

U.S. Department
of Homeland Security

United States
Coast Guard



Director
National Pollution Funds Center

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16480
06 November 2013

MEMORANDUM

From: Fredy Hernandez
CLAIMS MANAGER, NPFC

To: Tony Penn
DEPUTY CHIEF, ASSESSMENT AND RESTORATION DIVISION, NOAA

Subj: Claim: N10036-OC14 – *Deepwater Horizon* Oil Spill, 2010/11 Lost Human Use Past Assessment Costs

1. On August 15, 2012, the National Pollution Funds Center (NPFC), received a claim from the National Oceanic Atmospheric Administration (N10036-OC14) for costs incurred from July 2010 through October 2011 to assess lost human use of natural resources following the *Deepwater Horizon* oil spill. The claim, as subsequently revised by NOAA, totaled \$3,839,965.85.

2. The NPFC adjudicated this claim in accordance with the Oil Pollution Act (OPA, 33 U.S.C. 2701 *et seq.*) and the OPA regulations (33 C.F.R. Part 136 and 15 C.F.R. 990 *et seq.*). A copy of the determination and offer to pay the revised claimed amount of \$3,839,965.85 is enclosed.

3. If you accept this offer, please complete the enclosed Acceptance/Release Form and return to:
Director (cn)
National Pollution Funds Center
U.S. Coast Guard Stop 7100
4200 Wilson Boulevard, Suite 1000
Arlington, VA 20598-7100

4. If we do not receive the signed Acceptance/Release Form within 60 days of the date of this memo, the offer is void. If the settlement is accepted, 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 Damage Assessment Restoration and Revolving Fund Account with the signed Form.

5. If you have any questions regarding this determination, please feel free to contact me at [REDACTED]

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Enclosures: (1) NPFC determination
(2) Acceptance/Release Form

NPFC DETERMINATION

Claim Number:	N10036-OC14
Claimant:	National Oceanic Atmospheric Administration
Type of Claim:	NRDA, 2010/11 Past Assessment Costs
Claim Manager:	Fredy Hernandez
Amount Requested:	\$3,839,965.85
Offer Amount:	\$3,839,965.85
Determination Date:	06 November 2013

Summary of the Incident and Claim

On April 20, 2010, the *Deepwater Horizon* mobile offshore drilling unit exploded and sank, discharging an estimated 210.0¹ million gallons of oil into the Gulf of Mexico until the well was capped on July 15, 2010. Responders to the discharge dispensed approximately 1.84 million gallons of dispersants² to keep, or delay, the oil from reaching sensitive shorelines. 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 and advertised its OPA claims process.

Upon notification of 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 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, and on September 9, 2010, the Unified Command reported 39,885 square miles of Gulf of Mexico federal waters remained closed to fishing⁵. The trustees identified 13 resource/habitat injury categories, one of which is lost human use of natural resources injured by the spill and/or associated with the closures⁶. Each resource/habitat is interconnected with one or more of the others, with the potential for adverse impacts to one resource/habitat to reverberate throughout the larger Gulf of

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

² 1.07 million gallons on the surface and 771,000 gallons sub-sea. Deepwater Horizon Incident Joint Information Center. 2010. The Ongoing Administration-Wide Response to the Deepwater BP Oil Spill. <http://www.restorethegulf.gov/release/2010/08/06/ongoing-administrationwide-response-deepwater-bp-oil-spill>.

³ The state cotrustees are Louisiana, Mississippi, Alabama, Florida, and Texas.

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

Mexico ecosystem. For the human use component, the interconnected resource/habitat categories relate to, and support, direct and indirect human use.

Potential direct human use losses include disruptions in recreational boating, fishing, beach activities, and bird watching, while potential indirect, or non use, losses represent the value that people place on the injured natural resource(s), even if they will never use it. Both residents and non-residents of Gulf States make more than 150 million recreational trips to the Gulf of Mexico each year and in 2009 approximately 23 million of these recreational trips were individual fishing trips^{7,8}. These types of trips were affected by beach and fishery closures implemented in response to the spill to protect the environment and public health. The trustees' assessment of natural resource damages includes a specific focus on determining the nature and extent of the human use losses, including cumulatively, both direct and indirect human uses.

On August 15, 2012, the NPFC received a claim from NOAA (N10036-OC14) totaling \$25,809,280.24, the costs incurred from July 2010 through October 2011 to assess human use losses resulting from the *Deepwater Horizon* oil spill. NOAA subsequently revised the claim sum certain to \$3,846,347.56⁹, reflecting partial payment from BP received after the claim was submitted to the NPFC. NOAA again revised the sum certain of their claim to \$3,839,965.85^{10,11}, reflecting an adjustment to the indirect rate that was applied to labor costs and withdrawing the cost for travel that were previously paid by BP.

This determination presents the NPFC's analyses and findings with respect to this claim and the claim requirements under OPA.

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, 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 summarized above, this claim is for natural resource damages resulting from an OPA incident.

⁷ Natural Resource Damage Assessment, April 2012 Status Update for the Deepwater Horizon Oil Spill, (http://www.gulfspillrestoration.noaa.gov/wp-content/uploads/FINAL_NRDA_StatusUpdate_April2012.pdf)

⁸ NOAA National Marine Fisheries Service. 2010. Fisheries of the United States 2009. <http://www.st.nmfs.noaa.gov/st1/fus/fus09/index.html>

⁹ January 9, 2013 email from NOAA notifying the NPFC that BP had paid certain claimed costs

¹⁰ July 29, 2013 email from NOAA to NPFC reducing their sum certain from \$3,846,347.56 to \$3,845,530.28

¹¹ September 10, 2013 email from NOAA to NPFC reducing their sum certain from \$3,845,530.28 to \$3,839,965.85

Claimant Eligibility

Federal natural resource trustees are designated by the President, pursuant to OPA (33 U.S.C. §2706 (b)(2)), with responsibility to assess damages to natural resources under their trusteeship and develop and implement plans for the restoration, rehabilitation, replacement, or acquisition of the equivalent of those injured natural resources. 33 U.S.C. §§2706(c)(1)(A) and (C). Pursuant to 33 C.F.R. §136.207, natural resource trustees 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 U.S.C. §2706(d)(1)(C).

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 trustee pursuant to the President's designation of federal trustees under OPA, Executive Order 12777 (56 Fed. Reg. 54757, October 22, 1991), and Subpart G of the National Oil and Hazardous Substances Pollution Contingency Plan (40 C.F.R. §300.600).

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. 990 *et seq.* has 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.

After reviewing the claim and supporting documents, the NPFC finds that NOAA followed 15 C.F.R. 990 *et seq.* in carrying out the work subject to this claim. Specifically, they coordinated actions with other trustees to ensure no double recovery of damages¹², issued a notice of intent to conduct restoration planning¹³, invited BP to participate in the natural resource damage assessment¹⁴, prepared a plan that the public was given an opportunity to review¹⁵, and are maintaining an administrative record that is available for public review¹⁵.

General Claim Presentment Requirements

Claims to the Fund 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.

¹² NOAA's 2010/11 Lost Human Use Assessment Plan section 2.1

¹³ NOAA's 2010/11 Lost Human Use Assessment Plan exhibit 3 "Notice of Intent to Conduct Restoration Planning"

¹⁴ NOAA's 2010/11 Lost Human Use Assessment Plan exhibit 2 "Invitation to Participate in Natural Resource Damage Assessment"

¹⁵ NOAA's 2010/11 Lost Human Use Assessment Plan section 3.0

§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 incurred by NOAA to implement its 2010/11 Lost Use Assessment Plan. As of the date of this determination, the lost human use injury has not been determined; therefore, the claim was received within the period of limitations for claims.

The OSLTF is available to pay claims in accordance with section 2713 of OPA, including uncompensated damages. 33 USC §2712(a)(4). Damages include natural resource damages, which are damages for injury to, destruction of, loss of or loss of use of natural resources, including the reasonable costs of assessing those damages. 33 U.S.C. §2702(b)(2)(B). Costs shall be determined with respect to plans adopted under 33 U.S.C. §2706(c) (1)(C). 33 U.S.C. §2706(d)(2). Plans shall be developed and implemented only after adequate public notice, opportunity for a hearing, and consideration of all public comment. 33 U.S. §2706(c)(5). 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). According to NOAA the plan was published on the NOAA gulf spill restoration website¹⁶, on June 11, 2012, thereby meeting this requirement.

Claim Presentment to the Responsible Party

With certain exceptions, claims to the NPFC for damages must be presented first to the responsible party (RP). 33 U.S.C. §2713(a). If a claim is presented in accordance with §2713(a) and is not settled by payment by any person 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).

The claim record indicates that NOAA invited BP to participate in the natural resource damage assessment for the *Deepwater Horizon* oil spill by letter dated September 27, 2010. Subsequent cooperative efforts between NOAA and BP (or their representatives), including meetings and/or correspondence in May and June 2010, resulted in general agreement to pursue assessment of potential direct human use losses and disagreement on whether and how to pursue potential non use losses and NOAA's planned total value assessment approach¹⁷. As a result, NOAA limited coordination with BP with regards to total value assessment activities in accordance with 15 C.F.R. §990.14¹⁸.

¹⁶ "Deepwater Horizon NRDA Lost Human Use Assessment Plan Claim for Past Costs" *Gulf Spill Restoration Publications*. National Oceanic Atmospheric Administration, May 3, 2012. Web November 6, 2013.
<http://www.gulfspillrestoration.noaa.gov/wp-content/uploads/2012/06/Assess-Plan-for-Past-Costs_final.pdf>

¹⁷ September 21, 2012 letter from NOAA to BP which is supported by BP's letters (February 8 and August 3, 2012) agreeing to fund direct use activities (Tasks 1-7) and declining to fund total value activities (Tasks 8-12).

¹⁸ Section 990.14(c)(4) of the NRD regulations provide that the trustees decide the scope of the RP's participation and, under section 990.14(c)(5)(iii), may consider such factors as "the willingness of responsible parties to fund assessment activities". Under section 990.14(c)(4), the trustees have sole authority to make determinations regarding injury and restoration.

On May 4, 2012, NOAA presented BP with a claim for \$25,809,280.24, the costs incurred to implement its 2010/11 Lost Human Use Assessment Plan¹⁹. The plan, which was implemented in the July 2010 - October 2011 period, described potential types of human use losses resulting from the spill, NOAA's methods for assessing direct human use losses (Tasks 1-7) and total value of direct and indirect human use losses (Tasks 8-12), performance standards, assessment team development, management, and support, and anticipated deliverables. NOAA's claim to BP was supported by documentation of the actual costs incurred to implement this plan. BP responded to NOAA by letter on August 3, 2012, agreeing to fund the direct human use assessment (Tasks 1-7) under certain conditions and declining to pay for the total value assessment (Tasks 8-12).

On August 15, 2012, more than 90 days after presenting its claim to BP for \$25,809,280.24 to implement its 2010/11 Lost Human Use Assessment Plan, NOAA presented this claim to the NPFC²⁰. The NPFC notified BP on September 26, 2012 that this claim had been received²¹. BP responded to the NPFC on January 7, 2013²², acknowledging that the claim had been presented to the NPFC and stating that BP would provide NOAA partial payment of claimed costs.

Based on the above facts, the NPFC finds that NOAA's claim to the NPFC for reimbursement of past assessment costs to assess lost human use was presented to BP in accordance with OPA.

NPFC Review of Claimed Activity and Costs

NOAA claims costs incurred to implement its 2010/11 Lost Human Use Assessment Plan. As originally presented to the NPFC on August 15, 2012, the claim totaled \$25,809,280.24 for costs incurred to implement the 12 tasks identified in the Plan. Tasks 1-7 focused on determining the direct human use loss of natural resources injured by the spill, while tasks 8-12 focused on determining the total value of lost direct and indirect human use. According to NOAA, the direct human use loss and total value loss tasks were complimentary, whereby the direct human use assessment tasks were used to inform and validate part of the injury scenario for the total value assessment²³.

Upon notification from the NPFC that the claim was received, and following the 90 day RP presentment required under 33 U.S.C. §2713(a), BP paid NOAA \$21,962,932.68 for the costs incurred to implement the direct loss assessment (Tasks 1-7). Accordingly, NOAA reduced their claimed amount to \$3,846,347.56 and requested the NPFC

¹⁹ Letter dated May 4, 2012 from NOAA to BP transmitting their Interim, Partial Claim for Assessment Costs (exhibit 6)

²⁰ August 15, 2012 email from NOAA to NPFC

²¹ September 26, 2012 RP notification letter from NPFC to BP

²² January 7, 2013 email from Bea Stong/BP to Jim Hoff/NPFC with an attached letter dated December 20, 2012

²³ March 5, 2012 letter from NOAA to NPFC and phone conversation with Norman Meade (NOAA) on December 19, 2012

adjudicate the remaining uncompensated costs, representing the costs incurred to implement the total value assessment (Tasks 8-12)²⁴.

As described in NOAA's 2010/11 Lost Human Use Assessment Plan, Tasks 8-12 involved determining the total value loss of direct and indirect human use of natural resources injured by the spill. Specific tasks involved investigating possible approaches for estimating total value losses, including stated preference methods²⁵, conducting background studies on economic activity related to total value, and initiating the preferred assessment approach²⁶.

NOAA funded Tasks 8-12 of NOAA's Lost Human Use Assessment Plan and the associated costs, which included costs for consultants/contractors and NOAA staff labor and travel; these costs are unreimbursed. NOAA documented these cost through contract invoices, employee labor summaries, and employee travel vouchers.

After reviewing the cost documentation that NOAA provided to support this claim, the NPFC requested additional information specific to: (1) the rationale for paying both rental car and taxi costs for Norman Meade's travel on August 23, 2011, (2) purpose of travel for NOAA employees and contractors, (3) the rationale for paying over the approved GSA per diem lodging rate for travel on June 12-13, 2011, and (4) proof that contractor invoices were paid. On August 29, 2013 and September 10, 2013, NOAA responded by (1) stating that travel for Norman Meade on August 23, 2011 was for two separate cases²⁷ where taxi and rental car were needed and NOAA only claimed a portion of the total costs for the trip associated with *Deepwater Horizon*, (2) providing the purpose of travel and removing one travel voucher because this trip was related to the direct lost use assessment and BP had reimbursed NOAA for the travel, (3) stating that lodging rates appeared to be higher than approved amounts because they included taxes, but all rates are within the approved amounts per GSA schedule, and (4) providing proof of payment for contract invoices.

NPFC also requested additional information from NOAA about the indirect rate that NOAA applied to their labor costs²⁸. In response, NOAA acknowledge that the wrong indirect rate of 125.88% was applied. NOAA further applied the correct indirect rate of 113.03% to the labor costs, reducing the claim sum certain to \$3,839,965.85²⁹.

The NPFC next considered the appropriateness of NOAA's assessment procedures and, in particular BP's objections to the use of survey-based techniques to determine the total value of the loss. Survey-based valuation methods, however, are permitted for use in damage assessments under both the CERCLA (43 C.F.R Part §11.83(c)(2)(vii)) and OPA Natural Resource Damage Assessment Regulations (15 C.F.R. §990.27). The regulations

²⁴ January 9, 2013 email from NOAA to NPFC

²⁵ Stated preference methods may include conjoint analyses, contingent valuation and stated choice techniques.

²⁶ Attachment to August 29, 2013 email from Tony Penn (NOAA) to Fredy Hernandez (NPFC).

²⁷ *Portland Harbor* and *Deepwater Horizon*

²⁸ September 9, 2013 phone conversation with Tony Penn (NOAA) and Fredy Hernandez (NPFC)

²⁹ September 10, 2013 email from Tony Penn (NOAA) to Fredy Hernandez (NPFC)

further allow trustees to estimate the value of lost services where the trustees determine that such an approach is practicable and neither resource-to-resource nor service-to-service approaches are appropriate. 15 C.F.R. §990.53(d)(3). Section 3.2 of NOAA's 2010/11 Lost Human Use Assessment Plan specifically addresses this requirement, stating that the trustees considered alternate resource-to-resource and service-to-service approaches, but determined that addressing the public's lost use/non use values through replacement projects without an explicit measure of value was not appropriate given the size of the spill and potential magnitude of passive use losses³⁰. NOAA's 2010/11 Lost Human Use Assessment Plan also addresses how the proposed total value assessment complies with the standards for use of assessment procedures. Specifically, section 3.0 of NOAA's plan states that the trustees considered the criteria set forth in 15 C.F.R. §990.27 and determined that the unprecedented geographic scale and complexity of the spill warrants a combination of assessment procedures that are more complex, but offer reliable and valid information relevant to the type and scale of restoration necessary for the level of potential injury³¹.

NPFC is also aware of BP's concern that NOAA's proposed assessment of non use losses is not appropriate³². However, natural resource damages under both CERCLA and OPA regulations include the loss of non use of natural resources³³, which have been validated by the courts³⁴.

BP also expressed concern that NOAA's proposed use of stated preference methods is premature and may provide survey respondents with inaccurate and incomplete information about the injury and its recovery. NOAA is seeking reimbursement for work to investigate possible approaches for estimating total value losses, including stated preference methods, conduct background studies on economic activity related to total value, and initiate the preferred assessment approach and feasibility of restoration actions as permitted under 15 C.F.R. §990.42. NOAA states that preliminary survey work suggests potentially significant total value losses on the order of billions of dollars³⁵ and that it is scientifically feasible to estimate the magnitude of the lost total value at a reasonable cost³⁶. NOAA further states that it will not implement the final total value

³⁰ NOAA's 2010/11 Lost Human Use Assessment Plan section 3.2

³¹ NOAA Plan section 3.0 LOST HUMAN USE ASSESSMENT PLAN

³² February 8, 2012 and August 3, 2012 letters from BP to NOAA responding to NOAA's request for funding

³³ CERCLA 43 C.F.R Part §11.81 and OPA 15 C.F.R. §990.27

³⁴ *State of Ohio v. U.S. Department of the Interior*, 880 F. 2d 432, 475 (C.A.D.C. 1989). (When the injured resource is traded in a market, the lost use value is the diminution in market price. When that is not precisely the case, but similar resources are traded in a market, an appraisal technique may be used to determine damages. When, however neither of these situations obtains the market value, nonmarket resource methodologies are available. One of these is contingent valuation. See also *General Electric Co. v. Department of Commerce*, 128 F.3d 767, 772 (C.A.D.C. 1997) (the court gave the trustees discretion to use contingent valuation so long as the technique produced valid and reliable results for the particular incident).

³⁵ August 29, 2013 email from NOAA to NPFC

³⁶ July 29, 2013 email from Tony Penn (NOAA) to Fredy Hernandez (NPFC)

survey until late 2013/early 2014, when NOAA expects the results of the natural resource damage assessments to be sufficient and appropriate for inclusion in the surveys³⁷.

After reviewing the claim and BP's objections, the NPFC has determined that (1) proposed survey-based valuation methods are in accordance with the regulations (see 15 C.F.R. §§990.27 and 990.53), and (2) claimed assessment costs have been sufficiently documented, and are reasonable, and appropriate given the spill size and potential for injury. 33 U.S.C. §2706(d)(1)(C), 33 C.F.R. §136.211(a).

Revolving Trust Fund

As established by OPA (33 U.S.C. §2706(f)) and the NRDA regulations (15 C.F.R. §990.65), sums recovered by trustees for natural resource damages must be retained by the trustees in a non-appropriated revolving trust account for use only to reimburse or pay costs incurred by NOAA under 33 U.S.C. §2706(c) with respect to the damaged natural resources. For this claim, the NPFC will deposit \$3,839,965.85 into NOAA's Damage Assessment Restoration and Revolving Fund Account, which NOAA has demonstrated³⁸ to be a non-appropriated, revolving trust fund, to be used only to reimburse costs incurred by NOAA to implement Tasks 8-12 of its 2010/11 Lost Human Use Assessment Plan.

Conclusion

The NPFC has reviewed the claim submitted by NOAA for 2010/11 costs incurred to assess lost human use of natural resource 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. Part 136). We have determined that the claimed costs totaling \$3,839,965.85 based on NOAA's 2010/2011 Lost Human Use Assessment Plan are reasonable and appropriate, were properly presented to the RP, and were appropriately documented; therefore, they are compensable. This offer constitutes full and final payment for costs associated with this damage assessment plan.

³⁷ December 12, 2012 email from Tony Penn (NOAA) to Fredy Hernandez (NPFC)

³⁸ October 15, 2013 email from NOAA to NPFC

U.S. Department
of Homeland Security

**United States
Coast Guard**



Director
United States Coast Guard
National Pollution Funds Center

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National Pollution Funds Center
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Claim Number: N10036-OC14

Claimant Name: National Oceanic Atmospheric Administration

NOAA, the undersigned, accepts the determination of \$3,839,965.85 as compensation for the claim listed above.

On August 15, 2012, NOAA presented a claim to the Oil Spill Liability Trust Fund (OSLTF or the Fund) in the total amount of \$25,809,280.24 for past costs to assess lost human use of 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). NOAA subsequently reduced the sum certain to \$3,839,965.85.

The NOAA accepts the settlement offer of \$3,839,965.85 as full compensation for the cost to assess lost human use damages as described in the November 6, 2013 determination (N10036-OC14).

NOAA agrees to comply with 33 U.S.C. §2706(f) by depositing into a revolving trust account the amounts awarded in the November 6, 2013 determination.

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 payment of the \$3,839,965.85 payable and paid from the Fund for Claim Number N10036-OC14. NOAA authorizes the United States to sue, compromise or settle in the name of NOAA and the NPFC be fully substituted for, and acquires all NOAA rights arising from the November 6, 2013 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 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