



October 29, 2015

Justin Ehrenwerth
Executive Director
Gulf Coast Ecosystem Restoration Council
Hale Boggs Federal Building
500 Poydras Street, Suite 1117
New Orleans, LA 70130

Re: Proposed Regulation to implement the Spill Impact Component of the RESTORE Act

Dear Mr. Ehrenwerth:

The undersigned organizations appreciate the opportunity to comment on the Gulf Coast Ecosystem Restoration Council's (Council) Proposed Regulation¹ to implement the Spill Impact Component of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (RESTORE Act)². These regulations establish the formula used to allocate funds via the RESTORE Act from the Gulf Coast Restoration Trust Fund to the Gulf Coast states of Alabama, Florida, Louisiana, Mississippi and Texas. This Council has an important responsibility not only to administer grants but also to adhere to the guidelines within the RESTORE Act.

As the Gulf Coast receives restoration funding through the RESTORE Act and other recovery monies, the states can maximize this once-in-a-lifetime opportunity to support projects that will safeguard natural resources, strengthen industries and protect communities from future disasters. Our goal is to ensure that the projects selected through the Spill Impact Component represent the diverse issues and priority concerns of Gulf residents and to provide a transparent, science-based process that utilizes local expertise for every project, regardless of focus. Our hope is that the Council will similarly adopt the "triple bottom line" approach of balancing the environment, economy and community.

According to the Department of the Treasury's Interim Final Rule³, the Act gives the Council responsibility for administering the Spill Impact Component. Among other things, the Council determines each state's share,

¹ https://restorethegulf.gov/sites/default/files/FRID%202015-24816_RESTORE%20Act%20Spill%20Impact%20Component%2C%2020150929.pdf

² Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (RESTORE Act), Pub. L. No. 112-141, 126 Stat. 405.

³ <http://www.treasury.gov/services/restore-act/Documents/RESTORE%20Act%20Interim%20Final%20Rule.Federal%20Register2014-19324.pdf>

based on criteria in the Act, and disburses funds for eligible activities. The Council chair also must approve State Expenditure Plans (SEPs). Given these important roles, the Council is an appropriate body to determine whether and how to elaborate on the statutory eligibility criteria. Accordingly, the Interim Final Rule preserves the Council's discretion to issue guidance or regulations on this subject that are consistent with the Act.

The proposed regulation states the Council has limited authority to conduct thorough environmental review of SEPs or the projects proposed within. The Council's Executive Director has stated many times that the Council as a body holds to the principal that restoring the Gulf of Mexico environment restores the economy of the region. We would encourage the Council and Council staff to remember this principal when reviewing projects, programs and activities within SEPs.

The Council's SEP Guidelines⁴ lay out clear and consistent procedures for how the SEPs should be developed. However, we believe many of these guidelines should also be included in the Council's final regulation for the Spill Impact Component as set forth below. This would help to ensure compliance and demonstrate to the states the significance of the SEP guidelines.

Second, we highlight that the RESTORE Act directs the Council to evaluate the SEP based on four criteria including that the SEP takes the Council's Comprehensive Plan into consideration and is consistent with the goals and objectives of the Comprehensive Plan. We believe that evaluation includes identifying any conflicts or harm likely to be caused by projects in a SEP and projects selected by the Council through adoption of its initial and future priority lists. Further, the Council should strengthen the Comprehensive Plan to include objectives directed at avoiding conflict and ensuring consistency between Council projects and those proposed through a State Expenditure Plan.

I. SEP Guideline Language to specifically be included in the final SEP regulation

Section 5.2.2 State Certification of RESTORE Act Compliance

Each State Expenditure Plan must include a certification from the State Council member that all projects, programs, and activities included in the State Expenditure Plan meet the requirements listed in Sections 4.1 and 4.2.2. The certification should describe the process used to verify that the projects, programs, and activities meet these requirements. A statement should be included in the certification that issues crossing Gulf State boundaries have been evaluated to ensure that a comprehensive, collaborative ecological and economic recovery is furthered by the State Expenditure Plan. See 31 CFR § 34.503(b)(5).

This certification and statement from the state Council member should be referenced with appropriate documentation that verifies the state's claims.

Section 5.2.3 Public Participation Statement

A State Expenditure Plan must include a statement describing the process the State used to ensure appropriate public and tribal participation and transparency in the project, program, and activity selection process. Under the Treasury regulations, the State Expenditure Plan must be made available for public review and comment in accordance with 31 CFR § 34.503(g). Each project included in the State

⁴ <https://www.restorethegulf.gov/sites/default/files/SEP-Guidelines-final.pdf>

Expenditure Plan may be included only after consideration of all meaningful input from the public. 31 CFR § 34.503(b)(4) and (g).

Sustained, meaningful public participation in all restoration processes are critical to restoring the Gulf and its communities. It is our position that meaningful public participation includes: meetings open to the public, advance public notice of meetings, opportunities for public comment at meetings, and opportunities for comment on draft strategies, plans and projects. It is our position that adequate notice should be defined as a minimum of 15 business days in advance of meeting dates and that locations should be provided to ensure meaningful public participation and input. The states should ensure a transparent process when compiling projects, programs and activities for the SEPs. Further, projects that do not have community support should not be included in the SEP.

Section 5.2.5 Proposed Project Lists

Criteria the State will use to evaluate the success of each project, program, or activity in helping to restore and protect the Gulf Coast Region impacted by the Deepwater Horizon oil spill.

Requiring states to provide the criteria they will be using to evaluate the success of each project, program or activity is an integral part of ensuring that these options work together to achieve the intended goal of comprehensive, collaborative ecological and economic recovery of the Gulf ecosystem. Programs, projects and activities should have clear, measurable and achievable end points.

A description of the mechanisms that will be used to monitor and evaluate the outcomes of the project, program, or activity.

Monitoring and evaluation are vital to any project, as they provide the valuable information needed to make a transparent and objective assessment of whether the project has been successful in meeting its targeted goals and objectives. Project-level monitoring protocols should be incorporated into all projects within the SEPs.

A description of the best available science, as applicable, that informed the State's selection of the project, program, or activity.

Science and adaptive management are the core foundation of a successful restoration program, and we applaud the Council for requiring the states to provide a description of the best available science that informs the state's selection of the projects, programs and activities within the SEP. However, we would caution the Council to require an equally rigorous assessment for non-environmental restoration projects. For example, technical and environmental review should be provided to the Council for proposed infrastructure projects.

To the extent known, a description of any additional resources that will be leveraged to meet the goals of the State Expenditure Plan, including those related to specific projects, programs, or activities.

The Council should encourage states to submit projects, programs and activities that leverage funds from other resources, including monies available outside the *Deepwater Horizon* recovery effort. There is a finite amount of resources available for restoring the Gulf, and leveraging funds will not only avoid duplication of effort but will encourage projects to have a broader scope to achieve a more holistic approach to restoration. For example, many of the projects and programs within the Council's Draft Initial Funded Priorities List⁵ are planning

⁵ https://restorethegulf.gov/sites/default/files/Draft_Initial_FPL_0.pdf#overlay-context=our-work/draft-initial-funded-priorities-list-draft-fpl

initiatives that will lead to implementation of specific projects, programs and activities, which could be partially funded through the Spill Impact Component. Additionally, projects within the National Fish and Wildlife Foundation Gulf Environmental Benefit Fund should be considered to leverage with funds from the Spill Impact Component of the RESTORE Act.

II. Section 6.1 State Expenditure Plan Review

In order for funds to be dispersed to a state, the RESTORE Act requires each state to develop an SEP and submit it to the Council for approval. The RESTORE Act states the SEP must meet four criteria:

Criterion 1: All projects, programs and activities (activities) included in the SEP are eligible activities under the RESTORE Act.

Criterion 2: All activities included in the SEP contribute to the overall economic and ecological recovery of the Gulf Coast.

Criterion 3: The SEP takes the Council's Comprehensive Plan into consideration and is consistent with the goals and objectives of the Comprehensive Plan.

Criterion 4: No more than 25 percent of the allotted funds are used for infrastructure projects unless the SEP contains certain certifications.

Criteria 2 and 3 allow the Council some discretion in determining if in fact an SEP does contribute to the overall economic and ecological recovery of the Gulf Coast and if it is deemed to be consistent with the goals and objectives in the Council's Comprehensive Plan. Within section 6.1, the Council guidelines provide concrete procedures for the Council staff to follow when determining if an SEP will be approved. We strongly believe this language in its entirety should be included in the final regulation for the Spill Impact Component.

Criterion 2: Contributes to the overall economic and ecological recovery of the Gulf Coast:

In determining whether the State Expenditure Plan contributes to the overall economic and ecological recovery of the Gulf Coast, the Council staff will consider two things. First, whether the projects are carried out in the Gulf Coast Region based on the standard established in the Act and the Treasury regulations. This determination is made when, in the reasonable judgment of the Council staff, each severable part of the activity is primarily designed to restore or protect that geographic area. Second, the Council staff will consider the compatibility of each State Expenditure Plan with other States' State Expenditure Plans. This determination involves evaluating issues that cross Gulf State boundaries to ensure that a comprehensive, collaborative ecological and economic recovery is furthered by each State Expenditure Plan. It is presumed that a planning State Expenditure Plan will meet this criterion if it describes activities related to drafting a full State Expenditure Plan.

Criterion 3: Takes into consideration the Comprehensive Plan and is consistent with the goals and objectives of the Comprehensive Plan:

The Council staff will determine whether the State Expenditure Plan is consistent with the goals and objectives of the Comprehensive Plan. The Council staff will evaluate whether each project contained in the State Expenditure Plan will further one or more of the five goals discussed at Section 4.1.2 and will look to see if the projects will be implemented in a manner that does not have a negative impact, direct

or indirect, on the Gulf Coast ecosystem restoration projects and programs selected for implementation by the Council under the Comprehensive Plan. It is presumed that a planning State Expenditure Plan will meet this criterion if it describes activities related to drafting a full State Expenditure Plan.

State Expenditure Plans should include goals and objectives that are consistent with the Comprehensive Plan's five goals. We encourage the Council to use the below definition of the term "consistent," when reviewing SEPs:

- Agreeing or accordant; compatible; not self-contradictory
- Constantly adhering to the same principles, course, form, etc.

The Council should consider evaluating not only the negative impacts on SEP projects and programs selected for implementation but also the potential negative impacts to natural resource restoration efforts that have been identified and prioritized in the Comprehensive Plan's goals. These include, but are not limited to, impacts to coastal and marine habitats, water quality, living resources and the resilience of coastal communities.

The Council should not approve SEPs that include activities or projects, even if eligible under the RESTORE Act, that may result in or exacerbate environmental harm and damages that the Council is working to address through the restoration goals and objectives included in the Comprehensive Plan. Projects and activities that would negatively impact or jeopardize the restoration success of these resources cannot and should not be considered consistent with the Comprehensive Plan.

Finally, in addition to incorporation of the recommendations outlined above, we suggest that the Council's next revision to the Comprehensive Plan specify that projects and programs included in the SEPs should not conflict with the restoration objectives and outcomes of the Comprehensive Plan, the Natural Resource Damage Assessment and Restoration Plan, or the National Fish and Wildlife Foundation Gulf Environmental Benefit Fund.

Conclusion

We understand and appreciate that the Council takes the responsibility of reviewing and approving SEPs very seriously. The RESTORE Act presents a once in a generation opportunity to restore the Gulf of Mexico to a better functioning ecosystem and all funding sources must work together to this end. Thank you again for the opportunity to provide comments. We applaud the Council for setting a good example and high standard for states to follow regarding public participation.

Sincerely,

Ocean Conservancy
The Nature Conservancy
The Corps Network
Gulf Restoration Network
Ducks Unlimited
Wildlife Mississippi
Conservation Alabama Foundation
Mobile Baykeeper
Houston Wilderness
Alabama Coastal Foundation