

APPENDIX G-9:

FINDING OF NO SIGNIFICANT IMPACT For the Sea Turtle Early Restoration 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 Sea Turtle Early Restoration Project. The project involves a suite of actions to restore and protect sea turtles in the Gulf of Mexico that will be implemented by the Department of the Interior (DOI), the National Oceanic and Atmospheric Administration (NOAA), the Texas Parks and Wildlife Department, the Texas General Land Office, and the Texas Commission on Environmental Quality. 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 Federal Trustees prepared an environmental assessment (EA) to evaluate the potential environmental impacts associated with the Sea Turtle Early Restoration project. 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

The identification, consideration and analysis of alternatives are important aspects of the NEPA process and contribute to objective decision-making. 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). For the Sea Turtle Early Restoration Project, the Final Phase IV ERP/EA objectively explored reasonable alternatives, as well as alternatives considered

but eliminated from further analysis because they did not meet the stated purpose and need of the proposed action and thus not “reasonable” under NEPA.

The EA addresses the proposed action and a No Action alternative. The purpose of, and need for the proposed action is to begin to restore, replace, rehabilitate and/or acquire the equivalent of sea turtles injured by the Spill. The proposed action is being selected because it will result in more efficient restoration that will help address of sea turtle losses compared to the No Action Alternative. The Sea Turtle Early Restoration Project consists of four project components: (1) Kemp’s ridley sea turtle nest detection and enhancement; (2) enhancement of the Sea Turtle Stranding and Salvage Network (STSSN) and development of an emergency response program; (3) Gulf of Mexico shrimp trawl bycatch reduction; and (4) Texas enhanced fisheries bycatch enforcement.

Under the No Action Alternative the Trustees would not receive funding to implement new and enhance existing programs and support for existing programs may be highly variable and the level of effort provided may not remain constant. The No Action alternative would result in a continuation of these existing programs and policies, without the additional funding, staffing, infrastructure and enhancements of the proposed action. Under No Action, the existing conditions described for sea turtle resources would prevail. Restoration benefits associated with this project would not occur.

The alternatives considered but eliminated from further consideration involved variations to the project scope and duration of each component, as well as different arrangements of components. When considering the project component Enhancement of the Sea Turtle Stranding and Salvage Network and Development of the Emergency Response Program, the Trustees considered an alternative that did not include the Emergency Response portion. Ultimately, the Trustees included the Emergency Response Program because it was found to be an effective addition to the early restoration project that would create the greatest benefit to the resource when combined with actions to enhance the STSSN. When considering the duration of this project component, as well as the Kemp’s Ridley Sea Turtle Nest Detection and Enhancement, Shrimp Trawl Bycatch Reduction and the Texas Enhanced Fisheries Bycatch Enforcement project components, the Trustees initially considered alternatives that defined the project durations as 5 or 6 years depending on the project component, instead of 10 years. These shorter duration alternatives proved to be infeasible in the context of the Framework Agreement.

The Sea Turtle Early Restoration Project components are analyzed and described in an EA composed of three sections based on observed similarities between the four components that comprise the project. The three sections of the project EA are:

- 1) Kemp’s Ridley Sea Turtle Nest Detection and Enhancement;
- 2) Enhancement of the Sea Turtle Stranding and Salvage Network and Development of a Sea Turtle Emergency Response Program; and
- 3) Gulf of Mexico Shrimp Trawl Bycatch Reduction and Texas Enhanced Fisheries Bycatch Enforcement. (This section combines two project components.)

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.” Criteria discussed below are relevant to making a Finding of No Significant Impact. Each criterion was considered individually, as well as in combination with the others. The analysis of the environmental consequences of each component of the proposed Sea Turtle Early Restoration Project determined that minor (or less) 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 13, sections 13.2.5.3 through 13.2.5.5; 13.2.7.1 through 13.2.7.3; 13.2.9.1 through 13.2.9.3; and 13.2.10 (overall summary). When environmental consequences were reviewed across the entire Sea Turtle Early Restoration Project, the analysis suggests that resources would either not be affected by project activities or have minor adverse and/or minor to moderate beneficial impacts, as discussed below and in the Final Phase IV ERP/EA Chapter 13:

- Impacts to the physical environment (geology and substrates, air quality/ greenhouse gas emissions and noise) were assessed in the Final Phase IV ERP/EA Chapter 13, sections 13.2.5.3; 13.2.7.1; and 13.2.9.1, and would be minor. Minor long-term adverse impacts to geology and substrates are associated with the construction of cabins. Minor short-term adverse impacts to hydrology and water resources, air quality, greenhouse gas emissions, and noise are expected due to construction activity.
- Impacts to the biological environment were assessed in the Final Phase IV ERP/EA Chapter 13, sections 13.2.5.4; 13.2.7.2; and 13.2.9.2, and would be short-term and minor. Some minor, short-term adverse impacts to living coastal and marine resources such as foraging shorebirds including Piping plover and Red knot could occur. The enhanced STSSN and emergency response program would strive to help protected species through rescue, rehabilitation, and the bycatch reduction efforts would reduce mortalities of loggerhead, green and Kemp’s ridley sea turtles. Kemp’s ridley sea turtles would also benefit from nest protection activities occurring in Mexico and Texas. Long-term beneficial impacts are expected for loggerhead, Kemp’s ridley, and green sea turtles, with additional benefits to leatherback and hawksbill sea turtles. However, the intensity and context of these beneficial impacts would not be significant, relative to the overall populations of sea turtles in the Gulf of Mexico.
- Impacts to human uses and socioeconomics were analyzed in the Final Phase IV ERP/EA Chapter 13, sections 13.2.5.5; 13.2.7.3; and 13.2.9.3, and would be minor and short-term. Socioeconomics and environmental justice issues would not be impacted. Land and marine management and infrastructure was determined to have no adverse impact; however,

beneficial impacts to land management and infrastructure at Padre Island National Seashore would occur by providing safe and needed infrastructure for patrollers. Short-term, minor beneficial impacts to aesthetics and visual resources and tourism and recreation would occur as a result of construction of new cabins. Minor, short-term adverse impacts to tourism and recreation could occur during the construction phase of the cabins. Infrastructure would not be adversely impacted; however, it will be benefited through the construction of safe, strategically located cabins and corrals. Public health and safety could have short-term minor adverse impacts due to construction and the potential for hazardous materials spills through increased the use of marine vessels; however, safety procedures would minimize those impacts.

- The project is not expected to have any significant adverse effects on wetlands or floodplains, pursuant to Executive Orders 11990 and 11988. Negligible to minor, direct, adverse effects would occur to floodplains from construction of two new sea turtle cabins along the Gulf of Mexico shoreline; however, the two new facilities would be constructed on stilts, placing the facility above storm water velocity elevations. While the Gulf of Mexico beach is considered wetland and the proposed project is located within these areas, the construction of these cabins would be elevated.
- Because the Sea Turtle Early Restoration project has reasonably foreseeable effects on coastal uses or resources that are the subject of federally approved coastal zone management plans in each of the Gulf States, the Trustees submitted a consistency determination for the entire project for review by the appropriate agencies in each State. Each agency concurred with that determination on behalf 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 each State, as may be applicable.
- No significant adverse direct, indirect or cumulative impacts are anticipated from implementation of this project, due in part to its scale and scope (refer to the Final Phase IV ERP/EA Chapter 13, sections 13.2.11).
- Construction of the cabins would have localized and short-term impacts within the project footprint areas, and the intensity of adverse effects from this will be very minor. The project would also have no significant impact to any ocean, coastal, or essential fish habitats (EFH) as defined under the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA).
- The Sea Turtle Early Restoration Project's potential impacts are not controversial and the project is supported by the general public. It will benefit a variety of injured sea turtle resources and is not anticipated to significantly impact unique areas such as historic or cultural resources, park land, 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 invasive species.

- The proposed action would use well-established sea turtle protection and 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 success of the project will be monitored closely, and the approach and design may be applied, adopted, or modified for other future sea turtle 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 that were received during this period have been considered and incorporated into the Final Phase IV ERP/EA (Chapter 15, Response to Comments). The Final Phase IV ERP/EA is hereby incorporated by reference.

Agency Coordination and Consultation Summary

MSFCMA: NOAA has reviewed the Sea Turtle Early Restoration Project for compliance with the MSFCMA, and had informational discussions with NMFS Southeast Regional Office (SERO) Habitat Conservation Division (HCD). NOAA determined the project is not likely to adversely impact any EFH identified in the Gulf of Mexico Fishery Management Council's 2005 Generic EFH Amendment, or the NMFS Highly Migratory Species Fishery Management Plan. The SERO HCD concurred with this and therefore concluded no consultation was required for the Sea Turtle Early Restoration Project actions.

Endangered Species Act (ESA), MBTA, BGEPA, and Marine Mammal Protection Act (MMPA): To fulfill requirements and obligations under ESA and MMPA, the Trustees completed a review of the Sea Turtle Early Restoration 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.). See the Final Phase IV ERP/EA Chapter 13, sections 13.2.5.4.2; 13.2.7.2.2; and 13.2.9.2.2. The Trustees initiated consultations with NMFS and USFWS on the proposed project, which has already been the subject of a number of consultations and permitting actions under the ESA. The USFWS analyses were summarized and provided in a memorandum to the U.S. Fish and Wildlife Service (USFWS) Ecological Services offices in Panama City, FL; Daphne, AL; Jackson, MS; Lafayette, LA, and Corpus Christi, TX for their information, and no concurrence is necessary. The Trustees are awaiting NMFS' response on ESA understanding that a new biological opinion may be required before completion of this consultation. The Trustees also reviewed the proposed project for impacts to bald eagles and migratory birds in accordance with the Bald and Golden Eagle Protection Act of 1940 (16 U.S.C. 668-668c), the Migratory Bird Treaty Act of 1918 (16 U.S.C. 703-712), and determined take would be avoided (DOI 2015). The Trustees coordinated with NMFS SERO's Protected Resources Division to determine that this project does not require authorization under the MMPA.

Potential impacts to cultural and historical resources protected under Section 106 of the National Historic Preservation Act NHPA were evaluated in the Final Phase IV ERP/EA Chapter 13, sections 13.2.5.5.1; 13.2.7.3.1; and 13.2.9.3.1. The formal compliance review for this project including NHPA section 106 and Tribal consultations has been initiated and will be completed prior to project implementation.

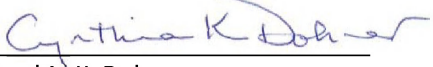
If any further need arises to coordinate and consult with other regulatory authorities, including for example Clean Water Act Section 404 or the Rivers and Harbors Act, the additional coordination or consultation requirements will be addressed prior to project implementation. The status of Federal regulatory 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 Finding of No Significant Impact, 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 Sea Turtle Early Restoration Project, the Federal Trustees have determined that the Sea Turtle Early Restoration 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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Date: 9/10/15

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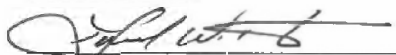
Cynthia K. Dohner
Authorized Official, U.S. Department of the Interior

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9/8/2015

Signature:

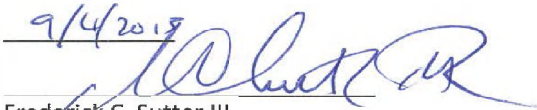


David Westerholm
Director, Office of Response and Restoration
National Ocean Service, NOAA

Date:

9/4/2015

Signature:



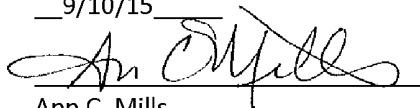
Frederick C. Sutter III
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Ann C. Mills

Deputy Under Secretary, USDA

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Signature:

Kenneth J. Kopocis
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