuous news media coverage. Despite the growing sense of urgency and an established legal and regulatory framework for handling oil spills, response actions to DWH were at times chaotic and ineffective. Poor planning before the spill by federal, state, and local entities and a general failure to anticipate and understand the nature of the response management framework and scope of actions required led to a response that many judged as inadequate.

Studies of the response and after-action reports identified a number of issues that contributed to problems in pre-spill planning, coastal protection, and shoreline cleanup. In addition, the Florida Legislature in 2011 enacted Senate Bill 2156 through the sponsorship of Senator Don Gaetz, creating a new Florida Commission on Oil Spill Response Coordination (FCOSRC, or Commission). The Commission was charged with preparing a report that identifies approaches for improving response capabilities and processes, to protect Florida's people and resources. The legislation directed the Board of Trustees of the Internal Improvement Trust Fund (Board) to appoint to the Commission:

- A representative of the office of each Board member
- A representative of each state agency that directly and materially responded to the DWH disaster
- The chair of the board of county commissioners of each of the following counties:
 - Bay County
 - Escambia County
 - Franklin County
 - Walton County
 - Gulf County
 - Okaloosa County
 - Santa Rosa County
 - Wakulla County

The Commission was charged with preparing a report for review and approval by the Board that

- Identifies potential changes to state and federal laws and regulations that will improve the oversight and monitoring of offshore drilling activities and increase response capabilities to offshore oil spills.
- Identifies potential changes to state and federal laws and regulations that will improve protections for public health and safety, occupational health and safety, and the environment and natural resources.
- Evaluates the merits of establishing a federal Gulf-wide disaster relief fund.
- Evaluates the need for a unified and uniform advocacy process for damage claims.
- Evaluates the need for changes to interstate coordination agreements to reduce the potential for damage claims and lawsuits.
- Addresses any other related issues as determined by the Commission.

The Board is directed to deliver the report to the Governor, the President of the Senate, the Speaker of the House of Representatives, the Secretary of the Department of Environmental Protection (DEP), and the Executive Director of the Department of Economic Opportunity by January 1, 2013.

1.1 Commission Membership and Meetings

The Commission is made up of representatives from the following 17 county and state organizations in Florida:

Dave Parisot	Okaloosa County Board of County Commissioners
George Gainer	Bay County Board of County Commissioners
Grover Robinson	Escambia County Board of County Commissioners
Joseph Parrish	Franklin County Board of County Commissioners
Warren Yeager	Gulf County Board of County Commissioners
Lane Lynchard	Santa Rosa County Board of County Commissioners
Not Designated	Wakulla County Board of County Commissioners
Bill Imfeld	Walton County Board of County Commissioners
Jennifer Fitzwater	Executive Office of the Governor
Leslie Palmer	Florida Department of Agriculture and Consumer Services
Tom Beck	Florida Department of Economic Opportunity
Not Designated	Florida Department of Environmental Protection
Tami Torres	Florida Department of Financial Services

Dr. Kendra Goff	Florida Department of Health
Danny Kilcollins	Florida Division of Emergency Management
Richard Knudsen	Florida Fish and Wildlife Conservation Commission
Russell Kent	Florida Office of the Attorney General

The governor appointed Commissioner George Gainer of Bay County as the Chairman of the Commission. Grover Robinson of Escambia County nominated Dave Parisot of Okaloosa County as the Vice Chairman. Bill Imfeld of Walton County seconded the motion, and all members of the Commission agreed with the nomination. All members of the Commission also agreed that a quorum was required for any voting actions, and defined the quorum as a total of 9 members of the Commission, including at least 5 of the 8 counties appointed to the Commission.

The Commission met on the following dates in 2012 to hear presentations and discuss the lessons learned during the DWH incident and what improvements to federal, state, and local policies and procedures should be recommended to facilitate more efficient, effective response activities in Florida in case similar oil spills occur in the future:

- Wednesday, August 22 at the Emerald Coast Convention Center
- Wednesday, September 12 at the Emerald Coast Convention Center
- Wednesday, October 3 at Walton County’s South Annex Branch Office
- Monday, October 29 at Walton County’s South Annex Branch Office
- Monday, November 26 at the Emerald Coast Convention Center
- Friday, December 7 at Walton County’s South Annex Branch Office

1.2 Public Outreach and Involvement

Pursuant to Sunshine Law requirements related to public meetings, notices and draft agendas for each meeting of the Commission were published in the *Florida Administrative Weekly* (renamed as the *Florida Administrative Register* [FAR] as of October 1, 2012, as the electronic replacement for the *Florida Administrative Weekly*) at least 7 days before each meeting.

In addition to the FAR, a list of all meeting dates was posted in advance on the DEP website at www.dep.state.fl.us/deepwaterhorizon/commission.htm, and each meeting was added to the DEP public notice calendar at <http://sharepoint.dep.state.fl.us/PublicNotices/default.aspx>. Tetra Tech set up an email address (floilspillcommission@tetrattech.com) advertised in the notice and provided on the DEP website to which comments or questions about the Commission’s work could be sent. Individuals could also ask to sign up on the project mailing list through this email

address. Those on the mailing list were sent notifications of upcoming meetings at least 7 days before each meeting.

In addition to public notices, Commissioner Richard Knudsen of the Florida Fish and Wildlife Conservation Commission asked each of the Florida Area Committee leads to inform their county Area Committee members about the Commission (its purpose and website for more information) and ways they could get involved in the Commission's discussions at meetings and through the mailing list.

Various members of the public attended the public meetings of the Commission and contributed to the discussions. A list of attendees from each meeting is provided in the meeting summary from each meeting, which is posted at www.dep.state.fl.us/deepwaterhorizon/commission.htm.

Finally, staff from The Florida Channel attended and produced audio-video recordings of some of the Commission's meetings, which can be viewed by browsing the video library at <http://thefloridachannel.org/video-library/browse-video-library>. NeighborVision filmed live footage at the October 3, 2012, meeting as well, which can be viewed at www.neighborvision.com/walton/CoOSRC.

1.3 Research Interviews

In addition to the publicly advertised regular meetings of the Commission, the Commission's contractor, Tetra Tech, conducted interviews with the following key people on their perspectives regarding the strengths and weaknesses of the spill response system. Information conveyed in these interviews was included in both the technical reports prepared by Tetra Tech and the final report on recommendations.

Escambia County – August 13, 2012

- Joy Blackman, Operations Chief, Public Works Director
- Timothy Day, Coastal Zone Manager
- John Dosh, Emergency Manager
- Kathleen Dough-Castro, Public Information Office
- Jeff Helms, Atkins, Consultant for Escambia County
- Taylor Kirchenfield, Water Quality Division Manager
- Larry Newsom, Assistant County Administrator
- Robert Turpin, Marine Resources Division Manager
- Keith Wilkins, Operations Section Chief, Community and Environment Director

Okaloosa County – August 29, 2012

- Jim Curry, County Administrator
- John Hofstad, Public Works Director
- Dave Parisot, Okaloosa County Commissioner
- Dino Villani, Public Safety Director

Santa Rosa County – September 5, 2012

- Brad Baker, Emergency Management Operations Chief
- Roger Blaylock, County Engineer
- Tony Cophagen, Director (Incident Commander of Oil Spill for Santa Rosa County)
- Michael Schmidt, Assistant County Engineer
- Tony Gomillion, Public Service Director
- Hunter Walker, County Administrator

Florida Department of Health – September 7, 2012

- Kendra Goff, State Toxicologist
- Sharon Watkins, Senior Epidemiologist Aquatic Toxins
- Patti Anderson, Water Programs Bureau Chief
- Ann Rowe-McMullen, Public Information Officer

Florida DEP – September 21, 2012

- Gwen Keenan, Director, Office of Emergency Response

Former Secretary of Florida DEP – October 19, 2012

- Michael W. Sole, Vice President, State Governmental Affairs, Florida Power & Light Company

1.4 Technical Reports

Six ancillary and supporting technical reports were prepared to research specific topics relevant to the final report to aid the Commission in generating supportable, adoptable recommendations for changes in local, state, and federal oil spill response policies and procedures. The six supporting reports reviewed by the Commission are as follows:

- Report 1: Analysis of Current State and Federal Laws Addressing Oil Spill Planning and Response
- Report 2: An Analysis of the Effectiveness of the Use of the Incident Command System in the DWH Incident
- Report 3: A Comparison of the National Response Framework and National Contingency Plan during a Major Oil Spill Incident
- Report 4: An Analysis of the Adequacy of Existing Funding Mechanisms for Large Oil Spills
- Report 5: Oil Spill Planning and Response in Alabama, Louisiana, Mississippi and Texas
- Report 6: A Summary of Lessons Learned from the Deepwater Horizon (DWH) Incident

The draft and final versions of each report are at www.dep.state.fl.us/deepwaterhorizon/commission.htm.

2 Offshore Oil Drilling Oversight, Monitoring, and Spill Response

The legislation authorizing the creation of the Commission includes among its provisions a requirement that the Commission “[identify] potential changes to state and federal law and regulations which will improve the oversight and monitoring of offshore drilling activities and increase response capabilities to offshore oil spills.” This section of the report provides that information. Note that most of the recommendations identified below are focused on (1) improvements in—and support for—oil spill contingency planning, (2) enhancements to the incident command apparatus, and (3) carefully targeted adjustments in the liability provisions of the Oil Pollution Act of 1990 (OPA).

Many of the changes in the current approach to oil spill planning and response discussed in this section can be achieved without amending state or federal statutes and regulations. For example, the recommendations for improving regional and area contingency planning can be implemented now, through coordinated action by the U.S. Coast Guard (USCG) and state/local agencies. In fact, it appears that various elements of the recommendations in this section—many of which are derived from various DWH *lessons learned* reports—have already been incorporated into USCG, state, and local approaches for future spills. However, the looming threat of future spills in the Caribbean and Gulf of Mexico and the need for ensuring that lessons learned are actually put into practice, obliges the Commission to clearly state its recommendations, so they can be incorporated as legal requirements, if necessary.

The recommendations in this section are presented in three subsections. Section 2.1 addresses the oversight and monitoring of offshore drilling activities that are generally under the purview of federal agencies and have been vastly improved over the past two years. Section 2.2 addresses pre-spill planning and preparedness, considered to be wholly inadequate in light of the recent increased drilling in waters that ultimately flow past Florida’s coastline. Section 2.3 covers spill response, which began somewhat chaotically during the DWH incident but improved considerably as federal, state, and local agencies cobbled together workable approaches to spill monitoring, shoreline protection, and coastal area cleanup.

The recommendations in Sections 2.1, 2.2, and 2.3 are based on observations and experiences from the spring and summer of 2010, as well as subsequent developments. The bullets below summarize each of the recommendations of those sections. All of the summarized recommendations bulleted below are fully described in the text boxes in this section, and are followed by a brief rationale for each. Section 8 presents the full list of all the recommendations in this document.

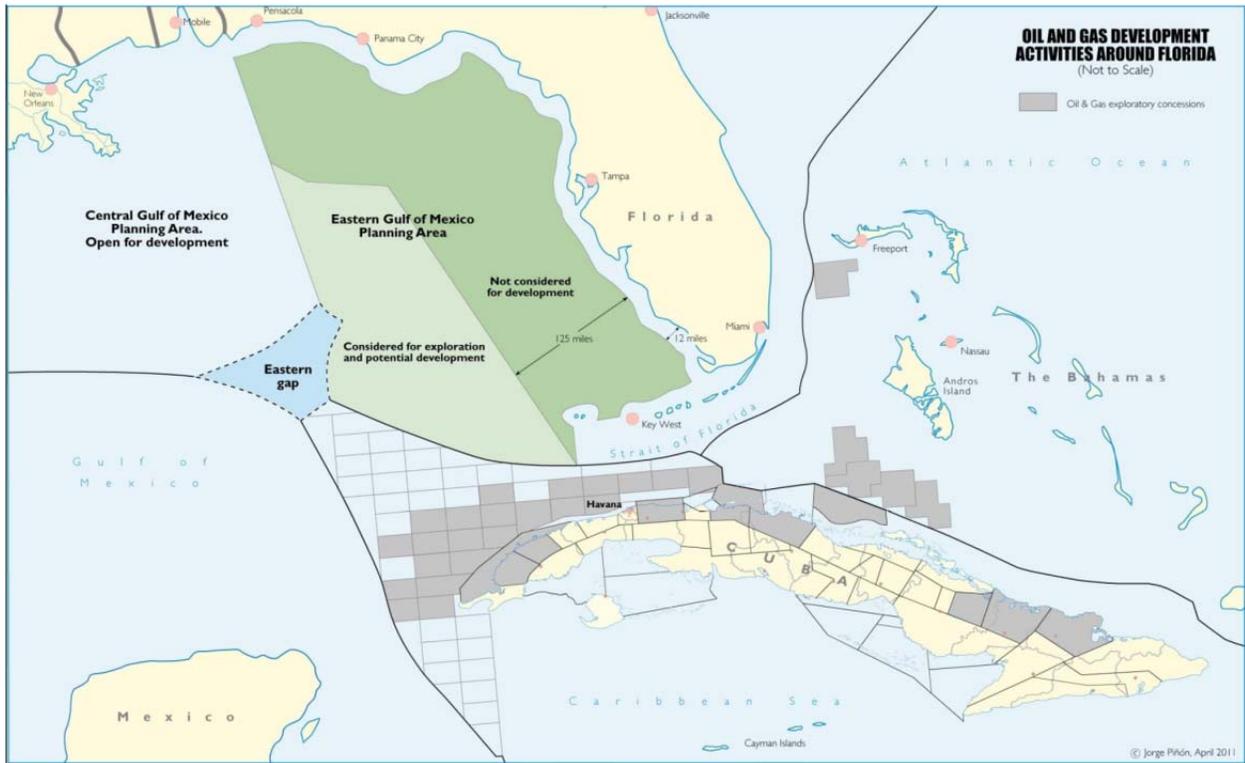
- Offshore drilling oversight and monitoring recommendations:
 - Continue the prohibition on drilling within nine miles of the Florida coast and the eastern Gulf of Mexico
 - Improved federal oversight and monitoring of offshore drilling precludes state action
 - Maintain existing state efforts for early oil spill detection and alert
- Recommendations for improving pre-spill planning and preparedness:
 - Standardize USCG spill response policies in Florida and improve preparedness
 - Improve and support state and local spill planning/preparedness programs
 - Use the federal Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act (RESTORE Act) funds to improve spill response science and technology
 - Upgrade oil spill contingency plans to ensure better Vessels of Opportunity (VOO) and Oil Spill Response Organization (OSRO) management
- Recommendations for improving oil spill response capabilities:
 - Develop a reimbursable fund for early state/local oil spill response activities
 - Upgrade and improve spill monitoring and modeling programs
 - Integrate local incident command system (ICS) branches and USCG/RP-staffed Emergency Operations Centers into contingency plans
 - Amend OPA to improve oil spill response and financial liability requirements

2.1 Detailed Recommendations and Rationale for Offshore Drilling Oversight and Monitoring

This subsection addresses recommendations to improve offshore drilling oversight and monitoring. Members of the Commission discussed the role of federal, state, and local agencies in overseeing and monitoring oil drilling activities in the Caribbean and Gulf of Mexico and the increased drilling activity off the coasts of Cuba and Mexico as reported by the USCG.¹

Figure 1 illustrates areas in the Northern Caribbean Sea and Eastern Gulf of Mexico where oil and gas exploration and drilling is presently occurring.

¹ Slaughter 2012



Source: Slaughter 2012.

Figure 1. Northern Caribbean Sea and Eastern Gulf of Mexico oil and gas exploration and drilling activities.

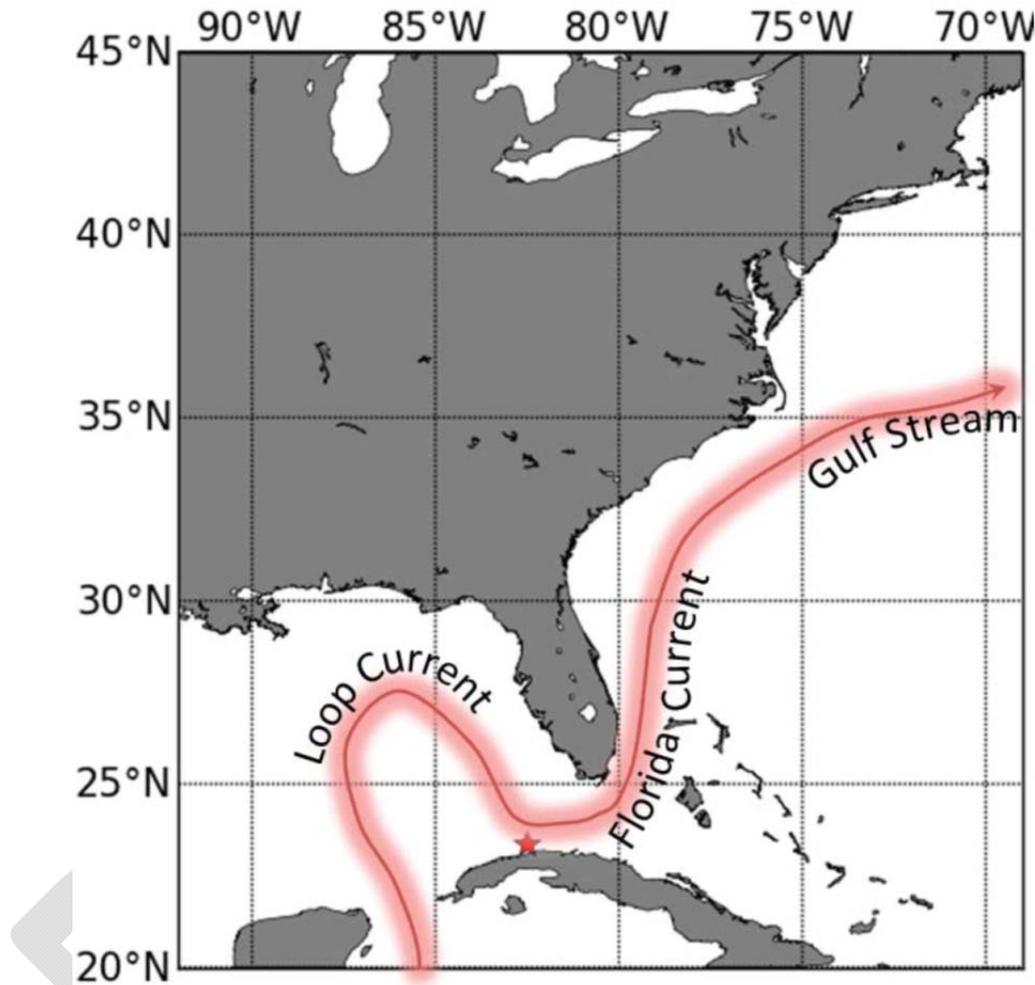
USCG personnel have been meeting with representatives of foreign drilling companies to gather information on their well development and oil/gas production plans and initiate discussions regarding spill prevention and response measures.² The following timeline summarizes some of the exploration and drilling activities occurring in 2012:

- May 2012—Repsol (Spanish) completed drilling at the Jaguey site in Block N26 north of Havana with the mobile offshore drilling unit (MODU) Scarabeo 9; the well is not commercially viable; Repsol is withdrawing from Cuban exploration
- July 2012—Petronas/Gazprom (Malaysian/Russian) completed drilling with Scarabeo 9 at the Catoche1 site in Block N51 off the northwest coast of Cuba; the well is not commercially viable
- Aug 2012—PDVSA (Venezuelan) began drilling with Scarabeo 9 at the Cabode San Antonio 1X site in Block N59 off the western tip of Cuba; drilling is in progress
- Fall 2012—Zarubezhneft (Russian) expected to drill at the Cayo Coco site in Block L off the north-central coast of Cuba using the MODU Songa Mercur

Offshore oil drilling in the eastern Gulf of Mexico and northern Caribbean Sea is a concern for Florida because of the currents that move through the area. The so-called Loop Current moves

² Slaughter 2012.

sea water from the Caribbean north, well into the central Gulf, and then east toward the west coast of Florida and south along the peninsula, through the Keys, and up the east coast, where it joins the Florida Current and northward-flowing Gulf Stream (Figure 2).



Source: Slaughter 2012

Figure 2. Generalized loop current and Gulf Stream flow in Florida's coastal waters.

The likelihood that any major oil spills in this region will affect Florida's waters—and possibly its coastline—make oversight and monitoring of offshore drilling in the Caribbean and Gulf of vital importance. However, local and state agencies have not had a role in offshore drilling oversight and monitoring. Florida does not allow drilling operations in its waters, which extend 9 nautical miles offshore in the Gulf of Mexico, and it has not had the capability, resources, or legal authority to conduct oversight and monitoring of U.S.-based or foreign-owned industry activities.

Members of the Commission discussed issues related to offshore drilling oversight and monitoring, and what role—if any—state and local agencies should play, given the significant federal role, and the recent reorganization and recommitment of federal agencies charged with

regulating, inspecting, and conducting enforcement activities regarding offshore drilling. After discussion, the Commission adopted the following recommendations, which are further discussed below:

- Continue the prohibition on drilling within 9 miles of the Florida coast
- Improved federal oversight and monitoring of offshore drilling precludes state action
- Maintain existing state efforts for early oil spill detection and alert

Recommendation:

Florida law prohibits offshore oil drilling in state waters, and that prohibition should be maintained to ensure protection of recreational beaches, sensitive coastal environments, and national defense assets.

Florida's economy has been based on tourism since the state's founding. Year-round warm weather, 825 miles of sandy beaches, unique coastal habitat, and abundant fish and wildlife draw millions of visitors annually. Because of its heavy dependence on coastal amenities—and the need to keep those relatively unspoiled—Floridians decided in 1990 to ban offshore oil and natural gas drilling. Other Gulf states, especially Texas and Louisiana—have had a long history of oil and gas development, which have been significant drivers of their economies. Those states are not as heavily dependent on coastal tourism and have been more comfortable with the risks inherent to offshore drilling. In Florida, however, threats to coastal areas, recreational beaches, offshore fisheries, and national defense assets are viewed with grave concern, despite any potential financial benefits to private industry.

The Commission was briefed on the recent oil and natural gas drilling in the northern Caribbean Sea and eastern Gulf of Mexico and is aware of the economic potential. However, the experience of the DWH incident clearly illustrates the risk posed by a large oil spill—and even the potential loss of tourism that might result from incremental small spills in highly localized areas. Therefore, while Florida needs to prepare itself and be ready to respond to spills moving toward its coastline from offshore wells near Cuba, Mexico, or other areas, the Commission endorses continuation of the drilling ban in state waters.

Recommendation:

Recent and appropriate improvements in federal oversight and monitoring of offshore drilling and oil production by the Bureau of Ocean Energy Management and the Bureau of Safety and Environmental Enforcement have precluded the need for increased oversight by Florida.

The Commission was asked to determine whether measures are needed to extend state oversight to offshore drilling operations. The governing framework for offshore oil and gas drilling spills in the United States is a combination of federal, state, and international authorities.³ However, most of the authority and resources for overseeing offshore drilling, regulating activities, enforcing rules, and responding to spills rests with federal agencies. The largest and most prominent federal statute related to oil spills is the OPA which, in addition to other advancements, expanded and clarified the authority of the federal government and created new oil spill prevention and preparedness requirements. The primary federal law governing oil development and operations in waters within federal jurisdiction is the Outer Continental Shelf Lands Act, implemented by the Secretary of the Interior. Pipeline and vessel statutes cover oil spill preparedness and response guidelines for those entities that transport oil within federal waters.

Agency responsibilities can be grouped into oil spill prevention and preparedness, and oil spill response and cleanup. The Bureau of Ocean Energy Management (BOEM) within the Department of the Interior is responsible for oil spill prevention and preparedness of offshore facilities involved in oil and gas extraction.⁴ For maritime oil spills, the USCG is designated as the overseeing agency, responsible for directing and overseeing cleanup activities.

Statutes regulating oversight and preparedness for oil spills are primarily enforced by the Department of the Interior. Before the DWH incident, the former Minerals Management Service (MMS) regulated most oil exploration activities within federal waters. Public attention and scrutiny before, during, and after the DWH incident revealed various internal conflicts of interest and corruption within MMS, leading to a major reorganization and significant improvements in the agency. The MMS reorganization occurred in two phases. In June 2010 Secretary of the Interior Salazar replaced MMS with a transitional agency: the Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE). The second phase was completed on October 1, 2011, when BOEMRE was divided into three separate agencies: BOEM, Bureau of Safety and Environmental Enforcement (BSEE), and Office of Natural Resources Revenue (Figure 3).

³ Ramseur 2012

⁴ Ibid.

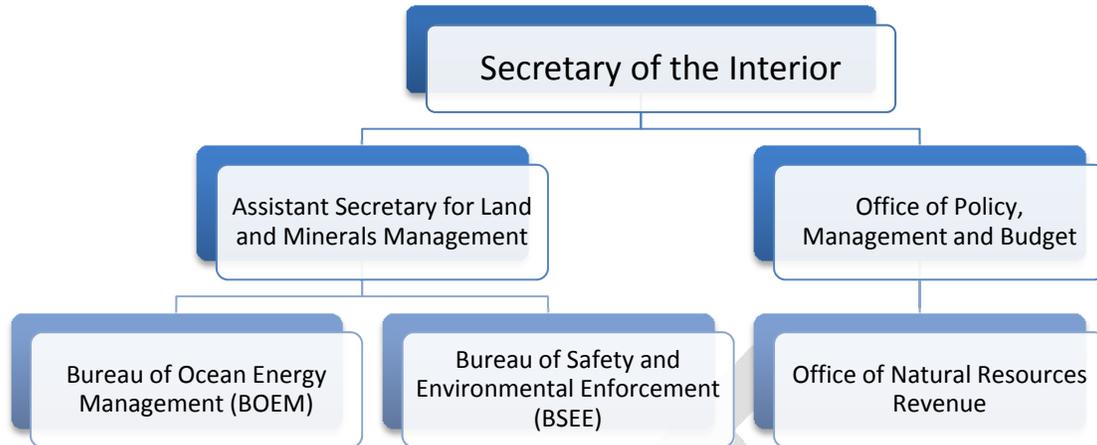


Figure 3. Restructured oil drilling agencies within the U.S. Department of the Interior.

BOEM is now responsible for managing the development of the nation’s offshore resources in an “environmentally and economically responsible way.”⁵ The agency’s primary functions include leasing of marine oil resources, plan administration, environmental studies, National Environmental Policy Act analysis, resource evaluation, economic analysis and the renewable energy program. BSEE now enforces safety and environmental Regulations, all field operations including permitting and research, Inspections, offshore regulatory programs, oil spill response, and newly formed training and environmental compliance functions.⁶ The separation of BOEMRE successfully divided the resource development and energy management functions and the safety and enforcement functions of the agency into separate agencies.

A number of other federal statutes also govern offshore drilling—and any problems that might result. Below is a brief and partial list of some of the more significant federal rules:

- Clean Water Act (CWA) of 1972 (title 33 *United States Code* [U.S.C.] 1251 et seq.) represented the broadest authority for addressing oil spills before the *Exxon Valdez* spill (Ramseur 2012). CWA section 311(b)(3) prohibits the discharge of oil or hazardous substances into U.S. navigable waters. Generally, section 311 mandates requirements for oil spill reporting, response, and liability. Additionally, CWA created a fund to be maintained by federal appropriations that could be used for cleanup and natural resource restoration if a spill occurs. Various elements of the act regarding the fund were amended and expanded with the passage of OPA.
- OPA of 1990 (33 U.S.C. 2701 et seq.) was largely a response to growing public concern surrounding the *Exxon Valdez* oil spill in Prince William Sound, Alaska. OPA expanded and clarified the authority of the federal government and created new oil spill prevention and preparedness requirements. Additionally, OPA strengthened existing liability provisions, providing a greater deterrent for the oil industry, which subsequently

⁵ U.S. Department of the Interior 2011

⁶ *Ibid.*

implemented more cautious practices. Following this legislation, spill occurrence and volume have decreased substantially since 1990.

- Outer Continental Shelf Lands Act (43 U.S.C. 1331-1356) authorizes the Secretary of the Interior to issue, on a competitive basis, leases for oil and gas in submerged lands of the outer Continental Shelf (OCS). The act authorizes the secretary to grant rights of way, rights of use, and easements through the submerged lands of the OCS.
- Oil and Gas and Sulphur Operations in the Outer Continental Shelf (title 30 of the *Code of Federal Regulations* [CFR] part 250) was initially published by BOEMRE on October 14, 2010, following the division of BOEMRE into BOEM and BSEE. The rule is intended to prevent waste and conserve natural resources of the OCS, under the rulemaking authority of the Outer Continental Shelf Lands Act.
- Oil Spill Financial Responsibility for Offshore Facilities (30 CFR part 253) establishes requirements for demonstrating oil spill financial responsibility for removal costs and damages caused by oil discharges and substantial threats of oil discharges from oil and gas exploration and production facilities and associated pipelines. Under OPA section 1016, oil and gas exploration and production leases issued by BOEM for operation in the Gulf of Mexico must establish and maintain financial liability eligibility to cover claims caused by oil discharges.
- Geological and Geophysical Explorations of the Outer Continental Shelf (30 CFR part 251) pertains to changes to the proprietary term of certain geophysical information previously under the MMS (now BOEM and BSEE), and generally provides additional protection to reprocessed vintage geophysical information that MMS retains.

Commissioners discussed whether there is a need for Florida state or local entities to seek to exert oversight authority over offshore oil drilling activities. As noted above—and as articulated by a wide range of studies—the lack of oversight and monitoring by federal agencies before the DWH incident led to many concerns regarding the overall safety of offshore oil and natural gas development and production.⁷ In its report to the President, the National Commission on the BP Deepwater Horizon Oil Spill⁸ bluntly summarizes the state of regulatory practice regarding offshore drilling:

In the years before the Macondo blowout, neither industry nor government adequately addressed these risks. Investments in safety, containment, and response equipment and practices failed to keep pace with the rapid move into deepwater drilling. Absent major crises, and given the remarkable financial returns available from deepwater reserves, the business culture succumbed to a false sense of security. The Deepwater Horizon disaster exhibits the costs of a culture of complacency.

⁷ FCOSRC 2012; National Commission on the BP Deepwater Horizon 2011; Williams et al. 2010

⁸ Deep Water: The Gulf Oil Disaster and the Future of Offshore Drilling – Report to the President; National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling, January 2011

The National Commission called for regulatory reforms “to assure human safety and environmental protection,” and increased regulatory oversight of leasing, energy exploration, and production, a call that was echoed by Florida officials. Indeed, a DWH study group comprised of Florida legislators concludes in a letter to the Speaker of the Florida House of Representatives that “[b]ecause spill response activities are dictated by federal law and the federal government assumed authority over the [DWH] spill, most of the recommendations identified in this letter are directed toward the federal government and aspects of the federal spill response system.” The letter further states that “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.”⁹

Members of the Commission agree with this sentiment, and find that improvements in federal oversight of offshore drilling has improved, and no state oversight legislation is needed. Changes to federal law regarding oil spill response are recommended, however, later in this report. Commissioners reserve the right to revisit the recommendation regarding no changes in state law if Florida adopts measures to allow offshore drilling in state waters.

Recommendation:

The Florida Department of Environmental Protection, Division of Emergency Management, and other state agencies monitor oil drilling and well production activities via the online http://www.dep.state.fl.us/water/mines/oil_gas/index.htm and regular communication with USCG, an approach that is reportedly working well and should be continued. In addition, Florida has oil spill communication mechanisms in place to alert state and local officials if a spill occurs—these mechanisms are satisfactory and should be supported and promoted for use by all state and local response entities.

As noted above, the experience of the DWH incident resulted in a significant overhaul of federal regulatory oversight of the offshore drilling industry, and increased monitoring of operations. Members of the Commission are not inclined to recommend state oversight of offshore drilling operations and are similarly reluctant to recommend enacting new laws, regulations, or programs to increase monitoring of those operations.

These conclusions, and the related recommendation above, are supported by Florida agency personnel who monitor offshore drilling operations under the existing federal online tracking and notification system.¹⁰ Staff from Florida DEP and Division of Emergency Management (DEM)

⁹ Williams et al. 2010

¹⁰ Keenan 2012

have access to the XXXXXXXXXX, which is maintained by the USCG? BOEM?. As is the case with the previous recommendation, this recommendation is supported by the workgroup convened by members of the Florida House of Representatives, who noted that “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.”¹¹

2.2 Detailed Recommendations and Rationale for Improving Pre-Spill Planning and Preparedness

As noted in the paragraph above, studies of the DWH incident found significant deficiencies in the DWH spill response, attributable to a general lack of communication and coordination. Under OPA—the federal law that governs responses to offshore oil spills—communication, coordination, and spill response actions are a product of previously developed regional and area contingency plans (i.e., Regional Contingency Plans [RCPs] and Area Contingency Plans [ACPs] developed under the National Contingency Plan (NCP) of OPA; see Figure 4) developed by federal, state, and local partners. The failure of those plans to anticipate an event like the DWH, an unprecedented though foreseeable accident, has been the subject of numerous studies by many of the agencies involved in the disaster.¹²



Figure 4. Contingency planning at the national, regional, and area levels.

Now that the potential for a major offshore oil spill has been realized, and the hard lessons learned have been digested, members of the Commission feel the time is right for significantly elevating the importance of spill contingency planning—especially in light of the increased

¹¹ Williams et al. 2010.

¹² Williams et all 2010; Florida Division of Emergency Management 2011; FCOSRC 2012; National Commission on the BP Deepwater Horizon. 2011.

drilling off the coasts of Cuba and Mexico. One of the key obstacles to a more robust approach to pre-spill planning and preparedness—i.e., through the RCP and ACP process—is the general lack of attention to, and resources for, those activities.

All the entities involved in oil spill contingency planning, from the federal agencies to state and local governments, have little dedicated funding for the kind of detailed planning needed, and even less to conduct preparedness drills and exercises. Even now, more than two years after the DWH event, major unresolved contingency planning issues exist that will increase exponentially in importance during the next major oil spill, such as how to acquire and deploy boom, solicit and train cleanup personnel, pay for initial local government response costs, coordinate and communicate response actions, and manage the VOO and OSRO programs.

The USCG and Florida agencies have been pursuing updates to contingency plans and drills and exercises to increase preparedness,¹³ but planning and preparedness for major oil spills is nowhere near what is now considered to be standard practice for hurricanes (e.g., see Koon 2011). In addition, placing Florida in two USCG districts, which each pursue somewhat different policies, procedures, and methods, continues to cause confusion and inconsistency where organization and standardization are needed.¹⁴

Members of the Commission support a more consistent approach and increased attention to oil spill contingency planning and overall preparedness. The Commission has adopted the following recommendations—which are discussed in detail below—to advance these objectives:

- Standardize USCG spill response policies in Florida and improve preparedness
- Improve and support state and local spill planning/preparedness programs
- Use federal RESTORE Act funds to improve spill response science and technology
- Upgrade oil spill plans to ensure better VOO and OSRO management

¹³ Slaughter 2012.

¹⁴ FCOSRC 2012.

Recommendation:

USCG Sectors 7 and 8 should be directed to (1) achieve general consistency in their Spills of National Significance (SONS) policies, procedures, and protocols regarding Florida oil spill contingency plans, preparedness activities (e.g., drills and exercises), incident command system deployment and operation, communication methods, and requirements for data collection, activity reporting, and response activity reimbursement and other forms; and (2) convene triennial conferences on SONS planning, preparedness, and response for the Gulf Coast and Caribbean regions.

As noted above, placing Florida in two USCG districts, 7 and 8 (Figure 5), has been identified as problematic by the Commission for a variety of planning, preparedness, and response operations reasons. USCG district commands are governed by the same federal laws, regulations, and agency rules, but each command has some autonomy in how it operates. For example, in 2012, USCG District 7 entered into a memorandum of understanding with the Florida Institute of Oceanography to coordinate mapping work, conducted an oil spill tidal inlet protection exercise in south Florida, and held an oil spill modeling workshop. While all these activities are ostensibly open to all Florida cities, counties, and citizens, they were intended for District 7's partners. USCG District 8 has been focused on the aftermath of the DWH response, and has not been as active in conducting drills, exercises, and workshops.

While members of the Commission realize that it is unlikely that the USCG would reorganize its coastal jurisdictions to accommodate any desire for Florida to reside in one district, a recommendation to standardize—or at least improve consistency—between Districts 7 and 8 seems achievable. A common approach to contingency planning, preparedness drills, and occasional exercises would help to improve the overall oil spill response framework in the state and create a seamless operational environment if another SONS occurs.

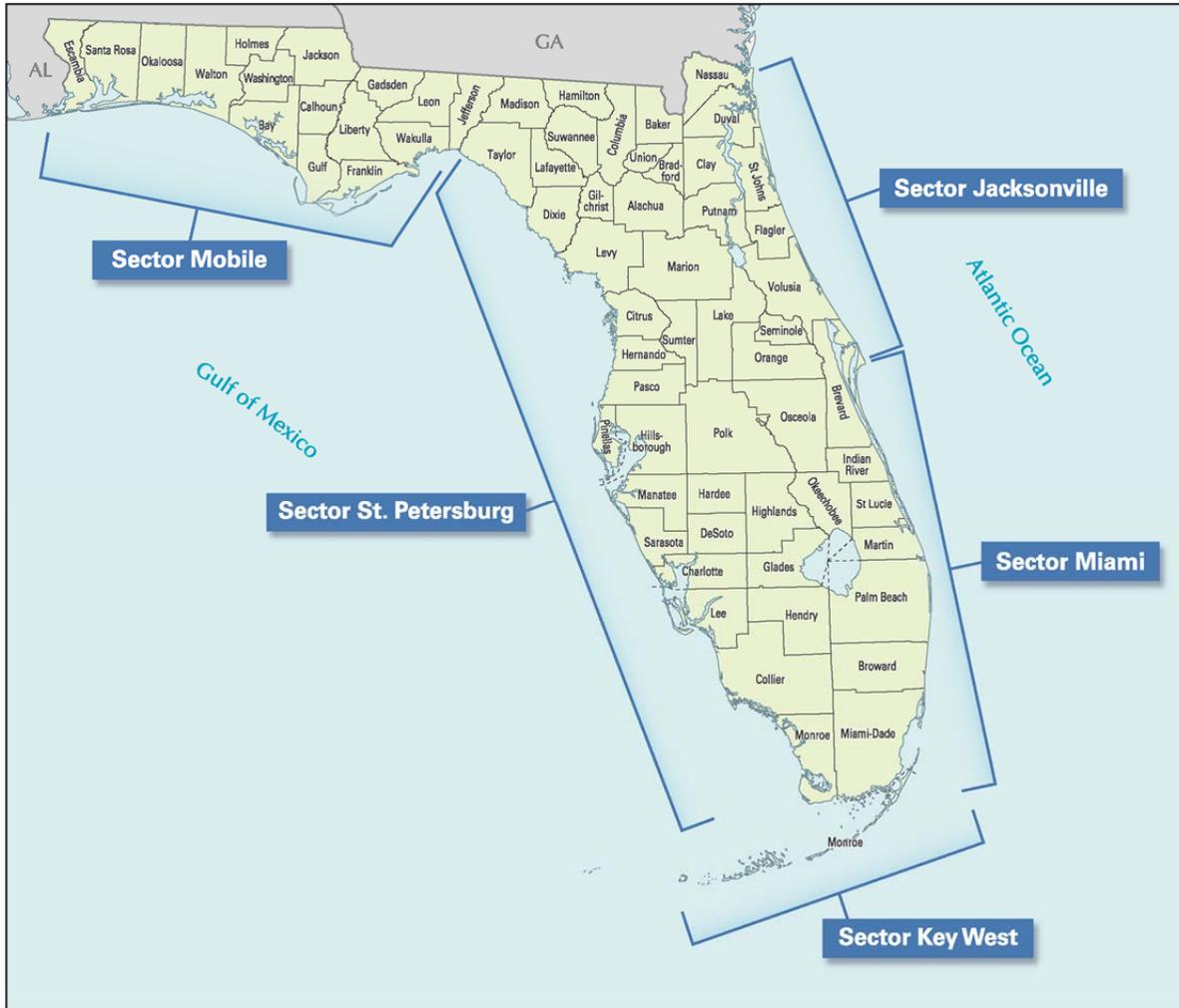


Figure 5. USCG districts and sectors for Florida [NOTE: SHOW DISTRICTS]

Recommendation:

State and local emergency management responsibilities should be amended to require active participation by Florida counties and elected officials in USCG ACP development and biennial drills and exercises, with financial support from a new Florida Oil Spill Response Fund, capitalized through state RESTORE Act funds, proceeds from the Florida lawsuit to recover taxes and revenues lost because of the DWH incident, or other sources.

Some states that authorize offshore drilling in their waters or routinely transport large volumes of oil via tanker ships have a more robust oil spill preparedness and response system than Florida (see the news article inset on the next page). Research conducted for the Commission and discussions regarding oil spill response activities during the DWH incident noted repeatedly an

overarching desire to bring spill response to a level comparable to hurricane response.¹⁵ According to Commission members, hurricane response is built on two key principles: planning and preparedness, and local action supported by state and federal agencies. Indeed, Florida state and local agencies support a vast network of emergency personnel that regularly plan for, communicate about, train and drill for, and receive funding and other support for hurricanes affecting the Florida peninsula.

As noted in the previous section, however, significant planning and preparedness activities for major oil spills are lacking. Local governments participate in the USCG oil spill regional and area contingency plans on a somewhat haphazard basis, without a dedicated base of funding, statewide organizational framework, or consistent policy and procedural approach. The lack of standardization on the USCG sectors' part operating in Florida reflects similar inconsistencies, with the state split between USCG Districts 7 and 8. There does not appear to be a culture of planning and preparation for oil spills as there is for hurricanes—a finding that apparently spans nearly all the federal, state, and local agencies examined for this report.

For example, the FY 2011-2012 Business Plan for the Florida DEM, a key agency supporting state and local emergency planning and response, lists the following activities related to hurricane preparedness:¹⁶

- Participate in the Governor's Hurricane Conference
- Complete 200 hurricane evacuation shelter surveys
- Identify 25,000 hurricane evacuation shelter spaces
- Distribute shelter data to county emergency offices

Alaska, Federal Agencies Hold Oil-Spill Response Drill

KETCHIKAN, Alaska - The threat of an oil spill in Alaska waters looms constant. The number of agencies that came to Ketchikan recently to conduct an emergency oil spill response exercise served as a testament to the gravity of such a situation.

The U.S. Coast Guard, the Department of the Interior, U.S. Fish and Wildlife Service, the National Park Service and the U.S. Navy joined forces with Alaska Departments of Environmental Conservation, Fish and Game, Natural Resources and Transportation to hold a nearly 7-hour exercise Sept. 26 at the Ted Ferry Civic Center.

Also in the mix were private industry partners—the Southeast Alaska Petroleum Resource Organization, Kirby Offshore Marine and Alaska Steamship Response—and tribal interest groups, Ketchikan Indian Community and the Sitka Tribe of Alaska.

All told, more than 120 people took part in the exercise.

*By Andrew Sheeler
Ketchikan Daily News
Fairbanks Daily News Miner
October 6, 2012*

¹⁵ FCOSRC 2012.

¹⁶ Koon 2011

- Support implementation of hurricane building codes
- Test enhancements to the annual hurricane exercise
- Obtain results from hurricane storm surge models
- Determine the number of hurricane-related courses to be delivered

The plan also lists information regarding oil spills, but the items listed describe recommendations for future activities, program development, or funding support, rather than actual planning and preparedness actions to be conducted or performed in the near term. These are summarized in the plan as recommendations from the Florida Association of Counties that are supported by the gubernatorial transition team, and reflect many of the recommendations in this report and others addressing lessons learned from the DWH incident.

Some members of the Commission noted a challenge regarding RCP and ACP development, updating, and implementation for local governments: turnover in the ranks of elected officials creates a continuous class of newcomers to the contingency planning process, meaning that an ongoing program of orientation and training is necessary to ensure preparedness. Such a program is already in place for hurricanes, and members of the Commission expressed interest in establishing a similar, permanent education program for elected officials and their agency staff leadership.¹⁷

Support for such a program—which might be implemented by the Florida Association of Counties or a state agency—could come from state general funds or another source. For example, the 2012 RESTORE Act contains funding for federal, state, and local activities, and Florida expects to receive some compensation from BP for lost revenues (e.g., sales and fuel taxes) because of the DWH incident.¹⁸ Regardless of the source, active participation by Florida counties and elected officials in oil spill contingency planning, drills, and exercises is imperative for ensuring that the response to the next SONS is efficient and effective. Support for additional spill readiness activities are captured in the next recommendation.

During its first three meetings, Commission members discussed the need for improvements in oil spill oversight and monitoring, the use of oil skimmers and dispersants, the use of boom to protect sensitive coastal resources, spill cleanup methods, and response communication—among responding entities, the news media, and the public.¹⁹ Research conducted by Tetra Tech²⁰ included these improvements and other findings in a two-page list of recommendations developed to improve spill contingency plan execution by the ICS responding to future spills under the NCP.

¹⁷ FCOSRC 2012

¹⁸ Florida Department of Revenue 2011

¹⁹ FCOSRC 2012

²⁰ Tetra Tech, 2012c.

The *National Oil and Hazardous Substances Pollution Contingency Plan* (NCP) was developed in response to a large oil spill that occurred in 1967 off the coast of England, from the oil tanker *Torrey Canyon*. The incident highlighted the difficulties of responding to oil spills in coastal waters, and prompted U.S. federal agencies to assess their own oil spill response capabilities. The NCP was published in 1968 as a multi-agency plan and blueprint for all federal government activities in response to oil spills. Since 1968 the NCP has undergone several revisions in response to congressional legislation. Authority for the NCP now resides in the CWA (33 U.S.C. 1251, et seq.) and OPA, which serve as the primary federal statutes governing the federal response to oil spills. CWA section 311 authorizes the President to develop an NCP to specify the federal response actions and authorities related to oil spills, including creation of a fund for federal responses to oil spills.

OPA strengthened and clarified the federal government's role in oil spill response, solidifies RP liability, and provides new requirements for contingency planning by both government and the oil industry. OPA section 4201 amends CWA section 311(c) to provide the President with authority to perform cleanup activities immediately after a spill using federal resources, monitor the RP response efforts, or direct the RP's cleanup activities. OPA also amends the NCP by requiring the President to establish procedures and standards for responding to worst-case oil spill scenarios. The President delegated to the U.S. Environmental Protection Agency (EPA) responsibilities for implementing the NCP amendments.

The fairly well-developed contingency planning and spill response system established under OPA and the NCP is not without problems, as discussed in later recommendations in this report. However, the national scope, resources, and federal authorities under OPA, NCP, and other federal laws and regulations²¹ provide a useful framework for developing, organizing, and executing policies, programs, and tasks that span the full scope of governmental structures and functions regarding and related to oil spill preparedness and response. Florida agencies and local governments do not have the capabilities—or the desire—to oversee and monitor oil drilling activities, as noted earlier. These activities, along with oil dispersal, removal, protection, cleanup, and mass communication, were viewed by the Commission as the proper purview of federal agencies, which have the tools required to develop and implement them, as noted above.

Federal agencies also have the resources to further develop the scientific, engineering, technical, and communication tools needed for spill preparedness and response, especially in light of the legal settlement of claims and penalties related to the DWH incident. For example, under the 2012 RESTORE Act, the federal government will retain 20 percent of the CWA fines and penalties paid by BP. These funds can be used to support developing oversight, monitoring, preparedness, response, and cleanup tools cited in this recommendation, as endorsed in this section by the Commission.

²¹ Tetra Tech 2012a.

Recommendation:

Regional and Area Contingency Plans should be amended to ensure better organization, deployment, and management protocols for the VOO program and relevant Oil Spill Response Organizations, emphasizing the importance of air surveillance and monitoring, a *locals first* preference in contracting, and the value of local knowledge and experience in assessing tidal impacts and flow patterns in predicting the movement of spilled oil.

Under activities authorized by OPA and the NCP, the USCG recognizes two categories of oil spill response entities that are engaged in pre-spill planning and spill response. The OSRO classification program is designed to assist oil facilities and vessels in developing the spill response plans required by OPA. Plan holders that list an OSRO in their response plans are exempt from providing and updating extensive lists of response resources, a regulatory benefit to plan holders that saves time and resources in plan development. An OSRO without a USCG classification may still be employed by a plan holder and may be listed in the plan, but it must be listed along with the plan holder's entire emergency response resource inventory.

VOO include a range of watercraft employed by the USCG during spill response to assist in skimming oil from the sea, place boom to protect sensitive coastal areas, and monitor oil spill movement. Members of the Commission expressed some frustration with the management of the OSRO and VOO programs because of (1) a general lack of coordination, command, and control, (2) lack of input on which vessels were hired, resulting in a failure to engage the most experienced, effective, and efficient personnel and watercraft, (3) wastefulness and poor use of VOO resources, and (4) lack of understanding on how to address OSROs and VOO into the spill contingency planning process.²²

The Florida DEM²³ notes that VOO skimmers, and the overall ability to obtain the right type of equipment for the job, "was a challenge." The division's after-action report concluded that "[t]he inability to coordinate the total number of skimmers available and the types of skimmers that were available, and to have them dispatched in a timely manner to sensitive areas, especially bay areas, was a challenge" until the USCG established local branches under the ICS. However, problems persisted, as noted in the report, "At no time during the operations could an accurate number be given on the number and types of skimmers in the area of operations. There was no mechanism in place to communicate with them when they were on the water and no way of tracking their location and progress. Trackers were offered and given by Florida for use during the operations. This marked the first time that [Unified Command in Mobile, Alabama] had any knowledge of where the units were in the water."

²² FCOSRC 2012.

²³ Florida DEM, 2011.

Finally, it should be noted that the use of VOO to track oil in the Gulf was an inefficient use of response resources. Members of the Commission expressed strong support for the use of an integrated, centrally coordinated fleet of aircraft to monitor oil movement and warn coastal counties of approaching oil.²⁴ Florida DEM²⁵ notes the importance of air resources in spill response. GPS trackers and cameras onboard aircraft allowed for easy tracking, monitoring, and mapping. Communication among ground and air personnel was awkward at first, but it was adapted quickly as the response proceeded. Because of these and other issues related to OSROs and VOO, the Commission recommends that contingency plans be amended as noted above.

2.3 Detailed Recommendations and Rationale for Improving Oil Spill Response Capabilities

Sections 2.1 and 2.2 of the Commission's report address oil drilling oversight/monitoring and pre-spill planning and preparedness. This section provides four recommendations regarding approaches for improving response actions after a spill has occurred. While the improved contingency planning recommendations in Section 2.2 represent fairly significant changes in past and current oil spill preparedness practices, the recommended actions that follow involve moderate to major changes in federal agency policy, practice, and targeted amendments to federal law.

Members of the Commission are fully cognizant of the importance and gravity of these recommendations and the difficulty involved in executing them. Moving USCG districts in Florida toward operational practices that formally incorporate incident command adaptations developed during DWH could be challenging; prompting Congress to amend OPA to address significant shortcomings in financial liability requirements and imprudent considerations for assigning authority during SONS represents a challenge far beyond the capacities and capabilities of the Commission—even for Florida. A list of the recommendations in this section follows:

- Develop a reimbursable fund for early state/local oil spill response activities
- Upgrade and improve spill monitoring and modeling programs
- Integrate local ICS branches and USCG/RP-staffed EOCs into contingency plans
- Amend OPA to improve oil spill response and financial liability requirements

²⁴ FCOSRC 2012.

²⁵ Florida DEM, 2011.

Recommendation:

Initial state and local responses to oil spills threatening Florida's coast line (e.g., boom acquisition and placement, assembling and training cleanup personnel) should be improved through better area contingency planning and funding from a new Florida Oil Spill Response Fund, capitalized through state RESTORE Act funds, proceeds from the Florida lawsuit to recover taxes and revenues lost because of the DWH incident, or other sources, with the understanding that reimbursements for expenditures made by the fund will be sought from the responsible party later, during the damage claims resolution process.

After the DWH explosion and resulting oil spill, county governments in Florida scrambled to initiate early response activities. Tracking the movement of oil in the Gulf and early actions to protect sensitive coastal areas and prepare for potentially massive cleanup operations were hampered by poor planning and the structure of the ICS, which was responsible for approving reimbursements for costs incurred during the response.²⁶ Florida counties were intimately familiar with how to respond during hurricanes and other natural disasters, as outlined by the National Response Plan and federal Stafford Act,²⁷ but they were almost completely mystified by the top-down, bureaucratic approach of the USCG-managed ICS—which included, almost inconceivably, provisions that the disaster's RP had the authority to approve or disapprove all local shoreline protection and cleanup costs in advance.

OPA provides for compensation for shoreline protection and cleanup costs, and for small- or moderate-sized oil spills, the approach for establishing an ICS and addressing cost reimbursements has worked well. However, given the increased offshore oil drilling activity in 2012, Florida and other Gulf states face the prospect of

Alaska's State Spill Response Fund

The Oil and Hazardous Substance Release Prevention and Response Fund was created by the Alaska legislature in 1986 to provide a readily available funding source to investigate, contain, clean up and take other necessary action to protect public health and welfare and the environment from the releases or threatened release of oil or a hazardous substance. Alaska Statute 46.080.030 states: "It is the intent of the legislature and declared to be the public policy of the state that the funds for the abatement of a release of oil or hazardous substance will always be available." (SLA 1986 Sec.1 Ch. 59)

Statutes governing the Response Fund were amended in 1989, 1990, 1991, 1994, 1999, and 2006. Generally, these amendments added more purposes for which the Response Fund could be used and increased the Department of Environmental Conservation's reporting requirements. The 1994 amendment made major changes to the Response Fund structure by dividing it into two separate accounts: the "Response account" and the "Prevention account." The 1999 amendment changed the requirement for an annual fund status report to the legislature to a biennial status report.

²⁶ FCOSRC 2012.

²⁷ Florida Association of Counties, undated.

another SONS in the next 10 years. Under the current system, a major spill moving toward the Florida coast would likely recreate many of the same issues local counties faced in gearing up for and executing initial response actions. Moreover, if the spill is caused by an RP beyond the reach of U.S. law, such as a foreign entity, questions on how to authorize and access funds for early response actions under OPA would probably cause the kind of confusion witnessed in the early days of the DWH incident.

Some states (e.g., Alaska; see inset text box above) have state spill response funds that cover spill prevention, planning, and response activities. In order to ensure a seamless, rapid, effective, and locally led response to future oil spills, the Commission recommends the creation of an initial or early response fund, capitalized with state RESTORE Act or other funds. A Florida Oil Response Fund would allow state and local governments to function as they do during hurricanes, with the understanding that—if an RP subject to U.S. law is identified—the fund can be reimbursed after the initial response period has ended.

Recommendation:

USCG oil spill contingency plans, state spill plans, and plans sponsored by other entities should be amended to ensure support for—and participation in—coastal mapping and oil spill movement, monitoring, modeling, and spatial analysis coordinated by the Florida Fish and Wildlife Research Institute’s Center for Spatial Analysis (e.g., Geospatial Assessment Tool for Operations and Response) and the federal Environmental Response Management Application.

Although Florida’s Panhandle supports a multibillion dollar, beach-based recreational industry, the response to the DWH oil spill focused initially on how to protect sensitive coastal resources, particularly critical habitat areas. The difficulty local, state, and federal officials faced in identifying and protecting those areas during the frenzied response effort has been well documented and discussed in some detail during Commission meetings.²⁸ Florida agencies have been working with the USCG, the National Oceanic and Atmospheric Administration, counties, and other entities to update critical area maps, upgrade spill monitoring and modeling capabilities, and develop new tools to improve overall response. Despite the importance of this work—and other efforts to modernize scientific and technical tools that support oil spill response—there is an ongoing risk that tight budgets will result in constricting the development of these tools during the critical pre-spill planning period.

Support for better mapping and analytical tools appears in the report developed by the National Commission on the BP Deepwater Horizon,²⁹ which concluded that better coastal and marine spatial planning—described as a suite of technologies, best practices, and networking—could aid in

²⁸ FCOSRC 2012.

²⁹ National Commission on the BP Deepwater Horizon, 2011.

response efforts and “balance orderly resource development with the protection of the human, marine, and coastal environments.” The Commission heard several brief reports on activities related to mapping, modeling, and spatial planning work during its first four meetings, and supports its further development. The expansion and integration of federal and state mapping, modeling, planning, and reporting applications promises to improve effectiveness and efficiency in future oil spill responses, and reduce the overlap and redundancy experienced during the DWH incident.

Recommendation:

USCG RCPs and ACPs and any incident or unified commands established to respond to SONS in Florida should be amended to include (1) placing a USCG representative and RP representative in each Emergency Operations Center when oil or other substances appear within 9 miles of the Florida coast, (2) consolidating public health and scientific research/information services at the incident command level to reduce redundancy and overlap, and (3) incorporating local branches under the ICS if a SONS occurs to ensure appropriate local involvement and integration into spill response and cleanup actions.

The recommendation above addresses contingency planning details that directly affect response operations. Each of the three specific parts of this recommendation emerged in meetings of the Commission and interviews with local government officials. The first item, placing a USCG representative and responsible party representative in each Emergency Operations Center when spills appear in Florida coastal waters, represents an attempt by the Commission to institutionalize an adaptation implemented by the unified command during DWH, designed to address poor communication with—and growing dissatisfaction among—local governments in the Gulf region. Better coordination between the command team and local officials is supported by a wide range of studies and individuals connected with DWH.³⁰ The National Commission³¹ included among its recommendations that U.S. EPA and USCG “should bolster state and local involvement in oil spill contingency planning and training,” and issue policies and guidance with protocols for:

- Including local officials from areas at high risk for oil spills in training exercises
- Establishing liaisons between the Unified Command local communities during response
- Adding a local on-scene coordinator position to the Unified Command structure

Another recommendation for improving the function of a unified or incident command is to consolidate public health and scientific research and information services at the command level,

³⁰ Keenan, 2012; National Commission on the BP Deepwater Horizon, 2011; Florida Association of Counties, 2011; Florida Division of Emergency Management, 2011.

³¹ National Commission on the BP Deepwater Horizon, 2011.

rather than expecting state and local governments to address these needs. The Commission heard from state and local officials charged with responding to health, environmental, and scientific inquiries from the media and public during the spill, and nearly all noted their lack of capacity to produce the information needed in a timely manner.³² In addition, the involvement of multiple entities producing guidance on duplicative and/or overlapping topics led to the release of conflicting and inconsistent messages. Keenan³³ and others said that coordinating this information at the command level, with allowances for regional, state, and local modifications or enhancements, would help to ensure accurate and consistent messaging regarding public health, environmental, scientific, and technical messaging, a position the Commission supports.

The final part of this recommendation for improving the command structure and function during major oil spills involves another adaptation employed during DWH: the incorporation of local branches under the incident command system in the event of a SONS. The Florida Association of Counties³⁴ concurs with this recommendation of the Commission, noting in their report that “Congress should revise the NCP or Unified Command Structure to require local branch Incident Command offices be established when a large spill occurs that impacts or threatens to impact multiple state and local government jurisdictions.” Keenan³⁵ and others³⁶ agreed, noting that the improvements in coordination, communication, and general response effectiveness after the DWH unified command personnel established local branches several weeks into the event.

Recommendation:

The Oil Pollution Act of 1990 and its implementing regulations should be amended to (1) reduce the role of any responsible party during SONS in approving or authorizing oil spill response actions undertaken by state or local governments to protect their resources and restore damaged areas; (2) increase the Oil Spill Financial Liability requirements by a factor of three; (3) increase the environmental liability limit from the current \$75 million to \$500 million; and (4) increase capitalization of the Oil Spill Liability Trust Fund to a minimum of \$5 billion, with an Emergency Fund total of a minimum of \$200 million, to ensure support for oil spill response and cleanup when the RP declares bankruptcy or is not subject to U.S. law. Financial liability limits and fund totals should be linked to the rate of inflation.

The recommendation above represents one of the most significant and challenging in this report. Efforts to amend OPA were launched after the DWH incident, but reports of possible financial impacts on the oil industry slowed legislative action.³⁷ A number of studies have

³² FCOSRC, 2012.

³³ Keenan, 2012.

³⁴ The Florida Association of Counties, 2011.

³⁵ Keenan, 2012.

³⁶ Florida Division of Emergency Management, 2011.

³⁷ National Commission on the BP Deepwater Horizon, 2011.

pointed to deficiencies in OPA regarding its capacity to respond to the scale and complexity of SONS.³⁸

While most studies of the DWH incident note the appropriateness of having the responsible party for a spill participate directly and aggressively in response and cleanup for smaller spills—even to the point of directing the deployment of personnel, equipment, and resources, and supervising response activities—they generally conclude that large spills are different. Because of the complexity of the response, the scope of activities, the area involved, scrutiny from the public and news media, and the sheer cost of the effort, management of SONS must reflect a more robust set of considerations, driven by both internal and external forces. The National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling³⁹ recognized the dichotomy between smaller and larger spill response efforts, and the need for adjusting the command structure under the NCP in its report:

“The spill’s magnitude calls into question whether the National Contingency Plan establishes an appropriate relationship between the federal government and the responsible party, as the public demanded in the weeks and months following the Deepwater Horizon spill that the government demonstrate control of the response. The responsible party that caused the spill is clearly legally responsible for containing the spill and mitigating its harmful consequences. The federal government, not the responsible party, must be in charge of those efforts.”

The Florida Association of Counties interviewed their constituent local government officials and reviewed the various reports on DWH and concluded that:

“OPA 90 was designed for more localized oil spills, where a response dictated by the U.S. Coast Guard works effectively. However, the Deepwater Horizon oil spill was of such magnitude that it exceeded the response assumptions inherent in the NCP. This proved particularly problematic when response actions had to cross jurisdictional boundaries. Compounding this shortcoming, according to the Florida House report, is that under NCP protocols, all operational response actions were directed by the U.S Coast Guard and BP as the Responsible Party (RP), which meant that impacted counties had no control over response resources. Due to the protocols of the NCP, counties were advised not to use their own resources for response and recovery activities without prior approval of the Unified Command, which was located outside the State of Florida. This created situations where counties had oil impacting their beaches but were advised not to take measures to remove it, even when local resources were readily available. What was particularly unfortunate was that such decisions were made at the height of the tourism season in the Florida panhandle, forcing visitors to avoid these otherwise valued destination sites.”⁴⁰

Clearly, given the lessons learned from DWH—which have been almost identically interpreted across the spectrum of public policy—it is time to amend OPA to reduce the role of any

³⁸ Williams et al, 2010; Keenan, 2012; Florida Association of Counties, undated; FCOSRC, 2012; Florida Division of Emergency Management. 2011; National Commission on the BP Deepwater Horizon, 2011.

³⁹ The National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling, 2011.

⁴⁰ The Florida Association of Counties, undated.

responsible party during SONS in approving or authorizing oil spill response actions undertaken by state or local governments to protect their resources and restore damaged areas. Such authorizations or approvals can and should be handled by the incident commander, or more appropriately, delegated to state incident commands under a more decentralized incident command system, designed to address the scope and span of control issues identified as deficiencies during the DWH incident.

In addition to adjusting the role of the RP during SONS, Congress should amend OPA to address the growing inadequacy of the statute's provisions to address response, economic, environmental, and other liabilities and claims resulting from a spill. Specifically, the Commission supports increasing the Oil Spill Financial Liability requirements by a factor of three, increasing the environmental liability limit from the current \$75 million to at least \$500 million, and increasing capitalization of the Oil Spill Liability Trust Fund to not less than \$5 billion, with an Emergency Fund total of not less than \$200 million, to ensure support for oil spill response and cleanup when the responsible party declares bankruptcy or is not subject to US law. In addition, financial liability limits and fund totals should be linked to the rate of inflation.

This recommendation is supported by the National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling (National Commission),⁴¹ which noted that "there are two main problems with the current liability cap and financial responsibility dollar amounts," including:

- A damages cap that limits liability well below levels that may actually be incurred distorts the incentives of industry participants to adopt cost-effective safety precautions. The relatively modest liability cap and financial responsibility requirements provide little incentive for oil companies to improve safety practices.
- The current \$75 million damage cap, though waived by BP, provides no guarantee that other companies in the future will agree to waive the cap. And if an oil company with more limited financial means than BP had caused the DWH spill, that company might well have declared bankruptcy long before paying fully for all damages.

The National Commission further noted that In the case of a large spill, the Oil Spill Liability Trust Fund "would likely not provide sufficient backup . . . (t)hus, a significant portion of the injuries caused to individuals and natural resources, as well as government response costs, could go uncompensated."

While members of the FCOSRC are cognizant of the possible effects raising the liability limits might have on entities drilling offshore for oil, they also recognizes the responsibility of federal law to protect coastal communities from potentially devastating, long-term economic losses caused by accidents, gross negligence, or both. As the National Commission noted, "a company should not be able to cause billions of dollars of damage and walk away, simply because its

⁴¹ The National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling, 2011.

operations contribute to the economy of the Gulf. Nor should smaller companies that can demonstrate the ability to drill safely and to pay for damages resulting from a large spill be forced out of the market. However, smaller companies that cannot demonstrate financial responsibility and meet risk requirements set and monitored by the Department of the Interior or a third party should not be allowed to make others pay for the costs of their accidents.”⁴²

Congress should also act to increase the level of support available in the Oil Spill Liability Trust Fund. As noted earlier in this report, U.S., Spanish, and Mexican companies are currently operating in the Gulf, and recent industry trends indicate slowly accelerating oil exploration in the region during the coming decade. A spill caused by an entity without the financial resources or the spirit of cooperation and accommodation exhibited by BP—or by a firm not subject to U.S. law—could put Florida’s coastal economy at significant risk. The OSLTF should be increased to address these shortcomings, and reflect the diminished level of support caused by inflation over the two decades since the passage of OPA.

⁴² The National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling, 2011.

3 Health, Safety, and Environmental Protection

This section examines health, safety, and environmental protection issues involved in the DWH spill response. The information below summarizes some of the key issues, but does not explore the full range of physical and mental health impacts or all of the environmental aspects of the spill and its aftermath.

A summary of recommendations related to protecting health, safety, and the environment during future oil spills include the following, which are addressed more fully Section 3.2:

- Amend ACPs to identify, prioritize and protect environmentally sensitive areas.
- Provide improved guidance on the use of dispersants in spill response efforts.
- Improve health effects information and communication following a spill.

3.1 Detailed Recommendations and Rationale for Health, Safety, and Environmental Protection

Recommendation:

Amend Area Contingency Plan (ACP) documents to allow for better identification, prioritization and protection of environmentally sensitive areas/habitats. Include state or region-specific information in ACPs as appendices, drawing from the best available technology. Apply sound science, engineering, and technical principles, considering water currents, tidal variations and the effects of protective measures used in environmentally and economically sensitive areas. Update and improve NOAA's scientific support functions in the planning and response phases.

When a spill occurs, natural resource trustees conduct natural resource damage assessments to determine the extent of the damage caused by the spill. Natural resource trustees are appointed by the governor from each state involved and the president. Governors usually appoint a state or tribal government representative, and the president is likely to appoint a representative from the National Oceanic and Atmospheric Administration (NOAA).

OPA states that the measure of natural resource damages includes:

- The cost of restoring, rehabilitating, replacing, or acquiring the equivalent of the damaged natural resources
- The diminution in value of those natural resources pending restoration
- The reasonable cost of assessing those damages.

The Florida Pollutant Discharge Prevention and Control Act (FPDPCA) states that the main threat to the state's coastal areas is from spills and discharges of hazardous substances and pollutants. These spills or discharges likely occur as a result of errors during the storage, transportation, and transfer of these substances and pollutants between ships, onshore facilities, offshore facilities, and terminal facilities. FPDPCA empowers and sets up the Florida Coastal Protection Trust Fund (FCPTF) for the FDEP and the Florida Fish and Wildlife Conservation Commission (FWC). FCPTF provides funding for FDEP and FWC to prevent (through regulations), investigate, rehabilitate, and cleanup sites contaminated by spills and discharges. FDEP is the primary enforcer of FPDPCA; however, FWC must assist FDEP with assessing damages to wildlife caused by spills and with recovering the costs of the damage.

Florida Statute 376.121, Liability for Damage to Natural Resources, and 376.07 1(e), Creation of State Contingency Plans, require that:

- A state response team be created that shall be responsible for creating and maintaining a contingency plan of response, organization, and equipment for handling emergency cleanup operations and wildlife rescue and rehabilitation operations;
- State plans include detailed emergency operating procedures for the state as a whole, including a plan for wildlife rescue and rehabilitation operations;
- These plans be filed with the governor and all Coast Guard stations in the state and Coast Guard captains of the port having responsibility for enforcement of federal pollution laws in the state;
- The state response team act independently of federal agencies but cooperate with any federal cleanup operation;
- An adequate wildlife rescue and rehabilitation program be developed;
- Injuries to natural resources from a spill be assessed and restoration plans developed to compensate for adversely affected wildlife resources and habitats.

Recommendation:

To track the movement and fate of oil, a unified Gulf of Mexico web-based mapping application that is compatible across all five states should be established to provide consistent reporting protocols. Examples of such applications include the Florida Division of Emergency Management and State Emergency Response Team's Geospatial Assessment Tool for Operations and Response (GATOR), and NOAA's collaborative development with the University of New Hampshire's Coastal Response Research Center, USEPA, USCG, and the Department of the Interior - the Environmental Response Management Application (ERMA®) Gulf Response.

The Florida FWC's Fish and Wildlife Research Institute (FWRI) houses several centers of expertise, one of which is the Center for Spatial Analysis in the Information Science and Management Section. Through the use of geographic information system (GIS) technology, the Center for Spatial Analysis provides several functions and technical services in oil spill planning and response efforts.

The center assists the USCG, NOAA, and FDEP if an oil spill occurs. Its analyses assist decision makers in developing response and cleanup strategies, in prioritizing response efforts, and in assessing damage after a spill. FWRI has partnered with the USCG to produce several of the Coast Guard's Area Contingency Plans and has made them digitally available on CD and the Internet. The *Environmental Sensitivity Index* (ESI) is a measure of a coastal zones' natural, socio-economic, wildlife, and habitat resources as depicted through the use of maps and atlases. ESI is used in oil spill planning, evaluation, prevention, and cleanup efforts. The *Florida Marine Spill Analysis System* (FMSAS) is a complex GIS application that allows users to conduct oil spill planning activities and manage response and mitigation efforts during an actual spill. Through an MOU, the FWRI maintains the FMSAS for DEP responders around the state and conducts regular training exercises and drills.⁴³

The FDEP secretary conducted daily briefings in the Florida Emergency Operations Center (SEOC) and with Incident Command and the northwest Florida counties. Because of the scope of the response effort, there were many activities and proposed response actions to coordinate. The state worked closely with the FOSC and assisted with state and local resources. Initial efforts included tracking the spill plume, evaluating weather and Gulf circulation patterns, and conducting risk assessment determinations. The State Emergency Response Team (SERT) was activated, and it 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 Florida DEM's Geospatial Assessment Tool for Operations and Response (GATOR) to facilitate response actions.⁴⁴

Recommendation:

Update or amend ACP policy and procedural guidance to clearly articulate the potential use (and where appropriate, restriction) of dispersants. Dispersant use decision matrices, application protocols, authorization procedures and monitoring subsequent to deployment, as well as the extent of use in Environmentally Sensitive Areas should be addressed. Factors for consideration include, but are not limited to, the distance of the oil from the shoreline, water depths, and the presence of critical nesting or foraging habitats.

⁴³ Fish and Wildlife Research Institute, Florida Marine Spill Analysis System, <http://myfwc.com/research/gis/projects/oil-spill>.

⁴⁴ Final Report – Deepwater Horizon Workgroup 1 – Response to current disaster and preparation for future disasters (August 31, 2010). Letter report to House Speaker Larry Cretul, submitted by Representative Trudi Williams, lead member of Deepwater Horizon Response and Recovery Workgroup 1.

Following the DWH oil spill, Executive Order 10-99 designated FDEP as the “lead state agency to coordinate emergency response activities among the various state and local governments responding to this emergency.”⁴⁵ Specific to declared emergencies, the Florida DOH is designated as the lead agency for Emergency Support Function 8. According to the *After Action Report* prepared by DOH, the solutions to address public health concerns in Florida in response to the DWH incident were as follows:

- A public health unit, in conjunction with other affected states, which coordinated response efforts across the multistate area of operations.
- An agreement with EPA to establish a central data repository (EPA-hosted SCRIBE).
- Human health benchmarks for oil, to develop an interstate human health benchmark framework on the basis of the constituents of the spilled oil.
- Developing several successive interim plans that created the framework for posting public health advisories, and public health notices on Florida beaches, and for later, lifting the advisories and notices. These plans required close coordination with county health departments, which were responsible for implementing the plans.
- Activating the Advanced Planning Unit, which developed several key documents/procedures, including *Florida Health Triggers*, a tool used as a foundation for the public health impact notice concept of operations, and hurricane impact analysis, which examined the potential public health and health consequences of a hurricane that might affect the area affected by the spill.
- Cooperation in the multistate Area Command (Houma, Louisiana) and Unified Command (Mobile, Alabama).
- Staffing the Public Information Emergency Support Function (ESF 14) with public information officers from FDEP to disseminate information to Floridians and visitors.⁴⁶

⁴⁵ State of Florida Office of the Governor, Executive Order 10-99 (Emergency Management – Deepwater Horizon).

⁴⁶ Florida Department of Health, 2011.

4 Gulf-Wide Disaster Relief Fund

While the existing system for addressing claims for response costs and various damages (e.g., economic losses, health impacts, and governmental claims for lost taxes and revenues) works well for small- and medium-sized spills, the scope and magnitude of activities following large spills demonstrably strains its capacity. The liability limits and funding totals to cover oil spill related response costs and damage claims under the OPA were established more than 15 years ago and did not anticipate the level of support required to address events such as the DWH incident.

Additionally, the unprecedented amount of involvement and financial support from BP following the DWH event could provide government at all levels with a false sense of security that these sources of funding will be present if another SONS occurs. While BP and other RPs were able to provide a wide range of financial assistance following DWH, a future RP might not have the resources to do the same. Smaller companies or international entities might not be able or willing to pay billions of dollars to compensate responders and claimants. Therefore, it is imperative to review and assess the financial implications of future SONS involving an RP that elects to strictly follow the limits of its liability and obligations under OPA, declares bankruptcy, or avoids liability under U.S. law altogether because it is a foreign entity.

The Commission seeks to preempt these and other liability issues by evaluating the merits of establishing a federal Gulfwide disaster relief fund to assist Gulf states during SONS. A model framework for such a fund is in the RESTORE Act.⁴⁷ The RESTORE Act, signed into law by President Obama on July 6, 2012, created the Gulf Coast Restoration Trust Fund (RTF) in the U.S. Department of the Treasury.⁴⁸ The RTF will receive 80 percent of the civil and administrative penalties paid to the U.S. under the CWA⁴⁹ by the parties responsible for the DWH oil spill. These funds will be allotted to all Gulf states and organizations but can only be used for projects that restore the environment or economy of the Gulf Coast. The remaining 20 percent of the CWA penalties is retained in the Oil Spill Liability Trust Fund to support federal resource agencies.⁵⁰

Under the RESTORE Act, the largest portion of the RTF (35 percent) will be distributed directly to the Gulf Coast states in equal shares (7 percent each) for ecological and economic restoration and recovery projects. For Florida, the act further stipulates how the 7 percent annually allocated funds will be used. Florida's allocations stipulate that 25 percent of the state

⁴⁷ Passed as part of the surface transportation and federal-aid highways act, the Moving Ahead for Progress in the 21st Century Act, or "MAP-21." Public Law 112-141; HR 4348.

⁴⁸ M. Herzog and J. Austin, *Detailed Analysis of the RESTORE Act* (Environmental Law Institute, July 13, 2012). Available at: <http://eli-ocean.org/gulf/wp-content/uploads/2012/07/RESTORE-Act-Analysis.pdf>.

⁴⁹ Also known as the Federal Water Pollution Control Act (FWPCA, 33 U.S.C. 1321).

⁵⁰ The Ocean Conservancy, *Distribution of Clean Water Act penalties to Gulf recovery per the RESTORE Act*, Florida Association of Counties, July 2012. Available at: [http://www.fl-counties.com/docs/pdfs/ocean-conservancy-restore_act_flowchart-\(07-05-12\).pdf?sfvrsn=0](http://www.fl-counties.com/docs/pdfs/ocean-conservancy-restore_act_flowchart-(07-05-12).pdf?sfvrsn=0)

funds go to unaffected (or non-disproportionally affected) counties, and the majority of these funds (75 percent) go to the eight disproportionately affected Florida counties.⁵¹ As a condition of funding, each state must develop a science-based, multiyear implementation plan describing how selected projects meet RESTORE Act's stated funding purposes.

The RESTORE Act also created a Gulf Coast Ecosystem Restoration Council (Council), which will receive 30 percent of the RTF. The Council's funds will go toward developing and implementing a science-based comprehensive plan. Unlike state implementation plans, the Council's comprehensive plan may not include economic development projects—only projects to restore and protect natural resources.⁵²

An additional 30 percent of the funds in the RTF will be allocated to states using an intricate formula-based calculation to determine the impacts of the DWH event on each state. These funds will be used to develop and implement state implementation plans. Another 2.5 percent of the money will go to the Gulf Coast Ecosystem Restoration Science, Observation, Monitoring and Technology Program. This program will primarily fund long-term, non-duplicative projects that address anticipated data collection and monitoring needs.

The Gulf States will receive an additional 2.5 percent of the RTF to award competitive grants for establishing Centers of Excellence in nongovernmental organizations, consortia, or universities.⁵³ Centers of Excellence must demonstrate broad expertise in at least one of five listed areas, including coastal sustainability, coastal resources, offshore energy development, sustainable economic development, and monitoring and mapping. Figure 6 shows how the funds from the RTF will be allocated among affected states and through scientific research grants.

⁵¹ Megan Herzog & Jay Austin, *Detailed Analysis of the RESTORE Act*. Environmental Law Institute (ELI), July 13, 2012. Available at: <http://eli-ocean.org/gulf/wp-content/uploads/2012/07/RESTORE-Act-Analysis.pdf>

⁵² Ibid.

⁵³ Megan Herzog & Jay Austin, *Detailed Analysis of the RESTORE Act*. Environmental Law Institute (ELI), July 13, 2012. Available at: <http://eli-ocean.org/gulf/wp-content/uploads/2012/07/RESTORE-Act-Analysis.pdf>

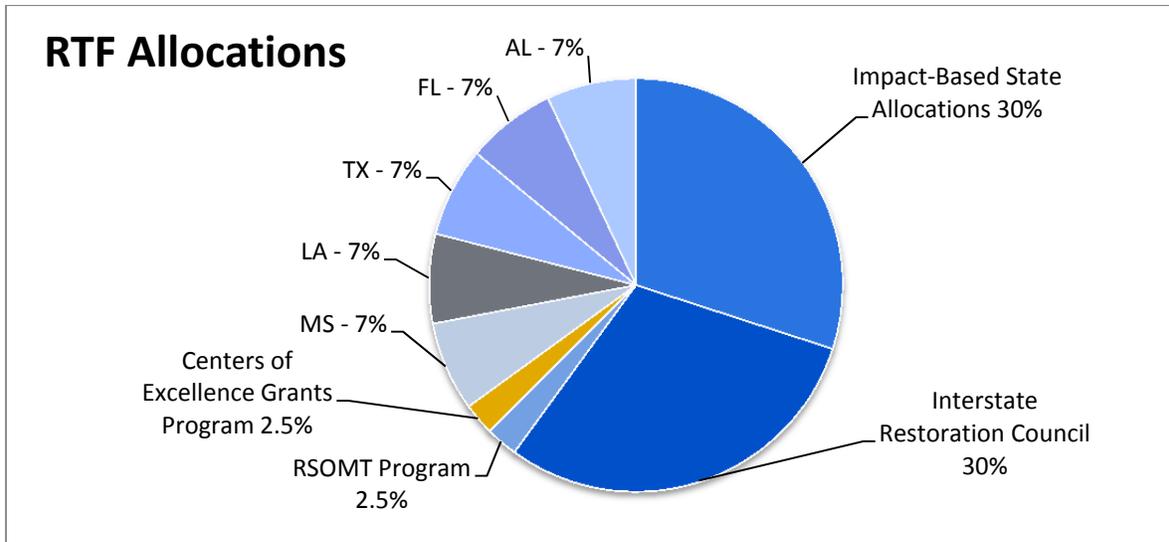


Figure 6. The RESTORE Act’s RTF allocations.

The RESTORE Act recognizes the need to restore damages incurred from the DWH oil spill and establishes a mechanism for long-term recovery of the affected ecosystems in the five Gulf Coast states affected by the spill. While the RESTORE Act terminates once all the funding resulting from DWH has been allocated, a federal Gulfwide disaster relief fund—as recommended by the Commission—could be established as a revolving fund, or at least a framework for addressing future SONS costs, within the USCG’s National Pollution Funds Center.

Recommendations:

Use the RESTORE Act as a model for a permanent ecological and economic restoration framework under OPA, and use allocations from the Restoration Trust Fund to support oil spill planning and preparedness and early response activities undertaken by local government.

4.1 Rationale for Recommendations

1. Use the RESTORE Act as a model for establishing a permanent ecological and economic restoration program under OPA, to increase predictability and manage expectations for handling restoration activities after future SONS. Using CWA and other fines and penalties related to spills to support federal, state, and local projects and entities in a manner roughly proportional to actual oil spill impacts should be considered as a permanent addition to OPA. Allowing the various entities to exercise independence

and discretion in how the funds are allocated internally helps to ensure flexibility and promotes both effectiveness and efficiency.

2. State and local emergency management responsibilities should be amended to require active participation by Florida counties and elected officials in USCG ACP development and biennial drills and exercises, with financial support from a new Florida Oil Spill Response Fund. This fund would be capitalized through state RESTORE Act funds, proceeds from the Florida lawsuit to recover taxes, revenues lost because of the DWH incident, or other sources.
3. Initial state and local responses to oil spills threatening Florida's coast line (e.g., boom acquisition and placement, assembling and training cleanup personnel) should be improved through a new Florida Oil Spill Response Fund. This fund would be capitalized through state RESTORE Act funds, proceeds from the Florida lawsuit to recover taxes and revenues lost because of the DWH incident, or other sources, with the understanding that reimbursements for expenditures made by the fund will be sought from the RP later, during the damage claims resolution process. Local governments have resources to conduct initial response activities—such as reviewing area and other contingency plans, communicating and coordinating with first responders, and activating their emergency operations centers—but lack resources to conduct mobilization and deployment operations in preparation for oil movement toward their coastlines. This renewed focus on preparedness would better equip Florida's counties to combat another SONS that threatens their coastlines.

5 Evaluation of the Need for a Unified and Uniform Advocacy Process for Damage Claims

The cost of responding to or cleaning up after an oil spill, and any economic harms incurred as a result of the spill, are undertaken by a variety of private and public sector entities and compensated by the RP or government fund through a claims-filing process. The DWH incident prompted the creation of one of the largest claim processing facilities in U.S. history and the most significant response from an RP under OPA. The unprecedented magnitude and effects of the oil spill caused significant impacts on the region's environmental resources and economic stability, resulting in natural and economic damages that are extremely difficult to identify and quantify. This section illustrates how the difficulties experienced during the DWH claims adjudication process necessitate the development of a unified and uniform damage claims process for both government and private claims.

5.1 Natural Resource Damages

Natural resource damages are recoverable at sites where injuries to natural resources have occurred as a result of a release of oil or as a result of natural resource injury related to implementing a response action. These claims are unique in that they are assessed and compensated differently than individual, business, and governmental damage claims. When a spill occurs, a group of appointed Natural Resource Trustees (Trustees) conducts a natural resource damage assessment (NRDA) to determine the extent of the damage caused by a spill.⁵⁴ The NRDA process allows the Trustees to determine the levels of harm and the appropriate remedies for damaged coastal and inland areas. OPA directs Trustees to undertake two main actions: (1) return injured natural resources to their baseline conditions (the condition that existed before the spill), and (2) recover compensation for interim losses.⁵⁵

Two primary sources can fund recovery or restoration for natural resource damages; the RP and the OSLTF. An additional source of funding for the restoration of natural resources related to the DWH incident is the RESTORE Act.⁵⁶ As described above, the RESTORE Act uses 80 percent of federal CWA penalty collections to establish the RTF and an innovative allocation scheme. The RTF supports both environmental and economic recovery along the Gulf Coast.

In April 2011, BP entered into an agreement to provide \$1 billion toward early restoration projects in the Gulf of Mexico, the largest agreement of its kind to date. These early restoration projects will begin to address effects on natural resources caused by the DWH incident. Early restoration projects can begin before the entire NRDA is completed, temporarily circumventing

⁵⁴ Alexander, Kristina, *The 2010 Oil Spill: Natural Resource Damage Assessment Under the Oil Pollution Act*. Congressional Research Service, September 8, 2010.

⁵⁵ Ibid.

⁵⁶ Passed as part of the surface transportation and federal-aid highways act, the Moving Ahead for Progress in the 21st Century Act, or "MAP-21." Public Law 112-141; HR 4348.

the complex and lengthy damage assessment process.⁵⁷ These projects—which are now being developed by states, with input from local governments and other entities—strive to return natural resources to their baseline ecological state more quickly, reduce the amount of time a resource cannot be used by the public, and reduce the amount BP would need to pay in damages in the long term.⁵⁸

Recommendation:

The voluntary program for *early restoration* instituted by BP after the DWH incident represents a good model for proceeding with natural resource damage mitigation, and should be incorporated formally as an option in OPA for large spills.

5.2 Economic Damages

While the direct environmental impacts of an oil spill might be most apparent to the general public, spills also create a burden on those who use coastal areas and the ocean for their economic livelihood. Direct economic losses can occur as a result of the closure of fishing grounds, effects on port operations, decreased tax revenue, or the loss of tourist-related business, to name a few.

OPA has established a claims process for economic damages.⁵⁹ In general, claims for damages must be presented first to the RP. If the RP denies all liability, or if the claim is not settled (i.e., if compensation is not paid) within 90 days after it was presented, the claimant can elect to initiate an action in court or present the claim directly to the OSLTF.⁶⁰ In the case of the DWH oil spill, BP established the Gulf Coast Claims Facility (GCCF) for individuals, businesses, and all levels of government to seek compensation for economic damages caused by the DWH oil spill. The GCCF set in motion a process by which claimants could file petitions for compensation from a \$20 billion trust fund BP had established in exchange for waiving the right to sue the company. The GCCF accepted individual, business, and government claims.⁶¹

5.3 Government Claims

Representatives from federal, state, or local government agencies that lost net taxes, royalties, rents, fees, or net profit shares as a result of the oil spill were eligible to submit to the GCCF a claim for lost government revenue. Many Gulf Coast states have or plan to submit claims to BP for compensation of lost sales, gas, communication services, and tourism impact taxes. Florida recently announced its plan to file claims with BP for any state-imposed revenue source, regardless of whether that source is shared by statute with local governments.⁶² Generally, if the

⁵⁷ Edmiston, Lee, *DWH Natural Resource Damage Assessment*, Presentation to the Florida Commission on Oil Spill Response Coordination on October 29, 2012.

⁵⁸ *Ibid.*

RP denies a government claim, the federal, state, or local government agency has three years to submit its claim to the NPFC for compensation.⁶³

A complication that arose even before a claims facility had been created was the question of RP reimbursement for local response activities during the first few days and weeks of the DWH oil spill. Because of the protocols of the NCP, counties were advised not to use their own resources for response and recovery activities without prior approval of the Unified Command, which was outside Florida. This created situations where counties had oil affecting their beaches but were advised not to take measures to remove it, even when local resources were readily available. If local governments opted to deploy emergency protective measures, they were advised that, unless approved by the Unified Command, such measures might not be reimbursed by the RP. These complications represent critical flaws in both oil spill preparedness and response protocol and regulations.

5.4 Health Claims

The crude oil released during the DWH incident carried with it significant public health risks. Crude oil has many highly toxic chemical ingredients that can damage every system in the body. Crude oil contains benzene and other volatile organic compounds such as ethylbenzene, toluene, xylene and naphthalene, polycyclic aromatic hydrocarbons, diesel fumes and heavy metals, all of which can harm human health. A 2007 Centers for Disease Control review of benzene toxicity concluded that long-term, low-level, oral and inhalation exposures to benzene have also caused peripheral nervous system abnormalities; distal neuropathy; difficulty sleeping; and memory loss.⁶⁴

Given the seriousness of these health impacts, a class action suit was filed in federal court in New Orleans on April 18, 2012, on behalf of Gulf Coast residents and cleanup crews made ill by the DWH oil spill. The plaintiffs are individuals who were injured as a result of exposure to oil or oil-dispersing chemicals or decontaminants by virtue of their employment as workers cleaning the spill or because of their residence in certain coastal areas near the waters affected by the spill. Specifically, the Medical Benefits Class Action Settlement offers monetary benefits to individuals who were any of the following:

1. Were cleanup workers between April 20, 2010, and April 16, 2012

⁵⁹ 33 U.S.C. 2713

⁶⁰ 33 U.S.C. 2713(c) and 33 U.S.C. 2713(h)(1)

⁶¹ Ramseur, Jonathan L., *Liability and Compensation Issues Raised by the 2010 Gulf Oil Spill*, Congressional Research Service, March 11, 2011.

⁶² Florida Department of Revenue, *Information for Local Governments Seeking Reimbursement for Damages Resulting from the Deepwater Horizon Oil Spill in the Gulf of Mexico*, October 28, 2012. Available at: <http://dor.myflorida.com/dor/tips/pdf/tip11adm-04.pdf>

⁶³ NPFC website, *Claims for Lost Government Revenue*. Available at: http://www.uscg.mil/npfc/claims/damages_lost_government_revenue.asp

⁶⁴ All information in this section was taken from: U.S. Department of Health and Human Services, *Toxicological Profile for Benzene*, August, 2007. Available at: <http://www.atsdr.cdc.gov/toxprofiles/tp3.pdf>

2. Resided in Zone A (specified beachfront areas) for some time on each of at least 60 days between April 20, 2010, and September 30, 2010 (Zone A Resident), and have had a specified physical condition before September 30, 2010
3. Resided in Zone B (specified wetlands) for some time on each of at least 60 days between April 20, 2010, and December 31, 2010 (Zone B Resident)⁶⁵

The medical settlement creates a Gulf Region Health Outreach Program, aimed at strengthening healthcare capacity and increasing health literacy in Gulf Coast areas of Louisiana, Mississippi, Alabama, and the Florida Panhandle. This would be funded by BP's newly created \$105 million grant program. The agreement states that the program will be uncapped, with payments ranging from \$1,300 to \$60,700 for cleanup workers and from \$900 to \$36,950 for Zone A and B residents.⁶⁶

According to the settlement website, the Medical Benefits Class Action Settlement is still not final until the court's fairness hearing on November 8, 2012. When this report was being written, the judge's final ruling had not yet been released. At the fairness hearing, the court considered whether the proposed medical benefits settlement is fair, reasonable, and adequate. After the court grants final approval to the medical benefits settlement and after any appeals are resolved, benefits will be provided to qualifying medical class members who submit valid proof of claim forms to the online claims center.

5.5 Effectiveness of the GCCF

The GCCF has drawn criticisms on all fronts.⁶⁷ The general public is suspicious of BP's benevolence, legal scholars decry the truncation of the judicial process and its guarantees of careful fact-finding, transparency, and accountability,⁶⁸ and claimants find the average claims payout (roughly \$10,000) to be grossly insufficient.

From April 2010 through December 30, 2011, the GCCF denied approximately 60 percent of the claimants who filed claims. According to a study prepared by BDO Consulting for the Department of Justice, a significant portion of the claims rejected during Phase I were denied because the GCCF determined that the claimants' business types were not compensable or the claimants failed to submit the required financial documentation.⁶⁹ The same study found that the

⁶⁵ Deepwater Horizon Medical Settlement Web Site, *Welcome to the DWH Medical Web Site*. Available at: <https://deepwaterhorizonmedicalsettlement.com/en-us/home.aspx>

⁶⁶ Schleifstein, Mark, *BP oil spill medical claims settlement covers workers, some coastal residents*, The Times-Picayune. April 18, 2010. Available at: http://www.nola.com/news/gulf-oil-spill/index.ssf/2012/04/bp_spill_medical_claims_settle.html

⁶⁷ Denise M. Pilié, *Satisfying Deepwater Horizon Claims: Will Ken Feinberg's Process Work?*, 58 Louisiana Bar Journal 176, Oct/Nov. 2010.

⁶⁸ David F. Partlett & Russell Weaver, *BP Oil Spill: Compensation, Agency Costs, and Restitution*, 68 WASH. & LEE 1341, 1343 (2001).

⁶⁹ BDO Consulting, *Independent Evaluation of the Gulf Coast Claims Facility – Report of Findings & Observations*. Report to the U.S. Department of Justice, June 5, 2012. Page 46. Available at: <http://www.justice.gov/iso/opa/resources/66520126611210351178.pdf>

majority of claims denied during Phase II were because claimants did not provide documentation sufficient enough to establish that their financial losses occurred as a result of the DHW event.⁶⁹ A list of the GCCF's most common selection and use of financial documents mistakes are detailed in the box below.

During the GCCF's tenure, the news media covered many claimant complaints, including assertions that similar claimants received different compensation amounts. The BDO Consulting report for the Department of Justice covered this in its analysis and reports that, because each claimant provided unique information, the extent to which two or more claimants were *similarly situated* was a matter of degree.⁷⁰ The variation in information regarding a claimant's earnings, circumstances, and documentation was enough to dictate different compensation outcomes.

Another common complaint was that the GCCF did not give appropriate consideration or attention to the types of documentation presented by claimants. Given the volume of claims, their wide range of documentation types, and the use of human claims reviewers most likely led to some errors in documentation assessment on the GCCF's part.⁷¹

Furthermore, many claimants complained about the lack of, or dissatisfaction with, communications they received from the GCCF. These complaints relate to various communication pathways the GCCF used, including public notices, website information, and case-specific letters. With regard to general public outreach, there is one instance in particular that the GCCF admitted that it was unable to follow through with its message. This was an early remark during the design phase of the claims process regarding 48-hour turnaround time for individual claims and 7-day turnaround time for business claims,

GCCF's Selection and Use Mistakes for Financial Documents

- Using an annual financial document when complete (or substantially complete) periodic payroll records were available
- Using a year-to-date paycheck or other full-year amounts when complete (or substantially complete) periodic payroll records were available
- Using incomplete periodic payroll records when an annual financial document was available
- Using incorrect payroll period start or end dates when entering a claimant's paycheck information into the review database, resulting in payroll records incorrectly appearing incomplete
- Using incorrect end dates of employment (year-end) instead of the actual employment termination dates when entering a claimant's annual financial document information into the review database, resulting in payroll records incorrectly appearing incomplete

*– BDO Consulting, Independent
Evaluation of the Gulf Coast Claims
Facility: Report of Findings &
Observations. June 5, 2012.*

⁷⁰ U.S. Department of Justice, *Deepwater Horizon (BP) Oil-Spill Fraud Home*. Page 72. Accessed at: <http://www.justice.gov/criminal/oilspill/>

⁷¹ *Ibid.*

which were both unrealistic.⁷² A hindrance to the claims adjudication process is the number of fraudulent claims submitted to the GCCF. The U.S. Attorney's Office has and continues to identify and pursue fraudulent claims, and the Department of Justice has prosecuted individuals and businesses for fraudulent claims, charity fraud, identity theft, insurance fraud, and procurement and government-benefit fraud.⁷³

5.6 Deepwater Horizon Claims Center

In August 2012, various lawsuits against BP and other RPs were consolidated before one court in litigation called *In re Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico* on April 20, 2010.⁷⁴ Rather than appear in court, the parties came to a settlement agreement establishing a shift from the GCCF to a new court-supervised claim process. The GCCF's successor was the Deepwater Horizon Claims Center, a court-supervised claims process. The Deepwater Horizon Claims Center is run by a court-appointed administrator, which opened 18 intake centers across the Gulf Coast to accept claims of economic and business losses.⁷⁵ On June 4, 2012, the GCCF was officially disbanded. During its one-and-a-half-year tenure, the GCCF processed more than one million claims and paid more than \$6.2 billion to more than 220,000 individual and business claimants.⁷⁶

Damages covered under the new claims facility are the following:

- Seafood Compensation Program
- Individual Economic Loss (IEL)
- Failed Business Economic Loss
- Business Economic Loss (BEL)
- Start-Up Business Economic Loss
- Individual Period Vendor Or Festival Vendor Economic Loss
- Coastal Real Property Damage
- Wetlands Real Property Damage
- Vessels of Opportunity Charter Payment
- Subsistence Loss
- Real Property Damage
- Vessel Physical Damage

From its opening on June 4, 2012, through October 5, 2012, the Deepwater Horizon Claims Center has received 76,257 registration forms and 74,762 submitted claim forms.⁷⁷ Table 1 displays the state-by-state breakdown of completed registration and claim forms during this

⁷² Most information in this section was taken from: BDO Consulting, *Independent Evaluation of the Gulf Coast Claims Facility – Report of Findings & Observations*. Report to the U.S. Department of Justice, June 5, 2012. Page 46. Available at: <http://www.justice.gov/iso/opa/resources/66520126611210351178.pdf>

⁷³ U.S. Department of Justice, *Deepwater Horizon (BP) Oil-Spill Fraud Home*. Accessed at: <http://www.justice.gov/criminal/oilspill/>

⁷⁴ Multi-district Litigation (MDL) 2179, *Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico*, on April 20, 2010.

⁷⁵ Hammer, David, *Gulf oil spill claims process is now governed by negotiated settlement*, Times Picayune (New Orleans), June 2, 2012. Available at: http://www.nola.com/news/gulf-oil-spill/index.ssf/2012/06/gulf_oil_spill_claims_process_1.html

⁷⁶ BDO Consulting, *Independent Evaluation of the Gulf Coast Claims Facility – Report of Findings & Observations*. Report to the U.S. Department of Justice, June 5, 2012, page 59. Available at: <http://www.justice.gov/iso/opa/resources/66520126611210351178.pdf>

⁷⁷ Judge Barbier, *Report by the Claims Administrator of the Deepwater Horizon Economic and Property Damage Settlement Agreement on the Status of Claims Review, Status Report 3*. October 5, 2012. Available at: http://www.deepwaterhorizoneconomicsettlement.com/docs/ClaimsAdminReport_3.pdf

period. Of the total claim forms submitted, 33 percent of claimants filed Individual Economic Loss Claims (IEL), 22 percent filed Business Economic Loss Claims (BEL), 12 percent filed Coastal Real Property Claims, and 10 percent filed in the Seafood Program. The other claim types represented the other 13 percent of claims submitted.

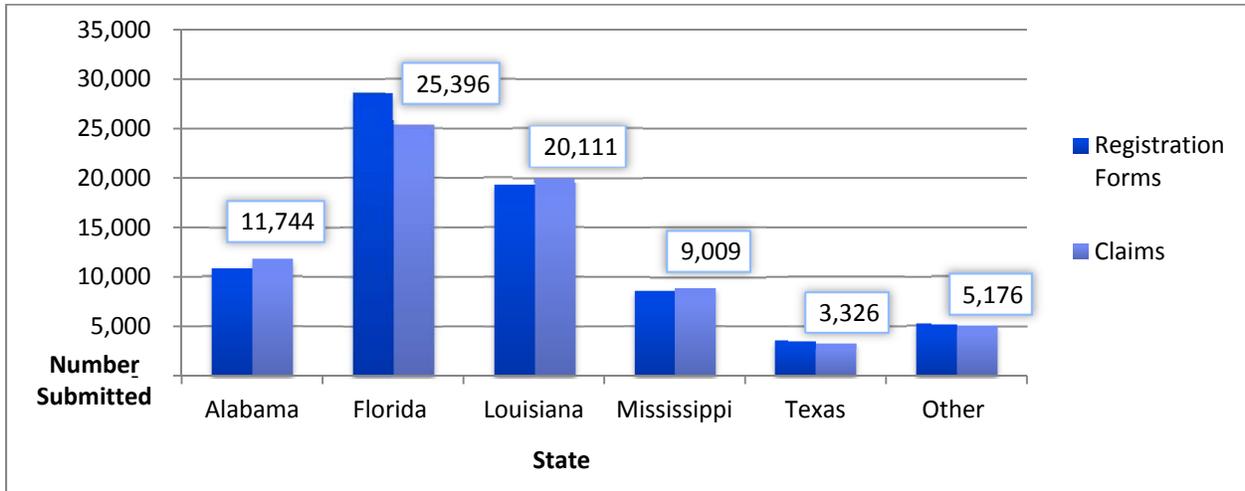


Table 1. Deepwater Horizon Claims Center filings by state of residence, 06/04/12–10/05/12.

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Recommendations:

The lessons learned through the adjudication of DWH claims in the GCCF and the Deepwater Horizon Claims Center should be used to establish a new claims facility framework under OPA. Such a framework would consist of a claims facility overseen by a board composed of three entities, represented in equal proportions: federal government, affected state governments, and the RP. In addition, each affected state would convene an oversight board to monitor the activity of the claims facility. The state oversight boards would also manage their own internal appeals panels, which would review claims rejected by the claims facility to determine if further action was warranted. The overall claims process would incorporate the following recommendations:

- a. Incentives—or disincentives—should be developed to expedite economic damage claims processing.
- b. When calculating damage compensation, it is recommended that future claims facilities institute compensation protocols for different industries.
- c. Future claims facilities should dedicate time and resources up front to developing an integrated communications strategy.
- d. Future claims facilities should use an independent team devoted to identifying errors and recommending procedural improvements.
- e. Future claims facilities should consider a process by which, in appropriate circumstances, previously processed claims will be reevaluated periodically in the wake of changes to methodologies or a determination that the claimant's employer was eligible.
- f. Future claims facilities should limit or end the production of statements that set unachievable expectations regarding the time needed to process claims.
- g. Claims facilities should provide claimants greater access to facility staff representatives at site offices.
- h. Future claims facilities should provide claimant-specific communications in the language of the claimant's choice.
- i. Future claims facilities should arrange for a process by which claimants would be able to receive free legal assistance.

5.7 Detailed Recommendations and Rationale

The voluntary program for *early restoration* instituted by BP after the DWH incident represents a good model for proceeding with natural resource damage mitigation and should be incorporated formally as an option in OPA for large spills. It is recommended that RP funding for early restoration be incentivized in some manner (e.g., by providing slightly higher ecological restoration credits for early restoration projects) but that the funds be distributed to the states (i.e., rather than to a multistate consortium or to a program controlled by the RP) to use for restoration projects at their discretion—provided that a consistent method of calculating and applying ecological benefits is achieved. However, because of project approval delays caused

by RP confidentiality concerns and multistate project approval processes, any permanent early restoration option under federal or state rules should remove the RP from decisions regarding project approval, and delegate that authority to individual state natural resource managers—provided that the calculation of ecological benefits are standardized and consistent across states, and across project types.

The lessons learned through the adjudication of DWH claims in the GCCF and the Deepwater Horizon Claims Center should be used to establish a new claims facility framework under OPA. The experience of the claims facilities operating after the DWH incident indicate that a more balanced process, involving federal and state agencies and the RP, might be more effective in investigating and resolving claims. In addition, the presence of oversight boards and appeals panels in each affected state would provide a venue for ensuring that the claims facility is accessible and operates equitably and transparently. The overall claims process should include the following operational components to address shortcomings identified during the DWH claims experience:

- a. It is recommended that incentives—or disincentives—be developed to expedite economic damage claims processing. Incentives could include a credit program that might be applied to any eventual fines or penalties; disincentives could include doubling the interest applied to legitimate economic damage claims that are delayed. In addition, increased vigilance and higher penalties are recommended for those filing false or fraudulent economic damage claims.
- b. When calculating damage compensation, it is recommended that future claims facilities institute different compensation protocols for different industries. For example, the fishing industry suffers for years because of closed fisheries, but hotels might see adverse effects for only a season or two. Compensation protocols should be sensitive to industry characteristics and negative impacts in each sector of the region affected.
- c. Many misconceptions and unattainable facts were circulated in the news media regarding the GCCF. Future claims facilities should dedicate time and resources up front to developing an integrated communications strategy incorporating the lessons learned by the GCCF's experiences.
- d. As resources and circumstances permit, future claims facilities should include a function, independent of claims processing, dedicated to identifying potential errors in processing, recommending claims processing improvements, and providing input to the facility regarding inquiries and criticisms. This function would need to operate such that it does not interfere with the primary goal of compensating adversely affected claimants as expeditiously as possible.
- e. Future claims facilities should consider a process by which, in appropriate circumstances, previously processed claims will be reevaluated periodically after

changes to methodologies or a determination that the claimant's employer was eligible. With a few exceptions, the GCCF did not retroactively review previously processed claims in light of subsequent changes to its methodologies or the claimant's employer's status. This approach might have created instances in which the outcome of a claim would be dependent on the timing of its submission and could have resulted in different outcomes for similar claimants.

- f. The high expectations created by the GCCF's early statements, the early phase's protocol language concerning claims processing times, and the fact that the processing of certain claims was delayed, likely led to some of the concerns expressed by claimants and the media regarding the timely processing of claims. Therefore, future claims facilities should limit or end the production of statements that set unachievable expectations regarding the time needed to process claims.
- g. Future claims facilities should attempt to staff site offices with and provide greater access to GCCF representatives from the start of the process. This would allow staff to provide more detailed and specific information for deficient or denied claims and immediately advise disgruntled claimants when their claims had been referred to law enforcement as being potentially fraudulent.
- h. Future facilities should provide, from the outset, claimant-specific communications in the language of the claimant's choice, without the additional step of the claimant requesting a translation. In the GCCF, claimants were initially required to take the additional step of requesting a translation to receive certain types of communications in their preferred language; eventually, the GCCF provided translations in its initial communications with claimants.
- i. Future facilities should arrange for a process by which claimants would be able to receive free legal assistance. The GCCF, recognizing the necessity of this type of assistance for claimants, entered into an agreement with the Mississippi Center for Justice (the Center), a nonprofit, public interest law firm. The Center oversaw a consortium of legal services providers in the Gulf region that rendered legal assistance to all claimants who sought it, regardless of income level. The agreement states that it is not imposing "any limitations on the professional judgment of legal services providers, including the ability to advise clients that they should reject a GCCF settlement offer and instead seek compensation from the NPFC or other oil spill fund, commence litigation, or take any other actions."⁷⁸

⁷⁸ Most information in this section was derived from: BDO Consulting, *Independent Evaluation of the Gulf Coast Claims Facility – Report of Findings & Observations*. Report to the U.S. Department of Justice, June 5, 2012. Available at: <http://www.justice.gov/iso/opa/resources/66520126611210351178.pdf>

6 Interstate Coordination Agreements

Each state's primary response mechanism to an oil spill incident is activated and implemented through their state emergency management and environmental agencies. These agencies generally coordinate preparedness planning and response/recovery activities during emergencies and disasters such as the Deepwater Horizon (DWH) oil spill of 2010. There are state laws, policies, and other mechanisms that also come into play during oil spill incidents and those are described elsewhere in this report. This section briefly explores existing interstate coordination arrangements and their potential for use in oil spill preparedness and response.

The Emergency Management Assistance Compact (EMAC) is an established mutual aid agreement between states and territories of the United States created by former Florida Governor Lawton Chiles following Hurricane Andrew in 1992. Interstate coordination agreements for state environmental agencies are not as common, but may be beneficial. EMAC enables states to share resources during natural and man-made disasters, including terrorism incidents, and is intended to complement the national disaster response system. EMAC is used alongside federal assistance or when federal assistance is not warranted. EMAC facilitates the maximum use of all available resources within member states' inventories.⁷⁹ Currently, all fifty states, the District of Columbia, Puerto Rico, Guam, and the U.S. Virgin Islands are EMAC members.

EMAC resources may include any capabilities—no matter how large or small, how typical or specialized—that one member state possesses that can be shared with another member state. With such resources as emergency operations center support, disaster recovery, security, fire-fighting, law enforcement, medical personnel and resources, public utilities management, and community outreach, the capabilities that states can share with one another are nearly limitless.⁸⁰

EMAC mutual aid agreements address contractual items such as responsibilities, compensation, reimbursement, limitations, licenses and permits, liability, and additional provisions in advance of the need for assistance.

Recommendation:

Develop an oil spill mutual aid framework that incorporates emergency and environmental agencies and resources.

⁷⁹ www.emacweb.org

⁸⁰ NRT Assessment Report, Feedback from the Deepwater Horizon Oil Spill, May 31, 2012.

6.1 Detailed Recommendations and Rationale

Members of the Commission recognize the benefits of multi-state mutual aid agreements, which are typically activated in the event of a hurricane or other natural disaster. The capacity of such agreements to accommodate oil spill preparedness and response activities is considerable— all states have similar emergency management, environmental, and natural resource agency components, and agency officials usually communicate with each other via professional associations or conferences. Building on this framework for future oil spill response would aid in the spill contingency planning process, and help accelerate response actions in the event of another major spill in the Gulf of Mexico region.

Recommendation:

Establish a common mechanism of access to multi-state resources through the EMAC regardless if an incident is through the NCP or NRF. Explore integrating state environmental agency resources into the arrangement, and develop guidance for national and regional response teams, joint meeting and training materials, and integrated drills and exercises.

Establishing a common and exercised mechanism of access to state-based resources through an expanded EMAC framework makes use of an existing structure that can accommodate oil spill response. The focus will be to improve the nationwide nature of the government-wide response to DWH while strengthening the NRS outside the impacted areas. The EMAC is a proven resource for cross-state coordination and sharing of resources, however, it proved to not be as effective during the DWH as it has been in NRF related emergency responses.

Coordination of funding and support mechanisms could be improved between Stafford Act (NRF) and the Federal Water Pollution Control Act (FWPCA)/OPA (NCP) response, for coverage of state-to-federal and federal-to-federal mutual aid under the EMAC.⁸¹ States wishing to donate resources during DWH became frustrated when they could not successfully utilize the EMAC. The EMAC has established conditions at the national and state levels making it advantageous over other mechanisms, such as commercial contracts or Pollution Response Funding Authorizations (PRFAs).⁸² While the complete reasons for this frustration are not fully understood, the likely reasons were that the NCP does not support EMAC engagement like the Stafford Act (NRF) and the reimbursable nature and state-to-state mechanism when a RP and the FOSC were the primary payers in the DWH. The use of a common and exercised mechanism of access to unaffected state-based resources, perhaps using the state-based all-

⁸¹ NRT Assessment Report, Feedback from the Deepwater Horizon Oil Spill, May 31, 2012.

⁸² Ibid.

hazard EMAC system, would have improved the nationwide nature of the government-wide response, and strengthened the NRS outside the impacted areas.⁸³

The EMAC Advisory Group, established in 2006, was identified as a need in the after-action report from Hurricane Katrina. Prior to 2005, EMAC response was comprised of state emergency management and National Guard personnel. Following 2004, the potential of EMAC was realized, and EMAC is used today for all response and recovery personnel. National organizations have a venue through the EMAC Advisory Group to work in coordination with the EMAC Committee membership to continually improve EMAC throughout the nation. EMAC Advisory Group Mission is to facilitate the effective integration of multi-discipline emergency response and recovery assets for nationwide mutual aid through the Emergency Management Assistance Compact.⁸⁴

It seems that the ineffectiveness of the EMAC during the DWH can be attributed to the states not being as involved during a NCP response compared to a NRF response. The biggest differentiator between the two types of responses is that the federal government is in command and control of the response with a RP engaged during a NCP response versus a NRF response when the local counties take command and rely on the state and federal government to support. The NCP structure took away the full ability to utilize the EMAC to its fullest capabilities because the coordination was being done at the federal level with the RP.

There was excellent communication across the Gulf coast states through the EMAC and across all EMAC entities regarding identifying resources during DWH; however, the execution of providing the resources lacked compared to other incidents when interstate response support proved invaluable. Some of the EMAC coordinators for the affected states were unable to acquire the personnel and assets from the offering states because they were not given permission to do so. The states were accustomed to working under the parameters of the NRF process where the federal government would ensure reimbursement to the state, but the states were uncertain about how payment would work during this kind of emergency. Highly detailed and time consuming paperwork requirements involved with any EMAC procurement were also a barrier to using EMAC. When the Coast Guard staff was asked why they had not looked to the unaffected states for trained personnel and equipment for the response, some replied that they simply had not thought about the unaffected states having the ability to assist. Many responded that if personnel from unaffected states were a known and available resource, they would have taken steps to ask for their participation, but were unsure of the process necessary to allow for such participation. EMAC was eventually used by some of the Gulf states to a minor extent, and included the use of National Guard troops, where cost reimbursement is provided by the federal government.⁸⁵

⁸³ Ibid.

⁸⁴ www.emacweb.org

⁸⁵ ISPR BP Deepwater Horizon Oil Spill, January 2011

Creating the ACP and RCP responses at the local level with local buy-in and having contracts in place to implement the ACPs (as suggested in other sections of this report) will facilitate better use of the EMAC, because it will place the control back in the hands of those familiar with the EMAC process and resources and with existing EMAC agreements in place.

Part of this process should also include the NRT opening dialogue with state authorities and organizations (such as the National Emergency Managers Association (NEMA) which oversees the EMAC and Pacific States/British Columbia Task Force) to better define the best processes for the FOSC or the UC to mobilize resources from afar in support of a major NCP response, particularly to determine how the EMAC or other national mechanisms may be employed to better utilize all response resources for efficient and effective response.⁸⁶

DWH demonstrated that the expected level of coordination (e.g., information management and sharing at all levels—local, state and federal) and support for a SONS or large-scale oil or hazardous substance incident was underestimated. The NRT and RRT have responsibilities to both coordinate and provide support to the federal on-scene coordinator (FOSC). They were quickly overwhelmed trying to meet the coordination needs of newly connected groups across state lines and the needs of the FOSC, particularly for tasks associated with the spill but not directly related to spill control, including public health, behavioral health, human services, and housing needs. Decisions to integrate additional groups (e.g., Cabinet-level representatives) and contingencies to address the need for additional support (e.g., IASG) were made based on best available information at the time during an evolving series of events. Therefore, the same objectives and tasks were trying to be achieved, but by entities at different levels with varying responsibilities. An important aspect of this recommendation is that better coordination and sharing of resources during a SONS at the local level will decrease the need for support from the Federal level.

The *NRT Assessment Report, Feedback from the Deepwater Horizon Oil Spill* identified key considerations regarding coordination and support needed during the DWH that include the following items to be addressed in the suggested SONS guidance:

- The NRT has specific national level responsibilities as defined in the NCP. The NCP provides for one NRT, it does not differentiate between a standing or incident-specific NRT, and does not easily permit the integration of other stakeholders during a response.
- The NRT served more as a senior level policy coordinating committee rather than a support organization for the FOSC through the RRTs.
- The lack of a clearly defined relationship between the NIC and IASG with the NRT and RRTs resulted in entities with unclear missions during the event. The IASG included more than the NRT member agencies identified in the NCP and its workgroups

⁸⁶ NRT Assessment Report, Feedback from the Deepwater Horizon Oil Spill, May 31, 2012.

addressed some issues not traditionally considered under the oil spill response phase (i.e., funding of citizen behavioral health, medical or housing needs). The IASG operated under the direction of, and reported to, the NIC.

- In contrast to the national-level experience, at the regional level there was no IASG at Unified Area Command (UAC) or the RRT. The NCP does differentiate between the standing RRT and incident-specific RRT.^[3]

It is also recommended that the expanded EMAC conduct SONS exercises as Tier I exercises with all five Gulf coast states once every three years to build familiarity and experience with response procedures and develop a working culture of lessons learned. As part of the reporting mechanism related to the SONS exercise, the EMAC group could conduct meetings for elected officials and senior agency staff on an annual basis covering planning activities and the SONS response structure. This can be part of existing meetings or conferences that political leadership and senior-level NRT representatives currently attend.

7 Complete List of Recommendations

1. Florida law prohibits offshore oil drilling in state waters, and that prohibition should be maintained to ensure protection of recreational beaches, sensitive coastal environments, and national defense assets.
2. Recent and appropriate improvements in federal oversight and monitoring of offshore drilling and oil production by the Bureau of Ocean Energy Management and the Bureau of Safety and Environmental Enforcement have precluded the need for increased oversight by Florida.
3. The Florida Department of Environmental Protection, Division of Emergency Management, and other state agencies monitor oil drilling and well production activities via the online XXXXXXXXXXXXX and regular communication with USCG, an approach that is reportedly working well and should be continued. In addition, Florida has oil spill communication mechanisms in place to alert state and local officials if a spill occurs—these mechanisms are satisfactory and should be supported and promoted for use by all state and local response entities.
4. USCG Sectors 7 and 8 should be advised to (1) achieve general consistency in their Spills of National Significance (SONS) policies, procedures, and protocols regarding Florida oil spill contingency plans, preparedness activities (e.g., drills and exercises), incident command system deployment and operation, communication methods, and requirements for data collection, activity reporting, and response activity reimbursement and other forms; and (2) convene triennial conferences on SONS planning, preparedness, and response for the Gulf Coast and Caribbean regions.
5. State and local emergency management responsibilities should be amended to require active participation by Florida counties and elected officials in USCG ACP development and biennial drills and exercises, with financial support from a new Florida Oil Spill Response Fund, capitalized through state RESTORE Act funds, proceeds from the Florida lawsuit to recover taxes and revenues lost because of the DWH incident, or other sources.
6. Regional and Area Contingency Plans should be amended to ensure better organization, deployment, and management protocols for the VOO program and relevant Oil Spill Response Organizations, emphasizing the importance of air surveillance and monitoring, a *locals first* preference in contracting, and the value of local knowledge and experience in assessing tidal impacts and flow patterns in predicting the movement of spilled oil.
7. Initial state and local responses to oil spills threatening Florida's coast line (e.g., boom acquisition and placement, assembling and training cleanup personnel) should be improved through better area contingency planning and funding from a new Florida Oil

Spill Response Fund, capitalized through state RESTORE Act funds, proceeds from the Florida lawsuit to recover taxes and revenues lost because of the DWH incident, or other sources, with the understanding that reimbursements for expenditures made by the fund will be sought from the responsible party later, during the damage claims resolution process.

8. USCG oil spill contingency plans, state spill plans, and plans sponsored by other entities should be amended to ensure support for—and participation in—coastal mapping and oil spill movement, monitoring, modeling, and spatial analysis coordinated by the Florida Fish and Wildlife Research Institute’s Center for Spatial Analysis (e.g., Geospatial Assessment Tool for Operations and Response) and the federal Environmental Response Management Application.
9. USCG RCPs and ACPs and any incident or unified commands established to respond to SONS in Florida should be amended to include (1) placing a USCG representative and RP representative in each Emergency Operations Center when oil or other substances appear within 9 miles of the Florida coast, (2) consolidating public health and scientific research/information services at the incident command level to reduce redundancy and overlap, and (3) incorporating local branches under the ICS if a SONS occurs to ensure appropriate local involvement and integration into spill response and cleanup actions.
10. The Oil Pollution Act of 1990 and its implementing regulations should be amended to (1) reduce the role of any responsible party during SONS in approving or authorizing oil spill response actions undertaken by state or local governments to protect their resources and restore damaged areas; (2) increase the Oil Spill Financial Liability requirements by a factor of three; (3) increase the environmental liability limit from the current \$75 million to \$500 million; and (4) increase capitalization of the Oil Spill Liability Trust Fund to a minimum of \$5 billion, with an Emergency Fund total of a minimum of \$200 million, to ensure support for oil spill response and cleanup when the RP declares bankruptcy or is not subject to U.S. law. Financial liability limits and fund totals should be linked to the rate of inflation.
11. Amend Area Contingency Plan (ACP) documents to allow for better identification, prioritization and protection of environmentally sensitive areas/habitats. Include state or region-specific information in ACPs as appendices, drawing from the best available technology. Apply sound science, engineering, and technical principles, considering water currents, tidal variations and the effects of protective measures used in environmentally and economically sensitive areas. Update and improve NOAA’s scientific support functions in the planning and response phases.
12. To track the movement and fate of oil, a unified Gulf of Mexico web-based mapping application that is compatible across all five states should be established to provide

consistent reporting protocols. Examples of such applications include the Florida Division of Emergency Management and State Emergency Response Team's Geospatial Assessment Tool for Operations and Response (GATOR), and NOAA's collaborative development with the University of New Hampshire's Coastal Response Research Center, USEPA, USCG, and the Department of the Interior - the Environmental Response Management Application (ERMA®) Gulf Response.

13. Update or amend Area Contingency Plan (ACP) policy and procedural guidance to clearly articulate the potential use (and where appropriate, restriction) of dispersants. Dispersant use decision matrices, application protocols, authorization procedures and monitoring subsequent to deployment, as well as the extent of use in Environmentally Sensitive Areas should be addressed. Factors for consideration include, but are not limited to, the distance of the oil from the shoreline, water depths, and the presence of critical nesting or foraging habitats.
14. Use the RESTORE Act as a model for establishing a permanent ecological and economic restoration program under OPA, to increase predictability and manage expectations for handling restoration activities after future SONS. Using CWA and other fines and penalties related to spills to support federal, state, and local projects and entities in a manner roughly proportional to actual oil spill impacts should be considered as a permanent addition to OPA.
15. State and local emergency management responsibilities should be amended to require active participation by Florida counties and elected officials in USCG ACP development and biennial drills and exercises, with financial support from a new Florida Oil Spill Response Fund. This fund would be capitalized through state RESTORE Act funds, proceeds from the Florida lawsuit to recover taxes, revenues lost because of the DWH incident, or other sources.
16. Initial state and local responses to oil spills threatening Florida's coast line (e.g., boom acquisition and placement, assembling and training cleanup personnel) should be improved through a new Florida Oil Spill Response Fund. This fund would be capitalized through state RESTORE Act funds, proceeds from the Florida lawsuit to recover taxes and revenues lost because of the DWH incident, or other sources, with the understanding that reimbursements for expenditures made by the fund will be sought from the RP later, during the damage claims resolution process.
17. The voluntary program for *early restoration* instituted by BP after the DWH incident represents a good model for proceeding with natural resource damage mitigation and should be incorporated formally as an option in OPA for large spills. It is recommended that RP funding for early restoration be incentivized in some manner.

18. The lessons learned through the adjudication of DWH claims in the GCCF and the Deepwater Horizon Claims Center should be used to establish a new claims facility framework under OPA. The experience of the claims facilities operating after the DWH incident indicate that a more balanced process, involving federal and state agencies and the RP, might be more effective in investigating and resolving claims. In addition, the presence of oversight boards and appeals panels in each affected state would provide a venue for ensuring that the claims facility is accessible and operates equitably and transparently. The overall claims process should include the following operational components to address shortcomings identified during the DWH claims experience:
- a. It is recommended that incentives—or disincentives—be developed to expedite economic damage claims processing. Incentives could include a credit program that might be applied to any eventual fines or penalties; disincentives could include doubling the interest applied to legitimate economic damage claims that are delayed. In addition, increased vigilance and higher penalties are recommended for those filing false or fraudulent economic damage claims.
 - b. When calculating damage compensation, it is recommended that future claims facilities institute different compensation protocols for different industries. For example, the fishing industry suffers for years because of closed fisheries, but hotels might see adverse effects for only a season or two. Compensation protocols should be sensitive to industry characteristics and negative impacts in each sector of the region affected.
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which the outcome of a claim would be dependent on the timing of its submission and could have resulted in different outcomes for similar claimants.

- f. The high expectations created by the GCCF's early statements, the early phase's protocol language concerning claims processing times, and the fact that the processing of certain claims was delayed, likely led to some of the concerns expressed by claimants and the media regarding the timely processing of claims. Therefore, future claims facilities should limit or end the production of statements that set unachievable expectations regarding the time needed to process claims.
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19. Develop an oil spill mutual aid framework that incorporates emergency and environmental agencies and resources.

20. Establish a common mechanism of access to multi-state resources through the EMAC regardless if an incident is through the NCP or NRF. Explore integrating state environmental agency resources into the arrangement, and develop guidance for national and regional response teams, joint meeting and training materials, and integrated drills and exercises.

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Acronyms

ACP	Area Contingency Plan
ARPC	Analysis Research Planning Corporation
BEL	Business Economic Loss
BP	British Petroleum
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
CWA	Clean Water Act
DHS	Department of Homeland Security
DOI	Department of the Interior
DOJ	Department of Justice
DWH	Deepwater Horizon
EAP	Emergency Advance Payment
FEMA	Federal Emergency Management Agency
FOSC	Federal On-Scene Coordinator
GCCF	Gulf Coast Claims Facility
GCG	The Garden City Group, Inc.
GOMESA	Gulf of Mexico Energy Security Act of 2006
IAG	Interagency Agreement
IEL	Individual Economic Loss
ISPR	Incident Specific Performance Review
MODU	Mobile Offshore Drilling Unit
NCP	National Contingency Plan
NOAA	National Oceanic and Atmospheric Administration
NPFC	National Pollution Fund Center
NRDA	Natural Resource Damage Assessment
NRT	National Response Team
OPA	Oil Pollution Act
OSC	Outer Continental Shelf
PKEMRA	Post-Katrina Emergency Management Reform Act
RAPID	Rapid Response Research
RESTORE	Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States
RP	Responsible Party
RSOMT	Ecosystem Restoration Science, Observation, Monitoring and Technology Program
RTF	Restoration Trust Fund
SCD	Specific Causation Document

SONS Spill of National Significance
USCG United States Coast Guard

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