



16450-17c
March 3, 2026

MEMORANDUM

From: (b) (6)
NRD Claims Manager, National Pollution Funds Center

To: (b) (6)
Acting Regional Director, Pacific Region 1, U.S. Fish and Wildlife Service

Subj: Claim: S99028-OI02– OR/WA Mystery Oil Spill '99

1. On May 19, 2025, the National Pollution Funds Center (NPFC) received a claim from the U.S. Fish and Wildlife Service (FWS), on behalf of the Department of the Interior (DOI), for Natural Resource Damages from the OR/WA Mystery Oil Spill '99 Incident (S99028-OI02). The claim totaled \$38,450,535 to restore damaged natural resources. On July 31, 2025, the FWS increased the sum-certain request to \$38,617,592.
2. Through the enclosed determination, the NPFC offers to pay \$38,614,465. The NPFC made this determination in accordance with the Oil Pollution Act (OPA, 33 U.S.C. §2701 et seq.), the OPA claims regulations (33 C.F.R. Part 136) and the Natural Resource Damage Assessment Regulations (15 C.F.R. Part 990).
3. If you accept this offer, please complete the enclosed Acceptance/Release Form and return via e-mail to (b) (6), or mail to:

Director (Cn) National Pollution Funds Center
U.S. Coast Guard Stop 7605
2703 Martin Luther King Jr Ave. SE
Washington, DC 20593-7605
4. If we do not receive the signed Acceptance/Release Form within 60 days of the date of this memo, the offer is void. If the settlement is accepted, the NPFC will strive to make payment within 30 days of receipt of the Release Form. I will work with your designated point of contact to execute the payment via IPAC to the DOI's Damage Assessment and Restoration Revolving Fund account.
5. The DOI may make a written request for reconsideration of this determination. The reconsideration request must be received by the NPFC within 60 days after the date of this

determination or 30 days from receipt of the determination, whichever is earlier. The request for reconsideration must be in writing and must include the factual or legal grounds for the relief requested, providing any additional support for the claim. Reconsideration will be based upon the information provided, and a claim may be reconsidered only once. Disposition of the reconsideration will constitute final agency action.

6. Please contact me at (b) (6) with any questions or concerns.

#

Enclosures: (1) NPFC Determination
(2) Acceptance/Release Form
(3) Cost Reporting Guidance

Cc: (b) (6) DOI SOL
(b) (6) FWS
(b) (6), FWS



National Pollution Funds Center Determination

Claim Number and Name:	S99028-OI02, OR/WA Mystery Oil Spill '99
Claimant:	Department of the Interior
Claim Type:	NRD Restoration Implementation
Amount Requested:	\$38,617,592
Offer Amount:	\$38,614,465
Determination Date:	March 3, 2026
NPFC Claim Manager:	(b) (6)

I. Discussion of Factual, Legal, and Administrative Basis for Claim

Summary of the Incident and Claim

On March 4, 1999, the U.S. Coast Guard began receiving reports of tar balls and oiled birds washing ashore on the beaches of northern Oregon¹ (FPN S99028) and southern Washington (FPN S99029).^{2,3} Responders to the incident conducted beach cleanup operations and wildlife surveys from March 4, 1999 through March 7, 1999,⁴ with additional intermittent beach surveys and carcass collections continuing as late as March 27, 1999.⁵ Spill responders initially suspected that the oil originated from the M/V *New Carissa* incident,⁶ however, subsequent laboratory analysis of oil taken from the tar balls and bird feathers did not match the M/V *New Carissa* reference samples.⁷ A total of 272 bird carcasses representing 17 species were collected - primarily Rhinoceros Auklets, Northern Fulmars, Common Murres, Cassin's Auklets, and Black-legged Kittiwakes.⁸ Two Marbled Murrelets also were collected - a species listed as threatened under the Endangered Species Act (16 U.S.C. 1531 *et seq.*). The source of the spill was never identified.⁹

Following the spill, the Department of the Interior (DOI), represented by the U.S. Fish and Wildlife Service (FWS), along with the State of Washington,¹⁰ acting as natural resource trustees (the

¹ POLREP 3, MSO Portland, Oregon, 070213Z MAR 99. FPN (S99028)

² The response to the Washington beaches was conducted under a separate FPN (S99029).

³ POLREP 1, MSO Portland, Oregon, 050200Z MAR 99. FPN (S99028)

⁴ As reflected in POLREP reports for FPN S99028 (OR) and FPN S99029 (WA).

⁵ As reflected in Morgue data report for M/V *New Carissa* spill response. FPN (S99018)

⁶ The M/V *New Carissa* was a freighter that released between 70,000 and 140,000 gallons of oil after grounding along the central Oregon coast near Coos Bay on February 4, 1999.

⁷ ADL Laboratories. 2001. Analysis of Feather Samples After the M/V *New Carissa* Oil Spill, Final Report. Prepared by Arthur D. Little, Inc. for Polaris Applied Sciences, Inc. The report concludes that the petroleum present on the feather samples is not related to the New Carissa source oil samples, that the petroleum in the feathers was easily distinguishable from the characteristics of natural bird oils, and that the petroleum present on the feather samples likely represents weathered mid to heavy petroleum products such as a No. 4 or No. 6 fuel oil, crude oil, or lube oil mixtures(s).

⁸ DARP, p. iii and Morgue data report for M/V *New Carissa* spill response.

⁹ NPFC S99028 Case Disposition Memo, January 9, 2003 and S99029 Case Disposition Memo, December 24, 2002. No RP identified.

¹⁰ Represented by the Washington Department of Fish and Wildlife.

Trustees) designated under the Oil Pollution Act (OPA) and appropriate state laws, initiated an assessment of natural resource damages resulting from the discharge. Based on a portion of the bird carcasses recovered, the Trustees developed a Natural Resource Damage Assessment Plan to quantify the total bird injury associated with the incident and plan appropriate restoration of those injured resources.¹¹

On March 30, 2015, the National Pollution Funds Center (NPFC) received a claim from the FWS, on behalf of the DOI, for costs to assess potential natural resource injuries. The claim totaled \$1,406,169¹² to assess injuries to birds resulting from the spill and to conduct restoration planning activities as described in the Trustees' Assessment Plan. The NPFC issued its initial determination on March 24, 2016, offering partial payment.¹³ The DOI requested reconsideration of the initial offer on May 12, 2016.¹⁴ The NPFC issued its final determination on reconsideration on July 14, 2016, offering to pay \$713,866 for past assessment costs and a portion of the future costs for injury quantification.¹⁵ The NPFC deferred adjudication of the damages associated with the cost to select and scale restoration activities pending the NPFC's review of the injury quantification.¹⁶

The NPFC received the DOI's Injury Assessment Report for the 1999 OR/WA Mystery Oil Spill Claim S99028-OI01 Injury Assessment) and request for the deferred damages to complete the assessment on October 24, 2019.¹⁷ The NPFC determined that the DOI provided the necessary evidence to support the Trustees' assessment that 3,049-3,385 birds died because of the Oregon-Washington Coast Mystery Oil Spill. The NPFC offered¹⁸ and paid \$445,604.41¹⁹ to complete the assessment.

The Trustees finalized the Damage Assessment and Restoration Plan/Environmental Assessment (DARP)²⁰ on March 18, 2025,²¹ and on May 19, 2025, the NPFC received the sum certain claim from DOI, represented by the FWS, for \$38,450,535 to restore damages to natural resources caused by the OR/WA Mystery Spill (the Claim). The DOI augmented their submission with additional

¹¹ 1999 Oregon/Washington Coast Mystery Oil Spill Natural Resource Damage Assessment Plan and Claim for Past and Future Assessment Costs. Prepared by (b) (6) on behalf of the U.S. Fish and Wildlife Service and the Washington Department of Fish and Wildlife. Submitted to the NPFC March 23, 2015. 34 pp.

¹² The Claim included (\$387,633 in past assessment costs and \$1,018,536 in future assessment costs).

¹³ NPFC Initial Determination, March 24, 2016 offered \$540,439 for past and future assessment costs, deferred adjudication of \$533,183 restoration planning costs, and offered to make available \$27,952 in contingency funds.

¹⁴ The DOI requested reconsideration of denied indirect costs and the NPFC's decision to defer adjudication of the restoration planning costs.

¹⁵ NPFC Determination on Reconsideration, July 14, 2016. The NPFC also approved the availability of \$35,762 in contingency funding.

¹⁶ Ibid.

¹⁷ Although the Trustees originally presented their request for the deferred costs on July 16, 2019, the NPFC issued a denial on September 26, 2019, citing conditions agreed to in the July 14, 2016, determination that were not met.

¹⁸ NPFC Deferred Cost Determination on Reconsideration, May 8, 2020.

¹⁹ The NPFC determined that the trustees' budget of \$569,569.91 to complete the assessment was properly evidenced and subtracted the remaining unspent \$123,965.50 from the original payment to derive a compensable claim amount of \$445,604.41. Additionally, the NPFC approved availability of \$87,809.29 in contingency funds (25% contingency on field activities for project development and 10% on other assessment activities)

²⁰ Oregon/Washington Coast Mystery Oil Spill Trustees. 2025. Final Damage Assessment and Restoration Plan/Environmental Assessment for the Oregon/Washington Coast Mystery Oil Spill. Prepared by U.S. Fish and Wildlife Service and Washington Department of Fish and Wildlife. 56 pp. + 11 separate appendices.

²¹ DOI Approval of the Restoration Plan for the OR/WA Mystery Spill NRDAR, approved by Regional Director Pacific Region 1, FWS and concurred by the DOI Office of the Solicitor.

information at the request of the NPFC²² and on July 31, 2025, the DOI revised the sum-certain request to \$38,617,592.²³ The NPFC's adjudication and determination follow.

Claimant Eligibility

Federal natural resource trustees are designated by the President pursuant to OPA. 33 U.S.C. §2706 (b)(2). Federal trustees designated under this section assess natural resource damages (NRD) for natural resources under their trusteeship (33 U.S.C. §2706(c)(1)) and may present claims against the Oil Spill Liability Trust Fund (OSLTF or the Fund) for uncompensated natural resource damages.

This claim to restore damages to natural resources was submitted on behalf of the DOI by the Regional Director for the Pacific Region of the FWS. The Secretary of the Interior is a designated federal natural resource trustee pursuant to the President's designation of federal trustees under OPA, Executive Order 12777 (56 Fed. Reg. 54757, October 22, 1991), and Subpart G of the National Oil and Hazardous Substances Pollution Contingency Plan (40 C.F.R. §300.600). The Regional Directors for the FWS have delegated authority to act as Trustee on behalf of the Secretary.²⁴

Jurisdictional Information

To be eligible for payment from the OSLTF for damages to natural resources, the claim must arise from an incident as defined by OPA, 33 U.S.C. §2701 et seq. and result in injury to, destruction of, loss of, or loss of use of natural resources. 33 U.S.C. §2702(b)(2)(A). Based on the preponderance of the circumstantial evidence summarized in the previous sections, the NPFC has determined that this incident resulted from a discharge of oil from a vessel into the Pacific Ocean, a navigable waterway, on or about March 4, 1999, and that migratory birds were killed by the discharge. As such, the Claim may be paid from the OSLTF. 33 U.S.C. §2712(a)(4) and §2713.

General NRD Claim Requirements

Pursuant to 33 U.S.C. §2713(e), the President promulgated regulations for the presentation, filing, processing, adjudication, and settlement of claims against the Fund. The Claims Regulations are found at 33 C.F.R. Part 136.

No responsible party (RP) has been identified for this incident; therefore, there is no RP presentment requirement. 33 C.F.R. §136.103.

The NPFC received the DOI's Claim on May 19, 2025. The DOI presented a sum-certain claim in writing to the Director, NPFC. Additionally, Trustee claimants are required to provide certifications as to the integrity of the claim in accordance with 33 C.F.R. §136.105 and §209, including whether the assessment was conducted in accordance with applicable provisions of the NRDA regulations, 15 C.F.R. Part 990, promulgated under 33 U.S.C. §2706(e)(1). The Claim includes the requisite certifications.

²² The NPFC requested additional information on June 3, 2025 and November 21, 2025 and received the respective information from the DOI on July 31, 2025 and December 11, 2025.

²³ Additional Information received July 31, 2025.

²⁴ DOI 207 DM 6, 521 DM 3, 032 FW 5, and 573 FW 3

NRD are determined with respect to plans adopted under 33 U.S.C. §2706(d)(2) that are developed and implemented after adequate public notice, opportunity for a hearing, and consideration of all public comments 33 U.S.C. §2706(c)(5). On July 11, 2024, the Trustees provided public notice that the draft DARP/EA that forms the basis of this claim was published for a 30-day public review and comment period on their website.²⁵ The Trustees reviewed and addressed all public comments and included the comments and responses as an appendix to the DARP.²⁶

NRD Claims to the NPFC must be presented within three years after the date on which the injury and its connection with the discharge in question were reasonably discoverable with the exercise of due care, or within three years from the date of completion of natural resource damage assessment under OPA (33 U.S.C. §2706(e)), whichever is later. 33 U.S.C. §2712(f)(2), 33 C.F.R. §136.101(a)(1)(ii). The Trustees finalized the DARP, which marked the end of the assessment,²⁷ on March 18, 2025. The DOI presented the Claim to the NPFC on May 19, 2025. The Claim was received within the time limit for NRD claims.

Accordingly, the NPFC has determined that the DOI met the above statutory and regulatory requirements for an NRD claim against the Fund.

The Trustees' Burden of Proof and the NPFC's Review Process

Trustees bear the burden of providing all evidence, information and documentation deemed necessary by the Director, NPFC, to support the claim. 33 C.F.R. §136.105(a). Unlike other types of claimants, Trustees may have a rebuttable presumption, so long as they follow the regulations under 15 C.F.R. Part 990:

Any determination or assessment of damages to natural resources for the purposes of this Act made under subsection (d) by a Federal, State, or Indian trustee in accordance with the regulations promulgated under paragraph (1) shall have the force and effect of a rebuttable presumption on behalf of the trustee in any administrative or judicial proceeding under this Act. 33 U.S.C. 2706(e)(2).

For assessment procedures to be in accordance with the Part, the assessment procedures must be capable of providing assessment information of use in determining the type and scale of restoration appropriate for a particular injury (§990.27(a)(1)); a more complex procedure must be reasonably related to the expected increase in the quantity and/or quality of relevant information provided by the more complex procedure (§990.27(a)(2)); and the procedure must be reliable and valid for the particular incident. (§990.27(a)(3)).

The NPFC adjudicates the entirety of a claim, including the assessment procedures used. The NPFC recognizes and accepts that modeling exposure and effects is generally accepted in NRDA and that modeling is an inherent component of restoration scaling.²⁸ However, when using any type of modeling to characterize or quantify injury and to scale restoration, the Trustees bear the burden of

²⁵ DARP, p. 10 and Appendix K.

²⁶ DARP Appendix K, Response to Public Comments

²⁷ 15 C.F.R. § 990.64(b)

²⁸ 15 C.F.R. § 990.27(b)(1)(iii)

proving that their models are supported by the evidence in the record. To that end, as part of the adjudication process, the NPFC analyzes whether the chosen models are appropriate for the incident and whether the inputs and outputs of the models are consistent with observations in the field at the time of the incident and/or supported by the body of available literature. Inappropriate models, inaccurate application of models, or results inconsistent with field observations and generally accepted values in the literature may fail to afford Trustees a rebuttable presumption for the assessed damages.²⁹

The NPFC's Determination Process

During the adjudication of claims against the OSLTF, the NPFC acts as the finder of fact. In this role, the NPFC considers all relevant evidence and weighs its probative value when adjudicating a claim. The NPFC is not bound by the findings or conclusions reached by other entities. If there is conflicting evidence in the record, the NPFC decides what evidence is more credible or deserves greater weight, and finds facts based on the preponderance of the credible evidence.

The NPFC considers all the documentation provided by the Trustees and its own independently conducted fact finding. Through this process the NPFC may find in favor of a Trustee, even if particular procedure(s) used by the Trustee are determined to not be reliable or valid for the incident, if the preponderance of evidence supports the damages claimed. Conversely, the NPFC may find against a Trustee even when the NPFC determines certain procedures are valid for an incident, if the preponderance of evidence rebuts the Trustee's claimed damages.

The NPFC utilizes an informal process when adjudicating claims against the OSLTF.³⁰ As a result, 5 U.S.C. § 555(e) requires the NPFC to provide a brief statement explaining its decision. This determination is issued to satisfy that requirement. Furthermore, as this determination is based on the unique facts giving rise to this claim, it should not be viewed as controlling over future NPFC claims determinations.

Prohibition Against Double Recovery

Under 33 U.S.C. § 2706(d)(3), double recovery for natural resource damages is prohibited. This prohibition includes payment of duplicative costs for damage assessment, restoration, rehabilitation, replacement, or acquisition for the same incident and natural resources.

The Conclusion

As discussed below, the NPFC evaluated the DOI's claim and determined that by a preponderance of the evidence, the DOI is entitled to a rebuttable presumption and most of damages claimed. The exception to this entitlement involves certain damages associated with

²⁹ 15 C.F.R. §990.27(a)(3)

³⁰ 33 C.F.R. Part 136.

overhead for activities for which the DOI indicates no overhead will be charged. The following sections of this determination summarize the NPFC's review and analysis of the submitted documentation and supporting information.

II. Injury Determination and Quantification

Summary of Injury Determination

As discussed above in Section I, the Trustees completed their Injury Assessment in 2019. Through the Injury Assessment, the Trustees determined that quantification of the natural resource injury and the associated compensatory restoration are best characterized in terms of the direct loss, or acute mortality, of migratory birds and the restoration necessary to replace the equivalent of the birds lost. The Trustees assert that bird carcasses recovered during the incident represent a portion of the total birds killed because dead birds were lost at sea, carcasses were scavenged by predators, and searchers were unable to locate all the birds that washed ashore. To quantify the full extent of bird injury, the Trustees used a Beached Bird Model (BBM),³¹ conducted two field studies, and developed an oil spill trajectory model to estimate the total bird mortality. The Trustees then conducted Resource Equivalency Analysis (REA) to convert direct mortality to Discounted Bird Years (DBY)³² for four groups of birds (Alcids, Divers, Surface Feeders, and Marbled Murrelets) based on general life history information and breeding habitat requirements to facilitate evaluating and scaling restoration projects.

The NPFC evaluated the Trustees' injury quantification as described in the Injury Assessment and found that the Trustees provided persuasive evidence to support their assessment that 3,049-3,385 birds died because of the Oregon-Washington Coast Mystery Oil Spill.³³ Although evidence suggested certain inputs to their BBM might be skewed toward increased impacts (e.g., background deposition of 0%, uniform deposition throughout extrapolation area), the Trustees applied other parameters that offset the potential overestimation (e.g., bounding the extrapolation area to exclude areas north of Willapa Bay known to be associated with stranded birds, utilizing conservative inputs for lost at sea modeling, and excluding live oiled birds). The Trustees then applied life history information for representative species of each group (age distribution, lifespan, survival rates, and fecundity) to determine direct loss and lost productivity of one generation (F1) to quantify the injury in terms of DBY. As discussed in the NPFC's May 8, 2020, the NPFC was persuaded that the Trustees' estimation of 3,217 total birds killed (2,435 Alcids, 674 Surface Feeders, 95 Divers, and 13 Marbled Murrelets) is reliable and valid. As such, the NPFC is incorporating by reference the NPFC's finding regarding the number and species composition of birds killed.³⁴

³¹ The BBM is an established model used to estimate spill-induced mortality as a function of carcass recovery, considering natural mortality, birds lost at sea, carcass removal from scavengers, searcher effort and efficiency, unsearched areas, birds removed or buried by tides/waves, and injured birds healthy enough to leave the shoreline prior to expiration.

³² Discounted Bird Years (DBY) represent the quantification of the total, long-term injury to a bird population by calculating the cumulative, time-weighted loss of individual birds, adjusted for the timing of those losses. This metric accounts for both the initial mortality and the lost reproduction/longevity over the years it takes for the population to recover to its baseline.

³³ NPFC. May 8, 2020. Determination for S99028-OI01 Deferred Restoration Planning Cost Claim. 14 pages.

³⁴ Ibid. pp. 4-8.

Consistent among all the REAs is the calculation of DBY associated with the direct loss (killed individuals) and F1 loss (first generation offspring). The NPFC agrees that the Trustees' choice to include F1 losses and exclude F2 (second generation) losses³⁵ is appropriate and valid for the category of birds and time of year of the incident.³⁶ Also consistent among the REAs, the Trustees applied injury discounting over 11 years to more accurately reflect the time period attributable to the NRDA assessment process.³⁷ The NPFC finds the discounting application valid for the incident.

Specific Injury Categories

Alcids – 2,435 killed; 39,403 DBY

Alcids - members of the family Alcidae - include the Murres, Guillemots, Auklets, and Puffins.³⁸ 194 oiled, dead Alcids were collected during response operations, which translated to 2,435 calculated total dead Alcids because of the spill.³⁹ Rhinoceros Auklets represent 54% (105/194) of the Alcids collected and presumed to have died because of the incident. Like most Alcids, Rhinoceros Auklets are long-lived species characterized by delayed maturity and low fecundity, spend most of their life at sea, prey underwater, and nest in colonies on small islands. Given that most of the Alcids were Rhinoceros Auklets, the Trustees used life-history information for Rhinoceros Auklets, when available, to inform the REA and targeted their restoration efforts on this species.

The Alcid REA incorporates life history values⁴⁰ that are consistent with available references at the time of injury quantification,^{41,42} with previous REAs produced by the Trustees for Alcids,^{43,44} and with a recent study not available to the trustees at the time of injury quantification.⁴⁵ The NPFC also

³⁵ DARP, Appendix C, pp. 3-4, "the bird kill did not cause sufficient declines in the seabird populations that population-level analyses would be required [F2 (second generation) losses]. However, the Trustees do not believe there is sufficient evidence demonstrating dependent compensatory factors (e.g., non-breeding adults replacing lost individuals) would permit recovery of lost birds immediately after the spill (a factor for not including foregone reproduction).

³⁶ The incident happened in near proximity to the breeding season and as several cited articles indicate, these species tend to exhibit mate and nesting site fidelity, suggesting that re-pairing or nest sites of killed birds being taken over by previously non-nesting birds is unlikely at least the year of the incident if not longer.

³⁷ The trustees adjusted the discounting period in response to the NPFC's determination, May 8, 2020.

³⁸ Marbled Murrelet, though an Alcid, are excluded from this group and addressed separately given their unique life history.

³⁹ DARP Injury Assessment section Tables 1, 2, and 3.

⁴⁰ Additional Information provided by Trustees, July 31, 2025. Life history values: lifespan 30 yrs, breeding beginning at age 5 and continuing until death; 90% females breed; 1 egg/nest; 84% fledging success; first year survival 63%, second year survival 85%, subsequent year survival 86%; age class distribution of birds killed scaled to natural survival rate.

⁴¹ Wilson, U.W. and D.A. Manuwal. 1986. Breeding Biology of Rhinoceros Auklet in Washington. The Condor. Vol 88: 143-155. Includes a comprehensive compilation of Alcid life history data.

⁴² DeSanto, T.L. and S.K. Nelson. 1995. Comparative reproductive ecology of the Auks (family Alcidae) with emphasis on Marbled Murrelet. SUDA Forest Service Gen. Tech. Rep. PAW-152. Chapter 3: 33-47.

⁴³ Luckenbach Trustee Council. 2006. S.S. Jacob Luckenbach and Associated Mystery Oil Spills Final DARP/EA. Appendix L.

⁴⁴ Skrabis, K.E. 2005. Resource Equivalency Analysis for Murres and Puffins. DARP/EA for the M/V New Carissa Oil Spill. Appendix 7.

⁴⁵ Hipfner, J.M. et al. 2019 Longevity in the Rhinoceros Auklet *Cerorhinca monocerata* and a comparison with other species of Alcidae. Marine Ornithology 47: 223-225.

confirms that the trustees accurately applied the inputs to the model to produce the 39,403 DBY of injury.

Divers – 95 killed; 896 DBY

Divers – characterized as species that dive for prey items – include the Western Grebe, Common Loon, Brandt’s Cormorant, Brown Pelican, White-winged Scoter, and Harlequin Duck. Western Grebes represent 50% (8/16) of the Divers collected and presumed to have died because of the incident.⁴⁶ Therefore, the Trustees based their injury assessment and their restoration efforts on this species.

The Diver REA incorporates life history values⁴⁷ largely consistent with available references at the time of injury quantification,^{48,49} previous REAs produced by the Trustees for Grebes,^{50,51} and recent studies not available to the trustees at the time of injury quantification.⁵² The lifespan variable, which skews high for Western Grebes accounts for the variable lifespans of diver species killed by the incident Western Grebes, it is conservative for Brown Pelicans and Common Loon, two of the other species of Divers killed by the incident and represented in this REA. Given the diversity of Divers killed by the incident, the NPFC finds the use of a 20-year lifespan valid for the injury portion of the REA.⁵³ The NPFC confirmed that the trustees accurately applied the inputs to the model to produce the 896 DBY of injury.

Surface Feeders – 674 killed; 25,669 DBY

Surface Feeders – characterized as species that feed at the water’s surface and do not dive deep in pursuit of prey – include the Northern Fulmar, Black-legged Kittiwake, Leach’s Storm-petrel, and Glaucous-winged Gull. Northern Fulmars represent 60% (36/60) of the Surface Feeders collected and presumed to have died because of the incident,⁵⁴ therefore the Trustees based their injury calculation on this species.

⁴⁶ DARP Injury Assessment section Tables 1, 2, and 3

⁴⁷ Additional Information received from Trustees, July 31, 2025. Life history parameters applied: lifespan 20 yrs; breeding beginning at age 3 and continuing until death; 85% adults breed; 2.5 eggs/nest; 51.8% fledging success, 0.5 fecundity (fledged females/adult female), first year survival 60%, subsequent year survival 76%, age class distribution of birds killed scaled to natural survival rate.

⁴⁸ Ivey, G. 2004. Conservation Assessment and Management Plan for Breeding Western and Clark’s Grebes in California. June 2004. 89 pp. Includes a comprehensive review of breeding history for California lakes.

⁴⁹ Washington Department of Fish and Wildlife. 2013. Western and Clark’s Grebes. Threatened and Endangered Wildlife in Washington: 2012 Annual Report. pp. 189-193.

⁵⁰ Luckenbach Trustee Council. 2006. S.S. Jacob Luckenbach and Associated Mystery Oil Spills Final DARP/EA. Appendix E.

⁵¹ Skrabis, K.E. 2005. Resource Equivalency Analysis for Grebes. DARP/EA for the M/V New Carissa Oil Spill. Appendix 7.

⁵² Hayes, F.E. et al. 2022. Historical and recent breeding of the Western Grebe and Clark’s Grebe in a severely impaired ecosystem at Clear Lake, California. Monographs of the Western North American Naturalist 14:65-100.

⁵³ The NPFC found the Trustees’ use of the same lifespan variable in the restoration portion of the REA did not significantly change the total DBY restored.

⁵⁴ Injury Assessment section Tables 1, 2, and 3; DARP Tables 2 and 3.

The Surface-Feeder REA incorporates life history values⁵⁵ that are largely consistent with available references at the time of injury quantification^{56,57} and with previous REAs produced by the Trustees for Fulmars.^{58,59} Although the lifespan variable is higher than that applied in the New Carissa REA for Fulmars (32 years), it is lower than that applied for the Luckenbach REA for Fulmars (70 years), and is supported by recent observations.^{60,61} The NPFC confirmed that the trustees accurately applied the inputs to the model to produce the 25,669 DBY of injury.

Marbled Murrelets – 13 killed; 188 DBY

Marbled Murrelets are small Alcids. Like other Alcids they are long-lived, demonstrate delayed maturity and produce a single egg per year. However, Marbled Murrelets are not colonial nesters and nest in late-successional coniferous forests usually within 53 miles of shore and remain in waters near the nest site year-round.⁶² Because of this unique characteristic of Marbled Murrelets and distinct threats, the Trustees assessed the injuries to this specific species toward developing species-specific restoration options.

The Marbled Murrelet REA incorporates life history values within the range of values among available references at the time of injury quantification,^{63,64} previous REAs produced by the Trustees

⁵⁵ Additional Information provided by the Trustees July 31, 2025. Life history values: life span 60 yrs; breeding beginning at age 10 and continuing until death; adults that breed 95%; 1 egg/nest; 42% fledging success; first year survivorship 25.4%, second year survivorship 86.4%, subsequent year survival 98%; age class distribution of birds killed scaled to natural survival rate.

⁵⁶ Mallory, M. L., S. A. Hatch, and D. N. Nettleship (2012). Northern Fulmar (*Fulmarus glacialis*), version 2.0. In *The Birds of North America* (A. F. Poole, Editor). Cornell Lab of Ornithology, Ithaca, NY, USA. <https://doi.org/10.2173/bna.361>. Life history values: mean life expectancy > 30 yrs; Breeding yrs 40+; breeding deferred 8-10 yrs; 1 egg/nest.

⁵⁷ Hatch, S.A. 1987. Adult survival and productivity of Northern Fulmars in Alaska. *The Condor* 89:685-696. Life history values: mean life expectancy of 26.5 yrs; adults that breed 95%; 1 egg/nest; breeding success of 41; adult annual survivorship 96.3%.

⁵⁸ Luckenbach Trustee Council. 2006. S.S. Jacob Luckenbach and Associated Mystery Oil Spills Final DARP/EA. Appendix F.

⁵⁹ Skrabis, K.E. 2005. Resource Equivalency Analysis for Northern Fulmars. DARP/EA for the M/V New Carissa Oil Spill. Appendix 7. Life History values: average lifespan 32 yrs; age at first breeding 9 yrs; percent adults breeding 85%; 1 egg/nest; fledging success 41%; first yr survival 86.4%, survival yrs 1-9 86.4%, survival yrs 10+ 96.9%.

⁶⁰ <https://npolar.no/en/species/northern-fulmar/>. Accessed April 14, 2025. Indicates life expectancy 26-60+ yrs; 1 egg/nest; adult annual survivorship 95+%.

⁶¹ https://www.allaboutbirds.org/guide/Northern_Fulmar/overview. Accessed April 14, 2025. Indicates banded birds 50+ yrs old observed breeding.

⁶² <https://www.fws.gov/species/marbled-murrelet-brachyramphus-marmoratus>. Accessed April 15, 2025.

⁶³ DeSanto, T.L. and S.K. Nelson. 1995. Comparative reproductive ecology of the Auks (family Alcidae) with emphasis on Marbled Murrelet. SUDA Forest Service Gen. Tech. Rep. PAW-152. Chapter 3: 33-47.

⁶⁴ Cam, E. et al. 2003. Demographic assessment of a Marbled Murrelet population from capture-recapture data. *Conservation Biology*. 17: 1118-1126

for Marbled Murrelets,^{65,66} and the 2017 Oregon status review.⁶⁷ The NPFC confirmed that the trustees accurately applied the inputs to the model to produce the 188 DBY.

III. Restoration Selection and Scaling

Summary

After quantifying the injury, the Trustees began the restoration selection and scaling phase to evaluate what projects were appropriate to restore the natural resources to baseline conditions and/or to compensate for interim service losses. 15 C.F.R. 990.53 *et seq.* Injured bird populations were allowed to recover naturally; therefore, the Trustees limited their Claim to compensatory restoration.⁶⁸ The Trustees identified six restoration projects to compensate for the interim losses to natural resources resulting from the oil spill. The projects were selected among 13 that were evaluated (along with a no-action alternative). The evaluation included nine criteria related to: similarity in the type and quality of services provided in comparison to the lost services, feasibility, likelihood of success, collateral benefits, and cost.

The NPFC reviewed the Trustees' restoration selection, scaling, and cost estimates to determine the reasonableness and appropriateness of the proposed actions; and whether the preponderance of credible evidence supports the DOI's Claim that the proposed suite of projects restore, rehabilitate, replace or acquire the equivalent of the damaged natural resources.⁶⁹

Alcids –39,403 DBY; 810 nests

Project Selection

The Trustees selected Rhinoceros Auklets as the target Alcid species for restoration, calculating that restoration of 810 nests will produce the necessary reproduction to compensate for the 39,403 lost DBY. Rhinoceros Auklets are highly susceptible to oil spills, drowning in gill net fisheries, and prey limiting events like El Niños and marine heatwaves,⁷⁰ and to competition for nesting burrows by non-native species and habitat degradation in nesting grounds. The Trustees targeted restoration projects that improve nesting opportunity and success.

The Trustees selected removal of introduced rabbits and habitat restoration on Destruction Island, WA

⁶⁵Luckenbach Trustee Council. 2006. S.S. Jacob Luckenbach and Associated Mystery Oil Spills Final DARP/EA. Appendix J.

⁶⁶Skrabis, K.E. 2005. Resource Equivalency Analysis for Marbled Murrelets. DARP/EA for the M/V New Carissa Oil Spill. Appendix 7.

⁶⁷ODFW. 2017. Draft status review of the Marbled Murrelet (*Brachyramphus marmoratus*) in Oregon and evaluation of criteria to reclassify the species from Threatened to Endangered under the Oregon Endangered Species Act. Report prepared for the Oregon Fish and Wildlife Commission and for public and peer review, September 2017. Oregon Department of Fish and Wildlife, Salem, OR. 122pp.

⁶⁸DARP, Section 3 Restoration Alternatives. p. 15. Compensatory restoration are actions taken to compensate for the interim loss.

⁶⁹33 U.S.C. §2706(d)

⁷⁰<https://abcbirds.org/birds>, accessed May 19, 2025

as the preferred restoration alternative.⁷¹ As described in the DARP, the 14-hectare (ha) island supports two species of Alcids (Rhinoceros Auklets and Tufted Puffins) and is typical of islands hosting these species with steep, rocky sides and a flat top containing sufficient soil to permit the excavation of nesting burrows. Rabbits were released on the island decades ago and have since multiplied many-fold, competing with the Alcids for burrow space, changing the habitat, and attracting predators.⁷²

The project involves removing the non-native rabbits, primarily through hunting and trapping,⁷³ stabilizing soils through replanting with native perennial grasses, and creating burrow openings to facilitate reoccupation by Rhinoceros Auklets and Tufted Puffins. Removal of invasive species has resulted in positive response from native seabird communities on multiple Pacific Islands. Island Conservation (the selected partner for the project) has extensive experience removing non-native species from islands, and the Washington Department of Fish and Wildlife and the University of Puget Sound have years of experience in seabird nesting research, monitoring, and management. The island itself is under joint management of the USCG, the FWS, and the NPS and is closed to the public.⁷⁴ Although public objection to killing mammals stopped a similar project on another island,⁷⁵ there were no public comments on the DARP objecting to the project.⁷⁶ Additionally, the Database of Island Invasive Species Eradication documents 137 attempts to eradicate European rabbits from islands, with 109 successful and only 8 failures.⁷⁷ The largest project not utilizing poisons was a 550-ha island (almost 40x greater in size than Destruction Island). Given the experience of the project partners, success of other similar rabbit removal projects, control of access to the island, and the existing nesting colonies of Rhinoceros Auklets and Tufted Puffins, the NPFC is persuaded that the project is appropriate in type and has a reasonable likelihood of success.

Project Scaling

The Trustees use the same life history inputs for restoration side of the REA as they used for the injury side of the REA.⁷⁸ The NPFC finds this appropriate given the primary species restored is the same species used to generate the life history inputs for the injury calculation and that the restoration project will reproduce natural historic conditions. The Trustees calculate that each nest created will compensate 48.6 DBY based on expected project performance of 10% in the 1st year, doubling annually until reaching an expected sustained performance of 55% in the 4th year. The Trustees calculate benefits for 115 years (at the 55% sustainment level) from project start. This results in a total of 810 nests needed to compensate for the 39,403 DBY of injury. The 55% performance is effectively equivalent to 55% burrow occupancy rate. Although the Trustees apply a lower burrow occupancy rate than recorded on Destruction Island prior to it being overrun with rabbits, the

⁷¹ DARP pp. 16-20.

⁷² Ibid., Appendix E, pp.1-2.

⁷³ Ibid., Appendix J.

⁷⁴ The USCG has initiated relinquishment of their ownership authority to the DOI but certain environmental obligations have delayed relinquishment of the island (Email from (b) (6), USCG to (b) (6), February 22, 2021). Given that the island falls within the boundary of the Olympic National Park, the expectation is that the NPS serve as primary steward of the island once the relinquishment is formalized (Email from (b) (6), NPS to (b) (6), NPS, June 6, 2013).

⁷⁵ DARP, Appendix J, p.36.

⁷⁶ Ibid., Appendix K.

⁷⁷ <https://diise.islandconservation.org/>. Accessed April 22, 2025.

⁷⁸ Additional Information received from the Trustees July 31, 2025. Alcid REA Restoration Scaling Summary.

Trustees use a higher fledge success rate than observed during the same historical period.⁷⁹ The Trustees' calculations produce a result well within the observed historical number of fledges for the island. As such, the NPFC finds the scaling valid and reliable.

The Trustees estimate the project will provide the equivalent of 823 Alcid nests – 813 Rhinoceros Auklets and 10 tufted Puffins - through reduced erosion, increased vegetative cover, reduced predation, and burrow creation.⁸⁰ This is higher than the 810 nests calculated to provide full compensation for the injury (1.6% overcompensation). The NPFC evaluated the Trustees' project scaling and whether the potential over-compensation may be reasonably avoided without resulting in increased likelihood of under-compensation.

The project requires complete eradication of non-native rabbits from the island, and this portion of the project cannot be “scaled” to increase or decrease the benefits to Alcids. Replanting native grasses to stabilize soil and increase cover is a necessary activity to reduce continued loss of burrows and to create an environment conducive to increased burrow density. As such, the NPFC finds this portion is similarly not amenable to scaling. The portion of the project well within the Trustees' control of scale involves the artificial creation of 250 Rhinoceros Auklet burrows and 10 Tufted Puffin burrows.⁸¹ The Trustees expect another 200 Rhinoceros Auklet burrows will be created through natural burrow creation. The balance of restoration involves the reduction in burrow loss due to improved soil stability (284 nests)⁸² and reduced eagle predation (79 nest equivalents) as eagles leave the island in response to the reduced abundance of rabbits on the island.⁸³ The NPFC finds the estimated reduction in burrow loss supported by the available literature^{84,85} but is not persuaded that reduced predation by eagles will be an immediate benefit and that predation of Alcids may increase in the near term, reducing the total gain in DBY.^{86,87} As such, the NPFC is persuaded that the total restoration benefit is not likely to exceed 810 nest equivalents and therefore the creation of 260 artificial burrows is supported.

⁷⁹ Wilson, U.W. and D.A. Manuwal. 1986. Breeding biology of the Rhinoceros Auklet in Washington. *The Condor*. 88: 143-155. The authors investigated breeding biology of Rhinoceros Auklets at Destruction Island from 1974-1983, calculating burrow occupancy at 70-79% and fledging success at 56-63%. By comparison, the Trustees expect scale the restoration based on an expected occupancy of 55% and fledging success of 84%.

⁸⁰ DARP, Appendix E, pp.1-5.

⁸¹ *Ibid.*, Appendix E. p.3.

⁸² The Trustees calculate that improved soil stability will reduce loss-rate by 60% = 284 burrows/yr saved. DARP, Appendix E. p.5.

⁸³ The Trustees assume a pair of eagles will leave the island reducing predation of 79 birds/pair/yr. DARP, Appendix E. p.5.

⁸⁴ Wilson, U.W. and D.A. Manuwal. 1986. Breeding biology of the Rhinoceros Auklet in Washington. *The Condor*. 88: 143-155.

⁸⁵ Brodier, S. et al. 2011. Responses of seabirds to the rabbit eradication on Ile Verte, sub-Antarctic Kerguelen Archipelago. *Animal Conservation* 2011: 1-7.

⁸⁶ DeGrange and Nelson found eagles on Petrel Island adapted their behavior to maximize predation of nesting seabirds (including Rhinoceros Auklet and Tufted Puffins), including flying in darkening skies and digging out burrows. DeGrange, A.R. and J.W. Nelson 1982. Bald Eagle predation on nocturnal seabirds. *Journal of Field Ornithology*. Vol 53:4007-409.

⁸⁷ Henson et al. observed that Bald Eagle predation of Glaucous-winged Gulls at Protection Island was associated with the declining population of gulls and that modeled results of the predator-prey dynamic would at best result in co-existence and at worst colony collapse. Henson, S.M, et al. 2019. Predator-prey dynamics of Bald Eagles and Glaucous-winged Gulls at Protection Island, Washington, USA. *Ecology and Evolution* 2019-9:3850-3867.

Project Cost (\$2,136,518)

The trustees' budget of \$2,136,518 for the Destruction Island project includes \$642,952 for rabbit removal, \$161,134 for revegetation, \$786,567 for nest restoration, \$140,738 for project management, \$297,128 for environmental compliance, and \$108,000 for tribal participation. The rabbit removal activity spans 3.5 years and includes detailed costs for field work, personnel, travel, equipment and supplies, and professional services. The revegetation and nest-restoration budgets largely support personnel costs and contractor support for these labor-intensive activities over about 5 years once a certain degree of rabbit removal is complete. Tribal and Washington state government personnel and ecosystem conservation non-profit organizations are expected to collaborate on these field-based activities. The budget for project management, compliance activities, and tribal participation support trustee personnel costs for these necessary administrative activities to execute the restoration. The NPFC finds the costs in line with other invasive mammal removal projects and habitat restoration for seabirds.⁸⁸

Project Completion

Project completion is predicated on eradication of rabbits, sufficient soil stability in previously eroding areas to sustain stable burrows at a density of 10 burrows per 2.5-meter radius plot, return of Tufted Puffins to restored slopes, and improvement of vegetative cover. Monitoring of soil stability, vegetation establishment, and burrow use will guide restoration timing (e.g., when soils are stable enough to create artificial burrows) and guide correction of identified restoration deficiencies. The Trustees are proposing to monitor planting success, Puffin response to playbacks and decoys, and nest occupancy and viability (burrow stability).⁸⁹ The NPFC finds the proposed monitoring components necessary to guide timing of restoration actions (e.g., soils sufficiently stable to auger Rhinoceros Auklet burrows) and determine restoration endpoints (e.g., re-occupancy by Tufted Puffins). The NPFC considers the rabbit eradication portion of the project complete when two years of successive monitoring indicate rabbits are no longer present.⁹⁰ The NPFC considers the vegetation and burrow occupancy portions of the project complete when 5 years of post-planting vegetation monitoring is completed or (if achieved earlier) the combination of manually revegetated areas reaching a slope stability within the range of variation in comparison with suitable island reference sites, burrow densities reaching 0.5 burrows/m², and burrow occupancy within the range of appropriate reference sites.⁹¹

Divers – 896 DBY; 154 nests

The Trustees selected Western Grebes as the target species of Divers for restoration, calculating that restoration of 154 Western Grebe nests will produce the necessary reproduction to compensate for the 896 lost DBY. Like other seabirds, adult grebes are susceptible to offshore oil spills, oiling associated with petroleum evaporative ponds, pesticides, and entanglement in fishing gear. The

⁸⁸ Donlan, C.J. et al. 2015. Maximizing return on investment for island restoration and species conservation. *Conservation Letters*, 8: 171-179.

⁸⁹ DARP, Appendix E. p.6.

⁹⁰ This is consistent with the Trustees' monitoring plan.

⁹¹ This is consistent with the Trustees' monitoring plan except for the qualifier "if achieved earlier" as the Trustees' do not propose ending monitoring if success metrics are achieved

Trustees focused on improving nesting opportunity/success to restore losses to Divers.⁹²

Western Grebes nest on interior lakes and reservoirs throughout the western and central states and overwinter in the Pacific nearshore marine environment. Fluctuating water levels during nesting (leading to predation or drowning of eggs) and human disturbance are primary threats to grebe nesting success.⁹³ These threats have contributed to a dramatic decline in numbers of Western Grebes nationally (50% over the past 25 years) and their listing as a species of special concern by the FWS and several states.⁹⁴ Unclear about where across the vast breeding grounds the WA/OR coast wintering grebes breed, the Trustees evaluated projects throughout the greater Western Grebe breeding territory.

The Trustees selected two projects to compensate for the injury to diving birds: a Western Grebe nest habitat creation project at Minidoka National Wildlife Refuge, Idaho and conservation easements in the Prairie Pothole Region of North Dakota.

Nesting Island Creation Project, Minidoka NWR, ID – 372 DBY; 120 nests

Project Selection

The project involves the reconstitution of Bulrush Island - a ~3 acre island in Lake Walcott, ID - which eroded away in the 1970s, completely losing its grebe colony with as many as 250 nests. Grebes have recently returned to the nearby Tule Island (after a colony collapse in 2017) suggesting Lake Walcott conditions are favorable for grebe nesting if the island is reestablished (i.e., stable water levels, exclusion of watercraft around nesting islands). The Trustees plan to physically restore Bulrush Island by installing berms (~1,500 linear ft) to control erosion, placing and contouring sediments (~ 13,000 yd³) over 2.7 acres, revegetating the island, and creating artificial nesting platforms. The Trustees will also employ social attraction methods (i.e., decoys and calls) for as long as 15 years to encourage grebe colonization. Given the reestablishment of the Tule Island colony, the technical feasibility of island reconstruction, and its high value as a habitat creation project,^{95,96} the NPFC is persuaded that the project is appropriate in type and has a reasonable likelihood of success.

Project Scaling

The Trustees estimate the project will result in 120 nests⁹⁷ once the island is reconstituted and vegetation is reestablished (estimated to take 3 years post-planting), reaching maximum recolonization in 15 years, with expected productivity at that level for 100+ years. These 120 nests are calculated to provide 3.07 DBY per nest, based on the same life history parameters used in the injury scaling except for number of fledges/nest which the trustees determined to be 0.064 fledges/nest for the proposed project.⁹⁸ The Trustees utilize the fledgling success rate of 0.06 fledges/nest calculated for nearby Tule Island in 2019 and further supported the validity of the input

⁹² DARP, pp. 21-22.

⁹³ La Porte, N. 2014. Assessing the breeding success of the Western Grebe after 40 years of environmental changes at Delta Marsh, Manitoba. *Waterbirds: The International Journal of Waterbird Biology*. 37: 30-42.

⁹⁴ <https://ecos.fws.gov/ecp/species/6743>. Accessed May 19, 2025.

⁹⁵ DARP, p. 15. Trustee selection criteria prioritize projects that create new resources and add to the population over those that simply protect existing resources.

⁹⁶ *Ibid.*, p. 25-26.

⁹⁷ Based on historic variable nesting attempts of 0-250 annually for Bulrush Island. DARP p.24 and Appendix H.

⁹⁸ Additional Information received July 31, 2025. Diver REA restoration scaling summary.

with comparative data from Idaho Fish and Game annual surveys at Cascade Reservoir.⁹⁹ The NPFC is persuaded that the method used by the Trustees to scale restoration is specific to and appropriate for the type and location of restoration project selected.

Project Cost (\$7,470,431)

The \$7,470,431 budget to complete the restoration includes \$4,643,900 to create the island, \$49,995 for materials to create grebe nesting platforms, \$34,440 for two unmanned aerial systems (UAS) for completing population surveys, and \$2,742,095 in personnel costs to manage the project, complete surveys of vegetation establishment, monitor grebe nesting and fledging success, and maintain social attractants as needed to encourage grebe colony reestablishment.¹⁰⁰ The NPFC finds the estimated cost to create the island and the nesting platforms are consistent with a similar nearby project at Malheur National Wildlife Refuge.¹⁰¹ The Trustees detailed the personnel requirements to support fulltime personnel support for 15 years¹⁰² and provided further justification for UAS surveys and the related cost.¹⁰³ The NPFC finds the estimated cost appropriate for the type and scale of the project.

Project Completion

Project completion is predicated on reestablishment of a Western Grebe colony on Bulrush Island, successful nesting as evidenced by the presence of “back-brooding” chicks, and increased performance over the first 15 years of project life. The Trustees propose to conduct weekly drone flights to monitor grebe nests and the establishment of emergent vegetation, and on-water surveys to count the number of adults and chicks in the water over the 15 years of active maintenance. A failure of the grebe colony or vegetation to establish will trigger additional corrective actions (e.g., additional plantings or additional social attraction approaches).

The Trustees indicate routine maintenance of the island is necessary to achieve fledging success, including, but not limited to, replacing ice-sheared vegetation, maintaining and relocating nesting platforms, and installing and maintaining carp exclusion devices.¹⁰⁴ As the project includes 15 years of active maintenance to achieve maximum productivity, and given the erratic use of nesting sites by grebes year to year, the NPFC concludes that project completion incorporates the maintenance period of 15 years and is not limited by measures of productivity in specific years.

Conservation Easements Prairie Pothole Region, ND - 524 DBY, 34 nests

Project Selection

The project involves the protection and restoration – through conservation easements – of wetland

⁹⁹ Additional Information received December 11, 2025. Annual survey results of grebe fledge success from 2018 through 2023 vary from 0 fledges from over 2000 nests to a high of 0.2 fledges from ~1600 nests with a median value of 0.014 fledges/nest over the 6 years surveyed.

¹⁰⁰ Personnel costs are based on the cost to support a GS-7 FTE for 15 years.

¹⁰¹ Additional Information received December 11, 2025, includes detailed project costs for a similar island creation and nesting habitat project at Malheur National Wildlife Refuge.

¹⁰² Ibid. Staff work is described as covering pre- and post-island creation and necessary surveys and 4-season adaptive maintenance to maximize project success.

¹⁰³ Ibid. The trustees describe the legal requirements that limit what UAS technology and vendors meet government requirements. The trustees will analyze rent vs. purchase prior to acquisition and follow all equipment decommissioning requirements at the conclusion of the project if equipment is purchased.

¹⁰⁴ Ibid.

complexes to protect grebe nesting habitat located on private lands in the North Dakota Prairie Pothole Region (PPR). The PPR is a primary breeding ground for Western Grebes in North America along with the localized populations in the intermountain West (as illustrated by the above Minidoka project). However, unlike the localized populations in the intermountain West, grebes in the PPR nest at much lower densities over much broader areas, with a mean density of 0.0148 pairs per acre of wetland and a preference for large hemi-marsh¹⁰⁵ areas.

The largely privately held landscape of the PPR is experiencing high rates of grassland and wetland loss to agriculture and development.¹⁰⁶ The FWS has worked closely with private landowners to protect valuable waterfowl habitat in the PPR for more than 50 years, administering more than 31,000 easements covering 2.6 million acres. The Trustees will use the existing suite of spatial planning tools to identify currently unprotected priority hemi-marsh wetlands with grassland buffers (important for stabilizing wetland water levels through increasing filtration and reducing runoff)¹⁰⁷ and pursue conservation easements with willing landowners. The project leverages existing programs to identify and prioritize areas for protection and utilizes well developed ongoing programs for identifying, executing, and managing easements. The NPFC is persuaded that the project is appropriate in type and has a high likelihood of success given the well-documented history of the conservation easement program¹⁰⁸ and willingness of current landowners in the ND PPR.¹⁰⁹

Project Scaling

The Trustees estimate that protection of 34 nests will compensate for 524 DBYs and that perpetual easement of 2,297 acres of wetland and 1,150 acres of grassland is necessary to protect 34 nests. Like the Minidoka project, the Trustees used the same life history parameters used to scale the injury except for fledges/nest which is based on survey results at Delta Marsh, Manitoba. The Trustees contend that 0.5 fledges/nest is a relatively high estimate in comparison to other surveys in the pothole region but as they are focused on obtaining easements of the most productive habitat, the higher estimate is appropriate. The NPFC is persuaded that the method used by the Trustees to scale restoration is specific to and appropriate for the type and location of restoration project selected.

As discussed above, Western Grebes nest at lower density in the ND PPR than in the intermountain west. At an average density of 0.0148 grebe pairs/acre of wetland, the Trustees have calculated that 2,297 acres of hemi-marsh wetland are needed to protect 34 Western Grebe nests. Additionally, the Trustees have calculated 1,150 acres of adjacent grassland are necessary to maintain stable wetland water levels. The Trustees selected a 2:1 wetland to grassland ratio which will enable protection of necessary buffer tracts in the variable pattern of land use and Public Land Survey System constraints. The applied ratio is consistent with a standard PPR Hydrogeomorphic Approach for Assessing Wetlands Functions which characterizes upland areas within 200 ft of the wetland edge and measures and scores the health of upland within 50ft of wetland edge as basis parameters for evaluating

¹⁰⁵ Hemi-marsh is characterized by a patchwork of equal portions of open water and emergent vegetation or other wetland plants.

¹⁰⁶ Dahl, T.E. 2014. Status and trends of prairie wetlands in the United States 1997 to 2009. U.S. Department of the Interior, Fish and Wildlife Service, Ecological Services, Washington, D.C. 67pp. Between 1997-2009 upland land uses (agriculture and development) account for 39% of lost wetland in the PPR.

¹⁰⁷ Ibid.

¹⁰⁸ DARP, Appendix I indicates that the FWS acquired 241,225 acres of wetland and grassland conservation easements in the U.S. PPR from 2012 through 2016.

¹⁰⁹ Ibid. Private landowners waiting to have their properties evaluated for easements in ND represent more than 100,000 of grassland and wetland acres.

potential impacts and developing mitigation requirements for projects that impact wetlands.¹¹⁰ The NPFC is persuaded that executing conservation easements for the calculated total acreage of wetland and buffering grassland will restore 34 nests or 524 DBY in this environment.

Project Cost (\$3,628,075)

The Trustees presented a detailed budget for \$3,509,443. The budget was subsequently adjusted twice¹¹¹ to account for inflation resulting in a total project budget request of \$3,628,075. Applying the increase evenly across budget lines, the Trustees estimate easement cost at \$2,919,526 (wetland at \$908.71/ac and grassland at \$723.66/ac), personnel costs for site evaluation of \$255,161 and for post-acquisition seasonal walk-in monitoring of \$425,268¹¹², and flight time of \$28,119. Other personnel costs are covered through existing appropriated programs.¹¹³

The FWS follows a standardized formula that relies on assessed land values to determine easement values.¹¹⁴ Additionally, the proposed land acquisition budget is on par with the FWS FY25 Budget Justification for Land Acquisition which includes estimates easement cost at \$900/acre.¹¹⁵ The calculated cost of a GS-7 biologist are all-inclusive.¹¹⁶ The NPFC finds the level of effort for site evaluation¹¹⁷ and walk-in monitoring¹¹⁸ appropriate but subject to the below project completion discussion. Similarly, the aerial survey costs are in line with both unmanned and manned hourly rates and the total hours (64) are conservative for the acreage likely surveyed (considerably more than the 3,447 ultimately acquired) and number of years (5) estimated to complete acquisitions.¹¹⁹

As indicated above, these figures include a CPI adjustment of 1.877% between original budget preparation in March 2023 to September 2023 and 1.476% from September 2023 to April 2024. The NPFC finds the adjustment appropriate as applied.¹²⁰

The NPFC finds the costs supported and appropriate for the proposed land conservation project.

¹¹⁰ Gilbert, M.C. et al. 2006. A regional Guidebook for Applying the Hydrogeomorphic Approach to Assessing Wetland Functions of Prairie Potholes. ERDC/EL TR-06-05. 170 pp.

¹¹¹ AI received July 31, 2025 includes a ~1.88% adjustment to the original budget calculation in March 2023 to derive a September 2023 budget of \$3,575,303, and an additional 1.476% adjustment to derive an April 2024 budget of \$3,628,075.

¹¹² Personnel costs estimated at the effort/cost of a GS-7 for 1.5 years for site evaluation, and a GS-7, ½ time for 5 yrs for post-acquisition seasonal walk-in monitoring.

¹¹³ DARP, Appendix I

¹¹⁴ FWS Manual. 2008. Minimally Restrictive Conservation Easements. 341 FW 6. 9 pp.

¹¹⁵ FWS. FY25 LWCF Land Acquisition Requested Line-Item Project List. Downloaded March 5, 2025 from <https://www.doi.gov/sites/default/files/documents/2024-03/1-fwsfy2025-lwcf-request-pds508.pdf>

¹¹⁶ Personnel budget line incorporates total cost including salary, benefits, taxes, overhead, other indirect and annual increases.

¹¹⁷ Less than 1hr/acquired acre for acquisition assessment with expectation that many more acres will be assessed than acquired.

¹¹⁸ Less than 1hr/acquired wetland acre with expectation of multiple monitoring visits to each parcel over 1-4 years.

¹¹⁹ <https://www.dronepilotgroundschool.com/drone-services-pricing/> (accessed August 18,2025) lists hourly rates from \$100-\$500/hr depending on experience level and equipment quality, and <https://stcharlesflyingervice.com/aircraft-rental-instruction-rates/> (accessed August 18, 2025) lists rates from \$135-\$550/hr for fixed wing manned aircraft.

¹²⁰ The 12-mo CPI for April 2024 was 3.4% according to the Bureau of Labor Statistics. www.bls.gov, accessed August 7, 2025.

Project Completion

The Trustees estimate easement acquisition for the target acres within 5 years of inception which includes identification of priority tracts, initial contacts with landowners, and the acquisition process. The Trustees propose an additional 5 years of post-acquisition seasonal monitoring of bird use to document signs of breeding. The Trustees have not supported the necessity of post-acquisition monitoring to complete the restoration (acquisition) project, but the Trustees have supported that monitoring of earlier acquired properties will help to inform location and habitat characteristics of desired properties for subsequent acquisition. As such, the NPFC considers the project complete when the Trustees have acquired ~2,297 acres of hemi-marsh wetland and bordering grasslands for the acquired wetlands or expend the \$2,824,063 acquisition budget, whichever comes first. Monitoring cost (1/2-time GS-7) is appropriate from the time the first parcel is acquired until the acquisition of the last parcel. As the acquisitions are estimated to take 5 years, it is reasonable that concurrent monitoring may occur for as long as 5 years, therefore the NPFC finds the monitoring budget compensable.

The NPFC is persuaded that the proposed project to acquire ~2,298 acres of hemi-marsh wetlands and buffering uplands (estimated at ~1,150 acres) will compensate for the 524 DBY of injury to diving birds and that the proposed budget is compensable from the OSLTF.

Surface Feeders – 802 nests; 25,669 DBY

As discussed in Section II above, the Trustees were unable to identify a viable restoration project for Northern Fulmars and therefore chose Kittiwakes and Storm Petrels as the target species for restoration of Surface Feeders, calculating that restoration of 802 nests between the two species will produce the necessary reproduction to compensate for the 25,669 lost DBY for Surface Feeders.

Storm Petrel nest creation, signage, docents, and lighting mitigation at Trinidad Rocks, CA – 250 nests (10,266 DBY)

Project Selection

Leach's Storm Petrels spend most of their lives at sea and are therefore vulnerable to oil spills, consuming plastic pollution (which they confuse for prey), and being snared in fishing nets. Degradation of nesting sites, predation of nests, trampling, and light pollution all affect nesting,¹²¹ and overfishing and limiting events like El Niños and marine heatwaves may reduce the abundance of prey species further stressing populations.¹²² The Trustees selected an assortment of actions to improve the nesting success of Leach's Storm Petrels at Trinidad Rocks, California to compensate for 10,266 DBY of injury to Surface Feeders.

The project involves: installing artificial burrows to reduce predation and trampling of nests; posting educational signs and employing seasonal docents to monitor public encroachment and provide education to reduce trampling and disturbance of nests and young; and modifying lighting near the rocks to reduce disorientation of fledglings.¹²³ The project employs methods with well documented

¹²¹ Pollet, I.L. et al. 2023. Experts' opinions on threats to Leach's Storm-Petrels (*Hydrobates leucorouus*) across their global range. *Avian Conservation and Ecology*. 18(1):11.

¹²² Ibid.

¹²³ DARP, pp.28-30, and DARP Appendix F

success for Leach's Storm Petrel restoration,¹²⁴ will be implemented by partners with experience conducting similar restoration, and occur at an active Storm Petrel nesting area experiencing decline specifically due to predation, loss of nesting habitat, trampling, disturbance, and light attraction. Monitoring of nest sites, public use, and lighting will help inform adjustments to activities in successive years. The project is relatively short in duration – 5 years - with a commitment by project partners to provide in-kind stewardship support of the artificial burrows for an additional 15 years, thus extending the value of the restoration.¹²⁵

The NPFC is persuaded that the project is appropriate in type to compensate for injury to Surface Feeders and has a high likelihood of success given the well documented success of similar efforts and the commitment of well qualified partners.

Project Scaling

The Trustees calculate that installation of 250 artificial burrows on various rocks in Trinidad Bay - at a presumed occupancy rate of 50% and fledging success of 60% - will generate approximately 6,519 DBY. Five years of outreach efforts by seasonal docents and new signage will prevent the loss of 20 nests and 5 adults annually generating 248 DBY. Baffling and targeted light reduction will reduce confusion of adults and juveniles saving an estimated 10 adults and 30 juveniles per year, generating 2,979 DBY.

The Trustees use the same life history information to quantify of restoration benefits as they used to quantify the injury.¹²⁶ Because many of the life history parameters used in the injury quantification were based on life history of Northern Fulmars, to evaluate the validity of the restoration model, the NPFC ran portions of the model utilizing more specific life history values for Leach's Storm Petrels. For example, the NPFC calculated DBY based on a species lifespan of 30 years vs. 60 years,¹²⁷ fledglings of 0.6/nest vs. 0.42/nest,¹²⁸ and adjusted juvenile survival rates and 1st year of breeding to better approximate Leach's Storm Petrel life history parameters found in the literature.^{129,130} The adjustments did not increase the DBY produced by the restoration over that calculated by the Trustees. As such the NPFC is persuaded that the method used by the trustees to scale restoration is reliable and valid.

¹²⁴ <https://www.conservationevidence.com/actions/481>. Provide artificial nesting sites for burrow-nesting seabirds - Conservation Evidence. Accessed May 27, 2025.

¹²⁵ DARP, Appendix F

¹²⁶ As discussed in the injury quantification section, the Trustees used available life history information for the variety of species killed and applied predominantly values for Northern Fulmars which constituted the bulk of the injury to surface feeders.

¹²⁷ British Trust for Ornithology. Leach's Petrel, *Hydrobates leucorhous*. <https://www.bto.org/learn/about-birds/birdfacts/leachs-petrel>. Accessed May 27, 2025.

¹²⁸ Bolton, M. et al. 2004. The use of artificial breeding chambers as a conservation measure for cavity-nesting procellariiform seabirds: a case study of the Madeiran storm petrel. *Biological Conservation* 116: 73-80. In this study, researchers recorded an occupancy of 27.2-40.9%, hatching success of 46.2-78.6%, and fledging success of 81.8-100% for a resulting productivity (chicks fledged/breeding attempts) of 41.7-64.3% for Madeiran storm petrels.

¹²⁹ Morse, D.H. and C.W. Buchheister. 1977. Age and survival of breeding Leach's storm-petrels in Main. *Bird Banding* 48: 341-349.

¹³⁰ Libois, E. et al. 2012. Nest boxes: A successful management tool for the conservation of an endangered seabird. *Biological Conservation* 155: 39-43. In this study, researchers found artificial nest box occupancy stabilized at ~85% for Mediterranean storm petrels in a location lacking natural nest sites. Where natural nest sites were abundant, artificial nest site use was lower (~13%) but that breeding success in artificial nests (72%) was higher than that for natural nests (53%).

Project Cost (\$820,791)

The Trustees provide a detailed budget for the project including \$404,630 in personnel costs (PI, technicians and students), \$10,127 in supplies (batteries, SD cards, and pavers for burrows), \$267,611 in contractor costs, \$37,470 in equipment costs (inflatable boat, trail cameras, and sound recorders), \$15,018 in other expenses (camera subscription, light baffling, and equipment maintenance), and \$78,799 in indirect costs.

The Trustees apply a CPI adjustment of 1.476% to account for the expected increase in project costs due to the time delay from budget calculated in September 2023 to preparation of the claim in April 2024. The NPFC finds the adjustment appropriate as applied.¹³¹

The NPFC finds the costs reflect the level of effort described in the project plan and are consistent with commercial pricing for equipment and supplies.¹³² Additionally, although the NPFC generally advocates equipment rental vice purchase, the length of time and intensity of use of the equipment (inflatable boat and cameras) for the lifespan of the project justifies the purchases.¹³³ Finally, the NPFC appreciates the significant in-kind contribution of the project proponent further reducing the requested budget.

Project Completion

Year one of the project is the most intensive period with placement of artificial burrows and monitoring equipment (trail cameras and automated data recorders) and lighting surveys. Annually for 4 additional years, monitoring results will inform replacement and relocating of artificial burrows, preferred locations for placing signs and docents, and priority lighting to mitigate. At the conclusion of 5 years, the Trustees will stockpile replacement burrow materials for use by the Bureau of Land Management, Arcata Field Office and Cal Poly Humboldt for their stewardship activities over the subsequent 15 years. The Trustees describe “Effectiveness Monitoring” to include evaluating nest success, public stewardship (evidence of public encroachment and nest trampling) and light pollution. Although the NPFC generally does not consider effectiveness monitoring as a compensable restoration cost, the monitoring described in this case will be used to inform location and intensity of annual restoration activities and is therefore a key component of the restoration project. The NPFC is persuaded that this multi-faceted restoration approach over a period of 5 years with additional stocking of burrow supplies at the conclusion of 5 years constitutes project completion. The NPFC recognizes that different components of the restoration may prove more viable than others and that the intensity of any given activity may vary over the 5-year period (or may not be necessary each year), however the 5-year project timeframe constitutes success. Stewardship after 5 years (except for the stockpiling of artificial burrow materials), although important for nest site persistence, is not a budgeted activity (but rather an in-kind contribution by participating partners).

¹³¹ The 12-mo CPI for April 2024 was 3.4% according to the Bureau of Labor Statistics. www.bls.gov, accessed August 7, 2025.

¹³² <https://www.reconyx.com/market/outdoor?srsltid=AfmBOopMG9eOVWGRGteZ5lQXy2xk3oDt9SaRlBwB6pgUsDGNEhJ5NXXk> (accessed August 8, 2025) validates the camera, cellular, and mounting cost estimates provided in the budget, and <https://www.boatspecialists.com/zodiac-inflatable-boats/?srsltid=AfmBOoqNwtxkgN-qaBD-E3qPZdlhkqezC-EURlePtKFbp676d9DDfSnT&sort=priceasc&page=3> (accessed August 18, 2025) validates the cost of an inflatable bay worthy boat with outboard motor.

¹³³ DARF, Appendix G, Section 9.

The NPFC is persuaded that the proposed project at Trinidad Rocks will compensate for 10,266 DBY of injury to surface feeding seabirds and that the proposed budget is compensable from the OSLTF.

Refurbishment of artificial nesting platform on Middleton Island, AK – 552 nests (15,403 DBY)

Project Selection

Black-legged Kittiwakes spend most of their lives at sea and breed on steep sea cliffs on remote islands in the circumpolar region. Like other seabirds, they are susceptible to oil spills, to snaring in fishing nets, and to limitation of prey supply,¹³⁴ but predation of nests and degradation of nesting habitat are common threats for which restoration projects can effectively address. The Trustees selected restoration of artificial nesting structures for Black-legged Kittiwakes on Middleton Island, AK to restore a portion of the injury to Surface Feeders. Middleton Island continues to be a very successful nesting location for Black-legged Kittiwakes. Over the decades as the cliff faces have eroded, Kittiwakes have shifted nest sites from the cliffs to manmade structures. Kittiwakes have experienced excellent nesting success on the artificial structures, but as structures deteriorate, the number of suitable nesting platforms have declined. The project will install artificial nesting structures within the existing colony and refurbish the existing artificial nesting structure on a radar tower. Trustees will install/improve a total of 552 nesting platforms, using more weather resistant materials and maintain the structure for 30 years.¹³⁵ The project leverages a proven design. The Institute for Seabird Research and Conservation (ISRC), the organization that has owned and managed the property since 2011, will implement the project. The NPFC is persuaded that the project is appropriate in type and has a high likelihood of success given the well-documented history of use by the preexisting structure and capability and willingness of the existing property manager/owner to do the work.

Project Scaling

The project refurbishes 450 existing nesting sites and adds 102 nest sites for a total of 552 nest sites and maintains the structure(s) for 30 years. A portion of the total nest sites will be added annually for 5 years with occupancy expected at the historic average of 88% occupancy for installed nest structures, resulting in a total estimate of 485 occupied sites beginning in Year-6 and maintained at that level through the 30-year project period. The Trustees calculate the restoration project will compensate for 15,403 DBY of injury to surface feeders. Although the Trustees applied the same life history inputs utilized in the injury portion of the REA (based largely on Northern Fulmar life history characteristics), the NPFC finds that utilizing life history values for Black-legged Kittiwake^{136,137} in the restoration portion of the REA does not significantly change the outcome in terms of DBY restored.

¹³⁴ BirdLife International. 2019. *Rissa tridactyla* (amended version of 2018 assessment). The IUCN Red List of Threatened Species 2019: e.T22694497A155617539.en.

¹³⁵ DARP pp.20-32 and DARP Appendix G.

¹³⁶ McNight, A. et al. 2019. Survival and recruitment dynamics of Black-legged Kittiwakes *Rissa tridactyla* at an Alaskan colony. *Marine Ornithology* 47: 209-222. Life History values: 20 yrs; avg age start breeding 7 yrs; 82% fledglings survive to age 2; 23% fledglings survive to breeding age; adult annual survival 92-94%.

¹³⁷ Hatch, S.A, et al. 1993. Status and ecology of kittiwakes (*Rissa tridactyla* and *R. brevirostris*) in the North Pacific. The status, ecology, and conservation of marine birds of the North Pacific, Canadian Wildlife Service, Alaska Science Center, pp. 140-153. Life history values: fledges/nest as low as 30%.

The project is not expected to benefit other seabird species injured by the incident as the nesting structure is specific to Black-legged Kittiwake and will not be utilized by the other seabird species occupying the island.

The NPFC is persuaded that refurbishing 450 existing nest sites and adding 102 nest sites and maintaining the structure for 30 years will restore 15,403 DBY for Surface Feeders.

Project Cost (\$1,077,444)

The Trustees provide a detailed budget of \$1,061,772. The total includes \$222,531 for equipment and materials, \$618,415 for project management and construction labor costs, \$93,483 in transportation costs (flights, barges, and vehicle rental) for the 5-year construction period, and stewardship cost of the nesting structure over 30 years at \$30,819 for spring charter flights to bring maintenance workers to the island on a 5-year cycle. ISRC, the project implementing organization, includes 10% overhead for all costs except Stewardship. An error in the Trustees' budget table inadvertently includes 10% overhead on stewardship in the total column.¹³⁸ The Trustees do not provide cost estimates for ISRC's In-kind contribution to the project, but they do describe ISRC supporting activities including annual maintenance activities; annual population monitoring post-construction; and the return flights, materials, and labor for the stewardship activities on a 5-year cycle.

The Trustees apply a CPI adjustment of 1.476% to account for the expected increase in project costs due to the time delay from budget calculated in September 2023 to preparation of the claim in April 2024. The NPFC finds the adjustment appropriate as applied.¹³⁹ Applied evenly across the budget, revised totals are \$225,815 for equipment and materials, \$627,543 for labor, \$94,863 in transportation, \$31,274 stewardship, and \$97,949 in overhead.

The NPFC finds the project budget well supported¹⁴⁰ and reflecting economical commercial values.¹⁴¹ Additionally, although the NPFC generally advocates equipment rental vice purchase, the Trustees have well evidenced the cost and logistics savings of purchasing certain equipment and maintaining the equipment on-island for the lifespan of the project.¹⁴² Finally, the NPFC appreciates the significant in-kind contribution of the project proponent further reducing the requested budget. The NPFC denies \$3,127 as it represents 10% overhead on the stewardship costs that the Trustees indicate are not subject to overhead.¹⁴³ The NPFC finds \$1,074,317 is compensable from the Fund to restore Black-legged Kittiwakes.

¹³⁸ Additional Information received December 11, 2025. Trustees confirm no overhead on Stewardship costs.

¹³⁹ The 12-mo CPI for April 2024 was 3.4% according to the Bureau of Labor Statistics. www.bls.gov, accessed August 7, 2025.

¹⁴⁰ DARP, Appendix G includes a detailed budget narrative including justification for purchase vs. rental of a 65ft personnel lift, air compressor, and sandblasting materials.

¹⁴¹ For example, the Trustees estimate flights for stewardship activities at ~\$6,000 (+5% in out years), whereas a search of charter flights from Anchorage to Middleton Island resulted in a range of \$9,000-18,000 in current year pricing. <https://jetadvisors.com/flight-time-results/turboprop-airliner/beeceh-99-airliner/ted-stevens-anchorage-intl/middleton-island/>. Accessed May 28, 2025.

¹⁴² DARP, Appendix G, Section 9.

¹⁴³ Stewardship costs in original budget = \$30,818.72 increased to \$31,273 with CPI adjustment. 10% = \$3,127.

Trustees reaffirmed in the Additional Information received December 11, 2025 that overhead would not be charged on stewardship costs.

Project Completion

As discussed, the project involves the refurbishment of the nesting structure and installation of new nesting platforms over a 5-year construction period, accommodating active nesting by Kittiwake, and maintenance (stewardship) of the structure over 30 years. The construction project is complete when the base nesting structure is refurbished, and the 552 artificial cliff nesting sites are installed. Given the iterative nature of the nest site installation (20% each year over 5 years) and the potential for adjustments in site design and placement, the NPFC finds that the proposed monitoring of occupancy and nest success is an appropriate component of the construction activity and may be used to guide timing and design of out-year construction. Given the extreme weather conditions on the island, the NPFC further finds that routing maintenance/stewardship of the structure is appropriate over the calculated restoration period of 30 years. The NPFC considers the project to be complete 36 years after initialization of construction activities.

The NPFC is persuaded that the proposed project at Middleton Island will compensate for 15,403 DBY of injury to surface feeding seabirds and that the proposed budget is compensable from the OSLTF.

Marbled Murrelets – 3.4 nests; 188 DBY

Project Selection

As discussed in Section II above, the Trustees are pursuing restoration of Marbled Murrelets independently of other species given their unique breeding requirements, calculating that restoration of 3.4 nests will produce the necessary reproduction to compensate for the 188 lost DBY. Like the other seabird species, oil pollution and gill nets threaten the adult population and predation reduces fledging success, but loss of breeding habitat appears to be the primary cause of species decline.^{144,145} The Trustees determined that protecting suitable breeding habitat (stands 80+ years old and near-suitable habitat 50-80 yr old stands) through direct land purchase or acquisition of conservation easements and subsequent management for Murrelets has the highest likelihood of success and provides substantial collateral benefits.¹⁴⁶ The Trustees determined that acquiring known high quality breeding areas (old growth forest +120 years old) is prohibitively expensive, and actions to reduce predation are labor intensive and not likely to succeed,¹⁴⁷ therefore, they are targeting acquisition of “suitable” and “near suitable” habitat. The Trustees have pursued this habitat conservation restoration strategy before, including for both the M/V *New Carissa* and S.S. *J. Luckenbach* NRDA and documented its success and value in restoration monitoring reports.^{148,149}

¹⁴⁴ Cam, E. et al. 2003. Demographic assessment of a Marbled Murrelet population from capture-recapture data. *Conservation Biology*. 17: 1118-1126.

¹⁴⁵ FWS. 2009. 2009 5-Year Review for the Marbled Murrelet. 108 pp.

¹⁴⁶ DARP, Table 5.

¹⁴⁷ DARP, p.37.

¹⁴⁸ Nelson, S.K., C.E. Rose, A.K. Wilson. 2017. Acoustic surveys for marbled murrelets on the Reed Creek parcel managed by the Confederated Tribes of Siletz Indians. Report to U.S. Fish and Wildlife Service and U.S. Geological Survey. 31 pp

¹⁴⁹ For the S.S. *J. Luckenbach* restoration, an administrative anomaly kept the completed habitat acquisition from being credited as an associated restoration project, but the acquisition proceeded regardless under separate funding.

The Trustees evaluated 20 properties in Oregon and Washington against a standard set of criteria that include factors such as stand age, parcel shape, Murrelet occupancy, proximity to other protected lands, and availability for purchase/easement. The Trustees will continue to evaluate properties as they become available for consideration until such time as properties are selected for purchase.

The NPFC is persuaded that protecting suitable and near-suitable habitat is an appropriate form of restoration for Marbled Murrelet and that the project has a high likelihood of success given the range of properties currently available and/or likely to be available in the project period, the Trustees' success with purchasing conservation easements and outright purchase of property, and their record of management of acquired lands for Marbled Murrelet. Protecting existing suitable habitat and near-suitable habitat not only protects existing nests but increases the likelihood of additional future nests as the ecosystem continues to mature.

Project Scaling

The Trustees determined that 3.4 nests are needed to produce the 188 DBY¹⁵⁰ of injury to Marbled Murrelets. The Trustees used the same life history inputs for restoration side of the REA as they used for the injury side of the REA.¹⁵¹ The NPFC finds this appropriate given the species restored is the same species used to generate the life history inputs for the injury calculation and that nothing about the restoration project indicates nesting success will be obviously greater or lesser than the conditions that generated the life history parameters used in the injury scaling.

The Trustees then determined the number of acres of suitable habitat per nest. They evaluated a wide range of literature covering the full range of the Marbled Murrelet from California through British Columbia. The Trustees ultimately determined that 125 acres of suitable habitat per nest is a reasonable estimate concluding that protection of 425 acres (3.4 nests X 125 acre/nest) of suitable nesting habitat will compensate for the 188 DBY of injury.¹⁵² Although the cited studies include a wide range of acre/nest estimates across the range, the 125 ac/nest selected by the Trustees is further supported by the results of a similar land acquisition restoration project for the M/V *New Carissa* incident for which post-acquisition monitoring over multiple years indicated a stable nest occupancy average of 105 acre/nest for two parcels totaling 1261 acres of high and medium quality nesting habitat.¹⁵³

Finally, the Trustees calculated the total number of acres they will need to acquire to secure the 425 suitable acres. Some additional acreage is necessary to maintain habitat suitability (ensure parcels aren't fragmented or subject to edge effects or excessive disturbance which reduces the likelihood of nesting and fledging success),¹⁵⁴ but additional acreage will mostly be acquired simply because available parcels include a mix of suitable and unsuitable habitat. A survey of available parcels with the desirable habitat indicates that on average 15% of the area is suitable nesting habitat and 85% is non-suitable nesting habitat. As such, the Trustees have calculated they will likely need to acquire 2,408 acres of non-suitable habitat to secure the 425 acres of suitable habitat for a total of 2,833

¹⁵⁰ 188 DBY/55.2/nest = 3.4 nests, restored DBY calculated for 125 years after which discounted gains are negligible.

¹⁵¹ Additional Information received from the Trustees July 31, 2025. MAMU REA Restoration Scaling Summary.

¹⁵² DARP, Appendix D.

¹⁵³ M/V *New Carissa* DARP/EA, 2006. Section 4.3.3.2. The characteristics of high and medium quality habitat in the M/V *New Carissa* DARP are defined differ slightly from the characteristics of suitable habitat in the OR/WA Mystery Spill DARP but are reasonably comparable.

¹⁵⁴ Weikel, J. 2019. Marbled Murrelet Technical Report. Oregon Department of Forestry. 41pp.

acres. The Trustees acknowledge that parcels without confirmed occupancy may be acquired but that future occupancy of the protected parcels (which will inherently include near-suitable habitat along with the suitable habitat) is expected as late seral habitat features develop.¹⁵⁵

The NPFC is persuaded that the Trustees' calculated acre/nest and total acres for acquisition will compensate for the 188 DBY of injury to Marbled Murrelet.

Project Cost (\$22,229,164)

The Trustees estimate the cost to acquire the land (using a purchase price of \$6,531/acre), associated transaction costs (6%), management plan costs (1%), operating and management costs (6%), monitoring (3%), maintenance and taxes (~5%) to derive a total project cost of \$22,229,164. Price per acre is derived from similar sales and market factors though the Trustees will follow Federal acquisition standards in purchasing restoration lands and the appraised values will be used.¹⁵⁶ Transaction costs include land appraisals, realty costs, and commissions. These costs are derived from standard rates for FWS realty acquisitions. The post-acquisition costs - Management Plan(s), Operation, Maintenance and Taxes include development of management plans, active forest management (e.g., thinning to accelerate the growth of younger trees into potential nesting habitat, debris and invasives management), ecological integrity assessments, infrastructure maintenance, and annual property taxes (or Payments In Lieu of Taxes) over a 10-year period.¹⁵⁷ Costs for monitoring Marbled Murrelets is based on the Pacific Seabird Group monitoring protocol over 10 years. The combined post-acquisition estimated cost of \$2,614,394 translates to \$926/acres of acquired land. This is well below the actual post-acquisition per acre cost of ~\$1,182/acre for the Marbled Murrelet habitat acquisition project for the New Carissa claim.¹⁵⁸ The NPFC finds the estimated cost for the project adequately supported and appropriate for the project.

Project Completion

As a land acquisition project, the NPFC considers the restoration activity complete when the approved acreage of land has been acquired and put into protected status,¹⁵⁹ an associated management plan is developed, and the initial 10 years of operating and management activities to protect and promote Marbled Murrelet occupancy are implemented. This is largely consistent with the DARP. The NPFC does not find that the "use of any remaining acquisition funds for additional land acquisition"¹⁶⁰ is compensable from the Fund.

The NPFC is persuaded that the proposed habitat project will compensate for 188 DBY of injury to Marbled Murrelets and that the proposed budget is compensable from the OSLTF.

¹⁵⁵ DARP, p.35.

¹⁵⁶ Claim letter submitted by FWS Pacific Region Acting Regional Director on May 19, 2025.

¹⁵⁷ Additional Information received July 31, 2025 and December 11, 2025 further delineate the types of costs included in the O&M budget and Maintenance & Taxes budget.

¹⁵⁸ M/V New Carissa Claim S99018-OI1, cost documentation received FY06-FY23.

¹⁵⁹ With assumed protected status for >100 yrs.

¹⁶⁰ DARP, p.36.

Case Management

The Trustees include Case Management estimated costs of \$1,223,634.¹⁶¹ The total involves case and claim management for six projects across 6-7 states for 10 years, and then in 5 year increments to Year 30.¹⁶² The estimated case management costs are based on 0.2 Full-Time Equivalent (FTE) decreasing over the life of the projects including estimated annual salary adjustments, indirect expenses for both FWS and DOI, and case team travel in Year 1 (case initiation) and Year 5 (upon completion of the majority of primary activities).¹⁶³ Case Management represents ~3% of restoration costs, well within estimated and actual administrative management costs for past NRDA upfront cost claims against the OSLTF.¹⁶⁴ The NPFC finds the Case Management budget is appropriate and compensable from the OSLTF.

IV. Conclusion

The NPFC is persuaded that the Natural Resource Damage Claim presented by the DOI is valid for the incident, well supported, and with minor exception, compensable from the OSLTF. As this is an “upfront” cost claim based on estimated budgets and subject to variable “completion” metrics, the Trustees should be mindful of type, scale, and end-points of activities for which the claim is paid.

Project/Activity	Location	Requested	Denied	Approved
Rabbit Removal & Habitat Restoration	Destruction Island, WA	\$2,168,053	0	\$2,168,053
Conservation Easements	Prairie Potholes, ND	\$3,628,075	0	\$3,628,075
Creation of Nesting Habitat	Minidoka NWR, ID	\$7,470,431	0	\$7,470,431
Refurbishment of Nesting Platform	Middleton Island, AK	\$1,077,444	\$3,127	\$1,074,317
Nest Creation, Signage, Docents, & Light Mitigation	Trinidad Rocks, CA	\$820,791	0	\$820,791
Nesting Habitat Protection	OR/WA Coast	\$22,229,164	0	\$22,229,164
Case Management	All Projects	\$1,223,634	0	\$1,223,634
TOTAL		\$38,617,592	\$3,127	\$38,614,465

¹⁶¹ AI Response July 31, 2025. Increase from \$1,056,577 due to change in staffing demographics within case management team.

¹⁶² Most restoration work is expected over the first 10 years followed by some routine maintenance of certain projects for an additional 10-20 years. Trustees anticipate a certain level of oversight and reporting over the full life of the projects.

¹⁶³ Rabbit eradication (Destruction Island Alcid Project), construction activities (Minidoka Grebe Island Creation Project, Middleton Island Black-legged Kittiwake nesting structures creation project, Trinidad Rocks Leach’s Storm Petrel burrow creation project), and land acquisition activities (Grebe habitat in North Dakota Pothole Region and Marbled Murrelet habitat in Pacific NW Forests) are all expected to be completed within 5 years of project initiation.

¹⁶⁴ The NPFC has conducted a regression analysis of 11 restoration claims paid by the NPFC which supports an inverse relationship between restoration cost and % administrative costs and determined that the value falls well within the expected range for restoration activities around \$38M

Request for Reconsideration

Through this determination, the NPFC denies claimed damages of \$3,127 overhead on Stewardship costs included in the Middleton Island Black-legged Kittiwake project budget.

The DOI may make a written request for reconsideration of this determination. The reconsideration request must be received by the NPFC within 60 days after the date of this determination or 30 days after receipt, whichever is sooner. The request for reconsideration must be in writing and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. Reconsideration will be based upon the information provided, and a claim may be reconsidered only once. Disposition of the reconsideration will constitute final agency action. All correspondence should include the corresponding claim number S99028-OI02.

Revolving Trust Fund and Return of Unused Funds to the OSLTF

As established by OPA (33 U.S.C. §2706(t)) and the NRDA regulations (15 C.F.R. §990.65), sums recovered by trustees for natural resource damages must be retained in a non-appropriated revolving trust account for use only to implement the activities addressed in this determination in accordance with the Trustees' Plan. For this claim, the NPFC will deposit \$38,614,465 into the DOI's Natural Resource Damage Assessment and Restoration Fund, which the DOI has demonstrated to be a non-appropriated, revolving trust fund.¹⁶⁵ The DOI shall reimburse the Fund for any amounts received from the Fund in excess of that amount required to accomplish the activities for which the claim is paid. 33 CFR 136.211(b).

Cost Documentation, Progress Reporting, and Final Report

As the claimant, the DOI shall ensure that all expenditures of OSLTF funds are documented appropriately and spent according to the Plan for the activities approved in this determination. Any funds not spent on the activities in the plan or inappropriately documented shall be returned to the Fund. 33 U.S.C. §2706(t).

One year from the date of this determination, and annually thereafter, the DOI shall provide the NPFC with a report on the status of implementation and expenditures. These annual progress reports should include:

1. A progress report that includes a description of work accomplished, timeline for future activities, and any unexpected problems incurred during implementation;
2. A summary of expenditures by category (i.e., labor, consultant/contractors, and travel); and
3. A narrative description of the work accomplished by each individual and how that work fits into the overall progress of the work for the year. Enough detail should be included to determine reasonableness of costs for each employee when cost documentation is received with the final report.

The DOI may include certified cost documentation with the annual reports and request confirmation

¹⁶⁵ 43 U.S.C. 1474(b).

that the costs incurred and supporting documentation are consistent with the activities for which the Claim was paid.

The DOI shall submit a final progress report within 120 days from the date an approved activity is complete. Unless already included in accepted annual reporting, this report should include:

1. Certification by the DOI that all expenditures of OSLTF funds were in accordance with the plan as approved by the NPFC;
2. A summary of findings;
3. Copies of final reports and/or studies;
4. Documentation of OSLTF funds remaining in the NRDAR Revolving Trust Fund for this claim, including account balance and interest earned; and
5. Documentation of all expenditures as follows:
 - a. Labor: For each employee -
 - i. A narrative description of the work accomplished by each individual and how that work fit into the plan. Enough detail should be included to determine reasonableness of costs; and
 - ii. The number of hours worked, labor rate, and indirect rate. An explanation of indirect rate expenditures, if any, will be necessary;
 - b. Travel: Paid travel reimbursement vouchers and receipts;
 - c. Contract: Activities undertaken, lists of deliverables, and contract invoices and receipts;
 - d. Purchases/Expendables: Invoices and receipts, along with an explanation of costs; and
 - e. Government Equipment: Documentation of costs, including the rate (i.e., hourly, weekly) and time for all equipment used for which costs were incurred.

With the final report(s), the NPFC will complete its reconciliation, and all remaining funds and/or inadequately documented costs will be returned to the OSLTF.

The NPFC has prepared standardized templates with instructions to facilitate final cost reporting (available on request).

U.S. Department of
Homeland Security

United States
Coast Guard



Director
National Pollution Funds Center

US Coast Guard Stop 7605
2703 Martin Luther King Jr Ave, SE
Washington, DC 20593-7605
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Email: (b) (6)

OR/WA Mystery Oil Spill '99 Claim: S99028-OI02	Claimant: U.S. Department of the Interior (DOI)
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On May 19, 2025, the U/S. Fish and Wildlife Service, on behalf of the DOI, presented a claim to the Oil Spill Liability Trust Fund (OSLTF or the Fund) in the total amount of \$38,450,535 to restore natural resource damages resulting from a mystery oiling event on or about March 4, 1999, resulting in tar balls and oiled birds washing ashore along the coast of Oregon and Washington. The NPFC assigned Claim Number S99028-OI02 to this claim. On July 31, 2025, the DOI increased the sum-certain request to \$38,617,592.

The DOI accepts the settlement offer of \$38,614,465 as full and final compensation for the costs to restore natural resource damages described in the March 3, 2026 determination for S99028-OI02. The DOI agrees to comply with 33 U.S.C. § 2706(f) by depositing into a revolving trust account the \$38,614,465 awarded in the March 3, 2026 determination.

By accepting this \$38,614,465, the DOI hereby assigns, transfers, and subrogates to the United States all rights, claims, interest and rights of action, that it may have against any party, person, firm or corporation that may be liable for the payment of the \$38,614,465 payable and paid from the Fund for Claim Number S99028-OI02. The DOI authorizes the United States to sue, compromise or settle in the name of the DOI and the NPFC be fully substituted for, and acquires all DOI rights arising from the March 3, 2026 determination.

The DOI acknowledges that no settlement will be made by any person on behalf of the DOI with any other party to recover the compensation paid by the Fund for March 3, 2026 determination without consultation with the NPFC.

The DOI will cooperate fully with the NPFC in any claim and/or action by the United States against any person or party to recover the compensation paid by the Fund. Cooperation shall include, but not be limited to, immediately reimbursing the Fund for any compensation received from any other source for the same claim, and providing any documentation, evidence, testimony, and other support, as may be necessary for the NPFC to recover from any other party or person.

The DOI certifies that to the best of its knowledge and belief that the information contained in this claim represents all material facts and is true, and it understands that misrepresentation of facts is subject to prosecution under federal law including, but not limited to, 18 U.S.C. §§287 and 1001.

<p>_____</p> <p>(b) (6) FWS Acting Regional Director</p>	<p>_____</p> <p>Date Of Signature</p>
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