

December 4, 2015

The Honorable John C. Cruden  
Assistant Attorney General, 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: Environmental Law Institute Comments on the Proposed BP Consent Decree and Draft PDARP/PEIS**

Dear Mr. Cruden and Mr. Rauch:

Thank you for the opportunity to provide information to assist the U.S. Department of Justice and the Trustees in finalizing the BP Consent Decree (Consent Decree) and the Programmatic Damage Assessment and Restoration Plan and Programmatic Environmental Impact Statement (PDARP/PEIS). The substantial effort to design an effective approach to Gulf restoration following the *Deepwater Horizon* oil spill is evident from the depth and breadth of these documents. Our comments focus on ways to improve public participation in the proposed natural resource restoration program.

As the program is currently structured, it is unclear to what extent the public will be able to meaningfully participate. We see two main barriers to the public's involvement: (1) limited participation mechanisms; and (2) a complicated governance structure that could deter public participation.

**Limited Participation Mechanisms**

While the PDARP/PEIS sets out some ways that the public can participate in the restoration program, it provides few opportunities for the public to meaningfully engage:

- **Meetings:** the PDARP/PEIS notes that the Trustees will hold public meetings "to provide information to, and to receive comment from, the public on restoration activities" (PDARP/PEIS, 7-27). It is unclear, however, whether these meetings will take place on a regular basis. At the same time, it is unclear whether any of the Trustee Council or Trustee Implementation Group (TIG) meetings will be open to the public.
- **Review and comment:** the PDARP/PEIS indicates that the public will have the opportunity to review and provide comments on proposed and revised restoration

plans. A similar opportunity does not, however, exist in regard to other key documents, including the Trustee Council standard operating procedures (SOP) or any TIG SOP.

- **Information sharing:** the PDARP/PEIS sets out a robust system for information sharing, which will include the current Trustee Council website, the restoration planning and implementation administrative record(s), and a Restoration Management Portal. While the public will be able to access information from these sources, it is unclear whether this information will be provided in a usable and understandable format. In addition, it is unclear what the public can do with this information. For example, as it is currently drafted, the PDARP/PEIS does not include any mechanism for the public to engage in the monitoring and adaptive management processes, unless those processes lead the Trustees to make changes that require a new or revised restoration plan.

### **Complicated Governance Structure**

The PDARP/PEIS puts in place a “distributed governance structure” that includes a Trustee Council and eight different Trustee Implementation Groups (TIGs), with each TIG responsible for decision-making for a defined restoration area. As the restoration program is currently structured, each TIG has the flexibility to determine its own timetable for restoration planning, and to determine whether to put in place its own additional memorandum of understanding (MOU) and standard operating procedures (SOP). Depending on the timing and degree of coordination among the TIGs, this complexity could make it very difficult for the public to keep track of the TIGs’ various procedures and actions. This in turn will make it difficult for the public to meaningfully participate in the restoration program.

### **Recommendations**

In light of these potential barriers to meaningful public participation, we offer the following recommendations:

- **Create a citizen advisory group:** we recommend creating a citizen advisory group for the Trustee Council and each TIG. This would enable public participation throughout the restoration program, including during restoration planning, implementation, and monitoring and adaptive management. Such an approach could be outlined in the Consent Decree and PDARP/PEIS, and developed as part of the public participation provisions of the SOP. Note that a number of public comments have already called for the creation of a citizens’ advisory council (see PDARP/PEIS, 5-146 to 5-147).
- **Establish additional mechanisms for the public to participate:** the Trustees should establish additional mechanisms or points in the program for the public to participate. Some examples include:
  - Seek public input on SOP: the SOP will guide Trustee Council, TIG, and individual trustee agency activities. A process should be put in place that allows public input into development of the Trustee Council SOP and any TIG SOP.

- Schedule regular public meetings: the Trustees should commit to scheduling regular public meetings, where the Trustees would update the public on the status of the restoration program and seek public input.
- Open Trustee Council and TIG meetings to the public: the Trustees should open Trustee Council and TIG meetings to the public.
- **Commit to providing useable and understandable information**: given the amount of data that will likely be generated, the Trustees will need to ensure that data that are released to the public are aggregated in a way that is understandable and usable by members of the public, so that they are able to follow and contribute information to the restoration program.
- **Ensure coordination among the TIGs**: the TIGs should ensure that their work is sufficiently coordinated so as to decrease the burden to the public in participating in the various TIGs. This could include, for example, TIGs coordinating on timing of decisions, issuing joint restoration plans, and/or holding joint meetings. Such coordination mechanisms appear to be authorized by the PDARP/PEIS, but could be expressly required and further developed as part of the SOP.

Again, thank you for this opportunity to comment on the proposed BP Consent Decree and draft PDARP/PEIS.

Regards,

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