

FINDING OF NO SIGNIFICANT IMPACT

Final Portland Harbor Supplemental Restoration Plan and Environmental Assessment

Background:

Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the Oil Pollution Act (OPA), the National Oceanic and Atmospheric Administration (NOAA), the designated Natural Resource Trustee (Trustee) for the Department of Commerce, prepared the Final Supplemental Restoration Plan and Environmental Assessment (Final SRP/EA) for the Portland Harbor Superfund Site. NOAA prepared this document on behalf of, and in coordination with, the Portland Harbor Natural Resource Trustee Council (Trustee Council). In addition to NOAA, the Trustee Council is comprised of the U.S. Department of the Interior; the State of Oregon, acting through the Oregon Department of Fish and Wildlife; the Confederated Tribes of the Grand Ronde Community of Oregon; the Confederated Tribes of Siletz Indians; the Confederated Tribes of the Umatilla Indian Reservation; the Confederated Tribes of the Warm Springs Reservation of Oregon; and the Nez Perce Tribe. The Final SRP/EA evaluates restoration alternatives to compensate the public for injuries to natural resources resulting from releases of hazardous substances and discharges of oil within the Portland Harbor Assessment Area (PHAA).

Since the 1900s, industrial facilities along the Willamette River at Portland Harbor have released an array of hazardous substances and discharged oil into the river system. In December 2000, the Environmental Protection Agency listed Portland Harbor on the National Priorities List due to elevated concentrations of contaminants. In 2002, the natural resource trustees established the Trustee Council. Since January 2007, the Trustee Council has been conducting a Natural Resource Damage Assessment (NRDA) to address impacts from contamination within the PHAA and identify suitable activities to restore injured natural resources.

As described in the Final SRP/EA, the NRDA has been, and continues to be, a complex multi-phased process. The Trustee Council is currently engaged in an assessment and in restoration planning for Phase 2, which is intended to facilitate early settlements with willing parties (for more information on the various components of the phased process, please refer to the Final SRP/EA).

In May 2017, the Trustee Council published its Final Portland Harbor Programmatic Environmental Impact Statement and Restoration Plan (Programmatic Restoration Plan) that provides an overall restoration approach, a comprehensive framework for implementing integrated habitat restoration, and a broad analysis of the environmental impacts of the potential restoration actions. In the Final SRP/EA, the Trustee Council uses the criteria identified in the Programmatic Restoration Plan to evaluate and select one of three alternatives to implement restoration resulting from settlements associated with the Phase 2 process. The Final SRP/EA also evaluates potential environmental impacts from the alternatives under the National Environmental Policy Act.

Preferred Alternative:

The Final SRP/EA evaluates restoration alternatives to compensate the public for injuries to natural resources resulting from contamination within the PHAA. After evaluating the alternatives, the Trustee Council has identified the Restoration Bank¹ Credit Alternative as the Preferred Alternative. This alternative would permit Phase 2 settling parties to compensate the public by either (1) purchasing “restoration credits” from one of several identified restoration banks or (2) paying money directly to the Trustee Council, which the Trustee Council would then use to purchase restoration credits.

Public Involvement:

Throughout the ongoing NRDA process, the Trustee Council has made, and continues to make, information available to the public. The Trustee Council sought public input on the Draft SRP/EA during a public review period that ended on September 14, 2020, and which included an online public meeting on September 1, 2020. Public comments received by the Trustee Council were addressed in preparing the Final SRP/EA and are included in an appendix to the document.

Alternatives Considered Under CERCLA and OPA:

In addition to the Preferred Alternative, the Trustee Council also considered two other alternatives: (1) the Trustee-Led Project Alternative, in which the Trustee Council would use settlement funds provided by a settling party to design and construct a restoration project and (2) the Partnering Project Alternative, in which the Trustee Council would provide settlement funds to a third-party entity to develop and implement a restoration project.

Environmental Consequences:

The National Environmental Policy Act (NEPA) requires an analysis of the effects of federal actions on the quality of the human environment. NOAA has determined that it is appropriate to combine the NRDA and NEPA analyses into one document, and has included an evaluation of alternatives for restoration under CERCLA, OPA, and NEPA in the Final SRP/EA.

Because restoration banks are generally developed prospectively by private entities and independent of any particular legal settlement, the “federal action” under NEPA resulting from a credit purchase would arguably be a simple financial transaction. Nevertheless, the current proposals are a mix of existing and yet-to-be-constructed restoration banks, and all of the implementers sought technical assistance from the Trustee Council early in the restoration planning process. In other words, there has been some direct Trustee Council involvement in the development of these projects. Therefore, even though these projects themselves do not necessarily qualify as “major federal actions” under NEPA, NOAA, in the interest of

¹ Restoration banks are generally large-scale ecological restoration projects developed with the intent of generating restoration credits, often for sale. Because they are not necessarily scaled to address just one party’s liability, restoration banks can be larger projects that offer more integrated and self-sustaining restoration and reduced overall costs through economies of scale.

transparency and thoroughness, has conducted a full NEPA analysis of these projects as if they were being carried out by a federal entity.

The Companion Manual (January 13, 2017) for NOAA Administrative Order (NAO) 216-6 (April 22, 2016) contains criteria for determining the significance of the impacts of a proposed action. In addition, the Council on Environmental Quality (CEQ) regulations at 40 C.F.R. §1508.27 state that the significance of an action should be analyzed both in terms of “context” and “intensity.” The significance of this action is analyzed based on the NAO 216-6 criteria and the CEQ’s context and intensity criteria. The criteria listed below are relevant to making a Finding of No Significant Impact (FONSI), and have been considered individually, as well as in combination with the others, and include:

- (1) Can the proposed action reasonably be expected to cause substantial damage to the ocean and coastal habitats and/or Essential Fish Habitat (EFH), as defined under the Magnuson-Stevens Act, and identified in one or more Federal Management Plans (FMPs)?

Response: No. NOAA does not expect the Preferred Alternative to cause substantial damage to ocean or coastal habitats or EFH as defined under the Magnuson-Stevens Act. Rather, restoration projects implemented under the Preferred Alternative provide increased habitat for aquatic- and riparian-associated animal species, including fish, birds, and other wildlife, and many plant species. This increase of habitat would be a long-term major beneficial direct impact of restoration implementation to aquatic- and riparian-associated species. Some short-term minor adverse impacts, both indirect and direct, could occur. For in-water or near-water activities, this has been or would be addressed through selective scheduling of construction periods to minimize or avoid impacts and implementation of methods to minimize in-water disturbances such as turbidity, sound, and light.

- (2) Can the proposed action be expected to have a substantial impact on biodiversity and/or ecosystem function within the affected area (e.g., benthic productivity, predator prey relationships, etc.)?

Response: No. The Preferred Alternative is not expected to have any substantial adverse impacts on biodiversity, productivity or ecological services. Rather, NOAA expects primarily beneficial impacts from integrated habitat development undertaken at the restoration bank sites. Any potential adverse impacts are expected to be minimal, localized, and not expected to decrease function or species biodiversity.

- (3) Can the proposed action reasonably be expected to have a substantial adverse impact on public health and safety?

Response: No. The Preferred Alternative is expected to have only minimal adverse impacts, if any, on public health and safety. These minimal adverse impacts would primarily be associated with construction, e.g., temporary, short-term increases in greenhouse gas emissions, noise, and turbidity, and then only for projects that have yet to be constructed. The

minor adverse impacts are expected to be offset by long term benefits to public health and safety, such as cleaner water, a noise buffer along the river, and increased flood control.

- (4) Can the proposed action reasonably be expected to adversely affect endangered or threatened species, their critical habitat, marine mammals, or other non-target species?

Response: No. The Preferred Alternative is not expected to adversely affect endangered or threatened species, their critical habitat, marine mammals, or other non-target species. The restoration banks included in the preferred alternative are expected to benefit, or are already benefitting, species, such as Endangered Species Act-listed Chinook salmon and will also benefit other species by improving shoreline and nearshore habitats. Any potential adverse impacts are expected to be minimal and localized, primarily associated with construction activities (which are already completed for some projects).

- (5) Are significant social or economic impacts interrelated with natural or physical environmental effects?

Response: No. NOAA does not expect there to be significant adverse social or economic impacts interrelated with the natural or physical environmental effects of the Preferred Alternative. It is anticipated that the restoration banks included in the Preferred Alternative will provide positive social interactions with the natural environment through improved fish population health and shoreline aesthetics, which may enhance recreation opportunities. Any adverse impacts are expected to be minimal and localized, primarily associated with construction activities (which are already completed for some projects).

- (6) Are the effects on the quality of the human environment likely to be highly controversial?

Response: No. The effects on the quality of the human environment from the proposed action are not controversial. The restoration banks included in the Preferred Alternative are anticipated to have beneficial impacts to the human environment. In addition, both the Trustee Council and the restoration bank developers have conducted extensive outreach to the public related to the projects (and other aspects of the NRDA process). This information has been well-received, and none of the public comments received suggest that the environmental impacts are controversial.

- (7) Can the proposed action reasonably be expected to result in substantial impacts to unique areas, such as historic or cultural resources, park land, prime farmlands, wetlands, wild and scenic rivers, EFH, or ecologically critical areas?

Response: No, any adverse impacts to unique areas, such as historic or cultural resources, park land, prime farmlands, wetlands, wild and scenic rivers, EFH, or ecologically critical areas are not expected to be substantial. Best management practices and mitigation are employed to limit the impacts to these unique areas.

Prior to conducting any construction activities, restoration bank developers under the Preferred Alternative are required to consult with the State Historic Preservation Office (SHPO) and the relevant tribes and conduct investigations to identify cultural and historic resources subject to Section 106 of the National Historic Preservation Act (NHPA). Projects are designed to avoid impacts to cultural and historic resources if the resources are found in the project areas. If any resources are discovered during implementation of any restoration actions, all soil disturbance would stop immediately, and SHPO and other appropriate authorities would be notified.

Moderate long-term adverse impacts to historic resources are possible at some restoration banks included in the Preferred Alternative. At the Linnton Mill Restoration Site, historic resources were identified in the old mill building, which was dismantled. The project proponent is required to mitigate for the impacts to these resources by commemorating the resources in educational signage that would be placed along the recreational path on the site. Other projects would be expected to conduct similar mitigation, if required.

Short-term minor adverse direct impacts to wetlands are possible at some restoration banks included in the Preferred Alternative, but would be minimized to the extent possible. At the Harborton Habitat Development Site in particular, preservation and enhancement of wetland habitat is a goal of the project. Given the sensitivity of the red-legged frogs that depend on the wetlands at the Harborton Habitat Development Site, special best management practices and design considerations are planned to limit the potentially moderate, short-term, adverse impacts of construction to the wetlands used by red-legged frogs.

Moderate long-term beneficial impacts are anticipated with improvements to habitat that supports Pacific lamprey, salmon, and sturgeon, all species with traditional importance to Native American tribes.

- (8) Are the effects on the human environment likely to be highly uncertain or involve unique or unknown risks?

Response: No. Restoration projects like the banks included in the Preferred Alternative are being built by experienced developers using established restoration techniques. The Preferred Alternative includes no projects or techniques that are unique, controversial, or untried. In addition, some of the restoration banks included in the Preferred Alternative are already constructed; therefore, the minimal adverse impacts associated with the construction phase are already known.

- (9) Is the proposed action related to other actions with individually insignificant, but cumulatively significant impacts?

Response: No. NOAA evaluated the restoration banks included in the Preferred Alternative in conjunction with other known past, proposed or foreseeable closely related projects, and determined that there are no significant cumulative impacts. NOAA is aware of several plans, projects, and programs (described in greater detail in the Final SRP/EA) that may have similar environmental impacts as the restoration banks included in the Preferred Alternative.

Along with the remedial actions in Portland Harbor, these activities are being considered as connected and similar past, present, and reasonably foreseeable future actions. NOAA anticipates that minor to moderate direct and indirect short-term adverse impacts to aesthetics, air quality, environmental health and noise, and potentially wetlands and water quality would result from restoration construction activities guided by the plans, projects, and programs considered by NOAA. The impacts would typically occur due to increased dust, noise, and exhaust fumes; potential exposure and disturbance of contaminated soils from construction equipment; and temporary increases in water turbidity from in water work.

- (10) Is the proposed action likely to adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural or historical resources?

Response: No. As noted above, the restoration banks included in the Preferred Alternative will not adversely affect National Historic Places or cultural, scientific, or historic resources.

- (11) Can the proposed action reasonably be expected to result in the introduction or spread of a non-indigenous species?

Response: No. The restoration banks included in the Preferred Alternative are not expected to result in the introduction or spread of non-indigenous species.

- (12) Is the proposed action likely to establish a precedent for future actions with significant effects or represent a decision in principle about a future consideration?

Response: No. The Preferred Alternative is not expected to set a precedent for future actions that would significantly affect the human environment or represent a decision in principle about a future consideration.

- (13) Can the proposed action reasonably be expected to threaten a violation of Federal, State, or local law or requirements imposed for the protection of the environment?

Response: No. Implementation of the Preferred Alternative would not result in any violation of Federal, State or local laws designed to protect the environment. The included restoration banks have undergone or will undergo required reviews and permitting prior to implementation; all regulatory authorizations are expected and no project implementation activities will occur until all authorizations have been secured.

- (14) Can the proposed action reasonably be expected to result in cumulative adverse effects that could have a substantial effect on the target species or non-target species?

Response: No. As described above and in the Final SRP/EA, NOAA evaluated the restoration banks included in the Preferred Alternative and determined that there will be no significant cumulative impacts to the environment, including specific target or non-target species.

DETERMINATION

Based upon an environmental review and evaluation of the “Final Portland Harbor Supplemental Restoration Plan and Environmental Assessment,” as summarized above, NOAA has determined that implementation of the Final SRP/EA does not constitute a major federal action significantly affecting the quality of the human environment under the meaning of Section 102(2)(c) of the National Environmental Policy Act of 1969 (as amended). Accordingly, an environmental impact statement is not required for this action.

Christopher Doley

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