

# RESPONSIVENESS SUMMARY

## FOR THE

# HUDSON RIVER NATURAL RESOURCE

## DAMAGE ASSESSMENT PLAN

**PREPARED BY THE HUDSON RIVER NATURAL RESOURCE TRUSTEES**

STATE OF NEW YORK

STATE OF NEW YORK DEPARTMENT OF ENVIRONMENTAL CONSERVATION

U.S. DEPARTMENT OF COMMERCE

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

U.S. DEPARTMENT OF THE INTERIOR

U.S. FISH AND WILDLIFE SERVICE

NATIONAL PARK SERVICE

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**JULY 2003**

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*This Responsiveness Summary for the Hudson River NRDA Plan was prepared by the Hudson River Natural Resource Trustees—the New York State Department of Environmental Conservation, the U.S. Department of Commerce’s National Oceanic and Atmospheric Administration, and the U.S. Department of the Interior’s Fish and Wildlife Service. The Trustees are working cooperatively to conduct a Natural Resource Damage Assessment (NRDA) for the Hudson River. The Responsiveness Summary provides trustee agency responses to public comments on and questions about the NRDA Plan.*



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# HUDSON RIVER

## RESPONSIVENESS SUMMARY



## INTRODUCTION

*The Hudson River Natural Resource Trustees received numerous comments on the Hudson River Natural Resource Damages Assessment Plan (the Plan), released September 16, 2002. After a 45-day period, followed by a 30-day extension requested by several members of the public, the comment period on the Plan officially closed on November 29, 2002. This document addresses issues and questions raised in the public comments.*

The *Plan* is a “living document” that the Trustees will continue to develop and refine as the natural resource damage assessment (NRDA) progresses. Many of the comments the Trustees received were intended to identify ways to improve the *Plan*. Some were ministerial in nature, others more substantive. Several questions raised will be answered by releasing existing information. Others can be best addressed in future documents, such as individual study plans, which the Trustees intend to provide to the public as they become available. However, the Trustees believe that none of the comments received warrants extensive revision of the *Plan*, with a new public notice period. Thus, the Trustees will recognize errors and identify corrections in this response document and will provide supplemental information in future public documents. The future public documents will be posted on the Trustees’ websites.

<http://www.darp.noaa.gov/neregion/udson.html>

<http://www.dec.state.ny.us/website/udson/index.html>

<http://contaminants.fws.gov/restroationplans/HudsonRiver.cfm>

The terms “Injury” and “Damages” are defined for purposes of this document as they are in the Department of the Interior’s (DOI’s) NRDA regulations, at 43 Code of Federal Regulations Section 11.14, as follows:

**Injury** - a measurable adverse change, either long- or short-term, in the chemical or physical quality or the viability of a natural resource resulting either directly or indirectly from exposure to a discharge of oil or release of a hazardous substance, or exposure to a product of reactions resulting from the discharge of oil or release of a hazardous substance.

**Damages** - the amount of money sought by the natural resource trustee as compensation for injury, destruction, or loss of natural resources as set forth in section 107(a) or 111(b) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

## GENERAL

### **OVERALL SCOPE OF THE NRDA**

Several commentors urged the Trustees to ensure that the NRDA address injuries occurring during the entire period from the 1940s as far into the future as the Trustees can project injuries will continue.

*Trustee Response:* The Trustees have legal authority to address, and will address, past, present and future injuries - that is, from the time of the initial release until the resources are returned to the condition that would have existed if the release had not occurred.

Some commentors recommended that the Trustees should restore resources where possible, but where that is not possible, they should “compensate the public.”

*Trustee Response:* Natural resource damages are required to be used to “restore, replace, or acquire the equivalent” of injured resources. Such restoration, replacement or acquisition of equivalent resources can also compensate the public for lost services provided by those resources.

Several commentors indicated that the public has a perception of the river as a whole as being an injured resource. They assert that part of the Trustees’ efforts should be to correct any public misperception of the extent to which the river’s resources are injured.

*Trustee Response:* Public outreach is an integral part of the Hudson River NRDA; the Trustees will strive to ensure this includes an appropriate level of public education on the existing and future injuries to, as well as the health of, particular river resources.

Commentors stated the assessment should be expanded beyond that outlined in the *Plan* to determine the damage of the Hudson River ecosystem as a whole. They suggest that this broad approach would assess the cumulative impact of the polychlorinated biphenyl (PCB) release, and would enable the ecosystem to be restored to baseline conditions.

*Trustee Response:* The Trustees believe the approach outlined in the *Plan* will result in a holistic assessment of injuries to the entire ecosystem. The existing approach will assess potentially injured resources individually. The collective findings of these numerous investigations will be considered in conjunction with the investigations of pathway (the route or medium through which the PCBs were transported from the source of the discharge or release to the injured resource) to yield a comprehensive understanding of injuries throughout and to the ecosystem.

One commentor stated that the *NRDA Plan* does not provide the level of scientific detail necessary to provide meaningful technical comments on the studies being proposed, and does not reach the level of specificity called for in the DOI regulations at 43 C.F.R. Section 11.31.

*Trustee Response:* The Trustees feel the level of specificity in the *NRDA Plan* is appropriate for the purposes for which it is intended, which is to ensure the public is apprised of the studies the Trustees will or may undertake. Additional details will be available in the various study plans and reports the Trustees issue. The *NRDA Plan*, as it will be supplemented with study plans and appropriate quality assurance plans, which will be finalized after the public has had the opportunity for appropriate public input, will satisfy the regulatory requirements because it will provide the level of specificity needed at the appropriate time.

One comment indicated that the *NRDA Plan* does not specify the basis for trusteeship by the New York State Department of Environmental Conservation (NYSDEC), National Oceanic and Atmospheric Administration (NOAA,) and U.S. Fish and Wildlife Service (USFWS) for specific Hudson River resources, but simply cites generic Presidential and Gubernatorial designations that are not specific to the Hudson River. Further, this comment suggested that the *NRDA Plan* should specify the resources over which each Trustee claims trusteeship and describe the basis for such claims.

*Trustee Response:* The Trustees–NOAA, NYSDEC, and DOI–believe the level of specificity of the citation of their authority is appropriate for the *NRDA Plan*, in part because various resources under study may be subject to the trusteeship of more than one Trustee. The Trustees have entered into a Memorandum of Agreement to conduct a joint assessment of all resources over which one or more of the Trustees has trusteeship.

One commentor asked what would be the anticipated effect of remediation on fish, birds, mammals habitats and wetlands.



*Trustee Response:* The Trustees believe the overall effect of EPA's remediation on the river's resources will be positive, with potential short-term localized negative impacts more than offset by significant long-term improvements to the health of the environment.

One commentor noted a lack of a full understanding of the Trustees' overall approach to the assessment and how each study and data set collected will fit into that approach.

*Trustee Response:* The Trustees are charged with assessing whether, and to what extent, injuries have occurred in a highly valued, 200-mile river reach into which a substantial quantity of PCBs has been released. While there is some exposure information on fish, sediments, and water, there is little exposure data on floodplains, birds, mammals, reptiles, amphibians and invertebrates. There is also very little information on possible effects on and injuries to any biota. As noted in the *Plan*, the Trustees are therefore pursuing a phased, iterative approach of conducting screening level exposure assessments and comparing exposure levels to hazard levels from the scientific literature. Expert panels and/or agency professionals make recommendations and the Trustees make decisions on the collection of additional exposure data and potential injury studies. The Trustees' decisions to conduct pathway and/or injury studies, and the Study Plans and Quality Assurance Project Plans that will delineate how those studies will be carried out, will typically be peer reviewed and released for public comment. The results of such studies will typically be peer reviewed and the results released to the public.

#### **GEOGRAPHIC SCOPE OF THE NRDA**

Several commentors believe the health of the Lower Hudson tributaries should be examined in the context of the health of the entire watershed, and should be restored as appropriate.

*Trustee Response:* The Trustees intend to consider injuries occurring in the river from Hudson Falls to the Battery in New York City, and outside these boundaries if injuries in such locations can be traced to the releases of hazardous substances that are the subject of this NRDA.

#### **CUTURAL RESOURCES**

One comment urged the Trustees to incorporate a National Historic Preservation Act Section 106 assessment of the impact of the PCB remedy on cultural resources in the NRDA and to seek compensation and restoration for any injury to cultural resources occurring as a result of the EPA remedy.

*Trustee Response:* Injuries to cultural resources are not, in and of themselves, normally considered injuries to natural resources. However, if injuries to natural resources have resulted in other losses to the public, such losses may be compensable. The Trustees will consider assessing any such losses.

#### **PEER REVIEW**

Commentors expressed support for the Trustees' use of expert panels and peer reviews in the NRDA, and urged that the public be informed of future expert panels, and of the recommendations generated by them. One commentor asked certain questions and made comments about the peer review process:

How will the peer review panel members be selected?

What role will the public have in the selection process?

What criteria will be used to ensure the panel members are free of conflicts and technically capable and that all relevant fields of expertise are represented?

To ensure true independence of the peer review, the review process needs to be open to the public and free from influence by the sponsoring organization. To have credibility, the peer review must be completely transparent and impartial. What process will be used to ensure openness, transparency and integrity?

Who will create the “charge” for the peer review panels? Will the public be given the opportunity to comment on the draft charge to ensure that the technical issues are fully and fairly characterized?

To maximize the benefits of independent scientific peer review, the panel members must have unfettered access to a full range of information and views. Will interested and qualified parties be afforded the opportunity to present information to the panels?

Will the results of the peer review be made available to the public?

How will the Trustees take into account the results of the peer review and the recommendations of peer review panels?

*Trustee Response:* The Trustees appreciate the support for the use of peer review. The Trustees expect to select peer reviewers and to allow those reviewers to conduct the reviews without direct public participation, in part because the costs of carrying out a fully expansive public participation process would be prohibitive. The Trustees expect that the peer reviews will generally be conducted similarly to those done at scientific journals, and that reviewers will be independent external experts, qualified in the particular field and not involved in the study or the case. In appropriate circumstances, the Trustees may forgo peer review. The Trustees may modify study plans or reports to reflect the recommendations by peer review panels.

#### **SCIENTIFIC RIGOR OF THE NRDA**

One commentor stated that the Trustees are required to follow the Information Quality Guidelines adopted by the Office of Management and Budget (OMB), DOI, USFWS and/or NOAA in the dissemination of information as part of the NRDA, and asked how the Trustees will ensure compliance with those guidelines. The commentor also asked when information would be disseminated.

*Trustee Response:* Pursuant to a statutory requirement and guidance from the OMB, Federal agencies, including USFWS and NOAA, developed Information Quality Guidelines to explain how the agencies would ensure that information disseminated to the public after October 1, 2002, would have utility, integrity, and objectivity (see [www.doi.gov](http://www.doi.gov) and [www.noaa.gov](http://www.noaa.gov) for guidelines). The FWS and NOAA will ensure compliance with the agency guidelines for information that will be disseminated to the public by applying new and existing standards in the guidelines and performing a pre-dissemination review of the information. Collected data that are disseminated to the public will have met the applicable standards, depending on the manner in which they are disseminated (e.g., as raw data or interpreted results).

#### **ECONOMIC SIGNIFICANCE OF THE HUDSON RIVER**

A comment notes that the *NRDA Plan* states, at page 17, that “Foremost among the Hudson River’s economic contributions is its continued role as a tourist and recreational destination,” and asks for specific economic data that support this statement. It also asks for support for the statement that “requests for space at marinas have historically outstripped availability.”

*Trustee Response:* The *NRDA Plan* recognizes the important and wide-ranging role that the Hudson River plays and has played in the economies of New York State and the northeast United States. Among its many contributions, the *Plan* recognizes the river’s role in tourism and recreation, fishing, transportation, power generation, real estate development, water supply, agriculture, and

manufacturing. The Trustees, however, have not collected economic data that specifically establish whether the river's contribution to tourism and recreation is of greater or lesser value than to other sectors of the economy. Recognizing that all of the river's economic contributions are important, the Trustees strike "Foremost" from the second paragraph on p. 17.

With respect to the issue of marina space, the 1998 Hudson River Estuary Action Plan documents the need for more docking facilities. The article found at the following website, published since the *Plan* was issued, corroborates this shortage.

<http://boatingonthehudson.com/currentissue/slips.htm>

### **PUBLIC OUTREACH**

Many commentors expressed appreciation of the Trustees' efforts to engage the public in discourse on the proposed *NRDA Plan*, which is considered by many to be critical to the assessment, especially in the generation of restoration project ideas, planning and implementation. Commentors suggest that the Trustees should publicize and hold public meetings explaining the NRDA process, which several commentors opined should be informal. Others expressly preferred more formal meetings, at which individuals could have opportunities to speak alone. The Trustees were encouraged to continue to meet with stakeholders, and to expand the network to other stakeholders such as farmers, the environmental justice community, water purveyors, boaters, sportsmen and others. One party asked whether the Trustees' public involvement program was documented anywhere.

Several commentors suggested the Trustees should have at least one full-time community involvement coordinator housed in the Hudson Valley dedicated solely to the Hudson River NRDA, and should continue to produce and distribute fact sheets. Commentors suggested that the Trustees should consider direct mailings to interested parties including community and town boards, libraries and chambers of commerce, and maintaining a list serve, preparing a public education video, making NRD related presentations at widely attended public gatherings that focus on Hudson River related activities and conducting media education and outreach.

Commentors also suggested a Citizen Advisory Board, which could take a pro-active approach to restoration planning and implementation. They suggested that because the NRDA process is complicated, with an uncertain time line, early and active public involvement would help create an enhanced understanding of the Hudson River NRDA and would result in a more successful restoration effort. In particular, commentors urged the Trustees to reach out to Native Americans in the Hudson Valley to inform them about the NRDA process and opportunities for restoration projects.

*Trustee Response:* The Trustees are committed to continuing an aggressive public participation process as the NRDA and restoration phase move forward. This will include direct mailings, media outreach, public meetings, web postings and availability sessions, as well as additional public participation strategies. The Trustees concur that widely attended public gatherings that focus on Hudson River related activities would provide good opportunities for making NRD presentations. Any Native American groups in the Hudson Valley will be given the opportunity to participate fully in the public outreach process.

Regarding the commentor's question on when the collected data will be made available, and whether all data and studies relevant to injury determination and quantification will be released to the public, the Trustees will determine whether, in light of preliminary investigations, full injury and pathway studies that would provide the basis for injury determination and quantification are warranted. The results of any study conducted pursuant to such a study plan will be peer reviewed upon completion, and the results then released to the public.

The Trustees will make their *Public Participation Plans* available to the public in the near future. The *Public Participation Plans* describe the outreach elements outlined in the preceding paragraph. The Trustees appreciate the positive function that a Citizen Advisory Board and a community involvement coordinator could have on the process. However, the Trustees decided that characterization of injuries and planning for restoration are the primary goals of the assessment at this time. In that context, the Trustees have determined that the best use of available funds at this time is to apply them to the injury characterization.

#### **POTENTIALLY RESPONSIBLE PARTY**

Several parties stated that the *NRDA Plan* should clearly identify the General Electric Company (GE) as the party responsible for the PCB contamination of the Hudson River. They indicate that the remedial investigation work done by the U.S. Environmental Protection Agency (EPA) has demonstrated that GE PCBs are the primary source of PCBs to the Upper and Lower Hudson, and that the EPA has estimated that 50% of the PCBs in New York harbor are GE PCBs. These parties assert the *Plan* should remove references to other potentially responsible parties (PRPs). Another commentor asserted the Trustees should identify other PRPs, and contaminants other than PCBs, in the *NRDA Plan*.

*Trustee Response:* The Trustees believe the *NRDA Plan*, which clearly states that the focus of this NRDA is on PCBs released by GE from its plants at Hudson Falls and Fort Edward, addresses both the PRP and chief contaminant of concern issues appropriately.

#### **NEGOTIATIONS**

Several commentors indicated that the Trustees should continue to maintain close coordination of the NRDA with EPA and GE. Commentors assert that if GE and the Trustees were to conduct a cooperative assessment, or negotiate a settlement, the Trustees should ensure that all other stakeholders are included in this process, particularly when it comes to restoration planning and project implementation.

These commentors assert the *Plan* is unclear on what basis the Trustees will negotiate a settlement, as it is unclear whether the Preliminary Estimate of Damages has been revised. If the Trustees negotiate a settlement prior to issuance of the 'Report of Assessment,' they request that estimates of damages be made publicly available.

*Trustee Response:* The negotiation process requires confidential discussions between the Trustees and the PRP to be effective. However, no proposed settlement will be finalized without being subject to public review before final approval by a court. Whether or not a cooperative assessment is undertaken, the Trustees will ensure all stakeholders remain apprised of pertinent developments. The *NRDA Plan* affirms the Trustees' commitment (page 33) to keeping the public informed on any decision by the Trustees to allow the PRP to implement all or any part of the Assessment Plan, and to share with the public information on any agreements between the Trustees and the PRP regarding procedures and schedules for sharing data, splitting samples, and results of analyses.

#### **EPA REMEDY AND NRDA**

Several parties point out that after implementation of the EPA remedy, approximately 80,000 pounds of PCBs are projected to remain in the Upper Hudson, and some PCB-contaminated sediments will also remain in the lower river. They assert that contaminated sediments in the Lower Hudson River

should also be removed. Future injuries to the Hudson's natural resources should be assessed, and addressed through appropriate restoration projects. They recommend that the Trustees impress upon EPA and GE that removal of PCBs should be more aggressive so as to minimize future injury and that it may be appropriate to consider additional cleanup as part of restoration. Another commentator said that the *NRDA Plan*, at page 21, implies that the Trustees may seek additional sediment removal, and asks whether that is correct, and if so, whether the process will be consistent with the National Environmental Policy Act (NEPA).

*Trustee Response:* The Trustees will assess and seek compensation for past, present and future injuries. The Trustees will consider all appropriate restoration options. All parties will be apprised of possibilities of minimizing future damages, and all appropriate restoration options. All restoration actions will comply with applicable law.

One commentator points out that text at page 32 of the *NRDA Plan* indicates that EPA “may decide to physically remove contaminated sediment...,” (emphasis added) and that the EPA has already decided that physical removal of the PCB-contaminated sediment is necessary.

*Trustee Response:* This was a generic statement about EPA authority, and was not intended to be limited to this case.

Some parties assert that the EPA remedy may cause some ecological damage. They recommend that the Trustees assess and seek compensation for any such damages that are not resolved by EPA's habitat restoration efforts. In addition, they suggest that mitigation efforts will need to occur, after the implementation of EPA's remedy, to restore resources affected by the PCB removal action. They assert that a biotic inventory prior to remediation is important, particularly for wetlands, to establish a baseline to restore pre-remediation conditions and that it will be important for the Trustees to work closely with the EPA and GE on these post-remediation restoration efforts.

*Trustee Response:* The Trustees are aware that habitat delineation is part of the EPA's remedy process. Habitat delineation is useful in the restoration of those habitats that may be impacted by remedy implementation. The Trustees will consider seeking compensation for injuries caused by implementation of the remedy, if any injuries are shown to occur.

#### **CHRONOLOGY OF EVENTS RELATED TO THE HUDSON RIVER**

Two commentators claim the chronology of events table (Exhibit 2-3) is incomplete and/or misleading. They give as examples that the reference to the capping of the remnants as an “interim remedy” is not accurate, that the efforts of GE to remediate the plant sites are not adequately recognized, that the statement related to the Hearing Officer's finding is out of context and incorrect and that the fact that an anti-dredging group, Citizen Environmentalists Against Sludge Encapsulation (CEASE), has opposed dredging for many years, is not reflected. One stated that the Hearing Officer's findings of violations of state law by GE's disposal of PCBs in the Hudson River were “vitiated” by the settlement entered into between GE and the New York State Department of Environmental Conservation in 1976.

*Trustee Response:* The Chronology of Events presents historic events or milestones that are important to the Trustees' Hudson River NRD claim. It is not intended to provide a comprehensive history of the EPA Hudson River PCB National Priorities List Site. The Trustees are aware there are many groups interested in Hudson River issues, including the NRD process. These groups have been and will be provided opportunity for input via the citizen participation process. The Trustees recognize that CEASE has been involved prominently in the issue of PCB

contamination in the Hudson River and that they successfully opposed the siting of a dredge spoil site in the Hudson River valley. The claim that the Hearing Officer's findings were rendered defective (vitiated) by the settlement is not supported by New York law, and the chronology appropriately refers to them.

#### **RECOVERY PERIOD**

One commentor believes the *Plan* should specify more clearly how the Trustees intend to determine the "recovery period" in terms of the reduction in PCB concentrations in resources over time. They urge the Trustees to rely heavily on the PCB fate and transport models developed by EPA and/or GE, or other appropriate, validated models, as indicated in the 1998 *Draft Scope for the NRDA Plan*.

*Trustee Response:* The Trustees will use models as appropriate, will consider the results of EPA and GE's models, and may develop another model. The Trustees will also consider future monitoring results during and, if appropriate, after the implementation of the remedy to make their best estimates of the recovery period.

#### **NRDA PLAN A "LIVING DOCUMENT"**

One commentor notes that the Trustees consider the *NRDA Plan* to be a "living document," and recommends that the Trustees seek timely public input on any proposed revisions to the *Plan*.

*Trustee Response:* The Trustees consider the comments received on the existing version of the *Plan* to be helpful. However, the Trustees believe that none of the comments received warrants extensive revision to the *Plan*, with a new public notice period. Thus, the Trustees will recognize errors and identify corrections in this response document and will provide supplemental information in future public documents.

#### **PRP INVOLVEMENT IN THE NRDA**

One comment noted that the *Plan* states the Trustees have invited and will continue to encourage the active participation of GE, providing GE with the benefit of early involvement, but claims that the Trustees have declined to provide GE with work plans, quality assurance plans and data from previous, current and planned assessment work.

*Trustee Response:* The Trustees have provided available non-privileged materials and data to GE and the public on a timely basis. The Trustees have agreed to streamline the information exchange process to ensure quicker identification and transfer of pertinent documents. The Trustees remain open to dialog with GE regarding increased cooperative participation in the assessment process.

#### **QUALITY ASSURANCE PLAN**

One commentor asserts that the quality assurance plan (QAP) attached to the *NRDA Plan* is only a recitation of guidance for preparing study-specific quality assurance project plans (QAPPs) and not a QAPP in and of itself.

*Trustee Response:* The *NRDA Plan* describes the Trustees' current proposed approach to the assessment. For each data collection effort that is part of the Hudson River NRDA and is identified in the *Plan*, the Trustees will develop a project specific Quality Assurance Plan which may be an independent document or may be incorporated into the project Study Plan. Such QA



Plans, in combination with the information on QA management described in the *Plan*, will ensure that the requirements listed in the National Contingency Plan and applicable EPA guidance for quality control and quality assurance plans are met.

In addition, the QAP attached to the *Plan* serves as a guide for the more detailed plans or QAPPs for the studies that will be completed during the damage determination and restoration phases of the NRDA.

## PATHWAY

### **CONNECTION WITH EPA REPORT**

One party believes it is not clear how the Trustees' pathway analysis will differ from the fate and transport, bioaccumulation modeling and ecological health risk assessment work that EPA conducted as part of the remedial investigation phase of the Hudson River PCB Site Reassessment. They assert that EPA drew clear conclusions that the upriver sediment is the primary source of PCBs to the rest of the river. They recommend that the Trustees' analysis of PCBs in sediment causing injury to biota should use the data currently being collected by GE as part of the EPA's remedial design process.

*Trustee Response:* To the maximum extent appropriate, the Trustees will use the data developed by the EPA to demonstrate pathway. However, in some instances, it may be necessary for the Trustees to conduct additional work to document the route by which PCBs were transported from the source of the release to a specific injured natural resource.

### **ALTERNATIVE SOURCES**

One commentor stated that, given the documented existence of local PCB sources in the lower Hudson River and the New York City metropolitan area, the pathway study is an important yet complicated study. The commentor recommends that, accordingly, the work plan(s) and products should be released for public comment and review.

*Trustee Response:* The Trustees' present efforts on pathway focus on evaluating existing information in the public record. Should the Trustees determine a full pathway determination study is warranted, the Trustees plan to develop and distribute peer-reviewed work plans, including sampling and analysis and QA plans.

### **FOOD WEB STUDIES**

Several commentors support the Trustees' efforts on food web studies.

*Trustee Response:* The Trustees will continue to carry out food web studies for those biotic resources that are injured as appropriate.

## INJURY DETERMINATION AND QUANTIFICATION

### **GENERAL**

One commentor asserted that the *NRDA Plan* is unclear about whether the Trustees intend to quantify

the alleged injuries as set out in the DOI regulations, and asked whether the Trustees intend to demonstrate that the alleged injuries have reduced services provided by the resources when compared to baseline services, or to determine the geographic extent of an alleged injury, without any examination of the resulting service reductions.

*Trustee Response:* The Trustees have been, and will continue to be, guided by the DOI regulations, and will demonstrate that any injuries have reduced services when compared to baseline.

Several commentors agree that exceedance of regulatory criteria demonstrates injury. They believe this is clear regarding the continued exceedance of Food and Drug Administration's tolerance limit of 2 ppm PCBs in fish. They also cite other approaches used to derive fish advisories for PCBs in fish (e.g., the Great Lakes Approach uses 0.05 ppm as a guideline to set fish advisories, and U.S. Environmental Protection Agency guidance uses 0.05 ppm as an example of a risk-based fish advisory benchmark). Based on these other approaches, the commentors conclude that the injury to this resource is much greater than that which is being evaluated by the Trustees, and that the Trustees should factor this into their assessment.

*Trustee Response:* The Trustees concur that exceedance of regulatory standards (e.g. the FDA tolerance limit) constitutes per se injury, and are aware of the guidelines that are lower than the FDA tolerance limit. However, those lower levels are not among the regulatory standards that provide a basis for a per se injury under the DOI NRD regulations. The Trustees note that the regulatory closures and consumption advisories also constitute per se injuries.

One commentor stated that Exhibit 2-2 lists ranges of PCB concentrations found in various resources, but provides little information with respect to when and where the specific data represented in the Exhibit were collected. They believe the Trustees should provide this information and describe the measures taken to ensure the quality of those data. This commentor also states Exhibit 2-2 cites a press release as the source of data, and asks for original sources.

*Trustee Response:* The sources for the data in the table are largely public, and most can be found in DEC's biota data base, in EPA's Remedial Investigation Feasibility Study CD and/or in NOAA's Hudson Watershed data base. The Trustees will correct the citation, but do not feel it is necessary for the purposes of the *NRDA Plan* to specify when and where each data point was taken.

## **BIOTA**

### *GENERAL*

One commentor asked: "Could any endangered species be put at greater risk because of the remedial dredging project, and if so, what steps are being taken to protect them?"

*Trustee Response:* EPA has primary responsibility for the remedy, which includes the responsibility to identify any risks to endangered species that may result from implementation of the remedy. EPA is responsible for consultation under the Endangered Species Act. Should such a risk be identified, it will be addressed first through consultation among appropriate agencies under the Endangered Species Act.

One comment was that efforts must be made to restore all threatened and endangered species with special attention paid to symbolic species, such as the bald eagle and the shortnose sturgeon.

*Trustee Response:* To the extent that these species have been injured by PCBs, the Trustees will seek restoration projects to address these injuries.



A questioner asked whether there will be a need for “repopulation” of various species?

*Trustee Response:* At this time, the Trustees do not believe there will be a need to augment the number of any species, but if during the course of the assessment they determine there is such a need, restoration projects will address this need as appropriate.

One commentor asked whether there have been quantitative wildlife inventories in the upper river.

*Trustee Response:* During the assessment the Trustees will evaluate the existence of any available indicators of wildlife health, including relevant information from wildlife inventories. The Trustees are not aware of any comprehensive wildlife inventories conducted to date.

#### FISH

Several commentors support the recommendation of the expert panel to conduct laboratory testing to evaluate the relative sensitivity of early life stages of different Hudson River fish species to PCBs. Another party asked that the Trustees provide their determination with respect to this recommendation when it is made, and seek public input on the decision of whether to proceed with this study.

*Trustee Response:* The Trustees continue to evaluate this potential injury study, and will consider any public comments.

One comment notes that the Trustees have indicated that over time, more than 17,000 fish samples were taken from the Hudson River. They assert that this is in and of itself a significant fish injury, since GE’s PCB contamination has resulted in this sampling and increased mortality of Hudson River fish.

*Trustee Response:* This concern is noted and will be reviewed by the Trustees.

One commentor noted that the *NRDA Plan* describes a proposed study to compare fish PCB concentrations against the FDA tolerance level. They urged the Trustees to release the work plan for this study to the public. A similar request was made for the fish health reconnaissance survey conducted in 2001. A question was posed of how the results on individual fish indicate that PCBs or other contaminants have adversely affected fish communities or populations in the Hudson River.

*Trustee Response:* In response to the request for public review of the work plan for the comparison of fish PCB concentrations against FDA tolerance levels, the Trustees note that this comparison of existing data points to a regulatory level did not involve any new data collection and, therefore, did not require preparation of a work plan. Also, in appropriate circumstances, the Trustees may forgo public review. With respect to the request relating to the fish health reconnaissance survey conducted in 2001, the Trustees note that issues regarding the effects of PCBs on fish, fish communities, or fish populations will be considered as we assess baseline and quantify injuries. However, population effects are not necessary prerequisites to proving injury. The Trustees will provide the SAP and QAPP for the fish health reconnaissance survey to the public when they are available.

One commentor noted that the Trustees should release the identity of the members of the expert fish panel, the work of the panel, the recommendations of its members, and a copy of the materials provided to the expert panel.

*Trustee Response:* The experts and peer reviewers may be witnesses in litigation. The materials the Trustees provided these individuals are privileged under court rules, and the Trustees have concluded it is not appropriate to release the reviewers’ identities or the material provided to the expert panel at this time.

*BIRDS*

For all bird studies, one commentor requested all work plans, peer review, QAPP and information on expert bird panels.

*Trustee Response:* The experts and peer reviewers may be witnesses in litigation. The materials the Trustees provided these individuals are privileged under court rules, and the Trustees have concluded it is not appropriate to release the reviewers' identities or the material provided them at this time. However, the Trustees will release the avian egg sampling and analysis plan (which includes the QAPP) in the near future, and any plan developed for an injury study when it becomes available.

One commentor noted that the *NRDA Plan* states that the Trustees intend to evaluate "what part of the contamination that led to the statewide advisory [for waterfowl] is attributable to PCBs from the Hudson River," and recommends the Trustees develop a work plan and a QAPP for this evaluation, subject to peer review, and make them available for public comment.

*Trustee Response:* Should the Trustees determine, based upon their evaluation of the statewide advisory, that an injury determination and quantification study for waterfowl is warranted, the Trustees intend to develop a study plan for that effort and follow the peer review process outlined in the peer review comment and response section, above.

Several commentors said a goal of restoration should be to reduce contaminant levels in waterfowl to make them safe to eat. They suggested that, in the interim, there is a need to increase awareness and expand education about these advisories, as well as the fish consumption advisories. They stated that such a health education campaign should be part of the restoration and compensation package.

*Trustee Response:* Public outreach with respect to consumption advisories is primarily the responsibility of the New York State Department of Health. However, the Trustees will consider a possible restoration project focused on supplementing and enhancing the Health Department's outreach and education efforts.

One commentor requested a copy of the following document: USGS (United States Geological Survey). 2001. Final Report #6 Organochlorine Pesticides and PCBs in Livers and Prey of Great Blue Herons. FWS No. 1448-5O181-99-H-OO7. May 2 (Reference # 70). This commentor also requested the data collected, the work plan, the peer review of that work plan, and the QAPP for collecting the data.

*Trustee Response:* The Trustees are collecting responsive documents and will make them available.

*MAMMALS*

For all mammal studies, one commentor requested all data, work plans, peer review, QAPP and information on expert panels.

*Trustee Response:* The data are posted on the DEC biota database. The experts and peer reviewers may be witnesses in litigation. The materials the Trustees provided these individuals are privileged under court rules, and the Trustees have concluded it is not appropriate to release the reviewers' identities or the materials provided them at this time. Regarding work plans and the QAPP, the Trustees are collecting responsive documents and will make them available.

One commentor asked what criteria the Trustees intend to use to determine the necessity for additional injury determination studies of bats?

*Trustee Response:* A decision on the necessity for additional injury determination studies of bats will be based upon a comparison of PCB levels in bat samples from the Hudson River to toxicological information from the scientific literature and consideration of the potential for these PCBs to adversely affect the health of Hudson River bats, including the State and Federally endangered Indiana bat. Should the Trustees determine it is appropriate to proceed with an injury determination study for bats, a Study Plan will be prepared. That Study Plan will be subject to peer review and provided to the public.

#### *AMPHIBIANS AND REPTILES*

One party asked for all plans involving the collection of snapping turtle eggs and incubation of snapping turtles, and asked for all data collected, work plans, peer review of those work plans, and the QAPPs for those studies. The comment continues that to the extent that the studies have not been completed, these documents should be subject to public comment.

*Trustee Response:* Preliminary investigations such as turtle egg collections are designed to improve the Trustees' understanding of exposure of Hudson River resources to PCBs. Data from these preliminary investigations will be assessed by the Trustees to determine if further study is warranted. A data report and SAP/QAPPs will be released to the public. A decision on the necessity for further study will be based upon a comparison of PCB levels in various components of the ecosystem to toxicological information from the scientific literature and consideration of the potential for these PCBs to adversely affect these different components of the ecosystem. If review of reptile information indicates the potential for injury to this resource, the Trustees will consider performing an injury determination study. The work plan for such a study would be peer reviewed and provided to the public.

#### **ABIOTIC RESOURCES**

##### *SEDIMENTS*

One commentor notes the *NRDA Plan* cites MacDonald *et al.* (2000) regarding sediment quality guidelines, and asks the Trustees to provide to the public the data and database relied on to generate the guidelines, the work plans for this study, and the QAPP for this study.

*Trustee Response:* The Trustees will use scientific literature when it is available to assist in the assessment. The Trustees chose to use the MacDonald *et al.* report (2000) as reference information published in a peer reviewed scientific journal to guide them in decision making. MacDonald *et al.* is public information, available in the journal *Environmental Toxicology and Chemistry*, Volume 19, Issue 5, pages 1403-1413. The original report from which the publication was derived was paid for by the Trustees and was previously released.

##### *SURFACE WATER*

One commentor stated that each water supply system that uses Hudson River water as a drinking water source must monitor for PCBs, but that the monitoring is inconsistent. They suggested that, while mid- and lower- Hudson water supplies may or may not exceed safe drinking water standards, the need for monitoring of PCBs is itself an injury, and the PCB monitoring increases the cost of the water supply. Furthermore, they urged the Trustees to examine the extent to which each water supply system monitors for PCBs, the adequacy of such monitoring and the associated costs. They further stated that, historically, the water supply system at Waterford has had problems with PCBs in their water supply.

*Trustee Response:* Increases in costs to local governments caused by hazardous substances releases may be compensable as natural resource damages. In addition, the public is due compensation for injury to the water itself. The Trustees will consider both potential claims.

#### GROUNDWATER

One commentor claimed that groundwater at the Town and Village of Fort Edward has been injured by GE PCBs. While injury to private wells may not be recoverable under NRD, the injury to groundwater in Fort Edward should be compensated for.

*Trustee Response:* Increases in costs to local governments caused by hazardous substances releases may be compensable as NRD. The Trustees are evaluating the extent to which groundwater has been injured and has resulted in increased costs to the municipality.

Another commentor asked whether the NRDA made any determination of injury to groundwater, and whether private wells currently show contamination. They went on to ask if wells close to the river have been tested for PCB or related contaminants.

*Trustee Response:* The Trustees are reviewing available groundwater data, including tests conducted on samples collected from private wells. These data show that some private wells are contaminated, but to the Trustees' knowledge, none of those wells is currently being used for drinking water purposes.

The same commentor asked whether dredging could adversely affect existing wells, whether there had been a study of this, and whether there is a way to anticipate which wells might be at risk.

*Trustee Response:* EPA has primary responsibility for the remedy, which includes the responsibility to identify any risks to groundwater that may result from implementation of the remedy. EPA found that "impacts to groundwater from resuspension [from the remedy] are...likely to be imperceptible." See the detailed response to master comment 253421 at page 9-21 of EPA's Responsiveness Summary, volume 1.

One commentor asked: "If potable wells are harmed [by the remedy], is there a way NRDA could address this, including reconnecting residents to municipal supplies?"

*Trustee Response:* EPA has predicted that there will be minimal, if any, impact to groundwater from re-suspension (see Trustee Response above). See the detailed response to master comment 253421 at page 9-21 of EPA's Responsiveness Summary, volume 1. However, if hazardous substance releases cause increases in costs to local governments, these may be compensable as NRD. If there is a groundwater injury due to the release of PCBs, restoration projects could include compensation for costs incurred in connection with providing municipal drinking water supplies to the public. If there is a groundwater injury due to the release of PCBs that has caused a municipality to incur additional costs to provide municipal drinking water supplies to the public, restoration projects, including groundwater treatment, could be designed to compensate the public for those damages.

#### FLOODPLAINS AND UPLAND DISPOSAL SITES

One commentor asked that the work plan, the peer review of the work plan, the QAPP for the screening level investigation of the floodplain, and the data collected be made available.

*Trustee Response:* There was no external peer review of this, or other screening level investigations, but the SAP (including the QAPP) have been made public.

This commentor asked how the Trustees will use this and other screening investigations to determine whether a more comprehensive assessment should be conducted.

*Trustee Response:* The preliminary investigations are designed to improve the Trustees' understanding of exposure of Hudson River resources to PCBs. Data from these preliminary investigations will be assessed by the Trustees to determine whether further study is warranted. The necessity for further study will be based on a comparison of PCB levels measured in various components of the ecosystem during preliminary investigations to toxicological information in the literature.

Several commentors state that the EPA remedy does not address contamination in the Hudson River floodplain or in upland disposal sites. They contend that, until these sources of contamination are remediated, they will continue to be a source of injury and damages into the future. In addition to damage assessment and compensation, these parties urge the Trustees, particularly the State of New York, to explore the remediation of these PCB contaminated areas. These parties are supportive of the Trustees' continued investigation of PCB contamination in the floodplain as a pathway, particularly to birds and mammals.

*Trustee Response:* The remediation of the floodplain and upland disposal sites are outside the scope of the NRDA. However, the Trustees will continue to encourage EPA to address human and ecological health issues posed by floodplain contamination. Future injuries, including those related to PCBs in the floodplain, will be addressed in the NRDA, and appropriate restoration projects will be considered. As needed, the Trustees also intend to conduct a thorough study of the floodplain as a pathway.

#### *AIR*

Some commentors assert that volatilization of PCBs is a pathway for PCBs to other resources, including certain receptors that are at locations extremely distant from the source of the release. They state that long-term impacts on plant and animal species throughout the food chain should be assessed inside and outside the Hudson River valley. They suggest that this could include a review of existing literature on volatilization and an air monitoring program in targeted areas along the Hudson River floodplain and other areas of exposed sediments. Because the Trustees have pointed out that the Hudson River is used as a source of cooling water for power generation, the commentors believe that power plant stacks should be considered as a source of PCBs to the air. In addition, one commentor indicated the Trustees should consider results of air monitoring conducted by EPA before, during and after dredging, and should conduct baseline and follow up air monitoring and tree bark studies.

*Trustee Response:* The Trustees are assessing potential injuries to air resources, and, based in part on comments received, will look in particular at the literature on volatilization. We do not expect that Hudson River power plants contribute significantly to PCB contamination through the air medium. The combustion itself - of gas, oil or coal - should result in little or no PCB emissions. The only plausible route would be through a so-called "wet tower" cooling technology. None of the plants on the Hudson uses this technology

#### **LOST USES**

##### *RECREATIONAL FISHERY*

Several commentors assert that the public's recreational angling on the Hudson has been significantly injured. They believe that the stigma of the Hudson's designation as a federal toxic waste site and

fishing restrictions have resulted in significant public loss of this resource. Several commentors would like to see appropriate restoration, including enhanced access to this resource.

*Trustee Response:* Recreational fishing losses will be carefully assessed, and depending upon the results of the assessment, appropriate restoration projects will be implemented.

Some commentors assert that, despite fishing restrictions, angler surveys show that Hudson River anglers keep and consume their catch, and that the Trustees should consider assessing the extent to which subsistence fishing is occurring. They assert health impacts to those consuming for subsistence should be assessed for compensation.

*Trustee Response:* Human health impacts are not directly compensable under NRD. However, PCB contamination may be impairing services these Hudson River fish would otherwise provide to Hudson River anglers and restoration projects may address that loss.

#### *NAVIGATIONAL LOST USE*

Several commentors indicated support for the Trustees' assessment of lost navigational uses resulting from the inability to dredge portions of the upper river for navigational purposes due to PCB contamination. They contend that this situation has resulted in the public's inability to use portions of the Hudson, including the Yacht Basin in Fort Edward, for recreational purposes. They suggest that, if EPA's project does not result in the removal of sediment from the Fort Edward Yacht basin, the Trustees should remove that sediment as an NRD restoration project. Some commentors were also supportive of efforts to investigate the loss of navigational services in the Lower Hudson, asserting that the incremental costs of navigational dredging and disposal costs, as well as the loss of commerce in New York Harbor, should be assessed, and compensated for.

*Trustee Response:* The Trustees plan to consider the lost navigational services component of the claim, but currently only for the upper river. Whether the Yacht Basin will be dredged under EPA's Hudson River remedy has yet to be determined and will depend upon the results of the sediment sampling work being conducted by GE as part of the remedial program. The Trustees will consider all proposals for restoration projects, including the Fort Edward Yacht Basin dredging, if the remedy does not include it.

One commentor indicated skepticism that the State's failure to dredge the Upper Hudson was due to PCB contamination, and pointed out that the *NRDA Plan's* citation of the number of vessels that have used the canal recently was actually the number of "lockings," or total number of vessels that were raised or lowered.

*Trustee Response:* Available information from the New York Canal Corp. indicates that the primary reason the Upper Hudson has not been dredged in recent years is the difficulty of disposing of contaminated spoils, and that the cost of dredging when it is conducted will be significantly higher because of the contamination. The comment is correct in that the canal usage numbers cited in the Plan are the number of vessels that are actually raised or lowered through each individual lock.

#### *COMMERCIAL FISHERY*

Several commentors note that the *NRDA Plan* recognizes the significance of the Hudson River to commercial fisheries and that commercial fishing has been severely impacted. They believe that, while there was a private settlement some years ago with commercial fishermen, "a way of life has been lost



on the Hudson” and this lost cultural resource, and any economic loss to the State, are injuries for which the public should be compensated.

*Trustee Response:* Injuries to commercial interests are not, in and of themselves, normally considered injuries to the public’s natural resources. However, if injuries to natural resources have resulted in other losses to the public, such losses may be compensable as NRD. The Trustees will consider assessing any such losses, in the context of the nature and magnitude of the natural resources in question, and the obligation of the Trustees to conduct a cost-effective assessment.

One commentor stated that the *Plan* does not identify the 34 commercially important fish cited on page 9 for which the National Marine Fisheries Service has designated the Hudson River to be essential fish habitat, and provides no information about what specific areas of the Hudson have been so designated for any particular fish.

*Trustee Response:* The NRDA Plan should state that “The National Marine Fisheries Service has designated the river an Essential Fish Habitat, in recognition of the role the river plays in maintaining 13 commercially important fish species.” The Essential Fish Habitat designations are based on salinity gradients and the life stages of the species. Therefore, the use of geographic boundaries may be inadequate for describing the location of Essential Fish Habitat in some situations. Due to the relatively complex nature of the designations, we refer interested readers to the National Marine Fishery Service’s Habitat Conservation Division, and to the internet link that was provided in the Plan: <http://www.nero.nmfs.gov/ro/doc/hcd.htm>

#### TOURISM

Several commentors encourage the Trustees to assess the damages to tourism resulting from the PCB contamination in the river.

*Trustee Response:* The Trustees do not intend to pursue damages for injuries to commercial interests. As noted above, injuries to commercial interests are not, in and of themselves, normally considered injuries to the public’s natural resources. However, if injuries to natural resources have resulted in other losses to the public, such losses may be compensable. The Trustees will consider assessing any such losses, balanced by the need to conduct a cost-effective assessment.

#### IMPACTS TO NATIONAL PARK SITES

One commentor notes that the *NRDA Plan* states that the presence of PCBs in or around Saratoga National Historic Park, the Home of Franklin D. Roosevelt National Historic Site, and the Vanderbilt Mansion National Historic Site (and other unidentified National Park Service sites) “has likely changed how park visitors view these sites.” This party asserts “this claim is totally unfounded speculation upon which the Trustees should not waste assessment funds.” The commentor asks that if the Trustees pursue this, they should explain how any such change in perception constitutes an injury within the meaning of CERCLA and the DOI regulations, and how the Trustees plan to quantify the alleged injury. The commentor continues that if any studies are undertaken, the work plans and associated documents should be released prior to initiating the study for public review and comment.

*Trustee Response:* The PCB contamination to Park Service property may have limited the public’s ability to use this public property, and the Trustees are evaluating whether this is an injury under CERCLA and the DOI regulations.

## DAMAGES DETERMINATION AND RESTORATION

### GENERAL

Two commentors urged the Trustees to take an ecosystem-wide approach to restoration. They suggested that the Trustees may want to create restoration criteria so as to maximize the impact of restoration efforts along each reach of the river.

*Trustee Response:* The Trustees believe the approach outlined in the *Plan*, assessing each potentially injured resource, and each potential restoration project, individually, will result in the development of a suite of restoration projects that will adequately address injuries to the entire ecosystem. In this effort, the Trustees will develop restoration criteria and will also use criteria provided in the DOI regulations.

One commentor asked whether the Damage Determination and Restoration studies will be limited to those identified in the *Plan*, *i.e.* the recreational fishing lost use study, the habitat equivalency analysis, the assessment of lost navigational services and the assessment of impacts to National Park Sites and Affiliated Areas. This commentor also asked whether it would be appropriate to focus a damage and restoration study on threatened and endangered species.

*Trustee Response:* The *NRDA Plan* describes the studies currently being considered or implemented by the Trustees. Other damage determination studies and restoration alternatives may also be considered by the Trustees, including those specifically directed toward targeted impacted resources such as threatened and endangered species.

This commentor also asked about alternatives to the Habitat Equivalency Analysis (HEA) methodology, which was described as a “catch all” category to envelop all injuries other than recreational fishing lost use, lost navigational services and impacts to National Park Sites and Affiliated Areas. In addition, this commentor asked whether the HEA will include assessment of injuries to water quality, water supply and air. The Trustees were urged to ensure that the HEA methodology considers the overall health of the ecosystem.

*Trustee Response:* The HEA methodology can be used to scale restoration projects for individual injured resources, and the Trustees will consider using a HEA approach for resources such as surface water or biota. HEA can also take into account the overall health of the ecosystem, and does serve as a method for scaling restoration for a broad group of potentially injured resources.

One commentor indicated the *Plan* states that the Trustees will consider a number of restoration alternatives and then select the most appropriate alternative. This commentor asserts that at page 56 the *Plan* says that “[s]hould it appear that EPA’s remedy will not achieve full restoration, the Trustees will consider and evaluate further restoration options and their costs.” They ask what evaluation criteria the Trustees will use to select final restoration alternatives and whether this evaluation will be consistent with DOI’s regulations and NEPA.

*Trustee Response:* The evaluation of restoration alternatives will be consistent with DOI’s regulations. Those regulations require evaluation of each of the possible restoration alternatives on all relevant considerations including the following factors: technical feasibility; the relationship of the expected costs of the proposed actions to the expected benefits from the action; cost-effectiveness; the results of any response action (such as EPA’s remediation in the case of the Hudson River); the potential for additional injury resulting from the proposed action; the natural recovery period; the ability of the resources to recover with or without alternative actions; the potential effects of the action on human health and safety; consistency with relevant Federal, State,



and tribal policies; and compliance with applicable Federal, State, and tribal laws. All restoration projects will comply with applicable law.

### ***SPECIFIC RESOURCES***

One commentor asked that American eel be specifically considered both in terms of impacts and possible restoration projects, and that all dams within the watershed be evaluated for their impact on movement of all fish species, anadromous, catadromous and resident. They state that much fish habitat is no longer available without some modification. Furthermore, they believe that fish movement and passage both upstream and downstream into the main channel should be examined as a way of restoring the Hudson River ecosystem. They suggest that restoring riverine wetlands, much of which they assert has been lost throughout the basin, should also be evaluated. They add that protection of watershed lands through fee purchase or easements is another class of restoration projects that should be evaluated, to protect water quality and increase public recreational opportunities.

*Trustee Response:* All restoration alternatives will be considered by the Trustees, including those alternatives directed toward targeted, impacted resources such as American eel.

### ***COST EFFECTIVE RESTORATION***

One commentor asked what specific actions the Trustees intend to take to ensure that implementation of the *NRDA Plan* results in cost-effective solutions for addressing hazardous substances in the Hudson River and its resources, as set forth on page 32, and says that since EPA is responsible for overseeing the cleanup of the Hudson, the Trustees' focus should be on finding cost-effective solutions for addressing any injuries to natural resources arising from hazardous substances in the Hudson, not the substances themselves.

*Trustee Response:* The Trustees recognize that the EPA has the lead on remedial activities, but through CERCLA the Trustees are authorized to undertake restoration activities that may also directly address the residual effects of hazardous substances in the river that remain in place after completion of the EPA remedy. Cost-effectiveness is one of the factors the Trustees will consider in evaluating restoration alternatives to address injuries to natural resources of the Hudson River.

### ***SOLICITATION OF PROPOSED RESTORATION PROJECTS***

One commentor considers the fact that the Trustees have previously requested input on restoration ideas from the public to be premature, since the scope and quantity of injuries and service reductions have not been finally determined. They assert that this has led the public to view the *NRDA* as a vehicle for obtaining funding for various "pet projects," and not a means to restore lost or reduced services provided by natural resources that have been proven to be injured. Other parties encourage the Trustees to continue to involve the public in future solicitation of proposed restoration projects. One party indicated appreciation that the existing list of potential restoration project was made available during the public availability sessions, and urged the Trustees to make an updated list available on-line and through regular mailings.

*Trustee Response:* The Trustees consider it prudent to have begun the process of soliciting proposed restoration projects. The Trustees have specifically indicated that the submissions received to date have not been screened, and that some of them may not be appropriate restoration projects for this *NRDA*.





