Public Scoping for Preparation of a Programmatic Environmental Impact Statement for the Deepwater Horizon BP Oil Spill

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I. Introduction and Scoping Purpose

Federal and State natural resource trustees are developing a Gulf of Mexico-wide Programmatic Environmental Impact Statement (PEIS) for the Deepwater Horizon BP Oil Spill to assist in their completion of a Natural Resources Damage Assessment (NRDA) related to the discharge of oil associated with the Deepwater Horizon oil spill (referred to hereafter as "incident"). This work falls within two laws. The PEIS is being developed as part of a federal requirement under the National Environmental Policy Act (NEPA) to follow a logical and documentable decision process to reach the preferred alternative for meeting goals of a project, and to consider the potential environmental consequences of the action to be taken (in this case, restoration). The Oil Pollution Act of 1990 (OPA), 33 U.S.C. § 2701 *et seq*., is the federal statute authorizing federal and state agencies to act as natural resource trustees, on behalf of the public, to conduct an NRDA which will measure and recover damages for injuries to natural resources resulting from this spill. The federally-designated natural resource trustees for this incident include the Department of Commerce, represented by the National Oceanic and Atmospheric Administration (NOAA), U.S. Department of the Interior (DOI), and U.S. Department of Defense, represented by the Navy. The state trustees include all five Gulf Coast states (Florida, Alabama, Mississippi, Louisiana, and Texas). The PEIS will be a coordinated effort between state and federal natural resource trustee agencies, as well as non-trustee agencies, local governments, and the public.

The public restoration scoping process, which consists of meetings being held in March 2011 across the Gulf of Mexico region, and in early April in Washington, DC, are fulfilling public scoping requirements of both the OPA and NEPA statutes. The purpose of the scoping meetings is two-fold: 1) to receive public input on the identification of broad restoration types that can address natural resources exposed to the spill, and 2) receive public input on the environmental and socioeconomic impacts of implementing restoration that the federal government should consider when developing the PEIS. The public scoping comment period for this phase of public engagement ends on May 18, 2011.

II. Background

On April 20, 2010 an explosion on the Deepwater Horizon MC252 drilling platform in the Gulf of Mexico caused the rig to sink, and oil began leaking into the Gulf. BP was unable to successfully cap the leak until mid-July, and millions of barrels of oil were released into the Gulf. In what has become the worst offshore oil spill in U.S. history, natural resources have been exposed to and impacted by oil and response activities. These resources include recreationally, ecologically, and commercially important species and their habitat within, and along the coast of, the Gulf of Mexico, as well as the services provided by these resources.

The magnitude of this spill is something our nation has not seen before, causing significant impacts to natural habitats, wildlife, and human communities along large coastal areas of Louisiana, Mississippi, Texas, Alabama, and Florida. Although it will be potentially years before the full extent of the damage is known, the Trustees have acted quickly to begin injury

assessments and to plan for restoration to compensate the public for those injuries. Because of the extensive nature of this spill and the broad range of resources affected, the Trustees will seek more of an ecosystem approach to developing a restoration plan, by exploring more holistic restoration actions which could benefit multiple resources and habitats.

III. Natural Resources Damage Assessment

The Trustees are in the process of conducting a NRDA to determine the types and amount of restoration needed to compensate the public for impacts to natural resources caused by the spill, including impacts caused by the response and clean-up efforts. It should be noted that the NRDA process is not the mechanism to address other spill impacts such as seafood safety, human health, or personal property damages.

The Trustees are currently collecting information on natural resources to assess potential impacts to fish, shellfish, marine mammals, turtles, birds, and other sensitive resources, as well as coastal and marine habitats (e.g., wetlands, beaches, seagrasses, and coral). Lost recreational human uses, such as fishing, hunting, and beach enjoyment also are being assessed, as well as ecological services provided by the habitats that are necessary to sustain functional and healthy ecosystems in the region.

The purpose of NRDA is to quantify injuries to our nation's natural resources, the subsequent loss of resource services, and the time required for natural resources to recover. Natural resources provide various services to other natural resources and to humans. Loss of these services is included in the definition of injury under the OPA regulations, and it means the functions performed by one natural resource for the benefit of another natural resource and/or the public. The outcome of the NRDA is to develop a restoration plan or series of plans that when implemented, will compensate the public for these losses.

IV. Injury Assessment and Measuring Losses

To contemplate restoration planning for injured resources, it is necessary to understand which resources are being investigated for potential injury. During the course of an injury assessment, the trustees are following a four-step approach to documenting injury. This process is:

Release ⇨ Pathway ⇨ Exposure ⇨ Injury

Since it is well documented that an oil release occurred, the trustees began determining all the potential pathways through which oil and dispersants could reach natural resources. From that point, investigations focused on the question of which resources were likely directly and indirectly exposed to oil and dispersants, and other response or clean-up actions which could have caused injury. Trustee scientists are currently engaged in multiple studies to assess and quantify injuries to resources that were exposed. Similarly, trustee scientists are looking at response-related injuries to resources.

The following diagram illustrates the resources that are being investigated.

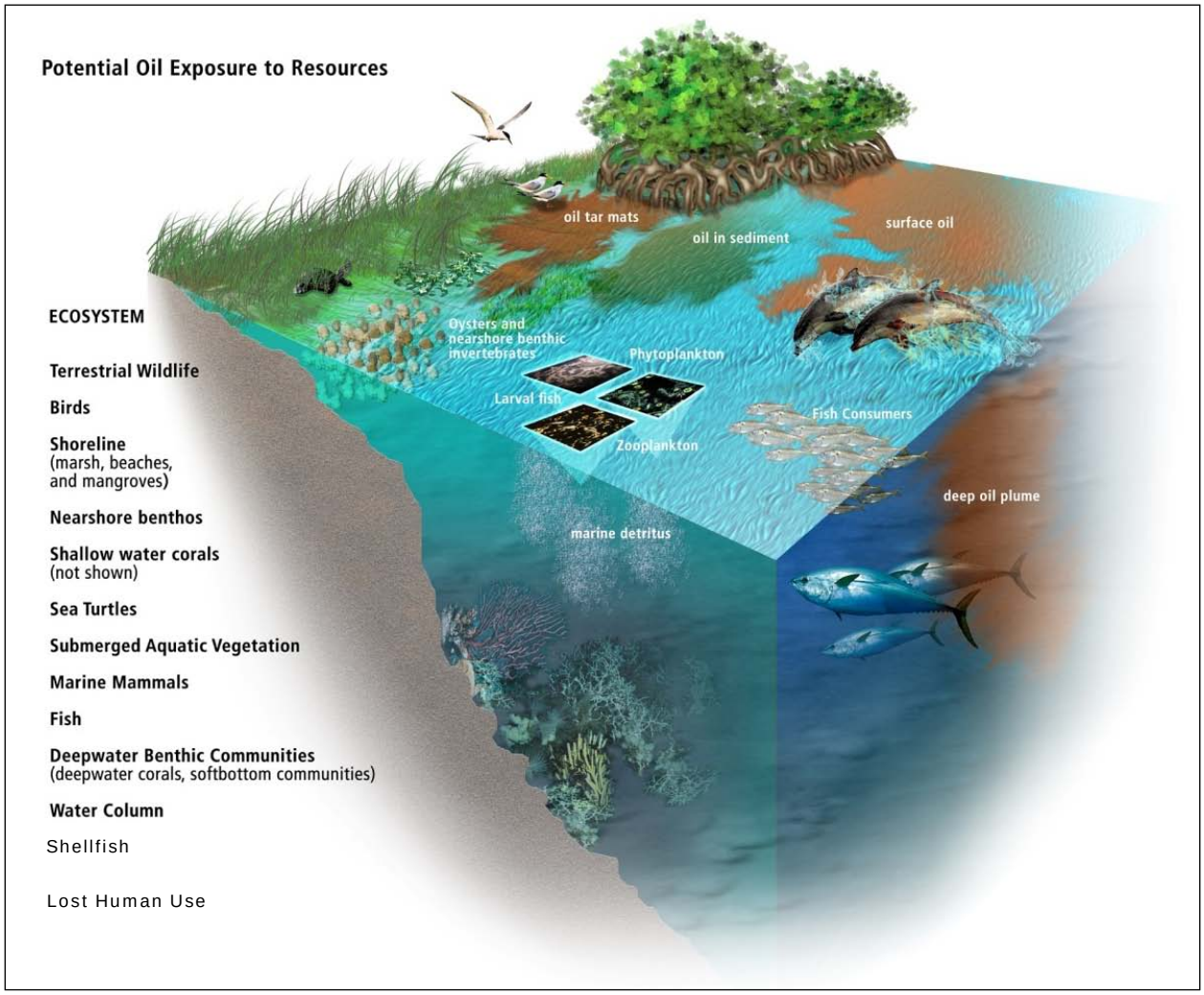

Figure 1. Schematic depicting resources and habitats potentially affected by exposure to oil and dispersants.

The trustees have the responsibility of making the case for natural resource damages related to the oil spill, and as such, careful consideration has gone into the development of work plans and data collection to support that effort. The completed work plans and quality controlled raw data are publicly available online at www.gulfspillrestoration.noaa.gov.

The work plans and assessments are designed to determine injury caused by exposure to oil and dispersants, as well as unintended impacts resulting from clean-up activities. The trustees are considering impacts to individual resources, but are also looking at impacts to ecosystem relationships, considering how these natural resources may be linked in terms of their services and function.

V. Getting to Restoration: NRDA and NEPA Processes

As part of the NEPA process, the Trustees have decided to develop a PEIS to help expedite development and implementation of subsequent NRDA actions. The PEIS can be used to guide and coordinate development of a future NRDA restoration plan, which will describe specific restoration actions that will be taken. The PEIS will improve the consistency and predictability of future restoration actions developed by the NRDA planning process and will minimize uncertainty for the public.

NRDA and NEPA Processes

Under NEPA, public scoping is important to the overall decision making process and is a first step in the development of a PEIS. The objectives of scoping are to:

1. Identify and obtain input from the people, organizations, and agencies, including federal agencies, state and local government agencies, and tribal governments, who are interested in the proposed federal action (for this purpose, the proposed action is environmental restoration).

2. Identify the range of alternatives that are possible for meeting the goals of the proposed action.

3. Identify significant environmental, socioeconomic, and other issues to be analyzed in the PEIS and eliminate non-significant issues from detailed analysis.

4. Identify other environmental review and consultation requirements so they can be integrated with the NEPA process (e.g., historic preservation, endangered species, etc.).

5. Identify information gaps or other issues potentially affecting the proposed action.

Under NRDA, scoping is also an important part of the Restoration Planning Phase. The trustees are currently in this phase, which includes two parts: 1) injury assessment, and 2) development of a restoration plan that will compensate the public for losses to natural resources and their services. The completion of a final restoration plan is dependent upon knowing the full extent of these losses. The trustees are still actively investigating injury, and as such, are not yet at the point of scoping for specific restoration projects with the public. Therefore the purpose of the current scoping process, which closes May 18, 2011, is to publicly scope for broad restoration types based on knowledge of oil exposure and/or response activity impacts to natural habitats and wildlife resources, as well as lost recreational opportunities. This information will later be used to support development of project-specific restoration plan(s).

NEPA and NRDA processes are similar in that they require public input and development of alternatives and recommendation for a preferred alternative. Figure 2 illustrates how NEPA is addressed within the context of this NRDA.

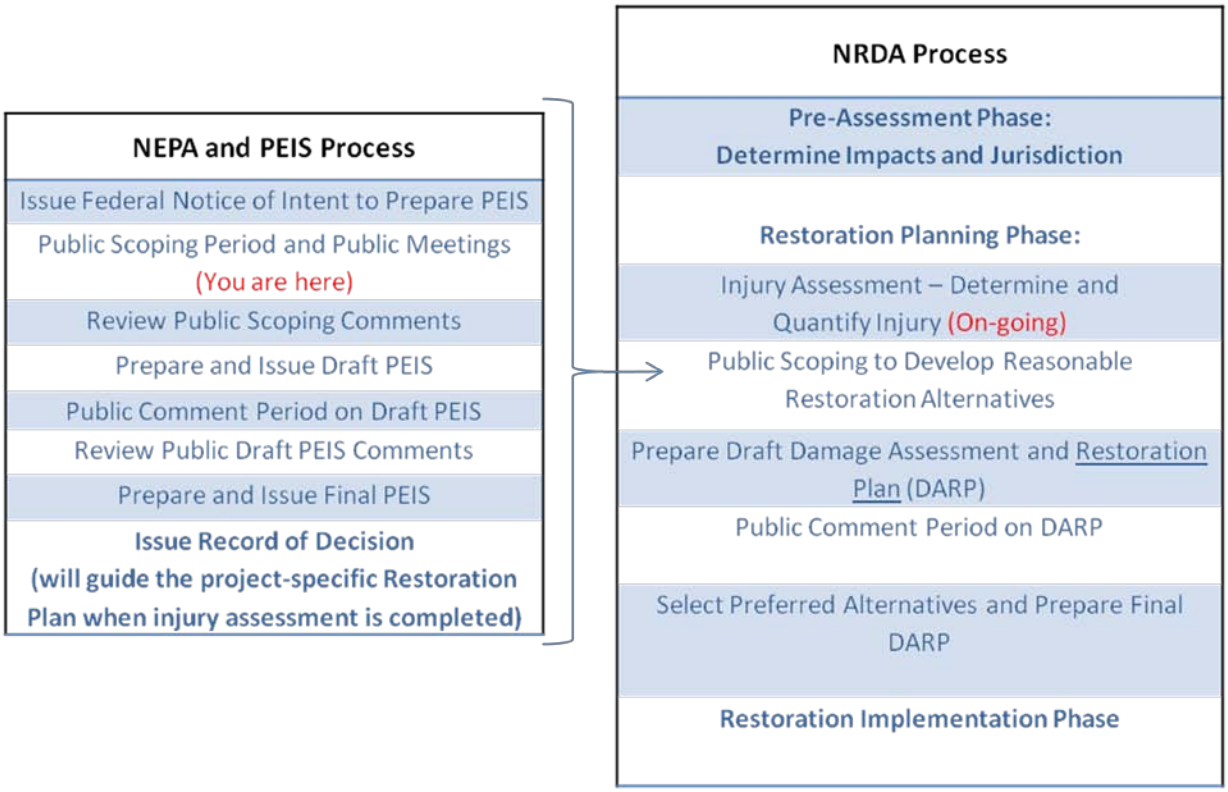

Figure 2.Steps of the NEPA and PEIS process within the NRDA process as outlined in the OPA regulations.

Due to the fact that the injury assessment is still pending for this incident, it is not possible to move to the selection of individual projects that will serve as the final Restoration Plan. The public scoping that is occurring now for the NRDA is for broad restoration types from which individual projects will be selected later, once the injury assessment is completed. At that point in time, another series of public scoping meetings will be conducted to receive input on specific restoration project ideas. The final PEIS will help guide the trustees on what types of restoration projects are most relevant for this incident, and which environmental impacts should be considered prior to moving to project implementation.

NOAA's National Marine Fisheries Service is the lead federal agency for preparation of the PEIS. NOAA will prepare the PEIS in cooperation with federal and state agencies that have specific jurisdiction, or areas of special expertise, that are relevant to the PEIS. These include the Department of Interior; Department of Defense, represented by the Navy; other federal agencies (to be determined); and state agencies including the Florida Department of Environmental Protection, and the Florida Fish and Wildlife Conservation Commission; the Alabama Department of Conservation and Natural Resources, and the Geological Survey of Alabama; the Mississippi Department of Environmental Quality; 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; and the Texas Parks and Wildlife Department, Texas General Land Office, and the Texas Commission on Environmental Quality.

Existing Regional Restoration Plans

It is recognized that some of these agencies, as well as numerous non-governmental groups, have long-standing ecosystem restoration plans and programs. The trustees are knowledgeable about these efforts and intend to consider existing restoration goals when developing the PEIS. At this time (scoping) we are not evaluating these plans but are trying to determine what should be considered within the existing body of work. Therefore, we would like to hear from the public on what worked well, what needs improvement, and how we should consider those other plans in relation to development of this PEIS.

VI. Descriptions of Potential Alternatives

A. No Action Alternative

In general, the No Action Alternative represents what would happen if a proposed action, in this case resource restoration, does not take place. The NEPA requires an evaluation of this as an alternative. It is used as the baseline with which to compare the impacts of the alternatives.

B. Reasonable Alternatives

All reasonable alternatives must be explored and evaluated. Reasonable alternatives include those that are practical or feasible from the technical and economic standpoint and using common sense. Ultimately, an otherwise reasonable alternative may not be selected for lack of connection to the exposed resources, low likelihood of success, or for other reasons.

C. Other Alternatives

Non-reasonable alternatives may be eliminated from study after a brief explanation of the reasons for eliminating them.

D. Preferred Alternative

No Preferred Alternative exists at present. The Preferred Alternative is the alternative which the agency believes would fulfill its statutory mission and responsibilities, giving consideration to the economic, environmental, technical, and other factors. It is likely that trustees will develop a Preferred Alternative that will comprise a suite of reasonable alternatives to address the many different resources which have been exposed; some alternatives may be temporally based, some alternatives may be geographically based, and some alternatives may be more conceptual and less developed than others.

VII. Restoration Scoping

The Oil Pollution Act (OPA) requires that compensation for injury to natural resources and their services be in the form of restoration. Restoration means any action (or alternative), or combination of actions (or alternatives), to restore, rehabilitate, replace, or acquire the equivalent of injured natural resources and services. Restoration or rehabilitation includes actions to assist the recovery of an injured natural resource and its services. Replacement or acquisition of the equivalent includes actions to provide the same or the functional equivalent of the natural resource and its services, such as where the injured natural resource cannot be restored or rehabilitated or it will take a long time to do so.

As previously discussed, the purpose of these scoping meetings is to receive input from the public on how to achieve the goal of restoring injured natural resources, specifically:

1) What resources should the trustees consider for restoration?
2) How should the trustees pursue restoration, rehabilitation, replacement, and acquisition of those resources?
3) What restoration types are relevant to the above?
4) What potential environmental and socioeconomic impacts of conducting such restoration should the trustees consider?

Considering that the PEIS is a foundational document to what will later be a project-specific restoration plan for the NRDA, the intent is to be broad in the identification of restoration types. Examples of restoration types that may be applicable to this event include, but are not limited to:

- Marsh creation and seagrass restoration
- Hydrologic restoration and river diversions
- Barrier island restoration and beach renourishment
- Marine debris removal and water quality improvements
- Land conservation
- Improved recreational infrastructure
- Shellfish (oyster reef) restoration

The outcome of this stage of restoration scoping will be a list of resources from which the trustees will focus restoration, coupled with a list of restoration types (for those resources) that will be the focus of an analysis in the PEIS of environmental effects. To illustrate this, the trustees may utilize a matrix to help conceptualize how resources and restoration are connected, and which restoration types may benefit multiple resources.

The PEIS will consider these restoration types for their relevancy in compensating for injury to exposed natural resources, as well as any potential environmental impacts that may result from implementing restoration. The PEIS should therefore expedite required environmental review of individual projects, because the document will have already considered broad impacts prior to selection of a final restoration plan.

VIII. Environmental Consequences of Restoration Types

To summarize the previous sections, the main purpose of the Natural Resources Damage Assessment (NRDA) is to determine and implement restoration actions which are appropriate to compensate for natural resource losses caused by the oil spill. The main purpose of the National Environmental Policy Act (NEPA) is to follow a logical and documentable decision process to reach the preferred alternative for meeting goals of a project and/or program, and to consider the potential environmental consequences of the restoration types that are developed as part of the Natural Resources Damage Assessment. The Programmatic Environmental Impact Statement will document this decision process as well as the environmental consequences of the preferred alternative.

It may be counterintuitive to think that natural resource restoration, conceived to remedy environmental damages, could cause other unintended consequences on the environment. The scale and magnitude of the spill and the resulting exposure of natural resources to oil will likely require significant, and potentially large-scale, restoration. Restoration projects, individually or collectively, may have a dramatic footprint on the gulf coast that must be evaluated under NEPA. As such, the PEIS will consider how specified restoration types could have direct, indirect, and cumulative impacts on the environment.

A. Direct and Indirect Impacts

In the PEIS, this section of the document will focus on the anticipated direct and indirect impacts on the environment from implementation of potential programmatic restoration alternatives. Impacts will be considered for both positive and negative consequences on the environment, and whether they are considered significant. Among other environmental issues that may be identified for analysis, the PEIS will evaluate the impacts of implementing the alternatives on the following:

a. Geologic and mineral resources
b. Soils and sediments
c. Water resources (ground and surface water, and water quality)
d. Wetlands (all various wetland types)
e. Vegetation (aquatic and terrestrial)
f. Wildlife Resources (aquatic and terrestrial)
g. Fisheries Resources
h. Federally Listed Threatened and Endangered Species

j. Cultural Resources (archeological and historical)

k. Socioeconomics (demographics and environmental justice)

B. Cumulative Impacts

This section of the PEIS will consider the cumulative benefits, in addition to the potential for cumulative adverse impacts, of restoration implementation across the region. Cumulative impacts will take into account the varieties of scale that exist between watersheds and larger ecosystems; as well as the potential effects of these restoration actions in conjunction with non-NRDA environmental restoration that may happen concurrently. The trustees' goal is to optimize restoration for losses to natural resources resulting from this incident, which should consider ecosystem linkages. The PEIS will assist the trustees in determining the merits of specific restoration actions to be selected in the future, and how they may be implemented in concert to achieve greater ecologic recovery.

IX. Legal Mandates and Authorities

The PEIS will be written in compliance with all applicable federal laws, regulations and required consultations, and Executive Orders. It will also consider all applicable state laws and regulations.

X. Submitting Comments and Next Steps

Comments can be submitted online to the trustees for consideration in the PEIS by visiting www.gulfspillrestoration.noaa.gov. Written comments can be submitted by mail to: NOAA Restoration Center, 263 13th Ave South, St. Petersburg, FL 33701. The public scoping period will end May 18, 2011. After scoping ends, the trustees will compile comments and begin drafting the PEIS. A first draft is anticipated to be available for public review and comment in early 2012.