



4 December 2015

The Honorable John C. Cruden
Assistant Attorney General for the Environment and Natural Resources Division
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530-0001

The Honorable Samuel D. Rauch III
Deputy Assistant Administrator for Regulatory Programs
National Marine Fisheries Service
1315 East-West Hwy, Silver Spring, MD 20910

RE: Joint Comments on the BP Consent Decree

Dear Mr. Cruden and Mr. Rauch:

On behalf of the undersigned members of the Gulf Future Coalition¹, we would like to thank the Department of Justice for its leadership in securing a settlement with BP and the Gulf states regarding natural resource damage claims and Clean Water Act civil claims. This settlement marks an important milestone for Gulf communities, and provides significant opportunities for comprehensive ecosystem restoration. We appreciate the opportunity to provide formal comments on the consent decree and the Draft Programmatic Damage Assessment Restoration Plan/Programmatic Environmental Impact Statement (PDARP/PEIS).

Public Engagement and Restoration

We appreciate the inclusion of important new requirements that BP must fulfill to monitor and publicly report on its efforts to improve the safety of drilling operations in the Gulf of Mexico. These requirements are critical to ensure that our coastal communities, and those that rely on the health of the Gulf for their livelihood, are provided with safeguards from future disasters.

While we appreciate your timely response to our request for an extension of the comment period, we disagree that it is in the best interest of the public to keep the deadline as planned. Because there are two long and complex documents for interested parties across the Gulf to read, comprehend, and provide comment on, the 60-day comment period is unreasonable. Additionally, for individuals who make their living shrimping in Gulf Coast waters, the chosen comment period was at the height of the season. We are very concerned with the lack of translated materials provided at all meetings, particularly the failure to provide translation services at the Texas meeting in Galveston. These oversights do a tremendous disservice to the citizens of the Gulf Coast, of whom these restoration dollars are meant to benefit. These funds, particularly those related to the Natural Resource Damages

¹ The Gulf Future Coalition is a diverse gulf-wide network of conservation, community, human rights, and social justice organizations working together to ensure the Gulf of Mexico environment and communities are made whole from the BP *Deepwater Horizon* oil disaster.

are public funds. It is a disservice to the public when our trustees don't provide adequate opportunities for communities who were most impacted by the disaster.

We have significant concerns that the proposed governance structure in the Consent Decree and the PDARP/PEIS will prevent meaningful participation from Gulf Coast communities. In its current form, eight newly created Trustee Implementation Groups (TIGs) creates substantial hurdles for public engagement and participation in the TIG's planning process. As each TIG will develop its own engagement strategies, the public will be forced to follow eight individual NRD processes – each with their own timeline and decision-makers. Such a dispersed system may seriously prevent wide-ranging public engagement among rural, low-income, communities of color, and limited English members of the public. These individuals have an important stake in the outcomes of these proceedings, however, with the additional hurdles of tracking eight different processes with minimal resources, this system may not be able to support their engagement.

This proposed unstructured and uncoordinated process places an enormous burden on the American public. It can reasonably be perceived that this proposed structure is an effort to decrease transparency and public participation. The Trustees must provide a consistent restoration planning process across TIGs that will not require enormous expenditures of time and resources from the public to participate.

In response, we suggest the consent decree and DRDARP be revised to support a multi-tiered approach to public engagement:

- The Trustee Council should develop strong standard operating procedures (SOPs) requiring each Trustee Implementation Group to develop common approaches, coordinated timelines and resources for engaging the public in developing draft restoration plans, in order to ensure inclusive participation. SOPs should promote steps to reach populations such as low income, minority, rural and limited English proficient communities and commercial and subsistence fishers across the coast which face hurdles to accessing public engagement opportunities and are disproportionately impacted by the health of coastal ecosystems. The public should be able to review and provide input on the Trustee Council's SOPs, including procedures for public engagement.
- The Trustee Council should require the Government Accountability Office to audit the restoration activities and monies spent by federal, state, and local municipalities to ensure compliance of expenditures under the Consent Decree.
- The Trustee Council should promote engagement strategies beyond public meetings to support comprehensive dialogue about restoration. In particular, the consent decree and DRDARP should create a public advisory committee to facilitate sustained input from representatives of the public at-large and key stakeholder groups on the planning, evaluation, fund allocation, and conduct of restoration activities. Such a committee, and relevant sub-committees could ensure key interests across the Gulf Coast states including commercial and subsistence fishers, conservationists, recreational users, socially vulnerable and native stakeholders relevant to the various TIGs are informed, involved and can help educate broader constituencies about the decision making process going forward.
- Terms should be added to the Consent Decree to promote the use of local workers and firms within NRD restoration. As cited in the DRDARP, local hiring is one of the top concerns of local residents during previous phases of public hearings on NRD. Terms should include a requirement to post new job opportunities created by contractors, or relevant subcontractors, as a part of NRD funded restoration work with relevant state and local workforce development agencies nearest the site of such work if state law does not already require such postings. Additionally, contractors should be required to consider workers referred to contractors and subcontractors by these local workforce agencies. Such terms would align with

the language under the RESTORE Act, recent state laws in Florida, Louisiana and Mississippi and examples in federal contracting.²

- The Trustee Council and TIGs should ensure adequate funding for public engagement. In particular, the Council should consider allocating a portion of the resources currently committed for administration under the regional restoration TIG to promoting public engagement across TIGs.

There is substantial concern that the proposed governance structure segments the responsibility of achieving ecosystem restoration that threatens the Trustees' ability to coordinate and reduces accountability. This proposal places an unjust burden on the public by increasing the time and effort required to meaningfully engage and participate in restoration planning and implementation.

Open Ocean Allocation

We are pleased that \$8.1 billion has been allocated toward NRD, and that \$1.24 billion of the NRD allocation is dedicated to restoration and enhancement of the open ocean. The BP oil disaster began off the shore of Louisiana, 5,000 feet below sea level. The sea life that depends on our the health of our oceans, such as sea turtles, marine mammals, finfish, and sea birds, were all exposed to massive amounts of oil and dispersants. The oil disaster began in our coastal waters, and the open ocean is in dire need of comprehensive restoration. Emerging information regarding the impacts to our ecosystem signifies troubling outcomes for our marine environment, which emphasizes the need for meaningful restoration in the open ocean. Inclusion of the open ocean allocation will allow for restoration of the Gulf Coast's premier fisheries and ocean habitats, both of which are essential to the health of the economy in the region.

However, we are concerned that the proposed governance structure for the administration of Natural Resource Damage (NRD) funds and implementation of restoration under the Draft Programmatic Damage Assessment Restoration Plan/Programmatic Environmental Impact Statement (PDARP/PEIS) will be extremely costly and make it difficult to plan and implement restoration activities to achieve the Gulf-wide and ecosystem-scale goals set by the Trustees.

While we appreciate the dedicated funding for blue water restoration, we are disappointed with the broad definition and terms of funding for the open ocean allocation. The consent decree defines Open Ocean as "restoration activities for resources primarily in the ocean and Federal Trustee administrative and preliminary planning activities across Restoration Areas."³ By this definition, projects and associated costs that do not address ocean resources will be able to be drawn from this account. This is proposal is unjustifiable considering the plethora of damages specified in the PDARP/PEIS for ocean resources and habitats.

Additionally, four of the early restoration projects that address lost recreational use have been reclassified as open ocean projects.⁴ These projects include nearly \$7 million for roadway enhancements (bike and pedestrian lanes) at Davis Bayou in Mississippi, \$545,000 for trail enhancement at Bon Secour National Wildlife Refuge in Alabama, more than \$10 million for a "beach enhancement project which involves removing fragments of asphalt and road-based material that are scattered widely over the Fort Pickens, Santa Rosa, and Perdido Key areas of Gulf Islands

² "Resources and Ecosystem Sustainability, Tourist Opportunities, And Revived Economies of the Gulf Coast States Act of 2011". Senate Report 112-100. <http://www.gpo.gov/fdsys/pkg/CRPT-112srpt100/html/CRPT-112srpt100.htm>; "Mississippi Jobs First Act of 2012", Mississippi Code 800.00-800.04 <http://www.sos.ms.gov/ACProposed/00019129b.pdf>; "Louisiana First Hiring Act", Chapter 27 of Subtitle III of Title 39 of the Louisiana Revised Statutes of 1950, R.S. 39:2211 through 2214 <http://www.legis.la.gov/legis/ViewDocument.aspx?d=877313>; "Job Orders- Department of Economic Opportunity" Florida Department of Economic Opportunity http://www.floridajobs.org/PDG/TrainingPresentations/wp_basics/Job_Orders_Part1.ppt

³ Consent Decree, Appendix 2 at §2.1.1.

⁴ Bike & Ped Lane GUIs MS (\$6,996,751), Bon Secour NWR Trail, AL (\$545,110), Beach Enhancement G.I. National Seashore (\$10,836,055), Gulf Islands National Seashore Ferry Project (\$4,020,000). See Appendix 2 Table 2 of Consent Decree at: <http://www.justice.gov/enrd/file/780686/download>

National Seashore, in Florida,”⁵ and more than \$4 million for the “purchase of up to three pedestrian visitor ferries for use between the City of Pensacola, Pensacola Beach, and the Fort Pickens area of Gulf Islands National Seashore in Florida.”⁶

As we examine and evaluate the types of projects conducted in previous phases of restoration, we are alarmed that these four projects have been reclassified as open ocean projects. None of the above listed projects occur in the open ocean and do not fit the definition⁷ provided by consent decree. This sets a dangerous precedent for future funding of projects in any component, where Trustees are able to pull funds from restoration accounts that do not benefit the stated resources. Additionally, of the Of the \$832 million⁸ allocated for early restoration, only \$20 million has been allocated to restoring marine resources injured in this oil disaster.⁹ Classifying recreational use projects as one that address injuries to the open ocean reduces the amount of funding available to restore and improve the our marine environment. The offshore ecosystem is where the disaster occurred and where resources to address significant injuries must still be directed. Funding these projects may be suitable under different allocations; however, they are inappropriate for the open ocean allocation. We recommend that the consent decree and its related documents consider an alternative, applicable allocation for these projects, either from their respective implementation state or from the region-wide allocations.

The NRD Final Allocation table provides additional details on where the NRD money will be spent. “Administrative Oversight and Comprehensive Planning” accounts for \$150 million of the open ocean funding.¹⁰ It is unclear if the \$150 million amounts to the total allocation for “Federal Trustee administrative and preliminary planning activities across Restoration Areas,” as explained in the open ocean definition. This clarification is crucial as it could indicate additional monies are removed offshore restoration. Is the \$150 million the final allocation total for Federal Trustee planning and oversight? Could additional funding from other portions of the open ocean allocation also be used for Federal Trustee planning and oversight? Should federal administrative and planning costs exceed \$150 million, where will the funding be derived from? With the costly administration expenditures of the proposed governance structure,¹¹ how will the Trustees ensure there will be adequate monetary support to develop and implement a comprehensive suite of restoration projects for the open ocean resources?

Due to the significant concerns outlined above, we are frustrated and troubled that funding for open ocean restoration will be spent on overhead costs for other restoration components and on reclassified, previously approved, land-based recreational projects. We implore the Department of Justice to revise the definition of Open Ocean in the consent decree to guarantee the proper use of the funds in that allocation. Further, the consent decree must make explicit that administrative costs should absolutely not exceed the \$150 million allocated, and should only pertain to costs related to staffing and travel. The open ocean allocation must not be used for Federal Trustee planning costs across restoration areas.

⁵ Phase III Early Restoration Fact Sheet, Gulf Islands National Seashore Beach Enhancement Project, available at <http://www.gulfspillrestoration.noaa.gov/wp-content/uploads/BeachEnhancementFactsheet4.pdf>.

⁶ Phase III Early Restoration Fact Sheet, Gulf Islands National Seashore Ferry Project, available at <http://www.gulfspillrestoration.noaa.gov/wp-content/uploads/FerryFactsheet4.pdf>.

⁷ “Restoration activities for resources primarily in the ocean and Federal Trustee administrative and preliminary planning activities across Restoration Areas.” Consent Decree, Appendix 2 at §2.1.1.

⁸ In September 2015, Trustees approved Phase IV of early restoration bringing the total approved to be spent to \$832 million from the \$1 billion BP pledged for early restoration. See <http://www.gulfspillrestoration.noaa.gov/2015/09/latest-round-of-early-restoration-projects-approved/>.

⁹ Early restoration included a bycatch-reduction project estimated to cost \$20 million. Consent Decree, Appendix 2, Table 2.

¹⁰ Consent Decree at Appendix 2.1; Table 5.10-1 Draft PDARP/PEIS at page 5–103.

¹¹ Consent Decree, Appendix 2: Agreement Among the United States and the Gulf States Relating to Natural Resource Restoration; Draft PDARP/PEIS at page 7-4.

Suggested definition of “Open Ocean”:

“Open Ocean” consists of restoration activities occurring in the ocean or activities that create, enhance, or improve marine resource management, scientific research, or monitoring of natural resources in the ocean and Federal Trustee administrative activities, capped at \$150 million, across Restoration Areas.

Thank you for your consideration of these requests; please let us know if we can provide additional information or assistance. For additional information, please contact Jordan Macha at the Gulf Restoration Network (jordan@healthygulf.org).

Sincerely,

Action Communication and Education Reform Inc., Duck Hill, MS

Alliance Institute, New Orleans, LA

Artspot Productions, New Orleans, LA

Atchafalaya Basinkeeper, Baton Rouge, LA

Earth Ethics, Pensacola, FL

Galveston Baykeeper, Galveston, TX

Gulf Islands Conservancy Inc., Biloxi, MS

Gulf Restoration Network, New Orleans, LA

Idle No More, Gulf Coast, Rayne, LA

Louisiana Environmental Action Network, Baton Rouge, LA

Lower Mississippi Riverkeeper, Baton Rouge, LA

Mind Power Collective, New Orleans, LA

Mobile Bay Sierra Club, Mobile, AL

Mondo Bizarro, New Orleans, LA

Mothers for a Sustainable Energy, Rayne, LA

Oasis Earth, Anchorage, AK

On Wings of Care, New Orleans, LA

Operation Homecare, Mobile, AL

Pelican Coast Conservancy, Mobile, AL

Pensacola Watershed Alliance, Pensacola, FL

Public Lab, New Orleans, LA

Synergy Strategic Communications, Mobile, AL

Vanishing Earth, New Orleans, LA