

Alabama State Expenditure Plan 2022 Amendment



Submitted pursuant to the Spill Impact Component of the RESTORE
Act 33 U.S.C. SS 1321 (t)(3)



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Executive Summary

The Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (“RESTORE Act”) requires the State of Alabama, through the Alabama Gulf Coast Recovery Council (AGCRC), to publish a State Expenditure Plan (SEP) detailing its plan to expend funds under the Spill Impact Component of the RESTORE Act. This plan and any amendments thereto, are subject to 45 days of public review and comment, and approval by the Chair of the Gulf Coast Ecosystem Restoration Council (RESTORE Council). Under the Spill Impact Allocation Final Rule published by the RESTORE Council at 40 C.F.R. Part 1800, 20.4% of the total Spill Impact Component funds, or approximately \$327 million over a 15-year period ending in 2031, will be allocated to the State of Alabama.

In 2019, the RESTORE Council approved the State’s initial SEP. This SEP contained 29 projects totaling approximately \$132 Million, all of which addressed one or more goals of the RESTORE Council’s Comprehensive Plan.

This amendment to the State’s SEP would approve \$37,161,000 in contingency funds to augment the budgets of approved SEP projects and programs, as needed, in response to cost increases for labor, materials, and/or other considerations. More information on this cost contingency fund is provided below. All other projects and programs, and the corresponding details/provisions that were approved in the initial Alabama SEP remain in full force and effect.

Section 1. Public Participation Statement

This draft SEP amendment was released for public comment for 45 days on the following websites:

- Alabama Department of Conservation and Natural Resources’ (ADCNR) comprehensive coastal restoration website;
- Mississippi-Alabama Sea Grant Consortium website; and
- Gulf of Mexico Alliance website.

The draft SEP amendment was also announced through Alabama’s comprehensive coastal restoration email distribution list. The Alabama Gulf Coast Recovery Council accepted comments via email at agcrc@dcnr.alabama.gov and U.S. Mail at 31115 Five Rivers Boulevard Spanish Fort, AL 36527. At the end of the comment period, the Administrator of the Alabama Gulf Coast Recovery Council reviewed and summarized the comments in the attached “State of Alabama’s Response to Comments Regarding the 2022 Amended Alabama State Expenditure Plan”.

After review, the Administrator convened the Alabama Gulf Coast Recovery Council to formally approve the final SEP amendment on April 6, 2022. Upon submission to the RESTORE Council for approval, the final SEP amendment will be released via Alabama’s comprehensive coastal restoration email distribution list and posted online.

Section 2. State Certification of RESTORE Act Compliance, Conflicts of Interest and Financial Integrity

In accordance with the Section 5.2.2 of the RESTORE Council's SEP Guidelines, the State of Alabama hereby certifies that all projects, programs, and activities included in this SEP amendment are eligible activities as defined by the RESTORE Act and meet the requirements listed in Sections 4.1 and 4.1.1 of the SEP Guidelines. Additionally, the process used to verify that the projects, programs, and activities meet these requirements is described in Section 1, Page 3 of the State's initial SEP. The State of Alabama further certifies that issues crossing Gulf State boundaries have been evaluated to ensure that a comprehensive, collaborative ecological and economic recovery is furthered by this amendment. The State hereby certifies that: (i) this Amendment to the State of Alabama's SEP complies with the RESTORE Council's SEP Guidelines; (ii) the activities proposed in this amendment contribute to the overall economic and ecological recovery of the Gulf Coast; and (iii) the activities proposed in this amendment will be carried out in the Gulf Coast Region in accordance with the requirements of 31 C.F.R. §§ 34.503(b)(5) and 34.203. The State also certifies that, pursuant to Section 4.2.2 of the SEP Guidelines and in accordance with 33 U.S.C. §1321(t)(3)(B)(ii)(I) and 31 C.F.R. § 34.503(f), no more than 25 percent of funding under the Spill Impact Component will be used to pay for infrastructure projects. Additionally, the State of Alabama certifies that this RESTORE SEP amendment takes into consideration the current Comprehensive Plan adopted by the RESTORE Council and is consistent with the goals and objectives of that Plan. Finally, the State of Alabama certifies that all projects, programs, and activities in the initial SEP are based on the Best Available Science as defined in the RESTORE Act.

All conflicts of interest and financial integrity provisions provided for in Section "Conflicts of Interest", Page 16 of the State's initial SEP also apply to this SEP amendment as required by Section 5.2.4 of the SEP Guidelines.

Section 3 SEP Project Cost and/or Scope Changes

The projects and/or programs in a SEP may need to be modified in the future in response to a range of factors including changes in costs, engineering and design, permitting, and other considerations. In some cases, such changes will warrant an amendment to the SEP, including public review and input. In other cases, such changes can be made at the discretion of the SEP sponsor without the need for a SEP amendment.

A SEP amendment is not required for a cost change to an approved SEP project or program if (i) the cost change does not affect the overall scope or objective of the given project or program, and (ii) funding is available within the total amount approved for the SEP (including amendments). For example, if the cost of a boat ramp increases due to increased construction costs but the scope of the project would not materially change and the total approved SEP funding would not change, then a SEP amendment would generally not be required. Similarly, if a proposed construction cost saving would not result in a material change to the overall project scope or objective, an amendment would not be required.

In some cases, however, increasing the funds for one SEP project or program may require decreasing the scope of other SEP projects or programs. If the reallocation of funds from one or more SEP projects or programs to another results in a material (more than minor) change in the overall scope or objective of the project(s) or program(s) from which funds are taken, then a SEP amendment is required.

If the proposed cost change requires additional funding above and beyond the total amount approved in the SEP and any amendments, it too requires a SEP amendment, regardless of whether there is a material change in the overall scope or objective of the given project or program.

Section 4 SEP Cost Contingency Fund

The State of Alabama ("Sponsor") will reserve \$37,161,000 in contingency funds to augment the budgets of approved SEP projects and programs, as needed, in response to cost increases for labor or materials, and/or other considerations not within the Sponsor's control. The purpose of the contingency funding is to enable approved SEP projects and programs to be completed as previously described in the SEP. These funds are not to be used for new projects or programs, or to change the overall scope or objective of approved SEP projects or programs.

Unless a SEP is amended, there will be no change in the primary eligible activity and overall scope and objective of the projects and programs to which these contingency funds are allocated. If the contingency funds are used to augment the budget of a SEP project that constitutes an infrastructure project pursuant to the RESTORE Act, those additional funds will be counted against the statutory 25% cap on infrastructure.

If for any reason the Sponsor proposes a material change in the scope or overall objective of a SEP project or program, then a SEP amendment would be required. Additionally, if the Sponsor proposes using any of these contingency funds for another project or program not previously described in an approved SEP, then a SEP amendment would be required. Section 3 of this amendment provides additional information regarding when a SEP amendment is triggered by a scope change and when projects contained within an approved SEP may be modified without a SEP amendment.

Project Name	Funds Previously Allocated Under the Spill Impact Component	Spill Impact Component Amendment Request	Total
Contingency Funds	\$0	\$37,161,000	\$37,161,000

Section 5. State of Alabama's Response to Comments Regarding the 2022 Amended Alabama State Expenditure Plan

On February, 10, 2022, the Alabama Department of Conservation and Natural Resources (ADCNR), on behalf of the Alabama Gulf Coast Recovery Council, published for public review and comment its 2022 Amendment to the Alabama State Expenditure Plan. The 2022 Amendment was made available for public comment for a total of 49 days, from February 10th to April 1st, 2022.

ADCNR accepted public comments and input electronically via email, fax, telephone, or mail directly to ADCNR.

During the public review and comment period, ADCNR received and reviewed a total of one (1) set of written comments (via email). No other comments were submitted. The one set of comments has been summarized for purposes of this response. All comments submitted during the public review and comment period were considered by ADCNR and each activity in the plan was adopted after consideration of meaningful input from the public.

Summary of Comments

5.1 Comment expressing appreciation of extended comment period.

The State appreciates and acknowledges this comment and will continue to make efforts to provide sufficient time to review and provide comment on future SEP amendments.

5.2 Comment regarding transparency and access to information related to AGCRC decision-making process.

The State appreciates and acknowledges this comment. All plans and documents related to the AGCRC and decision-making are available at www.alabamacoastalrestoration.org. For more information on how projects were originally selected by the AGCRC, please see the State's Initial State Expenditure Plan, approved in 2019. No additional projects are being proposed at this time. Future projects or material changes to existing projects in the SEP will be subject to additional public review and comment.

5.3 Comment regarding request for \$37 million in contingency funds and commensurate benefits to public and approval of SEP amendment, opposition to the approval of the SEP.

The State appreciates and acknowledges this comment. Projects throughout Alabama have experienced budget shortages related to supply chain issues, labor shortages and increased costs for materials. In order to complete the projects, many of which are in or near the construction phase, supplemental funds are needed. The benefits of these projects to the environment and economy of Coastal Alabama are articulated in the 2019 State Expenditure Plan. The State has and will continue to take into account the consideration of project benefits when identifying and selecting projects for implementation.

5.4 Comment regarding request to conduct a comprehensive review and update of the 2015 FPL.

The State appreciates and acknowledges this comment. The Funded Priorities List, or FPL, is developed by the Federal Gulf Coast Ecosystem Restoration Council. The AGCRC does not have a voting role in the development or review of the FPL. This comment has been provided to the Executive Director of the Gulf Coast Ecosystem Restoration Council.