



Detailed Analysis of

# THE RESTORE ACT

“Resources and Ecosystem Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012”

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## I. SUMMARY<sup>\*</sup>

The 112<sup>th</sup> Congress passed the RESTORE Act on June 29, 2012 as part of the surface transportation and federal-aid highways act, the “Moving Ahead for Progress in the 21<sup>st</sup> Century Act,” or “MAP-21” (Pub. L. No. 112-141; H.R.4348). President Obama signed the Act into law on July 6, 2012.

The RESTORE Act creates a Gulf Coast Restoration Trust Fund. The Fund will receive 80% of the civil and administrative penalties paid to the United States under the Clean Water Act (CWA) by the parties responsible for the *Deepwater Horizon* oil spill [6]. The Trust Fund will support a variety of projects aimed at helping the Gulf recover from injuries experienced as a result of decades of oil and gas development in the Gulf, including the effects of *Deepwater Horizon*. In general, RESTORE is intended to complement other efforts to restore the Gulf, and is not intended to set a precedent for future uses of CWA penalties or to interfere with the ongoing Natural Resource Damage Assessment (NRDA) process [1].

<sup>\*</sup> Bracketed references link to numbered items in the “Detailed Analysis of the RESTORE Act,” pt. III.

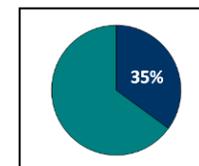
The U.S. Department of Justice filed a lawsuit seeking CWA civil penalties from the responsible parties on December 15, 2010. One responsible party, MOEX Offshore 2007 LLC, has agreed to pay the United States \$45 million in civil penalties as part of a settlement agreement, but the total amount of CWA civil penalties is not yet known.

### **Restoration Trust Fund (RTF)**

RESTORE will create a Gulf Coast Restoration Trust Fund (RTF) under the guardianship of the Treasury Secretary [7]. The RTF will receive 80% of the CWA civil and administrative penalties paid by responsible parties as a consequence of the *Deepwater Horizon* oil spill [6]. One concern is whether the Treasury will have sufficient capacity or motivation to monitor RTF expenditures and audits. The Treasury Secretary has 180 days following the enactment of RESTORE to develop auditing requirements and other procedures to evaluate whether funded projects are compliant with the Act. Such procedures are subject to public notice and comment [7]. The RTF will terminate on the date all funds have been expended [9].

### **Equal-Share State Allocations**

Out of the RTF, 35% of funds will go directly to the five Gulf states—Florida, Mississippi, Alabama, Louisiana, and Texas—in equal shares (7% each)—regardless of



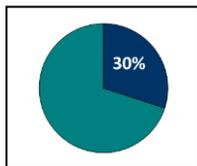
the impacts of the *Deepwater Horizon* incident on the state. The funds may be used for ecological and economic restoration of the Gulf [11]. RESTORE dictates that states may only expend funds for a specific list of purposes, including protection and restoration of natural resources, workforce development, job creation, tourism promotion, promoting consumption of Gulf seafood, planning assistance and flood protection infrastructure [12].

RESTORE further dictates how the equal-share state funds will be allocated among counties in Florida and parishes in Louisiana. Notably, the majority (70%) of Louisiana funds will go directly to the state as opposed to affected parishes [14]. In contrast, disproportionately affected Florida counties will share 75% of Florida’s equal-share funding, while nondisproportionately impacted counties will receive 25% [13].

As a condition of funding, each state or locality receiving funds must develop a science-based multi-year implementation plan describing how selected projects meet RESTORE’s stated funding purposes [15]. Public participation requirements to solicit recommendations for projects are vague: states may use any “appropriate” procedure for public input that already exists in the state, including conferring with a preexisting government task force [18]. States *may* give preference to Gulf individuals/companies in awarding project grants, but it is not required that they do so, and the definition of local individuals/companies is broad [20]. There is no provision in RESTORE allowing citizens to sue for judicial review of a state’s use of funds or the Treasury’s failure to enforce RESTORE’s audit provisions [21].

**Ecosystem Restoration Council**

RESTORE also will create a Gulf Coast Ecosystem Restoration Council (Council), which will receive 30% of RTF funds plus 50% of RTF interest and investment income [10, 23]. Members of the Council will include: the Secretaries of Interior, Army, Commerce, and Agriculture, EPA Administrator, Head of the Coast Guard, and governors of the Gulf states [25]. The Gulf State governors shall select one federal member to serve as Council Chair. Most “significant” Council actions

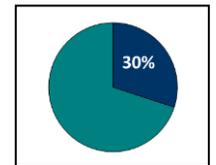


require the vote of the Chair plus a majority of the governors [26]. “Appropriate” Council actions and deliberations must be made available to the public “via electronic means” prior to any Council vote. The term “appropriate” is not defined by the legislation [27].

The Council’s funds will go toward developing and implementing a science-based Comprehensive Plan [28]. Unlike state implementation plans, the Council’s Comprehensive Plan may not include economic development projects—only projects to restore and protect natural resources [30]. The Comprehensive Plan must prioritize projects that contribute to Gulf restoration regardless of geographic location [32]. The Comprehensive Plan must include and incorporate the findings of the Gulf Coast Ecosystem Restoration Task Force [31]. Before a final version is published, a proposed Comprehensive Plan will be subject to notice-and-comment procedures [30].

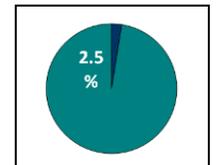
**Impact-Based State Allocations**

The Gulf states will receive 30% of RTF funds according to an intricate formula considering the portion of state shoreline oiled, the distance from the state to the *Deepwater Horizon* rig, and the state’s 2010 coastal population [35]. As with the other state funds, in order to receive money, states must develop plans listing the projects that will receive grants [35]. Importantly, unlike the Council’s Comprehensive Plan, state comprehensive plans may include projects to further economic recovery. State plans must be “consistent with” the Council’s Comprehensive Plan and will be subject to the Council’s approval [36, 38]. Here again, there is no provision in RESTORE allowing citizens to sue for judicial review of the states’ use of funds [38, 39].



**Restoration, Science, Observation, Monitoring, and Technology Program**

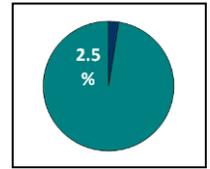
RESTORE will establish a Gulf Coast Restoration, Science, Observation, Monitoring, and Technology Program (RSOMT Program) under the National Oceanic and Atmospheric Administration (NOAA) to ensure the long-term ecological and economic



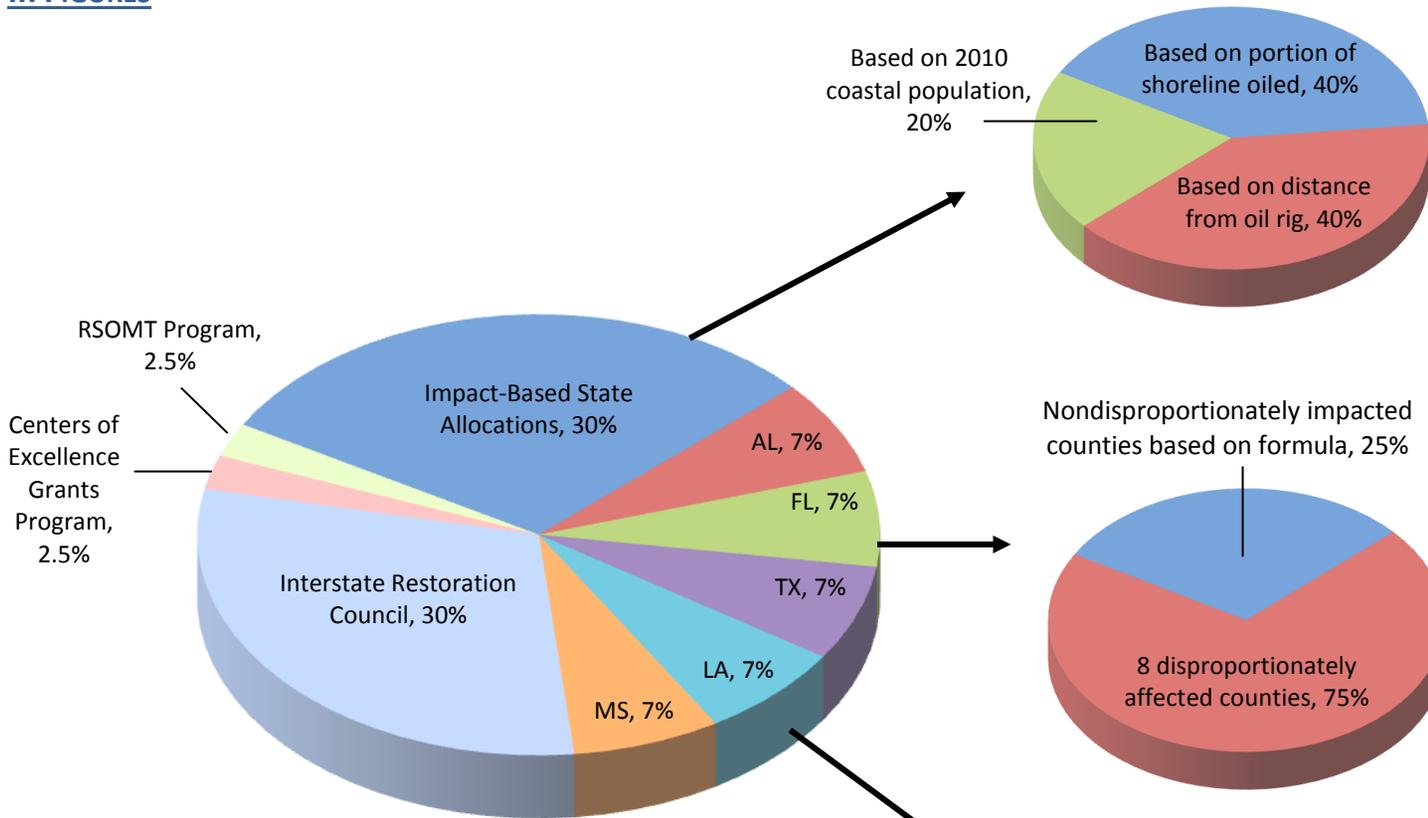
sustainability of Gulf fisheries [41, 43]. The RSOMT Program will receive 2.5% of RTF funds plus 25% of RTF interest and investment income [10, 42]. The RSOMT Program will primarily fund long-term, non-duplicative projects that address anticipated data collection and monitoring needs [45]. The Act limits NOAA’s use of funds, including prohibitions against using funds for existing or planned NOAA research (unless agreed to by the grant recipient); implementing or initiating regulations; or developing or approving limited access privilege programs in Atlantic fisheries [43]. The RSOMT Program must be carried out in consultation with the Regional Gulf of Mexico Fishery Management Council, and the Program may cooperate with the Gulf States Marine Fisheries Commission [44]. The RSOMT Program will terminate when all funds in the RTF have been expended [46].

### **Centers of Excellence Research Grant Program**

The Gulf states will receive 2.5% of RTF funds in equal shares, plus 25% of RTF interest and investment income, to award competitive grants for the establishment of “Centers of Excellence” in NGOs, consortia, or universities [10, 47]. Centers of Excellence must demonstrate broad expertise in at least one of five listed areas, including: coastal sustainability, coastal resources, offshore energy development, sustainable economic development, and monitoring and mapping. As there is no requirement that a Center focus on more than one of the listed disciplines, and no requirement that a Center research natural resources, Centers of Excellence can be primarily energy development or economic development research programs [50].

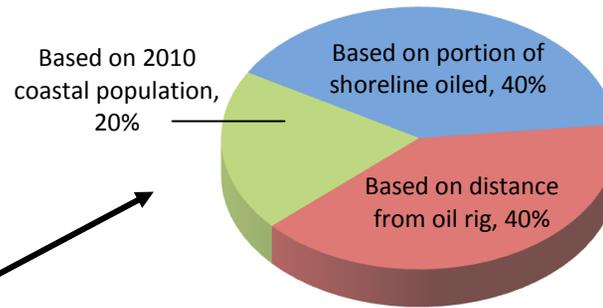


## II. FIGURES



**Figure 1. Allocations of the Restoration Trust Fund (RTF).**

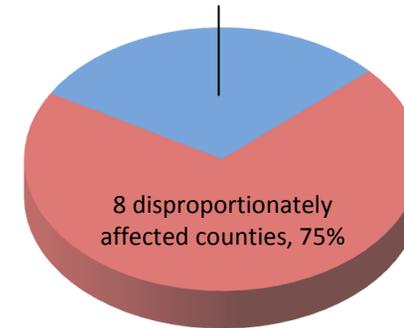
Eighty percent of Clean Water Act (CWA) penalties will be diverted to the RTF. The biggest chunk of the RTF (35%) will be distributed directly to the Gulf Coast states in equal shares (7% each) for ecological and economic restoration and recovery projects. A small minority of the RTF (5%) will fund scientific research and monitoring. The remainder of the funds will be divided between an Interstate Restoration Council (30%) and the Gulf States, based on oil spill impacts (30%), for the implementation of comprehensive restoration and recovery plans.



**Figure 2. Distribution of Impact-Based State Allocations.**

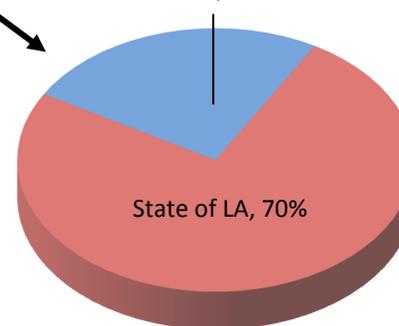
Of the total RTF funds, 30% will be distributed based on intricate formulas to the Gulf states to execute state implementation plans.

**Figure 3. Distribution of Florida's Equal-Share Funds.**



RESTORE specifies how Florida must divide its equal-share funds. Disproportionately affected Florida counties are guaranteed to receive the majority of the funds.

**Figure 4. Distribution of Louisiana's Equal-Share Funds.**



RESTORE specifies how Louisiana must divide its equal-share funds. The State of Louisiana will receive the majority of state funds, while oiled parishes will directly receive 30% of funds.

### III. DETAILED ANALYSIS OF THE RESTORE ACT

Act §	Topic	Description	Notes
<b>General Provisions</b>			
1.	§1606(b)	Effect	RESTORE does not supersede or affect recovery under the Oil Pollution Act or other federal law, or apply to any other oil spill incident.
2.	§1607	Limitations	RESTORE is explicit about not setting precedent, and not affecting recovery under the Oil Pollution Act, including NRDA ( <i>but see</i> #12, #32).
3.	§1608	Oversight	No funds may be used for eminent domain or federal land acquisition, unless: <ul style="list-style-type: none"> <li>the federal land is acquired by exchange or donation; or</li> <li>the acquisition is necessary for the restoration and protection of the environment, and the Governor of the state in which the acquisition occurs grants consent.</li> </ul>
4.	§1603—CWA § 311(a)(33)	Project region	The Office of the Inspector General and Treasury Department have authority to audit and investigate any projects, programs, and activities funded under RESTORE.
5.	§1603—CWA § 311(a)(27)	Best available science	It is unclear how much capacity the Inspector General and Treasury will have to monitor expenditures and audits ( <i>see also</i> #7).
			RESTORE includes a fairly inclusive definition of the Gulf region, incorporating watersheds within 25 miles. Note the coastal zones in each state may have varying depth and area.
			This definition applies throughout the Act ( <i>see, e.g.,</i> #15, #24, #32).

Act §	Topic	Description	Notes	
<b>Gulf Coast Restoration Trust Fund (RTF)—80% of CWA Penalties</b>				
6.	§1602(b)	Establishment	Out of CWA administrative and civil penalties paid by responsible parties in the <i>Deepwater Horizon</i> incident pursuant to a court order, settlement, or other instrument, 80% will go to a Gulf Coast Restoration Trust Fund (RTF).	Note that RESTORE applies regardless of whether the parties settle or go to trial.
7.	§1602(e)	Administration	The RTF will be administered and audited by the Secretary of Treasury. The Treasury Secretary has 180 days following the enactment of RESTORE to develop auditing requirements and other procedures to evaluate whether funded projects are compliant with the Act. The Treasury's procedures must include rules to guide how funds will be deposited into and expended from the RTF. Such procedures are subject to public notice and comment.	<p>It is unclear how much capacity the Treasury will have to monitor expenditures and audits.</p> <p>Note that the Treasury's procedures are subject to notice and comment.</p> <p>The ultimate amount of CWA penalties may or may not be determined by January 2013, the deadline for the Secretary to develop auditing and compliance procedures.</p>
8.	§1602(c)	Allocation of Funds	RTF funds, including interest and investment income, are available for expenditure without further appropriation.	No need for Congress to further appropriate RTF expenditures.
9.	§1602(f)	Sunset	The Trust Fund shall terminate when all funds have been expended.	It is unclear what would happen if funds were deposited into the RTF at different times (e.g., pursuant to separate settlements with each responsible party); in such a case, the RTF could be completely emptied even though the United States expects to collect additional penalties in the future for deposit into the RTF. This issue may be clarified by the Treasury's implementing regulations ( <i>see #7</i> ).
10.	§1603—CWA § 311(t)(4)	Interest	Of interest and investment income from the previous fiscal year, <b>25%</b> shall go to the RSOMT program; <b>25%</b> shall go to Center of Excellence research grants; and <b>50%</b> shall go to the Council to carry out its Comprehensive Plan.	Note that funds remain in the RTF until expended. Thus, the Act seems to contemplate that whatever money is in the RTF will be invested until such time as it is expended to a project. This issue may be clarified by the Treasury's implementing regulations ( <i>see #7</i> ).

Act §	Topic	Description	Notes
<b>Equal-Share State Allocations—35% of RTF, 7% to each state</b>			
11.	§1603—CWA § 311(t)(1)(A)-(B)	Funding	<p>Gulf states will receive 35% of RTF funds made available in each fiscal year, in equal shares, for ecological and economic restoration of the Gulf Coast region.</p> <p>Equal shares will go to each state, regardless of whether states were disproportionately impacted by the <i>Deepwater Horizon</i> spill.</p> <p>Note that both economic and environmental restorations are contemplated, but all within the “Gulf Coast region” as defined in #4 above.</p>
12.	§1603—CWA § 311(t)(1)(B)(i)-(ii)	Limited uses	<p>State funds may only be used to carry out one or more of the following in the Gulf Coast region:</p> <ul style="list-style-type: none"> <li>• Restoration and protection of natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands.</li> <li>• Mitigation of damage to fish, wildlife, and natural resources.</li> <li>• Implementation of a federally approved marine/coastal management plan, including fisheries monitoring.</li> <li>• Workforce development and job creation.</li> <li>• Improvements to state parks affected by the oil spill.</li> <li>• Infrastructure projects benefitting the economy or ecological resources, including ports.</li> <li>• Flood protection and infrastructure.</li> <li>• Planning assistance.</li> <li>• Promotion of tourism, including recreational fishing.</li> <li>• Promotion of Gulf seafood consumption.</li> <li>• Administrative costs (up to 3%).</li> </ul> <p>“Workforce development and job creation” is very open-ended, as is “Infrastructure projects benefitting the economy.”</p> <p>Several provisions could potentially be damaging to the environment.</p> <p>Several provisions could potentially overlap with the ongoing NRDA in the Gulf (<i>but see #1</i>).</p>

Act §	Topic	Description	Notes	
13.	§1603—CWA § 311(t)(1)(C)(i)	Florida funds	<p><b>75%</b> of Florida funds go to the eight Florida counties disproportionately affected by the incident; <b>25%</b> of funds go to the nondisproportionately impacted counties. Of the funds to nondisproportionately impacted counties,</p> <ul style="list-style-type: none"> <li>• 34% shall be based on the average population;</li> <li>• 33% based on the average per capita sales tax collections; and</li> <li>• 33% based on the inverse proportion of the average distance from the <i>Deepwater Horizon</i> oil rig to the nearest and farthest points of the shoreline.</li> </ul>	<p>It is necessary for RESTORE to specify county-by-county allocation in Florida because the coastal zone of Florida includes the entire state.</p> <p>The expenditure of RESTORE funds in Florida may be further restricted by Florida state law (see FLA. STAT. § 377.43, “Disbursement of funds received for damages caused by the Deepwater Horizon oil spill”).</p>
14.	§1603—CWA § 311(t)(1)(D)(i)	Louisiana funds	<p><b>70%</b> of Louisiana funds go directly to the state; <b>30%</b> of funds go to parishes in the coastal zone according to a formula:</p> <ul style="list-style-type: none"> <li>• 40% based on average number of oiled miles of parish shoreline;</li> <li>• 40% based on average parish population; and</li> <li>• 20% based on average land mass of parish.</li> </ul> <p>Each parish receiving funds must certify to the governor that it has completed a comprehensive land use plan.</p>	<p>The majority of Louisiana funds go to the state—not directly to oiled parishes. (<i>Compare with</i> allocation of Florida funds in #13).</p> <p>Questions remain regarding how many parishes do not have land use plans, as well as how expensive it is and how long it will take for parishes without land use plans to create them in order to be eligible to receive funds.</p>

Act §	Topic	Description	Notes
15.	§1603—CWA § 311(t)(1)(E)	<p>Funding conditions</p> <p>All states/localities receiving funds must meet audit and other requirements of the Secretary of Treasury; develop a multi-year implementation plan; and certify that:</p> <ul style="list-style-type: none"> <li>• Each project is “designed to restore and protect the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, coastal wetlands, or economy of the Gulf Coast;”</li> <li>• Each project carries out one or more of the allowable uses in #12;</li> <li>• Projects were selected based on “meaningful” and “broad-based” public input, including from individuals, businesses, and NGOs;</li> <li>• Each natural resource restoration or protection project is based on the best available science; and</li> <li>• Project selections were consistent with the procurement rules for a comparable project in that state, including any competitive bidding and audit requirements.</li> </ul>	<p>Public participation requirements are vague and open-ended.</p> <p>Projects can be economy-based. Note also the reference back to the limited uses in #12, which include both natural resource restoration and economic development.</p> <p>Natural resource projects must be based on the “best available science,” a term which is specifically defined in the statute (<i>see</i> #5 above).</p>
16.	§1603—CWA § 311(t)(1)(F)	<p>State entities</p> <p>The following entities shall carry out the state’s duties:</p> <ul style="list-style-type: none"> <li>• Alabama Gulf Coast Recovery Council;</li> <li>• Coastal Protection and Restoration Authority of Louisiana;</li> <li>• Mississippi Department of Environmental Quality; and</li> <li>• Texas Office of the Governor or appointee.</li> </ul>	<p>Note that there is no designated authority in Florida. As noted above, the expenditure of RESTORE funds in Florida may be further governed by Florida state law (<i>see</i> FLA. STAT. § 377.43).</p>
17.	§1603—CWA § 311(t)(1)(G)-(H)	<p>Compliance</p> <p>If state/locality does not spend funds in accord with the funding conditions (e.g., audit requirements), it will be cut off until it restores misused amounts to the RTF and/or funding conditions are met.</p>	<p>It is unclear how well the Treasury will be able to monitor fund allocations and bring enforcement actions against states. Note that the Treasury’s monitoring procedures must be developed subject to public notice and comment (<i>see</i> #7).</p>

	Act §	Topic	Description	Notes
18.	§1603—CWA § 311(t)(1)(I)	Public Input	State may use any “appropriate” procedure for public input in that state, including consulting with task forces.	RESTORE has a very open-ended public input clause. Note that consultation with an existing task force satisfies this clause. Therefore, a state may not even have to open itself to comment from individuals or interest groups, but simply confer with a preexisting government task force.
19.	§1603—CWA § 311(t)(1)(J)	Previously approved projects	Previously approved projects can receive funds if they fall within the allowable funding uses and were approved by conditions similar to the required funding conditions.	
20.	§1603—CWA § 311(t)(1)(K)	Local hire preference	State may give a preference to individuals/companies “that reside in, are headquartered in, or are principally engaged in business in the State.”	Note there is no local preference <i>requirement (compare with #28)</i> . Also, the definition of “local” businesses is extremely broad.
21.	§1603—CWA § 311(t)(1)(M)	Judicial Review	State can seek judicial review in a district court within 90 days of the Treasury’s denial of funds.	RESTORE contains no provision for judicial review of the state’s use of funds; the public has to rely solely on the Treasury and Inspector General to monitor states ( <i>see #3, #7, #17</i> ).
22.	§1603—CWA § 311(t)(1)(N)	Non-federal matching funds	Funds can be used to satisfy the non-federal share of any project cost that meets the #12 allowable funding uses.	

Act §	Topic	Description	Notes	
<b>Gulf Coast Ecosystem Restoration Council—30% of RTF + 50% of interest earned on RTF</b>				
23.	§1603—CWA § 311(t)(2)(A)	Funding	The Gulf Coast Ecosystem Restoration Council (Council) shall receive 30% of RTF funds to carry out a Comprehensive Plan.	
24.	§1603—CWA § 311(t)(2)(B)(i)	Limited uses	Council shall undertake “projects and programs, using the best available science, that would restore and protect the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, coastal wetlands, and economy of the Gulf Coast.”	According to this language, it would appear that Council funds can be spent to restore the Gulf Coast economy, <i>but see #30</i> for additional restrictions and explanation.
25.	§1603—CWA § 311(t)(2)(C)	Members	<p><u>Members of the Council:</u></p> <ul style="list-style-type: none"> <li>• Secretary of Interior;</li> <li>• Secretary of the Army;</li> <li>• Secretary of Commerce;</li> <li>• EPA Administrator;</li> <li>• Secretary of Agriculture;</li> <li>• Head of department in which the Coast Guard operates; and</li> <li>• Governors of the five Gulf states.</li> </ul> <p>Governors shall select one federal member to be Council Chair.</p>	<p>There are six federal members versus five state members, but a majority of states plus the Chair can approve a project (<i>see #26</i>). Thus, the Chair plays a significant role in decision-making, which makes selecting the Chair a critical process.</p> <p>According to the Preliminary Recommendations of the Gulf Coast Ecosystem Restoration Task Force, it would terminate upon creation of the Council. Compared to the Task Force, the Council adds the Secretaries of the Army and Coast Guard, but removes the Heads of CEQ, Defense, Justice, Transportation, OMB, Office of Science and Technology Policy, and Domestic Policy Council. However, RESTORE anticipates that the Task Force will coordinate with the Council (<i>see #31</i>).</p>

Act §	Topic	Description	Notes
26.	§1603— CWA § 311(t)(2)(C)(vi)	<p data-bbox="422 183 506 207">Voting</p> <p data-bbox="684 183 1381 318">“Significant” actions require the vote of the Chair + a majority of governors. “Significant” includes, but is not limited to, approving the Comprehensive Plan, state plans, reports to Congress, and transfers.</p> <p data-bbox="684 362 1371 496">For the approval of state plans, the certification of a state Governor that the plan satisfies the necessary requirements + the Chair’s vote will satisfy the above voting requirement.</p>	<p data-bbox="1425 183 1961 280">The Act seems to envision that “significant” actions might include more than just the few examples listed.</p> <p data-bbox="1425 324 1940 422">Note that there is essentially no federal oversight of state plans, as a Governor plus the Chair can approve a state plan.</p>
27.	§1603—CWA § 311(t)(2)(C)(vi)(IV)	<p data-bbox="422 505 583 570">Public transparency</p> <p data-bbox="684 505 1350 602">“Appropriate” actions (including significant actions) and deliberations shall be made available to public via electronic means prior to any vote.</p>	<p data-bbox="1425 505 1955 743">It is unclear which Council actions would be “appropriate.” RESTORE contains no additional details on the publication process (except for the “via electronic means” clarification), such as a timeline or a guaranteed opportunity for the public to attend hearings.</p>

Act §	Topic	Description	Notes	
28.	§1603—CWA §311(t)(2)(C)(vii)	Duties of the Council	<p>The duties of the Council are to:</p> <ul style="list-style-type: none"> <li>• Develop the Comprehensive Plan;</li> <li>• Identify preexisting projects that could quickly be implemented to restore natural resources;</li> <li>• Establish advisory committees as necessary, including a scientific advisory committee and public policy advisory committee;</li> <li>• Collect and consider scientific research, including research carried out under RSOMT Program and Centers of Excellence Grants Program (<i>see below</i>);</li> <li>• Develop standard contract terms for Comprehensive Plan projects giving preference to individuals/companies “that reside in, are headquartered in, or are principally engaged in business in a Gulf Coast State”;</li> <li>• Prepare financial plan; and</li> <li>• Submit annual reports to Congress and make recommendations for modifications of existing laws as necessary to implement the Comprehensive Plan.</li> </ul>	<p>Presumably, the Council will establish a scientific advisory committee to determine whether Gulf restoration projects are based on the best available science.</p> <p>As opposed to state funding, the Council has to develop contract terms that will give priority to Gulf-based project applicants (<i>compare with #20</i>). The definition of “local” businesses is still very broad, however.</p> <p>Note that the Council must consider the research of the RSOMT Program and Centers of Excellence (<i>see below</i>).</p> <p>The Council would not have to submit a final report to Congress—just annual reports.</p>
29.	§1603—CWA § 311(t)(1)(C)(ix)	Sunset	Council terminates on the date when all funds are spent.	See #9.

Act §	Topic	Description	Notes	
30.	§1603—CWA § 311(t)(2)(D)	Comprehensive Plan	<p>Within 180 days, the Council must publish a proposed Comprehensive Plan to “restore and protect the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, coastal wetlands of the Gulf Coast.” The proposed Comprehensive Plan is subject to public notice and comment. Within one year, the Council must publish an initial Comprehensive Plan in the Federal Register.</p> <p>The Comprehensive Plan must include a ten-year funding plan and three-year list of specific projects and programs to be funded. The Comprehensive Plan must be updated every five years, and the three-year list must be updated annually.</p>	<p>This language is exactly that same as the general direction to the Council in #24, <i>except that</i> the “economy” language has been deleted. Thus, the Comprehensive Plan may <i>not</i> include economic recovery projects, unlike state plans (<i>see</i> #11, #12). The conflict between the two directions is likely a vestige of an earlier version of the Act. In earlier versions of the Act, the Council had to direct half of its allocated funds to the states for either environmental or economic restoration projects. In this final version of the Act, that language has been supplanted by the impact-based state allocation section. In all versions of the RESTORE Act, however, the Council’s Comprehensive Plan has been limited only to natural resource restoration and protection projects.</p> <p>The Comprehensive Plan is subject to public comment, meaning the Council funding allocations may be more transparent than state funding allocations.</p> <p>It is unclear how the Council will be able to publish a proposed Comprehensive Plan by January 2013 if the total amount of CWA civil penalties is still unknown at that time.</p>
31.	§1603—CWA §§ 311(t)(2)(D)(i)(II) & 311(t)(2)(D)(ii)(II)-(IV)	Gulf Coast Restoration Task Force	<p>The Comprehensive Plan must include and incorporate the findings, information, and recommendations of the Gulf Coast Ecosystem Restoration Task Force.</p> <p>The initial Comprehensive Plan must be developed in close coordination with the Task Force.</p>	<p>The Task Force and Council must work together, and the Council will assume some of the Task Force’s role; but it remains unclear how this relationship will play out in practice. <i>See also</i> #25.</p>

Act §	Topic	Description	Notes	
32.	§1603—CWA §§ 311(t)(2)(D)(iii)	Restoration priorities	<p>The Comprehensive Plan’s three-year project list (except preauthorized projects) must be based on the best available science.</p> <p>The Council must give highest priority to projects that meet one or more of the following criteria:</p> <ul style="list-style-type: none"> <li>• Projects that make the greatest contribution to Gulf natural resources restoration or protection without regard to geographic location;</li> <li>• Large-scale restoration or protection projects;</li> <li>• Projects for natural resources restoration in state comprehensive plans; and</li> <li>• Projects that restore the “long-term resiliency” of natural resources most impacted by the oil spill.</li> </ul>	<p>Note the Comprehensive Plan generally must focus on the best available science and the most impacted areas, regardless of location. In practice, the category of preauthorized projects could be quite large. Thus, the exception of preauthorized projects from the best available science requirement could be significant.</p> <p>The Comprehensive Plan also must prioritize projects that are already identified in state comprehensive plans. In practice, this category of projects also could be quite large.</p> <p>There could potentially be some overlap between the ongoing NRDA and projects to restore the “long-term resiliency” of natural resources impacted by the oil spill (<i>but see #1</i>).</p>
33.	§1603—CWA § 311(t)(2)(E)(i)-(ii)	Implementation	<p>A state or agency represented on the Council shall expend RTF funds to carry out projects in the Comprehensive Plan.</p> <p>Primary authority and responsibility for each project shall be assigned to a state or federal Council member.</p>	See #25 for a list of Council members.
34.	§1603—CWA §§ 311(t)(2)(E)(ii)(III)	Grants to NGOs	Agencies cannot make grants to or cooperative agreements with NGOs if the grant amount is 10% or more of the total project cost, unless the grantee is reported in the Federal Register 30 days prior and listed in the Council’s annual report to Congress.	

Act §	Topic	Description	Notes	
<b>Impact-Based State Allocations—30% of RTF</b>				
35.	§1603—CWA § 311(t)(3)(A)	Funding	<p>Of all funds allocated to the RTF, 30% must go to Gulf states based on the formula:</p> <ul style="list-style-type: none"> <li>• 40% based on the portion of total shoreline miles oiled;</li> <li>• 40% based on the inverse proportion of the average distance of the <i>Deepwater Horizon</i> rig to the nearest and farthest points of oiled shoreline; and</li> <li>• 20% based on the average 2010 population of Gulf coastal counties.</li> </ul> <p>However the formula works out, each state must get at least 5% of the impact allocation funds.</p> <p>State funding is contingent on the state submitting a plan.</p>	RESTORE includes complex formulas for how almost one-third of RTF funds are distributed, and it is not clear how these will work out in practice.
36.	§1603—CWA § 311(t)(3)(B)(i)-(ii)	Limited uses	<p>Projects funded through impact allocation funds must meet the #12 allowable use requirements; contribute to the overall economic and environmental recovery of the Gulf; and take into consideration and be consistent with the Comprehensive Plan.</p> <p>A state’s plan cannot use more than 25% of funds for infrastructure projects, unless the plan certifies that the infrastructure projects address ecosystem restoration and mitigate the impacts of the oil spill on the ecosystem or economy.</p>	Note that the state plans for impact-based funds must be consistent with and consider the Comprehensive Plan, unlike the state plans for equal-share funds.
37.	§1603—CWA § 311(t)(3)(B)(iii)	State plans	<p>State plans will be developed by:</p> <ul style="list-style-type: none"> <li>• Alabama Gulf Coast Recovery Council;</li> <li>• Consortia of Florida localities, including at least one representative from each affected county;</li> <li>• Louisiana Coastal Protection and Restoration Authority;</li> <li>• Mississippi Governor’s Office or appointee; and</li> <li>• Texas Governor’s Office or appointee.</li> </ul>	Interestingly, the Texas and Mississippi Governor’s Offices are in charge of state plan development instead of a coastal or Gulf recovery entity.

Act §	Topic	Description	Notes	
38.	§1603—CWA §§ 311(t)(3)(B)(iv), 311(t)(3)(C)	Council approval/ disapproval	The Council shall approve/disapprove state plans based on whether the plan meets the #12 allowable use requirements.	<p>There are no requirements that the state plans, as opposed to the Comprehensive Plan, follow any kind of public participation processes.</p> <p>Only the Council has authority to enforce the conditions of the Act on the states. Recall that the Council's affirmative voting requirements are weakened during review of state plans (<i>see</i> #26).</p>
39.	§1603—CWA § 311(t)(3)(E)	Judicial Review	States may obtain judicial review in district court within 90 days of the Council's failure to approve a state plan.	Again, only states can obtain judicial review.
40.	§1603—CWA § 311(t)(3)(F)	Cost-sharing	A state or locality may use impact allocation funds to satisfy the non-federal share of any cost-sharing project that meets the #12 allowable use requirements.	

Act §	Topic	Description	Notes
<b>Gulf Coast Restoration, Science, Observation, Monitoring, and Technology Program (RSOMT Program)—2.5% of RTF + 25% of interest earned on RTF</b>			
41.	§1604(b)	Establishment	Within 180 days of enactment, the RSOMT Program shall be established to carry out research, observation, and monitoring to support the “long-term sustainability” of Gulf fisheries and fishing industries.
42.	§1604(h)	Funding	In addition to interest funding, the RSOMT Program will receive 2.5% of RTF Funds made available in each fiscal year.
43.	§1604(b), (c), (g)	Limitations on use of funds	<p>Funds may be used for:</p> <ul style="list-style-type: none"> <li>• Marine and estuarine research;</li> <li>• Marine and estuarine monitoring and ocean observation;</li> <li>• Data collection and stock assessments;</li> <li>• Pilot data programs;</li> <li>• Cooperative research; and</li> <li>• Administrative expenses (up to 3%).</li> </ul> <p>Programs shall include all marine, estuarine, aquaculture, and fish species in state and federal Gulf waters.</p> <p>Funds cannot be used for:</p> <ul style="list-style-type: none"> <li>• Existing or planned NOAA research, unless agreed to in writing by the grant recipient;</li> <li>• Implementing or initiating regulations; and</li> <li>• Developing/approving limited access privilege programs in Atlantic fisheries.</li> </ul> <p>Note that funded projects may include research on aquaculture species.</p> <p>It is unclear why the prohibition on using funds for existing or planned NOAA research has an exception if such use is “agreed to in writing by the grant recipient.” This phrase is likely a vestige from a prior version of the bill, when this language was in the section of the Act related to the Centers of Excellence Grant Program instead of its current position in the section of the Act related to the RSOMT Program.</p> <p>Note that the prohibition on using funds to implement or initiate regulations could significantly impact NOAA’s capacity to engage in fisheries reformation.</p>

Act §	Topic	Description	Notes	
44.	§1604(b)(3)-(4), (f)	Cooperation and Coordination	<p>Funds may be transferred to the Gulf States Marine Fisheries Commission to establish a monitoring and research program in the Gulf.</p> <p>The NOAA Administrator and Fish and Wildlife Service (FWS) Director shall consult with the Regional Gulf of Mexico Fishery Management Council and Gulf States Marine Fisheries Commission in carrying out the RSOMT Program.</p> <p>The NOAA Administrator and FWS Director shall develop a plan for coordinating RSOMT Program projects with existing federal and state science and technology programs, as well as with the Centers of Excellence.</p>	It is unclear how all of the various parties—the Gulf States Marine Fisheries Commission, NOAA, FWS, Regional Gulf of Mexico Fishery Management Council, Centers of Excellence, and RSOMT Program—will work together in practice.
45.	§1604(d)-(e)	Research priorities	Priority shall be given to integrated, long-term, non-duplicative projects that address anticipated information needs.	
46.	§1604(i)	Sunset	RSOMT Program will terminate when all RFT funds are spent.	<i>See #9.</i>

Act §	Topic	Description	Notes	
<b>Centers of Excellence Research Grants—2.5% of RTF + 25% of interest earned on RTF</b>				
47.	§1605(a)	Funding	In addition to interest funding, the Gulf states will receive 2.5% of RTF Funds made available in each fiscal year, in equal shares, exclusively for grants to establish Centers of Excellence to conduct research on the Gulf Coast Region.	
48.	§1605(b)	Duties	Grants will be awarded by: <ul style="list-style-type: none"> <li>• Alabama Gulf Coast Recovery Council;</li> <li>• Coastal Protection and Restoration Authority of Louisiana;</li> <li>• Mississippi Department of Environmental Quality;</li> <li>• Texas Office of the Governor or appointee; and</li> <li>• A Florida consortium of public and private research institutions within the state, including the Department of Environmental Protection and the Fish and Wildlife Conservation Commission.</li> </ul>	
49.	§1605(c)	Grants	States shall use funds to make competitive grants to nongovernmental entities and consortia in the Gulf Coast region, including public and private higher education institutions.	
50.	§1605(c)(3), (d)	Priority and disciplines	States will grant priority to applicants with the broadest expertise in at least one of the following: <ul style="list-style-type: none"> <li>• Coastal/deltaic sustainability;</li> <li>• Coastal fisheries and wildlife;</li> <li>• Offshore energy development, including research and technology to improve safety;</li> <li>• Sustainable growth, and economic and commercial development; and</li> <li>• Comprehensive monitoring/mapping.</li> </ul> Each Center shall focus on science, technology, and monitoring in at least one of these disciplines.	Centers for Excellence can be primarily energy development or economic development organizations. There is no requirement that any Center focus on more than one of the listed disciplines, and no requirement that the Centers conduct research on natural resources.
51.	§1605(c)(4)	Reporting	Each state shall provide information on grants, including the amount, discipline and recipient(s), to the Council annually. The Council shall include this information in its annual report to Congress.	

Act §	Topic	Description	Notes
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