

Chapter 15: Public Comment on the Draft Phase IV ERP/EA and Responses

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15.1 Introduction

The public comment period for the Draft Phase IV ERP/EA opened on May 20, 2015, was scheduled to end on June 19, 2015. The comment period was extended for 17 days, based on requests from the public, and closed on July 6, 2015. During the public review period the Trustees hosted six public meetings in Texas, Louisiana, Mississippi, Alabama, and Florida:

- June 2, 2015: Pensacola, Florida
- June 3, 2015: Mobile, Alabama
- June 4, 2015: Long Beach, Mississippi
- June 8, 2015: Belle Chasse, Louisiana
- June 10, 2015: Galveston, Texas
- June 11, 2015: Corpus Christi, Texas

At the public meetings, the Trustees accepted written comments, as well as verbal comments that were recorded by court reporters. In addition, the Trustees hosted a web-based comment submission site, and provided a P.O. Box and email address for the public to provide comments. As a result, the Trustees received comments provided at public meetings, web-based submissions, emailed submissions, and mailed-in submissions.

During the public comment period, the Trustees received approximately 2,600 submissions from private citizens; businesses; federal, state, and local agencies; non-governmental organizations; and others. Following the comment period, the Trustees reviewed all submissions. Similar or related comments contained in the submissions were then grouped and summarized for purposes of response. All comments submitted during the period for public comment were reviewed and considered by the Trustees prior to finalizing the Phase IV ERP/EA. All comments submitted are represented in the summary comment descriptions listed in this chapter, and all public comments will be included in the Administrative Record.

15.2 The Comment Analysis Process

Comment analysis is a process used to compile similar public comments into a format that can be addressed by Trustees.

Comments were sorted into logical groups by topics and issues, consistent with the range of topics applicable to the Draft Phase IV ERP/EA. The process was designed to capture and condense all comments received rather than to restrict or exclude any ideas. The comment analysis process allows the Trustees to provide an organized and comprehensive response to public comments, consistent with OPA and NEPA regulations.

The Department of the Interior's Planning, Environment and Public Comment (PEPC) database was used to manage public comments. The database stores the full text of all submissions and allows each comment to be grouped by topic and issue.

All comments were read and analyzed, including those of a technical nature; those that contained opinions, feelings, and preferences for one element over another; and comments of a personal or philosophical nature.

15.3 Summary Comments

15.3.1 General

1. Comment: Commenter(s) expressed support for the Draft Phase IV ERP/EA and identified projects.

Response: The Trustees acknowledge this support.

2. Comment: Commenter(s) expressed support for the inclusion of an educational component for all Phase IV projects, during all stages of the project.

Response: The Trustees recognize the important role that public education plays in their efforts to protect and restore the environment.

3. Comment: Trustees should not use Early Restoration funds for projects that do nothing to “restore or protect natural resources,” or on projects that only address recreational use losses.

Response: In Phase III, the Trustees determined that, for the purposes of Early Restoration, a mix of projects restoring natural resources and restoring losses of recreational services, both of which are permitted under OPA, is appropriate. This mix allows Trustees to address a variety of injuries caused by the Spill and contributes more broadly to the Trustees’ goal of making the environment and the public whole.

4. Comment: The Trustees have not provided sufficient information and detail to allow comment on the Draft Phase IV ERP/EA. Trustees should provide more information on project planning, implementation, injury assessment, the nexus to injury, and monitoring, both in the DERP and as project implementation progresses.

Response: The Trustees understand the interest in having more detailed information, but believe that the information presented is sufficient for purposes of developing this Early Restoration Plan. While the details vary by project, each of the proposed projects in the Draft and Final Phase IV ERP/EA includes a discussion of injury, performance criteria, monitoring and maintenance for that project. The discussion of injury in the Draft and Final Phase IV ERP/EA is a preliminary summary of information emerging from the NRDA, which is still underway. Preliminary results are available at <https://www.erma.noaa.gov/>. Many projects will continue to be evaluated during the permitting process which provides opportunity for additional public input. The Trustees intend to make the results of project activities, including monitoring information and plans, available to the public (e.g. through the restoration Project Atlas: <http://www.gulfspillrestoration.noaa.gov/restoration/early-restoration/early-restoration-projects-atlas/>).

5. Comment: The Trustees should only fund projects with a nexus to injury from the spill.

Response: Under OPA, the principle of nexus states that restoration actions must be capable of restoring, rehabilitating, replacing, or acquiring the equivalent of natural resources or services that are injured or lost as a result of an incident. This principle is a key criterion used in screening, evaluating, and selecting restoration actions to be included in any restoration plan developed under OPA. The Trustees have applied that criterion throughout the Early Restoration planning process, including in the Draft and Final Phase IV ERP/EA. The discussion of each of the Phase IV projects in this Final Phase IV ERP/EA identifies the types of injuries each project is intended to address.

6. Comment: The Trustees should be more transparent about planning and project selection and allow the public to comment on project options.

Response: The Trustees understand the importance and value of transparency in the NRDA restoration process. As with prior phases of Early Restoration, the Trustees have made substantial efforts to ensure the public is aware of the goals of restoration, the criteria to be applied in choosing restoration projects under OPA, the on-going opportunities for the public to submit projects for consideration, and the terms and processes outlined in the Framework Agreement. As noted in the Introduction to this Chapter, the Trustees have held numerous public meetings as well as developed and actively manage several web-based information portals used to keep the public apprised about restoration planning for the Spill.

7. Comment: The Trustees should improve consistency across project descriptions, EAs and monitoring plans.

Response: The Trustees strive for consistency among project descriptions, EAs, and monitoring plans. However, the proposed projects are by their nature different and the level of available information at this stage of planning is variable to some degree. The Trustees are ensuring that each project complies with all regulatory requirements, including OPA and NEPA and provides the necessary level of detail for these requirements

8. Comment: These projects “should be publicly-owned or have long-term agreements with private landowners ... to ensure land use change will not undermine the restoration investments.”

Response: The Trustees are mindful of the need to ensure restoration benefits are not lost due to changes in land use. Siting of restoration actions on publicly owned or managed lands and the use of conservation easements, management agreements, or other forms of agreements, including with private landowners, are all strategies that may be used, where appropriate, in implementing restoration projects to ensure restoration actions are protected and sustained to the extent needed to be successful at meeting restoration objectives.

9. Comment: Trustees should include, consult, and collaborate with outside entities in the planning, implementation, and monitoring process. These entities include, but are not limited to, the public, universities, local governments, the conservation corps, private businesses, non-profit organizations, and NGOs.

Response: Implementing Trustees are subject to and must abide by laws, regulations and policies governing their contracting and government processes and practices. Such laws, regulations, and policies will vary, depending on the Trustee agency implementing a project. The planning process for developing the Draft and Final Phase IV ERP/EA included a broad effort to engage the general public and stakeholders, including NGOs, during several key periods. In addition, stakeholders will be involved in implementation and monitoring of several projects.

10. Comment: For Living Shoreline projects, there was concern raised over the amount of dredging and water quality.

Response: In designing and implementing projects, the Trustees will work to keep dredging to the minimum necessary and will adhere to any BMPs specified in the environmental permitting process. For the Alabama Living Shorelines projects the Trustees do not anticipate any dredging.

11. Comment. The Trustees received multiple suggestions for new restoration projects.

Response: The Trustees appreciate the continued public interest in restoration planning, including recommendations for new restoration projects. The Trustees will continue to evaluate these ideas as potential DWH NRDA restoration projects. Project ideas can continue to be submitted and reviewed at <http://www.gulfspillrestoration.noaa.gov/restoration/>.

12. Comment: The Trustees received multiple editorial comments.

Response: Suggested changes were incorporated into the ERP/EAs where appropriate.

13. Comment: There should be a comprehensive, system-wide approach to restoration planning. This would also improve the discussion of cumulative impacts.

Response: The purpose of Early Restoration is to accelerate meaningful restoration of injured natural resources and their services resulting from the Spill while the natural resource damage assessment is ongoing. In Phase III of Early Restoration, the Trustees developed a comprehensive programmatic EIS that evaluated alternative approaches to accelerate restoration that addresses injuries to natural resources from the Spill that included a cumulative impact analysis. All projects selected for Phase IV tier from that PEIS.

14. Comment: There should be more and improved opportunities for the public to comment. In addition public meetings need to be planned around locals' availability, better publicized, have child care, and offer free parking.

Response: The Trustees strive to identify convenient venues and take many factors into consideration including time of day, accessibility and parking in selecting meeting times and

locations. In order to make the public aware of public meeting times and locations as early in the process as practicable, the Trustees posted information about meetings via text blasts, emails, Trustee websites, local newspapers, and in the Federal Register and State registers where appropriate. The Trustees remain committed to providing multiple opportunities for public engagement and to providing advance notice of those opportunities as early in the process as possible.

15. Comment: The Trustees should prioritize land acquisition.

Response: The Trustees recognize that land acquisition, though sometimes expensive, can contribute to restoration for some injuries in a cost-effective manner. The Trustees continue to evaluate additional projects, including those with a land acquisition component, with the goal of fully compensating the public for all resource injuries and losses that resulted from the Spill.

16. Comment: Commenter(s) suggested criteria for future project selection: make sure investments last, maintain a commitment to ecosystem restoration, provide opportunities for public participation, leverage NRDA monies to complement and increase the value of other ecosystem restoration efforts, establish a long-term monitoring and maintenance program, share information from long-term monitoring with the public.

Response: The Trustees recognize the importance of the suggested considerations in restoration planning. Several of these are encompassed in the OPA criteria which will continue to be used in future project selection. Project evaluation criteria used in the Early Restoration process are described in Section 1.5 of the Phase IV ERP/EA (see also Section 2.1.2.1 of the Phase III ERP/PEIS). In addition, the Trustees intend to make the results of project activities, including monitoring information, available to the public (e.g. through the restoration Project Atlas: <http://www.gulfspillrestoration.noaa.gov/restoration/early-restoration/early-restoration-projects-atlas/>)

17. Comment: Commenter(s) expressed concern for Gulf species, including turtles, birds, corals, marine mammals and their habitats.

Response: The Trustees acknowledge and share the public's concern for the natural resources injured as a result of the Spill.

18. Comment: The Trustees should define recovery objectives for impacted resources.

Response: Early Restoration is being initiated prior to completion of the full NRDA, and is not intended to fully address all injuries caused by the Spill. Additional projects will continue to be proposed either in subsequent phases of Early Restoration or in a future comprehensive Damage Assessment and Restoration Plan with the goal of fully compensating the public for all resource injuries and losses that resulted from the Spill.

19. Comment: The Gulf must be restored to the pre-BP disaster condition.

Response: Restoration activities are intended to restore or replace habitats, species, and services to their baseline condition. Baseline conditions are those that would have existed had the Spill not occurred (15 C.F.R. 990.30).

20. Comment: Commenter(s) expressed support for ecological projects.

Response: The Trustees acknowledge this support

21. Comment: Trustees need to ensure that offsets are appropriate for all projects.

Response: The Trustees believe that the offsets are appropriate for the projects. The Trustees developed offsets, consistent with Early Restoration objectives and NRDA regulations. As required by the Framework Agreement, offsets were negotiated with BP, taking into account the unique characteristics of the projects and the benefits of early action to restore lost resource services.

22. Comment: Trustees should ensure that plans are in place to support monitoring and adaptive management, and that adequate funding is available to implement them.

Response: NRDA regulations designate several factors that should be used to effectively gauge a project's progress and success, including restoration objective(s) and performance criteria. Restoration objective(s) have been identified for all Phase IV projects, and the Trustees' monitoring plans for each project have been included in the Final ERP/EAs. Each such plan includes the performance criteria that will be used to evaluate project success or the need for corrective action. Additional monitoring information may be developed in the future for some projects. The Trustees intend to make the results of project activities, including monitoring information, available to the public (e.g. through the restoration Project Atlas:

<http://www.gulfspillrestoration.noaa.gov/restoration/early-restoration/early-restoration-projects-atlas/>). Projects will use monitoring efforts to ensure project designs are correctly implemented during construction and will allow for adaptive management (corrective actions) to be taken where necessary and as budget allows. Adaptive management and corrective actions will be based on data collected and observations made during monitoring episodes.

Trustees are mindful of their obligations with regard to monitoring and management of the Phase IV projects and are committed to ensuring that Early Restoration funds are spent as intended. Adequate levels of funding are allocated to each project to complete all necessary monitoring.

23. Comment: Commenter(s) expressed support for the Trustees' "comprehensive restoration vision."

Response: The Trustees acknowledge this support.

24. Comment: There is a need for continued response efforts to clean up remaining oil.

Response: Decisions regarding ongoing Spill response efforts are outside the scope of NRDA process. The public is encouraged to contact the U.S. Coast Guard field unit commanders in the Gulf who remain available to respond to sightings of oil.

25. Comment: Projects designed to improve water quality should be part of early restoration.
- Response: The Trustees recognize that water quality improvement projects can contribute to restoration for some injuries. The Phase III ERP/PEIS describes the process and criteria by which project types appropriate for Early Restoration were identified and proposed. Additional restoration project types were considered by the Trustees, and will be considered further in the ongoing NRDA, but were not evaluated in detail in the Phase III ERP/PEIS further because the Trustees did not consider them appropriate for Early Restoration at this time. Potential projects to benefit resources via improvements to water quality were considered but additional time and effort was needed to evaluate these project types.
26. Comment: Trustees are not responsive to public comments.
- Response: The NRDA regulations require consideration of all public comments received and incorporation of any changes made in response to public comments into the Final ERP/EA. The Trustees take this responsibility seriously and have reviewed and considered each comment received carefully.
27. Comment: The Phase IV DERP had many “deficiencies that severely hinder readers.”
- Response: The Trustees strive to organize each public document in a manner that facilitates public review and understanding. In addition, documents which provide supplemental public information, such as fact sheets and summaries, are created to provide information in an abbreviated and simplified way. The Trustees have provided links to additional resources such as State web pages to provide additional information and to facilitate public input. The Trustees will continue to identify ways to improve their techniques for providing information to the public.
28. Comment: A full environmental impact study must be conducted to examine the possibilities of fallout to the ecosystems and the biodiversity of the island's animal inhabitants.
- Response: This Phase IV ERP/EA is tiered from the programmatic plan contained in the Phase III ERP/PEIS (40 C.F.R. § 1508.28) which is incorporated i by reference (40 C.F.R. § 1502.21). The programmatic analyses included in the Final Phase III ERP/PEIS streamline Early Restoration planning by evaluating broad issues and impacts associated with all project types included in the programmatic plan, thereby allowing the Trustees to tier project-specific analyses from the programmatic analyses. For the proposed Phase IV Early Restoration projects that tier from the PEIS, the Trustees considered the extent to which additional NEPA analyses may be necessary, including whether the analyses of relevant conditions and environmental effects described in the PEIS are still valid. The Trustees have conducted project-specific Environmental Assessments for each Phase IV project, which are included in this document (see Chapters 5-14).
29. Comment: There is concern that seafood from the Gulf is still unsafe, especially shrimp, crab, and bottom feeding fish.

Response: The Trustees acknowledge that public concerns about seafood safety related to the Spill may still arise but these are outside the scope of the Early Restoration process. The Trustees encourage members of the public with these concerns to contact state and local offices with responsibility for monitoring seafood safety in their area for further information

30. Comment: Early restoration projects need to be implemented in a manner where they do no harm, cause no short or long term environmental or economic issues, and are sustainable.

Response: The OPA NRDA Regulations at 15 CFR 990.54(a)(4) provide factors for the Trustees to consider when selecting from a range of restoration alternatives. One of these factors is the extent to which each alternative will avoid collateral injury as a result of implementing the alternative. The regulation contemplates that restoration projects may cause some degree of collateral injury in certain instances. Avoiding, minimizing, or mitigating any adverse ecological effects from a restoration project is essential to the achieving the Trustees' goals. Narrowing the range of acceptable projects to those with no collateral adverse effects, however, would artificially exclude many restoration alternatives with very high net benefits to natural resources. The Trustees have selected projects where the adverse effects on the ecosystem can be avoided or minimized. Prior to project implementation, the Trustees will have completed coordination and reviews under the Endangered Species Act, Magnuson-Stevens Fishery and Conservation Act, Marine Mammal Protection Act, Migratory Bird Treaty Act, Bald and Golden Eagle Protection Act, and Coastal Zone Management Act, National Historic Preservation Act, Section 404 of the Clean Water Act, Section 10 of the Rivers and Harbors Act, and other federal statutes, where appropriate. Any BMPs and measures to avoid and minimize impacts that are identified during the permitting process or during consultations and reviews with natural resource agencies would be implemented. As a result, collateral injury would be avoided and minimized during project implementation.

31. Comment: The Trustees need to translate more materials, particularly into Spanish and Vietnamese.

Response: The Trustees have adopted practices aimed at engaging populations with language barriers, such as making translated materials (e.g. the Phase IV ERP/EA Executive Summary, project fact sheets, and pertinent chapters) available, and providing translators at public meetings in areas with communities that do not use English as their primary language. However, it would be cost and time prohibitive to translate all documents into each requested non-English language.

32. Comment: Better processes and structures for public participation and input must be made available to native tribes, historic communities of color, coastal fishing communities, and other frontline communities that were directly impacted by the BP oil disaster.

Response: The Trustees value the participation of all members of the public, including those specific groups noted by commenters. The Trustees have adopted practices including providing targeted meeting notifications in local newspapers, on the radio, at community gathering places, and directly to community leaders. The Trustees will continue to use these

tools and processes to encourage participation and will also consider adapting processes and/or adopting new and innovative approaches to overcoming cultural, economic, institutional, and other barriers to effective public participation, to the extent practicable.

33. Comment: The comment period should have been at least 60 days, preferably 90 days, with a 30 day review period prior to public meetings.

Response: In response to public request, the Trustees extended the original 30-day public comment period on the Draft Phase IV ERP/EA an additional 17 days. The Trustees believe this reasonably balances the need for additional time against the need for Early Restoration.

34. Comment: Projects with significant public opposition need to have an adequate mechanism for independent review by credible experts.

Response: The public comment period and associated meetings afford all parties the opportunity to comment, including independent experts.

35. Comment: The Trustees need to coordinate better with other restoration efforts. The cumulative impacts assessment should include positive benefits in coordination with other DWH restoration funds.

Response: While involved in separate processes with different responsibilities, the Trustees and leaders of related restoration efforts are coordinating with one another to ensure efforts fit together for the benefit of the Gulf environment and the people affected by the Spill. Where appropriate, the cumulative impacts assessments have been updated to reflect this.

36. Comment: There should be programmatic and long-term monitoring for restoration activities. This will facilitate tracking the recovery of injured resources.

Response: Early Restoration is intended only to accelerate the start of meaningful restoration and is not meant to be comprehensive. Recovery objectives for an endangered or threatened species are appropriately outlined in the Recovery Plan for that species, not through the NRDA process. The monitoring for Early Restoration projects focuses on the evaluation of project success, and not on long-term, broader measures of the recovery of injured natural resources and their services in the Gulf. The Trustees anticipate developing monitoring efforts for each project that is implemented during later stages of the restoration planning process.

37. Comment: Commenter(s) expressed concern over the equitable use of funds across the Gulf States.

Response: The Trustees chose appropriate projects through a vetting process, which includes representatives from each of the state and federal Trustees. The Trustees selected the Phase IV ERP/EA projects through application of the evaluation criteria found in the Framework Agreement and the OPA regulations (see Section 1.5 of the Phase IV ERP/EA and Section 2.1.2.1 of the Phase III ERP/PEIS). The Phase IV ERP/EA is not intended to fully address all injuries caused by the Spill, and an even distribution of the DWH Early Restoration funds among states may not always be possible or in keeping with restoration goals for injured resources and resource uses across the Gulf. A subsequent Damage Assessment and

Restoration Plan (DARP) will address the goal of fully compensating the public for all resource injuries and losses that resulted from the Spill.

38. Comment: The Trustees need to review past projects in order to inform current project selection/planning and the assignment of offsets.

Response: The Trustees developed the Early Restoration selection process as a step-wise process comprised of: (1) project solicitation; (2) project screening; (3) negotiation with BP; and (4) evaluation and environmental review of proposed projects under OPA and NEPA, including public review and comment. In this process, the Trustees are cognizant of similar projects that have been conducted under early restoration or other programs.

39. Comment: The Trustees should ensure that restoration funds are used efficiently.

Response: The Trustees selected the Phase IV ERP/EA projects through application of the evaluation criteria found in the Framework Agreement and the OPA regulations, which include cost-effectiveness of the project (see Section 1.5 of the Phase IV ERP/EA and Section 2.1.2.1 of the Phase III ERP/PEIS). Trustees are mindful of their duties to the public to conduct the NRDA process, including project selection and implementation, with the stewardship required of public entities. To that end, Trustees follow all applicable state and federal contracting laws and standards, including those related to contractor integrity and accountability. In addition, the Trustees report on financial and project implementation progress each quarter, and that information is made available to the public.

40. Comment: The Trustees are encouraged to work with the project partners to address historic data collection issues, thereby improving data integration and quality.

Response: The Trustees continue to work with resource agencies and the scientific community to obtain and integrate all scientifically valid data to optimize restoration efforts.

41. Comment: There needs to be accountability for the goal of a project rather than just completion. We need to know who's accountable, and what the ramifications would be if goals are not met.

Response: The Trustees are responsible for all selected Early Restoration projects. Consistent with project funding, procedures such as corrective actions and adaptive management will be used to help the project meet its restoration goals. The results of the monitoring will be used to determine whether performance criteria that were established in the monitoring plans (found in Appendix B) were met, and if not, whether a corrective action is feasible for that particular project.

42. Comment: The Trustees need to publish all public comments and their responses to them.

Response: All comments submitted during the public comment period were reviewed and considered by the Trustees. All public comments submitted are represented by the summary comments and are addressed in responses included in this chapter. All individual public comments will be posted in the Administrative Record, which is publicly available (see Chapter 1 of this document (1.12)).

43. Comment: The Trustees need to make fishermen whole from the economic impacts of the Spill.

Response: The individual economic losses of fishermen are considered private rather than public claims under OPA, and are therefore are not within the scope of early restoration and the NRDA.

44. Comment: Commenter(s) expressed concern that restoration money will be used to support existing programs that impose new restrictions on fishermen.

Response: None of the Phase IV early restoration projects propose funding for or involve new regulations on any fishermen. One fisheries-related project, the Pelagic Longline Bycatch Reduction (PLL) Project, will provide an opportunity for PLL fishermen to contribute to the restoration of bluefin tuna and other non-target species in the PLL fishery, but their participation will be entirely voluntary. Participating fishermen will be compensated for their participation if they agree not to fish with PLL gear during PLL repose periods, and will be provided with an alternative fishing gear that will allow them to continue fishing with gear that has less dead discards of target, non-target, and protected species. During time periods outside of the PLL repose and after the restoration project ends, PLL fishermen will be able to return to fishing with PLL gear.

Another fisheries-related project, the Sea Turtle Early Restoration project, includes components (i.e. Gulf of Mexico Shrimp Trawl Bycatch Reduction and Texas Enhanced Fisheries Bycatch Enforcement) that will work to improve compliance with existing federal Turtle Excluder Device (TED) regulations. TEDs are an effective tool to reduce the bycatch of sea turtles in the Gulf of Mexico shrimp fishery. These components are focused on improving NOAA's capacity to provide education, outreach and assistance to the shrimp fishing community, and on increasing TPWD's TED enforcement effort in Texas waters. The goal is to provide guidance and resources to help fisherman comply with existing TED regulations in the Gulf of Mexico. Additionally, in Texas, the project will ensure that enforcement patrol efforts are undertaken early in the year, when sea turtle strandings are the highest, to encourage compliance with existing regulations. Reducing the bycatch of sea turtles in the shrimp trawl fishery is an effective restoration strategy for sea turtles.

45. Comment: Project performance criteria should include the same factors used to develop the offsets. This would allow the Trustees to measure success related to the offsets and assure the public that the project produced the resource benefit for which BP is credited. Additionally, including these factors would allow for future restoration projects to better estimate the resource benefit expected from restoration investments.

Response: Early Restoration is being initiated prior to completion of the full NRDA, and is not intended to fully address all injuries caused by the Spill. While some project performance criteria may relate to factors used to develop offsets, other considerations also influence the selection of performance criteria, including but not limited to, the availability of historical data and other ongoing monitoring efforts, utility for adaptive management purposes, and

other factors. The Trustees chose performance criteria that they believe are best suited to meet these varied needs.

46. Comment: The "No Action/ Proposed Action" dichotomy fulfills the letter but not the spirit of a true assessment. We are given no alternative procedures, sites, or monitoring protocols. This approach does not give confidence that true alternatives were considered.

Response: During the five years since the Spill occurred, each of the five Gulf States, DOI, and NOAA has used various means to solicit restoration ideas and proposed projects from the public. Hundreds of restoration proposals have been submitted, summarized, and made available both to the Trustees and to the public as a whole through various Trustee websites (see Section 2.1). These project proposals have informed and helped shape the Trustees' approach to early restoration projects. The Early Restoration project selection process, which is consistent with the Framework Agreement, constrains the range of project-level alternatives that can be considered in early restoration plans. Under the Framework Agreement, the Trustees negotiate with BP concerning the amount of funding that BP will provide for a specific proposed project and the NRD Offsets that BP will receive, to reduce its liability for NRD, in return for funding that project. Given the complexity of such negotiations, it would be impractical to negotiate funding and Offsets for multiple alternatives to each proposed project.

Therefore, the projects proposed in each early restoration plan present choices available to the Trustees in that phase of planning. Where other alternatives were considered in identifying proposed actions in the Phase IV ERP/EAs, those have been noted in relevant project chapters. - Further, each project alternative is proposed and is selected independent of the others, so that the final plan may vary in terms of selected outcomes. In this context, the project-level alternatives presented in the Phase IV ERP/EAs are reasonable.

47. Comment: The Trustees' definition of dispersants is unscientific and colloquial.

Response: The description of dispersants noted in the Draft Phase IV ERP/EA- that they are used to help break large globs of oil into smaller droplets that can more readily be dissolved or dispersed in the water column- is meant to facilitate public understanding of how they operate. The Trustees will use the definition of "dispersants" as described in the National Oil and Hazardous Substances Pollution Contingency Plan (40 C.F.R. 300 Subpart A) in the Final ERP/EA. This definition reads, "Dispersants means those chemical agents that emulsify, disperse, or solubilize oil into the water column or promote the surface spreading of oil slicks to facilitate dispersal of the oil into the water column."

48. Comment: The available evidence does not support the Trustees' assertion that there was "extensive oiling...from Texas to the Florida Panhandle." According to the Unified Command's Shoreline Cleanup and Assessment Technique ("SCAT") survey team, MC252 oil had been observed by SCAT teams as far west as Vermillion Parish in Louisiana and as far east as the Florida panhandle, geographically per SCAT, but only a portion of this range was "extensively" oiled."

Response: While the assessment of the amount of oiling that occurred across the Gulf Coast is ongoing, the Trustees believe that oiling was extensive. The discussion of injury in the Draft and Final Phase IV ERP/EA is a preliminary summary of information emerging from the NRDA. Preliminary results are available at <https://www.erma.noaa.gov/>.

49. Comment: Where are the data generated from monitoring plans going to be posted so that the public can review them? The Trustees should update the Phase IV Early Restoration Plan with the locations where the raw monitoring data, including records of observations, will be posted for public review, as well as explain how this count data will be used by the resource managers. It is important to provide details where this data will be posted for public review.

Response: The Trustees intend to make and have made the results of project activities, including monitoring data and reports, available to the public (e.g. through the restoration Project Atlas: <http://www.gulfspillrestoration.noaa.gov/restoration/early-restoration/early-restoration-projects-atlas/>). Monitoring plans for most projects will be refined as project siting and design are finalized. In addition, specifics regarding sampling methods, timing, frequency, and locations may be modified. Any updates to a monitoring plan will be available on the Project Atlas. The Trustees anticipate refining monitoring plans for each project as the project siting and design is finalized.

50. Comment: Trustees did not provide adequate supporting data for information presented in the injury assessment for ecological or human use injuries.

Response: The Phase IV ERP/EA is not intended to fully address all injuries caused by the Spill, which will be addressed in a comprehensive DARP. The preliminary assessment information presented in the Draft and Final Phase IV ERP/EA is sufficient to support selection of the Phase IV early restoration projects as proposed. Validated data from the NRDA continues to be released to the public as it becomes available.

51. Comment: Trustees did not provide a comprehensive review of the baseline condition of the Gulf of Mexico ecosystem.

Response: Baseline conditions are those that would have been present in the absence of the Spill. The assessment of injury to Gulf of Mexico natural resources includes evaluations of the baseline condition appropriate for the habitat, species, and injuries considered. Approaches for evaluating baseline condition may include comparison to historical data, field and laboratory studies that provide comparisons to conditions at reference locations, to control data or data bearing on incremental change, alone or in combination, and may include evaluations of potential confounding factors such as other sources of PAHs or other contaminants, as appropriate. (See 15 C.F.R. 990.30 Natural Resource Damage Assessments-Definitions). Presentation of a “comprehensive review” of the Trustees’ ongoing evaluation of baseline conditions in the ongoing assessment was not required to support the proposed Phase IV early restoration projects. The preliminary assessment information presented in the Draft and Final Phase IV ERP/EA is sufficient to support selection of the Phase IV Early Restoration projects as proposed.

52. Comment: The release of freshwater by the State of Louisiana does not constitute an appropriate Response activity under OPA.

Response: OPA makes responsible parties liable for damages that *result from* an incident in which oil is discharged, including damages for natural resource injuries. 33 USC §2702. This includes injuries resulting from response actions taken as a result of the incident, as is reinforced by OPA regulations. 15 CFR 990.30, 990.51. Freshwater diversions during the Spill clearly were performed in an effort to minimize or mitigate environmental harm from the Spill. Therefore, the public is entitled to recovery and restoration of injuries that occurred as a result of these response actions.

53. Comment: No data are presented to show that oil and dispersant vapors were present in the atmosphere.

Response: PAHs and volatile organic compounds were detected in air near the wellhead. For example, documentation of these findings can be found in Middlebrook et al., 2012, and at https://www.aiha.org/localsections/html/NTS/OSHA%20Update%20Exposure%20Assessment%20Onshore%20and%20Offshore%20in%20the%20Deepwater%20Horizon%20Oil%20Spill%20Response_Final.pdf

54. Comment: Trustees should explain the evidence that exists to support the statement that “[d]eep sea habitats are important reservoirs of biodiversity”.

Response: Deep sea habitats are important reservoirs of biodiversity and multiple efforts over the years have recorded and documented the abundance of life found at ocean depth (Grassle and Maciolek 1992), (Rex and Etter 2010), (Ruppert and Barnes 1994), (Gage 1996).

15.4 Texas

15.4.1 Texas Rookery Islands

55. Comment: The Texas Rookery project “should be conducted in areas that have long-term protection agreements with landowners or through public ownership.” Sufficient funds should be allocated for long-term monitoring and management of the bird rookery projects.

Response: The Trustees are mindful of the need to ensure restoration benefits are not lost due to changes in land use. This project will be conducted in public lands and waters and on lands (emergent and submergent) owned by the Chambers-Liberty Navigation District, the Texas General Land Office (TGLO), and the U.S. Fish and Wildlife Service (USFWS).

A majority of the identified rookery island enhancement project locations already have long-term leases or established management efforts in place. The Galveston Bay Foundation leases a previously restored island in Dickinson Bay from the TGLO and anticipates entering into a similar lease agreement for the Dickinson Bay Bird Island II, identified in the restoration plan. Audubon Texas manages Rollover Bay Island through a lease for the island and submerged lands with the TGLO and Smith Point Island through a lease for the island and submerged lands with the Chambers-Liberty Navigation District. Any additional lease(s) for managing the submerged bay bottom and the construction activities would be obtained prior

to implementing the proposed restoration. Maintenance activities on Dickinson Bay Island II would likely be managed by the Galveston Bay Foundation or another stakeholder, and maintenance at Smith Point and Rollover Bay Islands would likely be managed by Audubon Texas or another stakeholder. Dressing Point Island is part of the Big Boggy National Wildlife Refuge. As part of the Big Boggy National Wildlife Refuge, maintenance activities on Dressing Point Island would continue to be managed by the USFWS.

Trustees are mindful of their obligations with regard to monitoring and management of the Texas Rookery Islands project. The Trustees are committed to ensuring that Early Restoration funds are spent as intended, including 5 years of monitoring. The Texas Colonial Waterbird Society currently monitors all coastal nesting islands. The Trustees are partnering with conservation organizations and agencies that have the responsibility for managing these sites over the long-term.

56. Comment: Commenter(s) expressed support for the Texas Rookery project.

Response: The Trustees acknowledge this support.

57. Comment: Is there a plan for fisheries monitoring around the Texas rookery islands project to determine foraging availability for the birds utilizing the rookery?

Response: Monitoring for Early Restoration projects is focused on the evaluation of project success. Therefore Trustees monitor, following the NRDA regulations, to determine the success of the project at meeting the project restoration objective(s). The Texas Rookery Islands project will be monitored based on the Monitoring Plan found in Appendix B

Analysis of available data of the rookery islands and nesting birds over time indicate that the numbers and types of nesting birds have declined or changed as the islands have either become smaller in size or disappeared completely. This has been observed for many Texas coastal nesting islands. Evaluation of trends over time indicates that colonial waterbirds have decreased in nesting numbers from a peak in the mid-1990s to roughly half of that today. While the exact cause for this is not apparent and there may be multiple factors influencing their numbers, a similar decline in forage or predatory fish species has not been observed. There is documentation of the loss of nesting habitat and a decrease in number of nesting birds within these bays as well as in other bays along the coast.

The Trustees will not be conducting any additional project-specific monitoring to assess foraging availability. However, the Texas Parks and Wildlife Department (TPWD) routinely conducts bag seine and gill net monitoring in Galveston and East Matagorda Bays to assess fish populations. Currently, TPWD has observed record and near-record numbers of reds and trout in our bay systems.

58. Comment: The assessment of the Texas Rookery Islands project does not provide sufficient description and details of how the activities within each of the islands will be implemented to allow the public to provide constructive comments. The Trustees must include an analysis of each proposed action under consideration and a determination of the preferred action.

Response: This Phase IV ERP/EA is tiered from the programmatic portions of the Phase III ERP/PEIS (40 C.F.R. § 1508.28) which is incorporated here by reference (40 C.F.R. § 1502.21). The programmatic analyses included in the Final Phase III ERP/PEIS streamline Early Restoration planning by evaluating broad issues and impacts associated with all project types included in the programmatic plan, thereby allowing the Trustees to tier project-specific analyses from the programmatic analyses. Tiering project-specific analyses reduces or eliminates duplicative documentation by focusing project analyses on project-specific issues and incorporating by reference the issues evaluated in the broad programmatic analyses. For proposed Phase IV Early Restoration projects, the Trustees have considered the extent to which additional NEPA analyses may be necessary for the projects that tier from the PEIS, including whether the analyses of relevant conditions and environmental effects described in the PEIS are still valid or whether projects have been considered in separate analyses under NEPA for purposes of other federal processes.

The Trustees understand the interest in having more detailed information, but believe that the information provided is sufficient for purposes of developing this ERP/EA and to allow for meaningful comment on the proposed project. Each of the rookery islands in the proposed project are in various phases of design. The Trustees will ensure Early Restoration projects comply with applicable federal and state laws and regulations, including any required consultations, authorizations, and public comment opportunities. Early Restoration projects that are currently undergoing review under applicable laws will incorporate BMPs as required or otherwise agreed to by the Trustees. While all consultations must ultimately be completed before project implementation, some engineering and design activities will not be completed before the final early restoration plan. Additional details will be developed as part of the permitting, design, and engineering phase. The evaluation of techniques will occur during the additional engineering and design activities, which will take into consideration the environmental impacts from the various techniques. The Trustees recognize the importance of continuing to work with stakeholders during development of the implementation details for the project.

59. Comment: The Offsets include gulls, but does not provide specific species. However, the list of species provided in the project summary only identifies laughing gulls.

Response: While additional gull species may be found in the Gulf of Mexico, only laughing gulls (*Leucophaeus atricilla*) are anticipated to nest on the Texas rookery islands targeted for restoration by this project.

15.5 Mississippi

15.5.1 Restoring Living Shorelines and Reefs in Mississippi Estuaries

60. Comment: Commenter(s) expressed support for the cumulative impacts analysis of the Restoring Living Shorelines and Reefs in Mississippi Estuaries project.

Response: The Trustees acknowledge this support.

61. Comment: The Mississippi Grand Bay National Estuarine Research Reserve (NERR) restoration stipulations/requirements should be used throughout Mississippi.

Response: The Trustee coordinated closely with the Grand Bay NERR staff and intends to implement projects in a manner consistent with the Grand Bay National Estuarine Research Reserve Management Plan 2013-2018. Mitigation measures and environmental review procedures for projects at the Grand Bay NERR and for those project components that are located on other Coastal Preserves are discussed in Section 6.2.7.3.2 *Land and Marine Management* of the DERP.

62. Comment: Commenter(s) expressed support for the Mississippi Living Shorelines project.

Response: The Trustees acknowledge support of the Restoring Living Shorelines and Reefs in Mississippi Estuaries project.

63. Comment: The Mississippi Living Shorelines project will fail due to poor water quality in the project area. Water quality needs to be addressed first.

Response: The Trustees considered environmental conditions, including water quality, in the development and siting of the project. The Trustees anticipate successful reef development on breakwaters, intertidal and subtidal cultch deployments for all of the project components.

64. Comment: The monitoring criteria for Restoring Living Shorelines and Reefs in Mississippi Estuaries project are inadequate and do not address surrounding water, shorelines, benthos, and wetlands; there is no provision for adaptive management.

Response: Monitoring will be used to evaluate the restoration goals of the project, which are: 1) construct breakwater structures to protect shoreline from erosion, to facilitate reef development, and to support secondary production; 2) restore subtidal reef habitat and intertidal reef habitat to support secondary production. Post-construction performance monitoring is proposed for five years following completion of the project to evaluate the project's performance over time with respect to the production and support of organisms on the living shoreline (e.g., secondary productivity). Components of this monitoring may include collecting information with respect to:

- Structural integrity of breakwater structure;
- Shoreline profile and position;
- Spatial footprint of breakwaters, intertidal reefs and subtidal reefs; and
- Biological monitoring.

The monitoring plan is based on the current conceptual design for the project and will be refined as the project siting and design is finalized. This project will use monitoring efforts to ensure project designs are correctly implemented during construction and will allow for adaptive management (corrective actions) to be taken where necessary and as budget allows. Adaptive management and corrective actions would be based on data collected and observations made during monitoring episodes.

65. Comment: The Mississippi list of preparers is insufficient and does not contain enough technical personnel to have adequately evaluated the project.

Response: Regional Gulf Coast experts on oyster biology, estuarine ecology, fisheries and other relevant disciplines, assisted in project development using standardized techniques for shoreline protection, intertidal reef restoration and subtidal reef restoration. In addition, experts from other state and federal resource agencies reviewed and assisted in the development of all early restoration projects.

66. Comment: The Restoring Living Shorelines and Reefs in Mississippi Estuaries project needs to do a step by step coordination with the MDMR Coastal Preserves office. Intertidal and subtidal reefs should be implemented only if they will not affect marsh. Current flow studies should be done to determine what the addition of reef material will do to these bayous and the tidal marsh that they are designed to protect.

Response: During the engineering phase, final siting and design will consider tidal patterns, flow patterns and general hydrodynamics and the project effect on adjacent marshes and waterways. The Trustee has coordinated with the MDMR Coastal Preserves Program to ensure consistency with current management plans and will continue to do so. The Trustees will continue coordination as part of the environmental permitting process to avoid and minimize impacts to adjacent marsh, tidal bayous, SAVs and other natural resources on the Coastal Preserves.

67. Comment: The Restoring Living Shorelines and Reefs in Mississippi Estuaries project confuses Breakwaters and "living shorelines." The project uses these terms interchangeably, but the breakwaters described are hardened structures, not in line with current "living shoreline" development recommendations.

Response: For the purposes of the Phase IV Draft ERP/EA, Mississippi adhered to the following definitions.

Living Shoreline Approach: A shoreline management practice that provides erosion control benefits; protects, restores, or enhances natural shoreline habitat; and re-establishes land and water ecological connections and maintains coastal processes through the strategic placement of plants, stone, sand fill, and other structural organic materials (e.g. biologs, oyster reefs, etc.) or the natural establishment of organic materials such as sediments and plants. The Mississippi Phase IV Early Restoration living shoreline project includes establishing one or more of the following components:

Breakwaters: Linear structures that may utilize artificial and/or shell-based materials placed parallel to the shore in medium to high energy open-water environments for the purpose of dissipating wave energy to reduce shoreline erosion.

Reef Habitat: Large colonial aggregations of living oysters and other bi-valves that can have subtidal as well as intertidal portions, and provide habitat for a community of other species (e.g., tunicates, fish, crabs, worms, mussels, bryozoans, and barnacles).

Living Shorelines Techniques: The Mississippi Phase IV Early Restoration project may use the following techniques to implement a living shorelines approach.

Reef Development: the process of placing breakwaters that are designed to support secondary benthic productivity through colonization by species associated with reefs. Reefs also create calm areas near the shoreline, which can support colonization by submerged aquatic vegetation and marsh grasses to create intertidal and marsh habitat for aquatic organisms. Through this process, a reef can also reduce coastal wave energy and current action to reduce shoreline erosion.

Subtidal reefs: A reef that is constructed so that the structure is always under water or covered by water at all times under average meteorological conditions.

Intertidal reefs: A reef that is constructed so that a portion of the structure lies within the zone between the mean higher high water and mean lower low water lines.

68. Comment: The goals of the project are misleadingly presented as “Restore Oysters, Protect Shorelines and Reduce Erosion” in Table 4-1. In addition, the document states that “reefs would be built using suitable cultch material” (an oyster-specific term). The goal of the Mississippi Living Shoreline project is unclear and inconsistent across the project description and monitoring plan.

Response: “Restore Oysters” is the relevant project type from the Trustees’ preferred programmatic alternative (see Chapter 5 of the Final Phase III ERP/PEIS). In the Phase III ERP/PEIS; Section 5.3.3.6, “Restore Oysters” is described as a restoration technique which includes harvestable and non-harvestable oyster reefs for the purpose of enhance or increase secondary productivity.

“Commercial oysters are harvested from sub-tidal areas, but intertidal oysters are believed to be important as a source of larvae to maintain populations of both intertidal and sub-tidal oysters. Not all oyster reef creation projects are for the purpose of harvest. Oyster restoration may include placement of oyster cultch material near or on exposed shorelines to establish or reestablish intertidal oyster reef and enhance or increase secondary productivity. “

In addition, subtidal reef habitat restoration is anticipated by the NRDA Phase III Programmatic ERP/PEIS “Restore Oysters” technique. The Restoring Living Shorelines and Reefs in Mississippi Estuaries restoration goals are specific to non-harvestable intertidal and subtidal reef restoration for the purposes of increasing secondary productivity. The project goals are: 1) construct breakwater structures to protect shoreline from erosion, to facilitate reef development, and to support secondary production; 2) restore subtidal reef habitat and intertidal reef habitat to support secondary production. Post-construction performance monitoring is proposed for five years following completion of the project and will evaluate the project’s performance over time with respect to the production and support of organisms on the breakwaters, subtidal and intertidal reefs (e.g., secondary productivity).

69. Comment: The Mississippi public meeting was inadequate. There should have been several people staffing each poster to answer questions. The oral presentation for Shorelines and Reefs gave no information on what is to be done; only which sites had been chosen.

Response: Staff was available during the public meeting to answer any questions about early restoration project. Details for each project component were provided in the oral presentation.

70. Comment: The Trustees could improve the Restoring Living Shorelines and Reefs in Mississippi Estuaries project in a number of ways including a) clarifying objectives with respect to oyster production, including suitable measures of oyster restoration success in the monitoring plan, b) reconsidering the impact of hardened structures/breakwaters on existing shorelines, c) re-siting of Graveline reefs in deeper sections of the Bay and Bayou; using shell-only cultch in Graveline waters; d) closer coordination with Coastal Preserves to assess impacts and to give precedence to that program's management goals to preserve marsh.

Responses:

- a) **Clarify Objectives/Monitoring:** Intertidal reef habitat, subtidal reef habitat and breakwaters will develop into living reefs and are not for the purpose of harvestable oyster production. Restoration goals/objectives are: 1) construct breakwater structures to protect shoreline from erosion, to facilitate reef development, and to support secondary production; 2) restore subtidal reef habitat and intertidal reef habitat to support secondary production. A monitoring plan, tied to these objectives is included in Appendix B of the Phase IV DERP/EA.
- b) **Use of Hardened Structures/Breakwaters:** During the engineering phase, natural and manufactured materials will be considered for the establishment of breakwaters. In addition, hydrodynamics will be considered in the final design and siting of the breakwaters to avoid and minimize impacts to adjacent shorelines/wetlands, maximize protection, and facilitate reef development on the breakwaters. Regardless of the material selected, breakwaters, as well as intertidal and subtidal reef habitat are expected to provide habitat that supports benthic secondary production, including, but not limited to, bivalve mollusks, annelid worms, shrimp, crabs, and small forage fishes.
- c) **Graveline Reef:** Graveline reef placement in the DERP is based on historic presences of subtidal and intertidal oysters in the Graveline Bayou area. Siting of intertidal and subtidal reefs is subject to refinement and will be based on factors including SAV and shellfish surveys. Cultch materials could include oyster shells or limestone. The Trustee will coordinate with the Coastal Preserves Program in the development and design of the project.
- d) **Coordination with Coastal Preserves:** The Trustee will coordinate with the Coastal Preserves Program to ensure that the project is consistent with the all current Coastal Preserves management plan(s).

71. Comment: Where is the data generated from this monitoring plan, the “Data QA/QC, Clearance, and Release Steps” document and the “CompQAP” going to be posted so that the public can review the information?

Response: As with the other Phases of early restoration, data will be available through the www.restoration.noaa.gov Project Atlas. Data must first go through a Trustee internal QA/QC process before release to the public to ensure quality control. The “Data QA/QC, Clearance, and Release Steps” and the “CompQAP” are still in development and when final, will facilitate the process for making monitoring data available to the public.

72. Comment: The monitoring Plan should be updated with the locations where the raw monitoring data and the QA and QAP documents, including data products for each monitoring parameter, will be posted for public review. In addition, the data listed for each parameter should be included in the Annual Report and made available to the public.

Response: As with the previous Early Restoration Projects, data and appropriate reports are being made available after the Trustee QA/QC process. The Trustees are providing annual monitoring reports which are made available to the public through the NOAA Project Atlas.

73. Comment: Why is biological monitoring and water quality monitoring only in years 3 and 5?

Response: Timing of biological monitoring is based on when the reefs are expected to be mature to establish full secondary productivity values. The project monitoring will cover four major estuaries and hundreds of acres of reef allowing only 2 years of rigorous monitoring of productivity. For these reasons, biological and water quality monitoring was restricted to Year 3 and 5 and will be adequate to meet the monitoring requirements.

74. Comment: On Table B-3, Pages 30 and 33 of the monitoring plan:

- a) What is the basis for the performance criterion of 84 gww/m² of nonbivalve invertebrate infauna and epifauna?

Response:

Beck, S. and M.K. La Peyre. 2014. Effects of oyster harvest activities on Louisiana reef habitat and resident nekton communities. *Fishery Bulletin* 113(3): 327-340.

Raw biomass data was received from contact author and utilized to set this performance criterion.

- b) Why are bivalves excluded from this criterion?

Response: The Trustee intends to monitor bivalves; the monitoring plan will be revised to reflect this.

15.6 Alabama

15.6.1 Osprey Restoration in Coastal Alabama

75. Comment: The Trustees should visit the platforms during the breeding season; this should be clarified in the final version of the Plan.

Response: The Trustees will monitor nesting platforms multiple times during the year, including during the active nesting season.

76. Comment: Commenter(s) expressed concern that natural trees would work better than nesting platforms described in the Alabama Osprey project since they are abundant, and provide protection from storms and predators. In addition there are already sufficient nesting platforms for public viewing of osprey, and they appear to be costly to construct.

Response: The purpose of nesting platforms in the proposed Osprey restoration project is to benefit the species, not necessarily to provide public viewing opportunities. The proposed project has been evaluated for cost effectiveness.

As natural nesting sites, i.e., tree snags, are removed along developed coastlines, nesting platforms such as the structures proposed in this project provide important nesting habitat conservation measures. When platforms are placed within view of suitable fishing habitat for the Osprey and predator guards are placed on the poles limit raccoon predation, the species benefits.

15.6.2 Living Shoreline Projects – General Comments

77. Comment: Additional information on the location, building materials, project selection for the Alabama Living Shoreline projects should be provided.

Response: The Trustees understand the interest in having more detailed information, but believe that the information presented is sufficient for purposes of developing this Early Restoration Plan. Additional details will be developed as part of the permitting, design, and engineering phase.

78. Comment: “The Restoring Living Shorelines and Reefs in Mississippi Estuaries Project monitoring plan includes monitoring not only for shoreline erosion reduction and breakwater habitat utilization, but also for the sustainability of the reef habitat and its expected productivity. The living shoreline proposals in Alabama should mirror the plan for the Mississippi project to provide consistency and ensure the long-term objectives of these projects are met.”

Response: While similar in many aspects, the geographic and physical settings, and conceptual designs of the proposed Mississippi and Alabama living shorelines projects are unique to each project. The proposed projects will be monitored independently of one another by each state. Each monitoring plan is tailored to the specifics of each project. Given the differences in each proposed project, the proposed monitoring plans differ.

79. Comment: All natural methods such as marsh grass planting or oyster shell should be exhausted before breakwaters using hard armoring are used in the Living Shorelines projects to avoid damaging the environment, damaging marine life, and causing boating accidents.

Response: The Alabama living shoreline projects' impacts have been analyzed during the NEPA process. The projects' engineering and design is not complete at this point in the planning stage. However, when the proposed projects reach the engineering and design phase, impacts to marine life, the environment and safety will continue to be taken into account.

15.6.3 Point aux Pins (PAP) Living Shorelines

80. Comment: Support was expressed for the cumulative impacts analysis of the PAP Living Shoreline project.

Response: The Trustees acknowledge this support.

81. Comment: "It is inappropriate to ascribe offsets for the Point aux Pins Living Shoreline Project to offsets reserved for injuries to federal waters on the Continental shelf, however, in the event that unused credits are applied to federal waters, the weighting of offsets should be scientifically defensible.

Response: Application of offsets will be applied first to injury in Alabama waters and then, only if that injury in Alabama waters is exhausted, to Federal Waters of the continental shelf. The agreed upon conversion rates for translating offsets from one metric to another are based on information from scientific publications.

15.6.4 Shell Belt and Coden Belt Roads Living Shoreline

82. Comment: Support was expressed for the cumulative impacts analysis of the Coden Belt LS project.

Response: The Trustees acknowledge this support.

83. Comment: The statement of Performance Criterion on Page 64 is different than stated on Page 66. Is the performance criterion 90% presence/absence of infauna/epifauna organisms or 90% have coverage of invertebrate infauna and epifauna of breakwater units? Which is the correct criterion and what is the basis for this criterion?

Response: The language on page 66 is correct. So page 64 should be changed to read "Performance Criterion: At year 5, 90% of breakwater units have infaunal and epifaunal organisms present." The criterion is based on best professional judgment.

84. Comment: What is the basis for 75% survival of marsh plantings?

Response: 75% survival of marsh plantings is a standard construction contract criterion.

15.7 Department of the Interior

15.7.1 Bike and Pedestrian Use Enhancements at Davis Bayou, Gulf Islands National Seashore

85. Comment: Commenter(s) expressed support for the cumulative impacts analysis of the DOI bike path project.

Response: The Trustees acknowledge this support.

86. Comment: Commenter(s) expressed concern about the environmental impacts of the paved surfaces created from the DOI Bike Path project.

Response: The Trustees evaluated the potential impacts and concluded that impacts of the project to water quality would be minor. Pollutant runoff from vehicles should not appreciably increase because of this project, as vehicle use is not expected to increase even though paved surfaces will increase. Runoff is expected to enter adjacent areas as it does currently, i.e. mostly evenly all along the road edge; as such, impact from increased runoff should be minor.

Mitigation projects are planned to address impacts to palustrine (forested, scrub-shrub, emergent) and estuarine intertidal emergent wetlands. These projects were developed further since the DERP was released; updated descriptions are given in the Phase IV Final ERP/EA.

87. Comment: Commenter(s) expressed support for the Bike Path project.

Response: The Trustees acknowledge this support.

88. Comment: Commenter(s) expressed concerns about the use of Phase IV funding for the Bike Path project, citing the amount of funding, absence of nexus to a direct injury from the spill, and the failure of the project to restore or protect natural resources.

Response: The OPA NRDA regulations (15 CFR Part 990) define natural resource injuries to include loss of use of a resource. Recreational losses were widespread, significant, and directly related to the spill throughout the Gulf, including Gulf Islands National Seashore; therefore, as described in detail in the Phase III ERP/PEIS, from which this Phase IV ERP/EA tiers, restoring recreational loss is important component of Early Restoration. As discussed in the Phase IV ERP/EA, the project will provide habitat benefits by increasing the capacity under East Stark Bayou Bridge for greater water flows.

15.7.2 Bon Secour National Wildlife Refuge Trail Enhancement

89. Comment: Commenter(s) expressed support for the cumulative impacts analysis of the Bon Secour project.

Response: The Trustees acknowledge this support

15.7.3 Seagrass Recovery Project at Gulf Islands National Seashore

90. Comment: Commenter(s) questioned why only 0.02 acres was chosen for funding for the DOI Seagrass project when there is significant damage to seagrass throughout Gulf Islands National Seashore (GUIS) in Mississippi and Florida.

Response: The Trustees agree that additional restoration activities are necessary to restore seagrass throughout GUIS. For purposes of the early restoration process, the Trustees identified 0.02 acres of seagrass restoration at Gulf Islands National Seashore, Florida District as an incremental, but important contribution to seagrass restoration at GUIS. The Trustees have also undertaken other seagrass projects in several locations in Florida. DWH emergency seagrass restoration projects were completed in 2012 that included restoration in the following locations: Big Lagoon, Santa Rosa Sound, Perdido Bay, Choctawhatchee Bay, St. Andrews Bay, St. George Sound, and Apalachee Bay. The Phase III ERP/PEIS also included an early restoration seagrass project in St. Joseph's Aquatic Preserve.

91. Comment: Commenter(s) expressed concern about the interaction of the Seagrass project with ongoing activities in Santa Rosa Sound.

Response: This project seeks to restore seagrass beds due to response injury. Without restoration, the seagrass beds would continue to degrade. The harvest of seagrass transplant plugs for this project will follow established and field-verified techniques from the seagrass restoration literature to mitigate impacts from harvesting. This project does not include any dredging, has a very small footprint, and will require just a few days with a small crew in the field. Therefore the Trustees do not expect the impacts of this project to interact with other activities in Santa Rosa Sound, nor do they believe this project will set precedents related to seagrass in the Santa Rosa Sound area.

92. Comment: Commenter(s) expressed concern that the educational signage associated with the Seagrass project will be insufficient to mitigate human disturbance from fishing and foot traffic – the root cause of seagrass damage. Also suggested alternatives such as a dock.

Response: The Trustees understand the concern that this project will not completely mitigate visitor impacts in the seagrass beds at Naval Live Oaks. Balancing visitor access and their impacts and natural resource preservation is an inherent struggle in park management. The Trustees believe signage educating the public about the seagrass recovery project will enable to public to make informed decisions about avoiding the area where the project will occur. Because this area is well used by visitors and suffers from heavy visitor use impacts, without a restoration effort the seagrass beds in this area will continue to degrade. A dock would encourage even more visitors, and would likely kill any seagrass in its shadow.

93. Comment: Commenter(s) expressed concern that Seagrass donor sites will not recover from harvesting.

Response: The harvest of seagrass transplant plugs for this project will follow established and field-verified successful techniques for seagrass transplants from the seagrass restoration literature. Those BMPs, which can be found in section 12.2.4.1 of this document, include

maximum core size diameters, minimum shoots per square meter requirements for harvest areas, and minimum spacing intervals for transplant plugs. The transplant plugs will be harvested at such spacing and at such diameters that the donor beds are not anticipated to be harmed. The Trustees believe applying these BMPs will ensure the maximum success of the project.

94. Comment: Commenter(s) expressed concern about the precedence associated with removing seagrass from one area for deposit in another, within Santa Rosa Sound.

Response: The seagrass harvest and transplant areas are within the same area of interest at NLO, which is an area of approximately 0.5 miles x 2.25 miles. Care would be taken to harvest donor plugs from the healthiest beds and from optimal locations based on BMPs found in the seagrass restoration literature, discussed above in section 12.2.4.1. This harvesting strategy will ensure that donor seagrass locations are not harmed and will remain healthy.

15.8 Gulf-wide

15.8.1 Sea Turtle Project:

95. Comment: Commenter(s) requested funding for non-profit turtle programs that work to protect Kemp's ridley sea turtles through habitat protection, beach monitoring and research.

Response: The Trustees recognize the importance of continuing to work with stakeholders during development of the implementation details for the project. The Sea Turtle Early Restoration project includes specific project components designed to work directly with the various NGO sea turtle programs in Texas to support existing Sea Turtle Stranding and Salvage Network (STSSN) and nest monitoring work to protect Kemp's ridley and other sea turtle species.

96. Comment: Commenter(s) requested that the Trustees "expand their consideration of cumulative impacts to turtles and ... allow the public access to monitoring data to ensure public understanding and evaluation."

Response: The Trustees believe the information provided is sufficient to inform the public about the cumulative impacts to sea turtles and to allow members of the public to provide meaningful comment on the proposed project. However, in finalizing the Sea Turtle project chapter, the Trustees have updated the cumulative effects analysis with some additional information to help clarify anticipated effects on, and benefits to, affected resources. The Trustees will be making information on the results of project activities, including monitoring data, available to the public in the future (e.g. through the restoration Project Atlas: <http://www.gulfspillrestoration.noaa.gov/restoration/early-restoration/early-restoration-projects-atlas/>).

97. Comment: The Trustees should revise the cumulative impacts analysis to describe additional threats to Gulf sea turtles that were identified earlier in the document, such as poor water quality, marine debris and changing ocean conditions (e.g., increased sea surface

temperatures and ocean acidification). The cumulative impacts analysis should include a discussion on beneficial impacts to sea turtles from the Sea Turtle Early Restoration project as well as other DWH restoration funds.

Response: The Trustees believe the information provided is sufficient to inform the public about the cumulative impacts to sea turtles and to allow members of the public to provide meaningful comment on the proposed Phase IV projects. However, in finalizing the Sea Turtle project chapter in the Final Phase IV ERP/EA, the Trustees have updated the cumulative effects analysis with additional information on water quality, marine debris and changing ocean conditions to help clarify the anticipated effects on and benefits to affected resources.

Although involved in separate processes with different responsibilities, the leaders of the various DWH restoration efforts have previously emphasized that they are coordinating with one another to ensure efforts fit together for the benefit of the Gulf environment and the people affected by the Spill.

98. Comment: Commenter(s) expressed support for the sea turtle project.

Response: The Trustees acknowledge this support.

99. Comment: Commenter(s) requested that the sea turtle monitoring plan include a metric to track the release of turtles collected by the Texas Sea Turtle Stranding and Salvage Network.

Response: The Texas STSSN currently tracks the release of sea turtles from rehabilitation. The Monitoring Plan for the Texas STSSN Enhancement project component has been updated in the Final Phase IV ERP/EA and includes a metric to track the disposition of all stranded sea turtles, including data on release of turtles following rehabilitation.

100. Comment: Project effort should not provide funding for hatchling release and incubation of Kemp's ridley sea turtles on the upper Texas Coast, north of Mustang Island. Perpetuating nesting through releases of hatchlings in areas other than those the turtles historically chose to nest in is not in the best interest of any sea turtle species. The project should focus on the historical nesting areas on Padre Island National Seashore (PAIS) and South Padre Island.

Response: The Sea Turtle Early Restoration project includes a specific project component (i.e. Kemp's Ridley Sea Turtle Nest Detection and Enhancement) designed to protect Kemp's ridley nests in Texas, with a focus on where nesting most commonly occurs in Texas, PAIS and South Padre Island. However, the Trustees will provide support for nest detection and relocation on the upper Texas coast to maximize the number of sea turtle hatchlings that enter the Gulf of Mexico, which is important for the restoration of the species. The sea turtle restoration project activities in Texas, including the protection of nests along the Texas coastline are supported by the current Bi-National Recovery Plan for the Kemp's Ridley Sea Turtle (*Lepidochelys kempii*) (NMFS and USFWS, and Secretary of Environment and Natural Resources, Mexico [SEMARNAT] 2011).

101. Comment: Trustees need to work hard to ensure the survival of recently established and emergent Kemp's ridley nesting on the upper Texas coast.

Response: The Sea Turtle Early Restoration project includes a specific project component (i.e. Kemp's Ridley Sea Turtle Nest Detection and Enhancement) to support nest detection and protection activities on Texas nesting beaches, including the Texas upper coast.

102. Comment: Commenter(s) requested that the Trustees reconsider the sea turtle funding allocation among the various components to favor nest detection and protection in Mexico, where most Kemp's Ridley sea turtles nesting occurs.

Response: The Sea Turtle Early Restoration project includes a specific project component (i.e. Kemp's Ridley Sea Turtle Nest Detection and Enhancement) to support nest detection and protection efforts in Mexico. The Trustees recognize the importance of efforts to protect Kemp's ridley nests along the Gulf Coast of Mexico. As indicated in the ERP, the Trustees are planning to spend a portion of the project's early restoration funding to support these efforts. However, the safeguarding of sea turtle nests along the Texas coast, the recovery of stranded sea turtles, and the protection of additional life stages by reducing by-catch related mortalities are also important to restore sea turtles that were lost.

103. Comment: Commenter(s) requested that the Trustees monitor changes in sea turtle populations. Population-level monitoring will allow the Trustees to evaluate if restoration actions are having the intended impact and to what degree.

Response: Monitoring for Early Restoration projects is focused on the evaluation of the restoration project success, which will be monitored as described in the Monitoring Plans (updated) for this project found in Appendix B. Those plans are designed to assess success based on achievement of project goals and objectives. Data collected through the Sea Turtle Early Restoration project monitoring may be used by the USFWS and NOAA's National Marine Fisheries Service to inform population-level monitoring. Directed studies to monitor population trends are outside the scope of this early restoration project.

104. Comment: For the Sea Turtle Early Restoration project, the Trustees should identify specific, measureable recovery goals and set benchmarks for recovery.

Response: The purpose of Early Restoration is to accelerate meaningful restoration of injured natural resources and their services resulting from the Spill while the natural resource damage assessment is ongoing. It would be premature to set specific restoration objectives outside the ongoing assessment. However, such objectives are more appropriately considered as part of the future comprehensive DARP.

NRDA regulations designate several factors that should be included in monitoring plans in order to effectively gauge a project's progress and success, including restoration objective(s) and performance criteria. Monitoring for early restoration projects is focused on the evaluation of the restoration project success. The success of the Sea Turtle Early Restoration project will be monitored as described in the project Monitoring Plans (updated) found in Appendix B. Those plans are designed to assess success based on achievement of project goals and objectives. Recovery objectives for an endangered or threatened species are appropriately outlined in the Recovery Plan for that species, not through the NRDA

process. The Sea Turtle Early Restoration project is consistent with specific recovery objectives and recovery actions that are identified in the Endangered Species Act Recovery Plans for the sea turtle species that were injured by the spill.

105. Comment: Commenter(s) requested money to implement any potential new TED requirements.

Response: The Sea Turtle Early Restoration project does not involve the development of new TED regulations; rather it focuses on improving compliance with existing TED regulations through improving NOAA's capacity to provide education, outreach and assistance to the shrimp trawl fishing community, and through increasing TPWD's TED enforcement effort in Texas waters.

Restoration planning is ongoing. The Trustees continue to receive and consider new ideas and proposals for potential DWH NRDA restoration projects. Project ideas can continue to be submitted and reviewed at <http://www.gulfspillrestoration.noaa.gov/restoration/>.

106. Comment: The Trustees' statement regarding "minor to moderate beneficial effects" is inconsistent with the characterization of the project being important to the Kemp's ridley population. For example, without the project, only 25% of PINS is readily accessible to survey teams. With the project, the remaining 75% of PINS can be readily surveyed. Further support that this proposed project will result in a greater benefit to the species than characterized in this section of the Draft Plan can be found in the long-term recovery plan for species of turtles in the GOM (i.e., Bi-National Recovery Plan for Kemp's Ridley Sea Turtles, NOAA 2011), which includes the same project components as this early restoration project. According to the Recovery Plan, these components are the type of projects that are expected to have the most significant benefits for the Gulf of Mexico sea turtle populations. As such, please explain the characterization of benefits as "minor to moderate" compared to the projects described in the Recovery Plan which presumably would be receiving public funding.

Response: The entirety of the PAIS shoreline is currently surveyed for sea turtle nesting. The proposed cabins will make the survey efforts safer and more efficient. The ability to influence sea turtle recovery across the Gulf of Mexico is challenging given the breadth of stressors that are affecting the population.

A restoration planning document does not identify recovery goals for a listed species under the ESA; rather, it identifies only actions intended to restore resources or resource services that were lost. While resource recovery is not the focus of an early restoration plan, the proposed project will make meaningful progress toward restoration of sea turtles; that progress is expected to be a contributing part of the efforts needed to restore the species to pre-DWH conditions.

15.8.2 Pelagic Longline (PLL) Project

107. Comment: Project implementation for the PLL project should prioritize "educating, engaging and funding affected long-line fishermen in the gear transition."

Response: The PLL Project will provide for the education and engagement of PLL fishermen, including assistance to effectively transition to alternative gears. Section 14.1.2 of the Phase IV ERP/EA outlines the provisioning of alternative gear to participating fishers, and further states, "As part of the project, technical extension services (research, outreach, and training on the use of the alternative gear types) would be provided to participants to educate users and tune alternative gear to maximize effectiveness."

108. Comment: Commenter(s) expressed support for the PLL project and monitoring.

Response: The Trustees acknowledge this support.

109. Comment: The PLL project should "explore the feasibility and benefits of installing electronic monitoring equipment (e.g., cameras) on vessels participating in this project and using greenstick or buoy gear."

Response: As noted in section 14.1.5 of the Phase IV ERP/EA, electronic monitoring equipment has been installed on vessels in the Atlantic pelagic longline fishery in accordance with requirements under Amendment 7 to the 2006 Consolidated Atlantic Highly Migratory Species (HMS) Fisheries Management Plan (FMP). The Trustees continue to evaluate the potential feasibility and utility of electronic monitoring within the context of the monitoring plan for the project along with other available tools such as logbooks and fisheries observers.

110. Comment: The PLL project should "include additional information about the impacts of oil and dispersant exposure on small and large pelagic fish."

Response: The Trustees believe the preliminary assessment information presented in the Draft and Final Phase IV ERP/EA is appropriate for this stage of early restoration and is sufficient to support the PLL Project as proposed. Additional information about oil impacts to pelagic fish may be released in the future and more detailed findings of the injury assessment will be released as reports are finalized.

111. Comment: Commenter(s) noted that greenstick gear works, but is most successful/cost effective on smaller vessels. Requested help in transitioning to a smaller vessel.

Response: The Trustees will work with fishers participating in the PLL Project to help maximize the effectiveness and efficiency of the greenstick gear. As stated in section 14.1.2 of the Phase IV ERP/EA, technical extension services (research, outreach, and training on the use of the alternative gear types) will be provided to participants to educate users and tune alternative gear to maximize effectiveness. During the Phase IV early restoration project development process, the Trustees considered an alternative project component that provided for the exchange of PLL vessels for vessels specifically suited to the use of alternative gears. However, through the early restoration project selection process, this alternative was infeasible in the context of the Framework Agreement.

112. Comment: Commenter(s) expressed concern that the repose period of the PLL project may not be the best use of funds and may not provide a long-term, sustainable solution to fisheries protection.

Response: The PLL Project was proposed, as an early restoration project, to help restore fishery resources injured or lost as a result of the Spill, as part of the NRDA process being undertaken under OPA. Long-term fisheries management is not the purpose or focus of planning that occurs in the NRDA process. NOAA manages Atlantic HMS fisheries in accordance with the 2006 Consolidated Atlantic HMS FMP and its amendments under the authority of the Magnuson-Stevens Conservation and Management Act and the Atlantic Tunas Convention Act.

113. Comment: Commenter(s) requested more information on the PLL project.

Response: The Trustees believe that the level of information presented in the Draft and Final Phase IV ERP/EAs is appropriate for this stage of restoration and is sufficient to support the PLL Project as proposed. The information contained sufficient detail for the public to understand the proposed implementation measures and their potential impacts. The Trustees recognize the importance of continuing to work with stakeholders during development of the implementation details for the project. As implementation planning proceeds, the implementing Trustee intends to hold meetings with targeted groups of PLL Project stakeholders to communicate information and receive additional input on the project's implementation details with the goal of maximizing the potential project benefits to stakeholders and resources while limiting adverse impacts.

15.9 References:

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