



National Incident Command
Deepwater Horizon Response

2100 Second Street, S.W.
Washington, DC 20593-0001
Staff Symbol: NIC
Phone: (202) 372-1700
FAX: (202) 372-1933

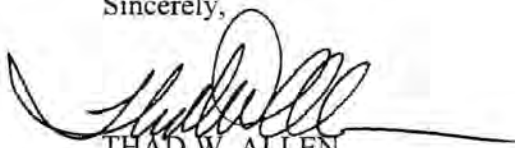
16451
01 Oct 2010

The Honorable Janet Napolitano
Secretary
U.S. Department of Homeland Security
Washington, DC 20528

Dear Madam Secretary:

Enclosed is my National Incident Commander's personal report as we discussed at our recent meeting. I apologize in advance for any grammatical or other minor errors as I wanted to provide this to you prior to my departure. There will be numerous other after action reports including the required Federal On Scene Commander's report, the Working Group Report of the President's Commission, and the Commission Report itself. For that reason, I focused this short report on what I feel are the critical strategic issues associated with the response. The report was prepared by me and my staff without outside consultation, staffing, or vetting. Accordingly, it reflects my personal views as the National incident Commander and I am solely responsible for the content. As stated above, my goal was to provide this report prior to my departure. I am providing a copy of this report to the Commandant of the Coast Guard and the Chairs of the NRT. I recommend you consider providing this report with any comments you feel appropriate to the "principals" who formed the government leadership team.

Sincerely,


THAD W. ALLEN
National Incident Commander

cc: Admiral Robert Papp, Commandant, U.S. Coast Guard
Captain John Caplis, U. S. Coast Guard
Dana Tulis, Chair to the National Response Team



CONFIDENTIAL

HCG254-009959



National Incident Command
Deepwater Horizon Response

2100 Second Street, S.W.
Washington, DC 20593-0001
Staff Symbol: NIC
Phone: (202) 372-1700
FAX: (202) 372-1933

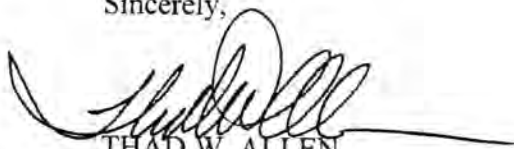
16451
01 Oct 2010

The Honorable Janet Napolitano
Secretary
U.S. Department of Homeland Security
Washington, DC 20528

Dear Madam Secretary:

Enclosed is my National Incident Commander's personal report as we discussed at our recent meeting. I apologize in advance for any grammatical or other minor errors as I wanted to provide this to you prior to my departure. There will be numerous other after action reports including the required Federal On Scene Commander's report, the Working Group Report of the President's Commission, and the Commission Report itself. For that reason, I focused this short report on what I feel are the critical strategic issues associated with the response. The report was prepared by me and my staff without outside consultation, staffing, or vetting. Accordingly, it reflects my personal views as the National incident Commander and I am solely responsible for the content. As stated above, my goal was to provide this report prior to my departure. I am providing a copy of this report to the Commandant of the Coast Guard and the Chairs of the NRT. I recommend you consider providing this report with any comments you feel appropriate to the "principals" who formed the government leadership team.

Sincerely,


THAD W. ALLEN
National Incident Commander

cc: Admiral Robert Papp, Commandant, U.S. Coast Guard
Captain John Caplis, U. S. Coast Guard
Dana Tulis, Chair to the National Response Team

CONFIDENTIAL

HCG254-009959

National Incident Commander's Report: MC252 Deepwater Horizon



Table of Contents

Executive Summary	3
Introduction.....	6
Oil Spill Response Governance, Doctrine and Organization.....	8
Deepwater Horizon Incident-Specific Issues.....	12
Way Forward	20
Conclusion	26

Executive Summary

The *Deepwater Horizon* oil spill is the largest and most complex our nation has ever confronted, more analogous to the challenges posed by Apollo 13 than the *Exxon Valdez* spill of 1989. It was complicated by the lack of human access to the Macondo wellhead, which was located 5,000 feet below the ocean surface and 45 miles offshore. We were fully dependent upon the use of remotely operated vehicles and remote sensors to access the well site to control the release of oil. The continuous discharge of oil from the well, from April 22 until July 15, 2010, did not result in a single monolithic spill, but rather thousands of smaller disconnected spills that repeatedly threatened and impacted the coastlines of all five Gulf Coast states. Additionally, we were challenged by the complexity of accurately measuring the volume of oil being discharged and responding to the continuous omnidirectional spread of the oil. Every day, for 87 days, we faced a major new oil spill.

The *Deepwater Horizon* oil spill is also the first incident in U.S. history to be declared a Spill of National Significance (SONS), and the first to designate a National Incident Commander (NIC). These first SONS and NIC designations have tested, under extreme conditions, the existing laws, regulations, policies, and procedures that govern oil spill response and the fundamental principles regarding the respective roles of responsible parties¹ and federal, state, and local governments in oil spill response.

Shortly after the *Deepwater Horizon* sank, the President assembled key members of his Cabinet, his staff, and me, as the Commandant of the Coast Guard to discuss the incident. The President directed us all to work together and be aggressive and forward leaning in our response. Upon my designation as the NIC, one of my primary responsibilities was to promote unity of effort across the whole-of-government – to take *a thousand points of light and turn them into a laser beam*.

The National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR Part 300), commonly referred to as the National Contingency Plan or NCP, is the United States' blueprint for responding to both oil spills and hazardous substance releases. As the NIC, I followed the doctrine² outlined in the NCP and assumed the responsibilities for addressing and coordinating national-level issues. However, we have two overlapping approaches to national-level governance³ during a major domestic incident such as the *Deepwater Horizon* — one articulated in regulation, the NCP, and the other in national policy, Homeland Security Presidential Directive-5 (HSPD-5). The NCP allows for the designation of a National Incident Commander for major oil spills. HSPD-5 names the Secretary of Homeland Security as the Principle Federal

¹ The Oil Pollution Act of 1990 provides that the **Responsible Party** for a vessel or facility from which oil is discharged, or which poses a substantial threat of a discharge, is liable for: (1) certain specified damages resulting from the discharged oil; and (2) removal costs incurred in a manner consistent with the National Contingency Plan (NCP).

² For the purposes of this document, **Doctrine** is defined as: The body of officially sanctioned guidance that describes principles or a set of strategies that is intended to be applied with judgment.

³ For the purposes of this document, **Governance** is defined as: The use of institutions, structures of authority, and collaboration to resource and coordinate or manage activities.

Official for domestic incident management. The NCP predates HSPD-5 and these two documents must be reconciled before the next major oil spill or hazardous substance release.

The Political and Social Nullification of Oil Spill Response Doctrine and Structure Governance

Over the course of the last 20 years, we have responded successfully to tens of thousands of oil spills using the authorities and doctrine articulated in the NCP. Despite its common use and a national exercise program intended to test and exercise the NCP over the years, we experienced both the *political and social nullification of the NCP during the Deepwater Horizon* response. There are two primary reasons for this: (1) the statutorily defined role of the Responsible Party (RP) in an oil spill response was generally not understood or accepted by the public and all levels of government; and (2) some state and local government officials balked at federal authority, direction, and control of resources in this response, preferring the Stafford Act response model.

The public's stated concern was not being able to "trust" the RP to make every effort possible to clean it up. They did not believe the RP would place environmental response interests above the interests of the company and its shareholders. It was not understood that the RP does *not* direct or oversee the response. This is the role of the federal government to ensure the RP fulfills all its obligations under the law. Federal primacy is necessary to provide a single point of control over the RP and promote unity of effort across all the impacted jurisdictions. For example, I issued a total of 17 NIC directives to BP over the course of the response aimed at stopping the flow of oil and gas from the well, and the Federal On-Scene Coordinator (FOSC) directed countless other actions. It is true that BP and various contractors executed many of these directed actions without direct government supervision.

Actions of state and local government officials outside the NCP structure were primarily the result of their unfamiliarity with the Oil Pollution Act of 1990 (OPA 90) and applying the NCP doctrine to a major oil spill. They had a better understanding and acceptance of the "bottom-up" response constructs defined within the Stafford Act and the National Response Framework (NRF) where the state and local governments direct the emergency response and the federal government plays a supporting role. This "bottom-up" construct was further reinforced in dramatic political and regulatory changes after the attacks of 9/11, which appropriately pushed substantial resources, grants, and emergency preparedness functions down to the local level.

Unequivocally, the NCP is a sound framework and allowed for needed discretion and freedom of action to address contingencies that arose during the *Deepwater Horizon* response. Through the unified efforts of over 47,000 people, we organized and directed a monumental response to remove and mitigate the damages from the estimated 4.9 million barrels of oil discharged into the Gulf. We established an Aviation Coordination Center at Tyndall Air Force Base in Florida, which allowed us to control, de-conflict, and monitor the air space over the affected offshore waters and coastline. The Aviation Coordination Center provided command and control for over 120 aircraft, which prevented midair collisions and improved situational awareness, validated oil trajectory modeling, tracked skimmers and vessels of opportunity, and directed boom deployment to where it was most needed. We amassed a fleet of more than 6,400 vessels including skimmers, vessels of opportunity, research vessels, Coast Guard cutters, and other specialized vessels to handle the myriad of individual activities that supported the response. In

fact, this response involved more vessels than were used in the D-Day invasion of Normandy. For the first time in history, we conducted large-scale offshore in-situ burns – burning over 11 million gallons of surface oil in 411 controlled burns. The Unified Area Command established new supply chains for boom, skimmers, dispersants, and scores of other equipment. We identified every foot of fire boom in the world. We procured boom from all domestic manufacturers, and mobilized all East and Gulf Coast offshore skimming vessels. As a result of demand, we procured nearly all nationally produced snare, containment, and fire boom, and engaged every domestic boom supplier to boost manufacture from a few thousand feet per week before the spill to over a quarter-million feet of boom per week at the height of the response.

Way Forward

Overall, OPA 90 and the NCP also served us well in this response, and any future considerations to amend the NCP as a result of lessons learned from the *Deepwater Horizon* spill should not change its fundamental governance structure. Moving forward, there are key efforts we must undertake with urgency to improve our collective ability to respond *before* the next major oil or hazardous substance release. We *must* ensure that all appropriate federal, state, local, and tribal government authorities and response structures are written into response plans and their elected or appointed officials are invited to participate in oil spill response exercises; de-conflict and reconcile the role of the NIC and the role of the PFO to ensure that both regulation and policy provide for a single designated individual to serve as the President's national-level representative; ensure a National Incident Commander, upon designation by the President, has the appropriate authorities organic to the position; empower and grow the National Response Team's (NRT) roles and responsibilities to better serve as the primary federal interagency body for planning, policy, and coordination for major oil spill response, and incentivize the private sector to develop 21st century oil spill response capabilities to keep pace with advancing technologies in oil exploration, deepwater offshore drilling, oil production, and maritime transportation.

Additionally, in the aftermath of events like September 11th and Hurricane Katrina, the public expects (and demands) a robust well-coordinated, whole-of-government response to major domestic incidents. The *Deepwater Horizon* oil spill proved to be no exception. The scope and magnitude of this spill surfaced a number of critical issues that would not normally be dealt with during a routine or traditional oil spill response. These included such issues as immediate and long-term behavioral and public health monitoring, seafood testing, and social and economic impacts. We were challenged to develop novel approaches to these emerging issues since OPA 90 primarily focuses upon cleanup and removal of the oil, and compensation for environmental damages. We need to examine law, policy, and doctrine to account for what is now a de-facto social contract with the public to provide immediate and long-term services as a result of a major domestic incident.

The *Deepwater Horizon* incident is a seminal event that will likely spur demand for sweeping changes in legislation, doctrine, policy, and capabilities to respond to future oil spills. As the National Incident Commander for the *Deepwater Horizon* spill, I offer my observations and recommendations in the following pages of this report.

Introduction

The *Deepwater Horizon* oil spill was unprecedented in both scope and duration. It is the largest and most complex oil spill our nation has ever confronted and it presented challenges more analogous to Apollo 13 than the *Exxon Valdez* spill of 1989. The response to this spill was complicated by the lack of human access to the Macondo wellhead, which was located 5,000 feet below the ocean surface and 45 miles offshore. Consequently, we were fully dependent on remotely operated vehicles, remote sensing, and deepwater drilling systems for access to the site, for actions necessary to control and monitor the discharge of oil, and for installing and operating the equipment used to stop the flow of oil.

The continuous discharge of oil from the well from April 22 until July 15, 2010, did not result in a single monolithic spill, but rather thousands of smaller disconnected spills that repeatedly threatened the coastlines of all five Gulf Coast States. Additionally, we were challenged by the complexity and difficulty of accurately measuring the volume of oil being discharged while responding to the continuous omnidirectional spread of the oil. Every day, for 87 days, we faced the equivalent of a major new oil spill.

Early on in the response, the Responsible Party (RP) and the U.S. Government discovered that there were gaps in our plans and capabilities to respond to a massive continuous oil and gas discharge in such a remote location. Collectively, we had underestimated the significant risks of a well blowout a mile below the surface of the Gulf. BP, the RP, did not adequately anticipate this contingency and therefore did not have sufficient capability *initially* to respond to a discharge of this magnitude. Nonetheless, an immediate response effort was undertaken by the U.S. Government and the RP and all available resources and capability were swiftly employed.

The *Deepwater Horizon* oil spill is the first incident in U.S. history to be declared a Spill of National Significance (SONS), and the first to designate a National Incident Commander (NIC). These first SONS and NIC designations have tested, under extreme conditions, the existing laws, regulations, policies, and procedures that govern oil spill response and fundamental principles regarding the respective roles of responsible parties and federal, state, local, and tribal governments in oil spill response.



I will discuss the intended function of the National Contingency Plan or NCP, as the United States' blueprint for responding to both oil spills and hazardous substance releases. Despite a national exercise program intended to test and exercise the NCP for a SONS event, we experienced both the *political and social nullification of the NCP during the Deepwater Horizon* response. There are two primary reasons for this: (1) the RP's statutorily defined role in an oil spill response was generally not understood or accepted by the public and all levels of government; and (2) some state and local government officials balked at federal authority, direction, and control of resources in this oil spill response. Overall, the NCP served us well in this response and any future considerations to amend the NCP as a result of lessons learned from the *Deepwater Horizon* spill should not change the fundamental response governance structure. We do need to focus on readiness and preparing new political leaders for what to expect in a response.

I will review my roles and responsibilities as the NIC and whether existing legal authorities and doctrine, largely contained within the NCP and U.S. Coast Guard instructions, were adequate. The NIC structure *did* serve its intended purpose to promote unity of effort across the whole-of-government – although this was not without considerable challenges. Since this is the first NIC designation in U.S. history, we learned much about NIC roles and responsibilities during the *Deepwater Horizon* response. I have included recommendations to capture those lessons, which include expanding NIC authorities and doctrine, among others.

This report includes my observations and recommendations regarding the legal authorities, doctrine, and policy that collectively provide the governance constructs used for oil spill response. I offer key efforts we should undertake with urgency to improve our collective ability to respond *before* the next major oil or hazardous substance release. This report does not speculate as to the cause of the incident, nor does it determine liability or assess the work of the Unified Area Command and its subordinates. Other entities and reports will provide these assessments.

Oil Spill Response Governance, Doctrine and Organization

After the *Exxon Valdez* spill in 1989, the Federal Water Pollution Control Act (also known as the Clean Water Act) was amended by the Oil Pollution Act of 1990 (OPA 90). OPA 90 was a comprehensive law that significantly increased requirements for oil spill prevention and response. Among other aspects, it provided for the ability to direct a more robust federal response to oil spills (33 U.S.C. §2701 et seq). Under OPA 90, an owner, operator, or other responsible party is required to participate in removal actions in accordance with the National Contingency Plan (NCP). OPA 90 also provided the President of the United States with very broad removal authorities. As codified in sections §311(c) and §311(e) of the Clean Water Act, the President is empowered to ensure effective and immediate removal of a discharge by:

- Directing federal, state, and private sector response removal actions (see §311(c)(1)(B)).
- Issuing administrative orders, that may be necessary to protect public health and welfare (see §311(e)(1)(B))

The first iteration of the NCP was established in 1968 – before OPA 90 – to provide a coordinated plan for responding to oil spills and hazardous materials releases. The NCP has been amended on several occasions, most recently in 1994 to incorporate the requirements of OPA 90. The NCP envisions a unified public and private sector response to large oil spills employing a Unified Area Command led by the Federal On-Scene Coordinator (FOSC) with full participation and funding by the Responsible Party (RP). The NCP establishes a provision for the Coast Guard Commandant to designate an incident within a coastal zone as a Spill of National Significance (SONS) if it is anticipated that the response effort needed or the threat to public health and welfare requires extraordinary coordination of federal, state, local, and tribal governments and responsible party resources (40 C.F.R. §300.323(a) and 40 C.F.R. §300.5).

The great strength of the NCP is that it directs close coordination among federal, state, local, and tribal stakeholders in oil spill preparedness and response. Responders are predominately drawn from federal, state, and local environmental management communities, the RP's contracted Oil Spill Removal Organizations (OSROs), and RP personnel. Other state and local emergency response personnel are invited to provide support as needed or called upon by the FOSC. While the National Response Framework (NRF) also relies on federal, state, local, and tribal coordination, it is designed to support state and local led emergency response to natural disasters and other catastrophic events. Although the NRF incorporates the NCP by reference under Emergency Support Function 10, the two governance structures are inherently different and the role of the RP is not explicitly addressed in the NRF. State and local government emergency response officials apply the “bottom-up” response constructs defined within the Stafford Act and the NRF where the state and local governments direct the emergency response and the federal government plays a supporting role. Funding and resources are predominantly an inter-governmental responsibility – as opposed to those of a private sector RP.

This response would have been even more complicated if a severe weather event resulted in a major emergency or disaster declaration under the Stafford Act. Severe weather, such as a

hurricane hitting the Gulf Coast, may have deposited oil or oily debris oil from the Deepwater Horizon wellhead on the shore or inland. As a result, we would have been using the "top-down" NCP and the "bottom-up" NRF approach simultaneously. Issues such as who would be in charge of removing the debris, who would pay for its removal (RP or Disaster Relief Fund), how we would determine if the oil was Deepwater Horizon oil, and how the Stafford Act/NRF response would be coordinated with the spill response have never been tested to this extent. Attempting to reconcile the NRF and the NCP during a major disaster is not a good business practice, and will likely lead to a less than optimal response. The conflict between the NCP and the NRF must be reconciled in law, policy, and doctrine to avoid similar situations in the future.

National Incident Commander Authorities and Doctrine

The President's §311(c) and §311(e) authorities allow him to control virtually all aspects of a response to an oil discharge, including the ability to direct the RP to pay for actions necessary for removal of oil. On October 18, 1991, the President delegated, without abdication, sections §311(c) and §311(e) of the Clean Water Act to the Secretary of the Department in which the Coast Guard is operating (see Executive Order 12777). These authorities were further delegated to the Coast Guard Commandant and to Coast Guard field commanders serving as a Federal On-Scene Coordinator (FOSC) for an oil spill or hazardous substance release (see DHS Delegation No. 0170.1 and 33 C.F.R 1-01-80).

These authorities are not automatically delegated to the NIC. After I was relieved as the Coast Guard Commandant on May 25, 2010, I no longer had the FOSC authorities inherent in that position. Fortunately the Secretary of Homeland Security, Janet Napolitano, delegated the §311(c) authority to me for my entire tenure as the NIC. I was not delegated §311(e) authorities to issue administrative orders, and if needed would have had to rely upon the FOSC for this function. Nonetheless, with the delegated authorities I did receive, I was able to legally direct the RPs actions, authorize removal, and approve expenditures against the Oil Spill Liability Trust Fund.

Currently, the only officially sanctioned NIC doctrine is from 40 C.F.R. §300.323, which states:

The NIC will assume the role of the FOSC in communicating with affected parties and the public, and coordinating federal, state, local, and international resources at the national level. This strategic coordination will involve, as appropriate, the National Response Team (NRT), Regional Response Team (RRT), the Governor(s) of affected state(s), and the mayor(s) or other chief executive(s) of local government(s).

The U.S. Coast Guard has further described the NIC's responsibilities for a SONS in a draft Commandant Instruction 16465.1A, Spills of National Significance Response Management System. These responsibilities expand on the NCP and include:

- Lead national level communications and develop strategies objectives.
- Coordinate interagency issues.

- Coordinate federal, state, local and international resources.
- Oversee Unified Area Command activities for effective response.

Overlapping doctrinal structures in a national-level response governance

Two overlapping doctrinal structures employed in this national-level response complicated the overall governance of the event – one articulated in regulation, the NCP, and the other in national policy, Homeland Security Presidential Directive-5 (HSPD-5). The NCP allows for the designation of a NIC for major oil spills. HSPD-5 names the Secretary of Homeland Security as the Principle Federal Official (PFO) for domestic incident management. This created confusion regarding the nearly identical roles assigned to the NIC and PFO during a SONS. The NCP predates HSPD-5 and these two documents have yet to be reconciled for a response to a major oil spill or hazardous substance release.

During the most recent SONS exercise held in March 2010, we did not have Cabinet-level senior leadership participation because it was not considered a Tier 1 exercise under the National Exercise Program. Without their participation, we missed an opportunity to educate senior leaders, to address the HSPD-5/NCP overlap, and to fully explore the political and policy implications of a major oil spill response under the NCP construct. As a result, there was no practical experience with the application of the NCP among many senior government officials. In contrast, the NRF, which provides the primary framework for most major domestic incidents, was well understood, accepted, and exercised by many of these same officials and formed the basis of their initial expectations and approach to this spill response.

When the Deepwater Horizon sank on 22 April, I requested a meeting of the National Response Team (NRT) as the Commandant. My intent was to employ this long standing interagency coordinating body in support of the deepening crises and potential for a catastrophic oil release. However, since we had not exercised the NCP with DHS leadership, the role of the NRT was not fully understood. The NRT, an interagency body, is comprised of 15 federal agencies responsible for developing, de-conflicting, and reconciling intergovernmental policy issues that surface during oil spill response. The EPA serves as the Chair and the Coast Guard serves as the Vice Chair of the NRT. When a spill involves a substantial threat to public health and welfare, substantial amounts of resources or substantial threats to natural resources, the NRT can be activated as an emergency response team to monitor the response actions and provide counsel and recommendations to the NIC to assist in the response. Rather than serving its intended purpose, direct engagement by Cabinet-level officials from the outset of this response essentially redirected the NRT to the role of support to intra-Cabinet communications and briefings, diminishing its ability to serve as a deliberative body and its value to the response organization. To provide the originally intended functions of the NRT, a new organization named the Interagency Solutions Group (IASG) was created within the NIC. The IASG essentially assumed the doctrinal responsibilities of the NRT, and proved exceptionally adept in promoting interagency unity of effort.

National Response Team



Deepwater Horizon Incident-Specific Issues

The Political and Social Nullification of Oil Spill Response Doctrine and Governance Structure

Beginning with the Clean Water Act in 1973, the law clearly required the private sector to plan for and ensure sufficient resources and personnel are available to respond to and mitigate the impacts of potential spills. Consequently, over the years oil spill removal capabilities grew and ownership shifted to the private sector, which spurred the expansion of Oil Spill Removal Organizations (OSROs) and increased demand upon response equipment manufacturers. It is the RP's responsibility to bear the cost of maintaining personnel and equipment at the ready. At the same time and under the same laws, it is the government's responsibility to ensure that potential RPs have plans in place that are adequately resourced and to direct how those resources are employed in a major spill event. As intended, the government does not maintain significant organic removal capability or capacity, other than that required to address spills caused by a government entity.

The NCP, the Clean Water Act, and OPA 90 are all based on the underlying principle that the "the polluter pays and the polluter cleans up." BP, as a RP, was and remains legally obligated to pay for and respond to the Deepwater Horizon oil spill. The legal role of the RP, and perceptions that they were directing and controlling the response, bred considerable distrust among the general public and government officials at all levels, and impacted perceptions regarding its effectiveness. The public's fundamental concern was a lack of trust in the RP. They did not believe the RP would place public and environmental interests above the interests of the company and its shareholders. This general uneasiness with the role of the RP contributed to the political and social nullification of the NCP, a rejection of the role of the RP mandated by law. In reality, the RP does *not* direct or oversee the response. The federal government does this through the Federal On-Scene Coordinator and the NIC if one is designated. We ensure that the RP meets all its obligations under the law. This includes ensuring no corners are cut by the RP in providing funding and resources needed to cleanup and mitigate the effects of the spill. That does not mean, however, that government personnel are present at every activity undertaken by contracted oil spill response organizations.

One example of how the federal government ensured it had adequate oversight over the RPs actions was the creation of a scientific oversight team directed by Department of Energy Secretary Chu. This team included some of the best minds in the U.S. Government to monitor the progress and critically review BP's efforts to contain and secure the source of the leak from the Macondo Well. The scientific team personally participated in daily briefings with BP executives and provided real time recommendations on the efficacy of the proposed mitigation measures to me. In all, I issued a total of 17 NIC directives to BP over the course of the response aimed at stopping the flow of oil and gas from the well, and the Federal On-Scene Coordinator (FOSC) directed countless other actions.

In the Deepwater Horizon response, BP, as the primary RP, provided the resources and capabilities as required by law. The FOSC and I provided the direction and legal oversight. Unfortunately, the public did not *initially* have visibility of the government's direction and

decision-making. This reinforced the public's perception that BP was "in charge" of the *Deepwater Horizon* response and not the federal government.

Further contributing to this nullification of the NCP was the lack of local government participation over the years in the triennial SONS exercises required by OPA 90. In 2002, I participated in the SONS exercise in New Orleans where the scenario notably involved a well blowout approximately 80 miles from where the Macondo well is located. During this exercise, state officials participated under their defined role in the NCP, but we did not have exercise participation below the state level to include mayors, parish presidents, and local councils. One of the early lessons learned in the *Deepwater Horizon* response is the imperative to engage all levels of government in planning for, exercising, and responding to a major oil spill. We should not assume the state always speaks for or manages the equities of local governments.

Adapting Existing Doctrine to the *Deepwater Horizon* Response

Establishing the National Incident Command

Before the *Deepwater Horizon* incident was designated a SONS and prior to my designation as the NIC, Rear Admiral Mary Landry assumed the role of FOSC and served as the Coast Guard's lead federal official for strategic communication and operational decision-making. In this capacity, RADM Landry worked with other federal partners, senior BP officials, state, and local representatives to establish a unified response organization. As the FOSC, by law, she was responsible for:

- Providing access to federal resources and technical assistance.
- Coordinating all federal containment, removal, and disposal efforts and resources during the oil spill.
- Serving as the point of contact for coordination of federal efforts with the local response community.
- Coordinating, monitoring, and directing response efforts.

As this incident expanded across the entire Gulf Region, so did the need to involve other national-level and international resources outside the span of control of the FOSC. This response clearly called for a NIC. By design, the FOSC's responsibilities are complementary to the NIC responsibilities. Strategic objectives and intent should be clear and transparent and designating a single individual, responsible for all aspects of the federal government's response, established a clear chain of command for communications and decisions.

As the NIC, I followed the doctrine outlined in the NCP and assumed the responsibilities for addressing and coordinating national-level issues. In the 10 days that passed between the fire, explosion, and subsequent sinking of the *Deepwater Horizon* and my designation as the NIC, multiple federal government agencies acted within their existing authorities to execute their particular agency responsibilities. Initially, I viewed my role as the Unified Area Command's

(UAC) relief valve for political and national pressures and a national-level resource broker. To this end, I created a "thin client," a lean NIC staff with a relatively small footprint located in Washington, D.C., and I traveled to the Gulf region frequently. I was also designated as the primary national spokesperson for the *Deepwater Horizon* response. Given the intensity of media coverage and public interest, I spent a considerable portion of my time briefing and interacting with national and local media to inform the public of the whole-of government's efforts. Significant effort was also focused on strategic and policy issues using existing interagency resolution bodies as well as creating a new policy resolution group, the Interagency Solutions Group (IASG). By assuming these responsibilities, I enabled the UAC to focus on operational response issues.

Coordinating Interagency Efforts

In addition to my NIC staff, the National Response Team (NRT) would normally serve as my primary advisory body to develop, de-conflict, and reconcile intergovernmental policy issues that surface during a SONS. Once the NRT was diverted from its traditional advisory role to provide daily high-level operational briefings to Cabinet members and agency heads, the IASG, led by DHS Assistant Secretary for Intergovernmental Affairs Juliette Kayyem, addressed many of the issues typically adjudicated by the NRT. The IASG became a self-contained interagency body with decision-making authority capable of resolving time-sensitive policy issues. The group was staffed at the action officer level and had representatives from over 20 agencies and Departments.

Along with adjudicating policy issues, the IASG assumed functions that were not anticipated in legal authorities or addressed in doctrine. For example, the IASG created the Interagency Alternative Technologies Assessment Program (IATAP) to evaluate thousands of offers of innovative response technologies from both domestic and international entities. Likewise, the IASG stood up the Flow Rate Technical Group (FRTG) composed of scientific technical experts, from government and academia, to quantify the daily rate of release from the Macondo well and the total amount of oil released into the Gulf. The IASG also chartered an Oil Budget Calculator Science and Engineering Team to estimate the fate of the oil. They developed a tool called the Oil Budget Calculator to estimate the fate of the oil (recovered, dispersed, evaporated, residual, etc.). To provide oversight of BP's claim process, the Integrated Services Team (IST) was created under the IASG. They oversaw over \$875 million in claim payments from over 200,000 individuals, businesses, and government entities, and served as a transition facilitator for the Gulf Coast Claims Center. The IST also deployed experts to promote public awareness of the claims process and other social services programs.

When the State of Louisiana submitted permitting proposals to construct a series of sand berms, rock dikes, and pipe booms to protect sensitive areas from oil, the IASG identified key issues to help address environmental and engineering concerns. The synergies created through the establishment of this group directly supported planning efforts by the Council of Environmental Quality (CEQ) and the Natural Resource Trustee Steering Committee to consolidate countermeasure proposals for consideration by the FOSC as removal projects. The 24 projects submitted, valued at over \$500 million, were carefully considered by the IASG and they developed recommendations on the merits of each project against the criteria outlined in the Clean Water Act.

The scope and the magnitude of this spill surfaced a number of other critical issues that would not normally arise during a routine or traditional oil spill response. The IASG was challenged to resolve issues such as immediate and long-term behavioral and public health monitoring, seafood testing, and social and economic impacts. This was especially difficult since OPA 90 limits the use of the Oil Spill Liability Trust Fund (OSLTF) for cleanup and removal of the oil, and compensation for environmental damages. The expectations of the federal government in crisis response grows with each new event and transcends existing legal authorities and limits on the use of federal funding. Going forward, we need to examine law, policy, and doctrine to account for what has become a changing perceived social contract by the American public to provide a range of immediate and long-term services as a result of a major domestic incident.

Cabinet-level Deputies Committee meetings were also convened to ensure senior administration officials were regularly briefed on response efforts. Deputies Committee meetings focused on key policy issues and friction points to ensure alignment throughout the administration and were especially helpful in addressing challenges posed by issues outside traditional oil spill response such as seafood safety. In the future, an incident-specific Deputies Committee should be convened, chaired and moderated by the NIC.

Use of the Oil Spill Liability Trust Fund

The Oil Spill Liability Trust Fund (OSLTF) was created under OPA 90 and is used to pay for costs not paid directly by the RP. As of September 19, 2010, over \$580 million in costs had been paid from the OSLTF. To ensure funding remained available for the federal response, Congress passed Public Law 111-191 which allowed for unlimited advancements of up to \$100 million from the principal to the emergency fund, but only for the Deepwater Horizon response. As of September 19th this additional advancement authority had been exercised five times, providing \$500 million in advancements to the emergency fund. Funding must be adequate to support effective and efficient federal oil removal when there is a major spill or a SONS. Accordingly, the changes made by Public Law 111-191 should be made permanent.

The Deepwater Horizon response has also demonstrated the extraordinary public expectations of prompt and effective compensation. While claims payments are currently available from the OSLTF, the cost to administer such payments, including adjudication costs, are payable only through Coast Guard operating funds. The cost to the federal government to administer and adjudicate claims in the event of a SONS would be enormous if there were no RP, or if the RP reached their limit of liability and refused to pay. The Deepwater Horizon claims footprint consists of over 35 claims centers and over 1,500 staff with an estimated payroll of \$42 million per month. While legislation has been proposed to eliminate this claims funding gap, it was not approved as requested. There remains an urgent need to enact a legislative provision for surge claims funding out of the OSLTF.

Additionally, there is a \$1 billion limit on use of the OSLTF for a particular event, of which only \$500 million may be used for Natural Resource Damages. The costs that count against this limit include both removal and Natural Resource Damage Assessment Initiate costs as well as any claims that ultimately might get paid from the fund. An underlying tenant of OPA 90 is that "the polluter pays", and as of September 19th BP had reportedly spent over \$9.5 billion on the

Deepwater Horizon response and has put an additional \$20 billion into a trust fund to pay Natural Resource Damages and additional claims. That is nearly \$30 billion the American taxpayers were not saddled with – reinforcing the wisdom of the current system described in the NCP and OPA 90. However, even with a viable and cooperative RP, the \$1 billion limit is clearly inadequate for a SONS-level event and should be significantly raised if a SONS is designated in the future.

Perceptions Regarding the Use of Foreign Flag Vessels - The Jones Act

There was a misperception that the Jones Act (46 USC § 55102) impeded the use of foreign flag vessels for Deepwater Horizon response operations. In reality, the Jones Act had no impact on response operations. As the NIC, I provided specific guidance to ensure accelerated processing of requests for Jones Act waivers. This process was used to expedite the Jones Act waiver requests for seven vessels engaged in source control operations in the event they were forced to alter operations in a manner that might implicate the Jones Act. This expedited process resulted in DHS Secretary Napolitano approving the waiver request in less than 10 days from the initial request. During the entirety of the response, there were no Jones Act waiver denials. Any decision not to use a foreign flag vessel during the response was based upon an operational decision not any limitations imposed by the Jones Act.

Activating the National Guard

During the Deepwater Horizon response, the National Guard proved to be an exceptional partner across a wide range of response activities. However, it was not clear how the National Guard should be activated and employed to best support the response. This was primarily due to competing interests and concerns over activation under Title 10, which is federally controlled and funded, versus Title 32 activation, which is state controlled and federally funded. I strongly support the efforts by the Council of Governors to reconcile these competing interests over command and control and funding of National Guard troops to *better* bring their capabilities to a future major oil spill response and other national-level emergency response operations.

Applying Dispersants

The use of chemical dispersing agents has a long and controversial history both in the U.S. and around the world. This dates back at least as far as the Amoco Cadiz incident off the coast of France when large quantities of oil based “dispersants” were applied to oil even as it washed up on the shoreline, leading to widespread and long lasting adverse environmental impacts. The conceptions and perceptions this left in the public’s mind were all negative (e.g., that dispersants are all toxic; that the private sector will wantonly use dispersants right up to and on the shoreline if left unchecked; and, that dispersants do not make the oil go away but suspend it permanently in the environment). We thought we had overcome these misconceptions and misperceptions in the late 1990s through the carrying out of mandates contained in the 1994 revisions to the NCP to engage in dispersant use decision planning in each region around the country. Following that mandate, and applying a process of consensus ecological risk assessment, each of the Regional Response Teams (RRTs) around the country established a set of guidelines and standards for the consideration of dispersant use when faced with a large spill. By the early 2000s, every region in the country had established clear guidelines regarding dispersant use. Those guidelines were

based on the application of the available science to the specific environment in the region, by the federal and state resource trustee agencies in the region. Unfortunately, during the Deepwater Horizon response, those regional dispersant guidelines were immediately invalidated when EPA's national product schedule, as a guide to dispersant selection, was called into question. This was made worse when the science community began focusing on the potentially unknown adverse effects of chemical dispersion 5,000 feet below the surface 45 miles from shore. Instead, we should have looked to established doctrine and practice in the NCP and tasked the RRT, or if the task was too big for them, the IASG to forge consensus on an ecological risk assessment or the environmental tradeoffs of dispersant use versus shoreline impacts in this specific instance. We did not do that. In the future, tools like the consensus risk assessment should be routinely practiced by and available to the RRTs to ensure response decisions are made based on optimizing the net environmental benefit. That said, it is clear that existing dispersant use policy, including the NCP National Product Schedule, and pre-approval protocols should be reviewed, and validated as necessary.

Communicating with Gulf State Governors and local elected officials

From the onset 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 NIC and FOSC along with other federal agencies briefed. The daily conference call was not only to impart information, but to provide the Governors with 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. While this forum was not conceived in NIC doctrine, it became an important vehicle that drove many tactical decisions and shifts in strategy such as boom deployment, skimming equipment allocations, and other protection and removal actions such as the sand berms. The daily conference call also allowed the Governor's to surface many social and economic issues such as sea food 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, which should be instituted in any major oil spill response that spans more than one state, with one adjustment. In the future, these calls should be hosted and moderated by the NIC. In addition, Governors should participate with their State On-Scene Coordinators to preserve alignment at the state and local level.

Similar to the Governors, local elected officials played a significant role in the response from the start. Although their efforts were very much appreciated, there were significant challenges in working with some officials due to their unfamiliarity with the oil spill response strategies outlined in the Area Contingency Plans (ACPs). In addition, many local elected officials rejected federal primacy in oil spill response operations. They often and publicly expressed their displeasure with the Unified Command's response efforts and at times worked independently of the Unified Command. To better promote unity of effort, in late May, we assigned more senior liaison officers to many of the local elected officials across all the affected Gulf states. These liaisons officers were created to ensure their concerns were relayed to the Incident Commanders and that response actions were coordinated to maximize effects. Going forward, we should memorialize in doctrine the use of these liaisons for major oil spill response and prescribe their reporting chain to the Incident Commander.

Improving Knowledge Management

The American public also expected near real-time briefings on the status, scope, and planned actions of any significant incident response, especially in today's 24-hours media cycle. Having all Senior Administration spokespersons from the operational commander to the NIC and Cabinet members, up to the White House Press Secretary, presenting a clear, consistent message, would build confidence and trust in the government's ability to effectively manage large-scale incidents. Throughout the Deepwater Horizon response, we had difficulty developing that message early on and in particular describing 'levels of effort' because we didn't have established metrics, standardized reporting, and adequate information systems for collecting, validating, and disseminating information across the whole of government to support communications within the response structure and for spokesperson(s). Existing data collection systems could not easily array critical response metrics across geographic, operational, or political boundaries. This was essential for state and local officials who demanded daily briefs that reflected equipment staged and deployed for their particular area of jurisdiction.

Accessing Domestic Oil Spill Response Resources and Processing International Offers of Assistance

The Deepwater Horizon incident required access to and use of spill response resources from Oil Spill Removal Organizations (OSROs) around the country. An immediate and on-going challenge throughout the response was the lack of a usable database listing OSROs either domestically or globally, let alone listing equipment that might be available to support the response. Domestically, while we could locate most OSROs, it took time to identify what equipment they had to offer, and more time to determine how moving the equipment they were offering to the Gulf of Mexico would impact the response posture of the contributing region. These information gaps became critical in determining the location of potential response resources to support the Deepwater Horizon incident and in ensuring that areas outside the Gulf of Mexico maintained enough response capability to meet federal and certain state requirements. This experience underscores the critical need for the establishment and maintenance of a response resource inventory data base that includes updated listing of all OSRO equipment nationwide, including real-time location and status of all OSRO equipment so that it can serve as a primary management tool for all major responses.

Internationally, in addition to the absence of a useful equipment data base, the challenge is that except for regional agreements for resource sharing with our neighbors in Canada, Mexico and Russia, we had never engaged other countries regarding sharing response equipment. The first task we faced was in sorting out who to talk with and what countries had potentially useful resources to offer. We found that there was no common lexicon regarding resource specifications (e.g., no common description of open ocean containment boom and skimming systems). There were no protocols for making requests or accepting offers, no mechanisms for reimbursing costs or even for determining costs in the first place. The NIC staff did manage to work through all of these issues with many of the offers, and to receive and employ some foreign resources, but the process was needlessly arduous and inefficient. Another major challenge was contending with political pressure to accept all international offers of assistance regardless of utility to the response. Going forward, we need to expand the response inventory database

described above to include international oil response resources and establish processes and procedures for review and approval of international offers of assistance to help speed the delivery of critical resources in a future oil spill response. Finally, any offshore containment and recovery system developed in the future should be integrated into this system.

Establishing Control of the Airspace

Historically, the coordination of aviation assets and sorties has proved to be a recurring challenge for major responses. We also experienced difficulties during the initial stages of the *Deepwater Horizon* response. With over a 120 aircraft and hundreds of daily public, private, and military flights in support of the response, there was a high risk of aerial collision and we experienced several near mishaps during the early stages of this response. We needed to quickly establish command and control over the airspace. This required engagement and coordination at a national level with the U.S. Air Force and U. S. Northern Command (NORTHCOM) to bring DOD capabilities and capacity to the response. In collaboration with NORTHCOM, we established the based out of Tyndall Air Force Base. The Aviation Coordination Center allowed us to control, de-conflict, and monitor the air space over the offshore waters and coastline of the Gulf and significantly improved our ability to verify oil trajectory modeling and direct resources such as skimmers, vessels of opportunity, and boom deployment to where it was most needed.

Way Forward

The scope and complexity of the *Deepwater Horizon* oil spill response has tested under extreme conditions existing laws, governance constructs, doctrine, policy, and capabilities to effectively respond to a SONS. Based on my experience as the NIC for this response, I have identified several areas to improve and optimize whole-of government unity of effort and effectiveness in response to a future SONS. To that end, I offer the following observations and recommendations:

Expand state and local government participation in developing and exercising Area Contingency Plans

During the *Deepwater Horizon* response, we experienced the political rejection of the multiple Area Contingency Plans (ACPs) that outlined response strategies for sensitive areas across the Gulf. Local and state government officials, in some cases, responded independently of the Unified Commands and employed response strategies that I believe, in retrospect, will prove to be ineffective and may have long term ecological consequences. Direct funding from BP to local governments facilitated these independent actions. To avoid this in the future and promote unity of effort, Area Committees must ensure that all appropriate federal, state, local and tribal government authorities and response structures are written into the ACP, and elected officials are invited to participate in oil spill response exercises. Most states have governmental and response structures that are different from one another – therefore, no one framework fits all. Consequently, ACPs should incorporate county/parish or other local authority specific annexes, where appropriate, that reflect these realities.

Promote executive-level understanding of the National Contingency Plan and Oil Pollution Act of 1990

A shared understanding of the NCP and OPA 90 coupled with practical experience, through exercise participation, would have gone a long way in preventing the political and social nullification of the statutory roles of the RP and federal government. I recommend active engagement by the NRT member agencies with senior federal appointed officials, and state and local elected officials, to develop greater experience with oil spill response and the NCP's governance constructs. These include:

- Develop, market, and provide executive-level NCP and crisis communication seminars for elected officials and senior-level appointed officials.
- Designate SONS exercises as Tier 1 national level exercises.
- Hold a SONS Cabinet-level table top exercise in 2011 with federal, state, local, and tribal officials.

- Seek venues and forums to better inform state and local elected officials of their roles and responsibilities during a major oil spill response and the Federal Government's authorities and responsibilities to oversee and direct response efforts under the NCP.

Reinstate funding for research and development for oil spill response

The Interagency Coordinating Committee on Oil Pollution Research (ICCOPR) has served as the primary governmental body for oil spill response research and development since 1991 directing interagency research and university grant programs. Unfortunately, Congressionally-directed funding to support ICCOPR was discontinued in 1995 and they have struggled to maintain relevance in a post 9-11 security-focused R&D environment.

To ensure we have 21st century oil spill response capabilities available before the next major oil spill occurs, we should amend the oil pollution research and development program described in 33 USC §2761 to reinvest funds in the ICCOPR. The ICCOPR should be required to conduct and sponsor research into oil fate and its effects, and the enhancement of capabilities suitable for preventing, responding to, and mitigating the impacts of spilled oil in the maritime environment. The ICCOPR should also be directed to permanently establish a program similar to the Interagency Alternative Technologies Assessment Program (IATAP) to evaluate new technologies *before* a spill occurs. The ICCOPR must receive *permanent* funding for R&D through annual distributions from the Oil Spill Liability Trust Fund or some other recurring funding source.

Harmonize the roles and responsibilities of the National Incident Commander and the Principal Federal Official

The role and authority of the NIC, as articulated in the NCP, and the role and authority of the Secretary of Homeland Security, as the PFO defined in HSPD-5 were not harmonized in the Homeland Security Act or subsequent policy directives, which lack statutory authority. This creates the potential for confusion over who is responsible for the whole-of-government coordination and communication to affected parties and the general public on a national level. For future SONS, we need to harmonize the roles of the NIC and the PFO to ensure that both regulation and policy provide for clarity regarding a national-level representative.

Expand the National Response Team's membership and responsibilities

We *must* empower and grow the National Response Team's (NRT) roles and responsibilities to better serve as the primary federal interagency body for planning, policy, and coordination for response to major oil spills and hazardous material releases. To this end, I recommend expanding NRT membership and responsibilities to permanently incorporate several of the temporary functions accrued by the National Incident Command during the Deepwater Horizon spill response. These include:

- Expand NRT membership to include all federal agencies with authority, expertise, and capability to respond to major oil and hazardous material spills.

- Expand the authorities and functions of the NRT and Regional Response Teams (RRTs) to adjudicate conflicting national-level and regional-level policy and procedural issues in support of a NIC, UAC, and ICs.
- Institutionalize the *Deepwater Horizon* National Incident Command's Interagency Solutions Group (IASG) structure and membership *permanently* under the NRT to serve as the primary action officers for issue and policy resolution during a major response.
- Require the NRT to lead the interagency lessons learned effort for member agencies following a response to a major oil spill or hazardous material release.
- Develop processes and procedures to solicit, evaluate, recommend, and formally accept international offers of assistance for a major oil spill response.
- Develop and maintain a domestic and, eventually an international response resource inventory data base that can support resource management during major spill events.
- Validate the NCP's National Product Schedule of chemical countermeasures.
- Review and improve the consensus ecological risk assessment tools.
- Institutionalize in doctrine a local elected official liaison program for use in a major oil spill response.

De-conflict and reconcile the “top down” approach of the National Contingency Plan with the “bottom up” approach of the National Response Framework

For future SONS, or major oil spill responses, we need to reconcile the different response constructs in the NCP and the NRF. To this end, I recommend that the NRT partner with the FEMA-led Emergency Support Functions Leaders Group (ESFLG) which has overall responsibility for coordinating the nation's preparedness for natural disasters and other catastrophic events. Together, the NRT and ESFLG should:

- De-conflict OSLTF and Stafford Act funding issues for all incidents.
- Reconcile the NCP approach of a federal led, and RP supported, Unified Command versus the state led, federally supported NRF approach.
- Align and coordinate activities of the NCP mandated Regional Response Teams and NRF mandated Regional Interagency Steering Committee at the regional level by requiring them to coordinate regularly through joint meetings and exercises.

Establish a cadre of potential National Incident Commanders for nationally significant incident response

The NIC has proven to be an effective command organization that should be applied to nationally significant domestic incident responses. We should develop and pre-designate a core cadre of individuals that could be called upon to serve as a NIC and lead any major domestic response contingency. This will be a very select group of highly qualified individuals with the right experience, training, and temperament to lead a whole-of-government response and

communicate effectively with affected parties under intense political and national and international media scrutiny. The NIC cadre would represent the national good and each should be introduced and exposed to a wide variety of government, industry groups, and media in order to build familiarity and trust. The NIC cadre should also be supported by a readily available trained staff element to stand-up and perform the functions required of a NIC when designated.

To equip this NIC cadre and supporting staff with the knowledge and skills necessary to lead a national-level response, a preparedness and leadership program should be developed. Most importantly, this program should train and test communication skills, adaptability, and decision making of the NIC and their response organization through extensive exercise play that accurately simulates the uncertainty, complexity, physical and emotional stress, and exhaustive battle rhythm of a major domestic response.

Establish National Guard activation protocols for a SONS

During the Deepwater Horizon response, it was not clear if the National Guard should be activated under Title 10 or under Title 32 to best support the response. I strongly support the efforts by the Council of Governors to reconcile these competing interests over command and control and funding of National Guard troops to *better* bring their capabilities to a major oil spill or other national-level disaster response in the future.

Memorialize in doctrine the use of the Aviation Coordination Center

Under the command and control of the Aviation Coordination Center, created specifically for this response, over 120 aircraft were safely operated to spot and track oil, direct vessels, and conduct vital environmental monitoring in support of daily operations. Either through Memorandum of Agreement, pre-scripted mission assignment, or similar vehicle DHS should coordinate with DOD to ensure that this capability is formally memorialized and made available as a matter of course for any national-level response.

Establish the DHS National Operations Center (NOC) as the NIC Information Manager

DHS Office of Operations Coordination, through the National Operations Center, was established to provide real-time situational awareness and coordinate the info-sharing within DHS. The NOC also supports info-sharing across the interagency. A standard, open architecture/open standards-based, Common Operating Picture (COP) software package, similar to the Environmental Response Management Application (ERMA) system used for this incident, should be developed and incorporated into existing requirements for the management of oil spill responses in the future. Additionally, standard metrics to describe a 'best response' should be developed and included in the development of the COP software. Using this information, the NOC will be better positioned to provide national-level situational awareness to the NIC and DHS leadership. Existing processes already support the NOC's role as the lead information manager for DHS and should include direct support to the NIC.

Expand NIC Authorities

The complexity and size of a SONS requires additional NIC authorities above and beyond those used for smaller events. These authorities should be established and described in doctrine. I recommend the following legal authorities for future NICs :

Presidential designation of a NIC

Currently the Commandant of the Coast Guard can designate a NIC for a coastal zone SONS and the EPA Administrator can designate a NIC for an inland SONS (40 C.F.R. § 300.323). Since the NIC is responsible for coordinating the whole-of-government response to include the Cabinet, the President should designate the NIC if required for a SONS.

Establish standing delegation of NIC Clean Water Act §311(c) and (e) authorities

A NIC must have the authority to control significant aspects of a response to a major oil spill, including directing the actions of a RP. When I was relieved as Commandant, I was only able to retain the §311(c) authority through delegation by DHS Secretary Napolitano. Without this delegated authority I would not have been able to legally direct the RPs actions, authorize removal, and approve expenditures against the Oil Spill Liability Trust Fund.

In the future, a NIC, by designation, should have §311(c) and (e) authority organic to the position. This should be explicitly articulated in the NCP and Executive Order rather than delegated during a SONS. This will ensure all future NICs and response stakeholders understand the authorities inherent to a NIC *prior to* a major pollution response.

Re-direct response assets nationally

During the response, the Coast Guard and the EPA issued an emergency temporary rule that waived certain Plan Holder requirements across the country to allow resources to be re-directed to the Gulf. Although this emergency rule was drafted, published and became effective within days, it was an unnecessary step in trying to get oil spill response resources on-scene. The exigent resource requirements of a SONS require flexibility regarding response plan requirements. I recommend that when a SONS is designated, certain requirements contained in response plans be eased in order to free up equipment. This will provide the NIC and the FOSC the ability to rapidly acquire critical resources for response efforts. Area Committees should consider the potential of supporting a SONS outside of their geographic area and incorporate contingencies into their Area Contingency Plans.

Consider designating a third party to represent the RP during a SONS

During the response, the role of the RP was never understood or accepted. There was a perception that the RP was directing the response and limiting the resources available for operations to cut costs. In a number of oversight and after action hearings for this response, I have raised the possibility that this perception could be alleviated in a future major oil spill response if we name an independent third party without fiduciary ties to the RP's corporate

shareholders such as a Qualified Individual (QI) or an industry ombudsman to represent an RP during a SONS. A QI or industry ombudsman could approve expenses on behalf of the RP, through a blind trust. This would ameliorate any perceived conflicts of interests between the RP and its shareholders while promoting public confidence that all the necessary resources are being applied. In one of the final changes in this report I am recommending no further discussion of this option. I raised this alternative as a way to focus on the fact that this response was constrained by external perceptions of BP to the point that normal collaboration that is required to execute the NCP was impaired. It is clear from media reporting of my statements that this issue is being misinterpreted as a recommendation by me to change the NCP and insert a QI. While that is certainly possible, the preferable action would be to let the existing doctrine guide the response. I have come to the conclusion that senior political leadership, local governments and the public in general have been unable to separate the required role of the RP in spill response and the perception of BP in this spill. I will accept any failure to adequately explain this. That said, it should not impeach the basic RP concept or drive changes to the NCP that are not needed.

Fix the administrative and borrowing provisions of the Oil Spill Liability Trust Fund

The Oil Spill Liability Trust Fund (OSLTF) borrowing provisions were insufficient during the early stages of the *Deepwater Horizon* response. The current provisions only allow the National Pollution Fund Center (NPFC) to borrow up to \$100 million from the fund principal and use it for response through the emergency fund. A legislative change was made specifically for the *Deepwater Horizon* response, which allowed multiple advancements up to \$100 million each. These legislative changes to the borrowing provisions should be made permanent for future major oil spill responses. In addition, there is an urgent need to enact a legislative provision to allow for surge claims funding out of the OSLTF and the current \$1 billion per incident limit on expenditures from the OSLTF is clearly inadequate for a SONS level event and should be significantly raised.

The United States should immediately ratify the United Nations Convention on the Law of the Sea (UNCLOS), the "Law of the Sea Treaty."

This recommendation is provided as a standalone issue in this report. Early in this response there was significant concern that oil might become entrained in the "Loop Current" and be carried into the Straits of Florida. While that never occurred it raised the issue of international oil spill response involving foreign nations like Cuba and the Bahamas. A well blow out in Australia last year resulted in extensive oil entering Indonesian waters. Given the continued need to recover hydrocarbons from the Gulf for the foreseeable future and the prospect of further oil exploration in the Arctic, the United States must move forward to ratify the Law of the Sea Treaty which provides a governance framework for international spill response. There are a host of reasons why this Nation should not delay in meeting our international responsibility and ratify this treaty. The potential and the need to plan for international responses to oil spills is just one more compelling reason to do this.

Conclusion

During the Deepwater Horizon response, the Responsible Party and the U.S. Government discovered that there were gaps in our plans and capabilities to respond to a massive continuous oil and gas discharge in such a remote location. Collectively, we had underestimated the significant risks of a well blowout a mile below the surface of the Gulf. BP did not anticipate this contingency and therefore did not have sufficient capability *initially* to contain the well or respond to a discharge of this magnitude. Nonetheless, an immediate response effort was undertaken by the U.S. Government and the RP and all available resources and capability were swiftly employed.

Using the framework provided for in the National Contingency Plan, a monumental response was undertaken through the unified efforts of over 47,000 federal, state, and local responders, including over 6,600 active and reserve Coast Guard members. We established five incident command posts across the Gulf Coast states and 15 staging areas to help flow critical resources to impacted locations. We employed over 835 oil skimmers; over 6,100 response boats and 3,190 vessels of opportunity, and over 120 aircraft. More than 34.7 million gallons of oily-water mix have been recovered through skimming and 411 controlled in-situ burns have removed over 11 million gallons of oil from the open water.

The *Deepwater Horizon* incident required a whole-of-government response and unity of effort by both the public and private sector to bring all available resources and expertise to control, mitigate damages, and clean up the massive 4.9 million barrels of oil that is currently estimated to have been spilled into the Gulf. Unlike Hurricane Katrina where the federal government supported state and local government under the Stafford Act, the *Deepwater Horizon* oil spill called for a federally directed response supported by a Responsible Party, in this case BP, that had significant responsibilities under the Oil Pollution Act of 1990 to respond to and pay for the cleanup. The National Contingency Plan *proved* effective in this response even though we were inhibited by state and local government inexperience and reluctance to accept both the federal government's lead role in directing the expenditure of funds and response actions and the collaboration legally required with the Responsible Party. To overcome this barrier, we must reinvent how we engage with state and local government officials in preparedness planning and exercises *to ensure* they are an integral part of oil spill response unified command.

Unequivocally, I believe the Oil Pollution Act of 1990 and the National Contingency Plan served us well in this response. Moving forward, there are key efforts we should undertake with urgency to improve our collective ability to respond *before* the next major oil or hazardous substance release. We *must*: ensure that all appropriate federal, state, local and tribal government authorities and response structures are written into response plans and that elected or appointed officials are invited to participate in oil spill response exercises; de-conflict and reconcile the role of the National Incident Commander and the role of the Principal Federal Official to ensure that both regulation and policy provide for a single designated individual to serve as the President's national-level representative; ensure a National Incident Commander, upon designation by the President, has the appropriate authorities organic to the position; empower and grow the National Response Team's (NRT) roles and responsibilities to better serve as the primary federal interagency body for planning, policy, and coordination for major oil spill response; and incentivize the private sector to develop 21st century oil spill response

capabilities to keep pace with advancing technologies in oil exploration, deepwater offshore drilling, oil production, and maritime transportation.