

## **Chapter 1: Purpose of and Need for Restoration**

### **1.1 Purpose**

The purpose of this document is to present the measures the Natural Resource Trustees will use to restore the natural resources and services lost as a result of the 1999 *M/V New Carissa* oil spill along the Oregon coast. In accomplishing that purpose, this restoration plan provides background on the spill and the Trustees' natural resource injury determinations and alternatives considered in the draft for resource restoration projects. The draft plan was released to the public on May 24, 2005 for a 45-day public comment period. This final plan addresses comments received during the public comment period. This document also serves, in part, as the Federal Trustees' compliance with the National Environmental Policy Act.

### **1.2 Overview**

On February 4, 1999, the *M/V New Carissa*, a bulk cargo ship in ballast, went aground 5 kilometers (km) north of the entrance to Coos Bay, Oregon. Subsequently, the vessel began leaking oil, an *in situ* burn was conducted, the vessel split in two, and additional oil was released. The bow section was refloated and towed offshore, only to break its tow and re-ground 110 km to the north at Waldport, Oregon, releasing additional oil. The bow section was again refloated, towed to sea, and sunk. The stern section remains stranded in the surf near the entrance to Coos Bay.

The total amount of oil released has been difficult to determine. The Unified Command, overall in charge of the response efforts, estimated 25,000 to 70,000 gallons. The Natural Resource Trustees' (Trustees) evaluation of Shoreline Cleanup Assessment Team (SCAT) reports, which estimated the volumes of oil stranded on the beaches, and analysis of modeling of water column concentrations, raise a possibility that a much greater amount of oil, up to 140,000 gallons, may have been released.

There were many natural resources potentially at risk from the oil including birds, marine mammals, fish, shellfish, outer beaches and rocky shores, and the estuaries from Coos Bay to Yaquina Bay. Initial assessments conducted by the Trustees determined that the oil spill adversely affected shorebirds (including the western snowy plover, a Federally threatened species), and various seabirds (including the marbled murrelet, a Federally threatened species). Cooperative studies co-funded by the Trustees and the Responsible Parties (RPs) to ascertain the effects of the *M/V New Carissa* oil spill have determined that 4 to 8 western snowy plovers likely perished; 672 other shorebirds were injured or killed; and 2,465 seabirds and gulls, including 262 marbled murrelets were killed.

Another cooperative study jointly funded by the Trustees and the RPs found that from 27,974 to 29,204 recreation trips valued at \$395,356 to \$413,056 were lost or diminished by the incident.

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Under the Oil Pollution Act of 1990, the parties responsible for the release of oil are liable for costs to assess impacts and restore injured natural resources. Federal, State and Tribal Natural Resource Trustees may conduct a Natural Resource Damage Assessment (NRDA) to document and quantify injuries to natural resources and services. For the *M/V New Carissa* spill, the Natural Resource Trustees include the U. S. Department of Interior (USDI), the U. S. Department of Agriculture (USDA), the State of Oregon, the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians and the Confederated Tribes of Siletz Indians of Oregon.

In this case, the RPs are: Green Atlas Shipping S.A. (owners of the *M/V New Carissa*); TMM Co., Ltd. (operators of the *M/V New Carissa*); Britannia Steamship Insurance Association, Ltd. (insurers of the *M/V New Carissa*); and Benjamin Morgado, the master of the *M/V New Carissa* at the time of the incident.

In May 2004, a settlement to resolve a 2001 lawsuit (*Green Atlas Shipping, et al. v. United States*) was reached between the United States and the RPs for the *M/V New Carissa* spill and approved by a Federal judge in Portland, Oregon. The terms of the settlement agreement regarding natural resource damages require the RPs to pay the United States \$4 million. The settlement agreement expressly recognizes that the \$4 million from the RPs does not represent the full compensation for natural resource damages and, under a separate Memorandum of Agreement (Appendix 3) with the National Pollution Funds Center (NPFC) <sup>1</sup> the Trustees are permitted to submit a claim to the NPFC for any additional damages.

### **1.3 Natural Resource Trustees and Authorities**

The Oil Pollution Act of 1990 (OPA) and Executive Order 12777 designate the Federal Trustees for oil spills, while the Governor of Oregon designates the State Trustees for oil spills in Oregon. Current Natural Resource Trustees for this incident are:

- USDI, represented by the State Director, Oregon/Washington Bureau of Land Management (BLM);
- USDA, represented by the Regional Director, Recreation, Lands and Minerals, Forest Service Region 6;
- State of Oregon Department of Fish and Wildlife, represented by the Director;
- State of Oregon Department of Environmental Quality, represented by the Director;

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<sup>1</sup> The U.S. Coast Guard's National Pollution Funds Center manages the Oil Spill Liability Trust Fund established by the Oil Pollution Act of 1990 to provide funding for, among other things, clean up and natural resource restoration costs for "uncompensated claims" resulting from oil spills in the United States.

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- Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw Indians, represented by the Tribal Chairman
- Confederated Tribe of Siletz Indians of Oregon, represented by the Tribal Chairman.

During the preassessment phase of this NRDA, the U.S. Department of Commerce, represented by the National Oceanic and Atmospheric Administration, and the Coquille Indian Tribe of Oregon participated as Natural Resource Trustees. Both subsequently withdrew from the Restoration Planning phase because of the limited degree of injuries to natural resources under their purview.

The Trustees designated the USDI as the Lead Administrative Trustee (LAT) [15 CFR 990.14(a)] and the Federal Lead Administrative Trustee (FLAT). USDI designated the BLM State Director for Oregon/Washington as the Authorized Official for the Department.

### **1.4 Overview of Oil Pollution Act of 1990 Requirements**

Under OPA, Trustees can recover:

- the cost of restoring, rehabilitating, replacing or acquiring the equivalent of the injured natural resources (“primary restoration”);
- the diminution in value of those injured natural resources pending restoration (“compensatory restoration”); and
- reasonable assessment costs.

Before initiating an NRDA, the Trustees must determine that:

- an incident has occurred and it is not expressly excluded from NRDA provisions;
- the incident is not from a public vessel;
- the incident is not from an onshore facility subject to the Trans-Alaska Pipeline Authority Act;
- the incident is not permitted under Federal, State or local law; and
- natural resources and/or services may have been injured as a result of the incident.

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Natural resources are defined as “land, fish, wildlife, biota, air, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to or otherwise controlled by the United States, any State or local government or Indian tribe” (15CFR 990.30). Injury is defined as “an observable or measurable adverse change in a natural resource or impairment of a natural resource service” (15 CFR 990.30).

As described in the OPA regulations, a NRDA consists of three phases: (1) Preassessment; (2) Restoration Planning, and (3) Restoration Implementation. Based on early available information collected during the Preassessment Phase, the Trustees make a preliminary determination as to whether natural resources and/or services have been injured and/or are likely to be injured by the release.

Through coordination with response agencies (e.g., U. S. Coast Guard) the Trustees next determine whether the oil spill response actions will eliminate the injury or the threat of injury to natural resources. If injuries are expected to continue and feasible restoration alternatives exist to address such injuries, the Trustees may proceed with the Restoration Planning Phase. Restoration Planning also may be necessary if injuries are not expected to continue to endure but are nevertheless suspected to have resulted in interim losses of natural resources and/or services from the date of the incident until the date of recovery.

The purpose of the Restoration Planning Phase is to evaluate the potential injuries to natural resources and services and use that information to determine the need for and extent of associated restoration actions. This phase provides the link between injury and restoration and has two basic components: (1) injury assessment, and (2) restoration selection. The goal of injury assessment is to determine the nature and extent of injuries to natural resources and services, thus providing a factual basis for evaluating the need for, type of, and scale of restoration actions. As the injury assessment is being completed, the Trustees develop a plan for restoring the injured natural resources and services.

During the Restoration Planning Phase, the Trustees must:

- identify a reasonable range of restoration alternatives
- evaluate and select the proposed alternative,
- develop a Draft Restoration Plan presenting the alternatives to the public,
- solicit public comment on the Draft Restoration Plan, and
- incorporate comments into a Final Restoration Plan.

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During the Restoration Implementation Phase for the *M/V New Carissa*, under the terms of the settlement agreement between the United States and the RPs and in accord with a separate Memorandum of Agreement between the Trustees and the NPFC, the Final Restoration Plan will be presented to the NPFC to fund the Trustees' costs for assessing damages and implementing the Restoration Plan in excess of the \$4 million settlement received from the RPs.

### **1.5 Coordination with the Responsible Parties**

The OPA regulations direct the Trustees to invite the RPs to participate in the damage assessment and restoration process. Although the RPs may contribute to the process in many ways, final authority to make determinations regarding injury and restoration rests solely with the Trustees.

During the early stages of the incident, the Trustees and representatives of the RPs prepared and co-funded a number of studies including the "Emergency Restoration Measures for the Western Snowy Plover" (USDI et al. 1999) to reduce and mitigate losses to plovers as a result of the spill and the "Impact Assessment of Oil Spilled from the New Carissa on the western snowy plover along the Oregon Coast" to determine the effect of the oil spill on the western snowy plover (Stern et al. 2000).

The Trustees and RPs co-funded several studies detailing impacts of the incident on shorebirds and seabirds: "*M/V New Carissa* Oil Spill Incident Coos Bay and Waldport Oregon Shorebird Survey Results" (Jacques 1999) and "Seabird Mortality Resulting from the *M/V New Carissa* Oil Spill Incident February and March 1999" (Ford et al. 2001).

Trustees prepared a report "New Carissa Recreational Loss Pre-Assessment Report" (Carlson and Fujimoto 2001) that was partially funded by the RPs.

In addition, Trustees and representatives of the RPs had extensive communications and met formally several times and informally discussed issues on numerous occasions. The Trustees sought comments from the RPs on all their studies and assessment reports prepared for this case.

In February 2001, the RPs filed suit (*Green Atlas Shipping, et al. v. United States*) alleging that the incident was caused by the Federal government's negligence. The United States answered the complaint and denied liability.

As required by 15 C.F.R. part 990.14 (c) (1), the Trustees sent the RPs a written invitation to participate in the Restoration Planning Phase on October 19, 2001. On June 25, 2002, the RPs responded in writing indicating their interest to participate with the Trustees in the Restoration Planning Phase of this NRDA.

In October 2003, the RPs approached the United States to discuss the possibility of reaching a settlement in the Federal case, *Green Atlas Shipping S.A., et al. v. United States*. In May 2004, a

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settlement agreement between the United States and the RPs was approved by a Federal judge in Portland, Oregon. (Appendix 3)

In a separate case, the State of Oregon sued the RPs for leaving the stern of the *M/V New Carissa* on State lands. The State was awarded damages of \$25 million in a jury trial but the RPs have appealed the decision. This State case is separate from this NRDA.

### **1.6 Public Participation**

On **May 15, 1999**, pursuant to 15 CFR 990.26, the Trustees published a public notice in *The World* newspaper, Coos Bay, Oregon, of their intentions to conduct emergency restoration efforts for the western snowy plover as a result of the *M/V New Carissa* incident (Appendix 2).

On **November 7, 2001**, Trustees published a Notice of Intent to Conduct Restoration Planning: *M/V New Carissa* Natural Resource Damage Assessment, in the Federal Register, Vol. 66, No. 216 pp 56339-56340 (Appendix 2).

On **June 28, 2004**, the Trustees issued a news release seeking public comment on the restoration planning process (Scoping Notice) and sent it to most western Oregon news outlets. In addition, Trustees published legal notices in the following Oregon papers: *The World*, Coos Bay; *The Oregonian*, Portland; the *Register Guard*, Eugene; and the *News-Times*, Newport, and mailed an information packet to all respondents who indicated an interest in receiving more information relative to preparation of the restoration plan. Information was also placed on the BLM's Coos Bay District's website: <http://www.or.blm.gov/coosbay/> (Appendix 2).

Trustees received comments from seven individuals during the Public Scoping period and they are summarized in Chapter 6.

On **May 24<sup>th</sup>, 2005**, the Trustees released the Draft *M/V New Carissa* DARP/EA for an initial 30-day public comment period, and simultaneously published the DARP/EA with all appendixes on the U. S. Fish and Wildlife Service's Oregon Fish and Wildlife Office website: <http://OregonFWO.fws.gov>. In addition to the document and appendixes, the website had the following supporting information available for download: the Trustees' joint news release; an 11-page simplified summary version of the DARP; a five-page Q&A about the spill, the Natural Resource Damage Assessment and Restoration process, and the proposed restoration plan.

Also on May 24<sup>th</sup> the Trustees sent a news release by direct email to 84 reporters, news outlets and wire services. The news release was also emailed to 137 potentially interested parties including all of Oregon's coastal county commissioners, selected State agencies and elected officials, Federal agencies and elected officials, non-government organizations, and opinion leaders. The news release contained information on the opportunity to comment, and a link to the web page with its additional documentation. More than 125 hard copies of the plan were mailed to agencies and individuals previously identified as partners or interested parties.

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The news release generated considerable media interest in the DARP. Trustee representatives were interviewed by a number of print, radio and television reporters and coverage of the story was thorough throughout western Oregon.

The Trustees also published legal notices of availability of the DARP/EA for public comment in four Oregon newspapers: The World, Coos Bay; the News-Times, Newport; The Register-Guard, Eugene; and The Oregonian, Portland.

Trustees held two public meetings to receive verbal comments and discuss, explain and answer all questions about the DARP/EA:

- **June 7<sup>th</sup>, 2005** in Newport Oregon (attended by 12 people)
- **June 8<sup>th</sup>, 2005** in North Bend, Oregon (attended by 24 people)

Within a few days after these public meetings, the Trustees posted on the above-mentioned web page summary transcriptions of the comments and questions which were raised.

Trustee representatives also conducted a number of personal briefings including:

- Oregon Coastal Zone Management Association meeting in Salem, Oregon;
- Coastal County Commissioner Briefing (all Oregon coastal county commissioners were invited to attend); present were representatives from Lincoln and Tillamook counties and staff from Congresswoman Darlene Hooley's and Senator Gordon Smith's offices;
- Staff members for Senator Wyden, Congressman Wu and Congressman DeFazio.

On **June 10<sup>th</sup>**, the Trustees received a request from Congresswoman Hooley's office, on behalf of the Lincoln County Commissioners in particular and other coastal counties' interests in general, to extend the public comment period if possible. In response, the Trustees extended the comment period an additional two weeks (until **July 8, 2005**) and issued a news release and published legal notices in the same four newspapers describing the extension.

During the public comment period, Trustees received 75 letters, emails and telephone calls containing one or more comments on the DARP/EA. In addition, more than 70 oral comments (some repeated several times) were transcribed in summary form from the public meetings in Newport and North Bend. In all, the public identified more than 225 issues to which the Trustees responded in writing for the final plan.

More details of the Trustees public comment process, including the Trustees' responses to the comments received, are included in Chapter 6.

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### **1.7 Administrative Record**

The Trustees have compiled an Administrative Record which contains documents the Trustees relied upon as they have planned and implemented the NRDA and addressed restoration and compensation issues and decisions. The Administrative Record is available for public review at the public repository listed below. An index of documents that are part of the Administrative Record is provided in Appendix 1.

The Administrative Record facilitates public participation in the NRDA process and will be available for use in any future administrative or judicial review of the Trustees' actions as provided by law. Additional information and documents, including public comments received on the Draft DARP/EA, the Final DARP/EA and other related restoration planning documents will become part of the Administrative Record and will be submitted to the appropriate repository upon their completion.

The documents comprising the Administrative Record can be viewed at the following public location:

Coos Bay District Office  
Bureau of Land Management  
1300 Airport Lane  
North Bend, OR. 97459  
(541) 756-0100  
Office Hours: Monday-Friday: 7:45am -4:30pm

### **1.8 Summary of the Natural Resource Damages Claim**

The NRDA damages claim for the incident encompasses restoration actions for injuries to the following natural resources and the services they provide:

- shorebirds
- seabirds, and
- lost recreation use.

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The proposed restoration actions seek to:

- maintain nesting habitat for the western snowy plover;
- protect and enhance shorebird habitat along the southern Oregon coast to compensate for injuries to an estimated 672 oiled shorebirds;
- protect and enhance marbled murrelet nesting habitat in Oregon to compensate for the mortality of an estimated 262 marbled murrelets;
- protect and enhance other seabird habitat in Oregon to compensate for the mortality of an estimated 2,203 seabirds and gulls (other than the marbled murrelets); and
- improve visitor services and increase recreation opportunities on Coos Bay's North Spit, in the Dunes National Recreation Area and at Governor Patterson State Park to compensate for the lost visitor use during the incident.