



July 3, 2013

The Honorable Penny Pritzker
Secretary of Commerce and
Chair, Gulf Coast Ecosystem Restoration Council
U.S. Department of Commerce
1401 Constitution Ave., NW
Washington, D.C. 20230

Dear Secretary Pritzker:

On behalf of all the members of the National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling, we offer the following comments on the "Draft Initial Comprehensive Plan" (the draft Plan) that the Gulf Coast Ecosystem Restoration Council issued on May 23, 2013.

Our Commission emphasized the importance of restoring the health and sustainability of the Gulf ecosystems and made the proposal that 80 percent of the Clean Water Act Funds be allocated to this effort. From the Commission's perspective, the compelling rationale for doing this was the need to reverse the long term degradation of Gulf of Mexico ecosystems. Long before the BP spill, the federal government was an active partner in the destruction of this productive resource, allowing the destruction or degradation of wetlands and other coastal environments to promote shipping, oil and gas development, agriculture, and other economic activities.

We appreciate that the Council's responsibilities for implementing the RESTORE Act are extremely complex and there are a number of questions about what Congress intended and how the legislation should be implemented. We also realize that Congress established some unrealistic deadlines for getting the process under way, particularly since no resources have been made available to support these efforts. Given these difficulties and limitations, we are very impressed by what the Council has accomplished to date, even though it has not been able to meet all of the deadlines set forth in the legislation.

Nevertheless, we do have some concerns about what we have seen so far, and more about what directions this effort may take in the future. Our concerns pertain not only to the Council's efforts but to the NRDA (Natural Resource Damage Assessment) processes, the National Fish and Wildlife Foundation program and the North American Wetlands Conservation Fund as well. In our report *Assessing Progress: Three Years Later* that we released in April, we set forth seven questions pertaining to the Gulf restoration efforts. We intend to monitor and evaluate all the restoration efforts with a continued focus on these seven questions.

Will the different programs be coordinated and how?

With separate organizations attempting to disburse such large sums of money for restoration, there could be substantial overlap or duplication or divergent interests that need to be reconciled. The draft Plan recognizes the need for coordination but sets forth no specific proposals for how this will be accomplished. We understand that some efforts are being made to coordinate the different efforts, but fear that, in the rush to get programs underway, this is not being given as much attention as it needs. Later in these comments we recommend that the Council, in cooperation with the other restoration efforts, establish two panels – a science advisory panel and a citizens advisory panel – to oversee these several programs. These panels could substantially help in the coordination effort.

Will the programs have clear goals and will there be robust monitoring of how well they are achieving those goals?

Before beginning such massive expenditures, it is essential that all parties agree on what they are trying to accomplish. It may be that the goals may differ somewhat among the programs – the RESTORE Act has a particular diversity of “eligible activities”. Nevertheless, it is important that all the programs establish clear, measurable goals, and that these goals be coherent and consistent among the programs. And for each goal there should be clear, quantitative metrics for measuring progress being made in achieving the goal, clear milestones to which this progress can be compared, and a robust monitoring program to measure and guide progress toward these goals.

The draft Plan recognizes the desirability for establishing objectives that are “more specific and measurable” than those set forth in that report. We believe that it is important that this process begin as soon as possible.

We recommend that the Council work with the other programs and with the National Academy of Sciences to define these goals and establish the milestones and monitoring programs. The Academy, which is now engaged through its newly endowed Gulf Program, has undertaken such efforts for a number of other programs and would provide a respected, independent venue for this effort.

Will the projects selected under the programs be based on the best available science?

Although the RESTORE Act and the draft Plan emphasize that the restoration projects should be “based on the best available science” none of the several restoration programs has established a scientific advisory committee. Whether the Council should establish such a committee is one of the questions raised in the request for comments.

Our response is an emphatic yes. Sustainable restoration in the Gulf is complicated scientifically and technically and the programs would benefit from having a standing committee of scientists to review proposed projects and ensure the rigor of their design. We recommend that the Council work with the other restoration programs to establish a scientific advisory process that would review all the restoration efforts to ensure that they are all based on the best available science.

Here again, the Council should seek advice from the National Academies about how that oversight might best be provided. And, as we said above, having an overarching review process could substantially help coordinate the various efforts and ensure they remained focused on the restoration goals.

The draft Plan is silent on coordination by the Council on the Gulf Coast Ecosystem Restoration Science Program and Centers of Excellence in Research Grants Program supported by the Gulf Coast Restoration Trust Fund. We realize that the Council lacks direct authority for these programs. However, the RESTORE Act does indicate some expectations for consultation and coordination among these elements, and the federal agencies and states represented on the Council do have some responsibility for these science programs. The Plan should be more explicit and innovative on how the two science programs will work to achieve synergies with the Council's activities, particularly with regard to how the programs can support the research, monitoring and observations to ensure the "best available science" is used in effective project design and adaptive management.

To what degree will the RESTORE Act funds be used to restore the resilience of Gulf of Mexico ecosystems degraded over the long term as a result of national policies?

From the Commission's perspective, this was the compelling rationale for allocating Clean Water Act fines to a Gulf Coast restoration trust fund in the first place. While the RESTORE Act allows use of these funds for economic development and infrastructure improvements as well as ecosystem restoration, it would be tragically short-sighted if the primary emphasis were not on rebuilding resilience in the natural systems that are critical to the regional economy and well-being. Furthermore, there should be diligence against using these funds for unrelated purposes such as to balance budgets or replace revenue sources for ongoing expenditures.

The RESTORE Act divides the money it makes available for restoration into three components. The first is the Direct Component in which the monies are allocated directly to the states. Although the Council has no responsibility for overseeing the expenditure of these funds, we believe that it should be fully aware of how these funds are being used so that the projects the Council supports can be coordinated with the Direct Component projects. For instance, if the Direct Component funds are spent predominately on economic development projects, the Council would have less need to consider such projects when considering proposals for the other two components.

The second component is the Council-Selected Restoration Component. We strongly believe that this component should be restricted to ecosystem restoration as is implied by your conversion of the four priorities set forth in the legislation into your four "evaluation criteria". These four criteria appropriately refer only to ecosystem related improvements, and this indeed should be the sole focus of the second component.

The Council's role regarding the third component, the Spill Impact Component, is murkier. A broader array of activities is eligible, and therein lies the risk of loss of emphasis on restoring the degraded ecosystems. The draft Plan states that projects, programs and activities included in State Expenditure Plans must be consistent with the goals and objectives of the Comprehensive Plan

although the draft Plan identifies the “ objectives” as pertaining to the Council-Selected Restoration Component, not to the third component. Frankly we found the distinction between goals and objectives confusing. Several of the objectives are only minor restatements of the goals while others seem only loosely if at all related to the goals. It is also unclear how the approval process for State Expenditure plans will work. Will each plan be voted up or down as a whole or could there be objections to specific projects, programs, or activities included in a plan?

Will there be adequate financial controls and auditing of expenditures to ensure the funds are well spent and to minimize the potential for waste or fraud?

There have already been several cases of fraud tied to payments made pursuant to the spill. We recognize that the RESTORE Act tasks the U.S. Department of the Treasury with developing rules to ensure that funds are spent appropriately, but were dismayed to read the Inspector General’s report indicating that it is disagreements among the federal agencies that has delayed these rules. Avoiding waste, fraud, and abuse is likely to be a major challenge, but meeting this challenge will be critical to the success of the program.

We would recommend that the Council make two modifications in the draft Plan to address these issues.

The first is to require that certain information be provided by the sponsor for each project before it is considered for approval. The draft Plan provides a list of information that “may” be provided for projects in the State Impact Plans. We recommend that the same information be provided for Council approved projects, and in both cases the provision of this information be mandatory not discretionary. Under the discretionary approach in the draft Plan, the Council could be expected to approve state plans with no information about what they will cost or what they will accomplish.

The second modification we recommend is that all the projects in the second and third components should be evaluated on the basis of how well they fulfill all five of the goals set forth at the beginning of the draft Plan, not on whether they respond to any one goal. Projects which help implement several goals should result in a more effective restoration program. Including independent evaluation to inform Council decisions would improve the credibility, transparency and accountability of these decisions.

Will the projects be selected and implemented expeditiously?

We are concerned about the delays that we have already observed in implementing the programs. We recognize, of course, that Congress provided the Council with no resources to carry out its preparatory work, that it is impossible to prepare a meaningful “comprehensive plan” before the amount of funds available for implementing the plan has been determined, and that Louisiana and Florida appear to be the only states to so far have prepared a proposed list of projects to be included in such a plan. We also recognize that some of our other recommendations such as establishing clear goals for the program and coordinating the Council’s efforts with the other programs may cause further delays. Nevertheless, it is important that restoration efforts be started as quickly as they can. As you know, the Gulf is continuing to lose wetlands at a distressingly high

rate. It will be much easier to try to prevent additional losses than to try to bring back those that have already occurred.

Will there be adequate opportunity for public review and comment?

We believe that it is important for the restoration programs to adopt transparent operating procedures and be open to public comment, and commend the Council on the initiative you have demonstrated in holding public meetings throughout the gulf coast. We recommend, again in response to one of the questions raised in the request for comments, that the Council continue this effort at transparency by establishing a public advisory committee. Here again it would make sense for such a committee to provide advice on the several restoration programs. This would help in their coordination in such a way that the public could obtain a full and clear view of all the efforts and how they fit together.

We also recommend that, once the Council has taken account of the comments submitted during the current review period and assembled all of the components the law specifies should be included in the Initial Comprehensive Plan, including the three-year project and program list and ten-year funding strategy, that you reissue the complete draft plan for public review and comment rather than finalizing it in pieces. Given the importance of the Council's activities and the amount of money that will be involved, it is more important that the initial plan be done well rather than it be issued according to arbitrary deadlines.

Several of our comments focus on the need for coordination among the programs. One excellent mechanism for accomplishing this would be for the programs to sponsor a coherent, well-crafted comprehensive planning process for the Gulf (sometimes called marine spatial planning), as the Commission recommended in its final report. This would substantially advance the development of sustainable management and coordinated restoration.

We appreciate the opportunity to comment on the Council's draft comprehensive plan and would be happy to answer any questions you might have. Again, we congratulate the Council on what it has accomplished and we stand ready to assist you in your efforts to implement an effective ecosystem restoration program in any way we can.


Senator Bob Graham


William K. Reilly