Workshop SUMMARY

BP Deepwater Horizon Restoration & Recovery: Implementing the RESTORE Act in Texas















Summary

BP Deepwater Horizon Restoration & Recovery: Implementing the **RESTORE Act in Texas**

Texas Sea Grant, in a partnership with the Environmental Law Institute (ELI), the Mission-Aransas National Estuarine Research Reserve (the Reserve), and the University of Texas Marine Science Institute (UTMSI) hosted the BP Deepwater Horizon Restoration and Recovery: Implementing the RESTORE Act workshop on Tuesday, July 16, 2013 at the UTMSI Visitors' Auditorium in Port Aransas, Texas. The workshop was attended by 82 participants who represented a variety of audiences, including but not limited to: state agencies, non-governmental organizations, city and county governments, and local citizens.

The meeting was opened with an introduction by UTMSI Director Dr. Joan Holt, and an overview of the meeting purpose by Texas Sea Grant/Mission-Aransas Reserve Coastal Planning Specialist Heather Wade. The sessions featured: a comprehensive overview of current Gulf of Mexico restoration and recovery processes by ELI; an in-depth look at the history of the RESTORE Act and the many processes created by the Act from ELI; a panel discussion on how to participate in the implementation of the RESTORE Act in Texas with speakers from the National Wildlife Federation, City of Corpus Christi, and the Coastal Bend Bays and Estuaries Program; a presentation on the key priorities and challenges of ocean and coastal restoration by the Ocean Conservancy; and a feedback session facilitated by the Reserve to identify local and statewide restoration priorities and next steps.

The facilitated feedback session was held to identify the needs of participants and their respective organizations to fully participate in the RESTORE Act processes, including the development of a plan to implement the RESTORE Act in Texas. The feedback session was faciliated with the use of survey questions designed by Texas Sea Grant, ELI, and the Reserve. Answers were collected using the Turning Point keypad polling system. During the session participants were also provided with the opportunity to give open ended comments through several discussion

periods, as well as on comment cards provided at the beginning of the session. The results of the keypad polling session are summarized below, and the full keypad polling report can be found in Appendix 1.

Participants were roughly evenly divided between those who had attended a meeting on the RESTORE Act before and those who had not.

While there was less than 5% difference between the most-favored and the least-favored priority areas, the three most-favored as ranked by participants were restoring and conserving habitat, replenishing and protecting living coastal and marine ecosystems and species, and restoring water quality.

62.9% of participants felt that the priorities in the Gulf Comprehensive Plan should not carry an equal emphasis in the Texas RESTORE Act restoration plan(s).

The majority of participants felt that it was important for the Texas RESTORE Act plan to provide specific details on the requirements for approved restoration activities for each priority (86.4% agreed or strongly agreed).

With regard to the impacts generated by plan projects, participants were equally in favor of projects that had impacts on the local scale, on a multicounty scale, and across the Gulf of Mexico.

83.6% of participants thought that the Texas state plan(s) should

Summarized Results of Feedback Session



develop project evaluation criteria that favor projects that include collaboration between multiple partners.

The majority of participants either felt they are not a part of (29.5%) or were unsure whether they are a part of (26.2%) the RESTORE process.

The majority of participants thought it is either highly (73.2%) or somewhat (16.1%) important for the Texas state plan to develop an outreach strategy.

The majority of participants agreed or strongly agreed (88.5%) that it is important that the Texas state plan(s) include a

long-term monitoring program to communicate project outcomes.

The majority of participants agreed or strongly agreed (93.2%) that information on funded projects should be made available through an online clearinghouse.

The majority of participants (76.3%) felt that they need more information on how to stay up-to-date with the RESTORE Act process; participants varied on whether they would prefer to stay up-to-date via a state RESTORE website (39.3%), email listserv (35.5%), or public meetings (25.2%).

It was highly (75.9%) or somewhat (19.0%) important to the majority of participants that they have access to easily understandable information on RESTORE Act legislation and regulations.

Roughly half (52.5%) of participants felt they will need help in their local areas to participate in the RESTORE Act process when the Texas plan is developed.

The top three predicted needs during the RESTORE Act process are staying up to date on the process (50.9%), process clarifications (21.8%), and grant writing (18.2%).

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Marine Science Institute
THE UNIVERSITY OF TEXAS AT AUSTIN



BP Deepwater Horizon Restoration & Recovery: Implementing the RESTORE Act in Texas

Workshop Summary

July 16, 2013 - University of Texas Marine Science Institute, Port Aransas, Texas

Texas Sea Grant, in partnership with the Environmental Law Institute (ELI), the Mission-Aransas National Estuarine Research Reserve (the Reserve), and the University of Texas Marine Science Institute (UTMSI) hosted the BP Deepwater Horizon Restoration and Recovery: Implementing the RESTORE Act in Texas meeting on July 16, 2013, at the UTMSI Visitors' Auditorium in Port Aransas, Texas. The meeting was attended by 82 participants who represented a variety of constituencies and perspectives, including but not limited to: state agencies, nongovernmental organizations, and city and county governments. The goal of the workshop was to explore the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (commonly referred to as the RESTORE Act) and what impacts the legislation may have for Texas. Meeting sessions included an overview of the RESTORE Act, including how it links with other regional restoration and recovery processes, the various mechanisms it creates, opportunities for public participation, and local, state, and regional restoration priorities and principles. Participants learned about the latest developments in Texas and had the opportunity to discuss priorities and potential next steps.

The meeting opened with a welcome from Dr. Joan Holt, UTMSI Director, followed by an introduction and logistical overview from Sally Palmer, Reserve Manager, and Heather Wade, Coastal Planning Specialist. Sessions included a review of the main Gulf of Mexico restoration and recovery processes by ELI; an in-depth look at the RESTORE Act, also by ELI, which explored the history of the Act and provided an overview of the five processes the Act creates; a panel presentation about opportunities to participate in RESTORE Act implementation in Texas, featuring representatives from the National Wildlife Federation, City of Corpus Christi, and Coastal Bend Bays & Estuaries Program; and a discussion of the challenges and priorities of ocean and coastal restoration by the Ocean Conservancy. The meeting concluded with an audience survey session facilitated by the Reserve that was designed to identify local and statewide restoration priorities and needs.

Review of the Gulf Restoration and Recovery Processes, Including the RESTORE Act

The first two sessions were presented by Teresa Chan, Staff Attorney at ELI, and Jordan Diamond, Co-Director of ELI's Ocean Program, and included a detailed overview of the BP Deepwater Horizon restoration and recovery processes and the RESTORE Act.

The first process covered was the Natural Resource Damage Assessment (NRDA) being conducted under the Oil Pollution Act (OPA). NRDA is the process that government representatives (called "trustees") use to determine the injuries an oil spill caused to natural resources, plan how to restore the injuried resources,

and implement restoration. The Deepwater Horizon NRDA began in 2010 and is being overseen by a group of federal and state trustees.

The second process addressed was the restoration and recovery activities occurring under the Clean Water Act (CWA) and the RESTORE Act. The CWA regulates the discharge of pollutants into U.S. waters and authorizes the U.S. government to levy administrative, civil, and/or criminal penalties against parties responsible for unpermitted discharges of oil. In 2010, the U.S. Department of Justice filed a lawsuit that, among other things, seeks civil penalties for the Deepwater Horizon oil release. Typically, any civil penalties would be directed into the Oil Spill Liability Trust Fund for use in responding to future oil spills; the RESTORE Act, however, diverts 80% of any civil and administrative penalties paid by the parties responsible for Deepwater Horizon into a newly established Gulf Coast Restoration Trust Fund. These funds will be used to help the Gulf recover ecologically and economically from both the injuries caused by Deepwater Horizon and the impacts of decades of growth and development in the region. (The remaining 20% of any civil and administrative penalties received will be transferred to the Oil Spill Liability Trust Fund.)

Finally, ELI provided an overview of claims and litigation related to Deepwater Horizon, focusing on the settlements reached between the federal government and parties involved in the disaster. The government has already finalized several agreements. First, the federal government reached a settlement with MOEX regarding CWA civil penalties: MOEX agreed to pay \$70 million in civil penalties and to implement \$20 million in supplemental environmental projects. Second, the government reached a partial settlement with BP, in which BP agreed to pay \$4 billion to resolve its criminal liabilities. These settlement monies will be distributed among various entities, including the National Academy of Sciences, the National Fish and Wildlife Foundation, the Oil Spill Liability Trust Fund, and the North American Wetlands Conservation Fund. Third, the government reached an agreement with Transocean to resolve its criminal liabilities for \$400 million and its CWA civil penalties for \$1 billion. For the criminal portion, the monies will go to the National Academy of Sciences, National Fish and Wildlife Foundation, and Oil Spill Liability Trust Fund. For the civil portion, 80% of the \$1 billion will go to the Restoration Trust Fund, while the remaining 20% will go to the Oil Spill Liability Trust Fund.

More information on Gulf Coast restoration and recovery, including fact sheets about the NRDA, the RESTORE Act, and the settlements is available at the ELI's Gulf of Mexico Recovery and Restoration website at www.eli-ocean.org/gulf.

Participating in RESTORE Act Implementation in Texas

Following the overview provided by the two representatives from ELI, a panel session explored the ways in which regional groups are beginning to implement restoration activities in the Coastal Bend region. The first speaker was Amanda Fuller, Texas Policy Specialist, Gulf Restoration Campaign for the National Wildlife Federation. Ms. Fuller provided information on the Texas process for implementing the RESTORE Act, as well as how workshop participants can stay involved in the public processes during development of the Texas state plan(s). Highlights from Fuller's presentation include:

- The contact person for the state's RESTORE Act processes is Commissioner Toby Baker of the Texas Commission on Environmental Quality (TCEQ). He is a member of the Gulf RESTORE Council, and he is forming a state advisory council and working to develop a state plan or plans.
- The Gulf of Mexico Draft Initial Comprehensive Plan highlights the importance of fresh water with respect to quantity and quality. The plan also focuses on partnerships and leveraging funds, and Texas is ahead of the curve with regard to partnering.
- NOAA's NRDA portal is used to submit NRDA projects, but was also the basis for Round 1 of National
 Fish and Wildlife Foundation funds because the Texas website was not yet functioning. Round 1 is now
 closed. The Texas state website, hosted by the Texas General Land Office, will be up soon and should be
 available for Round 2 at www.restorethetexascoast.org.

The next member of the panel was Tom Tagliabue, Intergovernmental Relations Director for the City of Corpus Christi. Mr. Tagliabue focused on the city's efforts to proactively prepare for RESTORE Act implementation. He reported that Corpus Christi city officials are focusing on outreach, research, education, project development, and advocacy, and have identified water quality initiatives and economic restoration as their two main priorities for restoration activities. To date they have met with state and federal officials, held public meetings, and submitted comments to the Gulf Restoration Council on its Draft Initial Comprehensive Plan.

The final panel speaker was Ray Allen, Executive Director of the Coastal Bend Bays & Estuaries Program (CBBEP), a National Estuary Program. CBBEP engages in restoration activities throughout the Coastal Bend area, with a focus on both restoring degraded habitat and protecting existing habitat. Its current projects include marsh restoration, oyster reef restoration, and geohazard mapping. Mr. Allen emphasized that the RESTORE Act has not altered CBBEP's priorities, but that the regional community needs to think about restoration priorities and their long-term impacts in order for projects to be effective.

Following their presentations, the floor was opened to the audience for a question-and-answer session. Some of the key points offered include:

- Freshwater inflows and water quality, city infrastructure, and habitat protection and buffer zone protection are all key opportunities for coordination in Texas.
- The purpose of the RESTORE Act is not only to address the impacts of Deepwater Horizon, but the entire burden of oil and gas development along the Gulf Coast over the years.
- Some key challenges to implementing the RESTORE Act include the lack of clear guidance on rules and timelines, an inability to devote staff and resources to beginning the implementation process, and the amount of funds coming into Texas relative to the length of its shoreline.
- The RESTORE Act most likely will not fund projects retroactively, but the specific parameters are currently being determined, especially with regard to continuing projects.
- There is currently no coordinated strategy for prioritizing restoration and protection in buffer areas.

Ocean and Coastal Restoration Challenges and Priorities

Bethany Kraft, Director of the Gulf Restoration Program for the Ocean Conservancy, gave the final presentation of the day. Ms. Kraft described Gulf restoration challenges and priorities, highlighting some of the reasons the Gulf is important, including seafood and biodiversity, as well as some of the ways in which the Gulf has been impacted, including habitat loss, pollution, and development. Ms. Kraft emphasized that restoration is complex, and there are broad priorities that need to be incorporated when projects and plans are developed. These need to make significant contributions to ecosystems and natural resources, without regard to geographic areas. Ms. Kraft also referenced some of the challenges in Gulf restoration, including the fact that restoration organizations are currently spending money they do not have in order to fully prepare for the RESTORE process, clear "rules of the road" with regard to spending the RESTORE money are lacking, and there are a wide range of authorized uses for RESTORE Act funds. Ms. Kraft stressed that participants need to consider how large-scale priorities and individual projects can fit together across all of the funding sources for Gulf restoration. She outlined several guiding principles for developing selection criteria for RESTORE Act projects:

- Sound Management science-based, coordinated, and transparent to the public;
- Stable and Coordinated Funding predictable funding streams and ways to leverage funding;
- Prudent Project Selection established criteria linking projects to specific, measurable objectives; and
- Stewardship supporting long-term resiliency and sustainability for coastal communities, addressing the whole Gulf.

In order to establish appropriate criteria, Ms. Kraft noted that guidelines can be found in the specific allocation of money being distributed, the overarching goals, the purpose of the criteria, and a realization that you are often comparing apples to oranges. She then presented some possible threshold criteria for project selection: defined restoration benefit, feasibility, meeting minimum design standards, likelihood of success, cost-effectiveness, and implementation impacts. Some supplemental criteria could include: benefits to multiple resources; benefits to the economy, people and communities of the Gulf; addressing the root cause of degradation; proposal quality and scope; and public support. More information on the Ocean Conservancy's Gulf Restoration Priorities is available at http://www.oceanconservancy.org/places/gulf-of-mexico/gulf-restoration.html.

Audience Survey Session: Local and Statewide Restoration Priorities and Needs

The meeting concluded with an audience survey session, with questions developed by the meeting steering committee and facilitated by Kristin Hicks, Coastal Training Program Coordinator with the Reserve. This session was aimed at identifying local and statewide restoration priorities and potential next steps. The goal of the feedback session was to assess the needs of participants and their respective organizations regarding the process and structure for Texas RESTORE plan(s) development, as well as any needs from the hosting organizations. Priority ranking-style questions allowed participants to respond multiple times to specified questions; responses were then weighted and ranked accordingly. It should be noted that this effort was not a scientific survey and the questions were intended to generate discussion only. The results are provided as an indicator of general direction but not conclusive findings. The summarized results of the feedback session are as follows, and participant comments are italicized and in color brackets. Graphical results of the feedback session are included in Appendix A.

- Participants were approximately evenly divided between those who had attended a meeting on the RESTORE Act before this particular meeting, and those who had not.
- While there was a less than 5% difference between the most-favored and the least-favored priority areas, the three most-favored as ranked by participants were: restoring and conserving habitat, replenishing and protecting living coastal and marine ecosystems and species, and restoring water quality. Please view Appendix 1 for the full breakdown of priority area responses.
- The majority of participants (62.9%) felt that the priorities in the Gulf Comprehensive Plan should not carry an equal emphasis in the Texas plan(s).
- The majority of participants felt that it was important for the Texas plan(s) to provide specific details on the requirements for approved restoration activities for each priority (86.4% agreed or strongly agreed with this statement). [Participants noted that the criteria suggested are still very vague in definition, and that evaluations will likely be difficult and subjective. It was suggested that the state look to existing selection criteria, such as those that exist for the GLO's Coastal Erosion Planning and Response Act, Coastal Management Program. It might also be a good idea to evaluate the effectiveness of the Coastal Impact Assistance Program selection criteria an example of determining what is effective and non-effective selection criteria. Participants also noted the importance of making selection criteria "easily understandable and clearly defined." Another participant comment indicated a concern that there are no criteria listed for economic restoration.]
- With regard to the impacts generated by plan projects, participants were equally in favor of projects that had impacts on the local scale, on a multi-county scale (posed to meeting participants as a "regional scale"), and across the Gulf of Mexico.

^{1.} When a priority ranking question with three choices is posed to an audience, the audience will vote three times. The first choice is the most desirable, and is weighted at 10. The second choice is weighted with a 9, and the least desirable choice is weighted with an 8. When the results are tallied, those weighted values are calculated by software and are represented in the graphical output.

- The majority of participants (83.6%) thought that the Texas state plan(s) should develop project evaluation criteria that favor projects that include collaboration between multiple partners. Participants were evenly split between thinking the plan(s) should or should not develop project evaluation criteria that favor projects that leverage funding from other existing projects. [A meeting participant suggested that a project shouldn't be put at a disadvantage if there is only one source of funding or one agency working on it, as long as it's a good project. Participant comments also indicated that with regard to evaluation criteria, in order to intelligently evaluate habitat projects, there is a need to quantify how much habitat is currently needed and to evaluate projects based on those targets.]
- The majority of participants felt they either are not a part of (29.5%) or are unsure whether they are a part of (26.2%) the RESTORE process. [A participant comment suggested that the RESTORE process is dominated by the adult world and that there need to be places for the sharing of science and results to younger groups. These groups are a connection to long-term sustainability, and results of RESTORE projects need to be translated to local coastal education systems.]
- The majority of participants thought it is either highly (73.2%) or somewhat (16.1%) important for the Texas state plan(s) to develop an outreach strategy, which should be designed for both the general public and target audiences rather than just one or the other (82.8%). [While not directly related to outreach, many of the participants indicated that they needed more clarity with regard to the process by which project selection decisions will be made. They also wanted more information about how they might influence that process. The feeling behind the comments was that participants are concerned that it would not be an open process, and that there would not be sufficient constituent representation during the meetings. Educating the constituency about the RESTORE process should be included in the outreach plan.]
- Comments also indicated that there needs to be a targeted outreach effort to local community representatives, because these communities will need representation during the RESTORE Act process. If and when regional meetings occur, local governments will need to know so that they can be included in the process and bring ideas to the table.
- The majority of participants agreed or strongly agreed (88.5%) that it is important that the Texas state plan(s) include a long-term monitoring program to communicate project outcomes.
- The strong majority of participants agreed or strongly agreed (93.2%) that information on funded projects should be made available through an online clearinghouse, and a lesser majority agreed or strongly agreed (63.3%) that RESTORE Act-funded projects should be presented at public meetings or conferences organized by the state.
- It was highly (57.6%) or somewhat (32.2%) important to the majority of participants to stay aware of ongoing RESTORE Act research.
- The majority of participants (76.3%) felt that they need more information on how to stay up-to-date with the RESTORE Act process; participants varied on whether they would prefer to stay up-to-date via a state RESTORE website (39.3%), email listserv (35.5%), or public meetings (25.2%). [Participants indicated a need to know how the state wants feedback from them with regard to the RESTORE Act process. How do decision-makers want the information? Does the state prefer written comments, hearings, etc.?]
- It was highly (51.67%) or somewhat (32.2%) important to the majority of participants that they stay aware of the type of research expertise available for RESTORE Act-related activities.
- It was highly (75.9%) or somewhat (18.9% important to the majority of participants that they have access to easily understandable information on RESTORE Act legislation and regulations.

- Roughly half (52.5%) of participants felt that they will need help in their local areas to participate in the RESTORE Act process when the Texas plan(s) are developed [Participant comments noted that guidance is needed from the state on what kind of input they are looking for from communities, and at what scale, such as regional or local, and what would be the best ways to maximize the feedback.]
- The top three predicted needs during the RESTORE Act process were staying up to date on the process (50.9%), process clarifications (21.8%), and grant writing (18.2%). [Participant comments indicated a desire for the state to quickly clarify the process for how things will work, because that will help increase the number of productive conversations about how to prepare. There were also several comments that indicated a need for more information on the Centers of Excellence, both in general and specifically on the state process for determining the Centers of Excellence.]

Workshop participants were informed that the discussion and comments generated by this session would be synthesized and provided to Commissioner Toby Baker.

For more information, contact:

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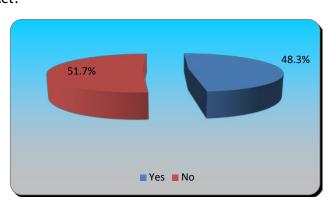


Appendix A: Graphical Feedback Session Results

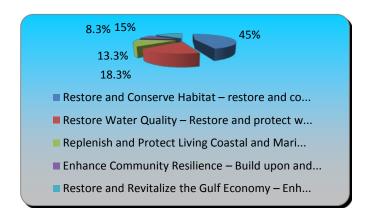
The keypad polling session was facilitated by Kristin Hicks, Coastal Training Program Coordinator for the Mission-Aransas National Estuarine Research Reserve, using the Turning Point Keypad Polling System by Turning Technologies. Participants were asked a series of survey questions developed by Texas Sea Grant and the Reserve for several topical areas related to the development of Texas' plan(s) for funds the state receives under the RESTORE Act. These survey questions were not developed as part of any study, but rather intended to facilitate and enhance discussion among participants. No participant information was collected with the survey questions, and all answers remain anonymous. The three topical areas addressed by the survey were project selection and funding distribution, plan outreach and communication, and needs and capacity building.

Participants responded using the keypads distributed at the beginning of the session. Each participant's answer was recorded anonymously, and the Turning Point software generated graphs and tables with percentage calculations for all survey answers. Using this system, when a priority ranking question with three choices is posed to an audience, the audience votes three times. The first choice is the respondent's most desirable, and is weighted at 10. The second choice is weighted with a 9, and the least desirable choice is weighted with an 8. When the results are tallied, those weighted values are calculated by the software and are represented in the graphical output. This survey answers are presented below.

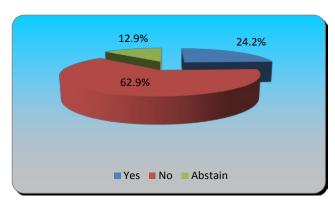
Have you been to any meetings about the RESTORE Act?



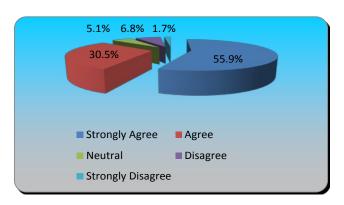
Rank the Gulf Comprehensive Plan priorities as you see they fit for the State of Texas (1 being Texas' top priority, 5 being the lowest priority).



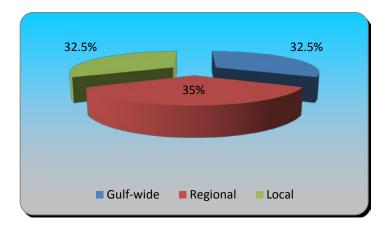
Do you think that the priorities in the Gulf Comprehensive Plan should carry an equal emphasis in the Texas state plan(s)?



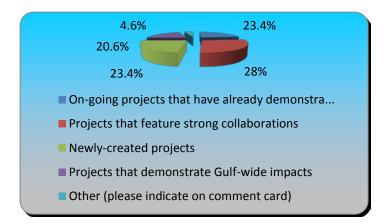
It is important to me that the Texas state plan(s) provide specific details on the requirements for approved restoration activities for each priority.



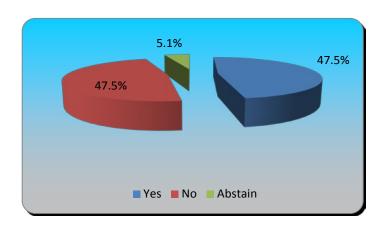
Rank the following level of area impact that you would like the Texas state plan(s) to favor in the selection criteria for restoration projects (1 being Texas' top priority, 3 being the lowest priority).



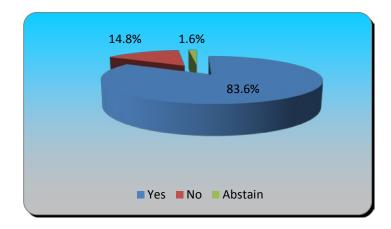
Which type of project would you like the Texas state plan(s) to favor in the selection criteria?



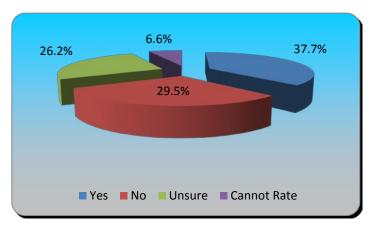
Do you think that the Texas state plan(s) should develop project evaluation criteria that favor projects which leverage funding from other existing projects?



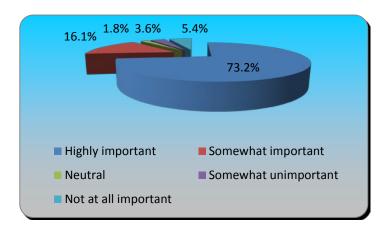
Do you think that the Texas state plan(s) should develop project evaluation criteria that favor projects which include collaboration between multiple partners?



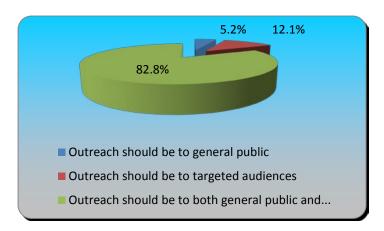
Considering the fact that the Texas state plan(s) is in the beginning stages of development, do you feel like you are a part of the RESTORE process?



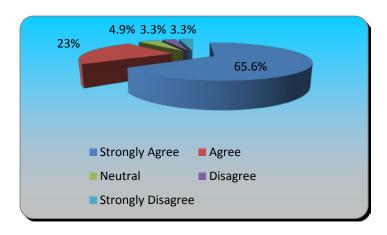
How important do you think it is for the Texas state plan(s) to develop an outreach strategy?



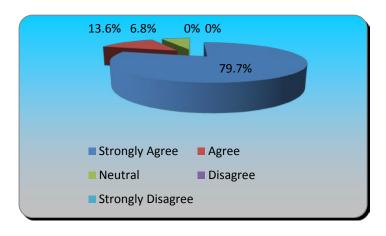
What types of outreach do you feel that the Texas state plan(s) should focus on?



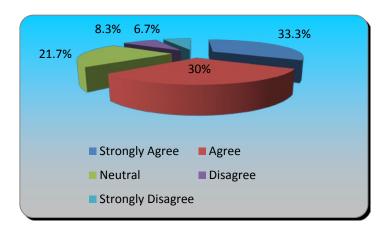
It is important to me that the Texas state plan(s) include a long-term monitoring program to communicate project outcomes.



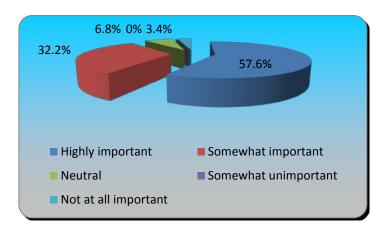
Do you agree that information on RESTORE Act funded projects should be available through an online clearinghouse?



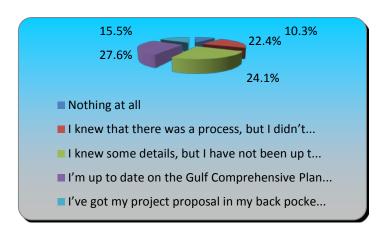
Do you agree that RESTORE Act funded projects should be presented at public meetings or conferences organized by the state (e.g. a Texas RESTORE Conference)?



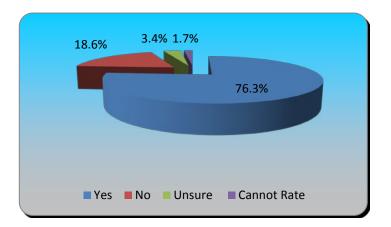
How important is it to you that you stay aware about ongoing research in the region related to RESTORE?



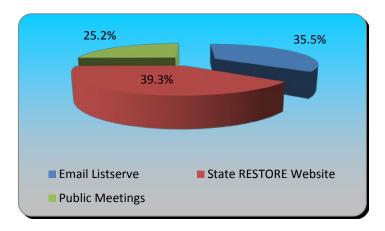
How much did you know about the RESTORE process prior to this meeting?



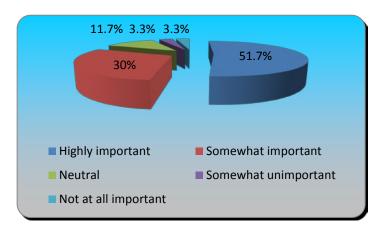
Do you feel that you need more information on HOW to stay up to date with the RESTORE process?



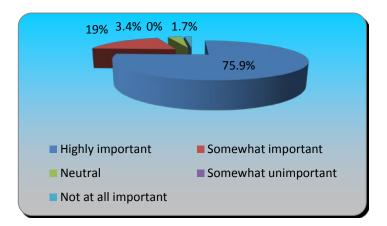
Of the following methods of staying up to date on the state's RESTORE process, rank the choices according to your preference (1 = most appealing and 3 = least appealing).



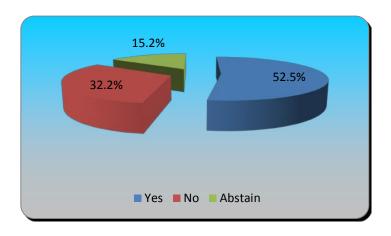
How important is it that you stay aware of the type of research expertise available for RESTORE related activities?



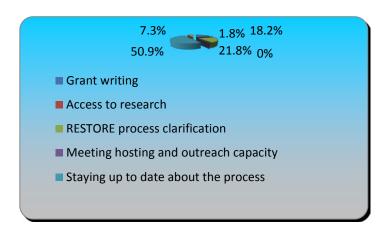
How important is it that you have access to easily understandable information on RESTORE legislation and regulations?



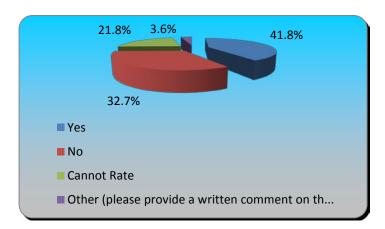
Do you feel like you will need help in your local areas to participate in the RESTORE process when the Texas state plan(s) come out?



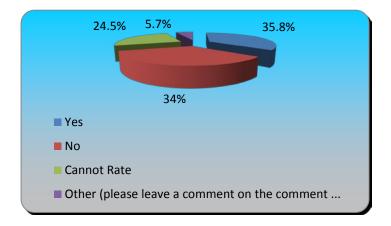
What are some of the needs that you feel you may have during the RESTORE process?



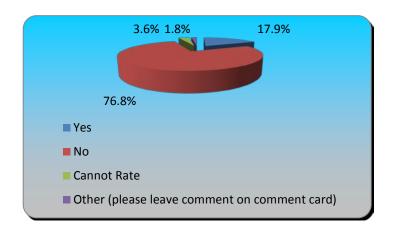
Do you need the ability to access more detailed data than you currently have?



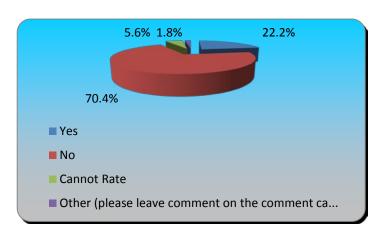
Do you need more detailed data collection capacity?



Do you need access to meeting facilities?



Do you need access to trained meeting facilitators?





www.texas-sea-grant.tamu.edu

www.missionaransas.org

www.utmsi.utexas.edu