



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
Washington, D.C. 20230

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February 15, 2012

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Gentlemen,

The enclosed Draft Phase 1 Early Restoration Plan and Environmental Assessment (Phase 1 DERP)<sup>1</sup> for the Deepwater Horizon Oil Spill proposes 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) have reviewed these two projects for consistency with Alabama's approved Coastal Area Management Program (ACAMP).

The enforceable policies of the Alabama Coastal Area Management Program (ACAMP) are contained in the Alabama Department of Environmental Management's Administrative Code Division 335-8 Coastal Program rules. These rules specify the uses subject to the rules as well as regulations which must be complied with in order to be consistent with ACAMP. Though the opportunity for assessing the consistency of these two projects with the ADEM Division 335-8 Coastal Program rules would also formally arise during the future permitting processes for the projects, the Phase 1 DERP provides the earliest opportunity for NOAA and DOI to consider the consistency of these proposed restoration projects. NOAA and DOI 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 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

<sup>1</sup> The document is also accessible electronically at: <http://www.gulfspillrestoration.noaa.gov/wp-content/uploads/2011/12/Final-ERP-121311-print-version-update.pdf>



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 771,000 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.

DOI, NOAA, and the designated natural resource trustee agencies for each of the five states on the Gulf coast (collectively, the Trustees), including the Alabama Department of Conservation and Natural Resources (ADCNR), are each authorized by the Oil Pollution Act of 1990 (OPA), 33 U.S.C. § 2701, et seq., 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.

This Phase 1 DERP presents and proposes the first set of projects for that purpose consistent with the Framework Agreement. The projects proposed in the Phase 1 DERP 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; these projects are intended only to help accelerate meaningful restoration in the Gulf prior to completion of the full NRDA. Nonetheless, the Phase 1 DERP does describe 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.

The Phase 1 DERP was developed jointly by DOI, NOAA, and the natural resource trustee agencies designated by the Governors of each of the five Gulf coastal states, including the ADCNR. It is subject to public review and comment. That comment period was initiated on December 15, 2011, and will end on February 14, 2012. Early restoration projects outlined in the Phase 1 DERP approved by the Trustees following consideration of the public comments are

expected are expected to be implemented with funds from the \$1 billion BP has set aside for this purpose.

The Phase I DERP proposes the following early restoration actions for implementation in Alabama:

- (1) Marsh Island (Portersville Bay) Marsh Creation** – This project involves the creation of salt marsh and protection of new and existing salt marsh along Marsh Island, a state-owned island in the Portersville Bay portion of Mississippi Sound, Alabama. The project area has experienced tremendous loss of emergent wetlands. Analysis by the ADCNR indicates that Marsh Island has decreased in size by approximately 50% since 1958 and has a current shoreline recession rate of 5-10' per year. Without the breakwater, the existing marsh would be completely washed away in approximately 15 years. The primary goals of the Marsh Island project are to protect the southern shoreline of the island to reduce and/or prevent further erosion of the existing salt marsh and to re-create salt marsh in the open water areas north of the remainder of the island. To address these goals, (1) permeable, segmented breakwater (approximately 5,700 linear feet) would be installed, (2) approximately 245,000 cubic yards of dredged materials would be placed in open-water areas placed to create 50 acres of marsh by with dredged material; (3) approximately 312,500 native vegetation plugs would be planted, and (4) approximately 5,000 linear feet of tidal creeks would be created, connecting existing tidal creeks to the newly created marsh and to Mississippi Sound, through use of a marsh buggy and natural dewatering and compaction of dredged sediments. This area has been identified as a top priority for coastal restoration by Alabama and its natural resource partners. Project performance will be monitored over time using standards for physical or structural conditions that are representative of normal and acceptable growth and development (e.g., elevation and colonization of native emergent vegetation), allowing corrective actions to be performed, if and where necessary.
- (2) Alabama Dune Restoration Cooperative Project** – This Project will restore approximately 55 acres of primary dune habitat at sites injured by the Oil Spill, including spill response efforts, at locations across ~ 20 miles of coastal dune habitat collectively owned and/or managed by the City of Gulf Shores, City of Orange Beach, Gulf State Park, Bon Secour NWR and the DOI's Bureau of Land Management. The primary actions in these areas will be planting of native dune vegetation and installation of sand fencing. These actions are designed to restore a coastal dune habitat, prevent wind erosion, enhance habitat for wildlife, and increase storm protection to habitats and human resources along the coast. They will be undertaken through the Coastal Alabama Dune Restoration Cooperative (CADRC), a formal partnership among the above landowners/managers.

Approximately 680,000 native plants would be planted within designated project areas. Proportions of plants would include approximately 70% sea oats grasses, 20% panic and smooth cord grasses, and 10% ground cover plants (sea purslane, beach elder, white morning glories and railroad vine) to maximize sand stabilization and limit wind erosion. Plants will be grown from seeds or cuttings from the Alabama or North Florida coast to ensure appropriate genetic stocks are used. Planting would be at 18-inch centers and 6 inches deep to ensure sufficient moisture is available to roots. Slow release fertilizer

would be added at installation and plants would be periodically watered, as needed, to facilitate establishment. Planting would be targeted for the March-June time frame.

Protective sand fencing would be installed around dunes on BLM property at the Our Road tract and in areas managed by the cities of Orange Beach and Gulf Shores. Sand fencing would be installed seaward of existing and in areas without established dunes, as needed to promote sand accumulation, and in accordance with approved ADCNR's guidelines. No new access roads or staging areas would be created; vehicles would use existing roads and parking areas. Informational signage would be placed in the project area at a rate of 10-25 signs per mile to help reduce human disturbance of restored areas. All aspects of the project would be implemented using best management practices in order to avoid or minimize affects to the Alabama beach mouse, Loggerhead sea turtle, Kemp's Ridley sea turtle and Piping plover, species having a special legal status for conservation and protection purposes. All participants involved in the project would follow guidelines and designated access points established by DOI and its CADRC partners to minimize foot traffic and human presence across ecologically sensitive areas.

**Summary of Coastal Zone Management Consistency Review for the Marsh Island (Portersville Bay) Restoration Project (Project)** – Our analysis of the Project's consistency with specific applicable portions of the ADEM Division 8 Coastal Program rules 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:

h) the use of any land for the purpose of planting, growing or harvesting plants, crops, trees or other agricultural or forestry products, including normal private road construction, raising livestock or poultry or for other agricultural purposes;

(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 and restore salt marsh on a state-owned island. Project actions will include planting of salt marsh vegetation on re-created marsh platforms. To the extent the Project includes the planting of marsh vegetation and is occurring on state-owned lands, 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. Additionally, best management practices (BMPs) will be utilized to insure that all ADEM water quality standards are met during the dredging and/or placement of sediments associated with project construction. Further, during construction, water quality monitoring to insure compliance with turbidity standards will be implemented.

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, a cultural assessment of the Project site as well as any proposed sediment borrow site will be conducted. The proposed Project will create, restore and protect wildlife and fisheries habitat and will, therefore, not adversely affect these resources. Additionally, the project site does not include any designated critical habitat of any endangered species listed pursuant to 16 USC 1531-1543. The proposed Project will create additional publicly owned habitat open to bird watching, hunting and/or other public use and will not obstruct navigable waters.

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

This chapter contains a number of requirements for projects which include the dredging and filling of wetlands and/or state-owned submerged lands. In summary, this chapter states that the dredging and/or filling of state-owned submerged lands for the purpose of marsh restoration may be certified to be in compliance with the ACAMP so long as certain requirements are met. Based on our review of the pertinent portions of these requirements, the following summary can be made:

1. The proposed Project will not include dredging and/or filling in close proximity to oyster beds. However, to insure compliance, site investigations will include a survey for oyster beds;
2. There are no known submersed grass beds in close proximity to the proposed Project. However, to insure compliance, site investigations will include a survey for submersed grassbeds;
3. As noted above, appropriate BMPs will be utilized to insure compliance with applicable water quality standards, including ongoing turbidity monitoring during sediment placement;
4. The proposed Project will be engineered and designed to reduce and/or mitigate for any potential impacts to coastal resources, including the use of BMPs noted above;
5. Any impacts to existing wetlands at the project site will be temporary and/or corrected prior to the completion of construction;
6. No dredged materials which contain toxic pollutants in toxic amounts will be utilized; and
7. The salinity of return waters from dredging will be similar to receiving water.

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

335-8-2-.06 states that bulkheads, the placement of rip-rap, other structural shoreline armament, jetties, groins, breakwaters and like structures shall not be permitted or certified to be in compliance with the ACAMP unless it is demonstrated that: (i) no fill material will be placed in wetlands or submersed grassbeds; (ii) the structure will be placed at or above mean high tide and landward of any wetlands; (iii) the structure will be designed so as to allow the normal hydrologic regime to be maintained in wetland areas; (iv) there are no feasible non-structural alternatives available including, but not limited to, preservation and restoration of dunes, beaches, wetlands, submersed grassbeds, and shoreline restoration and nourishment and retreat or abandonment (v) they are necessary to protect an existing navigational channel or a use of regional benefit; (vi) there are no other feasible non-structural alternatives; and (vii) there are no significant impacts to adjacent shorelines.

The proposed Project will not include the placement of fill materials in wetlands, submersed grassbeds or oyster beds. The proposed breakwater structures will be placed in around the

existing and restored wetlands in such a manner to insure the normal hydrologic regime to be maintained in wetland areas. Additionally, the proposed Project is utilizing the creation and planting of tidal marsh in conjunction with the placement of the breakwater structures. Further, the breakwater structure will protect a natural use of regional benefit (salt marsh) and is needed to protect the existing and created marsh from further loss. Finally, given the isolated project location, impacts to adjacent shorelines are not expected.

**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-.03 Mitigation

335-8-2-.04 Marinas

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

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 Alabama Dune Restoration Cooperative Project** – Our analysis of the Project's consistency with specific applicable portions of the ADEM Division 8 Coastal Program rules 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;

(h) the use of any land for the purpose of planting, growing or harvesting plants, crops, trees or other agricultural or forestry products, including normal private road construction, raising livestock or poultry or for other agricultural purposes;

(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 construction of sand fencing and the planting of dune vegetation, as proposed in the

Alabama Dune Restoration 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 small holes will be dug in the sand for placement of seedlings, 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 adversely modify its critical habitat pursuant to 16 USC 1531-1543. A concurrence to this effect has been obtained from the U.S. Fish and Wildlife Service. The proposed Project will involve the construction of fencing to protect dune vegetation, and therefore will limit public access to the dunes. The proposed project is restricted to dry land will not obstruct submerged lands or navigable waters.

**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 planting of native dune vegetation and the installation of sand fencing. However, these activities will enhance and restore existing dune habitat, but will not otherwise 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 Boatlips  
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

**Conclusion**

Based on this review, NOAA and DOI have found that the proposed Projects appear to be consistent with the ACAMP to the maximum extent practical to the extent that these activities have been defined by the current level of planning and design contained in the Phase 1 DERP.

Because these are early restoration projects, i.e, projects that are being fast tracked to accelerate the restoration of resources and services impacted by the Oil Spill, NOAA and DOI 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,

  
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(By Stephanie Willis)

Encl: Phase 1 DERP for the Deepwater Horizon Oil Spill