**A Complete Overview of the RESTORE Act:**

**“Resources and Ecosystem Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012”**

The April 20, 2010 BP Deepwater Horizon disaster led to the largest oil spill ever experienced in United States waters. Federal officials estimate the deepwater well deposited over 200 million gallons of oil into the Gulf Coast area over an 84-day period. In addition, 1.84 million gallons of chemical dispersants were used in the Gulf during the clean-up phase, despite little knowledge or investigation into the toxic effects of those dispersants.

Previously, the Clean Water Act allowed the Environmental Protection Agency to collect $1,100 per barrel of oil spilled, or $4,300 per barrel in cases of gross negligence, from parties found responsible for oil spills in federal waters. The Gulf Coast Restoration Task Force, led by Secretary of the Navy Ray Mabus, issued a report in 2010 titled "America's Gulf Coast." In the report, Congress was asked to dedicate 80 percent of the civil penalties incurred by British Petroleum (BP) to the Gulf Coast.

The Resources and Ecosystems Sustainability, Tourist Opportunity, and Revived Economies of the Gulf States Act (RESTORE Act) creates a crucial framework to manage and finance the Gulf Coast recovery effort. Without this key piece of legislation, the fines owed by BP would have gone into the US treasury fund under direction of the Oil Pollution Act, bypassing the very communities that need it most. Penalties paid by BP could range between $5 and $21 billion, making the RESTORE Act the single largest conservation funding victory in United States history.

**Summary of the Oil Pollution Act**

In response to the Exxon Valdez disaster of 1990, the Oil Pollution Act (OPA) was signed into law. The mission of the OPA was to improve the nation's ability to prevent and respond to oil spills. These improvements expanded the ability of the federal government to respond to oil spills and provided much needed money and additional resources. The OPA also placed strict blame and fines on the responsible parties of an oil spill.

In addition to the cost of cleanup, the OPA states that a responsible party must pay for damages caused by the oil spill to businesses, governments who experience a loss of tax revenue and for the damage of natural resources. The maximum amount that can be charged for the liability of offshore facilities is $75 million. However, if responsible parties are found to have acted with gross negligence, the $75 million cap is waived. This means the responsible party can be forced to pay an unlimited amount of damages under the OPA. In addition, the OPA created the Oil Spill Liability Trust Fund. The fund provides up to an additional $1 billion dollars to help with the cost of cleanup per spill.

The OPA expanded the available damages caused by oil spills, allowing individuals to collect damages for several different kinds of injury. Most noticeable, OPA recognized the loss of profits or earnings impairment capacity due to oil spills. This includes owners of hotels, restaurants and tourist attractions. In addition, the OPA recognized the right of recovery for monetary losses caused by destruction of real or personal property, no matter if they owned or leased the property. The OPA also permitted monetary damage recovery to those individuals who depend on natural resources for subsistence. Finally, the OPA increased the penalties associated with regulatory noncompliance, increased the response and enforcement authorities of the federal government, and preserved each state’s authority to establish laws governing oil spill prevention or response.

**Creation of the RESTORE Act**

The Deepwater Horizon rig exploded on April 20, killing 11 people and spilling massive amounts of oil into the Gulf of Mexico. In response to the explosion, The Obama Administration, led by Secretary Ray Mabus, released a long-term Gulf recovery plan on September 28, which included recommendations to commit 80 percent of the Clean Water Act penalties to the Gulf Coast recovery effort and to create a Gulf Coast Recovery Council. On October 5, 2010, President Obama signed an Executive Order to create the Gulf Coast Ecosystem Restoration Task Force. Environmental Protection Agency Administrator Lisa Jackson was chosen to chair the Task Force.

Sens. Landrieu and Richard Shelby, R-Ala., introduced the RESTORE Act in July 2011. They were joined by their original co-sponsors Sens. David Vitter, R-La.; Jeff Sessions, R-Ala.; Thad Cochran, R-Miss.; Roger Wicker, R-Miss.; Bill Nelson, D-Fla.; Marco Rubio, R-Fla.; and Kay Bailey Hutchison, R-Texas. This legislation passed the Senate as part of its transportation bill on March 14, 2012.

The bill received very broad, bipartisan support in Congress for its one simple purpose: to make sure the oil spill penalty money went back to the region that was damaged by the spill. Congressional champions from the Gulf, such as Senator Mary Landrieu (D-LA), Senator Bill Nelson (D-FL), Senator Richard Shelby (R-AL), and Congressman Steve Scalise (R-LA), worked tirelessly to get the bill passed. Also key was the support from Senator Barbara Boxer (D-CA), who helped broker the bipartisan compromise among the Gulf senators on the bill and then played a leadership role in passing the transportation bill with the RESTORE Act included. On June 29, 2012, the House and Senate pass the two-year transportation bill conference report, including the RESTORE Act, by a vote of 373-52 in the House and 74-19 in the Senate.

**Political Reaction to the RESTORE Act**

On July 6, 2012, after two years of work by legislators and advocates, the President signed the RESTORE Act into law. The new law created an official framework to manage and finance the Gulf Coast's recovery, while also establishing a trust account containing 80 percent of Clean Water Act penalties from the spill.

"This achievement is the work of a strong, bipartisan, hard-working coalition of Congress members that I was proud to lead with Senator Richard Shelby, and Representatives Steve Scalise and Cedric Richmond in the House. But none of this would have been possible without the tireless and incredible leadership of Senator Barbara Boxer; in committee, on the floor and in conference. It is also due to the work and dedication of many wonderful organizations, including numerous environmental, wildlife and business groups across the Gulf Coast," Sen. Landrieu said.

Both U.S. Senator Richard Shelby (R-Ala.) and Congressman Jo Bonner (R-Ala.) released statements applauding the passage. “This is a banner day for the Gulf Coast as the RESTORE Act is soon to become law and the coastal communities affected by the Deepwater Horizon spill are poised to receive long-awaited economic and environmental restoration funds,” Congressman Bonner observed after the final House vote.

“This is a huge step toward vital, long-overdue coastal restoration work along the Gulf Coast in Louisiana and our neighboring states. The RESTORE language will go a long way in addressing the impacts of the environmental and economic damage from last year’s oil spill, and we think it’s more than fair to have 80 percent of the fines for this event dedicated for restoration along the Gulf Coast,” said supporter U.S. Sen. David Vitter.

**Detailed Explanation of the RESTORE Act**

The “RESTORE the Gulf Coast Act” is a bipartisan, regional approach that will:

* Create the Gulf Coast Restoration Trust Fund
* Dedicate 80 percent of Clean Water Act penalties to be paid by the responsible parties to the restoration of the Gulf Coast ecosystem and economy
* Support a variety of projects that aim to help the Gulf Coast area recover from environmental and economic injuries experienced as a result of the Deepwater Horizon disaster

The RESTORE Act will help provide vital resources to the Gulf Coast areas and start the recovery process by:

* **Equal-Share State Allocations**

35 percent of the funds are to be dispersed in equal shares to the five Gulf Coast States for economic and ecological recovery. The bill ensures that funds are spent responsibly and for their intended purpose—restoring and protecting the Gulf Coast. States must spend these funds on economic and ecological recovery activities along the coast, as defined in the legislation.

Five coastal states -- Louisiana, Alabama, Mississippi, Florida and Texas -- will each share the money. Thirty-five percent of all BP paid fines will be split equally, but the rest of the money will be distributed according to a formula that considers each state’s proximity to the spill and extent of damage. By all accounts, Louisiana will receive the largest share of money for restoration.

The Act also dictates how the equal-share state funds will be allocated among counties in Florida and parishes in Louisiana. Notably, the majority (70 percent) of Louisiana funds will go directly to the state as opposed to affected parishes. In contrast, disproportionally affected Florida counties will share 80 percent of Florida’s equal-share funding.

The funds may be used for ecological and economic restoration of the Gulf Coast. The RESTORE Act dictates that the five states may only use funds for a specific list of purposes, including protection and restoration of natural resources, workforce development, job creation, tourism promotion, promoting consumption of Gulf seafood, planning assistance and flood protection infrastructure

* **Ecosystem Restoration Council**

Thirty percent of the funds will go towards the creation of a Gulf Coast Ecosystem Restoration Council, plus 50 percent of Restoration Trust Fund (RTF) interest and investment income. The Council’s funds will go toward developing and implementing a science-based plan, which can only include projects to restore and protect natural resources.

Members of the Gulf Coast Ecosystem Restoration Council must include the following:

Secretaries of Interior, Army, Commerce, and Agriculture, EPA Administrator, Head of the Coast Guard, and governors of the Gulf states. The Gulf State governors will choose one federal member to serve as Council Chair.

“Appropriate” Council actions and deliberations must be made available to the public “via electronic means” prior to any Council vote. (The term “appropriate” is not defined by the legislation.)

Unlike state implementation plans, the Council’s Comprehensive Plan may not include economic development projects—only projects to restore and protect natural resources. The Comprehensive Plan must prioritize projects that contribute to Gulf restoration regardless of geographic location.

The Comprehensive Plan must include and incorporate the findings of the Gulf Coast Ecosystem Restoration Task Force. Before a final version is published, a proposed Comprehensive Plan will be subject to notice-and-comment procedures.

* **Impact-Based State Allocations**

Thirty percent of the RTF funds will be dispersed among the Gulf Coast states according to an intricate formula considering the portion of state shoreline oiled, the distance from the state to the Deepwater Horizonrig, and the state’s 2010 coastal population.

Unlike the Council’s Comprehensive Plan, state comprehensive plans may include projects to further economic recovery. State plans must be “consistent with” the Council’s Comprehensive Plan and will be subject to the Council’s approval.

* **Restoration, Science, Observation, Monitoring, and Technology Programs**

2.5 percent of RTF funds plus 25 percent of RTF interest and investment income from The RESTORE Act will go toward establishing a Gulf Coast Restoration, Science, Observation, Monitoring, and Technology Program (RSOMT Program) under the National Oceanic and Atmospheric Administration (NOAA) to ensure the long-term ecological and economic sustainability of Gulf fisheries.

The RSOMT Program will primarily fund long-term, non-duplicative projects that address anticipated data collection and monitoring needs. The Act limits NOAA’s use of funds, including prohibitions against using funds for existing or planned NOAA research (unless agreed to by the grant recipient), implementing or initiating regulations, or developing or approving limited access privilege programs in Atlantic fisheries.

The RSOMT Program must be carried out in consultation with the Regional Gulf of Mexico Fishery Management Council, and the Program may cooperate with the Gulf States Marine Fisheries Commission. The RSOMT Program will sunset once all funds are expended.

* **Centers of Excellence Research Grant Program**

2.5 percent of RTF funds will go to The Gulf states in equal shares, plus 25 percent of RTF interest and investment income, to award competitive grants for the establishment of “Centers of Excellence” in NGOs, consortia, or universities.

One Center of Excellenceis to be established in each Gulf state to further Gulf Coast science, monitoring, and technology. The Centers are to be housed by non-governmental organizations, consortia, or universities.

Centers of Excellence must demonstrate broad expertise in at least one of five listed areas, including coastal sustainability, coastal resources, offshore energy development, sustainable economic development, and monitoring and mapping.

As there is no requirement that a Center focus on more than one of the listed disciplines, and no requirement that a Center research natural resources, Centers of Excellence can be primarily energy development or economic development research programs.

Allocation of the RESTORE Funds within each state will be as follows:

* **Florida**

Florida has chosen a unique allocation process. It is the only one of five Gulf Coast states that chose to send a portion of money directly to affected counties. The eight counties impacted by the disaster — Escambia, Santa Rosa, Okaloosa, Walton, Bay, Gulf, Franklin and Wakulla — will each receive 75 percent of the funds, while the remaining 15 coastal counties split the remaining 25 percent.

* **Louisiana**

Louisiana approved a 2012 Coastal Master Plan to direct the allocation of RESTORE funds within the state. A total of 70 percent of Louisiana’s funds will go directly to the state, while 30 percent of funds go to parishes in the coastal zone according to this formula: 40 percent based on average number of oiled miles of parish shoreline; 40 percent based on average parish population; and 20 percent based on average land mass of parish. In addition, each parish must have an approved comprehensive land use plan in place before receiving RESTORE funds.

* **Mississippi**

Of the available RESTORE funds, 35 percent is available to the Gulf Coast States in equal amounts for ecological and economic restoration of the Gulf Coast region. The Mississippi Department of Environmental Quality will oversee Mississippi’s share of funds under the RESTORE Act.

* **Alabama**

Alabama will allocate the RESTORE funds it receives to areas that are within 25 miles of a 10-foot elevation contour that is just inland from the two Gulf Coast counties of the state.

* **Texas**

Texas has 18 coastal counties, which are all within a coastal management zone. The RESTORE boundary would be considered those 18 counties land borders, plus another 25 miles of adjacent land that is inland. Areas such as Houston and McAllen are inside that inland zone.

**Release of RESTORE Funds to Gulf States**

In September, President Barack Obama issued an executive order to reaffirm the allocation of RESTORE funds to the five Gulf States as they attempt to recover in the wake of the worst marine oil spill in U.S. waters. BP still faces fines ranging from $5 to $21 billion under the Clean Water Act. The Department of Justice is currently asking a federal judge to consider BP’s actions ahead of the rig explosion that caused the spill negligent in the settlement of a lawsuit with area businesses.

The complication of releasing funds concerns a lawsuit over violations of the United States Clean Water Act. A previous ruling states BP acted with “gross negligence” in the Deepwater Horizon disaster actually triples the damages for BP, based on the amount of oil that spilled into the ocean. Meanwhile, talks have been progressing in an effort to avoid a full trial by reaching a settlement figure. However, the government has not been willing to settle for less than $18 to $21 billion from BP, who refuses to pay that amount. BP’s board appears to want a $15 billion settlement and refuses to meet the government at $18 billion. The lawsuit is scheduled to begin in early 2013, after which point RESTORE funds are expected to be released.

**Resources:**

RESTORE the Gulf Coast Act of 2011, S. 1400

<http://www.landrieu.senate.gov/mediacenter/upload/RESTORESBS.pdf>

The RESTORE the Gulf Coast Act

<http://www.landrieu.senate.gov/files/documents/RESTOREActonepager07-2012.pdf>

Summary of the RESTORE Act of 2012

<http://www.balch.com/files/upload/RESTORE%20Act%20Summary%202.pdf>