

**Restoration Plan and Environmental Assessment
for the
DuPont Waynesboro - South River/South Fork Shenandoah
River/Shenandoah River Site**

March 2017

prepared by:

Natural Resource Trustees:
U.S. Fish and Wildlife Service
Commonwealth of Virginia



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LIST OF ACRONYMS

BMP	Best Management Practice
CD	Consent Decree
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
CEQ	Council on Environmental Quality
C.F.R.	Federal Code of Regulations
COC	Contaminant of Concern
CWA	Clean Water Act, or Federal Water Pollution Control Act
CWPNAP	Cowbane Wet Prairie State Natural Area Preserve
DOI	U.S. Department of the Interior
DSAY	Discounted Service Acre-Year
EA	Environmental Assessment
EIS	Environmental Impact Statement
EPA	U.S. Environmental Protection Agency
ESA	Endangered Species Act
FCA	Fish Consumption Advisory
FONSI	Finding of No Significant Impact
FRFH	Front Royal Fish Hatchery
FWS	U.S. Fish and Wildlife Service
HEA	Habitat Equivalency Analysis
MCI	Madison Cave Isopod
MOA	Memorandum of Agreement
NAAQS	National Ambient Air Quality Standards
NEPA	National Environmental Policy Act
NOAA	National Oceanic and Atmospheric Administration
NFSR	North Fork Shenandoah River
NMFS	National Marine Fisheries Service
NPL	National Priorities List
NRDAR	Natural Resource Damage Assessment and Restoration
NRCS	Natural Resources Conservation Services
NRDC	Natural Resources Defense Council
PRP	Potentially Responsible Party
PV	Present Value
RCRA	Resource Conservation and Recovery Act
REA	Resource Equivalency Analysis
RP/EA	Restoration Plan/Environmental Assessment
SR	South River
SFSR	South Fork Shenandoah River

SRST	South River Science Team
SWMU	Solid Waste Management Units
USACE	U.S. Army Corps of Engineers
U.S.C.	U.S. Code
VDCR	Virginia Department of Conservation and Recreation
VDEQ	Virginia Department of Environmental Quality
VDGIF	Virginia Department of Game and Inland Fisheries
VDH	Virginia Department of Health

EXECUTIVE SUMMARY

From 1929 to 1950, mercury was used in the manufacturing process at the former E.I. du Pont de Nemours and Company (DuPont) plant located in Waynesboro, VA. Mercury releases from the DuPont plant impacted soil and groundwater on-site, and storm sewers transported mercury to the South River, which continued downstream to the South Fork Shenandoah River and Shenandoah River. Natural resources (*e.g.*, sediments, invertebrates, fish, amphibians, reptiles, birds, and mammals) have been exposed to and adversely affected by the mercury release. Remedial activities are ongoing under the direction of the U.S. Environmental Protection Agency (EPA) and the Virginia Department of Environmental Quality (VDEQ).

Under federal law, through the Natural Resource Damage Assessment and Restoration (NRDAR) process, natural resource Trustees are authorized to assess and recover damages resulting from injuries to natural resources attributable to hazardous substance releases. The Trustees then utilize these recovered damages to plan and implement actions to restore, replace, rehabilitate, and/or acquire the equivalent of injured natural resources and the services they provide. Trustees in this case, the Commonwealth of Virginia, acting through VDEQ and the United States Department of the Interior acting through U.S. Fish and Wildlife Service, developed this final Restoration Plan and Environmental Assessment (RP/EA) in accordance with 43 C.F.R. § 11.93 to inform the public as to the types and amount of restoration that are expected to compensate for injuries to natural resources and the services they provide associated with the mercury release from the former DuPont plant.

Under the National Environmental Policy Act, federal agencies must identify and evaluate environmental impacts that may result from federal actions. In this final RP/EA, the Trustees describe the purpose and need for action, identify potential restoration alternatives, including a No Action alternative, summarize the affected environment, and describe the potential environmental consequences of proposed restoration activities. The Trustees solicited public input on the Draft RP/EA, and Appendix D provides a summary of the comments received and the Trustee responses.

CHAPTER 1 INTRODUCTION AND SUMMARY

1.1 Purpose and Need for Restoration

This final RP/EA has been prepared by the Trustees to address natural resources injured and ecological services lost due to releases of mercury from the former DuPont plant located in Waynesboro, VA (the Facility). The purpose of the RP/EA is to present the “Preferred Alternative” restoration project or projects that will accomplish the goal of restoring, rehabilitating, replacing and/or acquiring the equivalent of those natural resources, and the services those resources provide, that have been injured from the mercury release.

For decades, mercury was released into the South River (SR), and transported downstream into the South Fork Shenandoah River (SFSR), Shenandoah River, and associated floodplain and upland habitat. A number of natural resources, including sediments, mussels, fish, amphibians, reptiles, birds, and mammals have been exposed to and adversely affected by mercury released from the Facility. The proposed remedial actions to reduce mercury in the system include stabilizing banks to prevent erosion and re-suspension of contaminated particles in the river (Anchor QEA *et al.* 2013). This strategy will be implemented in stages, likely over a period of more than 10 years. The effectiveness of this technique is unknown and will take many years of monitoring to determine whether there is a reduction in mercury is due to remedial activities. Impacts from mercury exposure are expected to continue into the future, as remedial efforts are not likely to remove all mercury from the system.

The Trustees developed the RP/EA in accordance with 43 C.F.R. § 11.93 to inform the public as to the types and scale of restoration to be undertaken towards compensating for injuries to natural resources. Consistent with the U.S. Department of the Interior (DOI) NRDAR regulations, the Draft RP/EA included a reasonable number of restoration alternatives and identified a preferred alternative. Public comments were sought on the Draft RP/EA and were considered and incorporated in the RP/EA as appropriate.

1.2 Trustee Authority and Natural Resource Damage Assessment and Restoration

Under federal law, the Trustees are authorized to act on behalf of the public to assess injuries to natural resources and services resulting from the release of hazardous substances into the environment. The NRDAR process, formalized in the DOI regulations (43 C.F.R. § 11), allows Trustees to pursue claims against responsible parties for monetary damages based on these injuries in order to compensate the public. The goal of this process is to plan and implement actions to restore, replace, or rehabilitate the natural resources that were injured or lost as a result of the release of a hazardous substance, or to acquire the equivalent resources or the services

they provide (Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9601 *et seq.*; 43 C.F.R. § 11).

The following authorities authorize federal, state and tribal governments to act on behalf of the public as Trustees of natural resources:

- CERCLA, as amended (42 U.S.C. § 9601 *et seq.*)
- Federal Water Pollution Control Act, 33 U.S.C. § 1251, *et seq.* (more commonly known as the Clean Water Act or CWA)
- The Oil Pollution Act of 1990 (33 U.S.C. § 2701-2761 *et seq.*)
- Executive Order 12580 (52 Federal Register (FR) 2923 (January 23, 1987)), as amended by Executive Order 12777 (56 FR 54757 (October 19, 1991))
- National Contingency Plan (40 C.F.R. §§ 300.600 *et seq.*)

As noted previously, the Trustees for the DuPont Waynesboro NRDAR are the Commonwealth of Virginia, represented by VDEQ, and DOI, represented by the U.S. Fish and Wildlife Service (FWS). A Trustee Memorandum of Agreement (MOA) was executed in June 2008, formalizing this collaborative process. The Trustee responsibilities outlined in the MOA include, but are not limited to: assessment of injury to natural resources, restoration planning, developing cost of restoration, replacement, rehabilitation, and/or acquisition of the equivalent, and coordination with response actions.

Under CERCLA, the parties responsible for releases of hazardous substances may be invited to participate in a cooperative NRDAR process (43 C.F.R. § 11.32(a)(2)). Although the final authority regarding determinations of injury and restoration rests solely with the Trustees, cooperative assessments can be beneficial to the public by reducing duplication of effort, expediting the assessment, and implementing restoration earlier than might otherwise be the case. Since 2005, DuPont has worked cooperatively with the Trustees to complete injury assessment studies, and a Cooperative Natural Resource Damage Assessment Funding Agreement (Cooperative Agreement) was signed by all parties in 2005 and 2010. Under the Cooperative Agreement, the parties conducted a series of site-specific studies assessing the exposure of natural resources, such as songbirds, amphibians, turtles, and bats, to mercury and potential effects resulting from that exposure. These studies are discussed in more detail in Chapter 3.

DuPont's active involvement in the damage assessment and restoration planning process also included/s the following:

- Providing funding and assistance for assessment activities;
- Providing data and developing a database of contaminant concentration data;

- Participating in the development of injury assessments of ecological and human use services,
- Identifying parcels for potential land conservation; and
- Identifying other potential restoration projects.

The Trustees completed a Damage Assessment Plan in 2011, summarizing existing information on natural resource injuries and describing proposed studies to evaluate past, current, and future impacts to natural resources and the services they provide (Industrial Economics, Inc. (IEc) 2011). In addition, the Damage Assessment Plan outlined how information gathered from the studies would be used to determine the types and scale of restoration needed to address these injuries.

1.3 Summary of Settlement

Based on the results of the natural resource injury determination and other legal considerations associated with the Facility, the Trustees lodged a negotiated proposed consent decree with DuPont in the U.S. District Court for the Western District of Virginia on December 15, 2016 to implement various projects to effectuate restoration, replacement, rehabilitation and/or acquisition of the equivalent of the natural resources injured from mercury released from the Facility and/or the services those resources provide.

The proposed Consent Decree (CD) will allocate the settlement as follows: DuPont, working with the Commonwealth, will complete at its expense certain recreational fishing projects; and DuPont will pay \$42,069,916.78 into the DOI NRDAR Fund to be expended jointly by the state and federal Trustees to complete restoration projects meeting the requirements of the RP/EA designed to address the injury.

1.4 Facility History and Remediation

The Facility is located on approximately 177 acres on the eastern shore of the SR in Waynesboro, VA (Figure 1; U.S. Environmental Protection Agency (EPA) 2016). DuPont began operations at the Facility in 1929, manufacturing acetate flake and yarn, collectively referred to as acetate fibers. It discontinued production of acetate fibers in 1977. Other products historically manufactured on site included: Orlon®, Lycra®, Permasep®, and BCF Nylon; currently only Lycra is produced at the Facility, now owned and operated by INVISTA (EPA 2016). DuPont continues to own the real estate underlying the Facility.

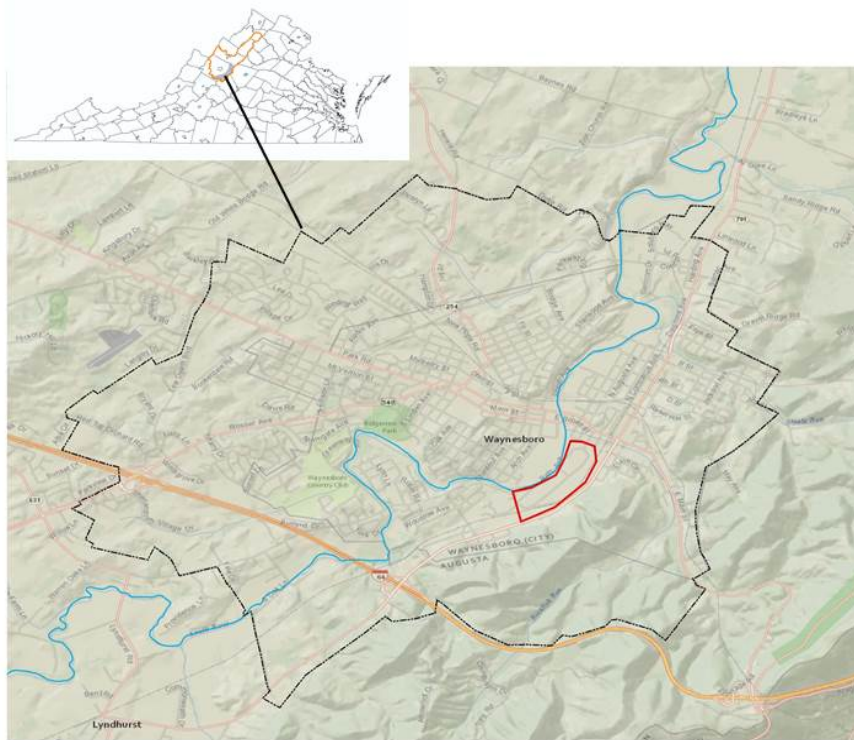


Figure 1. Location of DuPont Facility, outlined in red, encompassing 177 acres adjacent to the SR, in Waynesboro, VA.

From 1929 to 1950, mercury was used in the manufacturing process, and waste sludge was conveyed to an on-site retort facility where the mercury was to be recovered. However, mercury releases occurred, impacting soil and groundwater locally on-site, and storm sewers transported mercury from the Facility to the SR. Mercury continues to be encountered during investigations at the Facility and mercury releases to the SR occur via storm water runoff (VDEQ 2009, URS 2012, Anchor QEA *et al.* 2013). Mercury is transported and re-circulated downstream via surface water, sediments, and floodplain soils to the SFSR and Shenandoah River, and a variety of natural resources have been exposed to Facility-related mercury.

The mercury release was discovered in the 1970s, and a fish consumption ban, then advisory, was enacted in 1977 and 1979, respectively. As of 1999, fish tissue mercury levels had not declined since the early 1980s, as predicted, but instead concentrations remained steady or increased (URS 2012). DuPont and VDEQ discussed the need to assess mercury fate and transport in the SR and SFSR, and founded the South River Science Team (SRST) in 2001 to undertake this work. The SRST is a non-regulatory, collaborative group comprised of representatives from industry, state and federal governmental agencies, environmental groups, independent researchers, and other stakeholders. Since 2001, the SRST has met quarterly to coordinate efforts, identify data needs, collaborate, and share results and information concerning the assessment. Often the resulting studies have been used to support regulatory actions.

In 2005, DuPont entered into a consent decree with Natural Resources Defense Council (NRDC) and the Virginia Chapter of the Sierra Club as a result of lawsuit about the high mercury levels in fish and the associated threat to human health and the environment. It required that DuPont conduct a six-year ecosystem study of the SR watershed to delineate the threat and how to eliminate it, as well as fund abatement measures and propose a remedial plan. A revised consent decree was signed in 2014 that settled the matter with NRDC and Sierra Club.

DuPont has also conducted numerous on-site investigations under the Resource Conservation and Recovery Act (RCRA) Corrective Action Permit (VAD003114832; issued in 1998 and renewed in 2009) managed by EPA and VDEQ. EPA has regulatory authority for the investigation and remediation of contamination on Facility property and VDEQ has the regulatory authority for investigation and remediation of contamination of the rivers and floodplain. A RCRA Facility Investigation was conducted in three phases to characterize solid waste management units (SWMUs) where hazardous substances may have impacted the environment; studies included soil and groundwater sampling at 20 identified SWMUs. DuPont is implementing interim measures (*e.g.*, cleaning sewers) until the final remedy is selected. In 2014, VDEQ approved a Class 2 Permit Modification Request to incorporate the SR and parts of the SFSR (including the floodplain) into VAD003114832. Remedial activities for the rivers are ongoing. A remediation proposal was released in 2013 as required by the 2005 consent decree with NRDC/Sierra Club. The proposal found that a primary mechanism for the continued mercury loading to parts of the SR was through the slow erosion of legacy mercury deposits that currently reside in riverbank soils. Approximately 40 to 60% of the mercury that currently cycles through the food web into smallmouth bass tissue likely originates from eroding bank soils (Anchor QEA *et al.* 2013).

1.5 Relationship to Remedial Activities

NRDAR is a process that occurs in addition to the remedial process conducted by regulatory agencies like the EPA. These two processes have different goals. Remedial action objectives are risk-based, and are developed to protect human health and the environment from further unacceptable harm. The goal of NRDAR is the restoration of resources to their baseline condition, or what their condition would be absent the release of a hazardous substance. Losses resulting from natural resource exposure to released hazardous substances are estimated over time until the resource is restored. These losses can extend beyond the date of remedy completion if contaminants will be left in the environment at levels injurious to natural resources.

There are components of NRDAR and remedial actions that overlap. For example, remedial decisions can include consideration of restoration objectives identified by the NRDAR process. Work to remedy a site may partially or completely restore injured natural resources, and

NRDAR estimates take this into account. In addition, remedial actions may cause “collateral injury” to habitat, and quantification and restoration of this remedy-induced injury is evaluated within the NRDAR process.

For the DuPont Waynesboro NRDAR process, the Trustees have interacted and continue to interact with EPA and VDEQ as they evaluate, select, design, and implement remedies. This coordination provides an understanding of the remedial process and helped the Trustees evaluate how each of the remedial decisions affects estimates of natural resource damages.

1.6 Compliance with National Environmental Policy Act and Other Authorities

Restoration alternatives described in this document will be conducted in compliance with all applicable federal, state, and local regulations.

Federal natural resource and environmental laws, orders, and regulations considered during the development of this RP/EA include but are not limited to the: Endangered Species Act (ESA) of 1973; Farmland Protection Policy Act of 1981; Wild and Scenic Rivers Act of 1968; Migratory Bird Treaty Act of 1918; National Historic Preservation Act of 1966; Archeological and Historic Preservation Act of 1974; Fish and Wildlife Coordination Act of 1934; U.S. Fish and Wildlife Mitigation Policy of 1981; Information Quality Act of 2001; Executive Order 11990 on Wetlands of 1977; and Executive Order 11988 on Floodplains of 1977. Explanation of compliance with these and other federal authorities is found in Section 5.5.

The major state environmental statutes and programs considered during the development of this RP/EA include but are not limited to the: Virginia State Water Control Law, Va. Code § 62.1-44.5; Virginia Agricultural Best Management Practices Cost Share Program, Va. Code § 10.1-2128.1; Virginia Natural Area Preserves Act, Va. Code § 10.1-209 *et seq.*; and Virginia Cave Protection Act, Va. Code § 10.1-1000 *et seq.*

Actions undertaken by the Trustees to restore natural resources or services under CERCLA and other federal laws are subject to the National Environmental Policy Act (NEPA) (42 U.S.C. § 4321 *et seq.*) and the regulations guiding its implementation at 40 C.F.R. Parts 1500 through 1517. These authorities outline the responsibilities of federal agencies for preparing environmental documentation. In general, federal agencies contemplating implementation of a major federal action must produce an environmental impact statement (EIS) if the action is expected to have significant impacts on the quality of the human environment. When it is uncertain whether a contemplated action is likely to have significant impacts, federal agencies prepare an environmental assessment (EA) to evaluate the need for an EIS. If the EA demonstrates that the proposed action will not significantly impact the quality of the human environment, the agency issues a Finding of No Significant Impact (FONSI), which satisfies the

requirements of NEPA, and no EIS is required. For a proposed RP, if a FONSI determination is made, the Trustees may then issue a final RP describing the selected restoration action(s). In accordance with NEPA and its implementing regulations, this RP/EA summarizes the current environmental setting; describes the purpose and need for restoration actions; identifies alternative actions; assesses their applicability and potential impact on the quality of the physical, biological, and cultural environment; and outlines public participation in the decision-making process.

1.7 Public Participation

Public participation and review is an integral part of the restoration planning process, and is specifically required in the DOI NRDAR regulations (*e.g.*, 43 C.F.R. §11.81(d)(2)). In addition, NEPA and its implementing regulations require that federal agencies fully consider the environmental impacts of their proposed decisions and that such information is made available to the public. To facilitate public involvement in the ecological and recreational restoration planning process, the Trustees have been meeting with interested stakeholders since 2008 (Appendix A).

To continue the Trustees' dedication to public involvement, the Draft RP/EA was available for public review and comment for a period of 45 days in accordance with 43 C.F.R. § 11.81(d)(2). The Trustees addressed public comments and documented responses to those comments as part of the final RP/EA (Appendix D).

Comments were submitted in writing and were due to the Trustees by January 30, 2017. To submit a comment, request a hard copy of the Draft RP/EA, or for additional information, the following contact information was provided in the Draft RP/EA:

Anne Condon
U.S. Fish and Wildlife Service
6669 Short Lane
Gloucester, VA 23061
anne_condon@fws.gov

Copies of the Draft RP/EA were available online at:
<https://www.fws.gov/northeast/virginiafield/news/news.html>

As restoration progresses, the Trustees may amend the RP/EA if significant changes are made to the types, scope, or impact of the projects. In the event of a significant modification to the RP/EA, the Trustees will provide the public with an opportunity to comment on that particular amendment.

1.8 Administrative Record

An administrative record consisting of a catalog of all documents Trustees used to develop and make decisions related to the NRDAR process, including the Draft RP/EA, is maintained by FWS at the Virginia Ecological Services Office in Gloucester, VA.

1.9 Organization of the RP/EA

The remainder of this document is organized as follows:

- Chapter 2 describes the affected environment.
- Chapter 3 describes the injury assessment strategy and evaluation for ecological resources and human use / recreational fishing.
- Chapter 4 describes restoration alternatives.
- Chapter 5 evaluates the restoration alternatives, including the environmental impacts.
- Chapter 6 describes the selection of the preferred alternative for ecological and recreational fishing restoration.

CHAPTER 2 AFFECTED ENVIRONMENT – NATURAL RESOURCES / WATERSHED

The RP/EA evaluates restoration options to compensate the public for the natural resource injuries and associated losses in ecological and recreational services resulting from exposure to Facility-related mercury. As part of the evaluation, the Trustees assessed the current physical, biological, socio-economic, and cultural resources of the area within which restoration is likely to occur (the SR and SFSR watershed). This information will assist the Trustees in planning future restoration activities and ensure that potential restoration projects are designed to both maximize ecological and human use benefits while minimizing or eliminating project-related adverse environmental consequences.

This chapter presents a description of the physical, biological, and cultural environment for the waterways and ecosystems adjacent to and in the vicinity of the Facility as required by NEPA (42 U.S.C. § 4321, *et seq.*). The assessment area, the area impacted by the mercury releases and the focus of the injury assessment studies, is contained within the larger affected environment (Figure 2). The majority of restoration activities under the RP/EA would occur in proximity to the same areas.

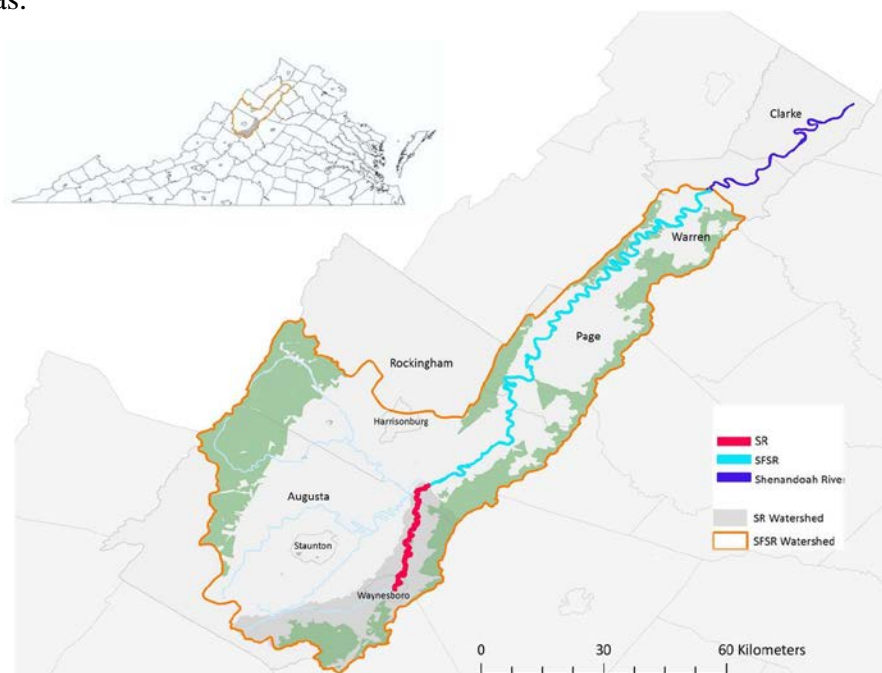


Figure 2. Assessment area includes the aquatic habitat of the SR downstream of Waynesboro, VA (pink), the SFSR (light blue), and for some analyses, the Shenandoah River (dark blue), plus the floodplain and upland habitat within a 300 m buffer around the SR and a 300 ft buffer around the SFSR. The remaining area within the SR and SFSR watershed is considered the affected environment and the area in which restoration is likely to occur. Green shading indicates conservation lands (National Forest, National Park, State Park, or State Natural Area Preserve).

2.1 Watershed

From its headwaters southwest of the City of Waynesboro, the SR flows in a northerly direction for approximately 50.8 miles to the town of Port Republic in Rockingham County. The drainage area of the SR is 235 square miles, with 89% in Augusta County, 6% in the City of Waynesboro, and 5% in Rockingham County (VDEQ 2009). As the SR approaches Waynesboro, large natural springs cool the water and increase flow.

In Port Republic, the SR merges with the North River to form the SFSR, which flows north through Rockingham, Page, and Warren Counties for approximately 100 miles. The SFSR drains approximately 1,700 square miles, and other major tributaries include the Middle River and Christians Creek (VDEQ 2009). There are 20 public access points along the SFSR offering recreational opportunities; the SFSR is a popular destination for canoeing and fishing, attracting thousands of users each year (VDGIF 2016). The majority of the land bordering the SFSR is private property, with the exception of the public access points, the Virginia-owned Andy Guest Shenandoah River State Park, and small sections of the George Washington National Forest on the west bank of the river.

At Front Royal, the SFSR merges with the North Fork Shenandoah River (NFSR) to form the Shenandoah River. This river continues to flow approximately 57 miles through Virginia and West Virginia, joining the Potomac River in Harper's Ferry, WV, and ultimately draining into the Chesapeake Bay. The main stem Shenandoah River is one of the top smallmouth bass rivers in the eastern United States, and the section that runs through Clarke County, VA, is designated as a component of the Virginia Scenic River System (Va. Code § 10.1-417). Most of the land adjacent to the Shenandoah River is privately owned. Numerous anthropogenic and natural barriers exist between the headwaters of the Shenandoah drainage and the Chesapeake Bay; for example, the SFSR has three run-of-river hydropower dams and the Shenandoah River has one (VDGIF 2016a, b).

The SFSR watershed (which contains the smaller SR watershed, hereafter collectively referred to as the SR/SFSR watershed) is within the Valley and Ridge physiographic region. To the southeast of the watershed are the Blue Ridge Mountains and to the west is Massanutten Mountain (Krstolic and Ramey 2012). The area surrounding the SR and the SFSR is mostly forested (55%) and agricultural (30% grass/pasture, 4% row-crop agriculture), interspersed with small urban populations (11%) including the City of Waynesboro and the towns of Grottoes and Elkton (Krstolic and Ramey 2012). The SFSR watershed receives many visitors annually to enjoy river-related activities.

The area enjoys significant natural heritage resources. For example, 17% of Augusta County contains natural heritage resources, such as habitat of rare, threatened, or endangered plant or animal species; unique natural communities; and significant geologic formations (Augusta County 2009). The SR/SFSR watershed supports numerous natural resources such as benthic organisms, fish, reptiles, amphibians, birds, and mammals, including state and federally listed species or species of concern. General descriptions of these resources are provided in Section 2.2 below.

2.1.1 Assessment Area

The assessment area includes the area within the SR/SFSR watershed that was considered in the NRDAR injury assessment to be impacted by mercury contamination from the Facility. The assessment area includes the 24 miles of the SR from Waynesboro to Port Republic, as well as the full extent of the SFSR (Table 1; Figure 2). Certain injury analyses also included the Shenandoah River within Virginia (*e.g.*, recreational fishing, ecological fish). The assessment area is discussed further in Chapter 3.

Table 1. Within the SR/SFSR watershed, the assessment area is a smaller area considered impacted by mercury contamination from the Facility. Below are the associated river miles, acres of aquatic habitat, and acres of floodplain/upland of the assessment area.

	River Miles	Acres of Aquatic Habitat	Acres of Associated Floodplain/Upland
SR	24	272	5,202
SFSR	101	3236	6,177
Shenandoah River	35	1445	NA
Total	160	4,953	11,379

2.2 Natural Resources in the SR/SFSR Watershed

The SR/SFSR watershed hosts a number of natural resources and unique habitats that Trustees considered in the NRDAR injury assessment (see Chapter 3) and when reviewing potential restoration projects.

Aquatic Resources

2.2.1 Mussels

Several species of native freshwater mussels were historically present in the SR, SFSR, Shenandoah River, and tributaries. Mussel surveys of the upper Shenandoah River system, conducted from the early 1900s through the 1970s, recorded nine species (Ortmann 1919, Johnson 1970, Clark 1981, Chazal and Roble 2011). Species composition is quite similar among the forks of the upper Shenandoah River, and also to other major tributaries of the Potomac River basin, like the Cacapon River in West Virginia, and Broad Run near Manassas, VA (Garst *et al.* 2014), indicating that most mussel species are widely distributed throughout the Potomac River basin. However, mussel surveys of the SFSR and NFSR systems conducted in the 1990s, early 2000s, and from 2008-2009 by biologists from the Virginia Department of Conservation and Recreation (VDCR), documented only three live species (triangle floater (*Alasmodonta undulata*), Eastern elliptio (*Elliptio complanata*), and creeper (*Strophitus undulatus*)) and showed that mussel abundance was very low in both the SFSR and NFSR (Chazal and Roble 2011). Surveys conducted in 2013 in the SR identified these same three species at survey locations upstream of Waynesboro (Garst *et al.* 2014).

2.2.2 Fish

The SR/SFSR watershed supports a diverse fishery. The fish assemblage in the Shenandoah drainage comprises 40 native species and subspecies and 18 introduced species (Jenkins and Burkhead 1994). Common taxa in the SR and SFSR rivers include smallmouth and largemouth bass (*Micropterus dolomieu* and *M. salmoides*), redbreast sunfish (*Lepomis auritus*), fallfish (*Semotilus corporalis*), shiners (*Cyprinella* spp. and *Notropis* spp.), dace (*Rhinichthys* spp.), white sucker (*Catostomus commersoni*), northern hogsucker (*Hypentelium nigricans*), darters (*Etheostoma* spp.), and sculpins (*Cottus* spp.). The American eel (*Anguilla rostrata*) migrates up the Potomac and Shenandoah Rivers from the Sargasso Sea and uses the SFSR and SR as elver and adult habitat.

As the SR approaches Waynesboro, several large springs enter the river providing an increase in flow and decrease in temperature. With the removal of the Rife-Loth Dam in 2010, this cold-water area now extends further downstream into the City of Waynesboro, creating suitable habitat for trout. Stocked species include: brook trout (*Salvelinus fontinalis*), rainbow trout (*Oncorhynchus mykiss*), and brown trout (*Salmo trutta*). A year-round trout fishery now exists several miles upstream of Waynesboro and downstream through most of Waynesboro City limits, creating a destination trout fishery for many anglers. As the SR warms downstream, habitat becomes more suitable for warm-water fish species; community composition varies

between upper and lower reaches of the SR reflecting the changes in habitat and water temperature (URS 2012).

2.2.3 Reptiles and Amphibians

Over 40 species of reptiles and amphibians occur in different areas within the SFSR watershed in wetland, riverine, and upland habitats. Some common reptile species along the SR include: snapping turtle (*Chelydra serpentina*), painted turtle (*Chrysemys picta*), stinkpot (*Sternotherus odoratus*), ratsnake (*Pantherophis alleghaniensis*), and northern watersnake (*Nerodia sipedon*). Common amphibians include: southern two-lined salamander (*Eurycea bislineata*), red-backed salamander (*Plethodon cinereus*), and American toad (*Bufo americanus*). Species of conservation concern found in the watershed include, but are not limited to: tiger salamander (*Ambystoma tigrinum*; state listed endangered), pine snake (*Pituophis melanoleucus*; state species of concern), and Big Levels salamander (*Plethodon sherando*), a woodland salamander endemic to the SR watershed, ranked as globally and state rare, and found in the Big Levels area within the George Washington National Forest/Blue Ridge Parkway.

Floodplain/Upland Resources

2.2.4 Birds

Both resident and migratory birds utilize habitat within the SR/SFSR watershed for breeding, feeding, and roosting. These include waterfowl, waterbirds, raptors, and songbirds. Surveys conducted in 2011 and 2012 in the upper SFSR watershed identified 113 species in various habitat types and elevations (Cristol 2012, unpublished data). Many of these species are neotropical migratory birds, breeding in or migrating through the watershed and wintering in Central or South America or the Caribbean. See Appendix B.

Species in the assessment area that are listed as species of greatest conservation concern (Tier I-IV) on the Virginia 2015 Wildlife Action Plan include, but are not limited to: belted kingfisher (*Megaceryle alcyon*), black and white warbler (*Mniotilta varia*), brown thrasher (*Taxostoma rufum*), Canada warbler (*Cardellina canadensis*), chimney swift (*Chaetura pelagica*), eastern kingbird (*Tyrannus tyrannus*), eastern meadowlark (*Sturnella magna*), eastern towhee (*Pipilo erythrophthalmus*), eastern wood-pewee (*Contopus virens*), field sparrow (*Spizella pusilla*), gray catbird (*Dumetella carolinensis*), and wood thrush (*Hylocichla mustelina*).

2.2.5 Mammals

Several species of mammals have been recorded in the SR/SFSR watersheds utilizing aquatic, floodplain, and terrestrial habitats. For example, muskrats (*Ondatra zibethicus*) forage on

shellfish in the river, and shrews (*Sorex* spp) prey on insects in the floodplain. Other species that use habitat in the watershed for feeding or breeding include river otters (*Lontra canadensis*) and mink (*Neovison vison*). Bats are also present in the watershed, foraging over the SR and SFSR, and roosting in caves, trees, and barns in the area. Bat species found in the watershed include big brown bat (*Eptesicus fuscus*), eastern red bat (*Lasiurus borealis*), and hoary bat (*Lasiurus cinereus*). Federally listed endangered Virginia big-eared bat (*Corynorhinus townsendii virginianus*) and Indiana bat (*Myotis sodalis*), federally and state listed threatened northern long-eared bat (*Myotis septentrionalis*), and state listed endangered little brown bat (*Myotis lucifugus*) and tri-colored bat (*Perimyotis subflavus*) may also be present in the watershed.

Unique Species and Features

2.2.6 Madison Cave Isopod

The Madison Cave isopod (*Antrolana lira*; MCI) is a federally listed threatened, free-swimming, sightless, subterranean crustacean that lives in karst aquifers. It is endemic to the northern Shenandoah Valley, VA, and Jefferson County, WV, and to date has been found exclusively in Cambrian/Ordovician aged carbonate bedrock (Orndorff and Hobson 2007). Until 1990, this rare isopod was known from only Madison Saltpetre Cave and the adjacent Steger's Fissure at the northeastern end of Cave Hill in Augusta County, VA. MCI abundance at Steger's Fissure is the highest in the species' range, estimated at 2,240-3,420 individuals (Fong 2007). As of 2010, the MCI was known from a total of 16 locations in the Shenandoah Valley from Leetown, WV, to Lexington, VA (FWS 2010).

2.2.7 Wetlands – Sinkhole Ponds

Freshwater emergent, forested, and pond wetland habitat is present throughout the watershed. The SFSR watershed also contains a unique group of depression wetlands, known as the Shenandoah Valley sinkhole ponds (Fleming and Van Alstine 1999). These sinkhole ponds occur on deep alluvial fans in Augusta, Rockingham, and Page Counties that were deposited over carbonate rocks along the foot of the Blue Ridge Mountains during the Pleistocene (see Figure 3 for locations of some of these sinkhole ponds). Solution of the underlying rock and reworking of surficial material by streams resulted in the development of numerous natural ponds varying in size from less than 0.1 acre to more than 3.7 acres. Pollen profiles from bottom sediments in two Augusta County ponds demonstrate the continuous existence of wetlands over the past 15,000 years (Craig 1969). Most ponds in the Shenandoah Valley complex experience seasonally fluctuating water levels. The hydroperiods of many ponds are irregular and unpredictable, varying with the size and depth of the basin, degree of shading, and local groundwater conditions. Three rare and apparently endemic community types occur in the Shenandoah Valley ponds, and their flora is notable for its high percentage of rarities.

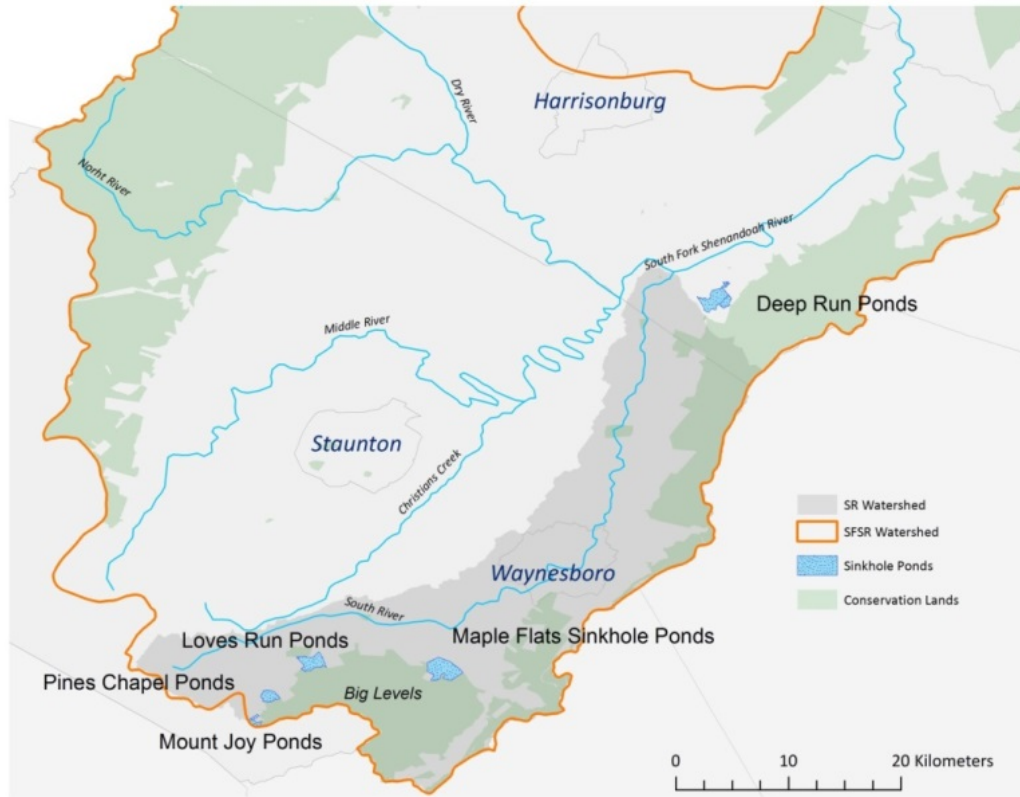


Figure 3. Sinkhole pond areas in Augusta and Rockingham Counties within the SR/SFSR watershed.

2.2.8 *Limestone Cave Habitat*

The SFSR watershed contains a number of historically and geologically significant limestone caves, including Grand Caverns, a National Natural Landmark located along the SR. The karst terrain, a landscape of sinkholes, sinking streams, and caverns, was formed by groundwater dissolving the limestone and dolostone that underlie the Shenandoah Valley floor. Several of the caves in the SFSR watershed are designated as significant under the Virginia Cave Protection Act, and provide habitat for the MCI and bat species (VDCR 2015).

2.3 *Cultural and Historic Resources*

The area contains significant historical and cultural resources, including Civil War battlefields and related historic sites, many of which are protected through Shenandoah Valley Battlefields Foundation (SVBF) and other partners (SVBF 2015).

2.4 *Ecological Stressors*

Ecological stressors in the SR/SFSR watershed include point source pollutants and industrial wastes, inadequately treated sewage, and agricultural and urban run-off and erosion from poor sedimentation control (FOSR 2013). The SFSR was listed as an impaired river in 1998 on Virginia's Section 303(d) Total Maximum Daily Load (TMDL) Priority List and Report, and again in 2002, 2004, 2006 and 2008 (Engineering Concepts, Inc. 2009). The impairment was due to exceedances of fecal coliform and bacteria standards. The SR, SFSR and Shenandoah River are also on the 303(d) list because of the mercury contamination. Many other streams within the watershed are listed as impaired; thirty streams in Augusta County (553.38 miles) have water quality impairments based on TMDLs for pollutants such as fecal coliform, bacteria, pH, and other contaminants (Augusta County 2009).

The SFSR watershed is home to dairy and beef cattle farms, with over 8,000 pairs of beef cattle and almost 3,000 dairy cattle as of 2009, and many have access to streams in the watershed (Engineering Concepts, Inc. 2009). The SFSR watershed also has chicken and turkey operations, and poultry litter is applied to cropland and pasture throughout the watershed. Augusta County, which contains most of the SR and its headwaters, is the second leading agricultural county in Virginia (Augusta County 2009). The county's watersheds, including the SR watershed, are experiencing excessive levels of soil erosion from farmland which can have negative impacts on stream quality and long term agricultural productivity (Augusta County 2009), particularly tributaries to the Middle River such as Christians Creek.

Areas within the watershed are experiencing increased human population growth and development in recent decades. In Augusta County, the growth rate for the decade 1990-2000 was 11.6%, the largest increase since 1960-1970 (Augusta County 2009). The population of Augusta and Rockingham Counties is expected to increase by 3% between 2015 and 2040 and more significant increases are predicted for cities and towns (*e.g.*, 37% expected increase in Waynesboro) (VDEQ 2015).

These stressors are important when evaluating restoration projects and areas – to help identify what projects to prioritize and what areas within the watershed to target – most in need of restoration, areas most at risk, where restoration will be most likely to succeed, etc. The existing stressors are also considered the evaluation of injury when establishing the baseline conditions of the area (see Chapter 3).

CHAPTER 3 INJURY ASSESSMENT

The natural resources listed in Chapter 2 provide a variety of services. Services are “the physical and biological functions performed by the resource, including the human uses of those functions, [that result from the resource’s] physical, chemical, or biological quality” (43 C.F.R. § 11.14 (nn)). For example, ecological services provided by benthic invertebrates and mussels include foraging opportunities for fish and birds, nutrient cycling, and water filtration. Wetland soils provide services by supporting healthy vegetation and diverse plant communities that in turn provide animals with foraging opportunities, nesting or denning areas, and protective cover. Examples of human use services provided by natural resources include opportunities for fishing, boating, and wildlife viewing and appreciation.

Injury has occurred when a resource’s viability or function is impaired such that the type and/or magnitude of services provided by that resource is reduced as a result of contamination (43 C.F.R. § 11.14 (v)). Determination of injury requires documentation that: (1) there is a viable pathway for the released hazardous substance from the point of release to a point at which natural resources are exposed to the released substance, and (2) injury of exposed resources (*e.g.*, surface water, sediment, soil, groundwater, biota) has occurred as defined in 43 C.F.R. § 11.62. The first condition is satisfied based on clear documentation of direct historical discharge of mercury, the contaminant of concern, from the Facility into the SR, and ongoing releases from the banks of the SR (VDEQ 2009, Anchor QEA *et al.* 2013; See Section 3.2). The second condition is satisfied because measured concentrations of mercury in various resources within the assessment area displayed associated effects, or exceeded levels at which the literature reports adverse effects on endpoints such as reproduction, growth, and survival as well as the presence of a fish consumption advisory.

3.1 *Contaminant of Concern*

The contaminant of concern (COC) in a NRDAR assessment area is a hazardous substance (as defined by Section 101(14) of CERCLA) to which trust resources have been exposed as a result of a release. Mercury is considered to be the primary COC for this assessment, listed in Table 302.4, the List of Hazardous Substances and Reportable Quantities under CERCLA, and as a toxic pollutant pursuant to 40 C.F.R. § 401.15, as amended.

As mercury cycles through the environment, it can be present in several different forms. “Quicksilver,” or mercury-zero, is metallic, elemental mercury (such as the mercury released from the Facility), and is less toxic than other forms. Once released into the environment, elemental mercury is converted to methylmercury, the most common, and most toxic, organic mercury compound, mainly by microscopic organisms in water, soil, and sediment. Methylmercury is lipid soluble, allowing it to cross biological membranes and to enter the food

web, where it is bioaccumulated and biomagnified in upper trophic level organisms such as fish and birds.

Mercury is primarily a neurotoxin, but can also cause biochemical, enzymatic, immunological, genetic, and reproductive effects on biota. For example, in adult mammals, methylmercury can cause ataxia difficulty in locomotion, impairment of hearing or vision, general weakness, and death (Eaton *et al.* 1980; Wren *et al.* 1987a,b). Symptoms of acute mercury poisoning in birds include, but are not limited to, reduced food intake leading to weight loss; progressive weakening in wings and legs; difficulty flying, walking and standing; and death (Wolfe *et al.* 1998). Reductions in egg laying and territorial fidelity are also associated with mercury exposure in birds (Barr 1986).

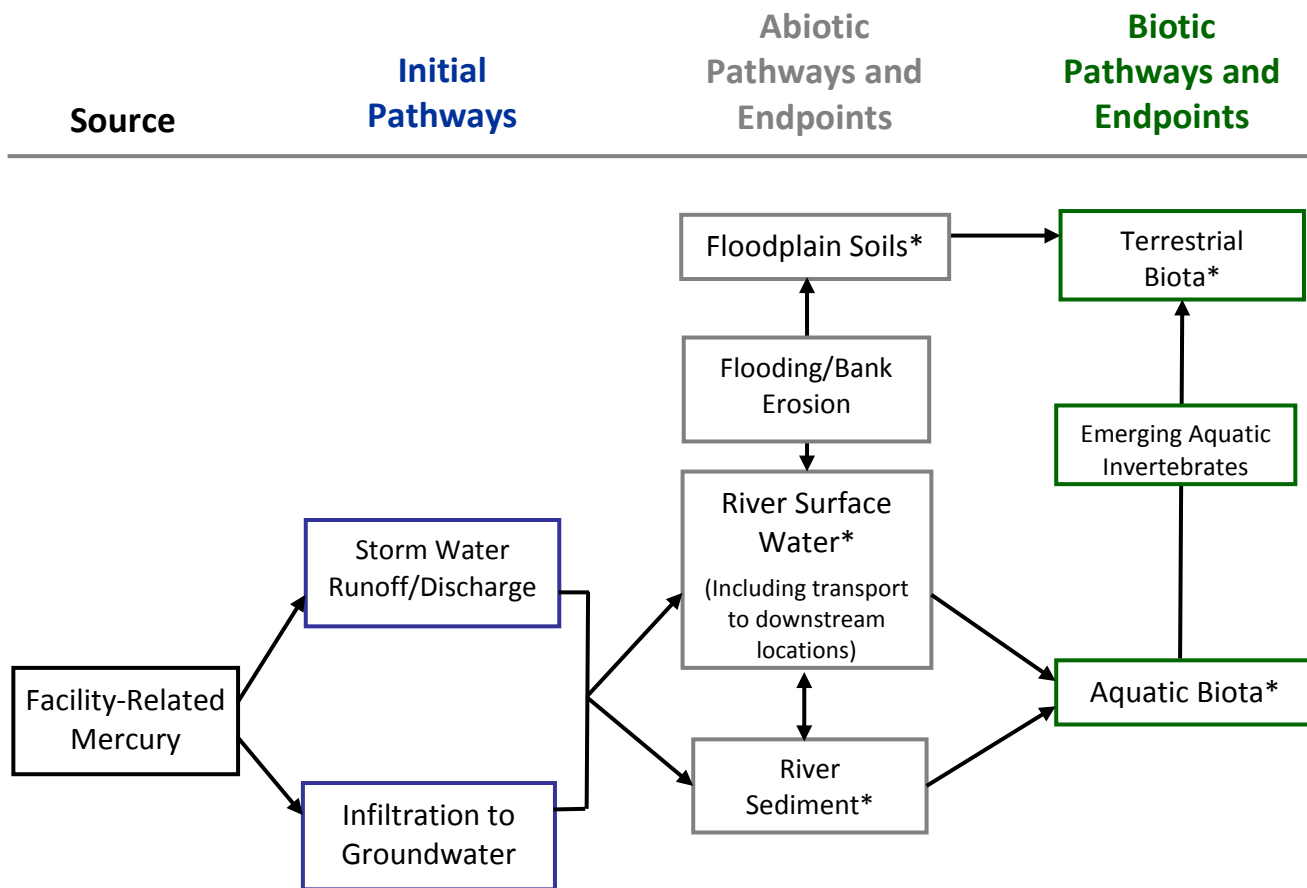
3.2 Pathway

Pursuant to 43 C.F.R. § 11.14 (dd), a pathway is defined as:

The route or medium through which...a hazardous substance is or was transported from the source of the discharge or release to the injured resource.

Facility-related mercury has been identified in on-site storm water outfalls and continues to be discharged to the river via the outfalls (Anchor QEA *et al.* 2013). There are multiple pathways, historic and current, from the Facility to trust resources, including through surface runoff, groundwater, permitted point-source discharges, movement in surface water and abiotic and biotic pathways (Figure 4).

Once mercury has been released to surface water and underlying sediments, it can be transported downstream via surface water flow. During periods of flooding, when heavy rains cause the SR and SFR to overtop their banks, mercury can be deposited on floodplain soils. Furthermore, contaminated floodplain soils in this study area can be transported back into the river via bank erosion processes (Eggleston 2009). Mercury in sediment and floodplain soils can be taken up by biota at the base of the food web and transported to higher trophic organisms via their diet (*e.g.*, snapping turtles and screech owls; Bergeron *et al.* 2007, Cristol *et al.* 2008). As such, aquatic and terrestrial biota may also serve as pathways in addition to being endpoints.



* Indicates a Trust resource being assessed in the DuPont Waynesboro NRDAR process.

Figure 4. Diagram of pathways from Facility-mercury to biological endpoints (adopted from IEC 2011).

3.3 Injury Assessment Strategy

The goal of the injury assessment is to determine the nature and extent of injuries to natural resources and to quantify the resulting resource and service losses, providing a basis for evaluating the need for, type of, and scale of restoration actions. Injury to biological resources has resulted from the release of a hazardous substance if the concentration of that substance is sufficient to:

Cause the biological resource or its offspring to have undergone at least one of the following adverse changes in viability: death, disease, behavioral abnormalities, cancer, genetic

mutations, physiological malfunctions (including malfunctions in reproduction), or physical deformations (43 C.F.R. § 11.62 (f)(1)(i)).

or

Exceed levels for which an appropriate State health agency has issued directives to limit or ban consumption of such organism (43 C.F.R. § 11.62 (f)(1)(iii)).

As described in Chapter 1, this assessment process is guided by the NRDAR regulations under CERCLA. The injury assessment process occurs in two stages: 1) injury evaluation and 2) resource and service loss quantification. To evaluate potential injury to resources, the Trustees reviewed site-specific injury studies, as well as existing information, including remedial investigation data, ecological risk assessments, and scientific literature.

Based on information from all these sources and with an understanding of the function of the terrestrial and aquatic ecosystems at and near the Facility, the Trustees evaluated injury to natural resources and determined the expected magnitude and severity of effects of mercury on trust resources. The Trustees considered several factors throughout injury assessment, including, but not limited to the:

- specific natural resource and ecological services of concern;
- evidence indicating exposure, pathway and injury;
- mechanism by which injury occurred;
- type, degree, spatial and temporal extent of injury; and
- types of restoration actions that are appropriate and feasible.

3.3.1 Geographic Scope

The assessment area is based on the geographic scope within which trust resources have been directly or indirectly affected by the releases of hazardous substances from the Facility (43 C.F.R. §11.14 (c)). For the purposes of this Draft RP/EA, Figure 2 depicts the geographic scope of the assessment area, which includes the:

- SR from the Facility in Waynesboro downstream to Port Republic (24 river miles, 272 acres).
- SFSR from Port Republic downstream to Front Royal (101 river miles, 3,237 acres).
- Shenandoah River to the West Virginia border (35 river miles, 1,446 acres; only applicable for the fish analyses – ecological and recreational injuries).
- Floodplain areas adjacent to the SR and SFSR (11,379 total acres, including 240 acres of wetlands).

3.3.2 *Temporal Scope*

Within the assessment area, natural resource exposure to Facility-related hazardous substances has been documented at least since the 1970s and is expected to continue into the future. Damages are calculated beginning in 1981, in accordance with case law related to the promulgation of CERCLA, and are estimated into perpetuity, unless otherwise specified. Injury and corresponding damages with regard to recreational fishing losses were assumed to persist until 2030.

Recovery scenarios may change with the implementation of additional remedial activities in the assessment area or with long-term environmental recycling of contaminants remaining after remedy implementation (*e.g.*, through resuspension of contaminated sediments). Because remedial activities are ongoing, and because there is a high amount of uncertainty regarding effectiveness and success, Trustees assumed that the injury would remain unchanged for a long period of time.

3.4 *Injury Evaluation / Resource and Service Losses*

Each of the resources impacted by the release of mercury, including surface water, sediment, and the organisms that utilize the riverine and associated wetland and floodplain or upland habitats (*e.g.*, fish, birds, reptiles, amphibians, mammals), is a trust resource. Over the years, these resources have been exposed to mercury from the Facility and have suffered adverse effects. Below are the trust resources likely impacted/exposed to mercury contamination including both aquatic and floodplain resources:

- Surface Water and Sediment
- Soil
- Mussels
- Fish
- Reptiles/Amphibians
- Human Use/Recreational Fishing
- Migratory Songbirds
- Piscivorous Birds/Mammals
- Waterfowl
- Bats
- Madison Cave Isopod

Injured trust resources within the assessment area sustained some loss in ecological services due to contamination. A reduction in the ability of a resource to provide these services, as compared to the baseline level of services or that which existed but for the contamination, is considered a service loss. The severity and magnitude of these potential losses are quantified, where possible, to establish a basis for scaling restoration (*e.g.*, damages). In the sections below, the

methodologies and assumptions used to quantify injury for the representative resources are discussed.

The representative resources for injury to riverine, floodplain, and wetland habitats and resources were **fish, mussels, migratory songbirds, amphibians**; and for the lost human use, **recreational fishing**. The decision to focus the injury assessment on these resources was primarily driven by the amount and type of data available for analysis and the overlapping restoration needs for multiple resources (see Table 2). Data regarding contamination of surface water were limited, or indicated that injury to this resource was unlikely, and therefore the Trustees determined that no further assessment of surface water was necessary. Data for sediment and soil exist and these resources were included in the broader analysis of floodplain and aquatic biological resources.

To address the wide range of service losses at the site, the Trustees developed a multi-pronged approach to damages determination: (1) habitat equivalency analysis for the loss of riverine, floodplain, and wetland resources; (2) resource equivalency analysis for the loss of migratory songbirds; (3) mussel propagation and replacement analysis; (4) recreational fishing losses using trip-equivalency analysis.

Table 2. Major habitat types within the assessment area, associated resources, and the representative resource used in the analysis of injury and scaling of restoration.

Major Habitat Types	Associated Resources	Representative Resource Used in Analysis
Aquatic / Riverine – SR, SFSR, Shenandoah River	Surface Water Sediment Mussels Aquatic Invertebrates Fish Amphibians and Reptiles Migratory Songbirds Piscivorous Birds and Mammals Bats Recreational Fishing	<ul style="list-style-type: none"> • Fish • Mussels
Floodplain / Upland – Habitat adjacent to SR and SFSR	Soil Surface Water Sediment Mussels Aquatic Invertebrates	<ul style="list-style-type: none"> • Migratory Songbirds

	Fish Amphibians and Reptiles Migratory Songbirds Piscivorous Birds and Mammals Bats Recreational Fishing	
Wetlands	Soil Surface Water Sediment Mussels Aquatic Invertebrates Amphibians and Reptiles Migratory Songbirds Piscivorous Birds and Mammals Bats Recreational Fishing	• Amphibians

Habitat Equivalency Analysis

Habitat Equivalency Analysis (HEA) is a service-to-service or resource-to-resource approach to natural resource valuation that can account for changes in baseline while estimating interim losses (Unsworth and Bishop 1994, Jones and Pease 1997). The fundamental concept is that compensation for lost ecological services can be provided by restoration projects that provide comparable services (compensatory restoration). HEA responds to the question “What, but for the release, would have happened to the injured area?” In this case, what services would the injured habitats have provided? With HEA, the replacement services are quantified in physical units of measure such as acre-years.¹ The selected projects, or project types, are scaled so that the quantity of replacement services equals the quantity of lost services in present value terms. Potentially responsible parties (PRPs) implement or pay for restoration projects that are sufficient to cover the public’s interim losses. HEA involves three basic steps:

- (1) Assess the present value of lost services (% service losses over time) relative to baseline. This “debit” is measured in discounted services acre-years (DSAYs).
- (2) Select appropriate compensatory restoration projects (% restored services). The “relative productivity” of a proposed restoration project compared to what was injured is measured in the number of DSAYs restored for every acre included in the project.

¹ An acre-year refers to all natural resource services provided by one acre for one year. This measure of natural resource services is specific to the type of land and its associated habitats since different habitats in varying locations provide different services.

- (3) Identify the size of the project (scaling) that will equate the total discounted quantity of lost services to the total discounted quantity of replacement services to compensate the public's losses. The "credit" is measured in acres owed or DSAYs restored by a proposed project of an identified size.

CERCLA (43 C.F.R. § 11.83) explicitly allows consideration of HEA as an economic tool to estimate damages in NRDAR cases. Following the process outline above, the Trustees determined the loss of riverine, floodplain, and wetland resources from mercury. To compensate for this loss, the amount of acquisition and enhancement needed was estimated using HEA. The assessment area is quite large with a variety of habitats. In collaboration with DuPont, Trustees identified the habitat types, reviewed the literature on natural resource injuries, and estimated service losses relative to baseline. Where restoration options were determined to provide multiple ecological services, the Trustees factored these additional service gains into the HEA crediting process.

Resource Equivalency Analysis

When there are injuries to non-marketed species, like migratory songbirds, their value can be difficult to quantify in economic terms. An alternative approach to economic valuation is resource equivalency analysis (REA) (variation of HEA based on Unsworth and Bishop 1994, and Jones and Pease 1997). A REA responds to the question, "What, but for the incident, would have happened to the injured species if it had not been killed by the oil spill or release of hazardous substances?" REA is a resource-to-resource approach that assumes services lost and restored are comparable. Specifically, the losses and replacement services are quantified in physical units of measure such as bird-years.² Restoration projects are scaled so that the quantity of replacement services equals the quantity of lost services in present value (PV) terms.³ PRPs pay for or implement restoration projects sufficient to cover the public's interim losses. Because the services provided by compensatory restoration projects are qualitatively equivalent to the services lost due to the spill or release, REA can avoid valuation altogether. When PRPs are

² A bird-year refers to all services provided by 1 bird for 1 year. This measure of services is specific to the type of bird since different birds provide different services (the replacement services for 20 bird-years could be 20 birds for only one year, one bird over 20 years, or something in between).

³ Services provided in the future are discounted at an appropriate rate to reflect the social rate of time preference, the rate at which society is willing to substitute between present and future consumption of natural resources. The real rate of interest and the government borrowing rate are recommended in the economics literature as the best measures of the social rate of time preference. OMB Circular A-4 and empirical evidence supports a 3% discount rate (*e.g.*, Freeman 1993; NOAA 1999). Federal rulemakings also support a 3% discount rate for lost natural resource use valuation (61 FR 453; 61 FR 20584). The annual discount factor may be calculated as $(1+r)^{P-t}$, where r is the discount rate, P is the present time period, and t is the time period of lost services. In 2016, for example, the discount factor is 1.0, because any number raised to the zero power equals 1.0 ($1.03^{(2016-2016=0)} = 1.0$).

interested in providing a payment rather than performing an in-kind restoration project, the estimated project costs may be used to develop a final claim for damages. The first REA was developed as part of the North Cape oil spill settlement in 1999 (see Sperduto *et al.* 2003).

CERCLA (43 C.F.R. § 11.83) explicitly allows consideration of REA as an economic tool to estimate damages in NRDAR cases. Following the process outline above, the Trustees determined the loss of songbird-years from mercury. To compensate for this loss, the amount of acquisition and enhancement needed was estimated using an understanding of songbird restoration that incorporates the full life-cycle of the bird (*e.g.*, breeding, migration, or wintering habitat protection or enhancement).

3.4.1 Fish (Ecological or Eco-Fish)

Though this analysis was focused specifically on eco-fish, it more broadly represents injury to the aquatic habitat and other resources that use that habitat such as piscivorous birds and mammals. The assessment area for the eco-fish injury analysis included a total of 4,954 acres of the SR (272 acres), SFSR (3,237 acres), and Shenandoah River (1,446 acres). To demonstrate injury due to mercury, site-specific toxicity information was reviewed and contaminant concentrations in fish tissue were compared to literature-based adverse effects thresholds. This analysis was a cooperative effort between the Trustees and DuPont and is summarized in this section.

Fish species reviewed in the analysis include, among others, smallmouth bass, largemouth bass, black crappie (*Pomoxis nigromaculatus*), rock bass (*Ambloplites rupestris*), bluegill (*Lepomis macrochirus*), common carp (*Cyprinus carpio*), and channel catfish (*Ictalurus punctatus*). The final database included over 6,000 whole body fish mercury concentrations from 14 species of fish collected between 1981 and 2007. These species were classified as piscivores, omnivores, or invertivores. Peer-reviewed literature was evaluated, including, but not limited to, studies that examined the effect of mercury (not inorganic mercury); studies that described an effect on growth, reproduction, and/or survival (not short-term exposure); and studies focused on similar species to those found in the assessment area (*e.g.*, studies on saltwater fish or arctic/rainforest species were excluded). Based on these studies, Trustees were able to determine service losses corresponding with a related mercury concentration. For example, at 0.5 parts per million (ppm) whole body mercury concentration, there was an associated 0% service loss, at 1 ppm, 27% service loss, at 2 ppm, 41% service loss and at 5 ppm, 62% service loss (Table 3).

Table 3. Range of the average mercury concentrations throughout the assessment area for the three different categories of fish species and expected associated service loss level.

Category	Range of average mercury concentrations (1981-2009), parts per million (ppm)	Range of associated service losses
Piscivores	0.07 ppm – 2.27 ppm	0% - 43%
Omnivores	0.09 ppm – 0.94 ppm	0% - 26%
Invertivores	0.04 ppm – 1.46 ppm	0% - 34%

HEA (described above) was used to calculate the present value losses in DSAYs. A combination of different restoration project types will compensate for an equivalent amount of DSAYs, such as riparian habitat buffers, agricultural best management practices (BMPs), and urban BMPs.

3.4.2 Mussels

Though also an aquatic resource, mussels were analyzed separately from fish due to the specific restoration needs (propagation and reintroduction activities) of these organisms. Mussel injury was analyzed directly and restoration was scaled to that loss. As part of the cooperative assessment, and for settlement purposes, the restoration for mussels is assumed to fully compensate for the other benthic organisms that were likely injured due to mercury contamination of sediment.

Trustees limited the geographic scope of the injury analysis to the SR where there is the most compelling evidence of injury to mussels (*e.g.*, no mussels exist below Waynesboro in the SR). Mussels have likely been extirpated for decades downstream of Waynesboro as no live mussels or fresh-dead shells were collected during the 2013 survey and only a few old, weathered shells were observed, all indicating live mussels have not existed in this reach for decades (Garst *et al.* 2014). Mussel survival and habitat may be impacted by physical stressors such as sedimentation and degradation of water quality from bank erosion, stream channel alteration, and land-use practices such as agriculture and urbanization. Urban areas can also contribute wastewater effluent, with elevated nutrients, ammonia, and heavy metals, to a river system. Research has shown reduced or absent mussel populations below urban areas (Gangloff *et al.* 2009). Chemical stressors, such as mercury, also impact mussel survival and habitat quality. Mercury can bioaccumulate in freshwater mussel tissue and may cause hormonal changes and shifts in energy allocation (Naimo 1995).

Trustees did not conduct studies to determine the precise cause of the lack of mussels below Waynesboro in the SR and SFSR. However, through literature review and expert consultation,

Trustees determined the likely proportion of injury expected from urban inputs (Waynesboro) and the proportion from mercury contamination (service loss attributable to mercury released from the Facility). In 2013, mean mussel density across sites sampled in the Cacapon River (WV), Broad Run (VA), and SR upstream of Waynesboro, was 2.26 mussel per square meter (m^2) – a reasonable expected density for suitable habitat throughout the SR watershed, including downstream of Waynesboro. Trustees expected a lower density of 1.0 mussels/ m^2 below Waynesboro given the urban inputs and considering the mix of habitat types (*e.g.*, unsuitable, such as bedrock, and suitable, such as cobble) that exist in the SR below Waynesboro. Using these density estimates, Trustees were able to parse the difference between the injury expected from urban inputs (56%) and the expected loss due to mercury (44%). Applying this estimated loss of density to the affected area resulted in a loss of up to 650,000 mussels. Therefore, the Trustees concluded a multi-year propagation program is necessary to restore the mussels lost from mercury contamination.

3.4.3 Migratory Songbirds

The assessment area supports many species of songbirds and other migratory birds, including waterfowl, wading birds, and raptors. For the purposes of claim development, Trustees focused on migratory songbirds due to the extensive site-specific data on contaminant concentrations and effects. Trustees also used songbird data to inform the analysis for the floodplain injury (see Section 3.4.4). Because of the specific restoration needs of migratory songbirds throughout their full life cycle and within their migratory flyway, Trustees did a separate analysis to determine injury specifically to neotropical migratory songbirds. Of the 75 species evaluated, 44 species are considered medium- or long-distance migrants, 17 species are considered short-distance migrants or seasonal migrants, and 14 are considered resident species. In consultation with experts, the Trustees determined that the neotropical migratory subset consists of up to 68% of the representative species in the assessment area, a significant proportion of the injured bird population.

Studies on exposure and effects of mercury on birds have been conducted in and around the assessment area and in the laboratory over a period of several years (*e.g.*, Brasso and Cristol 2008; Cristol *et al.* 2008; Hallinger *et al.* 2010, 2011; Jackson *et al.* 2011a, b; Varian-Ramos *et al.* 2014). These studies examined mercury exposure in multiple species and life stages, contamination of prey items, and geographic extent of elevated mercury levels. Cristol *et al.* (2008) described mercury levels in several songbird species that were as high, or higher, than fish-eating species from the site – illustrating that mercury contamination of the aquatic environment had moved to the terrestrial system and food web. Prey items, specifically spiders, had mercury levels higher than fish prey species. Several site-specific and laboratory studies examined effects to survival, reproduction, immune/endocrine system function, and other sublethal effects, such as song learning (*e.g.*, Brasso and Cristol 2008; Hawley *et al.* 2009; Wada

et al. 2009; Hallinger *et al.* 2010, 2011; Hallinger and Cristol 2011; Jackson *et al.* 2011a; Bouland *et al.* 2012; Carlson *et al.* 2014; Varian-Ramos *et al.* 2014; Henry *et al.* 2015).

Key findings of these studies link mercury to adverse reproductive effects, most notably in Carolina wren (*Thryothorus ludovicianus*) and tree swallow (*Tachycineta bicolor*). Hallinger and Cristol (2011) showed that mercury levels in tree swallows within the SR assessment area (mean \pm SE: 3.03 \pm 0.15 ppm) were significantly elevated compared to swallows breeding on reference sites (mean \pm SE: 0.16 \pm 0.005 ppm), and that these high levels of mercury were associated with reduced hatching and fledgling success. Contaminated birds produced approximately 1 less fledgling than reference birds, translating to a 20% reduction in nest success. Jackson *et al.* (2011a) used an information-theoretic approach to analyze the Carolina wren reproductive data collected in the assessment area. This model showed that blood mercury concentration of the adult female was a strong predictor of nest success, and enabled Trustees to relate mercury level with a loss in reproduction. Average blood mercury levels were available for the 75 songbird species within the assessment area, ranging from 0.02 to 6.2 ppm on the SR and 0.01 to 1.5 ppm on the SFSR. Based on the model from Jackson *et al.* (2011a), these concentrations translated to a 0.06 – 99.9 % likelihood of nest failure on the SR and 0 – 24.2% on the SFSR, depending on the species.

Because density estimates for each of the 75 species were available within the watershed, the Trustees were able to estimate the population (number of individuals) of songbirds within the 11,379-acre assessment area, and apply the appropriate loss estimates per species. These inputs were used in a REA to generate a number of lost bird-years and to estimate the number of wintering habitat acres necessary to compensate for the injury.

3.4.4 Non-wetland Floodplain (represented by songbirds)

Trustees selected songbirds as a representative resource for the floodplain and upland habitat. Because of the comprehensive songbird studies that support a quantifiable reduction in services (in this case, reproduction), songbirds were elected as the “umbrella” resource to inform the analysis for the floodplain/upland resources.

To quantify injuries, the baseline condition of the affected resources and associated services must be established. Baseline is “the condition or conditions that would have existed at the assessment area had the...release of a hazardous substance...not occurred” (43 C.F.R. § 11.14 (e)), taking into account natural processes and changes resulting from human activities. Baseline conditions include all environmental parameters, not only concentrations of COCs. For example, other impacts to water quality and physical changes to the habitat (the stressors discussed in Section 2.3) are incorporated into the determination of baseline conditions. As described in the

DOI regulations, establishing baseline requires either pre-release data or data from suitable reference locations.

There are multiple landcover types within the assessment area (developed, row crop, pasture/hay, riparian forest, upland forest and early successional), each of which provide different baseline services for songbirds in the assessment area. Based on expert consultation and literature reviews, baseline services were determined for each landcover type (related to songbirds specifically), ranging from 15-100%, and achieving maximum services in the riparian forest landcover type. When determining the baseline levels for each landcover type, Trustees considered the level of urbanization, habitat fragmentation, agricultural practices, use of pesticides or other chemicals, diversity of vegetation type and structure, and other factors that may influence bird use and habitat quality.

Trustees reviewed literature on mercury effects/exposure as weight-of-evidence, but focused on site-specific data to inform the injury quantification. At the time of assessment, the data generated from studies on this site provided more information than existed in the literature. Injury was determined by the reproductive loss expected for different regions of the assessment area such as riparian SR, upland SR, or riparian SFSR, which was determined using site specific studies and Trustee expertise. The maximum level of injury was 20% reproductive loss based on the site-specific studies (see above Section 3.4.3; Hallinger and Cristol 2011). A certain level of impairment was expected from the mercury contamination (5-20%), but some habitat types were already impaired for other reasons (agricultural activities, fragmentation, etc.). The total service loss was calculated by factoring the baseline services into the injury estimate, and service losses ranged from 0-20% for the various landcover types in the assessment area.

HEA was used to calculate DSAYs owed for the injury to floodplain habitat (up to 69,000 DSAYs). Restoration projects that will compensate for this injury amount will include protecting or enhancing habitat in the watershed. The exact amount of acres depends on the type of land (*e.g.*, agricultural, riparian, forested) and quality of habitat (whether, for example, it is contiguous, disturbed, fragmented), and how much active restoration may be required. This analysis was driven by bird data, but more broadly represents injury to floodplain resources, as the types of restoration that will restore floodplain and riparian habitat will have benefits to other resources as discussed in Section 4.3.4.

3.4.5 Wetland Floodplain (Amphibians)

The assessment area supports a variety of amphibian and reptile species. For the purposes of claim development, Trustees focused on amphibians due to their specific habitat requirements of ephemeral ponds for breeding, and because the Trustees had a considerable amount of data on amphibians (toads). To demonstrate injury to amphibians/wetland habitat within the assessment

area, Trustees used site-specific toxicity and effects data, as well as population models developed from these data.

Bergeron *et al.* (2010) collected adults from three amphibian species – red-backed salamander (*Plethodon cinereus*), northern two-lined salamander (*Eurycea bislineata*), and American toad (*Anaxyrus americanus*) – and larvae from the latter two species along a contamination gradient on the SR. Total mercury concentrations in the contaminated area were 3.5 to 22 times higher than in the reference area. Subsequent field and lab studies examined the effects of the elevated mercury levels on amphibian survival, reproduction, and behavior (*e.g.*, Burke *et al.* 2010; Bergeron *et al.* 2011a, b; Todd *et al.* 2012; Willson *et al.* 2012). Multigenerational studies on the impacts of elevated mercury levels in American toad were conducted over several years, generating some of the key findings used in the injury analysis (Bergeron *et al.* 2011a, b; Willson *et al.* 2012; Willson and Hopkins 2013). These studies informed a landscape-scale population model, which showed that in a mercury-contaminated network of wetlands, annual American toad productivity is reduced 68% relative to an uncontaminated network (Willson and Hopkins 2013).

These studies informed the HEA model used to estimate the amount of DSAYs owed for the acres of wetland habitat in the assessment area (up to 6,000 DSAYs). Restoration compensating for the wetland injury will include protecting or enhancing wetland habitat in the watershed, or creating new wetland habitat. The exact number of acres required depends on the quality and expected benefits of the project.

3.4.6 Recreational Fishing

In addition to the ecological services, natural resources within the assessment area provide recreational services. For example, the aquatic habitat and fishery resources of the assessment area provide anglers with extensive opportunities for recreational fishing. The SR and SFSR support a regionally significant recreational fishery, with smallmouth bass being the most sought-after game fish. Though trout fishing occurs in some areas along the SR, trout are stocked and safe for consumption, so the trout fishing was not part of this injury analysis. This section describes the Trustees' approach to quantifying the losses in recreational fishing resulting from contaminant-related Fish Consumption Advisories (FCAs) due to mercury.

FCAs in the assessment area have been in place since 1977, and limit consumption of certain types of fish on the SR, SFSR, and the Shenandoah River (Virginia Department of Health (VDH) 2013). Advisories due to mercury range from "Eat no more than one meal per month – certain species" to "Eat none – all species." Table 4 provides a summary of the FCAs within the assessment area from 1977 to the present.

The selected approach for quantification of damages was estimation of the total lost and diminished recreational fishing trips in the assessment area during the time period of 1981 through 2030, calculated in “present value trip equivalent losses.” This approach involves first estimating fishing pressure, and the number of “avoided trips,” those that were lost due to anglers who avoid fishing waters with FCAs, and “diminished trips,” those with a diminished experience due to the FCA. The analysis relied upon Virginia fishing license data and site-specific creel surveys (Bowman 1997; Bugas 2005, 2011; Reeser 2011) to provide estimates of the annual fishing pressure. From these data, Trustees estimated the number of trips that occurred in the assessment area between 1981 and 2030 (*e.g.*, baseline trips). Approximately 7% of anglers avoid bodies of water with FCAs (Connelly and Knuth 1995, Breffle *et al.* 1999). Between 10 to 37% of anglers who do visit contaminated water bodies take fewer trips to those waters (Connelly *et al.* 1990, Silverman 1990, Connelly *et al.* 1992, Vena 1992, Knuth *et al.* 1993, Breffle *et al.* 1999). To help facilitate settlement, the Trustees accepted a literature-based assumption that 10% of the baseline trips were avoided due to the FCA. Diminished trips were calculated using the results of Jakus *et al.* (1997) to adjust Trustees estimate of fishing trips into lost trip equivalents based on a percentage loss in value due to the presence of contamination. Based upon this review, lost trips were estimated at no more than 1.3 million present value trip-equivalents.

Table 4. Mercury FCAs on the SR, SFSR, and Shenandoah River (adapted from VDH 2013).

Waterbody and Affected Boundaries	Affected Localities	Species	Advisories/Restriction
South River from the footbridge at E. I. DuPont Co. in Waynesboro approximately 24 miles to the confluence with the North River at Port Republic (6/7/77; modified 3/29/01)	Waynesboro City, Augusta Co., and Rockingham Co.	All species except trout	DO NOT EAT. Stocked trout have been tested and are safe for consumption.
South Fork Shenandoah River downstream from Port Republic to the confluence with North Fork Shenandoah River, North Fork Shenandoah River from mouth of the river upstream to Riverton Dam, and Shenandoah River from the confluence of North and South Forks to Warren Power Dam just north of Front Royal. These river segments comprise approximately 105 miles. (6/7/77; modified 3/29/01)	Warren Co., Page Co., Rockingham Co., and Augusta Co.	All species	No more than two meals/months.

CHAPTER 4 PROPOSED RESTORATION ALTERNATIVES – ECOLOGICAL AND RECREATIONAL

To compensate the public for injuries (*e.g.*, service losses) to natural resources resulting from releases of mercury from the Facility, the Trustees are required to develop alternatives for the “restoration, rehabilitation, replacement, and/or acquisition of the equivalent of the natural resources and the services those resources provide” (42 C.F.R. §11.82 (a)). DuPont’s settlement with the Trustees for natural resource damages includes a cash payment of approximately \$42 million to be utilized in funding these types of projects as well as renovation of the Front Royal Fish Hatchery (FRFH) to be performed directly by DuPont (as part of recreational fishing compensation).

This chapter describes the Trustees’ restoration objectives and proposed restoration alternatives to compensate for the ecological and recreational injuries. Several restoration projects were proposed to the Trustees that are: 1) not expected to provide natural resource services similar to injured/lost services, or to provide services in a cost-effective way; 2) already required or funded in non-NRDAR contexts; and/or 3) lacks sufficient detail to permit analysis. These projects are summarized in Appendix C.

Below, the Trustees outline the following restoration alternatives:

Alternative	Description
A	<ul style="list-style-type: none"> • No Action, no projects implemented
B	<ul style="list-style-type: none"> • Projects to improve water quality and fish habitat • Mussel propagation • Neotropical migratory songbird full life cycle restoration • Land protection, property acquisition, and recreational and wildlife enhancements. • Recreational fishing improvement projects
C	<ul style="list-style-type: none"> • All components of Alternative B, and • Trout stocking and management

Trustees evaluated the alternatives to determine if they provide sufficient type, quality, and quantity of ecological services to compensate for those lost due to contamination in the context of both site-specific and regulatory evaluation criteria (43 C.F.R. §11.82 (d)) and compliance with potentially applicable laws. The Trustees may implement restoration projects that are not specifically identified in the RP/EA, but are similar to those projects identified and consistent with restoration objectives. Any project not reviewed within the RP/EA will be evaluated against the site specific and regulatory criteria, and if a project uses alternative techniques other than

described below, a project-specific NEPA determination will be made and public notice will be given to provide details on the new project proposal.

4.1 *Restoration Objectives*

The Trustees' overall ecological restoration objective is to compensate the public for past and expected future ecological losses due to Facility-related contamination in the assessment area. DuPont is currently designing and implementing remedial actions along the SR; however, the remedy is expected to take many years to complete and the effectiveness is yet unknown, so losses are expected to continue indefinitely into the future. The release of mercury has impacted the ability of trust resources to provide their baseline level of ecological services. Therefore, the Trustees focused on restoration projects that will compensate the public by providing additional (*e.g.*, above and beyond baseline) ecological services in or near the assessment area.

The Trustees' overall recreational fishing restoration objective is to compensate the public for interim and expected future recreational fishing losses due to mercury contamination in the assessment area. Since 1977, a FCA has been issued for rivers in the assessment area due to mercury contamination, and is expected to continue well into the future. The FCA has impacted recreational anglers by reducing the quality of fishing opportunities in the assessment area. Therefore, the Trustees focused on restoration projects that will compensate recreational anglers by creating new or improving existing fishing opportunities in or near the assessment area.

The following sections describe the no action alternative, as well as the characteristics and benefits of restoration alternatives evaluated as part of this process to compensate for both ecological and recreational fishing injuries.

4.2 *Alternative A: No Action Alternative (Natural Recovery)*

As required under NEPA, the Trustees considered a restoration alternative of no action. Under this alternative, the Trustees would rely on natural recovery and would take no direct action to restore injured natural resources or compensate for interim lost natural resource services. This alternative would include the continuance of ongoing monitoring programs, such as those initiated by VDEQ for fish, but would not include additional activities aimed at reducing contamination, reducing potential exposure to contaminants, or enhancing ecosystem biota or processes. Under this alternative, no compensation would be provided for interim losses in resource services.

Under the no-action alternative, no habitats would be preserved, restored, or enhanced beyond what agencies and organizations are already doing in the area with limited existing resources. Aquatic and riparian habitats would continue to be degraded along the SR and SFSR and in adjacent habitats. Water quality would continue to be impaired. Neotropical migratory birds would continue to decline because of continued contamination and threats to wintering habitat. Fishing and boating recreational opportunities would continue to be limited by access points and impaired fishing stocks. Local citizens would not benefit from improved recreational opportunities and increased education and stewardship.

4.3 *Alternative B: Preferred Restoration Alternative*

The Trustees considered a broad set of restoration alternatives that could potentially improve ecological services and recreational fishing services relevant to the assessment area. These restoration alternatives are expected to provide natural resource services similar to the services that the injured habitat would have provided but-for the mercury contamination. In addition to those proposed by Trustee agencies, alternatives were solicited from DuPont through cooperative discussion, and from stakeholders through meetings and discussions with local governments, conservation organizations, and academic researchers (see Appendix A).

The broad categories of proposed restoration alternatives are listed below, and are expected to increase habitat quality and quantity, promote habitat connectivity, create new public use opportunities, and benefit trust resources within the SR/SFSR watershed.

4.3.1 Projects to improve water quality and fish habitat

These projects would include agricultural BMPs that would improve 35-foot riparian zones along the SR, SFSR, and tributaries, and could include exclusion fencing, natural channel design projects, as well as urban BMPs such as stormwater pond improvements and impervious cover management. These projects would benefit small mammals, birds, amphibians, reptiles, and fish by providing habitat and improving water quality through reducing erosion and runoff.

4.3.2 Freshwater Mussel Restoration

These projects would focus on improving the mussel community in the SR, SFSR, and tributaries. Projects would focus on mussel propagation and restocking efforts. Because of the depauperate mussel community in the SR and SFSR, propagation efforts are necessary to increase numbers and re-establish stable mussel populations of nine species, which would otherwise not be achieved through habitat improvements alone. Riparian habitat improvement will also benefit mussels, but by itself would not return populations to healthy numbers. Mussel restoration projects have ancillary benefits to fish and wildlife species by improving water

quality, stabilizing sediment, enhancing bottom structure, and increasing food abundance (Vaughn and Hakenkamp 2001, Vaughn *et al.* 2008).

4.3.3 Neotropical Migratory Songbird Full Life Cycle Restoration

These projects would focus on habitat protection, enhancement, and/or restoration specific for migratory songbirds, and may include restoration activities located throughout their full life cycle (*e.g.*, breeding, migration, or wintering habitat protection or enhancement). Because of the importance of wintering habitat on the health, migration, and breeding success of neotropical migrants (*e.g.*, Marra *et al.* 1998, Bearhop *et al.* 2004, Norris *et al.* 2004), the Trustees will give specific consideration to projects that protect wintering habitat.

4.3.4 Land protection, property acquisition, and recreational and wildlife enhancements

This project category focuses on protection, enhancement, and/or restoration of riparian and floodplain habitat within the SR/SFSR watershed. Biologically and/or ecologically important land(s) would be purchased and held in perpetuity for public benefit. Such land(s) should benefit the same natural resources that were injured from Facility releases; reduce habitat fragmentation; directly support or benefit key biological resources, including wildlife and fish habitat, rare species occurrences, natural communities, wetland features, or other sensitive or unique attributes; and will be receive additional consideration if under threat of development, in close proximity to Virginia-owned lands or other protected lands, or of interest to environmental and international organizations. Enhancement activities on the subject parcels may include, but are not limited to: converting row crop and pasture/hay to forest (riparian or upland), invasive species control, wetland restoration and grassland creation (in certain areas). Actions related to habitat creation will maximize the use of low impact techniques as to not create additional disturbances.

Currently, one specific parcel is known to be available for acquisition, Cowbane Wet Prairie State Natural Area Preserve (CWP NAP) – Willets Tract Addition and Forest Restoration. This parcel is evaluated as a potential restoration site in Section 5.3.4. Additional properties are not yet identified; opportunities for land acquisition and protection will be evaluated as they arise, prioritizing those that contain the following features and opportunities:

- *Wetland Acquisition, Enhancement, and/or Restoration.* Protection, enhancement, and/or restoration of wetlands, with specific emphasis on ephemeral/sinkhole pond habitat of amphibians, that would provide benefits to a wide array of birds, amphibians, reptiles, mammals and fish and also serve as floodwater retention and groundwater recharge areas.

This could include planting buffers around existing wetlands or restoring hydrology to impacted wetlands, among other activities.

- *Amphibian and Reptile Habitat Enhancement and/or Restoration.* Habitat protection, enhancement, and/or restoration with specific emphasis on turtle breeding habitat. This may include creating in-stream basking habitat, or planning restoration to include characteristics of desirable breeding habitat.
- *Bat Habitat Enhancement and/or Restoration.* Habitat protection, enhancement, and/or restoration with specific emphasis on bat habitat, such as protecting hibernacula or known breeding habitat, and related activities such as surveys or outreach.
- *Waterfowl Habitat Enhancement and/or Restoration.* Habitat protection, enhancement, and/or restoration with specific emphasis on waterfowl breeding habitat. This may include addition of nest boxes for wood ducks, or targeting properties with existing waterfowl habitat for protection or restoration.
- *Recreational Fishing Access.* These projects include creating new and/or improving existing access to the river for recreational opportunities, specifically fishing.
- *MCI Habitat Protection/Restoration.* These projects would focus on protecting/restoring habitat used by the federally listed threatened MCI.

4.3.5 Recreational Fishing Improvement Projects

Recreational fishing projects will be prioritized that accomplish the following:

- Restore numbers of fishing trips
- Increase the value of individual trips
- Provide alternate fishing experiences with options for safe consumption
- Include outreach and mercury education efforts to inform public of actual risks and provide improved river access and opportunities for high quality water-contact recreation

This category will include the modification and improvement of the Virginia Department of Game and Inland Fisheries (VDGIF) FRFH located in Shenandoah County, VA. The FRFH is currently used to produce a variety of cool-water and warm-water fish species; however, the FRFH is an older facility, and requires modifications and updates to improve its ability to produce warm-water fish such as smallmouth bass, a sport fish highly valued by the public in the SR/SFSR watershed.

This category will also include creation of new or improvement of existing recreational fishing access points. The access point establishment may co-occur with land acquisition opportunities whenever possible, and greatest consideration will be given to those projects that provide significant enhancement of recreational fishing opportunities. However, there may be projects to

create or improve river access on the SR and SFSR that would effectively restore or increase the value of a fishing trip, but would not restore other resources, nor be compatible with the prioritization defined for land acquisition. The Trustees will also evaluate potential fishing access points separately from other land acquisition projects as opportunities are identified along the SR and SFSR.

4.4 Alternative C: Non-preferred Restoration Alternative

Alternative C includes all components of Alternative B (see Section 4.3 for descriptions), as well as enhanced trout management or increased trout stocking in the SR. In this Alternative, funding for projects to improve water quality and fish habitat (*e.g.*, agricultural and urban BMPs in the SR/SFSR watershed) would be reduced to allow funding for the trout management project.

4.4.1 Recreational Fishing Improvement Projects – trout stocking or management

This project will focus on improving trout fishing opportunities in the SR that allow safe consumption, where allowed by regulation, of harvested fish. The SR has well-established seasonal trout fisheries in and around Waynesboro and Grottoes. A special-regulation, year-round trophy section exists on the SR upstream of Waynesboro. This project would aim to expand stocking in the SR, through purchase of more and/or larger fish, or through development and construction of a grow-out and holding facility. This project would provide narrow benefits to trout anglers, or possibly anglers with no preferred target fish, in certain sections of the SR.

CHAPTER 5 EVALUATION OF ALTERNATIVES

The Trustees' primary goal in this chapter is to identify a preferred restoration alternative that compensates the public for natural resource injuries and associated losses resulting from the mercury releases within the assessment area. Trustees assess the environmental consequences of *Alternative A: No Action/Natural Recovery*, *Alternative B: Preferred Restoration Alternative*, and *Alternative C: Non-preferred Restoration Alternative* to determine whether implementation of either of these alternatives may significantly affect the quality of the human environment, particularly with respect to physical, biological, socio-economic, or cultural environments. This chapter also evaluates readily available information on environmental consequences of the preferred restoration alternatives and potential impacts on the quality of the physical, biological and cultural environment, and thus serves as an EA for the DuPont Waynesboro NRDAR Preferred Restoration Alternative.

The following definitions will be used to characterize the nature of the various impacts evaluated in the RP/EA:

- *Short-term or long-term impacts.* In general, short-term impacts are those that would occur only with respect to a particular activity or for a finite period. Long-term impacts are those that are more likely to be persistent and chronic.
- *Direct or indirect impacts.* A direct impact is caused by a proposed action and occurs contemporaneously at or near the location of the action. An indirect impact is caused by a proposed action and might occur later in time or be farther removed in distance but still be a reasonably foreseeable outcome of the action.
- *Minor, moderate, or major impacts.* These relative terms are used to characterize the magnitude of an impact. Minor impacts are generally those that might be perceptible but, in their context, are not amenable to measurement because of their relatively inconsequential effect. Moderate impacts are those that are more perceptible and, typically, more amenable to quantification or measurement. Major impacts are those that, in their context and due to their intensity (severity), have the potential to meet the thresholds for significance set forth under NEPA (40 C.F.R. § 1508.27) and, thus, warrant heightened attention and examination for potential means for mitigation to fulfill the requirements of NEPA.

- *Adverse or beneficial impacts.* An adverse impact is one having unfavorable or undesirable outcomes on the man-made or natural environment. A beneficial impact is one having positive outcomes on the man-made or natural environment. A single act might result in adverse impacts on one environmental resource and beneficial impacts on another resource.
- *Cumulative impacts.* Cumulative impacts are defined as the “impacts on the environment which result from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (federal or non-federal) or person undertakes such other actions” (40 C.F.R. § 1508.7). Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time within a geographic area.

5.1 Evaluation Criteria

To ensure the appropriateness and acceptability of restoration options addressing ecological losses, the Trustees evaluated each option against site-specific restoration requirements. These site-specific requirements were developed through discussions with natural resource managers at each of the Trustee agencies and with input from DuPont. Projects were also evaluated against the restoration criteria listed in the DOI damage assessment regulations (43 C.F.R. § 11.82).

Below are the criteria used to evaluate potential restoration projects as part of the DuPont Waynesboro NRDAR process. The criteria were developed by the Trustees, and reflect the “factors to consider when selecting the alternative to pursue” (NRDAR factors) as described in 43 C.F.R. § 11.82(d)(1-10).

Primary criteria:

- Relationship to the injuries giving rise to the claim for natural resource damages
 - Similarity in attributes to the injured natural resource, *e.g.*, same type and quality
 - Proximity to the SR/SFSR watershed
 - Scale of benefits (quantitative and qualitative) should be similar to the injured natural resource (*e.g.*, increase in acres/species/services)
- Likelihood of success and technical feasibility
 - Can be accomplished with the available technology
 - Similar projects have succeeded in the past
 - Costs are reasonable related to expected benefits

- Regulatory and policy considerations
 - Federal, state and local law compliance
 - Site ownership and access
 - Not otherwise required by federal, state, or local laws, regulations, permits, or licenses
 - Consistency with Trustee policy, management goals and objectives, as well as local, regional, and national restoration goals and initiatives
- Elimination rationale
 - Benefits are unlikely to result in restoration benefits in advance of the natural recovery period
 - Significant adverse environmental impacts, and such impacts are not adequately mitigated
 - Potential for significant adverse effects to human health and safety, and such effects are not adequately mitigated

Secondary criteria:

- Consistency with local, regional, and national restoration goals and initiatives
- Timeframe of potential benefits
- Self-sustainability
- Integration with existing management programs/leverage potential
- Habitat connectivity (*e.g.*, result is larger individual habitat parcels rather than multiple, smaller, disconnected parcels)
- Proximity to lands with protected status
- Benefits to protected species or sensitive or unique habitats
- Opportunities for education and outreach
- Provides measureable results – monitoring component

Additionally, actions undertaken to restore natural systems are expected to have long-term beneficial and sometimes short-term adverse impacts to the physical, biological, socio-economic, and cultural environments. In the analysis below, the Trustees examine the likely beneficial and adverse impacts of Alternatives A, B, and C on the quality of the human environment. The Trustees concluded that the actions associated with the preferred alternative would not lead to significant adverse impacts, and have issued a FONSI. The Trustees will continue to evaluate environmental impacts as specific projects are identified, designed and implemented. The following sections evaluate anticipated environmental consequences of the restoration alternatives in light of the NRDAR factors listed above.

5.2 *Evaluation of Alternative A: No Action/Natural Recovery*

The No Action/Natural Recovery Alternative would not initiate any restoration action outside of the currently funded remedial program. Instead, the ecosystem would attenuate to background conditions based on natural processes only, with no assistance from active environmental restoration. The Trustees considered the changes in ecological services from natural recovery and found that the No Action/Natural Recover Alternative:

- **Does not restore injured resources to baseline.** Remediation is expected to span many years and include years of monitoring after the bank stabilization actions are completed. Currently there is no guarantee that the remedial actions will reduce the continued inputs of mercury to the SR and SFSR from bank erosion. Lack of restoration beyond remedial actions will reduce the potential for resources to fully recover to baseline conditions.
- **Does not compensate the public for interim losses.** Because remedial activity will not improve the site above baseline conditions, interim losses have and will continue to accrue from continued ecological and human use injury due to mercury.

While the No Action Alternative does not *create* additional adverse impacts to the environment, and is technically feasible and cost-effective, it does not provide the ecological, recreational, and socio-economic benefits described under Alternative B. Given the long time frame until natural attenuation of mercury in the system is achieved, under the No Action Alternative adverse environmental consequences from mercury (*e.g.*, ecological and human use injuries) are expected to continue into the future and would not be mitigated through restoration actions. Otherwise stated, the No Action Alternative may result in adverse impacts to fish and wildlife, as well as reductions in the ecological and human use services, due to the lack of additional habitat functionality provided through restoration and/or preservation actions in the assessment area. Therefore, the No Action Alternative is not a favorable restoration alternative when evaluated against the NRDAR factors. This Alternative serves as a point of comparison to determine the context, duration, and magnitude of environmental consequences resulting from the implementation of Alternative B and C.

5.3 *Evaluation of Alternative B: Preferred Restoration Alternative*

Alternative B includes a suite of restoration projects that compensate for interim ecological losses and satisfy the NRDAR factors listed above (5.1). These projects will be located within the SR/SFSR watershed (Figure 5) when feasible and appropriate and include the following:

Project Category	Potential Locations	Estimated Cost
Projects to improve water quality and fish habitat – <i>Agricultural and urban BMPs in the SR/SFSR watershed (5.3.1)</i>	Headwaters of SR, tributaries to SR or SFSR, sites within the City of Waynesboro	\$ 10 million
Freshwater mussel restoration – <i>Propagation program (5.3.2)</i>	Freshwater Mollusk Conservation Center at Virginia Polytechnic Institute and State University; Virginia Fisheries and Aquatic Wildlife Center at Harrison Lake National Fish Hatchery	\$ 4 million
Neotropical migratory songbird full life cycle restoration – <i>Habitat restoration (5.3.3)</i>	Various locations	\$ 2.5 million
Land protection, property acquisition, and recreational and wildlife enhancements – <i>CWPNAP – Willets Tract addition and forest restoration (5.3.4)</i>	Property adjacent to CWPNAP	\$ 1.3 million
Land protection, property acquisition, and recreational and wildlife enhancements – <i>Additional properties, prioritizing those adjacent to SR or SFSR, creating contiguous protected land corridors (5.3.5)</i>	Locations upstream or within the City of Waynesboro, adjacent to the SR or tributaries to the SR or SFSR	\$ 18.2 million
Recreational fishing improvement projects – <i>Restoration of the VDGIF FRFH (5.3.6)</i>	Front Royal, VA	DuPont fund directly
Recreational fishing improvement projects – <i>Recreational fishing access creation/improvement (5.3.7)</i>	Locations on SR, SFSR, NFSR, or Shenandoah River, or tributaries	\$ 2.5 million

Project attributes, resource benefits, potential environmental impacts, social consequences, and costs are provided in the sections below. These projects provide compensation for the ecological injuries, at a cost of approximately \$38.5 million (the cash settlement for ecological damages). The remaining funds will be used for project restoration planning, oversight, and administration.

Restoration planning will include evaluation of these projects with input and feedback from the public as described in Chapter 1.

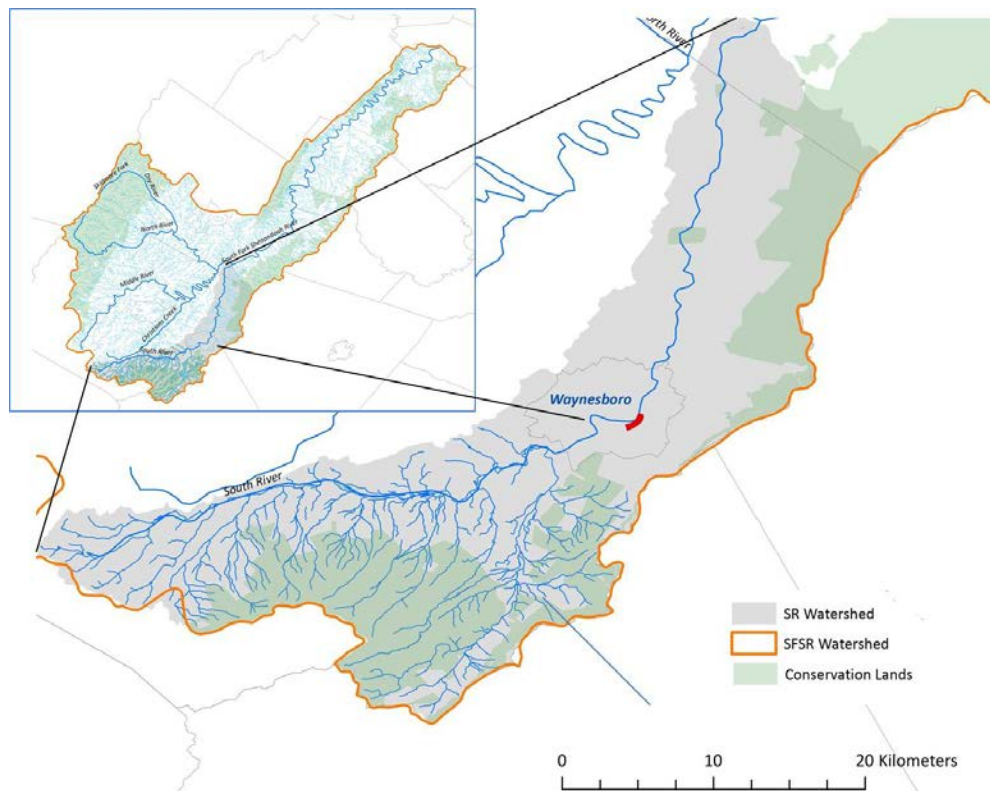


Figure 5. Map of major rivers and tributaries of SR/SFSR watershed (inset), and upstream of Waynesboro in the SR watershed (large map, shaded gray). Restoration may occur within the boundaries of these watersheds in riparian areas. Restoration activities in the headwater areas of the SR watershed (large map) will likely receive prioritization.

5.3.1 Projects to improve water quality and fish habitat - agricultural and urban BMPs in the SR/ SFSR watershed

Projects will be identified that improve water quality and habitat for native fish in the watershed through restoration actions such as planting riparian vegetation, stabilizing eroding banks, sedimentation control devices, improving in-stream habitat, installing alternative watering sources, excluding cattle from accessing the streams and other such agricultural BMPs. Other projects will be identified that improve water quality and habitat for native fish in the watershed through improvements to stormwater ponds and impervious cover management (*e.g.*, urban BMPs).

Location:

Candidate streams for agricultural BMP restoration activities will be those where riparian vegetation is degraded or absent, preferably in the headwaters of the SR (see VDCR 2010). Headwaters will be prioritized because restoration in those areas is likely to have the greatest positive impact on the overall stream and habitat quality. Other locations may include areas along tributaries to the SR or SFSR, including those within the City of Waynesboro. To maximize the effectiveness and coverage of implementing agricultural BMPs, Trustees may partner with existing programs to identify and prioritize locations and projects.

Possible locations for urban BMPs may include any of the towns and cities along the SR and SFSR, especially the City of Waynesboro. Waynesboro has identified potential restoration projects within the city limits, focusing on urban BMPs that are not already required by other laws or regulations.

Project Description:

Possible agricultural BMPs may include erecting livestock exclusion fencing, installing alternative watering sources, planting stream-side buffer vegetation, stabilizing eroding stream banks, sedimentation control structures, natural stream channel design, and/or implementing riparian zone conservation easements. Riparian habitat protection projects provide potential to restore riverine habitats and facilitate the recovery of aquatic fauna, like mussels, within impacted watersheds (Sweeney 1993). Implementation of the habitat protection and enhancement measures can restore the natural riparian structure and function, reduce nutrient and sediment input, provide organic debris as energy source, moderate and restore naturally occurring temperature regimes, and enhance natural recovery of biota (Horwitz *et al.* 2008, Sweeney and Newbold 2014). Projects will follow the Erosion and Sediment Control Handbook (VDEQ 1992) and the Natural Resources Conservation Services (NRCS) Field Office Technical Guidelines when appropriate. Urban BMP projects may include stormwater pond restoration or impervious cover management, such as bioswales, vegetative filter strips or constructed wetlands, or pervious paving techniques.

Improving riparian buffer zones and working with local landowners on implementing agricultural BMPs within the SR/SFSR watershed will provide the benefit of improving water quality and the overall health of the aquatic ecosystem. Urban BMPs will improve water quality in the SR and SFSR as well as quality and quantity of stormwater runoff from urban areas into the rivers. Stormwater runoff may contain soil, sediment, suspended solids, or other contaminants if there is no effective erosion protection in place. Sediment and suspended solids may be detrimental to fish breeding habitat as increased turbidity reduces light penetration, increases water temperature and impacts the level of oxygen in the water. Taking action to improve stormwater runoff will improve water quality and aquatic habitat for fish and other organisms.

For this restoration category, there is flexibility to select from a variety of beneficial and appropriate restoration activities and several potential partners in the watershed to maximize the benefits and scope of these types of activities. Projects may involve establishing landowner agreements for the protection of a buffer area, or may involve easement or fee simple acquisition. The Trustees will prioritize projects with willing landowners who agree to protect the riparian buffer long-term.

Estimated Cost:

The Trustees will allocate approximately \$10 million to implement and monitor agricultural and urban BMP projects.

Expected Impacts:

Intact riparian ecosystems provide many functions, including nutrient uptake, filtering runoff, capturing sediment, canopy and shade, regulation of stream water temperature, bank stability, and input for aquatic food webs. Mature riparian vegetation contributes woody material to the stream system through deadfall, which improves in-stream habitat, reduces stream velocities, and promotes bank and substrate stabilization (Sweeney and Newbold 2014). These functions are essential to maintaining water quality, flood mitigation, aquatic species survival, and biological productivity. Additionally, riparian buffers provide or improve habitat for aquatic and terrestrial species like songbirds and bats. Riparian buffer establishment and restoration is an efficient and cost-effective approach to protect and maintain water quality, and improve aquatic habitat for fish and other organisms. Cattle exclusion provides improvements in water quality through decreased nitrogen and sedimentation, even on a small scale. These activities will replace lost resources or provide additional natural resources and services by protecting and enhancing riparian areas in the upper SR/SFSR watershed, improving recreational fishing as a result. These types of projects have the additional benefit of potential removal from the CWA 303d list if a stream segment is impaired for nutrients and/or fecal coliform. Monitoring data post-project implementation can confirm that benefits are being provided by these activities.

Some restoration activities within this category may cause minor, short-term, direct or indirect impacts, however the long-term benefits listed above are expected to outweigh any of these impacts. For example, riparian planting may cause short-term, localized impacts as existing vegetation is trampled or removed prior to planting, and there may be a period of low ecological value of the area as plants grow to their full maturity. However, long-term impacts to water resources and riparian flora and fauna would occur due to the reduced erosion and increased shelter provided by these plants, and beneficial impacts would span a large geographic area downstream. Most of the riparian restoration activities (*e.g.*, cattle fencing, planting, alternate water sources) are not expected to create potential for causing additional impacts to natural

resources, or human health and safety. Many activities within this category qualify as a categorical exclusion under NEPA (40 C.F.R. § 1508.4), and do not individually or cumulatively have a significant effect on the human environment (*e.g.*, the installation of fences and the planting of seeds or seedlings and other minor re-vegetation actions). If more substantial stream bank stabilization or construction work is required, other short-term, moderate, localized impacts are expected from grading activities, equipment use, and temporary erosion into the river(s). For more substantial stabilization or other construction projects, Trustees would follow appropriate permitting processes and environmental review, and would not pursue a project that would have significant adverse environmental impacts.

Another consequence is that any lands potentially protected by conservation easements will no longer be available for commercial, residential, or economic development (potentially affecting the market value of other properties in the area). Restoration activities and acquisition of property or establishment of conservation easements will be consistent with federal and state policies and laws promoting the conservation and protection of fish and wildlife resources.

Resources Benefited:

Aquatic Resources and Supporting Habitat				Aquatic/Floodplain		Floodplain Resources and Supporting Habitat		
Sediment/ Invertebrates	Madison Cave Isopod	Surface Water	Fish	Amphibians / Reptiles	Piscivorous Birds / Mammals	Migratory Birds	Bats	Soil / Invertebrates
✓	✓	✓	✓	✓	✓	✓	✓	✓

5.3.2 Freshwater Mussel Restoration

This restoration category focuses on restoring the mussel assemblage in the SR and SFSR. Mussel restoration has several expected ecological benefits: improving water quality through filter feeding activity; stabilizing river and stream bottoms and adding to the general biotic integrity and diversity of the river system; enhancing habitat heterogeneity; and providing important substrate and refuge for mussel host fish and sport fish eggs and providing habitat for prey items, such as insect larvae (Vaughn and Hakenkamp 2001, Vaughn *et al.* 2008). These benefits also extend to the sport fish in the river. The restored mussel assemblage will provide vital aquatic ecosystem functions such as nutrient cycling, conversion of food resources into forms readily assimilated by other organisms, and long-term storage and release of important elements such as calcium, phosphorous, and nitrogen (Nedea *et al.* 2000).

Project Location:

Propagation activities will take place at the Freshwater Mollusk Conservation Center at Virginia Polytechnic Institute and State University as well as the Virginia Fisheries and Aquatic Wildlife

Center at Harrison Lake National Fish Hatchery. The Trustees will focus augmentation efforts within the SR and SFSR and their tributaries where habitat is suitable.

Project Description:

Because of the depauperate mussel community in the SR and SFSR, propagation is necessary to increase and establish mussel populations at multiple sites throughout the watershed. Between the two facilities, a plan will be developed to produce, release, and monitor target mussel species, and suitable sites will be identified in the SR and SFSR for introducing the propagated mussels into the rivers. Target species may include those listed in Table 5. The process for propagating listed and non-listed mussels has been developed and refined over the past two decades and is currently at a state where most mussel species can be propagated (O’Beirn *et al.* 1998, Henley *et al.* 2001, Jones *et al.* 2005, Barnhart 2006). Propagation and culture technology has greatly improved for mussels in the last 5 years, making population restoration at a large-scale possible (Carey *et al.* 2015). Each of the facilities can produce thousands of mussels per year for stocking. Propagation efforts will include collecting gravid females from the wild, artificially infecting host fish with mussel larvae in the laboratory, then collecting and holding transformed juvenile mussels. Mussels and host fish are held in the laboratory in recirculating systems for the majority of this process. Juvenile mussels are held in captivity for 1-3 years to improve the survival rate of the released cohort.

In addition to propagation, adult mussels of several species may be translocated from other areas within the watershed to facilitate restoration of the mussel assemblage. Mussel translocation by itself is not considered to be a viable option for mussel population restoration as it does not produce a net gain in mussels in the river. However, translocation of some species could potentially enhance the rate at which mussel restoration is achieved by creating conditions that are supportive of a stable mussel assemblage. Several issues must be considered in a restoration plan before any mussel translocation could take place. Surveys would be required to identify appropriate source populations. These surveys must include baseline information such as size/age structure and sex ratios to assess possible impacts of removing adult mussels from donor sites (*e.g.*, Cacapon River). Some work may be required to address concerns about the genetic relatedness, or lack thereof, of certain source populations and mussel populations within the SR/SFSR watershed.

Mussel translocation projects have met with mixed success (Sheehan *et al.* 1989, Cope and Waller 1995, Carey *et al.* 2015), therefore, a translocation plan would have to be developed that includes protocols for yearly monitoring to determine success and detect potential problems and provide assurance that those issues would be rectified. It is likely that several years of translocation efforts would be necessary for each species that meets predetermined criteria for translocation.

Table 5. Mussel species targeted for restoration in the Shenandoah River system as part of the DuPont NRDAR, along with a short description of propagation difficulty and notes on distribution and conservation status.

Species	Propagation Difficulty	Notes
Eastern elliptio, <i>Elliptio complanata</i>	Difficult; host fish are poorly understood, especially for juvenile mussel production in a hatchery setting.	This is a keystone species due to its high abundance and filtering capacity.
Northern lance, <i>Elliptio fisheriana</i>	Moderately Difficult; host fish are known for this species, but utilization for juvenile mussel production in a hatchery will need to be improved.	Species is of conservation concern in Virginia, extremely rare in Shenandoah River system, but strong populations occur in other Potomac River tributary streams (e.g. Broad Run)
Triangle floater, <i>Alasmidonta undulata</i>	Moderately Difficult; host fish are known for this species, but culture techniques for juveniles in the Anodontine mussel group needs improvement.	Widely distributed species but generally locally uncommon. Obtaining gravid female mussels may be challenging.
Plain pocketbook, <i>Lampsilis cardium</i>	Easy; host fish are well known and juvenile production capacity is high.	Technically feasible.
Green floater, <i>Lasmigona subviridis</i>	Moderately Difficult; host fish are known, but their utilization for juvenile mussel production in a hatchery will need to be improved. Host fish may not be necessary since glochidia can transform to the juvenile stage directly in gills of the female mussel. However, culture of juveniles in the Anodontine mussel group needs improvement.	Species is of conservation concern in Virginia, extremely rare in Shenandoah River system, but strong populations occur in other Potomac River tributary streams (e.g. Cacapon River).
Brook floater, <i>Alasmidonta varicosa</i>	Moderately Difficult; host fish are known, but culture techniques for juveniles in the Anodontine mussel group needs improvement.	Species is of conservation concern in Virginia, extremely rare in Shenandoah River system, but strong populations occur in other Potomac River tributary streams (e.g., Cacapon River).
Creeper, <i>Strophitus undulatus</i>	Moderately Difficult; host fish are known, but their utilization for juvenile mussel production in a hatchery will need to be improved. Host fish may not be necessary since glochidia can transform to the juvenile stage directly in gills of the female mussel. However, culture of juveniles in the Anodontine mussel group needs to be improvement.	Widely distributed species but generally locally uncommon. Obtaining gravid female mussels may be challenging. However, a population occurs in the SR upstream of Waynesboro, VA.
Yellow lampmussel, <i>Lampsilis cariosa</i>	Moderately Difficult to Easy; host fish are well known and juvenile production capacity is high.	Species is of conservation concern in Virginia, extremely rare in Shenandoah River system, but populations occur outside the Potomac River system (e.g. lower Nottoway River, VA). Obtaining gravid female mussels may be challenging.

Eastern floater, <i>Pyganodon</i> <i>cataracta</i>	Moderately Difficult to Easy; host fish are well known and juvenile production capacity is high. However, culture of juveniles in the Anodontine mussel needs improvement.	Species is extremely rare in Shenandoah River system, but is widely distributed and common in the lower reaches of Atlantic Slope Rivers, including the Potomac and Rappahannock rivers.
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All mussel restoration projects must be monitored during and beyond the propagation phase to document that the mussels reach sexual maturation and to document recruitment—an important indicator of a successful restoration. Monitoring is also needed to ensure that augmented individuals within a population reach ages similar to those found in the watershed. Mortality, recovery, and fitness indicators such as, growth and fecundity, may also be monitored for each species.

Propagation of these species is technically possible; several of them have been propagated successfully at the facilities in Virginia. Expected challenges for those species that have not yet been propagated include locating broodstock, and other standard challenges with propagation. Due to the experience of staff at each of the facilities, there is a high probability of identifying and managing challenges associated with propagation of new species.

Estimated Cost

Anticipated cost is \$4 million for a multi-year propagation program at two mussel facilities.

Expected Impacts:

The environmental consequences of propagating freshwater mussels to restore populations are positive. Augmentation activities provide several benefits in addition to reestablishing substantially extirpated populations. Propagation and release of mussels help to: 1) increase the re-colonization rates of species into suitable habitat, 2) increase the likelihood of recruitment into currently occupied habitat, 3) increase the chance of species' continued existence in currently occupied river reaches, and 4) stabilize declining populations of non-listed species which in turn may preclude the need for future federal or state listing actions. The reintroduction of native, formerly native, or established species into suitable habitat within their historic or established range, where no or negligible environmental disturbances are anticipated is an activity that qualifies as a categorical exclusion under NEPA (40 C.F.R. § 1508.4), and does not individually or cumulatively have a significant effect on the human environment.

Resources Benefited:

Aquatic Resources and Supporting Habitat				Aquatic/Floodplain		Floodplain Resources and Supporting Habitat		
Sediment / Invertebrates	Madison Cave Isopod	Surface Water	Fish	Amphibians / Reptiles	Piscivorous Birds/ Mammals	Migratory Birds	Bats	Soil / Invertebrates
✓		✓	✓		✓			

5.3.3 Neotropical Migratory Songbird Full Life Cycle Restoration – through Habitat Restoration

Additional land protection that will specifically benefit the habitat of neotropical migratory songbirds impacted in the assessment area, including warblers, flycatchers and thrushes, will be another preferred restoration component. Because these species migrate along the Eastern Flyway and make bi-yearly journeys across the United States, impacts stemming from the DuPont Facility result in reductions throughout the flyway, where they feed and rest and provide enjoyment to numerous bird watchers along the way. To restore these migratory birds for the benefit of both the area where the injury occurred in Virginia and throughout the flyway, the Trustees propose to support restoration activities that would consider their full life cycle (*e.g.*, breeding, migration, or wintering habitat protection or enhancement).

Effective restoration efforts for neotropical songbird migrants should include both breeding and wintering habitats. Protecting wintering habitat is especially important as winter food limitations cause mortality on wintering grounds as well as increase mortality during migration (Holmes 2007). Studies describe measurable carry-over effects that poor quality wintering habitat may have on a songbird's health and migration timing, breeding success, survival rates, and ultimately population changes (*e.g.*, Marra *et al.* 1998, Sillett *et al.* 2000, DeSante *et al.* 2001, Bearhop *et al.* 2004, Norris *et al.* 2004, Saracco *et al.* 2008), further emphasizing the need for wintering habitat protection to fully restore these species.

Full life cycle habitat restoration supports other DOI efforts to protect migratory birds such as the National Park Service Park Flight Program and FWS Neotropical Migratory Bird Conservation Program, as well as state-led efforts like the Association of Fish and Wildlife Agencies Southern Wings Program.

Project Location:

Trustees will focus on opportunities with demonstrated connectivity of the location(s) with the species that breed in the SR/SFSR watershed.

Project Description:

Projects would focus on protecting habitat for species found in the SR/SFSR watershed during the breeding season. Potential projects will likely include acquisition and long-term protection of existing habitat, with little active restoration needed. Trustees would target those properties with evidence of supporting shared migratory bird species that are adjacent to protected lands, and may be owned by an established organization that will provide oversight and monitoring.

Other projects may include restoration and rehabilitation of degraded tropical forests to improve wintering habitat or working within farming communities to promote sustainable agriculture to provide wildlife habitat. These would involve encouraging agroforestry over intensive clearing and traditional agriculture which provide very limited habitat benefits to migratory birds and require significant quantities of pesticides and fungicides. Extensive monitoring has shown that the abundance, richness, and diversity of neotropical migrant species in agroforestry systems are significantly greater than in agricultural monocultures or pastoral areas (Perfecto *et al.* 1996, Estrada and Coates-Estrada 2005, Harvey and Gonzalez Villalobos 2007), and that agroforestry systems provide important refugia for resident and migrant birds.

Projects in this category will be evaluated with the following considerations:

- an associated U.S. non-profit or organization will manage/oversee transaction and manage/oversee in-country efforts
- property is adjacent to already protected land
- there is high risk of development
- acquisition is cost-effective
- there is a high benefit to species, and documented overlap in species composition
- long-term monitoring is possible

Estimated Cost:

Trustees anticipate that this project will cost no more than \$2.5 million.

Expected Impacts:

For projects that only involve acquisition and protection of existing habitat, beneficial impacts are expected. Land would be protected rather than converted to agriculture or developed, providing high quality wintering habitat for migratory songbirds.

Enhancement activities are likely to include planting of forest (encouraging agroforestry) or invasive species management. These actions are expected to cause minor, short-term, localized impacts to existing resources and resource services, and result in moderate long-term benefits across a broad geographic scope.

Some restoration activities may, depending upon availability and suitability and life cycle needs of the species found in the SR/SFSR, occur outside of Virginia. Any activity will take in to account the nature of the linkage to related species adversely affected by the mercury contamination and potential positive impact to those populations. Bird injury was both a driver of the floodplain analysis, and a significant stand-alone injury requiring focused restoration activities,

5.3.4 CWPNAP - Willets Tract Addition and Forest Restoration

The primary goal of this restoration project is to protect and restore habitat along the SR that will benefit multiple resources and expand the area of already protected Virginia-owned lands. This project is evaluated separately from the category of “Land protection, property acquisition, and recreational and wildlife enhancements” because it is known to be available for acquisition at the time of preparing the Daft RP/EA.

Project Location: Augusta County, VA, along the south bank of the SR and adjacent to CWPNAP (Figure 6)

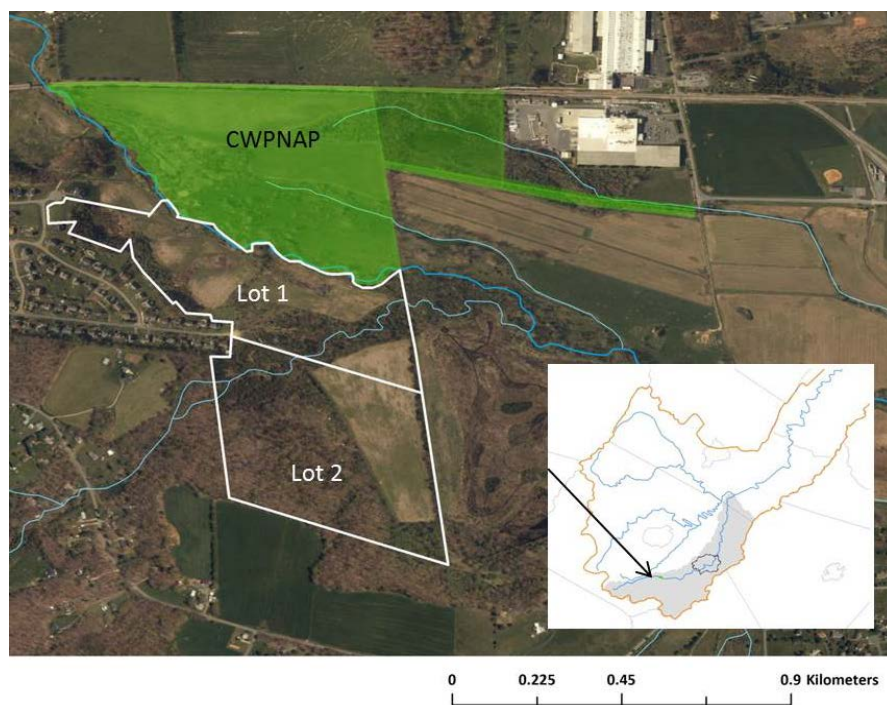


Figure 6. Willets Tract addition and forest restoration outlined in white (Lot 1 and 2), and CWPNAP in green shading.

Project Description:

CWPNAP is a 63-acre property along the north bank of the SR, owned and managed by the Virginia Department of Conservation and Recreation (VDCR) in Augusta County, VA. This property is part of a larger conservation site known as the “South River Wet Prairies” which has been assigned the highest possible biodiversity rank (“B1”) a site can receive in the Commonwealth. This rank stems from the presence of King Rail (*Rallus elegans*), an assemblage of documented rare plants (currently 17 taxa) and four distinct natural communities, including one of the last known examples of fire-maintained Shenandoah Valley natural grassland communities. At least 77 bird species have been recorded from the site (eBird 2016). At least one FWS Focal Species, the King Rail, and an additional bird species, the Grasshopper Sparrow (*Ammodramus savannarum*) considered to have “high regional threats” (Rosenburg 2003), are documented here. This area also overlaps with the potential ranges of federally listed endangered smooth coneflower (*Echinacea laevigata*) and Indiana bat, as well as federally listed threatened species such as swamp pink (*Helonia bullata*), Virginia sneezeweed (*Helenium virginicum*), MCI, and northern long-eared bat. The high quality prairie, wet meadows, and associated open habitats provide benefits for declining species which require such habitats, while wooded riparian forests provide benefits for other species which prefer these habitats.

Adjoining the VDCR owned and managed CWPNAP is an approximately 15 acre preserve managed jointly by VDCR and The Nature Conservancy. Prescribed fire is a critical management tool used across both ownerships to conserve the unique and outstanding biodiversity present. Continued use of prescribed fire at the site will require protecting adjacent parcels to serve as buffers from nearby smoke sensitive residential development. Moreover, a Virginia Conservation Vision Development Vulnerability model maps these adjacent parcels, and the entire perimeter of this conservation site, in the high degree of threat from development (Hazler *et al.* 2016). Thus, acquiring buffer parcels is a timely and critical need for maintaining habitat quality and supporting necessary management activities.

Two tracts are under negotiation and are currently available for acquisition and addition to the CWPNAP. These comprise ~84 acres directly adjacent to the existing state Natural Area Preserve and share approximately ½ mile of common boundary. In addition to providing critical fire management buffers, these parcels would expand habitat connectivity across the SR creating contiguous riparian area protection for approximately 2,037 ft on both sides of the SR, as well as along approximately 2,095 ft of currently unprotected riparian area along both sides of the riparian area along Stony Run, a main tributary of the SR.

The subject parcels have been zoned for residential development, and the current owner has proposed to use the parcels to expand a subdivision which has already been developed immediately to the west. Currently these tracts consist of a mix of active agricultural fields

(approximately 29%), mostly within the floodplain, fallow fields partially reverted to scattered trees/shrubs (approximately 28%), and existing, primarily upland forest (approximately 43%). If acquired, all existing forest would be maintained. Reverting fallow fields would be improved by reducing invasive species presence and all recently cropped fields (approximately 25 acres) would be restored to native hardwood forest. Restored and managed hardwood forests will provide water quality and retention benefits, as well as improved cover, foraging, and nesting habitat for many bird species throughout the year. Taken together, this project would expand opportunity for ecological restoration, increase riparian area protection, buffer the core Natural Area Preserve from external threats, and expand protection for at least one bird species of special concern as well as the other significant natural heritage resources present.

Parcels to be acquired include Lot 1 and 2, identified on Figure 6 above.

Estimated Cost:

Cost for acquisition: \$1,053,000 for Lot 1, Parcel ID 083C2 1 (34 acres) plus Lot 2, Parcel ID 083C2 1B (50 acres). Cost for restoration and monitoring activities: \$265,779.

These costs include acquisition of the parcel, plus purchase and establishment of oak and walnut seedlings and tree shelter, weed control activities prior to planting, and invasive plant monitoring and control.

Expected Impacts:

The acquisition of real property is an activity that qualifies as a categorical exclusion under NEPA (40 C.F.R. § 1508.4), and does not individually or cumulatively have a significant effect on the human environment. The restoration activities will result in direct and indirect, short-term, localized minor impacts on natural resources such as soil, sediment and vegetation. Impacts will be primarily related to weed control and elimination of agricultural crops prior to converting to forested habitat, *e.g.*, a short period of limited or no vegetation cover, some impacts from machinery, and temporary soil erosion in construction areas. The potential adverse effects are outweighed by the potential long-term direct and indirect benefits of creating riparian forested habitat adjacent to CWP NAP as discussed above. In summary, restoring riparian habitat from fallow fields to forest will improve water quality and retention, provide habitat for many bird species throughout the year, and provide protection for a significant natural heritage site long-term. No cultural resources are expected to be impacted; no soil disturbing activities are planned for the CWP NAP addition. Table 6 and 7 contain additional analysis of the anticipated beneficial impacts of the proposed acquisition.

Resources Benefited:

Aquatic Resources and Supporting Habitat				Aquatic/Floodplain		Floodplain Resources and Supporting Habitat		
Sediment / Invertebrates	Madison Cave Isopod	Surface Water	Fish	Amphibians / Reptiles	Piscivorous Birds/ Mammals	Migratory Birds	Bats	Soil / Invertebrates
✓	✓	✓	✓	✓	✓	✓	✓	✓

Table 6. Evaluation Criteria for CWP NAP restoration/addition.

RELATIONSHIP TO THE INJURIES (giving rise to the claim for natural resource damages)

<p>1. SIMILARITY IN ATTRIBUTES TO THE INJURED NATURAL RESOURCE, same type and quality</p> <p>2. LOCATION - proximity to SR/SFSR watershed</p> <p>3. SCALE OF BENEFITS OF THE PROPOSED PROJECT - quality/quantity benefits provided by project (increase in acres, species, etc.)</p>	<p>Similar, or more diverse, natural resources to those that were injured in the assessment area. Location within the same watershed, upstream on SR. Project would create an increase of acres of highly valued, protected area.</p>
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LIKELIHOOD OF SUCCESS AND TECHNICAL FEASIBILITY

<p>4. PROVEN TECHNOLOGY - can project be accomplished with available technology?</p> <p>5. DOCUMENTED SUCCESS - has a similar project succeeded in the past?</p> <p>6. COST EFFECTIVENESS - are costs reasonable related to expected benefits?</p>	<p>No advanced technology required for restoration activities. Standard restoration methods would apply. Similar projects have been successful, e.g., regular restoration activities at CWP NAP. Cost effective, as VDCR will provide in-kind contributions.</p>
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REGULATORY AND POLICY CONSIDERATIONS

<p>7. FEDERAL, STATE AND LOCAL LAW COMPLIANCE</p> <p>8. SITE OWNERSHIP AND ACCESS - do we have permission for the project?</p> <p>9. PROPOSED PROJECT IS NOT "OTHERWISE REQUIRED" - by federal, state, local laws, regulations, permits, licenses</p> <p>10. CONSISTENCY WITH TRUSTEE POLICY, MANAGEMENT GOALS, AND OBJECTIVES</p>	<p>No violation of any laws, and not required as part of any other law. Site is for sale, "shovel-ready", property owner has been cooperative.</p>
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GROUND FORS FOR PROJECT ELIMINATION

<p>1. BENEFITS OF PROJECT ARE UNLIKELY TO RESULT IN RESTORATION BENEFITS IN ADVANCE OF THE NATURAL RECOVERY PERIOD</p> <p>2. PROJECT HAS SIGNIFICANT ADVERSE ENVIRONMENTAL IMPACTS</p> <p>3. POTENTIAL FOR SIGNIFICANT ADVERSE EFFECTS TO HUMAN HEALTH AND SAFETY</p> <p>4. POTENTIAL FOR SIGNIFICANT ADVERSE SOCIOECONOMIC EFFECTS</p>	<p>Benefits would not accrue if this land is not protected/restored, as this site would be developed otherwise. Short-term environmental impacts may be expected during restoration, but nothing of lasting significance. No anticipated adverse effects to health or safety. No adverse socioeconomic effects are anticipated.</p>
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SECONDARY CRITERIA

<p>1. CONSISTENCY WITH LOCAL, REGIONAL, AND NATIONAL RESTORATION GOALS AND INITIATIVES</p> <p>2. TIME FRAME OF POTENTIAL BENEFITS</p> <p>3. SELF-SUSTAINABILITY OF THE RESTORATION PROJECT</p> <p>4. INTEGRATION WITH EXISTING MANAGEMENT PROGRAMS / LEVERAGE POTENTIAL</p> <p>5. HABITAT CONNECTIVITY (<i>e.g.</i>, creating contiguous habitat)</p> <p>6. PROXIMITY TO LANDS WITH PROTECTED STATUS.</p> <p>7. BENEFITS TO PROTECTED SPECIES / SENSITIVE OR UNIQUE HABITATS</p> <p>8. EDUCATION AND OUTREACH OPPORTUNITIES</p>	<p>This is consistent with state priorities (VDCR). The potential benefits are expected to start immediately for some of the restoration (protection of existing forest) and will increase over time for other (<i>e.g.</i>, conversion of crop fields to forest), which otherwise would not happen. Because of the proximity to CWP NAP, this project will become part of that existing management program. This project will not only increase acreage of contiguous habitat, but will also provide a buffer between CWP NAP and neighboring residential areas, allowing for fire management to continue at the prairie without impacts. Education opportunities may be combined with existing programs using CWP NAP.</p>
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MONITORING

<p>1. MONITORING - will there be measurable results?</p>	<p>Monitoring/control of invasive species activities will be part of project, and will be undertaken by VDCR.</p>
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Table 7. Additional evaluation of CWP NAP restoration/addition, using acquisition-specific criteria.

SURROUNDING LAND USE AND LAND PROTECTION STATUS

<p>Does the parcel provide opportunity to avoid habitat fragmentation or protect a corridor?</p> <p>Does surrounding land use threaten the resource value of a parcel?</p> <p>Nature and likelihood of development threats</p>	<p>Acquisition of this parcel will increase the size and contiguous area of CWP NAP and provide critical buffer from development. If developed, opportunity for riparian forest restoration will be lost, existing mature forest will be converted, and habitat fragmentation will increase. In addition, development will threaten continued prescribed burning practices at CWP NAP. Prescribed burning is a critical part of maintaining the unique habitat at CWP NAP, and implementation will be severely hampered by development of a residential area due to the smoke dispersal.</p>
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PRIORITY

<p>Has the parcel been identified as high priority for protection in existing local/regional land-use planning docs?</p>	<p>Long-standing VDCR priority due to rare species and natural communities, and designation as a high threat to development per the VDCR Conservation Vision Development Vulnerability model.</p>
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TYPES AND CONDITION OF NATURAL RESOURCES BENEFITED

<p>Is there evidence of rare species or habitat? Are there exemplary natural communities? Does it protect warm-water fisheries?</p>	<p>Tracts are part of a conservation site with outstanding (highest ranking) biodiversity significance, based on a large collection of rare plants, natural communities, and at least two bird species of conservation concern. Riparian buffer for more than 4,100 ft of the SR and a main tributary, Stony Run, will be protected.</p>
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COST OF PROTECTION

<p>Would this be acquisition, land transfer? Can the parcel be protected at a fair price for size and location? Is there opportunity for leveraging additional resources</p>	<p>Tracts will be acquired by VDCR at fair market value. The restoration costs will be leveraged with greater than 30% of the costs provided by VDCR matching funds. If successful acquisition is completed, it is likely that the owner of an adjacent 'Phase 2' high priority parcel will agree to work with VDCR as well.</p>
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LONG-TERM MAINTENANCE AND MANAGEMENT NEEDS

<p>Will public access be allowed? If so, is the management and degree of public access consistent with resource protection?</p> <p>What is potential for future management problems and costs?</p> <p>Are there on-site resources that need to be preserved (cultural, archaeological)?</p>	<p>Public access will be allowed, and will be consistent with VDCR's overall Natural Area Preserve guidelines seeking to balance public access and necessary management for the resources. Considering the management actions underway on existing protected lands, the VDCR and partners will maximize opportunities for efficient and expedited management activities. No cultural or archaeological resources are known on the site.</p>
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5.3.5 Land protection, property acquisition, and recreational and wildlife enhancements – riparian habitat along the SR or SFSR

Additional land acquisition will be targeted adjacent to the SR, SFSR, Shenandoah River and their tributaries to restore, enhance, or create contiguous areas of high-quality habitat for the same types of natural resources that were injured. Parts of the watershed are experiencing development pressure and have high levels of agricultural use, resulting in decreased water quality and habitat fragmentation. The purchase of lands (or conservation easements) may be accompanied by restoration and/or enhancement actions that will improve or increase habitat for a diversity of wildlife, and improve water quality through buffering impacts on sedimentation and run-off. These lands will remain protected in perpetuity.

The Trustees intend to solicit agencies, nonprofit organizations, and private citizens for proposed parcels for acquisition, and will select parcels for acquisition funding based on the priority criteria they established for acquisition and funding limitations. Project sponsors would need to identify the agency or nonprofit organization that would hold the easement or acquire the land in fee title. The Trustees have already identified one candidate parcel, described above (5.3.4).

Project Location:

Specific locations have not been determined, but potential acquisitions (with willing landowners) will be prioritized if they:

- are available for purchase within the desired timeline of the Trustees;
- are adjacent to already protected land;
- are at risk of development;
- are not already contaminated;
- provide habitat for state or federally protected species, or contain rare or unique habitat features;
- provide opportunities for wetland protection, enhancement, or restoration, that would specifically benefit amphibians that use ephemeral pond complexes for breeding;
- provide opportunities to protect or restore turtle breeding habitat, or in-stream basking habitat;
- provide opportunities to protect or restore bat habitat – hibernacula or breeding habitat;
- provide opportunities to restore or enhance waterfowl habitat, such as installation of wood duck box network;
- provide opportunities to protect quality habitat of the federally listed threatened MCI within its range in the northern Shenandoah Valley of Virginia and parts of West Virginia;
- increase public access for anglers or increase water-based recreation opportunities for the public; or
- provide opportunities to engage public in outreach activities.

Additional criteria are set forth in Table 7.

Project Description:

Examples of appropriate projects would include but not be limited to: restoring riparian forest habitat to benefit migratory birds, mammals, and amphibians/reptiles; converting hay/pasture/row crop to forest habitat; restoring or creating wetland habitat; restoring wet prairie habitat; or creating riparian buffer and stream stabilization. In some cases no additional enhancement work will be necessary.

Property acquisition will be targeted to specifically benefit amphibians, reptiles, bats, waterfowl, MCI, and wetland habitat – if these resources do not benefit from a suggested property

acquisition, that property will not be considered. Parcels acquired through this settlement will benefit at least one or all of the listed resources. When possible, river access points may be included in the restoration of a property – either by creating new access or improving existing access. However, river access will also be pursued separately from the land acquisition restoration category to ensure compensation of recreational fishing losses and to allow flexibility to capture unique opportunities that may provide significant additional benefit to recreational fishing.

A monitoring plan must be developed for selected projects to ensure long-term success. Because specific properties have not yet been identified, the evaluation criteria tables (see above Table 6 and 7) are not presented in this RP/EA. Each project will be reviewed in detail as it is identified following these criteria. A general review of impacts/effects is presented below.

Estimated Cost:

Trustees anticipate that the land protection component will cost approximately \$18.2 million.

Expected Impacts:

The acquisition of real property is an activity that qualifies as a categorical exclusion under NEPA (40 C.F.R. § 1508.4), and does not individually or cumulatively have a significant effect on the human environment. Some of the enhancement activities will result in direct and indirect, short-term, localized, or major impacts on natural resources such as soil, sediment, and vegetation. Existing habitat may in some cases be substantially modified to create the hydrology, grade, soil type, and vegetation necessary for the successful development of wetland habitats. This will likely involve the use of heavy machinery and construction equipment, which may result in soil compaction, emissions from heavy equipment, removal or crushing of understory vegetation, and increased soil erosion in the immediate area of construction operations. However, the long-term direct and indirect benefits expected from this type of restoration activity outweigh the potential adverse impacts. The creation of wetland habitat will provide significant benefit to amphibians and reptiles, and other species. For example, ephemeral ponds provide key breeding habitat for amphibians whose tadpoles and larvae are especially vulnerable to fish predation (fish cannot survive in ephemeral ponds). These ephemeral ponds also provide prey for species such as turtles, birds, small mammals, and predatory insects.

Other potential restoration actions may include planting, revegetation of riparian or upland forest, invasive species control, bank restoration, and erosion reduction. These actions are expected to cause minor, short-term, localized impacts to existing resources and resource services, and result in moderate long-term benefits across a broad geographic scope. Wetland, riparian, and upland planting may cause short-term, localized impacts to existing vegetation at the restoration site (*e.g.*, as existing vegetation is trampled or removed). During planting, which

may last for more than one year, the resource services provided by that area are likely to be reduced through physical disturbance over some time period, as the vegetation grows. However, long-term, moderate beneficial impacts to aquatic resources and associated flora and fauna are expected due to the reduced erosion and increased shelter provided by wetland and riparian plantings. Grassland restoration typically involves removal of existing vegetation through physical or mechanical means, replanting native grassland species, and conducting frequent maintenance (*e.g.*, mowing or burning) to ensure the grassland does not convert to a more shrub-dominated or forested habitat type. The adverse impacts of these actions are expected to range from direct, short-term, localized, minor impacts to indirect, long-term, localized, minor impacts. For example, the short-term impacts associated with revegetation are similar to those described above. The long-term minor impacts are associated with the continued maintenance of the habitat such as emissions from equipment or noise from mowing. However, the long-term direct and indirect benefits of grassland restoration outweigh the potential adverse impacts. Grasslands are increasingly threatened by agriculture and development, yet are a crucial habitat for birds and other wildlife. For example, migratory songbirds rely on grassland habitat for foraging and nesting during the summer, and small mammals such as voles and mice make their homes in grassland areas, and are an important food source to many birds of prey.

Incorporating river access as part of these projects may have short-term impacts, due to clearing vegetation, creating vehicle pull-off sites or parking lots, or increased foot traffic along the stream banks. Trustees will prioritize projects with minimal construction needs related to river access. Trustees do not anticipate any adverse impacts to historical or cultural resources, and will complete a full review of anticipated impacts to historic resources as properties are identified and evaluated, in accordance with Section 106 of the National Historic Preservation Act of 1966.

These projects would more likely benefit cultural or historical resources through the long-term protection they will provide. Beneficial ecological impacts are expected for benthic invertebrates/mussels, fish, birds, mammals, amphibians and reptiles.

Resources Benefited:

Aquatic Resources and Supporting Habitat				Aquatic/Floodplain		Floodplain Resources and Supporting Habitat		
Sediment / Invertebrates	Madison Cave Isopod	Surface Water	Fish	Amphibians / Reptiles	Piscivorous Birds/ Mammals	Migratory Birds	Bats	Soil / Invertebrates
✓	✓	✓	✓	✓	✓	✓	✓	✓

5.3.6 Restoration of the VDGIF FRFH – Recreational Fishing Improvement Project

The hatchery was built in the 1930s for the purpose of producing game fish for area rivers. The smallmouth bass is the most sought-after game fish in the Shenandoah River system and reproduces naturally in these waters. The restored hatchery would provide consistent production of smallmouth bass to supplement the river populations during years with poor natural reproduction. Restoration of the hatchery will generate increased numbers of higher quality fishing trips. A restored hatchery could also eventually produce other highly-desirable coolwater game fish for stocking, including walleye and muskellunge.

Project Location:

The FRFH is located near Front Royal, VA in Shenandoah County.

Project Description:

The renovated FRFH would improve consistency of year-class strength for smallmouth bass in area rivers through hatching, rearing, and stocking of fingerlings. A renovated facility could also provide facilities and opportunities for mercury-related environmental education for little additional cost. Effective outreach and education would help communicate potential risks associated with human exposure to mercury as well as safe activities available in the watershed. These would address the stigma associated with mercury contamination, which decreases the appeal of these rivers in the minds of many users. In short, the renovated hatchery could “bring people back to the river” through stocking programs and education.

The FRFH needs major reconstruction – including pond, raceway and building upgrades. Renovations are described in more detail in Appendix C to the proposed CD. Evaluation criteria for the FRFH are presented in Table 8.

Estimated Cost:

DuPont will perform all renovation directly. Initial costs of hatchery renovation have been estimated to be up to \$10 million. Staffing and operation costs will be covered by VDGIF.

Expected Impacts:

This project will renovate existing structures and will not involve any expansion of construction activities to new areas, so the Trustees anticipate minimal adverse impacts. Some short-term, localized, direct and indirect impacts may occur from construction activities and use of heavy machinery, such as soil compaction, emissions from heavy machinery, and potential soil erosion. Trustees do not anticipate any adverse impacts to historical or cultural resources, and will complete a full review of anticipated impacts to historic resources as properties are identified and evaluated, in accordance with Section 106 of the National Historic Preservation Act of 1966.

Expansion of the FRFH will generate additional fishing trips while also increasing the quality of fishing trips taken.

Table 8. Evaluation of the FRFH.

RELATIONSHIP TO THE INJURIES (giving rise to the claim for natural resource damages)	
1. SIMILARITY IN ATTRIBUTES TO THE INJURED NATURAL RESOURCE, same type and quality	The project focuses on restoring smallmouth bass, an injured resource in the assessment area. Location is within the same watershed. Project would also benefit smallmouth bass fisheries state-wide
2. LOCATION - proximity to SR/SFSR watershed	
3. SCALE OF BENEFITS OF THE PROPOSED PROJECT - quality/quantity benefits provided by project (increase in acres, species, etc.)	
LIKELIHOOD OF SUCCESS AND TECHNICAL FEASIBILITY	
4. PROVEN TECHNOLOGY - can project be accomplished with available technology?	Proposed renovations are standard and have been used at other Virginia hatcheries with success. Because DuPont is performing activities directly, the costs are expected to be reasonable. VDGIF will provide in-kind contributions of staff salaries.
5. DOCUMENTED SUCCESS - has a similar project succeeded in the past?	
6. COST EFFECTIVENESS - are costs reasonable related to expected benefits	
REGULATORY AND POLICY CONSIDERATIONS	
7. FEDERAL, STATE AND LOCAL LAW compliance	No violation of any laws, and not required as part of any other law. This project is consistent with state priorities.
8. SITE OWNERSHIP AND ACCESS - do we have permission for the project?	
9. PROPOSED PROJECT IS NOT "OTHERWISE REQUIRED" - by federal, state, local laws, regulations, permits, licenses	
10. CONSISTENCY WITH TRUSTEE POLICY, MANAGEMENT GOALS, AND OBJECTIVES	
GROUNDS FOR PROJECT ELIMINATION	
1. BENEFITS OF PROJECT ARE UNLIKELY TO RESULT IN RESTORATION BENEFITS IN ADVANCE OF THE NATURAL RECOVERY PERIOD	Short-term environmental impacts may be expected during restoration, but nothing of lasting significance. No anticipated adverse effects to health or safety. No adverse socioeconomic effects are anticipated.
2. PROJECT HAS SIGNIFICANT ADVERSE ENVIRONMENTAL IMPACTS	
3. POTENTIAL FOR SIGNIFICANT ADVERSE EFFECTS TO HUMAN HEALTH AND SAFETY	
4. POTENTIAL FOR SIGNIFICANT ADVERSE SOCIOECONOMIC EFFECTS	

SECONDARY CRITERIA

1. CONSISTENCY WITH LOCAL, REGIONAL, AND NATIONAL RESTORATION GOALS AND INITIATIVES 2. TIME FRAME OF POTENTIAL BENEFITS 3. SELF-SUSTAINABILITY OF THE RESTORATION PROJECT 4. INTEGRATION WITH EXISTING MANAGEMENT PROGRAMS / LEVERAGE POTENTIAL 5. HABITAT CONNECTIVITY (e.g., creating contiguous habitat) 6. PROXIMITY TO LANDS WITH PROTECTED STATUS. 7. BENEFITS TO PROTECTED SPECIES / SENSITIVE OR UNIQUE HABITATS. 8. EDUCATION AND OUTREACH OPPORTUNITIES	This is consistent with state priorities. The potential benefits are expected to start immediately and will increase over time for other. VDGIF will continue to staff this hatchery.
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MONITORING

1. MONITORING - will there be measurable results?	Monitoring activities will be part of project, and will be undertaken by VDGIF.
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5.3.7 Recreational fishing access creation/improvement

This project would focus on identifying safe and convenient river access for anglers and recreational users within the SR/SFSR watershed. For river float trips, the goal is to have access at intervals of 5-7 miles. Areas that will provide bank fishing and wading access are also desirable.

Project Location:

Various locations along SR, SFSR, NFSR, North River, and Shenandoah River. VDGIF and VDEQ have identified some potential access point needs in the SR/SFSR watershed; however, exact project location(s) will depend upon property suitability and availability.

Project Description:

VDGIF and VDEQ have identified several opportunities to improve or add access within the watershed that would meet the goal of access points every 5-7 river miles, or would provide additional bank fishing or wading access.

Estimated Cost:

Trustees have allocated no more than \$2.5 million to pursue access points either as component of property acquisition that will also benefit other resources, or separately. Costs will be highly variable between sites. Factors include whether ownership is public or private, size of tract, whether lease or purchase, local road access, topography, susceptibility to flooding, and degree of development proposed (canoe launch, boat ramp, walk-in access, etc.).

Expected Impacts:

Adding access points within the SR/SFSR has been identified as a need by Virginia natural resource agencies and stakeholders. Additional access to these rivers can provide more fishing and recreational opportunities and can also enhance trips by providing more conveniently located access, more options and varieties of trip types and lengths, by providing better services (ease of launching, parking, personal safety, nearby conveniences, etc.).

Incorporating river access may have short-term impacts, due to clearing vegetation, creating vehicle pull-off sites or parking lots, and increased foot traffic along the stream banks. Trustees will prioritize projects with minimal construction needs related to river access. Trustees do not anticipate any adverse impacts to historical or cultural resources, and will complete a full review of anticipated impacts to historic resources as properties are identified and evaluated, in accordance with Section 106 of the National Historic Preservation Act of 1966.

5.4 Evaluation of Alternative C: Restoration that Satisfies Site-Specific Criteria

Alternative C includes a suite of restoration projects that compensate for interim ecological losses and satisfy the NRDAR factors listed above (5.1). These projects will be located within the SR/SFSR watershed (Figure 5) when feasible and appropriate and include the following categories:

Project Category	Potential Locations	Estimated Cost
Projects to improve water quality and fish habitat – <i>Agricultural and urban BMPs in the SR/SFSR watershed (refer to 5.3.1)</i>	Headwaters of SR, tributaries to SR or SFSR, sites within the City of Waynesboro	\$ 7.5 million
Freshwater mussel restoration – <i>Propagation program (refer to 5.3.2)</i>	Freshwater Mollusk Conservation Center at Virginia Polytechnic Institute and State University; Virginia Fisheries and Aquatic Wildlife Center at Harrison Lake National Fish Hatchery	\$ 4 million
Neotropical migratory songbird full life cycle restoration – <i>Habitat restoration (refer to 5.3.3)</i>	Various locations	\$ 2.5 million

Land protection, property acquisition, and recreational and wildlife enhancements – <i>CWPNAP – Willets Tract addition and forest restoration (refer to 5.3.4)</i>	Property adjacent to CWPNAP	\$ 1.3 million
Land protection, property acquisition, and recreational and wildlife enhancements – <i>Additional properties, prioritizing those adjacent to SR or SFSR, creating contiguous protected land corridors (refer to 5.3.5)</i>	Locations upstream or within the City of Waynesboro, adjacent to the SR or tributaries to the SR or SFSR	\$ 18.2 million
Recreational fishing improvement projects – <i>Restoration of the VDGIF FRFH (refer to 5.3.6)</i>	Front Royal, VA	DuPont fund directly
Recreational fishing improvement projects – <i>Recreational fishing access creation/improvement (refer to 5.3.7)</i>	Locations on SR, SFSR, NFSR, or Shenandoah River, or tributaries	\$ 2.5 million
Recreational fishing improvement projects – <i>Trout management project (5.4.1)</i>	Appropriate locations within the SR	\$ 2.5 million

Project attributes, resource benefits, potential environmental impacts, social consequences, and costs are provided in the sections above (5.3) and below (5.4.1).

5.4.1 Trout management project

This project would focus on improving and increasing trout fishing opportunities on the SR to allow safe consumption of fish. Trout have been stocked at multiple locations along the SR starting in 1989 (Bugas 2011). Although trout were not an injured resource, and trout anglers were not impacted by the FCA or mercury contamination, stakeholders and state agencies identified this project for consideration due to angler interest in trout fishing on the SR and the opportunity to provide alternative fishing experiences with options for safe consumption.

Project Location:

Appropriate locations along SR, within the existing trout fishery in Waynesboro and Grottoes areas or in new areas with suitable habitat.

Project Description:

The goal of this project is to increase stocking frequency and size of fish and expand the area of trout stocking. Components of this project may include purchasing additional trout at larger

sizes for stocking, and/or constructing a grow-out facility to house trout, allowing them to reach desirable size.

Estimated Cost:

If this Alternative was selected, no more than \$2.5 million would be redirected from “projects to improve water quality and fish habitat,” that may also have potential benefits to trout, in order to complete the trout stocking/management project.

Expected Impacts:

Expanded trout stocking and higher quality fish will attract a greater number of trout anglers to the SR, and will provide greater numbers of safe-to-consume fish for those anglers.

Environmental impacts of trout stocking are primarily beneficial, and likely have minimal impact on native fish assemblages. Possible impacts may include some competition with local species and introduction of disease.

If construction of a grow-out or holding facility becomes part of this project, there may be some short-term impacts from construction activities. Trustees do not anticipate any adverse impacts to historical or cultural resources, and will complete a full review of anticipated impacts to historic resources if a construction project is pursued, in accordance with Section 106 of the National Historic Preservation Act of 1966.

5.5 Compliance with NEPA and other potentially applicable laws

Upon completion of the public comment period, an Environmental Action Statement and a FONSI were signed by the DOI Authorized Official and a notice of availability of the final RP/EA was advertised in local paper and posted on the FWS website. These documents will remain within the administrative record for this matter.

Coordination and evaluation of required compliance with specific federal acts, executive orders, and other policies for the preferred restoration plan is achieved, in part, through the coordination of this document with appropriate agencies and the public. All ecological restoration projects will be in compliance with all applicable federal statutes, executive orders, and policies, including, but not limited to: NEPA, 42 U.S.C. § 4321 *et seq.*; ESA, 16 U.S.C. § 1531, *et seq.*; the National Historic Preservation Act of 1966, 16 U.S.C. § 470 *et seq.*; the Fish and Wildlife Coordination Act, 16 U.S.C. § 661 *et seq.*; the Rivers and Harbors Act of 1899, 33 U.S.C. § 403 *et seq.*; the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.*; Executive Order 11990, Protection of Wetlands; and Executive Order 11988, Flood Plain Management. Compliance with the laws cited above, and any necessary permitting, will be undertaken during specific restoration project planning stages, and will be completed early in the project planning

process. See below for descriptions of relevant laws, regulations and policies, and how the proposed restoration alternative is in compliance.

State permits may be required to implement certain activities within the proposed restoration alternatives, depending upon the exact nature of proposed work. Proposed restoration activities in wetland and floodplain habitats would need to meet the requirements of the U.S. Army Corps of Engineers (USACE) Nationwide and/or General Permits. Any restoration work occurring within streambeds would require subaqueous bottom land permits from the Virginia Marine Resources Commission.

Federal Trustees are also required under Executive Order Number 12898, 59 C.F.R. § 7629, to identify and address any policy or planning impacts that disproportionately affect the health and environment in low income and minority populations. Since the restoration alternatives will result in changes that benefit trust resources throughout the SR and SFSR watershed, including in and near Waynesboro, the federal Trustee has concluded that there would be no adverse impacts on low-income or minority communities due to implementation of the restoration alternatives.

Anadromous Fish Conservation Act

The Anadromous Fish Conservation Act (16 U.S.C. § 757a, *et seq.*) provides authority to conserve, develop, and enhance anadromous fishery resources.

Compliance: The proposed restoration would conserve and enhance anadromous fishery resources.

Clean Air Act

The Clean Air Act (42 U.S.C. § 7401, *et seq.*) directs EPA to set limits on air emissions to ensure basic protection of health and the environment. The fundamental goal is the nationwide attainment and maintenance of the National Ambient Air Quality Standards (NAAQS). Primary NAAQS are designed to protect human health. Secondary NAAQS are designed to protect the public welfare (for example, to prevent damage to soils, crops, vegetation, water, visibility and property).

Compliance: All construction activity would be conducted with conventional equipment in compliance with all local ordinances and NAAQS.

Clean Water Act (Federal Water Pollution Control Act)

The Clean Water Act (33 U.S.C. § 1251, *et seq.*) is the principal law governing pollution control and water quality of the Nation's waterways. Section 404 of the law authorizes a permit program for the beneficial uses of dredged or fill material in navigable waters. The USACE administers the program.

Compliance: Coordination with the USACE would be completed pursuant to Section 404 of this Act before any site specific restoration action under this proposed plan could be undertaken. All joint federal/state permits would be obtained prior to the start of any site specific construction activities. All construction activity will be done in compliance with Section 404 of the law.

Endangered Species Act

The ESA (16 U.S.C. § 1531, *et seq.*, 50 C.F.R. Parts 17, 222, 224) directs all federal agencies to work to conserve endangered and threatened species and to use their authorities to further the purposes of the ESA. Under the ESA, National Oceanic and Atmospheric Administration (NOAA) National Marine Fisheries Service (NMFS) and FWS publish lists of endangered and threatened species. Section 7 of the ESA, called "Interagency Cooperation," is the mechanism by which federal agencies ensure the actions they take, including those they fund or authorize, do not jeopardize the existence of any listed species.

Compliance: The Trustees would conduct necessary Section 7 consultations with NMFS and FWS prior to implementation of any future restoration project proposed under this plan. Such consultations would be initiated before selection of a specific project, but may be completed and/or updated during a project's design phase.

Farmland Protection Policy Act

The Farmland Protection Policy Act of 1981 (7 U.S.C. § 4201 *et seq.*) aims to minimize the effect of federal programs on the unnecessary and irreversible conversion of farmland to nonagricultural use.

Compliance: The Trustees would coordinate with NRCS to minimize impacts to farmland if applicable.

Fish and Wildlife Conservation Act

The Fish and Wildlife Conservation Act of 1980 (16 U.S.C. § 2901 and 50 C.F.R. § 83) provides for protection and management of non-game fish and wildlife and their habitats.

Compliance: The intent of the NRDAR process is restore, replace, enhance, and/or acquire equivalent natural resources (fish, wildlife, and their supporting habitats) and resource services as were injured by releases of hazardous substances. The Trustees believe the restoration

activities described in the RP/EA will enhance habitats and fish and wildlife, thereby benefiting natural resources.

Fish and Wildlife Coordination Act

The Fish and Wildlife Coordination Act (16 U.S.C. § 661, *et seq.*) states that wildlife conservation shall receive equal consideration with other features of water-resource development. This Act requires federal permitting and licensing agencies to consult with NOAA/NMFS, FWS, and state wildlife agencies before permitting any activity that in any way modifies any body of water to minimize the adverse impacts of such actions on fish and wildlife resources and habitat.

Compliance: For restoration projects to be implemented under this plan, the Trustees would be consulting with agency regulatory staff in the future during the Clean Water Act Section 404 permitting process to minimize any potential impacts to fish and wildlife resources and habitat.

Information Quality Guidelines issued pursuant to Public Law 106-554

Information disseminated by federal agencies to the public after October 1, 2002, is subject to information quality guidelines developed by each agency pursuant to Section 515 of Public Law 106-554 that are intended to ensure and maximize the quality of such information (*e.g.*, the objectivity, utility and integrity of such information).

Compliance: The RP/EA is an information product covered by information quality guidelines established by NOAA and DOI for this purpose. The quality of the information contained herein is consistent with the applicable guidelines.

Migratory Bird Treaty Act

The Migratory Bird Treaty Act (16 U.S.C. § 715, *et seq.*) provides for the protection of migratory birds. This statute does not specifically protect the habitat of these birds but may be used to consider time-of-year restrictions for activities on restoration sites where it is likely migratory birds may be nesting and/or to stipulate maintenance schedules that would avoid the nesting seasons of migratory birds.

Compliance: Consultation with the FWS constitutes compliance with this Act. If future restoration activities under this plan are deemed to adversely impact migratory birds, appropriate measures will be implemented to avoid impacts.

National Environmental Policy Act

Congress enacted the National Environmental Policy Act (NEPA; 42 U.S.C. § 4321 *et seq.*) in 1969 to establish a national policy for the protection of the environment. NEPA applies to federal agency actions that affect the human environment. Federal agencies are obligated to comply

with NEPA regulations adopted by the Council on Environmental Quality (CEQ). NEPA requires that an Environmental Assessment be prepared to determine whether the proposed restoration actions will have a significant effect on the quality of the human environment. If an impact is considered significant, then an Environmental Impact Statement (EIS) is prepared. If the impact is considered not significant, then a FONSI is issued.

Compliance: The Trustees have integrated an analysis of the environmental consequences of the Preferred Alternative into the final RP/EA to comply with NEPA and CEQ processes and requirements. This integrated process allows the Trustees to meet the public involvement requirements of NEPA and CERCLA concurrently. Further NEPA analysis, tiered to the programmatic analysis herein, will occur when specific restoration activities are identified and proposed. Based on the analysis described in this document, the Trustees do not believe an EIS will be required for any projects within the scope of the Proposed Action.

National Historic Preservation Act

Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. § 470 *et seq.*) requires federal agencies to take into account the effects of its actions on historic properties by identifying historic properties, assessing adverse effects and resolving adverse effects.

Compliance: In the area proposed restoration activities could occur, the Trustees do not expect any restoration project to have an interaction with historic sites, buildings, objects and antiquities of national significance. However, coordination with the Virginia Department of Historic Resources would occur in the future to ensure that specific restoration actions under this plan avoid impacting any such properties.

Preservation of Historic and Archeological Data Act

The purpose of the Preservation of Historic and Archeological Data Act of 1974, as amended, 16 U.S.C. § 469, *et seq.*) is to provide for the preservation of historic American sites, buildings, objects and antiquities of national significance, and for other purposes by specifically providing for the preservation of historical of archeological data which might otherwise be lost or destroyed.

Compliance: In the area proposed restoration activities could occur, the Trustees do not expect any restoration project to have an interaction with historic sites, buildings, objects and antiquities of national significance. However, coordination with the Virginia Department of Historic Resources would occur in the future to ensure that specific restoration actions under this plan avoid impacting any such data.

Rivers and Harbors Act

The federal Rivers and Harbors Act (RHA; 33 U.S.C. § 401, *et seq.*) regulates development and use of the Nation's navigable waterways. Section 10 of this Act prohibits unauthorized obstruction or alteration of navigable waters and vests the USACE with authority to regulate discharges of fill and other materials into such waters.

Compliance: Coordination with the USACE would be completed pursuant to Section 10 of this Act before any site specific restoration action under this proposed plan could be undertaken. Future restoration actions under this plan that require Section 404 Clean Water Act permits are likely to meet the requirements of the USACE's Nationwide and/or General Permits. All joint federal/state permits would be obtained prior to the start of any site-specific restoration activities, including for compliance with Section 10 of the law where applicable.

Wild and Scenic Rivers Act

The Wild and Scenic Rivers Act of 1968 (16 U.S.C. § 1271 *et seq.*) preserves certain rivers with outstanding natural, cultural, and recreational values in a free-flowing condition.

Compliance: Trustees do not intend to include dam construction or other instream activities that would harm a river's free-flowing condition, water quality or outstanding resource values, as part of the restoration activities.

Executive Order 11514 Protection and Enhancement of Environmental Quality, as amended by Executive Order 11911 Relating to Protection and Enhancement of Environmental Quality

Executive Orders 11514 and 11991 require that federal agencies monitor, evaluate and control their activities to protect and enhance the quality of the Nation's environment to sustain and enrich human life; inform the public about these activities; share data gathered on existing or potential environmental problems or control methods; and cooperate with other governmental agencies.

Compliance: Releasing the final RP/EA, and any subsequent proposed site specific plans, for restoration for public review and comment is consistent with the intent of this Executive Order.

Executive Order 11990 Protection of Wetlands

Executive Order 11990 (40 C.F.R. § 6392 (a) and Appendix A) requires federal agencies to avoid the adverse impacts associated with the destruction or loss of wetlands, to avoid new construction in wetlands if alternatives exist, and to develop mitigative measures if adverse impacts are unavoidable.

Compliance: The Preferred Alternative includes alternatives for restoration that will preserve and enhance existing wetlands and restore wetlands degraded by past logging, forestry,

agricultural, and fire exclusion activities and practices. No long-term, significant adverse impacts to wetlands are anticipated.

Executive Order 11988 Floodplain Management

Executive Order 11988 requires federal agencies to avoid to the extent possible the long- and short-term adverse impacts associated with the occupancy and modification of floodplains and to avoid direct and indirect support of floodplain development wherever there is a practicable alternative.

Compliance: The Preferred Alternative includes alternatives for restoration that will preserve and enhance existing floodplains or restore floodplain habitat degraded by past agricultural activities and practices. No long-term, significant adverse impacts to floodplains are anticipated.

Executive Order 12898 Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations and Executive Order 12948

Amendment to Executive Order No. 12898

Executive Orders 12898 and 12948 require each federal agency to identify and address, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies and activities on minority and low-income populations.

Compliance: The Trustees have concluded that no low-income or ethnic minority communities would be adversely affected by any restoration activities that would occur under the Preferred Alternative.

Executive Order 12962 Recreational Fisheries

Executive Order 12962 requires that federal agencies, to the extent permitted by law and where practicable, and in cooperation with states and tribes, improve the quantity, function, sustainable productivity, and distribution of the Nation's aquatic resources for increased recreational fishing opportunities.

Compliance: The restoration activities that would occur under the Preferred Alternative will benefit fish populations in ways that could improve recreational fisheries.

Executive Order 13112 Invasive Species

The purpose of Executive Order 13112 is to prevent the introduction of invasive species and provide for their control, and to minimize the economic, ecological, and human health impacts that invasive species cause.

Compliance: The Preferred Alternative includes activities for management of invasive species. Surveys for invasive species and actions to control them, should they be present on acquired or state-owned restoration areas, would be performed.

Executive Order 13653 Preparing the United States for the Impacts of Climate Change

The purpose of Executive Order 13653 is to give federal agencies direction to support community-based preparedness and resilience efforts by establishing policies and prioritizing investments that promote preparedness, protect critical infrastructure and public resources, support science and research needed to prepare for climate impacts, and ensure that federal operations and facilities continue to protect and serve citizens in a changing climate. Specifically, Section 3 and 5 of Executive Order 13653 call for federal agencies to manage their lands and waters for climate preparedness and resilience and plan for climate change related risk.

Compliance: Under the Preferred Alternative, the Trustees would consider regional climate information in planning and design of future habitat restoration projects that should allow for more resilient habitats in the face of changing climate.

CHAPTER 6 SELECTION OF PREFERRED ALTERNATIVE

The Trustees evaluated three restoration alternatives. Of these, Alternative B best addresses natural resource injuries and service reductions resulting from the release of mercury within the assessment area, and includes the majority of the project categories originally suggested by stakeholders. Based on the Trustees' evaluation of the environmental consequences of Alternatives A, B, and C, the NRDAR factors described in 43 C.F.R. § 11.82(d), and the potential for greater restoration project opportunities, the Trustees select **Alternative B** as their Preferred Alternative.

Alternative A provides no restoration options, and is therefore insufficient to compensate for natural resource injuries.

Alternative C provides all of the opportunities for restoration contained in Alternative B, as well as a trout management component. The trout project was considered because it is supported by stakeholders, provides a safe-for-consumption fishing alternative, and benefits a certain portion of the SR angler population. However, the benefits are almost exclusively directed at trout anglers, a population that did not suffer a direct negative impact from the mercury contamination in the watershed.

Redirection of funds to complete a trout-only project would decrease funds available for restoration projects to improve water quality and fish habitat that would benefit all resources impacted by mercury. Those projects, agricultural and urban BMPs in the upper SR, headwater streams, and within the City of Waynesboro, will improve riparian and aquatic habitat, benefitting multiple resources including fish. Alternative B would allow for more funding to be allocated to those types of projects.

Because there are three differently managed stocked fisheries in the SR that are already popular destinations (Bugas 2011), the benefits of additional trout stocking and management are not sufficiently clear. Trout stocking impacts are too narrow, given the more broad benefits expected from the other restoration projects proposed in Alternative B, to devote substantial resources to the proposed trout project. Finally, the recreational fishing access improvement projects contained in Alternative B will provide substantial benefits to anglers of all fish species in the SR and SFSR, including trout anglers.

The Trustees believe that the Preferred Alternative, Alternative B, represents cost-effective and beneficial means by which to restore or replace the injured natural resources and the services they provided. Based on the restoration alternative selected in the final RP/EA, Trustees will begin to identify and evaluate additional specific project options.. Compliance with the laws

cited above, and any necessary permitting, will be undertaken during the planning stages of specific restoration projects.

The Trustees may implement restoration project alternatives that are not specifically identified in the RP/EA, but are consistent with our restoration objectives. Each project will be evaluated against the same restoration priorities and factors described above, and, if needed, a further review of environmental consequences will be conducted. Any selected projects that are expected to have non-negligible impacts will be subject to a project-specific NEPA analysis prior to implementation. In addition, Section 7 consultation (under the ESA) will be completed for restoration projects that may affect threatened or endangered species or their designated critical habitat and Section 106 of the National Historic Preservation Act will be followed for each restoration project that will be implemented.

A summary of the injury categories and associated restoration and resource benefits is presented in Table 9.

Table 9. Summary of injury and restoration categories.

Injury Category:	Representative Resource:	Preferred Restoration Categories:	Other Resources That Benefit:
Fish (Aquatic)	Fish (Section 3.4.1)	<ul style="list-style-type: none"> • Land protection, property acquisition, and recreational and wildlife enhancements – riparian habitat along the SR or SFSR • Agricultural and urban BMPS • Fish production (FRFH) • Mussel propagation 	<ul style="list-style-type: none"> • Sediment/Surface Water • Soil • Mussels • Amphibians/Reptiles • Songbirds • Piscivorous Birds and Mammals • Bats • Recreational Fishing
Mussels	Mussels (Section 3.4.2)	<ul style="list-style-type: none"> • Mussel propagation 	<ul style="list-style-type: none"> • Sediment/Surface Water • Fish • Piscivorous Birds and Mammals • Recreational Fishing

Migratory Birds	Songbirds (Section 3.4.3)	<ul style="list-style-type: none"> • Protection of songbird habitat throughout life cycle 	<ul style="list-style-type: none"> • Migratory Songbirds
Non-Wetland Floodplain	Songbirds (Section 3.4.4)	<ul style="list-style-type: none"> • Land protection, property acquisition, and recreational and wildlife enhancements – riparian habitat along the SR or SFSR 	<ul style="list-style-type: none"> • Sediment/Surface Water • Soil • Fish • Mussels • Amphibians/Reptiles • Piscivorous Birds and Mammals • Bats • Recreational Fishing
Wetland Floodplain	Amphibians (Section 3.4.5)	<ul style="list-style-type: none"> • Land protection, property acquisition, and recreational and wildlife enhancements – riparian habitat along the SR or SFSR 	<ul style="list-style-type: none"> • Sediment/Surface Water • Soil • Mussels • Amphibians/Reptiles • Songbirds • Piscivorous Birds and Mammals • Bats • Recreational Fishing
Recreational Fishing	Fishing Trips (Section 3.4.6)	<ul style="list-style-type: none"> • FRFH renovation and fish production • Access point creation/improvement • Agricultural and urban BMPs 	<ul style="list-style-type: none"> • Mussels • Piscivorous Birds and Mammals

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APPENDIX A. SUMMARY OF STAKEHOLDER PARTICIPATION.

From 2008 until the present, Trustees held multiple meetings or calls with federal and state natural resource agencies and other stakeholders to discuss the Natural Resource Damage Assessment and Restoration (NRDAR) process, injury assessment, and restoration ideas. Some of these meetings are listed below.

Date of meeting or call	Stakeholder groups (with Trustees)	Topics covered
September 25, 2008	<ul style="list-style-type: none"> • South River Watershed Steering Committee (multiple groups represented) 	NRDAR overview
April 21, 2009	<ul style="list-style-type: none"> • DuPont • Virginia Department of Conservation and Recreation (VDCR) • The Nature Conservancy (TNC) 	Restoration discussion; site visit to Cowbane Wet Prairie State Natural Area Preserve
April 30, 2010	<ul style="list-style-type: none"> • Virginia Department of Game and Inland Fisheries (VDGIF) 	Restoration discussion
June 1, 2010	<ul style="list-style-type: none"> • Trout Unlimited (TU) 	Restoration discussion
July 1, 2010	<ul style="list-style-type: none"> • TNC • VDCR • VDGIF 	Restoration discussion
August 8, 2011	<ul style="list-style-type: none"> • VDCR • VDGIF 	Restoration discussion – bats, Madison cave isopod
September 21, 2011	<ul style="list-style-type: none"> • VDGIF 	Restoration discussion– recreational fishing
February 15, 2012	<ul style="list-style-type: none"> • VDCR 	Restoration discussion
February 16, 2012	<ul style="list-style-type: none"> • VDGIF • DuPont 	Front Royal Fish Hatchery tour
April 13, 2012	<ul style="list-style-type: none"> • VDGIF • Virginia Tech 	Site visit to sinkhole ponds, emphasis on herpetofauna
April 16, 2012	<ul style="list-style-type: none"> • City of Waynesboro 	NRDAR
May 25, 2012	<ul style="list-style-type: none"> • Shenandoah Riverkeeper • DGIF 	Restoration discussion – recreational fishing
June 19, 2012	<ul style="list-style-type: none"> • Belize Foundation for Research and Environmental Education • Smithsonian Migratory Bird Center • University of North Carolina - Wilmington 	Restoration discussion – migratory songbird

August 10, 2012	<ul style="list-style-type: none"> • VDGIF 	Restoration discussion – recreational fishing
September 6, 2012	<ul style="list-style-type: none"> • VDGIF 	Site visit to properties upstream of Waynesboro
September 24, 2012	<ul style="list-style-type: none"> • VDGIF • VDCR 	Restoration discussion – properties, mussels, bats; and injury discussion
January 29, 2013	<ul style="list-style-type: none"> • Shenandoah Riverkeeper • Friends of the North Fork • VDGIF • TU • James Madison University 	NRDAR overview; and restoration discussion – recreational fishing
February 1, 2013	<ul style="list-style-type: none"> • TNC 	Restoration discussion
March 28, 2013	<ul style="list-style-type: none"> • TNC 	Restoration discussion
April 11, 2013	<ul style="list-style-type: none"> • NRCS • City of Waynesboro 	Restoration discussion
May 15, 2013	<ul style="list-style-type: none"> • Valley Conservation Council (VCC) • VDGIF 	Restoration discussion
June 10, 2013	<ul style="list-style-type: none"> • Augusta County 	NRDAR overview
July 24, 2013	<ul style="list-style-type: none"> • Friends of the Shenandoah River • Friends of the North Fork • TU • VDGIF • City of Waynesboro 	Restoration discussion; and NRDAR update
August 21, 2013	<ul style="list-style-type: none"> • VDGIF • DuPont 	Site visit to Front Royal Fish Hatchery
August 26, 2013	<ul style="list-style-type: none"> • VDGIF 	Restoration discussion – recreational fishing and ecological
August 29, 2013	<ul style="list-style-type: none"> • Friends of the North Fork • Potomac River Smallmouth Club 	Restoration discussion – recreational fishing
January 9, 2014	<ul style="list-style-type: none"> • City of Waynesboro 	NRDAR review
February 5, 2014	<ul style="list-style-type: none"> • VDCR 	Site visit to Cowbane Wet Prairie State Natural Area Preserve and surrounding area
April 21, 2014	<ul style="list-style-type: none"> • VDGIF 	Restoration discussion; and NRDAR update
May 8, 2014	<ul style="list-style-type: none"> • VDGIF 	Site visit to Virginia Fisheries and

		Aquatic Wildlife Center at Harrison Lake National Fish Hatchery
June 11, 2014	• Shenandoah Riverkeeper	NRDAR update
July 3, 2014	• City of Waynesboro	Restoration discussion
July 16, 2014	• Department of Forestry • VCC • Virginia Outdoor Foundation	NRDAR overview; and restoration discussion
July 24, 2014	• City of Waynesboro	Restoration discussion
August 13, 2014	• Whitescarver Natural Resources Management LLC	NRDAR overview; and restoration discussion
August 21, 2014	• Watershed Stewardship Inc.	Restoration discussion
November 19, 2014	• US Forest Service • Appalachian Mountain Joint Venture	NRDAR overview; and restoration discussion
January 22, 2015	• VCC • Virginia Outdoor Foundation	NRDAR update; and restoration overview
February 9, 2015	• Virginia Tech	Restoration discussion – amphibian/wetlands

**APPENDIX B. BIRDS OBSERVED DURING THE 2011-2012 SURVEYS IN THE
SR/SFSR WATERSHED.**

* indicates a species that was evaluated in the injury assessment (75 total)

Common Name	<i>Scientific name</i>
Acadian Flycatcher*	<i>Empidonax virescens</i>
American Crow*	<i>Corvus brachyrhynchos</i>
American Goldfinch*	<i>Spinus tristis</i>
American Kestrel	<i>Falco sparverius</i>
American Redstart*	<i>Setophaga ruticilla</i>
American Robin*	<i>Turdus migratorius</i>
Bald Eagle	<i>Haliaeetus leucocephalus</i>
Baltimore Oriole*	<i>Icterus galbula</i>
Barn Swallow*	<i>Hirundo rustica</i>
Barred Owl	<i>Strix varia</i>
Belted Kingfisher	<i>Megasceryle alcyon</i>
Black Vulture	<i>Coragyps atratus</i>
Black-and-White Warbler*	<i>Mniotilta varia</i>
Blackburnian Warbler	<i>Setophaga fusca</i>
Black-capped Chickadee	<i>Poecile atricapillus</i>
Black-throated Blue Warbler	<i>Setophaga caerulescens</i>
Black-throated Green Warbler*	<i>Setophaga virens</i>
Blue Grosbeak*	<i>Passerina caerulea</i>
Blue Jay*	<i>Cyanocitta cristata</i>
Blue-gray Gnatcatcher*	<i>Polioptila caerulea</i>
Blue-headed Vireo	<i>Vireo solitarius</i>
Bobolink*	<i>Dolichonyx oryzivorus</i>
Broad-winged Hawk	<i>Buteo platypterus</i>
Brown Thrasher*	<i>Toxostoma rufum</i>
Brown-headed Cowbird*	<i>Molothrus ater</i>
Canada Goose	<i>Branta canadensis</i>
Canada Warbler	<i>Cardellina canadensis</i>
Carolina Chickadee*	<i>Poecile carolinensis</i>
Carolina Wren*	<i>Thryothorus ludovicianus</i>
Cedar Waxwing*	<i>Bombycilla cedrorum</i>
Cerulean Warbler	<i>Setophaga cerulea</i>
Chestnut-sided Warbler	<i>Chaetura pelagica</i>
Chimney Swift*	<i>Chaetura pelagica</i>
Chipping Sparrow*	<i>Spizella passerina</i>

Cliff Swallow*	<i>Petrochelidon pyrrhonota</i>
Common Grackle*	<i>Quiscalus quiscula</i>
Common Raven	<i>Corvus corax</i>
Common Yellowthroat*	<i>Geothlypis trichas</i>
Cooper's Hawk	<i>Accipiter cooperii</i>
Dark-eyed Junco	<i>Junco hyemalis</i>
Dickcissel*	<i>Spiza americana</i>
Downy Woodpecker*	<i>Picoides pubescens</i>
Eastern Bluebird*	<i>Sialia sialis</i>
Eastern Kingbird*	<i>Tyrannus tyrannus</i>
Eastern Meadowlark*	<i>Sturnella magna</i>
Eastern Phoebe*	<i>Sayornis phoebe</i>
Eastern Towhee*	<i>Pipilo erythrophthalmus</i>
Eastern Wood Pewee*	<i>Contopus virens</i>
European Starling	<i>Sturnus vulgaris</i>
Field Sparrow*	<i>Spizella pusilla</i>
Fish Crow*	<i>Corvus ossifragus</i>
Golden-crowned Kinglet	<i>Regulus satrapa</i>
Grasshopper Sparrow*	<i>Ammodramus savannarum</i>
Gray Catbird*	<i>Dumetella carolinensis</i>
Great Crested Flycatcher*	<i>Myiarchus crinitus</i>
Great-blue Heron	<i>Ardea herodias</i>
Great-horned Owl	<i>Bubo virginianus</i>
Green Heron	<i>Butorides virescens</i>
Hairy Woodpecker*	<i>Picoides villosus</i>
Hooded Warbler*	<i>Setophaga citrina</i>
Horned Lark*	<i>Eremophila alpestris</i>
House Finch*	<i>Haemorhous mexicanus</i>
House Sparrow	<i>Passer domesticus</i>
House Wren	<i>Troglodytes aedon</i>
Indigo Bunting*	<i>Passerina cyanea</i>
Kentucky Warbler	<i>Geothlypis formosa</i>
Killdeer	<i>Charadrius vociferus</i>
Louisiana Waterthrush*	<i>Parkesia motacilla</i>
Mallard	<i>Anas platyrhynchos</i>
Mourning Dove*	<i>Zenaida macroura</i>
Northern Rough-winged Swallow*	<i>Stelgidopteryx serripennis</i>
Northern Bobwhite	<i>Colinus virginianus</i>
Northern Cardinal*	<i>Cardinalis cardinalis</i>
Northern Flicker*	<i>Colaptes auratus</i>

Northern Mockingbird*	<i>Mimus polyglottos</i>
Northern Parula*	<i>Setophaga americana</i>
Orchard Oriole*	<i>Icterus spurius</i>
Ovenbird*	<i>Seiurus aurocapilla</i>
Pileated Woodpecker*	<i>Dryocopus pileatus</i>
Pine Warbler*	<i>Setophaga pinus</i>
Prairie Warbler*	<i>Setophaga discolor</i>
Purple Martin*	<i>Progne subis</i>
Red-bellied Woodpecker*	<i>Melanerpes carolinus</i>
Red-eyed Vireo*	<i>Vireo olivaceus</i>
Red-headed Woodpecker*	<i>Melanerpes erythrocephalus</i>
Red-shouldered Hawk	<i>Buteo lineatus</i>
Red-tailed Hawk	<i>Buteo jamaicensis</i>
Red-winged Blackbird*	<i>Agelaius phoeniceus</i>
Rock Pigeon	<i>Columba livia</i>
Rose-breasted Grosbeak	<i>Pheucticus ludovicianus</i>
Ruby-throated Hummingbird*	<i>Archilochus colubris</i>
Ruffed Grouse	<i>Bonasa umbellus</i>
Savannah Sparrow*	<i>Passerculus sandwichensis</i>
Scarlet Tanager*	<i>Piranga olivacea</i>
Sharp-shinned Hawk	<i>Accipiter striatus</i>
Song Sparrow*	<i>Melospiza melodia</i>
Swainson's Warbler	<i>Limnithlypis swainsonii</i>
Tree Swallow*	<i>Tachycineta bicolor</i>
Tufted Titmouse*	<i>Baeolophus bicolor</i>
Turkey Vulture	<i>Cathartes aura</i>
Veery	<i>Catharus fuscescens</i>
Vesper Sparrow*	<i>Poocetes gramineus</i>
Warbling Vireo*	<i>Vireo gilvus</i>
White-breasted Nuthatch*	<i>Sitta carolinensis</i>
Wild Turkey	<i>Meleagris gallopavo</i>
Willow Flycatcher*	<i>Empidonax traillii</i>
Wood Duck	<i>Aix sponsa</i>
Wood Thrush*	<i>Hylocichla mustelina</i>
Worm-eating Warbler	<i>Helmitheros vermivorum</i>
Yellow Warbler*	<i>Setophaga petechia</i>
Yellow-billed Cuckoo*	<i>Coccyzus americanus</i>
Yellow-breasted Chat*	<i>Icteria virens</i>
Yellow-throated Vireo*	<i>Vireo flavifrons</i>

APPENDIX C. PROJECTS THAT DO NOT SATISFY SITE-SPECIFIC CRITERIA

Trustees did not evaluate these projects, because the actions proposed will not address natural resources injuries in a specifically designed, cost-effective way.

Project	Rationale for Unsuitability
Acquisition of properties located within other watersheds in Virginia	Insufficient information on the nexus to injured resources. Projects within SR/SFSR watershed will be prioritized, especially related to fish restoration. Restoration for migratory birds and other migratory species may occur outside the SR/SFSR watershed.
Acquisition of upland properties (no riparian connection)	Insufficient information on the nexus to injured resources. No nexus to riparian habitat. Projects with a riparian connection within SR/SFSR watershed will be prioritized.
Dam removal in SFSR watershed	Insufficient information is currently available on potential projects and expected benefits. Projects may be considered for future restoration.
South River Greenway Construction	Does not directly restore injured resources or resource services. However, projects under Alternative B may coordinate well with Greenway construction and property acquisition that may include access for greenway construction and recreation.
Education and outreach programs, tools, and facilities	Does not directly restore injured resources or resource services. However, projects under Alternative B are expected to include educational components and outreach opportunities (e.g., signage, outreach programs related to migratory songbirds).
White-nose syndrome research	Does not restore injured resources or resource services.
Aquatic education center and staff	Does not restore injured resources or resource services. Projects under Alternative B are expected to have educational components and outreach opportunities such as signage at access points
Lake Shenandoah renovation (Rockingham County / Harrisonburg area)	Insufficient information currently available on potential projects and expected benefits.
Stocking catchable channel catfish in lower SR	Insufficient information currently available on potential projects and expected benefits.
Angler (creel) surveys – to evaluate long-term success of stocking, fisheries management, and environmental education	Does not directly restore injured resources or resource services. May be incorporated as part of monitoring for options in Alternative B.

Coursey Springs Hatchery improvements	Insufficient information is currently available on potential project. Does not restore injured resources or resource services.
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APPENDIX D. RESPONSE TO COMMENTS

The 45 day public comment period on the Draft Restoration Plan/Environmental Assessment (RP/EA) began December 15, 2016 and ended January 30, 2017. The Virginia Secretary of Natural Resources, acting on behalf of the Commonwealth of Virginia, and the U.S. Fish and Wildlife Service (Service), acting on behalf of the Department of the Interior (DOI), (collectively, the Trustees) held a public information meeting in Waynesboro, VA, on January 10, 2017 that was attended by more than 70 individuals. The Service posted the RP/EA on its website, and published notice in the Waynesboro News Virginian, inviting comment on the RP/EA for a 45-day period. The Trustees received written responses during the comment period from 63 sources that consisted of municipalities, state and federal agencies, nonprofit entities, other organizations and associations, businesses, and individual citizens. Since beginning to study the affected watershed, and throughout the process, the Trustees worked to involve a wide range of stakeholders. Once the settlement is finalized, Trustees will continue stakeholder involvement, holding restoration project scoping meetings and engaging stakeholders throughout restoration implementation. The Trustees value the input of the stakeholders in the area, including those who are currently working towards restoration of the watershed.

This Appendix summarizes public comments on the RP/EA, grouped by categories, and provides the Trustees' responses to those comments. Table D-1 found at the end of the document provides a list of all commenters.

A. GENERAL COMMENTS

A.1. Restoration activities should be focused in certain locations – specifically Waynesboro and/or within the watershed.

Several commenters recommended that restoration activities occur in the South River (SR), South Fork of the Shenandoah River (SFSR), or Shenandoah River watersheds, as discussed in the RP/EA. Other commenters recommended a specific focus in areas within the City of Waynesboro (City) or downstream of Waynesboro. These comments were put into 2 categories: 1) commenters that requested the Trustees consider land protection projects downstream of Waynesboro as well as upstream locations to accomplish restoration within the impacted or affected areas; and 2) commenters that requested “compensation” for the City and noted that the City and its citizens served as “ground zero” of the contamination and have suffered the greatest ecological, environmental, and recreational impact. Commenters not only requested that project locations be focused within Waynesboro, but also suggested that the City should be compensated for economic losses due to the mercury contamination. Another commenter inquired about damage recovery for river businesses in the Town of Shenandoah.

RESPONSE: The Trustees share the commenters' desire to focus projects within the SR, SFSR, and Shenandoah River watersheds. With stakeholder input, the Trustees will identify priority restoration sites within these watersheds.

As set forth in the RP/EA, the goal of the Natural Resource Damage Assessment and Restoration (NRDAR) process, as outlined in Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) at 42 U.S.C. § 9601 et seq.; 43 C.F.R. § 11, is to plan and implement

actions to restore, replace, or rehabilitate the natural resources that were injured or lost as a result of the release of a hazardous substance, or to acquire the equivalent resources or the services they provide. The Trustees are also legally bound by the terms of the Consent Decree, which requires that recovered funds “be expended by the Trustees in accordance with 42 U.S.C. § 9611(i), for restoration, rehabilitation, replacement, or acquisition of equivalent natural resources pursuant to the Restoration Plan and any amendments thereto.” Any projects completed in the City of Waynesboro, or any other municipality or location, must be related to restoring natural resources that were injured from the mercury contamination.

With these legal obligations in mind, the Trustees will initially focus on uncontaminated areas for projects that involve the creation of habitat for the injured resources, including songbirds, bats, mammals, waterfowl, amphibians, and reptiles (*e.g.*, land protection projects and riparian habitat restoration projects). The restoration goal is to restore or replace what was lost due to the contamination, and creating habitat in the impacted area will require careful evaluation to ensure the project does not pose continuing risk to impacted species until the cleanup efforts are complete and successful. Nonetheless, some projects may be appropriate in the impacted area such as creating fishing access and urban best management practices (BMPs) to improve water quality, and the Trustees will evaluate potential projects throughout the affected watershed, including upstream locations.

The Trustees began working with representatives from the City in 2012 to identify potential restoration projects. Several possible urban BMPs and other riparian habitat projects were identified as suitable and the Trustees used information from these potential projects to inform the damages claim and refine the restoration categories. These projects were not specifically identified in the RP/EA because projects were not fully designed, planned, permitted, or coordinated with willing landowners. The Trustees will continue to work with representatives from the City to identify projects and will provide feedback as the project proposal selection process moves forward.

The Trustees recognize that the source of the mercury contamination from the DuPont facility is within the City, however, the ecological impacts resulting from the contamination extend over 100 miles downstream of the City. The levels of mercury in ecological receptors (fish and songbirds) are noticeably and significantly higher at locations several miles downstream of the City. “Mercury concentrations in the water column and in fish tissue increase sharply for approximately the first 10 miles downstream of DuPont (to the town of Crimora, VA).” (Virginia Department of Environmental Quality [VDEQ] 2009). The ecological study conducted in 2012 showed that concentrations of total mercury in fish tissue samples from all studied species generally increased with the distance down river (URS 2012). Songbird blood mercury levels remained elevated for at least 137 kilometers downstream (Jackson *et al.* 2011). The Trustees are obligated to focus on ecological impacts, and include all sites where the contaminants have come to be found. “Site” as defined by the NRDAR regulations means “an area or location, for purposes of response actions under the NCP [National Contingency Plan], at which oil or hazardous substances have been stored, treated, discharged, released, disposed, placed, or *otherwise came to be located.*” 43 C.F.R. § 11.14 (oo) (emphasis added). Numerous data demonstrate the area of ecological impact extends well beyond Waynesboro, including the aquatic and floodplain habitats from Waynesboro to Front Royal. Because of the widespread

watershed contamination, the Trustees will evaluate appropriate projects both within the City and throughout the watersheds.

A.2. Timeframe of funding and projects.

A number of commenters requested information about the funding timeframe; specifically when the Trustees will receive funding, the timeframe for expending the funds, and the timeline for project implementation. Commenters asked if the funds were required to be expended at one time or over a period of time and whether there was risk of the funds remaining unused in an account for many years.

RESPONSE: Section VI of the Consent Decree describes the timeframe of payment from DuPont. Within 30 days of the Court's approval of the Consent Decree, DuPont must make its initial payment to the Trustees, which will be held in a site-specific subaccount within the DOI NRDAR Fund, established pursuant to 42 U.S.C. §§ 1474b and 1474b-1. Funds from the Waynesboro NRDAR subaccount will be available to the Trustees to pay for Trustee-approved natural resources restoration projects in accordance with Section VII of the Consent Decree. There is no expiration date on these funds.

The Trustees expect to start project implementation in 2017. Restoration activities will occur over multiple years. For example, the mussel restoration project outlined in the RP/EA is designed to be a multi-year effort and the land acquisition projects may require several years to identify appropriate properties with willing landowners. It is the Trustees' goal to select and implement appropriate restoration projects as expeditiously as possible.

A.3. Define the Trustees.

A couple of commenters requested clarification on who the Trustee representatives are, how they were selected, and how long they serve.

RESPONSE: Natural Resource Trustees are Federal natural resource management agencies as designated in the National Contingency Plan and any state agency designated by the Governor of each state, pursuant to section 107(f)(2)(B) of CERCLA, 42 U.S.C. § 9607(f)(2)(B), that may prosecute claims for damages under section 107(f) or 111(b) of CERCLA; or an Indian tribe, that may commence an action under section 126(d) of CERCLA. In this case, the Virginia Secretary of Natural Resources, acting on behalf of the Commonwealth of Virginia, and the Service Northeast Regional Director, acting on behalf of DOI, are the Natural Resource Trustees.

The Trustee representative for the Virginia Secretary of Natural Resources is Angela Navarro, Deputy Secretary of Natural Resources. Some of the assessment activities were delegated by the Deputy Secretary of Natural Resources to the VDEQ. The Trustee representatives for the Service are Anne Condon and Susan Lingenfelter of the Virginia Field Office. These Trustee representatives will be responsible for identifying the project selection process and administering the funds and will continue working with stakeholders throughout the process.

B. RECREATIONAL FISHING PROJECTS COMMENTS

B.1. Front Royal Fish Hatchery and production of smallmouth bass.

B.1.1. Hatchery renovation.

Several commenters expressed opposition to renovating the Front Royal Fish Hatchery (FRFH). One commenter objected to spending any funds to improve state-owned hatcheries, and some noted that Front Royal is located far from where the release occurred. Commentators also expressed concern that any outreach and education benefits would be lost at that location, rather than in the area “most directly affected” by the pollution.

RESPONSE: Damages associated with the recreational fishery due to the presence of fish consumption advisories (FCAs) were calculated from the location where mercury was released to just north of the Warren Power Dam above Front Royal. As such, the FRFH is located just downstream of the impacted area, with the City of Waynesboro on the upstream end of the impacted area. Though the hatchery is physically located in Front Royal, the benefits will extend to the entire community affected by the mercury contamination. With the proposed improvements, which include lined ponds and catch kettles, the Virginia Department of Game and Inland Fisheries (VDGIF) plans to efficiently raise and harvest smallmouth bass annually at the FRFH for stocking throughout the watershed.

Stocking of game species has long been an approach of fisheries managers to restore and enhance lost and diminished fishing opportunities. VDGIF’s experience with fingerling smallmouth bass stocking demonstrates that it does not take a large quantity of young fish to make a difference in establishing a stronger year class. In addition to smallmouth bass, renovation of the FRFH will provide the flexibility for future expansion to produce other desirable game fish, including muskellunge and walleye, and other activities. The planned improvements to the hatchery will allow VDGIF to produce a meaningful quantity of sport fish on an annual basis and the agency expects positive results from stocking these fish in the field.

Education activities are not typically funded by NRDAR settlements, though the Trustees encourage opportunities to include an education component as part of a project. The FRFH is located in an area near the northern entrance to Shenandoah National Park and close to Washington, D.C., at the intersection of 2 major highways. As such, it is likely to receive many visitors from this accessible location, and the Trustees value any opportunity for natural resource outreach and education within the watershed.

B.1.2. Smallmouth bass.

Several commenters noted that smallmouth bass are not native to the Shenandoah system, and questioned why the Trustees would focus on a non-native species. Commenters also suggested that they did not expect to see an increase in fishing trips from this project (the FRFH and smallmouth bass production) because the renovated hatchery would not produce enough smallmouth bass to make an impact and the natural fish populations in 3 reaches of the Shenandoah River system is already robust. One commenter mentioned that “research findings

showing that smallmouth bass in the Shenandoah River system have a remarkable ability to bounce back from any significant mortality event (natural or manmade) with above average recruitment numbers in the following year.”

RESPONSE: Smallmouth bass are native to Virginia and were introduced to the Shenandoah River watershed in the 1800s (Jenkins and Burkhead 1994). They have naturalized throughout the system and have been the primary sport fish attraction in the SFSR for more than 100 years. The SFSR is experiencing recovery from past fish kills and, currently, the smallmouth bass population is quite healthy. VDGIF has researched limiting factors for smallmouth bass production in state rivers and has concluded that above average flows in June can depress nest success for the year. As noted above, stocking has long been a successful approach to restoration and enhancement of recreational fisheries, allowing resource managers to offset the effects of adverse events and conditions. For example, abiotic factors, such as summer flooding, are something biologists have come to accept, as are regular fish kills in the Shenandoah River watershed. Stocking smallmouth bass fingerlings will balance out erratic year classes, ultimately contributing to better angling as they grow. A consistent source of young smallmouth bass, tagged and monitored, will benefit anglers.

VDGIF’s experience with fingerling smallmouth bass stocking demonstrates that it does not take a large quantity of young fish to make a meaningful difference in improving the overall population. Staunton River in Campbell County was experimentally stocked with smallmouth bass from 2005-06 and 2009-13 with 15,000 fingerlings per year and an 11.3% return was documented from these stockings (*i.e.*, 11.3% of young-of-year smallmouth bass were hatchery origin).

B.1.3. FCA on smallmouth bass.

Commenters noted that improving the smallmouth bass fishery will not restore the injuries, because the additional stocked fish will not be consumable.

RESPONSE: Smallmouth bass raised in a clean environment (such as Passage Creek) will make their way into mercury-contaminated environments through a stocking program. It is unknown how much mercury the stocked fish will acquire during a lifetime, or whether stocked bass may actually be consumable. VDGIF creel surveys show that most bass anglers adhere to the FCA and practice catch-and-release, so the Trustees do not expect that a stocking program will contribute to consumption of mercury-laden fish.

The Trustees, in developing their damage claim, considered both lost fishing opportunities as well as fishing trips that were diminished in value as a result of the presence of the mercury advisory. Research and fisheries management practice have shown that stocking programs can increase catch rates for anglers (and, potentially provide additional enhancements in a fishery, such as adding an additional game species for anglers to target). As such, the Trustees expect that stocking will lead to higher value trips for existing anglers, as well as additional trips, even in the presence of an advisory. For example, some stocked fisheries are subject to catch-and-release management, but still provide value to recreational anglers. The action of stocking itself conveys a message to the angling community regarding availability of target species and can

result in increased trips. Stocking smallmouth bass is expected to create additional trips even though the consumption advisory remains in place.

It should be noted that once the sources of mercury that continue to impact the watershed are removed or capped through the separate, though related, cleanup process, it is anticipated that fish tissue mercury levels will decrease over time to the point that the FCA may be removed. The renovated FRFH will be available for decades into the future and will support increased quality and quantity of fishing trips after removal of the FCA.

B.1.4. Possible production of additional species.

Commenters mentioned the potential use of the FRFH to produce walleye and muskellunge, both non-native species, and that producing these species “does not serve the best interest of the majority of the angling community as these species habitat requirements are only met by a portion of the watershed and a very low percentage of anglers surveyed were interested in targeting these species.”

RESPONSE: VDGIF creel surveys from SR and SFSR show that a small proportion of the angling community target muskellunge and walleye. The level of interest in these species may be increasing, but the surveys to date do not reflect that interest as the populations of these species are fledgling, angling effort for these species is not typically captured in a summer survey, and these fisheries have received little promotion. VDGIF has been actively managing for muskellunge in the SFSR, between Port Republic and Front Royal, since 2009. VDGIF stocks the river annually, when fish are available from its Buller Hatchery, and the agency examines growth, movement, and natural reproduction with an active tagging program. In addition, walleye advanced fry are being stocked downstream of Warren Dam in Front Royal to the West Virginia line. With the improvements at the FRFH, VDGIF will be able to expand on these programs with the goal of providing an additional trophy predator to the system.

B.1.5. Food chain disruption.

Commenters expressed concern that stocking more predators will disrupt the food chain, with adverse impacts on the fishery.

RESPONSE: Concerns about overloading the system with stocked predators (smallmouth bass, walleye, and muskellunge) are not supported by existing data. If this was occurring, biologists would observe stunted predator growth and a significant loss of non-game fish (suckers, chubs, fallfish, minnows, darters, and others). Population surveys at 3 locations on SFSR in fall 2016 yielded uncommonly large numbers of fish representing all expected family groups (additional data analysis by VDGIF is pending). Thus, even with a number of stocking programs in place, the Shenandoah system is not experiencing an overload in predators at this time, nor is the stocking of those fish detrimentally affecting native fauna. VDGIF will continue monitoring the impact of its stocking programs to prevent predatory overload.

B.2. Creation and enhancement of access points.

Several commenters expressed support for creation and enhancement of recreational access points on the SR and SFSR, including improved boating access and portage around dams. Specific project ideas included: a) upgrade Shenandoah River Park Landing and docks (*e.g.*, replacing gravel in the parking area and roadway with porous pavement), b) increase access points on the North Fork of the Shenandoah River (NFSR) because the distance between current access points are too far apart for a reasonable afternoon float, c) locate public access at least every 5 to 7 miles, d) provide toilet facilities, and e) add trails and river access as part of the proposed Willets Tract acquisition.

RESPONSE: The Trustees support access point creation and enhancement. The Trustees and other state agencies will solicit input from stakeholders to determine locations and priorities for enhanced public access throughout the impacted area. The planned restoration actions by the Trustees complement a longer-term set of actions, funded and implemented under a range of authorities, designed to improve access to the SR, SFSR, and the Shenandoah system as a whole. For example, in recent years, 2 new non-motorized ramps and parking areas have been developed on the SR. VDGIF staff are investigating the potential for additional new public access points throughout the impacted area. In addition, the 4 hydropower dams on the SFSR will be re-licensed in the early 2020s and VDGIF will work to ensure that safe passage around these barriers to navigation is addressed during those proceedings. The funds set aside in the RP/EA for public ramps, fishing areas, and parking lots will build off this work, making the Shenandoah River watershed one of the most accessible river systems in the Commonwealth.

B.3. Trout restoration projects (Alternative C – Recreational Fishing).

B.3.1. Trout fishing.

Many commenters suggested that a trout restoration component would improve or return a significant amount of fishing trips to the SR, and benefit anglers in general. Some suggested that trout restoration would provide a greater benefit to the community as a whole, while also generating “return trips to the river” and providing a consumable fish option.

RESPONSE: Trout fishing in the SR has increased in popularity since the first fish were stocked in 1989. There are 3 SR reaches in the Waynesboro vicinity totaling 7 miles that are currently managed for trout fishing, with the possibility of adding a fourth “children only” area in the near future. While trout stocking and management were not included in the preferred restoration alternative in the Draft RP/EA because trout were not an injured species, VDGIF will continue working to ensure the SR supports a quality fishery for stocked trout. For example, new trout stocking locations were requested for Naked Creek and winter stocking in SFSR in the Town of Shenandoah; VDGIF will consider these options and work with stakeholders to identify others for support from its existing trout stocking program. VDGIF technical staff will continue to collaborate with local stakeholders to determine how to maximize angler opportunity in this watershed.

The Trustee focus is to replace, restore, or acquire the equivalent of the injured resource, as required by federal statutes and regulations. In this case, the Trustees determined that the most actionable injury was to those fishing trips impacted by the FCA associated with releases from the DuPont Waynesboro facility on over 100 miles of river, the majority of which is a warm water fishery. Trout fishing in the SR was not impacted by the FCA, and with focused stakeholder support, seems to have improved and expanded over the last several years in spite of the mercury and the existing FCA. Although there are some anglers who primarily seek trout in the SR (27% according to the 2011 creel survey), focusing restoration on trout would benefit a small proportion of the anglers in the impacted area. Smallmouth bass were the most sought after species by anglers in the SFSR in 2011 (83%; remaining constant since 1997).

Rather than focus on restoring a relatively small area in the SR suitable for trout, the Trustees are focusing the restoration efforts more broadly – through improving recreational access, water quality projects, and the FRFH renovations. The river access improvement projects together with the renovations of the FRFH facilitate opportunities for other desirable game fish, including muskellunge and walleye, will provide substantial benefits to anglers of all fish species in the SR and SFSR. Further, the bulk of the funds received under the Consent Decree will be used to purchase riparian areas and stabilize stream banks to reduce sediment input and improve water quality conditions in the upper SR, with concomitant improvements to fish habitat for all species. This type of restoration was supported by many stakeholders and a large number of commenters.

B.3.2. Trout grow-out facility.

Many commenters expressed a strong preference for a trout grow-out facility in Waynesboro. Several commentators noted the wider impact of such a facility on issues like tourism and economic development, and that VDGIF does not have a trout-focused facility in the area.

RESPONSE: One of the primary reasons expressed for supporting a trout grow-out facility in Waynesboro was the expected economic or revenue benefits to the City associated with constructing such a facility. Economic benefits to municipalities are not considered as part of the NRDAR process, and neither CERCLA, its implementing regulations, nor the Consent Decree permit the Trustees to expend recovered funds to support economic development activities. The trout fishery seems to have improved significantly in the last several years, unaffected by the mercury consumption advisory. This is primarily due to the efforts and dedication of the trout fishing community, whose input during the assessment process made Trustees aware of the need to consider a trout project in their evaluation of restoration alternatives. The Trustees determined that a trout grow-out facility should not be included in the preferred alternative of the RP/EA because: (a) trout were not impacted by the FCA; (b) the majority of the impacted fishery was a warm-water fishery; and (c) VDGIF does not have the funds to staff and operate such a facility long-term.

B.3.3. Trout stocking.

Some commenters supported trout restoration in general, but not specifically a grow-out facility. These commenters suggested additional stocking in other locations throughout the watershed

(e.g., around the Town of Shenandoah) and supported riparian buffers and agricultural BMPs to improve water quality for all fish species, including trout.

RESPONSE: VDGIF will continue working, outside the scope of this action, to ensure that the SR supports a quality fishery for stocked trout (see B.3.1). The Trustees agree that the water quality improvement projects – agricultural and urban BMPs – and land protection projects will benefit the trout fishery, and the aquatic system as a whole.

B.3.4. Brook trout.

Some commenters remarked specifically about brook trout since it is a native trout species and a Species of Greatest Conservation Need. Brook trout are found in headwater streams throughout the SR/SFSR watershed, and have been caught near the springs on the SR. Commenters asked why brook trout restoration was not considered.

RESPONSE: The recreational fishing analysis focused on the fishing losses (diminished and lost trips) from the FCA. The removal of the Rife-Loth dam in 2011 allowed brook trout to move into the area, as suggested by some commenters. However, there is no evidence that brook trout are thriving in the SR, and they were not likely injured from mercury contamination since their presence downstream of the former DuPont facility seems to be a fairly sporadic and recent phenomenon. Thus, restoration focused on brook trout will not be undertaken as part of this restoration. Nonetheless, brook trout are expected to benefit from projects funded through the RP/EA, including agricultural BMPs and riparian restoration in headwaters streams.

B.3.5. Trout injury.

Commenters questioned why trout (brook trout or other trout species) were not included in the analysis of injury to recreational fishing.

RESPONSE: Trout were not included in the injury analysis because they were not part of the FCA and the trout fishery was not impacted by the mercury contamination. The data available when the injury assessment was conducted showed no evidence that stocked trout were accumulating mercury, including trout in the river for 6 months (from a 2004-2005 study in the Constitution Park area; Jordan pers. comm.). The Constitution Park section of the SR is currently managed as “catch and release” (formerly “delayed harvest”, where anglers were allowed to keep trout after June 1 because temperatures were not cool enough to allow trout to survive over the summer).

The removal of the Rife-Loth dam has returned that section of river to more suitable water temperatures for trout, enabling some percentage of trout to survive through the summer. In 2017, VDEQ plans to target larger “hold-over” trout specifically looking for exceptionally large brown and rainbow trout in an effort to answer questions from anglers about the mercury concentrations in trout which survive multiple years in the SR. The Trustees encourage stakeholders to work with VDEQ and Virginia Department of Health to continue to study or monitor the trout in the area. Because this area is already designated as a “catch and release” fishery, there are no anticipated consumption risks.

B.3.6. Redirection of funds to trout.

Several commenters suggested that the Trustees redirect funds from mussel propagation and restoration, FRFH renovation, and other project categories to trout restoration.

RESPONSE: The Trustees will not transfer mussel restoration funds to trout restoration as the projects do not address the same injury/resource. Mussel restoration will address the injury to mussels in the SR. As explained further in Section E below, restored mussel populations will provide a range of additional ecological benefits, including serving as a food base for fish, mammals, and birds, and will improve water quality over time by their filtering capacity. Native mussels are part of the natural heritage of Virginia and restoring them will help improve the natural conditions of the SR and SFSR. The Trustees' estimated cost to restore mussels was based on successful mussel restoration work in other watersheds and on an analysis to produce mussels at 2 state-owned propagation facilities and stock them at numerous suitable sites over time.

Funds are not available to be redirected from the FRFH renovation project as this project is to be completed by DuPont directly rather than paid using recovered funds. Other restoration funds will not be redirected to trout restoration as the projects do not address the same injury/resource. However, the Trustees agree that water quality improvement projects (agricultural and urban BMPs) and land protection projects will benefit the trout fishery, and the aquatic system as a whole.

C. COMMENTS SUPPORTING ALTERNATIVE B

Several commenters expressed general support for the adoption of Alternative B - Preferred Restoration Alternative (all elements). For example, the Chesapeake Conservancy supported the adoption of Alternative B, noting: "We believe that projects proposed to improve water quality and fish habitat, restore freshwater mussel populations, protect habitat for wildlife with a focus on conserving the full life cycle of neotropical migratory birds, acquire additional land for recreational access and stream and river bank protection, and improve recreational fishing improvements directly and appropriately address the damages from toxic mercury contamination in the affected watersheds."

RESPONSE: The Trustees identified Alternative B as the preferred alternative because it provides a comprehensive set of restoration alternatives to improve ecological services and recreational fishing services in the watersheds. Alternative B includes a suite of projects that will benefit multiple resources and the entire watershed. All projects completed in headwaters or upstream of the contaminated stretch of river will benefit water quality downstream – through Waynesboro and beyond.

**D. COMMENTS ON PROJECTS TO IMPROVE WATER QUALITY AND FISH HABITAT
(ALTERNATIVE B)**

D.1. Water quality improvement projects.

Many commenters expressed support for water quality improvement projects and noted the wide range of benefits, especially to recreational fishing. Several commenters expressed that poor water quality is the biggest deterrent in bringing more anglers to the SR.

RESPONSE: The Trustees share the commenters' support for projects to improve water quality and fish habitat. Water quality improvement projects are widely supported by stakeholders and will benefit ecological resources and the recreational fishing community.

D.2. Agricultural BMPs.

Several commenters expressed specific support for agricultural BMPs such as streamside plantings. One commenter recommended securing perpetual easements to guarantee permanent habitat when implementing agricultural BMPs.

RESPONSE: The Trustees support agricultural BMP projects. The RP/EA includes implementing riparian buffer plantings and other projects that reduce erosion and improve aquatic habitat. The Trustees aim to focus much of the agricultural BMPs in headwater areas due to the extensive benefits that will be afforded to all areas downstream. Restoration in headwaters is likely to have the greatest positive impact on overall stream and habitat quality as water quality will improve in Waynesboro, downstream of Waynesboro, and ultimately in the Chesapeake Bay. The Trustees anticipate holding a stakeholder meeting in the summer of 2017 with organizations and agencies already involved in this type work to discuss collaboration and needs for the watershed.

D.3. Urban BMPs.

One commenter requested a "specific percentage of the \$10 million fund to improve water quality and fish habitat should be allocated to implementing urban BMPs in the City of Waynesboro to reduce stormwater pollution and provide waterfront public space for residents."

RESPONSE: As outlined in the RP/EA, the Trustees support urban BMPs as a restoration method. In 2014, the City identified several potential urban BMP projects that may be suitable, and shared this information with the Trustees. As noted in Section A.1 above, the Trustees plan to meet with the City to review the City's earlier project proposals and determine which projects are still available or appropriate, and if there are updates or additional projects for consideration. The City and other affected municipalities are encouraged to submit project proposals once the Trustees begin implementation of the RP/EA.

D.4. BMP implementation.

Commenters recommended possible processes for reviewing projects for water quality, such as involving existing organizations and working with existing programs. Commenters recommended these projects include a long-term maintenance component. Commenters provided several specific suggestions for implementation of BMPs. These included supporting education and outreach efforts to encourage implementation of BMP projects, as well as identifying certain sites for projects.

RESPONSE: The Trustees are developing a process for project proposal review/submission and look forward to working with stakeholders on project selection and implementation. Projects will include a long-term monitoring and/or maintenance component. While recovered funds are not typically used specifically for education programming, projects may be designed to incorporate an education component. Consistent with the restoration goal of the NRDAR process, the Trustees plan to direct spending in this category towards “on the ground” projects that protect and improve water quality.

E. COMMENTS ON MUSSEL RESTORATION (ALTERNATIVE B)

Commenters expressed concern about whether evidence supported the historic presence of mussels in the watershed, potential competition between the stocked native species and the invasive Asiatic clam, and whether downstream habitat would support mussels.

RESPONSE: Nine mussel species have been identified for population restoration in the SR and SFSR to compensate for the injury. The presence of these species in the Shenandoah River system, including the SFSR and SR, is based on scientific collection records over the last 100 years and the Trustees’ general knowledge of these species’ occurrence and habitat requirements. Despite degraded conditions in certain reaches of SR, biologists from Virginia Tech found 3 mussel species at 7 locations in the river upstream of Waynesboro during a survey in 2014. Much of the habitat was marginal or sub-optimal due to bank erosion, yet native mussel populations were present. Many were found in the presence of the Asian clam (*Corbicula fluminea*), indicating that native mussels can compete with this pervasive, introduced clam. The Trustees agree that water quality and suitable habitat must be considered when identifying restoration sites. An extensive habitat assessment for mussel restoration conducted in 2014 identified several reaches in the SR, upstream of Waynesboro, and in the SFSR, that provide suitable habitat for mussels. Fish hosts for mussels, such as smallmouth and largemouth bass also are abundant in these areas, and the smallmouth bass and mussel stocking activities can be coordinated where appropriate. The Trustees do not anticipate stocking mussels in the 15-20 mile section of the SR immediately downstream of Waynesboro due to concerns over the effects of remaining mercury and the possibility that those stocking efforts would conflict with the ongoing cleanup operations.

Restored mussel populations will provide a range of ecological benefits, including serving as a food base for fish, mammals, and birds, and will improve water quality over time through their filtering capacity. Native mussels are part of the natural heritage of Virginia and restoring them will help improve the natural conditions of the SR and SFSR.

F. COMMENTS ON NEOTROPICAL MIGRATORY SONGBIRD FULL LIFE CYCLE RESTORATION (ALTERNATIVE B)

F.1. Support for land conservation for migratory songbirds.

Several commenters expressed support for projects that directly affect restoration of neotropical songbirds, as well as other migratory and resident bird species, including the full life cycle restoration project(s), the Willets Tract acquisition, and other land acquisition projects that will establish contiguous protected land corridors. One commenter expressed support of the full-life cycle restoration, including land purchased outside of the United States. Other commenters recommended potential partners for songbird restoration and support for enlarging already preserved sites to create larger blocks of forest.

RESPONSE: The Trustees support habitat protection and restoration for migratory birds throughout their life-cycle and look forward to working with stakeholders and other partnering organizations that were recommended. The Trustees are aware of several potential opportunities and partnering organizations, and have not yet established a project proposal selection process or selected projects. After the project proposal submission process is developed, information will be provided to stakeholders and posted on the Service's DuPont NRDAR website (https://www.fws.org/northeast/virginiafield/environmentalcontaminants/dupont_waynesboro). All project submissions will be reviewed – including those on migratory songbird breeding, migration, and wintering habitats.

F.2. Identification of affected species.

One commenter requested a list of songbird species affected by the mercury release.

RESPONSE: Appendix B in the RP/EA contains a list of songbirds found in the watershed and it has been updated with “*” to indicate those species included in the injury assessment.

G. COMMENTS ON WILLETS TRACT ADDITION AND FOREST RESTORATION (ALTERNATIVE B)

G.1. Support for the Willets Tract Addition and Forest Restoration project.

A few commenters expressed support for the Willets Tract Addition and Forest Restoration project. One commenter recommended trails, access, and a connection to the Cowbane Wet Prairie Natural Area Preserve be considered as part of the project for secondary recreational benefits.

RESPONSE: The Trustees support this project. Once acquisition is completed, the Willets Tract would be added to the Cowbane Wet Prairie Natural Area Preserve, so the same recreational guidelines would apply. The Willets Tract property, like the existing property, will be used for guided hikes and other educational opportunities.

G.2. *Site location and expenses.*

Commenters questioned the location of the Willets Tract and how its acquisition would provide beneficial restoration to the injured area. One commenter questioned whether funds had already been expended to acquire the property.

RESPONSE: No funds have been obtained to complete this project. The Willets Tract is available for acquisition and was reviewed in the Draft RP/EA using the criteria set forth in the plan, see Table 6 and 7 in the RP/EA. The Trustees identified the property because it will provide habitat that will benefit all the same types of resources that were injured, in a clean (uncontaminated with mercury) environment within the watershed. The project is adjacent to already protected land (Cowbane Wet Prairie Natural Area Preserve) and is under threat of development.

H. COMMENTS ON LAND PROTECTION, PROPERTY ACQUISITION, AND RECREATIONAL AND WILDLIFE ENHANCEMENTS (ALTERNATIVE B)

Several commenters expressed support for land protection projects. Specific comments suggested a focus on permanent, voluntary easements or purchases of land, and on forested riparian buffer and large acreage plots to benefit migratory birds in particular. Commenters noted that conservation easements should be encouraged, as they may provide the most cost-effective means to enhance and protect riparian zones and wildlife habitat. Commenters also expressed support for protection of land in perpetuity. One commenter suggested the Trustees use a land conservation incentive grant model to include administrative costs in the process and allocation to long-term costs of easement stewardship and defense, and continue working with partners. Some commenters identified specific acquisitions or easements to protect riparian headwaters and corridors along the Shenandoah National Park and acquisitions along the Shenandoah River in the Town of Shenandoah.

RESPONSE: The Trustees agree that land acquisition and protection will provide considerable benefits to affected species. The Trustees anticipate these projects will benefit multiple natural resources and recreational activities. Depending upon availability from willing landowners, the Trustees plan to prioritize forest riparian buffers and large acreage plots. The Trustees will consider both fee simple and conservation easement opportunities, as long as easements are permanent.

The Trustees are developing a process for accepting and reviewing project proposals. Information about the process will be provided to stakeholders and posted to the Service's DuPont NRDAR website. The Commonwealth will likely use an existing mechanism (the Virginia Land Conservation Foundation) to accept project proposals related to land acquisition and use the Foundation's recommendations to assist the Trustees in reviewing potential projects. This mechanism is established, effective, familiar to many stakeholders, and offers flexibility to specify the criteria relating to the recovered funds. The Trustees will be responsible for all final decisions about projects while utilizing the evaluation criteria set forth in the RP/EA.

The Trustees will meet with stakeholders throughout the project development and selection process. Trustees will hold a scoping meeting with interested stakeholders once the settlement is finalized to discuss priority areas in the watershed and to discuss opportunities that exist on these areas.

I. COMMENTS SUPPORTING RESTORATION CRITERIA

Commenters provided support for the criteria that will be used to prioritize and select projects (e.g., projects to improve water quality and land acquisition projects). Commenters supported the elimination criteria that would make a project ineligible. Some commenters offered suggestions to strengthen the selection process. One commenter suggested employing technologies in remote sensing and modeling and another recommended establishing various partnerships to assist with project selection. Another requested the Trustees give considerable weight to the track record of the proposing entity and the entity's ability to guarantee (bond) the project when selecting restoration projects, as these factors support the likelihood of success for the proposed projects.

RESPONSE: The Trustees share support of the restoration criteria, which is posted on the Service's DuPont NRDAR website. (https://www.fws.gov/northeast/virginiafield/pdf/contaminants/dupont_waynesboro/Criteria_for_evaluating_restoration_projects.pdf). The Trustees plan to continue stakeholder engagement during the restoration project proposal and implementation phase to identify areas of highest conservation value/priority restoration. The Trustees welcome project proposals that utilize advanced technologies to identify and monitor potential restoration sites. The Trustees will consider the experience of the proposal sponsor when evaluating potential restoration projects.

J. COMMENTS ABOUT OTHER ISSUES RELATED TO RESTORATION

J.1. Concern about native and invasive plants.

Commenters support projects that include planting of native plants and extirpation of invasive plants.

RESPONSE: The Trustees will consider invasive plant issues when undertaking habitat restoration projects. For example, the Willets Tract Addition and Forest Restoration project includes invasive plant removal, control, and monitoring.

J.2. Inclusion of the Madison Cave Isopod as a focus of restoration.

Commenters inquired about the suitability of inclusion of Madison Cave isopod (MCI) restoration and asked whether there was documented injury to the MCI from mercury in the SR.

RESPONSE: The MCI was mentioned in Section 4.3.4 of the RP/EA as one of the considerations for evaluating land acquisition opportunities. This section did not prioritize any MCI projects over other types of projects, nor did it identify any projects specifically. It was included in a list of the types of property acquisition that would be considered, and any MCI-specific project will be evaluated based on the criteria established by the Trustees.

The MCI is federally and state listed as threatened, and the Service's MCI Recovery Plan (Service 1996) prioritizes protecting known populations and habitats. MCI are present within the assessment area, and within the species range abundance is highest at Steger's Fissure, located near Grand Caverns/Cave Hill (Grottoes, VA). The SR runs along the base of Cave Hill, and some hydrologic connectivity is suspected, so a risk of exposure and injury to the MCI from mercury is likely. However, the Trustees did not study the species due to the significant and costly effort that would be required to do so. The Trustees would like restoration to include a project that will afford benefits to this species, if possible.

J.3. Requests to support specific efforts or projects by specific stakeholders.

Several commenters proposed restoration ideas. Some of these are included below if not addressed elsewhere in the response to comments:

- a. Removal of debris/dredging to remove sediment from the dam in Shenandoah;
- b. Greenway hike/bike trail or South River Greenway expansion;
- c. Fish ladder at dams in affected watershed;
- d. Cement drainage ditch below Shenandoah Dam to help filter town's runoff water;
- e. Assist with bank erosion at Shenandoah River Adventures;
- f. Repair cracks below the Shenandoah Dam (located next to Shenandoah River Adventures) enabling trees to grow out of these cracks.

RESPONSE: Some of these projects may not be suitable for use of the recovered funds because of legal restrictions, such as paying to construct a bike trail. The Trustees encourage stakeholders to review the restoration criteria set forth in the RP/EA and shared on the Service's website and to submit project ideas under the appropriate category when implementation activities begin. The Trustees will develop a project submission process, and announcements will be shared through the Service's website and email distribution list.

K. COMMENTS ABOUT INJURY QUANTIFICATION AND METHODOLOGIES

K.1. Amount of settlement.

One commenter suggested that "[t]he final negotiated settlement is not sufficient to fully compensate for the damages documented by the trustee's technical staff." Another commenter stated that "...residents of Waynesboro suffer the stigma and loss of pride, tourism, property values and enjoyment of their city associated with living in a toxic waste dump."

RESPONSE: The Trustees relied on the NRDAR regulations at 43 CFR § 11.71(d) that recommend the following for selection of resources, services, and methodologies for injury quantification:

Specific resources or services to quantify and the methodology for doing so should be selected based upon the following factors: (1) Degree to which a particular resource or service is affected by the discharge or release; (2) Degree to which a given resource or service can be used to represent a broad range of

related resources or services; (3) Consistency of the measurement with the requirements of the economic methodology to be used; (4) Technical feasibility, as that phrase is used in this part, of quantifying changes in a given resource or service at reasonable cost; and (5) Preliminary estimates of services at the assessment area and control area based on resource inventory techniques.

The Trustees weighed estimates of damages for the site against the cost of conducting primary research that would be needed to prove such losses in the context of litigation as well as legal risks associated with such litigation. The Trustees also considered the significant delay in achieving any restoration that would be associated with attempts to collect greater damages. Based on this weighing, it was determined that the settlement with DuPont was reasonable and in the best interest of the public. The final settlement is within a range of expected costs associated with completing restoration, and the Trustees encourage stakeholders to help identify projects that will provide the greatest positive impact for the least dollars expended.

The reduction in ecological services associated with a contaminant release could result in a natural resource being “stigmatized,” however stigma losses are not typically part of a natural resource damage claim, due to both the cost and technical challenges associated with measuring such losses. The Trustees focused on restoration of natural resources and the services those resources provide as a means to restore all of the values the public holds for these resources.

K.2. Recreational fishing analysis.

Several commenters raised concerns about the recreational fishing analysis, including questions about the number and types of lost trips, the number of baseline trips, and the timeframe of the analysis. These commenters suggested that lost recreational trips by canoeists and kayakers should have been included in this analysis.

RESPONSE: Under applicable legal authorities, Trustees may evaluate injuries starting at the time of the release, or in 1981 (with the enactment of CERCLA). The recreational fishing analyses began in 1981 and were projected through 2030 based on assumptions made at the time about anticipated decreases in fish tissue mercury levels.

The number of baseline fishing trips for the period of 1981-2030 was estimated based on creel survey data and Virginia fishing license data. The existing historical creel survey data for the SR, SFSR, and Shenandoah River (Bowman 1997, Bugas 2005, Bugas 2011, Reeser 2011) provided somewhat limited data points on the number of fishing trips for the affected rivers. Therefore, the analysis also used annual data on the number of fishing licenses held in Virginia to calibrate the baseline fishing trip estimates. Specifically, for each river, the analysis used available annual trip estimates from the creel surveys and corresponding annual fishing license data for Virginia to calculate a weighted average ratio of annual angling trips to annual Virginia fishing license holders. This ratio was then multiplied by the annual number of Virginia fishing license holders to estimate annual angling trips for each year between 1981-2010 (with 2010 being the final year of available fishing license data at the time of the analysis). For the future period from 2011 to 2030, the analysis applied the 2010 estimate for Virginia fishing license holders (this results in carrying forward the 2010 annual trips estimate for 2011-2030). The

Trustees believe that this approach resulted in a reasonable estimate of baseline trips, based on best available data. Section 3.4.6 of the RP/EA and the literature cited section have been updated to include the full list of creel survey data used in the evaluation.

Two FCAs have been in place in the assessment area since 1977. The first advises against eating all fish species except trout and applies to 24 miles of the SR; the second advises against eating more than 2 meals per month for all fish species and applies to 105 miles of the SFSR and Shenandoah River (see Table 4 in the RP/EA). Given the cost and time required to conduct a primary study at the site, the Trustees decided to use existing information on baseline use of this resource and the existing literature on the impact of advisories on recreational anglers to assess damages to the recreational fishery. Existing data did not permit the Trustees to differentiate the effects of the FCAs. To estimate avoided trips, the analysis reviewed recreational fishing literature on how anglers respond to FCAs. The literature review suggested that approximately 7% of anglers avoid bodies of water with FCAs (Connelly and Knuth 1995, Breffle *et al.* 1999). Further, the literature review found that 10 to 37% of anglers who do visit contaminated water bodies take fewer trips to those waters (Connelly 1990, Silverman 1990, Connelly 1992, Vena 1992, Knuth 1993, Breffle *et al.* 1999). Assuming that these anglers take 10% fewer trips, this would result in a reduction of their total trips by approximately 3% percent. Combining the 7% of trips lost by anglers that avoid contaminated water bodies with the 3% of trips lost by anglers that take fewer trips yields a total avoided trips adjustment factor of 10%. The analysis also relied on the literature (Jakus *et al.* 1997) to estimate the percentage diminishment in trip value, due to the presence of contamination, for angling trips that occurred in the assessment area. The Trustees believe that this analysis was based on best available data and provides a reasonable measure of loss. Section 3.4.6 of the RP/EA and the literature cited section have been updated to include the references used to evaluate anglers who avoid fishing waters with FCAs.

The Trustees agree that boaters and canoeists may have avoided and continue to avoid this site due to the presence of the FCA, given perceived health risks and other disamenities associated with the hazardous contaminant releases. While primary research on how such resource users have been impacted by releases from this site was not deemed cost-effective, the Trustees note that many of the selected restoration actions, including improved ecological conditions and public access, will benefit this user group.

K.3. Injury differentiation.

Commenters noted that the RP/EA provides no distinction between areas severely damaged and other areas farther downstream from Waynesboro. These commenters requested that the data be used to identify how the Trustees scaled the projects to benefit the locations most severely affected by mercury pollution, which one commenter identified as the first 5 miles downstream of the former DuPont facility.

RESPONSE: As discussed above, the recreational fishing damages model, relying on existing literature, does not distinguish impacts to areas downstream of the site based on the severity of the advisory. Such an analysis would require substantial primary research and would be beyond the scope of this assessment. For the ecological injury, the same service loss was applied for the entire length of the SR floodplain area.

L. OTHER COMMENTS/QUESTIONS

L.1. Frustration with the public participation process.

Commenters stated there were not enough opportunities to participate and/or the process was not inclusive or transparent. Some of these commenters also expressed disappointment in the format of the January 10, 2017 public meeting. One commenter noted and appreciated that throughout the Draft RP/EA there is language referring to working with partners to prioritize, select, and implement various projects. Many stakeholders requested to be a part of future scoping or planning efforts.

RESPONSE: The Trustees met with numerous stakeholders on many occasions since 2008. In addition, the Trustees followed the public participation requirements of the NRDAR regulations. A list documenting these meetings is provided as Appendix A to the RP/EA. The meetings were informal and served to identify stakeholder priorities for project categories and locations, as well as other ideas about implementation strategies. These meetings were valuable to the Trustees and directly informed the damages claim. Many of the project ideas discussed were not fully developed, but were representative of the types and costs of restoration activities that would be available in the watershed. The Trustees used information available at the time to develop the claim and restoration plan.

When settlement negotiations formally began 2 years ago, interaction between the Trustees and stakeholders was reduced, as was noted by several commenters. Negotiations are a legal process among the Trustee agencies and the responsible party. The Trustees could not risk potential litigation by continuing to discuss restoration plans with stakeholders during this time.

After the settlement plans were outlined and the Draft RP/EA was provided for public comment and review, the Trustees held a public meeting in the City. At the public meeting, the Trustees presented an overview of the Draft RP/EA, and provided an opportunity for attendees to interact with representatives from the Service and the Commonwealth of Virginia during a 2-hour open house that included posters describing each of the proposed restoration categories. This format provided for interaction between interested members of the public and the Trustees on the issues of most concern to the public. Individuals with specific interests or questions were able to focus on a particular restoration topic and have one-on-one conversations with the Trustees. The Trustees anticipate holding a stakeholder meeting in the summer of 2017 with organizations and agencies already involved in this type work to discuss collaboration and needs for the watershed.

L.2. Fish kills.

A few commenters asked whether there was a correlation between fish kills and mercury in the river and whether funds could be used to find the cause of fish kills.

RESPONSE: The Shenandoah River fish kills are beyond the scope of the investigation related to the DuPont mercury releases; however VDGIF remains committed to addressing Shenandoah River fish kills. Fish health investigations from the ad hoc task force that the VDGIF initially

formed included histopathology, parasitology, bacteriology, virology, and blood analysis. Results from these investigations did not identify a definitive cause of the fish kills, but rather identified a suite of chronic stressors that are widespread and complex. VDGIF staff continues to meet with partners in the Shenandoah Valley to discuss fish health, water quality issues, sampling strategies, and landscape impacts to the river.

L.3. Cleanup.

Some commenters suggested that settlement funds be used to remove mercury from water and riverside land, or to stop additional pollution of the affected rivers and water.

RESPONSE: Funds recovered in this action may not be used for mercury removal or response actions in general. Clean up of mercury is addressed through the Resource Conservation and Recovery Act activities led by U.S. Environmental Protection Agency and VDEQ. For information about mercury removal/remediation and monitoring, contact the VDEQ Resource Conservation and Recovery Act Corrective Action Program Leader, Brett Fisher (Brett.Fisher@deq.virginia.gov).

Table D-1. List of commenters on the DuPont-Waynesboro Draft RP/EA.

Municipalities

City of Waynesboro

Town of Shenandoah

State and Federal agencies

Shenandoah National Park

Headwaters Soil and Water Conservation District

Shenandoah Valley Soil and Water Conservation District

Organizations, Associations, and Nonprofit Entities

Virginia Agribusiness Council Virginia Grain Producers Association

Friends of the North Fork Shenandoah
Potomac Riverkeeper Network and Shenandoah
Riverkeeper

Chesapeake Conservancy Valley Conservation Council

Augusta Bird Club Rockingham Bird Club

Shenandoah Valley Network

Shenandoah National Park Trust

Waynesboro Family YMCA

Businesses

Resource Environment Solutions, LLC

46 Private Citizens

**Approval of the
Final Restoration Plan and Environmental Assessment
for the
DuPont Waynesboro - South River/South Fork Shenandoah
River/Shenandoah River
Natural Resource Damage Assessment and Restoration**

In accordance with U.S. Department of the Interior (Department) policy regarding documentation for natural resource damage assessment and restoration projects (521 DM 3), the Authorized Official for the Department must demonstrate approval of draft and final Restoration Plans and their associated National Environmental Policy Act documentation, with concurrence from the Department's Office of the Solicitor.

The Authorized Official for the DuPont Waynesboro - South River/South Fork Shenandoah River/Shenandoah River Site is the Regional Director for the U.S. Fish and Wildlife Service's Northeast Region. By the signatures below, the Final Restoration Plan/Environmental Assessment (RP/EA) is hereby approved.

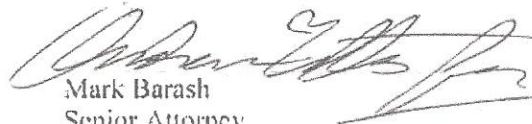
Approved:



Wendi Weber
Regional Director
Northeast Region
U.S. Fish and Wildlife Service

3/30/17

Date



Mark Barash
Senior Attorney
Northeast Region
Office of the Solicitor

Approved:



Molly Ward
Secretary of Natural Resources
Commonwealth of Virginia

3/27/17

Date



John W. Daniel, II
Deputy Attorney General
Commonwealth of Virginia



United States Department of the Interior

FISH AND WILDLIFE SERVICE

300 Westgate Center Drive
Hadley, MA 01035-9589



In Reply Refer To:
FWS/R5/ES-NRDAR/065363

MAR 31 2017

Memorandum

To: Supervisor, Virginia Field Office

From: Assistant Regional Director - Ecological Services *Paul R. Py*

Subject: Restoration Plan and Environmental Assessment for DuPont Waynesboro - South River/South Fork Shenandoah River/Shenandoah River Site

This is to inform you that the Regional Director, as Authorized Official, has approved the final *Restoration Plan and Environmental Assessment for the DuPont Waynesboro - South River/South Fork Shenandoah River/Shenandoah River Site*. The Regional Director has signed the Department of the Interior approval page, the Environmental Action Statement, and the Finding of No Significant Impact. Copies of the signed documents are attached.

We appreciate the efforts of you and your staff in accomplishing restoration under the Natural Resource Damage Assessment and Restoration (NRDAR) program.

If you have questions or need additional information, please contact Robin Heubel, Regional NRDAR Coordinator, at 413-253-8630.

Attachments

cc: WO-BERR
ORDA
NE-SOL

UNITED STATES FISH & WILDLIFE SERVICE

ENVIRONMENTAL ACTION STATEMENT

Within the spirit and intent of the Council of Environmental Quality's regulations for implementing the National Environmental Policy Act (NEPA) and other statutes, orders and policies that protect fish and wildlife resources, I have established the following administrative record and have determined that the action of the final *Restoration Plan and Environmental Assessment for the DuPont Waynesboro – South River/South Fork Shenandoah River/Shenandoah River*:

_____ is a categorical exclusion as provided by 516 DM 6 Appendix 1 and 516 DM 6, Appendix 1. No further documentation will therefore be made.

XX _____ is found not to have significant environmental effects as determined by the attached Environmental Assessment and Finding of No Significant Impact.


_____ is found to have significant effects, and therefore further consideration of this action will require a notice of intent to be published in the Federal Register announcing the decision to prepare an EIS.

_____ is not approved because of unacceptable environmental damage, or violation of Fish and Wildlife Service mandates, policy, regulations, or procedures.

_____ is an emergency action within the context of 40 CFR 1506.11. Only those actions necessary to control the immediate impacts of the emergency will be taken. Other related actions remain subject to NEPA review.

Other supporting documents (list):

Restoration Plan and Environmental Assessment for the DuPont Waynesboro – South River/South Fork Shenandoah River/Shenandoah River



Regional Director/DOI Authorized Official

3/30/17
Date

FINDING OF NO SIGNIFICANT IMPACT

Restoration Plan and Environmental Assessment for the DuPont Waynesboro - South River/South Fork Shenandoah River/Shenandoah River Site

The U.S. Department of the Interior and the Commonwealth of Virginia, collectively the Trustees, have completed a final Restoration Plan and Environmental Assessment (RP/EA) that explains the decisions of the Trustees to spend approximately \$38.5 million on several types of restoration projects. The RP/EA describes a restoration program that will restore, replace, and/or acquire the equivalent of the natural resources injured, destroyed, or lost as a result of contamination from the DuPont-Waynesboro Site in Waynesboro, Virginia. Planned activities include projects that will maximize recovery of injured resources, yet provide flexibility for implementation, including, but not limited to: riparian buffer planting, stream bank stabilization, best management practices (agricultural and urban), and long-term protection of habitat.

The draft RP/EA was available for public review and comment from December 15, 2016 through January 30, 2017. A notice of the draft RP/EA availability was published in local media outlets, and on January 10, 2017, the Trustees held a public meeting to discuss the draft RP/EA, respond to questions from the public, and receive input on the preferred alternative for restoration. The Trustee responses to public comments are presented in Appendix D of the final RP/EA. In general, the comments supported the types of restoration projects that were identified by the Trustees. Some clarifications and additional information have been provided as a result of the comments; however, the Trustees did not change the types of restoration projects outlined in the preferred alternative.

Based on a review and evaluation of the information contained in the final RP/EA, I have determined that the proposed actions do not constitute a major Federal action which would significantly affect the quality of the human environment within the meaning of Section 102 (2)(c) of the National Environmental Policy Act of 1969. Accordingly, the preparation of an environmental impact statement on the proposed actions is not required at this time.



Regional Director/DOI Authorized Official

3/30/17
Date