

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



David Pettit, Natural Resources Defense Council

David Pettit, Senior Attorney, has more than 30 years of trial court and appellate experience. His litigation and advocacy work focuses on air quality, public health and associated environmental justice issues in the most heavily polluted air basin in the United States.



David Newman, Natural Resources Defense Council

David Newman, Oceans Program Attorney, works on numerous issues, including working to ensure public participation and transparency in the NRDA process for the BP oil disaster.

HOW THE PUBLIC CAN PARTICIPATE IN THE NRDA PROCESS

ELI: Are the trustees required to solicit public comment during the NRDA process?

David N: Yes, the trustees are legally required to solicit public comment on the draft restoration plan. So, they have to release a draft plan, get public comments, and respond to those comments. In addition, individual restoration projects or groups of projects must undergo an environmental review, which may also require public comment. These are the minimum requirements. That said, there is plenty of flexibility for the trustees to do more.

ELI: Why are the minimum requirements for public participation not enough here?

David N: This is an unbalanced process. The law is written in such a way that the trustees are encouraged to work collaboratively with the parties responsible for the spill. In theory, this is not a bad idea. The problem is that it provides a front-row seat for the responsible parties to comment on every injury assessment plan, every proposal to determine pre-spill conditions, and the development of the restoration plan.

Here, BP has been sitting at the table all along. This has allowed them to see the trustees' plans

and some of the studies, and to respond to and comment on them. And while some of these plans and studies have been made available to the public, this is only well after BP has seen them. So, the process to date has been biased towards the responsible party, not the public. This is fundamentally problematic.

David P: Another reason the minimum participation requirements are not enough is that, by the time the enormous draft restoration plan has been negotiated and released, the prospect of substantive changes to that plan is very slim. It is therefore important to get in the process early and make your positions known with as much force as you can to get them into the draft plan. If you wait until the draft comes out, it will be like trying to derail a train that is coming downhill towards you at 100 miles an hour.

David N: I would add that there is a lot of pressure to focus on coastal resources as opposed to deep sea marine ecosystems. The deep sea marine ecosystems took the brunt of the spill, and it is likely its effects will occur in these ecosystems over many years. It's something BP and many of the trustees want to

downplay, as it will take some effort to assess and restore the injuries to these ecosystems.

At the same time, you've got states that have been suffering from coastal erosion and coastal pollution problems. They are trying to use the NRDA money to not only restore damage from the oil, but also for these long-term problems.

There is therefore pressure from various sources and, if there's not a lot of input from independent scientists and those who don't have a political interest in the cleanup, by the time the massive restoration plan comes out it could already be very biased in favor of coastal ecosystems at the expense of the deep water. If so, it will be very difficult to turn around.

ELI: If the trustees don't solicit public input beyond the minimum requirements, how else can individuals participate?

David N: Individuals should be providing grassroots support to pressure the trustees to open up the process. While individuals should say what they think about the spill, the injuries they have witnessed and the restoration they would like to see, that is of limited value if it's not that well informed due to a lack of public information. For example, during the programmatic environmental impact statement (PEIS) scoping process, many of us felt we did not have enough information about injuries to suggest areas to focus restoration. So, I think the most important thing to do is push for more information, status updates, and trustee plans.

ELI: What can community groups do?

David N: At this stage, community groups should be organizing themselves according to their areas of expertise, so they will be prepared to start participating as more information is released. It is likely we will start seeing documents – like an early restoration plan – in the next six months or so. There will

be lots of information to digest. To really play a role, groups should try to divide up the work according to their specialized expertise and interest, then engage in reviewing documents and commenting to the extent they can.

David P: Local groups may have more access to their own state trustees than to the federal ones. But I agree with David: the sooner the groups get involved, the better. And by getting involved, I mean writing detailed comment letters, engaging in face-to-face meetings, and generally pushing to get their needs recognized.

ELI: You have been talking about public participation in the context of the whole NRDA process. What about participating in early restoration? Is that different?

David N: It's not different, but it means being active in the process right now. The trustees are currently accepting proposals for restoration projects, and the state trustees are suggesting some. The best way for the public to be involved is to focus on state proposals: commenting for or against projects and, where there are gaps, suggesting their own. Secondly, the public should pressure the trustees to release a status report, providing a comprehensive overview of the NRDA to date.

ELI: The NRDA process could take several years to complete. Why should individuals and community groups get involved now?

David N: If you wait five years until a final plan is out, there is not going to be an opportunity to shape that plan. It will be too late.

ELI: Do you have any other advice for those thinking of getting involved in the NRDA?

David P: If individuals and community groups care, they need to expend a lot of energy on this process and keep at it. It's not going to be something where you go to one meeting, stand up, comment for a minute, and then it's over.