

GULF COAST ECOSYSTEM RESTORATION COUNCIL

40 CFR Part 1800

Docket Number: 109002015-1111-XX

RESTORE Act Spill Impact Component Allocation

AGENCY: Gulf Coast Ecosystem Restoration Council.

ACTION: Final Rule.

SUMMARY: This rule sets forth the Gulf Coast Ecosystem Restoration Council’s (Council) regulation to implement the Spill Impact Component of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (RESTORE Act). This rule establishes the formula allocating funds made available from the Gulf Coast Restoration Trust Fund among the Gulf Coast States of Alabama, Florida, Louisiana, Mississippi and Texas (“State” or “States”) pursuant to Sec. 1603(3) of the RESTORE Act.

DATES: This rule will become effective on the date that notice is published in the *Federal Register* confirming that the United States District Court for the Eastern District of Louisiana has entered a consent decree (Consent Decree) among the United States, the States and BP with respect to the civil penalty and natural resource damages in case number MDL No. 2179.

ADDRESSES: The Council posted all comments on the proposed rule on its Web site, www.restorethegulf.gov, without change.

FOR FURTHER INFORMATION CONTACT: Will Spoon at (504) 239-9814.

SUPPLEMENTARY INFORMATION:

Background

The Gulf Coast region is vital to our nation and our economy, providing valuable energy resources, abundant seafood, extraordinary beaches and recreational activities, and a rich natural and cultural heritage. Its waters and coasts are home to one of the most diverse natural environments in the world – including over 15,000 species of sea life and millions of migratory birds. The Gulf has endured many catastrophes, including major hurricanes such as Katrina, Rita, Gustav and Ike in the last ten years alone. The region has also experienced the loss of critical wetland habitats, erosion of barrier islands, imperiled fisheries, water quality degradation and significant coastal land loss. More recently, the health of the region’s ecosystem was significantly affected by the *Deepwater Horizon* oil spill. As a result of the oil spill, the Council has been given the great responsibility of helping to address ecosystem challenges across the Gulf.

In 2010 the *Deepwater Horizon* oil spill caused extensive damage to the Gulf Coast’s natural resources, devastating the economies and communities that rely on it. In an effort to help the region rebuild in the wake of the spill, Congress passed and the President signed the RESTORE Act, Public Law 112–141 sections 1601–1608, 126 Stat. 588 (Jul. 6, 2012), codified at 33 U.S.C. 1321(t) and *note*. The RESTORE Act created the Gulf Coast Restoration Trust Fund (Trust Fund) and dedicates to the Trust Fund 80% of all civil and administrative penalties paid under the Clean Water Act, after enactment of the RESTORE Act, by parties responsible for the *Deepwater Horizon* oil spill.

Under the RESTORE Act, these funds will be made available through five components. The Department of the Treasury (Treasury) has issued regulations (79 Fed. Reg. 48039 (Aug. 15, 2014)), adopting an interim final rule at 31 CFR part 34) (Treasury Regulations), applicable to all five components, that generally describe the responsibilities of the Federal and State entities

that administer RESTORE Act programs and carry out restoration activities in the Gulf Coast region.

Two of the five components, the Council-Selected Restoration Component and the Spill Impact Component, are administered by the Council, an independent Federal entity created by the RESTORE Act. Under the Spill Impact Component (33 U.S.C. 1321(t)(3)), the subject of this rule, 30% of funds in the Trust Fund will be disbursed to the States based on allocation criteria set forth in the RESTORE Act.¹ In order for funds to be disbursed to a State, the RESTORE Act requires each State to develop a State Expenditure Plan (SEP) and submit it to the Council for approval. The RESTORE Act specifies particular entities within the States to prepare these plans.

SEPs must meet the following four criteria set forth in the RESTORE Act: (1) all projects, programs and activities (activities) included in the SEP are eligible activities under the RESTORE Act (33 U.S.C. 1321(t)(3)(B)(i)(I)); (2) all activities included in the SEP contribute to the overall economic and ecological recovery of the Gulf Coast (33 U.S.C. 1321(t)(3)(B)(i)(II)); (3) the SEP takes the Council's Comprehensive Plan into consideration and is consistent with the goals and objectives of the Comprehensive Plan (33 U.S.C. 1321(t)(3)(B)(i)(III)); and (4) no more than 25% of the allotted funds are used for infrastructure projects unless the SEP contains certain certifications pursuant to 33 U.S.C. 1321(t)(3)(B)(ii) (33 U.S.C. 1321(t)(3)(B)(ii)). If the Council determines that an SEP meets the four criteria listed above and otherwise complies with the RESTORE Act and the applicable Treasury Regulations, the Council must approve the SEP

¹ 33 U.S.C. 1321(t)(3)(A)(ii). The Council previously promulgated a regulation permitting each State to access up to 5% of the total amount available in the Trust Fund under the Spill Impact Component (the statutory minimum guaranteed to each State). These funds could be used for planning purposes associated with developing a State Expenditure Plan. 80 Fed. Reg. 1584 (Jan. 13, 2015); 40 CFR 1800.20.

based upon such determination within 60 days after a State submits an SEP to the Council.

33 U.S.C. 1321(t)(3)(B)(iv).

The funds the Council disburses to the States upon approval of an SEP will be in the form of grants. As required by Federal law, the Council will award a Federal grant or grants to each of the States and incorporate into the grant award(s) standard administrative terms on such topics as recordkeeping, reporting and auditing. The Council will establish and implement a compliance program to ensure that the grants it issues comply with the terms of the grant agreement.

The ultimate amount of administrative and civil penalties potentially available to the Trust Fund is not yet certain. On January 3, 2013, the United States announced that Transocean Deepwater Inc. and related entities agreed to pay \$1 billion in civil penalties for violating the Clean Water Act in relation to their conduct in the *Deepwater Horizon* oil spill. The settlement was approved by the court in February 2013, and pursuant to the RESTORE Act approximately \$816 million (including interest) has been paid into the Trust Fund. On October 5, 2015, the United States announced that it had lodged a proposed Consent Decree among the United States, the States and BP with the United States District Court for the Eastern District of Louisiana, providing for settlement of all civil claims against BP arising from the *Deepwater Horizon* oil spill. If made final, the proposed Consent Decree would require BP to pay to the United States a civil penalty under the Clean Water Act of \$5.5 billion, plus interest, payable in installments over fifteen years. Under the RESTORE Act 80% of those payments, or \$4.4 billion plus interest, would be dedicated to the Trust Fund and allocated to the five components based on percentages defined in the RESTORE Act, including 30% to the Spill Impact Component, the subject of this rule. There are, however, additional steps that must be completed before such funds may

become available. The Consent Decree will not become final until a public comment process has been completed and the court has approved and entered the Consent Decree. This rule will become effective on the date when and if notice is published in the *Federal Register* confirming that the Consent Decree has been approved and entered by the court.

This Rule

This rule establishes the formula for allocating among the five States funds made available through the Spill Impact Component of the Trust Fund (Spill Impact Component), as required by the RESTORE Act, and supplements the Treasury Regulations. This rule, and the application of any determinations made hereunder, is limited to the Spill Impact Component and is promulgated solely for the purpose of establishing such allocation. The Council takes no position on what data or determinations may be appropriate for other uses, including for any other Component of the RESTORE Act or in connection with natural resource damage assessments, ongoing litigation, any other law or regulation or any rights or obligations in connection therewith.

The RESTORE Act mandates that funds made available from the Trust Fund for the Spill Impact Component be disbursed to each State based on a formula established by the Council by a regulation based on a weighted average of the following three criteria: (1) 40% based on the proportionate number of miles of shoreline in each State that experienced oiling on or before April 10, 2011, compared to the total number of miles of shoreline throughout the Gulf Coast region that experienced oiling as a result of the *Deepwater Horizon* oil spill; (2) 40% based on the inverse proportion of the average distance from the mobile offshore drilling unit *Deepwater Horizon* at the time of the explosion to the nearest and farthest point of the shoreline that experienced oiling of each State; and (3) 20% based on the average population in the 2010

Decennial Census of coastal counties bordering the Gulf of Mexico within each State.

33 U.S.C. 1321(t)(3)(A)(ii).

Public Comments and Summary of Changes to Final Rule

On September 29, 2015, the Council published a draft rule (80 Fed. Reg. 58417) establishing the formula for allocating among the five States funds made available through the Spill Impact Component, as required by the RESTORE Act. During the thirty-day comment period the Council received eleven written comments addressing the draft rule, from private citizens, other government entities (such as state, county and local entities), non-governmental organizations and others. All comments were reviewed and carefully considered by the Council before finalizing the rule. (The Council received fourteen additional comments not addressing the draft rule (for example, addressing specific restoration project preferences or addressing the Funded Priorities List) and did not respond to those comments herein.)

The Council has made one clarifying edit to the final rule. In the first sentence of 40 CFR §1800.400, the phrase “coastal political subdivisions” has been replaced by “coastal counties” in conformance with the Act pursuant to 33 U.S.C. §1321(t)(3)(A)(ii)(III).

General Comments/Responses

Comment: Several commenters suggested or encouraged the Council to allocate Spill Impact Component funds to specific projects, specific ecological or economic areas of concern, or specific geographic areas.

Response: The Council appreciates these comments and the expressions of concern for the ecosystems and economies of the Gulf Coast region. However, the purpose of the rule as required by the RESTORE Act is only to establish a percentage formula for allocation of Spill Impact Component funds; the rule does not address implementation. The implementation of

projects and programs under this Component will take place pursuant to other provisions of the RESTORE Act (e.g., the Council’s State Expenditure Plan (SEP) Guidelines available at www.restorethegulf.gov/sites/default/files/SEP-Guidelines-final_0.pdf). Additional information related to the Council’s restoration goals, objectives and activities can be found on our website at www.restorethegulf.gov. No change was made to the rule in response to this comment.

Comment: Several commenters referred to the SEP Guidelines (available at www.restorethegulf.gov/sites/default/files/SEP-Guidelines-final_0.pdf) and suggested that they be included, or incorporated by reference, in the rule. One commenter also suggested specific policies that the Council follow in implementing the SEP Guidelines and approving SEPs and mentioned the Council’s “discretion” in evaluating SEPs.

Response: The Council appreciates the comment and the thoughtful attention paid to the Council’s Spill Impact Component processes. Under the RESTORE Act, each State will create an SEP setting forth the projects and programs on which the State will expend Spill Impact Component funds. However, the SEPs and their implementation are not the subject of this rule. The Council published the rule pursuant to the section of the RESTORE Act requiring a regulation to establish the Spill Impact Component allocation formula, *see* 33 U.S.C. 1321(t)(3)(A)(ii), and the Council limited the rule to that purpose.

The Council’s SEP Guidelines were carefully drafted to ensure effective and efficient implementation of the relevant requirements in the RESTORE Act. These Guidelines, which do not establish any Council discretion in evaluating or approving SEPs (*see* the “Environmental Compliance” section below), remain in effect regardless of whether or not they are incorporated into a Council rule or regulation. The Council may in the future issue further regulations as circumstances warrant. No change was made to the rule in response to this comment.

Formula Criteria in General

Comment: One commenter criticized the formula's 40%-40%-20% weighting of the three criteria (miles of oiled shoreline; inverse proportion of the *Deepwater Horizon* drilling rig distance from oiled shoreline; and average coastal county population) used to establish the Spill Impact Component funding allocation for each State. The commenter suggested using a 50%-40%-10% respective weighting, stating that the formula set forth in the draft rule gives too much weight to coastal county populations and not enough to miles of oiled shoreline.

Response: The Council appreciates this comment and the analysis behind it. However, the formula's criteria percentage weightings of 40%-40%-20% described above are specified by the RESTORE Act and cannot be changed by the Council. *See* 33 U.S.C. 1321(t)(3)(A)(ii). No change was made to the rule in response to this comment.

Oiled Shoreline Criterion

Comment: One commenter offered support for the Council's use of US Coast Guard (USCG) data in determining the miles of oiled shoreline in each Gulf State.

Response: The Council appreciates the commenter's support for the Council's implementation of this rule criterion.

Comment: One commenter criticized the Council's use of USCG Rapid Assessment Technique (RAT) data in determining the amount of oiled shoreline in Texas, while using USCG Shoreline Cleanup Assessment Technique (SCAT) data for determining miles of oiled shoreline in the other States. The commenter suggested that SCAT data is the only reliable method for determining the oiled shoreline resulting from the *Deepwater Horizon* oil spill because RAT data is "preliminary in nature" and not guided by a "prescribed and systematic" methodology as is SCAT data. Since there is no SCAT data for Texas, the commenter suggested that there can be

no determination of miles of oiled shoreline in Texas for purposes of the rule, and stated that the Council should therefore use a zero percentage for Texas under the first two criteria of the formula. The commenter also stated that the RAT method is not mentioned in either the USCG's Incident Management Handbook or the National Oceanic and Atmospheric Administration's (NOAA) Shoreline Assessment Manual.

Response: The Council appreciates this comment and the analysis behind it. The Council has determined that it is prudent to consider the best available data in establishing the allocation in this rule. The location, magnitude, and persistence of exposure of nearshore habitats to *Deepwater Horizon* oil was documented through field surveys that included observations, measurements and collection and analysis of thousands of samples. Based on all data surveys, oil was observed on over 1300 miles of shoreline from Texas to Florida. Relying exclusively on SCAT data, thus excluding RAT data, would mean that Texas would appear to have had zero miles of oiled shoreline and (as the commenter concluded) result in a zero percentage for Texas under the first and second criteria of the rule formula. This is factually inaccurate. According to the available surveys and the USCG, Texas had at least 36.0 miles of shoreline "that experienced oiling as a result of the *Deepwater Horizon* oil spill." 33 U.S.C. 1321(t)(3)(A)(ii)(I). To exclude this data because the RAT method was used instead of the SCAT method would not reflect this reality. While the RAT technique is not specifically named, the technique is described in the USCG Incident Management Handbook under the discussion of Field Observers, and in NOAA's Shoreline Assessment Manual in its discussion of rapid assessment teams (3rd Edition) or Field Observers (4th Edition). While RAT is not as prescribed or systematic as SCAT, it is nevertheless a commonly used assessment methodology. Additionally, the oil samples from the Texas shoreline were fingerprinted by the USCG and

identified as originating from the Macondo well. Moreover, the use of RAT and SCAT data together is consistent with the use of both datasets by the United States in determining the injury to natural resources in its civil lawsuits against BP in connection with the *Deepwater Horizon* oil spill. The Council thus determined that since the Texas shoreline did in fact experience oiling from the spill, it was more reasonable to consider all available data, including RAT data, in establishing the allocation formula. No change was made to the rule in response to this comment.

Inverse Proportion Criterion

Comment: One commenter supported the Council’s mathematical formula for determining the inverse proportion of the average distance of the *Deepwater Horizon* drilling rig from the nearest and farthest point of oiled shoreline in each State.

Response: The Council appreciates the commenter’s support for the Council’s implementation of this criterion of the rule.

Population Criterion

Comment: One commenter criticized the Council’s calculation of the portion of the formula based on the third criterion, “the average population ... of coastal counties ... within each Gulf Coast State,” stating that the calculation in the rule gives too much weight to States with smaller total coastal populations. The commenter suggested calculating the total population of each State’s coastal counties as a percentage of the total population of all of the Gulf States’ coastal counties in calculating this part of the rule formula.

Response: The Council appreciates this comment. However, the RESTORE Act requires using, for this criterion, the calculation of the “average population ... of coastal counties ... within each Gulf Coast State.” *See* 33 U.S.C. 1321(t)(3)(A)(ii)(III). The Council interpreted this

language to mean the average coastal county population within each State. This appears to be the plain meaning and intent of the term “average” in this provision. Using the total population of all coastal counties within each State, rather than the average population of each coastal county, would ignore the term “average” in the criterion and change the resulting allocation percentages in a way not permitted by the RESTORE Act.

Thus the Council first determined which counties in each State are coastal counties, then used the 2010 Decennial Census data to determine the population of each of those counties, and finally calculated the average coastal county population within each State, compared to the respective averages of the other States, to arrive at the final percentage allocation for this criterion. No change was made to the rule in response to this comment.

Coastal Counties Definition

Comment: Several commenters criticized the exclusion of Harris County in Texas from the definition of “coastal counties” in the rule formula. *See* 33 U.S.C. 1321(t)(3)(A)(ii)(III). One commenter mentioned that Hillsborough County in Florida, and Orleans Parish in Louisiana, appear to have geographic complexities similar to Harris County.

One commenter supported the Council’s definition of coastal counties in the rule formula.

Response: The coastal counties for the State of Florida are determined by the RESTORE Act and the Treasury Regulations (*see* 31 CFR 34.2). The RESTORE Act does not specify the coastal counties for the States of Alabama, Mississippi, Louisiana or Texas, and the Council referred to a generally accessible geographic map in order to determine those States’ coastal counties. With respect to Texas there was additional discussion within the Council regarding the State’s geographic complexity; for example, there are several interconnected waterways that are

geographically distinct from the Gulf of Mexico. The Council did not consider any other State to be as geographically complex as Texas. For Hillsborough County in Florida, geographic complexity was not relevant since the Florida coastal counties are specified by the RESTORE Act and the Treasury Regulations. The Council did not consider Orleans Parish in Louisiana to be geographically complex since it directly touches the Gulf of Mexico through Lake Borgne, a body of water contiguous with the Gulf of Mexico. Since only the Texas coast was so geographically complex, the Council looked at additional sources when considering the definition of coastal counties in Texas.

The Council thus considered the list of coastal counties used by the State of Texas Railroad Commission (TRC) (<http://www.rrc.state.tx.us/>), the Texas state agency responsible for regulating exploration, production and transportation of oil and natural gas in Texas as well as related pollution prevention measures — matters that are topically related to the purposes of the RESTORE Act. The TRC list is consistent with the Texas counties identified in the rule by using the generally accessible geographic map.

The Council also consulted other Texas information sources. For example, the Council considered using the list used by the Texas Coastal Management Program (TX CMP) setting forth all or part of eighteen counties subject to the TX CMP. The Council found that the TX CMP does not contain a list of “coastal counties,” but rather tracks a “coastal zone.” The “coastal zone” area is defined by the Coastal Zone Management Act (CZMA) (16 U.S.C. 1451 et. seq.) based on hydrologic and geographic standards (see 16 U.S.C. 1453(1)) that are not meaningful for purposes of the Council defining “coastal counties” pursuant to the RESTORE Act at 33 U.S.C. 1321(t)(3)(A)(ii)(III).

The Council also considered the definition of “coastal political subdivisions” used in the Outer Continental Shelf Lands Act (43 U.S.C. 1356a) and rejected it because it also in part uses the CZMA definition of “coastal zone” to define “coastal political subdivisions.”

After having thus considered the TRC list and other sources, the Council concludes that the list of Texas coastal counties provided in the rule is reasonable and appropriate in implementing the provisions of the Spill Impact Component of the RESTORE Act. No change was made to the rule in response to this comment.

The Council is using the TRC list only for purposes of establishing the population criterion of the rule formula pursuant to 33 U.S.C. 1321(t)(3)(A)(ii)(III); this use of the TRC list has no bearing on any other determination of coastal counties, areas, political subdivisions or jurisdictions, under Federal or state law or otherwise.

Comment: Several commenters noted that Harris County was affected by the oil spill and therefore should have been included in the definition.

Response: The Council appreciates that numerous Texas (and other Gulf States’) counties were affected by the spill, including localities both on and more distant from the Gulf Coast. The Council interprets the RESTORE Act to require restricting the definition to a geographic determination of coastal counties; being affected by the spill is not a factor to be considered for this criterion of the rule formula, which is based solely on population. No change was made to the rule in response to this comment.

It should be noted that the rule formula establishes only the allocation of Spill Impact Component funds to each State and has no bearing on where in a State such funds may be expended; for example, the State of Texas could elect to fund projects and/or programs within Harris County. Spending decisions will be made by each State in accordance with the State

Expenditure Plan(s) to be created by each State under the RESTORE Act and the Treasury Regulations (including the limitation of programs to those carried out in the “Gulf Coast Region,” *see* 31 CFR 34.2 *and* 31 CFR 34.203(c)).

Changes to Final Rule

The Council made one clarifying edit to the final rule. In the first sentence of 40 CFR 1800.400, the phrase “coastal political subdivisions” has been replaced by “coastal counties” in conformance with the Act pursuant to 33 U.S.C. §1321(t)(3)(A)(ii)(III).

Environmental Compliance

The Council did not receive any public comments addressing the application of the National Environmental Policy Act (NEPA) to the promulgation of the rule or the Council’s approval or funding of an SEP. The Council adopts the analysis detailed in the proposed rule (80 Fed. Reg. 58417, 58419 (Sept. 29, 2015)) that NEPA review is not required to issue this rule and will not be required in connection with Council approval or funding of an SEP.

NEPA review will apply to specific activities undertaken pursuant to Council-approved SEPs that require significant Federal action before they can commence. For example, an SEP project requiring a Federal permit would generally require NEPA review by the issuing Federal agency, and obtaining such a permit might also require other Federal environmental compliance. No SEP implementation funds for an activity will be disbursed by the Council to a State until all requisite permits and licenses have been obtained.

After considering all public comments, the Council now issues the final rule. The rule will take effect on the date when and if the United States District Court for the Eastern District of Louisiana approves and enters the Consent Decree.

Procedural Requirements

Regulatory Planning and Review (Executive Orders 12866 and 13563)

As an independent Federal entity that is composed of, in part, six Federal agencies, including the Departments of Agriculture, the Army, Commerce, and the Interior, and the Department in which the Coast Guard is operating, and the Environmental Protection Agency, the requirements of Executive Orders 12866 and 13563 are inapplicable to this rule.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) generally requires agencies to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule will not have a significant economic impact on a substantial number of small entities because the direct recipients of the funds allocated under this rule are the five States, and states are not small entities under the Regulatory Flexibility Act. Additionally, this rule does not place any economic burden on the "coastal counties;" rather those counties will receive funds from their respective States' share of the allocated funds. Therefore, the Council has certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule does not have a significant economic impact on a substantial number of small entities. Thus, a regulatory flexibility analysis was not required and has not been prepared.

Paperwork Reduction Act

This rule is promulgated solely to establish an allocation formula and State allocation percentages. As such, there are no associated paperwork requirements. Any paperwork

necessary to submit a SEP under the Spill Impact component of the RESTORE Act required by statute and not by this rule. See 31 U.S.C. 1321(t)(3).

List of Subjects in 40 CFR Part 1800

Coastal zone, Fisheries, Grant programs, Grants administration, Intergovernmental relations, Marine resources, Natural resources, Oil pollution, Research, Science and technology, Trusts and Trustees, Wildlife

For the reasons set forth in the preamble, the Gulf Coast Ecosystem Restoration Council amends 40 CFR part 1800 as follows:

PART 1800 – SPILL IMPACT COMPONENT

1. The authority citation for part 1800 continues to read as follows:

Authority: 33 U.S.C. 1321(t).

2. Amend section 1800.1 to add, in alphabetical order, the following definitions to read as follows:

1800.1 Definitions.

* * * * *

Deepwater Horizon oil spill means the blowout and explosion of the mobile offshore drilling unit *Deepwater Horizon* that occurred on April 20, 2010, and resulting hydrocarbon releases into the environment.

* * * * *

Inverse proportion means a mathematical relation between two quantities such that one proportionally increases as the other decreases.

* * * * *

Spill Impact Formula means the formula established by the Council in accordance with section 311(t)(3)(A)(ii) of the Federal Water Pollution Control Act, as added by section 1603 thereof.

* * * * *

Treasury means the U.S. Department of the Treasury, the Secretary of the Treasury, or his/her designee.

Trust Fund means the Gulf Coast Restoration Trust Fund.

3. Add new Subpart C to read as follows:

Subpart C – Spill Impact Formula

Sec.

1800.100 Purpose.

1800.101 General formula.

1800.200 Oiled shoreline.

1800.201 Miles of shoreline that experienced oiling as a result of the *Deepwater Horizon* oil spill.

1800.202 Proportionate number of miles of shoreline that experienced oiling as a result of the *Deepwater Horizon* oil spill.

1800.300 Inverse proportion of the average distance from *Deepwater Horizon* at the time of the explosion.

1800.301 Distances from the *Deepwater Horizon* at the time of the explosion.

1800.302 Inverse proportions.

1800.400 Coastal county populations.

1800.401 Decennial Census data.

1800.402 Distribution based on average population.

1800.500 Allocation.

1800.100 Purpose. This subpart establishes the formula applicable to the Spill Impact Component authorized under the RESTORE Act (Pub. L. No. 112-141, 126 Stat. 405, 588-607).

1800.101 General Formula.

The RESTORE Act provides that thirty percent (30%) of the funds made available from the Trust Fund for the Oil Spill Impact Component be disbursed to each of the Gulf Coast States of Alabama, Florida, Louisiana, Mississippi and Texas based on a formula established by the Council (Spill Impact Formula), through a regulation, that is based on a weighted average of the following criteria:

(a) Forty percent (40%) based on the proportionate number of miles of shoreline in each Gulf Coast State that experienced oiling on or before April 10, 2011, compared to the total number of miles of shoreline that experienced oiling as a result of the *Deepwater Horizon* oil spill;

(b) Forty percent (40%) based on the inverse proportion of the average distance from the mobile offshore drilling unit *Deepwater Horizon* at the time of the explosion to the nearest and farthest point of the shoreline that experienced oiling of each Gulf Coast State; and

(c) Twenty percent (20%) based on the average population in the 2010 Decennial Census of coastal counties bordering the Gulf of Mexico within each Gulf Coast State.

1800.200 Oiled Shoreline. Solely for the purpose of calculating the Spill Impact Formula, the following shall apply, rounded to one decimal place with respect to miles of shoreline:

1800.201 Miles of Shoreline that Experienced Oiling as a Result of the *Deepwater Horizon* Oil Spill.

According to Shoreline Cleanup and Assessment Technique and Rapid Assessment Technique data provided by the United States Coast Guard, the miles of shoreline that experienced oiling on or before April 10, 2011 for each Gulf Coast State are:

- (a) Alabama – 89.8 miles.
- (b) Florida – 174.6 miles.
- (c) Louisiana – 658.3 miles.
- (d) Mississippi – 158.6 miles.
- (e) Texas – 36.0 miles.

1800.202 Proportionate Number of Miles of Shoreline that Experienced Oiling as a Result of the *Deepwater Horizon* Oil Spill.

The proportionate number of miles for each Gulf Coast State is determined by dividing each Gulf Coast State's number of miles of oiled shoreline determined in 1800.201 by the total number of affected miles. This calculation yields the following:

- (a) Alabama – 8.04%.
- (b) Florida – 15.63%.
- (c) Louisiana – 58.92%.
- (d) Mississippi – 14.19%.
- (e) Texas – 3.22%.

1800.300 Inverse Proportion of the Average Distance from *Deepwater Horizon* at the Time of the Explosion. Solely for the purpose of calculating the Spill Impact Formula, the following shall apply, rounded to one decimal place with respect to distance:

1800.301 Distances from the *Deepwater Horizon* at the Time of the Explosion.

- (a) Alabama – The distance from the nearest point of the Alabama shoreline that experienced oiling from the *Deepwater Horizon* oil spill was 89.2 miles. The distance from the farthest point of the Alabama shoreline that experienced oiling from the *Deepwater Horizon* oil spill was 103.7 miles. The average of these two distances is 96.5 miles.

- (b) Florida – The distance from the nearest point of the Florida shoreline that experienced oiling from the *Deepwater Horizon* oil spill was 102.3 miles. The distance from the farthest point of the Florida shoreline that experienced oiling from the *Deepwater Horizon* oil spill was 207.6 miles. The average of these two distances is 154.9 miles.
- (c) Louisiana – The distance from the nearest point of the Louisiana shoreline that experienced oiling from the *Deepwater Horizon* oil spill was 43.5 miles. The distance from the farthest point of the Louisiana shoreline that experienced oiling from the *Deepwater Horizon* oil spill was 213.7 miles. The average of these two distances is 128.6 miles.
- (d) Mississippi – The distance from the nearest point of the Mississippi shoreline that experienced oiling from the *Deepwater Horizon* oil spill was 87.7 miles. The distance from the farthest point of the Mississippi shoreline that experienced oiling from the *Deepwater Horizon* oil spill was 107.9 miles. The average of these two distances is 97.8 miles.
- (e) Texas – The distance from the nearest point of the Texas shoreline that experienced oiling from the *Deepwater Horizon* oil spill was 306.2 miles. The distance from the farthest point of the Texas shoreline that experienced oiling from the *Deepwater Horizon* oil spill was 356.5 miles. The average of these two distances is 331.3 miles.

1800.302 Inverse Proportions.

The inverse proportion for each Gulf Coast State is determined by summing the proportional average distances determined in 1800.301 and taking the inverse. This calculation yields the following:

- (a) Alabama – 27.39%.
- (b) Florida – 17.06%.
- (c) Louisiana – 20.55%.
- (d) Mississippi – 27.02%.
- (e) Texas – 7.98%.

1800.400 Coastal County Populations. Solely for the purpose of calculating the Spill Impact Formula, the coastal counties bordering the Gulf of Mexico within each Gulf Coast State are:

- (a) The Alabama Coastal Counties, consisting of Baldwin and Mobile counties;
- (b) The Florida Coastal Counties, consisting of Bay, Charlotte, Citrus, Collier, Dixie, Escambia, Franklin, Gulf, Hernando, Hillsborough, Jefferson, Lee, Levy, Manatee,

Monroe, Okaloosa, Pasco, Pinellas, Santa Rosa, Sarasota, Taylor, Wakulla, and Walton counties;

- (c) The Louisiana Coastal Parishes, consisting of Cameron, Iberia, Jefferson, Lafourche, Orleans, Plaquemines, St. Bernard, St. Mary, St. Tammany, Terrebonne, and Vermilion parishes;
- (d) The Mississippi Coastal Counties, consisting of Hancock, Harrison, and Jackson counties; and
- (e) The Texas Coastal Counties, consisting of Aransas, Brazoria, Calhoun, Cameron, Chambers, Galveston, Jefferson, Kennedy, Kleberg, Matagorda, Nueces, and Willacy counties.

1800.401 Decennial Census Data.

The average populations in the 2010 decennial census for each Gulf Coast State, rounded to the nearest whole number, are:

- (a) For the Alabama Coastal Counties, 297,629 persons;
- (b) For the Florida Coastal Counties, 252,459 persons;
- (c) For the Louisiana Coastal Parishes, 133,633 persons;
- (d) For the Mississippi Coastal Counties, 123,567 persons; and
- (e) For the Texas Coastal Counties, 147,845 persons.

1800.402 Distribution Based on Average Population.

The distribution of funds based on average populations for each Gulf Coast State is determined by dividing the average population determined in 1800.401 by the sum of those average populations. This calculation yields the following results:

- (a) Alabama – 31.16%.
- (b) Florida – 26.43%.
- (c) Louisiana – 13.99%.
- (d) Mississippi – 12.94%.
- (e) Texas – 15.48%.

1800.500 Allocation.

Using the data from sections 1800.200 through 1800.402 of this subpart in the formula provided in section 1800.101 of this subpart yields the following allocation for each Gulf Coast State:

- (a) Alabama – 20.40%.
- (b) Florida – 18.36%.
- (c) Louisiana – 34.59%.
- (d) Mississippi – 19.07%.
- (e) Texas – 7.58%.

4. The authority citation for this subpart continues to read as follows:

Authority: 33 U.S.C. 1321(t).

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