

## **DEPARTMENT OF COMMERCE**

### **National Oceanic Atmospheric Administration**

**AGENCY:** National Oceanic Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of Intent to Conduct Restoration Planning (Pursuant to 15 C.F.R. Section 990.44) – DISCHARGE OF OIL FROM APL INTO BUSKIN RIVER IN KODIAK, ALASKA, MARCH 15-16, 2019

**SUMMARY:** On March 15-16, 2019, oil stored in a diesel tank located on the American President Lines LTD property in Kodiak, Alaska, leaked from a fuel line, releasing what has been estimated to be approximately 1,369 gallons of oil. The oil from the leaking diesel tank entered the Lake Louise Tributary, Buskin River, and St. Paul Harbor. The area impacted includes anadromous waters, riverine, estuarine, and marine habitats, the Buskin River State Recreation Site, and the Alaska Maritime National Wildlife Refuge. The discharge of oil affected natural resources in this general area. All of the foregoing is referred to as the “Incident.”

Pursuant to Section 1006 of the Oil Pollution Act (“OPA”), 33 U.S.C. §§ 2701, *et seq.*, federal and state trustees for natural resources are authorized to (1) assess natural resource injuries resulting from a discharge of oil or the substantial threat of a discharge and response activities, and (2) develop and implement a plan for restoration of such injured resources. The federal trustees are designated pursuant to the National Contingency Plan, 40 C.F.R. Section 300.600 and Executive Order 12777. State trustees for the State of Alaska are designated pursuant to the Alaska Governor’s designation, dated December 2, 2005. The natural resource trustees (“Trustees”) under OPA for this Incident are the United States Department of Commerce, acting through the National Oceanic and Atmospheric Administration; the United States Department of the Interior, acting through the U.S. Fish and Wildlife Service; the Alaska Department of Environmental Conservation; Alaska Department of Natural Resources; Alaska Department of Fish and Game; and Alaska Department of Law.

American President Lines LTD (“APL”) is the Responsible Party (“RP”) for this Incident. The Trustees invited the RP to participate cooperatively in Natural Resource Damage Assessment (“NRDA”) activities, which the RP accepted.

In accordance with the NRDA regulations under OPA, 15 C.F.R. Part 990 (“NRDA regulations”), the Trustees have conducted a preassessment and determined that the Trustees have jurisdiction to pursue restoration under OPA, and that it is appropriate to do so. The NRDA regulations also require that the Trustees prepare a Notice of Intent to Conduct Restoration Planning (“Notice”) if certain conditions have been met, and if the Trustees decide to quantify injuries to natural resources and to develop a restoration plan.

This Notice is to announce, pursuant to 15 C.F.R. § 990.44, that the Trustees, having collected and analyzed data, intend to proceed with restoration planning actions to address injuries to natural resources resulting from the Incident. The purpose of this restoration planning effort is to

further evaluate injuries to natural resources and services, and to use that information to determine the need for, type of, and scale for restoration actions.

## **SUPPLEMENTARY INFORMATION**

### **Determination of Jurisdiction**

The Trustees have made the following findings pursuant to 15 C.F.R. § 990.41:

1. On March 15-16, 2019, a fuel line to a refrigeration unit located on the APL property in Kodiak, Alaska, leaked the contents of a diesel tank, resulting in the discharge of oil into and upon navigable waters of the United States, including the Lake Louise Tributary, Buskin River, and St. Paul Harbor, as well as adjoining shorelines. Such occurrence constitutes an “Incident” within the meaning of 15 C.F.R. § 930.30.
2. The Incident was not permitted pursuant to 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. Natural resources under the trusteeship of the Trustees have been injured as a result of the Incident. The oil discharged from the APL diesel tank is harmful to aquatic organisms, birds, fish, and vegetation that were exposed to the oil, and the discharge impacted human use activities. Accordingly, the discharged oil has had an adverse effect on the natural resources of the Buskin River system and its adjoining shorelines and impaired the services which those resources provide. Documents in the Administrative Record contain more information regarding the specific studies and observations by which the Trustees reached this determination.

As a result of the foregoing determination, the Trustees have jurisdiction to pursue restoration under OPA.

### **Determination to Conduct Restoration Planning**

The Trustees have determined, pursuant to 15 C.F.R § 990.42(a), that:

1. Observations and data collected pursuant to 15 C.F.R. § 990.43 (including recovered oil, sheen, water, sediment, biota samples, and aerial imagery depicting the extent of the spill) demonstrate that injuries to natural resources have resulted from the Incident. Immediately following the Incident, the Trustees identified several categories of potentially impacted resources, including different life stages of salmon, other fish species, birds, shellfish, aquatic invertebrates, and riparian and marsh vegetation, as well as effects to human use resulting from impacts on these natural resources. The Trustees then began conducting activities to evaluate injuries and potential injuries within these categories. For the Trustees’ ephemeral data collection, the RP had a contractor observe some field data collection activities. More information about these observations and data gathered during preassessment is available in the Administrative Record.
2. Spill response actions did not address all injuries resulting from the Incident to the extent that restoration would not be necessary. Although response actions were initiated soon after the spill,

the nature and location of the discharge prevented recovery of all of the oil and precluded prevention of injuries to some natural resources. In addition, certain response actions led to trampling of vegetation, sediment loss, and streambank destabilization, which caused additional injuries to natural resources. It is anticipated that injured natural resources will ultimately return to baseline levels (the condition they would have been in had it not been for the Incident), but interim losses have occurred or have likely occurred and will continue to occur until a return to baseline is achieved. In addition, there were lost and diminished human uses of the resources resulting from the impacts to the natural resources and spill response activities.

3. Feasible primary and compensatory restoration actions exist to address injuries and lost human uses resulting from the Incident. To conduct restoration planning, the Trustees have compiled an initial list of restoration projects that could potentially be implemented to compensate for interim losses resulting from the Incident. The Trustees have sought input from State and Federal agencies, the Sun'aq Tribe of Kodiak, and the RP on potential restoration projects to compensate for the services and functions provided by natural resources. In addition, assessment procedures such as Habitat Equivalency Analysis and Resource Equivalency Analysis are available to scale the appropriate amount of compensatory restoration required to offset ecological service losses resulting from this Incident. Lost human uses resulting from the Incident, including diminished use of the Buskin River State Recreation Site, may be quantified using an appropriate model, such as a Travel Cost Model. The Trustees will work cooperatively with local governmental agencies, tribes, and local stakeholder groups to identify potential restoration projects according to the relative magnitude of the spill.

During restoration planning, the Trustees evaluate potential projects, determine the scale of the restoration actions needed to make the environment and public whole, and release a Draft Restoration Plan for public review and comment.

Based upon information in the Administrative Record and 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 C.F.R. § 990.45. The Record will include documents considered by the Trustees during the preassessment, assessment, and restoration planning phases of the NRDA performed in connection with the Incident. The Record will be augmented with additional information over the course of the NRDA process. The Record is available at: <https://darrp.noaa.gov/oil-spill/apl-buskin-river>.

### **Opportunity to Comment**

Pursuant to 15 C.F.R. § 990.14(d), the Trustees seek public involvement in restoration planning for this Incident through public review of, and comment on, documents contained in the Record. The Trustees also intend to seek public comment on a draft Damage Assessment and Restoration Plan.

Comments should be sent to Sarah Allan (NOAA) at: [sarah.allan@noaa.gov](mailto:sarah.allan@noaa.gov).