

August 28, 2014

Deepwater Horizon NRDA Trustees
C/O Cynthia K. Dohner
U.S. Fish and Wildlife Service
1875 Century Boulevard
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Dear NRDA Trustees:

The purpose of this letter is to respectfully comment on the Final Programmatic and Phase III Early Restoration Plan and Programmatic Environmental Impact Statement in the context of the framework provided by Restoration Plan and PEIS for current and future selection of Phase III projects and suggesting a more expansive evaluation of alternatives for future phases of the Gulf of Mexico Natural Resources Damage Assessment (“NRDA”).

The Nature Conservancy submitted written comments on the Draft Programmatic Phase III Early Restoration Plan and Draft Programmatic Environmental Impact Statement (“DERP/PEIS”) on February 19, 2014 and provided public comment at several of the public workshops held throughout the Gulf. We appreciate the tremendous effort of the NRDA Trustees to solicit and evaluate the thousands of comments received from many stakeholders throughout the Gulf region. While the Final Phase III ERP/PEIS is very thorough in its consideration of comments on both the process of selection of projects and the evaluation of individual projects, we hope that, going forward, the Trustees will modify the project selection process and criteria to allow for consideration of multiple benefits and expand the range of restoration projects for which offset credits may be granted. The following identifies the major comments provided to the Trustees by the Nature Conservancy and the Trustees response, followed by our response to each comment.

I. More Complete Discussion of Injuries as Known

TNC Comment: The discussion of injury did not address the extent of the injury and provide the scale of impact across habitat types and species, for example the types and locations of birds or habitats that were most impacted and the geographic location of that impact. In addition, a thorough explanation of what the injuries are and how projects are chosen to restore those injuries was not provided.

Trustee Response: While the Trustees are still developing a comprehensive assessment of natural resource injuries and service losses, current information is sufficient to support the proposed Early Restoration actions. The discussion of injury in the Draft and Final Phase III ERP/PEIS is a preliminary summary of information emerging from the natural resource damage assessment. The relationship of the alternatives and the projects to these injuries is addressed in the descriptions of the alternatives and the projects. The Trustees will continue to consider and include information from the natural resource

damage assessment process to the extent available and appropriate to inform their development of future Early Restoration plans.

While the Final PEIS identifies the specific injuries and the amount of offset credits a particular project is awarded, the document does not quantify the scale of the damage in lost recreation days, habitat destroyed, etc., so that a member of the public can evaluate the efficacy of a project or category of projects in addressing the particular type of harm identified. As more documentation, including more detailed science, becomes available, we hope the Trustees will be able to disclose to the public more complete information on damages and why the projects selected best address the particular impact.

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

Response: The preliminary assessment information presented in the Draft and Final Phase III ERP/PEIS is sufficient to support the Early Restoration projects and programmatic plan as proposed. Validated data from the assessment continues to be released to the public as it becomes available.

Although data collection and validation is an ongoing process, the Final PEIS does not always explain how data gaps may have constrained the types of projects considered to be on the table as options for project selection. For example, the Trustees did not include water quality projects as an available project type for the Phase III ERP/PEIS. The document states that “likewise, potential to benefit resources via improvements to water quality were considered, but additional time and effort is needed to evaluate these project types.” The final Phase III ERP/PEIS fails to identify whether additional data on damage related to water quality impacts is the impediment or that the ability of particular types of projects to address the water quality impacts identified is the problem. We hope that in future phases of NRDA, water quality damages are identified and restoration alternatives considered that address such impacts.

II. Long-Term Monitoring

Programmatic monitoring on all NRDA Projects/Build in Dedicated Funding for Monitoring

Comment: The Trustees should invest a portion of Early Restoration funding to initiate ecosystem monitoring and pursue funding for long-term monitoring, observation and research. Programmatic, long-term monitoring is needed to inform the restoration process and to determine how the Early Restoration projects are contributing to ecosystem recovery at a system-wide scale.

Trustee 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. Therefore, monitoring for Early Restoration projects is focused on the evaluation of project success, and not on long-term, Gulf monitoring. The Trustees are committed to monitoring within the context of regulatory compliance and project performance under OPA. The Trustees are continuing to assess the potential injuries and losses to the natural resources caused by the Spill and will consider developing broader monitoring efforts in later stages of the damage assessment and restoration planning process. In so doing, the Trustees will consider monitoring comments received on the Draft Phase III ERP/PEIS.

The Nature Conservancy believes the development of monitoring methodologies that evaluates the overall restoration of harmed Gulf habitats/ecosystems in addition to the success of a specific individual

project is crucial to documenting whether Gulf natural resource damages are indeed being remedied. If monitoring regimes are not developed and put in place as categories of projects are selected, the opportunity to collect the data necessary to demonstrate the benefit of these projects over time, and the cumulative effect of collections of projects, will be lost. We suggest that, at minimum, project design should include the ability to add additional monitoring parameters as monitoring protocols for specific habitat restoration are developed. As additional monitoring increases the cost of implementation, we reiterate our suggestion that some early restoration funding be set aside to fund additional monitoring as protocols are developed.

We point to the proposed Pensacola fish hatchery project as an example of overly narrow monitoring criteria that does not adequately document project success in adding recreation days or other measure of enhanced recreation opportunity. The performance/success criteria for the project set forth in Section 12.20.4 states that: “the completion of the construction as designed and permitted; 2) operation of the hatchery as permitted; and 3) enhanced and/or increased public access provided to the natural resources, *which will be determined by observation that the hatchery is open and operational.*”

Missing from the performance/success criteria definition is measurement of the increase in recreational fish landings associated with the hatchery. While the narrative does states that “existing fisheries monitoring programs will be leveraged to provide information on recreational catch and effort, and abundance of select species,” no connection is made between this data and the definition of success for the project. As future NRDA projects and phases of NRDA are developed, we hope the Trustees will adopt success criteria that are based on the ecosystem or recreation service to be provided, rather than whether the project is built as designed.

III. Consideration of Multiple Benefits, “The extent to which each alternative benefits more than one natural resource and/or service.”

TNC Comment: Projects should use, as a criteria for project selection, that the project will create ecological and human recreation benefits. A desired project should address more than one species/benefit.

Trustee Response: As described in the Phase III ERP/PEIS, the Trustees evaluated projects based on the criteria mandated by OPA and the Framework Agreement. The criteria do not require that projects create both ecological and recreational benefits but do allow the Trustees to consider and select projects that address one or more injuries or provide benefits to other resources. For example, dune walkovers created as part of recreational projects have ancillary benefits of protecting dunes from injury caused by humans walking on the dunes. These types of effects have been recognized within the plan’s NEPA analyses.

We respectfully note that the criteria mandated by OPA and the Framework Agreement do not prohibit selecting projects that have both ecological and recreational benefits and that an offset system could in theory be negotiated between BP and the Trustees that accounts for multiple benefits. We believe that it is critical that the offset credit system not have the unintended consequence of forcing selection of narrow discrete projects that fail to address harm. We note that 50 CFR 990.54(5) explicitly *requires* the trustees to evaluate the proposed alternative based on “the extent to which each alternative benefits

more than one natural resource and/or service” among other factors such as cost, effect on public safety and extent to which it meets the trustees’ goals and objectives. While the Trustees did calculate offsets for multiple ecosystem services provided by each ecosystem restoration project, natural resource services of recreation projects were not considered in the structure of the evaluation of offsets for recreation services. For example, the acquisition of beachfront property that has important dune habitat would only be evaluated for beach access recreation values and not dune habitat services. Therefore, we hope the Trustees will develop an offset system applicable to future phases of NRDA that does not, by its structure, deter or discourage the evaluation of multiple benefits as one of the major decision making parameters for the selection of projects and which does not overcompensate the responsible party by virtue of allowing multiple offsets.

IV. Selection of Alternatives

For future phase of NRDA, the Nature Conservancy suggests that a more robust alternatives comparison be developed that evaluates how alternative suites of ecosystem restoration projects address particular natural resources damages. For example, in the case of fishery damages, will restoration of habitat or stock enhancement best ensure compensation for the natural resource damage versus a macro comparison of different restoration types, e.g. ecosystem and recreation alternatives. While we appreciate that the Trustees modified the design of several proposed projects in response to public comments; for example, the Navarre Beach Park Gulfside Walkover Complex, in order to avoid the need for an incidental take permit, the Final PEIS does not evaluate project alternatives that were not already selected prior to the Trustees decision to prepare a Programmatic Environmental Impact Statement. For example, the PEIS does not evaluate alternative methods of providing increased access to the beach to address human use impacts; for example, the acquisition of new beach front property versus the construction of additional facilities at existing parks.

Finally, we thank the Trustees for the tremendous investment of time and effort to move forward early restoration projects that comply with the Framework Agreement and OPA and provide some relief to Gulf States prior to resolution by settlement or litigation of the NRDA compensable damages. We hope that future phases of the Deepwater Horizon NRDA process start with a complete identification of restoration outcomes that best compensate for natural resource and human use damages caused by the Deepwater Horizon event followed by the selection of alternatives that achieve these critical Gulf restoration outcomes. The Nature Conservancy continues to offer its scientists and resources to assist the Trustees in accomplishing Gulf of Mexico restoration.

Sincerely yours,



Robert Bendick
Gulf of Mexico Program Director