

U.S. Department
of Homeland
Security

**United States
Coast Guard**



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National Pollution Funds Center

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July 5, 2012

Tony Penn
NOAA Office of Response and Restoration
SMC4, RM. 10317
1305 East West Highway
Silver Spring, MD 20910

Re: Claim Number N10036-OC08 - *Deepwater Horizon* Oil Spill Assessment

Dear Mr. Penn:

The National Pollution Funds Center (NPFC) has completed its review of the claim presented to the Oil Spill Liability Trust Fund (the Fund or the OSLTF) by the National Oceanic Atmospheric Administration (NOAA) for costs to assess potential natural resources injuries resulting from the *Deepwater Horizon* oil spill (Claim Number N10036-OC08). The claim totals \$105,972,308, representing \$105,494,062 to implement 39 assessment activities and \$478,246 for contingency. We have determined that \$19,428,049 of claimed costs to implement 27 activities is compensable at this time; the remaining \$86,544,259 claimed for 12 activities, is still under adjudication. This partial determination was made in accordance with the Oil Pollution Act (OPA) and the OPA claims regulations. 33 U.S.C. §2701 *et seq.*; 33 C.F.R. Part 136. The basis of our determination follows.

Summary of the Incident and Claim

On April 20, 2010, the *Deepwater Horizon* mobile offshore drilling unit exploded and sank, discharging an estimated 210 million gallons of oil into the Gulf of Mexico over a period of approximately three months¹. In addition, approximately 771,000 gallons of dispersants were applied to the waters of the spill area to minimize impacts from the oil². The U.S. Coast Guard designated the source of the spill as an offshore facility located on an area leased by BP Exploration & Production, Inc. (BP). BP accepted the designation as the responsible party (RP) and advertised its OPA claims process.

Following the spill, NOAA, along with the Department of the Interior and five Gulf Coast states³, acting as natural resource trustees designated under OPA and appropriate

¹ <http://www.gpo.gov/fdsys/pkg/FR-2012-04-20/pdf/2012-9581.pdf>

² <http://www.gpo.gov/fdsys/pkg/FR-2012-04-20/pdf/2012-9581.pdf>

³ Louisiana, Mississippi, Alabama, Florida, and Texas

state laws, initiated an assessment of natural resource damages resulting from the discharges and response to discharges of oil. By the August-September 2010 period, the trustees observed over 950 miles of oiled shoreline habitat, 400 oiled sea turtles, and over 1,500 oiled birds⁴; the Unified Command reported 39,885 square miles of Gulf of Mexico federal waters remained closed to fishing⁵; and NOAA identified natural resources at risk to include fish, marine mammals, sea turtles, oysters and associated habitats. The trustees continue to work together to develop plans to determine the nature and extent of these losses.

As required by the OPA NRD regulations (15 C.F.R. §990.14), the trustees have invited the RP to participate in the natural resource damage assessment. Trustee-RP technical working groups were formed to discuss and coordinate data collection and analyses needed to assess injury. As part of this arrangement, the trustees provided BP with work plans and requests for advanced funding. The trustees and BP worked cooperatively to finalize and sign work plans for which BP would provide funding for trustee data collection and assessment efforts from the time of the spill until late 2011.

On March 23, 2012, NOAA presented a claim to the NPFC for costs to continue assessment of potential injuries to aquatic resources and plan appropriate restoration of those injuries. The claim describes 41 assessment activities with a total cost of \$115,952,207. Nearly all of these activities involve continuation of assessment efforts initiated, or analyses of samples collected, with BP funds under the previously established cooperative assessment.

The NPFC conducted its initial review of the claim and, on March 30, 2012 and April 18, 2012, requested additional information about the claimed assessment activities. NOAA responded to these requests on April 11, 2012 and May 25, 2012. On June 5, 2012 NOAA reduced their sum certain from \$115,952,207 to \$105,972,308, withdrawing two of the 41 initially claimed activities and reducing the claimed amount of one activity⁶.

This determination presents the NPFC's findings with respect to 27 of the 39 activities in the revised claim. The NPFC is issuing this partial determination for the activities that we have completed adjudication, while we continue our adjudication of the remaining portions (activities) of the claim.

⁴ *Federal Register*, Vol. 75, No. 190, Pgs. 60800-60802, October 1, 2012: <http://edocket.access.gpo.gov/2010/pdf/2010-24706.pdf>

⁵ Unified Command for the BP Oil Spill, "The Ongoing Administration-Wide Response to the Deepwater BP Oil Spill," September 9, 2010: <http://www.restorethegulf.gov/release/2010/09/09/ongoing-administration-wide-response-deepwater-bp-oil-spill>

⁶ Letter from NOAA to the NPFC dated June 5, 2012 withdrawing two activities (oyster resource mapping and neritic sea turtle injury assessment) and reducing the claimed amount for the injury assessment management and administration activity.

Jurisdictional Information

The NPFC first considered whether the claimed damages arose from an incident as defined by OPA. 33 U.S.C. §2701 *et seq.* To be covered, the incident must involve a discharge of oil or a substantial threat of discharge of oil from a vessel or facility into navigable waters of the United States after August 18, 1990. Based on the information provided by NOAA in its claim, and the President's April 29, 2010 designation of this incident as a spill of national significance, the NPFC finds that this claim is for natural resource damages resulting from an OPA incident.

Claimant Eligibility

Federal natural resource trustees are designated by the President pursuant to OPA. 33 U.S.C. §2706 (b)), 33 U.S.C. §2706(b)(2). Federal trustees designated under this section shall assess natural resource damages for natural resources under their trusteeship (33 U.S.C. §2706(c)(A) and may present claims to the Oil Spill Liability Trust Fund (OSLTF or the Fund) for uncompensated natural resource damages, which include the reasonable cost of assessing those damages. 33 C.F.R. §136.207.

This claim for natural resource damage assessment costs was submitted by NOAA. NOAA, under the authority of the Secretary of Commerce, is an appropriate federal natural resource trustees 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).

General Claim Presentment Requirements

Claims to the OSLTF must be presented in writing to the Director, NPFC, within three years after the date on which the injury and its connection with the incident in question were reasonably discoverable with the exercise of due care, or within three years from the date of completion of the natural resource damage assessment under OPA (33 U.S.C. §2706(e)), whichever is later. 33 U.S.C. §2712(h)(2); 33 C.F.R. §136.101(a)(1)(ii). This claim is for costs associated with the development of a damage assessment plan to determine the nature and extent of damages to natural resources resulting from the incident. The assessment was not complete when the claim was received on March 23, 2012; therefore, the claim was received within the period of limitations for claims.

Natural resource damage claims presented to the NPFC must be based on a plan that the public has had an opportunity to review. 33 U.S.C. §2706(c)(5). On March 1, 2012, NOAA published its plan to assess and plan restoration of injuries on the NOAA Gulf Spill Restoration webpage⁷, thereby meeting this requirement.

⁷ http://www.gulfspillrestoration.noaa.gov/wp-content/uploads/2012/02/NPFC_Claim_FINALweb_030112.pdf

Claim Presentment to the Responsible Party

With certain exceptions, claims to the NPFC for damages must be presented first to the RP. 33 U.S.C. §2713(a). If a claim is presented in accordance with §2713(a) and the claim is not settled by any person by payment within 90 days after the date upon which the claim was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. §2713(c)(2).

NOAA presented its assessment plan and claim for implementation costs to BP, Transocean, MOEX, and Anadarko, hereinafter referred to as the RPs, on December 23, 2011⁸. The plan identified potential injuries to natural resources resulting from the incident, a general approach to assess those injuries, cost estimates for “NOAA Staff” and “Travel”, and “contracts and consultants” by quarter for each activity with a total sum certain of \$115,952,207.

On March 23, 2012, more than 90 days after providing its assessment plan and claim for implementation costs to the RP’s, NOAA presented a claim for \$115,957,207 to the NPFC, representing the costs to implement its assessment plan. The NPFC evaluated the appropriateness and reasonableness of costs, and presentment requirements for each assessment activity to confirm that the RP was presented with appropriate descriptions and justifications of the need for the assessment activities and associated costs. Our activity-specific findings are listed under the section titled “NPFC Review of Claim and Associated Costs”.

Claimant's Burden of Proof and Adherence to NRDA Regulations

Under OPA, trustees bear the burden of proving their entitlement to the amount claimed for compensation of natural resource damages. 33 C.F.R. §136.105. Any determination or assessment of damages to natural resources for the purposes of OPA by a trustee in accordance with the regulations at 15 C.F.R. Part 990 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) and 15 C.F.R. §990.13. Trustee determinations made in accordance with 15 C.F.R. 990 *et seq.* are initially presumed correct, but the presumption of correctness may be rebutted if the rebuttal evidence is of sufficient weight.

After careful review of the claim and supporting documents, the NPFC finds that NOAA followed 15 C.F.R. 990 *et seq.* Specifically, they coordinated actions with other trustees to ensure no double recovery of damages, issued a notice of intent to conduct restoration planning, prepared a plan that was reviewed by the public, and are maintaining an administrative record that is available for public review.

⁸ Letter dated December 23, 2011 from NOAA to the RP’s transmitting their Interim, Partial Claim for Assessment Costs

NPFC Review of Claim and Associated Costs

NOAA's assessment plan and claim to the NPFC, as revised on June 5, 2012, includes 39 assessment activities with a total implementation cost of \$105,972,308. This section presents the NPFC findings for 27 of the claimed activities.

Activity 1. Deep sea soft bottom sediment

Through a cooperative assessment, BP funded efforts to collect deep sea soft bottom sediments⁹. This claimed assessment activity involves analyzing these samples to determine the level of contamination from exposure to oil, dispersants, and drilling muds, as well as the abundance and condition of associated fauna. Samples will be analyzed for hydrocarbons and other toxic substances, such as barium (from drilling muds), with specialized analyses of low volume samples collected in sediment traps. Enumeration of sediment samples will provide information on community composition. Results will be used to determine the nature and extent of potential exposure and injury to soft bottom habitat and organisms¹⁰.

NOAA claims \$3,153,501 for contract costs associated with this activity. Analyses of low volume samples and enumeration of fauna is labor intensive and will require seven full time scientists, statisticians, deep sea chemists, data analysts, and technical writers. Laboratory analysis will take place at Texas A&M University, University of Nevada-Reno, and United States Geological Survey Gainesville.

Upon review of the claimed activity, the NPFC requested further information about the claimed costs for specialized hydrocarbon analyses of low volume samples and appropriateness of assessing potential injury resulting from drilling muds¹¹. NOAA responded that drilling muds were used during the "top kill" response effort to stop the release of oil, and specialized hydrocarbon analyses are necessary to analyze small volume samples.

The claim record confirms that this claimed activity and associated cost was presented to the RP. BP previously funded sample collection, and NOAA states that BP participated in technical workgroup meetings where work plans were discussed and reviewed. On December 23, 2011, NOAA provided BP with a claim that included \$3,153,501 to analyze previously collected samples. The claim and work plans¹² provided BP with justification of the need for assessment and description of the claimed activity, including how the data will be used to determine potential injury, timeframe for the assessment, and level of effort/costs. BP did not respond to NOAA's presentment of \$3,153,501 for this

⁹ http://www.gulfspillrestoration.noaa.gov/wp-content/uploads/2011/05/2011_04_07_DEEPWATERBENTHIC_Softbottom_Sediment_la-4-6-2-11.redacted2.pdf

¹⁰ Letter from NOAA to the NPFC dated April 11, 2012

¹¹ Letter dated March 30, 2012 from NPFC to NOAA requesting additional information

¹² Work plans provided to BP through the technical working groups during the preassessment phase in 2010 and 2011

activity. Thus, this claim was not settled within 90 days, allowing presentment to the Fund as uncompensated damages.

Based on the above facts, the NPFC finds that: (1) the assessment activity is appropriate for the spill given evidence of exposure, scale and complexity of the incident, and magnitude of potential injury, (2) the costs claimed are reasonable for the level of effort proposed, and (3) this claim was presented to BP and the Fund. The NPFC therefore finds claimed costs of \$3,153,501 are compensable from the Fund. 33 U.S.C. §2706 (d)(1)(C), 33 C.F.R. §136.211, 33 U.S.C. §2713(a), 33 U.S.C. §2713(c)(2).

Activity 2. Deep sea hard ground corals

Through preassessment data collected with remotely operated vehicles, NOAA has video documentation of deep sea hard ground corals exposed to oil. NOAA has further evidence from coral tissue samples linking this exposure to the *Deepwater Horizon* incident¹³.

This claimed assessment activity involves analyzing photographic images to determine species composition, spatial extent, and health of deep sea corals and evaluating coral tissue samples for hydrocarbons. This information will be used with results from the transport, fate, and effects modeling activity to help determine the nature, degree and spatial extent of the injury.

NOAA claims \$822,500 for contract costs to digitize and evaluate photographs, analyze tissue samples for hydrocarbons, and produce reports on potential injury, all of the claimed costs are for analyses of data previously collected with funding from BP.

Upon review of the claimed activity, the NPFC requested further information about the claimed costs for analyzing photographic images and how such analyses will be used to determine potential injury¹⁴. NOAA responded that photographic images will be evaluated and compared to images from reference sites to determine the existence of injury and time-series imagery will show the progression of injury over time¹⁵.

The claim record confirms that this claimed activity and associated cost was presented to the RP. BP previously funded preassessment data collection efforts and NOAA states that BP participated in regular technical working group conference calls where details of this activity were discussed and draft work plans were reviewed. On December 23, 2011, NOAA provided BP with a claim that included \$822,500 to analyze preassessment data collected with BP funding. The claim, work plans¹⁵, and additional communications provided BP with justification of the need for assessment and description of the claimed activity, including how the data will be used to determine potential injury, timeframe for the assessment, and level of effort/costs. BP did not respond to NOAA's presentment of

¹³ Letter from NOAA to the NPFC dated April 11, 2012

¹⁴ Letter dated March 30, 2012 from NPFC to NOAA requesting additional information

¹⁵ Work plans provided to BP through the technical working groups during the preassessment phase in 2010 and 2011

\$822,500 for this activity. Thus, the claim for this activity was not settled within 90 days, allowing presentment to the Fund as uncompensated damages.

Based on the above facts, the NPFC finds that: (1) the assessment activity is appropriate for the spill given evidence of exposure, scale and complexity of the incident, and magnitude of potential injury, (2) the costs claimed are reasonable for the level of effort proposed, and (3) this claim was presented to BP and the Fund. The NPFC therefore finds claimed cost of \$822,500 is compensable. 33 U.S.C. §2706 (d)(1)(C), 33 C.F.R. §136.211, 33 U.S.C. §2713(a), 33 U.S.C. §2713(c)(2).

Activity 3. Mesophotic reefs

NOAA's preassessment studies found *Deepwater Horizon* oil in coral tissue samples taken from deep water, low light reefs (i.e., mesophotic reefs) as well as associated sediments and fish. In addition, NOAA has documented a decrease in abundance in fish at two mesophotic reef sites where the presence of oil was confirmed¹⁶.

NOAA plans to evaluate video images collected during the preassessment phase, with funding from BP, and compare these to historic images to determine potential adverse effects to resident reef-dwelling fish and corals.

NOAA claims \$102,000 for this activity, which includes contract costs to determine fish abundance by evaluating 180 videos, 3,000 time lapse photos, and over 10,000 still images collected during the preassessment efforts. Contractors will also interpret data and draft reports.

Upon review of the claimed activity, the NPFC requested additional information on how NOAA will determine that any observed changes to the health of mesophotic reefs and associated fish were caused by this incident oil and not other known factors¹⁷. NOAA responded that they will incorporate pre-spill and reference site information into the injury quantification to determine injuries resulting from *Deepwater Horizon* oil vs. those caused by Gulf-wide factors (such as over-fishing, hurricane events, temperature shifts, etc.).

The claim record confirms that this claimed activity and associated cost was presented to the RP. BP previously funded preassessment data collection efforts and NOAA states that BP participated in weekly technical working group conference calls where the assessment activities and associated workplans were discussed. On December 23, 2011, NOAA presented BP with a claim that included \$102,000 to evaluate previously collected video images of mesophotic reefs. The claim, work plans¹⁸, and additional communications provided BP with justification of the need for assessment and description of the claimed activity, including how the data will be used to determine

¹⁶ Letter from NOAA to the NPFC dated April 11, 2012

¹⁷ Such as weather events, over fishing, sedimentation, freshwater intrusion, and coral disease

¹⁸ Work plans provided to BP through the technical working groups during the preassessment phase in 2010 and 2011

potential injury, timeframe for the assessment, and level of effort/costs. BP did not respond to NOAA's presentment of \$102,000 for this activity to analyze this data. Thus, the claim for this activity was not settled within 90 days, allowing presentment to the Fund as uncompensated damages.

Based on the above, the NPFC finds that: (1) the assessment activity is appropriate for the spill given evidence of exposure, potential for injury, and the scale and complexity of the incident, (2) the costs claimed are reasonable for the level of effort proposed, and (3) this claim was presented to BP and the Fund. The NPFC therefore finds claimed costs of \$102,000 are compensable from the Fund. 33 U.S.C. §2706 (d)(1)(C), 33 C.F.R. §136.211, 33 U.S.C. §2713(a), 33 U.S.C. §2713(c)(2).

Activity 4. Satellite telemetry with bluefin tuna and sperm whales

NOAA has satellite telemetry data indicating bluefin tuna spawning in oiled areas, which exposed adults, eggs, and larvae to *Deepwater Horizon* oil¹⁹. Sperm whales were also potentially exposed to oil and dispersants by swimming through the water column, passing oil contaminated water through their respiratory system, and ingesting oil contaminated water as part of feeding.

NOAA claims \$472,500 to compile telemetry data to allow for analyses of tagged animal movements, comparison to historical data, and assessment of injury determined as observed changes in site fidelity, movement patterns, and spawning areas. Claimed costs include contracts with experts at Stanford and Oregon State Universities to compare post and pre-spill behaviors, draft reports that summarize statistical comparisons, and produce histograms that provide dive information for whales.

The claim record confirms that this claimed activity and associated cost was presented to the RP. BP previously funded the tagging of bluefin tuna and whales, and the costs claimed are to analyze and interpret the data. NOAA states that they have provided BP with work plans, as well as citations from peer-reviewed literature that describes telemetry studies similar to what NOAA is proposing. On December 23, 2011, NOAA provided BP with a claim that included \$472,500 to analyze satellite telemetry data for bluefin tuna and sperm whales. The claim and work plans²⁰ provided BP with justification of the need for assessment and description of the claimed activity, including how the data will be used to determine potential injury, timeframe for the assessment, and level of effort/costs. BP did not respond to NOAA's presentment of \$472,500 for this activity to analyze the telemetry data. Thus, the claim for this activity was not settled within 90 days, allowing presentment to the Fund as uncompensated damages.

Based on the above facts, the NPFC finds that: (1) the assessment activity is appropriate for the spill given evidence of exposure, potential for injury, and the scale and complexity of the incident, (2) the costs claimed are reasonable for the level of effort proposed, and

¹⁹ Letter from NOAA to the NPFC dated April 11, 2012

²⁰ Work plans provided to BP through the technical working groups during the preassessment phase in 2010 and 2011

(3) this claim was presented to BP and the Fund. The NPFC therefore finds claimed costs of \$472,500 are compensable from the Fund. 33 U.S.C. §2706 (d)(1)(C), 33 C.F.R. §136.211, 33 U.S.C. §2713(a), 33 U.S.C. §2713(c)(2).

Activity 5. Transport, fate, and effects modeling

An estimated 210 million gallons of oil²¹ spilled into the Gulf of Mexico and approximately 771,000 gallons of dispersants were applied to the waters of the spill area to minimize impacts from the oil²². Oil and dispersants contain PAHs that are toxic to biota in the water column. The trustees have considerable data showing PAH levels during the response were above literature based thresholds for injury²³.

The proposed assessment activity involves modeling the volume and extent of water contaminated by PAHs and dispersant chemicals and corresponding level of injury resulting from exposure based on species composition and abundance expected within that volume of water, and toxicity thresholds and corresponding level of injury. NOAA claims \$3,446,000 for this activity which includes contract costs to conduct literature reviews, hydrodynamic and toxicity modeling, compilation of baseline data, statistical evaluation, review of data sets from other studies, and draft reports.

The NPFC requested additional information on the model that will be used to assess injury and evidence of where/how the model had been used in the past to assess natural resource injuries resulting from oil spills²⁴. NOAA responded stating that “no off-the-shelf modeling package is sufficient²⁵.” Therefore, NOAA will need to evaluate and use various models due to the extended duration, volume of oil, depth of release, and unprecedented application of dispersants. One model being considered and evaluated is the SIMAP model, which has been validated and used in more than 20 cases.

The claim record indicates that this claimed activity and associated cost was presented to the RP. BP funded 46 work plans provided by NOAA that describe the work to collect samples and data from the water column, pelagic fish data, ocean data, baseline, and other relevant data. On December 23, 2011, NOAA provided BP with a claim that included \$3,446,000 for this activity. The claim and work plans provided BP with justification of the need for assessment and description of the claimed activity, including how the data will be used to determine potential injury, timeframe for the assessment, and level of effort/costs. BP did not respond to NOAA’s presentment of \$3,446,000 for this activity. Thus, the claim for this activity was not settled within 90 days, allowing presentment to the Fund as uncompensated damages.

²¹ "Deepwater Horizon Oil Spill Early Restoration Plan." *Gulf Spill Restoration Publications*. National Oceanic Atmospheric Administration, 1 Dec. 2011. Web. 13 Mar. 2012
<<http://www.gulfspillrestoration.noaa.gov/wp-content/uploads/2011/12/Final-ERP-121311-print-version-update.pdf>>

²² <http://www.gpo.gov/fdsys/pkg/FR-2012-04-20/pdf/2012-9581.pdf>

²³ Letter from NOAA to the NPFC dated April 11, 2012

²⁴ Letter dated March 30, 2012 from NPFC to NOAA requesting additional information

²⁵ Letter from NOAA to the NPFC dated April 11, 2012

Based on the above, the NPFC finds that: (1) the assessment activity is appropriate for the spill given evidence of exposure, the scale and complexity of the incident, and magnitude of potential injury, (2) the costs claimed are reasonable for the level of effort proposed, and (3) this claim was presented to BP and the Fund. The NPFC therefore finds claimed costs of \$3,446,000 are compensable from the Fund. 33 U.S.C. §2706 (d)(1)(C), 33 C.F.R. §136.211, 33 U.S.C. §2713(a), 33 U.S.C. §2713(c)(2).

Activity 6. *Sargassum* communities

Sargassum seaweed communities provide habitat for a wide variety of marine animals, including young sea turtles. *Sargassum* accumulates in convergence zones, where oil also tends to concentrate. During field investigations in 2010 and 2011, NOAA documented oil in free-floating *Sargassum* mats, potentially exposing animals within those mats to oil²⁶.

Through this activity, NOAA will use previously collected aerial observation data to map *Sargassum* communities. This information will then be analyzed with maps of surface oil location and concentration to characterize exposure and potential injury to *Sargassum* communities resulting from *Deepwater Horizon* oil.

NOAA claims \$636,000 for contract costs to analyze aerial survey data and produce *Sargassum* distribution maps that will be used to document potential exposure and pathway of injury.

After reviewing the claim, the NPFC asked NOAA to explain what appeared to be two independent efforts to map *Sargassum* (see activity 7, below). NOAA responded that this activity will produce maps from field data, while the second activity will produce maps that relate oiled *Sargassum* to oceanic sea turtles.

The claim record indicates that this claimed activity and associated cost was presented to the RP. NOAA states that BP participated in the development and funding of five work plans associated with data collection for this activity and that they coordinated with BP on sample prioritization analysis and allowed BP to have input on sample handling, processing, and data sharing. On December 23, 2011, NOAA provided BP with a claim that included \$636,000 for data analyses as described by this activity. The claim, work plans²⁷, and additional communications provided BP with justification of the need for assessment and description of the claimed activity, including how the data will be used to determine potential injury, timeframe for the assessment, and level of effort/costs. BP did not respond to NOAA's December 23, 2011 claim for this activity. Thus, the claim for this activity was not settled within 90 days, allowing presentment to the Fund as uncompensated damages.

²⁶ Letter from NOAA to the NPFC dated April 11, 2012

²⁷ Work plans provided to BP through the technical working groups during the preassessment phase in 2010 and 2011

Based on the above facts, the NPFC finds that: (1) the assessment activity is appropriate for the spill given evidence of exposure and the scale and complexity of the incident, magnitude of potential injury, (2) the costs claimed are reasonable for the level of effort proposed, and (3) this claim was presented to BP and the Fund. The NPFC therefore finds claimed costs of \$636,000 are compensable from the Fund. 33 U.S.C. §2713(a), 33 U.S.C. §2713(c)(2).

Activity 7. Oceanic sea turtle injuries associated with *Sargassum*

During the preassessment phase NOAA and the co-trustees rescued over 450 oiled sea turtles in *Sargassum* communities.

This second claimed activity involving *Sargassum* and sea turtles seeks to relate *Sargassum* distribution (as mapped under activity 7) with sea turtle distribution maps to document the potential exposure and injury of young sea turtles through contaminated *Sargassum* habitat and complete analysis of field samples collected to inform condition of sea turtles. NOAA claims \$66,750 to contract experts in mapping, species classification and identification, and statistics to analyze and interpret field data collected.

The claim record confirms that this claimed activity and associated cost was presented to the RP. BP was signatory to, and funded, three works plans that described efforts to collect relevant field data that this claimed activity seeks to analyze. On December 23, 2011, NOAA provided BP with a claim that included \$66,750 for this data analyses. The claim and work plans²⁸ provided BP with justification of the need for assessment and description of the claimed activity, including how the data will be used to determine potential injury, timeframe for the assessment, and level of effort/costs. BP did not respond to NOAA's presentment of \$66,750 for this activity. Thus, the claim for this activity was not settled within 90 days, allowing presentment to the Fund as uncompensated damages.

Based on the above facts, the NPFC finds that: (1) the assessment activity is appropriate for the spill given evidence of exposure and the scale and complexity of the incident, (2) the costs claimed are reasonable for the level of effort proposed, and (3) this claim was presented to BP and the Fund. The NPFC therefore finds claimed costs of \$66,750 are compensable from the Fund. 33 U.S.C. §2706 (d)(1)(C), 33 C.F.R. §136.211, 33 U.S.C. §2713(a), 33 U.S.C. §2713(c)(2).

Activities 8-12. Oysters

NOAA's March 23, 2012 claim to the NPFC included six activities to assess potential oyster injuries in state waters of Louisiana. NOAA subsequently withdrew one of the claimed activities on June 5, 2012. Accordingly, the revised claim before the NPFC includes five oyster assessment activities, four of which are included in this determination and the other remains under adjudication.

²⁸ Work plans provided to BP through the technical working groups during the preassessment phase in 2010 and 2011

The five claimed assessment activities seek to measure oyster recruitment, reproduction, biomass, and abundance condition. The claim states that samples will be collected, assessed, and compared from oiled and unoiled areas, as well as areas “with low salinities because of the openings of the freshwater diversion structures in 2010 and the Bonnet Carré and Morganza spillways in 2011²⁹.”

Under OPA, the OSLTF is only available for damages caused by the release (or threat of release) of oil, or actions taken in accordance with OPA and the National Contingency Plan (NCP) in response to the release (or threat of release) of oil. During adjudication of this claim, the NPFC requested that NOAA provide documentation to support a determination that openings of freshwater diversion structures were an approved response action in accordance with OPA and the NCP. NOAA responded that:

“The consideration of the effect of low salinities on oysters is scientifically integral to the investigation of injuries to oysters and oyster habitats from the Oil Spill, regardless of whether those low salinities resulted from response action diversions, non-response related spillway openings, or other sources. The work plans NOAA and the co-trustees implemented in 2010 were and continue to be in areas and regions where oysters were potentially exposed to oil and/or dispersants. The injury studies undertaken were designed to identify injuries to oysters in these areas and to discern the reasons for these injuries, whether from exposure to oil, dispersants or other conditions (such as low salinities). The injury studies undertaken are, therefore, scientifically appropriate in scope. There are no costs included in NOAA’s Claim that are solely or uniquely attributable to identifying injuries from the opening of the diversions in 2010 per se.”

After reviewing NOAA’s response, the NPFC confirmed that all oyster sampling will occur in areas exposed to oil³⁰.

The NPFC notes that NOAA’s response states that the five claimed studies were designed to determine the cause of injury (i.e., oil, dispersants, or exposure to freshwater resulting from the freshwater diversions). The NPFC accepts the scope of the claimed assessment efforts, noting that the OSLTF would only be available to pay a future claim for restoration of injuries resulting from oil release (or threat) or a response to oil release (or threat). As such, compensation from the OSLTF for damages resulting from freshwater diversions determined by any of the five claimed oyster assessment activities would only be available where such actions were demonstrated to be an appropriate response action under OPA and the NCP.

²⁹ NOAA claim, page 21

³⁰ See appendix A (Environmental Response Management Application retrieved Monday, June 11, 2012 (gomex.erma.noaa.gov/))

Activity 8. 2012 oyster recruitment and reproductive condition

NOAA plans to continue to monitor oyster reproductive condition and oyster larvae recruitment in 2012 using similar procedures at the same locations sampled in 2011. Data collected in 2012 will help NOAA determine the rate of recovery and temporal extent of oyster injury.

NOAA claims \$441,050 for this activity, which includes contract costs for 2012 field data collections, as well as data analyses (such as enumerate spat, measure gonads, and statistical and geographical analysis), and injury quantification involving the Dauphin Sea Lab and the University of New Orleans.

The claim record confirms that this activity and associated cost was presented to the RP. BP previously funded three work plans that describe 2011 field data collection. NOAA states that in response to a trustee request to continue these data collection efforts in 2012, BP representatives stated that BP was not interested in further field investigation until previously collected data had been analyzed³¹. On December 23, 2011, NOAA provided BP with a claim that included \$441,050 to continue 2012 field data collection efforts and analyze samples. The claim, work plans, and additional communications provided BP with justification of the need for assessment and description of the claimed activity, including how the data will be used to determine potential injury, timeframe for the assessment, and level of effort/costs. BP did not respond to NOAA's presentation of \$441,050 for this activity. Thus, the claim for this activity was not settled within 90 days, allowing presentation to the Fund as uncompensated damages.

Based on the above facts, the NPFC finds that: (1) the assessment activity is appropriate for the spill given evidence of exposure and the scale and complexity of the incident, (2) the costs claimed are reasonable for the level of effort proposed, and (3) this claim was presented to BP and the Fund. The NPFC therefore finds claimed costs of \$441,050 are compensable from the Fund. 33 U.S.C. §2706 (d)(1)(C), 33 C.F.R. §136.211, 33 U.S.C. §2713(a), 33 U.S.C. §2713(c)(2).

Activity 9. 2011 oyster abundance and biomass

As part of the overall assessment of oyster injuries, the trustees have monitored oyster abundance and biomass from selected sites, collecting nearby sediment samples and oyster tissue samples for evidence of discharged oil. This claimed activity seeks \$567,125 for contract support to analyze and interpret 2011 data. The cost will cover contract costs to analyze about 150 archived oyster tissue samples and 500 sediment samples, as well as review of historical data and statistical analyses and modeling to assess changes in abundance and biomass. Claimed work will be performed with the technical support from Dauphin Island Sea Lab personnel, mapping specialists, oyster specialists, and statisticians.

³¹ Email from BP representative (Cardno ENTRIX) to oyster TWG dated November 29, 2011

The claim record confirms that this claimed activity and associated cost was presented to the RP. BP previously funded two work plans that describe collection of tissue and sediment samples for which NOAA is now requesting funds to analyze. NOAA states that BP participates in the trustee-RP oyster technical working group where this activity was discussed. On December 23, 2011, NOAA provided BP with a claim that included \$567,125 to analyze and interpret 2011 data. The claim and work plans provided BP with justification of the need for assessment and description of the claimed activity, including how the data will be used to determine potential injury, timeframe for the assessment, and level of effort/costs. BP did not respond to NOAA's presentment of \$567,125 for this activity. Thus, the claim was not settled within 90 days, allowing presentment to the Fund as uncompensated damages.

Based on the above facts, the NPFC finds that: (1) the assessment activity is appropriate for the spill given evidence of exposure and the scale and complexity of the incident, (2) the costs claimed are reasonable for the level of effort proposed, and (3) this claim was presented to BP and the Fund. The NPFC therefore finds claimed costs of \$567,125 are compensable from the Fund. 33 U.S.C. §2706 (d)(1)(C), 33 C.F.R. §136.211, 33 U.S.C. §2713(a), 33 U.S.C. §2713(c)(2).

Activity 10. 2012 oyster abundance and biomass

This claimed activity involves analyzing data collected in 2011 on oyster abundance and biomass, and continuing data collection and analyses in 2012 to assess temporal extent of oyster injury. NOAA claims \$944,750, which includes contract costs for field work (i.e., dive teams, quadrats, and contract labor), data analysis (i.e., statistical and geographical analysis at Dauphin Island Sea Lab), and travel to attend technical meetings.

The claim record confirms that this activity and associated cost was presented to the RP. BP previously funded two work plans that describe 2011 field data collection efforts for which NOAA now requests funds to continue and analyze and continue through 2012. NOAA states that, in response to a trustee request to continue these data collection efforts in 2012, BP representatives stated that BP was not interested in further field investigation until previously collected data had been analyzed (See activity 9 above)³². On December 23, 2011, NOAA provided BP with a claim that included \$944,750 to continue monitoring oyster abundance and biomass and analyze collected data. The claim, work plans, and additional communications provided BP with justification of the need for assessment and description of the claimed activity, including how the data will be used to determine potential injury, timeframe for the assessment, and level of effort/costs. BP did not respond to NOAA's presentment of \$944,750 for this activity. Thus, the claim for this activity was not settled within 90 days, allowing presentment to the Fund as uncompensated damages.

Based on the above facts, the NPFC finds that: (1) the assessment activity is appropriate for the spill given evidence of exposure and the scale and complexity of the incident, (2) the costs claimed are reasonable for the level of effort proposed, and (3) this claim was

³² Email from BP representative (Cardno ENTRIX) to oyster TWG dated November 29, 2011

presented to BP and the Fund. The NPFC therefore finds claimed costs of \$944,750 are compensable from the Fund. 33 U.S.C. §2706 (d)(1)(C), 33 C.F.R. §136.211, 33 U.S.C. §2713(a), 33 U.S.C. §2713(c)(2).

Activity 11. Oyster biofouling

NOAA and the co-trustees documented oyster reefs directly affected by oil; and observed oyster biofouling at unprecedented levels after the incident (i.e., the attachment of an organism or organisms to the oyster shell, which can reduce oyster growth and survival). Preliminary investigations to evaluate the degree and cause of biofouling demonstrated the highest abundances of biofouling organisms in the samples examined from the Black Bay/Breton Sound area, which had extensive oiling. NOAA plans to assess whether this increase in biofouling is caused by the incident³³.

NOAA plans to analyze oyster samples for evidence and frequency of biofouling, identify the organism(s) responsible, and determine if and how it is related to the incident. NOAA will use geographical and temporal patterns to relate biofouling to the incident by comparing areas that have been exposed to *Deepwater Horizon* oil as well as areas exposed to the influence of the spillway openings. Using multivariate statistical analyses, the biofouling results can be evaluated using indices of oil exposure to determine the extent to which oil may be contributing to the observed phenomenon.

NOAA claims \$156,750, which includes contract cost for staff labor at Dauphin Island Sea Lab to analyze 2,000 settlement plates, 100 dredge samples, and 900 quadrat samples for evidence of biofouling. Data will be compiled and analyzed by scientific and statistical experts.

Upon review, the NPFC asked NOAA to further explain how oyster injuries caused by biofouling were caused by *Deepwater Horizon* oil and/or response actions. NOAA responded stating that the trustees documented evidence of *Deepwater Horizon* oil in areas where heavy biofouling of oysters occurred. Preliminary observations are not sufficient to determine whether or not the unusual biofouling was caused by the incident, but the potential exists. Using multivariate statistical analyses, biofouling results can be evaluated to determine the extent to which oil may be contributing to the observed biofouling³⁴.

The claim record confirms that this claimed activity and associated cost was presented to the RP. On December 23, 2011, NOAA provided BP with a claim that included \$156,750 to assess potential impacts to oysters from the incident through biofouling. The claim provided BP with justification of the need for assessment and description of the claimed activity, including how the data will be used to determine potential injury, timeframe for the assessment, and level of effort/costs. BP did not respond to NOAA's

³³ NOAA hypothesizes that oyster reefs exposed to oil may have one or more key predator species that normally prey on biofouling organisms impacted by exposure to *Deepwater Horizon* oil, resulting in a reduction of top-down control and a bloom of the biofouling organisms

³⁴ NOAA response to NPFC request for additional information dated May 25, 2012.

presentment of \$156,750 for this activity to analyze this data. Thus, the claim was not settled within 90 days, allowing presentment to the Fund as uncompensated damages.

Based on the above facts, the NPFC finds that: (1) the assessment activity is appropriate for the spill given evidence of exposure and the scale and complexity of the incident, (2) the costs claimed are reasonable for the level of effort proposed, and (3) this claim was presented to BP and the Fund. The NPFC therefore finds claimed costs of \$156,750 are compensable from the Fund. 33 U.S.C. §2706 (d)(1)(C), 33 C.F.R. §136.211, 33 U.S.C. §2713(a), 33 U.S.C. §2713(c)(2).

Activity 12. Injury quantification to organisms from contaminated sediments

NOAA has documented “persistently oiled” nearshore sediments and associated exposure of benthic organisms, including fish, to elevated hydrocarbon concentrations. Through this claimed activity, NOAA will map PAH concentrations in sediments to determine the nature and extent of oil exposure to benthic organisms in nearshore areas. NOAA will analyze fish tissue and co-located sediments samples and evaluate this information with literature based injury thresholds of PAH concentrations.

NOAA claims \$238,500 for contracts to review and interpret field data collected³⁵, conduct a literature review, attend technical meetings, and produce maps.

The claim record indicates that this claimed activity and associated cost was presented to the RP. BP participated in the development of, is a signatory to, and funded, four work plans that describe collection of field data that NOAA now requests funds to analyze. NOAA states that BP has also worked with NOAA to determine the priorities assigned to samples for analysis. On December 23, 2011, NOAA provided BP with a claim that included \$238,500 for this activity. The claim and work plans provided BP with justification of the need for assessment and description of the claimed activity, including how the data will be used to determine potential injury, timeframe for the assessment, and level of effort/costs. BP did not respond to NOAA’s presentment of \$238,500 for this activity. Thus, the claim was not settled within 90 days, allowing presentment to the Fund as uncompensated damages.

Based on the above facts, the NPFC finds that: (1) the assessment activity is appropriate for the spill given evidence of exposure and the scale and complexity of the incident, (2) the costs claimed are reasonable for the level of effort proposed, and (3) this claim was presented to BP and the Fund. The NPFC therefore finds claimed costs of \$238,500 are compensable from the Fund. 33 U.S.C. §2706 (d)(1)(C), 33 C.F.R. §136.211, 33 U.S.C. §2713(a), 33 U.S.C. §2713(c)(2).

Activity 13. Analysis of dead, live captured and stranded sea turtles

NOAA and the trustees have captured over 400 live oiled sea turtles and 17 oiled dead sea turtles. Sea turtle injuries from oil can result from both direct exposure to spilled oil

³⁵ NOAA claims funds to analyze approximately 5,400 sediment samples previously collected

and indirect exposure, such as consumption of contaminated prey. The trustees believe that five species of sea turtles³⁶ are at risk to both direct and indirect exposure.

NOAA plans to analyze 200 tissue samples and 100 external swabs for PAHs and PAH metabolites, and compile, interpret, summarize, review, and map results. Analytical results will confirm exposure to *Deepwater Horizon* oil and be used to assess the number of sea turtles affected by the incident. NOAA claims \$280,500 for this activity, which includes contract costs for experts from the University of Florida.

The claim record indicates that this claimed activity and associated cost was presented to the RP. BP funded the collection of samples through two work plans presented by NOAA³⁷. On December 23, 2011, NOAA provided BP with a claim that included \$280,500 to analyze samples and compile data. The claim and work plans provided BP with justification of the need for assessment and description of the claimed activity, including how the data will be used to determine potential injury, timeframe for the assessment, and level of effort/costs. BP did not respond to NOAA's presentment of \$280,500 for this activity. Thus, the claim for this activity was not settled within 90 days, allowing presentment to the Fund as uncompensated damages.

Based on the above facts, the NPFC finds that: (1) the assessment activity is appropriate for the spill given evidence of exposure and the scale and complexity of the incident, (2) the costs claimed are reasonable for the level of effort proposed, and (3) this claim was presented to BP and the Fund. The NPFC therefore finds claimed costs of \$280,500 are compensable from the Fund. 33 U.S.C. §2706 (d)(1)(C), 33 C.F.R. §136.211, 33 U.S.C. §2713(a), 33 U.S.C. §2713(c)(2).

Activity 14. Abundance and distribution of neritic sea turtles

Aerial surveys conducted during and after the response documented the presence of loggerhead, Kemp's ridley, green, hawksbill, and leatherback sea turtles in the Gulf of Mexico where oil and response activities occurred. Through this activity, NOAA seeks funds to complete analysis and statistical interpretation of this survey data. NOAA will combine survey data with satellite telemetry and dive records data from sea turtle tracking efforts to establish distribution and movement patterns. This data will be used to assess changes in population size over time, shifts in turtle distribution, and location and the number of turtles injured from the incident. NOAA claims \$43,700 for this activity, which includes contract costs to compile analytical results.

After reviewing the claim, the NPFC asked NOAA to explain how turtle dive records are used to adjust aerial sightings and reduce double counting to determine population size³⁸. NOAA responded that they will use dive records to adjust for the time sea turtles spend

³⁶ <http://www.nmfs.noaa.gov/pr/species/turtles/#moreinfo>

³⁷ http://www.gulfspillrestoration.noaa.gov/wp-content/uploads/2011/02/2010_10_26_MAMMALS_Sea_Turtle_Nearshore_Entanglement_Netting_Survey_W_of_Delta.redacted3.pdf and http://www.gulfspillrestoration.noaa.gov/wp-content/uploads/2012/05/Entanglement_Addendum_AllSignatures.redacted-slw.redacted2.pdf

³⁸ Letter dated March 30, 2012 from NPFC to NOAA requesting additional information

underwater and are not visible to field teams and use two teams of observers that will record observations independently to obtain a more accurate number of turtles observed.

The claim record confirms that this claimed activity and associated cost was presented to the RP. BP funded four work plans to conduct aerial surveys³⁹. On December 23, 2011, NOAA provided BP with a claim that included \$43,700 for this activity to analyze and interpret data. The claim and work plans provided BP with justification of the need for assessment and description of the claimed activity, including how the data will be used to determine potential injury, timeframe for the assessment, and level of effort/costs. BP did not respond to NOAA's presentment of \$43,700 for this activity. Thus, the claim for this activity was not settled within 90 days, allowing presentment to the Fund as uncompensated damages.

Based on the above facts, the NPFC finds that: (1) the assessment activity is appropriate for the spill given evidence of exposure and the scale and complexity of the incident, (2) the costs claimed are reasonable for the level of effort proposed, and (3) this claim was presented to BP and the Fund. The NPFC therefore finds claimed costs of \$43,700 are compensable from the Fund. 33 U.S.C. §2706 (d)(1)(C), 33 C.F.R. §136.211, 33 U.S.C. §2713(a), 33 U.S.C. §2713(c)(2).

Activity 15. Sea turtle prey availability and quality

Sea turtles consume different crustaceans and fish in the Gulf of Mexico, many of which were exposed to oil⁴⁰. Preliminary results of samples taken from dead sea turtles collected after the incident indicate that PAHs are present in sea turtle stomach or intestinal areas. NOAA claims for costs to analyze sea turtle prey samples to assess the potential sea turtle injury resulting from consumption of contaminated prey.

NOAA claims \$207,250 for contract costs to analyze 100 prey item samples for PAHs and dispersants, 100 samples of bile from collected prey, and to evaluate and analyze results to support injury quantification.

The claim record confirms that this claimed activity and associated cost was presented to the RP. Prey sample collection was funded under a cooperative work plan by BP, where NOAA describes the type of analyses for samples. NOAA now seeks funds to analyze those samples. On December 23, 2011, NOAA provided BP with a claim that included \$207,250 for prey sample analyses. The claim and work plan provided BP with justification of the need for assessment and description of the claimed activity, including how the data will be used to determine potential injury, timeframe for the assessment, and level of effort/costs. BP did not respond to NOAA's presentment of \$207,250 for this activity to analyze the data. Thus, the claim for this activity was not settled within 90 days, allowing presentment to the Fund as uncompensated damages.

³⁹ Work plans provided to BP through the technical working groups during the preassessment phase in 2010 and 2011

⁴⁰ "NOAA roadmap" provided to the NPFC as an attachment to an email dated May 25, 2012

Based on the above facts, the NPFC finds that: (1) the assessment activity is appropriate for the spill given evidence of exposure and the scale and complexity of the incident, (2) the costs claimed are reasonable for the level of effort proposed, and (3) this claim was presented to BP and the Fund. The NPFC therefore finds claimed costs of \$207,250 are compensable from the Fund. 33 U.S.C. §2706 (d)(1)(C), 33 C.F.R. §136.211, 33 U.S.C. §2713(a), 33 U.S.C. §2713(c)(2).

Activity 16. Analysis of dead, remote biopsied, and stranded mammals

NOAA has documented oiled marine mammals in Barataria Bay, 32 of which have been examined and show signs of anemia, low blood sugar, and symptoms of liver and lung disease⁴¹.

NOAA plans to analyze 250 blubber and skin samples, 100 liver, lung, and tissue samples for cytochrome P4501a, and prepare technical reports. Results will be compiled, summarized, reviewed, mapped, and interpreted to compare with the physiological results from the estuarine dolphin health assessments (See activity 17 below). NOAA claims \$182,000 for contract labor cost associated with this activity.

After reviewing the claim, the NPFC asked NOAA to explain how NOAA plans to link the presence of biomarkers such as cytochrome P4501a to *Deepwater Horizon* oil or response actions. NOAA responded that biopsy samples were collected before, during, and after *Deepwater Horizon* oil entered the nearshore environment. NOAA will evaluate differences in biomarkers across a variety of oil exposure profiles. Exposure profiles are defined by evaluating *Deepwater Horizon* oiling information in the area where biopsies were collected.

The claim record confirms that this claimed activity and associated cost was presented to the RP. BP funded five work plans that described field data collection efforts. NOAA now requests funds to analyze samples collected during previous field data collection efforts. NOAA states that they provided BP with an outline that described the types of analyses proposed under this activity. On December 23, 2011, NOAA provided BP with a claim that included \$182,000 for this activity. The claim and work plans provided BP with justification of the need for assessment and description of the claimed activity, including how the data will be used to determine potential injury, timeframe for the assessment, and level of effort/costs. BP did not respond to NOAA's presentment of \$182,000 for this activity. Thus, the claim for this activity was not settled within 90 days, allowing presentment to the Fund as uncompensated damages.

Based on the above facts, the NPFC finds that: (1) the assessment activity is appropriate for the spill given evidence of exposure and the scale and complexity of the incident, (2) the costs claimed are reasonable for the level of effort proposed, and (3) this claim was presented to BP and the Fund. The NPFC therefore finds claimed costs of \$182,000 are compensable from the Fund. 33 U.S.C. §2706 (d)(1)(C), 33 C.F.R. §136.211, 33 U.S.C. §2713(a), 33 U.S.C. §2713(c)(2).

⁴¹ "NOAA roadmap" provided to the NPFC as an attachment to an email dated May 25, 2012

Activity 17. Estuarine dolphin population distribution and health assessment

NOAA conducted several dolphin surveys along Louisiana and Mississippi coastal waters in 2010 and 2011. Preliminary results indicate that dolphins were present in oiled areas such as Barataria Bay, Chandeleur Sound, and Mississippi Sound.

NOAA proposes to analyze and interpret information produced by field investigations for sub-lethal or latent effects such as organ damage and immune dysfunction; conduct follow-up field surveys in 2012 to assess abundance, survival rates, and collect additional tissue samples; and undertake statistical analyses to evaluate changes in annual abundance, evaluate changes in overall health over time, and interpret and synthesize data. These analyses will inform injury quantification to marine mammals.

NOAA claims \$409,000 for contract labor costs to analyze samples, conduct additional field surveys (i.e., dolphin sightings, photo identification, and tissue sample collection) and interpret and summarize results. NOAA contractors include veterinarians, biologists and wildlife epidemiologists.

Upon review, the NPFC requested NOAA provide the results from the 2010 and 2011 field surveys to justify the need for additional field work in 2012. NOAA responded by providing a press release providing information on dolphin surveys in 2010 and 2011. NOAA also stated that preliminary data suggests that dolphins are showing signs of poor health in areas located in the Gulf of Mexico. NOAA requests funds for NRDA studies that are necessary to complete the injury assessment on dolphins.

The claim record confirms that this claimed activity and associated cost was presented to the RP. BP funded seven work plans that described data collection efforts. NOAA now requests funds to analyze that data. NOAA also provided BP with a work plan for the additional field studies, which BP signed in March 2012 but did not fund. On December 23, 2011, NOAA provided BP with a claim that included \$409,000 for this activity. The claim and work plans provided BP with justification of the need for assessment and description of the claimed activity, including how the data will be used to determine potential injury, timeframe for the assessment, and level of effort/costs. BP did not respond to NOAA's presentation of \$409,000 for this activity. Thus, the claim for this activity was not settled within 90 days, allowing presentation to the Fund as uncompensated damages.

Based on the above facts, the NPFC finds that: (1) the assessment activity is appropriate for the spill given evidence of exposure and the scale and complexity of the incident, (2) the costs claimed are reasonable for the level of effort proposed, and (3) the claim was presented to BP and the Fund. The NPFC therefore finds claimed costs of \$409,000 are compensable from the Fund. 33 U.S.C. §2706 (d)(1)(C), 33 C.F.R. §136.211, 33 U.S.C. §2713(a), 33 U.S.C. §2713(c)(2).

Activity 18. Abundance and distribution of coastal and offshore mammals

Aerial surveys and satellite tagging of marine mammals conducted during and after the response documented the presence of marine mammals in the Gulf of Mexico where oil and response activities occurred.

NOAA proposes to complete analysis and statistical interpretation of survey and satellite tagging data. Tracking movements of marine mammals in the Gulf of Mexico will help NOAA quantify potential injuries by identifying changes in abundance and distribution related to baseline conditions and determine the number of marine mammals potentially exposed to *Deepwater Horizon* oil and/or dispersants. NOAA claims \$100,700, which includes contract labor to analyze and interpret field data collected and present findings in technical reports.

The claim record confirms that this claimed activity and associated cost was presented to the RP. On December 23, 2011, NOAA provided BP with a claim that included \$100,700 for this activity. The claim provided BP with justification of the need for assessment and description of the claimed activity, including how the data will be used to determine potential injury, timeframe for the assessment, and level of effort/costs. BP did not respond to NOAA's presentment of \$100,700 for this activity. Thus, the claim for this activity was not settled within 90 days, allowing presentment to the Fund as uncompensated damages.

Based on the above facts, the NPFC finds that: (1) the assessment activity is appropriate for the spill given evidence of exposure and the scale and complexity of the incident, (2) the costs claimed are reasonable for the level of effort proposed, and (3) this claim was presented to BP and the Fund. The NPFC therefore finds claimed costs of \$100,700 are compensable from the Fund. 33 U.S.C. §2706 (d)(1)(C), 33 C.F.R. §136.211, 33 U.S.C. §2713(a), 33 U.S.C. §2713(c)(2).

Activity 19. Marine mammal prey availability and quality

NOAA conducted a study of offshore prey in 2010 that documented oiled marine mammal prey in both offshore and nearshore environments. Consumption of contaminated prey can adversely affect marine mammals.

NOAA plans to analyze data generated by the 2010 prey study. NOAA will investigate the levels of potential exposure to marine mammal prey from discharged oil and dispersants by analyzing samples for PAHs and fingerprinting. This activity will help NOAA assess whether prey species of marine mammals were contaminated with *Deepwater Horizon* oil and help inform injury quantification. NOAA claims \$319,250, which includes contract labor and laboratory costs to analyze prey samples for PAHs and dispersants and to draft and finalize technical reports that summarize analytical results.

The claim record confirms that this claimed activity and associated cost was presented to the RP. BP funded the offshore prey sample collection work plan that describes the type of analyses NOAA plans to pursue with collected samples. NOAA now requests funds to analyze the collected samples. On December 23, 2011, NOAA provided BP with a claim that included \$319,250 for this activity. The claim and work plan provided BP with justification of the need for assessment and description of the claimed activity, including how the data will be used to determine potential injury, timeframe for the assessment, and level of effort/costs. BP did not respond to NOAA's presentment of \$319,250 for this activity. Thus, the claim for this activity was not settled within 90 days, allowing presentment to the Fund as uncompensated damages.

Based on the above facts, the NPFC finds that: (1) the assessment activity is appropriate for the spill given evidence of exposure and the scale and complexity of the incident, (2) the costs claimed are reasonable for the level of effort proposed, and (3) this claim was presented to BP and the Fund. The NPFC therefore finds claimed costs of \$319,250 are compensable from the Fund. 33 U.S.C. §2706 (d)(1)(C), 33 C.F.R. §136.211, 33 U.S.C. §2713(a), 33 U.S.C. §2713(c)(2).

Activity 20. Inhalation/near-water exposure modeling for marine mammals

During the response, marine mammals were observed in areas where concentrations of contaminants in the air were at or above levels of concern. Contaminants were released into the air by both oil and response actions through vapors and particle matter generated by in situ burns, respectively.

NOAA plans to investigate the concentration of airborne contaminants during the oil spill and their potential lethal and sub-lethal affects on marine mammals. NOAA and its contractors will review evidence from air samples collected during the response, conduct a literature review, and model exposure concentrations close to the water surface.

NOAA claims \$122,250, which includes contract labor costs to collect and interpret data, review literature, and prepare a final technical report.

The claim record confirms that this claimed activity and associated cost was presented to the RP. On December 23, 2011, NOAA provided BP with a claim that included \$122,250 for this activity. The claim provided BP with justification of the need for assessment and description of the claimed activity, including how the data will be used to determine potential injury, timeframe for the assessment, and level of effort/costs. BP did not respond to NOAA's presentment of \$122,250 for this activity. Thus, the claim for this activity was not settled within 90 days, allowing presentment to the Fund as uncompensated damages.

Based on the above facts, the NPFC finds that: (1) the assessment activity is appropriate for the spill given evidence of exposure and the scale and complexity of the incident, (2) the costs claimed are reasonable for the level of effort proposed, and (3) this claim was presented to BP and the Fund. The NPFC therefore finds claimed costs of \$122,250 are

compensable from the Fund. 33 U.S.C. §2706 (d)(1)(C), 33 C.F.R. §136.211, 33 U.S.C. §2713(a), 33 U.S.C. §2713(c)(2).

Activities 21-24. Shoreline Habitat and Resources Investigations

The trustees estimate that approximately 1,000 miles of shoreline, marsh, mangrove, and beach habitats were exposed to oil, some areas for greater than 12 weeks. Oil killed vegetation, resulting in erosion and reduced vegetative health and faunal abundance. NOAA claims the costs of four assessment activities to quantify injuries to shoreline habitat and associated fauna: (1) Shoreline oiling database and mapping, (2) Coastal wetland vegetation study, (3) Coastal wetland faunal study, and (4) Coastal wetland erosion study.

Activity 21. Shoreline oiling database and mapping

NOAA plans to consolidate various databases that contain response and NRDA data related to shoreline oiling. NOAA will use this database to map the shoreline habitat exposed to oil, information that will be used in shoreline habitat assessment, as well as nearshore assessment activities (e.g., oysters, and SAV). The maps will display different levels of shoreline oiling across the Gulf coast, depicting exposure and potential injury.

NOAA claims \$124,500, which includes contract labor costs to develop the database and mapping products. Database development will require coordinating among several trustees, spatial analysis, and quality control.

The claim record confirms that this claimed activity and associated cost was presented to the RP. BP funded five work plans that described data collection efforts related shoreline oiling. NOAA now requests funds to consolidate data collected from previous work plans and other activities into one database to produce maps that will help inform injury quantification. On December 23, 2011, NOAA provided BP with a claim for \$124,500 for this database and mapping activity. The claim and work plans provided BP with justification of the need for assessment and description of the claimed activity, including how the data will be used to determine potential injury, timeframe for the assessment, and level of effort/costs. BP did not respond to NOAA's presentment of \$124,500 for this activity. Thus, the claim for this activity was not settled within 90 days, allowing presentment to the Fund as uncompensated damages.

Based on the above facts, the NPFC finds that: (1) the assessment activity is appropriate for the spill given evidence of exposure and the scale and complexity of the incident, magnitude of potential injury, and (2) the costs claimed are reasonable for the level of effort proposed, and (3) this claim was presented to BP and the Fund. The NPFC therefore finds claimed costs of \$124,500 are compensable from the Fund. 33 C.F.R. §136.211, 33 U.S.C. §2713(a), 33 U.S.C. §2713(c)(2).

Activity 22. Coastal wetland vegetation study

NOAA plans to complete analysis, interpretation, and reporting of data collected during three sampling events conducted in 2010 and 2011. NOAA will analyze samples for above and below ground biomass, chlorophyll content, soil quality and function, and percent live and dead plant cover. These investigations will detect changes in primary production, reproduction, soil function, and spatial extent of injury to quantify injury. NOAA also requests funds to analyze additional observational data collected on relevant wetland vegetation (e.g., aerial and satellite imagery), and conduct an additional sampling event in 2012 to monitor recovery of wetland vegetation.

NOAA claims \$3,050,093, which includes contract labor and laboratory costs to analyze samples from 200 sites, interpret and apply results of aerial and satellite imagery analyses of changes in habitat over time, and conduct one additional field sampling event to assess rate of habitat recovery.

The claim record confirms that this claimed activity and associated cost was presented to the RP. BP funded three work plans that detailed data collection efforts. NOAA now requests funds to analyze and interpret data previously collected. On December 23, 2011, NOAA provided BP with a claim for \$3,050,093 for this data analysis. The claim and work plans provided BP with justification of the need for assessment and description of the claimed activity, including how the data will be used to determine potential injury, timeframe for the assessment, and level of effort/costs. BP did not respond to NOAA's presentment of \$3,050,093 for this activity. Thus, the claim for this activity was not settled within 90 days, allowing presentment to the Fund as uncompensated damages.

Based on the above facts, the NPFC finds that: (1) the assessment activity is appropriate for the spill given evidence of exposure and the scale and complexity of the incident, magnitude of potential injury, and (2) the costs claimed are reasonable for the level of effort proposed, and (3) this claim was presented to BP and the Fund. The NPFC therefore finds claimed costs of \$3,050,093 are compensable from the Fund. 33 C.F.R. §136.211, 33 U.S.C. §2713(a), 33 U.S.C. §2713(c)(2).

Activity 23. Coastal wetland faunal study

As a complement to the wetland vegetation study (Activity 28) that focuses on plants (i.e., primary production), NOAA also plans to assess potential injury to marsh invertebrate communities (i.e., secondary production). NOAA claims \$415,190 for this activity, which includes contract costs to analyze 2011 data and an additional field study in 2012. NOAA will use fiddler crabs and periwinkles as representative species because of their abundance, importance to marsh communities, and sensitivity to oil. This assessment work will allow determination of mortality, abundance, and changes in demographics for shoreline fauna.

The claim record confirms that this claimed activity and associated cost was presented to the RP. BP funded the work plan for the 2011 field efforts to collect data related to

fiddler crab and periwinkles. On December 23, 2011, NOAA provided BP with a claim for \$415,190 that includes the costs to analyze the samples collected and collect additional field data in 2012. The claim and work plan provided BP with justification of the need for assessment and description of the claimed activity, including how the data will be used to determine potential injury, timeframe for the assessment, and level of effort/costs. BP did not respond to NOAA's presentment of \$415,190 for this activity. Thus, the claim for this activity was not settled within 90 days, allowing presentment to the Fund as uncompensated damages.

Based on the above facts, the NPFC finds that: 1) the assessment activity is appropriate for the spill given evidence of exposure and the scale and complexity of the incident, magnitude of potential injury, and 2) the costs claimed are reasonable for the level of effort proposed, and (3) this claim was presented to BP and the Fund. The NPFC therefore finds claimed costs of \$415,190 are compensable from the Fund. 33 C.F.R. §136.211, 33 U.S.C. §2713(a), 33 U.S.C. §2713(c)(2).

Activity 24. Coastal wetland erosion study

NOAA has documented erosion of wetland habitat resulting from loss of vegetation exposed to oil. NOAA will analyze and interpret datasets from Real Time Kinetic (RTK)⁴² elevation surveys, Light Detection and Ranging (LiDAR)⁴³, and aerial imagery funded by BP to assess potential injury associated with wetland erosion resulting from the spill. Potential erosion due to oiling will be evaluated relative to historical erosion rates and unoiled areas.

NOAA claims \$55,500 for this activity, which includes contract labor cost for experts in coastal geology, coastal wetland systems, and NRDA to participate in the investigation. Experts will assemble and analyze LiDAR and RTK data.

The claim record confirms that this claimed activity and associated cost was presented to the RP. BP funded past field work for LiDAR data collection. NOAA now requests funds to analyze collected field data. On December 23, 2011, NOAA provided BP with a claim for \$55,500 for this activity. The claim and work plan provided BP with justification of the need for assessment and description of the claimed activity, including how the data will be used to determine potential injury, timeframe for the assessment, and level of effort/costs. BP did not respond to NOAA's presentment of \$55,500 for this activity. Thus, the claim for this activity was not settled within 90 days, allowing presentment to the Fund as uncompensated damages.

Based on the above facts, the NPFC finds that: 1) the assessment activity is appropriate for the spill given evidence of exposure and the scale and complexity of the incident, magnitude of potential injury, and 2) the costs claimed are reasonable for the level of

⁴² RTK is a technique used in land survey and in hydrographic survey to improve the accuracy of GPS

⁴³ LiDAR is an optical remote sensing technology that uses light to measure subtle topographic features such as river terraces and river channel banks, to measure the land-surface elevation beneath the vegetation canopy, to better resolve spatial derivatives of elevation, and to detect elevation changes

effort proposed, and (3) this claim was presented to BP and the Fund. The NPFC therefore finds claimed costs of \$55,500 are compensable from the Fund. 33 C.F.R. §136.211, 33 U.S.C. §2713(a), 33 U.S.C. §2713(c)(2).

Activity 25. Toxicity to Aquatic Organisms

To understand the nature and extent of injury resulting from the incident, NOAA needs to evaluate the toxicity of oil and dispersants released into the water column during this incident (i.e., what concentrations of PAH and contaminant in water and sediment are toxic to organisms). Through this activity, NOAA will complete toxicity testing for 12 representative species⁴⁴ in the Gulf of Mexico. Tests will help establish toxicity thresholds for organisms potentially injured by discharged oil and/or dispersants. NOAA will evaluate the toxic effects of oil and/or dispersants on organisms by their response to several endpoints including survival, growth, reproductive metrics, development, immunological effects, behavior, gene expression, and tissue damage.

NOAA claims \$2,139,190, which includes contract costs to conduct 160 toxicity tests and analyze and interpret the resulting data. NOAA has contracts with nine different laboratories that will participate in this activity.

The claim record confirms that this claimed activity and associated cost was presented to the RP. On December 23, 2011, NOAA provided BP with a claim that included \$2,139,190 for this activity. The claim provided BP with justification of the need for assessment and description of the claimed activity, including how the data will be used to determine potential injury, timeframe for the assessment, and level of effort/costs. BP did not respond to NOAA's presentment of \$2,139,190 for this activity. Thus, the claim was not settled within 90 days, allowing presentment to the Fund as uncompensated damages.

Based on the above facts, the NPFC finds that: (1) the assessment activity is appropriate for the spill given evidence of exposure and the scale and complexity of the incident, (2) the costs claimed are reasonable for the level of effort proposed, and (3) this claim was presented to BP and the Fund. The NPFC therefore finds claimed costs of \$2,139,190 are compensable from the Fund. 33 U.S.C. §2706 (d)(1)(C), 33 C.F.R. §136.211, 33 U.S.C. §2713(a), 33 U.S.C. §2713(c)(2).

Activity 26. Response Data Compilation and Synthesis

Oil spill response operations generated a large amount of data (i.e., location and duration of nearshore submerged oil recovery operations, beach cleanup, SCAT surveys, and animal collection and rehabilitation). Through this activity, NOAA claims \$307,500 for contract labor cost to compile response-collected information on aquatic resources stored in various databases and systems managed and maintained by BP or other non-trustee agencies, and present the information in useable and compatible formats.

⁴⁴ Inland silverside, sheepshead minnow, Red drum, southern flounder, speckled sea trout, goggle eye, cobia, mahi-mahi, bluefin tuna, grass shrimp, blue crab, and eastern oyster

The claim record confirms that this claimed activity and associated cost was presented to the RP. On December 23, 2011, NOAA provided BP with a claim that included \$307,500 for this activity. The claim provided BP with justification of the need for and description of the claimed activity, including how the data will be used to determine potential injury, timeframe for the assessment, and level of effort/costs. BP did not respond to NOAA's presentment of \$307,500 for this activity. Thus, the claim was not settled within 90 days, allowing presentment to the Fund as uncompensated damages.

Based on the above facts, the NPFC finds that: (1) the assessment activity is appropriate for the spill given evidence of exposure and the scale and complexity of the incident, (2) the costs claimed are reasonable for the level of effort proposed, and (3) this claim was presented to BP and the Fund. The NPFC therefore finds claimed costs of \$307,500 are compensable from the Fund. 33 U.S.C. §2706 (d)(1)(C), 33 C.F.R. §136.211, 33 U.S.C. §2713(a), 33 U.S.C. §2713(c)(2).

Activity 27. RP Data Reports

NOAA claims \$624,000 for contractor costs to review, interpret, and analyze RP data and findings shared with the trustees through the various technical working groups. NOAA expects that the RP will be providing the trustees with reports from over 200 assessment studies conducted by the RP outside of the cooperative trustee-RP assessment. NOAA's review and consideration of these RP assessment efforts is important and necessary to ensure consideration of all relevant injury assessment information in determining injury.

The claim record confirms that this activity and cost was presented to the RP. On December 23, 2011, NOAA provided BP with a claim for \$624,000 for contract costs to review their data reports. The claim provided BP with justification of the need for and description of the claimed activity, including how the effort will be used to determine potential injury, timeframe for the activity, and level of effort/costs. BP did not respond to NOAA's presentment of \$624,000 for this activity. Thus, the claim was not settled within 90 days, allowing presentment to the Fund as uncompensated damages.

Based on the above facts, the NPFC finds that: (1) the assessment activity is appropriate for the spill given evidence of exposure and the scale and complexity of the incident, (2) the costs claimed are reasonable for the level of effort proposed, and (3) this claim was presented to BP and the Fund. The NPFC therefore finds claimed costs of \$624,000 are compensable from the Fund. 33 U.S.C. §2706 (d)(1)(C), 33 C.F.R. §136.211, 33 U.S.C. §2713(a), 33 U.S.C. §2713(c)(2).

Summary

This determination approves \$19,428,049 to implement 27 of 39 claimed assessment activities. The remaining 12 activities totaling \$86,544,259 are still under adjudication and the NPFC will continue to review additional information provided by NOAA. Table 1 below is a summary of our determination:

Table 1. Summary of Claimed Activities

Activity	Amount approved in this determination	Pending adjudication
Deep sea soft bottom sediments	\$3,153,501	
Deep sea hard ground corals	\$822,500	
Mesophotic reefs	\$102,000	
Benthic Megafauna		\$240,500
Satellite telemetry with sperm whales and bluefin tuna	\$472,500	
Transport, fate, and effects modeling	\$3,446,000	
Sargassum Communities	\$636,000	
Oceanic sea turtle investigations associated with Sargassum	\$66,750	
Chandeleur Island field assessment and imagery analysis		\$138,500
Chandeleur Island benthic invertebrate analysis		\$93,000
2011 Oyster recruitment and reproductive condition		\$173,250
2012 Oyster recruitment and reproductive condition	\$441,050	
2011 Oyster abundance and biomass	\$567,125	
2012 Oyster abundance and biomass monitoring	\$944,750	
Oyster resource mapping - subtidal and intertidal		withdrawn
Oyster biofouling	\$156,750	
Injury quantification to organisms from contaminated sediments	\$238,500	
Analysis of dead, live captured, and stranded sea turtles	\$280,500	
Neritic sea turtle injury assessment		withdrawn
Abundance and distribution of neritic sea turtles	\$43,700	
Sea turtle prey availability and quality	\$207,250	
Analysis of dead remote biopsied and stranded mammals	\$182,000	
Estuarine Dolphin population distribution and health assessment	\$409,000	
Abundance and distribution of coastal and offshore mammals	\$100,700	
Marine mammal prey availability and quality	\$319,250	
Inhalation/Near Water Modeling	\$122,250	
Shoreline oiling database and mapping	\$124,500	
Coastal wetland vegetation study	\$3,050,093	
Coastal wetland faunal study	\$415,190	
Coastal wetland erosion	\$55,500	
Toxicity to Aquatic Organisms	\$2,139,190	
Data Management Systems		\$3,936,000
Sample and observational records intake		\$6,103,200
Laboratory Analysis		\$29,811,000
Tracking, QA/QC, and posting		\$5,797,500
Response data compilation and synthesis	\$307,500	
Aerial Imagery		\$300,000
RP data reports	\$624,000	
Trustee data management support		\$3,120,000
Restoration Scaling and Planning		\$3,641,714
Injury Assessment Management & Administration		\$13,524,131
NOAA Labor		\$16,348,018
General Coordination and Support for TWG		\$2,839,200
Contingency		478,246
Total	\$19,428,049	\$86,544,259

Revolving Trust Fund and Return of Unused Funds to the OSLTF

As established by OPA (33 U.S.C. §2706(f)) and NRDA regulations (15 C.F.R. §990.65), sums recovered by trustees for natural resource damages must be retained by the trustees in a revolving trust account. All other sums must be used to implement the approved Assessment Plan, as approved by this determination. All unused funds, including interest earned, shall be returned to the OSLTF in a timely basis and no later than six months from the completion of the assessment as described in this determination in accordance with 15 C.F.R. §990.65.

Cost Documentation and Final Report

As the claimant, NOAA shall ensure that all expenditures of OSLTF funds are documented appropriately and spent according to the Assessment Plan as approved in this determination. Any funds not spent or appropriately documented shall be returned to the Fund. NOAA shall provide the NPFC with a final report 120 days after completion of these activities. The report should include:

1. Certification by NOAA that all expenditures of OSLTF funds (including interest earned) were in accordance with the plan as approved by the NPFC;
2. A summary of findings;
3. Copies of final reports;
4. Documentation of OSLTF funds remaining in the 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 reconcile costs and all remaining funds and/or inadequately documented costs will be returned to the OSLTF.

The NPFC has prepared a standardized template with detailed instructions to facilitate annual progress and final cost reporting. These templates are provided as an attachment to an email sent with this determination.

Conclusion

The NPFC has reviewed the claim submitted by NOAA for costs to assess natural resource damages resulting from the *Deepwater Horizon* incident in accordance with OPA (33 U.S.C. 2701 *et seq.*) and its implementing regulations (15 C.F.R. 990 *et seq.* and 33 C.F.R. §136). Through this partial determination we have determined that \$19,428,049 is compensable to fund activities in the Assessment Plan. This offer constitutes full and final payment for costs of the 27 activities associated with this damage assessment plan.

If you accept this offer, please complete the enclosed Acceptance/Release Form and return to:

Director (cn)
U.S. Coast Guard Stop 7100
National Pollution Funds Center
4200 Wilson Boulevard, Suite 1000
Arlington, VA 20598-7100

If we do not receive the signed original Acceptance/Release Form within 60 days of the date of this letter, the offer is void. If the settlement is accepted, your payment will be mailed within 30 days of receipt of the Release Form. Please provide account information and instruction for the transfer of funds to your trustee account when you submit the Release Form.

If you have any questions regarding this determination, please feel free to contact me at 202-493-6623.

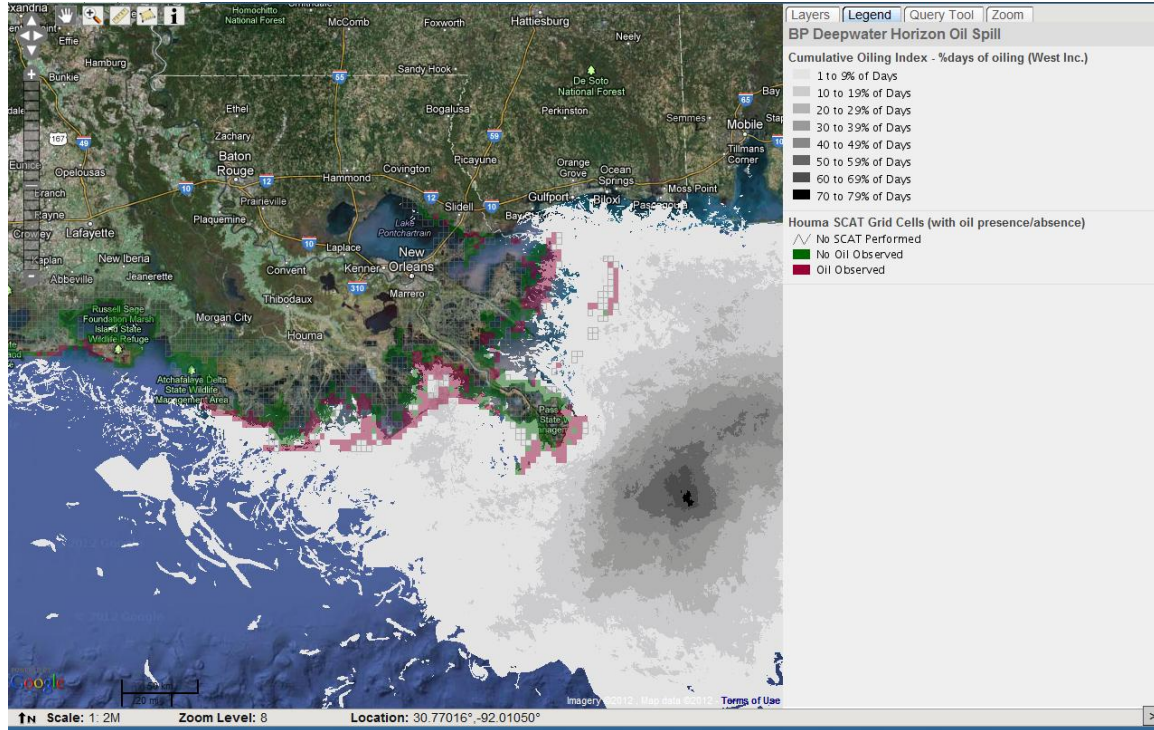
Sincerely,



Claims Manager
Natural Resource Damages

Encl: (1) Acceptance/Release Form

Appendix A:



Source: Environmental Response Management Application retrieved Monday, June 11, 2012 (gomex.erma.noaa.gov/.)

U.S. Department
of Homeland Security

**United States
Coast Guard**



Director
United States Coast Guard
National Pollution Funds Center

U.S. Coast Guard Stop 7100
National Pollution Funds Center
4200 Wilson Boulevard, Suite 1000
Arlington, VA 20598-7100
Phone: [REDACTED]
E-mail: [REDACTED]@uscg.mil

Claim Number: N10036-OC08

Claimant Name: National Oceanic Atmospheric Administration

NOAA, the undersigned, accepts the determination of \$19,428,049 as partial compensation for the claim listed above.

On March 23, 2012, NOAA presented a claim to the Oil Spill Liability Trust Fund (OSLTF or the Fund) in the total amount of \$115,952,207 for upfront costs to assess potential damages to natural resources resulting from the discharge of oil on or about April 20, 2010, from an area of land leased by BP (the *Deepwater Horizon* incident).

The NOAA accepts the settlement offer of \$19,428,049 as partial compensation for the cost to assess ecological damages as described in the July 5, 2012 determination (N10036-OC08).

NOAA agrees to provide a final report to the NPFC as directed in the determination. NOAA agrees to comply with 33 U.S.C. §2706(f) and 33 C.F.R. §136.211 by depositing into a revolving trust account the amounts awarded in the July 5, 2012 determination and any amounts in excess of those required for these reimbursements to accomplish the assessment activities approved in the determination shall be deposited to the OSLTF.

NOAA 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 loss. NOAA authorizes the United States to sue compromise or settle in the name of NOAA and that the NPFC be fully substituted for NOAA and subrogated to all NOAA rights arising from the July 5, 2012 determination.

NOAA acknowledges that the United States has pending legal actions associated with the *Deepwater Horizon* incident in federal district court but warrants that no settlement will be made by any person on behalf of the NOAA with any other party for costs that are the subject of the claim against the OSLTF and NOAA 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 OSLTF. The cooperation shall include but not be limited to, immediately reimbursing the OSLTF 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.

NOAA certifies that to the best of its knowledge and belief the information contained in this claim represents all material facts and is true, and understands that misrepresentation

Claim Number: N10036-OC06

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of facts is subject to prosecution under federal law, including but not limited to 18 U.S.C. §§287 and 1001.

FOR THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Tony Penn
NOAA Office of Response and Restoration

Date