



## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

[FWS-R1-ES-2023-N087; FXES11140400000-234-FF04E00000]

### Restoration Planning to Address 1999 Oregon-Washington Coast Mystery Oil Spill

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of intent to conduct restoration planning.

**SUMMARY:** Notice is hereby given of the trustees' (Department of the Interior, and Washington Department of Fish and Wildlife) intent to proceed with restoration planning actions to address injuries to natural resources resulting from the discharge of oil associated with a 1999 mystery spill along the northern Oregon and southern Washington coastline. The purpose of this restoration planning effort is to assess injuries to natural resources resulting from the spill and develop and implement a plan for the restoration of these injured resources.

**FOR FURTHER INFORMATION CONTACT:** For further information, contact the following trustee representatives: Mike Szumski (U.S. Fish and Wildlife Service), via email at [Mike\\_Szumski@fws.gov](mailto:Mike_Szumski@fws.gov) or via phone at 541-867-4550, or Donald Noviello (Washington Department of Fish and Wildlife), via email at [Donald.Noviello@dfw.wa.gov](mailto:Donald.Noviello@dfw.wa.gov) or via phone at 360-280-9376. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

### SUPPLEMENTARY INFORMATION:

#### Background

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 event lasted several days, during which response crews collected the carcasses of 272 seabirds, primarily rhinoceros auklets (*Cerorhinca monocerata*), Cassin's auklets (*Ptychoramphus aleuticus*), common murrelets (*Uria aalge*), and northern fulmars (*Fulmarus glacialis*). 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 in the northern Oregon and southern Washington area did not match the *New Carissa* source samples. The vessel responsible for the spill was never identified. Therefore, we are referring to the northern Oregon/southern Washington spill as the Oregon-Washington Coast Mystery Spill (or incident).

Under the Oil Pollution Act of 1990 (OPA; 33 U.S.C. 2701 *et seq.*), and in accordance with the provisions of regulations in title 15 of the Code of Federal Regulations (CFR) at §§ 990.42 and 990.44 (15 CFR 990.42 and 990.44), the trustees are initiating a natural resource damage assessment (NRDA), which will include injury assessment and restoration planning for the incident.

The purpose of the 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) are joint trustees (trustees) for natural resources injured by the incident. Per section 1006 of OPA (33 U.S.C. 2706), 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, a process known as restoration planning. With this *Federal Register* notice, the trustees announce their intent to assess

the injuries and damages to natural resources caused by the incident and prepare a plan for the restoration of those resources (damage assessment/restoration plan).

The NRDA process 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 enable the trustees to 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 at 15 CFR part 990. 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.

Section 1006 of the OPA, 33 U.S.C. 2706, authorizes the trustees to seek damages from the responsible party to pay for the implementation of the restoration plan. In the event that a viable responsible party cannot be identified, the trustees are authorized (33 U.S.C. 1321) to seek funding for natural resource damage claims for damage costs from the Oil Spill Liability Trust Fund (OSLTF), which is administered by the U.S. Coast Guard National Pollution Funds Center (Center). The trustees are proceeding in accordance with the regulations for NRDA at 15 CFR part 990, and plan to seek funding from the Center for costs associated with the Oregon-Washington Coast 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, and wildlife. 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 the 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 have resulted from the incident, including marbled murrelets (*Brachyramphus marmoratus*, a species listed as threatened under the Endangered Species Act (16 U.S.C. 1531 *et seq.*)). Specifically, 272 dead seabirds of various species 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 historical winds and currents;
  - d. Analysis of historic seabird population data; and
  - 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 or protection of seabird nesting habitat through acquisition, predator management, invasive species removal, habitat creation, habitat enhancement, education, or other means. During restoration planning, the trustees evaluate potential projects, determine the scale of restoration actions needed to make the environment and the public whole, and release a draft damage assessment and restoration plan for public review and comment.

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 public may view the record online at

[https://www.cerc.usgs.gov/orda\\_docs/CaseDetails?ID=1099](https://www.cerc.usgs.gov/orda_docs/CaseDetails?ID=1099).

### **Opportunity to Comment**

Pursuant to 15 CFR 990.14(d), the trustees intend to seek public comment on the draft damage assessment and restoration plan once it is completed. A separate *Federal Register* notice will be issued when the draft damage assessment and restoration plan is available for comment.

**Bridget Fahey,**

*Acting Regional Director – Pacific Region,*

*U.S. Fish and Wildlife Service;*

*Lead Administrative Trustee,*

*Oregon-Washington Coast Mystery Spill Natural Resource Damage Assessment.*

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