



United States Department of the Interior

FISH AND WILDLIFE SERVICE

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Atlanta, Georgia 30345

In Reply Refer To:
FWS/R4/DH NRDAR

April 16, 2014

Memorandum

To: Field Supervisor, Alabama Ecological Services Field Office

From: Deputy Deepwater Horizon, Department of the Interior Natural Resource Damage Assessment and Restoration (NRDAR), Case Manager *Deborah M. McC...*

Subject: Gulf State Park Infrastructure Improvements and Restoration, Gulf Shores, Alabama

As you are no doubt aware, 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 (the Gulf). These events resulted in the discharge of millions of barrels of oil into the Gulf over a period of 87 days. In addition, various response actions were undertaken in an attempt to minimize impacts from spilled oil. These events are hereafter collectively referred to as the Oil Spill.

The Department of the Interior (DOI), acting through the U.S. Fish and Wildlife Service (the Service) and other Bureaus, is a designated natural resource trustee agency authorized by the Oil Pollution Act of 1990 (OPA) and other applicable federal laws to assess and assert a natural resource damages claim for this Oil Spill. DOI is only one of several Trustees, including agencies of the State of Alabama (The State), so authorized. Consistent with their federal and state authorities, the Trustees are investigating the resource injuries and losses that occurred as a result of the Oil Spill 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. This process is known as a Natural Resource Damage Assessment (NRDA).

On April 20, 2011, DOI, National Oceanic and Atmospheric Administration, and the Trustees for the five Gulf states affected by the Oil Spill 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. The subject project is being evaluated by the Trustees as a potential early restoration project. The early restoration project has been proposed in a draft early restoration plan that was released for public comment and review on December 6, 2013. If the Trustees select the project after consideration of public comment and a stipulated agreement is reached with BP, the early restoration project will be implemented by the State. DOI, acting through the Service, will be a co-Trustee for the project, if it is selected and implemented.

Each project considered for early restoration is required to achieve compliance with the Endangered Species Act of 1973 (ESA), as amended (16 U.S.C. 1531 *et seq.*). The purpose of this memorandum is to ensure, through consultation and conference, that compliance is achieved.

By way of background, Alabama Department of Conservation and Natural Resources (ADCNR), consulted with the Service on a project known as “ Gulf State Park Hotel and Convention Center Demolition and Reconstruction between Gulf Shores and Orange Beach, Baldwin County, Alabama” in 2004. The original HCP referenced a Master Plan for renovations and rebuilding of Gulf State Park on a 44.3-acre footprint, of which 11.6 acres were suitable habitat for ABM. This plan required the restoration or enhancement of 14.7 acres of dune habitat for ABM. As a result of its initial consultation with the Service, Gulf State Park, Gulf Shores, Alabama has an existing Incidental Take Permit (ITP) for Alabama beach mouse which was issued under Section 10(a)(1)(B) of the ESA and became effective on December 27, 2004 (TE072831-0) (Table 1). The permit was subsequently modified, via informal request, on April 6, 2005 (TE072831-1) to shift the location and minimize the footprint of the beach pavilion. On February 26, 2006 (TE-072831-2), the ITP was modified again to reflect a modification to the location of the Fishing Pier and other administrative changes including a reduction to a 41.1-acre footprint, of which 17.6 acres were suitable habitat for ABM, and 22.7 acres of dune restoration/enhancement for ABM were required. The ITP was issued based upon a Habitat Conservation Plan (HCP) and expires on December 27, 2034.

As part of proposing the project for early restoration, the State updated their Habitat Conservation Plan to reflect: changes in Alabama beach mouse (ABM) population, newly proposed species and proposed critical habitats, updates to project boundaries, actions that have been completed under the HCP (including habitat restoration for Alabama beach mouse), and project design modifications . The State has also submitted a Dune Restoration and Management Plan (Dune Plan) for approval, which is a requirement of the HCP. Due to these updates, the project will still occur within a 41.1-acre footprint and impact 17.6 acres of suitable habitat for ABM. The required 22.7 acres of dune restoration/enhancement has been completed, as well as an additional 14.1 acres for a total of 36.8 acres of dune restoration/enhancement to benefit ABM. The new project design includes up to an additional 50 acres of dune restoration/enhancement for the benefit of ABM.

We have reviewed the proposed project titled “Gulf State Park Infrastructure Improvements and Restoration, Gulf Shores, Alabama” including the revised HCP and Dune Plan for potential impacts to listed, candidate, and proposed species and proposed and designated critical habitat, along with the existing ITP. The updates to the HCP include a reduction in project footprint from the original footprint and increased conservation measures, including additional dune restoration/enhancement to contribute to the recovery of the Alabama beach mouse. The previous BO and amendment determined the project then proposed would not result in jeopardy to the ABM or adversely modify or destroy critical habitat for the species. The updates to the HCP and completion of the Dune Plan include reductions in the project footprint and will, if the project is selected and funded during Early Restoration, result in a substantial increase of ABM habitat restoration/enhancement than previously analyzed. In addition, the conservation measures have been updated to today’s standards and technologies and are anticipated to provide better (than previously analyzed) avoidance and minimization of impacts throughout the action

area. None of this new information suggests that the conclusions regarding the jeopardy analysis for ABM should be changed. Therefore, we have concluded the ITP needs no additional updates and is valid for the implementation of the proposed project.

The updated conservation measures continue to avoid or minimize impacts to other protected species (three species of sea turtle, piping plover, and red knot if listed) to an insignificant and discountable level.

In addition, project as currently proposed includes new project components (trails and interpretive signs, research center) within Gulf State Park, but outside of the HCP area. Habitats in this area are upland scrub and freshwater wetland or developed area. No listed or proposed species are known to occur in this area. However, the gopher tortoise, a candidate species, is known to have active burrows near the proposed trail locations. Alabama Department of Conservation and Natural Resources has made the commitment (via a letter from Commissioner Gunter Guy, Jr. dated February 18, 2014) to protect gopher tortoise and avoid the species and its burrows during construction of the trails.

We have also reviewed the proposed project for impacts to bald eagles and migratory birds in accordance with the Bald and Golden Eagle Protection Act (BGEPA) of 1940 (16 U.S.C. 668-668c) and the Migratory Bird Treaty Act (MBTA) of 1918 (16 U.S.C. 703-712), respectively. Bald eagles are known to nest near the proposed trails and nesting eagles will be avoided during construction and operation following the National Bald Eagle Management Guidelines. The HCP contains provisions to protect migratory birds. Therefore, no take under BGEPA or MBTA is anticipated.

We have attached the updated HCP and Dune Plan describing the proposed project, potential effects, and conservation measures for your review. We request your concurrence that: (1) the existing ITP regarding Alabama beach mouse and its critical habitat does not need modification and is valid for the proposed project; (2) the proposed project is not likely to adversely affect three species of sea turtles, piping plover, and red knot or gopher tortoise if listed; and (3) there will be no adverse modification or destruction of proposed loggerhead critical habitat due to the proposed project.

If you have questions or concerns regarding this request, please contact Holly Herod, Fish and Wildlife Biologist, at 404-679-7089 or holly_herod@fws.gov.

Attachments

Table 1. Comparison of changes in action area, project footprint, habitat lost, habitat restoration/enhancement, and net gain in ABM habitat through the HCP for Gulf State Park. All units are in acres*.

	HCP Footprint	HCP area outside of Footprint	Total HCP AA	Habitat Lost**	Habitat Improvement Proposed or Implemented	Net Gain in ABM Habitat
Initial BO December 2004	44.3	137.9	182.2	11.6	14.7	+3.1
1 st Amendment BO December 2006	41.1	137.9	179.0	17.6	22.7/36.8***	+19.2
2 nd Amendment BO due to NRDAR	41.1	137.9	179.0	17.6	86.8	+69.2
Net Change due to NRDAR Revision****	0	0	0	0	Increased up to 50	Increased up to 50
Total					+86.8	+69.2

* All measurements within this document should be considered estimates for the purposes of effects analysis, rather than actual on-the-ground impacts as they have been calculated using various GIS tools overtime and have and have considerable variation among the tools.

**Note that the individual footprints for the Pier, Pavilion, and associated parking do not equate to habitat lost (recorded in the table above from the previous analyses) because: presumably not all of the footprint was considered habitat previously and not all habitat that was within the footprint was actually lost to infrastructure.)

*** HCP required 22.7 acres to mitigate for impacts to ABM. Gulf State Park actually restored 36.8 acres.

****Includes the 36.8 acres restored/enhanced under the first amendment plus up to an additional 50 acres proposed through NRDAR. The additional 50 acres are not required mitigation under the HCP and ITP but rather are proposed as part of the project description. If NRDAR funds are not made available, the additional proposed restoration/enhancement may not be implemented. The proposed infrastructure construction is still allowable under the existing ITP as the required mitigation is complete.