

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 *M/V COSCO BUSAN* into San Francisco Bay, November 7, 2007.

SUMMARY: On or about November 7, 2007, the privately owned cargo carrier *M/V Cosco Busan* struck a portion of the fendering system for the San Francisco-Oakland Bay Bridge's Delta Tower. This ruptured one or more of the vessel's fuel tanks, allowing a portion of the vessel's bunker oil to be discharged into the San Francisco Bay. The estimated discharge amounted to approximately 53,000 gallons of IFO 380, a heavy fuel oil used primarily to propel ships. This discharge affected natural resources in the 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 California are designated pursuant to the National Contingency Plan, 40 C.F.R. Section 300.605 and the *Governor's Designation of State Natural Resource Trustees under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Oil Pollution Act of 1990, and California Health and Safety Code section 25352(c)*, dated October 5, 2007. The natural resources trustees ("Trustees") under OPA

for this Incident are the United States Department of Commerce, acting through the National Oceanic and Atmospheric Administration ("NOAA"); the United States Department of the Interior ("DOI"), acting through the National Park Service ("NPS"), the U.S. Fish and Wildlife Service ("FWS"), and the Bureau of Land Management ("BLM"); and the California Department of Fish and Game ("CDFG"). The California State Lands Commission ("CSLC") is participating as a Trustee for this Incident pursuant to its jurisdiction under California state law over all state sovereign lands, including ungranted tidelands and submerged lands.

The Responsible Parties ("RPs") for this Incident are Regal Stone Limited and Fleet Management Limited. The United States and the People of the State of California *ex rel.* CDFG *et al.*, currently have filed lawsuits against the RPs pursuant to OPA and other federal and state environmental statutes. The Trustees have coordinated with representatives of the RPs on Natural Resource Damage Assessment ("NRDA") activities.

The Trustees began the Preassessment Phase of the NRDA in accordance with 15 C.F.R. § 990.40, to determine if they had jurisdiction to pursue restoration under OPA, and, if so, whether it was appropriate to do so. During the Preassessment Phase, the Trustees collected and analyzed the following: (1) Data reasonably expected to be necessary to make a determination of jurisdiction or a determination to conduct restoration planning, (2) Ephemeral data, and/or (3) Information needed to design or implement anticipated emergency restoration and/or assessment as part of the Restoration Planning Phase.

The NRDA Regulations under OPA, 15 C.F.R. Part 990 ("NRDA regulations"), provide that the Trustees are to prepare a Notice of Intent to Conduct Restoration Planning (Notice) if they determine certain conditions have been met, and if they 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 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.

FOR FURTHER INFORMATION: For further information contact one or more of the following Trustee representatives: Steve Hampton (CDFG) at shampton@ospr.dfg.ca.gov; Greg Baker (NOAA): greg.baker@noaa.gov; or Janet Whitlock (FWS): janet_whitlock@fws.gov

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 after it has been prepared. Comments should be sent to one or more of the Trustee representatives listed above.

SUPPLEMENTARY INFORMATION:

Determination of Jurisdiction

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

1. The impact of the M/V *Cosco Busan* with the Bay Bridge on November 7, 2007, resulted in a discharge of oil into and upon navigable waters of the United States, including the San Francisco Bay and Pacific Ocean, 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 bunker oil discharged from the *M/V Cosco Busan* is harmful to certain aquatic organisms, birds, wildlife, and vegetation that were exposed to the oil. Accordingly, the discharged oil and the response activities to address the discharge have had an adverse effect on the natural resources of San Francisco Bay, the Pacific Ocean, and their adjoining shorelines, and impaired the services which those resources provide. Documents in the Administrative Record contain more information regarding the specific studies, observations, etc., by which the Trustees reached this determination.

As a result of the foregoing determinations, the Trustees have jurisdiction to pursue restoration under the 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 dead and live oiled birds, information regarding marshes, beaches, eelgrass beds, and other oiled habitats) demonstrate that injuries to natural resources have resulted from the Incident; however, the extent of such injuries has not been fully determined at this time. Immediately following the Incident, the Trustees, in cooperation with the RPs, identified several categories of impacted and potentially impacted resources, including birds, shoreline habitats, marine mammals, fish, and eelgrass, as well as effects to human use resulting from the impacts on the resources. They then began conducting activities, in cooperation with the RPs, 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. The full nature and extent of injuries will be determined during the injury assessment phase of restoration

planning.

2. The 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 efforts, such as scrubbing of oiled rocks and rip rap and the removal of wrack from beaches, caused additional injuries to 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 were lost and diminished human uses of the resources resulting from the impacts to the natural resources and from the response actions themselves.

3. Feasible primary and compensatory restoration actions exist to address injuries and lost human uses resulting from the Incident. In preparation for restoration planning, the Trustees have begun to compile a list of restoration projects that could potentially be implemented to compensate for interim losses resulting from the incident. The Trustees have also sought suggestions from the public 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. To quantify lost human uses resulting from the Incident, the Trustees, partially in cooperation with the RPs, have gathered data regarding visitor use of impacted sites and associated activities. To value those lost uses the Trustees are using a Travel Cost Model and are employing the Benefits Transfer Method. To compensate for the lost and diminished human

uses arising from the Incident, the Trustees intend to solicit project ideas from local, regional, state, and federal managers of parks and other recreational areas, as well as from the general public. The Trustees will then select restoration actions using a value to cost approach, by which the cost of the restoration actions are scaled to the monetary value of lost and diminished human uses.

During the restoration planning phase, the Trustees will evaluate potential projects, determine the scale of restoration actions needed to make the environment and the public whole, and release a draft Damage Assessment and 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 the following locations:

San Francisco Main Library

100 Larkin Street (at Grove Street)

Civic Center, San Francisco CA 94102

(415) 557-4400

The Library is open seven days a week. Please check its website for hours and directions: <http://sfpl.org/librarylocations/main/main.htm>.

and at:

Water Resources Center Archives

410 O'Brien Hall

University of California

Berkeley, CA 94720-1718

(510) 642-2666

The Center is generally open Monday through Friday. However, please check its website for hours that may be different during academic vacations and for directions:

<http://www.lib.berkeley.edu/WRCA/info.html#hours>.

The Index of the Administrative Record and selected documents may also be viewed at the following website(s): www.dfg.ca.gov/ospr/spill/nrda/nrda_cosco-busan.html; www.darrp.noaa.gov/southwest/cosco/index.html; and www.fws.gov/contaminants/Issues/OilSpill.cfm.

Dated: _____

David G. Westerholm, Director

Office of Response and Restoration

National Ocean Service

National Oceanic and Atmospheric Administration