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May 18, 2011

NOAA Restoration Center
Attn: DWH PEIS Comments
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http://www.gulfspillrestoration.noaa.gov
Via FedEx and E-Filing

These comments are respectfully submitted by the undersigned organizations in response to the Notice of Intent to Begin Restoration Scoping and Prepare a Programmatic Environmental Impact Statement ("PEIS"), published by the National Oceanic and Atmospheric Administration ("NOAA") at 76 Fed. Reg. 9327 (Feb. 17, 2011). A full list of signatory organizations is attached to these comments.

The *Deepwater Horizon* disaster, which began with the explosion of the Macondo oil well on April 20, 2010, and resulted in the release of unprecedented volumes of crude oil, hydrocarbon gases, and chemical dispersants into the Gulf environment, has had dramatic impacts on natural resources and ecosystem services in and along the Gulf of Mexico. More than a year after it began, the disaster is far from over and Gulf Coast communities continue to suffer from adverse health impacts, threats to wildlife and the coastal and marine environment, and a damaged economy. Indeed, it is impossible even now to identify or to anticipate all of the short- and long-term effects of the disaster, but unidentified impacts are no less real. Public health and environmental injuries that are not yet manifest may develop down the road.

Given the magnitude and extraordinary nature of the disaster, the undersigned environmental and community-based organizations call on NOAA and all of the Trustees involved in the Natural Resource Damage Assessment ("NRDA") to commit to basic principles and to take concrete steps to increase transparency and expand public engagement in the NRDA process; to hold BP and the other Responsible Parties ("RPs") fully accountable for long-term injuries that are not yet known; to establish long-term research and monitoring; to ensure that restoration efforts are based on science; and to take comprehensive and adaptive

restoration actions that foster sustainability and are equitably distributed. These principles are critical to any effort to identify, select, and implement restoration projects to compensate Gulf Coast communities and the environment for the profound known and latent damage caused by the disaster.

I. The Trustees Must Increase Transparency and Expand Public Engagement

The impacts of the *Deepwater Horizon* disaster – the worst environmental disaster in United States history – run deep, and the circumstances demand early, ongoing and more robust public engagement than has been provided to date. In addition to the individual human lives lost, the blowout caused and continues to cause adverse impacts on natural resources upon which the livelihoods of Gulf communities depend. The natural resource-based industries of the Gulf, including tourism and seafood, have been devastated and have not returned to what they were prior to April 20, 2010. A wide array of species, including federally endangered and threatened species, such as the Kemp's Ridley sea turtle, have been injured or killed. Sensitive coastal and deep-water ecosystems, which serve as habitat for rare and sensitive species as well as nursery and spawning habitat for Gulf fisheries, have been degraded or destroyed. Indeed, the full scope of the long-term impacts are still unknown and Gulf Coast communities will continue to endure the disaster's lasting impacts for decades to come.

The magnitude and nature of this disaster demand robust public engagement and transparency at every stage of the NRDA process – during the Trustees' ongoing injury assessment, restoration planning, restoration implementation, and long-term monitoring. Indeed, National Environmental Policy Act ("NEPA") and Oil Pollution Act ("OPA") regulations require the trustees to facilitate public participation beginning with the early stages of developing a draft restoration plan. *See, e.g.*, 15 C.F.R. § 990.23(b) ("Depending upon the circumstances of the incident, federal trustees may need to consider early involvement of the public in restoration planning in order to meet their NEPA compliance requirements.").

> Trustees *must* provide opportunities for public involvement after the trustees' decision to develop restoration plans or issuance of any notices to that effect . . . . Trustees may also provide opportunities for public involvement at any time prior to this decision if such involvement may enhance trustees' decision-making or avoid delays in restoration.

Id. § 990.14(d) (emphasis added). These regulations set a floor, not a ceiling, for the extent of public engagement. *See id.* § 990.55(a) ("[T]rustees must, at a minimum, develop a Draft and Final Restoration Plan, with an opportunity for public review of and comment on the draft plan.").

Meaningful public engagement is necessary to build trust in the NRDA process and to instill confidence that the RPs will be held fully accountable for known and unforeseen damages. Thus far, the scale of the impacts combined with the public's inability to gain access

to critical information has resulted in widespread mistrust of the Trustees' ability and willingness to assess ecological injuries accurately and to implement restoration that will fully compensate the public and restore the environment. These circumstances demand early, ongoing and heightened public involvement as set forth below.

A. Increase Public Transparency

We urge the Trustees to increase the transparency of the NRDA process, including, *inter alia*, disclosing scientific processes, information regarding chain of custody, and the underlying data collected to assess injury to natural resources. While we recognize that the scientific analyses may not be complete and that disclosure may be restricted because of pending litigation, the Trustees still must develop robust and formal avenues for information disclosure and should share with the public all of the information that is shared with or known by the RPs. As discussed at greater length in Part IV, formal disclosure mechanisms will provide needed information to ensure that the broader scientific community can take part in assessing and studying the impacts of the *Deepwater Horizon* disaster. Formal mechanisms for disclosure also will help to dispel public mistrust of the Trustees' ability and willingness to carry out thorough and independently reviewed scientific investigations and to develop restoration that will adequately address the immediate, long-term, and latent impacts on all natural resources harmed by the disaster.

We urge the Trustees to establish new, and improve existing, avenues for disseminating information to the public. For example, NOAA's NRDA website should provide frequent and routine updates on the investigations of injured species, including but not limited to sea turtles, dolphins, offshore corals, brown shrimp, blue fin tuna, red snapper, sperm whales, whale sharks, oysters, resident and migratory bird species, and other indicator and highly vulnerable species. These updates should provide raw data, detailed descriptions, timelines of the investigation process, and an explanation when information cannot be disclosed. The Trustees also should release a comprehensive NRDA Status Report as soon as possible, and on a semi-annual or annual basis thereafter, to improve the public's understanding of the ongoing NRDA process and accompanying scientific investigation. Finally, the Trustees should host regular phone dialogues, during which scientists and other experts update interested members of the public about ongoing investigations and provide opportunities for question and answer. These calls might take place monthly, for example, using a conference call format.

The Administrative Record, which is currently available on the Department of Interior website, should be comprehensive, searchable, and updated on an ongoing basis. The Record must include all documents and data that are jointly shared with or known by the RPs, including data that has been jointly collected by the RPs and the Trustees and a complete description of all studies that are being conducted by the Trustees and RPs. A comprehensive Administrative Record is essential for the public and independent scientists to determine whether gaps exist in the research or in data analyses. This information also will ensure that

independent research, such as the science funded by the Gulf of Mexico Research Initiative, will not duplicate ongoing NRDA studies.

The Trustees also should establish a Restoration Library that archives all studies and findings from NRDA and non-NRDA sources, including the results of long-term monitoring of the environment and public health. This library would serve as a collective knowledge base for injury, disaster response, and restoration. It also would serve as a useful resource for future incidents as determinations are made about the strengths and deficiencies of disaster response and restoration efforts undertaken in the aftermath of the *Deepwater Horizon* disaster. Such a database was not created following the *Exxon Valdez* spill, leading to the loss of valuable information.

B. Establish a Public Advisory Council

To date, public meetings and opportunities to comment have been insufficient to build public confidence in light of the scope and depth of the disaster's impacts. The public interest community already has urged the Trustees to establish a Public Advisory Council comprised of Gulf-based community and environmental leaders, independent scientific experts, and other local public stakeholders to provide oversight and formal input into the damage assessment and restoration planning and implementation processes. Many members of the public and leaders in the public interest community have local expertise in the ecology and restoration of natural resources in the Gulf, but feel that they cannot meaningfully participate in the restoration process through the minimal avenues provided. A Public Advisory Council would serve as a liaison between the Trustees and interested members of the public, and enhance transparency and accountability. It could engage the Trustees and RPs in both formal and informal settings and provide a mechanism for funneling local expertise and input to the NRDA process as well as facilitate the dissemination of information to the public.[1]

The groundwork for a Public Advisory Council already has been laid in the Gulf. Public interest leaders from Gulf communities have demonstrated their capacity to organize collectively to address threats to the Gulf. For example, the Gulf Coast Fund was established to support community renewal and ecological health in the Gulf Coast region in the aftermath of

[1] Importantly, the purpose of the Public Advisory Council is distinct from the Regional Citizens' Advisory Councils ("RCACs"), which were authorized by Congress under OPA 90 in the aftermath of the *Exxon Valdez* spill in Prince William Sound and Cook Inlet, Alaska. *See* 33 U.S.C. § 2732(d). The RCACs were established to provide recommendations on policies, permits, and site-specific regulations for terminal and tanker operations; to monitor environmental impacts of the operation of terminals and tankers; to review the adequacy of oil spill prevention and contingency plans for terminals and tankers; and to provide advice and recommendations on port operations, policies, and practices, among other duties. *Id.* § 2732(d)(6). Although a Gulf of Mexico RCAC that fosters reform of the offshore oil drilling industry is essential for improving drilling practices going forward, its mandate would not encompass restoration, and so it would not serve the purpose envisioned for a Public Advisory Council. Nonetheless, the RCACs provide a model for a formal citizen advisory role, which should be replicated in the form of a Public Advisory Council in the context of restoration planning and implementation.

hurricanes Katrina, Rita, Gustav, and Ike, and the BP disaster. At the Fund's core is an Advisory Group of leading policy advocates, community activists, and grassroots organizers from the Gulf states committed to an open and transparent decision-making process to determine how best to distribute support to affected communities. The Advisory Group is composed of individuals who represent the diverse needs of local communities and are selected through a criteria-based nomination process. Similarly, in response to the *Deepwater Horizon* disaster, a diverse coalition of Gulf communities, fishing interests, and environmental and social justice groups has convened two Gulf Gatherings to date to develop a common vision for restoration. Together, this coalition has developed "A Unified Action Plan for a Healthy Gulf"[2] and the "Weeks Bay Principles for a Healthy Gulf,"[3] to leverage a cooperative approach to achieving the goal of a more resilient Gulf of Mexico.[4]

We understand that impending litigation imposes necessary limits on public disclosure, but the public needs a formal seat at the NRDA table now more than ever, in light of the recently signed Framework for Early Restoration Addressing Injuries Resulting from the Deepwater Horizon Oil Spill ("Framework Agreement"), dated April 19, 2011. To implement one billion dollars in early restoration projects without a formal mechanism by which the public can participate in decision-making and learn about the ongoing process would heighten public mistrust. A Public Advisory Council, on the other hand, would provide a layer of scrutiny that would increase public confidence in the restoration process and foster cooperation among the Trustees, BP, and communities of the Gulf. We therefore urge the Trustees to establish and convene a Public Advisory Council expeditiously.

C. Require Public Consultation Before Key Trustee Decisions

The Trustees should seek public input before certain key decisions become final, including those related to restoration selection, as well as in advance of any settlement with the RPs. As described above, the circumstances of the disaster and the magnitude of its immediate and lingering effects demand a heightened level of public engagement, consultation, and transparency. At a minimum, the Trustees must provide a formal response to comments

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[2] *A Unified Action Plan for a Healthy Gulf*, Gulf Restoration Network, http://healthygulf.org/files_reports/BP_Drilling_Disaster/Gulf_Future_Action_Plan_April_20_2011.pdf (last visited May 18, 2011) (appended as Exhibit A).

[3] *The Weeks Bay Principles for Gulf Recovery*, Gulf Restoration Network, http://healthygulf.org/files_reports/BP_Drilling_Disaster/Weeks_Bay_Principles.pdf (last visited May 18, 2011) (appended as Exhibit B).

[4] Many models exist to assist the Trustees in creating a formal entity for citizen consultation. In Alaska, a Public Advisory Committee advises the Oil Spill Trustee Council on the allocation of funding and decisions related to restoration and monitoring in the wake of *the Exxon Valdez* oil spill. Membership is drawn from the public at large as well as a range of communities and areas of expertise – for example, Science/Technical, Conservation/Environmental, and Native Landowners. *See* Current PAC Members, http://www.evostc.state.ak.us/people/pac.cfm (last visited May 18, 2011).

submitted on the PEIS. The public also must be given an opportunity to comment and have their comments formally considered by the Trustees before a settlement is reached.

Although we support early restoration to address urgent and preliminary restoration needs, the Framework Agreement, which makes available $1 billion for early restoration activities, was signed without any public input. The failure to afford any opportunity for public input has resulted in uncertainty about how actions taken under the voluntary agreement will affect future activities in the NRDA injury assessment, restoration planning, and implementation processes. For example: To what extent will the PEIS process currently underway inform early restoration efforts? Will early restoration projects that qualify for "NRD Offsets" be held to the same long-term monitoring and accountability standards as projects initiated under the NRDA restoration planning and implementation processes?

Moreover, The Framework Agreement authorizes moving forward with restoration without mechanisms such as a Public Advisory Council in place. The Framework Agreement recognizes that all draft early restoration plans "will be subject to public review and comment, plus environmental review, as required by law," and authorizes the Trustees "to withdraw any proposed project" based on information disclosed during the public review process. As discussed above, however, a minimalistic approach to public participation is inadequate in this context.

A Public Advisory Council is critical for ensuring meaningful public input on early restoration planning and implementation. Additionally, we urge the Trustees to disclose all proposed early restoration projects to the public (to the degree and at the same time as such information is disclosed to BP), to consult the public and provide opportunity for comments before the approval of any early restoration project under the Framework Agreement, and to fully inform the public regarding details of how NRD Offsets will be implemented and the relationship between projects undertaken pursuant to the Framework Agreement and other restoration going forward.

II. BP and the Other RPs Must Be Held Fully Liable Both for Long-Term Research and Monitoring and for Restoration of Later-Discovered Injuries

The Trustees should rely on a combination of different mechanisms to ensure that RPs are held fully accountable for the long-term impacts of the blowout and the subsequent response. A reopener clause in any potential settlement agreement is essential. Additionally, two financial mechanisms should be put into place to ensure that RPs will not later shirk liability under the reopener. First, the Trustees should dedicate a continuing, long-term payment stream to fund research and monitoring, as described below. Second, the RPs should be required to deposit into an escrow account an amount above and beyond the cost for restoring damages identified in the Restoration Plan; the funds in this account will be available to restore potential, later-discovered injuries.

A. Establish a Continuing Payment Stream to Fund Research and Monitoring

An agreement to settle NRDA claims likely will result in one or more lump sum payments, and there will be pressure to allocate the funds to pay for projects already in the queue. It is crucial, however, that funds be dedicated to an ongoing payment stream for research and monitoring activities that will focus on *the long term*. Twenty-two years after the *Exxon Valdez*, two species – the Pacific herring and pigeon guillemots – have not recovered, and another ten species or resource categories, including designated wilderness areas and intertidal communities, are still recovering.[5] Quite plainly, as described in more detail in Part III below, research, monitoring, and recovery will take decades. An ongoing payment stream is therefore a necessary and reasonable component of the RPs' liability.[6] A trustee council akin to the one established to oversee restoration after the *Exxon Valdez* spill – that is advised both by a Public Advisory Council and by independent members of the scientific community, discussed in Part IV below – should be formed to manage and oversee disbursement of the payment stream.

B. Establish an Escrow Fund for Restoration of Later-Discovered Injuries

The RPs also should be required to deposit funds into an escrow account to be used for future restoration of injuries that only become apparent after the final restoration plan is complete. This sort of financial set-aside was contemplated by NOAA when it promulgated the NRDA regulations. *See* Natural Resource Damage Assessments, 61 Fed. Reg. 440, 458 (Jan. 5, 1996) (codified at 15 C.F.R. Pt. 990) ("[T]he responsible parties [can] deposit an agreed-upon amount of money in an escrow account to cover future contingencies that could not be fully anticipated at the time of the settlement. These funds would then be used for future actions, or revert to the responsible parties if not needed."). The RPs should be required to set aside these funds now as part of the one-time, lump sum payment agreed to upon settlement of the NRDA process, because doing so would allay public fears that the RPs will attempt to avoid any future payment that may be necessary. In depositing these funds into the escrow account, BP and the RPs must relinquish all claim to the funds, aside from the possibility of reversion, and play no role in their future disbursement.

With respect to disbursements from the escrow fund, a review panel of independent scientists established to advise the Trustees, *see* Part IV *infra*, should peer-review research indicating the presence of an injury attributed to the *Deepwater Horizon* to determine whether

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[5] *See Status of Injured Resources & Services*, *Exxon Valdez* Oil Spill Trustee Council, http://www.evostc.state.ak.us/Recovery/status.cfm (last visited May 18, 2011).

[6] Funds for this purpose might originate in the NRDA settlement, Clean Water Act fines, or other sources. One form of such a revenue stream could be the accrued interest on a $1 billion investment of Clean Water Act penalties into U.S. securities (assuming Congress passes a law directing Clean Water Act penalties from the *Deepwater Horizon* disaster back to Gulf states). This mechanism has been recommended by a coalition of groups including the Gulf Restoration Network, the Ocean Conservancy, Sierra Club, Waterkeeper Alliance, the Alabama Coastal Foundation, and Mobile Baykeeper, and is supported by the undersigned. *See* Letter from Advocates for Envtl. Human Rights et al. to Adm'r Lisa Jackson, Chair, Gulf of Mexico Ecosystem Restoration Task Force (May 4, 2001) (appended as Exhibit C).

the injury in fact is a latent effect of the blowout or associated with response efforts. If the panel determines that the injury is reasonably attributable to the *Deepwater Horizon*, the Trustees should initiate injury assessment and restoration planning to determine the extent of injury and the means for restoration. Based on the outcome of this process, the Trustees can then agree upon an amount to disburse from the escrow fund for restoration of the injury.

C. Require a Broad Reopener Provision

The establishment of a continuing payment stream for ecosystem-wide research and monitoring, as well as an escrow fund to restore later-discovered injuries, should address the RP's long-term liability in large part. In the event that the funds made available through these mechanisms are later found to be inadequate, *and especially if these funding mechanisms are not put into place now*, a broad reopener provision in the settlement agreement is critical to ensure BP's and the other RPs' full accountability.

Any agreement to settle NRDA claims against the RPs, whether involving state or federal trustees, should include a reopener provision. When promulgating the NRDA regulations, NOAA recognized such provisions as a means to ensure the Responsible Parties' full accountability. *See* 61 Fed. Reg. at 495 ("Reopeners may be required to properly ensure that the environment and public are appropriately made whole for the injuries from a particular incident. Thus, reopeners should reflect the degree of certainty in the assessment of the nature and extent of injuries and losses."). In the context of the *Deepwater Horizon*, the degree of certainty that any assessment conducted in the next few years will fully capture all damage is very low. Among other things, the volume of the blowout; the uncertainty surrounding the impact of the oil-dispersant mix in the marine environment, and especially the benthic environments; and the complexity of the affected areas all contribute to a low level of certainty and thus the need for a strong and broad reopener.

A reopener provision should permit post-settlement recovery upon identification of a newly discovered injury reasonably attributable to the *Deepwater Horizon* disaster and response. The ability of a reopener to make the environment and public whole depends, however, on the provision's precise wording. We therefore urge the Trustees to consider and incorporate the following recommendations.

- The reopener must not contain any language that would bar recovery for injuries that "could have been reasonably anticipated or discoverable," or otherwise "could have been known" at the time of the settlement. The language in the *Exxon Valdez* reopener provision is instructive for what *not to include* in a proper reopener. In that agreement, reopening was permitted only if the injury "could not reasonably have been known nor could it reasonably have been anticipated by any Trustee from any information in the

possession of or reasonably available to any Trustee on the [date the agreement was signed]."[7]

Rather than use the Trustees' constructive knowledge as the basis for determining whether a later-discovered injury is the responsibility of the RPs, the reopener should establish the Trustees' *actual* knowledge at the time of the final restoration plan as the baseline upon which to identify later-discovered injuries. The Trustees' actual knowledge, moreover, must be clearly defined and delimited. The final restoration plan should contain a list of specific identified injuries. Any later-discovered injury not on this list – or an injury of significantly greater magnitude – would constitute unknown information sufficient to trigger a reopening.

- Unlike the reopener provision in the *Exxon Valdez* agreement, which required a showing that the populations, habitats, or species to be restored had suffered loss or decline "as a result of the Oil Spill,"[8] the reopener must allow for recovery for injuries *reasonably attributable* to the *Deepwater Horizon* blowout and response. As time passes, it will become increasingly difficult to demonstrate definitively that an injury has occurred "as a result of" the disaster. Given this reality and the pressing need nevertheless to make the public and the environment whole, a reasonableness standard is essential. Any concern that the RPs would be held liable for injuries not caused by the *Deepwater Horizon* disaster should be assuaged by the decision-making role contemplated for a panel of independent scientists, which will make the determination whether to recommend reopening for a later-discovered injury.

- The reopener provision should not require that a certain threshold for the extent of injury be met before permitting reopening. Again, the *Exxon Valdez* reopener provision exemplifies the sort of language that should *not* be used in an effective and meaningful agreement. The *Exxon Valdez* reopener permitted later recovery only for "populations, habitats, or species which, as a result of the Oil Spill, have suffered a *substantial loss or substantial decline* in the areas affected by the Oil Spill."[9] In passing the Oil Pollution Act, Congress emphasized the need for *full* restoration and intended for the statute to:

> make[] it clear that forests are more than board feet of lumber, and that seals and sea otters are more than just commodities traded on the market. [OPA] would clarify that in the wake of spills like the *Exxon Valdez*, *all reasonable demonstrable natural resource damages caused by a spill are paid by the responsible parties, rather than borne by the public*.

[7] Agreement and Consent Decree at 19, *U.S. v. Exxon Corp*, Civ. No. A91-082 (D. Alaska, Oct. 9, 1991).
[8] *Id.*
[9] *Id.* (emphasis added).

S. Rep. No. 101-94, at 15 (1989), *reprinted in* 1990 U.S.C.C.A.N. 722, 737 (emphasis added). Thus, a provision that would limit the RPs' liability for future-identified injuries only if those injuries are *substantial* is contrary to Congress's intent.

III. A Long-Term Commitment to Monitoring, Research, and Adaptive Management is Critical to the Restoration of the Gulf

The *Deepwater Horizon* disaster drove home a fact beyond dispute: that the complexities that shape the vast Gulf ecosystem are as yet poorly understood. The Trustees' understanding of the intricacies of the ecosystem naturally will evolve over time, as will their understanding of the effectiveness and impact of restoration measures. An effective Restoration Plan therefore must incorporate mechanisms for adaptive management that build in flexibility and responsiveness to the lessons learned from ongoing research and monitoring.

It stands to reason that an accurate picture of the full, long-term effects of the *Deepwater Horizon* disaster must necessarily account for the reproductive and lifecycle impacts on long-lived species that were just born or born shortly after the blowout. Research and monitoring under the Restoration Plan therefore must continue for several decades.[10] As more time passes, the ability to distinguish between the effects of the blowout and other factors may diminish, but such uncertainty does not obviate the Trustees' responsibility to monitor and pursue full restoration of all natural resources affected by the disaster. In fact, such uncertainty only calls for early action to establish monitoring mechanisms in order to pave the way for future scientific efforts.

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[10] The Restoration Plan should continue for a minimum of 35 years, an amount of time that reasonably falls within the range of years that long-lived species in the Gulf, such as sea turtles, reach sexual maturity. Five species of sea turtles, all classified as either threatened or endangered, inhabit Gulf waters: green, loggerhead, hawksbill, leatherback, and Kemp's Ridley. *See* Dep't of Interior, Turtles in the Gulf of Mexico, http://training.fws.gov/csp/oilspill/training/orientation/turtles/Turtles_in_the_Gulf_of%20Mexico.pdf (last visited Apr. 23, 2011). Green turtles reach sexual maturity between 26 and 40 years of age. *See* The IUCN Red List of Threatened Species, Chelonia Mydas, http://www.iucnredlist.org/apps/redlist/details/4615/0 (last visited Apr. 23, 2011). Loggerheads reach sexual maturity between about 20 to 30 years of age. *See* U.S. Fish & Wildlife Serv., Loggerhead Sea Turtle, http://www.fws.gov/northflorida/SeaTurtles/Turtle%20Factsheets/loggerhead-sea-turtle.htm (last visited Apr. 23, 2011). Hawksbill turtles take between 20 and 40 years to reach sexual maturity. *See* The IUCN Red List of Threatened Species, Eretmochelys imbricata, http://www.iucnredlist.org/apps/redlist/details/8005/0 (last visited Apr. 23, 2011). Leatherback turtles reach sexual maturity around 13-14 years of age. *See* The IUCN Red List of Threatened Species, Dermochelys coriacea, http://www.iucnredlist.org/apps/redlist/details/6494/0 (last visited Apr. 23, 2011). Kemp's Ridley turtles reach sexual maturity between 7 and 15 years of age. U.S. Fish & Wildlife Serv., Kemp's Ridley Sea Turtle (http://www.fws.gov/northflorida/seaturtles/turtle%20factsheets/kemps-ridley-sea-turtle.htm (last visited Apr. 23, 2011).

As set forth below, the Restoration Plan should include provisions for research and monitoring both to measure the effectiveness of restoration projects and to detect latent and lingering effects of the *Deepwater Horizon* disaster. Such research and monitoring should not only measure the effectiveness of restoration measures that will be implemented – the commonly-conceived role of monitoring in a restoration plan – but also should scope for potential unexpected injuries from the blowout. Broad-scale research and monitoring will deepen understanding of the Gulf ecosystem, which can guide future decision-making and provide better baseline information for future spill incidents.

The regulations implementing the natural resource damage provisions of the Oil Pollution Act, 15 C.F.R. § 990 ("NRDA regulations"), contemplate the inclusion of performance criteria, monitoring, and corrective action in a restoration plan. Under the NRDA regulations, Trustees are required to "establish restoration objectives," which "should clearly specify the desired outcome, and the performance criteria by which successful restoration will be judged." *Id.* § 990.55(b)(2). Performance criteria include "structural, functional, temporal, and/or other demonstrable factors." *Id.* The Trustees are required to determine criteria that either will "[c]onstitute success, such that responsible parties are relieved of responsibility for further restoration actions," or will "[n]ecessitate corrective actions in order to comply with the terms of a restoration plan or settlement agreement." *Id.* Notably, corrective action, as understood by NOAA, can and should include corrective actions for unforeseen contingencies.[11] The NRDA regulations also contemplate a "monitoring component" in the restoration plan to address "such factors as duration and frequency of monitoring needed to gauge progress and success, and level of sampling needed to detect success or the need for corrective action . . . ." *Id.* § 990.55(b)(3).

In other words, continued monitoring and adaptive management already are conceived of as part of any restoration plan designed under the NRDA regulations. The unprecedented nature of the *Deepwater Horizon* disaster and the novelty of the response actions that followed, however, compel strong research and monitoring provisions. Although the type of monitoring that narrowly focuses on measuring the performance of individual restoration projects is necessary, it will not be sufficient to ensure full recovery. Limited monitoring of the performance of restoration projects may well miss the broader picture of the health of the Gulf and fail to systematically scope for and detect subtle or latent injuries that arise in unexpected places in the future.

Therefore, an ecosystem-wide research and monitoring agenda that studies the health of the Gulf and seeks to understand its biological complexities is a critical component of effective restoration. Such research and monitoring should study a range of indicator species and their habitat to determine health, productivity, and population trends, and would build an

[11] 61 Fed. Reg. at 458 ("In most cases, trustees should consider including a mechanism to deliberate the need for and type of corrective actions in a settlement agreement where the types of contingencies that suggest the need for corrective actions cannot be completely foreseen.").

understanding of the biological needs of individual species and the role of these species in the ecosystem. The importance of an integrated understanding of the Gulf ecosystem cannot be overstated. Such an understanding would enable scientists to grasp how direct injuries from the *Deepwater Horizon* disaster reverberate over time and throughout the ecological web. Ecosystem-wide research and monitoring therefore will play a critical role in future injury assessment and the design of effective restoration measures and should be implemented expeditiously as part of the immediate action that will be undertaken pursuant to the Framework Agreement.[12]

IV. Restoration Efforts Must Be Based on Science and Involve Independent Members of the Scientific Community

To ensure the integrity of the analysis and to foster public confidence, restoration planning and implementation must be based on sound science and formally engage the independent scientific community. Lessons learned from the *Exxon Valdez* experience should inform the procedure for current NRDA injury assessment and restoration planning as well as future restoration. Specifically, the Trustees should immediately establish a strong coordinating scientific group ("Science Panel") comprised of independent members of the scientific community.

At present, the Science Panel's role would be to peer review NRDA studies and to promote integration among Trustee agencies and within the suite of NRDA studies to ensure a comprehensive and integrated scientific approach to injury assessment and restoration planning. The Panel also should play a central role as the Trustees' liaison with the public on matters of science. Although the need for confidentiality prior to settlement is well understood, the Science Panel should coordinate NRDA and non-NRDA science to ensure that gaps in the NRDA studies are filled by non-NRDA scientists and, to the extent possible, should share with the public information about the science undertaken.

Currently, the Trustees' failure to establish a Science Panel to carry out the functions described or, in the alternative, to make information about any such Panel public, has led to significant mistrust and anxiety among Gulf Coast residents. Members of the public and scientific experts have no assurance that the science undertaken pursuant to the NRDA process is comprehensive and integrated. Moreover, the lack of public knowledge about studies carried out under NRDA creates the possibility for significant overlap in scientific endeavors (for example, with studies conducted under the Gulf of Mexico Research Initiative) – a travesty, given limited resources and the vast range of unknowns in need of study.

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[12] Local groups have asked for the same research and monitoring from the Gulf Coast Ecosystem Restoration Task Force (GCERTF). *See* Letter from Advocates for Envtl. Human Rights et al. to Adm'r Lisa Jackson, *supra* note 6. At present, it is unclear how NRDA processes will interact with work implemented by the GCERTF. We therefore request that the Trustees transparently harmonize their efforts with the GCERTF's work.

A Science Panel as described above also could allay public anxiety and improve NOAA's tarnished image with respect to the recent unexpected mortality of dolphins and sea turtles in the Gulf. The Trustees' general failure to inform the public in a meaningful way about the procedures for studying such visible and startling injuries has corroded the public's trust. A Science Panel comprised of independent and well-respected scientists could go far in re-establishing this trust even if what the Panel can convey at present is limited to information about the steps that have been taken and the extent of confidentiality constraints.

In the future, the Science Panel can provide continuity between the assessment process and the restoration implementation phase. Once a settlement is reached, the Panel's role as the key body responsible for publicizing and making transparent the science of recovery is highlighted, given the absence of confidentiality requirements at that point. The Panel therefore should be responsible for systematically informing the public of the results of monitoring, research, and the progress of restoration. After a settlement is reached and throughout restoration, the Science Panel as envisioned would continue to peer review and coordinate continuing research and monitoring as well as the design of corrective measures to ensure that long-term damages are captured and corrected. As discussed above in Part II, the Panel also would serve the important function of making recommendations to the Trustees about whether funds should be disbursed from the escrow account to restore later-discovered injuries and/or whether the Trustees should seek to reopen the settlement agreement.

V. Restoration Should Be Comprehensive; Foster the Sustainability of the Region's Coastal and Marine Resources; and Be Well-Integrated, Adaptive, and Equitably Distributed

The restoration projects selected by the Trustees must address impacts to the broad range of resources damaged by the spill, including offshore deepwater marine habitat and near shore coastal and wetland ecosystems. Understanding the species-specific and broader ecosystem effects of oil, hydrocarbon gases, and the applied dispersants is critical to prescribing restoration measures that track recovery of injured coastal and marine resources. As such, well-documented injury will inform comprehensive and effective restoration. Pursuant to NRDA regulations:

> [The] Trustees must determine whether an injury has occurred and, if so, identify the nature of the injury. Potential categories of injury include, but are not limited to, adverse changes in: survival, growth, and reproduction; health, physiology and biological condition; behavior community composition; ecological processes and functions; physical and chemical habitat quality or structure; and public services . . . . trustees must establish whether natural resources were exposed, either directly or indirectly, to the discharged oil from the incident, and estimate the amount or concentration and spatial and temporal extent of the exposure . . . .

15 C.F.R. §§ 990.51(c)-(d). Moreover, the "[T]rustees must determine whether an injury or an impairment of a natural resource service has occurred as a result of" response actions. *Id*. § 990.51(e).

Accordingly, injury assessment and restoration planning must encompass the breadth of marine and coastal ecosystems and species that comprise the Gulf of Mexico, as well as the impacts resulting from oil and dispersant exposure and other response actions.[13] The unprecedented volume and application of the dispersants COREXIT 9500 and 9527 in the Gulf raise a host of unanswered questions, including potential long-term impacts of dispersed oil in the water column. Injury assessment should therefore include assessment of offshore habitats, such as deepwater corals, oyster reefs, and sea grasses blanketed by oil, dispersants, and oil-dispersant mixtures; and near shore habitats, such as wetlands, beaches, and barrier islands where oil and dispersants have washed ashore.

In addition to selecting restoration projects that address the immediate and easily-detected damage, restoration project selection also must address more subtle and delayed injuries that occur due to oil exposure during a species' critical life stage. For example, floating eggs and larvae of species, such as red snapper, blue fin tuna and brown shrimp, that spawned soon after the spill, were exposed to surface and subsurface oil. Projects should address injuries resulting from impacts to the spawning processes of these species. In addition, deepwater ecosystems that serve as habitat for rare corals and the prime feeding and nursery grounds for sperm whales were inundated by oil and dispersants. As such, the short- and long-term effects on species impacted as juveniles must be investigated and rehabilitated. To ensure comprehensive restoration and accountability, injury assessment must adequately investigate the immediate and delayed harm to present and future generations of species affected in the marine environment and tailor restoration objectives and criteria accordingly. As suggested above, this may include ongoing injury assessment beyond the date of a final NRDA settlement and flexibility to develop corrective restoration measures as effects become known or change over time.

NRDA funds must be used to ensure that the environment and public are made whole from the injuries to natural resources and services resulting from the disaster. To that end, we urge the Trustees to conduct a rigorous alternatives analysis, guided by independent science and local expertise in the form of a Science Panel and a Public Advisory Council. Pursuant to NRDA regulations, the "Trustees must consider a reasonable range of restoration alternatives before selecting their preferred alternative(s)." *Id*. § 990.53(a)(2). A rigorous restoration selection process must be developed to ensure that restoration funds are properly distributed

[13] Injury assessment and restoration planning should address other response actions that have had adverse impacts on the environment. For example, Louisiana constructed miles of sand berms along its shores that pose problems for sea turtles, birds, seagrass beds, navigation, water quality, and the natural flow of sediment along the coast. In addition, the release of freshwater from the Mississippi River into the Gulf to flush oil away from Louisiana's coastal marshes resulted in the destruction of the region's oyster population.

and focused exclusively on restoration of the injured natural resources and the functions they provide. This requires consideration of a range of restoration project alternatives, including "active" and "natural" primary restoration activities that achieve restoration of the lost or injured resource, as well as "compensatory" actions. *Id.* § 990.53(b)-(c). In addition, scaling and valuation of selected restoration actions are critical to ensuring that the environment and public are adequately compensated. *Id.* § 990.53(d). The Trustees must provide a comparative description of the alternatives that presents a "clear basis for choice among options," 40 CFR § 1502.14, and must "[d]evote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits." *Id.* § 1502.14(b). This comparative analysis must have a scientific basis, including discussion of the direct and indirect environmental effects of the various alternatives. *Id.* § 1502.16. In addition, the analysis must provide a discussion of the reasons for rejecting alternatives as infeasible. *Id.* § 1502.14(a).

To the extent possible, as restoration projects are selected and implemented, the Trustees also should seek to rebuild and strengthen the regional economy devastated by the disaster. In that vein, restoration should rehabilitate injured natural resources while improving coastal resilience and sustainability of the region's coastal and marine resources. Restoration should facilitate the recovery of coastal industries, such as fishing, tourism, and recreation, which are the underpinnings of the region's economy and rich local culture, by facilitating sustainable long-term management of the natural resources on which these industries depend. For example, projects that improve habitat for brown and white shrimp that mature in coastal areas before moving into deep marine waters will help to rebuild this vital component of the Gulf food web. These and other fisheries are integral to the Gulf's economy; sustainably managing the region's fish populations can increase the economic value of fisheries while maintaining the long-term ecological health of the region.

In addition, to stimulate the local economy, Trustees should give preference for restoration projects that hire from within the Gulf Coast. The Trustees should consider policies described in Oxfam America and the Center for American Progress's recent report, "Beyond Recovery,"[14] which give preference for restoration, research and monitoring projects that achieve restoration goals and utilize regional sourcing of component parts, subcontracts, skilled labor, and technology. Any eventual settlement should include provisions to allow the Trustees the necessary flexibility to promote policies and projects that connect local institutions, firms and workers to opportunities directly created by the projects they fund.[15]

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[14] "Beyond Recovery," Jeffrey Buchanan, Kate Gordon and Phillip Singerman, Oxfam America and Center for American Progress, February 2011 http://www.oxfamamerica.org/publications/beyond-recovery-moving-the-gulf-coast-toward-a-sustainable-future.

[15] These goals can be accomplished in several ways. First, when possible, large contracting jobs can be broken into smaller pieces to give local, small and disadvantaged firms the chance to bid and compete for these jobs. Additionally, any settlement should include preferences, including set-asides and/or bonus-bids, to prioritize organizations, firms, and individuals principally residing or operating in areas affected by the spill in procurement. In designing procurement practices, Trustees should seek to meet federal

Moreover, the final restoration plan should incorporate adaptation measures that address the increased threats of climate change on the Gulf's sensitive coastal and marine environment. Such threats include sea level rise and associated coastal erosion and loss of wetland habitat, more severe and frequent storm events, and the acidification and warming of the ocean. Accordingly, restoration plans should incorporate measures that restore and rebuild the Gulf of Mexico into a more resilient ecosystem. Ultimately, a well-integrated and adaptive restoration plan will help to ensure that the plant and animal species of the Gulf of Mexico are not only restored to their baseline conditions, but are provided the opportunity to once again thrive in a changing environment.

Finally, restoration projects should be integrated to reflect an ecosystem-based approach and designed to detect and address indirect, chronic, and cumulative effects. This approach requires that the disaster's effects on all Gulf states – Louisiana, Mississippi, Alabama, Florida and Texas – are equitably addressed in the Restoration Plan, and that pre-existing regional restoration plans, such as Louisiana's Regional Restoration Plans, are effectively integrated. For example, efforts to restore the more than one thousand miles of shoreline oiled by the disaster must be harmonized with pre-existing efforts in Louisiana to restore its ongoing wetland loss of approximately 25-35 square miles a year. Selected restoration projects that seek to rehabilitate oil and dispersant effects on Gulf fish species also must be coordinated with ongoing plans to address existing threats to these species from overfishing and habitat degradation. Restoration projects also must be synchronized with existing strategies to reduce excess nutrient runoff throughout the Mississippi River watershed, which causes algae overproduction and depletes oxygen in the water. This is particularly important in areas that retain nutrients, such as wetlands and stream buffers, and during summer months when the process causes huge dead zones in the Gulf, placing additional strains on ecosystems and species.

We appreciate your solicitation of comments on these important issues and thank you in advance for your consideration. Given the pace of events contemplated by the Framework Agreement, we request a written response within two months (by July 18, 2011), and also request a meeting with the Trustees to discuss our recommendations. To set a date for a meeting, please contact Marianne Engelman Lado at 212-791-1881 ext. 228 or Devorah Ancel at 415-977-5721.

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benchmarks for use of small and disadvantaged businesses amongst local firms, including for funds expended by states. When possible, Trustees should coordinate contracting and project needs with federal, state and local workforce, training, and/or community development agencies and seek to develop projects that promote worker training and job placement of local workers, disadvantaged workers including, minorities and women, and/or underemployed workers, especially those who have been impacted by the spill, such as commercial fishers and seafood workers. Firms that agree to utilize local workers as a first source of hiring and work with the local workforce system in training and/or placing local workers should be given additional preferences in procurement. *Id.*

Sincerely,

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On Behalf of:

The Alabama Coastal Heritage Trust
ACHT is an endowment founded in 1995 to preserve endangered coastal habitat and support preservation efforts through grants and educational efforts. The organization has been successful in acquiring 51 acres of endangered Alabama Beach Mouse habitat on Fort Morgan Peninsula and substantial acreage on Dauphin Island for preservation.

Alabama Rivers Alliance
The Alabama Rivers Alliance's purpose is to protect and restore Alabama's rivers and waterways. The organization advocates smart water policy, organizes at the grassroots level, and teaches citizens how they can protect their water with the goal of achieving healthy rivers, healthy people, and a healthy system of government for the state of Alabama.

Atchafalaya Basinkeeper
Atchafalaya Basinkeeper is a non-profit organization dedicated to protecting and restoring the ecosystems within the Atchafalaya Basin. Atchafalaya Basinkeeper is a member of the Waterkeeper Alliance, a grassroots advocacy organization consisting of over 200 local Waterkeeper programs and dedicated to preserving and protecting YOUR water from polluters.

Bayou Interfaith Shared Community Organizing
BISCO's mission is to build a powerful, multi-faith, multi-ethnic, multi-issue organization that serves as a voice for the people of Terrebonne and Lafourche Parishes in Southeastern Louisiana, as well as Grand Isle in Southern Jefferson Parish. BISCO's vision is to have safe, just, healthy and sustainable communities where individuals can prosper and grow, enjoying the benefits of a diverse and healthy ecosystem.

Earthjustice
Earthjustice is a non-profit public interest law firm dedicated to protecting the magnificent places, natural resources, and wildlife of this earth, and to defending the right of all people to a healthy environment.

Emerald Coastkeeper, Inc.
Emerald Coastkeeper is dedicated to protecting water quality in Northwest Florida and fights for the protection of natural resources.

Global Green
As the U.S. affiliate of Green Cross International, Global Green USA shares the organization's mission of responding to the combined challenges of security, poverty and environmental degradation to ensure a sustainable and secure future. Global Green recently began its Louisiana Wetland Action Program, a state-funded initiative to engage and empower Louisiana landowners in coastal restoration and, as a result, to encourage the growth of sustainable, resilient communities.

Guardians of the Gulf
Guardians of the Gulf is a community-based, volunteer nonprofit organization with the purpose of maintaining and improving the standards of performance of professionals in Environmental Health in the Gulf of Mexico region. Guardians of the Gulf is an organization committed to promoting, funding and facilitating efforts to help solve the recovery challenges of the Gulf of Mexico in the wake of the BP Oil Rig disaster. Their current focus is the building of medical clinics in five states to aid in the medical complications that arose from the oil spill itself.

Gulf Change
The mission of Gulf Change is to unite people across political, cultural and economic lines in order to further and maintain the cause of clean air and water as a human rights issue; to respond to humanitarian need and provide for a sustainable future for generations to come.

Gulf Islands Conservancy, Inc.
Gulf Islands Conservancy, Inc. is dedicated to the preservation and protection of the barrier islands and coastal wetlands of Mississippi. GIC is a non-profit organization that encourages the public use of marine resources balanced with the need to protect the Gulf Coast's fragile estuarine system.

Gulf Restoration Network
The Gulf Restoration Network is committed to uniting and empowering people to protect and restore the natural resources of the Gulf Region for future generations. GRN began as a coalition of member organizations, but has evolved a unique independent organization that strategically provides technical support and mentoring to both member and non-member groups, to advance issues of Gulf-wide importance.

Gulf Saver Solutions, Restore the Earth Foundation, Inc.
Gulf Saver Solutions is an initiative of the not-for-profit, women's majority owned corporation Restore The Earth Foundation Inc., dedicated to the expansion of environmental restoration efforts and awareness in our society. Gulf Saver Solutions began in the wake of the Deepwater Horizon Oil Spill as a coalition of several environmental nonprofit organizations and the Louisiana Department of Wildlife and Fisheries. The coalition continues to expand their efforts to address damage to the Gulf ecosystem with support from communities, environmental groups, volunteers and schools.

Mobile Baykeeper
Mobile Baykeeper's mission is to provide a means to protect the beauty, health and heritage of the Mobile Bay Watershed, Alabama's waterways and coastal communities. Their 4,000 plus members believe environmental restoration is the key to long-term economic recovery.

Natural Resources Defense Council
NRDC's purpose is to safeguard the Earth: its people, its plants and animals and the natural systems on which all life depends. NRDC has worked to protect people and the environment from the adverse effects of offshore oil and gas development for more than 30 years

On Wings Of Care, Inc.
On Wings Of Care has dedicated itself to helping in the Gulf since 2010 May, providing aerial searches and documentation, sampling by boat and land and follow-up analyses and summaries, interfacing in both support and collaborative roles with scientific communities concerned with studies of: 1) containment of the oil-fed fires on the Deepwater Horizon after the explosion, 2) monitoring the spread of oil and use of dispersants, 3) collection and analysis of samples of water, sediment/sand, bottom oil, and marine life, 4) monitoring, collection, and analysis of sick or dead marine life, and 5) marsh 'restoration' efforts occurring in critical areas such as Barataria Bay.

Oxfam America
Oxfam America is a member of the international confederation Oxfam, a confederation of 15 organizations working together with over 3,000 partners in more than 90 countries to find lasting solutions to poverty, suffering and injustice.

Sierra Club
Since 1892, the Sierra Club has been working to protect communities, wild places, and the planet itself. With 1.4 million members, it is the largest grassroots environmental organization in the United States, including in excess of 100,000 members across the five Gulf Coast states

Southern Environmental Law Center
Through the power of law and policy, SELC stands up for the Southeast and all the things we love about this special region: clean air and clean water, and our mountains, forests, rivers, wetlands, and the coast.

The Solution to Pollution Project
The 'Solution to Pollution Project' was Bobby Charles' vision for introducing children at an early age to sustainability through music and environmental lesson plans. The Project staff believe the deep water disaster can be a catalyst for changing the way we treat our planet.

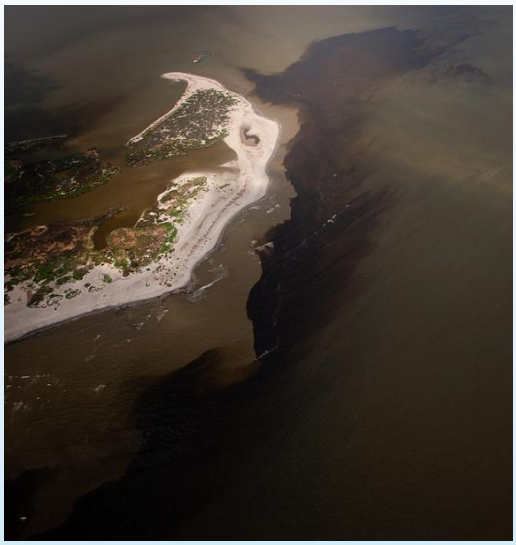
South Walton Community Council, Inc
SWCC is a citizen's organization in Walton County, Florida. Its mission is to preserve, protect and enhance the quality of life and natural environment of south Walton County.

Exhibit A

Gulf Future

Restore the Gulf * Defend our communities * Create a clean future

A Unified Action Plan for a Healthy Gulf



One year after it first began, BP's oil drilling disaster is not over. America's Gulf Coast is still suffering, and we need the support of the nation for a full and fair recovery. This is an on-going environmental and humanitarian crisis. BP's crude and toxic dispersants continue to impact the Gulf of Mexico and the Gulf Coast, poisoning people, killing wildlife, threatening ecosystems, and putting fishermen and tourism workers out of jobs.

After a full year, Congress and the federal government have yet to adequately act to restore and protect the Gulf, and BP is working to minimize their liability and the perception of the severity of their disaster's impacts.

All along the Gulf Coast, however, communities, citizens, and non-profit organizations are coming together to address the crisis and restore our Gulf. We are a diverse group made up of fishermen, faith leaders, environmentalists, clean-up workers, and residents who live, work, and play on the Gulf Coast. We come from all five Gulf Coast states, and represent culturally and racially diverse communities.

We've all been impacted by the BP oil disaster, and together, we have come up with a way forward. This is the *Gulf Future: A Unified Action Plan for a Healthy Gulf*. Divided into four areas of concern, marine restoration and resiliency, coastal restoration and resiliency, community recovery and resiliency, and public health, this plan represents our immediate goals—including specific demands of Congress, federal agencies, and the Obama administration—for a healthy and whole Gulf Coast. In the coming weeks and months, we will work together to realize these goals.

Costal Restoration and Resiliency

80% of Clean Water Act fines resulting from the BP drilling disaster must be directed to ecosystem restoration in the Gulf coast.

Federal and state restoration plans must support ecosystem and science-based strategies to increase ecological and community resiliency and sustainability. These strategies must:

- Have measurable objectives that address root causes of degradation and injury.
- Include a set of priorities on how to implement restoration projects, a timeline for implementation, and a process to evaluate their ecological effectiveness following implementation.
- Incorporate stakeholder input in the decision-making process.

All Gulf restoration efforts must have a governing structure to direct restoration efforts across agencies.

Congress must act now to ensure the **Natural Resource Damage Assessment process is fully funded**.

Please visit http://gulffuture.org for a restoration project decision matrix.

Marine Restoration and Resiliency

To provide that injury to the marine environment of the Gulf is fully assessed, we must ensure that (1) the Ecosystem Restoration Task Force strategy is **comprehensive** (e.g. includes marine considerations), **thorough, transparent, and participatory**; (2) that the **NRDA process fully assesses damage** to the marine environment; (3) there is funding for independent scientific research, and there is **ongoing monitoring and assessment of damage and restoration progress**.

When future spills occur, **local residents must be provided with access to impacted areas**, allowing citizens and local officials' oversight of the response by responsible parties and the government.

The administration and Congress must take action now to **implement the Oil Spill Commission recommendations**, including the creation of a **Regional Citizens Advisory Council** to oversee future oil and gas activity in the Gulf, and **prohibit the use of dispersant until found to be safe to the marine environment.**

Community Recovery and Resiliency

State and Federal government must build a shared resilience strategy for all communities to self-determine and **engage in a meaningful way** in the recovery of the Gulf Coast.

- Create a formal **Community Advisory Mechanism** that will contribute toward building resilient Gulf communities and a sustainable economy.
- Create and sustain **community-based capacity** to mitigate and respond to incidents.

State and Federal government must **create a sustainable and diverse economy** by Gulf States leading the nation in incentives and **investment in renewable energy industries.**

- Ensure **local communities can compete for jobs** in this new economy by providing education, training and workforce development and giving preferences to utilizing and benefiting local workers, businesses and institutions.
- Restoration legislation must foster **innovative collaborations for economic diversification**, equitable and sustainable economic growth, and new career pathways connected to Gulf Coast restoration, science, and monitoring.

Public Health

Affordable, accessible health care must be made available at the county/parish level provided by well-trained medical professionals who understand chemical exposure issues.

- **Educate healthcare providers** and the public on oil-spill related illnesses addressing both physical and mental health impacts.
- **Track health impacts** and illnesses through government studies and community efforts.
- **Secure affordable, accessible, and quality healthcare** by opening community clinics, holding health fairs, and requesting emergency clinics.

We must have an **integrated environmental assessment program** that monitors health and ecosystem risks in Gulf for ten years.

- **Long-term monitoring** of water, soil, air, and biota for oil-spill related contaminants by relevant state and federal agencies that addresses current gaps and is informed by community concerns.
- **Public clearinghouse of environmental data** that includes agency monitoring and studies, academic research, community testing, and NRDA studies/results.
- **Training and certification** of Gulf Coast **residents** to conduct environmental **monitoring**.
- **Independent review** of the safety of dispersant chemicals and other oil treatments.

We must establish **new comprehensive federal monitoring standards** that guarantee **safety of seafood** eaten in quantities typical of Gulf Coast populations.

- **Independent scientific review of FDA** Gulf seafood safety **assessment** methods.
- **Revised standards** for contaminant levels in Gulf seafood that **protect vulnerable populations** and reflect the full spectrum of oil-spill related contaminants (including metals and oil-range-organics).
- **Long-term seafood monitoring** program of state and federal waters.
- Revised **education and outreach materials** that identify and inform vulnerable populations.

We support this action plan:

Advocates for Environmental Human Rights
Alabama Rivers Alliance
Apalachicola Riverkeeper
Asian Americans for Change
Bayou Healers
Bayou Interfaith Shared Community Organizing
Boat People SOS
Citizens League for Environmental Action Now
Clean Water Network of Florida
Emerald Coastkeeper
Galveston Baykeeper
Guardians of the Gulf
Gulf Coast Fund
Gulf Islands Conservancy
Gulf Restoration Network
Immaculate Heart Community Development Corporation
Louisiana Bucket Brigade
Louisiana Environmental Action Network
Lower Mississippi Riverkeeper
Mary Queen of Vietnam Community Development Corporation
Mercy Housing & Human Development

Mississippi Center for Justice
Mississippi Coalition for Vietnamese-American Fisherfolks and Families
Mobile Baykeeper
On Wings of Care
Oxfam
Robert F. Kennedy Center for Justice and Human Rights
Sierra Club
South Bay Communities Alliance
Southern Mutual Help Association
Southwings
South Walton Community Council
Steps Coalition
Surfrider Foundation
TEJAS
Turkey Creek Community Initiative

For the most up-to-date list of supporters, please visit www.gulffuture.org.

Exhibit B

The Weeks Bay Principles for Gulf Recovery

On October 4-6, 2010, ninety-five people representing forty-six community, local, regional, national and international environmental, social justice, and fishermen's groups met at the Beckwith Camp and Conference Center on Weeks Bay, Alabama. Together, we drafted the following set of goals and principles that we believe must guide the recovery and restoration of the Gulf of Mexico, our coast and our communities in the wake of the BP drilling disaster.

Our Collective Goal

Six months after the BP oil disaster began, the diverse communities that live, work, and derive benefit from the Gulf call on government to take responsibility to:

- Make coastal communities whole again;
- Commit to cleaning up and restoring the Gulf;
- Hold BP accountable;
- Ensure local participation in decision-making;
- Conduct short and long-term monitoring; and
- Invest in economic opportunities to support locally-driven, sustainable recovery that restores and enhances America's Gulf coast.

The oil is still here and so are we.

Oil in coastal Louisiana on October 3, 2010. Photo by Gulf Restoration Network.

Fundamental Guidelines

In all of our work together we will be guided by the following axioms:

- Build confidence and trust
- Be inclusive
- Act and communicate with full transparency
- Ground decisions in science

Community Recovery

1. Growing and diverse constituencies of Gulf residents and organizations recognize that the future of their livelihoods depends on Gulf restoration. Seventy-three percent of voters in Gulf coast states support comprehensive coastal restoration*.
2. The people of the Gulf coast whose way of life and livelihood has been most affected by the BP disaster must have a seat at the decision-making table.
3. Recovery and restoration efforts must create tens of thousands of new jobs and provide economic opportunities to local communities, particularly disadvantaged and distressed communities.
4. Recovery must put our communities to work restoring the Gulf and building a healthy economy – leading America into a renewable energy future.

* Lake Research Partners poll, Septembers 2010

Public Health

1. Tens of thousands of response workers, community members and tourists have been exposed to oil and dispersants. There is a lack of health care providers who are trained to identify and treat chemical illnesses. We need the Center for Disease Control and National Institute of Health to provide our local health care departments with the training and resources to provide the needed health care.
2. There are still millions of gallons of oil and dispersants in the environment – while officials tell us that the water and air are fine, people continue to be concerned and report health symptoms. We need federal funding for independent, ongoing and long-term monitoring of our water, soil and air across all affected areas so we can be assured if and when the environment is clean.
3. The Gulf Coast provides 86% of the U.S. shrimp harvest, and 56% of the U.S. oyster harvest* – and we need better evidence that it's safe. Current monitoring is inadequate and does not test for toxic heavy metals or dispersants. It does not protect our children or our most vulnerable populations. We need the Food and Drug Administration to set monitoring standards that can guarantee the safety of the food we harvest and eat.

* http://gulfofmexicoalliance.org/pdfs/gulf_glance_1008.pdf

Coastal Restoration

1. The BP disaster is only the latest, most visible evidence of environmental destruction that has been ongoing in the Gulf for decades.
2. The government must act now to restore our coastal wetlands. A healthy Gulf is a prosperous Gulf crucial to storm protection, fishing, recreation, seafood and tourism – the cornerstones of the Gulf culture and economy.
3. Eighty percent of the coastal wetlands lost in our country are lost in the Gulf coast*. For example, Louisiana loses a football field of wetlands every 45 minutes**, and 40% to 60% of that is attributed to oil and gas activity***. BP and the oil and gas industry must pay their fair share for coastal restoration.

* Turner, R.E. 1997. Wetland loss in the Northern Gulf of Mexico: Multiple working hypotheses. Estuaries. 20:1-13
** Dahl, T.E. 2006. Status and trends of wetlands in the conterminous United States 1998 to 2004. U.S. Fish and Wildlife Service. p 54, Table 4.
*** Ko, Jae-Young, *Impacts of Oil and Gas Activities on Coastal Wetlands Loss in the Mississippi Delta*, Harter Research Institute. *Also* Penland, Shea, et al., *Process Classification of Coastal Land Loss Between 1932 and 1990 in the Mississippi River Delta Plain, Southeastern Louisiana.* (1990). U.S. Geological Survey, Open File Report 00-418.

Marine Recovery and Resiliency

1. The first step to recovery of the Gulf marine ecosystem is to identify all sources of past, present and future environmental degradation, including fully understanding the long-term impacts of the BP oil disaster. Specific restoration initiatives, both short and long-term, must be implemented to address all sources of marine injury.
2. Robust monitoring programs that fully disclose process and results, as well as access to impacted areas, are critical for ensuring effective restoration.
3. In order to restore the entire Gulf ecosystem, it is essential that the off-shore environment receive its fair share of attention and funding for recovery. Specific funding sources for this work must be provided immediately.
4. Everything possible must be done to prevent offshore drilling disasters. Reforms in policy, regulations, oversight, and enforcement are urgently needed to prevent more drilling disasters and to guarantee rapid, non-toxic and non-destructive response and cleanup when accidents do occur. Policies must be implemented that transition the Gulf region to a clean, renewable energy economy.

Conclusion

The Weeks Bay Principles for Gulf Recovery present a unified vision that will guide our work towards restored and healthy natural resources in the Gulf of Mexico region that support Gulf communities and wildlife, the region's unique cultures, and the nation.

Drafting Organizations

Alabama Chapter, Sierra Club

Apalachicola Riverkeeper

Asian Americans for Change—Gulf Coast Angels

Bayou Interfaith Shared Community Organizing (BISCO)

Delta Chapter (Louisiana), Sierra Club

Emerald Coastkeeper

Environment America

Equity and Inclusion Campaign

Galveston Baykeeper

Grand Bayou Community United

Greenpeace

Guardians of the Gulf

Gulf Islands Conservancy

Gulf Restoration Network

Joe Yerkes, Florida Fisherman

Lake Pontchartrain Basin Foundation

Louisiana Association of Family Fishermen

Louisiana Bayoukeeper

Louisiana Environmental Action Network

Louisiana Shrimpers Association

Lower Mississippi Riverkeeper

Mississippi Center for Justice

Mississippi Chapter, Sierra Club

Mobile Baykeeper

National Wildlife Federation

Natural Resources Defense Council

Oceana

Oxfam America

Sassafrass

Sierra Club Environmental Justice and Community Partnership Program

South Bay Communities Alliance

South Walton Community Council

Southwings

Surfrider Foundation

Turkey Creek Community Initiative

Waterkeeper Alliance / Save Our Gulf

The Weeks Bay Principles for Gulf Recovery

Document prepared by:

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For more information, contact Gulf Restoration Network at 504-525-1528 or info@healthygulf.org.

Exhibit C

Advocates for Environmental Human Rights ● Alabama Coastal Foundation ● Alabama Coastal Heritage Trust ● Alabama Rivers Alliance ● Apalachicola Riverkeeper ● Association of Family Fishermen ● Atchafalaya Basinkeeper ● BISCO ● Boat People SOS ● Calhoun County Resource Watch ● Clean Water Network of Florida ● Community Foundation of South Alabama ● Emerald Coastkeeper ● Equity and Inclusion Campaign ● Florida Wildlife Federation ● Galveston Baykeeper ● Global Exchange ● Guardians of the Gulf ●Gulf Change ● Gulf Island Conservancy ● Gulf Restoration Network ● Immaculate Heart Community Development Corp., Inc. ● Lighthouse Community Development Corporation ● Louisiana Bayoukeeper ● Louisiana Environmental Action Network (LEAN) ● Louisiana Shrimp Association ● Lower Mississippi Riverkeeper ● Mercy Housing & Human Development ● Mississippi Coalition for Vietnamese-American Fisherfolks and Families ● Mobile Baykeeper, Inc. ● Moving Forward Gulf Coast, Inc. ● National Audubon Society ● On Wings of Care, Inc. ● Operation HomeCare, Inc. ● Restore the Earth Foundation Inc. – Gulf Savers Initiative ● Sierra Club ● Southwings ● South Walton Community Council, Inc. ● Surfrider Foundation ● Waterkeeper Alliance

May 4, 2011
Administrator Lisa Jackson
Chair, Gulf of Mexico Ecosystem
Restoration Task Force
Environmental Protection Agency
Washington, D.C.

The undersigned groups write to provide our suggestions and concerns with regard to the current operation of the Gulf Coast Ecosystem Restoration Task Force ("Task Force") and the strategy it intends to produce.

1. **<u>The Decision-Making Body</u>**

We understand that a decision-making body must be created to implement the Task Force's strategic plan. Significant care must be taken in the designation of the entity to oversee the billions of dollars in restoration funding that could be made available. Whether an existing or new governing body is established, it must be empowered with specific duties and authorities relevant to comprehensive Gulf restoration in order to provide a sound management structure. These duties and authorities should include, but are not limited to:

- Ensuring that a collective restoration agenda is implemented throughout the Gulf and funds are directed to identified priorities and effective programs and projects;
- Establishing a Gulf-wide restoration agenda with public input, available to all stakeholders and the public, with sound programs and projects directed at ecosystem-based restoration needs;
- Developing priority criteria for the selection of programs and projects that can be applied in an equitable and transparent manner across the Gulf;

- Creating a structure that allows for consistent communication with stakeholder groups, independent scientists and experts, and the public, along with state and local government throughout the Gulf Coast;
- Establishing a transparent process for monitoring program/project progress, and outcomes; and
- Establishing a process for incorporating local and traditional knowledge in management decisions.

2. **The Decision-Making Process**:

We believe that rather than prematurely picking a collection of restoration projects, the Task Force's strategic plan should instead focus on creation of a decision-matrix to provide a general framework from which to make funding decisions. Such a matrix would ensure that projects with the most substantive environmental benefit are funded first. Factors we suggest as key evaluators under such a matrix would ensure that chosen projects accomplish the following:

- Address long-term recovery goals such as prevention of or recovery from oil spills, preservation/restoration of fish and wildlife, restoration of use;
- Have a Gulf-wide or Regional benefit;
- Address root causes of issues, not symptoms; and
- Have specific deliverables and measurable objectives.

Each factor should be assigned a point value, and those projects that meet the most criteria, and thus have the greatest point value, will be chosen. A clearly defined system such as the matrix suggested here will ensure that environmental restoration projects that maximize long-term coastal resiliency will receive higher priority when funding becomes available.

All projects subject to consideration should be subject to rigorous scrutiny to ensure that restoration projects chosen have a broad scope of positive environmental impacts on the many coastal resources of the Gulf of Mexico and will bring enduring positive change to our coastal ecosystems. The decision-making process must be focused to create a unified, comprehensive environmental restoration plan whose scope and intent will be sustainable and attract private, state, and federal funding.

It is imperative that the decision-making body creates a unified, comprehensive environmental restoration plan that integrates true environmental restoration into a focused vision for a resilient Gulf Coast. There are many worthy individual projects to be considered, but we must only enact projects that fit within a broad goal for coastal resiliency, ones that address systemic enhancement, restoration and protection of our coastal resources.

3. **Environmental and Conservation Advisory Group**

The Task Force has formally solidified a working relationship with existing FACA advisory committees that address local government and environmental justice issues. While we laud you for doing so, there is no similar forum for participation by environmental, conservation, fishing, and community groups in the development of a restoration strategy. The Task Force should create a forum for continual input by these groups to ensure that the restoration strategy developed by the Task Force addresses the needs and concerns of these groups.

4. **Long Term Monitoring**

It is imperative that a permanently funded Gulf of Mexico Ecosystem Research and Monitoring program be created to facilitate timely, adaptive management of natural resources and the effectiveness of restoration activities. The BP oil disaster revealed significant scientific uncertainty about how marine species at various life history stages and in a range of habitats would respond to oil exposure. Understanding the species-specific and broader ecosystem effects of oil is critical to prescribing restoration measures needed to facilitate and track recovery of injured, living marine resources. A significant lesson from the Exxon Valdez and Ixtoc I oil disasters is that while the full environmental effects of discharged oil or gas may not be known for years (or ever), early and sustained investments in ecosystem monitoring and research are critical to detecting lingering or subtle effects.

Even in the absence of episodic or catastrophic human-induced events like the BP disaster, however, the Gulf of Mexico ecosystem is in perpetual flux. Natural changes in oceanographic conditions combined with chronic impacts from past and present human activities on land or at sea affect habitat quantity and quality, as well as the abundance and distribution of marine life. Moreover, Natural Resource Trustees and other decision-makers need to be able to audit the effectiveness of restoration activities against program objectives and make changes in programmatic investments accordingly. Therefore, an indispensable component of a Gulf-wide restoration program is effectiveness monitoring, which generates the data needed for such audits.

A Gulf of Mexico Ecosystem Research and Monitoring Program modeled after the North Pacific Research Board (“NPRB”) is needed to provide a clearer understanding of Gulf ecosystem dynamics, track restoration progress, and support adaptive and sustainable management of living marine resources, including forage and fishery species. NPRB-funded research has improved scientists' ability to forecast ecosystem changes, answered important questions about fish-habitat relationships, and led to more informed resource management decisions. An endowed monitoring program should emphasize an integrated, interdisciplinary approach to long-term research and monitoring. While the program's ultimate goal is to take the pulse of the Gulf and facilitate sustained human use of a productive, diverse Gulf of Mexico ecosystem, the following supporting goals should guide specific project funding: 1) measure performance of Gulf ecosystem restoration projects; 2) assess lingering injury from the BP Deepwater Horizon disaster; and 3) improve understanding of the Gulf ecosystem to guide future decision-making and adaptive resource management. Such a program should include an expanded Ocean Observing System in the Gulf of Mexico so that large-scale or subtle shifts in the ocean ecosystem, and resulting changes in productivity and fishery resources, can be detected with sufficient warning.

An investment of $1 billion of the Clean Water Act penalties should be segregated into a separate account within Treasury and invested in securities of the United States. The Secretary of the Treasury should then, without further appropriation or fiscal year limitation, transfer all accrued interest to an entity to administer the research and monitoring program. An endowment of $1 billion would yield a variable, inflation-proofed annual revenue stream of about $50 million, which should be awarded on a competitive basis to government agencies, academic institutions, and other appropriate entities with emphasis on an integrated series of research and monitoring projects over a long time horizon.

The decision making and granting authority for these funds should be the Gulf of Mexico Ecosystem Research Board, an independent entity represented by a cross-section of stakeholders that operates under the administrative umbrella of the National Oceanic and Atmospheric Administration and the Department of Commerce. To optimize economies of scale, it may be appropriate to designate an existing non-governmental entity in the region as the fiscal agent and administrative unit for the board.

Conclusion

We strongly encourage you to take these suggestions into account quickly as the deadline for a final product for the President of the United States is only five months away. A decision-making body with a clear and defined decision-making process combined with advice and input from all interested parties will deliver the best plans for long-term ecosystem restoration throughout the Gulf Coast. The follow up of long-term monitoring will ensure we are vigilant in our ability to tackle any new problems as quickly as they arise.

Sincerely,

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