

Coordination in the Natural Resource Damage Assessment Process: Project Planning and Selection

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Introduction

In March 2018, we released a paper on “Coordination in the Natural Resource Damage Assessment Process: General Tools and Mechanisms,” which surveyed some of the general tools and mechanisms available to the *Deepwater Horizon* natural resource damage assessment (NRDA) trustees to help coordinate their activities. This paper builds on that work: it describes some additional tools that are available during project planning and selection that could help coordinate the trustees’ activities internally within the NRDA program and with external entities. (Note that when we talk about internal coordination, we largely mean coordination among the various Trustee Implementation Groups (TIGs)).

This paper focuses in particular on (1) project screening criteria; (2) strategic frameworks; and (3) joint restoration planning. We provide some examples of the ways that the trustees are using these tools, but have not attempted to catalogue all of them.

1. Screening for Projects that Bolster Coordination

The TIGs can use their project screening processes with an eye toward bolstering coordination internally and with external entities.

When selecting projects for their restoration plans, the TIGs use a systematic screening process to narrow down a large number of project ideas to a smaller set of proposed alternatives. As part of this screening process, they are required to consider various factors. For one, they must ensure that a project is consistent with the Programmatic Damage Assessment and Restoration Plan and Programmatic Environmental Impact Statement (PDARP). They also must consider six criteria set out in the federal Oil Pollution Act (OPA) NRDA regulations when evaluating proposed restoration project alternatives.¹

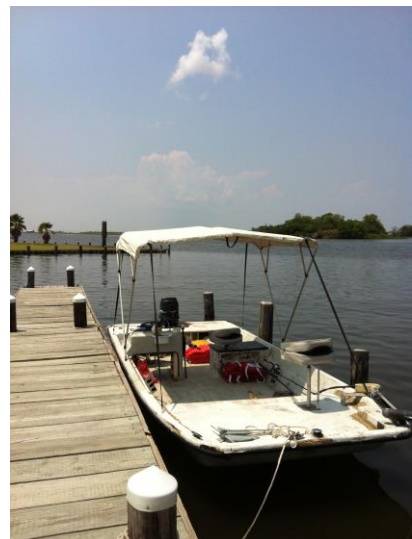


Photo by ELI Gulf Team.

In addition to the required factors, each TIG may develop its own criteria, referred to here as “additional” criteria, for screening project ideas.² The TIGs could develop

¹ See 15 CFR § 990.54(a). The OPA criteria are: “(1) The cost to carry out the alternative; (2) 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; (3) The likelihood of success of each alternative; (4) 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; (5) The extent to which each alternative benefits more than one natural resource and/or service; and (6) The effect of each alternative on public health and safety.” *Id.*

additional project screening criteria that will promote coordination with external entities, other TIGs, or both. Some examples of such screening criteria include:

Criteria to Promote Coordination with External Entities

- **Project leverages funds from outside sources:** By screening for projects that are receiving funds from outside sources, this type of criterion could help promote coordination with external entities. One example of this type of criterion being used is in the Texas TIG’s *Final 2017 Restoration Plan/Environmental Assessment*. There, the Texas TIG employed the “additional” criterion, “Project offers opportunities for external funding and/or collaboration.”³ Consistent with this criterion, “at least two projects selected in [the plan] are receiving partial funding through the RESTORE Act,” and “[a]dditional projects may be considered for future [National Fish and Wildlife Foundation Gulf Environmental Benefit Fund (NFWF GEBF)] and/or RESTORE Act funding to expand or complement projects selected...”⁴
- **Project is consistent with existing plans or efforts:** By screening for projects developed under or aligned with existing plans or other efforts (e.g., regional plans), this type of criterion could help coordinate TIG activities with other restoration activities. The LA TIG considered this type of criterion when screening projects for its *Final Restoration Plan #1*: it considered whether projects were already identified under, or at least “consistent with,” the state’s Coastal Master Plan.⁵ The final plan included three Wetlands, Coastal, and Nearshore Habitat

² According to the Trustee Council Standard Operating Procedures (SOPs), “TIGs will screen initial project ideas to hone in on potential projects and alternatives that will continue to be developed for consideration. Screening will adhere to project selection criteria consistent with OPA regulations (15 CFR § 990.54), the PDARP/PEIS, and *any additional evaluation criteria established by a TIG* and identified in a restoration plan or public notice.” TRUSTEE COUNCIL STANDARD OPERATING PROCEDURES FOR IMPLEMENTATION OF THE NATURAL RESOURCE RESTORATION FOR THE DEEPWATER HORIZON (DWH) OIL SPILL at 9.4.1.4 (revised Nov. 15, 2016) (hereinafter “SOPs”), *available at*:

<http://www.gulfspillrestoration.noaa.gov/sites/default/files/DWH%20TC%20SOP%202.0%20with%20appendices.pdf> (emphasis added).

³ TEXAS TRUSTEE IMPLEMENTATION GROUP, FINAL 2017 RESTORATION PLAN/ENVIRONMENTAL ASSESSMENT: RESTORATION OF WETLANDS, COASTAL, AND NEARSHORE HABITATS; AND OYSTERS at 369 (2017), *available at*: http://www.gulfspillrestoration.noaa.gov/sites/default/files/nrda_tx_tig_final_rpea_2017.pdf.

⁴ *Id.* at 19. The two projects that were noted in the 2017 plan as receiving partial funding through the RESTORE Act were the Bessie Heights Wetland Restoration project and the Pierce Marsh Wetland Restoration project. An additional project from that plan, the McFaddin Beach and Dune Restoration project, subsequently was awarded \$26.5 million in NFWF GEBF funding in April 2018. See National Fish and Wildlife Foundation, *Press Releases*, “NFWF Announces \$26.5 Million Award to Restore 17 miles of Shoreline at McFaddin National Wildlife Refuge” (Apr. 23, 2018), <http://www.nfwf.org/whoweare/mediacenter/pr/Pages/nfwf-announces-26-5-million-award-to-restore--17-miles-of-shoreline-at-mcfaddin-national-wildlife-refuge-2018-0423.aspx>. NFWF’s press release also notes that the project will receive RESTORE Act funding. *Id.*

⁵ LOUISIANA TRUSTEE IMPLEMENTATION GROUP, FINAL RESTORATION PLAN #1: RESTORATION OF WETLANDS, COASTAL, AND NEARSHORE HABITATS; HABITAT PROJECTS ON FEDERALLY MANAGED LANDS; AND BIRDS at 27

restoration projects that had been “developed under” the Coastal Master Plan in whole or in part.⁶ For another example of how this type of criterion has been used, see the box below on the Mississippi TIG’s screening process for its 2016-2017 restoration plan.

- **Project will be implemented in partnership with external entities:** By screening for projects that involve working with external entities, this type of criterion could promote external coordination.

Criterion to Promote Coordination with other TIGs

- **Project involves more than one TIG:** This type of criterion could promote internal coordination among the TIGs. We address “Joint Restoration Planning” in section three below.

Criterion to Promote Coordination with External Entities and other TIGs

- **Project leverages activities of other TIGs or external entities:** By screening for projects that leverage the work of other restoration efforts, this type of criterion could promote coordination with other TIGs and with external entities conducting restoration activities. The Alabama TIG considered this type of criterion when screening proposed nutrient reduction projects for its *Draft Restoration Plan II and Environmental Assessment*. More specifically, the Alabama TIG considered whether proposed projects occurred in watersheds that, among other things, “are co-located and have synergistic benefits with other DWH restoration initiatives.”⁷



Photo by ELI Gulf Team.

(Jan. 2017), available at:

http://www.gulfspillrestoration.noaa.gov/sites/default/files/FINAL%20LA%20TIG%20final%20RP%20%231_508.pdf.

⁶ *Id.* at 64. The three other projects selected for the plan were described as “consistent with” the Coastal Master Plan. *Id.* at 52, 54, 56.

⁷ ALABAMA TRUSTEE IMPLEMENTATION GROUP, DRAFT RESTORATION PLAN II AND ENVIRONMENTAL ASSESSMENT (Apr. 2018) at Appendix B, “Proposed Screening Methodology for Nutrient Reduction Projects,” page 3, available at: <http://www.gulfspillrestoration.noaa.gov/2018/04/alabama-releases-draft-restoration-plan-ii-seeking-public-comment-until-may-4>.

Mississippi: Screening Projects to Promote Coordination

In the Mississippi TIG's 2016-2017 *Restoration Plan/Environmental Assessment*, the TIG considered "additional" criteria related to coordination when screening project ideas for wetlands, coastal, and nearshore habitats (WCNH) and birds.⁸ More specifically, the TIG considered criteria related to coordination at two steps: when considering its MS TIG 2016-2017 Goals and Objectives, and when taking into account "Additional Considerations" (see figure above).

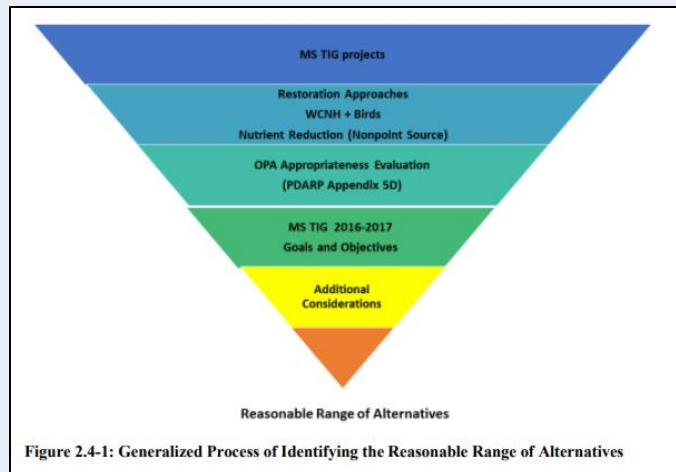


Figure 2.4-1: Generalized Process of Identifying the Reasonable Range of Alternatives

Source: MS TIG 2016-2017 RESTORATION PLAN, *infra* note 8, at 18.

For the MS TIG Goals and Objectives, all relate to some aspect of coordination – i.e., "regional connectivity; leveraging; project partnering opportunities; and synergy with existing regional planning initiatives."⁹ This step helped the TIG narrow its project list to project ideas that "included large acquisitions, habitat restoration, and projects that could be leveraged with funds outside of the NRDA process, such as RESTORE or NFWF GEBF funds."¹⁰ The TIG noted that projects that "provided only limited regional connectivity" were eliminated at this step.¹¹

In addition, the "Additional Considerations" that the TIG took into account included a criterion related to external coordination: whether projects were "consistent with regional planning efforts or ongoing restoration efforts including National Wildlife Refuge (NWR) management plans, the [MS Coastal Preservation] program, and others."¹²

As a result of this step, the TIG selected two WCNH and birds projects for inclusion in the 2016-2017 plan: the Graveline Bay Land Acquisition and Management project and the Grand Bay Land Acquisition and Habitat Management project. Implementing these two projects will involve various agencies coordinating across different geographic areas, ecosystems, and funding sources.¹³

⁸ See MISSISSIPPI TRUSTEE IMPLEMENTATION GROUP, MISSISSIPPI TRUSTEE IMPLEMENTATION GROUP 2016-2017 RESTORATION PLAN/ENVIRONMENTAL ASSESSMENT (2017), *available at*: <http://www.gulfspillrestoration.noaa.gov/sites/default/files/MSTIG%20RP%20EA%202016-2017%20FINAL%20Combined%20508.pdf>. The plan also prioritized another restoration type: nutrient reduction. The screening process for nutrient reduction projects, not described here, proceeded in parallel to the screening process for WCNH and birds and also included considerations related to coordination. See *id.*

⁹ *Id.* at 24.

¹⁰ *Id.* at 25.

¹¹ *Id.* at 25.

¹² *Id.* at 26.

¹³ See *id.* at ES-3, ES-4, 17.

2. Strategic Frameworks

Strategic frameworks are another tool available during project planning and selection to help coordinate the trustees' activities internally and with external entities. As explained in the PDARP, "TIGs may prepare strategic frameworks to focus and sequence priorities within a Restoration Area or to provide additional vision of how to meet Restoration Type goals set forth in the PDARP."¹⁴ The PDARP goes on to note that these frameworks "may provide context for prioritization, sequencing, and selection of specific projects within project-specific restoration plans."¹⁵ The TIGs are required to "consider relevant strategic frameworks as available" in project development and selection.¹⁶

In June 2017, the region-wide TIG released four strategic frameworks: one each for birds, marine mammals, oysters, and sea turtles. These frameworks are intended to, among other things, "promote information sharing and coordination across TIGs for the four resources..."¹⁷ While the details of each framework differ, they are all structured the same way. Each includes four modules. **Module 1** provides "[a] brief summary of the information in the PDARP/PEIS related to each resource..." **Module 2** provides "[b]iological and ecological information on each resource..." **Module 3** lists some of the "recent and ongoing conservation, restoration, management, and monitoring activities related to each resource..." And **Module 4** provides "[c]onsiderations for the prioritization, sequencing, and selection of restoration projects to benefit the resource..."¹⁸

The strategic frameworks provide a useful starting point for the TIGs to coordinate with one another, as well as with external entities. For one, they ensure that the trustees and others all have the same information about the resource in front of them. This includes information on the resource's biology and ecology, threats, and some of the ongoing activities "related to the conservation, management, and/or restoration of [the resource]

¹⁴ FINAL PROGRAMMATIC DAMAGE ASSESSMENT AND RESTORATION PLAN (PDARP) AND FINAL PROGRAMMATIC ENVIRONMENTAL IMPACT STATEMENT (PEIS) at 7-15 (Feb. 2016) (hereinafter "PDARP"), available at: <http://www.gulfspillrestoration.noaa.gov/restoration-planning/gulf-plan>.

¹⁵ *Id.*

¹⁶ SOPs, *supra* note 2, at 9.4.1.2(a); see also SOPs, *supra* note 2, at 9.4.1.1 ("as they are available, [strategic frameworks] will be considered by TIGs when developing and selecting projects").

¹⁷ See, e.g., DEEPWATER HORIZON OIL SPILL NATURAL RESOURCE DAMAGE ASSESSMENT TRUSTEES, STRATEGIC FRAMEWORK FOR SEA TURTLE RESTORATION ACTIVITIES at Introduction (June 2017), available at: http://www.gulfspillrestoration.noaa.gov/sites/default/files/wp-content/uploads/Sea_Turtle_Strategic_Framework_6.23.17.pdf.

¹⁸ *Id.*

within the northern Gulf of Mexico.”¹⁹ As the trustees put it, the frameworks “provide a shared knowledge set for all [t]rustees to use for restoration.”²⁰

In addition, the frameworks identify certain types of coordination that may be useful. This includes coordinating:

- **Across restoration types:** for example, the strategic framework for sea turtles indicates that the “restoration activities developed under the approaches and techniques described [in the module] should be coordinated with similar restoration activities targeting other GOM resources to ensure efficiency and maximize benefits.”²¹
- **With existing programs and entities:** for example, in the strategic framework for birds, the trustees note that they “intend to take full advantage of existing programs and previous research...when selecting and implementing restoration actions.” They go on to note that “[w]here applicable, restoration planning will be coordinated with existing statutes and entities charged with managing protected and managed resources...”²²
- **With other TIGs:** as the strategic framework for birds notes in a section on “Monitoring Coordination,” “[c]oordination across resource categories and [TIGs] may help identify opportunities to provide and enhance benefits to other injured resource categories in the design, implementation, and monitoring and adaptive management for all bird restoration projects.”²³
- **With regard to monitoring:** some of the strategic frameworks indicate that it would be useful to coordinate monitoring efforts – both at the project level²⁴ and the resource level.²⁵

¹⁹ See, e.g., *id.* at Module 3, page 1.

²⁰ See, e.g., DEEPWATER HORIZON RESTORATION PROJECT REPORT: BIRD STRATEGIC FRAMEWORK DEVELOPMENT FOR LIVING COASTAL AND MARINE RESOURCES (Apr. 20, 2017), available at: pub-data.diver.orr.noaa.gov/restoration/Bird_Strategic_Framework_ID74_2016_Annual_Report.pdf.

²¹ STRATEGIC FRAMEWORK FOR SEA TURTLE RESTORATION ACTIVITIES, *supra* note 17, at Module 4, page 3.

²² DEEPWATER HORIZON OIL SPILL NATURAL RESOURCE DAMAGE ASSESSMENT TRUSTEES, STRATEGIC FRAMEWORK FOR BIRD RESTORATION ACTIVITIES at Module 4, page 1 (June 2017), available at: http://www.gulfspillrestoration.noaa.gov/sites/default/files/wp-content/uploads/Birds_Strategic_Framework_06.23.17.pdf.

²³ *Id.* at Module 4, page 29.

²⁴ For example, the Strategic Framework for Sea Turtle Restoration Activities indicates that “[p]erformance monitoring for specific projects may rely on existing and/or enhancement of existing programs like fishery observer programs...”). STRATEGIC FRAMEWORK FOR SEA TURTLE RESTORATION ACTIVITIES, *supra* note 17, at Module 4, page 20. Note that the SOPs indicate that “[d]uring the development of a MAM plan, Trustees should consider relevant existing information sources (e.g., fisheries observer programs, marine mammal and sea turtle stranding networks, regional monitoring

At the same time, the frameworks identify some activities that may lead to increased coordination. For example, one of the potential planning project concepts that the oyster framework identifies is “[m]ap[ping] restoration of other resource types within suitable oyster habitat,” which is intended “to identify opportunities to leverage projects and implement multi-resource restoration projects.”²⁶ If implemented, this project could lead to increased coordination.

While the TIGs’ use of the strategic frameworks is likely to help them coordinate with each other and with external entities, there may be additional information the frameworks could provide to further support coordination. For example, the frameworks could:

- **Provide additional information to help with coordination:** some of the frameworks already include sections that could be helpful in this regard. For example, for each restoration technique included in the strategic framework for marine mammals, there is a section on “Coordination considerations.” This section is intended to describe “how activities associated with a potential technique could be coordinated with other restoration activities in the [Gulf of Mexico].”²⁷



Photo by ELI Gulf Team.

This section could be modified to include additional details, such as identifying specific activities that could support coordination.²⁸

networks, etc.) that could be leveraged to evaluate project performance.” SOPs, *supra* note 2, at 10.6.3(a).

²⁵ For example, the Strategic Framework for Marine Mammal Restoration Activities indicates that, for several reasons, “it is important to establish a coordinated [resource-level] monitoring effort with NOAA and local resource stakeholders.” DEEPWATER HORIZON OIL SPILL NATURAL RESOURCE DAMAGE ASSESSMENT TRUSTEES, STRATEGIC FRAMEWORK FOR MARINE MAMMAL RESTORATION ACTIVITIES at Module 4, page 22 (June 2017), available at: http://www.gulfspillrestoration.noaa.gov/sites/default/files/wp-content/uploads/Marine_Mammal_Strategic_Framework_06.23.17.pdf.

²⁶ DEEPWATER HORIZON OIL SPILL NATURAL RESOURCE DAMAGE ASSESSMENT TRUSTEES, STRATEGIC FRAMEWORK FOR OYSTER RESTORATION ACTIVITIES at Module 4, page 10 (June 2017), available at: http://www.gulfspillrestoration.noaa.gov/sites/default/files/wp-content/uploads/Oyster_Strategic_Framework_06.23.17.pdf.

²⁷ STRATEGIC FRAMEWORK FOR MARINE MAMMAL RESTORATION ACTIVITIES, *supra* note 25, at Module 4, page 4.

²⁸ For example, under the technique “Develop and Implement Tools and Techniques to Identify Possible Mass Strandings Situations Before They Occur, and to Avert Animals from Mass Strandings,” the trustees indicate that “collaboration with the PAM network is critical to this technique.” STRATEGIC

The strategic framework for sea turtles also provides guidance: for each restoration technique, there is a section on “Current status,” which provides a “[d]escription of existing funded projects or management actions related to a given technique that may affect the direction or sequencing of the technique.”²⁹ While the trustees did not intend to provide “an exhaustive list,” this section could be modified to include a more comprehensive list of relevant projects and activities. A section like this, along with one like the “Coordination considerations” section, could also be included in the frameworks that do not currently have similar information.

- **Identify coordination mechanisms:** the frameworks could also identify possible mechanisms to help with coordination. For example, in the strategic framework for marine mammals, the trustees indicate that “the development of a marine mammal data coordination group could help facilitate communication and information dissemination to restoration project managers and other stakeholders.”³⁰ This type of group could support coordination among the TIGs and with external entities, at least with regard to data. The frameworks could also identify other mechanisms that might help the trustees coordinate.

At the same time, additional strategic frameworks could be developed to further support coordination. The four strategic frameworks described above are focused on specific resources, but the frameworks could also focus on specific geographic areas. For example, the Louisiana TIG released a strategic restoration plan for the Barataria Basin, focusing on the wetlands, coastal and nearshore habitats restoration type. The plan is intended “to identify a restoration strategy that will help prioritize future decisions regarding project selection and funding.”³¹ While this plan involves a geographic area within a single restoration area, this sort of plan could possibly also be used to coordinate activities in a geographic area that crosses jurisdictions (i.e. includes more than one restoration area).³²

FRAMEWORK FOR MARINE MAMMAL RESTORATION ACTIVITIES, *supra* note 25, at Module 4, page 15.

Additional details like these could be useful in supporting coordination.

²⁹ STRATEGIC FRAMEWORK FOR SEA TURTLE RESTORATION ACTIVITIES, *supra* note 17, at Module 4, page 5.

³⁰ STRATEGIC FRAMEWORK FOR MARINE MAMMAL RESTORATION ACTIVITIES, *supra* note 25, at Module 4, page 26.

³¹ See LOUISIANA TRUSTEE IMPLEMENTATION GROUP, STRATEGIC RESTORATION PLAN AND ENVIRONMENTAL ASSESSMENT #3: RESTORATION OF WETLANDS, COASTAL, AND NEARSHORE HABITATS IN THE BARATARIA BASIN, LOUISIANA (Mar. 2018), Executive Summary at xii, *available at*: http://www.gulfspillrestoration.noaa.gov/sites/default/files/2018_03_LA_TIG_Final_SRP_EA_508-Compliant.pdf.

³² As noted above, the PDARP indicates that “TIGs may prepare strategic frameworks to focus and sequence priorities within a Restoration Area or to provide additional vision of how to meet Restoration Type goals set forth in the PDARP.” PDARP, *supra* note 14, at 7-15. While the PDARP does not specify that a strategic framework addressing more than one restoration type in more than one restoration area

3. Joint Restoration Planning

Another tool that may be useful in helping the TIGs coordinate internally during project planning and selection is joint restoration planning. The PDARP provides that “during project planning, TIGs will coordinate with other TIGs or individual Trustees for proposed projects that overlap TIG restoration areas,” and that “restoration plans...may be developed jointly with other TIGs.”³³ Similarly, the SOPs indicate that the TIGs can “develop joint restoration plans with other TIGs.”³⁴

The SOPs include procedural guidance for joint plan development:

Public engagement and review will involve geographies appropriate for all participating TIGs. Before proposing a joint draft restoration plan, the participating TIGs will agree on the decision processes and ensure these are clear to the public, either via notifications or in the draft restoration plan.³⁵

While we are unaware of any joint planning that has occurred to date, this type of planning could be an effective way for TIGs to coordinate across restoration areas.

Conclusion

There are several tools that are available to the trustees during project planning and selection that can help bolster coordination. In this paper, we highlight some of these tools, and provide examples of how the trustees have already been using some of them. As the restoration efforts move forward, these tools could play an important role in coordinating the trustees’ activities internally and with external entities.



Photo by ELI Gulf Team.

could be developed, such a framework could arguably be drafted “to provide additional vision of how to meet Restoration Type goals set forth in the PDARP.”

³³ PDARP, *supra* note 14, at 7-15 to 16.

³⁴ SOPs, *supra* note 2, at 9.4.3.1.

³⁵ *Id.* at 9.4.3.1.



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