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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XE201

Notice of Availability of the *Deepwater Horizon* Oil Spill Final Programmatic Damage Assessment and Restoration Plan and Final Programmatic Environmental Impact Statement (Final PDARP/PEIS)

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of availability of a Final Programmatic Damage Assessment and Restoration Plan and Final Programmatic Environmental Impact Statement.

SUMMARY: In accordance with the Oil Pollution Act of 1990 (OPA) and the National Environmental Policy Act (NEPA), the *Deepwater Horizon* Federal and State natural resource trustee agencies (Trustees) have prepared a Final Programmatic Damage Assessment and Restoration Plan and Final Programmatic Environmental Impact Statement (Final PDARP/PEIS). As required by OPA, in this Final PDARP/PEIS, the Trustees present the assessment of impacts of the *Deepwater Horizon* oil spill on natural resources in the Gulf of Mexico and on the services those resources provide, and determine the restoration needed to compensate the public for these impacts. The Final PDARP/PEIS describes the Trustees' programmatic alternatives considered to restore natural resources, ecological services, and recreational use services injured or lost as a result of the *Deepwater Horizon* oil spill. The Trustees evaluate these alternatives under criteria set forth in the OPA natural resource damage assessment regulations, and also evaluate the environmental consequences of the restoration alternatives in accordance

with NEPA. The purpose of this notice is to inform the public of the availability of the Final PDARP/PEIS.

ADDRESSES:

Obtaining Documents: You may download the Final PDARP/PEIS at <http://www.gulfspillrestoration.noaa.gov>. Alternatively, you may request a CD of the Final PDARP/PEIS (see **FOR FURTHER INFORMATION CONTACT**). You may also view the document at any of the public facilities listed at <http://www.gulfspillrestoration.noaa.gov>. The Final PDARP/PEIS also will be available for download at <http://www.justice.gov/enrd/deepwater-horizon>.

FOR FURTHER INFORMATION CONTACT: Courtney Groeneveld at gulfspill.restoration@noaa.gov.

SUPPLEMENTARY INFORMATION:

Introduction

On April 20, 2010, the *Deepwater Horizon* mobile drilling unit exploded, caught fire, and eventually sank in the Gulf of Mexico, resulting in a massive release of oil and other substances from BP's Macondo well. Tragically, 11 workers were killed and 17 injured by the explosion and fire. Initial efforts to cap the well following the explosion were unsuccessful, and for 87 days after the explosion, the well continuously and uncontrollably discharged oil and natural gas into the northern Gulf of Mexico. Approximately 3.19 million barrels (134 million gallons) of oil were released into the ocean, by far the largest offshore oil spill in the history of the United States.

Oil spread from the deep ocean to the surface and nearshore environment, from Texas to Florida. The oil came into contact with and injured natural resources as diverse

as deep-sea coral, fish and shellfish, productive wetland habitats, sandy beaches, birds, endangered sea turtles, and protected marine life. The oil spill prevented people from fishing, going to the beach, and enjoying their typical recreational activities along the Gulf. Extensive response actions, including use of dispersants, cleanup activities, and actions to try to prevent the oil from reaching sensitive resources, were undertaken to try to reduce harm to people and the environment. However, many of these response actions had collateral impacts on the environment. The oil and other substances released from the well in combination with the extensive response actions together make up the *Deepwater Horizon* incident.

The Trustees conducted the natural resource damage assessment for the *Deepwater Horizon* incident 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 of those resources and the loss of services they provide from the time of injury until the time restoration to baseline (the resource quality and conditions that would exist if the spill had not occurred) is complete.

The Trustees¹ are as follows:

- National Oceanic and Atmospheric Administration, on behalf of the U.S. Department of Commerce;

¹ Although a trustee under OPA by virtue of the proximity of its facilities to the *Deepwater Horizon* oil spill, the U.S. Department of Defense (DOD) is not a member of the Trustee Council and did not participate in development of this Final PDARP/PEIS.

- U.S. Department of the Interior, as represented by the National Park Service, U.S. Fish and Wildlife Service, and Bureau of Land Management;
- U.S. Department of Agriculture;
- U.S. Environmental Protection Agency;
- State of Louisiana Coastal Protection and Restoration Authority, Oil Spill Coordinator's Office, Department of Environmental Quality, Department of Wildlife and Fisheries, and Department of Natural Resources;
- State of Mississippi Department of Environmental Quality;
- State of Alabama Department of Conservation and Natural Resources and Geological Survey of Alabama;
- State of Florida Department of Environmental Protection and Fish and Wildlife Conservation Commission; and
- For the State of Texas: Texas Parks and Wildlife Department, Texas General Land Office, and Texas Commission on Environmental Quality.

Background

Notice of availability of the Draft PDARP/PEIS was published in the **Federal Register** on October 5, 2015 (80 FR 60126). The Draft PDARP/PEIS presented the assessment of impacts of the *Deepwater Horizon* incident on natural resources in the Gulf of Mexico and on the services those resources provide, and determined the restoration needed to compensate the public for these impacts. The Trustees provided the public with 60 days to review and comment on the Draft PDARP/PEIS. The Trustees also held public meetings in Houma, LA; Long Beach, MS; New Orleans, LA; Mobile, AL; Pensacola, FL; St. Petersburg, FL; Galveston, TX; and Washington, DC, to facilitate public

understanding of the document and provide opportunity for public comment. The Trustees considered the public comments received, which informed the Trustees' analysis of programmatic alternatives in the Final PDARP/PEIS. The Trustees actively solicited public input through a variety of mechanisms, including convening public meetings, distributing electronic communications, and using the Trustee-wide public website and database to share information and receive public input. A summary of the public comments received and the Trustees' responses to those comments are addressed in Chapter 8 of the Final PDARP/PEIS.

Overview of the Final PDARP/PEIS

The Final PDARP/PEIS is being released in accordance with the OPA, the Natural Resources Damage Assessment (NRDA) regulations found in the Code of Federal Regulations (CFR) at 15 CFR part 990, and the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*).

In the Final PDARP/PEIS, the *Deepwater Horizon* Trustees present to the public their findings on the extensive injuries to multiple habitats, biological species, ecological functions, and geographic regions across the northern Gulf of Mexico that occurred as a result of the *Deepwater Horizon* incident, as well as their programmatic plan for restoring those resources and the services they provide. The injuries caused by the *Deepwater Horizon* incident cannot be fully described at the level of a single species, a single habitat type, or a single region. Rather, the injuries affected such a wide array of linked resources over such an enormous area that the effects of the *Deepwater Horizon* incident constitute an ecosystem-level injury. The Final PDARP/PEIS presents four programmatic alternatives evaluated in accordance with OPA and NEPA.

The four alternatives under the Final PDARP/PEIS are as follows:

- Alternative A (Preferred Alternative): Comprehensive Integrated Ecosystem Restoration Plan based on programmatic Trustee goals;
- Alternative B: Resource-Specific Restoration Plan based on programmatic Trustee goals;
- Alternative C: Continued Injury Assessment and Defer Comprehensive Restoration Plan; and
- Alternative D: No Action/Natural Recovery.

These programmatic alternatives are comprised of restoration types and approaches to restore, replace, rehabilitate, or acquire the equivalent of the injured natural resources and services. The Trustees' preferred alternative for a restoration plan utilizes a comprehensive integrated ecosystem approach to best address these ecosystem-level injuries. The Trustees' evaluation determined this alternative is best, among several other alternatives, at compensating the public for the losses to natural resources and services caused by the *Deepwater Horizon* incident.

The Trustees' proposed decision is to select a comprehensive restoration plan to guide and direct subsequent restoration planning and implementation during the coming decades. The Final PDARP/PEIS is programmatic; it describes the framework by which subsequent project specific restoration plans will be identified and developed, and sets forth the types of projects the Trustees will consider in each of the described restoration areas. The subsequent restoration plans will identify, evaluate, and select specific restoration projects for implementation that are consistent with the restoration framework laid out by the Final PDARP/PEIS.

The Trustees considered this programmatic restoration planning decision in light of the proposed settlement among BP, the United States, and the States of Louisiana, Mississippi, Alabama, Florida, and Texas to resolve BP's liability for natural resource damages associated with the *Deepwater Horizon* incident. Under this proposed settlement, BP would pay a total of \$8.1 billion for restoration to address natural resource injuries (this includes \$1 billion already committed for early restoration), plus up to an additional \$700 million to respond to natural resource damages unknown at the time of the settlement and/or to provide for adaptive management. The proposed Consent Decree for the proposed settlement was the subject of a separate public notice and comment process; the Notice of Lodging of the proposed Consent Decree under the Clean Water Act and Oil Pollution Act was published in the **Federal Register** on October 5, 2015 (80 FR 60180).

Next Steps

In accordance with NEPA, a Federal agency must prepare a concise public Record of Decision (ROD) at the time the agency makes a decision in cases involving an EIS (40 CFR 1505.2). The Trustees will issue a ROD pursuant to NEPA regulations at 40 CFR 1505.2 and OPA regulations at 15 CFR 990.23. Accordingly, the ROD for the Final PDARP/PEIS will provide and explain the Trustees' decisions regarding the selection of a preferred alternative. The Trustees will issue the ROD no earlier than 30 days after the Environmental Protection Agency publishes a notice in the **Federal Register** announcing the availability of the Final PDARP/PEIS (40 CFR 1506.10).

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 February 17, 2011, NOI for a 90-day formal scoping (76 FR 9327) and public comment period for this Final PDARP/PEIS. The Trustees conducted the scoping in accordance with OPA (15 CFR 990.14(d)), NEPA (40 CFR 1501.7), and State authorities. As part of the scoping process, the Trustees hosted public meetings across all the Gulf States during spring 2011.

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.

Dated: February 11, 2016

Samuel D. Rauch III,
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

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