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**BEFORE THE SENATE ENVIRONMENT AND PUBLIC WORKS
SUBCOMMITTEE ON WATER AND WILDLIFE**

REGARDING

**PROGRESS ON ASSESSING NATURAL RESOURCE DAMAGES AND EARLY RESTORATION AFTER
THE BP/DEEPWATER HORIZON OIL SPILL DISASTER**

June 28, 2011

Chairman Cardin and Members of the Subcommittee, I am Cynthia Dohner, Regional Director of the U.S. Fish and Wildlife Service's (Service) Southeast Region and the Department of Interior's (DOI) Authorized Official for the Natural Resource Damage Assessment and Restoration (NRDAR) process in the BP/Deepwater Horizon oil spill.

I appreciate the opportunity to appear before the Subcommittee today to testify on our involvement in assessing damages to natural resources and early restoration efforts resulting from the BP/Deepwater Horizon oil spill, the largest oil spill in history. Since I appeared before your panel last July to talk about how the Oil Pollution Act's (OPA) NRDAR process works and its origins after the *Exxon Valdez* oil spill, we have taken important steps toward meeting natural resource restoration needs along the Gulf Coast.

While the response to this historic oil spill continues, the federal agencies and states that make up the NRDAR Trustee Council have initiated a formal assessment of damages, launched work on a Programmatic Environmental Impact Statement (PEIS) for potential restoration options, undertaken emergency restoration projects, and reached an unprecedented agreement with BP that makes \$1 billion available for early restoration projects to be implemented before ultimate resolution of the claim. My testimony will highlight the progress we have made to date and the work we see in the years ahead.

NRDAR Process

The NRDAR process focuses on identifying injured natural resources, determining the extent of the injuries, recovering damages from those responsible, and planning and carrying out natural resource restoration activities that achieve pre-spill conditions and resume pre-spill services. NRDAR also seeks to ensure that responsible parties compensate the public for the lost use and enjoyment of those resources. Under the NRDAR paradigm, federal and State agencies, along with Tribal governments are authorized to act as Trustees on behalf of the public for those natural resources they manage or control. DOI is working with fellow Trustees and independent

and responsible party scientists to obtain the best available scientific data to support our assessment of injuries.

In an oil spill, there are three phases in the NRDAR process: 1) pre-assessment; 2) injury assessment and restoration planning; and 3) restoration implementation. During the pre-assessment phase, Trustees collect time-sensitive data to determine if any trust resources have been injured or are likely to be injured by the oil spill.

Restoration implementation involves recovering damages for injured natural resources and using those damages to implement restoration projects. The OPA requires the Trustees to use funds obtained through a settlement or litigation to restore, replace or acquire the equivalent of the injured resources and the services provided by those resources. Injury to species and habitats is measured from the moment the oil impacts the natural resources until the injured resources are returned to the pre-spill or baseline condition. NRDAR allows implementation of emergency restoration projects before assessment is completed, provided those projects prevent additional or ongoing injury, are reasonable, and approved by the Trustees.

Much of the NRDAR work currently underway is part of the injury assessment and restoration planning phase and directly related to four principles attributable to oil spills: documented release, identification of pathway(s), exposure to natural resources, and quantifiable injury.

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, 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. The Oil Pollution Act (OPA) requires that the Trustees demonstrate connections between the release of the oil, the pathways the oil moves 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 NRDAR is conducted requires appropriate scientific rigor for studies in order to ensure that they are accepted into court as evidence in the case. The NRDAR 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.

Assessment of the injuries resulting from this spill is moving forward through independent studies by the Trustees and cooperative studies with BP, a responsible party under OPA. Currently more than 80 studies are planned. Twenty-four private, non-governmental and academic entities, including seven academic institutions in Texas, Louisiana, Mississippi Virginia, and Delaware, are engaged in the studies and assessment planning. There are 13 Technical Working Groups (TWGs) comprising the Trustee agencies working to determine and quantify the impact of the oil spill on multiple public resources. The TWGs are responsible for identifying endpoints and developing procedures and methods to measure potential injury to its respective resources in study plans. Currently, the TWGs are organized around study of the following categories: water column and sediments, turtles and marine mammals, shorelines,

terrestrial species, human use, shallow water corals, oysters, birds, fish, submerged aquatic vegetation, and deep sea benthos.

The assessment involves looking at both acute impacts that we can identify now and long-term chronic impacts, some of which may not materialize for years to come. DOI, in cooperation with our co-trustees, is moving forward with more than 20 assessment studies focusing on migratory birds, endangered species, and DOI-managed lands and the resources that utilize them. This is a subset of the studies being undertaken by the Trustees to characterize and quantify specific injuries and scale appropriate restoration. These assessment studies focus on the collection of information the Trustees believe is needed to inform incident-specific injury determination that will lead to projects that will restore, replace, or acquire the equivalent of injured natural resources. This assessment work will aid in determining the amount and types of natural resource restoration necessary to ultimately restore the Gulf Coast's natural resources and the services they provide to their pre-spill condition.

One of the actions the Trustees have taken to ensure enhanced transparency during the NRDAR process is the public distribution of cooperative assessment work plans and data. These efforts to make data publicly accessible as soon as possible while ensuring that rigorous scientific protocols are upheld, has required substantial coordination.

Emergency restoration projects have been initiated to avoid or reduce irreversible loss of natural resources, and to prevent or reduce continuing danger to these resources. For example, restoration of more than 2,400 acres of waterfowl habitat in the Mississippi alluvial plain has reduced risk of potential injury by drawing waterfowl away from areas that are oiled. Trustees are implementing emergency restoration for Kemp's Ridley sea turtles that evaluate their nesting activities, support hatchling success rates, and prevent mortality to the population through detection and protection of nesting turtles and nests. Through another emergency restoration project, the Trustees are identifying shoreline areas in need of restoration. At the same time, we are being mindful that some areas are still undergoing cleanup activities. A project to mend scars created in submerged aquatic vegetation (seagrass) beds caused by response equipment will be implemented in Florida.

Funding

There are three main funding mechanisms for the DOI NRDAR process: payments by the responsible parties, reimbursements from the Oil Spill Liability Trust Fund (OSLTF), and reimbursements from DOI's NRDAR Fund. Ultimately, the responsible party must reimburse the NRDAR fund or the OSLTF.

In May 2010, BP provided \$45 million to state and federal Trustees for the beginning phase of the injury assessment process. DOI and NOAA were allocated a total of \$20 million of that advance funding. The two agencies agreed to split the \$20 million evenly. DOI has obligated the \$10 million for personnel costs, equipment and supplies, and contracts with outside experts to implement assessment plans.

The DOI Trustees have an Interagency Agreement for \$47.8 million from the U.S. Coast Guard managed OSLTF to support initial baseline data collection as well as agency and state coordination work.

Finally, \$5.9 million from the DOI NRDAR fund has been allocated for DOI's Deepwater Horizon damage assessment activities. We will seek to recover OSLTF and NRDAR fund disbursements from the responsible parties.

To date, the DOI Trustees have received a total of \$12,363,356 in reimbursement from bills submitted to BP for actual costs incurred. These reimbursements are in addition to the \$10 million DOI received in advance funding.

On February 25, 2011, DOI presented a claim in the amount of \$67,510,774 to the responsible parties for its estimated costs to implement certain selected assessment procedures. This presentment is required by law before money is advanced by the OSLTF.

Lessons Learned

The NRDAR process is built upon many of the lessons learned from the 1989 *Exxon Valdez* spill in Alaska. To increase transparency, Trustees are posting study plans on the Internet; providing opportunities for public engagement; and conducting frequent calls with study planners, scientists and others to assist in both developing a broad, integrated ecosystem perspective, as well as reviewing myriad restoration possibilities. We recognize the value of technical expertise and will use leading researchers from academic institutions and non-governmental organizations to the extent practicable under the NRDAR process. Additionally, we anticipate further use of Gulf of Mexico experts in restoration design, implementation, and monitoring.

The Programmatic Environmental Impact Statement

The NRDAR restoration is subject to NEPA review. Accordingly, as part of the NRDAR restoration planning phase, the Trustees are preparing a Programmatic Environmental Impact Statement (PEIS) on potential restoration options. Public engagement is critical to this process. Ten public scoping meetings were held across the Gulf States; one was held in Washington, D.C. These meetings provided the public with an opportunity to identify a broad range of alternatives to restore, rehabilitate, or replace injured resources. To date, more than 300 unique public comments have been received. A draft PEIS is expected to be available for public comment in early 2012.

Early Restoration Projects

In April, 2011, the Trustees for the Deepwater Horizon oil spill signed a historic agreement with BP to provide \$1 billion towards early restoration projects, expected to commence in 2011 and 2012. This agreement exceeds the total amount provided under the Exxon Valdez Natural Resource Damage settlement. This agreement does not affect the ultimate liability of BP or any other entity for full natural resource damages. The agreement is unique because it provides an

accelerated schedule for the initiation of restoration, whereas restoration projects are typically funded only after a final settlement is reached.

This early restoration is taking place on a parallel track with our assessment work. In effect, restoration projects will begin prior to completion of the NRDAR assessment and restoration planning.

In order to implement early restoration projects, the Trustees must complete the public review process for projects under OPA and the National Environmental Policy Act. Additionally, each Trustee and BP must agree to a binding stipulation for the offsets BP will receive as a result of each project. At the end of the damage assessment process, the Trustees will take into account any benefits that were realized from these early restoration projects; however, as mentioned earlier, the projects will not reduce BP's total liability. Offsets are those calculations for early restoration that will reduce the total injury, and are based on the current information about potential injury. Offsets will be based on a comparative valuation of the services provided by a natural resource and the restoration equivalent of that resource. If the projects are successful and meet OPA criteria, they would be applied against BP's total natural resource damage liability. Projects that are part of this \$1 billion agreement will be funded when BP and the Trustee Council agree to the offsets BP will receive for the projects. However, other projects funded through the Oil Spill Liability Trust Fund may proceed without such agreement.

The \$1 billion will be distributed in accordance with an allocation alternative agreement among the Trustees where each Trustee will receive \$100 million for early restoration projects. The remaining \$300 million will be used for projects selected by DOI and NOAA from proposals submitted by the states. On June 5, 2011, BP made its first transfer of \$500 million to an Early Restoration Subaccount; transfer of the remaining \$500 million will be made on October 21, 2011.

The public is encouraged to submit early restoration projects for consideration. The Trustee Council has begun the intensive process of identifying early restoration projects. Examples of early restoration projects that the agreement may fund include the rebuilding of coastal marshes, replenishment of damaged beaches, conservation of sensitive areas for ocean habitat for injured wildlife, and restoration of barrier islands and wetlands that provide natural protection from storms.

The Trustees will continue to coordinate with the Gulf Coast Ecosystem Restoration Task Force. Because NRDAR Trustees have representatives on the Task Force, these two processes are constantly exchanging information as both efforts move forward. As the NRDAR and the Task Force activities move forward simultaneously, the Task Force will address ecosystem health and sustainability issues that existed prior to the spill and are likely to occur in the future. NRDAR's goal is to implement restoration projects that return the Gulf Coast to the condition it would have enjoyed had the spill not occurred. Given the complementary goals of the Task Force and the NRDAR process, we anticipate close, ongoing coordination and opportunities to integrate the activities of both groups.

Next Steps for the Trustees

We have made a great deal of progress within the NRDAR framework. We are able to embark upon restoration quickly thereby allowing the Trustees to address impacts to natural resources in an accelerated manner. We will continue working on assessment activities into 2012 and to prepare for potential litigation. We are also making sure early restoration projects are consistent with long-term restoration planning.

We will continue to address public concerns throughout the remainder of the NRDAR process by holding public meetings to gather input on damage assessment and restoration planning.

Conclusion

The NRDAR process is advancing on parallel tracks between the early restoration efforts and the studies to assess acute and long-term chronic impacts. This is a complex process involving five states and two federal agencies. The scope and magnitude of natural resource injuries and other impacts resulting from the BP/Deepwater Horizon oil spill are extraordinary and still not fully known. While we do not know at this time the extent of the injuries, we believe they will affect fish, wildlife, and plant resources in the Gulf, and possibly in other areas across the country for years or decades to come. To meet the requests from academics, non-governmental organizations, and the general public regarding data and ongoing NRDAR actions, DOI and co-trustees developed data sharing and other outreach practices resulting in one of the most transparent damage assessments in history.

To ensure restoration is commensurate with the injury, we are planning long term monitoring to evaluate its appropriateness and effectiveness. The long term monitoring plans will be used to ensure adverse effects are properly assessed. This spill has illuminated the importance of the Gulf ecosystem and the need for monitoring of natural resources before, during, and after a spill to effectively quantify the damage and to understand the cumulative effects of the stressors that act on the Gulf Coast ecosystem.

Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to testify today. I will be happy to answer any questions you may have.