State of Louisiana

Department of Environmental Quality

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GOVERNOR

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SECRETARY

BY FAX TO 301-713-4389

July 9, 2003

Dr. William Conner, Chief
Damage Assessment Center
Office of Response and Restoration/NOS
National Oceanic and Atmospheric Administration
1305 East-West Highway, SSMC#4, 10th Floor
Silver Spring, MD 20910

Re: The Louisiana Regional Restoration Planning Program (LaRRPP)
Draft Programmatic Environmental Impact Statement (PEIS) (May 2003)

Dear Dr. Conner:

Please accept this letter and its enclosure as our comments on the referenced draft document. We agree that the concept of regional planning offers the potential for more efficient and effective natural resource damage assessment and restoration through partnering of federal and state trustee agencies. We appreciate the efforts you and your staff have made to work cooperatively with the State of Louisiana to that end.

One of the basic purposes of the program description is to increase the public's understanding of the NRDA process by making the process sufficiently transparent. Several of our comments are intended to further this purpose, which is a very important and necessary feature of the program description. We have received comments that indicate some degree of public misunderstanding since the inception of the current NRDA program in 1991.

The single criterion placed upon the NRDA process by the Louisiana Legislature is to make the process "more efficient". We believe the draft takes that approach and offer several comments on additional program components that will enhance process efficiency.

We also believe that any program can benefit from a "continual improvement" procedure to ensure that goals are achieved consistently throughout the life of the program. Periodic internal review of program status and accomplishments will give the public the assurance that process efficiency will always remain the intent of the LaRRPP. The Louisiana Department of Environmental Quality (LDEQ) has offered comment on how "continual improvement" can benefit this program.

The LDEQ will continue to work cooperatively together with the RRP program workgroup to assimilate comments received on this draft and assist on formulating them into the most efficient and effective NRDA program possible.

Sincerely,

L. Hall Bohlinger, Ph.D.
Secretary

c: James P. Burgess III, NEPA Coordinator
Karolien Debusschere, LOSCO
File

Comment 1: Section 2.2.4.2.1 Injury Assessment

As a participant in the RRP program workgroup, the LDEQ is aware that one of the intentions of the LaRRPP is to provide for consistency and predictability by detailing the NRDA process, thereby minimizing uncertainty to the public and industry. With this goal in mind, we believe Section "2.2.4.2.1 Injury Assessment" should be expanded to include details of assessment methods that exist within the public domain, such as the Resource Equivalency Analysis (REA), the Habitat Equivalency Analysis (HEA), Wetland Valuation Assessment (WVA), the Type A model and others. Inclusion of methods historically used would increase the public's and industry's understanding without limiting the options available, as trustee discretion in the choice of method will be unaffected.[1] This would demonstrate a variety of assessment alternatives available in each NRDA.

Injury assessment is the key to each and every NRDA. The injury assessment phase of the NRDA can be difficult for the public to understand. This has been demonstrated on numerous occasions when members of the public expressed difficulty understanding the differences between natural resource damage and damage to personal property. This difficulty is usually expressed in the context of questioning why the personal property that was injured is not the proposed site of the compensatory project. More detailed explanation of the various methods historically used would describe the difference between damage to natural resource services and the damage to private property.

The public should be able to read and understand, even anticipate, the trustee options for assessment and follow the process through completion. The entire process, including the various options for assessment method, should be so clear that any responsible party (RP) can participate in a meaningful way without the necessity of hiring a technical consultant.

The trustees are still able to use a variety of alternatives to assess injury and an informed public/industry cooperates more readily, leading to greater efficiency of the NRDA process. Three different methods of injury assessment are described in the Louisiana Oil Spill Prevention and Response Act (La. R. S. 30:2452, *et seq.*): comprehensive, negotiated and expedited assessments. The description of the program to be operated in Louisiana by Louisiana and federal trustees should mention and explain each of these types of assessments. This section would also be a logical place to discuss the expedited assessment procedure required by La. R. S. 30:2480(C)(8).

[1] The wording of the section should not be construed to require the trustees to use any specific method, but to elaborate on what has been used historically so that readers of the programmatic document have a transparent view of the injury assessment portion of the process.

Comment 2: Section 3.2.7 Restoration Project Performance Criteria

This section describes in general terms the standards by which a restoration project is judged to be a success or failure by trustees, the public, and industry. Although a definition and possible examples of performance criteria are provided, there is no mention that the performance criteria for each project relate specifically to the restoration type. The trustees select the restoration type before performance criteria are or can be developed. This information is not readily apparent.

We suggest that this section be expanded to reference or include a list of the restoration types and subtypes historically used, with the specific performance criteria that, at a minimum, will be included for each type. As an alternative, this information could be included in section 3.2.3.

For example, performance criteria for creation/enhancement of coastal herbaceous wetlands typically include, based upon historical use, percent vegetative cover and platform elevation. Additional criteria may, of course, be required, as determined by the trustees for any specific project.

Placing each example within the context of its restoration type (or subtype) clarifies what criteria the public and industry can expect will be used by the trustees to measure project success, and these criteria are in large part dependent upon the restoration type. Giving examples of potential performance criteria by restoration type assures reasonableness and consistency of the application of criteria to future NRDAs. Providing the public with some of the likely criteria for common restoration types enhances public and industry understanding and cooperativeness, and makes the process more efficient.

Comment 3: Section 3.2.8 Restoration Project Monitoring Requirements

This section addresses monitoring requirements; monitoring is conducted to determine whether performance criteria have been met. Monitoring results are used to determine whether the project was successful and the public has been adequately compensated. Considering the essential nature of the monitoring requirement component, we suggest that inclusion of previously used monitoring methods and frequencies (protocols), is important for the public to understand what procedures may be used to assess long-term success or failure of a given project. Further, the RRP program workgroup reached conceptual agreement in July 2000 to establish monitoring requirements (including those that would allow for corrective actions) and to link performance criteria with monitoring requirements.

At a minimum, the additional information should describe what method and frequency of monitoring has been used historically for the performance criteria in section 3.2.7. For example, monitoring for percent vegetative cover would logically occur in the fall of the year and may involve the use of the "point-intercept" method as described in the Braun-

Blanquet Cover-Abundance Scale. Wording in this manner provides an important level of transparency as to what would be expected from responsible parties (for cash settlement or RP-implemented projects) and for the public (in demonstrating the need for fiscal expenditures within the program). Typically, the trustees do not require monitoring to begin until after there is something meaningful to monitor, i.e., performance criteria have been met or there is an expectation that criteria may be met. Once begun, responsible parties are encouraged to conduct monitoring as frequently as necessary to ensure project success.

Comment 4: Section 3.3 RRP Management Structure

This section describes a multi-tiered management structure, including the following: authorized officials, trustee council, case teams, regional field staff, RRP administration and coordination staff, project monitoring teams. Although this section describes a number of processes with interaction between the various trustees and assignment of certain duties to levels of management in four major components, the program description does not provide for resolution of disputes or conflicts between or among trustees. Regardless of the good intentions of all parties, it is logical to assume that at some point a conflict may arise.

An adequate decision hierarchy or dispute resolution procedure, in the absence of unanimity or consensus on every issue, is essential to ensuring that cases flow smoothly from initial assessment through successful restoration project completion. A clear and transparent description of a workable conflict or dispute resolution process would ensure all interests are protected in accordance with state and federal law, and the public is compensated in a timely manner.

Comment 5: Sections 3.3.2.2 Regional Field Staff and 6.0 Environmental Consequences

Section 3.3.2.2 indicates that NOAA anticipates trustee field staff located in regional offices throughout Louisiana will be made available and assigned to assist in the preassessment and restoration planning phase of NRDA cases, as well as restoration project implementation oversight activities. Without changes in manpower and funding, contingent upon outside approval, LDEQ is unable to divert regional field staff from their current assigned duties, to provide NRDA activities beyond spill response. It may be possible, with additional NRDA-specific training and planning, to utilize regional field staff in some preassessment data collection activities.

Diversion of regional field staff from their current duties to perform NRDA activities could have a direct or indirect negative adverse environmental impact. This is particularly true when the duties are those mandated by state and/or federal law and regulation for environmental protection, such as compliance with Clean Water Act and Clean Air Act requirements. These potential negative impacts are not discussed in section **6.0**

Environmental Consequences. At a minimum, section **6.1.2 Potentially Significant Adverse Environmental Impacts** should include a statement that potential adverse impacts could result and that they will be avoided to the maximum extent possible by appropriate resource allocation.

Comment 6: Quantifiable measures of program success

Just as performance criteria must be developed to evaluate the success of each NRDA project, the trustees, the public, and industry cannot evaluate the success of the program without quantifiable measures of program success. The PEIS does not directly address how success of the LaRRPP will be determined; i.e., quantifiable measures of success (such as performance criteria or indicators) are not included. Performance indicators can easily be developed for this program. Section **6.1.1 Beneficial Impacts** briefly touches on several:

1. the amount of restoration accomplished will be larger
2. will be accomplished more quickly and at a larger scale
3. will be accomplished at a lower cost to the trustees and RPs

An additional section referencing or reiterating these indicators, and/or others should be added. The new section should include a description of how and when the indicators will be measured. By using these demonstrable performance indicators (and/or others), measuring those indicators and comparing them to measures of the program before LaRRPP implementation, success of the program could be determined.

In addition to a one-time determination of program success, periodic program review should be incorporated. With regular periodic program review, the continuing operation of the LaRRPP can be monitored, providing an opportunity for timely course correction and improvements as needed.

Comment 7: Section 3.2.4.2 Project Selection Screening Criteria

The project selection screening criteria are used to evaluate and select specific restoration projects to compensate for damages. In addition to the settlement documentation, a written conservation servitude has historically been required by the federal Department of Justice (USDOJ) when restoration projects are proposed for implementation on private land. Without this additional written agreement, USDOJ has refused to approve more than one settlement package that included a project to be implemented on private land.

Therefore, the willingness of a private landowner to sign a written conservation servitude limiting his use of the property for the life of the project (a period of years) is an additional screening criteria that should be added to this section.

Comment 8: Section 3.2.6 Settlement Alternatives

The LaRRPP, in this section, makes a general statement that the trustees may seek revenues from the federal oil spill liability trust fund and/or the state oil spill contingency fund for funding of compensatory projects. In addition, state or federal trust fund money may be used to supplement funds provided by a responsible party for funding a compensatory project.

This section does not indicate specifically where money paid to settle a particular NRDA claim would be placed, who would control that money, and what criteria would apply to its use. The Natural Resources Restoration Trust Fund created in La. R. S. 30:2480.2 exists to fund compensatory projects. At a minimum, the appropriate federal and state funds where cash settlement payments will reside pending use in compensatory projects should be named, and the criteria for use.[2]

[2] The criteria for use should be specified or, if already specified by existing law or regulation, referenced.