

DEPARTMENT OF COMMERCE

**National Oceanic and Atmospheric
Administration**

**Notice of Intent To Conduct
Restoration Planning To Evaluate
Potential Injuries to Natural Resources
and Services Resulting From the
Discharge of Oil From the Tank Barge
(T/B) DBL 152 in the Gulf of Mexico**

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

ACTION: Notice of Intent to Conduct
Restoration Planning to evaluate
potential injuries to natural resources
and services resulting from the
discharge of oil from the Tank Barge
(T/B) DBL 152 in the Gulf of Mexico.
NOAA also seeks public involvement in

the restoration planning for this oil spill.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) has determined that the impacts of the November 11, 2005, discharge of slurry oil from the Tank Barge (T/B) DBL 152, over which NOAA has jurisdiction as a natural resource trustee, warrant performing a natural resource damage assessment. NOAA is hereby providing notice of its intent to conduct restoration planning to evaluate potential injuries to natural resources and services resulting from this incident and to use that information to determine the need for and the scale of restoration actions to address these potential injuries.

NOAA seeks public involvement in the restoration planning for this spill. Opportunities for public involvement are provided through public review and comment on documents contained in the Administrative Record, as well as on the Draft and Final Restoration Plans when they have been prepared.

Public Involvement and Further Information: Pursuant to 15 CFR 990.44(c), NOAA seeks public involvement in restoration planning for this incident, through public review of and comments on the documents contained in the administrative record. Comments should be sent to: Troy Baker, NOAA Assessment and Restoration Division, LSU/Sea Grant Building, Room 124B, Baton Rouge, Louisiana 70803, 225-578-7921 (ph), 225-578-7926 (fax), Troy.Baker@noaa.gov.

SUPPLEMENTARY INFORMATION:

Oil Spill and Response Activities

On November 11, 2005, while en route from Houston, Texas, to Tampa, Florida, the T/B DBL 152, owned and operated by K-Sea Transportation Partners, L.P. and K-Sea Operating Partnership, L.P. (collectively "K-Sea") allided with the unmarked, submerged remains of a pipeline service platform that collapsed in the western Gulf of Mexico during Hurricane Rita. The double-hulled barge was carrying approximately 119,793 barrels (5,031,317 gallons) of a blended mixture of heavier-than-water slurry oil. An estimated 45,846 barrels of oil (1,925,532 gallons) were discharged into federal waters of the Gulf of Mexico as a result of the allision (the Incident). Of this volume, an estimated 2,355 bbls (98,910 gallons) were recovered by divers. In total, 43,491 bbls (1,826,622 gallons) of unrecovered oil was left remaining in the environment. The discharge occurred in federal waters

approximately 35 nautical miles south-southeast of Sabine Pass, Texas and Calcasieu Pass, Louisiana.

Operations to locate, assess and recover the submerged oil were initiated shortly after the Incident occurred. Full-scale submerged oil recovery efforts using diver-directed pumping were initiated by early December 2005. Submerged oil cleanup activities were continued until January 12, 2006, at which time recovery operations were suspended by the Unified Command. Long-term monitoring of non-recovered submerged oil was initiated in January 2006 and continued for a period of approximately one year. Based on the results of long-term monitoring and on-going feasibility constraints, no additional submerged oil recovery was performed after January 2006. As of July 2006, residual submerged oil had been found as far as 13 nautical miles from the accident site.

The owner/operator of the vessel is a "Responsible Party" for this incident as defined by the Oil Pollution Act (OPA), 33 U.S.C. Section 2701 *et seq.* To date, the Responsible Party has cooperated with NOAA in the performance and/or funding of response, cleanup, and preassessment data collection activities. By letter dated May 10, 2007, the Responsible Party has committed to participate in a cooperative natural resource damage assessment. NOAA is the sole natural resource trustee for the DBL 152 Incident, as designated pursuant to 33 U.S.C. Section 2706(b), Executive Order 12777, and the National Contingency Plan, 40 CFR 300.600 and 300.605. NOAA's trust resources include, but are not limited to, commercial and recreational fish species, anadromous and catadromous fish species, marshes and other coastal habitats, marine mammals, and endangered and threatened marine species.

Immediately following the spill, NOAA and the Responsible Party initiated a number of cooperative preassessment data collection activities, pursuant to OPA, to gather information to aid in an initial determination as to whether natural resources or services have been injured or are likely to be injured by the discharge. Specific preassessment activities included the collection and analysis of neat and weathered oil samples, benthic fauna and demersal fishes, and samples of sediments and water taken in the oiled areas. NOAA's Preassessment Data Report details these preassessment data collection efforts, and provides summaries of laboratory results and supporting information. This Preassessment Data Report is available

for review at: <http://www.darrp.noaa.gov/southeast/dbl152/index.html>.

NOAA's Determination of Jurisdiction

NOAA made the following determinations required by 15 CFR 990.41(a):

(1) NOAA has jurisdiction to pursue restoration pursuant to OPA, 33 U.S.C. 2702 and 2706(c); 40 CFR part 300, the OPA Natural Resource Damage Assessments Final Rule, 15 CFR part 990, and 61 FR 440 (January 6, 1996).

(2) The discharge of slurry oil into the Gulf of Mexico on November 11, 2005, was an incident, as defined in 15 CFR 990.30.

(3) The discharge was not permitted under State, Federal, or local law; the discharge was not from a public vessel; and the discharge was not from an onshore facility subject to the Trans-Alaska Pipeline Authority Act, 43 U.S.C. 1651 *et seq.*

(4) Natural resources under the trusteeship of NOAA may have been injured as a result of the incident. The slurry oil discharged contains components that may be harmful to aquatic organisms, birds, wildlife, and vegetation. Specifically, benthic and demersal invertebrate and vertebrate fauna were likely exposed to the oil from this discharge, and injury to those resources, as well as lost ecological services, may have resulted from the Incident.

Based on the above findings, NOAA made the determination that it has jurisdiction to pursue restoration pursuant to OPA, 33 U.S.C. Sections 2702 and 2706(b)-(c).

Determination To Conduct Restoration Activities

For the reasons discussed below, NOAA has made the determinations required by 15 CFR 990.42(a) and is providing notice pursuant to 15 CFR 990.44 that it intends to conduct restoration planning in order to develop restoration alternatives that will restore, replace, rehabilitate, or acquire the equivalent of natural resources injured and/or natural resource services lost as a result of the Incident.

(1) Injuries have likely resulted from the Incident, though the extent of such injuries has not been fully determined at this time. NOAA bases this determination upon data presented in the Preassessment Data Report, which were collected and analyzed pursuant to 15 CFR 990.43. These data demonstrate the likelihood that natural resources and services have been injured from this incident including, but not limited to, benthic and demersal vertebrates and

invertebrates, which live on or near the ocean floor where the oil settled. The nature and extent of injuries will be determined during the damage assessment.

(2) Response actions during cleanup have not fully addressed the injuries resulting from the Incident. Although response actions were initiated promptly, the nature and location of the discharge prevented recovery of all of the oil and precluded prevention of injuries to some natural resources. It is anticipated that injured natural resources will eventually return to baseline levels, but there is the potential for interim losses to have occurred and to continue to occur until a return to baseline is achieved.

(3) Feasible compensatory restoration actions exist to address injuries from this incident. Restoration actions that could be considered may include, but are not limited to: creation or enhancement of offshore artificial reef structures; creation, restoration, enhancement or protection of marsh habitat; and marine debris removal. In addition, methods such as Habitat Equivalency Analysis exist to scale the amount of compensatory restoration required to offset ecological service losses resulting from this incident.

Administrative Record

NOAA has opened an Administrative Record (Record) in compliance with 15 CFR 990.45. The Record will include documents relied on by NOAA during the pre-assessment performed in conjunction with the Incident. To date the Record contains:

- (1) A copy of this notice;
- (2) A letter from NOAA to the Responsible Party inviting their participation in a cooperative natural resource damage assessment;
- (3) A letter from the Responsible Party to NOAA accepting the invitation to participate in a cooperative natural resource damage assessment and enclosing the "Guiding Principles for NOAA/K-Sea DBL 152 Cooperative Natural Resource Damage Assessment" that were developed and coordinated by NOAA and K-Sea to guide the cooperative NRDA for the Incident; and
- (4) The Preassessment Data Report prepared in conjunction with the preassessment activities arising from the Incident.

The Record is on file at: NOAA Assessment & Restoration Division, ATTN: Troy Baker, Louisiana State University, Sea Grant Building, Room 124B, Baton Rouge, LA 70803, 225-578-7921 (ph), 225-578-7926 (fax), TroyBaker@noaa.gov.

Dated: March 31, 2009.

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

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