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GOVERNMENT AFFAIRS CONSULTANTS

### ISSUE ALERT

From: Joel Porter, Legislative Fellow

Re: *Review of Deepwater: The Gulf Oil Disaster and the Future of Offshore Drilling*

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The National Commission on the BP Deepwater Horizon Oil Spill issued an official report to President Obama on January 11, 2011, concerning the causes and effects that the explosion of the Deepwater Horizon oil rig and Macondo well, which occurred on April 20<sup>th</sup>, 2010, would have on the Gulf Coast Region's environmental, human, and economic systems. This issue alert reviews and details the Report, focusing directly on chapters 6, 7, 9, and 10.

#### **Chapter 6 – Oiling a Rich Environment: Impacts and Assessments**

##### *Environmental Impact*

This chapter of the Report covers the ecological, economic, and psychological effects of the spill on the Gulf Coast. It provides a statutory process in which the spill is to be scientifically monitored and provides scientific assessment of the region's ecological system. The scientific approach used covers the limited data on the region taken prior to the spill, the challenges of gathering data immediately following the spill, and the potential for future scientific research if the federal government and responsible parties increase resources available to the area.

The Oil Pollution Act of 1990 (OPA) provides the process for assessing damage to areas affected by oil spills. It designates trustees to ascertain and/or quantify damages to 1. public national resources; 2. the services said resources provide; and 3. the public's lost use of these resources. In the case of the Macondo well explosion, trustees have been chosen from NOAA and the DoD (for affected lands owned by the military) and through

state government designation. OPA regulations further state that BP and other responsible parties must restore the coastline to its functioning level as of April 19, 2010.

Thus far the assessment shows that 650 miles of coastline are oiled. In Louisiana 130 miles of coastline have been designated moderate to heavily oiled and most of that land is in the delicate delta region. An additional 20 miles of oiled land has been designated moderate to heavily oiled in various parts of Mississippi, Alabama, and Florida accounting for another 60 miles of oiled coast. The slick never reached Texas or the southern coastline of Florida's Panhandle, due in large part to favorable wind patterns and tidal currents, specifically a large circulating eddy that prevented the oil from reaching and riding the 'Loop Current' to the Florida Keys.

The incident has affected the health and wellness of plant, marine, and human life through ingestion, filtration, inhalation absorption, and fouling. Predators ingest oil through eating oiled organisms or by mistaking globulates as food, top surface breathing marine mammals inhale and/or absorb hazardous chemicals and fumes, and oil in the water column affects fish and other marine organisms through dermal contact, filtration, or ingestion. The most devastating loss to the Gulf ecosystem has been the loss of filter feeders such as oysters, shrimp, and krill. A single oyster can digest and filter one gallon of water per hour. The largest losses in oyster beds occurred in Barataria Bay, Breton Sound, and around the lower Mississippi River region when an attempt to divert the oil by flooding each area with fresh water failed.

Oil now covers over 40% of the offshore area used by crabs (specifically Blue Crabs) to spawn their larva. Additionally, through November 1<sup>st</sup>, 2010, the ongoing assessment has found:

- 8,183 dead birds
- 1,144 dead sea turtles
- 109 marine mammals (including multiple variety of dolphin and one dead sperm whale calf) – dead or alive.

The number of finfish lost is incalculable due to the magnitude of the disaster. The largest scientific effort ever to tag and track sea-turtles, whales, and other large finfish by aerial reconnaissance, satellite, and open-water observation, is currently underway. Immediately following the incident, the federal government was slow to fund scientific research projects and lost the rare opportunity to observe and track destruction caused to an ecosystem immediately following an oil spill. The National Science Foundation attempted to fill the scientific gap by offering Rapid Response Research Grants to independent researchers. In total, they funded 167 research projects (none exceeding \$200,000) totaling \$19.4 million as of September, 2010. BP has committed \$500 million to independent research, but of that only a small portion has been allocated and the rest will be channeled through the Gulf of Mexico Alliance, a not-for-profit organization led by the five Gulf coast governors.

### *Economic Impact*

The Gulf Coast economy's three largest sectors, fishing, tourism, and energy, have all been devastated by the Macondo well blow out. Prior to the blow out, the Gulf Coast fishing industry was producing a third of the nation's seafood supply. The initial economic blow came from a direct loss to fisheries, but a second blow came from a temporary federal closure of fishing waters and food processing plants and the public perception of health risks associated with petroleum tainted seafood. In 2008, the region produced of 1.27 billion pounds of finfish and 73% of the nation's shellfish (half

coming from Louisiana) totaling more than \$659 million in revenue. The total economic loss to the seafood industry is still being evaluated, however, BP has already given the state of Louisiana \$48 million and Florida \$20 million for seafood testing and marketing. As of December, 2010 Alabama was still under consideration for similar funding.

Tourism brings in \$19.7 billion to the Gulf Coast annually (Florida bringing in more than 50% of that total), but the perceived image of oiled beaches and health risks have taken a toll on the industry. The Commission's Report identifies the loss to tourism as a significant blow to the Gulf Coast economy, however it goes on to state that,

“Quantifying such losses and the value of reputational damage may be even more difficult than assigning a value to the indirect losses suffered by the Louisiana fishing industry. Furthermore, responsibility for compensating those who may have suffered the indirect financial losses poses challenges of law, administration, and equity.”

Finally the Report states that immediately following the spill the moratorium on offshore drilling negatively impacted the energy industry. Aside from identifying the economic loss, the Report does not go into detail regarding the total monetary loss to energy companies and their workers or any compensation thereof.

To cover economic fallout, BP has created an escrow account and is incrementally funding it with what will eventually total \$20 billion. As of November 23<sup>rd</sup>, 2010, \$2 billion had been paid to 127,000 claimants. BP has allocated an additional \$42 million to Gulf state health departments and \$10 million to state substance abuse and mental health administrations. Both donations are to assist with depression, anxiety, and other long term mental health affects that are likely to result from depreciation in the quality of life caused by the economic impacts of the spill.

## **Chapter 7 – Recovery and Restoration**

The Gulf Coast has been environmentally degraded for centuries. Hypoxia (low oxygen in the bottom waters), caused by drainage from the fertilizers used for Midwestern agriculture, has created a dead belt spanning 7,700 square miles of Gulf waters. The erosion of the Mississippi River Delta and a drastic increase in saliency has displaced and/or killed hundreds of species of plants and animals, creating an uninhabitable ecosystem. The blowout of the Macondo well has increased awareness of this and provided an opportunity to restore the entire region at an increased pace and on a much larger scale.

The Report calls for the implementation of the Gulf Hypoxia Action Plan (GHAP) developed in 2001. GHAP's goal is to restore roughly 2,000 square miles of dead seabed by 2015, a quarter of that to be completed by 2010, by reducing the amount of nitrogen and phosphorus currently in the Gulf. However, delays impaired the implementation of the GHAP and the blowout further impaired its efforts. The Commissions' Report calls for the GHAP to be incorporated into the broader costal ecosystem recovery efforts and for more rigorous regulation in the Clean Water Act limiting discharges of hypoxia causing materials.

The Commissions' Report also calls for marine spatial planning to better manage oil and gas exploration, fishing, navigation, and military operations. The Report states that spatial planning will provide better organization in oversight and, in the event of another accident, aid with communication. This can also be used to better guide the mapping and size increase of protected marine areas and regulate and monitor the health of Gulf fisheries once the "NOAA Catch Share Policy", a federal program regulating commercial catch sizes, goes into effect.

The Report also states that the Mississippi River Delta has been degrading and that Louisiana has essentially been disappearing into the ocean for more than a century due to its levee-system and water controls. The Report states that while improvement has been made by the Army Corps of Engineers to reverse this, there is still significant yearly loss. "The annual sediment load reaching the Delta has decreased from 400 million metric tons before 1900 to 145 million metric tons in recent years....And very little of that reaches wetlands. (204)" Navigation canals and Katrina have made matters worse and now, with the current rate of land loss, much of southern Louisiana will disappear by 2100 without immediate action. Proposals to curb the loss of land and restore the delta that have come forward through the years include:

- Louisiana Act 6 (1989) – State legislature passed an initiative to manage restoration projects.
- The Coastal Wetlands, Planning, Protection, and Restoration Act (1990) ("Breaux Act") – A federal plan to increase restoration efforts by creating the Sport Fish Restoration and Boating Trust Fund, which receives taxes on gasoline for motorboats and other small engines, and on sport-fishing equipment yielding between \$30 million and \$80 million per year.
- Coast 2050 (1998) – A feasibility study, implemented by the agencies that developed the "Breaux Act", designed to offer recommendations to better manage the flow of sediment into the Mississippi River and to preserve and develop marsh and delta regions.
- Louisiana Coastal Area Comprehensive Coastwide Ecosystem Restoration Report (2005) – A study offered by the Corps to guide programs and better develop restoration programs.
- Water Resources Development Act (WRDA) (2007) – The result of the Corps' Coastwide Ecosystem Restoration Report. Congress passed WRDA to fund 15 projects with \$2 billion and created the Louisiana Coastal Area Ecosystem Restoration Program.
- Department of Defense Appropriations Act of 2006 – Following Katrina, this legislation directed the Corps to develop comprehensive hurricane protection. Those protections include, "hurricane and storm damage reduction, prevention of saltwater intrusion, preservation of fish and wildlife, prevention of erosion, and other related water resource purposes at full Federal expense."
- The State of Louisiana's Coastal Protection and Restoration Fund – Includes \$25 million a year from state mineral income and budget surpluses from previous years.
- The federal Coastal Impact Assistance Program – Authorizes \$250 million to be split among the coastal states of Louisiana, Alaska, Texas, Mississippi, Alabama, and California from FY 2007 - FY 2010.
- The Federal Gulf of Mexico Energy Security Act – Participating Gulf States, except for Florida, share 37.5 percent of federal offshore revenue from new mineral lease areas for use in coastal protection. This includes onshore infrastructure projects that mitigate the impacts of outer continental shelf energy activities.
- Louisiana-Mississippi Gulf Coast Ecosystem Restoration Working Group – Commissioned by President Obama in 2009, this group offered a road map for advancing policy making. These recommendations resulted in the President Authorizing \$19 million for construction, sediment use, and river diversions and \$16.6 million for studies of eventual restoration projects in his FY 2011 budget.

The Commission accepts that the many proposals over the years, and conflicting federal, state, and local jurisdiction issues, have caused enormous conflicts in the planning and management of the Gulf Coast's restoration efforts. The Report states that while estimates for full funding of comprehensive restoration efforts vary, Congressional testimony has left policy makers operating under the assumption that full restoration will require a minimum of \$500 million annually for 30 years (\$15 to \$20 billion in total).

The Report sees the Deepwater Horizon Disaster as a conduit to both begin funding restoration projects and to bridge the management issues through the creation of a guiding set of principles to restore the Gulf. At the core of their plan, the Commission identifies that the "responsible parties" will be levied a hefty fine for violating a number of components within the Clean Water Act. However, law stipulates that these damages must be funneled into the Oil Spill Liability Trust Fund established after the *Exxon Valdez* disaster. The Report calls on Congress to legislatively authorize that funds be channeled from the Trust through the guidance of a Trustee Council. This Council should not only be occupied by experts from the field and policy makers but by members of the affected communities as well. The Report places particular importance on this guidance, saying,

"Local citizen support is important for several reasons: it can reduce delay of projects due to litigation or other opposition; it contributes to political support for overall goals and funding, in the short and long terms; and it contributes to overall trust in government, which results in support for local projects. Any structure should therefore include a citizens' advisory council to provide formal advice and a direct line to citizens' concerns."

The Commission's Report also indicates how important it is for the Administration and Congress to keep both economic and environmental restoration a part of its agenda.

## **Chapter 9 – Investing in Safety, Investing in Response, Investing in the Gulf**

Chapter 9 addresses the causes and consequences of the oil spill and offers several recommendations in seven interest areas to guide policy makers in their efforts to better manage, regulate, and protect the valuable resources that the Gulf provides. Those seven recommendations are:

1. Improving the Safety of Offshore Operations
2. Safeguarding the Environment
3. Strengthening Oil Spill Response, Planning, and Capacity
4. Advancing Well-Containment Capabilities
5. Overcoming the Impacts of the *Deepwater Horizon* Spill and Restoring the Gulf
6. Ensuring Financial Responsibility
7. Promoting Congressional Engagement to Ensure Responsible Offshore Drilling

These recommendations are covered in greater detail in an addendum to Chapter 9.

## **Chapter 10 – American Energy Policy and the Future of Offshore Drilling**

Chapter 10 notes the public's outcry following the blowout of the Macondo well and discusses the need to balance the multiple resources that the Outer Continental Shelf provides. The Commission identifies one central lesson learned from the event: both an overhaul of industry practice and government oversight is required to manage natural resources and their exploration. The Commission continues by reiterating that deepwater drilling does not have to stop, but that it must be done safely and that new policies (such as those mentioned in chapter nine) need to be adapted.

Moreover, the Commission recommends that a broad review of the nation's patterns of energy production should be explored to guide policy-making. The Commission's Report cedes that oil and gas will continue to play a large role in meeting the Nation's energy demands for many future decades but policy should evolve at a consistent rate that matches the evolution of economic security and the pace of technology, safety, and environmental concerns. Additionally, it suggests a proactive approach to switching from nonrenewable energy sources to renewable substitutes to ensure that our national security is not totally reliant on diminishing supplies of nonrenewable, and all-too-often foreign, resources. Until we are able to fully develop those renewable resources the Report states that "oil from federal offshore lands helps moderate America's dependence on imported supplies, lessening the current trade deficit and contributing to national security." It also lists several other positive aspects of domestic (offshore) drilling, such as:

- Significant leasing revenues
- Royalties on production
- Increased employment (tens of thousands of workers)
- Support of local economies

Given the multiple benefits that offshore drilling provides, the Report suggests criteria for balancing its concerns with the Nation's energy needs, specifically those of the transportation-related sector. Those criteria are:

- Maintaining a sufficient reserve of petroleum to protect American national security should access to foreign sources be lost or become unreliable
- Requiring energy-efficient automobiles and other vehicles (among other sources of consumption) to reduce fuel use, and promoting energy-efficient transit alternatives
- Promoting the development of clean and domestically produced alternative fuels or sources of power for transportation
- Managing the inherent risks of domestic production of oil and gas — including from offshore areas — while considering the short- and long-term availability of these fuels

- Requiring safe operations to protect human health
- Protecting the natural environment, including steps to limit climate change

The Report suggests creating a comprehensive energy policy that balances the risks and rewards of oil and gas drilling and sets strategy to further develop and maintain renewable energy sources.

Learning from the Deepwater Horizon incident, the Report calls on the U.S. to work with international interests as we develop policy. Unifying exploration standards to ensure that technology assists safety measures concurrently will help mitigate future spills across international boundaries, this is extremely important as Mexico and Cuba begin deepwater exploration near U.S. territory.

Finally, the Report concludes that creating and implementing energy policy will take an enormous amount of political will and leadership. However, as the U.S. continues to move forward with the exploration of natural resources, it must do so in a safe and responsible manner, which can only be achieved by making drastic changes to both the industrial sector and within the government.