



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF WATER

July 15, 2022

Re: Notification of Consultation and Coordination for the Infrastructure Investment and Jobs Act -- Gulf Hypoxia Program Guidance for Tribal Cooperative Agreements

Dear Honorable Leader:

The U.S. Environmental Protection Agency (EPA) is initiating consultation and coordination with federally recognized Indian Tribes that have Indian country lands¹ located in the Mississippi and Atchafalaya River Basin (MARB)² portions of the 12 Mississippi River/Gulf of Mexico Watershed Nutrient Task Force (Hypoxia Task Force or HTF) states, and that currently receive funding from EPA. This consultation will inform EPA's development of grant guidance for the newly funded Gulf Hypoxia Program (GHP).³

On November 15, 2021, President Biden signed the Infrastructure Investment and Jobs Act of 2021 (IIJA, P.L. 117-58), also known as the Bipartisan Infrastructure Law (BIL). The BIL's investment in clean water is nothing short of transformational. It includes approximately \$50 billion to EPA, the single largest investment in clean water that the federal government has ever made. Through the BIL, EPA is for the first time able to invest significant resources through the new GHP to implement critically needed strategies to improve water quality in the MARB and reduce the low oxygen (hypoxic), or "dead," zone in the northern Gulf. As part of the GHP, EPA intends to provide \$6 million to eligible Tribes to help them build capacity for and demonstrate nutrient reduction actions that support the HTF's Gulf Hypoxia Action Plan (<https://www.epa.gov/ms-htf/gulf-hypoxia-action-plan-2008>).

This consultation and coordination process will be conducted in accordance with the *EPA Policy on Consultation and Coordination with Indian Tribes* (<https://www.epa.gov/tribal/forms/consultation-and-coordination-tribes>). This consultation period will remain open until Thursday, September 15, 2022, as EPA's GHP works to develop guidance that will inform Tribes of the funding opportunity and potential projects to reduce nutrient pollution within the MARB.

EPA invites you and/or your designated consultation representative(s) to participate in this process. As outlined below, EPA will hold informational webinars for Tribes to learn more and offer a 60-day comment period for EPA to receive Tribal input by email.

¹ <https://www.epa.gov/pesticide-applicator-certification-indian-country/definition-indian-country>.

² A full list of eligible tribes can be found in Table 1 of the enclosed Consultation and Coordination Plan.

³ The Infrastructure Investment and Jobs Act of 2021 (IIJA, P.L. 117-58), also known as the Bipartisan Infrastructure Law (BIL) requires that Gulf Hypoxia Program funds support "actions under the Gulf Hypoxia Action Plan" and requires EPA to award funding in fiscal years 2022–2026 in equal amounts to "the twelve states serving as members of the Mississippi River/Gulf of Mexico Watershed Nutrient Task Force (Arkansas, Iowa, Illinois, Indiana, Kentucky, Louisiana, Minnesota, Missouri, Mississippi, Ohio, Tennessee, and Wisconsin)." Therefore, EPA will provide GHP funds to the federally recognized Tribes with Indian country lands in the MARB portion of these 12 states.

1. EPA will hold two identical informational webinar and listening sessions for Tribal leaders and staff. To register for the webinars please click the link below under your preferred date:
 - a. Tuesday, August 16, 2022, from 2:00-4:00 pm ET
https://usepa.zoomgov.com/meeting/register/vJltdeyrrDisHGee34JGNyrc_m2pruvHOpA
 - b. Tuesday, August 30, 2022, from 2:00-4:00 pm ET
https://usepa.zoomgov.com/meeting/register/vJltfuiojEoNfvJORIOxyZ_GLn3oTbI0
2. As part of the comment period, EPA is seeking Tribal feedback on the questions listed in the attached Consultation and Coordination Plan. In addition, Tribes are invited to share their experiences—including successes and challenges—building and sustaining programs to reduce nutrient pollution within the MARB. Tribal comments are welcome by Thursday, September 15, 2022. More information about the process for submitting comments is provided in the attached Consultation and Coordination Plan.
3. Once EPA evaluates and considers Tribal comments from the comment period, the Agency will develop grant guidance, which will be released in late Fall 2022.

Enclosed is a Consultation and Coordination plan for this action that includes a description of the action under consultation and the process EPA intends to follow, including a timeline for the consultation and coordination period, and information on how you can provide input on this action. This information is also available on EPA's Tribal Consultation Opportunities Tracking System (TCOTS) at <https://tcots.epa.gov>.

If you have any questions or would like to request alternate arrangements to the process outlined in the consultation and coordination plan, please contact our official EPA representative for this consultation and coordination process, Catherine Brady (Office of Wetlands, Oceans, and Watersheds), by email at brady.catherine@epa.gov or phone at (202) 566-2424. We look forward to hearing from you.

Sincerely,

**JOHN
GOODIN**

Digitally signed by JOHN
GOODIN
Date: 2022.07.15
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John Goodin, Director
Office of Wetlands, Oceans, and Watersheds

cc: Eligible Tribal Environmental Directors
Eligible Tribal Environmental Staff
Regional Tribal Coordinators
Clean Water Act Section 319 Tribal Coordinators
Clean Water Act CWA Section 106 Tribal Coordinators

Enclosures:

1. Consultation and Coordination Plan for the Infrastructure Investment and Jobs Act -- Gulf Hypoxia Program Guidance for Tribal Cooperative Agreements
2. Mississippi River Gulf of Mexico Watershed Nutrient Task Force (HTF) Background Information
3. Examples of Potential Demonstration Project Proposals

Enclosure 1: Consultation and Coordination Plan for the Infrastructure Investment and Jobs Act -- Gulf Hypoxia Program Guidance for Tribal Cooperative Agreements

The Mississippi River/Gulf of Mexico Watershed Nutrient Task Force (Hypoxia Task Force or HTF) is a collaborative partnership co-led by EPA and the State of Iowa to address nutrient pollution in the Mississippi-Atchafalaya River Basin (MARB) that contributes to a hypoxic “dead” zone in the northern Gulf of Mexico (Gulf), which is one of the largest in the world. It is composed of five federal agencies, 12 states bordering the Mississippi and Ohio rivers, and a representative from the National Tribal Water Council (NTWC)⁴ on behalf of Tribes. Three multi-state sub-basin committees support the work of the HTF and are members of the HTF’s “Coordinating Committee.” A Land Grant University (LGU) consortium is a key partner of the HTF as well.⁵

The HTF’s Gulf Hypoxia Action Plan⁶ describes a strategy to reduce the frequency, duration, size, and degree of oxygen depletion of the hypoxic zone of the northern Gulf. Its goals are the following:

1. **Coastal Goal** (2008, updated 2015⁷): We strive to reduce the five-year running average areal extent of the Gulf of Mexico hypoxic zone to less than 5,000 square kilometers by the year 2035. Reaching this final goal will require a significant commitment of resources to greatly accelerate implementation of actions to reduce nutrient loading from all major sources of nitrogen and phosphorus in the MARB. An Interim Target of a 20 percent reduction of nitrogen and phosphorus loading by 2025 is a milestone for immediate planning and implementation actions, while continuing to develop future action strategies to achieve the final goal through 2035. Federal agencies, states, Tribes, and other partners will work collaboratively to plan and implement specific, practical, and cost-effective actions to achieve both the Interim Target and the updated Coastal Goal.
2. **Within Basin Goal** (2008): To restore and protect the waters of the 31 states and Tribal lands within the MARB through implementation of nutrient and sediment reduction actions to protect public health and aquatic life as well as reduce negative impacts of water pollution on the Gulf of Mexico.
3. **Quality of Life Goal** (2008): To improve the communities and economic conditions across the MARB, in particular the agriculture, fisheries and recreation sectors, through improved public and private land management and a cooperative, incentive-based approach.

EPA has long provided the HTF with general support for the members’ water quality programs and small, intermittent grants. With the Bipartisan Infrastructure Law (BIL), EPA has, for the first time, dedicated and sustained funding for implementing the Gulf Hypoxia Action Plan. Through this BIL investment, EPA will build on its partnership with the states, Tribes, sub-basin committees, and LGUs to make significant progress toward reducing nutrient loads that will improve water quality in the MARB and Gulf. The BIL Gulf Hypoxia Program (GHP) will enable Tribes to provide tangible benefits to communities and

⁴ The NTWC was established to advocate for the best interests of federally-recognized Indian and Alaska Native Tribes, and Tribally-authorized organizations, in matters pertaining to water; see:

<http://www7.nau.edu/itep/main/ntwc>.

⁵ See Enclosure 2 below for more information on the Hypoxia Task Force.

⁶ <https://www.epa.gov/ms-htf/gulf-hypoxia-action-plan-2008>.

⁷ <https://www.epa.gov/ms-htf/hypoxia-task-force-new-goal-framework>.

ecosystems within the region that depend on clean water. Through improved water quality, communities across the MARB can benefit from safer drinking water, protected fisheries, and a more stable economy. The tourism industry alone loses close to \$1 billion each year from reduced fishing and boating activities due to degraded water quality from nutrient pollution, which can cause a significant strain on local communities. Urban and rural partnerships will provide farmers and city-dwellers alike with a more resilient landscape and improved local water quality as they have the support they need to implement watershed plans and expand business plans to include conservation systems.

BIL GHP Priorities

BIL funds will significantly expand and enhance capacity to reach the goals of the HTF's Gulf Hypoxia Action Plan. Consistent with the goals of the Gulf Hypoxia Action Plan and the BIL direction, EPA will focus on the following priorities as it implements this program:

- **Support states as they scale up implementation of their nutrient reduction strategies.** BIL funds shall be used by states to scale up implementation of nutrient reduction strategies to advance bold, systemic actions that accelerate nutrient load reductions in the MARB and to the Gulf. EPA expects states to develop workplans that prioritize those actions most effective at reducing nutrient loads, using both proven and innovative approaches, that are now possible with BIL funding for the Gulf Hypoxia Action Plan.
- **Support Tribes in leveraging existing nutrient reduction strategies or developing new ones to advance HTF goals.** EPA will use the feedback and comments from the Tribal consultation in 2022 to guide how BIL funds will support Tribes.
- **Advance multi-state collaboration through support for multi-state organizations that will help to achieve the goals of the Gulf Hypoxia Action Plan.** Multi-state organizational support will enable coordination of regional, state, and Tribal stakeholders not represented on the HTF, including additional basin states, agencies, and interested parties and organizations; consolidate and improve access to data collected by state, Tribal, and federal agencies; and help to present regional progress towards the Action Plan goals. The sub-basin committees are committed through the Gulf Hypoxia Action Plan to support states and Tribes in the respective MARB regions as they implement comprehensive nutrient reduction strategies across state and Tribal boundaries.
- **Document and communicate progress towards HTF goals at the Basin scale.** BIL GHP resources will provide the HTF with long-needed support to document and communicate progress towards HTF goals at a basin scale to the public. The HTF, with support and facilitation by the LGU consortium, will evaluate and adopt new methodologies to document nutrient reduction progress. The consortium's support will enable the HTF to better account for the progress made by agricultural producers in implementing conservation practices without federal and state financial assistance, which are often omitted from current practice inventories.
- **Advance research in support of nutrient reduction strategies.** The BIL GHP funds will primarily support scale up of nutrient reduction strategies. In doing so, states, Tribes, sub-basin committees and the LGU consortium will identify new challenges and research questions, which they will present to federal partners and foundations for their support in pursuing solutions.
- **Leverage resources and coordinate with other federal, foundation, state, and Tribal programs.** No match is required for the funding authorized by the BIL GHP, and these funds can be used to leverage resources in the many federal agency and foundation grant programs operating in the MARB that require matching funds. With these BIL funds, the entities receiving GHP resources can leverage other resources and scale up actions that support the Gulf Hypoxia Action Plan.

BIL GHP Cross-Cutting Priorities

Consistent with EPA's implementation of the BIL, EPA will administer BIL GHP funding in a manner to achieve the following agency-wide priorities:

- **Ensure that GHP benefits are realized by disadvantaged communities.** EPA recognizes that negative environmental impacts—whether in rural, suburban, or urban areas—disproportionately impact communities that are low-income, predominately of color, indigenous, linguistically isolated, and/or impacted by other stressors. Work funded under the BIL GHP should include a discussion of how activities will improve water quality in areas that both advance Gulf Hypoxia Action Plan goals and benefit disadvantaged communities. Example activities can include expanding the adaptive capacity of disadvantaged communities and/or deepening engagement or representation of disadvantaged communities in development of nutrient reduction strategies and watershed-based planning efforts.
- **Advance water quality actions that have climate adaptation or mitigation co-benefits.** More frequent and intense storms and increased temperatures associated with climate change are anticipated to cause a range of impacts on nutrient loads and the formation and duration of the hypoxic zone, creating challenges for ecosystem and waterbody health.⁸ Entities are encouraged to consider and implement nutrient reduction activities that have climate adaptation or mitigation co-benefits. Increasing the capacity of the landscape to store carbon, attenuate floodwaters, retain nutrients, and withstand the impacts of extreme events can help to reduce hypoxia and harmful algal blooms, mitigate impacts on coastal ecosystems and communities, and build capacity for carbon sequestration across the MARB and other watersheds.⁹
- **Fully enforce civil rights.** Under Title VI of the Civil Rights Act, EPA has a responsibility to ensure that federal funds are not being used to subsidize discrimination based on race, color, or national origin. This prohibition against discrimination under Title VI has been a statutory mandate since 1964, and EPA has had Title VI regulations since 1973. EPA's nondiscrimination regulations prohibit recipients of EPA financial assistance from taking actions in their programs or activities that are intentionally discriminatory and/or have a discriminatory effect based on race, color,

⁸ Laurent, A., K. Fennel, D.S. Ko, and J. Lehrter. 2018. Climate change projected to exacerbate impacts of coastal eutrophication in the northern Gulf of Mexico. *Journal of Geophysical Research: Oceans* 123:3408–3426. <https://doi.org/10.1002/2017JC013583>; Lehrter, J.C., D.S. Ko, L.L. Lowe, and B. Penta. 2017. Predicted Effects of Climate Change on Northern Gulf of Mexico Hypoxia. In *Modeling Coastal Hypoxia*, D. Justic, K. Rose, R. Hetland, and K. Fennel, eds. Springer, Cham. https://doi.org/10.1007/978-3-319-54571-4_8; Lu, C., J. Zhang, H. Tian, W.G. Crumpton, M.J. Helmers, W-J. Cai, C.S. Hopkinson, and S.E. Lohrenz. 2020. Increased extreme precipitation challenges nitrogen load management to the Gulf of Mexico. *Communications Earth & Environment* 1, 21. <https://doi.org/10.1038/s43247-020-00020-7>; Rabalais, N.N. and R.E. Turner. 2019. Gulf of Mexico hypoxia: Past, present, and future. *Limnology and Oceanography Bulletin* 28(4):117–124. <https://aslopubs.onlinelibrary.wiley.com/doi/full/10.1002/lob.10351>.

⁹ Hatfield, J. L., R.M. Cruse, and M.D. Tomer. 2013. Convergence of agricultural intensification and climate change in the Midwestern United States: implications for soil and water conservation. *Marine and Freshwater Research* 64:423–435. <https://doi.org/10.1071/MF12164>; McLellan, E., D. Robertson, K. Schilling, M. Tomer, J. Kostel, D. Smith, and K. King. 2015. Reducing Nitrogen Export from the Corn Belt to the Gulf of Mexico: Agricultural Strategies for Remediating Hypoxia. *Journal of the American Water Resources Association* 51(1):263–289. <https://doi.org/10.1111/jawr.12246>; Porter, P. A., R.B. Mitchell, and K.J. Moore. 2015. Reducing hypoxia in the Gulf of Mexico: Reimagining a more resilient agricultural landscape in the Mississippi River Watershed. *Journal of Soil and Water Conservation* 70(3):63A–68A. <https://doi.org/10.2489/jswc.70.3.63A>; Wedding, L.M., M. Moritsch, G. Verutes, K. Arkema, E. Hartge, J. Reiblich, J. Douglass, S. Taylor, A.L. Strong. 2021. Incorporating blue carbon sequestration benefits into sub-national climate policies. *Global Environmental Change*. Volume 69. 102206. ISSN 0959-3780. <https://doi.org/10.1016/j.gloenvcha.2020.102206>.

national origin (including limited English proficiency), age, disability, or sex. EPA intends to carefully evaluate the implementation of GHP funding under the BIL to ensure compliance with civil rights laws. EPA will provide interested states with technical assistance and training to support their compliance with Title VI obligations.

- **Support the American worker and build a strong conservation workforce.** The BIL is not only an opportunity to reinvest in America’s communities and ecosystems, but also an opportunity to invest in the American workers who support them. BIL investments will create jobs in construction, operations, and maintenance, and other family-supporting careers, including building a strong restoration and conservation workforce. Consistent with Executive Order 14052, Implementation of the Infrastructure Investment and Jobs Act, as entities implement GHP workplans they should enforce encourage pre-apprenticeship, registered apprenticeship, and youth training programs that open pathways to employment; and encourage any state GHP funded subgrantees or contractors to support safe, equitable, and fair labor practices, for example by considering, among other things and where applicable and consistent with state and local law, adoption of collective bargaining agreements, local hiring provisions, project labor agreements, and community benefits agreements.
- **Support domestic manufacturing.** Acting in a bipartisan fashion, Congress passed the Build America Buy America (BABA) Act in 2021, concurrently with the BIL. Congress established this domestic preference program to create long-term opportunities for domestic manufacturers and manufacturing jobs and build resilient domestic supply chains for a wide range of products used in construction and infrastructure. All products used in the construction of infrastructure that is permanent, fixed, and serves a public function are covered by this new law. EPA will work with the GHP entities to determine the types of projects that may be covered by this new law and will support compliance or relevant waiver provisions where necessary. Additional implementation procedures for the GHP will be forthcoming, but for now, waiver options are available that are pursuant to the public interest waivers section in the Office of Management and Budget’s Memorandum *Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure*.¹⁰

Opportunities for Tribes to Participate

To implement the legislative directive establishing the BIL GHP, EPA intends to provide \$6 million to Tribes that have Indian country lands in the MARB portions of the 12 HTF member states to fund actions to support the HTF’s Gulf Hypoxia Action Plan.^{11,12} Through this consultation and coordination process, EPA seeks input from those Tribes that currently receive funding from EPA and that have Indian country lands in the MARB portions of the 12 HTF states for the development of grant guidance under the BIL. EPA anticipates awarding one cooperative agreement per eligible Tribe that requests funding, incrementally funded over FYs 23–25. Work under a cooperative agreement can continue for up to five years from the date of award.

¹⁰ <https://www.whitehouse.gov/wp-content/uploads/2022/04/M-22-11.pdf>.

¹¹ <https://www.epa.gov/ms-htf/gulf-hypoxia-action-plan-2008>.

¹² The Infrastructure Investment and Jobs Act of 2021 (IIJA, P.L. 117-58), also known as the Bipartisan Infrastructure Law (BIL) requires that Gulf Hypoxia Program funds support “actions under the Gulf Hypoxia Action Plan” and requires EPA to award funding in fiscal years 2022–2026 in equal amounts to “the twelve states serving as members of the Mississippi River/Gulf of Mexico Watershed Nutrient Task Force (Arkansas, Iowa, Illinois, Indiana, Kentucky, Louisiana, Minnesota, Missouri, Mississippi, Ohio, Tennessee, and Wisconsin).” Therefore, EPA will provide GHP funds to the federally recognized Tribes with Indian country lands in the MARB portion of these 12 states.

EPA will hold a 60-day consultation and coordination period, from July 15, 2022, to September 15, 2022. In addition to submitting responses to the questions below, EPA invites Tribes to share their experiences—including successes and challenges—in building capacity and implementing Tribal nutrient reduction strategies.

To help inform potential actions, EPA seeks input from Tribal officials on the following questions. Please see Enclosure 2 for background information about the BIL and the GHP that may be helpful when considering these questions.

Tribal Input

Question 1

Is the information regarding acreage and grant eligibility information in Table 1, correct? Please provide feedback on inaccuracies. EPA has used this information to determine Tribal eligibility for GHP funding by developing the following GHP categories:

Category 1: Currently receive 319/106 and holds more than 10K acres in the MARB portion of the 12 HTF states.

Category 2: Currently receive 319/106 and holds less than 10K acres in the MARB portion of the 12 HTF states.

Category 3: Currently receive General Assistance Program (GAP) grant(s) and holds less than 10K acres in the MARB portion of the 12 HTF states.

Table 1. BIL GHP Information Regarding Eligible Tribes

Tribes	EPA Region	Total Estimated Tribal Lands (Acres)	Estimated Tribal Lands in MARB Portion of 12 HTF States (Acres)	319 Eligibility	106 Eligibility	GAP Grant	Tribal Eligibility Category
Mississippi Band of Choctaw Indians	4	33,931	1,048	X	X	X	2
Fond du Lac Band	5	102,002	3,826	X	X	X	2
Ho-Chunk Nation of Wisconsin	5	10,258	9,303		X	X	2
Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin	5	79,582	79,582		X	X	1
Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin	5	86,564	86,564	X	X	X	1
Leech Lake Band	5	838,693	735,476		X	X	1
Lower Sioux Indian Community in the State of Minnesota	5	1,751	1,751		X	X	2
Mille Lacs Band	5	10,3445	103,445		X	X	1
Minnesota Chippewa	5	287	168		X	X	2

Tribe	EPA Region	Total Estimated Tribal Lands (Acres)	Estimated Tribal Lands in MARB Portion of 12 HTF States (Acres)	319 Eligibility	106 Eligibility	GAP Grant	Tribal Eligibility Category
Pokagon Band of Potawatomi Indians	5	3,459	153	X	X	X	2
Prairie Island Indian Community	5	3,417	3,417	X	X	X	2
Shakopee Mdewakanton Sioux Community of Minnesota	5	5,115	3,088	X	X	X	2
St. Croix Chippewa Indians of Wisconsin	5	2,436	2,436		X	X	2
Upper Sioux Community, Minnesota	5	1,502	1,502		X	X	2
White Earth Band	5	746,879	62,679		X	X	1
Coushatta Tribe of Louisiana	6	1,064	1,064			X	3
Jena Band of Choctaw Indians	6	436	436			X	3
Omaha Tribe of Nebraska	7	198,396	3,897		X	X	2
Ponca Tribe of Nebraska	7	205	1			X	3
Sac & Fox Tribe of the Mississippi in Iowa	7	6,617	6,617	X	X	X	2
Winnebago Tribe of Nebraska	7	113,818	645	X	X	X	2
Total				8	18	21	-

Question 2

EPA anticipates awarding one cooperative agreement per Tribe, incrementally funded over FYs 23–25, over a time period of the Tribe’s choosing, but not to exceed five years. EPA would award cooperative agreements for one of the two following project types in support of the [Gulf Hypoxia Action Plan](#):

- a. Building Tribal program capacity towards nutrient management activities
 - i. Capacity building is any activity that promotes and/or advances the GHP’s goal of reducing nutrient pollution. Examples of capacity building for this grant include: establish TAS for 106 and/or 319; partnership building with watershed stakeholders; and allocation of staff time to support nutrient reduction efforts, education, and outreach on Tribal and neighboring lands. A capacity-building project could potentially include a modest demonstration or training component, for example training on installation of fencing and off-site watering stations to keep livestock out of waterways.
- b. Conducting demonstration projects (e.g., agricultural conservation practices, septic system repair/replacement)

- i. Demonstration projects are defined as projects, either pilot or full scale, that assess the feasibility or effectiveness of a strategy, approach, or conservation practice(s) to reduce nutrient loadings in the MARB and Gulf of Mexico.

Would your Tribe be interested in applying for GHP funds and if so, would your Tribe prefer to receive funding to conduct capacity-building/planning activities or nutrient reduction demonstration activities as described above?

Funding amounts depend on the number of Tribes that apply for GHP funding and the number of Tribes that select either capacity building or demonstration projects. Funding ranges can be found in Table 2.

Table 2. Potential Funding Ranges

Tribal Eligibility Category	Number of Eligible Tribes	Potential Funding Ranges
(1) 319/106 & >10K acres in the MARB	5	\$300K–\$500K
(2) 319/106 & <10K acres in the MARB	13	\$150K–\$380K
(3) GAP & <10K acres in the MARB	3	\$150K–\$195K

Question 3

Are these potential funding ranges sufficient to carry out capacity and/or demonstration projects by your tribe? Based on the funding option selected (capacity building or demonstration projects), please describe the types of activities that you might conduct in support of the Gulf Hypoxia Action Plan if grant funding were provided.

Question 4

If EPA were able to secure a modest level of resources for technical assistance to Tribes that are managing nutrient pollution in support of the Gulf Hypoxia Action Plan, how could EPA best provide that assistance? How can EPA best help Tribes build partnerships with federal, state, or other organizations that can help Tribes manage nutrient pollution?

Process and Timeline

Table 3 below lays out the process and timeline for Tribal consultation and coordination.

EPA will hold two identical Tribal informational webinar and listening sessions on Tuesday, August 16, 2022, from 2:00–4:00 pm ET and on Tuesday, August 30, 2022, from 2:00–4:00 pm ET. The webinars will provide Tribal officials an opportunity to ask questions and learn more about this consultation opportunity. Registration for the first webinar can be found [here](#) or the second webinar [here](#).

At any point in the Tribal consultation and coordination process, Tribes may submit written comments in an email or an email attachment to Catherine Brady (brady.catherine@epa.gov).

Additionally, Tribal governments may request one-on-one consultation meetings with EPA. If you are interested in requesting a government-to-government consultation meeting with EPA during the consultation and coordination period, please contact Catherine Brady (brady.catherine@epa.gov) no later than Thursday, September 1, 2022, to allow time for EPA to make arrangements.

Tribes may access this letter and related consultation information in EPA’s *Tribal Consultation Opportunities Tracking System (TCOTS)*, located at <https://www.tcots.epa.gov>.

Table 3. Tribal Consultation and Coordination Process and Timeline

Date/Time	Event	Contact Information
July 15, 2022	<p>Initiation of the Tribal consultation period. Consultation notification letters are emailed to Tribal leaders.</p> <p>Also initiates 60-day comment period to solicit input on the questions in the <i>Consultation and Coordination Plan</i>.</p>	<p>EPA Contact: Catherine Brady brady.catherine@epa.gov (202) 566-2424</p>
August 16, 2022	<p>Informational Webinar and Listening Session #1 for Tribal Officials: Coordination for the Development of Tribal Grant Guidance under BIL</p>	<p>EPA Contact: Catherine Brady brady.catherine@epa.gov (202) 566-2424</p> <p>Registration Link: https://usepa.zoomgov.com/meeting/register/vJltdeyrrDIsHGee34JGNYrc_m2pruvHOpA</p> <p>Webinar Call In: +1 669 254 5252 US (San Jose) +1 646 828 7666 US (New York) +1 551 285 1373 US +1 669 216 1590 US (San Jose)</p> <p>Meeting ID: 160 253 2966</p>
August 30, 2022	<p>Informational Webinar and Listening Session #2 for Tribal Officials (identical presentation to #1): Coordination for the Development of Tribal Grant Guidance under BIL</p>	<p>EPA Contact: Catherine Brady brady.catherine@epa.gov (202) 566-2424</p> <p>Registration Link: https://usepa.zoomgov.com/meeting/register/vJltfuiopj oJEoNfvJORIOxyZ_GLn3oTbIO</p> <p>Webinar Call In: +1 669 254 5252 US (San Jose) +1 646 828 7666 US (New York) +1 551 285 1373 US +1 669 216 1590 US (San Jose)</p> <p>Meeting ID: 160 910 8198</p>
September 15, 2022	<p>End of consultation and coordination period. Deadline for tribal input. EPA then evaluates and considers comments received.</p>	<p>Comments can be emailed to: Catherine Brady brady.catherine@epa.gov</p>
November/ December 2022 (estimate)	<p>Tribal Guidance released at HTF Meeting</p>	

Enclosure 2: Mississippi River Gulf of Mexico Watershed Nutrient Task Force (HTF) Background Information

What is Hypoxia and What Causes It?

The term *hypoxia* refers to a deficiency of oxygen in water. Hypoxic waters have dissolved oxygen concentrations of < 2–3 mg/L, which is less than habitable for many lifeforms.¹³ Hypoxia can be caused by a variety of factors, including excess nutrients—primarily nitrogen and phosphorus—and waterbody stratification (layering) due to saline or temperature gradients.¹⁴ These excess nutrients promote algal overgrowth and lead to eutrophication. As dead algae decompose, oxygen is consumed through the decomposition process, resulting in dangerously low oxygen levels.

Hypoxic zones, sometimes called dead zones, are areas in open waters where hypoxia occurs. The largest hypoxic zone in the United States (and the second largest worldwide) was first documented in 1972 and forms each summer in the northern Gulf of Mexico (Gulf) off the coasts of Louisiana and Texas.¹⁵ Learn more about hypoxia:

HTF Website: <https://www.epa.gov/ms-htf>

Hypoxia 101 Website: <https://www.epa.gov/ms-htf/hypoxia-101>

NOAA Hypoxia Website: <https://oceanservice.noaa.gov/hazards/hypoxia/>

NOAA Gulf of Mexico Website: <https://gulfhypoxia.net/about-hypoxia/>

History of the Hypoxia Task Force

The Mississippi River/Gulf of Mexico Watershed Nutrient Task Force (also called the Hypoxia Task Force or HTF) was established in the fall of 1997 under the Harmful Algal Bloom and Hypoxia Research and Control Act (HABHRCA) to understand the causes and effects of eutrophication in the Gulf of Mexico; coordinate activities to reduce the size, severity, and duration; and ameliorate the effects of hypoxia. Activities include coordinating and supporting nutrient management activities from all sources, restoring habitats to trap and assimilate nutrients, and supporting other hypoxia related activities in the Mississippi River and Gulf of Mexico watersheds.

In 1995, EPA and the State of Louisiana received a petition under Section 319(g) of the Clean Water Act (CWA) asking for an interstate management conference on the hypoxic zone. In response, EPA convened the Principals of the Hypoxia Interagency Group in 1996 which agreed to make hypoxia a priority, formed an Interim Working Group on Hypoxia, and asked the White House Committee on Environment and

¹³ <https://www.epa.gov/ms-htf/hypoxia-101>; Turner, R.R., N.N. Rabalais, and D. Justic. 2006. Predicting summer hypoxia in the northern Gulf of Mexico: riverine N, P, and Si loading. *Marine Pollution Bulletin* 52(2):139–148.

¹⁴ <https://www.epa.gov/ms-htf/hypoxia-101>; Rabalais, N.N., and R.E. Turner. 2006. Oxygen depletion in the Gulf of Mexico adjacent to the Mississippi River In: Neretin L. (eds) *Past and Present Water Column Anoxia. Nato Science Series: IV: Earth and Environmental Sciences*, vol 64. Springer, Dordrecht.

¹⁵ <https://www.epa.gov/ms-htf/hypoxia-101>; Ward, C.H., M.E. Bender, and D.J. Reish (ed.) 1979. The offshore ecology investigation. Effects of oil drilling and production in a coastal environment. *Rice Univ. Studies* 65:1–589.

Natural Resources (CENR) to address the questions concerning the Gulf of Mexico hypoxia zone. The current HTF was chartered in 1998,¹⁶ setting forth its mission, roles and responsibilities, and members.¹⁷

In the mid-2000s, the HTF undertook a science reassessment,¹⁸ and published the 2008 Gulf Hypoxia Action Plan, which established an ambitious goal (revised in 2015) to limit the dead zone to no more than 5,000 square kilometers by 2035, using a dual nitrogen and phosphorus reduction strategy. For perspective, the current 5-year average of 2017–2021 is approximately 14,000 square kilometers. To reach the goal, in 2007 the EPA Science Advisory Board¹⁹ recommended a 45 percent reduction in nitrogen and phosphorus loads. This was confirmed by Fennel and Laurent 2018.²⁰ In 2015, the HTF adopted an interim goal to reduce nutrient loading of nitrogen and phosphorus by 20 percent by 2025. The BIL will support strong progress toward these goals.

Members

The HTF is a partnership of 12 states (with representation varied among environmental, agricultural, and natural resource management agencies), with 10 member states along the mainstem of the Mississippi River and two member states from the Ohio River Basin; five federal agencies; and a representative from the National Tribal Water Council on behalf of Tribes. Read more about the members here:

<https://www.epa.gov/ms-htf/hypoxia-task-force-members>.

Federal Agencies and Tribal representative

- U.S. Army Corps of Engineers
- U.S. Environmental Protection Agency
- U.S. Department of Agriculture
- U.S. Department of Interior
- National Oceanic and Atmospheric Administration
- National Tribal Water Council

¹⁶ <https://www.epa.gov/ms-htf/charter-mississippi-rivergulf-mexico-watershed-nutrient-task-force>.

¹⁷ With public awareness around harmful algal blooms (HABs) growing in the United States, Congress recognized the severity of threats that came as a result of hypoxic events and authorized the Harmful Algal Bloom and Hypoxia Research and Control Act in 1998 (HABHRCA 1998; embedded in Public Law 105-383). This led to the formation of multiple research programs on HABs and hypoxia. HABHRCA Section 604(b) specifically called for the submission of a “plan for reducing, controlling, and mitigating Gulf hypoxia by March 31, 2000”, and as a result, the White House tasked the HTF with developing an action plan. The CENR and the White House National Science and Technology Council (NSTC) published the *Integrated Assessment of Hypoxia in the Northern Gulf of Mexico* in 2000 to set the scientific basis for the HTF’s 2001 Gulf Hypoxia Action Plan that first established a nitrogen reduction-focused goal.

¹⁸ <https://www.epa.gov/ms-htf/history-hypoxia-task-force>.

¹⁹ <https://www.epa.gov/ms-htf/hypoxia-northern-gulf-mexico-update-epa-science-advisory-board>.

²⁰ Fennel, K. and A. Laurent. 2018. N and P as ultimate and proximate limiting nutrients in the northern Gulf of Mexico: Implications for hypoxia reduction strategies. *Biogeosciences* 15:3121–3131. <https://doi.org/10.5194/bg-15-3121-2018>.

State Member Agencies

Arkansas Natural Resources Commission
Illinois Department of Agriculture
Indiana State Department of Agriculture
Iowa Department of Agriculture and Land Stewardship
Kentucky Department for Environmental Protection
Louisiana Governor's Office of Coastal Activities
Minnesota Pollution Control Agency
Mississippi Department of Environmental Quality
Missouri Department of Natural Resources
Ohio Department of Agriculture
Tennessee Department of Agriculture
Wisconsin Department of Natural Resources

HTF Goals to Reduce the Hypoxic Zone

The Gulf Hypoxia Action Plan²¹ goals are:

1. **Coastal Goal** (2008, updated 2015²²): We strive to reduce the five-year running average areal extent of the Gulf of Mexico hypoxic zone to less than 5,000 square kilometers by the year 2035. Reaching this final goal will require a significant commitment of resources to greatly accelerate implementation of actions to reduce nutrient loading from all major sources of nitrogen and phosphorus in the MARB. An Interim Target of a 20 percent reduction of nitrogen and phosphorus loading by 2025 is a milestone for immediate planning and implementation actions, while continuing to develop future action strategies to achieve the final goal through 2035. Federal agencies, states, Tribes, and other partners will work collaboratively to plan and implement specific, practical, and cost-effective actions to achieve both the Interim Target and the updated Coastal Goal.
2. **Within Basin Goal** (2008): To restore and protect the waters of the 31 states and Tribal lands within the MARB through implementation of nutrient and sediment reduction actions to protect public health and aquatic life as well as reduce negative impacts of water pollution on the Gulf of Mexico.
3. **Quality of Life Goal** (2008): To improve the communities and economic conditions across the MARB, in particular the agriculture, fisheries and recreation sectors, through improved public and private land management and a cooperative, incentive-based approach.

For more information about the HTF, please see: <https://www.epa.gov/ms-htf>.

²¹ <https://www.epa.gov/ms-htf/gulf-hypoxia-action-plan-2008>.

²² <https://www.epa.gov/ms-htf/hypoxia-task-force-new-goal-framework>.

Enclosure 3: Examples of Potential Demonstration Project Proposals

For many years, EPA has requested applications from Indian Tribes and Intertribal Consortia for demonstration projects to manage nonpoint sources of pollution under Section 319 of the Clean Water Act. Below are several examples of the projects EPA selected for funding in FY2022 under the Section 319 program. These examples show the types of Tribal demonstration projects that EPA envisions supporting in the Gulf Hypoxia Grant program.

Tribe: Match-E-Be-Nash-She-Wish Pottawatomi Indians

Project Title: Jijak Gatwéndan I Mbish Project (*Jijak Protect the Water Project*)

Proposed Activities: This watershed-based implementation project will address the main contaminants listed within the Gun Lake Tribe's NPS Assessment Report, NPS Management Program Plan, and Rabbit River Watershed Management Plan through streambank stabilization, check-dams, and biodiffusers. Environmental outcomes will include reduction in sediment, nutrient, and *Escherichia coli* (*E. coli*) pollution into Ingerson Lake and the downstream waters of the Rabbit River, and a reduction in flooding and stream flashiness at the Jijak property. This project will install biodiffusers at the most downstream point of the Jijak property stormwater system and restore streambanks that have been scoured due to flashy stream flows protecting waters from NPS pollution.

Tribe: Santa Ynez Band of Mission Indians

Project Title: Reducing Pesticide and Nutrient Loading to Zanja de Cota Creek

Proposed Activities: The proposed project will focus on reducing pesticide and nutrient impacts to Zanja de Cota Creek and the Santa Ynez Chumash Reservation from upstream land uses. Pesticide uses in the watershed are widespread due to predominant agricultural land-uses. These pesticides can migrate into Zanja de Cota Creek from storm water runoff and also be dispersed through aerial deposition. An exploratory sampling investigation conducted in 2020 detected specific pesticides in storm water and surface soils on the reservation. Utilizing strategies outlined in the Tribe's NPS Management Plan, the project will implement on-the-ground best management practices (BMPs), including constructing bioswales and planting trees along the riparian corridor to reduce pesticide and nutrient loading into Tribal waters and the reservation. Water quality samples will be collected prior to and after installation of the BMPs to monitor effectiveness. Education and outreach materials will also be developed and provided to the Tribal community about herbicide and pesticide impacts and best practices.

Tribe: Turtle Mountain Band of Chippewa Indians

Project Title: Barney's Beach Belcourt Lake Shoreline Restoration Project, Turtle Mountain Indian Reservation

Proposed Activities: This project will restore 100 feet of shoreline on an eroding stretch of beach on Belcourt Lake and reduce a major source of NPS sedimentation and phosphorus into the lake. Belcourt Lake is impaired for nutrients (among other pollutants, according to federal standards), and experiences harmful algal blooms. Much of the excess phosphorus pollution that contributes to these blooms has been shown to come from near-shore ungauged runoff, exemplified at the prominent Barney's Beach site. This project has five objectives: (1) conduct site design and project management; (2) educate the Tribal community on the importance of NPS pollution control at Belcourt Lake; (3) prepare and regrade the site for restoration; (4) restore the eroding shoreline using ScourStop Panels and biodegradable fiber blankets that facilitate natural vegetation growth, and (5) conduct project monitoring and maintenance. The anticipated environmental outcomes include decreased erosion and phosphorus delivery from the Barney's Beach shoreline site into Belcourt Lake, decreasing the likelihood of future harmful algal blooms.

In addition to this primary environmental outcome, the proximity of the site to the Turtle Mountain Community College and engagement efforts with students and Tribal members will increase awareness of the community about the importance of NPS pollution control.

Tribe: Penobscot Indian Nation

Project Title: Riverbank Stabilization on Penobscot Nation Lands to Control NPS

Proposed Activities: The Penobscot Nation Water Resources Program proposed project will implement riverbank stabilization BMPs to address high severity threats to water quality that were identified in the Tribe's NPS Assessment and Management Plan. The objective of this proposed project is to control and reduce sedimentation and nutrient input into Penobscot Reservation waters by stabilizing 500 feet of eroding riverbank and restoring 6,250 ft² of vegetated riparian shoreline by installing riverbank stabilization BMPs. The anticipated environmental outcome will be to improve water quality and help attain Tribal water goals to protect and support aquatic life by preventing ~250 tons/year of soil from entering the Penobscot River.

Tribe: Red Lake Band of Chippewa

Project Title: Restoring Little Rock Creek Watershed at Fireline Road

Proposed Activities: The repair/re-construction of this site at the Fireline Road stream crossing, along with the associated bank stabilization, would be the first step in restoring and improving connectivity to all portions of Little Rock Creek on the Reservation. The Little Rock Creek Watershed is identified as part of a priority watershed (as it is within the HUC 10 Puposky Lake-Lower Red Lake Watershed) by the Red Lake Band in the EPA approved 2020 NPS Management Plan. In addition, stream crossings are identified as one of three main water quality issues for the Tribe in the NPS management plan. EPA funding under this project will cover the cost of construction at the Little Rock Creek site and upstream/downstream before and after biological, physical, and chemical assessments. This model will allow the Red Lake Band to provide substantial evidence of the impact of the work being completed. It is expected that this work will reduce the sediment and nutrient load in the Little Rock Creek watershed, as well as increase the fish and invertebrate biodiversity of the watershed. Additionally, the assessment of streams using a newly created scoring system to identify and organize NPS/watershed priorities that have an impact on Reservation waters will begin, greatly increasing the number of NPS-impaired waterbodies that have been identified, assessed, and prioritized. Outreach will increase NPS knowledge of community members.

Tribe: Bishop Paiute Tribe

Project Title: Bishop Paiute Tribe FY22 CWA 319 Competitive Nonpoint Source Management Program

Proposed Activities: This project is a continuation of the Tribe's longstanding NPS management program where each year staff prioritize projects based on the current environmental conditions detected through regular water quality monitoring, habitat assessments, observations, data analysis, and community resource usage. With known water quality pollution issues and risks within the watershed, staff use proven BMPs to lessen the contamination through stream stabilization, erosion control, restricting grazing animal access to waterways, work with community members and stakeholders in the watershed to educate about NPS pollution. Example methods used for stream stabilization include hardening and/or armoring the channel in areas with high animal crossings. Installing channel meanders and riparian vegetation slows streamflow and lessens erosion. Improved grazing management, along with limiting and excluding animals, is accomplished with fencing to significantly reduce bacteria and nutrient input into waters. Community education helps homeowners, agricultural grazers, and other stakeholders to understand what NPS impacts they have and how to lessen them. Anticipated outcomes include increased knowledge of trained staff and community members to better manage NPS pollution, increased sections

of Bishop Creek (an NPS-impaired waterbody) that have been partially or fully restored to meet water quality standards, and increased diversity and abundance of aquatic species within Bishop Creek.

Tribe: Southern Ute Indian Tribe

Project Title: CWA Section 319 Agricultural BMP Implementation Project

Proposed Activities: The main objective of this application is to fund the SUIT Cost Share Program (CSP). The Section 319 program implemented 45 agricultural BMP projects through the CSP from 2004–2016 that have reduced NPS pollution on approximately 1,000 acres of land throughout the Reservation. These projects are primarily irrigation improvement projects, exclusion fencing, and field filter strips. Implementing future agricultural BMPs will protect and restore water quality by reducing sediment, nutrient, and *E. coli* inputs into the waters of the SUIT Reservation.