

# Mississippi Trustee Implementation Group 2019 Final Supplemental Restoration Plan: Grand Bay Land Acquisition and Habitat Management



# EXECUTIVE SUMMARY

On April 20, 2010, the Deepwater Horizon (*DWH*) mobile drilling unit exploded, caught fire, and eventually sank in the Gulf of Mexico, resulting in release of approximately 3.19 million barrels (134 million gallons) of oil and other substances into the ocean (*In re: Deepwater Horizon*, 77 F. Supp. 3d 500, 525 (E.D. LA 2015)) and nearshore environment. The spill and response actions impacted the environment. The oil and other substances released from the well in combination with the response actions make up the *DWH* Oil Spill.

As an oil pollution incident, the *DWH* Oil Spill was subject to the provisions of the Oil Pollution Act of 1990 (OPA), which addresses preventing and responding to oil pollution incidents in navigable waters, adjoining shorelines, and the exclusive economic zone of the United States. The primary goal of OPA is to make the environment and public whole for injuries to natural resources and services resulting from an incident involving an oil discharge (or substantial threat of an oil discharge). Under the authority of OPA, a council of federal and state *DWH* Oil Spill Trustees (the Trustees) was established on behalf of the public to assess natural resource injuries resulting from the incident and to work to make the environment and public whole for those injuries. Given the broad ecological scope of the injuries, the Trustees proposed a comprehensive, integrated ecosystem restoration approach in a programmatic level restoration plan (the Programmatic Damage Assessment and Restoration Plan/Programmatic Environmental Impact Statement, or PDARP/PEIS) to guide and direct the restoration effort.

This document, “Mississippi Trustee Implementation Group 2019 Final Supplemental Restoration Plan: Grand Bay Land Acquisition and Habitat Management” (Final SRP), was prepared by the Mississippi Trustee Implementation Group (MS TIG) pursuant to OPA and its related NRDA regulations, as well as the National Environmental Policy Act of 1969 (NEPA), and is consistent with the Trustees’ findings in the PDARP/PEIS. In accordance with the OPA regulations (15 C.F.R. § 990.53), the MS TIG previously developed a screening process to develop a reasonable range of restoration alternatives, presented in the “Mississippi Trustee Implementation Group 2016-2017 Restoration Plan/Environmental Assessment” (2016-2017 RP/EA). Via this Final SRP, the MS TIG selects to continue restoration work for the Wetlands, Coastal, and Nearshore Habitats (WCNH) Restoration Type begun by that process by allocating \$10 million in additional funds from its WCNH Restoration Type to the Grand Bay Land Acquisition and Habitat Management project originally selected for implementation in the 2016-2017 RP/EA. Restoration measures would include the same measures developed for that project, which are the acquisition and protection of target habitats, as well as invasive species management, mechanical clearing, chemical treatment, and prescribed fire, all within the same project area. MDEQ and DOI would continue to be the Implementing Trustees on behalf of the Mississippi Trustee Implementation Group. DOI is the lead federal agency for this Final SRP and has adopted and incorporated by reference the Grand Bay Land Acquisition and Habitat Management project NEPA analysis in the 2016-2017 RP/EA. Pursuant to NEPA, a Finding of No Significant Impact (FONSI) has been prepared (See Appendix A).

# Table of Contents

1.0	Introduction .....	1
1.1	Relationship of this Supplemental Restoration Plan to the 2016-2017 RP/EA .....	2
1.1.1	Purpose and Need .....	2
1.1.2	Proposed Action.....	2
1.2	OPA Compliance .....	2
1.3	NEPA Compliance.....	3
1.4	Public Involvement .....	4
1.5	Administrative Record .....	5
2.0	Restoration Planning Process .....	5
2.1	Wetlands, Coastal, and Nearshore Habitats .....	5
2.1.1	Grand Bay Project Selection.....	5
2.1.2	Project Description .....	6
2.2	Natural Recovery .....	9
3.0	NEPA Summary .....	9
3.1	Affected Environment.....	10
3.2	Environmental Consequences.....	10
3.3	No Action Alternative.....	10
3.4	Cumulative Impacts Summary.....	11
4.0	Compliance with Other Laws and Regulations .....	11
4.1	Additional Federal Laws.....	11
4.2	Additional State Laws.....	12
5.0	Monitoring and Adaptive Management Plan .....	12
6.0	Summary of comments received on the Draft SRP and TIG responses.....	13
6.1	Introduction.....	13
7.0	List of Preparers and Reviewers.....	14
	Appendix A: Finding of No Significant Impact (FONSI).....	15

# 1.0 Introduction

The Mississippi Trustee Implementation Group (MS TIG) prepared this Mississippi Trustee Implementation Group Final Supplemental Restoration Plan: Grand Bay Land Acquisition and Habitat Management (SRP), in which the MS TIG approves additional funding for habitat acquisition and management for the Grand Bay Land Acquisition and Habitat Management project (Grand Bay Project). The MS TIG originally evaluated and selected the Grand Bay Project as part of the Mississippi Trustee Implementation Group 2016-2017 Restoration Plan/Environmental Assessment (2016-2017 RP/EA)<sup>1</sup>. The 2016-2017 RP/EA is consistent with the 2016 *Deepwater Horizon Oil Spill*: Final Programmatic Damage Assessment and Restoration Plan and Final Programmatic Environmental Impact Statement (PDARP/PEIS)<sup>2</sup>, prepared by the *DWH* natural resource trustees. Both documents are hereby incorporated by reference.

The MS TIG is responsible for restoring the natural resources and services within the Mississippi Restoration Area that were injured by the *Deepwater Horizon (DWH)* Oil Spill and response activities. The MS TIG includes one state trustee agency and four federal trustee agencies:

- Mississippi Department of Environmental Quality (MDEQ)
- U.S. Department of the Interior (DOI), represented by the U.S. Fish and Wildlife Service (USFWS), the National Park Service (NPS), and the Bureau of Land Management (BLM)
- National Oceanic and Atmospheric Administration (NOAA), on behalf of the U.S. Department of Commerce (DOC)
- U.S. Department of Agriculture (USDA)
- U.S. Environmental Protection Agency (EPA)

In this SRP, the MS TIG approves additional funding to continue restoration work for the Wetlands, Coastal, and Nearshore Habitats (WCNH) Restoration Type by increasing the amount of funding for habitat acquisition and management included as part of the Grand Bay Project in the 2016-2017 RP/EA, including the acquisition and protection of target habitats, as well as invasive species management, mechanical clearing, chemical treatment, and prescribed fire. All habitat acquisition and management measures will occur within the same project area established in the 2016-2017 RP/EA. MDEQ and DOI will continue to be the Implementing Trustees on behalf of the Mississippi Trustee Implementation Group.

Please refer to the 2016-2017 RP/EA and PDARP/PEIS for more information related to the *DWH* Oil Spill and associated authorities and regulations. The PDARP/PEIS provides restoration context and background for the spill, the natural resource damage assessment settlement, and the continuing restoration effort.

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<sup>1</sup> The 2016-2017 RP/EA can be found at <https://www.gulfspillrestoration.noaa.gov/2017/07/mississippi-trustee-implementation-group-releases-first-restoration-plan>.

<sup>2</sup> The PDARP/PEIS and Record of Decision can be found at <https://www.gulfspillrestoration.noaa.gov/restoration-planning/gulf-plan>.

## **1.1 Relationship of this Supplemental Restoration Plan to the 2016-2017 RP/EA**

The MS TIG evaluated and selected several restoration projects to begin to address WCNH injuries as described in the 2016-2017 RP/EA. Projects selected for implementation included the Grand Bay Project. As described in Section 3.4 of the 2016-2017 RP/EA, the MS TIG allocated \$6 million to initiate the acquisition and to commence management in nearshore coastal and wetland habitats within the boundaries of Grand Bay National Wildlife Refuge (Refuge), the Grand Bay National Estuarine Research Reserve (NERR), and the Grand Bay Savanna Coastal Preserve (Preserve). As described below, the MS TIG selects the Proposed Action to augment the work originally funded by the Grand Bay Project.

### **1.1.1 Purpose and Need**

The purpose of and need for action is consistent with that described in Section 1.5 of the 2016-2017 RP/EA: “To meet the purpose of restoring losses to natural resources and services injured as a result of the *DWH* Oil Spill, the MS TIG proposes to select the preferred alternatives/restoration projects evaluated in this RP/EA for implementation. This RP/EA is consistent with the PDARP/PEIS, which identifies extensive and complex injuries to natural resources and services across the Gulf of Mexico, as well as a need and plan for comprehensive restoration consistent with OPA. This RP/EA focuses on the restoration of injuries to natural resources and services in Mississippi, using funds made available in the *DWH* Consent Decree”. The programmatic and restoration type goals for WCNH as described in the 2016-2017 RP/EA would continue to be met. See Sections 1.5 and 2.4 of the 2016-2017 RP/EA for a detailed description of the restoration goals.

### **1.1.2 Proposed Action**

The MS TIG’s primary objective of coastal land acquisition and restoration is to protect important contiguous lands and waters in an effort to maximize efficiencies and effectiveness in restoring and managing those habitats for the benefit of coastal resources. The Grand Bay Project as described in the 2016-2017 RP/EA supports that objective by funding acquisition of up to 8,000 acres and habitat management on up to 17,500 acres of nearshore coastal and wetland habitats within the boundaries of the Refuge, NERR and Preserve in Jackson County, Mississippi. In this final SRP, the MS TIG selects the Proposed Action to allocate an additional \$10 million in funding to support further acquisition and/or habitat management and project success monitoring within the area of the Grand Bay Project originally selected in the 2016-2017 RP/EA<sup>3</sup>. These activities would all occur within the same geographic area, and if applicable, would use the same management techniques described in the 2016-2017 RP/EA (i.e., no new restoration techniques are proposed). Land would be acquired from willing sellers. Target habitats (coastal marsh, beach, freshwater marsh, savannas and flatwoods, and forested freshwater scrub-shrub) would be restored. Restoration measures and management activities include invasive species management, mechanical clearing, chemical treatment, and prescribed fire.

## **1.2 OPA Compliance**

As an oil pollution incident, the *DWH* Oil Spill is subject to the provisions of the Oil Pollution Act of 1990 (OPA), which addresses preventing and responding to oil pollution incidents in navigable

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<sup>3</sup> The additional \$10.0 M funding would not complete the acquisition of the entire 8,000 acres and/or the 17,500 acres of management.

waters, adjoining shorelines, and the exclusive economic zone of the United States. The primary goal of OPA is to make the environment and public whole for injuries to natural resources and services resulting from an incident involving an oil discharge (or substantial threat of an oil discharge). Under the authority of OPA, federal and state *DWH* Oil Spill Trustees (the Trustees) were designated on behalf of the public to assess natural resource injuries resulting from the incident and to work to make the environment and public whole for those injuries, and pursuant to OPA, began the process of natural resource damage assessment.

As part of its post-settlement *DWH* Oil Spill restoration planning, the MS TIG utilized the restoration goals and objectives from the PDARP/PEIS, existing applicable plans (e.g., the Mississippi Gulf Coast Restoration Plan; MGCRP), additional restoration planning tools (e.g., Mississippi Comprehensive Ecosystem Restoration Tool) and public idea submissions to develop the 2016-2017 RP/EA. As described in Section 3.4 of the 2016-2017 RP/EA, the MS TIG allocated \$6 million to acquire up to 8,000 acres and manage up to 17,500 acres of nearshore coastal and wetland habitats, including coastal marsh, beach, freshwater marsh, pine savannas and flatwoods, forested freshwater scrub-shrub, and open water including tidal creeks and bayous within the boundaries of Grand Bay National Wildlife Refuge, the Grand Bay NERR, and the Grand Bay Savanna Coastal Preserve. Any additional acquisition or management measures accomplished with the additional funding will be implemented consistent with the original project and the associated OPA/NEPA evaluation.

Section 3.1 of the 2016-2017 RP/EA contains the MS TIG's OPA evaluation for the Grand Bay Project. Under 15 C.F.R. § 990.54, the MS TIG evaluated the proposed restoration alternative based upon (1) the cost to carry out the alternative; (2) the extent to which each alternative is expected to meet the trustees' goals and objectives in returning the injured natural resources and services to baseline and/or compensating for interim losses; (3) the likelihood of success of each alternative; (4) the extent to which each alternative will prevent future injury as a result of the incident and avoid collateral injury as a result of implementing the alternative; (5) the extent to which each alternative benefits more than one natural resource and/or service; and (6) the effect of each alternative on public health and safety. The Grand Bay Project, supplemented with an additional \$10 million in funding, as selected in this final SRP, achieves the same OPA NRDA evaluation results for all of the reasons described in Section 3.1 of the 2016-2017 RP/EA, which is incorporated by reference and summarized below in Section 2.1.2.

### **1.3 NEPA Compliance**

Under the OPA regulations, federal trustees must comply with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. § 4321 *et seq.*, and its regulations, 40 C.F.R. § 1500 *et seq.*, when planning restoration projects. NEPA requires federal agencies to analyze the environmental impacts of their actions/decisions and to provide public involvement opportunities. The MS TIG prepared the draft and final SRP to supplement the 2016-2017 RP/EA as part of those processes. In accordance with 40 C.F.R. § 1501.5, the MS TIG designated DOI as the lead federal agency responsible for NEPA compliance for the SRP.

As part of the 2016-2017 RP/EA, the MS TIG completed an environmental assessment pursuant to NEPA on the on the Grand Bay Project. NEPA authorizes a federal agency to adopt an existing NEPA analysis provided that the analysis meets the standards for an adequate statement under the

NEPA regulations (40 C.F.R. § 1506.3). This SRP adopts and incorporates by reference the analysis undertaken in the 2016-2017 RP/EA with respect to the Grand Bay Project. The adopted NEPA analysis serves as the environmental assessment for this SRP.

The MS TIG has determined that the potential environmental consequences from the additional acquisition and habitat management activities that would occur with the funding selected in this final SRP fall within the scope of those environmental consequences already evaluated in the 2016-2017 RP/EA. The additional funding would simply allow the MS TIG to continue toward meeting the acquisition goal of up to 8,000 acres and habitat management goal of up to 17,500 acres as analyzed in the 2016-2017 RP/EA, and thus no additional NEPA analysis is required for the funding increase. The MS TIG's addition of funding in support of further acquisition and/or habitat management and project success monitoring within the acreage limits of the Grand Bay Project do not "make a substantial change relevant to environmental concerns" and there are no "significant new circumstances or information relevant to environmental concerns" related to the proposal that are not documented in the 2016-2017 RP/EA (see 40 C.F.R. § 1502.9(c)(1)). Therefore, a Finding of No Significant Impact (FONSI) was prepared for this SRP (See Appendix A). Section 3.0 below summarizes the 2016-2017 RP/EA NEPA analysis with respect to the Grand Bay Project.

## 1.4 Public Involvement

Public input is an integral part of NEPA, OPA, and the *DWH* Oil Spill restoration planning effort. The purpose of public review is to facilitate public discussion regarding the preferred restoration projects, allow the Trustees to solicit and consider public comment, and ensure that final plans consider relevant issues. The Trustees conducted an extensive public outreach process as part of PDARP/PEIS development, a process more fully described in Chapter 8 of the PDARP/PEIS. More discussion on public outreach and involvement can also be found in previous *DWH* NRDA restoration plans available at [DWH NRDA Trustee Council website](#).

In developing the 2016-2017 RP/EA, the MS TIG solicited project ideas from the public from which to develop a reasonable range of alternatives for a draft plan. The MS TIG then notified the public that it was beginning drafting the plan, and finally solicited public comment on the draft 2016-2017 RP/EA. Section 6 of the 2016-2017 RP/EA provides detail on the public comment process and includes a summary of all relevant public comments received on the Draft RP/EA and MS TIG responses, including one project-specific comment supporting the selection of the Grand Bay Project.

On October 10, 2018, the MS TIG published a Notice of Initiation for Restoration Plan Drafting in Mississippi.<sup>4</sup> The draft SRP is the result of that effort. The draft SRP addressed the Trustees' public involvement goals by proposing to the public that the MS TIG undertake project implementation described herein to provide primary and compensatory restoration of habitats, species, and services in Mississippi using funds made available in the *DWH* Consent Decree. Additional projects in Mississippi will continue to be proposed in subsequent restoration plans prepared by the MS TIG. The draft SRP was made available for public review and comment for thirty (30) days from July 2 through July 31, 2019, as specified in the public notice published in the Federal Register, the [restore.ms](#) website, and the Trustees' website.

The MS TIG accepted public comments through a web-based comment submission site

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<sup>4</sup> Available at [the Mississippi Restoration Area section of the Trustees' website](#).

(<http://www.gulfspillrestoration.noaa.gov>) and via U.S. mail. The MS TIG received one comment via the web and one comment via the mail. Chapter 6 of this document provides further detail on the comments received and the MS TIG's responses.

After the close of the public comment period, the MS TIG considered the comments received and finalized the SRP.

## **1.5 Administrative Record**

Pursuant to 15 C.F.R. § 990.45, the Trustees opened a publicly available Administrative Record for the *DWH* Oil Spill NRDA, including restoration planning activities, concurrently with the publication of the 2010 Notice of Intent to Conduct Restoration Planning (75 Fed. Reg. 60800). DOI is the lead federal Trustee for maintaining the Administrative Record, which can be found at the [DOI \*DWH\* website](#). Information about MS TIG restoration project implementation is being provided to the public through the Administrative Record and other outreach efforts, including at [the Trustees' website](#).

## **2.0 Restoration Planning Process**

NRDA restoration under OPA is a process that includes evaluating injuries to natural resources and natural resource services to determine the types and extent of restoration needed to address the injuries. This SRP is consistent with and tiers from the PDARP/PEIS, a programmatic document developed by the Trustees to provide high-level guidance for identifying, evaluating, and selecting future *DWH* restoration projects. Under OPA, the NRDA regulations (15 C.F.R. § 990.54) provide criteria used by Trustees to evaluate projects designed to compensate the public for injuries caused by oil spills. To meet the NRDA regulations, the Trustees identify a reasonable range of restoration alternatives (15 C.F.R. § 990.53) and then evaluate those proposed alternatives. The MS TIG utilized the Mississippi Gulf Coast Restoration Plan (MGCRP)<sup>5</sup>, numerous other regional restoration and ecosystem management planning documents, and project ideas submitted through the MDEQ Restoration Project Idea portal and the Trustee Project Submission Portal during development of the 2016-2017 RP/EA. The 2016-2017 RP/EA summarizes the restoration planning process for the MS TIG, including the TIG's project screening process and the resulting reasonable range of alternatives for that restoration plan. That process informs the OPA actions evaluated in this SRP, discussed below.

### **2.1 Wetlands, Coastal, and Nearshore Habitats**

#### **2.1.1 Grand Bay Project Selection**

The *DWH* Oil Spill caused significant injuries to Mississippi's nearshore marine ecosystem, including interrelated and biologically diverse habitats such as estuarine coastal wetland complexes, beaches and dunes, barrier islands, submerged aquatic vegetation, oyster reefs, and shallow non-vegetated areas (see PDARP/PEIS Section 4.6.1.1 Ecological Description). Injuries were detected over a range of species, communities, and habitats, affecting a wide variety of ecosystem

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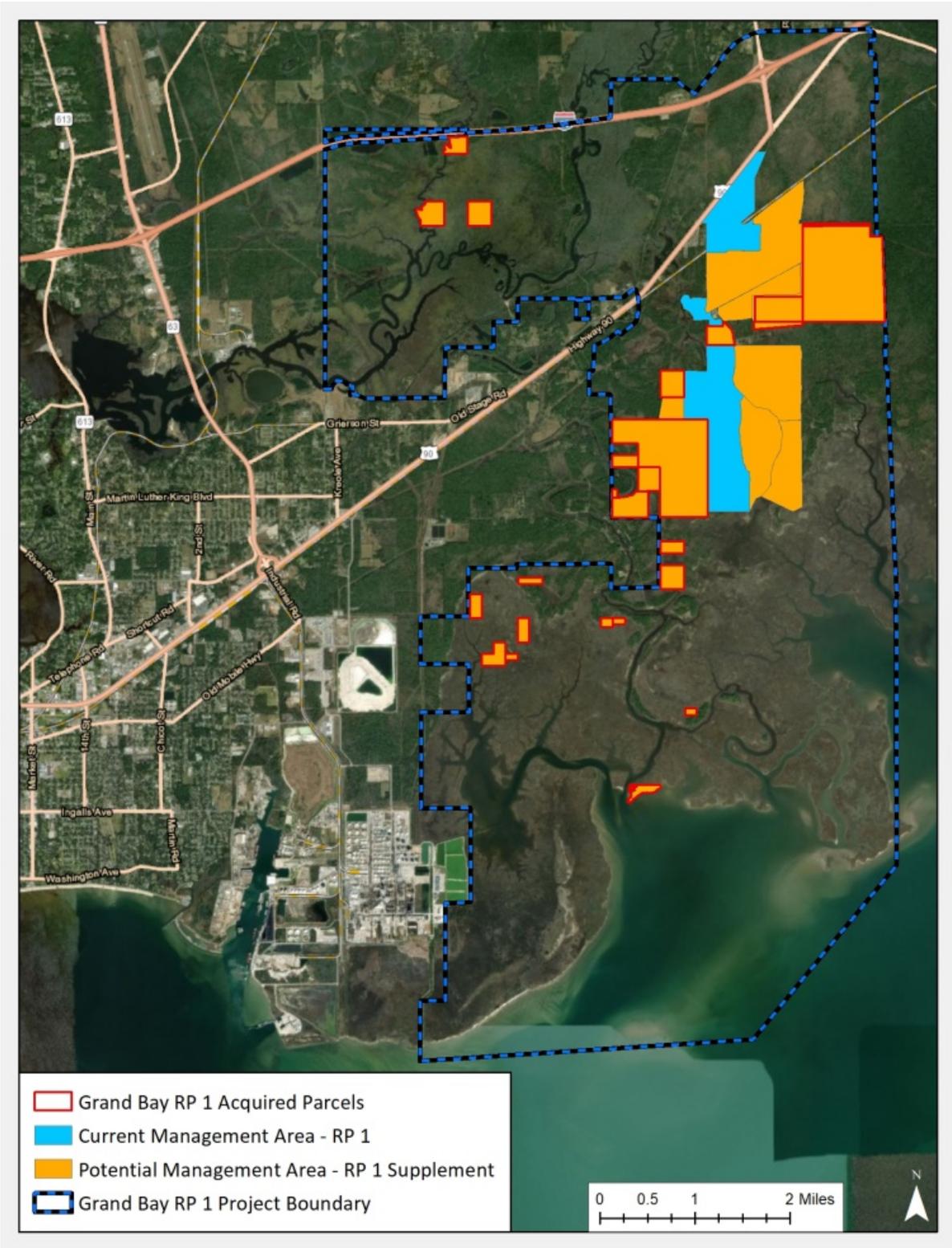
<sup>5</sup> Available at [The Mississippi Gulf Coast Restoration Plan](#).

components (PDARP/PEIS Section 4.6.9). The Trustees allocated the greatest amount of funding to the Restore and Conserve Habitat goal, because of the critical role that coastal and nearshore habitats play in the overall productivity of the Gulf of Mexico.

Sections 2.4.3.1 and 2.4.5.1 of the 2016-2017 RP/EA describe how the MS TIG used the information found in PDARP/PEIS Appendix 5.D, OPA evaluation criteria found at 15 C.F.R. § 990.54, and additional MS TIG goals and objectives to evaluate the MS TIG Projects within the WCNH Restoration Type for screening and project selection purposes. The MS TIG recognizes that one of three general restoration program areas of the MGCRP is Land Resources, which focuses on the need to conserve and manage priority lands, including lands already under protection. Objectives outlined in the program include conserving priority habitats by utilizing land protection tools such as fee title acquisition, conservation easements, and land donations; as well as managing and restoring priority habitats through actions including management plans, invasive species management, the use of prescribed fire (where appropriate), and enhancement of riparian zone buffers. In particular, regional connectivity, leveraging the potential to provide services to multiple resources, and partnering and synergy with regional planning initiatives drove selection of the Grand Bay Project (2016-2017 RP/EA Alternative D) for implementation.

### **2.1.2 Project Description**

Implementation of the Grand Bay Project began soon after publication of the 2016-2017 RP/EA/FONSI in 2017. Consistent with that document, associated habitats are being managed collaboratively by the [Mississippi Department of Marine Resources](#) (MDMR) and United States Fish and Wildlife Service (USFWS; on behalf of DOI). In December 2018 approximately 1,500 acres of target parcels were acquired under the Grand Bay Project and incorporated into the State Coastal Preserve Program (Figure 1). As stated in the 2016-2017 RP/EA, funds remaining for habitat management as part of the Grand Bay Project would depend on acquisition costs. Initial acquisitions left approximately 55% of the initial Grand Bay Project budget, limiting the amount of funding for habitat management and monitoring. The time frame for the project remains the same as described in the 2016-2017 RP/EA.



**Figure 1. Parcels acquired by the Grand Bay Project under the 2016-2017 RP/EA and habitats targeted for habitat management and monitoring with funding approved in the MS TIG 2019 Final Supplemental Restoration Plan: Grand Bay Land Acquisition and Habitat Management.**

Supplemental will support acquisition of additional target habitat, while also supporting management and monitoring of a total of approximately 3,100 acres within the project area for 8-10 years (Figure 1). This management work takes advantage of previous natural burns in the area, similar work being funded by other programs and in adjacent areas, and can be seamlessly incorporated into ongoing habitat management implementation otherwise being conducted by MDMR and in Grand Bay. Supplemental funding could support several additional prescribed burn cycles and other associated activities described by the 2016-2017 RP/EA. MDMR and USFWS will continue to manage the restored areas into the future.

Implementation of the Grand Bay Project and the work described herein continues to be consistent with and support the mission and goals of the MS TIG, Refuge, NERR, and Preserve management plans and initiatives. Additional acquisition, management and/or project success monitoring, is consistent with the Restore and Conserve Habitat Programmatic Goal for the WCNH Restoration Type in the PDARP/PEIS. The MS TIG continues to believe a combined strategy of land acquisition and habitat management represents the most comprehensive approach to help restore injuries to WCNH at this site, and collaborating with managers and staff at the Refuge, NERR, and Preserve continues to constitute a valuable partnership in reaching MS TIG goals.

Additional acquisition, habitat management and monitoring within the Grand Bay Project area would continue to meet the OPA evaluation criteria found in 40 C.F.R. § 990.54 because:

- Cost estimates continue to be reasonable, based on the experience of the MS TIG and project partners on similar acquisition and habitat management projects completed in the area;
- Proposed acquisition and habitat management continue to have a clear nexus to the WCNH injuries described in the PDARP/PEIS and the MS TIG's restoration goals and objectives (use of existing management plans and initiatives, leveraging DWH funds and providing habitat connectivity) would continue to be met;
- Proposed acquisition and habitat management continue to have a high likelihood of success. The MS TIG, through its Implementing Trustees of the 2016-2017 RP/EA Grand Bay Project, has already been successful in beginning to acquire parcels prioritized for acquisition, collaborating with project partners in planning, and beginning habitat management implementation. Proposed restoration activities would take advantage of similar ongoing work in this and other nearby areas;
- Proposed acquisition and habitat management of additional target habitats in the Grand Bay Project area would continue to result in benefits to WCNH injured in the *DWH* Oil Spill. Future and collateral injury would be avoided by employing best practices in project implementation;
- Proposed acquisition and habitat management is likely to continue to benefit more than one resource;
- There would be a continued long-term benefit to public health and safety from preserving additional parcels in the floodplain that otherwise might be developed; and
- The MS TIG intends to conduct monitoring and adaptive management as described in Appendix E of 2016-2017 RP/EA.

The MS TIG would continue to include applicable best practices for the Grand Bay Project referenced in Section 6.15 and Appendix 6A of the PDARP/PEIS and 2016-2017 RP/EA. Additional

best practices may be recommended for site-specific restoration measures and management activities in different locations due to differences in relevant conditions.

## **2.2 Natural Recovery**

Consistent with the OPA NRDA regulations, the PDARP considered a "... natural recovery alternative in which no human intervention would be taken to directly restore injured natural resources and services to baseline" (15 CFR 990.53(b)(2)). Under a natural recovery alternative, no additional restoration would be done by Trustees to accelerate the recovery of injured natural resources or to compensate for lost services. The Trustees would allow natural recovery processes to occur, which could result in one of four outcomes for injured resources: 1) gradual recovery, 2) partial recovery, 3) no recovery, or 4) further deterioration. Although injured resources could presumably recover to at or near baseline conditions under this scenario, recovery would take much longer compared to a scenario in which restoration actions were undertaken. Given that technically feasible restoration approaches are available to compensate for interim natural resource and service losses, the Trustees rejected this alternative from further OPA evaluation within the PDARP. Based on this determination, and tiering this SRP from the PDARP and incorporating that analysis by reference, the MS TIG did not further evaluate natural recovery for WCNH as a viable alternative under OPA and natural recovery is not considered further here.

## **3.0 NEPA Summary**

The MS TIG elected to prepare a programmatic analysis of the environmental consequences of the range of alternatives developed for the Grand Bay Project described in Section 3.4 of the 2016-2017 RP/EA to (1) consider the multiple related actions that would occur because of the Grand Bay Project restoration planning effort, and (2) allow for a better analysis of cumulative impacts. The action of acquiring individual parcels does not require parcel-specific NEPA evaluation because the impacts associated with acquisition are evaluated fully in the 2016-2017 RP/EA. Consistent with that approach, acquisition of additional individual parcels through implementation of this SRP likewise does not require parcel-specific NEPA evaluation, and subsequent environmental review that considers the management activities associated with those acquisition(s) would follow the same process as identified in the 2016-2017 RP/EA, i.e., preparation of Environmental Evaluation Worksheets.

As described in 2016-2017 RP/EA Section 3.1.2, subsequent environmental review would occur in addition to the programmatic NEPA review described therein to determine whether planned site-specific restoration activities and management measures are within the maximum expected impacts described in the 2016-2017 RP/EA, and the MS TIG would continue to use an Environmental Evaluation Worksheet (2016-2017 RP/EA Appendix A) to determine whether the planned site-specific restoration measures and management activities funded through this SRP are at or below the maximum adverse impacts described in the 2016-2017 RP/EA. If they are not, the MS TIG would undertake additional environmental review consistent with NEPA requirements and other requirements for protection of the environment or would consider other options regarding the planned project. So long as the adverse impacts of particular site-specific restoration measures and management activities are at or below the levels described in the 2016-2017 RP/EA, no additional environmental assessments or environmental impact statements would be required before implementation. Should site-specific environmental evaluation indicate the potential for significant

adverse effects or effects beyond those disclosed in the 2016-2017 RP/EA, an EA or EIS would be prepared, or the site-specific project would be modified so that the levels of impacts were at or below the levels described in the 2016-2017 RP/EA. Finally, to ensure that any properties acquired pursuant to the Grand Bay Project are preserved for the restoration purposes identified in that plan, acquired lands will be subject to restrictions that assure their proper use and conservation. Please refer to Section 3.4.12 of the 2016-2017 RP/EA for the full current NEPA analysis of the proposed activities. The conclusions reached in the 2016-2017 RP/EA, summarized below, are hereby incorporated by reference.

### **3.1 Affected Environment**

The Affected Environment for the proposed action is the same as the Grand Bay Project area and consists of parcels adjacent to and near Grand Bay in Jackson County, Mississippi, within the boundaries of the Refuge, NERR and Preserve. Section 3.4 of the 2016-2017 RP/EA describes the resources comprising the Affected Environment in detail.

### **3.2 Environmental Consequences**

The proposed action includes land acquisition, proposed habitat restoration measures and management activities such as prescribed fire and invasive species management through chemical treatment and/or mechanical treatment, access restriction, road repair/removal and culvert placement, and debris removal. Environmental consequences from the proposed action fall within the scope of those described in the 2016-2017 RP/EA; see the 2016-2017 RP/EA for a more detailed analysis. In summary, land acquisition and implementation of these restoration measures and management activities would have short-term, minor, adverse impacts to noise, tourism and recreation, and public health and safety. There would be short-term, minor to moderate, adverse impacts to hydrology, water quality, wetlands, air quality and greenhouse gases, habitat and wildlife from ground-disturbing activities associated with habitat restoration measures and management activities. Adverse impacts to soils would range from long-term, minor, due to allowing public access on previously private land, to short-term, minor to moderate due to habitat management activities.

As evaluated in the 2016-2017 RP/EA, land acquisition could have a short-term, minor to moderate adverse impact on socioeconomic resources due to changes in visitor spending and loss of tax revenues. There would be a long-term, minor to moderate, adverse impacts to land and marine management.

There would be long-term benefits from both acquisition and restoration management to soil, hydrology, floodplains, wetlands, water quality, habitat and wildlife, land and marine management, tourism and recreation, and public health and safety, due to preservation of habitats and floodplains, re-establishment of native plant communities, increased diversity in flora and fauna, implementation of existing resource management plans/initiatives, and the potential for increased visitor use.

### **3.3 No Action Alternative**

The No Action alternative was fully evaluated in section 3.2 of the 2016-2017 RP/EA. This alternative would have no beneficial impacts to WCNH because this alternative would largely result in a continuation of the current conditions described in the 2016-2017 RP/EA Section 3.4.1. The No Action Alternative does not meet the MS TIG's goals and objectives and does not provide the

restoration benefits that would occur from implementation of the Grand Bay Project.

### **3.4 Cumulative Impacts Summary**

Only air quality and greenhouse gas emissions and socioeconomics were carried forward for cumulative impacts analysis in the 2016-2017 RP/EA (Section 3.5). Only negligible to minor impacts are expected for all other resource areas. The Grand Bay Project would not contribute substantially to cumulative adverse impacts to air quality and greenhouse gas emissions and socioeconomics. The Grand Bay Project, carried out in conjunction with other restoration efforts, would have the potential to result in some long-term beneficial cumulative impacts to air quality and greenhouse gas emissions and socioeconomics.

When analyzed in combination with other applicable past, present and reasonably foreseeable future actions, the No Action Alternative would provide no beneficial impacts, because existing conditions would not change. This alternative is not expected to contribute to short-term or long term, cumulative adverse impacts to physical resources, biological resources, or socioeconomics, with the following exception: for the proposed project, without NRDA funding for acquisition, it is possible that target properties would be developed.

## **4.0 Compliance with Other Laws and Regulations**

Additional federal and state laws may apply. Legal authority applicable to restoration project development were fully described in the context of the *DWH* restoration planning in the PDARP/PEIS, Section 6.9 Compliance with Other Applicable Authorities and Appendix 6.D, Other Laws and Executive Orders. That material is incorporated by reference here.

Federal environmental compliance responsibilities and procedures will follow the Trustee Council Standard Operating Procedures for Implementation of the Natural Resource Restoration for the Deepwater Horizon (*DWH*) Oil Spill<sup>6</sup>, provided in Section 9.4.6 of that document. Following these standard operating procedures, the MS TIG, through its Implementing Trustees for the Grand Bay Project, would ensure that the status of environmental compliance (e.g., completed versus in progress) is tracked through the Restoration Portal. The MS TIG will keep a record of compliance documents (e.g., ESA biological opinions) and ensure that they are submitted for inclusion to the Administrative Record. The MS TIG will ensure compliance with all applicable laws and regulations.

### **4.1 Additional Federal Laws**

Potentially applicable federal laws, regulations and executive orders may include but are not limited to:

- Endangered Species Act
- Magnuson-Stevens Fishery Conservation and Management Act
- Marine Mammal Protection Act
- Coastal Zone Management Act

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<sup>6</sup> Available at [the Trustee Council Standard Operating Procedures for Implementation of the Natural Resource Restoration for the Deepwater Horizon Oil Spill](#).

- National Historic Preservation Act
- Coastal Barrier Resources Act
- Bald and Golden Eagle Protection Act
- Clean Air Act
- Clean Water Act
- Rivers and Harbors Act
- Marine Protection, Research and Sanctuaries Act
- Estuary Protection Act
- Archaeological Resource Protection Act
- National Marine Sanctuaries Act
- Farmland Protection Policy Act
- Private Aids to Navigation (C.F.R. Title 33, Chapter 1, Part 66)
- Federal Water Pollution Control Act
- Additional Executive Orders
  - EO 11988: Floodplain Management
  - EO 11990: Protection of Wetlands
  - EO 12898: Environmental Justice
  - EO 12962: Recreational Fisheries
  - EO 13112: Invasive Species
  - EO 13175: Consultation and Coordination with Indian Tribal Governments
  - EO 13186: Responsibilities of Federal Agencies to Protect Migratory Birds
  - EO 13693: Planning for Federal Sustainability in the Next Decade

## 4.2 Additional State Laws

Potentially applicable state laws may include but are not limited to:

- Public Trust Tidelands, Miss. Code Ann. §29-1-1 *et seq.*
- Antiquities Law of Mississippi, Miss. Code Ann. §39-7-1 *et seq.*
- Mississippi Air and Water Pollution Control Law, Miss Code Ann. § 49-17-1 *et seq.*
- Coastal Wetlands Protection Act, Miss. Code Ann. § 49-27-1 *et seq.*
- Marine Resources, Miss. Code Ann. 57-15-1 *et seq.*

## 5.0 Monitoring and Adaptive Management Plan

Monitoring, Adaptive Management, and Administrative Oversight were identified as Programmatic Trustee Goals for restoration in the PDARP/PEIS. As described in Chapter 5, Appendix 5.E of the PDARP/PEIS, the Trustee Council has committed to a Monitoring and Adaptive Management (MAM) Framework to support restoration activities by infusing best available science into project planning and design, identifying and reducing key uncertainties, tracking and evaluating progress toward restoration goals, determining the need for corrective actions, and supporting compliance monitoring. The MAM plan for the Grand Bay Project is detailed in Appendix E of the 2016-2017 RP/EA. That MAM plan would be adopted for supplemental funding proposed herein and updated as needed to reflect changing conditions and/or to incorporate new information. Any future revisions to the MAM plan will be made publicly available through the Trustee's *DWH* Restoration Portal.

## 6.0 Summary of comments received on the Draft SRP and TIG responses

### 6.1 Introduction

The public comment period for the Draft SRP opened on July 2, 2019 and ended on August 1, 2019. The MS TIG hosted a web-based comment submission site (the Department of the Interior's Planning, Environment and Public Comment webpage), and provided a P.O. Box for the public to provide comments.

During the public comment period, the Trustees received two submissions from the general public. As described below, all comments submitted during the period for public comment were reviewed and considered by the MS TIG prior to finalizing the Draft SRP. All public comments received are included in the Administrative Record at the [DOI DWH website](#).

### 6.2 Comments and MS TIG Responses

1. Comment: One commenter supports plans for land acquisition and habitat management and would like to see restoration focused on the Pointe-aux-Chenes shoreline and possibly reconstruction of the eroded Grand Batture Islands located within the Grand Bay National Estuarine Research Reserve in Mississippi.

Response: The MS TIG acknowledges the recommendation to implement measures to reduce shoreline retreat and restoration of the Grand Battures. While restoration focused on the Pointe-aux-Chenes shoreline and reconstruction of the eroded Grand Battures is not within the scope of this plan, the MS TIG will consider the comment in future planning. For the Grand Bay SRP, restoration measures and management activities include acquisition, mechanical clearing, chemical treatment, and prescribed fire.

2. Comment: One commenter submitted information on two patents that apply to protecting sand dunes and diverting waters.

Response: The MS TIG acknowledges receipt of the information.

## 7.0 List of Preparers and Reviewers

AGENCY/FIRM	NAME	POSITION
<b>MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY</b>		
Mississippi Department of Environmental Quality	Valerie Alley	NRDA Coordinator
Mississippi Department of Environmental Quality	Tina Nations	Project Manager
Mississippi Department of Environmental Quality	Tabatha Baum	Attorney
Balch & Bingham LLP	Bradley Ennis	Attorney
Covington Civil & Environmental, LLC	Steven Parker	Senior Scientist
Covington Civil & Environmental, LLC	Alane Young	Senior Geologist
<b>NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION</b>		
National Oceanic and Atmospheric Administration	Dan Van Nostrand	MS Restoration Area Coordinator
National Oceanic and Atmospheric Administration	Grant Blumberg	Attorney-Advisor
National Oceanic and Atmospheric Administration	Ramona Schreiber	DWH NEPA Coordinator
Earth Resources Technology, Inc	Stella Wilson	MS Restoration Area Support
<b>U.S. DEPARTMENT OF AGRICULTURE</b>		
United States Department of Agriculture, Gulf Coast Ecosystem Restoration Team	Ron Howard	Senior Technical Advisor
United States Department of Agriculture, Gulf Coast Ecosystem Restoration Team	Mark Defley	Biologist
<b>U.S. ENVIRONMENTAL PROTECTION AGENCY</b>		
Gulf of Mexico Program	Troy Pierce	Chief Scientist
Office of General Counsel	James Bove	Attorney
Region 4, NEPA Program	Daniel Holliman	Environmental Scientist
Region 4, Water Division	Darryl Williams	Environmental Engineer
Office of Water	Tim Landers	Environmental Protection Specialist
<b>U.S. DEPARTMENT OF THE INTERIOR</b>		
U.S. Fish and Wildlife Service	Brian Spears	Wildlife Biologist
U.S. Department of the Interior	Robin Renn	DWH NEPA Coordinator
U.S. Department of the Interior	John Rudolph	Attorney-Advisor

**Appendix A:  
Finding of No Significant Impact (FONSI)**

## **FINDING OF NO SIGNIFICANT IMPACT (FONSI)** **From Implementation of the** **Mississippi Trustee Implementation Group 2019 Supplemental Restoration Plan**

### **Introduction**

In accordance with the Oil Pollution Act's (OPA) Natural Resource Damage Assessment (NRDA) regulations and the National Environmental Policy Act, the Mississippi Trustee Implementation Group (Mississippi TIG) prepared a *Mississippi Trustee Implementation Group 2019 Final Supplemental Restoration Plan: Grand Bay Land Acquisition and Habitat Management* (SRP) to allocate an additional \$10,000,000 in funding to support further land acquisition and/or habitat management and project success monitoring within the Grand Bay Land Acquisition and Habitat Management project (Grand Bay Project) area. The Mississippi TIG originally evaluated and selected the Grand Bay Project as part of the *Mississippi Trustee Implementation Group 2016-2017 Restoration Plan/Environmental Assessment* (2016-2017 RP/EA). Additional land acquisition and habitat management for the Grand Bay Project will continue the process of conserving and restoring wetlands, coastal, and nearshore habitats injured as a result of the *Deepwater Horizon* (DWH) oil spill using funds as set forth in the DWH Consent Decree<sup>7</sup>.

Under OPA, as set forth in the DWH Consent Decree and as described in the 2016 DWH Trustees' Programmatic Damage Assessment and Restoration Plan/Programmatic Environmental Impact Statement (PDARP/PEIS), the MS TIG comprises the following state and federal Natural Resource Trustees Agencies: the Mississippi Department of Environmental Quality (MDEQ); the United States Department of Commerce, represented by the National Oceanic and Atmospheric Administration (NOAA); the United States Department of the Interior (DOI), represented by the United States Fish and Wildlife Service (FWS); the National Park Service (NPS), and the Bureau of Land Management (BLM); the United States Department of Agriculture (USDA); and the United States Environmental Protection Agency (EPA).

### **Lead and Cooperating Agencies and Adoption of NEPA Analysis**

The MS TIG designated DOI as the lead agency responsible for NEPA compliance. In accordance with CEQ NEPA Regulations (40 C.F.R. § 1506.3), DOI NEPA Regulations (43 C.F.R. § 46.120), and individual DOI bureau NEPA procedures, DOI adopts the NEPA analysis of the Grand Bay Project included in Chapter 3 of the 2016-2017 RP/EA.

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<sup>7</sup> On April 4, 2016, the Court entered the final Consent Decree negotiated among BP and the Trustees. The Consent Decree settles damages, including natural resource damages as defined under the Oil Pollution Act (OPA) of 1990, in a federal case arising from matters related to the DWH oil spill: *United States v. BPXP et al.*, Civ. No. 10-4536, centralized in MDL 2179, In re: *Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010 (E.D. La.)*

NOAA, EPA, USDA, and MDEQ are participating as cooperating agencies pursuant to NEPA (40 CFR 1508.5). As federal agencies, each federal Trustee on the MS TIG must make its own independent evaluation of the NEPA analysis integrated in the 2016-2017 RP/EA in support of its decision-making responsibilities (40 CFR 1506.3(a)). Each federal Trustee reviewed the 2016-2017 RP/EA NEPA analysis, found that the proposed action falls entirely within that previous analysis, found it sufficient to inform this action and accordingly has adopted that 2016-2017 RP/EA NEPA analysis.

### **Public Participation**

The Notice of Availability of the draft SRP was published in the Federal Register on July 2, 2019 (84 FR 31618). The MS TIG provided the public 30 days to review and comment on the draft SRP. Comments submitted during that time were reviewed and addressed by the MS TIG before finalizing the SRP. Details are provided in the final SRP.

### **Description of Proposed Actions and Alternatives**

The 2016-2017 RP/EA analyzed six action alternatives, as well as a No Action alternative (2016-2017 RP/EA, Section 2.6). Three, including the Grand Bay Project, were selected by the MS TIG as providing more efficient restoration benefits than the other action alternatives or the No Action Alternative. The Grand Bay project consists of an acquisition goal of up to 8,000 acres and habitat management goal of up to 17,500 acres to partially restore injuries to the Wetlands, Coastal and Nearshore Habitats (WCNH) and Birds restoration types in the Mississippi Restoration Area. In December 2018, approximately 1,500 acres of target parcels were acquired under the Grand Bay Project and incorporated into the Mississippi Coastal Preserves Program. Target habitats include coastal marsh, beach, freshwater marsh, savannas and flatwoods, and forested freshwater scrub-shrub. Habitat restoration measures and management activities include chemical treatment, mechanical treatment, and prescribed fire. The MS TIG allocated \$6,000,000 in the final 2016-2017 RP/EA for the Grand Bay Project from the WCNH and Birds restoration types. In the SRP, the MS TIG proposed, and after soliciting and addressing public comment, subsequently selected to allocate an additional \$10,000,000 from the WCNH restoration type.

### **Analysis Summary**

The 2016-2017 RP/EA evaluated both beneficial and adverse impacts of the Grand Bay Project. Because of the programmatic nature of the analysis (site specific locations not known at this time), the MS TIG outlined a process in Sections 3.1.2 and 3.7.2 of the 2016-2017 RP/EA that ensures site-specific adverse environmental impacts will continue to be avoided or minimized in the future as restoration measures and management activities and conservation practices are planned for specific parcels. Future NEPA evaluations are conducted by completing an Environmental Evaluation (Appendix A of the 2016-2017 RP/EA) that documents whether impacts are at or below maximum adverse impacts described in the 2016-2017 RP/EA. If, upon completion of the

Environmental Evaluation Worksheet, impacts are expected to exceed those described in the 2016-2017 RP/EA and summarized in this FONSI, the MS TIG will evaluate a plan of action to comply with NEPA and all other applicable environmental compliance requirements. Chapter 3.0 of the 2016-2017 RP/EA provides the analysis, summarized below.

- The Proposed Action is not expected to result in significant adverse effects on public health or safety. The restoration measures/management activities will provide long-term beneficial impacts to improve natural ecosystem functions, and best practices will be implemented on a site-specific basis to mitigate the potential for adverse effects to occur to public health and safety during implementation.
- The Proposed Action will have no significant adverse impacts to unique characteristics of the geographic areas. The Proposed Action is not expected to have any significant adverse effects on wetlands, floodplains, municipal water sources, ecologically critical areas, wild and scenic river corridors, park lands, wilderness, wilderness research areas, research natural areas, inventoried roadless areas, national recreation areas, or prime farmlands, particularly on a regional basis. The purpose of the Proposed Action is to improve the condition of natural resources damaged by the DWH oil spill.
- The effects of the Proposed Action on the quality of the human environment are not controversial. The Proposed Action is supported by the public. No public comments indicated opposition to the Proposed Action.
- There are no highly uncertain, unique or unknown risks associated with the Proposed Action. The land acquisition, habitat restoration and management activities, and conservation practices are successful, well-established, and commonly used practices for habitat restoration and land conservation.
- The Proposed Action neither establishes a precedent for future MS TIG actions with significant effects nor represents a decision in principle about a future consideration. Future MS TIG actions will be determined through separate planning processes.
- The Proposed Action will not result in significant adverse cumulative impacts. As discussed in the 2016-2017 RP/EA, the Proposed Action is intended to benefit natural resources. Though some minor, primarily short-term adverse effects may occur in some locations, the cumulative effects of these actions on the quality of the human environment are not expected to be regionally significant. As the 2016-2017 RP/EA also indicates, to the extent there are indications that site-specific projects may have the potential to result in significant adverse effects to the quality of the human environment, a supplemental EA or EIS may be prepared.

- The Proposed Action is not expected to adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places and is not expected to cause loss or destruction of significant scientific, cultural, or historical resources. The Proposed Action will be implemented in accordance with all applicable laws and regulations concerning the protection of cultural and historic resources.
- The Proposed Action is not expected to have a significant impact on endangered or threatened species, or their critical habitat as defined under the Endangered Species Act of 1973, and in fact is expected to benefit species. Consultations with U.S. Fish and Wildlife Service and National Marine Fisheries Service have been completed and the MS TIG received concurrence that the Proposed Action will either (1) have no effect or, (2) with the use of conservation measures identified in the consultations and the 2016-2017 RP/EA, may affect but is not likely to adversely affect threatened or endangered species or designated critical habitat.
- Based on information in the 2016-2017 RP/EA, the Proposed Action is not expected to threaten a violation of Federal, state, or local laws, or requirements imposed for environmental protection. Furthermore, the MS TIG will complete an Environmental Evaluation Worksheet to ensure NEPA and regulatory compliance, and to document whether impacts are at or below maximum adverse impacts as described.
- The Proposed Action will not adversely affect stocks of marine mammals as defined in the Marine Mammal Protection Act. This Proposed Action does not require authorization under MMPA.
- The Proposed Action will not adversely affect fish species managed under the Magnuson-Stevens Fishery Conservation and Management Act. No in-water work will be conducted as part of the Grand Bay Land Acquisition and Habitat Management project.
- The Proposed Action will not adversely affect essential fish habitat as defined under the Magnuson-Stevens Fishery Conservation and Management Act. Consultation with NOAA NMFS has been completed and NMFS concurred that the Proposed Action will not affect essential fish habitat.
- The Proposed Action will not adversely affect vulnerable marine or coastal ecosystems, including but not limited to deep coral ecosystems, because no coastal in-water work will be conducted.
- The Proposed Action is not expected to adversely affect biodiversity or ecosystem functioning (e.g., benthic productivity, predator-prey relationships, etc.). The Grand Bay Project is expected to provide long-term benefits by increasing diversity in flora and fauna.
- The Proposed Action is not expected to result in the introduction or spread of a nonindigenous species. Project purposes include management of invasive species and best practices are included in the 2016-2017 RP/EA to minimize the risk of the introduction or spread of nonindigenous species. The project includes provisions for invasive species management.

## DETERMINATION

In view of the information presented in this document and the analysis contained in the 2016-2017 RP/EA, it is hereby determined that implementation of the SRP will not significantly impact the quality of the human environment as described above. Therefore, an EIS will not be prepared.

FOR THE U.S. DEPARTMENT OF THE INTERIOR



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DEBORA L. MCCLAIN

Alternate Department of the Interior Natural Resources Trustee Official for the Mississippi Trustee Implementation Group

Date: 8/30/2019

FOR THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

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CHRISTOPHER D. DOLEY

Principal Representative, National Oceanic and Atmospheric Administration

Date: \_\_\_\_\_

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TONY PENN

Chief, Assessment and Restoration Division

National Ocean Service

Date: \_\_\_\_\_

FOR THE U.S. DEPARTMENT OF AGRICULTURE

A handwritten signature in cursive script that reads "Homer L. Wilkes".

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HOMER L. WILKES  
Principal Representative, U.S. Department of Agriculture

Date: 9/6/2019

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY



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MARY KAY LYNCH  
Alternate to Principal Representative, U.S. Environmental Protection Agency

Date: 9/4/2019