



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

DEC 13 2017

OFFICE OF
GENERAL COUNSEL

Mr. Jeff Harris
Louisiana Department of Natural Resources
Office of Coastal Management
Consistency Section
617 North Third Street, Suite 1078
Baton Rouge, LA 70802

Dear Mr. Harris:

I am writing on behalf of the federal members of the Louisiana Trustee Implementation Group (LA TIG), which is responsible for restoring the natural resources and services within the Louisiana Restoration Area that were injured by the April 20, 2010 Deepwater Horizon (DWH) oil spill and associated spill response efforts. This letter provides the federal Trustees' determination of consistency to the maximum extent practicable with the enforceable policies of Louisiana's coastal zone management program for four recreational use restoration projects. The LA TIG has proposed the four recreational use restoration projects for public review and comment in the "Deepwater Horizon Oil Spill Louisiana Trustee Implementation Group Draft Restoration Plan and Environmental Assessment #2: Provide and Enhance Recreational Opportunities" (RP/EA). If subsequently approved by the LA TIG, the projects would be included in a Final RP/EA.

The LA TIG is comprised of a number of Louisiana and federal agencies: the Louisiana Coastal Protection and Restoration Authority (CPRA); Louisiana Department of Natural Resources (LDNR); Louisiana Department of Environmental Quality (LDEQ); Louisiana Oil Spill Coordinators Office (LOSCO); Louisiana Department of Wildlife and Fisheries (LDWF); the National Oceanic and Atmospheric Administration (NOAA), on behalf of the U.S. Department of Commerce (DOC); the United States Department of the Interior (DOI), as represented by the U.S. Fish and Wildlife Service (FWS); the United States Department of Agriculture (USDA); and the United States Environmental Protection Agency (EPA). The federal Trustees (NOAA, DOI, USDA, and EPA) have reviewed the restoration plan and proposed projects for consistency with the Louisiana Coastal Resources Program (LCRP) and have found that, as proposed, these restoration actions are consistent to the maximum extent practicable with the applicable, enforceable policies of the State's federally-approved LCRP. This letter submits that consistency determination for State review on behalf of all federal Trustees.

Background

After the DWH oil spill the state and federal natural resources Trustees conducted a natural resource damage assessment (NRDA) to assess the adverse impacts to the Gulf's natural resources, and proposed a comprehensive, integrated ecosystem restoration approach to address the potential magnitude and breadth of restoration for injuries resulting from the oil spill. In February 2016, the DWH Trustee Council issued a Final Programmatic Damage Assessment and Restoration Plan/Programmatic Environmental Impact Statement (PDARP/PEIS) under the Oil Pollution Act (OPA) and the National Environmental Policy Act (NEPA) to analyze alternative approaches to implementing restoration and to guide restoration decisions consistently across the Gulf of Mexico region. The purpose of restoration is to make the environment and the public whole for injuries resulting from the incident by implementing restoration actions that return injured natural resources and services to baseline conditions and compensate for interim losses, in accordance with OPA and associated NRDA regulations. On April 4, 2016, the U. S. District Court for the Eastern District of Louisiana entered a Consent Decree resolving civil claims by the Trustees against BP Exploration and Production Inc. (BP) arising from the DWH oil spill. This historic settlement resolves the Trustees' claims against BP for natural resources damages under OPA.

Proposed Restoration Projects in the LA TIG Draft RP/EA

The Draft RP/EA prepared by the LA TIG tiers from the PDARP/PEIS and proposes restoration projects to compensate for recreational use services lost as a result of the DWH oil spill. Descriptions of the proposed projects in the Draft RP/EA are provided below.

1. The Elmer's Island Access project would enhance recreational opportunities within the Elmer's Island Refuge by incorporating a suite of component projects to improve upon existing access points, enhance the natural features of the area through reconnected hydrology, and develop a solution for improved access for recreational fishing activities targeting the eastern portion of Elmer's Island adjacent to Caminada Pass. These component projects include: improving aquatic hydrology through the installation of culverts under the access road; enhancing access features by improving currently improvised parking areas and small-boat launches; constructing an elevated boardwalk to facilitate beach access points; repair of a breach/washout location to allow foot traffic to additional fishing areas; improving dedicated birding areas, including walking paths and observation area; education and outreach materials; and long-term operational costs, including routine trash collection and removal.
2. The Statewide Artificial Reefs project would fund the enhancement of 11 existing artificial reef sites (nine inshore and two nearshore) to provide enhanced recreational opportunities for anglers throughout Louisiana. New reef material would be added to the 11 sites to increase the habitat complexity of the reef complex, while also providing increased recreational fishing opportunities to the public. The 11 reef sites proposed for enhancement are each established reef sites previously identified in the Louisiana Inshore and Nearshore Artificial Reef Plan (LDWF 2015), which is implemented through the LDWF under the oversight of the Louisiana Artificial Reef Council (R. S. 56:639).

3. The Lake Charles Science Center and Educational Complex (SCEC) project would fund the development of a public science center and educational complex in Lake Charles. The mission of the Lake Charles SCEC would be to enhance stakeholder involvement by providing fisheries extension, access, outreach, and education to the public.

The Visitor Science Center building would feature display aquaria showcasing Louisiana's diverse aquatic habitats, an aquatic animal touch tank exhibit, interactive educational displays, welcome desk for visitor sign-in, outreach materials, and public restrooms. The Outdoor Educational Complex would feature a youth/outreach fishing pond, nature trail, educational signage, natural landscaping, outdoor plaza and sidewalks, other outdoor educational areas including hunter safety range, visitor parking, site utilities, and roadwork.

4. The Island Road Piers project would fund the construction of five small parking lots, or vehicle pull overs, with adjoining fishing piers along Island Road located in the Pointe-aux-Chenes Wildlife Management Area (PACWMA). Elements of the proposed project would primarily provide for enhanced recreational fishing and crabbing opportunities, yet it would also offer infrastructure for non-consumptive activities like birding, photography, and nature watching. Included in the proposal is long-term operations and maintenance, including the development and distribution of outreach materials and trash collection/removal services.

LCRP Consistency Review

The federally-approved LCRP is comprised of a network of agencies with authority in the state's coastal zone. The primary authority guiding the LCRP is the Louisiana Department of Natural Resources. The LCRP is built around the following goals, which can be found at Louisiana Revised Statutes Article 49, §214.21, Subpart C:

- (1) To protect, develop, and, where feasible, restore or enhance the resources of the state's coastal zone.
- (2)(a) To assure that, to the maximum extent feasible, constitutional and statutory authorities affecting uses of the coastal zone should be included within the Louisiana Coastal Management Program and that guidelines and regulations adopted pursuant thereto shall not be interpreted to allow expansion of governmental authority beyond those laws.
- (b) To express certain regulatory and non-regulatory policies for the coastal zone management program. Regulatory policies are to form a basis for administrative decisions to approve or disapprove activities only to the extent that such policies are contained in the statutes of this state or regulations duly adopted and promulgated pursuant thereto. They are to be applicable to each governmental body only to the extent each governmental body has jurisdiction and authority to enforce such policies. Other policies are non-regulatory. They are included in the Coastal Zone Management Plan to help set out priorities in administrative decisions and to inform the public and decision makers of a coherent state framework, but such policies are not binding on private parties.
- (3) To support and encourage multiple use of coastal resources consistent with the maintenance and enhancement of renewable resource management and productivity, the need to provide for

adequate economic growth and development and the minimization of adverse effects of one resource use upon another, and without imposing any undue restriction on any user.

(4) To employ procedures and practices that resolve conflicts among competing uses within the coastal zone in accordance with the purpose of this Subpart and simplify administrative procedures.

(5) To develop and implement a coastal resources management program which is based on consideration of our resources, the environment, the needs of the people of the state, the nation, and of state and local government.

(6) To enhance opportunities for the use and enjoyment of the recreational values of the coastal zone.

(7) To develop and implement a reasonable and equitable coastal resources management program with sufficient expertise, technical proficiency, and legal authority to enable Louisiana to determine the future course of development and conservation of the coastal zone and to ensure that state and local governments have the primary authority for managing coastal resources.

(8) To support sustainable development in the coastal zone that accounts for potential impacts from hurricanes and other natural disasters and avoids environmental degradation resulting from damage to infrastructure caused by natural disasters.

The principle policies of the LCRP that are potentially relevant to restoration actions described in the RP/EA are those promulgated in the Louisiana Administrative Code at Title 43, Part 1, Chapter 7, Subchapter B (“Coastal Use Guidelines”): specifically:

- §701. Guidelines Applicable to All Uses
- §703. Guidelines for Levees
- §705. Guidelines for Linear Facilities
- §707. Guidelines for Dredged Spoil Deposition
- §709. Guidelines for Shoreline Modification
- §711. Guidelines for Surface Alterations
- §713. Guidelines for Hydrologic and Sediment Transport Modifications
- §715. Guidelines for Disposal of Wastes
- §717. Guidelines for Uses that Result in the Alteration of Waters Draining into Coastal Waters.

The Elmer’s Island Access, Statewide Artificial Reefs, Lake Charles SCEC, and Island Road Piers projects are consistent with the goals identified in the PDARP/PEIS for the “Provide and Enhance Recreational Opportunities” Restoration Type, specifically to:

- Increase recreational opportunities such as fishing, beach-going, camping, and boating with a combination of ecological restoration and creation of infrastructure, access, and use opportunities;
- Use education and outreach to promote engagement in restoration and stewardship of natural resources, which could include education programs, social media, and print materials.

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Louisiana Department of Natural Resources

The LA TIG federal Trustees have determined that the proposed projects are also consistent with the goals of the LCRP. In particular, the proposed projects would:

- “protect, develop, and, where feasible, restore or enhance the resources of the state's coastal zone” [Article 49, §214.21, Subpart C (1)];
- “support and encourage multiple use of coastal resources consistent with the maintenance and enhancement of renewable resource management and productivity, the need to provide for adequate economic growth and development and the minimization of adverse effects of one resource use upon another, and without imposing any undue restriction on any user” [Article 49, §214.21, Subpart C (3)];
- “enhance opportunities for the use and enjoyment of the recreational values of the coastal zone” [Article 49, §214.21, Subpart C (6)].

The LDWF previously coordinated with LDNR in requesting State concurrence on the LCRP consistency determinations for the 11 sites that comprise the proposed Statewide Artificial Reefs project and the Island Road Piers project features, and LDNR concurred with the LDWF determination that these projects will be consistent to the maximum extent practicable with the LCRP. The federal Trustees considered this information in our evaluation of the proposed projects, and adopt and incorporate by reference these prior determinations coordinated by LDWF on behalf of the federal members of the LA TIG.

Conclusion

Based on the review of each project, the federal Trustees of the LA TIG have determined that the proposed restoration projects are consistent to the maximum extent practicable with the enforceable policies of the State's approved coastal management program. If selected and implemented, the proposed projects will comply and be implemented in a manner consistent with the LCRP. We submit this determination letter for State review and concurrence for the proposed Elmer's Island Access and Lake Charles SCEC projects.

Mr. Jeff Harris
Louisiana Department of Natural Resources

Thank you in advance for your assistance.

Sincerely,



James Bove
Attorney Advisor
United States Environmental Protection Agency

Cc: Johnny Bradberry, Principal Representative for Louisiana
Homer Wilkes, Principal Representative for USDA
Kevin Reynolds, Principal Representative for DOI
Chris Doley, Principal Representative for NOAA
Mary Kay Lynch, Alternate to Principal Representative for EPA