

NATURAL RESOURCES SYMPOSIUM
BLUEPRINT FOR CHANGE: NEW APPROACHES AND NEEDED CHANGES TO MANAGING
NATURAL RESOURCE RISKS, LIABILITIES AND OPPORTUNITIES

September 25-26, 2018
Washington, DC

UNITED STATES, ET AL. V. BOUCHARD TRANSPORTATION COMPANY, INC., ET AL.

CASE/SITE SUMMARY

Summary

The case, *United States, et al. v. Bouchard Transportation Company, Inc., et al.*, involves a claim under the Oil Pollution Act (OPA) for natural resource damages allegedly resulting from the release of oil from the grounding of the T/B Bouchard, B-120 barge in Buzzards Bay, Massachusetts on April 27, 2003. Key features of the case include a 15-year NRDA effort by the technical and legal Trustee and RP teams to carry out an extensive, cooperative NRDA and restoration planning effort involving lost shoreline, boating and recreational shell-fishing use, and injuries to birds/wildlife (including threatened and endangered species) and aquatic and shoreline resources. This case was chosen to be included in the lessons learned segment because it is a prime example of the efficiencies to be gained by a cooperative, non-adversarial approach to NRDAs. Here, the RP's team successfully collaborated with the federal and state Trustees from the outset -- during the response and throughout the spill NRDA and restoration planning process.

In particular, approaches and/or practices that could be transferred to other cases and sites include:

- Cooperative assessments preferred over litigation;
- Memorandum of Agreement (MOA) (or Guiding Principles) can help build the proper foundation for a successful and cost-effective NRDA;
- Good science should trump: mobilize field team to the site to collect data as soon as possible after the spill, blending SCAT and NRDA work where possible to avoid duplication/save costs and relying heavily on science in assessing that data;
- TWGs should be comprised of technical personnel of RP and Trustees -- NO LAWYERS;
- Trust but verify -- challenge/calibrate Trustee models for assessing injuries and scrutinize Trustee "Reasonable Assessment Costs";
- Agree to disagree -- don't need precise agreement on NRDs to reach agreement on restoration;
- Every NRDA is different -- Not "One Size Fits All"; and
- Civility and cooperation should rule -- understand there will be disagreements but put civility and cooperation at the top of your priority list.

Site Name

T/B Bouchard B-120 Grounding Fuel Oil Spill, MA

Trustees

US Department of Commerce (DOC)/National Oceanic & Atmospheric Administration (NOAA); US Department of the Interior (DOI)/U.S. Fish and Wildlife Service (USFWS); State of Rhode Island, Department of Environmental Management (RI); Commonwealth of Massachusetts, Executive Office of Environmental Affairs (MA).

Trustee Council

NOAA (lead Trustee), DOI/USFWS, MA, RI

Responsible Parties

Bouchard Transportation Co.; B. No. 120 Corp.; and Tug Evening Tide Corp.

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Note: Any omissions and/or errors should be brought to our attention by contacting us at symposium@nrdonline.org.

Site Description

The complaints filed by the Trustees allege that, on April 27, 2003, tank barge, Bouchard No. 120, hit a shoal in Buzzards Bay, creating a 12-foot hole in the barge's hull and spilled an estimated 98,000 gallons of #6 oil into the coastal waters of Massachusetts and Rhode Island. The oil allegedly impacted more than 100 miles of diverse coastal shoreline along Massachusetts and Rhode Island and the associated natural resources, including: recreational shoreline, boating and shell-fishing use; birds/wildlife (including threatened and endangered species); and aquatic and shoreline species/communities.

Case Timeline

April 27, 2003: Spill occurs

June 2005: Rare Beetle Preassessment Screen

June 2003: RP and Trustees formally agree to conduct a cooperative NRDA

October 12, 2006: Trustee/RP Memorandum of Agreement

May 17, 2011: Partial Consent Decree entered by U.S. District Court for the District of Massachusetts

January 24, 2018: Final Consent Decree entered by U.S. District Court for the District of Massachusetts

Terms of Settlement

Total Settlement: ~\$26MM

NRD Settlement: ~\$19.4MM

- Aquatic Resources and Shoreline Resources: ~\$1.5MM
- Ram Island Shoreline Resources: ~\$534,000
- Recreational Resources: ~\$3.3MM
- Piping Plovers: ~\$715,000
- Wildlife Resources (animal species except for piping plovers; the habitats and other living organisms that support those species; and the ecological services provided by those species, habitats, and other living organisms): ~\$13.3MM

NRDA Costs: ~\$6.6MM (negotiated "reasonable costs of assessment")

- NOAA: ~\$3.6MM
- DOI/USFWS: ~\$2.3MM
- Commonwealth of MA: ~\$600,000
- State of RI: ~\$117,000

NRDA and Related Documents

The following NRDA, Restoration and related documents have been released:

- Pre-Assessment Data Report (2005)
- Exposure Assessment and Injury Determination for the Northern Diamondback Terrapin (2005)
- Rare Beetle Preassessment Screening (2005)
- Shoreline Injury Assessment Part I: Exposure Characterization Bouchard 120 Oil Spill, Buzzards Bay, Massachusetts and Rhode Island (2006)
- Final Aquatic Exposure and Injury Report, B-120 Oil Spill (2008)
- Final Buzzards Bay/Bouchard B-120 Oil Spill Lost Use Valuation Report (2009)
- Final Ram Island Shore Protection Alternatives Analysis and Wave Study (2009)
- Final Restoration Plan & Environmental Assessment for Piping Plover (2012)
- Final Programmatic Restoration Plan and Environmental Assessment for the B-120 Buzzards Bay Oil Spill (2014)
- Final Supplemental Environmental Assessment for Recreational Shellfishing and Shellfish Restoration (2016)

- Finding of No Significant Impact and Final Supplemental Environmental Assessment for Salt Marsh, Fish Passage, and Eelgrass Restoration (2017)

NRD Assessment Approaches

Resource injury evaluation at the site consisted of site-specific injury studies and use of remedial investigation data, ecological risk assessments, and technical, historical, and socioeconomic literature.

To identify the level of restoration needed at the site, Habitat Equivalency Analysis (HEA) & Resource Equivalency Analysis (REA) (as discussed in 43 C.F.R. § 11.83) methods were used.

Restoration Projects

Pursuant to May 2011 Partial Consent Decree, the restoration work consisted of several projects, including:

- Piping Plovers Restoration (listed under the Endangered Species Act as threatened):
 - Predator management
 - Law enforcement (prevention of harassment)
 - Public outreach and education
- Habitat Restoration
 - Tidal marsh restoration by fill excavation/removal
 - Invasive plant species control
 - Dam removal to support fish passage
 - Conservation mooring for eel grass protection and restoration
 - Stream and riparian habitat restoration
- Shellfish
 - Population enhancement project for bay scallops and oysters
- Coastal Access and Use
 - Pedestrian walking trails
 - Land acquisition for public access
 - Handicapped-accessible fishing pier
 - Boat ramp improvements

With the 2018 entry of the Final Consent Decree, the restoration work concerning loons, terns, and other birds is ongoing.

Restoration Implementation Lead

Trustees

Status of Restoration Implementation

See above.

Points of Interest

See below.

Description of Approaches/Lessons Learned

As noted above, the following are key lessons learned and/or approaches from this case that may be transferable to other cases and sites:

- Cooperative assessments preferred over litigation;
- MOA (or Guiding Principles) can help build the proper foundation for a successful and cost-effective NRDA;
- Good science should trump: mobilize field team to the site to collect data as soon as possible after the spill, blending SCA T and NRDA work where possible to avoid duplication/save costs and relying heavily on science in assessing that data;
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Further Information

For further information see below :

- <https://darrp.noaa.gov/oil-spills/bouchard-barge-120>
- https://www.cerc.usgs.gov/orda_docs/CaseDetails?ID=966
- <http://buzzardsbay.org/buzzards-bay-pollution/oil-pollution/oil-spill-4-28-03/>