

DEPARTMENT OF THE INTERIOR

U.S. Fish and Wildlife Service

PUBLIC NOTICE

AGENCY: United States Fish and Wildlife Service

ACTION: Notice of Intent to Conduct Restoration Planning (Pursuant to the Oil Pollution Act of 1990 and 15 C.F.R. §990.44)

SUMMARY: Under the Oil Pollution Act (OPA), and in accordance with the provisions of regulations at 15 CFR §§990.42 and 990.44, the Oregon/Washington Coast Mystery Spill (OR/WA Mystery Spill) Trustee Council is proceeding with a Natural Resource Damage Assessment (NRDA), which will include injury assessment and restoration planning, for a 1999 mystery spill along the northern Oregon/southern Washington coastline, collectively referred to in this Notice of Intent to Conduct Restoration Planning (Notice) as the “Incident.”

The purpose of OPA is to make the environment and public whole for injuries to natural resources and services resulting from an incident involving a discharge of oil. Pursuant to Section 1006(b) of OPA (33 U.S.C. §2706(b)), the Department of the Interior (U.S. Fish and Wildlife Service) and the State of Washington (Washington Department of Fish and Wildlife through the Washington Department of Ecology) are joint trustees (Trustees) for natural resources injured by the Incident. Per Section 1006 of OPA (33 U.S.C. 2701 *et seq.*), the Trustees are authorized to assess the type and extent of injury to natural resources from an oil spill and then develop a plan that will restore injured resources back to baseline. This process is known as Restoration Planning. By this Notice, the Trustees plan to assess the injuries and damages to natural resources caused by the spill, and prepare a plan for the restoration of those resources.

The OR/WA Mystery Spill NRDA will identify and quantify the nature and extent (both temporal and spatial) of injuries to natural resources and resource services arising out of the Incident, and develop plans for the restoration, replacement or rehabilitation of those injured resources, or for the acquisition of equivalent resources or resource services. The assessment will be conducted pursuant to the regulations for NRDA, as promulgated at 15 CFR Part 990, and in accordance with the assessment and restoration procedures and overall approach specified in the 1999 Oregon/Washington Coast Mystery Oil Spill Natural Resource Damage Assessment Plan and Claim for Past and Future Assessment Costs (Assessment Plan), following the consideration of any public comments and acceptance of the Assessment Plan by the Trustee Council. The NRDA will address natural resources and resource services, primarily bird injury, along the northern Oregon and southern Washington coastline for which injuries attributable to the Incident have been, or can be, determined.

FOR FURTHER INFORMATION CONTACT: For further information contact one or more of the following Trustee representatives: Mike.Szumski@fws.gov, Cindy.Schexnider@fws.gov, or Dan.Doty@dfw.wa.gov .

SUPPLEMENTAL INFORMATION:

Background - Oregon/Washington Coast Mystery Oil Spill

On March 4, 1999, Federal and State natural resource agencies received reports of tarballs and oiled birds coming ashore on beaches in northern Oregon and southern Washington. The incident lasted several days, during which response crews collected the carcasses of 272 seabirds, primarily rhinoceros and Cassin's auklets, common murrelets and northern fulmars. At the time, the Trustees were responding to the *New Carissa* oil spill, which had occurred 120 miles to the south near Waldport, Oregon. The *New Carissa* was initially suspected as the source

of the spill, but chemical analysis of tarballs and oiled bird feathers indicated that the oil did not match *New Carissa* source samples. The vessel responsible for the spill was never identified.

Section 1006 of the Oil Pollution Act (OPA), 33 U.S.C. 2701 *et seq.*, authorizes the Trustees to seek damages from the Responsible Party (RP) to pay for the implementation of the restoration plan. In the event that a viable RP cannot be identified, the Trustees are authorized ((33 U.S. Code § 1321(c)) to seek funding for natural resource damage (NRD) claims for NRD costs not paid by the RP from the Oil Spill Liability Trust Fund (OSLTF) administered by the U.S. Coast Guard National Pollution Funds Center (NPFC). The Trustees are proceeding in accordance with the regulations for NRDA at 15 CFR Part 990, and plan to seek funding from the NPFC for NRD costs associated with the OR/WA Mystery Spill NRDA and Restoration.

Determination of Jurisdiction

The Trustees have made the following determinations pursuant to 15 CFR 990.41 and 990.42:

(1) A spill of undetermined volume began on or about March 4, 1999, into the waters of the Pacific Ocean, off the coasts of northern Oregon and southern Washington. This occurrence constituted an “Incident” within the meaning of 15 CFR 990.30.

(2) The Incident was not permitted under a permit issued under Federal, State, or local law; was not from a public vessel; and was not from an onshore facility subject to the Trans-Alaska Pipeline Authority Act, 43 U.S.C. 1651 *et seq.*

(3) Oil discharged during the Incident adversely affected marine and shoreline habitats, wildlife, and human uses of natural resources in the area. Consequently, natural resources under the trusteeship of the Trustees have been injured as a result of the Incident.

(4) As a result of the foregoing determinations, the Trustees have jurisdiction to pursue

restoration under OPA.

Determination to Conduct Restoration Planning

The Trustees have determined, pursuant to 15 CFR § 990.42 (a), that:

(1) Pre-assessment data collected and analyzed pursuant to 15 CFR § 990.43 demonstrate that injuries to a wide variety and number of seabirds has resulted from the Incident, including marbled murrelets (a species listed as threatened under the Endangered Species Act, 16 U.S.C. §§ 1531-1544). Specifically, 272 seabirds were collected during the incident. The Trustees plan to undertake additional assessment activities to determine the total number of birds injured and services lost from the Incident.

(2) Response actions during cleanup have not adequately addressed the injuries and lost services resulting from the Incident. Response efforts consisted of cleaning up oil stranded along affected beaches and the collection of injured birds. These efforts reduced the magnitude and duration of impacts to shoreline habitats and wildlife, but did not eliminate all injuries or make restoration unnecessary. Data from numerous oil spills demonstrate that the bird carcasses collected during an oil spill represent only a portion of the birds killed by the oil, suggesting that additional birds likely died as a result of the Incident.

(3) Assessment procedures are available to estimate total injury, identify appropriate restoration projects and scale those projects to compensate for the injury. Procedures consist of, but are not limited to, the following.

- (a) Analysis of mortality data collected during the Incident
- (b) Analysis of reproductive and demographic parameters of key species
- (c) Modeling environmental parameters such as historic winds and currents
- (d) Analysis of historic seabird population data

(e) Analysis of habitat information to scale restoration

(4) Feasible restoration alternatives exist to address injuries from the Incident.

Restoration activities are expected to focus on seabirds. Restoration could include enhancement/protection of seabird nesting habitat through acquisition, predator management/removal, habitat manipulation, enforcement or education.

Based upon the foregoing determinations, the Trustees intend to proceed with restoration planning for this Incident.

Administrative Record

The Trustees have opened an Administrative Record (“Record”) in compliance with 15 CFR § 990.45. The Record will include documents relied upon by the Trustees during the assessment of natural resource damages being performed in connection with the Incident. The Record is on file at the Washington Fish and Wildlife Office of the U.S. Fish and Wildlife Service, 510 Desmond Drive SE, Olympia, Washington, 98503. Arrangements can be made to review the Record by contacting Cindy Schexnider at this address or at 360-459-4934.

Opportunity to Comment

Pursuant to 15 CFR § 990.14 (d), the Trustees are currently seeking public comment on the Assessment Plan made available concurrent with this Notice and a draft Damage Assessment and Restoration Plan once it is completed.

Questions regarding this Notice may be directed to:

Cindy Schexnider

U.S. Fish and Wildlife Service

Washington Fish and Wildlife Office

510 Desmond Drive SE

Lacey, Washington 98503

Telephone: 360-753-4324

Email: Cindy_Schexnider@fws.gov

Or

Dr. Michael Szumski

U.S. Fish and Wildlife Service

Newport Field Office

2127 SE Marine Science Drive

Newport, Oregon 97365

Telephone: 541-867-4558

Facsimile: 541-867-4551

Email: Mike_Szumski@fws.gov

Dated: 11/18/2014

Robyn Thorson, *Regional Director – Region 1, U.S. Fish and Wildlife Service*

Lead Administrative Trustee,

Oregon/Washington Coast Mystery Spill Natural Resource Damage Assessment