



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration

Office of General Counsel
263 13th Avenue South, Suite 177
St. Petersburg, FL 33701

October 22, 2012

Scott Brown
Chief – Coastal Field Office
4171 Commanders Drive
Mobile, AL 36615

Phillip Hinesley
Chief – Coastal Section
Alabama Department of Natural Resources
3115 Five Rivers Boulevard
Spanish Fort, AL 36527

Dear Mr. Brown and Mr. Hinesley:

The Natural Resource Trustees for the Deepwater Horizon Oil Spill are proposing implementation of two early restoration projects within Alabama's coastal zone. The U. S. Department of the Interior (DOI) and the National Oceanic and Atmospheric Administration (NOAA) (the undersigned Federal Trustees), have reviewed the project for consistency with the Alabama Coastal Area Management Program (ACAMP) and have found that, as best as can be determined at this level of planning, the proposed restoration action is consistent to the maximum extent practicable with the applicable, enforceable policies of the ACAMP. This letter submits that determination for State review.

Background

On or about April 20, 2010, the mobile offshore drilling unit *Deepwater Horizon* experienced an explosion, leading to a fire and its subsequent sinking in the Gulf of Mexico. These events resulted in the discharge of an estimated 5 million barrels (210 million gallons) of oil into the Gulf over a period of approximately 3 months. In addition, hundreds of thousands or more gallons of dispersants were applied to the waters of the spill area in an attempt to minimize impacts from spilled oil. These events are hereafter collectively referred to as the Oil Spill.

The magnitude of the Oil Spill and the U.S. Coast Guard-directed efforts to contain and clean up the oil across the Gulf were massive and unprecedented. The Oil Spill and associated response efforts impacted coastal and oceanic ecosystems ranging from the deep ocean floor, through the oceanic water column, to the highly productive coastal habitats of the northern Gulf of Mexico, including estuaries, shorelines and coastal marsh as well as ecologically, recreationally, and commercially important species and their habitats in the Gulf of Mexico and along the coastal areas of Alabama, Florida, Louisiana, Mississippi, and Texas. These fish and wildlife species and their supporting habitats provide a number of important ecological and human use services.

The Federal Trustees and the designated natural resource trustee agencies for each of the five states on the Gulf coast, (collectively, the Trustees), including the Florida Department of Environmental Protection (DEP) and the Florida Fish and Wildlife Conservation Commission (FWCC), are each authorized by the Oil Pollution Act of 1990 (OPA) and other applicable federal or state laws to assess and assert a natural resource damages claim for this Oil Spill, in order to fully restore and compensate the public for the harm



the spill caused to natural resources, including lost use of these resources by the public. Consistent with their authority and their claim, the Trustees are investigating the resource injuries and losses that occurred and have initiated restoration planning to identify the actions that will be needed or appropriate to restore injured resources and to make the public whole for the injuries and losses that occurred. That process, known as a Natural Resource Damage Assessment (NRDA), was initiated in the earliest days of the Oil Spill and is on-going at this time.

On April 21, 2011, the Trustees entered into an agreement with BP, a responsible party for the Oil Spill, under which BP agreed to provide \$1 billion for early restoration projects in the Gulf to address injuries to natural resources caused by the *Deepwater Horizon* oil spill. That agreement, entitled “Framework for Early Restoration Addressing Injuries Resulting from the *Deepwater Horizon* Oil Spill” (Framework Agreement), established a process under which the Trustees and BP are working together “to commence implementation of early restoration projects that will provide meaningful benefits to accelerate restoration in the Gulf as quickly as practicable” prior to completion of the NRDA process or full resolution of the Trustees’ natural resource damage claims.

Under this Agreement, the Trustees are proposing to implement the two projects described in this letter. The Trustees intend to present and seek public review and comment on the proposal to implement these two projects in a draft early restoration plan (Draft Plan) to be released at the end of October.. This will be the second set of early restoration projects to be proposed to the public under the Framework Agreement. This Draft Plan will be developed jointly by the Trustees and, as required by that Agreement, will include the restoration benefits estimated to be provided by each project (referred to as “NRD Offsets”) that, at the end of the NRDA process, the Trustees would credit against the assessment of total injury for the spill in relation to BP’s natural resource damages liability. If approved by the Trustees following consideration of public comments, the Trustees would expect these two new projects to be implemented with funds from the \$1 billion BP has set aside for use for early restoration.

Eight early restoration projects were previously selected for this purpose (Phase 1 Final Early Restoration Plan, April 18, 2012) and actions necessary to implement these projects are underway. The projects previously chosen and the two projects the Trustees are now proposing do not represent the full extent of restoration needed to satisfy the Trustees’ natural resource damages claims against the responsible parties for the Oil Spill; they are intended only to help accelerate meaningful restoration in the Gulf prior to completion of the full NRDA.

The Trustees propose the following early restoration actions for implementation in public lands of Gulf State Park in Baldwin County, Alabama and Bon Secour National Wildlife Refuge, Baldwin and Mobile Counties, Alabama:

Improving Habitat Injured by Spill Response: Restoring the Night Sky

This project will be implemented within existing developed areas of Gulf State Park (the Park) in Baldwin County. These developed areas include parking lots, tennis courts, and highways. The glare from existing artificial lights deters loggerhead sea turtles from engaging in essential behaviors, including migrating, sheltering, nesting, and foraging. In addition, such lights cause disorientation of individual animals, including hatchlings. Nesting females and hatchlings travel inland, toward the artificial lights, where they

often die from dehydration, are preyed upon by fire ants and ghost crabs, or sometimes crawl onto the road where they are run over by cars.

Retrofitting existing street lights to reduce visibility from the beach and/or broadcast a longer wavelength is a common practice to enhance the value of beach habitat for loggerhead sea turtles. This project will seek such enhancement to be achieved by reducing the amount of light cast onto beaches from anthropogenic sources within and adjacent to state lands in Baldwin County. No ground will be disturbed as a result of this project. Tall light poles will be made shorter. Some light fixtures will be shielded away from the beach, and some lights will broadcast longer wavelengths (reds and yellows). The project will include: site-specific surveys of existing lighting sources for each targeted beach; coordination with site managers on development of plans to eliminate, retrofit or replace existing light fixtures and light bulbs on the property or to otherwise decrease the amount of light reaching the loggerhead sea turtle nesting beach; retrofitting of streetlights and parking lot lights; and before-and-after lighting impact assessment. A federal contractor and Park personnel will be implementing the project.

A Comprehensive Program for Enhanced Management of Avian Breeding Habitat Injured by Response in the Bon Secour National Wildlife Refuge (Refuge)

The project would be implemented on public lands within the Refuge in Baldwin and Mobile Counties, Alabama. The project seeks to enhance affected beach nesting bird habitats by implementing a coordinated and comprehensive management program over the next five years. This program will address the most significant needs and challenges affecting these habitats within the project locations. Management actions will include the following:

1) Placing fencing and symbolic signage around sensitive bird nesting sites to indicate the site as off-limits to people, pets and other sources of disturbance. Placement will entail the use of shallowly placed fence poles or stakes, with minimal ground disturbance, to support ropes with signs attached.

2) Increasing surveillance and monitoring of posted nesting sites to minimize disturbance to nesting birds in posted areas. Posted nesting sites will be monitored to support adaptive management practices/response (e.g., if birds shift nesting site locations, posting materials will be relocated accordingly), and to gather the data needed to quantitatively evaluate the effectiveness of the management actions. The Refuge will use term personnel to implement and monitor activities outlined above.

Summary of Coastal Zone Management Consistency Review for the Improving Habitat Injured by Spill Response: Restoring the Night Sky Project (the Project) – Our analysis of the Project's consistency with specific applicable portions ACAMP is summarized as follows:

335-8-1-.05 Permissible Uses.

The proposed project includes the following activities, which are permissible to the extent they are consistent with the Code of Alabama 1975 §§ 9-7-13, as amended:

(j) construction of minor structures, and repairs or additions which will not constitute a substantial improvement and which will not obstruct public access;

(k) the conservation, repletion, research and management activities associated with a designated Estuarine Research Reserve, state or federal park or wildlife refuge, the marine mammal stranding network, the U.S. Fish and Wildlife Service, or the Department.

This Project will protect beach habitat for loggerhead sea turtles by retrofitting existing street lights. No ground will be disturbed as a result of this Project. To the extent the Project includes additions to structures, it is considered to include permissible uses under 335-8-1-.05(1).

335-8-2-.01 General Rules Applicable to All Uses Subject to the ACAMP

335-8-2-.01(1) specifies that all uses subject to the ACAMP that are in violation with applicable state air and water quality standards shall not be permitted or certified to be in compliance with the ACAMP. The proposed Project will not involve the emission of air pollution subject to the ADEM air quality standards, nor will the Project involve activities impacting water quality.

335-8-2-.01(2) requires that uses subject to the ACAMP not have an adverse impact on historical, cultural or archeological resources, on wildlife and fisheries habitats (especially the critical habitat of endangered species listed pursuant to 16 USC 1531-1543), and on public access to tidal and submerged lands, navigable waters, beaches and other public recreational resources. There are no known historical, cultural or archeological resources in the Project area. However, during the permitting, design and engineering phase of the project, an assessment of cultural and historic resources at the Project sites will be conducted, and any effects to those resources will be avoided or mitigated. The proposed Project will create, restore and protect wildlife habitat and will, therefore, not adversely affect these resources. Additionally, the project sites are not in occupied or critical habitat of any threatened or endangered species under 16 USC 1531-1543. The proposed Project is restricted to dry land and will not limit public access to tidal and submerged lands or navigable waters, beaches and will have no adverse impact on public recreational resources.

Other ADEM Division 8 Coastal Program Portions Considered Inapplicable – The following additional elements of the ADEM Division 8 Coastal Program rules were considered but, based on our review, did not appear to be applicable to this Project:

335-8-2-.02 Dredging and Filling.

335-8-2-.03 Mitigation

335-8-2-.04 Marinas

335-8-2-.05 Piers, Docks, Boathouses and Other Pile Supported Structures

335-8-2-.06 Shoreline Stabilization and Erosion Mitigation

335-8-2-.07 Canals, Ditches and Boatslips

335-8-2-.08 Construction and Other Activities on Gulf Front Beaches and Dunes

335-8-2-.09 Groundwater Extraction

335-8-2-.10 Siting Construction and Operation of Energy Facilities

335-8-2-.11 Commercial and Residential Development

335-8-2-.12 Discharges to Coastal Waters (Greater than 1 Million Gallons per Day).

Summary of Coastal Zone Management Consistency Review for the Comprehensive Program for Enhanced Management of Avian Breeding Habitat Injured by Response in the Bon Secour National Wildlife Refuge – Our analysis of the project's (the Project's) consistency with specific applicable portions ACAMP is summarized as follows:

335-8-1-.05 Permissible Uses.

The proposed project includes the following activities, which are permissible to the extent they are consistent with the Code of Alabama 1975 §§ 9-7-13, as amended:

(b) the conservation, repletion and research activities of the Marine Environmental Sciences Consortium, the Marine Resources Division of the Department of Conservation and Natural Resources and the Mississippi-Alabama Sea Grant Consortium;

(j) construction of minor structures, and repairs or additions which will not constitute a substantial improvement and which will not obstruct public access; and

(k) the conservation, repletion, research and management activities associated with a designated Estuarine Research Reserve, state or federal park or wildlife refuge, the marine mammal stranding network, the U.S. Fish and Wildlife Service, or the Department.

The placement of fencing and signage, as proposed in the Avian Breeding Habitat project, would be considered to be the construction of minor structures and/or conservation and management activities of a state or federal park or refuge and are therefore permissible uses under 335-8-1-.05(1).

335-8-2-.01 General Rules Applicable to All Uses Subject to the ACAMP

ACAMP section 335-8-2-.01(1) specifies that all uses subject to the ACAMP that are in violation with applicable state air and water quality standards shall not be permitted or certified to be in compliance with the ACAMP. The proposed Project will not involve the emission of air pollution subject to the ADEM air quality standards. While this project includes shallowly placed fence poles or stakes, with minimal ground disturbance, to support ropes with signs attached, no erosion or sediment movement is expected to result from the Project, and all ADEM water quality standards will be met.

ACAMP section 335-8-2-.01(2) requires the Alabama Department of Environmental Management (Department) to consider the extent to which a proposed use adversely impacts Historical, architectural or archaeological sites designated pursuant to 16 U.S.C. §§ 470-470W; wildlife and fishery habitat especially the designated Critical Habitats of endangered species listed pursuant to 16 U.S.C. §§1531-1543; and, public access to tidal and submerged lands, navigable waters and beaches or other public recreational resources. There are no known historical, cultural or archeological resources in the Project area. However, during the permitting, design and engineering phase of the project, an assessment of cultural and historic resources at the Project site will be conducted, and any effects to those resources will be avoided or mitigated. The proposed Project will create, restore and protect wildlife habitat and will, therefore, not adversely affect these resources. Additionally, though the project site is adjacent to or within designated critical habitat for the Alabama beach mouse, the Project is not likely to adversely affect the beach mouse or to affect its critical habitat pursuant to 16 USC 1531-1543. Similarly, although the Project sites are within critical habitat of the piping plover no effect on this habitat is expected. Appropriate concurrences will be obtained from the U.S. Fish and Wildlife Service as necessary before work begins. The proposed Project will involve the placement of temporary fencing to protect sensitive bird nesting sites, and therefore will limit public access to the these sites. Such limitation is expected to be minimal. The proposed Project is restricted to dry land and will not obstruct public access to tidal, submerged lands, navigable waters, or other public recreational resources.

335-8-2-.08 Construction and Other Activities on Gulf Front Beaches and Dunes

ACAMP section 335-8-2-.08(1) provides that no person shall remove primary dune or beach sands and/or vegetation or otherwise alter the primary dune system, construct any new structure, or make any substantial improvement to any existing structure, on, beneath or above the surface of any land located between mean high tide and the construction control line. The proposed project would involve the installation of shallowly placed fence poles or stakes. However, these activities will not alter the primary dune system.

Other ADEM Division 8 Coastal Program Portions Considered Inapplicable -- The following additional elements of the ADEM Division 8 Coastal Program rules were considered but, based on our review, did not appear to be applicable to this Project:

- 335-8-2-.02 Dredging and/or Filling
- 335-8-2-.03 Mitigation
- 335-8-2-.04 Marinas
- 335-8-2-.05 Piers, Docks, Boathouses, and Other Pile Supported Structures
- 335-8-2-.06 Shoreline Stabilization and Erosion Mitigation
- 335-8-2-.07 Canals, Ditches, and Boatslips
- 335-8-2-.09 Groundwater Extraction
- 335-8-2-.10 Siting, Construction and Operation of Energy Facilities
- 335-8-2-.11 Commercial and Residential Development
- 335-8-2-.12 Discharges to Coastal Waters (Greater than 1 Million Gallons per Day).

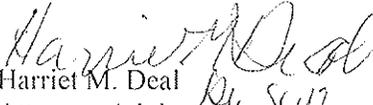
Conclusion

Based on review of the requirements of the ACAMP, the Federal Trustees have determined that the proposed projects are consistent to the maximum extent practicable with the applicable, enforceable policies of the ACAMP.

For the Federal Trustees, this represents the earliest opportunity for consideration of the consistency of the proposed restoration project with the ACAMP. Early consideration of CZMA consistency of these projects will provide support for finalizing the selection of these projects and help the participating federal, state and local agencies in expeditiously implementing these projects in keeping with the goals of early restoration for the Oil Spill.

Because these project are early restoration projects, i.e., being fast tracked to accelerate the restoration of resources and services impacted by the Oil Spill, the Federal Trustees are requesting and would deeply appreciate expedited review and a response to this determination of consistency as soon as is practicable. We thank you in advance for your efforts to accommodate this request.

Sincerely,


Harriet M. Deal
Attorney-Adviser *By SW*
United States Department of the Interior


Stephanie L. Willis
Senior Attorney
National Oceanic & Atmospheric Administration