



Audit Report



OIG-14-003

RESTORE ACT: Gulf Coast Ecosystem Restoration Council Faces Challenges in Completing Initial Comprehensive Plan

October 25, 2013

Office of Inspector General

Department of the Treasury

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Abbreviations

NEPA	National Environmental Policy Act
NOAA	National Oceanic and Atmospheric Administration
RESTORE Act	Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012
U.S.C.	United States Code

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*The Department of the Treasury
Office of Inspector General*

October 25, 2013

The Honorable Penny Pritzker
Chairperson, Gulf Coast Ecosystem Restoration Council

This report presents the results of our audit work related to the Gulf Coast Ecosystem Restoration Council's (Council) establishment of the Initial Comprehensive Plan as required by the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (RESTORE Act).¹ Our objective was to determine and assess the progress made toward establishing the Initial Comprehensive Plan by its mandated deadline of July 6, 2013. This audit was performed under authorities provided for in Section 1608 of the RESTORE Act. Specifically, the Department of the Treasury (Treasury) Office of Inspector General is provided the authority to conduct, supervise, and coordinate audits and investigations of projects, programs, and activities funded under the act.

In brief, we found that while the Council made notable progress towards establishing the Initial Comprehensive Plan, the Council did not publish the plan in the Federal Register by the mandated deadline. In addition, when the Initial Comprehensive Plan is published, it will not include all the elements required by the RESTORE Act. Instead, the Council plans to include all required elements in future versions of the Comprehensive Plan. We acknowledge the necessity for the Council to move cautiously in establishing the Initial Comprehensive Plan due to the (1) uncertainty of the amount that will eventually be deposited into the Gulf Coast Restoration Trust Fund (Trust Fund), (2) complexity of developing a plan of this scope, (3) multiple stakeholders involved in the process, and (4) coordination required with other Gulf Coast region assessment and restoration efforts. That said,

¹ Public Law 112-141, 126 Stat. 588-607 (July 6, 2012)

we are recommending that the Chairperson of the Council establish timelines for the next steps to be taken as soon as practicable and continue to work with Council members towards developing the Comprehensive Plan to include all elements required by the RESTORE Act.

In a written response, the Council provided a summary of actions taken and planned that meet the intent of our two recommendations presented in this report. The Council also stated that although it aimed to meet the statutory guideline, it believed it was critical to provide opportunities for meaningful public input into the plan from the people who live and work in the Gulf Coast region. As a result of the Council's decision to extend the public comment deadline and ensure that comments were adequately considered, the Council was delayed by a few weeks in completing the Comprehensive Plan. The Council's response is included as appendix 1.

Background

The RESTORE Act

The RESTORE Act established the Trust Fund within Treasury to provide funds for the environmental and economic restoration of the Gulf Coast region² in response to the 2010 Deepwater Horizon oil spill. Deposits into the Trust Fund will be comprised of 80 percent of all civil and administrative penalties paid after July 6, 2012, pursuant to a court order or negotiated settlement under the Federal Water Pollution Control Act.³ While the total amount that will eventually be deposited into the Trust Fund is unknown at this time, the Trust Fund received a deposit of

² As defined in the RESTORE Act, the term Gulf Coast region means (a) in the Gulf Coast States (Alabama, Florida, Louisiana, Mississippi, and Texas), the coastal zones that border the Gulf of Mexico; (b) any adjacent land, water, and watersheds that are within 25 miles of the coastal zones of the Gulf Coast States; and (c) all federal waters in the Gulf of Mexico.

³ Public Law 92-500 (as amended)

approximately \$323 million as a result of a settlement with the Transocean defendants.⁴

The RESTORE Act allocates the money from the Trust Fund into five components: (1) Direct, (2) Council-selected Restoration, (3) Spill Impact, (4) Centers of Excellence Research Grants Program, and (5) Gulf Coast Ecosystem Restoration Science, Observation, Monitoring, and Technology Program (Science Program). Treasury is responsible for administering the Direct Component and the Centers of Excellence Research Grants Program Component. The Council is responsible for administering the Council-selected Restoration Component and the Spill Impact Component. The National Oceanic and Atmospheric Administration (NOAA) is responsible for administering the Science Program Component.

The RESTORE Act also established the Council, a new independent entity within the federal government, comprised of the governors from the five affected Gulf Coast States; the Secretaries from the U.S. Departments of the Interior, Commerce, and Agriculture; the head of the department housing the Coast Guard (currently the Secretary of the Department of Homeland Security); the Secretary of the Army; and the Administrator of the U.S. Environmental Protection Agency. Following a recommendation from the Gulf Coast States, the President appointed the Secretary of Commerce as the Chair of the Council in September 2012. To accomplish its statutory requirements in the absence of funding, the Council established a transition staff comprised of non-reimbursable detailees from States and federal agencies. As of the end of our fieldwork, the Council Staff was administratively housed within the Department of Commerce. Its staffing included an Executive

⁴ On January 3, 2013, the Department of Justice lodged a proposed consent decree with the Transocean defendants (Transocean Deepwater Inc., Transocean Offshore Deepwater Drilling Inc., Transocean Holdings LLC, and Triton Asset Leasing GmbH) in the U.S. District Court, Eastern District of Louisiana. Under the proposed decree, among other things, the Transocean defendants will pay a \$1 billion civil penalty plus interest. The civil settlement was approved on February 19, 2013, and the first installment of approximately \$323 million was deposited into the Trust Fund in March 2013. It should be noted that pursuant to 2 U.S.C. §906(k)(6), the Balanced Budget and Emergency Deficit Control Act, as amended, budgetary authority in trust funds is temporarily reduced for the fiscal year ending September 30, 2013. This sequestration reduced the amount available in the Trust Fund by 5.1 percent, to approximately \$307 million. The sequestered amount is not available for obligation during the fiscal year it is sequestered, but remains in the Trust Fund and is available in subsequent years.

Director, Chief Financial Officer, Special Counsel, Comprehensive Plan Manager, and Director of Environmental Compliance.⁵

Initial Comprehensive Plan

The RESTORE Act required the Council to publish a proposed Initial Comprehensive Plan for the environmental and economic restoration of the Gulf Coast region no later than January 2, 2013. The Council published a proposed plan, *The Path Forward to Restoring the Gulf Coast*, on January 29, 2013.

The Council was also required to publish an Initial Comprehensive Plan no later than July 6, 2013, 1 year after the RESTORE Act was signed into law. The act states that the Comprehensive Plan shall include the provisions necessary to incorporate the strategy, projects, and programs recommended by the President's Gulf Coast Restoration Task Force.⁶ The act also requires that the Comprehensive Plan include: (1) a list of projects or programs authorized prior to July 6, 2012, that have not yet commenced, the completion of which would further the purposes and goals of the act; (2) a description of the manner in which amounts from the Trust Fund projected to be made available to the Council for the succeeding 10 years will be allocated; and (3) subject to available funding, a prioritized list of specific projects and programs to be funded and carried out during the 3-year period immediately following the date of publication of the Initial Comprehensive Plan (hereafter referred to as the Funded Priorities List).

The Council established a project plan to develop the Comprehensive Plan, which included milestones for: (1) developing the Draft Initial Comprehensive Plan, (2) facilitating discussions and working group meetings with subject matter experts from Council Member States and agencies, (3) facilitating discussions with

⁵ As of September 2013, three Council staff members' details have expired and the Council is planning for future staffing.

⁶ The President established the Gulf Coast Restoration Task Force on October 5, 2010, through Executive Order 13554. The Task Force was charged with development of a restoration strategy that proposes a Gulf Coast ecosystem restoration agenda. The Task Force released the *Gulf of Mexico Regional Ecosystem Restoration Strategy* for the long term ecosystem restoration for the Gulf Coast on December 5, 2011. As a result of Executive Order 13626, the Gulf Coast Restoration Task Force was disbanded on September 10, 2012.

Council's Executive Team Members⁷ on key components of the Plan, (3) holding public comment periods and "Public Listening Sessions",⁸ and (4) holding a Council Executive Team meeting to discuss public comments. In addition, the Council detailed a Comprehensive Plan Manager from the Mississippi Department of Environmental Quality in March 2013 to coordinate with each Council Member and oversee the process of establishing the Plan.

Objective, Scope, and Methodology

Our objective was to determine and assess the Council's progress toward establishing the Initial Comprehensive Plan by the mandated deadline of July 6, 2013. In performing our audit work, we reviewed: (1) the RESTORE Act, (2) the *Gulf of Mexico Regional Ecosystem Restoration Strategy* published by the Gulf Coast Ecosystem Restoration Task Force (Dec. 2011), (3) *America's Gulf Coast: A Long Term Recovery Plan after the Deepwater Horizon Oil Spill* published by the Secretary of the Navy (Sept. 2010), (4) *The Path Forward to Restoring the Gulf Coast: A Proposed Comprehensive Plan* published by the Council (Jan. 2013), (5) the Council Comprehensive Plan Team's⁹ reference documentation and project milestones, (6) the *Draft Initial Comprehensive Plan: Restoring the Gulf Coast's Ecosystem and Economy* (hereinafter referred to as Draft Initial Comprehensive Plan) along with *Appendix A: Background Information - Preliminary List of Authorized but Not Yet Commenced Projects and Programs* (May 2013), (7) the *Draft Programmatic Environmental Assessment* (May 2013), and (8) a sample of comments received by the Council during the formal public comment period for the Draft Initial Comprehensive Plan (June 2013). We interviewed Council personnel involved in developing the Initial Comprehensive Plan,

⁷ The Council's Executive Team consists of the Council Members' designees and alternates. For Federal agency members, the designees are at the level of the Assistant Secretary or the equivalent. In the case of the Gulf Coast States, the Governor may designate an alternate to represent the Governor on the Council.

⁸ From December 2012 to March 2013, the Council conducted Public Listening Sessions in all of the Gulf Coast States to gather early input into the development of the Initial Comprehensive Plan. The Council held a second round of Public Listening Sessions in the five Gulf Coast States in June 2013.

⁹ The Comprehensive Plan Team consists of the Comprehensive Plan Manager and two Senior Policy Advisors. The core team members were on detail from NOAA and the Department of Agriculture. Additionally, Council members' technical staff comprised a Comprehensive Plan working group that was available to support the development of the Initial Comprehensive Plan.

including the Senior Advisor for Gulf Coast Restoration and the Comprehensive Plan Manager. We performed our fieldwork from April 2013 through June 2013.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Initial Comprehensive Plan Was Not Published by the Mandated Deadline and Did Not Include All RESTORE Act Requirements

Mandated Deadline Missed

The Council made notable progress towards establishing an Initial Comprehensive Plan; however, a final Initial Comprehensive Plan was not published by the mandated date of July 6, 2013. On May 23, 2013, the Council published the Draft Initial Comprehensive Plan and accompanying *Draft Programmatic Environmental Assessment* in the Federal Register for a 30-day public comment period, which ended on June 24, 2013. The Council had intended to meet the mandated date by publishing the Initial Comprehensive Plan by July 6, 2013; however, the Council received multiple requests for an extension of the public comment period. To provide for public input into the Plan, the Council extended the public comment period by 2 weeks, to July 8, 2013. Council officials stated that over 41,000 comments were received by the end of the extended public comment period.

When we asked Council officials about the progress made towards developing the Initial Comprehensive Plan, they stated that they were making their best efforts to meet the 1-year timeframe in the RESTORE Act, while simultaneously standing up the Council as a new independent federal entity. They noted that, even in established federal agencies, plans of this nature and complexity typically require several years to develop. Accordingly, the Council is looking at the development and implementation of the

Comprehensive Plan as more of an iterative process. According to officials, at the time of our audit, the Council was working to review the comments provided to it during the comment period in a prompt yet thorough manner and expected to publish a final Initial Comprehensive Plan as soon as practicable. On August 28, 2013, subsequent to the completion of our audit fieldwork, the Council approved and issued the final Initial Comprehensive Plan.

All RESTORE Act Requirements Not Included

The level of detail in the Draft Initial Comprehensive Plan did not fully comply with the requirements in the RESTORE Act. Specifically, the Draft Initial Comprehensive Plan did not include a 10-Year Funding Strategy or a Funded Priorities List.

The Draft Initial Comprehensive Plan stated that the Council did not include the first two required items for the following reasons: (1) uncertainty of the overall amount and availability of funds to eventually be deposited in the Trust Fund; (2) lack of Treasury regulations to guide Trust Fund expenditures;¹⁰ (3) the RESTORE Act's requirement to solicit public input on the Plan; and (4) the need to allow the Gulf Coast States to develop State Expenditure Plans to guide the disbursement of funds to the States.

The Draft Initial Comprehensive Plan did include, as background information, a preliminary list of authorized but not yet commenced projects and programs as required by the RESTORE Act. This preliminary list is intended to serve as a reference of potential projects and, according to the draft, does not represent a list of projects and programs that the Council will prioritize or necessarily fund. The Draft Initial Comprehensive Plan also included goals, objectives, and evaluation criteria to guide the Council's ecosystem restoration funding decisions. Furthermore, the Draft Initial Comprehensive Plan set out the Council's next steps, which are to (1) refine objectives and evaluation criteria; (2) establish advisory committees as determined necessary; (3) develop regulations

¹⁰ As discussed in our report *Restore Act: Treasury Missed Its Statutory Deadline for Establishing Procedures Governing RESTORE Act Programs and Activities*, [OIG-13-038](#) (Apr. 17, 2013), Treasury missed its statutory deadline of January 2, 2013, to establish procedures governing RESTORE Act programs and activities. On September 6, 2013, Treasury published the draft procedures in the Federal Register, in the form of proposed regulations, for a 60-day public comment period.

establishing the oil spill restoration impact allocation formula; (4) release a schedule for the submittal of proposals from Council members; (5) select and publish a Funded Priorities List; and (6) adopt a 10-Year Funding Strategy. Council officials told us that a timeline for these next steps has not been established, as the timeline is dependent on several factors, including the finalization of the Treasury regulations governing RESTORE Act programs and activities, the funding available to certain projects from other sources,¹¹ and the outcome of ongoing litigation.¹²

The challenges faced by the Council to publish a more complete Comprehensive Plan, given the above unknown factors, are formidable. We were told that the Council considered and had discussions about developing the Funded Priorities List based on known available funding, but decided against it because the Council is cautious about funding projects that may be part of litigation or funded by other sources. As current litigation progresses, the Council expects to gain a better understanding of future funding in order for it to develop a more realistic Funded Priorities List. Additionally, the Council intends to update the Comprehensive Plan incrementally as current uncertainties become informed. That said, in addition to other factors,¹³ a complete Comprehensive Plan that meets all RESTORE Act requirements is

¹¹ Restoration projects in the Gulf Coast region may also receive funding through other sources such as the National Fish and Wildlife Foundation and the Natural Resource Damage Assessment process.

¹² On December 15, 2010, the U.S. Department of Justice filed a civil and criminal suit against BP Exploration and Production Inc.; Anadarko Exploration & Production LP and Anadarko Petroleum Corporation (known collectively as "Anadarko Defendants"); MOEX Offshore 2007 LLC; Triton Asset Leasing GMBH, Transocean Holdings LLC, Transocean Offshore Deepwater Drilling Inc., and Transocean Deepwater Inc. (known collectively as "Transocean Defendants") for violations under the Clean Water Act in the U.S. District Court for the Eastern District of Louisiana. The first phase of the trial against BP Exploration and Production Inc. began in February 2013 and the second phase of the trial began September 30, 2013. Additional phases will extend into 2014.

¹³ Prior to disbursing funds for the Council-selected Restoration Component and the Spill Impact Component, Treasury will need to establish the procedures for governing RESTORE Act programs and activities and the Council will need to establish its National Environmental Policy Act (NEPA) procedures. As a new independent federal entity, the Council will also have to develop necessary administrative and financial infrastructure prior to entering into interagency agreements and grants to distribute the Trust Fund money it oversees. In addition, federal agencies must comply with applicable environmental laws, including NEPA before making final decisions about federal actions that could have environmental effects. NEPA and its implementing regulations establish an environmental review and assessment process in which agencies must consider the potential environmental impacts of their proposed actions, including, among others, impacts on social, cultural, and economic resources, as well as natural resources.

essential so funds can be disbursed from the Trust Fund to recipients under the Council-selected Restoration Component and Spill Impact Component.

Recommendations

We recommend that the Chairperson of the Council:

1. Ensure that timelines are established as soon as practicable for the next steps listed in the Draft Initial Comprehensive Plan to include (a) refining objectives and evaluation criteria; (b) establishing advisory committees as determined necessary; (c) developing regulations establishing the oil spill restoration impact allocation formula; (d) releasing a schedule for the submittal of proposals from Council members; (e) selecting and publishing a Funded Priorities List; and (f) adopting a 10-Year Funding Strategy.

Council Response

After reviewing and considering over 41,000 public comments, the "Next Steps" section was revised and released in the final version of the Initial Comprehensive Plan. While some of the steps noted above are still reflected in the plan, others such as "refining objectives and evaluation criteria" have already been revised, based on the public comments received. The Council is establishing timelines for the next steps identified in the plan and hopes to make target deadlines publicly available by early 2014. Additionally, the Council intends to publish a Funded Priorities List and select projects and/or programs within the next year.

OIG Comment

The Council's actions taken and planned meet the intent of our recommendation.

2. Continue to work with Council members towards developing a Comprehensive Plan to include all items required by the RESTORE Act, including a 10-year funding strategy and a Funded Priorities List, and establish procedures to ensure annual

updates to the Funded Priorities List are completed on time.

Council Response

The Council approved the Initial Comprehensive Plan on August 28, 2013, but deferred including the 10-year funding strategy and Funded Priorities List in this iteration of the plan for several reasons. First, there is uncertainty related to the overall amount and availability of funds deposited in the Trust Fund. Second, the final procedures to guide Trust Fund expenditures have not been issued by Treasury. Additionally, the Gulf Coast States are in the process of developing State Expenditure Plans to guide the disbursement of funds that will be allocated to the States, based upon the extent of impacts from the Deepwater Horizon oil spill.

The Council intends to publish a Funded Priorities List and select projects and/or programs within the next year. The Council will publish the draft list for public review and comment before finalizing the list and incorporating it into the Comprehensive Plan. Once there is more certainty regarding ongoing litigation, the Council will also publish a draft 10-year funding strategy as an addendum to the plan. Over the next few years, development and implementation of the plan will be an iterative process leading to a comprehensive, region-wide, multi-objective restoration plan based on the best available science.

OIG Comment

The Council's planned actions meet the intent of our recommendation.

* * * * *

We appreciate the courtesies and cooperation extended by your staff as we inquired about these matters. Major contributors to this report are listed in appendix 2. A distribution list for this report is provided as appendix 3. If you have any questions, you may contact me at (202) 622-1090 or Marla A. Freedman, Assistant Inspector General for Audit, at (202) 927-5400.

/s/
Eric M. Thorson
Inspector General



UNITED STATES DEPARTMENT OF COMMERCE
The Secretary of Commerce
Washington, D.C. 20230

SEP 19 2013

MEMORANDUM FOR: Eric M. Thorson, Inspector General
Office of the Inspector General
Department of the Treasury

FROM: Penny Pritzker /s/
Chair, Gulf Coast Ecosystem Restoration Council

SUBJECT: Response to the Office of the Inspector General's Draft Audit Report: Gulf Coast Ecosystem Restoration Council Faces Challenges in Completing Initial Comprehensive Plan.

I appreciate the opportunity to review and respond to the Office of the Inspector General's Draft Audit Report: Gulf Coast Ecosystem Restoration Council Faces Challenges in Completing Initial Comprehensive Plan, dated August 14, 2013. On behalf of the Gulf Coast Ecosystem Restoration Council, I want to thank the Department of the Treasury's Office of the Inspector General for its recommendations.

I am delighted to inform you that the Council completed and unanimously approved the Initial Comprehensive Plan (the Plan) on August 28, 2013, at a public meeting in New Orleans, Louisiana. While the Council appreciates your observations and recommendations, we believe it is important to highlight the circumstances around your finding that "the Council did not publish the plan in the Federal Register by the mandated deadline of July 6, 2013." Although the Council aimed to meet the statutory deadline, we believe it is critical to provide opportunities for meaningful public input into the Plan from the people who live and work in the Gulf Coast region. In response to numerous requests to extend the public comment period, the Council extended the deadline by two weeks. The Council received and considered over 41,000 public comments on the Draft Plan. As a result of the Council's decision to extend the public comment deadline and ensure that comments were adequately considered, the Council was delayed by a few weeks in completing the Comprehensive Plan.

The Council took actions to address most, if not all, of the recommendations prior to issuance of this report. The following is our response to each of the specific recommendations.

SPECIFIC RECOMMENDATIONS AND RESPONSES

OIG Recommendation 1: Ensure that timelines are established as soon as practicable for the next steps listed in the Draft Initial Comprehensive Plan to include (a) refining objectives and evaluation criteria; (b) establishing advisory committees as determined necessary; (c) developing regulations establishing the oil spill restoration impact allocation formula; (d) releasing a schedule for the submittal of proposals from Council members; (e) selecting and publishing a Funded Priorities List; and (f) adopting a 10-Year Funding Strategy.

Appendix 1 Management Response

DOC Response: After reviewing and considering over 41,000 public comments, the “Next Steps” section of the Plan was revised and released in the final version of the Plan. While some of the steps noted above are still reflected in the Plan, others such as “refining objectives and evaluation criteria” have already been revised, based on the public comments received. The Council is in the process of establishing timelines for the next steps identified in the Plan and hopes to make target deadlines publicly available by early 2014. Additionally, the Council intends to publish a Funded Priorities List and select projects and/or programs within the next year.

OIG Recommendation 2: Continue to work with Council members towards developing a Comprehensive Plan to include all items required by the RESTORE Act, including a 10-year funding strategy and a Funded Priorities List, and establish procedures to ensure annual updates to the Funded Priorities List are completed on time.

DOC Response: The Council approved the Initial Comprehensive Plan on August 28, 2013. The Plan provides a framework to implement a coordinated, Gulf Coast region-wide restoration effort in a way that restores, protects, and revitalizes the Gulf Coast. The Council deferred developing a Funded Priorities List and Ten-Year Funding Strategy (i.e., a description of the manner in which amounts from the Trust Fund projected to be made available to the Council to implement the Plan for the next 10 years will be allocated). The Council did not include these elements in this iteration of the Plan for several reasons. First, there is uncertainty related to the overall amount and availability of funds deposited in the Trust Fund. Second, the final procedures to guide Trust Fund expenditures have not yet been issued by the U.S. Department of the Treasury. Additionally, the Gulf Coast States are in the process of developing State Expenditure Plans to guide the disbursement of funds that will be allocated to the States, based upon the extent of impacts from the Deepwater Horizon oil spill.

The Council intends to publish a Funded Priorities List and select projects and/or programs within the next year. The Council will publish the draft list for public review and comment before finalizing the list and incorporating it into the Plan. Once there is more certainty regarding ongoing litigation, the Council will also publish a Draft Ten-Year Funding Strategy as an addendum to the Plan. Over the next few years, development and implementation of the Plan will be an iterative process leading to a comprehensive, region-wide, multi-objective restoration plan based on the best available science.

Appendix 2
Major Contributors to This Report

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Gulf Coast Ecosystem Restoration Council

Chairperson
Department of Agriculture Council Designee
Department of the Army Council Designee
Environmental Protection Agency Council Designee
Department of Homeland Security Council Designee
Department of the Interior Council Designee
State of Alabama Council Designee
State of Florida Council Designee
State of Louisiana Council Designee
State of Mississippi Council Designee
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Under Secretary for Domestic Finance
Fiscal Assistant Secretary
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