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TESTIMONY OF
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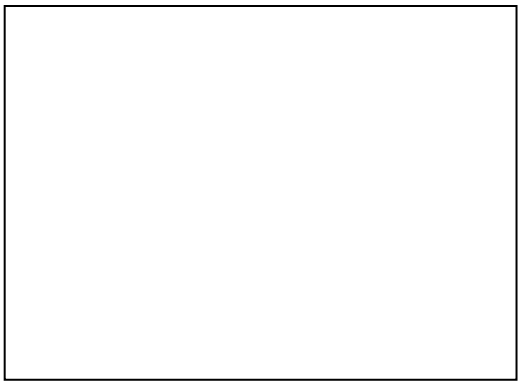
ON THE
RESEARCH AND TECHNOLOGY NEEDS FOR EFFECTIVEOIL SPILL RECOVERY AND CLEAN UP

BEFORE THE
HOUSE COMMITTEE ON SCIENCE AND TECHNOLOGYSUBCOMMITTEE ON ENERGY AND ENVIRONMENT COMMITTEE
JUNE 9, 2010

Good morning Chairman Baird and distinguished members of the committee. Thank you for the opportunity to testify before you on the BP/Deepwater Horizon oil spill.

On the evening of April 20, 2010, the Transocean-owned, BP-chartered, Marshall Islands-flagged Mobile Offshore Drilling Unit (MODU) Deepwater Horizon, located approximately 72 miles Southeast of Venice, Louisiana, reported an explosion and fire onboard. This began as a Search and Rescue (SAR) mission—within the first few hours, 115 of the 126 crewmembers were safely recovered; SAR activities continued through April 23, but the remaining 11 crewmembers were never found.

Concurrent with the SAR effort, the response to extinguish the fire and mitigate the impacts of the approximately 700,000 gallons of diesel fuel onboard began almost immediately. After two days of fighting the fire, the MODU sank in approximately 5,000 feet of water on April 22. On April 23, remotely operated vehicles (ROVs) located the MODU on the seafloor, and, on April 24, BP found the first two leaks in the riser pipe and alerted the federal government. Within the first 24 hours, the Coast Guard's Federal on Scene Coordinator (FOSC) confirmed with representatives from the Oil Spill Liability Trust Fund (OSLTF) that funds were available to speed the federal response to the threat of an oil spill. ROVs continue to monitor the flow of oil.



As the event unfolded, a robust Incident Command System (ICS) response organization was stood up on April 23 in accordance with the National Response Framework (NRF) and the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). ICS provides a common method to develop and implement tactical plans to effectively manage a multi-agency response to an emergency, such as an oil spill. The ICS organization for this response includes Incident Command Posts and Unified Commands at the local level, and a Unified Area Command at the regional level. It is comprised of representatives from the Coast Guard (FOSC), other federal, state, and local agencies, as well as BP as a responsible party.

The federal government has addressed the BP/Deepwater Horizon Oil Spill with an all-hands-on deck approach from the moment the explosion occurred. On the date of the explosion, a command center was set up on the Gulf Coast to address the potential environmental impact of the event and to coordinate with all state and local governments. After the MODU sank on April 22, the National Response Team (NRT)—led by the Secretary of Homeland Security and comprised of 16 federal agencies including the Coast Guard, other DHS offices, Department of Interior (DOI), the Environmental Protection Agency (EPA), National Oceanic and Atmospheric Administration (NOAA),—as well as Regional Response Teams (RRT), were activated.

On April 29, Secretary Napolitano declared the event a Spill of National Significance (SONS), which enhanced operational and policy coordination at the national level and concurrently allowed the appointment of Admiral Thad Allen as the National Incident Commander (NIC) for the Administration's continued, coordinated response. The NIC's role is to coordinate strategic communications, national policy, and resource support, and to facilitate collaboration with key parts of the federal, state and local government.

The NIC staff is comprised of subject matter experts from across the federal government, allowing for immediate interagency collaboration, approval and coordination. While the FOSC maintains authorities for response operations as directed in the National Contingency Plan, the NIC's primary focus is providing national-level support to the operational response. This means providing the Unified Command with everything that they need – from resources to policy decisions – to sustain their efforts to secure the source and mitigate the impact. This will be a sustained effort that will continue until the discharges are permanently stopped and the effects of the spill are mitigated to the greatest extent possible. Beyond securing the source of the spill, the Unified Command is committed to minimizing the economic and social impacts to the affected communities and the nation.

UNIFIED RECOVERY EFFORTS

The Unified Command continues to attack the spill offshore. As of June 2, 2010, over 14.2 million gallons of oily water have been successfully recovered using mechanical surface cleaning methods. Further, approximately 738,000 of surface dispersants have been applied to break up the slick, and over 120 controlled burns have been conducted when weather conditions allowed. In addition to the ongoing offshore oil recovery operations, significant containment and exclusion booms have been deployed and staged strategically throughout the Gulf region. These booms are used to protect sensitive areas including: environmental and cultural resources, and critical infrastructure, as identified in the applicable Area Contingency Plans (ACPs). To date, almost two million feet of boom have been positioned to protect environmentally sensitive areas. Fourteen staging areas have been established across the Gulf Coast states and three regional command centers. The Secretary of Defense approved the requests of the Governors of Alabama (up to 3,000), Florida (up to 2,500), Louisiana (up to 6,000), and Mississippi (up to 6,000) to use their National Guard forces in Title 32, U.S. Code, status to help in the response to the oil spill.

VOLUNTEERISM AND COMMUNICATION WITH LOCAL COMMUNITIES

A critical aspect of response operations is active engagement and communication with the local communities. Several initiatives are underway to ensure regular communications with the local communities.

1. Active participation and engagement in town hall meetings across the region with industry and government involvement.

2. Daily phone calls with affected trade associations.

3. Coordination of public involvement through a volunteer registration hotline (1-866-448-5816), alternative technology, products and services e-mail (horizonsupport@aol.com), and response and safety training scheduled and conducted in numerous locations.

4. More than 21,596 inquiries received online via the response website (www.deepwaterhorizonresponse.com) with more than 19,000 inquiries completed. (As of June 2, 2010.)

5. Over 60 million page hits on response website.

6. Almost 1,000 documents created/posted to response website for public consumption.

7. News, photo/video releases, advisories to more than 5,000 media/governmental/private contacts.

8. Full utilization of social media including Facebook, YouTube, Twitter and Flickr.

9. Establishment of Local Government hotlines in Houma, LA (985-493-7835), Mobile, AL (251-445-8968), Robert, LA (985-902-5253).

MODU REGULATORY COMPLIANCE REQUIREMENTS

43 U.S.C. § 1331, et seq. mandates that MODUs documented under the laws of a foreign nation, such as the Deepwater Horizon, be examined by the Coast Guard. These MODUs are required to obtain a U.S. Coast Guard Certificate of Compliance (COC) prior to operating on the U.S. Outer Continental Shelf (OCS).

In order for the Coast Guard to issue a COC, one of three conditions must be met:

1. The MODU must be constructed to meet the design and equipment standards of 46 CFR part 108.
2. The MODU must be constructed to meet the design and equipment standards of the documenting nation (flag state) if the standards provide a level of safety generally equivalent to or greater than that provided under 46 CFR part 108.
3. The MODU must be constructed to meet the design and equipment standards for MODUs contained in the International Maritime Organization Code for the Construction and Equipment of MODUs.

The Deepwater Horizon had a valid COC at the time of the incident, which was renewed July 29, 2009 with no deficiencies noted. The COC was issued based on compliance with number three, stated above. COCs are valid for a period of two years.

COAST GUARD / MMS JOINT INVESTIGATION RESPONSIBILITIES

On April 27th, Secretary Napolitano and Secretary of the Interior Ken Salazar signed the order that outlined the joint Coast Guard-MMS investigation into the Deepwater Horizon incident.

Information gathering began immediately after the explosion—investigators from both agencies launched a preliminary investigation that included evidence collection, interviews, witness statements from surviving crew members, and completion of chemical tests of the crew. The aim of this investigation is to gain an understanding of the causal factors involved in the explosion, fire, sinking and tragic loss of 11 crewmembers.

The joint investigation will include public hearings, which have already begun in Kenner, LA. The formal joint investigation team consists of equal representation of Coast Guard and MMS members. The Coast Guard has also provided subject matter experts and support staff to assist in the investigation.

LESSONS LEARNED FROM PAST RESPONSES

The Coast Guard has been combating oil and hazardous materials spills for many years; in particular, the 1989 major oil spill from the EXXON VALDEZ yielded comprehensive spill preparedness and response responsibilities.

In the 20 years since the EXXON VALDEZ, the Coast Guard has conducted SONS exercises every three years. In 2002, the SONS Exercise was held in New Orleans to deal with the implications of a wellhead loss in the Gulf of Mexico. In that exercise, the SONS team created a vertically integrated organization to link local response requirements to a RRT. The requirements of the RRT are then passed to the NRT in Washington, D.C, thereby integrating the spill management and decision processes across the federal government. The response protocols used in the current response are a direct result of past lessons learned from real world events and exercises including SONS.

Although the EXXON VALDEZ spill shaped many of the preparedness and response requirements and legislation followed to this day, other significant events since 1989 have generated additional lessons learned that shape our response strategies. The Coast Guard and EPA FOSCs have accessed the OSLTF to respond to over 11,000 oil spills or significant threats of an oil spill in the 19 years since the establishment of the Fund. The liability and compensation regime contained in Title I to the Oil Pollution Act of 1990 is well rehearsed and integrated into the FOSC's daily operations. Use of the Fund, oversight of the responsible party's obligation to advertise for and receive claims from those damaged by oil pollution, and cost recovery from the responsible party of all federal funds expended are all part of the pollution response exercise cycle.

These functions were most recently exercised during the Spill of National Significance (SONS) 2010 exercise that took place in Maine in March 2010.

Nearly 600 people from over 37 agencies participated in the exercise. This exercise scenario was based on a catastrophic oil spill resulting from a collision between a loaded oil tanker and a car carrier off the coast of Portland, Maine. The exercise involved response preparedness activities in Portland, ME; Boston, MA; Portsmouth, NH; Portsmouth, VA; and Washington, DC. The

response to the SONS scenario involved the implementation of oil spill response plans, and response organizational elements including two Unified Commands, a Unified Area Command, and the NIC in accordance with the National Contingency Plan and national Response Framework. The exercise focused on three national-level strategic objectives:

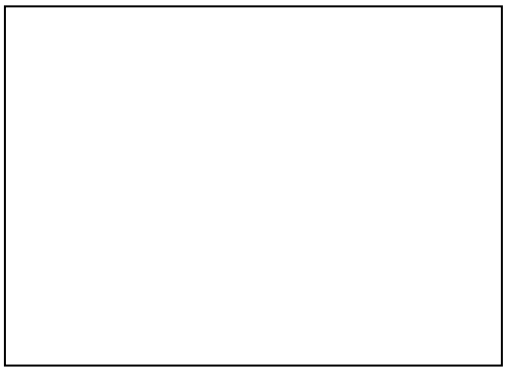
1. Implement response organizations in applicable oil spill response plans
2. Test the organization's ability to address multi-regional coordination issues using planned response organizations
3. Communicate with the public and stakeholders outside the response organization using applicable organizational components

The SONS 2010 exercise was considered a success, highlighting a maturity of the inter-agency and private oil spill response capabilities and the importance of national-level interactions to ensure optimal information flow and situational awareness. The timely planning and execution of this national-level exercise have paid huge dividends in the response to this potentially catastrophic oil spill in the Gulf of Mexico.

ROLE OF THE OIL SPILL LIABILITY TRUST FUND

The Oil Spill Liability Trust Fund (OSLTF), established in the U.S. Treasury, is available to pay the expenses of federal response to oil pollution under the Federal Water Pollution Control Act (FWPCA)(33 U.S.C. § 1321(c)) and to compensate claims for oil removal costs and certain damages caused by oil pollution as authorized by the Oil Pollution Act of 1990 (OPA) (33 U.S.C. § 2701 *et seq*.). These OSLTF expenditures will be recovered from responsible parties liable under OPA when there is a discharge of oil to navigable waters, adjoining shorelines, or the Exclusive Economic Zone (EEZ).

The United States established an exclusive economic zone, the outer limit of which is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the breadth of the territorial sea is measured. The U.S. EEZ is the largest in the world, containing 3.4 million square miles of ocean and 90,000 miles of coastline.



The OSLTF is established under section 9509 of the Internal Revenue Code (26 USC § 9509), which also describes the authorized revenue streams and certain broad limits on its use. The principal revenue stream is an 8 cent per barrel tax on oil produced or entered into the United States (see the tax provision at 26 U.S.C. § 4611). The per barrel tax increases to 9 cents for one year beginning on January 1, 2017, and the per barrel tax expires at the end of 2017. Other revenue streams include oil pollution-related penalties under 33 U.S.C. § 1319 and § 1321, interest earned through Treasury investments, and recoveries from liable responsible parties under OPA. The current OSLTF balance is approximately $1.5 billion. There is no cap on the fund balance but there are limits on its use per oil pollution incident. The maximum amount that may be paid from the OSLTF for any one incident is $1 billion. Of that amount, no more than $500 million may be paid for natural resource damages (26 U.S.C. § 9509(c)(2)).

OPA further provides that the OSLTF is available to the President for certain purposes (33 U.S.C. § 2712(a)) including federal removal costs, claims for uncompensated removal costs and damages, and payment of select federal administrative, operating and personnel costs addressed by the OPA.

NATIONAL POLLUTION FUNDS CENTER FUNDING AND COST RECOVERY

The National Pollution Funds Center (NPFC) is a Coast Guard unit that manages use of the OSLTF, making available the emergency fund for federal removal as well as trustee costs to initiate natural resource damage assessment. The NPFC also pays qualifying claims against the OSLTF that are not compensated by the responsible party. Damages include real and personal property damages, natural resource damages, loss of subsistence use of natural resources, lost profits and earnings of businesses and individuals, lost government revenues, and net costs of increased or additional public services that may be recovered by a state or political subdivision of a state.

In a typical scenario, the FOSC, Coast Guard, or EPA accesses the emergency fund to carry out 33 U.S.C. § 1321(c), that is, to remove an oil discharge or prevent or mitigate a substantial threat of discharge of oil to navigable waters, the adjoining shoreline or the EEZ. Costs are documented and provided to NPFC for reconciliation and eventual cost recovery against liable responsible parties. Federal trustees may request funds to initiate an assessment of natural resource damages and the NPFC will provide those funds from the emergency fund as well.

OPA provides that all claims for removal costs or damages shall be presented first to the responsible party. Any person or government may be a claimant. If the responsible party denies liability for the claim, or the claim is not settled within 90 days of being presented, a claimant may elect to commence an action in court against the responsible party or to present the claim to the NPFC for payment from the OSLTF. OPA provides an express exception to this order of presentment for state removal cost claims. Such claims are not required to be presented first to the responsible party and may be presented directly to the NPFC for payment from the OSLTF. These and other general claims provisions are delineated in 33 U.S.C. § 2713 and the implementing regulations for claims against the OSLTF in 33 CFR Part 136. NPFC maintains information to assist claimants on its website at www.uscg.mil/npfc.

NPFC pursues cost recovery for all OSLTF expenses for removal costs and damages against liable responsible parties pursuant to federal claims collection law including the Debt Collection Act, implementing regulations at 31 CFR parts 901-904 and DHS regulations in 6 CFR part 11.

Aggressive collection efforts are consistent with the “polluter pays” public policy underlying the OPA. However, the OSLTF is intended to pay even when a responsible party does not pay.

THE EMERGENCY FUND AND DEEPWATER HORIZON

The OSLTF consists of two major components, the main fund, or Principal Fund, and an Emergency Fund.

The Emergency Fund is available for Federal On-Scene Coordinators (FOSCs) to respond to oil discharges and for Federal natural resource trustees to initiate natural resource damage assessments, pending reimbursement by the Responsible Party. The Emergency Fund is

authorized to receive an annual $50 million infusion of funds through an apportionment from the OSLTF Principal Fund. In addition, the Emergency Fund may receive an advance of $100 million from the Principal Fund to supplement Emergency Fund shortfalls. (See 33 U.S.C. § 2752(b)).

In FY2010, the Emergency Fund has already received its annual $50 million apportionment. On May 3, 2010, since the initiation of the BP/Deepwater Horizon response, it received the statutorily authorized $100 million advance. These funds have been used to support the ongoing response efforts of 27 federal entities as well as response funding provided directly to the affected states.

While all funds expended will be billed to BP and, ultimately, recovered, these funds are deposited into the principal fund, not the emergency fund. As of June 1, 2010, obligations against the Emergency Fund for Federal response efforts totaled $93 million. At the current pace of BP/Deepwater Horizon response operations, funding available in the Emergency Fund will be insufficient to sustain Federal response operations within two weeks. Should this occur, the FOSC will not be able to commit additional funds for the agencies involved to provide critical response services, including for logistical, scientific and public health support.

On May 12, the Administration proposed a legislative package that will: enable the Deepwater Horizon Oil Spill response to continue expeditiously; speed assistance to people affected by this spill; and strengthen and update the oil spill liability system to better address catastrophic events. The bill would permit the Coast Guard to obtain one or more advances—up to $100 million each—from the Principal Fund within the OSLTF to underwrite federal response activities taken in connection with the discharge of oil associated with the BP Deepwater Horizon spill. This provision would ensure that the Emergency Fund has sufficient resources to support the Federal response. To enhance the ability to address generally the harms created by oil spills as well as to strengthen and update these laws, the bill would, for any single incident, raise the statutory expenditure limitations for the OSLTF from $1 billion to $1.5 billion and for natural resource damage assessments and claims from $500 million to $750 million.

LIABILITY LIMITS AND FINANCIAL RESPONSIBILITY

The Administration's May 12 legislative package also includes significant increases to OPA liability limits for vessel and facility source oil discharges, particularly relating to liability for oil removal costs.

Current law provides that a vessel's liability limit for oil removal costs and damages is a single fixed amount based on the vessel gross tonnage and vessel type. There are also certain fixed minimum amounts that may apply. Beginning in January 2007, the Coast Guard has annually reported on the adequacy – or rather, the inadequacy - of vessel liability limits. In the most recent 2009 Report on Oil Pollution Act Liability Limits, the Coast Guard's NPFC concluded as follows:

The NPFC continues to anticipate the OSLTF will be able to cover its projected non-catastrophic liabilities, including claims, without further increases to liability limits. However, **increases to liability limits for certain vessel types would result in a more equitable division of risk between the Fund and responsible parties, have a positive impact on the balance of the Fund, and reduce the Fund's overall risk position [emphasis added]**.

The limited data available indicates, as in previous reports, that increasing liability limits per incident for single hull tank ships, tank barges and non-tank vessels greater than 300 gross tons in particular would result in a more balanced cost share between responsible parties and the Fund while positively impacting the Fund's balance.[1]

Companies participating in offshore drilling, shipping, and other activities currently covered by Oil Pollution Act liability caps must demonstrate that they have the financial capacity to address anticipated clean-up costs and damages from their operations. Oil and other companies participating in offshore drilling activities should be strictly liable (jointly and severally) and responsible for all of the damages their activities could impose on persons, businesses, and the environment, thereby not only ensuring full compensation in the event of a spill, but also greatly aiding the prevention of future spills in the first place. Similarly, oil spill liability caps established by the Oil Pollution Act of 1990 for activities other than offshore drilling activities, such as shipping, should be reviewed and increased as appropriate to more fully reflect the spill risk associated with those activities. We look forward to working with Congress to change liability rules going forward and implement those changes within a reasonable transition period.

OPA CLAIMS PROCESS AND DEEPWATER HORIZON

BP and Transocean acknowledged in writing on May 10 their responsibility to advertise to the public the process by which claims may be presented; the NPFC has directed the responsible parties to use one phone number and one process so as not to confuse claimants, and all claims are being processed centrally through BP. As of May 31, 30,619 claims have been opened with BP, and more than $39 million has been disbursed; no claim has been denied, though many have yet to be processed.

So far, the majority of claims have been for lost income and lost profits for individuals and small businesses; as more oil comes ashore, property damage claims will likely increase. The interagency community continues to oversee BP's claims process. BP has set up 30 claims processing centers throughout the affected region, with over 480 managers and claims adjusters in the field. BP has also established a 1-800 number that is available 24/7, as well as web-based claims submission capabilities. While OPA 90 requires the responsible party to advertise and accept claims, NPFC has asked BP to be responsive to additional requests for information or action to ensure the claims process is meeting the needs of the citizens of the Gulf. The NPFC is in daily communication with BP regarding its claims administration and is raising concerns as they emerge. For example, in response to an NPFC request, BP is now providing translation services in Vietnamese and Spanish in certain communities, as well as on the 1-800 phone line. BP has also established a mediation capability for claimants who desire.

[1] The full Limit of Liability report is available on the NPFC web site at: http://www.uscg.mil/npfc/docs/PDFs/Reports/Liability_Limits_Report_2009.pdf

That said, we do not yet have complete, ongoing transparency into BP's claims process including detailed information on how claims are being evaluated, how payment amounts are being calculated, and how quickly claims are being processed. We are working with BP's senior executives to make sure we have the information we and appropriate representatives of State governments need to meet our responsibilities to the public.

BP's current claims capacity can take in 6,000 claims per day, while the current rate is well under 2,000. BP reports that it can surge to a capacity of taking in 15,000 claims per day, with over 2,500 adjusters and managers in the field in a matter of days. However, BP has not responded to all of NPFC's requests for data. BP currently provides daily summary data on claims that does not provide enough visibility into the claims process to fully view claims amounts and processing times.

Claims can be paid for the following damages (33 U.S.C. § 2702(b)):

Unreimbursed Removal Costs
Real or Personal Property Damage
Loss of Profits or Earning Capacity
Loss of Government Revenue
Cost of Increased Public Services
Natural Resource Damages
Loss of Subsistence Use of Natural Resource Damages (NRD)

Claims can be submitted within the following statute of limitation:

For Removal Costs: six years after date of completion of all removal actions.
For Damages: three years after the date on which the injury and its connection with the discharge are reasonably discovered with due care.
For NRD: three years from the date of completion of the NRD assessment.

As stated earlier, claimants who are denied by a responsible party can bring their claims directly to the NPFC for adjudication. If the NPFC finds the damage to be OPA-compensable and pays it, the cost of that claim will be billed to BP and recovered. In enacting these provisions, Congress made it clear that the Fund was available to pay so that claimants would not be required to go through costly litigation to be compensated. Fund payments are aggressively recovered from responsible parties to the fullest extent of the law consistent with the "polluter pays" policy underlying OPA, but the Fund remains available as the ultimate insurer for compensation of removal costs and damages under the OPA.

There are a number of advantages to claimants of having a responsible party pay the claims. BP can pay for more than just OPA compensable damages if it chooses, and BP may be liable for other damages, such as personal injury, covered by other laws. BP may also choose to pay a claim with less documentation than the government would be required to obtain. Further, BP can negotiate claim settlement, and is offering mediation services.

CONCLUSION

Through the National Incident Command, we are ensuring all capabilities and resources—government, private, and commercial—are being leveraged to protect the environment and facilitate a rapid, robust cleanup effort. Every effort is being made to secure the source of the oil, remove the oil offshore, protect the coastline, include and inform the local communities in support of response operations, and mitigate any impacts of the discharge.

Thank you for the opportunity to testify today. I look forward to your questions.