

**WRITTEN TESTIMONY OF
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**OVERSIGHT HEARING ON
“REVISITING THE RESTORE ACT: PROGRESS AND CHALLENGES IN GULF
RESTORATION POST-DEEPWATER HORIZON”**

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

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

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

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

The Gulf region is vital to our nation and our economy, providing valuable natural resources, abundant seafood, extraordinary beaches, recreational activities and a rich cultural heritage. Its

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

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

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

There are a number of challenges the Council must address in executing its mission. Due to the ongoing litigation against BP and other responsible parties, there remains tremendous uncertainty regarding the ultimate amount of funding that will be available for restoration projects as well as the timing of its availability. The Council recognizes the need to move forward in getting project implementation underway while at the same time planning for a future that is still uncertain. Indeed, the Council must consistently balance the urgency to move forward quickly and efficiently with the need to take the time to get this right. That said, the foundational steps are now almost complete and will serve to expedite our ability to fund projects from both the Comprehensive Plan and Spill Impact Components once Trust Funds become available.

Overview of the RESTORE Act and the Council

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

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

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

Administrative Establishment of the Gulf Coast Ecosystem Restoration Council

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

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

The Executive Director and Chief Financial Officer/Director of Administration have been in place since mid-2013. Additional core staff capacity has been made possible by details and temporary personnel assignments from member agencies and others. Though organizational independence is beneficial, there are challenges associated with standing up any new

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

independent federal agency. The Council has worked to overcome the budget challenges of starting operations from the ground-up by relying on our member states and agencies.

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

Council-Selected Restoration Component

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

To develop the Plan, the Council carefully reviewed the findings and recommendations of the *Gulf Coast Ecosystem Restoration Task Force Strategy (Strategy)*. The Council also reviewed numerous existing local, regional, state, and federal plans to inform the development of the Plan. The Council initiated a robust public engagement process to receive input from diverse voices from across the region. The Council hosted fourteen public meetings with over 2,300 attendees; over 41,000 public comments on the Draft Initial Comprehensive Plan and accompanying Programmatic Environmental Assessment were received. These comments were considered and incorporated, as appropriate, into the Initial Comprehensive Plan.

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

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

- (1) ***Restore and Conserve Habitat*** – Restore and conserve the health, diversity, and resilience of key coastal, estuarine, and marine habitats.

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

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

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

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

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

The RESTORE Act outlines several requirements the Council must consider when selecting projects to fund, including that projects must utilize best available science, and that the Council prioritize projects that meet one or more of the four priority criteria outlined in the Act. This process will ensure that projects that receive funding meet the statutory requirements of the RESTORE Act, will have a positive impact on the natural resources of the Gulf, and will provide a level of transparency and assurance that projects were chosen using the application of consistent and objective criteria.

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

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

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

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

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

Spill Impact Component

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

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

- Restoration and protection of the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands of the Gulf Coast region.
- Mitigation of damage to fish, wildlife, and natural resources.
- Implementation of a federally approved marine, coastal, or comprehensive conservation management plan, including fisheries monitoring.
- Workforce development and job creation.
- Improvements to or on State parks located in coastal areas affected by the *Deepwater Horizon* oil spill.
- Infrastructure projects benefitting the economy or ecosystem resources, including port infrastructure.
- Coastal flood protection and related infrastructure.
- Planning assistance.
- Administrative costs of complying with the Act.
- Promotion of tourism in the Gulf Coast region, including recreational fishing.
- Promotion of the consumption of seafood harvested from the Gulf Coast region.

Once an SEP is approved by the Council, grants will be awarded to the State, in accordance with a formula developed by the Council as directed by the Act, for specific projects, programs, and

activities identified in the SEP.² Because the ultimate size of the Trust Fund is unknown at this time, a State may submit periodic addenda to its SEP in order to request additional disbursements.

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

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

Environmental Compliance and Effectiveness

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

Pursuant to Council on Environmental Quality regulations, the Council is required to establish procedures for complying with NEPA. The Council is currently developing these NEPA procedures in a collaborative process, involving input from all federal and state members. One of the overarching goals of the Council's procedures will be to ensure that NEPA and other potentially applicable regulatory requirements are addressed as expeditiously as possible. Among other efficiency practices, the Council's NEPA procedures will encourage

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

robust interagency coordination and collaboration. The Council's NEPA procedures will also seek to avoid potential redundancy and inefficiency by encouraging concurrent and unified processes when addressing a range of regulatory requirements. The Council intends to publish its draft NEPA procedures for public review in 2014.

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

Coordination with Our Restoration Partners

The Council will work to coordinate our restoration activities with those of our key partners. While the Council does not have direct involvement in the activities undertaken by the states or local governments through the Act's Direct Component, the Council will strive, as appropriate, to coordinate its work with those activities. In addition, the Council will actively coordinate with the Gulf Coast Ecosystem Restoration Science Program and the Centers of Excellence Research Grants Program.

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

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

- The *Deepwater Horizon* Natural Resource Damage Assessment Trustees are assessing injury to natural resources and the services they provide, as well as the lost use of such resources, resulting from the *Deepwater Horizon* oil spill in the Gulf and the Gulf Coast States. Damages for natural resource injury will include the cost of restoring, rehabilitating, replacing, or acquiring the equivalent of the injured natural resources; the diminution in value of those natural resources pending restoration; and the reasonable

cost of assessing those injuries as a result of the *Deepwater Horizon* oil spill. The Trustees are using a public process to select and implement restoration projects.

- NFWF was established by Congress in 1984. NFWF will receive over \$2.5 billion throughout the next five years from the Transocean (January 2013) and BP (November 2012) criminal plea agreements with the United States. NFWF has stated that these funds will be used “to support projects that remedy harm to natural resources (habitats, species) where there has been injury to, or destruction of, loss of, or loss of use of those resources resulting from the oil spill.”
- The NAS received \$500 million from the Transocean and BP criminal plea agreements. These funds are to be used for human health and environmental protection, including oil spill prevention and response in the Gulf region.
- The NAWCF received \$100 million from the BP criminal plea agreement for wetlands restoration, conservation, and projects benefiting migratory birds.

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

Conclusion

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