



Audit Report



OIG-15-002

RESTORE ACT: NOAA's Establishment of the Science Program
Under RESTORE Act

October 7, 2014

Office of Inspector General

Department of the Treasury

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Abbreviations and Acronyms

GoMRI	Gulf of Mexico Research Initiative
GOMURC	Gulf of Mexico University Research Collaborative
NCCOS	National Ocean Service’s National Center for Coastal Ocean Science
NOAA	National Oceanic and Atmospheric Administration
RESTORE Act	Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012
RSPA WG	Gulf Coast Ecosystem Restoration Science Program Advisory Working Group
USFWS	U.S. Fish and Wildlife Service

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*The Department of the Treasury
Office of Inspector General*

October 7, 2014

Dr. Steven Fine
Chairperson, Science Program Executive Oversight Board
National Oceanic and Atmospheric Administration

This report presents the results of our audit of the stand-up of the Gulf Coast Ecosystem Restoration Science, Observation, Monitoring, and Technology Program (Science Program) authorized by the *Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012* (RESTORE Act).¹ Under Section 1608 of the act, the Department of the Treasury (Treasury) Office of Inspector General is charged with conducting, supervising, and coordinating audits and investigations of projects, programs, and activities funded by the act, including those administered by Treasury and other Federal entities. As such, we performed this audit as part of our ongoing oversight of programs and activities funded under the RESTORE Act. Our audit objective was to assess the National Oceanic and Atmospheric Administration's (NOAA) activities and progress to establish the Science Program in accordance with requirements set forth in Section 1604 of the RESTORE Act. Appendix 1 provides more detail of our audit objective, scope, and methodology.

In brief, we found that NOAA met the January 2, 2013, deadline for establishing the Science Program in accordance with the RESTORE Act. In standing up the program, NOAA developed a Science Program Framework that described the overall construct of the Science Program; created its organizational structure, which is housed in the NOAA National Ocean Service's National Center for Coastal Ocean Science (NCCOS); and coordinated with the

¹ Pub. L. 112-141, 126 Stat. 588-607 (July 6, 2012)

appropriate partners and stakeholders. NOAA also notified Congress of the program's establishment in a letter dated January 7, 2013.

We found that NOAA continues to develop and implement program activities in an effort to further strengthen the Science Program. That is, NOAA laid the foundation for the development of a more robust Science Plan within its Science Plan Framework that articulates the goals, objectives, short-term priorities, and rationale for how the Science Program will be executed; continues to refine the Science Program's organizational and governance structures; and is working on the Science Plan and long-term science priorities.

Although NOAA has positioned the organization to carry out its responsibilities to award grants and administer the Science Program, management acknowledges there are ongoing challenges to fully implement program activities. We make no recommendations in this report.

In a written response, NOAA management stated they reviewed the draft report and did not have any comments. Management's response is included as appendix 2.

Background

The RESTORE Act established the Gulf Coast Restoration Trust Fund (Trust Fund) within the Treasury to provide funds for environmental and economic restoration of the Gulf Coast region² that was damaged by the 2010 Deepwater Horizon oil spill. Deposits into the Trust Fund will be comprised of 80 percent of all civil and administrative penalties paid after July 6, 2012, under the Federal Water Pollution Control Act.³ While the total amount that will eventually be deposited into the Trust Fund is unknown at this time, the Trust Fund received approximately \$653 million as a result of the government's settlement with the Transocean

² As defined in the RESTORE Act, the term Gulf Coast region means (a) in the Gulf Coast States (Alabama, Florida, Louisiana, Mississippi, and Texas), the coastal zones that border the Gulf of Mexico; (b) any adjacent land, water, and watersheds that are within 25 miles of the coastal zones of the Gulf Coast States; and (c) all federal waters in the Gulf of Mexico.

³ Pub. L. 92-500 (as amended)

defendants.⁴ The final payment of \$160 million plus interest is due from the Transocean defendants in February 2015. Litigation is ongoing with other defendants, most notably BP Exploration and Production Inc.

The RESTORE Act allocates money in the Trust Fund to the following 5 components: (1) 35 percent will be made available to the Gulf Coast states in equal shares under the Direct Component; (2) 30 percent will be made available for grants under the Gulf Coast Ecosystem Restoration Council (Council)-selected Restoration Component; (3) 30 percent will be made available for grants under the Spill Impact Component; (4) 2.5 percent will be made available to the Centers of Excellence Research Grants Program Component; and (5) 2.5 percent will be made available to the Science Program Component. Treasury's Office of the Fiscal Assistant Secretary is responsible for administering the Direct Component and the Centers of Excellence Research Grants Program Component. The Council is responsible for administering the Council-selected Restoration Component and the Spill Impact Component. The NOAA Administrator is responsible for administering the Science Program Component.

Section 1604 of the RESTORE Act required that NOAA establish the Science Program by January 2, 2013, for the purpose of carrying out research, observation, and monitoring to support, to the maximum extent practicable, the long-term sustainability of the ecosystem, fish stocks, fish habitat, and the recreational, commercial, and charter fishing industry in the Gulf of Mexico. The act provided that the Administrator of NOAA and the Director of the U.S. Fish and Wildlife Service (USFWS) consult with the Regional Gulf of Mexico Fishery Management Council (Gulf Fishery Council) and the Gulf States Marine Fisheries Commission (Commission) in carrying out the Science Program. Appendix 3 provides more detail on partners and stakeholders discussed in this report.

⁴ On February 19, 2013, the civil settlement between the Department of Justice and Transocean defendants (Transocean Deepwater Inc., Transocean Offshore Deepwater Drilling Inc., Transocean Holdings LLC., and Triton Asset Leasing GmbH) was approved. Among other things in the settlement, the Transocean defendants will pay a \$1 billion civil penalty plus interest. Of this amount, \$800 million plus interest will be deposited in the Trust Fund.

Under Section 1604, priority is to be 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. RESTORE Act funds may not be used for (1) any existing or planned research led by NOAA, unless agreed to in writing by the grant recipient; (2) implementing existing regulations or initiating new regulations promulgated or proposed by NOAA; or (3) developing or approving a new limited access privilege program for any fishery under the jurisdiction of the South Atlantic, Mid-Atlantic, New England, or Gulf Fishery Councils.⁵ Furthermore, the RESTORE Act provided that NOAA use no more than 3 percent of its allocation to administer the Science Program.

Audit Results

Establishment of the Science Program

NOAA met the January 2, 2013, deadline for establishing the Science Program in accordance with the RESTORE Act. As required by the RESTORE Act, NOAA officials reached out to USFWS to begin coordination to establish the Science Program,⁶ and as early as August 2012, the Science Program Development Team⁷ (hereinafter referred to as development team) initiated weekly deliberations. The development team also consulted with the Commission and the Gulf Fishery Council as well as engaged with the Gulf of Mexico Research Initiative (GoMRI), the Gulf of Mexico Alliance, the Gulf of Mexico University Research Collaborative (GOMURC), and other relevant stakeholders in developing the Science Program Framework. As part of its ongoing efforts, Science Program officials continue to engage these partners and stakeholders and are also coordinating with the National Academy

⁵ As defined in the Magnuson-Stevens Fishery Conservation and Management Act of 1976, Pub. L. 94-265, as amended.

⁶ A Memorandum of Understanding was formalized on November 15, 2013, to detail the terms and procedures by which NOAA would consult with USFWS during the implementation of the Science Program.

⁷ The Science Program Development Team consisted of 26 individuals, of which 23 were from NOAA and 3 were from USFWS.

of Sciences and the National Fish and Wildlife Foundation. Appendix 3 provides more detail on partners and stakeholders discussed in this report.

The Science Program Framework describes the overall construct of the Science Program, including its purpose, motivation, guiding principles, focus areas (e.g. objectives and where the program will invest), organizational structure, and governance. The development team also drafted a mission statement for the Science Program that acknowledged the importance of laying a foundation for communication with other entities to facilitate reciprocal information sharing across RESTORE Act programs.

The development team determined that a notification letter to Congress with the Science Program Framework attached would be sufficient to meet the RESTORE Act deadline for establishing the Science Program; subsequent to establishing the program, NOAA notified Congress on January 7, 2013.

Science Program's Organizational Structure

The development team continued to regularly meet until March 2013, at which point the team stepped down, and the Executive Oversight Board took over future oversight of program development efforts. The board consists of a senior executive from 5 of NOAA's 6 Line Offices,⁸ a senior executive from USFWS, and an ex-officio member from NOAA's Finance Office. The Chairperson will rotate every year or two between senior executives from NOAA's National Marine Fisheries Service, NOAA's Office of Oceanic and Atmospheric Research, and NOAA's National Ocean Service.

The Science Program is housed in NCCOS, which has experience in administering and overseeing similar science programs. The program is led by a full-time program director who is based in the

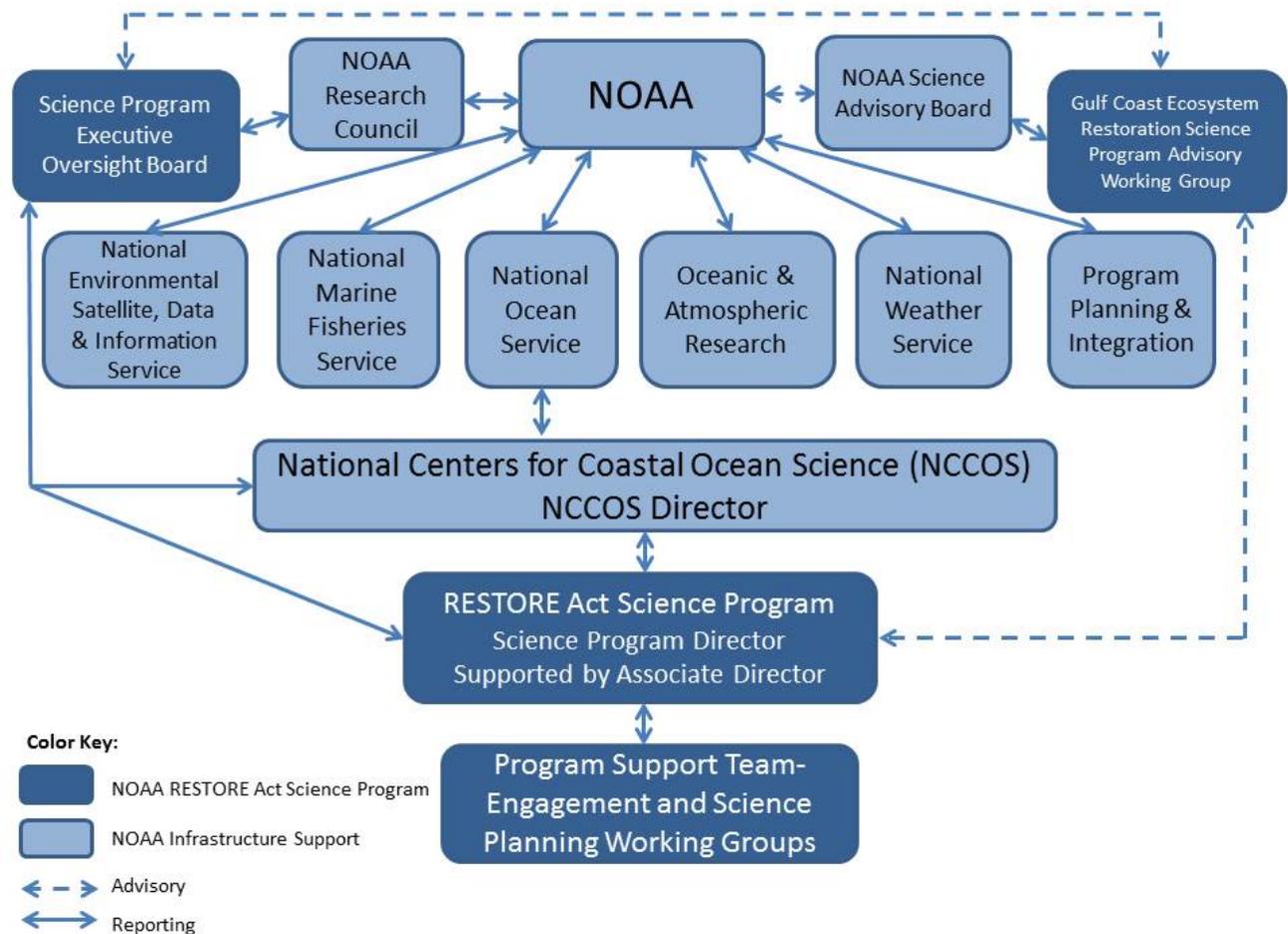
⁸ NOAA's six Line Offices include (1) the National Environmental Satellite, Data and Information Service; (2) the National Marine Fisheries Service; (3) the National Ocean Service; (4) the National Weather Service; (5) the Office of Oceanic and Atmospheric Research; and (6) Program Planning and Integration. All Line Offices other than Program Planning and Integration are part of the Science Program's Executive Oversight Board.

Gulf Coast region, in coordination with the NCCOS director. Both directors are supported by an associate program director and a Program Support Team⁹ responsible for developing short and long-term goals and priorities as well as implementing Science Program activities. The Program Support Team includes the Science Planning Working Group and the Engagement Planning Working Group. The Science Planning Working Group is responsible for developing a Science Plan that identifies science priorities for investment and establishes data management requirements. The Engagement Planning Working Group develops the Engagement Plan that guides two-way communication with partners and stakeholders during the life of the program.

As with NOAA's other grant programs, the Science Program will utilize NOAA's existing infrastructure for grants administration, information technology, accounting and budgeting. The organization structure and entity relationships are illustrated in figure 1.

⁹ The Program Support Team is composed of individuals from all the NOAA line offices and USFWS. The individuals provide part-time support to the Science Program.

Figure 1. Science Program’s Organizational Structure



(Source: OIG)

Within NOAA’s existing Science Advisory Board, NOAA established the Gulf Coast Ecosystem Restoration Science Program Advisory Working Group (RSPA WG)¹⁰ in July 2013, to provide independent guidance and review of the Science Program. The RSPA WG held its first meeting in June 2014 in Gulfport, Mississippi. NOAA intends to establish an independent review board of external partners

¹⁰ The RSPA WG is comprised of individuals from two groups—a permanent group and a rotational group. The permanent group, meets a requirement under the RESTORE Act for coordination between NOAA and other Gulf of Mexico science programs, and will include scientists representing (1) the Commission, (2) the Gulf Fishery Council, and (3) the RESTORE Act Centers of Excellence for Florida, Alabama, Mississippi, Louisiana, and Texas. The rotational group of individuals will include subject matter experts from a variety of disciplines whose collective knowledge can identify science gaps and needs related to the application of the RESTORE Act.

which will meet initially after the first 3 years and then every 4 to 5 years thereafter to review the program's effectiveness.

On August 16, 2013, NOAA announced the Science Program in the Federal Register¹¹ as a new competitive science program established to ensure the long-term sustainability of the Gulf of Mexico ecosystem and the communities that depend on it. The announcement also provided the Science Program's website¹² for the public to provide input or inquiries regarding the program.

Next Steps

A NOAA official noted that the next steps for the Science Program include (1) engaging partners to identify and prioritize ecosystem and management science requirements and gaps, including but not limited to, coordination with other Trust Fund recipients; (2) conducting competitive processes for issuing awards for addressing the science needs;¹³ and (3) continuing to refine the Science Plan in coordination with partners throughout the life of the program. As part of the process, a set of draft long-term science priorities have been developed. It is expected that the long-term science priorities as well as the entire Science Plan will be released for public comment in the fall of 2014.

Challenges

According to a NOAA official, the Science Program faces ongoing challenges including the (1) lack of Treasury RESTORE Act regulations,¹⁴ (2) coordination necessary due to the various partners and stakeholders involved, and (3) communication necessary to promote understanding of the scope of responsibility of the Science Program.

¹¹ "Implementation of New Gulf Coast Ecosystem Restoration Science, Observation, Monitoring, and Technology Program" (78 FR 50030; Aug. 16, 2013)

¹² www.restoreactscienceprogram.noaa.gov/

¹³ NOAA expects to issue a focused Federal Funding Opportunity once Treasury finalizes RESTORE Act regulations. Federal Funding Opportunities are public announcements by which a federal agency makes known its intentions to award discretionary grants or cooperative agreements, usually as a result of competition for funds.

¹⁴ On August 15, 2014, subsequent to the end of our fieldwork, Treasury published the Interim Final Rule for the RESTORE Act.

The Office of Management and Budget approved NOAA's apportionment request for administrative and programmatic funding on October 24, 2013. However, the Science Program cannot begin using the funds for the program until Treasury regulations have been finalized. Regardless, NOAA must continue working with their partners and stakeholders to ensure the ongoing information flow between all the programs for efficiency and to avoid any duplication. The RESTORE Act specifically required that NOAA coordinate with certain external entities, including among others, RESTORE Act entities and stakeholders under the Direct, Council-selected Restoration, Spill Impact, and Centers of Excellence Research Grants components.

Lastly, there are varying interpretations of the intent of Section 1604 of the RESTORE Act. A NOAA official stated that the Science Program cannot do all of the science for the five RESTORE Act components. The 2.5 percent allocation from the Trust Fund under Section 1604 of the RESTORE Act is meant to provide the science specifically for the Science Program and is not the scientific arm for all components of the act. Therefore, according to the NOAA official, NOAA expects that the other RESTORE Act components will establish their own separate science for restoration.

Although NOAA has positioned the organization to carry out its responsibilities to award grants and administer the Science Program, management acknowledges there are ongoing challenges to fully implement program activities.

* * * * *

We appreciate the courtesies and cooperation extended by your staff as we inquired about these matters. Major contributors to this report are listed in appendix 4. A distribution list for this report is provided as appendix 5. If you have any questions, you may contact me at (202) 927-5762 or Amni Samson, Audit Manager, at (202) 927-0264.

/s/

Deborah L. Harker
Director, Gulf Coast Restoration Audits

As part of our oversight of programs and activities authorized by the *Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012* (RESTORE Act), we initiated an audit of the National Oceanic and Atmospheric Administration's (NOAA) activities to establish the Gulf Coast Ecosystem Restoration Science, Observation, Monitoring, and Technology Program (Science Program) on July 3, 2013. The objective of our audit was to assess NOAA's activities and progress to establish the Science Program in accordance with requirements set forth in Section 1604 of the RESTORE Act.

To accomplish our objective, we conducted fieldwork at NOAA's office in Silver Spring, Maryland. We performed our fieldwork between June 2013 and June 2014 which comprised the following steps.

- Reviewed documents related to the establishment of the Science Program, including:
 - RESTORE Act requirements related to the establishment of the Science Program;
 - Science Program Framework dated January 2, 2013, developed by the Science Program Development Team;
 - Science Program Framework Outline and letter that was sent to Congress on January 7, 2013 for the establishment of the Science Program;
 - draft Science Plan Framework dated June 12, 2013, and the completed Science Plan Framework dated December 12, 2013, developed by the Science Plan Team;
 - Memorandum of Understanding dated November 15, 2013, between NOAA and the U.S. Fish and Wildlife Service;
 - Federal Register notification entitled *Implementation of New Gulf Coast Ecosystem Restoration Science, Observation, Monitoring, and Technology Program* published on August 16, 2013;
 - planning documents and minutes from the Science Program Development Team's meetings for the

- period from August 24, 2012 through March 22, 2013; and
- sample of the meeting minutes from the Executive Oversight Board meetings from February 2013 through August 2013.
- Reviewed websites, including:
 - the Science Program website for additional information on the Science Program, the organizational structure, and any announcements or updates; and
 - websites for Gulf of Mexico Research Initiative, Gulf of Mexico Alliance, Gulf of Mexico University Research Collaborative, Gulf States Marine Fisheries Commission, Gulf of Mexico Fishery Management Council, National Academy of Sciences, National Fish and Wildlife Foundation, and U.S. Fish and Wildlife Service for information on the entities.
- Interviewed key officials to gain and understanding of the Science Program, including:
 - Former Chairperson of the Science Program's Executive Oversight Board;
 - Director of NOAA's National Centers for Coastal Ocean Science;
 - Acting Science Program Director;
 - Former Associate Science Program Director;
 - Former NOAA Finance Office Director; and
 - NOAA Budget Execution and Operations Division Chief.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix 2
Management Response



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Silver Spring, MD 20910

OFFICE OF OCEANIC ATMOSPHERIC RESEARCH

SEP 24 2014

Deborah L. Harker
Director, Gulf Coast Restoration Audits
U.S. Department of the Treasury
Office of the Inspector General
740 15th Street, NW
Washington, DC 20220

Dear Ms. Harker:

Thank you for the opportunity to review and comment on the Office of the Inspector General's draft audit report on the National Oceanic and Atmospheric Administration's (NOAA) Establishment of the Science Program under the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (RESTORE Act). NOAA has reviewed the report and does not have any comments.

Sincerely,

A handwritten signature in cursive script that reads "Steve Fine".

Steven Fine
Chairperson, Science Program
Executive Oversight Board

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Gulf of Mexico Alliance	The Gulf of Mexico Alliance is a partnership, initiated in 2004, by the states of Alabama, Florida, Louisiana, Mississippi, and Texas, with the goal of significantly increasing regional collaboration to enhance the ecological and economic health of the Gulf of Mexico.
Gulf of Mexico Research Initiative	Gulf of Mexico Research Initiative (GoMRI) is a research program developed by BP Exploration and Production Inc. in May 2010, shortly after the explosion and sinking of the Deepwater Horizon Oil rig. The mission of GoMRI is to resolve issues related to the oil spill and to improve the long-term environmental health of the Gulf of Mexico. The research program is under the scientific advisory of the GoMRI Research Board, an independent and academic board of 20 science, public health, and research administration experts.
Gulf of Mexico University Research Collaborative	Gulf of Mexico University Research Collaborative (GOMURC) was created in response to the Deepwater Horizon oil spill. GOMURC unites the marine-related, University-based research consortium existing in each of the Gulf States, which represent 78 public and private institutions. GOMURC's mission is to enhance the Gulf of Mexico coastal marine science, oceanography and related management programs through communications, education, research, and public outreach; to promote activities of educators, scientists, and agencies responding to state, regional, national, and international issues; and to advocate for Gulf Coast science and education with policy-makers.
Gulf States Marine Fisheries Commission	The Gulf States Marine Fisheries Commission (Commission) is an organization of the five Gulf Coast States established by Congress (Pub. L. 81-66) in 1949. The principal objective is the conservation, development, and full utilization of the fishery resources of the Gulf of Mexico, to provide food, employment, income, and recreation

to the people of the Gulf Coast States. The Commission is empowered to make recommendations to the governors and legislatures of the five Gulf States regarding the management of the fisheries.

National Academy of Sciences

The National Academy of Sciences (NAS) is a private, non-profit society of distinguished scholars. NAS is charged with providing independent, objective advice to the nation on matters related to science and technology. Scientists are elected by their peers to membership in NAS for outstanding contributions to research.

National Fish and Wildlife Foundation

The National Fish and Wildlife Foundation (NFWF) is an independent nonprofit organization. NFWF is governed by a 30-member Board of Directors approved by the Secretary of the Interior. NFWF's mission is to protect and restore the nation's fish, wildlife, and habitats.

Regional Gulf of Mexico Fishery Management Council

The Regional Gulf of Mexico Fishery Management Council (Gulf Fishery Council) is one of eight regional Fishery Management Councils established by the Magnuson-Stevens Fishery Conservation and Management Act of 1976 (Pub. L. 94-265). The Gulf Fishery Council prepares fishery management plans designed to manage fishery resources from where state waters end, out to the 200-mile limit of the Gulf of Mexico.

U.S. Fish and Wildlife Service

The U.S. Fish and Wildlife Service (USFWS) is the bureau within the Department of the Interior that works with others to conserve, protect, and enhance fish, wildlife, and plants and their habitats. USFWS helps protect a healthy environment for people, fish and wildlife, and helps Americans conserve and enjoy the outdoors and living treasures. USFWS's major responsibilities are for migratory birds, endangered species, certain marine mammals, and freshwater and anadromous fish.

Appendix 4
Major Contributors to This Report

Amni Samson, Audit Manager
Eleanor P. Kang, Auditor-in-Charge
Dionne L. Smith, Auditor
Horace A. Bryan, Referencer
Kevin A. Guishard, Referencer

National Oceanic and Atmospheric Administration

Science Program Executive Oversight Board Chairperson
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Department of Commerce

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Under Secretary for Domestic Finance
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Office of Strategic Planning and Performance Management

Office of Management and Budget

OIG Budget Examiner