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RECORD OF DECISION
(ROD)

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RECORD OF DECISION
for the
FINAL SUPPLEMENTAL ENVIRONMENTAL IMPACT STATEMENT
on the
EXXON VALDEZ OIL SPILL RESTORATION PLAN

Introduction

NOAA, as a member of the *Exxon Valdez* Oil Spill Trustee Council (Council), has prepared a Final Supplemental Environmental Impact Statement (FSEIS). It presents and analyzes alternative proposals for the *Exxon Valdez* Trustee Council's management of the remaining joint trust funds resulting from the civil settlement of civil claims brought as a result of the 1989 *Exxon Valdez* Oil Spill. The FSEIS (1) describes two alternatives to restore the injured natural resources and services through implementation of a 20-year management of remaining joint trust funds; (2) describes the major issues involved associated with Council's proposals for restoration of the injured natural resources and services as identified through public meetings, comment and staff analysis; and (3) addresses comments made during the public review process.

This Record of Decision (ROD) represents the conclusion of the planning process, provides guidance for the Council's future actions and documents the decision of the Federal Natural Resources Trustees regarding management of the remaining joint trust funds. It presents reasons for selecting the course of action and the alternatives considered. In addition, it briefly discusses elements considered in reaching a final decision and supporting rationale.

The Federal and State governments, acting as Trustees for natural resources, are responsible for taking actions necessary to restore resources and the services they provide that were injured by the spill. The Federal Water Pollution Control Act (Clean Water Act) (33 U.S.C. § 1321[f]) and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)(42 U.S.C. § 9607[f]) provide the legal basis for these responsibilities.

The Council, recognizing that the remaining joint trust funds are limited and that it is becoming increasingly difficult to distinguish between spill impacts and other effects in measuring recovery, is considering a strategic and organized transition to a more modest restoration program, which would focus the remaining funds on a few specific programs and reduce administrative costs. Specifically, the Council proposes to narrow and refine the scope of the Council's monitoring efforts to five defined restoration categories: herring; lingering oil; long-term monitoring of marine conditions and injured resources, harbor protection and marine restoration, and lessons learned/outreach; and habitat acquisition and protection. Under this approach, the remaining Council funds would be expended with an emphasis on producing information to support the future management and natural restoration of the injured species. This information will enable management that is consistent with long-term restoration of injured species and thus also support the human services which depend upon them.

The FSEIS assesses the environmental impacts of the Council's proposal. In 1994, the Council adopted a Restoration Plan and an FEIS was issued that analyzed the Council's actions under that Plan. The five focus areas the Council currently proposes to pursue are consistent with the existing FEIS and are also largely consistent with the 1994 *Exxon Valdez* Oil Spill Restoration Plan.

In developing its proposed action alternative of focused restoration, the Council issued a Notice of Intent summarizing its proposals and subsequently held public meetings in six spill-area communities to encourage public comment. Throughout this deliberative process, the Council and its staff also consulted with scientists, Trustee Agency Liaisons, counsel, the Council's Public Advisory Committee, and reviewed numerous public comments received through the public meetings and those submitted directly to the Council.

Decision to Be Made

Recognizing that funding for future restoration is limited and that it is becoming increasingly difficult to distinguish between spill impacts and other effects in measuring recovery, the Council is considering an organized and strategic transition to a modest program which would focus the remaining funds on a few specific programs and habitat protection.

Alternatives Considered

The "no action" alternative (Alternative 1 in the FSEIS) consists of the Council continuing its activities in research, monitoring, general restoration and habitat protection, as it has done for the last twenty-one years, pursuant to the Preferred Alternative (5) in the FEIS. This current practice involves approximately \$2 million in administrative costs annually for funding of Trustee Agency Liaisons, science support, Restoration office administration, Public Advisory Committee operations, and project management. These funds also support numerous meetings by the Council, researchers, stakeholders and the public to review and approve individual projects of a limited length, typically one to three years.

Another alternative, expending the funds in a very short time frame, for example within three years, as a method to decrease the overall expenditure in administrative costs that accrue over time, was rejected. While it could possibly achieve some measure of purely economic efficiency with regard to overall administrative expenditures and might be appropriate for some projects, e.g. marine debris removal, it would not necessarily represent the most effective way to pursue restoration of injured resources and services. For example, it would not serve the considerable long-term scientific needs of monitoring and long-term herring research; nor would it benefit habitat protection, where taking the time to develop sensitive negotiations with willing sellers are required.

The Council also considered transferring the remaining funds to agencies to be expended as limited and required by the *Exxon Valdez* settlement. This action was rejected as it is unnecessary and would inhibit the opportunity to allow non-governmental organizations to propose creative collaborations and participation that could result in an efficient and creative use of resources.

Reallocating habitat monies to other restoration uses was rejected because the Council supports using the remaining funds (approximately \$24 million) currently designated for habitat protection for that valuable use. In addition, the Council noted that this allocation of funds is mandated by federal law. *See*, Public Law 106-113, 113 Stat. 1501A-207 (1999). An effort to amend the legal requirement would entail an additional and unnecessary use of administrative resources and time.

In addition, using the remaining funds for a permanent endowment was rejected without detailed consideration due to legal issues which could hinder a permanent endowment.

Environmentally Preferable Alternative

The Preferred Alternative (Alternative 2 in the FSEIS), which focuses the Council's activities in five restoration areas, addresses the same policies, locations, restoration goals, assumptions used for impact assessment, as outlined for the FEIS Proposed Action Modified Alternative 5 (FEIS, Ch. 2, pp. 14-16). The only shift is that the General Restoration list for FEIS Alternative 5 is supplanted by the Council's proposed five focus areas: herring; lingering oil; long-term monitoring of marine conditions and injured resources; harbor protection, marine restoration, and lessons learned/outreach; and habitat acquisition and protection. In addition, instead of considering individual, discrete projects that were typically one year in length, the Council proposes to fund longer-term, integrated programs. The Council would also shift many of its current administrative functions, such as some scientific and technical review and planning, peer review, and the solicitation and management of individual projects, to the entity responsible for the focus area. By narrowing its focus areas and by delegating many of its existing administrative functions to a select number of entities, the Council would streamline and reduce administrative functions and allow the funded entities to design and implement longer-term, integrated programs supporting restoration goals and objectives.

Rationale for Selection of the Preferred Alternative

The Preferred Alternative focuses the Council's actions on five proposed restoration areas that would aid in the recovery of a broad spectrum of injured resources and services. Under this approach, the remaining Council funds would be expended in a strategic and organized manner, with an emphasis on producing information to support the future management and natural restoration of injured species and, thus, the human services that depend upon them. For example, focus areas such as long-term monitoring of oceanographic conditions and injured resources and herring research can also produce information that can be used by a wide variety of researchers, members of the public, stakeholders, state and federal agencies. In addition, the information which results from such activities can enable management consistent with long-term restoration. This important data can assist those agencies and entities which have the mandate and resources to pursue long-term restoration goals for these injured species and services and which will exist beyond the life of the Council.

The Council's restoration effort has been evolving over time and the current proposal represents this progression. With regard to research and restoration proposals, this alternative refines the Council's efforts in these five areas and moves away from funding individual projects that typically lasted for one year and were focused on a singular injured resource. The single-species perspective has been driven largely by the original listing of injured resources and species. Consistent with this, the September 1994 FEIS and the Restoration Plan were largely organized by individual species. However, the 1994 Plan also acknowledged the importance of the ecosystems in the spill area, and this perspective has grown with time and as science has illuminated the complex and interdependent relationships of ecosystems. (*Exxon Valdez Oil Spill Restoration Plan*, 1994, p. 12). The Preferred Alternative, with its focus on long-term monitoring and herring research, emphasizes the importance of examining an ecosystem as a whole and over a sustained duration of time.

Under this Preferred Alternative, the Council does contemplate restoration activities for specific species, where that activity may serve one a focus area. For example, the Council includes herring as a single-species focus area in its current proposed alternative. However, this species is considered a keystone species in the marine ecosystem and herring play a vital role in the food chain of many injured species. Thus, rebuilding the herring population has the potential to support the restoration of a broad range of injured species. Supporting a healthy herring population also has the potential to compensate for some of the losses in fishing opportunities that resulted from the spill and its damage to species other than herring. (*Exxon Valdez Oil Spill Trustee Council 2009 Status Report*, p. 16). In this way, the Council's focus on this single species may serve a broad range of injured species and services. In addition, with regard to long-term monitoring, the Council contemplates monitoring a number of key species in the spill-affected ecosystems in order to contribute to the overall understanding of the spill-affected ecosystem.

The Preferred Alternative also emphasizes an effort to reduce administrative spending through funding long-term proposals administered largely by third parties which have an existing infrastructure that can accommodate administering such a program and therefore potentially allowing a higher allocation of funds (approximately an additional \$10–25 million, depending upon the administrative structure of the Council) to be used for restoration activities. By narrowing its focus to provide benefits for a broad range of injured species over the long-term, the Council increases the opportunity for continuing research to support the future management and long-term restoration goals for individual species and benefit the ecosystems hosting numerous species originally injured by the spill.

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Mitigation Measures and Monitoring

The Final SEIS is an informational document describing the process that the Council currently proposes to take in the future regarding remaining funding. It is not a regulatory document, nor is it an implementation plan. Since it is purely informational in nature, no mitigation measures will be utilized to minimize environmental impacts at this time. Once the Council decides on how the remaining funds will be spent, discussions of mitigation and monitoring will begin and be adopted.

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