



**Trustee Council Standard Operating Procedures
for
Implementation of the
Natural Resource Restoration
for the
*Deepwater Horizon (DWH) Oil Spill***

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1.0 INTRODUCTION

- (a) In Appendix 2 to the Consent Decree (Appendix A), which is the Restoration Agreement Among the United States and the Gulf States Relating to Natural Resource Restoration (Restoration Agreement (Appendix B)), the parties agreed to revise the original Memorandum of Understanding (Appendix C) in accordance with the Restoration Agreement, and to develop these Standard Operating Procedures (SOPs) for the long-term management, implementation, and administration of settlement funds for natural resource restoration. The Restoration Agreement requires these SOPs to include, but not be limited to, the following: Trustee Council structure and management, decision-making and delegation of authority, funding, administrative procedures, project reporting, conflict resolution, consultation opportunities among the Trustees, and administrative accounting and independent auditing systems for use by each Trustee Implementation Group (TIG). These SOPs supersede all prior SOPs for the *Deepwater Horizon* (DWH) Oil Spill Trustee Council (Trustee Council) and may be updated at the discretion of the Trustee Council.
- (b) The Trustees issue these SOPs to document the expectations of the Trustee Council and each TIG regarding restoration implementation and to promote consistency in restoration planning across the TIGs. These SOPs are intended only to improve the internal management of the Trustee Council and TIGs and do not create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States or states, their agencies, their officers or employees, or any person. These SOPs are not regulations and do not create any legally binding or enforceable requirements or obligations. Nor are these procedures intended to determine or set out compliance with any statute or regulation. These SOPs are not intended to amend or supplant the terms of the Consent Decree (including the Restoration Agreement), the final PDARP/PEIS, or the Trustee Council Memorandum of Understanding (MOU). If there is any conflict between these SOPs and the Consent Decree or the MOU, the Consent Decree or the MOU shall control. Because this document is intended for the internal management of the Trustee Council and TIGs, it is not intended to be cited in any court or litigation proceeding. Administration of the procedures discussed herein is within the sole discretion of the Trustees.
- (c) In order to operate efficiently and effectively, the Trustees may determine that deviation from these procedures is appropriate under some circumstances. Where any report, plan, or other document deviates from these procedures, approval of that report, plan, or other document by the Trustee Council shall also constitute approval of any deviation.

2.0 TRUSTEE COUNCIL STRUCTURE AND MANAGEMENT

- (a) The purpose of this section is to describe the responsibilities, structure, and administrative management of the Trustee Council memorialized in its MOU. The Trustees function as a full Trustee Council for conducting business of common interest to the entire group. The administrative functions described below are for the Trustee Council and do not include administrative functions of each individual Trustee, as required by various laws and regulations.
- (b) Additionally, the Trustees will assign eight TIGs, one for each Restoration Area provided within the Consent Decree for the purposes of planning, administering, and implementing restoration. The Restoration Agreement and final PDARP/PEIS establish the following Restoration Areas: Restoration in Alabama, Restoration in Florida, Restoration in Louisiana, Restoration in Mississippi, Restoration in Texas, Region-wide, Open Ocean, and Adaptive Management and Unknown Conditions. The roles and structure of both the Trustee Council and the TIGs are described below.
- (c) Funding sources to support the various roles and responsibilities of the Trustee Council, TIGs, and Trustees are generally described in Appendix D. Final decisions on funding sources are made by the TIGs. This Appendix is for illustrative purposes only and to provide general guidelines for funding activities of the Trustee Council, TIGs and Trustees. All funding decisions will be made at the TIG level in accordance with the Restoration Agreement.

2.1 Trustee Council Roles and Responsibilities

The subsequent sections of these SOPs are organized into procedures related to administration, finance, restoration planning and implementation, monitoring and adaptive management (MAM), data management and reporting, and public affairs and outreach. The roles and responsibilities of the Trustee Council and TIGs (see Section 2.3), per these categories, are generally provided below, with more specific actions and definition provided within each respective section. The majority of the responsibilities of the Trustee Council are carried out by the Lead Administrative Trustee (LAT), or its designee, as denoted in parentheses below and with oversight of the Trustee Council. The Trustee Council may also establish work groups to carry out a portion of these responsibilities as needed.

2.1.1 Administration

- Establish minimum SOPs for each TIG.
- Assign the LAT.

- Develop and maintain the Administrative Record (LAT).
- Conduct meetings with the TIGs as provided within these SOPs.
- Document decisions and actions (LAT).
- Direct support staff in conducting business of the Trustee Council (LAT).

2.1.2 Finance

- Track transactions through the U.S. Department of the Interior (DOI) Natural Resource Damage Assessment and Restoration Fund (DOI Restoration Fund) (LAT).
- Maintain the Data Integration, Visualization, Exploration, and Reporting system (DIVER) Restoration Management Portal (Restoration Portal) to support consolidated TIG financial management and reporting (LAT).
- Coordinate timing of financial audits and reporting across TIGs (LAT).

2.1.3 Restoration Planning and Implementation

- Coordinate with other DWH restoration programs.
- Conduct reviews of the restoration program at appropriate intervals.

2.1.4 MAM

- Establish and provide direction to a Cross-TIG MAM work group (described in Section 10) to facilitate coordination and compatibility of MAM products and procedures across TIGs, where appropriate.
- As set forth in Section 10, coordinate with other science and monitoring programs and the broader scientific community where appropriate.
- As set forth in Section 10, aggregate and synthesize monitoring data and information to evaluate collective progress toward meeting programmatic Restoration Type goals, to inform restoration program review and reporting.
- Identify emerging unknown conditions and recommend activities to further characterize these conditions.

2.1.5 Data Management and Reporting

- Maintain and update as needed the Restoration Portal to collect, aggregate, and report restoration implementation and monitoring data (LAT).
- Generate various public reports of aggregated TIG data related to restoration projects, finance, compliance, and monitoring (LAT).

2.1.6 Public Affairs and Outreach

- Develop and maintain the Trustee Council website (LAT). The updated Trustee Council website, known as the Gulf Spill Restoration website, contains overarching information about restoration planning, the Trustees, and environmental compliance information. The website also includes restoration area pages with news stories, links to project information, and a document archive specific to that area.
- Conduct public Trustee Council meetings
- Develop Trustee Council press releases and informational products as needed (LAT).

2.2 Trustee Council Management Structure

The Trustee Council is an executive body of all Trustees. Each Trustee is represented on the Trustee Council by a Designated Natural Resource Trustee Official (DNRTO) or designee. The Trustee Council is guided by a rotating Chair and Vice-Chair, and it is generally supported by the LAT and support staff.

2.2.1 Chair

The Chair of the Trustee Council is a designee from one of the five Gulf states. The Chair presides at meetings of the Trustee Council. The Trustee Council may assign the Chair other specific duties.

Beginning on August 1, 2016, the Chair position will rotate among the five Gulf state Trustees in the following order: Alabama, Mississippi, Florida, Louisiana, and Texas. During the meeting prior to the next state member's assumption of the role, the state member shall notify the Trustee Council of its designated Chair. The term of a Chair is one year beginning on August 1 following the Trustee Council meeting at which the Chair is designated. The Trustees may extend the term of an existing Chair or substitute another Trustee as Chair.

2.2.2 Vice-Chair

The Vice-Chair is a designee from one of the federal Trustee agencies. The Vice-Chair serves as Chair at Trustee Council meetings during absences of the Chair. Beginning on October 1, 2016, the order of rotation for the Vice-Chair will be: National Oceanic and Atmospheric Administration (NOAA), DOI, U.S. Environmental Protection Agency (EPA), USDA. The term of a Vice-Chair is one year beginning on October 1 of each year. The federal Trustees may extend the term of an existing Vice-Chair or substitute another federal Trustee as Vice-Chair.

2.2.3 Designations

Each DNRTO will notify other DNRTOs of the names, addresses, email addresses, and telephone numbers of their designee and alternate designee and, if relevant, the designation of a common representative in accordance with Section VI of the MOU. DNRTOs may change his or her designees at any time by written notice to the other Designated Officials.

2.2.4 LAT

- (a) Trustee Council operations require administrative and technical support. The LAT, currently DOI, provides general administrative and technical support to the Trustee Council, which includes, but may not be limited to, the items provided in Section 2.1.
- (b) In carrying out administrative activities, the LAT may rely upon other Trustees acting on behalf of the Trustee Council or procure contractual services after review and approval of the scope and projected budget of services by the Trustee Council.

2.2.5 Support Staff

The Trustee Council may designate support staff or procure contractual services to assist in the management of the duties of the Trustee Council. Unless otherwise agreed upon by the Trustee Council, staff direction will be provided by the LAT. Support staff may include, but not be limited to, program coordination, administrative and financial support, public affairs and outreach coordination, and information technology administration. Such support will be on an as-needed basis and may also provide services to the TIGs upon agreement of the Trustee Council.

2.2.6 Work Groups

The Trustee Council may form and task work groups or teams on an as-needed basis to address specific issues that may arise. These Trustee Council work groups or teams will act only at the direction of the Trustee Council and will have no independent decision-making authority. Particular to some of the responsibilities provided in Sections 2.1.3 and 2.1.4, the Trustee Council will establish a Cross-TIG MAM work group composed of one primary and one alternate staff member with technical expertise from each of the nine Trustee Council members (see Section 10.1., Cross-TIG MAM work group). At the direction of the Trustee Council, the Cross-TIG MAM work group will address many of the Trustee Council MAM responsibilities described herein.

2.3 TIG Roles and Responsibilities

As set forth within the Restoration Agreement, the TIGs are composed of individual Trustee agencies, which together are responsible for the general actions listed below.

2.3.1 Administration

- Promote consistency with these SOPs.
- Coordinate collection and submission of documents for the Administrative Record.
- Conduct meetings as provided within these SOPs.
- Document decisions and actions.

2.3.2 Finance

- Approve and document TIG funding decisions.
- Oversee general management of TIG funds.
- Promote consistency with financial requirements.

2.3.3 Restoration Planning and Implementation

- Coordinate with other DWH restoration programs.
- Develop draft and final restoration plans.
- Coordinate environmental reviews and compliance.
- TIG members act as cooperating agencies for the purpose of NEPA (40 CFR 1501.6) in the preparation of NEPA analysis integrated into TIG restoration plans.
- Select and authorize projects and Implementing Trustee(s).
- Provide for public engagement in planning process.
- Oversee project implementation, including monitoring and long-term activities as specified in project plans.

2.3.4 MAM

- Identify MAM priorities for the TIG's Restoration Area as set forth in Section 10.
- Review project MAM plans for compatibility with Section 10 of these SOP.

- Track monitoring data, reports, and other MAM information submitted to the Restoration Portal for compatibility with Section 10 of these SOP.
- Provide TIG related MAM data, information, and evaluations to the Trustee Council.

2.3.5 Data Management and Reporting

- Submit project data as established by these SOPs.
- Generate various public reports of aggregated TIG data related to restoration projects, finance, compliance, and monitoring as set forth in these SOPs.

2.3.6 Public Affairs and Outreach

- Develop and maintain the TIG pages of the Trustee Council website.
- Conduct public meetings as provided within these SOPs.
- Develop TIG press releases and informational products as needed.

2.4 TIG Management Structure

2.4.1 Primary Point of Contact

A primary point of contact (POC) will be designated within each TIG. The TIG primary POC will coordinate with the Trustee Council and the LAT to encourage consistency of TIG operations with these SOPs, including timely project reporting and submission of documents to the Administrative Record. Each TIG will notify the current Trustee Council Chair of its designated POC.

2.4.2 Designations

The DNRTTO letters will identify the representatives and alternates of each of their respective TIGs who are authorized to make official decisions and serve as the signatory within those TIGs. DNRTTO letters should contain the names, addresses, email addresses, and telephone numbers of the designee and alternate designee(s). These letters should also indicate who has signature authority for financial resolutions.

2.4.3 Support Staff

Support staff necessary for TIG operations will be provided by members of each TIG. Additional support staff can be provided to the TIGs by the LAT, upon TIG request and approval by the Trustee Council.

3.0 ADMINISTRATIVE PROCEDURES

3.1 Trustee Agreements

In addition to the Trustee Council MOU signed by all Trustees (Appendix C), the Trustees may develop Trustee agreements and procedures to further restoration.

3.1.1 MOUs

- (a) The federal Trustees have a separate MOU setting forth an approach and procedures pursuant to which the federal Trustees will speak with a single voice (i.e., reach a single federal position) on decisions made by the five TIGs for each of the five Gulf states. The Federal Trustee MOU may also address coordinated decision-making and dispute resolution among the federal Trustees in connection with their participation in the other TIGs and the Trustee Council.
- (b) Each state with multiple state Trustees has a separate MOU setting forth an approach and procedures pursuant to which each state will speak with a single voice (i.e., reach a single position) for its respective state on decisions made by the TIGs and the Trustee Council.

3.1.2 SOPs and Amendments

- (a) The Trustee Council may amend these SOPs or draft additional SOPs to establish processes or guidance documents for the Trustee Council for any part of the restoration within its purview (see Appendix E Memorandum for SOP Amendments and Guidance).
- (b) Paragraph 3.3 of the Restoration Agreement requires TIGs to develop procedures for developing projects, and TIGs have chosen to have these SOPs serve for this requirement. TIGs may develop SOPs to further guide administration, planning, implementation, and long-term management of restoration activities for their Restoration Area, provided those SOPs are consistent with these Trustee Council SOPs. TIG SOPs, if developed, will be appended to the Trustee Council SOPs and will be adopted upon TIG consensus, in accordance with the Trustee Council MOU, posted to the applicable TIG's webpage and included in the Administrative Record.
- (c) Amendments to Trustee Council SOPs, including appendices, may be initiated by any Trustee Council member at least 90 days prior to the Trustee Council meeting in which the proposal will be considered for adoption. Such amendments will be vetted at a Trustee Council meeting and must be agreed upon by all Trustee Council members to become effective. Amended documents supersede previous versions of the documents.

For more information, see Appendix E Memorandum for SOP Amendment and Guidance.

Minor changes may be proposed by any Trustee Council member by email or verbally to the Trustee Council chair and the LAT. The LAT will circulate the requested changes to all other Trustee Council members. Minor changes include the correction of typographical, transposition, or other scrivener errors; redrafting of a provision for clarification; and other refinements necessary to affect a provision's original intent. Minor changes will be approved when email approval has been received by the Trustee Council Chair from each Trustee Council member. Minor changes will become effective when the LAT updates the current version of the Trustee Council SOPs and posts it to the Administrative Record and the Trustee Council website.

- (d) Amendments to TIG SOPs may be initiated by any TIG member. Such amendments will be vetted at a TIG meeting and must be agreed upon by all TIG members to become effective. Amended documents supersede previous versions of the documents.

Minor changes may be proposed by any TIG member by email to all other TIG members. Minor changes will become effective only after email approval has been received by the proposing TIG member from each of the other TIG members and the minor change is made in writing in the current version of the relevant TIG SOPs appended to the Trustee Council SOPs posted to the Trustee Council website.

3.1.3 Public Availability

The Trustee Council MOU, Federal Trustee MOU, State Trustee MOUs, and Trustee Council SOPs, including any appended TIG SOPs, will be made publicly available on the Administrative Record.

3.2 Trustee Meetings and Documentation

3.2.1 Attendance

- (a) All Trustee Council members and/or their alternates and Trustee Council staff, as requested, are to attend Trustee Council meetings scheduled with advance notice of at least 30 days for in-person meetings. All Trustee Council members and/or their alternates and Trustee Council staff, as requested, are to make good faith efforts to attend all teleconferences or Web meetings scheduled with advance notice of at least seven days. Additional agency resources, including legal counsel, may also attend and participate in Trustee Council meetings at the discretion of their Trustee Council member. Trustee Council members may invite other non-Trustee attendees (e.g., RESTORE, NFWF staff), provided that advance notice is given to, and consent is received

from, the rest of the Trustee Council members. At the discretion of the Trustee Council, work group members may attend Trustee Council meetings.

- (b) Notification of and attendance at all TIG meetings is as provided in 3.2.1 (a) for the Trustee Council, unless otherwise agreed upon by consensus of the TIG.

3.2.2 Frequency

- (a) The Trustee Council and TIGs will meet as frequently as they deem necessary for advancing their respective work. At least once a year, the Trustee Council will have a meeting in which each TIG will provide an update on the status of its restoration planning, implementation, and monitoring/adaptive management, and where there will be opportunity for public input. TIGs will hold at least one public meeting per year, unless a TIG planning cycle calls for a different frequency, to discuss the status of restoration planning, upcoming restoration planning (including the Restoration Type[s] that TIG will focus on for a specified timeframe), and where there will be an opportunity for public input.
- (b) The Trustee Council and TIGs may conduct meetings in person or via other means, including teleconferences and Web meetings.

3.2.3 Location

For Trustee Council meetings, Trustees may rotate hosting in-person meetings, typically across the five Gulf states. Each TIG will decide by consensus the form and, where applicable, the location of its respective meetings, taking into account travel and cost efficiencies of its members.

3.2.4 Decision-Making Documentation

3.2.4.1 Documentation

Documentation of decisions will be routed for Trustee Council or respective TIG approval. Such documentation will be submitted to the Administrative Record, upon approval. Meeting minutes will be developed for the annual meetings of the Trustee Council and the TIGs.

3.2.4.2 Trustee Council and TIG Resolutions

- (a) Resolutions are generally required for financial decisions, approval of restoration plans, and approval of restoration projects. Resolutions may additionally be necessary for some releases of information or data to the public, or for approving amendments to Restoration Plans or Trustee Council documents. Project or planning activities that

affect or are funded by more than one TIG will require each TIG to sign a resolution for its portion of that project funding or activity.

- (b) Resolutions may be drafted and proposed by any Trustee Council or TIG member to be approved by the Trustee Council or respective TIG. Resolutions, once signed (by hand or approved electronic signature) by the Trustee Council or TIG, or their authorized designees, are maintained and distributed internally. Resolutions will be submitted to the Administrative Record.

3.3 Administrative Record

- (a) As provided in 15 CFR § 990.45 and § 990.61, Trustees will maintain the Administrative Record for restoration planning and implementation. The Trustees opened a publicly available Administrative Record on October 1, 2010 (see notice of intent to proceed with restoration planning, 75 Fed. Reg. 06800, at 60802). In addition to this Administrative Record, an Administrative Record may be maintained by individual Trustees, as may be required by law.
- (b) The following outlines the responsibilities related to the Administrative Record for the LAT, the Trustee Council, and the TIGs.
- (c) The LAT will create and maintain the Administrative Record, including continued maintenance of the existing Trustee Council Administrative Record. Maintenance responsibilities will include:
 - (1) Hosting a website that, at a minimum, provides public access to the Administrative Record in a centralized location.
 - (2) Retaining Administrative Record materials.
 - (3) Periodically notifying the Trustee Council and TIGs of Administrative Record obligations.
 - (4) Supporting the Trustee Council and TIGs, as requested, with posting records to the Administrative Record, including providing Administrative Record submission business rules to the Trustee Council and TIGs.
 - (5) Providing Administrative Record indices and/or organizational structures, with input from the Trustee Council and TIGs.

- (6) Closing the assessment section of the Administrative Record and opening a section(s) in the Administrative Record for further restoration planning and implementation, at the direction of the Trustee Council.
- (d) The Trustee Council will be responsible for providing guidance on the type and scope of materials to be included in the Administrative Record, in accordance with 15 CFR §§ 990.45 and 990.61. The guidance will be applicable to both the Trustee Council and the TIGs to ensure consistency across the Administrative Record(s). The Trustee Council, in its independent capacity from the TIGs, may direct the LAT to post documents to the Administrative Record. Each Trustee Council member who nominates records for inclusion in the Administrative Record must allow Trustee Council members to review the proposed records for at least 7 days before submitting them to the Administrative Record.
- (e) The TIGs will be responsible for identifying, collecting, and submitting appropriate documents (with support from the LAT) to their TIG-specific section of the Administrative Record. The LAT will be responsible for ensuring that TIG resolutions, draft and final Restoration Plans, and all TIG *Federal Register* notices are submitted to the Administrative Record. Each TIG nominates records for inclusion in the Administrative Record and must allow TIG members to review the proposed records for at least 7 days before submitting them to the Administrative Record. Counsel to the Trustee responsible for proposed records (i.e., primary author or custodian) will conduct a legal review of records prior to submitting documents for posting on the Administrative Record. TIGs will submit approved documents for posting to the Administrative Record in accordance with the Restoration Implementation Administrative Record Guidance.
- (f) Each TIG should designate an individual or individuals (no more than three per TIG) as its AR Representatives. The AR Representatives will be responsible for working with TIG members, including legal counsel, to identify, collect, approve, and submit documents for inclusion on the appropriate TIG-specific locations in the AR. The primary tasks of the AR Representative will be to coordinate TIG review of documents amongst the TIG members and submit the documents to the LAT through an electronic upload website or platform. The TIG will notify the LAT of its designated AR Representatives in writing, including phone and email contact information.

3.4 Records Retention

Each of the Trustees has its own records identification, retention, scheduling, and disposition (collectively “records management”) requirements, set forth in applicable state and federal statutes, regulations, and policies. Because of the joint federal/state nature of Trustee decision-

making, however, there is a need to standardize some record retention requirements across the jurisdictions. Documents related to the procurement and administration of contractual services for restoration planning or implementation by any Trustee using NRDA funds, including, but not limited to, solicitations, responses to solicitations, contracts, addenda, invoices and supporting documentation, will be retained for no less than 10 years after the completion of the work performed under the contract.

The Trustees agree to retain, pursuant to their applicable records management authorities, all other substantive records associated with a restoration project's selection or implementation for 6 years after that project's completion (excluding the time for any post-construction monitoring). Should this provision require a Trustee to retain records beyond that Trustee's applicable record retention period, the Trustee may submit those records to the LAT (in a manner and format determined by the LAT) at the completion of the Trustee's retention period for the remainder of the 6-year period. Any costs associated with this retention service will be funded by Region-wide Administrative TIG funds.

4.0 DECISION-MAKING AND DELEGATION OF AUTHORITY

Sections VI and VII of the MOU (Appendix C) are hereby incorporated by reference.

5.0 CONFLICT RESOLUTION

Section VII of the MOU (Appendix C) is hereby incorporated by reference.

6.0 FUNDING

6.1 DWH Natural Resource Damages Account Structure and the Natural Resource Damage Assessment and Restoration Fund

- (a) Annual payments by BPXP to the Trustees for natural resource damages (NRD Monies) will be deposited into the DOI Restoration Fund, which is a U.S. Treasury account managed by the DOI.
- (b) With the exception of the Adaptive Management and Unknown Conditions TIG, two sub-accounts will be created in the DOI Restoration Fund for each TIG, a general sub-account and an administrative sub-account. Additional sub-accounts may be created at the discretion of the individual TIGs, as appropriate, and in coordination with the LAT.
- (c) The LAT will serve as a liaison between the TIGs and the DOI Restoration Fund, including providing uniform deposit, transfer, and withdrawal forms to the TIGs; providing any necessary documentation to the DOI Restoration Fund; providing financial reports to the TIGs annually and after a deposit, transfer, or withdrawal is made.
- (d) Prior to any transaction with the DOI Restoration Fund, each TIG must provide the LAT with a copy of its DNRTTO letter. The LAT will provide the Trustee Council MOU, the Federal Trustee MOU, the relevant State Trustee MOU, and relevant DNRTTO letters to the DOI Restoration Fund. The TIG will be responsible for timely submission to the LAT of the relevant documentation described above, and any changes to those documents.

6.2 Annual Payment Deposit Process

- (a) BPXP will make payments to the DOI Restoration Fund accordingly:
 - (1) Remaining Early Restoration funds¹ in the amount of \$152,249,470.25 plus interest by May 4, 2016.
 - (2) \$489,655,172 annually by April 4, from 2017 to 2031 (with the exception of 2018).
 - (3) \$244,827,586 in 2018.

¹ On April 20, 2011, the Trustees and BPXP entered into an agreement whereby BPXP agreed to provide up to \$1 billion toward Early Restoration projects in the Gulf of Mexico to address injuries to natural resources caused by the DWH spill ("Early Restoration"). The \$1 billion and any interest earned thereon will hereafter be referred to as "Early Restoration funds."

- (4) Payment(s) not to exceed \$700,000,000 made within 60 days after the Trustees joint demand to BPXP that may occur any time between January 1, 2026, and April 4, 2032.
- (b) Unless otherwise specified by a TIG, the annual payments will be deposited into each TIG's general sub-account per the Restoration Agreement, Table 3. At least 45 days prior to the annual payment from BPXP, the LAT will send a Deposit Distribution spreadsheet to the TIGs. If a TIG decides to divide the funds between the General and Administrative subaccounts they will indicate the amount to allocate to each subaccount and will return the spreadsheet to the LAT. Based on the spreadsheet, the LAT will prepare the DWH Trustee Deposit Form and draft a joint resolution for review and approval by the Trustee Council and all the TIGs. The joint resolution should be approved at least 12 days in advance of the annual deposit.
- (c) At least 10 days prior to the annual payment, the LAT will submit the deposit instructions to the DOI Restoration Fund, which will accelerate the deposit into the TIG-specific sub-accounts.
- (d) Once the deposits have been made, the LAT will provide each TIG with a report confirming the deposit of funds into the TIG sub-accounts.

6.3 Funding Transfers Between Sub-accounts

- (a) A TIG may request the transfer of funds between its sub-accounts.
- (b) Transfer of funds between sub-accounts can take up to 46 days. Transfers between TIG sub-accounts must be documented by a TIG resolution. The TIG must submit a TIG resolution requesting the transfer and the DWH Funds Transfer Form to the LAT, indicating the amount to be transferred, the sub-account from which the funds should be withdrawn, and the sub-account to which the funds will be deposited.
- (c) A TIG should submit the resolution and DWH Funds Transfer Form to the LAT approximately 46 days prior to the date that the TIG needs to transfer funds.
- (d) The LAT will record the transfer request, assign a unique tracking number, and submit the transfer request to the DOI Restoration Fund.
- (e) Once the transfer has been completed, the LAT will provide the TIG with a report, confirming the transfer of funds.

6.4 Withdrawal of Funds from the DOI Restoration Fund

- (a) Withdrawal of funds can take up to 50 days. Withdrawals must be documented by a TIG resolution. The resolution must state the purpose for which the funds will be used (i.e., approved restoration project, administrative activities). A TIG may request a withdrawal of funds by submitting a TIG resolution and a DWH Funds Withdrawal Form to the LAT. For planning purposes, TIGs should submit the withdrawal request 50 days prior to the date on which the TIG intends to expend funds.
- (b) A separate DWH Funds Withdrawal Form is required for each Trustee who will be receiving funds due to the required Trustee-specific account information.
- (c) A resolution may contain withdrawal requests for multiple Trustees as long as a DWH Funds Withdrawal Form is submitted for each Trustee.
- (d) If the funds are being requested for an approved restoration project, a final restoration plan must be submitted along with the resolution and DWH Funds Withdrawal Form, unless previously submitted.
- (e) The LAT will record the withdrawal request, assign a unique tracking number, and submit the withdrawal request to the DOI Restoration Fund.
- (f) The DOI Restoration Fund will prepare and process a Treasury transfer that will transfer the funds from the DOI Restoration Fund to the state and/or federal Trustee indicated on the DWH Funds Withdrawal Form.
- (g) The Treasury will wire transfer the requested funds to the Trustee-specific account (Appendix F1).
- (h) The LAT will notify the TIG when the Treasury transfer request has been made to allow the Trustees to internally track the incoming funds.
- (i) Every withdrawal confirmation report provided by the LAT shall contain the following language: The disbursement of funds confirmed in this report was made pursuant to a TIG resolution. The funds disbursed may be used only for the activities authorized by that TIG resolution. Any non-authorized use of disbursed funds must be reported to the full TIG immediately upon discovery of unauthorized use.

6.5 Other Deposits and Return of Funds to the DOI Restoration Fund

Trustees may return funds to the DOI Restoration Fund. The funds returned to the DOI Restoration Fund may include funds that: originated from the DOI Restoration Fund and were

previously withdrawn, were received directly by a Trustee from BPXP, or interest earnings (See Section 6.6).

- (a) A TIG resolution is required to document the return of funds, the source of the funds, and must identify into which TIG sub-account the funds will be deposited. A resolution may address multiple returns for multiple Trustees.
- (b) A Trustee should submit the resolution and DWH Return of Fund Form(s) or DWH Other Deposit Form(s) to the LAT and then initiate the transfer of return funds from their banking institution to the DOI Restoration Fund. The LAT will post the funds to the appropriate TIG subaccount once the return has been received.
- (c) Once the return has been completed, the LAT will provide the TIG with a report, confirming the deposit of funds.

6.6 Interest Earned

Interest is tracked as described in Section 11.2.2 and is not categorized by any project, activity, or Restoration Type. Interest is reported in accordance with Section 7.1.9.

6.6.1 On Early Restoration Funds

The accrued interest paid by BPXP pursuant to paragraph 17 of the Consent Decree will be distributed for use in the Region-wide Restoration Area.

6.6.2 On TIG Allocations Within the DOI Restoration Fund

Interest earned on funds within the TIG sub-account can be used at the discretion of the TIGs for restoration within the jurisdiction of each TIG, including for planning, administration, or any other TIG responsibilities. The LAT will report interest by TIG annually on the total funds within TIG sub-accounts.

6.6.3 On Individual Trustee Accounts

Interest earned within individual Trustee accounts from withdrawals received from the DOI Restoration Fund and on Early Restoration funds received prior to the Consent Decree will be applied to the Restoration Area from which the funds were disbursed. The Trustee will report interest earned annually to each TIG. Interest can be used for any Restoration Type or activity as agreed upon by the TIG.

6.7 Investing Funds

Long-term investment decisions will be made and approved by a TIG resolution.

7.0 ADMINISTRATIVE ACCOUNTING AND INDEPENDENT AUDIT SYSTEMS

The financial accounting and audit requirements of these Trustee Council SOPs are the responsibility of each individual Trustee who receives funds under the Restoration Agreement. These SOPs do not supplant each Trustee's internal accounting and financial tracking systems, but they instead establish standards in financial transparency that will be practiced by each Trustee.

7.1 Financial Accounting

7.1.1 General

For financial accounting of funds, it is the responsibility of each Trustee agency and certifying officers to ensure that all actions are based on sound accounting and budgetary practices, applying the Generally Accepted Accounting Principles adopted by the Federal Accounting Standards Advisory Board (for federal Trustees), the Governmental Accounting Standards Board (for state Trustees), or other equivalent federal or state standards.

7.1.1.1 *Fiscal Year*

Unless otherwise approved by the Trustee Council, the fiscal year begins on January 1 and ends on December 31.

7.1.1.2 *Segregation of Funds*

- (a) NRDA funds. All funds subject to these SOPs, including all principal and interest thereon, must be accounted for separately from other sources of funding to ensure that funds provided and interest earned under the Restoration Agreement are used only for authorized DWH NRDA activities. Funds that are not part of the Restoration Agreement are not subject to these procedures.
- (b) Project funding. Trustees receiving funds will maintain unique project codes or identifiers for each project or non-project activity to track funds received and expensed for each Restoration Type and TIG allocation expended on each project or activity.

7.1.2 Allocation Adjustments

Adjustments to the allocations provided in the Restoration Agreement will be made pursuant to Section 3.6 and 3.8 of the Restoration Agreement (Appendix B).

7.1.3 Project Adjustments

Expenditure of funds on restoration projects shall be consistent with the applicable final restoration plan and budget approved by the TIG. All funds are subject to these SOPs and must be documented accordingly. Adjustments to project budgets can be made per the provisions in the following sections, subject to any requirements provided in the restoration plan or resolution.

7.1.3.1 Excess Project Funds

Any unspent or unobligated funds, including any accrued interest, remaining from a project or non-project activity may only be used by the Implementing Trustee(s) for another restoration project or non-project activity agreed to by the TIG. Funds may not be used for another project unless and until the Implementing Trustee(s) has confirmed in writing to the TIG that 1) the project is complete or 2) there is sufficient funding to complete the project requirements defined within the restoration plan (see Section 9.5.2). Remaining funds may be retained by the Implementing Trustee(s) and documented in the Restoration Portal as “unallocated funds” or returned to the DOI Restoration Fund as agreed upon by the TIG. Authorized budgets will be updated as necessary (See project Completion/Closeout 9.5.1.6, and Appendix F2 Authorized Budget Change Procedures).

7.1.3.2 Insufficient Project Funds

As soon as the Implementing Trustee(s) determine that there are insufficient funds to implement a project, the Implementing Trustee(s) will: 1) notify the TIG and 2) seek a resolution to address the budget shortfall. (Appendix F2 Authorized Budget Change Procedures).

7.1.3.3 Funds from Terminated Projects

When a project is terminated via TIG Resolution, the Implementing Trustee must subsequently change the Authorized Budget (Appendix F2 Authorized Budget Change Procedures). Funds from terminated projects (Section 9.5.3) should be managed pursuant to Section 3.5 of the Restoration Agreement (Appendix B). Expended funds will be reported per Section 11 of these SOPs.

7.1.4 Funding Transfers

Transfers will be tracked in accordance with Section 11 of these SOPs.

(a) Transfers between Trustees:

- (1) Trustees may transfer funds to other Trustees for the purpose of carrying out some of the project implementation requirements. The TIG will document

approval of such funding transfers. The respective Trustees decide which Trustee will track and report the respective project funds.

- (b) Transfers between projects or non-project activities:
 - (1) Consistent with the Restoration Agreement, Trustees may transfer funds between approved projects or non-project activities upon approval and documentation by the TIG, including justification for the transfer and financial tracking of such.

7.1.5 Planning and Implementation Costs

7.1.5.1 Allowable Costs

- (a) Funds received by Trustees under the Restoration Agreement shall only be used for costs associated with TIG-approved activities, such as restoration planning, non-project activities, project implementation, monitoring, and other related restoration activities. Such costs shall include:
 - (1) Direct costs. Direct costs are those costs directly related to planning and implementing projects or related activities, to the extent that their expected costs are included in the approved project or non-project activity budget.
 - (2) Indirect costs. All Trustees reserve the ability to recover indirect costs, which are unique to each Trustee. Costs that are included as part of the indirect calculation cannot be applied to a restoration project as a direct cost (i.e., supplies, utilities, etc.). Each Trustee may recover its indirect costs in accordance with its most current approved agency indirect cost policy.

7.1.6 Cost Documentation

- (a) Each Trustee receiving and expending funds under the Restoration Agreement will annually summarize within the Restoration Portal expenditures by Trustee, TIG, and Restoration Type. Additionally, Trustees will maintain documentation for these costs within their own systems for the purpose of financial auditing. Unless otherwise required by law or terms of a written agreement, the Trustees will track and report expended costs, or outlays, and not obligated costs, or encumbrances. The Trustee definitions of these terms are as follows:
 - (1) Expended costs (outlays). The term “expended costs” shall be defined as the actual outlay of funds (i.e., payments) through the issuance of checks or warrants, the disbursement of cash, or the electronic transfer of funds.

- (2) Obligated costs (encumbrances). The term “obligated costs” shall be defined as a commitment to acquire goods or services. An obligated cost is a commitment to pay and should not be considered an expended cost until the goods or services have been received and the invoice paid.

7.1.7 Cost Documentation Content

- (a) Each Trustee will maintain cost documentation supporting its expenditures. Documentation can be electronic or hardcopy and organized at the discretion of each Trustee.
- (b) Below is an overview of the types of documentation typically maintained:
 - (1) Labor. Labor costs are those associated with Trustee employee compensation for approved activities. Each Trustee will maintain documentation to support labor expenses based on established procedures by the individual Trustee.
 - (2) Travel. Travel costs include expenses incurred while on official travel for approved activities. Each Trustee will maintain documentation to support travel expenses based on established procedures by the individual Trustee.
 - (3) Contracts. Each Trustee will maintain documentation to support contract expenses consistent with applicable statutes and regulations, including, but not limited to, the following: a copy of the contract or purchase order and all modifications, a copy of paid invoice(s) (copy should indicate the period of performance, amount paid, and approval of invoice for payment), and documentation of work performed.
 - (4) Supplies and equipment. If these expenditures are made outside of the contracting process, the expense should be supported by invoices/receipts.
 - (5) Grants and cooperative agreements. Each Trustee will maintain documentation to support grant and cooperative agreement expenses consistent with applicable statutes and regulations, such as a copy of the grant or cooperative agreement and all modifications, as well as proof of payment to grant recipient or cooperator.
 - (6) Indirect costs. Each Trustee will maintain documentation to support its indirect costs.

7.1.8 Equipment

Each Trustee defines equipment per its agency policy. Trustees will follow their agency policy regarding equipment inventory; repair, maintenance, and safeguarding; surplus; and disposal. Equipment shall be used for the DWH project for which it was acquired. At the completion of the DWH project for which the equipment was acquired, the equipment shall belong to the acquiring agency and may continue to be used in accordance with the acquiring agency's policies. If agency policy or other funding agreement allow, the acquiring agency may, within its discretion, transfer equipment per agency policy or those agreements.

7.1.9 Financial Reporting

According to Section 11 of these SOPs, Implementing Trustees will submit financial data for the funds each has received. From this data, the LAT will produce an annual financial report (see Section 12) which will include total expenditures and transfers, as applicable for project or non-project-specific activity. Additionally, the reports will include all funds received and expended by the Trustees on a summary level, including project and administrative withdrawals, interest earned, and balances of each Restoration Type for each Restoration Area. Interest earned will be summarized by Restoration Area. The LAT will make these reports publicly available on the Trustee Council website and Administrative Record.

7.2 Financial Audits and Agreed Upon Procedures

- (a) To ensure public trust and accountability regarding the use of funds provided under the Restoration Agreement, a financial audit or Agreed Upon Procedures (AUP) engagement will be conducted no less than once every three years for the duration of implementation, with the first financial audit or AUP engagement occurring in 2017. Each Trustee is responsible for procuring such financial audits or AUP engagements and must abide by the scope of work and procedures contained below.
- (b) All financial audits or AUP engagements shall be conducted in accordance with the most recent Government Auditing Standards available during that fiscal year. In general, the scope of the financial audits or AUP engagements will be to evaluate the Statement of Receipts and Expenditures and source documentation for completeness, accuracy, and compliance with applicable guidelines and regulations.
- (c) The Trustee Council has developed two standard scopes of work (one for financial audits (Appendix F3) and one for AUP engagements (Appendix F4) to be followed by all respective accounting contractors or firms to the extent practicable. The final financial opinion or report of findings for each Trustee receiving funds under the Restoration Agreement will be made available to the TIG and Trustee Council no later than 60 days after receipt of the final financial opinion or report of findings. The LAT will also submit

the financial opinion or report of findings to the Administrative Record. In addition, the entity conducting the financial audits or AUP engagements shall be independent of the Trustee Council and Trustee agencies. All independent financial audits or AUP engagements will be completed in compliance with the financial procedures outlined herein and with all applicable and respective state and federal statutes, regulations, and policies.

7.2.1 Readiness

Each Trustee is responsible for ensuring that source documentation is organized and available for review, internal controls are documented, and individuals knowledgeable about the expenditures are reasonably available to answer questions.

7.2.2 Contractors

Contractors who receive funding for services are not automatically subject to the independent financial audits or AUP engagements. This does not, however, preclude the Trustee(s) who oversees an applicable contract from determining that an independent financial audit or AUP engagement of the contractor is required in addition to an agency or TIG review of expenditure documentation and work produced by that contractor.

8.0 CONSULTATION OPPORTUNITIES AMONG TRUSTEES

8.1 General Trustee Consultation

In order to promote a cooperative and collaborative approach to Gulf restoration as the Trustees operate pursuant to a distributed governance structure that gives TIGs the majority of decision-making responsibilities, communication will be encouraged and afforded between Trustees above and beyond TIG membership. The following provisions set forth minimum expectations for such communications and are intended to be additive and complementary to decision-making and conflict resolution processes described in other SOPs.

8.1.1 At the Trustee Council Level

Trustees will consider opportunities for consultation with one another before noticing public meetings and before re-examining the restoration program (approximately every five years). These opportunities may range from advance written notice of an event or proposed action to teleconferences or webinars between the Trustees or their technical staff, as appropriate.

8.1.2 Across TIGs

All TIGs should consider opportunities for consultation with Trustees that are not members of their TIG before noticing public meetings and initiating restoration plans.

8.1.3 Open Ocean TIG

The Open Ocean TIG will inform relevant state Trustee(s) at the earliest opportunity after initial project identification of a project that could potentially affect a state Trustee's jurisdiction, whether or not the project is within the state's geographic boundaries. Upon request of any such state Trustee(s), the Open Ocean TIG will coordinate with those state Trustee(s) regarding the proposed restoration activities.

8.2 Regulatory Consultation

Procedures for streamlining compliance with other laws, including regulatory and permitting provisions, are outlined in Section 9 of these SOPs. Trustees will continually look for additional opportunities to streamline such processes in order to expedite restoration implementation.

9.0 RESTORATION PLANNING AND IMPLEMENTATION

9.1 Final Programmatic Damage Assessment and Restoration Plan and Programmatic Environmental Impact Statement

In February 2016, the Trustees finalized a Programmatic Damage Assessment and Restoration Plan and Programmatic Environmental Impact Statement (PDARP/PEIS) describing restoration work and terms specified by the Restoration Agreement and in accordance with the OPA of 1990, 33 USC 2701 *et seq.*, NRDA regulations, 15 CFR § 990, and the National Environmental Policy Act (NEPA) of 1969. All subsequent restoration plans will be consistent with the PDARP/PEIS, including Alternative A as selected in the Record of Decision (ROD), signed March 22, 2016. As such, all references to restoration planning and implementation within these SOPs refer to that conducted under the Restoration Agreement and PDARP/PEIS, unless otherwise specified.

9.2 Completion of Early Restoration

- (a) On April 20, 2011, the Trustees and BPXP entered into a Framework Agreement (Framework for Early Restoration Addressing Injuries Resulting from the *Deepwater Horizon* Oil Spill) whereby BPXP agreed to provide up to \$1 billion toward Early Restoration projects in the Gulf of Mexico to address injuries to natural resources caused by the DWH spill.
- (b) Under the Framework Agreement, the parties (the Trustees, the U.S. Department of Justice, and BPXP) negotiated project-specific agreements (Stipulations) to fund Early Restoration projects.

- (c) With entry of the Consent Decree on April 4, 2016, the Framework Agreement was terminated and replaced by the Consent Decree. In addition, the Stipulations are void as between the Trustees and BXP, provided however that the Trustees shall use the amounts paid or committed by BXP under each Project Stipulation for the project(s) and in the manner specified in each such Project Stipulation and the corresponding Early Restoration plan adopted by the Trustees. Approved Early Restoration projects that have not yet been completed will be carried out in accordance with the Consent Decree. These restoration projects are now part of the general portfolio of Trustee-approved restoration projects and are subject to these SOPs. Unless the relevant TIG decides otherwise, Early Restoration funds held by an Implementing Trustee will continue to be held by the Implementing Trustee until project completion. Decisions concerning any project changes, the selection and implementation of any replacement project(s), and the use of any unexpended Early Restoration project funds will also be made in accordance with these SOPs (see Section 9.5) by the appropriate TIG for that project. As described in the Restoration Agreement and Section 6 above, previously undisbursed Early Restoration funding will be distributed to the Restoration Areas.

9.3 Other DWH Program Coordination

The Trustee Council and TIGs share responsibility to coordinate with other DWH restoration programs. The Trustee Council may consider the restoration actions of these other programs and facilitate the TIGs in activities such as identifying synergies, reducing potential redundancies, leveraging opportunities, and considering cumulative effects when proposing and selecting projects. The Trustee Council will coordinate as appropriate with other restoration and science programs on topics related to MAM, such as filling critical information gaps and developing consistent data standards and monitoring products (see Section 10.2). As detailed in subsequent sections of these SOPs, the Trustee Council and TIGs will make project monitoring data and project information publicly available for projects that are selected for implementation, facilitating coordination with the public, the scientific community, and other restoration programs.

9.4 Restoration Planning

- (a) TIGs will follow a process of:
- (1) Initial planning to identify, develop, and evaluate project ideas, including consideration of strategic frameworks, if available.
 - (2) Proposing projects, inclusive of alternatives, in draft restoration plans.
 - (3) Engaging the public for comment on draft restoration plans.

- (4) Developing final restoration plans.
 - (5) Selecting projects for implementation.
- (b) The restoration planning processes described below will be incorporated into project planning procedures a TIG may develop. Specific restoration planning requirements may be adjusted depending on the complexity of projects under consideration.

9.4.1 Initial Restoration Planning Steps

9.4.1.1 Strategic Frameworks

The Region-wide TIG will lead development of strategic frameworks for living coastal and marine resource Restoration Types (Marine Mammals, Birds, Sea Turtles, and Oysters) with allocations across multiple Restoration Areas (available in the Administrative Record). These provide broad context for project selection and implementation and will be considered by TIGs when developing and selecting projects. Other strategic frameworks may be developed at the discretion of the TIGs.

9.4.1.2 Initial Project Identification

- (a) TIGs will meet to consider the Restoration Type(s), restoration approach(es), regional locations, goals and objectives, and other issues to shape the initial purpose and need for each restoration plan and will consider relevant strategic frameworks as available.
- (b) TIGs may pursue a phased approach to planning (e.g., identifying projects for engineering and design in one restoration plan, and then evaluating that proposed project for implementation in more detail in a subsequent restoration plan) as described further in Section 9.4.1.5(c).

9.4.1.3 Public Involvement in Project Identification

As described in PDARP/PEIS Section 7.3.1, as each TIG conducts initial project identification, the TIG will provide opportunity for public input of project ideas. TIGs will notify the public of this opportunity via notice on the Trustee Council website. TIGs may also seek input on project ideas via public meetings, additional project submission databases, or other portals or venues.

9.4.1.4 Initial Project Screening

The TIGs and individual Trustees within the TIG will develop project ideas and will consider relevant project ideas submitted by the public. The TIGs will screen initial project ideas to hone in on potential projects and alternatives that will continue to be developed for consideration. Screening will adhere to project selection criteria consistent with OPA regulations (15 CFR §

990.54), the PDARP/PEIS, and any additional evaluation criteria established by a TIG and identified in a restoration plan or public notice.

9.4.1.5 Preliminary Project Development

- (a) The Implementing Trustees will, once potential projects and alternatives have been initially screened, develop project details for continued TIG evaluation. As needed, these details include:
 - (1) Goals and objectives.
 - (2) Timeframes.
 - (3) Details of benefits to injured resources.
 - (4) Potential environmental impacts and their magnitude.
 - (5) Implementation methodologies.
 - (6) Project monitoring (Section 10).
 - (7) Environmental compliance and permitting requirements (Section 9.4.6).
 - (8) Other information consistent with TIG project identification responsibilities.

- (b) The TIGs will ensure that initial cost/budget estimates for each project include, where applicable:
 - (1) Engineering and design.
 - (2) Compliance and permitting.
 - (3) Monitoring.
 - (4) Land rights.
 - (5) Construction.
 - (6) Oversight.
 - (7) Long-term maintenance and stewardship.
 - (8) Contingency.

The TIGs will refine project information as needed and agree when projects are sufficiently shaped, including consideration of alternatives, to be considered for potential further development in a draft restoration plan (see Section 9.4.2).

- (c) TIGs may propose to phase restoration projects across multiple restoration plans. For example, a TIG may propose funding a planning phase (e.g., initial engineering, design, and compliance) in one plan for a conceptual project. This would allow the TIG to develop information needed to fully consider a subsequent implementation phase of that project in a future restoration plan. For planning phases, the Implementing Trustee(s) will develop project information as described in subparagraph (a), to the extent that information is available without further planning funds. TIGs will ensure that initial cost/budget estimates for planning phases will lead to sufficient project information to develop a more detailed reasonable range of alternatives analysis in a subsequent restoration plan.

9.4.1.6 Notify the Public at Initiation of Restoration Plans

The Trustee Council website will be updated to notify the public when a TIG is initiating a restoration plan. For example, the notification could describe, to the extent known, the Restoration Types and approaches (or projects, if applicable) to be considered, the context for the restoration plan in relation to other Gulf restoration programs, and the intended years of funding to be included in the restoration planning for each Restoration Type. Where a restoration plan will rely on or incorporate portions of a regional restoration plan, the TIG may use this step as an opportunity to notify the public of projects to be considered from regional restoration plans.

9.4.2 Develop Restoration Plan Content and NEPA Analyses

- (a) Drafting the documents. TIGs will prepare draft and final restoration plans to analyze proposed projects or groups of projects, as well as a reasonable range of alternatives to those projects. The TIGs will discuss the appropriate level of NEPA documentation and the responsible lead agency will ensure appropriate NEPA compliance. When these SOPs refer to NEPA, it means the provisions of NEPA and the associated regulations from the Council on Environmental Quality (CEQ). NEPA will be integrated into restoration plans tiered from the PDARP/PEIS (unless a TIG determines that a restoration plan and NEPA analysis need to be developed separately; see Section 9.4.2.1). In addition to being consistent with OPA and NEPA requirements, restoration plans and their integrated NEPA analyses will include the following:

- (1) Name of restoration plans. TIGs will develop consistent naming conventions for restoration plans to assist in tracking and public transparency on all actions conducted by the Trustees over time.
- (2) Roles. The plan will identify the proposed Implementing Trustee(s) for each proposed project, as well as the federal agency responsible for NEPA analysis (lead agency) and references to that agency's NEPA regulations.
- (3) Cooperating agency information. All members of a TIG will serve as cooperating agencies for the purposes of NEPA (40 CFR 1501.6) and will be acknowledged as such in each restoration plan developed. The lead agency will also identify any additional non-Trustee cooperating agencies. Requests for the participation of Non-Trustee cooperating agencies in the NEPA process will be made at the earliest possible time to facilitate cooperators' participation.

9.4.2.1 Draft Restoration Plan and NEPA Analysis

Content of draft restoration plans is outlined in Section 7.3 of the PDARP/PEIS. Restoration plans will:

- (a) Describe how projects address injury, fit within the programmatic goals, Restoration Type goals (PDARP Record of Decision Section 8.2), and consider the planning and implementation considerations for Restoration Types and approaches as identified in Section 5.5 and Appendix 5.D of the PDARP/PEIS.
- (b) Where appropriate, include or incorporate by reference background information on restoration plans previously prepared by the TIG or other Gulf restoration programs, including selected projects and their implementation status, as well as summaries of the funds obligated to date by Restoration Type(s) (including any funds expended for restoration plan development and Early Restoration).
- (c) Describe scoping (when applicable) and screening by identifying the rationale and process that led to the particular Restoration Types, approaches, and purpose and need for each restoration plan.
- (d) Compare a reasonable range of alternatives, including consideration of the OPA NRDA regulations' evaluation standards, and identify the preferred alternative(s) as appropriate. Restoration objectives will be identified in the plan as they relate to the injuries determined in the Final PDARP/PEIS (PDARP/PEIS 5.10). Preferred alternatives will include a draft monitoring plan with specific performance criteria.

Integrated NEPA Analysis

- (1) Plans will generally be integrated with an analysis of each proposed project and its alternatives under NEPA.
- (2) Analyses will build on the programmatic environmental impacts as described in the PDARP and will be incorporated by reference (PDARP Section 6.17). These SOPs or TIG SOPs may build and expand upon that content as need arises.

Separate NEPA Analysis

- (1) A TIG may determine that a restoration plan and NEPA analysis needs to be developed separately and not integrated into one document.
- (2) That rationale will be provided in NOAs and the draft restoration plan, including any specific procedures the TIG will implement as a result of the separate analyses.

Actions Analyzed Adequately in the PDARP/PEIS

- (1) Some actions (e.g., engineering and design phase of a project) are analyzed in the Final PDARP/PEIS and may not require a tiered, project-specific NEPA analysis.
- (2) This should be clearly stated in draft restoration plans, and the appropriate section of the Final PDARP/PEIS should be incorporated by reference.

Public engagement

TIG members must concur (via resolution) that a draft restoration plan and NEPA analysis is ready for public release. Each TIG provides an opportunity for public review and comment on the draft restoration plan and NEPA analysis and describes in any individual SOP its TIG-specific methods of involving the public in planning and preparing the drafts. The TIGs will ensure the following:

- (1) The lead agency will provide notice of availability of draft and final restoration plans and any NEPA analyses through publication in the Federal Register. TIGs will ensure the documents are available on the Trustee Council website and the LAT will ensure the documents are available on the administrative record. The comment period may also be noticed by other means or public venues as deemed appropriate by the TIG (see Section 9.4.2.1).
- (2) Per OPA, restoration plans integrated with an Environmental Assessment will be available for a minimum 30-day public comment period. Per OPA and NEPA, restoration plans integrated with an Environmental Impact Statement (EIS) will undergo formal scoping at an earlier step, beginning with publication of a Notice of Intent in the Federal

Register; they will also be made available at the draft stage for a minimum 45-day public comment period. The draft restoration plan and NEPA analyses may be posted to the Trustee Council website or other public venue and public comment open prior to publication in the Federal Register. The comment period will remain open for at least the minimum timeframe based upon the date the notice of availability is published in the Federal Register.

- (3) TIGs will ensure that the public is notified of any meetings sufficiently ahead of time via the Trustee Council website and by other means required or recommended to reach affected stakeholders.

9.4.2.2 Final Restoration Plans and NEPA Analysis

Following the consideration of public comments, the TIGs will revise the restoration plan and NEPA analyses as appropriate, and will prepare final documents. Final restoration plans and NEPA analyses will be made public upon TIG approval as documented in a TIG resolution (see Section 9.4.4 below) and will address the following:

- a) Identify alternative(s) selected for implementation.
- b) Public comment summaries and agency responses.
- c) Consideration of public comments and revision of final restoration plans as necessary.
- d) Best practices and mitigation applicable to the implementation of each selected project.
- e) Outstanding environmental compliance needs or other contingencies that must be resolved prior to project implementation identified and explained.
- f) Inclusion of monitoring plans with final restoration plans, as detailed in Section 10.6.3, but may be updated as necessary.

Findings and Decision documents

The appropriate NEPA decision document (FONSI or ROD) will also serve as the OPA decision document.

FONSI

- (1) Concurrent with or following finalization of a restoration plan integrated with an Environmental Assessment, the federal action agency will prepare, where appropriate, a FONSI to be reviewed and approved by the TIG and signed by all federal agency members of that TIG.

- (2) The FONSI shall include appropriate content to meet all federal agency NEPA requirements, and must consider and describe any remaining environmental compliance requirements that must be concluded before implementation.
- (3) TIG resolutions adopting a plan or projects within a plan and withdrawing funds will be signed only after a FONSI is issued. The project(s) may then proceed (contingent upon completion of all compliance and other requirements specified in the FONSI).

ROD

- (1) For final restoration plans that integrate an EIS, the lead agency will file the final plan and EIS with EPA. EPA will then publish a notice of availability (NOA) in the *Federal Register*. The lead agency may also publish its own NOA.
- (2) NEPA generally requires a 30 day “wait” period after the Final EIS is published in the *Federal Register* (40 CFR 1506.11), before a ROD may be issued.
- (3) During the “wait” period, the lead agency will prepare the ROD. The ROD will state the selected alternative(s) and basis for selection, identify the alternatives considered, and mitigation commitments, meeting all requirements of a ROD under OPA and NEPA (40 CFR 1505.2).
- (4) The ROD will be signed by all TIG member agencies, and issuance of the ROD will be noticed in the *Federal Register*.
- (5) The projects may then proceed (contingent upon completion of all compliance and other requirements specified in the ROD).

9.4.2.3 Supplemental Restoration Plan, Environmental Assessments (EA) and Environmental Impact Statements (EIS)

If a TIG needs to make a material change(s) to an action (or environmental change) in a final restoration plan and associated NEPA, it may do so through a supplemental restoration plan, a supplemental restoration plan and EA, or supplemental restoration plan and EIS. The process, including public notice and comment, will proceed as described in Sections 9.4.2.1 and 9.4.2.2 above for a draft and final restoration plan and NEPA analysis, as appropriate.

9.4.3 Other Restoration Planning Considerations

9.4.3.1 Joint Restoration Plans

TIGs may choose to develop joint restoration plans with other TIGs. Public engagement and review will involve geographies appropriate for all participating TIGs. Before proposing a joint draft restoration plan, the participating TIGs will agree on the decision processes and ensure these are clear to the public, either via notifications or in the draft restoration plan.

9.4.3.2 Frequency of Restoration Plans

Each TIG will determine the frequency of restoration plans and may specify the frequency in its specific procedures, or it may choose a flexible planning schedule that brings forward proposed projects individually or in groups.

9.4.3.3 Programmatic Restoration Plans

In addition to or as a component of project-specific restoration plans, TIGs may choose to prepare subsequent programmatic restoration plans and corresponding tiered programmatic NEPA analyses, where appropriate. In addition to considering additional programmatic approaches, the Trustees will continue to consider available efficiencies with respect to compliance with relevant federal environmental statutes.

9.4.3.4 Re-examine Restoration Program

The restoration program is considered to be the whole of the implementation to be conducted per the Restoration Agreement. The Trustee Council will re-examine the restoration program to inform restoration planning at appropriate intervals, generally at least every 5 years or if a change in conditions warrants re-examination. Re-examination will track the status of the restoration program and determine whether any updates are needed based on newly emerged science and/or observed progress toward meeting ecosystem goals across TIGs and Restoration Types, as further described in Section 10.4.2.4.

9.4.4 Availability and Accessibility of Draft and Final Documents

Lead agencies will provide notice of availability of draft and final restoration plans and NEPA analyses in the *Federal Register*. Draft and Final EISs require filing with EPA. Draft and final restoration plan and EAs or restoration plan and EISs will be made available to the public via the Trustee Council website. Notice on the Trustee website may occur in advance of or concurrent with publication of the related NOA in the Federal Register; however, calculation of the requisite number of days in the comment period begins the day after publication in the Federal Register. In addition, TIGs may use additional tools to make restoration plans available, as

recommended by or required by state or other public notice practices. TIGs will facilitate appropriate accessibility at public meetings and make materials available for public review.

9.4.5 Environmental Compliance in Restoration Plans

In addition to OPA and NEPA, TIGs will identify required compliance with additional, applicable federal statutes (see Section 9.4.6) and state and local laws and regulations and integrate compliance into project analysis, design, and selection to streamline the process, where feasible. A Biological Evaluation (BE) form has been developed to help provide guidance and documentation for several federal statutes (see Restoration Portal for the BE form). TIGs may designate different federal action agencies or lead agencies for different statutes, when appropriate (e.g., NOAA/DOI for the Endangered Species Act, DOI for the Migratory Bird Treaty Act, etc.)

The Implementing Trustee(s) will be responsible for the development of necessary information to comply with all applicable authorities, and the federal environmental compliance liaisons will provide technical assistance as needed. The lead federal action agency will be responsible for the submission of documents to initiate consultations, when appropriate.

9.4.6 Federal Environmental Compliance

Implementing Trustee(s), TIGs, and federal action agencies/lead agencies will pursue early coordination and technical assistance from the regulatory agencies to identify issues early in the project planning process. Compliance responsibilities and procedures described below, where applicable are intended to provide details by statute, but are not a comprehensive or exhaustive list. See Environmental Compliance Manual (Appendix G) for more details on how to prepare submittals for the federal statutes outlined below. All environmental compliance activities will be coordinated with the appropriate TIG and federal environmental compliance liaisons, as needed.

9.4.6.1 Programmatic Endangered Species Act (ESA) Compliance

Implementing Trustee(s) will ensure ESA compliance documents are prepared as described in the framework programmatic biological opinions issued by the National Marine Fisheries Service (NMFS) on February 10, 2016, and U.S. Fish and Wildlife Service (USFWS) on March 18, 2016. The federal action agency will initiate consultation by submitting the required information to the appropriate NMFS and/or USFWS office.

9.4.6.2 Coastal Zone Management Act Federal Consistency

The lead federal agency, in coordination with the Implementing Trustee(s), will complete federal consistency determinations, as described in the program-level federal consistency determinations that each Gulf state concurred with as part of the PDARP/PEIS.

9.4.6.3 Essential Fish Habitat Compliance

The Implementing Trustee(s) are responsible for the preparation of the essential fish habitat (EFH) assessment. The federal action agency will initiate EFH consultation by submitting the EFH assessment to the appropriate NMFS office.

9.4.6.4 Marine Mammal Protection Act Compliance

The Implementing Trustee(s) will be responsible for obtaining Marine Mammal Protection Act permits, if necessary, by submitting a permit application to the appropriate NMFS and/or USFWS office.

9.4.6.5 National Historic Preservation Act Section 106 Compliance

The Implementing Trustee(s) will coordinate with the lead federal action agency to determine if a restoration activity could affect historic properties. If so, the Implementing Trustee(s) will be responsible for providing required information and the lead federal action agency will request consultation with the appropriate State Historic Preservation Officer(s) and Tribal Historic Preservation Officer(s).

9.4.6.6 Coastal Barrier Resources Act Compliance

The Implementing Trustee(s) will be responsible for providing the necessary information to the DOI environmental compliance liaison. The DOI environmental compliance liaison will initiate coordination with the appropriate USFWS office by submitting a Coastal Barrier Resources Act consistency determination.

9.4.6.7 Migratory Bird Treaty Act Compliance

The Implementing Trustee(s) will be responsible for providing the necessary information to the DOI environmental compliance liaison in the event that the MBTA is triggered by a project. The DOI environmental compliance liaison will initiate coordination by submitting the required information to the appropriate USFWS office.

9.4.6.8 Bald and Golden Eagle Protection Act Compliance

The Implementing Trustee(s) will be responsible for providing the necessary information to the DOI environmental compliance liaison. The DOI environmental compliance liaison will initiate coordination with the appropriate USFWS office.

9.4.6.9 Clean Air Act Compliance

Implementing Trustee(s) will work with appropriate persons to ensure applicable permits are obtained from the authorized regulatory agency, as appropriate.

9.4.6.10 Clean Water Act Section 404 and Rivers and Harbors Act Section 10 and Section 14 (Commonly Referred to as “Section 408”) Compliance

Implementing Trustee(s) will work with appropriate persons to apply for applicable permits and authorizations by submitting a permit application to the appropriate U.S. Army Corps of Engineers (USACE) office. Implementing Trustee(s) are encouraged to begin coordinating with the appropriate USACE office before submitting a permit application to help facilitate discussion of the factors that the USACE considers in its decision-making process, including measures to avoid and minimize potential impacts, as well as available efficiencies in the permitting process.

9.4.7 Tracking and Reporting for Environmental Compliance

The Implementing Trustee(s) will ensure that the status of environmental compliance (e.g. completed vs. in progress) is updated through the Administrative Record (see Section 11). By adding the documents to the Administrative Record, the status for each statute will automatically be updated in the Restoration Portal and inform the public via the regulatory compliance table on the Trustee Council website. Implementing Trustees will retain compliance documents (e.g., ESA biological opinions, USACE permits, etc.) and ensure that they are submitted for inclusion to the Administrative Record within 30 days of receipt.

9.4.8 Compliance with Conditions

The Implementing Trustee(s), in coordination with the federal action agency or federal lead agency, is responsible for implementing conditions required in consultations, permits or other applicable compliance documents, including providing any required follow up reports to regulatory agency in the timeframe specified. The Implementing Trustee(s) will ensure reports are submitted for inclusion in the Administrative Record.

9.4.9 Project Changes

If changes are made to any selected project, those changes may require a re-evaluation of determinations made in existing environmental compliance documents (see Section 9.5.2). The Implementing Trustee(s) are responsible for submitting revised final compliance documents for inclusion to the Administrative Record.

9.5 Restoration Implementation

- (a) TIGs will identify one or more Implementing Trustees for each selected restoration project. Implementing Trustee(s) may be designated for a project’s entirety, or for one or more of a project’s various implementation phases. The Implementing Trustee(s) are the primary entities responsible for implementation tasks, such as conducting or

contracting to complete implementation phases, conducting project-specific MAM, and maintaining projects in the long term.

- (b) The TIGs track whether projects are implemented consistently with final restoration plans and applicable MOUs, SOPs and other agreements. They also coordinate with both the Implementing Trustee(s) and the Trustee Council. The Trustee Council coordinates with each TIG to track and report the aggregated implementation status of the restoration program to the public and ensures that implementation is consistent with the commitments described in restoration plans.

9.5.1 Implementation Stages

9.5.1.1 Cooperative Project Implementation

When there are multiple Implementing Trustees, the roles of each agency should be clearly defined within the project resolution, management or implementation plan, MOU, or other agreement prior to disbursement of any project implementation funds. Project management plans, implementation plans, and/or project-specific agreements should identify the responsibilities of each Implementing Trustee, and may also include items such as Trustee coordination, detailed project budgets and schedules that will be used to disburse funds to the appropriate Implementing Trustee(s), implementation approaches, project phasing (if applicable), risk assessment, and contingency planning. These plans and/or agreements will be reviewed by the TIG and agreed on prior to the release of project funds. TIGs may also request project management or implementation plans for projects with a single Implementing Trustee, at their discretion, given the complexities or risks of a given project. Throughout a project the Implementing Trustee(s) should coordinate with the appropriate TIG.

9.5.1.2 Engineering and Design

Engineering and design is the responsibility of the Implementing Trustee(s). Engineering and design may be completed by the Implementing Trustee(s), when appropriate, or through the use of contractors under the direction of the Implementing Trustee(s). On request, the Implementing Trustee(s) will furnish engineering and design materials to the TIG.

9.5.1.3 Construction

Construction is the responsibility of the Implementing Trustee(s) and will comply with applicable rules and regulations regarding construction within the state where the project is located, and any consultations or regulatory permits. When construction is complete, the Implementing Trustee(s) will notify the TIG that the project is moving into the monitoring phase, report on the outcomes of construction, and provide as-built materials, as requested by the TIG.

9.5.1.4 Performance Monitoring

The Implementing Trustee(s) will conduct project-specific performance monitoring (including data collection, analysis, and synthesis) and perform associated project-specific adaptive management/corrective actions using project-specific funds, as available, and in accordance with final project-specific MAM plans. All performance monitoring will be conducted in accordance with standards described in Section 10; however, the Implementing Trustee(s) may conduct additional monitoring on a project-by-project basis. Monitoring data will be used by the Implementing Trustee(s) to track whether projects are trending toward the established performance criteria or whether corrective actions are required to redirect the project's performance trajectory. The Implementing Trustee(s), in coordination with the TIG, will evaluate corrective actions to determine whether these actions require additional environmental review, including modifications to regulatory permits and consultations, or if the modifications result in a material change to the project as selected in final restoration plans. If the corrective actions require additional or modified environmental reviews, the TIG will determine whether public notification is required.

Although project-specific monitoring will be conducted by Implementing Trustees and funded as part of that project's budget, TIGs will review draft monitoring plans to ensure that they are consistent with the Trustee Council SOPs, as described further in Section 10.4.1.1 and Section 10.6.3. TIGs will establish interim performance milestones in coordination with the Implementing Trustee(s) and will review corrective actions proposed by the Implementing Trustee(s).

9.5.1.5 Long-Term Operations, Maintenance, and Management

The Implementing Trustee(s) will ensure that long-term operations, maintenance, or management likely to be required for each project are identified, and appropriate budgets and agreements are established, to support the restoration goals of the restoration plan. If not already identified in the restoration plan, the Implementing Trustee(s) will identify the party responsible for project-specific long-term activities and will seek TIG approval if a party other than the Implementing Trustee is identified to fulfill these responsibilities at any point during project implementation.

9.5.1.6 Project Completion/Closeout

A project is complete after all activities and expenditures have been accomplished for that project, including long-term maintenance, operations, monitoring, and completion of any related reports and uploading any project data to the Restoration Portal. The Implementing Trustee(s) will notify the TIG when a project is ready to be closed.

Projects are ready to be closed when all expenditures have been reconciled and project reporting as described in Sections 11 and 12 is complete. The Implementing Trustee(s) will provide the TIG with a closeout report for each approved project/activity that will document, at a minimum, 1) the final funding balances and any transfers, and 2) a description of the project as built, including estimated benefits to natural resources.

There are two methods for TIG approval to change the project status to “Closed” in the Restoration Portal. In both approaches, the Implementing Trustee prepares a resolution for TIG approval that includes an authorized budget change request to match the final expenditures and direction for the disposition of any remaining funds.

- (a) “Unallocated Approach” – In the Resolution, the TIG provides detail regarding the unspent funds and directs the Implementing Trustee(s) to identify any remaining project/activity funds to be reported in the Restoration Portal as “unallocated” funds.
 - i. The Implementing Trustee retains and tracks these funds, including earned interest (see 6.6.3) and reports the status of the unallocated funds to the Restoration Portal on an annual basis. In addition, transfer transactions to and from the “unallocated” category will need to be logged in the Restoration Portal at the time of the transaction.
 - ii. When the TIG has identified a new project for implementation, the TIG should request the Implementing Trustee use their “unallocated” funds to support the project prior to withdrawing new funds. A TIG Resolution will be necessary for the new project, and should identify if “unallocated” funds will be used, and also provide any other necessary documentation (see also Section 6.0 Funding, 7.1.3 Project Adjustments, 7.1.4 Funding Transfers and 9.0 Restoration Planning).
- (b) “Restoration Fund Approach” – In the Resolution, the TIG directs the Implementing Trustee(s) to return any remaining project/activity funds and interest earned (see Section 6.6.2) to the TIG General Sub-Account within the DOI Restoration Fund per Section 6.5 of this document. The LAT will provide a confirmation report to the TIG and Implementing Trustee(s) to acknowledge receipt of the funds. The LAT will track and update funds in the Restoration Portal based on the regular DOI Restoration Fund updates. Funds obligated for new projects/activities would be requested through TIG Resolution following Section 6.4 Withdrawal of funds from the DOI Restoration Fund and 9.0 Restoration Planning and Implementation.

9.5.2 Project Changes

Implementing Trustee(s) will notify the TIG of material project changes during design or construction before taking further action on a project. Notifications will include a brief

discussion of the change, impact, and proposed path forward. In the event of a material project change, the TIG will conduct a project review to evaluate whether:

- (1) Any change to the project is consistent with the environmental review in the respective restoration plan/NEPA analysis, or there are substantial changes that are relevant to environmental concerns.
- (2) There are significant new circumstances or information relevant to environmental concerns not addressed in the impact analysis of the respective restoration plan/NEPA analysis [40 CFR § 1502.9 (c)].
- (3) Project changes affect their selection under OPA.

The TIG will identify, pursuant to OPA, whether and when modifications to a final restoration plan are required based on project changes identified during environmental consultation, final design, or implementation and determine what additional restoration planning or environmental evaluation may be required; and identify if a project may need to be terminated. In some cases, additional restoration planning and/or environmental review, including providing the opportunity for public review may be necessary.

The lead federal agency responsible for the NEPA analysis in coordination with the Implementing Trustee will determine with TIG approval whether and when modifications to the NEPA document would be necessary. In some cases, additional restoration planning and/or environmental review, including providing the opportunity for public review may be necessary. Revisions to the restoration plan or NEPA analysis will proceed following Section 9.4.2.2, above.

9.5.3 Project Termination

If the Implementing Trustee(s) and TIG determine that the project can no longer be implemented, a project may be terminated and the authorized budget updated (Appendix F2 Authorized Budget Change Procedures). The disposition of remaining funds will then be determined by the TIG (e.g., apply the funds to another approved project, return funds to the TIG sub-account) in accordance with Section 3.5 of the Restoration Agreement (Appendix B). TIGs will follow the procedures set forth in Section 9.4 to select another project in the event of project termination. The Implementing Trustee(s) will complete project reporting, including final financial reporting, as provided in Section 11, and document the reasons for project termination within the Restoration Portal.

10.0 MONITORING AND ADAPTIVE MANAGEMENT

As described in Chapter 5, Appendix E of the PDARP/PEIS, the Trustee Council has committed to a MAM framework to support restoration activities by infusing best available science into

project planning and design, identifying and reducing key uncertainties, tracking and evaluating progress toward restoration goals, determining the need for corrective actions, and supporting compliance monitoring. The Trustees' fifth goal, Provide for Monitoring, Adaptive Management, and Administrative Oversight to Support Restoration Implementation, provides the necessary funding to each Restoration Area to support administrative functions as well as overall decision-making within the Trustees' adaptive management framework. The DWH settlement allocates MAM funding to each of the five state TIGs and the Open Ocean and Region-wide TIGs. These allocations are intended to support the monitoring and adaptive management of restoration actions undertaken by the TIGs, as determined by each individual TIG, including any activities that each TIG determines to be needed to evaluate cumulative restoration progress within restoration types and/or restoration areas, and inform future restoration decision-making.

In addition to these TIG MAM allocations, the DWH settlement allocates funds to the Adaptive Management and Unknown Conditions TIG, which can be accessed no earlier than January 1, 2026. The Adaptive Management and Unknown Conditions TIG is intended to support adaptive management of the restoration program, as needed, by addressing any conditions that were unknown to the Trustees at the time of settlement. Information gained through TIG MAM activities outlined in the PDARP and this SOP could inform the Trustee Council's decisions on the timing and purpose of establishing the Adaptive Management and Unknown Conditions TIG.

These MAM SOPs are intended to broadly describe the roles and activities needed to fulfill the Adaptive Management framework described in the PDARP/PEIS. These activities include monitoring for project performance as well as supporting the broader MAM framework for evaluating progress toward restoration goals across TIGs and Restoration Types. These MAM SOPs should be considered preliminary pending review and revision, if needed, by the Cross-TIG MAM work group and approval by the Trustee Council (see Section 10.3.1 below).

10.1 Cross-TIG MAM Work Group

10.1.1 Purpose

To meet monitoring and adaptive management obligations, the Trustee Council will establish a Cross-TIG MAM work group. This group will serve as a forum for the TIGs to collectively address MAM topics relevant to multiple TIGs. The group may also support the TIGs and Implementing Trustees, upon request, in meeting their MAM responsibilities. The Cross-TIG MAM Working Group has no independent authority to act except when directed by the Trustee Council. The Cross-TIG MAM Working Group may provide assistance to the TIG or to an Implementing Trustee when requested. The Cross-TIG MAM work group will provide recommendations to the

Trustee Council regarding MAM responsibilities, procedures and guidelines, and it will operate on a consensus basis.

10.1.2 Membership

This work group will be composed of one primary and one alternate staff member with technical expertise from each of the nine Trustee Council members able to reflect the perspectives and needs of each of the Trustees. The Cross-TIG MAM work group will identify an external coordination point of contact (POC) and liaisons to each of the TIGs from within its membership to ensure communication among the work group, the TIG, as well as external groups. A science coordinator may also be designated to support the work group, and topic-specific work groups that pull in additional experts may be formed as needed.

10.2 Monitoring and Adaptive Management Procedures and Guidelines Manual

Further details on these procedures and guidelines outlined in these SOPs will be developed by the Cross-TIG MAM work group, compiled within a Monitoring and Adaptive Management Procedures and Guidelines Manual (MAM Manual), and approved by the Trustee Council. The MAM Manual can be downloaded from the Administrative Record, see Section 3.3.

The MAM Manual presents guidelines to execute the broad goals articulated in the PDARP/PEIS which go beyond the minimum provisions of Oil Pollution Act (OPA) regulations. The MAM manual includes, but will not be limited to: a template that may be used by TIGs for project-specific MAM Plans; guidance for monitoring and data management standards; recommendations and procedures for data quality assurance/quality control (QA/QC), clearance, and release; recommended procedures for project-level progress reporting and tracking restoration and recovery, and guidance for identifying and addressing information gaps. Future versions will include guidance for evaluating restoration progress and performing adaptive management for Restoration Types and Areas to meet the programmatic goals described in the PDARP/PEIS. These procedures, outlined in these SOPs and the associated MAM Manual, will be updated as necessary by the Cross-TIG MAM work group for approval by the Trustee Council throughout the period of restoration implementation. In addition, the TIGs have the option of developing TIG SOPs for MAM activities in their Restoration Areas, compatible with these SOPs and the MAM Manual.

10.3 Trustee MAM Responsibilities

Given the complexity and large degree of restoration and monitoring activity, there are multiple tiers of MAM that could be occurring in time, perhaps simultaneously. In order to effectively and efficiently implement the MAM framework, specific responsibilities for different parties are

explained below. Further details on sequencing and processes will be described in the MAM Manual. These responsibilities apply to project-specific monitoring and other non-project specific MAM activities, as they are appropriate and required to achieve the Restoration Goals laid out in the PDARP/PEIS.

10.3.1 Trustee Council Responsibilities for MAM

The Trustee Council will encourage and facilitate consistency in monitoring and data procedures to evaluate and report on progress toward meeting the ecosystem goals that are the stated basis for the Restoration Agreement and are foundational to the PDARP/PEIS.

10.3.1.1 TC MAM Responsibilities

- (a) The Trustee Council will provide direction to the Cross-TIG MAM work group, which will help fulfill many of the Trustee Council's MAM responsibilities. TC MAM responsibilities include:
 - (1) Maintain and update the MAM procedures and guidelines as part of these Trustee Council SOPs and the MAM Manual; the Cross-TIG MAM work group will review the MAM provisions included in these SOP and recommend revisions, as needed, to the Trustee Council for future versions of these SOP (see Appendix E Memorandum for SOP Amendments and Guidance). Support the TIGs in developing MAM SOPs compatible with these SOPs and the MAM Manual, as needed.
 - (2) Facilitate coordination and compatibility of MAM procedures across TIGs. Promotes efficiency and collaboration in addressing MAM priorities.
 - (3) Coordinate with TIGs and other science and monitoring programs in the Gulf of Mexico where appropriate, such as to develop compatible monitoring standards, procedures and guidelines, and identify and/or fill critical information gaps (see Sections 10.3.4 and 10.3.5).
 - (4) Develop mechanisms to engage with the broader scientific community (see Sections 10.3.4 and 10.3.5).
 - (5) Aggregate and synthesize monitoring data and information to evaluate collective progress toward meeting Restoration Type goals (see Section 10.4.2.2).
 - (6) Identify emerging unknown conditions that could influence restoration outcomes to inform the Trustee Council's decisions on the timing and purpose of

establishing the Adaptive Management and Unknown Conditions TIG (see Sections 10.4.2.3 and 10.5.3).

- (7) Provide input on the functionality of the Restoration Portal for monitoring information and data, including but not limited to development of interactive reporting and analysis tools (see Sections 10.6.5 and 10.6.6).
- (8) Perform programmatic reviews to evaluate the Trustees' collective progress toward meeting the restoration goals described in the Final PDARP/PEIS and provide feedback to TIGs for consideration in future restoration decision-making (see Section 10.6.7).
- (9) Report on progress toward programmatic MAM and Restoration Type goals (see Sections 10.7.3 and 10.7.4).

10.3.2 TIG Responsibilities for MAM

- (a) The TIGs are responsible for addressing MAM objectives that pertain to their restoration activities and for communicating information to the Trustee Council or Cross-TIG MAM work group. Each TIG will address the following MAM responsibilities, as appropriate to their restoration activities:
 - (1) Review and approve project MAM plans for compatibility with the SOPs and MAM Manual, for compliance with regulatory requirements, and to determine the MAM plans readiness for inclusion in restoration plans.
 - (2) Identify MAM priorities for the TIG's Restoration Area and communicate priorities to the Cross-TIG MAM work group.
 - (3) Ensure project monitoring data, monitoring reports, and other monitoring information are compatible with the MAM Manual guidelines and are submitted to the Restoration Portal.
 - (4) Provide aggregated and quality-controlled MAM data, information, and evaluations to the Trustee Council and Implementing Trustee(s).
 - (5) Provide the Trustee Council an annual status update of project monitoring information and data.

10.3.3 Implementing Trustee Responsibilities for MAM

- (a) Implementing Trustees will write MAM plans and conduct both project-specific monitoring and other non-project-specific MAM activities as agreed to by the TIG,

compatible with the procedures described herein (see Sections 9.3 and 9.5) and in the MAM Manual. Implementing Trustee MAM responsibilities include the following, as appropriate to their restoration activities:

- (1) Develop MAM plans for all projects other than those selected only for engineering and design, compatible with these SOPs and the associated MAM Manual, if available, and implement MAM plans.
- (2) Identify and propose activities to the TIGs to address Restoration Type and TIG MAM priorities, if established.
- (3) Conduct MAM activities, including project-specific monitoring and other non-project-specific MAM activities to support future planning and reporting, as appropriate.
- (4) Evaluate restoration project progress toward restoration objectives using project-specific performance criteria and identify the need for and propose corrective actions to the TIGs.
- (5) Enter MAM data and project information into the Restoration Portal in accordance with project specific MAM Plans.

10.3.4 Internal Coordination on MAM

- (a) MAM activities will be coordinated both internally within the Trustee Council governance structure and externally with other Gulf of Mexico restoration and science programs and the broader scientific community, where appropriate. Internal coordination is a shared responsibility of the Trustee Council and the TIGs, as demonstrated in Figure 1 below.

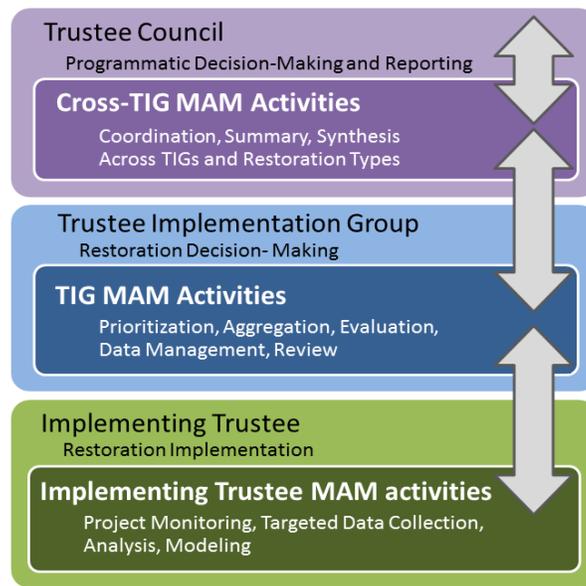


Figure 1. Generation and flow of MAM data and information (represented by gray arrows) among MAM activities that occur within the elements of the governance structure. MAM data and information (including monitoring data, reports, syntheses, and more) are generated through MAM activities (including data collection, analysis, synthesis, modeling, etc.), as noted in the dark shaded boxes.

(b) Figure 1 represents the generation and transfer of MAM data and information among Trustees. Gray arrows indicate MAM data and information transfer among MAM activities conducted within each element of the governance structure, as well as transfer of MAM data and information to and from the Trustee Council. The bullets below describe examples of the coordination activities represented by the gray arrows, from top to bottom.

- MAM Coordination between Cross TIG MAM work group and Trustee Council:
 - The Trustee Council directs the activities of the Cross TIG MAM work group.
 - Cross TIG MAM work group supports TIG MAM activities, upon request, provides data, programmatic evaluations and summaries, and makes recommendations to the Trustee Council on MAM activities.
 - The Cross-TIG MAM work group provides summarized MAM data and information case-wide to the Trustee Council for its public reporting
- MAM Coordination between TIGs and Cross TIG MAM work group:

- TIGs track project data and provide quality assurance and quality control on project monitoring data in the Restoration Portal and communicate the TIG MAM priorities and important information to the Cross-TIG work group.
- The Cross-TIG MAM work group provides the results of Restoration Type programmatic evaluations to the TIGs.
- TIG liaisons within the Cross-TIG MAM work group communicate TIG priorities and restoration activities to the Cross-TIG MAM work group and communicate outputs of the Cross-TIG MAM work group to the TIG.
- The Cross-TIG MAM work group also promotes efficiency and collaboration in addressing MAM priorities.
- MAM Coordination between Implementing Trustees and TIGs:
 - Implementing Trustees collect and input MAM data into the Restoration Portal, and identify the need for and propose corrective actions on projects to the TIGs.
 - TIGs provide feedback, including recommended corrective actions, to Implementing Trustees in order to inform current and future restoration planning and implementation activities.

10.3.5 External Coordination on MAM

- (a) As directed by the Trustee Council, the Cross-TIG MAM work group will work to identify opportunities to leverage resources with other restoration and science programs and collaborate on related MAM activities. It will also develop mechanisms to engage with the broader scientific community on MAM topics, as directed by the Trustee Council. These mechanisms will be further described in the MAM Manual. Each TIG may also coordinate with other Gulf programs and the scientific community on MAM topics, as applicable to their Restoration Area.
- (b) The external coordination responsibilities may include the following:
 - (1) Coordinate with other applicable restoration programs on MAM issues, including working to identify and potentially fill critical information gaps that impact restoration decision-making and developing compatible monitoring standards, as appropriate.
 - (2) Communicate critical MAM priorities and identified critical information gaps to applicable science programs.
 - (3) Participate in broader Gulf of Mexico monitoring coordination forums.

10.4 Adaptive Management

At the direction of the Trustee Council, the Cross-TIG MAM work group will support implementation of the adaptive management framework (as described in Chapter 5, Appendix E, of the PDARP/PEIS) across the Trustee Council governance structure.

10.4.1 MAM Activities During Restoration Planning

10.4.1.1 Planning for Project MAM

- (a) The Cross-TIG MAM work group may, as requested by the TIGs, support the TIGs and Implementing Trustees in applying the best available science to restoration project planning and design, including impact analyses (see Section 9.4.1.5). The Cross-TIG MAM work group may help inform the planning and design of new projects by aggregating project monitoring results, summarizing relevant scientific information, and providing these summaries to the TIGs. At the request of the TIGs, the Cross-TIG MAM work group will provide support to Implementing Trustees in developing project MAM plans as part of restoration plans in accordance with the MAM Manual (see Sections 9.5.1.4 and 10.6.3).
- (b) Where uncertainties may exist related to the implementation of a particular restoration technique, the Cross-TIG MAM work group may also support the TIGs and Implementing Trustees in developing additional project monitoring activities and adaptive management approaches to mitigate the uncertainties during project implementation. The costs required to implement the project monitoring plan should be included in the project budget. In addition, any adaptive management should be considered in the budget development process.

10.4.1.2 Identification of MAM Priorities

- (a) TIG MAM priorities. Each of the TIGs will identify priorities for the use of their designated MAM funds, including activities to identify and possibly address critical science and monitoring gaps relevant to its restoration priorities. The Cross-TIG MAM work group can support the TIGs, at their request, in developing these MAM priorities.
- (b) Restoration Type MAM priorities. At the request of the TC, MAM priorities may also be developed by TIGs to identify and possibly address critical information gaps for individual Restoration Types.
- (c) The Cross-TIG MAM work group will identify potential overlap in MAM priorities between the TIGs and Restoration Types and encourage and support coordination of

similar data collection efforts across geographic boundaries. The details of this process will be included in the MAM Manual.

- (d) Identification of MAM priorities for TIGs and Restoration Types will, where appropriate, include identification of opportunities to:
 - (1) Build upon existing/planned monitoring or research programs to the extent that data provided by those programs would meet the Trustees' needs.
 - (2) Coordinate on monitoring efforts for any targeted geographic features (e.g., estuaries, bays) that cross TIG boundaries.
 - (3) Coordinate with other Gulf of Mexico restoration programs on planning for MAM activities, to the extent possible, to identify opportunities for leveraging and collaboration.
 - (4) Engage with subject matter experts on specific Restoration Types or Restoration Areas, as appropriate.
- (e) The initially identified MAM priorities will be periodically re-examined by the TIGs as appropriate, based on programmatic evaluations of progress toward meeting restoration goals, as well as any changes in information (see Sections 10.4.2.2 and 10.4.2.4). These MAM priorities may also be revised by the TIGs, as needed, in response to unanticipated events, such as large-scale disturbances (e.g. hurricanes, oil spills, etc.).

10.4.2 Evaluation and Feedback

10.4.2.1 Project Monitoring, Evaluation, and Corrective Actions

The Implementing Trustee will conduct project monitoring in accordance with the final project MAM plan (see Section 9.5.1.4 and 10.6.3). As set forth in the project MAM plan, the Implementing Trustee(s) will review monitoring results to track whether projects are making progress toward meeting the established performance criteria or whether corrective actions are needed to meet project objectives. The Implementing Trustee will propose potential corrective actions to the TIG and will also determine whether any modifications to the project MAM plan are required as a result of the corrective action. The Implementing Trustee will submit a revised project MAM plan to the TIG, if needed.

10.4.2.2 Evaluation of Progress Toward Restoration Goals

- (a) The Cross-TIG MAM work group will establish mechanisms to aggregate and synthesize monitoring data and other information collected across all TIGs for each Restoration Type at appropriate intervals to evaluate collective progress toward meeting

Restoration Type goals and objectives. The Cross-TIG MAM working group may also support the TIGs, at their request, in aggregating and synthesizing monitoring data and other information collected within a TIG to assess progress within its Restoration Area. Procedures for evaluation of progress toward restoration goals will be described in the MAM Manual. This process may include:

- (1) Ensuring monitoring data, reports, scientific support data, and other products uploaded to the Restoration Portal are compatible with the MAM Manual (see Section 10.7.1).
 - (2) Aggregating and synthesizing restoration monitoring data and the results of any targeted scientific study or analysis relevant to each Restoration Type or Restoration Area.
 - (3) Assessing the relative success of restoration approaches on a programmatic level.
 - (4) Reviewing relevant outside science and monitoring information (including data collected by other monitoring programs, as well as updates to relevant species recovery or management plans prepared under other statutes).
 - (5) Identifying any environmental changes that may influence restoration within an individual TIG or the recovery of a particular resource.
 - (6) Engaging with subject area experts, as needed, to help evaluate progress toward restoration goals.
- (b) Based on this review of current information, the Cross-TIG MAM work group will communicate the results of Restoration Type evaluations and any recommended changes in Restoration Type MAM priorities to the TIGs to inform their future restoration planning. The Cross-TIG MAM work group will also share the results of Restoration Type evaluations with the Trustee Council and support the Trustee Council, at its request, in reporting to the public on progress toward meeting the restoration goals in the Final PDARP/PEIS. The TIGs will review previously identified TIG MAM priorities and make revisions, as needed, to reflect any changes in information gaps, prioritization of information needs, and/or changes to the prioritization and sequencing of restoration approaches.

10.4.2.3 Identification and Investigation of Unknown Conditions

The Cross-TIG MAM work group will establish a process to evaluate all monitoring results across TIGs and Restoration Types along with other relevant scientific information (e.g., scientific

literature, monitoring data from other programs) to identify any trends and/or unanticipated results that may signal the existence of emerging unknown conditions. Procedures for reviewing existing information to identify emerging unknown conditions will be described in the MAM Manual. In the event that emerging unknown conditions are discovered, the Cross-TIG MAM work group may make recommendations to the Trustee Council on the prioritization of MAM activities to better document and characterize those conditions to inform future Trustee Council decisions related to the timing and purpose of establishing the Adaptive Management and Unknown Conditions TIG.

10.4.2.4 Programmatic Review and Feedback

- (a) The Cross-TIG MAM work group will synthesize monitoring information and overall restoration results across TIGs and Restoration Types at appropriate intervals to evaluate and report to the Trustee Council on the Trustees' collective progress toward meeting the ecosystem goals described in the PDARP/PEIS. This programmatic review will support the re-examination of the Restoration Program as described in Section 9.4.3.4 and Programmatic MAM Reporting as described in Section 10.7.4. Procedures for programmatic review will be developed by the Cross-TIG MAM work group and will be included in the MAM Manual. The Cross-TIG MAM work group may also, at the approval of the Trustee Council, utilize subject matter experts in support of the programmatic review. In performing programmatic review, the Cross-TIG MAM work group will:
- (1) Consider the results of evaluations of restoration progress for individual Restoration Types and Restoration Areas (See Section 10.4.2.2).
 - (2) Consider the outcomes of restoration conducted to date, including restoration activities funded through the Final PDARP/PEIS and restoration work funded through other restoration programs in the Gulf of Mexico, to identify potential synergies and/or interactions among restoration efforts.
 - (3) Consider any evidence of changing environmental conditions or previously unknown conditions that could influence future restoration outcomes (See Section 10.4.2.3).
 - (4) Communicate the results of the programmatic evaluation to the Trustee Council and TIGs and provide recommendations for adjustments to restoration implementation, if needed.
 - (5) Assist the Trustee Council in reporting to the public on the progress of restoration, when requested, as further described in Section 10.7.4.

10.5 MAM Funding

Funding for MAM activities will be in accordance with the financial management procedures provided in Section 6 and Section 7.

10.5.1 MAM Funds

- (a) The “Monitoring and Adaptive Management” component of the Monitoring, Adaptive Management, Administrative Oversight Restoration Goal and Type (as allocated in Table 1 of the Restoration Agreement) is intended to fund activities in accordance with TIG MAM priorities and programmatic activities such as addressing critical information gaps and evaluating progress toward meeting ecosystem goals (e.g., monitoring activities that address more than one restoration project), including activities across TIGs and Restoration Types.
- (b) Activities that may be funded within this allocation include, but are not limited to, the following:
 - (1) Resolving critical information gaps/uncertainties for restoration planning; inform restoration decision-making.
 - (2) Supplementing Restoration Type monitoring activities, where needed.
 - (3) Performing cross-resource science and monitoring activities.
 - (4) Evaluating regional restoration outcomes (beyond individual project footprints) within the TIG’s Restoration Area.
 - (5) Performing programmatic or operational MAM activities, such as data aggregation summary and synthesis; report development; and data management activities.
 - (6) Responsively re-examining TIG and/or Cross-TIG MAM priorities following a disturbance (e.g. hurricane, oil spill, etc.).
 - (7) Performing monitoring to inform the design and implementation of future restoration projects, including better characterizing ecological function.
 - (8) Conducting Cross-TIG MAM work group operation and coordination activities.
- (c) Activities of the Cross-TIG MAM work group will be directed by the Trustee Council and funded by the MAM allocation of the Region-wide TIG. The Region-wide TIG will approve funding for the MAM work group activities.

10.5.2 Restoration Type Funding

- (a) Support for project-specific performance monitoring and associated project-specific corrective actions will be funded from the project-specific Restoration Type in accordance with final project MAM plans.
- (b) MAM-related activities that may be supported under Restoration Type funds include, but are not limited to:
 - (1) Project-specific monitoring, evaluation, and data management.
 - (2) Implementation of project-specific corrective actions.
 - (3) Data collection in support of planning restoration projects.
 - (4) Collection of prioritized data to address Restoration Type MAM priorities (described further in Section 9.4.1.1).

10.5.3 Adaptive Management and Unknown Conditions Restoration Funds

- (a) Adaptive Management and Unknown Conditions Restoration activities will be funded from the “Adaptive Management NRD Payment for Unknown Conditions” component of the Monitoring, Adaptive Management, Administrative Oversight Restoration Goal and Type, as allocated in Restoration Agreement (see Appendix B).
- (b) The Adaptive Management and Unknown Conditions Restoration funding is set aside to address (1) injuries and/or losses to Natural Resources resulting from the *Deepwater Horizon* Incident that are unknown to the Trustees as of July 2, 2015, or (2) to adapt, enhance, supplement, or replace restoration projects or approaches initially selected by Trustees. Under the Consent Decree, the Trustees may begin seeking payment from BXPX for Unknown Conditions and Adaptive Management no earlier than January 1, 2026. Decisions on utilizing funds under the Adaptive Management and Unknown Conditions Restoration TIG will be informed by monitoring data gathered across TIGs and by reviewing any available scientific and/or supporting information that documents unforeseen conditions or adaptive management needs. Specific procedures and criteria will be developed in the future to guide Trustees’ decisions on the use of the Adaptive Management and Unknown Conditions Restoration funds, and they are expected to be part of a future SOP update (see Appendix E Memorandum for SOP Amendments and Guidance). Adaptive Management and Unknown Conditions Restoration funds would not be accessed until such time that those procedures and criteria are approved by the Trustee Council.

10.6 Monitoring and Data Management

All of the processes below particularly apply to project-specific monitoring. Although many of the elements also apply to other non-project-specific MAM activities, the Cross-TIG MAM work group will need to develop further guidance on the specific processes for these types of non-project-specific MAM activities. This guidance will be included in the MAM Manual.

10.6.1 Definition of Monitoring Data and Information

- (a) Monitoring data include, but are not limited to, any datasets or model results collected, compiled, or utilized as part of DWH NRDA restoration. Monitoring data may be generated during any phase or component of restoration (including, but not limited to, planning, compliance, engineering and design, construction, as-built, baseline, post-implementation, and others), or as part of any project-specific monitoring or non-project specific data collection (i.e., to address TIG, Restoration Type, or cross-resource MAM priorities). Some MAM data may be protected from public disclosure under other regulatory authorities (personally identifiable information, Magnuson–Stevens Fishery Conservation and Management Act (MSFCMA), etc.), policies, or security measures (see Section 11.4 for further information).
- (b) Monitoring information includes any descriptive activities, plans, documents, and reports generated outside of the Restoration Portal monitoring that support evaluations of progress toward restoration goals and potential needs for corrective actions.

10.6.2 Monitoring and Data Standards

- (a) Monitoring and data standards will be established by the Cross-TIG MAM work group to increase consistency and allow for future analysis across TIGs and Restoration Types. Coordination with other restoration and science programs, as applicable, may be conducted prior to the development of these standards. Data collection protocols may be developed in coordination with existing monitoring programs and other Gulf of Mexico restoration programs, to the extent possible, to enhance compatibility with other existing datasets. A more in-depth list and description of monitoring and data standards will be included in the MAM Manual.
- (b) Monitoring standards will include, but are not limited to, parameters/metrics, performance criteria, and data collection protocols (further described in the MAM Manual).
- (c) Data standards will include, but are not limited to, Federal Geographic Data Committee/International Organization for Standardization (FGDC/ISO) standard

metadata, acceptable units, measurement precision (number of digits), a QA/QC process, a data dictionary, and a readme file (further described in the MAM Manual).

10.6.3 MAM Plan Development

- (a) The Cross-TIG MAM work group will build on conceptual monitoring plans and frameworks developed during Early Restoration (See PDARP Appendix 5.E) and establish a set of guidelines for standard project MAM plans for inclusion in the MAM Manual. These MAM plans will include measurable objectives with associated performance metrics to track progress toward restoration goals, methodologies and parameters for data collection, identification of key uncertainties, and potential corrective actions. If adjustments from the recommended monitoring standards described in the MAM Manual are needed, these adjustments should be described in the project-specific MAM plan and agreed to by the TIG. When applicable, Trustees should include tracking of compliance with appropriate regulations and adaptive management protocols. During the development of a MAM plan, Trustees should consider relevant existing information sources (e.g., fisheries observer programs, marine mammal and sea turtle stranding networks, regional monitoring networks, etc.) that could be leveraged to evaluate project performance.
- (b) All MAM plans will include a description of how the monitoring data will be managed (i.e., QA/QC procedures, metadata, data sharing, and storage). If project monitoring data will be provided by an outside data platform, the process for the data submission to the Restoration Portal should be specified within the data management section of the monitoring plan. If MAM data are protected from public disclosure under other regulatory authorities (personally identifiable information, Magnuson–Stevens Fishery Conservation and Management Act (MSFCMA), etc.), policies, or security measures, these reasons should also be explained, and any such limitations will be identified in the MAM plan (see Section 11.4 for further information).
- (c) Implementing Trustees will be responsible for ensuring that monitoring and data management is carried out in accordance with the MAM plan developed for each specific restoration project. If changes arise during implementation that will alter the planned monitoring activities, the project-specific MAM plan should be updated by the Implementing Trustee to reflect these changes, be approved by the TIG, and re-uploaded to the Restoration Portal.

10.6.4 MAM Data Review and Clearance

Detailed guidance on verification and validation steps and data review will be built on the monitoring data QA/QC, clearance, and release steps developed during Early Restoration and

included in the MAM Manual. Generally, before data is added to the Restoration Portal, the data should go through the appropriate QA/QC process in accordance with the data management section of the monitoring plan. Implementing Trustees will verify and validate MAM data and information. The submitting Trustee will give the other TIG members time to review the data before making such information publicly available. Before submitting the monitoring data and information package, co-Implementing Trustees shall confirm with one another that the package is approved for submission. No data release can occur if it is contrary to federal or state laws.

10.6.5 MAM Data Storage and Accessibility

The Restoration Portal is the central repository for all MAM information (including plans, reports, and other associated documents) and will allow for publication of monitoring data for public access. The Restoration Portal offers a centralized storage option for each Trustee that will meet data storage and accessibility (internal and public) requirements; however, Trustees may also maintain records on other platforms. More detailed data entry steps and workflows for restoration data management can be found in the Restoration Portal Manual. Trustees will provide DWH NRDA MAM data and information to the Restoration Portal as soon as possible and no more than 1 year from when data are collected. If it will not be possible to add data within that time frame, an estimated time frame of when to expect data after it has been collected should be provided in the data management component of the MAM plan. If data originate from another source database, an explanation of where the data originated from, as well as a description of the original source data's long-term management and archiving, should be provided. Specifics should be described in the data management component of the MAM plan.

10.6.6 MAM Data Sharing

- (a) The Trustees will ensure that data sharing follows standards and protocols set forth in the Open Data Policy, Executive Order 13642, dated May 9, 2013, Making Open and Machine Readable the New Default.
- (b) MAM data and information may be added to the Restoration Portal and determined ready to be made publicly available via the Trustee Council website throughout the calendar year. At a minimum, the Trustees will update the monitoring activities at a frequency specified by the Trustee Council for public reporting (see Section 12.0, Reporting).

10.6.7 MAM Data Analysis and Synthesis

- (a) Guidance on necessary data analysis and synthesis will be developed by the Cross-TIG MAM work group for inclusion in the MAM Manual. Data from outside sources may be

incorporated into analysis, but the outside sources should contain adequate metadata and meet minimum QA/QC standards. External scientific support may be used to conduct analysis and synthesis.

- (b) TIGs will share MAM data aggregation and analysis responsibilities with each other, especially when Restoration Types overlap with geographic areas, to help assess the combined effects of restoration projects and to improve the efficiency and overall effectiveness of restoration evaluation.

10.7 MAM Reporting and Tracking

The Trustees will report and track progress toward achieving restoration goals and objectives.

10.7.1 Project Monitoring Reporting and Tracking

- (a) Implementing Trustees will report on general monitoring activities as part of the project reporting described in Section 12.0, Reporting.
- (b) Implementing Trustees will upload final MAM documents, including a final monitoring plan and interim and final MAM reports, to the Restoration Portal to be shared with the Trustee Council and the Cross-TIG MAM work group. The documents will then be made publicly available.
- (c) Interim MAM reports will be produced by the Implementing Trustee and provided to the TIG at the frequency defined in the final monitoring plan. Report templates (including guidance on report frequency) developed during Early Restoration will be updated by the Cross-TIG MAM work group and included in the MAM Manual. Interim monitoring reports should contain summary statistics for MAM data, an overview of progress toward project restoration objectives, and a determination of the need for corrective actions. Reports should adequately describe the method to obtain results so they can be replicated.
- (d) A final MAM report will be provided before a project is considered complete. Final monitoring reports should contain a final analysis of project monitoring data, a report on the final project outcomes, and considerations for planning future projects.

10.7.2 TIG MAM Reporting and Tracking

As part of the Trustee Council meetings that will occur at least once a year, the TIG will provide an annual update on the status of MAM activities, including a summary of monitoring results by Restoration Type and/or geographic focus areas. TIGs may also provide similar updates during the TIG-specific annual meetings. TIGs will coordinate with Implementing Trustees to aggregate

monitoring data by Restoration Type for reporting to the Trustee Council to use for its annual meeting (the Trustees may utilize the Restoration Portal to make automated reports). Further analysis, beyond aggregating data, may be done less frequently. Further guidance for monitoring data aggregation, analysis, and reporting will be included in the MAM Manual.

10.7.3 Restoration Type MAM Reporting and Tracking

MAM information and data compiled and entered into the Restoration Portal by Implementing Trustees and TIGs for each Restoration Type across TIGs will be synthesized to document progress toward meeting Restoration Type goals. The synthesis will be the responsibility of the Cross-TIG MAM work group. The Cross-TIG MAM work group will determine the mechanism by which this synthesis occurs and describe it in the MAM Manual.

10.7.4 Programmatic MAM Reporting and Tracking

The Cross-TIG MAM work group, at the direction and approval of the Trustee Council, will provide programmatic summarization of MAM analysis and collective progress toward meeting the programmatic and Restoration Type goals. Trustees will communicate a programmatic update to the public approximately every 5 years, including data and analyses. This review could include any evidence to support the identification of the potential unknown conditions. Mechanisms for communication to the public will be described in more detail in the MAM Manual.

11.0 DATA MANAGEMENT

Multiple data systems are utilized to manage data generated by the Trustees throughout the duration of this NRDA. These systems are independent but complementary tools that help the Trustee Council meet its responsibilities. The Trustee Council utilizes these data management systems, coupled with a common public Web interface, to collect and present information on restoration implementation. The primary data management systems for restoration implementation include the following:

- (1) The Administrative Record managed by the LAT, and housed on a DOI website, stores decisional documents by the Trustee Council and TIGs, as described in Section 3.3.
- (2) The Gulf Spill Restoration website supports the Trustee Council's project submission portal which is a database for collecting project ideas from the public across all Restoration Areas. This is further described in Section 11.1 below.
- (3) The Data Integration Visualization Exploration and Reporting (DIVER) system contains both assessment data and restoration implementation information; the latter is contained within the Restoration Portal. This system is housed, managed, and overseen

by NOAA on behalf of the Trustee Council and as designated by the LAT. This system is further described in Section 11.2.

11.1 Restoration Project Submission

The Trustees are able to receive project submissions from the public for consideration when developing restoration plans (pursuant to Section 9.4.1.3) through both Trustee-specific websites and the Trustee Council website. Any individual, organization, or entity may submit project ideas through any or all of the applicable project submission websites. The procedures below are only applicable to the Trustee Council website because it is inclusive of all TIGs. Each TIG may specify its preferred location for receiving public project ideas as part of its respective restoration planning.

11.1.1 Data Entry

The Trustee Council website provides a variety of project idea submission methods, including online and downloadable PDF forms. Submission forms are designed to capture detailed project information, including description, location, restoration activities, habitats benefitted, cost, partners, and submitter contact information. Online and alternative submission forms may be found on the Trustee Council website.

11.1.2 Data Review and Access

Project submissions are reviewed by the website administrator according to the posting guidelines. Projects that meet the posting guidelines will be published to the website, where they can be accessed by Trustees and the public. To further support internal review and evaluation, project submission reports and any supplemental project documents provided by the submitters will be made available to the Trustees. Online access to project submissions can be found on the Trustee Council website.

11.2 Restoration Implementation and Project Data Management

- (a) The Trustee Council manages restoration implementation and project information through the centralized Restoration Portal platform within DIVER. Data and information managed in the Restoration Portal are accessible to the public through the Trustee Council website.
- (b) The Restoration Portal provides data entry and reporting tools for the Trustee Council to manage, review, and publish restoration data and related information. The Restoration Portal collects project-level information and aggregates information at the individual Trustee, TIG, and Trustee Council levels.

- (c) Detailed process and workflows for restoration data management can be found in the Restoration Portal Manual. This manual provides detailed guidance regarding data entry and instructions for using the Restoration Portal.

11.2.1 Project and Non-Project-Specific Progress Tracking

11.2.1.1 Record Creation

The Implementing Trustee will submit a Portal ID Form, for each TIG-approved project and non-project-specific activities (i.e., planning, administration and oversight, unknown conditions, and MAM activities that are not part of a specific project and considered project costs). The completed Portal ID Form will be provided to the LAT and then used by the Restoration Portal Administrator to create a portal record. Records will be established within approximately 30 days of TIG approval. Records may be established before final TIG approval for the purpose of generating project codes and initiating compliance procedures discussed in Section 9.4. Each project record will contain information related to project description, progress, finances, environmental compliance, and monitoring, and each non-project specific record will contain financial information and a general description and status of that respective activity.

11.2.1.2 Record Updates

The Trustees will update their records at least annually, as specified in Section 11.2.5. TIGs may choose to update their records more frequently and make the information publicly available via the Trustee Council website, using procedures agreed upon by the TIG.

11.2.1.3 Project and Non-Project Updates

Trustees will update project records throughout the planning, execution, and post-execution stages. These updates will include, but may not be limited to, the following: contracting actions and financial expenditures (see Section 11.2.2 below), environmental compliance, planning and construction milestones and outcomes, and long-term activities, including monitoring and operations, management, and maintenance, as applicable. Project updates will focus on those activities and expenditures occurring during the reporting period.

Trustees will update non-project records to include a general description of activities and expenditures during the reporting period.

11.2.1.4 Record Closeout

Implementing Trustees will close a record when all expenditures have been reconciled (See Section 9.5.1.6) and the final annual report is finished.

11.2.2 Financial Tracking

The Implementing Trustees will track and report their respective Trustee financial information that will be aggregated by the LAT at the TIG and Trustee Council level. Financial information includes deposits, transfers, and withdrawals from the DOI Restoration Fund, budgets authorized within restoration plans and subsequent TIG resolutions, expenditures, unallocated funds, interest earned, and any Trustee fund transfers. Financial reports will summarize withdrawals and expenditures by Trustee, Restoration Type, and TIG for both project and non-project specific activities for the duration of the funded activity. The following specifically addresses the data management aspects of financial data tracking (see Section 6 for procedures related to the DOI Restoration Fund and Section 7 for financial management and accounting procedures).

11.2.2.1 Initial Financial Data Entry

- (a) Upon withdrawal of funds by a Trustee, the LAT will submit financial information to the Restoration Portal to initiate financial tracking for the applicable project or non-project records.
- (b) The record(s) will be updated with:
 - (1) The total authorized budget.
 - (2) Implementing Trustee(s) and the funds each has received.
 - (3) The amount of funds by TIG(s) and Restoration Type(s).

11.2.2.2 Updating Financial Records

The Implementing Trustee's authorized financial representative will update financial records for expenditures and fund transfers to other Trustees or projects. At a minimum, Implementing Trustees' authorized financial representatives will report actual expenses for each of their respective records annually, as specified in Section 7. These expenses will be reported for the reporting period and will be reported by Trustee agency, TIG, and Restoration Type.

Financial records in the Restoration Portal will be updated quarterly, by the LAT, to reflect any funds received or returned to the DOI Restoration Fund. Records will be published to the public at the conclusion of the annual review period (See Section 11.2.5).

11.2.2.3 Tracking Interest Earned

The LAT will submit the amount of DOI Restoration Fund interest earned by TIG to the Restoration Portal annually. Similarly, each Trustee will annually report interest earned in its respective agency account by TIG to the Restoration Portal.

11.2.3 Compliance Tracking

The TIGs through the Implementing Trustees will track and report project environmental compliance information in a timely manner within the Restoration Portal and the Trustee Council website by submitting documents for inclusion in the Administrative Record. This includes consultations, progress, and outcomes, as discussed above in Sections 9.4.7 and 9.4.8. Trustees will also provide updates on compliance milestones as part of the project reports to the Trustee Council and public discussed in Section 12.

11.2.4 MAM Tracking

- (a) The Trustee Council will be responsible for tracking, analyzing, and reporting restoration monitoring information and data, as described in Section 10. Monitoring activities, including metrics, data collection frequency, and performance criteria, is tracked in the Restoration Portal. Monitoring data, per provisions specified in Section 10 of these SOPs, will be provided to the public through the Trustee Council website. Resolutions may be required at the discretion of the TIGs for data releases to the public.
- (b) The Trustee Council, through the Cross-TIG MAM work group, will provide a standard information management approach for Trustee submission and reporting of monitoring activities (see Section 10). The Restoration Portal is the central repository for all MAM information (including plans, reports, project photos, and other associated documents) and will allow for publication of monitoring data for public access. Monitoring data will be accessible to all Trustees.

11.2.5 Annual Restoration Data Submission and Review

- (a) Implementing Trustees will be responsible for entering and updating the data on their restoration projects and non-project specific activity in the Restoration Portal. At a minimum, project information will be entered into the Restoration Portal once a year to support annual reporting. Compliance and monitoring data will be updated pursuant to Sections 9.4.7 and 10.6, respectively. Prior to the start of the annual reporting period, the LAT will establish an annual reporting schedule, identifying milestone deadlines and the final publishing date. The LAT will coordinate with the Restoration Portal administrator to generate the project-level and aggregated reports for Trustee review. Each Trustee will review the reports, coordinate with its TIG members, and make

necessary edits within the Restoration Portal prior to the Restoration I Portal administrator posting the final annual reports on the Trustee Council website. The LAT will post the final annual reports to the Administrative Record.

- (b) Trustees are encouraged to enter project progress and monitoring data more frequently than once a year, as available, and to post to the Trustee Council website to support public transparency. Each TIG will agree upon a process for notifying the other TIG Trustees before a Trustee posts new or modified project information. Due to the financial data being aggregated at the Trustee Council level, comprehensive financial information will be published only once a year, as prescribed above.

11.3 Assessment Data Management

- (a) The majority of the environmental data collected to support the NRDA may be found in DIVER and the Environmental Response Management Application (ERMA) Deepwater Gulf Response mapping tool, which may be accessed on the Trustee Council website.
- (b) The DIVER data warehouse and query tool is a publicly accessible application that houses environmental data collected to support the NRDA. The DIVER application integrates data from many sources, including Trustee and historical data. The DIVER Explorer query tool can be used to filter, map, and download data and results.
- (c) ERMA Deepwater Gulf Response is a publicly accessible online mapping tool that displays spatial data layers and analysis from the DWH Response and Natural Resource Damage Assessment and Restoration effort.
- (d) The Administrative Record refers directly to both DIVER and ERMA for data and analysis supporting Chapter 4 of the PDARP/PEIS.

11.4 Public Data Sharing

The Trustee Council will make data and informational products available to the public. The information published to the public domain will be approved by the Trustees prior to publishing. Available information includes, but is not limited to, project descriptions and activities, finances, and monitoring data, subject to any limitations applicable to disclosing certain monitoring data identified in Section 10.

- (a) Information about how to access data will be provided to the public through the Trustee Council's website.
- (b) Data requests will be addressed by exporting the applicable reviewed/published data from the Restoration Portal and sending the exported data directly to the requestor. If

the requestor applies their own interpretations or reformatting of the original data, those data modifications will not be reviewed by the Trustees or Data Management Team.

- (c) The Restoration Portal will provide for public access to filter, map, and download Trustee-approved restoration project information and environmental data.
- (d) Data collected through Trustee restoration activities may also be made available through other sites (e.g., data.gov) as determined by the Trustee Council.
- (e) The Trustees will endeavor to use industry standards for metadata (such as FGDC/ISO metadata standards), particularly with environmental and spatial data, to facilitate data sharing.
- (f) The Trustees will ensure that data sharing follows standards and protocols set forth in the Open Data Policy Executive Order 13642, dated May 9, 2013, Making Open and Machine Readable the New Default.

12.0 REPORTING

- (a) The Trustee Council will provide reports to the public that contain updates on restoration activities and expenditures, as well as reports resulting from programmatic reviews (see Section 10.4.2.4). Annual reports will include expenditures, the status of restoration activities conducted to date, and progress made since the last reporting period. These reports will be posted on the Trustee Council website and will include both detailed and aggregated information across TIGs. Additionally, the Restoration Portal has the capacity to generate a variety of internal data summaries and reports to inform the Trustees on restoration progress or other specific queries.
- (b) The Trustee Council will provide the reports described below to the public each year. These reports will be generated by the LAT through the Restoration Portal in a consistent format based on the data submitted by the Implementing Trustees for those activities. The LAT will facilitate report generation in collaboration with the Restoration Portal administrator.
- (c) The Trustee Council will provide the reports described below to the public annually.

12.1 Annual Project and Non-Project Specific Progress Reports

Project reports will include: a summary of progress; available monitoring and as-built data, POCs, and financial status; including an accounting of both that year's expenditures and a

cumulative financial balance. Non-project specific activity reports will include a summary of progress and financial status for that activity.

12.2 Annual Financial Report

- (a) This report will provide a summary of expenditures, receipts, and balances per TIG and per Restoration Type as a means to track progress relative to the Restoration Agreement (Appendix B).
- (b) Financial summaries for each Trustee, TIG, and the full Trustee Council may be furnished by the Restoration Portal administrator as needed.
- (c) Additionally, the Restoration Portal may generate various internal reports and data queries to assist the Trustees, including interim monitoring data and progress reports, TIG and Restoration Type progress summaries, and other ad hoc reports requested by the Trustees.

13.0 PUBLIC AFFAIRS AND OUTREACH

13.1 Public Affairs

13.1.1 Media Contacts

Each federal agency and state will have at least one designated media contact. These media contacts will be posted on the Trustee Council website.

13.1.2 Media Inquiries

- (a) A media inquiry regarding a TIG's activities will be handled by the media contact(s) designated by the TIG. The TIG-designated media contact(s) will provide the media inquiry to all TIG members; the response will be coordinated and approved by all TIG Trustees.
- (b) A media inquiry regarding Trustee Council matters will be handled by the Trustee Council's designated media contact(s). The inquiry will be provided to all Trustee Council members. The proposed response will be provided to the members for review and approval.

13.1.3 Press Releases

- (a) All Trustee Council press releases must be approved by all Trustee Council members prior to distribution.

- (b) All TIG press releases must be approved by all TIG members prior to distribution.

13.2 Public Information Materials

- (a) The Trustee Council may develop any number of public information materials to inform and educate the public about its activities. For consistency, the Trustee Council may create templates and guidance for developing informational materials to be used by the Trustee Council and TIGs.
- (b) Trustee Council members or their designated media contact(s) will work collaboratively to determine content for templates or public information materials. Unless released in response to a public information request, any public information materials developed by the Trustee Council shall be approved by the Trustee Council before they are released to the public.
- (c) TIGs may also develop public information materials and templates and guidance for the development of informational materials. TIG members or their representatives shall work collaboratively to determine content for these materials. Unless released in response to a public information request, the materials shall be approved by the TIG members before they are released to the public.
- (d) The Cross-TIG MAM may also develop, at the request of the Trustee Council, public information materials. Cross-TIG MAM members or their representatives shall work collaboratively with the LAT regarding content and format for these materials. The materials shall be approved by all Trustee Council members before they are released to the public.

13.3 Event Calendar

The Trustee Council will maintain a public meeting and event calendar on its website. The calendar will list both TIG and Trustee Council events and meetings.

13.4 Website Postings

- (a) The Trustee Council will maintain its public website, Gulf Spill Restoration, which contains information on restoration activities.
- (b) The Trustee Council website will provide public access to restoration information, in one central location, including regular updates from the Trustee Council, the TIGs, and individual Trustee agencies.

- (c) The Trustee Council website will be maintained and updated through the LAT by the website administrator. Updates will include changes in text, images, web stories, etc. to ensure the website stays current. Maintenance will include minor changes to the home page organization to draw attention to a topic or make information easier for the public to view and access. Content changes or new pages must be reviewed and approved by all Trustees before being posted.
- (d) The Trustee Council website will also contain webpages for each of the five state TIGs and the Open Ocean and Region-wide TIGs. All content changes to the TIG webpages (e.g., text, images, web stories) must be reviewed and approved by all TIG members from the respective TIG before being posted by the website administrator.
- (e) The Trustee Council website will also contain updates from the Trustee Council and the TIGs in the form of web stories. All Trustee Council-level stories will be reviewed and approved by all Trustees before being posted. All TIG-level stories will be drafted by the TIG members, in coordination with the PA contact, and approved by all the TIG members before being posted to the TIG webpage.
- (f) The Trustee Council and TIG pages may include the following documents: draft and final restoration plans; project monitoring information; informational fact sheets; project details, status reports, and other activity tracking information; restoration progress updates and reports; notices and information regarding upcoming outreach/public participation activities; Trustee contact information; links to individual Trustee websites; and link(s) to the Administrative Record(s).

13.5 Public Engagement

13.5.1 Trustee Council Public Meetings

The Trustee Council may hold public meetings related to Trustee Council or restoration activities. At least once a year, the Trustee Council will conduct a public meeting during which each TIG will provide an update on the status of its restoration planning, implementation, and monitoring/adaptive management, and where there will be opportunity for public input. When the Trustee Council determines that one or more public meetings are needed to facilitate public engagement, it shall identify the timeframe during which public meetings will be held, considering various factors, including but not limited to, the type of public meeting (e.g., in-person, webinar), the availability of Trustee representatives to attend and the availability of suitable venues, as determined by the Trustee Council.

13.5.2 TIG Public Meetings

TIGs may host public meetings related to public engagement, restoration plan review, or project scoping, and they may develop additional forums for general information exchange and dialogue. TIGs will hold at least one public meeting per year, unless a TIG planning cycle calls for more frequent meetings, to discuss the status of its restoration planning, upcoming restoration planning (including the restoration type[s] that TIG will focus on for a specified timeframe), and where there will be an opportunity for public input. These TIG meetings for public input may be coordinated with other restoration meetings. When a TIG determines that one or more public meetings are needed to facilitate plan development and review or other public engagement, the TIG shall identify the timeframe during which public meetings will be held, considering various factors, including but not limited to, the type of public meeting (e.g., in-person, webinar), the length of any public comment period that may be required by law, availability of TIG Trustee representatives to attend the meetings, and the availability of suitable venues as determined by the TIG.

13.5.3 Notice of Trustee Council and TIG Public Meetings

Notices of public meetings will be made available to the public in a form deemed appropriate by the Trustee Council and the TIGs, respectively. These notices may be in forms that include, but are not limited to, emails, advertisements, legal notices, and web postings. Notices of meetings shall be developed and approved by each body, respectively.

14.0 APPENDICES

The following appendices are referenced in the SOPs.

- A) Consent Decree Among Defendant BP Exploration & Production Inc. (“BPXP”), the United States of America, and the States of Alabama, Florida, Louisiana, Mississippi, and Texas
- B) Restoration Agreement Among the United States and the Gulf States Relating to Natural Resource Restoration
- C) Trustee Council Memorandum of Understanding
- D) Administrative Functions Funding Table
- E) Memorandum for SOP Amendments and Guidance
- F) Financial Appendices
 - 1) Trustee Account Detail
 - 2) Authorized Budget Change Procedures
 - 3) Audit Scope of Work
 - 4) Agreed Upon Procedures Engagement Scope of Work
- G) Environmental Compliance Manual

Appendix A.

**Consent Decree Among Defendant BP
Exploration & Production Inc. (“BPXP”), the
United States of America, and the States of
Alabama, Florida, Louisiana, Mississippi,
and Texas***

* This Appendix includes the main body of the Consent Decree, but not the attendant appendixes. Those appendixes may be found at:
<https://www.justice.gov/enrd/deepwater-horizon>

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA**

**In re: Oil Spill by the Oil Rig
“Deepwater Horizon” in the Gulf
of Mexico, on April 20, 2010**

**This Document Relates to:
Nos. 10-4536, 10-04182, 10-03059,
13-4677, 13-158, 13-00123**

* MDL No. 2179
*
*
* SECTION: “J”
* JUDGE BARBIER
*
* MAGISTRATE JUDGE
* SHUSHAN
*
*

**CONSENT DECREE AMONG DEFENDANT BP EXPLORATION & PRODUCTION
INC. (“BPXP”), THE UNITED STATES OF AMERICA, AND THE STATES OF
ALABAMA, FLORIDA, LOUISIANA, MISSISSIPPI, AND TEXAS**

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A. This Consent Decree addresses civil claims arising from the *Deepwater Horizon* Incident asserted by the United States and/or the Gulf States (Alabama, Florida, Louisiana, Mississippi, and Texas) against BPXP and BP Entities, including claims for civil penalties, natural resource damages, response costs, and other damages. The Gulf States and BPXP have also entered into a separate settlement agreement addressing economic damages and other claims arising from the *Deepwater Horizon* Incident asserted by each Gulf State against BP Entities (“Settlement Agreement”).

B. The United States of America filed a complaint on December 15, 2010, captioned *United States v. BP Exploration & Production Inc., et al.*, No. 10-4536 in MDL 2179 (E.D. La.), relating to the *Deepwater Horizon* Incident alleging, among other things, that BPXP violated the CWA and is liable without limitation under OPA for removal costs and damages, including for, *inter alia*, injuries to, destruction of, loss of, or loss of use of natural resources and net loss of taxes, royalties, rents, fees, and net profit shares due to the injury to, destruction of, and loss of real property, personal property, and natural resources.

C. The State of Alabama filed a first amended complaint on April 7, 2011, captioned *State of Alabama v. BP p.l.c.*, Case No. 2:10-CV-04182 (E.D. La.), that was transferred to MDL 2179 (E.D. La.). Alabama’s complaint alleges, among other things, that BPXP and certain other BP Entities violated the Alabama Water Pollution Control Act, Ala. Code § 22-22-1 *et seq.*, the Alabama Air Pollution Control Act, Ala. Code § 22-28-1 *et seq.*, the Alabama Hazardous Wastes Management Act, Ala. Code § 22-30-1 *et seq.*, and the Alabama Solid Waste and Recyclable Materials Management Act, Ala. Code § 22-27-1 *et seq.*, and therefore are liable for civil penalties under those statutes. Alabama’s amended complaint also sought costs associated with

oil spill response actions, punitive damages and compensatory damages, including, without limitation, damages to natural resources and State properties, lost tax, and other revenues, under the Alabama Water Pollution Control Act, OPA, general maritime law, and common law.

D. The State of Louisiana filed a first amended complaint on April 19, 2011, captioned *State of Louisiana v. BP Exploration & Production, Inc.*, Case Nos. 11-cv-0516 and 10-cv-03059 in MDL 2179 (E.D. La.). Louisiana's amended complaint alleges, among other things, that BPXP and certain other BP Entities violated the Louisiana Environmental Quality Act/Water Control Law, La. R.S. § 30:2011 *et seq.*, § 30:2071 *et seq.*, and are therefore liable for civil penalties under that statute. Louisiana's amended complaint also sought costs associated with oil spill response actions and damages, including, without limitation, damages to natural resources, State property, costs of increased public services, and lost revenues, pursuant to OPA, and the Louisiana Oil Spill Prevention and Response Act, La. R.S. § 30:2451 *et seq.*

E. The State of Texas filed a complaint on May 17, 2013, captioned *State of Texas v. BP Exploration & Production Inc., et al.*, Case No. 1:13-cv-315 (E.D. Tex.), that was transferred to MDL 2179, where Texas filed an amended complaint on June 18, 2013, captioned *State of Texas v. BP Exploration & Production Inc., et al.*, Case No. 13-cv-4677 (E.D. La.). Texas' amended complaint alleges, among other things, that BPXP, certain other BP Entities, and other parties are liable for civil penalties under Texas' Oil Spill Prevention and Response Act, Tex. Nat. Res. Code § 40.001 *et seq.*, and the Texas Water Code, Tex. Water Code § 26.001 *et seq.* Texas' amended complaint also sought cost recovery and damages, including, without limitation, for injury to natural resources, lost tax revenues, lost state park revenues, and other economic damages, under OPA, the Comprehensive Environmental Response, Compensation, and Liability

Act (“CERCLA”), 42 U.S.C. § 9601 *et seq.*, Texas’ Oil Spill Prevention and Response Act, Tex. Nat. Res. Code § 40.001 *et seq.*, and the Texas Water Code, Tex. Water Code § 26.001 *et seq.*

F. The State of Mississippi filed a complaint on April 18, 2013, captioned *Hood v. BP Exploration & Production, Inc., et al.*, Case No. 1:13-cv-00158 (S.D. Miss.), that was transferred to MDL 2179 (E.D. La.) on May 9, 2013. Mississippi’s complaint alleges, among other things, that BPXP, certain other BP Entities, and other parties are liable for damages to the State, including for injury to natural resources, economic losses, and costs of providing increased public services under OPA and general maritime law, and for punitive damages under general maritime law. The State of Mississippi filed an additional complaint in the Circuit Court for the First Judicial District of Harrison County, Mississippi, on April 19, 2013, captioned *Hood v. BP Exploration & Production, Inc., et al.*, bearing case number A2401-13-93 on the docket of said court. The aforesaid action was removed to the U.S. District Court for the Southern District of Mississippi, Case No. 1:13-cv-00206 on May 3, 2013, and was transferred to MDL 2179 (E.D. La.) on May 20, 2013. Mississippi’s additional complaint alleges, among other things, that BPXP, certain other BP Entities, and other parties violated the common law, Mississippi Air and Water Pollution Control Law, Miss. Code Ann. § 49-17-1 *et seq.*, the Antiquities Law of Mississippi, Miss. Code Ann. § 39-7-1 *et seq.*, the Solid Waste Disposal Law of 1974, Miss. Code Ann. § 17-17-1 *et seq.*, and Miss. Code Ann. § 29-1-19, and therefore are liable for civil penalties under those statutes. Mississippi’s additional complaint also sought costs associated with economic, compensatory, and punitive damages, including, without limitation, damages to natural resources and State properties, and lost tax and other revenues under Mississippi law.

G. The State of Florida filed a first amended complaint on April 20, 2013, captioned

State of Florida v. BP Exploration & Production, Inc., et al., Case No. 5:13-cv-00123 (N.D. Fla.), that was transferred to MDL 2179 (E.D. La.). Florida's amended complaint alleges, among other things, that BPXP and certain other BP Entities are liable for damages, including, but not limited to, loss of taxes, under OPA, common law, and general maritime law, and punitive damages under general maritime law and Florida law. The Trustees for the natural resources of the State of Florida filed a complaint on March 5, 2014, captioned *Vinyard et al. v. BP Exploration & Production, Inc., et al.*, Case. No. 3:14-cv-00112 (N.D. Fla.), that was transferred to MDL 2179 (E.D. La.) on March 24, 2014. The Trustees for the State of Florida's complaint alleges, among other things, that BPXP and certain other BP Entities are liable for removal costs and natural resource damages under OPA.

H. On February 22, 2012, the Court entered an order granting partial summary judgment and finding BPXP liable for civil penalties under Section 311(b)(7) of the CWA, 33 U.S.C. § 1321(b)(7), in an amount to be determined by the Court. In the same order, the Court issued a declaratory judgment against BPXP, holding BPXP jointly and severally liable for removal costs and damages under Section 1002 of OPA, 33 U.S.C. § 2702. *See In re Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010*, 844 F. Supp. 2d 746 (E.D. La. 2012), *aff'd in part sub nom. In re Deepwater Horizon*, 753 F.3d 570 (5th Cir. 2014), *rehearing en banc denied* 775 F.3d 741 (5th Cir. 2015), *cert. denied* 135 S. Ct. 2893 (2015).

I. On November 14, 2011, the Court entered an order dismissing Alabama's and Louisiana's claims under state law, including for civil penalties, as being preempted by federal law. *In re Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010*, No. 10-3059, 2011 WL 5520295 (E.D. La. Nov. 14, 2011).

J. On October 12, 2011 and December 7, 2011, the DOI, on behalf of BSEE issued BPXP notifications of incidents of noncompliance, alleging, among other things, violations of the OCSLA, 43 U.S.C. § 1301 *et seq.*, and its implementing regulations 30 C.F.R. Part 250, Subparts A, C, D, and Q. The alleged violations occurred while BPXP and its contractors conducted drilling and temporary abandonment procedures at the Macondo Well. BPXP filed administrative appeals of the incidents of noncompliance with the IBLA (IBLA 2012-0050 and IBLA 2012-0085), which appeals have been stayed pending resolution of this action. Subject to the right to an appeal, BSEE has authority to assess civil penalties for incidents of noncompliance, as well as seek other appropriate relief, pursuant to 43 U.S.C. § 1350(b)(1) & (b)(2).

K. On July 15, 2010, the DOI, on behalf of the Bureau of Ocean Energy Management, Regulation and Enforcement, issued a letter regarding BPXP's obligations pursuant to OCSLA and the Federal Oil and Gas Royalty Management Act, 30 U.S.C. § 1756. BPXP filed an administrative appeal of this letter to the IBLA (IBLA 2010-0236), which appeal has been suspended.

L. The U.S. Coast Guard, NOAA, DOI, EPA, USDA, and other federal agencies have incurred costs, including response, removal, and natural resource damages assessment costs, as a result of the discharges of oil into the waters of the United States relating to the *Deepwater Horizon* Incident.

M. Each of the Gulf States, including their respective State Trustees, has incurred costs, including response, removal, and natural resource damages assessment costs, as a result of the discharges of oil into the waters of the United States and/or the Gulf States relating to the

Deepwater Horizon Incident.

N. On January 30, 2013, the Court in *U.S. v. BP Exploration & Production, Inc.*, Case No. 2:12-cr-00292 (E.D. La.) approved a criminal Plea Agreement between the United States and BPXP pursuant to which BPXP pled guilty to an information charging it with eleven counts of violations of 18 U.S.C. § 1115 (Misconduct or Neglect of Ship Officers), one count of violation of 18 U.S.C. § 1505 (Obstruction of Congress), one misdemeanor count of a violation of 33 U.S.C. §§ 1319(e)(1)(A) and 1321(b)(3) (CWA), and one misdemeanor count of a violation of 16 U.S.C. §§ 703 and 707(a) (Migratory Bird Treaty Act), relating to the *Deepwater Horizon Incident*.

O. On November 28, 2012, EPA issued a notice of suspension to BP p.l.c., BP America, Inc., BPXP, and other BP Entities from participating in federal contracts and other covered transactions. On February 1, 2013, EPA issued a notice of statutory disqualification to BPXP stating that BPXP cannot receive federal contracts or benefits if any part of the work will be performed at its Houston headquarters.

P. On March 13, 2014, BP p.l.c., BPCNA, BPXP, and certain other BP Entities entered into an Administrative Agreement with EPA to resolve all suspension and debarment matters arising from the *Deepwater Horizon Incident*. The Administrative Agreement incorporates requirements of both the Plea Agreement and a Securities and Exchange Commission Judgment Order entered against BP p.l.c. on December 10, 2012 (*Securities and Exchange Comm'n v. BP p.l.c.*, Case No. 2:12-cv-02774 (E.D. La.)).

Q. Trial has concluded on the United States' CWA claims, No. 10-4536. After the first phase of trial, on September 9, 2014, the Court issued its amended Findings of Fact and

Conclusions of Law finding that the discharge of oil was the result of BPXP's gross negligence and willful misconduct within the meaning of Section 311(b)(7)(D) of the CWA. *See In re Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010*, 21 F. Supp. 3d 657 (E.D. La. 2014). BPXP has disputed and appealed this decision to the U.S. Court of Appeals for the Fifth Circuit.

R. After the second phase of trial, on January 15, 2015, the Court issued its Findings of Fact and Conclusions of Law with respect to the Phase Two Trial (Doc. No. 14021), finding, *inter alia*, that 4.0 million barrels of oil were released from the Macondo Reservoir (Rec. Doc. 14021 ¶ 273); and that, for purposes of calculating the maximum civil penalty under the CWA, 3.19 million barrels of oil discharged into the Gulf of Mexico.

S. The Court conducted the third phase of the trial regarding the United States' civil penalty claim filed under the CWA between January 20 and February 2, 2015. The Court has not yet issued its findings of fact or conclusions of law regarding this third phase of the CWA trial.

T. The Parties agree, and the Court by entering this Consent Decree finds, that this Consent Decree, (i) has been negotiated at arm's length, in good faith, and will limit, avoid and resolve litigation between the Parties, and (ii) is fair, reasonable, and furthers the objectives of the statutes listed in the covenants not to sue.

NOW, THEREFORE, without further adjudication, findings or admissions of any issue of fact or law in connection with the *Deepwater Horizon* Incident, other than those expressly set forth in this Consent Decree, and with the consent of the Parties,

IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. Jurisdiction. This Court has jurisdiction over the subject matter of this action, pursuant to, *inter alia*, 33 U.S.C. §§ 1321(b), 1327, and 2717(b) and 28 U.S.C. §§ 1327, 1331, 1333, 1345, and 1355, and over the Parties for the purposes of the entry and enforcement of this Consent Decree.

2. Venue. Venue lies in the Eastern District of Louisiana pursuant to, *inter alia*, 33 U.S.C. §§ 2717(b) and 1321(b)(7)(E), and 28 U.S.C. §§ 98(a), 1391, and 1395.

3. Findings Regarding Jurisdiction and Venue.

a. Solely for purposes of this Consent Decree or any action to enforce this Consent Decree, the Court finds and the Parties acknowledge and agree that: (a) the Court has exclusive jurisdiction over this Consent Decree and any action to enforce it; and (b) venue is proper in the Eastern District of Louisiana.

b. This Court finds and the Parties agree that the Court has authority to enter this Order as to all claims addressed herein, including those transferred to MDL 2179 pursuant to 28 U.S.C. § 1407.

4. Retention of Jurisdiction. Consistent with the terms of this Consent Decree, including its Appendices, the Court shall retain jurisdiction over this case for the purpose of resolving disputes arising under this Consent Decree and effectuating or enforcing compliance with the terms of this Consent Decree.

II. APPLICABILITY

5. Persons Bound. The obligations of this Consent Decree apply to and are binding upon the United States, each of the Gulf States, and BPXP and, for the limited purposes set forth

in Paragraph 6, BP p.l.c. and BPCNA, and each of their successors, assigns, or other entities or persons otherwise bound by law to comply with this Consent Decree.

6. Participation of BP p.l.c. and BPCNA. BP p.l.c. and BPCNA are entering into this Consent Decree for the limited purpose of guaranteeing the payment obligations of BPXP, providing financial assurance, and granting and receiving covenants not to sue, as set forth in this Consent Decree.

7. Liability of Successors and Assigns.

a. Any legal successor or assign of BPXP, BPCNA, or BP p.l.c. shall be liable for the payment and other performance obligations of BPXP, BPCNA, or BP p.l.c., as applicable hereunder, and an agreement to be so liable shall be included by BPXP, BPCNA, or BP p.l.c., as applicable, in the terms of any sale, acquisition, or merger of BPXP, BPCNA, or BP p.l.c., as applicable, with appropriate terms for the retention or transfer of financial assurances for BPXP's payment obligations under the Consent Decree.

b. No change in the ownership or control of BPXP, BPCNA, or BP p.l.c. shall alter the obligations of BPCNA or BP p.l.c. as guarantors without the express written agreement of the United States and the Gulf States.

c. In the event of the sale, assignment, or transfer of some but not all of BPXP's assets to an unaffiliated third party pursuant to an arm's-length transaction, such third party shall not be liable for BPXP's obligations under this Consent Decree.

III. DEFINITIONS

8. Terms Defined in Statute or Regulation. Capitalized terms used in this Consent Decree that are defined in the CWA, OPA, or the OCSLA, or in regulations promulgated

pursuant to the CWA, OPA, or OCSLA, shall have the meanings assigned to them in such law or regulations, unless otherwise provided in this Consent Decree. In the case of a conflict between a defined term in this Consent Decree and any such term in OPA, CWA, OSCLA, or other law, the Consent Decree shall govern.

9. Terms Defined in this Consent Decree. For purposes of this Consent Decree, whenever the terms set forth below are used, the following definitions shall apply:

a. **“Act of Insolvency”** means any one of the following: the presentation of a winding-up petition in respect of BP p.l.c., the making of an application for an administration order in respect of BP p.l.c., an application to court for an order convening meetings of creditors of BP p.l.c. to consider a scheme of arrangement under the Companies Act 2006 that would materially alter the United States’ or any Gulf State’s rights against BP p.l.c. under this Consent Decree, the summoning of meetings of the creditors of BP p.l.c. (including the United States and the Gulf States) to consider a proposal for a company voluntary arrangement or other composition under the Insolvency Act 1986 that would materially alter the United States’ or any Gulf State’s rights against BP p.l.c. under this Consent Decree, or the appointment of an administrative receiver, administrator, or liquidator in respect of BP p.l.c. If in the case of a petition presented or application made by a creditor, contributory or other third party, such petition or application is stayed, dismissed, or withdrawn within 60 Days of its filing, such a petition or application shall not constitute an Act of Insolvency. For the purposes of this Paragraph, the term “materially alter” means an alteration to the United States’ or any Gulf State’s rights against BP p.l.c. under the Consent Decree which reduces the amounts owed or

payable, or extends the time at which payments are to be made, to the United States or any Gulf State or is otherwise materially prejudicial to the United States or any Gulf State.

b. “**Administrative Agreement**” means the agreement reached on March 13, 2014, between BP p.l.c., BPCNA, BPXP, and certain other BP Entities and the EPA, as amended, to resolve all suspension and debarment matters arising from the *Deepwater Horizon* Incident and which is attached as Appendix 4 to this Consent Decree.

c. “**BP Entity**” or “**BP Entities**” means one or more of the following: BP p.l.c., BPCNA, and BPXP, and any parents, subsidiaries, successors, assigns, and all entities identified in Appendix 7 to this Consent Decree, and, for each of the preceding, all of their current, future, and former officers, directors, and employees in their official capacities.

d. “**BP p.l.c.**” means BP p.l.c., a company incorporated in England whose registered office is at 1 St. James’s Square, London, SW1Y 4PD, England.

e. “**BPCNA**” means BP Corporation North America Inc., incorporated in the State of Indiana, with its current principal place of business in Houston, Texas.

f. “**BPXP**” means BP Exploration & Production Inc., incorporated in the State of Delaware, with its current principal place of business in Houston, Texas.

g. “**BSEE**” means the the Bureau of Safety and Environmental Enforcement in the Department of the Interior.

h. “**Change of Control**” means change of control of BP p.l.c. in the form of a takeover bid, tender offer or other merger transaction (however effected), that has become unconditional in all respects or otherwise effective, under which a third party or group of parties

acting together acquires such number of shares in BP p.l.c. (or an interest in such shares) so as to carry more than 50% of the voting rights in BP p.l.c.

- i. “**Consent Decree**” means this Consent Decree, including all its appendices.
- j. “**Court**” means the United States District Court for the Eastern District of Louisiana.
- k. “**CWA**” means the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251-1388.
- l. “**Date of Lodging**” means the date upon which the United States submits this Consent Decree to the Court, prior to soliciting public comment on the Consent Decree or the PDARP.
- m. “**Day**” means a calendar day unless expressly stated to be a business day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until 5 p.m. Central Time of the next business day.
- n. “**Deepwater Horizon**” means the mobile offshore drilling unit *Deepwater Horizon*, including its engines, gear, tackle, apparel, riser, and appurtenances.
- o. “**Deepwater Horizon Incident**” means (1) all discharges of hydrocarbons or other substances from the Macondo Well, including discharges from, through, or into the *Deepwater Horizon*, occurring on or after April 20, 2010, but prior to the Date of Lodging of the Consent Decree, regardless of any subsequent movement, migration, resuspension, or resurfacing

of such hydrocarbons or other substances; (2) the installation, drilling, construction and blowout of the Macondo Well; (3) the explosion and fire on the *Deepwater Horizon*; (4) the loss of the *Deepwater Horizon*; (5) containment efforts related to the Macondo Well; (6) construction of the relief wells within the meaning of the Macondo Well; and (7) cleanup, removal, and remediation efforts, and all other response or restoration actions, including the application of dispersants, in connection with the foregoing events.

p. “**Deepwater Horizon Oil Spill NRD Fund**” means the incident-specific subaccount within the NRDAR Fund established for the *Deepwater Horizon* Incident.

q. “**DOI**” means the U.S. Department of the Interior.

r. “**DOJ ENRD**” means the U.S. Department of Justice’s Environment and Natural Resources Division.

s. “**Effective Date**” means the date upon which the Court enters this Consent Decree.

t. “**EFT**” means a FedWire Electronic Funds Transfer.

u. “**EPA**” means the U.S. Environmental Protection Agency.

v. “**Exhibit B**” means Exhibit B to the Plea Agreement made enforceable by the Order of Special Conditions of Probation. A copy of Exhibit B is attached to Appendix 5 to this Consent Decree.

w. “**Federal Trustees**” means any and all federal officials designated by the President under Section 1006(b)(2) of OPA, 33 U.S.C. § 2706(b)(2), or authorized under any other applicable law, to act as trustees on behalf of the public for Natural Resources in

connection with the *Deepwater Horizon* Incident, including the Secretary of Commerce, the Secretary of the Interior, the Secretary of Agriculture, and the Administrator of the U.S. Environmental Protection Agency, and their respective delegates.

x. “**Framework Agreement**” means the agreement between BPXP, the United States, and the States of Alabama, Florida, Louisiana, Mississippi, and Texas titled the *Framework for Early Restoration Addressing Injuries Resulting from the Deepwater Horizon Oil Spill*, dated April 20, 2011.

y. “**Gulf State**” or “**Gulf States**” means one or more of the States of Alabama, Florida, Louisiana, Mississippi, and Texas.

z. “**IBLA**” means the Interior Board of Land Appeals in the Department of the Interior.

aa. “**Implementation Plan**” means “the detailed implementation plan” required by paragraph 32 of Exhibit B. The approved Implementation Plan, redacted to remove certain information in conformance with the standard provided by Paragraph 39.b., is attached as Appendix 6 to this Consent Decree.

bb. “**Indemnified Parties**” means those entities identified in Appendix 3 and any indemnified related parties with whom any of the BP Entities has entered into agreements to indemnify, hold harmless, or reimburse the party with respect to U.S. Covered Matters or State Covered Matters, prior to July 2, 2015.

cc. “**Macondo Well**” means (a) Macondo Well 1 (including MC-252#1, Well No. 001ST00BP00, MC-252#1 ST1, Well No. 001ST00BP01), Macondo Well 2 (including MC-

252#2, Well No. 003ST00BP00), and Macondo Well 3 (including MC-252#3, Well No. 002ST00BP00) within Block 252, Mississippi Canyon, OCS Official Protraction Diagram, NH 16 16-10 existing on or before the Date of Lodging of the Consent Decree; (b) the *Deepwater Horizon*; (c) a coffer dam used in the course of removal work conducted during the discharge of oil from Block 252 of the Mississippi Canyon that began April 20, 2010; (d) “the Macondo Well” as defined in the United States’ Complaint in MDL 2179; and (e) the eight aliquots within Block 252, Mississippi Canyon, OCS Official Protraction Diagram, NH 16-10, three of which were owned or operated by BXP or a BP Entity as of July 2, 2015.

dd. “**Natural Resource**” and “**Natural Resources**” means land, fish, wildlife, biota, air, water, ground water, drinking water supplies, sediment, habitat, supporting ecosystem, and/or any other such resources at any time belonging to, managed by, held in trust by, appertaining to, regulated by, assessed as part of the *Deepwater Horizon* Natural Resource Damages assessment, or otherwise controlled by the United States (including resources of the exclusive economic zone; “system unit resources” as defined by 54 U.S.C. § 100721(3); “park system resources” as defined by 16 U.S.C. § 19jj(d); and marine “sanctuary resources” as defined by 16 U.S.C. § 1432(8)), any Gulf State, and/or any Trustee.

ee. “**Natural Resource Damages**” means any costs or damages recoverable by the United States or any of the Gulf States (including the Trustees) as trustees or *parens patriae* on behalf of the public under Section 1002(b)(2)(A) of OPA, 33 U.S.C. § 2702(b)(2)(A), the Park System Resource Protection Act, 54 U.S.C. § 100722 and the former 16 U.S.C. § 19jj-1 (repealed Dec. 19, 2014), the National Marine Sanctuaries Act, 16 U.S.C. § 1443, Section 311(f)(4) and (5) of the CWA, 33 U.S.C. §§ 1321(f)(4) and (5), Section 107(a)(4)(C) of

CERCLA, 42 U.S.C. § 9607(a)(4)(C), any other federal law, state law, common law, or any federal, state, or local regulation, rule, guidance or ordinance, as compensation to the public for injury to, destruction of, loss of, or loss of use of Natural Resources, including any natural resource services they provide, resulting from a release or threat of release of oil or a hazardous substance or any removal or response action (including any diversion of freshwater). Natural Resource Damages include, without limitation: (i) the costs of assessing injury, destruction, loss of, or loss of use of Natural Resources and the resulting damages; (ii) the costs of restoration, rehabilitation, or replacement of injured, destroyed, or lost Natural Resources and natural resource services or of acquisition of equivalent resources; (iii) the costs of planning and monitoring such restoration activities; and (iv) any other compensation for diminution in value or loss of use or non-use values of Natural Resources.

ff. “**NOAA**” means the National Oceanic and Atmospheric Administration.

gg. “**NRDAR Fund**” means the DOI’s Natural Resource Damage Assessment and Restoration Fund.

hh. “**OCSLA**” means the Outer Continental Shelf Lands Act, 43 U.S.C. §§ 1331-1356.

ii. “**OPA**” means the Oil Pollution Act, 33 U.S.C. §§ 2701-2762.

jj. “**OSLTF**” means the Oil Spill Liability Trust Fund established pursuant to 26 U.S.C. § 9509 and 33 U.S.C. § 1321(s).

kk. “**Paragraph**” means a portion of this Consent Decree identified by an Arabic numeral or a lower case letter.

ll. **“Party” or “Parties”** means any or all of the United States, the Gulf States, BPXP, BPCNA, and BP p.l.c.

mm. **“PDARP”** means the *Programmatic Damage Assessment and Restoration Plan for the Deepwater Horizon Oil Spill*.

nn. **“Plea Agreement”** means the agreement approved by the District Court for the Eastern District of Louisiana on January 29, 2013, which is attached as Appendix 5 to this Consent Decree.

oo. **“Project Stipulation”** means a stipulation entered into pursuant to the Framework Agreement.

pp. **“RESTORE Act”** means the Resources and Ecosystems Sustainability, Tourist Opportunities and Revived Economies of the Gulf Coast States Act of 2012, Public Law 112-141, Subtitle F.

qq. **“Section”** means a portion of this Consent Decree denoted by a capitalized Roman numeral.

rr. **“Settling Local Entity”** means any local governmental entity that has, in the past, present, or future, settled claims for economic and other damages arising from the *Deepwater Horizon* Incident.

ss. **“State Covered Matters”** means the claims to which the covenant not to sue provided in Paragraph 61 applies.

tt. **“State Trustees”** means any and all state and local officials designated by any governor of any Gulf State under Section 1006(b)(3) of OPA, 33 U.S.C. § 2706(b)(3), or

authorized under any other applicable law, to act as a trustee on behalf of the public for Natural Resources in connection with the *Deepwater Horizon* Incident, including officials from the Alabama Department of Conservation and Natural Resources, the Geological Survey of Alabama, the Florida Department of Environmental Protection, the Florida Fish and Wildlife Conservation Commission, the Louisiana Coastal Protection and Restoration Authority, the Louisiana Oil Spill Coordinator's Office, the Louisiana Department of Environmental Quality, the Louisiana Department of Wildlife and Fisheries, the Louisiana Department of Natural Resources, the Mississippi Department of Environmental Quality, the Texas Parks and Wildlife Department, the Texas General Land Office, and the Texas Commission on Environmental Quality, and their respective delegates.

uu. **“Trustee” or “Trustees”** means one or more Federal Trustees and/or State Trustees.

vv. **“U.S. Covered Matters”** means the claims to which the covenant not to sue provided in Paragraph 60 applies.

ww. **“USDA”** means the U.S. Department of Agriculture.

xx. **“United States”** means the United States, its agencies, and instrumentalities.

IV. CIVIL PENALTY

10. Civil Penalty Amount. BPXP shall pay the United States the sum of \$5.5 billion as a civil penalty pursuant to 33 U.S.C. § 1321, and subject to the RESTORE Act.

11. Civil Penalty Payment Schedule. BPXP shall pay the civil penalty in accordance with the schedule set forth in Table 1. The Assumed Year presented in Table 1 shall be adjusted, if necessary, so that the first payment is due on the first anniversary after the Effective Date and each subsequent payment is due, respectively, on the subsequent anniversary of the Effective Date.

Table 1: Payment Schedule for Civil Penalty		
Payment Date	Assumed Year	Amount
Anniversary of the Effective Date	2017	\$379,310,345
Anniversary of the Effective Date	2018	\$189,655,172
Anniversary of the Effective Date	2019	\$379,310,345
Anniversary of the Effective Date	2020	\$379,310,345
Anniversary of the Effective Date	2021	\$379,310,345
Anniversary of the Effective Date	2022	\$379,310,345
Anniversary of the Effective Date	2023	\$379,310,345
Anniversary of the Effective Date	2024	\$379,310,345
Anniversary of the Effective Date	2025	\$379,310,345
Anniversary of the Effective Date	2026	\$379,310,345
Anniversary of the Effective Date	2027	\$379,310,345
Anniversary of the Effective Date	2028	\$379,310,345
Anniversary of the Effective Date	2029	\$379,310,345
Anniversary of the Effective Date	2030	\$379,310,345
Anniversary of the Effective Date	2031	\$379,310,343
Total:		\$5,500,000,000

12. Interest on the Civil Penalty. Interest shall accrue on all unpaid portions of the civil penalty in accordance with the requirements of Section VII and shall be paid to the United States on the anniversary of the Effective Date occurring in the year 2032. Such interest and any interest or stipulated penalties due under Paragraphs 44 and 51 for failure to timely pay the civil penalty shall be treated as a civil penalty payment pursuant to the CWA and the RESTORE Act.

13. Civil Penalty Payment Procedure. BPXP shall pay the civil penalty and the interest on the civil penalty through EFT pursuant to instructions that shall be provided upon request to BPXP by the Financial Litigation Unit of the Office of the United States Attorney, Eastern District of Louisiana. BPXP shall cause payment to be accompanied by a transmittal letter that shall specify that the payment is a civil penalty under Section 311(b) of the CWA and is being made pursuant to this Consent Decree, in connection with the *Deepwater Horizon* Incident. BPXP also shall cause the transmittal letter to specify the civil number assigned to this case (10-4536), along with DJ No. 90-5-1-1-10026.

14. Tax Treatment. No BP Entity may capitalize into inventory or basis or take as a tax deduction any portion of the civil penalty payments, including interest, due under this Section IV or any penalties or interest due under Paragraphs 44 and 51 for failure to timely pay the civil penalty.

V. NATURAL RESOURCE DAMAGES

15. Natural Resource Damages Amount. BPXP shall pay \$7.1 billion, plus any of the \$1 billion and accrued interest not yet paid by BPXP under the Framework Agreement, to the United States and the Gulf States for Natural Resource Damages resulting from the *Deepwater Horizon* Incident.

16. Natural Resource Damages Payment Schedule. BPXP shall pay the \$7.1 billion in accordance with the schedule set forth in Table 2. The Assumed Year presented in Table 2 shall be adjusted, if necessary, so that the first payment is due one calendar year after the Effective Date and each subsequent payment is due, respectively, on the subsequent anniversary of the Effective Date. The payments required by this Paragraph shall be

distributed to subaccounts within the *Deepwater Horizon* Oil Spill NRD Fund as set forth in Section 2.4 of Appendix 2. Interest on all unpaid portions of the Natural Resource Damages payments required under this Paragraph shall accrue in accordance with Section VII and shall be paid as provided in Paragraph 21.a.

Payment Date	Assumed Year	Amount
Anniversary of the Effective Date	2017	\$489,655,172
Anniversary of the Effective Date	2018	\$244,827,586
Anniversary of the Effective Date	2019	\$489,655,172
Anniversary of the Effective Date	2020	\$489,655,172
Anniversary of the Effective Date	2021	\$489,655,172
Anniversary of the Effective Date	2022	\$489,655,172
Anniversary of the Effective Date	2023	\$489,655,172
Anniversary of the Effective Date	2024	\$489,655,172
Anniversary of the Effective Date	2025	\$489,655,172
Anniversary of the Effective Date	2026	\$489,655,172
Anniversary of the Effective Date	2027	\$489,655,172
Anniversary of the Effective Date	2028	\$489,655,172
Anniversary of the Effective Date	2029	\$489,655,172
Anniversary of the Effective Date	2030	\$489,655,172
Anniversary of the Effective Date	2031	\$489,655,178
Total:		\$7,100,000,000

17. Final Payment of Early Restoration Funds. As of the Effective Date, the Framework Agreement and the Project Stipulations entered into under that agreement shall be void as to undertakings between BPXP and the Trustees, provided, however, that the Trustees shall use the amounts paid or committed by BPXP under each Project Stipulation for the project(s) and in the manner specified in each such Project Stipulation and the corresponding early restoration plan adopted by the Trustees, except that decisions concerning any project modification(s), the selection and implementation of any replacement project(s), and the use of

any unexpended early restoration project funds shall be made in accordance with the relevant provisions of Appendix 2. No later than 30 days after the Effective Date, BPXP shall pay all then-unpaid amounts that BPXP agreed to pay under the Project Stipulations and the balance remaining under the Framework Agreement (*i.e.*, any portion of the \$1 billion not previously paid under a Project Stipulation plus accrued interest) to Federal and/or State Trustees in accordance with Paragraph 18.

18. Payment Procedure for Natural Resource Damages. BPXP shall make the payments required under Paragraphs 15, 17, and 21 into the *Deepwater Horizon* Oil Spill NRD Fund, to be managed by DOI for the joint benefit and use of the Trustees in accordance with the requirements of Paragraph 19.

19. Use of Natural Resource Damages Payments. The Trustees shall use the amounts paid by BPXP pursuant to Paragraphs 15, 17, and 21 to address injuries and/or losses to Natural Resources (including services provided by Natural Resources) resulting from the *Deepwater Horizon* Incident, including for Natural Resource Damage assessment and planning activities of the Trustees after the Effective Date; for restoration, rehabilitation, replacement, or acquisition of the equivalent of injured or lost Natural Resources or natural resource services as provided in one or more restoration plans adopted by the Trustees consistent with 15 C.F.R. Part 990; for monitoring, information management, oversight, coordination, public education, and administrative activities related to the restoration plans and programs; and for addressing unknown conditions and undertaking adaptive management. The Trustees shall expend such funds in accordance with the provisions of Appendix 2.

20. Role of BP Entities. BPXP and the other BP Entities had and will have no role in developing the content of Appendix 2 beyond that established by law for members of the public.

21. Additional Payments for Unknown Conditions and Adaptive Management. As described in this Paragraph, BPXP shall pay additional funds, not to exceed \$700 million, for use by the Federal and State Trustees (1) to address injuries and/or losses to Natural Resources (including services provided by Natural Resources) resulting from the *Deepwater Horizon* Incident that are unknown to the Trustees as of July 2, 2015, including for any associated Natural Resource Damage assessment and planning activities, or (2) to adapt, enhance, supplement, or replace restoration projects or approaches initially selected by the Trustees. The payments required under this Paragraph shall consist of the following:

a. From the Effective Date, interest shall accrue, as set forth in Section VII, on the unpaid balance of the \$7.1 billion required under Paragraph 15. At any time between January 1, 2026 and the anniversary of the Effective Date in the assumed year 2032, the United States and all of the Gulf States may jointly demand payment of all or a part of the accrued and previously unpaid interest on the amount required under Paragraph 15. BPXP shall pay the requested amount of accrued and previously unpaid interest within 60 Days of receipt of the joint demand in accordance with joint instructions provided by the United States and the Gulf States. On the anniversary of the Effective Date in assumed year 2032, BPXP shall pay any remaining unpaid accrued interest as required under Paragraphs 15 and 16 to the Federal and/or State Trustees in accordance with joint instructions provided by the United States and the Gulf States.

b. In addition to the payment(s) of interest under Paragraph 21.a., on the 16th anniversary of the Effective Date, BPXP shall pay \$232 million to the United States for the joint use of the Federal and State Trustees.

c. The payments required by this Paragraph shall be distributed to subaccounts within the *Deepwater Horizon* Oil Spill NRD Fund in accordance with Section 2.3.3 of Appendix 2.

22. Reimbursement of Assessment Costs. BPXP shall pay a total of \$350 million for previously unreimbursed Natural Resource Damages assessment costs incurred by the Trustees or paid by the OSLTF in connection with the *Deepwater Horizon* Incident prior to the Effective Date and for the publicly-available data management system described in Paragraph 23.f. The \$10 million payment made by BPXP to DOI on July 14, 2015 shall be credited against the \$350 million total payment. Thereafter, BPXP shall pay the remaining \$340 million in accordance with the schedule set forth in Table 3. The Assumed Year presented in Table 3 shall be adjusted, if necessary, so that the first payment is due 60 Days after the Effective Date and each subsequent payment is due, respectively, on the subsequent anniversary of the Effective Date.

Table 3: Schedule for Payment of Past Federal and State Natural Resource Damages Assessment Costs			
No.	Date	Assumed Year	Amount
1	July 14, 2015	2015	\$10,000,000
2	60 Days After the Effective Date	2016	\$50,000,000
3	Anniversary of the Effective Date	2017	\$50,000,000
4	Anniversary of the Effective Date	2018	\$35,000,000
5	Anniversary of the Effective Date	2019	\$35,000,000
6	Anniversary of the Effective Date	2020	\$40,000,000
7	Anniversary of the Effective Date	2021	\$40,000,000

Table 3: Schedule for Payment of Past Federal and State Natural Resource Damages Assessment Costs			
No.	Date	Assumed Year	Amount
8	Anniversary of the Effective Date	2022	\$45,000,000
9	Anniversary of the Effective Date	2023	\$45,000,000
Total:			\$350,000,000

23. Allocation of Assessment Costs.

a. BPXP shall pay \$2,250,000 of each of payments number 2 and 3 required by Table 3 to the State of Alabama for Natural Resource Damages. Payment shall be made to the State of Alabama by wire transfer as follows:

Financial Institution:
 ABA Routing Number:
 Account to Credit:



At the time of each payment, BPXP shall send a copy of the wire transfer authorization form and transaction record in accordance with the notice requirements of Paragraph 92.

b. BPXP shall pay \$19,125,000 of each of payments number 2 and 3 required by Table 3 to the State of Louisiana for Natural Resource Damages. Payment to the State of Louisiana shall be made by wire transfer as follows:

Bank Name:
 Bank Address

 Account Name:
 Account Number:
 ACH Routing Number



BPXP shall notify the Louisiana Office of Finance and Support Services of the amount of payment and the expected wire date. A deposit ticket must be sent to the Louisiana State Treasury in advance to secure the funds being sent. At the time of each payment, BPXP shall send a copy of the wire transfer authorization form and transaction record in accordance with the

notice requirements of Paragraph 92.

c. BPXP shall pay \$2,875,000 of each of payments number 2 and 3 required by Table 3 to the State of Mississippi for Natural Resource Damages. Payment to the State of Mississippi shall be made by wire transfer as follows:

Account Name: Mississippi State Treasurer
Bank Name: [REDACTED]
Bank Address: [REDACTED]
ACH Route Number: [REDACTED]
Account Number: [REDACTED]

d. BPXP shall pay \$750,000 of each of payments number 2 and 3 required by Table 3 to the State of Texas by wire transfer to the Comptroller of Public Accounts, State of Texas, for the Attorney General's Suspense Account, using the following instructions:

Financial Institution: [REDACTED]
Routing Number: [REDACTED]
Account Name: Comptroller of Public Accounts, Treasury Operations
Account Number to Credit: [REDACTED]
Reference: AG No. 10-3202222 (BP Gulf Oil Spill)
Attention: Office of the Attorney General, Chief, EPD Div. (512-463-2012)
Contact: Kristy Lerma, Financial Reporting (512-475-4377)

At the time of each payment, the payor shall likewise send a copy of the wire transfer authorization form and transaction record, together with a transmittal letter referencing AG No. 10-3202222 to the State of Texas in the manner specified in the notice requirements of Paragraph 92.

e. The State of Florida has no uncompensated assessment costs.

f. BPXP shall pay all other amounts due under Paragraphs 22 and 23 and Table 3 to the United States through EFT pursuant to instructions that shall be provided upon request to BPXP by the Financial Litigation Unit of the Office of the United States Attorney,

Eastern District of Louisiana. BPXP shall cause payment to be accompanied by a transmittal letter that states that the payment is being made pursuant to Paragraph 23.f. of this Consent Decree. BPXP also shall specify the civil number assigned to this case (10-4536), along with DJ No. 90-5-1-1-10026. Of the amount paid to the United States, \$37 million shall be available to NOAA to establish, populate, manage, and maintain a Gulf-wide environmental data management system that shall be readily accessible to all Trustees and the public.

VI. OTHER PAYMENTS BY BPXP AND RELATED TERMS

24. Amount of Other Payments. BPXP shall pay the United States a total of \$250 million, allocated as follows:

a. \$167.4 million to pay unreimbursed response or removal costs related to the *Deepwater Horizon* Incident, paid or obligated by the OSLTF or incurred by the United States, prior to July 2, 2015; and

b. \$82.6 million in settlement of the United States' claims under the False Claims Act, 31 U.S.C. § 3729 *et seq.*, and the Federal Oil and Gas Royalty Management Act, 30 U.S.C. § 1756. This amount includes and resolves the share of royalty owed by BPXP and MOEX Offshore 2007 LLC for oil lost from the Macondo Well between April 2010 and July 2010 (a total share of 75%), but does not resolve or impair, in any way, any claims of the United States against Anadarko Petroleum Corporation or its affiliates for the remaining 25% share of that royalty, for which the United States alleges that Anadarko Petroleum Corporation or its affiliates are liable. This Consent Decree prohibits use or application of any of the proceeds secured hereunder – from this \$82.6 million or otherwise – to address in any way the claims of the United States against Anadarko Petroleum Corporation or its affiliates for royalties related to the Macondo Well

25. Schedule for Payment of Other Amounts. BPXP shall pay the \$250 million required by Paragraph 24 in accordance with the schedule set forth in Table 4 on the respective anniversary of the Effective Date. The Assumed Year presented in Table 4 shall be adjusted, if necessary, so that the first payment is due 60 Days after the Effective Date and each subsequent payment is due, respectively, on the subsequent anniversary of the Effective Date.

Table 4: Schedule for Payment of \$250 Million		
Date	Assumed Year	Amount
60 Days After the Effective Date	2016	\$40,000,000
Anniversary of the Effective Date	2017	\$30,000,000
Anniversary of the Effective Date	2018	\$30,000,000
Anniversary of the Effective Date	2019	\$30,000,000
Anniversary of the Effective Date	2020	\$30,000,000
Anniversary of the Effective Date	2021	\$30,000,000
Anniversary of the Effective Date	2022	\$30,000,000
Anniversary of the Effective Date	2023	\$30,000,000
Total:		\$250,000,000

26. Payment of Other Amounts. BPXP shall make payments of the amounts due to the United States pursuant to Paragraph 24 through EFT pursuant to instructions that shall be provided upon request to BPXP by the Financial Litigation Unit of the Office of the United States Attorney, Eastern District of Louisiana. BPXP shall cause payment to be accompanied by a transmittal letter that identifies the allocation of the payment set forth in Paragraph 24 and specifies the payment is being made pursuant to this Consent Decree in connection with the *Deepwater Horizon* Incident. BPXP also shall specify the civil number assigned to this case (10-4536), along with DJ No. 90-5-1-1-10026.

VII. INTEREST

27. Accrual of Interest. Interest on the unpaid balances due pursuant to Paragraphs 10 and 15 shall accrue from the Effective Date through the date of payment and shall be compounded annually on each anniversary of the Effective Date and shall be calculated on an actual/actual day basis. In the event of a payment of interest pursuant to Paragraph 21 or Section VIII of this Consent Decree that occurs after an anniversary date, the interest shall be calculated from the Effective Date through the date of payment.

28. Interest Rate. Interest shall accrue at the rate calculated by taking the average market yield on U.S. Treasury securities at 2-year and 3-year constant maturities, quoted on an investment basis by the U.S. Federal Reserve (H.15 Release), for the period from May 28, 2014 to May 27, 2015, rounded to two decimal places.

VIII. ACCELERATION OF PAYMENTS

29. BPXP Option for Acceleration. BPXP shall have the option (at its sole discretion) to pay any of the amounts required in Sections IV, V, or VI before they are due. Any such prepayment of an installment shall include the accrued but unpaid interest, if applicable (calculated in accordance with Section VII).

30. Acceleration Upon Change of Control. If there has been a Change of Control, the United States and all Gulf States may jointly elect to accelerate the schedule for all or any of the payments required in Sections IV, V and/or VI. If the United States and all Gulf States jointly elect to accelerate all or any of the payments due under Sections IV, V and/or VI, such accelerated payments shall become due and owing 120 Days after service of notice of such election, or any other time that the Parties may jointly agree upon.

31. Acceleration Upon Insolvency. If there has been an Act of Insolvency, the United States and all of the Gulf States may jointly elect to accelerate the schedule for all or any of the payments required in Sections IV, V, and/or VI. If the United States and all of the Gulf States jointly elect to accelerate all or any of the payments due under Sections IV, V, and/or VI, such accelerated payments shall become due and owing 120 Days after service of notice of such election, or any other time that the Parties may agree upon.

IX. FINANCIAL ASSURANCE

32. Commitment of Guarantors.

a. As set forth in the Primary Guaranty in Appendix 8, BPCNA hereby absolutely and irrevocably guaranties the payments of all kinds due from BPXP under this Consent Decree in the event that BPXP defaults on such payments.

b. As set forth in the Secondary Guaranty in Appendix 9, BP p.l.c. hereby absolutely and irrevocably guaranties the payments of all kinds due from BPXP under this Consent Decree in the event that BPXP defaults on such payments and BPCNA defaults on its obligation to serve as primary guarantor.

c. For purposes of any action to enforce the guaranty obligations set forth herein, BPCNA and BP p.l.c. waive all defenses or other arguments based in whole or part on the nature of the payments guarantied, the nature of the claims from which those payment obligations arose, or the nature of this Consent Decree.

33. Standard for Default.

a. For the purposes of Paragraph 32, BPXP shall be considered in default of a payment required under this Consent Decree if any of the following conditions has been met:

i. BPXP has failed to make such payment within 60 Days after such payment has become due under the Consent Decree;

ii. BPXP has filed for bankruptcy under the United States Bankruptcy Code or other applicable statute(s) or code(s) pertaining to insolvency; or

iii. any third party has petitioned a court to place BPXP in bankruptcy under the United States Bankruptcy Code or other applicable statute(s) or code(s) pertaining to insolvency, an order for relief is entered, and any such filing or petition is not dismissed within 60 Days of such order for relief.

b. For the purposes of Paragraph 32, BPCNA shall be considered in default on its guaranty of a payment required under this Consent Decree if BPXP has defaulted on such payment and any of the following conditions has been met:

i. BPCNA has failed to make such payment within 60 Days after BPXP has defaulted pursuant to Paragraph 33.a.; or

ii. BPCNA has filed for bankruptcy under the United States Bankruptcy Code or other applicable statute(s) or code(s) pertaining to insolvency; or

iii. any third party has petitioned a court to place BPCNA in bankruptcy under the United States Bankruptcy Code or other applicable statute(s) or code(s) pertaining to insolvency, an order for relief is entered, and any such filing, or petition is not dismissed within 60 Days of such order for relief.

X. INJUNCTIVE RELIEF

34. Prior Agreements. Various BP Entities and the United States have previously entered into certain agreements setting forth injunctive relief and other requirements of performance related to the *Deepwater Horizon* Incident, as described generally in this Paragraph:

a. On January 29, 2013, the United States District Court for the Eastern District of Louisiana approved BPXP's Plea Agreement which included injunctive relief set forth in Exhibit B. Exhibit B requires BPXP to implement specific improvements related to deep water drilling safety, including, *e.g.*: (1) third party verification of blowout preventers; (2) improvements in its cement design and competency; (3) the maintenance of a real-time, drilling operations monitoring center in Houston; (4) completion of additional oil spill response training and drills; (5) audits of the Safety and Environmental Management Systems of BPXP-contracted drilling rigs and BPXP-operated platforms, including BPXP-owned platform rigs; (6) development and implementation of a well control competency assessment plan for those it uses as Well Site leaders; (7) in collaboration with industry and government, initiation of at least four pilot projects to evaluate technology enhancements intended to improve operational safety with respect to deep water drilling and make available any resulting data or technology to anyone on commercially reasonable terms; and (8) requirements related to the use of two blind-shear rams on blowout preventers. Pursuant to Exhibit B, BPXP has submitted a detailed Implementation Plan for accomplishing these and other measures related to safe deep water drilling operations.

b. Exhibit B also requires appointment of both a process safety monitor and an ethics monitor. In brief, the process safety monitor's duties are to review, evaluate, and provide recommendations for the improvement of BPXP's process safety and risk management

procedures. In brief, the ethics monitor's duties are to review and provide recommendations for improvement of BPXP's code of conduct and its implementation and enforcement for the purpose of preventing future criminal and ethical violations with respect to dealings with regulatory and enforcement authorities. Exhibit B also requires appointment of an independent, third party auditor to sample or test compliance with various portions of Exhibit B. Exhibit B to the Plea Agreement and its Implementation Plan are attached to the Consent Decree as part of Appendices 5 and 6, respectively.

c. On March 13, 2014, BP p.l.c., BPCNA, BPXP, and certain other BP Entities entered into an Administrative Agreement with the EPA to resolve all suspension and debarment matters arising from the *Deepwater Horizon* Incident. The Administrative Agreement incorporates terms and conditions of both the Plea Agreement noted above and of a Securities and Exchange Commission Judgment Order entered against BP on December 10, 2012 (*Securities and Exchange Commission v. BP p.l.c.*, E.D. La.). The Administrative Agreement also requires actions related to maintenance or improvement of ethics and compliance programs and good corporate governance activities, such as: code-of-conduct training, the operation of an employee concerns hotline, and maintenance of risk-based compliance standards and procedures for BP Entities based in the United States. The Administrative Agreement also contains certain other specific additional provisions targeted to deep water drilling safety in the United States, including provisions related to contractor oversight and audits of safety and environmental management systems. The ethics monitor under the Plea Agreement also serves as an ethics monitor under the Administrative Agreement. A copy of the Administrative Agreement is attached to the Consent Decree as Appendix 4.

35. Acknowledgement of Compliance. BPXP acknowledges that it is in material compliance with the injunctive relief provisions set forth in Exhibit B and the requirements of the Implementation Plan and the Administrative Agreement.

36. Compliance with Exhibit B and the Administrative Agreement. BPXP's and the other BP Entities' obligations under Exhibit B, including the Implementation Plan, and under the Administrative Agreement continue and remain enforceable under the Plea Agreement or Administrative Agreement, as applicable, and not under this Consent Decree.

37. Submissions to DOJ ENRD. BPXP shall provide to DOJ ENRD copies of those documents specifically identified in Appendix 10. BPXP shall provide each document identified in Appendix 10 in the time and manner and format required by Appendix 10. To the extent that BPXP asserts that a document in Appendix 10 being submitted to DOJ ENRD contains confidential business information, BPXP shall mark or otherwise identify the document as confidential.

38. Information to be Made Publicly Available.

- a. BPXP shall post to a publicly-available web site:
 - i. The Consent Decree;
 - ii. Annual reports submitted to the EPA Suspension and Debarment Office pursuant to Section X, Paragraph 1 of the Administrative Agreement and the annual reports submitted to the Department of Justice Criminal Division pursuant to Paragraph 23 of Exhibit B and Section E of the Implementation Plan;
 - iii. Formal written notices or warnings that any BP Entity receives from an instrumentality of the United States under the applicable agreement asserting a material

violation, deficiency, or non-compliance of either Exhibit B, including the Implementation Plan, or the Administrative Agreement;

iv. A description (including necessary context) of the changes that are required of BPXP by operation of either Exhibit B or the Administrative Agreement, as specified by the entries in Appendix 11; and

v. Final findings of deficiencies from auditors retained under the Administrative Agreement or Exhibit B.

b. Solely for the purposes of this Paragraph, a “final finding of deficiency” means that recommendation or finding of deficiency, as the case may be, that exists after all objections and/or appeals have been finally resolved pursuant to the applicable process under either the Administrative Agreement or Exhibit B and the Implementation Plan.

c. Those items that are required to be posted pursuant to Paragraphs 38.a.ii through 38.a.v, and the manner of posting, are specifically identified in Appendix 11.

39. Protocol for Redaction Before On-Line Posting.

a. With respect to those documents to be posted pursuant to Paragraph 38, BPXP shall have 60 Days from either BPXP’s submission of the final document to the relevant agencies (under the Administrative Agreement or Exhibit B) or BPXP’s receipt of the final monitor recommendations or final auditor findings of deficiency, whichever is applicable, to post a redacted version of the document to the publicly-available web site. BPXP may redact:

i. Information that would reveal the identity of an individual or personal or private information about an individual;

ii. Trade secrets; and

iii. Confidential business information too sensitive to BPXP's or another BP Entity's competitive position to allow public disclosure.

b. At any time following posting of a document to the publicly-available web site, EPA (for documents under the Administrative Agreement), or the Department of Justice Criminal Division and/or BSEE (for documents under Exhibit B and the Implementation Plan) may in their discretion review BPXP's redacted version of any document for consistency with the requirements of this Paragraph for redacting. If the relevant agency believes that any material should not have been redacted under the applicable agency's standards for protection of trade secrets, confidential business information, and/or personally identifying information, such agency shall informally notify BPXP of the objection and initiate informal discussions concerning the redacted material. In the event the parties are unable to informally resolve the objection, the relevant agency may in its discretion withdraw the objection, or seek to resolve the objection pursuant to the provisions of Section XII of this Consent Decree (Dispute Resolution).

40. Expiration of Requirement to Provide Documents. The requirements of Paragraph 37 shall terminate with respect to documents required by the Administrative Agreement when the Administrative Agreement terminates and with respect to documents required by Exhibit B (including the Implementation Plan) when the Plea Agreement terminates.

41. Limited Duration of Postings. The Consent Decree shall remain posted until termination of the Consent Decree. All postings stemming from Exhibit B shall remain posted until two years after the last such posting required. All postings stemming from the Administrative Agreement shall remain posted until two years after the last such posting is

required. Any posting not covered by the prior sentences of this Paragraph shall remain posted until all requirements for posting have been satisfied, save for posting of the Consent Decree.

XI. STIPULATED PENALTIES

42. Liability for Stipulated Penalties. BPXP shall be liable for stipulated penalties to the United States and the Gulf States for violations of this Consent Decree as specified below.

43. Definition of Violation. A violation includes failing to perform any payment obligation required by the terms of this Consent Decree or failing to perform any of the obligations set forth in Paragraphs 37 and 38, according to all applicable requirements of this Consent Decree and within the specified time schedules established by this Consent Decree.

44. Failure to Make Timely Payments. In addition to the interest that would be due and any other available remedy, if BPXP fails to make any payment required by Sections IV, V, or VI, BPXP also shall be liable to the United States and all of the the Gulf States for a per Day, stipulated penalty as follows:

<u>Period of Delay or Non-Compliance</u>	<u>Per Violation per Day</u>
5th through 30th Day after accrual date	\$ 50,000
31st through 45th Day after accrual date	\$100,000
Beyond 45th Day after accrual date	\$200,000

45. Stipulated Penalties for Other Violations. The following stipulated penalties shall accrue per violation per Day for each violation of the requirements of Paragraphs 37 and 38 of this Consent Decree:

<u>Period of Delay or Non-Compliance</u>	<u>Per Violation per Day</u>
1st through 30th Day after accrual date	\$ 7,500
31st through 45th Day after accrual date	\$20,000

Beyond 45th Day after accrual date \$25,000

46. Accrual Date of Stipulated Penalties. The stipulated penalties provided for in Paragraph 44 shall begin to accrue 5 Days after the payment is due and continue to accrue each Day until full payment is made. The stipulated penalties provided for in Paragraph 45 shall begin to accrue the Day after the deadline for compliance and shall continue to accrue until performance is completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

47. Schedule for Payment of Stipulated Penalties. Subject to Paragraph 49, BPXP shall pay any stipulated penalty within 30 Days of receiving a written demand and payment instructions by the United States.

48. Discretion to Waive Stipulated Penalties.

a. The United States may, in the unreviewable exercise of its discretion, reduce or waive any applicable stipulated penalties due for violations of Sections IV, VI, or X of this Consent Decree.

b. The United States and all of the Gulf States may, in the joint exercise of their unreviewable discretion, reduce or waive any applicable stipulated penalties due for violations of Section V, VII, VIII, or IX of this Consent Decree.

49. Effect of Dispute Resolution. Stipulated penalties shall continue to accrue as provided in Paragraph 46 during any dispute resolution pursuant to Section XII of this Consent Decree, but need not be paid until the following:

a. If the dispute is resolved by agreement of the Parties or by a decision of the United States (after consultation with all of the Gulf States for disputes arising under Sections V, VII, VIII, or IX) that BPXP does not appeal to the Court, BPXP shall pay accrued penalties determined to be owing, together with interest, to the United States within 30 Days of the effective date of the agreement or the receipt of decision of the United States.

b. If the dispute is decided by the Court, BPXP shall pay all accrued penalties determined by the Court as owing, together with interest, within 60 Days of receiving the Court's decision or order, except as provided in Paragraph 49.c.

c. If any Party appeals the Court's decision, BPXP shall pay all accrued penalties determined as owing, together with interest (calculated in accordance with Paragraph 51), within 30 Days of receiving the final appellate court decision.

50. Payment of Stipulated Penalties. Each separate violation shall give rise to a single penalty per Day in the amount specified above. That single penalty shall be allocated in accordance with this Paragraph.

a. For violations of Paragraphs 37 or 38, BPXP shall pay the stipulated penalty to the United States in accordance with the payment instructions provided by the United States with the demand.

b. For violations of Section V, VII, VIII, or IX, BPXP shall pay the stipulated penalty in the following manner:

i. BPXP shall pay 10% of the stipulated penalty to the State of Alabama by wire transfer as follows:

Financial Institution: [REDACTED]

ABA Routing Number: [REDACTED]
Account to Credit: [REDACTED]

At the time of each payment, BPXP shall send a copy of the wire transfer authorization form and transaction record in accordance with the notice requirements of Paragraph 92.

ii. BPXP shall pay 10% of the stipulated penalty to the State of Florida. All payments to be made to the State of Florida under Paragraph 50.b. of this Consent Decree shall be deposited by the State of Florida into the Water Quality Assurance Trust Fund. Payments to the State of Florida shall be made by wire transfer using the following instructions:

Financial Institution:	[REDACTED]
Nine Digit Routing Number	[REDACTED]
Depositor Account Number	[REDACTED]
Depositor Account Name	State of FL, DFS, Chief Financial Officer, (DEP)
Type of Account	Checking
FEID #	[REDACTED]

At the time of each payment, BPXP shall likewise send a copy of the wire transfer authorization form and transaction record, together with a transmittal letter referencing Paragraph 50.b. of this Consent Decree to the State of Florida in the manner specified in the notice requirements of Paragraph 92.

iii. BPXP shall pay 10% of the stipulated penalty to the State of Louisiana by wire transfer using the following instructions:

Bank Name:	[REDACTED]
Bank Address	[REDACTED]
Account Name:	State of Louisiana Treasury
Account Number:	[REDACTED]
ACH Routing Number	[REDACTED]

BPXP shall notify the Louisiana Office of Finance and Support Services of the amount of payment and the expected wire date. A deposit ticket must be sent to the Louisiana State Treasury in advance to secure the funds being sent. At the time of each payment, BPXP shall send a copy of the wire transfer authorization form and transaction record in accordance with the notice requirements of Paragraph 92.

iv. BPXP shall pay 10% of the stipulated penalty to the State of Mississippi by wire transfer as follows:

Account Name:	Mississippi State Treasurer
Bank Name:	[REDACTED]
Bank Address:	[REDACTED]
ACH Route Number:	[REDACTED]
Account Number:	[REDACTED]

v. BPXP shall pay 10% of the stipulated penalty to the State of Texas by wire transfer to the Comptroller of Public Accounts, State of Texas, for the Attorney General's Suspense Account, using the following instructions:

Financial Institution:	[REDACTED]
Routing Number:	[REDACTED]
Account Name:	Comptroller of Public Accounts, Treasury Operations
Account Number to Credit:	[REDACTED]
Reference:	AG No. 10-3202222 (BP Gulf Oil Spill)
Attention:	Office of the Attorney General, Chief, EPD Div. (512-463-2012)
Contact:	Kristy Lerma, Financial Reporting (512-475-4377)

At the time of each payment, the payor shall likewise send a copy of the wire transfer authorization form and transaction record, together with a transmittal letter referencing AG No. 10-3202222 to the State of Texas in the manner specified in the notice requirements of Paragraph 92;

vi. BPXP shall pay 50% of the stipulated penalty to the United States in accordance with the payment instructions provided by the United States with the demand.

51. Interest on Late Payments of Stipulated Penalties. If BPXP fails to pay stipulated penalties according to the terms of this Consent Decree, BPXP shall be liable for interest as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due. Nothing in this Paragraph shall be construed to limit the United States from seeking any remedy otherwise provided by law for BPXP's failure to pay any stipulated penalties. BPXP shall pay any interest due under this Paragraph in accordance with the instructions and proportions set forth in Paragraph 50.

52. No Effect on Obligation to Comply. The payment of penalties and interest pursuant to this Section shall not alter in any way BPXP's obligation to complete the performance of the requirements of this Consent Decree.

53. No Effect on Other Remedies. Subject to the covenants provided by the United States and Gulf States in Section XIII, the stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States or Gulf States for BPXP's violation of this Consent Decree.

XII. DISPUTE RESOLUTION

54. Exclusivity of Remedy.

a. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under this Consent Decree. BPXP's failure to seek resolution of a dispute under

this Section shall preclude it from raising any such issue as a defense to an action by the United States or the Gulf States to enforce any obligation of BPXP arising under this Consent Decree.

b. The dispute resolution procedures set forth in this Section shall not apply to disputes among the United States and Gulf States, including, but not limited to, disputes arising under Appendix 2. Such disputes shall be subject to the provisions of Appendix 2 and any Memoranda of Understanding developed pursuant to Appendix 2.

55. Informal Dispute Resolution. If any Party determines that there is a dispute subject to the Dispute Resolution provisions of this Consent Decree, that Party shall send a written notice of dispute to all other Parties outlining the nature of the dispute and requesting informal negotiations to resolve the dispute. The Parties shall endeavor to resolve the dispute through good faith negotiations, but if the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States, after consultation with any affected Gulf State, shall be considered binding unless BPXP invokes formal dispute resolution procedures as set forth below.

56. Formal Dispute Resolution.

a. To invoke formal dispute resolution, BPXP shall, within 10 Days after the conclusion of informal dispute resolution, serve on the United States and any affected Gulf State a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting BPXP's position and any supporting documentation relied upon by BPXP.

b. The United States, after consultation with any affected Gulf State, shall serve its Statement of Position within 20 Days of receipt of BPXP's Statement of Position. The

United States' Statement of Position shall include, but is not limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States.

c. The United States' Statement of Position shall be binding on BPXP unless BPXP files a motion for judicial review of the dispute in accordance with the following Paragraph.

57. Judicial Review. BPXP may seek judicial review of the dispute by filing with the Court and serving on the United States and each of the affected Gulf States in accordance with Section XIX of this Consent Decree, a motion requesting judicial resolution of the dispute.

a. BPXP's motion must be filed within 20 Days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of BPXP's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of this Consent Decree.

b. The United States and any affected Gulf State shall respond to BPXP's motion within the time period allowed by the Local Rules of this Court.

58. Burden of Proof. Except as otherwise provided herein, BPXP shall bear the burden of demonstrating by a preponderance of the evidence that its position complies with this Consent Decree. With respect to disputes arising under Section XIII, including the application of any defined terms for purposes of Section XIII, the burden of proof shall be in accordance with applicable principles of law.

59. No Effect on Deadlines. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of BPXP under this Consent Decree, unless and until final resolution of the dispute so provides.

XIII. COVENANTS NOT TO SUE AND RESERVATIONS

60. United States' Covenants to BP Entities. Subject only to the reservations of rights in Paragraphs 64 and 65, the United States covenants not to sue BPXP and/or other BP Entities for any and all civil or administrative claims arising from the *Deepwater Horizon* Incident, including but not limited to any and all such claims under (a) OPA; (b) the CWA; (c) OCSLA; (d) the Endangered Species Act § 11(a)(1), 16 U.S.C. § 1540(a)(1); (e) the Marine Mammal Protection Act, 16 U.S.C § 1361 *et seq.*; (f) the National Marine Sanctuaries Act § 306, 16 U.S.C. § 1436; (g) the Federal Oil and Gas Royalty Management Act, 30 U.S.C. § 1719(a); (h) the False Claims Act, 31 U.S.C. § 3729 *et seq.*; (i) CERCLA, 42 U.S.C. § 9601 *et seq.*; (j) the National Historic Preservation Act, 54 U.S.C. § 300101 *et seq.* and the former 16 U.S.C. § 470 *et seq.* (repealed Dec. 19, 2014); (k) the Clean Air Act, 42 U.S.C. § 7401 *et seq.*; (l) the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11001 *et seq.*; (m) any claims asserted by the United States in Civ. No.2:10-cv-04536 (E.D. La.) and MDL 2179; or (n) any other statute or cause of action for civil damages or civil penalties that the Civil Division of the Department of Justice or DOJ ENRD has actual and present authority to assert and compromise pursuant to 28 C.F.R. § 0.45 or § 0.65. Subject only to the reservations of rights in Paragraphs 64 and 65, the United States also covenants not to sue BPXP and/or other BP Entities for (a) past, present, or future Natural Resource Damages, whether known or unknown, including assessment

costs, resulting from the *Deepwater Horizon* Incident; and (b) costs of response or removal related to the *Deepwater Horizon* Incident.

61. Gulf States' Covenants to BP Entities. Subject only to the reservation of rights in Paragraph 64, each of the Gulf States fully, finally, and forever release and waive any and all claims against BPXP and/or the BP Entities arising from the *Deepwater Horizon* Incident and further, the Gulf States covenant not to sue BPXP and/or BP Entities for any and all civil or administrative claims arising from the *Deepwater Horizon* Incident, including but not limited to claims under any and all of the following: (a) OPA; (b) the CWA; (c) OCSLA; (d) the Endangered Species Act § 11(a)(1), 16 U.S.C. § 1540(a)(1); (e) the Marine Mammal Protection Act, 16 U.S.C. § 1361 et seq.; (f) the National Marine Sanctuaries Act § 306, 16 U.S.C. § 1436; (g) the Federal Oil and Gas Royalty Management Act, 30 U.S.C. § 1719(a); (h) the False Claims Act, 31 U.S.C. §§ 3729 et seq.; (i) CERCLA, 42 U.S.C. § 9601 et seq.; (j) the National Historic Preservation Act, 54 U.S.C. § 300101 et seq. and the former 16 U.S.C. § 470 et seq. (repealed Dec. 19, 2014); (k) the Clean Air Act, 42 U.S.C. § 7401 et seq.; (l) the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11001 et seq.; (m) any state statutes corresponding to or containing causes of action similar to those provided to the United States government under (a) through (l) above; and (n) any other claims or causes of action for damages, costs, fines, or penalties arising under any state statute, ordinance, regulation or common law related to protection or restoration of the environment or Natural Resources or historic preservation arising from the *Deepwater Horizon* Incident. Subject only to the reservation of rights in Paragraph 64, the Gulf States also covenant not to sue BPXP and/or BP Entities for (a) past, present or future Natural Resource Damages, whether known or unknown, including assessment costs, resulting from the

Deepwater Horizon Incident; and (b) costs of response or removal related to the *Deepwater Horizon* Incident.

62. Covenants Concerning Natural Resource Damages. The United States and Gulf States agree that the payments provided under Sections V and VII, together with the payments previously provided under the Framework Agreement, will fully resolve their claims for Natural Resource Damages, whether known or unknown, resulting from the *Deepwater Horizon* Incident.

63. Covenants Concerning Indemnified Parties. The United States and the Gulf States, including any future-designated Natural Resource Trustees, shall not assert claims against any and all Indemnified Parties to the same extent that the United States or Gulf States have covenanted not to sue BPXP and/or BP Entities in Paragraphs 60 and 61, as applicable. For all such Indemnified Parties this covenant excludes penalties, and for Anadarko this covenant also excludes royalties that the United States alleges are owed to DOI on oil from the Macondo Well that was discharged during the *Deepwater Horizon* Incident.

64. Reservations of Rights by the United States and Gulf States. Notwithstanding any other provision of this Consent Decree, the United States and the Gulf States each reserve the following claims against BPXP or any other person:

- a. Claims based on a failure to meet a requirement of the Consent Decree;
- b. Claims based on past, present, or future discharges or releases of oil or a hazardous substance outside the definition of “*Deepwater Horizon* Incident”;
- c. Claims based on any discharge or release of oil or a hazardous substance from the Macondo Well after the Date of Lodging of the Consent Decree; and

d. Claims based on any violation of federal or state law that occurs after the Date of Lodging of the Consent Decree.

65. Additional Reservations of Rights Solely by the United States. Notwithstanding any other provision of this Consent Decree, the United States reserves the following claims against BPXP or any other person:

a. Claims for response or removal costs related to the *Deepwater Horizon* Incident that are incurred on or after July 2, 2015 and have been paid by the OSLTF, provided that where oil is addressed in such a response or removal, the oil is found to be from the Macondo Well based on either: (i) a positive chemical fingerprinting test; or (ii) a preponderance of the evidence, including chemical testing and other factors, taking into consideration any evidence provided by any BP Entity that disputes liability. BPXP and the BP Entities reserve all their rights to assert any factual or legal defenses against claims asserted by the United States under this subparagraph.

b. All subrogated rights under OPA, 33 U.S.C. § 2715, with respect to any claims for damages other than Natural Resource Damages resulting from the *Deepwater Horizon* Incident that are (i) brought by parties other than the United States or any of its agencies, departments, or branches, the Gulf States or any of the Gulf States' agencies, departments, branches, or any Settling Local Entity, and (ii) are paid by the OSLTF after July 2, 2015. The BP Entities reserve all their rights to assert any factual or legal defenses against subrogated claims asserted by the United States under this subparagraph.

66. Data Sharing and Related Agreements Voided. As of the Effective Date of this Consent Decree, any and all Natural Resource Damages assessment agreements related to the

Deepwater Horizon Incident between any Trustee and BPXP, including any commitments in work plans or other formal or informal agreements, written or oral, to (i) provide data, analysis or any other material or information related to the *Deepwater Horizon* Incident natural resource damages assessment or restoration planning or (ii) to share or preserve any tangible things or information, shall be void. Each BP Entity will keep confidential and not make public information as provided under the following data sharing agreements: Sea Turtle Data Sharing Agreement; Marine Mammal Data Sharing Agreement; and the Sea Turtle Carcass Drift Study.

67. Savings Provision. Except as provided in Paragraph 66, other than the Project Stipulations entered into pursuant to the Framework Agreement, these covenants not to sue do not affect rights under any written agreement or settlement, existing as of July 2, 2015 to which any instrumentality of the United States and any of the BP Entities are both a party.

68. BP Entities' Covenants to the United States and the Gulf States. BPXP and the BP Entities each covenant not to sue the United States or any of the Gulf States for, or to maintain in any administrative proceeding, any claim or defense that any of them has asserted in MDL 2179 and any other claims asserted or that could be asserted by any of the BP Entities against the United States and/or the Gulf States arising from the *Deepwater Horizon* Incident, including, but not limited, to claims pursuant to OPA §§ 1007, 1008, 1012, 1013, or 1015(a), 33 U.S.C. §§ 2707, 2708, 2712, 2713, or 2715(a), or before the IBLA, based on transactions or occurrences prior to July 2, 2015.

69. Treatment in Federal Contracts. In their capacities as federal contractors and lessees, each BP Entity agrees not to charge the United States, such as through a “cost plus” contract, for any payments made or costs incurred in connection with U.S. Covered Matters or

State Covered Matters and the Plea Agreement. Nothing in this Paragraph shall require any BP Entity to change its ordinary accounting practice for overhead expenses in contracts that are not “cost plus” contracts.

70. Gulf States’ Covenants to the United States. Each of the Gulf States covenants not to sue or otherwise assert any claims against the OSLTF arising from the *Deepwater Horizon* Incident.

71. Attorney’s Fees and Costs. Except as otherwise ordered by the Court, no Party or BP Entity shall seek from another Party or any BP Entity any costs within the meaning of 28 U.S.C. § 1920 or attorney fees arising from MDL 2179 (including any matters transferred to MDL 2179), State Covered Matters or U.S. Covered Matters.

72. Dismissal of Appeals. Upon the Effective Date of the Consent Decree, BPXP and the United States agree to file with the U.S. Court of Appeals for the Fifth Circuit in appeal docket number 14-31374 a joint stipulation stating that they have settled their dispute regarding the CWA and accordingly that BPXP is no longer seeking Fifth Circuit review of the Court orders at issue in that appeal with respect to the United States, but will continue to seek review of those orders to the extent that those orders relate to any ongoing disputes between the BP Entities and other parties to that appeal and/or in other pending proceedings. The BP Entities also agree that in the remaining appeal they will not assert any legal arguments interpreting the standard for determining gross negligence under the CWA or OPA, provided, however, that nothing in this Paragraph shall be construed to limit the BP Entities’ ability to advance, or respond to, any legal arguments regarding the standard for gross negligence or recklessness under general maritime law.

73. Dismissal of IBLA Appeals. By no later than 15 Days after the Effective Date, BPXP shall withdraw with prejudice its appeals IBLA 2012-50, IBLA 2012-85, and IBLA 2010-0236, and the incidents of noncompliance issued by BSEE on October 12, 2011 and December 7, 2011, as described in Paragraph J, are then fully and finally resolved.

74. Instrumentalities. All references to the Gulf States in this Section XIII and Paragraph 5 shall include each and every of the five Gulf States and, respectively, all State Trustees, all branches, agencies, associations, authorities, boards, bureaus, councils, departments, educational institutions or systems, components, public benefits corporations, or other instrumentalities of any kind, administrators, elected or unelected officials, officers or delegates (other than in their individual capacities), attorneys, or other agents of any kind of each of the Gulf States, provided however that a reference to a Gulf State shall not include counties, parishes, municipalities, or any other local governmental or local political subdivisions authorized by law to perform local governmental functions.

XIV. ADDITIONAL CONDITIONS

75. Resolution of Other Gulf States Claims. This settlement, and the entry of the Consent Decree, are conditioned upon the Settlement Agreement between the Gulf States and BPXP fully and finally resolving the Gulf States' remaining claims arising from the *Deepwater Horizon* Incident being executed and effective.

76. Limitation on Naming Trustees.

a. The Trustees designated by the United States and each of the Gulf States with respect to the *Deepwater Horizon* Incident are set forth in Appendix 1. No Gulf State shall

designate any new Trustee for the purpose of asserting a claim for Natural Resource Damages resulting from the *Deepwater Horizon* Incident.

b. The Trustees will negotiate a revised Memorandum of Understanding among them which will, among other things, reflect USDA and EPA membership in the Trustee Council.

77. Final Judgment. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States, each of the Gulf States, BPXP, BPCNA, and BP p.l.c. The Court finds that there is no just reason for delay and therefore the Court enters this Consent Decree as a final judgment under Federal Rules of Civil Procedure 54(b) and 58.

78. Integration. Except as expressly provided in Paragraph 75, this Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. No other document, or any representation, inducement, agreement, understanding, or promise, shall constitute any part of this Consent Decree or the settlement it represents.

79. No Admissions.

a. Except as expressly provided in this Consent Decree, nothing in this Consent Decree shall constitute an admission of any fact or law by any Party except for the purpose of enforcing the terms or conditions set forth herein.

b. The Parties agree that Appendix 2 and the PDARP, and any amendments or modifications thereto, shall not constitute an admission of fact or law by BPXP or any BP

Entity. BPXP and the BP Entities reserve their right to object to any statements, data, findings, methods, or calculations in the PDARP or future restoration plans related to the *Deepwater Horizon* Incident, in any proceeding, forum, or matter other than a proceeding to challenge the legal sufficiency or validity of the Consent Decree or the PDARP or any such future plan.

XV. PUBLIC PARTICIPATION

80. Public Comment Procedure. This Consent Decree will be lodged with the Court to allow for a period of not less than 60 Days for public notice and comment using the procedures of 28 C.F.R. § 50.7, 42 U.S.C. § 6973(d), La. R.S. 30:2050.7, and Texas Water Code § 7.110.

81. The United States' and Gulf States' Right to Withdraw Consent. At any time prior to the Effective Date, the United States and each Gulf State may withdraw or withhold consent to the proposed Consent Decree if comments received during the public comment procedure disclose facts or considerations indicating that the proposed Consent Decree or any of its terms is inappropriate, improper, or inadequate.

82. Effect of Withdrawal by the United States or One of the Gulf States. If the United States or any Gulf State withdraws from the proposed Consent Decree, the proposed Consent Decree shall become null and void as to all other Parties.

83. Consent to Entry. BPXP, BPCNA, and BP p.l.c. each consent to entry of the proposed Consent Decree without further notice and agree not to withdraw from or oppose entry of the proposed Consent Decree by the Court or to challenge any provision of the proposed Consent Decree, unless the United States or one of the Gulf States withdraws from the proposed Consent Decree pursuant to Paragraph 81.

XVI. LIMITS AND EFFECTIVE DATE OF CONSENT DECREE

84. Requirement to Comply with Other Law. Nothing in this Decree excuses BPXP from securing any applicable permits or complying with applicable law.

85. Effective Date of Consent Decree. This Consent Decree takes effect upon the Effective Date.

86. Payment Dates. If any payment date provided herein falls on a Saturday, Sunday, or federal holiday, the payment obligation shall extend until the close of business of the next business day.

XVII. MODIFICATION

87. Modification of Consent Decree. The terms of this Consent Decree, including any Appendix other than Appendix 2, may be modified only by a subsequent written agreement signed by all the Parties. Where any such modification constitutes a material change to this Consent Decree, it shall be effective only upon approval by the Court.

88. BP Entities' Consent to Modifications of Appendix 2. The Trustees will provide a period for public comment on the proposed PDARP consistent with OPA regulatory requirements, including 15 C.F.R. § 990.23, and other legal requirements. Revisions to the proposed PDARP that the Trustees, in their discretion, decide to make in response to public comments may require the United States and the Gulf States to make conforming modifications to Appendix 2 to this Consent Decree. The BP Entities consent to modifications to Appendix 2 without further notice.

XVIII. TERMINATION

89. Request for Termination. BPXP may serve upon the United States and each of the Gulf States a request for termination, after BPXP has completed the requirements of Sections IV, V, VI, VII, VIII, IX, X, and XI (including all payments required by those Sections).

90. Motion for Termination. Following receipt by the United States and each of the Gulf States of BPXP's request for termination, the Parties shall confer informally concerning the request and any disagreement that the Parties may have as to whether BPXP has complied with the requirements for termination of this Consent Decree. If the United States, after consultation with the Gulf States, agrees that the Consent Decree may be terminated, the United States and BPXP shall submit, for the Court's approval, a joint stipulation terminating the Consent Decree.

91. Effect of Termination. Any termination of this Consent Decree shall not modify or diminish the Covenants Not to Sue and Reservations set forth in Section XIII, and any related definitions, all of which shall survive any termination of this Consent Decree. Appendix 2 of this Consent Decree also shall survive the termination of this Consent Decree and become a separate, freestanding agreement among the Trustees after such termination.

XIX. NOTICES AND SERVICE OF PROCESS

92. Identification of Recipients for Notices. Unless otherwise specified in this Consent Decree, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows, using both U.S. Mail and electronic mail where such addresses are provided:

As to the United States:

EES Case Management Unit
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-5-1-1-10026

Sharon D. Smith
Assistant United States Attorney
United States Attorney's Office, E.D. Louisiana
650 Poydras Street, Suite 1600
New Orleans, Louisiana 70130
Fax: (504) 589-4510
Email: sharon.d.smith@usdoj.gov

Director, Water Enforcement Division
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Assistant Administrator, Office of Water
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Chief, Office of Claims and Litigation (CG-LCL)
United States Coast Guard Stop 7213
2703 Martin Luther King Jr. Ave. SE
Washington, DC 20593-7213

Bureau of Safety and Environmental Enforcement
Regional Director
1201 Elmwood Park Blvd.
New Orleans, LA 70125-2394

With a copy to:

Bureau of Safety and Environmental Enforcement
Office of the Director
1849 C Street, NW
Washington, DC 20240

General Counsel
National Oceanic and Atmospheric Administration
U.S. Department of Commerce
1401 Constitution Avenue, N.W.
Washington DC 20230
Fax: 202-482-4893
Phone: 202-482-4080
Attn: Chief, Natural Resources Section

Michele N. Laur
Senior Advisor
USDA, NRCS, Gulf Coast Ecosystem Restoration Team (GCERT)
7578 Old Canton Road
Madison, MS 39110

Primary: 202-579-0585
Secondary: 601-607-3131 ext. 109
Fas: 844-325-7065

As to the State of Alabama:

Governor of Alabama
Attn: BP Litigation
State Capitol
600 Dexter Avenue
Montgomery, AL 36130

Attorney General
Office of the Attorney General
c/o BP Litigation
501 Washington Avenue
Montgomery, AL 36130

Commissioner
Alabama Department of Conservation and Natural Resources
Attn: BP Litigation
64 North Union Street, Room 468
Montgomery, AL 36130

As to the State of Florida:

General Counsel

Florida Department of Environmental Protection
3900 Commonwealth Blvd., M.S. 35
Tallahassee, FL 32399-3000

Deputy General Counsel for Enforcement
Florida Department of Environmental Protection
3900 Commonwealth Blvd., M.S. 35
Tallahassee, FL 32399-3000

General Counsel
Florida Fish & Wildlife Conservation Commission
620 South Meridian St.
Tallahassee, FL 32399-1600

Office of Attorney General
State of Florida
107 W. Gaines St
Tallahassee, FL 32301-2301

As to the State of Louisiana:

Office of Attorney General
State of Louisiana
Attn: Section Chief - Environmental
State of Louisiana
P.O. Box 94005
Baton Rouge, LA 70804-9005

1885 N. Third Street
6th Floor
Baton Rouge, LA 70802-5159

And

Executive Director
Louisiana Coastal Protection and Restoration Authority
P.O. Box 44027
Baton Rouge, LA 70804-4027

450 Laurel Street
Suite 1501
Baton Rouge, LA 70801

As to the State of Mississippi:

The Honorable Jim Hood
Attorney General State of Mississippi
Post Office Box 220
Jackson, MS 39205

As to the State of Texas:

Chief, Environmental Protection Division
(Attn: Thomas Edwards, AAG and Jane Atwood, AAG)
Office of the Attorney General (MC-066)
P.O. Box 12548
Austin, TX 78711-2548

Wm. P. Clements State Office Building
300 W. 15th St., Floor 10
Austin, TX 78701-1649

Phone: (512) 463-2012
Email: Thomas.Edwards@TexasAttorneyGeneral.gov and
Jane.Atwood@TexasAttorneyGeneral.gov

As to BPXP:

BP Exploration & Production Inc.
501 Westlake Park Boulevard
Houston, Texas 77079
Attention: U.S. Company Secretary

with copies to each of the following:

BP Exploration & Production Inc.
501 Westlake Park Boulevard
Houston, Texas 77079
Attention: Gulf of Mexico, Regional President

BP America
501 Westlake Park Boulevard
Houston, Texas 77079
Attention: U.S. General Counsel

As to BPCNA:

BP Corporation North America Inc.
501 Westlake Park Boulevard
Houston, Texas 77079
Attention: Company Secretary

with copies to each of the following:

BP Corporation North America Inc.
501 Westlake Park Boulevard
Houston, Texas 77079
Attention: President

BP America
501 Westlake Park Boulevard
Houston, Texas 77079
Attention: U.S. General Counsel

As to BP p.l.c.:

BP p.l.c.
1 St James's Square
London, SW1Y 4PD
United Kingdom
Attention: Company Secretary

with copies to each of the following:

BP p.l.c.
1 St James's Square,
London, SW1Y 4PD
United Kingdom
Attention: Group General Counsel

BP America
501 Westlake Park Boulevard
Houston, Texas 77079
Attention: U.S. General Counsel

93. Change of Recipients for Notices. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

94. Date of Service. Notices submitted pursuant to this Section shall be deemed served or submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

95. Acceptance of Service of Process. The Parties agree to accept service of process as by delivery at the addresses specified in Paragraph 92 or in accordance with Paragraph 93 with respect to all matters arising under or relating to this Consent Decree.

XX. SIGNATURES

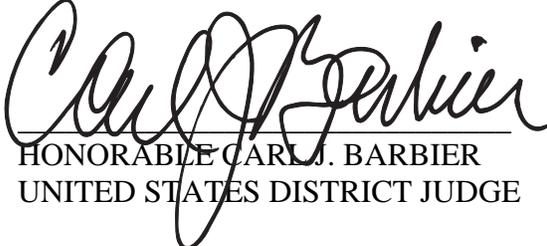
96. Authority of Signatories. Each of the undersigned representatives certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree, to execute this Consent Decree, and to legally bind to this Consent Decree the Party, affiliate or entity he or she represents.

97. Counterparts. This Consent Decree may be executed in counterparts, and its validity shall not be challenged on that basis.

98. Electronic and Facsimile Signatures. For purposes of this Consent Decree a signature page that is transmitted electronically (*e.g.*, by facsimile or e-mailed “PDF”) shall have the same effect as an original.

IT IS SO ORDERED:

Dated and entered in New Orleans, Louisiana, this 4th day of April, 2016.


HONORABLE CARL J. BARBIER
UNITED STATES DISTRICT JUDGE

THE UNDERSIGNED PARTY enters into this Consent Decree among BPXP, BPCNA, BP plc, the United States, and the States of Alabama, Florida, Louisiana, Mississippi, and Texas in Deepwater Horizon MDL 2179 (E.D. La.).

EXECUTED by:

BPXP

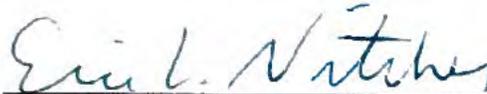
Date: 9-28-2015



Brian D. Israel
ARNOLD & PORTER LLP
601 Massachusetts Avenue, NW
Washington, DC 20001

BPCNA

Date: 9-28-2015



Eric L. Nitcher
Assistant General Counsel, BPCNA
501 Westlake Park Blvd
Houston, Texas 77079

BP p.l.c.

Date: 9-28-2015



Daryl A. Libow
SULLIVAN & CROMWELL LLP
1700 New York Avenue, NW
Washington, DC 20006

THE UNDERSIGNED PARTY enters into this Consent Decree among BPXP, BPCNA, BP plc, the United States, and the States of Alabama, Florida, Louisiana, Mississippi, and Texas in Deepwater Horizon MDL 2179 (E.D. La.).

FOR THE UNITED STATES:

OCT 01 2015
Date: _____



JOHN C. CRUDEN
Assistant Attorney General
Environment & Natural Resources Division
U.S. Department of Justice

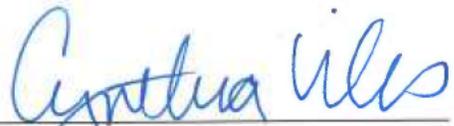
OCT 01 2015
Date: _____



BENJAMIN C. MIZER
Principal Deputy Assistant Attorney General
Civil Division
U.S. Department of Justice

THE UNDERSIGNED PARTY enters into this Consent Decree among BPXP, BPCNA, BP plc, the United States, and the States of Alabama, Florida, Louisiana, Mississippi, and Texas in Deepwater Horizon MDL 2179 (E.D. La.).

Date: 9/17/15



CYNTHIA GILES
Assistant Administrator
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency

Date: 9/17/15



KENNETH J. KOPOCIS
Deputy Assistant Administrator
Office of Water
Designated Natural Resource Trustee Official
United States Environmental Protection Agency

Date: Sep 17, 2015



JOHN FOGARTY
Associate Director
Office of Civil Enforcement
United States Environmental Protection Agency

THE UNDERSIGNED PARTY enters into this Consent Decree among BPXP, BPCNA, BP plc, the United States, and the States of Alabama, Florida, Louisiana, Mississippi, and Texas in Deepwater Horizon MDL 2179 (E.D. La.).

Date: 9.18.15



ANN MILLS
Deputy Under Secretary for Natural Resources &
Environment
U.S. Department of Agriculture

Date: _____

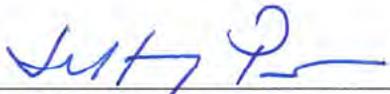
JEFFREY PRIETO
General Counsel
U.S. Department of Agriculture

THE UNDERSIGNED PARTY enters into this Consent Decree among BPXP, BPCNA, BP plc, the United States, and the States of Alabama, Florida, Louisiana, Mississippi, and Texas in Deepwater Horizon MDL 2179 (E.D. La.).

Date: _____

ANN MILLS
Deputy Under Secretary for Natural Resources &
Environment
U.S. Department of Agriculture

Date: 9/18/15



JEFFREY PRIETO
General Counsel
U.S. Department of Agriculture

THE UNDERSIGNED PARTY enters into this Consent Decree among BPXP, BPCNA, BP plc, the United States, and the States of Alabama, Florida, Louisiana, Mississippi and Texas in Deepwater Horizon MDL 2179 (E.D. La).

Date: 9/21/15



STEVAN E. BUNNELL
General Counsel
U.S. Department of Homeland Security

Date: 9/21/15



STEVEN D. POULIN
Rear Admiral, U.S. Coast Guard
Judge Advocate General

THE UNDERSIGNED PARTY enters into this Consent Decree among BPXP, BPCNA, BP plc, the United States, and the States of Alabama, Florida, Louisiana, Mississippi, and Texas in Deepwater Horizon MDL 2179 (E.D. La.).

Date: 09/17/15


HILARY TOMPKINS
Solicitor
Department of the Interior

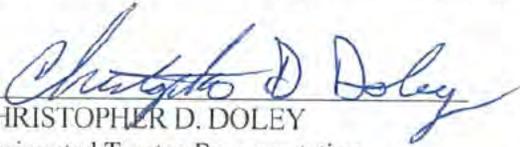
THE UNDERSIGNED PARTY enters into this Consent Decree among BXPX, BPCNA, BP plc, the United States, and the States of Alabama, Florida, Louisiana, Mississippi, and Texas in Deepwater Horizon MDL 2179 (E.D. La.).

Date: 7-21-2015



LOIS J. SCHIFFER
General Counsel
National Oceanic and Atmospheric Administration

Date: 9-21-2015



CHRISTOPHER D. DOLEY
Designated Trustee Representative
National Oceanic and Atmospheric Administration

THE UNDERSIGNED PARTY enters into this Consent Decree among BXP, BPCNA, BP p.l.c., the United States, and the States of Alabama, Florida, Louisiana, Mississippi, and Texas in Deepwater Horizon MDL 2179 (E.D. La.).

Date:

9/14/2015



ROBERT BENTLEY

Governor

State of Alabama

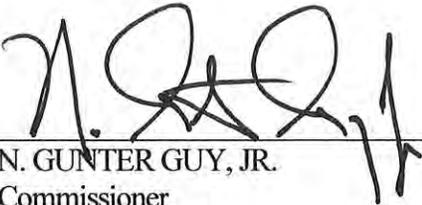
THE UNDERSIGNED PARTY enters into this Consent Decree among BPXP, BPCNA, BP p.l.c., the United States, and the States of Alabama, Florida, Louisiana, Mississippi, and Texas in Deepwater Horizon MDL 2179 (E.D. La.).

Date: 9-14-15

Luther Strange
LUTHER STRANGE
Attorney General
State of Alabama

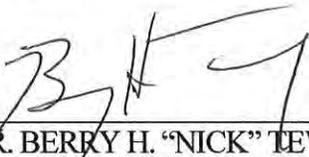
THE UNDERSIGNED PARTIES enter into this Consent Decree among BPXP, BPCNA, BP p.l.c., the United States, and the States of Alabama, Florida, Louisiana, Mississippi, and Texas in Deepwater Horizon MDL 2179 (E.D. La.).

Date: 9/14/15



N. GUNTER GUY, JR.
Commissioner
Alabama Department of Conservation and Natural
Resources

Date: 9/14/15



DR. BERRY H. "NICK" TEW, JR.
State Geologist
Geological Survey of Alabama

THE UNDERSIGNED PARTY enters into this Consent Decree among BPXP, BPCNA, BP plc, the United States, and the States of Alabama, Florida, Louisiana, Mississippi, and Texas in Deepwater Horizon MDL 2179 (E.D. La.).

Date:

9/15/2015



RICK SCOTT
Governor
State of Florida

THE UNDERSIGNED PARTY enters into this Consent Decree among BPXP, BPCNA, BP plc, the United States, and the States of Alabama, Florida, Louisiana, Mississippi, and Texas in Deepwater Horizon MDL 2179 (E.D. La.).

Date: 9/15/15

Handwritten signature of Pam Bondi in black ink, written over a horizontal line.

PAMBONDI
Attorney General
State of Florida

THE UNDERSIGNED PARTY enters into this Consent Decree among BXPX, BPCNA, BP plc, the United States, and the States of Alabama, Florida, Louisiana, Mississippi, and Texas in Deepwater Horizon MDL 2179 (E.D. La.).

Date: 9/15/15



JON STEVERSON
Secretary
Florida Department of Environmental Protection

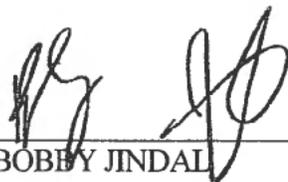
Date: 9/15/15



EUGENE "NICK" WILEY
Executive Director
Florida Fish and Wildlife Conservation Commission

THE UNDERSIGNED PARTY enters into this Consent Decree among BPXP, BPCNA, BP plc, the United States, and the States of Alabama, Florida, Louisiana, Mississippi, and Texas in Deepwater Horizon MDL 2179 (E.D. La.).

Date: September 15, 2015

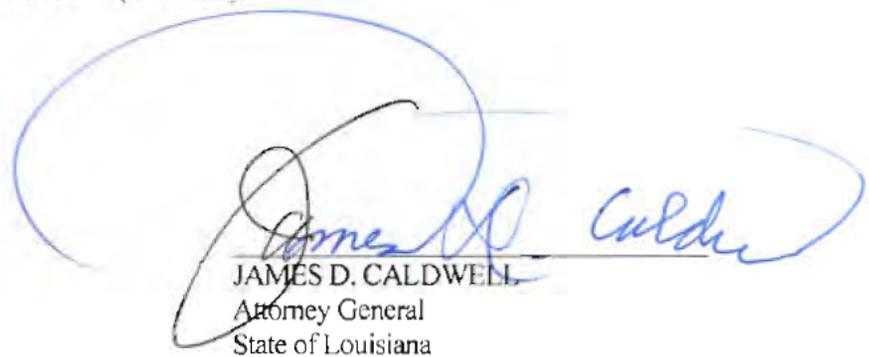


BOBBY JINDAL
Governor
State of Louisiana

THE UNDERSIGNED PARTY enters into this Consent Decree among BPXP, BPCNA, BP plc, the United States, and the States of Alabama, Florida, Louisiana, Mississippi, and Texas in Deepwater Horizon MDL 2179 (E.D. La.).

Date:

9/16/15



JAMES D. CALDWELL
Attorney General
State of Louisiana

THE UNDERSIGNED PARTY enters into this Consent Decree among BXP, BPCNA, BP plc, the United States, and the States of Alabama, Florida, Louisiana, Mississippi, and Texas in Deepwater Horizon MDL 2179 (E.D. La.).

Date: 9/16/15 

Kyle Graham
Executive Director, Louisiana Coastal Protection and Restoration Authority
State of Louisiana

Date: _____

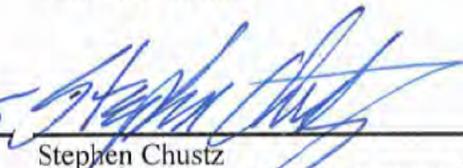
Brian Wynne
Director, Louisiana Oil Spill Coordinator's Office
State of Louisiana

Date: _____

Peggy Hatch
Secretary, Louisiana Department of Environmental Quality
State of Louisiana

Date: _____

Robert Barham
Secretary, Louisiana Department of Wildlife and Fisheries
State of Louisiana

Date: 9/16/2015 

Stephen Chustz
Secretary, Louisiana Department of Natural Resources
State of Louisiana

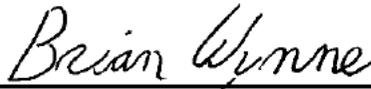
THE UNDERSIGNED PARTY enters into this Consent Decree among BPXP, BPCNA, BP plc, the United States, and the States of Alabama, Florida, Louisiana, Mississippi, and Texas in Deepwater Horizon MDL 2179 (E.D. La.).

Date:

Kyle Graham
Executive Director, Louisiana Coastal Protection and Restoration Authority
State of Louisiana

Date:

9/16/15



Brian Wynne
Director, Louisiana Oil Spill Coordinator's Office
State of Louisiana

Date:

9/16/15



Peggy Hatch
Secretary, Louisiana Department of Environmental Quality
State of Louisiana

Date:

9/16/15



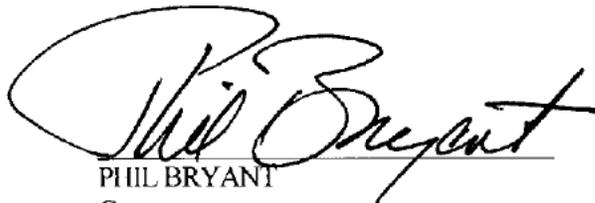
Robert Barham
Secretary, Louisiana Department of Wildlife and Fisheries
State of Louisiana

Date:

Stephen Chustz
Secretary, Louisiana Department of Natural Resources
State of Louisiana

THE UNDERSIGNED PARTY enters into this Consent Decree among BPXP, BPCNA, BP plc, the United States, and the States of Alabama, Florida, Louisiana, Mississippi, and Texas in Deepwater Horizon MDL 2179 (E.D. La.).

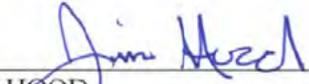
Date: Sept. 17, 2015

A large, stylized handwritten signature in black ink, appearing to read "Phil Bryant". The signature is written over a horizontal line.

PHIL BRYANT
Governor
State of Mississippi

THE UNDERSIGNED PARTY enters into this Consent Decree among BPXP, BPCNA, BP plc, the United States, and the States of Alabama, Florida, Louisiana, Mississippi, and Texas in Deepwater Horizon MDL 2179 (E.D. La.).

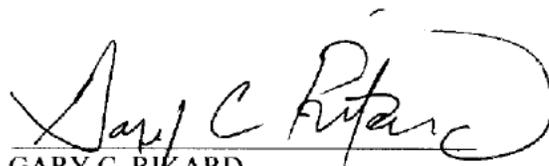
Date: 9/15/2015



JIM HOOD
Attorney General
State of Mississippi

THE UNDERSIGNED PARTY enters into this Consent Decree among BPXP, BPCNA, BP plc, the United States, and the States of Alabama, Florida, Louisiana, Mississippi, and Texas in Deepwater Horizon MDL 2179 (E.D. La.).

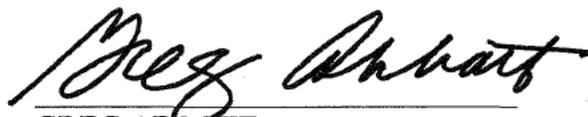
9/15/2015
Date



GARY C. RIKARD
Mississippi Department of Environmental Quality
Executive Director
P.O. Box 2261
Jackson, Mississippi 39225-2261

WE HEREBY CONSENT to the entry of the Consent Decree between BPXP, BPCNA, BP p.l.c., the United States, and the Gulf States in MDL 2179.

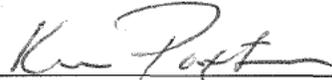
Date: 9/14/15



GREG ABBOTT
Governor
State of Texas

WE HEREBY CONSENT to the entry of the Consent Decree between BPXP, BPCNA, BP p.l.c., the United States, and the Gulf States in MDL 2179.

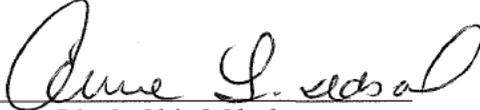
Date: 9/15/15



KEN PAXTON
Attorney General
State of Texas

WE HEREBY CONSENT to the entry of the Consent Decree between BPXP, BPCNA, BP p.l.c., the United States, and the Gulf States in MDL 2179.

TEXAS GENERAL LAND OFFICE
Natural Resource Trustee

By: 
Anne Idsal, Chief Clerk
Texas General Land Office

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
Natural Resource Trustee

By: _____
Richard Hyde, Executive Director
Texas Commission on Environmental Quality

TEXAS PARKS AND WILDLIFE DEPARTMENT
Natural Resource Trustee

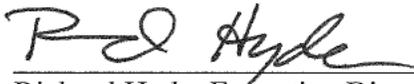
By: _____
Carter Smith, Executive Director
Texas Parks and Wildlife Department

WE HEREBY CONSENT to the entry of the Consent Decree between BPXP, BPCNA, BP p.l.c., the United States, and the Gulf States in MDL 2179.

TEXAS GENERAL LAND OFFICE
Natural Resource Trustee

By: _____
Anne Idsal, Chief Clerk
Texas General Land Office

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
Natural Resource Trustee

By:  _____
Richard Hyde, Executive Director
Texas Commission on Environmental Quality

TEXAS PARKS AND WILDLIFE DEPARTMENT
Natural Resource Trustee

By: _____
Carter Smith, Executive Director
Texas Parks and Wildlife Department

WE HEREBY CONSENT to the entry of the Consent Decree between BPXP, BPCNA, BP p.l.c., the United States, and the Gulf States in MDL 2179.

TEXAS GENERAL LAND OFFICE
Natural Resource Trustee

By: _____
Anne Idsal, Chief Clerk
Texas General Land Office

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
Natural Resource Trustee

By: _____
Richard Hyde, Executive Director
Texas Commission on Environmental Quality

TEXAS PARKS AND WILDLIFE DEPARTMENT
Natural Resource Trustee

By:  _____
Carter Smith, Executive Director
Texas Parks and Wildlife Department

Appendix B.

Restoration Agreement Among the United States and the Gulf States Relating to Natural Resource Restoration

Appendix 2: Agreement Among the United States and the Gulf States Relating to Natural Resource Restoration

Restoration to be performed through this Appendix 2 addresses the following **Restoration Goals**, which also were identified in the Gulf Coast Ecosystem Restoration Task Force Strategy (December 2011): Restore and Conserve Habitat; Restore Water Quality; Replenish and Protect Living Coastal and Marine Resources; Enhance Community Resiliency (Provide and Enhance Recreational Opportunities); and Provide for Monitoring, Research, and Adaptive Management. The restoration work and terms specified in this Appendix 2 are in conjunction with a Programmatic Restoration Plan that will be adopted by the Trustees prior to entry of this Consent Decree.

SECTION 1: MONEY AVAILABLE FOR RESTORATION PROJECTS

Monies available for restoration consist of all payments by BPXP to the Trustees for natural resource damages (hereafter, “**NRD Monies**”). **NRD Monies** include NRD payments by BPXP required by Paragraphs 15, 16, and 21 and the \$1 billion made available by BPXP under the Framework Agreement, the unspent portion of which is paid to the Trustees pursuant to Paragraph 17.

SECTION 2: ALLOCATION OF NRD MONIES TO RESTORATION AREAS AND TYPES OF RESTORATION ACTIVITIES

The restoration work addressed by this Appendix 2 will be performed by the Trustees, acting through the Trustee Council, using best available science. The Trustees will use **NRD Monies** for their restoration activities. The restoration work to be done by the Trustees shall be consistent with a Programmatic Restoration Plan adopted by the Trustees. The Programmatic Restoration Plan shall set forth, among other things, how the proposed restoration will address the injuries to natural resources caused by the *Deepwater Horizon* Incident.

- 2.1. **NRD Monies** received from BPXP shall be allocated among the following **Restoration Areas**:
 - 2.1.1. “**Open Ocean**” consists of restoration activities for resources primarily in the ocean and Federal Trustee administrative and preliminary planning activities across **Restoration Areas**.
 - 2.1.2. “**Region-wide**” consists of categories of restoration projects that will benefit resources across the Gulf. It also contains funding for Gulf-wide needs such as monitoring, research, oversight, and planning.

- 2.1.3. “**Restoration in Alabama**” consists of restoration activities to benefit resources within the geographic jurisdiction of the State of Alabama.
- 2.1.4. “**Restoration in Florida**” consists of restoration activities to benefit resources within the geographic jurisdiction of the State of Florida.
- 2.1.5. “**Restoration in Louisiana**” consists of restoration activities to benefit resources within the geographic jurisdiction of the State of Louisiana.
- 2.1.6. “**Restoration in Mississippi**” consists of restoration activities to benefit resources within the geographic jurisdiction of the State of Mississippi.
- 2.1.7. “**Restoration in Texas**” consists of restoration activities to benefit resources within the geographic jurisdiction of the State of Texas.
- 2.1.8. “**Adaptive Management & Unknown Conditions Restoration**” consists of restoration activities funded by BPXP’s additional payments for unknown conditions and adaptive management that are in addition to the \$7.1 billion on the NRD payment schedule.

2.2. For each **Restoration Area**, the **Restoration Area Amount** shall be the amount of **NRD Monies** to be made available to that **Restoration Area**. The **Restoration Area Amounts** for each **Restoration Area** are:

<u>Restoration Area</u>	<u>Restoration Area Amounts</u>
Region-Wide	\$ 349,851,678
Open Ocean	\$1,240,697,916
Restoration in Alabama	\$ 295,589,305
Restoration in Florida	\$ 680,152,643
Restoration in Louisiana	\$5,000,000,000
Restoration in Mississippi	\$ 295,557,000
Restoration in Texas	\$ 238,151,458
Adaptive Mgmt. & Unknown Conditions Restoration	up to \$ 700,000,000
TOTAL:	\$8,800,000,000

2.3. Distribution of NRD Payments.

- 2.3.1. Early Restoration Payments. Early Restoration Framework Agreement monies paid by BPXP after entry of the Consent Decree pursuant to Paragraph 17 will be distributed to NRDAR sub-accounts for the Restoration Areas as follows:

2.3.1.1. Agreed-upon projects. For early restoration projects previously approved in a stipulation or a term sheet, funding for those projects will be distributed to the Restoration Area to which the project pertains. A listing of previously approved early restoration projects for each Restoration Area is in Table 2.

2.3.1.2. The remaining early restoration NRD Monies that BPXP must pay within 30 days of the Effective Date will be distributed so that the total early restoration funding distributed to each **Restoration Area** equals the **Total Early Restoration Distribution** shown in the following table:

Restoration Area	Total Early Restoration Distribution
Region-wide	\$34,079,283
Open Ocean	\$76,700,409
Restoration in Alabama	\$129,027,405
Restoration in Florida	\$149,878,130
Restoration in Louisiana	\$371,437,300
Restoration in Mississippi	\$131,000,000
Restoration in Texas	\$107,877,473
Adaptive Mgmt. & Unknown Conditions Restoration	\$0
TOTAL:	\$1,000,000,000

2.3.1.3. The accrued interest paid by BPXP pursuant to Paragraph 17 will be distributed to the NRDAR sub-account for the Region-wide **Restoration Area**.

2.3.2. Distribution of the NRD payments on NRD Payment schedule in Paragraph 16. Beginning one year after entry of the Consent Decree, BPXP will make a series of payments pursuant to Paragraph 16 for NRD totaling \$7.1 billion (not including interest and an additional payment for unknown conditions and adaptive management). Those payments will be distributed each year to NRDAR sub-accounts for each of the seven Restoration Areas in the amounts shown on Appendix 2 Table 3. Within each **Restoration Area**, the distributed funds will be allocated proportionate to the **Restoration Type** amounts in Table 1, taking into account early restoration project allocations. The **Trustee Implementation Group** for each **Restoration Area** may agree on a different allocation of funds to the **Restoration Types**, consistent with fully funding all of the **Restoration Type** allocations over the life of the payment schedule.

2.3.3. Distribution of Payments for Unknown Conditions and Adaptive Management. NRD payments received pursuant to Paragraph 21 will be distributed to the

Adaptive Management & Unknown Conditions Restoration NRDAR sub-account.

- 2.4. The chart attached as Table 1 specifies the **Restoration Types** on which the Trustees shall expend **NRD Monies** from each **Restoration Area**, subject to the process for revisions in Section 3.6.
- 2.5. The rows in Table 1 identify **Restoration Types** organized by **Restoration Goals**.
- 2.6. For each **Restoration Type**, Table 1 identifies the amount of **NRD Monies** to be spent on restoration projects of that **Restoration Type** for each **Restoration Area**, subject to the process for revisions in Section 3.6.
- 2.7. **NRD Monies** in each **Restoration Area** not dedicated to a particular **Restoration Type** in Table 1 will be spent on restoration projects as determined by the **Trustee Implementation Group** (defined in Section 3 below) for that **Restoration Area**. It is anticipated that adaptive management will be used to implement restoration projects, and NRD Monies dedicated to any Restoration Type also may be used for that purpose.

SECTION 3: TRUSTEE DECISION-MAKING

- 3.1. A **Trustee Implementation Group** will administer **NRD Monies** for each **Restoration Area**. Each **Trustee Implementation Group** shall develop, select, and implement restoration projects using **NRD Monies** available for its **Restoration Area**.
- 3.2. The **Trustee Implementation Groups** shall be constituted for each **Restoration Area** as follows:
 - 3.2.1. **Restoration in Alabama**: the Federal Trustees and the natural resource Trustees for the State of Alabama.
 - 3.2.2. **Restoration in Florida**: the Federal Trustees and the natural resource Trustees for the State of Florida.
 - 3.2.3. **Restoration in Louisiana**: the Federal Trustees and the natural resource Trustees for the State of Louisiana.
 - 3.2.4. **Restoration in Mississippi**: the Federal Trustees and the natural resource Trustee for the State of Mississippi.
 - 3.2.5. **Restoration in Texas**: the Federal Trustees and the natural resource Trustees for the State of Texas.

- 3.2.6. **Region-wide:** all State and Federal Trustees.
 - 3.2.7. **Open Ocean:** the Federal Trustees.
 - 3.2.8. **Adaptive Management & Unknown Conditions Restoration:** all State and Federal Trustees.
- 3.3. Developing, selecting, and implementing projects. Each **Trustee Implementation Group** shall develop procedures for developing projects, in accordance with the OPA regulations and other applicable requirements.
- 3.3.1. Each **Trustee Implementation Group** shall develop, select, and implement projects on a consensus basis. For the five **Trustee Implementation Groups** for each of the five Gulf States, consensus requires that a proposed restoration action be supported by both the United States (as decided by the federal Trustees as a group) and the State (as decided by the State trustees as a group). The Federal Trustees will develop a Memorandum of Understanding (MOU) setting forth an approach and procedures pursuant to which the Federal Trustees will speak with a single voice on decisions made by the five **Trustee Implementation Groups** for each of the five Gulf States; the State Trustees for each State will develop a Memorandum of Understanding (MOU) setting forth an approach and procedures pursuant to which the State Trustees will speak with a single voice on decisions made by the five **Trustee Implementation Groups** for each of the five Gulf States. For the full Trustee Council and the **Trustee Implementation Groups** for the Region-wide and Adaptive Management and Unknown Conditions **Restoration Areas**, consensus requires that a proposed restoration action be supported by all non-abstaining Federal Trustees and all non-abstaining Gulf States (as decided for each Gulf State by the State trustees as a group). For the Open Ocean **Restoration Area**, consensus requires that a proposed restoration action be supported by all non-abstaining Federal Trustees.
 - 3.3.2. The process of developing, selecting, and implementing restoration projects will require **Trustee Implementation Groups** to regularly develop, propose, and decide upon restoration plans, pursuant to the applicable OPA regulations. Those regulations require an opportunity for public review and comment on proposed restoration plans. Many restoration plans for specific projects will not require modifications to the Programmatic Restoration Plan; however, some restoration decisions may require modifications to the Programmatic Restoration Plan.
- 3.4. At any point in the development, selection, or implementation of a restoration project, the applicable **Trustee Implementation Group** may designate a lead implementing

Trustee for that project. As appropriate, different Trustees may be designated as lead for different portions of a project. All decision-making will be as set forth in Paragraphs 3.1, 3.2, and 3.3.

- 3.5. Project Modification and Replacement. If construction or implementation is terminated on a project selected by a **Trustee Implementation Group**, the funds that would have been spent on that project remain dedicated to the same **Restoration Type** within the same **Restoration Area**. The applicable **Trustee Implementation Group** must then select another project(s). With regard to approved early restoration projects, decisions regarding project modifications, selection and implementation of any replacement project(s), and the use of any unexpended early restoration project funds shall be made by the appropriate **Trustee Implementation Group** for that project.
- 3.6. Changes to the amount of funding to be spent on a **Restoration Type** within a **Restoration Area** may be made after the **Trustee Implementation Group** proposes a revised restoration plan, which is subject to public review and comment pursuant to the OPA regulations, but only with the consensus (as defined in Section 3.3.1) of the Trustees in the **Trustee Implementation Group** for that **Restoration Area**. Any such changes will follow the applicable OPA requirements for changes to a restoration plan. In addition, any modifications to shift funding designated for one **Restoration Goal** to another **Restoration Goal** may be made only with the consensus (as defined in Section 3.3.1) of the Trustees in the **Trustee Implementation Group(s)** affected, and only with court approval, through a motion to the court setting forth the basis for the requested change.
- 3.7. Should there be an unresolved dispute about a substantial matter in one of the five Trustee Implementation Groups for the Gulf States, a trustee in that group may seek guidance from the full Trustee Council through a non-binding, non-voting Executive Session discussion.
- 3.8. Changes of less than \$50,000 to the amount of funding to be spent on a **Restoration Type** within a **Restoration Area** are not changes to the restoration plan and do not require either (1) public review and comment or (2) court approval before the change is put into effect. Public notice of such a change is required.
- 3.9. The Trustees shall revise their Memorandum of Understanding for operation of the Trustee Council in accordance with this Consent Decree.

SECTION 4: GENERAL PROVISIONS

- 4.1. Standard Operating Procedures. The Trustee Council will develop standard operating procedures (SOP) for the long-term management, implementation, and administration

of settlement funds. The SOP will include, but not be limited to: a) Trustee Council structure and management; b) decision-making and delegation of authority; c) funding; d) administrative procedures; e) project reporting; f) conflict resolution; g) consultation opportunities among the Trustees; and h) administrative accounting, and independent auditing systems for use by each Trustee Implementation Group. The independent financial audits shall be conducted on a regular basis with respect to funds disbursed to each Trustee Implementation Group as specified in the SOP, and shall include, but shall not be limited to, review of accounting policies and procedures for holding and tracking disbursed funds and review of actual expenditures disbursed for restoration activities. The results of these independent audits shall be made available to the public. In selecting and implementing projects, including the administration of **NRD Monies**, each **Trustee Implementation Group** will conform to the Standard Operating Procedures set by the Trustee Council.

4.2. Administration of Restoration Funds.

4.2.1. **NRD Monies** paid pursuant to this Consent Decree shall be deposited into a Natural Resource Damage Assessment and Restoration (NRDAR) account, managed by the Department of the Interior (DOI) for the Deepwater Horizon Oil Spill. Sub-accounts for each **Restoration Area** shall be created to fund the work in that **Restoration Area**. Disbursements from an account shall be made upon application by all Trustees in the appropriate **Trustee Implementation Group** to the appropriate NRDAR account or sub-account.

4.2.2. Each **Trustee Implementation Group** shall implement the administrative and accounting systems for funds disbursed from the applicable NRDAR account or sub-account.

4.3. No BP role. BP Entities had no role in the negotiation of Appendix 2, including Tables 1-3. BP Entities shall have no role in deciding how restoration monies are spent or in other decisions concerning restoration. BP Entities shall not challenge or object to any actions or analyses conducted by the Trustees, or on behalf of the Trustees, relating to developing, selecting, or implementing restoration work.

Appendix 2 Table 1: Natural Resource Damages Final Allocation

Restoration Goals and Restoration Types	Unknown Conditions	Region-wide	Open Ocean	Restoration in Alabama	Restoration in Florida	Restoration in Louisiana	Restoration in Mississippi	Restoration in Texas
1. Restore and Conserve Habitat Wetlands, Coastal and Nearshore Habitats				65,000,000	5,000,000	4,009,062,700	55,500,000	100,000,000
Habitat projects on Federally Managed Lands				3,000,000	17,500,000	50,000,000	5,000,000	
Early Restoration (thru phase IV)				28,110,000	15,629,367	259,625,700	80,000,000	
2. Restore Water Quality Nutrient reduction (nonpoint source)				5,000,000	35,000,000	20,000,000	27,500,000	22,500,000
Water Quality (e.g. stormwater treatments, hydrologic restoration, reduction of sedimentation, etc.)					300,000,000			
3. Replenish and Protect Living Coastal and Marine Resources								
Fish and Water Column Invertebrates			380,000,000					
Early Restoration Fish			20,000,000					
Sturgeon			15,000,000					
Sea Turtles		60,000,000	55,000,000	5,500,000	20,000,000	10,000,000	5,000,000	7,500,000
Early Restoration Turtles		29,256,165						19,965,000
SAV						22,000,000		
Marine Mammals		19,000,000	55,000,000	5,000,000	5,000,000	50,000,000	10,000,000	
Birds		70,400,000	70,000,000	30,000,000	40,000,000	148,500,000	25,000,000	20,000,000
Early Restoration Birds		1,823,100		145,000	2,835,000	71,937,300		20,603,770
Mesophotic Reefs & Deep Benthic Habitats			273,300,000					
Oysters		64,372,413		10,000,000	20,000,000	26,000,000	20,000,000	22,500,000
Early Restoration Oyster				3,329,000	5,370,596	14,874,300	13,600,000	
4. Provide and Enhance Recreational Opportunities								
Early Restoration of Recreational Loss			22,397,916	25,000,000	63,274,513	38,000,000	5,000,000	18,582,688
85,505,305					120,543,167	22,000,000	18,957,000	
5. Monitoring, Adaptive Management, Administrative Oversight								
Monitoring and Adaptive Management		65,000,000	200,000,000	10,000,000	10,000,000	225,000,000	7,500,000	2,500,000
Administrative Oversight and Comprehensive Planning		40,000,000	150,000,000	20,000,000	20,000,000	33,000,000	22,500,000	4,000,000
Adaptive Management NRD Payment for Unknown Conditions	700,000,000							
TOTAL NRD FUNDING	\$700,000,000	\$349,851,678	\$1,240,697,916	\$295,589,305	\$680,152,643	\$5,000,000,000	\$295,557,000	\$238,151,458

Appendix 2 Table 2: Early Restoration Projects for each Restoration Area

(Note: Dollar amounts for each early restoration project are estimates. Actual payments received for each early restoration project will be determined after receipt of the final early restoration payment pursuant to Paragraph 17.)

Region-wide	
Sea turtles (Eco) (TX, DOI, & NOAA)	\$25,035,000
Sea Turtles Total	\$25,035,000
FL Avian Breeding Habitat (Eco)* (FL & DOI)	\$1,823,118
Birds Total	\$1,823,118
Restoring the Night Sky, turtle (Eco) (AL, FL, & DOI)	\$725,000
Restoring the Night Sky, turtle (Eco) (AL, FL, & DOI)	\$3,496,165
Sea Turtles Total	\$4,221,165

Region-wide ER Total **\$31,079,283**

Open Ocean	
Bike & Ped Lane, GUIJS MS (RU)	\$6,996,751
Bon Secour NWR Trail, AL (RU)	\$545,110
Beach Enhancement G.I. National Seashore (RU)	\$10,836,055
Gulf Islands National Seashore Ferry Project (RU)	\$4,020,000
Rec Loss Restoration Total	\$22,397,916
Pelagic Long Line (Eco)	\$20,000,000
Fish and Water Column Invertebrates Total	\$20,000,000

Opean Ocean ER Total **\$42,397,916**

Restoration in Alabama	
Gulf State Park (RU)	\$85,505,305
Rec Loss Restoration Total	\$85,505,305
AL Marsh (Eco)*	\$11,280,000
AL Living Shoreline (Eco) (AL & NOAA)	\$5,000,080
AL Dune (Eco)*	\$1,480,000
AL Shell Belt & Coden Belt Roads LS (Eco)	\$8,050,000
AL Point aux Pinx LS (Eco)	\$2,300,000
Wetlands and Coastal Habitats	\$28,110,080
AL Oyster Cultch (Eco)	\$3,239,485
Oyster Total	\$3,239,485
Restoring the Night Sky, turtle (Eco) (AL, FL, & DOI)	\$100,000
AL Osprey Nests (Eco)	\$45,000
Birds Total	\$145,000

Restoration in Alabama ER Total **\$116,999,870**

Restoration in Florida	
Bob Sikes Pier Parking and Trail Restoration (RU)	\$1,023,990
Perdido Key State Park Boardwalk Improvements (RU)	\$588,500
Shell Point Beach Nourishment (RU)	\$882,750
Big Lagoon State Park Boat Ramp Improvements (RU)	\$1,483,020
Phase I Boat Ramp (RU)*	\$5,067,255
Scallop Enhancement (RU)	\$2,890,250
Artificial Reef (RU)	\$11,463,587
Fish Hatchery (RU)	\$18,793,500
Strategic Boat Access Along FL coast (RU)	\$3,248,340
Walton Cty Boardwalks & Dune Crossovers (RU)	\$386,291
Gulf Cty Rec Projects (RU)	\$2,118,600
Bald Point State Park Rec Areas (RU)	\$470,800
Enhancement of Franklin Cty Parks & Boat Ramps (RU)	\$1,771,385
Apalachicola River Wildlife & Environ Area Fishing Access (RU)	\$262,989
Navarre Beach Park Gulfside Walkover Complex (RU)	\$1,221,847
Navarre Beach Park Coastal Access (RU)	\$614,630
Gulf Breeze Wayside Park Boat Ramp (RU)	\$309,669
Developing Enhanced Rec Opportunities Escribano Point (RU)	\$2,576,365
Norriego Point Restoration & Rec Project (RU)	\$10,228,130

Restoration in Louisiana	
Fish Hatchery (RU)	\$22,000,000
Rec Loss Restoration Total	\$22,000,000
Barrier Island Projects (Eco) (LA, DOI, & NOAA)	\$49,925,700
Lake Hermitage (Eco)**	\$13,200,000
LA Barrier Island (Eco) (LA, DOI, & NOAA)	\$32,500,000
LA Barrier Island Projects (Eco)	\$164,000,000
Wetlands and Coastal Habitats	\$259,625,700
Oyster Cultch (Eco)**	\$14,874,300
Oyster Total	\$14,874,300
LA Breton Island Component (Eco)	\$36,000,000
Breton Island Component (Eco) (LA, DOI, & NOAA)	\$35,937,300
Birds Total	\$71,937,300

Restoration in Louisiana ER Total **\$368,437,300**

Restoration in Mississippi	
Pascagoula Beach Promenade (RU)	\$3,800,000
Popp's Ferry Causeway Park Project (RU)	\$4,757,000
INFINITY Science Center (RU)	\$10,400,000
Rec Loss Restoration Total	\$18,957,000
Living Shoreline (Eco) (MS & NOAA)	\$35,000,000
Phase IV Living Shoreline (Eco)	\$30,000,000
MS Living Shoreline (Eco) (MS & NOAA)	\$15,000,000
Wetlands and Coastal Habitats	\$80,000,000
Oyster Cultch (Eco)*	\$11,000,000
Artificial Reef (Eco)*	\$2,600,000
Oyster Total	\$13,600,000

Restoration in Mississippi ER Total **\$112,557,000**

Restoration in Texas	
Sea Rim State Park (RU)	\$210,100
Galveston State Park (RU)	\$10,745,060
Artificial Reef (mid/upper coast option) (RU)	\$1,919,765
Artificial Reef (Freeport) (RU)	\$2,155,365
Artificial Reef (Matagorda) (RU)	\$3,552,398
Rec Loss Restoration Total	\$18,582,688
Sea turtles (Eco) (TX, DOI, & NOAA)	\$15,087,527
Sea turtles (Eco) (TX, DOI, & NOAA)	\$4,877,473
Sea Turtles Total	\$19,965,000
Bird Rookery Islands (Eco)	\$20,603,770
Birds Total	\$20,603,770

Restoration in Texas ER Total **\$59,151,458**

Restoration in Florida	
Deer Lake State Park Development (RU)	\$588,500
City of Parker-Oak Shore Drive Pier (RU)	\$993,649
Panama City Marina Fishing Pier, Boat Ramp & Docks (RU)	\$2,000,000
Wakulla Marshes Sands Park Improvements (RU)	\$1,500,000
NW FL Estuarine Habitat Restoration, Protect & Edu (RU)	\$4,643,547
\$300M FL - Coastal Access (RU)	\$45,415,573
Lost Rec Use Total	\$120,543,167
Phase I Dune (Pensacola Beach) Restoration (Eco)**	\$585,898
FL Pensacola Beach Living Shoreline (Eco) (FL & NOAA)	\$8,090,468
Cat Point Living Shoreline (Eco)	\$775,605
Dune (Perdido Key) Dune Restoration (Eco)	\$611,234
Living Shoreline (Eco) (FL & NOAA)	\$2,737,595
Florida Seagrass Recovery (Eco)	\$2,691,867
Seagrass Recovery GUIS FL (Eco)	\$136,700
Wetlands and Coastal Habitats	\$15,629,367
Avian Breeding Habitat (Eco)* (FL & DOI)	\$2,835,000
Birds Total	\$2,835,000
FL Oyster Cultch Placement(Eco)	\$5,370,596
Oysters Total	\$5,370,596

Restoration in Florida ER Total	\$144,378,130
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Appendix 2 Table 3: Distribution of Paragraph 16 NRD Payments to Restoration Area Sub-Accounts

Payment Date	Assumed Year	Total Payment Amount	Region-wide	Open Ocean	Restoration in Alabama	Restoration in Florida	Restoration in Louisiana	Restoration in Mississippi	Restoration in Texas
Anniversary of the Effective Date	2017	\$489,655,172	\$21,777,406	\$80,275,690	\$11,487,028	\$36,570,656	\$319,211,220	\$11,348,759	\$8,984,413
Anniversary of the Effective Date	2018	\$244,827,586	\$10,888,704	\$40,137,845	\$5,743,514	\$18,285,328	\$159,605,610	\$5,674,379	\$4,492,206
Anniversary of the Effective Date	2019	\$489,655,172	\$21,777,406	\$80,275,690	\$11,487,028	\$36,570,656	\$319,211,220	\$11,348,759	\$8,984,413
Anniversary of the Effective Date	2020	\$489,655,172	\$21,777,406	\$80,275,690	\$11,487,028	\$36,570,656	\$319,211,220	\$11,348,759	\$8,984,413
Anniversary of the Effective Date	2021	\$489,655,172	\$21,777,406	\$80,275,690	\$11,487,028	\$36,570,656	\$319,211,220	\$11,348,759	\$8,984,413
Anniversary of the Effective Date	2022	\$489,655,172	\$21,777,406	\$80,275,690	\$11,487,028	\$36,570,656	\$319,211,220	\$11,348,759	\$8,984,413
Anniversary of the Effective Date	2023	\$489,655,172	\$21,777,406	\$80,275,690	\$11,487,028	\$36,570,656	\$319,211,220	\$11,348,759	\$8,984,413
Anniversary of the Effective Date	2024	\$489,655,172	\$21,777,406	\$80,275,690	\$11,487,028	\$36,570,656	\$319,211,220	\$11,348,759	\$8,984,413
Anniversary of the Effective Date	2025	\$489,655,172	\$21,777,406	\$80,275,690	\$11,487,028	\$36,570,656	\$319,211,220	\$11,348,759	\$8,984,413
Anniversary of the Effective Date	2026	\$489,655,172	\$21,777,406	\$80,275,690	\$11,487,028	\$36,570,656	\$319,211,220	\$11,348,759	\$8,984,413
Anniversary of the Effective Date	2027	\$489,655,172	\$21,777,406	\$80,275,690	\$11,487,028	\$36,570,656	\$319,211,220	\$11,348,759	\$8,984,413
Anniversary of the Effective Date	2028	\$489,655,172	\$21,777,406	\$80,275,690	\$11,487,028	\$36,570,656	\$319,211,220	\$11,348,759	\$8,984,413
Anniversary of the Effective Date	2029	\$489,655,172	\$21,777,406	\$80,275,690	\$11,487,028	\$36,570,656	\$319,211,220	\$11,348,759	\$8,984,413
Anniversary of the Effective Date	2030	\$489,655,172	\$21,777,406	\$80,275,690	\$11,487,028	\$36,570,656	\$319,211,220	\$11,348,759	\$8,984,413
Anniversary of the Effective Date	2031	\$489,655,178	\$21,777,413	\$80,275,692	\$11,487,022	\$36,570,657	\$319,211,230	\$11,348,754	\$8,984,410
TOTALS:		\$7,100,000,000	\$315,772,395	\$1,163,997,507	\$166,561,900	\$530,274,513	\$4,628,562,700	\$164,557,000	\$130,273,985

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Appendix C.

**Trustee Council Memorandum of
Understanding**

TRUSTEE COUNCIL MEMORANDUM OF UNDERSTANDING
RELATING TO THE NATURAL RESOURCE DAMAGE ASSESSMENT AND
RESTORATION RESULTING FROM THE
DEEPWATER HORIZON MOBILE OFFSHORE DRILLING UNIT AND THE
SUBSEA MACONDO WELL

I. INTRODUCTION

This Memorandum of Understanding (“MOU”) is among the United States Department of the Interior (on behalf of the Fish and Wildlife Service, the National Park Service, and the Bureau of Land Management) (“DOI”); the National Oceanic and Atmospheric Administration (“NOAA”) (on behalf of the United States Department of Commerce); the United States Department of Agriculture (“USDA”); the United States Environmental Protection Agency (“EPA”); the Louisiana Coastal Protection and Restoration Authority, the Louisiana Oil Spill Coordinator’s Office, the Louisiana Department of Environmental Quality, the Louisiana Department of Wildlife and Fisheries, and the Louisiana Department of Natural Resources, for the State of Louisiana; the Mississippi Department of Environmental Quality, for the State of Mississippi; the Alabama Department of Conservation and Natural Resources and the Geological Survey of Alabama, for the State of Alabama; the Florida Department of Environmental Protection and the Florida Fish and Wildlife Conservation Commission, for the State of Florida; and the Texas Parks and Wildlife Department, Texas General Land Office, and the Texas Commission on Environmental Quality, for the State of Texas (collectively referred to as the “Trustees” and each, individually, as a “Trustee”). This MOU is entered into to promote the coordination and cooperation of the Trustees in the restoration of natural resources for the incident or incidents known as the *Deepwater Horizon* Oil Spill that began on April 20, 2010 in the Gulf of Mexico, Mississippi Canyon Block 252, and which includes all associated response actions (“the Oil Spill”). The overall goal of this MOU is to support restoring the natural resources that were injured as a result of the Oil Spill to the condition they would have been in but for the Spill and to compensate the public for the diminished quality and lost use of those natural resources until they are restored as provided in the Oil Pollution Act.

II. AUTHORITIES

Certain Trustees entered into an earlier MOU related to the natural resource damage assessment (“NRDA”) for the Oil Spill circa November 2010 and which they later amended (“2010 MOU”). As required by Appendix 2 to the Consent Decree Among Defendant BP Exploration & Production Inc., the United States of America, and the States of Alabama, Florida, Louisiana, Mississippi, and Texas, entitled Agreement Among the United States and the Gulf States Relating to Natural Resource Restoration (the “Restoration Agreement”), this MOU supersedes and replaces the 2010 MOU, which has no further effect as of the effective date of this MOU.

The Trustees enter into this MOU pursuant to the authority provided to Natural Resource Trustees by the Oil Pollution Act (“OPA”) (33 U.S.C. §§ 2701 *et seq.*); the Federal Water Pollution Control Act (33 U.S.C. §§ 1251 *et seq.*); and the Natural Resource Damage Assessment Regulations (15 C.F.R. Part 990) promulgated pursuant to OPA (“OPA NRDA

Regulations”). In addition, NOAA, DOI, USDA, and EPA enter into this MOU pursuant to the authorities provided in Subpart G of the National Contingency Plan (40 C.F.R. §§ 300.600 *et seq.*); Executive Order 12580 (52 Fed. Reg. 2923 (January 23, 1987)), as amended by Executive Order 12777 (56 Fed. Reg. 54757 (October 19, 1991)); and Executive Order 13626 (77 Fed. Reg. 178 (September 13, 2012)). The State of Florida enters into this MOU pursuant to the Florida Pollutant Discharge Prevention and Control Act (Florida Statutes, 376.011 *et seq.*). The State of Louisiana enters into this MOU pursuant to the Louisiana Oil Spill Prevention and Response Act (La. R.S. 30:2451 *et seq.*) and accompanying regulations (La. Admin. Code 43:101 *et seq.*). The State of Mississippi enters into this MOU pursuant to the Mississippi Air and Water Pollution Control Law (Miss. Code Ann. §§ 49-17-1 through 49-17-43). The Texas General Land Office, Texas Parks and Wildlife Department, and the Texas Commission of Environmental Quality, for Texas, enter into this MOU pursuant to the Texas Oil Spill Prevention and Response Act of 1981 (Tex. Nat. Res. Code Ann. ch. 40) and applicable provisions of the Texas Water Code. The State of Alabama enters into this MOU pursuant to Alabama Code §§9-2-1 *et seq.* and 9-4-1 *et seq.*

III. DEFINITIONS

When used in this MOU, the terms “Federal Trustees,” “Gulf States,” “State Trustees,” “natural resources,” and “natural resource damages” (or “NRD”), whether or not capitalized, shall have the same meanings provided in the Consent Decree. The terms “natural resource damage assessment” or “assessment”, “restoration” or “restore,” “restoration plan,” and “natural resource services” or “services,” shall have the same meanings provided in OPA or the OPA NRDA Regulations.

“Consent Decree” refers to the Consent Decree Among Defendant BP Exploration & Production Inc. (“BPXP”), the United States of America, and the States of Alabama, Florida, Louisiana, Mississippi, and Texas in Multidistrict Litigation Case No. 2179, In re: Oil Spill by the Oil Rig “Deepwater Horizon” in the Gulf of Mexico, on April 20, 2010 (E.D. La.). Its effective date is listed on the last page of this document.

“Restoration Agreement” refers to the Consent Decree’s Appendix 2, titled Agreement Among the United States and the Gulf States Relating to Natural Resource Restoration.

Consistent with the Restoration Agreement, the terms below are defined as follows for purposes of this MOU:

“Federal MOU” means that Memorandum of Understanding required by the Restoration Agreement to be developed by the Federal Trustees setting forth an approach and procedures pursuant to which the Federal Trustees will speak with a single voice (i.e., reach a single federal position) on decisions made by the Trustee Implementation Groups (TIGs) for state-specific Restoration Areas. In the discretion of the Federal Trustees, the Federal MOU may also address coordinated decision-making and dispute resolution among the Federal Trustees in connection with their participation in the other TIGs and the Trustee Council.

“State MOU” or “State MOUs” means one or more of the Memoranda of Understanding required by the Restoration Agreement to be developed by the State Trustees for each Gulf State with multiple Trustees setting forth an approach and procedures pursuant to which those Trustees will speak with a single voice (i.e., reach a single position) for their respective State on decisions made by the TIGs and the Trustee Council.

“NRD Monies” means monies paid by BP for restoration by the Trustees pursuant to the Consent Decree or the Framework for Early Restoration Addressing Injuries Resulting from the *Deepwater Horizon* Oil Spill (“Framework Agreement”), dated April 20, 2011. As set forth in the Restoration Agreement, and especially Table 2, NRD Monies are allocated among the following “Restoration Areas”:

“Open Ocean” consists of restoration activities for resources primarily in the ocean and Federal Trustee administrative and preliminary planning activities across Restoration Areas.

“Region-wide” consists of categories of restoration projects that will benefit resources across the Gulf. It also contains funding for Gulf-wide needs such as monitoring, research, oversight, and planning.

“Restoration in Alabama” consists of restoration activities to benefit resources within the geographic jurisdiction of the State of Alabama.

“Restoration in Florida” consists of restoration activities to benefit resources within the geographic jurisdiction of the State of Florida.

“Restoration in Louisiana” consists of restoration activities to benefit resources within the geographic jurisdiction of the State of Louisiana.

“Restoration in Mississippi” consists of restoration activities to benefit resources within the geographic jurisdiction of the State of Mississippi.

“Restoration in Texas” consists of restoration activities to benefit resources within the geographic jurisdiction of the State of Texas.

“Adaptive Management and Unknown Conditions Restoration” consists of restoration activities funded by BP’s additional payments for unknown conditions and adaptive management that are in addition to the payments on the Payment Schedule for \$7.1 Billion Payment for Natural Resource Damages (Table 2 of the Consent Decree).

“Restoration Goal” means one of the five objectives of restoration work under the Consent Decree set forth in the first paragraph (and, with minor variations, in Table 1) of the Restoration Agreement, specifically: Restore and Conserve Habitat; Restore Water Quality; Replenish and Protect Living Coastal and Marine Resources; Enhance Community Resiliency (Provide and Enhance Recreational Opportunities); and Provide for Monitoring, Research, and Adaptive Management (including Administrative Oversight).

“Restoration Type” means one of the 15 categories of restoration projects or other restoration-related activities within the Restoration Goals, as set forth in Table 1 (“Natural Resource Damages Final Allocation”) of the Restoration Agreement.

“Trustee Council” means the body established pursuant to Section VI of this MOU.

“Trustee Council SOPs” means those standard operating procedures (“SOPs”) required by the Restoration Agreement to be developed for the long-term management, implementation, and administration of settlement funds.

IV. PURPOSE

The Trustees recognize that they have common interests in sharing information, ideas and expertise necessary to provide for the restoration, replacement, rehabilitation, or acquisition of natural resources and services equivalent to those injured or lost as a result of the Oil Spill. To serve those common interests, the Trustees have entered into this MOU to promote communication, coordination and cooperation among the Trustees throughout the natural resource damage assessment and restoration process for this Oil Spill. Such cooperation is intended to limit unnecessary duplication of effort, enhance the efficient use of limited financial and personnel resources, and increase the probability of success in achieving natural resource restoration that will make the public and the environment whole.

V. DEEPWATER HORIZON OIL SPILL TRUSTEES

A. Designated Natural Resource Trustee Officials. The following officials (“Designated Natural Resource Trustee Officials” or “Designated Officials”) have been duly designated to act on behalf of the public as State or Federal natural resource trustees. These Designated Officials, or their duly designated successors or representatives, will provide the primary policy guidance for NRDA activities undertaken on behalf of the public by the State and Federal natural resource trustees under this MOU.

1. Secretary, the U.S. Department of the Interior.
2. Secretary, the U.S. Department of Commerce.
3. Secretary, the U.S. Department of Agriculture.
4. Administrator, the U.S. Environmental Protection Agency.
5. Commissioner, the Alabama Department of Conservation and Natural Resources.
6. State Geologist, the Geological Survey of Alabama.

7. Secretary, Florida Department of Environmental Protection.
8. Executive Director, Florida Fish and Wildlife Conservation Commission.
9. Chairman, Louisiana Coastal Protection and Restoration Authority.
10. Director, the Louisiana Oil Spill Coordinator's Office.
11. Secretary, the Louisiana Department of Environmental Quality.
12. Secretary, the Louisiana Department of Wildlife and Fisheries.
13. Secretary, the Louisiana Department of Natural Resources.
14. Executive Director, the Mississippi Department of Environmental Quality.
15. Executive Director, Texas Parks and Wildlife Department.
16. Deputy Land Commissioner & Chief Clerk, Texas General Land Office.
17. Executive Director, Texas Commission on Environmental Quality.

B. Roles of Other Agencies. As determined to be appropriate by the Trustees, the Trustees may coordinate with and seek input and counsel from other federal and state governmental agencies and other bodies with responsibilities that may affect the Trustees' natural resource restoration goals, including, but not limited to:

1. Attorneys General for the Gulf States;
2. The U.S. Department of Justice;
3. The U.S. Coast Guard;
4. The U.S. Department of Defense ("DOD"), as trustee of natural resources on DOD-managed land adjacent to the Gulf of Mexico;
5. The Gulf Coast Ecosystem Restoration Council ("RESTORE Council") established under the Resources and Ecosystem Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012; and
6. The National Fish and Wildlife Foundation, as administrator of the restoration funds paid by BP Exploration & Production, Inc. and Transocean Ltd. under the Guilty Plea Agreements that resolved criminal charges filed by the United States against those companies in connection with the Oil Spill.

C. Lead Administrative Trustee. The Trustee Council will designate a Lead Administrative Trustee ("LAT") by written consensus from each Federal agency and each State represented on the Trustee Council. Such written LAT designation shall be included in the Administrative Record. The Trustee Council may change the designation of the LAT by the same process. The duties of the LAT will be specified in the Trustee Council Standard Operating Procedures.

VI. DEEPWATER HORIZON OIL SPILL TRUSTEE COUNCIL

A. To assist the Trustees in implementing this MOU, there is hereby created the *Deepwater Horizon* Trustee Council (“Trustee Council”). The Trustee Council is the executive body supporting the work of the Trustees when acting collectively, consistent with the Restoration Agreement, in coordinating and cooperating with respect to natural resources restoration. The Trustee Council will support and help coordinate the efforts of the TIGs, so that restoration is achieved with financial accountability and the obligations set forth in OPA, the Consent Decree, the Programmatic DARP, and future restoration plans are met.

B. Subject to the decision-making procedures in the Restoration Agreement and Section VII of this MOU, each Designated Official may directly participate in Trustee Council meetings or assign a designee, and an alternate designee, to do so. In general, for each State with multiple Designated Officials, those Designated Officials should designate a common representative and alternate representative to represent the position of the State as primary and alternate members of the Trustee Council. The Designated Officials for a State may, if so provided in their State MOU, authorize different primary and alternate representatives to speak for the State on different issues before the Trustee Council. A designated alternate Trustee Council member may act in the absence of the primary member.

C. Within ten (10) business days after the Effective Date of this MOU, each Designated Official shall notify the other Designated Officials of the names, addresses, email addresses, and telephone numbers of their designee and alternate designee. Any Designated Official may change his or her designees at any time by written notice to the other Designated Officials who are parties to this MOU.

VII. DECISION MAKING AND ADMINISTRATION

A. Within the Trustee Council, a TIG will administer NRD Monies for each Restoration Area as set forth in the Restoration Agreement. Trustee representation for each TIG by Restoration Area is as follows:

For Restoration in Alabama: the Federal Trustees and the Trustees for the State of Alabama.

For Restoration in Florida: the Federal Trustees and the Trustees for the State of Florida.

For Restoration in Louisiana: the Federal Trustees and the Trustees for the State of Louisiana.

For Restoration in Mississippi: the Federal Trustees and the Trustee for the State of Mississippi.

For Restoration in Texas: the Federal Trustees and the Trustees for the State of Texas.

For Region-Wide Restoration: all State Trustees and all Federal Trustees.

For Open Ocean Restoration: all Federal Trustees.

For Adaptive Management and Unknown Conditions Restoration: all State Trustees and all Federal Trustees.

B. Each TIG will develop, select, and implement projects on a consensus basis as defined below and in the Restoration Agreement.

The Federal Trustees will enter into a Federal MOU that will be effective within ten (10) business days of the Effective Date of the Consent Decree.

The Designated Officials of each state with multiple State Trustees will enter into a State MOU that will be effective within ten (10) business days of the Effective Date of the Consent Decree.

For each of the five TIGs for a State Restoration Area: Decisions related to developing, selecting and implementing restoration projects will be made on a consensus basis, requiring that a proposed restoration action be supported by both the United States (in accordance with the Federal MOU) and the State (in accordance with the State MOU). If a project is to be funded out of multiple State Restoration Area monies, decisions concerning that project will be made by consensus of the United States (in accordance with the Federal MOU) and each of the relevant States (in accordance with their respective State MOUs, where applicable).

For the Region-wide TIG: Decisions related to developing, selecting and implementing restoration projects, or to paying for Gulf-wide needs such as monitoring, research, oversight, and planning, will be made on a consensus basis, defined as concurrence by all non-abstaining Federal Trustees and by all non-abstaining States (each acting in accordance with its State MOU, where applicable).

For the Open Ocean TIG: Decisions related to developing, selecting and implementing restoration projects, or to paying Federal Trustee administrative and preliminary planning costs, will be made on a consensus basis, defined as concurrence by all non-abstaining Federal Trustees.

For the Adaptive Management and Unknown Conditions Restoration TIG: Decisions will be made on a consensus basis, defined as concurrence by all non-abstaining Federal Trustees and by all non-abstaining States (each acting in accordance with its State MOU, where applicable).

For Trustee Council matters: Decisions will be made on a consensus basis, defined as concurrence by all non-abstaining Federal Trustees and by all non-abstaining States (each acting in accordance with its State MOU, where applicable).

C. The Trustee Council will adopt SOPs for the long-term management, implementation, and administration of NRD Monies. The Trustee Council SOPs will, at a minimum, include the following:

- Trustee Council structure and management;
- Decision-making and delegation of authority;
- Funding principles and procedures;
- Administrative procedures;
- Project reporting procedures;
- Conflict resolution procedures;
- Trustee consultation opportunities among the Trustees;
- Administrative accounting and independent auditing systems for use by each TIG.

In addition, each TIG may adopt SOPs consistent with the Trustee Council SOPs, the OPA NRDA regulations, and other applicable requirements.

D. All Trustees recognize that inherent in the trust obligation is the duty to make decisions and take action in a timely manner. With that in mind, all Trustees will work conscientiously to reach consensus among themselves on issues.

In the event that the Trustees in a TIG cannot achieve consensus, any of the involved Trustees may notify the full Trustee Council, in writing, that the involved Trustees cannot come to consensus and may invoke the Trustee Council's assistance in resolving the dispute.

Within 30 calendar days of the invoking of dispute resolution, the Trustees will convene a nonbinding, nonvoting Executive Session of the full Trustee Council (either in person or by telephone conference) to discuss the dispute and to seek the input of the full Trustee Council on developing a consensus position.

If, within 30 calendar days after the full Trustee Council's nonbinding, nonvoting Executive Session, the involved Trustees cannot achieve consensus on the disputed issue(s), the involved Trustees will elevate the disputed issue(s) within those Trustees' respective organizational hierarchies. Once elevated, within 45 calendar days the involved Trustees will attempt, using the guidance of their respective superiors, to achieve a consensus position on the disputed issue(s) being elevated.

E. Although the Trustee Council members will strive for consensus in actions and positions, any Trustee Council member who does not wish to approve or disapprove an action or position may abstain from voting. Any such decision to abstain is deemed a non-objection.

F. Administrative oversight will be funded as follows: (1) the state Trustees will support their individual Trustee, non-project specific responsibilities on all TIGs and the Trustee Council using the administrative oversight and comprehensive planning funds allocated to their state-specific TIGs; (2) the federal Trustees will support their individual Trustee, non-project specific responsibilities on all TIGs and the Trustee Council using the Open Ocean TIG administrative oversight and comprehensive planning funds; and (3) collective administrative work (e.g., LAT

responsibilities and website hosting) conducted on behalf of the Trustees will be funded from the Regionwide Administrative Oversight and Comprehensive Planning funds.

Administrative costs include initial work by the Trustees to assemble information for potential restoration projects. Costs of developing, selecting, and implementing restoration projects and supporting activities (including staff costs) will generally be funded from monies allocated to the Restoration Type associated with each restoration project but may alternatively come from the administrative oversight and comprehensive planning funds for the project's Restoration Area. Each October, the Trustees will develop and adopt an annual budget for administrative costs for the coming year that ensures administrative cost funding will be available for the full term of the Consent Decree.

VIII. LIMITATIONS AND RESERVATION OF RIGHTS

This MOU recognizes that each Trustee operates under its own respective authorities and responsibilities and that the ability of each Trustee to dedicate funding or other resources to the NRDA is dependent upon the availability of funds and resources. Nothing in this MOU shall be construed as obligating the United States, the State of Louisiana, the State of Mississippi, the State of Alabama, the State of Florida, or the State of Texas, or any public agency, their officers, agents or employees, to expend any funds, or to expend any funds in excess of appropriations authorized by law.

Nothing in this MOU shall be construed to mean that any party to this MOU is abrogating or ceding any responsibility or authority inherent in its trusteeship over Natural Resources. This MOU establishes the responsibilities and obligations of a Trustee as set forth in the MOU, but is not intended to supplant the terms of the Consent Decree or to be the parties' exclusive agreement concerning its subject matter. If there is any inconsistency between this MOU and the Restoration Agreement or other applicable portion of the Consent Decree, the Restoration Agreement or other applicable portion of the Consent Decree shall control. This MOU is not enforceable in court.

IX. MODIFICATION OF MOU

Any modification of this MOU, including but not limited to the addition of a new natural resource trustee as a participant, shall be in writing and approved by all Trustees who are then parties to this MOU. Any modification to this MOU must be consistent with the Restoration Agreement (or any amended version of the Restoration Agreement approved by the Court).

X. TERMINATION OR WITHDRAWAL

This MOU shall be in effect from its effective date (defined in Section XII below) until termination by agreement of all Trustees. Any Trustee may withdraw from this MOU for any reason; however, such withdrawal will not abrogate that Trustee's administrative and fiduciary

obligations regarding NRD Monies received as of the date of withdrawal or relieve that Trustee of compliance with the Restoration Agreement, other provisions of the Consent Decree, or the Trustee Council SOPs. In the event any Trustee withdraws from the MOU, it must provide written notice to the other Trustees. A Trustee's withdrawal from this MOU shall be effective at the time such notice is provided. In the event of such withdrawal, this MOU remains in full force and effect for the remaining Trustees. A Trustee that has withdrawn from this MOU and then desires to rejoin the Trustee Council may rejoin by agreeing in writing to be subject once again to this MOU, if no other Trustee affirmatively objects.

XI. NO EFFECT ON THIRD-PARTIES

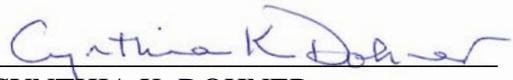
Nothing in this MOU creates any rights or causes of action in any person or entity not a party to the MOU.

XII. EXECUTION: EFFECTIVE DATE

This revised MOU may be signed in counterparts. The MOU shall be effective on the later of (1) the date the Designated Officials of all Trustees or their Authorized Designees have signed the MOU, and (2) the Effective Date of the Consent Decree.

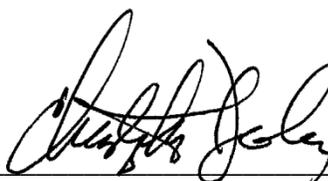
[Effective date of Consent Decree:4/4/16 Effective Date of this MOU: 4/4/16.]

3/22/16
Date



CYNTHIA K. DOHNER
Deepwater Horizon Authorized Official
U.S. Department of the Interior

3/22/16
Date



CHRISTOPHER D. DOLEY
U.S. Department of Commerce
National Oceanic and Atmospheric Administration
Authorized Designee

3/22/16
Date



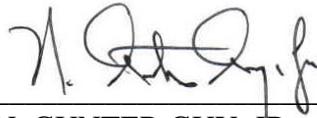
ANN C. MILLS
U.S. Department of Agriculture
Deputy Under Secretary for Natural Resources
and Environment
Alternate Authorized Designee

____ 3/22/16 _____
Date



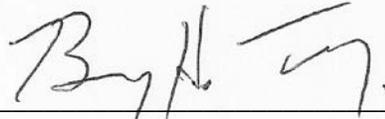
MARY KAY LYNCH
U.S. Environmental Protection Agency
Alternate to Principal Representative

3/22/16
Date



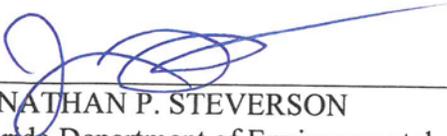
N. GUNTER GUY, JR.
Alabama Department of Conservation
and Natural Resources
Commissioner of Conservation

3/22/16
Date



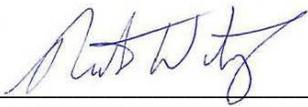
BERRY H. TEW, JR.
Geological Survey of Alabama
and State Oil and Gas Board of Alabama
State Geologist/Oil & Gas Supervisor

3-21-16
Date



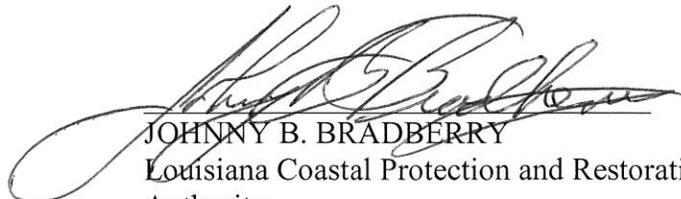
JONATHAN P. STEVERSON
Florida Department of Environmental
Protection
Secretary

3/22/16
Date



NICK WILEY
Florida Fish and Wildlife Conservation
Commission
Executive Director

3/22/2016
Date


JOHNNY B. BRADBERRY
Louisiana Coastal Protection and Restoration
Authority
Chairman

3/21/2016
Date


BRIAN WYNNE
Louisiana Oil Spill Coordinator's Office
Director

Date

CHUCK CARR BROWN, Ph.D.
Louisiana Department of Environmental Quality
Secretary

3/22/2016
Date


CHARLES J. MELANCON
Louisiana Department of Wildlife and Fisheries
Secretary

Date

THOMAS F. HARRIS
Louisiana Department of Natural Resources
Secretary

Date

JOHNNY B. BRADBERRY
Louisiana Coastal Protection and Restoration
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Louisiana Oil Spill Coordinator's Office
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3-21-16

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Date

CHUCK CARR BROWN, Ph.D.
Louisiana Department of Environmental Quality
Secretary

Date

CHARLES J. MELANCON
Louisiana Department of Wildlife and Fisheries
Secretary

3/21/2016

Date



THOMAS F. HARRIS
Louisiana Department of Natural Resources
Secretary

3/22/16
Date



GARY C. RIKARD
Mississippi Department of Environmental Quality
Executive Director

22 March 2016
Date


CARTER SMITH
Texas Parks and Wildlife Department
Executive Director

Date

ANNE L. IDSAL
Texas General Land Office
Deputy Land Commissioner & Chief Clerk

Date

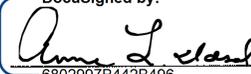
RICHARD A. HYDE, P.E.
Texas Commission on Environmental Quality
Executive Director

TRUSTEE COUNCIL MEMORANDUM OF UNDERSTANDING RELATING TO THE NATURAL RESOURCE DAMAGE ASSESSMENT AND RESTORATION RESULTING FROM THE *DEEPWATER HORIZON* MOBILE OFFSHORE DRILLING UNIT AND THE SUBSEA MACONDO WELL

Date

CARTER SMITH
Texas Parks and Wildlife Department
Executive Director

Date

DocuSigned by:

6802887B442B486

ANNE L. IDSAL
Texas General Land Office
Deputy Land Commissioner & Chief Clerk

Date

RICHARD A. HYDE, P.E.
Texas Commission on Environmental Quality
Executive Director

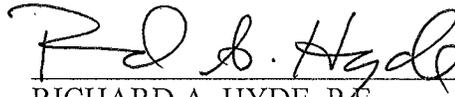
Date

CARTER SMITH
Texas Parks and Wildlife Department
Executive Director

Date

ANNE L. IDSAL
Texas General Land Office
Deputy Land Commissioner & Chief Clerk

3/22/2016
Date



RICHARD A. HYDE, P.E.
Texas Commission on Environmental Quality
Executive Director

Appendix D.

Administrative Functions Funding Table

This table is for illustrative purposes only and to provide general guidelines for funding activities of the Trustee Council, TIGs, and Trustees described in the Trustee Council SOP.

All funding decisions will be made at the TIG level in accordance with the Restoration Agreement.

This table is for illustrative purposes only and to provide general guidelines for funding activities of the Trustee Council, TIGs, and Trustees described in the Trustee Council SOP.
 All funding decisions will be made at the TIG level in accordance with the Restoration Agreement.

SOP Section	Entity	General Responsibility Description	Sub-Responsibility	General Funding Allocation
Meetings	Trustee Council	Trustee Council Meetings LAT - Coordination, facilitation and logistical support for Trustee Council and TIG meetings, Trustee Council reporting, restoration project reporting support, including dissemination of monitoring and adaptive management information, and public communications and engagement support.	TC Meeting Participation	TIG Admin oversight and comprehensive planning (State Trustees from respective Restoration Area and Federal Trustees from Open Ocean Restoration Area)
			Logistics / Planning / Support	Regionwide TIG Admin Oversight and Comprehensive Planning
			Meeting Space / Webinar Account	Regionwide TIG Admin Oversight and Comprehensive Planning
	Trustee Implementation Groups	TIG Meetings will be held for general purposes to discuss TIG business, to inform the public about TIG activities, and to support restoration plan development.	General TIG Meeting Participation	TIG Admin oversight and comprehensive planning (State Trustees from respective Restoration Area and Federal Trustees from Open Ocean Restoration Area)
			Logistics / Planning / Support	Regionwide TIG Admin Oversight and Comprehensive Planning
			Meeting Space / Webinar Account	TIG Admin oversight and comprehensive planning (For the Respective Restoration Area)
			Restoration Plan Meeting Participation	TIG Admin oversight and comprehensive planning (State Trustees from respective Restoration Area and Federal Trustees from Open Ocean Restoration Area) or TIG Restoration Type
	Regionwide Trustee Implementation Group	Regionwide TIG Meetings will be held for general purposes to discuss Regionwide TIG business, to inform the public about Regionwide TIG activities, and to support restoration plan development for the Regionwide Restoration Area.	RW TIG Meeting Participation	TIG Admin oversight and comprehensive planning (State Trustees from respective Restoration Area and Federal Trustees from Open Ocean Restoration Area)
			Logistics / Planning / Support	Regionwide TIG Admin Oversight and Comprehensive Planning
			Meeting Space / Webinar Account	Regionwide TIG Admin oversight and comprehensive planning

This table is for illustrative purposes only and to provide general guidelines for funding activities of the Trustee Council, TIGs, and Trustees described in the Trustee Council SOP.
 All funding decisions will be made at the TIG level in accordance with the Restoration Agreement.

			Restoration Plan Meeting Participation	TIG Admin oversight and comprehensive planning (State Trustees from respective Restoration Area and Federal Trustees from Open Ocean Restoration Area) or Regionwide TIG Restoration Type
	Trustees	Trustees will participate in their respective TIG meetings and will also participate in meetings held to support development of restoration plans.	TIG Meeting Participation	TIG Admin oversight and comprehensive planning (State Trustees from respective Restoration Area and Federal Trustees from Open Ocean Restoration Area)
			Project-Specific Restoration Project Meeting Participation	TIG Restoration Type
Financial Management	Trustee Council	LAT - aggregate restoration program financial status, provide financial and progress reports, provide audit support, publicly report use of funds across the restoration program, and compile the Administrative Record, as applicable.	N/A	Regionwide TIG Admin Oversight and Comprehensive Planning
	Trustee Implementation Groups	Track and record financial information in the Portal for the restoration area, provide summarized financial reporting to the Trustee Council, and submit required financial materials to the Administrative Record.	TIG Representative Restoration Area Data Aggregation	TIG Admin oversight and comprehensive planning (State Trustees from respective Restoration Area and Federal Trustees from Open Ocean Restoration Area)
			Restoration Area Data Aggregation Review	TIG Admin oversight and comprehensive planning (State Trustees from respective Restoration Area and Federal Trustees from Open Ocean Restoration Area)
	Trustees	Conduct Trustee administrative financial tracking, conduct project-level financial tracking through project completion, track project receipts and expenditures, maintain cost documentation, conduct audits, and provide audit and financial reports to their TIG.	Audits and Trustee Administrative Tracking	TIG Admin oversight and comprehensive planning (State Trustees from respective Restoration Area and Federal Trustees from Open Ocean Restoration Area)
			Project-level financial tracking	TIG Restoration Type
Restoration Planning (OPA & NEPA)	Trustee Council	LAT – Oversight, maintenance, and compilation of the Administrative Record, maintenance of the web portal; database management and coordination, restoration project reporting support, including dissemination of monitoring and adaptive management information, aggregate status of TIG restoration planning, , and make planning information publicly available	N/A	Regionwide TIG Admin Oversight and Comprehensive Planning

This table is for illustrative purposes only and to provide general guidelines for funding activities of the Trustee Council, TIGs, and Trustees described in the Trustee Council SOP.
 All funding decisions will be made at the TIG level in accordance with the Restoration Agreement.

	Trustee Implementation Groups	Develop draft and final restoration plans/environmental reviews (environmental assessments and environmental impact statements), coordinate environmental compliance, select projects, provide for public engagement within the restoration area, and submit materials for the Administrative Record.	Initial Planning	TIG Admin oversight and comprehensive planning (State Trustees from respective Restoration Area and Federal Trustees from Open Ocean Restoration Area)
			Restoration Plan Development	TIG Admin oversight and comprehensive planning (State Trustees from respective Restoration Area and Federal Trustees from Open Ocean Restoration Area) or TIG Restoration Type
	Trustees	Prepare project-level conceptual designs, costs, plans, analyses, and environmental compliance documentation for restoration planning purposes and maintain documents for the Administrative Record.	Initial Planning	TIG Admin oversight and comprehensive planning (State Trustees from respective Restoration Area and Federal Trustees from Open Ocean Restoration Area) or TIG Restoration Type
			Restoration Plan Development	TIG Admin oversight and comprehensive planning (State Trustees from respective Restoration Area and Federal Trustees from Open Ocean Restoration Area) or TIG Restoration Type
Additional Environmental Compliance	Trustee Council	LAT – Oversight, maintenance, and compilation of the Administrative Record, maintenance of the web portal to document compliance status; database management and coordination; and restoration project reporting support including documentation of compliance.	N/A	Regionwide TIG Admin Oversight and Comprehensive Planning
	Trustee Implementation Groups	Coordinate and oversee regulatory compliance conducted by the Implementing Trustees and aggregate restoration project compliance tracking across the TIG. Initial compliance assessment includes assessing and identifying applicable statutes and pathways during project selection before a draft restoration plan is finalized. Compliance support includes technical assistance and coordination between Trustees and regulatory agencies and submitting completed compliance documents for review during restoration plan development or upon finalization of a restoration plan.	Initial Compliance Assessment	TIG Admin Oversight and Comprehensive Planning (State Trustees from respective Restoration Area and Federal Trustees from Open Ocean Restoration Area)
			Compliance support	TIG Admin Oversight and Comprehensive Planning (State Trustees from respective Restoration Area and Federal Trustees from Open Ocean Restoration Area) or TIG Restoration Type
			TIG Representative Restoration Area Data Aggregation	TIG Admin Oversight and Comprehensive Planning (State Trustees from Respective Restoration Area and Federal Trustees from Open Ocean Restoration Area)

This table is for illustrative purposes only and to provide general guidelines for funding activities of the Trustee Council, TIGs, and Trustees described in the Trustee Council SOP.
 All funding decisions will be made at the TIG level in accordance with the Restoration Agreement.

			Restoration Area Data Aggregation Review	TIG Admin oversight and comprehensive planning (State Trustees from Respective Restoration Area and Federal Trustees from Open Ocean Restoration Area)
	Trustees	Prepare materials for environmental compliance with Federal, State, and local governments, as applicable. Additional assistance from a Federal Trustee may be requested for compliance materials preparation by the Implementing Trustee.	Compliance Material Preparation	TIG Admin oversight and comprehensive planning (State Trustees from Respective Restoration Area and Federal Trustees from Open Ocean Restoration Area) or TIG Restoration Type
			Federal Trustee Compliance Materials Preparation	TIG Restoration Type
Restoration Implementation	Trustee Council	LAT – Oversight, maintenance, and compilation of the Administrative Record, database management and coordination, restoration project reporting support, aggregate restoration program status tracking, dissemination of monitoring and adaptive management information, publicly report overall PDARP/PEIS restoration implementation.	N/A	Regionwide TIG Admin Oversight and Comprehensive Planning
	Trustee Implementation Groups	Track restoration area project implementation progress and report by restoration type, and submit materials for the Administrative Record.	TIG Representative Restoration Area Data Aggregation	TIG Admin oversight and comprehensive planning (State Trustees from Respective Restoration Area and Federal Trustees from Open Ocean Restoration Area) or TIG Restoration Type
			Restoration Area Data Aggregation Review	TIG Admin Oversight and Comprehensive Planning (State Trustees from Respective Restoration Area and Federal Trustees from Open Ocean Restoration Area)
	Trustees	Carry out project implementation and contracting (all phases—planning, engineering and design, construction, monitoring, and long-term management) and report implementation status to their TIG and maintain documents for the Administrative Record.	N/A	TIG Restoration Type
Monitoring and Adaptive Management	Trustee Council	LAT – Oversight, maintenance, and compilation of the Administrative Record, database management and coordination, restoration project reporting support, aggregate restoration program status tracking, dissemination of monitoring and adaptive management information, publicly report overall PDARP/PEIS restoration implementation, make monitoring data and information publicly available, and adaptively manage the overall PDARP/PEIS restoration program.	N/A	Regionwide TIG Admin Oversight and Comprehensive Planning

This table is for illustrative purposes only and to provide general guidelines for funding activities of the Trustee Council, TIGs, and Trustees described in the Trustee Council SOP.
 All funding decisions will be made at the TIG level in accordance with the Restoration Agreement.

		Cross TIG MAM Working Group- Maintains and updates MAM procedures, develops and updates MAM manual, provides for consistency of MAM activities across TIGs, aggregates, summarizes and synthesizes monitoring data and assesses progress towards restoration goals, develops interactive analysis tools within the Restoration Management Portal, Coordinates with other Goma science programs, identifies emerging unknown conditions, performs program reviews, develops mechanisms for engagement with the broader scientific community, and provides monitoring progress information for inclusion in Trustee public engagement materials.	N/A	Regionwide TIG Monitoring and Adaptive Management	
	Trustee Implementation Groups	Tracks and aggregates restoration area monitoring data and reporting to the Trustee Council by restoration type, conducts environmental reviews, reviews project MAM plans, approves and oversees corrective actions, and submits materials for the Administrative Record.	TIG Representative Restoration Area Data Aggregation	TIG Admin Oversight and Comprehensive Planning (State Trustees from Respective Restoration Area and Federal Trustees from Open Ocean Restoration Area) or TIG Monitoring and Adaptive Management (For the Respective Restoration Area)	
			Restoration Area Data Aggregation Review	TIG Admin Oversight and Comprehensive Planning (State Trustees from Respective Restoration Area and Federal Trustees from Open Ocean Restoration Area) or TIG Monitoring and Adaptive Management	
	Trustees	Develop project-specific monitoring and adaptive management plans and conduct project-specific monitoring, data analysis, adaptive management, reporting and maintain documents for the Administrative Record.	Initial Monitoring Plan Development	TIG Admin Oversight and Comprehensive Planning (State Trustees from Respective Restoration Area and Federal Trustees from Open Ocean Restoration Area) or TIG Restoration Type	
			Monitoring Plan Finalization	TIG Admin Oversight and Comprehensive Planning (State Trustees from Respective Restoration Area and Federal Trustees from Open Ocean Restoration Area) or TIG Restoration Type	
			Project Monitoring Implementation	TIG Restoration Type	
			Non Project Specific Monitoring	TIG Restoration Type or TIG Monitoring and Adaptive Management (For the Respective Restoration Area)	
	Data Management	Trustee Council	LAT - Maintain Trustee Council website, maintenance, support and additional development of DIVER, as necessary, and its Restoration Management Portal. Provide reports related to program wide progress. Data management and coordination; restoration project reporting support, including facilitating monitoring and adaptive management data sharing;	Project Reporting Support / Administrative Record	Regionwide TIG Admin Oversight and Comprehensive Planning

This table is for illustrative purposes only and to provide general guidelines for funding activities of the Trustee Council, TIGs, and Trustees described in the Trustee Council SOP.
 All funding decisions will be made at the TIG level in accordance with the Restoration Agreement.

			Trustee Website Management	Regionwide TIG Admin Oversight and Comprehensive Planning
			Restoration Management Portal	Data management Funds* <small>* Data Management Funds are identified in Paragraph 23(f) of the Consent Decree. These funds are not allocated to a TIG nor referenced in the Restoration Agreement, Allocation Table.</small>
	Trustee Implementation Groups	Review and provide reports related to Restoration Area progress; highly customized data management support needs related to a Restoration Area	TIG Representative Restoration Area Data Aggregation	TIG Admin oversight and comprehensive planning (State Trustees from Respective Restoration Area and Federal Trustees from Open Ocean Restoration Area)
			Restoration Area Data Aggregation Review	TIG Admin Oversight and Comprehensive Planning (State Trustees from Respective Restoration Area and Federal Trustees from Open Ocean Restoration Area)
Trustees	Project monitoring data QA/QC and entry of information and monitoring data into the Restoration Management Portal; customized, restoration type specific data management tasks and support requirements.	N/A	TIG Restoration Type	
Public Affairs and Outreach	Trustee Council	LAT -Provide public affairs support including fielding media inquiries, preparing and disseminating press releases, developing public information materials, maintaining a public meeting and event calendar, and providing support for Trustee Council meetings.	N/A	Regionwide TIG Admin Oversight and Comprehensive Planning
	Trustee Implementation Groups	Provide overall TIG public affairs support including developing news releases, informational fact sheets or other public engagement materials related to TIG activities and providing support for TIG meetings.	Initial Planning	TIG Admin oversight and comprehensive planning (State Trustees from Respective Restoration Area and Federal Trustees from Open Ocean Restoration Area)
			Restoration Plan Development & Implementation	TIG Admin oversight and comprehensive planning (State Trustees from respective Restoration Area and Federal Trustees from Open Ocean Restoration Area) or TIG Restoration Type
			TIG Representative Restoration Area Data Aggregation	TIG Admin oversight and comprehensive planning (State Trustees from Respective Restoration Area and Federal Trustees from Open Ocean Restoration Area)
			Restoration Area Data Aggregation Review	TIG Admin Oversight and Comprehensive Planning (State Trustees from Respective Restoration Area and Federal Trustees from Open Ocean Restoration Area)
Trustees	Provide project-specific information to include in TIG public engagement materials	N/A	TIG Restoration Type	

This table is for illustrative purposes only and to provide general guidelines for funding activities of the Trustee Council, TIGs, and Trustees described in the Trustee Council SOP.
All funding decisions will be made at the TIG level in accordance with the Restoration Agreement.

**Appendix E. Decision Memo for SOP Amendments and
Guidance**

DATE: 4/29/2020
TO: Deepwater Horizon Trustee Council
THROUGH: Standard Operating Procedures (SOP) Small Work Group
FROM: Lead Administrative Trustee Coordinator, Deepwater Horizon Restoration

Purpose: The SOP Small Work Group is seeking Trustee Council review and approval of the following information for the Development of Amendments to or Guidance in Support of the Trustee Council Standard Operating Procedures. If approved, the information below would be added as an Appendix to the SOPs and references to the Appendix would be made as needed in appropriate locations in SOP.

Overview:

When a need for a new or clarified process is identified to improve how DWH Trustee Council and TIG business is conducted, the process below will be used to amend the SOP or develop guidance. This process is not intended to replace the current SOP governing amendments, but rather to provide clarification on the process to propose amendments and the steps that would be followed if the Trustee Council approves development of an amendment or guidance document.

The Trustee Council may amend the SOPs or draft additional SOPs to establish processes or guidance documents for the Trustee Council (TC SOP 3.1.2(a)). The Trustee Council will amend the SOP when it is necessary for the Trustees to follow a new or clarified process. SOP amendments can be made directly in the text or as an appendix, and, where applicable, user manuals maybe updated to include step-by-step details, such that the SOP remains streamlined.

Guidance is considered as information to assist Trustees with operating procedures and is recommended for Trustees' use to facilitate consistency; however, it is not required. Guidance will be stored on Share Point (login required). The Share Point site can also be accessed from DIVER via the Reference Materials link titled "Share Point – Guidance" (Note: Link not yet requested).

Process:

1. Per SOP Section 3.1, any Trustee Council member, who identifies a need for a process or a need for additional detail to implement a process, may request development of guidance or an amendment to the SOP through the LAT via email. The full Trustee Council will be copied on the email. The LAT may also suggest SOP amendments or guidance via email to the full Trustee Council to standardize procedures or processes. The email will include a description of the overarching concern.
2. The Trustee Council will determine whether the requested amendment or guidance is necessary. If so, the Trustee Council will decide if the formation of a workgroup is warranted. This determination could occur over email or at the next scheduled Trustee Council conference call. If the Trustee Council:
 - a. does not form a workgroup to address the issue raised, then the LAT will work with the requesting Trustee Council member and the LAT DIVER

- Contractors (if related to DIVER) to address the issue. The LAT will coordinate with the Trustee Council on any necessary guidance or amendments, and the Trustee Council must review and approve the guidance or amendment prior to it becoming effective.
- b. decides to form a workgroup to address the situation, the workgroup will be comprised of designee(s) from each Trustee that is interested in participating on that issue.
3. If the Trustee Council establishes a workgroup, the LAT will work with the workgroup and the LAT DIVER Contractors (if related to DIVER) to address the issue raised.
- a. The LAT or assigned workgroup representative will provide draft guidance or amendments to the workgroup for a minimum of 14-days to review and provide written feedback;
 - b. After written feedback is received, the LAT or assigned workgroup representative will incorporate any written comments received into a revised version of the guidance or amendment and provide to the workgroup for further review and discussion;
 - c. Upon workgroup concurrence, the workgroup and the LAT will test any new process to ensure it works and refine as needed;
 - d. Upon the conclusion of the testing and any further refinement of the guidance or amendment, the workgroup will provide approval of the guidance or amendment to the LAT; and
 - e. Upon receipt of the workgroup approval, the LAT will share the guidance or amendment with the Trustee Council and request review and approval.

Appendix F1.

Trustee Account Detail

State of Alabama Trust Fund

Authorities

Following the DWH oil spill, the Alabama Department of Finance established a special revenue fund for revenues and expenditures used for all oil spill projects, and the Department of Finance maintains the accounting for this fund. Title 41 of the Code of Alabama defines the duties of the Finance Department.

Deposits

All DWH restoration funds are deposited into a demand deposit bank account. Every deposit is given an accounting code which is unique to each project, preventing DWH restoration funds from mixing with other funds deposited into the special revenue fund. These deposits are accounted for as separate funds on the books of the State of Alabama.

Investments and Interest

The funds are currently held in a non-interest bearing account. If the State of Alabama decides to begin investing these funds, they will be invested in compliance with the laws of the State of Alabama, and all interest earned will be allocated to the appropriate DWH fund.

State of Florida Trust Funds

Florida Department of Environmental Protection

Authorities

Section 376.11, Florida Statutes created the Coastal Protection Trust Fund to account for financial resources that are available for cleanup and rehabilitation after a pollutant discharge, to prevent further damage by the pollutant, and to pay for damages, cleanup and restoration of waterfowl, wildlife, and other natural resources. The Florida Legislature had directed that the Deepwater Horizon Natural Resource Damage Assessment (NRDA) funds received from BP pursuant to the “Framework for Early Restoration Addressing Injuries Resulting from the Deepwater Horizon Oil Spill” and the Department of the Interior (DOI) pursuant to the “Consent Decree Among the Defendant BP Exploration & Production Inc. (“BPXP”), the United States of America, and the States of Alabama, Florida, Louisiana, Mississippi, and Texas” be accounted for in the Coastal Protection Trust Fund. NRDA Funds received will be deposited into the State of Florida Treasury consolidation account and credited to the Coastal Protection Trust Fund using the official State of Florida accounting system FLAIR (the Florida Accounting and Information Resource system).

Deposits

All receipts for the Deepwater Horizon NRDA funds are received into the State of Florida Treasury and recorded to a NRDA Fund Identifier (FID) account in FLAIR. FLAIR provides a FID for each designated source of funding, producing a self-balancing set of accounts. DEP has established a unique NRDA FID within the Coastal Protection Trust Fund to be used exclusively to separately identify and account for the Deepwater Horizon NRDA funds. All Deepwater Horizon NRDA transactions, including receipts, interest earnings, and disbursements will be recorded in the NRDA FID. Use of the Deepwater Horizon NRDA funds in the NRDA FID is restricted by legislative appropriation to allowable NRDA costs as authorized by the Florida Trustee Implementation Group and/or the Trustee Council.

Investments and Interest

The State Treasury invests all available State funds as prescribed by Florida Statute. Monthly, the Treasury allocates interest earnings to each FID according to the FID daily cash balance.

Florida Fish and Wildlife Conservation Commission

Authorities

Section 379.206, Florida Statutes created the Grants and Donations Trust Fund to serve as a depository for financial resources to be used for allowable grants and donor agreement activities and consist of grants and donations from private and public nonfederal sources, development of regional impact wildlife mitigation contributions, and cash advances from other trust funds. The Florida Legislature had directed that the Deepwater Horizon Natural Resource Damage Assessment (NRDA) funds received from BP pursuant to the “Framework for Early Restoration

Addressing Injuries Resulting from the Deepwater Horizon Oil Spill” and the Department of the Interior (DOI) pursuant to the “Consent Decree Among the Defendant BP Exploration & Production Inc. (“BPXP”), the United State of America, and the States of Alabama, Florida, Louisiana, Mississippi, and Texas” be accounted for in the Grants and Donations Trust Fund. NRDA funds received will be deposited into the State of Florida Treasury consolidation account and credited to the Grants and Donations Trust Fund using the official State of Florida accounting system FLAIR (the Florida Accounting and Information Resource system).

Deposits

All receipts for the Deepwater Horizon NRDA funds are received into the State of Florida Treasury and recorded to a NRDA Fund Identifier (FID) account in FLAIR. FLAIR provides a FID for each designated source of funding, producing a self-balancing set of accounts. FWC has established unique FIDs within the Grants and Donations Trust Fund to be used exclusively to separately identify and account for Deepwater Horizon NRDA funds. All Deepwater Horizon NRDA transactions, including receipts, interest earnings, and disbursements will be recorded in the FIDs. Use of the Deepwater Horizon NRDA funds in the NRDA FIDs are restricted by legislative appropriation to allowable NRDA costs as authorized by the Florida Trustee Implementation Group and/or the Trustee Council.

Investments and Interest

The State Treasury invests all available State funds as prescribed by Florida Statute. Monthly, the Treasury allocates interest earnings to each FID according to the FID daily cash balance.

State of Louisiana Trust Fund

Authorities

The Natural Resource Restoration Trust Fund (NRRTF) was specifically established in order for the office of the oil spill coordinator to carry out its duties regarding natural resource damage assessments (NRDA(s)). La. R.S. §30:2480.2 NRDA funds resulting from an oil spill are initially received by the State Treasurer and then paid into the NRRTF. By Memorandum of Agreement the Louisiana Oil Spill Coordinator's Office has delegated its duties pertaining to the Deepwater Horizon Oil Spill (DWH) to the Coastal Protection and Restoration Authority.

Deposits

All DWH restoration funds deposited into the NRRTF are placed into a separate DWH appropriation within the NRRTF with sub-accounts used to track specific funding resolutions by assigning unique, specific organization and fund identification numbers. The separate appropriation and sub-accounts ensure the DWH funds are maintained separately from other funds deposited in the NRRTF.

Investments and Interest

The monies in this fund are invested according to the same principles that monies in the State's general fund are invested. All interest earned on the investment of DWH funds remains in the NRRTF DWH appropriation.

State of Mississippi Trust Fund

Authorities

The following link describes the State of Mississippi's policy for establishing funds: <http://www.dfa.ms.gov/dfa-offices/financial-reporting/maapp-manual/>. In 2000, MDEQ implemented an internal expenditure and revenue system called BP2K. This system allows MDEQ to track financial activity on a more detailed level than the statewide accounting system, Mississippi's Accountability System for Government Information and Collaboration (MAGIC). These systems are reconciled monthly. Within BP2K, unique division codes are established and utilized to track projects and grants.

Deposits

All transactions, including interest earnings, are assigned the appropriate division code prior to processing in BP2K. MDEQ establishes division codes for all of the work related to the Deepwater Horizon (DWH) incident to track projects and grants.

Investments and Interest

DWH restoration funds are kept in a separate interest-bearing treasury fund. DFA manages these treasury funds and is responsible for the investment of these funds. Interest earnings are allocated by DFA to MDEQ and then prorated to the appropriate treasury fund based on the funds' cash balance.

State of Texas Trust Fund

Authorities

Under the authority of Chapter 404, Subchapter G of the Texas Government Code, the Texas Natural Resource Trustees entered into an agreement with the Texas State Treasurer to establish a trust fund, the Natural Resource Damage Restoration Trust Fund, held within the Texas Treasury Safekeeping Trust Company, which is a special purpose trust company managed by the Texas Comptroller of Public Accounts.

Deposits

A Deepwater Horizon (DWH) account has been created in the Natural Resource Damage Assessment Trust Fund. Sub-accounts are created for each approved project within the DWH account.

Investments and Interest

Interest will accrue daily on each DWH account and remain in the specific account from which the interest was earned. The three trustee agencies can direct the duration of the investment period for each account.

USDA

Natural Resource Damage Assessment Settlement Funds

USDA will receive funds for Damage Assessment Settlement Funds into the Trust Fund account, Damage Assessment and Restoration Revolving Fund (12X4368) according to the specifications of the Natural Resource Damage Assessment Trustee Council. Each project has a unique funding and project code for use during the life cycle of that project. The funding is monitored and controlled by the NRDA Program Manager. The NRDA Program Manager works closely with project managers to review and monitor account balances.

Financial Management Modernization Initiative (FMMI), the official USDA accounting system, will be used to account for all funds received, including any Natural Resource Damage Assessment (NRDA) funds received from BP. Within FMMI, USDA has established codes to identify the NRDA funds and use of these funds by Fiscal Year, Fund Code, Cost Center (State and County), Object Class and Project.

Any funding document (e.g., contracts, purchase orders, travel authorizations) that contains a NRDA number requires clearances from a NRDA financial authority and the program manager. Labor using a NRDA number requires that the labor time and attendance (T&A) forms be signed and validated. Along with the T&A each employee using a NRDA number is required to fill out a weekly status report of what they were doing during the time the number was being charged. The T&A must also be reviewed by the supervisor and signed. Travel authorizations and vouchers must be signed by a manager and the employee must state the purpose of the trip and what was being done. Contracts are monitored for accuracy of services rendered or item purchases.

Department of the Interior Trust Fund

Authorities

The **Department of the Interior and Related Agencies Appropriation Act, 1992** (H.R. 2686/P.L. 102-154) permanently authorized receipts for damage assessment and restoration activities to be available without further appropriation until expended. The [**Dire Emergency Supplemental Appropriations for Fiscal Year 1992**](#) (H.J.RES. 157/P.L. 102-229) provides that the fund's receipts are authorized to be invested and available until expended. Additionally, the [**Department of the Interior and Related Agencies Appropriation Act, 1996**](#) (P.L. 104-134) provides authority to make transfers of settlement funds to other Federal trustees and payments to non-Federal trustees.

Deposits

Deposits into the DOI NRDAR Fund are attributable to specific projects through use of unique project code designations. Segregating funds by project code ensures there is accountability for tracking and auditing purposes. It also safeguards against the co-mingling of funds.

Investments and Interest

By law, restoration funds may only be invested in Treasury Securities and all ownership is maintained in the name of the Natural Resource Damage Assessment and Restoration Fund. Based on an estimate of cash flow requirements, the Department of the Interior, Office of the Secretary generates instructions for investment and forwards the instructions to the National Business Center. The National Business Center develops and submits an Investment Confirmation Letter that indicates which account investments are being purchased, the scheduled maturity dates and the investment type(s) to the Department of Treasury, which purchases the securities. At maturity, interest income is paid directly to the account.

Interest earned on restoration dollars is tied to a specific restoration project by the unique project code designation. Per DOI memorandum, dated January 13, 1997, with a subject of 'Project Allocations from the Natural Resource Damage Assessment and Restoration (NRDAR) Fund (FY 1997-01)', policy was adopted to ensure, "Interest from restoration receipts would be applied on a site-specific basis, meaning each restoration project would receive the interest on funds deposited into the NRDAR Fund for that restoration."

Environmental Protection Agency Trust Fund

Authorities

Executive Order 13626, dated September 10, 2012, designated the EPA as a trustee for the *Deepwater Horizon* (DWH) Oil Spill Natural Resource Damage Assessment and restoration efforts in connection with injury to, destruction of, loss of, or loss of use of natural resources, including their supporting ecosystems, resulting from the Oil Spill.

Funds received in relation to EPA's DWH Oil Spill trusteeship will be deposited into the EPA Damage Assessment and Restoration Revolving Fund (DARRF) account, which is maintained by EPA's Office of the Controller and Office of Water. Accounting and financial data are collected into EPA's financial management system of record (COMPASS).

Deposits

Funds received in EPA's DARRF are attributed to specific activities through an assigned unique project code in COMPASS (EPA's accounting system). This code applies to all spending actions (i.e., travel authorizations, purchase requisitions, commitment notices, payroll fixed account numbers, etc.). In addition, certain information can be tracked using accounting fields other than the project code, e.g., travel and payroll expenditures are distinguishable by Budget Object Class.

Investments and interest

Assessment and restoration funds are not invested and do not earn interest. These funds are placed into the EPA DARRF, which is a non-interest bearing revolving trust funds.

NOAA Trust Fund

Authorities

The Oil Pollution Act of 1990 authorized the NOAA Damage Assessment and Restoration Revolving Fund (DARRF). Under the Act, trustees are to retain sums recovered by federal, state, Indian, or foreign trustees for natural resource damages in revolving trust accounts, without further appropriation, for use only to reimburse or pay costs incurred by trustees with respect to damaged resources. DARRF accounts are maintained using NOAA's financial management system CBS (Commerce Business System) at governmental budget and finance levels. CBS is NOAA's system of record.

Deposits

Funds in the DARRF are from or for spill response activities, natural resource damage assessment activities, and/or restoration, rehabilitation, replacement, or acquisition activities. NOAA maintains subaccounts within the DARRF to manage these funds for their intended purpose. The DARRF holds two general types of funds: 1) funds specifically designated for individual cases and 2) funds that were recovered from past costs and available for future investment. Subaccounts are maintained to differentiate between these two general types of funds. Case-specific funds held in certain subaccounts are only available for specific assessment and/or restoration activities that are governed by settlement agreements and/or court orders. Funds within the DARRF that are available for future investment are recoveries of past response, assessment, and restoration planning costs from responsible parties. When funds are deposited into the DARRF, they are placed in a holding account until they can be distributed to the appropriate subaccount(s). Distributions to various subaccounts are made through a series of management approvals to ensure accuracy. DARRF management assigns unique project codes to funds to track receipt and expenditure of funds for their intended purpose. Each case has a unique project code for use during the life cycle of that case. Receipt and expenditure of DARRF funds are supported by a robust annual budgeting and spend plan process that is approved by DARRP management. DARRP conducts a quarterly and annual reporting and reconciliation process to ensure funds are appropriately allocated for their intended purpose and funds are expended according to approved spend plans.

Investments and Interest

The DARRF is not an interest earning account.

Appendix F2. Authorized Budget Changes

Authorized Budget Change Procedures

When a Trustee needs to increase or decrease their authorized budget, the Trustee(s) will notify the TIG and prepare a Resolution requesting the change. The change request may be combined into other Resolution and does not need to be a “stand-alone” resolution. To ensure the change request is clear and accurate, the resolution should include the statement and Table below.

The [XX] TIG has agreed by signature of this resolution to change the authorized budget(s) as identified in Table 1. Below. [Add Rows as necessary].

Restoration Type	Implementing Trustee	Project/ Non-Project Initiative Name	Portal ID	Previous Authorized Budget	Total Budget Change	New Authorized Budget

Appendix F3. Audit Scope of Work

Scope of Work

Contract Audit Services for

Deepwater Horizon Restoration Funds

The (Name of Trustee) is soliciting proposals from qualified firms of certified public accountants to conduct an audit of the Deepwater Horizon Restoration funds received by the (Name of Trustee) as a result of the Deepwater Horizon Oil Spill for the period April 20, 2011 through December 31, 2016, for the purpose of expressing an opinion on the project(s) Statement of Receipts and Expenditures and compliance with the Restoration agreements and procedures listed below. The resulting contract may include the option of performing additional audits for subsequent calendar years.

Related Documents and Guidelines

1. Framework for Early Restoration Addressing Injuries Resulting from the *Deepwater Horizon Oil Spill*;
2. Project Stipulation Agreement(s) Regarding Early Restoration of Natural Resource Damages Resulting from the *Deepwater Horizon Oil Spill*;
3. Restoration Agreement among the United States and the Gulf States Relating to Natural Resource Restoration (Restoration Agreement).
4. Resolutions signed by the Trustee Council or Trustee Implementation Groups that involve financial approvals or transactions; and
5. Trustee Council Standard Operating Procedures for Implementation of the Natural Resource Restoration for the Deepwater Horizon Oil Spill

The auditing services will be made in conformity with the standards for financial audits set forth in the U.S. Government Accountability Office's *Government Auditing Standards*, which includes auditing standards generally accepted in the United States of America as set forth by the American Institute of Certified Public Accountants.

The contractor will conduct an audit, on a test basis, of evidence supporting the information reported by the Trustee in the project reports prepared by the Trustee, and will ensure that the audit is conducted in compliance with guidelines and documents listed above.

As part of the procedures, the contractor will examine (Name of Trustee)'s internal control over project and non-project financial reporting and compliance in order to determine audit procedures for the purpose of expressing an opinion on the Trustees' Statement of Receipts and Expenditures and compliance with the guidelines and documents listed above, as well as any applicable state and federal regulations. The contractor will not issue an opinion on an Agency's internal controls except to the extent they have a material effect on the applicable financial statements. Significant deficiencies and material weaknesses shall be included in the Independent Auditor's Report on the internal control over project reporting and project compliance in accordance with *Government Auditing Standards*.

The Trustee acknowledges that while effective internal control reduces the likelihood that significant deficiencies and material weaknesses may occur and remain undetected, it does not eliminate that possibility. For that reason and because the contractor uses selective testing in its audit, the contractor cannot guarantee that material misstatements, if present, will be detected.

The quarterly (where applicable) and annual financial reports generated by the Restoration Management Portal are the responsibility of the Trustee. In this regard, the Trustee is responsible for

compiling cost documentation and reconciling cost documentation with the quarterly and annual financial reports. The Trustee is also responsible for making available to the contractor, upon request, the cost documentation and personnel to whom the contractor may direct inquiries.

As required by applicable auditing standards, the contractor will make specific inquiries of the Trustee and others about the representations embodied in the Statement of Receipts and Expenditures and the effectiveness of internal control structures. Auditing standards generally accepted in the United States of America also require that the contractor obtain a representation letter covering the information reported by the Trustee in the Statement of Receipts and Expenditures from certain members of the Trustee's management. The results of the audit tests, the responses to the contractor's inquiries, and the written representations comprise the evidential matter the contractor will rely upon in forming an opinion on the Statement of Receipts and Expenditures and compliance with Restoration agreements and procedures.

Background:

On April 20, 2011, the Deepwater Horizon Natural Resource Trustees and BP Exploration and Productions Inc. (BP) executed an agreement, which established a \$1 billion fund for early restoration projects in the Gulf to address injuries to natural resources caused by the *Deepwater Horizon* (DWH) Oil Spill (the Spill). This early restoration agreement, entitled "Framework for Early Restoration Addressing Injuries Resulting from the *Deepwater Horizon* Oil Spill" (the Framework Agreement), represented an initial step toward the restoration of natural resources injured by the Spill. On or about August 6, 2010, BP established a trust account, the *Deepwater Horizon* Oil Spill Trust (the Trust), as a repository for certain funds potentially owed by BP as a result of the Spill. A separate subaccount within the Trust was established for the holding and disbursement of early restoration funds (the Early Restoration Subaccount).

Funds from the Early Restoration Subaccount were deposited into individual trustee account(s) specified by the implementing trustee(s). Under the Framework Agreement, early restoration funds were disbursed from the Early Restoration Subaccount to the designated Trustee account or accounts after project-specific agreements/stipulations were signed and filed with the DWH Multi-District Litigation Court (the MDL Court; 2:10-md-02179 *In re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico*) and the requirements/triggers set forth in those agreements/stipulations were completed.

On April 4, 2016, a global settlement agreement between the United States, the five Gulf States, and BXPX was approved. Appendix 2 to the Consent Decree, which is the Restoration Agreement Among the United States and the Gulf States Relating to Natural Resource Restoration (Restoration Agreement), the parties agreed to develop Standard Operating Procedures (SOP) for the long-term management, implementation, and administration of settlement funds for natural resource restoration. These SOPs include (but are not limited to) funding, administrative procedures, project reporting, administrative accounting and independent auditing.

With entry of the Consent Decree, the Framework Agreement has been terminated and replaced by the Restoration Agreement. These restoration projects are now part of the general portfolio of Trustee-approved restoration projects and are subject to these SOPs. As described in the Restoration

Agreement, previously undisbursed Early Restoration funding was distributed to the appropriate Restoration Areas.

Audit Objective and Purpose:

The objective of the audit is to determine whether the information reported by the Trustee in the Statement of Receipts and Expenditures is presented fairly, in all material respects, and in compliance with any applicable state and federal regulations. The contractor should report all findings related to noncompliance with any provisions of the established restoration agreements or procedures in accordance with *Government Auditing Standards*.

Location of Financial Records:

Cost Documentation is located (address of where the contractor will need to go to review the financial documentation). The Trustee will provide cost documentation covering the time period of the engagement and will provide access to the Restoration Management Portal if needed.

Pre-Audit and Exit Conference:

A Pre-Audit Conference will be held to establish the audit liaison for the Trustee Agency. The following source documents will be provided to the contractor before the pre-audit conference: The Early Restoration Framework Agreement; the project stipulation agreement(s); applicable resolutions; and the Trustee Council Standard Operating Procedures for Implementation of the Natural Resource Restoration for the Deepwater Horizon Oil Spill. The contractor is to provide a preliminary schedule of documents and records needed by the contractor based on the contractor's assessment of the documents listed above. Arrangements for work space and any other needs of the contractor will be discussed at this time.

An Exit Conference will be held once the audit is complete by the contractor to summarize the results of the audit and to discuss findings and any corrective action needed by the Trustee.

Description of Required Services:

1. Audit receipts to verify they are in compliance with the Restoration and Framework Agreements, stipulation agreement(s), resolutions, and the SOP.
2. Audit expenditures to verify they are in compliance with the Restoration and Framework Agreement, stipulation agreement(s), resolutions, and the SOP.
3. Audit cost documentation compiled by the Trustee to verify it meets the minimum documentation set forth in the SOP.
4. Audit financial information recorded in the Restoration Management Portal to verify it is accurate, complete, and adequately supported in the corresponding cost documentation.

Deliverables:

Upon completion of the audit, the contractor will issue a report that will include the following:

1. Independent Auditor's Report (opinion) on Project(s) Statement of Receipts and Expenditures;
2. Independent Auditor's Report on the internal control over project reporting and project compliance in accordance with Government Auditing Standards;
3. Schedule of Findings, including all significant findings financial in nature and all significant items of noncompliance with established requirements of the applicable Early Restoration agreements and procedures.

**Appendix F4. Agreed Upon Procedures Engagement
Scope of Work**

Statement of Work

Attestation and Consulting Services for Deepwater Horizon Natural Resource Damage Assessment and Restoration Funds

The *(insert Trustee name)* is soliciting proposals from qualified firms of certified public accountants to conduct an Agreed Upon Procedures (AUP) engagement of the Deepwater Horizon Natural Resource Damage Assessment and Restoration (NRDAR) funds. The AUP covers NRDAR funds received by the *(insert Trustee name)* as a result of the Deepwater Horizon Oil Spill for the period (insert period of time being requested for the AUP). The purpose of the AUP is to evaluate the accuracy of funds reported on the project(s) Statement of Receipts and Expenditures and compliance with the Restoration agreements and procedures listed below.

1. Framework for Early Restoration Addressing Injuries Resulting from the *Deepwater Horizon* Oil Spill;
2. Project Stipulation Agreement(s) Regarding Early Restoration of Natural Resource Damages Resulting from the *Deepwater Horizon* Oil Spill;
3. Restoration Agreement among the United States and the Gulf States Relating to Natural Resource Restoration (Restoration Agreement).
4. Resolutions signed by the Trustee Council or Trustee Implementation Groups that involve financial approvals or transactions; and
5. Trustee Council Standard Operating Procedures for Implementation of the Natural Resource Restoration for the Deepwater Horizon Oil Spill.

The contractor will conduct the engagement in accordance with attestation standards specified herein. The engagement to apply AUPs will be conducted in accordance with Chapter 7 of the Government Auditing Standards (GAGAS) and the Statements on Standards for Attestation Engagements (SSAE) No. 18, as established by the American Institute of Certified Public Accountants (AICPA). The procedures to be performed in connection with this engagement are included as Attachment A to this Statement of Work (SOW). Accordingly, the contractor will evaluate, on a test basis, the documentation available to support the amounts reported by the Trustee in the annual project reports and compliance with guidelines and documents listed above.

As part of the procedures, the contractor will consider *(insert Trustee name)* programmatic internal controls over financial reporting and compliance in order to perform the procedures noted herein as Attachment A to this SOW. The contractor will not provide assurance on the internal control over project financial reporting and compliance. In accordance with GAGAS, the contractor should report any significant deficiencies, material weaknesses, instances of fraud, non-compliance with provisions of laws, regulations, contracts, and/or agreements, or abuse to the Trustees immediately upon identification of such matters.

Inputs into the annual financial reports generated by the DIVER Restoration Management Portal are the responsibility of the Trustee. In this regard, the Trustee is responsible for supporting cost documentation and reconciling supporting documentation with annual financial reports. The Trustee are also responsible for providing sufficient supporting documentation to the contractor in order to perform the AUP procedures.

Government Auditing Standards also requires that the contractor obtain a representation letter covering the information reported by the Trustee in the Statement of Receipts and Expenditures from certain members of the Trustee's management. The results of the procedures performed, findings identified, the

responses to the contractor's inquiries, and the written representations comprise the evidential matter the contractor will rely upon in the AUP report over procedures performed and findings on the Statement of Receipts and Expenditures and compliance with Restoration agreements and procedures.

Background:

On April 20, 2011, the *Deepwater Horizon* Natural Resource Trustees and BP Exploration and Productions Inc. (BP) executed an agreement, which established a \$1 billion fund for early restoration projects in the Gulf to address injuries to natural resources caused by the *Deepwater Horizon* (DWH) Oil Spill (the Spill). This early restoration agreement, entitled "Framework for Early Restoration Addressing Injuries Resulting from the *Deepwater Horizon* Oil Spill" (the Framework Agreement), represented an initial step toward the restoration of natural resources injured by the Spill.

On or about August 6, 2010, BP established a trust account, the *Deepwater Horizon* Oil Spill Trust (the Trust), as a repository for certain funds potentially owed by BP as a result of the Spill. A separate subaccount within the Trust was established for the holding and disbursement of early restoration funds (the Early Restoration Subaccount).

Funds from the Early Restoration Subaccount were deposited into individual trustee account(s) specified by the implementing trustee(s). Under the Framework Agreement, early restoration funds were disbursed from the Early Restoration Subaccount to the designated Trustee account or accounts after project-specific agreements/stipulations were signed and filed with the DWH Multi-District Litigation Court (the MDL Court; 2:10-md-02179 *In re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico*) and the requirements/triggers set forth in those agreements/stipulations were completed.

On April 4, 2016, a global settlement agreement between the United States, the five Gulf States, and BPXP was approved. In Appendix 2 to the Consent Decree, which is the Restoration Agreement Among the United States and the Gulf States Relating to Natural Resource Restoration (Restoration Agreement), the parties agreed to develop Standard Operating Procedures (SOP) for the long-term management, implementation, and administration of settlement funds for natural resource restoration. These SOPs include (but are not limited to) funding, administrative procedures, project reporting, administrative accounting and independent auditing.

With entry of the Consent Decree, the Framework Agreement has been terminated and replaced by the Restoration Agreement. These restoration projects are now part of the general portfolio of Trustee-approved restoration projects and are subject to these SOPs. As described in the Restoration Agreement, previously undisbursed Early Restoration funding was distributed to the appropriate Restoration Areas.

Engagement Objective and Purpose:

The objective of the AUP engagement is to perform the procedures, included as Attachment A to this SOW, to verify whether the information reported by the Trustee in the Statement of Receipts and Expenditures is accurate and is in compliance with the documents and guidelines listed above, and any applicable state and federal regulations. The contractor should report all findings related to noncompliance with any provisions of the established restoration agreements or procedures.

Location of Financial Records:

Supporting documentation is electronic. The Trustees will provide supporting documentation covering the time period of the engagement. Travel (indicate if travel is or is not) expected.

Pre-Engagement and Exit Conference:

A Pre-Engagement Conference will be held to establish the liaison for the Trustee Agency. The following source documents will be provided to the contractor before the pre-engagement conference: The Early Restoration Framework Agreement; the project stipulation agreement(s); applicable resolutions; and the Trustee Council Standard Operating Procedures for Implementation of the Natural Resource Restoration for the Deepwater Horizon Oil Spill. The contractor is to provide a preliminary schedule of documents and records needed by the contractor based on the contractor’s assessment of the documents listed above. Arrangements for work-space and any other needs of the contractor will be discussed at this time.

An Exit Conference will be held once the engagement is complete by the contractor to summarize the results and to discuss findings and any corrective action needed by the Trustee.

Deliverables:

Upon completion of the engagement, the contractor will issue a reports covering: the period (insert the period covered by this AUP), the procedures performed and all findings and instances of non-compliance identified and include the following:

1. Independent Accountant’s Report on Applying Agreed Upon Procedures;
2. Contractor’s Report on Schedule of Agreed Upon Procedures and Findings; and
3. Contractor’s Report on Observations and Recommendations.

Engagement Schedule:

Deliverable	Required Delivery Date
Pre-Engagement Conference	Within 3 days of the award date
Project Management & Data Management Plans	Within 10 days of the Pre-Engagement Conference
Progress Meetings	Bi-weekly
Draft Report	By 90 days of the award
Trustee Draft Report Review Period	30-day review period
Final Report	By the end of the 5-month performance period

Attachment A: SCHEDULE OF AGREED-UPON PROCEDURES AND FINDINGS

Element	Procedure Performed	Finding
Receipts	Verify that NRDAR funds received by each Trustee for the period are documented and recorded in accordance with the Restoration and Framework Agreement, stipulation agreements, resolutions and the TC SOP.	
Expenditures	Verify expenditures by each Trustee for the period are recorded, documented, and compliant with the Restoration and Framework Agreement, stipulation agreements, resolutions and the TC SOP.	
Cost Documentation	Select a sample of receipt and expenditure transactions to ensure that cost documentation maintained by each Trustee meets the minimum documentation set forth in the TC SOP.	
Statement of Receipts and Expenditures	Verify financial information recorded in the Restoration Management Portal (DIVER) is accurate, complete, and adequately supported in the corresponding cost documentation.	

Appendix G.

Environmental Compliance Manual

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1. National Environmental Policy Act

The Programmatic Damage Assessment and Restoration Plan and Programmatic Environmental Impact Statement PDARP/PEIS provided a comprehensive plan for restoration and programmatic evaluation of impacts. From that foundational analysis, in most cases TIGs will streamline subsequent environmental analyses by tiering project-specific NEPA analyses from the programmatic analyses. See 40 CFR § 1508.28; agency-specific NEPA procedures may also apply. The public will have opportunities to review and comment as restoration plans are developed. TIGs will follow NEPA procedures for preparing and publishing NOIs, NOAs, draft EA/EISs, final EA/EISs, conducting public scoping and obtaining comments.

NEPA Process and Tiering

TIGs will develop restoration plans for the projects they identify within the Restoration Type(s) for their TIG. The TIG Federal trustees are primarily responsible for ensuring restoration plans comply with NEPA. The federal Trustee agencies will determine the lead federal agency for purposes of NEPA, in coordination with the TIG. The lead federal agency will be documented by each TIG (in a TIG memorandum or TIG meeting notes) before a restoration plan is developed.

Tiering from the PDARP/PEIS. Generally, the NEPA analysis in restoration plans will tier from the PDARP/PEIS and focus only on those project-specific impacts that are different from those described in the PDARP/PEIS. TIGs will clearly state that the NEPA analysis is tiered from the PDARP/PEIS, identify the sections of the PEIS from which the NEPA analysis is tiered, and incorporate those sections by reference.. The tiered analysis should use the criteria for effects developed in the PEIS (Table 6.3-2), or can amend these as needed and describe the differences.

Any exceptions to tiering the NEPA analysis from the PDARP/PEIS will be described in the restoration plan and, notices and information will be provided to the public.¹

Level of NEPA Analysis

The TIGs will discuss the appropriate level of NEPA documentation and the lead federal agency will ensure appropriate NEPA compliance. The determination of the appropriate level of NEPA analysis is ultimately the responsibility of the lead Federal agency after coordination with the TIG.

When an EA is prepared for a restoration plan and no significant impacts are identified in the EA that have not already been disclosed and incorporated by reference from the PDARP/PEIS, the lead federal agency will prepare a Finding of No Significant Impact (FONSI).

The EA would identify any effects that are meaningfully different from those disclosed in the programmatic analysis. The lead federal agency, in coordination with the TIG, will determine whether the difference warrants the preparation of an EIS. At any point during EA development if the lead federal agency, after coordination with the TIG, determines a preferred alternative will cause significant impacts (short term or long term) not previously addressed in the PEIS, then an EIS will be initiated.

If the lead federal agency, in coordination with the TIG, finds the level of significance of impacts differs from those determined in the PDARP/PEIS and that the effects are likely to be significant, those impacts

¹ Examples of exceptions include subsequent restoration plans that incorporate by reference the PEIS and indicate no additional tiered NEPA analysis is required because potential impacts were addressed in sufficient detail in the PDARP/PEIS and the anticipated impacts fall within the PDARP/PEIS range of environmental consequences (e.g., for certain proposals to select projects for more detailed design and engineering).

will be analyzed in an EIS tiered from the PDARP/PEIS. Based on the EIS, the lead Federal agency will produce a Record of Decision (ROD).

Steps in Conducting NEPA Analysis

TIGs will:

1. Propose projects to accomplish TIG restoration objectives within at least one Restoration Type. A restoration plan may include one or multiple projects.
2. Initial project screening. Consider affected resources at a point in project planning when a reasonable range of alternatives can be identified and NEPA analysis can be meaningfully applied.
3. Determine the lead federal agency and any joint lead agencies for each plan. That agency (or agencies) will ensure appropriate NEPA compliance and participate in document preparation. The lead federal agency may or may not be an implementing trustee for one or more projects proposed in the plan.
 - a. Identify the lead federal agency early in restoration planning.
 - b. All members of a TIG will serve as cooperating agencies for the purposes of NEPA.
 - c. The lead federal agency, with TIG concurrence, will consider if additional agencies with special expertise or jurisdiction would be appropriate as cooperating agencies, and if so invite them.
 - d. After coordination with the TIG, the lead federal agency will determine the roles and responsibilities of additional cooperating agencies.
4. Preliminary project development. Initiate more detailed development of environmental analysis at a point when a reasonable range of alternatives can be identified and NEPA analysis can be meaningfully applied.
 - a. NEPA evaluation of impacts related to general E&D activities is addressed in the PDARP/PEIS. For proposed projects at a planning phase (i.e., conceptual stage), no additional NEPA analysis is likely to be needed beyond reference to the PDARP/PEIS. Once a project has matured to a point where there is sufficient detail known to support a discussion of reasonable alternatives, and the project is then proposed for implementation, then an environmental analysis should be performed in a subsequent restoration plan and NEPA analysis.
5. Determine the level of NEPA analysis (e.g. EA or EIS) for each restoration plan.
 - a. After coordination with the TIG, the lead federal agency will determine the level of NEPA analysis.
6. Develop Draft Restoration Plan Content and NEPA Analyses.
 - a. The lead federal agency will follow its own NEPA procedures as the primary process, but will ensure that the other applicable federal agency minimum NEPA procedures are met.
 - b. The TIG must all agree on the content, format, issues and analysis.
 - c. The TIG will coordinate on drafting and review of documents throughout development.
7. Public Engagement. Provide public notice and access at appropriate stages in plan development per the SOPs.
 - a. Solicit public involvement through public meetings, request for comments on draft restoration plans and NEPA analyses, and regular contacts, as appropriate.

- b. Follow lead federal agency NEPA procedures for public review and comment, taking into consideration the other TIG federal agencies' procedures. EISs will follow procedures for filing with the EPA for publication and notice of availability in the Federal Register.
- c. Post Notices of Availability (NOA) according to OPA and NEPA regulations to ensure documents are made publically available. A combination of methods may be used to give notice, including the Federal Register. Methods should be tailored to the needs of particular plans.
- d. The Administrative Record will be used for making draft and final restoration plans available in public locations. TIGs may also use repositories appropriate to their geographic location. If an action is a joint action with more than one TIG, repository from each TIG may be utilized.
- e. TIGs will facilitate appropriate accessibility (e.g., location, language, timing) at public meetings and of materials for public review.

Additional NEPA Streamlining Opportunities

Incorporation by Reference. TIGs may incorporate other materials or analyses by reference when the effect will be to reduce the size of an environmental review document. This should be accomplished without impeding agency and public review of the document. The incorporated material will be cited in the EA or EIS and its content briefly described, and will include citation of how the referenced material can be obtained.

Adoption. Existing NEPA analysis completed by another federal agency may be adopted if that analysis is reviewed and determined to be applicable to the TIG's proposed action. A federal agency may adopt another federal agency's draft or final NEPA analysis or portion thereof provided that it meets the standards for an adequate NEPA analysis under the CEQ regulations (40 CFR 1506.3 (a)) and it adequately assesses the environmental effects of the agency's proposed action.

- Relevant projects that already have draft or final NEPA analysis completed will be reviewed for adequacy and adopted if appropriate by the lead federal agency, following its NEPA procedures. This can then provide the NEPA analysis necessary to support the OPA decision.
- All or part of another agency's NEPA analysis can be adopted.
- The adopted NEPA analysis can be supplemented if necessary.
- The adopted NEPA analysis will be summarized in the restoration plan and clearly state that the lead federal agency reviewed and considered the analysis adequate under its own NEPA procedures.
- The adoption will be further documented in the FONSI or ROD.

OPA/NEPA analysis and other compliance requirements. Opportunities for streamlining multiple compliance requirements may exist should a proposed restoration plan need permitting under additional federal statutes. When possible, NEPA analyses should include sufficient information that may be used to support NEPA or other analysis under other federal statutes (e.g., issuance of ESA or MMPA scientific research permits or CWA Section 404/RHA permits). Trustees will continue to consider opportunities to streamline compliance with relevant federal environmental statutes consistent with effective environmental protections.

Content of Environmental Assessments and Environmental Impact Statements

Environmental Assessments will include the following components:

- Discussion of the need for the action.
- Description of the affected environment.
- Alternatives as required by Section 102(2)(E) of NEPA.
- Brief discussion of the environmental impacts of the proposed action and alternatives, including a no action alternative.

- Mitigation, as appropriate
- Listing of agencies and persons consulted.

Environmental Impact Statements will include the following components consistent with CEQ regulations at 40 CFR 1502.10-18:

- Cover sheet and table of contents
- Summary of the EIS
- Brief discussion of the purpose and need for the action
- Alternatives, including the proposed action
- Succinct description of the affected environment
- Discussion of the environmental impacts, including direct, indirect and cumulative impacts of the proposed action and alternatives, as well as mitigation
- Listing of preparers
- List of Agencies, Organizations and persons to whom copies of the statement are sent
- An index and appendices as appropriate

The NEPA Findings/Decision Document

FONSI. Based on the analysis, if the EA supports a FONSI, the FONSI will present the reasons why the lead federal agency concludes that no significant impacts will result from the proposed action. Each completed EA will be adopted by all federal trustees on the TIG that prepared the plan. The FONSI will include the adoption language and the FONSI will be signed by the federal trustees adopting the plan. The FONSI will be made publically available through appropriate public notice including the Federal Register.

ROD. An EIS will conclude with a ROD. At a minimum, the ROD will include the elements from NEPA at 40 CFR 1505.2.² After adoption of the EIS by all federal trustees on the TIG, the ROD will be signed by all TIG member agencies and will be made publically available through appropriate public notice including the Federal Register.

Additional Considerations

Certain types of effects analyses are typically included in NEPA analyses as a matter of agency policy and CEQ guidance. Two such areas considered in the PEIS that programmatically provided specific commitments for consideration in tiered restoration plans are climate change and environmental

² § 1505.2 Record of decision in cases requiring environmental impact statements.

At the time of its decision (§ 1506.10) or, if appropriate, its recommendation to Congress, each agency shall prepare a concise public record of decision. The record, which may be integrated into any other record prepared by the agency, including that required by OMB Circular A-95 (Revised), part I, sections 6(c) and (d), and part II, section 5(b)(4), shall:

- State what the decision was.
- Identify all alternatives considered by the agency in reaching its decision, specifying the alternative or alternatives which were considered to be environmentally preferable. An agency may discuss preferences among alternatives based on relevant factors including economic and technical considerations and agency statutory missions. An agency shall identify and discuss all such factors including any essential considerations of national policy which were balanced by the agency in making its decision and state how those considerations entered into its decision.
- State whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not, why they were not. A monitoring and enforcement program shall be adopted and summarized where applicable for any mitigation.

justice. Where appropriate, these considerations will be integrated into NEPA analyses tiered to the PEIS.

Consideration of the Effects of Climate Change.³ In the analysis of subsequent restoration plans, TIGs should include these considerations, as appropriate:

- Within context of proposed OPA benefits to injured resources, a range of future climate scenarios (e.g., sea level rise, changes to shorelines, and altered hydrology) that may impact restoration plans and will inform the development of climate-resilient restoration project design.
- Estimated GHG emissions (e.g., emissions from the use of construction machinery) from the proposed action and reasonable alternatives, as well as practicable mitigation measures.
 - Environmental Justice. Subsequent restoration plans and tiered NEPA analyses will, where applicable, evaluate population characteristics (including race and ethnicity and per-capita income as it relates to the poverty level) and effect determinations for environmental justice analyses. Project-specific data, such as those available from the EPA environmental justice mapping and screening tool “EJSCREEN,” <https://www.epa.gov/ejscreen>, will be used to consider implications for local minority or low-income populations. If necessary, Trustees will develop options for addressing any disproportionately high and adverse impacts.
 - Consistency with other environmental compliance documents. From time to time, TIGs may have to conduct additional NEPA analyses in the event of changes to projects. TIGs will ensure that any new or supplemental NEPA analysis is consistent with the content in all relevant draft or final environmental compliance documents, such as BE forms, letters of concurrence, biological assessments, biological opinions, NHPA 106 consultations, and Coastal Zone Management Act consistency determinations. The TIG will work closely with the federal Trustee compliance liaisons to identify and describe all consultations, permits and other requirements and their status in the draft and final restoration plans and NEPA analysis.

2. Early Coordination and Considerations for Environmental Compliance

Communication and planning are important for efficient environmental compliance processing. The Federal Trustees recommend that Implementing Trustees contact the federal TIG representatives early and often to gain insight into the compliance processes, refer back to this environmental compliance manual when needed, and ask for training if there are identified gaps in knowledge or understanding of these processes. Environmental compliance must be initiated at the appropriate stage. Some project activities may not commence before completion of applicable compliance processes.

The Federal Trustee compliance liaisons are also a source of information and assistance to answer compliance questions. These liaisons conduct preliminary reviews and route those documents within NOAA and DOI. A list of contacts can be found in section 13.

³ CEQ Final guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in National Environmental Policy Act Reviews, August 1, 2016. Available at: https://www.whitehouse.gov/sites/whitehouse.gov/files/documents/nepa_final_ghg_guidance.pdf

Best Practices and PDARP Appendix 6.A

When selecting and designing projects, Implementing Trustees should keep best practices in mind and use pre-application or technical assistance meetings with regulatory agencies to identify appropriate best practices and typical mitigation measures early in the process. Incorporating best practices and typical mitigation measures can also reduce additional requests for information from regulatory agencies. Current best practices and design guidance can be found on many of the webpages mentioned in the above sections.

Best practices were also compiled by the Trustees in Appendix 6.A of the PDARP/PEIS which can be used as a guide when designing projects. Additional best practices may be required or recommended by regulatory agencies once the project has been reviewed. Please see the most recent version of Appendix 6.A in the Restoration Portal.

Biological Evaluation Form

The Biological Evaluation (BE) form was developed by NMFS and FWS during DWH early restoration to provide the Trustees one form to streamline project information for environmental compliance. It is recommended that Implementing Trustees use this form to provide a project overview for early coordination with Federal regulatory agencies as outlined below. Other materials, in addition to the BE form, may need to be provided to complete compliance with all applicable statutes.

Please use the most recent version of the BE form found in the Restoration Portal under the Compliance tab.

3. Endangered Species Act Consultations

Federal action agency to initiate ESA consultation:	Federal Trustee, as designated by the TIG for each project
Documentation:	BE form recommended for informal consultations (NLAA) and for screening no effect and formal (LAA) consultations. A Biological Assessment is required for formal (LAA) consultations.

The purpose of the ESA is to conserve endangered and threatened species and the ecosystems upon which they depend. Section 7(a)(2) of the ESA requires every federal agency, in consultation with and with the assistance of the Secretaries of the Interior and Commerce, to ensure that any action it authorizes, funds, or carries out, in the United States or upon the high seas, is not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of designated critical habitat of such species. Section 9 of the ESA and regulations issued pursuant to Section 4(d) of the ESA prohibit the take of listed species unless exempted by the NMFS or USFWS. To “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed species. This prohibition applies to federal and nonfederal parties.

The Implementing Trustee will be responsible for ensuring completion of the required documentation and provide it to the compliance liaisons for initial review. Only a federal agency can submit materials to initiate ESA consultation with NMFS and/or USFWS. ESA effects determinations are further outlined below:

No Effect Determination

For projects that result in no effect to ESA-listed and proposed species or designated and proposed critical habitat, the Implementing Trustee, in coordination with the Federal action agency, will complete documentation to be retained in project records. No further consultation is required.

Not Likely to Adversely Affect Determination

For projects that result in a “not likely to adversely affect” determination for ESA-listed and proposed species or designated and proposed critical habitat, the Implementing Trustee, in coordination with the Federal action agency, will complete documentation. It is recommended that the Implementing Trustee complete the Biological Evaluation form/NMFS Project Design Criteria checklist. The Federal action agency will initiate consultation with the NMFS and USFWS, as appropriate.

Likely To Adversely Affect Determination

For projects that result in a “likely to adversely affect” determination for ESA-listed and proposed species or designated and proposed critical habitat, the Implementing Trustee, in coordination with the Federal action agency, will complete a biological assessment. The Federal action agency will initiate consultation with the NMFS and USFWS, as appropriate.

Streamlining Under the NMFS ESA Section 7 Programmatic Biological Opinion

In addition to the pathways above, NMFS developed an additional streamlined consultation pathway in their [programmatic biological opinion](#) (Opinion) completed on February 10, 2016. To qualify for streamlined consultation, the project must incorporate project design criteria (PDC) evaluated by NMFS. Appendix A of NMFS’ Opinion provides the project design criteria available at the time of the Opinion. Project design criteria may be updated or additional ones may be developed and evaluated in the future. The Trustees are responsible for confirming that they are using the most current PDCs and best practices at the time of project implementation.

For streamlined consultations, the PDC checklist portion of the BE form must also be completed to demonstrate compliance with PDCs and confirm that adverse effects to listed or proposed resources will be avoided. The BE form can be found in the Restoration Portal.

Coordination with U.S. Army Corps of Engineers on Existing NMFS and USFWS ESA Consultations

To facilitate efficiency, Implementing Trustees should inform the U.S. Army Corps of Engineers (USACE) when applying for permits if an ESA consultation has already been completed for the proposed project with NMFS and/or USFWS. The USACE may use the findings of existing consultations in their permitting actions.

It is recommended that the Implementing Trustee provide the following information to the USACE about any existing ESA consultations:

- A copy of the concluding document (letter of concurrence or biological opinion) from previous ESA consultation. Include the NMFS PCTS tracking number (SER #####) or USFWS tracking number, as appropriate.
- Description of changes in site conditions since the previous consultation, if any.
- Whether the project the USACE is considering for authorization is the same in scope and duration as that in the previous ESA consultation.
- Whether the project will be implemented as described in the letter of concurrence or biological opinion, including any precautionary measures, best management practices, etc.

If you need help locating an existing NMFS or USFWS ESA consultation document please reach out to a compliance liaison.

Links to Additional ESA Information

NMFS ESA programmatic framework biological opinion on the DWH PDARP/PEIS

http://sero.nmfs.noaa.gov/protected_resources/section_7/freq_biop/index.html

NMFS Threatened and Endangered Species in Gulf of Mexico

http://sero.nmfs.noaa.gov/protected_resources/section_7/threatened_endangered/Documents/gulf_of_mexico.pdf

<http://www.nmfs.noaa.gov/pr/species/esa/listed.htm>

http://sero.nmfs.noaa.gov/protected_resources/index.html

NMFS Critical Habitat Designations

For final rules, maps, and GIS data please visit:

http://sero.nmfs.noaa.gov/maps_gis_data/protected_resources/critical_habitat/index.html

NMFS Southeast Region Protected Resources ESA Section 7 Guidance Documents

http://sero.nmfs.noaa.gov/protected_resources/section_7/guidance_docs/index.html

USFWS ESA programmatic framework biological opinion on the DWH PDARP/PEIS <https://pub-dwhdatadiver.orr.noaa.gov/dwh-ar-documents/1136/DWH-AR0307034.pdf>

USFWS Consultation Guidance and Species Lists by State

<http://www.fws.gov/southeast/es/consultation.htm>

USFWS information on species and critical habitat

<http://www.fws.gov/endangered/species/>

- USFWS Ecological Services Field Offices

<http://www.fws.gov/ecological-services/map/index.html>

4. Coastal Zone Management Act

Lead Federal agency to make consistency determination:	Federal Trustee, as determined by TIG for each project (State and Federal CZMA leads will coordinate)
Documentation:	CZMA consistency determination letter to appropriate state(s)

Federal consistency under the Coastal Zone Management Act requires that federal actions that will have reasonably foreseeable effects on any coastal use (land or water) or natural resource within a state's coastal zone be consistent with the enforceable policies of the state's federally-approved coastal management program. This requirement is addressed through processes that provide for state review of a federal agency's determination of consistency with the relevant state's federally-approved program.

Restoration actions proposed to be undertaken or authorized by federal agencies, including federal Trustees acting pursuant to OPA, are subject to review for federal consistency under the CZMA as a "Federal agency activity" pursuant to Subpart C of the CZMA Federal Consistency Regulations, 15 CFR 930. Although the requirement to review federal agency activities in order to develop consistency determinations is a singularly federal responsibility, the nature of the relationship between federal agencies and the Gulf states as Trustees allows them to work closely in the development of the determinations.

CMZA Consistency Review Process

Initial CZMA federal consistency reviews will be conducted so that the consistency determinations can be issued for official state review concurrently with the release of a draft restoration plan. The federal TIG members will agree to a lead federal agency to organize the CZMA federal consistency review process. That lead federal agency will assign an individual (the federal CZMA lead) the responsibility of drafting the federal Consistency Determination.

The federal CZMA lead will contact a representative designated by the State TIG member(s) (the state CZMA lead) to confer on the reasonably foreseeable effects of the proposed plan and the relevant enforceable policies of the state's federally-approved coastal management program. The federal CZMA lead will provide the state CZMA lead an opportunity to review the draft federal consistency review before it is signed by the appropriate federal officials and sent to the state Coastal Management Program (CMP), see section 13 for a list of contacts, for processing in accordance with usual federal and state CZMA procedures. If requested by the federal CZMA lead, the state CZMA lead may reach out to the state CMP (or other appropriate state entity) to provide advance notice of the review, seek guidance or subject matter expertise, or otherwise aid in the process.

A consistency determination should include a detailed description of the proposed activity, its expected coastal effects, and an evaluation of how the proposed project is consistent with applicable enforceable policies in the state's CMP. The federal CZMA lead may submit NEPA documents, ESA consultations, federal permits associated with the proposed project, etc. as part of background information, however those analyses are not subject to consistency review.

Timing of submittal will be coordinated to ensure that the request for concurrence is received at least 90 days prior to Trustee Council decision on the proposed project.

Once a complete consistency determination has been received by a state CMP, the state CMP proceeds with a review of the received information and has 60 days to concur or object to the consistency determination. State concurrence is presumed if the state CMP does not respond within the 60 day period.

If a state CMP agrees with a consistency determination, then the Implementing Trustee may immediately proceed with the project. In the event of an objection, a state CMP and federal agency should attempt to resolve any differences during the remainder of the review period.

Links to Additional CZMA Information

<https://coast.noaa.gov/czm/act/>

<https://coast.noaa.gov/czm/consistency/>

5. Essential Fish Habitat Consultations

Federal action agency to initiate EFH consultation:	Federal Trustee, as designated by the TIG for each project
Documentation:	EFH assessment

The Implementing Trustee, in coordination with the Federal action agency, will create an Essential Fish Habitat (EFH) Assessment and submit it to NOAA for review and consultation initiation. This document is a critical review of the proposed project and its potential impacts to EFH. Only a federal agency can submit materials to initiate EFH consultation with NMFS. EFH Assessments must include: (1) a description of the proposed action, (2) an analysis of the potential adverse effects of the action on EFH and the managed species, (3) the federal agency’s conclusions regarding the effects of the action on EFH, and, (4) proposed mitigation, if applicable. If appropriate and depending on the scale of the proposed action, the assessment should also include the results of an on-site inspection, the views of recognized experts on the habitat or species affected, a literature review, an analysis of alternatives to the proposed action, and any other relevant information.

Suggested Template for an EFH Assessment:

- A. Introduction
- B. Project Description
 - 1) Project Location (include maps and figures)
 - 2) Construction and Installation (How much time will it take to implement the project? What activities comprise the construction schedule? Are there multiple project components? Provide the preliminary design parameters for your project. You may need to organize by depth if you will be working in both subtidal and intertidal areas)
 - 3) Project Monitoring and Project Maintenance Activities
 - a) Describe pre and post construction monitoring
 - a. Objective 1:
 - 1) Parameter 1:
 - b) Provide a Monitoring Schedule (include a matrix/table as a helpful guide)
 - c) Describe maintenance activities
 - a. short term
 - b. long term
 - d) Provide a maintenance schedule if appropriate

- C. Essential Fish Habitat – Present the EFH within the action area, a table format is helpful, broken out by management unit.
- D. List the managed fish species in the action area, organized by Fishery Management Plans (FMPs) that apply to this project location. Provide a table of the species and their life stage broken out by habitat, as appropriate.
- E. Describe the Ecology and Potential Impact of this project to EFH Fisheries and Species
- F. Describe the Environmental Consequences of the Proposed Action (direct and indirect)
- G. Describe the Proposed Mitigation Measures and Guidelines for EFH Protection
- H. Provide a Cumulative EFH Impacts Synopsis and Conclusion
- I. References

Links to Additional EFH Information

Maps

<http://www.habitat.noaa.gov/protection/efh/habitatmapper.html>

EFH Consultation Guidance and Preparing EFH Assessments

http://sero.nmfs.noaa.gov/habitat_conservation/efh/guidance_docs/index.html

<http://www.nmfs.noaa.gov/habitat/habitatprotection/essentialfishhabitat.htm>

http://sero.nmfs.noaa.gov/habitat_conservation/documents/pdfs/efh/efh_consultation_101_ver082013.pdf

6. Marine Mammal Protection Act

Lead agency to request MMPA authorization:	Implementing Trustee
Documentation:	BE form recommended for initial screening; additional information may be required

The Department of Commerce through the NMFS, is charged with protecting whales, dolphins, porpoises, seals, and sea lions, and the Department of the Interior through USFWS is charged with protecting walrus, manatees, otters, and polar bears. The MMPA established a moratorium on the taking of marine mammals in U.S. waters. It defines “take” to mean “to hunt harass, capture, or kill” any marine mammal or attempt to do so. The MMPA generally prohibits take of marine mammals in U.S. waters by any person and by U.S. citizens in international waters. Incidental takes are those that are unintentional, but not unexpected.

The Implementing Trustee will provide project information to DOI and NOAA that will serve as initial screening and further review from subject matter experts or additional information may be required. A completed BE form is recommended for initial screening. If take authorization is needed for marine mammals under NMFS or USFWS jurisdiction, the Implementing Trustee will apply to NMFS and/or USFWS for applicable permits.

Links to Additional MMPA Information

<http://www.nmfs.noaa.gov/pr/species/mammals/>

http://sero.nmfs.noaa.gov/protected_resources/index.html

<http://www.fws.gov/international/laws-treaties-agreements/us-conservation-laws/marine-mammal-protection-act.html>

Marine mammal incidental take authorizations

<http://www.nmfs.noaa.gov/pr/permits/incidental/>

7. National Historic Preservation Act Section 106

Lead agency to request NHPA consultation:	Federal Trustee, as designated by the TIG for each project
Documentation:	BE form and/or project description recommended for initial screening; additional information may be required

Section 106 of the National Historic Preservation Act requires federal agencies to take into account the effects of their actions on historic and cultural properties.

The Implementing Trustee will send a project description and may also send a completed BE form to the Federal Trustee coordinating NHPA for review and consultation initiation.

Additional information may be requested by the DOI NHPA Section 106 Compliance Coordinator (see section 13 of this appendix for contact information) to determine the appropriate level of consultation required. Additional information may include but is not limited to specific construction details, archival research, archaeological surveys, site visits, etc. Once sufficient information is available in order to make a determination the standard four-step consultation process will begin.

- Step 1: Establish an undertaking and initiate process.
- Step 2: Identify Historic Properties.
- Step 3: Assess Effects.
- Step 4: Resolve Adverse Effects.

During the consultation process the State Historic Preservation Officer and Tribal Historic Preservation Officer and tribes will have a minimum of 30 days to make a finding after receipt of the consultation request. Failure to provide sufficient information to the consulting parties can extend the 30 day minimum.

Links to Additional NHPA 106 Information

<http://www.achp.gov>

8. Archaeological Resources Protection Act

Lead agency to request ARPA permit:	DOI
Documentation:	BE form and/or project description recommended for initial screening; additional information may be required

If projects are conducted on federal or Indian lands, the implementing Trustee will need to comply with the Archaeological Resources Protection Act of 1979 (ARPA), which protects archaeological resources and sites on public and Indian lands. In addition to any NHPA Section 106 requirements, the Implementing Trustee will coordinate any archaeological research conducted on Federally or Indian held lands with the responsible cultural resource manager at that site. The DOI NHPA Section 106 Compliance Coordinator (see section 13 of this appendix for contact information) will be kept apprised of the permitting process and is available to provide assistance during the process.

Links to Additional Information

Archaeological Resources Protection Act

<http://www.nps.gov/archeology/tools/Laws/arpa.htm>

9. Migratory Bird Treaty Act and Bald and Golden Eagle Protection Act

Lead agency to coordinate MBTA and BGEPA compliance:	DOI
Documentation:	BE form or/and project description recommended for initial screening; additional information may be required

The Migratory Bird Treaty Act of 1918 (MBTA) implements various treaties and conventions among the United States, Canada, Japan, Mexico, and the former Soviet Union for the protection of migratory birds. Under MBTA, unless permitted by regulations, it is unlawful to pursue; hunt; take; capture or kill; attempt to take, capture, or kill; possess; offer to sell or sell; barter; purchase; deliver; or cause to be shipped, exported, imported, transported, carried, or received any migratory bird, part, nest, egg, or product, manufactured or not. USFWS regulations broadly define “take” under MBTA to mean “pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to pursue, hunt, shoot, wound, kill, trap, capture, or collect”. Implementing Trustees, through the DOI liaison, must coordinate with the USFWS to ensure that take of migratory birds, pursuant to the MBTA, does not occur.

The Bald and Golden Eagle Protection Act of 1940 prohibits anyone, without a permit issued by the Secretary of the Interior, from “taking” bald eagles, including their parts, nests, or eggs. The Bald and Golden Eagle Act defines “take” as “pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest, or disturb”. Implementing Trustees, through the DOI liaison, must coordinate with the USFWS to evaluate bald and golden eagle status in the project action area and determine if best practices need to be put into place to avoid nonpurposeful “taking” or “disturbing” of bald and golden eagles.

The Implementing Trustee will provide project information to the DOI compliance liaison for coordination and review pursuant to MBTA, as appropriate and BGEPA. A completed BE form is recommended. DOI will inform the Implementing Trustee if additional information is required for compliance with this statute.

Links to Additional Information

Migratory Bird Treaty Act <http://www.fws.gov/birds/policies-and-regulations/laws-legislations/migratory-bird-treaty-act.php> Bald and Golden Eagle Protection Act

<http://www.fws.gov/birds/policies-and-regulations/laws-legislations/bald-and-golden-eagle-protection-act.php>

10. Coastal Barrier Resources Act

Lead agency to coordinate CBRA compliance:	DOI
Documentation:	BE form or/and project description recommended for initial screening; additional information may be required

The Coastal Barrier Resources Act (CBRA) restricts federal expenditures of funds for activities located within the Coastal Barrier Resources System unless those activities meet one of the listed exceptions under the CBRA. Implementing Trustees, through the DOI liaison, must coordinate with USFWS to determine whether the proposed federal expenditure meets one of the CBRA exceptions or is otherwise subject to restrictions.

The Implementing Trustee will provide project information to the DOI compliance liaison for coordination and review pursuant to CBRA. A completed BE form is recommended. DOI will inform the Implementing Trustee if additional information is required for compliance with this statute.

Links to Additional Information

Coastal Barrier Resources Act <http://www.fws.gov/ecological-services/habitat-conservation/coastal.html>

11. Clean Water Act Section 404; Rivers and Harbors Act Section 10 and Section 14; Marine Protection, Research and Sanctuaries Act Section 103

Lead agency to apply for USACE permit:	Implementing Trustee
Documentation:	USACE permit application, see district websites for information.

The following information is in regard to U.S. Army Corps of Engineers (USACE) authorization(s) that may be required for project activities to meet the requirements of the Clean Water Act (CWA), Rivers and Harbors Act (RHA) and/or Marine Protection, Research and Sanctuaries Act (MPRSA).

- **CWA Section 404** (33 USC 1344) requires USACE authorization before discharging dredged or fill material into waters of the United States, including wetlands.

- **RHA Section 10** (33 USC 403) requires USACE authorization prior to any work done in, under, or over navigable waters of the United States or affecting the course, location, condition, or capacity of such waters.
- **RHA Section 14** (33 USC 408 and commonly referred to as “Section 408”) authorizes the alteration or occupation or use of a USACE completed civil works project if the Secretary, on the recommendation of the Chief of Engineers, determines that the activity will not be injurious to the public interest and will not impair the usefulness of the project.
- **MPRSA Section 103** (33 USC 1413) may also be required for the transportation of dredged material for the purpose of dumping it in ocean waters.

Implementing Trustees are encouraged to contact their local USACE field office prior to submitting a permit application, see section 13 for a list of contacts. Pre-application consultation can involve one or more meetings between applicants, USACE field staff, and interested resource agencies (federal, state and/or local). The purpose of such meetings is to provide for informal discussion of the proposed activities associated with a restoration project, whether or not USACE authorization may be required for these activities and, if so, under which statutory authority. Depending on which authorities may apply, the USACE can discuss the application and authorization process, factors the USACE considers in its decision-making, measures to avoid and minimize potential impacts, as well as nationwide or regional general permits that may be available for certain categories of activities. By discussing such information prior to application submittal, a complete application can be prepared and processed more efficiently.

Two common types of USACE permits include general permits and individual permits.

- **General permits** are Department of the Army authorizations issued on a nationwide or regional (District-wide or more limited scope) basis for a specified category of activities when those activities are substantially similar in nature and cause only minimal individual and cumulative impacts. If the conditions of the general permit are met, specified activities can take place without the need for an individual permit.
- **Individual permits** are required when a proposed activity does not qualify for a general permit. The individual permit process entails a full public interest review including evaluation of input and other information received during a public comment period. Pre-application consultation provides an opportunity for the USACE and implementing Trustees to discuss the type of permit most likely applicable to the restoration project (e.g., depending on the scope of activities proposed), the information needed to help support USACE evaluation and processing, and associated timeframes.

Additional efficiencies could be realized by using pre-application meetings to discuss multiple restoration projects, grouped geographically or by activity type for example, to facilitate progress on several projects at one time. Also, inviting other resource agencies to participate in these meetings could allow for discussion of issues relevant not only to USACE statutory authorities, but also other related environmental and resource reviews such as NEPA, EFH, NHPA, and ESA (see specific information on coordinating with USACE on existing ESA consultations in Section 3 above). Incorporating each in a comprehensive, rather than stepwise fashion, would help facilitate interagency communication and coordination, identify any potential inconsistencies in advance, and help reduce duplication of effort.

Links to Additional USACE Permitting Information

For more information about the USACE regulatory program, specific to each of the District Offices in the Gulf of Mexico, please see:

USACE Mobile District Office (AL & MS)

<http://www.sam.usace.army.mil/Missions/Regulatory.aspx>

USACE Jacksonville District Office (FL)

<http://www.saj.usace.army.mil/Missions/Regulatory.aspx>

USACE New Orleans District Office (LA)

<http://www.mvn.usace.army.mil/Missions/Regulatory.aspx>

USACE Vicksburg District Office (MS)

<http://www.mvk.usace.army.mil/Missions/Regulatory.aspx>

USACE Galveston District (TX)

<http://www.swg.usace.army.mil/Missions/Permits.aspx>

12. Compliance tracking and reporting

The Implementing Trustee(s) will ensure that the status of environmental compliance (e.g. completed vs. in progress) is tracked through the Restoration Portal. They will track the status for each statute, ensure the status is up to date in the Restoration Portal, and inform the public via the regulatory compliance table on the Trustee Council website. Implementing Trustees will keep a record of compliance documents (e.g., ESA biological opinions, Corps permits, etc.) and ensure that they are submitted for inclusion to the Administrative Record and uploaded within 30 days of receipt to the Restoration Portal. Environmental compliance must be initiated at the appropriate stage. Some project activities may not commence before completion of applicable compliance processes

The Implementing Trustee(s), in coordination with the federal action agency or federal lead agency, is responsible for implementing conditions required in consultations, permits or other applicable compliance documents, including providing any required follow up reports to regulatory agency in the timeframe specified. The Implementing Trustee(s) will: (1) upload any reports required by regulatory agencies to the Restoration Portal and (2) provide any follow up materials to regulatory agencies, such as, but not limited to:

- Pre and post project monitoring required by an ESA or EFH consultation
- Pre-construction notification required by the USACE
- Permit conditions required by the USACE
- Implementation of best practices required for compliance under ESA, EFH, MBTA, BGEPA, MMPA
- Project completion reports and as built surveys

For additional information on how to use the Restoration Portal, what to include in the Administrative Record, and how to submit documents to the Administrative Record, see the following appendices to the SOPs (when they become available):

- Restoration Portal Manual
- Administrative Record Business Rules
- Restoration Implementation Administrative Record Guidance
- Administrative Record Naming Conventions

13. Agency contacts/offices

Federal Trustee Compliance Liaisons

The following Federal Trustee compliance liaisons are also a source of information and assistance to answer compliance questions. These liaisons conduct preliminary reviews and route those documents within NOAA and DOI.

- Robin Renn, DOI (NEPA contact)

robin_renn@fws.gov or 251-517-8005

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- James “Kevin” Chapman, DOI (NHPA, ARPA contact)

james_chapman@fws.gov or 404-679-7060

- Ashley Mills, DOI (ESA, MMPA, BGEPA, MBTA, CBRA contact)
ashley_mills@fws.gov or 812-756-2712
- Christy Fellas, NOAA (ESA, EFH, MMPA)
christina.fellas@noaa.gov or 727-551-5714

Regulatory agency contacts/offices

Regulatory agency contacts and office information is provided in this list. Implementing Trustees may choose to ask questions or seek guidance directly from the sources listed below for matters that are detailed or particular to their project and regulatory authority. These sources should be contacted for discrete questions as they are subject matter experts.

In comparison, the Federal Trustee compliance liaisons are a source of information on general process as it relates to DWH, training, review of materials, and will guide compliance documents through the federal processes.

REGULATORY CONTACTS			
Agency/Division/Office	Point of Contact	Project Location	Questions regarding:
NMFS Southeast Regional Office			
Protected Resources Division http://sero.nmfs.noaa.gov/protected_resources/index.html	Mike Tucker michael.tucker@noaa.gov 727-209-5981	Entire Gulf of Mexico	ESA consultations
	Laura Engleby laura.ingleby@noaa.gov 727-824-5312	Entire Gulf of Mexico	MMPA permits
Habitat Conservation Division http://sero.nmfs.noaa.gov/habitat_conservation/index.html	Rusty Swafford rusty.swafford@noaa.gov 409-766-3699	Entire Gulf of Mexico	EFH consultations
Department of the Interior, Deepwater Horizon NRDAR Case Management Office https://www.doi.gov/deepwaterhorizon			
ESA Coordinator	Ashley Mills ashley_mills@fws.gov 812-756-2712	Entire Gulf of Mexico	ESA consultations, MMPA permits, BGEPA, MBTA, CBRA
NEPA Coordinator	Robin Renn robin_renn@fws.gov 251-517-8017	Entire Gulf of Mexico	NEPA compliance/coordination
NHPA Section 106 Coordinator	James “Kevin” Chapman james_chapman@fws.gov 404-679-7060	Entire Gulf of Mexico	Section 106 compliance/coordination

REGULATORY CONTACTS			
Agency/Division/Office	Point of Contact	Project Location	Questions regarding:
U.S. Army Corps of Engineers			
Jacksonville District	Donnie Kinard 904-232-1177	Florida	Clean Water Act Section 404; Rivers and Harbors Act; Marine Protection, Research and Sanctuaries Act
Mobile District	Craig J. Litteken 251-690-2658	Alabama Mississippi	
Vicksburg District	Jennifer Brown 601-631-7071	Mississippi	
New Orleans District	Michael Farabee 504-862-2766	Louisiana	
Galveston District	Janet Thomas Botello 409-766-3869	Texas	
State Coastal Management Program Managers (Contact list available at: https://coast.noaa.gov/czm/consistency/)			
Mr. Phillip Hinesley, Chief Coastal Section State Lands Division, ADCNR 31115 5 Rivers Blvd. Spanish Fort, AL 36527	251-621-1216; Fax: 251- 621-1331 phillip.hinesley@dcnr.alab ama.gov	Alabama	CZMA
Ms. Becky Prado Interim Coastal Program Administrator Florida Coastal Office, Dept of Env Protection 3900 Commonwealth Boulevard Douglas Building, Mail Station 47 Tallahassee, FL 32399-3000	850-245-2094; Fax: 850- 245-2189 rebecca.prado@dep.state. fl.us	Florida	CZMA
Mr. Keith Lovell Department of Natural Resources P.O. Box 44487 617 North 3rd St., Suite 1048 Baton Rouge, LA 70808-4487	225-342-9052 225-242-3458 fax keith.lovell@la.gov	Louisiana	CZMA
Mr. Jan Boyd, Director Mississippi Coastal Program Department of Marine Resources 1141 Bayview Avenue, Suite 101 Biloxi, MS 39530	228-523-4102 228-374-5008 fax jan.boyd@dmr.ms.gov	Mississippi	CZMA
Ms. Sheri Land, Director Coastal Resources Division Texas General Land Office P.O. Box 12873 Austin, TX 78711-2873	512-463-5058 512-475-0680 fax sheri.land@glo.texas.gov	Texas	CZMA