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CHAPTER 13: PUBLIC COMMENT ON THE DRAFT PHASE III ERP/PEIS AND RESPONSES

13.1 Introduction

The public comment period for the Draft Phase III ERP/PEIS opened on December 6, 2013, was extended for 15 days to a total of 75 days, and closed on February 19, 2014. During that time, the Trustees hosted nine public meetings in Texas, Louisiana, Mississippi, Alabama, and Florida:

- December 16, 2013: Mobile, Alabama
- December 17, 2013: Long Beach, Mississippi
- January 14, 2014: Belle Chasse, Louisiana
- January 15, 2014: Thibodaux, Louisiana
- January 16, 2014: Lake Charles, Louisiana
- January 21, 2014: Port Arthur, Texas
- January 22, 2014: Galveston, Texas
- January 23, 2014: Corpus Christi, Texas
- February 3, 2014: Pensacola, Florida

At the public meetings, the Trustees accepted written comments, as well as verbal comments that were recorded by court reporters. The Trustees also convened multiple community meetings designed to provide additional opportunities for individuals to comment on the Draft Phase III ERP/PEIS. In addition, the Trustees hosted a web-based comment submission site, and provided a P.O. Box and email address as other means for the public to provide comments. As a result, the Trustees received comments provided at public meetings, web-based submissions, emailed submissions, and mailed-in submissions.

During the public comment period, the Trustees received approximately 2400 submissions from private citizens; businesses; federal, state, and local agencies; non-governmental organizations; and others. Following the comment period, the Trustees reviewed all submissions. Similar or related comments contained in the submissions were then grouped and summarized for purposes of response. All comments submitted during the period for public comment were reviewed and considered by the Trustees prior to finalizing the Phase III ERP/PEIS. All comments submitted are represented in the summary comment descriptions listed in this chapter, and all public comments will be included in the Administrative Record.

13.2 Organization of this Chapter

Comments received were both general in nature as well as directed toward specific aspects of one or more of the projects detailed in Chapters 8-12 of this Final Phase III ERP/PEIS. Accordingly, the Trustees organized the comments and responses in the following manner:

- General Overview Comments
- Comments on the Introduction, Purpose and Need of the Draft Phase III ERP/PEIS and the Early Restoration Process
- Comments on the Project Selection Process Used by the Trustees
- Comments Relating to the Offsets Proposed for Certain Projects by the Trustees
- Comments on the Public Participation Process

- Comments on the Affected Environment Analysis
- Comments on the Injury Assessment
- Comments of the Development and Evaluation of Alternatives
- Comments on the Environmental Consequences Analysis
- Comments on Compliance Issues
- Comments on the Monitoring Planned for the Plan
- Comments Related to Project Implementation
- Comments on the Individual Projects Proposed by the Trustees, organized by the State in which the Project is Proposed to Take Place

13.3 The Comment Analysis Process

Comment analysis is a process used to compile and correlate similar public comments into a format that can be used by Trustees. Comment analysis assists the Trustees in organizing, clarifying, and addressing technical information pursuant to OPA and NEPA regulations. It also aids in identifying the topics and issues to be evaluated and considered throughout the planning process.

Comments were sorted into logical groups by topics and issues, consistent with the range of topics raised during public scoping, as well as the comments received on the Draft Phase III ERP/PEIS. The process was designed to capture all comment content rather than to restrict or exclude any ideas.

The Department of the Interior's Planning, Environment and Public Comment (PEPC) database was used for managing the comments. The database stores the full text of all submissions and allows each comment to be grouped by topic and issue.

All comments were read and analyzed, including those of a technical nature; opinions, feelings, and preferences of one element or one potential alternative over another; and comments of a personal or philosophical nature.

13.4 Major Comment Themes

The Trustees recognize the importance of all comments received during the public comment period. Still, a number of issues were either raised repeatedly from a number of sources, or addressed topics that the Trustees believe should be highlighted for the public.

1. Comment theme: Restoration activities should avoid further injury to the ecosystem and avoid collateral damages (i.e. do no harm).

   Response: Avoiding, minimizing, or mitigating any adverse ecological effects from a restoration project is essential to achieving the Trustees' goals. Narrowing the range of acceptable projects to those with no collateral adverse effects, however, would artificially exclude many restoration alternatives with very high net benefits to natural resources and their services to the public. The Trustees have selected projects where the adverse effects on the ecosystem can be avoided or minimized. Where appropriate, Best Management Practices will be implemented to reduce the potential for collateral injury. None of the proposed Phase III recreational use projects would cause an "unacceptable level of ecological injury", based on the NEPA analysis, regulatory compliance consultations and other information presented in the Final Phase III ERP/PEIS.

2. Comment theme: Some of the projects in the Draft Phase III ERP/PEIS do not meet requirements of OPA or NRDA, or Early Restoration. In particular, some projects do not have a sufficient nexus to injury from the Spill.

   Response: The principle of nexus under OPA, that restoration actions must be capable of restoring, rehabilitating, replacing, or acquiring the equivalent of natural resources or services that are injured or lost as a result of an incident, is a key criterion used in screening, evaluating, and selecting restoration actions to be included in any restoration plan developed under OPA. The Trustees have applied that criterion throughout the Early Restoration planning process, including in the Draft and Final Phase III ERP/PEIS. The discussion of each of the Phase III projects in this Final Phase III ERP/PEIS identifies the types of injuries each project is intended to address.

3. Comment theme: Monitoring plans included in the document are not sufficient and should address the broad impacts of projects on the entire Gulf of Mexico.

   Response: Each project in the Final Phase III ERP/PEIS identifies project objectives and how Trustees will use various forms of monitoring, as appropriate for each project, to assess progress toward those objectives. Because Early Restoration is intended only to accelerate the start of meaningful restoration and is not meant to be comprehensive, the monitoring for Early Restoration projects will focus on the evaluation of project success, and not on long-term, broader measures of the recovery of injured natural resources and their services in the Gulf. The Trustees are continuing to assess the potential injuries and losses to the natural resources caused by the Spill and anticipate developing broader monitoring efforts in later stages of the damage assessment and restoration planning process.

4. Comment theme: There is insufficient detail about the programmatic alternatives, and several project types are not included in the analysis.

   Response: The Phase III ERP/PEIS evaluates a broad range of injuries to natural resources and services and a broad range of project types to address those injuries. Each of the programmatic alternatives is made up of a number of project types. A project type refers to a category that includes restoration approaches with a comparable objective, using appropriate, established restoration techniques to meet that objective; example techniques for each project type are presented and evaluated as part of the programmatic analysis.

   Additional restoration project types were considered by the Trustees, and will be considered further in the ongoing NRDA, but are not evaluated in the Phase III ERP/PEIS because the Trustees do not consider them appropriate for Early Restoration at this time. The reasons for reserving those project types for the NRDA vary but include the need to develop more information about a technique or injury and, in some instances, uncertainty over the scale of injury and the need to negotiate Offsets with BP. For example, the document describes that, while the Trustees continue to assess Spill-related injuries to marine mammals and to deep benthic environments (e.g., deep sea corals, mesophotic reefs and deep soft bottom sediment habitat), additional time and effort is needed to identify appropriate, reliable restoration methods (Section 5.2.1). Likewise, potential to benefit resources via improvements to water

quality were considered, but additional time and effort is needed to evaluate these project types.

5. Comment theme: Some proposed projects should have their own EIS.

   Response: With this programmatic EIS and the other environmental analyses included or incorporated by reference in the Phase III ERP/PEIS, each of the 44 projects has been analyzed at a sufficient level of detail to comply with NEPA.

6. Comment theme: More, if not all, proposed projects should focus on ecological restoration, rather than on recreation.

   Response: For reasons articulated in the Phase III ERP/PEIS, the Trustees determined that, for the purposes of Early Restoration, a mix of projects restoring natural resources and restoring losses of recreational services is appropriate. Of the $627 million total estimated cost of the proposed Phase III early restoration projects, projects to restore the ecological properties of natural resources comprise $397 million (about 63% of the total) and projects to enhance recreation uses comprise $230 million (about 37%). This mix allows Trustees to address a variety of injuries caused by the Spill and contributes more broadly to the Trustees' goal of making the environment and the public whole.

7. Comment theme: The Trustees need to provide more information on the project selection process they used.

   Response: The Trustees undertook substantial public outreach efforts to solicit restoration options. The Trustees understand the importance and value of transparency in the NRDA restoration process and made substantial efforts to ensure the public is aware of the goals of Early Restoration, the criteria to be applied in choosing Early Restoration projects under OPA, the on-going opportunities for the public to submit projects for consideration, and the terms and processes outlined in the Framework Agreement that must also be satisfied to access BP funding. The Trustees believe the Draft and Final Phase III ERP/PEIS provide sufficient and timely information in that regard.

13.5 Summary Comments

13.5.1 General

1. Comment: Commenter(s) expressed support for the Draft Phase III ERP/PEIS.

   Response: The Trustees acknowledge this support.

2. Comment: There was some confusion about the interaction between Early Restoration and the RESTORE process.

   Response: RESTORE is a separate process under different authorities and is independent of the decisions being made for *Deepwater Horizon* Early Restoration.

3. Comment: Trustees need to provide a holistic, ecosystem-wide vision for restoration that will guide project selection. The project selection process does not fully consider how projects can be integrated and synergistic, in order to achieve full recovery. The draft does not achieve an

ecosystem-wide, comprehensive, integrated and long-term program that addresses injuries with ecologically balanced restoration alternatives.

Response: The purpose of Early Restoration is to accelerate meaningful restoration of injured natural resources and their services resulting from the Spill while the natural resource damage assessment is ongoing. The Trustees proposed alternatives and projects that meet the purpose and need of Early Restoration within the bounds of the Framework Agreement. Project proposal selection was accomplished through the Trustees' vetting process, which includes representatives from each of the state and federal Trustees. The Final Phase III ERP/PEIS, with additional information and changes based on public input, achieves the purpose and need of Early Restoration.

The Phase III ERP/PEIS is not intended to fully address all injuries caused by the Spill, which will be addressed in a comprehensive Damage Assessment and Restoration Plan (DARP). The Trustees continue to evaluate additional projects for funding as part of the Early Restoration process but also to work toward developing longer term restoration plans with the goal of fully compensating the public for all resource injuries and losses that resulted from the Spill.

4. Comment: As part of providing the above, the Trustees should utilize coastal and marine spatial planning as a tool to facilitate strategic and comprehensive planning.

   Response: The Trustees understand that the principles of coastal and marine spatial planning can be useful for restoration planning. The Trustees have and will continue to use spatial information in the evaluation of potential restoration projects. Spatial data used in the evaluation include project locations in relation to other restoration efforts, to sensitive resources, and to human uses. In addition to several other tools, the Trustees have used resources such as the ERMA Deepwater Gulf Response and the Early Restoration Project Atlas. The Trustees will continue to consider the best use of coastal and marine spatial planning tools in selecting and implementing projects into the future.

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

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

6. Comment: The Trustees should track changes in the broader northern Gulf of Mexico environment to understand how ecosystem changes interact with site-specific conditions and affect project performance.

   Response: Early Restoration projects have been designed to account for ecosystem changes and interactions with site-specific conditions based on existing data. As part of the project siting, planning and design, the Trustees consider available information on changes and trends in the northern Gulf of Mexico environment, such as information on land subsidence and projected sea level change. These factors are important to consider in project engineering and design, and the Trustees will monitor project performance with respect to project success.

7. Comment: Trustees should ensure that there is coordination among projects so that projects in a given area or with similar impacts, such as shoreline projects, can work together to yield more comprehensive results.

   Response: Project proposals, including shoreline projects, have been and will continue to be coordinated among all the Trustees, including any that would fall within a common area or would have similar potential impacts.

8. Comment: Damages pursuant to OPA are limited to measureable or observable adverse injuries where such injuries result from the release of oil.

   Response: "Damages" under OPA are measured by the cost of restoring, rehabilitating, replacing, or acquiring the equivalent of damaged natural resources; the diminution in value of those natural resources pending restoration; and the reasonable cost of assessing those damages (33 U.S.C. § 2706(d)(1)). "Injury" is not specifically defined in OPA but is defined in the OPA NRDA Regulations, as "an observable or adverse change in a natural resource or impairment of a natural resource service" (15 C.F.R. § 990.30). This includes the release of oil and activities conducted in response to the spilled oil. The Trustees are assessing natural resource damages in accordance with, among other guidance, the definitions provided by both the Oil Pollution Act and the OPA NRDA Regulations.

9. Comment: Restoration activities need to produce benefits that are related, or have a nexus, to injured natural resources and lost services. The nexus should be provided on a project by project basis so the project can be designed to address the injury.

   Response: The principle of nexus under OPA, that restoration actions must be capable of restoring, rehabilitating, replacing, or acquiring the equivalent of natural resources or services that are injured or lost as a result of an incident, is a key criterion used in screening, evaluating, and selecting restoration actions to be included in any restoration plan developed under OPA. The Trustees have applied that criterion throughout the Early Restoration planning process, including in the Draft and Final Phase III ERP/PEIS. The discussion of each of the Phase III projects in this Final Phase III ERP/PEIS identifies the types of injuries each project is intended to address.

10. Comment: Restoration activities should avoid further injury to the ecosystem and avoid collateral damages (i.e. do no harm). Some human use projects cause an unacceptable level of ecological injury; there should be no net loss.

Response: The OPA NRDA Regulations at 15 CFR 990.54(a) provide factors for the Trustees to consider when selecting from a range of restoration alternatives. One of these factors in 15 CFR 990.54(a)(4) is the extent to which each alternative will avoid collateral injury as a result of implementing the alternative. The regulation contemplates that restoration projects may cause some degree of collateral injury in certain instances

Avoiding, minimizing, or mitigating any adverse ecological effects from a restoration project is essential to achieving the Trustees' goals. Narrowing the range of acceptable projects to those with no collateral adverse effects, however, would artificially exclude many restoration alternatives with very high net benefits to natural resources and their services to the public. The Trustees have selected projects where the adverse effects on the ecosystem can be avoided or minimized. Where appropriate, Best Management Practices will be implemented to reduce the potential for collateral injury. None of the proposed Phase III recreational use projects would cause an "unacceptable level of ecological injury", based on the NEPA analysis, regulatory compliance consultations and other information presented in the Final Phase III ERP/PEIS.

11. Comment: Projects that may have a significant impact on the environment should undergo additional environmental analysis in the form of a stand-alone EIS tiered from the PEIS.

    Response: With this programmatic EIS and the other environmental analyses included or incorporated by reference in the Phase III ERP/PEIS, each of the 44 projects has been analyzed at a sufficient level of detail to comply with NEPA (see Chapters 8-12).

    The Phase III ERP/PEIS may also be used for future projects proposed for Early Restoration that meet the criteria of the Preferred Alternative. A subsequent analysis for any new projects would tier from the Phase III ERP/PEIS, and would be consistent with NEPA. If projects are proposed that are outside the scope and analysis of the Phase III ERP/PEIS, a separate NEPA process, including environmental assessments or environmental impact statement may be required.

12. Comment: Trustees should include, consult, and collaborate with outside entities in the planning, implementation, and monitoring process. These entities include, but are not limited to, the public, universities, local governments, the conservation corps, private businesses, non-profit organizations, and NGOs. In so doing, Trustees should consider, among other approaches, creating jobs in the local community, using and training a local workforce, buying and using local materials, providing a hiring preference to woman-owned, minority and disabled workforce, making use of private/public and private partnerships, and including the disabled and elderly in the design of projects.

    Response: Implementing Trustees are subject to and must abide by laws, regulations and policies governing their contracting and government processes and practices. Such laws, regulations, and policies will vary, depending on the Trustee agency implementing a project. The process for developing the Draft and Final Phase III ERP/PEIS included a broad effort to engage the general public and stakeholders during several key periods (for example, please see Section 1.9 "Public Review and Comment" and Section 2.1.1 for descriptions of the public engagement processes).

13. Comment: Trustees need to be aware of possible negative impacts to human health from the Spill and related activities; especially due to contact with the dispersant Corexit. There were also concerns raised regarding the potential environmental consequences of dispersant use.

    Response: Dispersants were used to break up oil and speed its natural degradation. Potential human health impacts of dispersant use, while important, are outside the scope of natural resource damage assessment. The National Institutes of Health has launched the Gulf Long-term Follow-up Study to look at the potential health effects from the oil spill across the Gulf region. The study is focusing on exposure to oil and dispersant products and potential human health consequences, including mental health concerns. For more information about this study, please see *www.gulfstudy.nih.gov*.

    The use of dispersants during the response was part of a broader array of mitigation measures to minimize the impact of this oil spill. These measures included mechanical removal, in situ burning, and the application of dispersants that involved degrees of uncertainty. U.S. government responders required monitoring and assessment plans for the application of dispersants as part of this spill response. The long term effects of dispersant use on natural resources are not entirely known. The Trustees are assessing the extent to which exposure of natural resources to oil or dispersants may have caused or contributed to any injuries or losses of natural resources or services. Any natural resource injuries related to dispersant use will also be considered for incorporation in the Trustees' ongoing restoration planning efforts.

14. Comment: Trustees need to be aware of and address, when appropriate, concerns about possible corruption and mismanagement in project selection and implementation.

    Response: Trustees are mindful of their duties to the public to conduct the NRDA process, including project selection and implementation, with the stewardship required of public entities. To that end, Trustees follow all applicable state and federal contracting laws and standards, including those related to contractor integrity and accountability. The project selection process followed by the Trustees is described in detail in Chapter 2 of the Phase III ERP/PEIS.

15. Comment: Environmental compliance, including project-specific NEPA reviews (only four of the Phase III projects reference an existing NEPA document), ESA and CWA compliance, as well as other relevant state and federal regulations for each of the 44 projects evaluated in the PEIS needs to be complete before project implementation.

    Response: The Final Phase III ERP/PEIS includes NEPA analyses for each of the 44 projects in chapters 8-12, in some cases incorporating additional existing NEPA analyses ; the Trustees will not implement projects before completing necessary reviews under applicable law.

16. Comment: The completion of a PEIS should not predetermine that all 44 Phase III projects will be implemented.

    Response: The Trustees will implement the Early Restoration projects selected pursuant to the evaluation criteria provided by the NRDA regulations and the Framework Agreement. The completion of the NEPA analysis is used to inform the Trustees' final decision to select particular projects for implementation in the Final Phase III ERP.

17. Comment: The Trustees should require rather than suggest that best practices be utilized for all projects.

    Response: Implementing Trustees will adopt and are required to implement project-specific mitigation measures (including BMPs) identified in the Final Phase III Record of Decision and completed consultations/permits. Oversight will be provided by the implementing Trustees.

18. Comment: Trustees need to be sure that all projects comply with federal accessibility laws and the ADA. Trustees should consider involving people with disabilities in design and implementation of projects that provide access to recreational opportunities.

    Response: The Trustees will ensure that all projects comply with applicable laws regarding people with disabilities in implementation of the projects. The Trustees will take under advisement the suggestion of involving those with disabilities in design and implementation of the recreational projects.

19. Comment: Trustees should be aware of and responsive to concerns that restoration money was not being equitably spent within their states.

    Response: As described in the Final Phase III ERP/EIS, the Trustees selected the proposed Phase III Early Restoration projects through application of the evaluation criteria found in the Framework Agreement and the OPA regulations (see Section 2.1.2.1). The purpose of these evaluation criteria is to help guide the Trustees in their selection of projects that will provide meaningful benefits to accelerate restoration in the Gulf as quickly as possible. An even allocation of the DWH Early Restoration funds within each state may not always be possible or appropriate.

13.6 Introduction, Purpose and Need, Early Restoration Process

20. Comment: The Trustees must provide more information on how project types were evaluated and selected for Phase III.

    Response: The Trustees explained their approach to evaluating and selecting project types in the Early Restoration process (Section 5.2), and the Draft and Final Phase III ERP/PEIS provided sufficient information in that regard. The goals of the Early Restoration process, the project type evaluation criteria applied, and the reasons for selection of the project types included in the Preferred Alternative were articulated in the Draft and Final Phase III ERP/PEIS. The process the Trustees followed is consistent with applicable laws, regulations and the Framework Agreement.

21. Comment: The Trustees must explain the basis for and legality of their decision to 1) shift the focus of Early Restoration from "human use" to "recreational use" and 2) exclude ecological services from inclusion in the alternatives for ERP.

    Response: “Recreational use” is a subset of “human use”. The change to “recreational use” from “human use” phrasing in this plan is intended only to clarify the lost public resource uses that the Trustees are focused on in planning for Early Restoration (Section 1.3). Lost recreational use injuries are readily apparent at this stage of the injury assessment and an appropriate focus of Early Restoration. Restoration of ecological services has not been

excluded from consideration in Early Restoration. The issue of undertaking 'ecological' restoration to enhance recreational use is addressed below.

22. Comment: Trustees need to explain why human use restoration cannot occur through environmental restoration.

    Response: The Trustees understand that recreational losses can be addressed through ecological restoration strategies or other actions that restore or enhance the resources available to be enjoyed by the public. However, because recreational losses caused by the Spill are widespread and substantial, the Trustees considered it important to also consider projects that could address these losses more directly and expeditiously. The Trustees note that restoration projects to restore lost recreational uses at other spills have included projects that: (1) improve public access to natural resources; (2) enhance the quality of recreational experiences; and, (3) promote public stewardship and responsible use of natural resources through educational components.

23. Comment: The Trustees should institute an independent peer-review process for future restoration projects to identify and remove inappropriate projects before they are presented to the public.

    Response: The Trustees do not believe that changes to the Early Restoration project selection process are warranted. The Trustees utilize project evaluation criteria as described in the Phase III ERP/PEIS. These criteria are consistent with applicable laws, regulations and the Framework Agreement. Proposed Early Restoration projects, based on Trustee application of these criteria, are identified in a draft restoration plan and subject to public review and comment. The Trustees consider all public comments, and as warranted make changes to proposed projects, potentially including their removal.

13.7 Project Selection

24. Comment: Although restoration and protection of finfish, shellfish, birds, and turtles were included as potential project types, no specific projects were proposed for restoration of these species.

    Response: The Trustees acknowledge that no specific projects were proposed in Phase III for the restoration of finfish, shellfish (other than oysters), and turtles. However, bird restoration has been proposed in Phase III to restore brown pelicans, terns, skimmers, and gulls. The proposed projects represent only one phase of Early Restoration projects. Injury assessment and restoration planning are ongoing. The Trustees continue to evaluate additional projects for funding as part of the Early Restoration process.

25. Comment: Each project should analyze its long-term resilience to changing conditions and the ability to withstand, respond to, and recover rapidly from disruptions related to climate change.

    Response: As described in the Phase III ERP/PEIS, project evaluation criteria utilized by the Trustees in the Early Restoration process included consideration of factors that can affect a project's likelihood of success, such as climate change impacts. In addition, environmental changes, such as anticipated sea level rise, have been or will be factored into project designs,

when appropriate. Finally, NRD Offsets preliminarily agreed to by BP and the Trustees reflect consideration of the project time period and rate of ecological service accrual, among other factors.

26. Comment: The Trustees should include projects that would restore and protect marine mammals in Phase III. Potential projects could include:

    a. Long-term monitoring of population status and health.

    b. Monitoring and preventing impacts from human actions.

    Response: As stated in Chapter 5, the Trustees continue to evaluate potential Spill-related injuries to marine mammals, however additional time and effort is needed to develop this information and identify appropriate restoration methods. Restoration ideas (such as long-term monitoring of population status and health, as well as monitoring and preventing impacts from human actions) brought forward through prior scoping, the project database, and from the comments on the Draft Phase III ERP/PEIS will continue to be considered as the Trustees develop marine mammal restoration approaches.

27. Comment: The Trustees received multiple suggestions for new restoration projects.

    Response: The Trustees will continue to evaluate new and existing project ideas as potential DWH NRDA restoration projects. Project ideas can continue to be submitted and reviewed at http:www.gulfspillrestoration.noaa.gov/restoration/.

28. Comment: More, or all, proposed projects should focus on ecological restoration (oyster reefs, seagrass, other reef systems, wetlands etc.) rather than on human use.

    Response: For reasons articulated in the Phase III ERP/PEIS, the Trustees determined that, for the purposes of Early Restoration, a mix of projects restoring natural resources and restoring losses of recreational services is appropriate. Of the $627 million total estimated cost of the proposed Phase III early restoration projects, projects to restore the ecological properties of natural resources comprise $397 million (about 63% of the total) and projects to enhance recreation uses comprise $230 million (about 37%). This mix allows Trustees to address a variety of injuries caused by the Spill and contributes more broadly to the Trustees' goal of making the environment and the public whole. The Trustees continue to consider ecological projects as part of Early Restoration.

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

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

30. Comment: Concerns were noted about the absence of projects in areas serving minority communities.

    Response: Project evaluation criteria are described in Section 2.1.2.1 of the Phase III ERP/PEIS. The purpose of these evaluation criteria is to help guide the Trustees in their selection of projects that will provide meaningful benefits to accelerate restoration in the Gulf as quickly as possible. These criteria do not prioritize based on providing benefits to either minority or majority populations. As part of its NEPA analysis, Trustees ensured that projects would not have a disproportionate adverse human health or environmental impact on minority communities.

31. Comment: Restoration projects should be selected with the economic needs of surrounding communities in mind.

    Response: Project evaluation criteria are described in Section 2.1.2.1 of the Phase III ERP/PEIS. The purpose of these evaluation criteria is to help guide the Trustees in their selection of projects that will provide meaningful benefits to accelerate restoration in the Gulf as quickly as possible. These criteria did not include consideration of the economic status of communities.

32. Comment: Trustees should conduct pilot projects to ensure viability of long-term coastal restoration projects.

    Response: Pilot projects are allowed under 15 CFR 990.54(c) if the Trustees need to identify and evaluate the feasibility and likelihood of success of a project, but a pilot project must be likely to provide information relevant to application of the evaluation standards listed in 15 CFR990.54(a), and be done at a reasonable cost and in a reasonable time frame. While the Trustees are willing to consider undertaking pilot projects in appropriate circumstances, proposed Phase III projects are known to be technically feasible to implement and likely to have long term success.

33. Comment: The purpose of artificial reef projects should be to restore lost fishing opportunities; they should not be implemented for the purpose of restoring habitat or fish populations. When implementing artificial reef projects, more knowledge is needed of the role these artificial reefs play in the ecosystem, which will inform future projects. Artificial reef projects using oil infrastructure should not be implemented.

    Response: The Phase III artificial reef projects offset recreational use losses. The Trustees recognize that there is still debate concerning the role that artificial reefs can play in restoring habitat or fish populations, and that results will vary depending on the specifics of the reef material used and the siting of the reef. Additional information will be collected on the reef projects and the Trustees will use that information, if appropriate, to help guide future restoration projects.

34. Comment: Trustees need to be more open and inclusive during the project selection process.

    Response: The Trustees understand the importance and value of transparency in the NRDA restoration process and made substantial efforts to ensure the public is aware of the goals of restoration, the criteria to be applied in choosing restoration projects under OPA, the on-going opportunities for the public to submit projects for consideration, and the terms and processes

outlined in the Framework Agreement that must also be satisfied to access BP funding. Collectively, the opportunities afforded the public to participate in Early Restoration planning have been substantial and extensive. The Trustees have held numerous public meetings and developed and actively manage several web-based information portals used to keep the public apprised about restoration planning for the Spill.

The Trustees understand and value the public's interest in Early Restoration, and strive to maintain a high degree of transparency while protecting the integrity of the Trustees' legal action and fulfilling the critical mission to protect, preserve, and restore the Gulf's natural resources. The Trustees have and will continue to provide ample opportunities for all members of the public to provide input into the Early Restoration planning process.

13.8 Offsets

35. Comment: The Trustees should be able to explain to the public and the court why BP should be given a 50% discount on human use projects where the offset is up to, and in some cases greater than, 2:1.

    Response: As with all Early Restoration project Offsets, recreational use project Offsets were developed through a combination of technical analysis and negotiations with BP. The Trustees applied a 'benefits-transfer' approach to develop, for each Phase III recreational use project, an estimated range of the benefits, in dollars, that are likely to accrue from the project. 'Benefits transfer' is a commonly utilized economic technique that applies information from existing studies to estimate values in a different context. Factors considered in the Trustees' evaluation of Phase III recreational use project Offsets included, but were not limited to: the potential number of participants expected to benefit; the potential additional value derived from new and/or enhanced recreational trips; the likely duration of benefits; the proportion of project benefits allocated to BP (if a project is only partially funded by Early Restoration funds); and a discount rate. An underlying principle of the offset calculation approach is: if lost recreational uses can be fully restored at a cost that is less than the value of the services being provided, the public is appropriately compensated by such restoration.

    Based on the benefit ranges estimated by the benefits transfer, the Trustees negotiated a benefit to cost ratio (BCR). The BCR does not represent a "discount" in favor of BP. Rather, the BCR is based on best available estimates of the project's public benefits relative to its costs. The Trustees do not agree that Offset ratios under OPA and the NRDA Regulations are limited to 1:1 in this context. The approach undertaken to estimate Early Restoration recreational use project benefits and costs, as described in the Final Phase III ERP/PEIS and briefly summarized above, provides a sufficient basis for concluding that the negotiated BCRs and associated Offsets reasonably reflect the recreational benefits likely to be gained by the public through implementation of the Phase III recreational use projects set forth in the Final Phase III ERP/PEIS.

36. Comment: Not a single project should be offset by a greater ratio than 1:1

    Response: The benefit to cost ratios for Phase III projects were arrived at through negotiations with BP taking into account the unique characteristics of the projects and the benefits of early action to restore lost resource services. The Trustees do not agree that Offset ratios for Early

Restoration projects should be limited to 1:1 (where the ratio reflects the agreed-to project benefits relative to the costs of the project). In the restoration planning process outlined in the OPA NRDA Regulations (15 CFR §§990), Trustees are permitted to consider the value of restoration projects to the public, as well as the costs of these projects, in determining the appropriate scale of restoration. Where Spill-specific analysis identified appropriate restoration projects, the Trustees offered Offsets, consistent with those regulations and the broader NRDA objective.

37. Comment: If the restoration plan moves forward without a 1:1 value to cost, then each co-Trustee, not just the implementing Trustee, should explicitly acknowledge that they agree that the very best science and/or natural resource approach has been employed for this NRDA and will accept such an approach as the default precedent for future NRDA cases.

    Response: All Trustees must agree to the negotiated Offsets for all Early Restoration projects. As described in the Final Phase III ERP/EIS, the methods and information used in the Trustees' evaluation of proposed Phase III project benefits are consistent with the standards for assessment procedures set forth in the OPA NRDA regulations at 15 C.F.R. 990.27, defensibly support proposed Offsets, and are appropriate for Early Restoration in the context of the Spill. The Trustees do not agree that these BCRs hold any precedent for either other parts of the comprehensive NRDA or future NRDA cases (e.g., Framework Agreement condition 9).

38. Comment: A comparison of benefits to offset credits given to BP should be provided. Each recreational use project should summarize the following economic benefits that the Trustees used to generate the benefit-to-cost ratios:

    a. The number of participants expected to benefit from each project
    b. The benefit these individuals are expected to derive from a new or enhanced experience
    c. The timeframe over which the benefits will be provided, in terms of both start date and expected duration of benefits

    Response: The information provided in the Phase III ERP/PEIS is consistent with the Framework Agreement, applicable laws, regulations and Pre-Trial Orders. The materials concerning Offsets exchanged with BP are settlement confidential and subject to Pretrial Orders in the *Deepwater Horizon* litigation. Releasing further internal analyses not shared with BP could adversely affect ongoing or future Early Restoration negotiations or other proceedings.

39. Comment: In addition, estimated losses need to be provided so that costs, benefits and credits can be shown in relation to the lost uses. This will ensure we are receiving appropriate restoration compensation for the damage.

    Response: The NRD assessment is ongoing and estimates of total recreational losses are not yet available; however, total loss estimates are not required to support selection of the proposed Phase III recreational use projects in the Phase III ERP/EIS. The information provided in the Phase III ERP/PEIS is consistent with the Framework Agreement, applicable laws, regulations and Pre-Trial Orders.

    As a general matter, Spill-related disruptions in the public's recreational use of Gulf resources were readily observable and are well documented as widespread and extensive; Spill-related

recreational use disruptions are discussed in Section 4.2.12 of the Phase III ERP/PEIS. Proposed Phase III recreational use projects will benefit a variety of recreational uses across a wide geographic area in the Gulf, were selected through the process described in the Phase III ERP/PEIS, and will contribute to the Early Restoration purpose of accelerating meaningful restoration of injured natural resources and their services resulting from the Spill. The Phase III ERP/PEIS is not intended to fully address all injuries caused by the Spill, which will be addressed in a comprehensive damage assessment and restoration plan. The Trustees continue to evaluate additional projects for funding as part of the Early Restoration process but also to work toward developing longer term restoration plans with the goal of fully compensating the public for all resource injuries and losses that resulted from the Spill.

13.9 Public Participation

40. Comment: Some members of the public feel left out of the process, information was not provided to the public in a timely manner and the Trustees should provide the public with the opportunity to get involved in the process early, and allow them to give input on project selection, project development, and the determination of offsets prior to negotiation with BP.

    Response: The Trustees have explained their approach to evaluating and selecting projects in the Early Restoration process and believe the Draft and Final Phase III ERP/PEIS provide sufficient and timely information in that regard. Responding to requests from the public, the Trustees extended the comment period in order to provide additional time for review and comment. With respect to the negotiation process, as discussed in the Draft and Final Phase III ERP/PEIS, under the Framework Agreement, each Early Restoration project is subject to negotiation with BP and agreement on project costs, BP funding and NRD Offsets. Initial negotiations were conducted with BP as a means of determining whether agreements-in-principle on the Trustees' proposed projects were achievable prior to preparing the Draft Phase III ERP/PEIS. Such initial agreements, however, are subject to the outcome of the public review of the proposed projects as presented in the Draft Phase III ERP/PEIS. For projects proposed for the Final Phase III ERP/PEIS, the negotiated agreements on costs, funding and NRD Offsets will be included in the Administrative Record in accordance with the terms of the Framework Agreement. The process and timing the Trustees have followed is consistent with the Framework Agreement, applicable law, and Pre-Trial Orders.

41. Comment: Trustees should acknowledge, address, and incorporate comments that receive “substantial attention” and should provide more opportunities for discourse on a topic if a benchmark number of comments are received on it.

    Response: The process for developing the Draft and Final Phase III ERP/PEIS included a broad effort to engage the general public and stakeholders during several key periods (for example, please see Section 1.9 “Public Review and Comment” and Section 2.1 for descriptions of the public engagement processes). Comments received during the scoping process are intended to determine the scope and significance of the issues to be evaluated in the EIS, and assist in eliminating issues that are not significant or have been covered in a prior environmental review. These comments were considered in the development of the Draft Phase III ERP/PEIS, though a formal response to scoping comments is not required.

In addition to scoping, an agency must also solicit from the public comments on a draft EIS and draft restoration plan. Regulations require that the public comment period be a minimum of 45 days (40 C.F.R. § 1506.10 (C), 15 C.F.R. §990.23(c)(2)(ii)(C). However, an agency has the discretion to extend that period. In response to public request, the Trustees extended the original 60 day public comment period on the Draft Phase III ERP/PEIS an additional 15 days.

The NRDA regulations require consideration of all public comments received and incorporation of any changes made in response to public comments into the Final Restoration Plan/EIS. NEPA sets forth the requirements for agency responses to comments received on a draft EIS (40 C.F.R. § 1503.4). The number of comments received on a particular issue does not trigger more or less consideration under NEPA and OPA.

42. Comment: To help the public comment process, Florida should have a fact sheet for each project.

    Response: Detailed information on each project is provided in the Draft and Final Phase III ERP/PEIS. Since Florida has such a large number of projects, the Trustees believed it would be most effective to group fact sheets by project location. However, for future Early Restoration projects, Florida will consider producing a fact sheet for each individual project.

43. Comment: The Draft Phase III ERP and the PEIS documents should have been separate.

    Response: The NRDA regulations encourage natural resource Trustees to integrate NEPA with NRDA restoration plans (15 C.F.R. § 990.23(a)). The Trustees have integrated the Phase III ERP and PEIS in a manner consistent with the NRDA regulations.

44. Comment: Trustees should provide detailed information about the location, cost, anticipated benefits, likely impacts, and NRD offsets for projects submitted and under consideration.

    Response: The Trustees considered all the projects submitted for Early Restoration. These submissions ranged from very specific, detailed projects to general restoration concepts. It is not feasible or necessary to provide detailed information on all of the submitted project ideas. The Trustees did provide this information for all proposed Phase III projects. The Phase III projects were identified through a reasonable balancing of Early Restoration project objectives, opportunities and timelines in the process of applying project evaluation criteria.

45. Comment: The Trustees need to provide more information on the types of injuries or lost "public uses," on proposed projects, and on its decision making process in order to allow the public to effectively comment.

    Response: While the Trustees are still developing a comprehensive assessment of natural resource injuries and service losses, the existing information is sufficient to support the proposed Early Restoration actions. The discussion of injury in the Phase III ERP/PEIS is a preliminary summary of information emerging from the natural resource damage assessment, and includes a considerable amount of information about the projects as well as the context and basis for their selection under OPA and the Framework Agreement. The Trustees believe the information is sufficient to inform the public about these Early Restoration proposals and to allow for meaningful comment on proposed projects.

46. Comment: Trustees should provide relevant and pertinent information in a manner that is more accessible to the public. Online resources (websites) should be streamlined; everything should be in one place.

    Response: The Trustees strive to organize each public document in a manner that facilitates public review and understanding. In addition, supplemental public information documents such as fact sheets and summaries are created to provide information in an abbreviated and simplified way. The Trustees have provided links to additional resources such as State web pages to facilitate public input via portals that provide additional information and access. The Trustees will continue to identify ways to improve their processes and mechanisms for providing information to the public.

47. Comment: The Trustees should provide information on project dimensions in a more standard format, including the use of color coding on the status of projects, similar to that used in the Louisiana Master Plan.

    Response: Because public participation in the Early Restoration process is important to the Trustees, they strive to provide useful information in a way that is easily understood and readily available. The Trustees will continue to consider ways to improve access to information and ways to streamline the review of information.

48. Comment: The comment period should have been extended further.

    Response: Regulations require that the public comment period be a minimum of 45 days (40 C.F.R. § 1506.10 (C)). However, an agency has the discretion to extend that period. In response to public request, the Trustees extended the original 60 day public comment period on the Draft Phase III ERP/PEIS an additional 15 days. The Trustees believed this reasonably balances the need for additional time against the need for expeditious Early Restoration.

49. Comment: The Trustees provided additional time for the comment period, but should not extend it any further so as not to delay project implementation.

    Response: Regulations require that the public comment period be a minimum of 45 days (40 C.F.R. § 1506.10 (C)). However, an agency has the discretion to extend that period. In response to public request, the Trustees extended the original 60 day public comment period on the Draft Phase III ERP/PEIS an additional 14 days. The Trustees believed this reasonably balances the need for additional time against the need for expeditious Early Restoration.

50. Comment: Public meeting notices should have been posted further in advance of the meeting date.

    Response: The Trustees strive to make the public aware of public meeting times and locations as early in the process as practicable. Information about public meetings is posted on the web and provided to the media at the same time the notice of availability of the draft document is made in the Federal Register. The Trustees remain committed to providing multiple opportunities for public engagement and to providing advance notice of those opportunities as early in the process as possible.

51. Comment: There should be more direct solicitation of information and project suggestions from seafood industry members such as boat captains, deckhands, factory workers, and business owners.

    Response: The Trustees recognize that public input is a critical part of the NEPA and NRDA Early Restoration planning process. Therefore, the Trustees utilize a variety of mechanisms for providing opportunities for public input, and invite everyone to participate at all meetings. The Trustees hosted a series of nine public meetings in Texas, Louisiana, Mississippi, Alabama, and Florida to directly facilitate public input on the Draft Phase III ERP/PEIS. The Trustees continue to work with all members of the public to provide opportunities for ongoing engagement.

52. Comment: The Trustees should have provided another set of meetings for Alabama and Mississippi because the public had insufficient time to prepare for the first ones.

    Response: The Trustees recognize that public input is a critical part of the NRDA Early Restoration planning process. Throughout the comment period, the Trustees provided a variety of means for public input in addition to these meetings, including hosting web-based comment submission sites and providing a P.O. Box and email address with which to receive comments. In addition, the public comment period, which began Dec. 6, 2013, was extended an additional 15 days, until Feb. 19, 2014, to provide additional time for consideration and comment. The Trustees consider all comments, regardless of how they are received.

53. Comment: The Trustees should improve processes and structures for public participation and input for underserved communities (Indian tribes, minority communities, etc.). For example, the Trustees should make all public comment put into the Administrative Record accessible and translated into Vietnamese. Trustees should provide outreach to underserved communities such as Vietnamese or Hispanics (specific meetings, translated documents, more advanced notice). Trustees should employ more accessible methods for communicating project information for persons with mobility, hearing, and vision impairments.

    Response: The Trustees value the participation of all members of the public, including low-income and minority communities, tribal groups and others with barriers to participation, such as the disabled. The Trustees have adopted practices aimed at engaging these populations, such as translating materials (e.g. the Draft Phase III ERP/PEIS Executive Summary and project fact sheets) for communities that do not use English as their primary language, and providing translators at public meetings. Other practices include providing targeted meeting notifications in multiple languages in local newspapers, on the radio, at community gathering places, and directly to community leaders.

    In addition to the open public comment meetings, the Trustees scheduled community meetings, at times and in locations preferred by residents. These meetings provided information to help individuals participate in a meaningful way. The Trustees will continue to use these processes to encourage the participation of low-income, minority, Native American, and disabled persons. The Trustees will also seek to adapt processes and/or adopt new and innovative approaches to overcoming cultural, economic, linguistic, institutional, and other barriers to effective public participation, to the extent practicable. However, it would be cost and time prohibitive to translate all documents into each requested non-English language.

54. Comment: Please make available on websites the companies that perform well and those that do not.

    Response: Trustees do not plan to publish information about companies on public websites. Trustees are mindful of their obligations to the public to conduct the NRDA process, including project implementation, with the stewardship required of public entities. Trustees will implement projects in accordance with state and federal contracting laws.

55. Comment: Trustees should address and resolve public comment issues as we go forward with the NRDA process.

    Response: The Trustees are continually listening and responding to the public's request for more input and transparency in NRDA process. For example, the Trustees added a number of small community meetings during the review of the Draft Phase III ERP/PEIS to provide greater opportunity for the public to comment on the Plan. The Trustees recognize their obligation to provide opportunities for public participation and consider all ideas and suggestions to provide easier access to information and improving communication.

56. Comment: Holding public meetings in the off-season limits the comments on recreational use projects.

    Response: The Trustees are committed to restoring the Gulf in a comprehensive and timely manner. They understand that providing adequate opportunities for the public to be involved is a critically important part of that process and strive to hold meetings and opportunities for engagement that are as accessible to as many as possible. Restricting document release and associated public meetings to a specific season would delay the implementation of restoration.

57. Comment: The Trustees should maintain an online database to track progress of compliance reviews on projects.

    Response: The Trustees appreciate this suggestion and will continue to take this into consideration. Currently, DOI maintains the *Deepwater Horizon* NRDA Administrative Record Index website, which provides documentation of completed regulatory reviews for Early Restoration projects.

58. Comment: There was dissatisfaction with the responsiveness to previous public comments; specifically on project selection.

    Response: The NRDA regulations require consideration of all public comments received and incorporation of any changes made in response to public comments into the Final ERP/PEIS. The Trustees take this responsibility seriously and have reviewed each comment received carefully. Project selection is discussed in Section 2.1.

59. Comment: There should be additional information on how public comments will be taken into account in the decision-making process.

    Response: The Trustees consider public comments on the Early Restoration planning process as described in Section 1.9 of the Draft and Final Phase III ERP/PEIS. The Trustees' response to public comments in the Final Phase III ERP/PEIS documents how the Trustees' considered particular public comments into the decision-making process. For example, the public provided information regarding a least tern nesting colony at Navarre Beach. Because of this

information, preliminary project designs were modified to avoid the nesting habitat. Public comments have resulted in the incorporation of additional information into the Phase III ERP/PEIS and in some cases modifications to selected projects.

13.10 Affected Environment

60. Comment: The Draft Phase III ERP/PEIS presents an incomplete picture of the Gulf ecosystem and fails to provide a comprehensive review of the ecosystem in baseline conditions. It should also include the deep-water environments in both the habitat section (3.3.1) and the living coastal and marine resources section (3.3.2).

    Response: In accordance with NEPA regulations, the Affected Environment chapter (Chapter 3 of the Draft and Final Phase III ERP/PEIS) describes the environment of the area(s) to be affected by the alternatives under consideration, and is not intended to be inclusive of the entire Gulf ecosystem. The scope of the Draft and Final Phase III ERP/PEIS reflects the objectives of the Early Restoration phase and the application of criteria from the Framework Agreement and the NRDA regulations to the Early Restoration planning process. The Trustees continue to evaluate potential Spill-related injuries to deep-water environments, however, additional time and effort is needed to gather this information, as well as to identify appropriate restoration methods. If, for example, deep water project types are proposed to address injuries to those resources in future phases of Early Restoration, the programmatic plan for early restoration could be expanded and any necessary additional NEPA analyses would be undertaken.

61. Comment: The Trustees should include the identification and preservation of cultural resources in the analysis, including the tribal communities, many of which are not federally recognized, and therefore not traditionally included in the consultation process. This is critical to ensure that historic and culturally important areas across the Coast are preserved.

    Response: The Trustees are dedicated to preserving the historic, cultural, and archaeological resources of the Gulf Coast. The Early Restoration projects included in the Final Phase III ERP/PEIS are currently being reviewed by the Federal Trustees, federally recognized Indian Tribes, and State Historic Preservation offices under Section 106 of the National Historic Preservation Act to evaluate any effects of the projects on historic properties. The Trustees solicited comments from interested members of the public, including non- Federally recognized tribes, during the scoping process and during the public comment period on the Draft Phase III ERP/PEIS. In addition, DOI has held public meetings in all Gulf Coast states where members of the public and local communities, including state-recognized tribes, were invited to provide comments and information on the Trustees' analysis of historic and cultural resources.

62. Comment: Why does the Essential Fish Habitat for red drum not extend to Southwest Louisiana and Southeast Texas where there is heavy utilization of that resource?

    Response: Designation of Essential Fish Habitat (EFH) is not part of the NRDA process. Please see Gulf of Mexico Fishery Management Council's 1998 Amendment 1 to the Gulf of Mexico Fishery Management Plans for more information on EFH designations in the Gulf of Mexico.

63. Comment: Trustees need to explain the text in the Draft Phase III ERP/PEIS on page 116, Figure 3-10 stating that the manatee habitat does not include Southwest Louisiana even though classical materials, such as by Professor Lowery of LSU, as well as historical accounts confirm that there were manatees at times in the Calcasieu Basin. At this stage of planning, there should also be recognition that Louisiana has habitat for the red wolf.

    Response: Figure 3-10 only addresses Federally-designated Critical Habitat for manatee (see 42 F.R. 47840) rather than all areas that manatees can use. The Trustees acknowledge that manatees can use waters in all the Gulf coastal states and have added additional information to the text (Section 3.3.2.7) to describe use of these areas. The Trustees have also added additional information regarding the potential for manatees in the Calcasieu Basin in the project information for the Louisiana Marine Fisheries Enhancement, Research, and Science Center (the "Center"). The Trustees further acknowledge that habitat suitable for red wolf exists within Louisiana. In fact, the ESA consultation for the Center acknowledges that the Calcasieu parish facility is proposed in habitat suitable for red wolf; however, the project will not affect the species because the red wolf is not expected to occur in the project area.

13.11 Injury Assessment

64. Comment: The injury assessment needs to address specific resources including the marine life, benthic life, diamondback terrapin, sea mammals, coastal vegetation, and Gulf menhaden.

    Response: The Trustees are targeting representative species and sensitive life stages throughout the area exposed to oil. The injury assessment is ongoing and the summary in Chapter 4 of the Draft and Final Phase III ERP/PEIS is intended to provide an overview of current information most relevant to Early Restoration.

65. Comment: More detailed information should be provided on the estimated human use losses; for example, the number of lost boating or beach days. This will help the public determine if a project has a clear nexus to injury or if project costs and offsets are appropriate.

    Response: As the injury assessment is ongoing, final estimates of the recreational losses are not yet available; however, sufficient information is available to validate the nexus between the current plan for Early Restoration and recreational use injury. Even at this point in the assessment, some injuries and losses, such as disruption in the public's recreational use of beaches, were readily observable and are well documented as widespread and extensive.

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

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

descriptions of the alternatives and the projects. The Trustees will continue to consider and include information from the natural resource damage assessment process to the extent available and appropriate to inform their development of future Early Restoration plans.

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

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

68. Comment: Trustees did not provide a comprehensive review of the baseline condition of the Gulf of Mexico ecosystem. Specifically, the baseline conditions of marine mammals, planktivorous fish, and deep-sea corals were not discussed.

    Response: Baseline conditions are those that would have been present in the absence of the Spill. The assessment of injury to Gulf of Mexico natural resources includes evaluations of the baseline condition appropriate for the habitat, species, and injuries considered. Approaches for evaluating baseline condition may include comparison to historical data, field and laboratory studies that provide comparisons to conditions at reference locations, to control data or data bearing on incremental change, alone or in combination, and include evaluations of potential confounding factors such as other sources of PAHs or other contaminants, as appropriate. See 15 C.F.R. 990.30.

    In accordance with NEPA regulations, the Affected Environment chapter (Chapter 3 of the Draft and Final Phase III ERP/PEIS) describes the environment of the area(s) to be affected or created by the alternatives under consideration, and is not intended to be inclusive of the entire Gulf ecosystem. The scope of the Draft and Final Phase III ERP/PEIS reflects the objectives of the Early Restoration phase and the application of criteria from the Framework Agreement and the NRDA regulations to the Early Restoration planning process. The Trustees continue to evaluate potential Spill-related injuries to deep-water environments, however, additional time and effort is needed to gather this information, as well as to identify appropriate restoration methods. OPA requires that the baseline condition of the resources be considered when determining and quantifying injury to natural resources.

69. Comment: What is the baseline period for the recreational use study?

    Response: The process of defining the baseline period and spill effect period is ongoing.

70. Comment: No data were presented showing that oyster eggs, sperm, or larvae were exposed to oil and dispersants in the water column.

    Response: Oyster gametes and larvae float to the surface after spawning and remain at the surface for the early part of their planktonic period. They can travel up to 40 miles in surface waters and were directly exposed to slicks during this phase of their life in 2010. Oyster larvae were observed in water samples taken in areas affected by the spill in 2010. Surface oiling was observed in nearshore waters over a large area of the Gulf of Mexico. This information can be

found on Environmental Response Management Application (ERMA), at the following link https://www.erma.noaa.gov/.

71. Comment: Evidence indicates that any injury to oyster populations in 2010 resulted from Louisiana's unilateral opening of freshwater diversions – not a Federal On-Scene Coordinator-approved Response action – and this has been further confounded by a series of subsequent events, including severe freshwater flooding in 2011 along the Mississippi River, drought in other areas of the Gulf coast, and Tropical Storm Lee in 2011. The release of freshwater by the State of Louisiana does not constitute an appropriate Response activity under OPA.

    Response: The Trustees are aware of the range of issues and concerns associated with the effects of freshwater on oysters in 2010 and 2011 from the use of diversions and from tropical storm Lee, and are appropriately considering these in the course of the ongoing natural resource damage assessment work. It is premature for the Trustees to address these concerns and issues at the present time. It is also not necessary for the Trustees to do so for purposes of supporting the Early Restoration plans, including the plan presented in the Final Phase III ERP/PEIS.

72. Comment: No data is presented to show that oil and dispersant vapors were present in the atmosphere.

    Response: PAHs and volatile organic compounds were detected in air near the wellhead. For example, documentation of these findings can be found in Middlebrook et al., 2012, and at https://www.aiha.org/localsections/html/NTS/OSHA%20Update%20Exposure%20Assessment%20Onshore%20and%20Offshore%20in%20the%20Deepwater%20Horizon%20Oil%20Spill%20Response_Final.pdf

73. Comment: Lab toxicity tests results are not shared, results are premature.

    Response: Laboratory toxicity test results are being published as they are completed. Some examples include: Brette et al., 2014; Incardona et al., 2014; and Mager et al., 2014. Additionally, Trustees are mindful that extensive testing and research regarding the Spill has been undertaken by the scientific community. Trustees continue to stay abreast of current research which may impact the understanding of ecological injury in the northern Gulf of Mexico.

74. Comment: The aerial extent of oiling is a cumulative number that grossly overstates the actual coverage. The volumetric statement is not related to a specific water depth, although it refers to surface water.

    Response: Trustees are accounting for temporally variable surface water oiling in calculations of exposure and injury. Concentrations of oil components are calculated for multiple depth intervals.

75. Comment: The statement that Barataria Bay suffered heavy and prolonged exposure to oil is subjective and not supported.

    Response: Multiple sources of publically available information, including SCAT records from response and NRDA data collected by the Trustees, clearly demonstrate that Barataria Bay shorelines were, and in many locations remain, among the most heavily and persistently oiled

areas of the northern Gulf. See data available at www.gulfspillrestoration.noaa.gov andhttp://response.restoration.noaa.gov/maps-and-spatial-data/environmental-response-management-application-erma/erma-gulf-response.html.

76. Comment: No evidence is presented for the statement that tens of thousands of turtles were oiled.

    Response: As noted previously, the discussion of injury in the Draft and Final Phase III ERP/PEIS is a preliminary summary of information emerging from the natural resource damage assessment, which is still underway. The phrasing was intended only to provide an indication of the general magnitude or number of turtles exposed to oil during the spill emerging from assessment investigations. The Trustees are evaluating multiple data sources to better determine the number of turtles exposed to oil during the spill. These include, but are not limited to, stranding records, response recovery operations, aerial surveys from aircraft, and analysis of the intersection of convergence zones, sargassum habitat, and baseline turtle densities.

77. Comment: The definition of nearshore for sediment is unclear.

    Response: The definition of the nearshore zone varies by species considered. Some species use a narrow band adjacent to the shore, and some use a wider zone.

78. Comment: Fingerprinting of oil is required for sediment, not just PAH concentrations.

    Response: Trustees have conducted forensic analysis of oil in sediment.

79. Comment: Miles of shoreline oiling is inaccurate.

    Response: As noted previously, the discussion of injury in the Draft and Final Phase III ERP/PEIS is a preliminary summary of information emerging from the natural resource damage assessment, which is still underway. Trustees are using multiple sources of information and surveys in calculating miles of shoreline oiled. Preliminary results are available at https://www.erma.noaa.gov/.

80. Comment: The Texas shoreline was not impacted by DWH oil above baseline conditions.

    Response: Texas beaches were oiled by the Spill. Impacts to Texas beaches included tar balls and pooled oil. The spill response effort in Texas included removal of DWH oil along beaches as well as shoreline surveys to document the presence and coverage of oil. Oil samples were collected and analyzed which confirmed the oil came from the Spill.

    The Trustees conducted comprehensive baseline monitoring, taking samples at specified intervals along the entire Texas coast, to assist in determining baseline conditions along Texas beaches had the Spill not occurred. This baseline evaluation provides a valid dataset to include in assessing the impact of DWH oil on Texas beaches. As noted previously, the discussion of injury in the Draft and Final Phase III ERP/PEIS is a preliminary summary of information emerging from the natural resource damage assessment, which is still underway. Additional information on the impact to Texas beaches can be found at http://www.tpwd.state.tx.us/landwater/water/environconcerns/damage_assessment/dwh_spill/index.phtml.

81. Comment: The volume of oil released is overstated.

    Response: The Trustees are aware that the volume of oil released is the subject of current litigation.

13.12 Development and Evaluation of Alternatives

82. Comment: Commenter(s) expressed support for Alternative 2.

    Response: The Trustees acknowledge this support.

83. Comment: Commenter(s) expressed opposition to Alternative 3.

    Response: The Trustees acknowledge this opposition.

84. Comment: Commenter(s) expressed support for Alternative 4.

    Response: The Trustees acknowledge this support.

85. Comment: Commenter(s) expressed opposition to Alternative 4.

    Response: The Trustees acknowledge this opposition.

86. Comment: The alternatives should include additional project types such as fisheries assessment and management ; protect, restore, enhance and monitor water quality; restore and protect marine mammals; restoration of highly migratory species, pelagic seabirds and their habitats; restore shrimp and crab species, deep sea habitats, natural reefs; restore and enhance marine tidal, and coastal vegetation; seagrass and scallop bed enhancement; replace septic tanks and sewer systems; improvements to fisheries management elements that support monitoring; restore wetland function; create artificial habitat; removal of dredging lead-based weights; address invasive species; fund citizen monitoring programs; and include research, restoration and remediation projects.

    Response: Early Restoration is specifically intended to accelerate meaningful restoration of injured natural resources and their services resulting from the Spill while work to complete the NRDA continues. The NRDA is ongoing and a DARP and associated PEIS will be developed in the future; the subject of the Phase III ERP/PEIS is "Early Restoration." As such, the Phase III ERP/PEIS need not consider project types for all categories of injury at this time, but only those that meet the criteria described in Chapter 5 as appropriate to consider for Early Restoration. As described in Chapter 5, each of the programmatic alternatives is made up of a number of project types. A project type refers to a category that includes restoration approaches with a comparable objective, using appropriate, established restoration techniques to meet that objective; exemplary techniques for each project type are presented and evaluated as part of the programmatic analysis.

    The Phase III ERP/PEIS describes the process and criteria by which project types appropriate for Early Restoration were identified and proposed. Additional project types were considered by the Trustees, but not evaluated further in the Phase III ERP/PEIS because the Trustees do not consider them appropriate for Early Restoration at this time. For example, the draft document describes that, while the Trustees continue to assess Spill-related injuries to marine mammals and to deep benthic environments (e.g., deep sea corals, mesophotic reefs and deep

soft bottom sediment habitat), additional time and effort is needed to identify appropriate, reliable restoration methods. Likewise, potential to benefit resources via improvements to water quality were considered but additional time and effort is needed to evaluate these project types.

Several of the project types recommended by commenters are encompassed by the alternatives and project types already proposed. Specifically, Early Restoration projects for restoration of highly migratory species of fish and restoration of shrimp and crabs could be considered under Alternative 2 and Alternative 4 under the project type "Restore and Protect Finfish and Shellfish." Similarly, certain aspects of coastal, marine and tidal vegetation enhancement may be appropriate under the "Create and Improve Wetlands" project type. Clarification to the description of this project type to include shellfish has been incorporated in revisions to Chapter 5.

As described in Chapter 5, the Trustees continue to evaluate the appropriateness of other potential project types for Early Restoration using new data and/or analysis, public input, Early Restoration experience, and other relevant information. If any "new" project types are proposed by the Trustees for inclusion in the Early Restoration process in the future, they would be subject to Trustee OPA and NEPA review, public review and comment on related documentation and Trustee consideration of public comments.

87. Comment: A reasonable array of alternatives would provide gradations of balance between ecological and recreational projects. The alternatives are designed such that a restoration portfolio with a balance of ecological and recreational projects is assumed to have roughly equivalent impacts as compared to a portfolio of predominantly recreational projects and only one ecological project.

    Response: The Trustees need not consider every possible alternative, but only a reasonable number that covers the spectrum of alternatives/project types. The Trustees evaluated projects based on the criteria mandated by OPA and the Framework Agreement. The criteria do not require that projects create both ecological and recreational benefits but do allow the Trustees to consider and select projects that address one or more injuries or provide benefits to other resources. Alternative 4 provides the Trustees flexibility in evaluating project proposals and determining those that meet the criteria established for Early Restoration.

    The Trustees agree that there are differences in environmental consequences that could result from recreational use project types as compared to ecological project types. In the programmatic analysis, a range of potential impacts is described (e.g., minor to moderate) for each alternative, and particularly for Alternative 4, as the amount of recreational use restoration and ecological restoration that may occur are not known at this time. Note that project specific analyses in Chapters 8 - 12 and in any future tiered analyses would describe the specific impacts associated with the specific proposal. See Table 6-3 for a comparison of impacts from the Alternatives and project types for the different human environment categories.

88. Comment: The alternatives were ambiguous and the Trustees should seek to define the restoration Alternatives with specificity in the Final ERP/PEIS.

Response: The development of a programmatic EIS often occurs when an agency needs to make decisions that cover broad geographic landscapes, actions, or funding priorities. Programmatic EIS's can set the parameters for site-specific projects including the alternatives considered at the proposed site, general impacts of the project types and the overall cumulative impacts when considered with other projects and actions. The Phase III ERP/PEIS provides an adequate level of specificity for the programmatic alternatives. The project-specific analyses in Chapters 8-12 draw from the framework and general analysis of the PEIS and focus on issues and impacts important to each proposed project. Future projects considered for selection would disclose an appropriate level of specificity.

89. Comment: The Trustees should conduct an alternatives analysis for projects that explores project alternatives from the array of project proposals, rather than merely restating that a project meets the criteria under the programmatic Alternative Four.

Response: Both the NRDA regulations and NEPA require Trustees to consider a reasonable range of alternatives in selecting restoration actions. In the ERP/PEIS, the Trustees considered four programmatic alternatives. In addition, in the evaluation of each of the 44 individual proposed early restoration projects, a "no action" alternative is presented along with the project. In the context of this Early Restoration Plan, the range of alternatives considered is reasonable.

The development of a programmatic EIS typically occurs when an agency needs to make decisions that cover broad geographic landscapes, actions, or funding priorities. Programmatic EISs can set the parameters for site-specific projects including the alternatives considered at the proposed site, general impacts of the project types, and the overall cumulative impacts when considered with other projects and actions. The site-specific analyses then tier from the framework and general analysis of the PEIS and focus on issues and impacts important to each site. The intent of this programmatic EIS is to allow for tiering to site-specific project proposals, as described in Section 1.6.2. The Phase III ERP/PEIS evaluates three action alternatives comprised of a variety of project types that are intended to meet the programmatic criteria set forth in the PEIS (See Section 5.1).

Over the four years since the Spill occurred, each of the five Gulf States, DOI, and NOAA has used various means to solicit restoration ideas and proposed projects from the public. Hundreds of restoration proposals have been submitted, summarized, and made available both to the Trustees and to the public as a whole through various Trustee websites (see Section 2.1). These project proposals have informed and helped shape the Trustees' approach to early restoration projects. The Early Restoration project selection process, which is consistent with the Framework Agreement, constrains the range of project-level alternatives that can be considered formally in the Phase III ERP/PEIS. In particular, under the Framework Agreement, the Trustees negotiate with BP concerning the amount of funding that BP will provide for a specific proposed project and the NRD Offsets that BP will receive, to reduce its liability for NRD, in return for funding that project. Given the complexity of such negotiations, it would be impractical to negotiate funding and Offsets for multiple alternatives to each proposed project.

Therefore, the Phase III ERP/PEIS presents the choices actually available to the Trustees for each proposed early restoration project–proceed with project-specific alternative(s) essentially

in the form negotiated with BP, ensure any changes to the project-specific alternative are consistent with the project as negotiated with BP, or defer action on the project. In this context, the project-level alternatives presented in ERP/PEIS are reasonable.

90. Comment: While the 'Restoring Habitat and Living Coastal and Marine Resources' is one of the considered alternatives, there is a dismissal of marine and deepwater resources as "the Trustees do not consider them appropriate for Early Restoration." It is confusing that Marine Resources would be considered in alternative one, though both the chosen projects and project types fail to include or address marine impacts. Limiting the selection of alternatives in advance does not meet the requirements of NEPA, as it is required to examine all reasonable alternatives and, should an alternative be excluded from further study, discuss the reasons for its elimination.

    Response: For Early Restoration the Trustees are focused on certain coastal and living marine resources. As discussed in Section 5.2 of the Phase III ERP/PEIS, additional project types were considered by the Trustees, but not evaluated in the Phase III ERP/PEIS because the Trustees did not consider them ripe for Early Restoration. The Trustees focused on projects: (1) that address injuries that are reasonably well understood; and (2) with which the Trustees have significant experience, allowing the Trustees to predict costs and likely success with a relatively high degree of confidence. A new section has been added to Chapter 5 to more clearly provide the rationale for project types that were eliminated from detailed study for purposes of Early Restoration.

91. Comment: It is difficult to determine the benefits of a project without understanding how one project compares or conflicts with another.

    Response: The programmatic alternative analyses are comparable across resources. While projects are not compared directly against each other, additional information on programmatic cumulative impacts is included in Section 6.9 and project-specific cumulative impact analyses in chapters 8-12, where applicable. See Table 6-3 for a comparison of impacts from the Alternatives and project types for the different affected resource categories.

92. Comment: The range of alternatives provided in the PEIS is limited and does not meet the requirements of NEPA. Specifically, ecological services and marine habitat and resources were not fully considered and the alternatives lacked discussion of restoration of ecological services including nutrient cycling, food production functions, resiliency for nesting species and carbon sequestration.

    Response: Please see Response to Comment 86 for additional detail. Although the Phase III ERP/PEIS does not call out these services specifically as alternatives or project types, many of the project types that are evaluated would provide these ecological service benefits. See Chapter 3 for a discussion of the affected natural resources and their services and Chapter 6 for the analyses of how alternatives would affect them.

93. Comment: The PEIS should detail how tiering for subsequent projects will occur, provide a process for future, similar projects to eliminate duplicative NEPA review, and layout a process for Trustee approval of future projects.

Response: The Phase III ERP/PEIS evaluates three action alternatives comprised of a variety of project types that are intended to meet the programmatic criteria set forth in the PEIS (See Section 5.1). The programmatic alternatives describe the project types that could be implemented if a particular programmatic alternative is selected. The intent of the programmatic EIS is to then allow for tiering site-specific project proposals in future phases of Early Restoration, as described in Section 1.6.2.

94. Comment: Projects in alternative 4 should include both human use and ecological benefits, human use projects alone should not comprise alternative 4.

    Response: As described in Chapter 5, Alternative 4 is a combination of Alternatives 2 and 3, and as such includes projects that provide human use and ecological benefits. Since Alternative 2 is a key component of Alternative 4, project types, including those listed in Section 5.3.3 are considered for selection when project proposals are received. There are currently 9 site-specific projects that fit within Alternative 2 project types alone. In addition, there are a number of other proposed projects that have components which include Alternative 2 project types while also addressing Alternative 3 project types.

95. Comment: Opportunities to restore commercial fishing were not discussed in the PEIS.

    Response: Pursuant to OPA, the Trustees assess, develop and implement a plan for restoration only for those resources under their trusteeship and for the public use of such resources. While the Trustees have trusteeship over fishery resources and can restore for losses of those resources, commercial fishing losses are considered private claims under OPA and therefore not addressed in the Phase III ERP/PEIS.

96. Comment: Collateral injury from Alternative 3 projects is not sufficiently considered in the programmatic analysis.

    Response: The Environmental Consequences section of the Phase III ERP/PEIS identifies and analyzes direct and indirect effects (which are NEPA terms) for project types that may be undertaken under any of the proposed programmatic alternatives, including Alternative 3. Direct and indirect effects were analyzed in terms of time and space, qualified as short-term or long-term, and assigned a value that ranges from minor to major. The analyses under NEPA informed the Trustees' consideration of the programmatic alternatives' potential for collateral injury under OPA, including the potential for collateral injury associated with recreational use project types in Alternative 3 and Alternative 4. These clarifications have been incorporated into Chapters 5 and 6, as appropriate.

97. Comment: The Trustees fail to provide analysis of how the four proposed alternatives compare to one another or how projects proposed under different alternatives compare to each other. The alternatives analysis should explain how individual projects should be evaluated based on the four programmatic alternatives. Additionally, the Trustees should acknowledge that there will inevitably be some conflict between recreational use projects and ecological restoration.

    Response: NEPA requires that an agency disclose the "environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decision maker and the public" 40 C.F.R. 1502.14. Chapter 6 of the Phase III ERP/PEIS provides an in-depth analysis of each alternative, and their

corresponding project types for affected resource topics. The programmatic alternative analyses are compared across resources as presented in Table 6-3. While projects are not compared directly against each other, additional information on programmatic cumulative impacts is included in Section 6.9 and project-specific cumulative impact analyses in chapters 8-12 (see Table 6-3 which shows the benefits and adverse impacts of alternatives by resource and project type).

The Trustees agree that there are differences in environmental consequences that could result from recreational use project types as compared to ecological project types. In chapters 8-12, projects have been grouped either by location or project type in order to identify cumulative effects.

98. Comment: While the Draft ERP/PEIS notes habitat modification as a potential impact on a localized and site-specific basis, habitat continuity across the Gulf Coast landscape is not discussed. The impact analysis of the alternatives was inadequate in addressing habitat fragmentation.

    Response: The Gulf Coast landscape encompasses thousands of miles of shorelines that have varying degrees of existing development and future development pressures. As discussed in Chapter 3, Affected Environment, habitat fragmentation in the Gulf Coast region has occurred due to a wide variety of human actions, including residential, commercial and industrial development and also from agricultural activities. In general, the restoration projects proposed under Alternatives 2, 3 and 4 are not expected to lead to increased large-scale habitat fragmentation. In fact, some proposed projects may lead to increased habitat continuity. While the potential exists for some projects to increase habitat fragmentation at a local level, any such potential issues are addressed in the Phase III project cumulative effects discussions in Chapters 8-12.

99. Comment: The Final ERP/PEIS should describe the extent to which Programmatic Alternatives affect the introduction or spread of exotic invasive species. In particular, establishment of exotic invasive species, including lionfish, tiger shrimp, nutria, and hydrilla presents a threat to ecosystem health and should be analyzed.

    Response: Executive Order 13112 Invasive Species directs federal agencies to work together to "prevent the introduction of invasive species and provide for their control and to minimize the economic, ecological, and human health impacts that invasive species cause." Potential effects related to invasive species are analyzed in Chapter 6 for the following project types: Restore Oysters; Enhance Public Access to Natural Resources for Recreational Use; Enhance Recreational Experiences; and Promote Environmental and Cultural Stewardship, Education, and Outreach. All project types may result in the opportunity for introduction or spread of invasive species. However, the effects would be avoided or minimized with implementation of appropriate BMPs. The Final Phase III PEIS has been revised to include an analysis of invasive species effects for the following project types: Create and Improve Wetlands; Restore Barrier Islands and Beaches; Protect Shorelines and Reduce Erosion; Restore and Protect Submerged Aquatic Vegetation; and Conserve Habitat.

100. Comment: Trustees inconsistently and narrowly included project types in analysis; why for example, were some project types such “restore oyster, finfish, shellfish, birds, and sea turtle” species specific, while other relevant species were omitted from the list.

Response: The Trustees took a consistent approach in applying the programmatic criteria for identifying project types for Early Restoration and those project types considered but not evaluated further. The Chapter 5 screening analysis describes how the project types were identified. An additional section describing project types considered but not evaluated further has been added to Chapter 5 for additional clarity.

101. Comment: The category “Create and Improve Wetlands” should include recovery of wetlands lost due to oil and gas production as well as address historical wetlands and should not be limited to only issues of erosion or lost wetlands because of development.

Response: As discussed in Section 3.3.1 of the Affected Environment, over 370,000 acres of wetlands in coastal watersheds adjacent to the Gulf of Mexico were lost between 1998 and 2004 (Stedman and Dahl 2005).Techniques under the “Create and Improve Wetlands” project type acknowledge wetlands lost due to past oil and gas exploration. Wetland creation projects included in the Phase III ERP/PEIS are intended to accelerate meaningful restoration of injured natural resources and their services resulting from the Spill.

102. Comment: The Trustees should address the cultural heritage/social value of wetlands.

Response: The Trustees recognize the importance of wetlands and their functions; see Chapter 3 and Chapter 6.

103. Comment: The Trustees did not provide clarity on how they selected and prioritized between ecological restoration and human use projects. The Trustees should focus on restoring the ecosystem first and provide sustainable public access as a supplemental and integral objective.

Response: The process for developing, screening and selecting projects is described in detail in the Phase III ERP/PEIS. The Trustees did not specifically prioritize between ecological projects and projects to compensate for lost human uses. It is not possible, nor intended, that all injuries will be made whole through the Early Restoration process, and the Trustees anticipate that many more projects, both ecological and human use, will be implemented as part of the long term restoration plan for the Spill.

13.13 Environmental Consequences

104. Comment: The analysis of impacts from project types on resources in the Early Restoration Plan needs to assess impacts to cultural and archeological resources including at project-specific sites.

Response: NEPA requires the analysis of the direct, indirect, and cumulative impacts of alternatives being considered. Chapter 6 of the Phase III ERP/PEIS provides an analysis of the potential impacts from alternatives’ project types on a number of resource topics, including cultural resources (which include archeological resources).

In addition to the programmatic analysis in the Phase III ERP/PEIS, each project-specific proposal evaluates potential impacts to cultural resources. Each project will also comply with

consultation requirements of Section 106 of the National Historic Preservation Act. This review and consideration of effects is described in the environmental reviews for individual proposed projects that could impact cultural resources (Chapters 8 through 12).

105. Comment: The EIS should consider human health effects from the oil spill.

    Response: Potential impacts to human health and safety that would be associated with potential Early Restoration project activities are analyzed in the PEIS. However, the human health effects that could be attributed to the oil spill itself are outside the scope of the Phase III ERP/PEIS.

106. Comment: Project types need to be simply defined.

    Response: The Trustees have described the protect types in Chapter 5. Some project types are more complex and require additional discussion than others. There are additional fact sheets on individual projects at www.gulfspillrestoration.noaa.gov that provide summarized information.

107. Comment: The impact analysis, including cumulative and indirect impacts does not contain enough detail. Specifically, recreational use projects do not consider indirect impacts such as increases in traffic, maintenance problems from increased use of road ways, increased threats to wildlife from human traffic, and increased pressure on fish populations associated with new boat ramps and fishing piers.

    Response: The programmatic and project-specific analyses have been reviewed and clarifications provided in the document where appropriate.

108. Comment: Environmental Justice analysis should include loss of access to recreational areas and an analysis of direct market competition with other facilities in the area to address potential loss of jobs.

    Response: The Trustees are mindful of obligations they have to consider Environmental Justice concerns consistent with Executive Order 12898. The project-specific environmental justice sections in Chapters 8-12 and/or the response to comments address access and economic concerns, where appropriate.

109. Comment: The Trustees fail to look at potential conflicts between Phases I, II and III and comprehensively identify conflicts between the various projects for both direct and cumulative impacts.

    Response: The Phase III ERP/PEIS considers the impacts from Early Restoration Phase I and II project as cumulative actions and incorporate these effects in the cumulative impact analysis, both at the programmatic as well as the site-specific level. The cumulative impact analysis in Section 6.9 has been expanded to provide additional detail on the analysis that was conducted. Additional information on the cumulative actions considered and evaluated is presented in Chapter 6, Appendix B.

    To evaluate potential cumulative impacts at the local level, the Trustees conducted cumulative effects analyses on a smaller geographic scale so that past, present and reasonably foreseeable future actions in a given region could be analyzed. At the end Chapters 8-12, proposed projects have been grouped by region or activity and were analyzed in two ways: 1)

for potential to result in cumulatively significant effects when undertaken in close proximity to one another or in the same timeframes; and 2) to identify relevant past, present and reasonably foreseeable future actions, which may overlap in time or space with the groupings of those proposed Phase III projects.

110. Comment: The Early Restoration Plan does not comply with the Council on Environmental Quality's guidance on missing information. Specifically, the "Trustees need to provide the following missing information for every project or provide an adequate explanation for the omission of such information, including, but not limited to: information about and documentation of review and compliance with other environmental laws, information about benefit-cost ratio calculations, and information about lost recreational services"**.**

    Response: The Trustees believe the Early Restoration Plan complies with the Council on Environmental Quality's regulations for implementing NEPA and is not lacking required information. The Trustees have included information in the Draft and Final Phase III ERP/PEIS pertaining to the review of Early Restoration projects under applicable laws.

111. Comment: The analysis of recreational use should include converting habitat (upland, beach or aquatic), disturbing native species, and exacerbating overfishing.

    Response: Conversion of habitats and disturbance of native species as a result of recreational use projects is analyzed as a potential effect in Section 6.6 of the Phase III ERP/PEIS under the Habitats discussion for each of the Project Types considered. While this analysis was done at a programmatic level, site-specific analyses were conducted in Chapters 8-12.

    The analysis considers whether any proposed recreational use projects could lead to increased fishing pressure. It highlights the potential for increased fishing pressure in relation to construction of artificial reefs including both commercial and recreational fishing activities in section 6.6.

112. Comment: Some of the living shorelines proposed are destructive to the natural environment. Planting emergent vegetation (or any vegetation) on natural sand areas within the bay can affect the natural terrestrial ecosystems, including bird habitat.

    Response: The proposed living shoreline projects do not include planting in upland beach areas. Some living shoreline projects include creation and planting of estuarine marsh habitat on the landward side of a breakwater or reef structure that is placed in open water. This would require placing sediment in open water on the landward side of those structures to create appropriate elevations for planting wetland emergent vegetation. The marsh creation areas will be sited to avoid impacting ecologically significant habitat including sand beaches. Additionally, the living shoreline projects are designed and sited such that wave strength is reduced on the landward side of the structures, reducing the erosion on landward habitats, including upland beaches.

113. Comment: Include a climate change impact analysis in the Draft Phase III ERP/PEIS and in the individual project environmental analyses. Projects that that will improve or build new structures must consider the permanence and resiliency of those structures under the threat of storms, flooding and sea level rise. In addition, shoreline artificial structures that interfere

with the movement of water, sand or sediment can exacerbate the effects of climate change by causing imbalances in sediment distributions along the shore.

Response: Considerations of climate change and project resiliency are discussed in Section 6.10.4. Additional material has been included to provide more information on the potential environmental changes that could occur based on changes in climatic factors, specifically in the Gulf Coast region. In addition, climate change issues, such as sea level rise, were considered during project design and development. Future proposed projects will also consider climate change and resiliency measures as they are designed.

114. Comment: Proposed projects that involve increasing public access to waterways should not be considered without additional consideration of the impacts to waterways that the increased traffic will bring. Where additional recreational access projects are proposed, provisions must be made to ensure that wastewater and stormwater runoff at these sites do not additionally impact adjacent estuaries and wetland areas.

    Response: The Phase III ERP/PEIS discusses potential effects from stormwater runoff from projects that would increase recreational usage or construct facilities in upland areas adjacent to waterways in all three recreational project types (see Sections. 6.6). Projects that include construction of facilities such as bathrooms and showers that require wastewater treatment may need to construct sewer lines, but would tie into existing sewage systems. The projects proposed under Alternatives 3 and 4 that include plans for such facilities would not require the expansion of existing wastewater treatment facilities.

    Projects proposed in Chapters 8-12 that would result in increased recreational access and include construction of impervious areas that could result in stormwater runoff impacts would be required to implement appropriate BMPs per the state or local standards. Furthermore, all proposed Early Restoration projects are required to comply with applicable Federal, State and local requirements for protecting water quality. The agencies will continue to work to identify appropriate, practicable features in the design phase for these projects that could help in further avoiding and minimizing water quality impacts. See Chapters 8-12 for project-specific information related to minimizing and mitigating stormwater runoff from individual projects.

115. Comment: An analysis of both the cumulative and indirect impacts of the suites of projects in the context of known or foreseeable activities of other entities is required by NEPA. All effects and impacts must be accounted for, including ecological, aesthetic, historic, cultural, or social - whether direct, indirect, or cumulative. The analysis fails to consider local impacts to sensitive habitats and resources and provides insufficient information about the resource impacts analysis**.**

    Response: Direct and indirect effects of the 12 Project Types and Alternatives for each resource area are discussed in Section 6.3 of the Draft and Final Phase III ERP/PEIS. Direct and indirect effects for each individual project proposed under Alternative 4 are contained within project specific Environmental Reviews in Chapters 8-12.

    Cumulative effects were identified and analyzed for the larger-scale northern Gulf Coast region in Section 6.9. Because this area covers thousands of miles of coastal shoreline and waters, the Draft and Final Phase III ERP/PEIS examined suites of activities (coastal development, industrial

development, oil and gas production, etc.) in its past, present and reasonably foreseeable future actions. Current and historic trends related to adverse effects were identified for each resource and each alternative was analyzed for its potential to add incrementally to cumulatively significant adverse effects.

To evaluate potential cumulative impacts at the local level, the Trustees conducted cumulative effects analyses on a smaller geographic scale so that past, present and reasonably foreseeable future actions in a given region could be analyzed. At the end of Chapters 8-12, proposed projects have been grouped by region or activity and were analyzed in two ways: 1) for potential to result in cumulatively significant effects when undertaken in close proximity to one another or in the same timeframes; and 2) to identify relevant past, present and reasonably foreseeable future actions, which may overlap in time or space with the groupings of those proposed Phase III projects.

The cumulative impact analysis in Section 6.9 has been expanded to provide additional detail on the analysis that was conducted. Additional information on the cumulative actions considered and evaluated is presented in Chapter 6, Appendix B.

13.14 Compliance

116. Comment: All federal and state regulations aimed at protecting species must be addressed prior to project approval and implementation including laws such as the Endangered Species Act, the Marine Mammal Protection Act, the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act require reviews, consultations and authorizations that must be carried out prior to final action and the public must have adequate notice and opportunity for comment.

    Response: The Trustees will ensure Early Restoration projects comply with applicable federal and state laws and regulations, including any required consultations, authorizations, and public comment opportunities. While all consultations must ultimately be completed before project implementation, some engineering and design activities could occur before all consultations are complete, further activities to implement projects will be conditioned on the completion of consultation. Evidence of consultations will be provided in the Administrative Record. Chapters 8-12 in the Final Phase III ERP/PEIS have been updated to reflect the most current information regarding these consultations.

117. Comment: Marine Mammal Protection Act (MMPA) discussion of BMPs on Draft PEIS is insufficient to fulfill the requirements of the MMPA. The required processes must be carried out and completed prior to approval and implementation.

    Response: The FWS and NOAA reviewed each project to determine if take of marine mammals under MMPA would occur. Many of the BMPs discussed in the Draft Phase III ERP/PEIS were general in nature, to provide a starting point for avoiding and minimizing impacts. Projects subject to MMPA authorization may require project-specific MMPA measures. We have described the review process in Section 7.5.4. Many projects have completed all or a partial review under MMPA. Additional details have been provided within Chapters 8-12 of the Final Phase III ERP/PEIS. However, several projects, at the time of publication of the Final Phase III ERP/PEIS, will still be under MMPA review. No project that may affect marine mammals will

move forward to implementation without having completed review under MMPA and either take will be avoided or an appropriate authorization will be requested under the MMPA.

118. Comment: The Draft PEIS contains conflicting statements about MBTA coordination and review, which must be rationalized or resolved in the final project descriptions and include documentation of the USFWS review and must explain how violations of the MBTA will be avoided.

    Response: The U.S. Fish and Wildlife Service has reviewed each project where migratory birds may be affected to ensure compliance with the MBTA. The Trustees have described the review process in Section 7.5.2 and removed conflicting information. All of the Phase III projects have completed review under MBTA and additional details regarding avoidance and minimization of impacts to Migratory birds have been provided within Chapters 8-12 of the Final Phase III ERP/PEIS.

119. Comment: The PEIS states that each project has been reviewed for the purposes of the Bald and Golden Eagle Protection Act; however it fails to include the results of these reviews and how potential interactions will be handled. Further, the PEIS contains conflicting statements as to whether these reviews have in fact taken place, and evidence of such review is notably absent.

    Response: All projects in the Final Phase III ERP/PEIS have completed review under BGEPA and additional details regarding avoidance and minimization of impacts to Bald eagles have been provided within Chapters 8-12, except where the Trustees have determined that no Bald eagles are present at or near the project site. We have updated our description of the review process in Section 7.5.5 and removed conflicting information. Golden eagles do not nest along the Gulf coast and are not generally present. Any Golden eagles that may be transiting the area would be protected by general avoidance measures for migratory birds.

120. Comment: Any projects that may affect listed species or critical habitat should not be included in the Final Phase III ERP/PEIS unless and until the legally required consultation process (under ESA) is completed and alternatives have been considered.

    Response: Each project was reviewed for potential impacts to candidate, proposed, or listed species or proposed or designated critical habitat to ensure compliance with the ESA is achieved. The Trustees described the consultation process in Section 7.5.1. Many projects have a completed consultation or review under the ESA and additional details have been provided within the individual project chapters. The Trustees also received and incorporated new information through the public comment process. Several projects, at the time of publication of the Final Phase III ERP/PEIS, may still be under ESA review. No project that may affect listed species or critical habitat will move forward to implementation without having a complete consultation under the ESA.

121. Comment: All BMPs and agreed upon elements of consultations must be included in any final project plan.

    Response: General BMPs for project types were included and updated in Chapter 6 for use in planning future projects. Each project proposed in Chapters 8-12 of the Final Phase III ERP/PEIS has been updated to include applicable BMPs and agreed upon elements of

consultations within their descriptions. For those projects still undergoing various consultations BMPs will be included in their individual consultations.

122. Comment: Bypassing the public notice and comment opportunities by publishing this information in the Final PEIS, rather than prior to finalization may be improper under NEPA, OPA and other laws. The Trustees should inform members of the public who have previously submitted comments or who are receiving emails from the various Trustee agencies related to NRDA about notices for permit filings associated with these laws.

    Response: The Trustees prepared the Draft Phase III ERP/PEIS concurrently with and integrated with project specific environmental impact analyses and related surveys under applicable law to the fullest extent possible, as required by NEPA regulations (40 C.F.R. § 1502.25). Additionally, pursuant to the NEPA regulations, the Draft Phase III ERP/PEIS lists Federal permits, licenses, and other entitlements which must be obtained prior to implementation of the Early Restoration projects proposed by the Trustees. The Trustees will ensure compliance with any applicable consultation, permitting, or review requirements as required by the NRDA regulations and applicable laws (15 C.F.R. § 990.24). Publishing the results of completed consultations in the Final Phase III ERP/PEIS does not necessarily replace the public notification and review process required by other environmental compliance statutes and authorizing agencies' regulations. Federal agencies will follow the regulations and notices required for consultation. Environmental permits for each project are discussed in Chapter 8-12. Regulatory agencies for various permits are responsible for notices related to environmental permits.

123. Comment: Mitigation measures and/or permits detailed in Phase III projects with pre-existing environmental compliance should be reviewed for validity (due to changing conditions such as past storms or the Spill itself).

    Response: For all Phase III projects where Trustees are relying on pre-existing mitigation measures and permits, the Trustees have reviewed and confirmed the validity and continuing appropriateness of those measures. Details have been provided in Chapter 7-12 to describe this review. No project will move forward to implementation without having current mitigation measures, consultations, and/or permits.

124. Comment: Reductions in environmental damage through project design are only appropriate when those designs are final and required as a condition of the project, not when the project is in its conceptual phase.

    Response: Reductions of environmental damage are, in fact, appropriate to incorporate as early in the design process as possible. BMPs required through reviews under applicable law or otherwise agreed to by the Trustees are identified in the environmental consequences analyses for specific Early Restoration projects. Any Early Restoration projects that are currently undergoing review under applicable law will incorporate BMPs as required or otherwise agreed to by the Trustees. The general regulatory consultation process includes developing a project proposal, incorporating project specific avoidance and mitigation measures or BMPs, as applicable, then entering into consultation under the relevant regulatory process (e.g., ESA, EFH, MBTA, MMPA, BGEPA, and CWA). Since this EIS is a programmatic EIS, the Trustees have identified a variety of avoidance and minimization

measures (BMPs - see Chapter 6 Appendix A) that may be applicable for incorporation into project designs during the conceptual phase. Not all of the BMPs are applicable to each project; however, where applicable, the Trustees expect them to be incorporated into designs as collateral damage to resources from restoration is undesirable and should be minimized to the maximum extent practicable. Any BMPs developed through consultation processes, or otherwise agreed to will become required measures for project implementation.

13.15 Monitoring

125. Comment: The Trustees should provide information on the project timelines for monitoring and the benchmarks that are being used to measure success in order to be clear to the public that the project achieves the level of benefits and values calculated as the basis for the offsets given to BP.

    Response: NRDA regulations designate several factors that should be included regarding monitoring in order to effectively gauge a project's progress and success, including restoration objective(s) and performance criteria. Restoration objective(s) have been identified for all proposed Phase III Early Restoration projects, and Trustees are currently developing performance criteria to evaluate project success or the need for corrective action. These criteria may include structural, functional, temporal, and/or other demonstrable factors. While the details vary by project, each of the proposed projects in the Draft and Final Phase III ERP/PEIS includes a discussion of performance criteria, monitoring and maintenance appropriate for that project. Plans for monitoring are in various stages of development. To the degree that more information is available, the Trustees have expanded these sections in the Final Phase III ERP/PEIS to provide additional information. Additional monitoring information may be developed in the future for some projects. The Trustees intend to make the results of project activities, including monitoring information, available to the public (e.g. through the restoration Project Atlas: http://www.gulfspillrestoration.noaa.gov/restoration/early-restoration/early-restoration-projects-atlas/).

126. Comment: The Draft Phase III ERP/PEIS fails to set clear recovery objectives for injured natural resources or services or provide for monitoring the success of restoration activities at the programmatic level in a way that provides transparency and accountability for the allocation of these unprecedented financial resources in the region.

    Response: The Trustees are continuing to assess the potential injuries and losses to the natural resources caused by the Spill and therefore it would be premature to set specific recovery objectives at this time. However, objectives will continue to be considered as the Trustees develop the future Damage Assessment and Restoration Plan.

127. Comment: The Trustees should adopt uniform standards for project monitoring by requiring project-level monitoring plans to include:

    a. Estimated cost of monitoring;

    b. Description of data to be collected, frequency of data collection and performance metrics to be used;

    c. Baseline monitoring;

d. Duration of post-project monitoring (minimum 5 years after project completion); and

e. Annual reports on project performance and goal achievement.

Response: As required under NRDA regulations, the Trustees are developing monitoring plans to track project progress towards reaching restoration objectives identified for each project. Because the Phase III ERP/PEIS contains projects with a wide range of restoration objectives, a uniform monitoring format for all project types is not feasible.

However, for similar projects, the Trustees are coordinating to promote development of consistent performance metrics, monitoring parameters, data collection methods, and frequency of data collection. The Trustees intend to make the results of project activities, including monitoring information, available to the public (e.g. through the restoration Project Atlas: http://www.gulfspillrestoration.noaa.gov/restoration/early-restoration/early-restoration-projects-atlas/).

128. Comment: Monitoring plans for recreational use projects should assess that the public actually gains knowledge about the Gulf of Mexico ecosystems or changes their attitudes or behaviors with respect to environmental stewardship.

Response: As described in specific project descriptions in Chapters 8-12 of the Final Phase III ERP/PEIS, Trustees have developed monitoring plans to track project success in reaching objectives. Where appropriate and to the extent practicable, these monitoring plans for recreational use projects will include efforts to track changes in facility use and gains in knowledge or understanding of the environment that visitors have been able to realize.

129. Comment: The Trustees should expand monitoring activities for all fisheries-related projects, including artificial reefs, hatcheries, and boat ramps and fishing piers. For example some commenters suggest using the NOAA Marine Recreational Information Program (MRIP) Protocols as a monitoring component to fishing enhancement projects.

Response: While the details vary by project, the level of monitoring information included in the Phase III ERP/PEIS is consistent with legal requirements. While existing monitoring programs may capture changes resulting from Early Restoration projects, expanding such programs is beyond the scope of Early Restoration. Although monitoring for impacts to marine fish is not a component of recreational use project monitoring, there are programs utilized within the Gulf, like the NOAA Marine Recreational Information Program (MRIP) protocols (in regional partnership with the Gulf Recreational Fisheries Information System – Gulf FIN) that are intended to provide regional monitoring of recreational fishing participation, effort, catches, landings, and releases of finish species in the marine waters and estuaries.

130. Comment: To prevent harmful effects of restoration activities on marine mammals, the Trustees should include measures to monitor and prevent disturbance of bottlenose dolphins and manatees as a required component of restoration projects that involve underwater sound-producing construction activities. It is further recommended that the Trustees support restoration activities to monitor and prevent injuries to marine mammals that may result from increased recreational use of the marine environment. Such restoration activities may include expanded education and outreach programs, enhanced stranding response programs,

increased federal and state enforcement efforts, and vessel-based visual monitoring surveys of manatees and bottlenose dolphins.

Response: Consultations for ESA-listed and discussions for MMPA-protected species are under way for proposed Phase III projects having the potential to affect these protected species. These consultations and discussions included evaluation of potential effects from underwater construction, sound-producing activities, and from certain aspects of increased recreational use (e.g., recreational fishing, boat traffic) of the marine environment. As a result of the Trustees' early and ongoing interactions with National Marine Fisheries Service and with the U.S. Fish and Wildlife Service, Best Management Practices (BMPs) and mitigation measures are incorporated into applicable projects to reduce the potential for effects or adverse interactions with protected species and their habitats.

Where projects may adversely affect ESA-listed species or adversely modify their designated critical habitats, ESA consultation is underway with either/both NMFS and FWS. Projects would specifically ensure that BMPs and other measures avoid or minimize the potential for any incidental harassment of manatees (protected under both ESA and MMPA). For a limited number of projects where the potential for incidental harassment of other marine mammals (e.g. dolphins) exists and could not be avoided via incorporation of BMPs, the Trustees will seek incidental harassment authorization from NMFS under MMPA. The potential for incidental harassment is particularly recognized with respect to certain construction (pile driving) methods associated with construction of large piers, and it is the Trustees full intent to seek MMPA authorization of these activities and to incorporate mitigation measures, potentially including monitoring programs, that may result from authorization.

The Trustees will continue to consider marine mammal restoration approaches as part of the future DARP, including ideas brought forward in these Draft Phase III ERP/PEIS comments (e.g., enhanced stranding response programs, increased enforcement, and visual monitoring surveys.) Additional restoration ideas (such as long-term monitoring of population status and health, as well as monitoring and preventing impacts from human actions) brought forward through prior scoping, the project database, and from the comments on the Draft Phase III ERP/PEIS will continue to be considered in developing the future draft DARP.

131. Comment: All projects should include ecological monitoring plans which will be coordinated and compiled into the broader ecosystem level monitoring to 1) understand effects of wider-scale environmental forcing factors on project objectives/indicators and 2) understand the impacts of project activities on ecosystem and other restoration efforts.

Response: Monitoring for Early Restoration projects is focused on the evaluation of project success. Therefore Trustees monitor, following the NRDA regulations, to determine the success of the project at meeting the project restoration objective(s). Long-term Gulf-wide monitoring, while an issue under consideration by the Trustees, is not required to assess individual project success. The Trustees consider broader ecosystem level monitoring outside the scope of what the Trustees anticipate accomplishing as Early Restoration under the terms of the Framework Agreement with BP. The Trustees intend to make the results of project activities, including monitoring information, available to the public (e.g., through the

restoration Project Atlas: http://www.gulfspillrestoration.noaa.gov/restoration/early-restoration/early-restoration-projects-atlas/).

132. Comment: An effective and substantive cumulative impact assessment relies on meaningful monitoring programs and the synthesis of monitoring results.

    Response: The Trustees do not agree that the development of a monitoring program is a necessary part of a cumulative impacts assessment. NEPA defines cumulative impacts as the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (federal or non-federal) or person undertakes such other actions. A cumulative impact analysis is predictive in nature to ensure that decision-makers are considering impacts to resources in addition to the direct and indirect effects of their actions.

133. Comment: Trustees need to implement project tracking and oversight to provide adequate visibility into actual progress so that management can take effective actions when the project's performance deviates significantly from the approved and funded projects.

    Response: Restoration objective(s) have been identified for all proposed Phase III Early Restoration projects, and Trustees are currently developing performance criteria to evaluate project success or the need for corrective action. The Trustees intend to track project activities, including monitoring efforts and any corrective actions that may be required. This information will be made available to the public, (e.g., through the Early Restoration Project Atlas: http://www.gulfspillrestoration.noaa.gov/restoration/early-restoration/early-restoration-projects-atlas/).

134. Comment: Long-term monitoring should include the fate of remaining oil and its impacts.

    Response: The long-term fate of the remaining oil is outside of the scope of information needed for Early Restoration planning.

13.16 Project Implementation

135. Comment: Projects designed to increase public use must have additional staffing, law enforcement and maintenance, or they result in unintended impacts to natural resources and public safety.

    Response: Funding for operations and maintenance are discussed in individual project descriptions, including commitments for staffing. With respect to enforcement, that is the responsibility of state and local law enforcement.

136. Comment: The Trustees should provide more funding for operational costs for a period of time or include more information about how operations and maintenance will be funded in the future. This information will help the public to be reassured that these projects are affordable, practical and contribute to long-term restoration.

    Response: Projects vary in the way that ongoing operations and maintenance will be funded; information for Phase III projects, as appropriate, is provided in Chapters 8-12.

137. Comment: The Trustees are encouraged to consider the use of sustainable design features in proposed Early Restoration projects.

Response: The Trustees recognize the inherent benefits of incorporating sustainable strategies and designs into Early Restoration project planning. Chapters 8-12 highlight several examples where proposed Early Restoration projects incorporate such strategies including: use of sustainable construction methods, energy and resource efficient structures, reducing existing impervious surface cover, routing stormwater runoff through vegetated treatment areas, and constructing trails using natural pervious materials. The Trustees will continue to identify, consider and incorporate appropriate sustainable design features to the maximum extent practicable as Early Restoration projects move forward to final design.

138. Comment: Trustees have included BMPs in the document; these BMPS should be incorporated and then monitored during project implementation.

    Response: Early Restoration projects will incorporate BMPs required through reviews under applicable law or otherwise agreed to by the Trustees. The Trustees are responsible for overseeing implementation of all Early Restoration projects including mitigation measures and BMPs. Progress on project implementation will be available to the public.

139. Comment: Infrastructure related project descriptions must include resiliency analysis for new structures in the event of flooding, hurricanes and sea level rise.

    Response: As described in the Phase III ERP/PEIS, project evaluation criteria utilized by the Trustees in the Early Restoration process included consideration of factors that can affect a project's likelihood of success, such as climate change impacts. In addition, environmental changes, such as anticipated sea level rise, have been or will be factored into project designs, when appropriate. Finally, NRD Offsets preliminarily agreed to by BP and the Trustees reflect consideration of the project time period and rate of ecological service accrual, among other factors.

140. Comment: Trustees need to examine the side effects to fish from coastal armoring and potentially consider the use of riprap to ameliorate the impact.

    Response: The Trustees understand this comment to suggest that further coastal hardening will lead to wave action that impacts fish which can be reduced by placement of riprap. Those projects designed to reduce coastal erosion include the use of riprap and other structures to reduce wave action. Projects that involve hardening the shoreline examine the effects of wave reflection on a site-specific basis.

141. Comment: Trustees should develop a Project Quality Assurance Team to work with the project to evaluate and assess project plans, standards, and procedures that will add value to the project and satisfy the constraints of the project and the organization's policies.

    Response: The Trustees are mindful of obligations they have to the public to ensure proper implementation of selected projects and are currently considering protocols and guidelines similar to the suggestion, including QA/QC guidelines, to assist in the implementation of selected projects. Since the party implementing the selected projects is a governmental entity, there are contracting standards required that consider and address these types of issues as well.

142. Comment: Trustees need to ensure that monitoring and maintenance funds are used for those purposes and not for potential cost overruns and other unforeseen costs.

Response: Trustees are mindful of their obligations with regard to monitoring the performance of the proposed Early Restoration projects. The Trustees are committed to ensuring that Early Restoration funds are spent as intended, including on monitoring and maintenance when that is part of the funded project plan. More information on Phase III project-specific budgets is included, as available, in Chapters 8-12.

13.17 Phase III Projects

13.17.1 Comments in Support of or Opposition to Specific Projects

In the sections below, the Trustees respond to comments and questions addressed to specific projects. In addition to these comments that focused on issues and concerns raised in the projects, the Trustees also received comments expressing support for or opposition to identified projects, and acknowledge the receipt of these comments, as appropriate. In some cases, commenters expressed support or opposition to categories of projects (such as barrier island restoration or recreational use projects). The Trustees include those statements below, but do not then note that support or opposition has been raised for each project that falls within those categories. Moreover, some commenters identified recommendations for improving or modifying a project while noting that the project was otherwise appropriate. Again, those specific recommendations are addressed in the project sections that follow but the Trustees have not characterized the comments as approving a specific project.

13.17.2 Texas

13.17.2.1 General

143. Comment: Why is Texas so far behind the other Gulf States in allocating Early Restoration dollars?

Response: As discussed in the Phase III ERP/PEIS (see Figure 2-1 in the Final Phase III ERP/PEIS) and under the Framework Agreement, each Early Restoration project is subject to negotiation with the Trustees and BP as well as agreement on project costs, BP funding, and NRD Offsets. Initial negotiations were conducted with BP as a means of determining whether agreements-in-principle on the Trustees' proposed projects were achievable prior to preparing draft Early Restoration plans. Such initial agreements, however, are subject to the outcome of the public review of the proposed projects as presented in the draft Early Restoration plans. The Texas Trustees have been proposing projects suitable to meet the gulf-wide Early Restoration goals for injuries and losses to resources, but those project proposals are subject to agreement by the other Trustees and BP.

144. Comment: Past public comments have not resulted in any changes to proposed projects for the State of Texas. At the last public meeting the public was in favor of using these early funds for more land acquisition.

Response: The Trustees have listened to and considered all comments that have been provided. The Trustees have also been provided numerous positive comments for the projects

that are being proposed in Texas, and those recreational use projects have been secured through the negotiation process. The Trustees recognize that land acquisition in Texas may be beneficial to remedy ecological injuries, but those projects must also be secured through the negotiation process with the other Trustees and BP. As discussed in the Phase III ERP/PEIS (see Figure 2-1 in the Final Phase III ERP/PEIS) and under the Framework Agreement, each Early Restoration project is subject to negotiation with the Trustees and BP as well as agreement on project costs, BP funding, and NRD Offsets.

The Trustees continue to evaluate additional projects for funding as part of the Early Restoration process but also to work toward developing longer term restoration plans with the goal of fully compensating the public for all resource injuries and losses that resulted from the Spill.

145. Comment: Moving forward, future Early Restoration should prioritize projects that provide ecological benefits, especially since many projects that restore habitat also benefit recreational opportunities.

Response: The Trustees are attempting to address a variety of injuries, both direct injury to resources and loss of services provided by those resources. In addition, recreational losses were widespread and significant throughout the Gulf and therefore restoration of lost human use is important in Early Restoration.

Injury assessment and restoration planning are ongoing. The Trustees continue to evaluate additional projects for funding as part of the Early Restoration process but also to work toward developing longer term restoration plans with the goal of fully compensating the public for all resource injuries and losses that resulted from the Spill.

The Trustees do not dispute that recreational losses can be addressed through ecological restoration strategies or other actions that restore or enhance the resources available to be enjoyed by the public. Because recreational losses caused by the Spill are widespread and significant, however, the Trustees considered it important to also consider projects that could address these losses more directly and expeditiously.

146. Comment: The stated nexus of the project to injured resources could be strengthened by providing an estimate of quantifiable human use losses by recreational use category.

Response: As a result of the Spill, the public's access to natural resources were reduced and/or prohibited by direct oiling, response activities, or perceptions that resources were impacted. As the assessment is ongoing, final estimates of the recreational losses are not yet available; however, sufficient information is available to determine the nexus between the current plan for Early Restoration and recreational use injury. Even at this point in the assessment, some injuries and losses, such as disruption to the public's recreational use of beaches, were readily observable and are well documented as widespread and extensive.

13.17.2.2 All Artificial Reef Projects

147. Comment: Monitoring on the three Texas reef projects should be expanded to include other aspects beyond recreational fishing such as habitat enhancement, sediment stabilization, and

coastal protection. Trustees should take a holistic approach to the project including collecting data on fish populations.

Response: The intent of the Early Restoration process is to implement projects that accelerate the restoration of resources injured by the Spill. Therefore, as required by OPA, monitoring for Early Restoration projects is focused on ensuring project success. Monitoring aspects beyond restoration objectives such as habitat enhancement, sediment stabilization, and coastal protection, while important concerns, are outside the scope of the Trustees' restoration project monitoring objectives. The Trustees are committed to monitoring within the context of regulatory compliance and project performance under OPA. In addition, the Texas artificial reef projects are sufficiently offshore (greater than 6 miles) and in deep enough water (at least 55 feet deep) that coastal protection and sediment stabilization benefits are not anticipated. See Comment #151 for more information on the surveys used to assess marine fish populations routinely conducted by TPWD.

148. Comment: Given the size of the reef relative to the bottom area of the continental shelf off Texas, the collateral injuries associated with this reef should be minimal. The cumulative environmental and socio-economic impacts of artificial reefs may increase over time as new reefs are added to the area, so assessing the cumulative ecological impacts of adding multiple reefs may be needed.

    Response: The cumulative impacts review in Chapter 8 did consider the TPWD Artificial Reef Program and reasonably foreseeable new reefs. Ecological impacts may be detected through evaluations of the TPWD Coastal Fisheries Division surveys and fishing license sales as well as the TPWD's Artificial Reef Program (described in more detail in Comment #151).

149. Comment: The Trustees should strengthen the monitoring plan by setting quantitative goals and monitoring progress toward these goals to evaluate project effectiveness.

    Response: As required by OPA, the Trustees are working to establish quantitative and/or qualitative performance criteria to be able to judge if the restoration objectives of this project are met or if there will be a need for corrective action. All or portions of the Texas artificial reef projects will be completed through the state procurement and contracting process. The contract scope of work outlines the objectives the contractors are required to meet while implementing the projects. These requirements as well as review of contract deliverables will be used to assist the Trustees in monitoring progress on the restoration projects.

    The artificial reef projects include monitoring efforts to ensure project designs are correctly implemented during construction. Monitoring has been designed around the project objective, which is to create or expand the reef site by adding reef materials through the random placement of predesigned concrete pyramids or the sinking of a ship.

    Performance criteria for the artificial reef projects will include a determination of successful construction of the Project according to design, and then monitoring and maintenance to confirm that the reef materials are in place and available for recreational fishing and diving. In order to determine successful placement of the constructed pyramids in accordance with the design, multi-beam side-scan surveys will be used to document the location of the pyramid structures and ensure all materials are located within the deployment zone and meet all

permit conditions, including USCG clearance restrictions. Monitoring using side-scan sonar will be conducted annually for 2 years and after major storm events to document any movement and settling of the structures. Recreational use of the reef observed during the side-scan monitoring will also be documented. Additional monitoring information on the ship project can be found in Comment #156.

Additional monitoring information for these projects will be made available to the public (e.g. through the restoration Project Atlas: http://www.gulfspillrestoration.noaa.gov/restoration/early-restoration/early-restoration-projects-atlas/).

150. Comment: The artificial reef projects provide recreational diving and fishing opportunities. It is not clear that artificial reefs contribute to overall productivity so these reefs should not be considered as applicable replacements for natural ecosystem structure.

Response: The artificial reef projects proposed in Texas are directed at compensating recreational injuries and are not intended to serve as ecological restoration.

151. Comment: Trustees should monitor potentially increased pressure on marine fish populations by using existing recreational fishing effort (creel surveys) or expanding recreational fishing surveys under the Marine Recreational Information Program.

Response: Potential increased pressure on marine fish populations was considered as part of the NEPA analysis for these projects. The Trustees will not be conducting any additional project-specific monitoring to assess fisheries impacts. However, the Texas Parks and Wildlife Department (TPWD) routinely conducts surveys to assess marine fish populations, which may demonstrate changes in fishing pressure.

TPWD has conducted on-site, end-of-trip interviews of recreational anglers at coastal boat-access sites since 1974. These interviews include both private-boat trips (non-guided) from inshore waters and party-boat trips (guided) from offshore waters. Annual estimates generated are used to monitor trends in fishing pressure as well as landings and catch rates. The coastline is divided into eight primary bay systems as well as five gulf areas, allowing for regional analyses to be completed. Surveys are conducted year-round and are divided into high-use (May 15 – Nov 20) and low-use (Nov 21 – May 14) seasons.

In addition to on-site interviews, TPWD also conducts rove counts at boat ramps to determine the number of boating parties using each boat-access site. Typically ten rove counts are conducted in each bay system during the high-use season, and six rove counts conducted in each bay system during the low-use season.

TPWD also conducts a Statewide Angler Survey every 3 years to monitor basic trends in fishing activity, including number of days fished, bay systems fished most frequently, and species targeted. Results are extrapolated out to all anglers. In addition to this Statewide Angler Survey, TPWD is currently conducting a survey related to fishing and boating activity around Texas' artificial reef structures.

TPWD also reviews license sales data to determine any increases or decreases in license sales. Results can be looked at regionally or temporally.

13.17.2.3 Freeport and Matagorda Artificial Reef Projects

152. Comment: Commenter(s) expressed support for these projects.

    Response: The Trustees acknowledge this support.

153. Comment: Trustees should consider placing some of the reefs in clusters for diving purposes.

    Response: The Trustees do not intend to place artificial reefs in a regimented pattern. Due to poor water clarity the Corpus, Freeport, and Matagorda artificial reefs are not being constructed specifically for divers. However, the reefs are suitable for divers, and divers are not prohibited from visiting the reef sites. Both the Freeport and Corpus reefs already contain materials that are clustered, which could be used by divers. Materials could be clustered incidentally during project implementation, but there are no plans to intentionally cluster materials.

13.17.2.4 Mid/upper Texas Coastal Artificial Reef (Ship Reef) Project

154. Comment: Commenter(s) expressed support for this project.

    Response: The Trustees acknowledge this support.

155. Comment: The long distance from shore and the depth of the wreck limits the value of the reef to recreational divers and suggest it be moved closer to shore and to a lower depth.

    Response: The location of the Ship Reef Project was chosen with the input and support of the diving community in Texas. The project would be ideally located for divers to take advantage of trips to the Flower Garden Banks National Marine Sanctuary or other reef sites in the same general area.

    The U.S. Coast Guard requires a 60-foot clearance between the surface of the water and the highest point of the ship. A depth of about 135 feet is necessary to sink a large ship and maintain the proper U.S. Coast Guard clearance. The project must be located sufficiently offshore to achieve the desired depth.

    The ship would be modified for sinking in an upright position on the ocean floor. Divers would descend from the surface to the top of the ship at 60 feet and proceed to the main deck to be located at a depth of approximately 80 feet. The top of the ship would bring the site within the range of normal recreational divers. The deeper sections would be ideal areas for advanced extended range diving.

156. Comment: The Trustees note that biological and human use monitoring will occur but do not specify the methods by which they will occur. These details need to be provided per NRDA regulations.

    Response: NRDA regulations require the restoration plan to include a description of monitoring for documenting restoration effectiveness, including performance criteria that will be used to determine the success of restoration or need for interim corrective action. The NRDA regulations also state that the monitoring component to the Draft Restoration Plan should address such factors as duration and frequency of monitoring needed to gauge progress and success, level of sampling needed to detect success or the need for corrective

action, and whether monitoring of a reference or control site is needed to determine progress and success.

This project is intended to restore lost recreational use and therefore, biological monitoring is not included under this project. Restoration effectiveness for the Ship Reef Project would be measured by successful implementation of the project (sinking the ship). Performance criteria for this Project will include a determination of successful construction of the Project according to design, and then monitoring and maintenance to confirm that the ship is in place and available for recreational fishing and diving. In order to determine successful placement of the ship according to design plans, multi-beam side-scan surveys and/or divers will verify final location and orientation of the ship before and after project implementation. The post-implementation survey will also be used to confirm that the final Project meets all permit conditions, including USCG clearance restrictions. Monitoring using side-scan sonar and/or divers will be conducted annually for 2 years and after major storm events to document any movement and settling of the ship. Recreational use of the reef observed during the annual monitoring will also be documented. Sampling and monitoring a reference or control site will not be necessary for this project.

Recreational use monitoring is being conducted through ongoing research. Currently Texas A&M University-College Station is studying the social and economic impacts of Texas artificial reefs. Also, as TPWD's Artificial Reef Program looks to expand existing reefs and identify locations for new permitted reef areas, TPWD's Artificial Reef Program will continue to receive feedback from user groups regarding placement and use of reefs in Texas.

13.17.2.5 All Texas State Park Projects

157. Comment: Monitoring should be expanded to survey visitor satisfaction before and after the new structures are built, as well as to survey for environmental impacts associated with increased visitation. Trustees should explain how they will account for increased access points and potentially increased user traffic in existing monitoring programs.

Response: Both state parks currently have visitation monitoring procedures to capture the number of daytime visitors, overnight visitors, and participants in interpretive programs. This information will be collected and shared annually by the Trustees to document performance monitoring of the projects for 5 years post-construction completion. The Trustees will not be conducting any project specific visitor satisfaction surveys. However, visitor use is monitored by the state park using existing TPWD protocols for the gathering and evaluating of visitor feedback.

Project impacts from increased visitor use could include littering and noise from visitors utilizing the new facilities. Both proposed state park projects will be replacing and/or enhancing recreational facilities that were damaged or destroyed by Hurricane Ike. These projects are intended to increase user traffic to numbers similar to those pre-hurricane. Because the same numbers of facilities and/or the same types of facilities are being rebuilt in the same general area, additional adverse impacts are not expected in the short-term. Long-term adverse impacts due to increased visitation will be monitored and addressed as necessary by the state park using existing TPWD procedures.

Galveston Island State Park is expecting to need to hire six new full-time positions and one seasonal position after the project has been completed to bring the park staffing levels back to levels prior to Hurricane Ike.

13.17.2.6 Sea Rim State Park Improvements

158. Comment: Commenter(s) expressed support for this project.

     Response: The Trustees acknowledge this support.

159. Comment: The project probably needs more than just a viewing platform at Willow Pond. The Trustees should consider additional restoration projects including hydrology, building back some dunes and replenishing the board walk.

     Response: Additional restoration projects such as improving the hydrology and building dunes are not part of the Phase III projects. However, the Trustees will continue to evaluate new and existing project ideas as potential DWH NRDA restoration projects. Project ideas can continue to be submitted and reviewed at http://www.gulfspillrestoration.noaa.gov/restoration/.

     Currently, there are many ecological restoration projects focusing on hydrologic and dune restoration occurring in Sea Rim State Park and the surrounding areas outside of the NRDA process. These projects are in various phases of design, funding, and implementation. A general framework guiding the ecological restoration in the area can be found in the Salt Bayou Watershed Restoration Plan, which can be viewed at http://www.tpwd.state.tx.us/publications/pwdpubs/media/salt_bayou_plan.pdf.

13.17.2.7 Galveston Island State Park Beach Redevelopment

160. Comment: Commenter(s) expressed support for this project.

     Response: The Trustees acknowledge this support.

161. Comment: Trustees should be concerned about rebuilding facilities on Galveston when this island is prone to erosion, hurricane damage or other problems.

     Response: The Trustees and TPWD State Parks considered risks from erosion and hurricane damage during evaluation of the Galveston Island State Park Beach Redevelopment Project. In order to protect the redeveloped beach site from future weather events, beach erosion or subsidence, the proposed project would be set back from the shoreline, further inland than the original beachside camping facilities, which are now largely underwater due to Hurricane Ike and beach migration.

     According to the Galveston Island State Park Master Plan, site planning along the beach would respond to a 50-year time horizon with elevated structures and transitional elements to respond to a changing coastal morphology. In response to subsidence, sea-level rise and beach migration anticipated at the Gulf beach over the coming decades, many of the beachside facilities would be elevated in order to protect these facilities from future flooding events and beach migration. Transitional facilities between elevated structures and at-grade recreation areas include dune walkovers, viewing platforms, picnic shelters, screened shelters and pavilions. The location and configuration of these beachside day and overnight facilities were evaluated in an alternatives analysis as part of the USACE permit application process. Their

location relative to the beach and the existing Farm-to-Market (FM) 3005 (San Luis Pass Road) was evaluated in the report with the goal of building back beach facilities to minimize impact to natural and cultural features, preserve and enhance contiguous habitat (prevent habitat fragmentation), provide safe public access to the beach to meet public demand, and create facilities which are adaptive to future weather events and beach erosion. Design considerations included rising sea levels, beach subsidence, dune migration, habitat shifts, and beach erosion. The project design and location presented in this Phase III restoration plan is the preferred alternative selected in the permit application.

13.17.2.8 New Projects or Alternatives: Texas

162. Comment: Comments suggested other potential restoration projects including but not limited to land acquisition, opening the mouth of the San Bernard River, living shoreline construction; more restoration projects including sea turtle, oyster reef, dune, and wetland restoration, and water quality improvement projects.

    Response: The Trustees acknowledge and appreciate the suggestion of additional restoration projects that may be suitable for restoring injuries caused by the Spill. The Trustees will continue to evaluate new and existing project ideas as potential DWH NRDA restoration projects. Project ideas can continue to be submitted and reviewed at http://www.gulfspillrestoration.noaa.gov/restoration/.

13.17.3 Louisiana

13.17.3.1 Louisiana Outer Coast Restoration

163. Comment: Commenter(s) expressed support for this project.

    Response: The Trustees acknowledge this support.

164. Comment: Additional information on injury assessment should be provided to ensure that bird offsets given to BP are proportional to the injury.

    Response: The Trustees continue to assess the potential injuries and losses to natural resources and services caused by the Spill. The summary in Chapter 4 of the Phase III ERP/PEIS is intended to provide an overview of current available information most relevant to Early Restoration. The Offsets proposed for this project are appropriate given current known and/or likely injuries caused by the Spill, and fairly and reasonably reflect the estimated benefits of the project.

165. Comment: Trustees should set quantitative goals for project monitoring to ensure project effectiveness.

    Response: The Trustees are working to establish quantitative and qualitative performance criteria to be able to judge if the restoration objectives of this project are met or if there will be a need for corrective action. Section 9.2.4 of this document has been updated to provide additional information regarding performance monitoring expected for this project. Additional monitoring information and plans for this project will be made available to the public (e.g. through the restoration Project Atlas: http://www.gulfspillrestoration.noaa.gov/restoration/early-restoration/early-restoration-projects-atlas/).

166. Comment: Construction should take place outside of hurricane season to avoid infrastructure, equipment, and habitat damage.

Response: The duration of the construction of these islands will likely exceed one year; therefore, completely avoiding construction during hurricane season is not an efficient or cost effective option. The Trustees have considered the risks associated with construction during hurricane season and will require implementing contractors to have a plan in place for if, and when, a potentially destructive storm is approaching the project site during construction. Construction would not begin until this plan is reviewed and approved. The content of these plans will depend upon various factors, such as the equipment being used and the location of the project. The plan should specify the weather conditions or wave heights that will require the shutdown of construction and removal of equipment, personnel, etc. Examples of measures that may be required would include: moving the dredge plant to a safe harbor; demobilizing small vessels; and securing loose land equipment/materials (including the dredge pipeline).

167. Comment: The Trustees should rely on the Louisiana Comprehensive Master Plan for a Sustainable Coast ("Louisiana Master Plan") to select future restoration projects.

Response: As noted in the Phase III ERP/PEIS, Caillou Lake Headlands, Chenier Ronquille, and Shell Island are included in the Louisiana Master Plan. Projects within the Louisiana Master Plan, as well as other existing regional restoration planning strategies/documents for the gulf, will continue to be considered for NRDA restoration planning purposes.

168. Comment: The Trustees should take advantage of completed NEPA analyses to move ahead quickly on this project.

Response: The Trustees concur and whenever possible, have adopted the existing NEPA analyses for components of this project, and incorporated those analyses into this document. More information regarding the Trustees' independent review and adoption of existing NEPA analyses for certain portions of this project can be found in Sections 7.8 and 9.3-9.5.

169. Comment: The Trustees should expedite completion of the NEPA analysis on Breton Island to expedite project implementation.

The Trustees propose to implement restoration at North Breton Island as expeditiously as possible and if selected will be moving forward with design and engineering as well as all necessary environmental reviews.

13.17.3.2 Louisiana Marine Fisheries Enhancement, Research, and Science Center

170. Comment: Commenter(s) expressed support for this project.

Response: The Trustees acknowledge this support.

171. Comment: The Trustees should more explicitly describe the intent, specific actions and goals of the proposed facilities to clarify the rationale and nexus to injury for this project.

Response: The concept of nexus relates to the fundamental principle under OPA that restoration actions be capable of restoring, rehabilitating, replacing, or acquiring the equivalent of natural resources or services as are injured or lost as a result of an incident. This

principle is embodied throughout NRDA regulations and is a key criterion used in screening, evaluating, and selecting restoration actions to be included in any restoration plan developed under OPA.

As stated in Section 9.7.1 of the Phase III ERP/PEIS, the proposed facilities would create the necessary infrastructure for Louisiana to "responsibly develop aquaculture-based techniques for marine fishery management. The proposed project would include two sites (Calcasieu Parish and Plaquemines Parish) with the shared goals of fostering collaborative multi-dimensional research on marine sport fish and bait fish species; enhancing stakeholder involvement; and providing fisheries extension, outreach, and education to the public." Specifically, the project would provide Louisiana with an important management tool for monitoring the long term health of wild populations of popular recreation marine species by developing the ability to release known numbers of marked juveniles into pre-determined habitats as part of well-designed studies that would allow for measurement and detection of changes in wild populations of marine sport fish species. The Center would also establish living laboratories to support a variety of marine fisheries outreach and educational activities for the public. These scientific, management, outreach and educational activities are designed to enhance recreational fishing opportunities in Louisiana.

172. Comment: The Trustees should provide an estimate of quantifiable human use losses by recreational use category, and additional information on how education enhances recreational opportunities.

Response: Because the assessment is ongoing, total estimates of the recreational losses are not yet available; however, total recreational loss estimates are not required to support the Phase III ERP/PEIS. At this point in the assessment, some injuries and losses, such as the disruption of recreational fishing, were readily observable and are well documented as widespread and extensive. Outreach and educational activities at the Center would deliver information to visitors on fisheries management topics and the importance of conserving valuable marine species and habitats. These activities are designed to encourage recreational angling and increase visitors' appreciation of Louisiana's unique natural resources.

173. Comment: The Trustees should plan fisheries enhancement projects within the context of an integrated and systemic approach to restoration and explain any link this project has with the Louisiana's Comprehensive Master Plan for a Sustainable Coast.

Response: It is important to first note that stock "enhancement" is not a goal of this project. Rather, the hatchery component of this project intends to facilitate fisheries management by releasing relatively small numbers of marked juveniles in coordinated study areas to monitor the long term health of recreationally important marine fish populations. The project would include initial assessment and goal setting, research and technology development including pilot studies, and operational implementation and incorporation of adaptive management strategies.

The Master Plan is an evolving document that is required to be updated every 5 years. Louisiana makes significant investment into monitoring, modeling and research to advance our understanding of our very dynamic environment. The research performed at the Center may aid in making future Master Plan development decisions.

174. Comment: The Trustees should monitor and study the interactions between hatchery-reared fish and wild fish, and detect any ecological or genetic impacts on native fish populations.

Response: The Trustees are aware of these important issues (e.g. the "Responsible Approach" proposed by Lorenzen et al. 2010) and will implement and follow appropriate best practices regarding the release of any hatchery-reared fish, maximizing the likelihood of beneficial outcomes and minimizing the risk of adverse impacts. All releases of marked hatchery fish would be coordinated with fishery managers and monitored to ensure adequate assessment of spatial, temporal, and ecological interactions with wild populations. LDWF is sensitive to conservation genetics principles on which the facilities would operate with respect to the various wild stocks. As such, there would be a focus on effective population size and the geographic partitioning of genetic diversity of the targeted species.

175. Comment: The Trustees should set quantitative goals for project monitoring to ensure project effectiveness.

Response: As required by OPA, the Trustees are working to establish quantitative and/or qualitative performance criteria to be able to judge if the restoration objectives of this project are met or if there will be a need for corrective action. Project monitoring goals will likely include the ability of the Center to serve as a fishery management tool and an evaluation of the educational outreach efforts to the public and recreational marine fishery community in Louisiana. Additional monitoring information and plans for this project will be made available to the public (e.g. through the restoration Project Atlas: http://www.gulfspillrestoration.noaa.gov/restoration/early-restoration/early-restoration-projects-atlas/).

176. Comment: The Trustees should provide information on how long term operation and maintenance for this project will be funded.

Response: The Center is an important addition to the State's fisheries management tools. LDWF has long hoped to be able to perform the valuable work made possible with construction of the Center. Since the Spill, the importance of this management tool for critical recreational species has become even more apparent. LDWF intends to appropriately budget funds necessary for the continued operation and maintenance of the Center from within the department's self-generating revenues or from other funding sources made available at the time.

177. Comment: Research at the Center should incorporate studies based upon the "Migratory Clock" for this region.

Response: The Trustees appreciate the information provided and intend to include the importance of seasonal migration patterns across species in the work conducted at the Center. Furthermore, coordinated releases of marked hatchery fish will allow LDWF to better understand the complex spatial and temporal movement patterns of marine fish species. The information gleaned from activities at the Center will be incorporated into LDWF's adaptive management process for recreational marine fisheries.

178. Comment: The Trustees should not support the construction of a fish hatchery that is intended to simply augment saltwater sport fish stocks in a strictly commercial sense.

Response: Construction of the Center is not intended to artificially augment sport fish stocks for commercial purposes. As previously discussed, the hatchery component of this project is intended to facilitate fisheries management by releasing relatively small numbers of marked juveniles in coordinated study areas to monitor the long term health of recreationally important marine fish populations. The Center will also establish living laboratories to support a variety of marine fisheries outreach and educational activities for the public.

179. Comment: The project should include research on natural mortality over time, population assessments, and population effects of habitat change.

    Response: The Trustees agree that these are important topics and they will be included, as appropriate, in the research conducted at the Center. The ability to spawn and culture marine fish species would provide many different opportunities to study basic life history questions for these important species. Furthermore, the coordinated releases of marked juveniles would develop an additional tool for fishery managers to quantitatively and qualitatively assess the heath and changes to marine fish populations.

180. Comment: The project should include an oral history section that captures local stories, including storm survivors, fish stories, etc.

    Response: The Trustees appreciate this suggestion and agree that Louisiana's rich cultural traditions should be integrated into the Center. The educational components of the project would allow for opportunities to highlight the many different cultural and biological aspects of marine fisheries in Louisiana. Specifically, the visitor center at the Calcasieu Parish facility includes adaptable informational displays that could be routinely updated and changed to focus on a wide variety of issues pertinent to marine habitats and fisheries.

13.17.3.3 New Projects or Alternatives: Louisiana

181. Comment: Additional projects in Louisiana were suggested for consideration by the Trustees. Examples include the creation of an Ecosystem Educational Outdoor Center, the completion of the Bayside Segmented Breakwater Project at Grand Isle, improvements to the Calcasieu Ship Channel, and other projects from the Louisiana Comprehensive Master Plan for a Sustainable Coast.

    Response: The Trustees acknowledge and appreciate the suggestion of additional restoration projects that may be suitable for restoring injuries caused by the Spill. The Trustees will continue to evaluate new and existing project ideas as potential DWH NRDA restoration projects. Project ideas can continue to be submitted and reviewed at http://www.gulfspillrestoration.noaa.gov/restoration/.

182. Comment: The restoration money should be evenly divided across the shoreline of the state.

    Response: The Trustees utilized the evaluation criteria found in the Framework Agreement and the OPA regulations. In addition to these criteria, as noted in the Phase III ERP/PEIS, certain Trustees applied other supplemental criteria to their individual selection process. The purpose of these criteria is to help guide the Trustees in their selection of projects that will provide meaningful benefits to accelerate restoration in the Gulf as quickly as possible.

Therefore, an even allocation of the DWH Early Restoration funds within the state may not always be possible or appropriate.

13.17.4 Mississippi

13.17.4.1 General

183. Comment: No recreational use projects should be funded from NRDA in Mississippi. The Trustees should prioritize, select, and implement ecosystem restoration projects particularly focused on fisheries restoration.

    Response: The process for developing, screening and selecting projects is described in detail in the Phase III ERP/PEIS. The Trustees did not specifically prioritize between direct restoration of resources and creation of services comparable to recreational use losses in selecting projects. Instead, the Trustees are attempting to address a variety of injuries, both direct injury to resources and loss of services provided by those resources. In addition, recreational losses were widespread and significant throughout the Gulf and therefore restoring recreational loss is important in Early Restoration. Also, the mix of projects reflects, among other things, the types of injuries that occurred in various locations affected by the Spill. Further, it is not possible, nor intended, that all injuries will be made whole through the Early Restoration process, and the Trustees anticipate that many more projects, both ecological and human use, will be implemented as part of the long term restoration plan for the Spill.

    The Mississippi recreational loss projects meet the evaluation criteria established for OPA and the Framework Agreement and are similar to past projects implemented as restoration actions for other oil spills throughout the country. The projects are intended to enhance and increase recreational opportunities as well as promote the public's appreciation and awareness of the Gulf of Mexico's natural resources injured by the Spill, helping to offset adverse impacts to such uses. The projects are technically feasible and utilize proven techniques with established methods and documented results and can be implemented with minimal delay. The projects have a high likelihood of success and are feasible and cost-effective; see C.F.R. § 990.54(a) (1) and (3) and Section 6e of the Framework Agreement. The recreational use projects are appropriate for Early Restoration.

    The Trustees acknowledge and appreciate the suggestion of additional restoration projects that may be suitable for restoring injuries caused by the Spill. The Trustees will continue to evaluate new and existing project ideas as potential DWH NRDA restoration projects. Project ideas can continue to be submitted and reviewed at http://www.gulfspillrestoration.noaa.gov/restoration/ and http://www.restore.ms.

13.17.4.2 Hancock County Marsh Living Shoreline Project

184. Comment: Commenter(s) expressed support for this project.

    Response: The Trustees acknowledge this support.

185. Comment: Commenter(s) expressed opposition to this project.

    Response: The Trustees acknowledge this opposition.

186. Comment: The final project description should include the amount of funding that will be dedicated to monitoring.

Response: The monitoring budget will be approximately three to five percent of the total Hancock County Marsh Living Shoreline budget.

187. Comment: The project should be modified to include bagless dredging and/or an oyster relay system.

Response: This project consists of a high profile reef of 6- to 9- inch thick layer of oyster shell or limestone. The Trustees considered bagless dredging for this project however, since it is only appropriate for low profile reefs, its use here could diminish restored habitat for this project. Oyster relay would be considered both in the establishment and/or long term management of the reef.

188. Comment: Local fishermen should be hired to work on this project.

Response: Phase III Early Restoration projects in the State of Mississippi will comply with hiring policies established by the Mississippi Jobs First Act, Miss. Code Ann. § 31-5-37, which, among other things, requires contractors constructing Early Restoration projects to outline an employment plan in bid submissions. Further, this Act requires that from the date the written notice of the contract award is received and until ten (10) business days after receipt of the employment plan by the Mississippi Department of Employment Security, the contractor shall not hire any personnel to fill vacant positions necessary for the Early Restoration project, except verified residents of the State of Mississippi. Further, any federal expenditure on this project will follow Federal Acquisition Regulations.

189. Comment: Monitoring efforts should be similar to those for other living shoreline projects included in the Phase III ERP/PEIS.

Response: The Trustees are working collaboratively to promote consistent monitoring for Phase III ERP/PEIS Early Restoration living shorelines projects.

190. Comment: Trustees should implement a monitoring period of no less than 10 years after project implementation.

Response: The current monitoring plan includes 7 years of monitoring, however, Trustees are working collaboratively to finalize a monitoring plan and to promote consistency for Phase III ERP/PEIS living shoreline projects. The Trustees will consider a 10-year monitoring period in the development of the monitoring plan.

191. Comment: Trustees should use natural material in construction of the breakwater to the extent possible.

Response: The Trustees intend to use natural material where practicable including limestone and oysters.

192. Comment: If recycled concrete is used for the project, then strong quality control measures are needed to ensure that reinforcing metal, rebar, and other rubble be strictly excluded from materials used in the water.

Response: The Trustees are not proposing to use recycled concrete.

193. Comment: “Suitable dredged fill material” should explicitly exclude contaminants and pollutants.

Response: The Trustee will adhere to regulatory suitability requirements and will use available Beneficial Use Program guidance including but not limited to the Mississippi Department of Marine Resources Interim Dredge Material Evaluation Protocol.

194. Comment: More information on the source of material for dike creation is needed; material should not come from diamond back terrapin turtle nesting habitat.

Response: Source material for dike creation will be selected upon completion of final project design. Material will not be quarried from diamond back terrapin turtle nesting habitat.

195. Comment: The list of suitable oyster cultch deployment sites should be expanded to include areas with a suitable substrate that may not have oysters currently present.

Response: The Trustees surveyed the Heron Bay area and identified a total of 110 acres of suitable substrate. A total of 46 acres of oyster reef will be restored commensurate with the negotiated parameters.

196. Comment: A new community-based monitoring program modeled after the Gulf Fisheries Management Council, Fisheries Disaster Recovery and Monitoring Program to collect fisheries data should be implemented and run by local fishermen.

Response: Monitoring for the Hancock County Marsh Living Shorelines project would be used to evaluate restoration objectives and is described in Section 10.2.4. A community-based monitoring program was not contemplated in the development and budgeting of the Hancock County Marsh Living Shorelines project. Responses to comment 188 address a request to hire local fisherman in the implementation of the Hancock County Marsh Living Shoreline project and provides a discussion of hiring practices related to the implementation of the project.

13.17.4.3 Restoration Initiatives at the INFINITY Science Center

197. Comment: Commenter(s) expressed support for this project.

Response: The Trustees acknowledge this support.

198. Comment: Commenter(s) expressed opposition to this project.
Response: The Trustees acknowledge this opposition.

199. Comment: There is a marginal nexus to injury for this project (did not exist at time of Spill). This project does not appear to be connected to the direct impacts of the Spill and could not be expected to provide the same services from its inland location.

Response: The concept of nexus relates to the fundamental principle under OPA that restoration actions are capable of restoring, rehabilitating, replacing, or acquiring the equivalent of natural resources or services as are injured or lost as a result of the incident.

Restoration Initiatives at INFINITY Science Center would replace or provide recreational opportunities like those lost through the provision of enhanced and/or increased access to coastal wetlands and coastal estuarine habitats (hiking, biking, running, etc.), and the creation and enhancement of wildlife viewing areas. In addition, the project’s educational components would inform the public about the Spill’s NRDA, restoration activities and enhance the public’s

understanding and appreciation of the injured resources. As a result of the Spill, the public's access to natural resources was severely reduced and/or prohibited for a significant period due to direct oiling, response activities or perceptions that natural resources were injured. This project will compensate for recreational uses that were lost as a result of restricted or denied access to natural resources injured by the Spill.

Restoration Initiatives at the INFINITY Science Center is located adjacent to and within the Hancock County Marsh Preserve, which received direct oiling. This preserve is also the location of the Phase III Hancock County Marsh Living Shoreline project. The Heritage Trail-Possum Walk provides enhanced public access for bikers, walkers, runners, and hikers from INFINITY to coastal wetlands in the Hancock County Marsh Preserve (Outdoor Education Center) and to estuarine wetlands and shorelines that experienced direct oiling.

200. Comment: The Project is inappropriate and fails to satisfy the requirements of OPA (including that the project is not environmental restoration), including that restoration projects must be "equivalent" to the injured resource it intends to restore, rehabilitate or replace, and therefore, this project should be removed from consideration from NRDA funding. This project is not related to damage done by the Spill, it is contrary to of OPA and its implementing regulations, and the Trustees should be concerned about the precedent being set by its inclusion.

    Response: Restoration Initiatives at INFINITY Science Center is compliant with OPA regulations will replace or provide recreational opportunities like those lost; See comment responses 199 and 201 for additional details.

201. Comment: The lack of specific and quantified types of recreational uses to be restored by this project prevents commenters from fully evaluating the nexus to injury. Project descriptions for the individual project components fail to clarify the relationship between proposed activities and the lost uses or injured resources.

    Response: As the assessment is ongoing, estimates of the total recreational losses are not yet available; however, total recreational loss estimates are not required to support the current Plan for Early Restoration presented in the Phase III ERP/PEIS. Even at this point in the assessment, some injuries and losses are readily observable and are well documented as widespread and extensive, including those in Mississippi. Among the most readily observed losses are significant reductions in recreation opportunities on and along portions of the Mississippi coast for an extended period of time. The relationship of the programmatic alternatives and projects in this Plan are explained in the Plan's descriptions of the alternatives.

    The Restoration Initiatives at INFINITY Science Center project will compensate for recreational uses that were lost as a result of restricted or denied access to natural resources injured by the Spill. A brief description of project components and the recreational uses they would provide is itemized below. Chapter 10 of the Phase III ERP/PEIS has been modified to clarify the component activities and uses.

- *Exhibits:* The project funding would also be used to develop educational components within the available gallery space in INFINITY. Exhibits would educate the public and build public

appreciation relating to Gulf resources, the Spill's NRDA, restoration actions, and restoration monitoring activities for Deepwater Horizon restoration projects. Exhibits will cover a number of topics including marsh ecosystems, oceanography, gulf species, hurricanes, and restoration monitoring. These exhibits would be designed to allow visitors (using computers, simulations and graphics) to experience how scientists model and study the Gulf's ecosystem.

- *Native Landscape/Nursery Area:* The Native Landscape Nursery Area is located between I-10 and the front of the INFINITY Science Center. The area would have three major elements: education, restoration and a cultural component. The creation of an open water/emergent wetland area would be a nursery of native wetland vegetation for both hands-on outdoor education and potential use plant materials in future restoration activities. The Native Landscape Nursery Area contributes recreational uses including but not limited to access to coastal wetland habitats, educational opportunities about wetland restoration, cultural preservation of historic features (rails, historic corridor), bird watching, wildlife observation and others.
- *Boardwalk and Outdoor Education Center:* The Outdoor Education Center would provide an outdoor classroom on the edge of the coastal Hancock County Marsh Preserve. The facility makes possible educational opportunities and awareness of the Gulf's ecosystems and natural resources in a hands-on, outdoor classroom adjacent to the Hancock County Marsh Preserve. Other uses include bird and wildlife observation and scenic viewing of natural resources. Construction of public Outdoor Education Center along the Heritage Trail-Possum Walk is intended to educate visitors of the ecologically sensitive coastal habitats injured by the Spill and response actions.
- *Heritage Trail-Possum Walk:* Enhancements would include paving of the existing Heritage Trail-Possum Walk to provide vehicular access to the Outdoor Education Center. The Heritage Trail-Possum Walk is a segment of a planned coast-wide Heritage Trail system. Uses would include access to coastal wetlands at the Outdoor Education Center, access via in the Heritage Trail-Possum Walk to coastal and estuarine habitats, bird/wildlife observation and other uses including running, hiking and biking. The project includes the construction of two areas along the Heritage Trail-Possum Walk for use as turnarounds to transport visitors on learning tours organized by INFINITY. Vehicular access would consist of golf carts used to transport visitors to the Outdoor Education Center via the paved Heritage Trail-Possum Walk.
- *Access Enhancement:* Access enhancements will include improvements to parking at the INFINITY Science Center to better accommodate large group educational visits (school buses) and ease of access to the INFINITY Science Center.

202. Comment: This project does not restore "shoreline use," "boating and boat-based fishing trips," and "shore-based fishing" because it is substantially removed from the shoreline and does not directly restore losses caused by the Spill.

     Response: The project is not intended to restore "shoreline use," "boating and boat-based fishing trips," or "shore-based fishing." The purpose of the project is to restore lost recreational opportunities through the provision of enhanced and/or increased access to coastal wetlands, provide enhanced and/or increased access to coastal estuarine habitat, create wildlife viewing areas, and provide educational components which would inform the public about the Spill's NRDA, restoration actions and restoration monitoring activities. This

project will compensate for recreational uses that were lost as a result of restricted or denied access to natural resources injured by the Spill. Additional related detail is provided in responses to comments 199 and 201 and in Chapter 10 of the Final Phase III ERP/PEIS.

203. Comment: The proposed improvements to facilities, grounds or exhibits at the INFINITY Science Center would not directly address multiple injuries or lost services.

    Response: Restoration Initiatives at the INFINITY Science Center replace or would provide comparable services described in comment responses 199 and 201 and in Chapter 10 of the Final Phase III ERP/PEIS).

204. Comment: The proposal does not explain whether the improvements are consistent with the long-term plans of INFINITY; the project description could better describe the connection between the proposed interpretive and educational elements and the facilities long-term plan for exhibit expansion.

    Response: The project was submitted by INFINITY as a restoration project idea and subsequently selected by the Trustees. The Early Restoration components of the project are consistent with long term plans of INFINITY. The project description has been revised in the Final Phase III ERP/PEIS.

205. Comment: Monitoring and project adjustments need to be included to limit ecological impacts from increased visitor use.

    Response: Project impacts from increased visitor use could include littering and noise from individuals and school classes utilizing the Heritage Trail-Possum Walk, the Outdoor Education Center, and the Native Landscape Nursery Area. The impacts will be sporadic, minor and short-term in nature. INFINITY Science center will be responsible for monitoring litter accumulation, litter removal and maintenance Heritage Trail Possum Walk, the Outdoor Education Center, and the Native Landscape Nursery Area.

206. Comment: Stormwater runoff from paved areas can cause adverse impacts to nearby waterways and eventually the MS Sound.

    Response: The Trustees agree that stormwater runoff from paved areas can cause adverse impacts to nearby waterways and the Mississippi Sound. For construction of the facilities, a Construction General Permit and stormwater pollution prevention plan (SWPPP) would be prepared and erosion, sedimentation, and stormwater runoff would be managed in accordance with Mississippi Department of Environmental Quality (MDEQ) stormwater requirements in order to prevent impacts to nearby waterways. As a part of final design, opportunities for treatment of stormwater runoff through pervious areas will be maximized to the extent practical. During operations, stormwater runoff from the paved parking area would drain into the stormwater basin for infiltration. Similarly, runoff from the trail would drain by overland sheet flow to adjacent pervious areas. Some runoff would percolate into the soils/pervious areas and some would collect in nearby drainage channels.

207. Comment: There will be a loss of wetlands associated with the proposed native landscape and nursery area.

Response: This element of the project has been previously authorized by General Permit #CELMK-OD-FE 14-GPD (Vicksburg District)-53. Any impacts to wetlands have been mitigated to prevent any net loss of wetlands in accordance with the U.S. Army Corps of Engineers Mitigation Rule.

208. Comment: Provide additional rationale for the BCR of 1.5:1.

Response: The benefit to cost ratios (BCRs) for Phase III projects were arrived at through negotiations with BP taking into account the unique characteristics of the projects and the benefits of early action to restore lost resource services. The goal of a Natural Resource Damage Assessment (NRDA) under OPA is to make the public whole for natural resource injuries and lost resource services, resulting from the release of oil to the environment (Oil Pollution Act of 1990 (33 USC §2706, and 15 CFR §§990, 1006, (d)(1)(A) and (B)). In the restoration planning process outlined in the OPA NRDA Regulations (15 CFR §§990), Trustees are permitted to consider the value of restoration projects to the public, as well as the costs of these projects, in determining the appropriate scale of restoration. Where Spill-specific analysis identified appropriate restoration projects, the Trustees offered Offsets, consistent with the broader NRDA objective, to make the public whole. Comment response 35 also includes information on the development of benefit to cost ratios.

209. Comment: Since coastal access already exists, the proposed project will not generate significant increases in recreational use.

Response: The completed project will provide enhancements to the Heritage Trail Possum Walk, facilitate access to the proposed Outdoor Education Center which is approximately 2 miles from the INFINITY Science Center, and facilitate access to estuarine habitats via the Heritage Trail-Possum Walk. Responses to comments 199 and 201 provide detail on various project components including increased recreational use opportunities

210. Comment: Remove/replace creosote railroad ties.

Response: Creosote railroad ties were installed as part of the construction of the existing Heritage Trail-Possum Walk for the purpose of trail bed containment and for historical context. Historically, dummyline railroads were used to transport lumber to the Logtown Mill. For the Early Restoration project, existing railroad ties will remain in place and will serve similar purposes.

211. Comment: This project is more appropriate for RESTORE funding.

Response: This project meets the evaluation criteria established for OPA, the NRDA Regulations and the Framework Agreement. The project is intended to enhance and increase recreational opportunities as well as promote the public's appreciation and awareness of the Gulf of Mexico's natural resources injured by the Spill, helping to offset adverse impacts to such uses. RESTORE is a separate process under different authorities and is independent of the decisions being made for *Deepwater Horizon* Early Restoration.

212. Comment: This project does not meet the criteria for Early Restoration. The economic and recreational benefits of the project are neither necessary nor urgent to warrant being funded under Early Restoration.

Response: This project meets the evaluation criteria established for OPA and the Framework Agreement. The project is intended to enhance and increase recreational opportunities as well as promote the public's appreciation and awareness of the Gulf of Mexico's natural resources injured by the Spill, helping to offset adverse impacts to such uses. The project is technically feasible and utilizes proven techniques with established methods and documented results and can be implemented with minimal delay. The project has a high likelihood of success and is feasible and cost-effective; see 15 C.F.R. § 990.54(a) (1) and (a) (3) and Section 6e of the Framework Agreement. The project is appropriate for Early Restoration.

13.17.4.4 Popp's Ferry Causeway Park

213. Comment: Commenter(s) expressed support for this project.

    Response: The Trustees acknowledge this support.

214. Comment: Commenter(s) expressed opposition to this project.
    Response: The Trustees acknowledge this opposition.

215. Comment: The project's nexus to injury is moderately strong, but could be strengthened by providing an estimate of quantifiable human use losses by recreational use category for the Mississippi Gulf Coast.

    Response: As the assessment is ongoing, estimates of the recreational losses are not yet available; however, total recreational loss estimates are not required to support the current Plan for Early Restoration presented in the Phase III/Programmatic ERP. Even at this point in the assessment, some injuries and losses, such as disruption in the public's recreational use of beaches, were readily observable and are well documented as widespread and extensive. The relationship of the programmatic alternatives and projects in this Plan are explained in the Plan's descriptions of the alternatives.

    As a result of the Spill, the public's access to natural resources was severely reduced and/or prohibited by direct oiling, response activities or perceptions that resources were injured. This project will compensate for recreational uses that were lost as a result of restricted or denied access to natural resources injured by the Spill. The Popp's Ferry Causeway Park would replace or provide comparable recreational opportunities by providing: (1) enhanced and/ or increased access to coastal estuarine habitats; (2) enhancement and creation of bird and wildlife viewing areas; (3) enhancement of shoreline fishing and hiking opportunities; (4) enhancement of recreational opportunities through enhanced kayaking access; and, (5) creation of educational components to inform the public about Gulf ecosystems injured by the Spill.

216. Comment: Trustees should provide additional information on the specific components to be funded with NRDA money.

    Response: The project description provided in the Phase III ERP/PEIS is based on the current design concept for the purpose of assessing the construction impact on the environment (Section 10.7). A description of construction and installation for all project components is included (10.7.3 thru 10.7.3.9).

217. Comment: This project would only address lost human uses and access to natural resources, but would not address natural resource injuries resulting from the Spill.

Response: The process for developing, screening and selecting projects is described in detail in the Phase III ERP/PEIS. The Trustees did not specifically prioritize between direct restoration of resources and creation of services comparable to recreational use losses in selecting projects. Instead, the Trustees are attempting to address a variety of injuries, both direct injury to resources and loss of services provided by those resources. In addition, recreational losses were widespread and significant throughout the Gulf, including those in Mississippi, and therefore are important in Early Restoration. Also, the mix of projects reflects, among other things, the types of injuries that occurred, and may still be occurring, in various locations affected by the Spill. Further, it is not possible, nor intended, that all injuries will be made whole through the Early Restoration process, and the Trustees anticipate that many more projects, both ecological and human use, will be implemented as part of the long term restoration plan for the Spill.

218. Comment: Public use monitoring should include surveying park users for their overall satisfaction with the amenities before and after improvements, as well as to track natural resource impacts associated with human use of the park.

Response: The Trustees are in the process of developing a monitoring plan and will consider incorporating visitor surveys as part of the monitoring plan.

219. Comment: This project does not appear to be connected to the direct impacts of the Spill.

Response: Comment response 195 addresses the project connection with the direct impacts of the Spill as well as replacement and provision of lost recreational opportunities.

220. Comment: This project is more geared towards tourism and economic development as opposed to environmental or natural resource restoration.

Response: The intent of the project is to restore lost recreational uses injured by the Spill and is not geared towards tourism and economic development (see comment response 215). The project will provide land and water-based recreational uses (e.g. shoreline fishing, hiking, kayaking) as well as educational opportunities (Back Bay Interpretive Center) to increase public appreciation and awareness of the Gulf of Mexico's natural resources injured by the Spill.

221. Comment: Pervious surfaces should be used to pave new parking and trail areas and replace existing impervious ones.

Response: During final design, the Trustees will, to the extent possible, consider the use of pervious surfaces, as well as on-site treatment of stormwater runoff throughout the site.

13.17.4.5 Pascagoula Beach Front Promenade

222. Comment: Commenter(s) expressed support for this project.

Response: The Trustees acknowledge this support.

223. Comment: Commenter(s) expressed opposition to this project.

Response: The Trustees acknowledge this opposition.

224. Comment: The project's nexus to injury is moderately strong, but could be strengthened by providing an estimate of quantifiable human use losses by recreational use category for the Mississippi Gulf Coast.

Response: As the assessment is ongoing, estimates of the total recreational losses are not yet available; however, total recreational loss estimates are not required to support the current plan for Early Restoration presented in the Phase III/Programmatic ERP. Even at this point in the assessment, some injuries and losses, such as disruption in the public's recreational use of beaches, are readily observable and are well documented as widespread and extensive. The relationship of the programmatic alternatives and projects in this Plan are explained in the Plan's descriptions of the alternatives.

As a result of the Spill, the public's access to the Pascagoula Beach was severely reduced and/or prohibited by direct oiling, response activities or perceptions that resources were injured. The Pascagoula Beachfront Promenade would restore, replace or provide recreational opportunities like those lost through the provision of enhanced and/or increased access to the Pascagoula beach and recreational amenities. This project will compensate for recreational uses that were lost as a result of restricted or denied access to natural resources injured by the Spill.

225. Comment: Trustees should provide additional information on the specific components to be funded with NRDA money.

Response: The components of Pascagoula Beachfront Promenade to be funded with Phase III funds within the 8,200-linear-ft. segment from Oliver Street to Point Park are described in Section 10.9.1. The project description provided in the Phase III ERP/PEIS is based on the current design concept for the purpose of assessing the construction impact on the environment (Section 10.8.2). A description of construction and installation for all project components is included (10.9.3).

226. Comment: This project would only address lost human uses and access to natural resources, but would not address natural resource injuries resulting from the Spill.

Response: The process for developing, screening and selecting projects is described in detail in the Phase III ERP/PEIS. The Trustees did not specifically prioritize between direct restoration of resources and creation of services comparable to recreational use losses in selecting projects. Instead, the Trustees are attempting to address a variety of injuries, both direct injury to resources and loss of services provided by those resources. In addition, recreational losses were widespread and significant throughout the Gulf, including those in Mississippi, and therefore are important in Early Restoration. Also, the mix of projects reflects, among other things, the types of injuries that occurred, and may still be occurring, in various locations affected by the Spill. Further, it is not possible, nor intended, that all injuries will be made whole through the Early Restoration process, and the Trustees anticipate that many more projects, both ecological and human use, will be implemented as part of the long term restoration plan for the Spill.

227. Comment: The new pedestrian concrete pathway and amenities could result in higher beach visitation, potentially increasing the amount of marine debris or disturbance to natural habitats or native species through human-animal interactions.

Response: Project impacts from increased visitor use could include littering and noise from individuals utilizing the proposed project components. The adverse impacts will be sporadic, minor and short-term in nature. Pascagoula Beach is a man-made seawall protection project (beach); any habitat is man-made. Litter removal will minimize the impact to native species or natural habitats. The City of Pascagoula will be responsible for monitoring litter accumulation, litter removal and maintenance. Noise from visitors using the promenade or amenities would occur adjacent to Beach Boulevard with only very limited habitat in the vicinity of the project.

228. Comment: Public use monitoring should include surveying park users for their overall satisfaction with the amenities before and after improvements, as well as to track natural resource impacts associated with human use of the park.

Response: The Trustees are in the process of developing a monitoring plan and will consider visitor surveys as a component of the plan.

229. Comment: Pervious surfaces should be used to pave new parking and trail areas and replace existing impervious ones.

Response: There are no new parking areas proposed for this project under Early Restoration funding. During final design, the Trustees will, to the extent possible, consider the use of pervious surfaces, as well as on-site treatment of stormwater runoff throughout the site.

230. Comment: This project is more geared towards tourism and economic development as opposed to environmental or natural resource restoration.

Response: The intent of the project is to restore, replace or provide recreational uses like those lost or injured by the Spill. The project is not geared towards tourism and economic development. The Pascagoula Beachfront Promenade would restore lost recreational opportunities through the provision of enhanced and/or increased access to the Pascagoula beach and recreational amenities which could be used by local residents as well as tourists.

231. Comment: The nexus for this project is weak because it focuses on lost recreational activities.

Response: The Pascagoula Beach was directly impacted by oil and response injuries resulting from the Spill. See comment responses 224, 226 and 230 for additional details.

13.17.4.6 New Projects or Alternatives: Mississippi

232. Comment: There were a number of new projects proposed for the state of Mississippi including a community based fish monitoring program and land acquisition projects.

Response: The Trustees acknowledge and appreciate the suggestion of additional restoration projects that may be suitable for restoring injuries caused by the Spill. The Trustees will continue to evaluate new and existing project ideas as potential DWH NRDA restoration projects. Project ideas can continue to be submitted and reviewed at http://www.gulfspillrestoration.noaa.gov/restoration/ and http://www.restore.ms.

13.17.5 Alabama

13.17.5.1 Swift Tract Living Shorelines

233. Comment: Commenter(s) expressed support for this project.

    Response: The Trustees acknowledge this support.

234. Comment: Additional elements should be part of the project including a contingency plan for delays or damage due to severe weather and include monitoring by a coastal environmental engineer with past experience.

    Response: Contingency planning is an important part of project design. Piling installation will be limited to summer months, to the maximum extent practicable; however, the remainder of the project construction can occur at any time during the year, providing for contingency and flexibility, if needed. Although there is a possibility that severe weather events could delay construction, we anticipate being able to avoid mobilization and installation delays due to the flexibility in the construction timeframes.

    The project budget includes a construction and supervision line item, which will likely be contracted to a qualified coastal engineering firm to ensure that the project is monitored during construction and installed according to specifications.

235. Comment: Replace the Swift Tract Living Shorelines Project with an alternative project because there is no direct nexus to the injury.

    Response: In accordance with OPA see 15 C.F.R. § 990.54(a)(2) and Sections 6a-6c of the Early Restoration Framework Agreement, the Swift Tract Living Shoreline Project will restore natural resource services like those that were injured during the Spill. The natural resources and ecological services identified for restoration at the project site may not have been oiled or injured directly, but would contribute to making the environment and public whole by restoring resources (salt marsh and benthic secondary productivity) or services substantially similar to those injured or lost as a result of the Spill.

13.17.5.2 Gulf State Park Enhancement Project

236. Comment: Commenter(s) expressed support for this project.

    Response: The Trustees acknowledge this support.

237. Comment: Commenter(s) expressed opposition to this project.

    Response: The Trustees acknowledge this opposition.

238. Comment: The Gulf State Park Enhancement Project is inappropriate and fails to satisfy the requirements of OPA (including that the project is not environmental restoration), including that restoration projects must be “equivalent” to the injured resource it intends to restore, rehabilitate or replace, and therefore, this project should be removed from consideration from NRDA funding and the Draft Phase III ERP/PEIS. This project is not related to damage done by the spill, there is no rationale or proof of nexus to injury for the construction of a lodge and conference center, and the project is unrelated to restoration of lost recreational uses due to the Spill.

Response: The Gulf State Park Enhancement Project exhibits a strong nexus to the recreational injury caused by the Spill. Along with the more than 50 miles of Gulf fronting beaches in Alabama, beaches at State Park were heavily and repeatedly oiled throughout the summer of 2010 (Michel et al 2013). Extensive response activities occurred there to remove oil from the park's beaches. In addition, the park was used as a staging area for the heavy equipment associated with cleanup on other sections of the beach. Visitation and use data for park resources, collected monthly by the Alabama Department of Conservation and Natural Resources for the period from May through September 2010, show a 78 percent reduction in visitors to Gulf State Park alone compared to the same period in 2009—from 2.3 million visitors in 2009 to 0.5 million in 2010.

The Trustees' evaluation process also took care to ensure that the Gulf State Park Enhancement Project would restore recreational services like those lost as a result of the oil spill. Lost services included both lost trips to the Alabama coast as well as decreases in trip quality for visits that did occur during the period of Spill impacts. In this case, restoration has to increase both the number and quality of shoreline visits at a scale that reflects the substantial loss in economic value that resulted from these losses. As discussed below, the proposed GSP project is designed to do this.

Construction of the Gulf State Park Enhancement Project is an effective means of facilitating new recreational visits to the beach and park. Lodge rooms create an access opportunity that is expected to add to the number of beach visits in areas directly affected by the oil spill, since the majority of those staying at the lodge are anticipated to spend time at the beach and park. These recreational visits are expected to be primarily new ones rather than visits by those who previously would have stayed somewhere else in the area. This is based on the fact that the lodge will offer a category of overnight stays that is not widely available in the Gulf Shores/Orange Beach area today. Within the Park, the lodge would open up a different kind of overnight access opportunity than is available at the existing campgrounds and weekly-rental cabins. While some motels or hotels in the general vicinity of Gulf State Park offer short-term lodging, most current overnight visitation requires longer-term, 5 to 7 night rentals of condominiums and vacation homes. The lodge provides shorter-term opportunities for overnight visitors, and is therefore expected to draw new visitors to the area who would not otherwise choose to come. In addition, the lodge represents a more convenient and potentially lower cost access option for visitors who might not be able to afford to come for an entire week, further increasing the likelihood that new recreational visits are created. Moreover, guests at the lodge would have immediate access to the beach and other natural resources and amenities of the Park at times early and late in the day that would be much less convenient for visitors staying outside the Park, making the experience more attractive to many. The new visits to the beach and park, facilitated by providing access to lodging infrastructure, are the same type of recreational opportunities that were reduced as a result of the spill.

The Gulf State Park Enhancement Project also is designed to augment the quality of shoreline recreational visits. Ecological restoration of the dune habitat will provide a more natural beach experience and enhance potential wildlife viewing opportunities. The interpretive center will foster visitor understanding of Alabama's complex and unique coastal ecosystems.

Improvements to trail and other visitor amenities will enhance the experience for many visitors. These quality improvements would apply both to new visits and to the visits to the beach and park that would have occurred even absent the project. These improvements will help compensate the public for the diminished access to and quality of Alabama's coastal recreational resources during the spill.

In summary, the GSP project represents a significant step towards replacing the substantial recreational services lost during the oil spill.

239. Comment: Long-term restoration needs have not been addressed, locally or otherwise; nor is there any discussion of how this project may fit within an anticipated final restoration plan. This project is contrary to OPA and its implementing regulations, and the Trustees should be concerned about the precedent being set by its inclusion.

Response: The purpose of Early Restoration is to accelerate meaningful restoration of injured natural resources and their services resulting from the Spill while the natural resource damage assessment is ongoing. The Phase III ERP/PEIS is not intended to fully address all injuries caused by the Spill or address long-term restoration needs, which will be addressed in a comprehensive damage assessment and restoration plan. The Trustees continue to evaluate additional projects for funding as part of the Early Restoration process but also to work toward developing longer term restoration plans with the goal of fully compensating the public for all resource injuries and losses that resulted from the Spill. In regards to appropriateness under OPA, the Gulf State Park Enhancement Project is appropriate under OPA, please see response to Comment 238 for further clarification.

240. Comment: In the absence of an appropriate way to compensate for all the lost recreational uses experienced in Alabama, the no action alternative is the best choice. If there is a lack of appropriate projects for restoration of lost recreational uses in Alabama, those funds should be made available for allocation to address lost recreational uses elsewhere on the Gulf Coast or for restoration of other injured resources on the Alabama shore or in state waters.

Response: The Gulf State Park Enhancement Project is appropriate under OPA, please see response to #238 for further clarification. In addition, the Trustees evaluated a range of project alternatives, both in the overall selection of the Gulf State Park Enhancement Project for inclusion in [the Preferred Alternative] and in the selection of the project elements within the Gulf State Park Enhancement Project itself. The Trustees considered a range of restoration project types in Alabama (See Chapter 11, Section 11.6.3). Within the Gulf State Park Enhancement Project, the Trustees determined that the best way to increase access to Gulf State Park was to provide additional lodging for visitors. The Trustees determined that a lodge would best accomplish this goal by allowing for the most rooms (and, therefore, access) in the least amount of space and that such lodge would fit on an already-disturbed footprint, thereby minimizing any potential collateral impacts on the environment. The selection of the lodge for inclusion in the Gulf State Park Enhancement Project was an alternative to building additional campgrounds or cabins, which would disturb a very large portion of the Gulf State Park's undisturbed natural environment.

241. Comment: The Gulf State Park Enhancement Project will have a significant impact on the environment and a separate EIS should be prepared if the Trustees decide to proceed with the project.

Response: The Gulf State Park Enhancement Project fits within two of the alternatives evaluated in the Programmatic EIS. In addition, the Trustees have evaluated the environmental impacts of the Gulf State Park Enhancement Project as part of the Draft Phase III ERP/PEIS, and have concluded the project will not result in significant impacts that would necessitate the preparation of an additional, project-specific EIS.

The Phase III ERP/PEIS analyzes the potential for significant impacts from implementation of three action alternatives and the continuation of the No Action alternative. Each alternative is comprised of a number of project types which are analyzed at the programmatic level and which consider the context of the region. In addition, 44 proposed site-specific projects, consistent with the preferred alternative and its project types, were analyzed for the potential for significant impacts at the local levels. The analyses conducted in these different geographic contexts ensure that the decision-maker and the public are aware of any potential for significant impacts to specific components of the human environment. The inclusion of the Gulf State Park Enhancement Project in the context of the Phase III ERP/PEIS allows for the timely consideration of the potential impacts from that project.

The regulations for implementing NEPA require the development of a supplemental draft or final NEPA analysis under two circumstances:

a. The agency makes substantial changes in the proposed action that are relevant to environmental concerns; or

b. There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts (40 C.F.R § 1502.9 (C)(1).

Neither of these conditions has been met as they relate to the Gulf State Park Enhancement Project. Therefore neither the development of a supplemental NEPA analysis nor separate EIS is necessary.

242. Comment: The GSP Enhancement project will impact critical habitat and species listed under the Endangered Species Act including turtles and beach mouse, and requires formal consultation and a biological opinion.

Response: Alabama is currently coordinating with USFWS regarding the Alabama beach mouse and its critical habitat and has updated the Habitat Conservation Plan (HCP) for GSP. The project is expected to enhance Alabama beach mouse habitat through the implementation of the HCP.

As of the publication of this document, no terrestrial critical habitat has been established for sea turtles in the northern Gulf of Mexico, although several beaches in the region (including Alabama beaches) have been proposed as critical habitat for the Loggerhead sea turtle. All development resulting from the project would include the use of sea turtle-friendly lighting

and would incorporate a light management program to minimize potential disturbances to sea turtles.

243. Comment: Implementation of the GSP project will limit access to the site and will be too expensive for locals and others to access.

Response: As explained above, the GSP project will expand rather than limit access to the Park's natural resources. While camping and cabin facilities already exist within Gulf State Park, the construction of the lodge at Gulf State Park will provide another option in the spectrum of overnight accommodation options in the park, providing visitors with additional lodging options and increasing the opportunity for those who desire lodging with a single night stay option. The lodge itself will be accessible to the public and still allow for public access to the beach in that area.

Additionally, the Gulf State Park Enhancement Project includes a variety of additional improvements to the recreational experience at the park that are independent of the access benefits provided by the lodge component of the project. The quality of the beach and park experiences will be directly enhanced through the restoration of dune habitat and the construction of the interpretive center, trails, and other associated visitor amenities. These improvements to the quality of recreational services will be an integral part of the beach/park experience, regardless of whether one stays at the lodge or not. Consequently, the project will provide for restoration of a variety of beach and park recreational services with no associated cost barrier (other than park admission fees), providing benefits to visitors who do not stay at the lodge.

244. Comment: There are components of the Gulf State Park Project and indirect impacts beyond those described in the Draft Phase III ERP/PEIS such as "highways and parking facilities to accommodate increased staffing needs and expected lodge and conference center guests." There could be collateral injury from increased visitor use due to implementation of the GSP project that would impact the existing Phase I dune restoration project at the park.

Response: 15 CFR 990.54(a)(4) requires that the Trustees should "avoid collateral injury as a result of implementing the alternative," but the regulation does not require that implementation cause no harm or completely avoid any collateral injury. The Trustees have chosen projects, including the Gulf State Park Enhancement Project, where the adverse effects on the ecosystem can be avoided, minimized, or mitigated. The Trustees have had extensive consultations with resource agency regulatory staff and designed project implementation so as to avoid or limit adverse effects to the ecosystem. Where appropriate, Best Management Practices will be implemented to reduce the potential for collateral injury.

In regards to the Phase I dune restoration project, collateral injury to the Phase I project from the construction and operation of the Lodge and Conference center is expected to be minimal and would be further minimized through project design as well as the implementation of the Habitat Conservation Plan and the Dune Management Plan. The development footprint for the proposed Lodge is not directly adjacent to the Phase I dune restoration project. The development footprint for the lodge and conference center are based on the previous lodge footprint and utilizes that previously disturbed habitat to minimize impacts to ABM habitat. The Phase I project is not located within the previous lodge footprint and would not be

impacted during construction or operation. Although visitors may access the area of the Phase I project, the new plan included updates to the Habitat Conservation Plan and the Dune Management Plan which will minimize potential impacts. The updated Dune Management Plan and Habitat Conservation Plan include information specifically for long term management and protection of dune habitat, including the dune habitat from the Phase I project. Those efforts include funneling pedestrian traffic to existing and proposed boardwalks and the placement of signage and habitat friendly fencing to make visitors aware of the sensitive nature of those habitats and the reasons why they are required to avoid those areas. Park officials also patrol these areas to ensure compliance with those regulations.

245. Comment: The GSP Enhancement project does not address multiple injuries or produce multiple benefits that are relevant to the restoration of injured natural resources and lost services as a result of the Spill.

    Response: The Gulf State Park Enhancement Project would address relevant injuries, as discussed under response Comment 238.

246. Comment: Please clarify how much of the 9.5 miles of new trail will occur in what is now primarily undisturbed habitat; this area proposed for new trails has the greatest habitat diversity and most wildlife.

    Response: Approximately 6.8 miles of the planned trail improvements fall within existing rights of way, firebreaks, utility corridors or existing footpaths. Approximately 2.7 miles of the paths occur in areas where prior disturbance has not occurred. One of those locations is immediately north and adjacent to the existing developed campgrounds and will tie an existing trail named Alligator Marsh to a power line right of way. The other is a pile-supported walkway just north of State Route 182. This pile-supported structure was shifted north at the request of the US Fish and Wildlife Service to avoid the dune habitat that occurs near State Road 182.

    None of the proposed structures will create an impediment to wildlife movement through these areas because they will be built on the ground, at grade, or will be pile supported thereby providing an underpass for wildlife. More detail about trail enhancements is provided in section 11.7.3.4.

247. Comment: Trustees should provide more data on the Alabama Beach mouse, as most of the information presented on the endangered Alabama beach mouse is out-of-date and the Habitat Conservation Plan was completed in 2004.

    Response: The State of Alabama has been working with the USFWS to improve ABM habitat at GSP since the original project permits were issued in 2004. Since that time, approximately 36 acres of habitat have already been restored or enhanced in GSP. The State, working with USFWS, has completed an update of the Dune Management and the Habitat Conservation Plans for GSP, which has increased conservation measures for ABM and sea turtles. The US Fish and Wildlife Service has issued an updated consultation including a revised Biological Opinion, based on updated species information. These updates addressed changes in ABM habitat and populations, added species not previously covered, and described restoration activities which have taken place since the original HCP was prepared.

248. Comment: The increased visitor use would impact shorebirds, including the willet and the sanderling, and the analysis should address these species and fulfill the requirements of the Migratory Bird Treaty Act. Statements that displaced wildlife would relocate are unsubstantiated.

Response: The Migratory Bird Treaty Act and potential effects on migratory birds due to project implementation are discussed in Section 11.7.6 of the Phase III ERP/PEIS. As concluded in that section, there could be adverse, but short-term and minor impacts, to some individual migratory birds during construction, primarily from noise disturbance. Three of the proposed project components (the re-establishment of the lodge and construction of the interpretive center and research and education facility) would occur on disturbed sandy areas or maintained lawn, which do not support many wildlife species. Construction activities during dune restoration and enhancement may temporarily displace birds using those areas, but impacts would be minor and would only displace species that favor shrub-scrub habitat. To the extent possible, visual observation would be used as a technique to document and avoid migratory birds that are potentially nesting and foraging. Construction of the proposed trails would result in minimal habitat loss during construction, thus there would be minimal impacts to migratory birds using these areas. In addition, best management practices would occur to avoid migratory birds and would include the following: construction will begin prior to the onset of nesting and be continuous such that birds are unlikely to nest in an active construction area if this not feasible and any construction is planned to begin in migratory bird nesting season, nesting surveys will be conducted. If nesting birds are present, then construction will not begin in the nesting area until any new chicks have fledged.

If birds in the vicinity of the construction area (i.e., the construction footprint of the lodge or interpretive center) are resting, foraging, loafing, and are disturbed, it is expected that they would move to other habitats of similar quality within the 6,150 acre Gulf State Park area. While there may be adverse, but short-term and minor, impacts to some individual migratory birds during construction, primarily from noise disturbance, no take under MBTA will occur.

A comprehensive list of migratory birds potentially present within Gulf State Park (including the willet and the sanderling) is presented in Table A1-9 in Chapter 11 of the Phase III ERP/PEIS.

249. Comment: There is a lack of information for the GSP project for understanding offsets, including insufficient information to evaluate the cost effectiveness and a lack of any specific information about lost recreational uses at GSP.

Response: The information provided in the Phase III ERP/PEIS is consistent with the Framework Agreement, applicable laws, regulations and Pre-Trial Orders. The materials concerning Offsets exchanged with BP are settlement confidential and subject to Pretrial Orders in the *Deepwater Horizon* litigation. Releasing further internal analyses not shared with BP could adversely affect ongoing or future Early Restoration negotiations or other proceedings.

250. Comment: The proposed monitoring for the GSP is inadequate as it only uses the numbers of visitors and participants as a primary metric. This measure does not address the quality of experience provided or the effectiveness of the interpretive displays and related educational

activities. Professionally designed surveys testing the quality of visitor experiences before and after implementation should be used. With regard to ecological project performance, the proposed monitoring addresses only construction impacts, while operational impacts are not addressed.

Response: NRDA regulations designate several factors that should be included regarding monitoring in order to effectively gauge a project's progress and success, including restoration objective(s) and performance criteria. Restoration objective(s) have been identified for all proposed Phase III Early Restoration projects, and Trustees are currently developing performance criteria to evaluate project success or the need for corrective action. These criteria may include structural, functional, temporal, and/or other demonstrable factors.

In regards to the metrics used for the Gulf State Park Enhancement Project, a key goal of the Gulf State Park project is to restore a portion of the lost visitor use in Alabama caused by the Spill through future improvements to the visitor experience. This would be accomplished through ecological restoration of dune habitat, improvements to the park's interpretive experience for visitors, and addition of visitor amenities such as new trails and enhancements to existing trails. Long term ecological monitoring after construction will occur and will include seasonal ABM surveys, predator control and annual reporting of habitat, restoration efforts and population status.

Performance criteria will be monitored for each of these project elements. For the dune restoration, ecological conditions will be monitored to ensure successful revegetation (as described in section 11.6.4 of the Final Phase III ERP/PEIS). For the other improvements, park managers plan to assemble annual data on the total number of visitors to the park. This type of information has been collected extending back as far as the early 1990s and will provide a basis for long-term comparisons of park visitation, including comparisons to the time when the previous Gulf State Park Lodge was operating. For the improvements to the quality of the visitor experience, the park would use existing GSP protocols for the gathering and evaluating visitor feedback.

251. Comment: Trustees should develop a long-term (5 to 10 years) comprehensive monitoring program to track and evaluate the success of the GSP project including a timeframe for monitoring and a description of the budget structure for funds to support a dedicated, sufficient monitoring plan.

Response: NRDA regulations designate several factors that should be included regarding monitoring in order to effectively gauge a project's progress and success, including restoration objective(s) and performance criteria. Restoration objective(s) have been identified for all proposed Phase III Early Restoration projects, and Trustees are currently developing performance criteria to evaluate project success or the need for corrective action. These criteria may include structural, functional, temporal, and/or other demonstrable factors. Each of the proposed projects in the Phase III ERP/PEIS, including the Gulf State Park Enhancement Project, includes a discussion of performance criteria, monitoring and maintenance appropriate for that project. Additional monitoring information may be developed in the future project development. The Trustees intend to make the results of project activities, including monitoring information, available to the public (e.g. through the restoration Project

Atlas: http://www.gulfspillrestoration.noaa.gov/restoration/early-restoration/early-restoration-projects-atlas/).

252. Comment: The Trustees should be concerned that the state government would be competing with private business and that a lodge run by a private entity would be built with public funding.

Response: The primary purpose and goal of the Gulf State Park Enhancement Project is to compensate for Alabama's recreational use loss along its coastline by providing better access to Gulf State Park's resources and by providing an enhanced recreational experience. (Please see response to Comment 238 for additional details.) Any incidental profits that are made are to be used only by the Alabama Department of Conservation and Natural Resources (See Alabama Code § 9-14e-7). To ensure that the lodge portion of the Project is operated in a sustainable and economical manner, and that the charges associated with staying in the lodge are based upon the reasonable cost of its operation and maintenance, the Trustees will explore various options as to the operation of the lodge in accordance with Alabama Code §§ 9-14e-1, et al.

253. Comment: Under the current description for the Gulf State Park Enhancement project, no detailed alternatives are outlined for the overall project or the lodge and conference center. The Trustees must conduct an alternatives analysis for this and other Phase III ERP projects that explores project alternatives from the array of project proposals submitted to Gulf Spill Restoration portal, rather than merely restating that a project meets the criteria under a programmatic alternative and that no other project or set of projects could compensate for the loss of use identified.

Response: The Trustees evaluated a range of project alternatives, both in the overall selection of the Gulf State Park Enhancement Project for inclusion in the Preferred Alternative and in the selection of the project elements within the Gulf State Park Enhancement Project itself. The Trustees considered [types] of projects in Alabama (See Chapter 11, Section 11.6.3). Within the Gulf State Park Enhancement Project, the Trustees determined that the best way to increase access to Gulf State Park was to provide additional lodging for visitors. The Trustees determined that a lodge would best accomplish this goal by allowing for the most rooms (and, therefore, access) in the least amount of space and that such lodge would fit on an already-disturbed footprint. The selection of the lodge for inclusion in the Gulf State Park Enhancement Project was an alternative to building additional campgrounds or cabins, which would disturb a very large portion of the Gulf State Park's undisturbed natural environment.

254. Comment: There are other projects that should occur instead of the GSP project including land acquisition, studies to monitor long-term impacts to quality of life, building plants to provide alternative sources of energy, addressing invasive species in the park, protecting against future environmental disasters, and alternative recreation projects such as enhanced campgrounds, adding modest priced housing stock or subsidize it, creating inland parking and/or a shuttle bus service to transport people to the beach area, or building an elevated walkway over the highway.

Response: The Trustees will continue to evaluate new and existing project ideas as potential DWH NRDA restoration projects. Project ideas can continue to be submitted and reviewed at http:www.gulfspillrestoration.noaa.gov/restoration/.

255. Comment: The Trustees should include additional elements such as clarification on access to the research and education center, a requirement (rather than suggestion) that best green building practices be employed with specific requirements for LEED and Green Seal Environmental Standard certifications, a requirement that the building take into account sensitive habitat and species, a clarification on how operations and maintenance will be funded, and controls on how the money allocated to the lodge is spent and how cost overruns will be handled. The Trustees should consider that control of storm water be a top priority, that lodge revenue be used for other restoration projects, that the education center include an exhibit on the BP oil spill and that the dune restoration involve high school students. Development of a construction plan should address species, noise, and pollution, and incorporate best management practices from the local community, university experts, federal agencies and NGOs. The planning and design process should include consultation with outside groups regarding storm preparedness, costal adaptation and resiliency planning, and the state should review similar coastal facilities for suggestions on maximum sustainability.

    Response: Specific design and implementation elements of the Gulf State Park Enhancement Project will be developed further as the design is finalized. The Trustees are committed to providing a facility that minimizes the facility's impact on the environment and establishes it as a model for regionally-appropriate coastal zone design and will take these suggestions under consideration in the development of the project. Information on funds for operation and maintenance regarding the Gulf State Park Enhancement Project has been added to Chapter 11.

256. Comment: There is not adequate information to inform the NEPA process since the project is "conceptual."

    Response: The Council on Environmental Quality (CEQ) regulations for implementing NEPA encourage NEPA to occur early in the planning process stating that the NEPA process should be integrated "with other planning at the earliest possible time to insure that planning and decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts" (40 C.F.R. §1501.2). While design work on the Gulf State Park Enhancement Project is not finalized, the level of detail provided in the environmental review document provides sufficient level of detail to analyze the impacts of the process, while meeting the intent of implementing NEPA early in the planning process, rather than in later stages of design. Further, the discussion provides a site-specific analysis of the impacts of the proposed project. NEPA states that a "[p]roposal exists at that stage in the development of an action when an agency subject to the Act has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal and the effects can be meaningfully evaluated" (40 C.F.R. § 1508.23). If the Trustees make substantial changes to the project that are relevant to environmental concerns, or if there are significant new circumstances or information relevant to environmental concerns and bearing on the project or its impacts, additional NEPA analysis could be required.

257. Comment: The proposal should be looked at in the context of the region, including components of the projects and the cumulative (direct and indirect) effects, to avoid segmentation. The entire GSP project has not been sufficiently analyzed and there are impacts of additional work not taken into consideration.

Response: As stated in section 11.7.7 of the Phase III ERP/PEIS, while only a portion of the lodge and conference center is being implemented with NRDA funding, the project impacts were analyzed as a whole, including the portions not funded under NRDA. Likewise, the analysis was conducted for all five project elements operating as a whole looking at both short- and long-term impacts. Since all five elements of the project were looked at in their entirely, even components not completely funded, no segmentation has occurred.

In looking at indirect impacts from potential increases in visitation, these impacts were addressed in the environmental review document. As the lodge and conference center would be built in an already developed area and within the historic footprint of the previous lodge, infrastructure is already in place and has the capacity to address the additional visitation that would occur. The site design process will address water quality concerns, as the footprint of the proposed facility is less than the previous facility and will include numerous stormwater prevention/retention elements on site to protect water quality in the area. While an increase in traffic would occur, a traffic study was conducted and showed the impacts of increased traffic would be at a moderate level with site mitigation (see section 11.7.6 "Traffic and Transportation" of the Phase III ERP/EIS).

258. Comment: There will be socioeconomic impacts associated with the lodge and conference; Trustees should clarify if visitors will be new visitors to the park or the region and how the project will impact similar businesses in the area.

Response: The GSP Enhancement Project is expected to draw many new visitors to the area's natural resources and improve the recreational experience for existing visitors. Construction of the lodge will bring new visitors by creating shorter-term overnight stay opportunities for visitors to the beach and park. Currently, short-term overnight lodging opportunities on the beach represent a relatively small proportion of all overnight lodging options in the area—the majority of options are condominiums that typically require minimum 5 to 7 night rentals. The lodge will cater to an under-served segment of the potential visitor population that seeks these shorter-term alternatives for visiting Gulf State Park and the broader Alabama coastal region. In addition the improved trails and interpretive facilities are expected to attract additional new visitors to the Park. With its emphasis on bringing new visitors to the region, the GSP Enhancement Project will have an overall positive impact on the socio-economic status of local residents and businesses, through the creation of new jobs and business opportunities in the Gulf Shores/Orange Beach area.

13.17.5.3 Alabama Oyster Cultch Restoration

259. Comment: Commenter(s) expressed support for this project.

Response: The Trustees acknowledge this support.

260. Comment: The Trustees should consider including additional elements such as a line item in the state budget for future operations, identifying a specific party for monitoring, developing

a plan for when and how oysters can be removed, providing more detail on monitoring and the monitoring timeframe, and considering additional studies in the assessment.

Response: As outlined in Section 11.9.4 "Operations and Maintenance", ADCNR will monitor the Alabama Oyster Cultch Restoration Project annually. A detailed description of the survey methods can be found in Section 11.9.4. As stated in Section 11.9.4, the project is expected to last approximately 10 years after harvesting begins. ADCNR regulates commercial and recreational harvest of oysters in State waters according to the regulations that can be found online at https://www.outdooralabama.com/images/file/Oyster%20Handout%20-%20Nov%2012.pdf.

261. Comment: Concerns were raised about the site selected for the project including if dredge disposal sites had been considered when choosing this site and only commercial harvest sites were considered.

Response: The proposed site for the Alabama Oyster Cultch Restoration project was selected based on physical and biological factors which make it suitable for recruitment. The proposed site is located within the footprint of historic oyster reefs and adjacent other reefs managed by ADCNR. There are no open-water dredged material disposal sites in proximity of the project site.

262. Comment: Commenters requested that projects related to oyster cultch restoration be coordinated across the Gulf Region and coordinated with related projects such as those that improve water quality.

Response: Project proposals, including oyster cultch projects, were and will continue to be coordinated among all the Trustees, including any that would fall within a given area or would have similar potential impacts.

13.17.5.4 New Projects or Alternatives: Alabama

263. Comment: A number of additional projects were recommended for implementation in Alabama, including but not limited to assisting with flood insurance, additional environmental restoration (reducing erosion, restoring habitats, etc.), projects on Dauphin Island such as erosion and living shorelines, reopening the area under the bridge at Alabama Point, addressing the seawall at Perdido Pass in Orange Beach, and funding projects in Africatown.

Response: The Trustees will continue to evaluate new and existing project ideas as potential DWH NRDA restoration projects. Project ideas can continue to be submitted and reviewed at http:www.gulfspillrestoration.noaa.gov/restoration/.

13.17.6 Florida

13.17.6.1 General

264. Comment: Trustees should be clearer on how they intend to balance key aspects of restoration, especially the conflicts that exist between restoring natural resources and increasing human access to resources to compensate for lost use.

Response: The Trustees have chosen projects where the adverse effects on the ecosystem can be avoided or minimized. The Trustees have had extensive consultations with resource agency

regulatory staff and designed project implementation so as to avoid or limit adverse effects to the ecosystem. Specific concerns regarding the sensitivities and avoidance of adverse effects to the ecosystem during implementation are discussed in the project sections. Where appropriate, Best Management Practices will be implemented to reduce the potential for collateral injury.

265. Comment: The state of Florida needs to build upon ecological restoration and consider a comprehensive plan to guide future restoration.

    Response: The Trustees agree that projects in Phases I-III are only the beginning of ecological restoration for resources injured by the Spill. While there is no Florida specific master plan, the comprehensive damage assessment and restoration plan will guide future restoration actions associated with the Spill.

266. Comment: Success of restoration projects rely on receiving water that is of adequate quality and quantity.

    Response: Water quality issues are one of many environmental conditions considered when projects are proposed. Hydrology and water quality are specifically addressed within the document in the Environmental Review for every project. The Trustees are confident of the likelihood of success of the selected projects given existing water quality conditions

267. Comment: The artificial reefs should be monitored to collect data on the increased effort the reefs will cause on marine fish populations.

    Response: Monitoring for Early Restoration projects is focused on the evaluation of project success. The level of monitoring information included in the Draft and Final Phase III ERP/PEIS is consistent with legal requirements. Monitoring of project post-construction impacts will be undertaken where required by law.

13.17.6.2 Florida Fish Hatchery

268. Comment: Commenter(s) expressed support for this project.

    Response: The Trustees acknowledge this support.

269. Comment: Commenter(s) expressed opposition to this project.

    Response: The Trustees acknowledge this opposition.

270. Comment: Nexus could be strengthened by specifying the type and amount of human losses that occurred as a result of the BP oil disaster.

    Response: As the assessment is ongoing, estimates of the total recreational losses are not yet available; however, total recreational loss estimates are not required to support the Phase III ERP/PEIS. At this point in the assessment, some injuries and losses, such as disruption in the public's recreational use of beaches, were readily observable and are well documented as widespread and extensive. The Final Phase III ERP/PEIS language in the project evaluation section has been updated to reflect the type of human losses.

271. Comment: Recommend implementing best practices to avoid collateral injuries to wild fish populations.

Response: The Trustees agree it is important to maintain and operate the hatchery facility in a manner that does not degrade wild fish populations. To this end, as described in the Phase III ERP/PEIS, one of the objectives of the project monitoring component is to assess the potential long-term impact on wild sport fish populations. Several methods that may be employed are described within. FWC has developed policies for genetic risk and release of marine organisms that are incorporated into state regulation at 68B-8.010, Fla. Admin. Code, and that will be followed in the implementation of the project to ensure that best practices are followed. These protocols will ensure that hatchery fish stock that is introduced will have negligible negative impacts on wild fish populations. Additionally, operation of the facility would follow the Florida Department of Agriculture and Consumer Services' Aquaculture Best Management Practices rules at 5L-3, Fla. Admin. Code.

272. Comment: Recommend that hatchery fish performance including disease and genetic diversity and impacts are rigorously monitored and practices are modified through adaptive management.

Response: FWC has fish health and genetic protocols in place to ensure that hatchery fish stock that are introduced will have negligible negative impacts on wild fish populations. As described in the Phase III ERP/PEIS, one of the objectives of the project monitoring component is to assess the potential long-term impact on wild sport fish populations. Several methods that may be employed are described within. FWC has developed policies for genetic risk and release of marine organisms and incorporated them into state regulation at 68B-8.010, Fla. Admin. Code. These policies will be followed in the implementation of the project in addition to compliance with the Florida Department of Agriculture and Consumer Services' Aquaculture Best Management Practices rules at 5L-3, Fla. Admin. Code.

273. Comment: Trustees should include more information on tracking post-release hatchery reared fish and commit to monitoring the broader northern Gulf environment to understand how ecosystem changes are affecting hatchery-reared fish survival.

Response: Building on more than 25 years of the state's operation of the Stock Enhancement Research Facility at Port Manatee, FL, five years of scientific monitoring is anticipated as part of the Florida Gulf Coast Marine Fisheries Hatchery/Enhancement Center project. This monitoring work is expected to provide information on stock fish survival, growth, and the reproductive contribution that hatchery fish make to wild populations.

The intent of the Early Restoration process is to implement projects that accelerate the restoration of resources injured by the DWH spill. Therefore, monitoring for Early Restoration projects is focused on the evaluation of project success. Long-term Gulf monitoring, while an important issue, does not meet this objective and is outside the scope of what the Trustees anticipate accomplishing as part of Early Restoration under the terms of the Framework Agreement with BP. The Trustees are committed to monitoring within the context of regulatory compliance and project performance under OPA. The Trustees are continuing to assess the potential injuries and losses to the natural resources caused by the Spill and anticipate developing broader monitoring efforts in later stages of the damage assessment and restoration planning process. The considerations and objectives for longer term monitoring are

continuing to be developed. The Trustees, in proposing long term monitoring approaches, will consider monitoring comments received on the Draft Phase III Early Restoration Plan and PEIS.

274. Comment: The Trustees should plan fisheries enhancement projects within the context of an integrated and systemic approach to restoration.

Response: The purpose of Early Restoration is to accelerate meaningful restoration of injured natural resources and their services resulting from the Spill while the natural resource damage assessment is ongoing. The Phase III ERP/PEIS is not intended to fully address all injuries caused by the Spill, which will be addressed in a comprehensive damage assessment and restoration plan. The Trustees continue to evaluate additional projects for funding as part of the Early Restoration process but also to work toward developing longer term restoration plans with the goal of fully compensating the public for all resource injuries and losses that resulted from the Spill. The hatchery is appropriate within the diverse portfolio of projects that will be implemented to address the multiple types of resources injured by the spill and because it is not inconsistent with restoration goals and projects for the Gulf, such a project can begin before the final restoration plan is developed.

275. Comment: Hatchery is not likely to be successful because the surrounding ecosystem is not conducive to the survival of hatchlings.

Response: Release of captive-spawned fish is described within the document. Fish from the Florida hatchery will be moved by truck or vessel and placed in suitable juvenile fish habitat throughout the northern Gulf of Mexico and would not rely on stocking within the immediate proximity of the hatchery.

276. Comment: Suggest seagrass and other habitat restoration should be done to restore fisheries rather than a hatchery.

Response: The Trustees agree that seagrass and habitat restoration are appropriate projects to restore fisheries and may choose such projects for those purposes in future restoration planning. The hatchery is intended to restore for lost recreational use of natural resources and met the parameters per the Framework Agreement. Selection of the hatchery project does not exclude a habitat restoration to benefit fisheries from being pursued through other opportunities.

277. Comment: Suggest the fish hatchery should have more educational component. For example could have collaborations with local governments, environmental groups and universities.

Response: Educational elements are contemplated for inclusion in the project and the full range of these elements has yet to be determined in the planning and design process. Proposal of the project has already necessitated local government collaboration in the project. Partnership with one or more universities and NGOs is expected as part of the operation of the facility.

278. Comment: Recommend the performance criteria for the project should include assessment of whether the experience of the recreational fishery is enhanced through the hatchery.

Response: Although it is complicated to directly link hatchery contributions to angler experience, part of the data to be collected during the 5-year monitoring period included

within the project will include fisheries abundance, catch, effort, and angler preferences in order to examine the impact of the project on recreational fishing.

279. Comment: The hatchery needs to be evaluated against other fishery enhancements like restoring a nursery habitat and using a hatchery. These two alternatives should be compared based on both the ecosystem restoration and the recreational values.

    Response: Additional projects may be proposed in the future as part of Early Restoration that would focus on other aspects of fishery enhancements within the project types assessed. The proposed hatchery project meets the criteria for Early Restoration project types. Additional site-specific alternatives analyses are not required.

280. Comment: Trustees should consider expanding the list of species reared to include species like blue crabs, tuna and cobia.

    Response: Species listed within the document are possibilities but do not represent an exclusive final determination. Species selection will be determined as part of the facility's future planning and design effort and will incorporate input from the local community and anglers.

281. Comment: Trustees should build a research facility for habitat restoration rather than a hatchery.

    Response: Early restoration projects must meet certain parameters per the Framework Agreement, and a facility intended solely for research would be unlikely to meet these parameters. The hatchery facility is intended to restore for lost recreational use, which would be difficult if not impossible to achieve with a habitat restoration research project. Selection of the hatchery project does not exclude a habitat restoration research facility from being pursued through other opportunities.

282. Comment: Water quality and habitat restoration within the watershed should be improved first, before a hatchery can be successful.

    Response: Water quality issues are one of many environmental conditions considered when projects are proposed, and hydrology and water quality are specifically addressed within the plan in the Environmental Review for every project. The Trustees are confident of the likelihood of success of the selected projects given existing water quality conditions. Fish from the Florida hatchery will be moved by truck or vessel and placed in suitable juvenile fish habitat throughout the northern Gulf of Mexico and would not rely on stocking solely within the immediate watershed of the hatchery.

283. Comment: Trustees have not been transparent during the project selection of this project.

    Response: The Trustees understand the importance and value of transparency in the NRDA restoration process and made substantial efforts to ensure the public is aware of the goals of restoration, the criteria to be applied in choosing restoration projects under OPA, the on-going opportunities for the public to submit projects for consideration, and the terms and processes outlined in the Framework Agreement that must also be satisfied to access BP funding.

    The Florida Trustee agencies have published and intermittently updated a list of potential Early Restoration projects on a public website for most of the duration of the Early Restoration

process since the Framework Agreement was entered; the hatchery was an early submission by FWC and is on that list as project M-2. Additionally, at the June 2011 meeting of the Pensacola City Council where negotiations to lease the project site to FWC were authorized, it was made known that *Deepwater Horizon* funds were being sought for project implementation. Full disclosure of the details of the projects being pursued is unwarranted while in negotiation with BP for agreement in principal, but the purpose of the public review process each phase of projects undergoes is to solicit feedback from members of the public prior to final decision-making concerning selection of the projects.

The hatchery project was among the projects listed in an announcement by the Trustees in the Federal Register on May 6, 2013, prior to the release of the Draft Phase III ERP/PEIS. On September 19, 2013, the Florida Trustee agencies, along with NOAA, hosted a workshop at the Sanders Beach-Corinne Jones Community Center in Pensacola to discuss three proposed local restoration projects: two living shoreline projects and the fish hatchery. After release of the Draft Phase III ERP/PEIS, nine public meetings were held across the Gulf, with an additional 12 community meetings intended to facilitate meaningful participation of minority and socially and economically disadvantaged communities. A public comment period was opened; originally set for 60 days, it was extended an additional 15 days. Collectively, these opportunities afforded the public to participate in Early Restoration planning have been substantial and extensive. The enhanced efforts for the *Deepwater Horizon* Spill are viewed by the Trustees as commensurate with the nature of the Spill.

284. Comment: Would like to see commemoration of the cultural value of Bruce Beach (i.e. could build a museum in addition to hatchery).

Response: The Phase III ERP/PEIS acknowledges the site's cultural importance and plans to incorporate an educational element about its past in the facility's planning. FWC has continued to meet with community representatives during the public review process and remains committed to recognizing the cultural history of the site in a manner compatible with the operation of a saltwater hatchery.

285. Comment: The hatchery should be relocated as it is subject to storm surges, the hatchery is not ideal use of land, and the area should remain for its cultural heritage or be used for other recreational opportunities. Suggestions include Port of Pensacola or Gulf Breeze EPA land.

Response: The hatchery site has been approved for this use by Pensacola city officials. The Trustees believe it is an appropriate use of the parcel, which has been vacant for many years. The proposed activities are not in conflict with the cultural heritage represented by the site and, in fact, this heritage will be commemorated at the location once redeveloped for the hatchery operation.

286. Comment: Redesign the hatchery to have a closed loop system.

Response: The recirculating aquaculture system to be incorporated in the design of the hatchery infrastructure will reuse approximately 80% of saltwater withdrawals from the bay.

287. Comment: Concern was raised over the revenue generated by the city from the lease fee.

Response: In June of 2011, the Pensacola City Council approved entry into negotiations with FWC for lease of the Bruce Beach site with the proposed lease fee. The contemplated fee is not atypical for a government partnership where activity is mutually desired by the parties. The vacant parcel will be substantially improved with the construction of the hatchery facility and its subsequent operation.

288. Comment: Concerns were raised about the participation of certain entities and individuals in the project.

    Response: Appropriate parties will be selected for participation as needed in accordance with federal and state laws, including competitive procurement processes as required. Participants will be accountable under applicable state and federal law protecting the public interest in government expenditures and other activities.

289. Comment: Hatchery raised fish will not increase native fish populations.

    Response: The hatchery has the potential to produce up to five million fish for release annually. Five years of scientific monitoring is anticipated as part of this project and is anticipated to provide information on stock fish survival, growth, and the reproductive contribution that hatchery fish make to wild populations.

290. Comment: Projects that are focused on cleaning up polluted bayous like Bayou Texas and Bayou Chico should be included instead of hatchery.

    Response: *Deepwater Horizon* Early Restoration projects must meet certain parameters per the Framework Agreement in order to receive funding from BP. Although many projects can restore for lost recreational use of natural resources and enhance fisheries, the hatchery project met the parameters for Early Restoration, including those from the Framework Agreement. Selection of the hatchery project does not exclude other appropriate projects, including those that benefit water quality, from being pursued through other opportunities, including future Gulf NRDA restoration.

291. Comment: Would like to see commercial development on the proposed hatchery site such as restaurants, theaters, empowerment center and retail stores that are all ADA accessible.

    Response: The Trustees proposed the marine fisheries hatchery/enhancement center in consultation with local representatives interested in pursuing the particular opportunities presented by this type of facility. The parcel where the facility is to be located is fairly small (10 acres) and co-located activities must be appropriate for the nature of a state-run saltwater hatchery. The facility will be designed to be accessible to public.

292. Comment: Trustees should replace the hatchery project with new project that would research and restore seagrass in the Florida Panhandle and include a public outreach and education facility that has an aquarium.

    Response: The hatchery is intended to restore for lost recreational use of natural resources and met the parameters per the Framework Agreement. Other projects, including emergency restoration conducted earlier in Florida and the Florida Seagrass Recovery project also proposed in Phase III for Early Restoration, are meant to restore seagrass resources. Selection

of the hatchery project does not exclude future seagrass restoration projects from being pursued through other opportunities, including future Gulf NRDA restoration.

13.17.6.3 Navarre Beach Park Coastal Access and Dune Restoration and Navarre Beach Park Gulfside Walkover Complex

293. Comment: Commenter(s) expressed support for these projects.

    Response: The Trustees acknowledge this support.

294. Comment: Commenter(s) expressed opposition to these projects.

    Response: The Trustees acknowledge this opposition.

295. Comment: Nexus could be strengthened by specifying the type and amount of human losses that occurred as a result of the BP oil disaster.

    Response: As the assessment is ongoing, total estimates of the recreational losses are not yet available; however, total recreational loss estimates are not required to support the Phase III ERP/PEIS. At this point in the assessment, some injuries and losses, such as disruption in the public's recreational use of beaches, were readily observable and are well documented as widespread and extensive. The Final Phase III ERP/PEIS language in the project evaluation section has been updated to reflect the type of human losses.

296. Comment: Trustees should explain whether human activity associated with the new facilities would significantly contribute to erosion, and if these new facilities will be threatened by erosion stemming from natural processes or human activity.

    Response: The human activity associated with the new facilities is not anticipated to significantly contribute to erosion. This expectation is based on Florida's experience with existing facilities at the site, which have not created erosion issues for the project area or the existing facilities. Furthermore, the proposed facilities will be built in accordance with federal and state guidelines, which will significantly reduce the threat of erosion from natural processes or human activity.

297. Comment: The Trustees should conduct a more thorough assessment of protected or sensitive species at the site.

    Response: A thorough assessment of protected or sensitive species at the site will be done as part of the environmental compliance consultations and permitting processes.

298. Comment: The proposal should be more explicit about the need for a state incidental take permit for state-listed least terns and snowy plovers, which may nest on the beach or mudflats in the vicinity of the project area.

    Response: Federal, state and local officials have met and have determined that the footprint of the infrastructure should be relocated. The proposed new location of the footprint would minimize the harm to state-listed birds, and would preclude the need for a state incidental take permit.

299. Comment: The project assessment needs the following information in order for the public to make a full and complete assessment of the project's environmental impacts: the presence of state-listed bird or sea turtle nesting habitat in Navarre Beach Park in relation to the project

site, a more thorough description of threats to these species for assessment of cumulative impacts, any required permits, and mitigation measures to minimize the impact of construction activity, facilities and future visitor use on the protected species.

Response: At the time of publication of the Draft Phase III ERP/PEIS, consultations for the Navarre Beach projects had not been initiated. Since then additional information has become available regarding the likelihood of species presence; general threats to the species and project specific threats, as well as avoidance, minimization, and mitigation measures. This additional information has been incorporated into the project-specific discussion in Chapter 12.

300. Comment: The proposal must better explain the relationship of the project to long-term restoration of dune and beach habitats and related species.

Response: The facilities that are being proposed are being built in accordance with federal and state guidelines to avoid, minimize and mitigate any negative effects on the surrounding dune and beach habitats and related species. The project is not anticipated to affect the long-term restoration of dune and beach habitats and related species.

301. Comment: The project description does not address the need to monitor the project's environmental impacts and does not commit to making funding available to Santa Rosa County for long-term monitoring and maintenance. The activities and cost of environmental performance monitoring should be included in the description and funding should be provided to the county.

Response: Monitoring for Early Restoration projects is focused on the evaluation of project success. The level of monitoring information included in the Phase III ERP/PEIS is consistent with legal requirements. Monitoring of project post-construction impacts will be undertaken where required by law. The County is providing the funding for maintenance.

302. Comment: Trustees should provide stronger assurance that long-term use of the new amenities would not pose an unreasonable risk to sensitive habitats and species.

Response: Appropriate measures will be taken to avoid and minimize impacts to sensitive habitats and species, such as nesting birds and beach mouse. Additionally, the footprint of the proposed infrastructure has been relocated to address concerns about potential impacts to sensitive habitats and species. Taking these measures into account, the long term use of the infrastructure will not pose an unreasonable risk to sensitive habitats and species.

303. Comment: Trustees should modify the project to incorporate additional bird viewing opportunities.

Response: The Trustees will consider additional bird viewing opportunities in the review of the final design of the project.

304. Comment: Questions rose as to whether additional walkovers and parking are needed because there is already sufficient beach access and available parking already.

Response: Santa Rosa County has evaluated the current use of their park, and the additional facilities are warranted based off their observations.

305. Comment: This project could hinder or contradict other NRDA projects to restore bird populations.

Response: The Trustees will coordinate among themselves to make sure that this project doesn't hinder or contradict other NRDA projects. Appropriate measures will be taken to avoid and minimize impacts to sensitive habitats and species. The proposed project will have the added benefit of funneling traffic away from sensitive habitats. The proposed project footprint has been relocated in consultation with federal, state and local officials, which will minimize the effects on nesting birds and their habitat.

306. Comment: Concern was raised over the current placement of infrastructure in relation to bird nesting habitat.

Response: Federal, state and local officials have met and have determined that the infrastructure should be relocated. The proposed new location of the footprint would minimize the harm to bird nesting habitat.

307. Comment: Dune systems cannot support construction of new walkovers.

Response: The new walkovers will be built to state and federal guidelines to avoid, minimize and mitigate impacts to the dunes. Furthermore, the existing foot traffic goes through the dune systems, so the walkways will significantly reduce current impacts to the dunes.

308. Comment: Modify walkovers and boardwalks so that they better support recreational users and those with disabilities.

Response: The new facilities, including the walkovers and boardwalks, are being designed to support recreational users. Additionally, the structures will be designed and built in compliance with the Americans With Disabilities Act.

309. Comment: Commenter recommends project does not move forward based on projected impact to sensitive species and habitat.

Response: Federal, state and local officials have met and have determined that the infrastructure should be relocated. The proposed new location of the footprint would avoid and minimize potential harm to sensitive species and habitat. Therefore, with the relocation of the footprint, the Trustees have determined that it is appropriate to move forward with the proposed project.

310. Comment: Suggest alternate projects that protect and restore wildlife and habitat instead of walkovers.

Response: This project is designed to address lost recreational use injury in Florida, and meets the criteria for Early Restoration project types. However, project ideas are still being solicited by the Trustees and can be submitted at http://www.gulfspillrestoration.noaa.gov/restoration/give-us-your-ideas/. Selection of the proposed Phase III projects does not preclude the selection of future projects that protect and restore wildlife and habitat.

13.17.6.4 Florida Pensacola Bay Living Shoreline Project

311. Comment: Commenter(s) expressed support for this project.

Response: The Trustees acknowledge this support.

312. Comment: Commenter(s) expressed opposition to this project.

Response: The Trustees acknowledge this opposition.

313. Comment: This was never a marsh area and it is not clear why you would make it one now.

Response: Pensacola Bay, including the Sanders Beach area, has undergone many changes affecting water quality and habitat. Past surveys of the northern portion of Pensacola Bay indicated that seagrass beds were common in this shallow estuary until the 1950s. Additional reports cite an abundance of species such as shrimp and other commercially important fisheries in Pensacola Bay. However, due to human disturbances such as dredging, pollution, and shoreline modification, conditions deteriorated resulting in poor water quality, habitat loss, and increased wave energy and shoreline erosion. Although improvements to water quality continue to make progress, the shoreline hardening and high wave energy have limited the ability of marine habitat to return to this portion of Pensacola Bay. The proposed Living Shorelines restoration technique creates habitats such as salt marshes and reefs to modify a site's environmental conditions, such as wave energy, so that habitat can become established. By establishing salt marsh and reef habitats at the proposed sites, the overall ecological condition of this portion of Pensacola Bay will improve and be capable of supporting a diversity of marine habitats and the species that depend on them.

314. Comment: The potential placement of oyster reef materials and marsh vegetation at Sanders Beach will take away from recreational opportunities in the area. The Sanders Beach portion of the project should be relocated to prevent disturbance of recreational opportunities.

Response: The activities proposed for the Florida Pensacola Bay Living Shoreline Project are based on restoration techniques that the Trustees identified to build on the success of previous Project GreenShores efforts and to achieve the restoration goals for this project. Upon approval of the project, an engineering and design process will be initiated to identify site specific criteria for the placement, dimensions, and overall design at each of the proposed sites, Sanders Beach and Project Greenshores Site II. The current recreational uses at Sanders Beach will be an important consideration in this design process. Therefore, the project will be designed to avoid or minimize the placement of project components within the open-water areas currently used for recreational purposes at Sanders Beach. In addition, the public will have the opportunity to provide input during the design process so that current types of recreational uses are fully considered in the final design for this project.

13.17.6.5 Florida Cat Point Living Shoreline Project

315. Comment: Commenter(s) expressed support for this project.

Response: The Trustees acknowledge this support.

316. Comment: Trustees should confirm there is no nesting of threatened species prior to beginning construction to ensure there is no incidental take.

Response: Prior to construction beginning, the Trustees shall obtain confirmation through pre-construction surveys that no sensitive species are nesting at the project site.

13.17.6.6 Norriego Point Restoration and Recreation Project

317. Comment: Commenter(s) expressed support for this project.

     Response: The Trustees acknowledge this support.

318. Comment: Commenter(s) expressed opposition to this project.

     Response: The Trustees acknowledge this opposition.

319. Comment: Nexus could be strengthened by specifying the type and amount of human losses that occurred as a result of the BP oil disaster.

     Response: As the assessment is ongoing, total estimates of the recreational losses are not yet available; however, total recreational loss estimates are not required to support the Phase III ERP/PEIS. At this point in the assessment, some injuries and losses, such as disruption in the public's recreational use of beaches, were readily observable and are well documented as widespread and extensive. The Final Phase III ERP/PEIS language in the project evaluation section has been updated to reflect the type of human losses.

320. Comment: The Trustees should clarify how the proposed parking area is needed to make the site's recreational uses accessible, functional or fully utilized; without a clear nexus to lost public loses this activity would not be justifiable under NRDA.

     Response: The proposed parking area is needed to enhance/increase access to the park, which will make the public's recreational use opportunities of the natural resources more accessible, functional or fully utilized. Similar past infrastructure components of projects have been implemented under other NRDA Restoration Plans.

321. Comment: Project monitoring activities should be expanded to include 1) tracking natural resource impacts, specifically changes in the abundance, behavior or types of native species, particularly birds, Gulf Sturgeon and bottlenose dolphin; 2) surveys of bird species of concern to track changes in abundance or behavior of animals for 10 years to determine impacts associated with human use; 3) surveys of changes in sediment distribution in the area for 10 years to assess whether the groins are having the desired effect; and 4) surveys to track changes in visitor attitudes of natural resources as well as visitor satisfaction

     Response: Monitoring for Early Restoration projects is focused on the evaluation of project success. The level of monitoring information included in the Phase III ERP/PEIS is consistent with legal requirements. Monitoring of project post-construction impacts will be undertaken where required by law. The state of Florida is not planning on doing satisfaction surveys at this point in time.

322. Comment: Norriego Point did not suffer any impact from the spill and therefore it is unclear whether this is a need for a project in this area.

     Response: Norriego Point was used as a response staging area during the oil spill and therefore was closed off to the general public. As a result of this closure, the public experienced a loss of recreational use.

323. Comment: This project will damage bird habitat.

Response: The project is not anticipated to result in significant negative impacts to bird habitat. Consideration of this resource has been part of a larger environmental compliance evaluation conducted in part by the U.S. Fish and Wildlife Service. Furthermore, the Trustees will be looking at ways to enhance bird habitat in certain areas of Norriego Point in the final design of the project.

13.17.6.7 Florida Artificial Reef Creation and Restoration

324. Comment: Commenter(s) expressed support for this project.

     Response: The Trustees acknowledge this support.

325. Comment: Commenter(s) expressed opposition to this project.

     Response: The Trustees acknowledge this opposition.

326. Comment: Nexus could be strengthened by specifying the type and amount of human losses that occurred as a result of the BP oil disaster.

     Response: As the assessment is ongoing, total estimates of the recreational losses are not yet available; however, total recreational loss estimates are not required to support the Phase III ERP/PEIS. At this point in the assessment, some injuries and losses, such as disruption in the public's recreational use of beaches, were readily observable and are well documented as widespread and extensive. The Final Phase III ERP/PEIS language in the project evaluation section has been updated to reflect the type of human losses.

327. Comment: Okaloosa County is not getting its proportional share of artificial reefs and therefore the project design should be modified to incorporate more reefs in Okaloosa County waters.

     Response: The Phase III ERP/PEIS describes permitted areas within which artificial reefs may be placed, but the final distribution of the reefs to be funded as part of this Phase III Early Restoration project is yet to be determined.

328. Comment: There should be more local government and contractor involvement in project implementation.

     Response: Local government and contractor involvement is robust in the existing state program for artificial reefs upon which the Early Restoration project builds. Applicable procurement laws will be followed in project implementation.

329. Comment: Artificial reefs also provide positive environmental contributions.

     Response: Project characterizations in the Phase III ERP/PEIS are chiefly driven by the primary restoration goal and the type of Offsets accorded to BP for agreeing to fund the Early Restoration project, but many if not all projects have ancillary benefits.

330. Comment: Commenter is concerned that majority of reefs are only accessible by power boat.

     Response: The final distribution of the reefs to be funded as part of the Phase III Early Restoration Project is yet to be determined. There will be a number of nearshore reefs that can be accessed by manually operated watercraft.

13.17.6.8 Developing Enhanced Recreational Opportunities on the Escribano Point Portion of the Yellow River Wildlife Management Area

331. Comment: Commenter(s) expressed support for this project.

     Response: The Trustees acknowledge this support.

332. Comment: Nexus could be strengthened by specifying the type and amount of human losses that occurred as a result of the BP oil disaster.

333. Response: As the assessment is ongoing, total estimates of the recreational losses are not yet available; however, total recreational loss estimates are not required to support the Phase III ERP/PEIS. At this point in the assessment, some injuries and losses, such as disruption in the public's recreational use of beaches, were readily observable and are well documented as widespread and extensive. The Final Phase III ERP/PEIS language in the project evaluation section has been updated to reflect the type of human losses.

334. Comment: Recommend Trustees consider the implications of increased access points and potentially increased angler traffic on existing fisheries monitoring programs. Trustees should explain how these increases should be factored into current sampling programs and costs of.

     Response: New access points will be readily incorporated into existing monitoring programs (e.g., NOAA's Marine Recreational Information Program) with negligible additional costs anticipated.

335. Comment: Recommend that the proposed natural areas assessment be integrated and inform the siting of amenities and infrastructure, including a new unpaved road.

     Response: The area inventory is anticipated to inform the infrastructure planning and design so that appropriate choices are made, balancing access and resource protection concerns.

336. Comment: The monitoring should be expanded to include: 1) tracking environmental impacts associated with increased human use; and 2) surveys of visitor satisfaction. The additional monitoring components recommended should be included in the project scope and budget.

     Response: Monitoring for Early Restoration projects is focused on the evaluation of project success. The level of monitoring information included in the Phase III ERP/PEIS is consistent with legal requirements. Monitoring of project post-construction impacts will be undertaken where required by law. The state of Florida is not planning on doing satisfaction surveys at this point in time.

337. Comment: A paved road would provide better access to the public and be more environmentally friendly by decreasing off road activities.

     Response: Multiple considerations will be taken into account in future planning and design of amenities for this project and appropriate selections will be made to protect resources while affording public access.

338. Comment: Concerns were raised over potential impacts of archaeological sites and recommends a full assessment be conducted.

     Response: Potential impacts to archaeological sites will be addressed through consultation (in progress) with the State Historic Preservation Officer conducted pursuant to the National

Historic Preservation Act and in compliance with state and federal laws protecting cultural resources.

13.17.6.9 Beach Enhancement Project at Gulf Island National Seashore

339. Commenter(s) expressed support for this project.

Response: The Trustees acknowledge this support.

340. Comment: Strengthen nexus by providing information on specific losses of specific types of lost human use services in order to determine if appropriately scaled.

Response: As the assessment is ongoing, estimates of the total recreational losses are not yet available; however, total recreational loss estimates are not required to support the Phase III ERP/PEIS. At this point in the assessment, some injuries and losses, such as disruption in the public's recreational use of beaches, were readily observable and are well documented as widespread and extensive. The Final Phase III ERP/PEIS language in the project evaluation section has been updated to reflect the type of human losses.

Comment: Weigh adverse environmental impacts from removal of large debris against benefit. Issue guidelines to avoid collateral injury.

Response: The Trustees are aware of possible short-term adverse impacts from this project and have evaluated those adverse impacts in the environmental consequences analysis for the project. The Trustees are employing many mitigation measures to prevent or minimize short-term adverse impacts. Any short-term adverse impacts are outweighed by the anticipated long-term benefits of the project.

The OPA NRDA Regulations at 15 CFR 990.54(a) provide factors for the Trustees to consider when selecting from a range of restoration alternatives. One of these factors in 15 CFR 990.54(a)(4) is the extent to which each alternative will avoid collateral injury as a result of implementing the alternative. The regulation contemplates that restoration projects may cause some degree of collateral injury in certain instances.

The Trustees have chosen projects where the adverse effects on the ecosystem can be avoided or minimized. The Trustees have had extensive consultations with resource agency regulatory staff and designed project implementation so as to avoid or limit adverse effects to the ecosystem. Specific concerns regarding the sensitivities and avoidance of adverse effects to the ecosystem during implementation are discussed in the project sections. Where appropriate, Best Management Practices will be implemented to reduce the potential for adverse effects. Therefore, the Trustees believe the Beach Enhancement Project at Gulf Islands National Seashore would not cause an "unacceptable level of ecological injury", based on the NEPA analysis.

341. Comment: Provide more information on how project is consistent with long term restoration plans.

Response: The project is consistent with guidance in the park's Draft General Management Plan, including the following guidance: "Restoration efforts would focus on reestablishing natural resource conditions that have been altered or impacted by human activity…" and

"[t]he wild and undeveloped nature of the national seashore would be maintained while providing visitor access to seashore educational and recreational opportunities."

The Phase III ERP/PEIS is not intended to fully address all injuries caused by the Spill, which will be addressed in a comprehensive damage assessment and restoration plan. The Trustees continue to evaluate additional projects for funding as part of the Early Restoration process but also to work toward developing longer term restoration plans with the goal of fully compensating the public for all resource injuries and losses that resulted from the Spill.

342. Comment: Responsibility of Trustees to monitor and replant.

Response: Monitoring success of replanted vegetation is part of the project plan. If survival success criteria are not met, replanting will occur.

343. Comment: Include duration and cost of monitoring.

Response: DOI will be using the existing protocols for gathering and evaluation of visitor feedback. The National Park Service routinely surveys visitors at Gulf Islands National Seashore to determine visitor satisfaction, and visitor centers make Visitor Comment Cards and suggestion boxes available to any visitor who would like to comment on any aspect of their recreation experience. The Trustees are providing a modest amount of funding to monitor visitor use feedback annually for the lifetime of the project.

344. Comment: Project should be expanded to include road hardening as is done in other areas.

Response: This project is only intended to improve visitor experience by cleaning up asphalt fragments and road base materials, not to improve existing park infrastructure. NEPA requires that an agency consider a reasonable range of alternatives and fully evaluate all reasonable alternatives that meet the purpose and need of the action. In this case, the Purpose and Need of Early Restoration is to accelerate meaningful restoration of injured natural resources and their services resulting from the Spill while work to complete the NRDA Assessment continues. State and Federal natural resource Trustees are in the process of assessing and quantifying injuries to natural resources and services provided by those resources caused by the Spill (NRDA Assessment) which will serve as the guide for identification of restoration projects to fully compensate the public for those injuries. The NRDA Assessment is ongoing; the subject of this PEIS is "Early Restoration." As such, the Phase III ERP/PEIS need not consider all potential techniques for restoration needed to compensate for all categories of injury at this time, but only those being considered as part of Early Restoration. Future assessments may consider additional techniques and project types, which will be the subject of additional analysis under NEPA.

345. Comment: The safe dates for bird nesting are not correct for this region and the Florida Fish and Wildlife Conservation Commission should be consulted before proceeding. Similarly, the statement that the activity will avoid the peak nesting season is inappropriate—instead, work should not be initiated until area biologists confirm the last beach-nesting birds of the season have fledged. This is a more accommodating trigger, since chicks can fledge across a wide range of time in late summer and this will ensure that work does not begin too early, nor is it delayed unnecessarily.

Response: Breeding, nesting, and fledging birds are generally present on Florida's beaches between March and August of every year. Sometimes breeding and nesting can begin in early February and fledging can extend into the fall. The NPS Beach Enhancement project will occur mostly during the late summer, fall, and winter months to avoid breeding, nesting, and fledging migratory birds. To aid NPS in planning, NPS will not conduct activities between March 15 and August 15 in areas where birds nest, as we can assume breeding birds will be present at Gulf Islands. The intent of the measure was, as the commenter suggested, to not begin work in areas of bird activity until all chicks have fledged or until there is no risk to any fledglings. This date could be before or after August 15. Similarly, work may continue in bird habitat until March 15; however if breeding activities begin earlier, work would cease in those areas and a protective, no-work buffer around them would be established in coordination with U.S. Fish and Wildlife Service (USFWS) and the Florida Fish and Wildlife Conservation Commission (FWC). Gulf Islands National Seashore serves as a sanctuary for nesting shorebirds, and will conduct the proposed project in a manner to avoid impacts to breeding, nesting, and fledging migratory birds.

346. Comment: Trustee should coordinate with USFWS Ecological Services and the Florida Fish and Wildlife Conservation Commission for best configuration and percent cover recommendations for vegetative replanting.

    Response: We agree that finding the right percent-cover of vegetative plantings is important to ecosystem balance and plan to coordinate with USFWS and FWC regarding these details. Currently, no net change in the size of vegetated areas is planned.

13.17.6.10 Florida Seagrass Recovery Project

347. Comment: Commenter(s) expressed support for this project.

    Response: The Trustees acknowledge this support.

348. Comment: The Trustees should consider pairing seagrass restoration projects with nearby water quality and sediment stabilization projects to maintain good seagrass growing conditions and achieve a more comprehensive approach to restoration.

    Response: This project is designed to address seagrass injury in Florida. However, project ideas are still being solicited by the Trustees and can be submitted at http://www.gulfspillrestoration.noaa.gov/restoration/give-us-your-ideas/. Selection of the proposed Phase III projects does not preclude the selection of future projects that would maintain good seagrass growing conditions.

349. Comment: Project should be expanded to include temporary enforceable poll and troll zones established at these sites until plantings are well established.

    Response: Based on past experience with seagrass restoration in the Panhandle, at this time, such zones have not determined to be necessary for success of the project. The reestablishment of buoys and signs are designed to avoid and minimize impacts to new seagrass plantings.

13.17.6.11 Deer Lake State Park Development

350. Comment: Commenter(s) expressed opposition to this project.

     Response: The Trustees acknowledge this opposition.

351. Comment: Nexus could be strengthened by specifying the type and amount of human losses that occurred as a result of the BP oil disaster.

     Response: As the assessment is ongoing, total estimates of the recreational losses are not yet available; however, total recreational loss estimates are not required to support the Phase III ERP/PEIS. At this point in the assessment, some injuries and losses, such as disruption in the public's recreational use of beaches, were readily observable and are well documented as widespread and extensive. The Final Phase III ERP/PEIS language in the project evaluation section has been updated to reflect the type of human losses.

352. Comment: The addition of impervious surface (likely asphalt) could contribute higher contaminant loads through runoff into nearby Deer Lake; the environmental consequences do not explicitly address the issue of runoff from new impervious surface. This analysis must be included in the EA.

     Response: The state of Florida has an active storm-water program, and the potential for higher contaminant loads through runoff into nearby Deer Lake will be addressed in the state permitting process. The language in the project specific environmental analysis has been updated.

353. Comment: The proposed project site is not appropriate because the environmental harm that is likely to result from project construction is not acceptable and would conflict with the spirit of NRDA. Project is problematic because the project site is in close proximity to wetlands and sensitive species or their critical habitat that would likely be harmed if the project is approved.

     Response: The Trustees are aware of possible short-term adverse impacts from this project and have evaluated those adverse impacts in the environmental consequences analysis for the project. The Trustees are employing mitigation measures to prevent or minimize short-term adverse impacts. Any short-term adverse impacts are outweighed by the anticipated long-term benefits of the project.

     The OPA NRDA Regulations at 15 CFR 990.54(a) provide factors for the Trustees to consider when selecting from a range of restoration alternatives. One of these factors in 15 CFR 990.54(a)(4) is the extent to which each alternative will avoid collateral injury as a result of implementing the alternative. The regulation contemplates that restoration projects may cause some degree of collateral injury in certain instances.

     Avoiding, minimizing, or mitigating any adverse ecological effects from a restoration project is essential to achieving the Trustees' goals. Narrowing the range of acceptable projects to those with no collateral adverse effects, however, would artificially exclude many restoration alternatives with very high net benefits to natural resources and their services to the public. The Trustees have selected projects where the adverse effects on the ecosystem can be avoided or minimized. Where appropriate, Best Management Practices will be implemented to reduce the potential for collateral injury. The proposed Deer Lake State Park project would not

cause an "unacceptable level of ecological injury", based on the NEPA and NRDA analyses, regulatory compliance consultations and other information presented in the Final Phase III ERP/PEIS.

354. Comment: Monitoring should be conducted to determine whether increased visitor use is impacting native species or having other undesirable effects (e.g., trash). The duration, data collection entity and estimated cost of the monitoring should be specified.

Response: Monitoring for Early Restoration projects is focused on the evaluation of project success. The level of monitoring information included in the Phase III ERP/PEIS is consistent with legal requirements. Monitoring of project post-construction impacts will be undertaken where required by law.

13.17.6.12 Gulf Islands National Seashore Ferry Project

355. Comment: Commenter(s) expressed support for this project.

Response: The Trustees acknowledge this support.

356. Comment: Provide information on how visitor use changed during oil spill to strengthen nexus.

Response: As the assessment is ongoing, estimates of the total recreational losses are not yet available; however, total recreational loss estimates are not required to support the Phase III ERP/PEIS. At this point in the assessment, some injuries and losses, such as disruption in the public's recreational use of beaches, were readily observable and are well documented as widespread and extensive. The Final Phase III ERP/PEIS language in the project evaluation section has been updated to reflect the type of human losses.

357. Comment: Project could cause various collateral injuries and these must be addressed in a way that avoids segmentation under NEPA

Response: The potential environmental effects of this project have been evaluated through the "Fort Pickens Pier and Ferry Service Environmental Assessment" (Fort Pickens EA) and related FONSI completed in 2011, as well as the Phase III ERP/PEIS. The potential impacts of the ferry service operation and the now-complete Fort Pickens Pier construction were evaluated in the Fort Pickens EA and FONSI, which determined the selected action would not have significant adverse impacts to public health, public safety, threatened or endangered species, or other unique characteristics of the region, such as habitat. The Phase III ERP/PEIS includes additional analysis of the ferry service operation, and also evaluates components of the project that would not be funded with Early Restoration funds, which include constructing two passenger queuing areas – one with a small ticketing facility; constructing a floating dock near Plaza de Luna, a landing, and a ramp between the two in one area; and constructing an additional floating dock at Quietwater Beach. Additionally, the Trustees have included information and environmental analysis in Chapter 12 for the interim option of operating the ferries from the existing facilities at Plaza de Luna and Quietwater Beach, if the ferries are ready for operation before the docks are funded or completed.

358. Comment: No discussion of alternatives to avoid collateral injury; if none, then should take mitigation measures.

Response: The Trustees are aware of possible short-term adverse impacts from this project and have evaluated those adverse impacts in the environmental consequences analysis for the project. The Trustees are employing many mitigation measures to prevent or minimize short-term adverse impacts. Any short-term adverse impacts are outweighed by the anticipated long-term benefits of the project.

The OPA NRDA Regulations at 15 CFR 990.54(a) provide factors for the Trustees to consider when selecting from a range of restoration alternatives. One of these factors in 15 CFR 990.54(a)(4) is the extent to which each alternative will avoid collateral injury as a result of implementing the alternative. The regulation contemplates that restoration projects may cause some degree of collateral injury in certain instances.

The Trustees have chosen projects where the adverse effects on the ecosystem can be avoided or minimized. The Trustees have had extensive consultations with resource agency regulatory staff and designed project implementation so as to avoid or limit adverse effects to the ecosystem. Specific concerns regarding the sensitivities and avoidance of adverse effects to the ecosystem during implementation are discussed in the project sections. Where appropriate, Best Management Practices will be implemented to reduce the potential for adverse effects. Therefore, the Trustees believe that the Gulf Islands National Seashore Ferry Project would not cause an "unacceptable level of ecological injury", based on the NEPA analysis.

359. Comment: Project needs a better discussion of cost, funding, timeline and feasibility of non-NRDAR-funded aspects to determine if feasible.

Response: The National Park Service is in the process of analyzing the feasibility of the entire ferry project, including a new dock and an expanded existing dock, as well as related facilities ("local facilities"). In this process the NPS has engaged all local partners, including City of Pensacola, Santa Rosa Island Authority, Escambia County, West Florida Regional Planning Council and the Northwest Transportation Planning Organization. Based on analyses to date, in consultation with its partners, NPS estimates that the costs to design, permit, and construct the local facilities are $2.5 million and that completion of these facilities will occur by December 2016. At least two funding sources have been identified -FHWA Federal Lands Access Program and FTA Discretionary Passenger Ferry Grant Program – and will be pursued by the local partners for the ferry project, with assistance from the National Park Service. In addition, the ferry project partners are investigating the availability of additional local, state and other federal funds. In the event that sufficient funding cannot be obtained and the facilities built before the boats are deployed, existing facilities within the City of Pensacola and Pensacola Beach could be used in lieu of new local facilities. A brief description and analysis of the potential use of these existing facilities has been added to the project description and environmental review in Chapter 12.

360. Comment: Project needs description of impacts from non-NRDAR-funded aspects to decide if EIS should be done.

Response: The Trustees have analyzed this project, including all connected actions, in this Programmatic Environmental Impact Statement. The Trustees do not intend to re-analyze the project in a separate EIS.

361. Comment: Monitoring plan should be expanded and timeline and cost provided.

Response: DOI will be using the existing protocols for gathering and evaluation of visitor feedback. The National Park Service routinely surveys visitors at Gulf Islands National Seashore to determine visitor satisfaction, and visitor centers make Visitor Comment Cards and suggestion boxes available to any visitor who would like to comment on any aspect of their recreation experience. The Trustees are providing a modest amount of funding to monitor visitor use feedback annually for the lifetime of the project.

13.17.6.13 Big Lagoon State Park Boat Ramp Improvement

362. Comment: Commenter(s) expressed support for this project.

Response: The Trustees acknowledge this support.

363. Comment: Nexus could be strengthened by specifying the type and amount of human losses that occurred as a result of the BP oil disaster.

Response: As the assessment is ongoing, total estimates of the recreational losses are not yet available; however, total recreational loss estimates are not required to support the Phase III ERP/PEIS. At this point in the assessment, some injuries and losses, such as disruption in the public's recreational use of beaches, were readily observable and are well documented as widespread and extensive. The Final Phase III ERP/PEIS language in the project evaluation section has been updated to reflect the type of human losses.

364. Comment: Each of the identified protected species should include the following information: identify frequency of presence and important habitat in Big Lagoon State Park, especially mapped in relation to the project site if possible; common threats and threats specifically from the proposed project; and mitigation measures to minimize the impact of construction activity and boat ramp use on the protected species.

Response: At the time of publication of the Draft Phase III ERP/PEIS, consultations for the Big Lagoon State Park project had not been initiated. Since then additional information has become available regarding the likelihood of species presence; general threats to the species and project specific threats, as well as avoidance, minimization, and mitigation measures. This additional project-specific information has been incorporated into Chapter 12.

365. Comment: A thorough terrestrial and submerged vegetation survey should be conducted before construction.

Response: As part of the environmental compliance consultation and permitting process, all appropriate surveys will be completed before construction.

366. Comment: Recommend Trustees consider the implications of increased access points and potentially increased angler traffic on existing fisheries monitoring programs. Trustees should explain how these increases should be factored into current sampling programs and costs of monitoring.

Response: New access points will be readily incorporated into existing monitoring programs (e.g., NOAA's Marine Recreational Information Program) with negligible additional costs anticipated.

367. Comment: Trustees should consider collateral injuries, and actively mitigate them to cause the least harm possible to any sensitive habitat and species.

Response: Potential impacts to sensitive resources are assessed within the environmental review included in the Phase III ERP/PEIS and addressed through additional consultation and permitting regimes that are in progress with the appropriate jurisdictional agencies. Additionally, the construction permit will require the implementation of BMPs that will avoid, minimize and mitigate harm to any sensitive habitat or species.

368. Comment: Recommend implementing no-wake or speed zones, posting educational signage at the boat ramp to remind boaters to avoid marine animals, increase law enforcement and establishing protocols to respond to boat-related hazardous material disasters.

Response: No-wake and speed zones will be addressed through existing state processes. The Boating and Waterways Section of FWC's Division of Law Enforcement is charged with responsibility to oversee and coordinate statewide regulatory waterway markers to ensure compliance with the uniform marking system and to improve compliance of state boating and resource protection zones. Boating and Waterways staff reviews locations of markers and plan for changes to increase effectiveness of public awareness and vessel operator compliance and monitors FWC-maintained markers for repairs.

Informational signage is being addressed in environmental compliance consultations with the federal agencies and will be finalized during future planning and implementation of the project. The local governments shall be responsible for establishing protocols to respond to nearby boat-related hazardous material disasters.

369. Comment: Recommend increasing monitoring to include: 1) surveys of visitor satisfaction; and 2) surveys of environmental impacts associated with increased visitation. The frequency, duration and estimated costs of these monitoring activities should also be included in the final proposal; the project should budget for all monitoring activities.

Response: Monitoring for Early Restoration projects is focused on the evaluation of project success. The level of monitoring information included in the Phase III ERP/PEIS is consistent with legal requirements. Monitoring of project post-construction impacts will be undertaken where required by law. The state of Florida is not planning on doing satisfaction surveys at this point in time.

13.17.6.14 Bob Sikes Pier Parking and Trail Restoration

370. Comment: Commenter(s) expressed support for this project.

Response: The Trustees acknowledge this support.

371. Comment: Nexus could be strengthened by specifying the type and amount of human losses that occurred as a result of the BP oil disaster.

Response: As the assessment is ongoing, total estimates of the recreational losses are not yet available; however, total recreational loss estimates are not required to support the Phase III ERP/PEIS. At this point in the assessment, some injuries and losses, such as disruption in the public's recreational use of beaches, were readily observable and are well documented as

widespread and extensive. The Final Phase III ERP/PEIS language in the project evaluation section has been updated to reflect the type of human losses.

372. Comment: The parking area renovations, solar lighting and aspects of new signage appear to be cosmetic upgrades that the project does not describe as essential to making the pier more accessible, functional or fully utilized by the public. The final proposal should clarify these activities to strengthen the nexus to injury, which in this case is lost access to or enjoyment of natural resources.

    Response: The parking renovations, solar lighting and new signage are needed to enhance and/or increase access to the pier, which will make the public's recreational fishing and beach use opportunities more accessible, functional or fully utilized. Similar past infrastructure components of projects have been implemented under other NRDA Restoration Plans.

373. Comment: Recommend Trustees consider the implications of increased access points and potentially increased angler traffic on existing fisheries monitoring programs. Trustees should explain how these increases should be factored into current sampling programs and costs of monitoring.

    Response: New access points will be readily incorporated into existing monitoring programs (e.g., NOAA's Marine Recreational Information Program) with negligible additional costs anticipated.

374. Comment: Recommend that the Trustees expand the monitoring plan to evaluate visitor satisfaction on a periodic basis.

    Response: Monitoring for Early Restoration projects is focused on the evaluation of project success. The level of monitoring information included in the Phase III ERP/PEIS is consistent with legal requirements. The state of Florida is not planning on doing satisfaction surveys at this point in time.

375. Comment: The project should use best management practices in regard to nesting birds.

    Response: Best Management Practices will be utilized to avoid nesting birds. Consultations are underway with the U.S. Fish and Wildlife Service regarding compliance with federal laws protecting wildlife.

376. Comment: Pier signage should be expanded to include information on hooked turtles and birds.

    Response: This type of informational signage is being addressed in environmental compliance consultations with the federal agencies and will be finalized during future planning and implementation of the project.

13.17.6.15 Northwest Florida Estuarine Habitat Restoration, Protection and Education – Fort Walton Beach

377. Comment: Commenter(s) expressed opposition to this project.

    Response: The Trustees acknowledge this opposition.

378. Comment: Nexus could be strengthened by specifying the type and amount of human losses that occurred as a result of the BP oil disaster.

Response: As the assessment is ongoing, total estimates of the recreational losses are not yet available; however, total recreational loss estimates are not required to support the Phase III ERP/PEIS. At this point in the assessment, some injuries and losses, such as disruption in the public's recreational use of beaches, were readily observable and are well documented as widespread and extensive. The Final Phase III ERP/PEIS language in the project evaluation section has been updated to reflect the type of human losses.

379. Comment: The Trustees should clarify whether the private landowners have been approached to give their support for easements needed to allow the boardwalk to traverse their property, as this is an important consideration for project success.

Response: The private landowners have been initially approached by the local government about granting easements for the proposed project. If easements cannot be obtained from the landowners, the final design will be altered to go around the private parcel(s).

380. Comment: The monitoring plan should be expanded to survey visitor satisfaction with the new amenities and to document environmental impacts (e.g., trash and trampling) that might result from increased visitation. The duration of long-term monitoring, frequency and estimated cost of the monitoring activities should be included in the monitoring plan, and the project should budget for these activities for several years.

Response: Monitoring for Early Restoration projects is focused on the evaluation of project success. The level of monitoring information included in the Phase III ERP/PEIS is consistent with legal requirements. Monitoring of project post-construction impacts will be undertaken where required by law. The state of Florida is not planning on doing satisfaction surveys at this point in time.

381. Comment: Trustees should clarify the type, scope or intended audience of mainstay educational curriculum to be presented and who was responsible for its development and continued execution.

Response: The educational curriculum will be developed after the boardwalk has been designed. The local government will be responsible for its development and continued execution.

382. Comment: Concern was raised that the project will impact the scenic views of the Okaloosa Sound and increase the human presence which could increase pollution, and security and safety hazards.

Response: The project is being designed to enhance the public's view of Okaloosa Sound. Furthermore, the project will be designed to minimize impacts on the views from adjacent properties. Any increased pollution and security and safety hazards that might occur due to increased human presence will be addressed by the local government, who is maintaining the project site.

13.17.6.16 City of Parker – Oak shore Drive Pier

383. Comment: Nexus could be strengthened by specifying the type and amount of human losses that occurred as a result of the BP oil disaster.

Response: As the assessment is ongoing, total estimates of the recreational losses are not yet available; however, total recreational loss estimates are not required to support the Phase III ERP/PEIS. At this point in the assessment, some injuries and losses, such as disruption in the public's recreational use of beaches, were readily observable and are well documented as widespread and extensive. The Final Phase III ERP/PEIS language in the project evaluation section has been updated to reflect the type of human losses.

384. Comment: According to the NEPA analysis, "the proposed project would have long-term moderate adverse impacts on seagrass habitat." More significantly, later in the project description draft NEPA analysis contradicts this by stating that the "analysis of environmental consequences suggests that […] no moderate to major adverse impacts are anticipated to result." An EIS is required for all "major Federal actions significantly affecting the quality of the human environment." This inconsistency requires remedying in the final NEPA analysis.

    Response: Due to concerns over impacts to the seagrass, the siting of the City of Parker Fishing Pier has changed to avoid or minimize impacts to seagrass. With this siting change, the project will have no longer a long term moderate adverse impact to seagrass. Instead the project is now anticipated to only long term minor adverse impacts on seagrass habitat. The language in the Environmental Analysis has been updated in Final Phase III ERP/PEIS to reflect this change.

385. Comment: Consideration should be given to relocating the fishing pier to an area slightly east of the current site that appears to have no seagrasses. Regardless, best practices that include the following should be integrated into project design: north-south pier orientation, leaving gaps between deck boards, and use of special material to maximize sunlight penetration.

    Response: The implementing Trustee has changed the siting of this structure to avoid existing seagrass. Additional decisions concerning final design will take into account permitting requirements. Furthermore, during construction, the implementing Trustee will implement BMPs to avoid, minimize and mitigate impacts to the surrounding seagrass.

386. Comment: Recommend improving and expanding the monitoring plan by including surveys of shading impacts on seagrasses, monofilament presence and fishing effort/catch. Project budget needs to account for these additional monitoring activities; the duration, frequency and estimated costs of these activities should also be specified.

    Response: Monitoring for Early Restoration projects is focused on the evaluation of project success. The level of monitoring information included in the Phase III ERP/PEIS is consistent with legal requirements. Monitoring of project post-construction impacts will be undertaken where required by law.

13.17.6.17 Panama City Marina Fishing Pier, Boat Ramp and Staging Docks

387. Comment: The Trustees should determine whether current or predicted levels of fishing effort warrant a new pier at the site before proceeding with construction.

    Response: The project was proposed by local government as part of a waterfront enhancement to address local demand for fishing opportunities. Additionally, fishing piers may be utilized for recreational activities other than fishing (e.g., wildlife viewing) and

therefore, fishing effort would be only one aspect of recreational use driving the need for infrastructure improvements.

388. Comment: Trustees also should consider whether upgrading or constructing piers and boat ramps at the proposed or future sites will have cumulative effects and, because of these possible effects, is consistent with long-term habitat, wildlife and fisheries restoration goals.

Response: Cumulative effects were identified and analyzed for the larger-scale north Gulf Coast region in Section 6.9 of the PEIS. Because this area covers thousands of miles of coastal shoreline and waters, the PEIS examined suites of activities (coastal development, industrial development, oil and gas production, etc.) in its past, present and reasonably foreseeable future actions. Current and historic trends related to adverse and beneficial effects were identified for each resource and each PEIS alternative was analyzed for its potential to add incrementally to cumulatively significant adverse and beneficial effects.

Additionally, in order to provide a more meaningful cumulative effects analysis, the state of Florida conducted a cumulative effects analysis on a smaller geographic scale so that past, present and reasonably foreseeable future actions in a given region could be analyzed. At the end of Chapters 12, proposed projects have been grouped by region or activity and were analyzed in two ways: 1) for potential to result in cumulatively significant effects when undertaken in close proximity to one another or in the same timeframes; and 2) to identify relevant past, present and reasonably foreseeable future actions, which may overlap in time or space with the groupings of those proposed Phase III projects.

Furthermore as are part of the consultation processes underway between the project proponent and the U.S. Fish and Wildlife Service and NOAA's Protected Resources Division and Habitat Conservation, the projects consistency with long-term habitat, wildlife and fisheries restoration goals will be evaluated.

389. Comment: Environmental impacts to federal- and state-protected species that are likely to occur in Panama City Marina from construction were discussed in the proposal. However, the assessment of these species is incomplete. Each of the identified protected species should include the following information: identify frequency of presence and important habitat, especially mapped in relation to the project site if possible; common threats and threats proposed by the project; and mitigation measures to minimize the impact of construction activity and boat ramp use on the protected species.

Response: At the time of publication of the Draft Phase III ERP/PEIS, consultations for the Panama City Marina project had not been initiated. Since then additional information has become available regarding the likelihood of species presence; general threats to the species and project specific threats, as well as avoidance, minimization, and mitigation measures. This additional project-specific information has been incorporated into Chapter 12.

390. Comment: Trustees should implement no-wake or speed zones, posting educational signage at the boat ramp to remind boaters to avoid marine animals, and establishing protocol to respond to nearby boat-related hazardous material disasters. Also, monofilament fishing line recycling programs and trash bins with proper disposal instructions for non-recyclable fishing line should be available at the pier.

Response: No-wake and speed zones will be addressed through existing state processes. The Boating and Waterways Section of FWC's Division of Law Enforcement is charged with responsibility to oversee and coordinate statewide regulatory waterway markers to ensure compliance with the uniform marking system and to improve compliance of state boating and resource protection zones. Boating and Waterways staff reviews locations of markers and plan for changes to increase effectiveness of public awareness and vessel operator compliance and monitors FWC-maintained markers for repairs.

Informational signage is being addressed in environmental compliance consultations with the federal agencies and will be finalized during future planning and implementation of the project. The local governments shall be responsible for establishing protocols to respond to nearby boat-related hazardous material disasters. Monofilament fishing line recycling trash bins with proper disposal instructions will be incorporated into the final design of the proposed project.

391. Comment: Recommend expanding long-term monitoring to include both environmental impacts associated with increased visitation and the types of recreational activity at the marina. Trustees should ensure that Panama City has the necessary funds and skill to conduct long-term maintenance and monitoring for this project.

Response: Monitoring for Early Restoration projects is focused on the evaluation of project success. The level of monitoring information included in the Phase III ERP/PEIS is consistent with legal requirements. Monitoring of project post-construction impacts will be undertaken where required by law. The City will provide the funds for long-term maintenance.

13.17.6.18 Wakulla Mashes Sands Park Improvements

392. Comment: Commenter(s) expressed opposition to this project.

Response: The Trustees acknowledge this opposition.

393. Comment: Nexus could be strengthened by specifying the type and amount of human losses that occurred as a result of the BP oil disaster.

Response: As the assessment is ongoing, total estimates of the recreational losses are not yet available; however, total recreational loss estimates are not required to support the Phase III ERP/PEIS. At this point in the assessment, some injuries and losses, such as disruption in the public's recreational use of beaches, were readily observable and are well documented as widespread and extensive. The Final Phase III ERP/PEIS language in the project evaluation section has been updated to reflect the type of human losses.

394. Comment: The upgrades to certain types of associated infrastructure (e.g., parking areas and bathrooms) should be explained in terms of their necessity for making the natural services accessible, functional or fully utilized. If these improvements are not essential, then they should be funded out of normal operating budgets, not NRDA funds.

Response: The parking areas and bathrooms are needed to enhance and/or increase access to the park, which will make the public's recreational boating and beach use opportunities more accessible, functional or fully utilized. Similar past infrastructure components of projects have been implemented under other NRDA Restoration Plans.

395. Comment: Trustees should explain the extended project timeline before the project is finalized and approved. Project is not expected to be completed until summer 2020.

Response: The timeline in the Draft Phase III ERP/PEIS is wrong. The completion date of the proposed project is anticipated to be 2015/2016. The language in the project specific section has been updated.

396. Comment: The monitoring plan should be expanded to include: 1) surveys assessing visitor enjoyment of the nature-based recreational opportunities should be conducted; and 2) surveys of environmental impacts such as disturbance to natural habitats or native species resulting from increased visitation should be documented. The duration, frequency and estimated cost of the monitoring should be included in the monitoring plan, and the project should budget for these activities for several years.

Response: Monitoring for Early Restoration projects is focused on the evaluation of project success. The level of monitoring information included in the Phase III ERP/PEIS is consistent with legal requirements. Monitoring of project post-construction impacts will be undertaken where required by law. The state of Florida is not planning on doing satisfaction surveys at this point in time.

397. Comment: Interpretive signage should be added to educate visitors about the site's unique or sensitive species and habitats and the importance of stewardship.

Response: This type of informational signage is being addressed in environmental compliance consultations with the federal agencies and will be finalized during future planning and implementation of the project.

13.17.6.19 Gulf Breeze Wayside Park Boat Ramp

398. Comment: Nexus could be strengthened by specifying the type and amount of human losses that occurred as a result of the BP oil disaster.

Response: As the assessment is ongoing, total estimates of the recreational losses are not yet available; however, total recreational loss estimates are not required to support the Phase III ERP/PEIS. At this point in the assessment, some injuries and losses, such as disruption in the public's recreational use of beaches, were readily observable and are well documented as widespread and extensive. The Final Phase III ERP/PEIS language in the project evaluation section has been updated to reflect the type of human losses.

399. Comment: The improvements to the bathroom and parking area may be appropriate if they make the boat ramp accessible, functional or fully utilized. We recommend clarifying the relevance of these components to strengthen the nexus to injury

Response: The parking areas and bathrooms are needed to enhance and/or increase access to the boat ramp, which will make the public's recreational boating and fishing puse opportunities more accessible, functional or fully utilized. Similar past infrastructure components of projects have been implemented under other NRDA Restoration Plans.

400. Comment: No-wake or speed zones should be established and educational signage posted at the boat ramp to inform boaters about the risks of boating to marine animals.

Response: No-wake and speed zones will be addressed through existing state processes. The Boating and Waterways Section of FWC's Division of Law Enforcement is charged with responsibility to oversee and coordinate statewide regulatory waterway markers to ensure compliance with the uniform marking system and to improve compliance of state boating and resource protection zones. Boating and Waterways staff reviews locations of markers and plan for changes to increase effectiveness of public awareness and vessel operator compliance and monitors FWC-maintained markers for repairs.

Informational signage is being addressed in environmental compliance consultations with the federal agencies and will be finalized during future planning and implementation of the project.

401. Comment: Monitoring should be expanded to include: 1) surveys for environmental impacts from usage; and 2) surveys of users to assess their level of satisfaction. Funding for these activities should be covered in the budget for a specified period of time

Response: Monitoring for Early Restoration projects is focused on the evaluation of project success. The level of monitoring information included in the Phase III ERP/PEIS is consistent with legal requirements. Monitoring of project post-construction impacts will be undertaken where required by law. The state of Florida is not planning on doing satisfaction surveys at this point in time.

402. Comment: Trustees should consider the implications of increased access points and potentially increased angler traffic on existing fisheries monitoring programs. Trustees should explain how these increases should be factored into current sampling programs and costs.

Response: New access points will be readily incorporated into existing monitoring programs (e.g., NOAA's Marine Recreational Information Program) with negligible additional costs anticipated.

403. Comment: Trustees should consider whether using NRDA Early Restoration to upgrade or construct new boat ramps at the proposed site or at future sites in the BP oil disaster impact area will have cumulative effects and whether these structures are consistent with long-term habitat, wildlife and fisheries recovery goals.

Response: Cumulative effects were identified and analyzed for the larger-scale north Gulf Coast region in Section 6.9 of the PEIS. Because this area covers thousands of miles of coastal shoreline and waters, the PEIS examined suites of activities (coastal development, industrial development, oil and gas production, etc.) in its past, present and reasonably foreseeable future actions. Current and historic trends related to adverse and beneficial effects were identified for each resource and each PEIS alternative was analyzed for its potential to add incrementally to cumulatively significant adverse and beneficial effects.

Additionally, in order to provide a more meaningful cumulative effects analysis, the state of Florida conducted a cumulative effects analysis on a smaller geographic scale so that past, present ad reasonably foreseeable future actions in a given region could be analyzed. At the end of Chapters 12, proposed projects have been grouped by region or activity and were analyzed in two ways: 1) for potential to result in cumulatively significant effects when undertaken in close proximity to one another or in the same timeframes; and 2) to identify

relevant past, present and reasonably foreseeable future actions, which may overlap in time or space with the groupings of those proposed Phase III projects.

Furthermore as are part of the consultation processes underway between the project proponent and the U.S. Fish and Wildlife Service and NOAA's Protected Resources Division and Habitat Conservation, the projects consistency with long-term habitat, wildlife and fisheries restoration goals will be evaluated.

13.17.6.20 Bald Point State Park Recreation Areas

404. Comment: Nexus could be strengthened by specifying the type and amount of human losses that occurred as a result of the BP oil disaster.

    Response: As the assessment is ongoing, total estimates of the recreational losses are not yet available; however, total recreational loss estimates are not required to support the Phase III ERP/PEIS. At this point in the assessment, some injuries and losses, such as disruption in the public's recreational use of beaches, were readily observable and are well documented as widespread and extensive. The Final Phase III ERP/PEIS language in the project evaluation section has been updated to reflect the type of human losses.

405. Comment: More information is needed to understand the purpose and benefits of the proposed aerobic treatment system and drain field and how it relates to the project.

    Response: The proposed aerobic treatment system and drainfield will service just the new restroom which will be built as part of the project. The proposed aerobic treatment system and drainfield will not be used to treat off-site locations.

406. Comment: Recommend that precautions be taken to prevent damage to existing wetland during construction.

    Response: As part of the permitting process, the Trustee will be required to implement BMPs to avoid, minimize and mitigate potential impacts to the wetland during construction.

407. Comment: The Trustees need to increase monitoring to include: 1) surveys for environmental impacts related to usage; and 2) periodic surveys gauging beach user satisfaction.

    Response: Monitoring for Early Restoration projects is focused on the evaluation of project success. The level of monitoring information included in the Phase III ERP/PEIS is consistent with legal requirements. Monitoring of project post-construction impacts will be undertaken where required by law. The state of Florida is not planning on doing satisfaction surveys at this point in time.

13.17.6.21 Enhancement of Franklin County Parks and Boat Ramps

408. Comment: Nexus could be strengthened by specifying the type and amount of human losses that occurred as a result of the BP oil disaster.

    Response: As the assessment is ongoing, total estimates of the recreational losses are not yet available; however, total recreational loss estimates are not required to support the Phase III ERP/PEIS. At this point in the assessment, some injuries and losses, such as disruption in the public's recreational use of beaches, were readily observable and are well documented as

widespread and extensive. The Final Phase III ERP/PEIS language in the project evaluation section has been updated to reflect the type of human losses.

409. Comment: More monitoring is needed to document impacts such as boater-wildlife interactions and trash (e.g., monofilament) and changes in recreational fishing effort and catch needed for fisheries management. These monitoring activities should all be covered in the project budget for a specified period of time.

Response: Monitoring for Early Restoration projects is focused on the evaluation of project success. The level of monitoring information included in the Phase III ERP/PEIS is consistent with legal requirements. Monitoring of project post-construction impacts will be undertaken where required by law.

410. Comment: Trustees need to consider the implications of increased access points and potentially increased angler traffic on existing fisheries monitoring programs. Trustees should explain how these increases should be factored into current sampling programs and costs of.

Response: New access points will be readily incorporated into existing monitoring programs (e.g., NOAA's Marine Recreational Information Program) with negligible additional costs anticipated.

411. Comment: Recommend implementing no-wake or speed zones, posting educational signage at the boat ramp to remind boaters to avoid marine animals, and establishing protocols to respond to nearby boat-related hazardous material disasters.

Response: No-wake and speed zones will be addressed through existing state processes. The Boating and Waterways Section of FWC's Division of Law Enforcement is charged with responsibility to oversee and coordinate statewide regulatory waterway markers to ensure compliance with the uniform marking system and to improve compliance of state boating and resource protection zones. Boating and Waterways staff reviews locations of markers and plan for changes to increase effectiveness of public awareness and vessel operator compliance and monitors FWC-maintained markers for repairs.

This informational signage is being addressed in environmental compliance consultations with the federal agencies and will be finalized during future planning and implementation of the project. The local governments shall be responsible for establishing protocols to respond to nearby boat-related hazardous material disasters.

13.17.6.22 Apalachicola River Wildlife and Environmental Area Fishing and Wildlife Viewing Access Improvements

412. Comment: Nexus could be strengthened by specifying the type and amount of human losses that occurred as a result of the BP oil disaster.

Response: As the assessment is ongoing, total estimates of the recreational losses are not yet available; however, total recreational loss estimates are not required to support the Phase III ERP/PEIS. At this point in the assessment, some injuries and losses, such as disruption in the public's recreational use of beaches, were readily observable and are well documented as widespread and extensive. The Final Phase III ERP/PEIS language in the project evaluation section has been updated to reflect the type of human losses.

413. Comment: Recommend the Trustees construct the Cash Bayou fishing and wildlife observation structure on the proposed previously disturbed site to minimize environmental impacts

Response: Florida Trustee representatives agree with this concept, and principles of avoidance and minimization will be incorporated into the final siting and design of infrastructure as appropriate.

414. Comment: Recommend that the monitoring plan be expanded to include the following: 1) environmental monitoring of increased human use of this natural area, and 2) visitor satisfaction levels. Should include these monitoring activities in the project description and the budget to ensure sufficient resources are dedicated to tracking impacts

Response: Monitoring for Early Restoration projects is focused on the evaluation of project success. The level of monitoring information included in the Phase III ERP/PEIS is consistent with legal requirements. Monitoring of project post-construction impacts will be undertaken where required by law. The state of Florida is not planning on doing satisfaction surveys at this point in time.

13.17.6.23 Perdido Key State Park Beach Boardwalk Improvements

415. Comment: Commenter(s) expressed support for this project.

Response: The Trustees acknowledge this support.

416. Comment: Final design plans should address impacts from storm surge and vertical growth of the dune field if existing dune conditions are maintained to allow for continued maturation of the primary and secondary dunes.

Response: The final designs of the proposed project will take these concerns into account.

417. Comment: Educational signage should be posted at the boardwalks to educate the public on the rarity of this habitat and the ecological and socioeconomic importance of maintaining this habitat in its natural condition.

Response: This type of informational signage is being addressed in environmental compliance consultations with the federal agencies and will be finalized during future planning and implementation of the project.

418. Comment: Recommend that additional monitoring of dune integrity, impacts related to human visitation and periodic surveys of visitor satisfaction are included in the final project description.

Response: Monitoring for Early Restoration projects is focused on the evaluation of project success. The level of monitoring information included in the Phase III ERP/PEIS is consistent with legal requirements. Monitoring of project post-construction impacts will be undertaken where required by law. The state of Florida is not planning on doing satisfaction surveys at this point in time.

13.17.6.24 Scallop Enhancement for Increased Recreational Fishing Opportunity in the Florida Panhandle

419. Comment: Commenter(s) expressed support for this project.

    Response: The Trustees acknowledge this support.

420. Comment: Nexus could be strengthened and clarified by specifying the type and amount of human losses that occurred as a result of the BP oil disaster.

    Response: As the assessment is ongoing, total estimates of the recreational losses are not yet available; however, total recreational loss estimates are not required to support the Phase III ERP/PEIS. At this point in the assessment, some injuries and losses, such as disruption in the public's recreational use of beaches, were readily observable and are well documented as widespread and extensive. The Final Phase III ERP/PEIS language in the project evaluation section has been updated to reflect the type of human losses.

421. Comment: Recommend that the Trustees carry out the project in phases, beginning with a pilot, and then scaling up.

    Response: Pilot projects are allowed under 15 CFR 990.54(c) if the Trustees need to identify and evaluate the feasibility and likelihood of success of a project, but a pilot project must be likely to provide information to determine the evaluation standards listed in 15 CFR 990.54(a), and be done at a reasonable cost and in a reasonable time frame. The Trustees have used pilot projects in other NRD cases, and the Trustees would be willing to conduct pilot projects in this or future phases of this case, assuming that the circumstances are appropriate. The Trustees have chosen projects that are known to be technically feasible to implement, and are likely to have long term success.

422. Comment: Recommend that the Trustees closely examine the reasons behind the 2002 recreational fishery closure and whether the re-establishment of one now is appropriate or feasible

    Response: The fishery closure was considered when the project was proposed. The project has been determined feasible but FWC will continue to assess unforeseen conditions during implementation of the project.

423. Comment: Recommend the Trustees take an integrated approach to restoration by addressing chronic ecosystem stressors such as impaired water quality that could improve project success and benefit a host of other habitats (e.g., seagrasses) and marine species.

    Response: The purpose of Early Restoration is to accelerate meaningful restoration of injured natural resources and their services resulting from the Spill while the natural resource damage assessment is ongoing. The Phase III ERP/PEIS is not intended to fully address all injuries caused by the Spill, which will be addressed in a comprehensive damage assessment and restoration plan. The Trustees continue to evaluate additional projects for funding as part of the Early Restoration process but also to work toward developing longer term restoration plans with the goal of fully compensating the public for all resource injuries and losses that resulted from the Spill.

424. Comment: The threshold for a self-sustaining population suitable for a sustainable recreational fishery should be better defined and specified in the final proposal.

Response: This work is being conducted as part of scallop fishery management activities by FWC independent of Early Restoration.

13.17.6.25 Shell Point Beach Nourishment

425. Comment: Nexus could be strengthened by specifying the type and amount of human losses that occurred as a result of the BP oil disaster.

Response: As the assessment is ongoing, total estimates of the recreational losses are not yet available; however, total recreational loss estimates are not required to support the Phase III ERP/PEIS. At this point in the assessment, some injuries and losses, such as disruption in the public's recreational use of beaches, were readily observable and are well documented as widespread and extensive. The Final Phase III ERP/PEIS language in the project evaluation section has been updated to reflect the type of human losses.

426. Comment: Concern was raised that the project would occur largely on privately owned beach because the sand would be placed above mean high water (i.e., private property), effectively excluding the public from enjoying the benefits of nourishment. We encourage the Trustees to explain the incongruity and describe how the public would benefit from this portion project.

Response: The proposed project is being limited to county owned upland only. The language in the project specific chapter has been updated to reflect this clarification.

427. Comment: Trustees should explore other strategies (e.g. acquire adjacent vacant lots) that when paired with beach nourishment may provide a more integrated and sustainable approach for reducing beach erosion.

Response: Project ideas are still being solicited by the Trustees and can be submitted at http://www.gulfspillrestoration.noaa.gov/restoration/. Selection of the proposed Phase III projects does not preclude the selection of other restoration projects that could address beach erosion.

428. Comment: Trustees need to monitor the fate of the supplemental sand as it is essential to measuring project performance and informing future beach nourishment projects in this part of the Gulf implemented with NRDA funding. All monitoring should be included in the project budget.

Response: The Florida Department of Environmental Protection requires beach restoration and beach nourishment permit holders to monitor the spreading and movement of sand following the initial placement of the fill material. This "physical monitoring" is collected over many years by performing bathymetric surveys, profile surveys, and aerial surveys. This data is submitted to the Florida Department of Environmental Protection for review as required by the permit.

429. Comment: The Trustees should perform periodic surveys of visitors to gauge their satisfaction with the nourished beach

Response: Monitoring for Early Restoration projects is focused on the evaluation of project success. The level of monitoring information included in the Phase III ERP/PEIS is consistent with legal requirements. The state of Florida is not planning on doing satisfaction surveys at this point in time.

13.17.6.26 Perdido Key Dune Restoration Project

430. Comment: Commenter(s) expressed support for this project.

     Response: The Trustees acknowledge this support.

431. Comment: Trustees should include a more thorough description of the maintenance and monitoring timelines and costs be included along with making a commitment to longer-term monitoring

     Response: The Trustees are currently developing a monitoring template for long term monitoring of dune restoration projects.

13.17.6.27 Florida Oyster Clutch Placement Project

432. Comment: Commenter(s) expressed support for this project.

     Response: The Trustees acknowledge this support.

433. Comment: The Trustees should develop a short guidance document for project managers describing the different oyster reef types (fishery harvest and ecosystem services) and the benefits associated with each type so that when future NRDA oyster restoration projects are selected the intended benefits and nexus of the project to injuries or lost services are clear to the public.

     Response: The state of Florida already has developed guidance that describes the different oyster reef types and the benefits associated with each type. This guidance has and will be taken into account when proposing restoration projects.

13.17.6.28 Strategically Provided Boat Access along Florida's Gulf Coast

434. Comment: Commenter(s) expressed opposition to this project.

     Response: The Trustees acknowledge this opposition.

435. Comment: Nexus could be strengthened by specifying the type and amount of human losses that occurred as a result of the BP oil disaster.

     Response: As the assessment is ongoing, total estimates of the recreational losses are not yet available; however, total recreational loss estimates are not required to support the Phase III ERP/PEIS. At this point in the assessment, some injuries and losses, such as disruption in the public's recreational use of beaches, were readily observable and are well documented as widespread and extensive. The Final Phase III ERP/PEIS language in the project evaluation section has been updated to reflect the type of human losses.

436. Comment: Cumulative impacts on manatees need to be addressed based on the distance boaters and anglers could travel from the project site. Potential impacts to manatees must be analyzed and reviewed per the Endangered Species Act and Marine Mammal Protection Act.

Response: Impacts to manatees and manatee habitat are being considered through consultations between the project proponent and the U.S. Fish and Wildlife Service to determine the project's compliance with various federal laws. Avoidance, minimization, and mitigation will be applied via permitting processes applicable to the project.

437. Comment: Monitoring plan for the eight projects is not sufficient. We strongly recommend that the following be addressed: 1) environmental monitoring of construction impacts (e.g., sedimentation) and human use impacts (e.g., monofilament) following completion, and 2) visitor satisfaction levels. Additional monitoring is needed to document the impacts of boating and angling on wildlife and fish populations.

    Response: Monitoring for Early Restoration projects is focused on the evaluation of project success. The level of monitoring information included in the Phase III ERP/PEIS is consistent with legal requirements. Monitoring of project post-construction impacts will be undertaken where required by law. The state of Florida is not planning on doing satisfaction surveys at this point in time.

438. Comment: Lafayette Creek Boat Dock in Walton County is inconsistent with the spirit of NRDA because of the potential for environmental impacts; and therefore should not be included in the final project proposal. The project involves substantial construction and conversion of natural habitat to accommodate doubling boat dock facilities, therefore the potential risk of collateral damage and environmental impacts is higher.

    Response: The Trustees are aware of possible short-term adverse impacts from this project and have evaluated those adverse impacts in the environmental consequences analysis for the project. The Trustees are employing mitigation measures to prevent or minimize short-term adverse impacts. Any short-term adverse impacts are outweighed by the anticipated long-term benefits of the project.

    The OPA NRDA Regulations at 15 CFR 990.54(a) provide factors for the Trustees to consider when selecting from a range of restoration alternatives. One of these factors in 15 CFR 990.54(a)(4) is the extent to which each alternative will avoid collateral injury as a result of implementing the alternative. The regulation contemplates that restoration projects may cause some degree of collateral injury in certain instances.

    Avoiding, minimizing, or mitigating any adverse ecological effects from a restoration project is essential to achieving the Trustees' goals. Narrowing the range of acceptable projects to those with no collateral adverse effects, however, would artificially exclude many restoration alternatives with very high net benefits to natural resources and their services to the public. The Trustees have selected projects where the adverse effects on the ecosystem can be avoided or minimized. Where appropriate, Best Management Practices will be implemented to reduce the potential for collateral injury. The proposed Lafayette Creek Boat Dock in Walton County project would not cause an "unacceptable level of ecological injury", based on the NEPA and NRDA analyses, regulatory compliance consultations and other information presented in the Final Phase III ERP/PEIS.

13.17.6.29 Walton County Boardwalks and Dune Crossovers

439. Comment: Commenter(s) expressed opposition to this project.

    Response: The Trustees acknowledge this opposition.

440. Comment: Nexus could be strengthened by specifying the type and amount of human losses that occurred as a result of the BP oil disaster.

    Response: As the assessment is ongoing, total estimates of the recreational losses are not yet available; however, total recreational loss estimates are not required to support the Phase III ERP/PEIS. At this point in the assessment, some injuries and losses, such as disruption in the public's recreational use of beaches, were readily observable and are well documented as widespread and extensive. The Final Phase III ERP/PEIS language in the project evaluation section has been updated to reflect the type of human losses.

441. Comment: Recommend increasing monitoring to include: 1) periodic surveys to gauge beach user satisfaction; and 2) surveys for environmental impacts related to usage. Environmental performance monitoring should be included in the project scope and budget.

    Response: Monitoring for Early Restoration projects is focused on the evaluation of project success. The level of monitoring information included in the Phase III ERP/PEIS is consistent with legal requirements. Monitoring of project post-construction impacts will be undertaken where required by law. The state of Florida is not planning on doing satisfaction surveys at this point in time.

442. Comment: The Palms of Dune Allen West Beach and Bayside Ranchette Beach components are inconsistent with the spirit of NRDA because of the potential for environmental impacts (collateral injury). The addition of facilities to the two undeveloped parcels of coastal property, Palms of Dune and Bayside Ranchette beaches, is of concern with regard to placing new infrastructure in undeveloped coastal habitat.

    Response: The Trustees are aware of possible short-term adverse impacts from these two subcomponents of this project and have evaluated those adverse impacts in the environmental consequences analysis for the project. The Trustees are employing mitigation measures to prevent or minimize short-term adverse impacts. Any short-term adverse impacts are outweighed by the anticipated long-term benefits of the project.

    The OPA NRDA Regulations at 15 CFR 990.54(a) provide factors for the Trustees to consider when selecting from a range of restoration alternatives. One of these factors in 15 CFR 990.54(a)(4) is the extent to which each alternative will avoid collateral injury as a result of implementing the alternative. The regulation contemplates that restoration projects may cause some degree of collateral injury in certain instances.

    Avoiding, minimizing, or mitigating any adverse ecological effects from a restoration project is essential to achieving the Trustees' goals. Narrowing the range of acceptable projects to those with no collateral adverse effects, however, would artificially exclude many restoration alternatives with very high net benefits to natural resources and their services to the public. The Trustees have selected projects where the adverse effects on the ecosystem can be avoided or minimized. Where appropriate, Best Management Practices will be implemented to

reduce the potential for collateral injury. The proposed Palms of Dune Allen West Beach and Bayside Ranchette Beach projects would not cause an "unacceptable level of ecological injury", based on the NEPA and NRDA analyses, regulatory compliance consultations and other information presented in the Final Phase III ERP/PEIS.

13.17.6.30 Gulf County Recreation Projects

443. Comment: Commenter(s) expressed opposition to this project.

     Response: The Trustees acknowledge this opposition.

444. Comment: Nexus could be strengthened by specifying the type and amount of human losses that occurred as a result of the BP oil disaster.

     Response: As the assessment is ongoing, total estimates of the recreational losses are not yet available; however, total recreational loss estimates are not required to support the Phase III ERP/PEIS. At this point in the assessment, some injuries and losses, such as disruption in the public's recreational use of beaches, were readily observable and are well documented as widespread and extensive. The Final Phase III ERP/PEIS language in the project evaluation section has been updated to reflect the type of human losses.

445. Comment: The Trustees need to increase monitoring to include: 1) surveys for environmental impacts related to usage; and 2) periodic surveys gauging beach user satisfaction.

     Response: Monitoring for Early Restoration projects is focused on the evaluation of project success. The level of monitoring information included in the Phase III ERP/PEIS is consistent with legal requirements. Monitoring of project post-construction impacts will be undertaken where required by law. The state of Florida is not planning on doing satisfaction surveys at this point in time.

446. Comment: Trustees need to consider the implications of increased access points and potentially increased angler traffic on existing fisheries monitoring programs. Trustees should explain how these increases should be factored into current sampling programs and costs of.

     Response: New access points will be readily incorporated into existing monitoring programs (e.g., NOAA's Marine Recreational Information Program) with negligible additional costs anticipated.

447. Comment: The Windmark Pier could increase fishing pressure in an area of St. Joseph Bay that is relatively remote and appears to less accessible to anglers than other more degraded areas of the Florida panhandle coast. This could exacerbate the problem of overfishing or undermine the recovery of fishery resources that were impacted by the BP oil disaster.

     Response: The Florida state-wide recreational survey doesn't show that there is any overfishing in the proposed project location. Additionally, no inshore stock that would be targeted is currently classified as overfished.

448. Comment: The Beacon Hill Memorial Park and Windmark Beach Fishing Pier components are inconsistent with the spirit of NRDA because of the potential for environmental impacts, which in our view violates a key principle of NRDA. The Windmark Beach Fishing Pier should not be built at the expense of converting upland coastal habitat. Beacon Hill project would impact

natural habitat in an area that appears to be surrounded by residential development, according to the aerial photograph in the proposal.

Response: The Trustees are aware of possible short-term and long-term minor adverse impacts from these two subcomponents of this project and have evaluated those adverse impacts in the environmental consequences analysis for the project. The Trustees are employing mitigation measures to prevent or minimize short-term and long-term minor adverse impacts. Any short-term and long-term minor adverse impacts are outweighed by the anticipated long-term benefits of the project.

The OPA NRDA Regulations at 15 CFR 990.54(a) provide factors for the Trustees to consider when selecting from a range of restoration alternatives. One of these factors in 15 CFR 990.54(a)(4) is the extent to which each alternative will avoid collateral injury as a result of implementing the alternative. The regulation contemplates that restoration projects may cause some degree of collateral injury in certain instances.

Avoiding, minimizing, or mitigating any adverse ecological effects from a restoration project is essential to achieving the Trustees' goals. Narrowing the range of acceptable projects to those with no collateral adverse effects, however, would artificially exclude many restoration alternatives with very high net benefits to natural resources and their services to the public. The Trustees have selected projects where the adverse effects on the ecosystem can be avoided or minimized. Where appropriate, Best Management Practices will be implemented to reduce the potential for collateral injury. The proposed Beacon Hill Memorial Park and Windmark Beach Fishing pier projects would not cause an "unacceptable level of ecological injury", based on the NEPA and NRDA analyses, regulatory compliance consultations and other information presented in the Final Phase III ERP/PEIS.

13.17.6.31 New Projects or Alternatives: Florida

449. Comment: Fund additional project types including those with an ecological focus, additional education opportunities, improving water quality, improving access to natural areas, invasive species reduction, and beach restoration. Commenters suggested addressing these project types though a variety of new projects, including but not limited to implementing Deadman's Island Oyster Reef Habitat Breakwater and Living Shoreline, Santa Rosa County Navarre Beach Renourishment and Dune Restoration project, planting seagrasses to improve water quality, a series of mini NERRs to employ graduates and focus on water quality, completing the Pensacola maritime park, and using funds to clean up oil pollution.

    Response: The Trustees acknowledge and appreciate the suggestion of additional restoration projects that may be suitable for restoring injuries caused by the Spill. The Trustees will continue to evaluate new and existing project ideas as potential DWH NRDA restoration projects. Project ideas can continue to be submitted and reviewed at http://www.gulfspillrestoration.noaa.gov/restoration/.

450. Comment: Washington County should be included in NRDA and Restore Funding

    Response: Projects in Washington County are not being considered for NRDA Early Restoration funding as the State of Florida is limiting such project to the 8 western-most Panhandle counties immediately adjacent to the Gulf of Mexico that disproportionately bore the direct

and response-related impacts of oiling. RESTORE is a separate process under different authorities and is independent of the decisions being made for *Deepwater Horizon* Early Restoration.

13.17.7 References

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