



**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 25, 2012

Ms. Willa Brantley
Director, Bureau of Wetlands Permitting
Mississippi Department of Marine Resources
1141 Bayview Avenue
Biloxi, MS 39503

Dear Ms. Brantley:

The Natural Resource Trustees for the Deepwater Horizon Oil Spill are proposing implementation of an early restoration project within Mississippi'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 Mississippi Coastal Management Program (MCP) and have found that, as best as can be determined at this level of planning, these proposed restoration action is consistent to the maximum extent practicable with the applicable, enforceable policies of the MCP. 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, approximately 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 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 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 project described in this letter, as well as projects in Florida and Alabama. The Trustees intend to present and seek public review and comment on the proposal to implement the 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 this project, and those in Florida and Alabama, 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 I Final Early Restoration Plan, April 18, 2012) and actions necessary to implement these projects are underway. 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.

The Trustees propose the following early restoration action for implementation in Mississippi:

A Comprehensive Program for Enhanced Management of Avian Breeding Habitat Injured by Response in the Gulf Islands National Seashore (GUIS)

The project would be implemented on public lands within GUIS in Jackson and Harrison counties, Mississippi (Petit Bois Island, Spoil (Sand) Island, Horn Island, East Ship Island, West Ship Island, Cat Island-West End, and Cat Island, Smuggler’s Cove). The project seeks to enhance affected beach-nesting and shorebird 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; and,
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. GUIS will use term personnel to implement and monitor activities outlined above.

Summary of CZA Analysis

The federally-approved Mississippi Coastal Program, approved by NOAA in 1980, is comprised of a network of agencies with authority in the coastal zone. The Mississippi Department of Marine Resources, through the Office of Coastal Ecology, serves as the lead agency for consistency determinations under the Coastal Zone Management Act. The Mississippi Department of Marine Resources is governed by the Commission on Marine Resources appointed by the governor. In addition to the DMR, Coastal Program commenting agencies include the Mississippi Department of Archives and History, the Mississippi Department of Environmental Quality Office of Pollution Control, and the Mississippi Department of Environmental Quality Office of Land and Water Resources. The primary authority guiding the Coastal Program is the Mississippi Coastal Wetlands Protection Act.

The Comprehensive Program for Enhanced Management of Avian Breeding Habitat Injured by Response in the Gulf Islands National Seashore (GUIS) has been determined by NOAA and DOI to be consistent with the applicable enforceable policies of the MCP.

The proposed project meets the following goals of the MCP (Chapter I, Section I):

1. To favor the preservation of the coastal wetlands and ecosystems, except where a specific alteration of a specific coastal wetlands would serve a higher public interest in compliance with the public purposes of the the public trust in which the coastal wetlands are held. While this project takes place outside of the statutorily defined “coastal wetlands,” the project enhances ecosystem preservation by protecting habitat adjacent to coastal wetlands.
2. 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 the domestic, agricultural, industrial, recreational, and other legitimate beneficial uses. By protecting habitat of endangered species, the proposed project will aid in the protection and propagation of wildlife found within the Mississippi Coastal Zone.
3. To encourage the preservation of natural scenic qualities in the coastal area. Limiting access to nesting habitat with symbolic signage in conjunction with the proposed monitoring activities will ensure that the scenic qualities of the barrier islands and their surrounding ecosystems are preserved.

The proposed project is located outside of coastal wetlands, and any impacts to coastal wetlands, direct or indirect, will be minimal. In accordance with Chapter 8, Section 2, Part III. N., the proposed project will not affect the following characteristics of coastal wetlands:

1. The natural supply of sediment and nutrients to the coastal wetlands;
2. The natural temperature regimes that are part of the ecosystem of coastal wetlands;
3. Salinity regimes;
4. Sediment transport processes;

5. Water flow and natural circulation; and,
6. The long-term biological productivity of the coastal wetlands' ecosystem.

When evaluating projects for consistency with the MCP, state agencies are also required to consider aspects of the national interest (Chapter 8, Section 7):

1. The protection of endangered flora and fauna, included those species listed for Mississippi. Consultation with the U.S. Fish and Wildlife Service concerning projects which may affect endangered flora and fauna is required. Since the Department of Interior is an implementing trustee for this project, consultation will occur before any work is done. . The goals of the proposed project align with the MCP's guidelines for the consideration of national interest.

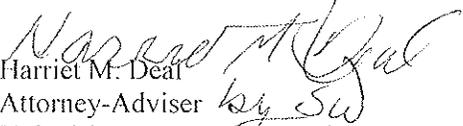
Conclusion

Based on review of the requirements of the MCP, and after evaluating the applicable factors associated with activities located within the Mississippi Coastal Zone but outside of coastal wetlands, a determination has been made that the proposed project is consistent to the maximum extent practicable with the applicable, enforceable policies of the MCP.

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

Because the project is an early restoration projects, i.e., are 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
United States Department of the Interior


Stephanie L. Willis
Senior Attorney
National Oceanic & Atmospheric Administration