

## **Update on Natural Resource Trustees' Progress in Phase 2 of the Portland Harbor NRDA**

Phase 2 of the Portland Harbor natural resource damage assessment (“NRDA”) is an expedited settlement-oriented process and was initiated nearly a year ago upon execution of the Phase 2 Funding and Participation Agreement. The parties have concluded two of the four planned quarterly meetings in 2011 between the Portland Harbor Natural Resource Trustees (“Trustees”) and the Phase 2 Participants.<sup>1</sup> The outline for the substantive topics of discussion for those meetings is included as Attachment A. The next meeting is scheduled for August 24, 2011. During these meetings, the Trustees have presented their models and current thinking on model inputs for estimating the injuries to natural resources caused by releases of hazardous substances at the Portland Harbor Superfund Site (“Site”). The Trustees are using two tools for this estimation – a habitat equivalency analysis (“HEA”) and a benefit transfer (“BT”) analysis. The HEA estimates the magnitude of injuries to nonhuman resources such as surface waters, sediments and biota. The BT estimates damages for lost human uses, such as recreation, that are compensable under CERCLA. *See generally* 15 C.F.R. § 990.27 (NOAA rule regarding selection of use valuation methodologies for NRD assessments); 43 C.F.R. § 11.83 (DOI rule regarding same).

### **A. Injury Assessment**

#### **1. Habitat Equivalency Analysis**

The HEA model being used for the Site is derived from the model developed by the federal trustees for the Hylebos Waterway. A report describing the HEA model in the context of that comprehensive NRDA settlement is available at <http://www.cbrestoration.noaa.gov/html>. The Trustees are adapting this model to the Site, with input from the Phase 2 Participants, as a basis for Potentially Responsible Parties to settle their NRDA liability.

To date, the Trustees have defined the geographical area for the HEA. They have also begun reviewing and refining the input data that will populate the HEA, defining habitat types for the Site, and developing relative habitat values. The Trustees have compiled an initial list of contaminants for the Site’s injury assessment and are in the process of refining that list based on an analysis of existing data, relevant literature and input from the Phase 2 Participants.

Based on preliminary assumptions and the use of the HEA model, the Trustees have prepared a preliminary estimate of the range of calculated injury, or debit, at the Site.

The Trustees are also in the process of developing service-loss thresholds, which are being informed by prior NRDA efforts, scientific literature, and information specific to the Portland Harbor Site. The Phase 2 Participants have provided and are continuing to provide specific literature and analyses regarding the thresholds that are being considered by the Trustees. The

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<sup>1</sup> The Phase 2 Participants are ACF Industries, Air Liquide, Arkema, Ashland/Hercules, BAE Systems/The Marine Group, Bayer CropScience, BNSF Railway, Calbag Metals, Chevron, City of Portland, ConocoPhillips, ESCO Corporation, Evraz/Oregon Steel, FMC Corporation, Gould Electronics, Gunderson, NW Natural, Oregon Department of State Lands and Department of Transportation, Port of Portland, Portland General Electric, Portland Terminal Railroad, Siltronic Corporation, TOC Holdings/Time Oil and Union Pacific Railroad.

Trustees have outlined several approaches to a service loss recovery curve and are currently reviewing and refining those approaches. The Trustees have not yet determined whether to conduct separate resource equivalency analyses (“REAs”) for specific trust resources such as wildlife species and, further, have not yet evaluated whether there is a gathering/fishing service loss for key resources of tribal interest (viz., salmon and lamprey).

## **2. Benefits Transfer Analysis**

The BT analysis for the Site is at an earlier stage of development than the HEA. The parties are discussing the categories of compensable service losses and the appropriate approach to valuing any reductions in services due to contamination. The Trustees have focused their preliminary BT analysis work on recreational fishing and boating within the Site. They have begun a literature review and gathered some Site-specific information in support of this effort. They have not yet determined whether or how they will separately address tribal gathering and fishing, as distinct from recreational fishing, in this effort.

### **B. Restoration**

The Trustees have developed a portfolio of restoration projects that may be used to address the liability of potentially responsible parties of the Portland Harbor Superfund Site. The Trustees have screened these projects against the Trustees’ 2008 Ecological Restoration Criteria. The Trustees have also evaluated these projects in light of the Chinook Salmon Habitat Values for the Lower Willamette developed by their Expert Panel. The list of Internet resources at the end of this update includes links to documents that provide additional information on these topics.

The Trustees have indicated that, at this point in time, their intention is to require that at least half of the restoration occur inside the Study Area. Restoration outside the Study Area would need to occur within the “broader focus area” discussed by the Expert Panel. See the weblinks below for a map of both of these areas. The Phase 2 Participants are engaged in discussions with the Trustees about many of the factors related to credits for restoration projects.

### **C. Allocation Process**

The Trustees have approved a Portland Harbor Natural Resource Damages allocation agreement, effective July 1, 2011, that has as its purpose the allocation of potentially responsible parties’ natural resource damage liability. Interested parties may join the allocation process at any time, but are encouraged to join no later than Thursday, September 29, 2011 (90 days from the agreement’s effective date).

### **D. Relevant Internet Resources**

The following Internet websites provide additional information regarding the Portland Harbor NRDA process, including publicly available information on the restoration planning process.

1. General Information on Portland Harbor NRDA Process:

<http://www.fws.gov/oregonfwo/Contaminants/PortlandHarbor/>  
<http://www.darrp.noaa.gov/northwest/portharbor/index.html>  
[http://www.fws.gov/filedownloads/ftp\\_OFWO/PortlandHarborNRDAWebSupport/Documents/](http://www.fws.gov/filedownloads/ftp_OFWO/PortlandHarborNRDAWebSupport/Documents/)

2. Restoration Planning Information:

[http://www.fws.gov/filedownloads/ftp\\_OFWO/PortlandHarborNRDAWebSupport/Documents/Restoration\\_Portfolio.pdf](http://www.fws.gov/filedownloads/ftp_OFWO/PortlandHarborNRDAWebSupport/Documents/Restoration_Portfolio.pdf)  
[http://www.fws.gov/filedownloads/ftp\\_OFWO/PortlandHarborNRDAWebSupport/Documents/CriteriaFinal0409.pdf](http://www.fws.gov/filedownloads/ftp_OFWO/PortlandHarborNRDAWebSupport/Documents/CriteriaFinal0409.pdf)  
[http://www.fws.gov/filedownloads/ftp\\_OFWO/PortlandHarborNRDAWebSupport/Documents/ExpPanelSum021210.pdf](http://www.fws.gov/filedownloads/ftp_OFWO/PortlandHarborNRDAWebSupport/Documents/ExpPanelSum021210.pdf)  
[http://www.fws.gov/filedownloads/ftp\\_OFWO/PortlandHarborNRDAWebSupport/Documents/Map\\_RestorationFocusArea.pdf](http://www.fws.gov/filedownloads/ftp_OFWO/PortlandHarborNRDAWebSupport/Documents/Map_RestorationFocusArea.pdf)