



Audit Report



OIG-17-001

RESTORE ACT

Treasury's Assessment of Environmental Compliance of RESTORE Act Programs

October 3, 2016

Office of
Inspector General

Department of the Treasury

Contents

Audit Report	1
Background.....	2
Results of Audit.....	3

Appendices

Appendix 1: Objective, Scope, and Methodology	7
Appendix 2 Management Response	9
Appendix 3: Background on RESTORE Act.....	10
Appendix 4: Major Contributors to This Report.....	11
Appendix 5: Report Distribution.....	12

Abbreviations

Centers of Excellence	Centers of Excellence Research Grants Program
Final Rule	Department of the Treasury Regulations for the Gulf Coast Restoration Trust Fund Final Rule
Interim Final Rule	Department of the Treasury Regulations for the Gulf Coast Restoration Trust Fund Interim Final Rule
OFAS	Office of the Fiscal Assistant Secretary
OIG	Office of Inspector General
NEPA	National Environmental Policy Act of 1969, as amended
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

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*The Department of the Treasury
Office of Inspector General*

October 3, 2016

David A. Lebryk
Fiscal Assistant Secretary

This report presents the results of our audit of the Department of the Treasury's (Treasury) process to assess its responsibility and establish procedures for overseeing the environmental compliance of programs, projects, and activities funded by the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (RESTORE Act).¹ We performed this audit as part of our ongoing oversight of RESTORE Act programs. The objective of our audit was to evaluate Treasury's assessment of its responsibility for environmental compliance under the National Environmental Policy Act² (NEPA). NEPA was the first major environmental law enacted in the United States designed to support compliance with namely other Federal and State environmental laws and regulations. Appendix 1 provides more detail of our audit objective, scope, and methodology.

In brief, we concluded that Treasury appropriately assessed its responsibility for environmental compliance of RESTORE Act programs. Treasury concluded that NEPA does not apply to its duties as administrator of RESTORE Act programs since overall Treasury's role is merely administrative and ministerial in nature. That said, we found that management's process to reach its conclusions and establish related procedures for RESTORE Act programs addressed potential environmental compliance risks and was thoroughly documented. Furthermore, records of key deliberations and decisions related to the assessment complied with Treasury and other Federal requirements. As such, we make no recommendations in this report.

¹ Pub. L. 112-141, 126 Stat. 588-607 (July 6, 2012)

² 42 U.S.C. § 4321 et seq.

We caution that our audit was to evaluate Treasury's assessment of its responsibility for environmental compliance of RESTORE Act programs and not the legal analyses supporting its determination of NEPA applicability. As such, we make no conclusions on the legal analyses and our audit results should not be construed as agreement or disagreement with the legal determination of NEPA applicability.

In a written response, Treasury management concurred with the findings of this report in that it appropriately assessed its responsibility for environmental compliance of RESTORE Act programs; thoroughly documented its process to reach its conclusions; established procedures for RESTORE Act programs to address potential environmental compliance risks; and maintained records of key deliberations and decisions in compliance with Treasury and other Federal requirements. Management's response, in its entirety, is included as appendix 2 of this report.

Background

The 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 Treasury is responsible for 37.5 percent of the RESTORE Act funds as the administrator of the Direct Component (35 percent) and the Centers of Excellence Research Grants Program (Centers of Excellence) Component (2.5 percent plus 25 percent of interest earned on the Trust Fund). The RESTORE Act also requires that the five Gulf Coast States (Alabama, Florida, Louisiana, Mississippi, and Texas) and applicable local governments prepare a multiyear implementation plan that is reviewed and accepted by Treasury

³ 33 U.S.C. §1251 et seq.

before being awarded a Direct Component grant.⁴ Additional details of the RESTORE Act are provided in appendix 3.

National Environmental Policy Act of 1969, as amended

The purpose of NEPA is to “encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.”⁵ Under NEPA, Federal agencies are required to prepare an environmental analysis for Federal actions significantly affecting the quality of the environment. NEPA requires Federal agencies to consider the potential environmental consequences of their “proposed actions”, as well as a range of reasonable alternatives, before deciding whether and in what form to take an action.

Results of Audit

We found that Treasury appropriately assessed its responsibility for environmental compliance of RESTORE Act programs. That is, we found that management’s process to determine NEPA applicability and establish related procedures for RESTORE Act programs addressed potential environmental compliance risks and was thoroughly documented. Furthermore, records of key deliberations and decisions related to Treasury’s assessment complied with Treasury and other Federal requirements.

Assessment of Treasury’s responsibility for environmental compliance was led by the Office of the Fiscal Assistant Secretary (OFAS) with assistance from Treasury’s Office of General Counsel;

⁴ The RESTORE Act and Treasury regulations require applicants to submit a multiyear implementation plan that describes, among other things, activities to be funded, their location, a budget, milestones, and criteria for measuring success. Applicants must seek public review and comment on the plan before submitting to Treasury for review.

⁵ The Council on Environmental Quality coordinates Federal environmental efforts and works closely with agencies and other White House offices in the development of environmental policies and initiatives. It was established within the Executive Office of the President by Congress as part of NEPA and additional responsibilities were provided by the Environmental Quality Improvement Act of 1970.

the Office of Management’s Safety/Health/Environmental Compliance; and, as of March 2014, the Office of Gulf Coast Restoration. OFAS determined that NEPA does not apply to its duties as administrator for RESTORE Act programs. This decision was made public in the “Department of the Treasury Regulations for the Gulf Coast Restoration Trust Fund Interim Final Rule” (Interim Final Rule) on August 15, 2014, and was reaffirmed in the “Department of the Treasury Regulations for the Gulf Coast Restoration Trust Fund Final Rule” (Final Rule) issued on December 14, 2015.⁶ In the preamble to the Interim Final Rule Treasury noted that it is the Federal awarding agency for grants under the Direct Component and Centers of Excellence Component and that the RESTORE Act provided Treasury a very limited role in reviewing multiyear implementation plans and awarding grants under these components. The preamble emphasized that Treasury has no role in project selection or design and provided Treasury’s conclusion that its duties are merely administrative and ministerial, and therefore, an environmental analysis under NEPA is not required. The preamble to the Final Rule provided that “when an agency action is nondiscretionary under a statute, the information that a NEPA review provides would not assist the agency’s decision-makers.”

To determine the applicability of NEPA for its RESTORE Act programs, OFAS officials consulted with the Office of General Counsel and the Office of Management’s Safety/Health/Environmental Compliance. We noted that the decision-making process and key deliberations were sufficiently documented. Additionally, Treasury consulted with other relevant Federal agencies, as well as the Council on Environmental Quality. Treasury also reviewed NEPA case law and NEPA practices for existing Federal programs that are similar to the Direct and Centers of Excellence Components. Records documenting the procedures, policy decisions, and key deliberations during this process were maintained in compliance with the following requirements.

- The Federal Records Act of 1950 requires that agencies make and preserve records containing adequate and proper

⁶ The Regulations for the Gulf Coast Restoration Trust Fund Interim Final Rule and Final Rule became effective on October 14, 2014, and February 12, 2016, respectively.

documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency and that are designed to furnish the information necessary to protect the legal and financial rights of the Government and of persons directly affected by the agency's activities.⁷

- Treasury Directive 80-05, *Records and Information Management Program* (June 26, 2002), requires that records be managed effectively and efficiently throughout their life cycle in order to facilitate accomplishment of the agency's programmatic and administrative missions, to preserve official agency records in accordance with applicable statutory and regulatory requirements, and to ensure access to information by Treasury officials, and the public as appropriate.

Although Treasury concluded that its responsibility to administer the Direct Component and Centers of Excellence Component does not require a NEPA review, it also concluded that other Federal actions connected with activities funded through a RESTORE Act grant, such as the issuance of a permit, may require NEPA review by the Federal agency issuing the permit. Based on this conclusion, the Office of Gulf Coast Restoration established environmental compliance procedures in the form of an environmental checklist included in its application guidance for both the Direct Component and Centers of Excellence Component, which was made available in August 2014. The application guidance requires that applicants review the environmental laws in the checklist to determine if they apply to the proposed eligible activity. Applicants must review

⁷ 44 U.S.C. §3101 et seq.

NEPA applicability for their proposed activity and answer the following questions:

1. Will the proposed activity be under the permitting authority of any Federal agency?;
2. Will the proposed activity receive Federal assistance (other than RESTORE Act funding)?; and
3. Will the proposed activity be subject to any Federal regulatory decision or approval?

The application guidance states that if any of those situations applies, the applicant must contact the relevant Federal agency for further guidance on environmental compliance. By adding this application requirement, Treasury ensures that NEPA applicability will be reviewed by the applicant prior to receiving a RESTORE Act grant under the Direct Component or the Centers of Excellence Component.

We caution that our audit was to evaluate Treasury's assessment of its responsibility for environmental compliance of RESTORE Act programs and not the legal analyses supporting its determination of NEPA applicability. As such, we make no conclusions on the legal analyses and our audit results should not be construed as agreement or disagreement with the legal determination of NEPA applicability.

* * * * *

We would like to extend our appreciation for the cooperation and courtesies extended to our staff during the audit. Major contributors to this report are listed in appendix 4. A distribution list for this report is provided as appendix 5. If you have any questions, please contact me at (202) 927-8782.

/s/

Cecilia K. Howland
Acting Director, Gulf Coast Restoration Audits

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 initiated an audit of the Department of the Treasury's (Treasury) process for determining environmental compliance of its RESTORE Act programs and projects. The objective of our audit was to evaluate Treasury's assessment of its responsibility for environmental compliance under the National Environmental Policy Act (NEPA).

We conducted our audit between November 2014 and April 2016 at our office in Washington, D.C., which comprised the following steps.

- We reviewed applicable laws and regulations, including:
 - RESTORE Act of 2012;
 - NEPA of 1969, as amended;
 - "Department of the Treasury Regulations for the Gulf Coast Restoration Trust Fund Interim Final Rule," 31 CFR Part 34, October 14, 2014;
 - "Department of the Treasury Regulations for the Gulf Coast Restoration Trust Fund Final Rule," 31 CFR Part 34, February 12, 2016;
 - Council on Environmental Quality NEPA Regulations, 40 CFR Part 1500-1508, November 28, 1978; and
 - Federal Records Act of 1950, as amended.

- We reviewed Treasury policies and procedures, including:
 - Treasury Directive 75-02 and Directive Publication 75-02, Department of the Treasury NEPA Program, May 6, 2015; and
 - Treasury Directive 80-05, Records and Information Management Program, June 26, 2002.

- We reviewed Treasury's Gulf Coast Restoration website and available program guidance for Treasury's RESTORE Act programs, including:
 - Direct Component Guidance and Application to Receive Federal Financial Assistance, section 5.0 Application Forms, Treasury RESTORE Act Environmental Checklist; and

- Centers of Excellence Research Grants Program Guidelines and Application to Receive Federal Financial Assistance, section 4.0 Application Forms, Treasury RESTORE Act Environmental Checklist.
- We interviewed key Treasury officials and staff responsible for NEPA applicability for Treasury RESTORE Act programs.

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.

Appendix 2
Management Response



ASSISTANT SECRETARY

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C.

AUG 31 2016

Ms. Deborah L. Harker
Director, Gulf Coast Restoration Audits
Office of Inspector General
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Dear Ms. Harker:

Thank you for the opportunity to review and comment on the Office of the Inspector General's draft audit report (Report) titled *Treasury's Assessment of Environmental Compliance of RESTORE Act Programs*. We concur with the report's findings that the Department of the Treasury (Treasury) appropriately assessed its responsibility for environmental compliance of Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act (RESTORE Act) programs; thoroughly documented its process to reach its conclusions; established procedures for RESTORE Act programs to address potential environmental compliance risks; and maintained records of key deliberations and decisions in compliance with Treasury and other Federal requirements.

Sincerely,

David A. Lebryk
Fiscal Assistant Secretary

As of April 2016, the Gulf Coast Restoration Trust Fund (Trust Fund) had received approximately \$816 million as a result of the government's settlement with the Transocean defendants and \$127 million as a result of its settlement with Anadarko Petroleum Corporation.¹ 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 Federal Water Pollution Control Act (Clean Water Act). Of this amount, \$4.4 billion (80 percent) will be deposited into the Trust Fund over 15 years beginning mid-2017.

The RESTORE Act allocates money in the Trust Fund to five components, as follows: (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 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 on the Trust Fund will be made 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 Component. Treasury's Office of Fiscal Assistant Secretary is responsible for administering the Direct Component and the Centers of Excellence Component. The National Oceanic and Atmospheric Administration is responsible for administering the Science Program Component. The Council is responsible for administering the Council-Selected Restoration Component and the Spill Impact Component.

¹ 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. On December 16, 2015, the civil settlement between the Department of Justice and Anadarko Petroleum Corporation was approved. Anadarko agreed to civil penalties of \$159.5 million. Of this amount, approximately \$127 million has been deposited into the Trust Fund.

Appendix 4
Major Contributors to This Report

John Gauthier, Audit Manager
Dionne Smith, Auditor-in-Charge
Kevin Guishard, Referencer
Gerald Kelly, Referencer

Department of the Treasury

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

Office of Management and Budget

OIG Budget Examiner



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

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Submit a complaint using our online form:

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