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OFFICE OF  
INSPECTOR GENERAL

DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220

August 27, 2021

Sent via email

Subject:     OIG Freedom of Information Act Request 2017-05-206  
              Final Response

This responds to your Freedom of Information Act (FOIA) request to the Department of the Treasury (Treasury), dated May 16, 2017. Your request sought:

A copy of the Statement of Work, and the final reporting and final presentation associated with the contract with Booz Allen Hamilton for services to Department of the Treasury Office of Inspector General, under Contract Instrument TOIGOIG13F0028, for technical review of the Gulf Coast Restoration Comprehensive Plan (during 2014/2015/2016).

In response to your request a search within the Treasury Office of Inspector General (OIG) Office of Audits was conducted. The completed search identified 64 pages of records responsive to your request. The responsive records have been reviewed under the FOIA, with information protected from disclosure pursuant to Exemption 6 of the FOIA as described below.

**FOIA Exemption 6, 5 U.S.C. § 552(b)(6)**

Exemption 6 exempts from release "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Treasury OIG redacted the information of third parties that could reasonably be expected to identify and/or cause unwarranted harassment and unsolicited invasion of the personal privacy of such individuals.

**Appeal**

Such redactions constitute a partial denial of your request and therefore an adverse action under the FOIA. Accordingly, you have the right to appeal this determination within 90 days from the date of this letter. By filing an appeal, you preserve your rights under the FOIA and give the agency a chance to review and

reconsider your request and the agency's decision. Your appeal must be in writing, signed by you or your representative, and contain the rationale for your appeal. Please address your appeal to:

FOIA Appeal  
FOIA and Transparency  
Privacy, Transparency, and Records  
Department of the Treasury  
1500 Pennsylvania Ave., N.W.  
Washington, D.C. 20220

### **Dispute Resolution and Mediation Services**

If you would like to discuss this response before filing an appeal to attempt to resolve your dispute without going through the appeals process, you may contact the Treasury Departmental Office FOIA Public Liaison via telephone at (202) 622-8098, or email at [FOIAPL@treasury.gov](mailto:FOIAPL@treasury.gov).

If you are unable to resolve your FOIA dispute through our FOIA Public Liaison, the Office of Government Information Services (OGIS) also mediates disputes between FOIA requesters and federal agencies as a non-exclusive alternative to litigation. If you wish to contact OGIS, you may write directly to:

Office of Government Information Services  
National Archives and Records Administration  
8601 Adelphi Road (OGIS)  
College Park, MD 20740-6001  
Email: [ogis@nara.gov](mailto:ogis@nara.gov)  
Website: <https://www.archives.gov/ogis>  
Telephone: (202) 741-5770  
Phone (toll free): 1 (877) 684-6448

If additional questions arise concerning this response, please contact us at [OIGFOIA@oig.treas.gov](mailto:OIGFOIA@oig.treas.gov) and include the above-referenced request number.

Sincerely,

*Camille Callender*

Camille Callender  
Assistant Counsel

## **Performance Work Statement Technical Review of the Comprehensive Plan**

### **1. Introduction**

The *Deepwater Horizon* oil spill that occurred from April through July 2010 caused significant ecological and economic damage to the Gulf Coast region. In an effort to restore and protect the region after the oil spill, the Gulf Coast Ecosystem Restoration Council (Council) is required to establish a Comprehensive Plan. The Comprehensive Plan will include a priority list of projects and programs that will provide the greatest contribution to restoring and protecting natural resources of the Gulf Coast region. In addition to restoring the ecological state of the gulf, the Comprehensive Plan also has a goal of reviving and supporting a sustainable Gulf economy. The Comprehensive Plan will serve as a guide for the expenditure of funds under the Council-selected Restoration Component and the Oil Spill Restoration Impact Allocation (Oil Spill Impact) component.

In support of the Treasury, Office of Inspector General (TOIG), the Contractor shall provide program management support services to: (1) perform assessments of the Gulf Coast Ecosystem Restoration Council's (Council) evaluation criteria and selection process for programs and projects to be funded by the Gulf Coast Restoration Trust Fund (Trust Fund) under the Council-selected Restoration and Oil Spill Impact components; (2) review of the Council's related published documents; and (3) perform the assessments to ensure, among other things, the Council is utilizing the best available science to guide a comprehensive plan for restoration of the Gulf Coast ecosystem and economy.

### **2. Background**

The *Deepwater Horizon* oil spill occurred in the Gulf of Mexico on April 20, 2012, and resulted in a release of oil that lasted 87 days. The total discharge is estimated at 4.9 million barrels of oil, or 210 million gallons. In response to the spill, the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States (RESTORE) Act was signed into law on July 6, 2012. The RESOTRE Act established the Trust Fund within the Department of the Treasury for the purpose of providing funds for the environmental and economic restoration of the Gulf Coast region. Deposits into the Trust Fund will be comprised of 80 percent of all civil and administrative penalties paid by responsible parties after July 6, 2012, under the Federal Water Pollution Control Act. The Act divides the Trust Fund into five components: the Direct component (35%), the Council-selected Restoration component (30%), the Oil Spill Impact component (30%), the Gulf Coast Ecosystem Restoration Science Program component (2.5%), and the Centers of Excellence component (2.5%). The RESTORE Act authorizes the Department of the Treasury's Office of the Inspector General (TOIG) to conduct, supervise, and coordinate audits and investigations of the projects, programs, and activities funded under the Act.

The RESTORE Act established the Council as an independent federal entity. The Council is made up of representatives from the five Gulf Coast States (Florida, Alabama, Mississippi, Louisiana, and Texas) as well as six federal agencies (Department of Commerce, Department of Agriculture, Department of the Army, Environmental Protection Agency, Department of Homeland Security, and Department of the Interior). At the recommendation of the Gulf Coast States, the President appointed the Secretary of Commerce as the Council's Chair. The Council is responsible for administering funds under the Council-selected Restoration and Oil Spill Impact components.

The Act requires the Council to establish an initial Comprehensive Plan by July 6, 2013, to restore and protect the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands of the Gulf Coast region. The Comprehensive Plan will be guiding disbursements from the Council-selected Restoration and Oil Spill Impact components, which make up 60% of the Trust Fund. The Council is responsible for expending funds from the Comprehensive Plan component in accordance with projects and programs adopted in the Comprehensive Plan.

Under the Oil Spill Impact Component, the Gulf Coast States are required to develop plans for the expenditure of funds where all projects, programs, and activities are eligible pursuant to the RESTORE Act, contribute to the overall economic and ecological recovery of the Gulf Coast, and take into consideration and are consistent with goals and objectives of the Comprehensive Plan. The Council is responsible for approving each of the state plans and ensuring they align with the goals of the Comprehensive Plan. Funds under the Oil Spill Impact Component will be distributed among the Gulf Coast States according to a formula established by the Council by regulation that is based on criteria outlined in the RESTORE Act. The amounts disbursed to each state for each fiscal year shall be at least 5% of the total amount available under the Oil Spill Impact component.

On May 23, 2013, the Council published the *Draft Initial Comprehensive Plan: Restoring the Gulf Coast's Ecosystem and Economy* and accompanying *Draft Programmatic Environmental Assessment* in the Federal Register for public comment. In the *Draft Initial Comprehensive Plan*, the Council's near-term next steps include refining the objectives and evaluation criteria, selecting and publishing a Funded Priorities List (*i.e.*, a project and program priority list that the Council intends to fund over the next 3 years), and adopting a Ten-Year Funding Strategy (*i.e.*, a description of the manner in which the Council will allocate amounts from the Trust Fund that are projected to be available to the Council for the next 10 years).

### **3. Scope**

#### **3.1 Technical Review of the Comprehensive Plan**

The Contractor will perform assessments of the documents and processes released by the Council to date that will guide it in its evaluation and selection of projects and programs under the Council-selected Restoration and Oil Spill Impact components. The scope of work will also include a review of future documents to be released by the Council during the period of performance under this contract. Among other things, the Contractor will complete an evaluation of whether the Council's evaluation criteria and selection process is founded on the best available science and leverages known best practices. In addition, the Contractor will assess the validity of assumptions used and conclusions reached regarding projects and programs that best address restoring the economic impact of the Gulf Coast region.

#### **3.2 Technical Review of State Expenditure Plans**

The Contractor will perform assessments of the State Expenditure Plans submitted to the Council. The scope of work will include a review of proposed programs, projects, and activities included in each Gulf Coast State's expenditure plan to determine whether they are eligible based on the criteria in the RESTORE Act and whether they are consistent with the goals and objectives of the Comprehensive Plan. Among other things, the Contractor will complete an evaluation of the

validity of assumptions used and conclusions reached by the Council regarding the programs and projects selected to improve the overall economic and ecological recovery of the Gulf Coast region.

#### **4. Applicable Documents**

Documents that must be used to accomplish the tasks of this contract include, but are not limited to, the following:

- Moving Ahead for Progress in the 21<sup>st</sup> Century (MAP-21) Act – Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (Public Law 112-141)
- *The Path Forward to Restore the Gulf Coast: A Proposed Comprehensive Plan*, issued by the Council on January 29, 2013
- *Gulf of Mexico Regional Ecosystem Restoration Strategy*, issued by the Gulf Coast Ecosystem Restoration Task Force
- *America's Gulf Coast – A Long Term Recovery Plan after the Deepwater Horizon Oil Spill*, issued by Secretary of the Navy Ray Mabus
- *Draft Initial Comprehensive Plan: Restoring the Gulf Coast's Ecosystem and Economy*, issued by the Council on May 23, 2013
- *Appendix A – Background Information – Preliminary List of Authorized but Not Commenced Projects and Programs*, issued by the Council on May 23, 2013
- *Draft Programmatic Environmental Assessment*, issued by the Council on May 23, 2013
- Comments on the *Draft Initial Comprehensive Plan: Restoring the Gulf Coast's Ecosystem and Economy*, *Appendix A*, and the *Draft Programmatic Environmental Assessment* received by the Council during the formal public comment period
- The Council's documents supporting the development of the initial Comprehensive Plan
- Future iterations of the *Comprehensive Plan* to be released by the Council during the performance period
- Gulf Coast State Expenditure Plans

The government will provide these documents.

#### **5. Technical Requirements**

The Contractor should have technical experience in the areas of program management, ecosystem/environmental restoration, and economic impact analysis. The Contractor should have knowledge of environmental programs and policies including the RESTORE Act, the National Environmental Policy Act, and the Natural Resource Damage Assessment Process.

##### **5.1 Review of the Council's Draft Programmatic Environmental Assessment**

The Draft Programmatic Environmental Assessment (PEA) developed by the Council provides a programmatic analysis of the environmental impacts of the Council's proposed actions under the Comprehensive Plan. The PEA will serve as an overarching framework for individual programs and projects proposed under the Council's Comprehensive Plan. The Contractor shall perform a technical review the Council's PEA. The Contractor shall complete the review within 20 business

days after contract award. No later than 10 business days after the completion of its review, the Contractor shall submit a report on its assessment of the PEA to TOIG.

The Contractor's report will provide a technical analysis on the PEA which provides:

- A summary of the methodology used to perform the review
- The technical analysis of the information contained in the PEA
- Recommendations on how the Council could enhance the PEA

## 5.2 Technical Review of the Council's Evaluation Criteria and Selection Process

This work will commence after the Council refines the evaluation criteria and selection process for programs and projects to fund under the Comprehensive Plan component and publishes the criteria in the federal register. In no event should the Contractor commence work under this task until it receives authorization from the TOIG contracting officer. The Contractor shall perform a technical assessment of the Council's evaluation criteria and selection process. The Contractor shall determine whether the evaluation criteria and program and project selection process is based on sound science and best practices as used in other comparable restoration projects. The Contractor will determine whether the Council's process of program and project selection is documented and supported.

The Contractor should interview appropriate Council personnel and review supporting documentation in order to determine the validity and sufficiency of the Council's evaluation criteria and selection process. The Contractor should consider best practices in environmental and ecosystem restoration community when assessing the technical merit of the Council's process.

Within 30 days of starting the task, the Contractor will provide the TOIG with a report on its technical assessment of the Council's evaluation criteria and selection process for programs and projects to fund under the Council- selected Restoration Component. The Contractor's report will include the following:

- A summary of the methodology used to assess the evaluation criteria and selection process
- An analysis of the evaluation criteria and selection process
- Recommendations to improve the evaluation criteria and selection process for future iterations of the Comprehensive Plan
- The contractor will also provide TOIG with a project plan for the completion of Task 5.3, Review of the Council's Selected Programs and Projects. The project plan will outline Contractor's methodology and estimated level of effort for each project review.

## 5.3 Review of Council's Selected Programs and Projects

After approval of the project plan presented in 5.2 and after the Council publishes its Funded Priorities List in the federal register, TOIG will review the list and select a sample of 15 programs and projects from that list for review. Once TOIG has selected a sample, TOIG will provide the Contractor with the sample. The Contractor will not commence work under this task until it receives authorization from the TOIG contracting officer. In the event that TOIG includes more than 15 programs and projects in its sample, TOIG will exercise an Option to include added funding for the program reviews outside of the original sample of 15.

The Contractor will review the selected programs and projects to ensure that the Council has adhered to its published evaluation criteria and selection process. The Contractor shall ensure that the Council's selection of each program or project is documented and supported. At the end of its review, the Contractor shall provide TOIG with a report to include:

- A summary of the methodology used to review each program or project
- A determination of whether the Council utilized its published evaluation criteria and selection process for each program or project in the sample
- An assessment of the Council's documentation and support for each program or project's selection
- An identification of any programs or projects that were not properly evaluated or selected by the Council
- Recommendations for future iterations of the Council's program and project selection process

#### 5.4 Review of State Expenditure Plans

At the direction of TOIG, the Contractor will develop a project plan for the completion of task 5.4, the Review of State Expenditure Plans. The Contractor's project plan will outline the Contractor's methodology and estimated level of effort for each project review. Upon TOIG approval of the Contractor's project plan, the Contractor will review each Gulf Coast State's Expenditure Plan submitted to the Council. The Contractor will not commence work under this task until it receives authorization from the TOIG contracting officer.

After approval of the project plan and after the Council makes its selection of programs or projects to fund from the State Expenditure Plans, TOIG will review the list and select a sample of the selected state programs or projects for the Contractor to review. The number of projects TOIG selects from each state will vary depending on the total number of programs or projects the Council selects from each state. The total number of projects TOIG will select from all states will not exceed 50. In the event that TOIG includes more than 50 programs or projects in its sample, TOIG will exercise an Option to include added funding for the program reviews outside of the original sample of 50.

The Contractor will review the selected programs and projects to ensure that the Council has adhered to its published evaluation criteria and selection process. The Contractor shall ensure that the Council's selection of each program or project is documented and supported. At the end of its review, the Contractor shall provide TOIG with a report to include: A summary of the methodology used to review the State Expenditure Plans

- A determination of whether the Council utilized its published evaluation criteria and selection process for each program or project in the sample
- An identification of any programs or projects that were not properly evaluated or selected by the Council
- An assessment of the Council's documentation and support for each program or project's selection
- Recommendations for future iterations of the Council's program and project selection process

## 6. Deliverables

PWS Section	Description	Start Date	End Date
5.1	Report on the Draft Programmatic Environmental Assessment	Within 10 business days after the contract award	No later than 30 days after the start of Task 5.1
5.2	Report on the Council's Evaluation Criteria and Program/Project Selection Process	After the Council publishes refined evaluation criteria and program/project selection process in the federal register and at the authorization of TOIG	No later than 30 days after initiating the task
5.2	Contractor's Project Plan for its Review of the Council's Selected Programs/Projects	After the Council publishes refined evaluation criteria and program/project selection process in the federal register and at the authorization of TOIG	No later than 30 days after initiating the task
5.3	Report on the Council's Selection of Programs/Projects	After (1) approval of the project plan presented in 5.2, (2) after the Council publishes its Funded Priorities List and in the federal register, and (3) at the authorization of TOIG.	No later than 30 days after initiating the task
5.4	Contractor's Project Plan for its Review of the Council's Oil Spill Impact Selected Programs/Projects	After the authorization of TOIG and the Council selects programs and projects to fund under the Oil Spill Impact Component	No later than 10 days after initiating the task
5.4	Report on Gulf Coast State Expenditure Plans	After (1) approval of the project plan presented for 5.4, (2) the Council selects programs and projects to fund under the Oil Spill Impact component, and (3) at the authorization of TOIG.	No later than 60 days after initiating the task

## 7. Quality Assurance Surveillance Plan

TOIG will perform 100% inspection of all deliverables submitted by the Contractor. The acceptable quality level is 0% deviation.

## 8. Security

- 8.1 Contractor personnel assigned to perform work under this contract will require access to Government IT Systems and/or Sensitive But Unclassified (SBU)/For Official Use Only (FOUO) information. All federal employees, contractors, subcontractors, experts, consultants, and paid/unpaid interns are subject to a background investigation to determine their suitability and fitness for work and the investigation must be favorably adjudicated. The completed and favorably adjudicated National Agency Check with Inquiries (NACI) or higher federal background investigation is the responsibility of the contractor.
- 8.2 Standards are established for investigations to determine eligibility for logical and physical access, suitability for Government employment, eligibility for access to classified information, eligibility to hold a sensitive position, and fitness to perform work for or on behalf of the Government as a contractor employee. These standards are consistent with Executive

Order 13467, Reforming Processes Related to Suitability for Government Employment, Fitness for Contractor Employees, and Eligibility for Access to Classified National Security Information, June 30, 2008.

- 8.3 Conditional access to certain United States Government documents or material containing sensitive information is contingent upon execution of a non-disclosure agreement for the sole purpose of performing a technical review of the Gulf Coast Ecosystem Restoration Council's Comprehensive Plan and related documents, as well as a technical review of Gulf Coast State expenditure Plans submitted to the Council under the Spill Impact component of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012. The Conditional Access to Sensitive Information Non-disclosure Agreement will be provided by the Contracting Officer Representative (COR) to the Contractor for personnel to complete and returned to the OIG Security Office.
- 8.4 On company letterhead, the Contractor will provide the OIG Security Office the name, date and place of birth, citizenship, and social security number in order to verify that all personnel working under this contract possess the minimum federal background investigation (NACI). Personnel shall either be U.S. citizens or have lawful permanent resident alien status (green card holders). Waivers for noncitizens may be requested in writing by the COR through the OIG Security Office.
- 8.5 Removal of Contractor Personnel. Contractor personnel shall be removed and barred from performance on this contract if the Government notifies the contractor that the employment or the continued employment of the individual is prejudicial to the interests or endangers the security of the United States of America to include security deviations/incidents and credible derogatory information obtained on contractor personnel during the course of the contract period.

## **9. Key Personnel Element**

The Contractor should have technical experience in the areas of program management, ecosystem/environmental restoration, and economic impact analysis. The Contractor should have knowledge of environmental programs and policies including the RESTORE Act, the National Environmental Policy Act, and the Natural Resource Damage Assessment Process. The Contractor shall provide documentation substantiating the experience required.

### **9.1 Substitution of Key Contractor Personnel**

During the first 180 calendar days of performance, the contractor shall make no substitutions of key personnel unless the substitution is necessitated by illness, death, or termination of employment. The contractor shall notify the COR within 5 calendar days after the occurrence of any of these events. After the initial 180 calendar days the Contractor shall submit a written request to the COR at least 30 calendar days prior to a substitution of personnel assigned to this contract. The Contractor shall include the circumstances necessitating the proposed replacement of the key personnel and shall provide the name, resume of the proposed replacement. It can be assumed that the COR would approve any personnel replacement that possesses the

qualifications under the contract. Any disputes regarding the substitution of key personnel will be decided by the Contracting Officer.

#### **10. Estimated Labor Effort**

The Government Estimates approximately **3,791** labor hours/year to support this effort.

#### **11. Period of Performance**

Base year is from date of contract award through twelve (12) months; with a two (2), one year options to extend.

#### **12. Conflict of Interest**

The Contractor performing work under this contract will be expected to comply with the independence and professional competence standards as outlined in the United States Government Accountability Office's *Government Auditing Standards*, Section 6.42-6.44 (December 2011). The Contractor performing work under this contract shall identify any potential conflicts of interest and independence concerns to TOIG. The Contractor shall disclose in its proposal the identify all contracts, ongoing and completed, relating to the Gulf Coast Ecosystem Restoration Council, *Deepwater Horizon Oil Spill*, RESTORE Act, and Gulf Coast State restoration projects. The Contractor shall provide to the Contracting Officer with additional information concerning the work performed under specific contracts to the extent the Contracting Officer needs such additional information to make a determination of the conflict of interest and independence status of the Contractor.

#### **13. Non-Personal Services**

This contract is a non-personal services contract. No personal services will be performed under this contract. The contractor shall not perform any inherently governmental actions under this contract. The services rendered by the contractor are rendered in the capacity of an independent contractor. The Government retains no direct control over the services provided by the contractor. No contractor employee shall hold himself/herself out to be a Government employee, agent or representative. All contractor personnel attending meetings, answering government telephones, and working in other situations where their contractor status is not obvious to third parties are required to identify themselves as such to avoid creating an impression in the minds of members of the public that they are Government officials, unless, in the judgment of OIG, no harm can come from failing to identify themselves. Contractors must also ensure that all documents or reports produced are suitably marked as contractor products or that contractor participation is appropriately disclosed.

#### **14. Place of Performance**

The services required by this procurement shall be performed primarily at the contractor's office. Some meetings will be required at OIG's office, located at 740 15th St. NW, Washington, DC 20220.

#### **15. Travel**

Travel to the Gulf Coast region may be required to meet with Council member and staff. However, when possible, the Contractor will utilize teleconferencing and videoconferencing capabilities. Estimated Travel Reimbursable Expense, Not More Than: \$6,000.

## **16.0 ADDENDUM TO 52.212-4, CONTRACT TERMS AND CONDITIONS – COMMERCIAL ITEMS (JUL 2013)**

### **16.1 FAR 52.217-8 OPTION TO EXTEND SERVICES (NOV 1999)**

The Government may require continued performance of any services within the limits and at the rates specified in the contract. These rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor. The option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed 6 months. The Contracting Officer may exercise the option by written notice to the Contractor within 30 days before the contract expiration date.

### **16.2 FAR 52.217-9 OPTION TO EXTEND THE TERM OF THE CONTRACT (MAR 2000)**

(a) The Government may extend the term of this contract by written notice to the Contractor within the final 30 days of each contract period; provided, that the Government gives the Contractor a preliminary written notice of its intent to extend at least 30 days before the contract expires. The preliminary notice does not commit the Government to an extension.

(b) If the Government exercises this option, the extended contract shall be considered to include this option clause.

(c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed 36 months.

### **16.3 DTAR 1052.232-7003 ELECTRONIC SUBMISSION OF PAYMENT REQUESTS (AUG 2012)**

(a) Definitions. As used in this clause—

(1) "Payment request" means a bill, voucher, invoice, or request for contract financing payment with associated supporting documentation. The payment request must comply with the requirements identified in FAR 32.905(b), "Payment documentation and process" and the applicable Payment clause included in this contract.

(b) Except as provided in paragraph (c) of this clause, the Contractor shall submit payment requests electronically using the Invoice Processing Platform (IPP). Information regarding IPP is available on the Internet at [www.ipp.gov](http://www.ipp.gov). Assistance with enrollment can be obtained by contacting the IPP Production Helpdesk via email [ippgroup@bos.frb.org](mailto:ippgroup@bos.frb.org) or phone (866) 973-3131.

(c) The Contractor may submit payment requests using other than IPP only when the Contracting Officer authorizes alternate procedures in writing.

(d) If alternate payment procedures are authorized, the Contractor shall include a copy of the Contracting Officer's written authorization with each payment request.

## TRAVEL COST

Travel costs will be billed and paid separately consistent with the Federal Travel Regulations. However, all travel invoice documentation will first be submitted to the COR for pre-approval. After approval by the COR, the Contractor should submit its invoice/documentation within 45 days of audit completion.

Travel will be reimbursed to the Contractor "as needed," to perform the necessary tasks associated with completion of the Deliverables of the Contract within an amount not to exceed amounts identified for the term of the Contract. The Contractor shall make every effort to obtain travel provisions in a manner that would be consistent with that of a Federal Employee adhering to the Federal Travel Regulations (FTR) with specific reference to the most economical travel, use of coach air versus first class accommodations, etc. To the extent possible, the Contractor shall request the Government Rate for hotel expenses when making travel arrangements. However, at no time is the Contractor authorized to represent him/herself as a Federal Government employee. However, the Contractor may represent him/herself as a Contractor for the Federal Government when making such requests for the Government Rate for hotel rooms and/or airline fares and similar expenses.

Reimbursement of expenses to the Contractor will follow the FTR per diem schedule for reimbursement for meals and expenses. The Contractor may invoice for miscellaneous expenses, taxi fares and any other expenses that are consistent with the FTR in effect at the time of travel. Travel vouchers submitted by the Contractor must be documented with receipts in a manner that is consistent with the FTR.

The Contractor will submit invoices for travel expenses using the format of the Federal Travel Voucher. If multiple travel vouchers are submitted for reimbursement at one time, the Contractor will appropriately summarize the individual vouchers with a summary chart listing the principal categories from the Federal Travel Voucher across the top of the summary chart and the names of the individual traveler down the stub column of the summary chart. The summary chart will be added across and down.

While the Contractor's expenses for hotel and airfare will not be restricted to amounts allowed for Government employees traveling to similar destinations, the Government does reserve the right to deny extravagant expenses. Therefore, Contractors should contact the COR prior to incurring any unusual travel expenses.

The Contracting Officer will notify the Contractor of amounts disapproved for travel vouchers, if any, at the time the travel voucher is reviewed for payment by the COR.

## PAYMENT AND INVOICE QUESTIONS

For payment and invoice questions, go to [www.ipp.gov](http://www.ipp.gov) or contact the Accounting Services Division at (304) 480-8000 option 7 or via email at [AccountsPayable@bpd.treas.gov](mailto:AccountsPayable@bpd.treas.gov).

## OVERPAYMENTS

In accordance with 52.212-4 section (i) 5 Overpayments: Accounts Receivable Conversion of Check Payments to EFT: If the Contractor sends the Government a check to remedy duplicate contract financing or an overpayment by the government, it will be converted into an electronic funds transfer

(EFT). This means the Government will copy the check and use the account information on it to electronically debit the Contractor's account for the amount of the check. The debit from the Contractor's account will usually occur within 24 hours and will be shown on the regular account statement.

The Contractor will not receive the original check back. The Government shall destroy the Contractor's original check, but will keep a copy of it. If the EFT cannot be processed for technical reasons, the Contractor authorizes the Government to process the copy in place of the original check.

#### **MARKING OF SHIPMENTS:**

The Contractor shall ensure the order number (Block 4) is clearly visible on all shipping/service documents, containers, and invoices.

#### **16.4 FAR 52.204-9 PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL (JAN 2011)**

(a) The Contractor shall comply with agency personal identity verification procedures identified in the contract that implement Homeland Security Presidential Directive-12 (HSPD-12), Office of Management and Budget (OMB) guidance M-05-24 and Federal Information Processing Standards Publication (FIPS PUB) Number 201.

(b) The Contractor shall account for all forms of Government-provided identification issued to the Contractor employees in connection with performance under this contract. The Contractor shall return such identification to the issuing agency at the earliest of any of the following, unless otherwise determined by the Government:

- (1) When no longer needed for contract performance.
- (2) Upon completion of the Contractor employee's employment.
- (3) Upon contract completion or termination.

(c) The Contracting Officer may delay final payment under a contract if the Contractor fails to comply with these requirements.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts when the subcontractor's employees are required to have routine physical access to a Federally-controlled facility and/or routine access to a Federally-controlled information system. It shall be the responsibility of the prime Contractor to return such identification to the issuing agency in accordance with the terms set forth in paragraph (b) of this section, unless otherwise approved in writing by the Contracting Officer.

#### **16.5 DTAR 1052.210-70 CONTRACTOR PUBLICITY (AUG 2011)**

The Contractor, or any entity or representative acting on behalf of the Contractor, shall not refer to the equipment or services furnished pursuant to the provisions of this contract in any news release or commercial advertising, or in connection with any news release or commercial advertising, without first obtaining explicit written consent to do so from the Contracting Officer. Should any reference to such equipment or services appear in any news release or commercial advertising issued by or on behalf of the Contractor without the required consent, the Government shall consider institution of all

remedies available under applicable law, including 31 U.S.C. 333, and this contract. Further, any violation of this provision may be considered during the evaluation of past performance in future competitively negotiated acquisitions.

#### **16.6 DTAR 1052.201-70 CONTRACTING OFFICER'S REPRESENTATIVE (COR) APPOINTMENT AND AUTHORITY (AUG 2011)**

(a) Gov't COR/Invoice Approver:

**Ms. Deborah L. Harker**

**Phone:** (b) (6)

**E-Mail:** (b) (6)

(b) Performance of work under this contract is subject to the technical direction of the COR identified above, or a representative designated in writing. The term "technical direction" includes, without limitation, direction to the contractor that directs or redirects the labor effort, shifts the work between work areas or locations, and/or fills in details and otherwise serves to ensure that tasks outlined in the work statement are accomplished satisfactorily.

(c) Technical direction must be within the scope of the contract specification(s)/work statement. The COR does not have authority to issue technical direction that:

- (1) Constitute a change of assignment or additional work outside the contract specification(s)/work statement;
- (2) Constitutes a change as defined in the clause entitled "Changes";
- (3) In any manner causes an increase or decrease in the contract price, or the time required for contract performance;
- (4) Changes any of the terms, conditions, or specification(s)/work statement of the contract;
- (5) Interferes with the contractor's right to perform under the terms and conditions of the contract; or
- (6) Directs, supervises or otherwise controls the actions of the contractor's employees.

(d) Technical direction may be oral or in writing. The COR must confirm oral direction in writing within five workdays, with a copy to the Contracting Officer.

(e) The Contractor shall proceed promptly with performance resulting from the technical direction issued by the COR. If, in the opinion of the contractor, any direction of the COR or the designated representative falls within the limitations of (c) above, the contractor shall immediately notify the Contracting Officer no later than the beginning of the next Government work day.

(f) Failure of the Contractor and the Contracting Officer to agree that technical direction is within the scope of the contract shall be subject to the terms of the clause entitled "Disputes."

#### **16.7 PERFORMANCE EVALUATION**

This contract is subject to a performance evaluation via The Contractor Performance Reporting System (CPARS) at [www.cpars.csd.disa.mil](http://www.cpars.csd.disa.mil). Following the end of each contract period and at contract completion, a completed Government evaluation shall be forwarded to the Contractor. The Contractor may submit written comments, if any, within the time period specified in the evaluation transmittal. The Contractor's comments shall be considered in the issuance of the final evaluation document. Any disagreement between the parties regarding the evaluation shall be forwarded to the

Bureau Chief Procurement Officer (BCPO). The final evaluation of the Contractor's performance is the decision of the BCPO. A copy of the final performance evaluation report will be sent to the Contractor and to the Government's past performance database at [www.ppirs.gov](http://www.ppirs.gov).

## **16.8 ADMINISTRATION**

After award, any questions or issues related to this procurement will be handled by the TOIG, Office of Management, Contracting Officer, Ms. RoDonda Thompson; email: (b) (6). When sending an e-mail to this address, please include the award number in the subject line of the e-mail.



# **End of Fieldwork Summary Gulf Coast Ecosystem Restoration Council Programmatic Environmental Assessment (PEA)**

Report to: U.S. Department of the Treasury  
Office of Inspector General  
740 15th Street, N.W.  
Washington, D.C. 20220

June 12, 2014

*This document is confidential and is intended solely for the use and information of the recipient to whom it is addressed.*

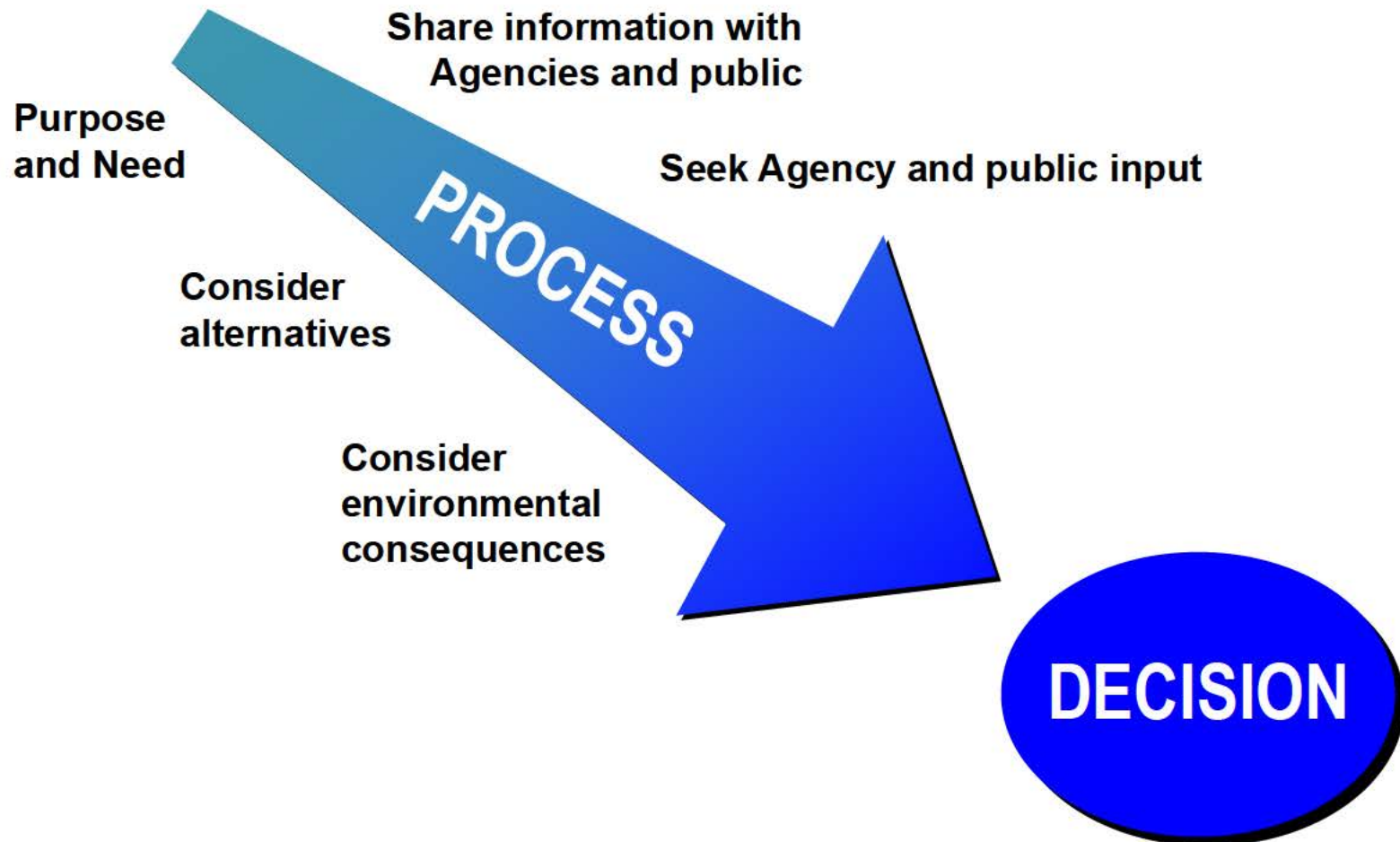
# The NEPA “Umbrella”

- ▶ The National Environmental Policy Act of 1969 (NEPA) provides a process by which Federal laws and regulations that protect the natural and human environment are considered.
  - Requires the Federal Government to examine proposed impacts of its actions before project implementation.
  - Does not mandate preservation, only informed decision-making.
- ▶ Council on Environmental Quality Regulations (40 C.F.R. 1500)
  - Detailed instructions on how to engage in the NEPA review process
  - Establishes three levels of analysis:
    - Categorical Exclusions (CATEX)
    - Environmental Assessments (EA)
    - Environmental Impact Statements (EIS)

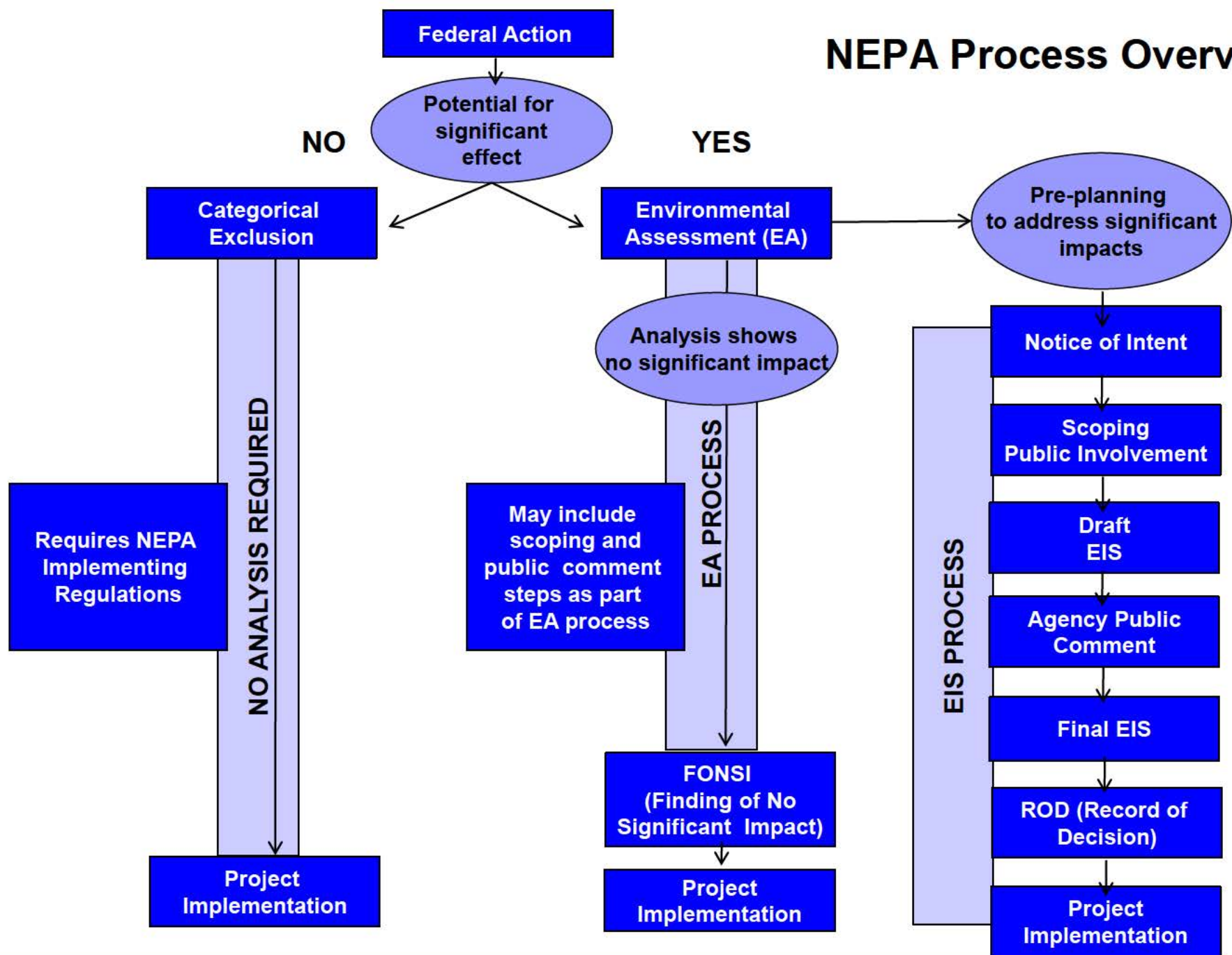


\*Image from: [http://earthairwaves.files.wordpress.com/2012/08/nepa\\_umbrella.jpg](http://earthairwaves.files.wordpress.com/2012/08/nepa_umbrella.jpg)

# NEPA is a Process that is Part of an Overall Decision-Making Process



# NEPA Process Overview



# Overview

## ► Objective

- Under the U.S. Treasury, Office of Inspector (TOIG) delivery order TOIG-OIG-13-F-0028, Booz Allen Hamilton, Inc. (Booz Allen) was tasked to assess whether the Gulf Coast Ecosystem Restoration Council's (Council) Programmatic Environmental Assessment (PEA) for the Initial Comprehensive Plan (Plan) complies with applicable laws, regulations, and procedures, including:
  - The Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (RESTORE);
  - The National Environmental Policy Act of 1969 (NEPA);
  - Other Federal laws, regulations, Executive Orders (EOs), and guidance; and
  - Best practices used in comparable restoration programs.

## ► Scope/Methodology

- Booz Allen reviewed the Council's PEA for compliance with:
  - RESTORE (PL 112-141, §1603)
  - NEPA (PL 91-190)
  - Council on Environmental Quality (CEQ) NEPA Regulations (40 CFR 1500-1508)
  - Records Management Act (44 U.S.C. § 31) (PL 113-65)
  - Administrative Procedures Act (APA) (5 U.S.C. § 500) (PL 79-404)
  - Freedom of Information Act (FOIA) (5 U.S.C. § 552) (PL 89-487)
- With TOIG staff, Booz Allen interviewed Council personnel involved in the development of the Plan and PEA.
- Booz Allen reviewed documents dated between July 2012 and March 2014, including:
  - Information on the Council's website
  - Documents and files delivered by the Council to TOIG in support of this evaluation

# Significant Findings

There are three substantial findings of the PEA analysis.

## ► **Finding 1: Purpose of the PEA**

Without amendment, the PEA is not adequate to meet the Council's future environmental compliance requirements, and the Proposed Action (creation of the Initial Comprehensive Plan) is inconsistently defined.

## ► **Finding 2: Scoping, Coordination, and Consultation**

### **2A. Geographic Scope**

The PEA does not fully define the geographic scope (i.e., the spatial extent) of potential restoration programs and projects funded by the Trust Fund and implemented by the Council.

### **2B. Public Scoping and Comment**

The Council may have missed opportunities to engage with stakeholders through public scoping for the Proposed Action and solicitation of comments for the Draft PEA.

### **2C. Agency Coordination and Consultation**

The Council did not fully coordinate or consult with Cooperating Agencies and other regulators.

## ► **Finding 3: Administrative Record**

The Council's AR is incomplete, there is no documented file maintenance process, and it is largely inaccessible to those outside of the Council.

# Finding 1: Purpose of the PEA

## ► Condition

- The PEA assembles general information on the Affected Environment (Environmental Setting) of the Gulf Coast.
- The Proposed Action is inconsistently defined, and therefore the Environmental Consequences (Environmental Effects) of the Proposed Action and the alternative are not well evaluated.
- The PEA does not support environmental compliance assessments of future Council actions.

## ► Cause

- Because the Initial Comprehensive Plan did not include projects and programs as initially planned, the purpose and function of the PEA was altered midway through the process.
- The scope of the Plan and the Plan's relationships and boundaries with other Gulf Coast restoration programs (including NRDA) was unclear.

## ► Criteria

- CEQ Regulations for Implementing NEPA, 40 CFR 1502
- *Modernizing NEPA Implementation* (NEPA Task Force, 2003)

## ► Effect

- The PEA does not increase the efficiency of the Council's environmental compliance activities or conserve resources for restoration projects.
  - NEPA assessments of future site-specific actions under the Plan cannot be "tiered" from the PEA.
- The PEA document does not support coordination with agencies or help de-conflict work of other restoration programs.
- The purpose of the PEA is unclear.

## ► Recommendation

- Develop a Revised PEA (or a Supplemental PEA), which includes a tiering process for NEPA compliance evaluations of future site-specific actions by the Council and its Cooperating Agencies.
- Clarify the Proposed Action and reasonable range of alternatives.
- Define boundaries of responsibility and cooperation with other Gulf Coast restoration agencies and programs.

# Finding 2A: Geographic Scope

## ► Condition

- The Council did not adequately describe the spatial extent of its potential programs and projects that might be funded through the Gulf Coast Restoration Trust Fund (Trust Fund) (i.e., it is unclear where the Proposed Action would occur).

## ► Cause

- The geographic scope of the RESTORE Act is subject to interpretation.
- The Trust Fund rules have not been finalized.
- The Council did not define the geographic extent of its program.

## ► Criteria

- The RESTORE Act mandates that projects can only be funded if they are located in the "Gulf Coast region," which is defined as within the coastal zone of the five Gulf Coast States or is within 25 miles of any adjacent land, water, and watersheds located in the coastal zones.
- CEQ Regulation Section 1501.7, *Scoping* and Section 1502.15 *Affected Environment*.

## ► Effect

- Stakeholders cannot effectively understand, evaluate, and comment on programs and projects that could be implemented under the Plan without knowing where the Proposed Action would occur.
  - Stakeholder membership is usually self-defined based on the individuals' understanding of project location.
- The efficiency of the Council will be reduced by having to address concerns outside its geographic scope.

## ► Recommendation

- Define the geographic scope of potential restoration programs and projects funded by the Council.

# Finding 2B: Public Scoping

## ► Condition

- Though extensive, the public scoping process was poorly documented, and did not support Council decision-making.
  - Public scoping involves asking stakeholders about their needs and desires with respect to the Proposed Action.
- Presentation materials for public engagement sessions did not mention the PEA.

## ► Cause

- Public confusion about the purpose of the PEA compared to the Plan, and the lack of clarity regarding the Proposed Action, were not mitigated by the Council, and caused insufficiencies in the public scoping effort.
- Council notices, publications, and presentations indicate a strong focus on the Draft Plan, with little or no focus on the PEA.

## ► Criteria

- Execution of thorough public scoping was advisable because implementation of the Plan is sensitive among many Gulf Coast stakeholders, and has garnered considerable public interest in appropriate use of the RESTORE Act Trust Fund.
- As a component of the NEPA process for developing an EIS, 40 CFR §1501.7 requires scoping and engagement with, "... any affected Indian Tribe, the proponent of the action, and other interested persons."

## ► Effect

- The Final PEA does not fully take into account stakeholder input and was not revised to incorporate the few received comments.
- Out of 41,000 comments received by the Council, only 12 comments were identified as relevant to the Draft PEA.
- The Council could lose public support or face challenges from stakeholders who feel their input was not considered.

## ► Recommendation

- Implement and properly document scoping plans and procedures for future NEPA evaluations to ensure stakeholders are engaged and educated on the action.

# Finding 2C: Agency Coordination and Consultation

## ► Condition

- The Council informally invited member Department-level agencies to become Cooperating Agencies
- Specific NEPA roles and responsibilities were not defined for the development of the PEA or the review of future NEPA documents.
- The Council did not conduct required Section 7 ESA or Section 106 NHPA consultations with USFWS, NMFS, SHPOs, or ACHP.\*
- The Council and its Cooperating Agencies did not follow best practices for Programmatic Analyses in the PEA.

## ► Cause

- The Council defined all agency communication as internal, and determined documentation was unnecessary.
- The Council assumed that coordination with sub-agencies (e.g., USFWS) would be conducted by the Department-level office of the Cooperating Agencies (e.g., DOI).

## ► Criteria

- With respect to programmatic NEPA assessments, the CEQ NEPA Task Force states, *"Collaboration among Federal, State, and local agencies and Tribes is necessary as jurisdictional boundary issues are more common in programmatic than in site-specific analyses."*
- Per CEQ Regulation Section 1501.7, *Scoping*, affected Federal, State, and local agencies must be involved in the scoping process for the preparation of an EIS.

## ► Effect

- More time and resources will be required to conduct site-specific NEPA evaluations without support of Cooperating Agencies.
- Stakeholders and lawmakers could be confused about the roles and responsibilities of Cooperating Agencies.
- Site-specific reviews will not benefit from programmatic agreements and cross-agency understanding.

## ► Recommendation

- Formalize the Council's organizational structure and processes for engaging Cooperating Agencies.
- Define roles and responsibilities for Cooperating Agencies in responding to stakeholder concerns and project review requirements.
- For Cooperating Agencies' reference, develop a streamlined NEPA review process for projects tiered off the Council's PEA.

\*USFWS: U.S. Fish and Wildlife Service, NMFS: National Marine Fisheries Service, SHPO: State Historic Preservation Offices, ACHP: Advisory Council on Historic Preservation

# Finding 3: Administrative Record (AR) Management

## ► Condition

- The PEA AR is incomplete, is not maintained in a rigorous manner, and is largely inaccessible to the public.
- Some public comments were miscategorized as applying only to the Draft Plan and not to the Draft PEA.
- The AR does not include any record of deliberations or consultations with Cooperating Agencies.

## ► Cause

- The Council had limited resources and time, considered its deliberations with Cooperating Agencies as internal, and did not require recordkeeping.

## ► Criteria

- RESTORE states, "Appropriate actions of the Council, including significant actions and associated deliberations, shall be made available to the public via electronic means prior to any vote."
- 44 U.S.C. 31, requires the head of each Federal agency to make and preserve records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency.
- The AR of an informed decision should have: (1) a clear tracking of legally required elements, (2) an appropriate consideration of public inputs, and (3) a consistent record of a hard look and a good faith compliance effort.\*\*

## ► Effect

- Council decisions are vulnerable to challenge without a comprehensive and accessible AR.
- Addressing FOIA requests and APA challenges could be costly and time consuming.\*\*

## ► Recommendation

- Establish and maintain a proper AR.
- Maintain transparency with stakeholders and update the Council's website.

\* APA: Administrative Procedure Act; FOIA: Freedom of Information Act

\*\* Rajala, Jake. 2009. "NEPA Retrospective." The Shipley Group. <http://www.shipleygroup.com/news/articles/0903.pdf>.



# 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



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## 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

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*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).<sup>1,2</sup> 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

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<sup>1</sup> 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.

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

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concurred 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).<sup>3</sup> As of February 2015, the Trust Fund had received approximately \$816 million as a result of the government's settlement with the Transocean defendants.<sup>4</sup> 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

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<sup>3</sup> Pub. L. 92-500 (as amended)

<sup>4</sup> 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.

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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.<sup>5</sup>

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<sup>5</sup> 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)).

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## 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 Workgroup<sup>6</sup> 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"<sup>7</sup> 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

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

<sup>7</sup> 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.

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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

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

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

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<sup>8</sup> 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.

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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 Committee<sup>9</sup> 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.<sup>10</sup> 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

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<sup>9</sup> 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.

<sup>10</sup> 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.

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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

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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

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

**Gulf Coast Ecosystem Restoration Council**

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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

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# Audit Report



OIG-16-051

RESTORE ACT

Gulf Coast Ecosystem Restoration Council's Records  
Management System Needs Improvement

July 27, 2016

Office of  
Inspector General

Department of the Treasury



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## Abbreviations

APA	Administrative Procedure Act
Clean Water Act	Federal Water Pollution Control Act
Council	Gulf Coast Ecosystem Restoration Council
NEPA	National Environmental Policy Act of 1969 as amended
PEA	Programmatic Environmental Assessment
Plan	Initial Comprehensive Plan
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*

July 27, 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) Programmatic Environmental Assessment (PEA), which was developed to evaluate the potential environmental impacts related to the Initial Comprehensive Plan (Plan). We performed this audit as part of our ongoing oversight of programs, projects, and activities to be funded by the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (RESTORE Act).<sup>1</sup> Our audit objective was to assess whether the PEA complies with the RESTORE Act, the National Environmental Policy Act (NEPA),<sup>2</sup> as well as applicable provisions of other Federal laws, regulations, and guidance. Appendix 1 provides more detail of our audit objective, scope, and methodology.

In brief, we concluded that the PEA conformed with the RESTORE Act and NEPA; however, we noted weaknesses in certain of the Council's operations related to other Federal requirements. Specifically, the Council's records management system needs improvement. Documentation was either missing or incomplete and what did exist was not organized to facilitate efficient retrieval of information. Furthermore, the Council lacked policies and procedures for maintaining records and it did not timely make all comments received related to the Draft Plan and Draft PEA available to the public as required by the E-Government Act.<sup>3</sup> Accordingly, we recommend that the Executive Director establish and implement appropriate records management policies and

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

<sup>2</sup> 42 U.S.C. § 4321 et seq.

<sup>3</sup> 44 U.S.C. § 101 et seq.

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procedures to document the decision making process and ensure transparency of the Council's operations. The records management policies and procedures should address the handling and public disclosure of comments related to proposed rulemaking.

In a written response, the Council Executive Director concurred with the recommendation to establish and implement appropriate records management policies and procedures. Furthermore, management's response commented that the audit covered Council activities primarily in 2013, shortly after the enactment of the RESTORE Act and creation of the Council. At that time, the Council was administratively housed within the Department of Commerce and had very limited staffing and financial resources. Since audit fieldwork, the Council has become a fully-functioning independent agency, has hired a professional staff, and has established organizational processes, procedures, and controls. Management also stated that it took certain actions with respect to missing records. Management's response, if implemented as stated, meets the intent of our recommendation. We have summarized the response in the recommendation section of this report. Management's response is included in its entirety as appendix 2.

## Background

The RESTORE Act established the Gulf Coast Restoration Trust Fund (Trust Fund) within the Department of the Treasury (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).<sup>4</sup> The Council is responsible for 60 percent of the RESTORE Act funds as the administrator of the Council-Selected Restoration Component and the Spill Impact Component. The RESTORE Act also required that the Council develop an Initial Comprehensive Plan to oversee the overall environmental and economic restoration of the Gulf Coast region. Details of the RESTORE Act are provided in appendix 3.

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<sup>4</sup> 33 U.S.C. § 1251 et seq.

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### Initial Comprehensive Plan and Programmatic Environmental Assessment

The RESTORE Act required the Council to publish the Plan no later than July 6, 2013. The Initial Comprehensive Plan was to 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 Plan.

While developing the Plan, the Council was creating the Plan's companion PEA to ensure compliance with NEPA and other applicable environmental laws and statutes. NEPA is a law designed to support compliance with environmental laws and regulations. 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. At the time the Council was developing the Plan and PEA, litigation was still ongoing with BP Exploration & Production Inc. and the Council faced many uncertainties with regard to the timing and scale of the RESTORE Act programs. Due to these uncertainties, the Council ultimately decided to publish the Plan without including specific programs and projects.<sup>5</sup> With no projects and programs in the Plan, the Council decided to change the stated "proposed action" of the PEA from implementation of programs and projects to the creation of the Plan. Development of a programmatic-level NEPA document, under the above circumstances is not required but is considered a best practice for programs of the scale and duration similar to that described in the Council's Plan. A Council official told us that even though the PEA was not required, the Council voluntarily

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<sup>5</sup> *RESTORE Act: Gulf Coast Ecosystem Restoration Council Faces Challenges in Completing Initial Comprehensive Plan*, OIG-14-003 (October 25, 2013), reported that the Council published its Initial Comprehensive Plan but did not include all of the elements required by the RESTORE Act.

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completed the PEA to demonstrate its commitment to complying with environmental laws and regulations.

The Council issued the Draft Plan and Draft PEA for public comment in the Federal Register on May 23, 2013. Following publication of the Draft Plan and Draft PEA, the Council held six public comment meetings prior to the close of the comment period for both documents on July 8, 2013. The Council approved the Plan and Final PEA on August 28, 2013.

## Results of Audit

We concluded that the PEA conformed with the RESTORE Act and NEPA. Specifically, the RESTORE Act required the development of the Plan, and the PEA was developed to evaluate the potential environmental impacts related to the Plan. The PEA complied with NEPA in that it addressed the required aspects of the Council's "proposed action" which was creation of the Plan.<sup>6</sup> That said, we noted weaknesses in the Council meeting other Federal requirements related to records management and accessibility.

### Finding

#### Records Management System Needs Improvement

##### Records Management

Council's documentation related to the Plan and the PEA was either missing or incomplete and what did exist was not organized to facilitate efficient retrieval of information. Furthermore, the Council lacked policies and procedures for maintaining records. The Federal Records Act<sup>7</sup> requires each agency to make and preserve records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential

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<sup>6</sup> NEPA, specifically 42 U.S.C. § 4332(c), requires the responsible official of major Federal actions significantly affecting the quality of the human environment to include in proposals a detailed statement on: (1) the environmental impact of the "proposed action"; (2) any adverse environmental effects which cannot be avoided, should the proposal be implemented; (3) alternatives to the "proposed action"; (4) the relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity; and (5) any irreversible and irretrievable commitments of resources which would be involved in the "proposed action" should it be implemented.

<sup>7</sup> 44 U.S.C. § 3101 et seq.

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transactions of the agency 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.

The Council was missing the following records, which are typically part of NEPA-related action and decision files: (1) organizational governance and standard operating procedures, (2) technical and programmatic references cited in the PEA, and (3) documentation of the analysis and disposition of individual comments received related to the Plan and PEA. In addition, we found that the Council's records did not include a summary for one of the public comment meetings related to the Draft Plan and Draft PEA, although summaries for other meetings were present.<sup>8</sup>

Records related to the Plan and the PEA were primarily comprised of comments received from the public in response to the Federal Register publication of the Draft Plan and Draft PEA on May 29, 2013. Council staff posted the comments on the Council's external website as well as retained them internally. Although the Council summarized its disposition of comments overall, it did not maintain any records documenting its dispositions to individual public comments. Furthermore, there were no written procedures describing how comments should be sorted, inventoried, and ultimately addressed in the PEA. The Executive Director told us that the official "Response to Public Comments" document, made available on the Council's website, represents the Council's disposition of comments; notes and analyses on the disposition of specific comments were not maintained after the comments were reviewed and categorized. Additionally, some records supporting the Plan and PEA were housed in individual staff email accounts. The retention of those records in multiple locations and within individual email accounts does not allow for efficient document retrieval and creates a risk of potential loss or corruption of data.

NEPA does not mandate any specific recordkeeping practices; however, the NEPA process is subject to judicial challenge under

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<sup>8</sup> The Council conducted eight public engagement sessions during the development process for the draft Plan and PEA, as well as six public comment meetings during the review period for the draft documents.

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the Administrative Procedure Act (APA).<sup>9</sup> NEPA specifies the process by which Federal agencies should review and document impacts on the environment, incorporating other laws, statutes, executive orders, and regulations, which specify the threshold criteria for pollutants and other environmental and natural resource considerations. Since NEPA is procedural, Federal agency NEPA actions are generally considered administrative actions, and therefore, judicial review of NEPA cases is brought to the courts under the APA. The APA enables individuals and groups to challenge actions or decisions made by Federal agencies if they believe an agency did not appropriately follow its procedures, or that procedures were improperly implemented. Judicial review of administrative actions is generally confined to the administrative record compiled by an agency, including development of NEPA documents. Accordingly, a strong records management system is critical to demonstrate compliance with requirements and withstand judicial challenges.

When asked about the issues identified with the records management, a Council official told us the primary cause was that there are no documented policies or procedures for recordkeeping by individual Council staff or contractors, and no person or group was designated to handle the recordkeeping system. Council officials also attributed the incomplete records to the fact that the Council was a new Federal entity with limited resources operating under time constraints imposed by the RESTORE Act for issuing the Plan and the PEA.

#### Records Accessibility

As another matter, we noted issues regarding the public accessibility to the Council's records. Although the Council attempted to make all comments on the Draft Plan and Draft PEA available, an administrative error resulted in stakeholders not having timely access to all comments. Only 24,000 of the 41,000 comments received by the Council could be found on the Council's

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<sup>9</sup> 5 U.S.C. § 500 et seq.

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website as of May 2013.<sup>10</sup> The E-Government Act requires that to the extent practicable, agencies shall make all submissions made by interested parties through the rulemaking process publically available online.

When asked about the discrepancy in comments, the Executive Director told us that former staff made an error posting form letters from non-governmental organizations to the Council's website. Once the error was brought to his attention, he ensured that the correct form letters were promptly posted. Council officials noted that limited resources and the tight deadlines involved with developing and finalizing the Plan and PEA contributed to the administrative error. Another contributing factor was the fact that the Council outsourced its website hosting and the Council had limited access to updating the website.

As a result of the posting error, the public was unable to timely review all comments made on the Draft Plan and Draft PEA.

## **Recommendation**

We recommend that the Executive Director establish and implement appropriate records management policies and procedures to document the decision making process and ensure transparency of the Council's operations. The records management policies and procedures should address the handling and public disclosure of comments related to proposed rulemaking.

### **Management Response**

The Council Executive Director concurred with the recommendation to establish and implement appropriate records management policies and procedures. The response noted that the policies and procedures have been implemented and address records management generally, and specifically the handling and

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<sup>10</sup> Comments that were missing from the original posting were submitted from one organization, the National Wildlife Federation. Of the approximately 17,000 comments that were missing, fewer than 200 were unique modifications to the National Wildlife Federation form letter. Form letters are used by non-governmental organizations to encourage their members to voice support or opposition to Federal proposed rulemaking.

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public disclosure of comments related to proposed rulemaking and other Council actions requiring public notice and comment.

Furthermore, management's response commented that the audit covered Council activities primarily in 2013, shortly after the enactment of the RESTORE Act and creation of the Council. At that time, the Council was administratively housed within the Department of Commerce and had very limited staffing and financial resources. Since audit fieldwork, the Council has become a fully-functioning independent agency, has hired a professional staff, and has established organizational processes, procedures, and controls.

Management also stated that it took certain actions with respect to missing records: [our report identified that the Council was missing the following records, which are typically part of NEPA-related action and decision files: (1) organizational governance and standard operating procedures, (2) technical and programmatic references cited in the PEA, and (3) documentation of the analysis and disposition of individual comments received related to the Plan and PEA.] The response provided the following:

- in 2014 the Council adopted written organizational Standard Operating Procedures that include detailed governance processes and procedures;
- NEPA regulations do not require or contemplate the maintenance of separate copies of publicly-available materials when referenced to in an environmental impact statement;
- the Council archives all public comments, Council responses, and records of public meetings in connection with Council actions for which public comment is sought; and
- the Council created an Environmental Compliance Library on the Council website.

#### OIG Comment

Management's response, if implemented as stated, meets the intent of our recommendation.

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\* \* \* \* \*

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 4. A distribution list for this report is provided as appendix 5. 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 conducted an audit of the Gulf Coast Ecosystem Restoration Council's (Council) Programmatic Environmental Assessment (PEA). The objective of our audit was to assess whether the PEA complies with the RESTORE Act, the National Environmental Policy Act (NEPA), as well as applicable provisions of other Federal laws, regulations, and guidance.

To accomplish our objective, we contracted with Booz Allen Hamilton Inc., a consulting firm with environmental service expertise, to assist us with this effort. We conducted fieldwork at the Department of Commerce's office in Washington, D.C., between October 2013 and June 2014, which comprised the following steps.

- We reviewed applicable Federal laws, regulations, and procedures related to the Council and its development of the PEA, including:
  - RESTORE Act of 2012;
  - 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 and accompanying PEA, August 28, 2013, and
  - Public comments made on the Draft Initial Comprehensive Plan and Draft PEA.
- We performed the following steps to a sample of comments on the Draft Initial Comprehensive Plan and the Draft PEA.
  - We reviewed the comments received on the Council's website and categorized them into two categories described below.

- Form Letters used by non-governmental organizations to encourage their members to voice support or opposition to a rulemaking.
  - Individual Responses comprised of comments received by mail, email, and "Council's Planning, Environmental, and Public Comment Portal".
  - We selected a random sample of comments from the Form Letter and Individual Responses categories. We reviewed a sample of 20 comments from the Form Letter Category and 40 comments from the Individual Responses Category. We did not project results to the entire population.
- We interviewed key Council officials responsible for developing the PEA.

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

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**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: July 20, 2016

SUBJECT: Response to the Treasury Office of Inspector General Report  
"Audit of the Gulf Coast Ecosystem Restoration Council's  
Programmatic Environmental Assessment"

Thank you for the opportunity to review the Treasury Office of the Inspector General's (OIG) above-entitled report, which was developed to evaluate the potential environmental impacts related to the Gulf Coast Ecosystem Restoration Council's (Council) Initial Comprehensive Plan and the related Programmatic Environmental Assessment (PEA) as part of OIG's ongoing oversight of programs, projects, and activities to be funded by the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (RESTORE Act).

We are pleased to concur with the finding that the PEA complied with the RESTORE Act and with the National Environmental Policy Act (NEPA). Since the Council membership includes major federal regulatory agencies, Council staff was able to call on extensive environmental compliance expertise in preparing the PEA, and will use such resources to continuously improve the efficiency and transparency of the Council's environmental compliance processes.

We concur with the recommendation that we institute effective records management policies and procedures. The Council has established and implemented a suite of formal Council administrative policies and procedures (a copy of which we have provided to you), including a records management policy.

With respect to the records management audit findings, we would generally note that your review covered Council activities primarily in 2013, beginning shortly after enactment of the RESTORE Act and the creation of the Council. At that time the Council was administratively housed within the Department of Commerce, had not yet become independently operational and had very limited staffing and financial resources.

## Appendix 2 Management Response

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Memorandum For: Deborah L. Harker  
From: Justin R. Ehrenwerth  
July 1, 2016  
p. 2

Subsequent to the OIG's fieldwork—which took place from October 2013 to June 2014—the Council has become a fully functioning independent agency, has hired a professional staff and has established appropriate organizational processes, procedures and controls.

With respect to OIG's "Records Management" discussion on page 4 of the Audit letter and the documents referenced in "(1)" on that page, in 2014 the Council adopted written organizational Standard Operating Procedures that include detailed governance processes and procedures.

With respect to the documents referenced in "(2)" on page 4, the technical and programmatic references cited in the PEA are publicly-available reference materials. NEPA regulations do not require or contemplate the maintenance of separate copies of such publicly-available materials when referenced and linked to in environmental impact statements.

With respect to the documents referenced in "(3)" on page 4 and the documentation of public comments and Council responses, the Council now uses the Department of Interior's Planning, Environment and Public Comment (PEPC) system to assist in managing these processes. The Council archives all public comments, Council responses and records of public meetings in connection with Council actions for which public comment is sought.

With respect to the Records Management comment regarding environmental compliance documentation, the Council has created an Environmental Compliance Library on the Council website that will include all compliance documents for all activities on Funded Priorities Lists and other Council-administered RESTORE activities.

In conclusion, we concur with OIG's recommendation that the Executive Director establish and implement appropriate records management policies and procedures, and have done so; such policies and procedures address records management generally, and specifically the handling and public disclosure of comments related to proposed rulemaking and other Council actions requiring public notice and comment.

We appreciate OIG's review of the Council's work as we move forward with our mission to restore the Gulf.

As of April 2016, the 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.<sup>1</sup> 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 this amount, \$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 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 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 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.

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<sup>1</sup> 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

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Deborah L. Harker, Audit Director  
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Marco T. Uribe, Auditor-in-Charge  
Usman Abbasi, Auditor  
Kajuana A. Britt, Referencer

**Gulf Coast Ecosystem Restoration Council**

Chairperson, Department of Agriculture  
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  
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