

## APPENDIX G-5:

### FINDING OF NO SIGNIFICANT IMPACT For the Osprey Restoration in Coastal Alabama Project

#### Overview and Background

The Department of the Interior (DOI), National Oceanic and Atmospheric Administration (NOAA), Environmental Protection Agency (EPA), and United States Department of Agriculture (USDA), (collectively “Federal Trustees”) have conducted an environmental assessment (EA) for the Osprey Restoration in Coastal Alabama project. The project involves the installation of five osprey nesting platforms along the coast in Mobile and Baldwin Counties, Alabama in order to provide enhanced nesting opportunities for piscivorous raptors, including osprey and will be implemented by the Alabama Department of Conservation and Natural Resources (ADCNR). The project is an early restoration project to be funded as part of the *Deepwater Horizon* Natural Resource Damage Assessment and Restoration process in accordance with the “Framework for Early Restoration Addressing Injuries Resulting from the *Deepwater Horizon* Oil Spill.” This project is one of several projects to be implemented by the Trustees as identified in the Final Phase IV Early Restoration Plan and Environmental Assessments (Final Phase IV ERP/EA) to accelerate restoration, and represents an initial step toward the restoration of natural resources injured by the *Deepwater Horizon* oil spill (Spill).

Under the Oil Pollution Act of 1990, damages recovered from parties responsible for natural resource injuries are used to restore, replace, rehabilitate and/or acquire the equivalent of the injured natural resources and services they provide (33 U.S.C. 2706). When Federal Trustees are involved, these restoration activities are subject to the requirements of the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 et seq. Therefore, the Trustees prepared this environmental assessment (EA) to evaluate the potential environmental impacts associated with the proposed restoration activities for the recovery of osprey and their associated habitat. This EA tiers from the Final Phase III Early Restoration Plan and Programmatic Environmental Impact Statement (Final Phase III ERP/PEIS) prepared by the Trustees in 2014 and is prepared in accordance with NEPA, Council on Environmental Quality (CEQ) NEPA regulations, and all applicable agency NEPA regulations and guidance.

#### Summary of Proposed Action and Alternatives

CEQ and the regulations implementing NEPA require the decision maker to consider the environmental effects of the proposed action and a reasonable range of alternatives, including the No Action Alternative, (40 C.F.R. § 1502.14). The EA addresses the proposed action and a No Action alternative. The purpose of, and need for the proposed action is to partially restore piscivorous raptors injured as a result of the *Deepwater Horizon* incident and to enhance osprey nesting in coastal Alabama.

The proposed action is being selected because it will result in more efficient recovery of bird nesting compared to the No Action Alternative. The Osprey Restoration in Coastal Alabama Project will install five osprey nesting platforms along the coast in Mobile and Baldwin Counties, Alabama. Five general areas have been identified for the location of these platforms (from west to east): the vicinity of Portersville Bay, the vicinity of Dauphin Island, the vicinity of Fort Morgan, the vicinity of the Little Lagoon in Gulf Shores, and in Gulf State Park.

Under the No Action Alternative, the Trustees would not pursue the Osprey Restoration in Coastal Alabama project as part of Phase IV Early Restoration. Under No Action, the existing conditions described in Chapter 9 would prevail. Restoration benefits associated with this project would not be achieved at this time. The Final EA and this Finding of No Significant Impact were prepared after considering input from the public during the public comment period for the Draft Phase IV ERP/EA.

## Analysis Summary

The Federal Trustees evaluated potential environmental effects of the proposed action and analyzed the significance of this action based on NEPA, CEQ NEPA regulations, and all applicable agency NEPA regulations and guidance. CEQ regulations (40 CFR §1508.27) state that the significance of an action should be analyzed both in terms of “context” and “intensity.” Each criterion discussed below is relevant to making a Finding of No Significant Impact and we considered each criterion individually, as well as in combination with the others. The Final Phase IV ERP/EA’s analysis of the environmental consequences of each component of this proposed project suggests that minor (or less) long and short-term adverse impacts to some resource categories and no moderate or major adverse impacts are anticipated to result from any of the project components described above. See the Final Phase IV ERP/EA Chapter 9, section 9.2.5. When environmental consequences were reviewed across the full Osprey Restoration in Coastal Alabama Project, the analysis suggests that resources would either not be affected by project activities or have minor adverse and/or beneficial impacts, as discussed below and in the Phase IV ERP/EA Chapter 9.

- Impacts to the physical environment (geology and substrates, water resources, and noise) were assessed in the Final Phase IV ERP/EA Chapter 9, sections 9.2.5.1, 9.2.5.2, and 9.2.5.3, and would be minor. Minor short-term adverse impacts to geology and substrates are associated with the construction and installation of the nesting platforms. Minor impacts to water resources could occur from the construction of nesting platforms near inland waters or wetlands, and impacts from noise would be short-term and minor, lasting only during the less-than-one-day construction period at each site.
- Impacts to the biological environment (living coastal and marine resources, wildlife and habitat, and threatened and endangered species) were assessed in the Final Phase IV ERP/EA Chapter 9, sections 9.2.5.2.1; 9.2.5.2.2; and 9.2.5.2.3 and would be temporary and minor. The Osprey Restoration in Coastal Alabama project would have a short-term minor adverse impact on the living coastal and marine resources evaluated in detail (wildlife and wildlife habitat and threatened and endangered species). The majority of living coastal and marine resources are not

expected to be affected by the proposed action because the platforms would not be placed in open water. Some invertebrates may be impacted by the placement of the platforms and disturbed during the establishment of the holes for the platforms. Once in operation, the placement of the platforms would not result in habitat fragmentation and would not result in adverse impacts. In addition, the platforms would provide additional nesting habitat for osprey and opportunistically for other species such as bald eagle, resulting in long-term beneficial impacts to that species.

- Impacts to human uses (visual and aesthetic resources) were analyzed in the Final Phase IV ERP/EA Chapter 9, section 9.2.5.3.2, and would be minor. Short- and long-term, minor adverse impacts to aesthetics and visual resources and tourism and recreation would occur as a result of construction of the nesting platforms restricting access to areas during the brief construction period, and the long-term change in the visual environment from the platforms.
- The project is not expected to have any significant adverse effects on wetlands and floodplains, pursuant to Executive Orders 11990 and 11988 because the project activities will not take place within any floodplain, and would have no effect on this resource. Any construction in close proximity to and/or in tidal wetlands will be closely monitored by the ADCNR or its agent. Vehicles will be restricted to adjacent uplands and no vehicles will be allowed to enter any wetlands. All construction activities other than foot traffic, the auguring holes and the actual insertion of the platform into the augured hole will be restricted to adjacent uplands. Any sediments remaining from hole excavation will be manually removed from wetlands and placed on adjacent uplands.
- Because the proposed project has reasonably foreseeable effects on coastal uses or resources that are the subject of federally approved Coastal Zone Management Plans in Alabama, the Federal Trustees submitted a consistency determination for the project to the Alabama Department of Environmental Management (ADEM). ADEM concurred with that determination on behalf of its state.
- In relation to other restoration actions with individually insignificant impacts, there would be no significant adverse cumulative impacts anticipated from implementation of this project, due in part to its scale and scope (See the Final Phase IV ERP/EA Chapter 9, sections 9.2.6).
- Construction of the nesting platforms would have minor, very localized and short-term impacts within the project footprint areas, and the intensity of adverse effects to biodiversity or ecosystem function from this will be very minor with no significant effects. The project would also have no substantial impact to any ocean, coastal, or essential fish habitats (EFH) as defined under the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA).
- The project's potential impacts are not controversial and the project is supported by the general public. It will benefit a variety of injured resources with no significant impacts to unique areas such as historic or cultural resources, park land, prime farmlands, wetlands, or ecologically

critical areas. It will have no effects on the human environment that would be highly uncertain or involve unique or unknown risks.

- Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA): To fulfill requirements and obligations under ESA and MMPA, NOAA and DOI completed a review of the Osprey Restoration in Coastal Alabama Project for compliance with Section 7 of the Endangered Species Act of 1973 (ESA), as amended (16 U.S.C. 1531 et seq.) and Section 101 of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1371(a)(5) et seq.). Refer to Phase IV ERP/EA Chapter 9, section 9.2.5.2.3. The Trustees initiated ESA Section 7 consultations with the NMFS SERO's Protected Resources Division and the USFWS Alabama Ecological Services Field Office. Because no project activities will take place in Alabama beach mouse critical habitat and because conservation measures will be properly implemented, the Trustees have determined the proposed project may affect, but will not likely adversely affect the Alabama beach mouse. Accordingly, the Trustees have made a "Not Likely to Adversely Affect" determination under the ESA for the Alabama beach mouse. For all other threatened, endangered, and candidate species in the area (see table 9-2), the Trustees made No Effect determinations. In June 2015, the Trustees requested concurrence from the USFWS regarding these determinations (DOI 2015). The U.S. Fish and Wildlife Service provided concurrence with this determination on July 10, 2015 (USFWS 2015).
- The proposed action is not expected to result in the introduction or spread of any non-indigenous species.
- The proposed action would use well-established nesting restoration techniques, with best management practices that have been used effectively in other projects. There is no expectation it would threaten a violation of Federal, State, or local law or requirements imposed for the protection of the environment, and is not expected to establish a precedent for future actions with potential significant effects. However, the extent of success of the project will be monitored closely, and the approach and design may be applied, adopted, or modified for other future osprey restoration projects.

Copies of the draft EA for this project were available to the public as provided in a Federal Register notice published on May 20, 2015. See *Deepwater Horizon* Oil Spill, Draft Phase IV Early Restoration Plan and Environmental Assessments 80 FR 29019-29021 (May 20, 2015). Public comments on the Draft Phase IV ERP/EA were taken during a 47-day public comment period extending from May 20, 2015 to July 6, 2015 (80 FR 35393, June 19, 2015). Public comments received during this period have been considered and addressed by the Trustees in the Final Phase IV ERP/EA. The Final Phase IV ERP/EA is hereby incorporated by reference.

## Agency Coordination and Consultation Summary

Endangered Species Act Section 7 consultation with the USFWS has been completed and the USFWS concurred that no threatened, endangered, or candidate species or critical habitat would be adversely

affected as a result of implementing this project. The project was also reviewed for impacts to bald eagles and migratory birds in accordance with the Bald and Golden Eagle Protection Act (BGEPA) of 1940 and the Migratory Bird Treaty Act (MBTA) of 1918, and determined take would be avoided (DOI 2015).

NOAA's Restoration Center, in coordination with the Protected Resource Division (PRD) in the SERO, determined that the Osprey Restoration in Coastal Alabama Project will have No Effect to listed species under the jurisdiction of NMFS. The Trustees also coordinated with NMFS SERO's Protected Resources Division to determine that this project does not require authorization under the MMPA.

Pursuant to the Coastal Zone Management Act, the Federal Trustees submitted consistency determinations for State review coincident with public review of this document. The Alabama Department of Environmental Management concurred with that determination of consistency with the enforceable policies of the Alabama Coastal Area Management Program for these proposed activities. Additional consistency review may be required pursuant to Federal regulations (see 15 C.F.R. Part 930) prior to project implementation.

Potential impacts to cultural and historical resources protected under Section 106 of the National Historic Preservation Act were described in the Final Phase IV ERP/EA Chapter 9, Section 9.2.5.3.1. A complete review of this project under Section 106 of the National Historic Preservation Act will be completed prior to project implementation. NHPA Section 106 and Tribal consultations would further identify potential cultural resources in the project areas and any mitigation measures necessary to protect those resources.

If any further need arises to coordinate and consult with other regulatory authorities, including for example Clean Water Act Section 404 or the Rivers and Harbors Act, the additional coordination or consultation requirements will be addressed prior to project implementation. The status of Federal regulatory permits/approvals will be maintained online (<http://www.gulfspillrestoration.noaa.gov/environmental-compliance/>) and updated as regulatory compliance information changes. The Federal Trustees' Finding of No Significant Impact for this project is issued subject to the completion of all outstanding compliance reviews under other Federal laws. If the proposed action changes or information is brought to light as a result of completing such reviews that is potentially relevant to the environmental evaluation supporting this , that evaluation will be updated or supplemented as required by NEPA and a new determination made by the Federal Trustees under NEPA as to whether the proposed action is likely to significantly affect the quality of the human environment.

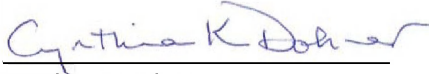
## **Determination**

In view of the information presented in this document and the environmental analysis contained in the supporting Final Phase IV ERP/EA for the Osprey Restoration in Coastal Alabama Project, the Federal Trustees have determined that the project will not significantly impact the quality of the human

environment. Accordingly, preparation of an environmental impact statement for this action is not necessary.

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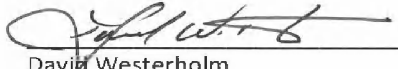
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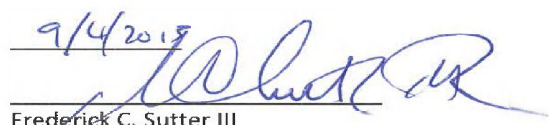
Cynthia K. Dohner  
Authorized Official, U.S. Department of the Interior

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Date: 9/8/2015

Signature:   
David Westerholm  
Director, Office of Response and Restoration  
National Ocean Service, NOAA

Date: 9/4/2015

Signature:   
Frederick C. Sutter III  
Director, Office of Habitat Conservation  
National Marine Fisheries Service, NOAA

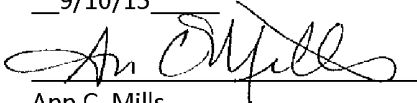


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Date:

9/10/15

Signature:



Ann C. Mills  
Deputy Under Secretary, USDA

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Date: 9/10/15

Signature:

*Kenneth J. Kopocis*  
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Principal Representative, EPA