

**Montrose Settlements Restoration Program Trustee Council
Summary
June 7, 2005 Trustee Council Meeting
Long Beach, California**

The following primary and alternate Montrose Trustee Council ("Council") members were present:

Jen Boyce	NOAA	Suzanne Goode	CDPR
Patty Velez	CDFG	Jennifer Lucchesi	CSLC
Kate Faulkner	NPS	Julie Yamamoto	CDFG
Jim Haas	USFWS		

Also attending:

Greg Baker	MSRP Staff	Chuck McKinley	DOI Solicitor
Dave Witting	MSRP Staff	Lisa Wolfe	CDFG
Annie Little	MSRP Staff	Patrick Rutten	NOAA
Milena Viljoen	MSRP Staff	Dave Parker	CDFG
		Ann Hurley	DOJ

Financial Report

2003 cost documentation is close to being completed; Cotton & Company is still resolving some issues before certifying NPS and FWS packages. The cost committee (Pease, Haas, Verrue-Slater) is reviewing packages after Cotton certifies them; they've already reviewed and found no issues with the CDFG 2003 package. Once all cost packages are certified and the cost committee has reviewed them, they should bring the entire set to the full Council for final action/ approval.

Baker provided a reminder that the 2004 cost documentation packages are due July 31st, and should be sent to him so he can transmit them to Cotton and Company for certification.

2002 cost documentation remains to be submitted by NOAA, FWS, and NPS. These packages were originally to be submitted by February 2005; we agreed to a new deadline for these packages of July 31.

The Council discussed a proposal from Cotton & Company to obtain statements, review and reconcile them, and provide quarterly reports on the transactions and balances in the settlement accounts for the Montrose case. Resolution 05-1 authorizing NOAA to incur cost and seek reimbursement for up to \$2,500 during 2005 for this purpose was circulated and signed. Continued quarterly review and reporting by Cotton & Company in subsequent years will be authorized as part of the annual overall budget process.

Greg Baker provided the actions and schedule for developing the 2006 budget. The MSRP team will initiate the budget development process in mid-August by sending out a set of spreadsheets for each Trustee Council agency to fill in and return by mid-September. We'll then pull it together and distribute a comprehensive draft budget prior to our next Trustee Council meeting (November 2nd). We will be funding and implementing restoration projects in 2006; however, rather than attempting to predict needs for specific implementation projects at the outset of 2006 and put those into the overall budget, we will follow an approach whereby we sign individual resolutions for projects being implemented as needs arise. The annual budget will be for our "Base" costs (Trustee Council, MSRP staff, office expenses, etc.).

Discussion of Public Comments Received on Draft Restoration Plan EIS/EIR

The Council discussed and considered the public comments received on the draft RP and how best to respond to them and/or make changes in the RP EIS/EIR and proceed with completing it. At the outset we discussed EPA's comments and the need to address them; EPA gave the document a rating of EC-2

meaning, “Environmental Concerns – Insufficient Information”. Baker will set up a time to meet with the reviewers in EPA Region 9 to go over their specific comments and clarify how best to address them.

The Council discussed requests for information the MSRP team has fielded from the Catalina Island Conservancy (CIC). Thus far they have asked for a copy of the final Consent Decree, trial transcript, and names of the agency officials who will ultimately sign off on the final RP EIS/EIR. Greg Baker asked that everyone provide the name of the signature officials likely to sign the final RP. For NOAA he indicated that Bill Hogarth, Director for NOAA Fisheries, would sign the Record of Decision. Kate Faulkner indicated that John Jarvis would sign for NPS. Jim Haas said that Steve Thompson would sign for FWS. In a previous phone conversation with Jonathan Clark, Greg Baker indicated that the plan would not need to go before the State Lands Commission itself, but could not recall the name of the likely signatory. Suzanne indicated that Ruth [?] would likely sign for CDPR. Patty Velez indicated that the director of OSRP, Carlton Moore, would sign for DFG.

Lisa Wolfe stated that the final approval document in the State EIR process is a Notice of Determination. She indicated she would get back to the Council with an outline of steps and procedures for completing the State approval process. Greg Baker’s understanding is that NOAA signs the federal ROD, and other federal agencies adopt it, rather than having multiple signatures on the ROD. At any rate, we should ensure that the ROD meets any and all NPS and FWS requirements to facilitate its adoption by those agencies. A draft of the ROD will be circulated for review at the time we circulate the final RP EIS/EIR and draft responses to comments in July.

A point was made that, while other officials have signature authority on the NEPA and CEQA documentation, the specific restoration planning decisions reside with Trustee Council members; in previous restoration plans, a signature sheet has been inserted in the final plan with Trustee signatures.

Fishing and Fish Habitat Comments: Dave Witting summarized the pertinent comments received concerning this part of the plan and led the discussions. Comments were received both in agreement and in opposition to fishing and fish habitat restoration proposals in the draft, and one new idea was received (reducing impingement and entrainment of marine biota on cooling water intakes, an issue being addressed by EPA regulations issued under Section 316(b) of the Clean Water Act). This idea was discussed; we presumed that to be considered, any contribution toward such actions by MSRP would need to be above and beyond what is already required by Federal and/or State requirements, and the benefits would only be for that increment of reduced impacts to aquatic biota. We agreed to further explore this concept, but that it is not sufficiently developed to consider further in the current draft of our plan. It may be considered however in the next planning round (i.e. phase 2).

The Trustees and staff discussed the issues raised and perspectives put forward in the comments on MPAs, reefs and fishing access, wetlands, and fishing outreach. Dave Witting proposed making some clarifications/ additions to the plan write up that would better explain and address many of the comments. No compelling reasons or new information were identified from the comments that would lead to fundamental changes in the fishing and fish habitat portion of the plan. No one proposed to alter the basic composition of this portion of the plan.

Peregrine Falcons: Annie Little summarized these and other bird comments and led the discussions. There were not as many comments received on the peregrine aspects of the draft plan as on proposals for other bird species. Concerns were raised about potential impacts to seabirds from peregrine falcon restoration; some commentators endorsed the proposal not to conduct active restoration, others requested that we actively restore; one commenter questioned the need for monitoring if we’re not undertaking active restoration. Also, it was pointed out in comments that the draft plan’s characterization of peregrine falcon restoration as “natural recovery” was misleading, since the SCPBRG continues to hack peregrines from the Vandenberg area as they have been doing for years. The Council agreed to carry forward to the final plan the preference for the peregrine falcon as proposed in the draft plan, although certain clarifications will be made in revising the document (e.g. to remove language characterizing the present state as natural recovery).

Seabirds: We received a wide range of comments on seabirds. Annie Little indicated that none of the comments expressed opposition to projects that involve eradication of non-native rats or cats on islands. Several commenters who wanted to see greater funding for bald eagles questioned the amount of funding going to seabirds, while several other reviewers endorsed the preferred alternative's proposed distribution of projects for seabirds as equitable in the context of all injured resources.

The Council discussed comments that migratory species of seabirds that don't breed in the SCB were not given further consideration for restoration (i.e. that our nexus evaluation was based on our understanding of reproductive injuries caused by DDTs and PCBs). It was suggested that we might point out the nature and location of other seabird restoration projects being undertaken by other trustee councils, some of which include projects for migratory species. We concluded that the RP EIS/EIR adequately explains how the Trustees evaluated nexus and seabirds in the plan. No proposal to alter the list of preferred seabird projects was made; however, two projects listed as tentative pending bald eagle outcomes will no longer be included as such (the Anacapa and Guadalupe Island projects), but will be considered projects we'd pursue only if other currently proposed seabird projects cannot be implemented.

Jim Haas proposed that we examine concentrations of DDE in seabirds as part of our peregrine falcon monitoring efforts, and noted that this would serve to broaden available data on seabird contamination.

Bald Eagles: Most of the comments received on the draft RP EIS/EIR addressed the bald eagle restoration alternatives.

Most who commented on the draft plan's bald eagle provisions asked that the Trustees continue supporting existing bald eagle work on Catalina, citing several considerations including: 1) the human use value of having bald eagles present on Catalina, since it is the Channel Island receiving the highest visitor use, and 2) concerns that if bald eagles were to ultimately disappear from Catalina after discontinuation of Trustee funding, it might lead to adverse ecological consequences, particularly for the endangered Catalina island fox.

The Trustees also received many comments in support of the proposal to discontinue funding for the current Catalina bald eagle program. These commentators expressed concern over the continued fostering of bald eagle chicks into an environment where they become contaminated, cited a preference that limited restoration dollars be spent on restoration projects having greater probability of success and long term sustainability, and endorsed an approach to bald eagle restoration that focuses on establishing naturally reproducing birds wherever they can succeed elsewhere in the Channel Islands, with the intent that when the persistent contamination problem eventually subsides they will spread to their former territories, including Catalina Island.

The Trustee Council considered all of the comments received. The Council acknowledged the importance of bald eagles on all of the Channel Islands, including Catalina, both for their ecological services and for the human use services they provide. After considering the range of comments received, the Council proposed to modify their preferred alternative in the final plan in the following manner: 1) the entire \$6.2 million bald eagle allocation in Phase 1 will now be reserved exclusively for bald eagle restoration on the Channel Islands regardless of outcome of NCI study; 2) the Trustees will release a subsequent CEQA/NEPA document for public review and input after the NCI Study results are known, and decide at that point how to proceed with bald eagle restoration in the Channel Islands; and 3) the Trustees will suspend funding for the Catalina bald eagle program in the interim until the NCI Study results are known.

Annie Little described further investigation into the assessment of potential impacts to the Catalina island fox should bald eagles disappear from Catalina. We plan to provide more analysis of this issue in the final plan; based on analysis thus far, FWS would issue a not likely to adversely affect determination.

In conclusion, the Council agreed to modify the preferred alternative in the final RP EIS/EIR by removing language in the draft that had stated that remaining bald eagle restoration funds may be reallocated to seabird projects if the NCI study results were negative. Further, the two bald eagle alternatives in the final RP EIS/EIR will be characterized as actions that will require further NEPA and/or CEQA analysis in Table

6-1, i.e. we will evaluate next steps for bald eagle restoration when the NCI results are known, obviating the need for the bald eagle “decision tree”.

Other Comments: Jim Haas suggested that we should provide additional explanation on how the evaluation factors in the CERCLA NRDAR regulations relate to our evaluation criteria. Julie Yamamoto suggested providing more language about immune/endocrine disruption in adult eagles.

Data Gap Studies Updates

Annie Little and Dave Witting updated the Council on recent developments regarding the NCI bald eagle study and the fish contamination study. Contaminant analysis is proceeding on both projects. We plan to have contaminant data on the bald eagle study available later this summer, and will schedule a meeting in the fall to evaluate how the NCI study is proceeding and whether we should make any adjustments in it (see date and location below). Battelle is proceeding acceptably with reanalysis of the fish data using their revised procedures; we have accepted 3 batches of data thus far and anticipate having our complete dataset by the end of the year.

Next Meeting

We agreed to hold our next Trustee Council meeting on November 2, 2005, in Long Beach. We also agreed to convene a meeting the following day, November 3rd, for those involved in the planning and implementation of the NCI bald eagle study, to review contaminant data and discuss progress and next steps.