



5 August 2016

Alabama Trustee Implementation Group
NOAA Gulf of Mexico Disaster Response Center
Attn: Alabama Recreational Use Restoration Plan
7344 Zeigler Blvd
Mobile, AL 36608

RE: Notice of Intent - Alabama Trustee Implementation Group Restoration Plan for Recreational Use and Environmental Impact Statement

Dear Trustees:

The Gulf Restoration Network¹ appreciates the opportunity to comment on the Alabama Trustee Implementation Group (TIG) notice of scoping and intent to prepare a recreational use restoration plan and environmental impact statement (EIS) to address Alabama's natural-resource injury from the BP/Deepwater Horizon oil disaster.

We are pleased that the TIG plans to fulfill its obligation to conduct a comprehensive analysis of alternative restoration opportunities for lost use of natural resources and may develop a comprehensive plan for future recreational restoration projects within the state.

We are hopeful that the scope of the TIG's review will evaluate alternatives fully and fairly, and seek the best of use of funds to restore actual damage caused by the BP spill. In the process, the public should have a clear understanding of how the Trustees choose projects over others and there should be consistent and transparent metrics for judging alternatives' benefits and costs comparatively. The discussion must include an exploration of reasonable alternative projects to address the injury. Accordingly, we make the following suggestions on a framework for analyzing proposed projects, including the costly proposal to construct a hotel and convention center facility in Gulf State Park. We also suggest several projects already proposed that we believe merit serious consideration.

I. Guiding Principles in Project Evaluation

A. Clear and Consistent Metrics and Supporting Data for Alternatives

The Trustees must conduct a comprehensive review of project alternatives under NEPA and OPA, an obligation affirmed by the court in *GRN v. Jewell, et al.*, 1:15-cv-191 (S.D. Ala.). Under NEPA, that

¹ The Gulf Restoration Network is a diverse coalition of individual citizens and local, regional, and national non-profit organizations committed to uniting and empowering people to protect and restore the resources of the Gulf of Mexico.

review of alternatives must “present 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.”² The Trustees must not only rigorously explore alternative projects but also establish clear, data-driven metrics for evaluating project proposals comparatively.

Theoretical discussions that merely indicate probable injury and assertions are insufficient. For example, in Early Restoration, the Trustees invoked metrics, like improvements in “user days” and “new visits,” but failed to offer any recent data supporting their analysis.³ To comply with NEPA and OPA, the Trustees must clearly define the loss of use injury Alabama suffered, the scale of that injury, and how and to what extent each alternative project or set of projects would compensate for the identified injury.

B. Recreational Loss of Use and Environmental Protection – Dual Purpose Projects

As the Trustees consider projects for recreational use restoration, we are particularly supportive of projects that serve to protect and enhance the natural environment, as well as provide significant value to coastal communities impacted by BP’s oil. This dual purpose for recreational-use projects is vital to the overall health of our region’s ecosystem and to the sustainability of the projects themselves against threats like climate change. We hope that the Trustees utilize this model when selecting future projects.

C. Cumulative and Indirect Impacts

The TIG is required under NEPA to consider cumulative and indirect impacts of potential projects.⁴ All effects and impacts must be accounted for, including ecological, aesthetic, historic, cultural, or social – whether direct, indirect, or cumulative.⁵

The indirect impacts caused by increased human use, such as automobile and foot traffic, may result in increased threats to environmentally sensitive areas (e.g. critical habitat for endangered species). Trustees should conduct a comprehensive analysis of cumulative impacts for individual projects, as well as a full examination of indirect impacts that the proposed recreational use projects could potentially cause, such as:

- Increased auto traffic in and around project areas, such as state parks, potentially causing maintenance problems from increased use of roadways;
- Increased threats to wildlife (including endangered species) and habitat from human traffic in environmentally sensitive areas; and,
- Increased pressures on fishing populations that could be associated with new boat ramps and/or fishing piers, particularly for those species currently considered overfished or undergoing overfishing.⁶

² 40 C.F.R. § 1502.14.

³ See PEIS, Ch. 11, pp. 57–59.

⁴ 40 C.F.R. §§ 1502.15, 1508.7, 1508.8.

⁵ See 40 C.F.R. § 1508.8

The Trustees must evaluate whether any potential recreational use project would conflict with other restoration projects also proposed for the same area. For example, major construction projects that are ongoing, or slated to occur, in the areas of selected RESTORE, NRDA or NFWF restoration developments should be included in the analysis of cumulative impacts. Similarly, the TIG should strive, to the extent possible, to analyze the cumulative positive and negative impacts of all recreational use projects that are selected or reasonably foreseeable.

All impacts must be fully explored, and potential measures for mitigation identified, to ensure that those impacts are avoided or mitigated prior to project selection and approval.

D. Public Participation & Environmental Justice

Trustees must evaluate the environmental justice implications of their decisions for low-income areas and communities of color, as required under Executive Order 12898.⁷ Alabama and its coastal areas are made up of diverse communities. This includes Native Tribes, historic communities of color, coastal fishing communities, and other frontline communities that were directly impacted by the BP oil disaster, and will be directly impacted by any restoration projects that are chosen by the Trustees. Better processes and structures for public participation and input must be made available to these communities, as they have been marginalized throughout this process. This is evidenced by, but are not limited to, the Trustee's failure to provide their own translators at public meetings or translated materials for non-English speaking populations in a timely manner, as well as failing to host meetings in a wider variety of communities close to more isolated disadvantaged populations affected by the spill, which would provide a greater opportunity for attendance by those effected populations.

While requests for written comment during scoping, and providing online portals for project submissions, are forms of public engagement, these methods do not typically meet the needs of frontline communities. The Trustees must adopt more participatory and inclusive practices, such as workshops and in-person meetings, to ensure that underserved constituents have an opportunity for their voice to be heard in all phases.

In evaluating proposed projects, the Trustees also should consider the needs of local residents, particularly from historically marginalized groups. For instance, if a recreational loss of use project is found to potentially benefit the local economy, this is an important consideration for the Trustees. However, if a project restricts access to natural resources associated with the project, such as with parking fees or lodging rates, this may exclude low-income families who traditionally have accessed the area.

The potential for job creation hinges on the use of local labor and contractors when implementing ecological and recreational projects. To ensure a benefit to the local population, implementing Trustees should be required to give preference to the local workforce, implement robust training

⁶ For example, current recreational take of red snapper has required early closure of that fishery. Additional analysis should consider what the result of increased recreational pressure would be on that fishery.

⁷ Executive Order No. 12898 (11 Feb 1994), 59 Fed. Reg. 7630 (16 Feb 1994).

programs and partner with local nonprofit workforce intermediaries to identify local hiring pool.⁸ The Spill recovery should assist, and not further marginalize, frontline communities.

E. Long-term Monitoring and Recovery

As projects are chosen and implemented, it is imperative that long-term monitoring of the recovery process is included at both the program and project level. Standardized information regarding monitoring is needed for all projects. In the Early Restoration process, Alabama included comprehensive descriptions of monitoring costs and activities for their Living Shoreline projects; this outline provides a good model for other projects. By way of negative contrast, the Trustees attempted to subsidize the Gulf State Park Enhancement Project in Early Restoration without ensuring that the project would be fully funded and would produce its intended effects.⁹

The sustainability of each project must be included in criteria for project selection. Our Gulf Coast region is an area slated for significant impacts from climate change, and it is imperative that the Trustees provide an adequate analysis of the resilience and cost-effectiveness of newly built structures in light of changing environmental conditions associated with climate change. The TIG should address project-specific measures to mitigate unavoidable climate-related impacts. To not address these critical issues would set projects up for failure, potentially waste limited financial resources, and violate the public trust the Trustees are required to protect.

II. Gulf State Park Hotel and Convention Center

A. The Proposed Convention Center and Hotel is Meant to Address State Budget and Economic Shortfalls, Not Natural-Resource, Natural-Resource-Service, or Resource-Use Injuries

As required by the *Gulf Restoration Network v. Jewell* decision¹⁰, the Trustees must conduct comprehensive analysis under NEPA and OPA when considering projects for lost recreational use in Alabama. The hotel and convention center proposed by Alabama does not have a nexus to a loss of use of a damaged environmental resource caused by the Spill or repair any such damage, and is inappropriate for funding under NRDA. Unfortunately, Alabama nonetheless may continue to pursue NRDA funding for this project.¹¹

In the NRDA process, trustees are required to create “a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent, of the natural resources under their trusteeship.”¹² NRDA regulations require that compensatory restoration “provide services of the same type and quality and of comparable value as those injured.”¹³ If actions of the same type, quality and value are

⁸ Both Louisiana and Mississippi passed laws in 2012 requiring local workers be granted preference in employment on contracts related to restoration activities (see LA HB 720 and MS SB 2622).

⁹ See PEIS, Ch. 11, pp. 60–61.

¹⁰ Case 1:15-cv-00191-CB-C (S.D. Ala.)

¹¹ See Office of the Governor, Press Release, *Gov. Bentley Makes Good on His Promise: Announces Gulf State Park Renovations on Schedule*, June 28, 2016, available at <http://www.wltz.com/story/32322460/gov-bentley-makes-good-on-his-promise-announces-gulf-state-park-renovations-on-schedule>.

¹² 33 U.S.C. § 2706(c).

¹³ 15 C.F.R. § 990.53(c)(2).

not available, then the Trustees should employ “actions that provide natural resources and services of comparable type and quality as those provided by the injured natural resources.”¹⁴

According to the Trustees’ explanation in Early Restoration, “[t]he spill led to large numbers lost and degraded beach trips over the course of many months as well as lost fishing trips and oyster harvesting due to closure of waters”¹⁵ and “[t]he State currently anticipates that the ongoing analyses will show the oiling of Alabama’s coast caused losses in beach use, fishing and boating that number in the millions of user-days.”¹⁶ This explanation provides a valid rationale for projects to replace loss of use. Projects, such as trail improvements and extensions, overlooks, interpretive kiosks and signage, and purchasing private land for public use, can be reasonably anticipated to “provide services of the same type and quality and of comparable value as those injured.”¹⁷

The Trustee’s description of injuries provides no rationale or proof of nexus to injury for the construction of a lodge and conference center. There is no claim—even assuming lodging or convention activity could be connected at all to Spill natural resources injuries—that area lodging was permanently reduced by the Spill. Although there was a 13% decline in taxable lodging rental income in 2010, this was not due to lack of lodging. In fact, 2011 rentals “soared to \$281 million, 37 percent over the previous year and about a 20 percent increase over 2009.”¹⁸ In a 2011 economic travel impact study, the collective total of visitors in Baldwin and Mobile County increased by 476,000 in 2011 from 2010, including a 12% increase in traveler expenditures during that time.¹⁹ Had shortage of lodging been a market challenge, the annual rental increases would not have escalated as quickly post-spill. A press release recently issued by the Governor of Alabama touted the fact that tourism to Alabama’s Gulf beach communities is at all-time record levels and poised for a sixth straight record-breaking year in 2016.²⁰ Four hundred thousand (400,000) more visitors came to Baldwin County in 2015 than in the year before.²¹ Clearly, the region is having no trouble attracting and accommodating new visitors in the wake of the Spill without publicly financed hotel and convention facilities.

Rather, it is evident that the hotel and convention center is meant to compensate for economic, not natural resource, concerns,²² and is unrelated to the recreational services lost due the oil disaster. The

¹⁴ 15 C.F.R. § 990.53(c)(2).

¹⁵ PEIS-ERP at section 11.6.2, p. 55.

¹⁶ PEIS-ERP at section 11.6.3, p. 56.

¹⁷ 15 C.F.R. § 990.53(c)(2).

¹⁸ DeWitt, R. (Aug 3, 2016). Stain of 2010 BP oil spill long gone from Alabama’s Gulf Coast.

<http://alabamane.wscenter.com/2016/08/03/2010-bp-oil-spills-stain-long-gone-alabamas-gulf-coast/>

¹⁹ Alabama Department of Tourism. (2011) *Travel Economic Impact 2011*.

<http://tourism.alabama.gov/content/uploads/2011-Tourism-Economic-Report-final3.pdf>

²⁰ Office of the Governor, June 28, 2016 Press Release, *supra*.

²¹ *Id.*

²² See e.g., Gulf State Park Hotel and Conference Center Initiative FAQ, questions 1, 2 and 18, available at

http://www.auburn.edu/communications_marketing/gulfstatepark/faq.html (“Our plans are to build a first-class facility that will bring dollars and jobs to Alabama and be a great addition to our State Parks. Alabama’s Gulf State Park is one of our state’s greatest economic and environmental assets.” “We have the opportunity to bring a first-class hotel to Alabama.” “The lease payments from the developer will yield considerable cash flow to DCNR. . . Also, there will be additional revenue from increased lodging taxes, increased sales taxes and increased jobs. The total economic benefit of the project is expected to bring in approximately \$65 million annually and produce nearly \$3 million each year in total tax collections.”). See also, Gulf State Park Convention Center project submission, <http://www.gulfspillrestoration.noaa.gov/restoration/give->

Governor of Alabama has candidly explained that a major purpose of the project will be to generate revenue that will go to other less-visited parks, including in areas of the state completely unaffected by the Spill.²³ The conclusion that the project is economically motivated is bolstered by the Coastal Recovery Commission of Alabama's project description, released in 2011, which stated that the project would not qualify as oil spill mitigation.²⁴ Far from addressing BP Oil Spill natural resource injuries, the hotel and convention facility appears calculated to address a different, unrelated injury entirely: the budget shortfall suffered by the State of Alabama and its parks system.

Building a hotel and conference center simply does not restore beach use, fishing or boating lost due to the BP oil disaster. The project thus fails to meet the basic requirements for a loss of use project. The TIG should reject it as a candidate for Alabama's recreational use NRDA funds.

B. Building a Hotel and Convention Center will Further Deny Access to the Beach by Residents of Limited Means

Further, the hotel and convention center would not make the public whole, because it would create further cost barriers to accessing public coastal resources.²⁵ The project description states Gulf State Park is used primarily as a "retreat and recreational area."²⁶ Gulf State Park is one of the few areas along the Alabama Coast that provides access to the general non-paying public. Public access to Baldwin County's public beach is already extremely limited. There are few free public access points in Orange Beach and Gulf Shores. The proposed project will reduce what little access currently exists, because the proposed hotel and convention-center facility²⁷ will only be available to paying guests, and the cost of access can reasonably be expected to be considerable given the average price for lodging at a beach-front location in the area.

At the same time, as the Governor has noted, tourism in the area is booming.²⁸ This presumably creates further strains on limited public beach. If the Trustees truly want to increase the public's access to Alabama's beach environment to accommodate additional visitors, projects such as land acquisition should be a priority.

Evaluating the cumulative socioeconomic impacts is an important consideration when comparing recreational loss of use. It is not clear as to whether "new visitors"²⁹ to the Gulf State Park would

[us-your-ideas/view-submitted-projects/](#); Strategic Advisory Group, *Events Center Feasibility Study: Alabama Gulf Coast*, Final Report (30 July 2001).

²³ Office of the Governor, June 28, 2016 Press Release, *supra* ("The Legislature has had difficulty adequately funding the state park system, and the fees Gulf State Park will bring in once it has been redeveloped will be a godsend to financially beleaguered parks throughout the state," Bentley said.)

²⁴ Coastal Recovery Commission Infrastructure Subcommittee, Gulf Coast Convention Center (5 Feb 2011) at p. 3, available at <http://crcalabama.org/wp-content/uploads/2011/02/05Gulf-State-Park-Convention-Center.pdf>.

²⁵ 15 C.F.R. § 990.10 ("The goal of the Oil Pollution Act of 1990 (OPA), 33 U.S.C. 2701 *et seq.*, is to make the environment and public whole for injuries to natural resources and services...").

²⁶ PEIS-ERP at section 11.7.6.9.5, p. 162.

²⁷ The only part of the rebuilt Lodge and Conference Center available to members of the public who are not guests at the hotel is a "publicly accessible interpretive landscape that includes preservation of an existing wetland and remnant scrub dune, creation of an interdunal swale for stormwater management, and creation of secondary and scrub dune habitat."

²⁸ Office of the Governor, June 28, 2016 Press Release, *supra*.

²⁹ Draft ERP-PEIS, Section 11.7.4, p. 83.

actually be new visitors to the Park, to the Orange Beach/Gulf Shores area, or to the entire region. This is particularly important given the tourism boom the region is experiencing even without the convention center and hotel facility. A thorough analysis should be conducted as to how this project will impact similar businesses³⁰ in the area that are already meeting the need for lodging. Since a significant portion of the privately run hotel and conference center will be built utilizing public funding, the State is essentially subsidizing a private enterprise. The public deserves a comprehensive analysis of how this will impact the economy of the surrounding region.

c. Building a Hotel and Convention-Center Facility could Considerably Impact the Local Environment

The proposed project would be built in a relatively fragile beach environment in a region where undisturbed scrub shrub and beach habitat is scarce. The area also provides rare habitat to the endangered Alabama Beach Mouse and other threatened species.

The close proximity of an Early Restoration Phase I Dune Restoration Project³¹ at the base of the primary dunes in front of the proposed hotel and conference center would almost certainly be impacted by construction and pedestrian traffic associated with the new facilities. Hence, the lodge and conference center would directly conflict with another NRDA Early Restoration project. The long-term restoration needs of dunes injured by the oil disaster would be undermined by the hotel and conference center, both during construction and due to human use upon completion. All phases of restoration need to be evaluated comprehensively to avoid conflicting restoration goals. The NEPA rules against segmentation and piece-mealing require any analysis to consider the proposal in the context of the impacts to the entire region, including other components of the projects and the cumulative (direct and indirect) effects.

We reiterate that this project is not an appropriate NRDA project, under the requirements of OPA and its implementing regulations, and must be removed from consideration for NRDA funding. Should the Trustees nonetheless proceed with the selection of this inappropriate and controversial project the Trustees must ensure consistency with already funded Early NRDA projects, thoroughly consider the potential impacts of the project on the environment, as required by National Environmental Policy Act, and consult the U.S. Fish and Wildlife Service on impacts to threatened and endangered species, as required by the Endangered Species Act .

III. Projects Meriting Review for Recreational Loss of Use

As the Trustees consider projects for recreational loss of use funding in Alabama, there are projects across Mobile and Baldwin Counties, including Gulf State Park, which would restore the injuries experienced in Alabama.³² Should Alabama's aim be to find a project that meets the same compensation for "loss of use" as the proposed hotel and convention center, there are a number of projects (or suites of projects) that could meet the same recovery metrics. Considering Alabama's lack

³⁰ E.g. hotels, hotels with meeting space, etc.

³¹ <http://www.gulfspillrestoration.noaa.gov/wp-content/uploads/Final-ERP-EA-041812.pdf> (Sec. 3.2.5.1, p-43, Alabama Dune Restoration Cooperative Project).

³² NOAA, Gulf Spill Restoration Project Portal, see Gulf State Park.

<http://www.gulfspillrestoration.noaa.gov/restoration/give-us-your-ideas/view-submitted-projects/>.

of public beach access, the acquisition of beach property, recreational facilities, or public access points could reasonably provide the same measurable outcome.

For example, these projects found in the Alabama Coastal Restoration portal³³ would meet the criteria for recreational loss of use:

- Project 79 – Aloe Bay Harbour Town (Mobile County)
- Project 82 – Dauphin Island Audubon Bird Sanctuary Shoreline Restoration and Management (Mobile County)
- Project 102 – Alabama Audubon Coastal Bird Stewardship Program (Baldwin/Mobile County)
- Project 111 – Spanish Fort Ecological Park (Baldwin County)
- Project 174 – USA Coastal and Environmental Sciences Initiatives (Mobile County)
- Project 177 – Hog Bayou Campground (Mobile County)
- Project 188 – Coastal Sustainable Tourism Laboratory (Baldwin County)
- Project 199 – Bayfront Park Restoration Improvement (Mobile County)
- Project 200 – Chickasabouge Park Habitat Restoration and Enhancement (Mobile County)
- Project 210 – Infrastructure Improvements of existing park and green spaces (Mobile County)
- Project 233 – D’Olive Creek Property Purchase, Habitat Study, Nutrient Removal Research/Education Facility (Baldwin County)
- Project 240 – Delta Port Marina Oysterman Support Dock (Mobile County)
- Project 266 – Perdido Watershed Access Improvement (Baldwin County)

In addition to these specific projects, other recreational projects that would meet the needs of the community include land acquisition for public access, living shoreline and artificial reef projects, fishing access – piers and boat launches, fishery programs³⁴ and other park enhancement and educational opportunities across Alabama’s coastal zone.

In Early Restoration, the Trustees stated that it is challenging to choose a “recreational use ... restoration project...large enough to provide a significant contribution towards compensating for the recreational use losses” in Alabama.³⁵ We wholly disagree, and the above-listed project proposals demonstrate that there are a variety of options to restore recreational use losses. However, if the Trustees truly believe that no appropriate project or suite of projects exists to compensate for the lost recreational uses experienced in Alabama, then a no-action alternative is the appropriate choice.

IV. Conclusion

We recognize that the Trustees have invested significant time and resources throughout this restoration process and appreciate your efforts. While we understand the urgency to fund and implement projects on the ground, we should not conduct a process that is incomplete or legally

³³ Alabama Department of Conservation and Natural Resources. Project Suggestion Portal <http://www.alabamacoastalrestoration.org/ProjectPrint.aspx>

³⁴ See Ocean Conservancy’s 2016 AL TIG scoping comments – Alternative Restoration Approaches: lionfish invasion response program and recreational fisheries monitoring project.

³⁵ PEIS-ERP, Section 11.6.3, p. 57.

inadequate. Certainly, we must avoid implementing projects that risk doing more harm than good. Let's ensure that we do what is right and just for the Gulf Coast.

Thank you for the opportunity to comment. If you have any questions, or if you would like to discuss these comments further, please contact Jordan Macha, Senior Policy Analyst for the Gulf Restoration Network, at: jordan@healthygulf.org or (512) 675-0076.

Sincerely,

A handwritten signature in black ink, appearing to read "Cynthia Sarthou". The signature is fluid and cursive, with a long horizontal stroke at the end.

Cynthia Sarthou
Executive Director
Gulf Restoration Network