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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XC701]

Notice of Availability of a Record of Decision for the Deepwater Horizon Oil Spill Louisiana Trustee Implementation Group Final Phase II Restoration Plan: #3.2 Mid-Barataria Sediment Diversion

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

ACTION: Notice of availability (NOA); record of decision (ROD).

SUMMARY: In accordance with the Oil Pollution Act of 1990 (OPA) and the National Environmental Policy Act of 1969 (NEPA), the *Deepwater Horizon* Oil Spill Final Programmatic Damage Assessment Restoration Plan and Final Programmatic Environmental Impact Statement (Final PDARP/PEIS), Record of Decision and Consent Decree, notice is hereby given that the Federal and State natural resource trustee agencies for the Louisiana Trustee Implementation Group (Louisiana TIG) have issued a Record of Decision (ROD) for the Louisiana Trustee Implementation Group Final Phase II Restoration Plan #3.2: Mid-Barataria Sediment Diversion Project (Final Phase II RP #3.2) and accompanying NEPA analysis, as adopted, in the Final Environmental Impact Statement for the Proposed Mid Barataria Sediment Diversion Project, Plaquemines Parish (MBSD FEIS). The ROD sets forth the basis for the Louisiana TIG's OPA Natural Resources Damage Assessment (NRDA) decision to fund and implement the 75,000 cubic feet per second (cfs) capacity Mid-Barataria Sediment Diversion Project. This restoration will continue the process of restoring natural resources and services injured or lost resulting from the *Deepwater Horizon* (DWH) oil spill of 2010. The purpose of this notice is to inform the public of the availability of the Louisiana TIG's ROD for its combined OPA NRDA and NEPA decision.

ADDRESSES: Obtaining documents: You may download the ROD at *http://www.gulfspillrestoration.noaa.gov*. Alternatively, you may request a copy of the combined OPA NRDA and NEPA ROD.

FOR FURTHER INFORMATION CONTACT: National Oceanic and Atmospheric Administration—Mel Landry, NOAA Restoration Center, (301) 427-8711, *gulfspill.restoration@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The DWH Trustees are:

- U.S. Department of the Interior (DOI), as represented by the National Park Service, U.S. Fish and Wildlife Service, and Bureau of Land Management;
- National Oceanic and Atmospheric Administration (NOAA), on behalf of the U.S. Department of Commerce;
- U.S. Department of Agriculture (USDA);
- U.S. Environmental Protection Agency (EPA);
- State of Louisiana 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).

Building on the PDARP/PEIS, the Louisiana TIG began evaluating restoration strategies that could restore for injuries to natural resources in the Barataria Basin, which resulted in the Strategic Restoration Plan and Environmental Assessment #3: Restoration of Wetlands, Coastal, and Nearshore Habitats in the Barataria Basin, Louisiana (SRP/EA #3). In the SRP/EA #3, the Louisiana TIG ultimately determined that a combination of "marsh creation and ridge restoration plus a large-scale sediment diversion would provide the greatest level of benefits to injured Wetlands, Coastal, and Nearshore Habitats and to

the large suite of injured resources that depend in their life cycle on productive and sustainable wetland habitats" (LA TIG, 2018, page 3-32) in the basin and in the broader northern Gulf of Mexico. In the SRP/EA #3, the Louisiana TIG also selected a Mid-Barataria sediment diversion (MBSD) as the specific sediment diversion project to move forward for further analysis.

Since finalizing the SRP/EA #3, the Louisiana TIG evaluated a variety of potential alternatives for a large-scale sediment diversion in the Barataria Basin. The Final Phase II RP #3.2, along with the MBSD FEIS released simultaneously by the U.S. Army Corps of Engineers, New Orleans District (USACE CEMVN) and adopted by the Federal agencies of the Louisiana TIG, set forth the results of that evaluation.

Overview of the Selected Alternative 1, Mid-Barataria Sediment Diversion Project

In the Final Phase II RP #3.2, the Louisiana TIG selected its preferred alternative (Alternative 1, MBSD Project) under the DWH Louisiana Restoration Area Wetlands, Coastal and Nearshore Habitats restoration type. The selected alternative consists of a controlled sediment and freshwater intake diversion structure in Plaquemines Parish on the right descending bank of the Mississippi River at River Mile (RM) 60.7 just north of the Town of Ironton. The outfall area for sediment, freshwater, and nutrients conveyed from the river is located within the Mid-Barataria Basin. The area of the MBSD Project includes the hydrologic boundaries of the Barataria Basin and the lower Mississippi River Delta Basin, also known as the birdfoot delta. The Mississippi River itself, beginning near RM 60.7 and extending to the mouth of the river, is also included in the MBSD Project area. The diversion will have a maximum diversion flow of 75,000 cfs, which would occur when the Mississippi River gauge at Belle Chase reaches 1,000,000 cfs or higher. The diversion will operate at up to 5,000 cfs (base flow) when the river is below 450,000 cfs at Belle Chase; at river flows above 450,000 cfs, the diversion will be opened fully. At the downstream end of the diversion channel, an engineered "outfall transition

feature" will be constructed to guide and disperse the channel flow into the Barataria Basin. The diversion is projected to increase land area, including emergent wetlands and mudflats, in the Barataria Basin across the 50-year analysis period relative to natural recovery, with a maximum increase of 17,300 acres (approximately 7000 hectares) in 2050, at the approximate mid-point of the 50-year analysis period.

The cost of the selected Alternative 1, MBSD Project at the time of the Draft Phase II RP #3.2 was anticipated to be approximately $2 billion. Since the publication of the Draft Phase II RP #3.2, substantial increases in the general inflation rate as well as corresponding increases to most cost components of the MBSD Project, including but not limited to construction materials, construction activities, and wages, have occurred. CPRA has experienced an average 25 percent increase in costs on its recent restoration projects. CPRA will not know the amount of the cost increase for the MBSD Project until it completes negotiations for a Guaranteed Maximum Price for project construction with the Construction Management at Risk contractor. In light of this uncertainty as to total project costs, the Louisiana TIG intends to limit its contribution to the overall project costs to $2,260,000,000. This will help ensure that DWH settlement funding would be available to construct all projects currently under consideration as well as for future large-scale wetlands, coastal, and nearshore habitat restoration projects not yet proposed. The cap will also ensure that planned DWH payments to the Louisiana TIG will be sufficient to cover project costs as it continues to be designed and implemented. To ensure the Monitoring and Adaptive Management (MAM) and Mitigation and Stewardship Plans are fully funded, the Louisiana TIG's contribution will cover the majority of MAM associated costs (a NRDA investment of up to $124,000,000, including contingency funding) and the Mitigation and Stewardship costs (currently estimated at $378,000,000, including contingency funding). A portion of the engineering and design costs has been paid by the National Fish and Wildlife Federation's Gulf Environmental

Benefit Fund. The remaining Louisiana TIG contribution will be applied toward other project cost categories. CPRA has committed to providing funding for all costs that exceed the Louisiana TIG's funding cap of $2,260,000,000.

The Louisiana TIG fully evaluated a smaller-capacity diversion with a maximum capacity of 50,000 cfs (Alternative 2). The Trustees found that such a diversion would provide substantially less benefit in marsh preservation and restoration, with only a small reduction in adverse impacts and a slight cost reduction.

The Louisiana TIG also fully evaluated a larger-capacity diversion with a maximum capacity of 150,000 cfs (Alternative 3). While the marsh creation benefits of such a large diversion would be significantly greater, the collateral injuries would also increase to levels unacceptable to the Trustees.

Three other alternatives (Alternatives 4-6) would divert the same flow (cfs) capacities as described above for Alternatives 1-3 and would include marsh terrace outfall features. While providing some benefits, the outfall feature alternatives do not substantially change the extent to which the corresponding alternatives with similar capacities and without terraces meet the Louisiana TIG's goals and objectives for the project.

The Louisiana TIG is committed to continuing efforts to restore the resources that would be adversely affected by the selected MBSD Project, many of which were also injured by the DWH oil spill. The selected MBSD Project includes a MAM Plan and a Mitigation and Stewardship Plan. The Project also includes a Dolphin Intervention Plan, which was developed in response to anticipated impacts and public comments. These plans serve as an integral part of the proposed restoration action. The MAM Plan includes (1) methods for specific types of monitoring, (2) key performance measures/indicators for assessing the success of the Proposed MBSD Project in meeting its objectives, and (3) decision criteria and processes for modifying (“adapting”) current or future management

actions. The Mitigation and Stewardship Plan includes actions to help to address collateral impacts of construction and operation of the Proposed MBSD Project. The Dolphin Intervention Plan outlines a spectrum of potential response actions for dolphins affected by the operation of the Proposed MBSD Project, ranging from recovery/relocation to no intervention to euthanasia. As part of the Project, CPRA would have responsibility for ensuring implementation of the measures outlined in each of these Plans.

While the Louisiana TIG rejected the No-Action-Alternative for this Final Phase II RP #3.2, the OPA analysis integrated information about the MBSD FEIS No-Action Alternative (40 CFR 1502.14(c)) because it provided a baseline against which the benefits and collateral injuries of the selected MBSD Project and its alternatives were compared.

The Louisiana TIG solicited public comment on the Draft RP for a total of 90 days between March 5, 2021 and June 3, 2021 (86 FR 12915, March 5, 2021). The Louisiana TIG held three public meetings to facilitate public understanding of the document and provide opportunity for public comment. The Louisiana TIG actively solicited public input through a variety of mechanisms, including convening virtual public meetings, distributing electronic communications, and using the Trustee-wide public website and database to share information and receive public input. The Louisiana TIG considered the public comments received, which informed the Louisiana TIG's analysis of alternatives in the Final RP. The Final Phase II RP #3.2 includes a summary of the comments received and responses to those comments. A Notice of Availability of the Final Phase II RP #3.2 was published in the **Federal Register** on September 23, 2022 (87 FR 58067).

Trustees typically choose to combine a restoration plan and the required NEPA analysis into a single document (33 CFR 990.23(a), (c)(1)). In this case, the Final Phase

II RP #3.2 does not include integrated NEPA analysis. This is because prior to evaluation of the Proposed MBSD Project by the Louisiana TIG as a restoration project under OPA, the USACE CEMVN initiated scoping for the MBSD Project EIS based on a permit application for the Project by CPRA. To increase efficiency, reduce redundancy, and be consistent with Federal policy and 40 CFR 1506.3, the four Federal Trustees in the Louisiana TIG decided to participate as cooperating agencies in the development of a single MBSD FEIS. As the lead agency, the USACE CEMVN has primary responsibility for preparing the MBSD FEIS (40 CFR 1501.5(a)). The Louisiana TIG has relied on the MBSD FEIS to evaluate potential environmental effects of the MBSD Project and its alternatives evaluated in the Final Phase II RP #3.2.

Based on review of the analysis and in accordance with 40 CFR 1506.3 (1978), each of the Federal trustees of the Louisiana TIG adopted the MBSD FEIS to satisfy its independent NEPA requirements related to its decision to fund and implement the selected MBSD Project pursuant to OPA 15 CFR 990 *et seq*. Furthermore, based on our determination of the sufficiency of the USACE's Final MBSD EIS, the Federal agencies of the Louisiana TIG determined that it was appropriate to adopt the Final MBSD EIS without the need for recirculation in accordance with 40 CFR 1506.3 (1978).

Administrative Record

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

The DWH 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 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 and includes the administrative record for the RP #3.2.

Authority

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

Dated: February 1, 2023.

Carrie Diane Robinson,

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National Marine Fisheries Service.

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