



Mr. Charles Reulet  
Administrator – Interagency Affairs and Field Services  
Louisiana Department of Natural Resources  
Office of Coastal Management  
617 North Third Street, Suite 1078  
Baton Rouge, LA 70802

Dear Mr. Reulet,

This letter provides the Deepwater Horizon (DWH) Louisiana Trustee Implementation Group's (Louisiana TIG's) consistency determination and supporting information pursuant to the Coastal Zone Management Act (CZMA) (16 USC §§ 1451 *et seq.*) and applicable federal regulations at 15 CFR Part 930, Subpart C for federal agency activities. The National Oceanic and Atmospheric Administration (NOAA), on behalf of the Louisiana TIG federal trustees, respectfully requests that the Louisiana Department of Natural Resources (LDNR) concur with the consistency determination that the projects proposed in the "Louisiana Trustee Implementation Group Draft Restoration Plan and Environmental Assessment #8 Wetlands, Coastal, and Nearshore Habitats" (Draft RP/EA #8) are consistent to the maximum extent practicable with the enforceable policies of the Louisiana Coastal Resources Program (LCRP). Under NOAA CZMA regulations at 15 CFR § 930.41, LDNR's concurrence shall be presumed if the state has not responded within 60 days from receipt of this letter, unless LDNR and the federal trustees agree to an alternative review period.

The Louisiana TIG is comprised of both federal trustees and state of Louisiana agencies. The U.S. Department of the Interior (DOI), NOAA, the U.S. Department of Agriculture (USDA), and the U.S. Environmental Protection Agency (EPA) comprise the "federal trustees." The State of Louisiana's Coastal Protection and Restoration Authority (CPRA), Oil Spill Coordinator's Office (LOSCO), Department of Environmental Quality (LDEQ), Department of Wildlife and Fisheries (LDWF), and LDNR comprise the "state trustees."

### **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 several millions of barrels of oil into the Gulf over a period of approximately three months. In addition, various response actions were undertaken, including, but not limited to the application of approximately hundreds of thousands or more gallons of dispersants 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 DWH Oil Spill. The magnitude of the DWH 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 DWH Oil Spill 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. This includes estuaries, shorelines, and coastal marshes 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 recreational services.

After the DWH Oil Spill, the designated state and federal natural resource trustees, (collectively the trustees) conducted a natural resource damage assessment (NRDA) for injuries resulting from the DWH Oil Spill to restore natural resources and compensate the public for the harm the spill caused to natural resources, including lost use of these resources by the public. In February 2016, the trustees issued a Final Programmatic Damage Assessment and Restoration Plan/Programmatic Environmental Impact Statement<sup>1</sup> (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. On April 4, 2016, the trustees reached and finalized a settlement of their natural resources damage claims with BP Exploration & Production, Inc., a responsible party for the DWH Oil Spill, through a Consent Decree approved by the U.S. District Court for the Eastern District of Louisiana.

### **Louisiana TIG Draft Restoration Plan/Environmental Assessment #8 Proposed Projects**

The Louisiana TIG has undertaken this restoration planning effort to contribute to the restoration of wetland, coastal, and nearshore habitat resources and services injured by the DWH Oil Spill, in Pontchartrain, Terrebonne, and Breton Sound Basins, Louisiana. The purpose of restoration, as discussed in Draft RP/EA#8 and detailed more fully in the Final PDARP/PEIS, is to make the environment and the public whole for injuries resulting from the DWH Oil Spill 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. Four of the projects evaluated in the Draft RP/EA #8 are preferred for implementation at this time and are summarized in Tables 1-4. The full RP/EA #8 is available at <https://gulfspillrestoration.noaa.gov/restoration-areas/louisiana>. Through Draft RP/EA#8, the LA TIG has analyzed both preferred E&D projects and both preferred construction projects under the requirements of OPA and NEPA.

Of the four preferred projects, Louisiana consistency determination is applicable to two. The Federal trustees' evaluation of the enforceable policies of the LCRP that are potentially applicable to these proposed restoration projects and the basis of our determination of consistency with these policies is provided below.

### **Proposed Projects Not Requiring a Consistency Determination**

The Final PDARP/PEIS provides for TIGs to propose phasing restoration projects across multiple restoration plans. In the Draft RP/EA #8 the Louisiana TIG proposes two projects to undergo phase I restoration planning for engineering and design (E&D) only, until which time during the E&D process that enough information is developed to undergo further OPA and NEPA analysis for full implementation in a future, phase II restoration plan. The two projects proposed for E&D are the New Orleans East Landbridge Restoration Project and the Raccoon Island Barrier Island Restoration Project. The consistency determination for these two projects is based on activities anticipated for E&D only. Should the projects be furthered to full implementation with funding by the LA TIG, the trustees would update the consistency determination concurrent with the development of a future Phase II Restoration Plan that would then evaluate design alternatives for construction.

The federal trustees determined that, given that both projects involve activities anticipated for E&D only, these phase I projects would have no reasonably foreseeable effects on a coastal use or resource. Pursuant to 15 CFR 930.33, having determined that these projects would have no effect on any coastal use or resource of the State, a federal agency consistency determination is not required. The federal

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<sup>1</sup> The Draft RP/EA#8 is available at [Louisiana Restoration Area | NOAA Gulf Spill Restoration](https://gulfspillrestoration.noaa.gov/restoration-areas/louisiana).

trustees also determined that a negative determination, pursuant to 15 CFR 930.35, is not required for the two proposed projects. Following E&D activities, should the projects be proposed for full implementation with funding by the Louisiana TIG, the Louisiana TIG would update the consistency determination concurrent with the development of a future phase II Restoration Plan that would then evaluate design alternatives for construction. The proposed phase I E&D projects are summarized in Tables 1 and 2.

Table 1: New Orleans East Landbridge Restoration Project

<b>Project Element</b>	<b>Project Details</b>
Project Phase	Engineering & Design
Restoration Approach	Create or restore wetland, coastal, or nearshore habitats
Restoration Technique	Create or enhance coastal wetlands through placement of dredged material
Project Location	Pontchartrain Basin; Orleans Parish; N30.113516, W89.687500
Project Summary	The goal of the project is to create and restore marsh habitat that separates Lake Pontchartrain from Lake Borgne and the Gulf of Mexico. The project would create 1,563 acres of wetlands using hydraulically dredged sediment from Lake Borgne and would create 21,597-ft. of living shoreline protection features.
Cost Estimate	The total engineering and design cost is estimated to be approximately \$4.0 million.

Table 2: Racoon Island Barrier Island Restoration Project

<b>Project Element</b>	<b>Project Details</b>
Project Phase	Engineering & Design
Restoration Approach	Create or restore wetland, coastal, or nearshore habitats
Restoration Technique	Create or enhance coastal wetlands through placement of dredged material
Project Location	Terrebonne Basin; Terrebonne Parish; N29.051097, W90.926373
Project Summary	The goal of the project is to create and enhance beach, dune, supratidal, intertidal, and subtidal habitats through seaward and landward sand fill placement and shoreline protection. The project would also restore multiple types of coastal habitat, including approximately 33 acres of beach and dune, approximately 150 acres of marsh, and approximately 50 acres of upland habitat (mounds).
Cost Estimate	The total engineering and design cost is estimated to be approximately \$8.2 million

**Proposed Projects Requiring a Consistency Determination**

The Final PDARP/PEIS also provides for TIGs to coordinate with other Gulf of Mexico restoration programs to maximize the overall ecosystem benefits from DWH NRDA restoration efforts. The Louisiana TIG, through Draft RP/EA #8 proposes two projects for full construction. One project, the Bayou Dularge Ridge and Marsh Creation Project, was designed with funding made available from the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act (RESTORE Act) as implemented by the Gulf Coast Ecosystem Restoration Council. One project, the Bayou La Loutre Ridge Restoration and Marsh Creation Project was designed with funding made available from the Coastal Wetlands Planning, Protection and Restoration Act (CWPPRA) as implemented by the CWPPRA Task Force. The design alternatives developed during E&D for both projects are currently at a stage where proposed construction activities may be analyzed under OPA and NEPA. The proposed phase II Construction projects are summarized in Tables 3 and 4.

Table 3: Bayou Dularge Ridge and Marsh Creation Project

<b>Project Element</b>	<b>Project Details</b>
Permit Application	N/A
Project Phase	Construction
Restoration Approach	Create or restore wetland, coastal, or nearshore habitats
Restoration Technique	Create or enhance coastal wetlands through placement of dredged material
Project Location	Terrebonne Basin; Terrebonne Parish; N29.264793, W90.935788
Project Summary	The primary goals of the project are to create and nourish marsh on the south side of Bayou Dularge utilizing borrow material from Lake Mechant and to restore the ridge along the southern bank of Bayou Dularge. This project would create and nourish approximately 700 acres of marsh and restore approximately 27,875-ft. of ridge along Bayou Dularge.
Cost Estimate	The total construction estimate is approximately \$65.5 million

Table 4: Bayou La Loutre Ridge Restoration and Marsh Creation Project

<b>Project Element</b>	<b>Project Details</b>
Permit Application	P20210285
Project Phase	Construction
Restoration Approach	Create or restore wetland, coastal, or nearshore habitats

Restoration Technique	Create or enhance coastal wetlands through placement of dredged material
Project Location	Lake Pontchartrain and Breton Sound Basins; St. Bernard Parish; N29.844179, W89.601784
Project Summary	The goals of the project are to utilize borrow material from Lake Borgne to create and nourish marsh along Lena Lagoon and to utilize materials dredged from Bayou La Loutre to restore the ridge along the southern bank of Bayou La Loutre. This project would create and nourish approximately 421 acres of marsh and restore approximately 27,741-ft. of ridge along Bayou La Loutre.
Cost Estimate	The total construction cost is approximately \$21.2 million

Marsh, dune and forested ridge creation through dredging and placement is a beneficial restoration type with far ranging benefits across multiple ecosystems and trophic levels. However, these restoration approaches also have inherent localized, short-term, negative, temporary impacts to coastal resources of concern, such as temporary disruptions to access and fishing, and disruption of existing habitats etc. These impacts are by in large, unavoidable, but are mitigated and minimized to the greatest extent practicable by practicing best management practices as detailed in the Draft RP/EA #8, as well as by techniques developed in the extensive experience of the Trustees in performing this type of restoration.

A Joint Permit Application has been submitted to the LDNR-OCM for the Bayou La Loutre Ridge Restoration and Marsh Creation Project. At the time that this letter was written, the application (P20210285) is under review by the LDNR-OCM.

To date, no Joint Permit Applications have been submitted for the Bayou Dularge Ridge and Marsh Creation Project.

**LCRP Consistency Review**

The federally approved LCRP is comprised of network agencies with authority in the state’s coastal zone. The lead state agency for the LCRP is LDNR. The LCRP is built around the goals outlined in the Louisiana Revised Statutes Article 49, § 214.21 Subpart C. As described below the federal trustees have determined that, pursuant to the CZMA and 15 CFR § 930.32, this activity is consistent to the maximum extent practicable with the following enforceable policies of the LCRP.

The principal policies of the LCRP that are potentially relevant to restoration actions described in Draft RP/EA #8 are those promulgated in the Louisiana Administrative Code (LAC) 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.

§701 Guideline Applicable to All Uses

Pursuant to LAC Title 43 §701 all uses subject to LCRP may be subject to the requirements of more than one guideline or section of guidelines and all applicable guidelines must be complied with. Additionally, uses subject to the LCRP shall conform with applicable state air and water quality standards and regulations and with other laws incorporated into the LCRP. The proposed projects shall adhere to all applicable guidelines and shall not violate any state air or water quality standards.

Pursuant to LAC Title 43 §701 all uses subject to the LCRP shall not have an adverse impact on the natural supply of sediment and nutrients to the coastal system, economic impacts, concentration of oxygen, streams, wetlands, and other natural biologically valuable areas, social patterns, temperature regimes, cumulative impacts, turbidity and suspended solids water flow and natural circulation patterns, historical, cultural or archeological resources, on wildlife and fisheries habitats (especially the critical habitat of endangered species), or on public access to tidal and submerged lands, navigable waters, beaches and other public recreational resources. The Draft RP/EA #8 proposes restoration projects that can address some of the public's losses caused by the DWH Oil Spill for the Wetlands, Coastal, and Nearshore Habitats (WCNH) restoration type.

The proposed projects have been developed to meet the goals of the Final PDARP/PEIS. Projects proposed under the WCNH restoration type are designed to restore, reduce, and prevent future injury to estuarine-dependent resources, and benefit multiple resources by restoring a range of ecological functions and services.

Through development of the Draft RP/EA #8, consistency with the State's enforceable polices were evaluated. The RP/EA #8 NEPA analysis found that the two alternatives proposed for construction would result in some short-term, minor, adverse impacts and some long-term, moderate, adverse impacts to certain resources. These adverse impacts would be offset by the beneficial impacts that these alternatives would generate. Detailed information about potential environmental effects identified for the proposed projects are presented in the Draft RP/EA #8 (see Chapter 4 of the Draft RP/EA #8), however, the only resources for which impacts of the Bayou Dularge Ridge and Marsh Creation project were found to be more severe than "minor" are habitats, wildlife, and marine and estuarine fauna, due to the filling of open water areas with dredge material.

§703 Guidelines for Levees

Pursuant to LAC Title 43 §703, levees must be constructed in a manner to avoid impacts to biologically productive wetland systems, including the avoidance of segmentation of wetland areas and prevention of the release of pollutants to wetland systems. Both of the construction projects proposed pursuant to Draft RP/EA #8 are consistent to the maximum extent practicable. The primary features resembling levees would be forested ridges proposed for the Bayou Dularge Ridge and Marsh Creation Project and for the Bayou La Loutre Ridge Restoration and Marsh Creation Project. The ridges proposed for these projects are historical ridges that have deteriorated due to natural and human-induced causes. Restoration of these ridges will restore natural hydrology of the marshes. The ridges would separate marsh from erosional forces of bayous; however, the ridges would not encircle or impound any area of marsh.

Other structures resembling levees would be the containment dikes that are temporary features and propose gaps to allow water flow and aquatic organism movement upon demobilization to the greatest extent possible, or would be removed completely, thus not triggering any of the concerns for the creation of levees, while providing beneficial and crucial edge habitat.

#### §705 Guidelines for Linear Facilities

Pursuant to LAC Title 43 §705, linear facilities involving the use of dredging and filling shall be avoided in wetland and estuarine areas. Similarly, linear facilities should not traverse tidal passes or gulf shoreline areas unless no other alternatives exist. Pursuant to Draft RP/EA #8, both construction projects would be constructed using best practice methods so as not to result in saltwater intrusion or land subsidence. Further, the use of any linear facilities (e.g., the sediment pipeline) would only use existing structures or temporary structures (e.g., containment dikes) so as to avoid any of the impacts associated with these types of facilities.

#### §707 Guidelines for Dredged Spoil Deposition

Pursuant to LAC Title 43 §707, redeposited dredge spoils shall be deposited in a manner to avoid negative impacts to water movement, flow, quality, turbidity, or upon known marsh oyster reefs or submerged vegetation, or create any hindrance to navigation or fishing. While short-term, moderate, adverse impacts are expected in certain benthic habitats subject to borrow and/or deposition, the use of best management practices would minimize the impacts during the construction phase of both projects.

#### §709 Guidelines for Shoreline Modification

Pursuant to LAC Title 43 §709, shoreline stabilization structures should not be built for creating fill areas unless part of an approved plan for surface alteration use. Similarly, under §709, shoreline modifications should use best practical methods to avoid the introduction of pollutants and toxic substances into coastal waters. Pursuant to Draft RP/EA #8, both projects would be constructed in a manner to avoid the introduction of pollutants and toxic substances into coastal waters using best management practices. For example, project specifications would require that the contractor must conduct their work in such manner as to prevent the entry of fuels, oils, bituminous materials, chemicals, sewage, or other harmful materials into streams, bayous, lakes, marshlands, bays, or the Gulf of Mexico. Likewise, the project specifications would require the contractor to work in such a manner as to prevent the placement of any fill material and the discharge of project-related discharges of turbid effluent and runoff into streams, lakes, marshlands, bays, or bayous.

#### §711 Guidelines for Surface Alterations

Pursuant to LAC Title 43 §711, wetland areas shall not be drained or filled. Pursuant to Draft RP/EA#8, the existing badly degraded wetlands would be nourished using best management practices. The marsh creation areas are currently open water and broken marsh. The fill material would be primarily placed in open water and on the broken marsh. The marsh creation areas were sited, as much as possible, to avoid placement on contiguous marsh. The forested ridge features will be installed on historical ridges. There will be some impacts to wetlands from construction activities, but these impacts will be more than mitigated by the creation and nourishment of marsh.

#### §713 Guidelines for Hydrologic and Sediment Transport Modifications

Pursuant to LAC Title 43 §713, weirs and water control structures shall be designed and built using best practical techniques and shall not result in saltwater intrusion or land subsidence. Pursuant to Draft RP/EA #8, the projects would be constructed using best management practices so as not to result in

saltwater intrusion or land subsidence. Project specifications would require that runoff from project construction sites be controlled in several ways. For example, runoff would be controlled by the construction, maintenance, and operation of earthen containment dikes, temporary water control structures, routing and temporary retention of effluent and discharge through marsh fill areas to allow settlement of the marsh fill and decanting of water to be discharged, and active management of all effluent, discharge, and runoff. In addition, boards installed on the water control structures would be used to allow discharge of slurry water while minimizing saltwater intrusion. Containment dikes would also be constructed to the minimum height necessary to avoid any potential avoidable subsidence. All the above listed structures would be employed by the construction teams to avoid any unnecessary saltwater intrusion or subsidence to the maximum extent practicable.

#### §715 Guidelines for Disposal of Wastes

Pursuant to LAC Title 43 §715, wastes generated shall not be placed, stored, or disposed in wetlands to the extent possible, and the generation, transportation, treatment, storage, and disposal shall be conducted pursuant to LA R.S. 30:217, *et seq.*, as amended, and to the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 *et seq.* Pursuant to Draft RP/EA #8, the projects would be constructed using best management practices and wastes generated would not be placed, stored, or disposed in wetlands to the extent possible, and the generation, transportation, treatment, storage and disposal would be conducted pursuant to applicable laws or regulations. Project specifications would further require that solid wastes (including cleared debris) and rubbish resulting from the construction activities be picked up daily and placed in containers, which would be emptied on a regular schedule to avoid overflow conditions. Failure by the Contractor to comply with Federal, state, or local solid waste disposal laws may result in forfeiture of their bond.

#### §717 Guidelines for Uses that Result in the Alteration of Waters Draining into Coastal Waters

Pursuant to LAC Title 43 §717, construction activities that affect coastal waters and wetlands shall be designed to preserve or enhance existing water quality, volume, and flow to the maximum extent practicable. Pursuant to Draft RP/EA #8, the projects would be constructed using best management practices so as to preserve or enhance existing water quality, volume, and flow. Project specifications would further require that the work be conducted in such a manner as to prevent the entry of fuels, oils, bituminous materials, chemicals, sewage, turbid effluent or other harmful materials into streams, bays, lakes, marshlands, bays, or the Gulf of Mexico.

#### **Conclusion**

Based on this review of 15 CFR Part 930, Subpart C and the enforceable policies of the LCRP, and after evaluating the activities for each proposed project, NOAA, on behalf of the federal trustees of the Louisiana TIG find that, as proposed, this restoration action and the project alternatives therein, is consistent to the maximum extent practicable with the applicable enforceable policies of the state's federally approved LCRP. If selected and implemented, the proposed projects would comply and be implemented in a manner consistent with the LCRP. This letter submits these determinations for review by the State coincident with public review of the Draft RP/EA #8. We thank you in advance for your assistance and concurrence.



Please contact Mel Landry at mel.landry@noaa.gov and (225) 425-0583 if you have technical questions or Jared Piaggione at jared.piaggione@noaa.gov and (301) 651-4393 for legal questions. Please note that due to the Coronavirus emergency, most federal staff are teleworking, and email is the best means to initiate contact.

Sincerely,

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Rachel W. Sweeney  
Program Manager, Deepwater Horizon Restoration Program  
National Oceanic and Atmospheric Administration

cc: Sarah Clardy, Louisiana TIG Representative for DOI  
Doug Jacobson, Louisiana TIG Representative for EPA  
Ron Howard, Louisiana TIG Representative for USDA  
Maury Chatellier, Louisiana TIG Representative for Louisiana

Attachments: Project Descriptions  
Project Shapefiles