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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XE201

***Deepwater Horizon* Oil Spill; Notice of Intent to Conduct Strategic Restoration Planning that Considers Existing Projects for Barataria Bay, Louisiana and to Initiate Restoration Planning with Regard to the Mid-Barataria Sediment Diversion**

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of intent to prepare a Strategic Restoration Plan for Barataria Basin, Louisiana, and to initiate restoration planning with regard to the Mid-Barataria Sediment Diversion.

SUMMARY: NOAA, on behalf of the Federal and state natural resource trustees for the Louisiana Trustee Implementation Group (Louisiana TIG Trustees) for the *Deepwater Horizon* (DWH) oil spill, is initiating two actions with this notice.

First, the Louisiana TIG Trustees are announcing their intent to prepare a Strategic Restoration Plan for Barataria Basin, Louisiana, pursuant to the *Deepwater Horizon* Programmatic Damage Assessment and Restoration Plan and Programmatic Environmental Impact Statement (PDARP/PEIS) (Feb 2016). This Barataria Basin Strategic Restoration Plan, referred to herein as the Phase I Plan, will consider identifying habitat restoration components of the Louisiana Draft 2017 Coastal Master Plan (draft 2017 CMP) to serve as an Oil Pollution Act (OPA) Strategic Restoration Plan for restoring wetland, coastal, and nearshore habitat in Barataria Basin, Louisiana, consistent with OPA and with the Trustees' PDARP/PEIS. The

Louisiana TIG Trustees will consider whether a combination of Barataria Basin habitat restoration projects in the draft 2017 CMP constitutes a preferred alternative, among other feasible alternatives, for fulfilling OPA's and the PDARP/PEIS's intent for the trustees to address ecosystem-level injuries and to restore, rehabilitate, replace, or acquire the equivalent of the injured wetland, coastal and nearshore habitat resources and services and compensate for interim losses of those resources from the *Deepwater Horizon* oil spill. Any projects or suites of projects that are ultimately included in the resulting Strategic Restoration Plan will be further analyzed in subsequent phased restoration plans and their accompanying environmental impact analyses as required by OPA, NEPA, and the Trustees' PDARP/PEIS.

Second, the Louisiana TIG Trustees are providing notice of the initiation of restoration planning, including analysis of the Mid-Barataria Sediment Diversion and appropriate alternatives to partially restore ecosystem and wetland, coastal and nearshore habitat resources and services in Barataria Basin, and compensate for interim losses of those resources and services, injured by the *Deepwater Horizon* oil spill. This potential Mid-Barataria Sediment Diversion Restoration Plan is referred to herein as the Phase 2 Plan. The Louisiana TIG Trustees are evaluating whether the Mid-Barataria Sediment Diversion is an appropriate project for restoring injuries from the *Deepwater Horizon* oil spill, and the Louisiana TIG Trustees anticipate that their decision in that regard will be informed by the results of the Phase 1 Plan. Further, by separate Supplemental Notice of Intent, the U.S. Army Corps of Engineers (USACE) is announcing its intent, as part of its review under section 404 of the Clean Water Act, section 10 of the Rivers and Harbors Act of 1899 ("Section 10/404"), and section 408 of the Rivers and Harbors Appropriation Act of 1899, as amended ("Section 408"), to prepare a draft Environmental Impact Statement ("EIS") pursuant to the National Environmental Policy Act of

1969 (NEPA). USACE will use the EIS, in conjunction with other relevant materials, to inform decision-making on the Department of the Army, section 10/404 and section 408 requests for permits and permissions for the Mid-Barataria Sediment Diversion. In order to capitalize on that ongoing environmental review, the Louisiana TIG Trustees are, at this time, requesting input on the scope of the USACE EIS via the process outlined in the coordinated USACE NOI. The LA TIG is supporting the development of the USACE EIS with the potential for the EIS to serve as the EIS for the Phase 2 Restoration Plan. The Louisiana TIG Trustees will additionally seek formal public involvement in the Phase 2 Draft Restoration Plan process in accordance with applicable Federal regulations and consistent with the PDARP/PEIS.

DATES: The date, time, and location of the formal public comment portion of this scoping period for the USACE EIS are yet to be determined. This information will be made available to the public on the DWH Trustees' Louisiana TIG web page,

(<http://www.gulfspillrestoration.noaa.gov/restoration-areas/louisiana>), the USACE-MVN's web page (<http://www.mvn.usace.army.mil/Missions/Regulatory/Permits/Mid-Barataria-Sediment-Diversion-EIS/>), and via a future **Federal Register** notice. The Louisiana TIG Trustees will additionally seek formal public involvement in the Phase 2 Draft Restoration Planning process in accordance with applicable federal regulations and consistent with the PDARP/PEIS. The date, time, and location of the formal public involvement period for the Phase 2 Restoration Plan process are yet to be determined. This information will be made available to the public via a future **Federal Register** notice and on the DWH Trustees' Louisiana TIG web page,

(<http://www.gulfspillrestoration.noaa.gov/restoration-areas/louisiana>).

FOR FURTHER INFORMATION CONTACT:

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- LOUISIANA: Liz Williams, *LATIG@la.gov*

SUPPLEMENTARY INFORMATION:

Background

On April 20, 2010, the mobile offshore drilling unit, *Deepwater Horizon*, which was being used to drill a well for BP Exploration and Production Inc. (BP), in the Macondo prospect (Mississippi Canyon 252 - MC252), exploded, caught fire and subsequently sank in the Gulf of Mexico, resulting in an unprecedented volume of oil and other discharges from the rig and from the wellhead on the seabed. The *Deepwater Horizon* oil spill is the largest oil spill in U.S. history, discharging millions of barrels of oil over a period of 87 days. In addition, well over one million gallons of dispersants 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.

The *Deepwater Horizon* State and Federal natural resource trustees (DWH Trustees) conducted the natural resource damage assessment (NRDA) for the *Deepwater Horizon* oil spill under the Oil Pollution Act 1990 (OPA; 33 U.S.C. 2701 et seq.). Pursuant to OPA, Federal and State agencies act as trustees on behalf of the public to assess natural resource injuries and losses and to determine the actions required to compensate the public for those injuries and losses. 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, including the loss of use and services from those resources from the time of injury until the time of restoration to baseline (the resource quality and conditions that would exist if the spill had not occurred) is complete.

Upon completion of the NRDA, the DWH Trustees reached and finalized a settlement of

their natural resource damage claims with BP in a Consent Decree¹ approved by the United States District Court for the Eastern District of Louisiana. Pursuant to that Consent Decree, restoration projects in Louisiana are now chosen and managed by the Louisiana TIG. The Louisiana TIG is composed of the following Trustees:

- U.S. Department of the Interior, as represented by the National Park Service, U.S. Fish and Wildlife Service, and Bureau of Land Management;
- National Oceanic and Atmospheric Administration, on behalf of the U.S. Department of Commerce;
- U.S. Department of Agriculture;
- U.S. Environmental Protection Agency;
- Louisiana Coastal Protection and Restoration Authority;
- Louisiana Department of Natural Resources;
- Louisiana Department of Environmental Quality;
- Louisiana Oil Spill Coordinator's Office; and
- Louisiana Department of Wildlife and Fisheries.

These restoration planning activities are proceeding in accordance with the PDARP/PEIS. Information on the Restoration Type: Restore Wetlands, Coastal, and Nearshore Habitats, as well as the OPA criteria against which projects will be evaluated, can be found in the PDARP/PEIS (<http://www.gulfspillrestoration.noaa.gov/restoration-planning/gulf-plan>) and in the Overview of the PDARP/PEIS (<http://www.gulfspillrestoration.noaa.gov/restoration-planning/gulf-plan>).

Overview of Action

¹ <https://www.justice.gov/enrd/file/838066/download>

The first action taken in this Notice is to inform the public that the Louisiana TIG Trustees intend to prepare a Strategic Restoration Plan for Barataria Basin pursuant to the PDARP/PEIS and OPA. The Trustees intend to consider the use of wetlands, coastal and nearshore habitat projects or suites of projects from the Draft 2017 CMP as the basis for that Strategic Restoration Plan. Those Draft 2017 CMP projects will be evaluated under applicable authorities in comparison to other feasible alternatives for restoring wetland, coastal and nearshore habitat and services injured by the *Deepwater Horizon* oil spill.

The PDARP/PEIS provides TIGs the option to prepare strategic restoration plans “to focus and sequence priorities within a Restoration Area” and to “consider resources at the ecosystem level, while implementing restoration at the local level.” (PDARP Section 7.3.1). In addition, the NRDA implementing regulations specifically allow trustees to consider the use of existing projects (15 CFR 990.56), such as those identified in the draft 2017 CMP. The Louisiana TIG is proposing that this Strategic Restoration Plan will focus on wetland, coastal, and nearshore habitat restoration type projects in the Barataria Basin restoration area because the PDARP/PEIS found that Barataria Basin experienced some of the heaviest and persistent oiling from the DWH spill and because the Basin supports very high primary and secondary production that contributes to the overall health of the northern Gulf of Mexico ecosystem.

The Louisiana TIG anticipates that the Strategic Restoration Plan for Barataria Basin will select for further funding and development most, if not all, of the remaining projects applicable under the “Wetlands, Coastal, and Nearshore Habitats” Restoration Type to be implemented in the Barataria Basin by the Louisiana TIG under the PDARP/PEIS. Developing such a strategic plan for much of Barataria Basin restoration for this Restoration Type will allow the Louisiana TIG to identify a suite of projects that, taken together, best achieve the “integrated ecosystem

restoration” called for in Chapter 5 of the PDARP/PEIS. A decision in the strategic plan to fund further development of projects will not be a final decision by the Louisiana TIG to proceed with implementation of those projects. Information about the “Wetlands, Coastal, and Nearshore Habitats” Restoration Type as well as the OPA criteria against which projects will be evaluated can be found in the PDARP/PEIS.

The second action taken in this Notice is to inform the public of the Louisiana TIG Trustees’ initiation of restoration planning, which will include the preparation of a restoration plan (the Phase 2 Plan) that evaluates the Mid-Barataria Sediment Diversion project as a means of restoring injured wetland, coastal and nearshore resources and services in Barataria Basin to restore for injuries resulting from the *Deepwater Horizon* oil spill. The Louisiana TIG began this restoration planning effort on March 28, 2017, by requesting project ideas from the public. At that time, the Louisiana TIG requested project ideas that could benefit wetlands, coastal, and nearshore habitats in the Barataria Basin, the estuary most heavily impacted by the DWH oil spill. That notice was published on the Louisiana TIG website:

(<http://www.gulfspillrestoration.noaa.gov/restoration-areas/louisiana>).

The Mid-Barataria Sediment Diversion, a large-scale sediment diversion, is one of the projects proposed in the Draft 2017 CMP. While the Louisiana TIG Trustees have not yet decided to move forward with a restoration plan for a Mid-Barataria Sediment Diversion, the project currently is undergoing engineering and design and supplemental scoping for preparation of an EIS, led by the USACE based on permit applications submitted by the Louisiana Coastal Protection and Restoration Authority pursuant to the provisions of section 404 of the Clean Water Act, section 10 of the Rivers and Harbors Appropriation Act of 1899, and section 14 of the Rivers and Harbors Appropriation Act of 1899, as amended. To facilitate the potential

consideration of this project under OPA, it is the intent of the state and Federal Louisiana TIG Trustees to assist the USACE in the preparation of the EIS for the Mid-Barataria Sediment Diversion. In addition, the Federal Louisiana TIG Trustees are cooperating agencies with the USACE for the preparation of that EIS. In a coordinated **Federal Register** notice, the USACE is issuing a supplemental Notice of Intent regarding the scope of the EIS for the project, including the potential for the EIS to inform a NRDA decision on restoration planning in which case the Louisiana TIG Trustees would adopt the EIS for such purposes. The Louisiana TIG is seeking to facilitate public involvement regarding the EIS, and encourages interested person and entities to submit comments in response to the USACE EIS process regarding the Mid-Barataria Sediment Diversion.

Next Steps

With regard to the Phase 1 Plan, the Louisiana TIG Trustees will proceed with consideration of whether a combination of projects in the Draft 2017 CMP provides a basis for a Strategic Restoration Plan for Barataria Basin.

With regard to the potential Phase 2 Plan, the Louisiana TIG Trustees will review all public input received as part of the USACE's scoping process for the preparation of an EIS for the proposed Mid-Barataria Sediment Diversion project as the Trustees work with the USACE to prepare an EIS that supports both the USACE regulatory decisions and OPA restoration planning decisions. The Louisiana TIG Trustees will additionally seek formal public involvement in the Phase 2 Draft Restoration Plan process in accordance with applicable federal regulations and consistent with the PDARP/PEIS.

Administrative Record

The documents included in the Administrative Record can be viewed electronically at the following location: <http://www.doi.gov/deepwaterhorizon/adminrecord>.

The Trustees opened a publicly available Administrative Record for the NRDA for the *Deepwater Horizon* oil spill, including restoration planning activities, concurrently with publication of the 2011 Notice of Intent (NOI) to Begin Restoration Scoping and Prepare a Gulf Spill Restoration Planning PEIS (pursuant to 15 CFR 990.45). The Administrative Record includes the relevant administrative records since its date of inception. This Administrative Record is actively maintained and available for public review.

Authority

The authority of this action is the Oil Pollution Act of 1990 (33 U.S.C. 2701 *et seq.*) and the implementing NRDA regulations found at 15 CFR part 990 and NEPA (42 U.S.C. 4321 *et seq.*).

Dated: April 21, 2017.

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