

**RESTORING JOBS, COASTAL VIABILITY, AND
ECONOMIC RESILIENCE IN THE GULF OF MEXICO:
H.R. 3096, THE RESOURCES AND ECOSYSTEMS
SUSTAINABILITY, TOURIST OPPORTUNITIES, AND
REVIVED ECONOMIES OF THE GULF COAST
STATES ACT OF 2011**

(112-66)

HEARING
BEFORE THE
**COMMITTEE ON
TRANSPORTATION AND
INFRASTRUCTURE**
HOUSE OF REPRESENTATIVES
ONE HUNDRED TWELFTH CONGRESS
FIRST SESSION

DECEMBER 7, 2011

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U.S. House of Representatives
Committee on Transportation and Infrastructure
Washington, DC 20515

John L. Mica
Chairman

Rick J. Rahall, III
Ranking Member

James W. Coon II, Chief of Staff

James H. Zola, Democrat Chief of Staff

December 2, 2011

MEMORANDUM

TO: Members, Committee on Transportation and Infrastructure

FROM: Staff, Committee on Transportation and Infrastructure

RE: Hearing on “Restoring Jobs, Coastal Viability and Economic Resilience in the Gulf of Mexico: H.R. 3096, the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2011”

PURPOSE

On Wednesday, December 7, 2011, at 10:00 a.m. in 2167 Rayburn House Office Building, the Committee on Transportation and Infrastructure will hold a hearing to review H.R. 3096, the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2011 (RESTORE Act).

BACKGROUND

Explosion and Sinking of the DEEPWATER HORIZON

The DEEPWATER HORIZON was a dynamically positioned mobile offshore drilling unit (MODU) operated by Transocean Ltd. Transocean was under contract with British Petroleum (BP) to use the DEEPWATER HORIZON to drill an oil and natural gas well at the Macondo exploration site in an area of the Gulf of Mexico known as the Mississippi Canyon Block 252 (MC 252). BP purchased the lease rights to MC 252 in 2008 for \$34 million and became the legal “operator” for any activities on that block. For the purposes of the Macondo site, BP partnered with two other companies, Anadarko Petroleum Corporation and MOEX Offshore to drill the well. BP owns a 65 percent

share of the well, followed by 25 percent for Anadarko Petroleum, and 10 percent for MOEX Offshore.

On the evening of April 20, 2010, as workers were conducting integrity tests of the well, pressure readings indicated problems. At approximately 9:40 p.m., drilling mud began spewing into the DEEPWATER HORIZON followed shortly thereafter by natural gas. Efforts to close off the well by activating the rams and annular preventers on the blow out preventer failed. At 9:49 p.m. the first of two explosions occurred. Eleven workers who were aboard the MODU at the time of the blowout and explosion were killed. On April 22, 2010, the DEEPWATER HORIZON sank and oil and natural gas began spewing from the uncontained well. It took 87 days to secure the damaged blowout preventer and stop the flow of oil into the Gulf of Mexico. The Flow Rate Technical Group, established by the National Incident Commander during the response effort, estimated that 4.9 million barrels of oil were released during the spill (1 barrel of oil is equivalent to 42 gallons).

Oil Pollution Act of 1990

The Oil Pollution Act of 1990 (OPA) was enacted following the EXXON VALDEZ oil spill in 1989. OPA consolidated existing laws and enacted new provisions to create a comprehensive Federal legal framework to govern liability and bolster the national response to oil spills. OPA allows instant response to oil spills by ensuring that either the Coast Guard for marine spills, or EPA for land based spills, has the authority to perform cleanup immediately using Federal resources, monitor the response efforts of the spiller (responsible party), or direct the responsible party's cleanup activities.

Responsible Party:

At the time of the DEEPWATER HORIZON oil spill, the MODU was operating in its capacity as an offshore facility. As such, the "responsible party" for the spill is defined under section 1001 of OPA as "the lessee of the area in which the facility is located...". As the lessees for the Macondo site, BP, Andarko Petroleum, and MOEX Offshore are the responsible parties for the DEEPWATER HORIZON oil spill. Transocean may also be considered a responsible party pending the outcome of the Department of Justice's civil suit (see below).

Limits on Liability:

Under section 1002 of OPA, responsible parties are liable for all removal costs and specified damages that result from the release (or substantial threat of release) of oil. OPA defines eligible damages as including:

- injuries to natural resources;
- loss of personal property;

- lost revenues, profits and earning capacity resulting from destruction of property or natural resource injury;
- damages for loss of subsistence use of the resource; and
- costs of providing extra public services during or after spill response.

OPA provided limited defenses from liability, including an act of God, act of war, and act or omission of certain third parties. However, these defenses do not apply to a party who; (1) fails to report a spill; (2) fails to cooperate reasonably with officials responsible for removal activities; or (3) fails, without sufficient cause, to comply with a cleanup order.

Except for certain behavior, including acts of gross negligence or willful misconduct, OPA set liability limits for cleanup costs and other damages. However, OPA liability limits do not affect liabilities that may be owed under states' laws. The current OPA liability limits are as follows:

Single-Hulled Vessels	\$3,200/gross ton
Double-Hulled Vessels	\$2,000/gross ton
Other Vessels	\$950/ gross ton
Onshore Facility	\$350 million
Deepwater Port	\$350 million
Offshore Facility	Total of all removal costs plus \$75 million

MODUs like the DEEPWATER HORIZON are first treated as tank vessels for its liability cap. If removal and damage costs exceed this liability cap, a MODU is deemed to be an offshore facility for the excess amount.

In the case of the DEEPWATER HORIZON, BP is liable for all removal costs plus \$75 million. BP has publicly stated they will not exercise the \$75 million limit and will continue to pay "all legitimate claims" (see below). The \$75 million cap would not apply if the responsible parties are found grossly negligent, have engaged in willful misconduct, or violated a statute or regulation.

Oil Spill Liability Trust Fund:

Congress first authorized the use of the Oil Spill Liability Trust Fund (OSLTF) in OPA, and in complimentary legislation enacted a barrel tax on the oil industry to capitalize the fund. Pursuant to section 405 of the Emergency Economic Stabilization Act (P.L. 110-343), the OSLTF is currently funded through an industry-paid 8 cent per-barrel tax which is scheduled to rise to 9 cents per-barrel in 2017 before expiring at the end of 2017. The fund currently has a balance of approximately \$2.3 billion.

Under section 1012 of OPA, the OSLTF is authorized to provide reimbursement for the following removal costs and damages:

- payment of costs for responding to and removing oil spills;
- payment of the costs incurred by the federal and state trustees of natural resources for assessing the impacts to natural resources caused by an oil spill, and developing and implementing the plans to restore or replace the injured natural resources;
- payment of individual claims for uncompensated removal costs, and for uncompensated damages (e.g., financial losses of fishermen, hotels, and beachfront businesses);
- payment for the net loss of government revenue, and for increased public services by a state or its political subdivisions; and
- payment of certain Federal administrative and operational costs, including Coast Guard oil spill research and development and operating expenses.

Under the OSLTF claims process, individuals seeking reimbursement for eligible costs must first attempt reimbursement from the responsible party. In the case of the DEEPWATER HORIZON incident, BP established a \$20 billion escrow fund, administered through the Gulf Coast Claims Center (GCCF) to pay claims arising from the oil spill (\$20 billion is neither a floor nor a ceiling). As of November 1, 2011, BP and the GCCF have paid more than 150,000 claims totaling more than \$5.9 billion to individuals and businesses affected by the spill. BP has paid an additional \$1.5 billion to federal, state, and local governments for response and removal costs, loss of revenue, increased public service costs and costs related to behavioral health services, oil spill related research, tourism, and seafood testing and marketing. Finally, BP has spent an additional \$14 billion on oil spill response, \$100 million on a Rig Worker Assistance Fund, \$10 million for a National Institute of Health long-term study on worker health, and has committed \$1 billion for early natural resource damages restoration projects (see below) and \$500 million to the Gulf of Mexico Research Initiative.

If the responsible party refuses to pay, or fails to provide sufficient payment within 90 days, individuals may seek reimbursement from the Coast Guard's National Pollution Funds Center (NPFC) which administers the OSLTF. Individuals who believe they are subject to reimbursement from the OSLTF due to the failure of the responsible party to pay, or provide sufficient payment, may apply to the OSLTF for reimbursement. However, they may not receive OSLTF reimbursement for damages already compensated by the responsible party. As of November 28, 2011, NPFC has received 1,578 claims from individuals and businesses. It has denied 1,497 and has 81 pending.

Current law limits the per incident exposure to the fund to \$1 billion, which includes no more than \$500 million for natural resource damages. Reimbursements of

expenses paid out of the OSLTF by the responsible party are not charged against the \$1 billion cap. As a result of the DEEPWATER HORIZON incident, the Coast Guard has paid approximately \$617 million in claims out of the OSLTF to date which count against the cap. BP has reimbursed the fund for almost all of that. Approximately \$4 million remains to be reimbursed.

Natural Resources Damages:

Under OPA's Natural Resources Damage Assessment (NRDA) process, federal, state and tribal government officials known as "Trustees" survey and collect data on damages to natural resources occurring as a result of an oil spill. The Trustees develop a plan to restore, replace or rehabilitate the damaged natural resources. Under OPA, responsible parties are required to pay the costs of natural resources damages to the extent they do not exceed responsible parties' limit on liability. The responsible parties may contest the Trustees' plan in court. If a responsible party exercises its liability limit, or otherwise fails to pay for the cost of the NRDA process, the Trustees may seek reimbursement from the OSLTF.

In the case of the DEEPWATER HORIZON incident, the Trustees are currently in the preassessment phase of the NRDA process is ongoing and the restoration planning process recently began. It could be several years before a final plan is approved. To date, BP has dedicated \$1 billion to pay for immediate restoration activities approved by the Trustees and has publicly committed to paying remaining natural resource damages once the final plan from the Trustees is approved.

Clean Water Act

The Federal Water Pollution Control Act (commonly known as the "Clean Water Act" or "CWA") is the principal Federal statute for protecting navigable waters and adjoining shorelines from pollution. Since its enactment, the CWA has formed the foundation for regulations detailing specific requirements for pollution prevention and response measures. It also provides criminal, administrative, and civil penalties for violations of such regulations.

Section 309 of the CWA authorizes civil and criminal penalties for violations of Section 311. Criminal penalties may include fines of between \$2,500 - \$25,000 per day of violation, or by imprisonment for up to one year, or both. Civil penalties can reach as high as \$37,500 per day of violation.

Section 311 of the CWA is specifically aimed at preventing and responding to spills of oil and hazardous substances. In conjunction with OPA, Section 311 provides for spill prevention requirements, spill reporting obligations, and spill response planning and authorities. It regulates the prevention and response to accidental releases of oil and hazardous substances into navigable waters, on adjoining shorelines, or affecting natural resources belonging to or managed by the United States. Finally, it imposes strict, joint

and severable liability on any party that is responsible for the discharge (or substantial threat of discharge) of oil or a hazardous substance.

Section 311(b) authorizes EPA to assess Class I or Class II administrative penalties for violations of Section 311. A Class I penalty may be assessed in an amount of up to \$16,000 per violation, not to exceed \$37,500. A Class II penalty may be assessed in an amount of up to \$16,000 per day of violation, not to exceed \$177,500. Each violation may be tabulated on a daily basis.

Section 311(b) also makes the owner or operator of a vessel, onshore, or offshore facility who discharges oil or hazardous substances in violation of Section 311 subject to a civil penalty of up to \$37,500 per day of violation, or up to \$1,100 per barrel of oil discharged. In instances of gross negligence or willful misconduct, these penalties increase to a \$140,000 per day of violation, or up to \$4,300 per barrel discharged.

It is important to note that these penalties are in addition to removal and damages costs the responsible party is liable for under OPA. Therefore, the funds raised by penalties are not necessarily used to respond to the triggering incident. However, any penalties paid pursuant to Section 311, or criminal penalties paid pursuant to Section 309 that are the result of violations of Section 311 *are to be paid into the OSLTF* (See 26 U.S.C. §9509(b)(8)). Therefore, these penalties may be used to support response and restoration to future spills, oils spill research and development efforts, and other activities authorized under Section 1012 of OPA.

Pursuant to the Debt Collection Improvement Act of 1996 (31 U.S.C. 3701 note), CWA administrative and civil penalties are subject to periodic inflationary adjustments. The penalty schedule is available at 40 C.F.R. 19.4.

Court Case

On December 15, 2010, the Justice Department (DOJ) filed a civil suit on behalf of the United States against BP, Anadarko Petroleum, MOEX Offshore, Transocean, Triton (the owner of the DEEPWATER HORIZON), and Lloyd's (the insurer of the DEEPWATER HORIZON) in the U.S. District Court for the Eastern District of Louisiana (Case 2:10-cv-04536). The DOJ alleges that the defendants through acts of omission, negligence and/or willfull misconduct violated several federal regulations governing safe well drilling operations, best available drilling technology, and procedures to maintain control of the well.

The DOJ is seeking civil penalties under Section 311(b) of the CWA. Based on the estimate of 4.9 million barrels of oil spilled, the civil penalties could total between \$5.4 billion and \$21 billion per defendant (except Lloyds) depending on whether the Court finds the defendants' actions constituted gross negligence or willful misconduct. Lloyd's is being sued pursuant to Section 1016 of OPA for the amount of the Certificate of Financial Responsibility it issued the DEEPWATER HORIZON.

The DOJ is also seeking a declaratory judgment from the court affirming that the responsible parties' actions constitute gross negligence or willful misconduct with respect to Section 1004 of OPA. If the Court were to provide such judgment, the responsible parties would not be able to assert the \$75 million limit on liability in the future.

In addition to the civil case, the Justice Department continues to pursue a criminal investigation of BP, Transocean, and Halliburton, which provided the cement to seal the well.

Mabus Report

On June 15, 2010 President Obama named Secretary of the Navy Ray Mabus to develop a long-term plan to restore the Gulf of Mexico. On September 28, 2010, Secretary Mabus released a report entitled "America's Gulf Coast: A Long Term Recovery Plan after the Deepwater Horizon Oil Spill." The report recommends Congress divert a significant amount of any CWA civil penalties obtained from parties responsible for the DEEPWATER HORIZON oil spill from the OSLTF and deposit them into a Gulf Coast Recovery Fund (GCRF). The GCRF would provide funding for projects which address long-term economic and ecosystem recovery and restoration efforts in the Gulf. The report also recommends Congress authorize a Gulf Coast Recovery Council composed of representatives from federal, state and tribal government to manage the funds and to coordinate projects. Finally, the report also recommended that the President immediately establish a Gulf Coast Ecosystem Restoration Task Force to coordinate the recovery of the region's ecosystem.

On October 5, 2010, the President established the Task Force recommended by the Mabus report, to coordinate the long-term conservation and restoration of the Gulf Coast. The Task Force is made up of senior officials from seven cabinet agencies, the Executive Office of the President, and representatives of the five Gulf Coast states. As part of its mandate, it was charged with developing a strategy to drive action and guide long-term collaboration to effectively address and reverse widespread environmental degradation and ensure a healthy environment and economic future for the Gulf. A preliminary strategy was released for public review and comment on October 5, 2011. The final strategy is expected to be released the week of December 5, 2011.

Prior Congressional Action

In the 111th Congress, the House of Representatives passed H.R. 3534, the Consolidated Land, Energy, and Aquatic Resources Act of 2010 on July 30, 2010 by a vote of 209-193-1. This legislation authorized the creation of a Gulf of Mexico Restoration Task Force for the purpose of coordinating Federal, State, and local restoration programs and projects in the Gulf that were impacted by the Deepwater Horizon spill. H.R. 3534 established a new, per-barrel, civil penalty provision within the CWA for releases of oil or hazardous substances in excess of 1,000,000 barrels, and

dedicated these penalties towards implementation of restoration activities approved by the Gulf of Mexico Restoration Task Force. No further action was taken on H.R. 3534 in the 111th Congress.

RESTORE Act

H.R. 3096, the RESTORE Act of 2011, was introduced by Representative Steve Scalise (R-LA) and 24 other bipartisan Members representing Gulf Coast districts. H.R. 3096 has been referred to the Committees on Transportation and Infrastructure, Natural Resources, and Science, Space and Technology. The legislation would:

- Establish a Gulf Coast Restoration Trust Fund (Fund) in the Treasury and requires the Secretary of the Treasury to deposit into the Fund 80 percent of all administrative and civil penalties paid pursuant to a court order, negotiated settlement, or other instrument in accordance with section 311 of the CWA. The other 20 percent would remain in the OSLTF.
- Establish a Gulf Coast Ecosystem Restoration Council (Council) composed of the five federal departmental and agency heads as well as the governors of the five Gulf states.
- Distribute available funds in the Fund as follows:
 - 35% of the total would be allocated in equal shares to the five Gulf Coast States (Florida, Mississippi, Alabama, Louisiana, and Texas). States must spend these funds on economic and ecological recovery activities along the Gulf Coast;
 - 60% of the total would be allocated to the Council. Of that amount:
 - 1/2 (or 30% of the total funds) would be used for the development and implementation of a comprehensive restoration plan.
 - 1/2 (or 30% of the total funds) would be allocated according to an impact driven formula and disbursed to the Gulf Coast States by the Council in response to plans submitted by the Gulf Coast States.
 - 5% would be allocated to a Long Term Science and Fisheries Endowment and Gulf Coast Centers of Excellence program. The programs would advance research, science and technology in the Gulf around specific disciplines including coastal restoration, fisheries research, offshore energy development, sustainable growth and economic development, as well as comprehensive monitoring and mapping of the Gulf.

On July 21, 2011, Senator Mary Landrieu and eight other Senators representing Gulf Coast states introduced S. 1400, legislation similar to H.R. 3690. S. 1400, as amended, was ordered reported favorably by the Committee on Environment and Public Works on September 21, 2011. The Congressional Budget Office estimates that

enactment of S. 1400 would increase direct spending by \$1.2 billion over the 2012 to 2021 period.

WITNESSES

Panel I

Gulf Coast Member of Congress

Panel II

Mr. Craig Bennett
Director, National Pollution Funds Center
United States Coast Guard

Mr. Tony Penn
Deputy Chief, Assessment and Restoration Division
Office of Response and Restoration
National Oceanic and Atmospheric Administration

Panel III

The Honorable Garret Graves
Chair
Coastal Protection and Restoration Authority of Louisiana

The Honorable Robert Craft
Mayor
City of Gulf Shores, Alabama

The Honorable Bill Williams
Commissioner
Gulf County, Florida

Mr. Julian MacQueen
Chief Executive Officer
Innisfree Hotels, Inc.

Dr. Robert Weisberg
University of South Florida

Mr. Mike Voisin
Motivatit Seafoods

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OF THE GULF COAST STATES ACT OF 2011**

WEDNESDAY, DECEMBER 7, 2011

HOUSE OF REPRESENTATIVES,
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
WASHINGTON, DC.

The committee met, pursuant to notice, at 10:03 a.m. in Room 2167, Rayburn House Office Building, Hon. John Mica (Chairman of the committee) presiding.

Mr. MICA. I would like everyone to take their seats, and we will call the committee—subcommittee to order. We will try to get started here. I expect Mr. Gibbs in just a minute.

Welcome this morning to the House Committee on Transportation and Infrastructure hearing on the subject “Restoring Jobs, Coastal Viability, and Economic Resilience in the Gulf of Mexico: H.R. 3096, the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf States Act of 2011.”

I see they have scheduled today three panels. The first one will be Members of Congress. And I would like to welcome them. As I said, Mr. Gibbs will be here shortly, but I wanted to go ahead and, in the interest of time, get this hearing started.

The order of business will be opening statements by members of our panel, and then we will hear from the Members who have requested to testify this morning.

First let me say that I was approached by many Members—and you will hear from some of them today—to enlist my support for the measure which I described. And I won’t take a half-hour to recite the title of the bill again, but in listening to Members and in my position as chair of the committee, I understand their concerns in trying to make their States and the areas they represent whole.

The oil spill incident that we had in the gulf was a horrendous tragedy impacting lives dramatically, hurting economies, destroying some of the ecosystem and doing damage to the economies in the whole region and the United States.

The bill that has been crafted—and there have been several proposals I have heard dividing up any awards that may result here from litigation—are crafted primarily, I think, right now to the

benefit of the Gulf States who secured—or rather, endured the primary damage. I thought what it would be best to do is to, rather than lend my support to a particular measure or division of some of those awards at this point, was to hear everyone out in open forum. And I hope to accomplish that. And we can hear from the Members, and they can provide for the record and, for what I hope to be a fair resolution of whatever proposal we come up with, their viewpoint and their—express their concerns on behalf of their constituencies.

I, in turn, hold a position as chair of the committee, and somebody has to represent—even though I represent 1 district in Florida out of, right now, 25, someone has to represent the people of the United States in this division again, and try—and this attempt to make everyone whole, including the people of the United States.

So, it is my hope that we can take from this testimony a good assessment of who has met their obligations in, first of all, trying to make folks whole after a very difficult situation. And then, if there is a division of any award, that it be done fairly and equitably, both among those impacted and on the basis of the damage they sustained, or that they have not been made whole for.

It has been our intent in the committee to try to ensure that those responsible for the spill are held accountable, and it falls on them to, again, make whole and repair, as best they can, the damage. And also compensate the United States and the taxpayers for the cost incurred. So, that is the purpose of today's hearing. And I appreciate Members coming before us, and we will try to sort this out as best we can, be fair and equitable to all parties, including the United States taxpayers, who absorbed a great deal of cost and also took on the responsibility for the—managing the cleanup and other very expensive enterprises for which the United States probably has not been made whole.

So, with that, that is those comments, let me yield—I guess Mrs. Napolitano, if you are ready—Ms. Johnson, are you ready? The gentlelady from Texas is recognized.

Ms. JOHNSON OF TEXAS. Thank you very much, Mr. Chairman. And thank you for holding this hearing and giving our colleagues an opportunity to testify.

I will not take up any time away from their time, but I would like to ask unanimous consent to place in the record a letter from Congresswoman Castor. And two, a testimony from the American Land Conservancy. So, if you can accept that under unanimous consent, then I will yield back my time.

Mr. GIBBS. [presiding.] So ordered.

[The information follows:]

KATHY CASTOR
11TH DISTRICT, FLORIDA

COMMITTEE ON
ARMED SERVICES

SUBCOMMITTEE ON TACTICAL AIR AND LAND
SUBCOMMITTEE ON EMERGING THREATS AND
CAPABILITIES

COMMITTEE ON THE BUDGET
DEMOCRATIC STEERING AND
POLICY COMMITTEE
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December 6, 2011

Chairman John Mica
Transportation and Infrastructure Committee
2165 Rayburn House Office Building
Washington, D.C. 20515

Ranking Member Nick Rahall, II
Transportation and Infrastructure Committee
2165 Rayburn House Office Building
Washington, D.C. 20515

RE: Improve the RESTORE Act

Dear Chairman Mica and Ranking Member Rahall:

As co-chair of the bipartisan Gulf Coast Caucus and proud representative of a district that borders on the Gulf of Mexico, the recovery and restoration of the Gulf and its communities are of immense importance to me and my constituents in Florida. The Gulf is a vital economic and ecological resource for the entire country. The tourism and seafood industry alone account for millions of American jobs. Thank you for considering Gulf environmental and economic restoration in your hearing today.

Your hearing focuses on the RESTORE Act and it is a fair starting point for discussion of Gulf restoration and research following the BP Deepwater Horizon disaster. I strongly support the policy direction that 80 percent of the fines and penalties under the Clean Water Act be directed to the Gulf of Mexico recovery and research. The National Commission on the BP Deepwater Horizon Oil Spill, Secretary of the Navy Ray Mabus report and the EPA Gulf Restoration Task Force all have come to the same conclusion.

However, your committee must address the flaws in the RESTORE Act to achieve meaningful recovery of the Gulf of Mexico. This is a once-in-a-lifetime opportunity to address critical systemic issues that have plagued the Gulf for decades. We must not waste it. The RESTORE Act does reflect a comprehensive and long-term economic and environmental restoration. The bill needs improvement in many areas, but I will concentrate on the most important improvements that need to be made.

1. RESTORE should focus on a Gulf-wide research and recovery strategy

As currently drafted, the RESTORE Act does not promote a Gulf-wide research and recovery strategy. Under the formulas contained in the bill that divide the monetary resources, Gulf-wide research and recovery efforts would be disjointed and receive short-shift. The formulas currently contained in the bill appear to be based upon Senate dynamics

rather than a Gulf-wide recovery and research strategy based upon sound science. The RESTORE Act fails to make a large enough investment in Gulf-wide solutions to problems such as the “dead zone,” red tide outbreaks that threaten tourism, and the health of the Gulf overall. Where is the overarching science advisory component that is necessary for such an important research and recovery strategy? To accomplish truly comprehensive restoration it is critical to have a science advisory component. The data collected is not valuable unless there are scientists available to collate and analyze all of the data collected.

2. RESTORE should devote greater resources to long-term research and Gulf monitoring

While RESTORE does carve out some dollars for long-term research and monitoring, the investments are inadequate to ensure a long-term, sustained research and recovery effort. Many of the impacts from the catastrophic disaster are currently impossible to discern to the naked eye and in the short term.

3. Do not duplicate the billions of dollars from the Natural Resource Damage Assessments to impacted areas

Any legislation that devotes 80 percent of the Clean Water Act fines and penalties to the Gulf of Mexico research and recovery effort should not duplicate the billions of dollars going to the impacted areas under the Oil Pollution Act and the Natural Resource Damage Assessment (NRDA). One billion dollars already have been directed to oiled areas and states for cleanup and restoration. The Clean Water Act proceeds should be directed to the broader and more comprehensive and long term initiatives, many of which will complement some of the NRDA-funded restoration efforts. The current RESTORE Act formulas could lead to wasteful and redundant efforts. We must maximize Clean Water Act fines to leverage funding provided by NRDA, the BP fund administered by Kenneth Feinberg and other funding sources. The goal is to ensure the Clean Water Act fines have as broad an impact on restoring the Gulf as possible. Although the Natural Resource Damage Assessment is still underway, in anticipation of the largest NRDA settlement in history, BP has already made a \$1 billion ‘down payment’ for early restoration projects.


The Gulf is rich in natural resources that support many jobs and economic stability for millions of families. The Gulf States produced 30 percent of the United States’ gross domestic product in 2009. If our five Gulf States were one country, it would rank seventh in global gross domestic product. Our abundance of natural resources is critical to our economic health. As those resources dwindle, so do our livelihoods and our financial stability. Investing in long-term environmental restoration and addressing environmental issues present prior to the BP oil disaster is critical to achieving comprehensive economic restoration. It is also critical that BP be held responsible for economic damages caused by the BP Deepwater Horizon disaster to small businesses and affected individuals. BP has set aside \$20B to fund a Gulf Coast Claim Facility, which is responsible for directing those funds to businesses and individuals affected by the BP oil spill. To date, the Gulf Coast Claims Facility has paid out almost \$6B.

The Gulf of Mexico is of tremendous national significance. Not only does it provide 30 percent of the nation’s gross domestic product, but it also provides 33 percent of the nation’s

seafood, yielding more finfish, shrimp and shellfish annually than the south, mid-Atlantic, Chesapeake, and New England areas combined. The Gulf of Mexico is home to 13 of the top 20 ports by tonnage. The Gulf of Mexico also provides recreation for millions of visitors a year, creating a multibillion-dollar tourism industry. The coastal population of the Gulf of Mexico is estimated to grow to 61.4 million by 2025, a 40 percent increase in just twenty years.

I am encouraged to see bipartisan support to direct 80 percent of the Clean Water Act fines to the Gulf of Mexico. However, the RESTORE Act as currently drafted, falls far short of the coordinated, long-term, science-based effort that is needed to protect such a valuable national resource. Therefore, I look forward to working with all members on an improved national strategy for the Gulf of Mexico and its communities.

Sincerely,


Kathy Castor
United States Representative
Florida District 11

**Testimony to the House Transportation & Infrastructure Committee Hearing,
Regarding BP Deepwater Horizon Oil Spill Restoration**

December 7, 2011

Why Habitat Conservation was a Cornerstone of *Exxon Valdez* Restoration

By Tim Richardson

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Chairman Mica, Ranking Member Rahall and Members of the House Transportation and Infrastructure Committee, you are to be commended for today's hearing on H.R. 3096, legislation which hopefully will become a nationally and globally significant response to America's worst oil spill. Thank you for the opportunity to provide the following perspectives to your important effort.

My basis for submitting testimony on H.R. 3096 stems from my role as administrative assistant to a Member of your Committee in 1989 (Greg Laughlin, TX) who also served on the Merchant Marine and Fisheries Committee's Coast Guard Subcommittee. Congressman Laughlin had oversight responsibility for the *Exxon Valdez* oil spill and it became my task to advise him as to how Congress should address environmental mitigation for Alaska's tragic tanker accident. Pursuant to that assignment, I toured the Kodiak Archipelago in August, 1989 during which I met with citizens groups, commercial fishermen, wilderness guides and outfitters, elected officials and Native Alaskan corporations who owned over 90% of the private land within 1,200 miles of coastlines impacted by the spill.

By June of 1990, I had left Capitol Hill and began working for Old Harbor Native Corporation and Akhiok Kaguyak, Inc., both Alaska Native Claims Settlement Act (ANCSA) corporations seeking mitigation from having their life-ways and livelihoods shattered by the *Exxon Valdez*. In the nearly 23 years since that oil spill I have been professionally involved in attempting to restore the environment of the *Exxon Valdez* oil spill region by working with fourteen ANCSA corporations, the Kodiak Brown Bear Trust, and as Alaska program director of the American Land Conservancy since 2003.

It is from that experience that I express my deepest sympathies to the people of the Gulf of Mexico who continue to bear the brunt of the *BP Deepwater Horizon* disaster. Likewise, it is from lengthy involvement with the *Exxon Valdez* Oil Spill Trustee Council process that I extend encouragement to this Committee and the Congress, that H.R. 3096 will succeed in directing the lion's share of the Clean Water Act fines to actions that will **Restore the Gulf**.

The single most important message to the Committee based on my experience is that:

H.R. 3096 should not remove federal land acquisition from the tool box of *BP Deepwater Horizon* oil spill mitigation policies.

In fact, as the Members of this Committee and the Congress closely examine the environmental and economic achievements of *Exxon Valdez* restoration you will likely conclude, as I have, that:

Habitat protection, including federal land acquisition, can provide the best win-win outcomes for the environment and the economy from the use of some of the dollars that H.R. 3096 seeks to direct to Restore the Gulf.

WHAT WORKED IN ALASKA OIL SPILL RESTORATION?

It is difficult for anyone unassociated with events on the scale of the *Exxon Valdez* or the *BP Deepwater Horizon* to grasp the aroused emotions and the innumerable personal and societal hardships that result from such colossal environmental tragedies. To wit, both the *Exxon Valdez* and the *BP Deepwater Horizon* have prompted the extremes of human behaviors and such reactions become normal life, including such harmful extremes as suicide, murder, divorce, substance abuse, depression and hopelessness, as well as positive extremes such as vision, leadership, eloquence, self-sacrifice, perseverance, resilience and cooperation.

Similarly, the wildlife and environmental damages from such events are revealed to be even more complex and difficult to grasp than the human dimensions because they occur in vast poorly understood biological systems and via interactions that most humans have little experience with. As we learned in Alaska, it can take years to partially understand the natural chain reactions unleashed by a major oil spill, yet likewise, in the shocking aftermath of an

Exxon Valdez or *BP Deepwater Horizon*, human are often unprepared to grasp the recuperative powers of natural ecosystems.

Therefore, as policy makers, you face one of the most unique challenges of your tenures in Congress, as well as one of the most unique opportunities for successful outcomes.

Alaska faced the same challenge after March 24, 1989.

Thankfully, through great dedication, countless meetings, marathon negotiations and ultimately a spirit of cooperation forged between competing interests, the widely different visions of how to allocate the \$1 billion Exxon environmental damages settlement found a consensus that pleased the vast majority of Alaskans impacted by the spill as well as concerned Americans outside of Alaska who cared deeply about the outcome of the *Exxon Valdez* settlement.

By contrast to the Alaskan environmental mitigation response, the result on the economic injury side was not nearly as positive and thereby lays a troubling contrast to what worked on the environmental side in Alaska. Fortunately, in the case of BP economic mitigation, a \$20 billion fund has been created, and hopefully can be administered in such a way that people in the Gulf can obtain a measure of what was sorely lacking in Alaska, that was punctuated by the 2009 Supreme Court ruling in the *Exxon Valdez* class action case when the Court sided with Exxon Mobil and against the claims of individuals and businesses impacted by the *Exxon Valdez* spill.

Setting aside the economic damages outcome in Alaska, and recognizing that H.R. 3096 strives to provide meaningful economic recovery from some of the Clean Water Act funds, I strongly urge each Member of the Committee and the Congress to become familiar with the results of *Exxon Valdez* Oil Spill restoration on the environmental side of the ledger, and furthermore to fully appreciate the myriad economic benefits to be derived from a healthier more resilient ecosystem in the Gulf of Mexico over the long haul.

EXXON VALDEZ OIL SPILL TRUSTEE COUNCIL RESTORATION OUTCOME

On October 9, 1991, the U.S. District Court in Alaska approved a plea agreement that resolved various criminal charges against Exxon as well as a civil settlement for recovery of natural resource damages resulting from the oil spill

Under the Criminal Plea Agreement agreed to by the Alaska Department of Law under Governor Walter J. Hickel and the Department of Justice under President George H.W. Bush, Exxon received a fine of \$150 million – the largest fine ever imposed for an environmental crime. The courts remitted \$125 million in recognition of Exxon's cooperation in cleaning up the spill and paying private claims. Of the remaining \$25 million, \$12 million went to the North American Wetlands Conservation Fund and \$13 million went to the Victims of Crime Fund. In addition, Exxon agreed to pay restitution of \$50 million to the State of Alaska and \$50 million to the United States.

In addition, a Civil Settlement and Restoration Fund were created via Exxon's agreement to pay \$900 million with annual payments stretched over a 10-year period. The agreement requires that the funds be used first to reimburse the federal and state governments for the cost of oil spill cleanup, damage assessment and litigation. The remaining funds were to be used for environmental restoration.

The *Exxon Valdez* Oil Spill Trustee Council was formed to create and carry out restoration and consists of three state and three federal trustees who are bound by a 'unanimous agreement' provision that means that any allocation of the fund requires a 6-0 vote of the trustees. The Trustee Council undertook a biological damage assessment and a public input process to help them shape the restoration plan which was adopted in 1994, five years after the wreck of the *Exxon Valdez*.

The categories for spending *Exxon Valdez* settlement funds are as follows:

ALLOCATIONS OF THE EXXON VALDEZ CIVIL SETTLEMENT

Spending Category	\$ Millions
Reimbursement for Damage Assessment and Response	\$213
Research Monitoring and General Restoration	\$180
Habitat Protection	\$392
Restoration Reserve	\$108
Science Management, Public Information, Administration	\$ 31
Total	\$924

Within the largest spending category, Habitat Protection, the Trustees pursued mostly permanent conservation agreements, either easements or fee sale acquisitions, with willing landowners in order to protect the feeding, nesting, and breeding habitats of fish and wildlife species injured by the oil spill. This purely voluntary program for private landowners occurred in a setting where most of the land in the spill impact region was federally owned in conservation units such as the Chugach National Forest, the Kenai Fjords National Monument, and the Kodiak National Wildlife Refuge.

In addition, nearly all the participating private landowners were Alaska Native Corporations, many of whose land holdings were valued by their shareholders for their contributions to subsistence and cultural resources as well as for economic returns to shareholders through commercial development practices such as timber harvest in forested areas or subdivision and development pursuant to the Alaska Native Claims Settlement Act of 1971 and the Alaska National Interest Lands Conservation Act of 1980.

In the context of nearly all the remote villages, the subdivision of land near the villages and the sale of land parcels to outsiders were unattractive to people who had lived continuously in their homelands for 7,000 years.

WHY PURCHASE LAND TO MITIGATE A MARINE DISASTER?

The recommendation to use funds generated from a spill in the waters of Prince William Sound and the Gulf of Alaska to purchase coastal habitats and salmon spawning drainages along 1,200 miles of oiled coastline was offered by state and federal wildlife agencies to achieve the "replacement of equivalent resources and services" that were damaged by the oil spill. At first blush, it seemed counter-intuitive to seek terrestrial conservation from a marine ecosystem disaster. This seemed doubly so in a state like Alaska in which state and federal governments already owned over 70% of the land.

However, as Alaska and the federal agencies grappled with the impact of the spill and the challenges involved in restoration, a few salient facts emerged:

1. It is very difficult to improve a large dynamic saltwater ecosystem by investing in marine-based projects. In short, how does one spend money to benefit plankton, benthic organisms and transient fish populations in the water column? This difficulty turned many marine restoration advocates into supporters of marine research, which eventually begged the question, 'How much is enough research if we are still unsure about vast complex systems, and secondly, is research actual restoration?' While establishing baseline data in a dynamic marine environment can be helpful to the future, does the increased knowledge actually meet the environmental restoration goals envisioned by the spill settlement, and does spending funds on scientists help compensate individuals and communities impacted by the oil spill?
2. When biologists reviewed the most threatened and endangered fish and wildlife species impacted by the spill, they found few obvious ways to help those species by investing in marine-based restoration projects in the saltwater. Instead, the natural resource agencies such as the Alaska Department of Fish and Game, Alaska Department of Natural Resources, U.S. Fish and Wildlife Service, U.S. Forest Service and the National Oceanic and Atmospheric Association recommended protecting the most vulnerable species, such as marbled murrelets, bald eagles, harlequin ducks, sockeye salmon, sea otters, harbor seals, black oystercatchers by either purchasing private coastal lands, or easements on lands, islets, etc., if those lands provided nesting, feeding and breeding

habitats for species injured by the spill. The rationale for this restoration strategy was that by assuring that these species' critical habitats were permanently protected in conservation units, the restoration results would be to create "habitat banks" to insure species survival against future oil spills or other man-made or natural threats and to provide safe havens from which those populations could grow and repopulate more damaged areas of the *Exxon Valdez* oil spill region. Hence, the investment of oil spill dollars for habitat banks in lightly oiled Kodiak could aid in the 'replacement of equivalent resources' oil spill settlement objective in the adjacent lands and waters of more heavily oiled Prince William Sound. The key determination in those oil spill restoration investments was to find and safeguard habitats for fish and wildlife species with a "link to injury" and a "potential for benefit". Similarly, the *Exxon Valdez* Trustee Council obtained restoration benefits for oil spill damaged human services, such as commercial fishing and outdoor recreational activity by focusing on the conservation of river drainages that if protected from future development, would support those human industries as well as provide clean water benefits to the saltwater environment in the Gulf of Alaska.

3. A large consensus of stakeholders and citizens of Alaska and the U.S. supported terrestrial based conservation, especially when such investments helped natural recovery and provided local, regional and national economic benefit including providing public access to remarkable private lands within the Chugach National Forest in Prince William Sound, the Kenai Fjords National Monument and the Kodiak National Wildlife Refuge.

When the *Exxon Valdez* Trustee Council followed the biologists' recommendation for terrestrial habitat conservation focused on coastal and riverine areas and solicited public comment in Alaska and the U.S. they found overwhelming support for a substantial allocation of *Exxon Valdez* funds to the category of land-based habitat protection.

Within the oil spill area, 60% of public comments supported the Habitat Protection and Acquisition policy option as their preferred approach, while outside Alaska, 81% of public comments supported coastal and riverine habitat protection and restoration. By contrast, monitoring and research received 9% support in the spill region and 9% support from comments from outside Alaska.

Informed by the biologists and the public that terrestrial based habitat protection and acquisition was the preferred option, the *Exxon Valdez* Oil Spill Trustee Council opted to allocate 55% of their available funds after damage assessment and cleanup response costs were paid back to the State of Alaska and the federal government.

Within the public comment process several stakeholder groups provided their recommendations in letters to the *Exxon Valdez* Trustee Council or in the media coverage of the restoration process in the aftermath of what was correctly viewed as a national tragedy. Excerpts from stakeholder letters, media quotations and *Exxon Valdez* Trustee Council statements appear below:

"Protecting contiguous tracts of land provides further protection of wildlife movement corridors, consistency in land management strategies, and facilitates public recreational use in concert with protection of injured species and supporting habitats."

Resolution 02-02 of the *Exxon Valdez* Oil Spill Trustee Council

"The lands (in Perenosa Bay) include important habitat for various species of fish and wildlife for which significant injury resulting from the oil spill has been documented... There is widespread public support for the conservation of the lands.... The purchase of lands is an appropriate means to restore a portion of the injured resources and reduced services in the oil spill area. Acquisition and conservation of the lands is consistent with the Final Restoration Plan."

Resolution 03-01 of the *Exxon Valdez* Oil Spill Trustee Council

"In short, Kodiak is special to our members... It provides millions of acres of spectacular landscape and wildlife available to hunters and sportsmen. Preserving its future is our primary objective from the *Exxon Valdez* process."

Susan Recce, National Rifle Association, 1993

“In case you were not aware... some of the support for the Seal Bay (land) acquisition which has been expressed by local businesses and governmental entities include: the Kodiak Chamber of Commerce, Kodiak Island Convention and Visitors Bureau, Northwest Setnetters Association, Kodiak Island Sportsmen’s Association, Kodiak Regional Aquaculture Association, Longline Vessel Owners Association, Area K Seiners, United Fisherman’s Marketing Association, Buskin River Inn, Alaska Groundfish Data Bank, Kodiak Island Borough, and the City of Kodiak.”

Letter to Representative Eileen McLean by Emil Christiansen,
President Old Harbor Native Corporation and Ralph Eluska,
President Akhiok-Kaguyak, Inc., 1993

“The primary purposes of establishing Afognak Island State Park are to protect the area’s recreational and scenic resources; to protect the area’s fish and wildlife habitat; to preserve and enhance the continued use of the area for sport and subsistence hunting and fishing, personal use fishing, trapping, recreational activities, and commercial fishing; and to restore and enhance resources and (human) services injured by the *Exxon Valdez* oil spill.”

Senate Bill No. 280, Legislature of the State of Alaska, 18th
Legislature, Second Session

“Habitat protection is the best restoration tool the EVOS Trustee Council has to ensure that injured fish and wildlife species and natural resources can rebound to pre-oil spill levels. The recuperative powers of natural systems will enable full recovery of most species injured by the oil spill when development pressures are held in check in critical breeding, nesting and feeding habitats.”

Finding of the Kodiak Archipelago Conservation Summit in 1996
signed by representatives of ESPN Outdoors, Izaak Walton League
of America, National Audubon Society, National Rifle Association,
Sustainable Development Institute, Safari Club International,
Wildlife Forever, Wildlife Management Institute

"The Kodiak Refuge is one of the nation's oldest and most famous refuges yet it faces challenges to its public access and management integrity. Foremost among threat to the Refuge is loss of public access to the most prized sport hunting and fishing areas, as well as commercial development of prime bear habitat. The Clinton Administration has supported the use of *EXXON VALDEZ* Settlement Funds for Kodiak Refuge acquisitions.

"In addition, this proposal has received support from sportsmen's groups like the National Rifle Association, Boone and Crockett Club, Safari Club International and the Federation of Fly Fishers, as well as environmental groups, including World Wildlife Fund. Private philanthropic organizations have also pledged to play a role in making the Refuge whole.

"Alaska Native Corporations own most of the critical habitat in question and have pledged to cooperate with the U.S. Fish and Wildlife Service and Alaska Department of Fish and Game in a comprehensive solution that will make the Refuge whole while meeting several public policy objectives and stimulating public and commercial use of these outstanding wildlife resources.

"We feel that Congress should play a proactive role by funding the Kodiak Refuge Land and Water Conservation requests.

"Among the benefits the (Congressional) Sportsmen's Caucus hopes to achieve are these:

- Provide greater public access to lands now closed to access for both consumptive and non-consumptive uses;
- Consolidate management of the Refuge and salmon streams by the USFWS and the Alaska Department of Fish and Game;
- Conserve in perpetuity Kodiak brown bear and other wildlife habitats;
- Stimulate economic growth through hunting related tourism in areas where such growth should take place for the benefit of Natives (Alaskans) and non-Natives alike...

Letter to Honorable Sid Yates, Chairman, Interior Appropriations Subcommittee by Congressman Don Young and Congressman Bill Brewster, Co-Chairs of the Congressional Sportsmen's Caucus, September 22, 1993

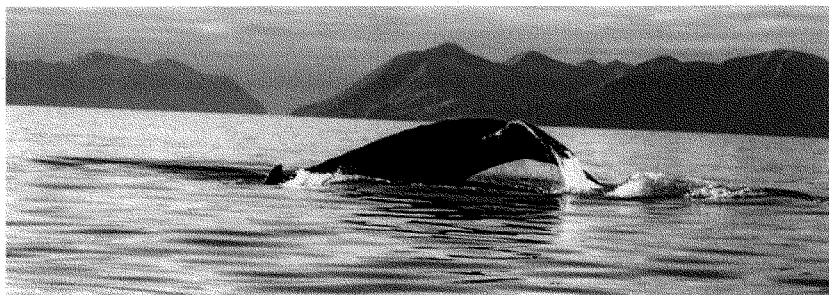
HABITAT CONSERVATION LEGACY OF THE *EXXON VALDEZ* OIL SPILL TRUSTEE COUNCIL

As indicated above, habitat protection is a major component of the *Exxon Valdez* Oil Spill Trustee Council restoration process. The acquisition of private lands, or partial interests in lands, is intended to promote natural recovery of spill-injured resources and human services by removing future threats of additional development impacts. The conserved lands will be managed in perpetuity for the restoration and protection of resources and services injured by the spill and for the enjoyment of the public for purposes of subsistence use, sport fishing and hunting, personal use fishing, trapping, recreational uses and commercial fishing.

The *Exxon Valdez* Trustee Council's Habitat Protection Process is the method that was designed to achieve this objective. During the Large Parcel Process, over one million acres within the spill affected area were evaluated, scored and ranked by a multi-criteria matrix. Initially, lands were divided into large parcels encompassing entire bays and watersheds. Criteria were used to assess the habitat and human use values associated with each parcel and the protection benefit that acquisition would provide for 19 selected injured resources and associated services.

This process provided the basis for the acquisition of protective bundles of rights on over 637,000 acres of land in the Kodiak, Kenai Peninsula, and Prince William Sound regions.

During the Small Parcel Process, smaller parcels, those less than 1,000 acres nominated by willing sellers, were also evaluated using criteria modified to reflect the unique benefits to injured resources that smaller parcels could provide in relation to the surrounding environment, management units and local communities. Over 9,000 acres were protected through this process. (Source: *Exxon Valdez* Oil Spill Restoration Habitat Protection & Acquisition Catalogue, February 2007).



CONCLUSION

This testimony is offered to the House Transportation and Infrastructure Committee with the sincere hope that your deliberations over H.R. 3096 will benefit from the lessons learned in over two decades of *Exxon Valdez* oil spill restoration.

In short, Congress should avail itself of the substantial record of restoration achievements carried out in Alaska with the inputs and efforts of many thousands of Americans including hundreds of experts and dozens of elected officials who played critical roles in what former Interior Secretary Bruce Babbitt described as “the most important environmental restoration effort ever attempted.”

American Land Conservancy’s primary recommendation to this committee is, although unlike Alaska, where the preponderance of lands impacted by its oil spill was federally owned and in the case of the Gulf of Mexico land is mostly privately owned, that **H.R. 3096 should not rule out federal land acquisition in your habitat protection efforts.**

The National Wildlife Refuges and National Forests in the five Gulf of Mexico states offer truly remarkable restoration opportunities in the context of *BP Deepwater Horizon* restoration and H.R. 3096 should not remove the tool of federal land acquisition from the biological and land management professionals who will be carrying out the intent of Congress through H.R. 3096.

Lastly, American Land Conservancy recommends that Congress, through **H.R. 3096 should instruct the state and federal conservation agencies carrying out habitat conservation to ramp up their land appraisal capabilities in accordance with procedures adopted by the *Exxon Valdez* Oil Spill Trustee Council** wherein private contract appraisers were utilized to meet the increased work load demand created by the restoration effort. And that state and federal review appraisers use the Uniform Appraisal Standards for Federal Land Acquisition to protect the integrity of *BP Deepwater Horizon* Clean Water Act expenditures pursuant to H.R. 3096.

Again, thank you for the opportunity to include this testimony in the record of this hearing on the vitally important subject of *BP Deepwater Horizon* restoration.

Ms. JOHNSON OF TEXAS. Thank you very much.

Mr. GIBBS. Thank you for your indulgence here, while we get started. I am sitting in for Mr.—Chairman Mica. Welcome to the committee today, and I will start with my opening statement.

The *Deepwater Horizon* oil spill was and continues to be a tremendous tragedy for the gulf coast and the Nation, as a whole. Over 87 days we all awaited anxiously as responders battled nature, logistics, and the natural limitations of technology to secure the well head.

Like all of you, I felt a tremendous amount of relief when the well was finally secured. However, as you all know, the response did not end there. The efforts to mitigate the impact of the spill are ongoing today, and will continue for years to come. I fully support the ongoing restoration to repair the damage caused by the oil spill, and I know the gulf coast will bounce back stronger than ever.

However, I do have some concerns about this specific piece of legislation. The responsible parties have already agreed to fully pay the cost of the spill response, damages, and restoration activities to individuals and businesses, environmental trustees in the Gulf Coast States. That could total over \$40 billion.

In addition, the State and local governments of the gulf coast currently receive 50 percent of the revenues for offshore drilling in the gulf, and use that funding for coastal restoration projects. The total cost is over \$25 million, annually.

Finally, the gulf coast has received billions of dollars for flood damage reduction projects in response to Hurricane Katrina, almost \$15 billion of which went to projects in the vicinity of New Orleans. Now some are seeking billions in the *Deepwater Horizon* Clean Water Act penalties for those same activities. I have some concerns with the precedent that sets.

Additionally, the language, as drafted, could potentially fund restoration projects with penalty money, allowing the responsible party to avoid payment under the Oil Pollution Act. The bill also comes with serious cost implications. CBO has scored the Senate version of this bill at \$1.2 billion.

And finally, the bill would redirect the penalties from the Oil Spill Liability Trust Fund to the States. The fund currently has a balance of \$2.3 billion. Meanwhile, the cost of the *Deepwater Horizon* spill could total over \$40 billion. Redirecting these penalties away from the fund could undermine efforts to respond to future spills, where the responsible party is either insolvent or is operating in the foreign waters, such as Cuba.

I would like to thank the Members of the panel and I would like to now represent—recognize Representative Napolitano for any opening statements you may have.

Mrs. NAPOLITANO. Thank you, Mr. Chair. I don't have questions of the Members, but I am glad this hearing is going to shed a little more light on the issue that brought such a great tragedy to the Gulf States.

I do ask for unanimous consent the statements from the members of the committee who were not able to make it be entered into the record.

Mr. GIBBS. So ordered.

Mrs. NAPOLITANO. Thank you. And with that, I yield back.

Mr. GIBBS. OK. At this time we will recognize our first panel of Members of Congress. I think the plan here is just to have your statements and not have questions. I think that is what we decided earlier on. So I will start with Honorable Olson. Welcome.

TESTIMONY OF HON. PETE OLSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS; HON. JEFF MILLER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA; HON. STEVEN M. PALAZZO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MISSISSIPPI; HON. JO BONNER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ALABAMA; AND HON. STEVE SCALISE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF LOUISIANA

Mr. OLSON. Thank you, Chairman Gibbs and Ranking Member Napolitano, for holding this hearing to examine the importance of the gulf RESTORE Act. Seated before you are five Members that represent the people who work and live in the Gulf States. And while each of us were impacted differently by the *Deepwater Horizon* spill, we have worked together to build a consensus to best address the challenges facing our States.

When considering the economic recovery needs of the gulf coast, a one-size-fits-all approach won't work. Gulf coast communities know what they need for recovery. It is critical that any economic response reflects local priorities.

In the 22nd Congressional District of Texas, which I represent, a significant portion of jobs are connected to manufacturers and small companies that rely on the offshore energy industry. This is an industry still reeling from the Obama administration's moratorium on deep water drilling in the Gulf of Mexico. The moratorium was only supposed to affect deep water drilling. But in reality, it impacted shallow water permits, as well.

As a result, family-owned companies with generations of experience lost work as the drilling operations they supported moved out of the Gulf of Mexico. Hundreds of thousands of industrial, engineering, manufacturing, construction, and support jobs were impacted. The drilling moratorium was—has technically been lifted. But the de facto moratorium, also known as a "permitorium," remains through the slow permitting process with devastating economic consequences.

There have been signs of recovery. But jobs in the Gulf of Mexico are still well below the levels before the *Deepwater Horizon* accident. While offshore activities finally expected to return to pre-moratorium levels by mid-next year, we are still well below projected levels.

The RESTORE Act will ensure that each State can address their specific recovery needs. Passing the RESTORE Act will bring us one step closer to the long-term ecological and economic recovery that the Gulf States most directly hurt by the spill desperately need. This bill and its Senate campaign will ensure a full recovery from the spill.

As you hear testimony from the expert witnesses here today, I ask that you keep something in mind. Reversing the effects of the

Deepwater Horizon is not just a regional interest. It is a national priority. The Gulf of Mexico supplies 30 percent of our Nation's energy, and is a powerful economic engine.

The damage that occurred in the Gulf of Mexico—communities along the gulf coast should be able to allocate the penalty money where it will be most beneficial, without bureaucratic interference.

I thank you for allowing me to testify before you today, and I look forward to working with this committee as the RESTORE Act moves through the committee process. I yield back.

Mr. GIBBS. I thank you.

Mr. Miller, Representative Miller, welcome.

Mr. MILLER OF FLORIDA. Thank you very much, Mr. Chairman. First I would like to, with all due respect, set the record straight. BP and the responsible parties have not, and in many cases do not, intend to make many of the individuals that were harmed economically especially whole in this instance.

And I would also like the record to reflect that Florida gets zero revenue from any leases or any production in the Gulf of Mexico.

I want to thank the other Members that are sitting here at the table today. It is a diverse group. And the fact that we were able to come together and be able to cosponsor a bill that was authored by our good friend, Mr. Scalise, who has talked about how important this RESTORE Act is for the gulf coast—not only the gulf coast, but also for the United States of America.

This bill is about one thing, and it is restoring the gulf coast from the devastating—and I mean devastating—effects of the *Deepwater Horizon* spill in 2010. The fact that we are here today, almost 2 years later, still talking about the impacts of the spill shows just how widespread the disaster was for our communities.

And you are going to hear about just how costly the effects of the spill were from local leaders, local economists, businesses, and environmental researchers in subsequent panels, so I am not going to go into what they will be testifying about this morning.

You all know that oil on the beaches of northwest Florida drove the tourism industry over a cliff. And you know that oil is still being cleaned up in the marshes of Louisiana, and occasionally along the gulf coast, to the east. So instead, I want to make clear what this bill is not.

This is not a handout or a backfill for local and State budgets. The RESTORE Act is about restoring the gulf coast from the worst oil spill in American history. As we have seen from the lingering effects of *Exxon Valdez*, these effects will be felt for years, if not for decades to come. The Federal Government has stepped in to help clean up the environmental damage, and the responsible parties set up a claims facility for individuals and businesses that were harmed.

However, more needs to be done. More needs to be done to restore the environment that will be damaged for years to come. But frankly, there is already a mechanism set forth in the law requiring the responsible parties to pay for and take care of environmental cleanup. There is no such statutory requirement to compensate for economic damages. There is not a mechanism to restore the countless small businesses that have already gone out of business because of the *Deepwater Horizon* spill. There is not a mecha-

nism to help the people who lost jobs, lost their homes, lost families because of the spill. You either roll the dice with the BP Feinberg claims facility, or you take your chances in court.

The RESTORE Act fixes the imbalance by creating a way to rebuild local and State economies that took such a tremendous hit from the oil spill. And the RESTORE Act is the right thing to do. It does force the responsible parties to take care of the damage that they caused. This damage took place along the gulf coast and the fines paid for the damage should be returned to the gulf coast. The RESTORE Act will help restore us from the *Deepwater Horizon* disaster. And I would hope that this committee will take up this bill as quickly as possible. And I appreciate the opportunity to testify.

Mr. GIBBS. Thank you.

Representative Palazzo, the floor is yours. Welcome.

Mr. PALAZZO. Thank you, Mr. Chairman, Ranking Member, members of this committee. Thank you for the opportunity to testify this morning about this critical piece of legislation. The Gulf of Mexico has been a leader in American oil production for nearly 75 years. I am proud to say Mississippi has played a significant role in the exploration and production of oil and gas in America. In fact, Chevron USA operates its largest American refinery in Pascagoula, Mississippi. Many generations of Mississippians, including myself, have benefitted from the good-paying jobs provided by the oil and gas industry.

Mississippi has also assumed the environmental responsibility that comes with the economic rewards. For decades, coastal residents have lived with the potential and real liabilities of the oil and gas industry so our region and the country could prosper economically.

The *Deepwater Horizon* oil spill in 2010 dealt a serious blow to our gulf coast environment and our economy. It is now time to seize an opportunity to repair and restore not only the damages from the *Deepwater Horizon* oil spill, but the decades of cumulative impacts we have endured, as a region. The RESTORE Act allows us to do this through Clean Water Act fines and not taxpayer money.

Under current law, responsible parties are required to pay fines for each barrel of oil spilled into the water. Without congressional action, these penalties will go toward unrelated Federal spending, and leave the necessary long-term restoration of our environment undone.

The RESTORE Act provides Gulf States with the flexibility necessary to address long-term environmental and economic restoration issues as they arise. The continued environmental deterioration of the gulf coast poses a growing threat to ecosystems that support not only the regional communities and cultures, but also our Nation's most critical energy, shipping, tourism, commercial, seafood, and other industries.

Two official reports on the spill, one conducted by Navy Secretary and former Mississippi Governor, Ray Mabus, and the other from the bipartisan National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling, recommended that CWA penalties be dedicated to gulf coast restoration.

The RESTORE Act is a unique opportunity for healing. It will help rebuild and strengthen our gulf coast ecosystems, and it will also support America's economic recovery. I strongly believe that recovery along the gulf coast can lead to recovery around the United States. Many of our Nation's key economic resources depend on the gulf's delicate and vulnerable ecosystem. A healthy gulf coast ecosystem means a healthy American economy.

Let me provide a few examples. Gulf energy helps power America. Nearly one-third of domestic oil production comes from the Gulf of Mexico. Ports and other infrastructure supported by the environment are necessary in keeping this industry functioning. As of now, the gulf is home to 10 of our Nation's 15 largest ports by tonnage, and there is a \$621 million port expansion plan in Gulfport, Mississippi.

The Gulf of Mexico produces 40 percent of all commercial seafood in the lower 48 States. Our Nation's seafood industry is clearly relying on a healthy gulf.

Tourism heavily depends on a healthy gulf. Restaurant, hotel, and other hospitality workers are part of the gulf's \$34 billion-a-year tourism industry.

Clearly, restoring communities and the environments of the gulf is critical to both the Gulf Coast States and the Nation, as a whole. It is in our Nation's best interest that this Congress works diligently and passes the RESTORE Act. There is no time to waste. The Gulf of Mexico needs it. America needs it. Mr. Chairman, Ranking Member, and other Members, thank you for your time. I yield back.

Mr. GIBBS. Thank you.

Representative Bonner, welcome.

Mr. BONNER. Thank you, Mr. Chairman and members of the committee for holding this time-sensitive hearing. And special thanks for affording some of us an opportunity to share our experiences and our thoughts with you.

The RESTORE Act, as has already been noted, is vitally important to both the gulf coast and to our country. And it is the Members who are here today from the five Gulf Coast States of Texas, Louisiana, Mississippi, Florida, and Alabama, on behalf of the millions of American taxpayers who reside on those—in those States and along that gulf coast who very much appreciate the opportunity to share with you some of the reasons why we believe this legislation is the right solution and the right resolution to this tragedy.

On a personal note, I am also grateful to the committee for giving one of our local leaders, Gulf Shores Mayor Robert Craft, who will be in one of the later panels, an opportunity to bring his unique perspective, as well. Mayor Craft is one of the many unsung heroes from this tragedy, in that he and so many other local leaders helped their communities keep the faith, especially during the darkest days of this, which was the worst manmade disaster in U.S. history when, as we can all recall, it didn't seem that anyone or anything could plug that plume of oil that was spewing up more than a mile deep off the bottom of the Gulf of Mexico.

While unlike the chairman of the committee, who hails from a State whose total coast line is more than 600 miles of beautiful

white sandy beaches, Alabama only has about one-tenth of that amount. In fact, even today many Americans are surprised to learn that Alabama has some of the most beautiful beaches in the world, all of which are located in my congressional district, in southwest Alabama.

But whether along the Florida Panhandle or in communities like Fort Morgan, Orange Beach, Gulf Shores, Dolphin Island in Alabama, the beaches along the northern Gulf of Mexico are as unique and as desirable to vacationers as any in the world. For generations, the beaches of Baldwin and South Mobile Counties in Alabama have been Vacation Central for Alabamians and for people all along the Gulf Coast States. Unfortunately, on April 20, 2010, the tragic and deadly *Deepwater Horizon* explosion changed that image in the minds of millions of Americans.

As oil began to wash ashore weeks later, fisheries were shut down. Hotels and condominiums lay vacant. And restaurants that were normally filled with tourists in anticipation of a good tourism season were empty. To say we struggled to stay afloat during that season would be an understatement. But to not acknowledge that businesses are still struggling almost 2 years removed from this event would be doing everyone who lives along the gulf coast a great disservice.

Thankfully, most of the visible oil has been removed from our beaches, and tourists returned to the Alabama gulf coast this past summer in record numbers. But for all the great progress that has been made, Mr. Chairman, there is still a lot to be done to fully heal the scars, and to ensure that future threats to our region will be minimized.

Members of the committee, the five of us are making the case today that there is still every reason to be concerned about future economic and environmental impact from the oil spill. A lot of questions still are not answered. And make no mistake. Each Gulf Coast State was affected in a different way from last year's spill. Some States, like Louisiana, arguably had more environmental damage, while others like Alabama endured significant and adverse economic impact. Our beaches in particular lost at least 1 million tourists during the 2010 season. And the absence of these tourism revenues struck just as our area was trying to recover from the worst recession since the Great Depression.

While we should all be hopeful about the prospects of putting the nightmare of 2010 behind us, the progress made toward the clean-up is but a hollow victory for thousands of local businesses and individuals which were dealt crippling blows during a tourism season that was a complete loss. Entire communities are still reeling from business losses, while the presidentially appointed administrator of the BP claims system, Mr. Ken Feinberg, continues to slow-walk approval of the legitimate claims payments.

While that is not what this hearing is about, I for one believe Mr. Feinberg's gulf coast claims facility has been nothing short of a colossal failure, and should be an embarrassment for the Obama administration that set it up.

That said, bringing the majority of the Clean Water Act fines assessed against BP, TransOcean, Halliburton and others back to the Gulf Coast States is only fitting, as our region was uniquely and

undeniably affected by this tragedy. As those of us who live along the Gulf of Mexico already know, our backyard is vital to the economic health of our entire Nation. As Mr. Palazzo and others have said, it is home to the vast majority of oil and gas production that benefits the entire country, as well as 40 percent of the country's seafood production. And it is a major world-class tourism destination that has economic benefits for the entire country.

In fact, if the United States Gulf Coast States, our five States of Alabama, Florida, Louisiana, Mississippi, and Texas were an individual country, they would rank seventh in global GDP with more than \$2.5 trillion annually. It is for this reason, Mr. Chairman, among many others, critical that the Gulf Coast States, which bear so much risk, even today, be afforded access to the majority of the Clean Water fines collected to restore the damage that has been done, and to better prepare our region to respond to future crises.

I am personally pleased that the five of us and the other Members, in a bipartisan way, who live in the five coastal States have worked to support Mr. Scalise and the legislative initiative that he helped bring to this table today—and I very much appreciate the committee and the Members giving this bill your serious consideration as a solution to a tragedy that should have never occurred. Thank you, Mr. Chairman.

Mr. GIBBS. Thank you, Representative.

Representative Scalise, welcome.

Mr. SCALISE. Thank you, Chairman Gibbs, Ranking Member Napolitano, and the members of the entire committee for having this hearing. I also want to thank my colleagues from the gulf coast for being with us here today. We have all worked hard to bring together a bipartisan coalition of support for this bill.

I do also want to correct the record. Louisiana won't even start getting revenue sharing until 2017 on offshore drilling, and it will be far below the 50 percent that was mentioned.

But before I begin my testimony, my colleague from New Orleans, Congressman Cedric Richmond, had planned to be with us today but had to go back to New Orleans for the funeral of a close friend. He asked that I submit his statement for the record. So if I could ask the committee to have that statement submitted, I think you all have a copy with you.

I want to thank the committee for taking up our bill today. The RESTORE Act will ensure that the lion's share of the future Clean Water Act fines assessed on the responsible parties will be dedicated to the Gulf Coast States that were directly impacted by last year's oil spill.

On April 20th of last year, the *Deepwater Horizon* exploded. Eleven men lost their lives. And when the Macondo well blew out, the largest oil spill in our country's history ensued.

We continue to remember those lost in the disaster, and keep their families with us in our prayers. The events of that tragic day are still felt every single day by the families, the communities, and fragile ecosystems all along the gulf coast.

Five million barrels, over two hundred and five million gallons. At its peak, the amount of oil per day that spilled from the Macondo well was about the equivalent of oil used by the entire State of Delaware each day. For 86 days, oil flowed into the Gulf

of Mexico, not only devastating the ecosystems of the gulf, but also causing billions in economic losses across all five Gulf Coast States, shutting down small businesses and destroying entire industries for an extended period of time.

On the third panel you will hear testimony from Mike Voisin, a seventh generation oyster harvester who will discuss how the gulf seafood industry, which represents a large portion of our domestic seafood supply, was essentially shut down for an entire season.

In addition, when the Government imposed a moratorium on drilling in the gulf, even for those companies who played by the rules and that in no way were connected to the *Deepwater Horizon* disaster, thousands of energy and service industry workers from all across the country lost their jobs, and about a dozen deep water rigs left our country for places like Ghana and Egypt.

Every day people along the gulf coast continue to deal with the effects of this disaster. And each story is unique. But one theme is constant, and one thing is clear: the recovery of this region will take well over a decade. And it is critical that this bill move forward, so that we are able to ensure that when the fines are eventually assessed and collected, that a mechanism is in place to ensure that those penalties return to the areas where the disaster occurred.

As I mentioned, this bill has wide support, not just from members of the gulf, but also for Members of Congress all across the country.

I want to particularly thank Congressman Don Young from Alaska for cosponsoring this bill, the RESTORE Act. He is all too familiar with the decades it takes to recovery from an oil spill. As the lead architect of the Oil Pollution Act of 1990—which is the legislation that actually imposes these fines we are talking about—in the wake of the *Valdez* spill, Congressman Young can attest to the importance of this legislation.

We have also received wide support from a broad coalition of people and organizations in the business and conservation communities. And I would like to submit for the record the support from those organizations, Mr. Chairman.

Mr. GIBBS. So ordered.

[Letters in support of S. 1400 and H.R. 3096, the RESTORE Act, follow. Please see the “Prepared Statements Submitted by Members of Congress” section for the statement of Hon. Cedric L. Richmond, a Representative in Congress from the State of Louisiana.]



Senate Majority Leader Harry Reid
522 Hart Senate Office Building
Washington, DC 20510

Senate Minority Leader Mitch McConnell
317 Russell Senate Office Building
Washington, DC 20510

Speaker John Boehner
H-232, U.S. Capitol
Washington, DC 20515

Minority Leader Nancy Pelosi
H-204, U.S. Capitol
Washington, DC 20515

Majority Leader Eric Cantor
H-329, U.S. Capitol
Washington, DC 20515

Minority Whip Steny Hoyer
1705 Longworth House Office Building
Washington, DC 20515

Chairman Doc Hastings
Committee on Natural Resources
1324 Longworth House Office Building
Washington, DC 20515

Ranking Member Ed Markey
Committee on Natural Resources
1329 Longworth House Office Building
Washington, DC 20515

Chairman John Mica
Committee on Transportation & Infrastructure
2165 Rayburn House Office Building
Washington, DC 20515

Ranking Member Nick Rahall
Committee on Transportation & Infrastructure
2163 Rayburn House Office Building
Washington, DC 20515

November 9, 2011

Re: Support for S. 1400 and H.R. 3096, the RESTORE Act

Dear Senate Majority Leader Harry Reid, Senate Minority Leader Mitch McConnell, Speaker John Boehner, Minority Leader Nancy Pelosi, Majority Leader Eric Cantor, Minority Whip Steny Hoyer, Chairman Doc Hastings, Ranking Member Ed Markey, Chairman John Mica, and Ranking Member Nick Rahall:

The undersigned organizations enthusiastically support S. 1400 and H.R. 3096, also known as the RESTORE Act, authored by Senator Mary Landrieu, Senator Thad Cochran, Senator Kay Bailey Hutchison, Senator Bill Nelson, Senator Marco Rubio, Senator Jeff Sessions, Senator Richard Shelby, Senator David Vitter, Senator Roger Wicker, Congressman Steve Scalise, Congressman Jo Bonner, Congressman Jeff Miller, Congressman Steve Southerland, Congressman Steven Palazzo, Congressman Pete Olson, and other Gulf Coast members. While we recognize that the bills have minor differences, the concept of dedicating at least 80% of penalties paid by the responsible parties under the Clean Water Act to Gulf Coast states to invest in the long-term health of the coastal ecosystem and its economies provides targeted environmental and economic recovery to the region affected most by the Deepwater Horizon Oil Spill.

The penalties that will be assessed exist because of damage inflicted on the Gulf Coast states by the responsible parties. When these penalties and the Oil Spill Liability Trust Fund were created years ago, a spill the magnitude of the Deepwater Horizon Oil Spill could not have been anticipated. It only makes sense that the majority of the fines that will be assessed should be directed to the Gulf Coast to help these states recover as they deal with the long-term impacts of the oil spill.

It is not an exaggeration to say that our region's future - economic and otherwise - depends on the restoration of our ecosystems. But even more importantly, the Gulf Coast provides this nation with economic and energy security. Between hosting some of the highest producing ports, a large majority of the oil and gas production in America, and many of the nation's fisheries and top tourism destinations, the Gulf Coast and its sustainability is clearly crucial to the strength of the nation's economy. The Gross Domestic Product (GDP) of the five states of the Gulf Coast region was almost \$2.4 trillion in 2009, representing 30% of the nation's GDP. The Gulf Coast states, if considered an individual country, would rank 7th in global GDP. Failure to restore the Gulf Coast puts our national economy at risk, and with the region still recovering from the effects of the oil spill, we urge you to move the RESTORE Act forward as quickly as possible.

We believe that enacting the RESTORE Act is vital to the environmental and economic recovery of a region still dealing with the devastating impact of this disaster. We urge Members in the House and Senate to join our support of the RESTORE Act and look forward to working with you to move this legislation forward.

Sincerely,

Greater Houston Partnership
Chamber Southwest Louisiana
Greater New Orleans, Inc.
Partners for Stennis - Hancock Chamber of Commerce
Mobile Area Chamber of Commerce
Pensacola Bay Area Chamber of Commerce

November 1, 2011

The Honorable John Mica, Chairman
Transportation and Infrastructure Committee
2187 Rayburn House Office Building
Washington, DC 20510

The Honorable Nick Rahall, Ranking Member
Transportation and Infrastructure Committee
2307 Rayburn House Office Building
Washington, DC 20510

Dear Chairman Mica and Ranking Member Rahall:

The undersigned organizations, representing millions of America's anglers, conservationists, scientists and fisheries managers, wish to express our strong support for H.R. 3096, the RESTORE the Gulf Coast Act of 2011. This important legislation will direct 80 percent of Clean Water Act (CWA) penalties charged to BP to the restoration of the Gulf Coast environment and economy. We request that the Transportation and Infrastructure Committee act swiftly to move this important legislation forward.

A healthy ecosystem and robust fish populations are vital to the well-being of the Gulf's society and economy, as they provide jobs for citizens and recreational enjoyment for millions. Recreational fishing alone contributes \$41 billion dollars in economic output in the Gulf Coast region annually and supports over 300,000 jobs. The combination of the biological impacts and the public's perception of the extent of those impacts resulting from the April 2010 Deepwater Horizon oil disaster caused severe economic harm to the region. The RESTORE the Gulf Coast Act of 2011 will provide tremendous and much-needed benefits for the thousands of fishery dependent businesses who continue to try and rebound from the oil spill's economic and environmental impacts.

The RESTORE the Gulf Act of 2011 establishes the Gulf Coast Ecosystem Restoration Council to develop and fund a comprehensive plan for the ecological recovery and resiliency of the Gulf Coast. To address critical gaps in fisheries data, the Act also establishes an endowment that will provide funding for needed fisheries stock assessments and ecosystem monitoring among other things. It is critically important that we invest in short- and long-term fisheries data collection to help gather the science needed to properly manage fish stocks.

The Gulf Coast ecosystem and the individuals, businesses and communities dependent on it need recovery dollars as soon as possible. The Gulf of Mexico region faces a lengthy challenge ahead to recover from the impacts of the oil spill, and without prompt Congressional action the region will receive none of the CWA funds that it justly deserves. We request your support of the RESTORE the Gulf Coast Act of 2011 and urge you to work to pass it as swiftly as possible.

Sincerely,

American Fisheries Society
American Fly Fishing Trade Association
American Sportfishing Association
Association of Fish and Wildlife Agencies
B.A.S.S., LLC
Berkley Conservation Institute, Pure Fishing
Center for Coastal Conservation

Coastal Conservation Association
Congressional Sportsmen's Foundation
International Game Fish Association
National Marine Manufacturers Association
Shimano Sport Fisheries Initiative
Theodore Roosevelt Conservation Partnership

cc: Members, Transportation and Infrastructure Committee

KRISTINE L. YOUNG, President
JOSEPH J. JARBOE, Senior Vice President
PAUL W. DIEDERICH, Vice President
HOWARD T. PERLEY, Jr., Treasurer
STEPHEN E. SANDHERR, Chief Executive Officer
DAVID R. LUKENS, Chief Operating Officer



October 17, 2011

The Honorable Steve Scalise
U.S. House of Representatives
Washington, DC 20515

Re: H.R. 3096, the Gulf Coast Restoration Act

Dear Representative Scalise:

The Associated General Contractors of America (AGC) would like to thank you for supporting the recovery of the Gulf Coast region by introducing H.R. 3096, the Gulf Coast Restoration Act. This legislation will ensure that the penalties the federal government is owed are distributed in the best interest of the coastal communities.

Under current law, the penalties acquired from BP and other responsible parties would go into the U.S. Treasury and the needed Gulf Coast restoration would receive no direct relief from these penalties. This legislation would ensure the vast majority of all civil penalties paid by BP or any other responsible party in connection with the Deepwater Horizon spill would be divided among the five Gulf Coast states most impacted by the spill.

AGC is encouraged this legislation would promote the long-term ecological and economic recovery of the Gulf Coast region through the funding of infrastructure projects, including coastal flood protection, directly affected by coastal wetland losses, beach erosion, or the impacts of the Deepwater Horizon oil spill.

Once again, thank you for your efforts to address the environmental and economic impacts of the Deepwater Horizon oil spill, by providing recovery funds to ensure the restoration of the natural resources in the Gulf Coast region.

Sincerely,

A handwritten signature in black ink, appearing to read "Marco A. Giamberardino", is written over a light blue horizontal line.

Marco A. Giamberardino, MPA
Senior Director
Federal and Heavy Construction Division



Louisiana Restaurant Association

2700 N. Arnould Road • Metairie LA 70002-5916 • (504)454-2277 • FAX (504)454-2299

October 17, 2011

The Honorable Steve Scalise
United States House of Representatives
429 Cannon House Office Building
Washington, DC 20515

Dear Representative Scalise:

As business men and women whose livelihoods and 20 million employees rely on the health and beauty of the Gulf Coast, we are writing to support the "RESTORE the Gulf Coast Act," H.R. 3096.

The RESTORE Act will dedicate 80 percent of Clean Water Act penalties to be paid by the responsible parties to the restoration of the Gulf Coast ecosystem and economy, and provide needed resources to Louisiana and other Gulf Coast states to start recovery. By supporting the RESTORE Act, we hold BP and others accountable for their actions, and ensure the fines they pay come back to the Gulf to accomplish this restoration.

We are proud to share our beautiful beaches, bays, bayous and coastline with more than 15 million visitors a year, fueling a \$34 billion annual tourism industry. The Gulf of Mexico supports world-class sport fisheries, abundant wildlife and natural beauty. After the BP Deepwater Horizon disaster, we became acutely aware of how much the damage to the Gulf hurt our livelihoods. For us, a healthy economy cannot exist without a healthy Gulf of Mexico.

We urge you to pass H.R. 3096 this year so that fines paid will come back to the Gulf for restoration. This is the most appropriate use of those fines and the best way to support the Gulf economy.

Sincerely,

A handwritten signature in cursive script that reads "Stan Harris".

Stan Harris
President & CEO
Louisiana Restaurant Association



Get fresh with us.

November 10, 2011

The Honorable John Boehner
Office of the Speaker
H-232 The Capitol
Washington, D.C. 20515

The Honorable Nancy Pelosi
Office of the Democratic Leader
H-204 The Capitol
Washington, D.C. 20515

Dear Speaker Boehner and Minority Leader Pelosi:

On behalf of the seafood community across the Gulf Coast, we are writing to inform you that the Resources and Ecosystems Sustainability, Tourism Opportunities and Revived Economies of the Gulf Coast States Act of 2011 (RESTORE Act) would directly benefit the seafood community along the Gulf Coast. The Senate Environment and Public Works Committee approved this bipartisan bill by voice vote on September 21st and companion legislation was introduced in the House. H.R. 3096 currently has twenty-six bipartisan cosponsors from across the Gulf region.

More than a year after the devastating Deepwater Horizon oil spill, public confidence in the safety of seafood from the Gulf of Mexico remains low despite reassurances from the federal government that it is completely safe to eat. An opinion poll conducted by Louisiana State University this April concluded that sixty-nine percent of consumers remain very concerned that these seafood products might be tainted with toxins associated with the spill. This lack of public confidence combined with ongoing struggles resulting from flooding along the Mississippi River earlier this year and outstanding challenges stemming from the hurricane season of 2005 translate into a need for additional resources to rebuild and strengthen our seafood supply chain. With the RESTORE Act, Congress has an opportunity to provide the Gulf Coast with much-needed funds, at no cost to American taxpayers, to help rebuild our fisheries ecosystems and alleviate consumer concerns regarding the safety of our products.

The RESTORE Act would dedicate at least 80% of the penalties paid under the Clean Water Act (CWA) to Gulf states to restore the ecosystems and economies damaged during the oil spill. Of particular importance is language designed to bolster the marketing of seafood harvested from the Gulf of Mexico. These funds would make possible essential messaging and outreach to consumers to restore demand for our wholesome, U.S. harvested seafood products. Our products have historically comprised nearly 1/3 of the nation's domestic seafood supply and contribute to over 885,000 jobs across the country. With unemployment hovering near double digits across the country, rebuilding this economic powerhouse should be a top priority and effective marketing is a key ingredient to making this happen.

With this letter, we would ask that you review the RESTORE Act closely and consider the many benefits it will provide to the seafood industry and our communities. It is imperative that the Gulf Coast see some level of reimbursement from Clean Water Act penalty monies as soon as they become available. Together we can spread the positive message about Gulf seafood and bring the Gulf Coast back to full health.

Sincerely,

Louisiana Restaurant Association, New Orleans, LA
Southeastern Fisheries Association, Tallahassee, FL
Texas Shrimp Association, Aransas Pass, TX
Louisiana Seafood Promotion and Marketing Board, New Orleans, LA
National Fisheries Institute, McLean, VA
Gulf Oyster Industry Council, Houma, LA
Louisiana Seafood Processors Council

cc: Chairman John L. Mica
Chairman Doc Hastings
Chairman Ralph M. Hall
Ranking Member Nick Rahall
Ranking Member Edward J. Markey
Ranking Member Eddie Bernice Johnson

Mr. SCALISE. If we look at the *Valdez* spill in Alaska, what we know is that even now, more than two decades later, those communities and the ecosystems that were directly affected still haven't fully recovered. And many of those effects weren't seen until many years later. Just one example was the collapse of the herring fishery in Alaska. The failure of the herring to come back couldn't fully be anticipated for about a decade after the spill. And it is estimated that the loss of the herring industry alone has cost the region about \$400 million.

The gulf coast will be dealing with similar restoration issues for more than a decade. And the ecosystems and resources of the gulf coast are of critical importance to our entire country. Thirty-three percent of the Nation's seafood harvest comes from the gulf. We produce 90 percent of America's total offshore oil and gas. And we are home to 10 of the Nation's 15 largest ports.

Last year's oil spill jeopardized these assets. And particularly in Louisiana, where we continue to lose a football field of our coast every hour, the effects of the oil spill exasperated the degradation of an already fragile ecosystem which supports the economy and resources all along the gulf coast which are so important to our entire country.

As history has shown us, after the *Valdez* spill, the recovery of the gulf coast region will take years to accomplish. It is essential that Congress work to ensure that responsible party, not the taxpayer—and I think that is very critical to note in this, it is the responsible party, not the taxpayer under our bill—that will foot the bill for this disaster and the cleanup. And our legislation, the RESTORE Act, accomplishes that while making sure there is a mechanism in place that allows each State to respond to our unique recovery needs.

This legislation enjoys bipartisan support, and I look forward to working with this committee to pass our bill. Thank you, Mr. Chairman, and I yield back.

Mr. GIBBS. Thank you. I want to commend you, all five of you, for coming before the committee with your testimony, and making sure that the damage that was done to your constituents are made whole. And obviously, the economic vitality of the gulf coast region is very important to the rest of the country.

So, thank you for being here. And you are excused, and we will take a break for just a few moments while our panelists for panel two can get to their seats.

Our next panel, we have two panels of expert testimony. We have Mr. Craig Bennett, he is the director of the National Pollution Funds Center of the United States Coast Guard. And Mr. Tony Penn is the deputy chief of the assessment and restoration division, Office of Response and Restoration of the National Oceanic and Atmospheric Administration.

Mr. Bennett, we will start with you. Welcome, and the floor is yours.

TESTIMONY OF CRAIG A. BENNETT, DIRECTOR, NATIONAL POLLUTION FUNDS CENTER, UNITED STATES COAST GUARD; AND TONY PENN, DEPUTY CHIEF, ASSESSMENT AND RESTORATION DIVISION, OFFICE OF RESPONSE AND RESTORATION, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Mr. BENNETT. Good morning, Chairman Gibbs, Ranking Member Napolitano, and distinguished members of the committee. I am grateful for the opportunity to testify before you today about the RESTORE Act. My testimony will focus on how this act may impact the Oil Spill Liability Trust Fund and the liability and compensation regime established by title I of the Oil Pollution Act of 1990, open OPA90.

Whenever there is an oil spill affecting U.S. waters, my role as the director of the NPFC is threefold. First, I fund the Federal oil pollution removal costs and trustee costs to initiate assessment of natural resource damages, using amounts Congress has made available from the Oil Spill Liability Trust Fund. Second, I ensure the response party adequately advertises its process for paying OPA90 claims for removal costs and damages. And, if claimants are not fully compensated by a responsible party, they may present their claims to the NPFC for payment from the Oil Spill Liability Trust Fund. Third, I recover costs from any and all responsible parties.

With respect to the *Deepwater Horizon* spill, costs to the Oil Spill Liability Trust Fund for Federal removal activities and trustee costs to initiate the assessment of natural resource damages have totaled \$616 million to date. In addition, the Coast Guard has incurred \$272 million in removal costs that were not paid directly out of the Oil Spill Liability Trust Fund, but for which the responsible party is liable.

As the responsible party, BP is advertising its claims process, and paying claims for damages that result from the spill. In general, claimants whose claims to BP or its gulf coast claims facility are denied or not settled after 90 days may present their claims to the NPFC for consideration. At the NPFC we have received more than 1,500 claims from individuals or businesses. The NPFC has paid one Federal trustee natural resource damage assessment claim in the amount of \$1.4 million.

To date we have sent the responsible parties 12 bills totaling \$716 million in Federal costs, due to the *Deepwater Horizon* spill. Of these, BP has paid the first 11 bills in the amount of \$712 million in full. We will continue to bill the responsible parties for all costs under OPA90.

The RESTORE Act would, among other things, redirect 80 percent of the civil penalties paid under the *Deepwater Horizon* responsible parties under section 311 of the Clean Water Act. Under the RESTORE Act, these redirected penalties could apparently be used for a broad range of ecological and economic restoration projects in the five Gulf States.

The provisions of the RESTORE Act may impact the Oil Spill Liability Trust Fund and the OPA90 liability and compensation regime in two important ways. First, the Oil Spill Liability Trust Fund is financed, in part, from Clean Water Act penalties. The re-

direction of these penalties would, therefore, be the most direct impact of the RESTORE Act on the Oil Spill Liability Trust Fund. Second, there was a potential for overlapping funding by the Gulf Coast Restoration Trust Fund of activities that might also constitute damages for which a responsible party is liable under OPA90. Responsible party liability includes natural resource and other economic damages. This liability is an addition to the responsible party's liability for any Clean Water Act penalty.

The potential for overlapping damage compensation could increase the burden on claimants when presenting OPA90 claims to establish that their claim damages have not or will not be compensated from the penalty amounts. The potential for overlapping damage compensation could also complicate NPFC cost recovery by providing the responsible parties with arguments that their penalty payments have been used to compensate the damages paid by the Oil Spill Liability Trust Fund.

The Coast Guard looks forward to working with the committee on these very important issues. Thank you for the opportunity to testify today. I look forward to your questions.

Mr. GIBBS. Thank you.

Welcome, Mr. Penn. The floor is yours.

Mr. PENN. Thank you, Chairman Gibbs and members of the committee, for the opportunity to testify on the natural resource damage assessment and restoration planning processes for the *Deepwater Horizon* oil spill as you consider H.R. 3096, or the RESTORE Act. My name is Tony Penn, I am the deputy chief of the assessment and restoration division in NOAA's Office of Response and Restoration. I appreciate the opportunity to discuss NOAA's trustee roles in the natural resource damage assessment process, also known as NRDA.

NOAA and our co-trustees have been working tirelessly over the last 19 months to assess the ecological and human use impacts of the spill and to identify restoration opportunities in the Gulf of Mexico. My testimony today will discuss the damage assessment process in general, and the status of the *Deepwater Horizon* assessment and restoration.

NOAA, along with our co-trustees, is charged with assessing and restoring natural resources and services injured by an oil spill. The goal of the assessment process is to determine the type and amount of restoration needed to compensate the public for injury to the natural resources. The trustees also assess the public's lost use of those resources, such as recreational fishing, boating, hunting, and swimming. The ultimate goal of NRDA is to implement a package of restoration projects that compensate the public for all the ecological and human use injuries. The NRDA process does not address private or commercial economic losses.

Since the outset of the *Deepwater Horizon* spill, NOAA has worked with Federal and State co-trustees and responsible parties to assess the injuries to ecosystem resources of the Gulf of Mexico. NRDA studies have been conducted in almost every area of the regional ecosystem. These include science directed at measuring the exposure and ecological injuries to resources and habitats in the shoreline, nearshore, water column, continental shelf, and deep sea environments. Additionally, they include assessing impacts due to

the acute and chronic exposures of the ecosystem to the released hydrocarbons and dispersants.

Presently, our longest term studies consist of less than 2 years of field observations and data, and analyses from that work are only now becoming available for synthesis and interpretation. Field studies are supplemented by toxicity studies that look at many permutations of exposure to oil in the laboratory, from fresh to weathered oil, and with and without dispersant. The unique ecosystem impact of this spill, especially among very long-lived organisms such as turtles, tuna, and mammals, means that long-term restoration monitoring will be central to any final restoration plan.

Concurrent with the injury assessment, NOAA and the co-trustees are planning for and implementing restoration. To date, the trustees and BP have agreed to implement several emergency restoration projects designed to curtail further injury to resources. The trustees are also preparing an environmental impact statement which will identify a range of restoration alternatives that the trustees will consider to compensate the public for lost natural resources and services. On April 21st of this year, the trustees announced an agreement whereby BP agreed to fund \$1 billion in early restoration projects. Public input on early restoration projects has already begun, and will continue through this year and into next.

Natural resource damages are one element of liability under the Oil Pollution Act, or OPA, that address injury to, destruction of, loss of, or loss of use of natural resources. Other elements of liability under OPA include oil removal costs, real and personal property damages, loss of subsistence use of natural resources, lost Government revenues that may be recovered by the United States, a State, or a political subdivision of a State, lost profits and earnings capacity of businesses and individuals, and net costs of increased or additional public services—again, which may be recovered by a State or a political subdivision of a State.

As stated in H.R. 3096, the purpose of the RESTORE Act is “to restore the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands of the Gulf Coast States, and to create jobs that revive the economic health of communities adversely affected” by the events surrounding the *Deepwater Horizon*. Ideally, natural resource damages should address restoration of resources impacted by the *Deepwater Horizon* spill. The ecological restoration called for in the RESTORE Act could address chronic non-spill environmental conditions.

The task of compensating the gulf coast residents and the larger American public for the impacts of the *Deepwater Horizon* spill is no small feat. The NRDA process under OPA provides a mechanism to mitigate the environmental impacts of the spill. And other provisions under OPA can address other types of impacts. The RESTORE Act is another opportunity to provide compensation in addition to OPA. The mechanisms by which the ultimate compensation is achieved should be clearly defined, and should consider provisions that currently exist under OPA.

Thank you for allowing me to testify on the damage assessment and restoration process.

I am happy to try and address any questions you may have.

Mr. GIBBS. Thank you. I will start off the first round of questions for this panel. Mr. Bennett, I think currently there is, what, \$2.3 billion in the trust fund. Is that correct?

Mr. BENNETT. That is correct, sir.

Mr. GIBBS. Has all the cost that the trust fund has paid out, incurred—has been reimbursed from the responsible parties? What is the status on the reimbursements and your expenditure so far from the spill?

Mr. BENNETT. We have billed for not all the costs that have been incurred, it is an ongoing process of billing. But we have billed for \$700 million of the Federal cost, which is probably 80 percent of the cost incurred. And BP has paid all but one bill of \$5 million that is pending payment.

Mr. GIBBS. I am curious—before the spill, historical trust fund balance. What would be your historical number?

Mr. BENNETT. Well, the trust fund originally—they called it a billion-dollar fund. It originally had a cap at \$1 billion. And recently, when the tax was reenacted, the cap was lifted. So it has been growing from around—from under \$1 billion to the current state of \$2.3 billion. So \$2.3 billion is as big as it has ever been, right now.

Mr. GIBBS. OK. What—I guess we heard in the testimony—I am a little concerned if these parties went bankrupt or insolvent, or if we had oil from a spill coming from the waters of Cuba, we could be liable for it and the trust fund could be really hit hard.

So I guess for contingency plans, from an actuary standpoint, what do you think the trust fund balance should be at, for historic levels?

Mr. BENNETT. That is a great question, Mr. Chairman. For 20 years \$1 billion was clearly more than enough for anything we witnessed. But this was the first time we have had a Spill of National Significance since OPA was enacted. And in the wake of what has been called probably a \$40 billion spill, it is hard to say what the right amount would be.

What I can say is the more that is there, the less likely I would have to come to you to ask for supplemental funds, should we run out of money. But it is hard to put a number on that.

Mr. GIBBS. OK. Mr. Penn, under this bill that is being proposed, would it be possible to use the penalty funds to finance restoration projects that are—responsible parties are also liable under the fund?

Mr. PENN. So, in looking at the bill, that is one of our concerns, is could these monies, the Clean Water Act penalties, be used for restoration that the responsible parties would otherwise be responsible for. And so what we would like to see is that the responsible parties are—they fully pay for what they owe under the OPA natural resource damages provisions, and that, you know, these dollars that would be available under the RESTORE Act do above and beyond what the responsible party would be liable for under OPA.

Mr. GIBBS. What role is the Gulf Coast Ecosystem Restoration Task Force playing in the NRDA process?

Mr. PENN. Yes. So we have been coordinating very closely with the Gulf Coast Restoration Task Force, and I think we have talked with them over the past 16, 18 months now, about how we integrate the damage assessment with the work of that task force. And

I think all along it was envisioned that the natural resource damage assessment would achieve restoration under its mandates, and then the gulf coast task force and their planning was to do restoration above and beyond what we would be called to do under OPA.

Mr. GIBBS. OK. I will yield to the ranking member.

Mrs. NAPOLITANO. Thank you, Mr. Chair. To Mr. Penn, you indicated both the emergency and early restoration projects have been undertaken with financing from BP. Has BP been supportive of the effort? And can you talk more in depth about the benefits that this approach could conceivably provide?

Mr. PENN. Yes, ma'am. BP has been cooperative. We are working on a cooperative damage assessment with them. As I mentioned, we are implementing a couple of emergency restoration projects—have already implemented. We are working on an early restoration plan to start using the billion dollars that they committed back in April.

I think the—for this, for the RESTORE Act, a potential opportunity that doesn't conflict with what we are trying to do for natural resource damages and the ecological restoration that we are doing is—as I mentioned in my statement, NRD does not address economic or commercial impacts. And so, in the RESTORE Act there is discussion about using funds for promoting the seafood industry, promoting tourism, workforce planning, planning assistance. Those are the kinds of things that we are not—that is not part of what we do under the damage assessment process. And so I think that might be an area where, you know, you wouldn't have this question about are you letting the responsible parties off the hook for their ecological restoration responsibilities.

Mrs. NAPOLITANO. Who then would be responsible for being able to address those shortages, those impacts?

Mr. PENN. I am sorry, who would be responsible for—

Mrs. NAPOLITANO. Right. If your agency does not handle those particular areas, who then would they be able to turn to?

Mr. PENN. Those economic impacts? Yes. Well, so that is a good question. And, you know, as I mentioned, the Oil Pollution Act does have these other elements of liability for, you know, private claims, for Government claims. I suppose there could be resources there to address some of these issues—

Mrs. NAPOLITANO. Well—

Mr. PENN [continuing]. But I don't know that that is happening.

Mrs. NAPOLITANO. Well, Mr. Penn, and that brings up an issue that if these people have no redress, because they can go to an agency and say, "No, it is not our responsibility, it is somebody else's," but nobody knows who else, then those people are still left holding the bag for something they have no part in, the catastrophe.

Mr. PENN. Yes, ma'am. And that is why I think that would be a fine use of the RESTORE Act, is to focus on that economic kind of recovery.

Mrs. NAPOLITANO. OK. Then the other question, then, the importance—what is the importance of the long-term monitoring, the damage assessment process? And is that type of monitoring covered under the Oil Pollution Act of 1990? And is there a timeframe limit?

Mr. PENN. So monitoring is very important as part of our damage assessment process. We, as we are charged with making the public and the environment whole, we want to—first we have to implement the restoration that we think is going to be compensatory. We use the monitoring to make sure that that restoration is performing and basically meeting the requirements that we set out, so that the public does get back those resources and services.

In the past, I would say, you know, monitoring has been on the order of 5 to 10 years, depending on the area, the kind of restoration that we are doing. I think in this case, restoration monitoring will be longer lasting. We expect that, as I mentioned, with some of these resources that are impacted, we may not see the effect of the spill on those resources for perhaps decades.

So, as part of our restoration, we plan to do active monitoring to see that we are able to restore resources, and to see also if there isn't some latent effect that we might have missed in the early days of our assessment—

Mrs. NAPOLITANO. OK, but if this were to take, say, a couple of decades, as you are mentioning, would BP still be liable to be able to address those events?

Mr. PENN. Yes. So what we would try and do, as part of the final restoration plan, the settlement or the court judgment, we would target funds that would come from BP for that long-term monitoring, as part of—

Mrs. NAPOLITANO. What is there in writing, or—and you can address, Mr. Bennett, if you wish—is there something somewhere that really holds BP liable for this extended period of impact?

Mr. BENNETT. Yes, ma'am. I can answer that question. Under the law OPA90 right now there are statute of limitations for the various kinds of damages. And the statute of limitations for NRD damages is 3 years from when the damage is known. So, in the case of NRD that is typically 3 years from the end of an assessment being done. And there is no limitation on when assessment can take place.

So if, for example, a certain species showed a problem 10 years from now and the trustees needed to start an assessment process and study and then come up with a restoration, the statute of limitation would all start from the end of that assessment. So there is basically no limit. And the responsible—BP would—and the other responsible parties would remain responsible, regardless of how long that took.

Mrs. NAPOLITANO. And they are aware of that?

Mr. BENNETT. Yes, ma'am. They are very aware of that.

Mrs. NAPOLITANO. Thank you. Then, Mr. Bennett, you affirm in your written statement that the direct impact of the RESTORE Act on the Oil Spill Liability Trust Fund would be—that it would redirect up to 80 percent of the amounts gathered through the Clean Water Act section 311 penalties. I don't think you mention that impact would be from the loss of the revenue to the trust fund. What would be the diversion of funds away from the Oil Spill Liability Trust Fund—threaten the fund's solvency in the short or long term? And would the fund be able to function in the future, much as it has over the past 30 years? Long question.

Mr. BENNETT. That is a good question, ma'am. And the short answer is no, it would not affect the solvency. We typically get \$10 million to \$20 million a year in Clean Water Act penalties. So the amount that we are talking here is a very large amount relative to what, historically, has been there.

But as the chairman pointed out, it is that much—our only point is that it will be that much less money that is there for future spills, and it is not our—I am kind of agnostic as to how much flows into the fund or doesn't flow, I just want to make sure people understand.

Mrs. NAPOLITANO. Well, Mother Nature doesn't count on the rules that we set.

Mr. BENNETT. Yes, ma'am.

Mrs. NAPOLITANO. So thank you, Mr. Chair, for the indulgence.

Mr. GIBBS. Thank you. Representative Landry, you have questions?

Mr. LANDRY. Yes, Mr. Chairman. Thank you. Is—Mr. Bennett, is it my understanding that you have some objection to 80 percent going to the Gulf Coast States?

Mr. BENNETT. I don't have an objection, per se. I have an observation, if you will, that it potential—not about whether it goes to the States, but that the—the diversion of 80 percent—the one concern is that that is less money that is in the fund for future spills. And the other concern we have is that the potential for overlapping issues with NRD—and I would just hope that we can work together to resolve the potential impacts of that, because it could complicate being responsive to a particular claimant down the road, and it could also complicate potential litigation in the future with ERPs, if there is overlap.

Mr. LANDRY. So your recommendation would not be basically to direct that 80 percent to the States. Is that—

Mr. BENNETT. I don't have a recommendation, one way or the other, on whether there is 80 percent direction.

Mr. LANDRY. Mr. Penn?

Mr. PENN. NOAA and the administration support the goals, the objectives of the RESTORE Act, of directing a significant portion of the Clean Water Act penalties into gulf coast recovery and restoration.

Mr. LANDRY. Well, here is the question. I mean ultimately you all work for the President, correct? And I mean do you all normally go against the recommendations of the administration?

Mr. BENNETT. No, sir.

Mr. LANDRY. Well, the administration directly recommended—all of his panels directly recommended that 80 percent of the fines go to the Gulf Coast States. So what I am trying to get from you all is to just echo what the administration has recommended.

So is that a fair assessment? Could you make that recommendation to us today, based upon what the administration has already recommended in their task force? I mean I would like to make sure that everybody is singing off the same hymnal.

Mr. BENNETT. Yes. It is a good question, Congressman. I don't think either of us are in a position to speak officially for the administration on—

Mr. LANDRY. Wow, really?

Mr. BENNETT. We don't object—what we are trying to do is make sure the committee is aware of the implications of the bill, as written.

Mr. LANDRY. Did you make—I mean—but evidently—I am sure the administration is aware of those implications, and evidently has made an executive decision that, you know what, those concerns—basically, directing 80 percent to those States trump those particular concerns. And I just again wanted to get everybody on the same hymnal.

Mr. PENN. I guess I would, if I may, say that, again, NOAA and the administration support the objectives of 80 percent, or a significant percent, of the Clean Water Act penalties going to gulf coast recovery and restoration.

I think the administration also shares the concern that we want to hold the responsible parties liable for what they are responsible for in restoration. We want to do the restoration that comes from the RESTORE Act in addition to what the responsible parties are required to do.

Mr. LANDRY. OK, great. Thank you. I have another question for you. Mr. Bennett, in analysis that you have done to date, have you examined the impact on a State-by-State basis?

Mr. BENNETT. I am not sure I follow your question. When we get claims we analyze the merits of each individual claim, and it is a very fact-specific—

Mr. LANDRY. I mean are you able to tell us, based upon the research and the study that you all have done throughout the gulf coast, if you can determine which States have had the greatest environmental impact, up to date?

Mr. BENNETT. Well, I have information on claims submitted and what GCCF reports and BP has—claims paid. I would have to defer to the trustees on the ongoing assessment of the environmental impact. I don't think that is a known quantity at this point.

Mr. LANDRY. So you don't have the ability to determine if certain States had been affected disproportionately? Like Mr. Bonner said, you know, some States from an environmental standpoint and others from an economical standpoint.

But, I mean, NOAA—to me, NOAA's main focus would be the environmental impact of the—you know, of each State. And so I am trying to determine whether or not you have the ability to say this particular area—it may not be a State, it may cross State lines—but this particular area was disproportionately affected, versus other areas of the Gulf of Mexico. I am just curious, based upon analysis that you all have made so far.

Mr. BENNETT. Yes, I can't say what is disproportionate. What I can say is we have—we can see what—the damages that are being paid, and what are being paid and compensated.

Mr. LANDRY. OK. Thank you, Mr. Chairman. I yield back.

Mr. GIBBS. Thank you. Representative Altmire.

Mr. ALTMIRE. Thank you, Mr. Chairman. Mr. Bennett, as you know, the Oil Pollution Act established finite caps for the emergency fund per incident expenditures and responsible party liability. And in light of the response and recovery costs for the *Deep-water Horizon* spill event, what is your opinion on whether these caps should be revised upward? And if so, by how much?

Mr. BENNETT. Congressman, that is a good question. We—it is hard to say if we will hit the cap. Certainly on removal costs, it doesn't appear to. That has kind of tapered off. There is ongoing response going on, but the costs of that are minor, in the scheme of things, for the removal actions.

BP and the GCCF have paid out \$7 billion to claimants already. Whether that is enough or not enough, we haven't paid a lot of damage money to individuals, businesses, or States.

I think the big unknown is the NRD costs. And so far, BP has indicated—has paid some of those costs, and has put a billion dollars on the table to start early restoration. But it is a good question, because the amounts that are being talked about for NRD, if they were to come to the fund, would exceed the cap.

Mr. ALTMIRE. Now, under the RESTORE Act, which we are talking about today, the funds collected from the Clean Water Act penalties paid by BP and other responsible parties would be diverted from the Oil Spill Liability Trust Fund to a new Gulf Coast Restoration Trust Fund. This fund would then finance a wide range of environmental projects to restore natural resources affected by the *Deepwater Horizon* spill.

However, under the natural resource damage assessments process, the same types of restoration projects could be supported by funds provided through a final NRDA damage settlement. Should the bill be amended to establish a clear demarcation between the types of projects funded through the NRDA and those projects funded under the RESTORE Act?

Mr. BENNETT. I think we would support—work to clarify the differences, and perhaps put a savings clause in or other mechanisms to help reduce some of the ambiguity about what might happen during cost recovery or claims adjudication downstream.

Mr. ALTMIRE. Mr. Penn, do you have a response also?

Mr. PENN. Yes, sir. I think that would be a good thing to do, to make sure that is clear that we are not doing restoration with RESTORE Act funding, that that should be the responsibility of the responsible parties.

Mr. ALTMIRE. And lastly, still with Mr. Penn but I will ask both of you. If a responsible party were, in effect, to pay for an environmental restoration of the RESTORE Act, would this in any way affect how much that responsible party might later be liable under an NRDA settlement? Should the bill clearly keep these two processes separate for the purposes specifically of liability?

Mr. PENN. Let me see if I understand. I think that if we—if a responsible party—funds from a responsible party goes to implement restoration, ecological restoration, and that is not brought by the trustees as part of the damage assessment process, I think they very well could, as we go to ask payment for our restoration claims under the damage assessment process, they could say, "Look, this area has already been restored."

And again, I think that is why we have to be very clear about what is being done for the natural resource damages versus what would be done under the RESTORE Act.

Mr. ALTMIRE. All right. Mr. Bennett?

Mr. BENNETT. I would agree. I would add typically there is an NRD damage dollar amount assigned to the damage. And so, if it

is not clear whether they were—the RPs were getting NRD credit for what was done under the RESTORE Act, then it is—if the trustees came and did something similar, it could be problematic in adjudicating that claim, because I have to be able to do cost recovery against those funds. And if the RP goes to court and says, “I have already done this,” and it is not clear what happened, I don’t know how the judge would rule. So that is the kind of thing that we are concerned about.

Mr. ALTMIRE. Great. Thank you both.

Mr. GIBBS. Representative Farenthold.

Mr. FARENTHOLD. Thank you very much, Mr. Chairman. I have a couple of questions, some just in general and some specific to the district that I represent, which is a large chunk of the Gulf of Mexico, including the Padre Island National Seashore.

But I want to first start with the broad national concerns with Mr. Bennett. After the *Deepwater Horizon* spill, I think we became acutely aware that as a country we don’t have enough science and technology designed to deal with these sort of events, whether or not they are the result of a spill, of a U.S. oil company or a company operating in U.S. waters or, worse yet, a company operating in the waters of Cuba or Mexico or in the Arctic and in other foreign waters.

What is the Coast Guard doing with respect to that? Are you all spending some money there? What are you all doing?

Mr. BENNETT. Yes, sir. As you know, there are provisions under OPA, title VII, for R&D. And there are discussions about continuing research and development. And I can take a question for the record if there is a specific question you have with regards to that. But it is a topic of discussion within the administration.

[Insert for the record from the U.S. Coast Guard follows:]

The Coast Guard’s Research, Development, Test, and Evaluation Program is currently executing four projects to enhance the Service’s ability to respond to a Spill of National Significance:

- The first project is “Response to Oil in Ice” with the objective to develop equipment and techniques for detecting, tracking, and recovering oil in ice-filled waters. The Coast Guard has conducted one exercise in the Great Lakes region to examine the capabilities of existing equipment and plans to conduct another exercise in the Great Lakes region in fiscal year 2012.
- The second project is “Recovery of Heavy Oil” with the objective to develop the capability to detect and recover heavy oil on the sea/ocean floor. The Coast Guard has conducted some initial prototype testing and plans to conduct a field demonstration in fiscal year 2012.
- The third project is “Detection and Collection of Oil within the Water Column” with the objective to develop technologies that can detect and mitigate oil within the water column down to 10,000 feet.
- The fourth project is “Mobile Asset Tracking and Reporting” with the objective to develop a flexible, interoper-

able communications and information system that will assist the Coast Guard, other Government agencies, first responders, and volunteers in responding to an incident of national significance.

Mr. FARENTHOLD. So how much did you all spend last year? Do you know that, off the top of your head?

Mr. BENNETT. I don't have those numbers handy, but I would be glad to get an answer back.

[Insert for the record from the U.S. Coast Guard follows:]

In fiscal year 2011, the Coast Guard obligated \$1.9 million in personnel and direct project costs for the four projects focused on enhancing the Service's oil spill response capabilities using fiscal year 2011 and previously appropriated funding.

Mr. FARENTHOLD. How much do you think you need for next year, I guess would be—

Mr. BENNETT. Yes, I am not—

Mr. FARENTHOLD [continuing]. The followup for that question, as well.

Mr. BENNETT. No, it is a good question, Congressman. But I am not an R&D expert. I would have to go back and get an answer for you.

[Insert for the record from the U.S. Coast Guard follows:]

Of the amounts appropriated in the Consolidated Appropriations Act, 2012, over \$650,000.00 is currently allocated from the Coast Guard's Research Development Test & Evaluation appropriation Research and Development for initiatives focused on enhancing the Service's oil spill response capabilities.

Mr. FARENTHOLD. And are you aware of—are you all partnering with academic institutions and other folks with regard to that R&D?

Mr. BENNETT. Yes, sir. I—although I am not an R&D expert, I do know that the Coast Guard and other Federal agencies work with academic institutions on R&D projects, and try to get the local people involved, as well.

Mr. FARENTHOLD. All right. Mr. Penn, as a NOAA representative, obviously the science is important to you. The beaches that are in the district that I represent are pretty much considered to be the garbage dump of the gulf. The way the currents work, it is going to probably wash up on the beaches of Texas. It is a ongoing battle that we fight. And as I think back in history, the Ixtapa well in Mexico, it was years after that blow-out that the final effects were determined and, you know, tar balls were washing up for a great deal of time.

I have got some concern with some of the time limits and cut-offs in this proposed bill. How sure are we in the science that there isn't just some huge plume there, waiting in the gulf, waiting to wash up somewhere? And you know, is there a time certain that

we are going to say, "All right, we have pretty much got this handled"?

Mr. BENNETT. Thank you. That is a very good question. I don't think there is a time certain. We are—under the damage assessment process, our intent is to study this until, you know, we are forced to bring a claim in a court. The United States Government has filed a suit last December, and now we are on a court schedule for when we will have to present our claim. Certainly we will study as much as we can and understand the impacts up to that point.

But even after that, whether it is a court settlement or a court order, we would—again, as part of our restoration plan, we would want to have monitoring to see that there aren't latent impacts that we see some time down the road that—you know, in the settlement context, you know, we would look at a re-opener clause. You know, *Exxon Valdez*, that is something they are going through right now.

So we are very concerned with your point, that we need to understand what has happened over time, the full length of time where there could be impacts, and get the public the restoration for those impacts.

Mr. FARENTHOLD. And I guess specifically I am concerned, in this act, if we are not careful in setting cut-off dates and deadlines, we are not going to be able to address the allocation of those resources, property.

Let me go on and ask you another kind of broad national-significance question on R&D and how this is handled. My—the way I look at it, I am afraid we are going to be setting up a bureaucracy. I think we have already got seven or eight agencies involved in this, as well as the individual States.

So I guess my first question would be do you have any suggestions on minimizing that bureaucracy and increasing the efficiency of how this is dealt with?

Mr. PENN. So with respect to the natural resource damages, we are working as a larger group. I mean we have a couple of Federal interests, we are working with all the States, the five Gulf Coast States. And, you know, I have to say I think it is one of the successes of what we have done to date, is that we have worked together, we have a trustee council that is shepherding us through the decisions that we need to make, working through the early restoration process.

But you are right. It is a number of agencies and people that we have to coordinate. But I think we have done well with respect to the broader damage assessment process. I think—you know, you asked about research and development. Our office, our particular office, the Office of Response and Restoration, would like to have some sustained focused effort on some of our oil spill response and damage assessment needs. And so if that focuses for our particular needs, we are supportive of that. You know, going through the Coast Guard may be another way of getting some of this important research done.

Mr. FARENTHOLD. I see I am out of time. Thank you very much.

Mr. GIBBS. Representative Southerland. Questions?

Mr. SOUTHERLAND. Thank you, Mr. Chair. I would like, if I could, to ask that three different reports from Federal task forces be submitted into the record.

Mr. GIBBS. So ordered.

Mr. SOUTHERLAND. Great. Thank you very much. One of the things, as a Member—I live in Panama City, Florida. So this morning Representative Miller sat on the panel to talk about the interest of Florida. But I was fortunate enough to work with our spearhead, Mr. Scalise here, in the forming of this. And I had, clearly, great concerns. But not only do I feel that we have the responsibility to legislate here regarding this incident, the *Deepwater Horizon*, I lived through it, because my community is on the Gulf of Mexico, and I have nine coastal counties.

One of the things that I want to make sure—because we keep talking about restoration and restoration, and as we talk about the RESTORE Act both in this committee and any other committee of oversight, I want to make sure that those of us who worked on the committee, especially those in Florida, recognize that there is a balance between the environmental damage and the economic damage.

Now, I know we are going to have another panel after this one that will delve into that. But I am fortunate enough, you know, because of—Mr. Farenthold talked about the currents. We benefit from those currents, even though he is hurt by those currents, because I live on the Emerald Coast. It has the prettiest beaches in the world. So you know, we—our damage was economic.

And so, when we talk about restoration, I would just ask all Members that are in attendance, and those that are perhaps watching this hearing to expand the definition and the purpose of restoration beyond environmental. It seems like every question here today has been focused on environmental. And I am telling you that I represent those nine counties. And how the effect of that wave of that economic damage went northward, we must also understand that there was significant economic damage to the small businesses. Thus, those economic damages continued to compound into the local and State governments that—and the cities that we live in.

So—and the environmental cost—or, excuse me, the opportunity cost. It wasn't just the actual cost or loss of dollars, but it is the opportunity cost of what those dollars that weren't there prevented us from doing to better the plight of our citizens.

So that was just a comment. I didn't get a chance this morning, because there wasn't room on the panel, but thank you for submitting for the record these reports. And I yield back.

Mr. GIBBS. Thank you. That is our questions for this panel, but I just wanted to make a couple comments—

Mr. YOUNG. Mr. Chairman?

Mr. GIBBS. Oh, I am sorry. Mr. Young.

Mr. YOUNG. Just don't forget me. You know, I used to sit in that chair. How time flies.

I just want to make—I do support this legislation. The gentleman is absolutely right, that the lack of results to the economic loss to a lot of our small communities in Alaska—I lived through this. And my biggest concern is some of the money that we filed

against Exxon—it took us a long time to get that money to us—I think was misused, not for the communities. We made a big mistake because we set up an organization that supposedly was to address some of the economic issues, but mostly environmental issues, and they ended up buying land, private land. That was not the appropriate thing to do.

So, OPA wasn't perfect. I worked on that legislation. And I would like us to look at OPA. I think this is part of the solution. Mr. Scalise, I thank you for this legislation to make sure that the communities—because we hear a lot about the environment.

If we leave God alone, the environment will do what it should do. And we will probably mess it up. And a lot of the areas in Alaska now, we “cleaned the environment up,” we killed the environment. We have dead areas where we use hot steam and soap and all that sort of thing. And we should have left it alone. We go out to muddle around in the bayous, cleaning up stuff that you know and I know that is natural to begin with, then we have a challenge to ourselves. Because are we doing better? I don't think we are.

But the people that live there, yes, maybe they will get some money if they have a few claims to file. They may get some back, I don't know. Some of them rejected, probably rightly so, but maybe not. But we got to look at the total economic package of the coastal States, and the effect upon it. And communities, small and large, were hurt. The money that comes from the so-called fines should not just necessarily go to the Government.

Now, I do believe the trust fund should be re-established, Mr. Chairman, and to a point where there is enough money when something does occur. I do believe that very strongly. But let's not forget those individuals. And I think this bill here has got great merit. It may have some mistakes as far as, you know, setting precedent—I don't believe in precedent, by the way. Everybody says precedent. The precedent is set here in Congress, it is not set into law.

And so, I do congratulate the gentlemen and those from coastal States who understand what they are going through and what their communities are going through.

So, Mr. Chairman, as we go through these hearings and find out why and yes and no, let's get a little broader mind. Because when we passed OPA, it was the first time we had ever had an incident like this. And I take great pride in that bill, although I don't think it is perfect. I think we ought to build on that bill with this bill, and we will solve the problem. With that, Mr. Chairman, I yield back.

Mr. GIBBS. Thank you. And I want to thank the panel. I do want to make a quick comment. As an outsider from the gulf coast region, I think as an American taxpayer, all taxpayers, we are thankful that the parties involved in this disaster have had the resources to make restitution and not put the hook on American taxpayers.

So thank you for being here, and the committee will be at ease while we excuse this panel and bring up the third panel. Thank you.

Mr. LANDRY. [presiding.] The hearing will be in order. I would like to first introduce our first—first one to make comments would be Mr. Julian MacQueen, chief executive officer of Innisfree Hotels.

Mr.—I know you got a flight to catch, so Mr. Graves was kind enough to let you go first. So that is kind of why we are working a little bit out of order. So you have 5 minutes, sir.

TESTIMONY OF JULIAN MACQUEEN, CHIEF EXECUTIVE OFFICER, INNISFREE HOTELS, INCORPORATED; GARRET GRAVES, CHAIR, COASTAL PROTECTION AND RESTORATION AUTHORITY OF LOUISIANA; HON. ROBERT CRAFT, MAYOR, CITY OF GULF SHORES, ALABAMA; BILL WILLIAMS, COMMISSIONER, GULF COUNTY, FLORIDA; ROBERT H. WEISBERG, PH.D., PROFESSOR OF PHYSICAL OCEANOGRAPHY, UNIVERSITY OF SOUTH FLORIDA; AND MICHAEL C. VOISIN, MOTIVATIT SEAFOODS, HOUMA, LOUISIANA

Mr. MACQUEEN. Well, thank you very much, Mr. Chairman and members of the committee for inviting me here today to share my experiences with the most damaging economic disaster to take place in the United States since the Three Mile Island nuclear meltdown in 1979.

I have been in the hotel business all my life, starting as a busboy in the Fort Walton-Destin area at 15 years old, and I founded Innisfree Hotels 25 years ago with the development of an 88-unit hotel in Mobile, Alabama. I spent every cent I had to open the hotel and to develop the property and to hire my staff. My initial guests actually had to make their own beds until I had enough money to pay the housekeeping staff.

Today, Innisfree is the largest hotelier in the Florida-Alabama gulf coast area, and the largest employer and taxpayer on Pensacola Beach. We own and operate 12 properties with 1,640 rooms and condominium units in Florida and Alabama. We employ 800 people in the peak season and 625 people in the off season. We have a combined payroll in excess of \$12.5 million. We pay in excess of over \$2 million annually in lodging and sales taxes. And we pay in excess of \$3.2 million annually in real estate taxes and lease fees.

Our beachfront resort hotels in Orange Beach, Alabama, and Pensacola Beach, Florida, were at the epicenter of the BP Horizon oil spill that hit the Alabama-Florida beaches. I was attending a hotel owners conference when the news broke out of the explosion and the spill, and immediately rushed home to implement our disaster preparedness program.

Those of us who live on the gulf coast are well experienced with natural disasters. For example, I lost seven hotels in one night during Hurricane Ivan in 2004. And one of those properties was the first to open up after the hurricane passed.

But nothing I had experienced prior prepared me for the oil and the Corexit dispersant that drifted unabated from the spill. This toxic brew fouled our waters and blanketed our formerly pristine white sugar beaches with a thick oil and weathered tar balls. We watched with amazement, as did the world, at the lack of a plan from BP to control the spill, and later to clean up our beaches.

Cleanup efforts were initially undertaken by people in blue jeans and tee shirts who raked and shoveled the sludge into bags wearing no safety clothing. It evolved painfully slow over weeks of experimentation to finally teams working in hazmat suits with so-

phisticated digging and sand and oil shifting mechanical equipment. The airborne fumes from the oil in our waters was so strong that it burned the eyes and the lungs, and our hospital emergency rooms treated 100 percent more respiratory problems in July of 2010 over 2009.

We have had many major oil mats shifting, sitting on the oil of—the floor of the gulf, just off our beaches, that even the smallest storms wash ashore. Presently, our beaches need constantly cleaning and renourishment.

This disaster could not have come at a worse time, economically. We had just suffered through 2 years of recession, and through the first 4 months of 2010 we were bracing for a record year. Unfortunately, however, while the rest of the Nation enjoyed a record summer, we enduring the trauma of a season without any tourists.

We make 70 percent of our money in the summer. And this hit just 1 month away from the commencement of our peak season. It was much worse, economically, than a hurricane, which typically hits at the end of the summer or early in the fall, after the hotels and our seasonal employees have made the money they need to carry themselves through the winter.

The phones stopped ringing as soon as the oil spill occurred and the people watched the oil 24 hours a day, 7 days a week, gushing to the gulf and floating our way. Our hotel sat at the epicenter of the spill coming ashore on the Alabama and Florida beaches. And the media coverage went on and on. National TV networks set up live broadcasts from our Hilton Hotel on Pensacola Beach, and I was interviewed by everyone from Sam Champion to Joe Scarborough, and from the Wall Street Journal, even to Al Jazeera. Our beaches were black from oil. The negative publicity was overwhelming and relentless.

I went into a deep depression, thinking I had lost everything I had worked for my entire life. And there was nothing I could do about it. I have quantified—we have quantified that the negative free media exposure from May to December 2010 for just Pensacola Beach alone had an advertising equivalency in excess of \$90 million. This is negative publicity.

We survived by cutting staff and expenses to the bone from day one of the spill. Hundreds of conscientious, hard-working employees were denied work in those prime summer months from which they made their primary earnings for the year. We were favorably surprised when BP stepped up and started immediately funding emergency payments. We can argue over the methods, and whether or not everyone had been completely made whole by the BP claim process. But we cannot argue over the godsend of that initial payment.

But I cannot stress enough that the long-term impacts of this disaster are not over. We have documented that many of our historical core customers have not returned to our hotels. For example, our Pensacola Beach Hilton Hotel has lost over 50 percent of the premium Hilton Honors guests. These are premier travelers who stay—who can stay anywhere on the points that they earn on their travel points program. The core geographic market from which our guests come have changed.

We know that over 50 percent of the gross revenue increase in 2010 over 2009 from our Pensacola Beach Hampton came in from 95 markets from which we have never had a guest, while the number of guests from our traditional markets have declined. Many of our core customers went to other locations and have never returned. We know that some of our customers went to Myrtle Beach, for example, which had a remarkable summer in 2010.

Along with—although the region was blessed with an above-average summer this year, we remain very concerned that it is not sustainable. This increase, which did not come from our core customers, was primarily driven by advertising grants to local communities by BP. A very sophisticated BP Web site and social media campaign involving Facebook, YouTube, Twitter, as well as \$170 million BP spent in national advertising and promotion has helped us recover somewhat for 2011. Our convention and visitor's bureaus received three grants in excess of four times their normal operating budgets. And our guests increased. BP continues to operate a very sophisticated Web site and social media campaign, encouraging people to come for visits.

Full economic and economic recovery of the gulf coast is directly tied to the use of monies received from the fines paid by BP for the barrels of oil they spilled. We still need beaches cleaned and re-nourished. We still need better preparedness plans by the oil companies working with the Federal, State, and local governments. We still need more research and better methods involved in the identification and removal of oil mats in the gulf before they come to shore. We still need more research and a better understanding of the long-term impact of our seafood, its ecosystems, and our wetlands. And we still need significantly greater marketing and advertising dollars.

In conclusion, I urge you and your colleagues to support the Restoration Act. Our States, our counties, cities, and convention and visitors bureaus need these funds as soon as possible, and with the greatest flexibility, in order to maximize their effect, based on local needs. I urge Congress and the administration to make sure that the funding from this legislation benefits the full range of economic and environmental recovery efforts, such as tourism, ecotourism, tourism-related economic development, the gulf waters, seafood, and wetlands.

Thank you again for this opportunity to share my story.

Mr. LANDRY. Thank you, Mr. MacQueen.

And now Mr. Garret Graves, the chair of Coastal Protection and Restoration Authority of Louisiana, someone who I have a tremendous amount of respect for, and understands coastal issues, regardless of whether you are in Louisiana or along the gulf coast.

Mr. Graves.

Mr. GRAVES. Congressman Landry, Congresswoman Napolitano, thank you very much for the opportunity to be here today. It is a good seat for you, sir.

I want to thank Congressman Scalise for introducing this bill. But I think it is unfortunate that we have to be here today under these conditions, in response to the *Deepwater Horizon* oil spill.

The *Deepwater Horizon* oil spill caused extraordinary impacts to the gulf coast. Nearly 1,100 miles of the gulf coast and all five Gulf

States were oiled. Approximately 75 percent of the heavily and moderately oiled shore lines were in the State of Louisiana. Further, in the State of Louisiana we have had over 300 marine mammals such as dolphins, whales, and other species that have washed up on our shore lines and have been found oiled with fingerprint from *Deepwater Horizon* since the beginning of this oil spill.

Just last month, Mr. Chairman, we removed 1 million pounds of tar mats from one beach in your congressional district that were previously unknown to exist. This oil spill is very live, very real, and very much impacting—continuing to impact our citizens today.

This oil spill compounded the extraordinary impacts from the hurricanes we have had along the gulf coast. In the last 7 years we have had—as I recall, I believe it is six of the most disastrous hurricanes in our Nation's history in regard to property damage. And this oil spill has compounded those efforts.

It is important to recognize that the gulf coast is fundamentally different from many other coasts in the United States. The gulf coast is a working coast. Mr. Chairman, I know you are aware that the five Gulf Coast States cumulatively represent the seventh largest economy in the world. The gross domestic product from those five States represents approximately \$2.5 trillion. Fifty-four percent of the Nation's oil, fifty-two percent of the Nation's natural gas, forty-seven percent of the Nation's refining capacity, and nearly fifty percent of all international commerce comes through our gulf coast through our port facilities, where 13 of the top 20 ports in the Nation are represented.

In addition to that, on an annual basis, approximately 1.4 million pounds of commercial seafood landings come from the gulf coast. It is one of the most productive estuaries in the world, and certainly the most productive in North America.

Mr. Chairman, this area is absolutely vital to the Nation. Even on the recreational fishing side, about 31 percent of the recreational fishing trips in the United States occur on the gulf coast. And those anglers are so good that they bring in about 44 percent of the recreational fishing landings in the United States.

The RESTORE Act is designed to fulfill recommendations of Secretary Mabus that was appointed by President Obama to develop a long-term recovery plan. It is designed to fulfill recommendations by the National Oil Spill Commission that was appointed by the President and had bipartisan leadership and former Senator Graham of Florida and former EPA administrator under President Bush, Sr., William Reilly. It was designed to respond to the Gulf Coast Ecosystem Restoration Task Force recommendations that recommended that these funds be returned to the gulf coast. And it is responsive to comments by the President, who endorsed, as you noted earlier, Congressman, who endorsed the concept of returning these dollars to the gulf coast.

I heard comments earlier regarding—and perhaps confusion—regarding the fact that this bill perhaps would cause an overlap through existing remedies that are provided under the Oil Pollution Act in 1990. And I want to clarify some statements that were made there that I think are very, very important for folks to recognize.

Number one, if these were duplicative or overlapping penalties if they were returned to the States, or if this was an overlapping remedy, why would they have been included in the same legislation? Why would the responsible parties be asked to pay both NRDA, economic, and these penalties, if they are overlapping or duplicative? These were done in the same year. These were all done in 1990 in the OPA bill. These are not duplicative. These are absolutely complementary penalties that are deterrents from causing environmental damages. I think it is important to keep that in mind. They are in the same statute. And so, if anyone would call those duplicative, I think that the Congress should review that. But certainly that is not the perspective of the State.

Number two, and perhaps the strongest point, Mr. Chairman, is that if these funds are not returned to the Gulf States, that means that the Federal Government profits from these funds from the responsible party. Why should the Federal Government profit from the Gulf coast loss? I don't think that is an appropriate policy approach. The Clean Water Act fines are complementary to the NRDA process. They are complementary to ecological restoration, and they supplement that process. They don't replace; they are in addition to.

Lastly, Mr. Chairman, the Clean Water Act is an environmental statute. These fines are environmental-related. They are based upon volume of oil. They are based upon the impact that oil caused. And I think that these fines should be returned, based upon these environmental impacts, as the spirit of the legislation—excuse me, of the law—intends.

I also heard, Mr. Chairman, that the redirection of these funds could cause gaps in the Oil Spill Liability Trust Fund, and I heard some very disturbing comments related to that. The Oil Spill Liability Trust Fund is designed to be a gap filler. It is not designed to be the bill payer for oil spills. Just like when I go drive a car, I have to have car insurance. And just as an operator is out there producing energy in the Gulf of Mexico, they should not be producing without the financial resources to address disasters such as a spill. And the trust fund was never set up to be the sole bill payer.

Billions of barrels of oil, trillions of cubic feet of natural gas have been produced in the Gulf of Mexico without a spill. This spill was an anomaly. And based upon some of the analyses that have been done, there appears to have been gross negligence on the part of the operators, and it appears that perhaps oversight activities were not as robust as they should have been.

I think it is important to recognize the comments that the director of the NPFC made on the second panel. He said that the balance of the trust fund today is the highest it has ever been. And this legislation does not take all of those funds. It does provide, under a worst case scenario, an additional \$1 billion, increase in the balance of the trust fund by 50 percent, and perhaps increasing the balance of the trust fund by over 200 percent of its existing balance. And it could be more.

The RESTORE Act—and this is another, I think, issue that was confused in some of the statements made earlier—the RESTORE Act simply improves upon the existing process known as SEPs,

supplemental environmental projects. This is a fundamental component of virtually all settlements that are administrative settlements or judicial settlements. These projects are included in settlement negotiations with the responsible parties. They exist today. It has been happening for several years, hundreds of cases in all EPA regions include supplemental environmental projects. And in effect, what this legislation does is it takes the decision for how those funds are spent away from the responsible party, and gives it to the public, to the State governments, to the local governments, and to the Federal agencies that are responsible for the trust resources.

Mr. Chairman, I think that is really important to recognize, that this is not a—that this is simply improving upon the current supplemental environmental project process. And I don't think that we should discriminate against the gulf coast by taking that away.

Finally, Mr. Chairman, I want to note on the behalf of Louisiana that the State is committed to investing these resources and resiliency efforts to help ensure the resiliency of coastal Louisiana against future hurricane damages and future disasters, to help ensure that the gulf coast may continue to be an extraordinary component of this Nation's economy.

Thank you, Mr. Chairman. Be happy to answer any questions.

Mr. LANDRY. Thank you, Mr. Graves.

Next, Mayor Robert Craft from the city of Gulf Shores, Alabama. You have 5 minutes.

Mr. CRAFT. Mr. Chairman and members of the committee, thank you for inviting me to testify today. First, let me state again how much the coastal residents along the Gulf of Mexico appreciate your interest in our region, as you consider the RESTORE Act. I believe the RESTORE Act contains requirements for eligible spending, which will ensure the American taxpayer an annual return on this investment.

As mayor of Gulf Shores, Alabama, a coastal city located directly on the Gulf of Mexico, we work closely with our sister city, Orange Beach, to support and enhance a dynamic beach tourism industry. In 2009, we hosted 4.6 million visitors on just 32 miles of sugar white sand beaches. This provided direct spending of over \$2.3 billion, creating over 40,000 tourism jobs.

In the pre-spill first quarter of 2010, our lodging tax, the only accurate measure of tourism performance, was up 17 percent in Gulf Shores alone, indicating the promise of a record year. If two cities in one county with only 32 miles of beaches and in just one of the gulf's many industries had this much at risk, consider the cumulative threat to the thousands of miles of gulf between Florida and Texas.

Ports along the coast struggled during this time to deflect the assumptions by many that they would be closed to traffic. The export-focused ports along the gulf coast are important to many sectors of the U.S. and local economies. Add to that the billions of dollars and thousands of jobs created by the gulf's oil and gas industry, as well as the commercial seafood harvesting and processing industry, and you understand the value of the coastal gulf to the Nation's economy.

On April 20, 2010, with the tragic events resulting in the *Deep-water Horizon* accident, our world changed, most probably for years

to come. All of our gulf-related industries came to a halt. Areas of the gulf were closed to all activities. Vacations were canceled, jobs were lost, and many small businesses with generations of history closed.

As the oil spread throughout the gulf, so did the impact on the entire gulf economy and reputation. In South Baldwin County alone, tourism dollars in July, our busiest month, were down nearly 70 percent. Also in July, when large areas of gulf waters were closed, our seafood landings were down an unbelievable 97 percent. Surveys confirmed that 75 percent of people nationwide had significant concerns regarding the safety of gulf seafood. Those safety concerns, along with major reputational damage for the entire gulf, resulted in many lost customers and business failures.

2011 was a much better year for our coast. Tourism and seafood were beginning to recover. But we all must understand why. BP funded \$179 million in tourism grants and commitments. BP also funded \$72 million for seafood testing and additional marketing. In addition, BP spent untold millions on protecting their brand and promoting their reputation with broad media ads touting the recovery and safety of the beaches and seafood. This dramatic increase in marketing is the main reason we had a good 2011.

2012 and beyond remain a serious question, since no such commitments from BP exist, going forward. When BP leaves, the future is up to us. And there are still many unanswered questions. As analysis continues on the safety of our gulf, we wonder. Will there be any future unknowns that affect the marketability of our products? Will the oil or dispersants destroy our juvenile population of seafood? Will our small businesses and fishermen survive? The businesses that are still here—and many aren't—have seriously depleted reserves. This loss of reserves, combined with damaged access to credit and any future impact, be it more spill effects, further economic downturn, or a tropical weather event—and we will certainly see more businesses close.

The entire gulf coast economy faces a continued threat from providing the energy resources that the Nation demands daily. But even with this exposure, which has a magnitude that we now all grasp, I believe the majority of us on the coast completely support continued safe drilling in our gulf, and encourage aggressive efforts to create energy independence for our country.

All we ask is that, as those who are negligent are fined, the fine money be directed to the coastal economies that were damaged. This will allow us to recover and to continue to generate tax dollars each year to the benefit of all Americans. The RESTORE Act contains strict requirements for eligible spending. These appropriate restrictions will ensure the American taxpayers will receive an annual return on investment.

There is no doubt that the gulf coast is of vital national importance. The ports, the seafood industry, the energy industry, and tourism all provide benefits to the entire country. It is absolutely in the Nation's interest to ensure that the gulf coast is able to boost its resiliency. Thank you, sir.

Mr. LANDRY. Thank you, Mr. Mayor.

The next panelist will be the Honorable Bill Williams, Gulf County, Florida.

Mr. WILLIAMS. Thank you, Mr. Chairman. On behalf of Congressman Mica, and certainly yourself, as the chair, I appreciate the opportunity. My name is Bill Williams, and I am a Gulf County commissioner of a small county located near Panama City in Apalachicola, less than 20,000 people. But I am also the president-elect with the Florida Association of Counties, so I have the opportunity to work with all 67 counties in the impact to our State, and as a system.

I have a script that is here, and you all can read with it. I think the issue here is that we don't need a script. I certainly don't, because we lived this for 2 years, and in the process. I have testified in front of Congressman Issa with the Oil Pollution Act responsibility, and how we have been paralyzed.

If I could take the picture that we have all heard today—and my congressman, Steve Southerland and Congressman Miller have hit it right on the head—this is about giving us a chance to pull back in. This is not a handout. This is not moving dollars that should be shifted back into the trust funds there. These five States were grossly impacted by the acts and negligence of others. We have been held, from the very beginning as local officials, paralyzed by OPA.

Congressman Young hit it very clear to me a moment ago. It was what they had at hand in 1990. And there were certainly excellent opportunities and things written in that. We have to make the changes that make us whole. The folks that I sit beside and the folks that are working, everyone is working hard. We have got different trust funds, trustees, everyone working. But what I want you guys to—and ladies—to understand is that it is so fragmented.

Right now, for example, in the NRDA process, if you look at what is happening within our States, each State received \$100 million, each State has a trustee that has the ability to overlook it. And they are doing yeoman's work on that process. As a local official in the State of Florida, we have sunshine laws where everything is accountable and transparent. I cannot look at what those NRDA projects are behind the scenes, because of confidentiality agreements with BP. To me, that is not acceptable in the process.

What I ask this committee to do is we understand—I can sit here and tell you the oystermen in Franklin County, their resources, their ability to make a living were devastated. You have heard this from the different Members that are here. I have an aquatic level one preserve in my county with scallops, one of the few areas in it. As Steve indicated, he has got different counties with coastal areas. This is about economics. And you do hear a lot about the issues of the different States. Louisiana, by far, took it on the nose on the environmental side. My State took 2 million pounds of product in Escambia County, 400 pounds of product in my county. We have product. And if we had the last tropical storm—I am still getting tar balls and tar mats that are coming there.

So, I think I would ask this committee to understand that there is a balance between economics and the economy that we have got to do. These funds and this transfer of dollars, instead of going to the general trust fund, will empower and allow our folks to come in.

President Obama sent in the Chamber of Commerce I would probably say maybe, I don't know, 6 months into the event. They did excellent work, drilling down into the counties that I serve with. But I don't know where that data went. How are we going to take that template and show that there is no redundancy on the environmental and on the economic side?

But this is an opportunity to put our citizens back to work, protect our shores, and have best practices that never happen again. So I ask that you hear our hearts, as much as our dialogue, and the fact that we were paralyzed. We do need best practices to review. OPA needs changes in the process that occur. We need these dollars to make sure that the research is done.

All of the services and all of the academia and all of the research is very fragmented. There is no central clearinghouse where we, as non-scientists, can make interpretations and give to our citizens where things are. I hear reports of fish with skin lesions, or I hear the shrimp industry is not there. I see what it is. We need your support in bringing all those academic and scientific—to come to us, where we can make decisions and work with the oil industry to have best practices and change OPA, that local officials are never empowered.

But as my congressman said, and certainly Congressman Miller, the economics cannot be forgotten here.

And I appreciate your time, Mr. Landry, to allow me to speak from a local perspective, because I think it is critical that you are our partner, the State is our partner. I have got a Governor that wants to move jobs. And we need your help to be able to do that.

Mr. LANDRY. Well, thank you. And I can tell you—I sit right next to your congressman on both this committee and in Natural Resources. And this is something that is very important to him. And I believe that he is committed to fulfilling everything that you requested here today.

Mr. WILLIAMS. Thank you, sir.

Mr. LANDRY. Next we will have Dr. Weisberg, University of South Florida.

Dr. Weisberg, you have 5 minutes.

Mr. WEISBERG. Thank you. Honorable committee members and guests, it is my privilege to comment today on H.R. 3096. My testimony will be somewhat different, because I am going to focus on the Gulf of Mexico, itself. I guess I am going to focus on the 5 percent of the bill, instead of the 95 percent of the bill.

While the *Deepwater Horizon* spill continues to be costly, I concur with the recent NRC report that the full impacts of the spill are unknown, and will be expressed over years to decades. I also question whether H.R. 3096 will facilitate definitive answers to the questions being posed. I will attempt to explain shortcomings and offer suggestions for improvements.

H.R. 3096 is precise, administratively, but imprecise on how the ocean system works. For instance, fish neither organize like regional councils, nor by State and Federal water boundaries. The Caribbean, Gulf of Mexico, and southeastern United States are not separate marine ecosystems, because they are connected by the Loop Current, the Florida current, and the Gulf Stream.

Similarly, while 3- or 9-mile limits distinguish State from Federal waters, fish spend their life histories in both of these regions. Ecology is, therefore, all about connectivity, connectivity in space, time, and across trophic levels.

Ecology begins with the ocean circulation, uniting nutrients with light, fueling primary productivity, and distributing water properties. This demands that the Gulf of Mexico be studied as a system if we are to better understand how it works, assess damages to it, and facilitate and improve environmental stewardship.

An automobile provides an analogy. With mechanical, electrical, and fuel systems, an automobile cannot be fixed if one does not know how its pieces work individually and together, as a system.

Referenced throughout H.R. 3096 are projects and programs that would restore and protect natural resources, ecosystems, fisheries, et cetera. Toward this end, the plan is to incorporate the President's Gulf Coast Restoration Task Force report, which lists four goals and actions. These actions, however, are mostly directed toward regions peripheral to the Gulf of Mexico versus the Gulf of Mexico itself. As such, the actions cannot achieve the goals.

For instance, beach water quality may have nothing to do with local inputs. Instead, water quality may be due to the transport of materials from points distant from the beach. Red tide offers a case in point, as does the movement of Gag Grouper larvae. The reality is that few coastal ocean processes are local. Most entail remote connections.

If these connections are not understood, then the goals cannot be met. Even the progression of oil deposition on the gulf beaches followed predictable connectivity rules. But these concepts are neither included in the task force report, nor in H.R. 3096. Whereas, a robust scientific foundation as referenced, the basis for that foundation is missing.

The shortcomings discussed above are echoed in the NRC report which states, "A mechanistic understanding of and model for complex linkages and interdependencies of the ecosystem being studied would be of immense value in analyzing ecosystem services."

The coastal ocean is particularly important, because that is where society meets the sea. How it works must be understood, if we are to predict the consequences of human actions and distinguish these from natural occurrences. Such understanding comes through observations and hypothesis testing. Hence the need for a coordinated program of ocean observing and modeling. Only in this manner will we be better prepared for future accidents, or become better environmental stewards.

Fisheries provide a focal point. If we can understand fisheries, then we can make application to other topics. In other words, to do fisheries right we must do all else right. All is predicated on understanding how the ocean system works, and the connections thereof. The problem is big, requiring coordination between observations and science-based models, many of which already exist. Benefit will derive from empowering those who actually pioneered such studies, and who have demonstrated performance through peer-reviewed publications.

We should sustain and systematically build upon what is scientifically defensible. But I am concerned about the level of fund-

ing. Five percent of the trust fund is to be split between the program and the fisheries and ecosystems endowment. The program will have five centers of excellence, each with foci within at least one of five enumerated topics. But of these five topics, only one addresses how the Gulf of Mexico works. Such dilution will negate having enough funding.

The fisheries and ecosystems endowment is also troublesome. We cannot understand the fish by merely studying fish. Instead, the fish must be viewed in the context of the system in which they live. The problem is one of State variable estimation with the fish being but one of many variables, and dependent upon all of them.

Two modifications are suggested. The first is to increase the percentage of money targeted at sustaining and building coordinated observing and modeling elements aimed at determining how the Gulf of Mexico works. The second is to remove preconditions, other than mandating that monies to be used in a scientifically defensible manner, to be developed by a science steering committee, selected from the academic community, organized through the NRC with input from the agencies. Plans must be generated by those most familiar with the science.

I appreciate the laudable intent of the task force, the agencies, and the drafters of H.R. 3096. With modification, we can provide a lasting legacy of benefit to the Gulf States and the Nation. Thank you.

Mr. LANDRY. Thank you, Dr. Weisberg.

And it gives me a great privilege to introduce one of my constituents from down in south Louisiana, a guy who is right on the coast who has seen firsthand the impact of this, not only environmentally but economically as well. Mr. Mike Voisin, Motivaitit Seafoods, Houma, Louisiana.

Mr. VOISIN. Thank you, Congressman. It is nice to have a congressman pronounce my name correctly. It is good to be with you today. My name is Mike Voisin. I am pleased to have this opportunity to appear before you today on several factors impacting the seafood production jobs in my home State of Louisiana.

In order to give you the most accurate perspective on this issue, I will be wearing my business hat. Since 1971 I have owned and operated Motivaitit Seafoods in Houma, Louisiana. My business is an oyster farming, seafood harvesting, processing, and distribution company. But my 40-year career in Louisiana fisheries goes well beyond that.

My family came to Louisiana in 1770, after having gotten kicked out of France and then kicked out of Canada, and then down to Louisiana. And hopefully *Deepwater Horizon* won't kick us out of Louisiana. I am a seventh generation oyster harvester and an eighth generation of my family is poised to take that business over.

2010 was an incredibly challenging and emotional year in the seafood community. We had over 40 closures and openings in our harvest areas, and a 90- to 120-day period, moving capital from one part of a State to another part of the State with closures, and throwing product back after closures would occur on a moment's notice.

Since 1982 I have served as a trustee for the Gulf and South Atlantic Fisheries Foundation and the Southeastern Fisheries Asso-

ciation, and the National Fisheries Institute, among other organizations. The Gulf of Mexico and the State waters associated with it produce one-third of all domestically caught fisheries production in the United States. And in my association with each of these organizations I have advocated for developing a strong and sustainable commercial fishing community. That is why I am here today in support of RESTORE Act, H.R. 3096.

The Louisiana seafood community has faced its share of environmental and economic challenges in recent years, most notably with the horrific hurricane seasons of 2005 and 2008, the *Deepwater Horizon* spill in 2010, and this past summer severe Mississippi River flooding. Fishing is a livelihood that has been under attack from environmental regulations, natural disasters, and resource depletion. In the absence of concerted action, this oil spill could be one of our challenging blows for the fishermen and the processors in the Gulf States.

First, it is imperative to recognize the natural resources of our culture and heritage has relied on to feed families for many generations is not something you can put a simple dollar value on. It is a tradition that has been threatened. It has forced U.S. fishery production into a downward spiral. In my written testimony I have included two charts provided by the National Marine Fisheries Service that outlines employment in both recreational and commercial fisheries across the gulf from 2006 to 2009.

Secondly, Louisiana's economy is highly dependent on a strong seafood supply chain. And under current law, the natural resource damage assessment that has been spoken of today a lot can take anywhere from 10 to 20 years before efforts can begin addressing recovery needs for our natural fishery resources. This is time in the seafood community we simply do not have.

Al Sunseri, a good friend of mine, owner of P&J Oysters, is also a competitor. I welcome his competition to keep our community healthy and compete in a global marketplace. But he is struggling. He can't supply all his wholesale customers because production is down by an estimated 50 percent. Next year's projections point to an oyster harvest equivalent to 35 percent of what we had been producing. His workforce will likely absorb the impact of the decline in sales. Our future is uncertain.

The only way to move forward is to calm the waters of fear in the fishing community, first and foremost by passing the RESTORE Act. The gulf coast claims facility is the first step, but it is plainly not enough to help ensure our community's survival over the medium and long term. The RESTORE Act will provide funds more quickly to respond to rebuilding those areas that our resources need to be able to thrive, once again.

At a time when Congress is justifiably looking high and low for measures to assist in job creation and generate real economic recovery, the RESTORE Act is a concrete immediate step that could be taken to do just that. I urge you to act quickly in the passage and implementation of this very important act. Thank you.

Mr. LANDRY. Thank you, Mr. Voisin. And I am going to let my southern manners get the best of me and allow the Ranking Member, Mrs. Napolitano, to ask the first series of questions. Mrs. Napolitano?

Mrs. NAPOLITANO. Well, and that is very kind of you, sir, and I really appreciate it. I would like to start off with Dr. Weisberg.

In your testimony you discussed the need for more monies to be dedicated to research and monitoring in the gulf to better assess long-term damages and ensure restoration dollars are better spent. You also mentioned the preconceptions and preconditions about how this money should be spent, how they should be removed. Can you explain what you mean in a little more detail?

Mr. WEISBERG. Yes, thank you. I guess, said succinctly, we cannot restore—when I say “restore,” I see there are two elements to this bill. One is economics and the other is, say, ecological. And I am referring to the ecological.

We cannot restore what we don't understand. We don't understand how the Gulf of Mexico works, as a system. The science isn't there. The long-term observations are not there. We have no baseline, for instance, of what to restore to. And so I am very concerned that the bill has a lot of language like “ecology,” like “restoration,” like “fisheries,” but with no definition on how to actually go about doing that.

And given the 5 percent of the monies that are to be apportioned, half in one way, half in another way, and a dilution within that apportionment, I just don't see how there is enough money to do what needs to be done.

Mrs. NAPOLITANO. OK. But I am not sure whether there are any universities doing any studies to be able to understand, especially along the gulf coast, to be able to have some of that information. I am sure some of them have already made some attempt to be able to study the gulf, the sea, the things that—because I know we have with—for rivers dams, an organization of universities that are doing those studies for those. Is there—there isn't any such thing?

Mr. WEISBERG. No, there certainly is. I don't mean to imply that there is not. There is. However, the way in which these programs are operating are not aimed at determining how the Gulf of Mexico works, as a system. They are stovepiped. And so we have never really approached the Gulf of Mexico the way it really needs to be approached.

Mrs. NAPOLITANO. OK. But is there a concerted effort, then, to be able to understand? If there is already studies, and you can then line up the impact this has had on identifying how it was versus how it is and how it should be.

Mr. WEISBERG. Those studies are going on. But they are not comprehensive enough, they are not sustained, and they are not geared to really come up with the answers that we need, going forward.

Mrs. NAPOLITANO. Then I can understand that, because I have been involved with other kinds of studies because I am ranking member in water and power, and we deal with some of these studies for—through the agencies, Natural Resources.

But—and I can understand there is never enough money for the R&D. That is a given. So somehow we need to be able—I don't know whether this bill has any segment in there to be able to say we need to know more about—with the R&D. There is universities getting Federal money. Maybe that is one of the things we should impose upon them to study, especially those universities that are

in that area, and then come back and offer—a coalition of them—to be able to look at and add to your studies.

The second question, sir. Can you talk more about the potential problems you see in studying fisheries, but not studying them within the larger ecosystem, and how does this affect the value of the research that may be done?

Mr. WEISBERG. That is a very good question, and I appreciate that. Fisheries, historically, have been studied not as fisheries oceanography, but as fisheries biology. So the fisheries have been studied on the basis of the fish, and not enough on the basis of the natural environment in which the fish actually make their living.

And so, I mentioned that the Magnuson-Stevens Act has councils. Those councils have specific regionality. But the fish don't know that regionality. The fish live in the environment. States look within 9 miles or 3 miles. The Federal waters go out to the EEZ. Every fish we put on a sandwich actually migrates between the State waters and the Federal waters. And so the way that we have actually been studying our fisheries needs to be looked at again in a more comprehensive way, so that we are studying the fish as they truly make their living in the environment.

Mrs. NAPOLITANO. As an industry, as an industry.

Mr. WEISBERG. Yes.

Mrs. NAPOLITANO. Because it is an industry.

Mr. WEISBERG. Yes.

Mrs. NAPOLITANO. Are there any suggestions—very quickly and to the point—that you might make to make this bill a little better?

Mr. WEISBERG. Yes, that is—

Mrs. NAPOLITANO. Quickly.

Mr. WEISBERG. OK. I think that we need more money going into the R&D.

Mrs. NAPOLITANO. Right.

Mr. WEISBERG. And whether it comes out of this bill or it comes out of the NRDA process—

Mrs. NAPOLITANO. But not split.

Mr. WEISBERG. Right. And I also would not split it the way it is split right now.

Mrs. NAPOLITANO. OK.

Mr. WEISBERG. And I would like to see a different process come into place.

Mrs. NAPOLITANO. OK.

Mr. WEISBERG. I was a little disappointed after we met in the President's task force, and—

Mrs. NAPOLITANO. Thank you for your answer, and very quickly. And thank you for your indulgence.

Mr. Graves, in your statement you said the RESTORE Act is simply taking the supplemental and environmental projects—process under the Clean Water Act, and giving control of that process to the States. But as you know, there are provisions in the bill that would allow the Clean Water Act fines to be used for that purpose, beyond environmental restoration projects.

If we are talking about using these fines assessed under the Clean Water Act to restore the degradation of the gulf caused by the *Deepwater Horizon* spill, then wouldn't it be appropriate to limit the use of these fines, should we authorize it, to environ-

mental restoration projects, as you described, to protect tourism, ecosystem, et cetera?

In other words, should we not spend this money—should we not be spending this money, the supplemental environment project money, on things like casinos, conventions, et cetera?

Mr. GRAVES. Congresswoman, I think you make a very good point. And you are certainly more familiar with the sausage-making process than I am. I will just say that on behalf of the State of Louisiana we certainly would make a commitment to spend our money or limit our money, money's uses, as consistent with the existing process, meaning we would limit our—

Mrs. NAPOLITANO. But who determines—I am sorry, but I went over time—who determines how that money is spent at the State level?

Mr. GRAVES. As I recall—and I think in the case of the State of Louisiana—that would be determined by the CPRA through a public process. The State agency where I work, through a public process.

Mrs. NAPOLITANO. So there wouldn't be any legislators taking some of that fund to balance the budget and do some other things with it?

Mr. GRAVES. Ma'am, we have done a very extensive master plan prioritization process. It is based solely upon science. I couldn't tinker with it if I wanted to. And that would make the determination on the priorities.

Mrs. NAPOLITANO. That is what they said in California. Thank you, Mr. Chair.

Mr. LANDRY. You are welcome. My question—actually, I would like to start with Mr. Voisin for just a second, and then I have a question for you, Mr. Graves.

But this weekend I—and as I watched the SEC championship game I was able to procure a sack of oysters from a—off of a boat, purchased it off of a oyster boat. You don't—I mean you recommend that the gulf oysters are safe today?

Mr. VOISIN. Absolutely, Congressman. One of our real challenges today in the seafood community is that, generally speaking, the Gulf States get it, and they understand that there has been a lot of media, post-event, for 2 years—close to, well, a year-and-a-half now. But outside of that, the rest of the States have not had that same opportunity to keep up on all of the work that has been done.

All of the seafood that has been harvested in the States was always safe. There were significant closures, as I mentioned in my testimony, when there was even a hint that potentially oil would be in an area. All of the sampling that NOAA and FDA and the States did showed no hydrocarbon level increases at all of any concern that went beyond what would be considered an action level.

So, oysters, crab, shrimp, fish from the Gulf of Mexico are safe, they are high-quality, they are available. And the challenge today is getting back out in America and helping those individuals who have kind of shied away from it, remind them that it is a healthy way to go, and to eat more seafood from the gulf coast.

We are working at that. Congress gave a few dollars to the Gulf States Marine Fisheries Commission. We set up a Gulf States seafood and marketing coalition that I chair, and we are trying to re-

integrate ourselves back into the national market. But it has been a real challenge, Congressman.

Mr. LANDRY. And, of course, the viability of the commercial fishing industry, which—you know, I think it is important to recognize—and it has been said multiple times—the importance of the gulf coast economy to the rest of the Nation when, in fact, 30 percent of our domestically caught seafood comes out of that area. I mean that is a third of all of our seafood out of a relatively small area.

And so, I am sure that you are here today because you feel that this bill helps not only to move in a direction of restoration, but continued viability for both the seafood industry and seafood living in the Gulf of Mexico.

Mr. VOISIN. Yes, sir, Congressman. And as I said, you know, our family left France and some of them went to Canada and some of them came straight to Louisiana. We really don't want to leave Louisiana. One of our challenges is Louisiana is leaving us. And if we don't implement a lot of the restoration that is needed today in Mr. Graves's master plan, Louisiana will leave us.

And what will that do? That—most of the seafood that is produced in the whole Gulf of Mexico spends part of its life in the estuaries of south Louisiana. So that means that the food that feeds America, or part of the food that feeds America, will not be able to be produced, as we lose that coastal estuary. We need to restore it and maintain it, so that we can provide that viable seafood production in south—in the Gulf of Mexico.

Mr. LANDRY. Well, I thank you. I have eaten my oysters last week, I am going to have shrimp stew this week.

Mr. Graves, could you expand your comment on gap—the gap filler comment that you had made earlier?

Mr. GRAVES. Yes, sir. The Oil Spill Liability Trust Fund, I—it is our view that it is not designed to be the single bill-payer for—in response to oil spills. I mean that is the responsibility of the responsible party. That is the liability of the responsible party.

I think just as if my neighbor was carrying out some irresponsible activities and had threatened to burn down my house, I wouldn't sit there and stockpile money in a fund, ready to respond to my house burning down.

Just as—let me put it this way. I mean the Cuba comment was brought up earlier. The Oil Spill Liability Trust Fund, the funds are in there derived from domestic producers. I don't know that it is their liability for what goes on in Cuba. And I think an analogy there would be that we have a threat from an ICBM being launched from China to the United States. We don't sit there and put money in a trust fund, waiting to come in and clean up the damage from the missile. Instead, what we do is we have bilateral negotiations. We take proactive steps, in terms of missile defense systems or regulatory oversight, in the case of offshore production.

And I think that you have a deterrence issue, as well, and I think that is the—in the case of domestic production, the fines.

The reality is that the best use of those funds is making proactive mitigation investments. And that is what this bill is trying to do. And in the case of Louisiana, we want to restore our coast, we want to restore the fragmented marsh, so if there is an-

other spill or another hurricane, we are not going to have the damage that we are currently experiencing from the *Deepwater Horizon* disaster.

Mr. LANDRY. And one last comment before we just—we wrap up. Isn't it correct that putting these projects into play, especially in Louisiana, would help to further protect and make future—and hopefully we don't have to use that term “future spills,” no one wants spills to happen again—but should there—an accident, and we can't guarantee that it won't happen again—but if we spend this money wisely and implement the projects properly, we can actually help mitigate future cleanups through proactive means.

Mr. GRAVES. There is no question. I am trying to remember the exact number, but if you measure our coastline smoothly from Texas to Mississippi, it is about 800 miles. If you measure the tidal shoreline, meaning all the erosion—eroded coastline that has occurred in your district, Congressman, we actually have 7—800 miles of tidal shoreline, because of this gross erosion, this coastal wetlands loss that has occurred.

And so, when the oil spill came, we weren't fighting the oil or trying to stop the oil on 800 miles. We literally were trying to come in and protect 40 million feet of shoreline. There is not 40 million feet of boom in the world. And so you are exactly right.


And that is how Louisiana is committing to invest these dollars, is to restore our coast, and to put it back in a more uniform manner that would help to mitigate damages from future spills—and hurricanes, by the way.

Mr. LANDRY. Thank you, Mr. Graves. And I would like to again thank the panel for taking the time out of their busy day to come here and give us your testimony.

And this committee will now stand adjourned.

[Whereupon, at 12:17 p.m., the committee was adjourned.]

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**OPENING STATEMENT OF
THE HONORABLE TIMOTHY H. BISHOP, RANKING MEMBER
SUBCOMMITTEE ON WATER RESOURCES AND ENVIRONMENT
HEARING ON H.R. 3096, THE RESOURCES AND ECOSYSTEMS SUSTAINABILITY, TOURIST
OPPORTUNITIES, AND REVIVED ECONOMIES OF THE GULF COAST STATES ACT OF 2011**

DECEMBER 7, 2011

Mr. Chairman, thank you for holding this hearing on the Deepwater Horizon explosion and its aftermath.

As everyone knows all too well, the events of April 20, 2010, permanently changed the way we looked at offshore oil and gas development in this country, or at least it should have.

On that fateful day, eleven good men lost their lives, but the tragedy did not end there. For the 89 days that followed, Americans watched with both shock and dismay as oil continued to spew into the Gulf of Mexico, closing fishing grounds, killing marine life, and destroying the way of life for countless coastal communities.

We realized in real time, but also too late, that despite the enactment of the Oil Pollution Act after the Exxon Valdez spill, and despite years of planning, the Federal government and the oil industry were unprepared to contend with a spill of this magnitude.

In our rush to extract oil from deeper and deeper resources in the Gulf, we failed to develop technologies to quickly and safely contain and clean up a spill. In fact, while our extraction technologies have advanced dramatically allowing us to go to deeper and deeper waters, our technology to react to spills is essentially the same as it was twenty years ago.

As the oil continued to spill into the gulf, we also realized that the liability limits for damages were incredibly low – only \$75 million – when the damages from the Deepwater Horizon are likely to be in the tens of billions of dollars. The law governing offshore energy development, the Outer Continental Shelf Lands Act, made production a priority over public health and environmental protection, and the agency responsible for policing industry had become far too cozy with them instead.

These events should not have been a surprise as Federal agencies and stakeholders had been warning Congress of the deficiencies in the law for years. At hearings in this Committee, prior to the Deepwater Horizon disaster, we were specifically warned that we were ill-prepared to address potential “worst-case” releases of oil – and these warning, unfortunately, were proven true.

In the 111th Congress, this Committee and the Natural Resources Committee passed legislation to address the deficiencies in the law, as well as dedicate Clean Water Act penalties to ecosystem restoration in the Gulf. Unfortunately, our colleagues on the other side of the aisle opposed this legislation based on the premise that we should not act until the Presidential Commission and the Joint Investigative Team investigations were complete.

Those investigations are now complete and they reinforce the principle reforms and safeguards passed by this Chamber in the last Congress. In essence, we got it right with the CLEAR Act.

The Presidential Commission and the Joint Investigative Team have called for changes that would fundamentally reform offshore drilling regulations, significantly decrease the chances of future blowouts and ensure that both industry and government agencies are better prepared.

Unfortunately, it appears that these warnings will again go unheeded. After almost a year in charge, the Majority has not proposed one reform or one additional safeguard to prevent future oil spills. In fact, the Republican Majority seems to be more interested in expanding offshore energy development to pay for surface transportation, than considering comprehensive legislation to ensure that expansion will come with minimal risks to coastal communities and the environment.

It's true that some of the recommendations of the Commission and the Joint Investigative Team have been implemented administratively, however, many have not.

We still have statutory liability limits that are far too low. Our cleanup technologies are still inadequate, and we still have an Outer Continental Shelf Lands Act that elevates energy production far above environmental protection and does not balance drilling with the needs of the other industries that rely on the oceans and coasts. Moreover, while the administrative changes should not go unrecognized, we must understand that there is nothing preventing future Administrations from undoing or ignoring those reforms. This Congress has a responsibility to the people of the Gulf and the country to minimize the probability of future disasters by making permanent reforms.

Today, we will hear about the very pressing need to restore the ecosystem and the resiliency of the Gulf of Mexico. I don't think anyone would argue this is not an incredibly important task and one that deserves our support. Clearly, the Mabus Report commissioned by President Obama made it clear that the Administration supports the concept of dedicating Clean Water Act fines from this incident to that restoration.

However, we cannot ignore the fact that this incredibly difficult undertaking is one we should want to avoid in the future, whether it is in the Gulf of Mexico or elsewhere. As we discuss how to correct the devastation in the Gulf we should also be discussing how to prevent such devastation from reoccurring. If we address only the results and not the cause, we run the risks, as the Presidential Commission pointed out, "of real costs... in more lost lives, in broad damages to the regional economy and its long-term viability, and in further tens of billion of dollars of avoidable clean up costs."

Finally, the Majority's singular focus on costs this year cannot overlook the \$1.2 billion price tag of the bill before us today. As I stated, the support for ecosystem restoration in the Gulf is bipartisan and was highlighted in the yesterday's recommendations by the President's Gulf Coast Task Force. However, if we are going to remain consistent in our efforts to promote budgetary discipline, we must address the significant issue of how you pay for the bill, and how you offset the costs that accompany a diversion of Clean Water Act fines.

If the plan is further cuts to agency functions at the Coast Guard, the Corps of Engineers and the EPA, I expect you will see support for this effort diminished. If the Majority wants to discuss reductions in subsidies to Big Oil that made more than \$100 billion in profit in the first three quarters of this year alone, you may find more interest.

In closing Mr. Chairman, restoration in the Gulf is critical and necessary, but we should not ignore the opportunity to permanently reform our offshore energy development system to avoid a similar tragedy in the future.



Rep. Rick Larsen

Opening Statement

House Transportation and Infrastructure Committee Hearing

**“Restoring Jobs, Coastal Viability and Economic Resilience in the Gulf of Mexico:
H.R. 3096, the Resources and Ecosystems Sustainability, Tourist Opportunities, and
Revived Economies of the Gulf Coast States Act of 2011”**

December 7, 2011

Thank you Mr. Chairman, in the interest of time I will keep my remarks brief.

First, I would like to extend my sympathies to the eleven families who lost loved ones during the explosion and subsequent sinking of the *Deepwater Horizon* drilling rig early last year, and also acknowledge the many hardships endured by residents of the Gulf Coast whose lives and businesses were disrupted by the resulting catastrophic oil spill.

The *Deepwater Horizon* oil spill was one of the worst man-made environmental disasters our country has ever experienced. It will be years before we begin to genuinely understand the dimensions of this event and grapple with its human and environmental aftereffects.

For this reason, it is important for the Congress to keep focused on the big picture. If not, we risk throwing “good money after bad” which will accomplish little, if anything, of lasting substance along the Gulf Coast.

This thought brings me to the subject of our hearing this morning. As introduced, H.R. 3096 would divert funds collected as penalties under the Clean Water Act from the parties responsible for the *Deepwater Horizon* to be deposited in a proposed Gulf Coast Restoration Trust Fund. These funds would be used to support environmental and economic restoration activities across the five Gulf Coast states.

On first glance, this concept to provide a dedicated funding source to support long-term restoration appears to be a reasonable approach. In fact, a similar provision was included in Title V of H.R. 3534, the CLEAR Act, comprehensive oil spill response legislation that was passed by the House last year.

That legislation regrettably failed to clear the Senate. At that time, most members who were opposed to the bill argued that it was premature; they said we should wait to move legislation until several different review panels assembled by the administration had completed pending investigations into the circumstances surrounding the *Deepwater Horizon* spill.

Fortunately, those panels expedited the completion of their work. Most recently, on December 5 the administration's Gulf Coast Ecosystem Restoration Task Force unveiled its final restoration plan for the Gulf Coast. Now, virtually all of the studies are in, and perhaps not too surprising, the suite of recommendations echo many of the policies contained in H.R. 3534, which was reintroduced this Congress as H.R. 501.

The resumption of oil and gas production in the Gulf also should provide additional motivation to act. According to information provided by the Bureau of Safety and Environmental Enforcement, virtually all of the drilling activities that were suspended as a result of this *Deepwater Horizon* disaster have resumed operations. Moreover, 97.7 percent of the 1,413 requests to extend deepwater oil and gas leases have been granted, and close to 300 new well permit applications have been approved since June 8, 2010.

But given what we now know about the risks of deepwater drilling and the exposed deficiencies, we should act to put in place the necessary authorities to ensure the highest level of safety and reliability for contemporary offshore energy development.

Yet, instead of taking up legislation to enact comprehensive reforms to modernize and overhaul our offshore energy policies and to guide long-term restoration efforts along the Gulf Coast, we are taking up H.R. 3096 devoid from this broader context. And that broader context is important if for no other reason than because the Congressional Budget Office reminds us that the spending authorized by this legislation must be off-set. I will be interested to hear from the bill's sponsors about where they intend to find the \$1.2 billion to match CBO's estimate.

Aside from the off-set, we also need to better understand the implications that the type of diversion proposed by this legislation might have on the future financial solvency of the Oil Spill Liability Trust Fund. In particular, we need to have a clear determination that the Fund will have adequate resources on hand to address future spills.

I am also concerned with unanswered questions regarding how this legislation might, or might not, affect the natural resource damage assessment process which is ongoing and likely to last for years. As you know, the NRDA process is entirely separate from any civil and criminal proceedings initiated under the Clean Water Act. Nevertheless, we should determine if the diversion of Clean Water Act penalties would affect in any way the liability of a responsibly party to pay for damages determined through the NRDA process.

In closing, I look forward to hearing from our witnesses this morning. But after today's hearing, I hope that the committee will turn its attention to the development of comprehensive oil spill response legislation that builds on what we have learned from the *Deepwater Horizon* disaster to improve our policies to prevent future oil spills, or should they happen, to respond effectively to protect lives, jobs and the environment.

**CONGRESSMAN CEDRIC L. RICHMOND**

Statement before the Committee on Transportation and Infrastructure

H.R. 3096 RESTORE Act

December 7, 2011

Chairman Mica, Ranking Member Rahall and distinguished members of the Committee, just a little more than 18 months ago, the Deepwater Horizon exploded, killing 11 Americans, and eventually spilling almost 200 million gallons of crude oil into the Gulf of Mexico. As we come here today to discuss the rebuilding and restoration of the Gulf Coast, we should also take a moment to remember the human sacrifice that day, and send our solemn thoughts and prayers to the families of those killed in the explosion.

The year of the spill, our shrimp supply was down 37 percent and crab was down 39 percent compared to the four years prior. Now, oyster beds are not reestablishing themselves fast enough and shrimpers have some real concerns. This fall's white shrimp catch has been down by as much as 80 percent. Every percentage point we're down represents a fisherman that's not able to provide for his family. It represents a waitress at a seafood restaurant who is taking home fewer tips. It represents a small business owner who has to mark up the price on menu items to break even.

Saving our coast is of the utmost importance. Mr. Chairman, I know you hear this a lot from Louisianans, but I can't say it enough: Louisiana's coastline is in trouble. We lose a football field of wetlands every hour. If one block of New York City disappeared every hour, the nation would be outraged. The USGS says that if this continues, Louisiana will have lost an area about 25 times the size of Washington, D.C between 1932 and 2050.

We all enjoy the seafood, music and culture that comes from Louisiana, but I want to tell my colleagues about two other critical parts of the national economy that Louisiana quietly provides every day.

More than 80 percent of the nation's offshore oil and gas is produced off of Louisiana's coast, and 25 percent of the nation's foreign and domestic oil comes ashore on Louisiana roads and waterways. Without a coastline to protect this infrastructure, our nation's oil supply is becoming more and more susceptible to damage by hurricanes. As we saw after Hurricane Katrina, disruptions in oil production along the Gulf Coast send gas prices soaring.

The second component is the critical role that Louisiana's ports play in the import and export of goods worldwide. The Mississippi River is the single most important waterway in the United States. It carries goods to and from 30 states and two Canadian provinces. In Louisiana, the five ports on the Lower Mississippi River make up the busiest port system in the world. In 2009, two-thirds of the Midwest's grain was exported along this route. Studies have estimated that blocking the Mississippi River could cost the United States more than \$295 million per day.

Mr. Chairman, the wetlands are not just what Louisianans rely on to protect us from hurricanes, or how we make our living, or where we spend time with our families in the outdoors. These wetlands are critical to protecting the country from threats to our energy independence and economic security.

Lastly, I would like to mention that the recommendation to send 80 percent of the Clean Water Act fines to the Gulf States was not our own, though we certainly welcome it. The National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling, co-chaired by former Sen. Bob Graham, as well as a report by Navy Secretary Ray Mabus both argued for dedicating these penalties to the Gulf States. In addition, the Administration's Gulf Coast Ecosystem Restoration Task Force has called on Congress to dedicate a significant portion of this money to help the Gulf recover.

There is no question about whether Louisiana's coastline will be restored. Because of the dire national security and economic threats, eventually it will happen. But, delaying these funds will only make vital projects more expensive. That's why we must turn this disaster into an opportunity. I urge the Committee to invest in the energy independence of the United States. Invest in the economic security of the United States. Invest in Louisiana's coastline.

The Gulf's recovery is truly America's recovery. In this effort, all Americans are Louisianans.

A handwritten signature in black ink, appearing to read 'C. Richmond', with a stylized flourish at the end.

Cedric Richmond
MEMBER OF CONGRESS

The Honorable Pete Olson
Testimony before the House Committee on Transportation and Infrastructure
Restoring Jobs, Coastal Viability and Economic Resilience in the Gulf of Mexico: H.R. 3096, the
Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the
Gulf Coast States Act of 2011
Tuesday, December 06, 2011

Thank you, Chairman Mica, for holding this hearing to examine the importance of the RESTORE Act. Seated before you are Members who represent the people who live and work in the Gulf States. While each of us were impacted differently by the Deepwater Horizon Spill, we have worked together to build a consensus to best address the challenges facing our states.

When considering the economic recovery needs of the Gulf Coast, a one-size-fits-all will not work. Gulf Coast communities know what they need for recovery. It's critical that any economic response reflects local priorities. In the 22nd district of Texas, which I represent, a significant portion of jobs are connected to manufacturers and small companies that rely on the offshore energy industry.

This is an industry still reeling from the Obama Administration's moratorium on deepwater drilling in the Gulf of Mexico. The moratorium was only supposed to affect deepwater drilling, but in reality, it impacted shallow water permits as well. As a result, family owned companies with generations of experience, lost work as the drilling operations they supported moved operations out of the Gulf of Mexico. Hundreds of thousands of industrial, engineering, manufacturing, construction, and support jobs were impacted.

The drilling moratorium has technically been lifted, but the "de facto moratorium", also known as the "permatorium", remains through the slow permitting process with devastating economic consequences. There have been signs of recovery, but energy jobs in the Gulf are still well below the levels before the Deepwater Horizon Accident. While offshore activity is finally expected to return to pre-moratorium levels by mid-next year, we are still well below projected levels.

The RESTORE Act will ensure that each state can address their specific recovery needs. Passing the RESTORE Act will bring us one step closer to the long term ecological and economic recovery that the Gulf States most directly hurt by the spill desperately need.

This bill and its Senate companion will ensure a full recovery from the spill. As you hear testimony from the expert witnesses here today, I ask that you keep something in mind. Reversing the effects of Deepwater Horizon is not just a regional interest, it's a national priority. The Gulf of Mexico supplies 30% of our nation's energy and is a powerful economic engine. The damage occurred in the Gulf of Mexico. Communities along the Gulf Coast should be able to allocate the penalty money where it will be the most beneficial without bureaucratic interference.

I thank you for allowing me to testify before you today, and look forward to working with this committee as the RESTORE Act moves through the Committee process.



TESTIMONY OF

THE HONORABLE JEFF MILLER
U.S. HOUSE OF REPRESENTATIVES
THE 1ST DISTRICT OF FLORIDA

BEFORE THE HOUSE TRANSPORTATION AND INFRASTRUCTURE
COMMITTEE

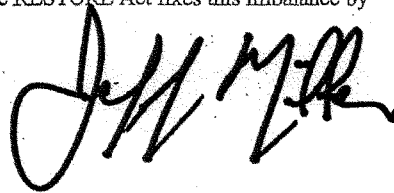
DECEMBER 7, 2011

Good morning Mr. Chairman, Ranking Member Rahall, and distinguished committee members. It is always a humbling experience to be on the opposite side of the dais, so thank you for the opportunity to present here today. I also want to thank the other Members sitting at the table with me for their efforts in putting this bill together, quite a feat for a group as diverse as ours. I would echo the words of my good friend from Louisiana, Mr. Scalise, about how important the RESTORE Act is for not only the Gulf Coast, but the entire nation.

Mr. Chairman, this bill is about one thing -- restoring the Gulf Coast from the devastating -- *the devastating* -- effects of the 2010 Deepwater Horizon oil spill. The fact that we are here today almost two years later still talking about the impacts of the spill shows just how widespread the disaster was for our communities. And you are going to hear about just how costly the effects of the spill were from local leaders, economists, businesses, and environmental researchers in subsequent panels, so I won't spend much time talking about the lost summer of 2010. You all know that oil on the beaches of Northwest Florida drove the local tourist economy off a cliff and you know that oil is still being cleaned-up in the Louisiana marshes.

So instead, I want to make clear what this bill is NOT. This is not a hand out or a backfill for state and local budgets. The RESTORE Act is about restoring the Gulf Coast from the worst oil spill in American history. As we've seen from the lingering effects of Exxon Valdez, these effects will be felt for years, if not decades more. The federal government has stepped in to help clean-up the environmental damage and the responsible parties set up a claims facility for individuals and businesses that were harmed.

However, more needs to be done. More needs to be done to restore the environment that will be damaged for years to come. But frankly, there is already a mechanism set forth in law requiring the responsible parties to pay for and to take care of environmental clean-up. There is no such statutory requirement to compensate for economic damages. There is not a mechanism to restore the countless small businesses that went out of business because of the spill. There is not a mechanism to help the people who lost jobs, lost homes, lost families because of the spill. You either roll the dice with the BP / Feinberg claims facility or take your chances in court. The RESTORE Act fixes this imbalance by



creating a way to rebuild local and state economies that took such a tremendous hit from the oil spill.

The RESTORE Act is the right thing to do. It forces the responsible parties to be responsible for the damage they caused. This damage took place along the Gulf Coast, and the fines paid for the damage should be returned to the Gulf Coast. The RESTORE Act will help restore the Gulf Coast from the Deepwater Horizon disaster, and I would urge the committee to take up and to pass the bill as soon as possible. Thank you.

Committee on Transportation and Infrastructure
United States House of Representatives
Hearing on HR 3096; RESTORE Act

Wednesday, December 7, 2011

Testimony of Congressman Steven Palazzo

NOT FOR PUBLICATION UNTIL RELEASED
BY THE COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
UNITED STATES HOUSE OF REPRESENTATIVES

Mr. Chairman, thank you for the opportunity to testify this morning about this critical piece of legislation.

The Gulf of Mexico has been a leader in American oil production for nearly 75 years. I am proud to say Mississippi has played a significant role in the exploration and production of oil and gas in America. In fact, Chevron USA operates its largest American refinery in Pascagoula, MS. Many generations of Mississippians, including myself have benefited from the good paying jobs provided by the oil and gas industry.

Mississippi has also assumed the environmental responsibility that comes with the economic rewards. For decades, coastal residents have lived with the potential and real liabilities of the oil and gas industry so our region and the country could prosper economically. The Deepwater Horizon Oil Spill in 2010 dealt a serious blow to our Gulf Coast environment and economy. It is now time to seize an opportunity to repair and restore, not only the damages from the Deepwater Horizon oil spill, but the decades of cumulative impacts we have endured as a region. The RESTORE ACT allows us to do this through Clean Water Act fines and not taxpayer money. Under current law, responsible parties are required to pay fines for each barrel of oil spilled into the water. Without Congressional action, these penalties will go toward unrelated federal spending and leave the necessary long term restoration of our environment undone. The RESTORE Act provides Gulf States with the flexibility necessary to address long-term environmental and economic restoration issues as they arise.

The continued environmental deterioration of the Gulf Coast poses a growing threat to ecosystems that support not only the regional communities and cultures, but also our nation's most critical energy, shipping, tourism, commercial seafood and other industries. Two official reports on the spill- one conducted by Navy Secretary and former Mississippi Governor Ray Mabus, and the other from the bipartisan National Commission on the Deepwater Horizon Oil Spill and Offshore Drilling – recommended that CWA penalties be dedicated to Gulf Coast restoration.

The RESTORE Act is a unique opportunity for healing. It will help rebuild and strengthen our Gulf Coast ecosystems and it will also support America's economic recovery.

I strongly believe that recovery along the Gulf Coast can lead to recovery around the United States. Many of our nation's key economic resources depend on the Gulf's delicate and vulnerable ecosystem. A healthy Gulf Coast ecosystem means a healthy American economy.

Let me provide a few examples (facts provided by the Audubon Society):

- Gulf energy helps power America. Nearly one third of domestic oil production comes from the Gulf of Mexico.
- Ports and other infrastructure supported by the environment are necessary in keeping this industry functioning. As of now the Gulf is home to 10 of our Nation's 15 largest ports by tonnage, and there is a \$621 million dollar port expansion already planned in Gulfport, MS.
- The Gulf of Mexico produces 40% of all commercial seafood in the lower 48 states. Our Nation's seafood industry is clearly reliant on a healthy Gulf.
- Tourism heavily depends on a healthy Gulf. Restaurant, hotel, and other hospitality workers are part of the Gulf's \$34 billion per year tourism industry.

Clearly, restoring communities and the environments of the Gulf is critical to both the Gulf Coast states and the Nation as a whole. It is in our Nation's best interest that this Congress works diligently and passes the RESTORE Act. There is no time to waste. The Gulf of Mexico needs it. America needs it.

Thank you again, I yield back the remainder of my time.



Written Testimony of Congressman Jo Bonner, Alabama's First District

House Committee on Transportation and Infrastructure

December 7, 2011

Chairman Mica, Ranking Member Rahall, and Members of the Committee, thank you for the opportunity to testify at today's hearing. The RESTORE Act is vitally important to the Gulf Coast, and I greatly appreciate the chance to share with you the reasons why.

Nearly two years after the tragic and deadly Deepwater Horizon explosion, thankfully most of the visible oil has been removed from our beaches and tourists have returned to the Alabama Gulf Coast in record numbers. For all the progress that has been made, there is still a lot to be done to fully heal the scars and to ensure that future threats to our region will be minimized. Much about the potential future economic and environmental impact from the oil spill remains unknown.

Each state was affected in different ways from last year's spill. Some states suffered more environmental damage, while others, including Alabama, endured significant and adverse economic impact. Alabama's beaches, in particular, lost at least one million tourists during the 2010 season. The absence of tourist revenues struck just as our area was trying to recover from the prolonged recession.

While we all should be optimistic about the prospects of putting the nightmare of 2010 behind us, the progress made towards the clean-up is a hollow victory for thousands of local businesses, which were dealt crippling blows during a tourism season that was a complete loss. Whole communities are still reeling from business losses while the presidentially-appointed administrator of the BP claims fund slow-walks approval of legitimate claims payments.

Leading up to this disaster, Baldwin County was anxiously anticipating a bounce-back tourist season to help make up for the past two down seasons resulting from the mortgage crisis and economic downturn. Even with deflated numbers, in 2009, about 4.6 million people visited the area and generated \$2.3 billion in economic activity. Approximately 40,500 people were employed in travel-related jobs and collected around \$915 million in wages. Baldwin County alone generated the largest portion (25%) of the state of Alabama's lodging revenues, collecting \$280 million in taxable lodging revenue.

To add some perspective, the hotel occupancy rate in the Gulf Shores and Orange Beach areas during the summer of 2007 was 83%. With the mortgage market bust and economic downturn of 2008 and 2009, we watched this rate fall to 76% and then to 73% respectively. To follow this two year 10% decline in occupancy with the oil spill seems like a cruel joke, but it was no joke, and in 2010, we watched this occupancy rate plummet, yet again, to just under 60%.

This only tells a fraction of the story though. Condominium occupancy rates for these two coastal cities fell from a high of 69% in 2009 to just under 38% occupancy in 2010. Taxable retail sales for the summer months, which were up 2.3% over the previous year in 2009, dropped

off a cliff in 2010, coming in at a whopping 27.5% below the previous year. This story goes on and on and there is simply no denying the impact this spill has had and will continue to have on the local businesses, governments and overall economic health of the Alabama Gulf Coast.

To add insult to injury, our region has been struggling unnecessarily for fair treatment with BP claims Czar, Ken Feinberg. Under his stewardship of the Gulf Coast Claims Facility (GCCF,) the BP compensation fund has paid out approximately \$5.4 billion in claims, with some \$14.6 billion remaining in the fund. The GCCF has processed over 134,000 claims from Alabama, paying less than half. Of the Alabama claims paid to date, a third of those were so-called "quick pay" where the claimant settles for an offer from Mr. Feinberg, foregoing their right to further compensation.

Mr. Feinberg continues to deny my charge that his repeated stonewalling and slow-walking of claims is forcing many to settle for a low amount out of desperation or simply to give up altogether. It has not been unusual for similar South Alabama businesses to file nearly identical claims and receive two very different amounts with no explanation for the wide variation.

For over a year, my offices have received a steady stream of complaints from people all across South Alabama about the GCCF's failure to pay legitimate claims while Mr. Feinberg continues to call his program a success. This is not acceptable and is frankly an insult to the people and local communities of the Gulf Coast as well as just one more roadblock on our path to recovery.

Shortly following the spill, former-Governor Bob Riley created the Coastal Recovery Commission to carefully study the oil spill's impact on Alabama, and in particular, in Southwest Alabama. The commission's report, which was released last December, called for a strategic focus on strengthening our local economies and the environment.

Bringing the majority of the Clean Water Act fines assessed against, BP, Transocean, Halliburton and others back to the Gulf Coast is only fitting as our region was uniquely and undeniably affected by the worst man-made environmental disaster in U.S. history. As those of us who live along the Gulf of Mexico already know, our backyard is vital to the economic health of the nation. It is home to 90 percent of America's offshore oil and gas production, 33 percent of the country's seafood, and is a major, world-class tourist destination.

In fact, if the U.S. Gulf Coast states were considered as an individual country, they would rank seventh globally in gross domestic product (GDP), at over \$2.5 trillion annually. It is therefore critical that the Gulf States – which bear so much risk – be given access to the majority of the Clean Water Act fines collected to restore the damage that has been done, and to better prepare our region to respond to future crisis.

It is also important to note that none of these funds are derived from taxpayer sources – they are entirely based on the fine assessed to BP and the other responsible parties under the Clean Water Act. Of the total amount of CWA fine monies going to the Gulf region, The RESTORE Act would divide 35 percent equally among the Gulf States for economic and ecological recovery. An additional 30 percent of CWA fines would be set aside to develop and implement a comprehensive restoration plan with all five states equally represented in the oversight. Another

30 percent of the CWA fine money would be disbursed among the five states according to a formula based on impact. Finally, five percent of the remaining funds would go toward establishing long-term science and fisheries endowments to safeguard our Gulf Coast ecosystem and to study the long-term impact of the spill on our near-shore and deep water ecosystems.

I am personally pleased to have assisted in writing this legislation and look forward to continuing to work with my fellow Gulf Coast lawmakers to push for its passage. I appreciate the interest of the Committee, stand ready to provide any additional information that might be required, and hope you will give favorable consideration to the RESTORE Act.

**Congressman Steve Scalise**

Statement before the House Transportation and Infrastructure Committee

Hearing on "Restoring Jobs, Coastal Viability and Economic Resilience in the Gulf of Mexico:
H.R. 3096, the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived
Economies of the Gulf Coast States Act of 2011"

December 7, 2011

Thank you, Mr. Chairman and Members of the Committee. I want to also thank my colleagues from the Gulf Coast who are with me today in support of this legislation, the RESTORE Act. We've all worked to bring together a broad and bi-partisan coalition in support of this bill.

I want to thank the committee for taking up our bill today and want to take this opportunity to urge all the members of the committee to support this important legislation. Our bill will ensure that the lion's share of the future Clean Water Act fines assessed on the responsible parties will be dedicated to the Gulf Coast states that were directly impacted by last year's oil spill.

On April 20th of last year, the Deepwater Horizon exploded, 11 men lost their lives, and when the Macondo well blew out, the largest oil spill in our country's history ensued. We continue to remember those lost in the disaster and keep their families in our prayers. The events of that tragic day are still felt every single day by the families, the communities and fragile ecosystems all along the Gulf Coast.

Five million barrels. Over 205 million gallons. At its peak, the amount of oil per day that spilled from the Macondo well was about the equivalent of oil used by the entire state of Delaware each day.

For 86 days, oil from the Macondo well flowed into the Gulf of Mexico, not only devastating the ecosystems and natural resources of the Gulf, but also causing billions in economic losses across all 5 Gulf states, shutting down small businesses, and destroying entire industries for an extended period.

On the 3rd panel, you will hear testimony from Mike Voisin, a 7th generation oyster harvester, who will talk about the particular impacts in that industry. He will detail how nearly the entire seafood industry in the Gulf, which represents a large portion of our domestic seafood supply, was essentially shut down for an entire season. In addition, when the government imposed a moratorium on offshore drilling in the Gulf, even for those companies that played by the rules and that in no way were connected to the Deepwater Horizon disaster, thousands of energy and service industry workers from all across the United States lost their jobs and about a dozen deepwater rigs left our country for places like Ghana and Egypt.

A few months ago, I met with Leslie Bertucci who owns a small business that provides services to offshore rigs and continues to struggle because of the extremely slow offshore permitting process. Her company continues to have to make cut backs, and earlier this year, she made the difficult decision to lay off 2 of her 16 employees—herself and her husband.

Every day, the people along the Gulf Coast continue to deal with the effects of this disaster, and each story is unique. But one theme is constant and one thing is clear: the recovery of this region will take well over a decade, and it is critical that this bill move forward so that we're able to ensure that when the fines are eventually assessed and collected, that a mechanism is in place to ensure that those penalties return to the areas where the disaster occurred.

As I mentioned, this bill has wide support, not just from Members of the Gulf Coast states, but also from Members of Congress all across the country who are supporting this effort because they understand that it is the right thing to do. I'd like to particularly thank Congressman Don Young from Alaska for co-sponsoring the RESTORE Act. He is all too familiar with the decades it takes to recover from an oil spill. As the lead architect of the Oil Pollution Act of 1990 in the wake of the Valdez spill that set up a mechanism to ensure that the responsible parties—not the federal taxpayer—pay for damages, Congressman Young can attest to the importance of this legislation and the need to ensure that each state can adequately and properly respond and recover according to the unique challenges faced by that state.

In addition to support from Members, we have also received wide support from a broad coalition of people and organizations in the business and conservation communities, who recognize that returning these future fines to the place of the injury is the right and fair thing to do, and who recognize that these fines will be necessary as the long term needs of the states are assessed and quantified. If we look at the aftermath of the Valdez spill in Alaska, what we know is that even now, decades later, those communities and the ecosystems that were directly affected still haven't fully recovered. And many of those effects weren't seen until many years later.

Just one example of many we could point to was the collapse of the herring fishery in Alaska. The failure of the herring to come back couldn't be fully anticipated for about a decade after the spill, and it's estimated that the loss of the herring industry alone has cost the region about \$400 million.

The Gulf Coast will be dealing with similar restoration issues for more than a decade, and the ecosystems and resources of the Gulf Coast are of critical importance to our country:

- Thirty-three percent of the nation's seafood harvest comes from the Gulf;
- We produce 90 percent of the nation's total offshore crude oil and natural gas production;
- You'll find over 4,000 offshore oil platforms in the Gulf and over 33,000 miles of pipeline that supply energy to our entire country; and
- We are home to 10 of the nation's 15 largest shipping ports by cargo volume.

Last year's oil spill jeopardized these assets, and particularly in Louisiana, where we continue to lose a football field of our coast every hour, the effects of the oil spill exacerbated the degradation of an already fragile ecosystem which supports the economy and resources all along

the Gulf Coast and which are so important to our country. The coastal areas of our states, which bore the brunt of the oil, sustain the entire Gulf region and provide billions of dollars to America's economy every year in energy, fishing, tourism, and shipping.

Unfortunately, as history has shown us after the Valdez spill, the recovery of the Gulf Coast region will take years to accomplish. It is essential that Congress work to ensure that the responsible party—not the taxpayer—foot the bill for this disaster, and our legislation, the RESTORE Act, accomplishes that, while making sure that there is a mechanism in place that allows each state to respond to its unique recovery needs. This legislation enjoys bi-partisan support, and I look forward to working with this committee as we work to move the RESTORE Act forward.

Again, thank you Mr. Chairman and the entire committee for today's hearing, and I would be happy to answer any questions that you may have.



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**TESTIMONY OF
MR. CRAIG A. BENNETT
DIRECTOR, NATIONAL POLLUTION FUNDS CENTER**

**ON "THE RESTORE ACT" (H.R. 3096):
RELATIONSHIP TO THE OSLTF AND OPA'90**

**BEFORE THE
HOUSE COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE**

DECEMBER 7, 2011

Good morning Chairman Mica and distinguished members of the Committee. I am grateful for the opportunity to testify before you regarding H.R. 3096, the "Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2011" (the RESTORE Act). My testimony today will focus on how the "Gulf Coast Restoration Trust Fund," established under SEC. 3 of the RESTORE Act, would impact the Oil Spill Liability Trust Fund (OSLTF) and the liability and compensation regime established by Title I of the Oil Pollution Act of 1990 (OPA'90) (33 U.S.C. § 2701, *et seq.*).

THE BP DEEPWATER HORIZON OIL SPILL

On the evening of April 20, 2010, an explosion aboard the Mobile Offshore Drilling Unit (MODU) DEEPWATER HORIZON, located in the Gulf of Mexico approximately 50 miles from the coast of Louisiana, led to the sinking of the MODU, the tragic loss of 11 lives, and the worst oil spill in U.S. history.

The Federal government responded immediately with all resources available. Within the first 24 hours the Federal On Scene Coordinator (FOSC) accessed the OSLTF to ensure funds were available to speed the Federal response. The BP DEEPWATER HORIZON oil spill, designated a Spill of National Significance (SONS), impacted the marine environment and many lives along the Gulf of Mexico. The containment effort to secure the well was an almost three-month process (87 days) and the resulting spill response effort became extraordinarily large and complex.

The magnitude of the spill clean-up required numerous resources, including two drilling ships and numerous oil containment vessels used to control the source. Using the framework provided for in the National Contingency Plan (NCP), a monumental response was undertaken through the unified efforts of more than 47,000 Federal, State, local, and private sector responders. The U.S. Coast Guard employed over 835 oil skimmers, over 6,100 response boats and 3,190 vessels of opportunity, and over 120 aircraft.

ROLE OF THE OIL SPILL LIABILITY TRUST FUND

In the wake of the Exxon Valdez spill Congress passed OPA '90 to serve as the comprehensive prevention, response, liability, and compensation regime to deal with vessel- and facility-caused oil pollution to U.S. navigable waters. OPA '90 authorized use of the OSLTF, which had been

previously established by Congress in the U.S. Treasury, and consolidated the liability and compensation requirements of certain prior Federal oil pollution laws and their supporting funds.

Under Section 1012(a) (1) of OPA '90, whenever there is a discharge, or substantial threat of discharge, of oil to the navigable waters, adjoining shorelines or the Exclusive Economic Zone (EEZ), the OSLTF is utilized to pay the expenses for the Federal response under the Federal Water Pollution Control Act (FWPCA) (33 U.S.C. § 1321(c)), and to compensate claimants for oil removal costs and certain oil pollution damages authorized by OPA'90. These OSLTF expenditures are recoverable under OPA'90 from the liable responsible parties, and collection efforts are pursued consistent with the "polluter pays" public policy of the Act. The OSLTF is, however, intended to be available even when a responsible party does not pay.

OPA'90 provides that the OSLTF is available for certain purposes (33 U.S.C. § 2712(a)). These purposes include:

- **The payment of Federal removal costs consistent with the National Contingency Plan (NCP) (33 U.S.C. §2712(a)(1)):** Under 33 U.S.C. § 2752(b), the President may make available up to \$50 million annually to carry out 33 U.S.C. § 1321(c) (provides the legal authority for Federal response) and for Federal trustees to initiate the assessment of natural resource damages. This \$50 million "emergency fund" amount is available until expended. If the emergency fund is deemed insufficient to fund Federal response efforts, an additional \$100 million may be advanced, annually, from the OSLTF subject to notification of Congress no later than 30 days after the advance. (33 U.S.C. § 2752(b)). This additional \$100 million was advanced on May 4, 2010, with Congressional notification. In addition, Public Law 111-191 authorized further advances for the purposes of responding to the BP DEEPWATER HORIZON oil spill, and this authority has been exercised six times. To date, an additional \$700 million (including the initial May, 2010 advance) has been made available to the emergency fund. Any additional amounts may be made available from the OSLTF for Federal removal subject to further appropriation.
- **The payment of OPA'90 claims for uncompensated removal costs consistent with the NCP and uncompensated damages (33 U.S.C. §§ 2712(a)(4) and 2713):** Under OPA'90 Section 6002(b), OPA'90 claims payments from the OSLTF are not subject to the annual appropriations requirement in OPA'90 Section 6002(a). (33 U.S.C. § 2752(b)).
- **Payment of Federal administrative, operating and personnel costs to implement and enforce the broad range of oil pollution prevention, response and compensation provisions addressed by the OPA'90 and FWPCA Section 311 (33 U.S.C. §2712(a)(5)):** Under OPA'90 Section 6002(a), this use of the OSLTF is subject to annual appropriations to the various responsible Federal agencies.

In the 20 years since it was established, the FOSCs have accessed the OSLTF to respond to over 11,000 oil spills or significant threats of oil spills. The liability and compensation regime contained in Title I to the Oil Pollution Act of 1990 is well integrated into the daily operation of the FOSC. Use of the OSLTF, oversight of the "responsible party's" obligation to respond to, and advertise for and receive claims resulting from, an oil spill incident, and cost recovery from the responsible party of the Federal funds expended, are all part of the pollution response cycle.

NATIONAL POLLUTION FUND CENTER (NPFC) ROLE

The Coast Guard's NPFC manages use of the emergency fund. In a typical scenario, an FOSC accesses the emergency fund to remove an oil discharge, or prevent or mitigate a substantial threat of discharge of oil, into or on the navigable waters, and the adjoining shoreline or the EEZ. Costs are documented and provided to NPFC for reconciliation and payment. In addition, Federal trustees may request funds to initiate an assessment of natural resource damages and the NPFC will provide those funds from the OSLTF emergency fund. These amounts are recoverable against the liable responsible parties. All funds expended from the emergency fund to conduct Federal removal operations and initiate natural resource damage assessments are billed to the responsible parties. It also is important to note that recovered funds are deposited into the OSLTF principal fund, not the emergency fund.

The NPFC also pays qualifying removal costs and damage claims against the OSLTF for amounts that are not compensated by the responsible party. The categories of claims for which the responsible party is liable under OPA'90, and that may be paid from the OSLTF if uncompensated by the responsible party, are removal costs consistent with the NCP and six categories of damages: (1) natural resource damages, (2) real and personal property damages, (3) loss of subsistence use of natural resources, (4) lost government revenues that may be recovered by the United States, a State, or a political subdivision of a State, (5) the lost profits and earnings capacity of businesses and individuals, and (6) the net costs of increased or additional public services which may be recovered by a State or political subdivision of a State. (33 U.S.C. § 2702).

As a general matter, claims may be submitted to the NPFC for payment from the OSLTF within the following limitation periods under OPA'90 (33 U.S.C. § 2712(h)):

- For Removal Costs: Six years after date of completion of all removal actions.
- For Damages: Three years after the date on which the injury and its connection with the discharge are reasonably discovered with due care.
- For Natural Resource Damages (NRD): Three years after the date on which the injury and its connection with the discharge are reasonably discovered with due care or, if later, three years from the date of completion of the NRD assessment under the damage assessment regulations.

OPA'90 claims must (with certain limited exceptions) be presented first to the responsible party. If the responsible party denies liability for the claim, or the claim is not settled within 90 days after it is presented, a claimant may elect to commence an action in court against the responsible party or present the claim to the NPFC for payment from the OSLTF. Among the express exceptions to this order of presentment, States may present removal cost claims directly to the NPFC for payment from the OSLTF. These and other general claims provisions are delineated in 33 U.S.C. § 2713 and the implementing regulations for claims against the OSLTF in 33 C.F.R. Part 136. In addition, NPFC maintains information to assist claimants on its website at www.uscg.mil/npfc.

NPFC pursues cost recovery for all OSLTF expenses for removal costs and damages against liable responsible parties pursuant to Federal claims collection law including the Debt Collection Act and implementing regulations. Vigorous collection efforts are consistent with the "polluter pays" public policy underlying the OPA'90. Nevertheless, the OSLTF is intended to be available to pay claims even when a responsible party does not pay.

OSLTF REVENUES, BALANCE AND LIMITS ON EXPENSES

The OSLTF is established under Internal Revenue Code Section 9509 (26 U.S.C. § 9509), which also describes the authorized revenue streams and certain broad limits on its use. The principal revenue stream is an 8 cent per barrel tax on oil produced or entered into the United States (see the tax provision at 26 U.S.C. § 4611). The current barrel tax increases to 9 cents for one year beginning on January 1, 2017, and expires at the end of 2017.

Two other revenue streams are oil pollution-related civil administrative and judicial penalties under FWPCA Section 311, and criminal penalties under FWPCA Section 309 for Section 311(b) violations, and recoveries from liable responsible parties under OPA'90.

Three sections of law address the required deposit of FWPCA penalties to the OSLTF. Internal Revenue Code Section 9509, the section of the Internal Revenue Code that establishes the OSLTF, provides, in relevant part, that amounts equivalent to any penalties under Section 311 of the FWPCA, and any penalties under Section 309(c) of the FWPCA resulting from violations of Section 311, shall be appropriated to the OSLTF. Section 4304 of OPA'90 reinforces that these penalties “shall be deposited in the [OSLTF].” In addition, Section 311(s) of the FWPCA provides that “Any amounts received by the United States [under Section 311 of the FWPCA] shall be deposited in the OSLTF.”

The current OSLTF balance is approximately \$2.3 billion. Although there is no cap on the OSLTF balance, there are limits on its use per oil pollution incident. The maximum amount that may be paid from the OSLTF for any one incident is \$1 billion. Of that amount, no more than \$500 million may be paid for natural resource damages. (26 U.S.C. § 9509(c)(2)). Although the magnitude and corresponding expense of the BP DEEPWATER HORIZON SONS response has scaled down in recent months, it is too early to project what the final Federal costs are likely to be, or when the \$1 billion cap on total per-incident expenditures from the OSLTF might be reached.

OVERVIEW OF SEC. 3 OF THE RESTORE ACT (H.R. 3096)

Section 3 of the RESTORE Act would, among other things, establish the “Gulf Coast Restoration Trust Fund” (GCRTF) in the U.S. Treasury. The GCRTF would be funded by directing the Secretary of the Treasury to deposit in the GCRTF “an amount equal to 80 percent of all administrative and civil penalties” paid by the responsible parties for the BP DEEPWATER HORIZON spill in accordance with Section 311 of the FWPCA, irrespective of whether the penalties are pursuant to court order or negotiated settlement.

The GCRTF Funds would be allocated and available for projects in the Gulf Coast states of Alabama, Florida, Louisiana, Mississippi, and Texas. The funds would be available for ecological and economic activities including, but not limited to:

- Coastal restoration;
- Mitigation of damage to and restoration of fish, wildlife and natural resources;
- Implementation of a comprehensive conservation management plan approved by a Federal Restoration Council established under the act;
- Promoting tourism including fishing and Gulf Coast fisheries;
- Mitigation of ecological impact of Outer Continental Shelf activities in general and the BP DEEPWATER HORIZON oil spill in particular;

- Coastal flood protection directly affected by long-term wetland losses or beach erosion as well as the BP DEEPWATER HORIZON oil spill; and
- Work force development, job creation, and other economic development projects.

OPA'90 AND OSLTF IMPLICATIONS OF THE RESTORE ACT

1. Impacts on the OSLTF balance.

The OSLTF is financed, in part, from FWPCA Section 311 penalties. The redirection of 80 percent of the administrative and civil FWPCA Section 311 penalties associated with DEEPWATER HORIZON to the GCRTF is the most direct impact the RESTORE Act would have on the OSLTF. It is important to note that the RESTORE Act would divert only the penalties and not the amounts recovered from the responsible parties for reimbursement of Federal removal and other OSLTF expenses.

2. Overlapping funding by the Gulf Coast Restoration Trust Fund.

The scope of the activities eligible to be funded by the GCRTF leads to potential overlap with categories of damages specified under OPA'90. Responsible parties are strictly liable, jointly and severally, for these damages under OPA'90, in addition to their liability for any FWPCA penalty. If the responsible parties do not pay damage claims, then the OSLTF may be available to compensate claimants, and the United States would seek to recover any amounts paid to claimants from the responsible parties. Arguments by a responsible party that its penalty payment has been used to compensate damages may complicate that recovery. Also because of the potential for overlapping damage compensation from penalty amounts and the OSLTF, the NPFC's adjudication of some claims may be more burdensome on claimants who must establish that their claimed damages have not or will not be compensated from the penalty amounts.

CONCLUSIONS

Through the unprecedented response to the DEEPWATER HORIZON incident, the Coast Guard has ensured that all capabilities and resources—government, private, and commercial—are being leveraged to protect the environment and facilitate a rapid, robust response effort. OPA'90 and its claims provisions also provide a cornerstone for compensation to the tens of thousands of residents of the Gulf region who suffered losses as a result of this tragedy and for funding trustee efforts to restore injury to, destruction of, loss of, or loss of use of, natural resources. Every effort is being made to ensure that those damaged by the BP DEEPWATER HORIZON oil spill are compensated, and that the “polluter pays.”

The Coast Guard looks forward to working with the Committee on these very important issues.

Thank you for the opportunity to testify today. I look forward to your questions.

**WRITTEN STATEMENT BY
TONY PENN
DEPUTY CHIEF, ASSESSMENT AND RESTORATION DIVISION
OFFICE OF RESPONSE AND RESTORATION
NATIONAL OCEAN SERVICE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
U.S. DEPARTMENT OF COMMERCE**

**ON
RESTORING JOBS, COASTAL VIABILITY, AND ECONOMIC RESILIENCE IN THE
GULF OF MEXICO: H.R. 3096, THE RESOURCES AND ECOSYSTEMS
SUSTAINABILITY, TOURIST OPPORTUNITIES, AND REVIVED ECONOMIES OF
THE GULF COAST STATES ACT OF 2011**

**BEFORE THE
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
U.S. HOUSE OF REPRESENTATIVES**

December 7, 2011

Thank you, Chairman Mica and Members of the Subcommittee, for the opportunity to testify on the Department of Commerce's National Oceanic and Atmospheric Administration's (NOAA) ongoing involvement in the Deepwater Horizon BP oil spill response effort.

My name is Tony Penn and I am the Deputy Chief of the Assessment and Restoration Division within NOAA's Office of Response & Restoration. This testimony will not discuss H.R. 3096, the "RESTORE Act" but rather inform the Committee of the critical role NOAA serves in the Natural Resource Damage Assessment (NRDA) process following oil spills and the importance of our contributions to protect and restore the natural resources affected by this tragic event.

NOAA's mission is to understand and predict changes in the Earth's environment and conserve and manage coastal and marine resources to meet our Nation's economic, social, and environmental needs. NOAA, acting on behalf of the Secretary of Commerce, is also a natural resource trustee and is one of the federal agencies responsible for protecting, assessing, and restoring the public's coastal and marine natural resources when they are impacted by oil spills, hazardous substance releases, and, in some cases impacts from vessel groundings on corals and in seagrass beds. For over 20 years, NOAA has assessed and restored coastal, marine, and riverine habitats impacted by oil spills. During this period, NOAA was instrumental in evolving the field of restoration ecology and is one of the Nation's leaders in environmental restoration following an oil spill.

The Deepwater Horizon BP oil spill, the largest accidental oil spill in history, is only the most recent example of the environmental and socioeconomic damage caused by oil spills, and underscores the importance of and the linkage between healthy environments and our socioeconomic wellbeing. As such, the entire Department of Commerce is deeply concerned

about the immediate and long-term environmental, economic, and social impacts to the Gulf Coast and the Nation as a whole from the BP oil spill. NOAA and our co-trustees have been working tirelessly to assess the ecological impacts and identify restoration opportunities along the coastal and offshore areas of the Gulf of Mexico, and will continue to do so until restoration from those impacts is complete.

My testimony today will discuss NOAA's involvement in the NRDA process, the status of the NRDA for the Deepwater Horizon BP oil spill, successes and challenges of the Deepwater Horizon NRDA, and the current status of restoration efforts.

NOAA's Natural Resource Damage Assessment Role

NOAA has several critical roles mandated by the Oil Pollution Act (OPA) of 1990 (33 U.S.C. 2701 *et seq.*), one of which is as a natural resource trustee. As a trustee, NOAA, along with our co-trustees, is charged with conducting a NRDA to assess and restore natural resources injured by an oil spill. The NRDA process is a legal process that is resolved through a claim for restoration submitted to the courts. The essence of the process is to determine the type and amount of restoration needed to compensate the public for harm or injury to our collective natural resources that occur as a result of an oil spill. 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. According to NOAA's regulations implementing the OPA, injury is determined relative to baseline, which is "the condition of the natural resources and services that would have existed had the incident not occurred" (15 C.F.R. §990.30). For restoration, OPA requires the trustees to restore, rehabilitate, replace, or acquire the equivalent of the injured natural resources and services (33 U.S.C. 2705, *see also* 15 C.F.R. §990.30) and in doing so seeks a nexus between the types and magnitude of the injury and the restoration.

In assessing the injuries to the suite of ecological services provided by the natural resources, NRDA also assesses the public's lost uses of those resources, such as recreational fishing, recreational boating, hunting, and swimming. The goal is to implement a comprehensive package of restoration projects that compensate the public for all of the ecological and human use loss injuries.

Stewardship of the Nation's natural resources is shared among several federal agencies, states, and tribal trustees that conduct NRDA's. NOAA, acting on behalf of the Secretary of Commerce, is the lead federal trustee for many of the Nation's coastal and marine resources. NDRA regulations explicitly seek participation by both responsible parties and government (15 C.F.R. § 990.14(c)(1)) to facilitate the restoration of natural resources and their services injured or lost by hazardous substance releases and oil spills. OPA also encourages compensation of injured natural resources in the form of restoration, with public involvement in determining the types and magnitudes of the restoration (33 U.S.C. 2706(c)(5)). NOAA and our fellow trustees conduct a NRDA in three main phases:

- **Preassessment** – The trustees evaluate injury and determine whether they have jurisdiction to pursue restoration and if it is appropriate to do so.
- **Restoration planning** – The trustees evaluate and quantify potential injuries and use that information to determine the appropriate type and scale of restoration actions.
- **Restoration implementation** – The trustees and/or the responsible parties implement restoration and monitoring. This may include corrective actions if necessary.

Within NOAA, the Damage Assessment, Remediation, and Restoration Program (DARRP) conducts NRDA. Established in 1990 after the Exxon Valdez oil spill, DARRP is composed of a team of scientists, economists, restoration experts, and attorneys to assess and restore injured resources. Since 1990, NOAA, together with other federal, state, and tribal co-trustees recovered over \$800 million for restoration of natural resources injured by oil, hazardous substances, and vessel groundings, including the recent early restoration agreement with BP. NOAA works cooperatively with co-trustee agencies and (in the case of a cooperative assessment of injuries) the responsible party (or parties) to share data and information collected during the spill and during the injury assessment. Working cooperatively with the responsible party and co-trustees can save time and money and can result in restoration being implemented faster and more efficiently.

Although the concept of assessing injuries may sound relatively straightforward, understanding complex ecosystems, the services these ecosystems provide, and the injuries caused by oil and hazardous substances takes time – often years. The time of year the resource was injured, the type of oil or hazardous substance, the amount and duration of the release, and the nature and extent of clean-up are among the many diverse factors that affect how quickly resources are assessed and restoration and recovery occurs. OPA requires that the trustees be able to demonstrate connections between the release of the oil, the pathways the oil moves along from the release point to the resources, exposure of the resources to the oil, and finally a causal connection between exposure and resource injury. The litigation context in which NRDA is conducted requires an elevated level of scientific rigor for the studies that are required to demonstrate these connections in order to ensure that our studies are accepted into court as evidence in the case. This level of scientific rigor coupled with the complexity of the ecosystems that are impacted by the spill means that the studies necessary to prove injury to resources and services may also take years to implement and complete. The NRDA process seeks to ensure an objective, scientifically rigorous, and cost-effective assessment of injuries – and that harm to the public's resources is fully addressed.

Current Status of NOAA's Natural Resource Damage Assessment Efforts

At the outset of the Deepwater Horizon BP oil spill, NOAA quickly mobilized staff from DARRP to begin coordinating with federal and state co-trustees and the responsible parties to collect a variety of ephemeral data that are critical to help inform the NRDA. The trustees are currently assessing the injuries to the Gulf of Mexico and soliciting public involvement in various restoration initiatives. On September 29, 2010, the trustees sent BP a Notice of Intent to Conduct Restoration Planning. This indicates that the trustees determined they have the jurisdiction to pursue restoration under OPA and moves the case from Pre-assessment Phase into

the Restoration Planning Phase. In this phase, the trustees formally identify and document impacts to the Gulf's natural resources, and the public's loss of use and enjoyment of these resources in order to determine the appropriate restoration projects to compensate for those losses.

The Deepwater Horizon NRDA focuses on assessing the injuries to all ecosystem resources from the deep ocean to the coastlines of the Gulf of Mexico. Information continues to be collected to assess potential impacts to fish, shellfish, terrestrial and marine mammals, turtles, birds, and other sensitive resources, as well as their habitats, including wetlands, beaches, mudflats, bottom sediments, corals, and the water column. Lost human uses of these resources, such as recreational fishing, hunting, and beach use, are also being assessed. Technical teams consisting of scientists from state and federal agencies, from academic institutions, and from BP have been in the field conducting daily surveys and collecting samples for multiple resources, habitats, and services. To date, several hundred scientists, economists, and restoration specialists have been and continue to be involved in our NRDA activities.

These assessment teams, called technical working groups (TWG) have been established to determine the oil spill's impact on multiple trust resources. The TWGs are responsible for identifying endpoints and developing procedures and methods to measure potential injury to their respective resources in study plans. Currently, there are thirteen TWGs divided into the following categories: water column and sediments, turtles and marine mammals, shorelines, terrestrial species, human use, shallow water corals, oysters, birds, submerged aquatic vegetation, and deep sea benthos. Several support TWGs have also been established to help ensure TWGs have the resources and data that they need. The study plans are selected and designed based upon our experiences from past oil spills and sound science with the main purpose of documenting and quantifying injury to a particular trust resource or service.

There are several steps in the development of a NRDA study plan. First, the TWG members identify an injury assessment approach or methodology for a particular resource. They then design and draft the study plan to address one or more questions related to the release, pathway, exposure, and injury resulting from the release of oil. The study plan is reviewed within the TWG, for scientific and statistical rigor, before the plan is reviewed by Deepwater Horizon case managers. As prescribed under the Oil Pollution Act NRDA regulations, the trustees afford BP the opportunity to review and provide input to the trustees in the development of study plans and many of the plans have been agreed to by representatives of the trustees and BP. Cooperation facilitates the cost effective collection and sharing of data, while allowing all parties to conduct their own analysis and interpretation of that data. It is important to note that at any time the trustees have the authority to withdraw from any cooperative assessment. Current study plans are focused on the causal connections between documented exposure to oil and injury to resources and services.

Once BP or their contractor weigh in, the trustees then decide which, if any, of BP's comments to accept. The plans are then submitted to BP, as one of the responsible parties, to either approve and fund or decide not to fund. When trustees cannot reach agreement with BP, or BP decides not to fund the study, the trustees use their own funding sources (e.g., from the Oil Spill Liability

Trust Fund) to conduct the study. Once the source of funds has been identified, the study plan is sent to contracting for processing if necessary. Studies have been developed over the course of days to weeks, and have not been delayed by the source of funds. It should be noted that even if the agencies fund the study, they still expect to recover those costs as “reasonable costs” of the assessment (33 U.S.C. 2702(b)(2)(A)).

Current Status of Restoration Efforts

The NRDA regulations define three types of restoration: emergency (15 C.F.R. § 990.26), primary (15 C.F.R. § 990.30), and compensatory (15 C.F.R. § 990.30). Emergency restoration is undertaken during the response phase to minimize or prevent (further) injury to natural resources. Primary restoration is any action, including natural recovery that returns injured natural resources and services to baseline. Compensatory restoration is any action taken to compensate for interim losses of natural resources and services that occur from the date of the incident until recovery.

The trustees and BP have agreed to implement several emergency restoration projects designed to curtail further injury to different resources. In particular, the trustees will implement a project to mend scars created in submerged aquatic vegetation (seagrass) beds caused by response equipment, namely boat props, in Florida. Designated areas in Mississippi Wildlife Management Areas have been flooded to attract migratory birds that otherwise may gather in oil impacted areas. One initiative will collect, store, and propagate plants, and replant damaged shorelines along the Gulf Coast to prevent further injury and erosion. Another project will improve the nesting and rearing success of endangered sea turtles on the Padre Island National Seashore.

Early restoration is the implementation of projects prior to the final quantification of injury. It is an emerging tool in NRDA that is not defined in the regulations and thus requires a great deal of discussion and agreement on how it will be implemented. It can fall under the purview of either primary or compensatory restoration.

On April 21, 2011, the trustees announced an agreement, called the Framework Agreement, whereby BP agreed to fund \$1 billion in early restoration projects. Under a separate allocation agreement the Department of the Interior (DOI), NOAA, and each of the five Gulf States (Florida, Alabama, Mississippi, Louisiana, and Texas) will receive \$100 million to implement projects. The remaining \$300 million will be used for projects selected by NOAA and DOI in coordination with the State trustees. All projects must meet the other requirements of the Framework Agreement, which insure a consistency with OPA, and must be approved by the Trustee Council (comprised of all the natural resource co-trustees) and BP. Public input on proposed early restoration projects has already begun and will continue through this year, and will culminate in a formal opportunity for comment once Phase 1 of the Draft Early Restoration Plan has been completed.

The benefits provided by these early restoration projects will eventually offset a portion of the Responsible Parties’ total liability. Under the Framework Agreement, BP and the trustees must agree to the “offsets” that each project will generate. Each project will have its own stipulation,

which will be filed with the court hearing the multi-district litigation on the accident. BP, all trustees, and the Department of Justice will sign each stipulation. This restoration should not compromise or negatively impact the NRDA process. Rather, it provides a rare opportunity for active restoration to begin prior to the full quantification of injury, a process that can often take years.

Next Steps

The immediate next steps for the Deepwater Horizon NRDA are to: 1) continue with the injury assessment; 2) implement early restoration with public input; and 3) continue broader restoration planning also with public input.

The trustees have assessment activities planned throughout 2011 and into 2012. These activities will continue to assess impacts to habitats and resources as warranted. This year of field activity is crucial for discerning sub-lethal and temporal changes in populations or habitats; a key component to any damage assessment.

A draft Programmatic Environmental Impact Statement will be available for public review and comment in early 2012. This document will identify the range of restoration alternatives that the trustees will consider to compensate the public for lost natural resources and services and lost human use. Concurrently, the trustees are focused on engaging the public to identify early restoration projects and begin the implementation process.

Highlights of Success in the NRDA

To meet the requests from academia, non-governmental organizations, and the general public regarding data and ongoing NRDA actions, NOAA and co-trustees have developed data sharing and other outreach practices that have resulted in one of the most transparent damage assessments in history. As noted previously, NRDA is a legal process, designed to resolve liability through restoration for the American public. The legal nature of damage assessment requires a degree of confidentiality to preserve the government's ability to make the strongest damage claim possible on behalf of the public in settlement negotiations and litigation. Nonetheless, the trustees have developed new public information sharing protocols to address the American public's unprecedented request for NRDA information, while at the same time, preserving the trustees' responsibility to ensure a strong legal case. The Administrative Record can be found online at <http://www.doi.gov/deepwaterhorizon/adminrecord/index.cfm>.

One of the key actions the trustees have taken to ensure enhanced transparency is the public distribution of cooperative assessment work plans and data during the NRDA process. Early in the Deepwater Horizon NRDA process, NOAA developed a NRDA Deepwater Horizon website (<http://www.gulfspillrestoration.noaa.gov>) which has become an effective tool in providing the public with important information. This website currently provides access to over 80 pre-assessment work plans and resulting validated data that are normally kept internal to the trustees until the NRDA has reached a legal settlement. These efforts to make data publicly accessible as

soon as possible while ensuring that rigorous scientific protocols are upheld has required substantial coordination efforts.

In addition, NOAA has continued to update its publicly accessible Gulf Environmental Response Management Application (ERMA) website (<http://www.geoplatform.gov/gulfresponse>), a NOAA tool that served critical operational and situational awareness roles during the response and will continue to be a vital tool during the assessment and restoration planning phases of the NRDA. The team that developed and evolved ERMA was recently named a finalist for the Homeland Security Medal for helping crisis managers respond to the Gulf oil spill by providing critical information on the flow of oil, weather conditions, location of response vessels, and the impact on fisheries and wildlife.

Along with providing an unprecedented amount of data during the NRDA, NOAA and the other trustee agencies have sustained efforts to educate and communicate with the public. Since the beginning of the spill, NOAA has conducted numerous roundtable discussions with stakeholder groups and has facilitated stakeholder field trips where NRDA actions were observed and discussed. NOAA has also used multiple social media tools and videos to help disseminate information regarding the NRDA's status and the opportunities for public involvement. As part of the Programmatic Environmental Impact Statement process to solicit restoration project ideas, eleven public meetings were held across the Gulf States and in Washington, DC. More than 500 citizens attended these meetings. The trustees received several hundred comments on restoration alternatives at the meetings, through a website, and via mail. Throughout the rest of the NRDA process, NOAA and our co-trustees envision holding public meetings where input will be formally sought on the damage assessment and restoration planning process.

Conclusion

The task of quantifying the environmental damage from this spill is no small feat. NOAA knows that our efforts are just one of the many pieces required to restore the larger ecosystem within the Gulf. I would like to assure you that we will not relent in our efforts to protect the livelihoods of Gulf Coast residents and mitigate the environmental impacts of this spill. In the wake of such an event, we are reminded of the fragility of our coastal ecosystems and the dependence of coastal economies on the health and prosperity of our seas. Thank you for allowing me to testify on NOAA's damage assessment efforts. I am happy to answer any questions you may have.



**INNISFREE
HOTELS**

**U.S. House Committee on Transportation & Infrastructure Julian MacQueen Testimony
December 7, 2011**

Thank you Mr. Chairman and members of the Committee for inviting me here today to share my experiences with the most damaging environmental disaster to take place in the United States since the Three Mile Island nuclear melt-down in 1979.

I have been in the hotel business all my life having started as a bus boy in a Fort Walton Beach, FL hotel at age 16. I founded Innisfree Hotels 25 years ago with the development of an 88 unit focused service hotel just off Interstate 65 in Mobile, AL. I spent every cent I had in the development of the property and did not have the money to hire any staff when I opened. My initial guests had to make up their own beds until I had enough money to hire a housekeeper.

Today, Innisfree is the largest hotelier on the Florida and Alabama Gulf Coast, and the largest employer and tax payer on Pensacola Beach, FL. We own and operate 12 properties with 1,640 hotel rooms and condominium suites in Florida and Alabama. We

- Employ approximately 800 persons in the peak season and 625 year around.
- Have a combined payroll in excess of \$12,600,000.
- Pay in excess of \$2,000,000 annually in lodging and sales taxes.
- Pay in excess of \$3,200,000 annually in real estate taxes and lease fees.

Our beach front resort hotels in Orange Beach, AL and Pensacola Beach, FL were the epicenter of where the BP Horizon oil spill hit the Alabama and Florida beaches. I was attending a hotel owner's conference when the news broke of the explosion and spill and immediately rushed home to implement our disaster preparedness plan.

Those of us who live on the Gulf are well experienced with natural disasters. For example, I lost seven hotels in one night with Hurricane Ivan in 2004, and one of my properties was the first hotel to reopen on Pensacola Beach.

But nothing I had experienced prior prepared me for the oil and the Corexit dispersant that drifted unabated from the spill. This toxic brew fouled our waters and blanketed our formerly sugar white beaches with a thick oil mousse and weathered tar balls. We watched with amazement, as did the world, at the lack of a plan from BP to control the spill and later to clean the beaches.

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Cleanup efforts were initially undertaken by people in blue jeans and T-Shirts, who raked and shoveled the sludge into bags wearing no safety clothing. It evolved painfully slow over weeks of experimentation into finally teams working in hazmat suits with sophisticated digging and sand and oil sifting mechanical equipment. The air borne fumes from the oil in our waters was so strong that it burned the eyes and lungs. Our Hospital emergency rooms treated 100% more respiratory cases last July than they did in July of 2009.

We still have many major oil mats sitting on the floor of the Gulf just off our beaches that even the smallest storms wash ashore. Presently, our beaches need constant cleaning and re-nourishment.

This disaster could not have come at a worst time economically. We had just suffered through two years of recession, and through the first four months of 2010, we were on pace for a record year. Unfortunately, while the rest of the nation enjoyed a record summer, we endured the trauma of a season without tourism.

We make 70% of our money in the summer, and this hit just one month away from the commencement of our peak season. It was much worst economically than a hurricane, which typically hits at the end of the summer or in the early fall after the hotels and their seasonal employees have made the money they need to carry them through the winter.

The phones stopped ringing as soon as the spill occurred and people watched the oil 24/7 gushing into the Gulf and floating our way. Our hotels sat at the epicenter of the spill coming ashore on the Alabama and Florida beaches and the media coverage thereof. National TV Networks set up live broadcasts from our Hilton pool deck, and I was interviewed by everyone from Sam Champion to Joe Scarborough and from the Wall Street Journal to Al Jazeera.

Our beaches were black from oil. The negative publicity was overwhelming and relentless. I went into a deep depression thinking I had lost everything I had worked for my entire life, and there was nothing I could do about it. We have quantified that the negative free media exposure from May to December 2010, for just Pensacola Beach alone, had an advertising equivalency value in excess of \$90 million.

We survived by cutting staff and expenses to the bone from day one of the spill. Hundreds of conscientious, hard-working employees were denied work in those prime summer months from which they make their primary earnings for the year. We were favorably surprised when BP stepped up and started immediately funding emergency loss payments. We can argue over the methods and whether or not everyone has been completely made whole by BP and now the GCCF, but we cannot argue over the godsend of that initial payment.

But I cannot stress enough that the long term impacts of this disaster are not over. We have documented that many of our historical core customers have not returned to our hotels. For example:

- Our Pensacola Beach Hilton has lost 50% of its premium Hilton Honors guests. These are the premier travelers, who can stay anywhere on points and spend that saved lodging money on the amenities and in the community.
- The core geographic markets from which our guests come have changed. We know that over 50% of the gross revenue increase in 2011 over 2009 at our Pensacola Beach Hampton Inn came from 95 markets from which we have never had a guest while the number of guests from our traditional markets has declined.
- Many of our core customers went to new locations last year and may never return. We know that some of our core customers went to Myrtle Beach, SC, which had a banner summer.

Although the region was blessed with an above average summer this year, we remain very concerned that it is not sustainable. This increase, which did not come from our core customers, was primarily driven by direct advertising grants to local communities by BP, a very sophisticated BP web site and social media campaign involving Facebook, You Tube and Twitter, as well as the \$170 million BP spent in national advertising and promotion. We heard radio ads run in Austin, Texas this summer encouraging people to come to the Alabama Gulf Coast.

Our area Convention and Visitors Bureaus received direct grants in excess of four times their normal annual adverting budgets. The Pensacola CVB was able to afford a national advertising campaign for the first time ever. Furthermore, BP provided over \$700,000 in vouchers that gave lodging guests a \$100 credit on an American Express card for every room night in our county for up to three nights (\$300).

BP continues to operate a very sophisticated web site and social media campaign involving Facebook, You Tube and Twitter publicizing how well the coast and the seafood has recovered and encouraging people to come for a visit.

<http://www.bp.com/sectionbodycopy.do?categoryId=41&contentId=7067505>

The full economic and environmental recovery of the Gulf Coast is directly tied to the use of the monies received from the fines paid by BP for the barrels of oil they spilled. We still need:

- Beaches cleaned and re-nourished;
- A better preparedness plan by the oil companies working with the federal, state and local governments;
- More research and better methods involved in the identification and removal of oil mats in the Gulf before they come ashore;
- More research and a better understanding of the long term impact to our seafood, its ecosystem and to our wetlands; and
- Significantly greater marketing and advertising dollars.

I urge you and your colleagues to support H.R. 3096, the RESTORE Act. Our states, counties, cities, and convention and visitors bureaus need these funds as soon as possible and with the greatest flexibility in order to maximize their effect based on local needs. I urge Congress and the Administration to make sure that funding from this legislation benefits the full range of economic and environmental recovery efforts, such as tourism, eco-tourism, tourism related economic development, the Gulf waters, seafood, and wetlands.

Thank you again for this opportunity to share my story, which is just one of the tens of thousands. Please let me know if I can answer any questions or be of any service to you to enact this important legislation.



***Restoring Jobs, Coastal Viability and Economic Resilience in
the Gulf of Mexico:***

***H.R. 3096, the Resources and Ecosystems Sustainability,
Tourist Opportunities, and Revived Economies of the Gulf
Coast States Act of 2011***

United States House of Representatives

Committee on Transportation and Infrastructure



Prepared Testimony of:

Garret Graves, Chair

Coastal Protection and Restoration Authority of Louisiana

December 07, 2011

Chairman Mica, Ranking Member Rahall and members of the Transportation and Infrastructure Committee. Thank you for the opportunity to testify today to provide perspective on the Deepwater Horizon disaster, HR3096 and associated Clean Water Act fines. We appreciate the opportunity to be here today. The long-term recovery and resilience of the Gulf Coast is critical to this nation. The reinvestment of Clean Water Act fines back into the Gulf will play an important role in the future of the Gulf States, as well as the nation as a whole.

Clean Water Act penalties should be predominantly used for restoration of the Gulf for four reasons:

- 1) The investment allows for the greatest leverage for use of the penalties due to economies of scale and opportunities for matching Natural Resource Damage, state and private investment in restoration projects;
- 2) The investment saves future federal disaster response funding because vulnerabilities in the Gulf will be reduced;
- 3) The investment helps achieve federal Gulf Coast restoration goals otherwise unattainable; and
- 4) The investment will help to cover the needs and impacts that are unmet by the Oil Pollution Act of 1990.

The Deepwater Horizon disaster was the worst oil spill in our nation's history. This disaster resulted in an estimated *five million barrels of oil* being released into the Gulf of Mexico. To put this volume in perspective, it amounts to nearly 20 times the amount of oil spilled in the Valdez spill. As a result of the Deepwater Horizon disaster, an estimated 1100 miles of the Gulf Coast were continually and repeatedly oiled. Today, nearly 20 months after the explosion, approximately 42 percent, or 460 miles, of Gulf shorelines remain oiled. Re-oiling of many areas occurs on a regular basis. According to experts, an estimated one million barrels, or 42 million gallons, of oil remain unaccounted for in the Gulf. Despite this fact,



the Coast Guard, astonishingly, approved BP's recent plan to demobilize oil spill response capabilities.

We commend BP for coming to the table and funding many aspects of response and recovery efforts when the other responsible parties chose to not participate, but attempts to withdraw resources and clean up capabilities is wildly premature. For the Coast Guard to approve these actions would be irresponsible and a complete failure to represent the best interest of the public.

While progress is being made, there is a long way to go.

Following the Valdez oil spill, Congress enacted the Oil Pollution Act of 1990. This Act was largely responsive to lessons learned in the Valdez and Santa Barbara spills. It significantly improved the framework for oil spill response and recovery; however, the size, scope, and duration of the Deepwater Horizon disaster response tested the limits of this framework, which was clearly overwhelmed by this spill, the first ever to be designated a Spill of National Significance. The weaknesses in the federal response framework under worst-case scenario conditions, exacerbated the impact of the disaster and further harmed Gulf Coast communities.

Secretary Ray Mabus Report: A Long Term Recovery Plan After the Deepwater Horizon Oil Spill

(September 28, 2010)

On June 15, 2010, President Barack Obama tasked Navy Secretary Ray Mabus to develop a long-term Gulf Coast Restoration Plan. Secretary Mabus' final report reached a number of important conclusions and made a number of key recommendations:

- *"The Gulf is also critical to nationwide commerce. Over time, the countless demands made on the region have critically impacted the entire Gulf environment. The most recent, and most damaging, of the impacts to the Gulf is Deepwater Horizon (page 1, paragraph 1)."*



- *“Additionally, people of the Gulf Coast believe the impacts of years of economic and environmental damage resulting from coastal erosion and environmental neglect should be addressed by those who have benefitted from the gulf’s resources (page 1, paragraph 5).”*
- *“A key recommendation of this report will be to call on Congress to dedicate a significant amount of any civil penalties obtained from parties responsible for the oil spill under the Clean Water Act to the recovery of the region that was damaged, and to those impacted by its effects. The report will outline a recommendation for establishment of a congressionally mandated governance structure to oversee and implement these and other sources of funding Congress may appropriate with the goal of a coordinated federal, state, and local long-term recovery strategy (page 2, paragraph 3).”*
- *“This report recommends two parallel and complementary efforts to ensure a seamless recovery and restoration effort in the Gulf Coast. In order to help address the harm inflicted upon the region, dedicated funds are absolutely essential. This report recommends that the President urge Congress to dedicate a significant amount of any civil penalties recovered under the Clean Water Act from responsible parties toward assisting the region where the damage from the spill occurred. The report also recommends that Congress establish a Gulf Coast Recovery Council to coordinate the federal, state, local and tribal actions that will be taken, funded in part with financial support from CWA civil penalties, to restore the Gulf Coast (page 4, paragraph 4).”*
- *“It is recommended that the President urge Congress to pass legislation that would dedicate a significant amount of any civil penalties recovered under the Clean Water Act from parties*



*responsible for the Deepwater Horizon oil spill to those directly impacted by that spill...Without additional legislation, these funds cannot be deposited into a Gulf Coast Recovery Fund. **Deepwater Horizon was more than an order of magnitude greater than any other oil spill the nation has faced to date. Therefore, a new mechanism to help fund overall Gulf restoration and recovery operations is necessary** (page 5, paragraph 1 of section A.)*

- It is recommended that the legislation passed would allow:
 - *“A significant amount of any civil penalties recovered under the Clean Water Act from the Deepwater Horizon spill **be deposited into a Gulf Coast Recovery Fund managed by a Gulf Coast Recovery Council. These funds would be used to address those critical recovery needs that may fall outside the scope of the OPA.**”*
 - *“The establishment of a Gulf Coast Recovery Council to lead to long-term ecosystem, economic, and health recovery in the Gulf”*
 - *“A portion of any Clean Water Act civil penalties be directed to the gulf states (Alabama, Florida, Louisiana, Mississippi, and Texas) to enable them to jumpstart their own recovery efforts.”*
 - *“The remaining amount of penalties be deposited in the Oil Spill Liability Trust Fund in accordance with existing law. This would allow for resources to be available to respond to future spills.” (pages 5 and 6)*



- *State and local communities leading their own recovery: "State leadership will be facilitated by the proposal that Congress dedicate an amount of any Clean Water Act civil penalties recovered from the Deepwater Horizon oil spill **directly to state governments.**"*
- *Public comment on CWA fines to Gulf: "We do need the funding to implement a plan. A plan is useless, we've got tons of plans, but we need the funding and the teeth to implement it." (page 118)*

President Barack Obama

In response to the Mabus report, President Obama expressed support for the dedication:

"The Mabus report offers a commonsense proposal for a path forward, relying on the ideas and coordination of efforts at the local, state, tribal, and federal levels, as well as of nonprofits and the private sector. I will ask Congress to provide dedicated resources to bolster the recovery effort, but we will not allow the recovery to wait for congressional action. I have asked EPA Administrator Lisa Jackson to lead a task force that will coordinate efforts to create healthier, more resilient ecosystems, while also encouraging economic recovery and long-term health issues. In the Gulf, the economy and the environment are locked intrinsically together.

We recognize that the recovery effort will take new thinking, cooperation, and creativity. But, most of all, it will take time. In the days ahead, we will stand with the people of the Gulf to help restore, rehabilitate, and revitalize the region. And, together, we will finish the job."

National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling

(January 11, 2011)

The President also appointed a National Oil Spill Commission to make recommendations related to the Deepwater Horizon disaster. This



presidential commission, led by former Senator Bob Graham and EPA Administrator under President George H.W. Bush, William Reilly. Their extensive work concluded:

- *“The Mabus report, as well as regional members of Congress and Governors from the Gulf, have proposed directing a significant amount of the penalty funds to long-term ecosystem restoration in the Gulf (and in the case of the Mabus report, to economic and health recovery as well). Secretary Mabus recommended that the President urge Congress to pass legislation to dedicate some of the penalties for those purposes.”*
- *“Legislative proposals to establish a coordinating and decision-making council, as recommended in Secretary Mabus’s report, call for a state-federal governing entity that has authority to prioritize restoration projects based on a comprehensive strategic plan. Although the details of early proposals varied, most recognized the need for a single, Gulf-wide decision-making authority and a strong leadership commitment to fund only those projects that conform to an agreed-upon vision for long-term restoration.”*
 - Recommendations:
 1. *Congress should dedicate 80% of the Clean Water Act penalties to long-term restoration of the Gulf of Mexico. (page 280)*
 2. *Congress and federal and state agencies should build the organizational, financial, scientific, and public outreach capacities needed to put the restoration effort on a strong footing.*



3. *"The Commission's recommendations share much common ground with those outlined in Secretary Mabus's report this past September. For instance, the Commission recommends that Congress—recognizing that dedicated, sustained funding is necessary to accomplish long-term Gulf of Mexico ecosystem restoration—should direct 80% of Clean Water Act penalties to support implementation of a region-wide restoration strategy. Directing such payments to the Gulf could, for the next 10 years, provide significant funding. If litigation arising from the spill results in civil or criminal penalties, a global settlement of litigation should include supplemental environmental projects and community service projects that direct payments to the Gulf. Should Clean Water Act penalties not be redirected toward Gulf ecosystem restoration, Congress should consider other mechanisms for a dedicated funding stream not subject to annual appropriations."* (page 280)

Gulf Coast Ecosystem Restoration Task Force: Gulf of Mexico Regional Ecosystem Restoration Strategy

(December 5, 2011)

Finally, the federal-state Gulf Coast Ecosystem Restoration Task Force appointed by President Obama released its final report released on Monday (December 5, 2011), where the Task Force:

"The Task Force recognizes the value of intergovernmental collaboration, the need for dedicated funding for large landscape-level restoration efforts, and the importance of a strong scientific foundation for restoration. Accordingly, the Task Force reiterates recommendations made by Secretary



Mabus that call for Congress to dedicate a significant portion of the eventual Clean Water Act civil penalties resulting from the *Deepwater Horizon* oil spill for Gulf recovery, in addition to current funding for Gulf programs." (executive summary)

Supplemental Environmental Projects

While all three reports recommend that Clean Water Act fines be returned to the Gulf and the president has endorsed this approach, it is important to note that current settlement practices already provide for such a remedy. Supplemental Environment Projects (SEP) are a mechanism whereby Responsible Parties propose environmentally-beneficial projects to complement cash fine settlements. Under U.S. Environmental Protection Agency (EPA) policy, the agency may determine to "mitigate down" the cash portion of a fine with consideration of the environmental benefits of the SEP.

In fact, SEPs have been included in hundreds of settlements over the last several years in every EPA regional office. This hybrid cash/SEP approach is an important tool in settlement negotiations, and are particularly valuable in the Gulf region where there are numerous potential projects. The use of SEPs to complement cash penalties allows for Responsible Parties to make investments in the long term health of an impacted area.

Importance of the Gulf Coast to the Nation

Mr. Chairman, the Gulf Coast is critical to this nation. This region is unrivaled in terms of international trade, ports/maritime, energy production and wild seafood. Collectively, the Gross Domestic Product of the five Gulf States represents the seventh largest economy in the world -- nearly \$2.5 trillion. This region produces an estimated 54 percent of the nation's oil, 52 percent of the natural gas, it hosts 47 percent of the refining capacity and is home to 13 of the top 20 ports in the nation. In fact, nearly half of all international trade (measured by tonnage) passes through Gulf Coast ports.



In terms of seafood, the Gulf of Mexico is the most productive ecosystem on the continent. An average of 1.4 billion pounds of commercial landings occur annually in the Gulf of Mexico. On the recreational side, 31 percent of all fishing trips were in the Gulf, but these trips accounted for 44 percent of the catches. The stories vary wildly as to whether those higher catch statics are attributable to better fishermen or better fishing grounds.

Louisiana's Role in the National Economy

Louisiana is the top energy producer in the United States (including OCS production) and we are home to the only deepwater oil port in the country. Our state is the top producer of seafood in the continental United States and we have five of the top 15 ports in the country. Nearly 20 percent of the maritime commerce in the nation flow through Louisiana's ports. The Mississippi River system is America's Commerce Superhighway. Over 30 states depend upon this waterway for maritime commerce.

The Gulf Coast is an economic, ecological, cultural and energy goldmine. Louisiana is a gem.

Natural and Manmade Disasters Affecting the Gulf Coast

This region has also experienced some of the most extraordinary challenges in our nation's history. In the last seven years alone, an estimated \$220 billion in damages and thousands of lives have been lost as a result of hurricanes that hit Gulf States.

In Louisiana, actions by the U.S. Army Corps of Engineers to control the lower Mississippi River system served as the primary cause of the loss of 1900 square miles of coastal wetlands in our state. The impact of flawed oil and gas access and extraction policies dating back 40 years or more exacerbated the impacted caused by the Mississippi River system levees. The cumulative impacts of these offshore activities remain unaddressed. While Louisiana historically was accreting or growing in size, the levees caused an immediate erosion problem that has continued for nearly 80 years. **Despite clear direction from this committee to commence with a comprehensive coastal wetlands restoration program in the**



Water Resources Development Act of 2007, the Corps of Engineers has missed all 17 statutory deadlines to proceed with work and reports and have distorted countless laws to expedite and innovate on restoration and protection efforts in Louisiana. However, it is important to note that Assistant Secretary Jo-Ellen Darcy and her deputy Rock Salt personally intervened to prevent the expiration of key restoration authorizations tied to the Louisiana Coastal Area program. We appreciate those efforts.

Despite the challenges posed by Corps of Engineers, the U.S. Geological Survey released a report this summer that found nearly 200 square miles in new coastal wetlands had been built in the last three years (2008-2010). We attribute these preliminary successes to exponential increases in investments by the state, fundamental reforms to organizational structure of our coastal program, coastal management policy improvements and resiliency in the coastal system.

Impacts of the Deepwater Horizon Disaster

The Deepwater Horizon disaster destroyed our momentum to restore coastal wetlands and the oil spill has increased the vulnerability of coastal communities. Sixty percent of the oiled shorelines during the entire Deepwater Horizon spill have been in Louisiana. This includes over 75 percent of the heavily and moderately oiled shorelines during the entire spill. An estimated 60 percent of the birds, fish, mammals and other species that have been recovered oiled or dead since the oil spill have been found in waters offshore Louisiana. This includes nearly 300 marine mammals since the oil began spilling. In recent months, dead or stranded dolphins have been found in our waters with confirmed Deepwater Horizon oil. Of heavily oiled shorelines, over 90 percent have been in Louisiana.

Regular re-oilings have been occurring on our coast. In fact, just last month, over 1,000,000 pounds of recently-discovered tar mats were removed in coastal Louisiana. Over 250 miles of our shoreline remains oiled today. Of this 100 percent of the heavily-oiled shorelines and 93 percent of the moderately oiled shorelines are in our state.



The disproportionate impact of the Deepwater Horizon disaster transcends our coastal communities. Our fishermen, seafood processors, marinas, bait shops, hotels, restaurants, platform workers, offshore supply operators, and many, many others have all been affected by this disaster. The explosion, spill and response efforts have all left a permanent scar on our people.

Oil Pollution Act and Clean Water Act Fines

The committee's invitation to testify today requested that we explain why Clean Water Act fines be returned to the Gulf Coast in light of natural resource and economic remedies provided for in the Oil Pollution Act of 1990. It is important to note that in passing the Oil Pollution Act (OPA), Congress clearly saw a need for both Natural Resources Damage Assessment (NRDA) and Clean Water Act penalties. Congress did not view them as overlapping in scope or purpose. Both are included in OPA.

The purpose of NRDA is to make the environment and public whole for injury to or loss of natural resources and services resulting from the Deepwater Horizon disaster by returning injured natural resources and services to the condition they would have been in had the spill not occurred ("baseline") and compensating for interim losses from the time of the incident until recovery (restoration) of those natural resources and services to baseline.

The policy rationale for Clean Water Act fines or penalties is wholly distinct from the purpose of NRDA. Per EPA, penalties deter future violations by responsible parties and other regulated entities, and encourage the adoption of pollution prevention techniques. Penalties also promote a national level playing field because they help ensure that violators do not obtain an unfair economic advantage through non-compliance with regulations. Because of these factors, penalties reduce the potential for future discharges, and promote environmental compliance and help protect public health.

NRDA restoration required under OPA exists for an entirely separate purpose than Clean Water Act penalties. There is not, and should not be, overlap between restoration funded through penalties and restoration under NRDA. Penalty-



funded restoration should be encouraged and provided for in addition to, and not instead of, NRDA restoration.

Restoration funded by penalties and/or Supplemental Environmental Projects should be encouraged for the same purposes as penalties themselves – to deter future violations, promote environmental compliance, and protect public health.

Targeting penalty funds to areas affected by a specific incident is not a new concept. As we noted earlier, Supplemental Environmental Projects, long utilized by EPA as part of settlement of CWA enforcement cases, are expressly required to have adequate nexus to the violation at issue. Nexus can be met where the project reduces the adverse impact or overall risk to public health or the environment affected by the violation.

SEPs cannot be projects that responsible parties are otherwise legally required to perform, making them distinct from restoration required by NRDA. Similarly, penalty funds directed toward Gulf Coast restoration as a result of proposed legislation would be spent on projects that responsible parties would not be required to perform under NRDA.

The Gulf Coast's environment and its communities have unquestionably borne the impacts of Deepwater Horizon, the largest oil spill in our nation's history. It is only fair that the Gulf Coast states receive the majority of the penalties that the Responsible Parties will pay as a result of this disaster.

The federal government should not profit from the Gulf's loss. Clean Water Act penalties must be reinvested in Gulf communities.

This magnitude of this incident calls for a specialized approach. Funding restoration in the Gulf (and specifically in Louisiana) through penalties is equitable and serves the purpose for which penalties exist.

Restore Act

Secretary Mabus, the National Oil Spill Commission, a Federal-State Task Force and the President have all expressed support for the need to return Clean Water



Act fines to Gulf communities. This initiative has bipartisan support in the United State Senate and the House of Representatives is on record supporting the concept of returning these funds to the Gulf. The business community, environmental community, local governments, state governments, liberals and conservatives have all expressed support for the reinvestment of fines into the impacted communities. This is not an partisan issue and it is not parochial. This is the right thing to do. It has clear policy precedent and the concept has been used in hundreds of Clean Water Act settlements around the nation.

We ask that you not discriminate against the Gulf. Return the fines back to the impacted communities. The Restore Act is designed to improve the health of the Gulf Coast and our people.

Allocation and Use of Funds

Reinvesting Clean Water Act fines back into the Gulf Coast should be an important national objective. The implications of no action would lead to significant environmental and economic consequences that ultimately would negatively impact energy production and gross domestic product for the entire United States, to name just a few.

Today, one of the greatest fiscal liabilities of the federal government is the next hurricane on the Gulf Coast. The federal government has repeatedly taken a reactive approach to disaster management -- using Stafford Act/FEMA to respond to a disaster. Multiple reports have shown that disaster mitigation is one of the greatest investments government can make. Studies show that every \$1 invested in resiliency will result in \$4-\$10 in cost savings in future disasters.

Clean Water Act fines should be returned to the Gulf based upon volume of oil -- just as the penalty is established. This ensures that funds are being invested in impacted areas. The State of Louisiana will commit to invest these funds in efforts to restore our coastal ecosystem, improve the resiliency of our coastal communities and to contribute to a bright future on the Gulf Coast for generations to come.



Written Testimony Mayor Robert Craft Gulf Shores, Alabama

House Committee on Transportation and Infrastructure

12/7/2011

Chairman Mica, Ranking Member Rahall, and Members of the Committee: Thank you for having me come to testify at today's hearing. The coastal residents along the Gulf of Mexico greatly appreciate your interest in our region as you consider the RESTORE Act.

The Alabama Gulf Coast is a unique blend of family owned businesses working in a beach community and a metropolitan city. In the South Baldwin County beach communities, we do not have many large chain hotels or restaurants, or large institutional employers. Our only industry is tourism. Southern Mobile County has industry, but also has a thriving tourism economy, and an economy dependent on healthy seafood in the Gulf.

Our visitors come to go charter fishing, engage in water sports, dine at the restaurants they know well, or just lie on the beach. They stay at condominium facilities or rental homes rather than large chain hotels. We have more than 14,000 condo units compared to 2,000 hotel rooms. Most of these properties and the rental companies who manage them are locally owned.

We hold dear the reputation we have as an attractive, safe family vacation community, which accounts for the large percentage of repeat visitors and we work hard to attract new visitors. In the years leading up to 2010, our city's economy grew by almost 10% per year. Tourists in South Baldwin County, where Gulf Shores and Orange Beach are located, accounted for almost 30% of the tourism income of the state.

Our lack of economic diversity makes us very vulnerable to anything that might impair tourism. Our economy and coastal ecology are inseparable. We survive financially only if the Gulf Coast environment is viable and healthy. It is in the best interest of the business community just as it is the local government to do whatever is necessary to maintain a healthy coast.

The fishing industry in Alabama accounts for \$800 million in sales and 18,000 jobs. We are involved in every step of the fishing industry. The number of trips out to fish has been down ever since the spill and the seafood harvest has been as well, which also effects the processing industry.

Our real estate market is primarily an investor/second home resort market and it was also on the come back, but has once again been pushed back due to the lack of uncertainty during 2010 and the lack of good rental income histories from 2010 still affecting the marketability of properties in 2011.

Our local governments and businesses know that they must have reserves for the inevitable tropical event or economic downturn, which temporarily cripples the local economy. Our history of dealing with such problems has honed our response and skills to the massive effort of cleaning storm debris and assisting disabled businesses. The much slower winter

season typically requires subsidies from reserves, as annual income for most businesses comes mainly from the summer season. It is a delicate balance which we understand. Given the events of the last year and a half, small businesses have depleted their reserves and credit is not available from the banking industry.

The first quarter of the year 2010 looked to be the beginning of the strongest year in the city's history. Lodging Tax Revenues were up 17% from a year earlier. In the months preceding the spill the city was in the process of final planning for a public beach reconstruction effort. Architects and engineers were hired for the design.

On April 20, 2010, the Deepwater Horizon well tragedy occurred. For the first few days there was constant confusing and conflicting information on the aftermath of the explosion and oil spill. The original estimates of leaking oil proved incredibly unreliable and understated. Louisiana was the earliest victim of the spill and by late April, in Gulf Shores, Alabama, landfall was imminent. The dread and fear was palpable as we awaited the inevitable.

In 2010, 100% (all 39 miles) of Alabama's white sand beaches were impacted for the entire season. This complete shutdown of all beaches in the state did not happen anywhere else on the Gulf Coast. Our goal is to diversify our economic base so that our economy is less dependent on an assumed ever ready Gulf of Mexico to lure tourists to this coast. We need an opportunity to rebuild within a more diverse economy. Local governments need substantial reserves to build a credit rating because of our high risk geography and recent business history given the 2010 BP oil spill disaster.

With the first sign of the green wave of oil just offshore, our coast became ground zero for the national media to gather and report on the disaster. Reservations were almost immediately cancelled. Small businesses were financially impacted the hardest because the BP claim paying process proved agonizingly slow and complicated. Ignoring local government, BP hired hundreds of contract workers to gather on the beach to pick up oiled material by hand. They ordered in heavy equipment without consultation of the city and all of this confusion and turmoil on our beaches was nationally telecast and written about daily. Due to the presence of BP, contactors, the Coast Guard and regulatory agencies on Alabama's beaches, tourists were scarce.

To avoid the overwhelming numbers of claims pouring into BP, the Gulf Coast Claims Facility (GCCF) was established, promising fast action on claims and up to \$20 billion in money to "make it right" for the thousands losing income due to the spill. This proved to be a smart strategic move for BP. It put a wall between the company and the escalating complaints, and BP/GCCF showed no intention of ever spending down this escrow. Today, less than \$6 billion has been expended.

Due to the fact that there was such a decrease in business during the summer of 2010 because of the BP oil spill, many of our businesses had no revenue to pay off their lines of credit. These businesses are no longer able buy on credit, have no reserve left and no way to borrow more money. This led to many not surviving 2010 or able to restock for 2011, which led to further business loss.

Reports of contaminated water, sand and seafood were rampant. Any “chemist” with a Petri dish working out of a garage could get airtime as he proffered that the Alabama beaches were seriously polluted and dangerous. News reports of the environmental damage created by BPs putting millions of gallons of dispersants in the sea were additional negative information for some media to pursue. The Alabama Department of Environmental Management (ADEM), and the State Health Department, with whom we continue to work with daily, had another story to tell but it was apparently not what sells news. Our cities were constantly in a defensive posture as we attempted to correct the onslaught of pseudo-science literally predicting the death of America’s Gulf Coast.

The mental and physical stress caused by the decrease in revenue to businesses and individuals led to increased domestic violence, drug and alcohol abuse, suicides, families being split up as they lost their homes, having to move in with other family members, one parent having to leave the area to find employment, lack of food, utilities, clean clothes – all has led to tremendous increases in the stress levels and mental anguish of the children of these families suffering from little or no income, not only affecting their health, but also their school work. This has also put a tremendous extra burden on teachers who have now had to become mental counselors and social workers, as well as teachers.

BP’s strategy was to spend millions on national ads bragging about all the good they were doing, and providing small grants to cities with the mantra of “making it right”. This was a self serving way of attempting to avoid future claims. It was a time never to be forgotten by those who lived through this disaster, with no end yet in sight.

The Alabama Gulf Coast Convention and Tourism Bureau’s aggressive advertising and BP funding proved successful as tourists began to return by early summer. Thousands of our loyal repeat visitors booked rooms, yet a heavy veil of caution and suspicion among visitors became obvious. Is the water really safe? Can we eat the seafood? Will the kids get sick if they play in the sand? Our reputation as a family friendly safe environment had been seriously damaged if not destroyed.

The 2011 summer tourism was a success. The millions spent on advertising undoubtedly contributed to what we pray was not just a one year wonder. We have no more resources to put into attracting visitors back to this coast. Fortunately, this area did not have a hurricane this season, so the unanswered question of how, where, and who pays for contaminated (oiled) debris washing up on shore during a storm surge did not have to be considered. It will remain a threat for a long time to come.

It is understood and accepted that we are in for a long term recovery in hopes of one day enjoying the stability we were on the brink of achieving in 2010. It has been an incredibly trying year and a half. BP is working hard to put this behind them, and future liability will remain with the Alabama coast. We can look forward to no more grants for tourism generating events or for marketing funds.

The oil mats remain off shore and probably hidden in the areas bays and estuaries. As I am writing this, five teams of workers patrolling the beach are picking up an average of 220

pounds of oil polluted material daily. For the last 500 days we have had BP workers/contractors or Coast Guard personnel on our beach to remind tourists that the threat is still here.

We continue to hear various reports on the quality of Gulf seafood and reports of new leakage at the Deepwater Horizon site. Like most of the information coming into us it is not possible to prove or disprove anything. Just getting information is challenging, much less culling fact from opinion and various agendas. Anything from an unusual number of dolphins dying to new research on sharks is reason for the public to suspect BP oil and/or dispersants, whether or not a cause and effect can be established.

These events have made this coast aware of and sensitive to the threat of thousands of wells in the Gulf as well as new and damaging information on contaminants and other not yet well defined problems such as a massive storm surge from a large hurricane that will oil the land and the bays and estuaries on this coast. All these threats remain out there and BP will be gone.

The State of Alabama has one of the most diverse assemblages of ecosystems in the world. The state has natural waterways that flow through pristine hardwood forests in the north, down through the Mobile Tensaw Delta and the Mobile Bay estuary and finally to the white sandy shores of the Gulf of Mexico. Alabama has the fifth highest diversity of species in the Nation, with the highest diversity of any state east of the Mississippi River. We have the Mobile Tensaw Delta, a National Natural Landmark, which is the second largest river delta system in the nation with approximately 250,000 acres of delta ecosystem. This system is a unique ecological habitat housing some species that are not found anywhere else in the world, like the Alabama red-belly turtle (*Pseudemys alabamensis*), the State Reptile and a federally endangered species with primary nesting grounds in Baldwin county portions of the Delta.

The Mobile Bay estuary serves as a sanctuary for a variety of waterfowl as well as providing vital food, cover, and nursery area for larval and juvenile aquatic and marine life, including recreationally and commercially important species. With all of its diversity, our state is host to submerged aquatic vegetation, wetlands, cypress gum swamps, salt marshes and oyster reefs, tidal brackish water marshes, fresh water lakes and ponds, bottom land forest (in North Alabama), wildlife management areas, and National Forests and approximately 200 miles of canoe trails. Alabama is located on a main migratory birding route and serves as a breeding, foraging and shelter area for approximately 300 species of birds. In many cases, Alabama habitat may be the first stop after a long migratory journey. Alabama also sustains more species of mollusks than anywhere else in the world. Our delta system drains approximately 80% of the State's waters and up to a fifth of National Waters at any time through Mobile Bay and then into the Gulf ecosystem which provides approximately a third of the nation's seafood.

Therefore, superior water quality and preserved habitat is imperative for the survival of sensitive and ecologically important species. It is not completely understood how vulnerable the Delta is to environmental stresses. With high species diversity, comes a potential for high and severe risk if our sensitive eco-habitats are lost. The RESTORE Act funding can help ensure that we are able to maintain habitat conservation and water quality vitality on many different levels both ecologically and economically.

We sit on the edge of our country's most productive energy source, and we now completely understand the risk we face. Knowing that, we still aggressively support continued safe drilling in our gulf and a drive toward energy independence. Additionally, the offshore energy which is vital to US energy independence continues to struggle to revive from an almost year long freeze in activity. This also has significant impact to the same supply companies, shipyards and others mentioned above.

The RESTORE Act money needs to go to the Gulf states to help rebuild/re-nourish the environment, prove the seafood, Gulf waters, air and sand are safe, help convince people that it is all safe (if it is), continue to clean the beaches until back to pre-BP oil spill condition – i.e. No Tar Balls, remove submerged oil mats, re-train some of our people who cannot make a living as they did before, expand and diversify the local economies to help prevent this type of environmental/financial devastation again, because we have lost some of our regular tourist customers forever due to their personal perception that our area is not safe and we may never be able to convince them otherwise.

There is no doubt that the Gulf Coast is of vital national importance. The ports, the seafood industry, the energy industry, and tourism all provide benefits to the region. It is absolutely in the national interest to insure that the Gulf Coast is able to boost its resiliency.

The full impacts of the spill may not be known for years to come. Ports along the coast struggled during the spill to deflect the assumptions by many that they would be closed to traffic. The export focused ports along the Gulf Coast are of importance to many sectors in the US and local economies. Boosting the capacity and resiliency of these ports will provide significant opportunities to diversify and increase job opportunities on a regional and national basis.

The Gulf Coast seafood industry has traditionally supplied a significant amount of wild caught seafood for the US. The long term damage will not be known. In the short term the industry is still trying to regain markets that disappeared during the spill. The impacts extend far beyond the families that for generations have fished the waters of the Gulf and its estuaries. The processors are still struggling to regain capacity lost during the spill. The supply companies, shipyards and others that support the industry continue to suffer as the industry struggles to rebuild.

The communities along the Gulf Coast will be left with the total responsibility of dealing with the final clean up, restoration of the environment and our reputations as safe places for people to visit or invest and our economic recovery and sustainability for the future and the RESTORE ACT money is needed by the Gulf States to make all of that happen.

We have to build resiliency within the Gulf coast communities, because we will always be faced with the possibility if this same type of environmental disaster and we need to be able to implement the lessons we have learned from this disaster to be better prepared to survive and thrive when we have another one. We only ask that our government recognize the harm caused and dedicate the clean waters fines to this and future spill recovery efforts.

Thank you very much for having me today. I am ready to answer any questions you may have.



DOUG SMITH
PRESIDENT
MARTIN

BILL WILLIAMS
PRESIDENT ELECT
GULF

BRYAN DESLOGE
FIRST VICE PRESIDENT
LAFAYETTE

KEN WELCH
SECOND VICE PRESIDENT
PINELLAS

HELEN LIEBERMAN
IMMEDIATE PAST PRESIDENT
BROWARD

CHRISTOPHER L. HOLLEY
EXECUTIVE DIRECTOR

**Statement by Bill Williams
Gulf County Commissioner (Florida)**

**House Committee on Transportation and Infrastructure
Wednesday, December 7, 2011
Rayburn Building, Room 2167**

Chair, Congressman John Mica (FL)

On behalf of Florida's 67 counties, and more specifically the coastal counties, I would like to thank Chairman Mica and the committee members for the opportunity to address the House Committee on Transportation and Infrastructure this morning.

On April 20, 2010 catastrophe struck. Eleven men lost their lives in this senseless tragedy and the Gulf of Mexico and her treasured coast were changed forever. Looking back I realize that time has allowed many wounds to heal and hindsight provides us with many lessons learned. While the hurt lessens and our communities slowly come back, we cannot forget the pain and suffering and the long term, possible permanent, environmental and economic tragedy that was inflicted on America's Gulf Coast.

While many of you may know our counties as tourist destinations, we are in reality often small communities with few full time residents making an income off of one resource – the Gulf of Mexico. The Gulf is abundant and generous in providing a spectacular shoreline, and a vast resource for recreational and commercial fishing.



Immediately following the Oil Spill, every citizen and county mobilized to protect their shoreline from the impact of oil washing on beaches and destroying our environment and economy. We invested resources we didn't have, to lay down boom and build berms to protect against oil. Immediately, visitors left, tourists canceled reservations and restaurants across the country stopped serving Gulf seafood. Our economy collapsed in a day and our environment was threatened forever.

All the boom still could not stop the oil and we stood by helplessly as we watched tar mats and tar balls mar our white sand beaches. Workers in hazmat suits trolled the beaches day and night but it was too late – the beaches were empty, everyone had gone home and no one else was coming.

Our fishing vessels normally used to harvest the best tasting shrimp, grouper and snapper you can imagine were now collecting oil in nets – the equivalent of using a cotton ball to clean up a barrel of oil. Fishing was no longer an option.

Apalachicola, famous for her amazing fresh oysters, was deserted. Her oysters if not spoiled, no one was willing to eat them and our oystermen were out of work.

These are just a few of countless stories around the Gulf of the impact of this tragedy and resources wasted in a futile attempt to stop oil that was coming anyway.

It is often in tragedy that we find our true strength, strangers become friends and fighting together becomes more important than culture, religion or politics. The Deep Water Horizon Oil Spill was no different. Citizens joined with government, cities joined with counties, counties with states and states became partners.

Texas, Louisiana, Mississippi, Alabama and Florida are unified. We have suffered this tragedy together and we can rebuild together – IF we are giving the tools to do so.

Our communities have pulled together to try our best to recovery from this tragedy. It is easy to be deceived by appearances and placated by the surface of our communities seemingly back to normal – but buried under our sand is oil.

Our seafood industries continue to fight the perception of damage and contamination and as my friend from USF will testify – the damage to the Gulf is not yet fully realized.

Not only is there much left to do to help our environment recover from the tar and damage, we know there is still oil out there – where, when and how it will cause its damage is unknown and the Gulf Coast must be armed with the tools and resources to respond when it does.

When a mistake is made we teach our children to stand up, take responsibility – to make it right. BP has done that and is continuing to do that, but it does not absolve them and others from paying the consequences for this disaster. Florida supports House Bill 3096 and asks that each of you support this important bill.

In these tight economic times, I understand the temptation to use these monies to fill holes, but I encourage and ask each of you to do what is right. To acknowledge that if this were your home, your livelihood – you would expect ask the same. I ask each of you to see the Gulf of Mexico for the national treasure she is - she provides our children with gentle waves to jump in, our families with beaches to lounge on and more importantly she provides five states and dozens

of counties – with the not just a livelihood but a home – a home that deserves to be restored, protected and promised the same future held before this tragedy.

This bill solidifies BP's responsibility to make right, by ensuring that those directly impacted from this tragedy can one day hope to be made whole.

We are here to help and assist your committee in any way possible and hope you will continue to use us a resource. On behalf of Florida, I thank you for this opportunity to be here.

I am happy to answer any questions or provide additional information.

Testimony before the Committee on Transportation and Infrastructure, U.S. House of Representatives

**RE: Restoring Jobs, Coastal Viability, and Economic Resilience in the Gulf of
Mexico: H.R. 3096, the Resources and Ecosystems Sustainability, Tourist
Opportunities, and Revived Economics of the Gulf Coast States Act of 2011.**

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December 7, 2011
(submitted December 5, 2011)

Honorable Representatives on the Committee on Transportation and Infrastructure, U.S. House of Representatives; participants, staff, and associates, it is my privilege to be here with you today to address the matter of establishing what damages occurred in the Gulf of Mexico coastal states as a result of the Deepwater Horizon oil spill for which compensation required under Section 1012 of the Oil Pollution Act of 1990 is not being received, and to comment on this as regards H.R. 3096, the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economics of the Gulf Coast States Act of 2011.

While there is no doubt that the Deepwater Horizon oil spill was and continues to be very costly for the Gulf of Mexico coastal states, I must concur with the recent draft interim report by the National Research Council: "Approaches for Ecosystems Services Valuation for the Gulf of Mexico After the Deepwater Horizon Oil Spill" that the full impacts of the spill are unknown, expected to be considerable and will be expressed over years to decades. I must also question whether the provisions of H.R. 3096, as written, will facilitate, along the lines of an Ecosystems Services (defined as the benefits that people receive from ecosystems) approach advanced in the NRC interim report, arriving at a definitive answer on damages. Whereas I appreciate the intent of H.R. 3096, I find certain shortcomings that require discussion. I will attempt to explain these and offer suggestions for improvements on this topic, which is of great importance for the Gulf states and for the nation.

I found H.R. 3096 to be very precise with its definitions pertaining to administrative matters, but less precise with its definitions pertaining to matters of ecology, or more generally with matters pertaining to the workings of the ocean as a complex, multifaceted system. Definitions of geography, using maps and physical features, are simpler than definitions of natural processes that occur within a geographical setting. For instance, fisheries do not organize as simply as the Magnuson Stevens Act

“regional councils” are organized, nor by the boundaries of state and federal waters. More specifically, the Caribbean, Gulf of Mexico and the Southeastern United States are not separate large marine ecosystems because they are connected by the Loop Current, Florida Current, and Gulf Stream. Similarly, while three (or nine) mile limits may denote state waters as being separate from federal waters denoted by the offshore extent of the EEZ, fish spend portions of their life histories in both of these regions. Moreover, many commercial and recreational species also utilize the estuaries. Ecology is therefore all about connectivity, connectivity in space, time and across trophic levels.

Discussions of ecology (and therefore an ecosystems services evaluation of damages as recommended within the NRC draft interim report) must therefore begin with the ocean circulation, which unites nutrients with light, facilitating plant growth similar to how homeowners care for their lawns. Without the ocean circulation there would be drastically reduced primary and higher trophic level productivity. From these concepts it follows that the Gulf of Mexico is a very complex, multifaceted system that must be studied as a system if we are to better understand how it works, assess damages to it and facilitate improved environmental stewardship going forward. An automobile provides a useful analogy. With mechanical, electrical, and fuel systems, an automobile cannot be fixed if one does not know how its pieces work both individually and together as a system. H.R. 3096, albeit motivated by environmental assessment of damages and environmental stewardship, falls short of facilitating the defensible science necessary to establish how the Gulf of Mexico ocean system works and hence for achieving its goals.

An important theme repeated throughout H.R. 3096 references “projects and programs that would restore and protect natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, coastal wetlands and economy of the Gulf Coast.” Toward such end, a plan is to be developed, which includes and incorporates the findings and information prepared by the President’s Gulf Coast Restoration Task Force (preliminary report dated October 5, 2011). The Task Force Report itself lists four goals:

1. Restore and Conserve Habitat,
2. Restore Water Quality,
3. Replenish and Protect Living and Marine Resources, and
4. Enhance Community Resilience,

and major actions for achieving these goals are itemized. However, these actions are almost entirely directed toward regions peripheral to the Gulf of Mexico (river inflows, wetlands, marshes, beaches), versus the Gulf of Mexico itself. As such, they will not (in my opinion) lead to the desired results. For instance, the water quality at a particular beach oftentimes has nothing to do with what happened locally in the immediate vicinity of the beach. Instead, the water quality may be due to the transport of materials from the coastal ocean at points quite distant from the beach. Red tide along the west Florida shoreline offers a case in point; so does the movement of Gag Grouper larvae from adult spawning regions along the shelf break to the sea-grass beds either near-shore or within the estuaries. The reality is that few coastal ocean processes are local; most entail remote connections. If these connections are not understood, and thereby made predictable, then

the Task Force Report goals cannot be met. Even the order of oil deposition on the northern Gulf beaches followed certain rules of connectivity. Simply stated (and paraphrasing the Taylor-Proudman theorem), water originating over deep water isobaths (and the oil carried by it) tends to stay in deep water, and conversely for shallow water isobaths. It is for this reason that the Mississippi River Delta was the first landed area to be oiled (it extends out closest to deep water isobaths). It then took some 1.5 months for beaches in the vicinity of Pensacola Florida to be oiled next (Pensacola is located at the head of DeSoto Canyon where deep water isobaths again come close to the coast. With oil in shallow water off the coast of the Florida Panhandle, the beaches both to the east (to around Panama City Florida) and west (to Alabama and Mississippi) of Pensacola then received oil. There was a predictable progression based on the physics of the ocean circulation. But these concepts are neither included in the Task Force Report, nor in H.R. 3096, whose actions are to be guided the Task Force Report. Whereas a "robust scientific foundation" is referenced, the basis for such foundation is missing throughout most of the Task Force Report. An exception is toward the end under "Research Programs," where it is stated that: "It is essential that monitoring, modeling, and research development activities are integrated from the initial stages of restoration and protection planning in order to support adaptive management decision-making." While I agree (and may have influenced the inclusion of such language in that report), I cannot derive much confidence that this will occur in view of the short shrift given elsewhere to the study of the Gulf of Mexico as a complex, multifaceted system.

The shortcomings discussed above are reflected to some degree in the National Research Council draft interim report previously cited. The NRC report states, for instance, "A mechanistic understanding of and model for the complex linkages and interdependencies of the ecosystem being studied would be of immense value in analyzing ecosystems services." Achieving this is neither simple, nor inexpensive nor short term. It requires a sustained, multidisciplinary approach to describing and understanding the workings of the Gulf of Mexico as a complex, multifaceted system. This will require a coordinated ocean observing and modeling program, a rationale for which now follows.

The coastal ocean is literally where society meets the sea. It is a complex, interconnected system, the workings of which must be understood if we are to predict the consequences of human actions and distinguish these from natural occurrences. Such understanding comes through adequate observations and hypothesis testing via science-based models; in other words, the application of the scientific method. Priority must therefore be given to implementing a coordinated, multidisciplinary program of coastal ocean observing and modeling, including the interactions that occur between the coastal ocean and the deep ocean and between the coastal ocean and the estuaries. That was the essence of my testimony before the U.S. House of Representatives Committee on Natural Resources, Subcommittee on Insular Affairs, the Oceans and Wildlife on 6/15/10 (at the height of the Deepwater Horizon oil spill), and it remains valid today. This is the pathway toward becoming better coastal ocean environmental stewards, and only in this manner will we be better prepared to deal with the ocean environmental consequences of future, unintended accidents such as the Deepwater Horizon oil spill.

In view of the above context, how should we be advancing our knowledge of the Gulf of Mexico? Two phrases taken from the present administration's approach to ocean sciences provide guidance. These are: Ecologically-Based-Management and Marine-Spatial-Planning. To accomplish these we must first ask what is meant by marine ecology and marine spatial planning? The key word in answer to this question is connectivity, connectivity across space and time and connectivity across trophic levels. In other words, we must understand how the ocean system works if we are to manage it, plan for its utilization, and predict consequences of human actions.

The ocean circulation is the fundamental determinant of connectivity. The circulation unites nutrients with light, fueling primary productivity and thence all higher level trophic interactions. The circulation also determines Earth's climate. Owing to these connections there is no aspect of Florida's economy that goes untouched by the ocean, and similar can be said to varying degrees for the other Gulf States.

The Gulf of Mexico consists of three interconnected regimes: 1) the deep-ocean, seaward from the shelf break (beyond which water depth plummets to the abyss), 2) the coastal ocean, which is the continental shelf region between the shelf break and the shoreline, and 3) the estuaries, where the rivers transition to the sea. The workings of the coastal ocean depend on the connections between these three regimes.

The deep Gulf of Mexico is governed by the Loop Current-Florida Current-Gulf Stream system, which connects the Caribbean, the Gulf of Mexico, and the Southeast United States. The coastal ocean is governed by local wind, heat and fresh water forcing and subtle deep-ocean and estuary interactions. The estuaries are governed by density differences between the river and ocean waters, with tides being important in how these waters mix. Thus, with different sub-system workings, we are challenged to understand and predict the workings of the overall Gulf of Mexico system. Nevertheless, the problem is tractable if approached in a systems-wide, scientifically defensible manner.

Where do we start? Whereas there are many societal relevant reasons for understanding the overall workings of the Gulf of Mexico, fisheries provide a rallying point because fisheries must integrate all of the sciences. Thus if we can understand fisheries well enough to engage in ecologically-based-management of fisheries resources (we presently do not) then we can also make application to harmful algal blooms, safe and efficient navigation, search and rescue, hurricanes, climate, and the tracking of hazardous spills such as occurred during the Deepwater Horizon event. In other words, to do fisheries right we must do all else right. Only then will we be in a position to engage in scientifically defensible marine-spatial-planning. All is predicated on understanding how the ocean system works and the connections thereof.

The problem is big, but there are guiding principles. First, we must combine extensive observations with science-based models. There can never be enough observations, and this requires models for integration; but, models, without observations, are nearly useless. The two must go hand in hand. Second, no single sensor (for

measuring state variables like temperature, salinity, velocity, nutrients, light, plankton, fish, bottom types and habitats, or other state properties) or sensor delivery systems (moorings, profilers, gliders, ships, side scan sonars, satellites, etc.) are adequate. A judicious mixture of these is needed, plus new technologies. Third, and similarly, no single model is adequate. In analogy to hurricane landfall prediction, we require an ensemble of models for ocean-atmosphere interactions, circulation, and the complex biological interactions that, together with the circulation, comprise ecology. There is much to do, and this requires many partners, each with individual expertise and brought together in a truly multidisciplinary, multi-institutional manner.

The starting point is with existing observing and modeling resources, which must be sustained and built upon. Numerical weather forecasting provides an example of how such approach can succeed. When first initiated in the 1950's, the results were terrible. But as observations were steadily added and sustained, model workings were better understood, and, as computational power increased, our ability to predict weather steadily improved to the point where most television viewers now eagerly await the evening report. The same can be applied to the development of ocean observing, modeling, and prediction systems for the Gulf of Mexico.

The time to do it is now, and the proceeds from compensation for the Deepwater Horizon oil spill required under Section 1012 of the Oil Pollution Act of 1990 provide the vehicle. Expertise for the required research and development is within the purview of the academic community and the private sector in support of the operational expertise of the state and federal agencies. The Gulf states, the nation and the associated industries and agencies all stand to benefit from empowering those who actually pioneered such studies and demonstrated performance through rigorous peer reviewed publications. This provides a starting point to be systematically added to in a capacity building endeavor. In other words, we need to sustain what is scientifically defensible and systematically add to these (observing, modeling and management) resources in a scientifically defensible manner.

All of the above can be accomplished (if scientific defensibility is mandated) within the framework of the Integrated Ocean Observing System (IOOS), which is broken into Regional Associations (RA), each with Regional Coastal Ocean Observing Systems (RCOOS). For the Gulf of Mexico there are two such RAs: SECOORA and GCOOS, with SECOORA extending from the westernmost portion of Florida to Cape Hatteras (i.e., it includes the entire State of Florida) and with GCOOS including the entire Gulf of Mexico. While these two entities cooperate, SECOORA is predicated on the fact that the Loop Current - Florida Current - Gulf Stream System provides the connectivity between the Caribbean, the Gulf of Mexico, and the Southeastern U.S. It is for this reason that the development of the RCOOS for the west coast of Florida is largely within the purview of SECOORA.

Given the economic, strategic, and societal value of the Gulf of Mexico, and the fact that much of the societal risk owing to commercial offshore activities (e.g., Deepwater Horizon oil spill) and tropical storms (e.g. Hurricane Katrina), funding for the

existing Gulf of Mexico through either SECOORA or GCOOS is disproportionately small and grossly inadequate. For instance, the 2010 annual budgets for different combined coastal regions within IOOS (see: <http://www.ioos.gov/partners/regional.html>) are:

- West Coast, \$10.1million
- Atlantic Coast, \$6.0 million
- Great Lakes, \$3.7 million
- Gulf Coast, \$1.4 million

Why the Gulf Coast, the coastal state region of the nation with the greatest present risk and where increased oil and gas exploration will focus in the future, has the fewest resources is questionable; but, regardless of previous actions, the need for remedy seems obvious.

Two other specific funding deficiencies of H.R. 3096 warrant mention. Whereas I readily recognize the need for funds utilization other than scientific research and development (the 35% and 60% distributions described in the bill), I am concerned about the level of funding identified with Gulf of Mexico research and development, in essence my preceding written testimony. Funding for this is specified at 5% of the Gulf Coast Restoration Trust Fund, and this is to be split equally between the "Program" and the "Fisheries and Ecosystems Endowment."

The Program, entitled: the "Gulf Coast Ecosystems Restoration Science, Observation, Monitoring and Technology Program will have five Centers of Excellence, one in each of the Gulf coast states, and it will award competitive grants to be administrated by NOAA. The Centers of Excellence will have foci within at least one of the following five areas:

- Coastal and deltaic sustainability
- Coastal fisheries and wildlife ecosystem research and monitoring
- Offshore energy development
- Sustainable and resilient growth, economic and commercial development in the Gulf of Mexico
- Comprehensive observation, monitoring and mapping of the Gulf of Mexico

Of these five areas, the only one that partially gets to the heart of my testimony (the need for a comprehensive multifaceted systems-wide approach to how the Gulf of Mexico works) is the last one. With funds so diluted [$0.8 \times 0.05 \times 0.5 \times 0.2 = 0.004$], even if the penalty monies amounted to 20B there would only be some 16M per state, and with only a small percentage to be used each year to ensure funds in perpetuity (for instance, using a 0.05 expenditure rate per year) this would result in 0.8M to be spent by each state. In the event that only 2B is available then the amount per year for each state would be some 80K, hardly enough to do much of any comprehensive observation, monitoring and mapping of the Gulf of Mexico (plus the necessary modeling that must be coordinated with the observations to fully employ the scientific method). My point is that a higher

percentage of the penalty monies must be apportioned toward understanding how the Gulf of Mexico works so that we can better assess long term damages, become better environmental stewards and be better prepared for any future unintended events. Moreover, the emphasis for the Centers of Excellence must be placed where it belongs (a comprehensive, multidisciplinary, systems-wide approach to the workings of the Gulf of Mexico), not diluted by ancillary verbiage.

The Fisheries and Ecosystem Endowment, in my opinion, is equally troublesome. Throughout my testimony I emphasized the need to understand how the Gulf of Mexico works. I even used fisheries as an example: if we can understand and predict the fish, we must be able to understand and predict many other aspects of the Gulf of Mexico. But we cannot understand the fish by merely studying the fish. We must instead study the fish in the context of the more complex system in which they make their living. The problem is one of state variable estimation with the fish being but one of the state variables (velocity, sea level, temperature, salinity, nutrients, phytoplankton, zooplankton, fish, etc.), and with the fish depending on all of these.

As a remedy to the concerns provided above, I am suggesting two modifications. The first is to substantially increase the percentage of penalty money to be provided for long term research and development specifically targeted at developing a comprehensive, multifaceted program of research and development for the Gulf of Mexico as a system. Such program would include scientifically defensible, coordinated observing and modeling elements, beginning with the ocean circulation and hence the connections that exist between the deep Gulf of Mexico and the continental shelf and between the continental shelf and the estuaries, and continuing with all of the trophic level interactions that comprise the ecosystem, or ecosystems. The second is to remove preconceptions and preconditions on how these monies are to be spent, other than mandating that they be used in a scientifically defensible manner to be developed by a science steering committee selected from amongst the academic community, with input from the agencies. Business as usual will not be helpful. It will be possible to generate plans within 180 days as asked for in H.R. 3096, but these plans must be generated with inputs from by those who are familiar with the science and who have demonstrated commitment (by their own actions), productivity (by publications in refereed professional journals) and understanding (through their contributions to how the Gulf of Mexico and its sub-regimes work). To do this there can be no disqualification of those serving on a science steering committee from engaging in the science being proposed. Perceived conflict of interest should not preclude getting the right people to engage.

My intention is not to be critical of the task forces charged, the agencies engaged or the drafters of a bill having laudable intent. Becoming better versed in the workings of our complex natural environment will not only make us better stewards of the environment, but will also help to facilitate the competing utilizations of environmental resources in ways that will best serve the Gulf coast states and the nation.

I thank you for your invitation to speak and for your attention.

Michael C. Voisin

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House Transportation and Infrastructure Committee
December 7, 2011

Chairman Mica, Ranking Member Rahall and Members of the Committee, my name is Mike Voisin. I am pleased to have this opportunity to testify before you today on several factors impacting seafood production and jobs in my home state of Louisiana. In order to give you the most accurate perspective on this issue, I will be wearing my business hat. Since 1971, I have owned and operated Motivait Seafoods in Houma, Louisiana. My business is oyster farming, seafood harvesting, processing and distribution, but my forty year career in Louisiana's fisheries goes well beyond that. My family came to Louisiana in 1770 and I am a 7th generation oyster harvester, with the 8th generation poised to take over.

Since 1982 I have served as a Trustee for the Gulf and South Atlantic Fisheries Foundation, the Southern Fisheries Association and the National Fisheries Institute, among others. The Gulf of Mexico and the State waters associated with it produce one third of all of the domestically caught fisheries production in the United States. In my associations with each of these organizations, I have advocated for developing a strong and sustainable commercial fishing industry. That is why I am here today in support of the RESTORE Act, H.R. 3096.

The Louisiana seafood community has faced its share of environmental and economic challenges in recent years, most notably with the horrific hurricane season of 2005, the Deepwater Horizon spill in 2010, and this past summer's severe Mississippi River floods. Fishing is a livelihood that has been under attack from global competition, environmental regulation, natural disasters, and resource depletion. In the absence of concerted action, this oil spill could be the final blow for these fishermen.

Despite these ongoing difficulties, Louisiana's fishermen have always risen to the occasion, often with strong support from the Federal Government. We need that continued support, and the RESTORE Act is our answer so we can continue to provide consumers with the safe, wholesome Gulf seafood products they love.

There are many ways Congress and this Committee can support the Gulf Coast economy as we work to recover after the Deepwater Horizon spill. In the last year, the Gulf Coast seafood community has worked diligently to identify and address several outstanding challenges, and I would like to take this opportunity to bring a few to your attention.

First, it is imperative to recognize the natural resources our culture and heritage has relied on to feed families for many generations is not something you can put a simple dollar value on. It is a tradition that has been threatened. It has forced U.S. fishery production into a downward spiral. In my written testimony, I have included two charts provided by the National Marine Fisheries Service that outline employment in both recreational and commercial fisheries across the Gulf of Mexico from 2006 – 2009¹ (*see attachment*).

¹ National Marine Fisheries Service. (2009). Fisheries Economics of the U.S.
http://www.st.nmfs.noaa.gov/st5/publication/fisheries_economics_2009.html

These charts illustrate the dramatic decline in fisheries employment that has occurred in the Gulf seafood industry and that should give us all cause for concern. Nearly one in seventy jobs in Louisiana² is seafood-related, and the industry has a total economic impact of \$2.4 billion annually³. Many of these jobs are in family-owned and operated companies that have been in business for generations, like mine. Continued employment decline in our industry will radiate outward, affecting communities across the Gulf and increasing the region's economic strains.

Secondly, Louisiana's economy is highly dependent on a strong seafood supply chain and, under current law, the Natural Resource Damage Assessment (NRDA) process can take anywhere from 10 – 20 years before efforts can begin addressing recovery needs for our natural (fisheries) resources. This is time, we in the seafood community, simply do not have.

Al Sunseri, owner of P&J Oysters, is my competitor. I welcome the competition to keep our industry healthy and compete in the global marketplace. But he is struggling. He can't supply all of his wholesale customers because production is down by an estimated 50%. Next year, projections point to an oyster harvest equivalent to 35% of what we have been producing. His workforce will likely absorb the impact of the decline in sales.

Our future is uncertain. We do know that environmental disasters at sea can have serious consequences for the seafood industry. For instance, three years after the Exxon Valdez oil spill in Alaska, the herring fishery there collapsed. It has not recovered to this day. It is no overstatement to predict that without significant help, the same future awaits the Gulf oyster industry. In 2009, Louisiana produced \$50.4 million⁴ in oysters. Last year, production amounted to \$24.7⁵ million. These numbers do not lie.

The only way to move forward is to calm the waters of fear in the fishing community, first and foremost by passing the RESTORE Act.

On November 15, 2011 Governor Bobby Jindal signed a Resolution urging mediation for our commercial fishermen because of the high number of claims that are being lost or delayed. Every day that goes by, we lose another fisherman because he can't afford to make his boat payment, his house payment or feed his family.

The Gulf Coast Claims Facility is the first step, but it is plainly not enough to help ensure our industry's survival over the medium and long term. But **the RESTORE Act** will provide funds more quickly to respond to rebuilding those areas that our resources need to be able to thrive once again. At a time when Congress is justifiably looking high and low for measures to assist in job creation and generate real economic recovery, the RESTORE Act is a concrete, immediate step that could be taken to do just that. I urge you to act quickly in the passage and implementation of H.R. 3096.

² National Marine Fisheries Service. (2008).

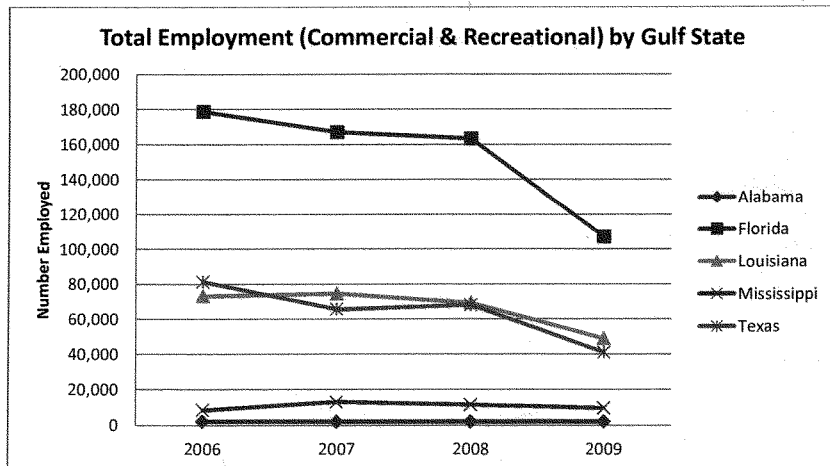
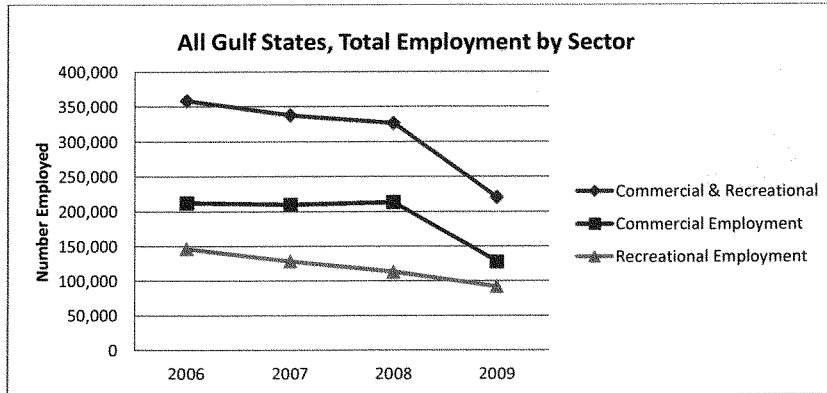
³ Southwick Associates. (2006). The Economic Benefits of Fisheries, Wildlife and Boating Resources in the State of Louisiana. http://www.wlf.louisiana.gov/sites/default/files/pdf/publication/32728-economic-benefits-fisheries-wildlife-and-boating-resources-state-louisiana-2006/southwick_2006_final_final_report_5-27-08_0.pdf

⁴ National Marine Fisheries Service. (2009). Landings Query Results. http://www.st.nmfs.noaa.gov/pls/webpls/MF_ANNUAL_LANDINGS.RESULTS

⁵ National Marine Fisheries Service. (2010). Landings Query Results. http://www.st.nmfs.noaa.gov/pls/webpls/MF_ANNUAL_LANDINGS.RESULTS

Again, I appreciate the opportunity to present these issues to the Committee for consideration. I look forward to your questions.

Attachment 1
 Mike Voisin
 December 7, 2011
 House Transportation and Infrastructure Committee



Source: Fisheries Economics of the U.S. (by year)
http://www.st.nmfs.noaa.gov/st5/publication/fisheries_economics_2009.html

**STATEMENT OF THE DEPARTMENT OF THE INTERIOR, BEFORE THE U.S.
HOUSE OF REPRESENTATIVES, COMMITTEE ON TRANSPORTATION AND
INFRASTRUCTURE, ON RESTORING JOBS, COASTAL VIABILITY AND
ECONOMIC RESILIENCE IN THE GULF OF MEXICO: H.R. 3096, THE RESOURCES
AND ECOSYSTEMS SUSTAINABILITY, TOURIST OPPORTUNITIES, AND
REVIVED ECONOMIES OF THE GULF COAST STATES ACT OF 2011**

December 7, 2011

The Department of the Interior and its agencies, which are responsible for a wide array of conservation and natural resource activities along the five-state Gulf Coast region, appreciates the opportunity to submit views on HR 3096 and share with you what our employees are working on in the region.

The BP Deepwater Horizon oil spill was the latest disaster to adversely impact one of the world's most important and diverse ecosystems, an ecosystem that plays an enormous role in our national economy.

Our Presence Along the Gulf Coast

The Department of the Interior (DOI) manages more than 40 national wildlife refuges and eight national parks covering nearly 4.2 million acres of freshwater, tidal, and terrestrial habitats. The Gulf Coast region is home to 38 protected species – 29 of which are endangered. Nearly half of the southeastern population of brown pelicans, recently taken off the list of protected species, lives along the northern Gulf Coast. Moreover, the region's coastal wetlands and marshes provide vital wintering habitat for millions of migratory birds and there are more than 400 avian species that migrate, winter, or live along the Gulf Coast.

The Gulf of Mexico's ecosystem is one of the most ecologically diverse and complex in the world, and it is an integral part of the Gulf Coast region's economy. The Gulf of Mexico region boasts a wide range of sub-ecosystems with unique features and habitats, and Gulf waters are home to a rich diversity of species. Its coastal areas contain half of the coastal wetlands in the United States. Habitats associated with the Gulf of Mexico include barrier islands with sandy beaches, dunes and tidal flats; bays and estuaries with emergent marsh, sea grasses and oyster reefs; coastal bird nesting islands; forested wetlands and coastal woodlots including bottomland hardwoods, longleaf pine, and coastal shrub lands. Offshore deep water supports unique and biologically rich marine communities such as dense communities of corals, sponges and other invertebrates.

Recreational and commercial fishing is a multi-billion dollar industry critical to the economies of the states and the nation. More than 44 percent of all marine fish caught by recreational anglers in the U.S. in 2009 were taken from the Gulf of Mexico. Revenue from fishing, hunting and wildlife viewing in the Gulf region's states topped \$22 billion, according to a national survey of wildlife-dependent recreation.

The Gulf Coast Region's population in 2010 was 20.9 million more than doubling since 1970. The region's population is expected to increase by 15 percent by 2020. The Gulf and its natural resources produce 30 percent of the nation's Gross Domestic Product; and 33 percent of the nation's seafood. From 2007 to 2009, more than 75 percent of the total U.S. shrimp landings and over 60 percent of oyster landings were from the Gulf of Mexico.

Crude oil production is over 1.6 million barrels per day in the federal waters of the Gulf, and is 54 percent of total U.S. production based on a three-year average from 2008 to 2010. A little more than half (52 percent) of total U.S. natural gas production comes from the Gulf based on a three-year average from 2007 to 2009.

Ongoing Natural Resource Damage Assessment

After the BP Deepwater Horizon oil spill, DOI along with NOAA began the Natural Resource Damage Assessment and Restoration process (NRDAR), which is authorized under existing statutory authorities. The Deepwater Horizon NRDAR seeks to quantify the amount of damage to Gulf of Mexico ecosystems by collecting, compiling, and analyzing information, statistics, or data through prescribed methodologies to determine injuries to natural resources. Currently, DOI staff is actively engaged in the injury assessment phase in close collaboration with NOAA and Gulf state trustees and will continue through the complete NRDAR process for some time. After the assessment is complete, current law allows the Natural Resource Trustees to submit a demand to responsible parties of the oil spill, specifying the damages sought.

On April 21, 2011, BP agreed to provide up to \$1 billion toward early restoration in the Gulf of Mexico to address injuries caused by the oil spill. Therefore, besides working on activities derived from the NRDAR process, the Trustees and BP are striving to identify and reach agreement on projects that can be implemented under this unprecedented early restoration effort. Accordingly, DOI is working with its fellow Trustees and the public to identify restoration projects including projects that will benefit Federal lands impacted by the release of oil.

Gulf Coast Ecosystem Restoration Task Force

In addition to the NRDAR restoration efforts, DOI is a member to the Gulf Coast Ecosystem Restoration Task Force. As part of its mandate in Executive Order 13554, the Task Force must coordinate efforts of Gulf Coast states, the federal government, Tribes and local governments to improve efficiency and effectiveness in the implementation of Gulf Coast ecosystem restoration actions. The Gulf of Mexico Regional Ecosystem Restoration Strategy was released earlier this week and marked a collaborative effort among five Gulf Coast states and 11 federal departments and agencies including DOI. The Task Force collaborated with all member agencies including the Department of the Interior, and received additional input during a public input and feedback period from academics, non-profit partners, industry, and the public.

The Strategy, which can be downloaded at <http://epa.gov/gulfcoasttaskforce>, addresses critical conservation and restoration issues facing the Gulf of Mexico ecosystem and outlines four goals for restoration across the region: Restore and Conserve Habitat; Restore Water Quality; Replenish and Protect Living Coastal and Marine Resources; and Enhance Community

Resilience. Going forward, the Task Force will focus on coordinating efforts to restore the Gulf Coast ecosystem and address barriers to implementation, such as science needs, regulatory complexities and funding.

Key Interior Efforts to Support Gulf Coast Restoration

Restoring the Gulf Islands National Seashore: Past dredging of navigation channels has deprived barrier islands in the Gulf Islands National Seashore of millions of cubic yards of sediments. The National Park Service (NPS) and Army Corps of Engineers are working on two projects to restore Gulf Islands National Seashore. A funded (\$439 million) program to begin in fall 2012 will return approximately 20 million cubic yards of sediment to the West and East Ship Islands and fill the Camille Cut (Mississippi).

The NPS and Army Corps are also developing a project to start in November 2012 to restore approximately 300,000-400,000 cubic yards of compatible sediment to the Florida barrier islands at an estimated cost of \$6 million that is proposed to be funded by the Natural Resource Damage Assessment Trustee Council.

Restoring Disturbed Lands and Protecting Jean Lafitte National Historic Park: Jean Lafitte National Historical Park and Preserve is working to restore 442 acres of canal and spoil banks back to emergent wetlands or shallow water habitat. The project will improve hydrology over an estimated 23,000 acres of wetlands, with an estimated construction cost of \$700,000. Jean Lafitte National Historical Park and Preserve plans to construct 45,200 linear feet of dikes to protect shoreline of three lakes and restore 1,650 acres of associated marshland in the Preserve, with an estimated cost of approximately \$58 million.

Expanding Gulf Coast National Wildlife Refuges: There are 41 National Wildlife Refuges located in the five Gulf Coast states. These refuges protect and recover endangered species, provide essential migratory bird habitat and support a diverse array of native plant and animal species while enhancing the sustainability and resiliency of the Gulf coast. The Gulf Coast refuges, along with other conservation lands and working landscapes, provide important ecosystem services such as biological diversity, pollination, carbon sequestration, clean water, flood protection, erosion control, and recreation.

Restoring and conserving additional natural areas will limit loss of critical coastal habitats for migratory birds, support endangered species recovery, protect important nesting areas and secure important ecosystem services for coastal communities. To meet this need, the Fish and Wildlife Service has targeted priority expansions in five Gulf coast national wildlife refuges, for a total of more than 160,000 additional acres.

Building Science-Based Conservation Partnerships in the Gulf: The Department of the Interior has taken a leadership role in science based conservation of the nation's land, water, wildlife and cultural resources through the formation of Landscape Conservation Cooperatives (LCCs) across the country, with four LCCs providing science support in the Gulf. These partnerships have engaged the states, federal agencies, NGOs and research institutions to provide science support

across a diversity of Gulf habitats, ensuring that the appropriate resources and expertise are engaged in this effort. The Department is committing over \$5 million annually to Gulf LCCs.

Underpinning Gulf Coast Restoration Activities with Sound Science: The U.S. Geological Survey is committed to a science plan in the Gulf that supports the four major goals of the Strategy. For example, USGS will commit \$4 million to build on and expand upon existing efforts by the Coastal and Marine Geology Program to understand and assess ecosystem and community vulnerability as a consequence of human activities (including restoration projects) and natural change and define actions needed prepare coastal communities in their efforts to anticipate and respond to landscape changes and evolving vulnerability from storm surge, subsidence, erosion, and sea-level rise.

H.R. 3096

H.R. 3906 is nearly identical to a companion bill in the Senate, S. 1400, the "Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2011."

The Administration continues to support the dedication of a significant amount of civil penalties to the Gulf region to fund Gulf-wide ecosystem restoration activities from an environmental and economic perspective. The oil spill exacerbated the long-term deterioration of the Gulf ecosystem. We do not yet fully appreciate the long-term impacts of the largest oil spill in American history. Any additional funding provided would help meet critical recovery needs that fall outside of the Oil Pollution Act for the long-term ecosystem, economic, and health recovery of the Gulf.

We do have some questions about several provisions in the bill and are happy to provide technical assistance and work with the Committee to address these concerns.

Conclusion

We believe the increased attention to both the challenges and opportunities in front of us will greatly benefit the 21 million citizens who call this extraordinary coast their home. The region plays a key role in our national economy and we strongly support bolstering ongoing collaboration to secure an economic and environmental revival along the Gulf Coast from Florida to Texas.

Thank you for the opportunity to provide this statement to the Committee. We will be happy brief Members and Committee staff and answer any questions you may have.