



RESTORE Update: Litigation and Regulation

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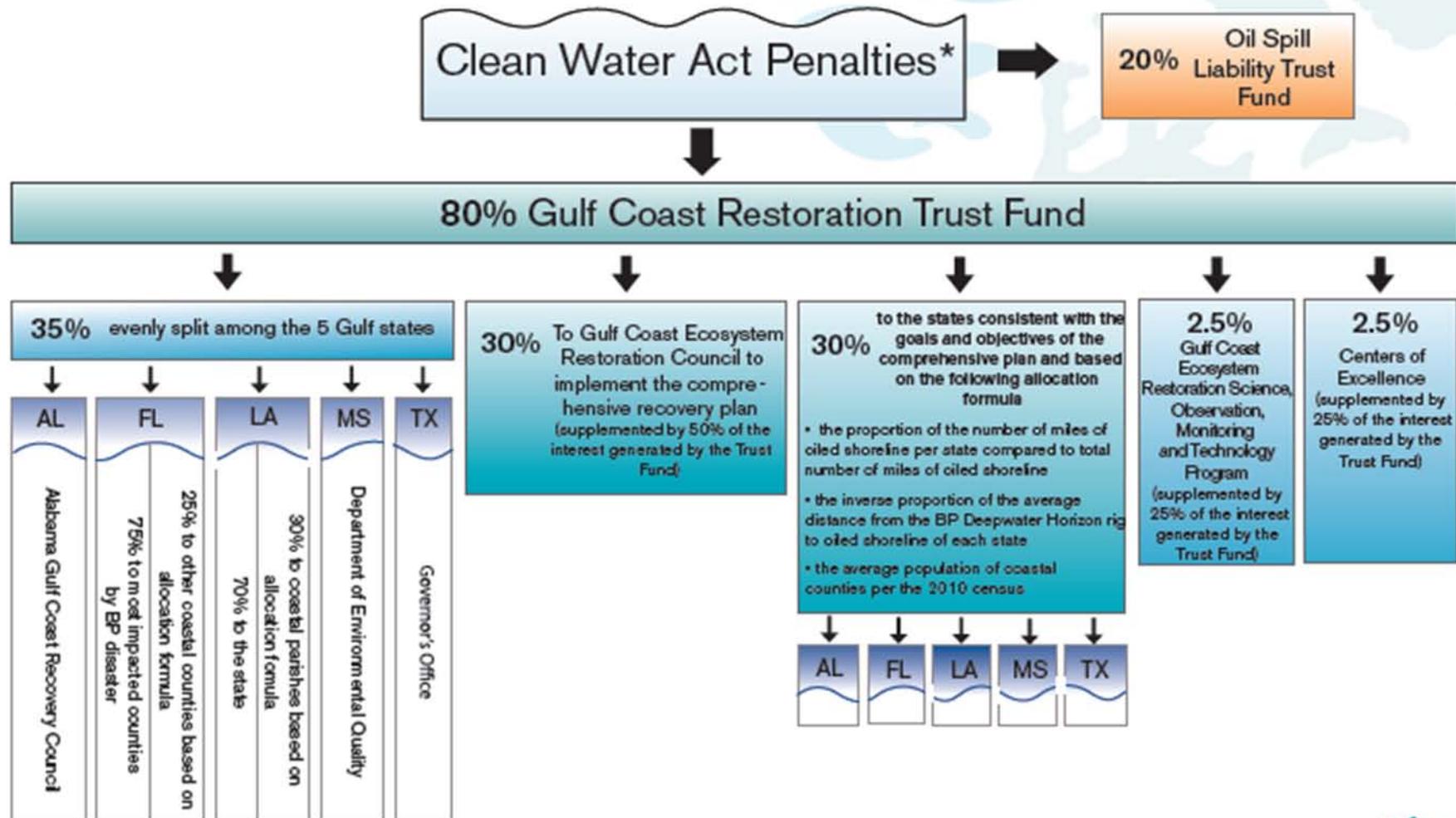
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Overview

1. Introduction
2. Litigation Update
3. Settlement Update
4. Treasury Regulations Update
5. Questions



Distribution of Clean Water Act penalties to Gulf recovery per the RESTORE Act



* Clean Water Act penalties are a per barrel penalty of \$1100 for release of pollution into the environment. If 'gross negligence' is determined in release of the pollution, the penalty per barrel increases to \$4300. In the case of the BP Deepwater Horizon incident the following are estimates:

\$1100 X (4.9 million barrels of oil released into the environment) = approx \$5.39 billion
 \$4300 X (4.9 million barrels of oil released into the environment) = approx \$21.07 billion [gross negligence]

All amounts are subject to negotiation via a settlement between the government and responsible parties.

Funding Sources and Claims

- NRDA- Natural Resource Damage Assessment under Oil Pollution Act
- RESTORE Act-80% of damages under OPA go to implementation
- Private Claims-Gulf Coast Claims Facility/DWH Claims Center
- US Claims- Includes civil penalties under Clean Water Act ***

The Main Litigation

- Three phases of litigation:
 - Phase I- determine the liability of BP, Transocean, Halliburton, and other companies and if they acted with gross negligence and willful misconduct (February 25, 2013-April 2013).
 - Phase II- how much oil spilled into the Gulf and who was responsible for stemming and controlling the spill (September 30, 2013-October 2013).
 - Phase III- how much BP will be paying in fines (status conference March 21, 2014 to determine what new evidence and testimony to be presented during penalty trial).
- **Gross Negligence determination 9/4/2014. This will be appealed.**
- CWA Penalty Phase III Trial set for January 20, 2015, with the trial expected to last approximately three (3) weeks.

Settlements and Funds to Date

- MOEX Civil Penalties-- \$70 million total with \$10 million to State of Florida.
- Transocean Civil and Criminal--\$1 billion in Clean Water Act penalties and \$150 million dollars to National Fish & Wildlife Foundation of which \$21 million available for Florida projects.
- BP Criminal--\$4 billion of which \$2.394 billion paid over 5 years to National Fish & Wildlife Foundation. (\$335,160,000 for Florida projects).
- Halliburton \$55 million to National Fish & Wildlife Foundation.
- **Halliburton**--\$1.1 billion (court must approve to deal with class actions, unknown distribution to trust funds and/or RESTORE)

MYIPs

- **Develop and submit** multi-year implementation plan (to Treasury)-
- Comply with Treasury Regulations
- Projects and plans must meet NEPA, CWA, Chapter 373, F.S., etc.
- MYIP must certify: Conforming project purpose
- Meaningful public input **(45 days)**
- Best available science
- Applicable procurement requirements (think Stimulus/ARRA, Davis Bacon, Buy American, etc.)
- Content of MYIP
- Programmatic in nature or project specific?
- **Each eligible activity requires a separate grant application**

Speculation on Regs

Forecast List

- ☺ Interim Final Rule (parts go into effect immediately, also allowing for more input)
- ☺ Deferring to OMB Grant Guidelines (Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Grants, 2 CFR, Part 200)
- ☺ Advance money for planning (grant applications for planning efforts)
- ☺ Plans can be phased, incremental and modified over time
- ☺ Treasury's view of NEPA (and MYIPs)
- ☺ Subawards and responsibility of local governments over them
- ☺ Additional policies and procedures to be developed over time ("guidance")
- ☺ Planning activities are broad (includes public engagement), not subject to 3% cap

What's Left to Resolve?

- **Scope of Initial Grant Applications for MYIPs.** Initial application for grant funds not limited to planning assistance to develop a plan, but also include reimbursement of pre-award costs, administrative costs & all activities under the purview of "planning assistance".
- **Development of Grant Management Systems under Planning Assistance.** "One-time" grant management costs not limited or modified in the future.
- **Public Review of Updated or Revised MYIPs and SEPs.** Clarify if MYIPs and SEPs that are modified, updated or revised must undergo the same public review as the adoption of the initial one.
- **IFR Updates and Further Review.** The IFR should require that Treasury review the Final Rule within a certain timeframe and revise it if necessary.
- **Guidance on Subawards and Contracting for Projects.** Need this ASAP.

Uniform Guidance

Audits (one time set up is planning assistance)

Allowable costs (tied to eligible activities)

Disbursements/Payments (likely not admin)

Procurement v. Subaward (some admin/plg assistance)

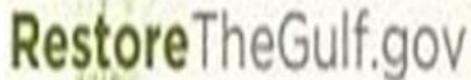
Recordkeeping (likely admin)

Reporting (likely planning)

On the Horizon: Rules and Guidance



Implementation of the Uniform Guidance
Guidance for use in evaluating “best available science”
Limitations on activities” (such as documentation to substantiate certain eligible activities)
Procedures for whenever a waiver or modification
NEPA policies and procedures in the Federal Register for public comment

The logo for RestoreTheGulf.gov features the text "RestoreTheGulf.gov" in a green, sans-serif font. To the left of the text is a stylized green plant with thin, vertical leaves.

Amounts to the Gulf Coast States
Policies and procedures for administration of grants
Standard terms to include in contracts and projects for the Comprehensive Plan
Uniform standards for how projects and programs are assigned to member states and federal agencies
When modifications to the SEPs require Council’s approval
NEPA compliance procedures
Processes for involving the public



Questions?

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