

RESTORATION PLANNING PROCESS DOCUMENT

For The

**HOUSATONIC RIVER BASIN
NATURAL RESOURCES RESTORATION PROJECT
CONNECTICUT**

Prepared by the Trustee Work Group for the Trustee SubCouncil for Connecticut:

Connecticut Department of Environmental Protection
National Oceanic and Atmospheric Administration
U.S. Fish and Wildlife Service

As Adopted by the Trustee SubCouncil for Connecticut on
April 22, 2003

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INTRODUCTION: Purpose of the Restoration Planning Process Document

The Housatonic River Basin Natural Resources Restoration Project (hereinafter, “Housatonic Project”) is a product of the natural resource damage assessment and restoration process established under the federal Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”). The CERCLA provisions regarding natural resource damage assessment and restoration provide the authority to certain federal and state government entities, called Natural Resource Trustees (“Trustees”) to collect natural resource damages from parties responsible for contaminating the environment. “Natural resource damages” are compensation for harm done to the environment, provided in the form of monetary payment and/or the construction of natural resource restoration projects.

Significant harm, or “injuries”, to the natural resources of the Housatonic River Basin have occurred from the releases of chemical wastes, primarily polychlorinated biphenyls (“PCBs”), from the General Electric facility in Pittsfield, Massachusetts. The contamination has affected aquatic organisms and their habitats, as well as water-related natural resources such as waterfowl and predators that consume contaminated aquatic organisms. In addition to the harm done to natural resources, natural resource services have been impaired due to the contamination. “Natural resource services” are functions or services provided by natural resources for the benefit of humans or other natural resources, such as recreational fishing for humans or nesting habitat for birds. In the case of the Housatonic River Basin, there has clearly been an adverse impact on recreational fishing, particularly with regard to consumption of the catch. There have also been losses of other recreational opportunities (e.g., boating and swimming) due to the actual or perceived risk associated with physical contact with the aquatic habitat.

In 1997, General Electric, the City of Pittsfield, the United States Government, the State of Connecticut and the Commonwealth of Massachusetts entered into negotiations with the goal of achieving a comprehensive settlement of all outstanding environmental issues, including remedial action and natural resource damages. A tentative agreement was reached in September 1998. That agreement was translated into a Consent Decree, which was lodged with the federal court on October 7, 1999 and approved by the court on October 27, 2000.

Pursuant to the requirements of the Consent Decree, General Electric has paid over \$15 million in natural resource damages. This sum has been divided between the geographic regions of Connecticut and Massachusetts so that roughly half of the \$15 million will be available for restoration projects in each state. These funds have been deposited into interest-bearing accounts held in trust by the Department of the Interior on behalf of all of the Trustees.

Before the funds allocated to the geographic region of Connecticut can be used to implement natural resource restoration projects, the Natural Resource Trustees for the Connecticut SubCouncil (i.e., representatives from the State of Connecticut, the U.S. Fish and Wildlife Service, and the National Oceanic and Atmospheric Administration) must develop a Natural Resources Restoration Plan (“Restoration Plan”). The Restoration Plan must evaluate a reasonable number of restoration alternatives and explain the rationale behind the choices made

regarding the restoration projects that will be implemented.

The final Restoration Plan cannot be adopted and implemented without the opportunity for the public to provide ideas and input into the Plan. The Housatonic Project involves many local communities and others that are very interested in, and wish to participate in, the development of the Restoration Plan.

Because the injuries impact many species and habitats, and because of the varied interests of the many stakeholders within the Housatonic River Basin, the restoration planning process will be challenging. It is important that the final product of this process, the Restoration Plan, is developed logically and objectively; that the concerns of the many stakeholders are considered; and that the injured resources and resource services remain the focus of the process. The Trustee SubCouncil for Connecticut (“SubCouncil”) has concluded that the development of this Restoration Planning Process Document (“RPPD”) is an appropriate first step in that process.

This RPPD is a precursor to the Restoration Plan that will be developed for the geographic region of Connecticut. The RPPD sets out the issues that the Trustees will take into consideration and the tasks that will be undertaken in the development of the Restoration Plan. In short, the RPPD is intended as both a guide and “road map” that the SubCouncil will follow in developing the final Restoration Plan. The RPPD is based on the federal natural resource damage assessment and restoration regulations (43 CFR Part 11) and is heavily influenced by the nature of the natural resource injuries associated with the Housatonic Project and the complexities of public, interactive decision-making.

RESPONSIBILITIES OF THE NATURAL RESOURCE TRUSTEES

Under the provisions of the relevant federal law, CERCLA, the assessment of natural resource injury and the use of any funds obtained for the compensatory restoration of injured natural resources (“Natural Resource Damage Recoveries” or “NRD Recoveries”) are the responsibilities of the Natural Resource Trustees. For the Housatonic Project, the Natural Resource Trustees are: the Commissioner of Environmental Protection for the State of Connecticut, the Secretary of Environmental Affairs for the Commonwealth of Massachusetts, the Under Secretary of Oceans and Atmosphere of the National Oceanic and Atmospheric Administration (NOAA), and the Regional Director, United States Fish and Wildlife Service, Region 5 (on behalf of the Department of the Interior).

On January 30, 2002, the Natural Resource Trustees executed a Memorandum of Agreement (“MOA”) setting out how the Natural Resource Damage Recoveries obtained under the Consent Decree will be managed. The full text of the MOA is available on-line at <http://www.epa.gov/region01/ge/restoration/29677.pdf>. A paper copy of the MOA may be obtained by contacting Mr. Rick Jacobson at the CT Department of Environmental Protection (see Appendix A.). Pursuant to the provisions of Section VII of the MOA, Natural Resource Trustee SubCouncils for the geographic regions of Massachusetts and Connecticut have been formed. The Natural Resource Trustee SubCouncil for the Geographic Region of Connecticut (“Trustee

SubCouncil for Connecticut” or “SubCouncil”) consists of the Trustee Representatives for the Commissioner of Environmental Protection for the State of Connecticut, the U.S. Fish and Wildlife Service (on behalf of the Department of the Interior), and the National Oceanic and Atmospheric Administration. Each SubCouncil has the authority, pursuant to Sec. VII, paragraph B.3. of the MOA, to authorize expenditure of the NRD Recovery allocated solely to the geographic region of the respective SubCouncil.

The Natural Resource Trustees have both the authority and, more importantly, the responsibility for making the final decisions regarding how the NRD Recoveries entrusted to them will be utilized. In reaching a final decision, the Natural Resource Trustees will strongly encourage public participation throughout the planning process.

Pursuant to the MOA between the state and federal Trustees, the Commissioner of Environmental Protection for the State of Connecticut, in partnership with the two federal Trustees, is responsible for developing and implementing a Natural Resources Restoration Plan (“Restoration Plan”) that will identify how the NRD Recovery allocated to the geographic region of Connecticut will be used. All decisions regarding expenditure of these funds require the unanimous approval of the three Trustee Representatives on the SubCouncil.

A Trustee Work Group (“TWG”), made up of technical staff of the Trustee agencies has been formed to undertake the day-to-day work of the Connecticut SubCouncil. Among other tasks, the TWG is responsible for preparing some of the draft documents that will be offered for public review. However, the TWG does not have the authority to make significant decisions on behalf of the SubCouncil, especially with respect to any expenditure of the NRD Recoveries. That responsibility is vested solely in the Natural Resource Trustee Council and SubCouncils. The TWG will be assisted in its efforts by a Technical Consultant Team (“Consultant Team”) retained to assist the SubCouncil in its work. (Refer to Appendix A for a listing of the Consultant Team members.)

Beyond the construct of the SubCouncil, the Trustee Representative for the State of Connecticut has formed an advisory group – the Connecticut Trustee’s Advisory Group (CTAG) – in accordance with the provisions of Section VII Paragraph I of the MOA. The group is made up of nineteen (19) organizations that have had an active and long-standing interest in the restoration and enhancement of natural resources within the Housatonic River Basin, or are representative of the geographic area affected by the PCB contamination and restoration efforts. The group was formed to advise the Connecticut Trustee regarding the development of the Restoration Plan from the point of view of the various organizations that make up the CTAG. (Refer to in Appendix B for a more complete description of the purpose and role of the CTAG).

REQUIREMENTS FOR NATURAL RESOURCE RESTORATION PLANNING

In accordance with the requirements of CERCLA, specifically Title 43, Part 11, Section 11.93, Subsection (a), a Restoration Plan shall be developed and made available for public review prior to any significant expenditures of the NRD Recovery on natural resource restoration activities.

(However, CERCLA provides for portions of the NRD Recovery to be spent on the development and implementation of the Plan. The amount of recovery allocated to consultant services for plan development and implementation will be limited to that approved at a public meeting by the Trustee Representatives to the Connecticut SubCouncil for each of the four phases described herein).

In addition to the requirements of CERCLA and the natural resource damage assessment and restoration regulations that directly govern the development of Restoration Plans, certain other state and federal laws and regulations, as well as certain federal Executive Orders, apply to the Housatonic Project's restoration planning process.

The National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) ("NEPA") is applicable to the development of the Restoration Plan. The NEPA requires federal agencies to evaluate the potential environmental impacts of their proposed actions (e.g., the implementation of a restoration project) and to consider alternatives to the proposed actions. Such an evaluation is documented in either an Environmental Assessment ("EA") or an Environmental Impact Statement ("EIS"). The choice of document depends, in part, upon the complexity of the proposed actions. The federal regulations directing the preparation of these documents can be found at 40 CFR Parts 1500-1508. The regulations encourage streamlining the NEPA compliance process by integrating the public participation process and project alternatives analysis of NEPA with the similar requirements of other applicable laws/regulations. Thus, NEPA compliance documentation will be incorporated into the Housatonic Project's Restoration Plan for Connecticut.

In addition to NEPA, depending upon the types of activities involved in the individual restoration project alternatives that will be evaluated in the Restoration Plan, other state, federal, and local laws or regulations may apply. The list that follows contains some of the potentially applicable federal requirements. The State of Connecticut has a number of legal requirements that are similar in scope and issues to the federal requirements identified below.

- Endangered Species Act (16 U.S.C. 1531-1544)
- Coastal Zone Management Act (16 U.S.C. 1451 *et seq.*)
- National Historic Preservation Act (16 U.S.C. 470-470x-6)
- American Indian Religious Freedom Act (42 U.S.C. 1996)
- Clean Water Act (33 U.S.C. 1251-1387)
- Rivers and Harbors Act (33 U.S.C. 401 *et seq.*)
- Executive Order 11990 on Protection of Wetlands
- Executive Order 11988 on Flood Plain Management

DEVELOPMENT OF THE NATURAL RESOURCE RESTORATION PLAN

Overview:

As currently envisioned by the SubCouncil, the development and implementation of the Restoration Plan will be carried out in four “phases”.

- Phase I involves the development of the framework within which restoration planning will proceed. This will include the process to be followed in developing the final Restoration Plan. It will also include development of a Public Participation Plan and a web site for making restoration process documents and relevant information readily available. The final task in Phase I will be the development and approval of a scope of work for Technical Consultant Team services for Phase II.
- Phase II will encompass the development of the Restoration Plan. This will include the finalization of project Eligibility Criteria, development of project Evaluation Criteria, solicitation of project proposals, review and evaluation of those proposed projects, preparation of appropriate environmental assessments for the selected alternatives, preparation of a draft Restoration Plan, and approval of the final Restoration Plan by the Trustee SubCouncil for Connecticut. Public participation will be solicited throughout Phase II, as this is when many important decisions will be made by the SubCouncil regarding the use of the NRD Recoveries and accordingly, when public participation in the process is most vital.
- Phase III will be the implementation of the final Restoration Plan. This may include the design, permitting, and construction of restoration projects; purchase of land; or such other activities as the SubCouncil may have determined to be appropriate to accomplish the restoration of natural resources and natural resource services injured by the releases from the GE facility.
- Phase IV will include any necessary follow-up evaluation or monitoring of the effectiveness of various restoration projects. Phases III and IV will depend on what projects are included in the alternative(s) selected for implementation in the final Restoration Plan, thus any discussion of the possible details of these phases at this time is premature.

Plan Development:

The following is a list of the key elements or steps in the process of developing the Natural Resources Restoration Plan. This list identifies the key tasks involved in both Phase I and Phase II of the Housatonic Project in Connecticut.

Phase I – Framework for Restoration Planning

- Development of the Restoration Planning Process Document. This document will set out the process that the Trustee SubCouncil for Connecticut will use to develop the final Restoration Plan.
- *Status: Work is on going. Anticipated publication for public review – March 2003. Anticipated completion and approval by the SubCouncil - May 2003.*
- Development of the Public Participation Plan. This plan will set out the mechanisms that the Trustee SubCouncil for Connecticut proposes to use to keep the public fully informed regarding the development of the Restoration Plan and to encourage public participation and input into that process.
- *Status: Work is on going. Anticipated publication for public review – April 2003. Anticipated completion and approval by the SubCouncil - June 2003.*

Phase II – Development of the Natural Resources Restoration Plan

- *Status: Work will be initiated following completion of Phase I.*

Overview of Tasks and Sequence:

- Compilation of existing data with respect to natural resources, resource services, and the natural resource injuries in the Connecticut portion of the Housatonic Basin
- Finalizing and publication of the Eligibility Criteria
- Development of the Evaluation Criteria
- Solicitation of Restoration Project Proposals
- Screening of Proposed Projects using the Eligibility Criteria
- Analysis of the Eligible Projects utilizing the Evaluation Criteria
- Development of Alternatives for NEPA/CEPA compliance analyses.
- Detailed Analysis of the Alternatives pursuant to NEPA and CEPA.
- Selection of the Preferred Alternative(s).
- Preparation and Adoption of the final Natural Resources Restoration Plan
 - Preparing the Interim Draft Restoration Plan
 - Public meetings/workshops to discuss the Interim Draft Restoration Plan; solicitation of public input.
 - Preparation of the Draft Final Restoration Plan
 - Public Hearing on the Draft Final Restoration Plan
 - Preparation of the final Restoration Plan and Responsiveness Summary
- Approval of the final Natural Resources Restoration Plan by the Trustee SubCouncil for Connecticut.

The foregoing provides some sense of the extent and complexity of the work that will be required of the TWG, the Consultant Team, the SubCouncil and the public in developing the Restoration Plan. The following section describes these steps in more detail.

Detailed Description of Tasks and Sequence:

General:

It is important that all of the participants in restoration planning remain cognizant of the fact that any restoration activities must be coordinated with remedial (“cleanup”) actions being undertaken or planned by GE and/or EPA. Although measures are being taken to avoid the release of any substantial mass of PCB-laden sediment during the remedial actions, the SubCouncil must ensure that any restoration work is not adversely impacted as a result of any such remedial actions. This will be a consideration that weaves through all of our evaluations of projects and timetables.

The Trustee Representatives have concluded that it is important to define the criteria that will be used to evaluate proposed projects before anyone is asked to submit such proposals. Having access to the criteria allows anyone wishing to propose one or more projects to know what issues need to be addressed to demonstrate the eligibility of the proposed project as well as the criteria that will be used to evaluate the proposal(s). To this end, the SubCouncil will convene one or more meetings and/or workshops seeking public input on the criteria.

Specific Tasks:

- Compilation of Relevant Natural Resource and Cultural Resource Information. The Consultant Team will assemble, compile and review relevant background information on resources within and immediately along the Housatonic River. The compiled information will be used by the Consultant Team to develop maps that will facilitate the restoration planning process. Base mapping of resources and other features will be developed for use for presentations and in the final Restoration Plan. This mapping will include locations of river access, dams, parks, campgrounds and other conservation lands, designated greenway areas, boat launches, land and river trails, including the Appalachian Trail, Trout Management Areas, Bass Management Areas, discharges, water supply locations, sensitive habitats, general locations of threatened and endangered species, (proposed) Upper Housatonic Valley National Heritage Area, and other relevant information. Information on water quality, sediment quality, river flows, fisheries, wildlife and other affected resources will be summarized and presented on maps, as appropriate. The Consultant Team will also review data, studies and assessments completed during previous phases of the NRDA process, including the “Preliminary Natural Resource Damage Assessment” prepared by Industrial Economics, Inc. It is intended that all data will be from existing sources. No new field surveys will be undertaken except as necessary to complete the assessment of proposed project eligibility and evaluation (see

below). The Consultant Team will be developing an initial bibliography of available information sources as part of their development of their Work Plan for Phase II, thus there will be information sources identified prior to the conclusion of Phase I.

- Finalization and Publication of the Eligibility Criteria. The TWG will develop and publish a list of Eligibility Criteria and the relevant laws, rules, regulations and policies they are based on. Following publication, a public meeting or workshop will be convened to discuss the Eligibility Criteria and the source(s) of the eligibility requirements. There will be an opportunity to answer any questions the public may have relative to the eligibility issues. Following the public discussion, the TWG will revise the criteria as appropriate and submit them to the SubCouncil for approval. In addition, the SubCouncil will determine how injuries and impairments that resulted from the release of PCBs and other pollutants from the GE facility are factored into the eligibility and selection of restoration projects.
- Development of Evaluation Criteria. It is vital that criteria be developed by which eligible projects can be evaluated against one another. This will provide a basis for selecting from the list of eligible projects those projects that offer the best or most relevant restoration potential.

The TWG will develop and publish an initial set of proposed Evaluation Criteria. Following publication, a public meeting or workshop will be convened to get public input on both the proposed criteria and any additional issues or criteria that the public believes should be included in the evaluation/selection of projects. After consideration of the input received from the public, the TWG will revise the Evaluation Criteria as appropriate and submit them to the SubCouncil for approval.

- Solicitation of Restoration Project Proposals. The SubCouncil will request the input of the interested public, business and governmental agencies on potential restoration projects. While all ideas are welcome, it is beyond the capability of the TWG, and beyond the budget of the SubCouncil, to undertake significant development of every idea that is generated. The person or group making the proposal will have to shoulder some of that responsibility. For this reason, it will be necessary to develop a form or format for the submission of proposals as well as a set of instructions for those wishing to submit proposals. The form and directions will help ensure that all proposals contain all pertinent information, thereby ensuring that all proposals receive fair consideration and facilitating the evaluation of the proposals.

The TWG and Consultant Team will develop a Restoration Project Proposal form and directions for submitting proposals. These will be submitted to the SubCouncil for review and approval. The approved Restoration Project Proposal form and directions for submitting proposals will then be published. Following publication, the form and directions will be discussed at a public meeting to ensure that interested parties have the opportunity to have their questions answered.

In addition, it will be necessary to identify the mechanisms to be used to reach out to interested parties. These mechanisms will be identified in the Public Participation Plan and public input on the outreach mechanisms will be sought.

Following publication of the approved Restoration Project Proposal form and directions for submitting proposals, the SubCouncil will announce a general solicitation for restoration project ideas and proposals from all interested parties. The SubCouncil will establish a schedule and deadline for the submission of such proposals. The details of this part of the process will be worked out concurrently with the discussion of project information requirements and proposal formats.

- Screening of Proposed Restoration Projects Using the Eligibility Criteria. This step will result in the development of a list of Eligible Restoration Projects for further evaluation and analysis. The TWG, with the assistance of the Consultant Team, will prepare an initial listing of all proposals received and develop a preliminary assessment of the eligibility of each such proposal. The preliminary eligibility determination will be shared with the public for review. Following the review period, one or more public meetings will be held to discuss the proposals and to receive comment. There will also be an opportunity for the public to submit written comment. Once public comment is integrated into the decision-making process, the SubCouncil will adopt a list of projects deemed eligible for further consideration.
- Analysis of the Eligible Projects Utilizing the Evaluation Criteria. Once the SubCouncil adopts a list of eligible projects, the Consultant Team will be tasked with doing an evaluation of those projects using the Evaluation Criteria. This will be done in coordination with the TWG. It will include any technical, environmental, economic and other evaluations required for application of the Evaluation Criteria. A draft report on the results of the evaluation undertaken, together with a recommended list of projects for further consideration, will be published for public review. Following the review period, one or more public meetings will be held to discuss the recommendations and to receive comment. There will also be an opportunity for the public to submit written comment. Once public comment is integrated into the decision-making process, the SubCouncil will decide which projects will be considered for implementation.
- Development of Alternatives for NEPA/CEPA Compliance Analyses. The National Environmental Policy Act (“NEPA”), and the Connecticut Environmental Policy Act (“CEPA”) require the evaluation of “alternatives” as part of the decision-making process to ensure that the choice of project(s) to be implemented was made based on the full consideration of the potential impacts of the project and its alternative options on the environment. Once the SubCouncil has identified the projects that will be considered for implementation, the TWG and Consultant Team will begin the process of developing groups of projects into a number of restoration “alternatives”. The purpose of such grouping is to have a manageable number of alternatives in order to conduct the types of

analyses required by NEPA and CEPA. This grouping of projects may be by types (e.g., habitat restoration or recreation enhancement) or they may be organized by geographic area or some other criteria. How projects will be grouped cannot be determined until the number and variety of eligible projects is known, and the evaluation criteria applied to provide some means of comparing the relative merit of the various eligible projects. However, the grouping of projects into various alternatives will be subject to public discussion, review and comment.

- Detailed Analysis of the Alternatives Pursuant to NEPA and CEPA. The TWG and the Consultant Team will undertake a more detailed technical review and analysis of the potential environmental and social impacts of the identified restoration alternatives. This analysis must include an evaluation of the “no action” alternative (what will happen if no restoration is undertaken and the natural resources are allowed to recover without intervention). It will also include a comparative analysis of the various alternatives to determine which alternatives provide the best environmental outcome. The analysis will include further evaluation of the potential cost of the alternatives, the potential environmental and social impacts, positive and negative, and evaluation of the feasibility of the alternatives. The feasibility component relates to both the technical and the legal issues that may determine if the project is physically viable or permissible/permittable under applicable law. The analysis will also include an evaluation of what on-going maintenance may be required for each alternative as well as a consideration of possible sources of additional funding that may be available for certain types of projects.

The results of the Consultant Team’s detailed technical analysis of the alternatives will be reviewed by the TWG and will also be published for public review. Following the review period, one or more public meetings will be held to discuss the proposals and to receive comment. There will also be an opportunity for the public to submit written comment. This is a critical step, as it will ultimately result in the determination of which alternative(s) are chosen as Preferred Alternative(s) in the Interim Draft Restoration Plan.

- Selection of the Preferred Alternative(s). Following the receipt and consideration of public input, the SubCouncil will determine which projects will make up the “Preferred Alternatives” that will be included in the Interim Draft Restoration Plan. It is important to note that the Restoration Plan must describe all alternatives that were considered and document how about the decision was made to implement the Preferred Alternative(s).
- Preparation and Adoption of the Final Natural Resources Restoration Plan. The outline of the steps below summarizes the final restoration plan preparation and adoption process. A detailed description of the process is provided in Appendix C.
 - Preparing the Interim Draft Restoration Plan
 - Public meetings/workshops to discuss the Interim Draft Restoration Plan; solicitation of public input.
 - Preparation of the Draft Final Restoration Plan

- Public Hearing on the Draft Final Restoration Plan
- Preparation of the final Restoration Plan and Responsiveness Summary
- Approval of the final Natural Resources Restoration Plan by the Trustee SubCouncil.
The final version of the Restoration Plan will be submitted to the SubCouncil for formal approval. Once approved by the SubCouncil, Phase III – implementation - begins.

PUBLIC PARTICIPATION PLAN

The foregoing description of the planning process includes mention of the many specific opportunities for public participation. Following public review and discussion of this document, the Communications Consultant will develop a complete Public Participation Plan. The Public Participation Plan (PPP) will detail the techniques and methodologies that will be used to facilitate public input, a more detailed discussion of the nature and frequency of public participation opportunities and plans for dissemination of project information. The Communications Consultant will also provide a summary of the Public Participation Plan for inclusion in the final draft of this document.

Appendix A

Project Contacts and On-Line Information Sources

Connecticut Department of Environmental Protection (DEP)

Department of Environmental Protection
79 Elm Street
Hartford, CT 06106

Edward Parker, Chief, Bureau of Natural Resources
Trustee Representative to the Trustee Council and CT SubCouncil
Ph. 860-424-3010
email (secretary): karen.onofri@po.state.ct.us

Rick Jacobson, Assistant Director, Inland Fisheries Division
Trustee Alternate Representative to the Trustee Council and CT SubCouncil, and Trustee Work Group member
Ph. 860-424-3474
email: rick.jacobson@po.state.ct.us

Susan Peterson, Housatonic Watershed Coordinator, Bureau of Water Management
DEP Alternate to the CT SubCouncil
Trustee Work Group member
Ph. 860-424-3854
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United States Fish and Wildlife Service (USFWS)

Veronica Varela, Environmental Contaminants Biologist &
Natural Resource Damage Assessment and Restoration Specialist
Trustee Representative to the Trustee Council and CT SubCouncil, and Trustee Work Group member
U.S. Fish and Wildlife Service, New England Field Office
70 Commercial Street, Suite 300
Concord, New Hampshire 03301
Ph. 603-223-2541 ext. 16
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National Oceanic and Atmospheric Administration (NOAA)

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Trustee's Representative to the Trustee Council and CT SubCouncil, and Trustee Work Group member
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Fax: 860-344-8599
Cell: 860-966-3940

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On-line Information Resources

EPA GE/Housatonic Web Site: <http://www.epa.gov/region01/ge/index.html>

Memorandum of Agreement between the Natural Resource Trustees:

<http://www.epa.gov/region01/ge/restoration/29677.pdf>

[Additional on-line resources will be identified and included in this appendix. On-line resource will also be identified, and appropriate links provided, on the project web page being developed in Phase I.]

Appendix B

HOUSATONIC BASIN NATURAL RESOURCES RESTORATION PROJECT

CONNECTICUT TRUSTEE'S ADVISORY GROUP

PURPOSE AND ROLE IN THE RESTORATION PROCESS

BACKGROUND

Under the provisions of the relevant federal law, the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), the assessment of natural resource injury and the use of any funds ("Natural Resource Damage Recoveries" or "NRD Recoveries") obtained for the restoration of injured natural resources is the responsibility of the Natural Resource Trustees.

In the current project involving the restoration of natural resources damaged by the release of PCBs from the General Electric facility in Pittsfield, Massachusetts, the Natural Resource Trustees are: The Commissioner of Environmental Protection for the State of Connecticut, The Secretary of Environmental Affairs for the Commonwealth of Massachusetts, The Under Secretary of Oceans and Atmosphere of the National Oceanic and Atmospheric Administration (NOAA), and the Regional Director, United States Fish and Wildlife Service, Region 5 (on behalf of the Department of the Interior).

The Natural Resource Trustees have executed a Memorandum of Agreement ("MOA") establishing a framework for the development, implementation and oversight of restoration activities funded from the Natural Resource Damage Recoveries obtained under the Consent Decree. Pursuant to the provisions of Section VII of the MOA, Natural Resource Trustee SubCouncils for the geographic regions of Massachusetts and Connecticut have been formed. The Trustee SubCouncil for Connecticut consists of the Trustee Representatives for the Commissioner of Environmental Protection for the State of Connecticut, the U.S. Fish and Wildlife Service (on behalf of the Department of the Interior), and the National Oceanic and Atmospheric Administration. Each SubCouncil has the authority, pursuant to Sec. VII, paragraph B.3. of the MOA, to authorize expenditure of the NRD Recovery allocated solely to the geographic region of the SubCouncil.

Pursuant to the MOA between the State and Federal Trustees, the Commissioner of Environmental Protection for the State of Connecticut, in partnership with the two federal trustees, is responsible for developing and implementing a Natural Resources Restoration Plan ("Restoration Plan") that will identify how the Natural Resource Damage Recovery allocated to the geographic region of Connecticut will be used. All decisions regarding expenditure of the NRD Recovery allocated to Connecticut require the unanimous approval of the Trustee Representatives making up the Trustee SubCouncil for Connecticut.

The MOA makes specific provision for the creation and “use” of advisory groups. The Connecticut Trustee’s Advisory Group (“CTAG”) was created pursuant to the provisions of Section VII Paragraph I of the Trustee Memorandum of Agreement (“MOA”). That paragraph is pertinent with regard to both the creation and the purpose and role of the CTAG in the restoration process.

Paragraph I reads as follows:

“I. Advisory Groups or Public Meetings. The Trustee Council, SubCouncil, or any individual Trustee, acting either separately or collectively, may organize and convene public meetings or establish and use an Advisory Group to provide review, technical comment, guidance and recommendations on proposals for Natural Resource Restoration, the restoration plan, work in progress or that has been completed under contract or other agreement (to ensure satisfactory compliance with such contract or other agreement), or other technical matters relating to the objectives of this MOA. An Advisory Group may include members from Federal, state or local governmental agencies, non-profit organizations, citizens or private businesses who agree to voluntarily participate. Any Advisory Group “established” and “used” solely by either the Mass. Trustee or the Conn. Trustee (or both) shall not be considered a Federally “established” or “used” advisory committee within the meaning of the Federal Advisory Committee Act (“FACA”), 5 U.S.C. app. 2 §§ 1-15, by virtue of the fact that either the Mass. Trustee or Conn. Trustee provides or shares the comments or work product of the Advisory Group with other members of the Trustee Council or SubCouncil or that such comments or work product is considered in informing decisions of the Trustee Council. The reasonable costs of any Trustee in convening such a public meeting or Advisory Group shall be considered a cost of restoration planning.”

FORMATION OF ADVISORY GROUP

An advisory group has been formed by the Commissioner of Environmental Protection in accordance with the provisions of Section VII Paragraph I of the MOA. The group was formed to advise the Commissioner, who is the Connecticut Trustee, regarding the development and implementation of the Restoration Plan. The group, known as the Connecticut Trustee’s Advisory Group (“CTAG”), is made up of nineteen (19) organizations (see Attachment A) that have had an active and long-standing interest in the restoration and enhancement of natural resources within the Housatonic River Basin, or are representative of the geographic area affected by the PCB contamination and restoration efforts.

RESTORATION PLAN DEVELOPMENT

Before attempting to define the role of the CTAG, it is important to have an understanding of the restoration planning phase of the process. Over the course of the restoration planning phase, the Trustees will be requesting public input on a number of key elements of the process. These key elements generally represent points at which important information will be gathered and/or significant decisions made. The following is a list of some of the key elements or steps in the process:

- Development of the Restoration Planning Process Document. This document will set out the process that the Trustee SubCouncil for Connecticut will use to develop the final Restoration Plan.
- Development of the Public Participation Plan. This plan will set out the mechanisms that the Trustee SubCouncil for Connecticut proposes to use to keep the public fully informed regarding the development of the Restoration Plan and to encourage public participation and input into that process.
- Identification of Eligibility Criteria as they relate to injured natural resources and impaired natural resource services. These are criteria based on Federal and State laws and regulations pertaining to natural resource restoration and the use of funds (“damages”) recovered from responsible parties. A proposed project must meet all eligibility criteria in order to be considered further. Due to the manner in which this natural resource damage settlement was reached, there is still work to be done in determining how the injuries and impairments that resulted from the release of PCBs and other pollutants from the GE facility should be factored into the eligibility and evaluation of restoration projects. In particular, because the resources injured may be quite varied, it may not be feasible to draft Eligibility Criteria that clearly delineate whether or not a project addresses resources that were injured or services that were impaired. It seems likely that the best approach will be to factor into the Evaluation Criteria (see below) some measure of the degree to which a proposed project restores or replaces resources or services that were impacted.
- Development of Evaluation Criteria. These are the criteria by which eligible projects will be evaluated or ranked against one another to determine which such projects offer the best or most relevant restoration potential for the cost.
- Solicitation and development of restoration project proposals and ideas.
- Screening of Proposed Restoration Projects utilizing the Eligibility Criteria. This step will result in the development of a list of Eligible Restoration Projects for further evaluation and analysis.
- Evaluation of the Eligible Restoration Projects utilizing the Evaluation Criteria, including consideration of the analysis provided by the technical consultants on potential cost and impact. This step will result in the development of a list of Preferred Restoration Projects that will be further evaluated for possible inclusion in the Restoration Plan. The Preferred Restoration Projects will be evaluated in greater detail for potential cost, environmental impact and feasibility.
- Review of the results of the detailed technical analysis by the consultants of the Preferred Restoration Projects. This step will result in the determination of which projects are chosen as “Recommended Projects” for inclusion in the draft Restoration Plan.

- Review and comment on the draft Natural Resources Restoration Plan (“Restoration Plan”). This will involve review of the Recommended Projects, the projected costs, feasibility and impacts and the description of the evaluation and decision-making process.

ROLE OF THE CONNECTICUT TRUSTEE’S ADVISORY GROUP

The primary role of the CTAG is to advise the Connecticut Trustee regarding the development of the Restoration Plan from the point of view of the various organizations that make up the CTAG. The principal ways that the CTAG will do that is by:

- Review and Comment on Documents: The CTAG will be asked to review and provide comment/input to the Connecticut Trustee on a variety of draft and final work products and documents developed during the course of the restoration planning process. Work products and documents include, but are not limited to: the Restoration Planning Process Document, the Public Participation Plan, the design and functioning of the web site, the Scope of Work for Phase II, proposed Eligibility Criteria, proposed Evaluation Criteria, the various drafts of the Restoration Plan, and any other progress documents created during the development of the final Natural Resources Restoration Plan. The majority of these documents will be developed by the Trustee SubCouncil, Trustee Work Group and/or the Consultant. However, other documents that are pertinent to the development of the Restoration Plan may be submitted from a variety of sources. Any draft work product or document made available to CTAG for review will also be made available for the general public to review.
- Participation in Development of Work Products/Decisions: In addition to review and comment on a variety of work products and documents, it is anticipated that the CTAG will be involved in the development of a number of important work products that are critical to the planning process. These include, but are not limited to: finalization of the Eligibility Criteria, development of the Evaluation Criteria, participation in the application of Eligibility and Evaluation Criteria to proposed projects and participation in discussions leading to the selection of “preferred” restoration projects. Again, the participation of the general public will be actively sought in these activities; however, the CTAG is expected to provide input that represents the views of the member organizations.
- Develop and Submit Project Proposals: The representatives to the CTAG will be expected to solicit ideas and project proposals from their respective member groups as well as developing project proposals collectively as a group to submit to the Connecticut Trustee. The CTAG will also have the opportunity to provide review and comment on proposals that have been collected by the Trustee SubCouncil from others (e.g. Trustee agencies, other governmental sources and the general public).

FUNCTIONAL/OPERATIONAL CONSIDERATIONS OF THE CTAG:

- Support provided to CTAG: The Connecticut Trustee, through his assigned staff, will provide any pertinent materials, presentations or clarification requested by the CTAG. The Connecticut Trustee's staff will attend CTAG meetings to provide information as needed and to ensure prompt response to questions or requests for information by the CTAG. The Consultant Team may also be tasked by the Trustee with providing information by way of documents or presentations as needed. Because of the cost of consultant time, it is anticipated that members of the Consultant Team will only attend CTAG meetings when it is necessary for the presentation of information. As was the case with the request for secretarial support, the Connecticut Trustee will seek financial support for the work of the CTAG from the Trustee SubCouncil when appropriate.
- Interaction with the Natural Resource Trustees: As the paragraph cited above from the MOA suggests, there are regulatory constraints on the creation or use of advisory groups by federal agencies. It is primarily for this reason that the CTAG was created by the Connecticut Trustee and will be "used" by the Connecticut Trustee. In order to avoid any problems for the federal Trustees or their representatives, it is important that any formal communications involving the CTAG be through the Connecticut Trustee. As also noted in the MOA, the federal trustees are free to consider any input or information from a non-federal advisory group that the Connecticut Trustee may chose to provide to them. In addition, it is entirely legitimate for the CTAG to request that the Connecticut Trustee obtain information and guidance from the federal Trustees. That said, it is important to note that every CTAG member organization and every delegate to the CTAG has the same right that any other interested party has to contact the federal Trustees and to attend and participate in Trustee SubCouncil meetings. The critical factor in deciding whether or not communication needs to go to the Connecticut Trustee is whether or not that communication expresses the view of the advisory group rather than that of individual member organizations or individuals.
- Relevant Legal Requirements: In its operations, meetings and communications, the CTAG is subject to the requirements of the Connecticut Freedom of Information Act [Section 1-200 Et. Seq. of the Connecticut General Statutes]. The most important of the requirements arising from that Act pertaining to the CTAG are the requirements that all CTAG meetings be open to the public, that they are properly noticed and that accurate minutes of meetings and deliberations be kept and made publicly available. In addition, any communications between members relevant to the business of the CTAG, and any communications from the CTAG are public documents and must be retained and made available pursuant to the Act. The provision of secretarial support to the CTAG was specifically for the purpose of enabling compliance with these requirements.

Although the federal laws and regulations that delineate the restoration process and acceptable outcomes do not specifically bind the CTAG, the CTAG should be aware that the Trustees are so bound. That means that despite any input from the CTAG, or any

other entity, the Trustees cannot approve projects that would be deemed ineligible under applicable law or that were developed outside the required process.

OTHER ISSUES PERTINENT TO THE ROLE OF THE CTAG:

CTAG participants are expected to act as liaison with their respective organizations in order to foster the exchange of information and ideas between those groups and the Connecticut Trustee. Working with the CTAG is one component of a comprehensive Public Participation Plan that the Connecticut Trustee will be developing in concert with the other Trustees.

How the CTAG goes about participating in the process is largely up to the members. The Connecticut Trustee is open to input from the CTAG in any reasonable form. It may be that the CTAG will chose to vote on various items and projects and report the results to the Trustee. Instead, or in addition, it may wish to submit reports that present the views of the group in more detail at each stage of the development of the Restoration Plan.

It is important to note that the CTAG holds no decision-making power regarding which proposed projects are evaluated and selected. That authority and responsibility is reserved to the Trustees by federal law. That said, if the CTAG members arrive at unanimous agreement, or even substantial agreement on an issue, the fact that such diverse interests can agree on the issue is important information for the Trustees to have. Conversely, if the CTAG members remain deeply divided on an issue or project that too is valuable information to the decision-makers.

Beyond the general outline and guidance provided in this document, the CTAG members must work to define the role of the group in the restoration project. All of the member groups and their selected representatives are experienced in public decision-making. Although the CTAG may request additional guidance from the Connecticut Trustee at any time, the Trustee and his staff view the CTAG as an independent entity that will reach its own conclusions regarding the many issues that lie ahead.

**Attachment A
(to Appendix B)**

List of Organizations making Up the Connecticut Trustee's Advisory Group

1. Housatonic Coalition
2. Housatonic Valley Association
3. Housatonic River Commission
4. River Sports Alliance
5. Naugatuck River Watershed Association
6. Pomperaug River Watershed Coalition
7. Shepaug River Association
8. Northwestern Connecticut Council of Governments
9. Housatonic Valley Council of Elected Officials
10. Valley Council of Governments
11. Council of Governments of the Central Naugatuck Valley
12. Lake Lillinonah Authority
13. Lake Zoar Authority
14. Candlewood Lake Authority
15. Lake Housatonic Authority
16. Northeast Generation Services
17. South Central Regional Council of Governments
18. Greater Bridgeport Regional Planning Agency
19. Litchfield Hills Council of Elected Officials

Appendix C

Detailed Description of the Preparation and Adoption of the final Natural Resources Restoration Plan

- **Preparation of the Interim Draft Restoration Plan.** The Consultant Team will prepare and submit an Interim Draft Restoration Plan (IDRP) to the TWG for review and comment. The IDRP will outline the purpose, goals and objectives of the plan; it will document the evaluations undertaken to that point in the process and it will summarize the results of those evaluations.
- **Public meetings/workshops to discuss the Interim Draft Restoration Plan.** This will involve review of the Preferred Alternatives; the projected costs, feasibility and impacts of the Preferred Alternatives; and the evaluation and decision-making process. It is anticipated that more than one meeting or workshop may be needed to provide ample opportunity for discussion of the technical analysis and the projects included in the IDRP. A decision regarding the number of such meetings/workshops will be made with input from the public. Provisions will be made to accept public input both verbally at the meetings/workshops and in writing from those who would prefer to do so.
- **Preparation of the Draft Final Restoration Plan.** After receiving and factoring in input from the public and interested parties, the TWG and Consultant Team will prepare the “Draft Final Restoration Plan (DFRP)”. This is the version of the Restoration Plan that will go to public hearing prior to consideration for approval by the SubCouncil.

It is anticipated that one or more public informational meetings will be held to present the DFRP to the public and answer any questions prior to the formal public hearing. Input from these informational meetings will be used by the TWG in preparation for the formal public hearing.

- **Public Hearing on the Draft Final Restoration Plan.** A formal public hearing will be held on the Draft Final Restoration Plan. At this hearing, the Trustee SubCouncil will take formal public comment. In addition, specific provisions, including a specific timeframe, will be established for submission of written comment.

Preparation of the Final Restoration Plan and Responsiveness Summary. Following the public hearing, the TWG and Consultant Team will prepare the final version of the Natural Resources Restoration Plan for consideration and action by the SubCouncil. In preparing the final version, the TWG will make revisions as appropriate or necessary based on input received from the public hearing, any written comment submitted and any direction provided by the SubCouncil. The TWG and the Consultant Team will also prepare a Responsiveness Summary, which will describe the public comments received and the action(s) taken or changes made as a result of those comments. The response will also include the answers to any questions asked in the formal comments.