



## Deepwater Horizon Natural Resource Damage Assessment

### Early Restoration Project Selection Criteria

On April 21, 2011, the *Deepwater Horizon* Natural Resource Damage Assessment (NRDA) Trustee Council announced an agreement under which BP committed to provide \$1 billion toward implementation of early restoration projects.

A NRDA is the process used by natural resource trustees to develop the public's claim for natural resource damages against the party or parties responsible for the spill. It also seeks compensation for the harm done to natural resources and those services they provide.

As part of the NRDA, trustees are evaluating a broad suite of early restoration projects based on criteria included in the Oil Pollution Act of 1990 (OPA) regulations, the April 2011 agreement, and additional factors that are otherwise key components in planning or implementing restoration projects.

#### Oil Pollution Act of 1990

The OPA regulations (15 C.F.R. § 990.54) require the trustees to evaluate proposed restoration alternatives based on, at a minimum:

- The cost to carry out the alternative;
- The extent to which each alternative is expected to meet the trustees' goals and objectives in returning the injured natural resources and services to baseline and/or compensating for interim losses (the ability of the restoration project to provide comparable resources and services, that is, the nexus between the project and the injury, is an important consideration in the project selection process);
- The likelihood of success of each alternative;
- The extent to which each alternative will prevent future injury as a result of the incident and avoid collateral injury as a result of implementing the alternative;
- The extent to which each alternative benefits more than one natural resource and/or service; and
- The effect of each alternative on public health and safety.



*Trustees have held numerous public meetings to solicit input on projects.*

Under OPA regulations, if the trustees conclude that two or more alternatives are equally preferable, the most cost-effective alternative must be chosen.

#### April 2011 Early Restoration Agreement

The April 2011 early restoration agreement states that the trustees shall select projects for early restoration that meet all of the following criteria:

- Contribute to making the environment and the public whole by restoring, rehabilitating, replacing or acquiring the equivalent of natural resources or services injured as a result of the *Deepwater Horizon* oil spill or response, or compensating for interim losses resulting from the incident;
- Address one or more specific injuries to natural resources or services associated with the incident;
- Seek to restore natural resources, habitats or natural resource services of the same type, quality and of comparable ecological and/or human-use value to compensate for identified resource and service losses resulting from the incident;
- Are not inconsistent with the anticipated long-term restoration needs and anticipated final restoration plan; and
- Are feasible and cost-effective.



*Mindful of the need to restore the Gulf's resources as soon as possible, the trustees are taking decisive strides to identify restoration projects that will begin to address the impacts of the Deepwater Horizon oil spill in the near future.*

### **Additional Considerations**

Trustees also took into account several practical considerations that, while not legally mandated, are nonetheless useful and permissible to help screen the large number of potentially qualifying projects.

None of these practical considerations was used as a “litmus test.” Rather, they were used as flexible, discretionary factors to supplement the decision criteria described on page 1.

For example, trustees:

- Took into account how quickly a given project is likely to begin producing environmental benefits;
- Sought a diverse set of projects providing benefits to a broad array of potentially injured resources;
- Focused on types of projects with which they have significant experience, allowing them to predict costs and likely success with a relatively high degree of confidence and making it easier to reach agreement with BP on the offsets attributed to each project, as required by the April 2011 early restoration agreement; and
- Gave preference to projects that were closer to being ready to implement.

### **A Shared Goal: Starting Recovery Quickly**

All of these discretionary factors are consistent with a key objective for pursuing early restoration: to secure tangible recovery of natural resources and natural resource services for the public's benefit while the longer-term process of fully assessing injury and damages is still under way.

In addition, the OPA regulations include specific guidance on the utilization of existing restoration projects and regional restoration plans (e.g., Louisiana Regional Restoration Plan) to address natural resource injuries when appropriate.

Projects already developed under such plans — with engineering designs, cost analyses, partner coordination, and permit and National Environmental Policy Act requirements satisfied — could be implemented quickly and are good candidates for consideration in the early restoration process.

