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# Stopping *the* Slick, Saving *the* Environment

*A Framework for Response, Recovery, and Resiliency*

*By Nicolas D. Loris, Claude G. Berube, James Jay Carafano, Ph.D.,  
Ben Lieberman, Jack Spencer, and Matt Mayer*



Thomas A. Roe Institute for Economic Policy Studies  
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# EXECUTIVE SUMMARY

On April 20, 2010, the explosion at the Deepwater Horizon oil platform in the Gulf of Mexico resulted in a massive, continuing release of underground oil. Washington must develop a comprehensive response to the crisis that mitigates damage, promotes economic and environmental recovery, and delivers solutions to ensure resiliency in the face of future catastrophes. Right now, Americans need answers that will ensure the protection of their environment, the freedom and productivity of their economy, and the security of their lives and property.

While the federal government may lack the resources and expertise to stop the flowing oil at the site of the disaster, it has the authority and responsibility to play a more proactive and responsive role in mitigating and recovering from the effects of the disaster. After months of observing the federal response, however, it is clear that the response is inadequate.

The right framework for response, recovery, and enhancing resiliency in the future must:

- **Recognize** that offshore oil drilling is still an important national priority. If the United States stopped drilling offshore, even more oil would need to be imported, which would require more tankers, which in turn involves its own risks and costs.
- **Reject** efforts to hijack the public policy debate. Global warming legislation—placing caps on carbon dioxide emissions—would do nothing to improve cleanup or to prevent future spills, but it would distract from the very efforts to clean up and stop the oil that must be the top priority now. Nor would emissions caps magically create new problem-free sources of alternative energy. Instead, global warming legislation would raise energy costs for all Americans and kill much-needed jobs.
- **Resist** efforts to impose new regulations without a clear, compelling assessment. There are currently many regulations that govern offshore oil drilling operations. Current regulations must be adequately enforced before new ones are piled on for the sake of political expediency.
- **Rethink** the liability system for dealing with private actors. The government should embrace a rational, market-based approach that aligns actions of private industry with their responsibility to finance the problems they create. Such a system ties profits to safe operations, thus creating incentives for self-policing.
- **Reconsider** how the federal government leads and organizes response to catastrophic disasters, as well as the federal capacities required to respond to disasters.
- **Recommit** to developing strategies that promote resiliency—establishing policies and programs to protect the environment and ensure a robust and free economy in the face of significant disruptions, empowering rather than hamstringing state and local governments and free enterprise.

The Administration and Congress can and must take the first steps toward implementing this framework. These steps should include:

- **Stop** making things worse by politicizing the federal response to the disaster;
- **End** unnecessary bureaucratic delays in organizing response and recovery efforts;
- **Restructure** response and recovery efforts;
- **Reform** the National Response Framework; and
- **Rebuild** the response capacity of the U.S. Coast Guard.

## **Do It Now**

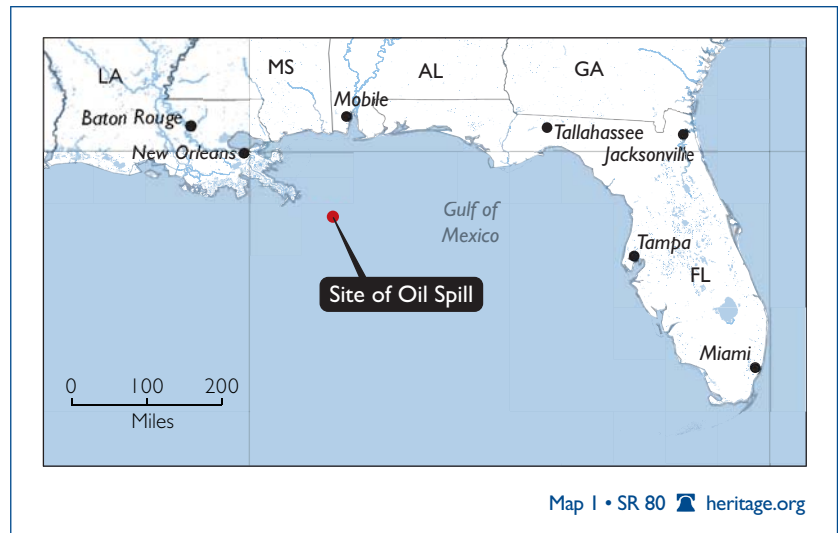
The gulf oil spill presents an unprecedented economic and environmental challenge for the United States. Rather than continue to fret over the political fallout, the Administration and Congress should focus on how best to speed up the current response and recovery. There is no justification for enacting policies that will have both near- and long-term economic consequences and do very little, if anything, to address the issue at hand. Without fully understanding what caused the spill, the government is in no position to legislate answers that will most likely do more harm than good.

In addition, both Congress and the Administration need to be prepared to better mitigate future catastrophes. While tragic, the gulf spill can be a learning tool used to mitigate and contain any future spills or disasters. Better coordination of the federal response and equipping the federal government with the capacity to manage such a situation effectively will not reduce the risk of an oil spill to zero, but it will provide a superior response that can significantly reduce any environmental and economic damage.

# Stopping the Slick, Saving the Environment: A Framework for Response, Recovery, and Resiliency

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## Government Response: Inadequate

While the federal government may lack the resources and expertise to stop the flowing oil at the site of the disaster, it has the authority and responsibility to play a more proactive and responsive role in mitigating and recovering from the effects of the disaster. After months of observing the federal response, however, it is clear that the response is inadequate:

- Although the oil spill in the gulf is an extremely rare failure, the damage it caused cannot be ignored. President Barack Obama must exert leadership and do a better job of coordinating the federal response to the ongoing calamity.
- The governor of Louisiana and the fishing and tourism industries along the Gulf Coast are begging the federal government to respond faster to their requests for sand barriers, for an extended fishing season to make up for a smaller-than-usual catch this year, and for a waiver of the Jones Act to allow foreign oil skimmers to assist with the cleanup. These requests were met with bureaucratic resistance and delay. In other Gulf Coast states, both state and local interests have been frustrated by slow response in providing cleanup or establishing mitigation measures.

Clearly, the Obama Administration is not working in a coordinated fashion. The Environmental Protection Agency (EPA), the Department of the Interior, the Department of Homeland Security, and the White House, as well as the Coast Guard, have been putting out confusing and contradictory statements since the disaster began, creating the appearance of a crisis of competence. The President should make coordination of action and clarity of messages his top priority.

Federal regulatory red tape has gotten in the way of the cleanup, including (1) missed opportunities to burn off more of the oil because of overblown air pollution concerns; (2) holdups in the use of dispersants; (3) permit delays

## Ten Biggest Oil Spills

Year	Location	Name	Millions of Barrels
1991	Persian Gulf, Kuwait	Gulf War Oil Spill	10.3
1980	Gulf of Mexico	Ixtoc Oil Well	3.3
1979	Trinidad & Tobago	Atlantic Empress	2.1
1992	Uzbekistan	Fergana Valley	2.0
1983	700 miles off coast of Angola	ABT Summer Tanker	1.9
1983	Persian Gulf, Iran	Nowruz Oil Field	1.9
1983	Saldanha Bay, South Africa	Castillo de Bellber tanker	1.8
1978	Brittany, France	Amoco Cadiz Tanker	1.6
1991	Mediterranean Sea, near Genoa, Italy	Amoco Haven	1.1
1988	Nova Scotia, Canada	Odyssey tanker	1.0

Source: Forbes.com, "The Ten Biggest Oil Spills," at [http://www.forbes.com/2010/04/29/worst-oil-spills-business-energy-oil-spills\\_slide\\_11.html](http://www.forbes.com/2010/04/29/worst-oil-spills-business-energy-oil-spills_slide_11.html) (June 11, 2010).

Chart 1 • SR 80  heritage.org

in allowing the state of Louisiana to create artificial barriers against the encroaching oil slick; (4) failure to waive regulatory prohibitions against foreign assistance; and (5) failure to approve barges and booms in time to block oil from reaching Alabama's Magnolia River.

As owner of the nation's waters, the federal government is ultimately responsible for what happens in those waters. It exercises that responsibility through regulation and oversight. But rather than focus on Washington's failures, the Obama Administration has made short shrift of its own shortfalls. Likewise, the crisis has been used to advance political agendas. The Administration's emphasis has been on:

- Establishing a commission to study why and how the disaster occurred. This commission does nothing to address the crisis at hand. Instead, it substitutes process for action at a time when leadership is needed. While commissions can help to provide some long-term guidance, it does nothing to help in the current crisis.
- Pushing for global warming legislation. In Louisiana itself, the effect of the Waxman–Markey global warming bill would mean a loss of more than 21,000 jobs, gas-price hikes, and skyrocketing consumer electricity rates. Subsidizing experimental energy sources does not make more sense because oil is polluting the waters. The economic burdens caused by carbon dioxide cuts and clean energy mandates should be fully debated, not crammed through to take inappropriate advantage of a crisis.
- Responding by initiating criminal investigation and possible prosecution of British Petroleum, which owns the Deepwater Horizon oil rig. This is not only premature, but also predictable. In the wake of accusations that the President has failed to take decisive action, his Administration is taking the path of "Nothing demonstrates 'doing something' like prosecuting someone." Investigations divert attention and resources—the federal government's and BP's—away from stopping the oil flow and containing damages.

Finally, the federal government needs to re-examine its approach to long-term recovery and mitigating future catastrophes. It is clear that the current strategy is not adequate.

Something went very wrong in the gulf. BP and the federal government failed to uphold their responsibilities to ensure safe operations or to adequately prepare a response plan for a major spill. But this failure was likely not the result of insufficient regulatory burdens. Getting a lease to drill offshore is already an onerous process, and once drilling operations commence, the lessee is subjected to constant monitoring and inspection by the Minerals Management Service. It was more likely the case that the current regulatory regime confuses responsibilities, undermines incentives for market-based safety solutions, and creates conflicts of interests between the regulator and those being regulated.



Under U.S. law, BP is directly responsible for no more than \$75 million in liability costs (the secondary costs incurred by businesses and communities), and up to \$1 billion more comes from the Oil Spill Liability Trust Fund (OSLTF). The \$75 million cap is waived if the responsible party is found to be grossly negligent, which has not yet been the case with BP. BP has stated it will pay all costs incurred by the oil spill, which have likely already exceeded the \$75 million cap and could soon exceed the total \$1.75 billion available.

The cap is artificially too low and should be reformed in a thoughtful way that more accurately assigns risk and liability to those engaged in drilling activities but not removed entirely, given the problem of uncapped tort liability that leads to frivolous lawsuits. The OSLTF is financed by an eight-cent-per-barrel tax on imported and domestic oil. This tax is passed on to consumers through the price of gas, and increasing the tax would simply shift responsibility for cleanup costs to American consumers. Raising the tax now would be premature since the full cost of the spill is not yet known, nor is it known whether a responsible party will be found grossly negligent.

Despite years of investment in disaster response after 9/11, the United States is still inadequately prepared to respond to unexpected catastrophes. While the 9/11 attacks and the oil spill are very different, the nation's ability to respond to such catastrophes draws on many of the same national assets and relies on the same federal bureaucracies. The actions of the federal, state, and local governments as well as the private sector are not adequately integrated. The federal government lacks critical capabilities, particularly in the maritime domain, to deal with catastrophes. The U.S. does effectively coordinate international support for disasters.

An assessment of months of government responses to the catastrophic oil slick demonstrates that (1) the current federal response is inadequate; (2) some government actions are making the situation worse, not better; and (3) Washington lacks an effective plan to deal with long-term challenges or improve future response and recovery.

### The Next Steps

Washington needs to start now not just to improve the response and recovery from the gulf spill, but also to deal with future natural catastrophes and terrorist attacks. Catastrophic disasters overwhelm the capacity of state and local governments. They put tens of thousands of lives and billions of dollars of infrastructure and economic activity at risk.

Catastrophes require a national response. Here, the federal government has a dual requirement: coordinating an effective national response that includes not only federal assets, but also state, local, and community resources as well as private-sector and international support. Additionally, the federal government must ensure that unique federal response assets, such as the Coast Guard, are prepared to respond to catastrophes.

#### Step I: Don't Make Things Worse

**Get the Call to Action Right.** The oil spill in the Gulf of Mexico now dominates the energy and environmental policy debate and will continue to do so for quite some time. Though there are still more questions than answers about the causes of the spill and a full assessment of the still-ongoing cleanup would be premature, a few preliminary conclusions can now be drawn and midcourse corrections made. Once the leak is plugged and the cleanup is under control, Congress should consider more substantive changes, both structural and procedural, in order to reduce the likelihood of future spills and to improve the response to any that do occur.

Regrettably, the Obama Administration and some in Congress are trying to exploit events by pushing a pre-existing agenda—global warming legislation, alternative energy mandates and subsidies, and broad-based restrictions on offshore drilling—that would do far more economic harm than environmental good. Before Congress says yes to prudent measures in the months ahead, it needs to say no to the bad measures that are on the table now.

Many logistical deficiencies have come to light since the April 20 Deepwater Horizon rig explosion and subsequent oil leak from the sea floor. But problems like the shortage of needed equipment cannot be fixed now, and it is too late to undo the lack of preparedness on the part of nearly every governmental and non-governmental party involved. Similarly, one cannot immediately revamp the existing command structure—led by the Coast Guard and

involving a dozen federal agencies as well as BP and state governments—even though it is proving to be slow and cumbersome. All should be thoroughly reviewed in the months ahead with an eye to improvements.

**Refrain from Playing Politics.** Many of the initial actions by the President and legislative proposals from Congress are a compendium of what *not* to do in response to an oil spill. First of all, there has been too much focus on the liability provisions in the Oil Pollution Act. Under the act, responsible parties—chiefly BP in this case—must pay the entire costs of the cleanup, plus up to \$75 million in damages. Additional damages up to \$1 billion come from the OSLTF.

While these regulations need to be revisited, now is not the time. Despite some structural problems of the current system, it does provide multiple private-sector cash streams to fund all recovery efforts. BP is responsible for the direct cleanup costs and has set up a claims process of 600 personnel and has paid out 20,000 claims.<sup>1</sup>

The primary focus of the Obama Administration and Congress has been to lambaste BP for its corporate irresponsibility and promise to raise the liability limits on the company. In addition to being factually questionable—for example, the \$75 million liability cap does not apply if BP is found to have been grossly negligent or to have engaged in willful misconduct—changing the liability scheme would do nothing to facilitate the ongoing cleanup. Changes in the liability limits make sense and should be a part of the longer-term legislative response, but they should not be a priority now.

All too much of Washington's response to the oil spill thus far has simply been to resurrect its existing energy and environmental agenda. This agenda had stalled for good reason and is not a sensible response to the events in the gulf.

In particular, global warming legislation, led by the Kerry–Lieberman cap and trade bill, has now been offered as somehow being justified by the spill. Similarly, President Obama and Congress have pointed to environmental damage in the gulf as yet another reason for mandates and subsidies for alternative energy sources: in other words, the often-touted new clean-energy economy. The President has also issued a moratorium on all new drilling activity in the gulf and offshore Alaska, a policy that could blossom into a permanent ban on new offshore production.

The link between such measures and the spill is tenuous at best. Clearly, they would do nothing to stop the current leak or clean up the oil slick. Granted, global warming legislation would reduce demand for oil by raising the price of gasoline and thus slightly reduce the risk of future spills. However, it would do so in a way that does trillions of dollars in collateral economic damage.<sup>2</sup>

The push for alternative energy sources and a moratorium on new offshore drilling are also poor responses. Alternatives like ethanol have problems of their own, including high prices (and government subsidies) as well as their own set of environmental risks, including increased inputs of energy, pesticides, and fertilizer needed to grow more corn. Notwithstanding rhetoric about a clean-energy economy, the reality is that the age of petroleum is not over just yet. Every barrel not produced nearby must be transported to America by tanker, and the risk of tanker spills is several times higher than the risk from offshore wells. Global warming policies would only succeed in raising energy costs for the American people and harming the economy.

Instead, the President and his supporters in Congress should rely on the marketplace to do their work for them. They argue that the environmental and economic risks of continued offshore drilling require additional regulatory actions including potentially long-term moratoriums on new drilling and additional taxes on drilling activities. Yet the market would do exactly what the President and some in Congress are attempting to achieve by regulation if offshore drilling were truly as risky as they are portraying it: Higher risk will result in high prices,

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1. "Obama's Political Oil Fund," *The Wall Street Journal*, June 15, 2010, at <http://online.wsj.com/article/SB10001424052748704324304575307111725173500.html> (June 15, 2010).

2. David W. Kreutzer, Karen A. Campbell, William W. Beach, Ben Lieberman, and Nicolas D. Loris, "What Boxer–Kerry Will Cost the Economy," Heritage Foundation *Backgrounder* No. 2365, January 26, 2010, at <http://www.heritage.org/Research/Economy/bg2365.cfm>, and "The Economic Consequences of Waxman–Markey: An Analysis of the American Clean Energy and Security Act of 2009," Heritage Foundation *Center for Data Analysis Report* No. CDA09-04, August 5, 2009, at <http://www.heritage.org/Research/EnergyandEnvironment/cda0904.cfm>.

which should lead to more competitive alternatives. But instead of trusting the market, the President continues to insist on intervening.

**Refrain from Playing Politics with Prosecutions.** The Administration must also stop and rethink its “public attention grabbing” approach to criminal prosecutions. The catastrophe in the gulf must be taken seriously, which is why the Justice Department should not be carelessly and irresponsibly floating the idea of criminal punishment unless and until there is good evidence of actual criminal wrongdoing. The potential civil fines and liability for financial damages may alone be crippling for BP without dangling the Damocles sword of criminal liability over the heads of those who are now trying to contain the spill.

As *The Wall Street Journal* reported recently, Attorney General Eric Holder “declined to specify the target of the investigation because he said authorities aren’t ‘clear on who should ultimately be held liable.’”<sup>3</sup> A fishing expedition approach to criminal prosecution—including scouring the federal code to find anything that might possibly work to provide criminal penalties—is counterproductive to the number one priority: stopping and containing the oil spill.

Announcing criminal investigations or prosecutions to score political points or stave off political damage is an abuse of power. It is possible that criminal wrongdoing occurred, but the current approach—one that all but announces that criminal charges will be brought and then seeks to identify the crime and the criminal—undermines the criminal justice system. While it is easy to heap scorn on an oil company whose operations are causing serious damage to this country’s Gulf Coast, the American people and this Administration should not seek criminal punishment in the absence of solid evidence.

### Step 2: Take Responsible Action

There are a number of unnecessary bureaucratic delays hampering the government’s response to the oil disaster that can and should be eliminated right away. Already, opportunities to burn off more of the oil, use dispersants to their full advantage, and allow the state of Louisiana to erect artificial barriers have been held up by objections from the EPA and other government agencies.

**End Unnecessary Delays.** The Obama Administration has the power to end the unnecessary roadblocks to action. The Administration must act.

Similarly, the Jones Act, which places limits on the use of foreign-flagged ships operating between American ports, can be waived in emergencies. Doing so would allow much-needed additional vessels to engage in cleanup activities. The Obama Administration’s failure to promptly grant such a waiver is one of several examples of President Obama’s failure to treat the spill as a crisis. (President Bush granted waivers in the aftermath of Hurricane Katrina in 2005.) There are European firms that have the vessels and expertise to clean up the spill—yet are prevented from doing so by red tape.

**Hold BP Accountable.** Under U.S. law, BP is currently solely responsible for the entire cost of the cleanup of the oil spill. The U.S. government should ensure that BP, not American taxpayers, ends up footing the bill.

**Restructure Response and Recovery Efforts.** Beyond the technical questions of responding to the spill, the administrative structure of the response needs a major overhaul. The system for responding to oil spills was largely shaped by the reaction to the 1989 *Exxon Valdez* tanker spill off the coast of Alaska. The Oil Pollution Act of 1990 set out procedures for offshore cleanups with the federal government, led by the U.S. Coast Guard, in charge of the unified command. Other agencies, including the EPA (which developed the oil spill contingency plan) and the National Oceanic and Atmospheric Administration, were also involved.

The Deepwater Horizon spill is the first major test of these procedures. The delays and poor coordination—for example, it was more than a week into the spill before the Coast Guard contacted the Department of Defense for help—must be fixed. Coordination with affected states needs to be improved. The relationship between the Coast Guard and BP needs to be clarified. In particular, the lead role of the federal government must be better reconciled with the reality that oil companies have most of the equipment and expertise to cap leaking wells.

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3. Thomas Catan and Guy Chazan, “Oil Spill Draws Criminal Probe,” *The Wall Street Journal*, June 2, 2010, at <http://online.wsj.com/article/SB10001424052748704875604575280983140254458.html> (June 15, 2010).

In addition, the federal government must decentralize response and recovery efforts, empowering rather than thwarting the ability of state and local governments to respond rapidly and decisively to safeguard the livelihood of their communities and local environments.

**Determine What Went Wrong Before Adding New Regulations.** The federal government needs to allow BP and the other entities involved in the operations and oversight to find out what caused the explosion and why “fail-safe” mechanisms like the blowout preventer did not work. The government should also be aware of the unintended consequences of mandating certain technology standards, especially technology-specific regulations that reduce the incentive for more effective technologies to reach the market.

### Step 3: Consider the Future

Washington’s failures in this catastrophe will be repeated in the future unless Congress and the Administration adopt major reforms in the national response to catastrophic threats.

**Review BP’s Actions.** The public expects responsible parties to be held responsible. Once responsibility has been established, the federal government should begin a comprehensive review that considers (1) that warning signs before the April 20 explosion may have been ignored; (2) that BP’s safety track record has been spotty—past environmental and safety violations, past spills, and deadly accidents; (3) whether BP’s transition to renewable energy sources had any negative impact on its oil and gas operations. Congress and the Administration, however, should pursue a responsible inquiry that does not play politics with a crisis or impede an effective response and recovery.

**Reform the National Response Framework.** The current structure of the Department of Homeland Security (DHS) is too centralized in Washington, D.C., to respond effectively to catastrophic disasters. When disaster strikes, this is a major problem in terms of getting resources on the ground efficiently. Major reforms are required.

State and local governments know their own geography, people, business conditions, and needs far better than the federal government ever can. For too long, federal policymakers have tried to force through a federal solution to this problem. But effectively responding to such disasters requires a true enterprise of participants from federal agencies and actors, from state and local governments, and from the private sector. Empowering all of these entities to act promptly and responsibly will make the difference in whether the U.S can respond successfully when disaster strikes.

One significant impediment to empowering state and local governments to drive their own crisis response is that DHS has not used the Homeland Security Grant Program (HSGP) to build needed capabilities at the local level. Instead, the HSGP has often been driven by politics, and its resources are not allocated effectively on the basis of risk.

Regionalizing certain aspects of homeland security and disaster response would enable regional cooperation among the states and authorize state governments to respond to crises that are unique to their region. It also remains important to allow state and local governments to drive their own crises response and emergency management to decrease response times to disasters unique to each region. Furthermore, Congress and the Administration should discontinue the wasteful and ineffective HSGP, switching to a cooperative agreement structure in which DHS and state and local governments negotiate outcomes as equal partners.

**Focus Federal Efforts on Catastrophic Responses.** In part, the nation was unprepared for disasters like Hurricane Katrina and the recent oil spill because the federal government has increasingly been diverting resources, focus, and preparations for disaster response to routine response activities instead of keeping them focused on large-scale catastrophes. Federal efforts must shift.

Over the past 16 years, the disaster response community has explicitly and implicitly reduced the threshold of what qualifies as a natural disaster eligible for a federal declaration. This “defining disaster down” approach is driven largely by the 75 percent or more cost-share provision that Congress included in the 1988 Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act). This helps to explain why disaster declarations are often granted months *after* the event when the situation has clearly already been handled without federal involvement.

Congress and the Administration should:

1. Amend the Stafford Act to limit eligibility for FEMA disaster declarations to (a) manmade catastrophes such as the recent Gulf of Mexico oil spill, (b) hurricanes, (c) earthquakes, (d) volcanic eruptions, and (e) tsunamis, explicitly excluding other natural disasters like standard blizzards or rainstorms;
2. Insert severity and magnitude thresholds for disasters so that only those that are truly national emergencies qualify for federal involvement; and
3. Adopt a high economic threshold requirement for any program that is created to prevent a national catastrophic natural disaster from bankrupting the insurance industry.

**Rethink Natural Catastrophic Disaster Insurance Reform.** Congress should reject proposals to establish a national catastrophe fund (CAT fund). A CAT fund, like the bankrupt and highly inefficient National Flood Insurance Program (NFIP), would provide government insurance to homeowners and businesses. Such proposals would make it easier for individual states to create unrealistic disaster insurance programs with underpriced policies by creating a federal loan fund to cover losses suffered by those programs.

Examinations of 55 years of actuarial data on where and when natural disasters occur demonstrate that roughly 11 states face a potential and predictable risk of a nationally catastrophic natural disaster every year. To attract and keep residents and businesses, these states have imposed rate caps to prevent insurance companies from charging actuarially sound property and casualty (P&C) insurance rates. These state rate caps have prevented insurance companies from securing sufficient capital reserves and, more troubling, indirectly spread the cost of their known risks to other, less risk-prone states. Hence, the rate caps in these 11 states have resulted in the other 39 states—many of which lost population, businesses, and tax revenue to the 11 states—subsidizing the cost of living in those 11 states.

The private sector, state governments, and—as a last resort—the federal government could take many actions short of creating a CAT fund that would provide greater stability to the insurance market at a lower cost to most taxpayers. To be eligible for any federal catastrophic natural disaster program, a state should meet five requirements: (1) no rate caps; (2) sound building codes; (3) no redevelopment of disaster-prone areas; (4) tort reform to eliminate or significantly reduce frivolous lawsuits by lawyers seeking to capitalize on sensational headlines and public sympathy after a natural disaster; and (5) state-mandated P&C insurance.

Under the mandate, states must require individuals and businesses in known hurricane, earthquake, and flood zones to purchase P&C insurance, including state-based earthquake and hurricane insurance and federal flood insurance. Such a mandate will increase the capital reserves of insurance companies and the liquidity of government insurance programs. Rethinking catastrophic disaster insurance reform is important as policymakers discuss the possibility that the oil spill effects could combine with hurricane season and that oil residue could make landfall due to a storm.

**Improve Public-Private Partnerships.** The U.S. government has not done an effective job of building public-private partnerships for catastrophic response. What is needed are strategies of resiliency, or methods for ensuring that basic infrastructure and systems of global, national, and local networks remain strong in the face of natural catastrophes or terrorist attacks.

A strategy of resiliency does not mean abandonment of preventive measures. At its core, resiliency is far more complex—and effective—than simply protecting critical infrastructure against natural and human threats. The first and most vital goal of resilience strategies is to make sure there is freedom for the economy to operate, and to operate with trust and confidence.

Not all infrastructure should be deemed critical. Indeed, in the United States, the national designations of “critical” infrastructure and key assets have been detrimental to attempts to prioritize national security efforts. Where infrastructure is indeed critical, it should be labeled as such. Energy providers and supply chain nodes, such as the infrastructure involved in this spill, are undoubtedly critical.

However, the “failure is not an option” mentality with regard to protecting infrastructure has led to an overzealous approach that deems almost any road or bridge “critical.” The designation has become increasingly pointless, driven by politics and stakeholder interests rather than by rational assessments. If everything is critical, nothing is

critical. In addition to acting responsibly to protect the public interest, the private sector has every reason to reduce its own vulnerabilities in its own self-interest.

The most important tool to be used in building resiliency is establishing an appropriate governance regime that will allow the private sector and the marketplace to adapt and innovate, to provide a robust capacity to deliver goods and services every day—especially in times of crisis. Armed with these assessments and a common-sense division of roles and responsibilities, public-private partnerships can set about instituting practical measures that will reduce risk and enhance resiliency.

The federal government needs to define clearly what it believes are reasonable actions for the private sector and to address liability issues. Congress and the Administration need to further consolidate and coordinate DHS operations, remove impediments to private-sector involvement, and facilitate effective information-sharing among public and private entities.

**Modernize the U.S. Coast Guard.** The U.S. Coast Guard is the key federal asset for responding to domestic maritime catastrophes. In particular, the Coast Guard is the lead agency for oil and hazardous substance pollution incidents occurring within the coastal zone of the U.S. The Coast Guard is inadequately resourced for these missions and requires an accelerated program of modernization.

The Coast Guard's planes and ships are aging and simply wearing out; some cutters are six decades old. A long-standing (pre-9/11) modernization plan called Deepwater has never been adequately funded. Even the partial funding received from Congress has failed to produce much progress, as the program has become increasingly mired in political controversy and policy missteps. Recently, Coast Guard Admiral Thad Allen reported that, "Of the 12 major cutters assigned to Haiti relief operations, 10, or 83 percent, suffered severe mission-affecting casualties. Two were forced to return to port for emergency repairs and one proceeded to an emergency dry dock."

Instead of rebuilding the Coast Guard, Congress and the President are cutting back assets needed to respond to catastrophic disasters. In particular, the National Strike Force, specifically organized to respond to oil spills and other hazardous materials disasters, is being cut. Overall, President Obama has told the Coast Guard to shed nearly 1,000 personnel, five cutters, and several helicopters and aircraft.

Congress and the Administration should double the U.S. Coast Guard's active and reserve end strength over the next decade and significantly accelerate Coast Guard modernization.

**Encourage Development of State Defense Forces.** State Defense Forces (SDFs) can make an important contribution during catastrophic disaster response. They provide a framework for effectively organizing and sustaining volunteers on a statewide basis. In particular, they can address issues regarding liability, accountability, safety, and logistical support for volunteers.

After the cleanup of the 1989 *Exxon Valdez* oil spill, volunteer responders were inadequately organized, equipped, and supervised. They reported suffering maladies ranging from chronic respiratory illnesses to cancer. A similar fate awaited responders at the Twin Towers on 9/11 in New York City. A report for the National Institutes of Health argued that the U.S. needed a disaster response system able to do more than merely mobilize millions of "skilled trades" in response to a catastrophe.

Nearly a decade later, no progress has been made. After the worst oil spill in U.S. history, gulf residents rushed to volunteer their help with the cleanup. Many area fishermen, armed with little more than booms and their boats, set sail to help contain the spill, but few left port with anything approaching adequate training and protective equipment.

States still lack an effective large-scale volunteer mobilization network. U.S. law allows states to raise and maintain state defense forces which are under the command of a state governor and consist of citizen volunteers. SDFs and other volunteer groups composed of citizens from local communities can build a stronger response when disaster strikes and are an essential part of true preparedness.

SDFs should be a core part of the volunteer assets available to states in time of crisis. Congress can help by establishing a legislative framework to require appropriate cooperation between the Departments of Defense and Home-

land Security and the state governments on SDF matters, recognizing SDFs as an integral military component of the nation's homeland security that falls under state control.

Congress should authorize the Pentagon and Department of Homeland Security to provide limited support for SDFs at no direct cost to the federal government.

**Establish a Naval National Guard.** States currently lack an effective capability to integrate with federal maritime assets, like ships and planes, in responding to catastrophic disasters. Congress should create a Naval National Guard that would have its own personnel and platforms that would be dual-use for military operations or disaster relief working in tandem with the Coast Guard under a unified command structure.

Both the Army and Air Force have National Guard forces that can respond both to state governors and to the federal government. The Navy does not. Likewise, states can develop SDFs to assist in large-scale disasters on the landward side but not at sea. Several states with maritime interests already have state naval defense forces. Both the New York and New Jersey Naval Militias assisted in the response to the terrorist attacks of 9/11. States, however, lack the resources and expertise to establish and maintain robust maritime SDFs.

Creating a Navy Guard to include all coastal states would offer several advantages. A Navy Guard would provide coastal states with more resources to address their state maritime security and public safety requirements. Unlike the Coast Guard, the Navy Guard would focus on state needs when not on active federal service. It would also provide an organization within the National Guard and the Navy that treats homeland security missions as an inherent responsibility and would work to develop the requisite competencies and capabilities to fully support these tasks. Finally, a Navy Guard would provide a suitable partner for the U.S. Coast Guard to ensure seamless integration of the Defense and Homeland Security Departments' maritime operations.

**Include Mexico in NORAD.** To improve cooperative U.S.–Mexican responses to maritime disasters and other threats in the gulf region, the United States should invite Mexico to join the North American Aerospace Defense Command (NORAD).

NORAD is a binational organization run by the United States and Canada. Established during the Cold War to provide early warning of any approaching Soviet bombers, the command today monitors North American airspace and provides situational awareness of what is happening on the seas.

Mexico needs NORAD. The command could offer vital assistance in organizing and sharing information about threats on the air and sea. NORAD could also provide a coordinated military structure that would let Mexico better cooperate with the U.S. and Canada on a host of common security issues. U.S. NORAD links directly to the U.S. Northern Command (NORTHCOM). Mexico's cooperation in NORAD would be particularly fruitful since the Mexican military is responsible for the security of Mexico's offshore oil infrastructure.

The U.S. should include Mexico in NORAD to coordinate efforts on both air and sea threats including both natural and manmade disasters, as well as transnational criminal activity.

**Build Disaster-Response Capacity in Partner Nations.** Small Caribbean island nations have few large-scale platforms or infrastructure to respond to major disasters. Energizing existing cooperative structures with Caribbean nations would strengthen their capacity to respond to crises such as oil spills as well as other large-scale disasters.

As other nations explore and drill for petroleum in the Gulf of Mexico, they may not have regulatory requirements as stringent as those of the U.S. government and may lack the capacity for robust response to disasters. An effective instrument for building capacity could be modeled on the U.S. government's Millennium Challenge Account. The MCA consists of a pool of funds to be used for economic and development aid in developing countries. Access to that pool is granted after a rigorous process in which country applications are judged according to such criteria as adherence to basic standards of human rights and good governance, fiscal responsibility, and a commitment to the kinds of development projects that have a proven record of promoting economic growth.

By demanding that a country demonstrate its commitment to freedom and economic development, the MCA greatly improves the likelihood that aid will not squandered on wasteful projects or corruption. By placing emphasis on good governance and democratic norms, the MCA lessens the potential for aid to be used to prop up authoritarian regimes and increases the likelihood that it will go to programs that directly help people in need.

Congress and the Administration should redirect current foreign assistance programs into a “Security for Freedom Fund” to achieve similar goals for capacity building among cooperative nations in the Western Hemisphere for capabilities related to security and catastrophic disaster response.

**Repeal the Jones Act.** In 1920, Congress passed the Merchant Marine Act, also known as the Jones Act, a piece of protectionism that has only hampered an anemic American maritime industry. It also has prevented a quicker response to the oil spill by leaving the U.S. with less robust public and private maritime infrastructure and assets.

Within days of the oil spill, 13 countries, including several European nations, offered assistance. When asked, a State Department press spokesman refused to identify any offers of assistance. European firms claim they could accomplish the spill cleanup in four months rather than the estimated nine months if done only by the U.S.

Working together, the U.S. and Europe could accomplish the cleanup in three months. The Belgian firm DEME contends on its Web site that it could clean up oil with accuracy at a depth of 2,000 meters. Another European firm with deep-sea capabilities is the Belgian Jan De Nul Group. The Dutch and Belgians are long-time NATO allies and, as such, partners in international security cooperation. To close the door on them while they are offering a helping hand in a time of national emergency is simply unacceptable.

U.S. companies do not have the ships that can accomplish deep-sea dredging because those ships would cost twice as much to build in the U.S. as they do outside the country—another adverse impact of the Jones Act.

The Jones Act, which is supposedly about protecting jobs, it is actually killing jobs. The jobs of fishermen, people working in tourism, and others who live along the Gulf Coast and earn a living there are being severely affected. There are also additional private-sector jobs that are *not* being created in the United States since the Jones Act effectively prices U.S.-based companies out of the ability to be competitive on the global market. As Americans strive to develop new technologies for a cleaner environment at sea, the Jones Act continues to hobble their own capabilities, sometimes with devastating results.

After waiving the Jones Act for the gulf cleanup effort, Congress and the Administration should repeal it altogether.

### Do It Now

The gulf oil spill presents an unprecedented economic and environmental challenge for the United States. Rather than continuing to fret over the political fallout, the Administration and Congress should focus on how best to speed up the current response and recovery. There is no justification for enacting policies that will have both near- and long-term economic consequences and do very little, if anything, to address the issue at hand. Without fully understanding what caused the spill, the government is in no position to legislate answers that will most likely do more harm than good.

In addition, both Congress and the Administration need to be prepared to better mitigate future catastrophes. While tragic, the gulf spill can be a learning tool used to mitigate and contain any future spills or disasters. Better coordination of the federal response and equipping the federal government with the capacity to manage such a situation effectively will not reduce the risk of an oil spill to zero, but it will provide a superior response that can significantly reduce any environmental and economic damage.





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