

Vocational Rehabilitation Response to the *Horizon* Disaster 3: Public-Sector Initiatives, Post-Disaster Employment Trends, and Re-Evaluation of Wage-Loss Methodologies

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Following the *Horizon* disaster in April 2010, Smith and Senette (2010a, 2010b) examined the potential roles that vocational rehabilitation counselors may assume, assessing that vocational rehabilitation counselors would primarily undertake a role in forensics, primarily focusing on the evaluation of wage losses and decreased employment options for petroleum and aqua cultural workers. Trends a year following the disaster suggests that public-sector counselors have primarily assisted in the job placement of these workers, leaving forensic-based counselors at present a minimal role in post-disaster assessment and placement. The legal community and vocational rehabilitation counselors have been further required to evaluate wage losses for workers within a subsistence economy, primarily those of Vietnamese descent in Southeast Louisiana, presenting an unpredicted challenge. The present article examines these issues, and also offers recommendations for vocational rehabilitation counselors to prepare for future disasters, maximizing both their forensic and career counseling skills.

As per previous suggestions in the literature (Smith & Senette, 2010a, 2010b), the role of vocational rehabilitation counselors following the *Horizon* disaster was uncertain. It was predicted that vocational rehabilitation counselors would serve a vital role, primarily within forensics, assessing loss of wage earning capacity for not only unemployed and displaced petroleum workers, as a result of the Gulf Coast drilling moratorium, but also within industries directly and indirectly affected, such as the aqua cultural, fabrication, and service industries. Although suits have been filed (Goguen, 2010; United States District Court Eastern District of Louisiana, 2011), vocational rehabilitation has yet to play a major role in the task of specifically assessing loss wages. However, at present vocational rehabilitation has been primarily focused towards public-sector rehabilitation. The present article examines these issues, and also offers recommendations for vocational rehabilitation counselors to prepare for future disasters.

Petroleum Industry

A decline in oil and natural gas positions was initially seen immediately after the spill as of May 2010 (Louisiana Workforce Commission, 2011a). In June 2011, the industries of oil and natural gas had both seen increases in employment. In particular, jobs involving the drilling of oil and natural gas drilling and wells accounted for 600 new positions, representing the petroleum industry's most noticeable increases in employment growth. Most other areas of this industry have seen little to no changes in employment numbers between 2010 and 2011. More research is necessary to determine specific areas of this industry that were directly affected by the *Deepwater Horizon* spill as time progresses.

Other Nonfarm Industries

As of May 2010 support and service industries began to have rapid increases in layoffs (Louisiana

Workforce Commission, 2011a). The construction industry was hardest hit initially following the spill; trailed by layoffs in manufacturing, waste management, health care/social assistance, hospitality, food service, sales, and retail. It is not currently known if the order of layoffs took place in a manner reflecting each industry affected by the spill and their supporting industries, due to the proposed recession, or both.

In June 2011 increases in employment rates were seen in the health care/social assistance, hospitality, food service, and retail and industries (Louisiana Workforce Commission, 2011a). Of these, health care/social assistance witnessed the largest gains with 11,000 new positions. Increases in the number of individuals employed in the utilities industry suggests that employment in waste management has improved. In June 2011, manufacturing industries have also started to show increases in the numbers of employees. Furthermore, concurrently the number of individuals employed in the construction industry has continued to decrease.

Trades involving metal work and welding have seen reverse effects in the industries of construction and manufacturing (Louisiana Workforce Commission, 2011 a). Specialty trade contractors, such as metal workers and welders, were one of the only areas of construction that witnessed increases in the number of employees (Louisiana Workforce Commission, 2011a). The other area of construction that saw increases in employment numbers in 2011 is civil engineering construction, which also uses employees who are metal workers and welders. On the other hand, transportation equipment manufacturing and ship/boat building, both manufacturing trades involving metal work and welding, have seen continued decreases in employment numbers.

Unemployment Rates and Employment Numbers

The number of citizens unemployed in Louisiana was beginning to decrease after Hurricanes Katrina and Rita, and right before the recession in 2007 (Louisiana Workforce Commission, 2011a; United State Bureau of Labor Statistics, 2011a, 2011b). This may have been due to the massive unemployment numbers and decrease in the labor force that were seen immediately after the two hurricanes. When the recession hit, another plateau in unemployment numbers was witnessed between January 2008 and January 2009. Between January 2009 and the spill, employment numbers decreased slightly. Within months before the spill, employment numbers began to increase, but they reached a plateau in early 2011 (United States Bureau of Labor Statistics, 2011a, 2011b). They took another downturn at this time, but they still have not reached the lows seen after Katrina and Rita. While Louisiana's unemployment rate has been continually

rising, it still has not reached the current national average of 9.2 %.

Despite the likely shielding effects of the petroleum industry, the unemployment rate continues to climb post spill, with the exception of June 2011, further prompting potential inability to state definite impacts of the spill at present (United State Bureau of Labor Statistics, 2011a, 2011b). Employment numbers post spill reached a plateau between the spill and January 2011. Starting January 2011, employment numbers began to gradually decline. Conversely, Louisiana's unemployment rate has dropped between May and June of 2011 (United States Bureau of Labor Statistics, 2011a, 2011b). The differing pictures given by Louisiana's unemployment rate and its employment numbers is difficult to reconcile. Examining employment numbers in each of Louisiana's Nonfarm Industries gives a good explanation to resolve these incongruent observations of Louisiana's Workforce. The Nonfarm Industry in Louisiana has seen recovery in employment numbers since the spill, with the exception of the construction industry that has seen continual declines (Louisiana Workforce Commission, 2011a, 2011b). Initial losses in employment numbers for the construction industry were far heavier than the combined initial losses of the other nonfarm industries. The decline in construction industry employment numbers since the spill, and recovery of employment numbers in every other nonfarm industry, provides a relatively good explanation for the incongruence between employment numbers and the unemployment rate in Louisiana between now and the spill. It appears that gains in employment numbers made in other industries have been canceled out by losses in employment numbers in the construction industry. This would account for the sudden increase of Louisiana's unemployment rate since the spill, and the decline of employment numbers between January and June of 2011. More detailed statistics would be necessary to confirm this hypothesis.

Vietnamese Aquaculture Workers

The settlement of Vietnamese people in Louisiana began in 1975, immediately following the fall of South Vietnam's capital, Saigon (Bankston, 2011). In 2000 it was estimated that close to one out of every ten Louisiana Vietnamese men were employed in the aquacultural realm and the Vietnamese accounted for one out of every twenty workers in the Louisiana fishing industry (Bankston, 2011). Vietnamese American fishermen faced hostility from white fishermen on the Gulf Coast who complained of unfair competition from their Vietnamese American counterparts and attempted intimidation from the Ku Klux Klan in the 1980's (Bankston, 2011). In response to these events Vietnamese Fishermen banded together to form the first Vietnamese Fishermen Association of America to

represent their interests (*Vietnamese Fishermen's Association v. The Knights of the Ku Klux Klan*, 1981).

For decades the Vietnamese American fishing community in Southeast Louisiana has used fish, shrimp, oysters and crab to feed the community and as currency to barter for other goods and produce (Bloch, 2010). This is known as the informal system of "barter" which allows families to trade seafood for a variety of services in what amounts to a neighborhood barter system (Smith & Senette, 2010a, 2010b). It is difficult to evaluate loss of wages in this population due to a large proportion of these products not accounted for in taxes although claims have been filed (Gulf Coast Claims Facility, 2011). Due to a lack of formal record keeping only 1 out of 16,858 loss of subsistence claims have been approved (Gulf Coast Claims Facility, 2011). Documentation and evidence must be provided by a claimant that shows that they live off of the land and have been impacted by the spill (Gulf Coast Claims Facility, 2011).

As it is predicted that vocational rehabilitation counselors may be hired by Vietnamese subsistence fishermen via their legal representatives following the BP oil spill, it is important that counselors keep in mind the cultural dynamics involved in working with this population. In working with Vietnamese Americans, counselors need to be knowledgeable of the cultural history and history of the migration experience of the group, the group's mental health dispositions, cultural and systemic biases affecting counseling, and the role of paraprofessionals (Brown, 1985). Several dialects exist in the Vietnamese language and have traditionally been divided into three dialect regions including North, Central, and South (Brown, 1985). It is important in choosing translators as paraprofessionals to ensure that they are competent in and knowledgeable of specific geographical dialects in the Vietnamese language. Traditional Asian Americans emphasize collectivism (i.e., importance of group over individual interests and goals), maintenance of interpersonal harmony, reciprocity, and placing other's needs ahead of one's own (Atkinson, 2004). Counselors should also be aware of Asian American values of self-control, self-effacement, avoidance of family shame, and expectations to resolve psychological problems oneself (Atkinson, 2004). Research has implied that Asian Americans often do not seek counseling services due to a lack of familiarity with conventional Western forms of helping and norms that discourage them from seeking help from others (Atkinson, 2004). As vocational rehabilitation counselors, these are important implications to consider when working with Vietnamese-American clients.

Assessment of Aquacultural Wage Losses

Previously, Smith and Senette (2010a, 2010b) projected six methods may be utilized to evaluate wage losses for aqua cultural workers, including review of

tax records, gross receipts and number of producers in parish, gross value and number of products produced, Bureau of Labor Statistics, O*Net, and self-report. It was proposed that each of these methods offered both strengths and weaknesses, with most probable, the requirement that multiple methods would have been used to adequately evaluate either wage loss or lost wage earning capacity. One year after the accident, feasibility of these methods has been variable, and will be discussed in the following section.

Review of Tax Records

Media avenues following the explosion readily picked up on the issue that many aqua cultural workers work on either a "cash" basis, or on a "barter" system, making assessment of wages difficult to determine. Several media avenues pushed towards aqua cultural workers "coming clean" on past taxes, prior to being eligible for any settlement or remuneration. In response, it was projected that many aqua cultural workers chose to not seek benefits. However, alternate discussions began, particularly in the Vietnamese community, that culture dictated use of a product to sustain a subsistence economy, not lending towards a traditional economic model of gathering a product, selling the product, and then paying taxes, based on costs and profits. Rather, it has been advocated that cultural sensitivity must recognize that aqua cultural products are harvested, and not sold, but rather bartered, for not only products (i.e., gas and groceries), but also services (i.e., repair to boat motor, plumbing repairs to home, or tax preparation services). A vocational rehabilitation counselor with access to tax records for a displaced aqua cultural worker would be better prepared to compare pre and post-accident wages, albeit this resource may not be available.

Gross Receipts and Number of Producers

Media predicted that following the Horizon disaster that cultures would be lost. That is, generations that had previously fished and harvested the Gulf would no longer be able to pass their trade to new generations. Indeed, many media accounts documented the projected permanent loss of these professions. Although it was projected that the number of producers would dwindle towards non-existence, both private and public entities have well-documented the continuance of the profession and availability of shrimp, finfish, etc. from the Gulf. Potentially, several trends could have occurred, considering re-opening of the shrimp season in June 2011, and oyster season in August 2011: fewer producers fished for limited available product, resulting in loss of wages; fewer producers fished for similar rates or greater rates of available product, resulting in similar or increase wages; or, the same number of producers fished for limited available product, resulting in reduced wages. In any of these

situations, the vocational rehabilitation counselor, or the forensic economist was faced with determining the number of producers prior to the spill, the number of producers following the spill, the availability of product prior to the spill, the availability of the product after the spill, and comparison of prices both prior to and following the spill. Admittedly, quality of before-after assessments would be determined by accuracy of data. Utilizing a "garbage in-garbage out" model, if any of the available statistics were derived by questionable methods, perhaps lacking reliability and validity, then the final assessments would be poor. Reputable resources may include information from Louisiana State University AgCenter Research and Extension, or the Louisiana Seafood Promotion Board. However, in order to defend a *Daubert* challenge, the counselor should be prepared to evaluate the quality of information used to render an opinion about wage losses.

Gross Value and Number of Products Produced

As mentioned in Smith and Senette (2010 a, b), a valuable resource that may be used to evaluate and compare total production is an annual publication, *Louisiana Summary: Agricultural and Natural Resources*. It offers annual data related to forestry, row crops, and aqua cultural products. However, data is presented in individual issues is one year behind the current year. That is, data for 2010 reflects 2009 data, making 2010 data not available until late 2011. As such, data is not presently available, allowing a comparison across years. However, it is important to note that aqua cultural production rates were significantly reduced following Hurricanes Katrina and Rita in 2005. As such, it would difficult for a vocational counselor to evaluate that loss of wages would be due to exclusively the *Horizon* disaster, and not as residuals from Hurricanes Katrina and Rita. Perhaps, an aqua cultural expert may assist in aiding the vocational counselor using this method.

Bureau of Labor Statistics and/or O*Net

Following publication of Smith and Senette (2010a, 2010b) the second author reviewed resources that may specifically offer wages for aqua cultural workers in South Louisiana to utilize this resource. Statistics simply are not available that would allow a vocational counselor to use this single resource to evaluate wage losses. Rather, it would be recommended that these resources may be used as a secondary reference.

Self-Report

In the media examination of potential way to reimburse workers and producers, this method has primarily been examined, not as a means to accurately offer an examination of wages, but rather as a method to encourage compliance with tax-reporting require-

ments. It is projected that this method would offer the greatest likelihood of a *Daubert* challenge. Furthermore, the vocational counselor and legal counsel must examine the potential lack of sympathy of a jury considering loss wages for someone that readily admits to fraud, specifically failure to pay taxes. The vocational counselor would be encouraged to use this method with extreme caution.

Litigation Relative to the *Horizon* Disaster

The *Deepwater Horizon* oil spill has prompted the filing of tens of thousands of lawsuits by individuals in Louisiana, Alabama, Mississippi, and Florida who were affected by the devastation along the Gulf's coastline. Current estimates have BP setting aside about \$32 billion to cover cleanup, legal claims, fines, and other costs related to the spill (Gulf Coast Claims Facility, 2010). Lawsuits have also been filed against Transocean, Halliburton, and Cameron International. Below is a listing of the different types of suits being filed following the oil spill:

- Lost business profits and individual income losses
- Environmental damage
- Property Damage
- Health problems and health risks from oil and chemical dispersants
- Injuries and health risks for health problems
- Wrongful death and injury claims by rig workers and their families
- BP shareholder lawsuits
- Lawsuits by state government

Thousands of plaintiffs employed in the fishing, shrimp, and oyster industry have filed lost business profits and individual income losses suits seeking repayment for profits and income that were lost because of the oil spill. Examples of these plaintiffs include charter boat operators, hotels, tourist attractions, rental property owners, and other businesses in popular resort areas (Goguen, 2010). Environmental damage suits have been filed for damage to coastline, wetlands, wildlife, and other harm to the ecosystem in the Gulf region. BP has a \$20 billion fund set up for property damage suits filed for damages to commercial, residential, and undeveloped property along the Gulf coastline, and a number of small islands offshore. Property damage suits have also been filed involving the use of dispersants to aid in the cleanup of the spill. Lawsuits for health problems and health risks from oil and chemical dispersants have been filed by individuals in the gulf region over the health problems and health risks caused by the presence of oil on or near coastal property and the dangers posed by toxic torts (Goguen, 2010).

Furthermore, lawsuits have been filed by individuals for injuries and health risks from cleanup with claims of symptoms including headaches, nausea, and throat irritation (Goguen, 2010). Family members of the 11 workers killed in the explosion of the oil rig have filed wrongful death and injury claims against BP and Transocean. The surviving drill rig workers have also sued BP and Transocean for negligence. Dozens of suits have been filed by BP shareholders and pension funds accusing BP of misleading shareholders and causing BP share values to plummet. The U.S. Securities and Exchange Commission (SEC) is also investigating whether BP insiders profited from trading based on nonpublic information in the weeks and months after the spill. Alabama is considering filing a state government suit against BP to recoup tax revenue from business income that was lost because of the spill, and to recover state money that was spent cleaning up the spill.

Under a process known as multidistrict litigation (MDL) hundreds of federal lawsuits filed in the Deepwater Horizon oil spill have been consolidated together as MDL-2179 and will be heard by Judge Carl Barbier of the U.S. District Court for the Eastern District of Louisiana (U.S. District Court Eastern District of Louisiana, 2011). MDL-2179 consists of claims for the wrongful death of the 11 rig workers, personal injury claims, and numerous claims for environmental and economic damages (Gulf Coast Claims Facility, 2010). Due to enforcement of the Oil Pollution Act of 1990 BP was required to establish a payment procedure or settlement of claims process for interim, short term damages (Oil Pollution Act, 1990). BP initially set up an Independent Claims Facility and set up a \$20 billion escrow fund that was later replaced by the Gulf Coast Claims Facility (Gulf Coast Claims Facility, 2010). Numerous BP oil spill lawsuits have also been filed as class actions including negligence claims against BP and shareholder suits filed on behalf of BP investors. More class actions suits are likely to be filed, provided there is enough similarity among the plaintiffs and the damages they suffered (Gulf Coast Claims Facility, 2010). (It is important to note that the majority of the above information was acquired from websites. As such, the presented information has not been reviewed or confirmed by peers in the field of vocational rehabilitation. As more peer-reviewed articles about the spill are published, a clearer picture about the role forensics will play in relation to the *Deepwater Horizon* oil spill will be understood).

National Emergency Grant Prompts Public-Sector Vocational Counselors to Assist in Job Development and Counseling for Displaced Workers

National Emergency Grants (NEG's) have provided time-limited funding assistance in response to large, unexpected economic events that lead to significant

dislocation. NEGs generally provided funding to state and local workforce investment boards in response to significant events that create a sudden need for assistance that cannot reasonably be expected to be accommodated within the ongoing operations of the formula-funded Dislocated Worker program, including the discretionary resources reserved at the State level (Louisiana Workforce Commission, 2011b). The Gulf Coast states of Louisiana, Alabama, Florida, and Mississippi were awarded a \$27 million dollar Regular NEG grant from the U.S. Department of Labor following the *Deepwater Horizon* oil spill.

Louisiana Workforce Commission (LWC) was awarded a \$10 million dollar award on June 30, 2010 and started a program that provided funding for Training, Information, Development and Employment (TIDE) for employers and workers affected by the *Deepwater Horizon* Oil Spill (Louisiana Workforce Commission, 2011b). The services provided through TIDE for affected workers include assessment of current job skills and the development of new skills. Networking opportunities are provided through connections with employers as well as on the job training, and support services such as child care and transportation (Louisiana Workforce Commission, 2011b). Most of these services are initiated and coordinated by case workers employed by the Louisiana Workforce Commission. The services offered for businesses include networking opportunities, on-the-job training money, and financial assistance for business operations. Entrepreneurs are also eligible for funds used in starting their own business and training from business experts (Louisiana Workforce Commission, 2011b).

The Affiliated Blind of Louisiana Training Center (ABL) was awarded a \$20,000.00 fee-for-service contract from the Louisiana Workforce Commission for programs designed to assist workers unemployed after April 20, 2010. The facility is funded by the contract to provide training to citizens of Lafayette Parish and the eight surrounding parishes. The training programs offered include Keyboarding, Introduction to Computers, Introduction to Microsoft Office 2010 (Word, Outlook, and Excel), Microsoft Word 1-Introduction to Word, and Excel 1-Introduction to Excel. These programs are designed to provide individuals with transferable skills that will make them more marketable on the job market. Job Readiness and Success Skills Training is another program offered under the contract through ABL. This training includes instruction on developing networking skills, job survival skills, and advancement skills. Participants are also instructed on how to create effective resumes and cover letters. These skills are taught by vocational rehabilitation counselors employed at ABL.

Discussion and Conclusion

The *Deepwater Horizon* oil spill was undoubtedly a terrible disaster, resulting in not only deaths, but also environmental consequences. Wide spread employment overlay was expected as a result of the spill, as were long term affects to Louisiana's aquaculture (Smith & Senette, 2010b). As such, the role of vocational rehabilitation after the spill was thought to be focused towards forensics to assist in determination of lost wages and permanent loss of employment opportunities for injured and displaced workers.

Initial impressions relative to the spill were that decreases in employment rates for the oil and natural gas industries immediately after the spill would be enduring and would lead to permanent decreases in job opportunities for other industries across the state. Employment numbers for almost every industry have rebounded to post spill numbers. The statistics for Louisiana 2010-2011 aquaculture season have not been released, but recoveries in the hospitality and food service industries would suggest that the aquaculture industry has recovered as well. However, it is important to note that additional time is needed to determine both short and long-term effects of the oil spill on aqua cultural production rates. The only exception to recovery in employment numbers is the construction industry that continues to witness declines in employment numbers.

While numerous suits and claims have been filed in relation to the spill, the role of vocational rehabilitation professionals in these cases is still unknown as data is still sparse. All available information on the subject comes from attorney websites, with none currently available from peer reviewed vocational rehabilitation journals, with exception of Smith and Senette (2010a, 2010b). Once more information on this subject is made available, a clearer picture of the role vocational rehabilitation professionals should play regarding the spill will emerge.

It appears that the current role of vocational rehabilitation counselor lies more in the public sector, rather than the private sector at this time. Service and training offered under the National Emergency Grant are currently being managed and provided by vocational rehabilitation counselors in the public sector. If, however, the need for forensics arises in future, relative to the spill, methods used to identify lost wages for subsistence aqua cultural workers have been outlined in this article for the use of other rehabilitation professionals. Multi-cultural counseling considerations are also outlined for occasions that vocational rehabilitation counselors may work with Vietnamese aquaculture workers.

In closing, initial assessments suggests that the *Horizon* oil spill has not had the devastating effects that were initially expected. Again, these comments are

presented with caution, as long-term effects of the spill are still unknown. Although Louisiana's employment and unemployment numbers have fluctuated with the Gulf hurricanes and the *Deepwater Horizon* oil spill, Louisiana's unemployment rate is still below the national average. While the Gulf Coast moratorium did suspend work activity for six months following the spill, the petroleum industry has picked up following termination of the moratorium. Furthermore, most industries that had seen declines after the spill are currently at or above post-spill employment rates. The public sector has also initiated many programs and services to assist individuals affected by the spill to obtain and maintain employment. While vocational rehabilitation professionals are currently responding to the spill in the public sector, if the need arises, forensic and multi-cultural methodologies must be evaluated to enable counselors to properly evaluate lost wages, loss of wage earning capacity, and future employment options for prospectively displaced, injured, or killed workers.

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