

APPENDIX G-3:

FINDING OF NO SIGNIFICANT IMPACT

For the Bike and Pedestrian Use Enhancements at Davis Bayou, Mississippi District, Gulf Islands National Seashore

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 Bike and Pedestrian Use Enhancements at Davis Bayou in Gulf Islands National Seashore. The project involves roadway safety improvements that will be implemented by the Department of the Interior (DOI). 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).

The project has been modified since the Draft Phase IV ERP/EA was publicized. Consultation with NOAA National Marine Fisheries Service pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA) to identify potential impacts to EFH resulted in the addition of a mitigation element to the project scope. A one-acre marsh creation project within the NPS boundary of the Davis Bayou Area has been added to the scope to offset potential adverse impacts to essential fish habitat from construction. This modification is analyzed in the Final Phase IV ERP/EA and does not reflect impacts significantly above those already discussed in the Draft EA.

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 the Draft and Final Phase IV ERP/EA to evaluate the potential environmental impacts associated with implementing bike and pedestrian use enhancements at Davis Bayou in Gulf Islands National Seashore. This Final Phase IV ERP/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, the Council on Environmental Quality (CEQ) regulations, and all applicable agency NEPA regulations and guidance.

Summary of Proposed Action and Alternatives

The CEQ NEPA regulations 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 CFR § 1502.14). The EA addresses the Proposed Action, Alternative B: construction of a bicycle-pedestrian path; Alternative C: a road closure plan; and Alternative A: no action. The proposed project's purpose is to partially restore recreation lost on DOI-managed lands in the five Gulf States as a result of the Spill. The proposed project is needed to enhance the use of the Davis Bayou Area of Gulf Islands National Seashore by bicyclists and pedestrians in particular; this includes making their experiences safer and more enjoyable. The project will improve the experience of bicyclists and pedestrians in the Davis Bayou Area of Gulf Islands National Seashore. It will improve access to natural resources for recreational use through the construction and enhancement of infrastructure – i.e., the construction of multi-use trails on either side of the two main roads through the Davis Bayou area. The trails would be paved, two feet from the edge of the automobile lanes, five feet wide, and with a four foot unpaved buffer beside them (exact dimensions are pending final design). There would also be two traffic-calming devices along the northern section of Park Road.

The Proposed Action would be selected because it will result in more efficient recovery of recreational use losses compared to the No Action Alternative and Alternative C.

Alternative C would not be selected because while it would provide some recreation lost use benefits, those benefits are uncertain, are subject to the ability to implement and maintain institutional controls into the future, and provide only a nominal improvement in visitor safety.

Under the No Action Alternative the Trustees would not implement the roadway safety improvements and enhancement of infrastructure. The No Action alternative would result in a continuation of the existing unsafe conditions for pedestrians and bicyclists at the Park. 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, Council on Environmental Quality (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 (FONSI) and each criterion was considered individually, as well as in combination with the others. The Final Phase IV ERP/EA's analysis of the environmental consequences of the project suggests that minor or moderate impacts to some resource categories and no major adverse impacts are anticipated to result from project implementation. (See the Final Phase IV ERP/EA Chapter 7, sections 7.2.9.1 through 7.2.9.3.) When environmental consequences were reviewed across the full Bike and Pedestrian Use Enhancements project, the analysis suggests that resources would have no significant impacts, as discussed below and in the Phase IV ERP/EA Chapter 7:

- Impacts to the physical environment (geology and substrates, hydrology, water quality, floodplains, air quality, greenhouse gas emissions and noise) were assessed in the Final Phase IV ERP/EA Chapter 7, sections 7.2.9.1.1; 7.2.9.1.2; 7.2.9.1.3; and 7.2.9.1.4, and would range from short- and long-term, minor, adverse to short- and long-term, moderate adverse. These impacts would occur as a result of ground disturbance from soil removal, grading, and vegetation clearing; increased potential for foreign material to integrate into the natural soil regimen; placement of pilings, and creation of emergent marsh; and the production of emissions. Long-term beneficial impacts would result from improved hydrology east of Park Road. Due to the small scale and scope of the project and the use of construction best management practices (BMPs) and mitigation measures, no significant adverse impacts to the physical environment would occur.
- Impacts to the biological environment (wetlands, emergent and terrestrial habitat, wildlife and wildlife habitat, fish and fish habitat, essential fish habitat, and protected species) were assessed in the Final Phase IV ERP/EA Chapter 7, sections 7.2.9.2.1 and 7.2.9.2.2, and would be short- and long-term, minor, and adverse. These impacts would occur as a result of the use of fill; the placement of pilings; creation of emergent marsh habitat; the potential for erosion; disturbance during construction activities, an expanded development footprint; and the removal of vegetation. Long-term beneficial impacts would result from improvements to EFH and to wetlands east of Park Road. Due to the small scale and scope of the project and the use of construction BMPs and mitigation measures, no significant adverse impacts to the biological environment would occur.
- Impacts to human uses (socioeconomics and environmental justice, cultural resources, tourism and recreational use, public health and safety) were analyzed in the Final Phase IV ERP/EA Chapter 7, sections 7.2.9.3.1; 7.2.9.3.2; 7.2.9.3.3; 7.2.9.3.4; 7.2.9.3.5; 7.2.9.3.6; and 7.2.9.3.7, and would have minor to moderate short-term, adverse impacts. These adverse impacts would result from ground disturbance; temporary closures and/or minor traffic jams during construction; the temporary presence of equipment during construction; and temporary inconveniences from noise and visual intrusions. Short- and long-term beneficial impacts would result from the addition of temporary jobs during construction; creation of a safer and more pedestrian-friendly experience; and decreased potential for collisions and conflict. Due to the small scale and scope of the project and the use of construction BMPs and mitigation measures, no significant adverse impacts to human uses would occur.
- The project is not expected to have any significant adverse effects on wetlands and floodplains, pursuant to Executive Orders 11990 and 11988 11988 (and corresponding NPS Director's Orders #77-1 and #77-2) because the project activities that would take place within any wetland or floodplain would be subject to mitigation measures that would ensure no more than minor adverse impacts on these resources.
- 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 Mississippi, the Federal Trustees submitted a consistency determination for the project to the Mississippi Department of Marine Resources (Mississippi DMR). The Mississippi DMR concurred with that

determination on behalf of its state. Additional consistency review may be required pursuant to federal regulations (see 15 C.F.R. Part 930) prior to project implementation, including as part of required Federal and State permitting processes and authorizations in Mississippi, as may be applicable.

- In relation to other restoration actions with individually insignificant impacts, there would be no significant adverse cumulative impacts anticipated for target or non-target species from implementation of this project, due in part to its scale and scope (See Final Phase IV ERP/EA Chapter 7, section 7.2.11.1.6).
- Implementation of bike and pedestrian use enhancements would have localized and short-term impacts within the project footprint areas, and the intensity of adverse effects to biodiversity or ecosystem function from this would be very minor. The project would also have no significant impact to any ocean, coastal habitat, or 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 recreational use 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.
- 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 construction techniques, with BMPs 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 construction 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 that were received during this period have been considered and incorporated into the Final Phase IV ERP/EA (Chapter 15, Response to Public Comments). The Final Phase IV ERP/EA is hereby incorporated by reference.

Agency Coordination and Consultation Summary

Endangered Species Act (ESA), BGEPA, MBTA, and Marine Mammal Protection Act (MMPA): The USFWS and NMFS have reviewed the Bike and Pedestrian Use Enhancements Project and the corresponding biological evaluation form for compliance with Section 7 of the ESA. The USFWS and NMFS concurred that the BMPs and mitigation measures would be sufficient to avoid, minimize or offset impacts to

protected species such that there would be No Effect to them, and no additional conservation recommendations were required. 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. The Trustees also coordinated with NMFS SERO's Protected Resources Division to determine that this project does not require authorization under the MMPA.

Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA): The Trustees consulted with NOAA NMFS pursuant to the MSFCMA for potential impacts to essential fish habitat (EFH). After the Draft Phase IV ERP/EA was released, that consultation identified potential adverse impacts to EFH from construction and resulted in the addition of a mitigation element to the project scope to offset those potential impacts: a one-acre marsh creation project within the NPS boundary of the Davis Bayou Area. With the addition of this mitigation component, NOAA NMFS concurs that the overall effects of the project on EFH would be minimal (NOAA 2015).

Potential impacts to cultural and historical resources protected under Section 106 of the National Historic Preservation Act (NHPA) were described in the Final Phase IV ERP/EA Chapter 7, Section 7.2.9.3.2. A complete review of this project under Section 106 of the NHPA has been initiated and will be completed prior to project implementation. NHPA Section 106 and Tribal consultations will further identify potential cultural resources in the project areas and any mitigation measures necessary to protect those resources.

Any additional coordination or consultation requirements, including for example compliance with Clean Water Act Section 404 or the Rivers and Harbors Act, 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' FONSI 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 FONSI, 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 analysis contained in the supporting Final Phase IV ERP/EA for the Bike and Pedestrian Use Enhancements at Davis Bayou in Gulf Islands National Seashore, the Federal Trustees have determined that the proposed action 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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For the Bike and Pedestrian Use Enhancements at Davis Bayou, Mississippi
District, Gulf Islands National Seashore

Date: 9/10/15

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

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Date:

9/3/2015

Signature:

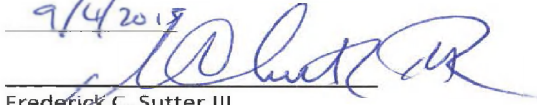


David Westerholm
Director, Office of Response and Restoration
National Ocean Service, NOAA

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*
Kenneth J. Kopocis
Principal Representative, EPA