Western Port Angeles Harbor Damage Assessment and Restoration Plan

Public Meeting – 7 April 2021

Meeting Starts at 6:30

Use the question box for technical assistance

Western Port Angeles Harbor Damage Assessment and Restoration Plan

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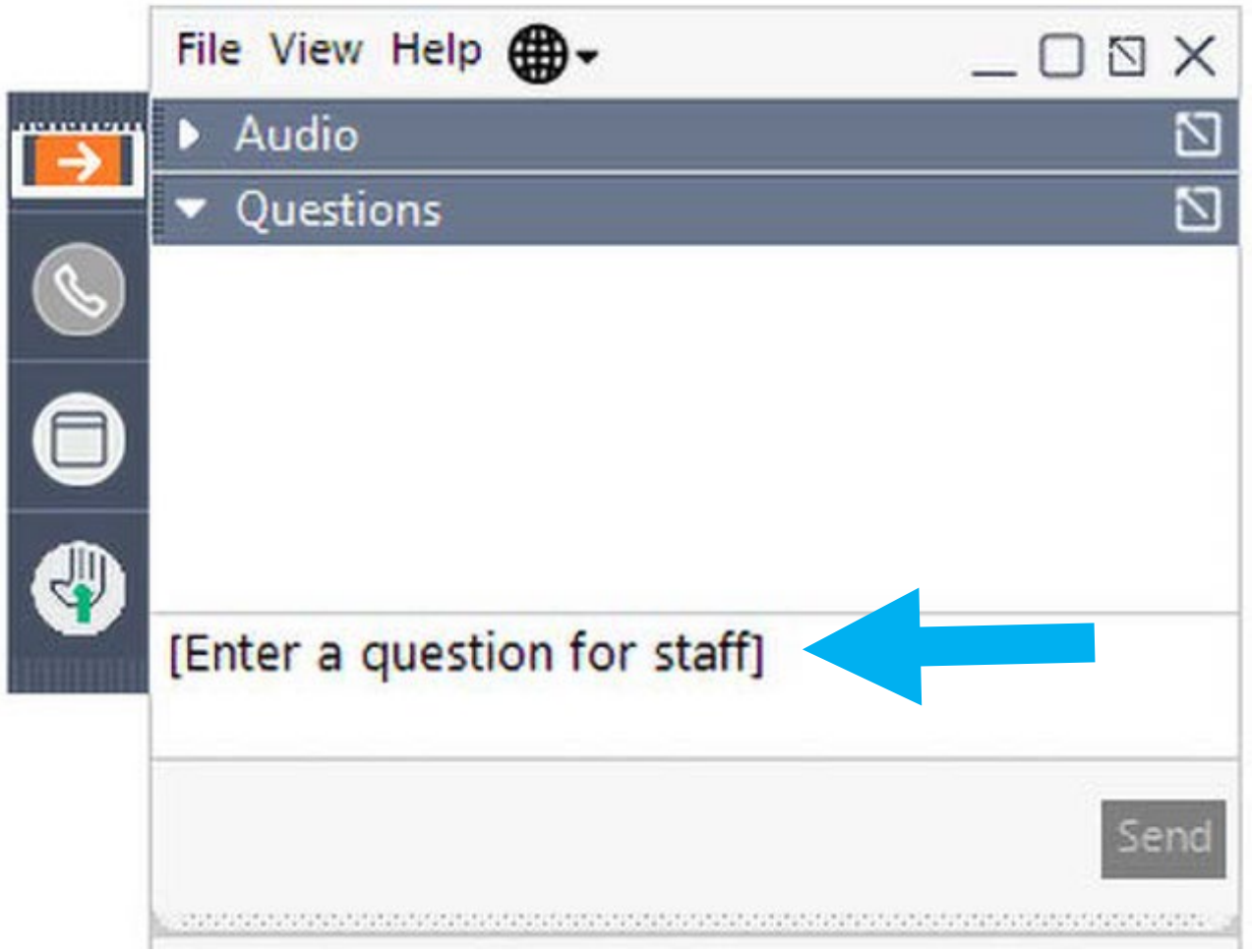
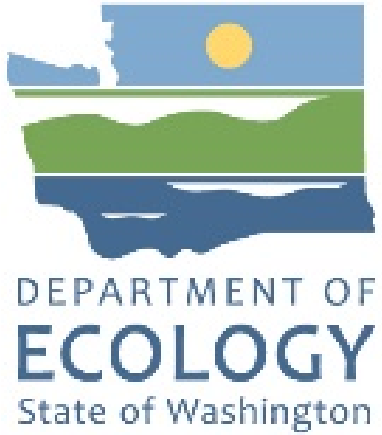
Webinar Logistics	
Introduction	Matt Beirne, Lower Elwha Klallam Tribe
Damage Assessment & Settlement	Rob Neely, NOAA Ocean Service
Restoration Planning for Port Angeles Harbor	Paul Cereghino, NOAA Fisheries
Providing Comments and Next Steps	Connie Groven, Washington Ecology
Questions and Answers	

Participation in the Webinar

- If using a phone, please turn off your computer microphone & speakers.
- When Q&A starts, use the “Questions” box to type questions for the Trustees.
- Following the Q&A, when the Public Comment session starts, use the “Questions” box to type your comment.



Who Are "The Natural Resource Trustees"?



How Do The Trustees Operate?

Operate under a Memorandum of Agreement (MOA)

Responsibilities defined by Laws

- Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)
- Oil Pollution Act (OPA)
- Washington Model Toxics Control Act (MTCA)

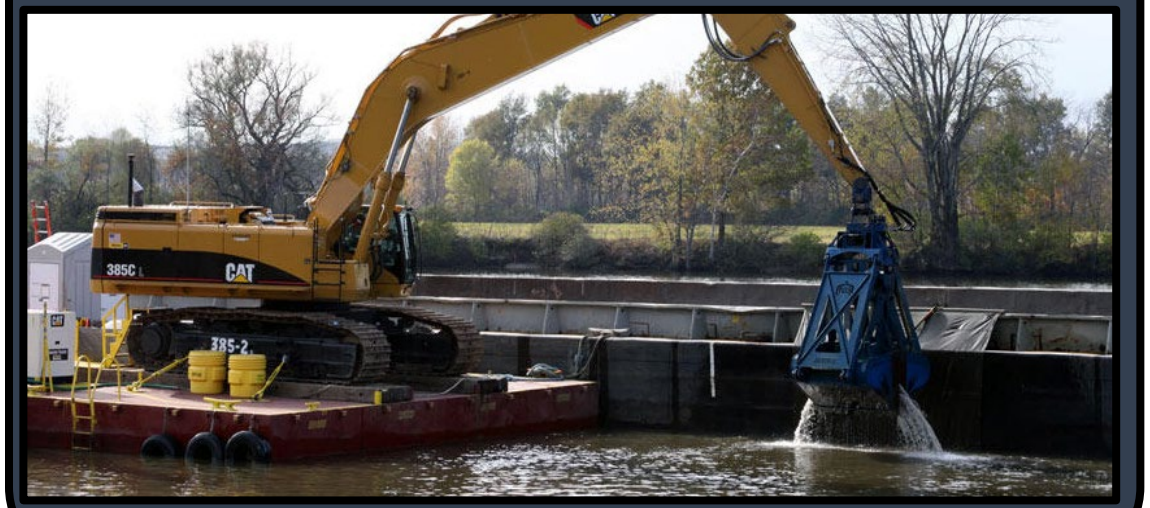
Maintain a Public Administrative Record

- Ecology is currently “lead administrative trustee”

How is NRDA Different than Harbor Cleanup

"Cleanup"

- Goal is to protect human health & environment
- Led by Ecology
- Lower Elwha Klallam Tribe Participating
- Under Model Toxics Control Act (State Law)

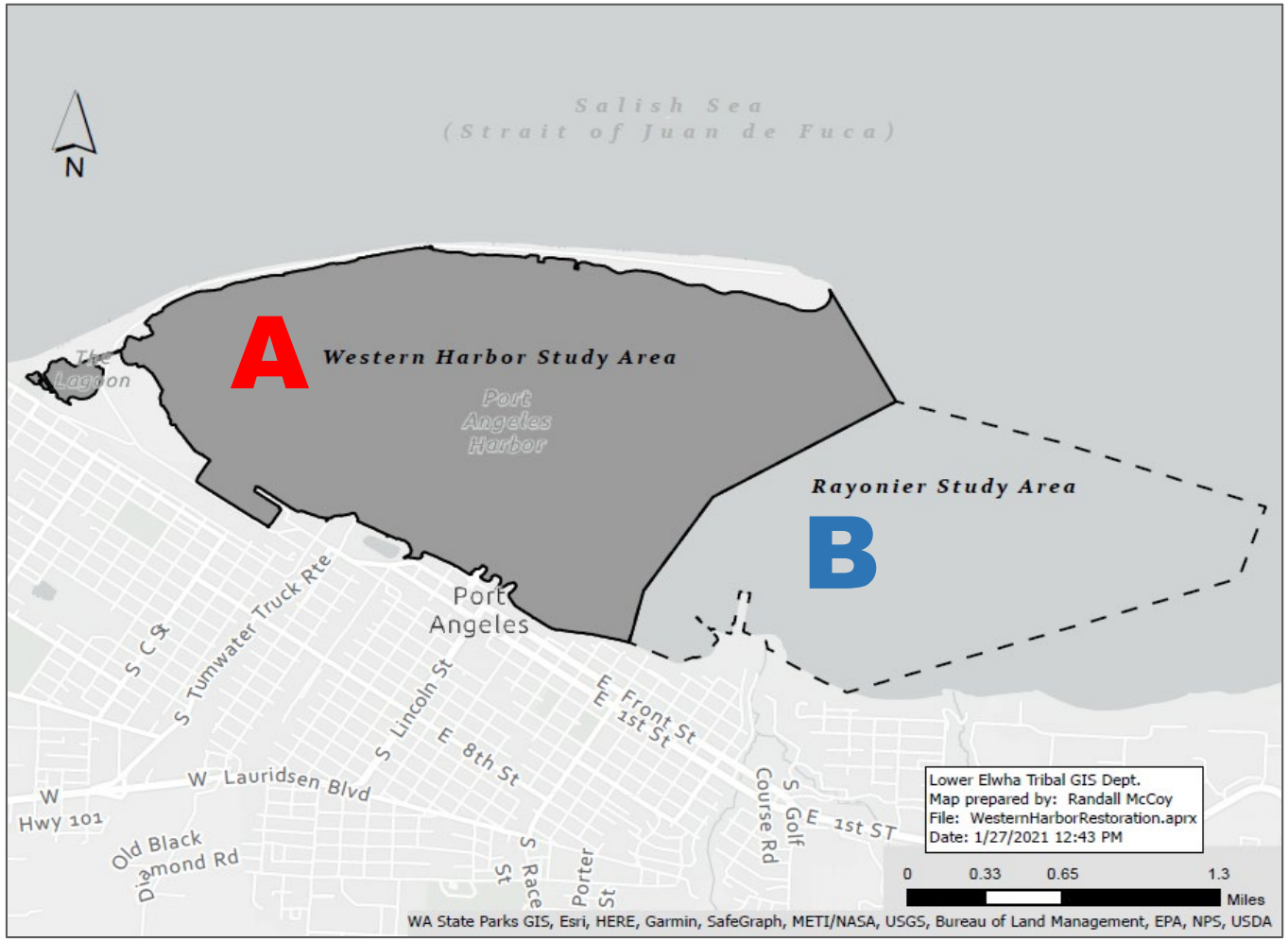


NRDA

- Goal is to compensate public for injuries through restoration
- Led by Natural Resource Trustees
- Under Federal Law (CERCLA & OPA) and State Law (MTCA)

Ediz Hook Restoration

Port Angeles Harbor NRD Assessment Areas



A. Western Harbor is the focus of this settlement and comment period

- **Same as Western Harbor Cleanup Study Area**
- **Industrial and municipal releases**
- **2,139 Acres**

B. Eastern Harbor Study Area

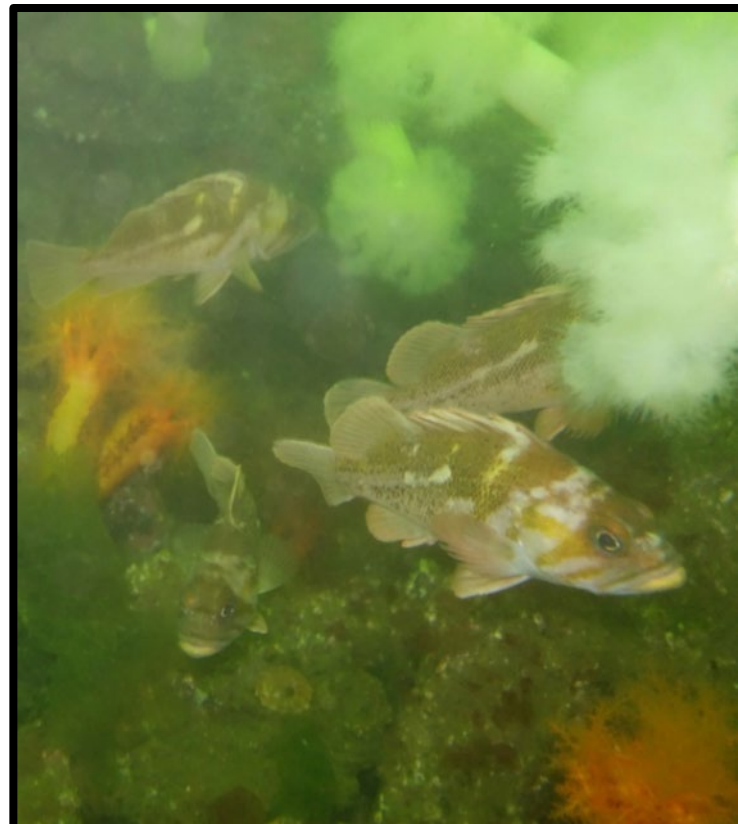
- Separate matter with Rayonier
- Injuries to be addressed through a separate process

What Do The Trustees Do?

Make the public whole for injuries to trust resources caused by releases of toxic contamination – “Natural Resource Damage Assessment and Restoration”

- Determine if there is evidence of injury to trust resources
- Assess the scale and character of injury
- Quantify damages
- Seek compensation from potentially responsible parties
- Make the public whole for damages through restoration

<u>This is NOT Cleanup</u> –This is a separate but parallel process



What is the Scope of the Settlement

Restoration fund and assessment costs $9.3 million

Parties will be free of liability for damages upon payment, with some reservations for unknowns (“Cash out settlement”)

City of Port Angeles	$800,000
Five Parties	$8,500,000

Nippon Paper Industries USA Co., Ltd,
Merrill & Ring Inc.,
Georgia-Pacific LLC,
Port of Port Angeles,
Owens Corning

NRDA settlement doesn’t change liability under the MTCA cleanup process

Establish a Port Angeles Harbor Restoration Fund

Identify, Prioritize, and Implement Restoration Projects


Snohomish River Estuary


Squally Beach Restoration


Hylebos Creek Restoration


Middle Waterway Restoration

Seeking Public Comments on Three Documents

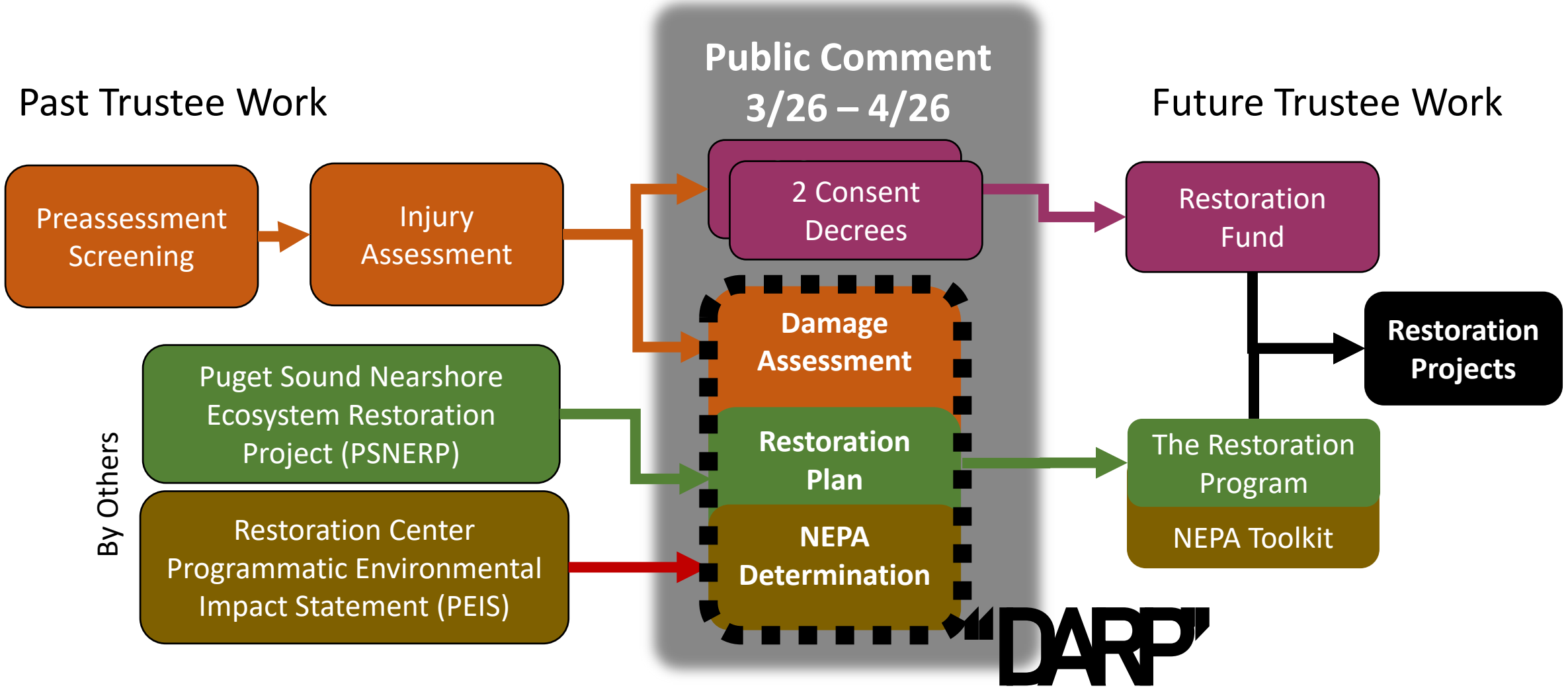
Consent Decrees (2) - Department of Justice (Federal Register Notice) Total of 6 parties

1. Nippon Paper Industries USA Co., Ltd, Merrill & Ring Inc., Georgia-Pacific LLC, The Port of Port Angeles, and Owens Corning
2. The City of Port Angeles

Damage Assessment and Restoration Plan (DARP) for <u>Western Harbor</u>

- Describes damage assessment methods
- Describes restoration approach
- Includes NEPA review of decision to initiate a program (not future projects)

NRDA "Road Map" For This Process

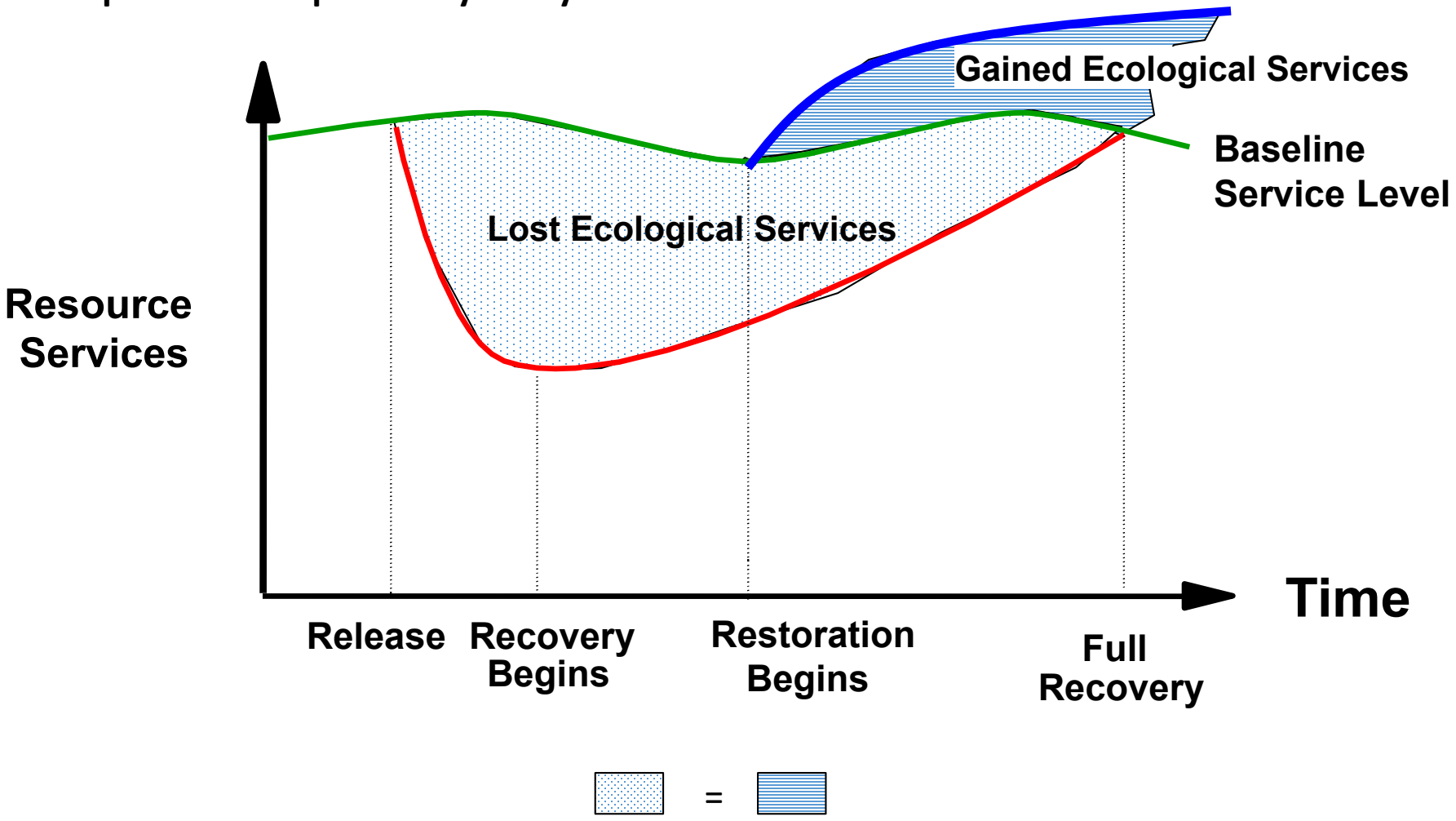


How Did We Determine The Settlement Was Appropriate?

- ***Preassessment Screen for Port Angeles Harbor*** **(2013)**
- ***Proposed Estimate of Natural Resource Damages in Port Angeles Harbor*** **(2014)**
  - Documents habitat equivalency analysis
- **Independent investigation of restoration options and cost of restoration**
- **Negotiated settlement vs. litigation**
- **Negotiation with Western Potentially Responsible Parties (PRPs)**

What Is Injury Assessment Anyway?

Conceptual Depiction of "Equivalency Analysis"



How Did We Assess Injury?

Used existing data describing sediment contamination

11 sediment studies between 2002 and 2013

Technique – Habitat Equivalency Analysis (HEA)

Presumed loss of services, over area, over duration, compounded over time.

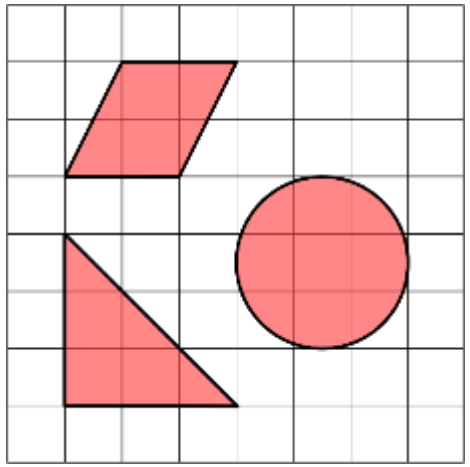
Calculated A Range of Potential Injury

Largely driven by different ways of estimating PAH & PCB injury.

Resulting in estimate of 508 to 1,323 “Discounted Service Acre Years”(DSAYs)

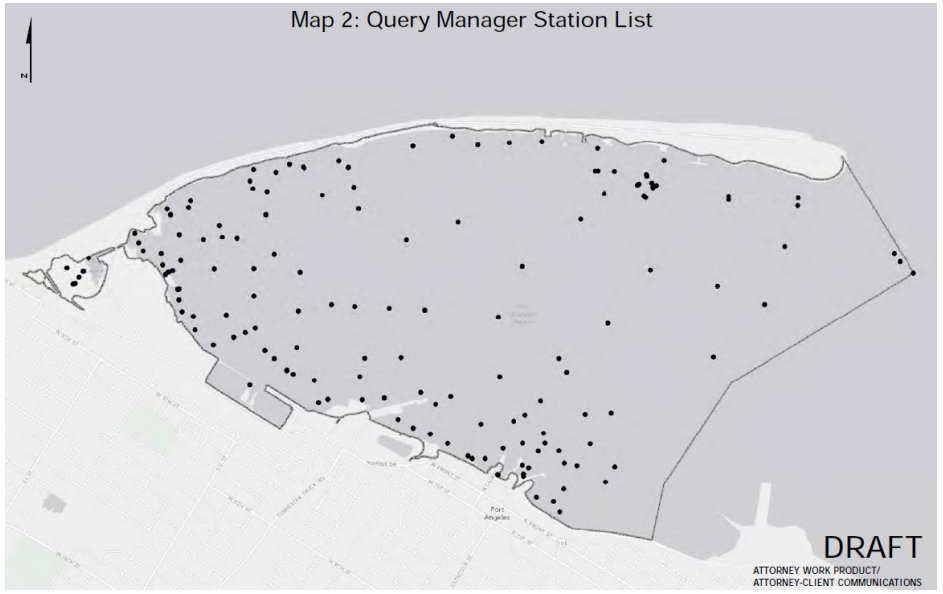
What Is A Discounted Service Acre Year?

Area (Acres) X **Time (Years)** X **Services** X **Appreciation (3% Discount Rate)**

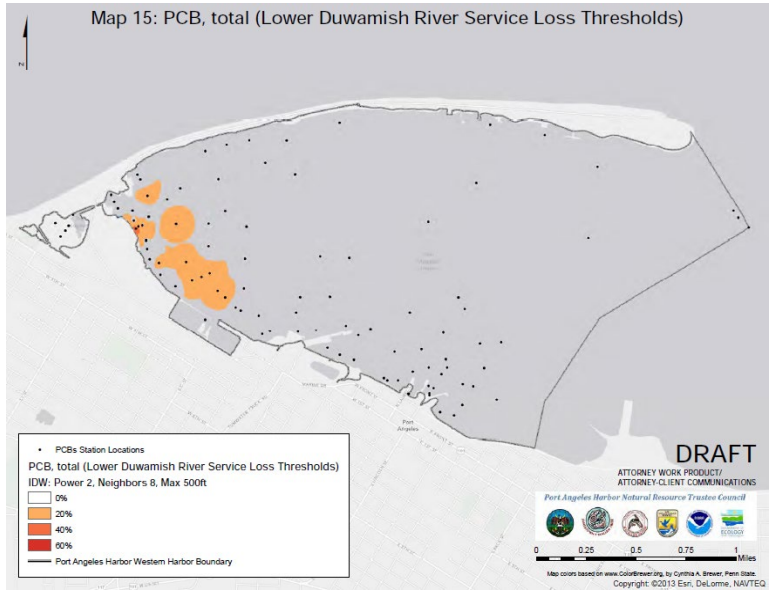


How Did We Assess Injury?

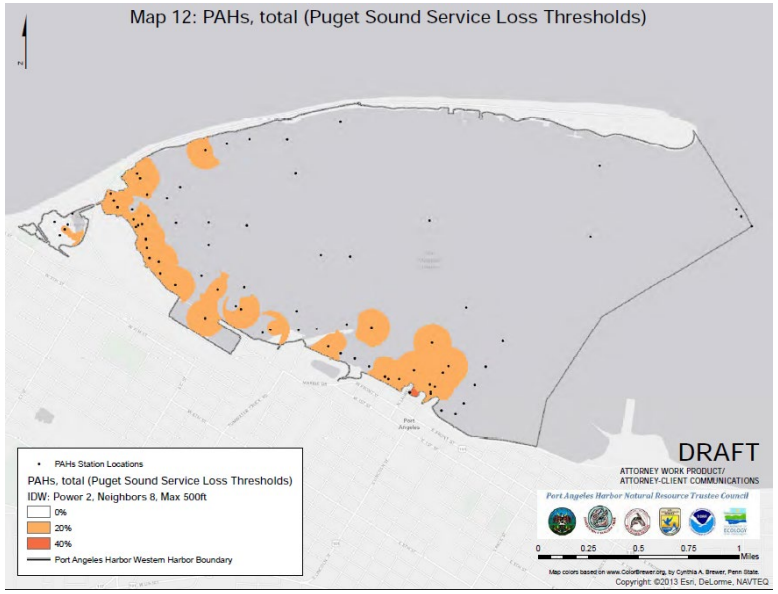
Sediment Sample Locations



PCBs



PAHs



What Is Injury Assessment Anyway?

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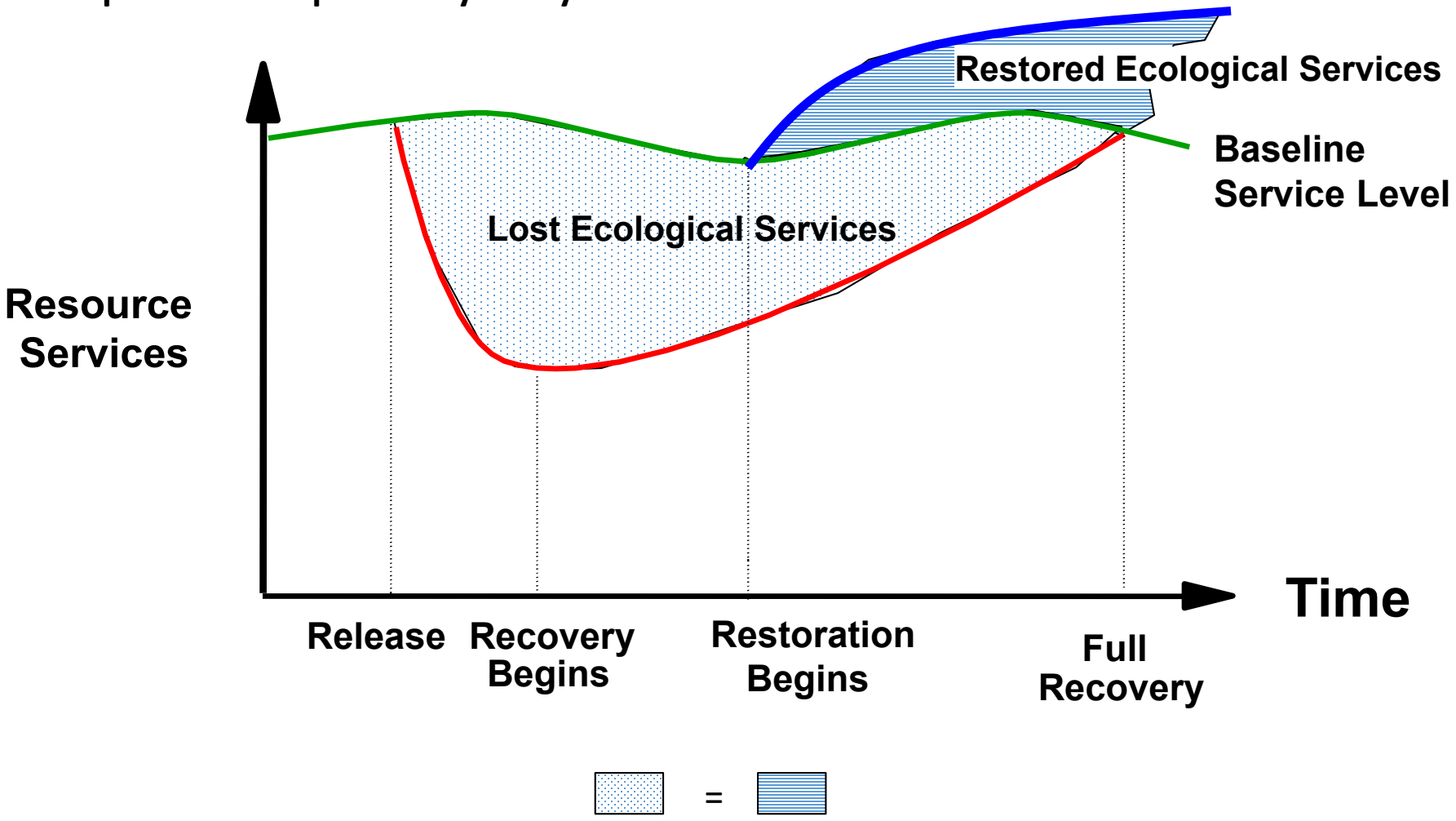


How Did We Evaluate the Cost of Restoration?

Obtained unit costs of four local restoration projects

- Wood debris remediation
- Fish passage barrier removal
- Estuary fill removal
- Shoreline debris removal and beach reconstruction

Estimated costs for trustee implementation

- design, construction, contingency, trustee oversight, long term stewardship, and inflation adjustments.

Averaged the lower three full cost estimates

- Average of “reasonable” projects, shoreline debris project was outlier

Proposed Cost of Restoration = ~$15,000 per Discounted Service Acre Year


Tarboo Creek Restoration

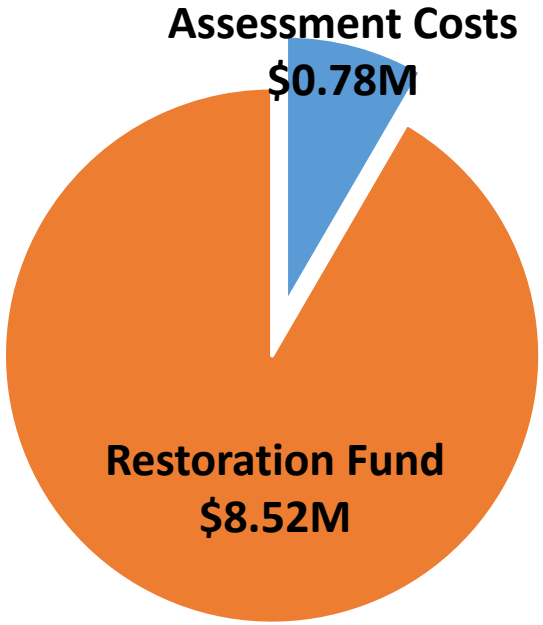

Ediz Hook Before Restoration


Harbor Eelgrass

Understanding The Settlement

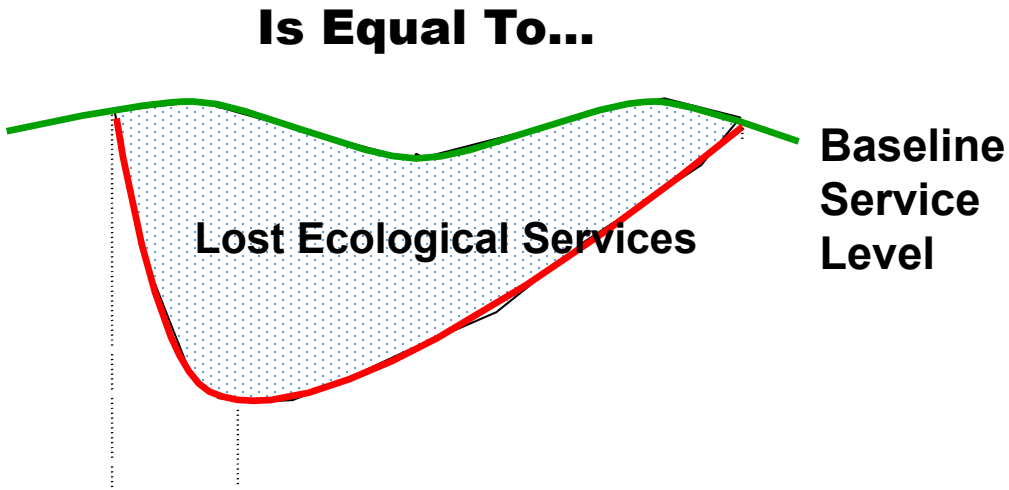
Total of $9.3 million settlement (negotiated settlement)

- **Less ~$780,000 in past Trustee Assessment Costs**
- **Results in ~$8.52 million restoration fund**
- **~$15,000 per DSAY estimated cost of restoration** (conservative estimate)
- **Estimated delivery of 566 DSAYs** (comfortably within injury estimate)

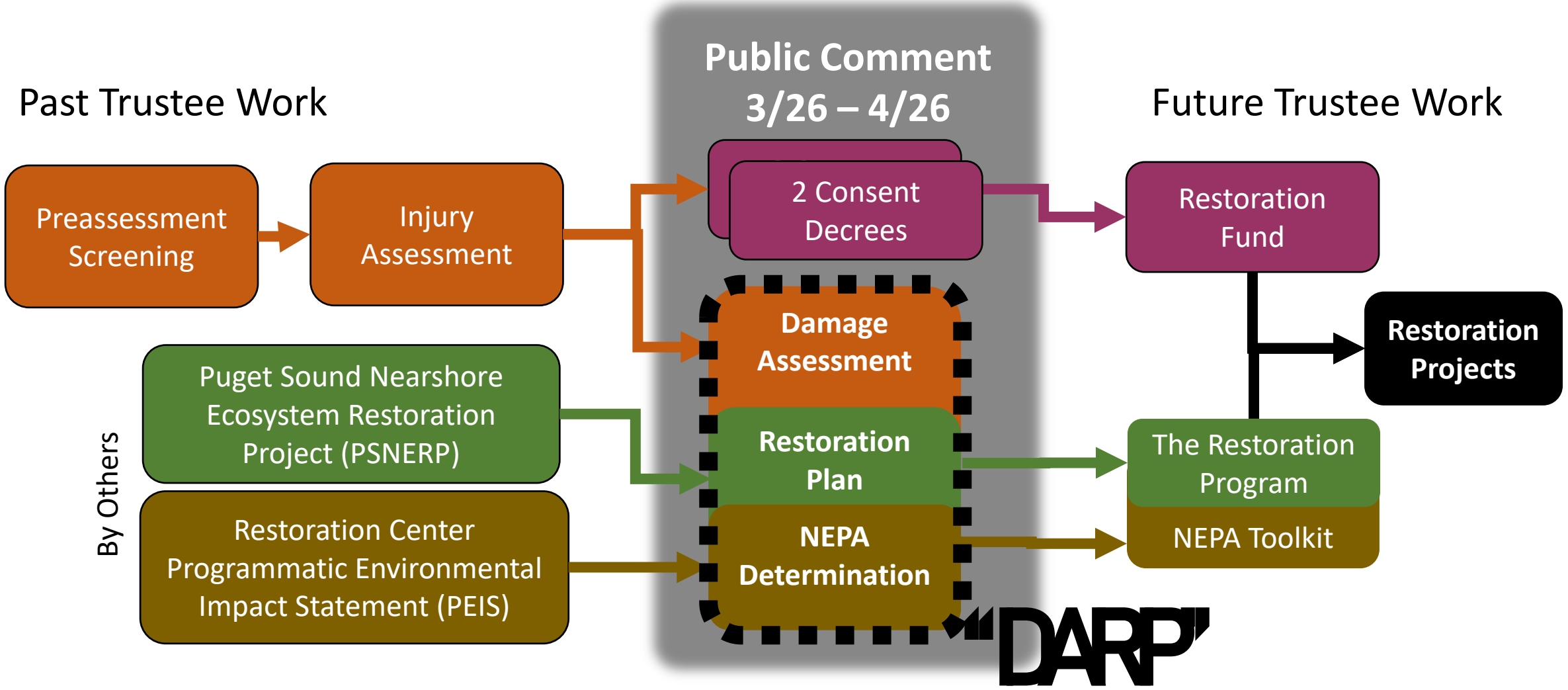


Public Benefits

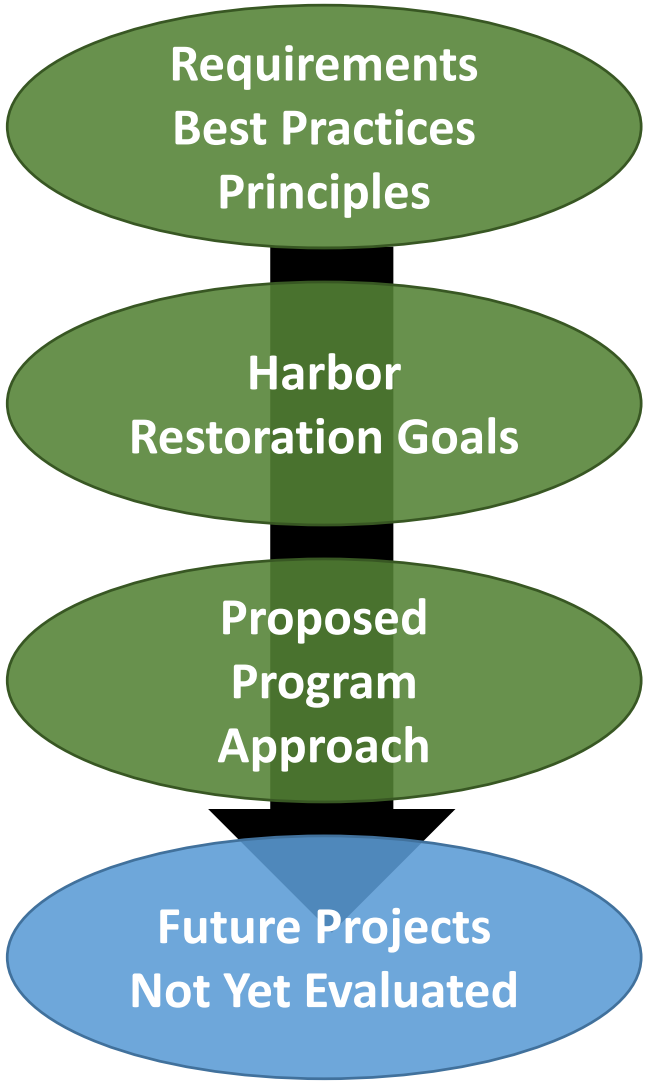
- **Avoids public risks of litigation**
- **Gives Trustees control to maximize restoration**
- **Allows rapid initiation of a restoration program**



NRDA "Road Map" For This Process



What are the Parts of Our Restoration Plan?



Trustee Declarations:

1. Preference for a “trustee-managed restoration program focused on nearshore habitat restoration and enhancement”

2. This approach is so far consistent with existing programmatic NEPA analysis

Requirements & Best Practices

Making the public whole through restoration is the purpose of NRDA

- Equivalent recovery of resources only, not punitive
- Clear relationship between injury and restoration
- In excess of other requirements or obligations


Skokomish Restoration

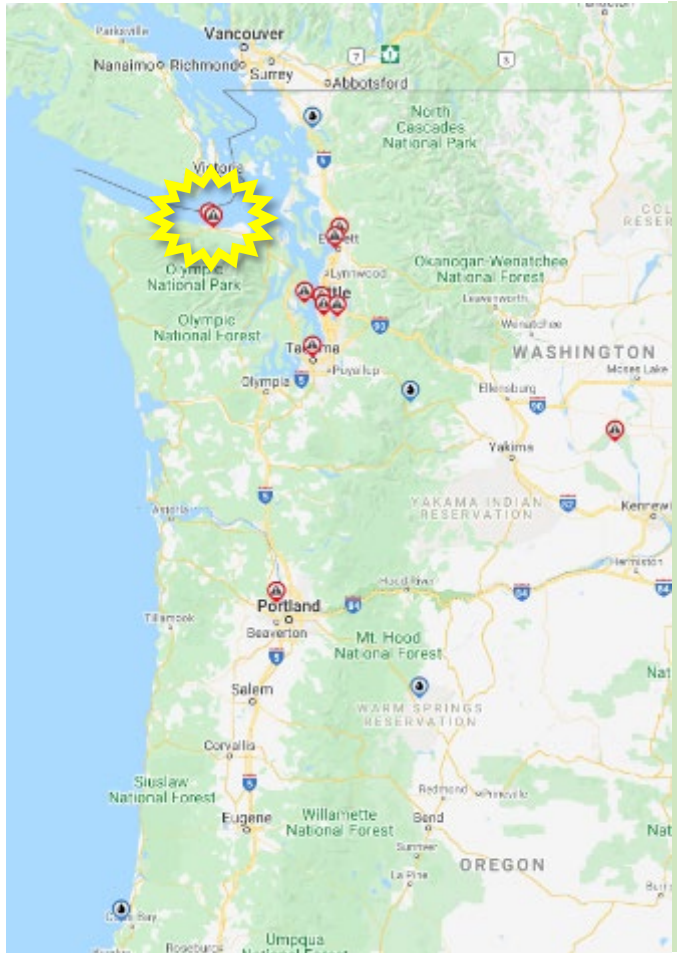

Jimmycomelately Restoration


Puget Creek Restoration

Requirements & Best Practices

Based on program experience, we apply the following best practices

- Restore natural conditions
- Self-sustaining projects
- Work with local plans
- Permanently protect restoration
- Observe and take care of sites into the future
- Involve the public



30 years of work
$10.4 Billion in restoration

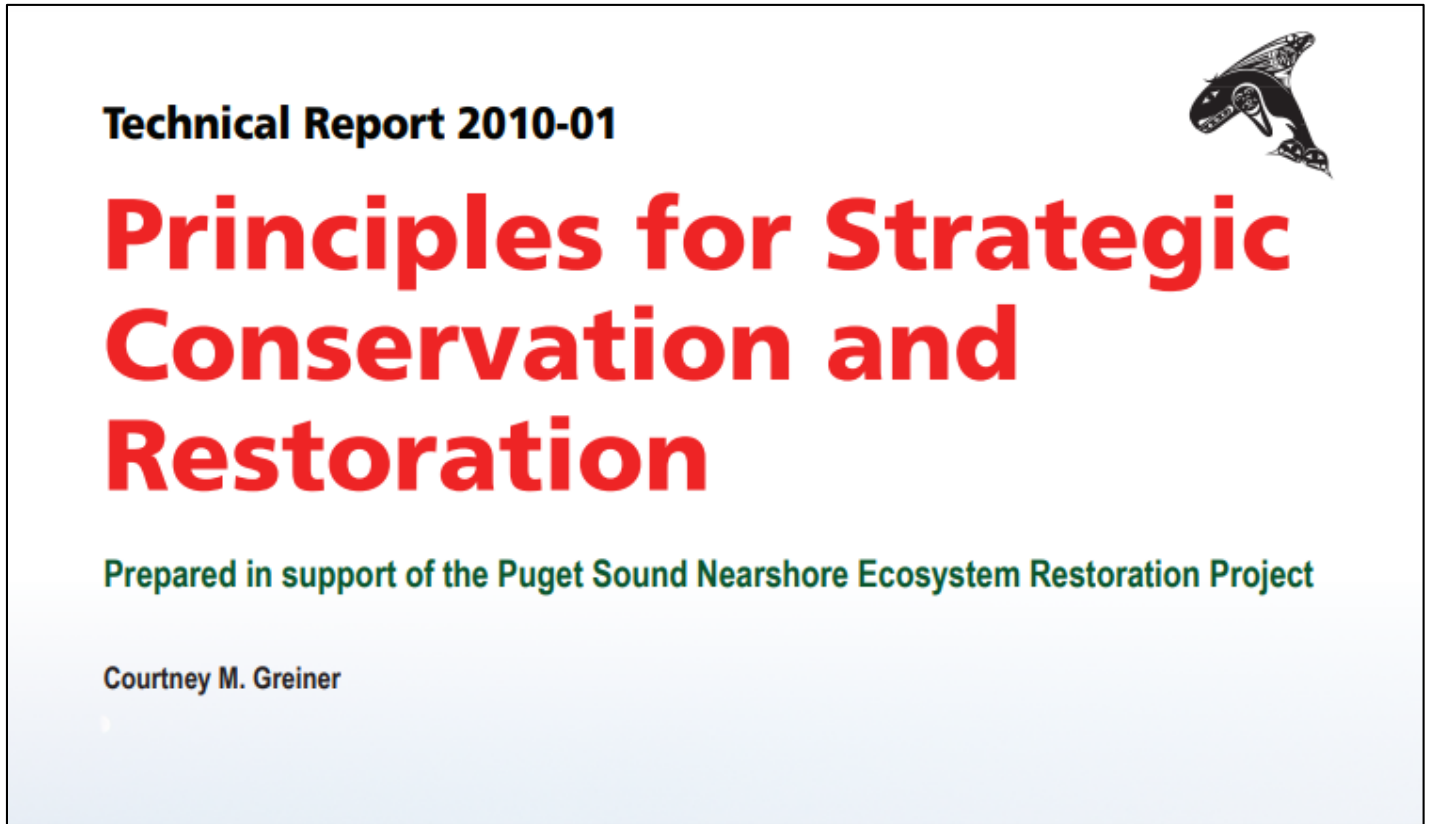
Regional Cases:
Duwamish Waterway
Commencement Bay
Port Gardner
Portland Harbor

National Cases:
Exxon Valdez
Deepwater Horizon

What Are Proposed Restoration Goals For the Harbor?

Puget Sound Nearshore Ecosystem Restoration Project

- Landform specific and process-based
- Ecosystem-based and strategic



Potential Actions:

Beach and Dune Restoration
Debris Removal
Sediment/Materials Placement
Fish Passage
Invasive Species Control
Native Plantings
Forest Management
Channel Restoration
Bank Restoration
Signage and Access Management
Subtidal Planting
Wetland Restoration

What Are Proposed Restoration Goals For the Harbor?

A. Recover and expand on **remnant habitats**
B. Restore **regionally rare** barrier beach, lagoon, and creek mouth habitats
C. Restore natural **shoreline erosion and transport** of beach sediments
D. Increase the **area of beach and shallow subtidal habitats** particularly in the Lagoon complex and restore cross-shore habitat connectivity
E. Construct **large islands of complex habitat** connected by continuous shallow water habitats
F. Increase **forage fish and salmonid populations** within the harbor
G. Avoid habitats anticipated to be **degraded by future impacts**


Ediz Hook Before Restoration


Ediz Hook After Restoration

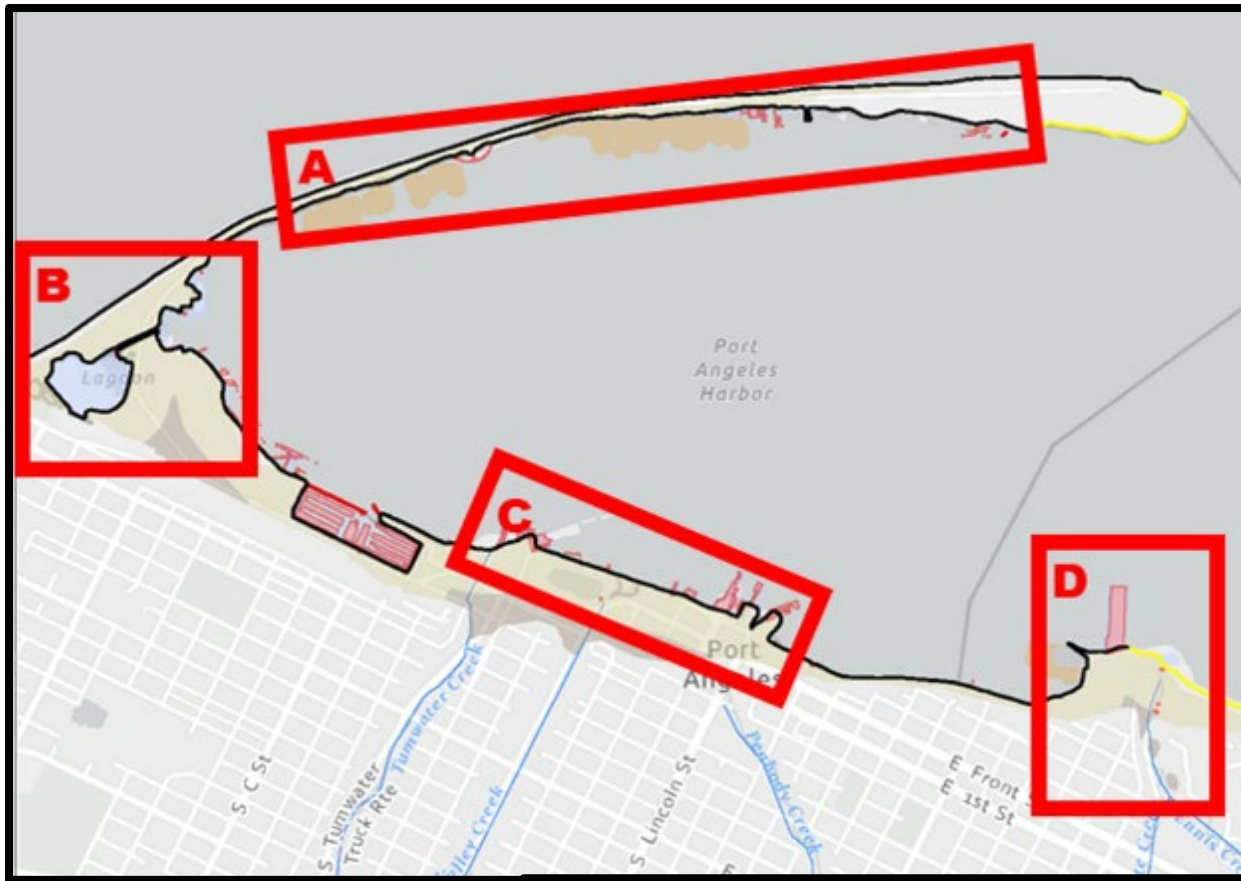

Ediz Hook Before Restoration


Ediz Hook After Restoration

Were Might Restoration Occur?

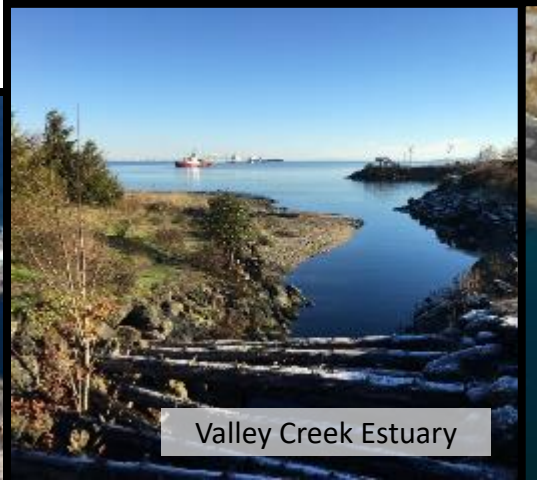
We observe four areas of opportunity within the Harbor

A. **Ediz Hook Shoreline**
(Including Sediment Sources)
B. **Tse-whit-zen Lagoon and Environs**
C. **Creek Mouth Landscape**
D. **Ennis Creek** – floodplain, estuary, and nearshore




Ediz Hook


Tse-whit-zen Lagoon


Valley Creek Estuary


Ennis Creek Estuary and Nearshore

"Preferred Alternative" For Restoration

A Trustee-led program, uses funds to complete actions with community involvement:

1. Meets NRDA requirements and best practices
2. Implements cost-effective restoration
3. Flexible in negotiating restoration in Port Angeles Harbor
4. Responsive to clean-up design
5. Ensures protection and stewardship
6. Implements ecosystem-based restoration

Harbor Eelgrass

Tse-whit-zen Lagoon at Low Tide 1994

Trustees Discarded the Following Program Approaches:

1. **NOT Focused on Deep Sub-tidal Wood Waste Restoration**
   Not limiting factor in ecosystem with severe shoreline development
2. **NOT Focused on economic, recreational, or educational access**
   Not likely to restore injured resources
3. **NOT focused on storm water remediation**
   City is already obligated
4. **NOT to transfer funds to Existing regional restoration funding systems**
   Potentially costly to transfer NRDA requirements, and focus is away from Harbor resources

How Will We Implement Projects?

Restoration Program Actions:

- **Funding from NRDAR account to a Trustee in order to:**
  1. **Complete priority action as an agent of the Trustees**
  2. **Enter into an agreement with a third-party project sponsor**

Community Involvement

- Actions memorialized in trustee resolutions, with NEPA determination
- All resolutions available in a public administrative record
- Notification of resolutions to “interested parties” list
- Periodic informal public meetings on strategy and progress
- Solicitation of restoration actions

What About Public Review of Proposed Actions (NEPA)?

Today we are proposing a program
Trustees will fund actions
Those actions will be federal actions reviewed under NEPA, as either:

1. **Consistent** with this plan and "NOAA National P-EIS", receiving rapid review
2. **Not Consistent** and requiring Focused Environmental Assessment, for example:
    - Interaction with potentially contaminated soils and sediments
    - Conflicts with water-dependent uses, or
    - Exceptionally large or complex actions

We Are Subject to Permitting: As a restoration program we are subject to all local, state and federal regulations (including State Environmental Policy Act and Local Shoreline Master Program review).

Please Comment on Our Restoration Plan!

We are asking you to provide comment on our Damage Assessment and Restoration Plan (DARP; 49 pages) by April 26

- Online Comment: http://tcp.ecology.commentinput.com/?id=Rm5ge

- Connie Groven is your point of contact for formal comment
  - Connie.Groven@ecy.wa.gov or
  - Connie Groven
    PO Box 47775
    Olympia WA 98504-7775

- Search: “Port Angeles Harbor NRDA comments”

Please Comment on Our Two Consent Decrees!

We are asking you to provide comment on our two consent decrees by April 26

- Email comments to US Department of Justice at pubcomment-ees.enrd@usdoj.gov

- Mail comments to:
  - Assistant Attorney General
    U.S. DOJ – ENRD
    P.O. Box 7611
    Washington, DC 20044-7611

- Refer to “United States, et. al. v. Nippon Paper Industries USA Co. Ltd., D.J. Ref. No. 90-11-3-10973”

How Will We Use Public Comments?

Trustees will:

1. Review all comments
2. Amend our Restoration Plan or consent decrees, if needed, based on comments
3. Publish Final DARP to the Trustee administrative record, including:
   - Responses to your comments
   - Formal federal determination under NEPA
4. Provide Consent Decree comments and responses to the Court as part of any motion to move forward.

Who Was The Presentation Team?

Matt Beirne, Lower Elwha Klallam Tribe matt.beirne@elwha.org

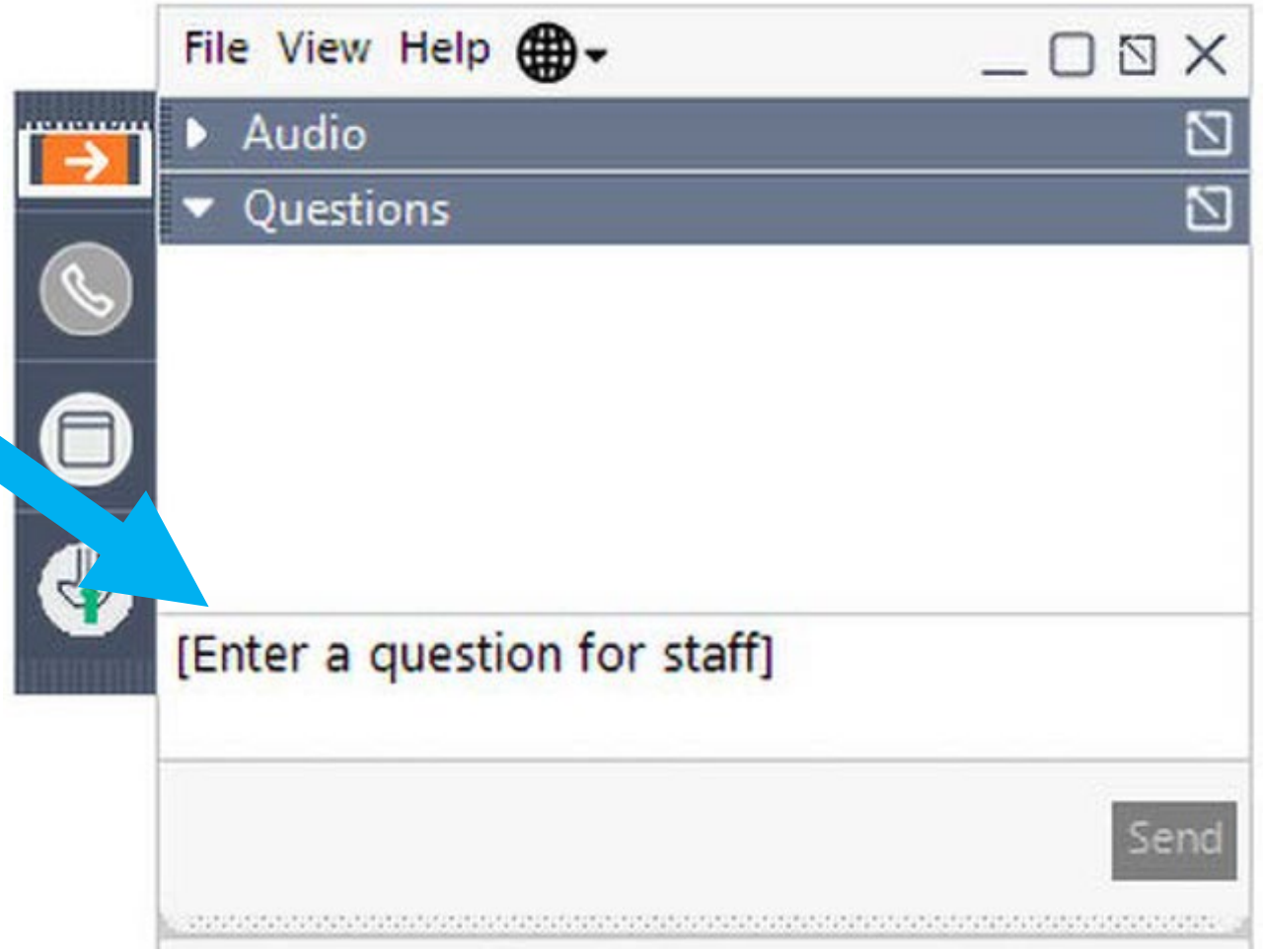
Rob Neely, NOAA Ocean Service, robert.neely@noaa.gov

Paul Cereghino, NOAA Fisheries, Restoration Center, paul.r.cereghino@noaa.gov

Connie Groven, Ecology, connie.groven@ecy.wa.gov

Get Your Questions Answered

Type Here



- Please type in your questions to the “Questions” box
- We may not get to them all
- Please note: This is not an opportunity to submit public comments. Please only enter questions at this time.


THANK YOU