

**Final  
Summary of Proceedings  
Green Coasts<sup>1</sup> Stakeholder Meetings  
NOAA Offices, Silver Spring, MD**

I. Introduction.....	3
II. Trustees .....	4
A. Scope of Green Coasts .....	4
B. Stakeholder Meetings.....	4
C. Stakeholder Working Group .....	8
D. Green Coasts Process.....	4
E. Incentives to Participate in Green Coasts.....	6
F. Potential Problems.....	6
G. Structure vs. Flexibility.....	7
H. Appropriate Sites.....	7
I. Public Participation.....	8
III. Industry Groups.....	9
A. Differences between Green Coasts and Current Practice .....	9
B. Incentives .....	9
C. Procedure.....	10
D. Site Criteria for Pilot Sites .....	12
E. Public Involvement.....	13
F. Next Steps.....	13
IV. Environmental Groups.....	14
A. Concerns.....	14
B. Incentives .....	15
C. Methods of Public Input.....	15
D. Site Selection.....	16
E. Elements of the Framework.....	16
F. Next Steps.....	18

**Attachment A: Attendance lists**

**Attachment B: Green Coasts Presentation**

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<sup>1</sup> The "Green Coasts" name has changed to "Cooperative Assessment Pilot Project" (CAPP) as of November 1, 2001. Besides being more descriptive, this name change identifies support for this effort by the Federal trustees.



## I. Introduction

The National Oceanographic and Atmospheric Administration (NOAA) conducted four facilitated sessions to garner stakeholder input regarding the development of the Green Coasts concept. Green Coasts is a program initiative whereby potential responsible parties may be provided the opportunity to initiate and conduct cooperative natural resource damage assessments.

The meetings included representatives from state trustee agencies, federal trustee agencies, potentially responsible parties (PRPs), and environmental non-governmental organizations (NGOs). For the purposes of this summary, the state trustee meeting and the federal trustee meeting are combined in one section. Attendance lists are included in Attachment A. Valerie Lee of Environment International Ltd. (EI) facilitated the meetings, and Alisa Bieber of EI took notes. NOAA expressed its intentions to have discussions with the Indian tribal trustees in the fall of 2001. However, NOAA did not want to forestall the synopsis of the prior meetings until such time that NOAA could talk with the tribal trustees. A synopsis of the tribal trustee meeting will, however, be provided once it takes place.

For each meeting, Bill Conner of NOAA's Damage Assessment Center welcomed the group and began the meetings by listing five points relating to Green Coasts. First, he stated that Green Coasts is similar to the current cooperative assessment process. Green Coasts is intended to institutionalize the cooperative assessment process that already occurs on a case-by-case basis. One major difference, however, is that the PRPs will step forward to participate in this program. Second, he emphasized that this program is not meant to cover all natural resource damage assessment (NRDA) sites. Inclusion of 1% of NRDA sites nationwide would be enough to make Green Coasts a success. Third, he said that trustee involvement and oversight would still be essential for the assessment process. Fourth, he indicated that the same standards and components applicable to the current NRDA process are applicable to Green Coasts. Lastly, he stressed that once both PRPs and trustees agree to cooperate under the Green Coasts framework, either can terminate the agreement at any time.

Following Bill Conner's comments, Eli Reinharz, also of the Damage Assessment Center, presented an overview (slide presentation) about Green Coasts. This presentation highlighted the potential of Green Coasts to encourage cooperation with willing PRPs within the existing legal structure and safeguards. The presentation is included as attachment B. After the presentation, NOAA responded to questions from the stakeholder participants and Valerie Lee facilitated the discussion. Summaries of the proceedings follow.

## II. Trustees

### A. Scope of Green Coasts

Several participants of the trustee meetings asked why NOAA was creating a framework for NRDA's under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) because the DOI is responsible for promulgating the CERCLA regulations and NOAA works more frequently with the Oil Pollution Act (OPA). NOAA responded that CERCLA cases tend to be less urgent and allow more time to create partnerships, whereas OPA cases tend to need more immediate action. Moreover, while NOAA was responsible for promulgating the OPA regulations, NOAA addresses both OPA and CERCLA NRDA sites without bias to either. NOAA added that it has had positive experiences with cooperative assessments under the existing OPA framework and, as demonstrated by Lavaca Bay (a CERCLA site), it believes assessments under CERCLA might also benefit from a similar approach. It was stressed that the intent of Green Coasts is to develop a streamlined cooperative assessment within the existing legal framework. Some trustee representatives wondered if Green Coasts would affect them because NOAA has few resources in landlocked areas.

### B. Stakeholder Meetings

One participant asked how the stakeholders were selected, and why the meetings with stakeholder groups were held in this particular order. NOAA indicated that timing issues and stakeholder availability determined the order of the meetings.

The people selected for the stakeholder meetings represented groups with experience and interest in cooperative NRDA's. NOAA personnel had spoken with many more potential participants than could come to the meetings. One state participant suggested that the Department of Defense (DOD) be added to either or both of the federal trustee or PRP meetings. Another suggested that EPA should be included in the meetings, because cooperation for a voluntary streamlined NRDA should begin during the response action. NOAA agreed, and indicated that they would attempt to include representatives from DOD and EPA.

Several participants wondered how involved the states would be in Green Coasts. If states are going to sign off on the NRDA's, they would need to be involved. NOAA clarified that this program, as currently envisioned, would involve state buy-in on a case-by-case basis. Several state representatives wondered if the program would be formal enough for them to bring it to their state legislatures for funding and approval. If a detailed framework were available, it would be very useful to gain buy-in from the states.

### C. Green Coasts Process

*Initiation:* Several stakeholders suggested that trustees should begin the Green Coasts NRDA process early when the response is just beginning. This would allow studies to be designed that are relevant to restoration as well as response. The facilitator asked during which step in the CERCLA response process a cooperative NRDA should begin. Many participants

believed that the studies done for the RI/FS would be a good place to start because they are relevant, although the standards for determining injury and causation will be different. For example, if animals are captured or killed as part of the risk assessment, they could also be used to determine injury.

*Point of Contact:* The trustees agreed that they would like a point of contact including a name and telephone number for the lead PRP, rather than conducting everything through lawyers and consultants.

*Resources:* Several people commented that resource constraints could limit trustee participation in a new NRDA initiative. NOAA stressed that cooperative assessments would only be undertaken if the PRP funds the assessment process and the trustees agree to the process. Many participants stressed, however, that they would still need to have core staff not reliant on PRP funding to address Green Coasts issues that may not directly relate to a specific Green Coasts project.

*Model Agreements:* Most participants agreed that adhering to model agreements reduces both transaction costs and time. These agreements should cover both the legal relationship among the parties and the technical aspects of the NRDA process. Elements of a model initiation agreement could include:

- Process for data sharing;
- Agreement that studies should not be conducted that would undermine joint data;
- Tolling agreement, which could be a separate agreement;
- Confidentiality; and
- Agreement on the sampling process and general process objectives.

*Standards for Damage Determination:* The trustee representatives discussed the technical standards that should be used. The participants agreed that the standards should be able to withstand public scrutiny and judicial review. One person suggested that the standards be the same as for a consent decree: fair, reasonable, adequate and in compliance with the law. Many favored the reasonable worst-case (RWC) approach, during which scientists use their best professional judgment in arriving at conservative, protective assumptions to ensure that natural resources are adequately restored. Some, however, felt that an RWC scenario often was not realistic enough, and a reasonable best-case catastrophe should be formulated and used in determining injury.

Most participants agreed that the approach to determining the need for more studies should include the following steps:

1. Review existing data for the site;
2. Review literature;
3. Determine data gaps; and
4. Fill data gaps.

Addressing data gaps could be accomplished in a cooperative process using the RWC approach. In a non-cooperative approach, the standards for addressing data is "litigation-quality science," proof that can be presented in court in an adversarial setting. Because studies that will be

presented in court may be developed over several years, using an RWC approach would streamline the NRDA and many participants agreed that it should be used where possible. With the agreement of the parties, participants felt that some studies could be performed, but stipulations should be in place in case either party decides to discontinue the agreement.

*Stipulations:* Stipulations should be worked out periodically so that if the trustees or the PRPs back out, the work that has been completed is defensible in court. Possible stipulations could include:

- Type/scope of contamination;
- Type/extent of injury;
- Accuracy/precision of work; and
- Restoration areas/issues.

*Dispute Resolution:* Several people believed that a project initiation agreement should have a dispute resolution requirement, and perhaps have a neutral facilitator throughout the process. Several state representatives felt that the dispute resolution should be non-binding.

*Restoration Monitoring:* This concern originated from a 10-year study that showed 98% of restoration activities in a certain area had been unsuccessful in the long term. One participant felt strongly that Green Coasts model agreements should include mandatory monitoring of restoration projects. Most participants agreed that a requirement for restoration monitoring would not derail an agreement.

*Endpoint for the Process:* Potentially, the endpoint for Green Coasts could be a consent decree or a no further action letter. If the settlement amount or value were to exceed a certain threshold, DOJ would need to sign the agreement as well.

## **D. Concerns**

Some trustee representatives were not sure how this new program would help their problems with low levels of staffing. Others wondered how Green Coasts would fit in with existing MOAs, especially if those agreements were with DOI or other agencies not directly initiating Green Coasts.

Other major problems could arise if one side terminates the cooperative assessment midway through and the scientists report that it is too late to get the necessary data or the lawyers report that the statute of limitations ran out.

## **E. Incentives to Participate in Green Coasts**

Most participants were excited about the opportunity to share information and lessons learned with each other. Aspects of cooperative agreements vary regionally. For example, some states put a tolling agreement in the initial agreement, but others have worked out a tolling agreement separately. Many states were excited about the opportunity to have the PRPs volunteer to pay for the assessment and restoration costs up front.

Additionally, the institutionalization of the process will help educate all parties involved. Many participants commented that, currently, it is very difficult to work with a trustee or a PRP who has little prior experience with NRDA's. If the process is standardized, it will be easier for newcomers to learn the process.

Many participants agreed that incentives for PRPs and trustees to participate in Green Coasts include:

- Minimization of transaction costs;
- Consistency/standardization;
- Time savings with institutionalization and model agreements;
- Education of PRPs;
- Exchange of knowledge among trustees;
- Good public relations; and
- Reduction of interim losses.

## **F. Structure vs. Flexibility**

One question that emerged from the meetings was how much flexibility would be allowed in the Green Coasts framework. Several people favored flexibility very strongly, but opinions varied among the participants. Some believed that structure would limit creativity, while others believed that the structure would bring advantages of both time and financial savings. Some participants had concerns that advances and innovations that some trustees have made in cooperative assessments would be lost if NOAA created a new framework.

A participant suggested that one approach would be to have model agreements with various options built in, and the parties could choose paragraph A, B or C depending on the circumstances. Another approach included maintaining a historical library for past cooperative assessments and methodology that the trustees could draw on when they were working on their own agreements.

## **G. Appropriate Sites**

Criteria that may lead to successful pilots and an eventual Green Coasts program could include:

- Well organized multiple PRPs or single PRP;
- Clear injuries (often these are the severe injuries);
- Well-defined site;
- Numerous, easily scalable restoration options;
- Clear causation;
- Willing PRPs and trustees;
- Clear liability;
- Public/political support;
- Few public health issues;
- Well-organized trustees with partnership agreement and lead trustee;
- NOAA must be a trustee;
- Less controversial resources impacted;

- Experienced PRPs, trustees and consultants (ideally with cooperative assessment experience); and
- Cooperation with response agencies.

The group did not agree whether sites with smaller damages should be given preference in the selection of pilot sites over sites with larger damages. The facilitator asked whether very large sites similar to the Montrose NRDA would be appropriate. Some participants believed that at sites with high dollar values for damages, PRPs would be very unwilling to participate in a voluntary program because there would be much more at stake than at smaller sites. Other participants, however, did not want to rule any sites out if there was a possibility of PRP volunteers.

Some participants said that there should be a large body of knowledge about the site and the damages before an attempt was made to include the site in a pilot program. Others stressed that existing knowledge would not be as important as beginning the NRDA during the response action so the data for the restoration could be gathered during the RI/FS.

## **H. Public Participation**

Although many people wanted some parts of the process to be confidential, most people agreed that there should be a clear administrative record and that joint data sets should be public. Additionally, many participants agreed that the environmental and other public advocacy groups would insist on receiving information about the process. One participant was concerned about third-party lawsuits.

## **I. Next Steps**

Participants supported the formation of a cross-stakeholder working group for Green Coasts. The state trustees also wanted to meet with the federal trustees first to agree on an approach before they meet with industry and environmental group representatives.



### **III. Industry Groups**

#### **A. Differences between Green Coasts and the Current Practice**

Several participants wondered how Green Coasts would be different from what happens currently. NOAA staff identified several clear distinctions. First, the parties will begin the process focused on a cooperative assessment rather than beginning the cooperation partway through. Second, the PRPs have the opportunity to nominate a site for Green Coasts that they think would be most appropriate. Third, Green Coasts offers all participants the opportunity to streamline and institutionalize the process through mutually agreed upon actions and assumptions. NOAA staff stressed that they wanted to hear from the participants what standards or guidelines they would like in Green Coasts.

#### **B. Incentives**

Participants agreed that the key incentives for both PRPs and trustees are reduced transaction time and reduced cost.

One participant suggested that under a Green Coasts framework, a company might be able to aggregate a series of small sites owned by one company into one cooperative assessment. In that way, the process would be streamlined, compensatory restoration might be shared among sites and the companies could receive a release of liability for their sites.

It was suggested that a process similar to wetland mitigation banking could be initiated with restoration. Companies might be able to do extra restoration on some sites where restoration would be easier or more successful in exchange for doing less at other sites where restoration is more difficult or expensive.

Another suggestion involved the integration of response and restoration activities. With this integration, there might be greater opportunity for flexibility. For example, EPA might require fewer remedial activities, especially if the remedial actions are very environmentally destructive, in exchange for more restoration and compensation.

One person mentioned that in about half of the cases, it has been initially clear to the parties what restoration activities would be required after all the studies have been completed. It would be very useful for the PRPs if these endpoints could be discussed at the outset. If a consensus can be reached, it would save much of the transaction costs.

Certainty is an advantage to the PRPs. If there were a timetable of what would be accomplished in six-month or one-year intervals, the representatives felt it would be easier to generate enthusiasm from their managers and easier to budget for the activities.

It was suggested that this proposed partnership should be too costly for both sides to terminate lightly. Both parties should be equally disadvantaged if it fails. One method to ensure this is to

force the process back to the beginning if an agreement falls apart. Another method would be to proscribe preparations for litigation if the agreement is in effect.

One participant pointed out that there would need to be an enforcement threat in order for companies to participate in this program. For industry, it is a calculated risk. If the companies believe that there is a significant risk of enforcement action, they will spend the money to restore an area. If they believe there is low risk, they might prefer to spend money elsewhere. Because of the risk calculation, the industry representatives thought NOAA and other trustees as well as PRPs should have the opportunity to initiate the program.

Although public relations do not have much power as an incentive by itself, it is a benefit that lends weight to other more tangible incentives. Public relations benefits can be increased by joint publicity, so the public is aware of the willingness of the PRP to restore the site. Joint publicity also minimizes the potential for political polarization.

The group acknowledged that another incentive might arise if the trustees are willing to deal individually with PRPs in a multiple PRP site. Then the PRPs might volunteer, both to resolve the liability and to ensure that they would not be last in line and pay *more* than their fair share. However, if this is done, the government must understand the orphan share and not allocate it to one of the volunteers. One concern is that this might increase transaction cost for the government.

In short, incentives include:

- Reduced transaction costs;
- Reduced transaction time;
- Possible grouping of multiple sites;
- Possible “restoration banking;”
- Ability to “work backwards;”
- Increased certainty of time and cost;
- Disincentives for breaking it off for both sides;
- Possible enforcement threat;
- PRP lead;
- Integrated response and NRDA processes;
- Global resolution of response and restoration liabilities;
- Good public relations;
- Net environmental benefits; and
- Resolution of individual liability in multiple PRP sites.

Participants agreed that a cooperative process would be very difficult, if not impossible, if all the trustees were not involved and willing to sign a release of liability at the end of the restoration process.

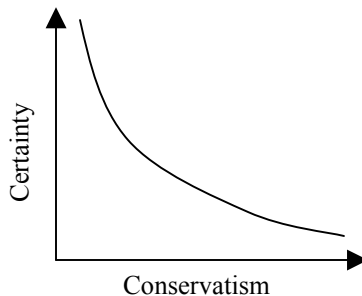
## **C. Procedure**

*Timing of Initiation:* Several participants suggested that the NRDA could begin during the response action and build on the information gained during the RI/FS process. An integrated

process might encourage a higher awareness of the environmental damages caused by the remediation that necessitate restoration actions. However, many participants believed that in some cases, the response and restoration activities should be dealt with separately and consecutively.

In order to simplify the process, the industry representatives felt that the trustees need to designate a lead trustee. The involvement of too many people makes the process confusing and unmanageable.

*Expediting Restoration Planning:* In general, participants suggested that certainty and conservatism are inversely related as is shown in the graph below. In other words, in a situation with many studies and a high degree of certainty, fewer conservative assumptions need to be made. Conversely, if there are few studies (low certainty) many conservative assumptions need to be made (high conservatism). Most participants said that they favored the low certainty and high conservatism.



The industry representatives favored doing only as much investigation as needed to agree on conservative assumptions. Several participants suggested approaches that would involve fewer studies. This could involve a reasonable worst case (RWC) approach, during which all parties agree to a reasonable worst case scenario and then plan restoration and compensation activities accordingly. Another possible method of reducing the need for certainty and increasing the conservative assumptions is agreeing on a conservative model and working with the output of that model. In general, participants agreed that having one data set and one set of experts expedites the process.

Several participants believed that stipulations during the process would be too time-consuming and may not be worth the effort. A few participants, however, stressed that stipulations would be useful to record the progress made and prevent the entire assessment from starting over if the cooperation breaks down.

The personalities involved are another variable that influences the efficiency of the process. However, the group concluded that one couldn't establish a screen for the participants. The group agreed that the parties around the table should have enough authority to make decisions and agreements for the organizations that they represent. Ideally, the team will include "moderates" from both sides who do not wish to polarize the process.

The cooperative process to decide the standards might involve three steps. First, there would be an analysis of existing data. Second, scientists would study the data and determine what additional data they need to agree on damages. This may or may not involve filling all the gaps in the data. Third, the restoration projects would be planned.

The group agreed that an informal dialogue should happen first and, if agreement on a general vision for the site could occur quickly, there might be a statement of intent committing the parties to a cooperative process. Model agreements should not be required but might be helpful in some places. If this process falls apart, a method of dispute resolution should be available.

*Dispute Resolution:* Participants agreed that there should be a mechanism for dispute resolution in the agreement. Some felt that there should be a third-party facilitator available or working with the groups throughout the process.

#### **D. Site Criteria for Pilots**

The group brainstormed the following criteria for a potential Green Coasts pilot site:

- Well-coordinated, experienced trustees;
- Well-coordinated, experienced PRPs;
- Simple system;
- Simple or well-known contaminant;
- Clear allocation of liability if multiple PRPs;
- Participants willing to take a risk;
- Supported by NGOs and environmental groups;
- High visibility;
- Clearly identified PRP(s);
- Solvent PRP(s) willing to pay up front;
- NPL or non-NPL sites; and
- Enthusiastic PRPs to champion Green Coasts.

There was some question regarding how simple to make the pilot sites, because Green Coasts' success might be limited if the sites concerned are too simple. On the other hand, the pilot might not be a success if the sites are too complex. Two criteria that were mentioned early in the discussion and then removed from the list as being inappropriate to a credible pilot program were: single PRP and single event.

The group was not in agreement about the appropriate size for Green Coasts sites. Many participants believed that their management would not be interested in small sites, and would be most interested when large amounts of money were at stake. Others believed that when large amounts of money are at stake, the PRPs would not be interested in a partnership. They might see it in their interest to spend perhaps a half million dollars on litigation that might reduce their liability by 50 million dollars.

The facilitator asked the group about the qualities that would make a site inappropriate for a pilot project, i.e., a description of the "nightmare site." The group quickly created the following list :

- Multiple, dysfunctional PRPs;

- Multiple, dysfunctional trustees;
- Bankrupt or soon-to-be bankrupt PRPs;
- ESA concerns;
- Municipalities involved as a PRP or trustee;
- Government is a PRP;
- Heavy lawyer involvement;
- Multiple contaminants;
- Unclear and subtle effects;
- Some releases permitted;
- Act of God invoked;
- Multiple, competing scientific experts (within PRPs or between trustees and PRPs);
- Publicly or politically unsavory PRPs;
- Excessive public attention;
- First-of-a-kind incident; and
- Sites located in a protected area.

The PRPs for sites would have to be forward-thinking and committed to championing the new process. Economically strapped and recalcitrant companies would not present good candidates for a pilot program.

No one offered suggestions for pilot sites. The group agreed that NOAA could approach companies about sites, but that it should be done in person or on the phone. Letters can be perceived as too official, binding or threatening.

## **E. Public Involvement**

The PRPs agreed that public involvement and support was necessary and sometimes very helpful. Identifying a restoration plan acceptable and supported by the public greatly improves the process and reduces the potential for third-party lawsuits. In many situations, improving public relations and supporting local communities is an additional incentive to become involved in cooperative assessments.

## **F. Next Steps**

The industry representatives requested that the minutes from all the stakeholder meetings be sent to them and strongly supported the idea of upcoming cross-stakeholder meetings. They believed that their management would definitely support continued involvement in a working group focused on the development of a Green Coasts process. They also stressed that they would like EPA and DOI involved in the ongoing discussions.

## IV. Environmental Groups

### A. Concerns

The first concern to arise was the name. “Green Coasts” is not very descriptive and has environmentally beneficial connotations, which may or may not be accurate. One alternate name suggested was “Partnerships for Restoration.” There was also the idea of including a descriptor with the name.

Although NOAA is a trustee, some people felt that some trustees did not accurately reflect the best interest of the public, and that the public should have the opportunity to be involved directly. Additionally, one person pointed out that the trustees also represent the PRPs because the PRPs are also citizens. The involvement of NGOs, whose primary goal is to restore the resource, will help to balance the weight of PRPs, for whom cost savings is a primary goal.

Although NGO participants acknowledged that government trustees and industry groups might have good intentions, the group was not entirely comfortable with the idea of a partnership between the trustees and industry because both groups have mixed environmental records. Several participants cited their own experiences and said that they were not comfortable with the PRPs collecting and analyzing the data and planning restoration projects.

There was a concern that the shift in focus away from litigation-quality science would result in poor science and a more vulnerable position if a lawsuit should arise. One participant felt that it was crucial to have safeguards to prevent under-recovery of damages and to prevent the resolution of the NRDA before the sustainability of the restoration projects is assured.

Several participants expressed concerns about the potential that Green Coasts would limit the PRPs’ liability. NOAA explained that Green Coasts’ arrangements regarding liability would be no different from what is used currently. If the PRPs pay the money in full or perform restoration to set standards, the trustees issue a covenant not to sue or a consent decree. On some occasions, a “comfort letter” could be issued, which states that, given the actions that have been accomplished, the agency has no intent of taking further action. This letter is not binding, but can be drafted and signed more quickly than a consent decree. One participant expressed discomfort with liability release or limitation being used as an incentive. NOAA agreed that it should not and would not be used as incentive.

Participants inquired about what conditions could cause a case to be reopened. NOAA replied that if new contaminants were found, the case could be reopened, but if new injury were found due to the same contaminants, the case could not be reopened.

Overall, the concerns listed included:

- The name is vague and possibly misleading;
- Trustees represent PRPs as well as public;
- Distrust for PRPs and trustees;
- A move away from litigation-quality science could result in poorer science;

- Lack of “checks” or quality assurance of data;
- Sufficient trustee oversight of work conducted by PRPs;
- Liability limits should not be used as incentives;
- Liability should not be reduced; and
- Reopener clauses should not be weakened.

## **B. Incentives**

The strongest incentive for NGOs to support Green Coasts would be increased public input into the process. Several people suggested that standard methods of public participation would not be enough and that the public should become a third partner in Green Coasts, the equivalent of another trustee. Although the group acknowledged that the trustees represent the public, some felt that the NGOs should be at the table because they would focus only on the public.

Open documents and meetings are crucial elements of this public involvement, and the lack of access to both is a current frustration for the NGOs. Additionally, funding to perform restoration monitoring and oversight would be a powerful incentive to citizens’ groups.

Incentives for NGOs to support Green Coasts would include:

- Increased public and NGO input in the process;
- Potential for an NGO to function as a trustee;
- Availability of information through open documents and meetings;
- Funding for the NGOs to do public outreach and education;
- Funding for the NGOs to perform monitoring and restoration work through community volunteers; and
- Potential for the restoration projects to be completed faster.

Incentives for the trustees and PRPs to support NGO involvement include:

- NGO support would add credibility to both;
- NGOs would support trustees in their mandate to fully restore resources; and
- Potential source of volunteer labor and community support.

## **C. Methods of Public Input**

Several participants wanted a representative of the local community to be included in meetings. Similar to trustees, this person would have the same ability to sign agreements. One person pointed out that the NGOs would not be able to sign away the ability to sue should the process not progress properly. Another felt that the signing was not as important a function for NGOs as the facilitation of public dialogue.

Although the group acknowledged the difficulty of one or even two NGO representatives speaking for the entire public, they pointed out that they frequently face the challenge of representing a diverse constituency. They suggested that the selection of an individual representative to represent the public was not as important as the process by which the public offers input and the open communication that the representative would facilitate. One person mentioned that the Food Quality Protection Act had a successful system of public involvement.

Several people offered support for a system similar to that in the technical assistance grants, in which a technical advisor(s) can be hired by the NGO. For some sites, a stakeholder involvement group or a technical working group could provide public involvement and oversight of the process. Another idea would be a science court of third party scientists overseeing the process or a peer review panel selected by the public.

Based on experience, a participant stressed that key functions of an NGO focused on a particular site or a stakeholder involvement group would be the dissemination of information and the provision of volunteers. The volunteers provide labor hours for planting and maintenance of the projects, and help with community education and continuing community support of the restoration projects.

#### **D. Site Selection**

Participants agreed that not all sites would be appropriate for a voluntary NRDA process, although not everyone agreed what criteria should be used.

Inappropriate sites might have:

- Significant interim lost use or lost non-use values;
- Permanent lost use or lost non-use values;
- Extensive damages to public resources;
- Permanent damages to resources;
- Severe ecological injury to multiple media; and
- Particularly complex damages.

Appropriate sites would include:

- Sites with one PRP;
- Sites with a small footprint that entirely contains the contamination;
- Fewer contaminants that are easily identified;
- Localized impact of contamination;
- PRPs that are tied to the community;
- PRPs with a good environmental track record;
- Locations where damage is easy to assess;
- Sites with straightforward restoration options; and
- Involved trustees that are dedicated to the environment.

#### **E. Elements of the Framework**

NOAA explained the current process for cooperative assessments. First there is an agreement about the scope of the project. The trustees then approve the contractor that the industry hires and approve the scope of work (SOW) that is created. The SOW includes sampling and analysis plans, quality control and means to oversee the contractor. Trustees monitor the lab and field contractors, including accompanying them to oversee sampling protocol. Trustees also hire their own experts if necessary. The peer review team is jointly approved. The environmental group participants felt that the process sounded reasonable, provided that the contractor is beholden to the trustees, not the PRPs.



One participant stressed that the public would need to have the opportunity to comment at the beginning of the process. The point was raised, however, that sampling and modeling are two places where there is an opportunity to affect the outcome. Even with good people on both sides there can easily be differences of opinion. Because of the inscrutable “black box” aspect of modeling, it is hard for the public to review models thoroughly. Therefore, public involvement early in the planning stages is vital.

Some people believed that, to streamline the process, a model could be developed and approved by all involved and then any changes to the approved model would have to be approved as well. NOAA responded that habitat equivalency analysis is similar to what was being described. It is used in cooperative assessments to either determine the studies needed or obviate the need for further studies.

The facilitator asked about the possibility of using data for an NRDA that had been collected as part of the response action. One participant expressed discomfort with the response action process because the public is not invited until the risk assessment phase, before which many crucial decisions are made. It was pointed out that the trustees do not receive formal notice until the national priorities listing (NPL) determination is made, although often the trustees know when the EPA is conducting an investigation. Trustees do not have the resources to begin an NRDA that early, and one NOAA representative pointed out that there is not usually enough information at that point for them to begin.

Although one participant believed that it was important to get new data in the restoration phase as a check on the previous data, several others thought that it was appropriate to use the old data sets provided that they were relevant and from a reliable source. Because an NRDA must determine injury, whereas a response needs only to determine risk, not all data will overlap. It was also important to the group that the data would be available to the public. The public can then determine if the right questions are being asked and the data are believable. Several participants acknowledged that the use of existing data would speed the process and enable more sites to be restored.

The participants were asked about the possibility of using a reasonable worst case (RWC) approach. In such an approach, the key question is whether enough information exists to set boundaries of possible injury. If enough information exists, the parties agree to use the most environmentally conservative scenario to establish protective remedies and therefore avoid additional studies. At first, the participants were uncertain that PRPs would willingly assume more liability than otherwise necessary. NOAA stated that RWC was a common approach, and PRPs might, for example, assume a high level of injury to the resource that would cost \$25,000 to restore rather than spend \$100,000 to prove that it was only \$10,000 worth of damages. The NGO participants did not agree on how widely they would like this approach to be used. They were uncertain about whether standard operating procedures for RWC would be possible to develop for diverse sites.

There was a discussion about whether the trustees should hire contractors to do the work or whether the PRPs could hire contractors with trustee approval. When asked whether they would

prefer trustees hiring the contractors with PRP oversight or PRPs hiring the contractors with trustee oversight, most preferred the trustees hiring the contractors. Several participants disagreed, however, believing that the PRPs would have the ability to provide the money sooner or that the difference is an administrative detail; the partners would choose the consultants together.

The NGO participants believed that important elements of a framework would be:

- Public involvement in scope of work (prior to sampling or modeling);
- Signing ability for the NGO representative;
- Public/NGO representation in the process, similar to trustee;
- Non-confidential data;
- Standardized process applicable to many sites;
- Peer review/neutral scientific fact-finding;
- Formalized public involvement in decision-making;
- Public involvement in monitoring and implementation of restoration options; and
- Trustee oversight of work and contractors answerable to trustees, even if payment comes from PRPs.

The participants did not come to agreement about how much prior data could be used in the NRDA, the nature of conservative assumptions that could be used or whether the contractor could be paid directly by the PRPs.

## **F. Next Steps**

Most participants felt that the Green Coasts idea is worthy of further discussion, especially if it means that NRDA's can be done faster and without compromising standards. Participants who disagreed also wanted to be included in any further discussions and to be informed of future developments.

**Attachment A**  
**Green Coasts Stakeholder Attendance List**  
**State Trustee Stakeholder Meeting**  
**June 8, 2001**

<b>Trustee Name</b>	<b>Participant Name</b>	<b>Address</b>	<b>Contact Numbers/ E-mail</b>
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New Jersey Department of Environmental Protection Office of Natural Resource Damages	Ernie Hahn	501 East State St. PO Box 404 Trenton, New Jersey 08625	Ph: 609-984-5475 Fax: 609-984-0836 E-mail: <a href="mailto:ehahn@dep.state.nj.us">ehahn@dep.state.nj.us</a>
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## State Trustee Stakeholder Meeting (cont.)

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**Federal Trustee Meeting**  
**July 19, 2001**

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## Federal Trustee Meeting (cont.)

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**Environmental Groups/NGO Stakeholder Meeting**  
**June 21, 2001**

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Pacific Coast Federation of Fishermen Associations Inc.	Glen Spain	P.O. Box 11170 Eugene Oregon 97440-3370	Ph: 541-689-2000 Fax: 541-689-2500 E-mail: <a href="mailto:fishliffr@aol.com">fishliffr@aol.com</a>
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Citizens for a Better Environment	Jeffery Foran	152 W. Wisconsin Ave. Suite 510 Milwaukee, Wisconsin 53203	Ph: 414-271-7280 Fax: 414-271-5904 E-mail: <a href="mailto:jforan@cbemw.org">jforan@cbemw.org</a>
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## Environmental Groups/NGO Stakeholder Meeting (cont.)

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**Attachment B  
Green Coasts Overview Presentation**



# **Green Coasts**

A Government Partnership with  
PRPs to Restore Natural  
Resources



## **Goals of Green Coasts?**

- ◆ Strengthen partnerships
- ◆ Restore more sites/resolve additional liabilities
- ◆ Streamline the NRDA process
- ◆ Encourage initiative/innovation



## What is Green Coasts?

- ◆ Another means to:
  - Cooperate with willing PRPs in pursuing restoration of injured resources, under trustee oversight
  - Enhance the collaborative experience
- ◆ Green Coasts will not replace existing authorities, programs or responsibilities



## How is Green Coasts different from the NRDA process?

### NRDA Process

- ◆ Trustees initiate action
- ◆ Trustee pay all costs, then seek reimbursement
- ◆ Trustees conduct/ share and oversee work

### Green Coasts

- ◆ PRPs initiate action
- ◆ PRPs pay costs in real time
- ◆ PRPs conduct work based on trustee guidelines/oversight



## How is Green Coasts different (cont.)?

### NRDA Process

- ◆ Focus on litigation quality work
- ◆ Adversarial negotiation/litigation
- ◆ Qualified information sharing

### Green Coasts

- ◆ Focus on work/agmts that support restoration/resolution
- ◆ Parties may terminate action
- ◆ Full and free information sharing



## Authority for Green Coasts?

- ◆ Cooperation at the outset is explicitly encouraged by existing NRDA:
  - Programs
  - Regulations (CERCLA at 43 CFR 11.32, OPA at 15 CFR 990.14(c), NCP at 40 CFR 300.615(d)(2))
- ◆ PRPs are invited to participate in development of the assessment and restoration process



## **Scope of Green Coasts?**

- ◆ Green Coasts will focus on hazardous substance sites where:
  - Trustees have jurisdiction
  - Restoration is appropriate
  - Restoration is practical



## **Scope of Green Coasts (cont.)?**

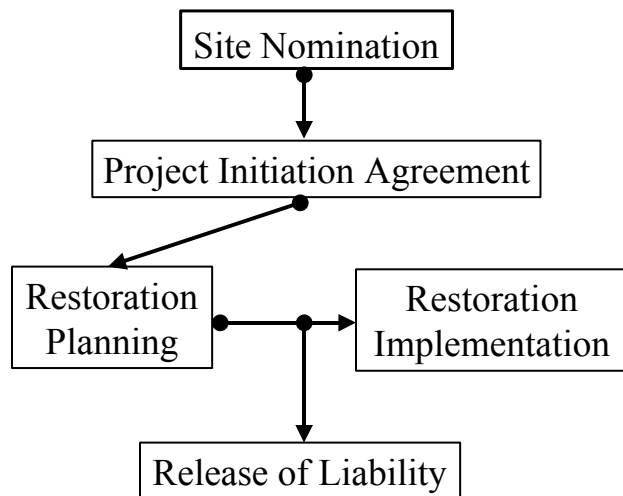
- ◆ Green Coasts needs to be road-tested through pilot efforts
- ◆ Pilot efforts should target regional and stakeholder differences
- ◆ Should the program be coextensive with pilot project criteria?



## Scope of Green Coasts (cont.)?

- ◆ Possible pilot criteria
  - Well-defined footprint
  - Complete/adequate/documented response
  - Clear contaminant-injury nexus
  - Availability of restoration with nexus to injury
  - High probability of restoration success
  - Limited human health concerns
  - Single PRP
  - PRP willing to share information

## The Process - A Possible Model





## **Challenge to the Stakeholders Participants?**

- ◆ Identify incentives
- ◆ Define and articulate challenges/solutions
- ◆ Indicate next steps, e.g., How best to proceed?