

**DHS PLANNING AND RESPONSE: PRELIMINARY
LESSONS FROM DEEPWATER HORIZON**

HEARING
BEFORE THE
COMMITTEE ON HOMELAND SECURITY
HOUSE OF REPRESENTATIVES
ONE HUNDRED ELEVENTH CONGRESS
SECOND SESSION

SEPTEMBER 22, 2010

Serial No. 111-80

Printed for the use of the Committee on Homeland Security



Available via the World Wide Web: <http://www.gpo.gov/fdsys/>

U.S. GOVERNMENT PRINTING OFFICE

66-030 PDF

WASHINGTON : 2011

For sale by the Superintendent of Documents, U.S. Government Printing Office
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DHS PLANNING AND RESPONSE: PRELIMINARY LESSONS FROM DEEPWATER HORIZON

Wednesday, September 22, 2010

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON HOMELAND SECURITY,
Washington, DC.

The committee met, pursuant to call, at 10:04 a.m., in Room 311, Cannon House Office Building, Hon. Bennie G. Thompson [Chairman of the committee] presiding.

Present: Representatives Thompson, Sanchez, Norton, Jackson Lee, Cuellar, Clarke, Richardson, Pascrell, Cleaver, Green, Lungren, Rogers, McCaul, Bilirakis, and Cao.

Chairman THOMPSON. The committee will come to order.

The committee is meeting today to receive testimony on DHS's planning and response and preliminary lessons from Deepwater Horizon. I want to thank the witnesses for agreeing to testify at today's hearing.

This hearing is not the first examination of the oil spill this committee has undertaken. On June 21, the committee traveled to the Gulf Coast to see the effects of the oil spill. On July 12, the Subcommittee on Management, Investigations, and Oversight conducted a field hearing in New Orleans to examine the response command structure and to take testimony about the lines of communication between State, local, and Federal authorities. So after we have taken those close-up shots of this disaster, it is now time to act on the big picture.

Today, we are here to examine lessons from the Deepwater Horizon oil spill. Let me be clear. This hearing is not to examine the Coast Guard's readiness. By all accounts, the Coast Guard has performed admirably in responding to the largest oil spill in history. The Coast Guard was the first on the scene, conducting search and rescue following the April 12 explosion on the Deepwater Horizon oil rig. After the success of the final well kill procedures on September 19, the Coast Guard is likely to remain in the area, overseeing reclamation efforts for a very long time to come.

But as we turn the page on this episode, I want to make sure that we do not close the chapter in this book. Instead, we must take the opportunity to examine the Department's role in incident management and the part it plays in coordinating other Federal agencies in any response scenario.

Since 2003, the Department has become the Federal agency the public turns to for leadership when a disaster occurs. Yet, the De-

partment's involvement and leadership in developing and implementing disaster response plans remains unclear. The Deepwater Horizon oil spill is an example of an instance in which the Department was expected to provide leadership in response to recovery activities. Yet, as we now know, the Department did not have a role in reviewing or assessing the plans for the response and recovery of this type of disaster. The agency that regulated the industry reviewed the response plan.

In the course of preparing for this hearing, we have discovered other instances in which the Department will likely be expected to play a role in response but has been given no role in planning. For instance, the Nuclear Regulatory Commission requires each nuclear power plant to develop and periodically test a detailed emergency response plan. While it appears that FEMA plays some role in reviewing certain aspects of those plans, it is not clear whether FEMA can or should work with the NRC, the private-sector owners, or local authorities in fine-tuning those emergency response plans.

In another instance, under the Clean Air Act, the Environmental Protection Agency has oversight of risk management planning at facilities that handle hazardous substances. The owners and operators of those facilities prepare risk management plans. Those plans are submitted to EPA.

The first lesson from the oil spill is that the agency that regulates should not review the disaster response plan, as it seems that the law could be interpreted to ensure that the Department of Homeland Security is involved in those reviews.

Under Homeland Security Presidential Directive, HSPD-8, the Secretary of Homeland Security is a principal Federal official for coordinating the implementation of all-hazard preparedness in the United States. FEMA, reporting to the Secretary, has responsibility for emergency planning. Yet, in February, the Department of Homeland Security's Inspector General released a report which found that DHS had not completed a full set of plans for any single disaster scenario.

The Department has said that the failure to create those plans is a result of a shortage of Federal planners. The Department has also indicated that it does not have authority to oversee Federal agency operation plans or require any agency to coordinate its plans with DHS or other agencies.

So we are here today to examine a very simple proposition: If you fail to plan, do you plan to fail? I hope that we can all agree that failure is not an option.

Again, I want to thank the witnesses for appearing today and look forward to their testimony. I now recognize the acting Ranking Member of the full committee, the gentleman from Louisiana, Mr. Cao, for an opening statement.

Mr. CAO. Thank you very much, Mr. Chairman. I would like to thank you for this hearing and for your continued attention to this spill that has impacted our district and the districts of many numbers of Members of this committee.

Unfortunately, due to a scheduling conflict, Ranking Member King is not able to be here today. So, on his behalf, I would like

to welcome the witnesses and to thank them for taking the time to be here today.

I also owe gratitude to Ranking Member King and the Republican staff for this opportunity and for their help in preparing today.

I look forward to working with my committee colleagues on conducting a thorough analysis of the response such that we are able to walk away with an honest assessment of any missteps as well as a set of best practices that we can use in the future. With thousands of active and inactive wells and critical infrastructure in the Gulf, it is inevitable that we will find ourselves needing to respond to another disaster, security crisis, or, even worse, a terror attack. How we respond and mitigate will determine whether any new incident has the detrimental impact of the Deepwater Horizon. My plan is to make sure that none does.

The Joint Command did work with BP to align a combination of containment vessels, booming, and controlled burns to mitigate the oil flow while overseeing a permanent solution. The command, under Admiral Allen's watch, did see the well successfully capped and the oil flow stopped.

We seem to be poised for a smooth transition into the recovery phase of the Deepwater Horizon disaster. However, there are questions about the chain of command and creating a clear mission for the Department in light of the legal burden on the responsible party, BP. There are questions about transparency and access to the spill site. Additionally, this spill highlighted an on-going need to focus on the Gulf Coast's vulnerable energy infrastructure and what it means in terms of homeland security issues.

It is also my understanding that around 1,700 Active duty and Reserve personnel are still deployed to the Gulf region. I have heard concerns that the Coast Guard's redeployment of assets to the Gulf may be leaving other parts of the country potentially vulnerable. I am curious as to how the search operations are funded, where the Coast Guard personnel came from, and how the Coast Guard is back-filling to ensure missions are not suffering as a result of these deployments.

To improve a variety of elements related to the oil spill, Republican Members of the committee have introduced legislation which addresses many of the administration's shortcomings. For example, I have recently introduced H.R. 5684, the Maritime Infrastructure Security and Counterterrorism Act, which was referred to this committee and would require the Secretary to commission an independent review of the risk of a terrorist attack on offshore energy infrastructure in the Gulf of Mexico. It is my hope that this committee follow up on this hearing by acting on legislation referred to it that addresses the homeland security elements of this disaster.

I look forward to hearing from our witnesses especially regarding any lessons learned by the Department that can be applied in future disaster planning and recovery operations and whether the organizational framework and authorities for responding to disasters is sufficient going forward. I also look forward to hearing from our local witnesses, Mr. Craig Taffaro, and others. He, like me, has been on the front lines of this disaster from Day 1 and has a lot

to say about how the administration and the Department handled things.

Again, Mr. Chairman, I want to thank you personally for this hearing, and I yield back.

[The statement of Hon. Cao follows:]

PREPARED STATEMENT OF HONORABLE ANH "JOSEPH" CAO

I would like to thank Chairman Thompson for this hearing and the continued attention to the spill that has impacted our districts and the districts of a number of Members of this committee. Unfortunately, due to a scheduling conflict Ranking Member King is not able to be here today. So on his behalf I would like to welcome the witnesses and thank them for taking the time to be here today. I also owe gratitude to Ranking Member King and the Republican staff for this opportunity and their help preparing today.

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RESPONSE

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YOUR BILL

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I look forward to hearing from our witnesses, especially regarding any lessons learned by the Department that can be applied in future disaster planning and recovery operations and whether the organizational framework and authorities for responding to disasters is sufficient going forward.

I also look forward to hearing from our local witness, Mr. Craig Taffaro, President of Saint Bernard Parish. He, like me, has been on the front lines of this disaster from Day 1 and has a lot to say about how the administration and Department handle things.

Chairman THOMPSON. Other Members of the committee are reminded that, under committee rules, opening statements may be submitted for the record.

[The statement of Hon. Richardson follows:]

PREPARED STATEMENT OF HONORABLE LAURA RICHARDSON

SEPTEMBER 22, 2010

Mr. Chairman, thank you for convening this hearing today focusing on the Department of Homeland Security's role in planning the disaster response related to the Deepwater Horizon Oil Spill, which the Secretary of the Department of Homeland Security (DHS) deemed a Spill of National Significance. I extend a special welcome to the witnesses.

On April 20, 2010, an explosion and fire occurred on the Deepwater Horizon oil rig, located approximately 72 miles southeast of Venice, Louisiana in the Gulf of Mexico. Several days after the explosion, the well was reported to be leaking oil at an estimated 60,000 barrels per day. The leak continued for nearly 2 months until June 15, 2010, when the leak was successfully capped and oil stopped leaking from the well.

However, even after the oil was originally capped, the ultimate effects that the oil spill had on the Gulf Coast were staggering. In Louisiana and Mississippi alone, the oil spill affected nearly 700 miles of the total tidal shoreline. It also closed approximately 83,927 square miles of Federal waters, severely damaged the Gulf's delicate ecosystem, and ruined hundreds, if not thousands, of businesses along the coast.

In total, 4.9 million barrels of crude, or 206 million gallons leaked from the Deepwater Horizon well, nearly half the amount of crude oil imported by the United States daily. At current market prices (\$81.17 per barrel on September 10, 2010), the value of the crude oil spilled into the Gulf of Mexico exceeds \$397 million. The direct and indirect economic damage and social costs of the Deepwater Horizon Gulf oil spill are unprecedented and will be felt for years.

As Chair of the Homeland Security Subcommittee on Emergency Communications, Preparedness, and Response, I visited the Gulf twice, on June 21 and then again from July 11–13, to observe first-hand the impact of the worst oil spill in our Nation's history on the local economy, environment, and quality of life of the people of the Gulf region. Based on my observations and on numerous discussions with Federal officials and local officials and stakeholders, it was and is apparent that new remedial legislation is needed to address the complex problems that have arisen as a result of this tragic incident.

Upon my return from the Gulf, I reported my observations and recommendations to the House in a Special Order on July 21, 2010 and subsequently documented them in my report to the administration, the House leadership, and Chairman Thompson. I ask unanimous consent that the attached copy of my report be included in the record of this hearing.*

As the representative of California's 37th district, I also represent THUMS islands, which contain a number of offshore drilling platforms located less than a mile offshore from the district's coast. Although these drilling platforms are different in nature from the Deepwater Horizon, there is always the potential risk of an oil spill. Considering its proximity to the shores of Long Beach, any major oil spillage could severely impact the region's beaches, ports, and livelihoods of hundreds of thousands of persons living or working in the adjacent communities.

Thus, it is incredibly important for us to evaluate the response to the Deepwater Horizon Oil Spill in order to make sure the Department of Homeland Security is fully prepared and equipped to respond to any future incidents swiftly, effectively, and in manner that minimizes damage and danger to persons, property, and the environment. That is the purpose of today's hearing.

I will soon introduce two bills: H.R. —, the Oil Spill Prevention and Return to Yesterday Act of 2010 ("OSPREY Act"), and H.R. —, the Securing Health for Ocean Resources and Environment Act of 2010 the ("SHORE Act"), the latter the House companion to S. 3597 introduced in the Senate by Senator Rockefeller of West Virginia.

H.R. —, the Oil Spill Prevention and Return to Yesterday Act of 2010 ("OSPREY Act") has three key features. First, it requires that any applicant or a permit to drill for oil and gas on the outer Continental Shelf must submit and have approved by the Secretary of Interior an oil spill response and restoration plan.

Second, the response plan required to be submitted and approved must provide for effective and prompt response to and clean-up of any discharge of oil occurring in the course of operations under the authorization, including a detailed description of the containment boom and other equipment that is required to implement the rapid response plan, how it will be made available, and where it will be stored.

*The document has been retained in committee files.

Third, the environmental restoration plan required to be submitted must provide for restoration of the environment following such a discharge to the condition that existed before the discharge.

The other legislative proposal I intend to introduce, H.R. ———, the Securing Health for Ocean Resources and Environment Act of 2010 the (“SHORE Act”) will enhance at the Federal and local level governmental communication, preparedness, and response to oil spills. Specifically, the SHORE Act will:

1. Improve NOAA’s spill response, containment, and prevention capacity;
2. Better define coordination between Federal and State response activities;
3. Better define coordination between NOAA, the Coast Guard, and the Department of Interior;
4. Clarify existing authority for NOAA to receive funds from the Oil Spill Liability Trust Fund (OSLTF) for its mandates under the Oil Pollution Act (OPA);
5. Double the amount the Coast Guard may receive from the OSLTF each year, with a percentage dedicated toward oil spill research and development;
6. Invest in a damage assessment and restoration revolving fund;
7. Mandate improvements in the frequency and quality of Coast Guard safety inspections and certification requirements;
8. Require prompt posting by Coast Guard Unified Command of oil spill Incident Action Plans on a publicly accessible website;
9. Provide new authority to promote prompt decision making with regard to fisheries re-openings and closures in a coastal oil spill response;
10. Strengthen coastal State oil spill planning and response; and
11. Direct NOAA to develop a long-term monitoring and research program for the Gulf of Mexico.

I believe these bills will help remedy some of the emergency planning and response problems that were revealed by the Deepwater Horizon disaster.

Thank you again Chairman Thompson for convening this hearing. I very much look forward to hearing from our distinguished panel of witnesses.

Thank you. I yield back my time.

Chairman THOMPSON. I now welcome our first panel of witnesses.

Our first witness is Mr. Kevin Costner. Since 1993, Mr. Costner is both an actor and an entrepreneur in oil spill cleanup and oil water separator technologies. In the last 15 years, he has founded Costner Industries, cofounded Ocean Therapy Solutions, and has committed over \$20 million towards research and development in oil spill cleanup and recovery.

Welcome.

Our second witness is Mr. Craig Taffaro, Jr. Mr. Taffaro is the President of St. Bernard Parish in Louisiana and has been since 2008. Before that, he served for 8 years as District D parish councilman.

Without objection, the witnesses’ full statements will be inserted into the record. I now recognize Mr. Costner to summarize his statement in as reasonable an amount of time as possible.

Mr. Costner.

STATEMENT OF KEVIN COSTNER, OCEAN THERAPY SOLUTIONS

Mr. COSTNER. So I guess you have seen my movies.

Chairman THOMPSON. Well, the good and the bad.

Mr. COSTNER. I guess that list can be pretty long on both sides, probably.

Mr. Chairman, Members of the committee, thank you for this opportunity to appear before you today to discuss the lessons learned from the BP Deepwater Horizon oil spill.

Unfortunately, it continues to remain a critical issue for our country and, in fact, the world. But it also poses two giant questions: No. 1, do we have the capacity today to protect our environ-

ment from oil spills, large or small; and, if we do, then why didn't we perform better? No. 2, if we don't, then how quickly can we put in place a credible plan for spills that we know are going to continue now and into the future, man-made or otherwise? I say "otherwise" because I know this body has no greater task than to anticipate the nature of all attacks that can take American lives and disrupt our economic way of life.

Americans and the world need to demand that the oil industry put this on-going problem front and center; to demand that the same energy and the same financial resources that send this industry around the world in pursuit of oil be brought to bear to address the safety of America; that the same appetite that drives them to drill in conditions and depths that boggle the mind, where no cost seems too great, we need to demand that the same will, that that same mindset be brought to the defense of an ecosystem that cannot speak for itself.

Americans demand that this nightmare that continues to chase us into the 21st Century be solved with real solutions, solutions that don't depend on dispersants, burning, and public relations. What we don't need is a cosmetic show of force or a 500-page report that is obsolete.

This plan was strategically and economically formed to take advantage of existing vessels that are currently working in the Gulf. The plan we propose begins on page 4 of the booklet in front of you. It consists of three tiers: A first response, followed by an overwhelming response, and backed up by a shallow water last line of defense. It consists of 190 vessels; and it incorporates state-of-the-art booming, skimming, separation, and storage capacity.

The plan is simple, and it is easy to understand. It is backed up by logistics, science, and engineering. It is an aggressive strategy built around rapid deployment, overwhelming response, and a mechanical recovery of oil from water.

As we examine the plan going forward, you will see a graphic on page 6 of these 33 deepwater rigs that were being drilled at the time of the Macondo accident. These rigs are serviced by 40 deepwater platform vessels that operate through the Gulf on a 24-hour basis. Our plan takes advantage of these existing assets and will retrofit them with state-of-the-art oil spill recovery technology, giving them a dual purpose, should they be called upon.

They have a storage capacity of approximately 12,000 barrels. In the event of an accident of the magnitude of the Deepwater Horizon, we would be able to deploy six of these vessels to the accident within 2 to 3 hours.

Page 7 shows the overwhelming response that would follow, with 30 offshore supply vessels making their way back to the shore to predetermined coastal response facilities where they will be loaded with dedicated oil recovery equipment that has been pre-fitted for the vessels. They will have a storage capacity of 6,000 barrels and can be deployed within 48 hours. At the same time, 10 deepwater barges with an average capacity of over 100,000 barrels will be moving simultaneously and on site within 96 hours.

If this was the Deepwater Horizon and we elected to throw this fleet of 80 ships at it—our own kitchen sink, if you will—we would

have the storage and processing capacity of over 1.5 million barrels.

It is also important to understand that our plan does not consider the Deepwater Horizon as a worst-case scenario. Given the dangerous world that we live in, we have anticipated a situation where five Deepwater Horizons could simultaneously occur. On page 8, you will see that we would handle this situation, should it develop, by deploying and dividing our 70 offshore vessels and 10 deepwater barges to the multiple spill sites. The storage and processing capacity would be over 300,000 barrels for each site.

Our last line of defense, on page 9, is made up of 100 shallow water skimming vessels and 10 shallow water barges. They have been designed to work in water as shallow as 2 feet and travel up to 20 knots, with the ability to work in seas of up to 6 feet. They range in size from 35 feet to 56 and are designed specifically to be transported by trucks anywhere along the Gulf. The significance of this last line of defense is not only in its mobility but in its psychological impact, as Americans can finally begin to put away their rubber boots.

On page 10 you can see how Americans and the rest of the world have come to picture the Gulf. But when you turn the page and you begin to see a truer picture, these three graphics begin to paint the reality of what really exists. Over 5,000 platforms, 27,000 wells, and, below it all, sitting on the ocean floor, out of sight, is an infrastructure—a network, if you will—of pipelines that stretch over 31,000 miles, taking gas and oil to our mainland.

This is what our end of the Gulf looks like to our neighbors. But what do we see when we reverse the picture? When we when look off the Coast of Mexico, Venezuela, and Brazil, it begs the question: How good is their spill response plan? Do they even have one? Is it possible that we think the Gulf is so big, so vast, that what happens somewhere else doesn't matter, that it is not our problem?

I don't believe for a second that this committee feels that way. But if there is someone out there that does, then I would ask them to look at Cuba and this committee to look at page 12. For, as beautiful as Cuba is, it still only sits 90 miles off the coast of Florida. Seven deepwater wells have been slated for exploration in 2011 and 2012.

If you turn to page 13, you will see an even more startling graphic, a grid of the 59 available leases being offered by Cuba. Twenty-nine out of the 59 have already been leased off Cuba's northwest shore. What will their response be if something goes wrong? Is it too big a leap to think that we could have oil on the level of a Deepwater Horizon moving uncontrollably towards Florida and up our eastern seaboard? How could anyone think when we are looking at the Gulf that our plan is too ambitious, that we don't need that much capability, storage, or capacity? I could make the case that our plan is just the opposite, that it is too light.

Our choices are clear. We can choose to enlist a fleet of 6,000 vessels that are hampered by their lack of training and preparedness, or we can create a dedicated fleet of 190 state-of-the-art vessels. We can choose to let oil come to the surface and mechanically recover it as a saleable asset, or we can burn it. We can choose to separate oil from water at high speeds with outputs that exceed the

EPA standards and improve the efficiency of every boat on the water, or we can use dispersants and sink it to the bottom. We can choose to recover oil, or we can choose to cover it up.

The opportunity for us today is to move forward. We have a choice in all things. But what we cannot accept is a return to the status quo. America deserves a no-nonsense approach to spills that are certain to happen now and into the future. We believe this plan strikes the heart of the problem. It is efficient, it is streamlined, and it is robust. It is easy to understand and implement. It simply requires a commitment to being prepared. It stands as a turn-key operation that can be implemented today. The American people and the Gulf deserve nothing less.

Thank you.

[The statement of Mr. Costner follows:]

PREPARED STATEMENT OF KEVIN COSTNER

SEPTEMBER 22, 2010

Mr. Chairman, Members of the committee, thank you for the opportunity to appear before you today to discuss lessons learned from the BP Deepwater Horizon oil spill. Unfortunately it continues to remain a critical issue for our country and in fact the world. But it also poses two giant questions.

One—do we have the capacity today to protect our environment from oil spills large and small? And if we do, then why didn't we perform better?

And two—if we don't, then how quickly can we put into place a credible plan for spills that we know are going to continue now and into the future, man-made or otherwise. I say otherwise because I know this body has no greater task than to anticipate the nature of all attacks that could take American lives and disrupt our economic way of life.

Americans and the world need to demand that the oil industry put this on-going problem front and center. To demand that the same energy and the same financial resources that send this industry around the world in the pursuit of oil be brought to bare, to address the safety of America. That the same appetite that drives them to drill in conditions in depths that boggle the mind, where no cost is too great. We need to demand that that same will, that same mindset, be brought to the defense of an ecosystem that cannot speak for itself. Americans demand that this nightmare that continues to chase us into the 21st Century be solved with real solutions. Solutions that don't depend on dispersants, burning, and public relations. What we don't need is a cosmetic show of force or a 500-page report that's obsolete.

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This is what our end of the Gulf looks like to our neighbors. But what do we see when we reverse the picture? When we look off the coasts of Mexico . . . Venezuela . . . Brazil.

It begs the question—How good is their spill response plan? Do they even have one?

Is it possible that we think the Gulf is so big, so vast that what happens somewhere else doesn't matter? That it is not our problem? I don't believe for a second that this committee feels that way. But if there is someone out there that does, then I would ask them to look at Cuba, and this committee to look at page 12.

For as beautiful as it is, Cuba still only sits 90 miles of the coast of Florida. Seven deep water wells have been slated for exploration in 2011 and 2012. If you turn to page 13, you will see an even more startling graphic. A grid of the 59 available leases being offered by Cuba.

Twenty-nine out of the 59 have already been leased, off of Cuba's northwest shore. What will be their response if something goes wrong? Is it too big a leap to think that we could have oil on the level of a Deepwater Horizon moving uncontrollably toward Florida and up our eastern seaboard?

How could anyone think when looking at the Gulf that our plan now is too ambitious, that we don't need that much capability, storage, or capacity? I could make the case that our plan is just the opposite. That it is too light.

Our choices are clear. We can choose to enlist a fleet of 6,000 vessels that are hampered by their lack of training and preparedness or we can create a dedicated fleet of 190 state-of-the-art vessels.

We can choose to let oil come to the surface and mechanically recover it as a saleable asset, or we can burn it.

We can choose to separate oil from water at high speeds with outputs that exceed current EPA standards and improve the efficiency of every boat on the water, or we can use dispersants and sink it to the bottom.

We can choose to recover oil or we can choose to cover it up.

The opportunity for us today is to move forward. We have a choice in all things, but what we cannot accept is a return to the status quo.

America deserves a no-nonsense approach to spills that are certain to happen now and into the future. We believe this plan strikes to the heart of the problem. It is efficient, streamlined, and robust. It is easy to understand and implement, it simply requires a commitment to being prepared.

It stands as a turn key operation that can be implemented today.

The American people and the Gulf deserve nothing less.

Chairman THOMPSON. Thank you for your testimony.

I now recognize Mr. Taffaro to summarize his statement.

**STATEMENT OF CRAIG PAUL TAFFARO, JR., ST. BERNARD
PARISH, LOUISIANA**

Mr. TAFFARO. Thank you, Chairman Thompson and Acting Ranking Member Cao, for having me. I appreciate you allowing Mr. Costner to go first. I didn't want to overshadow him in the hearings today.

Chairman THOMPSON. Noted.

Mr. TAFFARO. Thank you.

Of significant importance, I believe, was the clear indication that the response to the Deepwater Horizon oil spill crisis started from a position of catch-up. What may be unknown is that St. Bernard Parish and the New Orleans metropolitan area are rather robust in preparing for and being ready for disasters. In the last 5 years, we have experienced five Type 1 disasters in our parish alone. Many communities across the country never experience a Type 1 disaster, and we have had five.

In retrospect, the information flow relative to the Deepwater oil spill crisis had similar markings as several of the other disasters experienced in the St. Bernard community: Namely, poor factual information about the event; a downplaying of available resources and the mechanism to obtain such; and a lack of local engagement to the response coordination.

Complicating this event was the differing authorizing legislation for Louisiana versus other coastal States. Louisiana law specifically states and grants emergency powers to the local authorities, primarily parish presidents and mayors, during times of declared disasters. This construct seemed to create a bureaucratic obstacle that has plagued the coordination throughout. Instead of embracing the local authorities' involvement in resource capacity, local authorities were met with resistance, exclusion, and power struggles.

The immediate perception and experience of the local parishes was the very agency, representing in the United States Coast Guard, that was to have ultimate authority, according to OPA and the Clean Water Act, had partnered itself in a position of protection rather than enforcement. BP, as the responsible party, enjoyed that protection. While the description that the oil spill was analogous to fighting a war, the soldiers in the field and on the battleground were met with consistent resistance of resource supply, restricted procurement processes, and the lack of follow-through. While operational discussions and decisions were being made in Houma, some 90 minutes away and beyond from most of the impacted areas, inputting coordination from the local communities was ignored in many cases and patronizingly accepted in others.

A buildup of OSRO [Oil Spill Removal Organization] resources and assets was clearly under way. The request to use local commercial fishing fleet involvement was fought; and these commercial fishermen, who were at the heart of the impacted area, had to fight their way into the response. The local vessels were eventually placed into a rotation and side by side with the OSRO vessels, were utilized in the response effort and given daily assignments in boom deployment, oil detection, and recovery support activity, rapid assessment, and other activities. The local fleet provided a critical asset in the mission response, sharing valuable information of tidal activity, strength of currents, and marsh detection and impact.

Very early on in the response, St. Bernard Parish requested BP to allow for and support the establishment of a local environmental planning and assessment team. This was disallowed by BP, only to be told some 3½ months later by a visiting Coast Guard authority that St. Bernard should have been involved in environmental assessment from the start. This lack of continuity was addressed by the local community by establishing a deputy or lead in all ICS [Incident Command System] sections. These sections were sought to be replaced and undermined throughout the process.

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

During these operational disputes, the U.S. Coast Guard chose to sit on the fence, claiming that business, contractual arrangements, and engaging in directives on such topics were outside their legal purview and authority. The dynamic only strengthened the uncontested authority of BP as the perpetrator of the disaster and the responsible party which was able to usurp the 51 percent authority of the Coast Guard. If BP disagreed with the decision, they simply chose not to pay, in essence daring the Coast Guard to use its ability to reach into the Oil Spill Fund.

Because most of these decisions were reflective of a disconnect between the multiple layers of the operational ICS structure, enough doubt was cast or enough time had passed that an argument be made that BP had the right to use their discretion in paying for services, personnel, or equipment which had already been engaged and used. If the immediate operational need had ceased by the time the dispute was brought to awareness, the Coast Guard simply bowed out of the dispute, attributing it to a business or contractual issue.

In the immediate past, there was a constant discussion over the appropriate level of demobilization and the pace of such as it related to an agreed-to and established transition plan. Every oil spill has a response phase and a recovery phase. Although these vary from incident to incident, the basic framework exists.

Within the communication of the well being capped, it was clearly the start of a different focus by BP and the United States Coast Guard, at least providing complicit support if not active leadership in this shift. Requests immediately became rejected or denied at a higher pace. Payments to vendors became slow. Sightings of oil became more and more unrecoverable. The constant debate over the need for continued operations commenced.

While the discussion relative to these topics is appropriate throughout the response, arbitrary decisions to demobilize or attempt to demobilize basic features of the response began in earnest. In the midst of the activation investigation of the transition plan, it was an apparent expectation that each branch would lean forward in the transition, despite certain triggers not to do so being reached. This push was indicative of a common belief that the inci-

dent was all but over and the focus on long-term recovery was the order of the day.

The beliefs of such seemed to undermine the enthusiastic support to find and treat oil-impacted areas. Sightings were now limited on the water surface, but signs of the water bottom's being impacted and the marsh literally washing away were largely ignored and referred to the NRDA [Natural Resource Damage Assessment] process.

The gap between response and NRDA has proven to be a difficult crevasse to cross. The United States Coast Guard does not recognize their role in the NRDA process and has a difficult time asserting itself and its authority to go beyond the established shoreline treatment recommendations. This gap in responsible party identification has resulted in acres of lost marshland that is so critical to the coastal protection of St. Bernard Parish and the surrounding areas, including the city of New Orleans. Further intervention is necessary, in addition to the identification of the critically damaged sites, but funding to accomplish this task has been rejected.

It is noted that the interaction between the St. Bernard Parish branch and the Department of Homeland Security was nonexistent. Parish leadership did have the opportunity to communicate with an assigned parish president liaison officer from the Coast Guard, who did participate in the daily conference call with the Secretary's staff. The Department of the Interior [DOI] was referenced throughout the response, primarily in conjunction with the focus on the barrier islands of the coast of Louisiana. Interestingly enough, these are the same islands that have been neglected for some 25 years and receive now intense protection in the objection to build berms to assist in capturing oil.

The Department representative communicated directly with BP representatives regularly, but as parish president I did not have one single conversation with any DOI representative.

The exterior input to the branch action plan was responded to without question and created confusion in who actually was coordinating the response. This type of disjointed influence was not limited to DOI but it also included other agencies which often operated without coordination or notification to the branch, including NOAA [National Oceanic and Atmospheric Administration], FDA [Food and Drug Administration], and, many times, EPA [Environmental Protection Agency]. What worked for one community may not have worked for others.

I am wrapping up, Mr. Chairman. I was taking the lead from Mr. Costner.

The challenge to share information operationally, logistically, or resource assignment was never conquered. Having the ability to use best practices seemed to be lost, as the resources reviewing information from branch to branch often did not return calls for clarification or direction.

It is most important to recognize that the Federal legislation as interpreted and applied leaves the very community and citizenry impacted by such an event to be continually victimized throughout the response by allowing the responsible party to be the gatekeeper of funds for a response effort. Despite a 51 percent role, the Coast Guard continually referenced legal limitations that forced their

command to stop short of implementing operational decisions that would have been beneficial or could not identify clear authority to do so.

At some point, the responsible party has to be redefined to mean financially responsible and be prohibited from having operational veto authority in the response effort. This change in application of the existing legislation would allow the U.S. Coast Guard to partner with the local community and our State in which an incident occurs, instead of partnering as an operational partner with the responsible party.

Thank you for allowing me to speak, Mr. Chairman.
[The statement of Mr. Taffaro follows:]

PREPARED STATEMENT OF CRAIG PAUL TAFFARO, JR.

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

PRELIMINARY LESSONS LEARNED

Of significant importance was the clear indication that the response to the Deepwater Horizon Oil Spill crisis started from a position of playing catch-up. From the breaking notice that an explosion had occurred to even today, the information flow to the local branch has been wrought with inconsistency, fragmented messaging, and stove-piped communication patterns. Both the United States Coast Guard and BP were at a distinct disadvantage in the Gulf Coast Region of Louisiana as the Louisiana Governor's Office of Homeland Security and Emergency Preparedness together with the individual parishes have been operating at a higher state of readiness than most other local municipalities throughout the United States. This increased level of readiness to respond comes with being engaged on a daily basis in the long-term recovery process and annual preparation activities following the overwhelming experiences of Hurricanes Katrina, Rita, Gustav, and Ike. Additionally, the region has experienced the largest domestic land oil spill in United States history with the Murphy Oil, USA spill in conjunction with Hurricane Katrina and an additional Mississippi River Oil Spill in 2009 which impacted the St. Bernard community as well. When totaled, St. Bernard Parish has been directly engaged in five Type 1 disasters in the last 5 years, a statistic that has produced a rather robust appetite for response management.

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

tivity needed was brought to bear. While the description that the Oil Spill was analogous to fighting a war was pronounced, the soldiers in the field and on the battle grounds were met with consistent resistance of resource supply, restrictive procurement processes, and a lack of follow-through. While operational discussions and decisions were being made in Houma, LA, some 90 minutes or more from most of the impacted areas, input, and coordination from the local communities was ignored in many cases and patronizingly accepted in others. The responsible party operations lead either interpreted directives or was instructed to actually hide information from the local incident command personnel by covering up maps, information, and assignments when local personnel entered the separate command post established by BP. For the first 6 weeks of the response, despite an approved joint command and incident command team being built, a separate and uncoordinated effort was the norm. A build up of OSRO (Oil Spill Response Organizations) assets was clearly underway and the request to use the local commercial fishing fleet, the very industry that was under siege in this "war" had to fight their way into the response. BP created a Vessel of Opportunity program which was mismanaged in fulfilling the goal of putting local vessels in local waters to assist in the local response efforts. St. Bernard Parish established a modified version of the Vessels of Opportunity program, that to BP's credit was funded. The local vessels were eventually placed into a rotation and, side-by-side with the OSRO vessels, were utilized in the response effort and given daily assignments in boom deployment, oil detection and recovery, support activity, rapid assessment, etc. The local fleet proved to be a critical asset in the mission response sharing invaluable information of tidal activity, strength of currents, and marsh detection and impact.

Very early on in the response, St. Bernard Parish requested BP to allow for and support the establishment of a local environmental planning and assessment team. This was disallowed by BP only to be told some 3½ months later by a visiting Coast Guard authority that St. Bernard should have been involved in environmental assessment from the start.

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

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

This contention often was the result of an Incident Command in Houma not recognizing the operational input and planning of the local branch in St. Bernard Parish. Despite the use of local experts, BP personnel, and deployed USCG personnel, and despite Branch Action Plans being submitted and no objection being communicated activities and implemented assignments were often criticized and rejected after the fact. Most disturbing in this pattern of retroactively rejecting sound operational practices was and is BP's financial hostage program. After services have been rendered, resources used and expended, equipment activated, and often after successful completion of tasks, BP has undertaken a program to disallow costs, reject approval of previously approved processes, and financially strangle the local small businesses which have acted in good faith efforts in the oil spill response, many times financing the activity themselves. It is not lost in this discourse the fact that local companies and brokers were positioning themselves to make a profit within this structure, but agreed upon transactions should be supported, not cancelled. Modifications of agreements, a review of reasonable costs, and the elimination of unneeded resources have been and continue to be supported by the local branch. However, leaving unpaid vendors to scramble to stay afloat with millions of dollars in unpaid bills because BP has changed their rules multiple times over the course of 5 months is unacceptable. Underscoring the contentions that existed as BP attempted to paint the St. Bernard Branch as a rogue operation and that their personnel needed to be protected from intimidation and influence from the local leadership, BP personnel who have multi-million dollar signature authority in their non-oil spill positions were re-

duced to having absolutely no authority at all. This action significantly stifled the ability of the branch to operate efficiently.

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

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

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

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

What worked for one community may or may not have worked in another community. The challenge to share information operationally, logistically, or resource assignment was never conquered. Having the ability to use best practices seemed to be lost as the resources reviewing information from branch to branch often did not return calls for clarification or direction. Branch to branch discussion was more apt

to occur and often did, but did not result in the adoption of similar interventions, even when sought to do so.

COMMUNICATION

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

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

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

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

While now outside the direct control of BP, the claims process has created unnecessary anxiety and distress within the community that was most directly impacted by the spill itself. The members of the commercial fishing fleet find themselves being matriculated out of the response activities with no market to fish their respective products and little assurances that their future is any more promising than their last 5 months. While there is no argument that there is some product to be harvested, the on-going need for longer-term and more comprehensive testing to promote the industry continues to be unmet. Furthermore, incentive programs and shared liability programs for the product that is caught have not gotten any traction. Questions of BP using earned money by the fishing community to reduce damages continues to be a point of contention, leaving the local community with the belief that they were duped into working for the enemy and cleaned up the mess for free.

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

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

It must be recognized that any incident will create competing interests by the parties involved in the response. The responsible party will obviously have a much different commitment than the objective enforcer of the spill response. Additionally, in this situation, the USCG in its role as the Federal On-Scene Coordinator must have the latitude to act and enforce without financial repercussions. Current legislation

allows for reimbursement by the USCG and local municipalities for their expenses in the response. When the responsible party is at the decision-making table with financial veto authority it sets up a significant potential for a conflict of interest. This is further underscored in our current situation both on the National level with recent cuts to the USCG and at a time when local revenues are struggling to keep pace with service needs and operational expenses.

SUMMARY

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

- Recognize that current legislation generally is crafted based on the most recent experiences. Reactive legislation without expansive application of industry experiences and in-depth analysis of real “worst-case” scenarios is negligent. Just as we learned in the Hurricane Katrina response, there must be legislation that allows for flexible response decisions in the face of disasters which transcend the boundaries of existing legislation.
- Recognize that a basic tenet of disaster response is that disasters are local. To exclude local engagement curtails critical information and hinders the process of an expedited response. While following a National Contingency Plan may set the specific command parameters and structure, if implemented without local buy-in initiates significant but unnecessary power struggles, stifles valuable information exchange, breeds distrust, and ultimately interferes with the effective completion of the mission at hand via distractions which focus on personality and authority dynamics.
- Establish a National downstream logistics program which accounts for real-time resource availability and a pre-event awareness of potential shortfalls and pre-planned alternatives to address such shortfalls.
- Redefine the role of “responsible party” from the manager of the disaster to the required financier of reasonable response efforts. Require the participation of all operating oil and gas companies to contribute to the oil spill fund at a level that allows the ability to cover costs of a response. In times of a specific incident, create a pre-established evaluation team to provide a cost estimate for the response associated with a specific disaster and require those funds to be deposited into escrow to be drawn on for response costs. Oversight of the escrow should be administered by an independent agency that will account for cost reasonableness and response vendor payments.
- Eliminate the operational practice that isolates data used for decision making at all levels of the response from the local branches and establish a network of information sharing and concurrence that integrates actual “on the ground” experiences with scientific theory and data interpretation.

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

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

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

Chairman THOMPSON. Thank you for your testimony.

I will remind each Member that he or she will have 5 minutes to question the panel.

I now recognize myself for questions.

Mr. Costner, when you originally contacted Federal agencies over 15 years ago to promote your oil spill clean-up technology, what was the response?

Mr. COSTNER. Well, the list of whom I contacted read pretty much like a who’s who—all the initials, very difficult to keep up

with. But, really, we are talking about the Coast Guard, MMS [Minerals Management Service]. Really, I went to everyone in the Government side of things. I equally went to industry, volunteered my machines spill after spill, to put them on the spills at my own cost. I had my machines tested at the Coast Guard facility in New Jersey.

The EPA we contacted. Really, everybody was contacted, multiple times, trying to let them understand that this capability existed to create efficiencies where efficiencies were not.

Chairman THOMPSON. The question is, after 15 years, it took an oil spill for somebody to say, well, this guy, Costner, might have a good idea. Explain how EPA or whomever—

Mr. COSTNER. It came from a local—Billy Nungesser was made aware that there might be a machine—a magic machine from an actor. When it was presented to Billy, before they could even make the explanation, Billy Nungesser said, stop, wait a second. Before I was a politician, I was in the oil business, and I saw this machine work in Houston at an exposition. It does work. Please call him. At that point I was invited down to the Gulf and began this long, 4-month journey of having it tested by BP out on the water.

Chairman THOMPSON. Mr. Taffaro, your testimony in terms of the lack of coordination between Federal agencies and local is quite troubling. I would say this from a step-by-step standpoint. Do you have any knowledge of any training that has been provided at the Federal level to State and locals dealing with oil spill response?

Mr. TAFFARO. Mr. Chairman, I am not aware of any of that type of training being offered. That discussion has begun. I can tell you that both the Governor's Office of Homeland Security and Emergency Preparedness and the local communities that have been impacted are now in discussions in terms of preparing for and creating another level of expertise at the local level to deal with this type of a crisis. But prior, no, that had not been done.

Chairman THOMPSON. So the plan that BP had submitted in furtherance of getting a permit, you were not privy to seeing it.

Mr. TAFFARO. Not at all. Not at all.

Chairman THOMPSON. So, as best you can, can you just describe for the committee, once the spill occurred, what communication was like the first 2, 3 days of the spill with you and the Federal agencies?

Mr. TAFFARO. Mr. Chairman, it was actually rather strange to have experienced the same situation that we experienced during Hurricane Katrina. Having been in office at the time as a council member, the coordination and communication was virtually non-existent, which is what created the gap to begin with. Because we were prepared to respond to a disaster—any disaster—in terms of management capabilities, we began standing up a disaster response branch long before anyone showed up to say we are here to manage this disaster with you, for you, or to get out of the way.

So, again, there were several days before any coordination became even apparent that there would be an incident command branch or an outpost or any type of coordination with a higher-level authority.

Chairman THOMPSON. The last question is: We were told during our visit that there was one person in charge. That if your parish

needed an answer, there was one person for you to contact to get that answer. Did you find that to be true?

Mr. TAFFARO. I still don't know who that person is today, other than Admiral Allen. Now, obviously, the incident command—the National incident commander has designated an area commander in terms of Admiral Zee, Captain Perry now within the structure.

Chairman THOMPSON. We were told a number of times that there was one person who resolved any issue for local government the minute it came in.

Mr. TAFFARO. I never received that memo or introduction to that individual.

Chairman THOMPSON. Thank you.

I yield to the gentleman from New Orleans, Mr. Cao.

Mr. CAO. Thank you very much, Mr. Chairman.

My first question is to Mr. Costner. First of all, I want to say how impressed I am with the plans that you have put together. My first question to you here is: According to your plan, what kind of contingencies have you put in place, for example, to redeploy the vessels as well as to redeploy the resources and whether or not the resources are adequate in the event of disruption such as hurricanes, storms, or so forth?

It seems to me that the plan you put forward—tier 1, tier 2, tier 3 based on the presupposition that it would be a smooth transition from different tiers. I am wondering whether or not you put into your plan, for example, interruptions by hurricanes, by storms, tornados, or what have you.

Mr. COSTNER. Well, I think that when you are dealing with an act of God, whenever people are fighting for life and limb, the ability to exercise some kind of clean-up is going to be limited. So our plan, we don't have vessels that can operate in hurricane-type weather—or booms. So when that happens we are really at the mercy of what is going on.

In short, when we saw exactly what happened with the Deepwater Horizon, we had perfect weather conditions. What this plan takes advantage of is we know that at any one point in time these 40 vessels that I talked about, they are operating, day and night. So what we have elected to do is to outfit them so that they can be first responders, so that they can get there within 2 to 3 hours. Make no mistake, 34 can also be on their way. We can have what we call an overwhelming response. But we need the ability to have a first response. So the plan was designed to take advantage of vessels that were already out there.

Your question was kind of long, so perhaps there is something I have missed.

Mr. CAO. I was just thinking whether or not this plan put into place certain contingencies such as hurricanes and things that can disrupt.

Mr. COSTNER. No. We don't have. I am sure this plan could be improved. I said so as much.

What I don't think it can be is reduced. I think that it probably would make sense to have a boat at the site of a well that is being drilled, because we know that is a very delicate moment in the life of a well. I think it would be responsible to have something sitting

out there 24/7 during the life of a well being drilled. I think that—that is not in the plan, and I think it actually should be.

This is an initial response. We think that it is very significant, and it could be incorporated beginning today. There is a time schedule in the booklet in front of you that examines how quickly these assets could be brought to bear and put into place.

Mr. CAO. Now are you assuming that these 40 existing platform sort of vessels, all Coast Guard vessels, are they working in conjunction with Coast Guard and private corporations, private entities?

Mr. COSTNER. Well, they would be taken over by the Coast Guard. Because the minute a spill happens, the Coast Guard takes command. But what would happen is, since they have been predesignated, it would be a very turn-key operation for the Coast Guard to actually understand. The problems that have been outlined here is that there seems to be a disconnect in how to coordinate what goes on.

These 190 vessels would be dedicated to this particular idea versus 6,000. I mean, if we were to extrapolate that particular response—if we had five disasters happen at once, if you extrapolated the current plan, there would be over 30,000 vessels out there trying to collect oil. We know at the end of the day that they collected about 3 percent. We know they are also limited.

One of the problems that occurred with 6,000 vessels is that there is too many. The sheer volume makes it dangerous. They can't operate at night. We also know that oil doesn't stop leaking throughout the night. So technology needs to catch up with what the problem is going on out there. This program is designed to do that, to work 24/7.

Mr. CAO. Thank you very much.

Mr. Taffaro, I know that one of the biggest problems that we had down in the Gulf Coast was a lack of a clear command-and-control structure. What was your experience with respect to this perception or this problem?

Mr. TAFFARO. Congressman, I guess the largest challenge for us in trying to determine the answer to that question was we interpreted the law to mean that the Coast Guard, by legislative authority, would be running and managing the command. But oftentimes in the structure the responsible party had equal authority and oftentimes veto authority, whether it was directly through objections to operations or through a financing leverage where if they chose not to authorize payment—

Mr. Costner's technology was there. We all saw it. We were exposed to it and actually requested to be allowed to utilize it. If it didn't work, then we would discard it. But because BP said no, that is what generally held up the entire process on many cases.

So if the Coast Guard is truly the command in this type of an incident, then let the responsible party financially support that command, rather than have veto authority in operations.

Mr. CAO. Thank you, Mr. Chairman. Yield back.

Chairman THOMPSON. Thank you very much.

The gentleman from Texas, Mr. Cuellar, for 5 minutes.

Mr. CUELLAR. Thank you, Mr. Chairman. I want to thank both of the witnesses for being here.

Mr. Taffaro, let me ask you a question. I am looking at your testimony, and in particular I am looking at pages 6 and 7, where you go in very specific suggestions as to where there was a problem working with the Federal Government. The main thing is, without local buy-in initiatives, it is kind of hard to get some of these issues addressed.

I have looked at the testimony that Mr. Chávez and Rear Admiral Neffenger—and it is day and night, what they are going to present; and I hope you stay here to listen to their testimony. But it is totally day and night.

I want to know, just follow up with what the Chairman talked about. Why is there such a disconnect? What are we missing here? Because I am one of those. Without the local buy-in, I don't care if you have the best plan out there, why do you think—I mean, there is a disconnect here, totally.

Mr. TAFFARO. I believe we can't ignore the massive nature of this incident, obviously, and the multiple layers of command. Oftentimes, if there was a command that we were told that Admiral Allen—and, in many cases, during a meeting with the parish presidents and the Governor—that Admiral Allen or his deputy would support, by the time it got to the local level it had changed dramatically and significantly. It is indicated in our experiences, even as recently as yesterday, we have a transition plan that the Coast Guard has signed off on, the State signed off on, BP signed off on, but to implement that transition plan is different in every single parish that is impacted right now. That shouldn't be the case. The transition plan was meant to be a standard, but it is implemented differently across the board.

Mr. CUELLAR. I hope, Mr. Chairman, the two witnesses will stay here and follow up on the specific problems of Mr. Taffaro. I don't care if you have the best plan, but if you don't get down to the locals, we have got a problem. I hope our two witnesses will take a look at that and spend a little bit of time with Mr. Taffaro.

To Mr. Costner, thank you very much. Let me ask you another question I have with Homeland Security. I know that Homeland usually brings up, well, look, we have just been in existence 8 years, and we are still working at it. We still are trying to work this out. My response is, we won World War II in 4 years. So that response doesn't buy me out.

One of the issues, following up on what the Chairman talked about, was this issue about how do you get the ideas from the private sector so Government can say, you know, here's a good idea. I can understand there are some ideas out there that might not be the best, but if you have a good idea like you have, and I certainly want to thank you, but let's say the same thing in Texas. I know you know some of my friends, Paul Sadler, Auggie Corito, and some of those folks from Austin. But even in Texas, for example, the former Governor Mark White had an idea, and he just couldn't get through the Government.

Apparently, you have the same situation. You go in, you present an idea. What suggestions do you have where Homeland can look at an idea and say: Let's move through this idea. At the same time, there are some people who come up with some of the craziest ideas. But yours was a good idea. How do we get Government to get those

good ideas from the private sector like you had? Because you had a little difficult time in trying to get past the bureaucracy.

Mr. COSTNER. I still don't know that answer. We have an interesting system in America, and thank God we actually have it, because it gives us this forum, for as frustrating as it may be for everyone, but we are here. In my instance, I am kind of a brick-and-mortar person. I wanted to come and offer this committee an actual plan.

So what I have attempted to do as a citizen is to do kind of the heavy lifting, put over \$20 million into technology. You should understand also that this technology came out of the DOE [Department of Energy]. So this actually had a potential to be a great story in technology that the Government paid for, I bought, I extrapolated it into something that could work around the world just as well as here on our own Coast.

So I have attempted do the things. I have called the Governors. I have come to Capitol Hill three times to testify, to not just bring awareness, because we are all aware of what has happened.

I think what this body is in need of, what the American people are in need of, is a plan. That plan, make no mistake, didn't need to come from the Government. It should have come from industry. Industry should have had a plan in place that was not just adequate. Adequate is a word that we use when we are a child. We just do the bare minimum. What we needed is a plan that is overwhelming. To that extent I have gone out of my way to talk to the oil companies and present this plan to them, with the idea that this is a plan that they should have in place.

Short of that, I guess we come back to our system of Government where we have to mandate, where we have to legislate. But, in this case, that doesn't have to happen. I think a heavy influence from this particular committee, from the Department of the Interior, I think from the Coast Guard, I think a heavy influence can be brought to bear on the oil companies; and I think they would accept a plan that has this type of science, this type of logistics, this kind of response.

It exists, like I say, today. It is a turn-key operation that can be passed over to the Coast Guard and we can begin to get rid of some of the frustrations. Because at the point of something going wrong there is an overwhelming response to something that seems practical, something that seems adult. We need an adult response to a problem, and a mature industry like the oil industry should have one.

Mr. CUELLAR. Mr. Chairman, thank you.

By the way, "For Love of the Game," great movie.

Mr. COSTNER. Thank you.

Chairman THOMPSON. The gentleman from Texas for 5 minutes, Mr. McCaul.

Mr. MCCAUL. Thank you, Mr. Chairman, and thank the witnesses for being here.

Mr. Costner, thank you for your leadership and your role in this response effort. I know you testified before the Science and Technology Committee previously, so we had a chance to visit at that time. It is really an astounding story that the two of you have to

tell here today about the Federal Government, and sometimes the Federal Government is its own worst enemy.

This technology, Mr. Costner, as you mentioned in your report, was developed over 30 years ago by scientists at the Idaho National Lab. The patent was applied for in 1990. You purchased it in 1993. For 15 years, you tried to get the Federal Government to take notice of this technology to prevent the very disaster we saw happen in the Deepwater Horizon spill.

I think the Chairman has already gone through your testimony in terms of who you contacted to try to get attention. But even after the spill occurred, what is even more incredible to me is the lack of interest or lack of response by the Federal Government.

Can you tell me a little bit about the obstacles and the challenges you encountered, even after the spill, trying to get the attention of the Department of Homeland Security?

Mr. COSTNER. Well, not so frustrated. You have to understand that I don't know the waters myself, how to navigate in Government. I am a citizen. I think most of the people behind me—well, maybe not. This is an interesting place to work. So I try to educate myself.

I have never tried to lean on my celebrity to bring attention to this. I always thought that the technology would speak for itself. But it hasn't.

Listen, America's story is pretty long in all things, in all things that we have accomplished. Maybe we have come to a seminal point where we can put our thumb down, we can put our fist down and say this is what we need to be about.

So I feel privileged that I have this audience. I feel like this group has the weight, has the interest of the American people at heart and could influence the oil industries to take this plan.

As you can see, my emphasis has kind of shifted. I have gone from technology that I was willing to offer up—a machine that would create efficiencies on the water where no efficiencies existed—and we have moved—my experience down in the Gulf the last 5 months has led me to bring forth a plan.

I want to be really clear about this plan. This plan was not made by myself. It was made up of locals who have experience—considerable experience both nationally and internationally. It is made up by men who have made their own companies in the oil service business who have really made a thoughtful plan that we believe is overwhelming in its ability to respond to oil spills, big and small.

Mr. MCCAUL. I think it is the role of this committee, Mr. Chairman, to get attention to your plan and get the Department of Homeland Security to consider this plan—and the Federal Government.

Eventually, BP did end up buying some of your machines, is that correct?

Mr. COSTNER. That is correct.

Mr. MCCAUL. How many?

Mr. COSTNER. They bought 32. Twenty-one of them were deployed.

Mr. MCCAUL. And they worked—

Mr. COSTNER. They worked very well. But pointing out to the frustration that everyone has experienced, there were times when

our machine sat out there waiting for oil to be brought to them from these 6,000 boats. It never came. There was no logistics that could direct these boats to where this oil could be offloaded and they could continue to gather more.

So why my plan is simple is because it needs to be simple. We need to have one in place. It needs to be mobile. It needs to be very robust. But it needs to be passed off. The only plan that can be passed off is one that has been carefully thought out, where training has followed suit, and it can pass over to the Coast Guard. We need to simplify this, and we can do it.

Mr. MCCAUL. One hundred ninety vessels with 190 of these machines?

Mr. COSTNER. Well, no, there would be multiple machines sitting on these boats to process this oil.

Mr. MCCAUL. I would be interested to get the cost for that plan. I know you don't have that figure.

Mr. COSTNER. Well, I have had to do estimates, because I think that is important. There is a price tag with everything. But I think it is important to know that as we designed this plan we didn't just act like we had a blank check and throw it at the oil industry. I don't want to be that cavalier. What we decided to do was to take existing assets. Of these 190 boats, 90 of them already exist. What we have proposed is to retrofit them. So, in a way, we are not trying to stuff a bitter pill down them. We are trying to use existing assets.

The 100 shallow water boats were something that we don't have. We are too accustomed to seeing our own citizens on the beach standing heroically with rubber boots and pitchforks and hay. These shallow water boats, as I described, can move in a very rapid mobile place. They can move from Texas to Florida overnight. So, finally, we can have some highly technical pieces of equipment working as oil moves its way towards our shore, should it get by this plan.

Mr. MCCAUL. In the limited time, just one question, Mr. Taffaro. You testified that the parish interaction with DHS was non-existent, is that correct?

Mr. TAFFARO. That is correct. The link between myself as the parish representative and DHS occurred through the Coast Guard's PPLO, the liaison officer supplied by the Coast Guard.

Mr. MCCAUL. So you did not have a seat at the unified command.

Mr. TAFFARO. We had our branch in St. Bernard. So there was no DHS direct interaction.

What I wanted to add to that if I can, quickly, is that the characterization here is that every individual who came to assist, whether they were rotating in or rotating out, had a clear dedication to the mission, but the system that they operated in did not provide the appropriate support to carry the message from the highest levels of authority to the ground level.

Mr. MCCAUL. Just closing, Mr. Chairman. I think you testified, Mr. Taffaro, about legislation needed to have more flexible response decisions to be made. I think we should take a look at that on this committee.

Thank you for the testimony.

Mr. TAFFARO. Thank you.

Chairman THOMPSON. Thank you, and that has been duly noted. We were told on our visits just the opposite. Part of what we are trying to do with this after-action review is that, if we have to legislatively require it, we will do that, because we understand that has to be the connection.

We now recognize the gentlelady from California, Ms. Richardson, for 5 minutes.

Ms. RICHARDSON. Thank you, Mr. Chairman.

Mr. Taffaro, how long have you been the president or involved in government in an elected official position at your parish?

Mr. TAFFARO. I served as a council member for 8 years; and I have been the parish president since January, 2008.

Ms. RICHARDSON. Did you participate—back in 2005, there was a National level exercise regarding a potential oil spill. Did you participate in that in any way or were you aware of it?

Mr. TAFFARO. No, I did not participate.

Ms. RICHARDSON. You said in your questions and answers in response to Mr. Chairman that you did not have a point of contact. But yet in your testimony you reflected on the fact that you did have a liaison that you were involved with. I think, if you notice, several Members are asking the same question. Can you be clear on whether in fact there was a liaison with the Coast Guard that you were interacting with? Because we were specifically told that each parish had a liaison. Maybe you didn't feel the liaison did enough, but was there a liaison available for you to interact with at your parish?

Mr. TAFFARO. Sure. Let me clear that up. The question that I answered was whether or not there was a person who had ultimate authority within the Coast Guard that I was introduced to. No, that was not the case, outside of Admiral Allen.

The liaison officer program actually started during the response in response to that disconnect, as well as the function of the liaison officer, and I don't want to be curt about this, but part of that came about because of the negative media attention that many of the local parish officials were bringing to light about the disconnect that was happening.

Ms. RICHARDSON. Right, but the question is, and I only have 3 minutes, and I need to ask some questions to Mr. Costner, the question is: Did you have a liaison? Yes or no?

Mr. TAFFARO. Yes.

Ms. RICHARDSON. Okay. So you were introduced to someone. Did you participate on any of the calls?

Mr. TAFFARO. I participated with my liaison officer. I was not invited to participate on the calls. In fact, I was told that the call was for the liaison officer and DHS's offices, not for the parish president to sit in on.

Ms. RICHARDSON. So you have no idea whether the questions you asked or the concerns that you had were elevated on the call through the liaison officer.

Mr. TAFFARO. I believe that the liaison officers assigned to me, I thought, did due diligence in conveying whatever concerns that were necessary or conveyed to him.

Ms. RICHARDSON. By you.

Mr. TAFFARO. Up to DHS.

Ms. RICHARDSON. Did you receive responses from him based upon the things you were asking?

Mr. TAFFARO. Sometimes, not always. Oftentimes, there was a single direction of communication.

Ms. RICHARDSON. Okay.

Mr. Chairman, one of the things that I have an interest in as being Subcommittee Chair of Emergency Communications Preparedness and Response is that I think a huge weak link that we have is the lack of continuity of Government.

I would look forward to working with you, especially the excellent testimony that we have that you initiated through this hearing, because, as I said, and I am going to say it publicly again, my 6 years on a city council, 8 months in the State legislature and even now, 3 years in Congress, no one has ever told me what do I need to do if something happens. That is a scary point. If I don't know, and it sounds like, through your experience, there wasn't, still, we haven't gotten to that point.

I think continuity of Government, inter agencies are now working well together, but connecting the dots, local officials, State officials, Federal officials, with those agencies to maximize where we need to be is still not there. So I appreciate you having this hearing. I appreciate you coming, sir, to testify, because I think it further accentuates that this is a huge problem that needs to be addressed, and I am very appreciative that you brought this forward.

Mr. Costner, in the remaining time that I have, which is about a minute and 4 seconds, when the Deepwater Horizon spill occurred, did you ever receive a call from anyone saying, we hear you have something—

Mr. COSTNER. No, I did not. I was on my way to Canada to look at the oil tailing problems that they have up there in Canada. I was invited down. So I wasn't immediately called. I was invited down by a group of local businessmen to see if this machine really could work.

Ms. RICHARDSON. When it was tested on the water, what happened? Did they use it?

Mr. COSTNER. Well, when it was first tested I felt that I was, I thought perhaps the game was rigged, because I thought I was going out to test oil and water, and the sample that was brought to me was thicker than peanut butter. I was a little frustrated, as you can imagine, because it was designed to separate oil and water. But the machine, through some engineering, through about 2 to 3 or 4 days, we figured out how to do that.

I was then brought oil that had dispersants in it, and the machine was able to separate that. It is interesting to note that we were able to come under the EPA standards of an output that was below 15 parts per million, and, of course, we are obviously able to separate oil and water. In fact, we prefer that it come to the top, that it not have dispersants, so that we can gather it.

Ms. RICHARDSON. So was it ever used at any point in the process?

Mr. COSTNER. Pardon me?

Ms. RICHARDSON. Was your equipment ever used?

Mr. COSTNER. It was. When BP finally put it through the entire gauntlet of works, something that I don't think has ever been done

before on the water, it was successful, and BP, at that point, chose to buy 32 of the machines and place them on vessels.

Ms. RICHARDSON. Did you witness some being used?

Mr. COSTNER. Pardon me?

Ms. RICHARDSON. Did you witness some being used?

Mr. COSTNER. No, I didn't witness them being used. I had all the faith in the world that they would work and the reports came back to me. In the white paper, you can see that they did work, and BP did understand the value of these particular machines.

Ms. RICHARDSON. How long did it take from the time—and if I could just have an additional 30 seconds, Mr. Chairman?

How long did it take from the testing to the equipment actually being purchased and being used?

Mr. COSTNER. It took quite a while. We came to the fight late, so I don't have that; probably 2½ months.

Ms. RICHARDSON. I didn't hear you answer the question of my Republican colleague. What—

Mr. COSTNER. Yeah, it was pretty long.

Ms. RICHARDSON. What is the estimated cost of your plan?

Mr. COSTNER. The cost. It is interesting to note that the plan that is being put forth by industry right now, there is a consortium of the oil companies, and a number, a billion dollars, is being tossed around. It is a pretty sexy number. I think everybody behind me would go, a billion dollars? I mean, that gets your attention.

But it is important to know that that is designed for prevention and containment at the well site. What that plan does not include—and I think the committee, I hope, takes this really to heart—what that plan does not include is surface oil, the problem that we are talking about today, the one that came on to the beaches of the parishes, the one that comes up. It seems like they fail to anticipate that something could go wrong, and so their plan is a billion dollars.

I would estimate our plan is somewhere around \$850 million to a billion dollars itself, with an on-going cost of about \$150 million to maintain it.

Now, those are guesses. But I have outlined before that we have tried to use existing assets to not drive that cost. But like I said before, I don't think there is any cost that is too great that they are willing to pay. I think in the service of safety, I think this plan is the right one.

So the plan that is being offered right now by industry does not include surface oil, and that is what this plan is all about.

Ms. RICHARDSON. Thank you, gentlemen, for your testimony.

Thank you, Mr. Chairman.

Chairman THOMPSON. Thank you very much.

The Chairman now recognizes the gentleman from Florida, Mr. Bilirakis.

Mr. BILIRAKIS. Thank you, Mr. Chairman. I appreciate it very much.

Thank you for your testimony, gentlemen.

Mr. Costner, again, thank you for sticking with this. It has got to be very frustrating after 15 years.

I have been concerned, regarding your plan, I have been just concerned about the dispersants and their effect on the ecosystem.

Does your plan avoid using dispersants or minimize using dispersants?

Mr. COSTNER. It doesn't require using dispersants. We want the oil to come to the surface.

I think if dispersants are used, and we don't include that in our plan, it should be as a last line. That call should be a difficult one to make.

But if we create a rapid response, an overwhelming response, we should be able to recover a majority of that oil. That is another reason why we created a last line of defense that is sitting on the shore waiting, really effective boats.

So, yeah, when you disperse, you are not getting rid of the toxicity of the oil. The only thing you are doing is breaking it up and allowing it to spread into the ecosystem a lot quicker. The point of dispersants has always been almost a—No. 1, it gets it out of mind and out of sight really quickly, so there is that aspect.

But the other reason they talk about dispersants, and the reason why I think they have been effective in having them work is because the claim is, if we don't disperse, it will travel along the surface of the ocean quicker and get to your beaches quicker. That scares everyone. So everyone naturally goes, yes, well then, disperse.

But we do not require dispersant. We do not require burning because burning does nothing to get rid of the toxicity either. It simply creates a more airborne pollution.

Mr. BILIRAKIS. Thank you very much.

Mr. Taffaro, your testimony echoed many of the sentiments, particularly in the area as to the information sharing and exchange by the Unified Command with local governments. I have heard these same sentiments in the State of Florida. Based on your experiences, what recommendations would you make to enhance communications, resource allocation and overall responsiveness in the event another disaster of this magnitude occurs?

Mr. TAFFARO. Well, one recommendation that I would put forth for consideration is to have a National logistical program that identified resources ahead of time and had those resources in a logistical downstream chain, instead of having to then scurry through in response to an incident to find resources and to allocate them accordingly.

That should be a paramount preparation issue or item for any agenda for any operational oil and gas company, as well as combining with all of the Federal agencies that have oversight to and regulatory authority over those industries.

Mr. BILIRAKIS. Thank you.

As a follow-up, in addition to looking back after disaster response to make changes to plans and procedures going forward, I believe that it is necessary to use lessons learned as they are happening to correct deficiencies in response while it is on-going. In your experience, as you raised issues about the lack of responsiveness or unavailability of resources with Unified Command, were they capable of changing the way they operate to address your concerns and to be more responsive?

Mr. TAFFARO. In our experience, they were not. Oftentimes we sat across from a Coast Guard command individual who stated

they would like to go further, but they were legislatively restricted. I think one of the issues that we have learned at the local level and try to promote that to the National level is that, in after-action reports, we oftentimes promote legislation based on the most current scenario, and that leaves us short for the next disaster that transcends the previous one.

So if we are not proactive in looking at, as Mr. Costner said, well, if you had one Deepwater Horizon issue, do we have capacity to respond? What if we have five? Can we do that?

So overplaying—within the legislation, if I can, one of the things that, again, we borrowed the lessons learned from Katrina is that there has to be, because in my estimation, we, as individuals, are hard-pressed to come up with legislation that fits every disaster that we may have. But there should be a way for legislation to grant authority when we come up against a disaster that transcends the current legislation's parameters to act reasonably and to act responsibly.

Mr. BILIRAKIS. Thank you very much. Appreciate it.

Thanks for your testimony, gentlemen.

Chairman THOMPSON. That really is the reason we are here today, to talk about lessons learned from this situation and, hopefully, at some point, we will provide the legislation so it won't repeat itself.

We will now—the gentleman from New Jersey, Mr. Pascrell, for 5 minutes.

Mr. PASCRELL. Thank you, Mr. Chairman.

Mr. Chairman, this reminds me of many hearings that go on in the Congress that deal with many different agencies of the Federal Government. The relationship between any particular industry and the Federal agency designated for specific oversight is really biblical in itself.

Although the Minerals Management Service, when I hear that term, Mr. Costner and Mr. Taffaro, you know, it is like Niagara Falls, suddenly I turn, with Lou Costello and Bud Abbott. It's a nomenclature, and I don't feel very comfortable when I hear it.

On the other hand, shortcuts imply a conscious effort, if not a criminal intent, as far as I am concerned, but you point out in your testimony, Mr. Costner, that we are not simply talking about what you can't see, don't worry about.

On page 16, in your testimony, "What is the Difference Between Separating Water and Oil," I find very simple and right on target. We have been given the all-clear sign. The hole has been plugged. We are trying to work backwards now to find out and hold people culpable, not only in the private sector but in the Federal sector. Firing people is not enough, as far as I am concerned.

So, Mr. Chairman, the 9/11 Commission told us the most important failure concerning the 9/11 attacks was one of imagination. So this is what your struggle is, let's face it, for 15 years; people who have imagination, people who have none.

It seems that some imagination failed us when it came to planning for Hurricane Katrina, despite the fact that a large-scale natural disaster in a coastal city like New Orleans should have been entirely predictable.

Now we have the Deepwater Horizon, a massive oil spill in the Gulf. It seems we still fail to have the imagination to think that if we are drilling for oil thousands of feet below the earth's surface with immense pressure in ever-changing conditions, that maybe, just maybe, we might be terribly wrong.

Mr. Chairman, I find it hard to believe that it requires a real active imagination to not consider that a distinct possibility. The simple undisputed facts of this entire disaster is that there was no real contingency plan. I blame the Federal Government. I blame BP, and I blame those private folks who dig into the ocean and say, all is clear, because you can't see anything on the surface, not from private industry nor from the local and State and Federal Governments, which is exactly why our response to this disaster was made on the fly and took so long to coordinate properly.

So here we are once again in this committee considering a threat after it has occurred. We are good at it. We have written the protocol, the model. I hope you are watching. Once again, we are stuck being reactionary instead of proactive.

So, Mr. Costner, let me ask you this question. Do you feel as if you have been heard, or do you have to create a spectacle just to get attention of decision-makers on the ground? I am trying to make it as simple and direct as possible, sir.

Mr. COSTNER. I feel I have been heard and now, you know, what I am dependent on, as every other citizen is, is the collective will of our Government to move.

My hope would be that industry would take this plan and the influence that this committee could be brought to bear and do this without being made to do it; that they could see that this is a responsible act.

But I have been heard. Now I am in the hands of people who have gone into public service.

Mr. PASCRELL. Thank you.

Mr. Taffaro, thank you for your candidness.

Mr. Costner, thank you for your candidness.

Let me ask you this: Was your office consulted on a regular basis on the oil spill response efforts? Yes or no.

Mr. TAFFARO. I am going to answer based on the definition of regular.

Mr. PASCRELL. That is not a yes or no.

Mr. TAFFARO. I have to say yes, but defining regular is a tough issue.

Mr. PASCRELL. Well, let's go into the answer to your question then. Were you humored in the process?

Mr. TAFFARO. Yes. One of the things that we forced into operation at the St. Bernard branch was: I wasn't going away, despite, at the front end and even all the way 'til last 2 weeks, not being recognized as a legitimate seat at the table of command at the branch.

Mr. PASCRELL. What do you expect from us, Mr. Taffaro? What do you want us to do? Tell me what you want me to do.

Mr. TAFFARO. If this committee can address the link between the National Incident Command and the National Contingency Plan and make sure that those dots are connected, all the way to the ground-level forces that are on the front line of any disaster, then

I think we have accomplished something in the process, because there is so much valuable information that comes from the people who are dealing on the front lines of a disaster that rarely make its way back to the decision-makers at higher levels of authority.

Had we had that flexibility when Mr. Costner showed up in New Orleans with his machines, we would have had them on the water the very next day. We asked for that. But that was not the case.

Mr. PASCRELL. Why?

Mr. TAFFARO. Because the bureaucratic system didn't allow for that.

Mr. PASCRELL. What is the heart of the bureaucratic system that we are referring to specifically today? Where is the heart? Where is the soul? Where is the centerpiece of it?

Mr. TAFFARO. In this incident, the heart and soul is the definition of responsible party.

Mr. PASCRELL. Well, who is the most responsible party—forget about BP for a second—on this side of the table?

Mr. TAFFARO. Current legislation hands that to the United States Coast Guard.

Mr. PASCRELL. Mr. Taffaro, let me ask you this, if I may, Mr. Chairman, do you primarily receive information from the Coast Guard or some other Federal agency?

Mr. TAFFARO. In this incident, the Coast Guard.

Mr. PASCRELL. The Coast Guard.

One more question? Quick.

Chairman THOMPSON. One more question.

Mr. PASCRELL. Thank you, Mr. Chairman. Did you receive any information from BP or its contractors?

Mr. TAFFARO. Throughout the course of this incident?

Mr. PASCRELL. Yes.

Mr. TAFFARO. Yes.

Mr. PASCRELL. You did.

Thank you, Mr. Chairman.

Chairman THOMPSON. The Chairman now recognizes the gentleman from California, Mr. Lungren, for 5 minutes.

Mr. LUNGREN. Thank you very much, Mr. Chairman.

I would like to direct some questions to Mr. Taffaro. My experience for 8 years as Attorney General of California, when we had earthquakes, mud slides, floods, fires, riots, was that the chain of command was extremely important, and even though we don't do things perfectly, and there are always after-action reports and so forth, the lines of authority were fairly clear.

If we have a disaster, man-made or otherwise in a county in the State of California the sheriff is the chief law enforcement officer. He is the one they all respond to. When we have assistance from other outside agencies and departments, they go to him. They understand that sort of command structure. People swallow their pride and understand that is the command structure. The State comes in, and there is an overall decision making by the Governor and other State-wide authorities. When the Feds come in, they assist with us.

But we never had a problem, as I can recall, that after the fact, we were talking about people not knowing what the lines of authority were, or there was an inability to get a response. So that is

what puzzles me here and particularly when, at least out of Katrina, it appeared to me that the jewel of the Federal response was the Coast Guard. We didn't hear complaints about the Coast Guard in that regard.

So, Mr. Taffaro, my question to you is, is it, in your mind, from your experience, some bureaucratic snafu or difficulty in operation in the Coast Guard, or is it this lack of legal authority that the Coast Guard had to make decisions?

Mr. TAFFARO. Well, in Louisiana, one of the things that I believe created some confusion is Louisiana law is very specific in a declared state of emergency.

Mr. LUNGREN. Yes.

Mr. TAFFARO. That grants the authority to the local authorities at that point.

The Clean Water Act and OPA 90 clearly does not recognize the law of that State that is stated in Louisiana. So, as a former Attorney General, you would easily see how that conflict begins to arise when a Federal agency does not recognize a State legislative authorized authority for a local municipality.

Mr. LUNGREN. That occasionally occurs, yes. I do recall that.

Mr. TAFFARO. But I don't believe that hurdle was something that could not be overcome. I believe the challenge came and what made it difficult was a lack of recognition on both sides, because as the parish president, I dug my heels in when I was told, you have no authority in this response. The Coast Guard dug their heels in and said, we have all the authority in this response. In essence, we undermined the process of efficiency.

Mr. LUNGREN. I always found it worked out best in terms of concurrent legal jurisdiction or law enforcement jurisdiction, when the FBI and Federal authorities recognized that there were more boots on the ground with respect to local law enforcement and that they generally knew the issue better in terms of street crime and so forth because they were working it, and even though they had Federal jurisdiction, it was respecting and taking into account the information base that they could get from local law enforcement. It sounds like that kind of analogy didn't work in your instance.

Mr. Costner, you said in your testimony before the House Science and Technology Committee in June that you had come across several "regulatory roadblocks" including various Government regulations. You also mentioned an overall "ineptness" on the part of numerous Government agencies. I am not looking to point fingers; I am just trying to find out where you found difficulties and where you think—well, let me put it this way. Do you think your celebrity came in the way of having your solution seriously considered through the process?

Mr. COSTNER. No, I think it is business and business as usual. People don't want to pay the cost because safety isn't sexy.

Mr. LUNGREN. Well, let me put it this way. You had a particular patent that you had that went through a particular process that would be needed in certain circumstances.

Mr. COSTNER. That is right.

Mr. LUNGREN. Yet it seemed that you had difficulty getting that accepted over a 15-year period of time. I am always recalling something President Eisenhower said about World War II. He said the

real hero of World War II was Higgins, who built the Higgins boats, which were the landing craft out of Louisiana. Yet Higgins was relatively a small operator compared to all the big “military industrial complex,” and if we had waited for them to build those landing crafts, we might not have landed on Normandy.

So it has always brought in my mind, how do we make sure that the good people in the Federal Government make sure that they recognize, perhaps, ideas coming from unconventional sources or not from the big guys, and in this circumstance when we are working with our oversight and Homeland Security, one of our responsibilities is to see that science and technology advances are utilized.

So I guess, out of your experience, could you give us any insight into the roadblocks you saw that you think ought not to be there? Or are there constructs we could create to make sure that if you can’t go through the front door, there is a side door or something that would consider the unconventional, if I can call you that?

Mr. COSTNER. Right. Well, I think right now you have a group called the MSRC [Marine Spill Response Corporation] that represents the oil industry. It is funded by the oil industry. The people who run it came out of the oil industry, and they do the bidding of the oil industry. It would be up to them to, you would think, to stay on top of the latest technology.

They were privy to this machine. Like I said, it was tested with the Coast Guard in New Jersey. It was demonstrated multiple times in my own back yard in Santa Barbara where the MSRC was invited to. Right now, that group, if you look past the oil companies, the group that was responsible, that we were led to believe was responsible for handling this oil spill, was the MSRC.

So I would leave it to you to decide how good a job you think they have done or how big the door is open to someone like myself, who is offering what we consider the latest, the best technology available.

You know, they had 6,000 boats out there, and we believe that only 3 percent of the oil was collected at the end of the day. But the eye of the needle that I have to go through, there is a Catch-22. I volunteered to go on a variety of spills. Well, if it hasn’t been tested, it can’t go out on the water. You know, well, how do you get it tested? How do you get it out on the water? It is a very difficult hill to negotiate. I have managed to 15 years later, we got out on the water. But you can see the journey was very, very tough.

But we have to make sure that if there is an organization in place that was responsible for the spill, how well did they do? What did they do? Why do we feel that we didn’t really respond, that there wasn’t a plan at all?

I mean, there can be a chain of command. I understand what this committee’s talking about. A chain of command is very important. But without an army to direct it, without the brick and mortar, and that is what I offer up in the fleet of 190 is a brick-and-mortar, a push-button situation where then you can figure out the chain of command.

But somebody has to go do the heavy lifting, the dirty work, long before it even reaches the beaches or the parish. There is someone

that has to be out there. That is what we really need is a robust plan, and that is what we do not have.

Mr. LUNGREN. Thank you very much.

Thank you, Mr. Chairman.

Chairman THOMPSON. Thank you.

Mr. Costner, one thing I want to try to get a time line. We know about the 15 years that you have been working on it. At what point was it the Coast Guard that contacted you about your equipment, or were you still pursuing the Coast Guard? Or did you go to the local—

Mr. COSTNER. No, this came through the local businessmen in New Orleans.

Chairman THOMPSON. So the Feds nor anybody else actually gave you the time of day on this issue?

Mr. COSTNER. Well, they didn't think to bring it up because I think it was, you know, it just has never been on their radar. They have never thought it important.

But I think the industry, you know, never adopted it. The interesting thing about the machine is the ability to actually reclaim the assets. So it is not just cleaning it up. You would think that—I thought gravity would have come to my door. If you thought you were going to lose a valuable asset, could you not only clean up it, but could you resale it?

So I really can't explain the journey. I guess, if you are not mandated to clean something up, I guess it takes a very evolved person who is willing to do it. If you run a public company, if you decide that we are going to spend \$2 billion of our dollars to clean up a mess, I think your stockholders will come and say, why did you spend that \$2 billion? You say, well, we thought it would be a responsible thing to clean up this mess. I think those stockholders would say, and this is where human nature comes into bear, nobody told you to do that. That was my dividend. You just spent \$2 billion of my dividend to clean up something that no one has made you do.

So we realize that we actually need a very evolved person who is going to work in a public job, just like, and if it was a private situation, it would be looking at somebody who would look at \$2 billion of their profits and say: Do I want to put this into protection? It goes against our human nature. We want our pile to grow bigger.

So who speaks for the ecosystem that can't speak for itself?

Chairman THOMPSON. Thank you.

The gentlelady from Texas, Ms. Jackson Lee.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman.

To the witnesses that are here, I want you to know that you have come to the right place. The Chairman of this committee recognizes, even as we have lived in this skin since 9/11, that we were long overdue for having a Department that really has the full responsibility for natural and man-made disasters.

I would not want to put words in your mouth, but what I would suggest is that we come to a conclusion in this Government that there needs to be one captain of the ship; that jurisdiction for issues of which you are facing need to be holed up, held up in one place where you can get an answer.

I want to pose this sort of query to you, building on what we have heard. I want to also commend you to a bill that is named the REMEDIES Act that I will highlight some sections out of it that I think speak to your area.

Forgive my raspy voice. First of all, I capture the words, Mr. Costner, that you said, do we have, does this Nation have the capacity to protect the environment from oil spills? As I listened to you and listened to your technology, I think you understand and seem to accept the fact that we will be engaged in deepwater exploration, whether it is in the United States or whether it is the newly found oil reserves off the coast of Africa now that all those nations are getting excited about; and at the same time, that we have a responsibility to protect these folk who are vulnerable.

To the president of the parish, let me say to you, having been a member of the Houston City Council, I can understand what you said about resistance, exclusion, and power struggles, the worst formula for helping your constituents.

So I would like to raise this question. As I do so, I would like to put into the record a letter from the president of Plaquemines parish,* I think one of your colleagues who you may know, Billy, and we all know him as Billy, but Nungesser, who says we respectfully ask that BP consider our request for this equipment to aid in the protection of our vulnerable coastal wetlands.

They are asking for some equipment that is being moved from Grand Isle and being disposed of that deals with some of the issues, Mr. Costner, that you have talked about, to be placed there. This letter is dated September 17, so this is not something in August. The difficulty, of course, is to get a response, and that is where I would like to pose my line of questions.

Mr. Costner, I think you have been very generous and kind in your remarks.

I guess, before I say that, let me express my appreciation for the Coast Guard. I think we need to do so because they are the organization that we saw pick up 22,000 in Hurricane Katrina, and they did the best they could when they got the call for this oil spill.

But would you reflect quickly on the fact that I recall you being at a Senate hearing and CNN coverage, before specifically the Government reached you. Was it before that? Or were you before that hearing when you asked the question, why do you have to keep doing this over and over again before someone listens? Was that where someone finally picked up the phone and called you from Government, or where you got hooked into the response?

Mr. COSTNER. I think that occurred before I got hooked into the Government. The Government really never called me, but I didn't expect that.

I realized that I could bring this to the Government, and so I started, you know, and trying to navigate these waters is not easy. You don't really know. But I came to friends that had had experience here, and so I began my journey.

Ms. JACKSON LEE. But that highlighted the dilemma because that was right in the middle of the spill and you had still not been reached out to; is that correct?

*The information was not provided at the time of publication.

Mr. COSTNER. That is correct.

Ms. JACKSON LEE. Do you believe today that we still have need for that oil separation equipment? Because the information or the letter that Mr. Nungesser is speaking about is still requiring or asking for that equipment? He is asking for specific companies.

Mr. COSTNER. Yes. The Gulf desperately needs the shallow water boats that I outlined. Again, I talk in terms of brick and mortar, I really do.

Ms. JACKSON LEE. But do you believe there is still a need for clean up even now?

Mr. COSTNER. Well, I would imagine that oil is going to continue to roll up on the beach in some way, but I can't actually speak to that to know that we do. I know that a spill could occur tomorrow, so we should have this equipment.

Ms. JACKSON LEE. On call.

Mr. COSTNER. I think they would appreciate having 20 of these shallow water boats sitting in front of their parish.

Ms. JACKSON LEE. Or other equipment that may clean up Plaquemines parish, as this particular individual needs.

Mr. COSTNER. That is correct.

I think something that we have never mentioned is that this same opportunity exists for us on our freshwater bodies, our great lakes, our great rivers. We have the potential. That happens every day. So while we are talking about the Gulf, it is important to understand that this happens on a daily basis and that we have to protect our fresh water in exactly the same way.

Ms. JACKSON LEE. Do you believe that the Homeland Security Department should be able to define a scheme, if you will, for immediately grappling with natural disasters and man-made disasters, the appropriate framework?

Mr. COSTNER. I think so. But I think what the committee needs is, you do your job; I do mine. You do need to be able to do that. But you also need to be armed with someone who is given you the tools to do that.

Ms. JACKSON LEE. But if I might, in giving you the tools, having at least one place you can go to, would that be helpful?

Mr. COSTNER. It absolutely would be.

I mean, something happens on the West Coast, you know, who starts that ball? I would say the Coast Guard. I think the Coast Guard has to have a designated fleet that they know how to operate. If something happens in Lake Tahoe, you have some system you call, and quickly somebody is going there.

Now, do these assets exist at our fire stations? Can we use existing infrastructure? I think it is important to streamline everything and to understand that everything that we have requires training, so that when it goes out there, it actually works; it does what it is supposed to do.

Ms. JACKSON LEE. Thank you.

Mr. Taffaro, from the local government perspective and your issue of command and connection, I think those are two themes, if you had one house that was responsible for the natural disaster, homeland security, you know the levels where you are supposed to go to, the Coast Guard was commanded under that structure, there

was a structure where they had to work with local governments, how much better would that be for you?

Mr. TAFFARO. It would be better for everyone involved, not only for the local communities impacted by the disaster, but it would enhance the response by the command structure itself. I am a believer, having lived now through five type 1 disasters in the last 5 years, that the National agency or Federal agency that is responsible ultimately for commanding or managing a disaster is much more effective when the local knowledge and the local resources are brought to bear. That is just, over and over, an experience that continues to bear truth in every response that has been involved, at least in St. Bernard.

Ms. JACKSON LEE. So, in conclusion, the payor, in this instance, the oil industry, should be responsive to the local government and the Federal Government impacted. Maybe if we had one Achilles heel, I saw too much dominance by the private sector.

I would like to see us developing in-house expertise on oil spills, floods, hurricanes, volcanos. Do you see that to be the right way so that the payor pays, because they are responsible, but the people who are responsible for the lives of those we represent need to be in charge?

Mr. TAFFARO. I can't agree with you more.

To use a cliché, the fox should not watch the henhouse in the midst of a disaster response.

Ms. JACKSON LEE. I thank you and I look forward to legislation that I would like to share with both of you on how we can move forward in the research and making that come to bear. Thank you so very much.

I yield back, Mr. Chairman.

Chairman THOMPSON. Thank you very much.

The Chairman now recognizes the gentleman from Texas, Mr. Green.

Mr. GREEN. Thank you, Mr. Chairman.

I thank the witnesses for appearing.

For fear that I will forget, I would like to also thank all of the persons who were involved in the response, from the very top to the very bottom; every person played a role and every role was important.

I would also like to recognize the fact that 11 persons lost their lives. I know that it has to be exceedingly difficult for the family members to witness hearings such as this, and I want to make it clear to them that we are still sensitive to the fact that they lost their lives, the 11 persons that are no longer with us.

I am concerned about a number of things, but today I shall talk about the perception of leadership and the perfection of leadership, two important concepts. It is exceedingly important, I believe, that on Day 1, or as near to Day 1 as possible, some one person walks up to a microphone and says, I am in charge, or words that are the equivalent.

The perception of leadership made a difference in Louisiana after Katrina. When that general came to town and he said: I am in charge, and he started barking orders, it made a real difference in terms of what the public thought would happen in terms of a response.

But the perception is not enough. There has to actually be a perfection of leadership. Somebody has to have the authority to say do this and understand that it will be done.

The question is this: First, do you perceive that the public will benefit from some person stepping up and saying I am in charge on day one or as near to day one as possible?

Mr. Costner, thank you for your time and your energy and your service to your country as a citizen who cares about people. So I will start with you in terms of someone stepping up as near to Day 1 as possible.

Mr. COSTNER. Well, I think the American public, I think you all were underwhelmed by the response. I think—and you are underwhelmed because, in 1990, the Federal Government took quick action, tried to muster a lot of resources to close the gap here and to take these resources and put them towards oil-response technology. So the question that gets asked is, 20 years later, what happened? Were those 20 years wasted?

Mr. GREEN. Is it important, Mr. Costner, that someone step forward immediately who is in charge?

Mr. COSTNER. Yes. But they have to have—yes, it is, and they have to have the resources to be able to—because one general standing up and have no army—

Mr. GREEN. Exactly, which is why, Mr. Costner, I pointed out that you have the perception as well as the perfection of leadership. It is one thing to have a perception, but you have got to have somebody who actually has not only the apparent power but the actual power to get things done. Do you follow the distinction?

Mr. COSTNER. I do, absolutely.

Mr. GREEN. Okay. I will go to the honorable parish council person.

Mr. TAFFARO. I couldn't have said that better myself. The perception and perfection of leadership is enormously important.

What I do not have is information that sheds light on what information came from the immediate explosion of the well, because, if we recall, as an after-action item, we look at the delay of, was there a perception of leadership based on information that had trickled out?

If you recall, the National media was reporting there was an explosion; there was no real threat. Then it became a little bit more of a threat. Then it became a National emergency.

In that delay, there was a lack of perceived ultimate authority because in the beginning, it would run its course as an NRC [National Response Center] response. But that is not where it ended. If we are going to respond to disasters, in my estimation, it is much better to overwhelm the response at the front end than play catch up at the back end.

Mr. GREEN. I agree with you. I think that we have to move to a point of not allowing the perception to exist that this is being managed by a committee. While you have to have input from the multitudes to make good decisions, you still have to have a person who has the perception of power and the ability to get things done. It makes a difference when you have someone to step up immediately and say: I am in charge, and here is what we are going to do.

One of the levels of frustration that I had visited upon me quite regularly from constituents was the notion that, is it BP that is in charge, simply because of the way BP was out front, or is the Government in charge? At some point, those issues have to be resolved expeditiously so that the public understands that we really do intend to mitigate and eliminate the problem to whatever extent that we can as quickly as we can. That is why I pose this.

I think that that is what this hearing is about, trying to find a way for us to project leadership that is actually there to make a difference.

I thank both of you for your comments. Thank you very much. I yield back.

Chairman THOMPSON. Thank you.

The Chairman now recognizes the gentleman from Missouri for 5 minutes, Mr. Cleaver.

Mr. CLEAVER. Thank you, Mr. Chairman.

Let me thank the witnesses.

My question, one question, centers on the Exxon Valdez oil spill. It is generally accepted that there were about 11 million gallons of oil spilled in the Prince William Sound. I am not sure what that environment is like today. Do either of you?

My question is: Will the oil spill device that you have brought forth, is that something that needs to be widespread in every part of the U.S. waters where we are drilling? Is it something that has to be in place when there is an oil spill, or is it something that needs to be brought in after the oil spill?

Mr. COSTNER. Yes, it is important to point out that the machine and the technology that we created is only part of the puzzle. It sits on other assets.

So what you are saying is that—it is absolutely important; I see that those assets have to be able to be ready to deploy. That is what this plan is about. This plan should be replicated on the West Coast, in Alaska, on the East Coast if we decide to drill. I am not debating that.

If we do drill, though, we have to have these protections in place. The way I look at the machine and the way I truly, truly look at it is, this body, not particularly this body, but your predecessors, a long time ago decided if you are going to operate on the water, you are going to have to have life preservers for the people that are on your boat. You are going to have to have a fire extinguisher. If you are on a large cruise ship, you better have enough life boats to save everybody, not just first-class passengers.

So we have evolved to things that we know are safe. I think the oil-water separator is actually almost a mandated idea, whether it is mine or somebody else's, which is, if you have a spill anywhere, then you have the obligation, if you are not fighting for life and limb, to be the first responder on that space.

So whether the oil tankers that are moving around the world coming into our ports, into our rivers, into our great lakes, into our bodies of water, if they don't have that capacity, that is a mistake. I think that is where we have come to.

Mr. CLEAVER. One final question, Mr. Chairman.

One of the problems we have, we haven't built a new nuclear facility in the United States in a quarter of a century or more. One

of the problems is the waste, you know, what do we do with the waste? Do we put it in Yucca Mountains in Nevada? No, they are going to fight it.

The other issue is can we develop another use of that waste? The same question would be raised of recaptured oil. I mean: Is there anything that we can technologically do today with the water that has been recaptured?

Mr. COSTNER. Yes, there is. The machine is a highly engineered piece. It spews out water and oil at 99.9 percent purity. So if it hasn't been interfered with dispersants, its saleability—I wouldn't say at this point that it is 100 percent saleability, but it has a—it becomes—you don't have to take it off the books anymore. We don't have to sink it to the bottom. It has a value.

Probably from a technological standpoint, I think that it would be wise for us to engineer it even more to bring it back to 100 percent of its value. So we don't have to sink it. We can collect it.

The dirty secret is the oil and water that is being pulled off the ocean right now, where is it going? Is it going into holding tanks? Is it being injected back into dry holes on land somewhere to somehow find its way into our water system? Where is that oil, all this oil and water that is going? Because really what has happened out there was ships were picking up 90 percent oil—or 90 percent water, 10 percent oil; 80 percent water, 20 percent oil.

The machine that I am talking about would allow those ships to come back into shore with 100 percent oil, a bigger payload. But the water that was hauled off in oil, where did it go? Was someone paid for that?

Mr. CLEAVER. Thank you.

Thank you very much.

Chairman THOMPSON. Thank you very much.

The Chairman now recognizes the gentlelady from New York for 5 minutes, Ms. Clarke.

Ms. CLARKE. Thank you very much, Mr. Chairman. Thank you for holding this very extremely important hearing regarding the lessons of the Department of Homeland Security and what we have learned from the Deepwater Horizon oil disaster.

I would like to add my voice to those of my colleagues and folks around the Nation in extending my continued condolences to the families of the Deepwater Horizon oil rig workers who lost their lives as a result of the April 29 explosion and fire.

Second, I would like to express to sisters and brothers of the Gulf Coast region how saddened I am that such an event of epic proportions has occurred in such a short time after the tragic events of Hurricanes Katrina, Ike, and Gustav. You are truly in my thoughts and prayers.

Although my district, the 11th Congressional District of New York was not directly affected by the spill, the aftermath and future implications of the disaster are alarming enough to grab and hold our attention. Additionally, as a native New Yorker and the Chairperson of the Subcommittee on Emerging Threats, Cybersecurity, and Science and Technology, I am deeply concerned about DHS's role in the planning and implementation of National Response Framework and the technologies required and deployed in response to disaster.

DHS's Science and Technology Directorate must be stood up and be required to interact and understand new technology solutions that may not necessarily be on their radar. We can see from the five Type 1 disasters that have hit the Gulf Coast in the past 5 years that our National disaster response must be improved.

If we cannot properly respond to natural disasters in the Gulf Coast, how are we going to properly respond to disasters that may hit the rest of the country?

It is clear to me that DHS's leadership role must not only be clearly defined within the response and recovery of a disaster, its role should be central to the reviewing and assessment of disaster plans as well.

Mr. Costner, my first question is to you and whether you were aware or made aware at any point in time about the fact that there is a Science and Technology Directorate within DHS?

Mr. COSTNER. I wasn't. I probably should have been. I probably experienced my own fatigue over the years.

The thing that has been the most illusive for us is that there is a thing called Best-Available Technology. But it seems like it is almost a mythical group. No one can tell me who is in charge of that group. But yet it is what keeps equipment from being on the spot. The Coast Guard can't give an answer; MMS can't give a specific answer. So many groups can't give an answer, and so, you know, you feel like you are trick or treating, going to every door. What does this mean?

In the mean time, the real loss is the loss of time. In the mean time, we don't move ahead, and technology has not been placed front and center.

Ms. CLARKE. I think, Mr. Chairman, this is a very important point. If DHS's role is to coordinate efforts, and we have a Science and Technology Directorate resident in that agency, they need to be stood up as soon as an event occurs and be just as aggressive as the rest of the agency in seeking solutions and reaching out to individuals, such as Mr. Costner, to examine exactly what they have in terms of technologies. Then that would help to avoid the scramble that, unfortunately, he was subjected to.

Mr. Taffaro, president of St. Bernard Parish, I want to thank you for your presentation here today. In your testimony, you stated that, within your disaster experiences, you have seen the exchange of "poor factual information" about the event, a downplaying of available resources and the mechanisms to obtain such, and a lack of local engagement to the response coordination. Can you give me specific examples of what you are referencing?

Mr. TAFFARO. Sure. The factual information actually started from the start, at the very origin of the event, as stated, just having a true picture of what was occurring as a result of that explosion.

Certainly, and appropriately, the Nation focused on and mourned the passing of those 11 individuals who lost their lives.

But in addition to that, there was an entire disaster that was unfolding in front of us, and we could not get that specific information. I think that caused the response to, again, be delayed and have to play catch up. Even, to put it in perspective, even in if this committee were to move forward and to the full Congress or to DHS and adopt a plan, such as Mr. Costner's plan, without actual

and accurate factual information, that response would never be pulled. So the trigger would have to be pulled based on actual information that is necessary.

In terms of the resources, it has been well documented, because of not having a predetermined and pre-planned identification and downstream logistical resource and supply program, scattering for resources and having five States all vie for the same amount of resources became as much of a political activity as a response activity.

So those two points obviously are extremely important.

We have covered the local engagement of not being recognized as a seat at the table from the start. We are now, and the transition plan that was signed forces that issue. But even after it was signed, it was disclaimed to us that that was a mistake, and it shouldn't have been signed.

Ms. CLARKE. Let me touch upon that point again because I wholeheartedly agree with you that consulting with local communities and assessing their needs, their wants, are critical to adequately addressing a disaster area and its recovery.

In your opinion, what would be the best way to garner the buy-in of the local community within a National contingency plan?

Mr. TAFFARO. By making sure that it is written in both legislatively and procedurally, that there is a seat at the table for the local authority, whoever that may be, whether it is a mayor, a parish president, or a county administrator, whoever that is in a given municipality, so there is no question and there is no ambiguity about whether or not there is local involvement in a National event.

Ms. CLARKE. Mr. Chairman, these are truly important lessons learned.

I want to thank you, and I yield back the balance of my time.

Chairman THOMPSON. Thank you very much.

I would like to thank our first panel of witnesses for their very valuable testimony and the Members for their questions.

Before being dismissed, however, I would remind our first panel of witnesses that the Members of the committee may have additional questions for you. We will ask you to respond expeditiously in writing to those questions.

Again, I would like to thank you for your testimony.

Mr. Taffaro.

Mr. TAFFARO. Mr. Chairman, if you would indulge me for one moment. I would like to go on the record and state that the hundreds of people who have come through the St. Bernard branch, that I don't want this testimony to taint their personal involvement or their personal efforts in any way; that the questions and responses that I have offered are indicative of a systematic issue. Almost to a person, those members of the United States Coast Guard as well as those contractors employed by and sent to us through the BP organization, when they arrived in St. Bernard Parish, they may not have known what they were there to protect; but by and large, they knew by the time they left or while they were there how important their mission was. They adopted it wholeheartedly.

Chairman THOMPSON. Well, I don't think there is any question.

The point is it should not have been on-the-job training. They should have been prepared before the incident occurred. That is what we are trying to get to.

But there is no question of the heroic efforts on the part of the men and women after the spill.

So I, again, thank both of you for your testimony.

I would like to ask the clerk to prepare the witness table for our second panel of witnesses. We will recess while that is being done.

[Recess.]

Chairman THOMPSON. We would like to reconvene the hearing for the second panel.

I now welcome our second panel of witnesses.

Our first witness on the panel is Mr. Richard Chávez. Mr. Chávez is the acting director of Operations Coordination and Planning at the Department of Homeland Security.

Our second witness is Rear Admiral Peter Neffenger. Rear Admiral Neffenger served as the Deputy National Incident Commander for the Deepwater Horizon Oil Spill Response. Before this, he was Commander of the Ninth Coast Guard District, responsible for operations throughout the five Great Lakes and the St. Lawrence Seaway.

Our third witness is Mr. Richard Skinner. Mr. Skinner serves as the Inspector General for the Department of Homeland Security. Prior to his arrival at the Department, Mr. Skinner was Acting Inspector General with the Federal Emergency Management Agency.

Our fourth and final witness on the panel is Mr. William Jenkins, Jr. Mr. Jenkins is director of Homeland Security and Justice at the U.S. Government Accountability Office. He is responsible for leading GAO's work on emergency preparedness and response to Federal judiciary and elections.

Chairman THOMPSON. Without objection, the witnesses' full statements will be inserted in the report.

I now recognize Mr. Chávez to summarize his statement for 5 minutes.

STATEMENT OF RICHARD M. CHÁVEZ, ACTING DIRECTOR, OPERATIONS COORDINATION AND PLANNING, DEPARTMENT OF HOMELAND SECURITY

Mr. CHÁVEZ. Mr. Chairman and Members of the committee, good afternoon and thank you for the opportunity to testify today on the Department of Homeland Security's activities related to the BP Deepwater Horizon oil spill response.

As the acting director of Operations Coordination and Planning, or OPS, I am responsible for providing situational awareness and developing a common operating picture for all domestic incidents that affect our Nation.

Additionally, I am responsible for coordinating the development of internal DHS and other Department and agency or interagency strategic plans as directed by the Secretary of Homeland Security. These plans enable DHS and our partners to effectively conduct homeland security operations across all mission areas.

This morning, I will provide a general overview of the roles and responsibilities of OPS and our role in the BP Deepwater Horizon response.

OPS was created to assist the Secretary of Homeland Security in coordinating operations and planning during routine and crisis situations. Within my office, the National Operations Center, also known as the NOC, continuously monitors, collects, and reports on actual or potential domestic incidences, 24 hours a day, 7 days a week, 365 days a year. The NOC is the primary National-level hub providing situational awareness and developing a common operating picture for domestic incident management. In plain terms, situational awareness and common operating picture means collecting information from any sources, synthesizing that information into one story for senior decisionmakers.

Additionally, the NOC serves as the primary center for collecting and distributing response information to other Federal operation centers focused on homeland security.

Similarly, OPS coordinates with DHS components and interagency partners to develop strategic level plans. These plans clarify roles and responsibilities, determine requirements, and establish long-range goals, priorities, and objectives. Based on these strategic plans, DHS components and our interagency partners can develop their operational level plans.

Furthermore, OPS supports DHS components by providing planning augmentation and expertise during events.

On the day of the BP Deepwater Horizon explosion, the NOC began to collect information on the incident and distribute it to senior leadership to facilitate situational awareness and decision support. In the hours and days following the explosion, OPS, DHS components, and our interagency partners supported the Secretary in responding to the dynamic incident environment.

OPS disseminated incident information to all the Homeland Security partners. Anticipating the worst-case scenario, information was passed through an established process for interagency blast calls. The blast call connects the NOC with all the other Federal operation centers.

OPS actions during the BP Deepwater Horizon response, with support from our partners, included coordinating responses to requests for information on a daily basis; creating three daily senior leadership briefs; developing decision support products for the Secretary and DHS senior leadership; and coordinating calls, teleconferences, and other briefings in support of the Secretary.

OPS provided strategic-level support in accordance with existing plans and standard operating procedures for the National Incident Commander and the Secretary of Homeland Security. We remain committed to providing real- and near real-time situational awareness and developing the National common operating picture for any and all domestic events. Additionally, OPS is committed to developing three strategic plans as appropriate to maximize our readiness to respond.

Thanks again for the opportunity to testify. It will be a pleasure for me to answer your questions.

[The statement of Mr. Chávez follows:]

PREPARED STATEMENT OF RICHARD M. CHÁVEZ

SEPTEMBER 22, 2010

Thank you for the opportunity to testify today on the Department of Homeland Security's (DHS) activities related to the BP Deepwater Horizon oil spill response. As the Acting Director of Operations Coordination and Planning (OPS), I am responsible for integrating Departmental and strategic level interagency planning and enabling the coordination of DHS operations to effectively conduct joint homeland security operations across Components and mission areas. This morning, I will provide a general overview of the purpose and structure of OPS and discuss our functions and our role in the administration-wide oil spill response.

OPS OVERVIEW

As articulated in Section 101 of the Homeland Security Act and various Presidential Directives, the Secretary of Homeland Security is "the focal point regarding natural and man-made crises and emergency planning."

To support the Secretary in this role, OPS ensures that the Department has collaborative operations coordination and planning capabilities at the strategic level. OPS provides support to Departmental leadership by facilitating internal DHS operational decision-making and the Department's involvement in interagency operations.

Operations Coordination Across DHS

The National Operations Center (NOC)—which is the primary National-level hub for situational awareness and operations coordination across the Federal Government for domestic incident management—is central to our ability to maintain situational awareness for the Secretary and Department leadership. The NOC collects and synthesizes all-source information across all threats and all hazards, covering the full spectrum of homeland security missions and partners, sharing event-related and operational information with Federal, State, local, territorial, Tribal, and non-governmental partners. Additionally, the NOC serves as the primary coordinating center for other Federal operations centers focused on homeland security operations. In performing these functions, the NOC ensures that critical information related to terrorism, disasters, and other threats reaches Government decision-makers in a timely manner.

The NOC operates 24 hours a day, 7 days a week, 365 days a year, to support the Secretary and the Department's mission.

Department Planning Across DHS

OPS coordinates with DHS Components and interagency partners to develop strategic-level plans to support the effective execution of the Secretary's incident coordination responsibilities, as defined in the Homeland Security Act and Presidential Directives. OPS works with representatives from DHS Components and other Federal, State, and local partners to develop strategic plans and guidance. OPS also supports the Secretary by providing operational planning expertise during crises.

OPS, along with other interagency partners, is currently conducting numerous planning efforts. OPS remains focused on developing DHS plans for primary Departmental missions and for DHS support to other departments. For instance, OPS provided its substantial planning expertise in interagency coordination and support planning for H1N1 planning and the Haitian earthquake response planning.

Continuity Coordination

As DHS Continuity Coordinator, I am responsible for ensuring the effectiveness and survivability of all DHS Primary Mission Essential Functions (PMEFs). OPS works with Component leadership to ensure that PMEFs will be sustained even during emergencies that could significantly hamper personnel, facilities, or operations for homeland security missions.

OPERATIONS COORDINATION DURING THE BP DEEPWATER HORIZON RESPONSE

Prior to the BP Deepwater Horizon oil spill, the Department was preparing for a Spill of National Significance (SONS). From 22–25 March 2010, OPS, along with many other Federal, State, and private organizations, participated in the U.S. Coast Guard-sponsored SONS Exercise 2010. OPS leadership and the NOC participated in a simulated response to an oil spill affecting the Northeastern United States to refine our plans and procedures related to a SONS response. The proximity of this exercise did help inform our efforts in support of the BP Deepwater Horizon Oil Spill.

The Deepwater Horizon oil rig exploded on 20 April 2010. In the hours and days following the explosion, OPS, the NOC, DHS Components, and our partners supported the Secretary, the Department, and the interagency community in responding to what began as a search and rescue event. Concurrently, we began to establish an integrated interagency framework to address the potential environmental impact of the event and to coordinate with all State and local governments, anticipating and planning for a worst-case scenario.

On 21 April 2010, OPS initiated the crisis action process, which allows us to dedicate staff that can provide detailed information and decision support for a specific incident, while minimizing the impact to our on-going missions. On 29 April 2010, a SONS was declared and OPS activated the full Crisis Action Team (CAT) to support the Secretary and the National Incident Commander, who would be later named, in directing response efforts. The CAT stood down on 6 August 2010, after 99 days of continuous operation.

OPS actions during the BP Deepwater Horizon response, with support from our partners, included the following:

- Coordinating responses to Requests for Information (RFIs) on a nearly daily basis;
- Creating hundreds of Senior Leadership Briefs (SLBs);
- Developing decision support products for the Secretary and other DHS leadership; and
- Contributing to a robust interagency response effort through regular coordination calls, teleconferences, and other briefings.

In response to the BP Deepwater Horizon oil spill, OPS provided strategic level support, in accordance with a predefined set of plans and standard operating procedures, for the National Incident Commander, the Secretary of Homeland Security, and the President of the United States. The response to this environmental catastrophe was the largest oil spill response in U.S. history, and at its peak encompassed more than 7,000 vessels, nearly 50,000 personnel, and dozens of Federal, State, and local government and private sector agencies and entities. Like other incidents, after-action and lessons learned reviews are on-going.

OPS remains committed to providing professional expertise in the areas of operations coordination and operational planning in order to prepare for, prevent, protect, respond to, and recover from natural and man-made disasters affecting the people of the United States.

Thank you again for this opportunity to testify. I would be pleased to answer any questions that you may have.

Chairman THOMPSON. Thank you for your testimony.

I now recognize Rear Admiral Neffenger to summarize your statement for 5 minutes.

STATEMENT OF REAR ADMIRAL PETER NEFFENGER, DEPUTY NATIONAL INCIDENT COMMANDER, DEEPWATER HORIZON OIL SPILL RESPONSE

Admiral NEFFENGER. Good afternoon, Chairman Thompson and distinguished Members of the committee. Thank you for the opportunity to testify before you today.

As noted, I am the Deputy National Incident Commander for the Deepwater Horizon oil spill response.

On the evening of April 20 of this year, the Mobile Offshore Drilling Unit Deepwater Horizon, which carried an estimated 700,000 gallons of diesel fuel suffered a catastrophic fire and explosion while in the final stage of completing the Macondo Well 45 miles southeast of Venice, Louisiana, on the Outer Continental Shelf. It was owned by Transocean, chartered by BP, and under the Marshall Islands flag.

As nearby boats fought the ensuing fire, others took courageous action to recognize 115 of 126 crew members. Tragically, and despite extensive search and rescue efforts that continued for over 3 days, 11 crew members were never found and died in the incident.

On April 22, after the Deepwater Horizon sank, the Coast Guard established an incident command post and began to mobilize all available response resources to respond to what we expected could be a major oil spill. As part of this, the incident commanders also activated preexisting area contingency plans, which are plans developed in concert with State governments, other Federal agencies, as well as Tribal entities, where they exist.

As the Commandant of the Coast Guard at the time, Admiral Allen activated the National Response Team to begin the process of bringing the whole of Government efforts to bear. The National Response Team is an entity consisting of 16 Federal Departments and Agencies, and they are charged with responsibility for coordinating emergency preparedness and response to oil and hazardous pollution events, especially of great magnitude.

On April 29, Homeland Secretary, Janet Napolitano, designated the event a Spill of National Significance and appointed Admiral Thad Allen, who at the time, as I said, was the Commandant of the Coast Guard, as the National Incident Commander for the response. He in turn appointed me his deputy on that date.

The Deepwater Horizon oil spill has been unprecedented in both scope and duration. It is the largest and most complex our Nation has ever confronted. As Admiral Allen has said, it presented challenges at the wellhead more analogous to Apollo 13 than the Exxon Valdez spill. There was no human access to the damaged wellhead located 5,000 feet below the ocean surface. Consequently, we were fully dependent on remotely-operated vehicles for access to the site, for actions necessary to control and monitor the discharge of oil, and for installing and operating equipment ultimately used to stop the flow of oil.

Further complicating was the continuous discharge from April 22 until July 15 that did not result in a single spill but rather thousands of smaller disconnected spills that repeatedly threatened the coastlines of all five Gulf States.

At its peak, we deployed more than 47,000 responders, over 3,000 of which were Coast Guard members; 4 million feet of boom; more than 7,000 vessels, including 835 specialized skimmers; and over 3,000 vessels of opportunity; 120 aircraft, and hundreds of public and private organizations and volunteers.

As the Deputy National Incident Commander, my primary goal and duty has been to ensure a coordinated, unified, whole-of-Government effort to address National-level policy issues and to ensure a tight linkage among the various Federal, State, and local partners to gain effective command and control. Since the early days of this response, I was personally briefed on daily conference calls with each of the Governors from each of the affected States, and during these calls, I received valuable and frank feedback alerting us to areas where we needed to adjust operations, expand efforts, and incorporate greater State and local participation, and that feedback lays the groundwork for many follow-on assessments and some of the lessons learned that we will be generating.

Although there are a number of efforts currently underway to determine those lessons learned, I do have a few immediate observations. Clearly, we need tighter linkage between the Bureau of Ocean Energy Management and Regulatory Enforcement and the

Coast Guard with respect to Outer Continental Shelf response plans. As the agency tasked with responsibility for responding to on-water spills, I think it is imperative to be part of the planning process associated with that.

We also learned that there are a number of immediate and long-term public health issues that would not normally surface in an oil spill but that surfaced in this oil spill because of its scope and duration. These included seafood testing, social and economic impacts, and overall worker safety, both for the spill workers as well as the people of the Gulf.

Throughout the response, we were also evaluating and testing alternative technologies through our Interagency Alternative Technologies Assessment Program. I will say that it proves challenging to do this during a response, but several promising technologies surfaced that we will continue to evaluate and consider as we move forward.

As Mr. Taffaro has noted, all oil spills really are local.

Although we have a very mature oil spill planning and exercise program, which has over the decade since the oil spill—the Exxon oil spill—has engendered close coordination with the State, with area committees that are put together with State and Federal partners, we learned in the early weeks of the importance of bringing local mayors, local city councils, and local parish presidents into the effort and addressed this through such efforts as our parish president liaison program.

As you know, the Unified Area Command has announced a consolidation of incident command posts as the emergency phase begins to wind down. This transition will better support day-to-day operation of on-going response while not affecting frontline responders who continue to clean shoreline, sample Gulf waters, and respond to additional recoverable oil found.

We still have over 22,000 workers conducting clean-up operations along 600 miles of shoreline, and this consolidation allows us to sufficiently support those operations.

As those efforts shift from immediate emergency response to long-term environmental and economic restoration, we will continue to work diligently through the Unified Area Command to ensure we address on-going impacts and to address and learn the valuable lessons that we know will come out of this.

Mr. Chairman, I thank you for this opportunity, and welcome any questions you may have.

[The statement of Admiral Neffenger follows:]

PREPARED STATEMENT OF PETER NEFFENGER

SEPTEMBER 22, 2010

Good morning Mr. Chairman and distinguished Members of the committee. I appreciate the opportunity to appear before you to discuss preliminary lessons learned from the Federal Government's response to the BP Deepwater Horizon Oil Spill.

INITIAL RESPONSE

On the evening of April 20, 2010, the Mobile Offshore Drilling Unit (MODU) DEEPWATER HORIZON, which contained an estimated 700,000 gallons of diesel fuel, exploded 45 miles southeast of Venice, Louisiana. It was owned by Transocean, chartered by BP, and flagged in Marshall Islands.

As nearby boats fought the ensuing fire, others took courageous action to rescue 115 of 126 crew members from the water within a few hours. Though searches by public and private sector aircraft and boats continued through April 23, the remaining 11 crew members were never found.

The U.S. Coast Guard played a led role in the Federal Government's all-hands-on-deck response to the BP Deepwater Horizon disaster from the moment the explosion occurred on April 20. The Coast Guard lead a massive search and rescue operation, initiated spill response for a major environmental disaster and coordinated with State and local governments officials. Within the first 24 hours, the Coast Guard Federal on Scene Coordinator (FOSC) confirmed that Oil Spill Liability Trust Fund (OSLTF) funds were available to speed the Federal response to the threat of an oil spill.

On April 22, the MODU sank to the seafloor, roughly a mile beneath the surface. The following day, remotely operated vehicles (ROVs) located the MODU on the seafloor, and on April 24, as part of an extensive assessment, ROVs spotted two leaks in the riser pipe.

On April 22, following the sinking of the MODU, the Coast Guard activated the National Response Team (NRT). The NRT, led by the Secretary of Homeland Security, consists of 16 Federal departments and agencies responsible for coordinating emergency preparedness and response to oil and hazardous substance pollution events—including the Coast Guard, DHS, the departments of Defense, Commerce, Interior, and the Environmental Protection Agency, among others.

On April 23, the Coast Guard established a robust Incident Command System (ICS) response in accordance with the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). ICS provides a common command-and-control framework to develop and implement tactical plans to effectively manage a multi-agency response to emergencies. The ICS organization for this response included Incident Command Posts and Unified Commands at the local level and a Unified Area Command at the regional level, and consisted of representatives from the Coast Guard (the FOSC), other Federal, State, and local agencies, as well as BP as the primary responsible party.

As part of this historic response, the Unified Area Command—with support from the National Incident Command and State Department—also leveraged assets, skills, and offers of assistance from foreign countries and international organizations. The first of these offers was from Mexico in May. Others included: Argentina, Belgium, Canada, China, Estonia, France, Germany, Greece, Ireland, Japan, Kenya, Mexico, Netherlands, Norway, Qatar, Russia, Spain, Sweden, Taiwan, Tunisia, United Arab Emirates, United Kingdom, the United Nations' International Maritime Organization, the European Union's Monitoring and Information Centre, and the European Maritime Safety Agency. All offers of assistance were considered.

SPILL OF NATIONAL SIGNIFICANCE (SONS) DESIGNATION

On April 29, Secretary of Homeland Security Janet Napolitano designated the event a Spill of National Significance (SONS) and appointed Admiral Thad Allen as the National Incident Commander (NIC) to coordinate the response on May 1. The SONS and NIC designations enabled and enhanced operational and policy coordination at the National level. The NIC helped to coordinate strategic communications, National policy and resource support, and to facilitate collaboration with key parts of Federal, State, and local governments.

The NIC staff consists 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 provides National-level support to the operational response—from resources to policy decisions—to secure the source and mitigate the impact of the spill.

On the day that DHS announced the SONS designation, there were already more than 70 vessels in the Gulf of Mexico responding to the spill and approximately 1,100 personnel deployed and on scene to assist.

CHAIN OF COMMAND

Under Homeland Security Presidential Directive—5 and the Homeland Security Act of 2002, the Secretary of Homeland Security is “the focal point regarding natural and man-made crises and emergency planning.” These authorities designate her as the “principal Federal official” for all domestic incidents with overall responsibility for coordinating the Federal Government's resources in response to, and recovery from, a SONS. During the BP Deepwater Horizon oil spill response these re-

responsibilities included oversight and coordination of the NRT and all elements of the National Response System.

The National Contingency Plan (NCP) set forth the underlying framework and organizational structure for the Federal response to this oil spill. The National Response Framework (NRF), its Annexes, and National Incident Management System (NIMS) are complementary and provide flexible and adaptable response frameworks for addressing issues not expressly addressed in the NCP that may arise during the response.

Under the NCP, the 16 Federal partners comprising the NRT monitor and evaluate reports from the FOSC. They also: (1) Recommend actions to respond to the discharge or release of hydrocarbons; (2) Request from other Federal, State, and local governments, or private agencies, resources under their existing authorities to respond to a discharge or release, or to monitor response operations; and (3) Coordinate the deployment of equipment, personnel, or technical advice to the affected region from other regions or districts.

Under the NCP, the FOSC is the incident commander within the Unified Command, which includes representatives from the responsible party as well as Federal, State, and local governments. The Unified Command coordinates and directs the operational response in coordination with State and local partners in the affected areas. This system implements the requirements of Federal law and Executive Orders relating to the NRF and NIMS.

A critical lesson learned from EXXON VALDEZ articulated in the NCP is that the FOSC is the incident commander. The incident management structure is designed to support the FOSC in carrying out response priorities.

During a SONS incident, the Secretary of Homeland Security or the Commandant of the Coast Guard may name a National Incident Commander (NIC). As mentioned above, the Secretary named Admiral Thad Allen as the NIC. Admiral Allen assumed the FOSC's responsibilities for communicating with affected parties and the public at the National level, and coordinating Federal, State, local, and international resources at the National level. The FOSC at the Unified Area Command maintains all other authorities for response operations as directed in the NCP.

BP and the other responsible parties have been and will continue to be responsible for the costs associated with the BP Deepwater Horizon Oil Spill. Under the Oil Pollution Act of 1990, BP and the other responsible parties are required to reimburse the Oil Spill Liability Trust Fund for expenses incurred. Regular invoices are a proactive step to hold BP accountable for obligations related to response and recovery activities to date and ensure American taxpayers are not held responsible for the costs associated with the BP/Deepwater Horizon Oil Spill. To date, six bills have been sent by the Federal Government to BP and the other responsible parties. These bills provide an important mechanism by which BP reimburses the Oil Spill Liability Trust Fund.

UNIFIED RESPONSE EFFORTS

Throughout the response, a variety of systems, technologies, assets, and personnel were employed as part of the largest response to an oil spill catastrophe in U.S. history. This included:

- Roughly 4 million feet of deployed hard boom.
- More than 40,000 Federal, State, local responders including over 6,600 active and reserve Coast Guard members. The Secretary of Defense authorized 17,500 National Guard troops from Gulf Coast States to join the response.
- Four incident command posts across Gulf Coast States.
- A standing Interagency Solutions Group at NIC Headquarters consisting of more than 18 Federal agencies determining real-time solutions to far-reaching strategic issues.
- 411 controlled burns have eradicated more than 11 million gallons of oil from the open water.
- 835 oil skimmers operating throughout the Gulf.
- More than 7,000 response vessels including 60 Coast Guard Cutters and more than 3,000 vessels of opportunity.
- More than 120 aircraft, including 22 Coast Guard aircraft.
- Offers of assistance received from nearly two dozen countries. All offers were considered and cataloged for future use.

As of this week:

- After months of extensive operations planning and execution under the direction and authority of the U.S. Government science and engineering teams, BP has successfully completed the relief well by intersecting and cementing the well nearly 18,000 feet below the surface.

- More than 3,000 vessels are still on-site, including skimmers, tugs, barges, and recovery vessels to assist in clean-up efforts and sub-surface monitoring—in addition to dozens of aircraft, remotely operated vehicles, and multiple mobile offshore drilling units.
- The Unified Command, with partners from NOAA, EPA, and other agencies, are engaged in a comprehensive collaborative effort to monitor the fate of the oil and the disbursement sub surface. The subsea monitoring program, conducted under the direction of the Federal On-Scene Coordinator, has produced more than 30,000 samples in near- and offshore waters to date.
- Approximately 25,200 personnel remain engaged in the response to protect the shoreline and wildlife and clean up vital coastlines.
- Approximately 87 percent of Gulf of Mexico Federal waters are now open to fishing.
- More than 34.7 million gallons of oily-water mix have been recovered through skimming.
- 15 staging areas remain to protect sensitive shorelines.
- Roughly 500 miles of shoreline had light to trace amounts of oil; including 231 miles in Louisiana, 90 miles in Mississippi, 62 miles in Alabama, and 114 miles in Florida. An additional 112 miles of shoreline had heavier oil, including 101 miles in Louisiana, 9 miles in Mississippi and 2 miles in Florida.

LESSONS LEARNED FROM PAST RESPONSES

Although the Coast Guard has been combating oil and hazardous materials spills long before the passage of the Oil Pollution Act of 1990 (OPA 90), the most recent experience with a spill approaching the magnitude of DEEPWATER HORIZON involved the EXXON VALDEZ. The EXXON VALDEZ spill triggered significant legislation regarding National pollution preparedness and response.

Prevention, Research & Development

Annual oil spill totals from tanker spills have dropped dramatically since the passage of OPA 90. New prevention technologies have been developed and implemented, such as double-hulled tankers. The EXXON VALDEZ incident prompted the establishment of major research areas—including controlled burning, dispersants, vessel of opportunity skimming systems, and spill fate and behavior modeling—for the 1997 Interagency Oil Pollution Research and Technology Plan. Research conducted in these areas over the past decade has advanced oil spill clean-up techniques and strategies—advances that have informed and continue to inform the Deepwater Horizon response. Consequently, the 1997 Interagency Oil Pollution Research and Technology Plan has proven to be an important strategic guidance document for oil pollution research.

Section 7001 of the Oil Pollution Act of 1990 (OPA 90) established the Interagency Coordinating Committee on Oil Pollution Research (ICCOPR). The purpose of the Interagency Committee is twofold: (1) To prepare a comprehensive, coordinated Federal oil pollution research and development (R&D) plan; and (2) to promote cooperation with industry, universities, research institutions, State governments, and other nations through information sharing, coordinated planning, and joint funding of projects. The Interagency Committee reports its activities to Congress biennially.

The first Oil Pollution Research and Technology Plan was completed on April 24, 1992 and submitted to Congress and the Marine Board of the National Research Council for their review and comment. The second edition of the Oil Pollution Research and Technology Plan was submitted to Congress on April 1, 1997. The current plan documents the role that oil pollution research plays in reducing the environmental and economic threats posed by oil production and transport. It emphasizes prevention, focuses on the high-risk components of the oil production and transportation systems, and advocates continuation of a Federal oil spill research and development program. The Interagency Committee has been working on the third revision of the Oil Pollution Research and Technology Plan. The third revision will include concerns related to Arctic oil pollution prevention and response as well as lessons learned from the Deepwater Horizon Mobile Offshore Drilling Unit accident in the Gulf of Mexico.

Prior to the BP Deepwater Horizon oil spill, the Interagency Coordinating Committee on Oil Pollution Research (ICCOPR) had begun the process of revising the 1997 Interagency Oil Pollution Research and Technology Plan. The ICCOPR will need to closely examine the lessons learned from the current spill to better update the research strategies needed for the next decade. Just as the EXXON VALDEZ pointed to needed research, the BP oil spill will identify new focus areas and response challenges that will guide research and response communities in the future.

The ICCOPR recognizes that progress in oil pollution research occurs best through continued collaboration among academia, industry, and government. Although funding was initially authorized and appropriated in the early 1990's for the ICCOPR to award research grants to universities, this is currently not the case. The ICCOPR will continue to develop strategies to promote common awareness and collaboration among universities, industry, and the Government concerning on-going research.

Exercises

The response protocols used during response to the BP Deepwater Horizon oil spill were also informed by the exercise regimen the Coast Guard maintains.

Since 2001, the Coast Guard and the Minerals Management Service (MMS), the predecessor to Bureau of Ocean Energy Management Regulations and Enforcement (BOEM), have held nine offshore-related exercises and responded to one actual event. All featured Coast Guard and MMS participation, as well as State and local officials where applicable, and involved offshore oil platforms, pipelines, or MODUs.

In the 20 years since the EXXON VALDEZ spill, the Coast Guard has also conducted SONS exercises every 3 years. In 2002, the SONS Exercise was held in New Orleans to address the implications of a loss of well control event in the Gulf of Mexico. In that exercise, the SONS team created a vertically integrated organization to link local response requirements to an RRT. The requirements of the RRT were then passed to the NRT in Washington, DC in order to test the integration of the spill management and decision processes across the Federal Government.

These functions were tested again during a SONS exercise this past March in the Northeast. Nearly 600 people from 37 agencies participated in this exercise, the scenario for which was a catastrophic oil spill from a collision between an oil tanker and a car carrier off the coast of Portland, ME. The exercise involved response preparedness activities in Portland, ME, Boston, MA, Portsmouth, NH, Portsmouth, VA, and Washington, DC. The response to the 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 NRF. 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 demonstrated a maturing of oil spill response capabilities, and the importance of National-level interactions to ensure optimal information flow and situational awareness. But we also learned that in future exercises we should expand participation to account for the wide variety of issues that emerged as a result of the BP Deepwater Horizon oil spill. For example, to date our exercise plans had not anticipated the seafood safety and human health impact concerns that have been so clear in this disaster.

The BP Deepwater Horizon oil spill was the first real-world spill designated as a SONS, and the first to activate a National Incident Commander. Within the NIC organization, several elements—including the Interagency Solutions Group—were established to ensure the integrity of communications among the field, the inter-agency, and the FOSC. These organizational structures were a significant improvement over the response used during the EXXON VALDEZ.

Access and Use of the Fund

Although the EXXON VALDEZ spill and subsequent OPA 90 legislation shaped many of the preparedness and response requirements and legislation followed to this day, lessons learned from other significant events since 1989 have also shaped our response strategies. Coast Guard and EPA FOSCs have accessed the Oil Spill Liability Trust Fund 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. Title I of OPA established new and higher liability limits for oil spills, with commensurate changes to financial responsibility requirements. It substantially broadened the scope of damages, including natural resource damages (NRDs), for which polluters are liable. It also authorized the Oil Spill Liability Trust Fund (OSLTF) up to \$1 billion to pay for expeditious oil removal and uncompensated damages. (The Energy Policy Act of 2005 later raised the limit of the Fund to \$2.7 billion; and the Delaware River Protection Act of 2006, title VI of the Coast Guard and Maritime Transportation Act of 2006, increased the limits of liability.) Use of the Fund, oversight of responsible parties,

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 cycle.

PRELIMINARY LESSONS LEARNED FROM THE DEEPWATER HORIZON OIL SPILL

Throughout this unprecedented and evolving event, we have marshaled the largest response to an oil spill in our Nation's history and we have continued to adapt and evolve this response at every turn as the disaster itself has unfolded. We have created redundancy wherever appropriate—from directing BP to employ additional methods to contain its leaking oil, to finding new ways to keep the oil off our vital shores, to using multiple scientific methodologies to gauge the size of this catastrophe. Now that the relief well has been cemented, we will continue to tailor our ever-expanding response to each new challenge that arises until the Gulf is restored.

As with any incident, we must review the lessons learned from the BP Deepwater Horizon oil spill response to inform equipment standards, technology, and preparedness to respond in the future.

These lessons learned will be captured in several on-going assessments and reviews, including the President's National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling and a Coast Guard-chartered workgroup to evaluate interagency planning, preparedness, and response efforts related to Deepwater Horizon, in addition to the Deepwater Horizon Joint Investigation by the Coast Guard and BOEM.

Notwithstanding the fact that on-going recovery efforts and assessment of the spill response make it difficult to reach definitive conclusions at this stage, we are beginning to identify areas for improvement.

It became clear early in the spill response that there was a need for a better process to manage and channel an abundance of ideas, creativity, and suggestions of citizens and industry for spill response and clean-up technologies. To meet this challenge, the Coast Guard, in collaboration with interagency partners, established the Interagency Alternative Technology Assessment Program (IATAP) to collect and review oil spill response solutions from scientists and vendors on topics such as oil sensing improvements to response and detection, oil wellhead control and submerged oil response, traditional oil spill response technologies, alternative oil spill response technologies, and oil spill damage assessment and restoration. The IATAP provides a useful model to garner and incorporate innovative solutions in future responses. These assets and technologies were evaluated to test their effectiveness and ensure that any resources that were deployed could be done so quickly and effectively. A number of concepts were sent to the Gulf region for consideration in the response effort.

Whereas funds are made available from the OSLTF into an Emergency Fund to carry out removal actions for oil spills under Section 311(c) of the Federal Water Pollution Control Act (FWPCA), the magnitude of the DEEPWATER HORIZON spill required legislative relief to permit additional advances from the Emergency Fund to support removal activities for the response. This legislative relief pertains only to the DEEPWATER HORIZON response and could be required for future response efforts.

Other initiatives and efforts that proved beneficial during the response included establishment of the Interagency Solutions Team within the NIC staff, a unit that consisted of more than 18 Federal agencies and organizations working together on solutions embodying a whole-of-Government response. Typically, this arrangement produced near-final solutions within hours for what might have otherwise taken days or weeks. The BP Deepwater Horizon spill response reinforced the importance of involving local-level government officials early in a response to the maximum extent possible.

State and local emergency management and environmental management personnel are members of Coast Guard Area Committees, and States are members of RRTs under the NCP. Continuous engagement with States and local communities in preparedness planning and exercises is paramount, because it accounts for differences in approach among States and properly supports integration of State and local entities in incident response. We continue to actively encourage participation and prioritize inclusion by local leaders as part of this historic response so that we can respond as quickly and effectively as possible to problems that arise on the ground. Going forward, we must continue to engage local government officials in response planning and exercise.

Other mechanisms by which the State and local emergency management systems coordinated with the incident response organization include local emergency operation centers (EOCs), which coordinate with the Unified Incident Command over-

seeing local operations through the State On-Scene Coordinator (a standing member of the Unified Incident Command) and the incident liaison officer. Moreover, for the BP Deepwater Horizon oil spill, State EOCs coordinated with the Unified Area Command in New Orleans, LA through the State On-Scene Coordinator and the Unified Area Command liaison officer. Each State also coordinated with the NIC through the inter/intra-governmental affairs liaison and during daily Governors' conference calls with the National Incident Commander.

In addition to mechanisms described above, the Coast Guard embedded liaison officers with Parish Presidents in Louisiana, assigned Deputy Incident Commanders at Incident Command Posts, and held daily calls with local officials. These efforts were vital to coordinating efforts from the local level to the Governors and Congressional delegations.

CONCLUSION

In closing, through the National Incident Command, the Coast Guard has worked to ensure that all capabilities and resources—including Government, private, and commercial—are being leveraged to protect the environment and facilitate a rapid, robust clean-up effort.

Moving forward, the Coast Guard will:

- Assist in transitioning NIC spill response efforts to recovery by those agencies and entities involved in the Post-Spill Restoration and Natural Resources Damage Assessments;
- Work with the interagency to review the NCP and NRF to identify National-level issues to enhance our ability to provide a coordinated, whole-of-Government response to major incidents; and
- Capture lessons learned; identify potential areas for improvement; and implement recommendations to more effectively respond to future spills.

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

Chairman THOMPSON. Thank you for your testimony, Admiral.

I now recognize someone who is no stranger to this committee, Inspector General Skinner, to summarize his statement for 5 minutes.

STATEMENT OF RICHARD L. SKINNER, INSPECTOR GENERAL, DEPARTMENT OF HOMELAND SECURITY

Mr. SKINNER. Thank you, Chairman Thompson and Members of the committee. Thank you for inviting me to discuss our report on the Department of Homeland Security's progress in Federal incident management planning. I would also like to discuss what my office is doing with regard to oversight of the Department's response to the spill.

The National Response Framework, which is the Federal Government's guide for responding to all types of disasters, describes planning as the cornerstone of disaster preparedness and response. Planning provides three principled benefits: It allows jurisdictions to determine in advance the protocols that will be followed, and it guides other preparedness activities, and it contributes to unity of effort of providing a common blueprint for disaster response activities.

Incident management planning is vital because it identifies detailed resources and responsibilities for each agency responding to an emergency. Integrating plans among all public and private sectors is imperative for a coordinated response. This was evident in Hurricane Katrina, and it was underscored in the subsequent White House report which recommended that DHS lead the effort to develop an integrated Federal planning system to meet the requirements of the National Response Framework.

In response to the Homeland Security Presidential Directive—8, DHS published the National preparedness guideline. The National

Preparedness Guidelines defines what it means for the Nation to be prepared for all disasters, all hazards. One of the four critical elements of the guidelines involves National planning scenarios, which depict a diverse set of high-consequence terrorist threats and natural disasters.

HSPD-8 also directed DHS to lead the effort to develop, in cooperation with other Federal agencies, an integrative planning system followed by a series of planning documents for each National planning scenario. The Homeland Security Council, in partnership with DHS, other Federal agencies, and State and local governments, developed 15 National planning scenarios.

Collectively, the scenarios are designed to focus contingency planning on all levels of government and with the private sector. The scenarios form the basis for coordinated Federal planning, training, exercise, and grant investments. A complete set of plans for each scenario includes a strategic guidance statement, a strategic plan, a concept of operation plan, and individual agency operation plans.

DHS was working to develop the plans, but in July 2009, the White House National Security Staff began a review of HSPD-8 and put on hold those efforts. To date, a full set of plans has not been completed for any single scenario.

That is not to say, however, that planning is not on-going at Federal agencies outside the National planning scenario framework. Federal agencies have long been involved in contingency planning for their own mission-essential functions.

The bigger challenge is when an incident involves multiple agencies whose efforts must be integrated. The Deepwater Horizon incident provides an excellent example of this challenge. No less than a dozen Federal agencies, in addition to several States, local parishes, and counties and townships throughout the Gulf Coast and private entities as well were involved in the Gulf Coast oil spill response. It is vital that those agencies coordinate their planning efforts and provide a unified response if we are going to be successful.

Bringing all this together under one Federal umbrella, however, continues to be a daunting task. DHS has faced challenges leading the effort to develop incident management plans. There is a diverse group of interagency and intergovernmental planners, subject matter experts, and contractors involved in the process, and reaching a consensus is not always easy.

Furthermore, there are a limited number of emergency management planners in government, at all levels, and this has presented a challenge with developing incident management planning and guidelines.

It would be premature for me to comment at this time on the Deepwater Horizon response efforts. Our work is on-going, and we are not ready yet to draw conclusions on our efforts. We have three audits underway, and we plan to start a fourth in the next few months.

Our first audit will determine whether Coast Guard has controls in place to recover from BP all Federal taxpayer costs associated with the oil spill.

The second audit is reviewing Coast Guard and Marines Safety Performance Plans.

The third audit is looking at whether it has the resources to conduct safety inspections in marine offshore drilling units, such as the Deepwater Horizon drilling rig.

The fourth audit planned for later this year will look at the effectiveness of the Coast Guard's Unified Area Command, which was formed in response to the oil spill. The Unified Command structure provides shared management of the incident among Federal, State, local, and private sectors. Our work will address the effectiveness of the Coast Guard's internal and external communications to stakeholders, its management and coordination of resources, and the quality of the National Contingency Plan as it was implemented during this disaster.

The National Contingency Plan, as you know, is the Government's blueprint for responding to oil disasters—or oil spills, that is. It was under this framework that DHS led the Federal response to the Gulf oil spill. I look forward to sharing the results of our work with this committee.

Mr. Chairman, this concludes my prepared remarks. I welcome any questions that you or the Members may have. Thank you.

[The statement of Mr. Skinner follows:]

PREPARED STATEMENT OF RICHARD L. SKINNER

SEPTEMBER 22, 2010

Chairman Thompson, Ranking Member King, and Members of the committee: Thank you for inviting me here today to discuss the Department of Homeland Security's (DHS) progress in Federal incident management planning and the Deepwater Horizon oil incident.

The first part of my testimony today will address incident management planning at the Federal level, particularly the role of DHS. The information provided is primarily contained in our February 2010 report, "DHS' Progress in Federal Incident Management Planning" (OIG-10-58). I will then address what my office is doing with regard to oversight of the response to the Deepwater Horizon oil incident.

FEDERAL INCIDENT MANAGEMENT PLANNING

The *National Response Framework* (NRF), the guide to how the Nation conducts all-hazards response, describes planning as the cornerstone of National preparedness and a critical element to respond to a disaster or emergency. Planning provides three principal benefits: (1) It allows jurisdictions to influence the course of events in an emergency by determining in advance the actions, policies, and processes that will be followed, (2) it guides other preparedness activities, and (3) it contributes to unity of effort by providing a common blueprint for activity in the event of an emergency. Planning is a foundational element of both preparedness and response and thus is an essential homeland security activity.

Incident management planning is vital because it identifies detailed resources, personnel, and assets, and specific roles, responsibilities, and actions for each Department and agency responding to an incident or emergency. Integrating and synchronizing Federal policies, strategies, and plans among all Federal, State, local, private sector, and community efforts is imperative for a coordinated response. This was realized during the examination of the failed Federal response to Hurricane Katrina and was underscored in the subsequent White House report. The report concluded, "Insufficient planning, training, and interagency coordination are not problems that began and ended with Hurricane Katrina. The storm demonstrated the need for greater integration and synchronization of preparedness efforts, not only throughout the Federal government, but also with the State and local governments and the private and non-profit sectors as well." The White House report recommended that the Department of Homeland Security lead an interagency effort to develop and resource a deliberative, integrated Federal planning and execution system to meet the requirements of the revised *National Response Plan* (now referred to as the *National Response Framework*). It also put in motion a number of Government actions meant to improve response planning, including the advancement of

credible planning scenarios depicting a range of potential terrorist attacks, natural disasters, and related impacts facing our Nation.

The President had kicked off a new framework for planning with the issuance of *Homeland Security Presidential Directive—8* (HSPD—8) in December 2003. HSPD—8 directed the DHS Secretary to develop a National domestic all-hazards preparedness goal. In furtherance of HSPD—8, DHS released the *National Preparedness Guidelines* in September 2007. The *National Preparedness Guidelines* define what it means for the Nation to be prepared for all hazards. One of the four critical elements of the *National Preparedness Guidelines* involves National Planning Scenarios, which depict a diverse set of high-consequence threat scenarios of both potential terrorist attacks and natural disasters. According to the Post-Katrina Emergency Management Reform Act of 2006 (PKEMRA), the Scenarios are “to reflect the relative risk requirements presented by all hazards . . . in order to provide the foundation for the flexible and adaptive development of target capabilities . . . to meet the national preparedness goal.”

The President approved *Annex 1 to Homeland Security Presidential Directive—8* in December 2007, formally establishing a standard and comprehensive approach to National planning. It directed the DHS Secretary to lead the effort to develop, in coordination with the heads of Federal agencies with a role in homeland security, an Integrated Planning System followed by a series of related planning documents for each National planning scenario.

The Homeland Security Council, in partnership with DHS, other Federal departments and agencies, and State, local, Tribal, and territorial governments, developed 15 National Planning Scenarios. Collectively, the scenarios are designed to focus contingency planning for homeland security preparedness work at all levels of government and with the private sector. The scenarios form the basis for coordinated Federal planning, training, exercises, and grant investments needed to prepare for all types of emergencies. The Homeland Security Council compressed the 15 National Planning Scenarios into 8 key scenario sets in October 2007 to integrate planning for like events and to conduct cross-cutting capability development.

A complete set of plans for each planning scenario includes: (1) A strategic guidance statement, (2) a strategic plan, (3) a concept of operations plan, and (4) individual operations plans from every department and agency with responsibilities enumerated in the concept of operations plan. DHS’ Office of Operations Coordination and Planning led the effort to develop strategic guidance statements and strategic plans, while FEMA’s Operational Planning Branch led the development of concept of operation plans. At the time of our fieldwork, the development of Federal incident management plans was progressing, but a full set of plans had not yet been completed for any single scenario. Thus far, five of the eight key scenario sets have approved strategic guidance statements, while four have approved strategic plans. One concept of operations plan has been approved by the DHS Secretary.

DHS and FEMA have faced challenges leading the effort to develop incident management plans. There is a diverse group of interagency planners, subject matter experts, and contractors that assist DHS and FEMA with planning. However, according to DHS officials, there are a limited number of planners available in Federal agencies, and this has presented a challenge with developing incident management plans. Additionally, because of aggressive deadlines to complete some of the incident management plans, planners were required to work on multiple plans at the same time, and they often had to choose between incident management planning meetings that were scheduled concurrently. According to DHS officials, efforts are on-going to address the shortage of Federal planners to assist with developing incident management plans.

As I said before, DHS and FEMA were making progress on the National Planning Scenarios; however, in July 2009, the White House National Security Staff (NSS) began a review of HSPD—8 and temporarily put on hold efforts to complete the remaining plans.

This is not to say that planning is not on-going at Federal agencies outside of this framework. Federal departments and agencies have long been involved in contingency planning for their own personnel and mission-essential functions. The bigger challenge is when an incident involves multiple agencies, whose efforts must be integrated for a successful response. The Deepwater Horizon incident provided our most recent example of this challenge.

No less than a dozen Federal departments and agencies were involved in the Deepwater Horizon response effort. Primary players included the Department of Homeland Security and Coast Guard; the Department of the Interior; and the Environmental Protection Agency. The response also included the Department of Defense; the Department of Labor; the National Oceanic and Atmospheric Administra-

tion; the Small Business Administration; the Fish and Wildlife Service; the National Park Service; and the National Institute for Occupational Safety and Health.

The Clean Water Act, as amended by the Oil Pollution Act of 1990, is the primary Federal statute governing the Federal response to oil spills. The act authorized the President to develop the *National Oil and Hazardous Substances Pollution Contingency Plan*, more commonly called the *National Contingency Plan* (NCP). The *National Contingency Plan* is the Federal Government's blueprint for responding to oil spills and hazardous substance releases and establishes the National Response Team and its roles and responsibilities. It was under this framework that DHS and the Coast Guard led the Federal response to the Deepwater Horizon oil spill. Although the NCP is the operative framework for oil spill response, other frameworks and authorities may play a role in the Deepwater Horizon spill response. For example, there are also provisions for responding to oil spills in the Emergency Support Function—10 (ESF-10) annex to the National Response Framework. I'll briefly use this to illustrate the complexity and challenges of interagency planning.

The Emergency Support Functions provide the structure for coordinating Federal interagency support for a Federal response to an incident. They are mechanisms for grouping functions most frequently used to provide Federal support to States and Federal-to-Federal support, both for declared disasters and emergencies under the Stafford Act and for non-Stafford Act incidents. ESF-10 is the Oil and Hazardous Materials Response Annex to the NRF. The ESF-10 Coordinating Agency is the Environmental Protection Agency (EPA). Primary agencies are EPA and the Department of Homeland Security/U.S. Coast Guard. There are 13 support agencies, the Departments of Agriculture, Commerce, Defense, Energy, Health and Human Services, Homeland Security, Interior, Justice, Labor, State, and Transportation, and the General Services Administration, and Nuclear Regulatory Commission, as well as numerous sub-agencies. It is vital that these agencies coordinate their planning efforts and provide a unified response, but authorities, funding and personnel reside in the individual agencies. Bringing all of this together under one Federal umbrella continues to be a challenge.

It would be premature for me to comment on the actual response effort. My office began planning oversight work immediately, but we did not want to deploy staff that might in any way disrupt the response effort. Having said that, we have initiated three audits, and we plan to initiate a fourth during fiscal year 2011.

One on-going audit is an evaluation of Coast Guard's Internal Controls for Identifying Costs Associated with the Deepwater Horizon Oil Incident. The Coast Guard's response to this incident imposed extraordinary costs on the service. In oil spill events, the Coast Guard must recover costs from the "responsible party" (in this case, British Petroleum, or BP). Our audit will determine whether the Coast Guard has adequate policies, procedures, and internal controls in place to capture all direct and indirect Federal costs associated with the Deepwater Horizon Oil Incident.

The two other on-going audits are reviewing various aspects of Coast Guard's Marine Safety Program. One audit is reviewing Coast Guard's Marine Safety Performance Plan. This plan includes six initiatives focused on increasing the competency of its marine safety workforce, delivering improved service to the marine industry, improving management practices, and increasing the safety of recreational boats, towing vessels, and fishing vessels. Our audit will determine whether improvements to the Plan are needed for it to be an effective tool for managing the Marine Safety Program. The other audit is looking at whether Coast Guard has the capabilities and resources to conduct safety inspections on domestic and foreign-flagged offshore vessels, including Marine Offshore Drilling Units such as the Deepwater Horizon. The Coast Guard oversees 20,000 U.S. and foreign-flagged vessels by conducting 80,000 inspections annually and 14,000 investigations. The outcomes of these inspections often serve as a basis for improving safety through regulatory and policy changes.

The audit planned for fiscal year 2011 will look into the effectiveness of the Unified Command response in relation to the Deepwater Horizon Incident. Under the provisions of *Homeland Security Presidential Directive—5* (HSPD-5), *Management of Domestic Incidents*, all levels of Government must be capable of working together to efficiently and effectively manage a domestic incident. According to HSPD-5, the Government treats crisis management and consequence management as a single, integrated function. The Unified Command structure provides shared management of the incident among Federal, State, and private sectors—the Federal On-Scene Commander, the State On-Scene Commander, and the Responsible Party, respectively. The work we will conduct is designed to determine the efficacy of the Unified Command in its internal and external communications to stakeholders, management, and coordination of resources, in response to the Deepwater Horizon oil spill. We will also look at the quality of the National Contingency Plan as it was implemented

during this disaster. I look forward to sharing the results of this work with the committee.

Mr. Chairman, this concludes my prepared remarks. I welcome any questions that you or the Members may have. Thank you.

Chairman THOMPSON. Thank you for your testimony.

I now recognize Mr. Jenkins for his statement for 5 minutes.

STATEMENT OF WILLIAM O. JENKINS, JR., DIRECTOR, HOMELAND SECURITY AND JUSTICE ISSUES, GOVERNMENT ACCOUNTABILITY OFFICE

Mr. JENKINS. Mr. Chairman and Members of the committee, I am not going to repeat other things that Mr. Skinner said. Instead, I would like to supplement his comments and talk today about criteria for developing and testing disaster response plans.

As you know, disasters come in all sizes and can be the result of many causes, including deliberate actions. A disaster may occur suddenly, such as an earthquake or a bomb blast or Deepwater Horizon; or it may occur with some forewarning and continue for days or weeks, such as the flooding we saw in various parts of the country this year or a flu pandemic. An effective response to major disasters requires the resources and coordinated action of many players, Government and non-Government. To do that requires planning and forethought.

The development of detailed disaster response operations plans and the validation of those plans through testing and exercising is a key component of effective disaster response planning.

The January 2008 National Response Framework describes planning as the cornerstone of National preparedness. Response plans define the roles and responsibilities of all those who have a role in the response; and the resources and capabilities each will contribute to the response; and the plans also provide a blueprint for how the response will be directed, managed, and coordinated.

In June 2010, FEMA adopted three private-sector standards for use by U.S. companies in emergency planning and response. Those standards provide that organizations should test and evaluate the appropriateness and efficacy of their emergency response plan.

The National Response Framework identifies seven criteria for effective response planning: Acceptability; adequacy; completeness; consistency and standardization of products; feasibility; flexibility; interoperability and collaboration. Although all are important, I would like to focus on a few of these and the criteria of whether or not they are met.

Adequacy. To be adequate, a plan should be based on valid and relevant planning assumptions and the concept of operation should identify critical tasks specific to the plan's objectives.

The completeness of plan is complete if it incorporates major actions, objectives, and tasks to be accomplished. The plan should address the personnel and resources required, sound concepts for how those resources will be deployed, used, sustained, and mobilized. Including all those who would have responsibilities under the plan and developing the plan helps ensure the plan is complete.

Feasibility. Can critical tasks identified in the plan be accomplished within available resources, including those from mutual aid or other resources? Procedures for drawing on available resources,

such as EMAC, and integrating and employing all resources effectively need to be in place before the disaster.

Interoperability and collaboration is particularly important in planning because of the number of people that would be involved in responding to a major disaster. The plan's other stakeholders and participants should be complementary in their objectives in collaboration and focused on integrating the efforts of all stakeholders.

It is critically important that the assumptions embedded in emergency plans are validated. These include assumptions about the type and probability of events, such as a blow-out, and any assumptions about the capability to effectively to respond to the consequences of that event.

As we and the DHS Inspector General have noted, robust operational planning and validation of those operational plans are key components of disaster preparedness. As Hurricane Katrina and Deepwater Horizon have so vividly demonstrated, shortcomings in such planning can complicate the ability to marshal needed resources and effectively coordinate their use.

DHS also faces the challenge, continuing challenge, in measuring, developing measures for assessing preparedness and capabilities, and has created a task force on preparedness to this response. The report is due at the end of this month to make recommendations with regard to how we can improve preparedness and particularly measure our success in being prepared.

That concludes my statement, Mr. Chairman. I would be pleased to respond to any questions you or other Members of the committee may have.

[The statement of Mr. Jenkins follows:]

PREPARED STATEMENT OF WILLIAM O. JENKINS, JR.

SEPTEMBER 22, 2010

GAO-10-969T

Mr. Chairman and Members of the committee: I am pleased to be here this morning to discuss the importance of preparing, validating, and testing emergency operations plans for disaster response. Among the lessons learned from the aftermath of Hurricane Katrina was that effective disaster response requires planning followed by the execution of training and exercises to validate those plans. The development of detailed emergency operations plans and the validation of those plans through testing and exercising is a key component of effective disaster response planning. These plans are part of a broader cycle of emergency preparedness that includes policy development, planning, and resource allocation, exercising and testing operational plans, and assessment and reporting.¹

To help guide Federal emergency response planning, the Federal Emergency Management Agency (FEMA) developed the *National Response Framework*, in conjunction with a variety of stakeholders, as a blueprint for how the Nation conducts response to hazards of any type, regardless of cause. The *National Response Framework*, which was issued in January 2008, describes planning as the cornerstone of National preparedness and a critical element for response to a disaster or emergency. Response plans define the roles and responsibilities of all those who will have a role in the response and the capabilities they will contribute to the effort and provide a blueprint for how the response will be directed, managed, and coordinated.

¹The elements of the emergency management framework are discussed in detail in our April 2009 report on the Federal Emergency Management Agency's efforts to lead the development of a National preparedness system. See GAO, *National Preparedness: FEMA Has Made Progress, but Needs to Complete and Integrate Planning, Exercise, and Assessment Efforts*, GAO-09-369 (Washington, DC: Apr. 30, 2009).

In addition, in June 2010, as part of its Voluntary Private Sector Preparedness Accreditation and Certification Program, FEMA adopted three private sector standards for use by U.S. companies in emergency planning and response. These standards provide that organizations should test and evaluate the appropriateness and efficacy of their emergency response plans.²

My comments are based on our previously issued work on emergency planning and response over the last several years, including our April 2009 report on FEMA's efforts to lead the development of a National preparedness system.³ Specifically, my testimony today focuses on: (1) The criteria for effective disaster response planning established in FEMA's *National Response Framework*, (2) additional guidance for disaster response planning, (3) the status of National disaster response planning efforts, and (4) the special circumstances related to operational response planning for oil spills.

To address these objectives, we reviewed the policies and plans that form the basis of the preparedness system. These policies and plans include, among others, the *National Response Framework* and *National Preparedness Guidelines*, as well as the National integrated planning system and preliminary versions of related guidance to develop and integrate plans across Federal, State, Tribal, and local governments. We also reviewed the Department of Homeland Security's (DHS) Office of Inspector General report on the status of FEMA's disaster response planning efforts. For the purposes of this testimony, we did not assess any criteria used or the operational planning for the Deepwater Horizon response. More detailed information about our scope and methodology is included in our April 2009 report. We conducted this work in accordance with generally accepted Government auditing standards.

NATIONAL RESPONSE FRAMEWORK'S CRITERIA FOR RESPONSE PLANNING

The *National Response Framework* discusses several elements of effective response and response planning. The term response, as used in the *National Response Framework*, includes the immediate actions to save lives, protect property and the environment, and meet basic human needs. Response also includes the execution of emergency plans and actions to support short-term recovery. An effective, unified National response—including the response to any large-scale incident—requires layered, mutually supporting capabilities—governmental and nongovernmental. Indispensable to effective response is an effective unified command, which requires a clear understanding of the roles and responsibilities of each participating organization.

The *National Response Framework* employs the following criteria to measure key aspects of response planning:

- *Acceptability*.—A plan is acceptable if it can meet the requirements of anticipated scenarios, can be implemented within the costs and time frames that senior officials and the public can support, and is consistent with applicable laws.
- *Adequacy*.—A plan is adequate if it complies with applicable planning guidance, planning assumptions are valid and relevant, and the concept of operations identifies and addresses critical tasks specific to the plan's objectives.⁴
- *Completeness*.—A plan is complete if it incorporates major actions, objectives, and tasks to be accomplished. The complete plan addresses the personnel and resources required and sound concepts for how those will be deployed, employed, sustained, and demobilized. It also addresses time lines and criteria for measuring success in achieving objectives and the desired end state. Including all those who could be affected in the planning process can help ensure that a plan is complete.
- *Consistency and standardization of products*.—Standardized planning processes and products foster consistency, interoperability, and collaboration; therefore, emergency operations plans for disaster response should be consistent with all other related planning documents.

²American National Standards Institute, *Organizational Resilience: Security, Preparedness, and Continuity Management Systems-Requirements with Guidance for Use* ASIS SPC.12009 (Mar. 12, 2009).

³See for example, GAO-09-369, GAO, *Actions Taken to Implement the Post-Katrina Emergency Management Reform Act of 2006*, GAO-09-95R (Washington, DC: Nov. 21, 2008), *National Response Framework: FEMA Needs Policies and Procedures to Better Integrate Non-Federal Stakeholders in the Revision Process*, GAO-08-768 (Washington, DC: June 11, 2008), and *Catastrophic Disasters: Enhanced Leadership, Capabilities, and Accountability Controls Will Improve the Effectiveness of the Nation's Preparedness, Response, and Recovery System*, GAO-06-618 (Washington, DC: Sept. 6, 2006).

⁴A concept plan describes how capabilities are integrated and synchronized to accomplish critical tasks to meet objectives.

- *Feasibility*.—A plan is considered feasible if the critical tasks can be accomplished with the resources available internally or through mutual aid, immediate need for additional resources from other sources (in the case of a local plan, from State or Federal partners) are identified in detail and coordinated in advance, and procedures are in place to integrate and employ resources effectively from all potential providers.
- *Flexibility*.—Flexibility and adaptability are promoted by decentralized decision-making and by accommodating all hazards ranging from smaller-scale incidents to wider National contingencies.
- *Interoperability and collaboration*.—A plan is interoperable and collaborative if it identifies other stakeholders in the planning process with similar and complementary plans and objectives, and supports regular collaboration focused on integrating with those stakeholders' plans to optimize achievement of individual and collective goals and objectives in an incident.

ADDITIONAL GUIDANCE AND POLICY REGARDING OPERATIONAL PLANS AND TESTING

Under the Post-Katrina Emergency Management Reform Act, FEMA has responsibility for leading the Nation in developing a National preparedness system.⁵ FEMA has developed standards—the *Comprehensive Preparedness Guide 101*—that call for validation, review, and testing of emergency operations plans (EOP).⁶ According to the *Comprehensive Preparedness Guide 101*, plans should be reviewed for conformity to applicable regulatory requirements and the standards of Federal or State agencies (as appropriate) and for their usefulness in practice. Exercises offer the best way, short of emergencies, to determine if an EOP is understood and “works.” Further, conducting a “tabletop” exercise involving the key representatives of each tasked organization can serve as a practical and useful means to help validate the plan. FEMA’s guidance also suggests that officials use functional and full-scale emergency management exercises to evaluate EOPs. Plan reviews by stakeholders also allow responsible agencies to suggest improvements in an EOP based on their accumulated experience.⁷

We also identified the need for validated operational planning in the aftermath of Hurricane Katrina, noting that to be effective, National response policies must be supported by robust operational plans. In September 2006, we recommended, among other things, that DHS take the lead in monitoring Federal agencies’ efforts to meet their responsibilities under the National Response Plan (now the *National Response Framework*) and the National Preparedness Goal (now the *National Preparedness Guidelines*), including the development, testing, and exercising of agency operational plans to implement their responsibilities.⁸ DHS concurred with our recommendation. The Post-Katrina Emergency Management Reform Act transferred preparedness responsibilities to FEMA,⁹ and we recommended in April 2009 that FEMA should improve its approach to developing policies and plans that define roles and responsibilities and planning processes by developing a program management plan, in coordination with DHS and other Federal entities, to ensure the completion of the key National preparedness policies and plans called for in legislation, Presidential directives, and existing policy and doctrine; to define roles and responsibilities and planning processes; as well as to fully integrate such policies and plans into other elements of the National preparedness system.¹⁰ FEMA concurred with our recommendation and is currently working to address this recommendation.

Other National standards reflect these practices as well. For example, according to Emergency Management Accreditation Program (EMAP) standards, the development, coordination, and implementation of operational plans and procedures are fundamental to effective disaster response and recovery.¹¹ EOPs should identify and assign specific areas of responsibility for performing essential functions in response to an emergency or disaster. Areas of responsibility to be addressed in EOPs include

⁵Pub. L. No. 109–295, § 644, 120 Stat. 1355, 1425 (2006).

⁶Department of Homeland Security, Federal Emergency Management Agency, *Comprehensive Preparedness Guide (CPG) 101: Developing and Maintaining State, Territorial, Tribal, and Local Government Emergency Plans*. Mar. 2009.

⁷For example, States may review local plans.

⁸GAO, *Catastrophic Disasters: Enhanced Leadership, Capabilities, and Accountability Controls Will Improve the Effectiveness of the Nation’s Preparedness, Response, and Recovery System*, GAO–06–618 (Washington, DC: Sept. 6, 2006.).

⁹6 U.S.C. § 315.

¹⁰GAO–09–369.

¹¹The EMAP standards are the voluntary National accreditation process for State, territorial, Tribal, and local emergency management programs. Using collaboratively developed, recognized standards and independent assessment, EMAP provides a means for strategic improvement of emergency management programs, culminating in accreditation.

such things as evacuation, mass care, sheltering, needs and damage assessment, mutual aid, and military support. EMAP standards call for a program of regularly scheduled drills, exercises, and appropriate follow-through activities—designed for assessment and evaluation of emergency plans and capabilities—as a critical component of a State, territorial, Tribal, or local emergency management program. The documented exercise program should regularly test the skills, abilities, and experience of emergency personnel as well as the plans, policies, procedures, equipment, and facilities of the jurisdiction. The exercise program should be tailored to the range of hazards that confronts the jurisdiction.

STATUS OF NATIONAL DISASTER PLANNING EFFORTS

We reported in April 2009 that FEMA lacked a comprehensive approach to managing the development of emergency preparedness policies and plans.¹² Specifically, we reported that FEMA had completed many policy and planning documents, but a number of others were not yet completed. For example, while DHS, FEMA, and other Federal entities with a role in National preparedness have taken action to develop and complete some plans that detail and operationalize roles and responsibilities for Federal and non-Federal entities, these entities had not completed 68 percent of the plans required by existing legislation, Presidential directives, and policy documents as of April 2009.

Specifically, of the 72 plans we identified, 20 had been completed (28 percent), 3 had been partially completed (that is, an interim or draft plan has been produced—4 percent), and 49 (68 percent) had not been completed. Among the plans that have been completed, FEMA published the Pre-Scripted Mission Assignment Catalog in 2008, which defines roles and responsibilities for 236 mission assignment activities to be performed by Federal Government entities, at the direction of FEMA, to aid State and local jurisdictions during a response to a major disaster or an emergency. Among the 49 plans that had not been completed were the *National Response Framework* incident annexes for terrorism and cyber incidents as well as the *National Response Framework*'s incident annex supplements for catastrophic disasters and mass evacuations. In addition, operational plans for responding to the consolidated National planning scenarios, as called for in Homeland Security Presidential Directive 8, Annex 1, remained outstanding.

In February 2010, DHS's Office of Inspector General reviewed the status of these planning efforts and reported that the full set of plans for any single scenario had not yet been completed partly because of the time required to develop and implement the Integrated Planning System.¹³ The Integrated Planning System, required by Annex 1 to Homeland Security Presidential Directive 8 (December 2007), is intended to be a standard and comprehensive approach to National planning. The Directive calls for the Secretary of Homeland Security to lead the effort to develop, in coordination with the heads of Federal agencies with a role in homeland security, the Integrated Planning System followed by a series of related planning documents for each National planning scenario. The Homeland Security Council compressed the 15 National Planning Scenarios into 8 key scenario sets in October 2007 to integrate planning for like events and to conduct crosscutting capability development.¹⁴ The redacted version of the Inspector General's report noted that DHS had completed integrated operations planning for 1 of the 8 consolidated National planning scenarios¹⁵—the terrorist use of explosives scenario.¹⁶ FEMA officials reported earlier this month that the agency's efforts to complete National preparedness planning will be significantly impacted by the administration's pending revision to Homeland Security Presidential Directive—8. Once the new directive is issued, agency officials plan to conduct a comprehensive review and update to FEMA's approach to National preparedness planning.

In addition to FEMA's planning efforts, FEMA has assessed the status of catastrophic planning in all 50 States and the 75 largest urban areas as part of its Nationwide Plan Review. The 2010 Nationwide Plan Review was based on the 2006

¹²GAO-09-369.

¹³Department of Homeland Security, Office of Inspector General, *DHS' Progress in Federal Incident Management Planning* (Redacted), OIG-10-58 (Washington, DC, Feb. 22, 2010.)

¹⁴The eight scenarios are: (1) Explosives attack (terrorist use of explosives); (2) nuclear attack (improvised nuclear device); (3) biological attack (aerosol anthrax, plague, food contamination, foreign animal disease); (4) radiological attack (radiological dispersal devices); (5) chemical attack (blister agent, toxic industrial chemicals, nerve agent, chlorine tank explosion); (6) natural disaster (major earthquake, major hurricane); (7) cyberattack; and (8) pandemic influenza.

¹⁵The DHS IG's report noted that DHS had completed five of the eight strategic guidance statements and four strategic plans. See DHS OIG-10-58.

¹⁶To align with Homeland Security Presidential Directive 19, in July 2008 the improvised explosive device scenario was renamed the Terrorist Use of Explosives scenario.

Nationwide Plan Review, which responded to the need both by Congress and the President to ascertain the status of the Nation's emergency preparedness planning in the aftermath of Hurricane Katrina. The 2010 Nationwide Plan Review compares the results of the 2006 review of States and urban areas' plans, functional appendices and hazard-specific annexes, on the basis of:

- Consistency with Comprehensive Preparedness Guide 101,
- Date of last plan update,
- Date of last exercise, and
- A self-evaluation of the jurisdiction's confidence in each planning document's adequacy, feasibility, and completeness to manage a catastrophic event.

FEMA reported in July 2010 that more than 75 percent of States and more than 80 percent of urban areas report confidence that their overall basic emergency operations plans are well-suited to meet the challenges presented during a large-scale or catastrophic event.

OPERATIONAL RESPONSE PLANS FOR OIL SPILL RESPONSES

Oil spills are a special case with regard to response. For most major disasters, such as floods or earthquakes, a major disaster declaration activates Federal response activities under the provisions of the Robert T. Stafford Disaster Relief and Emergency Assistance Act.¹⁷ However, for oil spills, Federal agencies may have direct authority to respond under specific statutes. Response to an oil spill is generally carried out in accordance with the National Oil and Hazardous Substances Pollution Contingency Plan.¹⁸ The *National Response Framework* has 15 functional annexes, such as search and rescue, which provide the structure for coordinating Federal interagency support for a Federal response to an incident. Emergency Support Function No. 10, the Oil and Hazardous Materials Response Annex, governs oil spills. As described in Emergency Support Function No. 10, in general, the Environmental Protection Agency is the lead for incidents in the inland zone, and the U.S. Coast Guard, within DHS, is the lead for incidents in the coastal zone. The difference in responding to oil spills and the shared responsibility across multiple Federal agencies underscores the importance of including clear roles, responsibilities, and legal authorities in developing operational response plans.

In conclusion, Mr. Chairman, emergency preparedness is a never-ending effort as threats evolve and the capabilities needed to respond to those threats changes as well. Realistic, validated, and tested operational response plans are key to the effective response to a major disaster of whatever type. Conducting exercises of these plans as realistically as possible is a key component of response preparedness because exercises help to identify what "works" (validates and tests) and what does not. This concludes my statement. I will be pleased to respond to any questions you or other Members of the committee may have.

Chairman THOMPSON. Thank you for your testimony.

I would remind each Member that he or she will have 5 minutes to question the panel. I will now recognize myself for questions.

Mr. Jenkins, this National planning scenario that has not been completed, whose responsibility is it to complete it?

Mr. JENKINS. There is a responsibility between both FEMA and DHS operations to complete those, working with other agencies, as Mr. Skinner has pointed out in his report.

Chairman THOMPSON. Okay.

Mr. Skinner, help us out with that.

Mr. SKINNER. Yes, DHS most certainly has the lead to do this, and the Secretary is in charge of that program. DHS relies very, very heavily on its Federal partners, however. FEMA, for example, is responsible for developing the concept of operation plans. They rely heavily on the other Federal agencies to contribute staff to prepare plans to provide the input in those areas where they have the expertise.

¹⁷ 42 U.S.C. §§ 5121–5206.

¹⁸ The National Oil and Hazardous Substances Pollution Contingency Plan, more commonly called the National Contingency Plan or NCP, is the Federal Government's blueprint for responding to both oil spills and hazardous substance releases.

At the Departmental level, the Department has received people from other—from the other departments and agencies that, again, have expertise in their areas to contribute to the strategic plan, strategic guidance.

Problems that we are having is, No. 1, there is not enough of these people to go around. They are being spread very, very thinly. We got off to a late start. As a matter of fact, I don't think the Department got started until a year after it was supposed to get started. Secondly, people were being called to do other duties because of the, for example, the election; the issues that we are dealing with border security down in the Southwest. This caused problems in putting this together.

Chairman THOMPSON. But do you see the Department not having the benefit of the scenario results and still being able to adequately plan going forward?

Mr. SKINNER. Yes, this can hinder our ability to move forward. Like I said, the individual departments are preparing their individual operational plans. However, those plans have never been reviewed. FEMA doesn't have the authority to mandate that they be reviewed. So, therefore, we do not know if they in fact are adequate plans, whether those plans fit into the concept of operations or with the strategic plans. So we have a long way to go. There was progress being made. It has been slowed. But we do have a very, very long way to go.

Chairman THOMPSON. Thank you.

Admiral, you referenced some comments about the Coast Guard being involved in the planning process and that you had hoped for tighter linkages in that. Can you expound on that?

Admiral NEFFENGER. Yes, Mr. Chairman. What I was referring to is the response plans that are generated for—well, I will start with this. We require response plans for all vessels which pose a potential pollution hazard to the Federal waters of the United States. This includes tankers and certain other types of vessels. What was the Minerals Management Service, now the Bureau of Ocean Energy Management and Regulatory Enforcement, also has response plan requirements for Outer Continental Shelf activities. There is an existing memorandum of agreement between our two agencies that provides for the option to review response plans but doesn't mandate the review of response plans.

I think, moving forward, one of the earlier lessons learned for us is that as the Federal on-scene coordinator responsible for cleaning up and responding to oil spills in the maritime environment, we should be reviewing all potential sources of pollution in the—response plans for all potential sources of pollution in the maritime environment.

Chairman THOMPSON. I agree with you. If you had the responsibility to review a plan for the Gulf Coast, the Gulf of Mexico, and saw where it referenced seals and walrus in the plans, would you have noted that that probably didn't have anything to do with the Gulf of Mexico?

Admiral NEFFENGER. I think the good thing about a review process is that they surface those kinds of issues that may need to be addressed.

I think what we would have been interested in most importantly is how a worst-case discharge is defined, because that is what really we are talking about when you are looking at planning, is how do you define worst case and what types of efforts then will be brought to bear and what equipment will be available to deal when that?

Chairman THOMPSON. I understand. But I asked, if you saw seals and walruses in a Gulf of Mexico response plan, would that not have raised a flag?

Admiral NEFFENGER. I probably would have asked a few questions, yes, sir.

Chairman THOMPSON. Here is the BP part of the plan. Did the Coast Guard, to your knowledge, have any opportunity to review it?

Admiral NEFFENGER. Well, as I said, we have a memorandum which would allow for review. But to my knowledge, we did not review that plan, no, sir.

Chairman THOMPSON. So, basically, you were left to the mercy of BP to advise the Coast Guard on what they needed to do as overseer to correct it.

Admiral NEFFENGER. Well, what I would say is that it is not that we were without resources and capability. We did assume from the outset that we were going to be dealing with a major oil spill, if for no other reason than that there were 700,000 gallons of diesel fuel on-board the Deepwater Horizon. And we also made the assumption that we would have leakage from the well, although, as noted, it was beyond the scope and unprecedented that we would have had as much leakage as we had over the extended period of time that we did.

But we did immediately put response resources out to bear on the site and did turn to BP as a responsible party to activate not only their existing oil spill response or removal organization contracts, but to bring all possible resources to the site.

Chairman THOMPSON. Thank you.

You referenced an MOA that has been agreed to. Has it been signed?

Admiral NEFFENGER. Yes, sir. I think that is longstanding. I will have to get you—I can get you a copy for the record.

Chairman THOMPSON. Please.*

Admiral NEFFENGER. That will include the date. I don't off the top of my head know on what date it was signed. But it was signed previously with the Minerals Management Service.

Chairman THOMPSON. But, even with that, to your knowledge, the Coast Guard had nothing to do with the review of BP's response plans should a spill occur.

Admiral NEFFENGER. For this particular well, I don't believe that we did review this particular response plan.

Chairman THOMPSON. Thank you. I yield to the gentleman from New Orleans, Mr. Cao.

Mr. CAO. Thank you very much, Mr. Chairman.

My first question is to Mr. Skinner because I am still a little bit confused with respect to your answers to the National planning scenarios that the Chairman alluded to earlier.

*Due to legibility, the information was retained in committee files.

In your statement, you said that in July 2009, the White House National Security Staff began a review of HSPD-8 and temporarily put a hold on efforts to complete the remaining plans. My question contains three parts: No. 1, why did they put a hold in the first place? No. 2, is the NSS still preventing the completion of these plans? If they are still preventing the completion of these plans, the question is why? If not, where is the status of the plans?

Mr. SKINNER. First, in response to your first question, I am not sure why they put a hold. It is our understanding, my office's understanding, that we wanted to review that directive to see if it can be streamlined and improved.

Second, yes, we have been told that the strategic planning concept of operations planning and strategic guidance has been put on hold pending the results of the White House review of the directive.

Third, and the last question, Congressman? You had three parts.

Mr. CAO. Right. I asked you if the White House National Security Staff still puts a hold on the remaining plans. If the answer is yes, they still put a hold, the question is, why? If no, they are no longer putting a hold, then where is the status of the planning?

Mr. SKINNER. It is my understanding that there is still a continuing hold on future planning pending the results of a new directive.

Mr. CAO. Do you know why it is taking so long to review these directives?

Mr. SKINNER. No, I don't. It is my understanding it might be some differences in how we want to approach our National strategic planning.

Mr. CAO. Now you also said that the National planning scenarios were making progress. Can you explain to me what kind of progress we were making?

Mr. SKINNER. Originally, it was our understanding that the Department wanted to start this process back in 2008—early 2008—but we were not able to start developing or issuing guidance until late 2008. We saw progress in four of the scenarios where we had strategic guidance, we had strategic plans, we had operational plans or concept of operations plans. But that all came to a halt in July 2009.

Mr. CAO. As of today, we don't really know where these—what is the process, where we are in the process.

Mr. SKINNER. That is correct. I understand it is all on hold. In January of this year, we speculated that, at the pace that we were moving, that we could have a complete set of plans by February 2011. But I think—I doubt very seriously if that can happen.

Mr. CAO. Based on your understanding of these planning scenarios, how urgent is it that we complete these plans?

Mr. SKINNER. I think it is extremely urgent that we complete these plans. If you look at the scenarios that were developed and identified, everyone was in agreement that these are issues that need to be addressed. We need to have a Nation-wide plan at all levels—at the Federal level all the way, vertically and horizontally, down to the State and locals, the private sector.

We saw what happened in Katrina. We saw what happened in Deepwater Horizon. I think it is very important that we have plans in place that people understand what their organizational respon-

sibilities are, what the resources are available to address certain scenarios—a chemical attack, a nuclear attack. I think it is extremely important. I think the administration recognizes it is important. I am confident they will get back on track.

Mr. CAO. So, based on the answers I have received, can I assume that what you are trying to say is the White House National Security Staff, they are not acting with a sense of urgency?

Mr. SKINNER. I don't want to draw that conclusion. I believe they are actively engaged. It is just you would have to ask—I have not been—our office has not been privy to what the issues that are being raised between the White House and the Department.

Mr. CAO. Thank you, and I yield back.

Chairman THOMPSON. Thank you very much.

The Chairman recognizes the gentleman from New Jersey, Mr. Pascrell, for 5 minutes.

Mr. PASCRELL. I want to continue, if I may, Mr. Chairman, on the path that Mr. Cao has laid out very astutely.

I would like to ask Mr. Skinner, who I have a great, great affection for, and Mr. Jenkins, from the Government Accountability Office, this question. Upon your examination from your each different specific points of perception, how would you explain—how would you describe the relationship between BP and the Minerals Management Service?

Mr. SKINNER. Congressman, we are in a process currently of looking at the Department of Homeland Security's response and the Coast Guard's response to the Deepwater Horizon incident.

Mr. PASCRELL. But the Minerals Management Service is under the Interior Department.

Mr. SKINNER. That is correct.

Mr. PASCRELL. Have you had any review?

Mr. SKINNER. No.

Mr. PASCRELL. Let me ask it this way. Have you looked with the Interior Department at the relationship BP had with the Government?

Mr. SKINNER. Yes. We are coordinating our reviews.

Mr. PASCRELL. What did you conclude?

Mr. SKINNER. We have not drawn any conclusions.

Mr. PASCRELL. When will we get those conclusions?

Mr. SKINNER. Our first three reviews we hope to have something by the end of this calendar year. Our review of National Contingency Plan and its relationship to the former MMS we are looking at early next spring.

Mr. PASCRELL. So if I would have asked you this before this disaster, you would have said we are going to put a committee together or we are going to refer this to a panel of some sort that will examine whatever the relationship was with BP and any Federal agency that has oversight. You would be answering me the same thing.

Mr. SKINNER. No. Let me say this, that, based on my conversations with the Acting IG or the IG at the Department of Interior, they are actively engaged in studying this subject as we speak. They may draw conclusions and issue reports a lot sooner than our ability to draw conclusions on the adequacy of the Coast Guard's and the Department of Homeland Security's response.

Mr. PASCRELL. So the Department of Interior is looking into this relationship as well. Is that what you are telling me?

Mr. SKINNER. Yes, sir.

Mr. PASCRELL. That doesn't seem to me to be a healthy situation at first blush, but maybe I am wrong—

Mr. SKINNER. It is the Department of Interior Inspector General, who is independent of the Management in that relationship.

Mr. PASCRELL. Let me ask you, Mr. Jenkins, the same questions. How would you answer them?

Mr. JENKINS. I can't answer them only because we have done absolutely no work on that topic at all. So we don't have any information on that.

Mr. PASCRELL. Well, here's my dilemma then with that, Mr. Skinner—Mr. Jenkins, I am not blaming you personally. We have a situation—I will repeat what I said earlier. You have oversight. We don't need a disaster to look into if that oversight is paying us dividends or there is no oversight; simply by name we have oversight.

I don't accept this. I want to tell you this right now. I do not accept what you are just telling me, that you can't tell me right now what was the relationship between what really was a flunky organization by everyone's measure, this Minerals Management Service. Again, slowly, I turned. You can't tell me what the relationship was with that agency or any oil company, could you?

Mr. JENKINS. No, sir.

Mr. PASCRELL. Who would know that?

Mr. JENKINS. I think it would be—we have—

Mr. PASCRELL. Who would know that, Mr. Jenkins?

Mr. JENKINS. Well, as Mr. Skinner said, the Interior Inspector General would be the best source.

Mr. PASCRELL. He is going to be inspecting an agency which is in the Interior Department. Thank you.

Let me ask you this. The Homeland Security Act of 2002 vested the Secretary of the Department of Homeland Security with responsibility for emergency planning for natural and man-made crises on behalf of the United States. Under the Act, the Department acts as a focal point regarding natural and man-made crises and emergency planning.

So the law is clear in saying that the DHS is primarily responsible for emergency planning in a man-made crisis, which this certainly was. Yet, as I said before, it is abundantly clear that no such emergency plan existed.

Furthermore, it seems clear to me that the DHS had absolutely no role in emergency planning before this disaster occurred. I don't care what I have read; I have come to that conclusion. Maybe you could give me other information and change my mind. I have changed my mind on some things, that the weather is too cold; it is too hot. I have changed my mind on a lot of things in my life, whether my kids were listening to me or they weren't listening to me.

So let me ask all the witnesses this question. Do you agree that the Department of Homeland Security and its various components, including the Coast Guard, had no role in emergency planning be-

fore this disaster occurred? A simple yes or no to that particular question.

Then I have one more final question, if I may, Mr. Chairman.

Mr. Chávez.

Mr. CHÁVEZ. Yes.

Mr. PASCRELL. Rear Admiral.

Admiral NEFFENGER. Let me just clarify. You are asking if I agree with you that DHS had no role in emergency planning?

Mr. PASCRELL. That is correct.

Admiral NEFFENGER. From my perspective, no, sir. In fact, we have been involved in, particularly with respect to oil spills, planning for 20 some years since the passage of the Oil Pollution Act.

Mr. PASCRELL. You have been. That is interesting.

Mr. Skinner.

Mr. SKINNER. I do agree with Rear Admiral Neffenger that the Department and FEMA have been actively engaged in many areas.

The question is how well those plans have been implemented and how well they have been exercised; how well have people been trained to understand what is in those plans? I think therein lies one of our biggest problems.

Mr. PASCRELL. Thank you.

Mr. Jenkins.

Mr. JENKINS. I agree with Mr. Skinner.

Mr. PASCRELL. Well, you all agree with one another.

Let me tell you my take. This is another case of turf battles when it comes to Homeland Security, Mr. Chairman.

Is it the reason why DHS had no role, really, in emergency planning because the existing Federal regulator with the Bureau of Ocean Energy Management, Regulation and Enforcement, better known as BOEMRE—you learned something today, I did, too—formally known as the Minerals Management Service, did not want them involved. Can anybody on the panel answer that question?

Mr. Chairman, I conclude, and thank you for allowing me to go over.

Chairman THOMPSON. Thank you very much.

The Chairman now recognizes the gentlelady from Texas, Ms. Jackson Lee.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman. As witnesses know, as you build on the genius of each of you and your staff, we build on the genius of our colleagues.

Allow me to build on the genius of our Chairman. I think this is a very important hearing.

Let me publicly state, Mr. Chairman, that, interestingly enough, you have several committees that, frankly, overlap what happened in this great episode of our history, this great tragedy, from Emergency Preparedness to Cybersecurity. I chair the Subcommittee on Infrastructure Protection. There is no doubt that our energy system of pipelines and oil rigs are part of the infrastructure of America.

Then my dear friend from New Jersey has just opened an expanded can of worms that talks about how we host disaster recovery in one entity. I know that each of the gentlemen sitting here are enormously polite. I may give a yield to the Inspector General and the GAO. They are often coming and being impolite because they have to bring truth to the table.

But we have a problem in the system of Government.

Before I pose these questions, let me also join the genius of my colleague from Texas, as I have joined the genius of the gentle lady from New York, and indicate that it is important to note that lives were lost.

We sat here after 9/11 expressing the dismay in that horrific tragedy that lives were lost, lives were lost, and when reviewed, we looked at information that had not been translated, phones that didn't work, and we felt sad.

Let me also note, as we did in 9/11, of the heroic acts of so many people. Again, the energy industry, the folks that just work, we have to thank them. As I visited the command center in Houma, and just over and over again, let me thank the command center leadership and thank the Coast Guard.

I want to express my appreciation to Admiral Allen and all of you who moved expeditiously when the call came. Let no one diminish the time spent away from family and the heroic efforts that were there.

Going on that, I am going to be the unpleasant person at the party and say it is atrocious. I have to tell my colleagues it is atrocious. They are not going to listen. But there is no reason to scatter jurisdiction on disaster. If you need someone, you can call them up. But the anchor of disaster should be Homeland Security. Natural disaster, man-made disaster: Homeland security.

There is a phrase in the Bible when someone asks about who is going to do a certain act, and you stand and say: Send me. I don't mind taking the responsibility.

So my concern is, we need some people, whether it is a Republican administration, a Democratic administration, we need somebody to stand up and say, this is not working; I have got too many bosses.

Now I would like the Department of Interior, and they might be good when things are going well, to make sure that they are reviewing what is going on, on the rig. They admit that they failed by not going to that rig as often as they should because it is well known that some on the rig absconded—I use that terminology—left the rig days out because they felt something was not right. So the question has to be: When are we all going to own up to this?

Let me just ask this question, Mr. Chávez. When the oil spill was designated a National Significance, a SONS—look at that acronym—and Admiral Thad Allen was appointed National incident commander, what role does Secretary Napolitano have?

Mr. CHÁVEZ. She was the incident manager.

Ms. JACKSON LEE. Was she flown out to the site 24 hours a day, standing, giving orders or working in conjunction? How did that work, sir?

Mr. CHÁVEZ. She was working through Admiral Allen, again, as the incident commander as per the plan.

Ms. JACKSON LEE. Right. So she was getting measured information or delayed information. When I say she, let me just say the Secretary of Homeland Security, because this goes on from how many years back. We are not pointing out to the Secretary. We know she is at another hearing today. We are just trying to get the structure.

So what you are saying is she was getting information 4 hours, 24 hours, et cetera, later.

Mr. CHÁVEZ. As it came in.

Ms. JACKSON LEE. As it came in, you believe.

Mr. CHÁVEZ. I know. That is what the responsibility as the National Operations Center.

Ms. JACKSON LEE. But we don't have any documentation, having that position not necessarily being on site, that it was first knowledge. You are saying, under the procedures, you think that is what happened.

Mr. CHÁVEZ. Agree.

Ms. JACKSON LEE. Let me move to Admiral Neffenger.

When you had this responsibility and you worked with the Secretary, who is considered ultimately in charge, the Admiral or the Secretary of Homeland Security, whoever that might be?

Admiral NEFFENGER. Well, for this incident the Secretary named Admiral Allen the National incident commander and vested ultimate decision-making authority in him; however, maintained her role as the principal Federal official under HSPD-5 through daily interaction with him. I personally witnessed their daily interaction.

Ms. JACKSON LEE. I think that is positive.

But let me probe this. The Chairman said we will have additional questions. I am going to put this question on the record and ask you to give this to me in writing, how we can enhance that relationship.

Since you were involved in Katrina, don't let your mind focus only on the oil spill. I, frankly, believe that it should be in tandem, so that we can concretely reinforce that Homeland Security and the Secretary of Homeland Security, reporting to the President, reporting to this Congress, is right there on the action.

So let me just ask you in this question, and I have got two more quickly, Mr. Chairman: Did you develop your expertise on the job, on this oil spill? Did you gather some industry people right to you real quick? How did you move quickly on this issue?

Admiral NEFFENGER. Actually, there is a number of pieces to that.

Ms. JACKSON LEE. Excuse my voice.

Admiral NEFFENGER. Let me quickly outline the process. As I mentioned earlier, there is a robust planning process that was put in place by the Oil Pollution Act of 1990. That, among other things, included development of area contingency plans, which are coordinated through the State government and State agencies, as well as the Federal Government, and responsible parties—potential responsibility parties. That generates something called an Area Contingency Plan, which is the first step in knowing what you might need in the event of a major oil spill or even a minor oil spill response. That is the first piece that is in place, is the pre-need relationships amongst those folks.

When an event actually happens, the plan is a guideline only, and then you have to adjust it on the fly, as you know, because in the case of this event, things happened that we hadn't ever seen before. So, in this case, we knew that we needed—the Oil Pollution Act of 1990's fundamental principle was that the American taxpayer shouldn't bear the burden of cleaning up.

Ms. JACKSON LEE. Can you get with how you got the expertise, quickly? I need to ask—

Admiral NEFFENGER. We drew on the industry for the expertise, not just the responsible party, but other members, and we took experts within the Coast Guard and within the Federal Government.

Ms. JACKSON LEE. Let me quickly ask the two gentlemen this last question, the Inspector General and GAO. You are doing a study, Inspector General, after the fact. You did a study after Katrina. Can you imagine lives lost are just kind of having their cup overwhelmed about inspector reviews after the fact? My question to you, can we do better by lodging—and don't tell me that you are going to give us a report in 2011—disaster responsibilities in one Government entity? Do we need to have the true expertise, spend money on the expertise that helps us in conspicuous potential obvious nuclear situation, oil spill, flood, et cetera? I would ask the GAO on that. You are going to be studying after the fact. There is a frustration for us studying everything after the fact.

Mr. SKINNER. Let me say, I don't believe that all expertise can rest within the Department of Homeland Security.

Ms. JACKSON LEE. I don't either, but I am saying—

Mr. SKINNER. I am sorry.

Ms. JACKSON LEE. Sufficient. Should the Homeland Security Department be a major responsible key focus for disasters in the United States with a certain amount of expertise?

Mr. SKINNER. Absolutely. We should be the lead.

Ms. JACKSON LEE. That is what I am trying to understand.

Mr. Jenkins.

Mr. JENKINS. Yes, absolutely they should be the lead and not only have at least some basic level of expertise, but they need to be able to know where they can draw on that expertise expeditiously when needed.

Ms. JACKSON LEE. I thank you, Mr. Chairman.

I yield.

Chairman THOMPSON. Thank you very much.

The Chairman now recognizes the gentleman from Texas, Mr. Green.

Mr. GREEN. Thank you, Mr. Chairman.

Thank you, witnesses, for appearing.

It is important that we have leadership, and it is important that that leadership be perceived as taking the lead.

Somehow in this scenario with Deepwater Horizon, the perception existed that BP was in charge. That perception became a reality for a lot of people. They literally thought that this was something that BP was not only responsible for but was taking the lead on and was going to dictate how and when and to what extent actions would be taken. The question becomes: How do we resolve that kind of perception that can cloud the minds of the public?

Admiral, your thoughts, please.

Admiral NEFFENGER. Well, I understand the angst that develops when people see the entity that they think is responsible for causing something playing a role in somehow cleaning it up.

But I would suggest that that is exactly what we need to have happen. We want the polluter to pay, and we want the spiller to be responsible.

In order to ensure that they do clean it up, you have to have them close by. If you are going to be ordering them to write the checks and to pay for the equipment and the requirements and to bring the resources to bear, which is what we expect, not at the taxpayer's expense but at their expense, then you need them close by to make that happen.

I think that where we have to deal with the perception, we need to explain that. We need to explain, why did BP have a role in the Incident Command? It is because the incident commander, who at all times was in charge of this, the Federal on-scene coordinator, currently Rear Admiral Paul Zukunft, needs them there so that when he issues a directive or an order to them, he can see that it is carried out and he can ensure that it is carried out.

Chairman THOMPSON. Will the gentleman yield?

Mr. GREEN. Yes, I will.

Chairman THOMPSON. Admiral, one of the earlier witnesses said that BP had the authority to veto certain decisions in this process. Did we give BP the veto authority?

Admiral NEFFENGER. No, sir.

At no time did they have veto authority.

They did, however, sometimes suggest different ways of doing things that we then reviewed, in particular with respect to securing the source at the wellhead.

They had expertise. So it is not unusual to have them suggest an alternative means of doing it, to then review that within the Federal Government, and we had technical teams and scientific teams that would do that, engineering teams that would do that.

There were many times discussions that took place and meetings that took place, but ultimately, the authority always and still rests with the Federal Government in the Federal on-scene coordinator.

Chairman THOMPSON. Well, we will provide you with some information to the contrary relative to the testimony from a previous witness and ask you to respond on it.

[The information follows:]

Question. Did BP have the power to veto any decisions made by the National Incident Command (NIC), and if so, under what circumstances and authority; Did BP, in fact, veto any of the NIC's decisions stating the particular circumstances of any veto; and If BP did not have the power to veto decisions made by the NIC, then what authority or input did BP have regarding response measures to be carried out through the NIC?

Answer. BP did not have the power to veto decisions of the National Incident Command and therefore did not. BP does have membership on the Unified Area Command (UAC). This allows BP to provide expertise and useful information in determining response priorities and actions. It also allows BP to best support the response efforts. Final decision authority within the UAC resides with the Federal On-Scene Coordinator. BP also had access to directly discuss response measures and decisions with the National Incident Command.

Chairman THOMPSON. The other issue—and I will give you plenty of time, Mr. Green. You are the last questioner.

With respect to dispersants, did the Coast Guard approve BP using the amount of dispersants that was used, or was that a BP decision?

Admiral NEFFENGER. No. It starts with the pre-approval of the Regional Response Team, that is the collection of agencies at the Federal level and that handle all those pre-approval processes. So

the dispersant that was used was already on a pre-approved dispersant use list.

On a daily basis BP had to request permission from the Federal on-scene coordinator, from the Coast Guard, in order to use dispersants. Any use of dispersants was approved by the Federal on-scene coordinator.

Chairman THOMPSON. So the volume, i.e. the amount, of dispersant, was approved by the Coast Guard.

Admiral NEFFENGER. On a daily basis, yes, sir.

But if I could add to that. The use of dispersants is always a tradeoff. The tradeoff is this: You know that when you have a spill of this magnitude—and, as I said, every day it was a major new oil spill—you want to avoid as much shoreline impact as possible because we know how sensitive those marsh areas are and how many natural resources are at risk in the event oil comes ashore. So dispersants are one way you can mitigate that amount coming to shore and hopefully break it up enough so that natural processes can act on it.

Second, those individuals working at the site, there is a tremendous amount of oil, as you know, coming right up at the well site, and that generated a lot of what are called volatile organic compounds. These are just the aromatics that come off the top. They are very hazardous and dangerous to your health. So the dispersants were used on the surface to knock those down for the safety of workers at the site.

So those were the two primary reason dispersants were used. The amount that was used in any given day, while we attempted to minimize as much as possible, was used based upon those two considerations.

Chairman THOMPSON. I yield back to the gentleman from Texas. Thank you for being so kind.

Mr. GREEN. I thank you for your questions. I welcome that type of inquiry. Thank you very much.

With reference to the perception of leadership and perception of who is in charge, somehow, at the genesis of this, BP stepped up to the microphone, stepped up to the world stage, and presented an image of being not only in charge to the extent that they were rendering technical expertise, but that this was their, for better want of terminology, it was their operation to manage in total.

Now am I to understand that while BP provided expertise, it was actually the Federal Government that was literally in charge of the incident?

Admiral NEFFENGER. Yes, sir. That is in accordance with the law.

Mr. GREEN. If that is the case, and that is the way I understand it, a litigator in a courtroom brings in experts, but at no time does a litigator allow the appearance, the perception to exist that the expert is in charge of the litigation. Somehow we have to come—we have to look at this carefully now, because it can happen again.

Somehow we allowed BP to seize this perception of being in charge and, in so doing, gave the public some degree of discomfort because of what you said about being responsible for what happened and then for the clean-up and the mitigation effort.

So I am bringing this up because when this happens again—and I pray that it never does; 11 lives were too many. One life is too many. It hurts my heart to talk about this because I can never talk about it without talking about those lives that were lost. But somehow BP or the next BP must not seize the moment such that the ultimate authority appears to be secondary or perhaps even tertiary to the primary authority—actually, the assumed primary authority, which was BP.

Am I making this clear to you, Admiral? If not, I can say it in different words. I do have the ability to speak such that people can understand me. So if that is not clear, I would like to say it in different words. But do you follow what I am saying?

Admiral NEFFENGER. Yes, sir. I do.

Let me add, I think what we really noticed in an incidence of this magnitude is, and it goes back to the early comment about the local nature of oil spills of this magnitude, if you look back over the 11,000-plus oil spills that the Federal Government has responded to in the water—the Coast Guard is the Federal entity and coordinator since the Exxon spill, and they are of all sizes. I mean, some of are very, very small, anything from a quart of an oil to a few hundred gallons into something as large as this—what you normally find, the average citizen normally doesn't see any of that response.

So you work closely with the person responsible. You act out to enforce the requirement to have them clean it up, to bring the resources to the scene and to move forward, and then you go from there.

This response, however, looked a lot more like a natural, a major natural disaster than it did—it looked a lot like, and particularly considering where it happened, along the Gulf Coast, you know, a population that has suffered considerably over the past 5 years or so from natural disasters. This felt very local. It threatened the livelihoods of the people down there. It threatened their fishing grounds, and it became this on-going threat without a perceived end for some period of time. That dramatically changes the nature of it.

I think you have to account for that, going forward, being the case. This is a world in which the availability of information, the interest on the part of the public is significant. I think that is good because it brings a lot of people to bear; it brings a lot of people forward that say, I want to help, I want to do something. But it also gets to that question, I think, you have with regard to perception.

So moving forward, one of the things that you want to look at in judging the lessons of this is: How do we better involve the populace from the beginning? How do we address their concerns and their needs in a way that helps to explain why they might see something like a BP representative talking about what they are doing to stop the oil flow, but that doesn't mean that the BP representative is running the show. I don't know if that's responsive to your question, sir.

Mr. GREEN. It is, and I will leave with this, and I thank you for your response.

Here is the circumstance that we now have to negotiate: We had one strike with Katrina, because we didn't have someone to immediately step forward and say: I am in charge. The Governor equivocated. The mayor was involved. But we didn't have someone to immediately step up and say: I am in charge.

With this incident, there was some question as to who was in charge. At some point, when these things happen, at or near Day 1, someone has to step up and say: I am in charge. It really, it is a simple concept, but it is something that has to happen, so that the public can acquire that degree of comfort necessary to allow us to move forward and do the things that we have to do, because we are continually being questioned about who really was in charge, even though we know the hierarchy associated with this concern.

So I thank you, and I just wanted to have that moment to let you know that we have a concern that has to be addressed. Thank you.

I thank you, Mr. Chairman for the additional time.

Chairman THOMPSON. Thank you.

But I also appreciate you raising the issue.

President Taffaro was clear in his testimony that when his parish made a request to the Coast Guard, BP disagreed with the request. I am trying to figure out, how does BP get into a response scenario to do anything other than—can you kind of explain?

I understand that they were there for advice or whatever. But when they get to the point where they become part of the decision-making process, to that local official, it is almost like the person who caused the problem is now determining what solution is applied to the problem they created.

Admiral NEFFENGER. Well, I don't know the specific incident of which you are speaking, but I can say, in general terms, as I noted before, BP would often, throughout the course of this response, make recommendations as to how to go about implementing something that we ordered them to do from the Federal on-scene coordinator, anything from, with respect to how you might deploy resources to the types of resources that might be available.

That doesn't necessarily mean that they got to choose which one it was, but because they are paying for it and we are asking them to order it and they might come back and say, look, I can't get this type of equipment, but I can get this; do you think that might work?

With respect to their participation in direct requests from parish presidents back to the Coast Guard, I just don't have any direct knowledge of that, sir. But I would be happy to take any of those incidents for the record and respond to them.

Chairman THOMPSON. Mr. Skinner, did your review indicate any problems along this line? Or you haven't looked at it?

Mr. SKINNER. We are currently in the middle of our review right now, Mr. Chairman.

Chairman THOMPSON. Well, I think part of this after-action or lessons-learned effort on behalf of the committee is to, as the gentleman from Texas indicated, you want to be very clear who is in charge.

But for that local elected official, who, for the most part, is the individual being contacted by local citizens, they need to have a very clear line.

But the process also should be one that involves training of local personnel and others, and I think we can do plans. We can do all those other things that Katrina taught us. Plans are on the shelf, and they are no better than the people who are tasked with the responsibility of carrying them out.

I guess the question, last question for me, Admiral, if a comparable spill occurred tomorrow, what have we learned from the Horizon spill that would be beneficial for that spill?

Admiral NEFFENGER. Well, I think, as you have noted, sir, what we learned immediately is you have to involve local mayors, local councils, local parish presidents immediately in the response and provide an active space for them in the response structure.

We have always worked with the States, but you can't make the assumption that the State can speak for the needs of local populace. That is, to me, one of the early and most positive lessons that we learned out of this and we addressed during the course of the response.

The parish president liaisons, for example, were put in place in the third week of May, so just a month into the response, to address specifically some of those very real and vocal concerns that came up. So that is one immediate thing you would do differently is immediately involve them.

Some other things that we learned were how to do just-in-time training for people who hadn't otherwise been trained. By the end of this response, we were moving people through on-site, just-in-time training for hazardous materials handling, for basic understanding of oil spill hazards and so forth.

Chairman THOMPSON. Do we have personnel available to us to handle a comparable response like the Horizon from the Coast Guard standpoint?

Admiral NEFFENGER. Well, a response of this magnitude stresses any organization, particularly as it goes over time. I am not sure that you ever want to just have on the shelf enough to respond to something of this magnitude.

What you really need to do is ensure that you have expertise, that you take the expertise we learned from this, you distribute it throughout the organization so that you have a base of trained people within your organization, and then you know how to reach out to all those resources that are available to you across the Government.

Chairman THOMPSON. So do we have the expertise?

Admiral NEFFENGER. I believe we do, yes, sir. I believe that this spill has given us even more of that expertise.

Chairman THOMPSON. So, how do we resolve the perception question if we have the expertise now?

Admiral NEFFENGER. Well, I think it goes back to a better connection early on in a response with the local population, with the local mayors, the local parish presidents and helping them to understand, you know, that the process that is here—you know, some of this is the tension between expectations of Federal response in

a disaster. You know the Stafford Act is a Federal support to local authorities, and local authorities implement the response.

The Oil Pollution Act of 1990 establishes a very different structure. It is a Federally-directed structure that puts the Federal Government in charge with assistance from the State and local entities, but the money doesn't go to the State and local entities from the Federal Government.

So that is a natural tension that develops, particularly among a geographic region that is probably more familiar with a FEMA-like Stafford Act response.

So, I think some of it is just understanding the difference, and then allowing for a Federally-directed response, because you want that unity of effort, particularly when you have something of this geographic scope. I mean, it crossed five States and multiple geographic and jurisdictional boundaries. So I think that it is a good thing to have a Federal entity ensuring that unity of effort.

But then you have to have a way to tie in the very real needs and demands of the local populations, because the effect of that oil spill is very different depending upon where you stand on the Gulf Coast.

Chairman THOMPSON. It is clear that the purpose of this hearing was to kind of come up with going forward and the review. Obviously, there are a lot of questions yet to be answered. But let me thank you for your patience and indulgence as witnesses and your valuable testimony.

I would again like to remind you that Members of the committee may have additional questions for you, and we will ask that you respond expeditiously in writing to those questions. There being no further business, the committee stands adjourned.

[Whereupon, at 1:23 p.m., the committee was adjourned.]

APPENDIX

QUESTIONS FROM CHAIRMAN BENNIE G. THOMPSON OF MISSISSIPPI FOR RICHARD M. CHÁVEZ

Question 1. According to the National Contingency Plan, the Commandant of the Coast Guard appoints the National Incident Commander (NIC) and determines whether a spill is a Spill of National Significance (SONS). However, the Secretary of Homeland Security declared the SONS and appointed the NIC. Why was this the case? Will the administration revise the National Contingency Plan to formally grant the Secretary these authorities?

Answer. Under the Homeland Security Act of 2002, the Secretary of the Department of Homeland Security is “the [Federal] focal point regarding natural and man-made crises and emergency planning.” Under that Act and Homeland Security Presidential Directive 5 (HSPD-5), the Secretary serves as the principal Federal official for all domestic incidents, and therefore has overall responsibility for coordinating the Federal Government’s resources in response to and recovery from incidents like a Spill of National Significance (SONS). The National Contingency Plan sets forth the framework and organizational structure for the Federal response to oil spills, including the designation of a National Incident Commander, if one is necessary. Thus, for a SONS incident in the coastal zones, the Secretary of Homeland Security or the Commandant of the Coast Guard may name the National Incident Commander. In the Deepwater Horizon oil spill, the Secretary named the Commandant of the Coast Guard as the National Incident Commander.

Question 2. According to HSPD-8, the head of each Federal department or agency is required to undertake actions to support the National preparedness goal, including adoption of quantifiable performance measurements in the areas of training, planning, equipment, and exercises for Federal incident management and asset preparedness. Does DHS review these performance measurements? If not, who has oversight over these Federal departments or agencies to ensure that they are meeting the Secretary’s National preparedness goal?

Answer. As an operational component of DHS, the Federal Emergency Management Agency (FEMA) is the Department’s lead agency for preparedness. Specifically, FEMA’s National Preparedness Directorate (NPD) within Protection and National Preparedness is responsible for leading the Nation’s efforts to enhance preparedness to prevent, protect from, respond to, and recover from disasters, natural and manmade. NPD strives to achieve a Nation prepared through a comprehensive cycle of planning, organizing and equipping, training, exercising, evaluating, and improvement planning.

In 2007, FEMA published the *National Preparedness Guidelines* which finalized the development of the National Preparedness Goal and its related preparedness tools. The *Guidelines*, including the supporting *Target Capabilities List*, defines what it means for the Nation to be prepared for all hazards. There are four critical elements of the Guidelines:

- (1) The *National Preparedness Vision*, which provides a concise statement of the core preparedness goal for the Nation.
- (2) The *National Planning Scenarios*, which depict a diverse set of high-consequence threat scenarios of both potential terrorist attacks and natural disasters.
- (3) The *Universal Task List (UTL)*, which is a menu of some 1,600 unique tasks that can facilitate efforts to prevent, protect against, respond to, and recover from the major events that are represented by the National Planning Scenarios.
- (4) The *Target Capabilities List (TCL)*, which defines 37 specific capabilities that communities, the private sector, and all levels of government should collectively possess in order to respond effectively to disasters.

To support the Federal role in implementing the preparedness framework outlined in the *Guidelines*, Federal departments and agencies were directed to do the following:

(1) Support and participate in the management and maintenance structure and process developed for the *Guidelines*, associated tools, and Capabilities-Based Preparedness process; and

(2) Initiate or re-orient programs and initiatives to implement the *Guidelines*. Additionally, in the Post Katrina Emergency Management Reform Act, Congress tasked FEMA with producing a series of reports, including a Federal Preparedness Report, to address preparedness questions. FEMA subsequently worked with Congress to consolidate this series of reports into one National Preparedness Report. This report is still underway, but should be entered into the interagency process soon.

Question 3a. What are the roles and responsibilities of the Office of Operations Coordination and Planning?

How was your office contributing to the incident management for the Deepwater Horizon Oil Spill?

Question 3b. Does your office have any responsibilities under the National Response Framework? If so, please describe these duties.

Answer. The Office of Operations Coordination and Planning (OPS) supports the Secretary by ensuring that the Department has collaborative operations coordination and planning capabilities at the strategic level. OPS provides support to Departmental leadership by facilitating internal DHS operational decision-making and the Department's involvement in interagency operations.

The National Operations Center (NOC), one of the divisions of OPS, serves as the primary National-level hub for domestic situational awareness and operations coordination across the Federal Government pertaining to the prevention of terrorist attacks and for domestic incident management. The NOC is central to our ability to maintain situational awareness for the Secretary and Department leadership. It collects and synthesizes all-source information across all threats and all hazards, covering the full spectrum of homeland security missions and partners, sharing event-related and operational information with Federal, State, local, territorial, Tribal, and non-governmental partners. Additionally, the NOC serves as the primary coordinating center for other Federal operations centers focused on homeland security operations. In performing these functions, the NOC ensures that critical information related to terrorism, disasters, and other threats reaches Government decision-makers in a timely manner.

The NOC operates 24 hours a day, 7 days a week, 365 days a year, to support the Secretary and the Department's mission.

OPS coordinates with DHS Components and interagency partners to develop strategic-level plans to support the effective execution of the Secretary's incident coordination responsibilities, as defined in the Homeland Security Act and Presidential Directives. OPS works with representatives from DHS Components and other Federal, State, and local partners to develop strategic plans and guidance. OPS also supports the Secretary by providing operational planning expertise during crises.

As DHS Continuity Coordinator, OPS is responsible for ensuring the effectiveness and survivability of all DHS Primary Mission Essential Functions (PMEFs). OPS works with Component leadership to ensure that PMEFs will be sustained even during emergencies that could significantly hamper personnel, facilities, or operations for homeland security missions.

The Deepwater Horizon oil rig exploded on 20 April 2010. In the hours and days following the explosion, OPS, the NOC, DHS Components, and our partners supported the Secretary, the Department, and the interagency community in responding to what began as a search and rescue event.

On 21 April 2010, OPS initiated the crisis action process, which uses a dedicated staff that can provide detailed information and decision support for a specific incident, while minimizing the impact to our on-going missions. On 29 April 2010, a Spill of National Significance (SONS) was declared and OPS activated the full Crisis Action Team (CAT) to support the Secretary and the National Incident Commander, who would be later named, in directing response efforts. The CAT stood down on 6 August 2010, after 99 days of continuous operation.

OPS actions during the BP Deepwater Horizon response, with support from our partners, included the following:

- Coordinating responses to Requests for Information (RFIs) on a nearly daily basis;
- Preparing Senior Leadership Briefs (SLBs);
- Developing decision support products for the Secretary and other DHS leadership; and

- Contributing to a robust interagency response effort through regular coordination calls, teleconferences, and other briefings.

In response to the BP Deepwater Horizon oil spill, OPS provided strategic level support, in accordance with a predefined set of plans and standard operating procedures, for the National Incident Commander, the Secretary of Homeland Security, and the President of the United States.

The NRF highlights the NOC responsibilities/actions. It states that the NOC serves as the National fusion center, collecting and synthesizing all-source information, including information from State fusion centers, across all-threats and all-hazards information covering the spectrum of homeland security partners. Federal departments and agencies should report information regarding actual or potential incidents requiring a coordinated Federal response to the NOC.

Question 4. The Macondo well was 5,067 feet deep, and it leaked over 200 million gallons of crude oil into the Gulf of Mexico when the blowout preventer failed. There are at least three other wells that have been drilled in the Gulf at depths of up to 9,627 feet, and could do even more damage in a major spill.

What steps is the Department taking to ensure that the Government has access to the necessary equipment, technology, and expertise to respond to a spill at these depths?

Answer. The Coast Guard is working with other Government agencies, National Response Team members, States and local governments, the oil industry and the oil spill removal organizations (OSROs) at the local, regional, and National levels to review existing industry and Government plans. These reviews are intended to validate and revise when appropriate the stakeholder communities involved in planning worst case discharge planning assumptions, the completeness of strategies and assumptions in place to address the worst case discharge, and the equipment and personnel availability to carry out those strategies. These reviews will include review of pre-authorization agreements for dispersant, in-situ burning and any other innovative response techniques that may be considered for use in spill response.

At the National level, both industry and Government are in the process of re-examining the efficacy of planning standards contained in the regulations relative to "estimated daily recovery capacity" for mechanical recovery equipment as well as efficiency estimates for both in-situ burning and dispersion. To improve awareness and mobilization of resources from around the country, we are working with the OSROs to enhance the National Response Resource Inventory. We have also initiated efforts through the Department of State to engage internationally in sharing information about and access to response resources world-wide.

Question 5a. The Coast Guard does not have direct authority to review disaster plans for underwater sub-platform drilling systems. That authority rests with the Department of Interior. In the case of the Deepwater Horizon, BP's plan was a cookie-cutter plan that listed seals and walrus as animals dwelling in the Gulf.

Did anyone in the Department review this plan?

Question 5b. Has anyone at the Department reviewed the sub-platform disaster plans for any deepwater wells? If not, why not?

Question 5c. Has the Department performed a review to identify gaps in DHS disaster planning authority?

Question 5d. What is the Department's strategy for ensuring effective disaster planning where other Federal agencies control disaster planning, or for unregulated industries?

Question 5e. Does the Department need new authorities so that it can review these plans in the future?

Answer. The Department of Homeland Security (DHS) did not review BP's plan before the oil spill and has not reviewed sub-platform disaster plans for any deepwater wells. There is no statutory authority for DHS to review or approve the disaster plan for the underwater sub-platform drilling system for the Deepwater Horizon rig or for any other rigs operating on the Outer Continental Shelf. That is the responsibility of the Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE), formerly the Minerals Management Service (MMS).

DHS is constantly capturing after-action items from exercises and real-world events such as the Deepwater Horizon Oil Spill. These after-action items are taken for future corrective actions, as necessary.

DHS/FEMA is leading the development of multiple interagency disaster planning activities, including catastrophic planning for responding to hurricanes, earthquakes, tsunamis, Improvised Nuclear Devices, and other natural and man-made disasters, including terrorism.

DHS is still in the after-action review process for the Deepwater Horizon disaster and is working with other Federal, State, and local partners as well as private industry to identify needed corrective actions. This process will yield any rec-

ommendations for expanded authorities for the Department, and will be presented to Congress at that time.

Question 6a. DHS is not mentioned in the National Contingency Plan addressing Federal Government oil spill response.

Has this caused confusion or posed any challenges for DHS in leading Deepwater Horizon response efforts?

Question 6b. How should these issues be addressed going forward?

Answer. Under the Homeland Security Act of 2002 and the Homeland Security Presidential Directive (HSPD-5), the Secretary of the Department of Homeland Security is the Federal focal point regarding natural and man-made crises and serves as the principal Federal official for all domestic incidents. The National Contingency Plan (NCP) sets forth the framework and organizational structure for the Federal response to oil spills—a type of domestic incident. The NCP names the Coast Guard as the response lead for oil spills in coastal zones. Once the Secretary designated the Deepwater Horizon oil spill a Spill of National Significance, the Secretary led the multi-agency Federal response to the oil spill with the Coast Guard leading the operational response on the ground. We are not aware of any confusion in DHS' role in the Deepwater Horizon response.

Question 7a. Who in the Department is responsible for establishing policy and overall strategy for fulfilling the obligation to collaborate Federal disaster planning efforts? Where is this policy or strategy documented?

Who is responsible for oversight of DHS components' disaster planning activities? Describe these internal oversight efforts.

Question 7b. What accountability measures are in place to ensure that appropriate disaster planning is being done within DHS and throughout the Federal Government?

Answer. The Federal Emergency Management Agency (FEMA) and the Office of Policy establish policy and strategy for collaborating on Federal disaster planning efforts. FEMA's role in establishing policy and strategy for Federal disaster planning efforts is described in the National Response Framework (NRF) and the 2006 Post-Katrina Emergency Management Reform Act. FEMA is currently leading the development of multiple inter-agency disaster planning activities, including catastrophic planning for responding to hurricanes, earthquakes, tsunamis, Improvised Nuclear Devices (IND), and other natural and manmade disasters including terrorism. FEMA also coordinates Emergency Support Function (ESF) emergency management resources and has invested substantial time in meeting with the ESFs through the auspices of the Emergency Support Functions Leadership Group (ESFLG). Under the NRF, Federal departments and agencies and the American Red Cross are grouped by capabilities and types of expertise, into ESFs to provide the planning, support, resources, program implementation, and emergency services that are most likely to be needed during a disaster response.

As established in Homeland Security Presidential Directive—5, the Secretary of Homeland Security is the principal Federal official for domestic incident management. The Secretary employs the DHS Office of Policy to strengthen homeland security by developing and integrating Department-wide policies, planning, and programs in order to better coordinate the Department's response and recovery missions. The DHS strategy for policy and planning is documented in the DHS Strategic Plan Fiscal Years 2008–2013. DHS Office of Policy represents the Department at interagency policy committee meetings of the National Security Staff's Domestic Resilience Group (DRG). FEMA also participates in and is represented on the DRG, which coordinates policy development and implementation by multiple agencies of the United States Government for National security policies related to domestic emergency management preparedness policy, response, and incident management for all hazards. The DHS Office of Policy also leads development of the Quadrennial Homeland Security Review, which includes a strategic framework for ensuring resilience to disasters.

Pursuant to statute and Secretarial direction, the responsibility to lead the collaboration of overall Federal disaster planning efforts rests with FEMA. Within that responsibility, FEMA coordinates specific disaster response planning with those agencies responsible for certain types of disasters.

Each DHS component is responsible for developing appropriate disaster planning and associated activities for its organization based on requirements set out in statute or at the direction of the component head, the Secretary, or the White House. The Office of Operations Coordination and Planning (OPS) is responsible for coordinating the development of plans specific to Department operations. OPS does this by establishing intra-departmental planning teams for developing threat-specific plans; facilitating and coordinating the planning, review, and approval process; and distribution of approved plans. In addition, if requested, OPS supports components

in development of their component-specific plans and reviews component-specific plans, as appropriate. However, OPS does not have actual oversight of individual components' disaster-planning activities.

DHS is not aware of any formal accountability measures in place to ensure appropriate disaster planning is being done within DHS or throughout the Federal Government. However, when the Secretary, the President, or the National Security Staff order the development of a threat-specific plan or set of plans, such as in response to the anthrax threat, DHS tracks the development of each required plan. OPS is responsible for tracking DHS-specific planning efforts. FEMA is responsible for tracking Federal interagency planning efforts.

Question 8a. What authority does the Department have to corral the resources of other Federal agencies in response to a major disaster?

What mechanism or authority was used to access Federal resources outside of DHS during the Deepwater Horizon response?

Question 8b. What lessons were learned from these efforts that would improve future response efforts where multiple Federal agencies are involved in the response?

Answer. The Federal Emergency Management Agency (FEMA) and the Office of Policy establish policy and strategy for collaborating on Federal disaster planning efforts. FEMA's role in establishing policy and strategy for Federal disaster planning efforts is described in the National Response Framework (NRF) and the 2006 Post-Katrina Emergency Management Reform Act. In addition, the Robert T. Stafford Disaster Relief and Emergency Assistance Act describes the programs and processes by which the Federal Government provides disaster and emergency assistance to State and local governments, Tribal nations, eligible private nonprofit organizations, and individuals affected by a declared major disaster or emergency. FEMA is currently leading the development of multiple inter-agency disaster planning activities, including catastrophic planning for responding to hurricanes, earthquakes, tsunamis, Improvised Nuclear Devices (IND), and other natural and man-made disasters including terrorism. FEMA also coordinates Emergency Support Function (ESF) emergency management resources and has invested substantial time in meeting with the ESFs through the auspices of the Emergency Support Functions Leadership Group (ESFLG). Under the NRF, Federal departments and agencies and the American Red Cross are grouped by capabilities and types of expertise, into ESFs to provide the planning, support, resources, program implementation, and emergency services that are most likely to be needed during a disaster response.

HSPD-5, Management of Domestic Incidents, establishes a single, comprehensive National incident management system. Pursuant to HSPD-5, the Secretary of Homeland Security is the principal Federal official for domestic incident management, and is responsible for coordinating Federal operations within the United States to prepare for, respond to, and recover from terrorist attacks, major disasters, and other emergencies. The Secretary is also responsible for coordinating the Federal Government's resources utilized in response to or recovery from terrorist attacks, major disasters, or other emergencies under any one of the following circumstances: (1) A Federal department or agency acting under its own authority has requested the assistance of the Secretary; (2) the resources of State and local authorities are overwhelmed and Federal assistance has been requested by the appropriate State and local authorities; (3) more than one Federal department or agency has become substantially involved in responding to the incident; or (4) the Secretary has been directed to assume responsibility for managing the domestic incident by the President. Additionally, the Post-Katrina Emergency Management Reform Act of 2006 (PKEMRA) establishes the FEMA Administrator as the principal advisor to the President, the Homeland Security Council, and the Secretary for all matters relating to emergency management in the United States and responsible for providing the Federal leadership necessary to prepare for, protect against, respond to, recover from, or mitigate against natural disasters, acts of terrorism, or other man-made disasters.

With regard to oil spills, in particular, the Oil Pollution Act authorizes the President to direct Federal, State, and private actions to remove discharged oil in oil spills. Through the Oil Pollution Act, the Homeland Security Act of 2002 and the Homeland Security Presidential Directive-5 (HSPD-5), the Department of Homeland Security was able to access and direct Federal resources outside of the Department of Homeland Security during the Deepwater Horizon oil spill. For instance, DHS leveraged the Interagency Remote Sensing Coordination Cell (IRSCC), which comprises 18 Federal organizations (NOAA, USGS, USDA, NASA, EPA, USCG, and seven DHS component organizations, and five Department of Defense organizations).

Collectively, the IRSCC was established to coordinate, synchronize, collaborate, and track remote sensing data acquisition activities and capabilities; to ensure in-

formation needs of first responders, State emergency managers, and Federal managers are established and addressed; to establish an environment to facilitate awareness and sharing of remote sensing data; and to improve the governance of Federal remote sensing operations by minimizing duplication of effort and unnecessary tasking, and reducing operational costs.

The IRSCC provided the NIC a mechanism for obtaining remotely sensed data regarding all aspects of the SONS response. The NIC provided the IRSCC with six detailed information requirements related to the threat posed to the United States by the oil spill. The IRSCC used remotely sensed data on a daily basis to determine the extent of the oil spill, measure its growth/shrinkage, and direct skimming vessels into the appropriate portions of the spill. The IRSCC also used this data to track the many miles of boom placed along the coastline to protect estuaries and other sensitive areas along the coast.

QUESTIONS FROM CHAIRMAN BENNIE G. THOMPSON OF MISSISSIPPI FOR PETER
NEFFENGER

Question 1. Did the Coast Guard review BP's spill response plan or its lease exploration plan for the Macondo project? If not, why not? Does the Coast Guard need new authorities to ensure that it is able to review relevant plans in the future?

Answer. No, the Coast Guard did not review BP's spill response plan or its lease exploration plan for the Macondo project. There is no statutory requirement for the Coast Guard to review or approve Oil Spill Response Plans (OSRP) for facilities operating on the Outer Continental Shelf (OCS). That is the responsibility of the Bureau of Ocean Energy Management, Regulation, and Enforcement (BOEMRE), formerly the Minerals Management Service. If the Coast Guard is to be tasked with review of OSRP's, new authorities and resources would be required.

Question 2. Was any aspect of the Federal response to the Deepwater Horizon spill hampered by limitations in the Coast Guard's authority? What authority did the Coast Guard have to direct the activities of other Federal players involved in the response? Has the Coast Guard identified gaps in its authorities that should be addressed going forward?

Answer. No aspects of the Federal response were hampered by limitations in the Coast Guard's authority. In accordance with the National Oil and Hazardous Substances Pollution Contingency Plan (NCP/40 CFR 300.120) the Coast Guard Federal On-Scene Coordinator (FOSC) directs response efforts and coordinates all other efforts at the scene of a discharge or release. As part of the planning and preparedness for response, FOSCs are required to be pre-designated by the Regional or District head of the lead agency. The Coast Guard is required to provide FOSCs for oil discharges, including discharges from facilities and vessels under the jurisdiction of another Federal agency, within or threatening the coastal zone.

Currently, there are a series of after-action reports being generated that will identify lessons learned and recommendations regarding many issues, including National response to oil spills that occur as a result of offshore continental shelf activities. We will not have a definitive list of issues and recommendations regarding Coast Guard authorities until these reports are completed and the lessons learned and recommendations are fully evaluated.

Question 3. The Coast Guard has extensive experience in surface spill clean-up and response, but what in-house expertise and equipment was available to deal with this deepwater spill? How can this capacity be improved?

Answer. A variety of Coast Guard resources that included equipment and experienced personnel were used during the DEEPWATER HORIZON (DWH) response. For example, hundreds of fully qualified Pollution Investigators and Federal On-Scene Coordinator Representatives were used to oversee the surface oil spill clean-up activities for the duration of the response. Additionally, personnel that possessed specialized oil and HAZMAT skills and experience from the Coast Guard's three strike teams (Gulf, Atlantic, and Pacific) played key roles in the DWH response.

The Coast Guard also employed its fleet of buoy tenders, deploying their Vessel of Opportunity Skimming Systems and Spilled Oil Recovery Systems in the response.

Currently, there are a series of DWH after-action reports in development that will review all aspects of the response and inform improvements in Coast Guard capabilities.

Question 4. What after-action reporting is the Coast Guard planning? What is the time frame for completion of this reporting? Will you commit to providing the committee with an update on after-action reporting efforts in 30 days, and to provide us these documents once they are completed?

Answer. The Coast Guard has multiple after-action reports either completed or in progress. The National Incident Command (NIC) report was released on October 1, 2010. In December 2010, the Presidential Commission's Preparedness and Response Workgroup expects to release its findings. A Search and Rescue case study is anticipated to be completed in November. The Coast Guard will continue to update the committee on our efforts.

Question 5. Due to the magnitude of this oil spill, what additional responsibilities have the National Incident Commander and the On-Scene Federal Coordinator taken on that were unforeseen when the National Contingency Plan was developed?

What changes in roles and responsibilities do you foresee will be made to these positions under the National Contingency Plan?

Answer. This was the first oil spill declared a SONS and therefore, the first oil spill where a NIC was designated. Section 300.323 of the National Contingency Plan (NCP) addresses the roles and responsibilities of the NIC. This section states, "a National Incident Commander (NIC) . . . will assume the role of the OSC in communicating with affected parties and the public, and coordinating Federal, State, local, and international resources at the National level."

The magnitude of this spill required the NIC to undertake responsibilities to ensure a whole-of-Government approach to the response that is not described in this NCP citation. This included coordination of claims and coordination with the agencies responsible for public health activities, including coordination of closures to and reopening of fisheries. Since various investigations and reports examining the Deepwater Horizon response are still in progress, it is too soon to state specifically what changes may be made to this position under the NCP. With respect to the Federal On-Scene Coordinator (FOSC), we have yet to identify any responsibilities that the FOSC performed in this response that are not identified in the NCP.

QUESTIONS FROM HONORABLE GUS M. BILIRAKIS OF FLORIDA FOR PETER NEFFENGER

Question 1. Admiral, constituents of mine in both local government and the private sector have expressed their concerns about the lack of information sharing and exchange with Unified Command, especially at the outset of the response.

What lessons have you learned from this response thus far with respect to communications and information sharing and how will these lessons shape plans for communicating with stakeholders in State and local governments and the private sector in future response efforts?

Answer. From the outset of the Deepwater Horizon spill, the Governors of all affected Gulf States were intimately involved in the response efforts. To provide the governors of Louisiana, Mississippi, Alabama, Florida, and Texas with the most up-to-date information on response efforts, the White House instituted and moderated a daily conference call where the National Incident Commander (NIC) and the Federal on Scene Coordinator (FOSC) along with other Federal agencies briefed. The daily conference call was not only to impart information, but to provide the Governors a venue to ask questions, communicate concerns, and share their priorities and assessments of the response. In return, their candid feedback allowed us to align our efforts and tailor response strategies with each of the States. The daily conference call also allowed the Governors to raise many social and economic issues such as seafood testing to promote consumer confidence in Gulf seafood and behavioral and mental health concerns for their affected constituents. This daily conference call proved an effective communication forum for a multi-jurisdiction response.

Local elected officials also played a significant role in the response from the start. There were some challenges in working with some officials due to their unfamiliarity with the oil spill response strategies outlined in the Area Contingency Plans (ACPs). To better promote unity of effort, in late May, we assigned more senior liaison officers to many of the local elected officials across all of the affected Gulf States. These liaison officers were created to ensure their concerns were relayed to the Incident Commanders and that response actions were coordinated to maximize effects.

The communications and information-sharing mechanisms employed during the Deepwater Horizon contributed to effective sharing of real-time information and continuous feedback across all appropriate Federal, State, local, and Tribal government authorities, response structures, and industry stakeholders. These mechanisms should be incorporated into regional planning guidance, included in future Area Contingency Plan revisions and oil spill response exercises, as appropriate.

Question 2. Admiral, as we discussed at the Subcommittee on Management, Investigations, and Oversight's July field hearing in New Orleans, to meet the needs of the response the Coast Guard redeployed assets from around the country. You noted

that surging for this length of time has been a challenge for the Coast Guard and that we have been fortunate to not have experienced any other major incidents that would have further stretched Coast Guard resources.

Seeing how this spill impacted Coast Guard operations, what additional resources and/or authorities do you believe would be necessary should the Coast Guard need to respond to a similar incident in the future while also maintaining its other vital missions?

Answer. During the past year the Coast Guard surged forces to meet the Nation's disaster response mission needs, including Haitian earthquake relief efforts, flooding on the Western Rivers, and the Deepwater Horizon oil spill. Throughout these surge operations, the Coast Guard continued to serve the American people by performing its everyday missions, including search and rescue, enforcing migrant laws, interdicting illegal drugs, protecting living marine resources, and ensuring resiliency of the Marine Transportation System. While 2010 was an exceptional operational year, these demanding operations highlighted the continuing decline of fleet readiness and reinforced that recapitalization of aged and obsolete cutters, boats, aircraft, and support infrastructure is Coast Guard's key strategic imperative.

