

Determination of Jurisdiction

The Trustees have made the following determinations pursuant to 15 CFR 990.41 and 990.42:

(1) On or about September 6, 1999, the dredge vessel MV *Stuyvesant* spilled a quantity of intermediate fuel oil, estimated to be at least 2,100 gallons, in the Pacific Ocean off Humboldt Bay, near Eureka, California. This occurrence constituted an "Incident" within the meaning of 15 CFR 990.30. The Incident is also a spill or discharge as defined at California Government Code 8670.3(u).

(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 affected marine and shoreline habitats, wildlife, and human uses of natural resources in the area. 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 Federal Oil Pollution Act (OPA), 33 U.S.C. 2701–2761, and California's Lempert-Keene-Seastrand Oil Spill Prevention and Response Act, Government Code Sections 8670.1 *et seq.*

Determination To Conduct Restoration Planning

The Trustees have determined, pursuant to 15 CFR 99.42(a), that:

(1) Data collected pursuant to 15 CFR 990.43 demonstrate that injuries to natural resources have resulted from the Incident, including but not limited to the following:

(i) Injury to a wide variety and number of seabirds and shorebirds, among them marbled murrelets and western snowy plovers (species listed as threatened under the Endangered Species Act, 16 U.S.C. 1531–1544);

(ii) Impacts to beaches, tide pools, offshore rocks, sea cliffs, and jetties such that the ecological services provided by these habitats were reduced for varying periods of time;

(iii) Impacts to water quality in marine waters affected by the spill such that the ecological services provided by this habitat were reduced for some period of time; and

(iv) Lost public recreational uses of beaches, parks, and other public areas, including lost or diminished opportunities for public hiking, camping, fishing, surfing, beach combing, and wildlife viewing.

(2) The response and cleanup actions taken during early stages of the Incident have not adequately addressed the injuries resulting from the Incident to the extent where restoration would not be necessary. Response efforts included collection and removal of oil and oiled debris along beaches and rehabilitation of oiled birds. These efforts reduced the magnitude and duration of impacts to beach habitats and wildlife, but did not eliminate all injuries or make restoration unnecessary.

(3) Potential assessment procedures to be used to evaluate injuries and to design and implement the appropriate type and scale of restoration for these injured natural resources and services consist of, but are not limited to:

(i) Compilation of data on numbers, species, and collection locations of dead or debilitated birds found during the spill response;

(ii) Compilation of demographic data for key bird species;

(iii) Field studies and/or literature searches to estimate rates of removal of carcasses from beaches by scavengers and effectiveness of wildlife operations personnel and techniques at finding oiled birds stranded on beaches;

(iv) Computer modeling of bird distribution and abundance data and/or oil trajectory data to estimate spill-related avian mortality;

(v) Resource Equivalency Analysis or other techniques to scale bird restoration projects to bird injuries;

(vi) Habitat Equivalency Analysis or other techniques to scale habitat restoration projects to habitat injuries;

(vii) Field studies to ascertain restoration suitability of various tracts of land; and

(viii) Analysis of habitat quality information to properly scale restoration projects.

(4) Feasible primary and compensatory restoration actions exist to address injuries from the Incident. Restoration activities are expected to focus on marbled murrelets and other seabirds, snowy plovers and other shorebirds, marine and shoreline habitats, and lost recreation. Restoration actions for the injured resources may include, but are not necessarily limited to:

(i) Acquisition of marbled murrelet nesting habitat from willing sellers, potentially including acquisition of forested lands identified as the Grizzly Creek Marbled Murrelet Conservation Area in the Pacific Lumber Company's Habitat Conservation Plan;

(ii) Enhancement and/or protection of nesting locations of seabirds along the California coast;

(iii) Enhancement and/or protection of beaches, wetlands and other habitats used by bird species that were affected by the spill, potentially including eradication of invasive exotic plants from dune areas; and

(iv) Enhancement of trails or other facilities used for public recreation at beaches or parks where public access was lost or diminished during the spill response.

Administrative Record

The Trustees have opened an Administrative Record (Record) in compliance with 15 CFR 990.45. The Record includes documents relied upon by the Trustees during the assessment and restoration planning performed thus far in connection with the Incident, including data supporting the above determinations. The Record is on file and available to the public at the locations specified in the **ADDRESSES** section.

Public Comments Solicited

Pursuant to 15 CFR 990.14(d), the Trustees seek public involvement in restoration planning for this Incident, through public review of, and comment on, this Notice and the documents contained in the Administrative Record, as well as on the Draft Restoration Plan after it has been prepared.

Please submit electronic comments in an ASCII file format and avoid the use of special characters and encryption. Please also include "Attn: Stuyvesant NOI" and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, please contact us directly by calling Charlene Hall at the Sacramento Fish and Wildlife Office (*see ADDRESSES* section).

Our practice is to make all comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the record, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.