

acquisition of private lands or partial interests in private lands promotes the natural recovery of spill-injured resources and associated services by removing the threat posed by additional development impacts. The program is implemented by state and federal resource agencies, often in partnership with non-governmental organizations. The habitat program has protected approximately 650,000 acres of valuable habitat through a variety of purchases of various property rights, ranging from fee simple acquisition to conservation and timber easements. The goals of the habitat protection program remain viable. Resource and land management agencies, such as the Alaska Department of Natural Resources, Alaska Department of Fish and Game, U.S. Fish and Wildlife Service, National Park Service and U.S. Forest Service, continue to receive parcel nominations for Council consideration. Approximately \$24 million remains within the habitat subaccount for future habitat protection efforts. The Council is considering alternatives for allocation of these funds. For example, half of the funds remaining may be allocated to the purchase of large parcels within a period of two to three years, and the remaining half to a program spanning a 12-year period focused on the protection of small parcels less than 1,000 acres or \$1 million in price. The Council proposes to utilize the approximately \$24 million remaining to continue the habitat program. A variety of administrative options, funding allocations, time frames, and management strategies will be considered.

#### Public Involvement

Scoping is an early and open process for determining the scope of issues to be addressed in a SEIS and for identifying if there are significant environmental effects or issues related to the proposed action. A principal objective of the scoping and public involvement process is to identify a range of reasonable alternatives that will delineate critical issues and provide a clear basis for distinguishing among those alternatives and selecting a preferred alternative. Through this Notice, the Council notifies the public that a NEPA analysis and decision-making process has been initiated so that interested or affected people may participate and contribute to the final decision.

Through this scoping process, the Council is seeking input and feedback on the areas, issues and projects proposed above, as well as possible alternatives to these proposals. The Council seeks public involvement in the

development of the SEIS and encourages members of the public to submit comments in writing at the address shown above (see **ADDRESSES**). Written comments should be as specific as possible to be the most helpful. Written comments received during the scoping process, including the names and addresses of those submitting them, will be considered part of the public record on this proposal and will be available for public inspection.

The Council also invites the public to participate in the scoping meetings shown above (see **DATES**). When the lead federal agency considers a change to a proposed action analyzed in an environmental impact statement (EIS), or new information relevant to the action becomes available, the federal agency must determine whether a supplement to the EIS (also referred to as a "supplemental EIS") or a new EIS is appropriate. In this instance, NOAA, as the lead agency, has determined that a SEIS is appropriate and will be prepared under the authority and in accordance with the requirements of NEPA, Council on Environmental Quality Regulations (40 CFR parts 1500–1508), other applicable federal laws and regulations, and NOAA's established policies and procedures for compliance with those regulations. A SEIS must consider all reasonable alternatives, including the preferred action and the no action alternative. Even the most straightforward actions may have alternatives, often considered and rejected in early stages of project development that should be discussed. Opportunities for public comment are provided through public review and comment on documents contained in the Administrative Record as well as on the Public Review Document, Draft and Final Environmental Impact Statement when prepared.

In compliance with 15 CFR 990.45, the Council will prepare an Administrative Record (Record). The Record will include documents that the Council relied upon during the development of the SEIS. After preparation, the Record will be on file at the Exxon Valdez Oil Spill Trustee Council office in Anchorage, AK and duplicate copies will be maintained at the following website: <http://www.evostc.state.ak.us>.

Dated: January 15, 2010.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### Notice of Intent To Conduct Restoration Planning (Pursuant to 15 CFR 990.44)—Discharge of Oil From the MIV CASCO BUSAN into San Francisco Bay, November 7, 2007

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of Intent to conduct restoration planning (pursuant to 15 CFR 990.44)—Discharge of Oil from the *MIV CASCO BUSAN* into San Francisco Bay, November 7, 2007.

**SUMMARY:** On or about November 7, 2007, the privately owned cargo carrier *MIV CASCO 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 CFR Section 300.600 and Executive Order 12777. State trustees for California are designated pursuant to the National Contingency Plan, 40 CFR 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 CFR 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 CFR 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 CFR 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 CONTACT:** For further information contact one or more of the following Trustee representatives: Steve Hampton (CDFG) at [shampton@ospr.dfg.ca.gov](mailto:shampton@ospr.dfg.ca.gov); Greg Baker (NOAA) at [greg.baker@noaa.gov](mailto:greg.baker@noaa.gov); or Janet Whitlock (FWS) at [janecwhitlock@fws.gov](mailto:janecwhitlock@fws.gov).

**Opportunity to Comment:** 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, 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 CFR 990.41:

1. The impact of the MIV CASCO 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 CFR 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 MIV CASCO 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 CFR 990.42(a), that:

1. Observations and data collected pursuant to 15 CFR 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 pre-assessment. The full nature and extent of injuries will be determined during the injury assessment phase of restoration 4 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 CFR 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 Web site for hours and directions: <http://sfpl.org/librarylocations/mainmain.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 Web site for hours that may be different during academic vacations and for directions: <http://www.lib.berkeley.edu/WRCNinfo.htm#hours>.

The Index of the Administrative Record and selected documents may also be viewed at the following Web site(s): [http://www.dfg.ca.gov/osprispillnrda/nrda\\_cosco-busan.html](http://www.dfg.ca.gov/osprispillnrda/nrda_cosco-busan.html); <http://www.darrp.noaa.gov/southwest/coscolindex.html>; and <http://www.fws.gov/contaminants/Issues/OilSpill.cfm>.

[www.fws.gov/contaminants/Issues/OilSpill.cfm](http://www.fws.gov/contaminants/Issues/OilSpill.cfm).

Dated: January 11, 2010.

**David G. Westerholm,**

*Director, Office of Response and Restoration, National Ocean Service, National Oceanic and Atmospheric Administration.*

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#### DEPARTMENT OF COMMERCE

##### National Oceanic and Atmospheric Administration

[Docket No. 0907081108-91430-02]

**RIN 0648-XP68**

##### Listing Endangered and Threatened Wildlife and Designating Critical Habitat; 12-month Determination on How to Proceed with a Petition to Revise Designated Critical Habitat for Elkhorn and Staghorn Corals

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of 12-month determination.

**SUMMARY:** We, the National Marine Fisheries Service (NMFS), announce our 12-month determination on how to proceed with a petition to revise the critical habitat designation for elkhorn (*Acropora palmata*) and staghorn (*A. cervicornis*) corals pursuant to section 4(b)(3)(D)(ii) of the Endangered Species Act (ESA) of 1973, as amended. Elkhorn and staghorn corals are listed as threatened throughout their ranges and have designated critical habitat consisting of substrate of suitable quality and availability to support successful larval settlement and recruitment, and successful reattachment and recruitment of asexual fragments in water depths shallower than 30 meters in four areas in Florida, Puerto Rico, and the U.S. Virgin Islands. The petition seeks to extend the northern boundary of designated critical habitat in the Florida area to the Lake Worth Inlet, which is approximately 15.5 miles (25 km) north of the current boundary at Boynton Beach Inlet, based on the discovery of staghorn corals north of the existing critical habitat boundary. We have evaluated the available scientific information and have decided, based on the adequacy of the existing, recent designation to meet the corals' conservation needs, the relatively low benefit the requested revision would provide, the protections afforded to the species from the recent

ESA section 4(d) regulations, and our need to complete higher priority conservation activities for these and other coral species, to deny the petitioned action.

**DATES:** The finding announced in this document was made on January 22, 2010.

**ADDRESSES:** Interested persons may obtain more information about critical habitat designated for elkhorn and staghorn corals online at the NMFS Southeast Regional Office website: <http://sero.nmfs.noaa.gov/pr/esa/acropora.htm>.

#### FOR FURTHER INFORMATION CONTACT:

Jennifer Moore by phone 727-824-5312, fax 727-824-5309, or e-mail [jennifer.moore@noaa.gov](mailto:jennifer.moore@noaa.gov); or Marta Nammack by phone 301-713-1401 or e-mail [marta.nammack@noaa.gov](mailto:marta.nammack@noaa.gov).

**SUPPLEMENTARY INFORMATION:** On January 6, 2009, NOAA received a petition from Palm Beach County Reef Rescue (the Petitioner) to revise the designated critical habitat of elkhorn (*Acropora palmata*) and staghorn (*A. cervicornis*) corals (PBCRR, 2009). On July 27, 2009, we issued a positive 90-day finding that the petition presented substantial scientific information indicating the revision may be warranted and initiated a 30-day information solicitation period (74 FR 36995). Section 4(a)(3)(A)(i) of the ESA (16 U.S.C. §§ 1533 *et seq.*) requires generally that critical habitat shall be initially designated at the time of listing a species as threatened or endangered. The ESA also provides that NMFS may revise critical habitat from time-to-time as appropriate (section 4(a)(3)(A)(ii)). For any petition to revise a designated critical habitat that presents substantial scientific and commercial information, section 4(b)(3)(D)(ii) of the ESA provides only that, "the Secretary shall determine how he intends to proceed with the requested revision, and shall promptly publish notice of such intention in the **Federal Register**." The statute says nothing more about options or considerations regarding the Secretary's 12-month determination. We have fully considered all information received in response to our 90-day finding and determined that the most appropriate action to take in response is to deny the petition.

#### Background

On November 26, 2008, we published a final rule designating critical habitat for elkhorn and staghorn corals (73 FR 72210). On January 6, 2009, we received a petition from Palm Beach County Reef Rescue (the Petitioner) to revise elkhorn and staghorn corals' critical habitat