

**TESTIMONY OF THOMAS E. KELSCH, SENIOR VICE PRESIDENT,  
GULF ENVIRONMENTAL BENEFIT FUND,  
NATIONAL FISH AND WILDLIFE FOUNDATION,  
BEFORE THE SENATE COMMITTEE ON COMMERCE, SCIENCE, AND  
TRANSPORTATION, SUBCOMMITTEE ON OCEANS, ATMOSPHERE, FISHERIES,  
AND COAST GUARD, REGARDING  
“REVISITING THE RESTORE ACT: PROGRESS AND CHALLENGES IN GULF  
RESTORATION POST-*DEEPWATER HORIZON*”  
Tuesday, July 29, 2014, 10:30 a.m., SR-253**

Thank you, Mr. Chairman, Ranking Member Rubio, and Members of the Committee. It is an honor to be here with you today, and to join this distinguished panel of exceptional public servants, fellow Gulf restoration partners, to discuss our collective efforts to restore and protect the natural resources of the Gulf of Mexico region.

The National Fish and Wildlife Foundation (NFWF) was established by Congress in 1984 to foster public-private partnerships to conserve fish, wildlife, plants, and their habitats for present and future generations of Americans. To fulfill our mission, we do not engage in litigation, we do not advocate or oppose given policies or decisions, and we do not lobby.

NFWF is governed by a 30-member Board of Directors that includes the Director of the U.S. Fish and Wildlife Service (FWS), the Administrator of the National Oceanic and Atmospheric Administration (NOAA), and 28 private citizens, including several from states bordering the Gulf of Mexico.

Over 30 years, NFWF has developed a successful model of coordinating and leveraging public and private funds to address the most significant threats to fish and wildlife populations. As one of the nation’s largest conservation funders, NFWF currently works with 15 federal agencies, numerous state agencies, private partners, and our local grantees to implement on-the-ground and in-the-water conservation projects in all 50 states and internationally. NFWF’s work helps to create and sustain abundant wildlife species and natural habitats that serve as both a source of enjoyment for all Americans and an important driver of our nation’s economic health.

**NFWF’s Initial Response in the Gulf**

Our experience in the Gulf region is extensive. In fact, in the years prior to the 2010 Deepwater Horizon oil spill, NFWF had already invested more than \$128 million to support over 450 fish and wildlife habitat projects throughout the Gulf region. These projects were supported with federal funds and private contributions from NFWF’s corporate partners. In response to the oil spill, NFWF’s experience in the Gulf region allowed us to take a leadership role in coordinating immediate efforts to bolster wildlife populations outside the spill zone and enhance their recovery once the spill was over.

NFWF worked with government agencies, non-governmental organizations, private foundations, individuals, and corporations to protect and restore Gulf Coast fish, wildlife, and habitats affected by the oil spill. For example, NFWF engaged Walmart to secure a commitment of \$2.25 million for NFWF-funded conservation projects on federal and state wildlife management lands on the Gulf coast. We also worked with FedEx and agency partners during the summer of 2010 to facilitate the transfer of 25,000 endangered sea turtle eggs from the Gulf coast to the Atlantic coast—one of the largest wildlife relocations in history. NFWF also launched the Recovered Oil Fund for Wildlife in 2010, funded with \$22.9 million in proceeds from BP's share of net revenue from the sale of oil recovered from the Deepwater Horizon site, and leveraged those monies by working closely with some of our other corporate partners. The Fund, and matching money, funded 53 grants between 2010 and 2013.

### **BP and Transocean Criminal Settlements**

On November 15, 2012, the Justice Department announced that BP had agreed to plead guilty to various criminal charges arising from the 2010 Deepwater Horizon oil spill. Transocean followed suit on January 3, 2013. On January 29, 2013, the United States District Court for the Eastern District of Louisiana approved BP's plea agreement. Two weeks later, on February 14, 2013, Transocean's plea agreement was approved. The plea agreements designated NFWF as the recipient of \$2.394 billion from BP and \$150 million from Transocean to be used for projects to "remedy harm and eliminate or reduce the risk of future harm to Gulf Coast natural resources." These Deepwater Horizon settlement payments were similar to various other settlement payments that have flowed to NFWF over the years to fund projects benefitting our nation's natural resources. We believe that our long history of successfully managing these types of funds contributed to the decision by the Department of Justice to commit the BP and Transocean settlement funds to our care.

The requirements for BP and Transocean to pay these funds, as well as the usage restrictions applicable to the funds, were entered in federal Court orders that are enforceable as special conditions of probation. NFWF must look strictly to the plea agreements and these Court-ordered probationary conditions in our administration of the funds.

According to the plea agreements, the BP funds will be paid to NFWF over a five-year period and the Transocean funds will be paid to NFWF over a two-year period beginning in 2013. The plea agreements require:

- 50 percent of the funding to be allocated for barrier island restoration and river diversion projects in Louisiana;
- remaining funds to be allocated for natural resource benefit projects in the states of Alabama, Florida, Mississippi (28 percent each), and Texas (16 percent); and,
- consultation with the Gulf state resource agencies, as well as with NOAA and the FWS, to identify projects for potential funding.

## **NFWF Gulf Environmental Benefit Fund**

NFWF has a long track record of successfully managing funds arising from legal and regulatory proceedings that are designated to benefit natural resources. In the case of the BP and Transocean criminal funds, NFWF carries out this function through its Gulf Environmental Benefit Fund (GEBF). As directed by the two plea agreements, NFWF will administer a total of \$2.544 billion to fund projects benefitting the natural resources of the Gulf Coast that were impacted by the spill.

### **Purposes**

The underlying plea agreements specify a narrow purpose for the Louisiana-designated funds as compared to the purpose designated for funds in the other four states. In Louisiana, the funds may be used only “to create or restore barrier islands off the coast of Louisiana and/or to implement river diversion projects on the Mississippi and/or Atchafalaya Rivers for the purpose of creating, preserving, and restoring coastal habitat.” Selection of projects must take into consideration Louisiana’s Coastal Master Plan, as well as the Louisiana Coastal Area Mississippi River Hydrodynamic and Delta Management Study.

In the other four states, the funds must be used “to conduct or fund projects to remedy harm to [natural] resources where there has been injury to, or destruction of, loss of, or loss of use of those [natural] resources resulting from the Macondo oil spill.”

It is here that we have faced our greatest challenge. NFWF has no discretion to stray from the strict language of the plea agreements regarding the purpose or distribution of the GEBF – monies in the Fund may be used **only** for projects that directly benefit the specific types of natural resources (habitat and species) that were impacted by Deepwater Horizon. Thus, for example, NFWF’s GEBF is not available to pay for otherwise important projects that aim to remedy economic or social impacts from the Macondo spill. It has taken considerable time and effort to educate stakeholders across the Gulf region regarding the strict parameters under which we operate and to conform local expectations to the terms of the plea agreements.

### **Consultation and Project Selection**

As required by the plea agreements, NFWF has continually consulted with natural resource management agencies in each of the five Gulf States and with FWS and NOAA on the identification and prioritization of appropriate projects. The specific state resource agencies with whom NFWF is consulting are: (1) the Alabama Department of Conservation and Natural Resources, (2) Florida Fish & Wildlife Conservation Commission, (3) Florida Department of Environmental Protection, (4) Louisiana Coastal Protection and Restoration Authority, (5) Mississippi Department of Environmental Quality, (6) Texas Parks and Wildlife Department, (7) Texas Commission on Environmental Quality, and (8) Texas General Land Office. Many of the agencies with whom NFWF is consulting serve on both the Deepwater Horizon Natural

Resource Damage Assessment Trustee Council and the Gulf Coast Ecosystem Restoration Council, and their input has been the primary means through which project selection under NFWF's GEBF has been coordinated with similar activities under both the Natural Resource Damage Assessment (NRDA) and "Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States [RESTORE] Act of 2012" programs.

NFWF has worked to develop general consensus among the state and federal agencies in identifying projects that meet the conditions of the plea agreements and that maximize benefits for Gulf coast natural resources. When our state and federal agency partners suggest projects that provide regional benefits, such as those crossing state boundaries or even potentially Gulf-wide, NFWF has worked to facilitate interstate and inter-agency agreement on project design and funding strategies. However, even in the absence of consensus, NFWF retains the responsibility and authority under the plea agreements to make final project funding decisions.

In addition to the primary criteria for project selection set forth in the plea agreements, NFWF identifies and prioritizes projects that also meet the following criteria:

- advance priorities in natural resource management plans, such as those called for under the RESTORE Act;
- are cost-effective and maximize environmental benefits;
- are science-based; and,
- produce measureable and meaningful outcomes for Gulf natural resources.

As it does in its other conservation grant-making, NFWF's decision-making relies on strong, science-based evidence and the technical input from state and federal resource agencies. In the aftermath of the oil spill, public agencies, universities, and other organizations have conducted, and continue to conduct, extensive research to improve the understanding of the Gulf of Mexico ecosystem and efforts needed to restore critical natural resources, enhance its resiliency, and improve management. As this information becomes available, it will be used to further inform our thinking.

### **Payment Schedule**

From 2013 to 2018, the GEBF will receive a total of \$1.272 billion for projects in Louisiana, \$356 million each for projects in Alabama, Florida, and Mississippi, and \$203 million for projects in Texas. In accordance with the terms of the two plea agreements, payments into the GEBF will occur over a five-year period in the case of BP and over a two-year period in the case of Transocean. More than half of the funding will arrive in years four and five. As payments are received, NFWF will segregate funds into accounts by state in accordance with the formula established by the plea agreements and will award the funds to projects after the required

consultations with state and federal resource agencies and approval by the NFWF Board of Directors. The schedule of payments and mandated division of funds follows:

	<b>Payment</b> (in millions of dollars)	<b>Louisiana</b>	<b>Alabama</b>	<b>Florida</b>	<b>Mississippi</b>	<b>Texas</b>
Apr. 2013	\$158.00	\$79.00	\$22.12	\$22.12	\$22.12	\$12.64
Feb. 2014	353.00	176.50	49.42	49.42	49.42	28.24
Feb. 2015	339.00	169.50	47.46	47.46	47.46	27.12
Feb. 2016	300.00	150.00	42.00	42.00	42.00	24.00
Feb. 2017	500.00	250.00	70.00	70.00	70.00	40.00
Feb. 2018	894.00	474.00	125.16	125.16	125.16	71.52
<b>Totals</b>	<b>\$2,544.00</b>	<b>\$1,272.00</b>	<b>\$356.16</b>	<b>\$356.16</b>	<b>\$356.16</b>	<b>\$203.52</b>

BP = \$2,394M

Transocean = \$150M

### **Grant Awards to Date**

On November 14, 2013, one year after BP entered its guilty plea, NFWF announced the first set of awards derived from the GEBF. Two additional grants were announced on April 3 and April 8, 2014. To date, NFWF has awarded more than \$260 million, or more than 50 percent of the \$511 million received to date, for priority conservation projects in the five Gulf States.

A break out of awards follows:

<b>State</b>	<b>Project Description</b>	<b>Grant Recipient</b>	<b>Amount</b> (\$ in millions)
<i>Alabama</i>	Restoration & Enhancement of Oyster Reefs	Alabama Department of Conservation & Natural Resources—Marine Resources Division	\$3.75
	D'Olive Watershed Restoration	Mobile Bay National Estuary Program/Marine Environmental Sciences Consortium	6.78
	Fowl River Watershed Restoration	Mobile Bay National Estuary Program/Marine Environmental Sciences Consortium	2.05
<i>Florida</i>	Management & Restoration of Escribano Point Coastal Habitat—Phase I	Florida Fish & Wildlife Conservation Commission	1.73
	Government Street Regional Stormwater Pond at Corrine Jones Park	Florida Department of Environmental Protection	2.11
	Apalachicola Bay Oyster Restoration	Florida Fish & Wildlife Conservation Commission	4.19
	Comprehensive Panhandle Coastal Bird Conservation	National Audubon Society	3.21
	Eliminating Light Pollution on Sea Turtle Nesting Beaches	Sea Turtle Conservancy	1.50

<b>State</b>	<b>Project Description</b>	<b>Grant Recipient</b>	<b>Amount</b> (in 1000s of \$)
<i>Florida cont.—</i>	Enhanced Assessment for Recovery of Gulf of Mexico Fisheries—Phase I	Florida Fish & Wildlife Conservation Commission	3.00
<i>Louisiana</i>	Caminada Beach & Dune Increment II: Engineering & Design	Louisiana Coastal Protection & Restoration Authority	3.00
	East Timbalier Island: Engineering & Design	Louisiana Coastal Protection & Restoration Authority	6.00
	Mid-Barataria Sediment Diversion: Engineering & Design	Louisiana Coastal Protection & Restoration Authority	40.40
	Lower Mississippi River Sediment Diversions: Planning	Louisiana Coastal Protection & Restoration Authority	13.60
	Increase Atchafalaya Flow to Terrebonne: Planning	Louisiana Coastal Protection & Restoration Authority	4.90
	Caminada Beach & Dune Increment II: Construction	Louisiana Coastal Protection & Restoration Authority	144.55
<i>Mississippi</i>	Coastal Bird Stewardship Program	Mississippi Department of Environmental Quality	1.60
	Mississippi Coastal Preserves Program	Mississippi Department of Environmental Quality	3.30
	Coastal Stream & Habitat Initiative	Mississippi Department of Environmental Quality	2.63
	Mississippi Coastal Restoration Plan	Mississippi Department of Environmental Quality	3.60
<i>Texas</i>	Sea Rim State Park Coastal Dune Restoration	Texas Parks & Wildlife Department	0.19
	Galveston Island State Park Marsh Restoration & Protection	Texas Parks & Wildlife Department	2.49
	West Galveston Bay Conservation Corridor Habitat Restoration	Scenic Galveston	4.08
	Oyster Reef Restoration in East Bay	Texas Parks & Wildlife Department	0.84
	Gulf Coast Migratory Waterfowl Habitat Enhancement	Ducks Unlimited	1.25
		<b>total</b>	<b>\$260.75</b>

Following further extensive consultation with state and federal resource agencies over the coming months, NFWF anticipates awarding, by year’s end, an additional \$130 million or more of settlement funds received thus far.

Our ability to begin awarding funds less than a year after the plea agreements were approved was made possible in large part by the intense efforts of our federal, state, local, and private partners to help us craft a process that generated quality proposals in a timely manner focusing on the highest priority conservation goals. This “can do” spirit, and the collaboration and cooperation that resulted, has been one of the true success stories surrounding NFWF’s GEBF.

### **Conclusion**

As we move forward with the implementation of the GEBF, we will continue to work with our state and federal partners to identify high priority projects that meet the requirements of the plea agreements and provide long-term restoration benefits to the Gulf of Mexico region. As stated,

we are utilizing existing planning and prioritization efforts such as those required by the RESTORE Act to deliver the funds without creating new and duplicative processes. Accountability and fidelity to the Court orders are essential to the process and we are committed to awarding the funds entrusted to us in a timely and responsible manner.

NFWF will report annually to Congress, as well as to the Court and Department of Justice, on its activities with regard to the GEBF. This will include a list and descriptions of projects and the funding awarded for them. We look forward to continued input from key stakeholders, both public and private, to ensure the success of the GEBF and its associated restoration projects.