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RESOURCES AND ECOSYSTEMS SUSTAINABILITY, TOURIST OPPORTUNITIES, AND REVIVED ECONOMIES OF THE GULF COAST STATES ACT OF 2011

DECEMBER 8, 2011.—Ordered to be printed

Mrs. BOXER, from the Committee on Environment and Public Works, submitted the following

R E P O R T

[To accompany S. 1400]

[Including cost estimate of the Congressional Budget Office]

The Committee on Environment and Public Works, to which was referred a bill (S. 1400) to restore the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands of Gulf Coast States, to create jobs and revive the economic health of communities adversely affected by the explosion on, and sinking of, the mobile offshore drilling unit Deepwater Horizon, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

GENERAL STATEMENT AND BACKGROUND

S. 1400, the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2011 (the RESTORE Act), dedicates Clean Water Act civil and administrative penalties paid by responsible parties in relation to the Deepwater Horizon oil spill for economic and ecological restoration activities on the Gulf Coast.

This legislation is intended to provide for the long-term health of the economy and valuable natural ecosystems of the Gulf of Mexico (Gulf). The impacts of the BP Deepwater Horizon oil spill were exacerbated by pre-existing factors and conditions in the Gulf Coast region, such as loss of wetlands, water pollution that contributes to hypoxic conditions and dead zones, and degradation of important

estuary habitat (many of which have been designated estuaries of national significance by EPA's National Estuary Program).¹ The oil spill, lasting almost three months, released an estimated 4.9 million barrels of oil into the Gulf of Mexico, closing 88,542 square miles of federal waters for fishing while contaminating hundreds of miles of shoreline, bayous, bays, and islands with oil.² This event significantly impacted environmental and economic health of the region.

The Gulf of Mexico is an extremely diverse ecosystem that is critical to many terrestrial, aquatic and migratory species. The Gulf is comprised of over 600,000 square miles of water, and in the U.S., is bordered by five coastal states (Alabama, Florida, Louisiana, Mississippi, and Texas). Over forty percent of the continental United States drains into the Gulf of Mexico.³ Gulf habitats include coastal wetlands, submerged vegetation, important upland areas, and marine/offshore areas. Encompassing over five million acres (about half of the U.S. total), the Gulf's coastal wetlands serve as an essential habitat for numerous fish and wildlife species, including migrating waterfowl (about 75% traversing the U.S.), seabirds, wading birds, furbearers, and sport and commercial fisheries.⁴ The Gulf supports 100 million migratory, nesting and wintering birds. The hundreds of miles of coast support wetlands which serve as nurseries for countless marine organisms, including many commercially important seafood species. To local economies, wetlands offer food, energy, transportation, recreation, and protection from storms and flooding.⁵

The Gulf is also a major source of commercial seafood production and recreational fishing. Over one-third of the Nation's seafood is a product of the Gulf of Mexico, including 72 percent of the shrimp, 66 percent of the harvested oysters, and 16 percent of commercial fish.⁶ "In 2008, marine recreational participants took more than 24.1 million trips catching 190 million fish from the Gulf of Mexico and surrounding waters."⁷

Three reports published following the oil spill related to long-term recovery of the Gulf Coast recommend that a significant portion of any Clean Water Act civil penalties received as a result of the BP Horizon oil spill should be dedicated to the Gulf Coast for restoration activities; these include: *America's Gulf Coast: A Long Term Recovery Plan after the Deepwater Horizon Oil Spill*, written by Secretary of the Navy Ray Mabus; *Deep Water: The Gulf Oil Disaster and the Future of Offshore Drilling*, the report of the National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling; and the *Gulf of Mexico Regional Ecosystem Restoration Strategy (Preliminary)*, prepared by the Gulf Coast Ecosystem Restoration Task Force. All three reports also recommended the cre-

¹*America's Gulf Coast: A Long Term Recovery Plan after the Deepwater Horizon Oil Spill*, <http://www.restorethegulf.gov/sites/default/files/documents/pdf/gulf-recovery-sep-2010.pdf> at 26-27.

²*Id.* at 2.

³*Id.* at 23.

⁴General Facts about the Gulf of Mexico, <http://www.epa.gov/gmpo/about/facts.html>, accessed October 18, 2011.

⁵Louisiana Coastal Initiative, <http://conservation.audubon.org/louisiana-coastal-initiative>, accessed October 18, 2011.

⁶Monica Bruckner, Montana State University, *The Gulf of Mexico Dead Zone*, <http://serc.carleton.edu/microbelife/topics/deadzone/>, accessed October 18, 2011.

⁷*Id.*

ation of a region-wide Gulf Coast Council to guide restoration efforts.

The report prepared by Secretary Mabus recommended:

“Specifically it is recommended that the President propose to Congress that legislation be passed that would allow:

- A significant amount of any civil penalties recovered under the Clean Water Act from the Deepwater Horizon spill be deposited into a Gulf Coast Recovery Fund managed by a Gulf Coast Recovery Council. These funds would be used to address those critical recovery needs that may fall outside the scope of the OPA.
- The establishment of a Gulf Coast Recovery Council to lead to long-term ecosystem economic, and health recovery in the Gulf.
- A portion of any Clean Water Act civil penalties be directed to the Gulf states (Alabama Florida, Louisiana, Mississippi, and Texas) to enable them to jumpstart their own recovery efforts.
- The remaining amount of penalties be deposited in the Oil Spill Liability Trust Fund in accordance with existing law. This would allow for resources to be available to respond to future spills.”⁸

The National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling stated:

“Congress should dedicate 80 percent of the Clean Water Act penalties to long term restoration of the Gulf of Mexico.”

“Congress and federal and state agencies should build the organizational, financial, scientific, and public outreach capacities needed to put the restoration effort on a strong footing.”

“. . . the Commission recommends that Congress—recognizing that dedicated, sustained funding is necessary to accomplish long-term Gulf of Mexico ecosystem restoration—should direct 80 percent of Clean Water Act penalties to support implementation of a region-wide restoration strategy.”

“The Commission recommends that Congress establish a joint state-federal Gulf Coast Ecosystem Restoration Council.”

“The Commission believes that having a comprehensive, binding strategy to guide the restoration effort is critical to success.”⁹

In its preliminary restoration strategy, the Gulf Coast Ecosystem Restoration Task Force stated:

“Accordingly, the Task Force reiterates recommendations made by Secretary Mabus that call for Congress to:

⁸*America's Gulf Coast: A Long Term Recovery Plan after the Deepwater Horizon Oil Spill*, <http://www.restorethegulf.gov/sites/default/files/documents/pdf/gulf-recovery-sep-2010.pdf> at 5–6.

⁹*Deep Water: The Gulf Oil Disaster and the Future of Offshore Drilling*, the report of the National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling, http://www.oilspillcommission.gov/sites/default/files/documents/DEEPWATER_ReporttothePresident_FINAL.pdf at 280–281.

- Formalize the long-term intergovernmental partnership among the Gulf Coast States and the federal government by establishing a successor coordinating body to the Gulf Coast Ecosystem Restoration Task Force.

- Dedicate a significant portion of the eventual Clean Water Act civil penalties resulting from the *Deepwater Horizon* oil spill for Gulf recovery, in addition to current funding for Gulf programs.”¹⁰

“The Task Force reaffirms the importance of Secretary Mabus’ two initial recommendations: that Congress (1) set aside a significant portion of any potential Clean Water Act civil penalties associated with the Deepwater Horizon oil spill for recovery in the Gulf and (2) create a Gulf Coast Recovery Council to coordinate restoration and recovery in the region as an eventual successor to this Task Force.”¹¹

S. 1400 authorizes the major recommendations of these reports.

OBJECTIVES OF THE LEGISLATION

This bill directs Clean Water Act penalties collected pursuant to the explosion of the offshore drilling unit Deepwater Horizon and the subsequent oil spill to restore the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands of Gulf Coast States, to create jobs and to revive the economic health of communities adversely affected by the oil spill.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Section 1 notes that this Act may be cited as the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economy of the Gulf Coast States Act of 2011 (or the “RESTORE the Gulf Coast Act”).

Section 2. Congressional findings

Section 2 establishes Congressional findings that provide the rationale for the legislation.

Section 3. Establishment of Gulf Coast Restoration Trust Fund

Section 3 establishes a Gulf Coast Restoration Trust Fund and credits to the Trust Fund amounts equal to 80 percent of all administrative and civil penalties paid by a responsible party in connection with the Deepwater Horizon oil spill pursuant to Section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321). The amounts in the fund and the interest earned shall be available without further appropriation solely for the purposes and eligible activities of this Act.

The Secretary of the Treasury, in consultation with the Secretaries of Interior and Commerce, is required to develop procedures for the oversight of expenditures from the Trust Fund, including

¹⁰Gulf Coast Ecosystem Restoration Task Force, Gulf of Mexico Regional Ecosystem Restoration Strategy (Preliminary), http://www.epa.gov/gcertf/pdfs/GCERTF-Preliminary-Strategy_10052011_forPDF_10-17_changesacc_b.pdf. Accessed October 24, 2011 at 8.

¹¹*Id.* at 54.

compliance with applicable requirements of the Act and audit requirements.

Section 4. Dedication and allocation of clean water act penalties to the Gulf Coast

Section 4 creates a new subsection in Section 311 of the Federal Water Pollution Control Act to govern the allocation of penalties deposited in the Trust Fund and to establish the conditions under which funds would be expended in the five Gulf Coast States to restore and protect the natural resources, ecosystems, fisheries, marine and wildlife habitats, coastal wetlands, and economy of the Gulf Coast.

This section would establish three mechanisms for allocating 95% of the funds available in each fiscal year until the funds are expended:

- 35% of the total would be allocated in equal shares to the five Gulf Coast States (Subsection “(t)(1)”);
- 30% of the total would be allocated to the Gulf Coast Ecosystem Restoration Council (Council) for the development and implementation of a comprehensive ecosystem restoration plan (Comprehensive Plan) (Subsection “(t)(2)”);
- 30% would be allocated to Gulf Coast States by the Council according to an impact-based formula to implement state-developed plans that are consistent with the Comprehensive Plan (Subsection “(t)(3)”);
- the interest earned on the Trust Fund would be equally divided between a National Endowment for the Oceans and the research programs established in Section 5 (Subsection “(t)(3)”).

SUBSECTION (1) SUMMARY

Subsection (a) amends Section 311 of the Clean Water Act to provide definitions for terms added to Section 311 by this legislation.

DISCUSSION

The term “Gulf Coast Ecosystem” is defined in paragraph “(32).” The definition outlines the areas of the Gulf of Mexico and its coastal areas eligible to participate in the programs established by this Act. The term Gulf of Mexico Ecosystem includes the coastal zones (as defined by the Coastal Zone Management Act of 1972) that directly border the Gulf of Mexico, including federal lands within these coastal zones; any adjacent land, water, and watersheds, that are within 25 miles inland of the coastal zones of the Gulf Coast States; and all federal waters adjacent to coastal zones of the Gulf Coast States.

SUBSECTION (2) SUMMARY

Subsection (2) makes a technical modification to Section 311(s) of the Federal Water Pollution Act to clarify that funds deposited into the Gulf Coast Restoration Trust Fund and expended pursuant to the new subsection “(t)” are not required to be deposited in the Oil Spill Liability Trust Fund pursuant to subsection “(s).”

SUBSECTION (3) SUMMARY

Subsection (3) adds a new paragraph “(t)” to Section 311 of the Federal Water Pollution Control Act to direct the expenditure of funds deposited into the Gulf Coast Restoration Trust Fund.

Subsection “(t)(1)” Summary

Subsection “(t)(1)(A)” reserves 35 percent of the funds placed in the Trust Fund for each of the Gulf Coast States. Funding is reserved and made available for each state in equal shares.

Subsection “(t)(1)(B)” describes the eligible activities for which funds made available in this Act may be used. The activities are focused on (1) restoration and conservation of the Gulf Coast ecosystem and (2) economic recovery efforts. Administrative costs are eligible but are limited to 3 percent of the amount made available to a Gulf Coast State. No funds may be used for activities to support or promote imported seafood or any seafood product that is not harvested from the Gulf Coast ecosystem.

Subsection “(t)(1)(C)” describes special conditions for the distribution of funds to coastal political subdivisions in a state where the coastal zone includes the entire state and in the state of Louisiana. In the first case, the Secretary shall make available to the 8 counties disproportionately affected by the Deepwater Horizon spill 75 percent of the funding available for that state pursuant to subparagraph (t)(1)(A). In the case of Louisiana, the Secretary shall make available funding reserved for the state of Louisiana pursuant to subparagraph (t)(1)(A) in the following manner: 70 percent to the State of Louisiana; and 30 percent directly to parishes in the coastal zone in Louisiana according to a weighted formula. As a condition of receiving funding under subparagraph “(t)(1)(C)(ii)(II),” a parish in the coastal zone of Louisiana must certify that it has completed a comprehensive land use plan.

Coastal political subdivisions receiving funding pursuant to this subsection must meet all of the conditions of subparagraph (D).

Subsection “(t)(1)(D)” describes conditions that a Gulf Coast State or a coastal political subdivision must meet to receive funding from the Trust Fund. These conditions include:

- Agreeing to meet any conditions, including audit requirements, established by the Secretary of the Treasury.
- Requesting funding only for projects and programs designed to restore and protect the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, coastal wetlands, or economies of the Gulf Coast.
- Carrying out an eligible activity described in subparagraph “(t)(1)(B).”
- Selecting projects and programs based on meaningful public input, including broad-based participation from individuals, businesses, and non-profit organizations.
- In the case of a natural resource protection or restoration project, using the best-available science to select projects.
- Certifying that the awarding of a contract for expenditure of amounts made available from the Trust Fund is consistent with standard procurement rules and regulations governing similar projects or programs in the state.

- Developing and submitting a multi-year implementation plans for funds available to the state or coastal political subdivision pursuant to paragraphs “(t)(1)(A)” and “(t)(1)(C).”

Subsection “(t)(1)(E)” describes the entities within each Gulf Coast State responsible for administering funds provided pursuant to paragraph “(t)(1)(A).”

Subsection “(t)(1)(F)” directs the Secretary of the Treasury to provide no additional funds to a state or coastal political subdivision if the state or coastal political subdivision has used funds for an activity not explicitly authorized by paragraph “(t)(1)(B)(i).” To continue receiving funds, the state or coastal political subdivision must deposit an amount equal to the amount expended on the unauthorized use into the Trust Fund or use such amount to implement an eligible project approved by the Secretary.

Subsection “(t)(1)(G)” directs the Secretary of the Treasury to provide no additional funds to a state or coastal political subdivision if the Secretary determines the state or coastal political subdivision does not comply with any requirement or condition of paragraph “(t)(1).”

Subsection “(t)(1)(H)” requires Gulf Coast States to use appropriate procedures for public input and consultation in developing recommendations for projects and programs to receive funding under this subsection.

Subsection “(t)(1)(I)” allows a state or coastal political subdivision to satisfy the conditions of subparagraph (D) if it has already established conditions substantively the same as those in subparagraph (D).

Subsection “(t)(1)(J)” requires states to coordinate with the Chair of the Council established in subsection “(t)(2)” to identify large-scale projects that may be jointly supported by the Council pursuant to the Comprehensive Plan.

Subsection “(t)(1)(K)” allows a Gulf Coast State or coastal political subdivision to use amounts available from the Trust fund to meet the cost-share requirement of other federal programs. The use of funds as cost-share shall not affect the priority in which other federal funds are allocated.

Subsection “(t)(1)(L)” requires preference be given to individuals and companies headquartered in or principally engaged in business in a Gulf Coast State.

Subsection “(t)(1)(M)” requires that any funds not identified in a plan in accordance with subparagraph (D)(iv) shall remain in the Trust Fund until a state or coastal political subdivision submits a plan for their use.

Subsection “(t)(1)(N)” allows judicial review of a determination that a state or coastal political subdivision does not meet the requirements of this subsection.

Subsection “(t)(1)” Discussion

Eligible Activities: The activities authorized (subsection “(t)(1)(B)”) are intended to promote the restoration of the ecosystem and economies of the Gulf Coast.

Funds may be used for a variety of activities to restore the Gulf Coast ecosystem, including coastal restoration, mitigation of damage to natural resources and implementation of existing marine, coastal or comprehensive conservation management plans. Eco-

conomic recovery activities include tourism promotion, seafood promotion, workforce development, coastal flood protection, and mitigation of the ecological and economic impact of Outer Continental Shelf activities and the oil spill through infrastructure projects.

This subsection authorizes expenditures for workforce development. This is intended to include non-profit, university, and community college-based workforce, career and technical training programs. This would also include the identification of projects, research, programs and partnerships with federal, state and local workforce agencies, industry and local stakeholders from economically and socially disadvantaged communities.

While this subsection expressly authorizes expenditures for improvements to or upon “State parks located in coastal areas affected by the Deepwater Horizon oil spill,” it is the intent that a county or local park is also eligible to receive funding under the Act for any other eligible activity identified under Section (t)(1)(B)(i)(I).

Conditions: The conditions established for expenditure of funds (subsection “(t)(1)(D)”) are intended to ensure funds allocated to a state or coastal political subdivision are used for the purposes of this Act—restoring the ecosystems and economy of the Gulf Coast. The ability of the Secretary of the Treasury to audit expenditures of funds provides additional assurances that funding will be spent in accordance with all relevant requirements. These conditions also ensure meaningful public input as states and coastal political subdivisions identify and propose projects and programs for funding.

Coordination with Council: To improve efficiencies and to promote large-scale projects, states are encouraged to coordinate expenditures under paragraph “(t)(1)” with other expenditures approved by the Council for restoration of the Gulf of Mexico pursuant to paragraphs “(t)(2)” and “(t)(3).” Specifically, subsection “(t)(1)(J)” is intended to promote cooperation and coordination between states and the Council in selecting projects. The requirement is focused on large-scale projects that will have the greatest benefit for the Gulf Coast ecosystem.

Unauthorized Use of Funds: Funds allocated to states and coastal political subdivisions may be used for activities authorized in subsection “(t)(1)(B)(i)”. Subsection “(t)(1)(E)” is intended to preclude the use of funds on activities not authorized by preventing a state or coastal political subdivision from receiving additional funds until the unauthorized use is fully addressed by depositing funds into the Trust Fund or implementing an eligible project of the same value.

Local Preference: Subsection “(t)(1)(L)” gives a preference to companies located on the Gulf Coast. This includes the development of procurement and grant policies that promote the use of local workforce development agencies and programs to assist with training and hiring of local workers, including workers from disadvantaged, underserved and resource constrained communities.

Subsection “(t)(2)” Summary

Subsection “(t)(2)(A)” reserves 60 percent of the amounts in the Trust Fund for distribution by the Council to carry out the Comprehensive Plan.

Subsection “(t)(2)(B)” directs the Council to expend funds made available from the Trust Fund to undertake projects and programs

to restore and protect the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, coastal wetlands, and economy of the Gulf Coast. This subsection directs the Secretary of Treasury to develop necessary conditions, including audit requirements, necessary to ensure the Council expends funds in accordance with subsection “(t)(2).” Administrative expenses of the Council, including staff expenses associated with the Council or its advisory committees, are limited to 3 percent of funds made available to the Council.

Subsection “(t)(2)(C)” describes the membership and functions of the Council, which consists of representatives of seven federal agencies and the governors of the five Gulf Coast States. Governors may select an alternate to be appointed to the Council who may vote on the Governor’s behalf. The Council is chaired by one of the federal agency members of the Council that is selected by the states on the Council.

Significant actions of the Council must be approved by the affirmative vote of the federal Chairperson and a majority of state members. Significant actions include: approval of a Comprehensive Plan and future revisions to that plan; approval of state plans pursuant to paragraph (3)(B)(iii); and approval of reports submitted to Congress. In the case of approval of a state plan pursuant to paragraph (3)(B)(iv), the vote requirement is met by the affirmative vote of the federal Chairperson and the certification of the state submitting the plan that it meets all relevant requirements.

Subparagraph “(t)(2)(C)(vi)(V)” requires the Council to provide public transparency of its actions, including making votes on significant actions and associated deliberations open to the public.

The duties of the Council as outlined in subparagraph “(t)(2)(C)(vii)” include: develop a Comprehensive Plan and regularly update that plan; identify previously-authorized projects that if implemented quickly would restore and protect the Gulf Coast ecosystem; coordinate the development of consistent policies, strategies and plans for the restoration and protection of the Gulf Coast ecosystem; establish advisory committees, including a science advisory committee and public policy advisory committee; coordinate scientific and other research associated with restoration of the Gulf Coast ecosystem, including research in carried out pursuant to section 5; seek to ensure all products are based on the best available data; make recommendations to address the needs of economically and socially vulnerable populations; develop standard terms in contracts that provide preference for individuals and companies residing in a Gulf Coast State; prepare an integrated financial plan and recommendations for coordinated budget requests; submit annual reports to Congress; and submit a final report upon expenditure of all funds.

The Federal Advisory Committee Act does not apply to the Council or its advisory committees.

Subsection “(t)(2)(D)” outlines the parameters for development of the Comprehensive Plan. The Council is required to develop a proposed plan within 180 days and finalize this plan, after public notice and comment, within one year. This subsection requires incorporation of the findings of the Gulf Coast Restoration Task Force into the Comprehensive Plan and close coordination with the Task Force in the development of the plan. The Comprehensive Plan

must also consider all relevant findings, reports or research funded by a Center of Excellence or the Gulf Coast Fisheries and Ecosystem Endowment established in section 5.

The Comprehensive Plan must include: such provisions as are necessary to incorporate recommendations of the Gulf Coast Restoration Task Force; a list of projects and programs authorized prior to the enactment of this subsection that would further the goals and objectives of this Act; a description of the manner in which funds in the Trust Fund will be allocated over the succeeding 10 years; and subject to available funding, a prioritized list of specific projects and programs to be funded during the 3-year period following publication of the Comprehensive Plan.

The Comprehensive Plan must be updated every 5 years, and the 3-year list of projects and programs must be updated annually.

In selecting projects and programs for inclusion on the 3-year list, the Council must give priority to the following: projects and programs projected to make the greatest contribution to restoring and protecting the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands of the Gulf Coast ecosystem, without regard to geographic location; large-scale project and programs; projects contained in existing state comprehensive plans; projects that restore the long-term resiliency of the natural resources and ecosystems most impacted by the Deep-water Horizon oil spill.

Subsection “(t)(2)(E)” requires the Council to expend funds made available from the Trust Fund to carry out the Comprehensive Plan. The Council is directed to assign primary authority and responsibility for each project and program included in the Comprehensive Plan to a state or federal agency and to transfer such amounts necessary to the designated state or agency to carry out the project or plan.

This section allows a state or coastal political subdivision to use amounts made available to satisfy the non-federal share of a project or program authorized by other federal law if it meets the requirements in subparagraph (D) for inclusion in the Comprehensive Plan.

Subsection “(t)(2)(F)” allows the Council to develop Memorandums of Understanding with federal members of the Council to establish integrated funding and implementation plans.

Subsection “(t)(2)(G)” requires the Council to terminate following submission of the final report required in subparagraph “(t)(C)(vii)(XI)”.

Subsection “(t)(2)” Discussion

Eligible Activities: In identifying priorities pursuant to subsection “(t)(2)(D)”, the Comprehensive Plan may select from eligible activities identified in subsection “(t)(1)(B)(i),” including recommendations for ecosystem restoration-related workforce development and job creation programs.

Public Engagement: This subsection waives compliance with the Federal Advisory Committee Act for the Council and its advisory committees. However, this is not intended to limit public involvement in the decision-making of the Council. Additional public transparency and input requirements are included. For example, subsection “(t)(2)(D)(ii)(I)” requires the Council to allow public com-

ment on the proposed Comprehensive Plan. In addition, subsection “(t)(2)(C)(vi)(V)” requires the Council to make significant actions and associated deliberations available to the public. It is expected that this will involve a robust process for public engagement in and transparency of Council decisions.

Scientific Input: Among the Council’s duties enumerated in subsection “(t)(2)(C)(vii)” is the coordination of scientific and other research associated with restoration of the Gulf Coast ecosystem. Section 5 establishes research centers of excellence and a fisheries and ecosystem endowment to carry out ongoing research on the restoration of the Gulf of Mexico. In carrying out its duties, the Council should consider the research produced by the centers of excellence and funded through the fisheries and ecosystem endowment in its decision-making.

The Council is also directed to establish advisory committees necessary to assist the Council in carrying out its duties, including a science advisory committee. Such an advisory committee should provide independent scientific advice to the Council to aid in its decision-making, including the development of a Comprehensive Plan and selection of projects and programs for funding.

Restoration Priorities: Subsection “(t)(2)(D)(iii)” outlines priorities for selecting projects to be included in the Comprehensive plan. These priorities are focused on projects and programs with the greatest benefit for the ecosystems of the Gulf Coast, including large-scale projects, projects contained in existing state comprehensive plans, and projects that restore long-term resiliency to areas most impacted by the Deepwater Horizon oil spill.

Implementation: The Council is intended to function through its member agencies and the states. To implement projects and programs identified in the Comprehensive Plan, the Council is directed to identify a member federal agency or state to undertake primary responsibility for a project or program and to transfer appropriate funding to the state or federal agency to implement the project or program. Such coordination should allow for the agency or state with the greatest expertise related to a project or program to oversee its implementation.

Subsection “(t)(3)” Summary

Subsection “(t)(3)(A)” requires that 50 percent of the funding provided to the Council (or 30 percent of funds deposited in the Trust Fund) shall be distributed based on an oil spill impact formula. The formula is the weighted average of the following criteria:

- 40 percent based on the proportionate number of miles of shoreline in each Gulf Coast State that experienced oiling as of April 10, 2011 compared to the total number of miles of shoreline that experienced oiling.
- 40 percent based on the inverse proportion of the average distance from the Deepwater Horizon oil rig to the nearest and farthest point of the shoreline that experienced oiling in each Gulf Coast State.
- 20 percent based on the average population in the 2010 decennial census of coastal counties bordering the Gulf of Mexico.

Each Gulf Coast State is guaranteed a minimum of 5 percent of the funds distributed according to the impact formula.

Subsection “(t)(3)(B)” requires the Council to distribute funding to Gulf Coast States according to the impact formula, subject to the submission of a plan to the Council by the Gulf Coast State that meets all applicable requirements of this subsection. These requirements include:

- All projects, programs, and activities proposed for funding are eligible under paragraph “(t)(1)(B)(i).”
- The projects, programs, and activities contribute to the overall ecological and economic recovery of the Gulf Coast.
- The plan takes into consideration the Comprehensive Plan and is consistent with its goals and objectives.

A state plan may propose to use no more than 25 percent of the funding made available for infrastructure projects eligible under subclauses (X) and (XI) of subsection “(t)(1)(B)(i)” unless the plan: (1) will address the ecosystem restoration needs in the state and (2) additional investment in infrastructure is required to mitigate the impacts of the Deepwater Horizon oil spill.

The Council must act to approve or disapprove a plan within 60 days of the plan being submitted.

Subsection “(t)(3)(C)” requires the Council to provide reasons in writing for disapproval of a plan and consult with the state to address any identified deficiencies.

Subsection “(t)(3)(D)” requires that any funds allocated to a state under the impact formula shall remain in the Trust Fund in the event a state fails to submit a required plan.

Subsection “(t)(3)(E)” allows states to seek judicial review in a district court located within the state if the Council fails to approve or take action on a submitted plan.

Subsection “(t)(3)” Discussion

This subsection ensures a portion of funds in the Trust Fund are distributed based on impacts related to the Deepwater Horizon oil spill. Funding distributed in this subsection is based on a state plan that has been developed in coordination with the Comprehensive Plan and approved by the Council. This ensures close coordination between states and the Council.

Subsection “(t)(4)” Summary

Subsection “(t)(4)(A)” divides the interest earned on funds in the Trust Fund between two endowments established in this subsection: the National Endowment for Oceans and the Gulf of Mexico Research Endowment.

Subsection “(t)(4)(B)” establishes a national endowment for oceans to provide funds to coastal states for activities to restore, protect, maintain, or understand living marine resources and their habitats in ocean and coastal waters, including baseline scientific research, ocean observing, and other related activities. Funding is allocated to states according to a weighted formula. Funding is also provided to regional ocean and coastal planning bodies and for a National Grant Program for Oceans and Coastal Waters.

Subsection “(t)(4)(C)” establishes a Gulf of Mexico Research Endowment to provide funding for research activities authorized in Section 5.

Section 5. Gulf Coast Ecosystem Restoration Science, Observation, Monitoring, and Technology Program

Subsection (b) establishes a Gulf Coast Ecosystem Restoration, Science, Observation, Monitoring, and Technology Program (Program) carried out by the Administrator of the National Oceanic and Atmospheric Administration (Administrator). Subsection (c) requires the Administrator to make grants to establish five centers of excellence in each of the Gulf Coast States. In carrying out this program, the Administrator must consult with other federal agencies with expertise in the discipline of a center of excellence.

In awarding grants under subsection (c), the Administrator shall give priority to entities and consortia that demonstrate the ability to establish the broadest cross-section of participants. Disciplines outlined for the five centers of excellence are as follows:

- Coastal and deltaic sustainability, restoration and protection; including solutions and technology that allow citizens to live safely and sustainably in a coastal delta.
- Coastal fisheries and wildlife ecosystem research and monitoring.
- Offshore energy development, including research and technology to improve the sustainable and safe development of energy resources.
- Sustainable and resilient growth, economic and commercial development in the Gulf Coast.
- Comprehensive observation, monitoring, and mapping of the Gulf of Mexico.

The Administrator is required to develop a plan to coordinate projects and activities of the Program with other existing federal and state science and technology programs as well as with the centers of excellence.

Subsection (d) establishes a fishery and ecosystem endowment (Endowment) to ensure, to the maximum extent practicable, the long-term sustainability of the ecosystem, fish stocks, fish habitats, and the recreational, commercial, and charter fishing industry of the Gulf of Mexico. Funds may be expended for marine and estuarine research; marine and estuarine ecosystem monitoring and ocean observation, data collection and stock assessments, pilot programs for fishery independent data and reduction of exploitation of spawning aggregations, and cooperative research. Priority is given to integrated, long-term projects that build on, or are coordinated with, related research activities and address current or anticipated marine ecosystem, fishery or wildlife management information needs.

The program will be administered by the Administrator, in consultation with the Director of the U.S. Fish and Wildlife Service.

Subsection (e) reserves 5% of funds deposited in the Trust Funds to be equally divided between the Program and the Endowment. Administrative expenses are limited to not more than 3 percent of the funds available.

Discussion

Section 5 establishes research centers of excellence and a fisheries and ecosystem endowment to carry out ongoing research on the restoration of the Gulf of Mexico. The Gulf Coast Ecosystem Restoration Council established in Section 4 is directed to consider

the research produced by the centers of excellence and funded through the endowment in its decision-making. In identifying and selecting research needs, to fulfill the requirements of Section 4 and Section 5, the Administrator and the centers of excellence receiving funding should coordinate with the Council on identifying research necessary to develop and carry out the Comprehensive Plan.

There are multiple ongoing research efforts in the Gulf of Mexico based at universities and other research institutions. In establishing the centers of excellence and fisheries and ecosystem endowment, it is important to avoid duplication. When awarding research funding these programs should build upon and incorporate ongoing research efforts.

It is the intent of the Committee that universities, university-affiliated entities, or other collaborative and consortia organizations led by universities located in the applicable Gulf Coast State should be given consideration in the selection of funding recipients.

Section 6. Gulf Coast Ecosystem Restoration Science, Observation, Monitoring, and Technology Program

The savings clause in paragraph (1) of subsection (a) clarifies that nothing in this Act shall affect or supersede any provision of federal law, including requirements of the Oil Pollution Act related to injury to natural resources as well as laws for protection of public health and the environment.

Paragraph (2) clarifies that the provisions of this Act apply only to fines collected pursuant to the Deepwater Horizon oil spill and not to any other oil pollution event.

Subsection (b) clarifies that funds made available under this Act may only be used for eligible activities specifically authorized in this Act.

Discussion

Natural Resources Damages: As highlighted by the report prepared by Secretary of the Navy Ray Mabus (America's Gulf Coast: A Long Term Recovery Plan After the Deepwater Horizon Oil Spill at p. 26–27), the adverse impacts of the Deepwater Horizon oil spill were compounded by a number of pre-existing factors and conditions in the Gulf Coast region such as erosion, storm damage, over-fishing, and hypoxia. It is the intent of this legislation that monies deposited into the Trust Fund be available to address the long-term pollution and degradation of the ecosystem and natural resources of the Gulf States as well as economic recovery, which was exacerbated by the Deepwater Horizon oil spill. These activities are typically in addition to activities to restore damages associated with the Deepwater Horizon oil spill.

Under the existing statutory schemes, the United States may seek natural resources damages (NRD) for injury to natural resources under Title I of Oil Pollution Act (OPA), 33 U.S.C. §§ 2701–2730, and also obtain penalties from a responsible party for discharges of oil in violation of section 311 of the CWA, 33 U.S.C. § 1321, such as occurred in connection with the explosion on, and sinking of, the Deepwater Horizon mobile offshore drilling unit.

The intent of the legislation is to address the long-term restoration of Gulf coast ecosystems and economies. It is expected that ef-

forts to restore natural resources using civil penalties deposited into the Trust Fund will benefit from coordination with activities to restore those resources for which NRD are authorized under OPA. However, the intent of the savings clause in Section 6 is to make clear that in no way are this legislation and new Trust Fund intended to affect the ability of natural resources trustees under section 1006 of OPA, 33 U.S.C. §2706, to fully recover allowable damages for natural resource injuries under OPA, even if the restoration, rehabilitation, replacement, or acquisition of natural resources is funded in the first instance by civil penalties from the Deepwater Horizon oil spill that have been deposited in the Trust Fund. Under no circumstances should potential later efforts to seek cost recovery for NRD under OPA be considered “double recovery” for purposes of section 1006(d) of OPA, 33 U.S.C. §2706(d).

The ability to obtain both NRD and penalties is not, and has never been, considered double recovery against a Responsible Party, but rather separate remedies provided by law that serve different purposes. Clean Water Act penalties are punitive in nature and serve a deterrent purpose, while NRD claims are intended to compensate the public for natural resource injuries resulting from an oil spill. Accordingly, even if some penalties recovered in litigation related to the Deepwater Horizon explosion and oil spill are used to fund activities for the long-term restoration of natural resources that were also injured by that spill, it is not double recovery for a Natural Resources trustee to thereafter seek recovery for valid NRD claims. To bar NRD cost recovery under such circumstances would undermine the deterrent effect of any penalties imposed on the responsible parties.

Nothing in this legislation shall interfere with the statutory responsibilities and authority of the Natural Resource Damage Assessment Trustee Council or the individual trustees to carry out their statutory responsibilities to assess natural resource damages and implement restoration actions under 33 U.S.C. §2706 and other applicable law. The Council established under this Act should support and closely coordinate with the Natural Resource Damage Trustee Council, but shall not preempt the decisions of the Trustee Council or individual trustees. While, as noted above, projects eligible for funding made available under this legislation could overlap to some extent with restoration provided for under the NRDA process, the Council shall seek to avoid such overlap, and priority should be given to projects that are not likely to be funded under the NRDA process.

Public Health and Environmental Laws: Nothing in this section supersedes any other federal law related to public health and environmental protection. All projects or programs funded by this Act must comply with all relevant laws.

LEGISLATIVE HISTORY

The Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States (RESTORE) Act of 2011 was introduced by Senators Landrieu (D-LA), Shelby (R-AL), Vitter (R-LA), Nelson (D-FL), Rubio (R-FL), Sessions (R-AL), Cochran (R-MS), Wicker (R-MS), and Hutchison (R-TX) on July 21, 2011. The bill was received, read twice, and referred to the Senate Committee on Environment and Public Works. Previously,

two related pieces of legislation (S. 861 and S. 862) to dedicate Clean Water Act fines to restoration activities in the Gulf of Mexico were introduced and referred to the Committee on Environment and Public Works.

On September 21, 2011, the Full Committee met to discuss a number of bills including S. 1400. During this meeting, the Committee considered the bill and adopted an amendment in the nature of a substitute offered by Senator Boxer and co-sponsored by Senators Whitehouse, Vitter, and Sessions that made technical changes to the bill and modified the allocation of the interest earned on the Trust Fund. S. 1400 was ordered to be reported favorably with an amendment in the nature of a substitute by voice vote.

ROLLCALL VOTES

The Committee on Environment and Public Works met to consider S. 1400 on September 21, 2011. The bill was ordered to be reported favorably with an amendment in the nature of a substitute by voice vote with Senators Inhofe, Barrasso, and Johanns recorded as “No”.

REGULATORY IMPACT STATEMENT

In compliance with section 11(b) of rule XXVI of the Standing Rules of the Senate, the committee finds that S. 1400 does not create any additional regulatory burdens, nor will it cause any adverse impact on the personal privacy of individuals.

MANDATES ASSESSMENT

In compliance with the Unfunded Mandates Reform Act of 1995 (Public Law 104-4), the committee noted that the Congressional Budget Office (CBO) has found, “S. 1400 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.”

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

OCTOBER 19, 2011.

Hon. BARBARA BOXER,
Chairman, Committee on Environment and Public Works,
U.S. Senate, Washington, DC.

DEAR MADAM CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1400, the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2011.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Sarah Puro.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

S. 1400—Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2011

Summary: S. 1400 would establish the Gulf Coast Restoration Trust Fund (GCRTF) and would require that 80 percent of any administrative and civil penalties paid to the federal government under the Clean Water Act (CWA) in connection with the April 2010 explosion at the Deepwater Horizon facility in the Gulf of Mexico be deposited into that Trust Fund. The bill would also establish two smaller funds, which would receive interest credited to the GCRTF, to support programs that maintain the health of the Gulf of Mexico and oceans worldwide. Amounts in all three funds would be available for spending without further appropriation. Those amounts would otherwise be deposited in the Oil Spill Liability Trust Fund (OSLTF) and eligible to be spent only subject to further appropriation action.

CBO estimates that enacting the legislation would increase direct spending by \$1.2 billion over the 2012–2021 period. Pay-as-you-go procedures apply because enacting the legislation would affect direct spending. S. 1400 would not affect revenues.

The bill would require the Department of the Treasury to complete audits of spending from the GCRTF and to ensure compliance with the provisions of the legislation. CBO estimates that implementing those requirements would cost \$13 million over the 2012–2016 period, subject to appropriation of the necessary amounts.

The bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA).

Estimated cost to the Federal Government: The estimated budgetary impact of S. 1400 is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and the environment).

		By fiscal year, in millions of dollars—											
		2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2012– 2016	2012– 2021
CHANGES IN DIRECT SPENDING													
Gulf Coast Restoration Trust Fund:													
Estimated Budget Authority		0	0	37	127	163	309	318	323	309	290	327	1,876
Estimated Outlays		0	0	2	12	40	94	155	228	279	300	54	1,110
Oceans Endowment and Gulf of Mexico Endowment:													
Estimated Budget Authority		0	0	0	6	14	26	41	55	61	67	19	270
Estimated Outlays		0	0	0	1	4	10	18	27	35	43	5	138
Total Changes:													
Estimated Budget Authority		0	0	37	133	177	335	359	378	370	357	346	2,146
Estimated Outlays		0	0	2	13	44	104	173	255	314	343	59	1,248
CHANGES IN SPENDING SUBJECT TO APPROPRIATION													
Department of the Treasury:													
Estimated Authorization Level		0	0	5	5	5	10	10	10	10	10	15	65
Estimated Outlays		0	0	3	5	5	7	10	10	10	10	13	60

Basis of estimate: For this estimate, CBO assumes S. 1400 will be enacted early in fiscal year 2012 and that the necessary

amounts to audit the new programs that the legislation would establish will be provided for each year.

Penalty collections under current law

The magnitude of any administrative and civil penalties that may be collected under the CWA because of the Deepwater Horizon incident and when the government might collect such penalties is uncertain. Under the CWA, penalties related to oil spills are generally based on the size of the discharge and the applicable penalty rate, which is higher for discharges caused by gross negligence. The CWA authorizes lower penalties to be assessed based on a number of considerations, including the financial position of the violator and whether the violator takes action to mitigate the damage from the spill. Negotiated settlements between the federal government and the entity responsible for an oil spill are also authorized by the CWA.

It is possible that any penalty payments related to the Deepwater Horizon incident will be received by the government only after a lengthy legal process that could take several years to resolve. In that case, penalty collections could be delayed until after 2021. On the other hand, they could be collected relatively quickly if a settlement with the violator is reached. CBO weighed the probabilities associated with those scenarios to estimate the magnitude and the timing of penalties that may be paid under current law as a result of the Deepwater Horizon incident. Based on those probabilities, CBO estimates that revenues from civil penalties will total about \$2.3 billion over the 2012–2021 period. Under current law, those amounts would be deposited into the OSLTF and generally could only be spent if provided for in appropriation acts.

Direct spending

Gulf Coast Restoration Trust Fund. S. 1400 would establish the GCRTF and require that 80 percent of any CWA penalties (estimated to total about \$1.9 billion over the 2012–2021 period) paid to the federal government in connection with the explosion at the Deepwater Horizon facility in the Gulf of Mexico be deposited into the fund. Balances in the GCRTF would be available, without further appropriation, to pay for environmental remediation and restoration projects in Alabama, Florida, Louisiana, Mississippi, and Texas. Because such projects have historically taken several years to complete, CBO estimates enacting this provision would increase direct spending by \$1.1 billion over the 2012–2021 period.

Oceans Endowment and Gulf of Mexico Endowment. S. 1400 would transfer any interest amounts credited to the GCRTF to two new funds—the National Endowment for the Oceans and the Gulf of Mexico Endowment. Under the provisions of the bill, those amounts, in addition to interest credited directly to the endowments, would be available to be spent without further appropriation for grants to states to engage in environmental research, restoration, or protection for the Gulf of Mexico or oceans worldwide. CBO estimates that enacting those provisions would increase direct spending by \$138 million over the 2012–2021 period.

Spending subject to appropriation

The bill would require the Department of the Treasury to complete audits of spending from the GCRTF and to ensure compliance with the provisions of the legislation. Based on historical spending for similar efforts, CBO estimates that enacting those requirements would cost \$13 million over the 2012–2016 period, subject to appropriation of the necessary amounts.

Pay-As-You-Go considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays that are subject to those pay-as-you-go procedures are shown in the following table.

CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR S. 1400, RESOURCES AND ECOSYSTEMS SUSTAINABILITY, TOURIST OPPORTUNITIES, AND REVIVED ECONOMIES OF THE GULF COAST STATES ACT OF 2011, AS ORDERED REPORTED BY THE SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS ON SEPTEMBER 21, 2011

	By fiscal year, in millions of dollars—											2012–2016	2012–2021
	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021			
	NET INCREASE OR DECREASE (–) IN THE DEFICIT												
Statutory Pay-As-You-Go Impact	0	0	2	13	44	104	173	255	314	343	59	1,248	

Intergovernmental and private-sector impact: S. 1400 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments. Those governments could benefit from grants authorized by the bill, but any costs would be incurred voluntarily as conditions of federal assistance.

Estimate prepared by: Federal Spending: Sarah Puro; Federal Revenues: Pamela Greene; Impact on State, Local, and Tribal Governments: Ryan Miller; Impact on the Private Sector: Amy Petz.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis; Frank Sammartino, Assistant Director for Tax Analysis.

CHANGES IN EXISTING LAW

In compliance with section 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows: Existing law proposed to be omitted is enclosed in [black brackets], new matter is printed in *italic*, existing law in which no change is proposed is shown in roman:

* * * * *

FEDERAL WATER POLLUTION CONTROL ACT

* * * * *

SEC. 301. (a) * * *

* * * * *

SEC. 311. (a) For the purpose of this section, the term—

(1) “oil” means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil;

(2)* * *

* * * * *

(25) “removal costs” means—

(A) the costs of removal of oil or a hazardous substance that are incurred after it is discharged; and

(B) in any case in which there is a substantial threat of a discharge of oil or a hazardous substance, the costs to prevent, minimize, or mitigate that threat; **[and]**

(26) “nontank vessel” means a self-propelled vessel that—

(A) is at least 400 gross tons as measured under section 14302 of title 46, United States Code, or, for vessels not measured under that section, as measured under section 14502 of that title;

(B) is not a tank vessel;

(C) carries oil of any kind as fuel for main propulsion; and

(D) operates on the navigable waters of the United States, as defined in section 2101(17a) of that title[.];

(27) *the term ‘Chairperson’ means the Chairperson of the Council;*

(28) *the term ‘coastal political subdivision’ means any local political jurisdiction that is immediately below the State level of government, including a county, parish, or borough, with a coastline that is contiguous with any portion of the United States Gulf of Mexico;*

(29) *the term ‘Comprehensive Plan’ means the comprehensive plan developed by the Council pursuant to subsection (t);*

(30) *the term ‘Council’ means the Gulf Coast Ecosystem Restoration Council established pursuant to subsection (t);*

(31) *the term ‘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;*

(32) *the term ‘Gulf Coast ecosystem’ means—*

(A) *in the Gulf Coast States, the coastal zones (as that term is defined in section 304 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1453), except that, in this section, the term ‘coastal zones’ includes land within the coastal zones that is held in trust by, or the use of which is by law subject solely to the discretion of, the Federal Government or officers or agents of the Federal Government) that border the Gulf of Mexico;*

(B) *any adjacent land, water, and watersheds, that are within 25 miles of the coastal zones described in subparagraph (A) of the Gulf Coast States; and*

(C) *all Federal waters in the Gulf of Mexico;*

(33) *the term ‘Gulf Coast State’ means any of the States of Alabama, Florida, Louisiana, Mississippi, and Texas; and*

(34) *the term ‘Trust Fund’ means the Gulf Coast Restoration Trust Fund established pursuant to section 3 of the Resources*

and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2011.

* * * * *

(s) The Oil Spill Liability Trust Fund established under section 9509 of the Internal Revenue Code of 1986 (26 U.S.C. 9509) shall be available to carry out subsections (b), (c), (d), (j), and (l) as those subsections apply to discharges, and substantial threats of discharges, of oil. Any amounts received by the United States under this section shall be deposited in the Oil Spill Liability Trust Fund *except as provided in subsection (t).*

(t) *GULF COAST RESTORATION AND RECOVERY.*—

(1) *STATE ALLOCATION AND EXPENDITURES.*—

(A) *IN GENERAL.*—*Of the total amounts made available in any fiscal year from the Trust Fund, 35 percent shall be available, in accordance with the requirements of this section, to the Gulf Coast States in equal shares for expenditure for ecological and economic restoration of the Gulf Coast ecosystem in accordance with this subsection.*

(B) *USE OF FUNDS.*—

(i) *ELIGIBLE ACTIVITIES.*—*Amounts provided to the Gulf States under this subsection may only be used to carry out 1 or more of the following activities:*

(I) *Coastal restoration projects and activities, including conservation and coastal land acquisition.*

(II) *Mitigation of damage to, and restoration of, fish, wildlife, or natural resources.*

(III) *Implementation of a federally approved marine, coastal, or comprehensive conservation management plan, including fisheries monitoring.*

(IV) *Programs to promote tourism in a Gulf Coast State, including recreational fishing.*

(V) *Programs to promote the consumption of seafood produced from the Gulf Coast ecosystem.*

(VI) *Programs to promote education regarding the natural resources of the Gulf Coast ecosystem.*

(VII) *Planning assistance.*

(VIII) *Workforce development and job creation.*

(IX) *Improvements to or upon State parks located in coastal areas affected by the Deepwater Horizon oil spill.*

(X) *Mitigation of the ecological and economic impact of outer Continental Shelf activities and the impacts of the Deepwater Horizon oil spill or promotion of the long-term ecological or economic recovery of the Gulf Coast ecosystem through the funding of infrastructure projects.*

(XI) *Coastal flood protection and infrastructure directly affected by coastal wetland losses, beach erosion, or the impacts of the Deepwater Horizon oil spill.*

(XII) *Administrative costs of complying with this subsection.*

(ii) *LIMITATION.*—

(I) *IN GENERAL.*—*Of the amounts received by a Gulf State under this subsection not more than 3*

percent may be used for administrative costs eligible under clause (i)(XII).

(II) PROHIBITION ON USE FOR IMPORTED SEA-FOOD.—None of the funds made available under this subsection shall be used for any program to support or promote imported seafood or any seafood product that is not harvested from the Gulf Coast ecosystem.

(C) COASTAL POLITICAL SUBDIVISIONS.—

(i) IN GENERAL.—In the case of a State where the coastal zone includes the entire State—

(I) 75 percent of funding shall be provided to the 8 disproportionately affected counties impacted by the Deepwater Horizon Oil Spill; and

(II) 25 percent shall be provided to nondisproportionately impacted counties within the State.

(ii) LOUISIANA.—Of the total amounts made available to the State of Louisiana under this paragraph:

(I) 70 percent shall be provided directly to the State in accordance with this subsection.

(II) 30 percent shall be provided directly to parishes in the coastal zone (as defined in section 304 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1453)) of the State of Louisiana according to the following weighted formula:

(aa) 40 percent based on the weighted average of miles of the parish shoreline oiled.

(bb) 40 percent based on the weighted average of the population of the parish.

(cc) 20 percent based on the weighted average of the land mass of the parish.

(iii) CONDITIONS.—

(I) LAND USE PLAN.—As a condition of receiving amounts allocated under clause (ii), the chief executive of the eligible parish shall certify to the Governor of the State that the parish has completed a comprehensive land use plan.

(II) OTHER CONDITIONS.—A coastal political subdivision receiving funding under this subsection shall meet all of the conditions in subparagraph (D).

(D) CONDITIONS.—As a condition of receiving amounts from the Trust Fund, a Gulf Coast State, including the entities described in subparagraph (E), or a coastal political subdivision shall—

(i) agree to meet such conditions, including audit requirements, as the Secretary of the Treasury determines necessary to ensure that amounts disbursed from the Trust Fund will be used in accordance with this subsection;

(ii) certify in such form and in such manner as the Secretary of the Treasury determines necessary that the project or program for which the Gulf Coast State or coastal political subdivision is requesting amounts—

(I) is designed to restore and protect the natural resources, ecosystems, fisheries, marine and wild-life habitats, beaches, coastal wetlands, or economy of the Gulf Coast;

(II) carries out 1 or more of the activities described in subparagraph (B)(i);

(III) was selected based on meaningful input from the public, including broad-based participation from individuals, businesses, and nonprofit organizations; and

(IV) in the case of a natural resource protection or restoration project, is based on the best available science;

(iii) certify that the project or program and the awarding of a contract for the expenditure of amounts received under this subsection are consistent with the standard procurement rules and regulations governing a comparable project or program in that State, including all applicable competitive bidding and audit requirements; and

(iv) develop and submit a multiyear implementation plan for use of those funds.

(E) APPROVAL BY STATE ENTITY, TASK FORCE, OR AGENCY.—The following Gulf Coast State entities, task forces, or agencies shall carry out the duties of a Gulf Coast State pursuant to this paragraph:

(i) ALABAMA.—

(I) IN GENERAL.—In the State of Alabama, the Alabama Gulf Coast Recovery Council, which shall be comprised of only the following:

(aa) The Governor of Alabama, who shall also serve as Chairperson and preside over the meetings of the Alabama Gulf Coast Recovery Council.

(bb) The Director of the Alabama State Port Authority, who shall also serve as Vice Chairperson and preside over the meetings of the Alabama Gulf Coast Recovery Council in the absence of the Chairperson.

(cc) The Chairman of the Baldwin County Commission.

(dd) The President of the Mobile County Commission.

(ee) The Mayor of the city of Bayou La Batre.

(ff) The Mayor of the town of Dauphin Island.

(gg) The Mayor of the city of Fairhope.

(hh) The Mayor of the city of Gulf Shores.

(ii) The Mayor of the city of Mobile.

(jj) The Mayor of the city of Orange Beach.

(II) VOTE.—Each member of the Alabama Gulf Coast Recovery Council shall be entitled to 1 vote.

(III) MAJORITY VOTE.—All decisions of the Alabama Gulf Coast Recovery Council shall be made by majority vote.

(ii) LOUISIANA.—In the State of Louisiana, the Coastal Protection and Restoration Authority of Louisiana.

(iii) MISSISSIPPI.—In the State of Mississippi, the Mississippi Department of Environmental Quality.

(F) COMPLIANCE WITH ELIGIBLE ACTIVITIES.—If the Secretary of the Treasury determines that an expenditure by a Gulf Coast State or coastal political subdivision of amounts made available under this subsection does not meet 1 of the activities described in subparagraph (B)(i), the Secretary shall make no additional amounts from the Trust Fund available to that Gulf Coast State or coastal political subdivision until such time as an amount equal to the amount expended for the unauthorized use—

(i) has been deposited by the Gulf Coast State or coastal political subdivision in the Trust Fund; or

(ii) has been authorized by the Secretary of the Treasury for expenditure by the Gulf Coast State or coastal political subdivision for a project or program that meets the requirements of this subsection.

(G) COMPLIANCE WITH CONDITIONS.—If the Secretary of the Treasury determines that a Gulf Coast State or coastal political subdivision does not meet the requirements of this subsection, including the conditions of subparagraph (D), where applicable, the Secretary of the Treasury shall make no amounts from the Trust Fund available to that Gulf Coast State or coastal political subdivision until all conditions of this subsection are met.

(H) PUBLIC INPUT.—In meeting any condition of this subsection, a Gulf Coast State may use an appropriate procedure for public consultation in that Gulf Coast State, including consulting with 1 or more established task forces or other entities, to develop recommendations for proposed projects and programs that would restore and protect the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, coastal wetlands, and economy of the Gulf Coast.

(I) PREVIOUSLY APPROVED PROJECTS AND PROGRAMS.—A Gulf Coast State or coastal political subdivision shall be considered to have met the conditions of subparagraph (D) for a specific project or program if, before the date of enactment of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2011—

(i) the Gulf Coast State or coastal political subdivision has established conditions for carrying out projects and programs that are substantively the same as the conditions described in subparagraph (D); and

(ii) the applicable project or program carries out 1 or more of the activities described in subparagraph (B)(ii).

(J) CONSULTATION WITH COUNCIL.—In carrying out this subsection, each Gulf Coast State shall seek the input of the Chairperson of the Council to identify large-scale projects

that may be jointly supported by that Gulf Coast State and by the Council pursuant to the Comprehensive Plan with amounts provided under this subsection.

(K) NON-FEDERAL MATCHING FUNDS.—

(i) IN GENERAL.—A Gulf Coast State or coastal political subdivision may use, in whole or in part, amounts made available to that Gulf Coast State from the Trust Fund to satisfy the non-Federal share of the cost of any project or program authorized by Federal law that meets the eligible use requirements under subparagraph (B)(i).

(ii) EFFECT ON OTHER FUNDS.—The use of funds made available from the Trust Fund to satisfy the non-Federal share of the cost of a project or program that meets the requirements of clause (i) shall not affect the priority in which other Federal funds are allocated or awarded.

(L) LOCAL PREFERENCE.—In awarding contracts to carry out a project or program under this subsection, a Gulf Coast State or coastal political subdivision may give a preference to individuals and companies that reside in, are headquartered in, or are principally engaged in business in, a Gulf Coast State.

(M) UNUSED FUNDS.—Any Funds not identified in an implementation plan by a State or coastal political subdivision in accordance with subparagraph (D)(iv) shall remain in the Trust Fund until such time as the State or coastal political subdivision to which the funds have been allocated develops and submits a plan identifying uses for those funds in accordance with subparagraph (D)(iv).

(N) JUDICIAL REVIEW.—If the Secretary of the Treasury determines that a Gulf Coast State or coastal political subdivision does not meet the requirements of this subsection, including the conditions of subparagraph (D), the Gulf Coast State or coastal political subdivision may obtain expedited judicial review within 90 days of that decision in a district court of the United States, of appropriate jurisdiction and venue, that is located within the State seeking such review.

(2) COUNCIL ESTABLISHMENT AND ALLOCATION.—

(A) IN GENERAL.—Of the total amount made available in any fiscal year from the Trust Fund, 60 percent shall be disbursed to the Council to carry out the Comprehensive Plan.

(B) COUNCIL EXPENDITURES.—

(i) IN GENERAL.—In accordance with this paragraph, the Council shall expend funds made available from the Trust Fund to undertake projects and programs that would restore and protect the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, coastal wetlands, and economy of the Gulf Coast.

(ii) ALLOCATION AND EXPENDITURE PROCEDURES.—The Secretary of the Treasury shall develop such conditions, including audit requirements, as the Secretary of

the Treasury determines necessary to ensure that amounts disbursed from the Trust Fund to the Council to implement the Comprehensive Plan will be used in accordance with this paragraph.

(iii) *ADMINISTRATIVE EXPENSES.*—Of the amounts received by the Council under this subsection, not more than 3 percent may be used for administrative expenses, including staff.

(C) *GULF COAST ECOSYSTEM RESTORATION COUNCIL.*—

(i) *ESTABLISHMENT.*—There is established as an independent entity in the Federal Government a council to be known as the ‘Gulf Coast Ecosystem Restoration Council’.

(ii) *MEMBERSHIP.*—The Council shall consist of the following members, or in the case of a Federal agency, a designee at the level of the Assistant Secretary or the equivalent:

(I) The Chair of the Council on Environmental Quality.

(II) The Secretary of the Interior.

(III) The Secretary of the Army.

(IV) The Secretary of Commerce.

(V) The Administrator of the Environmental Protection Agency.

(VI) The Secretary of Agriculture.

(VII) The head of the department in which the Coast Guard is operating.

(VIII) The Governor of the State of Alabama.

(IX) The Governor of the State of Florida.

(X) The Governor of the State of Louisiana.

(XI) The Governor of the State of Mississippi.

(XII) The Governor of the State of Texas.

(iii) *ALTERNATE.*—A Governor appointed to the Council by the President may designate an alternate to represent the Governor on the Council and vote on behalf of the Governor.

(iv) *CHAIRPERSON.*—From among the Federal agency members of the Council, the representatives of States on the Council shall select, and the President shall appoint, 1 Federal member to serve as Chairperson of the Council.

(v) *PRESIDENTIAL APPOINTMENT.*—All Council members shall be appointed by the President.

(vi) *COUNCIL ACTIONS.*—

(I) *IN GENERAL.*—Subject to subclause (IV), significant actions by the Council shall require the affirmative vote of the Federal Chairperson and a majority of the State members to be effective.

(II) *INCLUSIONS.*—Significant actions include but are not limited to—

(aa) approval of a Comprehensive Plan and future revisions to a Comprehensive Plan;

(bb) approval of State plans pursuant to paragraph (3)(B)(iii); and

(cc) approval of reports to Congress pursuant to clause (vii)(X).

(III) QUORUM.—A quorum of State members shall be required to be present for the Council to take any significant action.

(IV) AFFIRMATIVE VOTE REQUIREMENT DEEMED MET.—For approval of State plans pursuant to paragraph (3)(B)(iv), the certification by a State member of the Council that the plan satisfies all requirements of clauses (i) and (ii) of paragraphs (3)(B), when joined by an affirmative vote of the Federal Chairperson of the Council, is deemed to satisfy the requirements for affirmative votes under subclause (I).

(V) PUBLIC TRANSPARENCY.—Appropriate actions of the Council, including votes on significant actions and associated deliberations, shall be made available to the public.

(vii) DUTIES OF COUNCIL.—The Council shall—

(I) develop the Comprehensive Plan, and future revisions to the Comprehensive Plan;

(II) identify as soon as practicable the projects that—

(aa) have been authorized prior to the date of enactment of this subsection but not yet commenced; and

(bb) if implemented quickly, would restore and protect the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, barrier islands, dunes, and coastal wetlands of the Gulf Coast ecosystem;

(III) coordinate the development of consistent policies, strategies, plans, and activities by Federal agencies, State and local governments, and private sector entities for addressing the restoration and protection of the Gulf Coast ecosystem;

(IV) establish such other advisory committee or committees as may be necessary to assist the Council, including a scientific advisory committee and a committee to advise the Council on public policy issues;

(V) coordinate scientific and other research associated with restoration of the Gulf Coast ecosystem, including research, observation, and monitoring carried out pursuant to section 5 of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2011;

(VI) seek to ensure that all policies, strategies, plans, and activities for addressing the restoration of the Gulf Coast ecosystem are based on the best available physical, ecological, and economic data;

(VII) make recommendations to address the particular needs of especially economically and socially vulnerable populations;

(VIII) develop standard terms to include in contracts for projects and programs awarded pursuant to the Comprehensive Plan that provide a preference to individuals and companies that reside in, are headquartered in, or are principally engaged in business in, a Gulf Coast State;

(IX) prepare an integrated financial plan and recommendations for coordinated budget requests for the amounts proposed to be expended by the Federal agencies represented on the Council for projects and programs in the Gulf Coast States;

(X) submit to Congress an annual report that—

(aa) summarizes the policies, strategies, plans, and activities for addressing the restoration and protection of the Gulf Coast ecosystem;

(bb) describes the projects and programs being implemented to restore and protect the Gulf Coast ecosystem; and

(cc) makes such recommendations to Congress for modifications of existing laws as the Council determines necessary to implement the Comprehensive Plan; and

(XI) submit to Congress a final report on the date on which all funds made available to the Council are expended.

(viii) APPLICATION OF FEDERAL ADVISORY COMMITTEE ACT.—The Council, or any other advisory committee established under this subsection, shall not be considered an advisory committee under the Federal Advisory Committee Act (5 U.S.C. App.).

(D) COMPREHENSIVE PLAN.—

(i) PROPOSED PLAN.—

(I) IN GENERAL.—Not later than 180 days after the date of enactment of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2011, the Chairperson, on behalf of the Council, shall publish a proposed plan to restore and protect the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands of the Gulf Coast ecosystem.

(II) CONTENTS.—The proposed plan described in subclause (I) shall include and incorporate the findings and information prepared by the President's Gulf Coast Restoration Task Force.

(ii) PUBLICATION.—

(I) INITIAL PLAN.—Not later than 1 year after date of enactment of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2011 and after notice and opportunity for public comment, the Chairperson, on behalf of the Council and after approval by the Council, shall publish in the Federal Register the initial Comprehensive

Plan to restore and protect the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands of the Gulf Coast ecosystem.

(II) *COOPERATION WITH GULF COAST RESTORATION TASK FORCE.—The Council shall develop the initial Comprehensive Plan in close coordination with the President’s Gulf Coast Restoration Task Force.*

(III) *CONSIDERATIONS.—In developing the initial Comprehensive Plan and subsequent updates, the Council shall consider all relevant findings, reports, or research prepared or funded by a center of excellence or the Gulf Fisheries and Ecosystem Endowment established pursuant to the Gulf Coast Ecosystem Restoration Science, Monitoring, and Technology Program under section 5 of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2011.*

(IV) *CONTENTS.—The initial Comprehensive Plan shall include—*

(aa) such provisions as are necessary to fully incorporate in the Comprehensive Plan the strategy, projects, and programs recommended by the President’s Gulf Coast Restoration Task Force;

(bb) a list of any project or program authorized prior to the date of enactment of this subsection but not yet commenced, the completion of which would further the purposes and goals of this subsection and of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2011;

(cc) a description of the manner in which amounts from the Trust Fund projected to be made available to the Council for the succeeding 10 years will be allocated; and

(dd) subject to available funding in accordance with clause (iii), a prioritized list of specific projects and programs to be funded and carried out during the 3-year period immediately following the date of publication of the initial Comprehensive Plan, including a table that illustrates the distribution of projects and programs by Gulf Coast State.

(V) *PLAN UPDATES.—The Council shall update—*

(aa) the Comprehensive Plan every 5 years in a manner comparable to the manner established in this subsection for each 5-year period for which amounts are expected to be made available to the Gulf Coast States from the Trust Fund; and

(bb) the 3-year list of projects and programs described in subclause (IV)(dd) annually.

(iii) *RESTORATION PRIORITIES.*—Except for projects and programs described in subclause (IV)(bb), in selecting projects and programs to include on the 3-year list described in subclause (IV)(dd), based on the best available science, the Council shall give highest priority to projects that address 1 or more of the following criteria:

(I) Projects that are projected to make the greatest contribution to restoring and protecting the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands of the Gulf Coast ecosystem, without regard to geographic location.

(II) Large-scale projects and programs that are projected to substantially contribute to restoring and protecting the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands of the Gulf Coast ecosystem.

(III) Projects contained in existing Gulf Coast State comprehensive plans for the restoration and protection of natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands of the Gulf Coast ecosystem.

(IV) Projects that restore long-term resiliency of the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands most impacted by the Deepwater Horizon oil spill.

(E) *IMPLEMENTATION.*—

(i) *IN GENERAL.*—The Council, acting through the member agencies and Gulf Coast States, shall expend funds made available from the Trust Fund to carry out projects and programs adopted in the Comprehensive Plan.

(ii) *ADMINISTRATIVE RESPONSIBILITY.*—

(I) *IN GENERAL.*—Primary authority and responsibility for each project and program included in the Comprehensive Plan shall be assigned by the Council to a Gulf Coast State represented on the Council or a Federal agency.

(II) *TRANSFER OF AMOUNTS.*—Amounts necessary to carry out each project or program included in the Comprehensive Plan shall be transferred by the Secretary of the Treasury from the Trust Fund to that Federal agency or Gulf Coast State as the project or program is implemented, subject to such conditions as the Secretary of the Treasury, in consultation with the Secretary of the Interior and the Secretary of Commerce, established pursuant to section 3 of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2011.

(iii) *COST SHARING.*—

(I) *IN GENERAL.*—A Gulf Coast State or coastal political subdivision may use, in whole or in part, amounts made available to that Gulf Coast State or coastal political subdivision from the Trust Fund to satisfy the non-Federal share of the cost of carrying a project or program that—

- (aa) is authorized by other Federal law; and
- (bb) meets the criteria of subparagraph (D).

(II) *INCLUSION IN COMPREHENSIVE PLAN.*—A project or program described in subclause (I) that meets the criteria for inclusion in the Comprehensive Plan described in subparagraph (D) shall be selected and adopted by the Council as part of the Comprehensive Plan in the manner described in subparagraph (D).

(F) *COORDINATION.*—The Council and the Federal members of the Council may develop Memorandums of Understanding establishing integrated funding and implementation plans among the member agencies and authorities.

(G) *TERMINATION.*—The Council shall terminate on the date on which the report described in subparagraph (C)(vii)(XI) is submitted to Congress.

(3) *OIL SPILL RESTORATION IMPACT ALLOCATION.*—

(A) *IN GENERAL.*—Except as provided in paragraph (4), of the total amount made available to the Council under paragraph (2) in any fiscal year from the Trust Fund, 50 percent shall be disbursed by the Council as follows:

(i) *FORMULA.*—Subject to subparagraph (B), for each Gulf Coast State, the amount disbursed under this paragraph shall be based on a formula established by the Council by regulation that is based on a weighted average of the following criteria:

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

(II) 40 percent based on the inverse proportion of the average distance from the Deepwater Horizon oil rig to the nearest and farthest point of the shoreline that experienced oiling of each Gulf Coast State.

(III) 20 percent based on the average population in the 2010 decennial census of coastal counties bordering the Gulf of Mexico within each Gulf Coast State.

(ii) *MINIMUM ALLOCATION.*—The amount disbursed to a Gulf Coast State for each fiscal year under clause (i) shall be at least 5 percent of the total amounts made available under this paragraph.

(B) *APPROVAL OF PROJECTS AND PROGRAMS.*—

(i) *IN GENERAL.*—The Council shall disburse amounts to the respective Gulf Coast States in accordance with the formula developed under subparagraph

(A) for projects, programs, and activities that will improve the ecosystems or economy of the Gulf Coast, subject to the condition that each Gulf Coast State submits a plan for the expenditure of amounts disbursed under this paragraph which meet the following criteria:

(I) All projects, programs, and activities included in that plan are eligible activities pursuant to paragraph (1)(B)(i).

(II) The projects, programs, and activities included in that plan contribute to the overall economic and ecological recovery of the Gulf Coast.

(III) The plan takes into consideration the Comprehensive Plan and is consistent with its goals and objectives, as described in paragraph (2)(B)(i).

(ii) FUNDING.—

(I) IN GENERAL.—Except as provided in subclause (II), the plan described in clause (i) may use not more than 25 percent of the funding made available for infrastructure projects eligible under subclauses (X) and (XI) of paragraph (1)(B)(i).

(II) EXCEPTION.—The plan described in clause (i) may propose to use more than 25 percent of the funding made available for infrastructure projects eligible under subclauses (X) and (XI) of paragraph (1)(B)(i) if the plan certifies that—

(aa) ecosystem restoration needs in the State will be addressed by the projects in the proposed plan; and

(bb) additional investment in infrastructure is required to mitigate the impacts of the Deepwater Horizon Oil Spill to the ecosystem or economy.

(iii) DEVELOPMENT.—The plan described in clause (i) shall be developed by—

(I) in the State of Alabama, the Alabama Gulf Coast Recovery Council established under paragraph (1)(E)(i);

(II) in the State of Florida, a consortia of local political subdivisions that includes at least 1 representative of each disproportionately affected county;

(III) in the State of Louisiana, the Coastal Protection and Restoration Authority of Louisiana;

(IV) in the State of Mississippi, the Office of the Governor or an appointee of the Office of the Governor; and

(V) in the State of Texas, the Office of the Governor or an appointee of the Office of the Governor.

(iv) APPROVAL.—Not later than 60 days after the date on which a plan is submitted under clause (i), the Council shall approve or disapprove the plan based on the conditions of clause (i).

(C) DISAPPROVAL.—If the Council disapproves a plan pursuant to subparagraph (B)(iv), the Council shall—

- (i) provide the reasons for disapproval in writing; and
- (ii) consult with the State to address any identified deficiencies with the State plan.

(D) *FAILURE TO SUBMIT ADEQUATE PLAN.*—If a State fails to submit an adequate plan under this subsection, any funds made available under this subsection shall remain in the Trust Fund until such date as a plan is submitted and approved pursuant to this subsection.

(E) *JUDICIAL REVIEW.*—If the Council fails to approve or take action within 60 days on a plan described in subparagraph (B)(iv), the State may obtain expedited judicial review within 90 days of that decision in a district court of the United States, of appropriate jurisdiction and venue, that is located within the State seeking such review.

(4) *AUTHORIZATION OF INTEREST TRANSFERS.*—

(A) *IN GENERAL.*—Of the total amount made available in any fiscal year from the Trust Fund, an amount equal to the interest earned by the Trust Fund and proceeds from investments made by the Trust Fund in the preceding fiscal year—

- (i) 50 percent shall be transferred to the National Endowment for Oceans in subparagraph (B); and
- (ii) 50 percent shall be transferred to the Gulf of Mexico Research Endowment in subparagraph (C).

(B) *NATIONAL ENDOWMENT FOR THE OCEANS.*—

(i) *ESTABLISHMENT.*—

(I) *IN GENERAL.*—There is established in the Treasury of the United States a trust fund to be known as the ‘National Endowment for the Oceans’, consisting of such amounts as may be appropriated or credited to the National Endowment for the Oceans.

(II) *INVESTMENT.*—Amounts in the National Endowment for the Oceans shall be invested in accordance with section 9602 of the Internal Revenue Code of 1986, and any interest on, and proceeds from, any such investment shall be available for expenditure in accordance with this subparagraph.

(ii) *TRUSTEE.*—The trustee for the National Endowment for the Oceans shall be the Secretary of Commerce.

(iii) *ALLOCATION OF FUNDS.*—

(I) *IN GENERAL.*—Each fiscal year, the Secretary shall allocate, at a minimum, an amount equal to the interest earned by the National Endowment for the Oceans in the preceding fiscal year, and may distribute an amount equal to up to 10 percent of the total amounts in the National Endowment for the Oceans—

(aa) to allocate funding to coastal states (as defined in section 304 of the Marine Resources and Engineering Development Act of 1966 (16 U.S.C. 1453)) and affected Indian tribes;

(bb) to make grants to regional ocean and coastal planning bodies; and

(cc) to develop and implement a National Grant Program for Oceans and Coastal Waters.

(II) PROGRAM ADJUSTMENTS.—Each fiscal year where the amount described in subparagraph (A)(i) does not exceed \$100,000,000, the Secretary may elect to fund only the grant program established in subclause (I)(cc).

(iv) ELIGIBLE ACTIVITIES.—Funds deposited in the National Endowment for the Oceans may be allocated by the Secretary only to fund grants for programs and activities intended to restore, protect, maintain, or understand living marine resources and their habitats and resources in ocean and coastal waters (as defined in section 304 of the Marine Resources and Engineering Development Act of 1966 (16 U.S.C. 1453)), including baseline scientific research, ocean observing, and other programs and activities carried out in coordination with Federal and State departments or agencies, that are consistent with Federal environmental laws and that avoid environmental degradation.

(v) APPLICATION.—To be eligible to receive a grant under clause (iii)(I), an entity shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary determines to be appropriate.

(vi) FUNDING FOR COASTAL STATES.—The Secretary shall allocate funding among States as follows:

(I) 50 percent of the funds shall be allocated equally among coastal States.

(II) 25 percent of the funds shall be allocated based on tidal shoreline miles.

(III) 25 percent of the funds shall be allocated based on the coastal population density of a coastal State.

(IV) No State shall be allocated more than 10 percent of the total amount of funds available for allocation among coastal States for any fiscal year.

(V) No territory shall be allocated more than 1 percent of the total amount of funds available for allocation among coastal States for any fiscal year.

(C) GULF OF MEXICO RESEARCH ENDOWMENT.—

(i) IN GENERAL.—There is established in the Treasury of the United States a trust fund to be known as the ‘Gulf of Mexico Research Endowment’, to be administered by the Secretary of Commerce, solely for use in providing long-term funding in accordance with section 5 of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2011.

(ii) INVESTMENT.—Amounts in the Gulf of Mexico Research Endowment shall be invested in accordance with section 9602 of the Internal Revenue Code of

1986, and, after adjustment for inflation so as to maintain the value of the principal, any interest on, and proceeds from, any such investment shall be available for expenditure and shall be allocated in equal portions to the Gulf Coast Ecosystem Restoration Science, Monitoring, and Technology Program and Fisheries Endowment established in section 5 of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2011.

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