

Gulf Coast Ecosystem Restoration Council
New Orleans, LA 70130



MEMORANDUM

FROM: Ben Scaggs
Executive Director

TO: Andrew Wheeler
Administrator, U.S. Environmental Protection Agency (EPA)
Chairperson, Gulf Coast Ecosystem Restoration Council (Council)

DATE: July 22, 2019

**SUBJECT: Recommendation for Approval of Florida State Expenditure Plan
Amendment #1**

Pursuant to the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (33 U.S.C. §1321(t) and *note*) (RESTORE Act), the attached Florida State Expenditure Plan (SEP) Amendment #1 (Amendment) requires approval or disapproval by the Chairperson of the Council within 60 days after receipt. This 60-day review period officially began on June 24, 2019; the statutory deadline for Chairperson approval or disapproval is August 22, 2019.

Pursuant to the Council's SEP Guidelines, Council staff reviews the proposed SEP (or amendment) and makes a recommendation to the Chairperson on whether to approve or disapprove it based on the requirements of the RESTORE Act, the Department of the Treasury's implementing regulations and the Council's SEP Guidelines.

I have reviewed the Amendment and find that it is complete and meets all applicable requirements. I therefore recommend that the Chairperson approve the Amendment on behalf of the Council. A more detailed explanation of this recommendation is provided below. If you agree with this recommendation and approve the Amendment, the attached response letter has been prepared for your signature.

The attached letter would constitute the Chairperson's affirmative vote for the Amendment. Pursuant to section 4.3.3 of the Council's Standard Operating Procedures, Council staff will post on the Council's website all deliberative materials (including this memorandum) at least seven days before formal Council approval of the Amendment.

BACKGROUND

The RESTORE Act established the Council as an independent federal entity. Among other duties, the Council is tasked with administering the Spill Impact Component of the RESTORE Act, under which 30 percent of the funds in the Gulf Coast Restoration Trust Fund (Trust Fund) are disbursed to the five Gulf Coast States based on an allocation formula established by the Council by regulation, based on criteria in the RESTORE Act. In order for Spill Impact Component funds to be disbursed to a State or their administrative agent, the RESTORE Act requires each State to develop a SEP and submit it to the Chairperson for approval.

Under the RESTORE Act, the Council itself has no role in the creation and amendment of SEPs or the design or selection of SEP activities; these actions are undertaken solely by the State members. The RESTORE Act specifies four criteria that SEPs must meet in order to be eligible for funding under the Spill Impact Component, and when a SEP meets these criteria (and otherwise complies with the RESTORE Act and Treasury regulations) the Council has no authority or discretion to select or designate alternative versions of a SEP or alternative activities within a SEP. Although the Council must determine whether a SEP has met these statutory criteria, the RESTORE Act does not grant the Council discretion to separately consider external factors, such as environmental impacts, in its statutory review. The Council's role and responsibilities with respect to amendments of SEPs are the same as outlined above for SEPs.

In March 2016 the Council updated its SEP Guidelines, which describe the required elements of a SEP, the process for submitting a SEP and the standards by which the Chairperson will evaluate a SEP. The SEP Guidelines set forth the elements required in a SEP to ensure compliance with the RESTORE Act and applicable Department of the Treasury regulations. Pursuant to the SEP Guidelines, SEP amendments may focus on the proposed change only, but must be submitted, reviewed and approved through the same process used for SEPs. The SEP Guidelines reiterate the four statutory criteria that all SEPs and SEP amendments must meet:

1. Each activity in the SEP (or amendment) must be eligible for funding under the RESTORE Act.
2. The SEP (or amendment) must contribute to the overall economic and ecological recovery of the Gulf Coast.
3. The SEP (or amendment) must take into consideration the Council's Comprehensive Plan and be consistent with the goals and objectives of the Comprehensive Plan.
4. No more than 25% of the funding made available in a SEP (or amendment) may be used for infrastructure projects for eligible activities 6 and 7 (i.e., coastal flood protection, port and other infrastructure projects), unless a waiver is provided as described in the RESTORE Act.

The Council staff review found that the Amendment meets all four of the required criteria. The Council staff review also found that it was complete and met all of the other requirements set forth in the SEP

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Guidelines. These requirements (set forth in the original SEP and not amended, and thus applicable to the Amendment) include descriptions of the financial controls and other financial integrity mechanisms that will be used, a description of the process used for preventing conflicts of interest in the development and implementation of the Amendment, project-specific information, a certification that all activities in the Amendment are based on best available science and otherwise comply with RESTORE Act requirements, and information regarding the public participation process used in developing the Amendment.

Pursuant to the SEP Guidelines, all Council members were given 20 days to review the Amendment for completeness and consistency with the four statutory criteria described above. Council members were to provide any comments they might have in that regard to Council staff, which in turn would provide them to the Chairperson for his/her consideration in the approval or disapproval of the Amendment. No Council member provided comments on the Amendment.

The Amendment, if approved, would provide approximately \$4,500,000 in Spill Impact Component funding for renovation and expansion of the Kingfish Boat Ramp in Manatee County, Florida. The Amendment would also remove two previously approved Manatee County projects from the SEP. These two projects are entitled Preserve Management Plans (\$280,000) and Coastal Watershed Management Plans (\$1,300,000). Additionally, the Amendment would reduce Spill Impact Component funding approved for four projects in the original SEP. These four projects with reduced funding are named Manatee River Oyster Restoration Project, Portosueno Park Living Shoreline, Coastal Preserve Trail and Boardwalk Enhancements, and Urban Park Stormwater Improvements - GT Bray Park. The reduced costs of these four projects collectively amounts to approximately \$3,100,000. These cost reductions are offset by increased leveraged funds expected from other sources; it is not anticipated that the scope of any of those four projects will be reduced.

Once a SEP or SEP amendment is approved, funding for activities in the SEP is disbursed to the respective State via federal grants when such funds become available in the Trust Fund. As part of the grant process, all activities for which funding is sought will be carefully reviewed to ensure consistency with the approved SEP and compliance with the RESTORE Act and all other applicable requirements. Funding for implementation activities is disbursed to the State after verification of compliance with all applicable federal environmental and other laws.

Florida's proposed Amendment complies with all of the applicable requirements set forth in the RESTORE Act, Treasury regulations and SEP Guidelines. If approved by the Chairperson, we look forward to working with Florida and the Gulf Consortium to help ensure an efficient grants process for the activities included in the Amendment.

Thank you in advance for your review of this matter. Please do not hesitate to let me know if you have any questions or would like to discuss this matter further. Technical questions regarding the Florida SEP can be directed to John Ettinger, of my staff, at (504) 444-3522 or at john.ettinger@restorethegulf.gov.

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ATTACHMENTS

1. Florida State Expenditure Plan Amendment #1
2. Draft Letter Approving Florida State Expenditure Plan Amendment #1