

WebMemo



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The Federal Response to the Oil Spill: Lessons to Be Learned

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America's current system for responding to oil spills was largely shaped by the reaction to the 1989 Exxon Valdez tanker spill off Alaska. The Oil Pollution Act of 1990 set up new procedures for offshore cleanups, one significant change being that the federal government, led by the U.S. Coast Guard, was put in charge of such activities.

The Deepwater Horizon spill is the first major test of these procedures. While it is far too early to draw firm conclusions about the government's performance, tough questions need to be asked in the months ahead about whether the response was as timely and effective as it should have been.

The Oil Pollution Act of 1990. Many believe that there were lost opportunities in the immediate aftermath of the Exxon Valdez spill to help contain the damage. For example, the oil sat around the grounded tanker off the Alaskan coast for several days before it was blown toward coastal areas and caused onshore environmental damage. But conflicting state and federal actions stymied the cleanup efforts and slowed the initial response to the spill.

Congress concluded that the existing response protocol was poorly coordinated. One of the goals of the Oil Pollution Act was to clarify the lines of authority in the immediate aftermath of a spill so that the response can be swift and effective. The statute also beefed up preparedness measures in anticipation of spills and created a liability scheme for the government's cleanup costs and to injured third parties for damages.

The act authorizes the President to either federalize the spill or oversee the cleanup efforts of the responsible private party or parties. Spills in coastal waters are handled by the Coast Guard, while the Environmental Protection Agency handles inland spills. In the case of Deepwater Horizon, the President delegated authority to the Coast Guard, which in turn coordinates efforts with other federal agencies and state officials as well as BP and other private parties. The Coast Guard has at its disposal the resources to address spills.

How Have the Feds Done So Far? Much attention has focused on the growing price tag of the cleanup and whether the liability provisions and dollar limits applicable to BP are sufficient. However, far more important is the need for the cleanup to be timely and effective in minimizing the environmental and property damage.

It is too early to grade the Coast Guard's performance as well as that of the other agencies it is working with, but at least some evidence suggests that, as with Exxon Valdez, the initial response may have been indecisive. For example, since oil is flammable, burning it is one way to help turn a very serious water pollution issue into a far less serious air

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pollution issue. Several early opportunities to do so were lost during the Exxon Valdez spill, and the same may have been true of the Deepwater Horizon site in the immediate aftermath of the spill.

There are some indications that the Coast Guard was reluctant to move ahead with burning because of air pollution concerns, which if true would be evidence of poor judgment as the air pollution impacts would have been minor and transient relative to the benefit of reducing the volume of waterborne oil. There is also evidence of needed cleanup equipment not pre-positioned and in adequate supply. There are also indications that dispersants—chemicals that make the oil less environmentally harmful and easier to collect—were not used to full advantage at the sea floor. This reluctance may have been due to environmental concerns about its impact that, under the circumstances, were not warranted.

There is also reason to question the level of coordination between the Coast Guard and various other governmental and non-governmental entities. For example, it was fully nine days into the accident before the Obama Administration solicited Department of Defense cooperation in deploying equipment needed to contend with the extreme depths of the spill site. A review of the Coast Guard's performance should also include a discussion of whether recent budget cuts left it unable to effectively respond to a major spill.¹

Recommendations. Going forward, it is important that several actions take place:

- There should be a coordinated effort involving BP, the Coast Guard, the National Guard, and other federal and state agencies to stop the flow of oil and minimize the environmental and

economic damage as the oil begins to reach the shores.

- Congress should authorize an independent study of the cause of the spill that avoids the cynical finger-pointing among BP and its contractors that the nation witnessed last week.
- Any regulations resulting from this study should not include forestalling offshore drilling. The economic harm of reducing domestic oil supplies would likely be greater than that caused by the spill itself.

Moving Forward from Deepwater Horizon. In a real sense, the strong safety record of the offshore energy industry in recent decades has hampered the response to this accident, as few government and non-governmental responders have any first-hand experience with a major spill. Further, as technology has advanced to allow exploration and drilling at great depths—in the case of Deepwater Horizon through 5,000 feet of water and 18,000 feet of sea floor—the challenge of dealing with spills under these conditions may have lagged.

Once the investigations commence, the first question to ask is whether regulators could have done more to prevent the spill in the first place.² But an equally important issue is how the federal government performed once the spill occurred. The Deepwater Horizon spill should be used not as an excuse to ban offshore exploration and drilling outright or to make it prohibitively expensive but to implement sensible new procedures to minimize the damage.

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1. See James Jay Carafano, "Massive Oil Spill Makes Case for Reversing Obama Coast Guard Cuts," Heritage Foundation WebMemo No. 2894, May 11, 2010, at <http://www.heritage.org/Research/Reports/2010/05/Massive-Oil-Spill-Makes-Case-for-Reversing-Obama-Coast-Guard-Cuts>.
2. See Jack Spencer, "Gulf Coast Oil Spill: Does the Federal Government Share Responsibility?," Heritage Foundation WebMemo No. 2896, May 12, 2010, at <http://www.heritage.org/Research/Reports/2010/05/Gulf-Coast-Oil-Spill-Does-the-Federal-Government-Share-Responsibility>.