

# Chapter 1: Introduction, Purpose and Need, and Public Participation

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## 1.1 Introduction

On or about April 20, 2010, BP Exploration and Production Inc. (BP) was using Transocean's mobile offshore drilling unit *Deepwater Horizon* to drill a well in the Macondo prospect (Mississippi Canyon 252–MC252) when the well blew out, and the drilling unit exploded, caught fire and subsequently sank in the Gulf of Mexico (the Gulf). This incident resulted in an unprecedented volume of oil and other discharges from the rig and from the wellhead on the seabed. Tragically, 11 workers were killed and 19 injured. The *Deepwater Horizon* oil spill is the largest maritime oil spill in U.S. history, discharging millions of barrels of oil over a period of 87 days (hereafter referred to as “the Spill,” which includes activities in response to the spilled oil). In addition, well over one million gallons of dispersants<sup>1</sup> were applied to the waters of the spill area in an attempt to disperse the spilled oil. An undetermined amount of natural gas was also released to the environment as a result of the Spill (National Commission on the BP *Deepwater Horizon* Oil Spill and Offshore Drilling 2011).<sup>2</sup>

The U.S. Coast Guard responded and directed federal efforts to contain and clean up the Spill. At one point nearly 50,000 responders were involved in cleanup activities in open water, beach and marsh habitats. The scope, nature and magnitude of the Spill caused impacts to 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, including estuaries, shorelines and coastal marshes. Affected resources include ecologically, recreationally, and commercially important species and their habitats in the Gulf and along the coastal areas of Texas, Louisiana, Mississippi, Alabama, and Florida. These fish and wildlife species and their supporting habitats provide a number of important ecological and recreational use services.

Pursuant to the Oil Pollution Act (OPA), Title 33 United States Code (U.S.C.) §§ 2701 *et seq.*, and the laws of individual affected states, federal and state agencies, Indian tribes and foreign governments act as trustees on behalf of the public to assess injuries to natural resources and their services<sup>3</sup> that result from an oil spill incident, and to plan for restoration to compensate for those injuries. OPA further instructs the designated trustees to develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent of the injured natural resources under their trusteeship (hereafter collectively referred to as “restoration”). This process of injury assessment and restoration planning is referred to as Natural Resource Damage Assessment (NRDA). OPA defines “natural resources” to include land, fish, wildlife, biota, air, water, ground water, drinking water supplies and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the Exclusive Economic Zone), any State or local government or Indian tribe, or any foreign government (33 U.S.C. § 2701(20)).

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<sup>1</sup> Dispersants do not remove oil from the ocean. Rather, they are used to help break large globs of oil into smaller droplets that can more readily be dissolved or dispersed in the water column.

<sup>2</sup> National Commission on the BP *Deepwater Horizon* Oil Spill and Offshore Drilling. 2011. *Deep Water: The Gulf Oil Disaster and The Future Of Offshore Drilling*. Available at: <http://www.gpo.gov/fdsys/pkg/GPO-OILCOMMISSION/pdf/GPO-OILCOMMISSION.pdf>.

<sup>3</sup> Services (or natural resource services) means the functions performed by a natural resource for the benefit of another natural resource and/or the public (15 C.F.R. § 990.30).

The Federal Trustees are designated pursuant to section 1006(b)(2) of OPA (33 U.S.C. § 2706(b)(2)) and Executive Orders 12777 and 13626. The following federal agencies are the designated natural resource Trustees under OPA for this Spill:<sup>4</sup>

- The United States Department of the Interior (DOI), as represented by the National Park Service (NPS), United States Fish and Wildlife Service (USFWS), and Bureau of Land Management (BLM);
- The National Oceanic and Atmospheric Administration (NOAA), on behalf of the United States Department of Commerce;
- The United States Department of Agriculture (USDA); and
- The United States Environmental Protection Agency (EPA).

State Trustees are designated by the governor of each state pursuant to section 1006(b)(3) of OPA (33 U.S.C. § 2706(b)(3)). The following state agencies are designated natural resources Trustees under OPA and are currently acting as Trustees for the Spill:

- Texas Parks and Wildlife Department (TPWD), Texas General Land Office (TGLO) and Texas Commission on Environmental Quality (TCEQ);
- 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 Department of Natural Resources (LDNR);
- The State of Mississippi's Department of Environmental Quality (MDEQ);
- The State of Alabama's Department of Conservation and Natural Resources (ADCNR) and Geological Survey of Alabama (GSA); and
- The State of Florida's Department of Environmental Protection (FDEP) and Fish and Wildlife Conservation Commission (FWC).

This document, prepared jointly by State and Federal Trustees, serves as a Draft Phase IV Early Restoration Plan under OPA, and also contains the associated assessment for each proposed project under the National Environmental Policy Act (collectively, Draft Phase IV ERP/EA). Consistent with the Phase III Early Restoration Plan and Programmatic Environmental Impact Statement (Final Phase III ERP/PEIS), the DOI is the lead federal agency for preparing the Draft Phase IV ERP/EA. The Federal co-Trustees are cooperating agencies pursuant to NEPA (40 C.F.R. §1508.5). As discussed in Chapter 4, these cooperating Federal agencies intend to adopt these EAs, once completed. This document is prepared in accordance with 40 C.F.R. Parts 1500-1508, "CEQ's Regulations for Implementing NEPA" and DOI NEPA implementing regulations (43 C.F.R. Part 46).

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<sup>4</sup> The U.S. Department of Defense is a trustee under OPA of natural resources at its Gulf Coast facilities potentially affected by the Spill but is not a member of the Trustee Council and did not participate in the preparation of this document.

In addition to acting as Trustees for this incident under OPA, the States of Texas, Louisiana, Mississippi, Alabama and Florida are also acting pursuant to their applicable state laws and authorities, including but not limited to:

- The Texas Oil Spill Prevention and Response Act of 1991, Tex. Nat. Res. Code, Chapter 40;
- The Louisiana Oil Spill Prevention and Response Act of 1991, La. R.S. §§ 30:2451 *et seq.*, and accompanying regulations, La. Admin. Code 43:101 *et seq.*;
- The Mississippi Air and Water Pollution Control Law, Miss. Code Ann. §§ 49-17-1 through 49-17-43;
- Alabama Code §§ 9-2-1 *et seq.* and §§9-4-1 *et seq.*;
- The Florida Pollutant Discharge Prevention and Removal Act, Fla. Stat., Section 376.011 *et seq.*

State and Federal natural resource Trustees (the Trustees) are in the process of assessing and quantifying injuries to natural resources and to services provided by those resources caused by the Spill. When completed, the information from this process will guide the Trustees' identification of restoration projects to compensate the public for those resource injuries and losses. While the NRDA for the Spill is ongoing, the Trustees and BP have begun a process of "Early Restoration" – whereby the Trustees begin the process of restoring injured resources and services prior to the completion of the full NRDA process (Section 1.2 below provides additional information about the "Framework Agreement" that established the Early Restoration process for the Spill). To date, three phases of Early Restoration have been planned and 54 restoration projects with a total cost of approximately \$698 million have been selected for implementation.<sup>5</sup> Early Restoration Plans and assessments of environmental impacts were prepared for Phase I and Phase II.<sup>6</sup> For Phase III, the Trustees prepared a Phase III Early Restoration Plan (which included project-specific environmental reviews) as well as a Programmatic Early Restoration Plan and Environmental Impact Statement (Final Phase III ERP/PEIS).<sup>7</sup>

This Draft Phase IV ERP/EA serves as a Draft Early Restoration Plan and Environmental Assessments for an additional 10 proposed Early Restoration projects. These proposed projects have a total estimated cost of approximately \$134 million. The Trustees continue to identify and develop additional Early Restoration projects to take full advantage of the Early Restoration funds available under the Framework Agreement. Any additional projects that are proposed and selected will be included in subsequent Early Restoration plans to be released at a future date. The remainder of this chapter describes the Framework Agreement, the relationship of this document to the Final Phase III ERP/PEIS and purpose and need for Early Restoration. It also provides additional background and contextual information relevant to the objectives, content and organization of this Draft Phase IV ERP/EA. The

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<sup>5</sup> \$698 million = \$62 million (Phase I) + \$9 million (Phase II) + \$627 million (Phase III).

<sup>6</sup> Phase I: <http://www.gulfspillrestoration.noaa.gov/wp-content/uploads/Final-ERP-EA-041812.pdf>; Phase II: <http://www.gulfspillrestoration.noaa.gov/wp-content/uploads/Phase-II-ERP-ER-12-21-12.pdf>

<sup>7</sup> <http://www.gulfspillrestoration.noaa.gov/restoration/early-restoration/phase-iii/>

present document also provides notice of change in Section 1.7 to one Phase III Early Restoration Project: Enhancement of Franklin County Parks and Boat Ramps – Eastpoint Fishing Pier Improvements – in Florida.

## 1.2 Early Restoration Framework Agreement

The early restoration planning process is designed to be a cooperative endeavor between the Trustees and parties responsible for the Spill. On April 20, 2011, BP agreed to provide up to \$1 billion toward Early Restoration projects in the Gulf of Mexico to address injuries to natural resources caused by the Spill. This Early Restoration agreement, entitled “Framework for Early Restoration Addressing Injuries Resulting from the *Deepwater Horizon* Oil Spill” (Framework Agreement), represents a preliminary step toward the restoration of injured natural resources. The Framework Agreement is intended to expedite the start of restoration in the Gulf in advance of the completion of the injury assessment process. The Framework Agreement provides a mechanism through which the Trustees and BP can work together “to commence implementation of Early Restoration projects that will provide meaningful benefits to accelerate restoration in the Gulf as quickly as practicable” prior to the resolution of the Trustees’ natural resource damages claim. Early restoration is not intended to, and does not fully address all injuries caused by the Spill. Restoration beyond Early Restoration projects will be required to fully compensate the public for all natural resource losses, including recreational use losses from the *Deepwater Horizon* oil spill. The Trustees have engaged the public in a separate process to develop a plan to fully address all restoration that will be needed. This process is described in Section 2.1.1 (Early Restoration Project Solicitation and Public Participation) of the Final Phase III ERP/PEIS.

The early restoration planning process is part of the NRDA, but is also shaped in part by the Framework Agreement with BP. The Framework Agreement is a partial, interim settlement under which BP is making up to \$1 billion available for restoration before completion of the NRDA and before any final resolution of its liability, in return for agreed offsets (“NRD Offsets” explained later in this document) to be applied by the Trustees in the future against their total assessment of injury. This provides an opportunity for the Trustees to make progress towards restoration while the steps needed to determine the full amount of injury and natural resource damage unfold. At the same time, under the Framework Agreement, a proposed early restoration project may be funded only if all of the Trustees, the U.S. Department of Justice, and BP agree on, among other things, the amount of funding to be provided by BP and the Offsets against injury or service losses attributable to that project. The need for project-specific agreements inevitably affects which projects are practical to pursue in the early restoration process.

By its nature, the early restoration process is not intended to accomplish full restoration. Because final determinations of injury will not be completed for some time, it would be premature to say now what proportion of any particular type of injury would be addressed by the projects proposed in this Draft Phase IV ERP/EA. Early restoration projects represent an initial step toward fulfilling the responsible parties’ obligation to pay for restoration of injured natural resources. Ultimately, the responsible parties are obligated to compensate the public for the full scope of natural resource injuries caused by the Spill, including the cost of assessment and restoration planning.

### 1.3 Relationship of Phase IV ERP/EA to the Final Phase III ERP/PEIS

The Trustees are proposing, in this Draft Phase IV ERP/EA, 10 projects in accordance with OPA and under the Framework Agreement that are meant to continue implementation of Early Restoration for the purpose of accelerating meaningful restoration of injured natural resources and their services resulting from the Spill.

Given the potential magnitude and breadth of further Early Restoration, the Trustees previously prepared a Programmatic Early Restoration Plan (Programmatic ERP) and PEIS under OPA and NEPA to analyze alternative approaches to continuing Early Restoration and to consistently guide remaining Early Restoration decisions. The programmatic approach was taken to assist the Trustees in their development and evaluation, and to assist the public in its review of future Early Restoration projects. The 10 projects proposed in this Draft Phase IV ERP/EA are consistent with in the programmatic analysis addressed in the Final Phase III ERP/PEIS previously developed by the Trustees, as summarized below.

The regulations that guide NRDA's under OPA require that restoration planning actions undertaken by Federal Trustees comply with the NEPA, 42 U.S.C. §§ 4321 et seq., and the regulations guiding its implementation at 40 C.F.R. Parts 1500-1508 (15 C.F.R. § 990.23). NEPA and its implementing regulations outline the responsibilities of federal agencies, including the preparation of environmental impact analysis such as an environmental impact statement.

A federal agency may prepare a programmatic EIS (PEIS) to evaluate broad actions (40 C.F.R. § 1502.4(b); see *Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations*, 46 FR 18026 (1981)). When a federal agency prepares a programmatic NEPA analysis, such as a programmatic EIS, the agency may "tier" subsequent, narrower environmental analyses on site-specific plans or projects from the programmatic analysis (40 C.F.R. § 1502.4(b); 40 C.F.R. §1508.28). Federal agencies are encouraged to tier subsequent, narrower analyses from a programmatic NEPA analysis to eliminate repetitive discussions of the same issues and to focus on the actual issues ripe for decision at each level of environmental review (40 C.F.R. § 1502.20).

Department of the Interior regulations (43 CFR 46.140, "Using tiered documents") authorize tiering under certain circumstances:

**(a)** Where the impacts of the narrower action are identified and analyzed in the broader NEPA document, no further analysis is necessary, and the previously prepared document can be used for purposes of the pending action.

**(b)** To the extent that any relevant analysis in the broader NEPA document is not sufficiently comprehensive or adequate to support further decisions, the tiered NEPA document must explain this and provide any necessary analysis.

**(c)** An environmental assessment prepared in support of an individual proposed action can be tiered to a programmatic or other broader-scope environmental impact statement. An environmental assessment may be prepared, and a finding of no significant impact reached, for a proposed action with significant effects, whether direct, indirect, or cumulative, if the environmental assessment is tiered to a broader

environmental impact statement which fully analyzed those significant effects. Tiering to the programmatic or broader-scope environmental impact statement would allow the preparation of an environmental assessment and a finding of no significant impact for the individual proposed action, so long as any previously unanalyzed effects are not significant. A finding of no significant impact other than those already disclosed and analyzed in the environmental impact statement to which the environmental assessment is tiered may also be called a “finding of no *new* significant impact.”

A programmatic NEPA analysis may consider multiple related federal actions that may encompass a large geographic scale or that constitute a suite of similar programs, both of which apply to the joint state and federal Early Restoration effort to restore natural resources and services that were impacted by the Spill. The Trustees elected to prepare a PEIS to support analysis of the environmental consequences of the Programmatic ERP, to consider the multiple related actions that may occur as a result of Early Restoration, and to allow for a better analysis of cumulative impacts of potential actions.

For the Programmatic ERP, the Trustees developed a set of project types for inclusion in programmatic alternatives, consistent with the desire to seek a diverse set of projects providing benefits to a broad array of potentially injured resources and services they provide.<sup>8</sup> Ultimately, this process resulted in the inclusion of 12 project types in the programmatic alternatives evaluated for Early Restoration, including:

1. Create and Improve Wetlands
2. Protect Shorelines and Reduce Erosion
3. Restore Barrier Islands and Beaches
4. Restore and Protect Submerged Aquatic Vegetation
5. Conserve Habitat
6. Restore Oysters
7. Restore and Protect Finfish and Shellfish
8. Restore and Protect Birds
9. Restore and Protect Sea Turtles
10. Enhance Public Access to Natural Resources for Recreational Use
11. Enhance Recreational Experiences
12. Promote Environmental and Cultural Stewardship, Education and Outreach

While the 12 project types can be combined in numerous ways to develop programmatic alternatives, the Trustees considered and evaluated four programmatic alternatives in the Final Phase III ERP/PEIS, ultimately selecting Alternative 4: Contribute to Restoring Habitats, Living Coastal and Marine Resources, and Recreational Opportunities (which includes project types 1-12 above) in the “Record of Decision for the Deepwater Horizon Oil Spill: Final Programmatic and Phase III Early Restoration Plan and Early Restoration Programmatic Environmental Impact Statement (Phase III ERP/PEIS)” (October 2014

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<sup>8</sup> Project type names, descriptions, and the resources benefitted are not necessarily indicative of NRD Offsets agreed upon with BP for any particular project pursuant to the Framework Agreement. Offset types and the relationship to projects proposed in this DERP are described in Chapters 5-14 of this document and Appendix C. Future proposed projects, even if similar to those proposed herein or within the same project type, may bear different proposed NRD Offsets.

ROD). As further described throughout this document, the proposed Phase IV projects are consistent with the Trustees' selected programmatic alternative.

This Draft Phase IV ERP/EA is tiered from the programmatic portions of the Phase III ERP/PEIS (40 C.F.R. § 1508.28) which is incorporated here by reference (40 C.F.R. § 1502.21).<sup>9</sup> The programmatic analyses included in the Final Phase III ERP/PEIS streamline Early Restoration planning by evaluating broad issues and impacts associated with all project types included in the programmatic plan, thereby allowing the Trustees to tier project-specific analyses from the programmatic analyses. Tiering project-specific analyses reduces or eliminates duplicative documentation by focusing project analyses on project-specific issues and incorporating by reference the issues evaluated in the broad programmatic analyses. For proposed Phase IV Early Restoration projects, the Trustees have considered the extent to which additional NEPA analyses may be necessary for the projects that tier from the PEIS, including whether the analyses of relevant conditions and environmental effects described in the PEIS are still valid or whether projects have been considered in separate analyses under NEPA for purposes of other federal processes. These considerations are addressed in the project-specific environmental reviews included in this document (see Chapters 5-14).

## 1.4 Early Restoration Purpose and Need

Phase IV of Early Restoration continues to fall within the scope of the purpose and need identified in the Final Phase III ERP/PEIS (see Chapter 1). This purpose and need is reproduced below and has been updated to include total project costs from Phase III.

Restoration activities are intended to restore or replace habitats, species, and services to their baseline condition (primary restoration) and to compensate the public for interim losses from the time natural resources are injured until they recover to baseline conditions (compensatory restoration). NRDA restoration planning has two basic components: (1) injury assessment and (2) restoration selection. Given its expansive geographic scale and complexity, the *Deepwater Horizon* NRDA process may continue for several more years. Therefore, for the purpose of accelerating meaningful restoration of injured natural resources and their services resulting from the Spill, the Trustees propose to continue implementation of Early Restoration in accordance with OPA and the Final Phase III ERP/PEIS, using funds made available in the Framework Agreement. Having completed three emergency restoration projects as well as initiated three previous phases of Early Restoration, with 54 projects totaling \$698 million, the Trustees are herein proposing an additional 10 Early Restoration projects worth approximately \$134 million for Phase IV of Early Restoration. Early Restoration is being initiated prior to completion of the full NRDA, and is not intended to fully address all injuries caused by the Spill. Additional projects will continue to be proposed in both subsequent phases of Early Restoration as well as in the complete NRDA.

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<sup>9</sup> The Final Phase III ERP/PEIS is available at: <http://www.gulfspillrestoration.noaa.gov/restoration/early-restoration/phase-iii/>.

## 1.5 Phase IV Project Selection Process and Alternatives

The Trustees developed the Early Restoration selection process to be responsive to the purpose and need for conducting Early Restoration. In summary, Early Restoration project selection is a step-wise process comprised of: (1) project solicitation; (2) project screening; (3) negotiation with BP; and (4) evaluation and environmental review of proposed projects under OPA and NEPA, including public review and comment.

The Trustees' Early Restoration project selection process initially results in a set of potential projects that, consistent with the Framework Agreement, are submitted to BP for review and discussion. The Framework Agreement requires the Trustees and BP to agree on: (1) the funding amount for a proposed project; and (2) Offsets. If the Trustees and BP reach agreement in principle on project terms, those projects are incorporated into a Draft Early Restoration Plan and are subject to NEPA review. Projects can be considered ready for implementation only after consideration of comments submitted during the public review process, finalization of the Early Restoration Plan, completion of all required permits and environmental compliance reviews including NEPA, and execution and filing of the project stipulations.

With respect to the 10 projects proposed in this Draft Phase IV ERP/EA, as with previous phases of Early Restoration, the Trustees identified potential projects from many sources, including but not limited to: submissions from the public; Gulf restoration reports, research, management plans and related efforts; and Trustee information collection activities. The Trustees applied a screening process to be responsive to the purpose and need for conducting Early Restoration based on specified evaluation criteria and practical considerations that, while not legally mandated, are nonetheless useful and permissible to help screen potential projects. Additional information about the process that individual State Trustees used to screen potential projects is also included, as relevant, in Chapters 5-14. Individual Trustees identified preliminary lists of projects that were then brought to all of the Trustees for collective consideration and approval to proceed with project negotiations with BP.

NOAA and DOI applied the following additional restoration evaluation criteria to identify potential projects:

- DOI identified projects that would take place both on and off DOI-managed lands. DOI has significant experience implementing restoration projects on lands managed by DOI, which allows DOI to predict costs and project success with a relatively high degree of confidence. Additionally, the Spill injured natural resources and related services on several of the National Wildlife Refuges and National Parks. Consequently, DOI prioritized some restoration projects that would be implemented on these National Wildlife Refuges and National Parks. For projects that would not take place on DOI-managed lands, DOI has sought to partner with other Trustees to propose and implement Early Restoration projects that address injuries and comply with project evaluation criteria.
- NOAA's project screening process included the application of the restoration evaluation criteria, as well as identification of projects that would restore injuries specifically to NOAA trust resources. Further, NOAA prioritized projects that would have benefits to both nearshore and offshore trust resources. NOAA sought to partner with other Trustees to propose and

implement Early Restoration projects that address injuries to NOAA trust resources, and comply with the project evaluation criteria.

A more detailed description of NRDA restoration planning; requirements set forth by the OPA, NEPA, the Early Restoration Framework Agreement and other applicable authorities; and each step in the Early Restoration project selection process can be found in the Final Phase III ERP/PEIS (in particular, see Chapters 1 and 2).

## 1.6 Previous Phases of Early Restoration

The Trustees previously selected 54 Early Restoration projects for implementation, including: eight projects documented in the April 2012 final “*Deepwater Horizon* Oil Spill Phase I Early Restoration Plan and Environmental Assessment”; two projects documented in the December 2012 final “*Deepwater Horizon* Oil Spill Phase II Early Restoration Plan and Environmental Review”; and 44 projects documented in the June 2014 final “*Deepwater Horizon* Oil Spill: Programmatic and Phase III Early Restoration Plan and Early Restoration Programmatic Environmental Impact Statement”.

As summarized in Table 1-1, the total estimated cost of Early Restoration projects selected for implementation to date is approximately \$698 million (including contingencies). Ecological projects comprise \$460 million (66%) of this total, and recreational projects comprise the remaining \$238 million (34%). Within the ecological project category, barrier island restoration and dune projects account for \$321 million of estimated project costs, followed by marsh and living shoreline projects (\$92 million), oyster projects (\$35 million), sea turtle and bird habitat enhancement projects (\$9 million), and seagrass projects (\$3 million).

For more information about previously selected Early Restoration projects, please see the relevant restoration planning document(s) cited above.

**Table 1-1. Summary of Funds Spent on Phase I, II, and III Early Restoration Project Categories**

PROJECT CATEGORY	ESTIMATED COST FOR ALL PROPOSED PROJECTS IN THAT CATEGORY
Barrier Islands and Dunes	\$321,098,721
Recreational	\$237,628,642
Marsh and Living Shoreline	\$92,283,748
Oyster	\$35,192,681
Sea Turtle and Bird Habitat Enhancement	\$8,979,283
Seagrasses	\$2,691,867
<b>Total</b>	<b>\$697,874,942</b>

## **1.7 Notice of Change to one Phase III Early Restoration Project: Enhancement of Franklin County Parks and Boat Ramps – Eastpoint Fishing Pier Improvements Component (Florida)**

The Final Phase III ERP/PEIS stated that the Early Restoration project Eastpoint Fishing Pier in Franklin County, Florida included the construction of a restroom facility at the base of the public fishing pier. That facility is described as utilizing a holding tank that would need to be pumped out regularly. In addition to the restroom facility, the project also includes a kiosk describing fishing ethics, litter control, and the important resources surrounding the pier (primarily commercial oyster bars). Since selection of this project in the Final Phase III ERP/PEIS, in initial planning for project implementation, it was learned that the design of the restroom facility would be changing from using a holding tank requiring regular pump out to using a holding tank and grinder pump system, which would be connected to the existing sewer infrastructure approximately 2/3 of a mile away. Section 9.2 of the ROD for the Final Phase III ERP/PEIS describes criteria the Trustees will consider to evaluate material changes to any selected Phase III early restoration project to determine whether additional restoration planning and environmental review, including opportunity for public comment, is necessary. First, the Trustees will determine whether any change to the project is consistent with the environmental review in the Final Phase III ERP/PEIS or if there are substantial changes that are relevant to environmental concerns. Second, the Trustees will assess whether or not there are significant new circumstances or information relevant to environmental concerns not addressed in the impact analysis of the Final Phase III ERP/PEIS (40 C.F.R. § 1502.9 (c)). Third, the Trustees will evaluate whether changes to the project result in changes to the project description in the Final Phase III ERP/PEIS that affects their selection under OPA. The Trustees' evaluation of this project change is provided in Appendix A of this document. After considering these criteria in relation to the identified change, the Trustees have determined that the change to the Eastpoint Fishing Pier Improvements component does not impact the overall "Enhancement of Franklin County Parks and Boat Ramps" project objective (which is to enhance and/or increase recreational fishing and boating opportunities by improving two existing fishing piers, an existing boat launch facility, and an existing waterfront park), that the environmental consequences of the change to the Eastpoint Fishing Pier Improvements component will not be substantial, and that the change does not present significant new circumstances or information pursuant to the first two criteria. Consequently, the Trustees find the project change does not affect the Trustees' selection of the project under OPA or the environmental analysis under NEPA in the Final Phase III ERP/PEIS.

Accordingly, the Trustees are providing notice of the change to the public: a holding tank and grinder pump system, which will be connected to the existing sewer infrastructure approximately 2/3 of a mile away, is replacing the waste disposal feature previously described. The restroom will still be built at the base of the public fishing pier and the kiosk will still be constructed as well.

The Trustees are not required to seek public comment on their analysis of the project change, but are making that analysis available to the public coincident with the Trustees' request for public comment on the Draft Phase IV ERP/EA.

## 1.8 Proposed Phase IV Projects

Based on the project selection process outline above, and in accordance with the Final Phase III ERP/PEIS, the Trustees are proposing 10 projects for inclusion in Phase IV of Early Restoration. Chapter 4 provides summary information about proposed projects, and Chapters 5-14 provide more detailed information, including the tiered NEPA analyses for these projects. The Phase IV ERP will not exhaust potential Early Restoration funding. If all proposed Phase IV projects go forward, there will still be approximately \$134 million in Early Restoration funding not yet allocated to projects.

The Trustees note that the NRDA is still a work in progress. The Early Restoration process is not intended to accomplish full restoration. However, the Trustees do not view interim inaction on restoration as the right response to the present unknowns or uncertainties about the full extent of the resource injuries and losses. An accounting of whether the early restoration actions selected by the Trustees adequately address all categories of natural resource injury and service losses must await completion of the NRDA and must consider both the Early Restoration projects and the final, comprehensive damages assessment and restoration plan.

## 1.9 Severability of Proposed Phase IV Projects

In the Draft Phase IV ERP/EA, the Trustees propose 10 specific Early Restoration projects expected to cost approximately \$134 million. As discussed in more detail in Chapter 4, the proposed Phase IV projects presented in this Draft Phase IV ERP/EA are independent of each other and may be selected independently by the Trustees. A decision not to select one or more of the proposed projects in the Final Phase IV ERP/EA should not affect the Trustees' selection of the remaining Phase IV Early Restoration projects.

## 1.10 Public Participation

### 1.10.1 Public Participation Prior to the Draft Phase IV ERP/EA

OPA, NEPA and the Framework Agreement require the Trustees to consider public comments on the restoration planning process associated with the Spill. For each phase of Early Restoration, the Trustees have developed draft restoration plans for public review and comment and have held public meetings prior to finalizing projects.

A Notice of Intent to Conduct Restoration Planning for the *Deepwater Horizon* Oil Spill (2010 NOI) was published in the Federal Register on October 1, 2010 and announced publicly by the Trustees (Discharge of Oil from *Deepwater Horizon*/Macondo Well, Gulf of Mexico, Intent to Conduct Restoration Planning, 75 Fed. Reg. 60,800 (October 1, 2010)). Pursuant to 15 C.F.R. § 990.44, the 2010 NOI announced that the Trustees determined to proceed with restoration planning to fully evaluate, assess, quantify, and develop plans for restoring, replacing, or acquiring the equivalent of natural resources injured and losses resulting from the Spill.

In planning for Phase I and Phase II of Early Restoration, the Trustees prepared and released draft plans for public review and comment, and considered all public comments received before approving the final Phase I and Phase II plans in April 2012 and December 2012, respectively.

A Notice of Intent to Prepare a Programmatic Environmental Impact Statement for a Phase III Early Restoration Plan and Early Restoration Project Types, and to Conduct Scoping Meetings (2013 NOI) was published in the Federal Register (78 Fed. Reg. 33431-33432 (June 4, 2013)) and announced publicly by the Trustees. Pursuant to NEPA, OPA, and the implementing Natural Resource Damage Assessment regulations found at 15 CFR Part 990, the 2013 NOI announced that the Trustees intended to prepare a PEIS under NEPA to evaluate the environmental consequences of early restoration project types, as well as the early restoration projects that the Trustees intended to propose in a Draft Phase III Early Restoration Plan. The programmatic evaluation of early restoration project types in the PEIS was intended to allow the Trustees to better analyze cumulative effects of early restoration, and to tier NEPA analyses for future early restoration plans to the PEIS, where appropriate.

The Trustees also established websites to provide the public information about injury and restoration processes,<sup>10</sup> and public solicitation of restoration projects has been ongoing since publication of the 2010 NOI. The Trustees have received hundreds of proposals, all of which can be viewed at several web pages (see footnote 10). The public provided ideas and comments at public meetings focused on the PEIS for the final, comprehensive damages assessment and restoration plan<sup>11</sup> as well as during public meetings held during each phase of Early Restoration.

OPA, NEPA and the Framework Agreement require the Trustees to consider public comments on the restoration planning process associated with the Spill. For each phase of Early Restoration, the Trustees have developed draft restoration plans for public review and comment and have held public meetings prior to finalizing projects. The Draft Phase I ERP/EA, the Draft Phase II ERP/ER, and the Draft Phase III ERP/PEIS served as proposed restoration plans for Early Restoration, environmental review of the projects under NEPA, and the means used by the Trustees to seek public review and comment during

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<sup>10</sup> The Trustees established the following websites:

- NOAA, Gulf Spill Restoration, available at <http://www.gulfspillrestoration.noaa.gov/>;
- NOAA, DIVER, available at <https://dwhdiver.orr.noaa.gov/>
- DOI, *Deepwater Horizon* Oil Spill Response, available at <http://www.fws.gov/home/dhoilspill/>;
- Texas Parks and Wildlife Department, *Deepwater Horizon* Oil Spill, available at [http://www.tpwd.state.tx.us/landwater/water/environconcerns/damage\\_assessment/deep\\_water\\_horizon.phtml/](http://www.tpwd.state.tx.us/landwater/water/environconcerns/damage_assessment/deep_water_horizon.phtml/);
- Louisiana, *Deepwater Horizon* Oil Spill Natural Resource Damage Assessment, available at <http://losco-dwh.com/>;
- Mississippi Department of Environmental Quality, Natural Resource Damage Assessment, available at <http://www.restore.ms/>;
- Alabama Department of Conservation and Natural Resources, NRDA Projects, available at <http://www.alabamacoastalrestoration.org/>; and
- Florida Department of Environmental Protection, *Deepwater Horizon* Oil Spill Response and Restoration, available at [www.deepwaterhorizonflorida.com](http://www.deepwaterhorizonflorida.com).

<sup>11</sup> A final Damage Assessment and Restoration Plan will outline the total injury that occurred as a result of the Spill and the plan to fully compensate the public for those losses; it will be the result of the comprehensive NRDA effort currently in process.

Phases I, II and III. Public meetings were held to facilitate the public review and comment. A complete record of the public meetings and input opportunities is available at <http://www.gulfspillrestoration.noaa.gov>.

### 1.10.2 Public Participation on the Draft Phase IV ERP/EA

The Draft Phase IV ERP/EA is being made available for public review and comment for 30 days. The public is encouraged to review and comment on the proposed Phase IV projects. The deadline for submitting written comments on the document, as specified in the public notice published in the Federal Register, is thirty days from the date of release of this Draft Phase IV ERP/EA. Public comments will be considered by the Trustees prior to making project selection decisions and finalizing the Phase IV plan. Comments on the Draft Phase IV ERP/EA can be submitted during the comment period by one of the following methods:

- Via the internet: <http://www.gulfspillrestoration.noaa.gov/>
- Via the internet: <https://parkplanning.nps.gov/nrda/>
- Via hard copy, write: U.S. Fish and Wildlife Service, P.O. Box 49567, Atlanta, GA 30345.

**Please note that if you include your address, phone number, email address, or other personal identifying information in your comment, your entire comment, including your personal identifying information, could be made publicly available.**

The Trustees will hold a series of public meetings to facilitate the public review and comment process for the proposed Phase IV projects. Meeting locations, dates, and times are set forth below. They are also specified in the Federal Register notice announcing release of this document. After the close of the public comment period, the Trustees will consider all input received during the public comment period, and then finalize this Draft Phase IV ERP/EA, as may be appropriate. A summary of comments received and the Trustees' responses will be included in the Final Phase IV ERP/EA. After the close of the public comment period, the Trustees will consider all public input received. The Draft Phase IV ERP/EA will then be finalized as may be appropriate.

## 1.11 Document Organization and Decisions to be Made

Consistent with the purpose and need and proposed actions identified above, this Draft Phase IV ERP/EA is divided into the following chapters:

- **Chapter 1 (Introduction, Purpose and Need, and Public Participation):** Introductory information and context for the Draft Phase IV ERP/EA;
- **Chapter 2 (Affected Environment and Environmental Setting):** Information describing the affected environment within which the proposed Early Restoration activities are expected to take place;
- **Chapter 3 (The *Deepwater Horizon* Oil Spill Natural Resource Injury Assessment):** A summary of the status of *Deepwater Horizon* Oil Spill Natural Resource Injury Assessment efforts;

- **Chapter 4 (Introduction to Proposed Phase IV Early Restoration Projects):** Identifies proposed projects and provides brief, summary information about them;
- **Chapters 5-14 (Evaluation of Proposed Phase IV Restoration Projects):** OPA and NEPA analyses related to the 10 specific projects proposed by the Trustees for implementation in Phase IV of Early Restoration;
- **List of Preparers:** Identification of individuals who substantively contributed to the development of this document.
- **List of Repositories:** A list of facilities that will receive copies of the Phase IV Early Restoration Plan/Environmental Assessments for review by the public.
- **Appendix A (Evaluation of Change to the Phase III Early Restoration Project: Enhancement of Franklin County Parks and Boat Ramps – Eastpoint Fishing Pier Improvements)**
- **Appendix B (Phase IV Early Restoration Project Monitoring Plans):** Project-specific monitoring plans for each proposed Phase IV project.
- **Appendix C (Additional Phase IV Project Offset Information):** Additional offset information for some proposed Phase IV projects.
- **Appendix D (Guidelines for NEPA Impact Determinations from the Final Phase III ERP/PEIS):** Guidelines for resource-specific definitions for determining effects of individual planned actions.
- **Appendix E (Statements of Findings Related to DOI Bike and Pedestrian Use Enhancement Project at Gulf Islands National Seashore):** A Floodplain Statement of Findings (FSOF) and a Wetlands Statement of Findings (WSOF).
- **Appendix F (2011 National Park Service EA “Expansion of Facilities Supporting Sea Turtle Science and Recovery, Construction of Patrol Cabins and Expansion of Incubation Laboratory, 2011.”)**

This document is intended to provide the public and decision-makers with information and analysis on the Trustees’ proposal to proceed with the selection and implementation of up to 10 individual Phase IV Early Restoration projects.

The public, government agencies, and other entities have identified and continue to identify a large number of potential restoration projects for consideration during the restoration planning process. Projects not identified for inclusion in the Final Phase IV ERP/EA may continue to be considered for inclusion in future restoration plans.

## 1.12 Administrative Record

Pursuant to 15 C.F.R. § 990.45, the Trustees opened a publicly available Administrative Record for the NRDA for the Spill, including restoration planning activities, concurrently with the publication of the 2010 NOI. DOI is the lead Federal Trustee for maintaining the Administrative Record, which can be found

at <http://www.doi.gov/deepwaterhorizon/adminrecord>.<sup>12</sup> Information about early restoration project implementation is being provided to the public through the Administrative Record and other outreach efforts, including <http://www.gulfspillrestoration.noaa.gov>.

### 1.13 Remaining Milestones

The following is a list of milestones that would occur prior to project implementation.

- Draft Phase IV ERP/EA release for public review and comment
- Public comment period
- Public meetings (occurring during the public comment period) to solicit input- all meetings from 6-9 PM local time
  - June 2 : Crowne Plaza Pensacola Grand Hotel, 200 East Gregory Street, Pensacola, FL 32502
  - June 3: Renaissance Mobile Riverview Plaza Hotel, 64 South Water Street Mobile, AL 36602
  - June 4: University of Southern Mississippi, Long Beach, FEC Auditorium 730 East Beach Boulevard, Long Beach, MS 39560
  - June 8: Belle Chasse Auditorium, 8398 Louisiana 23, Belle Chasse, LA 70037
  - June 10: Texas A&M University at Galveston, Seawolf Parkway on Pelican Island Auditorium, Class Room Lab Building – Building #3007 on campus map Galveston, TX 77554
  - June 11: Harte Research Institute for Gulf of Mexico Studies Texas A&M University at Corpus Christi, 6300 Ocean Drive Corpus Christi, TX 78412
- Review public comments
- Consider and prepare responses to comments
- Revise the Draft Phase IV ERP/EA (as appropriate), including responses to comments
- Issue Final Phase IV ERP/EA and NEPA decisions
- File Stipulation Agreements with the Court

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<sup>12</sup> Additionally, Louisiana is also maintaining an Administrative Record (see <http://losco-dwh.com/AdminRecord.aspx>) in accordance with state regulations (La. Admin. Code 43:127).