

11/1/2023 Summary Information and FAQs for: Natural Resource Damage Settlement

This summary provides information regarding the settlement and specifically the City's role in the settlement.

Resources

The U.S. Department of Justice and the Portland Harbor Natural Resource Trustees will be issuing a press release.

Inquiries about the overall settlement should go to the U.S. Department of Justice. Their press contact is Matthew Nies. His phone is 202-598-6713, and his email is matthew.nies@usdoj.gov.

Information about the Alder Creek Restoration Project is available at:
<https://www.wildlandsinc.com/banks/alder-creek-restoration-project/>

The steps for assessing and quantifying damages to Portland Harbor natural resources has been a public process and the library of reports and documents are available on the Trustees' website:
<https://www.fws.gov/portlandharbor/damage-assessment>

Overview

The City's Portland Harbor Natural Resource Damage Settlement is expected to be filed in federal court on November 1, 2023.

The City achieved a major milestone in Portland Harbor. The City and more than 25 other cooperating parties reached a settlement with the Portland Harbor Natural Resource Trustees for natural resource damages from sediment contamination in the Portland Harbor Superfund Site in the lower Willamette River.

Natural resource damages are losses to wildlife habitat, natural resources of tribal significance and recreational fishing use. These damages are different from the costs of cleanup. The natural resource damage settlement is not settling cleanup responsibilities.

The Trustee Council consists of state and federal resource agencies and five Tribal Nations.

The Trustees have undertaken a thorough process to identify and quantify the harm to natural and recreational resources. The U.S. Department of Justice considered parties early funding of the Trustees assessment process and jump starting restoration as part of the ultimate settlement. The City has supported the Trustees' work since it began in 2003. From the beginning, City Council authorized funding the Trustee's work and early investment in habitat restoration sites in Portland Harbor. The City's funding helped the Alder Creek Restoration Site establish habitat in Portland Harbor in 2015. This funding and work counted towards the City's settlement with the Trustees.

The City is in this first group of parties that reached settlements with the Trustees. This is not settling the Trustees' claims against all potentially responsible parties in Portland Harbor. There are many potentially responsible parties that have not reached a settlement. The remainder of the claims will be settled in future settlements or through litigation.

2. FAQs

What are the natural resource damages being claimed?

The natural resource damages include habitat loss, ecologic injury to species of concern, recreational fishing losses and injuries to natural resources of tribal importance, such as salmon and lamprey. Restoring habitat will also support the return of culturally significant species such as minks, river otters, osprey and eagles.

The Trustees quantified the loss of natural resources caused by contamination in Portland Harbor and as well as the loss as discounted ecological service acre years (DSAYs). Overall, the Trustees seek funds, land, or in-kind services to compensate for 4,130 DSAYs of ecological loss, \$5,402,400 for recreational losses and \$695,100 for tribal service losses, such as loss fishing salmon and lamprey or harvesting culturally significant plants and materials. This first group settlement will provide over 471 DSAYs of that total. The Trustees calculate that the value of those DSAYs and the other payments to the Trustees results in a value of \$36 million to the Trustees from this first settlement.

What is the City's share of the natural resource damages?

The City's settlement is for 61 DSAYS. The City satisfied half of this through funding 35 DSAYS worth of restoration work at Alder Creek in 2015. The City will satisfy the remaining amount by funding the Trustees' purchase of an additional 26 DSAYS at locations selected by the Trustees. The City will also pay \$60,970 to compensate for recreational and tribal service losses and \$248,468 for the Trustees' assessment costs. The total cost for the City to settle is \$4.8M. Considering the City's previous funding and credit purchases, the City's net final payment to the Trustees will be ~\$335,500.

How did the Trustees identify the damages?

The Trustee's claims are based on damage-assessment studies, remedial investigations, regulatory standards, and scientific literature. The City and other cooperative parties funded the assessment plan which went out for public comment in November 2009, and was finalized in June 2010. The City and other parties funded initial restoration planning and additional studies to fill information gaps. These studies included evaluating impacts to lamprey, juvenile salmon, and osprey eggs. The Trustee Council released its draft Portland Harbor Programmatic Environmental Impact Statement and Restoration Plan for public comment in July 2012 and the Plan was finalized in June 2017. The Trustees damage assessment documents are available at <https://www.fws.gov/portlandharbor/damage-assessment>.

Who are the other settling parties?

The settling parties include private and public entities. The Port of Portland, PacifiCorp, Portland General Electric, and Oregon Steel Mills (now Evraz) are among the more than 25 parties in this first group of settling parties.

Who is on the Portland Harbor Natural Resource Trustee Council?

The Trustee Council is state and federal natural resource agencies and Tribal Nations. Specifically, the:

- Confederated Tribes of the Grand Ronde Community of Oregon
- Confederated Tribes of the Siletz Indians
- Confederate Tribes of the Umatilla Indian Reservation
- Confederated Tribes of the Warm Springs Reservation of Oregon
- Nez Perce Tribe
- Oregon Department of Fish and Wildlife
- National Oceanic and Atmospheric Administration
- US Department of the Interior

How did the City damage these natural resources?

The City did not directly cause the natural resource damages. The damages to natural resources were caused by contamination in the sediment at the Portland Harbor Superfund Site. The City reached an overall settlement with the Trustees that resolves liabilities for activities that may have caused contamination from City properties and conveyance system facilities.

Where will habitat restoration take place?

The Trustees concluded that all restoration should take place in the mainstem Willamette River up to Willamette Falls, the Multnomah Channel, the Oregon side of the lower Columbia River between the east end of Hayden Island and the Multnomah Channel outlet, and portions of Scappoose Bay. Half of the restoration work must be within Portland Harbor.

To date, four Ecological restoration projects have been built: Alder Creek, Linnton Mill, PGE Harborton, and the Rinearson Natural Area. A map is provided at the end of this document.

Why is it in the best interest of the City to join the settlement with other settling parties?

Getting restoration projects established and funded is a high priority for the City. The City has been an early participant in this process to get restoration projects in place as soon as possible. For efficiency, the Trustees are filing settlements in court for groups of parties. The City is in the first group because the sooner that settlement funds are available, the sooner restoration takes place.

Where did the funds to pay for the settlement come from?

This agreement settles City-wide liabilities with respect to natural resource damages. Because this is a general settlement for the conveyance system and City properties, the funds have come from the Bureau of Environmental Services and the General Fund. The City has been funding restoration work and the Trustee's assessment and restoration planning process since 2003 and the City received a credit for those payments.

How is this related to the Portland Harbor Superfund Cleanup?

Compensation for natural resource damages is part of the Superfund Law but is a separate process from the sediment cleanup. The U.S Environmental Protection Agency oversees the sediment cleanup and determines the cleanup actions that are required such as capping and dredging to remove contaminated sediments. The Natural Resource Trustees determine the losses to ecological, tribal and recreational resources that were caused by the contamination. This settlement is for the Trustees' claims for natural resource damages. The out-of-court settlement process for the Portland Harbor sediment cleanup is separate and is still underway.

How has and will the public be involved in restoration planning?

The Trustees released its initial Programmatic Restoration Plan for public comment in 2012. The Trustees released a Supplemental Restoration Plan for public comment in 2020. The Trustees are continuing to work on additional plans for restoration, recreational and tribals losses and will include the public in that planning process. See the Councils website for more information; [Restoration Planning | Portland Harbor \(fws.gov\)](https://www.fws.gov/PortlandHarbor).

What Happens Next?

The settlement goes before a judge in the U.S. District Court in Portland. The judge will review the settlement to ensure that it is fair and reasonable. As a practical matter, the Trustee Council would only propose a settlement to the Court that it can defend as fair and reasonable.

Natural Resource Damage Restoration Bank Locations:

