



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of 30-day public comment period on the Injury Assessment Plan for the Lower Duwamish River (“Lower Duwamish River Natural Resource Damage Assessment: Injury Assessment Plan”)

AGENCY: National Ocean Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

ACTION: Notice of Public Comment Period.

SUMMARY: NOAA, on behalf of its co-members of the Elliott Bay Trustee Council (Trustee Council), announce the release of the Lower Duwamish River Injury Assessment Plan, which sets forward the Trustee Council’s approach for assessing natural resource damages at the Lower Duwamish River. The Injury Assessment Plan is one of the first steps in the natural resources damages assessment process, and is being released to the public in accordance with the applicable regulations.

Through today’s notice, NOAA is announcing: 1) the Trustees’ plan to begin the assessment of natural resource damages for lost ecological and human use services resulting from releases of hazardous substances and oil to the Lower Duwamish River in Seattle, Washington; and 2) a provision of a 30-day period for public comment on the plan.

ADDRESSES: Comments are sought on the draft injury assessment plan and should be emailed to Rebecca.Hoff@noaa.gov with the subject line: “Comments on Lower Duwamish River Natural Resource Damage Assessment: Injury Assessment Plan.” Comments may also be mailed to: Rebecca Hoff of NOAA Western Region Center, 7600 Sand Point Way, Building 1, Seattle, WA, 98118.

SUPPLEMENTARY INFORMATION: The increasingly industrial uses of the Lower Duwamish River led to contamination of natural resources through multiple pathways from releases of hazardous substances upland and adjacent to the river. As a result of this contamination, EPA designated Harbor Island, Lockheed West Seattle, and the Lower Duwamish Waterway (collectively, the Site) as Superfund sites on the National Priority List. Examples of contaminants of concern released to the Lower Duwamish River include polychlorinated biphenyls (PCBs), metals, and polycyclic aromatic hydrocarbons (PAHs). Natural resources such as benthic invertebrates, migratory fish (such as juvenile Chinook salmon), resident fish (such as sculpin and English sole), birds, and fish eating mammals exposed to these compounds can potentially be harmed as a result. In addition, hazardous substances released to the Lower Duwamish River have potentially reduced the human use services (e.g., recreational fishing, recreational boating, tribal uses) provided by the River. In addition, fish consumption advisories related to hazardous substances have been issued to the public warning of the risks associated with consumption of various fish species commonly targeted by anglers. The Injury Assessment Plan sets forth the approach the Trustee Council will apply to completing the damage assessment process to resolve natural resource damages liability with non-settling parties.

The Elliott Bay Trustee Council is comprised of Federal, state and tribal natural resource trustees. Members of the Trustee Council include the U.S. Department of the Interior; the U.S. Department of Commerce, acting through NOAA; the State of Washington; the Suquamish Tribe; and the Muckleshoot Indian Tribe. 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 Council's actions.

Under the federal regulations, the Trustee Council can elect to perform a Type A or Type B injury assessment. Type A assessment procedures use simplified model assumptions to address injuries that result from a single event or short-term exposure. Releases of hazardous substances from the Site have occurred from multiple sources over many decades, resulting in complex exposure conditions impacting aquatic and upland media and associated complex food webs. Therefore, the Elliott Bay Trustee Council previously elected to perform a Type B assessment, the procedures for which require “more extensive field observation than the Type A procedures.” 43 C.F.R. § 11.33(b). This assessment method includes injury determination, quantification, and damage determination. Because substantial Site-specific data already exist to support the assessment, a Type B assessment can be conducted for the Site at a reasonable cost. The federal regulations for a Type B assessment outline methods for determining (1) pathways through which hazardous substances released by potentially responsible parties expose natural resources, (2) injuries to natural resources, (3) the extent of those injuries and resultant public losses, (4)

baseline conditions and time required for the resources to recover to baseline, and (5) the cost or value of restoring injured resources. These methods facilitate calculation of natural resource damages. 43 C.F.R. §§ 11.60-11.84.

Dated: July 19, 2018.

David Westerholm, Director,
Office of Response and Restoration.

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