

**Montrose Settlements Restoration Program Trustee Council
Summary
October 22nd 2003 Workshop
October 23rd 2003 Meeting Summary
Long Beach, California**

The Montrose Settlements Restoration Program held a restoration planning workshop for the Trustee Council on October 22nd 2003, followed by a regular Trustee Council meeting on October 23rd 2003.

Attendance

The following primary and alternate Trustee Council members were present:

Bill Conner	NOAA	Jennifer Boyce	NOAA
Patty Velez	CDFG	Julie Yamamoto	CDFG
Suzanne Goode	CDPR	Kate Faulkner	NPS
Dan Welsh	USFWS	Jim Haas	USFWS
Andy Yuen	USFWS	Jonathan Clark	CSLC

Also attending:

Greg Baker	Act'g MSRP Prog Mgr	Anne Little	USFWS
Dave Witting	MSRP	Dave Parker	CDFG
Kolleen Bannon	NOAA	Trina Heard	NOAA

Scott Sobiech, USFWS and Dave Parker, CDFG attended 10/22 workshop only.

Val Chambers, NOAA attended 10/23 meeting only.

OCTOBER 22ND RESTORATION PLANNING WORKSHOP

The Trustees held a one-day workshop on October 22nd to discuss the Tier 1 evaluation of restoration ideas gathered for initial consideration for the MSRP Restoration Plan (RP). The purpose of the Tier 1 evaluation is to select the most promising ideas from among the more than 100 ideas gathered through internal analysis and public involvement. The projects identified through the Tier 1 evaluation will proceed into a more detailed evaluation and alternatives analysis for the RP.

The workshop consisted of a staff-summarized analysis of other restoration plans' approaches to doing project evaluation, the staff's recommended approach and set of criteria for the MSRP RP, and presentations demonstrating the Tier 1 process applied to several examples from each of the restoration categories being considered (Fish / Fishing, Bald Eagles, Peregrine Falcons, and Seabirds).

The proposed approach for conducting Tier 1 was distributed. It consisted of evaluating each restoration idea against four main criteria, Nexus, Location, Feasibility, and Benefits. Each idea was to receive a pass/ no pass rating for Nexus, and be given a numerical rating from 0-3 for the remaining criteria based on specific sets of descriptions for the ratings. Cost-effectiveness was to also be considered if the four main criteria failed to adequately distinguish the ideas.

The Trustee Council discussed the defensibility of the system, the need to have a written record justifying not only why projects were selected for Tier 2, but also why others were not. We discussed whether having a numerical rating system put us at increased risk of protest/ litigation, and concluded that the numerical rating system per se wasn't a problem, but that we need to be sure that the written justification supports the numerical scores assigned. For clarity and brevity, staff suggested that the actual public RP document will probably not include the full numerical system, but it will be in the admin record.

Regarding the criteria themselves, the Trustee Council recommended that the Location criterion be combined into the Nexus criterion, and that another separate criterion for evaluating multiple resource benefits of projects be added into Tier 1. We also modified the approach for scoring Nexus to make it

consistent with the other criteria by provide for 0-3 ratings. The Trustee Council agreed that staff should re-work the criteria and then proceed with performing the actual Tier 1 evaluation, and bring forward the results and recommendations for the next Trustee Council meeting in January 2004. Also, the RP should describe how the specific criteria used in the MSRP plan relate to and are consistent with those suggested in the NRDA regulations.

The following additional points were made concerning specific categories of restoration and specific project proposals.

Seabirds

We discussed an analysis prepared by Annie Little proposing a basis for distinguishing which seabird species have been affected by the contaminants of the case, to aid in determinations about nexus. Bill Conner suggested that if we think in compensatory restoration terms, we do not have to dismiss restoration projects for the latter groups of birds simply because we do not have evidence of their connection to the injuries of the case. He suggested that projects found to have the greatest benefits for seabirds of any species (or that benefit seabirds which are currently considered to be at greatest risk) should receive strong consideration regardless of whether the particular seabirds benefiting were known to be injured by Montrose contamination.

The outcome of this discussion was that rather than eliminating from further consideration projects that target seabirds for which there is no clear nexus to the DDT/PCB injuries of this case, we will evaluate the injury nexus for all seabird projects, and rate them on a scale from 1-3 based on the analysis of injury evidence developed by USFWS. This will allow thorough sorting of all the seabird projects not only by consideration of each bird species' nexus to the case but also its current conservation status and the other criteria. Projects benefiting seabirds with a weak nexus to the case will still receive serious consideration and may be selected for Tier 2 should they be found to be strong candidate projects in terms of the other criteria.

Bald Eagles

Since the NCI Bald Eagle re-establishment feasibility study is ongoing and the outcomes will not be known before 2006 or later, the discussion centered around how we can evaluate potential Bald Eagle restoration ideas in the RP ahead of the NCI results. Annie Little passed out an initial outline addressing this question and proposing that, rather than running each of the Bald Eagle restoration ideas through criteria and rating them, we defer specific decisions on Bald Eagle restoration projects pending the outcomes of the NCI study, and set aside a portion of the restoration funds for future Bald Eagle restoration. The Council asked that Annie expand upon the initial write-up, and agreed that the RP should discuss and identify a process for decision-making, estimate likely costs for ultimately proceeding with restoration of Bald Eagles, and propose to reserve a portion of the restoration funds for this future use.

The NCI study notwithstanding, we identified the need to make decisions about the ongoing Bald Eagle work on Catalina Island, since that program has been ongoing for years and we still do not have a sense of when or if the situation might reach a point where continued intervention is no longer necessary to maintain the birds on the island. Through discussion we identified three principal options available to address the Catalina Bald Eagle situation and the Trustee Council recommended that they be further developed in the context of the draft RP:

1. Discontinue the program because it appears that contamination is still too high to allow the birds to self-sustain, and this is unlikely to change for the foreseeable future.
2. Attempt other measures, such as marine mammal carcass removal, to see whether they might reduce exposures sufficiently to allow the birds to be self-sustaining and might be more cost effective than the current program.
3. Make a decision that we will continue the egg removal/ fostering program for several more years despite the continued contaminant-caused reproductive problems.

Staff pointed out that we will have some data on contaminant levels and trends from Catalina ahead of the date when we would be putting out the draft RP, and that this data might help inform our determinations.

Peregrine Falcons

We discussed the current status of Peregrine Falcons throughout the Channel Islands. Kate Faulkner and others indicated that given the current status of the recovery of Peregrines in the NCI and on the mainland, it makes sense for the Trustees to focus Peregrine restoration efforts on the Southern Channel Islands. It was pointed out that we do not really know the current status of Peregrines in the SCI since there has not been a formal survey conducted since the early 1990s (Note: the Trustees subsequently recommended such a survey as part of the 2004 budget, see notes for the October 23rd meeting below). Overall, the Tier 1 evaluation process for Peregrine Falcon projects as described by staff did not present any difficult issues and the Council recommended that the evaluation proceed as described (with the modifications in Tier 1 criteria and rating as noted above).

Fish and Fishing

Dave Witting circulated and summarized a draft "white paper" proposing a means of organizing and analyzing the many potential fishing restoration ideas into themes and sub-themes to facilitate decision analysis. Many of the ideas in this category are presented as concepts which could be applied in a number of locations and for which several specific implementation approaches are available (e.g. reefs, stock enhancement, wetlands). The Trustees discussed the likelihood that for some fishing restoration ideas we may develop them beyond the initial conceptual level, but not have sufficient specific information to go so far as to select a single project site or design in this version of the RP. Rather, it may be that we select restoration approaches and potential sites in this RP, identify next steps, such as pilot studies, and then supplement the NEPA/CEQA analysis later when we have a specific project or set of projects to implement.

The Trustees also discussed the Marine Protected Areas concept as a means of restoring fishing services and fish habitat. It was raised in the context of an idea submitted by NPS that MSRP restoration funds be considered for use in administration of the already established MPA program for the NCI, e.g. enforcement, monitoring, etc. The Trustees discussed MPAs in a larger context too, i.e. that we might consider them as an approach to be used elsewhere in the Southern California Bight where they could be a means for recovery of fish and supply of fish to areas outside of their boundaries. Dave Witting put forward a concept that MPAs could be used in association with artificial/ natural reefs such that a portion of reef could be set aside for fish production and another portion be used for fishing.

At the conclusion of the day the Trustees endorsed the proposed approach for Tier 1 evaluation with the changes noted above, and also acknowledged that what we are conducting needs to be kept within the perspective of iterative planning, i.e. that this RP will not be the final word on all of the MSRP restoration work.

OCTOBER 23RD TRUSTEE COUNCIL MEETING

The meeting began with a brief recap of the prior day Tier 1 workshop.

Restoration Funding Allocation

We discussed approaches for allocating restoration funds among the different categories of resources. Bill Conner also suggested an approach whereby we look at allocating resources between primary and compensatory restoration, i.e. what percent of the funds should the Trustees devote to bringing injured resources/ services back to baseline, vs. implementing projects to compensate for interim losses. Discussion ensued about which specific resources were in fact candidates for primary restoration work, i.e. was it limited to Bald Eagles, Peregrine Falcons, and Fishing services, or did we take a view that actions to recover certain seabird species might also be considered primary restoration. While the

Government did not ultimately argue a case for ongoing injuries to seabirds during litigation, it nevertheless could be argued that certain species continue to experience egg shell thinning and may be conceivably be below baseline, although there is a lack of sufficient data to definitively determine this.

The Trustees were generally in agreement that we want to reserve some portion of the restoration funds for compensatory restoration projects (despite our sense that we could direct all the funds toward primary restoration and still not restore ongoing injuries/ losses back to baseline). There was consensus that our ultimate plan should put forward a diverse portfolio of restoration projects because this would spread the benefits among many resources/ areas and would also spread the inherent risks that projects may not always completely achieve their objectives. Beyond these agreements, the Trustees did not identify any tentative splitting of funding among resource categories, but rather recommended that MSRP staff give the issue further thought and bring it back for discussion at the next meeting.

Within the discussion of restoration funding allocation, we also discussed the total dollar amount that should be presumed available for restoration implementation, given that other program costs somewhat reduce available funds and interest earned somewhat increases available funds. A decision on what number to use was also deferred to staff for recommendation at a future meeting.

Bill Conner suggested that to the extent that we could obtain estimates of potential costs of restoring Peregrine Falcons and Bald Eagles to baseline in the Channel Islands, that could help in funding allocation efforts. MSRP Staff agreed to develop firm cost estimates.

Status of 2003 Activities and Proposed 2004 Budget

MSRP staff provided an update on the status of ongoing efforts, with most of the detail focused on our ongoing data gap studies on Bald Eagles and fish.

Birds

The Council discussed concerns about the San Francisco Zoo program, a need for better justifications in their invoicing, and questions about capital improvement needs.

Dan Welsh indicated he would look into SF Zoo invoices. The Council also had questions about the \$90,000 for construction of the stairwell. Also, the Zoo was allocated \$50,000 under the cooperative agreement for outreach work, but has yet to spend the funds. The Council agreed that USFWS should make sure that the Zoo will not spend the outreach money; USFWS indicated they would process a modification to the Cooperative Agreement to ensure this. Bill Conner suggested instituting a reporting expectation for the Zoo (and in general for recipients of MSRP funds) summarizing what it has done and is doing concerning contract deliveries, including invoices. USFWS announced that cooperative agreement project management is being transferred from Sacramento to Carlsbad for 2004.

Regarding the 2004 budget proposal, the Council asked staff to go back to Dave Garcelon and ask whether it would be possible to reduce costs for the Catalina program without significantly impacting it. Dan Welsh suggested that we be careful not to cut back on the monitoring efforts. The Council also discussed whether to alter the Catalina program in other ways for 2004, e.g. pilot marine mammal carcass removal, or would it be possible to reduce the effort to an every other year program? In the end, the Council agreed to fund the program for 2004 but inform IWS that the continuation of the program past 2004 would be subject to its evaluation within the RP during 2004, including public input. Patty Velez indicated she would like to see more of a breakdown from IWS on costs.

The Council asked that staff meet with the SF Zoo to revisit their proposed operating and capital improvements budget for 2004, and to reinforce the reporting/ invoicing needs.

We discussed and agreed to leave in a contingency for obtaining Bald Eagle chicks from Alaska. The Council also agreed to eliminate the proposed Peregrine Falcon contaminant survey and instead directed staff to request a proposal from Brian Walton for a nesting survey for the peregrine falcons on the Southern Channel Islands.

Fish Studies

The Angler Survey field work is complete and responses have been tabulated. A summary report of angler survey will be prepared by Stratus by mid December for internal review, and the final report should be ready in Feb/ Mar of 2004. We are beginning to receive data packages from the laboratory for the fish contamination study. Analyses and data validation are anticipated to be completed in January 2004, with a draft report to be prepared by March.

Reports for both of these studies are to be coordinated with EPA, and neither are intended to delve into data interpretation; rather they are intended to be reports on the study objectives, design, implementation issues, and preliminary results.

Report on Cost Reimbursement

Per Kolleen Bannon all agencies have received their reimbursements of past damage assessment costs with the exception of the remaining annual partial reimbursements of NOAA's past costs. NOAA's request to draw \$4 million from the court registry for the 2003 partial reimbursement of past costs has been approved but hasn't been done yet.

Per Bill Conner – NOAA has not submitted its reimbursement request for 2002 to Trustee Council. In the works are: contract cost – fish studies, and restoration planning.

Per Dan Welsh - \$89,000 was transmitted to NOAA for cost of analyzing 2003 eagle samples through Battelle, \$9,000 to Fish and Game for time spent in restoration and planning. The investment strategy that was outlined in July's meeting was followed. Jim Haas (Welsh's TC chair replacement) will take over account information.

The Council discussed the present requirement for quarterly reporting on expenditures by agencies. Policy and procedures need to be written to meet the needs of the program and circulated to Trustee Council for approval. The possibility of reducing reporting to semi-annual was discuss but the Council decided to leave reporting at quarterly. All agencies are to make best efforts to achieve this goal.

Restoration Plan Development

Greg Baker explained the current status of contracting for assistance on development of the RP. The Trustee Council had agreed in 2002 to provide \$121K in funding to MEC Analytical, Inc. for assistance on development of the Preliminary Planning Report, but we had never actually circulated for signature a specific TC Resolution to transfer the funds to NOAA. A resolution was circulated and signed at this meeting for this purpose. MEC has already completed this work and been paid for it by NOAA, thus the resolution is to reimburse NOAA for this cost.

Greg Baker also explained that the Trustees had not yet signed a resolution authorizing an agreed upon amount for continued contractor assistance (\$190K) for continued contractor assistance through the preparation of the public draft RP. However, at this stage the MSRP team recommended that rather than transferring \$190K to NOAA at this stage in the calendar year and this stage in the plan development, instead we place \$100K into the 2004 budget for this assistance and pursue a more limited contractor role once we have a clearer understanding of which restoration ideas are moving forward into detailed Tier 2 analysis. The Council agreed.

Outreach

We discussed the Outreach coordinator position vacancy, and next steps. Based upon discussions with the previous outreach coordinator prior to her departure, there is a sense that we'd filled that full time position somewhat prematurely, since we hadn't yet put out the Restoration Plan and there was a limit to

how much public outreach/ education we could do prior to that stage. Staff recommended that we wait on backfilling the position until Spring of 2004 so as to bring the person on board a few months preceding the release of the draft RP.

Also, Chris Doley of NMFS Restoration has offered to share an outreach person with MSRP. The proposal is that 75% of the outreach coordinator's position would be dedicated to MSRP work, while the other 25% would be for other (i.e. non-MSRP) natural resource restoration work. Trustee Council thought that this was a good idea, and directed that cost for staffing this position during 2004 should presume a 75% contribution from MSRP.

Jim Haas (?) indicated that the Fish & Wildlife Service Public Affairs Officer is available to assist with outreach efforts until MSRP hires an outreach coordinator.

We discussed the status of the web site and the possibility that we develop a separate web site (the current MSRP site is operated as a NOAA site within the general NOAA/ DARP system). The Trustee Council recommended that staff explore development of a MSRP web page independent of NOAA, and funding for this was included in the 2004 budget.

Other Issues

Greg Baker is continuing to Act as MSRP Program Manager while Pamela Castens remains on extended leave until March. NOAA will work with Pam in January to develop a recommendation for the Council on whether she will be returning to work in March..

Next Trustee Council meetings- January, 15 in Long Beach, May 6 in Long Beach, and June 23/24, location to be decided.