

The RESTORE Act: Comparing the Funding Mechanisms

The RESTORE Act, which became law on July 6, 2012, will divert 80% of any civil and administrative Clean Water Act penalties collected as a result of *Deepwater Horizon* (DWH) to the Gulf for restoration, recovery, and research activities. The following tables compare the various mechanisms for distributing funds under RESTORE. Note that the U.S. Department of the Treasury (Treasury) was required to establish procedures for administering RESTORE funds. An interim final rule became effective in Oct. 2014 (Treasury Rule) and is incorporated in the tables where relevant.

Direct Component (Treasury administers)

35%



Gulf Coast Ecosystem Restoration Council (Council administers)

30%

+ 50% of the interest



Spill Impact Component (Council administers)

30%



	Direct Component (Treasury administers)	Gulf Coast Ecosystem Restoration Council (Council administers)	Spill Impact Component (Council administers)
Lead Entity	<ul style="list-style-type: none"> AL – Gulf Coast Recovery Council (AGCRC) FL – Funds go directly to affected counties LA – Coastal Protection & Restoration Authority (LCPRA) MS – Dept. of Environmental Quality (MDEQ) TX – Office of the Governor or appointee 	11 federal and state members: <ul style="list-style-type: none"> Secretaries of the Interior, Army, Commerce, Agriculture, and Homeland Security; Administrator of the U.S. EPA; and Governors of the five Gulf states (who selected the Secretary of Commerce as Chair). 	<ul style="list-style-type: none"> AL – AGCRC FL – Consortium of local political subdivisions (minimum one rep. of each affected county) LA – LCPRA MS – Office of the Governor or appointee TX – Office of the Governor or appointee
Timing	<i>No timelines specified</i> , but Treasury released its first funding opportunity announcements in Sept. 2014.	The Council was given 180 days from the date of enactment (i.e., Jan. 2, 2013) to publish a proposed comprehensive plan and one year to publish an initial plan. The initial plan was published in Aug. 2013.	<i>No timelines specified.</i>
Funding Allocation	Each state receives an equal share (7%). The Act also specifies the division of funds in Florida as follows: <ul style="list-style-type: none"> 75% of the funds goes to the eight disproportionately affected counties; and 25% goes to the nondisproportionately impacted counties. ... and in Louisiana as follows: <ul style="list-style-type: none"> 70% of the funds goes to the State; and 30% goes to parishes by a formula based on shoreline oiled, population, and land mass. 	<i>No specifications.</i>	Funds dispersed based on the weighted average of the following criteria (each state will receive at least 5% of the total annual funds disbursed): <ul style="list-style-type: none"> 40% based on ratio of miles of state shoreline oiled pre- 4/11/2011 versus total from DWH; 40% based on inverse proportion of average distance from the DWH rig to nearest and farthest points of oiled shoreline; and 20% based on average population of Gulf coastal counties (based on 2010 census).

Direct Component

Gulf Coast Ecosystem
Restoration Council

Spill Impact Component

	Multi-Year Implementation Plans (submitted to Treasury)	Comprehensive Plan (developed by the Council)	State Funding Plans (require Council approval)
Planning Requirements	<p>Among other requirements, all states and/or localities receiving funds must develop a multi-year implementation plan.</p> <p>The state/locality must certify that projects and programs:</p> <ul style="list-style-type: none"> • Are designed to restore and protect Gulf Coast resources; • Carry out one or more of the eligible activities (see below); • Were selected based on meaningful and broad-based public input; • Are based on the best available science; and • Were selected consistent with procurement rules for comparable projects in the state 	<p>One of the Council’s primary responsibilities is to develop a Comprehensive Plan to restore and protect natural resources. The initial plan was required to include:</p> <ul style="list-style-type: none"> • Provisions to “fully incorporate” the recommendations of the Gulf Coast Ecosystem Restoration Task Force; • A list of projects previously authorized (but not started) that “would further the purposes and goals” of the Council and RESTORE Act; and • A ten-year funding plan (updated every five years) and three-year list of priority projects to be funded (updated annually). 	<p>Each state receiving funds must develop an expenditure plan that describes the activities that will receive funding. The plan must take into consideration the Council’s Comprehensive Plan, and be “consistent with” its goals and objectives.</p> <p>Each plan must be approved by the Council. However, this can be satisfied by certification of one State member of the Council and the affirmative vote of the Federal Chair.</p>
Participation	<p>Under the Treasury Rule, states and localities must show that:</p> <ul style="list-style-type: none"> • The multi-year implementation plan was “made available” for public review and comment for at least 45 days “in a manner calculated to obtain broad-based participation” • Each activity in that plan “was adopted after consideration of meaningful input from the public” 	<p>“Appropriate” Council actions and deliberations must be made available to the public “via electronic means” before any Council vote. (“Appropriate” is not defined by the Act.)</p> <p>The Comprehensive Plan must be subjected to notice-and-comment procedures before it is finalized.</p>	<p>Under the Treasury Rule, a state expenditure plan “must be available for public review and comment” for at least 45 days “in a manner calculated to obtain broad-based participation”.</p>
Local Hire Provisions	<p>All states and localities must certify that project selections were consistent with procurement rules for comparable projects in that state.</p> <p>A state or locality <i>may</i> give preference to those “that reside in, are headquartered in, or are principally engaged in business in the State”.</p>	<p>For Comprehensive Plan projects, the Council must develop standard contract terms that give preference to individuals/companies “that reside in, are headquartered in, or are principally engaged in business in a Gulf Coast State”.</p>	<p><i>No local hire provisions specified.</i></p>

Direct Component

Gulf Coast Ecosystem
Restoration Council

Spill Impact Component

Eligible Activities	<p>Funds must be used to achieve ecological and economic restoration of the Gulf Coast.</p> <p>Eligible activities, which can include previously approved projects, are as follows:</p> <ul style="list-style-type: none"> • Restoration and protection of natural resources; • Mitigation of damage to natural resources; • Implementation of a federally approved marine, coastal, or comprehensive conservation management plan; • Workforce development and job creation; • Improving state parks affected by the spill; • Infrastructure projects benefitting the economy or ecological resources; • Flood protection and infrastructure; • Planning assistance; • Promotion of tourism; • Promotion of Gulf seafood consumption; and • Administrative costs (not more than 3%). 	<p>The Plan must target restoration and protection of Gulf natural resources.</p> <p>In selecting projects to include on the three-year list, except for previously authorized projects, priority will be given to projects that address one or more of the following criteria:</p> <ul style="list-style-type: none"> • Projects that are projected to make the greatest contribution to restoring and protecting Gulf Coast natural resources; • Large-scale projects that are projected to substantially contribute to restoring and protecting Gulf Coast natural resources; • Projects contained in existing Gulf Coast State comprehensive plans for natural resource restoration and protection; and/or • Projects that restore long-term resiliency of natural resources most impacted by the spill. <p>In addition to developing the comprehensive plan, the Council has many other responsibilities, including approving certain state plans and establishing advisory committees as necessary. No more than 3% may be spent on administrative expenses.</p>	<p>Funds are to be used “for projects, programs, and activities that will improve the ecosystems or economy of the Gulf Coast region”.</p> <p>They must:</p> <ul style="list-style-type: none"> • Be eligible activities as defined for the Direct Component funds (<i>see Column 1</i>); and • Contribute to the overall economic and ecological recovery of the Gulf Coast. <p>No more than 25% of the funds may be used for infrastructure projects, unless the plan certifies that the State’s ecosystem restoration needs are addressed by the plan and additional infrastructure investment is necessary to mitigate the impacts of DWH.</p> <p>No more than 3% may be spent on administrative costs.</p>
Review	<p><i>No provision for citizen enforcement specified.</i></p> <p>If a state or locality does not meet requirements under the Act, it cannot receive additional funds until those requirements are met.</p> <p>The state or locality has 90 days to seek expedited review if the Secretary of the Treasury determines that the state or locality has not met requirements under the Act.</p>	<p><i>No provision for citizen enforcement specified.</i></p>	<p><i>No provision for citizen enforcement specified.</i></p> <p>If the Council fails to approve or take action on a plan within 60 days of submission, the state has 90 days to seek expedited review of that decision.</p>

General Notes:

- Funds may only be used to acquire land from a willing seller. The federal government may not use funds to acquire land, unless the acquisition is achieved by exchange or donation, or necessary for restoration and protection of Gulf Coast natural resources and consented to by the relevant state Governor.
- The Act explicitly authorizes states and localities to use the Direct Component and Spill Impact Component funds to satisfy non-federal cost share requirements.


**NOAA RESTORE Act Science Program
(NOAA administers)**

2.5%
+ 25% of the interest



**Centers of Excellence
(Treasury administers)**

2.5%
+ 25% of the interest



Leads	<ul style="list-style-type: none"> The NOAA Administrator, in consultation with the Director of the Fish & Wildlife Service (FWS) In implementing the program, the NOAA Administrator and FWS Director will consult with the Gulf Fishery Management Council and Gulf States Marine Fisheries Commission. 	<ul style="list-style-type: none"> AL: AGCRC FL: Florida Institute of Oceanography LA: LCPRA MS: MDEQ TX: Office of the Governor or appointee
Timing	The NOAA Administrator was given 180 days from enactment (i.e., Jan. 2, 2013) to establish the Restoration Science, Observation, Monitoring, and Technology (RSOMT) program (the “NOAA RESTORE Act Science Program”).	<i>None specified</i> , but Treasury released its first funding opportunity announcement in Sept. 2014.
Reqs.	The program will “carry out research, observation, and monitoring to support, to the maximum extent practicable, the long-term sustainability of the ecosystem, fish stocks, fish habitat, and the recreational, commercial, and charter fishing industry in the Gulf of Mexico.”	Funds shall be used to make competitive grants to nongovernmental entities and consortia in the Gulf, including universities, to establish Centers of Excellence.
Eligible Activities	<p>Priority shall be given to integrated, long-term, non-duplicative projects that address current or anticipated information needs.</p> <p>Funds may support:</p> <ul style="list-style-type: none"> Marine and estuarine research; Marine and estuarine ecosystem monitoring and ocean observation; Data collection and stock assessments; Pilot programs for fishery independent data and reduction of exploitation of spawning aggregations; Cooperative research; and Administrative expenses (up to 3%). <p>Funds may not be used for:</p> <ul style="list-style-type: none"> Existing or planned NOAA research (unless agreed to by grant recipient); Implementing or initiating NOAA regulations; or Developing or approving new limited access privilege programs. 	<p>Each Center shall focus on science, technology, and monitoring in at least one of the following Gulf-focused disciplines:</p> <ul style="list-style-type: none"> Coastal and deltaic sustainability, restoration, and protection; Coastal fisheries and wildlife ecosystem research and monitoring; Offshore energy development, including research and technology to improve sustainable and safe development; Sustainable and resilient growth, and economic and commercial development; and Comprehensive observation, monitoring, and mapping. <p>In awarding grants, states must give priority to those “that demonstrate the ability to establish the broadest cross-section of participants with interest and expertise” in the focus discipline.</p>
Other	While no specific public participation opportunities are identified under the Act, the program has periodically sought public input on program development.	Under the Treasury Rule, states must show that their rules and policies for grants (including the selection of Centers of Excellence) were available for public comment for at least 45 days.