

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

AGENCY: National Oceanic and 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 THE TUG WESTERN MARINER INTO NEVA STRAIT NEAR SITKA, ALASKA, MARCH 21, 2022.

SUMMARY: This Notice is to announce, pursuant to 15 C.F.R. § 990.44, that state and federal and natural resource trustees intend to proceed with restoration planning actions to address injuries to natural resources resulting from a March 2022 discharge of oil from the tug *Western Mariner* near Sitka, Alaska.

On March 21, 2022, at 2:55 a.m., the tug *Western Mariner* (“the Tug”) experienced a temporary steering failure and collided with the freight barge *Chichagof Provider* while traveling through Neva Strait, approximately 18 miles northwest of Sitka, Alaska. The collision pushed the Tug onto the beach, resulting in a release of diesel. Within the following eight days, response agencies controlled the spill and refloated and removed the vessel from the site. Released oil moved throughout Neva Strait by winds and strong tidal currents into waters to the north and south of the grounding site. Oil was observed on shorelines in Neva Strait, and on certain beaches, where oil concentrated, penetrated the shoreline sediments, and persisted for over a year. Response actions included recovery of oil on water in the vicinity of the grounding, and shoreline flushing and manual agitation on beaches with persistent oiling.

The oil spill impacted marine water and shoreline habitats and natural resources. Oil was observed on water and in nearshore and shoreline habitats, and elevated oil concentrations were found in sediment and bivalve tissues samples. Intertidal invertebrates, such as mussels, clams, cockles, crabs, sea cucumbers, and sea stars were impacted. Marine mammals and fish were observed swimming in and near oil and other wildlife that use impacted habitats may have been affected. It is likely that the harvest and use of marine resources were disrupted as a result of the spill and a seafood safety advisory was issued by the Alaska Departments of Health and Environmental Conservation. This paragraph and paragraph above collectively describe the “Incident” referenced below.

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 trustees are designated pursuant to the National Contingency Plan, 40 C.F.R. Subpart G. The natural resources trustees (“Trustees”) preparing to conduct restoration planning for this Incident are the Alaska Department of Environmental Conservation, the Alaska Department of Law, the Alaska Department of Fish & Game, the Alaska Department of Natural Resources, the United States Department of Commerce, acting through the National Oceanic and Atmospheric Administration, the United States Department of Agriculture, acting through the United States Forest Service, and the United States Department of the Interior, as represented by the Fish and

Wildlife Service and the Bureau of Indian Affairs.

Western Tugboat Company is the Responsible Party (“RP”) for this Incident. Through an initial funding agreement, the RP participated in certain preassessment activities, including funding some incurred Trustee costs related to the preassessment. On October 30, 2023, the RP notified the Trustees that the RP has exceeded its limit of liability under OPA, 33 U.S.C. § 2704, and would no longer directly fund natural resource damage assessment (“NRDA”) activities or restoration. Thus, the Trustees will seek all unreimbursed recoverable costs for assessment and restoration through the National Pollution Funds Center.

In accordance with the NRDA regulations under OPA, 15 C.F.R. Part 990 (“OPA NRDA regulations”), the Trustees have conducted a preassessment and determined that they have jurisdiction to pursue restoration under OPA, and that it is appropriate to do so. The OPA 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 the 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 preassessment 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 of restoration actions.

SUPPLEMENTARY INFORMATION:

One of the goals of OPA is to make the environment and public whole for injuries to natural resources and services resulting from an incident involving a discharge or substantial threat of a discharge of oil from a vessel into or upon navigable waters or adjoining shorelines. This goal is achieved through the return of the injured natural resources and services to baseline and the compensation for interim losses of such resources and services from the date of the Incident until recovery. To facilitate achievement of this goal, the Trustees are responsible for assessing the damages to natural resources under their trusteeship that have resulted from the Incident and developing a plan for the restoration of these resources.

Determination of Jurisdiction

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

1. The grounding of the Tug on March 21, 2022, resulted in a discharge of oil into and upon navigable waters of the United States, including the Neva Strait and adjacent waters, as well as adjoining shorelines. Such occurrence constitutes an incident within the meaning of OPA, 33 U.S.C. § 2701(14); 15 C.F.R. § 990.30.
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 belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the Trustees have been injured as a result of the Incident. The oil discharged from the Tug is harmful to certain aquatic organisms (such as echinoderms, mollusks, macroalgae, fish, and marine mammals) and human use of natural resources (such as shellfish and herring egg harvesting). Accordingly, the discharged oil has had an adverse effect on the natural resources of Neva Strait and its adjoining shorelines. 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 determinations, 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 sheen and shoreline oiling surveys, oil chemicals in sediment and biota samples, observations of marine mammals swimming in oil, observations of organisms stressed and dying in and under sheens and contaminated sediments and porewater, olfactory detection of oil on beaches and in bivalves, photos of physical disturbances from response and clean-up, and seafood harvest and consumption alerts/advisories) demonstrate that injuries to natural resources have resulted from the Incident. Immediately following the Incident, the Trustees identified several categories of impacted and potentially impacted resources, including marine mammals (*e.g.*, sea lions and sea otters), marine birds, echinoderms (*e.g.*, starfish and sea cucumbers), mollusks (*e.g.*, clams, cockles, and mussels), other shoreline resources and habitat services, as well as effects to human use resulting from the Incident and impacts on these natural resources. The Trustees then began conducting activities to evaluate injuries and potential injuries within these categories. More information on these resource categories is available in the Administrative Record, including information gathered during the preassessment.
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. It is anticipated that injured natural resources will eventually 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 until a return to baseline is achieved. In addition, there may have been lost and diminished human uses resulting from the Incident's impacts to the natural resources. The results of preassessment efforts documented injuries to marine shoreline habitats and resources, potential impacts on marine mammals, and human uses of resources.
3. Feasible compensatory restoration actions exist to address injuries and lost human uses resulting from the Incident. For preassessment, the Trustees identified restoration projects that

could potentially be implemented to compensate for interim losses resulting from the Incident. The Trustees will seek suggestions from state and federal agencies, the Sitka Tribe of Alaska, local stakeholder groups, and the public on other potential restoration projects to compensate for the services and functions provided by natural resources during restoration planning. In addition, assessment procedures such as Habitat Equivalency Analysis and Resource Equivalency Analysis are available to scale the appropriate amount of restoration required to offset ecological service losses resulting from this Incident. A Benefits Transfer Method and value to cost approach, or similar scaling methods could be used to quantify lost human uses and associated restoration.

During restoration planning, the Trustees intend to evaluate potential projects, determine the scale of restoration actions needed to make the environment and the 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://www.diver.orr.noaa.gov/web/guest/diver-admin-record/15922>

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 Restoration Plan.

Comments should be sent to Sarah Allan (NOAA) at: Sarah.Allan@noaa.gov

Adoption by Federal and State Natural Resource Trustees

As designated Natural Resource Trustees, the Alaska Department of Environmental Conservation, the Alaska Department of Law, the Alaska Department of Fish & Game, the Alaska Department of Natural Resources, the United States Department of Commerce, acting through the National Oceanic and Atmospheric Administration, the United States Department of Agriculture, acting through the United States Forest Service, and the United States Department of the Interior, as represented by the Fish and Wildlife Service and the Bureau of Indian Affairs, hereby adopt the foregoing.