

**Proposed Amendments to**  
**May, 2008 “Damage Assessment and Restoration Plan / Environmental Assessment –**  
**Howard/White Unit No. 1 Oil Spill – Final Report”**

**U.S. Coast Guard, National Pollution Funds Center**  
**Claim Number: E02414-O12 – Pryor Oil Restoration**

**January, 2013**

## INTRODUCTION

Upon beginning implementation of the restoration projects prescribed in the July 2008 “Damage Assessment and Restoration Plan/Environmental Assessment– Howard/White Unit No. 1 Oil Spill” (“DARP”) and approved by NPFC in its October, 2009 Letter of Determination, the Obed-Pryor Oil Spill Natural Resource Trustee Council (“Trustees”) encountered changed conditions and unavoidable circumstances with certain projects that made it impossible to implement them. The DARP states that, in this event, another project – i.e., the Golliher Creek mine reclamation project – would be implemented. However, since the DARP was completed, this project has become infeasible due to overgrowth of the site with vegetation, making site access extremely difficult and cost-prohibitive. As such, the trustees propose that the following changes to the restoration portion of the DARP be implemented:

1. Purchase land to restore the remaining portion of stream services lost during the 2002 incident rather than implement the bog garden and stream bank restoration projects.
2. Purchase a different tract of land than was stated in the DARP for the restoration of forest resource services and visitor uses lost during the incident.
3. Increase real estate transaction costs.
4. The State of Tennessee will purchase the lands rather than the National Park Service.
5. Implement a smaller version of the stream bank restoration project than was scoped in the DARP.

## PROJECT DESCRIPTIONS

Following is a description of each of the proposed changes, including a brief explanation of why the original projects could not be implemented and an accounting of – where applicable – the services (i.e., discounted service acre-years, or “DSAYs”) that these changes will provide.

1. Purchase land to restore stream services. The total quantity of stream services lost during the incident was 26.1 discounted service acre years (DSAYs). The rain gardens project (9.65 DSAYs) and the invasive vegetation removal project (0.18 DSAYs) scoped in the DARP for implementation in Centennial Park in Crossville, TN are being implemented and will restore 9.83 DSAYs of stream services. The bog garden project was found to be infeasible and cannot be implemented, leaving 12.60 DSAYs uncompensated. The stream bank restoration project was also found to be infeasible, leaving 3.68 DSAYs uncompensated. (A small, new stream bank restoration project, however, was identified (see #4 below) that will restore 0.40 DSAYs.) The total stream service DSAYs remaining to be restored and in need of a project, then, are 15.88. A replacement project was developed by the trustees to purchase land. This would restore the stream services by protecting streamside land on the Obed River from development (e.g., road or structure construction, timber harvesting), thereby preventing erosion and sediment runoff from occurring on this land that would adversely affect the water quality and benthic habitat of the adjacent river. The approach used to scale the project – i.e., to determine how many acres of

land should be purchased to restore the 15.88 DSAYs of stream services remaining – is based on the 2004 Stream Mitigation Guidelines for the State of Tennessee. Calculations indicate that acquiring and protecting 77.4 acres of land will restore this amount of DSAYs. *This project was scaled in the “Revised Proposal to Compensate for Stream Services Injuries” and submitted to the U.S. Coast Guard’s National Pollution Funding Center (NPFC) on March 9, 2012 and approved by NPFC on August 15, 2012. (Note that there is a 2.6 acre difference between the acreage calculated in the Revised Proposal (80) and the acreage stated above; this is due to the small, 0.40-DSAY stream bank restoration project that was added to partially restore stream services after the Revised Proposal was submitted.)*

A 90-acre parcel (Dobson tract; deed shows tract to be 90 acres) with a willing seller has been identified by the Trustees. See Appendix A. The Stream Mitigation Guidelines referred to above state that in order for land "preservation" or "perpetual protection" to be used to restore streams, the land purchased should:

- include riparian habitat
- be on a stream that is a unique or ecologically significant aquatic resource
- be located in a similar watershed as the one impacted
- be of high quality and relatively undisturbed
- be under threat of development

The 90-acre parcel meets these criteria:

- It is on the Obed River.
- The Obed River is a designated Wild and Scenic River and is critical habitat for the federally threatened spotfin chub and the purple bean mussel. The parcel itself is habitat for two federally threatened terrestrial plant species (Virginia spiraea and Cumberland rosemary).
- It is in the same Obed River watershed where the oil spill occurred.
- It is a high quality area and relatively undisturbed.
- It is under threat of both logging due to its timber resources and development due to its scenic location on the Obed River, which includes desirable cliff/bluff acreage.

Based on its 2010 selling price, the parcel is valued at \$268,452. To purchase 77.4 acres of the parcel would cost approximately \$230,869 (i.e.,  $\$268,452 / 90 \text{ acres} = \$2,983/\text{acre}$ ;  $\$2,983 \times 77.4 = \$230,869$ ). The entire parcel must be purchased; it is not divisible. An appraisal of the parcel and negotiations with the seller will determine its actual final value.

2. Purchase a different tract of land to restore injured forest resource services and lost visitor use. According to the DARP, 2.3 acres of forested land must be protected (acquired or conserved) to restore the lost forest services and \$56,446 worth of land must be protected to restore the lost visitor use. The DARP identified two tracts – 101-10 and 102-14. Since the DARP was completed, however, both tracts have become unavailable due to reconsideration by one seller and an unresolvable title issue with the other. *A proposal to purchase a different tract*

of land than was stated in the DARP was submitted to NPFC on June 20, 2011. A new 29-acre parcel (Plateau tract; State of Tennessee Property Data shows tract as being 29 acres) has been identified by the trustees that, if purchased, would compensate for all of the injuries to forest resources and some of the lost visitor use. Like tracts 101-10 and 102-14, it borders the Obed Wild and Scenic River area (it is on Clear Creek), has river access, is under threat of development, and has harvestable timber. See Appendix B. As such, it is appropriate for – and a high priority to – the trustees for restoring forest resource services and the lost visitor use.

A 2010 appraisal valued the parcel at \$45,000. Assuming the 2.3 acres cost \$3,569 (i.e.,  $\$45,000 / 29 \text{ acres} = \$1,552/\text{acre}$ ;  $\$1,552 \times 2.3 \text{ acres} = \$3,569$ ), that leaves approximately \$41,431 left over from the estimated parcel cost to go towards restoring the lost visitor use. Once the 26.7 acres remaining for this parcel are purchased, approximately \$15,015 (i.e.,  $\$56,446 - \$41,431$ ) will remain that must be spent on acreage elsewhere to fully restore lost visitor use. An appraisal of this parcel and negotiations with the seller are needed to determine its actual final value.

These remaining funds could be spent on the 12.6 acres that remain from the 90-acre parcel (i.e.,  $90 - 77.4 = 12.6$ ). If this were done, 5.0 acres could be purchased ( $\$15,015 / [\$2,983/\text{acre}] = 5.0$  acres) and 7.6 acres would remain ( $12.6 - 5.0 = 7.6$ ). Again, these amounts are estimates; actual amounts will be determined by the final acreage costs.

3. The State of Tennessee will purchase the lands rather than NPS. The DARP states that the National Park Service (“NPS”) will purchase the lands proposed for acquisition. However, after the DARP was adopted, the Trustees concluded that NPS lacks authority to buy the lands, but that the State Trustee does have authority to buy the lands. Therefore, the Trustees have decided the State of Tennessee, rather than NPS, will purchase the lands and cause them to be preserved and protected in perpetuity. *This proposal was submitted to NPFC on September 9, 2011 and approved by NPFC over the phone (date not recorded).*

4. Implement a smaller version of the stream bank restoration project. The Trustees could not implement the stream bank restoration project scoped in the DARP for two reasons: working on private properties proved to be much more complicated than originally thought due to a need for the Trustees to acquire access and disturbance easements, and scheduling the project to coincide with the City’s sewer project – a requirement to be able to afford the project – proved infeasible. However, a small, highly erodible area was found elsewhere in Centennial Park on the tributary to the Little Obed during implementation of the rain garden project. This new project will involve the same type of grading and re-vegetation work as the original project and will restore 0.20 acres and 0.40 DSAYs – 3.28 DSAYs less than the original project would have (see item 1, above, for the proposed land acquisition to compensate for these 3.28 DSAYs). *This project was submitted to NPFC on June 6, 2012 and approved by NPFC over the phone on June 25, 2012.*

The cost estimate for the 0.20 acre restoration project is \$38,735. The Tennessee Trustee has already received the funds to cover this small project – they were funds leftover from the rain garden project, which has been completed.

5. Real estate transaction costs will cost more. Real estate transaction costs to be incurred by the State of TN will be more than the \$9,000 estimated in the DARP and will be comprised of: title work = \$1,000; appraisal = \$5,000; appraisal review = \$1,000; Phase I environmental assessment = \$5,000; survey = \$1.50/linear foot of parcel perimeter  $\approx$  \$8,300 for Plateau parcel and  $\approx$  \$20,200 for Dobson parcel; closing costs = \$1,000; and a Real Estate Management fee of 10% or \$10,000, whichever is less (\$4,500 for Plateau, \$10,000 for Dobson). Other than these costs, there will be no additional oversight and administrative costs incurred by the State for its time to conduct and manage these transactions.

Assuming the parcel cost estimates given above, these costs will total \$25,800 for the 29-acre parcel and \$43,200 for the 90-acre parcel. See Table 2 below.

## **FUNDING DETAILS AND PROPOSAL**

As Table 1 below indicates, of the \$770,837 (including contingency) approved by NPFC in the Oct., 2009 Letter of Determination, \$295,714 has been committed to DARP-scoped projects and expenses to date, and \$475,123 remains. The remaining projects and expenses are itemized in Table 2 below and total approximately \$389,884. A total of \$30,000 of this is estimated for the remainder of trustee oversight and administrative costs. Since there remains approximately \$55,152 for this, this cost will be easily covered.

The exact amount of funds needed will remain unknown until appraisals are completed for each parcel, negotiations with the sellers are complete, and all costs associated with buying the property are incurred. However, \$389,884 is a good estimate. Subtracting this from \$475,123 leaves \$85,239 remaining, unspent, from the \$770,837 that NPFC originally approved in 2009.

The funds remaining for each expense category and itemized in Table 1 can be added together in any number of combinations to make up the funds needed. Rather than attempting this, the Trustees believe it is simpler for NPFC to do so. However, the Trustees propose that the \$85,239 be recast and used as contingency funds should the cost estimates above fall short.

With regard to the additional 12.6 acres of the Dobson parcel that will need to be purchased, it's probable that the lost visitor use funds left over from the Plateau parcel purchase will not be enough to purchase this. This would be the case if the per-acre costs remained the same as they are assumed to be in this proposal, or if they increased, or even decreased slightly. It's also possible that the per-acre costs of the Plateau parcel will be higher than currently assumed such that not even the entire 29-acre parcel could be purchased with the \$56,446. Should either (or both) of these situations arise, the Trustees request that any funds leftover from the original \$770,837 approved by NPFC be used to purchase any remaining acreage.

Regardless of the exact final costs of the restoration project and expense changes described above, the Trustees shall spend no funds restoring resources or services that were not injured and will return to NPFC any unspent funds from all expense categories after project completion.

## NEPA and PUBLIC REVIEW

The Trustees have determined that the NEPA impacts analysis conducted in the DARF is sufficient for the changes described above and that no additional NEPA analysis is needed.

However, the public were given a chance to review and comment on the changes during a 30-day comment period from October 10 to November 9, 2012. No comments were received. See Appendix C for the “Amendment” that the public reviewed and Appendix D for the Public Comments Report generated from that review.

**Table 1: Funding Summary by Project and Expense Category**

**Approved Budget (Oct., 2009):**

**\$699,176 + \$71,661 = \$770,837**

<b>Project/Expense Category</b>	<b>Budgeted in 2009 Letter of Determ.</b>	<b>Funds Committed</b>	<b>Funds Remaining</b>
<i>Forest Resources</i>			
Invasive Vegetation	\$9,018	\$9,018	NA
Land Acquisition	\$17,050	\$0	\$17,050
Contingency	\$2,558	\$0	\$2,558
<b>Sub-Total</b>	<b>\$28,626</b>	<b>\$9,018</b>	<b>\$19,608</b>
<i>Stream Services Centennial Park Watershed</i>			
Streambank Restoration	\$25,000	\$0	\$25,000
Streambank Landscaping	\$64,980	\$0	\$64,980
Invasive Species Removal	\$0	\$0	\$0
Bog Garden	\$31,860	\$0	\$31,860
Rain Garden	\$217,800	\$168,113	\$49,687
Monitoring	\$50,000	\$0	\$50,000
OWCA Oversight & Admin.	\$71,049	\$17,762	\$53,287
Contingency	\$69,103	\$0	\$69,103
<b>Sub-Total</b>	<b>\$529,792</b>	<b>\$185,875</b>	<b>\$343,917</b>
<i>Lost Visitors Use</i>			
Land Acquisition	\$56,446	\$0	\$56,446
<b>Sub-Total</b>	<b>\$56,446</b>	<b>\$0</b>	<b>\$56,446</b>

<i>Administration</i>			
Trustee Oversight & Admin.	\$155,973	\$100,821	\$55,152
<b>Sub-Total</b>	<b>\$155,973</b>	<b>\$100,821</b>	<b>\$55,152</b>
<b>Total</b>	<b>\$770,837</b>	<b>\$295,714</b>	<b>\$475,123</b>

**Table 2: Outstanding projects and expenses, and funds needed**

<b>Outstanding Projects and Expenses</b>	<b>Funds Needed</b>
Land acquisition to restore forest resources and visitor use	\$60,015 <sup>1</sup>
Appraisal, etc.	\$25,800
	\$230,869 <sup>2</sup>
Land acquisition to restore stream services	
Appraisal, etc.	\$43,200
Small stream bank restoration	\$0 <sup>3</sup>
Admin. and oversight costs	\$30,000 <sup>4</sup>
<b>Total</b>	<b>\$389,884</b>

1 – This is \$56,446 to restore lost visitor uses and \$3,569 to restore forest resources. The latter amount is different from what was estimated in the DARP and is based on a more accurate per-acre cost of this different parcel of \$1,552 (i.e. the reappraisal value of \$45,000/29-acre parcel size) rather than the \$3,500/acre cost that was in the DARP.

The new appraisal and negotiations with the seller will determine the actual cost.


2 – This is for 77.4 acres. The new appraisal and negotiations with the seller will determine the actual cost.

3 – This project will cost \$38,735. The funds are available from what was already transferred to TDEC for the rain garden project.

4 – This will fund the Trustee Council Administrative Coordinator at half time and other minor trustee labor costs for approximately one year.

## TRUSTEE APPROVAL

With their signatures below, representatives of the Trustees hereby certify their approval of the information in this proposal.

 Date: 1/25/13  
Mark VanMouwerik  
Restoration Project Manager, Environmental Quality Division  
National Park Service  
Primary Representative for the Secretary of the Interior

\_\_\_\_\_  
Date: \_\_\_\_\_  
Debbie Duren  
NRDA Program Manager  
Tennessee Department of Environment and Conservation  
Authorized Official for the Commissioner  
Primary Representative of the Governor of Tennessee

 Date: 01/25/13  
Steven Alexander, Ecologist  
U.S. Fish and Wildlife Service  
Advisory Representative

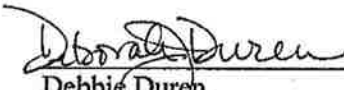
Of Counsel:



## TRUSTEE APPROVAL


With their signatures below, representatives of the Trustees hereby certify their approval of the information in this proposal.

\_\_\_\_\_  
Date: \_\_\_\_\_  
Mark VanMouwerik  
Restoration Project Manager, Environmental Quality Division  
National Park Service  
Primary Representative for the Secretary of the Interior

\_\_\_\_\_  
Date: 1/22/13  
Debbie Duren  
NRDA Program Manager  
Tennessee Department of Environment and Conservation  
Authorized Official for the Commissioner  
Primary Representative of the Governor of Tennessee

\_\_\_\_\_  
Date: \_\_\_\_\_  
Steven Alexander, Ecologist  
U.S. Fish and Wildlife Service  
Advisory Representative

Of Counsel:

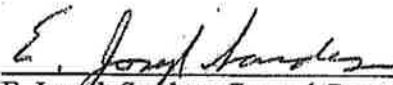
 Date: Jan 24, 2013  
Gerald A. Thornton, Attorney  
Office of the Field Solicitor  
U.S. Department of the Interior  
Knoxville, Tennessee

\_\_\_\_\_  
Date: \_\_\_\_\_  
Joe Sanders, Chief Counsel  
Office of General Counsel  
Tennessee Department of Environment and Conservation  
Nashville, Tennessee

Of Counsel:

\_\_\_\_\_  
Date: \_\_\_\_\_

Gerald A. Thornton, Attorney  
Office of the Field Solicitor  
U.S. Department of the Interior  
Knoxville, Tennessee

\_\_\_\_\_  
Date: 1-27-13  
E. Joseph Sanders, General Counsel  
Office of General Counsel  
Tennessee Department of Environment and Conservation  
Nashville, Tennessee

## **APPENDICES**

A. Dobson parcel image

B. Plateau parcel image

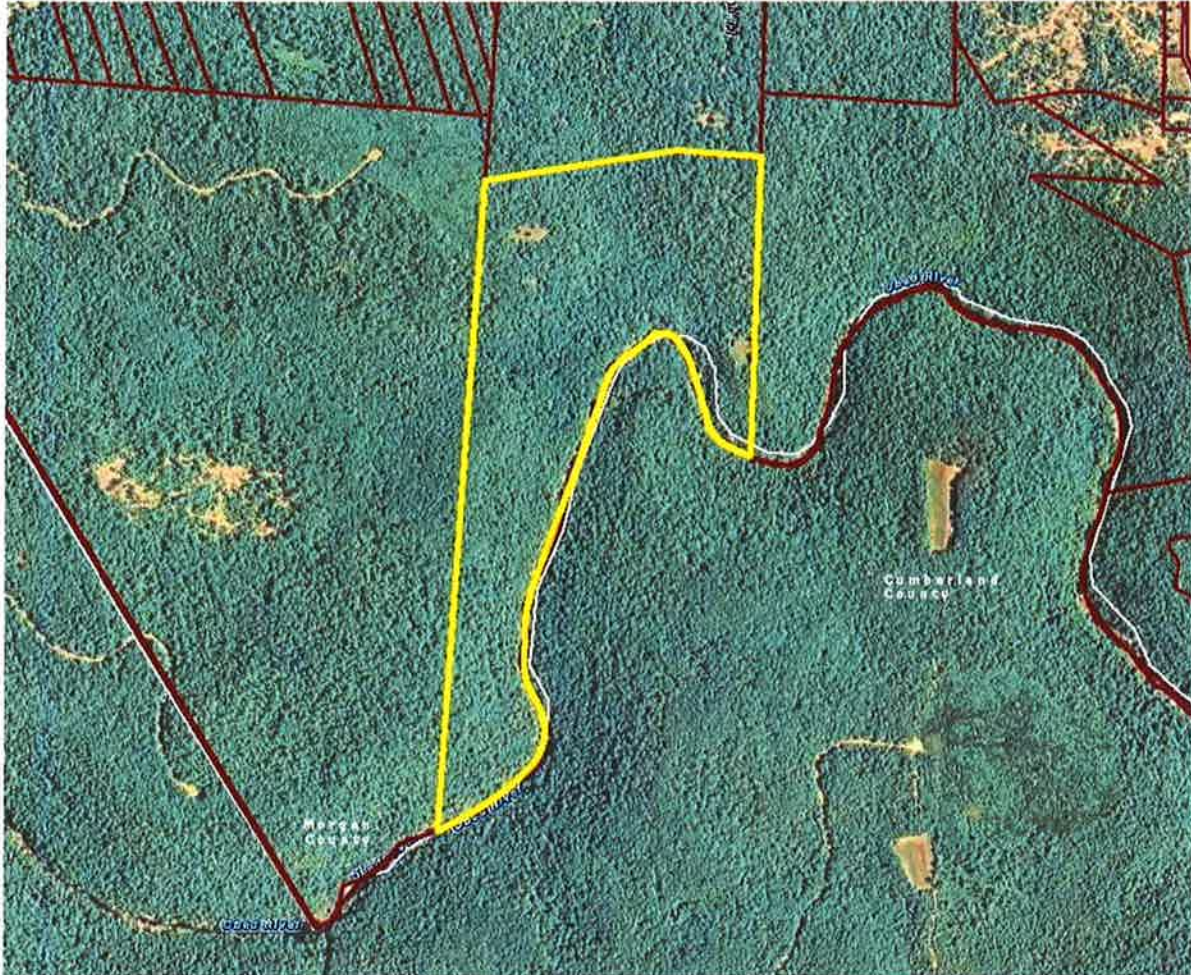
C. Amendment to the Damage Assessment and Restoration Plan/Environmental Assessment –  
Howard/White Unit No. 1 Oil Spill

E. Public Comments Report for the Amendment to the DARP/EA

## APPENDIX A

Morgan County- Dobson Parcel: 102 002.00

(Date Created: 8/23/2012)





## APPENDIX B

**Morgan County- Plateau Parcel: 082 014.00**

**(Date Created: 8/23/2012)**



## APPENDIX C

### Amendment to the Damage Assessment and Restoration Plan/Environmental Assessment – Howard/White Unit No. 1 Oil Spill

(Prepared October 2, 2012)

The Obed-Pryor Oil Spill Natural Resource Trustee Council (“Trustees”) proposes the following changes to the July 2008 “Damage Assessment and Restoration Plan/Environmental Assessment– Howard/White Unit No. 1 Oil Spill” (DARP/EA):

- Purchase land to restore the portion of stream services lost during the 2002 incident rather than implement the bog garden and streambank restoration projects. The total number of stream services lost during the incident was 26.1 discounted service acre years (DSAYs). The bog garden and the streambank restoration projects in Centennial Park, Crossville were found to be infeasible for technical reasons that were not evident during planning. They would have restored 12.6 and 3.68 DSAYs, respectively. (A much smaller version of the streambank restoration project will be done that restores 0.40 DSAYs rather than 3.68. See last bullet below.) Purchasing land will restore these stream services by protecting land abutting a stream near the injured area from development (e.g., road or structure construction, timber harvesting), thereby preventing the injurious effects of erosion and sediment runoff from occurring on this land and negatively effecting the benthic habitat of the adjacent stream. The approach used to scale the project – i.e., to determine how many acres of land should be purchased to restore the 15.88 DSAYs of stream services that the bog garden and streambank projects no longer will be – is based on the 2004 Stream Mitigation Guidelines for the State of Tennessee. Calculations indicate that 77.4 acres of land are necessary for acquisition and protection. This scaling approach was approved on August 15, 2012 by the restoration funding agency – the U.S. Coast Guard’s National Pollution Funding Center.
- Purchase a different tract of land than was stated in the DARP/EA for the restoration of forest resources and visitor uses lost during the incident. The DARP/EA states the Trustees will pursue tracts 101-10 and 102-14 to acquire or conserve. Since the DARP/EA was completed, however, both tracts have become unavailable due to reconsideration by one seller and an unresolvable title issue with the other. Another tract has been identified that, if purchased, would compensate for the same injuries. Like tracts 101-10 and 102-14, it also abuts a creek. It is highly valued by the Trustees for its outstanding habitat, vegetation, and scenery that visitors (especially boaters) can appreciate. As such, it is at great risk of being purchased and developed.
- The State of Tennessee will purchase the lands rather than the National Park Service. The DARP/EA states the National Park Service (NPS) will purchase the land. However, after the DARP/EA was adopted, the Trustees learned that 16 U.S.C. §19jj-3(b) prohibits NPS from acquiring interests in land with money recovered under any federal, state, or local law as a

result of damage to any resource within a unit of the National Park System. However, the statute does not prevent the Tennessee Trustee from acquiring land for restoration purposes with money recovered by that Trustee. Therefore, the Trustees have decided the State of Tennessee should purchase the land with the State's share of the restoration money to preserve and protect it instead of NPS.

- Implement a much smaller version of the streambank restoration project than was scoped in the DARP/EA, i.e., 0.2 acres and 0.4 DSAYs vs. 1.82 acres and 3.68 DSAYs, respectively. The project would be located in Centennial Park, but on a different stream than the DARP/EA project was on. It would be located on a small but highly erodible area and does not present the technical problems that the DARP/EA project did that made it infeasible.

The DARP/EA states that, in the event the Centennial Park projects (e.g. the bog garden, streambank restoration, and rain garden projects) cannot be implemented, another project discussed in the DARP/EA – i.e., the Gollither Creek mine reclamation project – would be implemented. However, since the DARP/EA was completed, this project has become infeasible due to site overgrowth with vegetation, making site access extremely difficult and cost-prohibitive.

Finally, the Trustees have determined the NEPA impacts analysis conducted in the DARP/EA sufficiently covers the changes described above. Therefore, additional NEPA analyses will not be performed.



## APPENDIX D

### Public Comments Report for the Amendment to the DARP/EA

(Prepared November 15, 2012)

#### PEPC - Content Analysis Report Page 1 of 1

Content Analysis Report  
(11/15/2012)

Project

ID:

20967

Project Title: Damage Assessment and Restoration Plan/Environmental  
Assessment

Document

ID: 50031

Document Title: Amendment to the Damage Assessment and Restoration Plan / Environmental  
Assessment - Howard/White Unit No. 1 Oil Spill

Correspondence Distribution by Code *click column header to sort* (Note: Each correspondence may have multiple codes. As a result, the total number of correspondence may be different than the actual comment totals)

Code	Description	Correspondences
------	-------------	-----------------

Signatures		
------------	--	--

Comment Distribution by Status ( 0 )

Status	# of Comments
--------	---------------

--	--

Correspondence Distribution by Correspondence Type

Type	Correspondences
------	-----------------

--	--

Correspondence Signature Count by Organization Type ( )

Organization Type	Correspondences	Signatures
-------------------	-----------------	------------

--	--	--

Correspondence Distribution by State ( )

State	Correspondences
-------	-----------------

--	--

Correspondence Distribution by Country ( 0 )

Country	# of Correspondences
---------	----------------------

--	--