

## **Appendix B: Summary of public comments on the Draft and Revised Draft Restoration Plan/Environmental Assessment**

The following issues, concerns, and suggestions were received during the public comment periods of the Draft Restoration Plan/Environmental Assessment (DRP/EA) from February 1, 1999 through April 12, 1999, and the Revised Draft Restoration Plan/Environmental Assessment (RDRP/EA) from January 7, 2000 through February 7, 2000. Comments are summarized below and are categorized according to subject. The number following the comment corresponds to the number of similar public comments received. A response to the comments is provided by the Trustee Committee.

### **General Comments of the overall Draft Restoration Plan/Environmental Assessment**

#### Comments:

Support for the DRP/EA as developed by the Trustee Committee. (2)

Urge support for the preferred Alternative D: An Integrative Approach to Restoration. (2)

Request that the Trustee Committee select Alternative C: Habitat Focused Restoration as the preferred alternative. (1)

The restoration plan should include restoration efforts for other seabirds, such as Cassin's and rhinoceros auklets, and tufted puffins. (2)

Why wasn't quantification of injuries to fish, shellfish, and fisheries resource, including injury to fishery associated habitats pursued as part of the damage assessment? (1)

Make funds available for other types of studies that would improve damage assessment for future spills. (1)

The public comment period for the RDRP/EA was insufficient and should be extended. (4)

Extensive baseline data was lacking in the revised draft and should be included in the final plan. This would generate more meaningful predictions for No Action/Natural Recovery which should be more clearly documented in the plan. (1)

Quantifiable goals should be more clearly defined so alternatives can be reviewed in terms of their effectiveness in meeting those goals. (1)

Siltation, and preventative measures, such as the towing vessel and the oiled wildlife rehabilitation center, is a result of another influence and should be pursued under a separate project. These projects are not part of the consent decree and would significantly reduce the amount of funds available for the true purpose of the settlement. (1)

The final plan should include an ecosystem-based alternative to be compared with other alternatives in terms of effectiveness toward meeting clearly stated goals. (1)

Specific budgetary information relevant to the proposed projects should be made available to the public. (2)

Restoration efforts should be focused on common murre, tufted puffins, and marbled murrelets. (1)

Failure to restore tufted puffins is negligent with respect to the criteria on page 3-2, as well as on the part of the agencies. (1)

It is an apparent conflict of interest for all proposed projects to be accomplished in-house by trustee agencies. (1)

A scientific oversight committee should be formed to review all projects. At least half of the members of the oversight committee should be from agencies, organizations, or universities independent of the trustees. (1)

Each funded project should be put out for a public request for proposal, with independent review of all proposals by the aforementioned scientific committee. Criteria for acceptance should include expertise, implementation feasibility, and budget. (1)

Return funds which would have been spent on declined projects to a central repository for future use, including additional projects and/or projects elements, as determined by the expert review committee in consultation with the trustees. (1)

Response:

The Trustees considered four alternatives in their selection of the preferred alternative. All of the alternatives evaluated had ecosystem-level benefits. However, the preferred alternative, an integrative restoration approach, was chosen after consideration of public comment, partly because of its encompassing array of potential projects that offered the greatest opportunity to integrate projects into a comprehensive ecosystem-level restoration, benefitting the greatest number of species. The *Tenyo Maru* spill primarily affected the marine environment. The integrative restoration approach allows for terrestrial habitat improvements for marbled murrelet nesting and conservation of kelp as well as restoration of marine nesting seabirds, including common murre, Cassin's auklets, and tufted puffins.

The Trustee Committee has added language for the consideration of a tufted puffin project if Phase II of the Restoration of Common Murre Colonies in Copalis National Wildlife Refuge (NWR) (Section 3.2.2.1) is not pursued.

Fish surveys were conducted as part of the injury assessment for the *Tenyo Maru* oil spill. This was primarily an offshore spill, and with the exception of kelp beds, there were negligible impacts to other nearshore environments. No adverse effects to fishery resources were documented. Thus, the final restoration plan addresses the restoration of seabirds and kelp (those resources documented to have been injured by the oil spill). The fisheries resource, as part of the kelp-associated ecosystem, may indirectly benefit from the conservation and recovery of kelp beds.

The use of restoration funds is guided by Natural Resource Damage Assessment (NRDA) under the Oil Pollution Act (OPA) of 1990. The Trustee Committee does not have the ability to authorize expenditures on studies purely for future injury assessment. Restoration funds must be used to restore, rehabilitate, replace and/or acquire the equivalent of natural resources injured by the *Tenyo Maru* oil spill.

Public comment was solicited on the DRP/EA from February 1 through April 12, 1998. In response to comments received on the DRP/EA, the document was modified slightly by adding a project proposal to provide partial funding to station an emergency towing vessel at the entrance to the Strait of Juan de Fuca and by deleting a project proposal to reduce seabird by-catch in coastal set net fisheries. The Trustees felt that the Plan was revised significantly enough that an

additional public comment period should be pursued. The Trustees resubmitted a RDRP/EA for a 30-day public comment period from January 7 through February 7, 2000, consistent with the National Environmental Policy Act (NEPA), the OPA, and the NRDA regulations.

Unfortunately, as is the case for many spill situations, extensive pre-spill baseline data were lacking for the *Tenyo Maru* oil spill. The Trustees funded some pilot projects with interest funds earned from the restoration fund to aid in the selection of a preferred restoration alternative, and to help establish baseline that could be used to evaluate the progress of any potential restoration efforts. Some of these projects included a survey of common murre colonies in Washington and Oregon, evaluation of productivity and reproductive success on Tatoosh Island off the Washington coast, a seabird prey-base study, and at-sea distribution of common murre and marbled murrelets. As a result of the pilot project data, the Trustees chose an integrative restoration approach as the most efficient and effective alternative in restoring the environment and reaching the primary goal of the restoration plan, which is to compensate the public for injuries by restoring, rehabilitating, or replacing specific populations of seabirds and kelp beds (including their associated communities). The primary objective is to provide a functioning and sustainable ecosystem where specific populations of seabirds and kelp beds are enhanced to provide a net gain of habitat function beyond existing conditions.

In addition to primary goals and objectives, each project proposal has specific project goals that will be used in monitoring and measuring the progress of the project. Estimated budget and schedules are provided for each project proposal in Section 4 of the Plan. Several restoration projects will be defined in greater detail through the development of scopes of work, work plans, specific budgets, and time-lines to measure the success and progress of the project. These projects will have work committees likely consisting of Trustee and non-Trustee expertise. Some of the actual work activities are expected to be contracted out by the work committee through a proposal process. This process would include selection criteria, such as, expertise, implementation feasibility, and budget. However, per NRDA under OPA, Trustees will have oversight of project implementation and the overall restoration progress.

Kelp was a natural resource with documented injury as a result of the spilled oil. Siltation has a serious impact on the health and recruitment of kelp beds. The Trustees believe that restoration projects that facilitate the growth of kelp, such as projects that would reduce the amount of siltation load on kelp beds, will aid in the recovery of this ecosystem and the species associated with it. Improving the success of rehabilitation and subsequent release of wildlife would likely provide a positive effect on restoration through population stabilization and recruitment, especially for rare and endangered species.

Public comments received on the draft plans have revealed that the marbled murrelet habitat protection project is favored as a restoration tool to recover marbled murrelet populations and benefit other species that interact with marbled murrelet habitat. The Trustee Committee has dedicated any remaining funds from some of the projects to protecting marbled murrelet habitat.

### **Restoration of Common Murre Colonies in Copalis National Wildlife Refuge**

## Comment

Allowing for the natural repopulation of this habitat is far superior and sustainable option than is being proposed in the plan. (1)

Will reference sites be monitored during Phase I and II? (1)

- Will colonies be accessed to determine physical/habitat limitations to population growth and recovery? (1)
- Define "adequately monitored" in "Phase II of this plan will be implemented if restoration sites can be adequately monitored." (1)
- Demographic analyses is needed prior to this project. (1)
- Additional studies are needed on the possible benefit of decoys and sound playback effect. (1)
- There needs to be specific criteria set for determining when and if the project will advance from Phase I (feasibility) to Phase II. (1)
- The presence of a small group of breeders should not preclude Phase II of the project. (1)
- How will it be determined that there is a cause-effect relationship between eagle fly-overs and other natural or anthropogenic activities and population declines of murre? Define "other natural" problems more clearly. (1)
- The decision of logistical feasibility should be made by an inspection of the sites by people who have previously installed such equipment and know when technical climbing and boat accessibility are feasible. (1)
- Do not see the value of a second year feasibility study. (1)
- Appears to meet the criteria for inclusion. (1) Recommendations for restoration implementation:
  - a) Inclusion of chick diet and/or forage rate sampling;
  - b) Coordination of ongoing PNCERS, GLOBEC, and BPA nearshore research designed to address production changes in coastal Oregon and Washington;
  - c) Formation of a team of independent experts to review the causes of murre population decline at the conclusion of Phase I. Experts should be appointed across the trustee agencies, with at least half coming from agencies, organizations, or universities independent of the trustees;
  - d) Additional reference sites in Oregon, or at the very least coordination with existing data collection efforts of the Oregon Coastal Refuges office in Newport, OR;
  - e) There is evidence to suggest populations are decolonizing Copalis National Wildlife Refuge; independent scientific review committee should evaluate criteria for moving to Phase II of this plan. (1)
  - f) If Phase II is implemented, continued monitoring of both Copalis Rocks and the reference sites should be conducted to determine whether murre can successfully breed and are not being drawn into a demographic sink and whether this immigration is causing significant decline in other Washington murre colonies.
- Concern with human intervention in the restoration of common murre on the Copalis National Wildlife Refuge. (1)

## Response:

Phase I of the project will include assessing the colony sites to determine whether the use of social attraction methods are needed and appropriate. Adequate monitoring of the restoration project is defined as the ability to determine an index or measurement that can be used to assess the effectiveness of social attraction techniques. Please refer to Section 3.2.2.1 - Proposed Activities - Phase I - Feasibility Study.

The monitoring of a reference site will be detailed further in scope of work documents and project methodologies developed for this project. The Trustee Committee is limited as to how much "investigation" i.e., demographic analyses, may be done that does not directly restore the resources injured in the *Tenyo Maru* oil spill. The Trustee Committee is utilizing current information and expertise gained in the similar restoration efforts on Devil's Slide Rock in California as part of the Restoration Plan for Seabirds Injured by the Apex Houston Oil Spill (U.S. Fish and Wildlife Service 1995) as an example of the potential success of restoring common murrelets injured in an oil spill. As Phase I of the project develops, we will continue to use the expertise gained in the Apex Houston project for implementation and evaluation of Phase I.

The Trustee Committee added criteria to several of the projects in the RDRP/EA and this project is one of them. Please refer to Section 3.2.2.1 - Proposed activities: Project Criteria for specific criteria to aid the Committee in the evaluation of Phase I.

This restoration plan provides the general concept of the projects. The project coordinators for each project will provide the specific design of their project to the Trustee Committee for evaluation, potential modification, and approval. The specific project designs will be consistent with the restoration plan but provide more detail in methods, work plans and detailed scopes, schedules, and budgets. The work committee charged with implementation of this project will consider comments received regarding project implementation in the development of the specific design of this project. The appropriate environmental documents and applicable permits will be prepared for review and adoption by the Trustee Committee before implementation of any project.

The Trustee Committee has allowed two years for Phase I of the project for flexibility in the plan to allow for weather and other potential unforeseen problems. The Trustee Committee will have close oversight of all phases of the project and will closely monitor the funding allocations for Phase I of the project.

### **Oiled Wildlife Rehabilitation Center**

#### **Comment:**

- Oppose restoration funds being spent on a wildlife rehabilitation center. (5)
- Question the usefulness and the Puget Sound location of a wildlife rehabilitation center. (2)
- Support funding a wildlife rehabilitation center with *Tenyo Maru* restoration monies. (41 - many of which appeared to be variations of a form letter)

#### **Response:**

The Trustee Committee believes that improving rehabilitation techniques in the State of Washington will aid in the recovery of injured species. Improving the ability to return injured individuals back to their natural environment will supplement population recruitment and recovery, especially for threatened and endangered species. Partial funding of the establishment of a rehabilitation center in Washington may help to improve rehabilitation techniques that would be especially valuable for endangered and rare species and may provide a public education forum for seabird and kelp ecology. The *Tenyo Maru* restoration settlement provides a minor portion of the overall cost of establishment of a rehabilitation center. The total cost associated with the actual rehabilitation of wildlife as a result of a recognized incident would continue to be the responsibility of the spiller.

Per recommendations by experts in the field of wildlife rehabilitation, the Final Restoration Plan/Environmental Assessment states that a primary care facility would be provided on the coast to stabilize animals for transport to the South Puget Sound area where equipment, supplies, and 24-hour staffing are more readily available.

### **Public Education Signs and Brochures**

#### Comments:

The education of the public regarding human disturbances of nesting seabirds should not be funded by this restoration project, but by the NWR system, the Olympic National Park, or the Olympic Coast National Marine Sanctuary. (1)

It may be more cost productive to increase education for personnel operating freights, oil tankers, and other large ships. (1)

- Support the use of \$100,000 for education programs (2)

#### Response:

This education project will build upon existing multi-agency cooperation in current education programs in the U.S. Fish and Wildlife Service (FWS), Washington State Parks, Olympic National Park, and the Olympic Coast National Marine Sanctuary (OCNMS). It will complement FWS education efforts underway with the *Nestucca* oil spill restoration funds and other current education efforts to reduce impacts from aircraft overflights. This project will not fund current education programs, rather, it is a cooperative venture to educate the recreational users that access ports along the Oregon Coast, Tatoosh Island, and the OCNMS. Signs will be posted at marinas and not on the National Wildlife Refuges. Brochures will be printed for recreational users as well as commercial users of the nesting seabird areas.

### **Marbled Murrelet Habitat Protection and River Silt Reduction**

#### Comments:

- Support efforts to acquire habitat for affected resources. (3)
- Suggest purchasing commercial logging rights or acquiring holdings within the Lake Ozette Watershed for marbled murrelet habitat and to reduce siltation and aid in the recovery of Lake Ozette sockeye stocks. (2)

- If Trustees are limited to only purchasing occupied marbled murrelet habitat, consider purchasing development rights on the Makah's primary reservation instead of around Lake Ozette. (1)  
Significantly increase the funding allocated to protection and recovery of marbled murrelet nesting habitat. (4)  
No *Tenyo Maru* funds should be spent on reduction of stream siltation. A huge amount of resources is already available for the restoration of salmonid populations. (1)  
Strongly consider the release of a portion of the *Tenyo Maru* oil spill restoration funds to purchase Teal Slough property in Pacific County, Washington. (1)  
Pleased that the largest sum of restoration funds is being allocated to habitat-focused restoration. (2) However, there is concern with lack of effort to identify habitats for purchase.  
Consider purchasing habitat, other than marbled murrelet habitat. (1)

Response:

Marbled murrelet surveys as well as Phase I of the river silt reduction component will identify projects that comply with the criteria established by the Trustee Committee for protection and recovery of marbled murrelet nesting habitat and river silt reduction. These surveys and investigations will include the Lake Ozette Watershed and the Teal Slough property in Pacific County, Washington. The DRP/EA and RDRP/EA provided general restoration project suggestions to the public for consideration. Following consideration of public comments, the Trustee Committee will make decisions regarding the final acceptance of projects. Specific restoration implementation activities will be conducted on final accepted projects based on criteria developed by the Trustee Committee, such as the selection of habitats for protection. Habitat selection must be based on the benefit to those species that were documented as injured from the spill.

Section 4 - Proposed Project Schedules and Estimated Budgets provides that any unused portions of funding from several projects in the plan will increase allocations to marbled murrelet habitat protection and river silt reduction, i.e., Restoration of Common Murre Colonies in Copalis NWR, Oiled Wildlife Rehabilitation Center, and the Stationing of an Emergency Towing Vessel at the Entrance to the Strait of Juan de Fuca.

Injury to kelp was documented as part of the natural resources injured in the *Tenyo Maru* oil spill. The Trustee Committee has addressed this with the river silt reduction component of the habitat focused restoration portion of the selected Integrated Restoration Approach Alternative. The feasibility portion of the river silt reduction project must be completed within six months of the notice of availability of a final restoration plan. After consideration of public comment, the Trustee Committee has developed strict criteria for the selection of river silt reduction projects. These criteria identify and preclude any projects that have current or potential protection through regulation or other conservation activities. Please refer to Section 3.2.3.1 Marbled Murrelet Habitat Protection and River Silt Reduction - Project Criteria for River Silt Reduction.

## **Protection of Marine Environments by Stationing an Emergency Towing Vessel at the Entrance to the Strait of Juan de Fuca**

### **Comment:**

Lease a rescue tug for Neah Bay during the year it takes the State and coast Guard to complete their oil spill risk assessment. (9)

Strongly reject use of restoration funds to fund oil spill prevention measures, specifically to station a stand-by rescue tug at Neah Bay, WA. (7)

The timing of the tug trial should not be limited to the deliberations of the North Sound Risk Panel. (1)

- The June deadline for the rescue tug funds should be extended. (1)
- Correct the plan to note that the tug is not just for winter or high risk vessels. (1)

### **Response:**

The Natural Resource Trustees for the *Tenyo Maru* oil spill are proposing to dedicate a portion (\$400,000) of the recovered natural resource damages to contribute to the cost of stationing a rescue tug at Neah Bay during the 1999-2000 storm season. Application of a portion of the natural resource damage recoveries as seed money for the tug's deployment is an appropriate expenditure as part of the restoration plan developed by the Trustees, and under the unique circumstances presented. Partial funding for the tug represents a small but important component of a more comprehensive plan aimed at benefitting the natural resources impacted by the oil spill. The stationing of the tug during the period of greatest risk of a vessel grounding will help to lessen the risk of further oil spills in the affected area, thereby increasing the likelihood of success for the other measures in the restoration plan. While the direct benefits of a single storm season's deployment of the tug will necessarily be of limited duration, the deployment will serve as a stop-gap measure while other administrative processes regarding rescue tug stationing are being completed, and will also provide important additional data for those processes to consider in addressing the issue of long-term rescue tug deployment for response purposes.

The *Tenyo Maru* Consent Decree provides that the recovered damages are to be "used only for restoring, rehabilitating, replacing or acquiring the equivalent of injured natural resources as provided in 33 U.S.C. § 2706(f)." Consent Decree ¶ 23.f (The cited statutory section is the source of the requirement that recovered damages may only be used to restore, rehabilitate, replace or acquire the equivalent of affected natural resources.) The *Tenyo Maru* spill impacted marine and avian natural resources along the outer coast of the Olympic Peninsula. The Trustees have developed a proposed restoration plan involving actions that would benefit species of seabirds and kelp communities harmed by the oil spill through habitat acquisition, preservation and enhancement, seabird colony enhancement efforts, contribution to the funding of oiled wildlife rehabilitation facilities, and public outreach and education. In response to public comments received on the proposed restoration plan, the Trustees have proposed to include as a plan element the partial funding for the rescue tug. The tug would be available to help prevent vessel groundings and resulting oil spills associated with loss-of-power and loss-of-steering events in the western Strait of Juan de Fuca and on the outer coast. Incidentally, it would also help to mitigate the injuries to natural resources resulting from spills due to other events, by serving as a oil spill response platform.



In addition to public comments proposing and supporting funding for the tug deployment, the Trustees also received comments opposed to the proposal and questioning the legality of expending natural resource damages for this purpose. After evaluating the proposal and supporting factual information, and taking into consideration information recently developed by agencies evaluating marine safety issues in the area, the Trustees have concluded that the proposed funding is consistent with legal requirements. By providing the funding in conjunction with and in support of the overall plan for restoring the injured natural resources, the Trustees' actions will restore, replace, rehabilitate and acquire the equivalent of the injured natural resources as required by the Oil Pollution Act and the Consent Decree.

The aim of contributing to stationing the tug is to help increase the likelihood of success of the restoration projects that are the primary focus of the restoration plan. The natural resources and habitats impacted by the *Tenyo Maru* spill have likely experienced some level of natural recovery in the years since the spill. That level of natural recovery presents a base upon which the other projects in the plan will build in providing benefits to the target resources. Further spills will erase or set back the natural recovery achieved to date and will diminish the beneficial effect of the proposed restoration efforts. By helping to prevent or to lessen the effect of oil spill events, the tug will help to increase the likelihood of success for the other projects and actions included in the restoration plan. While the commitment of funds to the tug deployment is relatively small (less than 7.5 percent of the recovered damages), by helping to provide an enhanced level of protection for the natural resources of the outer Olympic Peninsula area impacted by the oil spill the tug element serves as an important component of a comprehensive plan for restoring the injured resources.

Currently available information indicates that the western Strait of Juan de Fuca and the outer Olympic Peninsula coastline are at significant risk from future oil spills. A study conducted by the John Volpe National Transportation Center for the U.S. Coast Guard, Scoping Risk Assessment: Protection Against Oil Spills in the Marine Water of Northwest Washington State (1997) (the "Volpe Study"), examined the likelihood of accidents and the environmental consequences of a given spill. The Volpe Study judged the outer Olympic Peninsula coastline among the study areas having the highest likelihood of accident involving an oil spill, a high sensitivity to an oil spill, and a low capability for response to a spill. While a number of initiatives have attempted to address these concerns, including an industry-led international tug of opportunity system (ITOS), indications are that the risks remain high. A 1999 study by the U.S. Coast Guard, Analysis of the Geographic Coverage Provided by the International Tug of Opportunity System from November 1998 - May 1999, found that the ITOS provided only a 42 percent probability of coverage for the western half of the Strait of Juan de Fuca and offshore areas. For the southern approaches to the Strait, the probability of coverage was only 14 percent. These areas are among those most directly impacted by the *Tenyo Maru* spill and of greatest concern to the Trustees, especially the Makah Tribe. A tug stationed at Neah Bay dedicated to the rescue mission would increase the coverage for the affected areas to 100 percent.

Permanent stationing of a rescue tug beyond this interim measure implemented in conjunction with other restoration activities would not be an appropriate use of these restoration dollars.

Long-term decisions and commitments to a rescue tug, and the funding required, are the responsibility of other agencies and response-related programs. The U.S. Coast Guard, in communication with other agencies and parties, is continuing to examine the issue of the need for further marine safety efforts in the area, and is in the process of conducting an analysis of alternative approaches, including stationing a dedicated rescue tug such as the one proposed at Neah Bay. Through implementation of this proposal, the Trustees would be providing interim protection for the natural resources affected by the *Tenyo Maru* spill until the agencies with the programmatic responsibility can complete their decision making processes. Incidentally, deployment of the tug this season will also help to generate additional data on the need for and effectiveness of a permanent dedicated rescue tug that those agencies can use in reaching their decisions.

### **Seabird By-Catch Reduction in Coastal Set Net Fisheries**

#### **Comment:**

- Skepticism of the benefit of the reduction of seabird by-catch in set net fisheries because of reduced fishing vessels in coastal set-net fisheries. (1)
- There is little or no indication that auditory cues affect the foraging of seabirds. Therefore, the benefit of this restoration project is questionable. (1)
- It is impossible to select the best restoration option for common murres and other seabirds in Washington State because appropriate analyses are lacking, such as demographic analyses for Washington murres, auklets, and murrelets showing the relative effects of oil-spill and gill-net mortality to the well-being of Washington's seabird populations. If gill net mortality is significant, then funds should be allocated for studies of the foraging range and dispersion of birds using radio telemetry or aerial or shipboard surveys. (1)
- Monitoring the Tatoosh Island murre population as a means of determining the utility of pingers in dissuading murres from foraging near nets does not seem well-founded in logic. Too many factors affect the Tatoosh colony to make this aspect of the project a sufficiently sensitive indicator of success or failure. Monitoring the Tatoosh Island murre population should continue, and be paid for with *Tenyo Maru* restoration funds, but not justified as a means of determining the success or failure for a pinger/gill-net by-catch reduction project. (1)
- The estimated budget for the set-net fishery project seems high. (1)
- Disapprove of the deletion of the seabird by-catch reduction project in the RDRP/EA. (2)

#### **Response:**

After consideration of public comments, the Trustees deleted the Seabird By-Catch Reduction in Coastal Set-net Fisheries project from the RDRP/EA. No coastal set-net fisheries are currently being conducted on the north Washington coast and such fisheries are not likely to be resumed in the foreseeable future. The Trustees determined that the feasibility and any restoration benefits associated with this project were questionable enough for the project to be eliminated from the Final Restoration Plan/Environmental Assessment.