

Chapter 6: Public Comments with Trustees' Responses

6.1 Public Comments during the Scoping Process with Trustees' Responses

Summary of Comments received during the Public Scoping period.

M/V New Carissa Final DARP January, 2006

Summary of Comments received during the Public Scoping Process (June/July 2004)				
Commenter	Date	Method	Comment Synopsis	Trustees' Response
Mike Graybill, South Slough National Estuarine Reserve Manager	29-Jun	email	In any acquisition of habitat consider the importance of placing acquisitions in strategic relationship to existing network of protected sites, forging links and creating corridors between existing protected areas and create larger blocks of protected areas when possible; consider both the long term and short term benefits, including lower cost investments in habitat today may have greater long term benefits; consider restoration that doesn't require intensive ongoing management for the long term	In both habitat acquisition proposals for marbled murrelets and shorebirds, the Trustees ranked higher those potential tracts which would create larger blocks of habitat, especially in areas adjacent to existing reserves. Trustees opted to consider alternatives for restoring marbled murrelet losses by acquisition of both current functioning habitat and younger, but potential habitat. The amount of management that would have to be applied (and its cost) was considered for all alternatives.
John Griffith, Coos County Commissioner	2-Jul	email	Make whole those who lost (surfers, fishermen, clam diggers, campers, clambers and crabbers); spend the money to de-list the west coast population of the western snowy plover from the endangered species list; predator management would benefit the species most.	Trustees' objectives are to restore equivalent type recreation opportunities to what was lost. The projects that are proposed do offer opportunities to the groups mentioned by the commenter, as well as to others. Trustees are proposing to improve habitat for the western snowy plover, and have also offered as an alternative, a proposal which would create additional habitat and manage predators for the plover's benefit. These conservation measures would contribute to the conservation of the species and ultimately to the recovery of the species to the point where it could be removed from listing under the Endangered Species Act.
"2"	9-Jul	email	Use money to sue the Federal government to allow free access to Horsfall beach for poor people	The Federal government can not sue itself.
Bill Grile	8-Jul	email	Put me on your mailing list and send any info to address	
Jim Brown	9-Jul	phone	requested packet	

M/V New Carissa Final DARP January, 2006

Paul Watte	9-Jul	phone	requested packet	
Earl Stanwood	12-Jul	phone	Only interested in issue of removing the stern; didn't want a scoping packet	
Jim Brown	14-Jul	letter	Shorebirds: protect nesting sites; marbled murrelet: Siuslaw and Elliot forests are key areas, plus perhaps some private timber company could create a reserve; plover restoration should be done carefully to avoid public rejection; predator management may be marginally acceptable; recreation losses: improve public use areas in an environmental friendly way; education signs showing the consequences of oil spills; brochures with before and after pictures; keep the public informed well; town hall meetings are ok, but appearing before the city councils for the affected cities is better; for monitoring photos and visits to document results; but also 'show and tell' for media and local officials would be helpful.	Trustees are proposing to protect nesting and wintering sites for shorebirds. In conducting an assessment of suitable habitat potentially available for protection and acquisition, the Trustees did evaluate many private parcels adjacent to the Siuslaw National Forest. Trustees are proposing maintenance of the plover habitat created by the emergency restoration in 1999, several months after the spill, and don't expect the project to be controversial. Trustees have proposed a number of recreational projects which increase the public's access to coastal areas affected by the spill, in an environmentally sensitive manner. Trustees have proposed several environmental education projects and will be conducting briefings and meetings to educate the public about the proposals in the restoration plan.
Steve Rumrill	16-Jul	phone	Requested to comment on DARP when it is available	

M/V New Carissa Final DARP January, 2006

Paul Watte	19-Jul	letter	Don't get carried away on spending too much money on wildlife; they will propagate back to where they once were; as far as the recreation use, use the money to build and maintain a road out to the New Carissa wreck.	Trustees are required to restore primary and interim losses as a result of the spill. Trustees don't feel that many of the wildlife resources would quickly return, if at all, to their prespill baseline. At the very least, Trustees would need to restore the interim losses in a cost effective manner. Trustees considered and rejected the suggested project of building a road out to the New Carissa wreck because such a project would cause adverse impacts to the environment..
Diane Howes	20-Jul	phone	requested scoping packet	
Ruth Melody	20-Jul	letter	requested scoping packet (along with a letter detailing ideas about various exhibits, displays, memorabilia relative to the New Carissa)	
Ruth Melody	26-Jul	letter	suggests that many of the birds may have recovered naturally; the "marbled muscovy ducks" (murrelets) and western snowy plover can be reintroduced; the money from the lost recreation use (29,000 lost recreation trips) should be used to stock and run a New Carissa memorabilia gift shop.	Trustees felt that using the money from the lost recreation use to stock and run a gift shop would not meet their objectives of restoring the in-kind recreational losses from the spill, and likely would not be allowed under OPA. For those reasons, the Trustees rejected the proposal.

6.2 Public Comments on the Draft DARP/EA with Trustees' Responses

6.2.1 Public Comment Process

On May 24th, 2005, the Trustees released the Draft *M/V New Carissa* DARP/EA for an initial 30-day public comment period, and simultaneously published the DARP/EA with all appendixes on the Fish and Wildlife Service's Oregon Fish and Wildlife Office website (<http://OregonFWO.fws.gov>). In addition to the document and appendixes, the website had the following supporting information available for download: the Trustee's joint news release; an 11-page simplified summary version of the DARP; a five-page Q&A about the spill, the Natural Resource Damage Assessment and Restoration process, and the proposed restoration plan.

Also on May 24th the Trustees sent a news release by direct email to 84 reporters, news outlets and wire services. The news release was also emailed to 137 potentially interested parties including all of Oregon's coastal county commissioners, selected State agencies and elected officials, Federal agencies and elected officials, non-government organizations, and opinion leaders. The news release contained information on the opportunity to comment, and a link to the web page with its additional documentation. More than 125 hard copies of the plan were mailed to agencies and individuals previously identified as partners or interested parties.

The news release generated considerable media interest in the DARP. Trustee representatives were interviewed by a number of print, radio and television reporters and coverage of the story was thorough throughout western Oregon.

The Trustees also published legal notices of availability of the DARP/EA for public comment in four Oregon newspapers: The World, Coos Bay; the News-Times, Newport; The Register-Guard, Eugene; and The Oregonian, Portland.

Trustees held two public meeting to discuss, explain and answer all questions about the DARP/EA:

- June 7th, 2005 in Newport Oregon (attended by 12 people)
- June 8th, 2005 in North Bend, Oregon (attended by 24 people)

Within a few days after these public meetings, the Trustees posted on the above-mentioned web page summary transcriptions of the comments and questions which were raised.

Trustee representatives also conducted a number of personal briefings including:

- Oregon Coastal Zone Management Association meeting in Salem, Oregon
- Coastal County Commissioner Briefing (all Oregon coastal county commissioners were invited to attend); present were representatives from Lincoln and Tillamook counties and staff from Congresswoman Darlene Hooley's and Senator Gordon Smith's offices.

M/V New Carissa Final DARP January, 2006

- Staff members for Senator Wyden, Congressman Wu and Congressman DeFazio.

On June 10th, the Trustees received a request from Congresswoman Hooley's office, on behalf of the Lincoln County Commissioners in particular and other coastal counties' interests in general, to extend the public comment period if possible. In response, the Trustees extended the comment period an additional two weeks (until July 8, 2005) and issued a news release and published legal notices in the same four newspapers describing the extension.

6.2.2 Public Comments

During the public comment period, Trustees received 75 letters, emails and telephone calls containing one or more comments on the DARP/EA. In addition, more than 70 oral comments (some repeated several times) were transcribed in summary form from the public meetings in Newport and North Bend.

From the list of public comments, Trustees sorted two broad categories:

1. "Provisions of the Draft DARP/EA Specifically Supported by Public Comment," which would not require the preparation of a response from the Trustees, and,
2. "Issues Identified by the Public," which would require some sort of response or explanation from the Trustees, or a change in the final DARP. A synopsis of the changes to the Final is included in the Executive Summary.

6.2.2.1 Provisions of the draft DARP/EA supported by Public Comment:

- Sisters Shorebird Program
- Protection of existing marbled murrelet habitat
- Consolidate shorebird education with ODFW and Oregon State Parks
- Acquiring habitat
- A mix of motorized and non-motorized recreation uses
- Plover habitat restoration
- Strong presence of docents
- Barrier fencing to control ORV use at Horsfall
- Clear signage to curtail disruptive activities on offshore rocks and in plover areas
- Predator management in seabird rookeries
- Better garbage bins
- Plover habitat maintenance
- Acquiring and managing shorebird wintering and migratory habitat on the Oregon coast
- Acquiring a parcel for seabirds adjacent to a seabird colony
- The cooperative studies that were done to ascertain the effects of the spill
- Moving forward with restoration
- Acquisition, enhance and management of occupied marbled murrelet habitat
- Written assurances that marbled murrelet habitat will be managed for restoring the 262 lost to the spill

M/V New Carissa Final DARP January, 2006

- Restoring lost public use by implementing new recreation projects
- Determining that the “no-action” alternative will not satisfy OPA
- The appropriateness of the proposed project list
- Hiking and equestrian trails on the North Spit
- Purchasing land that is critical for habitat
- Purchasing land for restoration
- Education as a part of restoration
- The Plan
- Using kiosks
- The balance of the recreation restoration projects
- The effectiveness of the overall strategy
- The plan benefits the entire coast
- Acquisition of “refuge” lands for species
- Acquiring old growth forest habitat
- Plan is generally consistent with the Forestry Plan for Oregon
- The plan is a reasoned, well-thought-out response to mitigation need
- Maintain plover habitat
- Protection and enhancement of shorebird and other seabird habitat
- Improvement of visitor services and increased public recreation facilities
- Snowy Plover educational project
- Supports the Trustees’ criteria for selecting marbled murrelet habitat
- The alternative proposing the acquisition of 21,000 acres of marbled murrelet habitat would take too long and is less likely to succeed
- Support the proposal to acquire the developable tract adjacent to the seabird colony
- Strongly support recreation disturbance education
- Educational materials and strategies well designed
- Support Trustees’ filing claim to the NPFC for the full natural resource losses
- Supports the plan
- Restore wildlife and habitat to pre-spill numbers
- Spend the money on habitat restoration for marbled murrelet and snowy plover
- Proposal is appropriate under OPA
- The money is for natural resources and recreation
- Separate from the State case regarding the stern
- Education/awareness projects
- Support plan as proposed
- Studied approach
- Balanced approach
- All proposed projects
- Restores what was lost
- Improves recreation opportunities

M/V New Carissa Final DARP January, 2006

6.2.2.2 Issues Identified by the Public with Trustees' Responses

Trustees initially identified more than 225 issues raised by the public during the comment period. Some of these issues were repetitive or similar, and they were consolidated into a somewhat shorter list for preparation of the Trustee's responses.

The Trustees also organized the issues into the following 17 categories to facilitate responses:

- Acquisition of Lands
- Adequacy of the Restoration Plan
- Restoration Plan Budget/Cost
- Cooperation
- Community Economics
- Information and Education
- Location of Restoration Projects
- Management of Acquired Lands
- Marbled Murrelet
- National Environmental Policy Act (NEPA)
- Oil Pollution Act of 1990 (OPA)
- Predator Management
- Western Snowy Plover Restoration
- Property for Sale
- Recreation
- Seabirds
- Other Issues

Comments by Category with Trustees' Responses

Acquisition of Lands, Adequacy of the Restoration Plan, Restoration Plan Budget/Cost, Cooperation, Community Economics, Information and Education, Location of Restoration Projects, Management of Acquired Lands, Marbled Murrelet, National Environmental Policy Act (NEPA), Oil Pollution Act of 1990, Predator Management, Western Snowy Plover Restoration, Property for Sale, Recreation, Seabirds, Other.

Acquisition of Lands

Prefer habitat protection through acquisition rather than easements.

Response: Acquisitions and conservation easements each have benefits and drawbacks, and either can be appropriate for protecting habitat depending on the management objectives. For example, outright acquisition of habitat by one of the Federal Trustees would bring a parcel into public ownership and under established management in an existing publicly reviewed land use plan. However, other than a partial reimbursement of the former property taxes (called "payment in lieu of taxes"), the Federal government could not compensate a county for the full amount of taxes formerly paid by a private owner. A conservation easement, on the other hand, could be structured so that the county would not lose any property tax revenue. Conservation easements,

M/V New Carissa Final DARP January, 2006

however, require additional costs to monitor to ensure that provisions of management are being followed. The Trustees have chosen to keep both of these strategies available, depending on the specific objectives of any eventual acquisition.

Private forestlands were not damaged so acquisition of private forestlands does not restore the injured resources.

Response: Acquisition of unprotected habitat on private lands is intended to restore lost marbled murrelets, and is expected to be effective.

Low maintenance land is poor land to acquire. Health and safety of adjacent lands could be a problem.

Response: The Trustees plan that any tract of land acquired would be managed to protect the values for which it was acquired. In addition to protecting habitat values, this would also include management to ensure that there is not an unsafe buildup of fuels in areas near residences and management to control noxious weeds, for example.

Murrelet habitat acquisition is too expensive, there is already enough marbled murrelet habitat, and what if murrelet gets delisted? Special attention for the murrelet is not justified. Don't take habitat out of private hands; acquire lands currently under a Habitat Conservation Plan land if the marbled murrelet is delisted. Compensation for birds' death is waste of ill gotten money from insurance

Response: The Oil Pollution Act of 1990 (OPA) says that the Trustees "shall develop and implement a plan for the restoration" of injured resources. The law does not condition restoration upon special State or Federal conservation status. Consequently, the requirement to return the species to baseline is unaffected by its current Federal listing as a threatened species.

Acquisition of marbled murrelet habitat is based solely on the need to provide restoration to offset the losses from the New Carissa oil spill. The Trustees considered the marbled murrelet separately from the other seabirds only because of its unique nesting habitat requirements. The number of marbled murrelet years lost is equivalent to the number of marbled murrelets potentially gained through the proposed restoration projects, just as for other species' restoration.

Marbled murrelets in the Pacific Northwest are not nest site limited, they are food limited, and reopening the salmon ranching facility on the North Spit, or the Confederated Tribes' salmonid habitat proposal, would provide food for murrelets.

Response: The Marbled Murrelet Recovery Plan, and most authorities on marbled murrelets, agree that suitable nesting habitat is a major limiting factor preventing the conservation and recovery of the species. The Trustees have determined that additional food sources would not accomplish the needed restoration.

M/V New Carissa Final DARP January, 2006

Don't buy land that is currently available for mitigation. Leave for public or private projects.

Response: Any land is available for some form of mitigation. The New Carissa restoration plan is a public project. The Trustees used the criteria established by the Oil Pollution Act in determining which restoration projects to propose.

A number of commenters offered suggestions to the Trustees for parcels that should be considered for acquisition.

Response: To the extent that they could obtain specific resource information on the suggested parcels, the Trustees evaluated the various proposals for acquisition. Without exception, however, the Trustees' evaluations found that none of the proposed parcels met the Trustees' objectives as well as their original proposals and consequently, no additional parcels were further considered for acquisition.

Consider acquisition of the privately owned Beltz Farm for restoration opportunities.

Response: Several commenters suggested that the Trustees consider the Beltz Farm for acquisition and the Trustees have evaluated the tract. The tract that is proposed for shorebird restoration actually has higher shorebird values, at a much lower cost than the Beltz Farm. Also, there are little or no seabird values associated with the Beltz tract.

Strongly oppose acquisition of younger habitat (alternative proposal) to restore marbled murrelet.

Response: The Trustees are not proposing to implement the younger habitat alternative for restoring marbled murrelets.

Request a public meeting along the Washington coast.

Response: The Trustees feel that the two public meetings in Oregon, (North Bend and Newport), are appropriate given the spill's location within the State. Any individual can easily comment on the DARP in writing regardless of state of residency.

Encourage Trustees to acquire parcels to create larger blocks with existing protected lands.

Response: The Trustees agree that acquiring parcels to enhance larger blocks of habitat adjacent to existing protected lands is an appropriate restoration/conservation strategy and had included it in the Criteria for Acquiring Marbled Murrelet Habitat, page 53 in the draft restoration plan.

M/V New Carissa Final DARP January, 2006

Consider exchanging low-value habitat on Federal land for high-value habitat on private land instead of purchasing.

Response: Any exchange under these circumstances would require many more acres of Federal lands to be transferred to private ownership to balance the high quality tracts the Trustees are envisioning to acquire because Federal land exchanges are usually accomplished with equal economic values rather than equal acreages. Also, exchanges often take many years to consummate and this would not meet the objective of restoring the injured resources to baseline as quickly as possible.

Habitat protection is more important than revenue, business or tax roles.

Response: The Trustees have determined that habitat protection through acquisition or conservation easement meets restoration objectives, and that to the extent possible, this should be done through minimizing economic losses to local governments or businesses.

Purchase, in fee or easement, appropriate coastal public use access for protection.

Response: The plan's proposal for acquisition focuses on seabird and shorebird habitat to offset the injuries from the spill. The Trustees have determined that for a few of these parcels (specifically for seabirds and shorebirds) additional public access would generally defeat the reason for their acquisition. However, the Trustees have proposed to restore some of the lost visitor days by improving public access in several areas where resources would not be threatened.

Purchase, in fee or easement, appropriate coastal wildlife habitat for protection.

Response: The Trustees have determined that this is appropriate, and propose to acquire key coastal wildlife habitat for seabirds and shorebirds.

For a number of reasons, non-profit organizations should not be expected to manage marbled murrelet habitat in Tillamook County.

- *They're grant dependant*
- *Their membership is migratory or in flux*
- *They have limited expertise*
- *They lack equipment or operators*
- *They would need to use outside contracts*

Response: Before the Trustees consider a non-profit organization for management of any of the acquisitions, there would have to be some assurance that the non-profit would be capable of the task. In most cases, this would need to be a national or regional organization with sufficient

M/V New Carissa Final DARP January, 2006

resources to adequately manage a tract to the Trustees' standards, rather than a local group with limited resources.

Acquired lands should be surveyed, then managed to maintain safe access and prevent large-scale wildfires

Response: Federally acquired lands are typically surveyed when there is a question on the boundaries, and are managed to lower the risk of large wildfires. Fire is generally not an issue in the coastal fog belt where the potential habitat areas are located. Some road access is essential to manage young plantations and stands until they can develop older forest characteristics. However, some roads may be closed or decommissioned to reduce habitat fragmentation, disturbance and the risk of human caused fire.

Purchase marbled murrelet habitat, transfer it to the county (or grant the county a conservation easement), and provide annual funding to the County for restoration of the lands.

Response: The Trustees' objective is to protect and manage the marbled murrelet habitat so that it will provide restoration to offset the injuries sustained as a result of the spill. Within that objective, the Trustees will consider other willing agencies or organizations only if they have a habitat conservation mission and experience, management expertise, and adequate staff and financial resources. In addition, any recipient of a parcel will be required to provide legally binding assurances that the parcel would be managed in a manner consistent with the explicit reasons for acquisition, and to the standards determined by the Trustees. If a county could meet these requirements, the Trustees would consider it along with other potential recipients.

Purchase marbled murrelet habitat, transfer it to ODF, and provide annual funding to ODF for restoration of the lands.

Response: During preparation of the draft restoration plan, a State Trustee representative approached the Oregon Department of Forestry (ODF) to determine if that agency would be interested in managing several of the murrelet tracts that had been evaluated for potential acquisition. The response was "no." Also, in the official comments received from ODF, there was no mention of an interest in acquiring any of the parcels.

Purchase marbled murrelet habitat, transfer it to a Private Non-Profit, and provide adequate funding to the Non-Profit for restoration of the lands through contract or easement.

Response: The Trustees' objective is to protect and manage the marbled murrelet habitat so that it will provide restoration to offset the injuries sustained as a result of the spill. Within that objective, the Trustees will consider other willing agencies or organizations only if they have a habitat conservation mission and experience, management expertise, and adequate staff and financial resources. In addition, any recipient of a parcel will be required to provide legally

M/V New Carissa Final DARP January, 2006

binding assurances that the parcel would be managed in a manner consistent with the explicit reasons for acquisition and to the standards determined by the Trustees. If a non-profit organization could meet these requirements, the Trustees would consider it along with other potential recipients.

Purchase the necessary marbled murrelet habitat, and then transfer it first to the county, then to the Oregon Department of Forestry (ORS Chapter 530) so ODF can manage the land for the benefit of the county.

Response: The Oregon Department of Forestry has communicated to the Trustees that the agency is not available to manage the marbled murrelet habitat associated with this restoration effort.

The restoration plan is contrary to Coos County Resolution 05-03-022C (re: Federal acquisition of private lands).

Response: The Trustees understand that Coos County Commissioners are not in favor of any Federal acquisition of private lands within the county.

Adequacy of the Restoration Plan

Environmental – invertebrates and tidepools were not adequately surveyed; estuaries were not adequately surveyed

Response: During February and March, 1999, the Trustees and representatives of the Responsible Parties conducted extensive sampling and analysis of tarballs, sediments, water, and tissue of several species of invertebrates in various estuaries and outer beaches along the coast from Coos Bay to north of Waldport and Alsea Bay (Michel 2000). Invertebrates sampled included Dungeness crabs, clams, oysters, and mussels. While Trustees did find some evidence of oil contamination of invertebrates from the *M/V New Carissa*, concentrations were generally low resulting in a relatively low estimated loss of invertebrate biomass. Based on this information gathered during the pre-assessment phase of the Natural Resource Damage Assessment, the Trustees decided not to pursue any further damage assessment for invertebrate losses.

Long term effect of the Oil Spill on the Oregon economy was not analyzed.

Response: Under the Oil Pollution Act of 1990, the Trustees can recover the cost of restoring “natural resources” (defined by the law as: “the land, fish, wildlife, biota, air, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to or otherwise controlled by the United States, any State or local government or Indian tribe”). Assessing the effect on the Oregon economy is outside the scope of the Trustees’ charge under OPA.

M/V New Carissa Final DARP January, 2006

Need specific definition of what “management” means

Response: Management, as used throughout the restoration plan, generally means the administration of resources to ensure that the desired restoration is achieved. A specific example is included under the discussion on page 54 of the draft where the Trustees discuss what type of management action might be required for any acquired habitat for marbled murrelet restoration. “Such (management) actions may include, but are not limited to, necessary inventories (e.g. stand exams, weed surveys, stream surveys), access management (e.g. maintenance and repair of roads, culverts, road decommissioning and closing), forest management (e.g. thinning to accelerate the growth of younger trees into potential nesting habitat) and monitoring (e.g. marbled murrelet occupancy surveys) to determine if the properties are meeting the intended restoration goals.”

Need local input and cooperation in the plan.

Response: As summarized in the beginning of this section, the Trustees have sought and considered a broad array of public input during formation and review of this plan. The wide variety of issues discussed here reflects that conclusion.

Not a lot of change in plan despite comments. Poor draft and poor final plan.

Response: The Trustees have until now only published and sought comments on a “draft” restoration plan. This is the first publication of comments on that draft. It is possible that this commenter incorrectly assumed that the draft was actually the final.

Propose public service ad campaign to enhance effects of the restoration plan.

Response: The Trustees agree that it is important to inform the public of conservation efforts, and to foster positive public behaviors that could complete the necessary restoration of the species affected by the spill. Rather than using a public service ad campaign, however, the Trustees have proposed public education projects to accomplish that goal. In particular snowy plover, shorebird and seabird education projects are proposed. In addition, an annual report outlining plan accomplishments will be published and posted to a Trustee website.

Need better evaluation criteria for proposed signs, effectiveness monitoring and adaptive management.

Response: The Trustees will rely on the Fish and Wildlife Service to help design and place most of the signs for seabird restoration, and to evaluate their effectiveness. Enough funds have been included in the budget to finance oversight of the signs’ effectiveness. The monitoring summary has been updated to include this.

M/V New Carissa Final DARP January, 2006

The Trustees should consider natural recovery/no action. Use common sense for recovery.

Response: The Trustees did consider a “no action” or “natural recovery alternative”. The Trustees determined that neither primary nor compensatory losses could be reasonably restored with this alternative so it received no further consideration.

Trustees should clarify the monitoring requirements in the final restoration plan for all restoration components.

Response: The monitoring summary, table 12, has been revised to clarify monitoring requirements.

The restoration plan may be inconsistent with some elements of the Forest Plan for Oregon:

- *Active management*
- *Maintaining economic contribution of private lands*
- *Maintaining the forest land base*

Response: The Forestry Program for Oregon is a strategic plan established by the Oregon Board of Forestry and is a guide for forest lands in Oregon. Protection or restoration of marbled murrelet habitat meets many of the seven strategies in the plan including: to protect, maintain and enhance the soil, and water resources; contribute to the conservation of diverse native plant and animal populations and their habitats; protect, maintain and enhance the health of Oregon’s forest ecosystem and watersheds within the context of natural disturbance and active management; and enhancing carbon storage in Oregon’s forest. The Trustees are proposing that the marbled murrelet habitat be acquired by a conservation organization which would pay the appropriate property taxes to the county. Active management of any acquired habitat for marbled murrelet restoration would occur as discussed on page 54 of the draft restoration plan. Also, the Trustees expect that actions such as road maintenance, culvert replacement, forest thinnings, road decommissioning, and wetland restoration, for example, will return money to the local economy through contracts and jobs.

Restoration Plan Budget/Cost

Some proposed recreation projects are too costly

Response: The Trustees considered cost in the selection of all restoration projects, including the recreation projects, and have determined that the proposals meet the criteria.

Trustees should provide more detail on budget

Response: The Trustees have added more detail on the budget in this final plan, although data on land costs obviously can not be added until specific tracts have been evaluated.

M/V New Carissa Final DARP January, 2006

Want to see included in the plan timeframes, end results, total costs (loss of revenue) of the proposal

Response: The Trustees have added more clarification on plan timeframes and end results. Additional detail on the budget has also been added, but obviously data loss of revenue related to land acquisitions can not be added until specific tracts have been evaluated.

Leave money in Oil Spill Liability Trust Fund for future use

Response: The Trustees intend to file a claim to the National Pollution Fund Center for all the uncompensated natural resource costs as authorized by the law and the settlement agreement between the Responsible Parties and the United States.

Put restoration money in common school fund and don't use it for murrelets or other wildlife

Response: Putting restoration funds into the Common School Fund with no clear restoration accomplished would not be legal or authorized by the Oil Pollution Act.

Too much money spent on birds when people need jobs

Response: The Trustees consider the proposals to be the most cost-effective alternatives available to restore the natural resource losses from the New Carissa. The issue of creating jobs for people is beyond the scope of this restoration plan and the intent of the Oil Pollution Act. The commenter is incorrect in assuming that, if not spent on restoration, the money would be available to create jobs in general.

The Trustees should prepare Economic Impact Studies on acquisition of land and its effect on counties and cities

Response: The discussion in this plan on the economic impacts of habitat acquisition has been expanded from that which was included in the draft.

Settlement estimate and payment are parallel to an insurance fraud because agencies inflated the estimated bird mortality.

Response: The Trustees contracted with Dr. Glenn Ford, a recognized authority, for the seabird mortality report and continue to support the findings and conclusions in his report.

M/V New Carissa Final DARP January, 2006

The Trustee's estimated management costs may not be accurate:

- *Roads and culverts on private lands are required to be in better condition than on Federal land,*
- *precommercial thinning would not likely be needed*
- *but other annual maintenance costs such as PILT (Payment in Lieu of Taxes), road maintenance, noxious weed control, public use management and fire protection need to be considered and a revenue source provided to support in long-term.*

Response: Precommercial thinnings may still be needed depending on the management objectives for the land acquired. The Trustees have revised the estimate of management costs associated with land acquisitions based on comments received.

Ensure that Trustees request adequate money for management of the property.

Response: The Trustees have considered appropriate management needs, and intend to request the amount of money needed to adequately manage any tracts acquired.

The county receives no Payment In Lieu of Taxes for Forest Service or BLM lands.

Response: In 2005, Oregon counties received a total of over \$6,400,000 for Payment in Lieu of Taxes (PILT) which are based on the amount of Federal ownership (BLM, USFS, and NPS) in each county. Of this, Oregon's coastal counties received more than \$640,000 in 2005.

Prorate restoration based on percentage of each congressional district coastal ocean front.

Response: Restoration of natural resources is based on criteria defined in the Oil Pollution Act.

Cooperation

Trustees should work with non-profits for efficiency.

Response: The Trustees have been working with several non-profit organizations in evaluating habitat for acquisition and expect to have opportunities to continue working with them in the future.

The Trustees should brief OCZMA

Response: In response to this suggestion, on June 10th, staff from the Trustees briefed the Oregon Coastal Zone Management Association at the association's regular meeting. Trustee staff also followed up with another briefing on June 22, for a group of Oregon coastal county commissioners and county staff, all OCZMA members.

M/V New Carissa Final DARP January, 2006

Consider education/cooperation efforts with ODFW near shorebird projects and Oregon State parks

Response: As one of the Trustees, the Oregon Department of Fish and Wildlife has been involved in all aspects of this damage assessment, and will continue to participate as a Trustee through restoration planning and implementation. The agency, a member of the western snowy plover working group, will be involved in the plover education project and, in association with the Oregon Parks and Recreation Department, will be involved in the seabird education project and the seabird predator management project.

The Trustees should work with the Fish and Wildlife Service on proposed new refuge for the land acquisition as part of the proposal

Response: The Trustees considered an alternative which would have acquired conservation agreements in the New River area (much like the new National Wildlife Refuge which has been proposed) but determined that these areas were neither the best nor the most cost-effective for restoring the specific shorebird losses that resulted from this spill.

Expand Trustees to include other organizations

Response: The Oil Pollution Act is very specific about what entities can be “Trustees” for Natural Resource Damage Assessments. The current Trustees are the only ones authorized under the law for this spill.

Coordinate with Oregon State Parks Ocean Shore Management Plan and proposed HCP.

Response: The snowy plover restoration work and public outreach is in compliance with the proposed HCP between Oregon Parks and Recreation Department and the Fish and Wildlife Service.

Important for Oregon Department of Fish and Wildlife to work with non-profit groups for coastal restoration and mitigation.

Response: The Oregon Department of Fish and Wildlife, in conjunction with the other Trustees, has been working with non-profit conservation groups during the restoration planning phase of this Natural Resource Damage Assessment.

M/V New Carissa Final DARP January, 2006

Consider working with Audubon Society of Portland to discuss educational and monitoring strategies following development of Important Bird Areas by Audubon.

Response: The Trustees received formal comments from the Portland Audubon Society and have had conversations with representatives of this group regarding the Important Bird Areas.

There are additional policies and statutes the restoration plan should coordinate with:

- *The Forestry Program for Oregon*
- *ORS Chapter 197 – Comprehensive Land Use Planning Coordination*
- *ORS Chapter 272 – Federal Lands*

Response: Trustees have coordinated, to date, with the various local, State and Federal agencies responsible for the above-mentioned policies and statutes. Coordination will continue through the design, permitting and construction phases of the restoration projects.

The restoration plan has not considered the Coastal and Estuarine Land Conservation Program (CELCP).

Response: The Coastal and Estuarine Land Conservation Program (CELCP) was established to protect coastal and estuarine lands considered important for their ecological, conservation, recreational, historical or aesthetic value and is administered by the National Oceanic and Atmospheric Administration (NOAA). Only one project in Tillamook County, outside of the *M/V New Carissa* affected areas, has been funded in Oregon under this program in years 2002-2005. This restoration plan's actions and locations have been developed based on criteria in the Oil Pollution Act of 1990 with different purposes than those of the CELCP.

The Trustees should consider the effects of restoration projects, if any, from the State's stern award.

Response: The Responsible Parties appealed the State of Oregon's court ordered award on the case involving the *New Carissa's* stern. A ruling on this appeal has yet to be made.

Community Economics

Want alternatives that offer a positive economic benefit to community: 1. more ATV use, 2. salmonid recovery

Response: Several of the recreation projects would help support more public access, including ATV use. Along with other recreation projects that support other types of uses, these would also offer an economic benefit to the community. The Trustees did not identify any injuries to salmonids, and consequently have proposed no projects to restore them. However, as noted, some of the forest habitat protection would benefit salmon.

M/V New Carissa Final DARP January, 2006

Develop local projects which will create local jobs

Response: Many of the recreation projects will tend to create or enhance local employment opportunities. The restoration projects for shorebirds and marbled murrelets could have similar effects. These restoration projects, often in the form of local contracts, could include forest thinnings, road maintenance, culvert replacement, weed control, heavy equipment and earth-moving work, as well as others.

Counties should not lose any tax revenue, however, the loss of use and loss of economic activity in acquired habitat is larger issue than loss of tax revenue.

Response: The Trustees' goal is to accomplish the required restoration while minimizing the loss of tax revenue to the affected counties, if possible. Trustees have expanded their discussion of economic issues in the restoration plan.

If lands are transferred to Federal ownership there may be a loss of some fire protection funds.

Response: Commenter is correct in that a county would lose some fire protection funds for the acres transferred into public ownership. However, the US Forest Service provides its own fire protection for its lands, so a county would lose responsibility for fire protection for those acres, mitigating any loss of fire protection funds to the county. The Bureau of Land Management would increase fire protection funding to a county proportionate to the acreage acquired.

Mitigate costs of implementing the Oregon Forest Practices Act on private land.

Response: This would not be considered restoration under the Oil Pollution Act.

Don't put Oil Pollution Act funds into hands of local political figures for possible use unrelated to needed restoration.

Response: The Trustees have a legal obligation under the Oil Pollution Act to ensure that restoration funds are used only for appropriate restoration projects.

Loss of revenue to counties can be made up with payments to counties, gains in employment from habitat restoration workers and materials from local sources, and the attraction of birdwatchers

Response: Response: The loss of tax revenues to counties is expected to be minimal under this final restoration plan. The Trustees are proposing that about 90 percent of the acquired forest lands would be transferred to an entity which would make equivalent payments to the county. The restoration measures proposed are also expected to have some positive local economic benefits. Actions such as road maintenance, culvert replacement, forest thinnings, road

M/V New Carissa Final DARP January, 2006

decommissioning, and wetland restoration, for example, will return money to the local economy through contracts and jobs.

Information and Education

Increase law enforcement presence in problematic areas if education projects are not successful.

Response: The Trustees plan to evaluate the effectiveness of the education projects. If any are not successful within a reasonable time period, Trustees will determine the appropriate action.

Concern that docent program will be working with Oregon Coast Aquarium and wondering who will ensure docent training and oversight.

Response: The Oregon Western Snowy Plover working team, which is comprised of some Trustee agencies (including the Forest Service, Bureau of Land Management, Fish and Wildlife Service, and Oregon Department of Fish and Wildlife) and others, is responsible for oversight of the snowy plover education project and for reporting results to the Trustees. The Oregon Coast Aquarium is one of several organizations that is being considered for this partnership.

Concern with the plover exhibit at the Aquarium in that it seems inappropriate and misleading to the public education messages the restoration plan should be promoting

Response: The Trustees are not involved with the plover exhibit at the Oregon Aquarium as part of this restoration plan.

Consider implementing an outreach plan for shorebirds targeting private landowners in the central coast to identify critical wintering habitat on the central coast area

Response: The Trustees have determined that the shorebird projects proposed for implementation along the Coquille River best meet the objectives for restoring the lost shorebird years, and that pursuing other potential projects would not be necessary at this time.

Propose internship program for restoring shorebird habitat.

Response: Although such an internship would have benefits for shorebirds, the Trustees have determined that the proposed shorebird projects best meet the objectives.

Support environmental education through art projects in the schools.

Response: The Trustees have selected the Sister Shorebird Program as the education project for shorebirds. There are many aspects to this program which could readily incorporate art projects.

M/V New Carissa Final DARP January, 2006

Support creation of Trust fund for future scholarships for studies of effects on marine environment of marine accidents like New Carissa.

Response: Although this may be a worthwhile project, it does not seem to contribute to the restoration of the resources lost during this spill, as required by the Oil Pollution Act.

Fund and maintain educational signing adjacent to beaches.

Response: Two of the Trustees' proposed restoration projects (recreation and seabird education) have components which will design, install and maintain educational signing adjacent to beaches.

Relocate/reopen Marion Ave. as a shorebird education project.

Response: Although people historically used Marion Ave. in North Bend for viewing the large numbers of shorebirds on the Pony Slough mudflats, reopening Marion Ave. at this time, would now likely require some filling of those same important mudflats and wetlands. The Trustees feel that the Sister Shorebird program best meets the objectives for shorebird education without affecting other natural resources.

Workshops and grade school curriculum projects for shorebirds-frankly a waste of money.

Response: Components of this and other similar programs have been very successfully implemented along the Oregon coast. The Trustees' plan will build upon this success.

Consider public education efforts with hotels, and Bed & Breakfasts, to discourage people feeding food scraps to crows.

Response: This suggestion may propose a worthwhile effort. However, the Trustees have determined that supplying predator-proof garbage cans to Oregon State Parks, adjacent to key seabird colonies, will more directly restore species lost as a result of this spill. With each garbage can provided, there will be information on the importance of properly storing trash, and the roles that crows, ravens, jays and other predators can play in both exploiting unsecured garbage and vulnerable wildlife, including seabirds and western snowy plovers.

Location of Restoration Projects

Concentrate restoration in areas directly affected by spill.

Response: The Trustees have determined that public resources stretching from Cape Arago north to Nehalem Bay and likely beyond were affected by the spill. This represents the majority of the Oregon coastline. In determining the location and nature of the restoration projects a number of criteria outlined by the Oil Pollution Act were considered; one factor being those sites that best restore the lost resources.

M/V New Carissa Final DARP January, 2006

Block up acquisition parcels.

Response: The criteria for acquiring marbled murrelet habitat was outlined on page 53 of the draft restoration plan. One of the factors considered when the Trustees evaluated and ranked more than 40 tracts was if a parcel was adjacent to an existing marbled murrelet protected area. In addition, the proposed shorebird acquisition tract is adjacent to an existing National Wildlife Refuge and helps block-up a contiguous tract of extremely valuable shorebird habitat.

Consider Weyerhaeuser's "Old Mill Pond" on Coos Bay's North Spit as a restoration project for shorebirds.

Response: The Trustees have evaluated the considerable supplemental information this commenter provided on the resource value of the subject property. There is no doubt that this property is valuable for shorebirds and other wildlife, however the Trustees have determined that it does not have the equivalent shorebird and other resource values that the proposed acquisition and restoration tracts provide. The proposal along the Coquille River near Bandon would acquire and restore former salt marsh/estuarine habitat which have experienced steep declines on the Oregon coast and are relatively rare, at-risk resources.

Consider The Nature Conservancy's biodiversity mapping project for suitable habitat

Response: Trustees met with The Nature Conservancy twice to review and consider their biodiversity mapping project during the evaluation of restoration sites.

Make the area directly affected by the spill (Newport to Coos Bay) as the #1 priority for marbled murrelet habitat acquisition.

Response: The Trustees considered a number of criteria for selecting appropriate tracts for marbled murrelet acquisition and restoration, see page 53 in the draft restoration plan. The Trustees still consider Oregon's north coast, as recommended in the Marbled Murrelet Recovery Plan, as the first priority. A large portion of this area was directly affected by the spill.

The Trustees should acquire murrelet habitat in the Elliot Forest, with the purchase price going into the common school fund.

Response: For a tract or tracts to be able to qualify as restoration, it has to be currently unprotected marbled murrelet habitat. It is not clear that any current marbled murrelet habitat in the Elliot State Forest would meet this requirement.

M/V New Carissa Final DARP January, 2006

Management of Acquired Lands

Management of habitat could be addressed better by local government than by Trustees

Response: The Trustees' objective is to protect and manage the marbled murrelet habitat so that it will provide restoration to offset the injuries sustained as a result of the spill. Within that objective, the Trustees have decided to consider other willing agencies or organizations only if they have a habitat conservation mission and experience, management expertise, and adequate staff and financial resources. In addition, any recipient of a parcel will be required to provide legally binding assurances that the parcel would be managed in a manner consistent with the explicit reasons for acquisition, and to the standards determined by the Trustees. If a local government entity could meet these requirements, the Trustees would consider it along with other potential recipients.

Federal government agencies are already struggling with budget and shouldn't take on additional unfunded maintenance

Response: The Trustees will seek sufficient funds in the claim to the National Pollution Fund Center to cover management and maintenance needs.

Concern over whether Federal or State agencies can properly manage the acquired lands

Response: The Trustees have determined that the Federal agencies (USDI and USDA) and the State of Oregon have both the staff and expertise to properly manage marbled murrelet habitat.

Marbled murrelet habitat can be managed better by private owners

Response: Although there are exceptions, the vast majority of remaining marbled murrelet habitat in Oregon occurs on Federal and State lands. Most of the former marbled murrelet habitat on private lands has been logged and is no longer functioning habitat.

Use money to establish a foundation to assist property owners to manage land.

Response: The Trustees have determined that this alternative presents a much lower likelihood of success than the proposed alternative, due to the inherent difficulty of monitoring and ensuring specific management on an array of privately owned lands.

Against any government agency expanding its holdings and controls.

Response: The Trustees have proposed several options for acquiring habitat to complete the necessary restoration. One option includes having a non-governmental organization acquire and manage the habitat. Whether an agency or an organization acquires and manages habitat on

M/V New Carissa Final DARP January, 2006

behalf of the Trustees will depend on the specific tract selected and the ability of an agency or organization to meet standards established by the Trustees.

Supports preserving and enhancing natural resources for sustainability over longest possible time horizon.

Response: Preserving and enhancing natural resources for sustainability over the longest possible time horizon is a worthwhile goal typically sought by the Trustee agencies.

Support managing efforts on behalf of species on a State or Federal level to make up for habitat not being protected on Coos County lands.

Response: The planned actions are solely to restore natural resources from this oil spill: the Oil Pollution Act does not authorize any attempt to make up for past management on other lands.

The restoration plan doesn't address the issue of funding for long-term management of acquired lands.

Response: The draft restoration plan proposes funding for initial maintenance and management to bring acquired lands up to the standards for which it is being acquired. In many cases, monitoring costs are included for the long term. In the long term, acquired forest lands are expected to generate income that will help fund their management.

The decision document should clearly describe where proceeds for thinning and other income should go; such proceeds should be used for on-site management.

Response: Any revenue generated by forest management activities will be used for management of the acquired lands, to the extent practicable.

Do not limit public access to the acquired land.

Response: In most cases, the Trustees envision that acquired lands will be open to the public. The only exception would be in cases where public access would adversely affect the resources for which the tract was acquired.

Marbled Murrelet

Consider a more comprehensive conservation strategy for marbled murrelets protecting suitable habitat and potential habitat allowing protection of larger blocks of habitat in the future.

Response: The basis for the Trustees' strategy for restoring marbled murrelets is the Marbled Murrelet Recovery Plan (USFWS, 1997). When looking for potential tracts for acquisition for restoration of the marbled murrelet, the Trustees considered a number of factors including size of

M/V New Carissa Final DARP January, 2006

tract, proximity to other habitat, and proximity to existing marbled murrelet reserves, among other factors. In addition, the Trustees consulted with The Nature Conservancy's Pacific Northwest Ecosystem analysis when selecting tracts for potential acquisition.

Consider some additional research and monitoring opportunities for marbled murrelet

Response: In considering options for marbled murrelet restoration, Trustees discussed conducting additional monitoring and research, but decided that, in this case, research and monitoring are not restoration. Trustees will, however, conduct monitoring studies to determine the level of marbled murrelet use in the tracts acquired.

Clarify monitoring and reporting requirements for marbled murrelet habitat.

Response: Information on monitoring requirements has been clarified in the final.

Consider developing an ODF conservation strategy for marbled murrelets for private industrial timber lands similar to what is in place in Washington and California.

Response: The proposal is beyond the scope of this restoration plan.

Consider using funds to finance unfunded marbled murrelet habitat restoration activities on Federal lands.

Response: The Trustees will not propose funding of activities for restoration that agencies are expected to complete as part of their normal responsibilities.

Current Federal land management isn't helping the marbled murrelet.

Response: Without Federal protection under the Northwest Forest Plan, the outlook for the marbled murrelet would be much poorer than it is today. Long-term predictions for the murrelet, with appropriate protection, are positive.

Turn over the murrelet money to the Common School Fund to offset losses to the Common School Fund from marbled murrelet protections already in place as well as those anticipated under the Elliot Forest Habitat Conservation Plan.

Response: Putting restoration funds into the Common School Fund with no clear restoration accomplished would not meet the requirements of the Oil Pollution Act.

M/V New Carissa Final DARP January, 2006

Restoration of marbled murrelets does not require additional habitat because their habitat is increasing.

Response: Changes in habitat for marbled murrelet are largely due to implementation of the Northwest Forest Plan on Federal lands. Although this habitat may be slowly increasing, these changes do nothing to specifically restore the species to the baseline it would have been at, if the spill had not occurred. The Trustees' proposal would accomplish that.

Marbled murrelet habitat on private land is not "unprotected."

Response: There are no rules under the State Forest Practices Act that require protection of marbled murrelet habitat on private lands and there are no requirements under the Forest Practices Act to survey suitable marbled murrelet habitat.

Provide payments for State-owned lands to create suitable habitat through active management.

Response: The Trustees will not normally propose funding of activities for restoration that agencies are expected to complete as part of their normal responsibilities.

Purchase conservation easements on private lands for marbled murrelet habitat.

Response: This is an option the Trustees will consider if the private landowner and any potential conservation agreement specifically meet their standards.

The information in the marbled murrelet Recovery Plan is out of date, so don't base marbled murrelet restoration on it.

Response: Although portions of the Marbled Murrelet Recovery Plan may be ready for updates, it is still the primary source of conservation recommendations for the species. The Trustees also used information from the Fish and Wildlife Service's "Marbled Murrelet 5-Year Review" completed in 2004.

Consider an alternative with a continued no-take protocol on the Elliot State Forest which would likely save as many murrelets as the proposed action.

Response: The Oregon Department of Forestry is currently developing a new forest management plan and habitat conservation plan for the Elliott State Forest (east of Reedsport). How marbled murrelet habitat is managed in the future on the Elliott State Forest is currently being determined through a separate State planning process that has no legal connection with the restoration requirements under the Oil Pollution Act.

M/V New Carissa Final DARP January, 2006

Consider incorporating the results of the marbled murrelet 5-year review in the restoration plan, in particular the importance of protecting suitable habitat in the near term.

Response: The Trustees have incorporated information from the “Marbled Murrelet 5-year Review” into the restoration plan.

National Environmental Policy Act (NEPA)

The proposed plan contains numerous NEPA violations

Response: Trustees have met all requirements under the National Environmental Policy Act with their DARP/EA.

County did not have “Cooperating Agency” status in the restoration plan environmental assessment.

Response: Coos County requested Cooperating Agency status for the Environmental Assessment when the restoration plan was nearly complete and the Authorized Official concluded that adding Coos County as a formal cooperator would not afford the process or Coos County any significant benefit.

CEQ regulations, 40CFR 1508.14, “economic or social effects are not intended by themselves to require preparation of an Environmental Impact Statement.”

Response: Trustees agree that this is a correct citation of the CEQ regulations and have included them in the “Finding of No Significant Impact” document.

This proposal requires an EIS rather than an EA, and there is ample case law to support the position that an EIS is necessary.

Response: The Trustees have determined that this is not the case, and have articulated this position in the “Finding of No Significant Impact” document accompanying the final restoration plan.

Oil Pollution Act of 1990 (OPA)

Trustees should not be allowed to seek these restoration funds because of fault of the Federal government in the spill: the restoration plan is a looting of the Oil Pollution Account.

Response: As part of the court-approved settlement agreement between the Responsible Parties for the *M/V New Carissa* and United States, and in a separate Memorandum of Understanding between the Federal Trustees and the National Pollution Funds Center, the Trustees received specific authority to file a claim with the National Pollution Funds Center for any uncompensated natural resources injured by the spill.

M/V New Carissa Final DARP January, 2006

Trustees' bird mortality estimates are inflated.

Response: The Trustees contracted with Dr. Glenn Ford, a recognized authority on seabird injuries from oil spills, to conduct the bird mortality estimates. Dr. Ford's estimates of bird mortality for this case are well within a range of potential estimates that could be derived from information available to the Trustees.

Trustees refused access to dead birds for independent testing.

Response: It is the Trustees' prerogative, under the Oil Pollution Act and its implementing regulations, to direct the focus of a natural resource damage assessment. This includes any determinations of the appropriateness of testing of dead birds.

Predator Management

Consider addressing predatory birds in predator management

Response: The Fish and Wildlife Service originally considered addressing predatory birds within its predator management proposal for seabirds (USFWS 2005), but decided to focus on non-native mammalian predators (primarily red fox and domestic rats) which present the greatest current threat to nesting birds. Although predatory birds can adversely affect nesting seabirds, the Fish and Wildlife Service determined that a healthy population of seabirds can normally withstand this amount of predation from native avian predators.

Disagree with Finding of No Significant Impact on existing predator management EA: an EIS is necessary on the predator management proposal to properly assess its impacts.

Response: In a separate Environmental Assessment: "Mammalian predator damage management to protect seabird colonies on Oregon Islands National Wildlife Refuge, Three Arch Rocks National Wildlife Refuge, and adjacent mainland areas" (USFWS 2005), the Fish and Wildlife Service completed the process required by the National Environmental Policy Act (NEPA process) for mammalian predator damage management to protect seabird colonies on Federal refuges in Oregon. The Trustees relied on this analysis and decision which was completed in May 2005 and which concluded that an Environmental Impact Statement was not necessary.

Commenter suggests looking into specific predator control project for Northern Fulmars

Response: Although a number of Northern Fulmars (*Fulmaris glacialis*, a seabird species similar to gulls in appearance) were killed by the spill, the species nests in the arctic making restoration specifically for this species on the Oregon coast difficult. Because of this situation with the Northern Fulmar and several other species that do not nest in Oregon, and the inherent difficulty of achieving specific restoration for each and every seabird species, the Trustees

M/V New Carissa Final DARP January, 2006

decided to combine the total seabird years lost and have focused on appropriate projects along the Oregon coast for seabird restoration.

Clarify historic mammalian predation on seabird colonies.

Response: During 2001 and 2002, red foxes (*Vulpes vulpes*) caused the failure of seabird nesting on Middle Coquille Point and Elephant Rocks within the Oregon Islands National Wildlife Refuge near Bandon, Oregon. Red foxes were observed loafing near the entrances to the nesting burrows of tufted puffin and pigeon guillemot and in the area of ground nesting western gulls, Brandt's cormorants and double-crested cormorants. Red foxes were also observed eating and burying western gull eggs. During the 2003 nesting season, no red foxes were observed in the area and nesting western gulls, pigeon guillemots and black oystercatchers successfully bred on and around the rocks. A number of seabird species, such as tufted puffin and Brandt's cormorant, which historically bred on Middle Coquille Point and Elephant Rocks, were observed in the area, but continued to restrict their breeding efforts to islands not accessible to red foxes. In addition to the loss of valuable seabird breeding habitat, opportunities to observe seabirds, such as tufted puffins, have been greatly reduced due to the presence of the red foxes (USFWS 2005).

Oppose transfer of funds to APHIS Wildlife Services to complete predator management for seabirds.

Response: The Fish and Wildlife Service will be responsible for determining the scope and direction of the predator management for seabirds on lands within the Federal refuges. APHIS, Wildlife Services, is the official agency for conducting predator management operation on Federal lands. Any transfer of funds to APHIS, Wildlife Services, will be through a contract which will specifically list the approved predator management techniques to be used and any reporting and monitoring requirements.

Western Snowy Plover Restoration

Federal agencies have killed more plovers than the oil spill.

Response: The Trustees do not know what this comment is referring to.

Prioritize plover money by order of success: 1. predator control, 2. maintain existing HRAs and next exclosures

Response: As Stated in the draft restoration plan, the emergency restoration conducted by the Trustees and the Responsible Parties restored most of the losses the western snowy plover experienced as a result of the oil spill. As part of the emergency restoration, the Trustees and the Responsible Parties cooperated in creating 30 acres of plover habitat within the 1998 Habitat Restoration Area (HRA). Trustees have prioritized funding for the western snowy plover in

M/V New Carissa Final DARP January, 2006

maintaining that 30-acre habitat to ensure that it continues to produce plovers for the next 30 years. The Trustees also propose funds to conduct monitoring to determine the effectiveness of that habitat and to conduct an outreach project (the plover docent program) to increase western snowy plover production in other areas of the coast. The Trustees have determined that these priorities best restore the losses from the New Carissa oil spill.

Drop proposed docent program

Response: The Trustees have determined that the proposed docent program is an essential part of the western snowy plover restoration for this spill.

Clarify when and where habitat maintenance for the Western snowy plover will occur on North Spit lands and that monitoring of this habitat will occur annually for the next 30 years.

Response: Habitat maintenance for the western snowy plover will be completed annually for 30 years on the 30 acres of habitat in the 1998 HRA created by the emergency restoration on Coos Bay's North Spit. The final restoration plan has been changed to clarify this information.

Clarify the specifics of the plover docent program, including timing and monitoring.

Response: The purpose of the snowy plover docent program is to train volunteers to be able to meet and educate the public near snowy plover nesting areas about the sensitivity of plovers to certain human activities. The Oregon Western Snowy Plover working Group, comprised of Trustee agencies and other organizations, would oversee the implementation and monitoring of the docent program. The Trustees envision that the Working Group would partner with the Oregon Coast Aquarium or other non-profit organization to help train the volunteers. The Trustees proposed budget is meant to allow for several years of initial funding to establish the program. The Working Group would be responsible for reporting annually to the Trustees on the results of the program.

If plover is delisted, money should be used for recreation.

Response: The Oil Pollution Act of 1990 (OPA) says that Trustees "shall develop and implement a plan for the restoration" of injured resources. The law gives no additional weight to species with special State or Federal conservation status. Consequently, the requirement to return the species to its pre-spill baseline is unaffected by its current Federal listing as a threatened species.

M/V New Carissa Final DARP January, 2006

Plover habitat has already been restored, doesn't need any more restoration.

Response: Although some habitat for the western snowy plover has been restored, the need to offset the losses from the oil spill remains. The restoration plan will therefore maintain the 30 acres of habitat that already have been created.

Plover habitat funding should be made directly available to Tillamook County.

Response: The Trustees have determined that the best projects to meet the restoration objectives remain the same: maintenance and monitoring of the 30-acre nesting habitat on Coos Bay's North Spit created by the emergency restoration and the plover education project (docent program).

The restoration plan should make clear how many acres of plover habitat will be restored each year.

Response: Thirty acres of habitat on the North Spit will be maintained each year on Coos Bay's North Spit. The restoration plan does not propose creating additional habitat.

Maintain as large a plover restoration area as possible.

Response: Based on the Trustees' analysis, annual maintenance of 30 acres of habitat for 30 years is what is required to restore the plover losses from the oil spill. The Oil Pollution Act does not grant authority to propose more than what is required to offset the spill losses.

Property for Sale

Approach people willing to "gift" land rather than buying parcels

Response: The Trustees evaluated more than 40 tracts for potential acquisition for marbled murrelet habitat restoration, and found no parcels which were available without cost. Based on the potential value of the tracts needed for marbled murrelet habitat (older forest habitat) it is unlikely that anyone would be willing to "gift" land to the Trustees.

The Trustees should consider other acreages along Coquille River for the proposal.

Response: The two parcels the Trustees are considering for restoration along the Coquille River are both former estuarine habitat, potentially prime shorebird habitat and it is unlikely there are two parcels that would better meet the objectives.

M/V New Carissa Final DARP January, 2006

Recreation

Recreation projects should focus on natural projects.

Response: Restoration funds are intended for and limited to those natural resources and recreation activities that were adversely affected by the incident. To the extent possible, within these sideboards and existing agency plans for the affected areas, the Trustees have attempted to identify a range of recreation projects that meet this objective.

The Trustees should make trails more handicap accessible.

Response: Opportunities to increase handicap-accessible trails within the area affected by the incident are limited because of the sand environment. There are already some fully accessible opportunities (such as the accessible viewing platform at Horsfall Beach and accessible boat dock on the Coos River) in the impacted area. One proposed project would make trails at the Governor Patterson Memorial State Recreation Site more accessible, and one other proposed project would develop several fully accessible campsites in Horsfall Campground.

Recreation projects should not be placed where there is an entry fee required.

Response: Oil Pollution Act funds for restoration of lost recreation opportunities are targeted for those areas where recreation opportunities were actually lost due to the incident. As a result, funds will sometimes be spent in areas where facility use fees (not entry fees) are charged because those are the areas and recreation activities that were impacted by the incident.

Signs shouldn't detract from natural areas.

Response: Any signing constructed in conjunction with the restoration plan will be located and designed so as to minimize impacts to natural areas.

There should be better information available on how the public can get recreation permits.

Response: Where appropriate, such as at the information kiosks, information about recreation permits and passes will be posted.

Separate natural areas and educational areas.

Response: Nothing in the draft restoration plan mixes education and natural areas. The only proposed projects that may have an educational component are the informational kiosks. These are all proposed for roadsides and near facility developments, not in natural areas.

M/V New Carissa Final DARP January, 2006

Restore existing signs where possible.

Response: Most of the signing proposed is new signing, replacing existing temporary signing. Where existing signs can be consolidated or restored, they will be.

All recreational users should benefit from the recreation proposals, not just motorized users.

Response: There are benefits for all recreationists in the proposed projects. For example, improved information kiosks benefit all users, not just motorized users. The beach closure signing for motor vehicles benefits non-motorized users. Because of the location of the incident and the time of year of the incident, much of the recreation that was adversely impacted was motorized recreation. As a result, motorized recreation is heavily, but not exclusively, represented in the proposed restoration projects.

Open more areas for ATV use.

Response: This is a resource allocation issue involving lands managed by some of the Trustees. It is beyond the scope of this restoration plan.

Keep beaches open and free to visitors, maintain open access.

Response: The restoration plan does not propose to close any beaches, nor does it propose any fees. It does propose improved signing for some areas of beach that are already closed to motor vehicles during certain times of the year. Facility use fees existed on some Trustee lands at the time of the incident. This plan is not intended to revisit decisions about uses and management practices that have already been made, during earlier planning efforts.

Maintain integrated recreation uses. Don't separate users (especially on North Spit).

Response: At the North Spit, BLM proposes no change to existing policy. No new separation of users is proposed.

Allow non-street legal vehicles to access New Carissa wreck area.

Response: Oregon Parks and Recreation Department regulations prohibit non-street legal vehicles on the beach near the *M/V New Carissa*. Any changes to the regulations would need to be approved by the Oregon Park and Recreation Department, and its commission, and does not fall under the authority of the Trustees.

M/V New Carissa Final DARP January, 2006

Recreation mitigation should be for local use and access.

Response: All of the proposed recreation projects would be on publicly-owned State or Federal lands. As such, projects cannot be designed or administered to benefit only local interests. Local interests will certainly benefit from the proposed projects, but so will non-local visitors to the area.

Tourists come to Oregon beaches for wildlife and the pristine nature of its beaches, keep it that way.

Response: For the most part, the proposed recreation projects improve or enhance already existing recreation opportunities and facilities. Very little new development is proposed that would adversely affect wildlife or the pristine nature of nearby beaches.

No signs, no kiosks in recreation proposed projects.

Response: Improving public information in the area affected by the incident can help compensate for recreation opportunities lost during the incident. Signs and information kiosks can help visitors have a safer and more enjoyable visit. They can also help minimize visitor impacts to sensitive wildlife areas, such as snowy plover habitat, which were directly impacted by the incident.

Proposed recreation projects benefit recreationists who didn't lose anything from spill-related beach closures, projects should go only to users who lost recreation (kiosks and signs weren't there when ship hit).

Response: Many of the proposed projects are designed to primarily benefit recreationists and recreation activities that were directly affected by the incident. However, all of the proposed recreation projects are located on publicly owned lands. As such, all public users, whether they were individually impacted by the beach closures or not, have the right and opportunity to benefit from the proposed projects. It is not possible or legal to say that only certain people may benefit from the facilities and other improvements located on public lands.

Recreation money should go to Oregon Hunters Association for shooting range.

Response: The Trustees have determined that money for an offsite shooting range does not best meet the objectives for restoring recreational losses directly affected by the incident.

Supports recreation projects for horses, bikes and walking, not ATVs.

Response: Many of the proposed projects are designed to primarily benefit recreation activities that were directly affected by the incident. Because of the location and time of year, the incident

M/V New Carissa Final DARP January, 2006

affected ATV recreation more than some others. Nevertheless, there are benefits for horses, bikes and walking within the proposed projects. For example, beach signing to improve compliance with beach closures for OHVs should improve walking and horseback riding experiences on those beaches.

Keep public access open for bird watching, hiking and horseback riding on the North Spit.

Response: The North Spit remains open for these activities.

Support development of ATV parks.

Response: This is beyond the scope of the restoration plan. However, the plan does propose enhancing ATV opportunities in the Horsfall area.

Recommend re-opening the interior North Spit road as a recreation restoration project.

Response: The recommendation is beyond the scope of this restoration plan. Also, Corps of Engineers regulations do not permit OHV activity in the interior of the North Spit, and BLM policy does not permit OHV activity in the interior of the North Spit.

The Trustee's proposal for education contributes little to local users and tourism.

Response: The proposed recreation projects are intended to replace recreational opportunities which were lost due to the oil spill. In addition, the Oregon Coast is already a popular tourism destination and many of the proposed projects will provide opportunities (such as OHV riding, hiking, beachcombing, camping, wildlife viewing, horseback riding, etc.) that cause visitors to stay in the area longer and/or return for subsequent visits. The proposed kiosks can be opportunities to provide educational materials for local users, as well as non-local visitors.

Put kiosks and signs in the BLM North spit boat ramp area.

Response: One of the proposed locations for an information kiosk is at the boat ramp.

Recreation projects in the restoration plan only peripherally address those who really incurred losses, shooters not mentioned.

Response: The Trustees have determined that the proposed projects address the interests of many users (including OHV riders, hikers, beachcombers, campers, wildlife viewers, horseback riders, etc.) who were adversely impacted by the *M/V New Carissa* incident. Recreational shooting occurred in the project area prior to the incident and nothing in the restoration plan prevents recreational shooting from continuing in the future.

M/V New Carissa Final DARP January, 2006

The projects proposed will exacerbate the conflicts between shooters and other users.

Response: State laws address shooting safety.

All of the money earmarked for North Spit should be directed to alleviate the conflict between shooters and other users.

Response: The Trustees have determined that restoration funds should be spent on a variety of projects to benefit the broad range of recreationists and recreation activities that were negatively impacted by the *M/V New Carissa* incident.

Recreational mitigation is simplistic; should have ongoing educational programs.

Response: Oil Pollution Act funds are one-time money intended to improve and enhance recreation opportunities that were adversely impacted at the time of the *M/V New Carissa* incident. As part of the restoration for western snowy plover, shorebirds and seabirds, the Trustees have proposed educational projects aimed at informing the public about their natural resources. Money for on-going educational programs that would have to come from a Trustee's annual budget is outside the scope of the restoration plan.

Encourage choosing recreation projects that discourage negative impacts and further protect wildlife.

Response: All proposed recreation projects are intended to minimize negative impacts from those recreation activities that were present and adversely impacted at the time of the *M/V New Carissa* grounding and subsequent area closures. Projects that harden sites and limit activities to designated areas or trails do benefit wildlife by channeling or concentrating recreation use and preventing it from impacting broader geographic areas.

No signs or kiosks are needed.

Response: The Trustees have found that there are frequent visitor questions at area offices and to field employees because of inadequate on-site information to help visitors identify where they are and what is available in the immediate vicinity. The kiosks and the information provided on them will help alleviate this situation.

No segregation of activities.

Response: This is beyond the scope of the restoration plan and gets into management decisions already made by some of the Trustees in prior planning efforts.

M/V New Carissa Final DARP January, 2006

Recreation projects are a waste of money.

Response: The Trustees are proposing projects that will provide positive benefits to people who were directly impacted by the incident, as well as spin-off economic benefits to local communities.

Do not spend money on ATV recreation.

Response: ATV recreation was one of the activities that was adversely affected when the area was closed to public use during the *M/V New Carissa* incident. As a result, it is appropriate that a portion of the restoration funds be spent to benefit that activity.

With all this ill-gotten money public should not have to pay to go to Horsfall dunes.

Response: Restoration plan funds are one-time money intended to improve and enhance recreation opportunities that were adversely impacted at the time of the *M/V New Carissa* incident. The fees paid by visitors to the Horsfall area provide on-going funds to help maintain (and sometimes improve) those opportunities over time. The purposes of the two funding sources are entirely different and, as such, restoration funds cannot replace user fees.

Seabirds

Consider management of light pollution as a technique for seabird restoration.

Response: Although controlling light pollution could have a positive impact on seabirds, and is, in fact, part of the rationale for acquiring a seabird property adjacent to an existing colony, the Trustees have determined that the proposed projects (habitat acquisition, predator management and access signing) best meet their objectives for restoring the losses to seabirds from the spill.

Relocate fireworks displays away from crucial nesting areas.

Response: The Trustees agree that this could have positive benefits for nesting seabirds, but have determined that the proposed projects best meet our objectives for restoration.

Trustees should purchase both seabird parcels A and B.

Response: Based on calculations, acquisition of Parcel A in combination with the predator management and education project will meet restoration needs. Acquiring another parcel would necessitate dropping all or part of the other two projects, which would not be in the best interest of seabirds.

M/V New Carissa Final DARP January, 2006

Enumerate which species are benefited by seabird parcel A.

Response: Pelagic cormorants, tufted puffins and Western gulls would be benefited by seabird parcel A.

Other Issues

Consider follow-up research to see if New Carissa bow is causing contamination and affect on “dead zone.”

Response: Such follow-up research is beyond the scope of this restoration plan.

Make email address for public comments readily available on website.

Response: Immediately after receiving this comment at a public meeting, the Trustees updated the *M/V New Carissa* information web page to include a direct email link to facilitate public comment.

Fuel buyers end up paying indirectly through OPA, polluters pass on tax to consumers

Response: The initial tax on oil in the Oil Pollution Act (5 cents per barrel of oil shipped within US waters) that contributed to funding of the Oil Spill Liability Trust Fund was instituted under the concept that potential polluters pay for future response and natural resource claims as a result of oil spills. However, the commenter may be correct in the assumption that any tax would be consequently passed on to consumers.

Endangered Species Act has not worked, why should this proposal?

Response: There is no apparent connection between the success or failure of the Endangered Species Act and the success or failure of this restoration plan.

Can't puffins nest on New Carissa?

Response: Puffins nest in burrows in the ground, and the stern of the New Carissa is clearly unsuitable habitat.

“Willing seller” what does that mean? Does it mean coercion, and harassing a landowner into selling? Put in writing “no eminent domain possible.”

Response: The Trustees have clearly articulated in both the draft and final versions of the restoration plan that: “any acquisition will be from willing sellers and will not be part of any condemnation or eminent domain proceeding or action.”

M/V New Carissa Final DARP January, 2006

Consider building reefs offshore.

Response: The Trustees have determined that habitat is the primary limiting factor for the marbled murrelet and proposals such as building offshore reefs to increase potential prey species for murrelets would not be as effective or as likely to succeed as the habitat-based plan.

Restoration funds should be used to build a tsunami warning system instead of restoring birds.

Response: This is beyond the scope of the restoration plan.

Money should be set aside for future prevention of another ship accident/oil spill.

Response: Although preventing future accidents and oil spills would be beneficial, it is not appropriate restoration for the resources lost as a result of the spill.

Do not spend any significant amount of restoration funds on existing staff and overhead.

Response: Only when existing staff are involved in approved restoration activities to support this restoration plan will they be appropriately funded. Overhead will be included in the claim to the extent that it is authorized by specific policy.

Do not spend any significant amount of restoration funds on short-term actions such as predator control.

Response: Because there are numerous examples where appropriate predator management has been effective in restoring seabird populations (USFWS 2005) and because of the identified predator problem on some of the seabird colonies within the National Refuge System along the Oregon coast, the proposal for predator management activities remains in this restoration plan.

Do not spend any significant amount of restoration funds on classroom educational materials.

Response: The Trustees have decided that public outreach and education is an integral part of the entire scope of their restoration plan. The Sister Shorebird Program is entering its fourth year at select locations along the Oregon coast. It is very popular with 4th to 6th grade teachers and students and there is a demand for expanding this program to cover schools in all seven coastal counties. Through in-class and field-based study, students learn about shorebird life history, conservation and management through curricula that meets State benchmarks for Life Sciences. Where offered to date, this program has been enthusiastically embraced.

M/V New Carissa Final DARP January, 2006

Do not spend any significant amount of restoration funds on cleaning of individual oiled birds and mammals.

Response: Cleaning of individual oiled birds and animals is typically an oil spill ‘response’ activity, and is not included in the Trustees’ restoration plan.

Do not supplement or replace State or Federal agency’s funding responsibilities.

Response: The Trustees’ specific intent is to not augment funding of State or Federal agencies for their normal management responsibilities. In a few cases, restoration actions have been proposed which fall within the purview of an agency, but have either never been funded or have been traditionally under funded.

Set aside money for an endowment to fund perpetual improvements.

Response: Several of the restoration proposals (plover maintenance and monitoring, predator management for seabirds) are scheduled to be funded over a 30 year time period, and in that sense, money will be set aside to fund these activities for the term.

Don’t consider compensatory restoration.

Response: The Oil Pollution Act requires both primary and compensatory restoration.

Federal acquisition, or Federal nexus triggering consultation, will constrain management to develop habitat.

Response: Management responsibilities or constraints on parcels may vary under Federal, State or private ownership. A constraint to one person may be an environmental enhancement to another. In the end, the Trustees will evaluate which ownership best meets the objectives of their restoration.

Current BLM management of the North Spit is inappropriate.

Response: Other than the very modest plover habitat maintenance efforts and a few of the recreation projects on the North Spit, BLM management of the North Spit is outside the scope of this plan.

Federal acquisition might impair adjoining landowner’s ability to manage without restrictions.

Response: Because there are survey requirements for marbled murrelets on Federal and State lands, there could possibly be some new sites found on the margins of these lands that could trigger State regulations on the private lands. Alternately, the habitat on Federal lands could be used to help meet the requirements for protecting murrelets on private lands.

M/V New Carissa Final DARP January, 2006

Contribute the proposed funding to ODF for management of the Elliot Forest HCP.

Response: This proposal is beyond the scope of this restoration plan.

Concern over use of asphalt sealant compounds adjacent to marine environment.

Response: The Oregon Parks and Recreation Department will ensure that any application of asphalt sealant in State parks will conform to any State and Federal laws, and it will be applied in a manner consistent with the manufacturer's guidelines.

Suggest study of water quality and ocean micro-currents.

Response: This is beyond the scope of this restoration plan.

Government is a poor land steward.

Response: The vast majority of known marbled murrelet habitat within Oregon is on either State or Federal government lands. Most of the former marbled murrelet habitat on private lands has been logged and is no longer habitat for this species.