

## PUBLIC NOTICE

COMMONWEALTH OF PUERTO RICO, DEPARTMENT OF NATURAL AND ENVIRONMENTAL RESOURCES and the NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, U.S. DEPARTMENT OF COMMERCE

### NOTICE OF INTENT TO CONDUCT RESTORATION PLANNING

Pursuant to 15 C.F.R. § 990.44

#### T/V PORT STEWART INCIDENT – OCTOBER 27, 2009

On or about October 27, 2009, the T/V PORT STEWART, a 176 meter tank vessel carrying seven million gallons of oil, went aground in coral reef habitat on the southeast coast of Puerto Rico near the entrance to Yabucoa Channel in waters approximately 10 meters (30 ft) in depth. Evidence indicates the vessel was pivoted while it was aground at the bow. The T/V PORT STEWART was freed with assistance of local tug boats after forward ballast water was released and cargo was transferred to the aft of the vessel. During extraction of the vessel, another reef area approximately 200 meters to the south of the initial grounding site was impacted. While there was no release of oil, the grounding and subsequent actions undertaken to remove the vessel to prevent a significant oil spill resulted in significant reef injury, including fractured and crushed hard corals, dislodged hard and soft corals, areas of scraped and pulverized bottom, tug-boat cable damage, and patches of anti-fouling paint, and caused or contributed to a loss of biota in approximately 512 square meters of coral reef. The impacted reef areas are located in waters along the outer portion of the relatively narrow insular sea shelf east of Yabucoa. These areas support a diverse epifaunal assemblage visually dominated by soft corals, sponges, and hard corals. The losses included Staghorn coral (*Acropora cervicornis*), which is listed as a threatened species under the Endangered Species Act. The vessel grounding and subsequent removal actions to prevent a significant oil spill are collectively referred to in this Notice as the "Incident."

Officials of the Commonwealth of Puerto Rico, Department of Natural and Environmental Resources (Puerto Rico DNER) and the National Oceanic and Atmospheric Administration of the U.S. Department of Commerce ("NOAA") are designated, pursuant to section 1006(b) of the Oil Pollution Act of 1990 ("OPA"), 33 U.S.C. 2706(b), as trustees ("Trustees") for natural resources harmed by this Incident. Puerto Rico DNER has further authority to address the harm caused by this Incident pursuant to Law 147 of the Commonwealth of Puerto Rico and is serving as the Lead Administrative Trustee (LAT) for coordinating the natural resource damage assessment for the Incident.

The Trustees have determined to proceed with restoration planning for this Incident, in accordance with the provisions of 15 CFR §§ 990.42 and .44. This restoration planning process will consider the type and scale of restoration actions that are needed and appropriate to compensate the public for additional coral resource injuries and losses. This Notice serves to inform the public of the Trustees' intention to develop a formal plan to address those restoration needs. The public will be afforded a future

opportunity to review and comment on a Draft Restoration Plan before that plan is finalized by the Trustees.

The Responsible Party ("RP") is Port Stewart (GmbH & Co KG) of Germany. The RP was invited to participate in the conduct of this emergency restoration, as provided in 15 CFR § 990.14(c). The RP, represented by and acting through its technical consultants (Polaris Applied Sciences) agreed to and has cooperated with the Trustees in pre-assessment activities, in performing and/or funding emergency primary restoration actions at the injury sites in 2009-2010 and, in funding post-restoration monitoring in 2010, 2011 and 2013.

### **Trustees' Determinations**

(a) Determination of Jurisdiction. – The Trustees' Determination of Jurisdiction pursuant to 15 C.F.R. § 990.41 is contained in the 'Notice of Emergency Restoration Action' for the Incident dated and issued February 27, 2010. As indicated in that notice:

1. The Trustees have jurisdiction to pursue restoration pursuant to the Oil Pollution Act, 33 U.S.C. §§ 2702, 2706(c). The grounding and subsequent removal of the vessel to prevent the substantial threat of discharge of oil into or upon navigable waters was an incident as defined in 15 C.F.R. § 990.30. Puerto Rico DNER has additional authority to pursue restoration under Commonwealth Law 147.
2. Port Stewart (GmbH & Co KG) of Germany is a person as defined in 33 U.S.C. § 2701(27).
3. The Incident was not permitted under any federal, state, or local law.
4. The T/V PORT STEWART is not a public vessel, as defined at 33 U.S.C. § 2701(29) and 15 C.F.R. § 990.30.
5. The Incident did not occur from or otherwise involve an onshore facility subject to the Trans-Alaska Pipeline Authority.

(b) Determination to Conduct Restoration Planning - The Trustees have also determined, pursuant to 15 C.F.R. § 990.42(a), that the conditions requisite to proceeding with restoration planning for this Incident have been met. This determination is based upon data and other information regarding this Incident, including information obtained as part of Pre-assessment, Emergency Restoration activities at the site in 2009-2010 and subsequent site visits, which indicates that:

1. Natural Resource Injuries: Natural resource injuries and resource service losses, as defined at 15 C.F.R. § 990.30, resulted from both the grounding and subsequent removal effort, including, but not limited to:

- (a) Mortality of, and associated impacts to, hard and soft corals;
- (b) Mortality of, and associated impacts to, threatened species under the Endangered Species Act (e.g. *Acropora cervicornis*);
- (c) Displacement of, and associated impacts to, hard and soft corals;
- (d) Injuries from the continued presence of anti-fouling paint within impact areas;
- (e) Ecological service losses associated with the above mentioned injuries;

- (f) Loss of natural bathymetry, rugosity, and reef substrate;
- (g) Destruction of coral resources and reef structure resulting in unconsolidated rubble and berms present at the site.

2. Response Actions: Response actions that were undertaken focused on removal of the vessel and were intended to resolve the threat of a significant discharge of oil and on-going damage to the reef. Response actions included actions such as positioning of tug boats to prevent vessel movement, development of a protective booming strategy, efforts to pull the vessel free from the reef with tug boats, and lightering operations. Response actions did not involve any action to restore or rehabilitate any injured coral resources or reef habitat at the site and further did not compensate the public for any resource injuries or service losses attributable to the Incident and subsequent response actions.

3. Potential Restoration Actions: Emergency restoration actions, as defined by 15 CFR § 990.26, were undertaken at the site in 2009-2010 to minimize and prevent additional injuries to and losses of natural resources at the site and to aid in the recovery of affected coral resources. This included stabilizing viable corals dislodged during the incident which were not expected to survive without reattachment. These efforts resulted in reattachment of approximately 1,004 soft corals, hard corals, and coral fragments, including 80 *Acropora cervicornis* fragments, removal of approximately 5 gallons of anti-fouling paint and contaminated substrate, and stabilization of some large rubble. The emergency restoration actions were designed to and were able to address all primary restoration needed at the site including the use of 15 cubic yards of limestone to stabilize portions of the site and restore topographic complexity to the site. The emergency restoration actions, however, do not address interim resource losses that occurred.

Restoration planning will focus on identifying the additional restoration actions that are appropriate for use to compensate the public for the interim resource injuries and service losses caused by the Incident, including but not limited to losses of Gorgonian and Scleractinian corals, sponges like *Xestospongia muta* and included *Acropora cervicornis*, a threatened species under the Endangered Species Act. Appropriate restoration actions for this Incident may include, but are not limited to alternatives such as rubble stabilization, direct reef enhancement, *Acropora cervicornis* propagation, coral transplanting, monitored natural recovery, emergency or other restoration actions needed at orphan grounding sites; and measures to prevent or avoid future impacts to coral resources, such as aids to navigation, marine debris removal, mooring buoys, removal of abandoned vessels to prevent further harm to coral resources or reef habitat and/or *Acropora cervicornis* predator eradication. Feasible restoration opportunities of this nature are known to exist in Puerto Rico's coastal environment. "The public is invited to provide early input to the Trustees on available restoration opportunities and alternatives that the Trustees should consider in developing an appropriate Restoration Plan for the coral injuries and losses attributable to this Incident. Restoration ideas may be sent in writing via email, fax, or regular mail to: Dr. Craig Lilyestrom, Director, Marine Resources Division, Puerto Rico Department of Natural and Environmental Resources, P.O. Box 366147, San Juan, PR 00936; Fax: (787) 999-2271; Email: Craig.Lilyestrom@drna.gobierno.pr

## **Administrative Record**

In compliance with 15 CFR 990.45, the Trustees opened an Administrative Record (AR) to hold records and information pertaining to the NRDA for this Incident. The AR will be available for public review at the offices of PRDNER's Marine Resources Division, Dr. Cruz Matos Building, Sector el Cinco, Hwy. 8838, Km. 6.3, Rio Piedras, PR 00926. AR documents will also be accessible by clicking on "Case Documents" on the following NOAA webpage: [http://www.darrp.noaa.gov/southeast/port\\_stewart/index.html](http://www.darrp.noaa.gov/southeast/port_stewart/index.html),

Dated: June 13, 2013