

The *Deepwater Horizon* Oil Spill and  
The Gulf Coast Restoration Plan

Melissa M. Durbin  
Admiralty  
Professor Hooks  
16 November 2012

## TABLE OF AUTHORITY

- I. INTRODUCTION
- II. DISCUSSION
- III. GOVERNMENTAL ACTIONS
- IV. THE GULF COAST RESTORATION PLAN
  - a. Congressional Action*
  - b. Ecosystem Recovery*
  - c. Health and Human Services Recovery*
  - d. Economic Recovery*
  - e. Nonprofit Sector Recovery*
- V. CONCLUSION

## INTRODUCTION

Transocean owned and operated the *Deepwater Horizon*, a mobile offshore drilling unit, in the Gulf of Mexico.<sup>1</sup> As owner, Transocean leased the drilling rig to BP.<sup>1</sup> Thereafter, cement contractor Halliburton supplied its services in the oil field.<sup>1</sup> This collaboration could never have anticipated what happened in the spring of 2010.

On April 20, 2010, the worst environmental disaster in modern history occurred when the *Deepwater Horizon* exploded near the Louisiana coastline.<sup>2</sup> The subsequent blowout of the Macondo well caused the *Deepwater Horizon* to sink.<sup>3</sup> Lastly, efforts to stimulate the blowout preventer failed, permitting oil to disperse into the Gulf of Mexico.<sup>4</sup>

In July 2010, BP announced that efforts to cap the well were successful.<sup>4</sup> While this prevented oil from flowing into the Gulf, the well was not declared dead until several months later.<sup>4</sup> Meanwhile, those impacted from this disaster filed claims against Transocean, BP, and Halliburton. In more recent claims, suits have been brought against Cameron International, the manufacturer of the blowout preventer.<sup>1</sup>

Initially, cases were filed respectively in Texas, Florida, Louisiana, Mississippi, and Alabama federal courts.<sup>5</sup> In general, plaintiffs' preferred suits in the Eastern District of Louisiana.<sup>5</sup> However, defendants favored the Southern

District of Texas.<sup>5</sup> The primary motive of this preference is due to the fact that BP's domestic headquarters are located there.<sup>5</sup>

Shortly thereafter, Transocean filed a Limitation of Liability Action in the Southern District of Texas.<sup>5</sup> The Limitation Liability Act of 1851 permits a vessel owner to limit liability for damage or injury caused without "the owner's privity or knowledge to the value of the vessel or the owner's interest in the vessel."<sup>6</sup> In this case, the district court reasoned it would postpone ruling on motions to transfer owner's limitation of liability action.<sup>7</sup> The court reasoned that the Judicial Panel on Multi-District Litigation would decide whether the spill cases could be centralized into one court.<sup>7</sup> Accordingly, the panel reasoned that consolidation was warranted in the Eastern District of Louisiana.<sup>8</sup> Defendants thereafter filed a motion to dismiss.<sup>9</sup>

The most recent development from the catastrophe in the Gulf surrounds the criminal charges of three BP employees, two of which are accused of manslaughter.<sup>10</sup> By pleading guilty, BP agreed to the payout of four and a half billion dollars.<sup>10</sup> As Attorney General Eric Holder stated, "this marks the largest single criminal fine and the largest total criminal resolution in the history of the United States."<sup>10</sup> Meanwhile, additional claims against BP are pending for impairing "people's livelihoods and the environment."<sup>10</sup>

## DISCUSSION

This article depicts the government's actions following the *Deepwater Horizon* oil spill. Additionally, it assesses strategies designed to bring restoration in the Gulf Coast states and the approaches by which issues can be resolved in the future.

### **Governmental Action:**

In June 2010, President Barack Obama made a pledge to the Gulf Coast and its residents to recover from the *Deepwater Horizon* oil spill.<sup>11</sup> In a heartening speech, the President stated that "we will fight this spill with everything we've got for as long as it takes."<sup>11</sup> In addition, the President announced that BP would be held responsible for the damage it caused.<sup>11</sup> Thereafter, the President proposed a strategy that included efforts relating to the cleanup, recovery, and prevention.<sup>11</sup> Though each element is detrimental to the Gulf Coast region, this article assesses the second component of recovery, which focuses on the longstanding goals of the Gulf Coast community.

President Obama assigned Ray Mabus, Secretary of the Navy, the task of developing the Gulf Coast Restoration Plan.<sup>11</sup> The President directed that this plan should include several principles.<sup>12</sup> First, it shall conduct a post-spill assessment and offer suggestions for recovery.<sup>12</sup> In addition, it should address the economic recovery, community planning, restoration of the ecosystem, and

public health.<sup>12</sup> Furthermore, it should provide relief to those impacted by the spill.<sup>12</sup> Lastly, its development requires the cooperation of "states, communities, tribes, fisherman, businesses, and conservationists."<sup>12</sup>

### **The Gulf Coast Restoration Plan:**

In September 2010, Secretary Mabus released the *America's Gulf Coast* report, which provided recommendations for building a more resilient Gulf Coast.<sup>2</sup> The report received applause from Louisiana Senator Mary Landrieu because it made "many of the same recommendations that I have been making since the oil spill began."<sup>13</sup> Senator Landrieu also commended the Obama Administration on fulfilling the President's promise to restore the Gulf Coast.<sup>13</sup> Additionally, Louisiana Governor Bobby Jindal disclosed his appreciation for efforts to dedicate funds toward coast and shore repair.<sup>13</sup> However, Louisiana Senator David Vitter expressed his concern regarding the equal representation of states, but asserted that he would "ensure that money follows the environmental impacts, which would push the great majority to Louisiana."<sup>13</sup>

Despite these political differences, President Obama delivered the most accurate depiction of the report. The President commented that the report provided a pathway for moving forward with the assistance of governmental and nongovernmental actors respectively.<sup>14</sup> Additionally, the President recognized

the significance for immediate Congressional action.<sup>14</sup> In his statement, the President named Lisa Jackson, EPA Administrator, to lead a task force.<sup>14</sup>

While the President celebrated Secretary Mabus's report (hereinafter referred to as "the report"), he closed by stating that "it will take time."<sup>14</sup>

The purpose of this article is to provide an in-depth analysis to the question of what comes next.<sup>2</sup> By evaluating the three components that Secretary Mabus regards as inextricably linked, notably the environment, the economy, and health and human services, the answer to this question becomes clearer.<sup>2</sup> The article here begins with a discussion recommending Congressional action.<sup>2</sup> The issues that follow explore the ecosystem, health and human services, economy, and the nonprofit sector.<sup>2</sup>

#### A. **Congressional Action:**

The report strongly advises distributing recovery funds to the Gulf Coast communities.<sup>2</sup> In doing so, the President has to convince Congress to enact legislation allowing civil penalties recovered under the Clean Water Act ("CWA") to those impacted by the spill.<sup>2</sup> Title 33 U.S.C. section 1321 (b)(1), the CWA, prohibits dispersing harmful quantities of oil into "U.S. navigable waters, shorelines, or the contiguous zone."<sup>15</sup> The statute imposes a civil penalty on "the owner, operator, or person in charge of any vessel, onshore facility, or offshore facility from which oil or a hazardous substance is

discharged." <sup>15</sup> Consequently, any civil penalties recovered under CWA are transferred to the Oil Spill Liability Trust Fund. <sup>2</sup> This fund was created under the Oil Pollution Act of 1990. <sup>16</sup>

The OPA is a leading statute in the government's response to this disaster in the Gulf. <sup>2</sup> Congress passed this legislation following a similar oil spill, *Exxon Valdez*. In that case, ten million gallons of crude oil were dispersed into the Prince William Sound. <sup>17</sup> The OPA sanctions strict liability to the responsible parties of oil spills. <sup>17</sup> Under the OPA, "a vessel or facility discharging oil onto navigable waters or adjoining shorelines is strictly liable for removal costs and damages." <sup>17</sup> The facts show that OPA pertains to the *Deepwater Horizon* case. <sup>4</sup> Due to the location of the rig and the scattering of oil throughout U.S. waters and shorelines, OPA applies. <sup>4</sup> Therefore, responsible parties such as BP will be held liable for removal costs and damages. <sup>4</sup>

Although BP may be liable, the report determines that the Oil Spill Liability Trust Fund is designed for future cleanup and response efforts. <sup>2</sup> At present, the critical issue remains that funds are not dispersed into a Gulf Coast Recovery Fund, which is a restoration fund for the Gulf Coast. <sup>2</sup> The Mabus report suggests that a Gulf Coast Recovery Council should direct and operate these funds. <sup>2</sup> Certainly, this will lead in the eventual recovery in the Gulf. <sup>2</sup>



Similarly, the report discloses that CWA penalties should be redistributed to projects bolstering the region's health.<sup>2</sup> However, this requires the cooperation from state and local governments.<sup>2</sup> It is specifically recommended that a presidentially appointed state co-chair be elected at the state level.<sup>2</sup> In addition, local governments should assist the Gulf Coast Recovery Council.<sup>2</sup> Lastly, a balance must be achieved at the local level between foreign relations, public affairs, and communications.<sup>2</sup>

In sum, the needs of this region cannot be accomplished without the assistance of Congress.<sup>2</sup> However, this creation of the Gulf Coast Recovery Fund and the Gulf Coast Recovery Council will identify the effects caused directly by the *Deepwater Horizon* oil spill.<sup>2</sup> As a result, Congress must take action in ensuring its commitment to the Gulf.<sup>2</sup>

**B. Ecosystem Recovery:**

The principal purpose of this section is to reverse the degradation of the Gulf's ecosystems.<sup>2</sup> Secretary Mabus envisions that a durable Gulf of Mexico is one that supports "the economies, communities, and cultures of the region."<sup>2</sup> The successful restoration of this section compels the support from science and other related principles.<sup>2</sup>

First, the report identifies the restoration efforts made by the Gulf Coast states.<sup>2</sup> For example, the state of Louisiana devised a "State Comprehensive

Master Plan for a Sustainable Coast." <sup>2</sup> This plan seeks the repair of erosion located on the coastal wetlands of Louisiana. <sup>2</sup> Further, the plan directs "all coastal restoration and hurricane prevention efforts in Louisiana." <sup>2</sup> Collectively, these state efforts are likely to fill in the missing gaps in the larger Gulf Coast restoration effort. <sup>2</sup>

This chapter recommends the implementation of an Ecosystem Restoration Task Force. <sup>2</sup> Its main purpose is to coordinate actions between federal and state agencies and evaluate the progression of restoration plans. <sup>2</sup> Further, it is intended to promote and facilitate projects, including funding, and restorations. <sup>2</sup> It must improve the public's commitment toward progress, application, and direct science efforts. <sup>2</sup> Here, Secretary Mabus suggests affiliating technical teams in support of the Task Force. <sup>2</sup> Specifically, the report identifies the following four teams: the Regional Planning and Integration Technical Team, the Environmental Review Technical Coordination Team, the Budget and Funding Coordination Team, and the Science Coordination Team. <sup>2</sup>

The chief responsibility of the Regional Planning and Integration Technical Team is to advise the Task Force on developing a Gulf of Mexico Regional Ecosystem Restoration Strategy to be completed within the first year. <sup>2</sup> In addition, the Environmental Review Technical Coordination Team is to

develop a strategy for environmental review with the Council on Environmental Quality.<sup>2</sup> Also, the Budget and Funding Coordination Team is accountable for collaborating with agencies to construct a budget for the region.<sup>2</sup> The Science Coordination Team will ensure that decisions are based on science.<sup>2</sup> Yet, other teams may need to be included on either a temporary or permanent basis.<sup>2</sup>

In essence, the *Deepwater Horizon* oil spill has made it possible to fully inspect the environmental degradation of the Gulf.<sup>2</sup> However, its success depends upon the support of governmental and nongovernmental subdivisions.<sup>2</sup> In so doing, the vision of a healthy and resilient Gulf Coast can be made into a reality.<sup>2</sup>

### C. **Health and Human Services Recovery:**

This chapter explores the challenges to health and human services resulting from the *Deepwater Horizon* oil spill.<sup>2</sup> Several approaches are also studied which serve to promote the recovery in this region.<sup>2</sup> Here, the report considers involving the following: surveillance, behavioral health prevention and treatment, the delivery of medical services, access to human services, seafood safety, and research.<sup>2</sup>

With surveillance, risks negatively impacting health can be reduced or eliminated.<sup>2</sup> Here, Secretary Mabus proposes that governmental actors should partner with the Gulf states.<sup>2</sup> This section classifies how the Health and Human

Services (HHS) Centers for Disease Control and Prevention have already joined with several states in identifying the effects of the spill and alerting public health officials.<sup>2</sup>

In the coming years, behavioral health services are projected to increase.<sup>2</sup> While Secretary Mabus ensures that the government is eager to work with the Gulf states, further action is needed.<sup>2</sup> Generally, the consequences from the spill will be the most extensive for those individuals that rely on the businesses disturbed by the spill.<sup>2</sup> However, the report recommends refining telecommunications.<sup>2</sup> To demonstrate, the introduction of a toll-free hotline could potentially alert individuals of where to seek help if needed.<sup>2</sup>

Perhaps the most challenging issue is expanding medical services to encompass members of the local community.<sup>2</sup> Because patients deserve a higher quality of care, it is suggested for the medical arena to identify illnesses from the spill through early detection.<sup>2</sup> Therefore, the proper treatment can be afforded to patients.<sup>2</sup>

This next issue of human services is likely to increase as the lasting effects of the spill are felt.<sup>2</sup> The impact is capable of causing individuals to deplete their financial means and potentially losing the support of family and friends.<sup>2</sup> Because the extent to which human services are needed is not yet

known, it is recommended that the government fully utilize existing programs and funds.<sup>2</sup> BP recently publicized that it would provide "\$52 million to help address behavioral needs of the Gulf Coast."<sup>2</sup> While this is one avenue for relief, other funding will be needed.<sup>2</sup> In the near future, these services can expect funding issues as more residents become eligible for human services programs.<sup>2</sup>

Furthermore, the issue of seafood safety requires the government to take additional action.<sup>2</sup> The report notifies that the "restoration of confidence in seafood safety will take a long-term effort."<sup>2</sup> With limited funding, extra training, supplies, and equipment are needed for seafood sampling.<sup>2</sup> Still further, seafood samples identify contaminants linked to the spill.<sup>2</sup> While the safety of seafood depends largely on inspections and data, it creates a challenge for the government, as it had to certify that the seafood did not contain dispersants.<sup>2</sup> Most importantly, it is critical that state and federal workrooms collaborate together in evaluating and reporting the findings of oil and pollutants.<sup>2</sup>

Generally, studies have failed to consider the long-term results from oil spills.<sup>2</sup> Research conducted in the past has focused on the short-term effects.<sup>2</sup> Thus, this chapter advises that a panel of experts observe the lasting imprint from the spill on local communities.<sup>2</sup> To illustrate, the *Exxon Valdez* oil spill

resulted in the increase of "anxiety, depression, and post-traumatic stress disorder." <sup>2</sup> In this case, research shows that "one-third of all health claims associated with this oil spill have been for anxiety and stress." <sup>2</sup> Therefore, the cooperation of the federal and state governments is needed to meet the needs of these communities. <sup>2</sup>

In sum, the report generally favors a unified approach for the health and human services sector. <sup>2</sup> This strategy is to incorporate surveillance and research into its framework. <sup>2</sup> In so doing, the Gulf Coast will be better safeguarded from the potential health risks in future disasters. <sup>2</sup>

#### D. **Economic Recovery:**

In this section, Secretary Mabus recommends focusing on the concerns of individuals, businesses, and communities of the Gulf. <sup>2</sup> The economic impact from the spill will affect each community differently. <sup>2</sup> Therefore, it is strongly advised that the government advance its programs to include members throughout the Gulf Coast community. <sup>2</sup>

One example is the independently run claims facility managed by Kenneth Feinberg. <sup>2</sup> BP had previously managed the claims process before it was transferred to the Gulf Coast Claims Facility (GCCF). <sup>2</sup> Thereafter, the GCCF gathered material involving "claimants, and the justifications that they

provided to explain individual claims." <sup>2</sup> Accordingly, a claim may be submitted to GCCF for matters concerning "clean-up and removal costs, lost earnings or profits, among others." <sup>2</sup> Under the GCCF, relief is determined using the proximity test. <sup>1</sup> Here, claims are classified as either emergency or final claims. <sup>1</sup> Emergency claims are comprised of six months of lost income, whereas final claims signify long-term losses. <sup>1</sup> According to Secretary Mabus, these calculations illustrate the importance for taxpayers to learn the options concerning financial hardship. <sup>2</sup>

In addition, families impacted by the spill may need assistance accessing such materials as financial services. <sup>2</sup> The report further identifies that small business owners may require help adjusting to the different business environment. <sup>2</sup> In particular, The Treasury's Community Development Financial Institutions Fund (CDFI Fund) provides support to those affected by this spill. <sup>2</sup> However, the report recommends that the CDFI Fund expand its services. <sup>2</sup> Carrying out these initiatives will better enable more members of the Gulf and its people to recover from this tragedy. <sup>2</sup>

In conclusion, the *Deepwater Horizon* oil spill has adversely affected the the Gulf Coast. <sup>2</sup> Meanwhile, observations of the Gulf are essentially crippling the tourism and entertainment industries. <sup>2</sup> While the region is exploring new ways to restore its image, there is no single explanation that will trigger its

economic recovery.<sup>2</sup> However, local support coupled with a look to the future suggests a promising economic revival of this region.<sup>2</sup>

**E. Nonprofit Sector Recovery:**

The nonprofit sector serves an important function as it evaluates the needs of local communities.<sup>2</sup> This factor explicitly identifies "the most pressing concerns in societies, available resources, and potential limitations."<sup>2</sup> This chapter considers several approaches to regenerate the nonprofit sector.<sup>2</sup> These strategies will also ensure the ability of the nonprofit sector to serve those areas most impacted from the spill.<sup>2</sup>

Following the spill, the need for nonprofit organizations increased by an estimated thirty to fifty percent in the Gulf states.<sup>2</sup> Many organizations faced the challenge of keeping up with the daily preparations such as "food, job training, and mental health services."<sup>2</sup> Hence, this precluded these organizations from assessing the longstanding needs of the communities.<sup>2</sup> Still further, the spill has triggered job loss, stress, and decreased fundraising.<sup>2</sup>

This section of the report determines that the nonprofit sector must develop a network of support, which provides access to services to the most distraught areas.<sup>2</sup> Secretary Mabus recommends that databases need to be fully exploited in response efforts.<sup>2</sup> To illustrate, the Coordinated Assistance



Network is a confederation of disaster response associations with an online database consisting of information about the "victims, their needs, and the transfer of services." <sup>2</sup> This database delivers materials to both administration and nonprofit leaders. <sup>2</sup> Further, the report designates that response efforts must incorporate state and local entities. <sup>2</sup> Likewise, community and faith-based organizations should be integrated due to their ability to comprehend the cultural and ethnic communities needs. <sup>2</sup>

Although the nonprofit sector plays a vital role in the recovery of impacted communities, its ability to administer a long-lasting recovery is uncertain. <sup>2</sup> The spill has regrettably restricted its ability to extend its role in restoration. <sup>2</sup> Therefore, the support of the local community is critical in ensuring that the needs of the Gulf Coast are recognized. <sup>2</sup>

## **CONCLUSION**

Overall, this article reflected on the events succeeding the April 20, 2010 catastrophe in the Gulf of Mexico. The article provided a detailed examination of Secretary Mabus's *America's Gulf Coast*. Further, the solutions raised in this article generally require the cooperation of the government, states, and members of the Gulf. In addition, the article examined the application of this alliance to Congressional action, and the recovery of the ecosystems, health and human services, economic, and nonprofit sector. Although these sectors offer

potential solutions, it is one step closer toward the lasting recovery in the Gulf.

---

<sup>1</sup> Ilisja Moreland, *From The Exxon Valdez To The Deepwater Horizon: Will BP's Dollar Reach Where The Oil Didn't?* 14 Sustainable Dev. L.J. 117 (2011).

<sup>2</sup> Ray Mabus, *America's Gulf Coast: A Long Term Recovery Plan after the Deepwater Horizon Oil Spill*, <http://www.restorethegulf.gov/sites/default/files/documents/pdf/gulf-recovery-sep-2010.pdf> (Sept. 2010).

<sup>3</sup> Wikipedia, *Deepwater Horizon Explosion*, [http://en.wikipedia.org/wiki/Deepwater\\_Horizon\\_explosion](http://en.wikipedia.org/wiki/Deepwater_Horizon_explosion) (last modified November 11, 2012).

<sup>4</sup> Dr. Ronen Perry, *The Deepwater Horizon Oil Spill and The Limits of Civil Liability*, 86 *Wash. L. Rev.* 1 (February 2011).

<sup>5</sup> *Oil Spill Cases Transferred To New Orleans Federal Court*, 17 No. 8 (September 22, 2010).

<sup>6</sup> 46 U.S.C. §§ 30501, *et. seq.*

<sup>7</sup> *In re Oil Spill by the Oil Rig "Deepwater Horizon" In The Gulf of Mexico*, 719 F. Supp. 2d 753 (S.D. Tex. 2010).

<sup>8</sup> *In re Oil Spill by the Oil Rig "Deepwater Horizon" In The Gulf of Mexico*, 731 F. Supp. 2d 1352 (M.D.L. 2010).

<sup>9</sup> *In re Oil Spill by the Oil Rig "Deepwater Horizon" In The Gulf of Mexico*, 808 F. Supp. 2d 943, (E.D. La. 2011).

<sup>10</sup> Michael Kunzelman, Associated Press, *BP to pay \$4.5 billion*, <http://theadvocate.com/home/4439281-125/report-bp-agrees-to-pay> (November 15, 2012).

<sup>11</sup> The White House: Office of the Press Secretary, *Remarks by the President to the Nation on the BP Oil Spill*, <http://www.whitehouse.gov/the-press-office/remarks-president-nation-bp-oil-spill> (June 15, 2010).

<sup>12</sup> The White House: Office of the Press Secretary, *Memorandum from the President on the Long-Term Gulf Coast Restoration Support Plan*, <http://www.whitehouse.gov/the-press-office/memorandum-president-long-term-gulf-coast-restoration-support-plan> (June 30, 2010).

<sup>13</sup> *Louisiana Vitter, Melancon, Landrieu, Jindal Respond to Mabus's Report*, <http://www.bayoubuzz.com/buzz/item/483-louisiana-vitter-melancon-landrieu-jindal-respond-to-mabuss-report> (September 28, 2010).

<sup>14</sup> The White House: Office of the Press Secretary, *Statement by the President on the Long-Term Recovery Plan After the Deepwater Horizon Oil Spill*, <http://www.whitehouse.gov/the-press-office/2010/09/28/statement-president-long-term-recovery-plan-after-deepwater-horizon-oil-> (September 28, 2010).

<sup>15</sup> 33 U.S.C. § 1321.

<sup>16</sup> Larry Schnapf, *Oil Pollution Control Act: An Overview for the Business Lawyer*, <http://www.environmental-law.net/wp-content/uploads/2011/08/OPA-Overview-for-Business-Lawyersapr2010.pdf>.

<sup>17</sup> Adam Solomon and Dana Gambro, *The Deepwater Horizon Oil Spill and its Effects on the Oyster Industry: How Legal Recovery Can Operate for Restaurants, Oyster Farmers, and Oyster Harvesters in Louisiana*,

---

<http://www.law.tulane.edu/uploadedFiles/Academics/Lectures/The%20Deepwater%20Horizon%20Oil%20Spill%20And%20Its%20Effects%20On%20The%20Oyster%20Industry.pdf>  
(last accessed November 15, 2012).