Status of the Deepwater Horizon Natural Resources Damage Assessment

United States Senate Committee on Environment and Public Works

Subcommittee on Water and Wildlife





Prepared Testimony of:

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Chairman Cardin, Ranking Member Sessions and subcommittee members, thank you for the opportunity to share Louisiana's perspective on the Natural Resource Damage Assessment (NRDA) process associated with the Deepwater Horizon disaster. My name is Garret Graves and I serve as the chair of the Coastal Protection and Restoration Authority of Louisiana (CPRA). The CPRA was established after Hurricanes Katrina and Rita to serve as the single state agency responsible for hurricane protection, flood control, ecosystem restoration and coastal resiliency. Responsibilities associated with this position include the lead NRDA trustee for the State of Louisiana. Following the 2010 oil spill, President Barack Obama appointed me to serve on the Gulf Coast Ecosystem Restoration Task Force.

The Gulf Coast is a precious resource to this nation.

The U.S. Fish and Wildlife Service has referred to coastal Louisiana as the most productive ecosystem on the continent. Commercial fishermen harvest over two billion pounds of fish and shellfish annually from the Gulf's waters. Louisiana's unique coastal estuary serves as a nursing ground for 90 percent of these fisheries and supports the lifecycle for 98 percent of the commercially-harvested species in the Gulf of Mexico.

Over 20 million Americans are employed in the Gulf of Mexico region. Many of these jobs are tied to the Gulf's resources. For example, tourism and recreation provide over 620,000 employment opportunities, the seafood industry supports hundreds of thousands of jobs and gulf workers provide up to 27 percent of domestic oil production in the Gulf of Mexico. Waters offshore Louisiana and our coastal area's energy infrastructure produce or transport up to one-third of the oil and gas consumed in the United States. The U.S. Treasury directly benefits to the tune of $5-6 billion annually from energy production in the Gulf of Mexico -- making it one of the largest revenue streams for the federal government.

Six of the nation's top 10 ports are on the Gulf Coast. With the deepening of the Panama Canal allowing the transit of larger vessels from Pacific nations, we expect this to increase. Louisiana



alone is home to five of the top 15 ports in the country. Its ports and river system currently provide maritime commerce and export capabilities to 31 states. The Mississippi River is truly America's Commerce Superhighway -- supporting hundreds of billions of dollars in cargo annually with one of the most efficient transportation mediums in our nation.

According to the Bureau of Economic Analysis , the five Gulf States' gross domestic product collectively approaches nearly $2.5 trillion. If the Gulf States constituted a country, this region would be the world's seventh largest economy. Though, I hope you are comforted by the fact that no secession plans are imminent.

This impressive economic and ecological activity has been challenged in recent years. Specifically, in Louisiana, we have been hit with Hurricanes Katrina, Rita, Gustav, and Ike in the last six years. In addition, this latest record high water event on the Mississippi River system has caused a number of tense moments. It is important to note that 40 percent of the continental United States drains through our state. From Montana, to Minnesota to portions of New York -- to two Canadian Provinces -- the Mississippi River watershed is one of the world's largest.

Despite these extraordinary challenges, Louisiana was on an upward trajectory in recent years. Our citizens were committed to a full recovery. Homes were being rebuilt, the economy was recovering and the state was making record investments to restore the ecosystem and improve the resiliency of our coastal communities. In fact, a United States Geological Survey report released just a few weeks ago indicated that our state may have actually grown by up to 200 square miles between 2008 and part of 2010. This apparent coastal wetlands restoration, recovery and accretion follows decades of coastal wetlands loss. The same USGS report confirmed that while 1900 square miles of wetlands have eroded or been lost over the last 80 years, our recent investments and coastal management improvements contribute to a successful coastal strategy.

On April 20, 2011, everything changed.

Nearly 206,000,000 gallons or 4,900,000 barrels of oil and 1,800,000 gallons of dispersants covered thousands of square miles of the Gulf and shored on hundreds of miles of our coast. According to federal data, up to 92 percent of the heavily and moderately oiled shorelines on the Gulf were in Louisiana. The same ecosystem that is called the most productive on the continent, the one that 90 percent of the marine species in the Gulf of Mexico depend upon, is now polluted. One of the nation's top recreational and commercial fishing destinations is now subject to the nation's largest offshore oil spill. The direct implications on the fishermen, charter captains, marinas, restaurants, hotels, tourism, employment opportunities, energy production, trade deficit, and Louisiana families is profound.

Even today, the Gulf Coast has approximately 205 miles of coast that has heavy, moderate, light or very light oil remaining. Of this, 185 miles are in Louisiana. This includes 100 percent of the heavily oiled areas, over 99 percent of the moderately oiled shorelines, 81 percent of the light oil coverage areas and 96 percent of the lightly oiled shorelines.

Mr. Chairman, I know that this committee is committed to assist the Gulf States in our recovery and also know that we must learn from this disaster to ensure that failures and mistakes related to the Deepwater Horizon explosion, response and recovery are not repeated.

I would first like to comment on a few items that pertain to the response and Natural Resource Damage Assessment process, then address a few Louisiana-specific issues.

While we all recognize that this spill is unprecedented, it is important to consider some of the lessons learned from the Deepwater Horizon disaster, especially for Spills of National Significance (SONS).

A thematic issue that must be addressed is the need for a fundamental role reversal between the Responsible Parties and the impacted states, federal agencies and trustees. From the

beginning of this spill and continuing today, we have witnessed the Responsible Parties exercise excessive control over the response, assessment and recovery efforts. While I commend BP for coming to and staying at the table with its checkbook, there is often a direct conflict between the interests of the public and the financial or legal liabilities of the Responsible Parties. The current statutory and regulatory structure allows the Responsible Parties to dictate conditions based upon the fact that they are funding the activity.

In the case of ongoing oil spill response activities, this has evolved even farther; it is a modern-day case of Stockholm Syndrome whereby responders are dependent upon the financial resources of and have repeatedly shown signs of empathy toward the Responsible Parties -- who hold them financially captive to the detriment of the will and best interests of the public. Examples include recent attempts to leave thousands of boom anchors in our Gulf waters where they may pose a threat to the environment, commercial and recreational fishing equipment and boating safety. Further, numerous efforts have been made to prematurely designate oiled areas as "No Further Treatment" or inappropriate endpoints for active response efforts. To date, much uncertainty exists related to Submerged Oil Mats and the current threat posed by the remaining oil during and between hurricane seasons. We must note that the current Federal On-Scene Coordinator, Captain Julia Hein, has hosted a number of recent meetings to begin tackling these challenges. We commend her for these efforts to protect the long-term interests of the public.

On the NRDA side, efforts to quantify the natural resource injury associated with a spill of this size and complexity could easily cost hundreds of millions of dollars, consist of thousands of work plans assessing various resources and take a decade or more to complete. Current NRDA efforts are funded under an informal cooperative agreement between BP and the Trustees. In effect, BP has to sign off on our assessment activities before we can begin in order for those studies to be funded by BP. In effect, this causes two problems. First, BP can delay in their review and approval of work plans thereby threatening the timely collection of ephemeral data. Second, BP can refuse to concur in assessments that are contrary to their legal interests or

make funding contingent upon the elimination of assessment activities that they view as damaging to their case. Once again, this demonstrates the leverage afforded to the Responsible Parties that are in direct conflict with the public interest. The Responsible Parties should be required to provide up front assessment costs for reasonable NRDA activities and strict timelines should be set on review and comment by the Responsible Parties for assessment activities.

The timing of the NRDA process and restoration activities also warrants review. Responsible Parties are not required to begin restoration work prior to the completion of the NRDA. Considering the inevitable legal challenges and complications associated with NRDA, it is very possible that the natural resources injured from the Deepwater Horizon disaster could remain in a degraded state for 15 years or more as the NRDA and associated legal processes evolve. While accurately quantifying injury resulting from a spill is important to guide an ultimate resolution, this current process only prolongs the victimization of the communities and ecosystem afflicted by oil spills by delaying restoration of the natural resources.

S.662 filed by Senators Vitter and Landrieu and the House companion, H.R.1228, require the Responsible Parties to make a down payment on their natural resource damage liabilities. Rather than waiting 10 years or more, these proposals would require a preliminary damage assessment then require a down payment to begin restoring impacted natural resources within the first year. We strongly support this concept and commend our delegation members for their foresight. We believe it played an important role in the recent $1 billion early restoration negotiations.

Without a mechanism to compel the Responsible Parties to begin early restoration activities, the trustees are once again at a disadvantage in negotiations. In this case, the Responsible Parties retain the leverage in any negotiation for early restoration. Natural resource trustees may be forced to agree to unfavorable terms or conditions in order to access early restoration funding from the Responsible Parties. S.662 levels the playing field between the public/trustees and the Responsible Parties.

Numerous examples of this leverage exist. One example of the disadvantaged position of the trustees is that BP recently made a unilateral announcement that they would not fund any early restoration projects that are in areas with ongoing response operations. This condition was not in the Deepwater Horizon Early Restoration Framework Agreement, but a unilateral condition established due to the "voluntary" nature of the agreement and the control of funding afforded to BP. This now puts the Louisiana trustees in a position to either prematurely designate coastal areas as "clean" or risk not receiving any early restoration funding.

Under the circumstance, we appreciate BP recognizing the importance of early restoration, but believe that significant improvements could be made to the NRDA process to improve the public's interest.

The National Oil Spill Commission recommended that an independent science auditor be established to ensure that the Natural Resources Damage process yield restoration that truly corresponds to the loss. We strongly support this recommendation. Restoring the Gulf should not be a political process. It is a scientific process that is designed to restore the ecological baseline.

Finally, Mr. Chairman, I would be remiss if I did not mention two last issues related to this spill and recovery. First, the Water Resources Development Act of 2007 (WRDA)authorized approximately 17 ecosystem restoration projects designed to begin addressing the loss of 1900 square miles of our coastal wetlands. This coastal area is jurisdictional wetlands and should be protected. However, the majority of the historical and ongoing loss is attributable to federal action with no mitigation for these impacts. Further, every single statutory deadline in the WRDA bill has been missed. Many of these projects could lay the groundwork or inform NRDA projects. We would appreciate the committee exercising its oversight authority to prevent further delay or adverse impact as a result of these delays.

The second issue is Clean Water Act fines. Under federal law, the Responsible Parties are liable for civil penalties of up to $4300 per barrel of oil discharged into the Gulf. Navy Secretary Ray

Mabus, the National Oil Spill Commission and numerous others call for the return of 80 percent of these revenues back to environmental projects in Gulf States. EPA policies dating back ten years also support this concept. The State of Louisiana commits to use 100 percent of these funds to environmental restoration and projects. The federal government should not profit from the loss on the Gulf Coast. Senator Landrieu and Vitter have filed legislation related to this issue and current policies allow for the negotiation of settlement of these fines through Supplemental Environmental Projects without additional statutory authority. Regardless of the path taken here, we strongly support the recommendations of Secretary Mabus and the National Oil Spill Commission related to the allocation of these funds based upon need and impact rather than criteria irrelevant to the disaster and historical conditions.

We appreciate this opportunity to share our experiences with you and welcome any questions you may have.