



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

OFFICE OF THE GENERAL COUNSEL

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February 15, 2012

Danny Clayton  
Administrator, Florida Coastal Management Program  
Office of Intergovernmental Programs  
Department of Environmental Protection  
3900 Commonwealth Blvd. MS 47  
Tallahassee, Florida 32399-3000

Dear Mr. Clayton:

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 Florida'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 the Florida Coastal Management Program (FCMP) 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 FCMP. 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 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 Florida Department of Environmental Protection (DEP) and the Florida Fish and Wildlife Conservation Commission (FWC), are each

<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>



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.

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 states on the Gulf coast, including the DEP and the FWC. 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 that are approved by the Trustees following consideration of the public comments are expected to be implemented with funds from the \$1 billion BP has set aside for this purpose.

The Phase 1 DERP proposes the following early restoration actions for implementation in Florida:

- ▶ Public Boat Ramp Enhancement and Construction Project – This project entails repairing an existing boat ramp in Pensacola Bay (Navy Point Park Public Boat Ramp N30-22.8’/W087-16.9’), construction of a new boat ramp facility in Pensacola Bay (Mahogany Mill Public Boat Ramp N30-23.9’/W087-14.9’), repairing and modifying an existing boat ramp in Perdido Bay (Galvez Landing Public Boat Ramp N30-18.8’/W087-26.5’) and constructing a new boat ramp facility in Perdido Bay (Perdido Public Boat Ramp N30-31.4’/W087-26.7’). Visitor information kiosks would be installed at each location to provide environmental education to boaters regarding water quality and sustainable practices for utilization of marine/estuarine/coastal resources in Florida.
  
- ▶ Florida (Pensacola Beach) Dune Restoration Project - The project would help restore an area of the beach dune habitat located in the Pensacola Beach area in Escambia County where oiling and the extensive use of all-terrain vehicles and heavy equipment during the response

resulted in conditions that have inhibited plant growth and prevented the natural seaward expansion of the dunes since June 2010. Project activities would begin at the western boundary of

Pensacola Beach (approximately 7.5 miles east of Pensacola Pass) and extend approximately 4.2 miles to the east. Approximately 394,240 native plants will be planted approximately 40 feet seaward of the existing primary dunes within designated 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. All plants would be grown from seeds or cuttings from the Alabama or North Florida coast to ensure appropriate genetic stocks are used in the project. Plants would be installed at 18-inch centers and 6 inches deep to ensure that sufficient moisture is available to roots, and properly covered with sand to stabilize and protect the plants. Planting would be targeted for the March – August time frame. Slow release fertilizer would be added during plant installation and plants would be periodically watered, as needed, to facilitate establishment. Dune plants that do not survive within the first 90 days after planting would be replaced. Plant installations will be regularly monitored to document survivorship, to evaluate overall project success and to identify maintenance activities needed for 3-5 years following initial project implementation.

The PHASE I DERP summarizes information considered by the Trustees and supporting these proposed restoration actions.

### **Summary of FCMP Analysis**

The federally-approved Florida Coastal Management Program is a networked program comprised of twenty-four statutes administered by nine state agencies and the five water management districts. The Public Boat Ramp Enhancement and Construction Project and the Florida (Pensacola Beach) Dune Restoration Project have been determined by NOAA and DOI to be consistent with all enforceable policies of the FCMP. The basis of our determination of consistency with the potentially applicable, enforceable policies of the FCMP is reflected in the following summaries:

Chapter 161, Fla. Stat. (Beach and Shore Preservation): These provisions regulate construction, reconstruction, and other physical activity in the coastal zone, and regulate actions for protection and preservation of the coastal zone, particularly from erosion. The Florida (Pensacola Beach) Dune Restoration Project is subject to regulation and permitting under these sections. The restoration action will increase or improve beneficial ecosystem functions and the project is consistent with the goals and policies of these statutes.

Chapter 267, Fla. Stat. (Historical Resources): These provisions concern the administration of state-owned or state-controlled historic resources and promote the preservation of non-state-owned historic resources. No state cultural resources or known historic sites are believed to be affected by the Florida Dune (Pensacola Beach) Restoration Project. No state cultural resources or known historic sites are known at this time to be affected by Public Boat Ramp Enhancement and Construction Project, but final consistency with these provisions will be determined via consultation with the State Historic Preservation Office during the state permitting process.

Chapter 253, Fla. Stat. (State Lands): These provisions regulate the acquisition of land by the State, and the management, conservation, protection, disposition, and use of State-owned lands.

Florida DEP is mandated to regulate land use in order to assure the maximum benefit and use for the general public. The restoration projects will either be implemented on, or will affect the use of, State-owned lands. The Florida (Pensacola Beach) Dune Restoration Project will improve, enhance, and extend human use of public beaches by preventing or retarding beach erosion, and the Florida Boat Ramp Enhancement and Construction Project will improve and enhance access to state submerged lands. Chapter 373, Fla. Stat. (Water Resources): these provisions include regulation of management and storage of surface waters, including permitting associated with wetlands and navigable waters within the state. The Public Boat Ramp Enhancement and Construction Project is subject to regulation and permitting under these provisions, which are administered primarily by DEP and the water management districts. The Public Boat Ramp Enhancement and Construction Project has been developed in cooperation with DEP. Any concerns regarding the maintenance of surface water quality and the preservation of associated natural resources will be addressed in final project planning, design, and permitting. Final consistency will be indicated by the issuance of applicable state permits.

Chapter 379, Fla. Stat., (Fish and Wildlife Conservation): These provisions implement the State policy of conservation and wise use of freshwater fish and wildlife species, with particular emphasis on endangered and threatened species; require FWC to administer, develop and conserve marine fishery resources of the State, including through the protection and enhancement of the marine and estuarine environments and water quality; and recognize the importance of marine commercial and recreational fishing. Development of the Florida projects has been coordinated with FWC. Potential concerns will be addressed in project design and permitting, and continued consistency with Chapter 379, Fla. Stat., and its enforcement mechanisms will be assured through each project's respective state permitting processes.

Chapter 376, Fla. Stat. (Pollutant Discharge Prevention and Removal): The policies and goals of this chapter are highly similar to those of the Federal Oil Pollution Act under which this restoration plan was developed. These provisions prohibit the discharge of pollutants, including oil, into or upon any coastal water, estuary, tidal flat, beach or lands adjoining the seacoast. Among other things DEP is directed to recover damages resulting from pollution discharges, for use to restore damaged natural resources to pre-discharge conditions. These provisions authorize basing the measure of damages on the cost of actions to restore injured resources when restoration is feasible. The Phase 1 DERP is fully consistent with the provisions of this chapter as they may relate to early restoration.

Chapter 403, Fla. Stat. (Environmental Control): These provisions regulate routine or expected discharges of pollution into the air and waters of the State. Permits may be issued for discharges that do not unacceptably degrade water quality and if the project is in the public interest. These provisions include regulation of dredge and fill projects. Issuance of the state permits for the proposed Florida projects will be the final indicator of consistency with these provisions.

### **Conclusion**

The Phase 1 DERP DARP/EA represents the earliest opportunity for consideration of the consistency of proposed restoration projects with the FCMP. Early consideration of CZMA consistency 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 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.

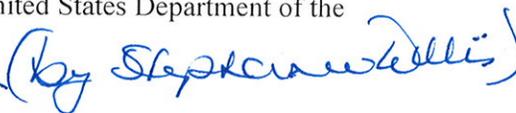
Sincerely,



Stephanie L. Willis  
Senior Attorney  
National Oceanic & Atmospheric Administration  
Interior



Harriet M. Deal  
Attorney-Adviser  
United States Department of the



(by Stephanie Willis)

Encl: Phase 1 DERP for the Deepwater Horizon Oil Spill