



Audit Report



OIG-16-037

RESTORE ACT

Funded Priorities List Evaluation Criteria and Selection Process
Met Requirements

April 21, 2016

Office of
Inspector General

Department of the Treasury

Contents

Audit Report	1
Background	2
RESTORE Act	2
Council-Selected Restoration Component	3
Audit Results	4
Council’s Evaluation Criteria and Selection Process for the Funded Priorities List Met Requirements	4
Evaluation Criteria	4
Proposal Evaluation and Selection Process.....	6
Proposal Selection.....	7

Appendices

Appendix 1: Objective, Scope, and Methodology	10
Appendix 2: Management Response....	12
Appendix 3: Major Contributors to This Report.....	13
Appendix 4: Report Distribution.....	14

Abbreviations

FPL	Funded Priorities List
Clean Water	Federal Water Pollution Control Act
Council	Gulf Coast Ecosystem Restoration Council
RESTORE Act	Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012
Treasury	Department of the Treasury
Trust Fund	Gulf Coast Restoration Trust Fund

This Page Intentionally Left Blank.

*The Department of the Treasury
Office of Inspector General*

April 21, 2016

Justin R. Ehrenwerth
Executive Director, Gulf Coast Ecosystem Restoration Council

This report presents the results of our audit of the Gulf Coast Ecosystem Restoration Council's (Council) evaluation criteria and selection process for programs, projects, and activities to be funded under the Council-Selected Restoration Component of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (RESTORE Act).^{1,2} We performed this audit as part of our ongoing oversight of RESTORE Act programs. Our audit objective was to assess the Council's process for evaluating and selecting programs and projects under the Council-Selected Restoration Component. Specifically, we assessed whether the Council's evaluation criteria, proposal evaluation, and selection process for the Funded Priorities List (FPL) complied with the RESTORE Act, the Department of the Treasury's (Treasury) RESTORE Act regulations, the Council's Initial Comprehensive Plan requirements, and the Council's policies and procedures. Appendix 1 provides more detail of our audit objective, scope, and methodology.

In brief, we found that the Council's evaluation criteria and selection process for programs, projects, and activities included in the FPL under the Council-Selected Restoration Component met applicable requirements. Accordingly, we make no recommendations in this report. In a written response, the Council

¹ Created by the RESTORE Act, the Council is an independent entity within the Federal government, comprised of the governors from the five affected Gulf Coast States (Alabama, Florida, Louisiana, Mississippi, and Texas); 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.

² Pub. L. 112-141, 126 Stat. 588-607 (July 6, 2012)

concluded with the conclusions of this audit. The management response in its entirety is included as appendix 2.

Background

RESTORE Act

The RESTORE Act established the Gulf Coast Restoration Trust Fund (Trust Fund) within Treasury to provide funds for environmental and economic restoration of the Gulf Coast region that was damaged by 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, under the Federal Water Pollution Control Act (Clean Water Act).³ As of February 2015, the Trust Fund had received approximately \$816 million as a result of the government's settlement with the Transocean defendants.⁴ In July 2015, BP Exploration & Production Inc. agreed to settle with the Federal government and the Gulf Coast States. A U.S. District Judge from the Eastern District of Louisiana approved the terms of the settlement on April 4, 2016, where BP Exploration & Production Inc. agreed to pay \$20.8 billion. Of the \$20.8 billion, \$5.5 billion plus interest relates to civil and administrative penalties under the Clean Water Act; of that, \$4.4 billion (80 percent) will be deposited into the Trust Fund over 15 years.

The RESTORE Act allocates money in the Trust Fund to the following 5 components: (1) 35 percent will be made available to the Gulf Coast States (Alabama, Florida, Louisiana, Mississippi, and Texas) in equal shares under the Direct Component; (2) 30 percent plus 50 percent of interest earned on the Trust Fund will be made available for grants and interagency agreements under the Council-Selected Restoration Component; (3) 30 percent will be made available for grants under the Spill Impact Component; (4) 2.5 percent plus 25 percent of interest earned will be made

³ Pub. L. 92-500 (as amended)

⁴ On February 19, 2013, the civil settlement between the Department of Justice and Transocean defendants (Transocean Deepwater Inc., Transocean Offshore Deepwater Drilling Inc., Transocean Holdings LLC, and Triton Asset Leasing GmbH) was approved. Among other things in the settlement, the Transocean defendants paid a \$1 billion civil penalty plus interest. Of this amount, \$800 million plus interest was deposited into the Trust Fund.

available to the Science Program Component; and (5) 2.5 percent plus 25 percent of interest earned on the Trust Fund will be made available to the Centers of Excellence Research Grants Program Component. Treasury's Office of the Fiscal Assistant Secretary 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 is responsible for administering the Science Program Component.

The Council-Selected Restoration Component

Section 1603 of the RESTORE Act required that the Council publish an Initial Comprehensive Plan no later than July 6, 2013, 1 year after the RESTORE Act was signed into law. The Council's Initial Comprehensive Plan serves as a framework that will guide the Council's selection of programs, projects, and activities to be funded under the Council-Selected Restoration Component. The RESTORE Act requires that the Council's Initial 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) a prioritized list, subject to available funding, of specific projects and programs to be funded (referred to as the FPL) and carried out during the 3-year period immediately following the date of publication of the Initial Comprehensive Plan. The Council approved the Initial Comprehensive Plan on August 28, 2013, but at that time the plan did not contain an FPL as required by the RESTORE Act.⁵

⁵ In October 2013, we reported that the Council's Initial Comprehensive Plan did not contain all of the elements required by the RESTORE Act, including an FPL (*RESTORE Act: Gulf Coast Ecosystem Restoration Council Faces Challenges in Completing Initial Comprehensive Plan* (OIG-14-003; issued Oct. 25, 2013)).

Audit Results

Council's Evaluation Criteria and Selection Process for the Funded Priorities List Met Requirements

We found that the Council's evaluation criteria, proposal evaluation, and selection process for programs, projects, and activities to be funded under the Council-Selected Restoration Component complied with the RESTORE Act, Treasury's RESTORE Act regulations, Council's Initial Comprehensive Plan requirements, and the Council's policies and procedures.

After publishing the Initial Comprehensive Plan in August 2013, the Council formed the Process Development Workgroup⁶ to develop the evaluation criteria and selection process for the FPL. The Process Development Workgroup used requirements in the RESTORE Act and Treasury's RESTORE Act regulations, as well as the Initial Comprehensive Plan to develop the evaluation criteria.

Evaluation Criteria

Under the Council-Selected Restoration Component, the Council must give highest priority to programs, projects, and activities that are based on "best available science"⁷ and address one or more of the following criteria: (1) projects that will make the greatest contribution to restoring and protecting the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands of the Gulf Coast region, without regard to geographic location within the Gulf Coast region; (2) large-scale projects and programs projected to substantially contribute to restoring and protecting the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands of the Gulf Coast ecosystem; (3) projects contained in existing Gulf Coast State comprehensive plans for restoration and protection of natural resources; and (4) projects that restore

⁶ The Process Development Workgroup was comprised of representatives serving on behalf of each Council member, as well as Council staff.

⁷ The term "best available science" refers to science that (1) maximizes the quality, objectivity, and integrity of information, including statistical information; (2) uses peer-reviewed and publicly available data; and (3) clearly documents and communicates risks and uncertainties in the scientific basis for such projects.

long-term resiliency of the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands most impacted by the Deepwater Horizon oil spill.

The RESTORE Act also requires that projects, programs, and activities funded under the Council-Selected Restoration Component be carried out in the Gulf Coast region. Treasury's RESTORE Act regulations and the Council's Initial Comprehensive Plan reiterate the requirements and priorities set forth in the RESTORE Act.

The Council's Initial Comprehensive Plan further narrowed the evaluation criteria by identifying the Council's goals and objectives to guide funding decisions. The Council's goals, which provide the overarching framework for the Council's approach for region-wide Gulf Coast restoration include: (1) restore and conserve habitat; (2) restore water quality; (3) replenish and protect living coastal and marine resources; (4) enhance community resilience; and (5) restore and revitalize the Gulf Coast economy. The Council's objectives, which define the scope of projects and programs to be funded under the Council-Selected Restoration Component, include: (1) restore, enhance, and protect habitats; (2) restore, improve, and protect water resources; (3) restore and protect living coastal and marine resources; (4) restore and enhance natural processes and shorelines; and (5) promote community resilience. The Initial Comprehensive Plan affirmed that projects that are not within the scope of the Council's objectives will not be funded under the Council-Selected Restoration Component.

Each of the evaluation criteria required by the RESTORE Act, Treasury's RESTORE Act regulations, and the Initial Comprehensive Plan were captured in a series of "Context Reports" that were developed to evaluate each proposal received. The reports were titled as: (1) Eligibility, (2) Budget, (3) Science, (4) Priority and Commitment to Plan, and (5) Environmental Compliance. The "Context Reports" were to be completed by Council staff with the

exception of the Science Context Report which was to be completed by three independent science reviewers.⁸

The Eligibility Context Report provides an evaluation of whether the proposed program, project, or activity would restore natural resources and benefit the Gulf Coast region. The Budget Context Report is an analysis of the adequacy of the proposed funding amount. The Science Context Report describes the verification work done to determine whether the proposed activities would be carried out using the “best available science.” The Priority and Commitment to Plan Context Report provides an evaluation of how a proposal adheres to the priority criteria in the RESTORE Act, and the goals and objectives contained in the Council’s Initial Comprehensive Plan. In the case of planning or technical assistance funding, the Environmental Compliance Context Report is intended to provide general information about the proposed activities that will be helpful to guide future environmental compliance. For proposals seeking implementation funding, the report also captures the status of environmental compliance.

Proposal Evaluation and Selection Process

In addition to developing the evaluation criteria, the Process Development Workgroup established the proposal evaluation and selection process and criteria for the FPL. The Initial Comprehensive Plan provided the detailed requirements with regards to the proposal evaluation and selection process. The plan stipulated that proposals would be evaluated using the following three-step process: (1) eligibility verification; (2) coordination review; and (3) evaluation.

The eligibility verification step determined whether a proposal met the minimum requirements under the RESTORE Act. The Process Development Workgroup designed the Eligibility and Priority and Commitment to Plan Context Reports to aid in this determination. The coordination review step determined whether the proposed program, project, or activity should be coordinated with Deepwater

⁸ Council staff solicited expert volunteer reviewers from within the five Gulf Coast States and from across the country. Each proposal was reviewed by one volunteer from the Gulf Coast State most directly linked to the proposal, one from the Gulf Coast region but not the most directly linked State, and one from outside the Gulf Coast region.

Horizon oil spill restoration efforts funded by other organizations. The evaluation step ensured that proposals conformed with determinations included in the Budget, Science, and Environmental Context Reports.

Using the three-step process outlined in the Initial Comprehensive Plan as a guideline, the Process Development Workgroup established a more detailed proposal evaluation and selection process. The Council Steering Committee⁹ approved the process and related evaluation criteria in July 2014 and published the process on the Council's website in August 2014.

Proposal Selection

In August 2014, at the same time the Council published the process on its website, it solicited proposals from Council member entities. The solicitation of proposals was limited to Council member entities due to the RESTORE Act stipulation that projects and programs adopted through the Initial Comprehensive Plan be carried out through the Federal agencies and Gulf Coast States represented on the Council. The proposal submission guidelines allowed each Council member to submit up to five proposals. In addition, Council members could submit proposals on behalf of Federally-recognized Tribes.¹⁰ The Council requested that the proposals focus on habitat and water quality for the Initial FPL. The proposal submission window closed on November 17, 2014, and the Council received 50 proposals, consisting of approximately 380 distinct activities.

Council staff and science volunteers reviewed each proposal using the established criteria. As a result, three separate Science Context Reports, one for each science reviewer, were developed for each proposal submitted, while one report per proposal was generated for each of the other four reviews (Eligibility, Budget, Priority and

⁹ The Council's Steering Committee is comprised of at least one representative serving on behalf of each Council member. The Steering Committee's responsibilities include establishing committees or working groups to carry out the work of the Council, providing general program and policy advice to the Council, and providing oversight of program implementation and administration.

¹⁰ A Federally recognized tribe is an American Indian or Alaska Native tribal entity that is recognized as having a government-to-government relationship with the U.S., with the responsibilities, powers, limitations, and obligations attached to that designation, and is eligible for funding and services from the Bureau of Indian Affairs.

Commitment to Plan, and Environmental Compliance) for a total of 350 "Context Reports." All of the reports were made available to the public on the Council's website in March 2015.

Council staff also coordinated with other organizations funding Deepwater Horizon oil spill restoration efforts to leverage any available resources and avoid duplication and any potential conflicts. The Council conducted coordination efforts with the National Fish and Wildlife Foundation and the Natural Resource Damage Assessment Trustee Council, to name a few.

After reviewing the "Context Report" for each proposal, the Council's Options Development Team comprised of Council staff, used geographic information system coordinates from the proposals to create maps showing the impacted areas. The Council staff evaluated the maps, looking for synergies and overlapping interests among the proposed projects. Based on the mapping information, the Options Development Team decided to focus on funding conservation and restoration activities in 10 key watersheds.

The Options Development Team also decided to separate the FPL into two categories to distinguish between those Draft FPL activities that the Council proposed to approve and fund (Category 1 activities) and those Draft FPL activities that would be Council priorities for further review and potential future funding (Category 2 activities). Going forward, the Council intends to review each proposed activity in Category 2 to determine whether to: (1) move the activity to Category 1 and approve it for funding, (2) remove it from Category 2 and any further consideration, or (3) continue to include it in Category 2. The Options Development Team presented the Draft FPL to the Council Steering Committee for review. On May 5, 2015, the Council Steering Committee endorsed the Draft FPL.

On August 13, 2015, the Council announced in the Federal Register that the Draft FPL was posted on the Council's website for a 45 day comment period which closed on September 28, 2015. The RESTORE Act and the Council's Standard Operating Procedures stipulated that Council members must vote on approval of the Comprehensive Plan and future

revisions to the Comprehensive Plan. After considering comments received, the Council voted on and approved the Initial FPL on December 9, 2015. The Notice of Availability of the approved Initial FPL was published in the Federal Register on December 15, 2015. Subsequently, the Council published a notice in the Federal Register on December 31, 2015, requesting applications for FPL funding.

* * * * *

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 3. A distribution list for this report is provided as appendix 4. If you have any questions, you may contact me at (202) 927-5762 or Eileen Kao, Audit Manager, at (202) 927-8759.

/s/

Deborah L. Harker
Director, Gulf Coast Restoration Audit

As part of our oversight of programs, projects, and activities authorized by the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (RESTORE Act), we audited the Gulf Coast Ecosystem Restoration Council's (Council) evaluation criteria and selection process to develop the Funded Priorities List (FPL) under the Council-Selected Restoration Component of the act. Our audit objective was to assess the Council's process for evaluating and selecting programs and projects under the Council-Selected Restoration Component. Specifically, we assessed whether the Council's evaluation criteria, proposal evaluation, and selection process for the FPL complied with the RESTORE Act, the Department of the Treasury's (Treasury) RESTORE Act regulations, Council's Initial Comprehensive Plan requirements, and the Council's policies and procedures.

To accomplish our audit objectives, we contracted with Booz Allen Hamilton Inc., a consulting firm with environmental service expertise, to assist us with this effort. We conducted our audit between November 2014 and December 2015, which included fieldwork at the Council's offices in New Orleans, Louisiana. During the audit, we performed the following steps.

- We reviewed applicable Federal laws and regulations including:
 - The RESTORE Act;
 - Treasury Interim Final Rule for RESTORE Act and Preamble, 31 CFR Part 34, October 14, 2014;
 - Treasury Final Rule for RESTORE Act and Preamble, 31 CFR Part 34, February 12, 2016;
 - The National Environmental Policy Act (NEPA) of 1969 as amended;
 - Council on Environmental Quality NEPA Regulations, 40 CFR Part 1500-1508, November 28, 1978;
 - Federal Records Act of 1950 as amended;
 - Administrative Procedure Act of 1946 as amended;
 - and
 - Freedom of Information Act of 1967 as amended.

- We reviewed the Council’s website and key documents, including:
 - The Initial Comprehensive Plan, August 28, 2013;
 - The Draft Initial FPL, August 13, 2015;
 - Council Member Proposal Submissions;
 - Proposal Context Reports;
 - Council-Selected Restoration Component Proposal Submission and Evaluation Process Details;
 - Council-Selected Restoration Component Proposal Submission and Evaluation Process Fact Sheet;
 - Council Member Proposal Submission Guidelines For Comprehensive Plan Funded Priorities List of Projects and Programs Gulf Coast Ecosystem Restoration (RESTORE) Council 33 U.S.C. § 1321(t)(2);
 - Gulf Coast Restoration Council Standard Operating Procedures;
 - Initial FPL, December 9, 2015; and
 - Federal Register Announcement – *Notice of Availability of the Initial Funded Priorities List*, December 15, 2015.


- We interviewed key Council officials responsible for developing the FPL, including:
 - Executive Director;
 - General Counsel;
 - Director of Environmental Compliance; and
 - Acting Science Coordinator.

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.



GULF COAST ECOSYSTEM RESTORATION COUNCIL

MEMORANDUM FOR: Deborah L. Harker
Director, Gulf Coast Restoration Audit

FROM: Justin R. Ehrenwerth 
Executive Director, Gulf Coast Ecosystem Restoration Council

DATE: April 13, 2016

SUBJECT: Response to the Treasury Office of Inspector General Report
"Funded Priorities List Evaluation Criteria and Selection Process
Met Requirements"

Thank you for the opportunity to review the Treasury Office of the Inspector General's (OIG) report, "Funded Priorities List Evaluation Criteria and Selection Process Met Requirements" setting forth the results of OIG's audit of the Gulf Coast Ecosystem Restoration Council's (Council) evaluation criteria and selection process for programs, projects and activities to be funded under the Council-Selected Restoration Component of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012.

We are pleased that OIG concluded its audit with no recommendations. The Council concurs with OIG's conclusions and is greatly encouraged by the report. We appreciate OIG's review of the Council's work as we move forward with our mission to restore the Gulf.

Appendix 3
Major Contributors to This Report

Eileen J. Kao, Audit Manager
Marco T. Uribe, Auditor-in-Charge
Usman Abbasi, Auditor
Kajuana Britt, Referencer

Gulf Coast Ecosystem Restoration Council

Chairperson
Department of the Army Council Designee
Department of Commerce Council Designee
Environmental Protection Agency Council Designee
Department of Homeland Security Council Member
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
State of Texas Council Designee
Executive Director

Department of the Treasury

Deputy Secretary
Under Secretary for Domestic Finance
Fiscal Assistant Secretary
Deputy Assistant Secretary, Fiscal Operations and Policy

Office of Management and Budget

OIG Budget Examiner



Treasury OIG Website

Access Treasury OIG reports and other information online:

<http://www.treasury.gov/about/organizational-structure/ig/Pages/default.aspx>

Report Waste, Fraud, and Abuse

OIG Hotline for Treasury Programs and Operations – Call toll free: 1-800-359-3898

Gulf Coast Restoration Hotline – Call toll free: 1-855-584.GULF (4853)

Email: Hotline@oig.treas.gov

Submit a complaint using our online form:

<https://www.treasury.gov/about/organizational-structure/ig/Pages/OigOnlineHotlineForm.aspx>