



November 5, 2013

Via Federal eRulemaking Portal: www.regulations.gov

Department of the Treasury
Attention: Ms. Janet Vail
Room 2050
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

**Re: Comments on RESTORE Act Proposed Rule by
Department of the Treasury. Docket ID:
TREAS-DO-2013-0005-0001; RIN: 1505-AC44;
CFR: 31 CFR Part 34; Federal Register Number: 2013-21595.**

Dear Ms. Vail:

On behalf of the Gulf Consortium, we appreciate the opportunity to provide formal comments on the U.S. Department of the Treasury's ("Treasury") proposed rule ("Rule") implementing the RESTORE Act ("Act"). The Deep Water Horizon oil spill significantly impacted all of Florida's Gulf Coast communities, both in terms of environmental and economic damages. The Act and the Rule presents an unprecedented opportunity to provide direct relief for these impacts to Gulf Coast communities.

The Consortium believes that it is critical for RESTORE Act funds to be distributed as quickly as possible, but it is equally important to ensure that this Rule strikes a balance between adhering to the Act, and the letter of the law, while streamlining the process of accessing funds, implementing projects and quickly moving forward environmental and economic projects. This Rule will be the roadmap to implement large scale, multi-year programs. Given the duration and magnitude of the program, it is imperative to establish a workable framework for implementation.

This correspondence is intended to provide formal comments on the Rule, explain Florida's unique status under the Act, discuss the effects of the Rule on the Consortium and the 23 Florida counties, and suggest Rule revisions that could reduce some of the

unnecessary financial burden for the Act's implementation. The following is a summary of the Consortium's comments.

- **Access to funds, advance payments and reimbursement for work already completed.** The Rule must recognize that recipients of funds face organizational, staffing and fiscal challenges at all levels. To avoid delay, the Rule should explicitly outline the process for accessing and expending funds. A process for grant applications, advance payment and reimbursement must be clearly stated in the Rule.
- **The planning and project implementation process.** The Rule must recognize the complexity of planning and implementing projects of the magnitude contemplated by the Act. The Rule should clearly light the paths from planning and public input, to grant application and procurement, funds distribution and ultimately to reporting and compliance procedures so that Florida Gulf Coast counties and the Gulf Consortium can readily discern and follow the intent and meaning of the Rule. These issues should not be addressed in a later, forthcoming policy or rule. They should be addressed now so that planning and implementation can be launched quickly.
- **Environmental compliance.** The Rule must clearly articulate the various environmental requirements for planning and project implementation. In particular, the Rule should provide guidance on compliance with the National Environmental Policy Act ("NEPA") for program, plan and project implementation through the use of categorical exclusions, environmental assessments and environmental impact statements.

The RESTORE Act in Florida

Implementation of the Act in Florida is unique in two key areas. First, under the Direct Component, of the total amounts made available from the Trust Fund, 35 percent of the Clean Water Act civil penalties shall be available to the Gulf Coast States in equal shares, and will flow directly to 23 individual Gulf Coast counties in Florida rather than through the State legislature or the Governor. This allows Florida's communities at the local level to determine the investments needed for environmental and economic recovery. The second unique feature of the Act in Florida is the development of the State Expenditure Plan through a consortium of local political subdivisions.

Direct Component

Unlike the other states, the Act divides the entirety of the Florida share of the Direct Component into two portions:

- 25 percent of Florida's share directed to 15 Nondisproportionately Affected Counties under a formula based on distance to the Deepwater Horizon event, population and sales tax collections.
- 75 percent of Florida's share directed to Eight Disproportionately Affected Counties along Florida's panhandle (Wakulla, Franklin, Gulf, Santa Rosa, Bay, Okaloosa, Walton and Escambia) with no formula specified.

The Act requires public input as Florida's 23 Gulf Coast counties develop their Multi-Year Implementation Plans under the Direct Component. Most of the counties have already convened local advisory committees to evaluate and recommend projects for funding under the Direct Component to the respective Boards of County Commissioners to fulfill the public input requirement.

The Gulf Consortium

The second unique feature of the Act in Florida is the Gulf Consortium. To implement the requirements of the Act, Florida's 23 Gulf Coast counties came together to officially form the Gulf Consortium and facilitate the development of a coordinated State Expenditure Plan that would enhance Florida's recovery through the prudent investment of the Spill Impact Component. Of the total amount available from the Trust Fund, 30 percent shall be disbursed pursuant to a formula provided in the Act to the Gulf Coast States upon the approval of the State Expenditure Plan. This part of the Act gave Florida a distinct opportunity to create a partnership between local governments and the State to develop the State Expenditure Plan.

Formed through Inter-local Agreement under Chapter 163, Florida Statutes, the Gulf Consortium is a public entity that operates fully under Florida's extensive sunshine laws.¹ It adheres to Florida's public records and public meeting requirements and recognizes the importance of public participation by ensuring that all meetings are publicly noticed and there is ample time for citizens to address the Consortium and provide input and feedback for full consideration. Like a state agency, the Consortium will provide reports to the Florida Auditor General and Florida's Chief Financial Officer. This State oversight is in addition to the Treasury Rule for federal reporting and auditing requirements.

Pursuant to the Act, the Gulf Consortium is comprised of one county official from each of the 23 Gulf Coast counties. This guarantees each county, from Escambia in the panhandle to the Florida Keys, a role and a voice in the State's recovery efforts. The formal collaboration of 23 separate government entities -- more than 115 elected officials representing 6 million people -- recognizes that Florida and the Gulf Coast

¹ A copy of the Interlocal Agreement Relating to Establishment of the Gulf Consortium (Sept. 19, 2012) is included with the Consortium's electronic submittal of its comments.

should not just survive this tragedy, but maximize resources and apply lessons learned to best benefit Florida's environment and economy.

The Gulf Consortium is also working with Florida's Governor, state agencies and other restoration partners to advance common goals, reduce duplication, and maximize benefits to the Gulf Coast region. To this end, the Consortium and the State entered into a Memorandum of Understanding on June 12, 2013 to further our collective objectives of maximizing efficiencies and revenue opportunities under the Act.² This Memorandum provides the Governor with six ex-officio, non-voting appointees to the Consortium representing diverse interests to provide input and guidance to the Consortium on policies and criteria used to determine projects, activities and programs for inclusion in the State Expenditure Plan.

Our collaboration with the State of Florida also provides for a Technical Working Group comprised of appropriate State agencies to review and provide input on projects considered for the State Expenditure Plan during its development. The Consortium, in conjunction with the Technical Working Group, will develop criteria for the submission and selection of projects. At a minimum, the selection of projects will include:

- Consistency with the applicable laws and rules;
- Prioritization based on criteria established by the Consortium;
- Consideration of public comments;
- Approval by an affirmative vote of at least a majority of the Consortium Directors present at a duly noticed public meeting of the Consortium; and
- State agency involvement, input and review in the development the State Expenditure Plan.

Involvement of Florida's Governor in the development and approval of the State Expenditure Plan is consistent with the Act and underscores the commitment by the State, its local governments and its citizens to work together, not as separate silos, but as partners for the full benefit of the entire coastline.

Comments on the Rule

The Gulf Consortium was formed pursuant to the Act to promote a recovery effort that is economically efficient and minimally bureaucratic. To fulfill the mandates of the Act, the Consortium has been funded from voluntary contributions of its 23 member counties to date. Still struggling to recover from the Great Recession, each of the 23

² A copy of the Memorandum of Understanding between Governor Rick Scott and the Gulf Consortium is included in the Consortium's electronic submittal of its Rules comments.

counties has cut back services and staffs as property values have fallen and county tax revenues have dwindled. Notably, seven of the 23 counties are fiscally constrained, so their county commissions struggle to provide a basic level of government services.³

All of the 23 counties individually and collectively through the Gulf Consortium are hoping the final Rule will include only the bare minimum of federal procedural requirements necessary to maintain the integrity of the program and comply with the law.⁴ Florida's counties desire to spend the lion's share of Florida's Direct and Spill Impact Components on actually restoring the economy and our ecosystems consistent with the Act.

Where applicable, the Consortium's comments on the Rule offers specific suggestions for modifications that could alleviate additional costs. Comments suggesting additions to the Rule are presented by underlined text and deletions by ~~struck through~~ text.

Regulatory Flexibility Act and Seven Fiscally Constrained Counties

The Regulatory Flexibility Act ("RFA") (5 U.S.C. 601 et seq.) generally requires agencies to prepare a regulatory flexibility analysis of any rule unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. In the Rule, Treasury has certified that the Rule does not have a significant economic impact on a substantial number of small entities, and thus no initial regulatory flexibility analysis was included. Nonetheless, Treasury has invited comments on the Rule's impact on small entities.

Seven county members of the Gulf Consortium qualify as "small entities" under the RFA.⁵ Dixie County, Franklin County, Gulf County, Jefferson County, Levy County, Taylor County and Wakulla County each have populations under 50,000.⁶ Three of the small counties are Disproportionately Affected Counties as defined in the Act: Franklin, Gulf and Wakulla. The other four are Nondisproportionately Impacted Counties as defined in the Act. The State of Florida has also recognized these seven counties as "Fiscally Constrained Counties."⁷ At its heart, a Florida designation of Fiscally

³ Each county that is entirely within a rural area of critical economic concern as designated by the Governor pursuant to s. 288.0656 or each county for which the value of a mill will raise no more than \$5 million in revenue, based on the taxable value certified pursuant to s. 1011.62(4)(a)1.a., from the previous July 1, shall be considered a fiscally constrained county. Sec. 287.67(1), Fla. Stat.

⁴ The Consortium is authorized to act as a resource to its member counties on all Act issues, including the development of federal rules implementing the Act. See Interlocal Agreement, Sec. 2.02(A).

⁵ The RFA defines "small governmental jurisdiction" as the government of a city, county, town township, village, school district, or special district with a population of less than 50,000. 5 U.S.C. 601(5).

⁶ See the State's official population estimates for the seven fiscally constrained counties which is included in the Consortium's electronic submittal of its Rules comments.

⁷ Id. and see, sec. 218.67(1), Florida Statutes. Florida's Constitution limits a county's ad valorem tax levies to 10 mills. See, Art. VII, sec. 9, Fla. Const.

Constrained County means that the county has extremely limited resources to meet the fundamental requirements of a safe society.

The purpose of the RFA is to ensure that, in developing rules, agencies identify and consider ways of tailoring regulations to the size of the regulated entities. A federal agency should make a reasonable, good-faith effort, prior to issuance of a final rule, to inform the public about potential adverse effects of its proposals and about less harmful alternatives.⁸ As promulgated, compliance with the Rule will require the expenditure of a significant amount of funds in relation to the budgets of these Fiscally Constrained Counties. As the seven Fiscally Constrained Counties are small entities under the RFA, the Rule should follow the RFA's process in preparing the proper analysis to provide them with alternatives to expensive, onerous compliance requirements.

Recognition of the Gulf Consortium as the Entity Required to Prepare the State Expenditure Plan

The Gulf Consortium was formed to fulfill the requirements in the Act to serve as "a consortium of local political subdivisions that includes at a minimum 1 representative of each affected county . . ." to develop Florida's State Expenditure Plan. The Rule should expressly recognize all of the entities required to develop the State Expenditure Plan and that the Gulf Consortium is required to prepare the Plan in Florida. Adding recognition of the Gulf Consortium will help clarify the Rule and the requirement to develop the State Expenditure Plan. To accomplish this recognition, section 34.2, the definitions section, could be revised to include the following: "*Gulf Consortium* means a consortium of local political subdivisions created by interlocal agreement between the 23 Florida Gulf Coast counties." Rule Section 34.503(a)(2) should be revised accordingly.

Pre-Award Costs for the Consortium and Coastal Political Subdivisions

Only one section of the Rule provides authorization for pre-award costs, and that section is limited to costs for environmental review and compliance⁹. The Rule should expressly allow federal reimbursement for the up-front costs to develop the State Expenditure Plan, which have been funded thus far by the 23 Florida counties and for the costs to develop the Multi-Year Implementation Plans. The specific authorization for pre-award costs to pay for the development of the State Expenditure Plan, as required by the Act, will help alleviate the Rule's burden on the 23 counties that have had to fund that effort to date and the costs to develop the Multi-Year Implementation Plans. At a minimum, the Rule should specify that such costs incurred after the date of enactment of the Act are reimbursable to the 23 counties.

⁸ *Southern Offshore Fishing Ass'n v. Daley*, 995 F. Supp. 1411 (M.D. Fla. 1998).

⁹ See, Rule Sec. 34.200(a)(3).

New subsections (5) and (6) should be added to Section 34.200(a) to read:

(5) Pre-award costs of preparing the State Expenditure Plan or Multi-Year Implementation Plan are allowable. These costs may be charged directly to Trust Fund awards with the prior approval of the Treasury or the Council. All such costs should also be identified in a grant application.

(6) A Gulf Coast State, including the Gulf Consortium, a coastal political subdivision, or other authorized entity may seek reimbursement of administrative costs to the extent permitted by Federal laws. Such costs should also be identified in a grant application for approval by the Treasury or the Council.

Planning Costs for the Gulf Consortium and Florida's 23 Gulf Coast Counties

The Gulf Consortium recommends the Rule be revised to expressly authorize the 23 Florida Gulf Coast Counties to provide planning monies on a voluntary basis from Direct Component allocations to the Gulf Consortium for the purpose of developing Florida's State Expenditure Plan that would be reimbursable to those counties upon disbursement of Spill Impact Component funds by the Council. In discussions with Treasury, the Consortium was assured that if the counties voluntarily chose to use Direct Impact funds for the development of the State Expenditure by the Gulf Consortium, that would be authorized. Specifically, the Consortium recommends that Section 34.305 be revised to add a new subsection (c) as follows:

(c) An entity that is a member of the Gulf Consortium may apply for and provide planning costs to be used by the Gulf Consortium for the development of a State Expenditure Plan. Upon request by the respective county, such funds shall be reimbursed by the Gulf Consortium.

Additionally, to further capture this concept, the Gulf Consortium recommends the addition of the following broader definition of the term "planning costs" be included in definition section 34.2.

Planning costs means direct and indirect costs of data gathering, studies, analysis, and preparation of plans for eligible activities under section 34.201(a) through (i), including the costs of staff, public input requirements and environmental review and compliance of plans and projects.

Planning costs can include preparation and revision of a Multi-Year Implementation Plan or a State Expenditure Plan.

Administrative Costs

The Act expressly authorizes funds to be used for administrative costs of complying with the Act. The Act limits administrative costs to not more than three percent. Section 34.205(a) constrains the application of the three percent limitation to each grant as follows: "The three percent limit is applied to the total amount of funds received under each grant" In contrast, Section 34.205(b) provides the Council's three percent limitation to the total amount of funds received by the Council, as follows:

(b) Of the amounts received by the Council under the Comprehensive Plan Component, not more than three percent may be used for administrative expenses, including staff. The three percent limit is applied to the total amount of funds received by the Council, beginning with the first fiscal year it receives funds through the end of the fourth, or most recent fiscal year, whichever is later.

The administrative costs actually incurred for administering a grant will vary depending on the activity, program or project funded by the grant. For example, a grant to develop a State Expenditure Plan or a Multi-Year Implementation Plan may require a larger expenditure of administrative costs than a grant to fund a stormwater project. Moreover, limiting administrative costs to approved grants forces counties to bear the expense of administrative costs necessary to prepare and apply for future grants. The Rule should recognize both the Act's limits on administrative costs and the varied amounts for administrative costs to accomplish an eligible activity. Specifically, the Rule should track the Act and allow Florida's counties to be treated similarly to the Council in determining the application of the three percent limit. Section 34.205(a) should be amended as follows:

(a) Of the amounts received by a Gulf Coast State, coastal political subdivision, or coastal zone parish or other authorized entity, including the Gulf Consortium, under the Direct Component, Comprehensive Plan Component, and Spill Impact Component, not more than three percent may be used for administrative costs, ~~including staff of complying with the Act.~~ The three percent limit is applied to the total amount of funds received under each grant, beginning with the first fiscal year it receives funds through the end of the most recent fiscal year.

Procurement Issues

The Rule does not provide a comprehensive section relating to procurement for any of the components that will provide a road map that assures advance payment or reimbursement of costs for procurement of contracts to implement projects. Neither Subpart D, relating to the Direct Component nor Subpart F, relating to the Spill Impact Component, provides any direction on procurement. Section 34.402, relating only to the Comprehensive Plan Component Application procedure and grant award process, only provides for the Council to develop an application and selection process, and failing that, the assignees can use a selection process of their choosing that is fair, open, and meets the requirements of Federal laws and, for State and local governments that are awarding, the applicable State and local laws. Section 34.802(e), relating to Certifications, only requires Grantees to certify they have followed "in every material respect the applicable procurement rules applying to contracts in the Grantee's State for each project, program, and activity funded under this Agreement, including rules for competitive bidding and audit requirements."

The Consortium and the 23 Gulf Coast Counties are particularly concerned with the requirements relating to procurement issues because of the unique status of the 23 counties and the Consortium under the Act and the broad powers under Florida law to procure that the Consortium and the counties have in the absence of an applicable, specific Florida statutory requirement.

In Florida, absent a specific reference and mandate in a Florida Statute, generally the State does not control the home rule power of a county to act or the authority of an interlocal entity such as the Gulf Consortium to choose its own method of procurement.¹⁰ The 23 counties have all adopted their own written procurement policies. The counties applicable competitive bidding requirements are those developed locally under their home rule powers, where there is no state mandate to procure contractors in a manner specified in an applicable Florida Statute.¹¹

¹⁰ Home rule is well-established in Florida. A Florida county can act for any public purpose as long as the action is not inconsistent with a statute. It encompasses all counties under Article VIII, section 1 (f) and (g). See, generally, section 125.01(1) for an enumeration of certain specific powers, and subsection (3) clarification that the enumerated list is not intended to be exclusive or restrictive, rather the legislative purpose is to be liberally construed to grant to all counties the broad exercise of home rule powers authorized in the Florida Constitution. The broad construction of section 125.01 has been approved by the Supreme Court of Florida on numerous occasions. See, e.g., *State v. Orange County*, 281 So. 2d 310 (Fla. 1973). See also, *Sutton Corp. v. Lake County Water Dist.*, 870 So. 2d 930 (Fla. 5th DCA 2004), [county not required to apply State procurement sec 287.057(18), Fla. Stat. governing state procurement requirements].

¹¹ The State of Florida has adopted statutes that control some aspects of county and Consortium procurement that expressly provides that it must be followed by the counties and other entities, including the Consortium See, e.g., the Competitive Consultant's Negotiation Act, requiring a certain procurement process for the State and local governments to follow in procuring engineers and architects. Sec. 287.55, Fla. Stat.

Consistent with most Federal grant programs, following a previously adopted competitive procurement procedure has generally sufficed in meeting federal grant requirement. Because the Consortium intends to use a competitive method of procurement that is not inconsistent with State law requirements regarding interlocal entity procurement for applicable projects, the Rule should not impose any additional requirements.

Advance Payment

The Rule's preamble as well as sections 34.502 and 34.303 appear to suggest that the Consortium and counties must prepare and submit a State Expenditure Plan or Multi-Year Implementation Plan respectively prior to receiving any grant funding. Requiring the submission of a plan prior to awarding the funds will be an extreme hardship to the Consortium, which has no funding independent of that provided by the 23 counties, and to the 23 counties themselves. The Consortium suggests the Treasury revise the Rule to address this issue and provide for advance payments for the development of the State Expenditure Plan and the Multi-Year Implementation Plan.

This concept could be captured through an additional definition:

Advance payments means a payment made to a recipient upon its request either before outlays are made by the recipient or through the use of predetermined payment schedules. Recipients shall be paid in advance provided they maintain or demonstrate the willingness to maintain both written procedures that minimize the time elapsing between the transfer of funds and disbursement by the recipient, and financial management systems that meet the standards for fund control and accountability.¹²

Additionally, Section 34.200 should be revised to include the following:

(c) *Advance payments may be made to a Gulf Coast State, coastal political subdivision, coastal zone parish and other authorized entity, including the Gulf Consortium,*

¹² See, Circular A-110 Revised 11/19/39 as Further Amended 9/30/99 and 40 C.F.R. § 30.2(d). See 2 CFR Part 215.22 payment procedures, OMB Circular A-110 essentially outlining a preference for advance payments as long as written procedures and financial management systems are in place with reimbursement preferred when those conditions cannot be met. See also §12.61, 43 CFR Subtitle A, Recipients and subrecipients shall be paid in advance provided they maintain or demonstrate the willingness and ability to maintain procedures to minimize the time between transfer of funds and their disbursement by recipient or subrecipient. Finally, see Proposed OMB Uniform Guidance: Cost Principles, Audit, and Administrative Requirements for Federal Awards (pp 36-39), which includes similar guidance but elaborates with such requirements as tying advance payments to immediate cash needs, consolidating advances to cover cash needs, etc. and reimbursement used when requirements for reporting and financial management cannot be met.

provided the entity maintains or demonstrates the willingness to maintain both written procedures that minimize the time elapsing between the transfer of funds and the disbursement by the entity, and financial management systems that meet the standards for fund control and accountability.

Incremental Plans and Grants

The Consortium recommends that the Rule expressly recognize that a Multi-Year Implementation Plan and a State Expenditure Plan may be developed incrementally, and funding should be allowed in all phases of plan development. Rule 34.202 provides some important latitude and specific funding authority for the Council Comprehensive Plan. These include Plan amendment, preparing reports and audits, and establishing and operating advisory committees. The Rule should provide similar specificity for the development of the State Expenditure Plan and the Multi-Year Implementation Plan. Delaying this specificity to a later policy or rule will create hardship and an impediment to recipients because work has already been undertaken, particularly for the planning process.

The Consortium supports a planning process and granting process which is phased, flexible and incremental as needed to address the feasibility and regulatory approval process for projects over the duration of the overall restoration program which is likely to span many years and require numerous adjustments over time. The Rule should create an approach whereby an initial grant application could be submitted and approved for reimbursement of previously expended funds for a State Expenditure Plan or Multi-Year Implementation Plan consistent with the Act or provide for advance payment of funds to develop a State Expenditure Plan or Multi-Year Implementation Plan. When that phase of the planning process is completed and there is more specificity for projects and programs, a supplemental grant application can be made for further implementation of the projects in the State Expenditure Plan or Multi-Year Implementation Plan.

To capture the concept of grant phasing and incremental planning for the Direct Component for the 23 Gulf Coast counties, section 34.303(a) should be amended as follows:

(a) The applicant must submit a multiyear implementation plan describing each program, project, and activity, collectively or singularly, for which it seeks funding. For each, the plan must include narrative description showing need, purpose, and objectives; identification of the eligible activity under which it qualifies; location; budget; milestones; projected completion dates; and criteria the applicant will use to evaluate the success of each activity in

helping to restore and protect the Gulf Coast region impacted by the *Deepwater Horizon* oil spill. The applicant must also state whether it has applied, either individually or collectively through agreement with other applicants, for a grant to fund the program, project, or activity under any other part of the Act. Such plans may be amended from time to time to re-prioritize, change, remove, or add individual programs, projects, or activities as determined by the respective Gulf Coast State, coastal political subdivisions or coastal zone parishes. For the State of Louisiana parishes, the applicant must submit information demonstrating compliance with § 34.302(e). Treasury may require a standard format for the plans and additional information.

To capture the concept of grant phasing and incremental planning for the Spill Impact Component and the Gulf Consortium, section 34.503(c) should be amended as follows:

(c) For each program, project, and activity, the State Expenditure Plan must include a narrative description showing purpose and objectives, estimated expenditures, major milestones, estimated duration, and criteria the State will use to evaluate success. Such plans may be amended from time to time to re-prioritize, change, remove, or add individual programs, projects or activities as determined by the respective Gulf Coast State. The applicant must also state whether it has applied for a grant to fund the program, project, or activity under any other part of the Act.

Additional Treasury Rule and a Standard Format

Section 34.301, entitled "Responsibility for administration" states that Treasury may develop and apply policies and procedures consistent with the subpart, applicable Federal policies and the Act. Section 34.303 states "Treasury will develop an application process for grants available under [the Direct Component] . . . that is consistent with the Act and Federal policies on grants." Subsection (a) further provides "Treasury may require a standard format for the plans and additional information."

We recognize that some of these future regulations, such as a standard format for plans, may be helpful to determine the necessary information for submittal to Treasury. But, without seeing those future regulations, it is impossible to determine whether these additional regulations will be helpful to the counties.

The Gulf Consortium recommends that the referenced future policies, procedures, process and format should either be added to these Rule for comment in a

supplemental draft of the Rule or separately promulgated subject to public notice and comment.

Formula for the Eight Disproportionately Affected Counties

The Rule defines "Disproportionately Affected Counties" and states that Treasury will follow their mutually agreed to formula for distributing funds among them when the counties include them in their Multi-Year Plans.¹³ Since a formula for the Eight Disproportionately Affected Counties was not included in the Act, these counties joined together as a committee to develop a distribution that treats each county in a fair and proportionate manner. The formula determined by the Eight Disproportionately Affected Counties distributes 20 percent of the funds equally among the eight counties. The remaining 80 percent is distributed based on oiled shoreline, per capita sales tax collections, population and distance from the Deepwater Horizon oil rig. The formula has been approved by the Boards of County Commissioners of each of the eight counties.¹⁴

Bay County	15.101
Escambia County	25.334
Franklin County	8.441
Gulf County	6.743
Okaloosa County	15.226
Santa Rosa County	10.497
Wakulla County	4.943
Walton County	13.712

The Consortium is grateful that the Rule include a definition of Disproportionately Affected Counties and recognize that the eight counties have agreed to a formula.

Formula for the Fifteen Nondisproportionately Impacted Counties

The Act includes a formula for computing allocations to the 15 Nondisproportionately Impacted Counties, but does not specify the methodology or sources for computing. The Rule invites comments on the appropriate methodology and sources. The Gulf Consortium's Committee of 15 Nondisproportionately Impacted Counties, consisting of one Consortium Director from each of the 15 counties, recommended a methodology and sources, as acknowledged and referenced in the Rule. The Committee recommendation was approved by the full Gulf Consortium. The Consortium requests that the Rule adopt the following methodology and sources as approved by the Gulf Consortium:

¹³ Rule 34.302(b).

¹⁴ See, e.g., Escambia County Resolution No. R2013-15 (Jan. 17, 2013), a copy of which is included with the Consortium's electronic submission of comments.

- 1) The recommended sources of data are:
 - a) "34% Based on Weighted Average of the Population of the County" – 2010 Census <http://quickfacts.census.gov/qfd/states/12000.html>
 - b) "33% Based on Weighted Average of County Per Capita Sales Tax Collections Estimated for FY 2012" <http://edr.state.fl.us/Content/local-government/reports/lqfih12.pdf>
Starting on Page 152 of report, use "Countywide Total" number
 - c) "33% Based on Inverse Proportion of the Weighted Average Distance from the Deepwater Horizon oil rig to each of the Nearest and Farthest points of the Shoreline" <http://response.restoration.noaa.gov/maps-and-spatial-data/environmental-response-management-application-erma/erma-gulf-response.html>
- 2) The recommended methodologies are:
 - a) Take total population of all 15 counties and divide by each county population equaling a weighted average percentage
 - b) Take sum of all Per Capita Sales Tax Collections for Calendar Year 2012 and divide by individual county Per Capita Sales Tax equaling a weighted average percentage
 - c)
 - a. Average the nearest and farthest point in each county to determine the County Mean Distance (CMD).
 - b. Average the nearest and farthest point of the Region to determine the Regional Mean Distance (RMD)
 - c. Calculate the inverse proportion (IP) of the CMD of each County to the RMD (Formula: RMD/CMD)
 - d. Equals each County's share (expressed as a percentage) of the inverse proportion (Formula: CMD IP/SUM of IP)
- 3) Final percentage for each county is computed as the Sum of (2a X 0.34+2b X 0.33+2c.d. X 0.33)

The computation for allocation among the 15 Nondisproportionately Impacted Counties employing the approved methodology and sources is as follows:

County	Population 2010 Census	Proportionate Share	Sales Tax Per Capita	Proportionate Share	Distance to DWH	Proportionate Share	Inverse Proportion	Estimated Allocation
Charlotte	159,978	3.27%	127.40	6.45%	698,666	7.4%	5.85%	5.17%
Citrus	141,236	2.89%	85.90	4.35%	590,799	6.3%	6.92%	4.70%
Collier	321,520	6.57%	183.07	9.27%	775,680	8.3%	5.27%	7.03%
Dixie	16,422	0.34%	48.47	2.45%	525,021	5.6%	7.78%	3.49%
Hernando	172,778	3.53%	90.93	4.60%	592,839	6.3%	6.89%	4.99%
Hillsborough	1,229,226	25.11%	156.36	7.92%	610,369	6.5%	6.69%	13.36%
Jefferson	14,761	0.30%	52.62	2.66%	472,097	5.0%	8.66%	3.84%
Lee	618,754	12.64%	156.12	7.91%	715,632	7.6%	5.71%	8.79%
Levy	40,801	0.83%	74.52	3.77%	568,273	6.0%	7.19%	3.90%

County	Population 2010 Census	Proportionate Share	Sales Tax Per Capita	Proportionate Share	Distance to DWH	Proportionate Share	Inverse Proportion	Estimated Allocation
Manatee	322,833	6.60%	144.26	7.30%	622,336	6.6%	6.57%	6.82%
Monroe	73,090	1.49%	378.34	19.16%	913,479	9.7%	4.47%	8.31%
Pasco	464,697	9.49%	95.31	4.83%	593,404	6.3%	6.89%	7.09%
Pinellas	916,542	18.73%	142.00	7.19%	590,602	6.3%	6.92%	11.02%
Sarasota	379,448	7.75%	149.56	7.57%	634,421	6.8%	6.44%	7.26%
Taylor	22,570	0.46%	90.00	4.56%	494,401	5.3%	8.26%	4.39%
	4,894,656	100%	\$ 1,974.86	100%	9,398,019	100%	101%	100%

Environmental Law Compliance

The Rule specifically invites comments on appropriate methods for ensuring full compliance with applicable environmental laws while also providing for timely funds disbursement and project implementation.¹⁵ Additionally, the Rule requires "[E]nvironmental review and compliance procedures must be complied with for each program, project, or activity, as applicable."¹⁶ The Gulf Consortium recommends that Section 34.200 be revised to define actions that are required to undergo the various NEPA evaluation requirements, such as environmental impact statements, environmental assessments or categorical exclusions¹⁷ pursuant to 42 U.S.C. 4321 and the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA, 40 C.F.R. Parts 1500-1508 for both the planning and project implementation processes. Specifically, to the extent permitted by law, we recommend that a Multi-Year Implementation Plan and State Expenditure Plan be categorically excluded from NEPA in the Rule or only subject to an environmental assessment to streamline the planning process.

If required by law, Federal agencies may establish a new or revised categorical exclusion in a variety of circumstances when a determination is made that the action is not expected to have a significant individual or cumulative environmental effect. The Consortium recommends immediately defining these actions in the Rule, and if required, undertaking consultation with the Council on Environmental Quality as soon as possible. The Consortium will participate actively in the required public involvement procedures on developing such categorical exclusions due to the cost associated with meeting NEPA requirements in the context of the RESTORE Act implementation.

¹⁵ Supplementary Information, I Background.

¹⁶ Section. 34.200(a)(3).

¹⁷ A categorical exclusion is a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency in implementation of these regulation (sec. 1507.3) and for which, therefore, neither an environmental assessment of an environmental impact statement is required. 40 C.F.R. sec. 1508.4

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Finally, the Consortium recommends developing a streamlined environmental regulatory compliance approach. For instance, a project documentation process should be developed so that when projects are implemented and undergo compliance review, an applicant can simultaneously meet all Clean Water Act (33 U.S.C. § 1251), NEPA and any state environmental regulatory approvals with one set of documents concurrently. Recognizing that all federal and state environmental requirements must be met for RESTORE plans and projects, the Rule should not require repetitive or duplicative regulatory analyses.

If you should have any questions about the Consortium's comments, please contact the Consortium interim General Counsel Sarah Bleakley via email at sbleakley@ngnlaw.com or phone at 850-224-4070.

Sincerely,

A handwritten signature in black ink, appearing to read "Grover C. Robinson IV". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Grover C. Robinson IV, Chairman
Gulf Consortium

cc: The Honorable Bill Nelson
The Honorable Steve Southerland, II
Gulf Consortium Directors and Alternates
County Managers and County Attorneys of the 23 Florida Gulf Coast Counties
Mr. Chris Holley, Executive Director, Florida Association of Counties
Mr. Douglas Darling, Interim Manager, Gulf Consortium
Ms. Sarah M. Bleakley, Interim General Counsel, Gulf Consortium

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