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***Deepwater Horizon* Oil Spill: Gulf Coast Restoration Efforts**

The explosion of the *Deepwater Horizon* offshore drilling rig on April 20, 2010, which took place 41 miles southeast of the Louisiana coast, resulted in an unprecedented discharge of oil into U.S. waters. An estimated 4.1 million barrels of oil discharged into the Gulf of Mexico over 84 days. The spill resulted in the oiling of more than 1,100 miles of shoreline and caused damage to fish and wildlife species in Florida, Alabama, Mississippi, Louisiana, and Texas. As a result of the spill, private parties have agreed to pay more than \$16 billion for recovery efforts and related restoration projects.

Oil Spill Restoration Funding

In the wake of the oil spill, several settlement agreements between the federal government and parties responsible for the oil spill (e.g., BP, Transocean) provided funding to mitigate and recover from damages associated with the *Deepwater Horizon* spill. These efforts have been in addition to preexisting, ongoing federal, state, local, and nongovernmental efforts to restore the Gulf of Mexico ecosystem.

The distribution and use of funds under three of these settlements in particular are expected to have a major effect on restoration work in the Gulf: (1) civil penalties paid by responsible parties under the Clean Water Act (CWA) to support efforts outlined under the Resources and Ecosystems, Sustainability, Tourist Opportunities, and Revived Economies (RESTORE) Act of 2012 (Subtitle F of P.L. 112-141); (2) criminal penalties under the CWA paid by responsible parties to the nonprofit National Fish and Wildlife Foundation (NFWF) and other entities; and (3) natural resource damages paid to a fund (administered by the federal government), assessed under the Natural Resource Damage Assessment (NRDA) process, governed by the Oil Pollution Act of 1990 (P.L. 101-380).

Although funding available for some of these efforts was provided as early as 2012-2013, the majority of the funding designated to settle outstanding claims against BP (in particular CWA civil penalties and OPA natural resource damages) was finalized by the Department of Justice in an \$18.7 billion settlement on April 4, 2016. As a result of this and previous settlements, more than \$16 billion is expected to eventually be provided for ecosystem restoration and related projects in Gulf states under the RESTORE Act, NFWF, and NRDA processes (remaining funds are designated for other uses).

RESTORE Act

The RESTORE Act established the Gulf Coast Restoration Trust Fund and the Gulf Coast Ecosystem Restoration Council, among other things. Under the legislation, 80% of administrative and civil CWA penalties paid by responsible parties in connection with the 2010 *Deepwater Horizon* oil

spill are to be deposited in the fund and made available without further appropriation. The act divided this funding among the following components:

- 35%—Direct Component, divided evenly among the five Gulf Coast states for ecosystem/economic projects and administered by the U.S. Treasury Department (Treasury);
- 30%—Comprehensive Plan Component, with projects selected by the Gulf Coast Ecosystem Restoration Council (which is also established in the act and composed of six federal members and five Gulf state representatives);
- 30%—Spill Impact Component, distributed by the council based on a proportional formula established in regulation and to be used for specified activities (limited to 25% infrastructure);
- 2.5%—Gulf Coast Ecosystem Restoration Science Program, administered by the National Oceanic and Atmospheric Administration (NOAA) and focused on science, research, and monitoring; and
- 2.5%—Centers of Excellence Grants, divided evenly among the five Gulf states and administered by Treasury.

Approximately \$0.8 billion is scheduled to be made available in the trust fund pursuant to a 2013 settlement with Transocean. The April 2016 settlement with BP stated that BP would pay \$5.5 billion to resolve CWA claims, 80% (\$4.4 billion) of which is to be distributed to the trust fund according to the RESTORE Act. Together with the Transocean settlement, total funding would be \$5.2 billion.

Components of the RESTORE Act are being implemented separately. For the Direct Component and Centers of Excellence Grants, Treasury has finalized regulations and is awarding funds on a rolling basis. For the Comprehensive Plan Component, the Initial Comprehensive Plan was published in August 2013 and updated in 2016. Ten proposals for initial funding priorities were selected for funding in April 2016 (other projects are expected to be selected as funding from the BP settlement becomes available). The 2016 Comprehensive Plan Update also includes a 10-year funding strategy, as required under the RESTORE Act. A regulation allowing for the release of 5% of Spill Impact Component funds for planning purposes was approved in December 2015, and the final spill impact formula was approved in December 2015. Finally, the NOAA Science Program has established long-term research priorities and began awarding funding in December 2014.

NFWF Restoration

Pursuant to criminal settlements with BP and Transocean, NFWF is to receive and distribute \$2.54 billion in a newly created fund, the Gulf Environmental Benefit Fund, over the 2013-2018 time period. More than half the funding is expected to be distributed to the fund in 2017 and 2018. Of the amounts going to NFWF, Louisiana is expected to receive approximately \$1.27 billion and the other states are expected to receive the remaining funds. The funds are to be used for barrier island and river diversion projects in Louisiana and to remedy harm to natural resources in other affected states. NFWF reports that it is working with state natural resource agencies, the Fish and Wildlife Service, and NOAA, among others, to coordinate restoration activities. As of July 2017, NFWF reported that it had funded 101 projects costing approximately \$0.880 billion.

NRDA Process and Early Restoration

Enacted after the *Exxon Valdez* oil spill of 1989, the Oil Pollution Act allows state, federal, and tribal governments to act as “trustees” to recover damages to natural resources in the public trust from the parties responsible for an oil spill. Under OPA, responsible parties are liable for damages to natural resources, including the following:

- the cost of restoring, rehabilitating, replacing, or acquiring the equivalent of the damaged natural resources;
- the diminution in value of those natural resources pending restoration; and
- the reasonable cost of assessing those damages.

The trustees’ work occurs in three steps: a pre-assessment phase, the restoration planning phase, and the restoration implementation phase. The *Deepwater Horizon* NRDA process is in the restoration implementation phase, which includes development of project-specific restoration and implementation plans.

On April 21, 2011, the trustees for the *Deepwater Horizon* oil spill announced an agreement with BP to provide \$1 billion toward early restoration projects in the Gulf of Mexico to address injuries to natural resources caused by the spill. As of July 2017, the trustees reported approval of 65 early restoration projects, with a combined cost of \$0.866 billion. Further, in early 2016, NOAA released a final damage assessment and restoration plan, which outlines plans to fund a total of \$8.8 billion in natural resource damages that were approved under the 2016 settlement with BP (this amount includes the aforementioned amount for early restoration projects).

Timeline of Spill/Restoration Activities

April 20-July 15, 2010: *Deepwater Horizon* spill.

September 2010: Initial Oil Spill Commission Report (also known as the Mabus Report) published.

October 2010: Gulf Coast Restoration Task Force established.

December 2011: Gulf Coast Restoration Task Force strategy published.

April 2012: Phase I NRDA early restoration projects announced.

July 2012: RESTORE Act becomes law.

December 2012: Phase II NRDA early restoration projects announced.

January 2013: Criminal settlement/NFWF funds finalized.

August 2013: RESTORE Act Initial Comprehensive Plan published.

November 2013: First NFWF projects announced.

August 2014: Initial Comprehensive Plan projects solicited.

October 2014: RESTORE Act Direct Component Rule; Phase III NRDA early restoration projects approved.

December 2014: NOAA Science Program funds available.

January 2015: Spill Impact Component planning grants available.

September 2015: Phase IV NRDA early restoration projects announced.

December 2015: Final spill impact formula approved.

February 2016: Final NRDA Damage Assessment and Restoration Plan published.

April 2016: \$18.732 billion settlement with BP finalized; first 10 Comprehensive Plan projects announced.

December 2016: Updated Comprehensive Plan approved.

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