State of Louisiana

James H. Jenkins, Jr.
Secretary

Department of Wildlife & Fisheries
Post Office Box 98000
Baton Rouge, LA 70898-9000
(225) 765-2800

M.J. "Mike" Foster, Jr.
Governor

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William Connor, 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

Dear Mr. Connor:

The Department of Wildlife and Fisheries offers the following comments on the Draft Programmatic Environmental Impact Statement (DPEIS) for the Louisiana Regional Restoration Program (RRP). In developing this new program for implementation in Louisiana, the best aspects of the existing Natural Resource Damage Assessment (NRDA) process must be retained and used as a basis on which to build. These are a focus on the resources, and flexibility and innovation which lead to effectiveness and cost-efficiency.

Louisiana has been a leader in developing and implementing cooperative NRDA, and the goal of further streamlining the NRDA process and its implementation in Louisiana is worthy. Within the program presented in this DPEIS there are two things that will help achieve that goal: the database of available projects, and the mechanism for combining small projects to implement more ecologically significant restoration. The management structure (Section 3.3) and case implementation process (Section 3.4), however, describe a bureaucratic system with several levels of organization within several state and federal agencies. The cash settlement options also will contribute to the development of bureaucracy by providing incentive for agencies to develop bureaucratic infrastructure to handle cash and develop and monitor projects. The funding needed to support these systems will negate any savings realized by streamlining the assessment and restoration planning and implementation development. One of the reasons for the success of the existing NRDA process in Louisiana is that responsible parties have been able to see their settlement funds spent on the ground restoring the natural resources that were injured by their spill. Most responsible parties in Louisiana NRDA cases to-date have, in fact, opted to implement restoration themselves with trustee oversight. The currency used in Louisiana's NRDA process has been restoring injured resources; cash value and money management must not be of primary importance.

The focus on restoration led to another strength of the existing Louisiana NRDA process: flexibility and innovation. The trustees working cooperatively with responsible parties have been able to take advantage of innovative restoration opportunities that will not be possible under a rigidly-defined structure as proposed here. This is essential and must be maintained in the RRP.

The RRP is but one of several ways to compensate the public by restoring natural resources injured by oil spills. The document must clearly state that the overall goal of the program is restoring resources injured by incidents, and that the most efficient and cost-effective means of providing restoration will be used. Each incident must be evaluated on its own merits and the trustees decide (cooperatively with the responsible party) whether to use incident-specific NRDA, the RRP, or any other method to adequately compensate the public for injury to natural resources/services. This concept is alluded to in the general description of the program (page 6). It must be highlighted and emphasized in the Purpose and Need section (1.3)

The program must result in decreased transaction costs for individual NRDA or there will be no benefit to the public. Consistency and predictability could be a two-edged sword that will limit the trustees' ability to take advantage of restoration opportunities that clearly benefit resources but don't fit the framework established by the RRP program. Therefore, flexibility must be not only included, but encouraged. The uncertainty that needs to be minimized is whether or not restoration will take place, not the specific means by which restoration is achieved. The program must focus on the resource.

Participation by the responsible party in a cooperative process is key to the success of the program. The invitation for the RP to participate must be extended as early in the process as possible. An informal invitation at the time of the spill followed by a formal solicitation is appropriate.

The DPEIS describes certain organizational structures within participant agencies to implement the program. It must be stated that the specific mechanism of participation used by individual agencies is at the discretion of that agency.

The DPEIS does not, but should describe how the responsible party will interact with the trustees in this program structure.

Additional specific comments are included as notes attached to the DPEIS file on the enclosed CR-ROM. Thank you for the opportunity to provide comments on the program. The NRDA process offers opportunities for natural resource and habitat restoration work that otherwise would not be done.

Sincerely,

James H. Jenkins, Jr.
Secretary

Summary of LDWF Written Comments on the Draft PEIS

Page: 26
The program must result in decreased transaction costs for individual NRDA or there will be no increased benefit to the public. Consistency and predictability could be a two-edged sword that will limit the trustees' ability to take advantage of restoration opportunities that clearly benefit resources but don't fit the framework established by the RRP program. Therefore, flexibility must be not only included, but encouraged. The uncertainty that needs to be minimized is whether or not restoration will take place, not the specific means by which restoration is achieved.

Page: 29
The program described describes additional mechanisms for case settlement, but these already were options available to the trustees; flexibility has not necessarily been increased.

Page: 31
It should be clearly stated in the PEIS that the regional restoration program is but one of several ways to compensate the public by restoring natural resources injured by oil spills. The document should clearly state that resource restoration for injuries resulting from an incident(s) is the overall goal of the program, and that that restoration will be pursued in the most efficient and cost-effective manner possible. The trustees should evaluate each incident based on its own merits and decide (cooperatively with the responsible party) whether restoration should be conducted through an incident-specific NRDA, the Regional Restoration Planning Program, or any other means that adequately compensates the public for injury to natural resources/services. This concept is alluded to here; it should be highlighted and emphasized in the Purpose and Need section (1.3)

Page: 31
and also will (not but)

Page: 31
See previous comments regarding predictability, consistency, and uncertainty.

Page: 39
More accurate and/or up-to-date information regarding licensing may be available from LDWF. Contact Janice Landry at 225 765-2881. This comment also applies to fishing licenses.

Page: 54
Identify the circumstances when one would go to step 3 in figure 2.2

Page: 58
The meaning of the text for birds and wildlife here is unclear. Is the intent to say "Birds (mammals) located permanently or seasonally in all coastal and inland areas are included

in this category (Appendix B). This category can also include injuries to the ecological services birds (mammals) provide to other resources."

Page: 96
What is the proposed mechanism for designating "authorized officials"? Will state officials be designated by the Governor?

Page:96
It should be stated that the mechanism of participation by individual agencies is at the discretion of that agency. How does the responsible party interact with the trustees in this program structure?

Page: 99
Agencies may choose to participate in program implementation through mechanisms other than through regional staff.

Page: 101
A formal invitation for the RP to participate at this point is appropriate; however the RP should be involved in the process as soon after the incident as possible.

Page: 136
Heather Finley's expertise is in biology and geology