



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

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February 17, 2012

Ms. Willa Brantley  
Director, Bureau of Wetlands Permitting  
Mississippi Department of Marine Resources  
1141 Bayview Avenue  
Biloxi, MS 39530

Dear Ms. Brantley:

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 Mississippi'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 Mississippi Coastal Management Program (MCP) and have found that these proposed restoration actions are consistent to the maximum extent practicable with the applicable, enforceable policies of the MCP. This letter submits that determination for State review. The Mississippi Department of Marine Resources has already certified the individual Mississippi projects included in the Phase I DERP and found them to be consistent with the MCP.

#### 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

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<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>



Gulf coast (collectively, the Trustees), including the Mississippi Department of Environmental Quality (MDEQ), 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.

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 MDEQ. 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 Mississippi:

Mississippi Oyster Cultch Early Restoration Project: The goal of this project is to restore and enhance oyster cultch areas in the marine waters of the Mississippi Sound in Hancock and Harrison counties. This project will restore and enhance approximately 1,430 acres of the oyster cultch areas within the Mississippi Sound. Cultch material (oyster shell, limestone or crushed concrete, or some combination thereof) will be deployed at a rate of 100 cubic yards per acre with adjustments for site conditions as needed. Deployment would occur in Spring 2012, Fall 2012 and Spring 2013.

Mississippi Artificial Reef Habitat Project: The Mississippi Artificial Reef Habitat project

proposes to deploy nearshore artificial reefs in Mississippi Sound. Currently there are 67 existing reefs areas that are each approximately 3 acres in size. At present, approximately half of the existing reef areas have a low profile and consist of crushed concrete or limestone. With the proposed project, approximately 100 acres of crushed limestone would be added to the 201-acre footprint of the existing reef areas.

The PHASE 1 DERP summarizes information considered by the Trustees and supporting these proposed restoration actions.

### **Summary of MCP 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 DMR, Coastal Program commenting agencies include the Mississippi Department of Archives and History and the Mississippi Department of Environmental Quality Office of Pollution Control, and Office of Land and Water Resources. The primary authority guiding the Coastal Program is the Mississippi Coastal Wetlands Protection Act.

The Oyster Culch Restoration Project and the Artificial Reef Habitat Project have been determined by NOAA and DOI to be consistent with all enforceable policies of the MCP. NOAA and DOI consider the principal policies of the MCP that are potentially relevant to actions described in the Phase 1 DERP to be those relating to:

1. Favoring 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 public trust in which the coastal wetlands are held. Preservation for biological productivity is the dominant public interest in the wetlands.
2. Protecting, propagating, and conserving the state's seafood and aquatic life in connection with the revitalization of the seafood industry of the State of Mississippi.
3. Conserving 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 domestic, agricultural, industrial, recreational, and other legitimate beneficial uses.
4. Putting to beneficial use to the fullest extent of which they are capable the water resources of the state, and to prevent the waste, unreasonable use, or unreasonable method of use of water.
5. Preserving the state's historical and archaeological resources, to prevent their destruction, and to enhance these resources wherever possible.

The basis of our determination of consistency with these potentially applicable, enforceable policies is reflected in the following summaries:

1. The Mississippi Department of Marine Resources found the oyster culch restoration activities consistent with the MCP by Certificate of Waiver (DMR-090383), dated March 6, 2009, and completed the required notification with the MCP coastal program agencies.
2. The Mississippi Department of Marine Resources found the artificial reef habitat activities consistent with the MPC by Certificate of Waver (DMR-120097), dated October 28, 2011,

- and completed the required notification with the MCP coastal program agencies.
- Both projects were found to be in compliance with the public policy of wetlands protection set forth in Mississippi Code Section 49-27-3, based on criteria set forth in the MCP.
  - Neither project has changed since these reviews were completed.

### Conclusion

NOAA and DOI have found that the proposed restoration actions are consistent with the applicable, enforceable policies of the MCP, as evidenced by the identified finding and actions of the Mississippi Department of Marine Resources.

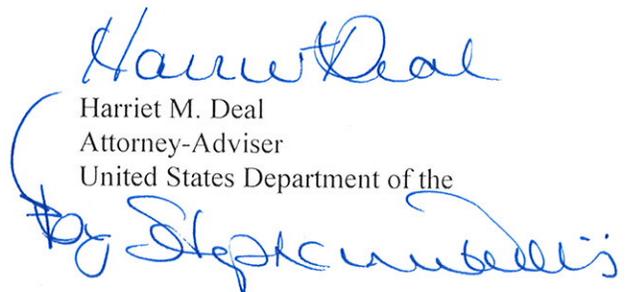
The Phase I DERP DARP/EA represents the earliest opportunity for consideration of the consistency of proposed restoration projects with the MCP. Early consideration of CZMA consistency will provide support for finalizing the selection of these projects and help the participating federal, state and local 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. Additionally, because the Mississippi Department of Marine Resources has already certified that the individual Mississippi projects are consistent with the MCP, we request that a 15-day abbreviated comment period be provided for the Mississippi Coastal Program Agencies with regard to this Phase I DERP, as those agencies have already had an opportunity to comment on the individual Mississippi projects included in the Phase I DERP. We thank you in advance for your efforts to accommodate this request.

Sincerely,



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



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

Encl: Phase I DERP for the Deepwater Horizon Oil Spill