

## UPDATE ON PROPOSAL RELATING TO GULF OIL SPILL AND MINNESOTA'S MIGRATING BIRDS

### Status of Natural Resource Damage Assessment (NRDA)

- On July 10, 2010, the DNR sent President Obama a letter regarding the potential for Minnesota's migratory birds to be affected by the Gulf oil spill and inquiring about potential standing and involvement in any Federal NRDA process.
- On October 1, 2010, the DNR received a reply from the U.S. Fish and Wildlife Service acknowledging the potential for impacts from the oil spill to extend to Minnesota's bird populations. However, the letter does not appear to acknowledge the State of Minnesota directly as a trustee in the NRDA process and instead suggests that Minnesota's interests will be represented through coordination with the regional office of the USFWS. Because the letter is unclear as to whether Minnesota is eligible to be an NRDA trustee, the Attorney General's office is currently examining the issue further.

### Potential Proposal to LCCMR for Activities Relating to Gulf Oil Spill and Migrating Birds

- LCCMR staff held meetings with several of the panel members that presented to the LCCMR on September 29.
- From those meetings some general consensus emerged on focus areas and the types of activities that should be prioritized and that would provide the greatest long-term benefits to efforts at this early stage.
- We are working with DNR on leading the effort in prioritizing and administering any efforts on behalf of all potential partners.
- The focus areas and types of activities identified includes:
  - **Bioaccumulation:** The effects of bioaccumulation are likely to be the largest issue for Minnesota birds in the long term and having scientifically valid data documenting the effects will be critical to any related efforts in the NRDA process, such as injury assessment. Activities in this area should focus on documenting any evidence of the presence of hydrocarbon or dispersant chemicals in Minnesota birds and the effects any such bioaccumulation may be having on the health and mortality of the birds.
  - **Population Monitoring:** Monitoring populations of key species most likely to be affected by the oil spill will be critical for detecting any change potentially attributable to the oil spill. This data will be helpful to the NRDA process and it is critical to determining if any long term mitigation efforts should be initiated for certain species. Detection of change requires existing datasets of past populations, which narrows the list of candidate species. Of the species most likely to be affected and for which there are existing datasets, loons and white pelicans stand out as the strongest candidate species. The best datasets exist for loons, which are amongst the Minnesota bird species most likely to be affected, and loons provide the additional benefit of having a public appeal that could be used in related educational and outreach efforts.
  - **Education/Outreach:** The situation presents an opportunity for public education and outreach. An education/outreach effort should be considered as a possible component of whatever main efforts are prioritized. However, this should be considering a supplementary focus rather than a primary focus.





## United States Department of the Interior

### FISH AND WILDLIFE SERVICE

1875 Century Boulevard  
Atlanta, Georgia 30345

OCT 01 2010

In Reply Refer To:  
FWS/R4/RD

Mr. Mark Holsten  
Commissioner  
Minnesota Department of Natural Resources  
500 Lafayette Road  
Saint Paul, MN 55155

Dear Mr. Holsten:

Thank you for your letter to President Obama concerning potential injury to migratory birds and waterfowl in Minnesota as a result of the Deepwater Horizon oil spill in the Gulf of Mexico. As your letter reflects, DOI, through the U.S. Fish and Wildlife Service (Service), has had a long and productive partnership with the State of Minnesota to protect and preserve migratory birds, waterfowl, and habitats in Minnesota. This is accomplished through a number of different programs and initiatives – including the North American Wetlands Conservation Act, the North American Waterfowl Management Plan, the new Great Lakes Restoration Initiative, and the Natural Resource Damage Assessment and Restoration provisions of federal statutes such as the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Oil Pollution Act (OPA), and the Clean Water Act (CWA).

As you know from our experience working together as co-trustees on a number of natural resource damage cases originating within the State of Minnesota, the collective natural resource Trustee goal is always complete restoration and protection of natural resources that are injured or harmed by a release or spill. This goal of complete and comprehensive restoration is an explicit cornerstone of our efforts on the Deepwater Horizon incident. It is our expectation that the ongoing collaborative efforts with NOAA and the Gulf States (Alabama, Florida, Louisiana, Mississippi, and Texas) to fully document and analyze all impacts to migratory birds and waterfowl in the area of the spill, and to see to it that those impacts are comprehensively addressed through effective restoration will ensure that the ecological health and vitality of the affected Mississippi flyway population – from the Gulf of Mexico up through Canada – is restored, protected, and revitalized.

Migratory bird species potentially affected by the oil spill in the Gulf, and the role of the Service in monitoring and evaluating associated bird populations, including consideration of near-term mitigation and potential long-term restoration actions, are briefly described on the Service's website which can be accessed at <http://www.fws.gov/midwest/MidwestBird/oilspill.htm>. As your letter suggests, any evidence of population fluctuations for certain species of birds or waterfowl that migrate from the Gulf may be informative in these ongoing efforts. It is critical that scientifically valid data and other information is carefully evaluated to discern potential

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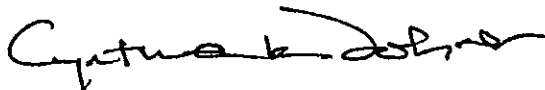
Mr. Mark Holsten

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effects of the Gulf oil spill from other confounding factors influencing population fluctuations. The FWS, acting through its Regional Office in Minneapolis, would like to set up regular coordination with Minnesota and other Midwest States on the role which states, including Minnesota, can play with the Service in partnership with the Gulf States, in restoring the ecological integrity of the Gulf of Mexico and the species which utilize its waters and shoreline. I have asked Tom Melius, the Regional Director of the FWS in Minneapolis, and Charlie Wooley, his Deputy, to contact you shortly to begin this important effort.

Thank you again for your help and for the historic partnership we have enjoyed for the conservation, protection, and restoration of our nation's natural resource heritage. If we can be of further assistance in this matter, please feel free to contact me at 404-679-4000 or Tom Melius at 612-713-5301.

Sincerely yours,



Cynthia K. Dohner  
Regional Director

cc:  
FWS R3-RD/DRD

# Minnesota Department of Natural Resources

500 Lafayette Road · Saint Paul, Minnesota · 55155-4037

Office of the Commissioner

651-259-5555



July 10, 2010

President Barack Obama  
The White House  
1600 Pennsylvania Avenue NW  
Washington, DC 20500

**RE:** Natural Resource Damage Assessment (NRDA) of BP Oil Spill on Natural Resources in the State of Minnesota

Dear President Obama:

Minnesota Pollution Control Agency Commissioner Paul Eger and I have been designated by Governor Pawlenty to act on behalf of the public as co-trustees of Minnesota's natural resources for purposes of the Clean Water Act (CWA) and the Oil Pollution Act of 1990 (OPA). We believe that Minnesota may have suffered public trust resource injuries to migratory birds, including loons and other waterfowl, as a result of the BP oil spill and may be eligible to receive compensation for these injuries.

The Mississippi Flyway is the longest migration route in the western hemisphere and is especially important for migrating waterfowl. Migratory waterfowl in Minnesota are dependent on this route as part of their life cycle. The portion of the Mississippi Flyway route within the Gulf of Mexico is sufficiently close to the BP oil spill that migrating birds could be injured or killed from coming into contact with the oil. The State of Minnesota shares a public trust responsibility with the U.S. Fish and Wildlife Service (USFWS) for managing migratory waterfowl that spend part of their life cycle in Minnesota as well as the Gulf of Mexico.

The MDNR has collected population data on migratory waterfowl as part of its management responsibilities. This information will be compared to post BP oil spill population data to determine whether injury has occurred to migratory waterfowl resources within Minnesota. If it is determined that injury has occurred, additional studies will be implemented to assess the extent of injury and develop a restoration plan, which may include compensation for any identified injury.

The State of Minnesota would appreciate any assistance from the federal government, potentially from the USFWS or the National Oceanic and Atmospheric Administration, in assessing migratory waterfowl injury as a result of the BP oil spill. Please contact me at (651) 259-5022, as the State of Minnesota's trustee for migratory birds, to coordinate any injury assessments under the OPA.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Holsten".

Mark Holsten  
Commissioner

c: Tim Pawlenty, Governor  
Lori Swanson, Minnesota Attorney General  
Minnesota Congressional Delegation  
Ken Salazar, Secretary of the Interior  
Tom Meleus, US Fish and Wildlife Service  
Tony Hayward, British Petroleum CEO  
Lisa Jackson, EPA Administrator  
Paul Eger, Commissioner of MPCA

DNR Information: 651-296-6157 or 1-888-646-6367 • TTY: 651-296-5484 or 1-800-657-3929 • FAX: 651-296-4779 • [www.mndnr.gov](http://www.mndnr.gov)

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