Portland Harbor Restoration Plan Programmatic EIS Scoping Report

Prepared for

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INTRODUCTION

Since the early 1900s, industries along the lower Willamette River have released dozens of contaminants into the river and onto the land around it. Substances released include polychlorinated biphenyls, polycyclic aromatic hydrocarbons, metals, pesticides (e.g., DDT), dioxins, and furans. In 2000, Portland Harbor was declared a federal Superfund site. In 2002, the Portland Harbor Natural Resource Trustee Council was formed to develop and coordinate damage assessment activities at Portland Harbor.

The Trustee Council includes the National Oceanic and Atmospheric Administration (NOAA), Department of the Interior (U.S. Fish and Wildlife Service), Oregon Department of Fish and Wildlife, the Nez Perce Tribe, the Confederated Tribes of the Warm Springs Indian Reservation of Oregon, the Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes of Siletz Indians, and the Confederated Tribes of the Grand Ronde Community of Oregon (all agencies and Indian Tribes are collectively referred to as the "Trustees"[1]). The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §§ 9601 et seq.; the Oil Pollution Act (OPA) of 1990, 33 U.S.C. §§ 2701 et seq.; the Clean Water Act (CWA), 33 U.S.C. § 1251; the National Oil and Hazardous Substances Pollution Contingency Plan [National Contingency Plan (NCP)], 40 C.F.R. 300, Subpart G; Executive Orders 12580 and 12777; and other applicable federal and state laws and regulations, provide a legal framework for the Trustee's actions.

Under CERCLA, parties responsible for releasing hazardous substances into the environment are liable both for the costs of responding to the release (by cleaning up, containing or otherwise remediating the release) and for damages arising from injuries to publicly owned or managed natural resources resulting from the release. The federal regulations provide a framework for performing a Natural Resource Damage Assessment (NRDA) involving hazardous substances and describe methods for (1) making the decision to conduct an assessment, (2) establishing that hazardous substances have exposed and injured natural resources, (3) quantifying the extent of injury and resultant public losses, (4) determining the amount and cost of restoration required to return the injured resources and their services to baseline and to compensate the public for interim losses, and (5) planning and implementing projects designed to restore the injured natural resources and resultant public losses. Although the regulations are not mandatory, they provide useful guidelines for assessing injuries and damages, and planning and implementing restoration of the injured natural resources and resultant public losses. The Trustee Council has been, and will continue to be, guided by these regulations as practical and appropriate as they carry out the Portland Harbor NRDA.

Exposed natural resources for Portland Harbor include, but are not limited to:

- aquatic-dependent mammals such as mink and river otter;
- migratory birds, including osprey, bald eagle, mergansers and other waterfowl;
- great blue heron, spotted sandpiper and other shorebirds;
- cliff swallow;
- belted kingfisher;

[1] The Confederated Tribes and Bands of the Yakama Nation, although a trustee for Portland Harbor, has withdrawn from the Trustee Council and is no longer participating in the restoration planning efforts of the group of Trustees identified above.

- anadromous and resident fish, including salmon, lamprey and sturgeon;
- reptiles and amphibians;
- aquatic invertebrates;
- wapato and other aquatic plants; and
- wetland and upland habitats, groundwater, and surface water.

Importantly, some of the exposed species are included on the threatened and endangered species lists under the Endangered Species Act of 1973,16 U.S.C. §§ 1531-44. The services that are provided by the potentially affected natural resources include, but are not limited to:

- habitat for trust resources, including food, shelter, breeding, foraging, and rearing areas, and other factors essential for survival;
- fishing opportunities;
- non-consumptive uses such as wildlife viewing and photography and other outdoor recreation activities;
- primary and secondary contact activities such as swimming and boating;
- cultural, spiritual, and religious use;
- option and existence values; and
- traditional foods.

The Trustees are developing a Restoration Plan that will identify and evaluate restoration alternatives and provide the public with an opportunity to review and comment on the proposed restoration alternatives. The purpose of the restoration actions is to make the public whole through compensation for natural resource injuries resulting from the release of hazardous substances in Portland Harbor. The Restoration Plan will provide guidance to the Trustees in their decision-making regarding the implementation of Portland Harbor NRDA restoration activities intended to restore, replace, or acquire the equivalent of those injured natural resources.

The need for this type of guidance arises because of widespread, historic contamination in the Portland Harbor area with liability being assigned to numerous potentially responsible parties (PRPs) who own, have owned, operated, or are operating, facilities along the waterway. The PRPs, as well as the public, need to be fully informed of the decision-making process to be undertaken by the Trustees in order to fully engage in the process. Engagement in the process by interested parties is a necessary component in the expeditious settlement of Natural Resource Damage liabilities.

The Restoration Plan will be developed as a joint Programmatic Environmental Impact Statement and Restoration Plan (PEIS/RP). The Trustee Council has identified three restoration planning alternatives that could be evaluated in the PEIS/RP. These include:

1. integrated habitat restoration actions that will benefit multiple species and services (those species listed above as potentially affected by releases of hazardous substances – for example, fish such as salmon and resident fish, mammals such as mink and river otter, and aquatic-dependent birds such as osprey and bald eagle);
2. species-specific restoration actions (for example, augmenting a species population through artificial production); and
3. a no-action alternative (no action takes place and the public is not compensated).

As settlements are reached with PRPs, individual restoration projects will be developed based on the PEIS/RP and will be analyzed as part of individual Environmental Assessments or other review documents to be tiered to the programmatic document.

The National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321 et seq., and the Council on Environmental Quality (CEQ) regulations implementing NEPA under 40 C.F.R. Chapter V (CEQ regulations), apply to restoration actions by federal trustees. The purpose of the scoping process is to identify the concerns of the affected public and federal agencies, states, and Indian tribes, involve the public early in the decision-making process, facilitate an efficient PEIS/RP preparation process, define the issues and alternatives that will be examined in detail, and save time by ensuring that draft documents adequately address relevant issues. The scoping process reduces paperwork and delay by ensuring that important issues are addressed early. This Scoping Report documents the scoping activities and comments received for the Portland Harbor Restoration Plan.

NEPA OVERVIEW

NEPA and CEQ regulations apply to restoration actions by federal trustees. NEPA requires the designation of a federal lead agency (or co-lead agencies). NOAA and the U.S. Fish and Wildlife Service (USFWS) are co-lead agencies. In addition, NOAA is the lead administrative trustee for the Portland Harbor NRDA case. The state and tribal members of the Trustee Council are acting as cooperating agencies. A cooperating agency may be any agency other than the lead agency which has discretionary authority over the proposed action, jurisdiction by law, or special expertise with respect to the environmental impacts expected from the proposed action (40 C.F.R. 1508.5).

The lead agency is responsible for determining whether an EIS is required and for initiating the scoping process, if necessary. NOAA and USFWS have determined that an EIS is necessary for the project. NOAA issued a Notice of Intent to publish an EIS in the Federal Register on February 1, 2010 (75 Federal Register 5039-40).

NEPA regulations require the lead agency to solicit information from the public through a scoping process and to consult with appropriate federal agencies regarding the proposed action. For the Portland Harbor project, the scoping process included a public meeting, information posted on the case website and disseminated through email, and an opportunity to submit written comments through March 15, 2010.

INTERNAL SCOPING

NOAA, as the lead administrative trustee for the Portland Harbor NRDA case, engaged in an internal scoping process to determine the appropriate level of NEPA analysis for the PEIS/RP. Under NOAA's NEPA guidelines, some trustee restoration actions may qualify for Categorical Exclusions (CEs) under NEPA (NOAA Administrative Order (NAO) 216-6, Section 6.03b.2). NOAA determined that the preparation of a Restoration Plan for Portland Harbor merits EIS-level analysis for several reasons:

1. NAO 216-6 Section 5.05c identifies types of actions that do NOT qualify for a CE. NOAA determined that the proposed action (preparation of a Restoration Plan for Portland Harbor) meets some or all of these criteria, which include:
    a. Actions that involve a geographic area with unique characteristics such as historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.

b. Actions that are the subject of controversy based on potential environmental consequences.

c. Actions that have uncertain environmental impacts or unique or unknown risks.

d. Actions that establish a precedent or decision in principle about future proposals.

e. Actions that may result in cumulatively significant impacts.

f. Actions that may have any adverse effects upon endangered or threatened species or their habitats.

2. NOAA determined that the preparation of the Restoration Plan, and the implementation of restoration actions identified and selected under it, may have a cumulatively significant effect on the quality of the human environment, both in terms of context and intensity. Although NOAA anticipates that the balance of the effect will be beneficial, the geographic scope, potential short-term adverse impacts, and potential for substantial public interest and controversy led NOAA to opt to prepare an EIS.

NOAA's Responsible Program Managers coordinated internally with NOAA's Office of Program Planning and Integration (PPI) to determine that an EIS is the appropriate level of analysis for this major federal action. PPI staff have reviewed the initial purpose and need, proposed action, and initial reasonable range of alternatives to include in the analysis.

NOAA also coordinated with the USFWS, the co-lead agency for NEPA compliance, and the USFWS concurred that an EIS is the appropriate level of analysis for the Portland Harbor Restoration Plan.

PUBLIC SCOPING

The NOI for the Portland Harbor PEIS/RP was published in the Federal Register on February 1, 2010 officially announcing NOAA's and the Trustees' intent to issue a PEIS for the project and beginning the public scoping process. This section of the report documents the scoping process.

PRESS RELEASES AND ANNOUNCEMENTS

A public scoping meeting was held on Wednesday, March 3, 2010 from 6:00 PM to 8:00 PM within the study area at the Water Pollution Control Laboratory located at 6543 N. Burlington Avenue, Portland, OR 97203. The meeting was announced in several ways including newspaper notices, website notices, email distribution, and phone calls as described in the following list:

- A public meeting notice was published the week prior to the meeting in four city-wide weekly newspapers including the following:
  - Portland Mercury
  - Willamette Week
  - The Portland Tribune
  - The Skanner
- A meeting notice was posted on The Sentinel's online event calendar one week prior to the meeting. This neighborhood newspaper serves many neighborhoods within or adjacent to the study area.

- A meeting notice was posted to the KBOO Community Radio FM 90.7 calendar of events.
- A meeting notice and handout describing the scoping process was emailed to two email lists including:
    - Email list serve ("Portland Harbor News Briefs") managed by the U.S. Environmental Protection Agency (EPA) for notifications regarding the Portland Harbor Superfund Site announcements (February 25, 2010).
    - Email addresses of local, community-based organizations focused on conservation and restoration around the Portland Harbor area, identified as "potential partners" in implementing restoration actions (Feb. 8, 2010).

PUBLIC SCOPING MEETING

The public meeting consisted of a brief project presentation followed by small group and individual discussions at four topic stations. The presentation included an introduction to the site, the role of the Trustees, restoration planning overview, potential alternative restoration approaches and the schedule for the project. The topic stations were designed to provide opportunity to speak with experts at each station in the following disciplines:

- Ecological Resources
- Tribal Resources and Environmental Justice
- Recreation
- EPA Superfund Clean-up

After the presentation, comments and questions were recorded on flip charts at each station. Comment sheets were provided to all attendees, and email and mailing addresses were provided for comments to be submitted outside of the scoping meeting. Comments were due by March 15, 2010.

PUBLIC SCOPING RESULTS

All scoping comments submitted were received during the Scoping Meeting in the small group discussions. No comments were received via email or U.S. Postal Service mail. In total, 31 comments were recorded and can be summarized into six categories as shown in Table 1 below. Comments are included in Appendix A.

Table 1. Comment Category Summary

Comment Category	Number of Comments[a]
Recreation	15 – (48%)
Project Sites	8 – (26%)
Ecological Habitat	7 – (23%)
Tribal	5 – (16%)
Process	5 – (16%)
Project Opportunity	3 – (10%)

[a] Some comments applied to more than one category, so the total number of comments in the table is greater than the total number of comments received.

Recreation was a concern in the largest number of comments, followed by project sites and ecological habitat. Nearly half of the 15 comments concerning recreation were focused on the potential interactions of recreation types or recreation projects with ecological or Tribal resources. These either warned of potential negative effects for ecological resources or suggested educational benefits to combining recreation with the natural environment. The remaining recreation comments included concern for recreation opportunities lost over time because contamination has made contact activities, such as swimming, hazardous to human health; overuse of other nearby recreation areas because of lost opportunities within Portland Harbor; lack of kayak recreation support (camping, kayak trail); and the need for more sport fishing resources.

Comments in the project sites category include those comments that concerned how sites would be chosen, addressed specific sites, or included any issues pertinent to site ownership or location. One comment requested open and early property owner involvement in restoration planning, while others indicated a need to fully investigate any prior restoration at sites such that no existing restoration work would be undermined.

Comments regarding ecological habitat were varied and included the need for better fish habitat; including bird habitat needs with restoration (specifically red-tailed hawk and peregrine falcon); considering native oak and madrone forest habitat restoration; and ensuring that recreation and Tribal resource restoration are sensitive to also protecting ecological habitat.

Five of the comments included Tribal resources. Most of these were suggestions to include education about Tribal history in restoration projects or to choose restoration locations by considering traditional Tribal practices in the area. Project process was also the topic of five comments. These comments asked questions about how restoration activities relate to the damage assessment process, what environmental analysis is being performed, and funding and permitting for restoration. The project opportunity category includes comments regarding restoration ideas that are not tied to specific sites or agencies.

All of the comments address issues, questions or suggestions that can reasonably be expected to be discussed as part of the PEIS/RP.

FUTURE STEPS

The Draft PEIS/RP is anticipated to be available for public review during a ninety day formal comment period beginning in mid-summer 2011. The document will be published in the Federal Register at the beginning of the comment period and will be available electronically, on compact disc and in hardcopy format by request through NOAA.

The Trustees will evaluate and provide responses to all comments received on the Draft PEIS/RP. The Final PEIS/RP is anticipated to be issued in mid-summer 2012.

NOAA and the USFWS anticipate utilizing a tiered NEPA evaluation approach for individual Portland Harbor restoration projects after they are identified based on the general direction of the Restoration Plan.

APPENDIX A - COMMENTS

	STATION: CLEAN-UP	**INCLUDE IN PEIS? Y/N**	**CATEGORY**
1	Why don't we just form local improvement districts and get the banks restored? Why is the assessment necessary?	Y	Process
2	Have you used a net environmental benefits analysis to determine the best restoration sites and net benefit from restoration?	Y	Process
	STATION: RECREATION	**INCLUDE IN PEIS? Y/N**	**CATEGORY**
3	There is a loss of beach access and recreational uses as a result of contamination.	Y	Recreation
4	People don't/shouldn't swim, launch kayaks, recreate on the beach in Portland Harbor (even at Cathedral Park or Kelly Pt. Park).	Y	Recreation
5	Underuse in Portland Harbor is resulting in overuse on Sauvie Island.	Y	Recreation
6	Create more opportunities for recreation activities in water and also on beaches.	Y	Recreation
7	Concern with interaction between recreation and habitat restoration could have a negative effect. However the effect could be mitigated. Suggestions included: viewpoints (one potential location at 107th Ave.) and raised walkways.	Y	Recreation; Ecological Habitat

	STATION: RECREATION (CON'T)	**INCLUDE IN PEIS? Y/N**	**CATEGORY**
8	Additional benefits to recreation are possible through cultural interpretative sites.	Y	Recreation; Tribal
9	Recreation opportunities provide increased benefits when located near wildlife and habitat.	Y	Recreation; Ecological Habitat
10	Interest in increased kayaking opportunities within the area. Creation of kayak trail system, resting areas, and camping sites suggested.	Y	Recreation
11	Manage recreation to maximize education and minimize habitat impacts. One suggestion includes encouraging stewardship at restoration sites.	Y	Recreation; Ecological Habitat
12	Fishing should be a high priority recreational use that ecological restoration is designed to enhance. Recreational restoration should provide more access once the river is clean enough. • Fishing access could be enhanced through: o Fishing hole maps o Increased boat access o Increased materials available (maps, information on fishing supply stores) • Habitat for fish should be built (Willamette Cove suggestion). • Question whether adequate testing for fish tissue contamination has been conducted.	Y	Recreation; Ecological Habitat

	STATION: RECREATION (CON'T)	**INCLUDE IN PEIS? Y/N**	**CATEGORY**
13	People avoid swimming now because of contamination concerns.	Y	Recreation
14	Numerous questions about *how* recreational loses will be valued, accounted for, restored, paid for through this process.	Y	Recreation; Process
15	The confluence of the Willamette and Columbia Rivers is a traditional trading ground for the tribes in the area. Are there ways to honor the cultural and historic value of this area through a modern day "trading ground?" Suggestion of a small off-river canal with shops and businesses in downtown Portland that is accessible to pedestrians and boaters.	Y	Recreation; Tribal; Project Opportunity
	STATION: ECOLOGICAL	**INCLUDE IN PEIS? Y/N**	**CATEGORY**
16	What about *ongoing* pollution/injury? Monitoring of *current* pollutant releases is needed, and should guide permitting.	Y	Process
17	Consider university student involvement – education opportunity and source of information (student support – mini grant programs).	Y	Project Opportunity
18	Ensure all property owner involvement for restoration sites.	Y	Project Sites

19	Ensure that the amount of restoration under the NRDA Portland Harbor process is not reduced because of restoration being done under other processes (i.e., River Plan, ESA, etc.). Don't use the same restoration uplift to count as mitigation or restoration for more than one process or requirement.	Y	Process
20	Let's fix the (habitat) problem – clean up the banks – don't worry about tribal/ recreational losses – focus on restoration *cost* – don't have to go through injury assessment.	Y	Ecological Habitat; Recreation; Tribal
21	Want to see *higher* percentage of restoration inside study area (80%).	Y	Project Sites
22	Be aware of previous/current unrelated restoration when planning projects.	Y	Project Sites
23	Consider institutional knowledge at Department of State Lands (DSL). Several key staff at DSL will be retiring soon. The project should involve them soon so the opportunity to benefit from their knowledge is not lost. Additionally, because DSL is a partial landowner in nearly all the potential restoration sites, they should be included in all landowner communications. DSL requested early and frequent communication.	Y	Project Sites
24	Gather information on Multnomah Channel restoration opportunities.	Y	Project Sites
25	Make sure we have good bird habitat with restoration projects. Specifically mentioned red-tailed hawk and peregrine falcon.	Y	Ecological Habitat
26	Meet with Metro regarding their restoration concepts/projects.	Y	Project Sites

	STATION: TRIBAL RESOURCES	**INCLUDE IN PEIS? Y/N**	**CATEGORY**
27	Do the 20-odd sites identified so far for restoration have recreational value? • Mill Site has recreational value. One idea is to install a narrow-gauge train for providing tours of the site.	Y	Recreation; Project Sites
28	Do not support 50-50 percent split of restoration in harbor–outside harbor. It is more cost effective to go outside harbor with more of the restoration actions.	Y	Project Sites
29	Explore connecting Sturgeon Lake to the Columbia River. Also, look for other restoration opportunities around Sturgeon Lake.	Y	Project Opportunity
30	Install cultural interpretive signs for the trail in Willamette Cove. This should point out ecological uplift, tribal history/use, as well as other important information.	Y	Tribal
31	Oak/Madrone habitat is a tribal cultural resource and restoration actions should address this resource.	Y	Tribal; Ecological Habitat