

Refugio Oil Spill – Damage Assessment and Restoration Plan/Environmental Assessment

Frequently Asked Questions (FAQs) following the May 13, 2020 virtual public meetings

The natural resource trustees for the Refugio Beach Oil Spill, including OSPR, State Lands, Parks and Recreation, University of California, U.S. Fish and Wildlife Service, Department of the Interior, and the National Oceanic and Atmospheric Administration (collectively, the Trustees) hosted two “virtual” public meetings on May 13th to solicit the public’s comments on the draft Damage Assessment and Restoration Plan/Environmental Assessment. The *two virtual meetings* collectively had over 200 attendees. The Trustees are parties to a proposed settlement that includes natural resources damages for the spill in the amount of \$22 million. More information and a copy of the restoration plan can be found on OSPR’s NRDA webpage at: <https://wildlife.ca.gov/OSPR/NRDA/Refugio> and at: https://www.fws.gov/ventura/docs/Refugio/FINAL%20DARP%20Fact%20Sheet_508revised.pdf. After the restoration plan is finalized, potentially later this summer, the Refugio Beach Oil Spill Trustee Council will meet and begin the process of planning, implementing, and monitoring projects outlined in the plan.

Why are there different estimates of the amount of oil released from the pipeline?

The Trustees understand that Dr. Igor Mezic, co-founder of AIMdyn, Inc. and a Professor at the University of California, Santa Barbara, performed a study for private litigants that suggests the volume of oil spilled exceeds the 123,000 gallon estimate referenced in the Draft Damage Assessment and Restoration Plan/Environmental Assessment (DARP).

The Trustees relied upon the total spill volume (i.e., the amount that left the pipeline) referenced in the Pipeline and Hazardous Materials Safety Agency’s Failure Investigation Report and various other response documents. We then estimated the amount of oil that in turn would have entered the ocean. These volume estimates support the Trustees’ understanding of the relative magnitude of the spill. However, natural resource damages are based upon the cost to restore the quantified injuries to resources and the value of lost human use, not spill volume.

To the extent the volume estimates were considered by the Trustees in the assessment process, it was primarily a means to “cross check” whether the spill volume was consistent with the Trustees’ determination of the geographic extent of oiling and degree of impacts. The Trustees’ analysis of the geographic extent of oiling relied primarily on NOAA’S trajectory modeling and field observation data, as well as

measurable environmental impacts. For example, the Trustees considered field observations of oil collected by oil spill responders conducting SCAT surveys. The Trustees also conducted a robust forensics study to determine the origin (or “fingerprint”) of a large number of oil and tissue samples found in the environment in various locations.

Are the damages determined by spill amount?

No. NRDA damages for this spill were estimated based on the cost of restoration projects to restore injured resources, plus the value of lost public use of the resources. The Trustees used data collected in the field at the time of, and in the years following, the spill to quantify the injuries. The Trustees relied on objective evidence, including forensic analysis of the spilled oil and oil collected on beaches from Gaviota to Los Angeles; chemical analysis of surf water, sediment pore-water, and tissues; and extensive biological survey data collected in various shoreline habitats, such as upper, mid, lower, and subtidal shoreline habitats.

Why did you focus on these particular species/ecosystems?

The Trustees focused on specific species and ecosystems harmed by spill. Part of the selection criteria includes selecting species or ecosystems where there are potential restoration actions that can be taken to help restore them. For example, since Pelicans were one of the primary bird species impacted by the spill, the Trustees will take actions that create or save more Pelicans, such as improving their nesting or roosting habitat, or preventing hook and line fishing gear entanglements.

What about resources that will recover on their own or that recover by the time you make the claim?

Many resources will eventually recover on their own over time. That process is known as natural recovery. However, the goal of restoration is to shorten the time needed to achieve full recovery where possible (this is called Primary Restoration) and to compensate for the time that it took for the resource to recover (called Compensatory Restoration). The projects described in the draft DARP are compensatory restoration projects; however, some of the projects will also shorten the timeline for recovery to baseline (ex. the bird and mammal projects).

What are the projects designed to do?

All of the proposed projects are designed to restore, replace, or acquire the equivalent of the lost resources and/or their services through on-the-ground actions. Several of the projects address multiple resources. The projects were selected based upon a set of

criteria outlined in the OPA regulations that generally focus on the biological needs of the injured species and the feasibility of restoring the resources.

Can you go back to Plains and insist that they pay more for restoration?

Once the settlement is finalized the Trustees will not be able to seek more money for restoration. However, it is important to note that the dollar amount of the damages must be based on reasonable estimates of the cost to implement one or more restoration projects needed to compensate for the specific resource injuries. The amount of the natural resource damages settlement cannot be based on other environmental or non-environmental considerations and may not include a punitive multiplier.

Who does the work on the restoration projects and how are they selected?

The Trustees will often use an open bid process to select contractors to implement projects. In some cases, city, county, state or federal agencies can complete projects with internal resources if provided funding. The Trustee Council (TC, see <https://wildlife.ca.gov/OSPR/NRDA/Trustee-Council>) selects various entities (i.e., private contractors, non-governmental agencies, government agencies) to develop scopes of work and implement the selected restoration projects. For each project, a member of the TC will be selected as the project lead. The project lead will manage contracts and oversee project implementation. A final restoration report is prepared following completion of the projects outlined in the final DARP.

Who oversees the restoration work?

The Trustee Council (TC) will oversee and monitor the progress of each restoration project. Typically, after a natural resource damage case is settled, a TC remains engaged to accomplish restoration goals using funds awarded as a result of the damages claim. The participating Trustees sign a Memorandum of Understanding (MOU) that facilitates the continued coordination and cooperation of the TC.

Can we get access to your data?

Yes, data are contained in many forms and can be accessed in the Draft DARP including Appendix B, as well as in the administrative record at <https://www.diver.orr.noaa.gov/web/guest/refugio-beach>.

Who funded the Trustees' assessment?

Per the Oil Pollution Act, the responsible parties, Plains All American Pipeline, L.P., and Plains Pipeline, L.P. (jointly, Plains) are responsible for assessment and restoration costs.

Were both black and white abalone impacted?

The goal of the subtidal restoration projects is to enhance function of subtidal habitats. Abalone restoration was selected not because of documented impacts to abalone, but rather because restoring abalone populations to the local kelp forest habitats will enhance and restore the ecological function of those areas. The target species for restoration include black abalone for shoreline habitats and red, pink, and possibly white abalone for subtidal habitats.

If the value of the lost use is \$4.4M, why are the damages only \$3.9M?

The Trustees believe the amount recovered through the settlement is equitable and will compensate the public for the loss of use resulting from the spill. This belief is based on the following considerations: (1) the amount is within a range of values the Trustees deem to be possible given the uncertainties in some of the data we collected, (2) it can be difficult to assess pre-spill baseline use at beaches, and (3) it is difficult to assess small declines in use following a spill, and many of the beaches that remained open had relatively modest reductions in beach use. Additionally, the Trustees' were willing to accept a modest reduction (less than 13%) to reach a settlement and commence restoration more quickly. We also recognize that there are inherent risks involved in litigation if a settlement was not reached. Basically, there is no guarantee that we would get the full 4.47 million if we litigated and there would be a significant delay and cost involved.

Will there be updates on the progress of these restoration projects and how the money is spent?

Yes, annual Trustee Council updates/newsletters will be published on the CDFW-OSPR Refugio webpage at <https://wildlife.ca.gov/OSPR/NRDA/Refugio>.

Are there ways to volunteer for any of these projects?

Yes! There are several projects that can benefit from volunteers. We will strive to communicate those opportunities as they arise.

What is the status of Tier 2 restoration projects in terms of any potential funding?

While the Tier 2 projects do not represent our preferred projects, many are projects that the Trustees are interested in and are available should the Tier 1 projects fall through or become infeasible.

What happens to the various 2nd Tier proposed restoration projects that were summarized in Appendix N?

All of the "2nd tier" projects that appear in Appendix N were deemed as valid approaches to restoration and could be implemented if a preferred project falls through, or if we are able to implement those preferred projects at a reduced cost.

Where are the funds that will ensure that the restoration projects will be successful?

Each restoration project includes monitoring to assess the effectiveness of the restoration conducted. The Trustees have extensive experience implementing restoration with many partners, and have budgeted the projects to allow for unexpected delays or issues. By law, the Trustees are entitled to recover the amount we think will be needed to successfully implement effective restoration and compensate for the injuries.

I'm curious about the fact that three of the four intertidal restoration projects were focused on sandy habitat as opposed to rocky habitat. Can you explain that ratio?

All the projects target restoration of the impacted resources. More injury was documented in the sandy shoreline than in the rocky intertidal habitats, so more restoration is targeted for sandy beach habitats.

When do you anticipate that the National Fish and Wildlife Foundation grant process will begin? Will there be the opportunity to comment on recreational projects before they are selected for funding?

The grant process cannot begin until the Draft Damage Assessment and Restoration Plan is finalized. We anticipate that the Grant process will likely commence later this year or early 2021. The Trustees will provide public notice of the "request for proposals" as well as public notice and opportunity to comment on the suite of projects submitted for funding. Recreational projects to compensate for lost use will be selected for funding following consideration of any public comments received.

Do you think settlement dollar amount is appropriate?

Yes, given what happened, the \$22 million was an equitable settlement, and it is one of the largest oil spill NRDA settlements in the country. Those dollars will allow the Trustees to implement restoration actions that will compensate for the harmful effects of the spill.

What information do you need from the public to move forward?

We need any feedback on the Tier 1 projects proposed by the Trustees. Also, any input from the public regarding their recommendations for projects to be implemented by the Trustees, including recommendations or comments on Tier 2 projects or any of the other projects considered by the Trustees.

When can we anticipate these restoration projects getting underway?

The Trustees anticipate getting restoration projects off the ground sometime in early to mid-2021.

Can we get a copy of today's presentations please?

Yes, we will make these presentations available on the CDFW-OSPR webpage at <https://wildlife.ca.gov/OSPR/NRDA/Refugio> and in the Trustees' administrative record at <https://www.diver.orr.noaa.gov/web/guest/diver-admin-record?diverWorkspaceSiteId=6104>