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

OFFICE OF THE GENERAL COUNSEL
Natural Resources Section
263 13th Avenue South, Suite 177
St. Petersburg, FL 33701

March 1, 2012

Keith Lovell
Administrator
Office of Coastal Management, Interagency Affairs, Field Services & Compliance Division
Louisiana Department of Natural Resources
P.O. Box 44487
Baton Rouge, LA 70804

Dear Mr. Lovell,

The enclosed Draft Phase 1 Early Restoration Plan and Environmental Assessment (Phase 1 DERP)[1] for the Deepwater Horizon Oil Spill proposes implementation of two early restoration projects within Louisiana'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 Louisiana's approved Coastal Resource Program (LCRP) and have found that, as best as can be determined at this level of planning, the activities associated with these aforementioned early restoration projects will be consistent to the maximum extent practicable with the LCRP.

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 Louisiana's Coastal Protection and Restoration Authority (CPRA), Oil Spill Coordinator's Office (LOSCO), Department of Natural Resources (LDNR), Department

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

of Environmental Quality (LDEQ), and Department of Wildlife and Fisheries (LDWF), 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 damage 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.

The 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 damage 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 Oil Spill in relation to BP's natural resource damage 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 CPRA, LOSCO, LDNR, LDEQ, and LDWF. It is subject to public review and comment. That comment period was initiated on December 15, 2011, and ended 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 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 Louisiana:

(1) **Lake Hermitage Marsh Creation – NRDA Early Restoration Component** – This project involves the creation of approximately 104 acres of brackish marsh within the footprint of a base project, known as the "Lake Hermitage Marsh Creation Project", developed for and funded through the Coastal Wetlands Planning, Protection and Restoration Act (CWPPRA) Program. The Lake Hermitage Marsh Creation Project (BA-42) was approved for CWPPRA funding in 2006 as part of Priority Project List #15. The NRDA Early Restoration Component would be a substitute for approximately 5-6 acres of earthen terraces that had been included for construction within the CWPPRA project boundary.

The project site is within the Barataria Hydrologic Basin in Plaquemines Parish, Louisiana, to the west of the community of Pointe a la Hache, and northwest of the community of Magnolia. The primary goals of the CWPPRA-approved base project are to restore the eastern Lake Hermitage shoreline to reduce erosion and prevent breaching into the interior marsh and to re-create marsh in

the open water areas south and southeast of Lake Hermitage. The base project's elements included: (1) creating 549 acres of marsh by filling open-water areas and fragmented marsh with dredged material; (2) restoring approximately 6,106 linear feet of the eastern Lake Hermitage shoreline; and (3) creating 5 acres of emergent habitat by constructing 7,300 linear feet of earthen terraces, over a terrace field of approximately 104 acres. The opportunity to create 104 acres of marsh in the terraces field was considered throughout the engineering and design phases of the CWPPRA base project, however, due to funding constraints, the final design of the base project included the earthen terraces. The NRDA Early Restoration Component will create that additional 104 acres of brackish marsh in lieu of those earthen terraces.

Marsh areas would be created entirely within the base project's terrace boundary. Sediment would be hydraulically dredged from a borrow area in the Mississippi River, and pumped via pipeline to create new marsh in the project area. Over time, natural dewatering and compaction of dredged sediments should result in elevations within the intertidal range which would be conducive to the establishment of emergent marsh. The 104- acre fill area would be planted with native marsh vegetation.

(2) **Louisiana Oyster Cultch Project** – This project involves (1) the placement of oyster cultch onto approximately 850 acres of public oyster areas throughout coastal Louisiana, including 3-Mile Bay, Drum Bay, Lake Fortuna, South Black Bay, Hackberry Bay and Sister Lake, and (2) construction of an oyster hatchery facility for the production of supplemental oyster larvae and seed to be used to facilitate and expedite success of the cultch placement.

Cultch material to be used would consist of limestone rock, crushed concrete, oyster shell and other similar materials that are suitable substrate for attachment of oyster larvae and for subsequent growth. The cultch materials would be placed at a planting density of ~ 200 cubic yards/acre, with appropriate adjustment based on water bottom characteristics at the time of project implementation. This project component would be implemented by the LDWF. LDWF will contract for the placement of cultch materials and employ cultch planting approaches utilized by LDWF since 1917.

LDWF would contract to construct a new hatchery building in partnership with Louisiana Sea Grant next to the LDWF Research Lab on Grand Isle and the existing Sea Grant oyster hatchery. The site is currently undeveloped[2]. The footprint of the new hatchery building is anticipated to be approximately 8400 square feet. Hatchery operations would include broodstock maintenance, algal cultivation, larvae production, and a nursery system. The nursery system would produce "eyed" larvae stage (approximately 15 days), "spat" (larvae that has settled and set onto small pieces of shell), and seed oysters (~ 1 inch in length). When oysters reach approximately 1 inch in length they would be moved to a suitable growout area (i.e. public oyster areas). Broodstock (adult oysters used in oyster breeding) are collected in Louisiana waters and would continue to be located at the LDWF Research Lab. The system would use the water from, and would replace the water to, the bay immediately adjacent to the new facility. Planned capacity for the hatchery system is approximately 8,000 gallons of water per day from April through October. The facility is designed to produce 1 billion eyed larvae per season.

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[2] This new building would be constructed next to the LDWF Research Lab. The site is currently undeveloped, is approximately 20,186 square feet, is owned by the Grand Isle Port Commission and is leased by Louisiana State University (LSU). LSU has plans to construct an additional building at this site, but construction of this building is not part of the early restoration project. Activities currently housed at the LDWF Research Lab will relocate to the new hatchery building once it is constructed.

Summary of CZA Analysis

Lake Hermitage Marsh Creation – NRDA Early Restoration Component – LDNR's Office of Coastal Management (OCM) has previously reviewed this proposed Project and found it to be consistent with the principal policies of the LCRP. That documentation appears in two letters issued by your office as part of the permitting phase for the Project, the first dated March 11, 2009 and the second dated September 15, 2011. Copies of these letters are enclosed for your convenience. The Project has not changed since last reviewed by OCM, therefore, NOAA and DOI have determined the Project to be consistent with the LCRP, relying on the existing finding of consistency issued by OCM.

Louisiana Oyster Cultch Project – This Project involves three types of activities (1) placement of cultch material on ~ 850 acres of public seed grounds for oysters, (2) construction and operation of an oyster hatchery/nursery facility and (3) introduction of seed oysters produced at that facility back on to public seed grounds. The LCMP policies applicable to activities within Louisiana's coastal zone are found within the State's Coastal Use Guidelines (Guidelines)[3]. The LCMP's Coastal Use Permit system[4] is the principal means for implementing these Guidelines in Louisiana's coastal zone. Although component activities included in the Louisiana Oyster Cultch Project will be subject to permitting and consistency review under that system, the Phase I DERP represents the earliest opportunity for NOAA and DOI to consider and document the consistency of the proposed early restoration actions with applicable LCMP policies.

In evaluating the Project's consistency with the LCMP, NOAA and DOI considered the following policies as potentially applicable to the Project's component activities: (1) Guidelines for Linear Facilities, La. Admin Code 43:I.705; (2) Guidelines for Surface Alterations, La. Admin. Code 43:I.711; (3) Guidelines for Disposal of Wastes, La. Admin Code 43:I.715; (4) Guidelines for Uses that Result in the Alteration of Waters Draining into Coastal Waters, La. Admin. Code 43:I.717 and (5) Guidelines Applicable to All Uses, La. Admin. Code 43:I.701. The basis for determining the Project's consistency with each of these Guidelines is reflected in the following summaries:

(1) §705. Guidelines for Linear Facilities – "Linear Facilities" refers to "uses and activities which result in creation of structures or works which are primarily linear in nature." LAC 43:700. Examples include pipelines, roads, canals, channels, and powerlines. Construction of the oyster hatchery may include running of additional lines for needed water, electric power and sewer services as well as some additional road area for access purposes. However, these will be minimal as they will be local to the construction site and tie into pre-existing infrastructure at that location. Neither the placement of cultch material on nor the introduction of seed oysters into public oyster grounds involve the creation of a linear facility.

(2) §711.Guidelines for Surface Alterations - The guidelines for "surface alterations" concern activities that involve and may contribute to growth in industrial, commercial, urban, residential, and recreational uses within the coastal zone. Growth is encouraged in suitable areas and ways and the guidelines seek to meet that goal through application of listed requirements, to the maximum extent practicable. "Surface alterations" include 'those uses and activities which change the surface or usability of a land area or water bottom." La. Admin. Code 43.I.700. The guidelines list many requirements, covering a wide variety of possible "surface alteration" activities.

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[3] The Guidelines, found at La. Admin Code 43:I.701 - .719, were adopted pursuant to the State and Local Coastal Resources Management Act of 1978.

[4] This system is established and defined in the Rules and Procedures for Coastal Use Permits, La. Admin Code 43:I.723.

This Project will result in deployment of oyster cultch material over existing public oyster grounds in submerged coastal waters, including in 3-Mile Bay, Drum Bay, Lake Fortuna, South Black Bay, Hackberry Bay and Sister Lake. This action is entirely consistent with the current usage of these State submerged lands. The action involves use of clean materials only (i.e., limestone rock, crushed concrete, oyster shell and other similar materials suitable for attachment and growth of oyster larvae) at densities suitable to the areas targeted for enhancement. The action will be implemented by LDWF with methods successfully used by LDWF since 1917.

The Project also involves construction of an oyster hatchery facility on property next to a LDWF Research Lab and Sea Grant hatchery in Grand Isle. The construction site is suitable for the proposed structure, the action is entirely in keeping with the current usage of the adjacent lands, and construction at this location will benefit from pre-existing infrastructure at that location (such as roads, electrical, water and sewer lines, etc). The construction site is entirely an upland area; no wetlands need to be drained or filled. Operation of the hatchery's nursery system will draw (be dependent on) water from nearby coastal waters (estimated at 8000 gallons per day from April through October) but will replace the same amount each day. Further, the facility's design will incorporate any features or operations needed to ensure that water returned to coastal waters meets any applicable water quality standards.

(3) §715. Guidelines for Disposal of Wastes – The guidelines for "disposal of wastes" are concerned with the location and operation of facilities that store, treat, and dispose of wastes and seek to avoid these practices occurring in wetlands and to minimize adverse impacts that may result from such operations.

Neither the placement of cultch material on nor the introduction of seed oysters into public oyster grounds involve the disposal of any wastes or will occur in wetlands. As such, these guidelines do not appear to be applicable to these component activities of the Oyster Project. Similarly, the primary functions of the oyster hatchery/nursery facility do not involve the storage, treatment or disposal of waste and the facility will not be constructed in and its operation will not affect any wetlands. The oyster hatchery/nursery facility are potentially subject to these guidelines only to the extent the facility may generate and need to dispose of wastes or waste water that are incidental to its hatchery and nursery system operations. None of any such "wastes", however, would be hazardous, radioactive, at risk of leaching, or at risk of entering any wetlands. The design of the facility will incorporate any features or operations needed to treat and/or dispose of any incidental waste, including waste waters, in accordance with best management practices and any applicable water quality standards.

(4) §717. Guidelines for Uses that Result in the Alteration of Waters Draining into Coastal Waters - These guidelines are largely concerned with upland and upstream water management programs with the potential to affect coastal waters and wetlands, but they also encompass runoff from developed areas. The guidelines seek to ensure that such runoff is managed, to the extent practicable, to simulate natural water patterns, quantity, quality and rate of flow.

Neither the placement of cultch material on or the introduction of seed oysters into public oyster grounds nor the construction and operation of the oyster hatchery/nursery facility involve actions that have the potential to affect waters draining into coastal waters. There is the potential for storm water runoff from the oyster hatchery/nursery facility to enter coastal waters, however, such runoff is already occurring at the site and construction of that facility will not affect the current pattern, quantity, quality or rate of flow in any way.

(5) §701. Guidelines Applicable to All Uses - These guidelines largely include information and guidance bearing on the use, interpretation, and legal effect of the guidelines themselves and on the information to be considered by and the responsibilities of permitting authorities in the process of systematically considering and making determinations with respect to the permitting of activities in the coastal zone.

These guidelines, however, also summarize general policies with respect to activities in the coastal zone that are focused on maintaining the long term viability and productivity of the coastal ecosystem. The guidelines provide that activities are to be planned, sited, designed, constructed, operated, and maintained to avoid significant adverse impacts to the coastal environment by a wide variety of activities, including from discharges of inorganic nutrient compounds; alterations in natural oxygen concentrations in coastal waters; destruction or alteration of wetlands and water bottoms; changes in salinity regimes; changes in littoral and sediment transport processes; discharges of suspended solids (including from dredging); land loss through erosion and subsidence; and impacts from floods, hurricanes and other storms. The guidelines also seek to ensure conformance with applicable water and air quality laws, standards and regulations, to avoid compromise of the State's interest in granted and donated lands or water bottoms, to allow for multiple concurrent uses appropriate to location, and to avoid unnecessary conflicts in uses.

The Oyster Project activities are to help restore and enhance the oyster resource in Louisiana coastal waters. None of the project's component actions will affect any wetlands, littoral or sediment transport processes, salinity regimes or oxygen concentrations in coastal waters. None of the Oyster Project activities pose any risk of coastal land loss by any means or have the potential to increase or decrease potential impacts from floods, hurricanes and other storms. Certain activities may give rise to minor, temporary, localized effects in immediately adjacent waters (e.g., turbidity associated with initial placement of cultch material), but these will be minimized through the use of best practical techniques and management practices. The placement of cultch material will occur on existing oyster grounds, consistent with the historic usage and Louisiana state interest in these areas of water bottom.

Finally, Project elements will be subject to permitting (and further consistency review) under Louisiana's Coastal Use Permit system. This process ensures that further details regarding the plan for all Project activities are reviewed, as appropriate, by permitting authorities and approved prior to implementation. This process also ensures actions will be undertaken in conformance with applicable water and air quality laws, standards and regulations.

Other LCRP Guidelines Considered Inapplicable – The following additional elements of the LCRP Guidelines were considered but, based on our review, did not appear to be applicable to any component of this Project:

§703. Guidelines for Levees
§707. Guidelines for Dredged Spoil Deposition
§709. Guidelines for Shoreline Modification
§713. Guidelines for Hydrologic and Sediment Transport Modifications
§719. Guidelines for Oil, Gas, and Other Mineral Activities

Conclusion

The Phase 1 DERP represents the earliest opportunity for consideration of the consistency of proposed early restoration projects with the LCRP. Early consideration of CZMA consistency will provide support for finalizing the selection of these projects and help the participating federal and state 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

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

Encl: Phase 1 DERP for the Deepwater Horizon Oil Spill

Letter dated 3/11/2009 from LDNR, Office of Coastal Management (Rives), to Office of Coastal Protection and Restoration (Cantu) re Lake Hermitage Marsh Creation (CWPPRA Project BA-42; C20090038)

Letter dated 9/15/2011 from LDNR, Office of Coastal Management (Lovell), to Office of Coastal Protection and Restoration (Simoneaux) re Lake Hermitage Marsh Creation (CWPPRA Project BA-42; C20090038 Mod 1)

BOBBY JINDAL
GOVERNOR

SCOTT A. ANGELLE
SECRETARY

State of Louisiana

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF COASTAL RESTORATION AND MANAGEMENT

March 11, 2009

Kristi Cantu
Office of Coastal Protection and Restoration
P. O. Box 44027
Baton Rouge, LA 70804

RE: **C20090038** Coastal Zone Consistency
USFWS
Lake Hermitage Marsh Creation CWPPRA Project BA-42, **Plaquemines Parish, Louisiana**

Dear Ms. Cantu:

The above referenced project has been reviewed for consistency with the approved Louisiana Coastal Resource Program (LCRP) as required by Section 307 of the Coastal Zone Management Act of 1920, as amended. The project as proposed in the application is consistent with the LCRP.

If you have any questions concerning this information request, please contact Brian Marcks of the Consistency Section at (225)342-7939 or 1-800-267-4019.

Sincerely yours,

Karl L Moy for

Jim Rives
Administrator

JR/JH/bgm

cc:

James F. Boggs, USFWS, Lafayette
Pete Serio, COE-NOD
Rick Hartman, NMFS
Frank Cole, CMD FI
Albertine Kimble, Plaquemines Parish

BOBBY JINDAL
GOVERNOR

SCOTT A. ANGELLE
SECRETARY

State of Louisiana

DEPARTMENT OF NATURAL RESOURCES
OFFICE OF COASTAL MANAGEMENT

RECEIVED
2011 SEP 20 AM 9:56
LA-OCPR

September 15, 2011

Rudolph A. Simoneaux
Office of Coastal Protection and Restoration
P. O. Box 44027
Baton Rouge, LA 70804-4027

RE: **C20090038 Mod 1** Coastal Zone Consistency
USFWS
Lake Hermitage Marsh Creation CWPPRA Project BA-42; modification includes omission of 7,300 feet of earthen terraces, expansion of Marsh Creation Fill Site B by 104 acres, addition of 5,700 feet of earthen containment dikes, and increase of the maximum dredging elevation in the Mississippi River borrow area from -66.0 feet NAVD 88 to -76.0 feet, **Plaquemines Parish, Louisiana**

Dear Mr. Simoneaux:

The above referenced modification has been reviewed for consistency with the approved Louisiana Coastal Resource Program (LCRP) as required by Section 307 of the Coastal Zone Management Act of 1920, as amended. The modification as proposed in the application is consistent with the LCRP. If you have any questions concerning this information request, please contact Brian Marcks of the Consistency Section at (225)342-7939 or 1-800-267-4019.

Sincerely,

Keith Lovell

Keith Lovell
Administrator
Interagency Affairs/Field Services Division

KL/JH/bgm
cc: James F. Boggs, USFWS, Lafayette
Kristi Cantu, OCPR
Pete Serio, COE-NOD
Rick Hartman, NMFS
Frank Cole, CMD FI
Albertine Kimble, Plaquemines Parish

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