



Gulf Coast Ecosystem Restoration Council

Record of Decision

Adoption of National Oceanic and Atmospheric Administration (NOAA) Restoration Center Programmatic Environmental Impact Statement in Connection with Funding Approval for Marsh Restoration in Fish River & Oyster Bay

Introduction

The Gulf Coast Ecosystem Restoration Council (Council) hereby adopts the [2015 NOAA Restoration Center Programmatic Environmental Impact Statement \(PEIS\)](#) to address the National Environmental Policy Act (42 U.S.C. §§ 4321 *et seq.*) (NEPA) in connection with approval of implementation funds for Marsh Restoration in Fish River and Oyster Bay in Alabama (collectively, “Activity”). The Council is approving \$2,250,089 in funding for the Activity. Approximately \$40,000 of the funding will be used to support final design work to complete planning for the Fish River site, and the remaining \$2,210,089 of the funding will support implementation of restoration work at both the Fish River and Oyster Bay sites. These implementation funds will be used to restore approximately 200 acres of tidal creeks and wetlands through hydrological restoration work. NOAA is the sponsor for restoration implementation at the Fish River site, and the State of Alabama is the sponsor for restoration implementation at the Oyster Bay site.

Background

The Council is approving funding for the Marsh Restoration in Fish River and Oyster Bay through an amendment to the Council’s Initial Funded Priorities List (FPL). On December 9, 2015, the Council approved the Initial FPL, which includes certain projects and programs approved for funding under the Council-Selected Restoration Component of the RESTORE Act (33 U.S.C. § 1321(t) and *note*), along with other activities the Council identified as priorities for further Council consideration and potential future funding. Activities approved for funding in an FPL are in “Category 1,” and priorities for potential future funding are budgeted for in “Category 2.” In the Initial FPL, the Council approved approximately \$156.6 million in Category 1 activities and prioritized twelve Category 2 activities for potential future funding, subject to further Council and public review. The Council included planning activities in Category 1 and implementation activities in Category 2 for the Marsh Restoration in Fish River, Weeks Bay, Oyster Bay and Meadows Tract project.

Prior to approving an activity for funding in FPL Category 1, the Council must comply with NEPA and all other applicable Federal environmental laws. When the Initial FPL was approved in 2015, the Council had not addressed NEPA and other laws applicable to approval of funding for the Category 2 implementation activities for the Marsh Restoration in Fish River, Weeks Bay, Oyster Bay and Meadows Tract project. However, the Council did recognize the potential ecological value of future implementation work based on the review conducted during the Initial FPL process. The Council therefore approved \$907,954 in planning funds as part of the Initial FPL, a portion of which was to be used to complete environmental compliance activities. As noted above, the Council placed the implementation portion into FPL Category 2, pending the outcome of further Council review. At the time of the Initial FPL the estimated cost of project implementation at three sites was \$2,250,089.

Marsh Restoration in Fish River and Oyster Bay

The Initial FPL describes the Fish River, Weeks Bay, Oyster Bay and Meadows Tract project as part of NOAA's Connecting Coastal Water initiative, which if implemented would restore a more natural hydrology to a total of 470 acres of wetlands at three sites (Fish River/Weeks Bay, Oyster Bay and the Meadows Tract) located within the Mobile Bay ecosystem in Alabama. Through this project, NOAA would implement restoration activities, conduct monitoring to assess restoration outcomes, and engage in outreach and educational activities with restoration practitioners and stakeholders.

During the course of planning work, it was determined that the project would need to be modified during the implementation phase due to increased planning costs for surveying at the Fish River site and increased estimated costs for future construction. The estimated cost to construct the three sites now totals \$3,118,558 (including construction, oversight, monitoring, etc.), which is \$908,469 short of the amount of Category 2 set-aside funds available.

To address the budget shortfall, multiple changes have been made to the scope of this project in coordination with the State of Alabama and other Council members. It was determined that the hydrological improvements that could be accomplished at the Fish River and Oyster Bay sites would provide greater benefits to tidal hydrology, habitat utilization, and water quality than the interior site improvements possible at the Meadows Tract. Therefore, to help address the budget shortfall, implementation of the Activity will include the Fish River and Oyster Bay sites but not the Meadows site. NOAA will complete final design modifications at Fish River to reduce the construction footprint to backfill only 2 of the 3 dead-end canals, yet still achieve habitat benefits. The State of Alabama will be the project sponsor to complete construction at the Oyster Bay site. The Activity, as revised in scope, will now restore a more natural hydrology to a total of 200 acres of wetlands at two sites within the Mobile Bay ecosystem in Alabama.

Additional information on the revised Activity, including metrics of success, response to science reviews and more, is available in an activity-specific appendix to the FPL, which can be found at <https://www.restorethegulf.gov>.

NOAA PEIS and Environmental Compliance

To comply with the National Environmental Policy Act (NEPA), the Council is adopting the PEIS developed by NOAA's Restoration Center. The PEIS provides a programmatic-level environmental analysis to support NOAA's restoration activities throughout the coastal United States including the Gulf of Mexico, and includes a programmatic-level analysis of restoration alternatives by activity type and the associated environmental consequences. In addition to providing a programmatic analysis, the PEIS can be used to cover site-specific actions, including funding awards, provided that the activity being proposed is within the range of alternatives and scope of potential environmental consequences and does not have significant adverse impacts. NOAA has determined and documented, in NEPA Inclusion Analyses and NEPA Concurrence Forms dated November 23, 2020, that the Activity meets these criteria and that no further NEPA review is needed.

During project-specific engineering and design and Clean Water Act (CWA) permitting, there was additional analysis of site specific conditions and the effects of project-specific design alternatives. It was determined that the Activity meets the criteria of the U.S. Army Corps of Engineers (USACE) Nationwide Permit (NWP) 27: Aquatic Habitat Restoration, Enhancement and Establishment Activities (USACE file number SAM-2019-00333-SBC). NOAA's Restoration Center coordinated with NOAA's Protected Resources and Habitat Conservation Divisions and determined that consultations have been completed for resources under the agency's jurisdiction with respect to the Endangered Species Act (ESA) and the Magnuson-Stevens Fishery Conservation and Management Act with respect to the Activity. NOAA Restoration Center also received concurrence from the U.S. Fish and Wildlife Service on effects determinations with respect to the Activity under the ESA. Regarding the National Historic Preservation Act, NOAA Restoration Center received concurrence from the Alabama State Historic Preservation Office of the Alabama Historical Commission that the Activity will have no effect on cultural resources eligible for listing on the National Register of Historic Places.

The Council has reviewed the applicable environmental compliance documentation. Based on this review, the Council is adopting the PEIS to support the approval of implementation funds for the Activity, provided that it is implemented in accordance with the terms and conditions of the NWP 27. The associated documentation can be found at the Council's [website](#).

Public Comments

On June 24, 2021, the Council published a notice on the Council website seeking public comment on the proposal to amend the FPL to approve implementation funding for Marsh Restoration in Fish River and Oyster Bay. This notice also sought comment on the Council's proposal to adopt the NOAA Restoration Center PEIS to support the funding approval. The public comment period was 32 days and ended on July 26, 2021. The Council received no comments on the proposed FPL amendment and NOAA RC PEIS adoption.

Council Decision

The Council initially reviewed the Activity proposal as part of the Initial FPL development process. The Council has subsequently reviewed the revised scope of the Activity, the PEIS, and associated environmental compliance documentation discussed above. Based on these reviews, on August 18, 2021, the Council voted to (i) adopt the PEIS, (ii) amend the FPL by moving Marsh Restoration in Fish River and Oyster Bay implementation activities from Category 2 to Category 1, and (iii) approve \$2,250,089 in final design and implementation funding for the Activity.

The Council has authorized the Executive Director of the Council to execute this Record of Decision on its behalf.

Mary Walker
Executive Director, Gulf Coast Ecosystem Restoration Council

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