GULF RESTORATION NETWORK

UNITED FOR A HEALTHY GULF

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TESTIMONY OF CYNTHIA SARTHOU, EXECUTIVE DIRECTOR, GULF RESTORATION NETWORK

BEFORE THE U.S. SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION FOR THE SUBCOMMITTEE ON OCEANS, ATMOSPHERE, FISHERIES, AND COAST GUARD

JULY 21, 2010

I am Cynthia Sarthou, the founding Executive Director of the Gulf Restoration Network. I have been working on ocean and coastal issues for over three decades, with the last xx years spent in the Gulf. The Gulf Restoration Network or GRN is a fifteen year-old environmental advocacy organization exclusively focused on the health of the Gulf of Mexico. Our mission is to unite and empower people to protect and restore the natural resources of the Gulf for future generations. Our primary efforts have focused on ensuring healthy waters, protecting and restoring coastal wetlands, and defending marine fisheries and ecosystems. Our board members hail from all five Gulf States.

Since our founding in 1994, the GRN has followed activities related to oil and gas development in the Western and Central Gulf of Mexico, attending hearings and filing comments. Throughout that time period, I continually heard from representatives of the Bureau of Ocean Energy Management, Regulation, and Enforcement, ("BOEMRE") formerly the Minerals Management Service ("MMS"), and various oil companies that my concerns about the potential impacts to marine species and habitats from oil and gas exploration and development were negligible. The reason given was generally that the industry was so far advanced in its technological ability and its technology so fail safe that a major accident could never happen. As the BP drilling disaster has shown all too clearly, they were wrong.

I. Research and Development and Its Effectiveness in Preparing for the BP Horizon Disaster.

What has been equally evident is that BOEMRE failed, as did Congress, to invest in research and development intended to improve oil spill response capabilities because of their belief that an oil spill of any significant magnitude was improbable. As a result, the response to the BP Horizon disaster has involved antiquated technologies, such as skimming, burning and the use of dispersant. Because of this lack of preparedness a significant amount of oil has spread across the waters of the Gulf and onto Gulf state beaches and coastal wetlands.

After the Exxon Valdez spill in 1989, the Minerals Management Service (MMS), the Coast Guard and NOAA, had reason to believe that research into oil spill response technology was

necessary to improve oil spill response efforts. In fact, Section § 2761 of the OPA established the Oil pollution research and development program. However, monies needed to support the research under Section 2761 were not appropriated.

Since 1995 the MMS has spent between $6 and $7 million annually on research[1], however, little, if any, of that research focused on developing new oil spill response technologies that could more safely and effectively contain oil either at the surface or subsurface. The MMS did conduct research on the effectiveness of booms[2], burns[3], dispersants [4]and skimmers[5], looked into the best possible weather conditions to apply the respective measures[6], published many studies showing the extreme difficulty in capturing and stopping oil spills from blow out preventer failures in deep depths, and researched the formation of subsea oil plumes. However, even though dispersants are an approved method of addressing oil spills, neither the MMS nor EPA has completed research regarding the long-term impacts of chemically dispersed oil on the marine ecosystem. Yet, in response to the BP Drilling Disaster, they have approved the application of approximately 2 million gallons of dispersant – the largest amount applied in U.S. history. Additionally, the MMS has not required that oil companies have sufficient amounts of other existing oil spill technologies in place to respond to a worst-case scenario oil spill. Instead, the MMS trusted oil companies to have the resources available and in place. As the BP Deepwater Horizon disaster illustrates, the companies are grossly unprepared to deal with a spill the magnitude of the current disaster.[7] If the companies had sufficient booms and skimmers in place prior to the BP-Deepwater Horizon disaster, they could have prevented more of the oil from spreading along the Gulf coast.

While the MMS did conduct research into certain aspects of oil spill response technology, the response to the BP Deepwater Horizon disaster illustrates that BOEMRE failed to complete

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[1] Le, Phuong. "Little Money, Study Devoted to Oil Spill Cleanup Technology - The Boston Globe." *Boston.com*. 27 June2010.Web.<http://www.boston.com/news/science/articles/2010/06/27/little_money_study_devoted_to_oil_spill_cleanup_technology/>.

[2] Air Jet Atomization and Burning of Oil Slicks, S. L. Ross Environmental Research Limited, 1991. http://www.mms.gov/tarprojects/152.htm (see also Technology Assessment and Concept Evaluation for Alternative Approaches to In-Situ Burning of Oil Spills in the Marine Environment, Final Project Report, Marine Research Associates, North Stonington, Connecticut, September 1998. <http://www.mms.gov/tarprojects/291.htm>).

[3] S.L. Ross Environmental Research, Ltd., and Applied Fabrics Technologies, Inc., The Effect of Buoyancy to Weight Ratio on Oil Spill Containment Boom Performance, Final Report, May 2003. <http://www.mms.gov/tarprojects/457.htm> (see also Screening Test for Fire Resistant Booms in Waves and Flames, SL Ross Environmental Research, Ltd, April 1998. <http://www.mms.gov/tarprojects/244.htm>).

[4] *Identification of Window of Opportunity for Chemical Dispersants on Gulf of Mexico Crude Oils*, November 2007, By Randy Belore, S.L. Ross Environmental Research Ltd., Ottawa, ON, Canada <http://www.mms.gov/tarprojects/595.htm>.

[5] Investigation of the Ability to Effectively Recover Oil Following Dispersant Application – Final Report, SL Ross Environmental Research Ltd., 21 pp., December 2007. <http://www.mms.gov/tarprojects/589.htm>.

[6] See *Identification of Window of Opportunity for Chemical Dispersants on Gulf of Mexico Crude Oils*, November 2007, By Randy Belore, S.L. Ross Environmental Research Ltd., Ottawa, ON, Canada <http://www.mms.gov/tarprojects/595.htm>.

[7] <http://www.gomr.mms.gov/PI/PDFImages/PLANS/29/29977.pdf> (page 7-1) (BP's exploration plan stating that they could address a 300,000 barrel a day spill); http://www.gomr.mms.gov/PI/PDFImages/PLANS/25/26601.pdf>(see page F 1) (Shell claiming that they can respond to an oil spill of 80,000 barrels per day).

necessary research on or support development of new oil spill response technologies. Our research has revealed that BOEMRE has received little, if any, funding to verify the effectiveness of technologies developed by the private sector to address oil spills or support research and development of more effective oil spill response technologies. This is not to say that technologies have not been developed. GRN's staff received hundreds of calls and emails, as did BP and all of the state and federal agencies involved, pressing for the use of new oil spill response technology. However, because there had been no research and approval of these technologies prior to the BP disaster, the agencies were faced with the impossible task of trying to effectively sort out the truly effective technologies, approve and begin use of them to address oil already spewing from the BP Horizon well. With the exception of the higher profile media worthy technologies, such as that pressed by Kevin Costner, this led BP and the Coast Guard to simply revert to the less than effective, but better known, techniques of booming, skimming, burning, and dispersing.

If MMS had fulfilled its duty to increase the effectiveness of oil spill response technology, more oil would have been captured near the site of the blowout and the impacts associated with the Deepwater Horizon's would probably be much less severe.

II. Public and Scientist Involvement in Federal Government Response

The Federal Government's response efforts have largely excluded members of the public and the independent scientific community. From the beginning, even obtaining information about response planning and deployment of equipment and manpower has been difficult. Additionally, the FAA imposed a 3,000 foot requirement on all over flights, which severely limited monitoring of response efforts or verification of impacts to coastal barrier islands and the like. Similarly, the Coast Guard recently issued a rule prohibiting the public from coming within a "safety zone" which encompasses 65 feet of any response vessels or booms on the beach or the water. [8]The Coast Guard recently modified the rule to allow representatives of the press to obtain credentials that allow them within the safety zone.

Although Administrator Jackson and Secretary Lubchenco have met with local groups throughout the Gulf to discuss their concerns, the knowledge of local organization's on existing contamination or others issues that could affect water sampling have not been solicited or incorporated into sampling plans. Equally concerning, EPA and NOAA have not required BP to make the monitoring data that they have collected available to the public. This significantly impairs the ability of independent and academic scientists to perform detailed analyses of the impacts of this disaster.

Similarly, in bird rescue efforts, private non-governmental organizations, such as the Wildlife Rehabilitation and Education Center (Texas), although having significant experience with the rescue of brown pelicans and other birds, have been excluded from the rescue process efforts. These groups have asserted concerns that there has been no effort by the U.S. Fish and Wildlife Service (USF&WS) and BP's contractor, Tri-State Bird Rescue & Research (Tri-State), to share best techniques, discuss innovative approaches, and realistically evaluate changing needs and break-downs in the effort. Similarly, the U.S. F&WS and Tri-State rescue team currently lacks

[8] *See* Appendix A: Times Picayune Editorial, July 5, 2010.

input from the non-profit groups and rescuers with the most extensive field rescue experience on the most-refined field capture techniques. As a result, there is a concern that bird mortality is higher than it might otherwise have been.[9]

Conclusion

To ensure that the Bureau of Ocean Energy Management, Regulation, and Enforcement and the Coast Guard are better able to address the next major oil spill, they must greatly expand their support of research and development and push the oil industry to adopt the best possible oil spill response technology. The Congress must greatly increase the funding available for necessary research into the efficacy and environmental impacts of developing technologies. Moreover, oil companies should be required to invest significant monies on (1) production of oil spill response equipment, including the construction of "caps" and the like needed to stop the release of oil from deepwater wells should a blowout occur, in advance and have them at the ready in each region, and (2) oil spill response technology research and development to ensure that we move into the twenty-first century in terms of our response capability.

Finally, national contingency planning for oil spills must incorporate better methods for involvement of the public and independent scientists in oil spill response activities.

[9] *See* Appendix B; Letter to Acting Director Rowan W. Gould from the Atchafalaya Basinkeeper, Gulf Restoration Network, Lake Pontchartrain Basin Foundation, Louisiana Environmental Action Network, Lower Mississippi Riverkeeper, and Natural Resources Defense Council (July 14, 2010) (attached).

Appendix A: Editorial on Coast Guard "Safety Zone"

Is the Coast Guard working for the public or BP? An editorial

Published: Monday, July 05, 2010, 6:24 AM Updated: Tuesday, July 06, 2010, 9:30 AM
Editorial page staff, The Times-Picayune

The Coast Guard says that **rules aimed at keeping the public and news media away from the oil spill response** are necessary to protect the environment and the people and equipment involved in the cleanup.

But the new "safety zone" that the agency has set up within 65 feet of any response vessels or booms on the beach or the water mostly protects BP from bad PR.

Since booms are often placed more than 40 feet outside of islands or marsh grasses, this additional buffer will make it difficult to document the effect of oil on the land or wildlife.

That's not in the best interest of the Gulf Coast. Reporters and photographers, including those who work for The Times-Picayune, serve a vital function in documenting the disaster and the response.

This decision isn't the only one that has hampered media coverage of the **oil spill**. The Federal Aviation Administration has ordered that no media flights to photograph the spill can go below 3,000 feet without special permission.

Coast Guard Admiral Thad Allen, national incident commander for the spill, said that the safety zone restrictions are not unusual. He said BP didn't bring up the issue, but that local officials in Florida and elsewhere had raised safety concerns.

But plenty of local officials understand the need to inform the public. "Anytime you all want, you all can come in there wherever we go on our boats," Plaquemines Parish President Billy Nungesser told reporters.

At this point, the Coast Guard has not justified its position. In fact, its reasons keep changing. First the restrictions were needed to protect civilians. Now the claim is that workers and equipment are at risk. But what's clearly at risk is the public's right to know, and that deserves protection, too.

Appendix B: Letter to Fish and Wildlife Service

Atchafalaya Basinkeeper, Gulf Restoration Network, Lake Pontchartrain Basin Foundation, Louisiana Environmental Action Network, Lower Mississippi Riverkeeper, and Natural Resources Defense Council

July 14, 2010

Acting Director Rowan W. Gould
U.S. Fish and Wildlife Service
1849 C Street NW, Room3358
Washington, D C 20240-0001

Dear Acting Director Gould:

The undersigned groups write to express our concerns about several elements of the ongoing response to the BP drilling disaster. Our concerns stem both from the efforts to clean-up the oil on barrier islands and areas used by birds as rookeries and our concern that little is being done to rescue fledglings from nests abandoned by oiled birds.

First, we have received reports from volunteers monitoring response efforts that cleanup crews are negatively impacting nesting areas. For example, cleanup crews working on islands off the Louisiana coast crushed nests and eggs of birds nesting on that island. Similarly, crews on beaches have been disturbing least tern nests along the water edge and, at times, crushing or otherwise endangering fledglings.

In relation to beaches, the environmental/conservation community are willing to work with USFWS to establish a beach steward volunteer program. These volunteers could help to flag and then monitor beach-nesting bird colonies, educating contractors and other people about the risk to the birds and the need to not encroach on colonies. Of course, to be effective, beach stewards would need either some authority to interact with/direct BP contractors, or would need to simply document and report encroachment on colonies, preferably directly to Louisiana Department of Wildlife and Fisheries (LDWF) biologists in Joint Incident Command (JIC). The state of Louisiana has maps of the colonies, and has indicated a willingness to have this kind of help. Although we understand that USFWS has indicated an interest in getting a beach steward program, this effort appears stalled. ***Forward movement must occur quickly, as time is of the essence if we are to ensure maximum action to protect nesting birds.***

Additionally, there must be improvement in communication from JIC to BP field supervisors regarding this issue – supervisors must be trained to recognize risks and better control access to dune and back beach areas by their workers. This will only occur if Department of Interior directs BP to make training available and take the necessary action to reduce interactions between cleanup crews and nesting birds.

Second, while efforts are being made to rescue adult oiled birds; similar attention is not being paid to abandoned fledglings. We have the following suggestions for action that can be taken to increase survival of oiled birds and fledglings:

1. ***Evaluation Teams:*** Small evaluation teams should be formed in each state to assess, at least weekly, the oiled bird situation in the field and recommend improvements to the field rescue effort. The teams should consist of one lead person from IBRRC, USFWS, the appropriate state wildlife agency (i.e. LDWF) and one or two individuals from uninvolved NGO's with experience in wildlife rescue. . These teams should focus on sharing best techniques, discussing innovative approaches, and realistically evaluating changing needs and break-downs/ logjams in the effort, not critiquing past efforts.

2. ***Oiled Bird Capture Experts with the most Field Experience Should Guide/Provide training:***

   The field rescue team currently lacks input from the non-profit groups and rescuers with the most extensive field rescue experience, who likely know the most refined field capture techniques. USFWS has asked that International Bird Rescue and Research Center (IBRRC) conduct classroom training for incoming field rescue personnel from USFWS and LDWF. Having IBRRC provide this requested basic training, and including a field training rescue component to demonstrate the more effective techniques that they employ should improve the rescue effort. (E.g. IBRRC has methods of baiting birds that allow them to draw birds out of a colony so that they can single out the oiled birds and capture them without risk to the nestlings in the colony.

   We recognize that the professionals involved are caring and doing difficult work under trying conditions. To improve this difficult environment and strengthen the efforts of USFWS we recommend decreasing territoriality among the various agencies/ organizations, while also providing training, enhancing communication, boosting teamwork and supplying expert oversight where appropriate.

3. ***Increase Efforts to rescue Orphaned birds:*** USFWS personnel routinely capture and band all fledgling chicks, including royal terns, pelicans and others, on colonies. However, currently little effort is being made to monitor colonies at night to identify nests not incubated by an adult pelican. The orphaned chicks could then be collected and forwarded to available rescue centers. There is likely much more mortality of adults than we are seeing through the rescue effort, and there needs to be more effort to identify orphaned chicks and forward them to centers that have the capacity to rear and release orphaned chicks. If orphaned chicks are not heavily oiled and may have better survival rates than oiled birds, this may be an effort that helps at more of a population level. If a lack of personnel for night monitoring is a problem, experienced volunteer rescue groups could be drafted for this purpose.

4. ***Rehabilitated chick-rearing:*** Many chicks have been rescued and rehabilitated, and need to be raised on islands until they are ready to fledge in the presence of wild birds. Standard practice is to put them on a grassy island that is not a nesting colony, feed them, and allow them to begin to follow wild pelicans as they are ready.[10] Planning for this type of release has been ongoing for most of a month with little result. This is a serious logjam, and holding these chicks too long is not improving their odds of surviving and fledging well. We understand that concerns about where to raise the chicks is the central obstacle. For example, we understand that Louisiana has stated a preference for rearing chicks on Louisiana islands, because adults tend to return to nest on or near the islands from which they fledged. At this point we feel that the central consideration in choosing the location should be protection from re-oiling. Given the oil now reaching Florida, locations in far-western Louisiana or Texas would seem to make sense from the standpoint of increasing the likelihood that these birds would not be re-oiled. Whatever site is chosen, there are several experienced rehabilitation groups that are well-qualified to handle the on-site rearing process. These groups should be identified and subcontracted through the current lead rescue groups as appropriate.

5. ***Improvement Needed to Oiled Wildlife Hotline:*** This hotline functions, but does not inspire confidence in callers. The hotline is located in Houston, TX, and is run by BP. Many of the operators do not speak English very clearly, and none of them are familiar with birds or the areas from which oiled birds are being rescued. This results in a need to repeat all information very clearly, several times, and to spell the names of every bird, usually several times. Also, operators seem to be following a script, resulting in them repeatedly asking where the nearest town or city is, and at what intersection a bird is located. The process is causing increasing concern for people calling in to the hotline.

   We concede that the information does go directly to a wildlife biologist in Joint Incident Command, and is relayed to a field team that goes to the site and evaluates the rescue potential for the bird. So, the system seems to work. But the communication difficulty has caused concern about whether reported birds will actually be rescued.

   This problem could easily be solved by putting local people, or birders, in the call centers. There are many potential volunteers through Audubon and other bird advocacy groups who may be able to fulfill this function. At the very least, someone with good knowledge of the landscape and birds should be assigned to each of the centers. Further, the script being used by operators must be re-evaluated and more training given to

[10] There is precedence for this type of rearing and release from the Louisiana Brown Pelican restoration plan from the 1970's, and this technique was also used successfully to rear and release 250 pelican chicks in 2005 after the Breton Island oil spill. This technique results in comparable survival rates to naturally-reared pelican chicks.

operators to make the process of collecting information more efficient. Large, well-labeled maps in the centers might also help.

Third, I understand that all birds are being banded prior to release. However, rehabilitation is expensive, survival studies are few, and the oil in this spill has weathered more than most before it hits shore. We should take advantage of the opportunity to learn more about survival for future oil spills. Color-marking Brown Pelicans is a logical first effort, as they are most commonly captured and should return to areas where they could be more easily re-sighted next year. As Laughing Gulls are also being rehabilitated in large numbers, they too would be a logical choice as a second study species using color-banding. We should also be working in advance to design studies to look at survival of migratory shorebirds, since little is known about how they survive oiling. The study plan should specify how survival will be estimated, and frequency of re-sighting efforts, if color-banding studies are the method of choice.

Conclusion

While we recognize the many pressures imposed on the USFWS by the ongoing disaster, we believe that through implementation of the above suggestions and more effective use of well trained volunteers, more birds can be saved. We request that the actions/approaches suggested above be implemented immediately to increase the protection of both adult birds and chicks. We would appreciate a written response to this letter. Moreover, if you have questions or concerns, please contact us to set up a meeting. We would like to have an opportunity to meet with you to discuss our concerns and suggested solutions.
Sincerely,
Dean Wilson
Atchafalaya Basin Keeper

Cynthia Sarthou
Executive Director
Gulf Restoration Network

John A. Lopez, Ph.D.
Director-Coastal Sustainability Program
Lake Pontchartrain Basin Foundation

Richard Bryan, Jr.
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