



**UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Office of General Counsel, Natural Resources Section
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Long Beach, California 90802**

August 8, 2013

Karolien Debusschere
Louisiana Oil Spill Coordinator's Office
Department of Public Safety & Corrections
Public Safety Services
P.O. Box 66614
Baton Rouge, LA 70896

Re: Louisiana Trustee Comments on T/B DBL 152 Draft DARP/EA

Dear Ms. Debusschere,

Thank you for your comments on behalf of the Louisiana Oil Spill Coordinator's Office (LOSCO) and its state natural resource co-trustees. As a frequent partner on spills affecting Louisiana's invaluable natural resources, the National Oceanic and Atmospheric Administration (NOAA) always values LOSCO's input on such matters.

NOAA will soon begin preparing its formal "Response to Comments" on the Draft Damage Assessment and Restoration Plan/Environmental Assessment (DARP/EA) for the Tug Barge DBL 152 Oil Spill (DBL 152). However, before doing so we would like to take this opportunity to clarify certain statements in the DARP/EA and request additional information related to the Louisiana trustees' comments.

Overlapping Impacts

NOAA appreciates the Louisiana trustees' concern regarding the potential overlap of DBL 152 and Deepwater Horizon (DWH) impacts. NOAA's statements in the draft DARP/EA on this subject were not intended as a limitation on the magnitude of DWH impacts. It is perhaps more accurate to say that, based on what is currently known about the two spills, and considering their temporal and spatial distance, NOAA identified no quantifiable overlap relevant in measuring injury and scaling restoration for DBL 152. We intend to add language to this effect and welcome your feedback on this clarification.

Oil Fate and Transport

The fate and transport of the DBL 152 oil warrants further discussion because it is relevant to the Louisiana trustees' comments on additional monitoring, trusteeship, and the appropriate geographic nexus for restoration. As noted in the draft DARP/EA, long-term monitoring data showed the oil migrating generally west-northwest of the capsized location and dissipating over time.

There is considerable discussion of the fate and transport of the oil in the NOAA paper "Long-Term Transport of Oil from T/B DBL-152," which was prepared in support of the DBL 152 response in December, 2005. This paper is included in the DBL 152 administrative record and is attached to this letter as well. Generally, the paper concludes that the heavy oil that sank during this spill was expected to remain stationary on the ocean floor until storm-generated wave energy caused the oil to break up and mix in the water column. At this point the long term transport of the oil would be down-coast (from northeast to southwest) and eventually offshore (thus no shoreline impacts were anticipated). The paper also noted that, because the DBL 152 oil was heavy, low viscosity oil, it was likely to sink and continue to break up into smaller and smaller particles over time, more quickly than higher viscosity heavy oils. In other words, the oil would physically degrade relatively rapidly and continue to move down-coast (at least until it began moving away from shore). Monitoring data were consistent with these predictions. At the completion of long term monitoring in 2007, the leading edge of the oil was over 20 nautical miles from shore and it was not expected to enter state waters. The closest shoreline point at that time was the Sabine Pass at the Texas/Louisiana border. Thus, based on historical and spill-specific data, it was predicted that, while entry into state waters and/or shoreline impacts were unlikely, if either were to occur, they would occur in Texas.

Additional Monitoring

Based on current information, it appears unlikely that additional monitoring would be justified at this point due to the logistical difficulty and high cost associated with locating any possible remnants of the non-uniform and discontinuous submerged oil in such a large footprint (last estimated by the long-term monitoring efforts of the Unified Command to be approximately 45,000 acres). As noted above, the DBL 152 oil sank quickly and has, therefore, been weathering and collecting sediment at the bottom of the Gulf of Mexico for the last seven and a half years. It is, therefore, highly unlikely that monitoring at this time would be able to identify oil or impacts that could be reliably "fingerprinted" to the DBL 152 oil spill. The slurry oil from this spill was a blended product difficult to characterize from the onset because of the wide range of residues and diluents used in its production. Thus, the benefits of such monitoring would be questionable. Conversely, the costs of such monitoring would be substantial. Offshore monitoring of the Gulf floor would be extremely resource intensive under the best of

circumstances. In this case, NOAA would be searching for oil that has not been observed for six years, and that is predicted to have broken down considerably due to the physical characteristics discussed above. As to impacts, it is currently two and a half years past NOAA's predicted point of full recovery. Even if one assumes that (1) this prediction was incorrect and (2) injured resources had still not recovered in the intervening two and a half years, it is highly likely that any lingering impacts would be so subtle that they could not reliably be attributed to the DBL 152. Finally, even if additional monitoring was justified, NOAA does not currently have the resources or funding to carry it out. However, if Louisiana is interested in undertaking further monitoring, NOAA would like to discuss ways in which we could incorporate any resulting data into the DBL 152 injury assessment.

Injury to Louisiana Resources

As stated in your letter, NOAA's conclusion that it was acting as the sole trustee was based largely on the determination that injuries were limited to resources in federal waters. In addition, during periodic verbal communications between the Louisiana trustees and NOAA staff, Louisiana declined to participate in the cooperative assessment. Subsequently, a Notice of Intent to Conduct Restoration Planning (which identified NOAA as the sole trustee) was published in the Federal Register (Vol. 74, No. 66) on April 8, 2009. This notice informed the public of NOAA's intent to evaluate potential injuries to natural resources and services resulting from this incident and to use that information to determine the need for and to scale restoration actions to address these potential injuries. The Louisiana trustees did not communicate an interest in participating as a co-trustee at this point either. We regret that there appears to have been some miscommunication. NOAA would, of course, have been happy to coordinate more closely with the Louisiana trustees if we had known of that desire.

In moving forward, if the Louisiana trustees are aware of quantifiable data that identifies injuries to Louisiana trust resources, NOAA would be pleased to discuss further how to incorporate that data into the DBL 152 injury assessment. Also, as a practical matter, we anticipate that NOAA's planned claim to the National Pollution Funds Center will address only benthic injuries in federal waters. Therefore, NOAA's claim would not preclude Louisiana from making a claim for injuries to Louisiana resources.

Louisiana Restoration Projects

NOAA has no objection to evaluating projects in Louisiana, and we welcome the opportunity to discuss any projects that might meet the evaluation criteria laid out in the draft DARP/EA. It is important to note that, when evaluating the geographic nexus for restoration, NOAA gave primary consideration to the trajectory of the oil, which, as discussed above, showed continued movement toward the upper Texas coast. In addition to this general

geographic nexus analysis, there were also important considerations that led NOAA to the particular proposed restoration project identified in the draft DARP/EA. Specifically, the preferred alternative represents a phase in an ongoing effort to protect shorelines throughout the Texas Chenier Plain National Wildlife Refuge Complex; as such, the project benefits from the fact that the affected property is already protected under U. S. Fish & Wildlife Service management, meaning that no conservation servitude costs will be incurred, and that prior phases of the shoreline protection effort demonstrated a track record of successful implementation. In addition, the proposed alternative benefits from the fact that it is scalable in terms of project size and from the fact that it produces multiple restoration benefits that are scalable against the injury debits created by the DBL 152 oil spill, yielding an overall cost-benefit analysis for the project that outperformed the other alternatives under consideration. Although these address only a subset of the criteria used in selecting an appropriate project, they are significant considerations.

In order to facilitate further coordination on these matters, additional information would be helpful. Please provide within 30 days any feedback on the clarification of overlapping impacts or specific plans the Louisiana trustees may have regarding additional monitoring, data indicating injury to Louisiana resources, and/or summaries of projects you feel should be considered as restoration for the DBL 152 injuries. As we're sure you can appreciate, NOAA is eager to finalize the DARP/EA and move toward restoration implementation.

Again, thank you for your comments on behalf of the Louisiana trustees.

Sincerely,



Christopher J. Plaisted
Attorney-Advisor
NOAA