The RESTORE Act & NEPA

The following summarizes how the National Environmental Policy Act (NEPA) may apply to the RESTORE Act. It includes a review of how similarly structured federal grant programs have applied NEPA, as well as an overview of what we know to date on how the federal government will apply NEPA to RESTORE Act programs. Some of the information on NEPA applicability comes from the Treasury Department's Interim Final Rule for administering RESTORE Act funds, released on Aug. 15, 2014. Treasury is accepting comments on the interim rule through Sept. 15, 2014; the final rule, with any revisions, will take effect on Oct. 14, 2014.

How Might NEPA Apply to the RESTORE Act?

In July 2012, the President signed the Resources and Ecosystem Sustainability Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012—better known as the "RESTORE Act."

Since the RESTORE Act creates a new set of federal grants, there is a question as to how the National Environmental Policy Act of 1970 (NEPA) applies to each of the resulting programs, plans and projects.

RESTORE Act Overview

The RESTORE Act creates a Gulf Coast Restoration Trust Fund (RTF), which will receive 80% of any Clean Water Act civil and administrative penalties paid by BP and other companies responsible for the *Deepwater Horizon* oil spill. The RTF will support the following five processes or "pots" of funding:

NEPA Overview

NEPA is the nation's basic environmental law. Under NEPA, a detailed environmental impact statement (EIS) must be prepared where there is a "major Federal action significantly affecting the human environment." An EIS evaluates alternatives to the proposed action, explains environmental impacts and mitigation measures, and provides opportunities for public comment.

Federal agencies may prepare a simpler environmental assessment (EA) in order to determine whether an EIS is needed. Analysis may also occur for entire programs (PEA/PEIS). Actions that federal agencies define in their procedures as generally not having significant impacts may be eligible for a categorical exclusion (CE) from environmental analysis.

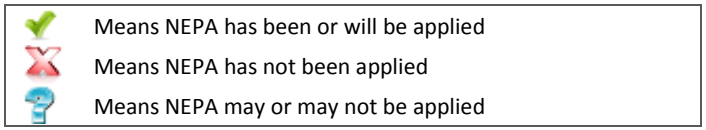
For more information on the RESTORE Act and the processes it establishes, please visit www.eli-ocean.org/gulf/clean-water-act-restore

NEPA Applicability Under Other Federal Grant Programs

Although the RESTORE Act establishes new grant programs, there are many existing federal grant programs with goals and structure similar to some of the RESTORE funding pots. In each, funds are distributed to states or local governments by a statutory formula.

The decision points at which NEPA may be applied under those grant programs are generally the same as those under RESTORE: (1) program establishment; (2) review of state plans or multi-year/-project applications; and (3) project-specific funding.

The chart below summarizes how other federal grant programs have applied NEPA at each of these stages. In general, NEPA applies in at least one (and sometimes multiple) stage(s) of all these programs.



Program	NEPA Applicability			Notes
	Overall Program	Plan-Level	Project-Level	
Coastal Impact Assistance Program (CIAP) Overview: leasing revenues on the Outer Continental Shelf are directed to eligible coastal states and political subdivisions. Funds are distributed by a statutorily established formula. Administering entity: currently U.S. Fish & Wildlife Service (FWS)	✓	✗	✓	• Minerals Management Service (the original administering entity) prepared a Programmatic EA and finding of no significant impact (FONSI) for the program. • To receive the CIAP funds, each eligible state was required to submit a coastal assistance plan to MMS for approval. • NEPA documents are prepared for individual projects where required.
Coastal Wetlands Planning, Protection, and Restoration Act (CWPPRA) Overview: establishes the National Coastal Wetlands Conservation Grant Program, which enables the provision of matching grants to states for coastal wetlands acquisition, restoration, and management. Administering entity: FWS	✓	✗	✓	• In Louisiana (which receives 70% of funding), the Army Corps of Engineers leads the task force that prepared the coastal wetlands conservation plan; the state's CWPPRA program was evaluated in a programmatic EIS for this plan. An annual Priority Project List undergoes its own set of public comment procedures. EAs are required for individual projects. • FWS has issued regulations to implement CWPPRA and the grant program. These regulations require compliance with environmental laws and refer to the FWS service manual, which indicates that "[e]ach action proposed for Federal funding must include [a NEPA analysis]"

Program	NEPA Applicability			Notes
	Overall Program	Plan-Level	Project-Level	
Abandoned Mine Land Reclamation Program Overview: fees assessed on active coal mines are distributed to states with legacy abandoned mines. Funds are distributed by a statutorily established formula. Administering Entity: Office of Surface Mining (OSM)				• OSM prepared a programmatic EIS to govern its administration of the program. • When a multi-project grant application is submitted by a state, OSM will evaluate it to determine whether the PEIS covers the impacts. If not, additional NEPA analysis is conducted. • In practice, NEPA analysis is conducted at the project level, rather than the grant phase. OSM has adopted CEs for many project types.
Federal Emergency Management Agency (FEMA) Grants Overview: FEMA administers a number of federal grants (e.g., disaster relief programs) Administering entity: FEMA				• FEMA has informal guidance that provides that "[a]ny action that FEMA initiates or funds… must undergo environmental review pursuant to NEPA unless that action is [subject to a statutory exclusion]". In addition to the statutory exclusions (primarily for emergency response), FEMA has adopted a number of CEs for project types.
Department of Housing and Urban Development (HUD) Community Development Block Grants (CDBGs) Overview: HUD distributes money to local and state governments through CDBGs. Larger cities and counties receive annual grants directly from HUD according to a statutory formula. Smaller cities and counties receive CBDG funds via state-run grant programs, which are funded by HUD under a similar statutory formula. Administering Entity: HUD and delegated states				• By statute, all CDBG-funded actions are subject to an environmental review process to ensure compliance with NEPA and other federal environmental laws. This process uses NEPA as the "umbrella statute" for carrying out environmental analyses. • The HUD Secretary is expressly authorized to delegate this environmental review to local and state grant recipients. • Delegated states and localities are encouraged to tier their environmental analyses and to aggregate related projects for environmental review.
FWS State Wildlife Grants Overview: funds are allocated by statutory formula. After FWS approves a state's wildlife conservation plan, states apply for project grants. Administering Entity: FWS				• While the state plan approval has not triggered NEPA review, the project funding phase does.

NEPA Under the RESTORE Act

While it is not entirely settled how NEPA will apply to the five RESTORE pots, the administering entities have given some initial indications. These are summarized in the chart below.

"Overall program" refers to analyses required at the establishment phase; "plan-level" refers here to approval of a portfolio of projects or grants; and "project-level" means review of individual projects.

RESTORE Pot	NEPA Applicability			Notes
	Overall Program	Plan-Level	Project-Level	
Direct Component (Pot 1) Administering entity: Treasury				• For its oversight and administration of Pots 1 and 5, Treasury has not completed an environmental review. • Treasury states in the preamble to its Interim Final Rule that it "does not anticipate that its review of Multiyear Implementation Plans or the issuance of individual grants will require a NEPA review." • Treasury says that some projects "may require NEPA review by the agency issuing [a federal] permit." Treasury's Guidance for applicants does not treat receipt of Pot 1 funds itself as a NEPA trigger.
Restoration Council Component (Pot 2) Administering entity: Council				• While the Council is still drafting NEPA procedures, it has completed a Programmatic EA for the initial comprehensive plan, which covers its oversight of Pots 2 and 3. • Council: "[i]t is expected that projects and programs subsequently selected for funding…may be subject to further NEPA review."
Spill Impact Component (Pot 3) Administering entity: Council				• While the Council is still drafting NEPA procedures, it has completed a programmatic EA for the initial comprehensive plan, which covers its oversight of Pots 2 and 3.
Science Program (Pot 4) Administering entity: NOAA				• NOAA did not prepare an EA/EIS for its science framework in Dec. 2013. • NOAA has indicated it is currently preparing a science plan, which is using the framework as a foundation, and a programmatic EA.
Centers of Excellence (Pot 5) Administering entity: Treasury				• See above for Direct Component (Pot 1). • Treasury's Guidance does not treat receipt of Pot 5 funds as a NEPA trigger.