The New RESTORE Act Regulations, Notice, and Guidelines from Treasury Direct Component and Spill Impact Component

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August 28, 2014
It’s Complicated
Overview of some Gulf restoration funds and processes

Flow of Oil Spill Funds in Florida

Resolution of Criminal, Civil, Administrative & Natural Resource Claims

Criminal Penalties
BPS: $4 billion
Transocean: $400 million

Clean Water Act Civil & Administrative Penalties*
Transocean: $1 billion

20% - Oil Spill Liability Trust Fund

80% - RESTORE Act - Gulf Coast Restoration Trust Fund

35% Equal State Allocation
7% of total to Florida

30% Gulf Coast Ecosystem Restoration Council Allocation

30% Oil Spill Restoration Impact Allocation

25% Centers of Excellence

25% Gulf Coast Ecosystem Restoration Science, Observation, Monitoring & Technology Program

Ocean Conservancy

Trustees:
Dept. of Commerce: NOAA
Dept. of Interior: USFWS
Dept. of Defense: Environmental Protection Agency
Dept. of Agriculture: State Trustees

NRDA Trustee Council

Natural Resource Damage Assessment
$1 billion for early restoration

Injury assessment, restoration planning & implementation.

Clean Water Act Civil & Administrative Penalties*

Non-Disproportionately Affected Counties
25% of FL’s Share

Disproportionately Impacted Counties:
25.334% - Escambia
10.467% - Santa Rosa
15.226% - Okaloosa
13.712% - Walton
15.101% - Bay
6.743% - Gulf
8.441% - Franklin
4.943% - Wakulla

Determined distribution formula.

Members:
CHAIR: Department of Commerce - Penny Prister/Teresa Christober
Department of Agriculture - Thomas J. Vickers/Don Wilkes
Department of the Interior - Sally Jewell/Rachel Jackson
Department of Homeland Security - John McHugh/Rock Salt
Environmental Protection Agency - Gina McCarthy/Recedoigmoidal
Governors: Representatives - AL - Gunter Guy
FL - Rick Scott
LA - Garret Graves
MS - Travis Fisher
TX - Toby Baker

Executive Director
Justin Ehrenwerth

State plans must be approved by council.

Weighted formula to determine how much money each state receives.

20% by population of affected counties
40% by distance from the Deepwater Horizon
40% by economic dependence

Florida Fish & Wildlife Conservation Commission
Nick Wiley & Gil McRae

Designated agencies as State Trustees on NRDA Trustee Council.

Governor Rick Scott

Florida Institute of Oceanography

Key:
- Funds
- Actions/Decisions
- FL Only influence
- Gulf States/Federal influence

U.S. Fish & Wildlife Service
Gulf States Marine Commission
Gulf of Mexico Fishery Management Council

Florida Consortium
Doug Darling
FL Association of Counties facilitated a group of 23 counties to develop an interlocal agreement to oversee this fund.

Subcommittee: Committee of 8 Disproportionately Affected Counties
Chair: Commissioner Robinson (Escambia)
Vice Chair: Commissioner Robson (Escambia)

40% of trust's annual disbursement

National Fish & Wildlife Foundation
$2,544,000
National Academy of Sciences
$850,000

North American Wetlands Conservation Fund
$100,697,000

Treasury
$6,000,000

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727-369-6516

*There may be other civil and administrative penalties. The CWA penalties are the focus of this chart.
**This is revision G, as of 5/4/13. This is time sensitive material.
To ensure you have the most recent version, please contact the Ocean Conservancy staff member listed above.
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Clean Water Act Civil & Administrative Penalties
20% - Oil Spill Liability Trust Fund

Oil Spill Liability Trust Fund
$1.150 billion

National Fish & Wildlife Foundation
$2.544 billion
National Academy of Sciences
$150 million

Criminal Penalties
BP: $4 billion
Transocean: $400 million

25% Centers of Excellence

80% - RESTORE Act - Gulf Coast Restoration Trust Fund

35% Equal State Allocation
7% of total to Florida

30% Gulf Coast Ecosystem Restoration Council Allocation

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25% Gulf Coast Ecosystem Restoration Science, Observation, Monitoring & Technology Program

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Executive Director
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Members:

Chair: Department of Commerce
Vice Chair: Commissioner Frank Roberson
Commissions:
Environmental Protection Agency
Department of Agriculture
Department of the Interior
Florida Fish & Wildlife Conservation Commission

Florida Institute of Oceanography

Disproportionately Affected Counties
25% of FL’s Share

Determined distribution formula:
34% average population
33% distance to Deepwater Horizon
33% average collections per capita

Disproportionately Impacted Counties:
25.334% - Escambia
10.497% - Santa Rosa
15.228% - Okaloosa
13.712% - Walton
15.101% - Bay
8.743% - Gulf
8.441% - Franklin
4.943% - Wakulla

Weighted formula to determine how much money each state receives.

State plans must be approved by council.

The funds will be split up evenly among the 5 Gulf States to establish a center in each.

Pending final decision based on Treasury regulations.

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RESTORE Act
Direct Component Guidance and Application to Receive Federal Financial Assistance

August 2014
Services

Home » Services » Restore Act

Restore Act

On April 20, 2010, the largest offshore oil spill in the United States occurred, exacerbating the effects of previous natural disasters. Oil flowed unchecked for three months. The cause was an explosion of the Deepwater Horizon, an oil rig drilling in the Gulf of Mexico. Before the well was capped, millions of barrels of crude oil were released, closing tens of thousands of square miles of federal waters to fishing, and causing extensive damage to marine and wildlife habitats, and tourism.

On July 6, 2012, the President signed into law the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act (RESTORE Act. Subtitle F of Public Law 112-141). The Act established the Gulf Coast Restoration Trust Fund in the U.S. Treasury Department. Eighty percent of the civil penalties paid after July 6, 2012, under the Federal Water Pollution Control Act in connection with the Deepwater Horizon oil spill will be deposited into the Trust Fund and invested. Under the Act, amounts in the Trust Fund will be available for programs, projects, and activities that restore and protect the environment and economy of the Gulf Coast region.

Treasury is responsible for issuing compliance and auditing procedures for the entire Act and procedures for two grant programs administered by Treasury. Treasury is now issuing these procedures as an Interim Final Rule, with an effective date 60 days from the date of publication. Treasury will accept comments on the Interim Final Rule for 30 days after publication, and publish a Final Rule after considering any comments. Separately, Treasury published a Notice of Proposed Rulemaking that allocates shares to individual Louisiana

Quick Links

- Gulf Coast Ecosystem Restoration Council
- National Oceanic and Atmospheric Administration
- Alabama Gulf Coast Recovery Council
- Florida Department of Environmental Conservation

Photographs are courtesy of the following:
- Alabama Department of Conservation and Natural Resources
- Mississippi Department of Environmental Quality
- National Oceanic and Atmospheric Administration (NOAA)
- Texas Parks and Wildlife Department

http://www.treasury.gov/services/restore-act/Pages/default.aspx
The Restore Act

On 20, 2010, Deepwater Horizon, an oil rig drilling in the Gulf of Mexico, exploded, spilling millions of barrels of crude oil in the Gulf waters. The spill, the largest in U.S. history, closed tens of thousands of square miles of federal waters for fishing, and caused extensive damage to marine and wildlife habitats and tourism.

On July 6, 2012, the President signed the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (RESTORE Act) into law.

The Act established a new Trust Fund in the Treasury of the United States, known as the Gulf Coast Restoration Trust Fund. Under the Act, money in the Trust Fund will be available for programs, projects, and activities that restore and protect the environment and economy of the Gulf coast region.

To report fraud or corruption in regards to the RESTORE Act or Gulf Coast Trust Fund
Submit an electronic hotline form,
Dial 1-866-584-GULF (4853), or
Email the Fraud Hotline at
GulfCoastRestorationHotline@oig.treas.gov
Generally what funds can be spent on:
Pot 1, 3 – environment and economy
Pot 2 – environment
Pots 4, 5 – research and monitoring
Distribution of RESTORE funds

Graphic courtesy of the Environmental Law Institute
Questions on Draft RESTORE Rule Pots 1 and 3

* How do we access the funds?
* When can we access the funds?
* How much funding can we plan for and access?
* How do we prepare a plan and then access the funds when we have no money to prepare a plan?
Questions on Draft RESTORE Rule Pots 1 and 3

- Even if we can access the funds, how can you do planning, coordination, and public outreach if only 3% of the funds can be spent on administrative costs?
- Can plans be revised, added to?
- How will the National Environmental Policy Act/NEPA be applied
- How do we determine and apply Best Available Science
How do we access the funds?

Grant program – GrantSolutions.gov, after the Multi-Year Plan is complete (except for funds to prep the plan). OMB Uniform Guidance for local governments is an important facet of this.
When can we access the funds?

* Apply soon after September 15, especially for funds to prep the plan; awards after October 14

How much funding can we plan for and access?

* Share of funds from the Transocean settlement ONLY
How do we prepare a plan and then access the funds when we have no money to prepare a plan?

Allow grant application for funds to prepare Multiyear Plan
How will funds be shared between counties/parishes?

Treasury approved formulas for sharing for Florida disproportionately affected and nondisproportionately affected counties

Treasury announced proposed rulemaking for formula for Louisiana parishes
How will the National Environmental Policy Act/NEPA be applied?

Treasury does not anticipate that its review of Multiyear Implementation Plans or the issuance of individual grants will require a NEPA review.

Treasury will soon publish agency-wide NEPA policy and procedures in the Federal Register for public comment.
How do we determine and apply Best Available Science to our projects?

“In consultation with Council members, Treasury is developing guidelines for use in evaluating the best available science criteria for grants under the Direct Component”
How can you do planning, coordination, and public outreach if only 3% of the funds can be spent on administrative costs?

Administrative costs were defined narrowly – “costs for general management functions, general ledger accounting, budgeting, human resource services, general procurement services, and general legal services.”
* Can plans be revised, added to?
  * Yes, plans can be phased, incremental, and revised
Direct Component funds can be subawarded by state/parish/county; subrecipients are subject to the same grant restrictions as the grant awardee.

The administrative costs cap does not apply to the administrative costs of subrecipients – OMB Uniform Guidance will govern this.
Plan must be available for 45 days for broad-based public review and comment

Describe how each activity in the plan was adopted after consideration of all meaningful input from the public

Additional notes: Pots 1 and 3
NEPA guidance
Best Available Science implementation
More questions as we try this new system out
The Gulf Coast Ecosystem Restoration Council is responsible for preparing regulations that will address most of the questions related to Pot 3.
How do we access the funds?

Grant process from Council to States, to be developed in a future rule.

NEPA and Best Available Science roles to be determined.
How do we prepare a plan when we have no money to prepare a plan?

For preparation of the State Expenditure Plans for the Spill Impact Component “... a new [Council] rule has been published in the Federal Register for Gulf Coast states to receive funding for development of State Expenditure Plans.”
Answers: Spill Impact Component Pot 3

* “... Spill Impact Component funds will be invested in projects identified in approved State Expenditure Plans.”
“The [Council] Interim Final Rule provides access to up to 5% of the funds available to each State under the Oil Spill Impact Component for planning.

The Council anticipates releasing a proposed rule later this year that sets forth the final oil spill impact formula and sets levels of funding provided to each State.”
Gulf Coast Ecosystem Restoration Council
“In general, states will use the same policies and procedures that apply to procurements using non-Federal funds, with certain narrow exceptions.”
Additional note for Pots 1 and 3

“Other non-Federal entities, including the Florida counties and Louisiana parishes and subrecipients of states, will use their own documented procurement procedures reflecting applicable state and local laws ...” if they conform to fed law and OMB’s Uniform Guidance
Projects that include aspects outside of the Gulf Coast Region are allowable, as long as “each severable part of the activity is primarily designed to restore or protect” the Gulf Coast Region.
It WAS your chair – you got up.
Jim Muller, Bay County RESTORE Act Coordinator

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Subscribe as interested party

cobay.fl.us/restore
The term “best available science” means science that—

* maximizes the quality, objectivity, and integrity of information, including statistical information;
* uses peer-reviewed and publicly available data; and
* clearly documents and communicates risks and uncertainties in the scientific basis for such projects;