

Draft Evaluation of Second Project Change for the Alabama TIG Restoration Plan I/Environmental Impact Statement Project: Dauphin Island Eco-Tourism and Environmental Education Area

Introduction

In accordance with Section 9.5.2 of the Trustee Council Standard Operating Procedures for Implementation of the Natural Resource Restoration for the *Deepwater Horizon* (DWH) Oil Spill (Trustee Council SOPs), the Trustees are required to evaluate material changes to any selected restoration project. Trustees must also determine whether additional restoration planning and environmental review—including opportunity for public comment—is necessary when a material change to a previously selected restoration project occurs.

The changes presented herein are being evaluated in accordance with Trustee Council SOPs. Through this project change memorandum, the Alabama Trustee Implementation Group (TIG) proposes a reduction in public use amenities, as well as a project budget increase in the amount of \$460,613, for the Dauphin Island Eco-Tourism and Environmental Education Area restoration project (Project). These additional project funds would be used, in combination with Gulf of Mexico Energy Security Act (GOMESA) funds secured by the Alabama Department of Conservation and Natural Resources (ADCNR), the Implementing Trustee for the Project, to construct public access amenities at a property on Dauphin Island, Alabama, with the goal of providing and enhancing public recreational opportunities. The property in question was acquired with the Alabama TIG's natural resource damage assessment (NRDA) funds in 2019, as part of the original project activities. This is the second project change proposed by the Alabama TIG for this Project.

Project Background

The Dauphin Island Eco-Tourism and Environmental Education Area restoration project was analyzed in the [*Deepwater Horizon Oil Spill Alabama Trustee Implementation Group Final Restoration Plan I and Environmental Impact Statement: Provide and Enhance Recreational Opportunities* \(RP I/EIS\)](#) and selected by the [Alabama Trustees](#) for implementation.

The Project approved the acquisition and management of approximately 100 acres of privately held land and water bottom on Dauphin Island. As described in RP I/EIS, the property was to be acquired to enhance recreational use through the development of public amenities, including a fishing pier, bicycle path, parking area, boardwalks, gazebos, and public restrooms, as well as by protecting the property from commercial development. The ADCNR, in conjunction with the Town of Dauphin Island (Town), is the Implementing Trustee for the Project. The Project was approved with a budget of \$4,000,000 for the acquisitions and improvements.

After the RP I/EIS Record of Decision was signed on May 16, 2017, ADCNR entered into an implementation agreement with the Town to provide certain labor, services, and materials in the implementation of the Project. Under the implementation agreement, ADCNR is

responsible for all items related to the due diligence and closing of the acquisition of the parcels described in the Project. The Town is responsible for the planning, engineering and design, permitting and consultation, and construction of the infrastructure and improvements outlined for the Project.

Description of Project Change No. 1

ADCNR initiated the due diligence for the acquisition in 2017. As a result of the due diligence and associated planning that occurred after the RP I/EIS Record of Decision, ADCNR, as the Implementing Trustee, determined that acquisition of approximately five (5) acres of uplands approved in the Project should be terminated because the seller was unwilling to move forward with the sale of that approximately 5-acre area. The seller's unwillingness made the acquisition of this area not feasible (See, Figure 1 & 2).

The project property was acquired in January 2019. The original project description in the RP I/EIS called for up to 100 parking spaces, plus 7 additional ADA-accessible parking spaces. Because the property ultimately acquired by the Town consisted of 5 fewer upland acres than expected to be acquired in the RP I/EIS, the acquired property does not have sufficient acreage to construct all 100 parking spaces, or the complete bike path and elevated boardwalk contemplated in the RP I/EIS. Thus, the Project was modified in 2019 to reduce the number of parking spaces developed at the site to approximately 50 parking spaces, including the 7 ADA-accessible spaces. The asphalt bike path and elevated boardwalk evaluated in RP I/EIS was also planned to be shortened slightly. Based on the 2019 project change, the scope and location of the restrooms, gazebo, educational displays, fishing pier, and kayak launch amenities were not expected to change, with the exception that the fishing pier was reclassified to a viewing pier during the Town's planning process. In the end, the revised project was expected to provide the majority of the public amenities approved in RP I/EIS in full, while protecting 95% of the originally-intended acquired lands from further development. Project Change No. 1, which the Alabama TIG completed in 2019, resulted in an expected reduction of the overall project costs by \$2,222,000, making the Project's new total anticipated cost \$1,778,000.

Description of the TIG's Proposed Project Change No. 2. After the acquisition of the 95-acre parcel was completed in January 2019, the Town issued a Request for Qualifications for the engineering and design of the recreational use amenities outlined in Project Change No. 1. Due to substantially increased costs of construction since the Project was originally scoped, even the lowest bid was substantially higher than the revised budget approved through Project Change No. 1. As a result, ADCNR and the Town reviewed options for leveraging additional funding streams for the Project and were able to secure \$2,211,700 in additional funding through GOMESA for ecological and recreational use restoration at the site (see Table 1 below).

After consultation with the project contractor, of the public access amenities originally contemplated in the RP I/EIS, ADCNR and the Town have now determined that the most effective use of the existing NRDA-funded construction budget would be to construct the restrooms, a portion of the planned parking spaces (see table below), and the boardwalk.

ADCNR also proposes increasing the project budget to provide additional NRDA funds (\$460,613) to complete these public access amenities at the site. The remaining amenities described in the RP I/EIS (gazebo, educational displays, and viewing pier) are no longer proposed to be constructed under the NRDA-funded portion of the Project budget; instead ADCNR and the Town propose using the GOMESA funds for construction of some of these elements, including an additional approximately 200-300 feet of boardwalk, the viewing pier, and a kayak launch. Table 1, below, describes the level of amenities originally proposed, and how they have evolved over time, including their funding sources.

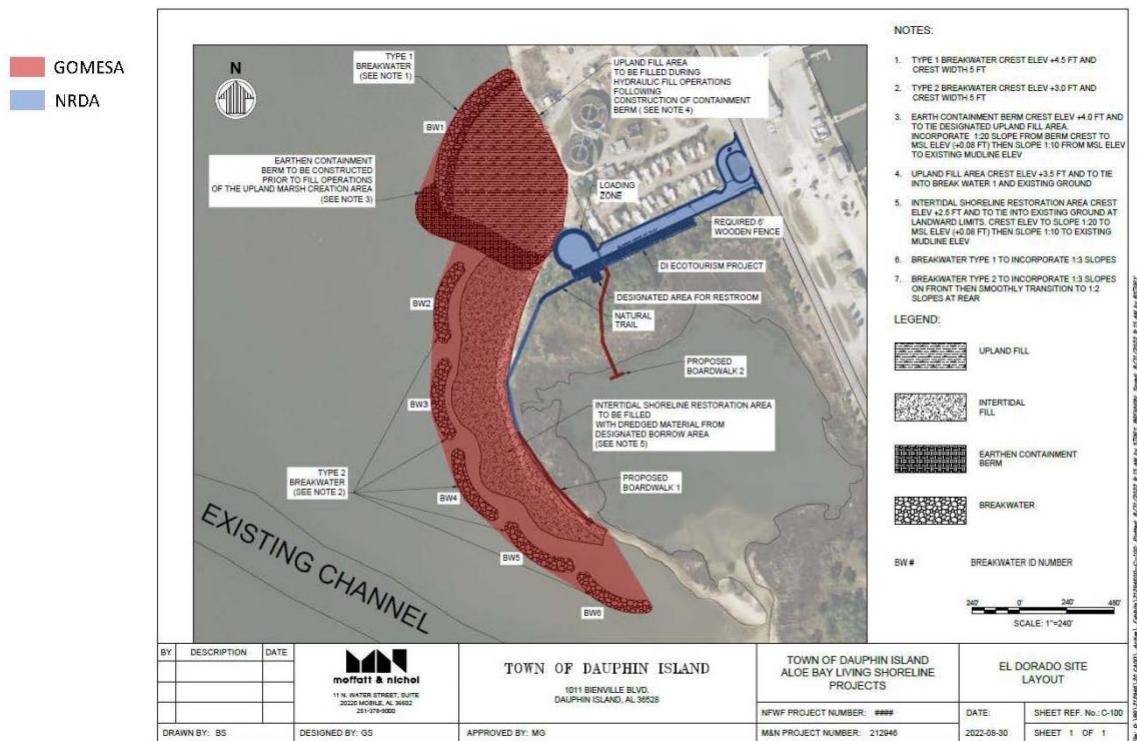
Table 1 – NRDA-funded project components

Amenity	Originally Proposed	Project Change No. 1	Proposed Project Change No. 2
Land Acquisition (complete)	100 acres	95 acres	95 acres (no change) (NRDA)
Parking	100 (inc. 7 ADA)	50 (inc. 7 ADA)	~41 (inc. 3 ADA) and ~8 kayak trailer spaces (NRDA)
Boardwalk	~1520 total linear feet of boardwalk	Slightly less than 1520 total linear feet of boardwalk	~600 total linear feet of boardwalk to be constructed with NRDA-funds; ~200-300 additional linear feet with GOMESA funds
Bike Path	2355 linear feet	2355 linear feet	No bike path would be constructed.
Restrooms	500 ft ²	500 ft ²	500 ft ² (no change, NRDA)
Gazebo	450 ft ²	450 ft ²	No gazebo would be constructed.
Fishing/Viewing Pier	~930 linear feet	~930 linear feet	No pier would be constructed with NRDA funds. GOMESA would fund a viewing-only pier.
Educational Displays	Included	Included	No educational displays would be constructed.
Boat Ramp/Kayak Launch	None	Added	No boat ramp or kayak launch would be constructed with NRDA funds.

Amenity	Originally Proposed	Project Change No. 1	Proposed Project Change No. 2
			GOMESA would fund a kayak launch.
Sea Turtle-Friendly Lighting	Included	Included	Included (NRDA)

GOMESA Funding

ADCNR has secured funding for the site through GOMESA, including funding for ecological restoration and public access amenities. GOMESA funding would be used for engineering and design, permitting, and construction of a 1000-foot-long segmented breakwater and 2.5 acres of marsh and beach habitat creation, as well as ~200-300 feet of boardwalk, the viewing pier, the kayak launch, and an ADA beach access mat. These GOMESA-funded ecological and recreational use restoration activities would complement the revised project's public access amenities, to be funded with Alabama TIG NRDA funds, to enhance the restoration benefits of the Project as a whole by leveraging the available GOMESA funds with NRDA funds.



Revised Budget for the Project's NRDA Funds

The anticipated cost of the modified list of NRDA-funded amenities plus contingency is estimated to be \$1.375 million. To date, \$863,613 has been expended on the Project (for

acquisition and trustee supervision), leaving a balance of \$914,387 in remaining NRDA project funds. The new proposed budget for the Project’s NRDA funds is as follows:

Updated Estimated Cost for Amenities:	\$1,100,000
Contingency (20%):	\$275,000
TOTAL ESTIMATED COST FOR AMENITIES:	\$1,375,000
NRDA Funds Expended to Date:	\$863,613
Remaining Project NRDA Funds:	\$914,387
Additional NDRA Funds Needed:	\$460,613
NEW PROPOSED NRDA PROJECT BUDGET:	\$2,238,613

Determination of Need for Additional NEPA Analysis or Additional OPA Restoration Planning

The Alabama TIG evaluated the proposed budget increase and reduction in proposed public access amenities for the Project based on the criteria established in Section 9.5.2 of the Trustee Council SOPs. The Alabama TIG evaluated whether the reduction in infrastructure would result in a modified project that remains consistent with the environmental review in the RP I/EIS or whether the modification would result in substantial changes that are relevant to environmental concerns. The Alabama TIG also assessed whether there are significant new circumstances or information related to the environmental concerns not addressed in the impact analysis of the RP I/EIS (40 C.F.R. § 1502.9 (c)). Finally, the Alabama TIG evaluated whether reduction in proposed infrastructure or proposed budget increase would affect the Project’s selection under the Oil Pollution Act (“OPA”).

A reduction in length to the elevated boardwalk would reduce adverse impacts related to physical and biological resources; other impacts addressed in the EIS would remain the same. Similarly, foregoing construction of gazebo and bike path, and changing the fishing pier to a viewing platform within the same project footprint would reduce adverse impacts overall; however, the long-term benefits that would have been associated with those amenities would not accrue. The beneficial impacts of recreation access from the boardwalk, restrooms, and parking would continue. The Alabama TIG concludes that the reduction in proposed infrastructure continues to meet the overall purpose and need and that there are no material changes to the environmental consequences evaluated in the RP I/EIS as a result of the reduction of proposed infrastructure. In short, the environmental consequences anticipated from the modified project fall within the range of impacts evaluated in the RP I/EIS. Accordingly, no new National Environmental Policy Act (NEPA) analysis is required.

Similarly, the proposed project modifications would not change the result of the overall analysis of the Project under OPA in the RP I/EIS, as the Project was proposed and selected to provide partial compensation for recreational use lost in coastal Alabama as a result of the DWH oil spill, and the modified project would still meet that purpose. Thus, the nexus to resources injured by the oil spill remains clear. Though the scope of the public amenities evaluated in the

January 2023

RP I/EIS has changed, the revised project would still also meet the OPA evaluation criteria as described in the RP I/EIS.

The key issue from an OPA perspective, given that the modified project results in the elimination of a number of the recreational amenities originally proposed, is whether the project still provides a reasonable level of public benefits after the change. An assessment of this requires consideration of how both the Project's recreational amenities and total costs have changed since the original OPA evaluation. The original project cost was estimated in RP I/EIS to be \$4 million. This was reduced under Project Change No. 1 by 55.6% to \$1,778,000 because the Trustees were ultimately able to acquire only 95 of the originally anticipated 100 acres and the amenities were reduced due to land availability. The proposed project change would increase the overall project budget from \$1,778,000 to \$2,238,613. While the current proposed project change also reduces the recreational amenities at the site, the public benefits of the remaining amenities are considered in the context of the overall project costs. The increased budget to implement the features described in this Project Change No. 2 (from \$1,778,000 to \$2,238,613) and reduction in scope of the infrastructure amenities paid for with NRDA funds reflects the recent unprecedented cost increases in labor and materials that have occurred globally over the past 2 years. Notwithstanding the reduction in scope, under the proposed Project Change No. 2, the Project continues to provide opportunities for bayfront recreational activities such as walking, birdwatching, and viewing coastal habitat and wildlife. In addition, the ability to leverage GOMESA funds to construct additional recreational use amenities for the Project provides additional recreational opportunities.

In sum, the Project as proposed in Project Change No. 2, even with its reduced public amenities, would continue to offer the public shoreline recreational opportunities that represent reasonable and appropriate compensation for natural resource injuries incurred as a result of the DWH oil spill, and the increased cost is still less than the originally-approved project budget of \$4,000,000. Therefore, the Alabama Trustees conclude that the modifications proposed under Project Change No. 2 are consistent with the selection of the Project under OPA in the Final RP I/EIS, and no additional OPA evaluation is required. The Trustees incorporate the OPA analysis in the Final RP I/EIS for this project by reference. The Trustees further conclude that the proposed modifications to the Project warrant an opportunity for public notice and comment under OPA. Therefore, the Trustees will accept public comment through January 27, 2023. Comments can be submitted during the comment period by the following method:

- Via email to: ALTIG@dcnr.alabama.gov

Determination of Need for Additional Environmental Compliance Reviews

Based on the project changes described above, project activities funded with NRDA monies under this proposed project modification would not warrant additional reviews under the Endangered Species Act, the Marine Mammal Protection Act, the National Historic Preservation Act, or the Coastal Zone Management Act, nor are additional reviews for Essential Fish Habitat, under the National Marine Fisheries Service's or U.S. Fish and Wildlife Service's jurisdiction,

January 2023

required. This is due to the fact that the proposed modifications would reduce the scope of the paths and upland amenities and remove the NRDA-funded construction of a fishing pier. Thus, the reduced project footprint would result in fewer effects under the above listed statutes than those previously considered during environmental compliance reviews completed at the time of and following the TIG's release of RP I/EIS.

All ecological and recreational restoration at the site that is funded with GOMESA monies will be subject to separate environmental compliance reviews, not overseen or implemented by the Alabama TIG.