

December 4th, 2015

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

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

RE: Public Comments on the BP Oil Spill Consent Decree and Draft Programmatic Damage Assessment and Restoration Plan

Dear Mr. Cruden and Mr. Rauch:

On behalf the undersigned organizations, we would like to thank the Department of Justice and the State and Federal Trustees for their leadership in advancing a settlement with BP for natural resource damage claims, Clean Water Act civil claims and economic claims. Given the resources at stake and the impacted coastal communities' reliance on healthy ecosystems, it is critical that this agreement ensures effective, accountable governance and inclusive, meaningful public engagement to harness the full potential of these resources on behalf of the public.

We are concerned that the governance structure proposed in Consent Decree and in the Draft Programmatic Damage Assessment and Restoration Plan for implementing the Natural Resource Damage claims may hinder Gulf Coast communities' ability to play a significant role in restoration without significant improvements.¹ By distributing restoration decision-making across eight newly created Trustee Implementation Groups (TIGs) as opposed to a single Trustee Council, this agreement creates significant hurdles for the public's ability to having a meaningful voice across each TIG's planning process. With each TIG developing its own engagement strategies, the public must follow eight individual NRD processes, each with its own timelines and decision-makers. We are concerned this approach could create inefficiencies for the trustee agencies implementing public engagement and the public tracking the process. Such a diffuse governance structure threatens the inclusivity of public engagement among low income, rural, minority and limited English proficient members of the public, as well as those engaged in commercial fishing enterprises, who have interests across multiple TIGs but face additional hurdles to tracking all these different processes over time without greater coordination and additional resources and policies to support their engagement.

Currently the consent decree and DRDARP provides few detail about how the Trustee Council and TIGs will approach public engagement beyond generalized commitments to hold periodic open meetings at the discretion of TIGs and developing a web portal. Despite significant hurdles to engagement outlined above, the agreement takes no real steps to mitigate these challenges and support broader community involvement in restoration. Given the scale of the resources becoming available under this consent decree,

the significant interest of Gulf Coast communities in ensuring they are used properly to restore coastal ecosystems, and the limited opportunity to weigh in on NRD restoration proceeding the development of the consent decree, it will be important to develop coherent and sustained public engagement strategies going forward. The limited engagement and secrecy from federal and state trustee agencies to date continues to be a source of frustration by stakeholders and members of the public. Gulf Coast communities want a more authentic, sustained two way conversation about restoration with decision-makers going forward to be able to have greater understanding about developing plans and provide more significant and detailed input, based on the deep traditional ecological knowledge and interests of communities and stakeholder groups.

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

- The Trustee Council should develop strong standard operating procedures (SOPs) requiring each Trustee Implementation Group to develop common approaches, coordinated timelines and resources for engaging the public in developing draft restoration plans, in order to ensure inclusive participation. SOPs should promote steps to reach populations such as low income, minority, rural and limited English proficient communities and commercial and subsistence fishers across the coast which face hurdles to accessing public engagement opportunities and are disproportionately impacted by the health of coastal ecosystems. The public should be able to review and provide input on the Trustee Council's SOPs, including procedures for public engagement.
- The Trustee Council should promote engagement strategies beyond public meetings to support a two way dialogue about restoration. In particular, the consent decree and DRDARP should create a public advisory committee to facilitate sustained input from representatives of the public at-large and key stakeholder groups on the planning, evaluation, fund allocation, and conduct of restoration activities. Such a committee, and relevant sub-committees could ensure key interests across the Gulf Coast states including commercial and subsistence fishers, conservationists, recreational users, socially vulnerable and native stakeholders relevant to the various TIGs are informed, involved and can help educate broader constituencies about the decision making process going forward. The Exxon Valdez Consent Decree and Memorandum of Agreement between Alaska and the United States similarly required "meaningful public participation in the injury assessment and restoration process, which shall include establishment of a public advisory group..."ⁱⁱ The public advisory committee has been a critical part of informing restoration in Alaska. Subsequently, President Obama's National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling recommended that if a settlement of NRD claims with BP is reached by the Trustee Council, that a public advisory committee should be created in the Gulf.ⁱⁱⁱ The consent decree and DRDARP should require the creation of such a committee by the Trustee Council with appropriate public input on its makeup.
- Terms should be added to the Consent Decree to allow federal and state trustees and related agencies to give a preference in contracting and grantmaking decisions to promote the use of local workers and firms within NRD restoration. As cited in the DRDARP, local hiring has continued to be one of the top concerns of local residents during previous phases of public

hearings on NRD.^{iv} Terms on the consent decree should also include a requirement to post new job opportunities created by contracts or grants related to NRD restoration, or relevant subcontracts or subgrants, with state and/or local workforce development agencies nearest the site of such work, if state law does not already require such postings. Additionally, contractors should be required to consider workers referred to contractors and subcontractors by these local workforce agencies. Such terms should align with the language under the RESTORE Act, recent state laws in Florida, Louisiana and Mississippi and examples in federal contracting.^v

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

We thank you for the opportunity to comment on the consent decree and DRDARP to build a more vibrant, productive future for the Gulf of Mexico, its ecosystems and its communities. Thank you for your consideration of this request, and please let us know if we can provide additional information or assistance. For additional information, please contact Jeffrey Buchanan, Senior Domestic Policy Advisor at Oxfam America at (202) 299-7930 or jbuchanan@oxfamamerica.org.

Sincerely,

1 Anchor	(New Orleans, LA)
A Community Voice - Louisiana	(New Orleans, LA)
Air Alliance Houston	(Houston, TX)
Alabama Appleseed Center for Law & Justice, Inc.	(Montgomery, AL)
Alabama Coast United	(Orange Beach, AL)
Alabama Rivers Alliance	(Birmingham, AL)
Alliance Institute	(New Orleans, LA)
Apalachicola Riverkeeper	(Apalachicola, FL)
Atchafalaya Basinkeeper	(Baton Rouge, LA)
Back Bay Mission	(Gulfport, MS)
Boat People SOS	(Bayou La Batre, AL)
Brighter Future Foundation	
Calhoun County Resource Watch	(Seadrift, TX)
Center for Fair Housing	(Mobile, AL)
CLIMB CDC	(Gulfport, MS)

Commission on Stewardship of the Environment of the Louisiana Interchurch Conference	(Baton Rouge, LA)
Deep South Center for Environmental justice	(New Orleans, LA)
Disaster Accountability Project	
Earth Ethics	(Pensacola, FL)
Florida Clean Water Network	(Navarre, FL)
Florida Conference United Church of Christ	(Orlando, FL)
Galveston Baykeeper	(Galveston, TX)
Greater Light Ministries	(New Orleans, LA)
Gulf Islands Conservancy	(Gulfport, MS)
Gulf Restoration Network	(New Orleans, LA)
Hijra House	(Biloxi, Mississippi)
Homeowners' Hurricane Insurance Initiative	(Mobile, AL)
Idle No More - Gulf Coast	(Rayne, LA)
Interfaith Sponsoring Committee, BISCO	(Thibodaux, LA)
Latino Forum of New Orleans	(New Orleans, LA)
Levees.Org	(New Orleans, LA)
Limitless Vistas, Inc.	(New Orleans, LA)
Louisiana Environmental Action Network (LEAN)	(Baton Rouge, LA)
Louisiana Language Access Coalition	(New Orleans, LA)
Louisiana Shrimp Association	(Grand Isle, LA)
Lower Mississippi Riverkeeper	(Baton Rouge, LA)
Mary Queen of Viet Nam CDC	(New Orleans, LA)
Mind Power Collective	(New Orleans, LA)
Mississippi Center for Justice	(Jackson, MS)
Mobile Bay Sierra Club	(Mobile, AL)
Mobile County Training School Alumni Association, Inc	(Mobile, AL)
Mondo Bizarro	(New Orleans, LA)
Moore Community House	(Biloxi, Mississippi)
Mothers for Sustainable Energy - Gulf Coast	(Rayne, LA)
Operation Homecare, Inc	(York, AL)

Oxfam America	
Rural Training and Research Center, Federation of Southern Cooperatives/Land Assistance Fund	(Epes, AL)
San Antonio Bay Waterkeeper	(San Antonio, TX)
Social Justice Committee, First Unitarian Universalist Church of New Orleans	(New Orleans, LA)
Southeastern Fisheries Association	(Tallahassee, FL)
Steps Coalition	(Biloxi, MS)
Texas Injured Workers	(Seadrift, TX)
The Repair S.H.O.P.	(Hattiesburg, MS)
The Urban Conservancy	(New Orleans, LA)
TRAC	(Thibodaux, LA)
TruFund Financial Services	(Belle Chase, LA)
Turkey Creek Community Initiatives	(Gulfport, MS)
United Houma Nation	(Houma, LA)
Vanishing Earth	(New Orleans, LA)
Zion Travelers Cooperative Center	(Phoenix, LA)

END NOTES:

ⁱ Consent Decree, Appendix 2, U.S. v. BP Exploration and Production et al, Civil No. 10-4536 (E.D. La.) (centralized in MDL 2179: In Re: Oil Spill by the Oil Rig “Deepwater Horizon” in the Gulf of Mexico, April 20, 2012), D.J. Ref. 90-5-1-1-10026; Deepwater Horizon Oil Spill Draft Programmatic Damage Assessment and Restoration Plan and Draft Programmatic Environmental Impact Statement, Chapter 7

ⁱⁱ Memorandum of Agreement and Consent Decree at pg. 11. United States v. State of Alaska, No. A91-081 CIV (D. Alaska, filed Aug. 23, 1991).

ⁱⁱⁱ Deepwater: Recommendations to the National Commission on the Deepwater Horizon Oil Spill and Offshore Drilling, January 2011 Available at: http://cybercemetery.unt.edu/archive/oilspill/20121210200707/http://www.oilspillcommission.gov/sites/default/files/documents/OSC_Deep_Water_Summary_Recommendations_FINAL.pdf; Staff Paper: Long-term Regional Restoration in the Gulf: Funding Sources, Governance and Structure, National Commission on the Deepwater Horizon Oil Spill and Offshore Drilling, January 2011, Available at: http://cybercemetery.unt.edu/archive/oilspill/20121211011552/http://www.oilspillcommission.gov/sites/default/files/documents/Long-Term%20Regional%20Restoration%20in%20the%20Gulf_Funding%20Sources%20and%20Governance%20Structures.pdf

^{iv} ; Deepwater Horizon Oil Spill Draft Programmatic Damage Assessment and Restoration Plan and Draft Programmatic Environmental Impact Statement, Chapter 5, page 13; 134; 146-147; 193.

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