

Gulf Coast Ecosystem Restoration Council

New Orleans, LA 70130



MEMORANDUM

FROM: Mary S. Walker
Executive Director

TO: Janet McCabe
Deputy Administrator, U.S. Environmental Protection Agency (EPA)
Chairperson, Gulf Coast Ecosystem Restoration Council (Council)

DATE: May 16, 2023

SUBJECT: Recommendation for Approval of Mississippi State Expenditure Plan 2022 Amendment

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 Mississippi State Expenditure Plan (SEP) 2022 Amendment (SEP Amendment) requires approval or disapproval by the Chairperson of the Council within sixty days after receipt by the Council. This sixty-day review period officially began on April 19, 2023; the statutory deadline for Chairperson approval or disapproval is June 20, 2023.

According to the Council's SEP Guidelines, Council staff is to review the proposed SEP Amendment and make a recommendation to the Chairperson for approval or disapproval 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 SEP Amendment and find that it meets all applicable requirements. I therefore recommend that the Chairperson approve the SEP 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 SEP Amendment, the attached response letter has been prepared for your signature.

The attached letter would constitute the Chairperson's affirmative vote to approve the SEP 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 SEP 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 thirty percent of the funds in the Gulf Coast Restoration Trust Fund (Trust Fund) are disbursed to the five Gulf Coast states pursuant to 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 its 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 substantive role in the creation 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 discretion to reject a SEP, to select or designate alternative versions of a SEP, or to select or designate alternative activities within a SEP. Although the Council must determine whether a SEP has met the statutory criteria, the Council does not have the discretion to separately consider external factors in its statutory review.

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 under 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 Treasury regulations. Pursuant to the SEP Guidelines, SEP amendments may focus on the proposed change(s), 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 under eligible activities 6 and 7 (i.e., coastal flood protection, port and other infrastructure projects) unless a waiver is obtained as provided in the RESTORE Act.

The Council staff review found that the SEP Amendment meets all four of the required criteria as well as all the other requirements set forth in the SEP Guidelines. These requirements 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 SEP

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Amendment, project-specific information, a certification that all activities in the SEP Amendment comply with RESTORE Act requirements, and information regarding the public participation process used in developing the SEP Amendment.

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

The SEP Amendment, if approved, would increase funding for ongoing planning activities, while adding seven new activities in support of tourism, economic infrastructure and workforce development. The total amount approved in the SEP Amendment would be \$22,351,500.

Once a SEP (or SEP amendment) is approved, funding for the activities in the SEP will be disbursed via federal grants. 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, including all applicable federal environmental and other laws.

In summary, the proposed SEP Amendment complies with all of the applicable requirements set forth in the RESTORE Act, Treasury regulations and SEP Guidelines. If it is approved by you, we look forward to working with Mississippi to help ensure an efficient grant process for the activities included in the SEP 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 SEP Amendment can be directed to John Ettinger of Council staff at (504) 444-3522 or at john.ettinger@restorethegulf.gov.

ATTACHMENTS

1. Mississippi State Expenditure Plan 2022 Amendment
2. Draft Letter Approving Mississippi State Expenditure Plan 2022 Amendment