

Exploring Gulf restoration issues with individuals working on the ground and in the water



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COMMENTING ON RESTORATION PLANS

ELI: What is commenting?

Jay: Public commenting is part of the process that federal and state governments use in making decisions on important issues. It generally involves making a draft or proposed decision available to the public, and asking the public to say what they think of the proposal – whether it is a good or bad idea or if they have suggested alternatives.

ELI: Will the public have the opportunity to comment on early restoration projects before they are implemented?

Jay: Yes, the Oil Pollution Act requires that plans for restoration be developed and implemented only after the public has the opportunity to comment and the trustees consider these comments. In addition, the \$1 billion early restoration agreement between the trustees and BP requires that all draft early restoration plans go through public review and comment.

That said, it is also important to keep in mind that the public has the right to comment at *any* time during the restoration process, and does not have to wait until there is a formal commenting period. This could be particularly important for early restoration; it may become difficult to influence these plans at the formal commenting stage because by that point, the

trustees and BP will have negotiated at length to determine which projects should be implemented and how much credit BP will receive for them. If you have a proposal for a specific restoration project, it is probably better to send that idea immediately.

ELI: Who’s allowed to comment?

Jay: Any member of the public is allowed to comment – you do not need to be an expert, prove that you are a US citizen, or prove that you are particularly affected.

You may want to consult with a lawyer or other expert to assist with your comments. It is important to keep in mind, however, that you do not need a lawyer or other expert and that, if you decide to use one, you should work closely with that individual to ensure that it is your ideas that get communicated.

ELI: If someone decides they want to comment, how do they go about doing it?

Jay: While there are no requirements imposed on a commenter, it is important to keep in mind that you’re trying to persuade the trustees to take action in accordance with your comment. So, you should write your comment persuasively. You want your comment to convince the trustees of your point of view.

You should also write in clear and simple language. If you are commenting on a specific restoration action or element in the plan, you should refer to the specific page number in the plan or otherwise identify it so that the trustees can understand what you are commenting about. And it is important to organize your thoughts in a logical manner.

Further, you should provide any materials you may have in support of your comment. You can include documents, links to websites, references to published reports, and more. Just be sure that the trustees can find it. Even better, if it's information that the trustees have, you can point to their own information.

ELI: What sort of materials should you include in your comment?

Jay: I think it is useful to think of commenting as a way of helping the trustees do a better job. The more you can give the trustees to show them what you are suggesting is the best way of meeting their stated goals, the more effective your comment will be. So, whatever proof you have of that, whether it's scientific reports, the trustees' information, or personal observations, you should include it. Personal observations can be useful, and if you are able to document those observations – through your own photographs, GPS coordinates, or any other kind of proof – that is even better.

ELI: What happens after a comment is submitted?

Jay: If comments are received in response to a specific request for comment from the trustees, the trustees will be required to collect, catalogue, and consider the comments. In general, this means that the trustees read the comments and categorize similar ones. Then they consider the comments and decide what to do. Are they going to change their

plans? Are they going to continue with existing plans? When the trustees release a final decision, they typically provide a document that summarizes all the categories of comments received, with a response for each category.

If you are sending in a comment, and there was no formal comment period, the trustees are not required to do anything with your comment. So, you might not hear anything.

ELI: Once a decision is released, is there anything the public can do at that stage?

Jay: Yes, there is still the potential for additional input. As I mentioned, the trustees are open to comment at any time. The only exception is that they will not review comments that were received after a public comment period has closed until after a final decision is released. When that happens, the public can comment about whether they like the decision or not. It is quite possible that the so-called final decision will turn out not to be final – that the trustees will reconsider it in light of public comment and opinion. And once a decision is final, the public may be able to sue if they don't like it.

ELI: Why should members of the public be interested in commenting?

Jay: You should be interested in commenting because it is your opportunity to affect the decision. It is quite possible you could have a substantial effect. For example, if you have information that the trustees are not aware of, they may very well take your comment and incorporate it. And if you have information about why a particular action might fail or have unintended consequences, getting that information in front of the trustees can help them avoid those consequences.