RECORD OF DECISION
for the Final Lower Duwamish River NRDA
Restoration Plan and Programmatic Environmental Impact Statement

Introduction

NOAA, as a member of the Elliott Bay Trustee Council (Trustees), has prepared a Final Lower Duwamish River NRDA Restoration Plan and Programmatic Environmental Impact (RP/PEIS). The RP/PEIS will guide decision-making regarding the implementation of Lower Duwamish River Natural Resource Damage Assessment (LDR/NRDA) restoration activities. This plan is intended to expedite and provide a point of departure for future site-specific projects and facilitate the preparation of subsequent project-specific environmental documents through the use of tiering. Project specific National Environmental Policy Act (NEPA) environmental evaluation documents, usually in the form of Environmental Assessments, will be prepared for future restoration projects and will be referenced back to, or "tiered" from, the RP/PEIS.

This Record of Decision (ROD) represents the conclusion of the programmatic planning process and provides guidance for the Trustee's future actions and documents the decision of the Trustees regarding the approach to take to restore injured natural resources in the LDR. It presents reasons for selecting the course of action and the alternatives considered. The ROD briefly discusses elements considered in reaching a final decision and supporting rationale.

The Federal government, acting together with other Trustees for natural resources, is responsible for taking actions necessary to restore injured resources and the services they provide. The LDR/NRDA was conducted pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, the Oil Pollution Act of 1990, and other applicable laws, which provide the legal basis for these responsibilities. Concurrent with the damage assessment process, the Trustees conducted restoration planning to determine the best approach to restoring, rehabilitating, replacing, and acquiring the equivalent of the injured natural resources and their associated services. The Trustees prepared the RP/PEIS, which included: the National Oceanic and Atmospheric Administration (NOAA) and the U.S. Department of Interior, Fish and Wildlife Service (U.S. DOI/U.S. FWS) as the lead federal agencies, with the State of Washington, the Suquamish Tribe, and the Muckleshoot Indian Tribe as participating trustees, and the U.S. Army Corps of Engineers (U.S. ACOE), and the Environmental Protection Agency (U.S. EPA) as cooperating agencies.

A previous draft RP/PEIS was made available for public review on May 22, 2009 with the comment period ending on July 28, 2009. A supplement to the draft RP/PEIS was made available for public review on July 27, 2012 with the comment period closing on October 10, 2012. In the supplemental document, the Trustees added more detail about the injury assessment and restoration valuation methodology used in the LDR/NRDA, as requested in some of the comments received on the previous draft, and made some other more minor changes to address other comments.

Key Issues

The Trustees have taken an ecosystem approach to planning for the implementation of restoration projects as part of the LDR/NRDA. Trustees established priority focus areas for

restoration that fulfill CERCLA requirements (restoration with a strong nexus to the injured resources) and puts restoration in areas where habitat is scarce and essential for fish and wildlife in the Lower Duwamish River. Each Habitat Focus Area (HFA) places boundaries around important target habitat features and other factors important to restoring injured natural resources. There are four HFAs covered under this document: **HFA1- Lower Duwamish River**, extending from the northern tip of Harbor Island upstream to North Winds Weir; **HFA2- Inner Elliott Bay Shoreline**, between the Duwamish head and Port of Seattle Terminal 91; **HFA3- Duwamish River Reach (farther upstream of the Lower Duwamish)**, which goes from upstream of North Winds Weir to the confluence of the Green and Black rivers; and **HFA4- Green River Reach** (upstream from the Duwamish River Reach) which extends from the confluence of the Green and Black rivers to the boundary of the Lower Green River Watershed (as defined by the Water Resource Inventory Area (WRIA) 9). The Trustees' ability to restore injured resources and the approach required varies among the HFAs. Priority will be given to projects within HFA1- the Lower Duwamish River- and HFA2- Inner Elliott Bay. Projects in other habitat focus areas will be subject to minimum size and project type restrictions, and will be acceptable for NRD settlements only if they are a component of a settlement proposal that includes restoration in the Lower Duwamish River (HFA1).

Alternatives Considered

The Programmatic Environmental Impact Statement (PEIS) analyzes the environmental impacts of the alternatives that may be employed by the Trustees to restore, replace, rehabilitate, and/or acquire the equivalent of the injured natural resources as well as the services they would have provided but for the hazardous substance releases and oil discharges to the environment of the Lower Duwamish River. Three alternatives were evaluated in the RP/PEIS: 1) No-Action, an alternative which is required to be considered, under which the Trustees would not conduct restoration actions to restore natural resources; 2) Species-Specific Restoration, under which the Trustees would develop specific restoration actions designed to benefit individual species; and 3) Integrated Habitat Restoration, under which habitat complexes would be developed to benefit, directly or indirectly, the suite of natural resources that were injured by releases of hazardous substances into the LDR.

Preferable Alternative (Integrated Habitat Restoration)

The Preferred Alternative (Alternative #3 from the list above) consists of habitat projects that provide benefits to the wide suite of species that are likely to have been injured as a result of hazardous substance releases into the LDR. The Trustees preferred alternative is a comprehensive plan based on restoration of key habitats that, together, will benefit the range of different resources injured by releases of hazardous substances in the LDR. This alternative best meets the needs of the Trustees' restoration goals and principles by maximizing ecological benefits for a wider range of natural resources and their associated services. This alternative meets the basic purpose of NRDA, which is to restore the natural resources and services that were affected by these releases. The LDR is highly modified with relatively little remaining natural intertidal habitat, so creation of habitat projects such as marshes and mudflats, even on a relatively small-scale compared to what had existed prior to the alteration of the river system, will be of great benefit to the injured natural resources utilizing this area. Ideally, projects will consist of integrated habitats, such as a mudflat bordered by marsh with a riparian buffer, to maximize the level of ecological services to affected resources.

Decision

Based upon the review of the alternatives and their environmental consequences described in the PEIS, the decision of NOAA and Trustees is to implement Alternative 3, the integrated approach. This alternative is proposed as preferred because it is best suited of all the alternatives to fulfill the goal of NRDA under CERCLA to restore injured natural resources and services. It is specifically designed to improve habitats that function in support of multiple fish and wildlife resources, as well as the prey items of these species that reside in those habitats. Habitat restoration in the Duwamish River will provide indirect benefits to animals such as Orcas, even though they do not directly utilize habitats in the LDR. Since Orcas feed on fish and other prey that do depend on these habitats, they will benefit from increased biomass and lower contamination in prey items. In fact, part of the recovery plan for the distinct population segment of Southern Resident Orcas, which are now listed as endangered under the Endangered Species Act, includes habitat restoration to increase prey availability to Orcas (US DOC, NOAA, 2008). The Trustees recognize the success of similar habitat restoration projects in the LDR by the Elliott Bay Panel and others, Commencement Bay, and elsewhere in Puget Sound, whether done in a NRDA-context or not, and this alternative will build on those efforts. The potential impacts of this alternative are discussed in greater length below.

The Restoration Plan will be utilized to coordinate and implement restoration projects under the LDR/NRDA. The Restoration Plan will allow existing settlement funds to be utilized to implement restoration projects and will facilitate additional settlements. The ultimate scale of restoration activity that will be undertaken will depend upon the funds, property and services made available through resolution of natural resources damage claims. By adopting the preferred alternative with its mitigation measures to avoid significant adverse impacts, all practicable means to avoid or minimize harm have been adopted.

Rationale for Selection of the Preferred Alternative

This alternative involves actions designed primarily to restore certain types of habitats that support a range of species. Under this alternative, the Trustees would focus on habitat projects that benefit a suite of different species, using important surrogate species and groups to evaluate the benefits of potential habitat projects to injured resources. Under this approach, projects that provide benefits to a large number of potentially injured species would have greater value compared to projects that would tend to benefit largely one species or a small group of species. Typical kinds of restoration actions under this alternative include removal of intertidal fill to restore mudflats, marsh, and/or riparian habitats, creation of off-channel areas, removal of creosote pilings and overwater structures that shade habitats, and softening shorelines. These projects will create habitats that provide food, foraging, and resting areas for juvenile salmonids and other fish, shorebirds and other wildlife.

The Integrated Habitat Restoration Alternative should result in net improvement in water and sediment quality over the long term. Some habitat restoration actions would result in short-term construction-related impacts, but using best management practices at a project-level can typically minimize these impacts. Adverse impacts may include temporary increases in erosion associated with land disturbance, temporary increases in turbidity, temporary increases in noise from construction activities, and short-term increases in air pollution from construction equipment.

This alternative ties in well with the approach the Trustees used in estimating injury, which is based on habitat use and value to the surrogate species or species groups. By clearly laying out the types of projects that the Trustees favor, potentially responsible parties (PRPs) will be able to use these guidelines to develop potential project ideas for settlement discussions with Trustees. This will also allow PRPs to begin considering whether restoration actions can be integrated with response or remedial actions to save costs. Use of this alternative will be more efficient for the Trustees, because there will be a consistent set of criteria and a methodology for evaluating potential projects. It also facilitates the establishment of a cash-out position for potential settlements. Previous habitat restoration projects constructed in the LDR by the Elliott Bay/Duwamish Restoration Panel enables Trustees to develop make reasonable restoration cost estimates for construction, monitoring, adaptive management, and Trustee administrative costs for future restoration projects that may result from settlements.

Consideration of Mitigation Measures

Since this is a programmatic approach that applies to a larger area, and at this time the details of specific restoration projects that may be proposed are unknown, the impacts were presented in general terms. Specific projects would undergo additional environmental analysis. The project screening and prioritization presented as a two-tiered analysis would assist in preferring future projects with consideration of their potential environmental impacts. Accordingly, best management practices and mitigation measures associated with individual projects are not included in this RP/PEIS, but would be considered in the identification of priority projects and the analysis of proposed projects and their alternatives in subsequent NEPA analyses. Types of mitigation measures may include local and state-required best management practices for erosion control, reduction in air pollution via dust control during construction and stockpiling of materials, minimizing the area and time of disturbance of sediments and water flow to maximize protection of fish and their habitats, and other mitigation measures as appropriate to the proposed project. These would be considered on a project-specific basis and assessed for their capacity to reduce impacts as part of the analysis and selection of future restoration actions.

The Elliott Bay Trustee Council approves the Final Lower Duwamish River NRDA Restoration Plan and Programmatic Environmental Impact Statement for restoration of the Lower Duwamish River environment and authorizes the implementation of the preferred alternative contained therein.

Frederick C. Sutter
DOC, NOAA, Director, Office of Habitat Conservation

9/9/2013
Date

Robyn Thorson
DOI, US FWS, Region 1 Director

Date