



Audit Report



OIG-13-052

RESTORE ACT: Treasury Needs to Establish Procedures to Expend and Invest Gulf Coast Restoration Trust Fund Monies

September 24, 2013

Office of
Inspector General

Department of the Treasury

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Abbreviations

BFS	Bureau of the Fiscal Service
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*

September 24, 2013

Richard L. Gregg
Fiscal Assistant Secretary

This report presents the results of our audit work related to the Department of the Treasury's (Treasury) establishment of the Gulf Coast Restoration Trust Fund (Trust Fund) 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 Trust Fund, to include the requisite infrastructure and assignment of responsibilities as well as the related accounting policies and procedures.

Among his responsibilities, the Secretary of the Treasury, in consultation with the Secretary of Commerce and the Secretary of the Interior, was required to establish procedures for depositing amounts in and expending amounts from the Trust Fund. Under the RESTORE Act, procedures were to be established (i.e., issued in final) by January 2, 2013. In April 2013, we reported that Treasury missed its statutory deadline to establish the procedures.²

In brief, we found that Treasury's Bureau of the Fiscal Service (BFS) established the Trust Fund and was able to receive the first deposit in March 2013. However, as of June 12, 2013, Treasury had not established procedures necessary to expend amounts from the Trust Fund, or developed an investment strategy that takes into account projected outlays from the Trust Fund. According to a Treasury

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

² *Restore Act: Treasury Missed Its Statutory Deadline for Establishing Procedures Governing RESTORE Act Programs and Activities*, [OIG-13-038](#) (Apr. 17, 2013)

official, Treasury planned to issue those procedures in the form of regulations in September or October 2013. On September 6, 2013, subsequent to the completion of our audit fieldwork, Treasury published the draft procedures in the Federal Register, in the form of proposed regulations, for a 60-day public comment period.³ We are recommending, and cannot emphasize strongly enough the need for, your office to take all necessary actions to expedite the issuance of the RESTORE Act regulations and develop a Trust Fund investment strategy.

In a written response, Treasury management provided a summary of actions taken and planned that meet the intent of our three recommendations presented in this report. The management response is included as appendix 1.

Background

Gulf Coast Restoration Trust Fund

The RESTORE Act established the Trust Fund within Treasury to administer funds for the environmental and economic restoration of the Gulf Coast region⁴ 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.⁵ 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

³ 78 FR 54801, Gulf Coast Restoration Trust Fund

⁴ 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.

⁵ Public Law 92-500 (as amended)

approximately \$323 million as a result of a settlement with the Transocean defendants.⁶

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 Program. Treasury is responsible for administering the Direct Component and the Centers of Excellence Research Grants Program Component. The Gulf Coast Ecosystem Restoration Council (Council)⁷ 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 Gulf Coast Ecosystem Restoration Science Program Component.

Objective, Scope, and Methodology

Our objective was to determine and assess the progress made toward establishing the Trust Fund, to include the requisite infrastructure and assignment of responsibilities as well as the related accounting policies and procedures. In performing our audit work, we reviewed (1) the RESTORE Act, (2) Treasury's procedure for trust funds titled *The Process of Investment Fund Administration within the Department of the Treasury* (Nov. 2000), (3) Treasury's draft *Gulf Coast Restoration Trust Fund Concept of Operations* (Mar. 18, 2013), and (4) 31 U.S.C. §9702, *Investment of Trust Funds*. We interviewed BFS officials responsible for the Trust Fund and reviewed documentation to support the

⁶ 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 under the Federal Water Pollution Control Act. The civil settlement was approved on February 19, 2013, and the first installment of approximately \$323 million was deposited into the Trust Fund on March 21, 2013.

⁷ Section 1603 of the RESTORE Act created the Council comprised of the Secretaries of the Interior, Army, Commerce, and Agriculture, the Administrator of the Environmental Protection Agency, the head of the department housing the Coast Guard (currently the Secretary of the Department of Homeland Security), and the governors of Alabama, Florida, Louisiana, Mississippi, and Texas. The Secretary of Commerce was selected by member states and appointed by the President as the Chairperson of the Council.

establishment of the Trust Fund and the deposit of funds into the account. We also met with Department of Commerce officials to obtain their perspectives on the status of the establishment of the Trust Fund as it relates to the Council's role in administering the Council-selected Restoration Component and Spill Impact Component. We performed our fieldwork from March 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.

Finding

Treasury Lacks Necessary Procedures to Expend Amounts from the Gulf Coast Restoration Trust Fund and an Investment Strategy

Procedures to Expend Amounts from the Trust Fund

The RESTORE Act requires Treasury to consult with the Interior and Commerce Departments when establishing procedures governing the expenditure of amounts from the Trust Fund. On behalf of Treasury, BFS is responsible for the accounting and investment operations of all trust funds held by Treasury. BFS established the Trust Fund and received the first settlement deposit of approximately \$323 million from the Transocean defendants on March 21, 2013. Although this money was deposited into the Trust Fund and invested, BFS officials told us that Treasury's ability to disburse funds for projects and programs depends on several factors, including finalizing Treasury's RESTORE Act regulations. These other factors include steps that the Council and the Gulf Coast States must complete under the RESTORE Act. At the time of our audit, the delay in finalizing the regulations affected Treasury's ability to disburse funds from the Trust Fund to support activities under the Direct Component, Centers of Excellence Research Grants Program Component, and Gulf Coast Ecosystem

Restoration Science Program Component.⁸ According to a Treasury official, at the time, Treasury planned to finalize those regulations in September or October 2013.⁹

Treasury also developed a draft *Gulf Coast Restoration Trust Fund Concept of Operations* related to the investment function; however, it is based on several key assumptions that will not be resolved until the Treasury regulations are issued/finalized. Once the regulations are issued, Treasury will need to finalize its internal procedures for the Trust Fund.

Investing Deposits Received by the Trust Fund

At the time of our audit, Treasury was investing the amounts held in the Trust Fund in overnight securities rather than longer-term investments that typically yield a higher rate of return.¹⁰ BFS officials informed us that until an investment strategy, which considers expected outlays, is final, they will continue to invest in overnight securities. According to a BFS official, Treasury plans to administer the Trust Fund as a Treasury Program Managed Investment Fund.¹¹ In this regard, BFS will need to work with the administrators for the RESTORE Act Components to obtain cash

⁸ Among other things, funds under the Council-selected Restoration Component and the Spill Impact Component cannot be disbursed until the Council issues the Comprehensive Plan, adopts a prioritized list of projects, and issues regulations for the allocation of funds under the Spill Impact Component. The Council is responsible for developing a Comprehensive Plan to restore and protect the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands of the Gulf Coast region. The draft Comprehensive Plan was published in the Federal Register for a 30 day public comment period on May 23, 2013. The Council later extended the comment period to July 8, 2013, and approved the plan on August 28, 2013.

⁹ As noted previously, on September 6, 2013, Treasury published the draft procedures in the Federal Register, in the form of regulations.

¹⁰ Since March 21, 2013, the average rate of return for overnight securities is 0.035 percent. On that same day, the rate of return was 0.005 percent for 4-week Treasury bills; 0.016 percent for 13-week Treasury bills; 0.053 percent for 26-week Treasury bills; and 0.122 percent for 50-week Treasury bills.

¹¹ Treasury manages three types of Trust Funds:

- Treasury-managed Investment Funds are larger funds that receive monies collected by the Treasury through employment or excise taxes and transferred to the funds, based on estimates.
- Agency-managed Investment Funds are funds for which Treasury acts as an investment agent, executing the investment and redemption instructions given by the program agency for the fund.
- Treasury Program Managed Investment Funds are funds for which Treasury is designated the program agency; Treasury has a higher degree of programmatic and investment responsibilities for these funds.

flow projections and related timetables for required funds, so that BFS can invest the funds accordingly.

Under the RESTORE Act, amounts in the Trust Fund are to be invested according to 31 U.S.C. §9702, which states that funds shall be invested in Government obligations and earn at least a 5 percent interest rate. While we recognize that investments at 5 percent are not available under current market conditions, this may not always be the case. As appropriate, Treasury's proposed regulations should at a minimum acknowledge 31 U.S.C. §9702 and inform the public about its approach for selecting available investments.

Recommendations

We recommend that the Fiscal Assistant Secretary:

1. Take necessary action to establish regulations for the Gulf Coast Restoration Trust Fund, and to finalize internal Treasury procedures for the Trust Fund.

Management Response

Treasury is in process of publishing procedures that will address RESTORE Act requirements. Treasury is also preparing additional materials, such as instructions, to accompany the regulations.

OIG Comment

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

2. Ensure that Treasury's proposed regulations address how Treasury intends to meet the requirements of 31 U.S.C. §9702 for investment of the Trust Fund.

Management Response

Treasury stated that the above referenced procedures will address the RESTORE Act's requirements for investing the Trust Fund, among many other issues.

OIG Comment

Management's actions taken and planned satisfy the intent of our recommendation. It should be noted the proposed regulations state that investments will bear interest at rates described in 31 U.S.C. §9702, unless the Secretary of the Treasury determines that such rates are unavailable for obligations with suitable maturities. In that event, the Secretary will consider current market yields on comparable obligations.

3. Ensure that BFS, working with the administrators of each Trust Fund Component, establishes an investment strategy that takes into account projected outlays.

Management Response

Treasury recognizes the need for an investment strategy. After consulting with the Council and NOAA concerning their investment needs, Treasury began implementing an investment strategy at the end of July that includes Treasury securities with medium and short-term maturities. Treasury will review this investment strategy with the Council and NOAA on a regular basis.

OIG Comment

Management's actions and commitment to review the investment strategy on a regular basis satisfy 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) 927-5400 or Deborah Harker, Audit Director, at (202) 927-5762.

/s/

Marla A. Freedman

Assistant Inspector General for Audit

Appendix 1
Management Response



ASSISTANT SECRETARY

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C.

August 30, 2013

Marla A. Freedman
Assistant Inspector General for Audit
Office of the Inspector General
U.S. Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20036

Dear Ms. Freedman:

Thank you for the opportunity to review the draft audit report, *Treasury Needs to Establish Procedures to Expend and Invest Gulf Coast Restoration Trust Fund Monies*. We agree with each of the report's recommendations and are implementing them.

Treasury recognizes the importance of establishing timely and appropriate procedures to expend and invest amounts in the Gulf Coast Restoration Trust Fund. The Executive Branch has completed its review of Treasury's procedures and they will be published in the Federal Register next week. The procedures will address the RESTORE Act's requirements for investing the Trust Fund, among many other issues. The public will have sixty days to review these procedures and offer comments. Treasury is also preparing other materials, such as application instructions, to accompany the final procedures.

Treasury recognizes the need for an investment strategy as well. After consulting with the Gulf Coast Ecosystem Restoration Council (Council) and the National Oceanic and Atmospheric Administration (NOAA) concerning their investment needs, Treasury began implementing an investment strategy at the end of July that includes Treasury securities with medium and short-term maturities. Treasury will review this investment strategy with the Council and NOAA on a regular basis.

Sincerely,

Richard L. Gregg
Fiscal Assistant Secretary

Auditor's Note: Treasury published the procedures referred to in the response, in the form of proposed regulations, in the Federal Register on September 6, 2013 (78 FR 54801).

Appendix 2
Major Contributors to This Report

Deborah L. Harker, Audit Director
Eileen J. Kao, Audit Manager
Marco T. Uribe, Auditor-in-Charge
Eleanor P. Kang, Program Analyst
John B. Gauthier, Referencer

Department of the Treasury

Under Secretary for Domestic Finance
Fiscal Assistant Secretary
Deputy Assistant Secretary, Fiscal Operations and Policy
Office of Strategic Planning and Performance Management
Office of the Deputy Chief Financial Officer, Risk and Control
Group

Office of Management and Budget

OIG Budget Examiner