

**REVISITING THE RESTORE ACT:
PROGRESS AND CHALLENGES IN GULF
RESTORATION POST-DEEPWATER HORIZON**

HEARING

BEFORE THE

SUBCOMMITTEE ON OCEANS, ATMOSPHERE,
FISHERIES, AND COAST GUARD

OF THE

COMMITTEE ON COMMERCE,
SCIENCE, AND TRANSPORTATION
UNITED STATES SENATE

ONE HUNDRED THIRTEENTH CONGRESS

SECOND SESSION

JULY 29, 2014

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED THIRTEENTH CONGRESS

SECOND SESSION

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**REVISITING THE RESTORE ACT:
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TUESDAY, JULY 29, 2014

U.S. SENATE,
SUBCOMMITTEE ON OCEANS, ATMOSPHERE, FISHERIES,
AND COAST GUARD,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The Subcommittee met, pursuant to notice, at 10:30 a.m. in room SR-253, Russell Senate Office Building, Hon. Bill Nelson, presiding.

**OPENING STATEMENT OF HON. BILL NELSON,
U.S. SENATOR FROM FLORIDA**

Senator NELSON. Good morning, everybody.

It is hard to believe that it has been 4 years since a disaster of major proportions.

And the visitation that has occurred prior to the starting of this hearing—most everybody knows everybody, all those that are participating today in the audience. And I want to thank you for what you have done over the years in being concerned. I want to thank all of the agencies at all levels of government.

Senator Rubio, I am holding my opening statement in abeyance as a courtesy, if it is OK with you, to our guests. Senator Landrieu and Senator Vitter have asked to speak to the Committee today, and of course, they are one of the states that was most impacted by the spill and now the long-term effects that we are seeing on a daily basis.

I remember I went to visit with two professors at Louisiana State University who had done—this is about a year after the spill—research with a little fish that lives in the bays and bayous that roots around in the sediment. It is called a killifish. And even after only a year, they were seeing dramatic changes in the killifish and their offspring as a result of bays where there was a lot of oil and then the contrary, in the bays that did not have much oil.

And of course, most of those bays are in the state of Louisiana where most of the oil went, although the oil went as far east as some of the tar balls coming up on Panama City Beach in our state, a good bit of oil that went up on Pensacola Beach. And they are still finding oil today that is buried way down deep in the sand on Pensacola Beach. So it has affected a lot of states.

And of course, you all know the tremendous economic devastation that occurred because in a state like Senator Rubio's and mine, that has such a tremendous part of its economy having to do with tourism, the tourists did not come because they thought there was oil on the beach when in fact there was not. And not just in northwest Florida on the sugary white beaches, but the tourists did not come all the way down the peninsula of Florida simply because of what they feared.

So we want to welcome everybody here on a most timely hearing, and I want to recognize first the senior Senator from Louisiana, Senator Landrieu, who if I can say—and I will take the personal privilege to say—was the spark plug. I mean, she did not let up back a few years ago when we passed the RESTORE Act. Senator Landrieu?

**STATEMENT OF HON. MARY LANDRIEU,
U.S. SENATOR FROM LOUISIANA**

Senator LANDRIEU. Thank you so much, Senator Nelson and Senator Rubio, for conducting this really important oversight meeting—and Senator Boxer as well—on the RESTORE Act, a very significant piece of legislation that was passed 2 years ago and needs to be more fully implemented.

But let me begin by saying that the state that Senator Vitter and I represent has been struggling for decades for justice and fairness for our coast. It has been my number one issue since being elected to the Senate to advocate on behalf of coastal restoration because without it, our state has a very, very limited and dim economic future.

The coast of Louisiana is the largest section of land in America that is being eroded. It has the greatest pressures of any coastal area in the country. We lose—I have lost thousands of miles literally of land in the last 50 years. It is the state's and should be our state's number one priority. It is both an environmental priority and an economic priority, and it is absolutely essential that we are successful.

So several years ago, I led the effort to secure the only known or identifiable source of revenue that could come back to the state to help us restore our coast, which is part of the \$9 billion a year that the state generates for the Federal Treasury from oil and gas resources off of our shore. As you know, we are one of four states that produce offshore oil and gas. We have generated over \$216 billion for the Federal Treasury. If Louisiana and the producing Gulf Coast States could get a portion of that revenue, we could begin to address our own coastal restoration challenges, which are our challenges, but this is really America's energy coast. It is America's wetlands. It is not just Louisiana, as we contribute hugely to the economic strength of this entire Nation, which is why we believe it should be a shared responsibility and partnership.

So I led that effort successfully. We are now receiving some revenue to come in. But when this accident happened 4 years ago and 11 men lost their lives and a huge platform in the Gulf, the Macondo platform, blew up with BP and other operators, I knew that there would be a large penalty to be paid. And of course, it was Senator Boxer's legislation, the Clean Water Act, that assesses

a strong penalty for violators that pollute our rivers, our streams, and our oceans.

Well, this was one of the largest, most egregious pollution events in the history of our country when over 5 million barrels of oil spilled into the Gulf. Now, we have drilled 40,000 wells in the Gulf, Mr. Chairman, over a long period of time, and happily and thankfully most of those have gone without incident. We have very strong environmental rules and regulations. But there were many defective processes that went on. The blowout preventer failed and 5 million gallons of oil spilled, of course, along your shore, which does not do production, but you have risk, Mississippi, Texas, Louisiana. We believe the bulk of the damage, of course, environmentally was done to the Louisiana coast, but there was damage done throughout the coast and significant economic damage to our state and to yours as well.

So that is why I led the effort to—and with Senator Vitter's good support and help, we built a broad coalition, including yourself, of stakeholders, both the stakeholders here in Washington, Congress, and at the State level and community and civic leaders to pass the RESTORE Act. As you know, it became law 2 years ago. Democrats, Republican leaders here in Congress and across the country came together to support it. The RESTORE Act was meant to implement quickly for the Gulf Coast to jump start restoration efforts. While we depend on revenue sharing as a long-term permanent fix, this could have jump started our efforts. And the penalty, once it is determined by the court, is going to be somewhere between \$5 billion and \$20 billion. I felt like it was the most fair thing to direct 80 percent of that penalty back to the Gulf where the accident happened, which is what the RESTORE Act did and passed.

But it has been more than 2 years since we came together to pass that Act, and both the Department of Commerce, as Chair of the Council, and Department of the Treasury have failed in my view to implement the law the way it was supposed to. These deadlines have come and gone. The Treasury deadline has been passed. The Commerce deadline has been passed. And as I said, since the first deadline passed, Louisiana has lost an additional 35 square miles of wetlands, roughly the size of Fort Lauderdale, Florida, with which you and Senator Rubio are very, very familiar. These deadlines were not arbitrary. They were meant to be adhered to. The Gulf Coast Restoration Trust Fund contains more than \$600 million. It is not the full amount, which the courts will ultimately decide, but an early deposit was made of \$600 million. That money needs to be distributed.

During the last announcement on August 28, Secretary Pritzker set a goal to have the ecosystem projects selected within 12 months. August 28, 2014 is fast approaching. Yet, the Department of Commerce is off track to achieve that goal. I urge Deputy Secretary Andrews to explain in great detail what has changed, why these deadlines are being missed. Between all the previous reports and plans and the public process associated with them, this should not have been difficult.

And I want to present to this committee for the record—this is Louisiana's plan. We have had a coastal restoration plan for over 30 years, not 30 months, 30 years. This plan is ready to go. It is

vettied by environmentalists, by business leaders, by our recreational and commercial fishermen. This plan has been signed off on not by one Governor but by six. Republicans, Democrats, Members of Congress stand behind, unified this plan. Louisiana is ready to go. We do not want to delay or wait any longer. If other states do not have their plans together along the Gulf Coast, well, they may have to miss the deadline, but Louisiana does not.

So I urge the Department of Commerce to read our plan and to start funding some of these important projects that were anticipated as we passed the RESTORE Act.

I know I have gone over my time, but let me just have 1 minute to close.

Moving forward, we must also be sure that the ecosystem projects ultimately selected are steps toward the comprehensive, large-scale restoration without regard to geographic state boundaries. That was what was intended by Congress particularly for Pot 2. It is particularly important that the Council adhere to the statutory ecosystem restoration priorities and not add criteria to this. These responsibilities fall on the Department of Commerce. They will be testifying next, and your committee will oversee their work.

In closing, the Department of Commerce and the Department of the Treasury must make RESTORE a priority. They must stop failing to meet their deadlines. I am prepared to work with them in any way that I can. Implementation delays should not have happened, and they cannot continue. Once the administration gives the green light to restoring our working coast, the promise of the RESTORE Act will be realized, the promise of billions of dollars to Louisiana and our sister states who share much of the risk—we acknowledge that. We want them to be made as whole as possible.

But Louisiana's plan is ready to go. There is no doubt that the Gulf Coast will have a brighter future because of the RESTORE Act, and with revenue sharing coming online starting this year and accelerating and increasing over time, we finally now have the money to fund a plan. We have the will. We have the plan. We need the partnership from the Federal Government to fund our projects, to save our coast, to secure our coast for its future and the economic future of the United States.

Thank you.

Senator NELSON. Thank you, and without objection, your plan will be entered in the Committee's record.

[The information referred to follows:]

Coastal Protection and Restoration Authority of Louisiana. 2012. *Louisiana's Comprehensive Master Plan for a Sustainable Coast*. Published by the Coastal Protection and Restoration Authority of Louisiana, 450 Laurel Street, Baton Rouge, LA 70801 to "promulgate the comprehensive master plan, to report to the Louisiana Legislature and inform Louisiana Citizens under authority of R.S. 49:214.5.3." 190 pages.

Here is a link to the plan: http://issuu.com/coastalmasterplan/docs/coastal_master_plan-v2?e=3722998/2447530

Check www.coastalmasterplan.la.gov for updates. Contact the Coastal Protection & Restoration Authority at P.O. Box 44027, Baton Rouge, LA 70804; or MasterPlan@la.gov.

Senator NELSON. Senator Vitter?

**STATEMENT OF HON. DAVID VITTER,
U.S. SENATOR FROM LOUISIANA**

Senator VITTER. Thank you, Senators and colleagues, very much for this hearing, even more importantly for all of your leadership when we passed the RESTORE Act because the three of you were extremely supportive and involved.

And of course, it was a big win. The *Deepwater Horizon* disaster was the biggest environmental disaster in our Nation's history, a huge impact to the Gulf Coast in particular. So the RESTORE Act was a big win, dedicating 80 percent of the Clean Water Act's civil penalties paid by the responsible parties to restoration and rebuilding.

Understanding the critical need for that—of course, I was an original cosponsor and worked diligently to get the RESTORE Act passed through our Senate Environment and Public Works Committee. I thank the Chairman for her leadership. We passed it there unanimously in November 2011—unanimous and passionate support. And then we passed it through the Senate in March of 2012.

Then as a leading Republican conferee on the highway bill, I continued to make the enactment, the full, final passage and enactment of the RESTORE Act an absolutely top priority by insisting that it be included in the final version of that highway bill.

As you know, no one felt the effects of the *Deepwater Horizon* disaster more than the citizens of Louisiana. Our coastline experienced over 671 miles of oiled shoreline. That is one and a half times the miles of oiling than experienced by all other states combined, and besides having that over 60 percent of shoreline oiled, Louisiana also had about 90 percent of the total oiled marsh and that happens to be the most sensitive habitat to oiling. So that is a significant impact.

As a result of the spill, our economy, of course, took a huge hit as well. Our seafood and recreational industries in particular were devastated. Fortunately the RESTORE Act will provide the critical funds needed to help ease that real damage.

Given the importance of the RESTORE Act, I have kept a very close watch since its passage on the manner of implementation and have expressed several concerns along the way, which I will also do today.

I have requested multiple briefings with Treasury regarding pending regulations, as well as a meeting with the Secretary of Commerce, Penny Pritzker, to discuss my particular concerns regarding the Council's process in determining how funds will be distributed under certain provisions.

We have made progress, but I also want to express some of those concerns today, four in particular.

Number one, the allocation of funds under Bucket 2 of the RESTORE Act. I understand the Council has just announced the process for evaluating and submitting restoration projects under this component and that the Council members may begin submitting projects as early as next month with project evaluation and selection activities taking place later this fall. Given that these projects will be funded with available funds from the Transocean settlement and we do not yet know how much in civil penalties BP will

be required to pay, I want to stress the importance of refraining from nickel and diming these funds. We want to move quickly. We want to start. Everybody agrees with that. But we do not want that to turn into ultra-small projects because of limited resources now. The funding priority list to be developed by the Council should primarily contain projects that contribute to the large-scale, comprehensive Gulf restoration envisioned under Bucket 2.

Point number two. I want to emphasize that the four priority criteria for Bucket 2 listed in the actual statutory language should take precedence over the objectives contained in the comprehensive plan developed by the Council. The Council should also give priority to projects that address multiple criteria as opposed to only one.

Point number three. And this also has to do with Bucket 2. Under the plain language of the RESTORE Act regarding Bucket 2, funds distributed under Bucket 2, should only be used for projects that would restore and protect the environment. In Treasury's proposed rule, however, Treasury has unilaterally decided to include economic projects as eligible under Bucket 2, and that is contrary to the clear statutory language. I would urge you all to just literally look at the statutory language here and the proposed regs. They do not line up. And that is serious. So in order to avoid unnecessary litigation that would delay the distribution of much needed funds, Treasury should resolve this issue before issuing the final regs.

Point number four. And this has to do with Bucket 3. Bucket 3 will be divided among the states according to a formula to be established by the Council by regulation based on the weighted average of three criteria. And they are developing that formula. In continuing with this process, I want to encourage the Council to ensure that all of the Council members are fully engaged in the process and that they give input and also that the Chair should vote independently and in line with the intent and language of the statute, not just for whatever the majority of the states may work out on their own. I think that is very important.

So those are the four main continuing concerns I wanted to express.

Of course, Louisiana has a very strong interest in making sure that the implementation process is conducted in a fair and transparent model. I know we all support that.

Despite my pending concerns, I would like to commend all those involved for their hard work and dedication to ensuring the successful implementation of all parts of the RESTORE Act.

Thank you.

Senator NELSON. Thank you, Senator Vitter.

We understand that in the Treasury's first draft, indeed, that language is there. It is this Senator's understanding that they are taking that out, and pursuant to the clear legislative intent, that seems to be a step in the right direction.

Now, in the interest of time, I am going to forego an opening statement and will enter it into the record.

[The prepared statement of Senator Nelson follows:]

PREPARED STATEMENT OF HON. BILL NELSON, U.S. SENATOR FROM FLORIDA

It is hard to believe that it has been four years since the worst man-made environmental disaster in our Nation's history—the explosion of the *Deepwater Horizon* oil platform, which resulted in the death of 11 men and over 4.9 million barrels of oil spilled in the Gulf of Mexico.

One of the highlights of a gridlocked Congress was the RESTORE Act in 2012. Without the Senator from Louisiana and California in particular, we might not have gotten across the finish line.

The law directs the bulk, 80 percent, of any Clean Water Act civil penalties paid as a result of the 2010 oil spill back to the Gulf Coast States.

Last year, both BP and Transocean settled their *criminal* cases for violations of the Clean Water Act with the U.S. Department of Justice. As a result, over two and half billion dollars will go toward Gulf restoration projects through the National Fish and Wildlife Foundation, who is represented at the hearing today.

While we wait for a resolution of the remaining clean water act fines, it's important that our Federal agencies, states, and counties are getting prepared if and when there is a resolution to the ongoing litigation in New Orleans.

My top priorities for restoring the gulf are to ensure that we have sufficient science guiding ecosystem restoration and that restoration projects are funded on a much timelier basis than in the last 4 years. Simply put, the Gulf can't wait.

To me, a restored gulf is one in which clean water is free from harmful algae blooms and free from tar mats, is home to healthy oyster reefs and fish habitat and sea grass beds, where charters ferry tourists from hotels to pristine beaches and then on out to the best fishing spots around.

In order to get there, some more things need to start happening.

With regard to RESTORE Act implementation, I am pleased the Council announced on Friday a path forward for funding ecosystem restoration projects from the available funds from the Transocean settlement.

However, there is much work to be done to get to a funded project list. I'm interested in learning how the Commerce Department, the Council members, and other stakeholders view a restored gulf and how you are working together to ensure this process runs more efficiently.

Since last year's hearing, I know that that National Fish and Wildlife Foundation has obligated over \$260 million to ecosystem restoration in the Gulf—including funding fisheries assessments in Florida, which is welcome news to our fisherman.

One of the lessons we learned—and we learned it too late—is that we do not have sufficient understanding of the gulf ecosystem. Even now, we do not have a clear picture on the biological status of two-thirds of the federally managed fish stocks that call the gulf home, so it is important that some of these fines go toward dedicated, long-term science about the gulf ecosystem, which is what we envisioned for the NOAA Science Program.

I'd like to thank today's witnesses and others who have been working to design plans and projects that will lead to a healthy and restored Gulf of Mexico. I greatly appreciate the amount of time and energy you have spent trying to get it right.

Thank you again to our witnesses and especially to Senator Landrieu, who deserves the highest praises for her work to get this legislation passed. I look forward to hearing your testimony.

Senator NELSON. Senator Boxer, with Senator Rubio's concurrence, is here and has to go to another meeting. I want to recognize her as a member of this committee and again as one of the leaders in helping see that the RESTORE Act was enacted into law. Senator Boxer?

STATEMENT OF HON. BARBARA BOXER,
U.S. SENATOR FROM CALIFORNIA

Senator BOXER. Well, Mr. Chairman, thank you so very much. Thanks to my colleagues. Senator Rubio, thank you as well.

I am really directing my remarks to the Honorable Bruce Andrews and Mr. Justin Ehrenwerth, who are the Federal folks who are going to be making sure that the implementation of our RESTORE Act is followed and the intent is followed and there is no freelancing about what we meant. We knew what we meant. We

worked really hard on this. So where is Justin? Hi, Justin. I see Bruce there. So this is to you in friendship.

Just over 3 years ago, as Chairman of the Environment and Public Works, I stood with most members of the Gulf Coast Senate delegation to announce a far-reaching bipartisan agreement that would dedicate 80 percent of the Clean Water Act's civil penalties collected in relation to the BP spill to activities to restore the Gulf Coast ecosystem and economy. And I say that very clearly. Two points: restore the ecosystem, restore the economy. Not one, but two.

I want to thank Senators Landrieu and Vitter and Nelson and Shelby and others who worked so hard with us to develop a compromise proposal. As a Senator from California, this was not affecting my state, but I know when something happens like that what it does to you. It just takes you back. And we have gone through earthquakes, floods, fires, and droughts. We continue to go through those things. And my colleagues always step up to the plate.

So my approach was let us get these funds where they deserve to go. Eighty percent back. And I am very pleased that the RESTORE Act was ultimately incorporated into the conference agreement on the transportation bill, as Senator Vitter reminded us, known as MAP-21. That whole transportation bill is coming back this afternoon, but I will not get into that.

Over 4 years after the BP oil spill, the impacts on the fish and wildlife of the Gulf region are still being felt. Things are getting better, for sure. And I just got back from New Orleans. I was so excited to see the amazing amount of vitality in New Orleans.

Recent research has shown that dolphins near the spill are suffering. Scientists have also found an abnormal number of fish with problems. So we need significant research on the long-term consequences of the spill.

The RESTORE Act was designed to help ensure that the Gulf's damaged ecosystem and the thousands of jobs that depend on them are once again thriving and strong. And we know that small businesses and their employees have been hit hard in all these states. And, my colleagues, I know how hard you have all worked to bring this back, and that is what the RESTORE Act is about, restoring the ecosystems, restoring the economy.

The Gulf of Mexico and its abundant natural resources are a great economic asset. We just relearned that the ocean-related economy, which is something that Senator Nelson always reminds me, is generating \$21 billion in economic activity and supports over 400,000 jobs. That is the Gulf Coast economy. So the RESTORE Act is absolutely critical.

And I do have concerns that I want to address to my colleagues. A legal settlement was reached with Transocean in February 2013. As a result, there is money sitting in the Gulf Coast restoration trust fund waiting to be spent. The needs on the ground are too great for us to wait any longer. The funding has to go where it is needed most in accordance with our law.

The RESTORE Act set many important milestones, including a one-year deadline for release of an initial comprehensive plan to restore and protect the natural resources, the ecosystems, the fisheries, marine and wildlife habitat, beaches, coastal wetlands. This

plan will guide the Federal, State, and local efforts to restore the damaged Gulf of Mexico environment.

I am very pleased that the RESTORE Council, Justin, released an initial comprehensive plan that provides a framework. It is very important. But I am concerned that the project-by-project list required by the legislation has not yet been released despite being more than a year overdue. Folks in the Gulf Coast region—they need help now. The committee today is going to hear from our friends that I just mentioned. And I have to be at another incredibly important hearing on Iran, so I will not be here, but I am here in spirit. And with my colleagues, I will hear what you say.

As the administration works to implement the RESTORE Act, it must strive to faithfully implement the legislation passed by Congress, including—and this is important—the delicate balance between restoration of the Gulf Coast ecosystems and the economy. Now, gentlemen, these two are related. The beautiful environment in the Gulf Coast and the vibrant economy go hand in hand. I come from a coastal State. Something happens to our coast, our economy crashes. People come there for the beauty.

So I am so proud of our accomplishment in passing the RESTORE Act. It is over 2 years ago. However, much more needs to be done. And I am so glad that Senators Landrieu and Vitter and Wicker and Rubio and Nelson and I are going to make sure that this really happens. We remain committed to addressing the devastating impacts of the BP oil spill. We need to get a step ahead. We do not know how much is going to come in on this, but it is going to be substantial. If we cannot get our act together now and we have funds sitting in there now, it does not bode well for our moving forward quickly.

So for me to you, I stand ready to help. If there is anything I can do, please call on me. If you have any problems with what was the intent of the law, we know because we wrote it. So just do not go off on something that you think is in there. Talk to us. And again, we will ride herd and we will be with you as you roll this all out.

Mr. Chairman, thank you so much for this hearing.

Senator NELSON. Thank you, Senator Boxer.

Senator Rubio?

Senator LANDRIEU. Mr. Chairman, could I just underscore 1 minute before Senator Rubio?

Senator NELSON. Of course.

Senator LANDRIEU. Thank you so much.

Senator NELSON. And if the two of you need to leave, go ahead.

Senator LANDRIEU. Yes. I think we are going to leave this in good hands.

But I want to thank Senator Boxer for her extraordinary leadership. This would not have happened without her. It went through the EPW Committee, and without her leadership, the RESTORE Act would not have happened.

And of course, this committee is now going to play a vital role in the implementation.

I want to underscore what Senator Vitter said and Senator Boxer, the law is clear. We debated the issue of pot 2. That money was expressly and solely directed to ecosystem restoration. Period.

Pot 1 and Pot 3 were negotiated by Senators for both, for ecosystem and economic, because our states suffered differently, and that was a negotiation. It is written in the law as plain as day. So let us follow the law. Let us meet our deadlines. Let us get this work done.

Thank you.

Senator BOXER. Thank you, Senator.

Senator NELSON. I hope the Treasury Department listens to this testimony.

Senator Rubio?

**STATEMENT OF HON. MARCO RUBIO,
U.S. SENATOR FROM FLORIDA**

Senator RUBIO. Thank you, Senator Nelson, for holding this hearing.

And I want to thank the Senators from Louisiana as they go about their work today. Thank you for being here today and being a part of this and all the work that went into getting us to this point.

At the outset, I wanted to say there is another hearing going on in Foreign Relations where the key negotiators for the U.S. with Iran are the witnesses. So at some point in the hearing, when it would be my turn, I am going to run and do those questions and then come back over.

But I wanted to thank you, Senator Nelson, for holding this hearing as well.

And I wanted to thank Grover Robinson and Mimi Drew for being here today. Grover actually interrupted his family vacation to be here. And to both Mimi and Grover, your dedication to restoration of Florida's economy and the ecosystem has not gone unnoticed, and we thank you for all that you do.

I also, like I said, wanted to thank my Gulf colleagues from Louisiana and Mississippi and everywhere else for the work we have done together. Bipartisan support is ultimately what got the Act enacted in the first place, and that is what it is going to take to have proper oversight over its implementation. And today we are holding a very timely hearing on the progress and the challenges of implementing the RESTORE Act.

I have significant concerns about the progress being made to date, particularly at the Federal level. I am optimistic that once a final settlement is reached under the Clean Water Act, our state and local partners will be ready to move forward with the several projects that they have waiting in the wings.

And by the way, I am pleased to see a representative of the National Fish and Wildlife Foundation who is here today. The Foundation has already been working on funding projects through the Gulf Environmental Benefit Fund, administering approximately \$12.5 billion in funds to projects all across the region. It will be good to hear of lessons learned in administering these separate funds in hopes of perfecting the process overall as we move forward.

However, as I mentioned and you have already mentioned, one of my biggest concerns is the slow pace of the administration in meeting—or should I say not meeting—the deadlines that are pre-

scribed under the law. For example, even settlement money received to date cannot be expended without a final rule from the Treasury Department. Under the RESTORE Act, the Department was directed to establish procedures to expend any money received within 180 days. So that would have been around December 2012. However, to date, we still have not received a final rule from the Department.

And as we will hear today from Grover and from Mimi, this delay has had some real on-the-ground implication for stakeholders. In Florida, our counties are impeded from even moving in the planning process as they do not have the administrative funds necessary to undertake such a massive project. The restoration process has many moving parts, several different funds, and several different administrators of those funds. Proper planning is going to be key in making sure spending is not duplicative and that the money is spent in the most responsible way possible.

Unfortunately, this delay by Treasury has already impeded the success of restoration. And while I appreciate the Gulf Coast Ecosystem Restoration Council's announcement on Friday of last week on their, quote, progress that they have made in finalizing the approval process for projects submitted to them, I find their announcement lacking in the detail necessary to truly provide a clear and straightforward process for interested parties.

Last, I have two important clarifications to make regarding the interpretation of the RESTORE Act.

First of all, as we negotiated the Act here in the Senate, we worked very hard to put forward in the law exactly how we intended for the money to be spent, both in what projects would be eligible and by formula how much each state should receive. I would like to reiterate to the Council and to the stakeholders here today that both myself—and I think I speak for Senator Nelson—fully expect that the Council will adhere to the letter of the law as it was intended. It would be inappropriate of the Council to reinterpret, for example, the oil spill impact allocation formula that divides a portion of the settlement funds between the states.

Additionally, there is one issue in Florida related to both the economy and the ecology and that is the issue of water quality. Just this weekend, just today we read reports about the lasting impact of the dispersants that were used. Trace elements are still found in tar balls, and we were told that those things would disperse when they came in contact with water. But 4 years later, they are still interacting with its impact, and it is not fully understood the lasting impact that that would have on our ecology. And you can just imagine these are not the kinds of things that you brag about in your Chamber of Commerce pamphlets as tourists are interacting with these tar balls and there is real concern about its implications.

And already we keep hearing that, well, the long-term impacts of the dispersants are not complicated or we do not think they are very dangerous. But already some of the claims that were made initially before their use have proven not to be true, and there simply is not enough research or data to tell people this with a level of certainty that we hear from the industry and that tragically sometimes government has echoed. So I think we would all like to

better understand from everyone here today how they value water quality, particularly as it relates to habitat restoration off the coast of Florida.

Again, I want to thank everyone that is here today coming to this hearing, and I appreciate you holding this hearing, Senator Nelson. And I look forward to returning in a few moments after my line of questioning in Foreign Relations is up.

Senator NELSON. Thank you, Senator Rubio.

I want to invite the witnesses up.

Senator Wicker, any comments from you before we get into the testimony?

**STATEMENT OF HON. ROGER F. WICKER,
U.S. SENATOR FROM MISSISSIPPI**

Senator WICKER. Yes, I have comments. I want to subscribe to much of what you, Mr. Chairman, have said, as well as Senator Boxer, Senator Rubio, and Senator Landrieu.

I want to take my 2 minutes of opening statement to pay special tribute to Dr. Trudy Fisher, who will testify, and perhaps that will shorten the introduction that you have to make for her.

Dr. Fisher served as Executive Director of the Mississippi Department of Environmental Quality for the past 8 years, and she will soon be leaving that position. She was first appointed by Governor Haley Barbour, reappointed by Governor Phil Bryant. She was the first woman to serve as the department's director and has been instrumental in the aftermath of the BP oil spill.

Dr. Fisher serves as Mississippi's trustee under the Oil Pollution Act and has served as Chair of the National Resources Damage Assessment Deepwater Horizon Trustee Council.

In addition, Director Fisher serves as Governor Bryant's designee on the RESTORE Council where she oversees and helps implement programs to restore the Gulf Coast.

Before serving as Executive Director, Dr. Fisher led an environmental law practice, served on the Mississippi Department of Environmental Quality as General Counsel for the Department of Environmental Quality.

She received her bachelors degree from MUW and her law degree from the University of Mississippi School of Law where she was Editor-in-Chief of the *Mississippi Law Journal*. She has repeatedly been recognized by her peers as one of the best lawyers in America and recently received a rating of AV Preeminent, which is the highest possible legal rating in both ability and ethical standards.

So I am delighted to recognize this daughter of Mississippi to testify as part of this panel today. Her work has kept our state clean and safe so future generations of Mississippians and Americans can continue to enjoy our abundant natural resources.

Thank you for your indulgence, Mr. Chairman. I am delighted to claim Dr. Trudy Fisher as a friend and to welcome the other five members of our distinguished panel.

[The prepared statement of introduction by Senator Wicker follows:]

STATEMENT OF INTRODUCTION FOR TRUDY FISHER BY HON. ROGER F. WICKER

Trudy Fisher has served as Executive Director of the Mississippi Department of Environmental Quality for the past eight years. She is first appointed by Governor Haley Barbour in 2007 and was reappointed by Governor Phil Bryant in 2012.

She was the first woman to serve as the department's director and has been instrumental in the aftermath of the BP oil spill in 2010. Trudy serves as Mississippi's Trustee under the Oil Pollution Act and has served as Chair of the National Resources Damages Assessment's Deepwater Horizon Trustee Council, which is comprised of the five Gulf States and the four Federal trustees.

In addition, Trudy serves as Governor Bryant's designee on the RESTORE Council, where she oversees and helps implement programs to restore the Gulf Coast.

Before serving as Executive Director, Trudy led an environmental law practice and served on the Mississippi Department of Environmental Quality's general counsel. Trudy received her Bachelor of Science degree from the Mississippi University for Women and her law degree from the University of Mississippi School of Law.

She has repeatedly been recognized by her peers as one of the best lawyers in America and recently received a rating of "AV Preeminent," which is the highest possible legal rating in both ability and ethical standards.

During her time as Executive Director of the Mississippi Department of Environmental Quality, Trudy managed a staff of over 400 employees and a budget of over \$250 million. She is responsible for protecting Mississippi's environment and she administers most EPA programs in our state. After Hurricane Katrina, the agency, under Trudy's leadership, implemented a \$640 million wastewater and water infrastructure program for the Gulf Coast region.

Her work has kept our state clean and safe so future generations of Mississippians can continue to enjoy our abundant natural resources. We greatly appreciate Trudy's service to Mississippi and wish her well in her future endeavors. Thank you.

Senator NELSON. Thank you, Senator.

Welcome. We are going to hear first from Bruce Andrews, who is the Deputy Secretary of Commerce. He is well known to us as the former General Counsel for this committee and Chief of Staff of this committee. And he was just confirmed to this position very recently, within the last few days.

Then we are going to hear from Justin Ehrenwerth, the Executive Director of the RESTORE Council. Welcome.

As Senator Wicker has already introduced, Trudy Fisher, Executive Director of Mississippi Department of Environmental Quality.

And then Mimi Drew, the Governor's Designee to the RESTORE Council representing our state, the State of Florida.

And then Grover Robinson, Commissioner Robinson, the County Commissioner of Escambia County, which is Pensacola. And he is the new President of the Florida Association of Counties and was someone who helped us personally pass the RESTORE Act a couple of years ago.

I think what you have heard some of the Senators say that this was almost a miraculous kind of coming together of the politics that enabled us just before an election to pass this historic piece of legislation. And it was tacked onto a transportation bill. The whole RESTORE Act was put on as an amendment, and it has made its way through.

And then finally, we are going to hear from Thomas Kelsch, the Senior Vice President of the Gulf Environmental Benefit Fund, the National Fish and Wildlife Foundation.

And so we welcome you all and we will take you—now, we are putting your formal statement in the record. If I can forego my formal statement, so can you. So do not sit there and read us your statement. Talk to us and limit it to about 5 minutes.

Mr. Andrews?

**STATEMENT OF HON. BRUCE H. ANDREWS,
DEPUTY SECRETARY OF COMMERCE,
U.S. DEPARTMENT OF COMMERCE**

Mr. ANDREWS. Good morning, Senator Nelson, and thank you. Good morning also, other members of the Committee. Thank you for inviting me here today to testify regarding Gulf Coast restoration. It is good to be back at the Commerce Committee. It sort of feels like being home.

Mr. Chairman, I want to personally thank you for holding this hearing and for what a great champion you have been for Gulf Coast restoration. I know how important this is to your state and you have spoken quite passionately about it.

The Department of Commerce and the administration are strongly committed to restoring the Gulf Coast region, a region that is vital to our Nation and our economy.

In response to the oil spill and building on our prior efforts, there are several large-scale initiatives that have begun, including the work under the RESTORE Act, which I know we want to talk about predominantly today, but also the NRDA process and the work through the National Fish and Wildlife Foundation. The Department of Commerce, along with our partners in both the Federal and State government, are playing an important role in each of these initiatives. We are working with our partners to advance the common goals and advance the goals of the legislation, trying to avoid the duplication of these various efforts and maximize the benefits that inure to the Gulf Coast region.

Our goal and our commitment is simply to address the damage caused by the spill but also to enhance the long-term environmental health and economic prosperity of the region.

While each of these efforts is important, I want to focus today on the RESTORE Act, especially because the previous speakers were so focused on its implementation. And as you know, the Council is by design a unique State-Federal partnership that fosters deliberative decisionmaking. It brings together the skills and expertise of all of the parties and frankly the variety of perspectives. However, with 11 members, there are a number of diverse views and sometimes competing interests which, under that, decisionmaking can sometimes take time. Yet, we recognize that it is imperative for the Council to continue to move forward with all deliberate speed and concerted effort to achieve this critical mission, and under the Department's leadership, the Council has achieved significant progress in setting a foundation to restore the Gulf Coast for future generations.

Most of the Council's efforts to date have been undertaken leveraging the existing resources and the personnel both from the Council members and from outside sources. And in the fall of 2013, the Council was able to access a small amount of the initial funding to begin hiring core staff and put basic operations in place. Although the Council is still administratively housed in the Department of Commerce, we hope to have it established as an operational entity by the end of this fiscal year, which I think is an important milestone in moving all of this forward.

In August 2013, after extensive public input, the Council unanimously passed the Initial Comprehensive Plan, which is another

important milestone because it helped set a framework and build the necessary process for both the project evaluation and selection under the plan. The evaluation process provides a merit-based selection of projects with also transparency for everybody involved to see. It allows for independent science review, which is critically important. It provides for coordination at the project level with all these various efforts, how important that is. And it gives the highest priority—and I want to underscore this because I know this was mentioned this morning. It gives the highest priority to projects that meet one of more of the evaluation criteria that were included in the law.

The Council has developed project submission guidelines and anticipates releasing those guidelines in August, which is an important milestone in moving all of this forward because that will allow us to establish and publish a draft funded priorities list for public comment and then for final action.

Finally, the Council has begun a two-part rulemaking to implement the oil spill impact formula component, which also has been mentioned here this morning. In the next 2 months, the Council anticipates releasing the interim final rule that will allow accessing up to 5 percent of the Bucket 3 funds to both states and the Florida counties, recognizing how important that is for the process moving forward. And concurrently, the Council is developing a proposed rule and guidelines that will implement the oil spill impact formula. This two-part approach will allow us to access the funds that will allow the planning process to go forward but also allow the states to develop the State expenditure plans in a fair and transparent rulemaking process.

So in conclusion, it has been 4 years since the *Deepwater Horizon* spill. Much progress is made, but we also recognize that there is a lot to be done. And the Department of Commerce, through our roles in various pieces of the restoration process, is committed to continuing the work with the citizens of the Gulf Coast to both make smart investments and use available resources to wisely restore the region's ecosystem and economy for future generations.

So I appreciate the Committee's time, and I look forward to answering your questions.

[The prepared statement of Mr. Andrews follows:]

PREPARED STATEMENT OF BRUCE H. ANDREWS, DEPUTY SECRETARY,
U.S. DEPARTMENT OF COMMERCE

Introduction

Good morning Chairman Nelson, Ranking Member Rubio, and Members of the Committee. Thank you for inviting the Department of Commerce to testify before you today on the successes and challenges in restoring the Gulf Coast region's environment and economy following the *Deepwater Horizon* oil spill.

The Administration is strongly committed to restoring the Gulf Coast region, and I want to thank you for being a champion of Gulf restoration. The Gulf Coast region is vital to our Nation and our economy, providing valuable energy resources, abundant seafood, extraordinary beaches and recreational activities, and a rich cultural heritage. Over twenty-two million Americans live in Gulf coastal counties and parishes—working in important U.S. industries like commercial seafood, shipping, tourism, and oil and gas production. The region also boasts ten of America's fifteen largest ports accounting for nearly a trillion dollars in trade each year. Its waters and coasts are home to one of the most diverse environments in the world—including over 15,000 species of sea life. Over the past century, the Gulf Coast has experienced the loss of critical wetland habitats, erosion of barrier islands, imperiled fish-

eries, and water quality degradation. Amplifying these issues, the region has endured significant natural and man-made catastrophes in the last decade, including major hurricanes such as Katrina, Rita, Gustav, and Ike, and the *Deepwater Horizon* oil spill.

In response to the oil spill, and building on prior efforts to help ensure the long-term restoration and recovery of the Gulf Coast region, several large scale restoration initiatives have begun, including work under the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (RESTORE Act); the Natural Resources Damage Assessment process; and projects through the National Fish and Wildlife Foundation. While each process is subject to different requirements for investing resources and each is overseen and managed by a unique set of governance arrangements, funding from all of these efforts will be directed to Gulf restoration. These efforts are at different stages of maturity and implementation. As a practical matter, the total amount of funding that ultimately will be available for restoration under the RESTORE Act and the Natural Resource Damage Assessment process and the timing of those funds is still unknown.

The Department of Commerce, along with our state and Federal partners, plays an important role in each of these initiatives. We understand the importance of and are committed to coordination across these Gulf restoration initiatives and will work closely with our partners to advance common goals, reduce duplication, and maximize the benefits to the Gulf Coast region. We recognize this unique and unprecedented opportunity to implement a coordinated Gulf region-wide restoration effort in a way that restores and protects the Gulf Coast environment, reinvigorates local economies, and creates jobs in the Gulf region. Our goal and commitment is not simply to address the damage caused by the spill—it is to enhance the long term environmental health and economic prosperity of the Gulf Coast region for generations.

The RESTORE Act

The RESTORE Act was passed by Congress on June 29, 2012, and signed into law by President Obama on July 6, 2012. The RESTORE Act provides for planning and resources for a regional approach to the long-term health of the valuable natural ecosystems and economy of the Gulf Coast region. The RESTORE Act dedicates 80 percent of any civil and administrative penalties paid under the Clean Water Act, after the date of enactment, by responsible parties in connection with the *Deepwater Horizon* oil spill to the Gulf Coast Restoration Trust Fund (the Trust Fund) for ecosystem restoration, economic recovery, and tourism promotion in the Gulf Coast region. The RESTORE Act divides the Trust Fund into five components and sets parameters for how these funds will be spent:

- 35 percent of the funds are divided equally among the five Gulf Coast states for ecological and economic restoration. Eligible activities include: restoration and protection of natural resources; mitigation of damage to natural resources; workforce development and job creation; improvements to state parks; infrastructure projects, including ports; coastal flood protection; and, promotion of tourism and Gulf seafood.
- 30 percent of the funds will be administered for restoration and protection according to the Comprehensive Plan developed by the Gulf Coast Ecosystem Restoration Council (Council).
- 30 percent of the funds are dedicated to the Gulf Coast states based on the Oil Spill Impact Formula set out in the RESTORE Act. This formula will be based on the number of miles of shoreline that experienced oiling, the distance from the *Deepwater Horizon* mobile drilling unit at the time of the explosion, and the average population as of the 2010 Census. Each state is required to have a Council-approved plan in place for use of these funds.
- 2.5 percent of the funds are dedicated to the Gulf Coast Ecosystem Restoration Science, Observation, Monitoring and Technology Program. The National Oceanic and Atmospheric Administration (NOAA) will establish a Gulf Coast Ecosystem Restoration, Science, Observation, Monitoring and Technology Program for marine and estuarine research, ecosystem monitoring and ocean observation, data collection and stock assessments, and cooperative research.
- 2.5 percent of the funds are dedicated to the Centers of Excellence Research Grants Program. The Centers of Excellence Research Grants funding is distributed through the states to nongovernmental entities to establish centers of excellence that will focus on the following disciplines: coastal and deltaic sustainability; restoration and protection; fisheries and wildlife ecosystem research and monitoring; offshore energy development; sustainable and resilient growth; and comprehensive observation, monitoring and mapping in the Gulf.

In addition, interest generated from the funds in the Trust Fund is allocated among the NOAA Science Program, the Centers of Excellence, and Council implementation of the Comprehensive Plan.

The Department of Commerce plays a key leadership role in implementation of the RESTORE Act. The Secretary of Commerce serves as a member and is honored to serve as the Chairperson of the Council. In this role, the Department has brought together a diverse range of expertise and experience from across our bureaus, including NOAA's expertise in science-based natural resource restoration, the Economic Development Administration's expertise in sustainable economic development, and International Trade Administration's expertise in travel and tourism promotion, to help implement the integrated approach to Gulf restoration envisioned by the RESTORE Act. In addition, the Department of Commerce through NOAA is responsible for establishing and implementing the Gulf Coast Ecosystem Restoration, Science, Observation, Monitoring and Technology Program.

Gulf Coast Ecosystem Restoration Council

The RESTORE Act established the Council to help restore the ecosystem and economy of the Gulf Coast region by developing and overseeing implementation of a Comprehensive Plan and carrying out other responsibilities. The Council is comprised of the Governors of the States of Alabama, Florida, Louisiana, Mississippi and Texas and the Secretaries of the U.S. Departments of Commerce, Agriculture, Army, Homeland Security and the Interior, and the Administrator of the U.S. Environmental Protection Agency. The Council has oversight over the expenditure of sixty percent of the funds made available from the Trust Fund: thirty percent will be administered for restoration and protection according to the Comprehensive Plan developed by the Council and thirty percent will be allocated to the states according to a formula set forth in the RESTORE Act and spent according to individual state expenditure plans to contribute to the overall economic and ecological recovery of the Gulf. The state expenditure plans will be consistent with the goals and objectives of the Comprehensive Plan and are subject to the Council's approval. The Council will oversee and implement this funding with the goal of a coordinated federal, state, and local long-term recovery approach.

The Council is committed to working with Gulf communities and partners to invest in actions, projects, and programs that will ensure the long-term environmental health and economic prosperity of the Gulf Coast region. To guide these investments, the Council has adopted five overarching goals:

- Restore and Conserve Habitat;
- Restore Water Quality;
- Replenish and Protect Living Coastal and Marine Resources;
- Enhance Community Resilience; and,
- Restore and Revitalize the Gulf Economy.

Implementation—Progress and Challenges

The Council is by design a unique state-federal partnership that fosters deliberative decision-making, allows for the coordinated use of the expertise of its members, and provides a mechanism to maximize the opportunity for collaboration and ultimate success. One of the Council's strengths is its ability to bring together each state and Federal agency's capabilities and expertise; however, with eleven members with diverse views, and sometimes competing interests, decision-making requires cooperative effort and can take time. Nonetheless, the Council and its members continue to proceed with deliberate speed and concerted effort to meet key milestones and achieve common goals.

The Department of Commerce recognizes that it is imperative that the Council move forward efficiently to achieve its critical mission. Under the Department's leadership, the Council has made significant progress in setting up a strong foundation to restore the Gulf coast. During the first year, the Council established basic processes; assembled a transition staff; developed and published a proposed Comprehensive Plan; developed and published an Initial Comprehensive Plan and accompanying environmental compliance documents; hosted public listening sessions in all five Gulf Coast states with over 2,000 individuals in attendance; and hired key management positions, including an Executive Director and Chief Financial Officer. Since the Comprehensive Plan was approved in late August 2013, the Council has taken important steps to implement the Comprehensive Plan and fund projects under the Plan. During the past year, the Council also has worked on developing a regulation for the Oil Spill Impact Formula Component and is preparing to review and fund projects under state expenditure plans.

Standing up a New Independent Entity in the Federal Government

One of the major challenges of standing up the new independent entity has been the lack of dedicated resources. Most of the Council's efforts to date have been undertaken by leveraging existing resources and personnel from Council members and outside sources. The Department of Commerce has dedicated significant Departmental resources to help the Council in this start-up period. We have contributed both personnel and basic support services to the Council, including human resources, IT, payroll, legal and contracting. While awaiting the Treasury regulations, the Department of Commerce worked with the Department of Treasury and the Council to make initial funding accessible to the Council to begin hiring core staff, put basic operations in place, and to make further progress on implementation. This Fiscal Year, the Council continued to focus on building operational capacity, establishing institutional procedures and infrastructure, and implementing key milestones to enable it to be prepared to begin selecting and funding projects. Justin Ehrenwerth, the Council's Executive Director, will go into more detail about this. The Council is still administratively housed within the Department with the goal of establishing an operationally independent Federal entity by the end of this Fiscal Year. To that end, the Council has begun recruiting for key staff positions and selecting a more permanent office in the Gulf region.

Developing a Comprehensive Plan and Funded Priorities List Under the Plan

After extensive public input, the Council unanimously approved the Initial Comprehensive Plan on August 28, 2013. This major accomplishment provides a framework to implement a coordinated, Gulf Coast region-wide restoration effort in a way that restores, protects, and revitalizes the Gulf Coast. The Council deferred developing a Funded Priorities List and Ten-Year Funding Strategy (*i.e.*, a description of the allocation of the amounts from the Trust Fund projected to be made available to the Council to implement the Plan for the next ten years). Over the past several months, the Council has built the necessary steps to operationalize the project selection and vetting process described in the Comprehensive Plan. This project selection and vetting process provides for a merit-based selection of projects to achieve comprehensive ecosystem restoration. It incorporates an independent peer review evaluation to ensure projects are grounded in science, provides for coordination at a project level with other restoration efforts, and gives the highest priority to projects that meet one or more of the evaluation criteria enumerated in the law. The Council also developed project submission guidelines. The Council anticipates releasing the project submission guidelines and beginning review of the submissions in August. Using this process, the Council will develop the draft Funded Priorities List. The Council will publish the draft list for public review and comment before finalizing the list and incorporating it into the Plan. It should be noted that the Council faces the challenge of making strategic funding decisions that will achieve comprehensive Gulf-wide restoration without knowing the total amount of money that will be available.

Progress on Implementing Oil Spill Impact Formula Component

The Council has begun a two-part rulemaking to implement the Oil Spill Impact Formula Component. The first part will take the form of an interim final rule that would provide access to the states and Florida counties of up to 5 percent of funds for planning. The Council anticipates releasing this rule in the next two months. Concurrently, the Council is developing a proposed rule and guidelines that will implement the oil spill impact formula. The proposed rule will be published for public notice and comment. This approach will allow access to funds to develop a state expenditure plan while providing a fair and transparent rulemaking process.

RESTORE Act Gulf Coast Ecosystem Restoration Science, Observation, Monitoring, and Technology Program

In addition to the Department's work within the Council, another key element of the Department's efforts to implement the RESTORE Act is the responsibility to establish a Gulf Coast Ecosystem Restoration Science, Observation, Monitoring, and Technology Program (NOAA RESTORE Act Science Program or the Program). In January 2013, NOAA established this Program. The Program will receive 2.5 percent of the funds, plus 25 percent of the interest, from the Trust Fund.

To develop the Program, NOAA worked diligently with the U.S. Fish and Wildlife Service (USFWS), and with key stakeholders including the Gulf of Mexico Fishery Management Council (FMC), the Gulf States Marine Fisheries Commission (Commission), the five Gulf states, Federal partners, academic institutions, non-profit organizations and other entities across the Gulf region. The Program seeks to achieve a holistic understanding of the Gulf of Mexico ecosystem and support, to the max-

imum extent practicable, restoration efforts and the long-term sustainability of the ecosystem, including its fish stocks, habitats, and fishing industries.

Program Engagement and Coordination

To be successful, the NOAA RESTORE Act Science Program must harness the expertise of the scientific community in the Gulf of Mexico and beyond, and link it to the region's pressing science needs. An engagement process that connects researchers, resource managers, and resource users and allows their collective knowledge to inform the Program's direction is required. NOAA, working with its USFWS partners, initiated this engagement process early in the program development phase and has continued it as it moves to early stages of implementation. NOAA and USFWS have already held over 100 meetings with stakeholders including representatives from the Commission, the FMC, universities, Federal agencies, and non-governmental organizations. These meetings shaped the Program's current framework and continued engagement is shaping the development of the Program's science plan.

It is important to keep in mind that this Program is one of several recently created research programs focused on increasing our understanding of the Gulf of Mexico. Others include the Gulf Research Program at the National Academies, the Gulf of Mexico Research Initiative, and the State Centers of Excellence also authorized in the RESTORE Act. These programs will add their activities to the existing Federal and other research programs already active in the Gulf of Mexico. NOAA is actively engaging and coordinating with these other new initiatives, as well as with existing research programs.

Program Organization and Next Steps

The Program is housed within the National Ocean Service's National Center for Coastal Ocean Science (NCCOS). NCCOS's experience running grant programs focused on pressing coastal and ocean issues, its experience working in the Gulf of Mexico, and its demonstrated ability to transfer the results of researchers to resource managers make it a logical home for the Program. An Executive Oversight Board internal to NOAA and the USFWS will keep the program connected to the other research programs within NOAA and the USFWS. An Advisory Working Group established under NOAA's Science Advisory Board and comprised of subject matter experts as well as representatives of various Gulf of Mexico science programs including the Commission, FMC, and RESTORE Act Centers of Excellence will keep the Program connected to the larger science community. A Gulf-based director for the Program will keep the Program grounded in the region.

The Program currently is developing a science plan that will guide program implementation and anticipates releasing the draft plan for public comment by Fall 2014. In addition to providing additional detail on the structure and administration of the Program, the science plan will lay out the science priorities for the Program, the connection of those priorities to management needs, and the expected outputs and outcomes that will result from the activities competitively funded under each priority. The priorities are being drawn from prior science and research needs assessments for the Gulf of Mexico and from input the Program received from stakeholder engagement. Once finalized, the science plan will guide the development of the competitive Federal funding opportunities the Program will support.

Early in the development of the Program, it became apparent that there was a pressing need to provide support for short-term projects whose results would inform the future direction of the Program, as well as the other science and restoration initiatives underway or being planned for the region. As a result, the Program has developed an initial Federal funding opportunity around the short-term priorities identified in the Program's science plan framework. Those short-term priorities are:

- Comprehensive inventory and assessment (*i.e.*, strengths and weaknesses) of ongoing ecosystem modeling efforts (conceptual and quantitative);
- Identification of currently available health/condition indicators of Gulf of Mexico ecosystem components, including humans, followed by comparative analysis of strengths and weaknesses and design and testing of additional indicators; and,
- Assessment of monitoring and observation needs and development of recommendations to build off existing assets to establish a Gulf wide monitoring and observation network.

This opportunity will be available once the Treasury regulations are in effect. The NOAA RESTORE Science Program represents an opportunity and capacity to help integrate the disparate science efforts across the Gulf and advance overall understanding of the Gulf of Mexico as an integrated ecosystem. The Program will contribute to the science needed for the long-term sustainability of the Gulf of Mexico

ecosystem, including its fisheries, and help inform restoration and management efforts.

The Department of Commerce's Natural Resources Damage Assessment Role

Another important Gulf restoration effort is the Natural Resources Damage Assessment (NRDA) process. The Department of Commerce, represented by NOAA, has a critical role under the Oil Spill Pollution Act (OPA) serving as a natural resource trustee. NOAA, along with its co-trustees, is charged under the Act with conducting a Natural Resource Damage Assessment to assess the natural resources and the damage to them caused by the oil spill and the response, as well as the value of the lost use of those resources until they are restored. This is an injury to the public, and the public availability of those resources, and is in addition to any individual injury caused by the spill. The OPA requires the Trustees to use the damage assessment as the basis for developing a restoration plan with public review and input. The Trustees then present the restoration plan to responsible parties (primarily BP Exploration and Production Inc. (BP)) for funding, and either BP agrees to fund it or the Trustees file it with the Court as a claim for litigation. The essence of the process is to identify and quantify the injury to resources caused by the spill, determine the type and amount of restoration needed to restore the resources to their pre-spill state or provide equivalent alternative resources, and compensate for their interim lost use. Inherent in this process is the need to assess the injuries to natural resources that are caused by the oil spill itself, as well as those caused by actions carried out as part of the oil spill response. For restoration, OPA requires the trustees to restore, rehabilitate, replace, or acquire the equivalent of the injured natural resources and services and in doing so there must be a nexus between the types and magnitude of the injury and the restoration.

In general, stewardship of the Nation's natural resources is shared among several Federal agencies, states, and federally recognized tribes. NOAA, acting on behalf of the Secretary of Commerce, is the lead Federal trustee for many of the Nation's Federal coastal and marine resources.

The *Deepwater Horizon* NRDA Trustees (NRDA Trustees) are, in addition to NOAA, the trustee agencies from the States of Florida, Alabama, Mississippi, Louisiana and Texas; and the U.S. Department of the Interior (DOI), the U.S. Environmental Protection Agency (EPA), and the U.S. Department of Agriculture (USDA). These nine entities (five states and four Federal agencies) have formed a Trustee Council that has worked cooperatively since shortly after the *Deepwater Horizon* spill to assess compensable injuries caused by the spill, and to develop a restoration plan to restore affected Gulf resources, compensate for lost uses including lost human uses, and to implement those plans. We note that two of the Federal agencies—EPA and USDA—were added by Executive Order in September, 2012, and have joined the cooperative efforts since that time.

NRDA regulations explicitly seek participation in the assessment and restoration planning by responsible parties and the NRDA Trustees to facilitate the restoration of natural resources and their services injured or lost by oil spills. The nature and extent of participation in restoration planning is left to the discretion of the NRDA Trustees. OPA also encourages compensation of injured natural resources in the form of restoration, with public involvement in determining the types and magnitude of the restoration. Indeed, public involvement is an important component of the OPA and of the National Environment Policy Act Environmental Impact Statement processes that work together to inform decisions about restoration plan development and implementation.

Assessing injury to natural resources in this context is challenging. Understanding complex ecosystems, the services these ecosystems provide, and the injuries caused by the release of oil and the response takes time—often years. The time of year the resource was injured, the type and source of oil, the amount and duration of the release, the location, and the nature and extent of clean-up are among the many diverse factors that affect how quickly injury to resources can be assessed, and restoration and recovery planning and implementation can occur. The OPA requires that trustees be able to demonstrate connections between the release of the oil, exposure of the resources to the oil, and, finally, a causal connection between exposure and resource injury. Exposure and its effects on the resource can be direct and/or indirect. For example, the health of a dolphin might be adversely affected by being directly exposed to the oil in the water. It may also be exposed and affected indirectly by eating prey that becomes contaminated by the oil.

In addition, because the NRDA forms the basis for a restoration plan that may be litigated, an especially careful level of scientific rigor is required for the studies that are to demonstrate these connections in order to ensure that our studies will

be accepted by a court as evidence in the case. For all of these reasons, the assessment and the restoration plan based on it may take a number of years to complete and even more time to implement. For example, the implementation of the restoration plan for the Exxon Valdez oil spill that occurred in 1989 is still ongoing. The NRDA process requires an objective, scientifically rigorous, and cost-effective assessment of injuries—and development of a restoration plan with public input that assures that harm to the public's resources is fully addressed.

Natural Resource Damage Assessment Early Restoration

In April 2011, the NRDA Trustees announced an agreement under which BP would provide \$1 billion toward implementation of early restoration projects. This agreement is called the Framework Agreement for Early Restoration Addressing Injuries Resulting from the *Deepwater Horizon* Oil Spill (Framework Agreement). A separate agreement among the NRDA Trustees allocated that \$1 billion as follows: the five state trustees, DOI, and NOAA are each allocated \$100 million for funding early restoration projects pertaining to injury to their primary trust resources. The remaining \$300 million is to be used to fund additional state-proposed restoration projects as selected by NOAA and DOI. All projects must be approved by the NRDA Trustee Council and are subject to BP approval through its agreement to stipulations that all Trustees sign and BP agrees to. The Framework Agreement represents an initial step toward fulfilling BP's obligation to fund the complete restoration of injured natural resources and compensate for lost use of those resources.

The NRDA Trustees' key objective in pursuing early restoration is to achieve tangible recovery of natural resources and natural resource services for the public's benefit while the longer-term injury and damage assessment and restoration plan development is under way. As with the more complete assessment and restoration planning process, a restoration plan with opportunity for public input must accompany early project selection.

Phase I and Phase II Early Restoration

The first early restoration plan, the Phase I Early Restoration Plan & Environmental Assessment (Phase I ERP/EA), was presented for public review and comment in December 2011 and finalized by the NRDA Trustees in April 2012. The eight projects included in the Phase I ERP/EA are now being implemented and collectively will provide marsh creation, coastal dune habitat improvements, near-shore artificial reef creation, and oyster cultch restoration, as well as the construction and enhancement of boat ramps to compensate for lost recreational use of resources. The total estimated cost for the Phase I ERP/EA is \$62 million.

The NRDA Trustees presented the Phase II Early Restoration Plan & Environmental Review (Phase II ERP/ER) for public review and comment in November 2012 and finalized it in December 2012. The Phase II ERP/ER projects, of which there are two, will help restore nesting habitats for beach-nesting birds and sea turtles harmed as a result of spill response activities. The total estimated cost for these two projects is \$9 million. Implementation of both of these projects has begun and, for some project components, construction is in progress.

Phase III Early Restoration

To initiate the third phase of early restoration, the NRDA Trustees in December 2013 released a draft plan that proposed more than \$600 million in new restoration projects across the Gulf states. The Draft Programmatic and Phase III Early Restoration Plan and Draft Early Restoration Programmatic Environmental Impact Statement (Draft Phase III ERP/PEIS) were available for public review and comment through Feb. 19, 2014. The NRDA Trustees held a total of nine public meetings across the Gulf Coast during this public comment period to spur public engagement, and also accepted comments on the draft plan via numerous other avenues, including the Trustees' website, e-mail, and U.S. Mail. In June 2014, the Federal natural resource trustee agencies and the state natural resource trustee agencies from Alabama, Florida, Louisiana, and Mississippi released the Final Programmatic and Phase III Early Restoration Plan and Programmatic Environmental Impact Statement (Final Phase III ERP/PEIS) and associated environmental analyses to the public. The plan outlines 44 proposed projects totaling an estimated \$627 million. Projects focused on ecological restoration represent 63 percent of the total dollar amount of projects, while the remaining 37 percent focus on restoring lost recreation uses of natural resources. The Plan also identifies a preferred programmatic strategy for early restoration actions. This programmatic strategy may also serve as the base document from which to tier subsequent environmental compliance evaluation for future early restoration plans. More information is available at www.gulfspillrestoration.noaa.gov.

Final decisions on both the programmatic early restoration plan alternatives and each of the 44 projects will be documented in a final record of decision. The record of decision for the Final Phase III ERP/PEIS will provide and explain the NRDA Trustees' decisions regarding the selection of a programmatic early restoration alternative and specific early restoration projects. The NRDA Trustees will issue the record of decision no earlier than 30 days after the Environmental Protection Agency publishes a notice in the Federal Register, which occurred on June 27, 2014, announcing the availability of the Final Phase III ERP/PEIS.

National Fish and Wildlife Foundation-Gulf Environmental Benefit Fund

In early 2013, a U.S. District Court approved two plea agreements resolving certain criminal cases against BP and Transocean which arose from the 2010 *Deepwater Horizon* explosion and oil spill. The agreements direct a total of \$2.544 billion to the National Fish and Wildlife Foundation (NFWF) to fund projects benefiting the natural resources of the Gulf Coast that were impacted by the spill. Pursuant to the plea agreements, NFWF is required to consult with natural resource management agencies, including NOAA and USFWS, on the identification and prioritization of appropriate projects for Gulf of Mexico restoration.

Over the next five years, NFWF's Gulf Environmental Benefit Fund will receive a total of \$1.272 billion for barrier island and river diversion projects in Louisiana, \$356 million each for natural resource projects in Alabama, Florida, and Mississippi, and \$203 million for similar projects in Texas.

Conclusion

It has been four years since the *Deepwater Horizon* oil spill. Much progress has been made, and there is still much to be done. The Department of Commerce, through our roles in all of these large Gulf restoration efforts, is committed to continuing to work with the citizens of the Gulf Coast to make smart investments and use available resources wisely to restore the region's ecosystem and economy. Although the Council faces challenges implementing portions of the RESTORE Act, the Department is committed to ensuring that this Council continues to work with deliberate speed and focused effort to help restore the Gulf Coast region's environment and economy.

Thank you again, Chairman Nelson and Members of the Committee, for the opportunity to discuss the Department of Commerce's role in Gulf of Mexico restoration. I appreciate the Committee's time and attention, welcome any questions, and look forward to working with you further on this important effort.

Senator NELSON. Thank you, Mr. Andrews.
Mr. Ehrenwerth?

STATEMENT OF JUSTIN R. EHRENWERTH, EXECUTIVE DIRECTOR, GULF COAST ECOSYSTEM RESTORATION COUNCIL

Mr. EHRENWERTH. Good morning, Chairman Nelson, Senator Wicker, and members of the Committee. I appreciate the opportunity to speak with you today about the Council's work for its implementation of the RESTORE Act and our restoration mission.

In the same spirit of cooperation and collaboration that Congress exhibited in the passage of the RESTORE Act, Council members are working together to create a foundation for collaborative work that will allow us to efficiently and effectively fund large-scale ecosystem restoration across the Gulf.

While this has taken more time than the Council members anticipated, we believe that we have had some time well spent and this initial investment of time and resources will result in a more efficient, responsible, and successful organization.

Due to the ongoing litigation against BP and some of the other responsible parties, there remains tremendous uncertainty about the amount and ultimate timing of funding that will be available for our work. The Council recognizes the need to continue to move forward in getting project implementation underway while taking the time to get this right.

We applaud Congress for creating the Council as an independent entity in the Federal Government. In so doing, Congress provided the opportunity for this Council to leverage the tremendous expertise of the five Gulf Coast States and the six Federal agencies which are just invaluable resources that will facilitate sound and inclusive restoration decisions.

While the Council remains administratively housed in the Department of Commerce, as Deputy Secretary Andrews said, we expect to be fully independent by the end of this fiscal year. And indeed, over the past year, we have taken a number of steps on the very complex road of establishing a new independent entity in the Government, which are more fully described in my written testimony.

One of the Council's primary responsibilities was to develop a comprehensive plan to restore the ecosystem and economy of the Gulf, a plan that we did issue in August of 2013. Due to the uncertainty in the amount and timing of funds that will be available, as well as the fact that the states could not finish their own planning efforts without guidance from the comprehensive plan, our initial plan did not include a list of projects to be funded. I am very pleased to report today that the Council has finalized the selection process of this element of our work. The selection process will allow the Council to invest early in specific actions that will be carried out in the near term with known funding. The process will ensure that the Council honors the requirements of the Act, that our decisions are made on the best available science, and that we carry out our work in a transparent and inclusive fashion.

The Council anticipates soliciting project submissions from its members next month and have a draft list of projects published for public review in 2015.

While the Council will select and fund ecosystem restoration projects according to our comprehensive plan, spill impact component funds will be invested in projects and programs identified in State expenditure plans. In recognition of the need to provide funding for planning and development of these state plans, I am very pleased to report today that the Council will publish an interim final rule this summer that will allow the states and counties in Florida to access funds for planning purposes. Concurrently, the Council will continue to move forward with publishing a draft regulation that addresses the additional requirements of the spill impact component, including an impact allocation formula. The Council is committed to working collaboratively to address these complex issues involved with this aspect of our mission.

Our Council continues to closely coordinate our restoration activities with so many of our key partners, including the National Fish and Wildlife Foundation, the NRDA Trustee Council, States, Federal agencies, tribes, and so many other entities working in the region. We are actively engaged at many levels to coordinate so that we advance common goals, avoid duplication, and maximize the benefits to the Gulf Coast region. While we all represent different organizations with varied missions, we are all committed to the collective restoration of the Gulf.

Four years after the unprecedented disaster in the Gulf and 2 years after the passage of the RESTORE Act and thanks to the

leadership, foresight, and cooperation of a bipartisan Congress, we are poised to chart a new future for the natural resources, economy, and communities of the Gulf. More than process, more than any individual project, this effort is about ensuring that the people and wildlife who call the Gulf home can do so for many generations to come. We take our charge to move forward quickly and efficiently very seriously. The Council appreciates this Committee's support of our efforts and for the opportunity to share our progress with you.

Thank you.

[The prepared statement of Mr. Ehrenwerth follows:]

PREPARED STATEMENT OF JUSTIN R. EHRENWERTH, EXECUTIVE DIRECTOR,
GULF COAST ECOSYSTEM RESTORATION COUNCIL

Good morning Chairman Nelson, Ranking Member Rubio, and Members of the Committee. My name is Justin Ehrenwerth and I am the Executive Director of the Gulf Coast Ecosystem Restoration Council (Council). I appreciate the opportunity today to speak to the Committee about the Council's work towards implementation of the RESTORE Act and comprehensive restoration of the Gulf of Mexico region.

My comments today will focus on the Council's progress to date on implementation of the RESTORE Act. The Council recognizes the incredible opportunity the RESTORE Act represents for the Gulf of Mexico and the imperative that we get this right. In the two years since passage of the Act, the Council has worked to develop the foundational steps necessary to stand up and administer an independent Federal entity whose charge will be to select and fund restoration projects in the Gulf region. While this has taken more time than Council members anticipated, we believe it is time well spent and will result in a more efficient, responsible and successful organization.

With the RESTORE Act, Congress brought together the five impacted Gulf Coast states with six Federal agencies, creating an independent entity with an unprecedented amount of restoration expertise and knowledge. In the same spirit of cooperation and collaboration that Congress exhibited in the passage of the Act itself, Council members are working together to create a foundation for collaborative work that will allow us to efficiently and responsibly fund and implement large-scale restoration projects across the Gulf, the likes of which the region has not seen.

The Gulf region is vital to our Nation and our economy, providing valuable natural resources, abundant seafood, extraordinary beaches, recreational activities and a rich cultural heritage. Its waters and coast are home to one of the most diverse ecosystems in the world, including over 15,000 species of sea life. Over twenty two million Americans live in Gulf coastal communities. Despite this richness, the health of the region's ecosystem has been significantly impacted over the last several decades. The Gulf Coast region has experienced loss of critical wetland habitats, erosion of barrier islands and other coastal areas, imperiled fisheries, water quality degradation and significant coastal land loss due to the alteration of hydrology, other human activities, and natural forces.

Against this backdrop of both abundance and decline, the explosion of the *Deepwater Horizon* rig on April 20, 2010 cost eleven men their lives and set into motion one of the largest man-made disasters in our Nation's history. While thousands of people worked to stop the flow of oil from the wellhead and protect our shorelines, wildlife and coastal communities, we also looked to the future. We understood that an event of this magnitude would take the collective thinking and cooperation of the entire region to ensure that the Gulf recovered.

Two years after the passage of the RESTORE Act, and four years after the explosion of the *Deepwater Horizon* rig, the Council is well-positioned to begin the process of selecting restoration projects in the next several months. The Council has made significant progress toward finalizing the activities and processes required to lay a solid foundation for large-scale restoration in the future.

There are a number of challenges the Council must address in executing its mission. Due to the ongoing litigation against BP and other responsible parties, there remains tremendous uncertainty regarding the ultimate amount of funding that will be available for restoration projects as well as the timing of its availability. The Council recognizes the need to move forward in getting project implementation underway while at the same time planning for a future that is still uncertain. Indeed, the Council must consistently balance the urgency to move forward quickly and effi-

ciently with the need to take the time to get this right. That said, the foundational steps are now almost complete and will serve to expedite our ability to fund projects from both the Comprehensive Plan and Spill Impact Components once Trust Funds become available.

Overview of the RESTORE Act and the Council

Passed in 2012, the RESTORE Act envisions a regional approach to restoring the long-term health of the valuable natural ecosystems and economy of the Gulf Coast region. The RESTORE Act dedicates eighty percent of any civil and administrative penalties paid under the Clean Water Act, after July 6, 2012, by responsible parties in connection with the *Deepwater Horizon* oil spill to the Gulf Coast Restoration Trust Fund (the Trust Fund) for ecosystem restoration, economic recovery, and tourism promotion in the Gulf Coast region.

In addition to establishing the Trust Fund, the RESTORE Act establishes the Council as an independent entity in the Federal Government. The Council is charged with helping to restore the ecosystem and economy of the Gulf Coast region by developing and overseeing implementation of a Comprehensive Plan and carrying out other responsibilities. The Council is currently chaired by the Secretary of the U.S. Department of Commerce.

The Council has oversight over the expenditure of sixty percent of the funds made available from the Trust Fund. Thirty percent will be administered for restoration and protection according to the Comprehensive Plan developed by the Council. The other thirty percent will be allocated to the States according to a formula established by the Council by regulation and spent according to individual State Expenditure Plans to contribute to the overall economic and ecological recovery of the Gulf.

Administrative Establishment of the Gulf Coast Ecosystem Restoration Council

The Council applauds Congress for creating the Council as an independent entity in the Federal Government.¹ In so doing, Congress provided the opportunity to leverage the tremendous expertise of the five Gulf States as well as that of six agencies in the Executive Branch—invaluable resources that will facilitate sound and inclusive restoration decisions and inform the manner in which we go about a task as large and complex as the comprehensive restoration of the Gulf of Mexico.

While the Council remains administratively housed in Department of Commerce, we expect to be fully independent from Commerce by the end of FY14. Indeed, over the past year, the Council has taken many steps on the complex road of establishing a new, independent entity in the Federal Government. For example, the Council has been established as an independent entity with the Office of Management and Budget, the U.S. Treasury Department, the Office of Personnel Management and the General Services Administration. The Council also executed Memoranda of Understanding (MOU) with Treasury for access to administrative and programmatic funds in order to support start-up operations and to begin hiring staff. The Council has established a number of internal and financial controls as well as core operating systems including accounting, human resources, procurement, website hosting and travel.

The Executive Director and Chief Financial Officer/Director of Administration have been in place since mid-2013. Additional core staff capacity has been made possible by details and temporary personnel assignments from member agencies and others. Though organizational independence is beneficial, there are challenges associated with standing up any new independent Federal agency. The Council has worked to overcome the budget challenges of starting operations from the ground-up by relying on our member states and agencies.

The Council members recognize the great task ahead of them, and as the members have worked together to advance a complicated and critical restoration mission, the Council has evolved and strong relationships have been established.

Council-Selected Restoration Component

One of the Council's primary responsibilities is to develop a Comprehensive Plan to restore the ecosystem and economy of the Gulf Coast region. The Council approved an Initial Comprehensive Plan (Plan) in August 2013 that outlines overarching goals for restoring and protecting the natural resources of the Gulf.

To develop the Plan, the Council carefully reviewed the findings and recommendations of the *Gulf Coast Ecosystem Restoration Task Force Strategy (Strategy)*. The

¹“ESTABLISHMENT.—There is established as an independent entity in the Federal Government a council to be known as the ‘Gulf Coast Ecosystem Restoration Council’” 33 U.S.C. 1321(t)(2)(C)(i).

Council also reviewed numerous existing local, regional, state, and Federal plans to inform the development of the Plan. The Council initiated a robust public engagement process to receive input from diverse voices from across the region. The Council hosted fourteen public meetings with over 2,300 attendees; over 41,000 public comments on the Draft Initial Comprehensive Plan and accompanying Programmatic Environmental Assessment were received. These comments were considered and incorporated, as appropriate, into the Initial Comprehensive Plan.

Building on the strong foundation established in the Task Force *Strategy* and other local, regional, state, and Federal plans, the Council is taking an integrated and coordinated approach to Gulf Coast restoration. This approach strives to both restore the Gulf Coast region's environment and, at the same time, revitalize the region's economy because the Council recognizes that ecosystem restoration investments may also improve economic prosperity and quality of life. In addition, this approach acknowledges that coordinated action with other partners is important to successfully restore and sustain the health of the Gulf Coast region. This coordination is particularly important because diverse funding sources and decision-making bodies are simultaneously investing in Gulf Coast restoration.

To provide the overarching framework for an integrated and coordinated approach for region-wide Gulf Coast restoration and to help guide the collective actions at the local, state, tribal and Federal levels, the Council has adopted five goals:

- (1) *Restore and Conserve Habitat*—Restore and conserve the health, diversity, and resilience of key coastal, estuarine, and marine habitats.
- (2) *Restore Water Quality*—Restore and protect water quality of the Gulf Coast region's fresh, estuarine, and marine waters.
- (3) *Replenish and Protect Living Coastal and Marine Resources*—Restore and protect healthy, diverse, and sustainable living coastal and marine resources.
- (4) *Enhance Community Resilience*—Build upon and sustain communities with capacity to adapt to short-and long-term changes.
- (5) *Restore and Revitalize the Gulf Economy*—Enhance the sustainability and resiliency of the Gulf economy.

The fifth goal focuses on reviving and supporting a sustainable Gulf economy to ensure that those expenditures by the Gulf Coast States authorized in other sections of the RESTORE Act, such as the Direct Component and the Spill Impact Component, can be considered in the context of comprehensive restoration. To achieve all five goals, the Council will support ecosystem restoration that can enhance local communities by giving people desirable places to live, work, and play, while creating opportunities for new and existing businesses of all sizes, especially those dependent on natural resources. In addition, the Council will support ecosystem restoration that has the added benefit of building local workforce capacity.

The RESTORE Act requires creation of a "Funded Priorities List" (FPL) that indicates which projects and programs the Council intends to fund. The Initial Plan did not include this list for several reasons, including the uncertainty regarding ultimate availability of funding, and the fact that states could not begin planning efforts for their State Expenditure Plans without the guidance from the Comprehensive Plan. For all of these reasons, the Council purposely deferred developing the Ten-Year Funding Strategy and FPL.

I am pleased to report that earlier this month, the Council finalized a proposal submission and evaluation process to select projects for inclusion on a forthcoming FPL, which will be included as an addendum to the Initial Comprehensive Plan. This FPL addendum will contain projects and programs that will be funded with available Transocean Deepwater Inc. funds. Future amendments to this FPL and the process by which projects are selected for inclusion will evolve over time as new information becomes available, adaptive management activities occur, and as funding uncertainties are resolved. The Council anticipates that once the full amount ultimately to be paid into the Trust Fund is known, future amendments to the FPL will include significantly larger projects and project lists that reflect the full amount available to be spent for restoration activities.

This approach will allow the Council to invest early in specific actions, projects and programs that can be carried out in the near-term with known funding to provide on-the-ground results while maintaining a focus on the long-term recovery of the Gulf Coast.

The RESTORE Act outlines several requirements the Council must consider when selecting projects to fund, including that projects must utilize best available science, and that the Council prioritize projects that meet one or more of the four priority criteria outlined in the Act. This process will ensure that projects that receive funding meet the statutory requirements of the RESTORE Act, will have a positive im-

pact on the natural resources of the Gulf, and will provide a level of transparency and assurance that projects were chosen using the application of consistent and objective criteria.

The Council developed a rigorous proposal submission and evaluation process that:

1. Ensures that projects to be funded meet both statutory requirements and commitments the Council made in the Comprehensive Plan.
2. Provides for external scientific review of project proposals to maintain objectivity and ensure that statutory requirements for use of best available science are met.
3. Promotes project submissions that emphasize:
 - a. How a project is foundational in the sense that the project forms the initial core steps in addressing a significant ecosystem issue so that future projects can be tiered to substantially increase the benefits;
 - b. How a project will be sustainable over time;
 - c. Why a project is likely to succeed; and
 - d. How a project benefits the human community where implementation occurs.
4. Proposes a project focus area of Habitat and Water Quality for the first addendum to the Plan to allow Council members to submit for consideration projects that address common ecosystem priorities and to find synergies among projects and across jurisdictional boundaries.
5. Ensures that all applicable environmental compliance requirements are addressed.

While the Council will more formally discuss this process with the public in the coming weeks and months, this process was developed to ensure that projects comply with the requirements of the RESTORE Act. It also provides Council members the project-specific context they need to ensure that the activities chosen for funding can be expected to have a synergistic and significant positive impact.

After projects are vetted, the Council will publish for public review and comment a Draft FPL, which will identify the projects and programs the Council intends to prioritize for funding. The Council will carefully review public comments, make any appropriate changes, and finalize the FPL. Once finalized, the FPL will serve as the basis for allocating funds currently available under the Comprehensive Plan Component through grants to the five Gulf Coast States and Interagency Agreements with Federal Agencies.

The Council anticipates soliciting project submissions from its members in August 2014, with a draft FPL published in 2015.

Spill Impact Component

While the Council will select and fund projects and programs to restore the ecosystem with Council-Selected Restoration Component funds, the Spill Impact Component funds will be invested in projects, programs, and activities identified in approved State Expenditure Plans (SEP). The RESTORE Act allocates 30 percent of the Trust Fund to the Gulf Coast States under a formula established by the Council by regulation and spent according to individual SEPs. Each Gulf Coast State will develop an SEP describing how it will disburse the amounts allocated under the Spill Impact Component. These projects, programs, and activities will be implemented through grants to the States in a manner that is consistent with the requirements of the RESTORE Act as well as the goals and objectives of the Comprehensive Plan.

The RESTORE Act provides the scope of activities eligible for funding under the Spill Impact Component. As described in the Act, these activities can include:

- Restoration and protection of the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands of the Gulf Coast region.
- Mitigation of damage to fish, wildlife, and natural resources.
- Implementation of a federally approved marine, coastal, or comprehensive conservation management plan, including fisheries monitoring.
- Workforce development and job creation.
- Improvements to or on State parks located in coastal areas affected by the *Deepwater Horizon* oil spill.

- Infrastructure projects benefitting the economy or ecosystem resources, including port infrastructure.
- Coastal flood protection and related infrastructure.
- Planning assistance.
- Administrative costs of complying with the Act.
- Promotion of tourism in the Gulf Coast region, including recreational fishing.
- Promotion of the consumption of seafood harvested from the Gulf Coast region.

Once an SEP is approved by the Council, grants will be awarded to the State, in accordance with a formula developed by the Council as directed by the Act, for specific projects, programs, and activities identified in the SEP.² Because the ultimate size of the Trust Fund is unknown at this time, a State may submit periodic addenda to its SEP in order to request additional disbursements.

The Council is developing a draft regulation for public comment which adheres to the structure of the Act. In recognition of the need to provide funding for planning and the development of SEPs, I am pleased to report that the Council plans to publish an Interim Final Rule this summer that will allow states to access funds for planning purposes. Concurrently, the Council will move forward with publishing a draft regulation that addresses the additional requirements for the Spill Impact Component, including the finalization of the impact allocation formula. These complex decisions take time and involve several levels of coordination at both the state and Council levels. The Council is committed to working collaboratively on these issues. We are confident that we are nearing resolution of any outstanding questions regarding the Impact Allocation Formula and will keep you apprised of the Council's progress.

The publication of an Interim Final Rule to allow access to funding for planning will be particularly helpful to the State of Florida. The Council applauds Florida's Gulf Consortium on its progress in establishing a new public entity among Florida's 23 Gulf Coast Counties in order to draft Florida's SEP. The Council understands the importance of these funds to the Consortium's critical planning efforts.

Environmental Compliance and Effectiveness

Projects and programs to be funded by the RESTORE Council will need to comply with a range of existing legal, regulatory, and policy requirements. Depending on the type of activity to be funded, the Council and its members may need to address laws such as the National Environmental Policy Act (NEPA), Clean Water Act, and Endangered Species Act, among others. The Council is currently developing policies and procedures to efficiently and effectively address these requirements.

Pursuant to Council on Environmental Quality regulations, the Council is required to establish procedures for complying with NEPA. The Council is currently developing these NEPA procedures in a collaborative process, involving input from all Federal and state members. One of the overarching goals of the Council's procedures will be to ensure that NEPA and other potentially applicable regulatory requirements are addressed as expeditiously as possible. Among other efficiency practices, the Council's NEPA procedures will encourage robust interagency coordination and collaboration. The Council's NEPA procedures will also seek to avoid potential redundancy and inefficiency by encouraging concurrent and unified processes when addressing a range of regulatory requirements. The Council intends to publish its draft NEPA procedures for public review in 2014.

The Council fully recognizes the public interest in expeditious implementation of Gulf ecosystem restoration projects and programs. Being comprised of state and Federal agencies, including those with jurisdiction over major environmental laws and regulations, the Council is in a unique and advantageous position with respect to interagency coordination and collaboration. The Council intends to leverage this broad membership with the goal of becoming a model of efficiency and interagency coordination on regulatory matters.

Coordination with Our Restoration Partners

The Council will work to coordinate our restoration activities with those of our key partners. While the Council does not have direct involvement in the activities undertaken by the states or local governments through the Act's Direct Component, the Council will strive, as appropriate, to coordinate its work with those activities.

²Council approval of a SEP is signified by the certification by a State member of the Council that the plan satisfies all requirements in (i) and (ii) of paragraph (3)(B), when joined with an affirmative vote of the Council Chair. 33 U.S.C. 1321(b)(2)(C)(vi)(III)

In addition, the Council will actively coordinate with the Gulf Coast Ecosystem Restoration Science Program and the Centers of Excellence Research Grants Program.

The Council recognizes that there are other partners critical to restoring and sustaining the health of the Gulf Coast region. The Council will coordinate with states, Federal agencies, tribes, and other entities working in the Gulf Coast region to achieve common goals, create regulatory efficiencies, and collectively work towards an integrated vision for comprehensive restoration. Additionally, the Council will coordinate with other intergovernmental bodies and Gulf Coast restoration initiatives to ensure that efforts are complementary and mutually beneficial.

Specifically, the Council recognizes similar work resulting from the *Deepwater Horizon* oil spill undertaken by the Natural Resource Damage Assessment (NRDA) Trustees, the National Fish and Wildlife Foundation (NFWF), the National Academy of Sciences (NAS), and the North American Wetlands Conservation Fund (NAWCF). A brief overview of these efforts is provided below.

- The *Deepwater Horizon* Natural Resource Damage Assessment Trustees are assessing injury to natural resources and the services they provide, as well as the lost use of such resources, resulting from the *Deepwater Horizon* oil spill in the Gulf and the Gulf Coast States. Damages for natural resource injury will include the cost of restoring, rehabilitating, replacing, or acquiring the equivalent of the injured natural resources; the diminution in value of those natural resources pending restoration; and the reasonable cost of assessing those injuries as a result of the *Deepwater Horizon* oil spill. The Trustees are using a public process to select and implement restoration projects.
- NFWF was established by Congress in 1984. NFWF will receive over \$2.5 billion throughout the next five years from the Transocean (January 2013) and BP (November 2012) criminal plea agreements with the United States. NFWF has stated that these funds will be used “to support projects that remedy harm to natural resources (habitats, species) where there has been injury to, or destruction of, loss of, or loss of use of those resources resulting from the oil spill.”
- The NAS received \$500 million from the Transocean and BP criminal plea agreements. These funds are to be used for human health and environmental protection, including oil spill prevention and response in the Gulf region.
- The NAWCF received \$100 million from the BP criminal plea agreement for wetlands restoration, conservation, and projects benefiting migratory birds.

The Council will work with its partners to advance common goals, avoid duplication, and maximize the benefits to the Gulf Coast region.

Conclusion

Four years after the unprecedented disaster in the Gulf, two years after passage of the RESTORE Act, and thanks to the leadership, foresight and cooperation of a bipartisan Congress, we are poised to chart a new future for the natural resources, economy and communities of the Gulf Coast region. The Council is committed to the success of this effort in the long-term; more than process, more than any individual project, this effort is about ensuring that the people and wildlife who call the Gulf home can continue to do so for generations to come. We take our charge to move forward quickly and responsibly very seriously. The Council appreciates this Committee’s support of our early efforts and for the opportunity to share our progress with you.

Senator NELSON. Thank you.

Ms. Fisher, tell us about Mississippi.

STATEMENT OF TRUDY D. FISHER, EXECUTIVE DIRECTOR, MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY

Ms. FISHER. Yes, sir. Thank you, Mr. Chairman, and Senator Wicker, thank you for your opening comments. Good morning.

My comments are going to be made in context to the testimony of the first two gentlemen and the rest of the esteemed panelists sitting here with me this morning. I want to take us back and kind of put things in context of where we were in April 2010. And no one at that time could have predicted the enormity of the Federal and State resources which would be devoted to response and restoration after the spill. I seriously doubt that any of us conceived

then just how long and tedious the path ahead would be. While our Gulf residents are a hardy and resilient cohort, the largest man-made disaster in U.S. history, the spill, came as the region was still struggling to complete recovery from the largest natural disaster in U.S. history, Hurricane Katrina.

Our experience in these early days of April 2010 taught us lessons which are as important today as they were then. First and foremost, virtually every endeavor since the spill occurred has been unprecedented, complex, and unique. The three restoration funding streams are no different. Now, I want to take a moment just to highlight these and the accomplishments to date.

Natural Resource Damage Assessment process. That process weaves together the largest trustee council ever assembled after any oil spill since the passage of the Oil Pollution Act. It brings to the table five diverse states and four Federal agencies. NRDA also marks the very first use of the early restoration model where we got a down payment on injury to the Gulf. We stand poised to commit over \$600 million to projects in the Gulf of Mexico. And this progress has been done, has been accomplished while the trustee council is shouldering the most complex natural resource damage assessment in history. Distinguished by its decided long-term injuries that are in nature, this assessment will create both policy and practice which has never existed before as we learn more about the important issues of long-term exposure, aggregate impacts, and synergistic effects. I fully believe that we will all look back at this time and it will reveal gains in scientific method far beyond what we could have imagined in 2010.

RESTORE Act. With its passage 2 years after the spill, the RESTORE Act entered the restoration funding arena as a bold, new model for assuring that restoration would be Gulf-driven, that the tangible benefits would be visible on the ground in all five Gulf States. As a state representative, I view the RESTORE Act as an innovative Congressional statement on the importance of the five Gulf States in the thinking, the planning, and the doing which will result in restoring the Gulf. But it too is the first of its kind, bringing together five states and, in this case, six Federal agencies.

As an independent Federal entity, there has been a lot of infrastructure work required to actualize the RESTORE Council. You have received a report on a lot of that work today. I am sure that every member of the Council and every member of our staff, just as you, wish we could move faster, and we wish we had projects to share with you today. That said, I often have to remind myself that we just have a small portion of the funding which is likely to come to the RESTORE Act through the Clean Water Act penalties.

But we stand here before you today poised to pull the trigger, poised to pull the trigger on the release of RESTORE funding to projects and planning efforts. We are going to have to coordinate our efforts as a Council, continue to collaborate, and make decisions. We must press ourselves to come to closure on a number of decisions which are within our grasp. We have worked mightily as Federal and State partnerships to get to the base camp below the summit of RESTORE. If we do not redouble our efforts now and exert that last burst of energy to get us across the finish line, shame on us. As a State representative, I am comfortable that we

have all worked hard to date and that our discussion has been a rich one. However, it is time to quit talking and start acting. Mr. Chairman, if we sit here before you again next year and we have not fielded suites of projects under all three RESTORE buckets, none of us should be satisfied and you should not be satisfied with us.

As you, we remain anxious to see the final Treasury regulations which control all of the uses of the RESTORE dollars. We are energized and stand ready to allocate Mississippi's allotment under the RESTORE Act.

Mr. Kelsch is going to be talking about the National Fish and Wildlife Foundation, but those monies have been launched with great gusto and is in its second round of annualized funding. In Mississippi, we are focusing—you talked about water quality and coastal streams and improving a habitat. We also received a \$3.6 million grant from the National Fish and Wildlife Foundation, representing 1 percent of the total money that we will ultimately receive, to ensure that our National Fish and Wildlife funds are maximized.

What we do in Mississippi and the other teams is leverage the dollars. How are we going to leverage RESTORE, the National Fish and Wildlife Foundation, and the NRDA process?

And also, I would like to remind us, lest we forget, that the results that we have been talking about to get to where we are today have all been accomplished atop the backdrop of complex, multiple legal proceedings by the Federal Government and the Gulf States to hold one of the richest companies in the world accountable for its actions in the Gulf of Mexico.

In the face of this panoply of historic factors, we have all had to learn to see things differently and to do things different. In Mississippi, our team coalesces around a duet of guiding principles in our work on restoration. It is really simple. Our watchwords are to get it right and to conduct business as unusual. Getting it right means taking the necessary time to consider and resolve important issues and questions, most of which have never been addressed before or have never been addressed on this scale. The energy we all share for tangible results—the energy in this room for tangible results must always be tempered with overriding goal of getting things right through a science-based, transparent, collaborative approach. “Right” in this context means decisions based on the law, based on science, and made in the full context of the concerns and expectations of our public, our NGO's, our tribes, and our local and State elected and appointed officials.

Senator NELSON. Ms. Fisher, I need you to wrap up.

Ms. FISHER. Yes, sir.

In summary, are we as far along as we wish we were in the RESTORE process? Absolutely not. But we are proud of the hundreds of millions of dollars in projects which are either directly on the ground or are targeted for over the next 5 years through two of the funding streams. We understand the Gulf of Mexico and its sensitive ecosystem better than we ever have. We understand each other on the RESTORE Council and the other councils better than we ever have, having spent literally thousands of hours together working together. We are confident that prompt execution of the

RESTORE Council's near decisional agenda is going to result in a flow of projects to the Gulf.

I thank you, Mr. Chairman, for this hearing and for the hearing we had last year. Yours and the Committee's active involvement is a powerful meter of accountability to the RESTORE Council and for the work that is going on in the Gulf of Mexico. Your continued inquiry is one of our most powerful tools in ensuring that we harvest all that you intended through the RESTORE Act.

Thank you, sir.

[The prepared statement of Ms. Fisher follows:]

PREPARED STATEMENT OF TRUDY D. FISHER, EXECUTIVE DIRECTOR,
MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY

Good morning Senators Nelson and Wicker, and members of the Committee. Thank you for the opportunity to testify on behalf of the State of Mississippi on environmental restoration following the 2010 *Deepwater Horizon* oil spill and the progress and challenges in implementing the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast Act of 2012 (RESTORE Act).

My name is Trudy D. Fisher and I have served as the Executive Director of the Mississippi Department of Environmental Quality for over seven years. Our agency is responsible for state environmental programs as well as most of the Federal environmental programs delegated to the states by the Environmental Protection Agency. In addition, MDEQ serves as a "first responder" for man-made and natural disasters. As Executive Director, I serve as Mississippi's Trustee under the Oil Pollution Act. Our emergency response to the *Deepwater Horizon* oil spill and responsibilities as a Trustee and Trustee agency began very shortly after April 20, 2010. Since that time, I have been actively engaged in the Natural Resources Damages Assessment (NRDA) process on behalf of the State, through the NRDA Deepwater Horizon Trustee Council comprised of the five Gulf states and the four Federal trustees. I also serve as Governor Phil Bryant's designee on the RESTORE Council and MDEQ is the lead agency for coordination of monies flowing through court decrees, including the sums administered by the National Fish and Wildlife Foundation's (NFWF) Gulf Environmental Benefit Fund.

My comments are in context to the other thoughtful perspectives you will hear today as you have assembled stakeholders from around the table we all share in restoring the Gulf. The Restore Council's Executive Director, Justin Ehrenworth and Deputy Secretary of Commerce Bruce Andrews have both spoken to the structure work which has occurred since your last briefing as well as the map for near term progress on RESTORE. Rather, I will focus on Mississippi's perspective on the overall journey to Gulf restoration across the multiple funding lanes which have materialized since the spill. I will also speak directly to some of the challenges we have faced as well as the significant progress I believe we have made and the gains I see in our near future.

In April 2010, no one could have predicted the enormity of Federal and state resources which would be devoted to response and restoration after the spill. I seriously doubt that any of us conceived then how long and tedious the path ahead would be. While Gulf residents are a hearty and resilient cohort, the largest man-made disaster in U.S. history, the spill, came as the region was still struggling to complete recovery from the largest natural disaster in U.S. history, Hurricane Katrina.

Our experience in the early days after the spill taught us lessons which are as important today as they were then. First and foremost, virtually every endeavor since the spill has been unprecedented, complex, and unique. The three restoration funding streams are no different. I will take a moment to highlight each.

NRDA weaves together the largest Trustee Council ever assembled after an oil spill, bringing to one table five diverse states and four Federal agencies. NRDA also marks the first use of the "early restoration" model, whereby the NRDA Trustee Council has managed to commit over \$600 million to projects while at the same time shouldering the most complex natural resource damage assessment in history. Distinguished by its decided long term injury nature, this assessment will create both policy and practice which has never existed before as we learn more about the important issues of long term exposure, aggregate impacts, and synergistic effects. I

fully believe that we will all look back at this time and it will reveal gains in scientific method far beyond what we could have imagined in 2010.

In the case of Mississippi, we have secured (or will soon secure) over \$60 million in early restoration projects and are on course to securing additional projects should exhaust close to our state's full share of early restoration. Those projects include artificial reed enhancement, oyster reef restoration, projects to restore human use losses and other projects designed to restore habitat. Each of these projects is wholly ecological in purpose.

With its passage two years post spill, the RESTORE Act entered the restoration funding arena as a bold new model for assuring that restoration would be Gulf driven and that the tangible benefits would be visible on the ground in all five Gulf states. As a state representative, I view the RESTORE Act as an innovative Congressional statement on the importance of the five Gulf states in the thinking, planning, and actions which will restore the Gulf. But, it too is the first of its kind, bringing together five states and six Federal agencies. As an independent Federal entity, there has been much infrastructure work required to actualize RESTORE. You have received a report on that work today and I will not recount the numerous steps which have been taken. I am sure that every member of the Council and every member of our staff wish we could move faster and wish we had projects to share with you today. That said, I often have to remind myself that we presently have only a small portion of the funding which is likely to come through a final future resolution of the Clean Water Act penalties which fuel RESTORE.

We come before you today poised to pull the trigger on the release of RESTORE funding to projects and planning efforts. We are going to have to coordinate our efforts as a Council, collaborate and make decisions. We must press ourselves to come to closure on a number of decisions which are within our grasp. We have worked mightily as a federal/state partnership to get to the base camp below the summit of RESTORE. If we don't redouble our efforts now and exert that last burst of energy, shame on us. As a state representative, I am comfortable that we have all worked hard to date and that our discussion has been a rich one. However, it is time to quit talking and start acting. If we sit here before you again next year and we have not fielded suites of projects under all three RESTORE buckets, none of us should be satisfied. And you should not be satisfied with us.

We remain anxious to see the final Treasury regulations which control all of the uses of RESTORE dollars. We are energized and eager to apply for RESTORE funds out of the shared portion of funds and we are poised to thoughtfully spend Mississippi's allotment from both the direct component and the Oil Spill Allocation Fund. The potential release of planning dollars through the interim final rule described by other witnesses today will be vital to all five states in charting a comprehensive map for maximum use of the RESTORE dollars.

Mississippi has also made great strides in the use of funds directed to the states as a part of the consent decree which resolved criminal charges against BP and Transocean. The Gulf Environmental Benefit Fund, created by NFWF to administer over \$2 billion to the states over a five year period has launched with great gusto and is in its second round of annualized funding. Mississippi has used funding to date to improve streams in all three of our coastal counties, provide improved habitat for birds in more than twenty locations, and to restore and improve the State of Mississippi's system of Coastal preserves. Our state is excited about the projected announcement of Round Two projects later this year and we expect to field a robust suite of restoration activities from that round. We also recently received a \$3.6 million grant from NFWF (approximately one percent of the overall NFWF dollars allocated to Mississippi) to create an integrated, coast wide, restoration plan that will guide the path forward for using the balance of our state's \$356 million share of NFWF funds.

Lest any of us forget, results since 2010 have all been accomplished atop the backdrop of complex multiple legal proceedings by the Federal Government and the states to hold one of the world's richest companies accountable for their actions in the Gulf of Mexico.

In the face of this panoply of historic factors, we have all had to learn to see things differently and to do different things. In Mississippi, our team has coalesced around a duet of guiding principles in our work on restoration. Though profoundly simple, our watchwords are to "get it right" and to conduct "business as unusual". Getting it right means taking the necessary time to consider and resolve important issues and questions, most of which have never been addressed before or have never been addressed in an effort of this scale. The energy we all share for tangible results must be tempered with the overriding goal of "getting things right" through a science based, transparent, collaborative approach. "Right" in this context means decisions based on the law, based on science, and made in the full context of the con-

cerns and expectations of our public, NGOs, Tribes, state and Federal elected and appointed officials.

A second compelling component in getting this effort right is our willingness to adopt a “business as unusual” business model. We must be prepared to make expedited decisions to make progress. As one of our Federal partners has observed in many of our meetings, “we cannot afford to let great be the enemy of good.” While many of the questions which face us in this effort are unique and of first impression, we must wrestle with them, apply our best thinking, and move forward. While all of our decisions must be based upon law and best available science, we must find practical answers to the questions of restoration, make decisions, and move forward. As we say on the Mississippi team, we have to remember to play offense in every setting. We cannot afford to focus on undue effort to over define the challenges or to become trapped in negative thinking or “getting to no” in our decision making. Every member of our team is expected to bring his or her best game to the table every day. Our citizens rightly expect this level of commitment and hard work and we will not deliver the results each of you envisioned from the RESTORE act without this mindset.

We only have one chance to get this right and those of us privileged to represent our fellow citizens in this effort bear a fiduciary duty to those back at home to turn our discussions into projects. Coordination and collaboration among the Gulf states and Federal agencies are essential to any degree of success we have, as is the will to seek solutions which serve our common good. Through both the NRDA process and the RESTORE Council, strong bonds of shared understanding and effort have been formed and strengthened. Many of us have spent literally thousands of hours together in the last four years. I cannot overestimate the importance of this shared experience. It has fostered greater understanding across geopolitical boundaries, promoted a more holistic view of the Gulf, and created an interdependent path to restoration. Like all joint endeavors, things work best when everyone has common goals and objectives. The biggest challenges arise when a member state or Federal agency acts out of a singular interest rather than the common interest, or strays from or stretches basic reading of Federal law. We cannot afford to distract our focus or risk the good of the whole by self-serving actions. And when we must disagree with one another, it must be done in a way which does risk damage to long term collaboration.

In summary, are we as far along as we wish we were in the RESTORE process? Absolutely not. But, we are proud of the hundreds of millions of dollars in projects which are either already on the ground in Mississippi or are targeted there over the next five years through NRDA and NFWF funds. We understand the Gulf and its sensitive ecosystem better than we ever have. We understand our stakeholders’ needs and concerns better than we ever have before. And we understand one another better. We are confident that prompt execution of the RESTORE Council’s near term decisional agenda will result in the flow of projects to the five Gulf states.

Thank you again, Mr. Chairman and Members of the Committee, for continuing to focus on the RESTORE Act and its implementation. Your active involvement acts as a powerful meter of accountability for all of us who do the day to day work to give full impact to this important law. Your continued inquiry is one of our most powerful tools in assuring that we harvest all that was intended by the Act. I would also like to thank Senator Wicker and his staff for their continued perseverance in restoration of the Mississippi Gulf. I know that he feels, as I do, that the work we accomplish in this effort is legacy work, which, if we are tenacious and thoughtful, will live long after all of us are gone.

I greatly appreciate the opportunity to discuss MDEQ’s role in the Gulf of Mexico and our Gulf Coast restoration. I appreciate the Committee’s time and attention, welcome any questions, and look forward to working with you further on this important effort.

Senator NELSON. Thank you.

Ms. Drew, tell us about your work on the Council.

**STATEMENT OF MIMI A. DREW, FORMER SECRETARY,
FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION;
AND FLORIDA GOVERNOR RICK SCOTT’S DESIGNEE TO THE
GULF COAST ECOSYSTEM RESTORATION COUNCIL**

Ms. DREW. Good morning. Senator Nelson, Senator Wicker, thank you very much for having this opportunity to talk to you today.

I represent Governor Rick Scott on the Gulf Coast Ecosystem Restoration Council, we call the "Council." I am pleased to be here and I have been working on this for the last 4 years. Like my friend, Ms. Fisher, and several others of us, we have been working on it since the oil spill actually happened.

I am a Florida native. I have invested 30-plus years in environmental protection in various careers, and I happened to be serving for the Florida DEP as the Deputy Secretary when the *Deepwater Horizon* disaster occurred and spent a lot of time during that time following up with the issues that had to be dealt with across the state. I also was promoted to the Secretary position and at that point retired from State government. However, I am now back as a special advisor to Secretary of DEP Herschel Vinyard and I represent the state on all issues related to the *Deepwater Horizon*.

As you can imagine, coming from my long-term service and love for the State of Florida, it was with dismay that I watched the spill. I worked in command centers across the Gulf during the spill, as well as the Florida Emergency Operations Center, and we held our breath as we watched the oil spread slowly toward Florida's beaches and marshlands. It is gratifying, after living through those long months, to see that restoration efforts are now beginning to take shape.

You invited us here today to discuss the successes and challenges specifically to date in implementing the RESTORE Act. I am not going to repeat which you will have already heard from several others today, but I do want to spend some time talking specifically about challenges.

So Florida is unique among the Gulf States. As we already heard this morning from Senator Nelson, our economy is really driven by tourism and a healthy environment is paramount to a good economy in Florida. We are known as the fishing capital of the world. Recreational and commercial fishing bring in millions and billions of dollars, hundreds of thousands of jobs. More than 95 million people visit Florida each year, all expecting a clean and healthy environment to swim, fish, boat, or simply enjoy the gorgeous beaches and waterways.

The explosion of the *Deepwater Horizon* was devastating to the tourist economy that summer, and we all watched closely for 87 days until the well was capped. As you know, we still are having tar balls and tar mats in Florida. So it is a continuing issue for us.

One overarching issue and challenge for us has been the amount of time between the spill and achievement of meaningful restoration. We have an early partial settlement from BP under NRDA, National Resource Damage Assessment of the Oil Pollution Act, but even that has taken a while to get money out the door for those projects. I am pleased to say that in Florida, we will have about \$100 million worth of projects this year ready to go on the ground from that fund, but it has been a long, slow process.

I would like to move now to the specific challenges and areas within the Act. In Florida, the direct funding component, or Bucket 1, flows directly from the Treasury Department to the individual counties. We at the state level will not be actively involved in that process, but we have reached out to the counties to try to ensure that projects that are done at that level clearly meet the stated

goals of the Act and work collaboratively with the other parts of the Act that the state will have an involvement with.

I believe that you are going to hear more from Commissioner Robinson today, but one of the biggest issues there has been funding to develop planning for Bucket 1.

I am going to address Bucket 2 now, which really I think you all have heard a lot about this morning. But the biggest issue again has been lack of ability to have funding for planning. We have all had meetings over the last couple of years and tried hard to get—we got the interim plan out. We now have a path forward for funding. We are hopeful to see a funded priorities list very soon. All of that, of course, is contingent on the Treasury regs becoming final, and we are all hopeful to see that happening very soon.

Bucket 3, or the spill component. Again, this issue is—we have been confounded a little bit by lack of planning funds. Bucket 3 is to be administered by the Florida Gulf Consortium, and they are to develop the State expenditure plan, which is then approved by the Governor and submitted to the Council. We are hopeful that with announcement of the interim final regulation, we will be able to see planning funds go to the counties to develop that plan.

So I am going to move to the successes now because we have had a few successes. So I think the Council has been able to come together with the interim final plan, which really set a path forward for us. We landed on a good, robust process for beginning to develop the programs and projects for Bucket 2. We have agreed to two focus areas for Bucket 2 to help everyone get started, and those are water quality and habitat restoration. We have identified a way to get planning funds available, once the Treasury regulations are final.

And there is one area of success that is a little more subtle, and I would just like to take a moment to highlight that. We have been successful in knitting together a diverse group of agencies, personalities, and agendas in the RESTORE Council itself. Those of you who work in Congress are no strangers to the skills it takes to bring together a diverse group and end up with an outcome that is satisfactory to all. We are facing the same type of challenges. We have come a long way toward identifying unifying goals.

I am pleased to be here today to have the opportunity to talk about that, and I am happy to answer any questions. And we look forward to reporting back to you once we have some additional things to say. Thank you very much.

[The prepared statement of Ms. Drew follows:]

PREPARED STATEMENT OF MIMI A. DREW, FORMER SECRETARY, FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION; AND FLORIDA GOVERNOR RICK SCOTT'S DESIGNEE TO THE GULF COAST ECOSYSTEM RESTORATION COUNCIL

Introduction

Good morning Chairman Nelson, Ranking Member Rubio, and Members of the Committee. My name is Mimi Drew, and I represent Governor Rick Scott on the Gulf Coast Ecosystem Restoration Council (Council). I am pleased to be here today, representing the state of Florida. As a Florida native, I have invested 30 + years working to protect and restore natural resources in Florida for the use of our citizens and many visitors who come to the state every year. During my career, I held several positions within state government related to environmental protection. I was serving as Deputy Secretary of the Florida Department of Environmental Protection (FDEP) when the *Deepwater Horizon* Oil Spill (the Spill) occurred. During the Spill,

I was promoted to the position of Secretary of FDEP, and remained with the department until my retirement from the state in 2011. Following that, I was asked to stay on as a Special Advisor to the state to ensure continuity with all the *Deepwater Horizon* activities that continue to this day. I am currently representing Florida's interests in the multiple environmental restoration efforts that have developed since the Spill. In addition to serving on the Council, I am also Florida Department of Environmental Protection Secretary Herschel T. Vinyard Jr.'s representative on the *Deepwater Horizon* Trustee Council, and I work closely with the National Fish and Wildlife Foundation (NFWF) to ensure Florida's interests and priorities are well represented. Prior to that, I sat on the Gulf Coast Ecosystem Restoration Task Force, predecessor to the Council.

As you can imagine, coming from my long term service and love for the State of Florida, it was with dismay that I watched the Spill. I worked in several command centers across the Gulf during the Spill, as well as Florida's Emergency Operations Center, and held my breath along with everyone else as we watched the oil spread slowly toward Florida's beaches and marshlands. It is gratifying after living through those long months to see that several restoration efforts are now beginning to take shape.

You invited us here today to discuss the successes and challenges to date in implementing the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (RESTORE Act). I am not going to repeat what you will have already heard from Justin Ehrenwerth, Executive Director of the Council. He speaks for all of us on the Council with his summary of activities and status report.

What I would like to do is to report more specifically on issues around the RESTORE Act that affect Florida, and how we have worked to address them. I would also like to briefly mention the other restoration funding streams and let you know how we are coordinating within the state to ensure that Florida ends up with the most efficient and effective projects with those funds.

Challenges

Those of us who live and work around the Gulf of Mexico are aware of its unique ecosystems and natural resources. Each of the five Gulf States, ranging from Florida to Texas, relies on the Gulf for recreation, business, and simple aesthetic appreciation. Florida has been nicknamed the "Fishing Capital of the World." Recent data indicates that Florida Gulf recreational fishing generated more than \$13.1 billion in sales and created just over 109,000 jobs while commercial fishing generated \$16.6 billion in sales and created more than 82,000 jobs.¹ Nearly 95 million people visit Florida each year, drawn to our sugar sand beaches along the Gulf, providing a huge economic boom to businesses that support those visits. People who are fortunate enough to live close to the Gulf enjoy simple and inexpensive opportunities to fish, swim, kayak, bird watch, or just soak up the sun and views. All of these activities that we take for granted were threatened on April 20, 2010, with the explosion of the *Deepwater Horizon*. First, the loss of eleven lives from the explosion saddened everyone. Then, the constant broadcasting on television stations around the world of the oil spewing from the bottom of the Gulf kept everyone worried for 87 long days before the final cap was placed on July 15, 2010.

The result in Florida was that many people who normally would have vacationed during that summer changed their plans. I won't spend much more time on this, because the history is available in the multiple reports that have been issued. However, it is important to understand how Florida was uniquely damaged by the Spill. In Florida, a clean environment is crucial to a healthy economy. When that is threatened, the economy and the families who live here all suffer.

Part of our challenge in recovering from the Spill is being able to leverage available funding streams that will address restoration. The initial funding stream, called "Early Restoration", grew out of a partial interim settlement that the *Deepwater Horizon* Natural Resource Trustees reached with BP three years ago which basically provides a down payment against BP's ultimate liability, which will be determined by the Natural Resource Damage Assessment (NRDA) under the Oil Pollution Act of 1990. That agreement is for \$1 billion to be made available to affected State and Federal Trustees to restore proven injury, and Florida's allocation is \$100 million plus some portion of \$300 million to be shared among the states at the direction of the Federal Trustees. Because this is a partial interim settlement and the first of its kind, the process has taken a good deal of time to implement as all the Early Restoration projects require full Trustee approval as well as agreement with

¹National Marine Fisheries Service. 2014. Fisheries Economics of the United States, 2012. U.S. Department Commerce NOAA Tech. Memo NMFS-F/SPO-137.

BP that the project offsets a known injury. We are now close to being able to have committed \$100 million for projects in Florida, and the result will be the implementation of many good projects to deal with some of the injured natural resources, as well as the loss of recreational use, which occurred as a result of the Spill.

The focus of the NRDA projects has been to offset currently known injury. The beauty of the RESTORE funding is that it is broader in nature and can be used to improve the health of the Gulf in general. Therefore, we see this as an opportunity to expand and enhance the type of projects that we haven't been able to fund through NRDA.

One of our largest, and I would say, overarching challenges across all programs has been the amount of time between the Spill and achieving meaningful restoration. Although everyone involved has worked diligently to implement the various programs and funding streams, it has seemed to the watching public that we haven't been expeditious. In response to this criticism, it's important to note that this was the largest environmental disaster ever to occur in the United States. It involves five states, and at least four Federal agencies. By its nature, it is complicated and the rules are difficult to understand. Managing expectations has been very difficult, as the general public as well as people outside the immediate circle of the councils and committees become more frustrated with the pace of restoration.

I don't have a solution for this. Working on the inside of this issue, I can tell you it is not from lack of trying that our groups aren't able to move more nimbly. It is however a challenge and perhaps history will suggest that there could be changes in laws or rules that might permit a more rapid approach to restoration. One thing I will note here: had we not reached an early partial settlement with BP on the NRDA side, we would have no restoration projects at all as the litigation continues to work its way through court.

Direct Funding Component

Under the RESTORE Act, the flow of funding is structured differently for Florida when compared to the other Gulf Coast states. For the Direct Funding Component, or Bucket 1 as it is commonly called, funding in Florida flows directly to the individual 23 Gulf Coast Counties (Counties). The RESTORE Act directs that 75 percent of the available funds will be distributed among the eight most western Gulf Coast counties (Escambia through Wakulla) with the remaining 25 percent being distributed among the remaining fifteen Gulf Coast counties (Jefferson through Monroe). Once the Department of Treasury (Treasury) Regulations are finalized, the individual Counties can access these funds directly from the Treasury. The funds will be released once the Counties have met the conditions outlined in the RESTORE Act, which include submitting a multiyear implementation plan to the Treasury. Once Transocean makes its final payment, there will be \$56,000,000 available for distribution among the Counties.

The challenge here is to make sure by working with the Counties that projects within Bucket 1 are coordinated with other funding streams, and if possible, achieve some measure of leveraging to get the best possible projects across the Gulf. And of course, as I'm sure you will hear from the County representative later, part of their challenge has been to start planning for these projects without funding, which will not be available until the Treasury Regulations are finalized.

Comprehensive Plan Component

Florida has unique ecosystems, and has a long history of environmental protection measures to ensure they flourish. Florida's Gulf of Mexico coastline includes 23 counties, and ranges from Escambia County to Monroe County. Each of the counties has a different set of restoration priorities. In the Panhandle, which includes eight counties from Escambia to Wakulla, population is fairly low, and intense development is limited to several large cities. There still remains a great deal of natural landscape along the Gulf in these counties. Further south, toward Hillsborough County, the population increases and the urban impacts on the Gulf also increase. Of course, Monroe County which includes the Florida Keys, is the only tropical coral reef in the United States, and has its own set of challenges.

Because there was no available funding to the Council to develop the Initial Comprehensive Plan (Plan), all the members were challenged to be able to provide staff and funding to develop and publish the Plan. This is not news to this Committee, as the issue of funding availability is one that runs through all portions of the RESTORE Act implementation. Aside from the funding challenge, one of the biggest challenges to us in developing projects for the Funded Priority List (FPL), which is part of the Plan, is to reflect the different ecosystems as well as socioeconomic situations which range along the Gulf. The one unifying factor for us is that the Council just recently reached agreement on two goals to focus on in the initial FPL, which

are identified in the testimony from Justin Ehrenwerth. These stated goals of water quality restoration and protection, and habitat conservation and protection are two that rise to the top of Florida's priorities. For years, Florida has been a leader in both of these areas through our continued programs for water quality protection. Most recently, we became one of the few states to adopt numeric water quality standards, which will go a long way toward enhanced water quality protection. Florida Department of Environmental Protection Secretary, Herschel T. Vinyard Jr., has repeatedly taken the position that water quality protection is his highest priority, and therefore the decision by the Council to emphasize this goal is welcome to Florida.

In terms of habitat restoration, Florida has a long history of successful habitat restoration across the state. Land acquisition has been a large part of that, and over the years, Florida has acquired more land than any other state or Federal entity. But that's not the whole picture. Within Florida State Parks, for example, there is a very active program for habitat restoration and conservation. The Florida Fish and Wildlife Commission also has an active habitat restoration and management program on lands that they oversee and manage; and the state agencies work closely with interested local governments to extend that ethic. Additionally, the state works closely with interested private landowners to protect and restore habitat on private lands. We look forward to translating these focus areas into meaningful projects for Florida's portion of the projects and programs funded under the Comprehensive Plan.

Spill Impact Component

Again, the RESTORE Act sets out a different process in Florida for developing projects under this component, or Bucket 3 as it is often called. The Florida Gulf Consortium (Consortium) is identified as being responsible for developing the State Expenditure Plan, which is then to be approved by the Governor and submitted to the Council for approval. The Consortium has been hampered in this effort by lack of funds, and you will hear later on your agenda today what they have done so far to begin implementation of this component.

I'd like to focus today on specific challenges that have come up to ensure that there is active collaboration and cooperation among the state and local entities responsible for this funding stream. Recognizing that it is imperative that all the processes necessary to develop, finalize and receive approval of the State Expenditure Plan are streamlined and efficient, the Governor's office developed a Memorandum of Understanding with the Consortium, which was signed on June 12, 2013. We have been working actively with the Consortium since passage of the RESTORE Act to ensure that we have a transparent and collaborative process for approval of the State Expenditure Plan. As Florida's representative on the Council, I have consistently encouraged the Council to provide a funding mechanism for the Consortium (as well as other states) to receive a planning grant for this component. I am now pleased to say that once the Treasury Regulations are finalized, the Council is poised to issue an Interim Final Regulation which will allow the Consortium to apply for up to 5 percent of the funds that will ultimately be available in this component such that they can be used for development of the State Expenditure Plan. Therefore, the Consortium will be able to begin the planning effort even while the Council continues to develop the final rule for the Spill Impact Component.

Success to Date

Although it has been somewhat of a long road to get RESTORE activities off the ground and running, I am optimistic that we have tackled and solved some of our larger administrative issues, and are making good progress on some of the thornier technical issues. The Council's recent agreement to use the existing funds in the trust fund for the Comprehensive Plan Component to focus efforts across the Gulf on water quality and habitat restoration gives us a good map to begin proposing projects and programs to fit that model. In Florida, we will be using our watershed protection approach to think about ways to enhance whole ecosystems when we propose ideas for this component. We believe that water quality improvement and protection is vital to enhancing and restoring habitat, so these focus areas go hand in hand. The water quality needs in Florida are huge. EPA's report to Congress in 2008, called the Clean Watersheds Needs Survey, suggests that Florida's stormwater needs are \$2.5 billion. This was six years ago, so I imagine that number has increased substantially. Nonpoint sources and stormwater are the biggest threats to water quality in Florida, so being able to develop projects which address these needs is very important to us.

Another success relates to our ability to identify a way to get planning funds to the Consortium shortly after the Treasury Regulations are finalized. As mentioned

above, this will be a major part in our ability to create a thoughtful, long term State Expenditure Plan.

And finally, although more difficult to quantify, we have been successful in knitting together a diverse group of agencies, personalities and agendas in the RESTORE Council itself. Those of you who work in Congress are no strangers to the skills needed to bring together a diverse group and reach an outcome that is satisfactory to all. We are facing the same type of challenges, and have come a long way toward identifying unifying goals. Each of the members brings a different set of interests and priorities to the table. Luckily for some of us, membership is the same for most of the committees and councils that are addressing Gulf restoration, so there are familiar faces. Some of us have worked together since we rolled up our sleeves during the Spill and walked the beaches looking for oil. This has helped us come together as a Council and we are making good progress in that area. For us to succeed, we have to share some common characteristics: Patience, as the wheels of bureaucracy move slowly; collaboration, as it takes all of us to reach agreement on a path forward; dedication, because this is hard work; listening skills, because everyone has a slightly different story to tell; and recognition of the value of science, because we all want these projects and programs to be a sustainable success.

Conclusion

In ending my testimony, I would like to thank you all for taking the time out of your schedules to ask these very important questions. As Florida moves ahead to knit together restoration plans, programs and projects, we will be working with a large audience of interested parties, including local governments, nonprofit organizations, and of course just regular citizens. We have a robust outreach program, an active website which we keep updated (www.deepwaterhorizonflorida.com) and a long history of providing information to the public in meetings or by other mechanisms. We are working closely with our other Gulf State and Federal partners on the NRDA funding. We have established a good relationship with the NFWF on a series of great restoration projects for fisheries enhancement, water quality, and wildlife habitat and restoration which will be funded out of the criminal settlements. We expect to keep working with the NFWF in the coming months, and they have assured us that it is their intent to reflect the states' interests in restoration and help us to leverage all available funding streams for restoration. It is our sincere intent to continue to engage fully in all Gulf restoration efforts with the goal in mind of making the best use of available funds to harmonize the various funding streams and make good decisions about how best to apply available funds.

I look forward to keeping you apprised as we continue to work through our challenges, and hope to be able to report on many successes in the future.

Senator NELSON. Thank you.
Commissioner Robinson?

STATEMENT OF HON. GROVER C. ROBINSON IV, COMMISSIONER, DISTRICT 4, ESCAMBIA COUNTY; PRESIDENT, FLORIDA ASSOCIATION OF COUNTIES; AND CHAIRMAN, FLORIDA GULF COAST CONSORTIUM

Mr. ROBINSON. Mr. Chairman and also Ranking Member Senator Rubio from the State of Florida, I appreciate the opportunity to be here today to speak to you.

I am here today to talk on behalf of local governments but also the Florida Gulf Consortium that was established by this Act which represents 23 coastal counties along Florida.

First, I greatly appreciate the wisdom of this body in insisting that local governments be involved in this process, especially within the State of Florida. The direct component will flow funds directly to these individual counties. In addition, component 3 that deals with the oil spill impact fund will also be directing funds to counties in the state partnership as well that was created by this Act.

I do want to say for the purposes of the spill impact formula in Florida, the 23 impacted local governments created a formal entity

known as the Gulf Consortium to write the state expenditure plan and engage the public. In addition, the individual counties are also engaging the public. These groups are hearing from subject-matter experts not only with regard to environmental restoration initiatives, but also potential projects to bolster economic recovery across the region. Both goals, environmental and economic restoration, remain essential to developing and implementing the plans required by the Act and the forthcoming Treasury rules.

That said, while all of us are excited by the many opportunities these projects will provide, the critical aspect at this moment exists with the required development of the numerous plans that must serve as road maps for the pursuit of appropriate projects for restoration.

Every stakeholder understands the more significant fines and, thereby, funds will come from the outcome of the ongoing litigation with British Petroleum. However, each of us has been granted an immediate opportunity with the Transocean settlement. This \$1 billion settlement requires a deposit of \$800 million into the Gulf Coast Restoration Trust Fund and thus opens real opportunities for planning to begin quickly and coordination amongst the different planning bodies to occur. It is this planning that must be done to provide a positive and necessary direction for the expenditure of funds to ensure both environmental and economic restoration.

Recently I had the opportunity to visit with Senator Nelson in Orlando, and I gave him the following Gulf Coast analogy. I told him the Senate and the U.S. Congress had provided us in the region with a great gift. To use a Gulf Coast metaphor, we have essentially been handed an oyster. However, at this particular time we have no tool to open the shell. We have no shucking knife, which is the planning dollars, meaning we are unable to really access this wonderful gift that has been presented to us for the restoration of the Gulf of Mexico. Therefore, the essential step for all stakeholders, Federal, State, or local, is to pursue and complete the required planning process allowing funds to flow wisely in a coordinated method.

In addition to my individual role for the county, I am also the Chairman of the Florida Gulf Consortium, which was created by this Act. It is a truly unique organization combining both multiple local governments, as well as State government, in a true partnership. To date, I will tell you this body meets almost bimonthly to coordinate and exchange information and strategize about its planning process. The recent addition of the Governor of Florida's six appointees to this consortium has created a truly cohesive statewide approach.

But perhaps the most essential task of the consortium is the establishment and the creation of the Florida State expenditure plan, with the goal to outline and identify practical and appropriate projects for both environmental and economic restoration. It remains our sincerest hope that the process developed within the State expenditure plan be applied to maximize opportunities within the other funding mechanisms across the *Deepwater Horizon* settlement sources, such as the Natural Resource Damage Assessment, NRDA, and the National Fish and Wildlife Foundation, NFWF. While both NFWF and NRDA have begun projects across the Gulf

Coast, it concerns me that any monies awarded through these entities may not necessarily be based upon priorities consistent with the forming of the State expenditure plan and the multiyear implementation plans. While not yet an issue, I have real concern that any future expenditures would be better coordinated and efficiently overseen if these plans were already established. Toward that end, the consortium and local governments need funding up front now to ensure resources are available for this required funding and further that it flows directly to those specific bodies charged with drafting those plans.

Additionally, at the state and local level, we need guidance on the process to develop and submit these plans. The sooner we have specific rules of the game, the sooner we can develop our plans consistent with all relevant state and Federal regulations beyond just the RESTORE Act itself. This includes specific direction on what documentation will be required for these plans such as compliance with NEPA and at what point we must secure any required permits and other required approvals.

Finally, I would like to comment on the importance of moving forward expeditiously on developing regulations for both Components 2 and 3. In that regard, I understand that there has been some disagreement on the potential formula related to the spill impact component. I recently attended a National Association of Counties meeting in New Orleans, along with several other local officials from Gulf Coast counties and parishes. At that meeting, all present agreed that while each state and county/parish could argue they sustained more damage and deserved more money than the other, any additional monies provided to one entity would be to the detriment of an equally deserving recipient of the greater coalition.

Knowing firsthand the amount of energy and effort that went into the original negotiations on the spill impact formula, coupled with the fact that each Gulf State participated in the process of developing this formula, I believe changes after the fact should not be entertained. The current statutory formula included within the text of the RESTORE Act should be maintained and the regulatory framework completed as soon as possible for both the development of plans and the eventual implementation of eligible projects. A great spirit of cooperation existed between these stakeholders during the negotiations surrounding these formulas, and I believe any change to these would sincerely hinder restoration across the Gulf of Mexico.

In closing, I would just like to say thank you again for the work you did to provide the Gulf Coast with a real silver lining after a terrible environmental and economic tragedy. While nothing will totally remove the scars from that experience, it is the RESTORE Act that provides hope to state and local governments and the constituents they serve along the entire Gulf Coast. That same spirit has brought significant coordination and collaboration across the region and an excitement for what the future may bring. I ask that you please do all within your power to ensure that proper upfront funding is established for planning at all levels of the Act and to ensure a continued coordination between Federal, state, and local governments.

Thank you again for all you have done for our region and our country.

[The prepared statement of Mr. Robinson follows:]

PREPARED STATEMENT OF HON. GROVER C. ROBINSON IV, COMMISSIONER,
DISTRICT 4, ESCAMBIA COUNTY; AND PRESIDENT, FLORIDA ASSOCIATION OF COUNTIES

I. Introduction

Good morning Mr. Chairman and Members of the Senate Commerce Subcommittee on Oceans, Atmosphere, Fisheries and Coast Guard. My name is Grover Robinson, and I sincerely appreciate the opportunity to address you this morning relative to the RESTORE Act and its implementation across five (5) states on the Gulf Coast. In addition to my being a commissioner from Escambia County Florida, I also serve as the President of the Florida Association of Counties and Chairman of the Florida Gulf Coast Consortium (comprised of 23 counties) created by the RESTORE Act. My comments this morning will address local government activities as they relate both to Component 1 (the Direct Component), as well as Component 3 (the Spill Impact Component). In addition, my comments focus on the immediate challenges facing local governments post-Oil Spill primarily in Florida but also to a larger extent those extended along the Gulf Coast.

First, I greatly appreciate the wisdom of this body in insisting that local governments be involved as part of this process, especially within the State of Florida. The Direct Component that specifically provides funds directly to coastal counties impacted by the tragic events of the *Deepwater Horizon* Oil Spill remains essential for both environmental and economic restoration as envisioned by the RESTORE Act. However, many of the same parallels can be drawn to the Spill Impact Component and the charge entrusted to the Florida Gulf Coast Consortium.

II. Input Into the Process for Developing the Required Plans

In both cases, groups have been established to oversee the Plan development process and provide citizen input into the Multi-Year Implementation and State Expenditure Plans. Within the Direct Component, each individual county is generally creating a citizen RESTORE Act committee to meet the public input requirement in the Act. For the purposes of the Spill Impact Component in Florida, the 23 impacted local governments created a formal entity known as the Gulf Consortium to write the State Expenditure Plan and engage with the public. Currently, these groups are hearing from subject matter experts not only with regard to environmental restoration initiatives, but also on potential projects to bolster economic recovery across the region. Both goals, environmental and economic restoration, remain essential to developing and implementing the Plans required by the Act and forthcoming Treasury Rules—be they for the Multi-Year Implementation Plan in the Direct Component, or the State Expenditure Plans for the Spill Impact Component.

That said, while all of us are excited about the many opportunities these projects will provide, the critical aspect at this moment exists with the required development of the numerous plans that must serve as the roadmaps for the pursuit of appropriate projects for restoration.

III. Upfront Funds for Plan Development

Every stakeholder understands the more significant fines, and thereby funds, will come from the outcome of ongoing litigation with British Petroleum (BP). However, each of us has been granted an immediate opportunity with the Transocean settlement funds. This one billion dollar settlement requires a deposit of \$800-million into the Gulf Coast Restoration Trust Fund and thus opens real opportunities for planning to begin quickly and coordination amongst the different planning bodies to occur. It is this planning that must be done to provide a positive and necessary direction for the expenditure of funds to ensure both environmental and economic restoration.

Recently I had the opportunity to see Senator Nelson in Orlando, and I gave him the following Gulf Coast analogy. I told him that the Senate and the U.S. Congress have provided the region with a great gift. To use an appropriate metaphor, we have essentially been handed an oyster. However, at this particular time we have no tool to open the shell (shucking knife/planning dollars), meaning we are unable to really access the wonderful gift we have been presented—the implementation of eligible projects to actually restore the Gulf Coast. Therefore, the most essential next step is that all stakeholders: federal; state, and local, pursue and complete the required planning processes allowing funds to flow wisely and in a coordinated manner.

IV. Opportunity for Coordination Among the Planning and Funding Efforts

In addition to my individual county role, I am also the Chairman of the Florida Gulf Consortium, which the U.S. Congress created through this Act. It is a truly unique organization combining both multiple local county governments as well state government in a true partnership. To date, I will tell you this body meets almost bi-monthly to coordinate, exchange information and strategize about its planning process. The recent addition of the Governor of Florida's six appointees to this Consortium has truly created a cohesive state-wide approach. Perhaps the most essential task of the Consortium is to establish and create the Florida State Expenditure Plan, with the goal to outline and identify practical and appropriate projects for both environmental and economic restoration. It remains our sincerest hope that the process developed within our State Expenditure Plan be applied to maximize opportunities with the other funding mechanisms across the greater *Deepwater Horizon* settlement sources, such as Natural Resource Damage Assessment (NRDA) and National Fish and Wildlife Foundation (NFWF). While both NRDA and NFWF have provided funding for projects across the Gulf Coast, it concerns me that any monies awarded through these entities may not necessarily be based upon priorities consistent with the forthcoming State Expenditure and Multi-Year Implementation Plans. While not yet an issue, I have real concerns that any future expenditures would be better coordinated and efficiently overseen if these plans were already established. Toward that end, the Consortium and local governments need the proper funding upfront to ensure resources are available for this required planning and further, that it flows directly to those specific bodies charged with drafting those specific plans.

Additionally, at the state and local level, we need clear guidance on the process to develop and submit these plans. The sooner we have specific "rules of the game" the sooner we can develop our plans consistent with all other relevant state and Federal regulations beyond just the RESTORE Act itself. This includes specific direction on what documentation will be required in the plans, such as compliance with National Environmental Policy Act (NEPA) and at what point we must secure any required permits or other required approvals.

Finally, I would like to comment on the importance of moving forward expeditiously on developing the regulations for Components 2 (Comprehensive Plan) and 3 (Spill Impact). In that regard, I understand that there has been some discussion and potential disagreement on the formula related to the Spill Impact Component. I recently attended a National Association of Counties meeting in New Orleans along with other local officials from Gulf Coast counties and parishes. At that meeting, all of those present agreed that while each state and county/parish could argue they sustained more damage and deserved more money than the other, any additional amounts provided to one entity would be to the detriment of an equally deserving recipient of the greater coalition.

Knowing firsthand the amount of effort and energy that went into the original negotiations on the Spill Impact formula, coupled with the fact that each Gulf State participated in the process of developing this formula, I believe changes after-the-fact should not be entertained. The current statutory formula included within the text of the RESTORE Act should be maintained and the regulatory framework completed as soon as possible for both the development of plans and the eventual implementation of eligible projects. A great spirit of cooperation existed between the stakeholders during the negotiations surrounding these formulas, and I feel any attempt to alter the formula significantly hinders the restoration of the Gulf of Mexico either environmentally or economically.

V. Conclusion

In closing, I would just like to say thank you again for the work you did to provide the Gulf Coast with a real silver lining after a terrible environmental and economic tragedy. While nothing will totally remove the scars of that experience, it is the RESTORE Act that provides hope to state and local governments and the constituents they serve along the entire Gulf Coast. That same spirit has brought significant coordination and collaboration across the region and an excitement for what the future may bring. I ask that you please do all within your power to ensure that proper upfront funding is established for planning at all levels of the Act and to ensure a continued coordination between federal, state and local governments.

Thank you again for all you have done for our region and our country.

Senator NELSON. Thank you, Commissioner Robinson.

Mr. Kelsch, wrap us up here. I want you to also talk about the fact that \$2.5 billion under the Act has already flowed because of

a criminal fine, and that has flowed through Fish and Wildlife. And that is for Gulf restoration projects. So talk to us about that.

**STATEMENT OF THOMAS E. KELSCH, SENIOR VICE
PRESIDENT, GULF ENVIRONMENTAL BENEFIT FUND,
NATIONAL FISH AND WILDLIFE FOUNDATION**

Mr. KELSCH. Thank you, Senator and Ranking Member Rubio. It is an honor to be here with you today and to join a distinguished panel of exceptional public servants and fellow Gulf restoration partners.

I want to begin by apologizing on behalf of our Executive Director, Jeff Trandahl, who is on travel and unable to be here to testify today.

This year, the Foundation is celebrating its 30th anniversary as a Congressionally-chartered conservation nonprofit. As one of the Nation's largest conservation funders, we currently work with 15 Federal agencies, numerous state agencies, corporations, foundations, individuals, and our local grantees to implement on-the-ground conservation projects in all 50 states and internationally.

Our experience in the Gulf is extensive. In fact, prior to the *Deepwater Horizon* disaster, the Foundation had invested over \$128 million in conservation projects throughout the five Gulf States.

As I am sure you are aware and as you just alluded to, in 2013 the plea agreements resolving certain criminal claims against BP and Transocean were approved by the U.S. District Court. Those plea agreements established the payment schedule for restitution funds, \$2.54 billion total, and an allocation formula by state for those funds. The plea agreements also directed the Foundation's use and management of the restitution funds, which we refer to as the Gulf Environmental Benefit Fund.

Under the terms of the plea agreements, we are charged with funding projects whose purpose is to remedy harm to or reduce the risk of future harm to natural resources, habitats, and species in the states of Alabama, Florida, Mississippi, and Texas that were affected by the *Deepwater Horizon* oil spill. In Louisiana, we are directed to fund only barrier island restoration and river diversion projects that are consistent with the State's Coastal Master Plan and other related studies that Senator Landrieu and Senator Vitter mentioned earlier today.

In identifying these projects and very importantly, the Foundation is required to consult with natural resource agencies from each of the five states and with the U.S. Fish and Wildlife Service and with NOAA. To date, the Gulf Environmental Benefit Fund has received \$511 million in payments from the responsible parties, and we have awarded \$260 million, more than half of the available funds, to a variety of projects that address priority conservation needs in all of the five Gulf States. Already migratory birds, sea turtles, oysters, and other fish and wildlife are directly benefiting from these investments.

Following further extensive consultation with our state and Federal resource agencies, we anticipate awarding an additional \$130 million or more this summer and fall. As we do with other funding opportunities, we are continuing to build effective partnerships

with the states, Federal agencies, and the private sector to identify and advance priority projects. Importantly, we are engaged with members of both the RESTORE Council and the Natural Resource Damage Trustees as appropriate to understand their emerging conservation priorities and policies in an effort to better understand how their efforts can complement and inform our own. We recognize that such coordination will ensure that investments from the Gulf Environmental Benefit Fund contribute to the overall restoration goals for the Gulf of Mexico as established under the RESTORE Act.

We also continue to look for opportunities to leverage Gulf Environmental Benefit Funds with our other public and private funds to maximize outcomes for the Gulf.

Again, on behalf of the National Fish and Wildlife Foundation, I want to thank you for the opportunity to join today's hearing and to provide this brief update on the Gulf Environmental Benefit Fund. We look forward to continuing to work with our state and Federal agency partners to advance significant conservation projects in each of the five Gulf States over the life of the fund and also look forward to keeping Congress apprised of our progress.

Before I conclude, I just want to take a moment to thank both Trudy Fisher and Mimi Drew for their leadership and dedication in working with NFWF to build a strong partnership for conservation in both Mississippi and Florida. They and their counterparts in other states and within Fish and Wildlife Service and NOAA deserve our great thanks and gratitude, and we look forward to answering any questions.

[The prepared statement of Mr. Kelsch follows:]

PREPARED STATEMENT OF THOMAS E. KELSCH, SENIOR VICE PRESIDENT, GULF ENVIRONMENTAL BENEFIT FUND, NATIONAL FISH AND WILDLIFE FOUNDATION

Thank you, Mr. Chairman, Ranking Member Rubio, and Members of the Committee. It is an honor to be here with you today, and to join this distinguished panel of exceptional public servants, fellow Gulf restoration partners, to discuss our collective efforts to restore and protect the natural resources of the Gulf of Mexico region.

The National Fish and Wildlife Foundation (NFWF) was established by Congress in 1984 to foster public-private partnerships to conserve fish, wildlife, plants, and their habitats for present and future generations of Americans. To fulfill our mission, we do not engage in litigation, we do not advocate or oppose given policies or decisions, and we do not lobby.

NFWF is governed by a 30-member Board of Directors that includes the Director of the U.S. Fish and Wildlife Service (FWS), the Administrator of the National Oceanic and Atmospheric Administration (NOAA), and 28 private citizens, including several from states bordering the Gulf of Mexico.

Over 30 years, NFWF has developed a successful model of coordinating and leveraging public and private funds to address the most significant threats to fish and wildlife populations. As one of the Nation's largest conservation funders, NFWF currently works with 15 Federal agencies, numerous state agencies, private partners, and our local grantees to implement on-the-ground and in-the-water conservation projects in all 50 states and internationally. NFWF's work helps to create and sustain abundant wildlife species and natural habitats that serve as both a source of enjoyment for all Americans and an important driver of our Nation's economic health.

NFWF's Initial Response in the Gulf

Our experience in the Gulf region is extensive. In fact, in the years prior to the 2010 *Deepwater Horizon* oil spill, NFWF had already invested more than \$128 million to support over 450 fish and wildlife habitat projects throughout the Gulf region. These projects were supported with Federal funds and private contributions from NFWF's corporate partners. In response to the oil spill, NFWF's experience in

the Gulf region allowed us to take a leadership role in coordinating immediate efforts to bolster wildlife populations outside the spill zone and enhance their recovery once the spill was over.

NFWF worked with government agencies, non-governmental organizations, private foundations, individuals, and corporations to protect and restore Gulf Coast fish, wildlife, and habitats affected by the oil spill. For example, NFWF engaged Walmart to secure a commitment of \$2.25 million for NFWF-funded conservation projects on Federal and state wildlife management lands on the Gulf coast. We also worked with FedEx and agency partners during the summer of 2010 to facilitate the transfer of 25,000 endangered sea turtle eggs from the Gulf coast to the Atlantic coast—one of the largest wildlife relocations in history. NFWF also launched the Recovered Oil Fund for Wildlife in 2010, funded with \$22.9 million in proceeds from BP's share of net revenue from the sale of oil recovered from the *Deepwater Horizon* site, and leveraged those monies by working closely with some of our other corporate partners. The Fund, and matching money, funded 53 grants between 2010 and 2013.

BP and Transocean Criminal Settlements

On November 15, 2012, the Justice Department announced that BP had agreed to plead guilty to various criminal charges arising from the 2010 *Deepwater Horizon* oil spill. Transocean followed suit on January 3, 2013. On January 29, 2013, the United States District Court for the Eastern District of Louisiana approved BP's plea agreement. Two weeks later, on February 14, 2013, Transocean's plea agreement was approved. The plea agreements designated NFWF as the recipient of \$2.394 billion from BP and \$150 million from Transocean to be used for projects to "remedy harm and eliminate or reduce the risk of future harm to Gulf Coast natural resources." These *Deepwater Horizon* settlement payments were similar to various other settlement payments that have flowed to NFWF over the years to fund projects benefitting our Nation's natural resources. We believe that our long history of successfully managing these types of funds contributed to the decision by the Department of Justice to commit the BP and Transocean settlement funds to our care.

The requirements for BP and Transocean to pay these funds, as well as the usage restrictions applicable to the funds, were entered in Federal Court orders that are enforceable as special conditions of probation. NFWF must look strictly to the plea agreements and these Court-ordered probationary conditions in our administration of the funds.

According to the plea agreements, the BP funds will be paid to NFWF over a five-year period and the Transocean funds will be paid to NFWF over a two-year period beginning in 2013. The plea agreements require:

- 50 percent of the funding to be allocated for barrier island restoration and river diversion projects in Louisiana;
- remaining funds to be allocated for natural resource benefit projects in the states of Alabama, Florida, Mississippi (28 percent each), and Texas (16 percent); and,
- consultation with the Gulf state resource agencies, as well as with NOAA and the FWS, to identify projects for potential funding.

NFWF Gulf Environmental Benefit Fund

NFWF has a long track record of successfully managing funds arising from legal and regulatory proceedings that are designated to benefit natural resources. In the case of the BP and Transocean criminal funds, NFWF carries out this function through its Gulf Environmental Benefit Fund (GEBF). As directed by the two plea agreements, NFWF will administer a total of \$2.544 billion to fund projects benefitting the natural resources of the Gulf Coast that were impacted by the spill.

Purposes

The underlying plea agreements specify a narrow purpose for the Louisiana-designated funds as compared to the purpose designated for funds in the other four states. In Louisiana, the funds may be used only "to create or restore barrier islands off the coast of Louisiana and/or to implement river diversion projects on the Mississippi and/or Atchafalaya Rivers for the purpose of creating, preserving, and restoring coastal habitat." Selection of projects must take into consideration Louisiana's Coastal Master Plan, as well as the Louisiana Coastal Area Mississippi River Hydrodynamic and Delta Management Study.

In the other four states, the funds must be used "to conduct or fund projects to remedy harm to [natural] resources where there has been injury to, or destruction of, loss of, or loss of use of those [natural] resources resulting from the Macondo oil spill."

It is here that we have faced our greatest challenge. NFWF has no discretion to stray from the strict language of the plea agreements regarding the purpose or distribution of the GEBF—monies in the Fund may be used *only* for projects that directly benefit the specific types of natural resources (habitat and species) that were impacted by *Deepwater Horizon*. Thus, for example, NFWF's GEBF is not available to pay for otherwise important projects that aim to remedy economic or social impacts from the Macondo spill. It has taken considerable time and effort to educate stakeholders across the Gulf region regarding the strict parameters under which we operate and to conform local expectations to the terms of the plea agreements.

Consultation and Project Selection

As required by the plea agreements, NFWF has continually consulted with natural resource management agencies in each of the five Gulf States and with FWS and NOAA on the identification and prioritization of appropriate projects. The specific state resource agencies with whom NFWF is consulting are: (1) the Alabama Department of Conservation and Natural Resources, (2) Florida Fish & Wildlife Conservation Commission, (3) Florida Department of Environmental Protection, (4) Louisiana Coastal Protection and Restoration Authority, (5) Mississippi Department of Environmental Quality, (6) Texas Parks and Wildlife Department, (7) Texas Commission on Environmental Quality, and (8) Texas General Land Office. Many of the agencies with whom NFWF is consulting serve on both the Deepwater Horizon Natural Resource Damage Assessment Trustee Council and the Gulf Coast Ecosystem Restoration Council, and their input has been the primary means through which project selection under NFWF's GEBF has been coordinated with similar activities under both the Natural Resource Damage Assessment (NRDA) and "Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States [RESTORE] Act of 2012" programs.

NFWF has worked to develop general consensus among the state and Federal agencies in identifying projects that meet the conditions of the plea agreements and that maximize benefits for Gulf coast natural resources. When our state and Federal agency partners suggest projects that provide regional benefits, such as those crossing state boundaries or even potentially Gulf-wide, NFWF has worked to facilitate interstate and inter-agency agreement on project design and funding strategies. However, even in the absence of consensus, NFWF retains the responsibility and authority under the plea agreements to make final project funding decisions.

In addition to the primary criteria for project selection set forth in the plea agreements, NFWF identifies and prioritizes projects that also meet the following criteria:

- advance priorities in natural resource management plans, such as those called for under the RESTORE Act;
- are cost-effective and maximize environmental benefits;
- are science-based; and,
- produce measureable and meaningful outcomes for Gulf natural resources.

As it does in its other conservation grant-making, NFWF's decision-making relies on strong, science-based evidence and the technical input from state and Federal resource agencies. In the aftermath of the oil spill, public agencies, universities, and other organizations have conducted, and continue to conduct, extensive research to improve the understanding of the Gulf of Mexico ecosystem and efforts needed to restore critical natural resources, enhance its resiliency, and improve management. As this information becomes available, it will be used to further inform our thinking.

Payment Schedule

From 2013 to 2018, the GEBF will receive a total of \$1.272 billion for projects in Louisiana, \$356 million each for projects in Alabama, Florida, and Mississippi, and \$203 million for projects in Texas. In accordance with the terms of the two plea agreements, payments into the GEBF will occur over a five-year period in the case of BP and over a two-year period in the case of Transocean. More than half of the funding will arrive in years four and five. As payments are received, NFWF will segregate funds into accounts by state in accordance with the formula established by the plea agreements and will award the funds to projects after the required consultations with state and Federal resource agencies and approval by the NFWF Board of Directors. The schedule of payments and mandated division of funds follows:

| | Payment (in millions of dollars) | Louisiana | Alabama | Florida | Mississippi | Texas |
|---------------|--|-------------------|-----------------|-----------------|-----------------|-----------------|
| Apr. 2013 | \$158.00 | \$79.00 | \$22.12 | \$22.12 | \$22.12 | \$12.64 |
| Feb. 2014 | 353.00 | 176.50 | 49.42 | 49.42 | 49.42 | 28.24 |
| Feb. 2015 | 339.00 | 169.50 | 47.46 | 47.46 | 47.46 | 27.12 |
| Feb. 2016 | 300.00 | 150.00 | 42.00 | 42.00 | 42.00 | 24.00 |
| Feb. 2017 | 500.00 | 250.00 | 70.00 | 70.00 | 70.00 | 40.00 |
| Feb. 2018 | 894.00 | 474.00 | 125.16 | 125.16 | 125.16 | 71.52 |
| Totals | \$2,544.00 | \$1,272.00 | \$356.16 | \$356.16 | \$356.16 | \$203.52 |

BP = \$2,394M

Transocean = \$150M

Grant Awards to Date

On November 14, 2013, one year after BP entered its guilty plea, NFWF announced the first set of awards derived from the GEBF. Two additional grants were announced on April 3 and April 8, 2014. To date, NFWF has awarded more than \$260 million, or more than 50 percent of the \$511 million received to date, for priority conservation projects in the five Gulf States. A break out of awards follows:

| State | Project Description | Grant Recipient | Amount (\$ in millions) |
|-----------|--|--|----------------------------|
| Alabama | Restoration & Enhancement of Oyster Reefs | Alabama Department of Conservation & Natural Resources—Marine Resources Division | \$3.75 |
| | D'Olive Watershed Restoration | Mobile Bay National Estuary Program/ Marine Environmental Sciences Consortium | 6.78 |
| | Fowl River Watershed Restoration | Mobile Bay National Estuary Program/ Marine Environmental Sciences Consortium | 2.05 |
| Florida | Management & Restoration of Escibano Point Coastal Habitat—Phase I | Florida Fish & Wildlife Conservation Commission | 1.73 |
| | Government Street Regional Stormwater Pond at Corrine Jones Park | Florida Department of Environmental Protection | 2.11 |
| | Apalachicola Bay Oyster Restoration | Florida Fish & Wildlife Conservation Commission | 4.19 |
| | Comprehensive Panhandle Coastal Bird Conservation | National Audubon Society | 3.21 |
| | Eliminating Light Pollution on Sea Turtle Nesting Beaches | Sea Turtle Conservancy | 1.50 |
| Louisiana | Enhanced Assessment for Recovery of Gulf of Mexico Fisheries—Phase I | Florida Fish & Wildlife Conservation Commission | 3.00 |
| | Caminada Beach & Dune Increment II: Engineering & Design | Louisiana Coastal Protection & Restoration Authority | 3.00 |
| | East Timbalier Island: Engineering & Design | Louisiana Coastal Protection & Restoration Authority | 6.00 |
| | Mid-Barataria Sediment Diversion: Engineering & Design | Louisiana Coastal Protection & Restoration Authority | 40.40 |
| | Lower Mississippi River Sediment Diversions: Planning | Louisiana Coastal Protection & Restoration Authority | 13.60 |

| State | Project Description | Grant Recipient | Amount (\$ in millions) |
|--------------------|--|--|----------------------------|
| | Increase Atchafalaya Flow to Terrebonne: Planning | Louisiana Coastal Protection & Restoration Authority | 4.90 |
| | Caminada Beach & Dune Increment II: Construction | Louisiana Coastal Protection & Restoration Authority | 144.55 |
| <i>Mississippi</i> | Coastal Bird Stewardship Program | Mississippi Department of Environmental Quality | 1.60 |
| | Mississippi Coastal Preserves Program | Mississippi Department of Environmental Quality | 3.30 |
| | Coastal Stream & Habitat Initiative | Mississippi Department of Environmental Quality | 2.63 |
| | Mississippi Coastal Restoration Plan | Mississippi Department of Environmental Quality | 3.60 |
| <i>Texas</i> | Sea Rim State Park Coastal Dune Restoration | Texas Parks & Wildlife Department | 0.19 |
| | Galveston Island State Park Marsh Restoration & Protection | Texas Parks & Wildlife Department | 2.49 |
| | West Galveston Bay Conservation Corridor Habitat Restoration | Scenic Galveston | 4.08 |
| | Oyster Reef Restoration in East Bay | Texas Parks & Wildlife Department | 0.84 |
| | Gulf Coast Migratory Waterfowl Habitat Enhancement | Ducks Unlimited | 1.25 |
| | | <i>total</i> | <i>\$260.75</i> |

Following further extensive consultation with state and Federal resource agencies over the coming months, NFWF anticipates awarding, by year's end, an additional \$130 million or more of settlement funds received thus far.

Our ability to begin awarding funds less than a year after the plea agreements were approved was made possible in large part by the intense efforts of our federal, state, local, and private partners to help us craft a process that generated quality proposals in a timely manner focusing on the highest priority conservation goals. This "can do" spirit, and the collaboration and cooperation that resulted, has been one of the true success stories surrounding NFWF's GEBF.

Conclusion

As we move forward with the implementation of the GEBF, we will continue to work with our state and Federal partners to identify high priority projects that meet the requirements of the plea agreements and provide long-term restoration benefits to the Gulf of Mexico region. As stated, we are utilizing existing planning and prioritization efforts such as those required by the RESTORE Act to deliver the funds without creating new and duplicative processes. Accountability and fidelity to the Court orders are essential to the process and we are committed to awarding the funds entrusted to us in a timely and responsible manner.

NFWF will report annually to Congress, as well as to the Court and Department of Justice, on its activities with regard to the GEBF. This will include a list and descriptions of projects and the funding awarded for them. We look forward to continued input from key stakeholders, both public and private, to ensure the success of the GEBF and its associated restoration projects.

Senator NELSON. Thank you.

Senator Rubio?

Senator RUBIO. Thank you, Mr. Chairman.

Just briefly so that no one is wondering where all the money went, in my statement I said the Gulf Environmental Benefit Fund was \$12.5 billion. It is actually \$2.5 billion.

[Laughter.]

Senator RUBIO. There is not \$10 billion sitting around.

Mr. Andrews, what is your role on the Council?

Mr. ANDREWS. Senator, I serve as the Deputy Secretary of the Department. Secretary Pritzker is the Chair selected by the states of the Council, and so as part of the operating structure, one of the roles of the Deputy Secretary of the Department is essentially to serve as the Chief Operating Officer for the Department. Because this is such a high priority for the Department and making sure this is done well, this is one of the projects, probably right now what I spend most of my time on, frankly, focusing on and working with our team to make sure that this is being done well and appropriately.

Senator RUBIO. Will Secretary Pritzker or you on her behalf—will you make clear here today that you commit to implementing the oil spill impact formula as is written in the law?

Mr. ANDREWS. Senator, the statute is absolutely our guide for implementing this, and we are going to follow the law.

Senator RUBIO. Ms. Drew, thank you for being here. I appreciate it very much.

Let me ask you this. How important is—let me just get to this in the interest of time. How important is water quality to habitat restoration, and do you feel water quality is being appropriately emphasized in all of the current funding streams?

Ms. DREW. Thank you very much for that question, Senator Rubio.

Unfortunately, under NRDA, we have not been able to address water quality, and we know that in the State of Florida particularly we had aquatic ecosystems that were injured. We hope to be able to see both the NFWF funding and some of the RESTORE funding go to water quality. It is my opinion that you cannot have a good habitat, particularly marine or aquatic habitat, unless you have good water quality. Florida has a long history of water quality protection, and we would like to see these funds be used for that continuing protection.

Senator RUBIO. Mr. Robinson, thank you for being here. I understand you have interrupted a vacation to be here with us today. So I appreciate your commitment to this cause.

I wanted to get your thoughts on the Council's—what they released on Friday, their proposal for submission and evaluation.

Mr. ROBINSON. Thank you, Senator, and thank you for your invitation to be here.

We have seen a little bit of it and started being in the process. Anything that begins to advance funds for planning is most important at this particular time, whether we are at the county level or at the state consortium level. I think it is going to be important for Floridians that we get plans moving. So I am very happy about that. I just want to make sure that in all 23 of our counties, we are able to get the planning that we need to get done in order to advance the projects.

Senator RUBIO. Well, what has been the number one impediment that the county consortium has had moving forward with the restoration work?

Mr. ROBINSON. It is absolutely planning dollars. That has been our biggest issue. And also in a sense somewhat that we are a little bit different. The direct component does not go directly to the State. So it is kind of hard to figure how to advance some of those

dollars. But once we get going, as I said before, that group has been a very good mesh of state and local government working together. I am very excited about what I see. And we will be having our next consortium meeting next week in Escambia County at Pensacola Beach, and we are moving forward on that. We just need planning dollars so we can begin to get a consultant moving on getting that plan done.

Senator RUBIO. Mr. Ehrenwerth, you state that the Council anticipates an interim final rule in the next 2 months that would provide access to the states and Florida counties of up to 5 percent of funding for planning. What has been the delay in issuing that interim final rule?

Mr. EHRENWERTH. Well, Senator, we have been very committed to doing everything in our power to ensure that all the states and Federal agencies who participate in the Council have the support and the resources that they need to carry out this work. We are very optimistic that we will get—

Senator RUBIO. Why has it taken so long?

Mr. EHRENWERTH. We were exploring a number of options to try to get money quickly to the consortium of counties in Florida, as well as the other states. And I think with the interim final rule option, we finally settled on the best approach to get money—

Senator RUBIO. So when can we expect that?

Mr. EHRENWERTH.—this summer. We are moving forward with it as we speak.

Senator RUBIO. The summer meaning August?

Mr. EHRENWERTH. We are going to try to do it as quickly as we possibly can.

Senator RUBIO. Mr. Kelsch, given the amount of money and the different funding streams that have resulted from both criminal and civil penalties from the *Deepwater Horizon* incident, how important is process and planning on selected projects so that we can avoid duplication and inefficiencies?

Mr. KELSCH. I think the plea agreements require that the Foundation consult closely with the state resource agencies, Fish and Wildlife Service, and NOAA. Importantly, the individuals that we are consulting with, Mimi Drew, Trudy Fisher, are the same individuals who sit and represent the agencies on the RESTORE Council and NRD Trustee Council. That coordination, that consultation has been extremely critical relative to avoiding duplication. While we are constrained within the plea agreement in terms of what we can support for planning, we are pleased, as noted in Trudy's comments, our ability to support some planning in the State of Mississippi and Alabama to help address some of those critical needs as well.

Senator NELSON. As you can hear by the comments of the Senators, those of us who wrote and passed this law—we are impatient. We want to get on with it. And it has been 2 years. And although the big chunk of money, which will be as a result of the civil fines imposed by Judge Barbier, which is going to be anywhere from about \$5 billion to \$20 billion, 80 percent of which is going to flow under the structure of the RESTORE Act, the 20 percent, of course, going into the Oil Spill Liability Trust Fund—you do not have that money, but you got other pots of money. You have got

\$2.5 billion that has gone to Mr. Kelsch's operation. You will have \$800 million that has come down from the Transocean money. So the message from us to you is get on with it. And it is an opportunity to have some money that is there to start the planning for when the big wad of money comes when the judge decides in New Orleans and/or after that goes through an appellate process, which could be some time on down the road.

Now, that issue in front of Judge Barbier is how many barrels of oil were spilled and what was the culpability. And once he decides the latter, then he multiplies that times the number of barrels of oil that were spilled. And then that money is going to flow.

And the structure is pretty easy. It is fairly clear in the statute. There are those three pots of money that you have been talking about today. You call them "buckets." Then there are two more that are basically 2.5 percent each, one of which goes to take care of the fish, fish stock assessments, another which goes to the Centers of Excellence.

Anybody want to tell me about how the planning for the Centers of Excellence has gone along in any of the states? Ms. Fisher?

Ms. FISHER. Yes, Mr. Chairman, I will be happy to address. We are anxiously awaiting the finalization of the Treasury regs, as everyone is, to have those final rules in place. And then the coordination and the testimony that was filed by Deputy Secretary Andrews—the coordination of the Centers of Excellence and the research work will be done—we are working in Mississippi to leverage, Senator Rubio, for sure to avoid duplication, but we focus on leveraging the dollars, how do we maximize the three funding streams and the research, the monitoring, the backup information that is needed. So that is the type of discussions and planning that we are having with proponents for our Centers of Excellence. How to leverage and how to maximize all of those funding streams, including the 2.5 percent for the Centers of Excellence.

Senator NELSON. So what you just said is we are waiting for the Treasury regs. And so, Treasury, please understand the impatience of the Senators on this panel who have been responsible in passing this Act.

Mr. Kelsch, do you want to give us any lessons learned since you actually have your fingers on \$2.5 billion? Any lessons learned you want to share with all of us?

Mr. KELSCH. I think the work to date of the RESTORE Council in implementing the RESTORE Act has actually helped to establish the degree of kind of consensus and a path forward. It has been critical to our success. I think the fact that we are dealing again with the same individuals who are helping to shape the initial master plan, shape the implementation of priority projects, and then can work with them less encumbered, if you will, by the conditions of the plea agreement and having funds certain in the accounts that we have has allowed us to be able to make very effective investments while these other processes are being complete.

Senator NELSON. Mr. Ehrenwerth, you have stated that the Council is slated to become operationally independent. This panel wants to make sure that "independent" does not mean a lack of accountability.

And, Mr. Andrews, how will the Council help ensure a thorough and expedited environmental and regulatory compliance?

Mr. ANDREWS. Well, the Council, Senator, will continue to work with all of the agencies and with all of the states. And we recognize the impatience of the Committee but also, frankly, of all the members of the Council, both on the Federal side and the State side. So we have already been working among the Federal agencies to make sure that we do the prep work upfront to try to streamline the regulatory process on the back end so that we are not slowed down by regulatory impediments.

Senator NELSON. All right. We are counting on you. Otherwise, we are going to have another hearing, and we are going to be beating on your door because you all have got to implement this thing. And it has been 2 years and it is time to get moving.

Commissioner Robinson, tell us what do you think—in closing here, what can the Federal Government do to help the local governments of all the Gulf Coast States in this implementation process other than what has been stated clearly here that you need planning money right now?

Mr. ROBINSON. Senator, thank you very much for your vision very much in helping create this RESTORE Act. Again, it is going to be vital to that point.

Twenty-three counties and almost half the Gulf Coast—of the Gulf of Mexico is in the State of Florida. And I think in order to protect Floridians, much of what has already been said here today, many of the things there regards to planning and other parts. But I want to echo what Ms. Drew also said. In Florida, water quality leads to habitat, and we cannot have habitat restoration without water quality improvements. So those projects that are moving water quality—we need those to be moving forward.

And, again, thank you for everything and your leadership in making this happen for the RESTORE Act for all of us along the Gulf Coast but especially us Floridians.

Senator NELSON. Well, I want to thank all of you very much.

Let us look at what we have learned here. We have learned that the Department of Commerce has got to figure out a way to get the funding moving for the planning as we wait for the big wad of money to be decided by the court in New Orleans.

We need the administration to finalize the Treasury rules.

We need the administration to work with this Committee as we oversee the implementation of the law.

And we need to make sure that the administration is prioritizing large-scale ecosystem protection across science and research programs, and that would include the so-called fish fund,” which is the science program on assessing the fish stocks which was one of the little small set-aside funds that was set up.

So I think we have learned some things here today, and it is now up to you all to go out and implement it.

Thank you for your public service. Thank you for your devotion to duty.

The meeting is adjourned.

[Whereupon, at 12 p.m., the hearing was adjourned.]

A P P E N D I X

GULF OF MEXICO UNIVERSITY RESEARCH COLLABORATIVE

August 11, 2014

Hon. MARK BEGICH,
Chairman,
Senate Subcommittee on Oceans, Atmosphere, Fisheries, and Coast Guard,
Washington, DC.

Hon. MARCO RUBIO,
Ranking Member,
Senate Subcommittee on Oceans, Atmosphere, Fisheries, and Coast Guard,
Washington, DC.

Hon. BILL NELSON,
Senate Subcommittee on Oceans, Atmosphere, Fisheries, and Coast Guard,
Washington, DC.

Dear Senators Begich, Rubio, and Nelson:

Thank you for holding the recent hearing, *Revisiting the RESTORE Act: Progress and Challenges in Gulf Restoration Post-Deepwater Horizon*. We greatly appreciate your unrelenting attention to the Gulf in the wake of this tragedy and hope that science will be employed widely and wisely to help guide restoration efforts and ensure that we are better prepared for future injuries to our coastal communities and resources.

As you well know, in response to the 2010 BP *Deepwater Horizon* Oil spill, various programs were authorized to address response, restoration and science in the Gulf, with funding and oversight for these programs originating from a variety of places, both Federal and private. The Gulf of Mexico Research Initiative (GoMRI), Natural Resource Damage Assessment, criminal plea agreements, Clean Water Act, class action lawsuits, and the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act (RESTORE Act) represent the broad authorities, funding sources, and diverse goals of the Nation responding to this tragedy. Given that each program addresses a specific need, each also brings its own governing body, timeline, and oversight structure. While the RESTORE Act included some provisions for coordination among efforts, there is no requirement or mandate for coordination among the various broader suite of restoration science programs. With no overarching framework to identify gaps or duplicative efforts that may exist in time or space or opportunities to maintain continuity and availability of data and information moving forward, we are left with no mechanism to ensure that, at the end of these programs' tenure, we have a whole that is greater than the sum of their individual parts.

Coordination among programs for creating efficiencies in programs and reducing duplicative work is critical to the success of all the programs. For instance, there will be monitoring efforts in many of these programs, either to help actively manage a restoration project or to improve basic knowledge of and forecasting for the coastal environment. A coordinated ocean observing system that provides real-time data from buoys, gliders, radar and other remote devices would be a valuable asset for all programs and would advance the field of knowledge to better prepare the Nation for the next oil spill regardless of its location. Another example of needed coordination exists with regards to research vessels. A dedicated regional research vessel for the Gulf would certainly be fully utilized given the many field experiments and monitoring activities that will be ongoing for the next decade.

On the data side of monitoring, there are also multiple entities with plans to compile all the historic data and establish a permanent repository. Cyberinfrastructure of this sort is very complex, costly, and needs to be thoughtfully designed and implemented to ensure quality control of data going in and quality products coming out. Coordination of efforts in data quality control and management is essential for en-

sure the Nation's researchers, industry and resource managers have open access to data and information products that will aid sustainable management of our resources.

Furthermore, a lateral strategy and coordination can maximize the programs' varied timelines through staging of research, as well as moving research findings into usable products. While some programs have strengths in research and science, others focus on restoration, communication, forecasting, mitigation, and myriad other topics. Programs building on each other's strengths (as well as on data and information from historical programs) and bolstering others to complementarily fill mission gaps will create a cohesive, comprehensive national approach to Gulf oil spill response and recovery.

Finally, we share your concerns with the sluggish way that the Treasury Department has responded to the RESTORE Act regulations. As you know, these regulations are overdue, and no money can flow until they are finalized. It appears that Treasury and OIG activities are not synchronized, further exacerbating a confusing situation along the Gulf. In one case, the Federal entities (led by NOAA) are well on the way to planning for RESTORE science activities, but the lack of rules from Treasury seem to preclude the academic Centers of Excellence from being at the planning table, even though it is prescribed in the statute.

We share your commitment to a successful restoration of Gulf ecosystems and hope that with your leadership we can achieve vigorous coordination between the various Gulf spill science programs. It is critical that this occurs as soon as possible to ensure that we take the best advantage of the ongoing and future opportunities stemming from the Gulf oil spill tragedy. We understand the complexity and magnitude of coordinating across the breadth of Gulf restoration resources and activities, and we offer the experiences of Consortium for Ocean Leadership and the Gulf of Mexico University Research Collaborative to assist with developing a strategy. We are happy to discuss these issues with you in more detail at your earliest convenience.

Regards,

ROBERT B. GAGOSIAN,
President and CEO,
Consortium for Ocean Leadership.

WILLIAM MONTY GRAHAM,
Board Chairperson,
Gulf of Mexico University Research Collaborative.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. ROGER F. WICKER TO
HON. BRUCE H. ANDREWS

Question. How will Department of Commerce ensure, as required by the RESTORE Act, that oil spill programs do not replace but are coordinated with existing NOAA programs mandated to support ecosystem restoration and conservation?

Answer. The Department of Commerce's National Oceanic and Atmospheric Administration (NOAA), in partnership with the Gulf Coast Ecosystem Restoration Council, actively coordinates with the other entities involved in Gulf Coast ecosystem restoration to ensure all programs are free of duplication. NOAA is actively engaging and coordinating with governmental and nongovernmental research programs that operated in the region prior to the *Deepwater Horizon* oil spill and RESTORE Act implementation to prevent any overlap. The coordination efforts of both NOAA and the Council focus on, but are not limited to, the following activities and entities: RESTORE Section 1604—NOAA Science & Monitoring; RESTORE Section 1605—State Centers of Excellence; Natural Resources Damage Assessment (NRDA) trustees; National Fish and Wildlife Foundation (NFWF); National Academy of Science (NAS); and Gulf of Mexico Research Initiative (GoMRI). We continue to be strongly committed to coordinating with our partners in our collective efforts to restore the Gulf Coast region. In addition, the Council has built specific steps into the project selection process to coordinate on project selection to help leverage resources and avoid duplication.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARCO RUBIO TO
HON. BRUCE H. ANDREWS

Question 1. A topic we frequently hear about in Florida is not only the importance of stock assessments, for example, of the red snapper fishery but of a clearer understanding of how the *Deepwater Horizon* incident may have impacted this fishery. How will the work of the Gulf Coast Ecosystem Restoration Science, Observation, Monitoring, and Technology Program contribute to stock assessments?

Answer. We recognize the need to advance our current understanding of Gulf fisheries. The Gulf Coast Ecosystem Restoration Science, Observation, Monitoring and Technology Program (Program) will contribute to a holistic understanding of the Gulf of Mexico ecosystem including its fish populations, fishing industries, habitat, and wildlife through ecosystem research, observation, monitoring, and technology development. Because fish stocks and fisheries are such an integral component of the ecosystem, much of the research supported by the Program will either directly or indirectly increase our understanding of fisheries in the Gulf and provide data that will be critical to our assessment work on many Gulf species.

Question 2. When do you anticipate hiring a director for the science program? Why hasn't a director been hired yet?

Answer. The Gulf Coast Ecosystem Restoration Science, Observation, Monitoring and Technology Program, or NOAA RESTORE Science Program, has been led for over a year by an Acting Director based in the region. We are in the process of hiring a Director and a Washington, D.C.-based Associate Director. We expect the Associate Director to be on the job by October, 2014, and the Director to be on the job by the end of the year.

Question 3. Is it possible that the delay in implementing sections of the RESTORE Act, particularly science projects like the assessment of fisheries, could have implications for the natural resource damage assessment process as well?

Answer. The science for the injury assessment under the Natural Resource Damage Assessment (NRDA) is well underway and is not impacted by the fact that science projects have not yet been implemented under the RESTORE Act. The science projects that will be funded under components of the RESTORE Act will be important in helping to inform long term restoration planning and monitoring.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. BILL NELSON TO
JUSTIN R. EHRENWERTH

Question. The recently released project selection process encourages projects that benefit "the human community where implementation occurs." That doesn't come from the statute, and in fact, could take away from comprehensive restoration because several projects provide benefits only far from where they actually are implemented. For example, in Florida, by purchasing buffer lands around freshwater springs, the benefit is to communities that rely on downstream waters. So the project is implemented upstream, but the benefits are elsewhere. How will this consideration be addressed?

Answer. Mr. Ehrenwerth failed to submit a response to the question.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. ROGER F. WICKER TO
JUSTIN R. EHRENWERTH

Question 1. What programs non-federal programs (State agencies, University Research Consortia, designated Center of Excellence: Center for Gulf Studies) are being coordinated with?

Answer. Since 2013, representatives of the Gulf Coast Ecosystem Restoration Council (Council) and Council staff have been informally meeting and coordinating with many of our partners including the NOAA RESTORE Act Science Program, the National Academy of Sciences Gulf of Mexico Program, the National Fish and Wildlife Foundation Gulf Program, the Gulf of Mexico Research Initiative, the Gulf of Mexico University Research Consortium, the Gulf of Mexico Alliance, the North American Wetlands Conservation Fund, the National Resource Damage Assessment program, candidate or prospective Centers of Excellence under the Act's Section 1605 program, and various state agencies. Some of this coordination has taken place under the banner of the "Gulf Coast Ad Hoc Coordination Forum" which was created to provide regular communication and coordination on Gulf of Mexico restoration related science amongst the entities funded as a result of the *Deepwater Horizon* oil spill to support science and restoration. Coordination of this forum has been

carried out through monthly teleconferences and/or webinars as well as periodic face-to-face meetings.

Question 2. How are they being coordinated with? How do we ensure the states have the intended leadership role in developing the science needs when NOAA is restricted from engagement with the Centers of Excellence?

Answer. The Gulf Coast Ecosystem Restoration Council staff has been informally engaged through the Gulf Coast Ad Hoc Coordination Forum with a variety of entities including: the NOAA RESTORE Act Science Program, the National Academy of Sciences Gulf of Mexico Program, the National Fish and Wildlife Foundation Gulf Program, the Gulf of Mexico Research Initiative, the Gulf of Mexico University Research Consortium, the Gulf of Mexico Alliance, the North American Wetlands Conservation Fund, the National Resource Damage Assessment program, candidate or prospective Centers of Excellence under the Act's Section 1605 program, and various state agencies.

I defer to the U.S. Department of Commerce and NOAA to discuss its activities in this regard.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARCO RUBIO TO
JUSTIN R. EHRENWERTH

Question 1. Will Council commit to implementing the oil spill impact formula as it was written in the law?

Answer. Yes. The Gulf Coast Ecosystem Restoration Council (Council) is committed to a fair and transparent process when developing regulations that adhere to the RESTORE Act. In August 2014, the Council published an Interim Final Rule in the Federal Register that will allow Gulf Coast states to receive funding for development of State Expenditure Plans. The Interim Final Rule provides access to up to 5 percent of the funds available to each State under the Oil Spill Impact Component for planning—a percentage equal to the statutory minimum each Gulf Coast state is guaranteed under the RESTORE Act. The Council anticipates releasing a second proposed rule in the coming months that adheres to the RESTORE Act, details the oil spill restoration impact allocation formula, and sets levels of funding provided to each State. The Council will undertake a public notice and comment process for this second rule. Following review of and response to public comments, the Council will finalize the regulation and begin awarding funds to the Gulf Coast States according to the RESTORE Act, the regulation, and approved State plans.

Question 2. What has precluded the Council from entering a Memorandum of Understanding regarding administrative funding with the states similar to the MOU between the Department of Commerce and the Department of Treasury?

Answer. In August 2013, the Council executed a Memorandum of Understanding (MOU) with the U.S. Department of the Treasury (Treasury) to make funds from the Gulf Coast Restoration Trust Fund (Trust Fund) available for administrative expenses. This MOU was an interim measure to allow the Council to access administrative funds in support of initial stand-up activities while Treasury finalized its regulations concerning the investment and use of amounts deposited in the Trust Fund. The MOU between the Council and Treasury expired on October 14, 2014, upon finalization of the Treasury regulations. The Act provides the Council with a 3 percent cap on administrative expenses and the Council has approved a budget consistent with this cap that allocates funds to cover administrative expenses of the Council, such as accounting systems, pay roll, etc. In recognition of the need to provide funding for planning and the development of State Expenditure Plans under the Oil Spill Impact Allocation Component, the Council issued an Interim Final Rule (IFR) in August 2014 to provide funding to state Council members for planning and the development of State Expenditure Plans under the Oil Spill Restoration Impact Allocation Component of the Trust Fund.

Question 3. How will the Council weight each of the five goals in the Comprehensive Plan?

Answer. The five Goals in the Initial Comprehensive Plan will not be weighted. The Council will use the Goals and Objectives set forth in the Initial Comprehensive Plan to guide its ecosystem restoration funding decisions. The Goals provide the Council's desired long-term outcomes for Gulf Coast restoration; the Objectives outline the broad types of activities that are expected to achieve the Goals. The Council intends to refine the Objectives over time to be more specific and measureable as more information is known about the ultimate amount and availability of funding.

Question 4. Please provide a detailed timeline of the milestones and final publication of the funded priorities list.

Answer. The Council is committed to working with deliberate speed to implement the Act and develop a Funded Priorities List (FPL).

- Project solicitation window closes on November 17, 2014.
- Projects reviewed for eligibility under RESTORE Act; budget reasonableness; “Priority and Commitment to the Initial Comprehensive Plan” review; “Best Available Science” review conducted by external experts; “Environmental Compliance Readiness” review; and concurrent development of “context reports” for the aforementioned reviews completed March 2015.
- Council review of context reports and development of Draft FPL; Draft FPL published in the Federal Register June 2015, for public review and comment.
- Public comment period on Draft FPL closes July 2015.
- Council review and incorporation of public comments; finalization and publication of the FPL completed by September 2015.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. MARCO RUBIO TO
MIMI A. DREW

Question. You mention that, in lessons learned, there could be some changes to laws or rules that would permit a more rapid approach to restoration. Can you elaborate on this?

Answer.

Issue: On April 20, 2011, the Deepwater Horizon Natural Resource Damage Assessment Trustees and BP signed the *Framework for Early Restoration Addressing Injuries Resulting from the Deepwater Horizon Oil Spill*, which set aside \$1 billion dollars for early restoration. However, three and half years later, the Trustees and BP have only reached agreement on how to spend \$700 million of the \$1 billion. This is due, in part, to the fact that the Trustees and BP must negotiate the amount of credit that BP will receive for each early restoration project that it funds. To date, when determining the amount offsets for each project, BP has refused to use a dollar-for-dollar (value-to-value) scaling approach, which is allowed under 15 C.F.R. §990.53. Instead, BP has insisted that the Trustees calculate the offsets using Habitat Equivalency Analysis, Resource Equivalency Analysis, or Benefit Cost Ratio. If BP was required to use a dollar-for-dollar scaling approach then the amount of time spent on negotiating the offsets for the early restoration projects would be significantly reduced.

Recommendation: Amend the Oil Pollution Act of 1990 (OPA), to require the responsible parties to participate in early restoration for spills where final restoration will not be implemented for a numbers of years due to the size and complexity of the spill. As part of this amendment, require early restoration projects to be credited using the dollar-to-dollar (value-to-value) scaling approach, which would allow for a more rapid restoration.

Issue: The *Deepwater Horizon* disaster has shown that an incident of that type and size requires a huge and timely response. However, once the initial cleanup is accomplished, technically, final restoration could wait until the case is either litigated to conclusion or settled. If the Trustees and BP hadn’t been able to reach agreement on an early restoration settlement of \$1 billion, the affected Trustees would still be waiting to begin the restoration of damaged resources.

Recommendation: Amend the Oil Protection Act of 1990 (OPA), to require responsible parties provide early restoration funding for spills or incidents over a certain size or geographic distribution.

Issue: One of Florida’s most immediately recognized injuries was the damage to recreational use of the resource, or loss of human use. The existing law is very focused on detailed assessment for ecological loss, but not particularly helpful in determining how to address loss of human use.

Recommendation: Given the large role this injury played in the DWH incident, the law should be reviewed against what we have learned for possible changes to make this type of loss more easily addressed and offset.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARCO RUBIO TO
THOMAS E. KELSCH

Question 1. How important is water quality to habitat restoration?

Answer. Improved water quality can be an important element in restoring the ecological functioning of priority bays and estuaries, especially in areas where noted degradation of water quality is the significant limiting factor in those systems. With limited funding available, projects that provide the most significant measurable improvement to the functioning of bays and estuaries affected by the *Deepwater Horizon* oil spill, and the habitats and species they support, must be prioritized to ensure the most significant outcomes and highest possible returns on investment from the Gulf Environmental Benefit Fund are achieved.

Question 2. Does the Foundation have any sort of rebuttal process for projects that apply for funding but are not accepted?

Answer. In accordance with the terms of the plea agreements, NFWF is required to consult with state and Federal resource agencies in identifying projects for funding under the Gulf Environmental Benefit Fund. NFWF works closely with our resource agency partners to provide substantive comments and guidance on potential improvements to projects that may make them more competitive.

To facilitate consideration for funding through the Gulf Environmental Benefit Fund and other funding sources arising from the *Deepwater Horizon* oil spill, each of the Gulf States has established a web-based portal to receive project ideas and comment from the public. The states are responsible for managing these submission processes and notifying applicants of the status of their submissions.



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