RE: Comments on *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.

Dear Mr. Cruden:

On behalf of the undersigned organizations, we would like to thank the Department of Justice for its leadership in securing a settlement with BP and the Gulf states regarding Natural Resource Damage (NRD) claims and Clean Water Act civil claims. This settlement marks an important milestone for Gulf communities, and provides significant opportunities for comprehensive ecosystem restoration. We appreciate the opportunity to provide formal comments on the consent decree.

As organizations that care deeply for the health of the oceans, we appreciate the inclusion of important new requirements that BP must fulfill to monitor and publicly report on its efforts to improve the safety of drilling operations in the Gulf of Mexico. However, we have concerns that the proposed governance structure for the administration of NRD funds and implementation of restoration under the Draft Programmatic Damage Assessment Restoration Plan/Programmatic Environmental Impact Statement (PDARP/PEIS) will be extremely costly and make it difficult to plan and implement restoration activities to achieve the Gulf-wide and ecosystem-scale goals set by the Trustees.

We are pleased that $8.1 billion has been allocated toward NRD, and that $1.24 billion of the NRD allocation is dedicated to restoration and enhancement of the open ocean. The BP oil disaster began off the shore of Louisiana, 5,000 feet below sea level. The sea life that depends on the health of our oceans, such as sea turtles, marine mammals, finfish, and sea birds, were all exposed to massive amounts of oil and dispersants. The oil disaster began in our marine waters, and the open ocean is in dire need of comprehensive restoration. Emerging information regarding the impacts to our Gulf of Mexico ecosystem points to troubling outcomes for our marine environment, which underscores need for meaningful restoration in the open ocean. Inclusion of the open ocean allocation will allow for restoration of the Gulf Coast’s premier fisheries and ocean habitats, both of which are essential to the health of the economy in the region.

While we appreciate the dedicated funding for blue water restoration, we are disappointed and very concerned with the broad definition and terms of funding for the open ocean allocation. The consent decree defines open
ocean as “restoration activities for resources primarily in the ocean and Federal Trustee administrative and preliminary planning activities across Restoration Areas.”

This language raises two principal concerns. First is the potential that projects that do not address open ocean resources could be drawn from this account. This proposal is unjustifiable considering the extensive damages to ocean resources and habitats outlined in the PDARP/PEIS.

This concern is underscored by the fact that four of the early restoration projects that have nothing to do with restoring ocean resources have been reclassified as open ocean projects. These projects include nearly $7 million for roadway enhancements (bike and pedestrian lanes) at Davis Bayou in Mississippi, $545,000 for trail enhancement at Bon Secour National Wildlife Refuge in Alabama, more than $10 million for a “beach enhancement project which involves removing fragments of asphalt and road-based material that are scattered widely over the Fort Pickens, Santa Rosa, and Perdido Key areas of Gulf Islands National Seashore, in Florida,” and more than $4 million for the “purchase of up to three pedestrian visitor ferries for use between the City of Pensacola, Pensacola Beach, and the Fort Pickens area of Gulf Islands National Seashore in Florida.”

As we examine and evaluate the types of projects conducted in previous phases of restoration, we are alarmed that these four projects have been reclassified as open ocean projects. None of the above listed projects occurs in the open ocean. This sets a dangerous precedent for future funding of projects from this account. Classifying recreational use projects as projects that address injuries to the open ocean also reduces the amount of funding available to restore and improve the marine environment. Already, only $20 million of the $832 million allocated for early restoration has been allocated to restoring marine resources injured in this oil disaster. The offshore ecosystem is where the disaster occurred and where resources to address significant injuries are sorely needed. Funding these four projects may be suitable under different allocations; however, they are inappropriate for the open ocean allocation. We recommend that the consent decree and its related documents consider an alternative, applicable allocation for these projects, either from their respective implementation state or from the region-wide allocations.

The second concern relates to money from this category going to fund all of the Federal Trustees administrative and planning functions across all restoration areas. The NRD Final Allocation table provides additional details on where the NRD money will be spent. “Administrative Oversight and Comprehensive Planning” accounts for $150 million of the open ocean funding. What is the rationale for taking all these costs out of just this one pot? Moreover, it is unclear if the $150 million amounts to the total allocation for “Federal Trustee administrative and preliminary planning activities across Restoration Areas”. Is $150 million the maximum amount that can be taken from the open ocean account for these general administrative and planning activities that are not limited to open

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1 Consent Decree, Appendix 2 at §2.1.1. (Emphasis Added)
2 Bike & Ped Lane GUIS MS ($6,996,751), Bon Secour NWR Trail, AL ($545,110), Beach Enhancement G.I. National Seashore ($10,836,055), Gulf Islands National Seashore Ferry Project ($4,020,000). See Appendix 2 Table 2 of Consent Decree at: http://www.justice.gov/enrd/file/780686/download
5 In September 2015, Trustees approved Phase IV of early restoration bringing the total approved to be spent to $832 million from the $1 billion BP pledged for early restoration. See http://www.gulfspillrestoration.noaa.gov/2015/09/latest-round-of-early-restoration-projects-approved/.
6 Early restoration included a bycatch-reduction project estimated to cost $20 million. Consent Decree, Appendix 2, Table 2.
7 Consent Decree at Appendix 2.1; Table 5.10-1 Draft PDARP/PEIS at page 5–103.
ocean restoration? With the costly administration expenditures of the proposed governance structure, how will the Trustees ensure there will be adequate monetary support to develop and implement a comprehensive suite of restoration projects for open ocean resources?

Due to the significant concerns outlined above, we object to funding for open ocean restoration being spent on overhead costs for other restoration components and on reclassified, previously approved, land-based recreational projects. We ask the Department of Justice to revise the definition of open ocean in the consent decree to guarantee the proper use of the funds in that allocation. Further, the consent decree must make explicit that administrative costs may not exceed the $150 million allocated. The open ocean allocation must not be used for Federal Trustee planning and administrative costs across all restoration areas.

**Suggested definition of “Open Ocean”:**

“Open Ocean” consists of restoration activities occurring in the ocean or activities that create, enhance, or improve marine resource management, scientific research, or monitoring of natural resources in the ocean and Federal Trustee administrative activities.

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 Cynthia Sarthou at Gulf Restoration Network (cyn@healthygulf.org).

Sincerely,

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Gulf Restoration Network

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8 Consent Decree, Appendix 2: Agreement Among the United States and the Gulf States Relating to Natural Resource Restoration; Draft PDARP/PEIS at page 7-4.