

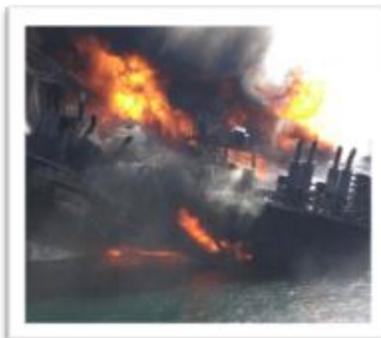
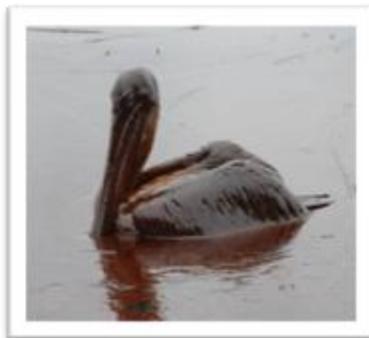


***Restoring Jobs, Coastal Viability and Economic Resilience in
the Gulf of Mexico:***

***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 statistics 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.

