

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:

Thank you for the opportunity to comment on the Gulf Coast Ecosystem Restoration Council's (Council) Proposed Regulation 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). As the proposed regulations establish the formula for funds allocated from the Gulf Coast Restoration Trust Fund from the RESTORE Act, we encourage the Council to urge each state to capitalize on this unique opportunity to support projects that will safeguard our ecosystem, strengthen the economy and protect communities from future disasters.

State Expenditure Plan: Guidelines, Compliance and Consistency

We appreciate the Council's clear outline of process and procedures governing the State Expenditure Plan (SEP) Guidelines.¹ However, for consistency, we encourage the Council to include these guidelines in the Proposed Rule for the Spill Impact Component. Incorporating these guidelines would help to ensure compliance and demonstrate to the States the significance of the SEP guidelines. Chosen projects should represent the diversity of the Gulf Coast, prioritizing concerns of coastal communities, and ensure that best-available science and transparent mechanisms are applied to each project. The onus is on the Council to ensure that each state adheres to the guidelines set by the RESTORE Act as the grants under the State Expenditure Plans are administered.

Furthermore, the Council should not approve SEPs that include activities that may result in environmental harm, regardless of eligibility under the RESTORE Act. This should be an essential feature, as the Council should not sanction projects that jeopardize the success of comprehensive restoration and are not consistent with the goals and objectives included in the Comprehensive Plan.

¹ U.S. Gulf Coast Ecosystem Restoration Council. "Oil Spill Impact Component: State Expenditure Plan Guidelines". 1 Dec 2014. https://www.restorethegulf.gov/sites/default/files/SEP-Guidelines-final_0.pdf

Oil Spill Component: Population Formula

Within the proposed rule, the Council developed a formula for allocating the funds available among the five Gulf States. In the “population” component of the formula, 20 percent of the allocation is based on the average population of the 2010 Decennial Census of the coastal counties bordering the Gulf of Mexico in Texas, Louisiana, Mississippi, Alabama, and Florida. As the RESTORE Act does not define the term “coastal counties” for states other than Florida, the Council had the discretion of determining which counties would be considered “coastal” for the purpose of the funding allocation.²

From Texas to Alabama, the Council chose to define coastal counties/parishes as those that “physically touched the Gulf of Mexico.”³ While we do not disagree with this interpretation, the application that the Council chose to employ in determining what “physically touches” the Gulf of Mexico is not consistent across the Gulf States. In Texas, instead of choosing all counties that “touch” the Gulf, the Council used the coastal county listing applied by the Texas Railroad Commission, which identifies only Aransas, Brazoria, Calhoun, Cameron, Chambers, Galveston, Jefferson, Kenedy, Kleberg, Matagorda, Nueces, and Willacy Counties as coastal counties.⁴ As a result, Harris County, which is hydrologically linked to the Gulf of Mexico through Galveston Bay, is notably excluded from the counties chosen by the Council.

Both in practice and application, we disagree with the Council’s decision to use an approach that excludes Harris County in Texas. In its relation to the Gulf of Mexico, Harris County is as connected to the Gulf as Orleans and St. Tammany Parishes in Louisiana. Orleans and St. Tammany Parishes do not physically touch the Gulf of Mexico, but are hydrologically connected to the Gulf by way of a large embayment, Lake Pontchartrain. Harris County is similarly connected by Galveston Bay in Texas. By excluding Harris County as a coastal county, the Council sets a bad precedent in how criteria is interpreted and applied. As RESTORE is a new and precedent-setting process, consistency in its application of criteria is critical to the integrity of the overall process.

To provide greater consistency across the Gulf, we recommend that the Council use the counties and parishes identified by the Coastal Zone Management Programs in Texas, Louisiana, Mississippi, and Alabama, which implements the Federal Coastal Zone Management Act (CZMA). The purpose of the CZMA is “to preserve, protect, develop, and where possible, to restore or enhance the resources of the nation’s coastal zone.”⁵ This defined purpose is closely aligned with that of the RESTORE Act and the duties of the Council, we believe that the definition of coastal counties should match those of the federal CZMA.⁶

² RESTORE Act Spill Impact Component Allocation. Notice of Proposed Rulemaking. 80 FR 58418. 29 Sept 2015.

³ *Ibid.* 80 FR 58419.

⁴ *Ibid.* 80 FR 58419.

⁵ 16 U.S.C. § 1452(1)

⁶ U.S. NOAA. “State Coastal Zone Boundaries”. 9 Feb 2012. <http://coast.noaa.gov/czm/media/StateCZBoundaries.pdf>

Conclusion

We recognize the Council has invested significant time and limited resources into the development of this rulemaking and are grateful for that effort. We applaud the Council for setting high standards for public participation, and we thank you for providing the opportunity to comment.

Sincerely,

Coastal Bend Bays & Estuaries Program
Galveston Bay Foundation
Galveston Baykeeper
Gulf Restoration Network
Houston Audubon
Houston Wilderness
Student Conservation Association
Texas Ducks Unlimited
Turtle Island Restoration Network

CC: Commissioner Toby Baker, TCEQ
Stephen L. Tatum, Jr., TCEQ