



# United States Department of the Interior

OFFICE OF THE SOLICITOR  
Washington, D.C. 20240

December 12, 2013

Ms. Willa Brantley  
Mississippi Department of Marine Resources  
Bureau of Wetlands Permitting  
1141 Bayview Avenue  
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Dear Ms. Brantley:

The Natural Resource Trustees for the Deepwater Horizon oil spill are proposing selection of four (4) early restoration projects within Mississippi's coastal zone. These projects are proposed as Phase III early restoration actions for the Deepwater Horizon oil spill in a just released document titled "Draft Programmatic and Phase III Early Restoration Plan and Draft Early Restoration Programmatic Environmental Impact Statement." The U. S. Department of the Interior (DOI), the National Oceanic and Atmospheric Administration (NOAA), the United States Department of Agriculture, and the United States Environmental Protection Agency (the undersigned Federal Trustees), have reviewed the projects for consistency with the Mississippi Coastal Management Program (MCP) and have found that, as best as can be determined at this level of planning, these proposed restoration actions are consistent to the maximum extent practicable with the applicable, enforceable policies of the State's program. 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 several million barrels of oil into the Gulf over a period of approximately three months. In addition, various response actions were undertaken, including, but not limited to the application of approximately hundreds of thousands or more gallons of dispersants 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 recreational 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, for Mississippi, the Mississippi Department of Environmental Quality, 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 Oil 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 20, 2011, DOI, NOAA, and the State 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 Oil Spill. That agreement, entitled “Framework for Early Restoration Addressing Injuries Resulting from the *Deepwater Horizon* Oil Spill” (Framework Agreement)<sup>1</sup>, 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 damages claims. Ten early restoration projects have already been selected for this purpose across the Gulf (See Phase I Final Early Restoration Plan, April 18, 2012; Phase II Early Restoration Plan, December 21, 2012). Implementation of these projects is underway.<sup>2</sup>

The Trustees are now proposing a third set of early restoration projects (Phase III) for implementation across the Gulf. The proposed Phase III projects include four (4) projects for the State of Mississippi that are described in Appendix A to this letter and that would be implemented within or otherwise have the potential to affect the coastal zone of Mississippi. The Trustees are presently seeking public review and comment on these projects in a document entitled “Draft Programmatic and Phase III Early Restoration Plan and Draft Early Restoration Programmatic Environmental Impact Statement” (Draft Plan) released on December 6, 2013.

The Draft Plan also includes a proposed programmatic plan for the Trustees’ early restoration decisions under the Oil Pollution Act and the Framework Agreement going forward, including for the Phase III projects. The Trustees have evaluated project types suitable for early restoration and are proposing to continue to pursue early restoration based on a suite of restoration project types (i.e, through projects types that contribute to initial restoration of certain habitats, living coastal and marine resources, and recreational opportunities) and via a described process for developing and selecting specific projects of those types. The proposed programmatic plan is included as part of and supported by a draft programmatic environmental impact statement (DPEIS for Early Restoration) included in the Draft Plan. The Draft Plan was informed by and developed following a public scoping process undertaken by the Trustees in accordance with the National Environmental Policy Act. The Draft Plan, including the DPEIS for Early Restoration and the proposed programmatic framework, is available for public review and comment until 4

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<sup>1</sup> The Framework Agreement is available at: <http://www.gulfspillrestoration.noaa.gov/wp-content/uploads/2011/05/framework-for-early-restoration-04212011.pdf>

<sup>2</sup> Additional information about these projects is available at: <http://www.gulfspillrestoration.noaa.gov/restoration/early-restoration/>.

February 2014 and the Trustees welcome any comments from your office that may enhance their ability to select early restoration projects that are in keeping with State CZMA programs. An announcement of the comment period on the Draft Plan, with directions for submitting written comments on that document, may be found at: <http://www.doi.gov/deepwaterhorizon> or <http://www.gulfspillrestoration.noaa.gov>.

The projects previously chosen and the 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.

### **Proposed Phase III Early Restoration Projects in Mississippi:**

The Trustees propose the following early restoration actions for selection in Mississippi:

1. **Hancock County Marsh Living Shoreline Project:** This proposed project would provide for construction of up to 5.9 miles of living shoreline. It is located between Bayou Caddy and the mouth of the East Pearl River in Hancock County.
2. **Restoration Initiatives at the INFINITY Science Center:** This proposed project would provide visitors with interactive science, education, interpretive, and research opportunities for exploring the Gulf ecosystem. It is located southwest of the Interstate 10 and Highway 607 interchange in southern Hancock County.
3. **Pascagoula Beachfront Promenade Project:** This proposed project would provide for the completion of a lighted concrete pathway adjacent to the sand beach in Pascagoula, immediately south and parallel to Beach Boulevard.
4. **Popp's Ferry Causeway Park Project:** This proposed project would improve the City of Biloxi property within Back Bay by expanding a park environment where visitors could experience the coastal estuarine ecosystem. The Causeway property is a parcel of land located just west of the Popp's Ferry Bridge.

Appendix A to this letter contains a set of more detailed project descriptions.

Our evaluation of the principal enforceable policies of the MCP that are potentially applicable to the listed Phase III early restoration projects and the basis of our determination of consistency with these policies is summarized in Appendix B.

### **Conclusion:**

Based on review of the requirements of the State's coastal zone management program, and after evaluating the applicable factors associated with activities affecting the coastal zone, a determination has been made that the proposed projects, at this level of planning, are consistent to the maximum extent practicable with the applicable, enforceable policies of the program. If selected and implemented, the proposed Mississippi projects will comply with the MCP and will be conducted in a manner consistent

with the program.

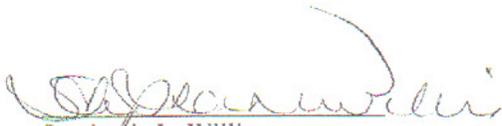
For the Federal Trustees, this represents the earliest opportunity for consideration of the consistency of the proposed Phase III early restoration projects with the MCP. Early consideration of CZMA consistency of these projects will provide support for finalizing the selection of projects and help the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

Because the projects are being proposed as part of the early restoration process, i.e., are intended to accelerate the restoration of resources and services impacted by the Oil Spill, the Federal Trustees are requesting and would deeply appreciate 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-Advisor  
United States Department of the Interior

Deepwater Spill Phase III Restoration Plan  
Letter Concerning Mississippi Coastal Management Program

A handwritten signature in cursive script, appearing to read "Stephanie L. Willis". The signature is written in black ink and is positioned above the printed name.

Stephanie L. Willis  
Senior Attorney  
National Oceanic & Atmospheric Administration

Deepwater Spill Phase III Restoration Plan  
Letter Concerning Mississippi Coastal Management Program



Gary M. Freeman  
Senior Counsel, Office of the General Counsel  
United States Department of Agriculture

Deepwater Spill Phase III Restoration Plan  
Letter Concerning Mississippi Coastal Management Program



James Bove  
Senior Attorney  
United States Environmental Protection Agency

Enclosures: Appendix A  
Appendix B

## APPENDIX A:

### COMPILATION OF PHASE III EARLY RESTORATION PROJECT DESCRIPTIONS PROPOSED FOR IMPLEMENTATION IN MISSISSIPPI

#### Hancock County Marsh Living Shoreline Project

The Hancock County Marsh Living Shoreline project is located in western Hancock County between Bayou Caddy and the mouth of the East Pearl River. The 20,909-acre Hancock County Marsh complex, one of the largest in Mississippi, is part of the extensive Pearl River estuary and is partially owned and managed by the Mississippi Department of Marine Resources (MDMR) as part of the Coastal Preserves of the State of Mississippi. Historically, there were extensive, prolific reefs of the American oyster (*Crassostrea virginica*) in the shore zone and nearshore areas of lower Hancock County that provided natural protection from shoreline erosion. Historical erosion rates, particularly at St. Joseph's Point, make this shoreline a priority for protection and marsh creation. The living shoreline (breakwater) would help protect the Hancock County Marsh complex that includes estuarine and estuarine marine deepwater habitats, estuarine and estuarine marine wetlands, freshwater emergent wetlands and freshwater forested and scrub shrub wetlands.

Breakwaters would be constructed along the marsh shoreline in two locations: from the Pearl River to the western limit of Heron Bay (western reach) and from the eastern limit of Heron Bay to approximately four miles to the northeast towards (eastern reach) approximately 1.86 miles past the heel of St. Joseph's Point. Construction activities could include placement of linear structures that may utilize artificial and/or shell-based materials within the -3 to -5 foot Mean Lower Low Water (MLLW) contour. Approximately 46 acres of marsh would be constructed in the St. Joseph's Point area to protect and restore marsh areas that experience the historical rates of erosion. A total of 46 acres of subtidal oyster reef would be created using oyster shell in northeastern Heron Bay to protect the shallow embayment and to increase oyster production in the area.

#### Restoration Initiatives at the INFINITY Science Center

The INFINITY Science Center is located southwest of the intersection of Highway 607 and Interstate 10 in southern Hancock County, Mississippi, and is adjacent to coastal estuarine habitats including the Hancock County Marsh Preserve. The project site is bordered by the Pearl River to the west and will connect to the "Logtown Scenic Byway to Space" trail to the south to facilitate beach access through the scenic byways in Hancock County, Mississippi. The majority of the total available gallery space in the INFINITY Science Center will be reserved for exhibits about the Gulf of Mexico and its coastal ecosystem. Exhibits will cover a number of topics including marsh ecosystems, oceanography, gulf species, hurricanes, and restoration monitoring. These exhibits will be designed to allow visitors (using computers, simulations and graphics) to experience how scientists model and study the Gulf's ecosystem. The exhibits will highlight the

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<sup>1</sup> Additional information on each project may be found in Chapter 10 of the Draft Plan.

importance of science and scientific research, natural processes, and environmental stewardship, as well as wise economic utilization of these resources.

The Heritage Trail-Possum Walk will bring visitors through multiple coastal habitats that occur throughout the immediate area including marsh, bayhead swamp, cypress swamp, and pine flatwoods. The proposed project would enhance access to a coastal trail system that connects with sandy beach habitats. The Heritage Trail-Possum Walk includes a public outdoor education center to inform visitors of the ecologically sensitive nature of coastal habitats injured by the Oil Spill. The project also includes development of a native landscape/nursery area.

#### Popp's Ferry Causeway Park Project

The mostly unimproved 10-acre Popp's Ferry Causeway property is a parcel of land and marsh located just to the west of the Popp's Ferry Bridge. It is owned by the City of Biloxi, Mississippi. It is surrounded by water on all sides, including the Biloxi River to the north, Big Lake to the west and the Back Bay to the south and east. The property was purchased by the City of Biloxi in the year 2000. Improvements were started in 2001 but these were destroyed by Hurricane Katrina in 2005. Construction commenced again in 2011, and the following work has been completed and is not included in this proposed early restoration project: boardwalk system (north of the boat launch), some shoreline stabilization, a marsh boardwalk and shelters in the northern portion of the area, some utility work, construction of an entry sign, construction of one fishing pier, some roadway lighting, and roadway repairs on the east side of the causeway.

The early restoration project currently being proposed would upgrade the existing site and amenities by creating the Popp's Ferry Causeway Park, an interactive location where the public would continue to fish, crab, and walk through a system of boardwalks and nature trails that allow viewing of the waterfront and marshes. One of the project goals is to build upon what the public perceives as the "best fishing spot without a boat in Biloxi, Mississippi." The proposed conceptual plan includes components that will enhance visitor access to coastal estuarine habitats such as: roadway repair and lighting; construction of a concession and bait stand where the public can also rent kayaks; construction of new fishing piers; and continuation of an eight-foot-wide concrete walkway/wooden boardwalk on the west side of the site with benches and lighting. Riprap water edge treatment would replace existing treatments west of the concrete walkway/wooden boardwalk for additional shoreline stabilization. In addition, picnic areas, nature trails, visitor parking and construction of a new interpretive center with outdoor exhibits would take place in upland areas, and a marsh overlook pier and boardwalk would be included.

#### Pascagoula Beachfront Promenade Project

The Pascagoula Beachfront Promenade project is located immediately south of and parallel to Beach Boulevard in Pascagoula, Mississippi, in Jackson County and will extend approximately 8,200 feet from Point Park on the western end to the eastern edge of the drainage channel east of Oliver Street. It is immediately adjacent to a sand beach on the Mississippi Sound, which was oiled during the Oil Spill. In addition to the promenade, amenities may be constructed as funding allows (e.g. fire pits, playgrounds, volley ball courts, public art, parking, and shower stations). The promenade would be constructed from the southern edge of the curb on Beach Boulevard

and extend over the sand beach, which was recently funded through a U.S. Army Corps of Engineers' \$12 million seawall protection ("beach creation") project.

## **APPENDIX B:**

### **SUMMARY OF COASTAL ZONE MANAGEMENT CONSISTENCY REVIEW FOR PHASE III EARLY RESTORATION PROJECTS PROPOSED FOR SELECTION IN MISSISSIPPI**

It is the public policy of Mississippi to preserve coastal wetlands in their natural state, except where an alteration of a specific coastal wetland serves a higher public interest. Further, the Mississippi Coastal Program (MCP) is built around the following goals:

1. To provide for reasonable industrial expansion in the coastal area and to insure the efficient utilization of waterfront industrial sites so that suitable sites are conserved for water dependent industry;
2. To favor the preservation of the coastal wetlands and ecosystems, except where a specific alteration of a specific coastal wetland would serve a higher public interest in compliance with the public purposes of the public trust in which the coastal wetlands are held;
3. To protect, propagate, and conserve the state's seafood and aquatic life in connection with the revitalization of the seafood industry of the State of Mississippi;
4. To conserve the air and waters of the state, and to protect, maintain, and improve the quality thereof for public use, for the propagation of wildlife, fish and aquatic life, and for domestic, agricultural, industrial, recreational, and other legitimate beneficial uses;
5. To put to beneficial use to the fullest extent of which they are capable the water resources of the state, and to prevent the waste, unreasonable use, or unreasonable method of use of water;
6. To preserve the state's historical and archaeological resources, to prevent their destruction, and to enhance these resource wherever possible;
7. To encourage the preservation of natural scenic qualities in the coastal area;
8. To consider the national interest involved in planning for and in the siting of facilities in the coastal area;
9. To assist local governments in the provision of public facilities services in a manner consistent with the coastal program; and,
10. To insure the effective, coordinated implementation of public policy in the coastal are of Mississippi comprised of Hancock, Harrison and Jackson Counties.

Restoration activities, such as those proposed in the Draft Plan, are intended to restore or replace habitats, species, and services to their baseline conditions (primary restoration) and to compensate the public for interim losses from the time natural resources are injured until they recover to baseline conditions (compensatory restoration). To meet these goals, the restoration activities need to produce benefits that are related to natural resources injured and services lost as a result of the Oil Spill.

The proposed Phase III Mississippi early restoration projects are intended to reduce shoreline erosion, create habitat for oysters and other secondary productivity, and protect and create marsh habitat. Additionally, some proposed projects would provide for enhanced public access to natural resources, enhance recreational experiences, and the promotion of environmental and cultural stewardship, education, and outreach.

Collectively, early restoration and the proposed Mississippi Phase III projects will:

- Serve a higher public interest by preserving coastal wetlands and their ecosystems by creating marsh and species habitat, reducing shoreline erosion, and providing increased public access to coastal wetlands while promoting environmental and cultural stewardship, education, and outreach;
- Protect, propagate and conserve Mississippi's aquatic life and seafood by creating oyster and secondary benthic habitat;
- Put to beneficial use to the fullest extent the water resources of the state through habitat creation and shoreline erosion reduction;
- Assist in the preservation of natural scenic qualities through marsh creation and erosion reduction as well as increased access to coastal wetlands through the promotion of environmental and cultural stewardship, education, and outreach; and,
- Assist local government in the provision of public facilities' services through the enhancement of recreational experiences.

The proposed projects are consistent to the maximum extent practicable with the applicable, enforceable policies of the MCP. If selected and implemented, the proposed Mississippi projects will comply with the MCP and will be conducted in a manner consistent with the program. The Trustees understand that, if the project(s) are selected for implementation, they will require additional regulatory approval under the Mississippi Coastal Wetlands Protection Act. Where appropriate, requests for certification under the Mississippi Coastal Wetlands Protection Act (and any other applicable laws) will be sought prior to implementation.