



**Commission on
Oil Spill Response Coordination**

October 29, 2012 • 9:00am – 3:00pm Central Time
South Walton County Courthouse Annex, Santa Rosa Beach, Florida

On October 29, 2012 the 4th meeting of the Commission on Oil Spill Response Coordination was held at the South Walton County Courthouse Annex in Santa Rosa Beach, Florida.

The meeting was attended by the following Commission members (or their designated alternate noted with an asterisk):

- Tom Beck, Florida Department of Economic Opportunity
- *Donald Butler, Gulf County Administrator (*for Bill Williams*)
- Leslie Palmer, Florida Department of Agriculture and Consumer Services
- Jennifer Fitzwater, Executive Office of the Governor
- George Gainer, Bay County Board of County Commissioners (Chair)
- Dr. Kendra Goff, Division of Disease Control & Health Protection
- Bill Imfeld, Walton County Board of County Commissioners
- Russell Kent, Florida Office of the Attorney General
- Danny Kilcollins, Florida Division of Emergency Management
- Richard Knudsen, Florida Fish and Wildlife Conservation Commission
- Lane Lynchard, Santa Rosa County Commissioner
- Dave Parisot, Okaloosa County Board of County Commissioners (Vice-Chair)
- Joseph Parrish, Franklin County Board of County Commissioners
- Grover Robinson, Escambia County Board of County Commissioners
- *Tasha Carter, Department of Financial Services (*for Tami Torres*)

Invited speakers were Lee Edmiston, Manager and Environmental Administrator at Apalachicola National Estuarine Research Reserve and Florida Department of Environmental Protection and Miguel Bella, South East Regional Manager at the U.S. Coast Guard's National Pollution Funds Center. Due to extreme weather in the north east on October 29th Miguel Bella was unable to speak to the commission. However Mr. Bella submitted his presentation ahead of time and Chris Russell from the U.S. Environmental Protection Agency (EPA) Region 4 spoke to the Commission about the topics Mr. Bella had planned to cover.

The Commission's legal counsel, Dan Thompson of Berger Singerman, also attended the meeting.

The following members of the public attended the meeting:

- Todd Sumner
- Peggy Mathews

- Susan Forsyth
- TaQuitia Winn
- Tim Williams
- Mark Bowen
- Chips Kirschenfeld
- Dino Villani

In addition, staff from the Commission's contractor (Tetra Tech) in attendance included:

- Eric Dohner
- Michael Bomar
- Barry Tanning
- Rebecca Fisher

Several staff from The Florida Channel attended and filmed the meeting for the channel which can be viewed online at: <http://thefloridachannel.org/video/102912-florida-commission-on-oil-spill-response-coordination/>

Chairman George Gainer called the meeting to order at 9:00 am, and requested a roll call of Commission members in attendance. After the roll call, the Chairman asked the contractor's facilitator to proceed with the business items listed in the agenda.

Administrative Review

Meeting facilitator Barry Tanning of Tetra Tech asked everyone, including audience members, to introduce themselves. Mr. Tanning then briefed the Commission on several administrative and logistical items.

Mr. Tanning then welcomed Dan Thompson, legal counsel for the Commission, who had prepared a brief review for the Commission regarding appointing replacement Commissioners. Mr. Thompson stated that if a current membership entity of the Commission on Oil Spill Response Coordination wished to appoint another County Commissioner (who is not the Chair of that county's Board of Commissioners) or an official who is not a County Commissioner as a replacement, it would not incur any civil or criminal penalties. However, Mr. Thompson stressed that the Commission should articulate such actions in their final report to the Board of Trustees, stating what changes were made and how they have impacted the voting within the Commission.

Mr. Tanning then introduced Lee Edmiston from the Apalachicola National Estuarine Research Reserve (NERR) and staff member of the Florida Department of Environmental Protection (DEP) to speak about the Natural Resource Damage Assessment (NRDA) process.

Natural Resource Damage Assessment (NRDA)

Lee Edmiston, Manager and Environmental Administrator at Apalachicola National Estuarine Research Reserve (NERR) and Florida Department of Environmental Protection

Mr. Edmiston began by stating that he would not be speaking about the RESTORE Act but focusing primarily on the NRDA process. He explained that when a spill occurs, natural resource trustees conduct a NRDA to determine the extent of the damage caused by a spill. The NRDA process allows Trustees of

affected states and the federal government to determine the levels of harm and the appropriate remedies. The federal Oil Pollution Act of 1990 (OPA) directs trustees to undertake two main actions: 1) return injured natural resources to their baseline conditions (the condition that existed prior to the spill) and 2) recover compensation for interim losses. The NRDA process is managed by the Deepwater Horizon Oil Spill Trustee Council (Trustees) which consists of state and federal Trustees. DEP is the lead trustee agency for Florida and the Florida Fish and Wildlife Conservation Commission (FWC) is the co-trustee agency.

Mr. Edmiston outlined the NRDA process, which consists of three main phases: Pre-assessment, Restoration Planning, and Restoration. Mr. Edmiston stated that currently, the Trustees' efforts are focused on injury assessment and restoration. He remarked that the restoration process is long-term and ongoing, and that today his presentation will be focusing on early restoration as it relates to the Framework Agreement signed by the Trustees and BP. In his presentation, Mr. Edmiston gave an overview of the Framework Agreement that was signed by the Trustees and BP to provide \$1 billion for early restoration projects. Early Restoration – which is not required under OPA or other statutes – allows restoration projects to begin prior to NRDA completion. However, the injury assessment will continue while Early Restoration planning is under way. Mr. Edmiston said that this \$1 billion represents a down payment by BP, but does not affect their overall ultimate liability for natural resource or other damages. The \$1 billion is divided in the following manner:

- \$500 million split equally among the Gulf State Trustees (Alabama, Florida, Louisiana, Mississippi and Texas)
- \$200 million split equally among the Federal Trustees (National Oceanic and Atmospheric Administration (NOAA) and U.S. Department of Interior (DOI))
- \$300 million to fund state-sponsored restoration projects to be selected by DOI and NOAA

Mr. Edmiston outlined the necessary criteria of state-sponsored projects (funded by the \$300 million) and how those proposed projects in Florida were identified through a step-wise process that actively encouraged public input. If the projects are successful and meet certain criteria, the responsible parties (RPs) could receive restoration credits for the projects, which would be applied against their total natural resource damage liability. Mr. Edmiston then outlined the current selection process, which includes: project solicitation, project screening and identification, negotiation, public review and comment, and final selection.

Mr. Edmiston stated that over 300 potential Florida restoration projects have been submitted totaling over \$3 billion in estimated costs. There have been two projects accepted under Early Restoration in Florida—one for boat ramp enhancement and construction and one for dune restoration. Mr. Edmiston then went into the specifics of each of these projects. He then identified the next step for Phase 2 of the NRDA. Mr. Edmiston finished by providing the websites where Early Restoration projects are listed and where information on submitting projects for Early Restoration can be found. Questions were then received from the Commissioners and attendees.

One audience member asked if BP would ever be removed from the NRDA process? Mr. Edmiston stated that as long as the NRDA process and the injury assessment are ongoing, BP will be involved. Essentially, the responsible party will be involved throughout the entire NRDA process.

Commissioner Joseph "Smokey" Parrish mentioned that he was glad that BP agreed to this unprecedented Early Restoration option, stating that if this was not the case many projects would have to wait 10 years or so to get underway. Mr. Edmiston agreed, stating that there is a significant benefit to

both Florida and BP. Early restoration allows Florida to begin restoring its coastline, but it also reduces the “loss of use” time that would have increased the injury and subsequently required BP to pay more for the damage. Commissioner Dave Parisot agreed, stating that the earlier these projects are done the more positive effects Florida will see.

Commissioner George Gainer mentioned that while this option was indeed helpful, the requirements for getting a project approved by the Trustees and BP were extensive and causing considerable delay in implementation. He stated that many counties don’t have the resources to jump through the permitting and regulatory hoops of the Early Restoration process. Commissioner Parisot concurred with Commissioner Gainer, and asked Mr. Edmiston whether the Trustees had tried to find a way to “cut through the red tape” and make the submission process more simplified. Mr. Edmiston said that he was aware of the problems with the process, which include confidentiality provisions imposed by BP, and that state and federal Trustees are working as best they can.

A Commissioner proposed the possibility of lumping together projects from various counties as a way to reduce the amount of time needed to complete the submission of Early Restoration projects. Mr. Edmiston stated that if this tactic is used, the Trustees would need to make sure that the calculation of ecological benefit credits are consistent, which would be difficult given differing ecosystems and climate conditions across counties.

Commissioner Russell Kent pointed out that for future spills, there is no rule stating that a responsible party must establish an Early Restoration option. Mr. Tinning agreed and proposed that the Commission’s recommendations include support for early restoration. Mr. Edmiston concurred as well, stating that for most spills the responsible party usually walks away from the incident and the state is left to deal with the natural resource damages and must take legal action to receive compensation. Other Commissioners agreed that some type of incentive for Early Restoration should be built into oil spill regulations.

National Pollution Funds Center

Chris Russell, Federal On-Scene Coordinator, U.S. EPA Region 4

Mr. Russell started his presentation by giving some background information about the NPFC. He stated that NPFC administers the Oil Spill Liability Trust Fund (OSLTF) under the Oil Pollution Act (OPA), which provides funding for oil removal activities and the initiation of NRDA’s related to oil discharges, pays claims for loss and damage from oil discharges, recovers costs from responsible parties, administers the Certificate of Financial Responsibility (COFR) program, is a Funding Manager for the U.S. Coast Guard (USCG) under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and is a Stafford Act Emergency Support Function #10 Funding Manager for the USCG.

Mr. Russell stated that the OSLTF is used for costs not directly paid by a responsible party or guarantor, including costs to respond to “mystery spills” for which there is no identified RP. The OSLTF, which contains approximately \$2 billion, has two major components:

1. The Emergency Fund is available for Federal On-Scene Coordinators (FOSCs) to respond to discharges and for federal trustees to initiate natural resource damage assessments. The Emergency Fund is a recurring \$50 million available to the President annually.

2. The remaining Principal Fund balance is used to pay claims and to fund appropriations by Congress to Federal agencies to administer the provisions of OPA and support research and development.

He then listed the sources, limitations, and allowed uses of the OSLTF. He then explained Pollution Removal Funding Authorization (PRFA) which is a NPFC tool available to EPA and USCG FOSCs to quickly obtain needed services or assistance from other governmental agencies. He then discussed a financial obligation document that commits the OSLTF to payment of costs incurred in response and removal activities undertaken by another agency working for the FOSC.

Mr. Russell then explained the process for recovering costs from a responsible party under the OSLTF. The NPFC is responsible for recovering all federally funded removal costs and damages from the RP up to their limit of liability. He stated that since the passage of OPA, over \$934M have been recovered from RPs (as of Jan 2012).

An audience member asked Mr. Russell what would happen if another Spill of National Significance (SONS) were to occur but no responsible party stepped forward? Mr. Russell stated that since the OSLTF would not have enough money to handle all of the costs, the NPFC would have to go to Congress to request for more funding. Mr. Toning asked a follow-up question: if the responsible party is not a United States entity, what type of planning do we have in place? The consensus was that there is no real protocol in place for such a situation. Commissioner Gainer proposed adding protocols for international responsible parties to OPA as one of the Commission's recommendations.

Many Commission members made remarks about how having BP maintain control complicated the response process. Mr. Toning asked the Commission if it is the best idea to include a RP in a decision-making capacity for authorizing expenditures during a SONS. There was no conclusive answer, but many thought that specific protocols for approving response expenses during SONS should be included in OPA. A Commissioner mentioned that OPA was best designed to deal with small and medium spills but that a SONS necessitated a different approach. Commissioner Parrish also noted that if we rely on an RP to calculate the amount of oil released from a spill they are not likely to give the public an accurate number. He stressed the need to identify a way to ensure the RP accurately estimates the quantity of oil spilled.

Commissioner Parrish stated that the counties know how to plan for hurricanes and they know what they will get reimbursed for following a hurricane, but the same cannot be said for oil spills. He emphasized the need for a clear outline of funding sources available to counties in the wake of an oil spill. Many Commissioners agreed, stating that the key is reacting quickly and knowing where and from whom financial support will come from.

Compensation for Economic Damages (Open Discussion)

Commissioner Kent began the discussion by briefly explaining the history and structure of the Gulf Coast Claims Facility (GCCF) and the recent transition away from the GCCF to the Deepwater Horizon Claims Center. Commissioner Parrish gave an example from Exxon Valdez to give perspective for the discussion: the Commissioner had met a gentleman in Alaska this year who had just received his compensation from a damage claim he filed following the Exxon Valdez spill, it had taken the claims facility roughly 20 years to honor his damage claim. Commissioner Parrish pointed out that in Florida many businesses are operating with razor-thin budgets from month to month and therefore require a swift claims adjudication process.

Other Commissioners agreed, stating that quite a bit of frustration exists among small business on the Gulf Coast because they feel that they are being squeezed out of the market the longer they have to wait for compensation. A Commissioner stated that the average person does not fully understand the process of filing damage claims, further adding to the frustration present in many affected counties.

Commissioner Lane Lynchard stated that various problems exist within the GCCF, but above all else the delays and confusion during the claims process hurt Florida the most. The process for filing claims and the mandated timeframe for compensation should be hammered out and made public knowledge. The Commission recommended that incentives – or disincentives – be developed to expedite the processing of economic damage claims. Incentives could include a credit program that might be applied to any eventual fines and/or penalties; disincentives could include doubling the interest applied to legitimate economic damage claims that are delayed. In addition, increased vigilance and higher penalties are recommended for those filing false or fraudulent economic damage claims.

Ms. Gwen Keenan from DEP pointed out that the unprecedented nature of the BP's commitment and involvement during DWH may provide the public with a false sense of security that these sources of funding will be present if another SONS occurs. While BP and other RPs were able to provide additional financial assistance following DWH, a future RP may not have the resources to do the same. Ms. Keenan further stressed that smaller companies or international entities may not be able or willing to pay billions of dollars to compensate responders and claimants. Therefore, it is imperative to review and assess financial resources for SONS in the event an RP does not go above and beyond their liability obligations under OPA, declares bankruptcy, or escapes liability under U.S. law because it is a foreign entity.

To Ms. Keenan's statement, Commissioner Parrish asked if the OSLTF would be able to compensate economic damage claims if another SONS occurred with no RP. Would this require a change in the statute? *(-In email correspondence following the meeting, Mr. Miguel Bella from USCG's NPFC answered that in the event of a spill without a viable RP, the administration would have to seek necessary legislative changes to enable the available balance of the fund to be available for response, and would seek supplemental appropriations from Congress if the fund was deemed to be inadequate to meet projected requirements.)* Mr. Tinning suggested the Commission consider recommending adding wording to OPA that would identify a process within the NPFC to address economic claims when a RP is not able or not required to set up a claims facility.

Commissioners Parrish, Parisot, and Robinson raised concerns about how damages were calculated and allotted. The Commissioners stated that when calculating damage compensation, future claims facilities should institute different compensation protocols for different industries. For example, the fishing industry suffers for years due to closed fisheries, but hotels may only see adverse impacts for a season or two. Compensation protocols should be sensitive to industry characteristics and negative impacts within each sector of the region affected.

Commissioner Gainer raised the issue of persons who file fraudulent claims and the question of how to deal with them. Commissioner Kent stated that the U.S. Attorney's Office has and continues to identify and pursue fraudulent claims.

The RESTORE Act

Eric Dohner, Tetra Tech

Eric Dohner from Tetra Tech began a discussion of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act (or RESTORE Act). He began by explaining the general structure and functions of the Act and focused specifically on Florida's allocation. The RESTORE Act creates a Gulf Coast Restoration Trust Fund (RTF). The Fund will receive 80% of the civil and administrative penalties paid to the United States under the Clean Water Act (CWA) by the parties responsible for the Deepwater Horizon oil spill. The Trust Fund will support a variety of projects aimed at helping the Gulf recover from injuries experienced as a result of decades of oil and gas development in the Gulf, including the effects of Deepwater Horizon.

Mr. Topping explained that this discussion should be used to frame the Commission's task of evaluating a Gulf Wide Disaster Relief Fund. Essentially, is the RESTORE Act a good model for a Gulf-wide funding mechanism for future spills? Commissioner Parisot stated that it is likely too early to see if the RESTORE Act would make for a good structure to base a revolving fund around. He also stated that the RTF does show potential but it is really too early to say. Other Commissioners agreed as well. Commissioner Robinson pointed out that while OPA is a good model for small and medium scale spills, that it is not equipped to handle SONS. He stated that the RESTORE Act might be a good model for SONS, the allocation system set up and the manner it was handled were both very well done in the eyes of the counties.

Funding for Post-Incident Activities

Michael Bomar, Tetra Tech

Mr. Bomar from Tetra Tech started by asking the Commission about what their counties are currently doing now to deal with preparedness for another SONS. He emphasized that the Commission needs to submit an implementable report which must be financially viable. Mr. Bomar stressed that we must ensure there are resources available for such an event at the federal, state, and local level.

Mr. Topping asked the Commission how the initial mobilization activities were funded in their counties. Many Commissioners stated that they had some type of emergency fund but that it was very unclear whether they would get reimbursed for their mobilization expenses. Commissioner Robinson stated that it was somewhat lucky that all of the counties hit by the oil spill had large enough emergency funds to cover the upfront costs. He stated that many counties in Florida would not have been able to mobilize and respond to the spill because their emergency funds are quite a bit smaller.

Additionally, Commissioner Robinson remarked that DWH occurred as the hurricane season was beginning and that the counties use the same funds to respond to hurricanes and oil spills. This could prove to be a very big problem if a large hurricane and a spill occur in the same month or season.

Mr. Doug White from DEP stated that there is a state oil spill fund to reimburse counties for response activities. He stated that requirements for tapping the fund are quite stringent and is therefore not used very often.

Funding for Pre-Incident Activities

Barry Toning, Tetra Tech

Mr. Toning started the session by asking the Commission a set of targeted questions, including:

1. How are oil spill preparedness activities organized and staffed in the counties?
2. Are counties involved with current updates to the Area Contingency Plan (ACP)?
3. What kind of preparedness activities (drills, exercises) do counties participate in now?
4. How are they funded – and what is the process?
5. Do counties partner with each other – and USCG – in current oil spill planning and preparedness activities?
6. What is the difference between the funding structure for hurricane preparedness vs. oil spill preparedness?

Commissioner Robinson stated that funding for oil spill preparedness comes out of the county's general annual budget. He also stated that prior to DWH counties were not involved with the ACP process. He said that county officials are dependent on USCG to update and educate the public about what is in the regions ACP; he stressed the need for more meetings during the ACP drafting and/or revising phase. Another Commissioner stated that in the past the problem has been that many county officials do not have the travel budget to come to ACP meetings and USCG didn't have very much money to have multiple meetings. Commissioner Knudsen stated that this is where we need more support and this is where the coordination will take place so it is quite important.

Some Commissioners mentioned the difference between USCG Sector 8 and 7 and how they would like Florida to be within one Sector. Another Commissioner pointed out that changing USCG's Sectors was not likely to happen and that the Commission should focus on funding for preparedness. Commissioner Parisot pointed out that many areas within his county needed to conduct [preparedness drills and exercises, but closing off waterways to place boom and conduct drills would require approval of and assistance from the USCG. Commissioner Robinson also raised the point that while we may want to have a fund for oil spills, they are not as common and hurricanes and committing the same amount of resources to each probably not justified.

Status of Reports

Mr. Toning provided a status report to the Commission on the reports Tetra Tech is working on that will inform the development of the Commission's final report. One Commissioner asked that track changes be used when updating the reports. Another Commissioner requested that a section about governmental claims be added into Report 4. The Commissioners will review Report 4, 5, and 6 before the next meeting and will provide comments to Tetra Tech. A draft of the Final Report, containing recommendations from the Commission, will be available at least a week prior to the November 26 meeting.