

U.S. Department
of Homeland Security

United States
Coast Guard



Director
National Pollution Funds Center

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16480
24 April 2014

MEMORANDUM

From: Fredy Hernandez [REDACTED]
CLAIMS MANAGER, NPFC

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

Subj: Claim: N10036-OC18 – *Deepwater Horizon* Oil Spill Assessment

1. On October 30, 2013, the National Pollution Funds Center (NPFC) received a claim from the National Oceanic and Atmospheric Administration (NOAA) for costs to assess potential natural resource injuries resulting from the *Deepwater Horizon* oil spill (N10036-OC18). The claim totaled \$147,902,421 to implement 38 assessment activities that are detailed in NOAA's 2014 Assessment Plan. NOAA later withdrew two activities and subsequently reduced its sum certain for this claim to \$128,427,376.
2. The NPFC has issued four partial determinations that approved 34 of the now 36 assessment activities and associated NOAA agency costs.
3. NOAA claims \$17,206,503 for the two remaining assessment activities and associated NOAA agency costs. Through the enclosed fifth and final determination, the NPFC offers to pay \$14,620,918. This fifth and final determination was made in accordance with the Oil Pollution Act (OPA, 33 U.S.C. §2701 *et seq.*), the OPA claims regulations (33 C.F.R. Part 136) and the Natural Resource Damage Assessment Regulations (15 C.F.R. Part 990). A copy of the determination and offer to pay the amount of \$14,620,918 is enclosed.
4. 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
5. 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.
6. If you have any questions about this determination, please feel free to contact me at 703-872-6054.

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Enclosures: (1) NPFC determination
(2) Summary of Claimed Activities
(3) Acceptance/Release Form

National Pollution Funds Center Determination

Claim Number and Name:	N10036-OC18, <i>Deepwater Horizon</i> Oil Spill Assessment
Claimant:	National Oceanic and Atmospheric Administration
Claim Type:	NRDA, Upfront Assessment Costs
Amount Requested:	\$17,206,503
Offer Amount:	\$14,620,918
Determination Date:	24 April 2014
NPFC Claim Manager:	Fredy Hernandez

Summary of the Incident and Claim

On April 20, 2010, the *Deepwater Horizon* mobile offshore drilling unit exploded and sank, discharging an estimated 210¹ 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 claims process pursuant to the Oil Pollution Act (OPA).

Upon notification of the spill, the Department of Commerce, National Oceanic and Atmospheric Administration (NOAA), along with the Department of the Interior, Fish and Wildlife Service (FWS), 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 September of 2010, the trustees observed over 950 miles of oiled shoreline habitat, 400 oiled sea turtles, and over 1,500 oiled birds⁴. Numerous other natural resources at risk including fish, marine mammals, oysters, and associated habitats were identified. The trustees continue to work together to develop and implement assessment plans to determine the nature and extent of these losses.

On October 30, 2013, NOAA presented the National Pollution Funds Center (NPFC) with a claim for costs to implement their 2014 assessment and restoration planning activities. The claim totaled \$147,902,421, represented as the costs with respect to NOAA's Third Interim, Partial Claim for Assessment and Restoration Planning (2014 Assessment Plan or Plan). The Plan describes 38 assessment activities, many of which are a continuation of assessment and injury quantification efforts initiated in 2011, 2012 or 2013 and funded by BP or the Oil Spill Liability Trust Fund (Fund or OSLTF).

¹ "Deepwater Horizon Oil Spill Early Restoration Plan." *Gulf Spill Restoration Publications*. National Oceanic Atmospheric Administration, December 1, 2011.

² 1.07 million gallons on the surface and 771,000 gallons sub-sea. "The Ongoing Administration-Wide Response to the Deepwater BP Oil Spill." *Deepwater Horizon Incident Joint Information Center*, September 9, 2010.

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

⁴ *Federal Register*, Vol. 75, No. 190, Pgs. 60800-60802, October 1, 2010

NOAA subsequently withdrew two activities and reduced the claim sum certain for 36 assessment activities to \$128,427,376^{5,6}.

Earlier Partial Determinations and Payments for Claim N10036-OC18

On February 3, 2014, the NPFC issued its first partial determination for the October 30, 2013 claim, approving \$46,390,569 for 16 assessment activities included in the claim and making the following findings with respect to the incident, claimant, and claim:

1. The *Deepwater Horizon* oil spill occurred after OPA's date of enactment (August 18, 1990) and is an OPA incident;
2. OPA damages include natural resource damages, including the reasonable cost of assessing those damages. 33 U.S.C. §2702(b)(2)(A); 33 U.S.C. §2706(d)(1)(C);
3. NOAA is a federal trustee designated by the President with responsibilities to assess natural resource damages under its trusteeship and to develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent of the natural resources under its trusteeship. 33 U.S.C. §2706(b)(1); 33 U.S.C. §§2706(c)(1)(A) and (C), and 33 C.F.R. §136.207;
4. NOAA determined that there is jurisdiction to pursue restoration for this incident under OPA. 15 C.F.R. §990.41;
5. NOAA's claim for assessment costs is based on its 2014 Assessment Plan, which the public was given an opportunity to review and to provide comments. 33 U.S.C. §2706(c)(5);
6. NOAA presented its claim for assessment costs (\$147,902,421) based on NOAA's 2014 Assessment Plan to BP on July 11, 2013. This claim was not settled within 90 days by payment by any party, allowing presentment to the Fund as a claim for uncompensated natural resource damages; and
7. The claim was presented to the Fund within the period of limitations for claims. 33 U.S.C. §2712(h)(2); 33 C.F.R. §136.101(a)(ii), 15 C.F.R. §990.64(a).

The NPFC issued subsequent partial determinations on February 19, 2014, March 7, 2014, and April 17, 2014, that adopted these findings and approved an additional 18 activities included in the October 30, 2013 claim. Enclosure 1 lists the 38 claimed assessment activities, identifying the 16 that were approved on February 3, 2014, nine that were approved on February 19, 2014, five that were approved March 7, 2014, two that were withdrawn on January 31, 2014 and April 10, 2014, four that were approved April 17, 2014, and two that are subject to this final determination.

Fifth and Final Partial Determination

This section addresses the final two⁷ claimed activities in the 2014 Plan. The claimed amount for the fifth and final determination associated with the 2014 Plan is \$17,206,503.

⁵ December 3, 2013, January 31, 2014, March 14, 2014, and April 10, 2014 emails from NOAA to NPFC

⁶ \$147,902,421 (original claimed amount) - \$2,525,312 (costs withdrawn on December 3, 2013) - \$2 (withdrawn on January 16, 2014) - \$7,462,062 (costs withdrawn on January 31, 2014) - \$350,000 (costs withdrawn March 20, 2014) - \$9,079,669 (costs withdrawn on April 10, 2014) - \$58,000 (costs withdrawn on April 23, 2014) = \$128,427,376 (revised claimed amount)

NPFC Review of Claim and Associated Costs

F. Sea Turtles

NOAA claims funds for two sea turtle assessment activities; one of which was approved in the NPFC's February 19, 2014 determination (*Activity F.1. Sea Turtle Exposure and Injury Assessment Report*)⁸; the second is addressed below.

Activity F2. Strandings: Necropsies, and Management, Transport, and Storage of Sea Turtles and Marine Mammals

NOAA's assessment of potential injuries to sea turtles includes review of information from the Sea Turtle Stranding Networks (STSN), an established group of volunteers that responds to stranded sea turtles that are washed ashore or floating, alive or dead, and, where appropriate, transports the carcasses to laboratory necropsy and storage facilities.

Following the *Deepwater Horizon* incident and in response to the observed increases in sea turtle and marine mammal strandings in the spill area, the NPFC provided NOAA with an obligation of \$498,493⁹ for enhanced efforts by the stranding networks during the January - July 2012 period. These enhanced efforts continued in 2013 with \$377,936 provided by BP¹⁰.

NOAA now claims \$2,722,782 for contract costs to continue the enhanced STSN efforts in 2014. Of this total, \$1,505,761 is claimed for sea turtle collection, data collection, and transport in 2014, \$308,403 is claimed for necropsies on sea turtles expected to be collected in 2014, \$251,800 is claimed for storing turtles and marine mammal carcasses, and \$590,200 is claimed for agency coordination, data review, and interpretation. NOAA supports this request by (1) identifying potential pathways for sea turtle injury, particularly during early life stages spent in offshore convergent zones and as adults exposed to surface oil during the spill, and (2) stating that sea turtle strandings continue to occur throughout the Gulf of Mexico spill area.

The claim record indicated that information from the 2012 and 2013 enhanced networks has helped establish the number of sea turtles that have stranded, and that such strandings were located, and are coincident with, surface and shoreline oiling from the spill. However, NOAA has not provided evidence from these enhanced efforts or other earlier sea turtle assessment work¹¹ that the stranded turtle's injuries or past injuries resulted

⁷ Strandings: Necropsies, and Management, Transport and Storage of Sea Turtles and Marine Mammals and Restoration Planning

⁸ The NPFC's February 19, 2014 determination approved \$1,096,604 for claim Activity F.1: Sea Turtle Exposure and Injury Assessment Report.

⁹ Interagency Agreement signed September 13, 2012 between the NPFC and NOAA

¹⁰ January 10, 2014 email from NOAA to NPFC

¹¹ The NPFC has previously provided \$2,250,642 to NOAA and \$2,380,597 to the DOI for sea turtle assessment activities. For NOAA, NPFC's July 5, 2012 determination (N10036-OC08) approved (1) \$494,133 for analysis of dead, live captured, and stranded sea turtles, (2) \$43,700 for assessment of abundance and distribution of neritic sea turtles, and (3) \$207,250 for assessment of sea turtle prey availability and quality; and for DOI, NPFC's March 13, 2012 determination (N10036-OI04) approved \$1,857,782 to analyze samples and study exposure to Kemp Ridley and Loggerhead sea turtles; NPFC's

from the *Deepwater Horizon* incident. NOAA acknowledges, “stranding data that are available in the Northern Gulf prior to 2010 may not be sufficient for direct comparison to the stranding data that has been collected since 2010”¹².

The NPFC understands that NOAA plans additional analyses of data from turtles collected in 2012 and 2013, and that a planned toxicity study on a surrogate species might establish past and/or ongoing injury relating to the *Deepwater Horizon* incident. However, at this time, NOAA has not demonstrated that past efforts by the STSNs have provided assessment information of use in determining the type and scale of restoration appropriate for the injury, or established that continued enhanced STSN data collection in 2014 would provide such information; therefore, the NPFC determines that costs associated with this activity are not reasonable and appropriate. 33 USC 2706(d)(1)(C); 15 CFR 990.27(c)(v). Claimed costs of \$2,470,982 for proposed 2014 sea turtle collection, data collection and transport, and necropsies in 2014 are, therefore, denied.

If NOAA seeks reconsideration of this claim (see section of this determination titled: “Reconsideration of denied costs”) it must submit additional information that demonstrates that the proposed continuation of STSN activities will provide assessment information of use in determining the type and scale of restoration appropriate for the injury.

The remaining claimed costs of \$251,800 are for storing both turtles and marine mammal carcasses that were previously collected. The NPFC previously funded enhanced efforts to collect and analyze marine mammal carcasses in 2014¹³; therefore, the NPFC finds that it is reasonable to continue to store these animals for potential further analyses until the assessment is complete (15 C.F.R. §990.27). The claimed costs to store collected marine mammals are reasonable for the level of effort proposed. Therefore, costs of \$251,800 claimed for storing turtles and marine mammal carcasses that were previously collected are compensable. 33 U.S.C. §2706 (d)(1)(C); 33 C.F.R. §136.211(a),

L. Restoration Planning Activities

Activity L1. Restoration Planning

NOAA’s 2014 Assessment Plan identifies \$18,033,118 (\$12,157,836 for contract and \$5,875,282 for agency costs) for the Restoration Planning Activity, which includes nine cost categories,¹⁴

May 31, 2012 determination (N10036-OI09) approved \$344,725 to assess Kemp Ridley nests, and NPFC’s July 20, 2012 determination (N10036-OI11) approved \$178,090 to assess Loggerhead nests.

¹² NOAA response to NPFC request for additional information dated December 13, 2013.

¹³ The NPFC’s March 7, 2014 determination approved \$3,563,271 for the Coastal and Estuarine Cetacean Strandings Activity

¹⁴ The nine categories of claimed costs under the Restoration Planning Activity are: (1) Leadership, Management, and Oversight (\$2.567m); (2) Finance (\$2.069m); (3) Emergency Restoration (\$.214m); (4) Early Restoration Planning and Offset Development (\$.642m); (5) Early Restoration Regulatory and Environmental Compliance (\$1.711); (6) Post-Stipulation Early Restoration Project Management and Implementation (\$2.356m); (7) Programmatic Restoration Plan and Programmatic Environmental Impact Statement (\$5.919m); (8) Data Management (\$2.097m); and (9) Communications(\$0.458m)

including costs to plan and implement projects to restore, rehabilitate, replace or acquire equivalent of natural resources injured due to the incident. Restoration projects for which costs are claimed include an emergency restoration project subject to an agreement with BP, Early Restoration projects that either are, or will be, associated with a Framework Agreement executed in 2011 between the Trustees and BP¹⁵, and long-term restoration planning pursuant to OPA that will be implemented following completion of the injury assessment.

Under the Early Restoration Projects initiative, the Federal and State trustees executed a Framework Agreement with BP. The terms of the Framework Agreement provide that BP will provide \$1 billion to the trustees to fund Early Restoration projects that are outside and distinctive from the OPA-based 2011 -2014 Interim Assessment Plans and the subsequent restoration plans. Under the terms of this Framework Agreement, the federal and state trustees identify Early Restoration projects that will be implemented prior to completion of the OPA-based injury assessment and restoration process. BP and the trustees agree that BP will obtain specific restoration credits to offset natural resource injuries caused by the oil spill, once determined. When the offsets are determined and agreed upon, BP and the trustees execute a Stipulation memorializing each Early Restoration project and the associated offsets and BP agrees to provide funds to implement each project.

The Stipulations are not clear as to whether the trustees, upon receipt of payment for implementation of the Early Restoration projects, retain any rights that would be acquired by the Fund in the event that the trustees seek further funding from the Fund for implementation costs. The NPFC sought clarification from both NOAA and Department of Justice (who aided the trustees in the development of the Framework Agreement and the specific Stipulations) as to whether the trustees retained any rights that the United States would acquire if costs were paid from the Fund. Neither DOJ nor the trustees provided clarification as to reservation of rights; therefore, the NPFC determined that any trustee costs incurred after execution of the Stipulations are not payable from the Fund. NOAA has withdrawn all Early Restoration project costs from consideration. Our findings are discussed below.

1. Emergency Restoration (\$214,000): This cost category will fund Emergency Restoration activities associated with restoration of submerged aquatic vegetation that was damaged by the response action. NOAA and BP agreed that BP would reimburse NOAA for its costs to complete the restoration project, which includes two-year monitoring, oversight and closeout costs. NOAA withdrew these costs on March 20, 2014¹⁶.
2. Programmatic Environmental Impact Statement and Programmatic Restoration Plan (\$5,919,000): NOAA is leading the development of the *Deepwater Horizon* Programmatic Restoration Plan (PRP) and the Programmatic Environmental Statement (PEIS), which will be the foundation of the OPA restoration-based claim to compensate the public for injured resources. The costs will fund the development of a PRP/PEIS that will evaluate alternatives, and identify preferred alternatives scaled to restore the

¹⁵ Early Restoration Framework Agreement between the trustees and BP signed April 20, 2011

¹⁶ March 20, 2014 email from NOAA to NPFC

equivalent of injured resources and lost services. The draft PRP/PEIS will be made available for public review. The NPFC finds that these claimed costs are reasonable and appropriate. 33 U.S.C. §2706 (d)(1)(C); 33 C.F.R. §136.211(a).

3. Early Restoration Planning and Offset Development (\$642,000): Costs associated with this category will fund the identification of Early Restoration projects in Phase III and Phase IV of the Early Restoration initiative and the development of restoration scaling and injury offsets for Early Restoration projects. These activities, which bring the projects up to OPA- and NEPA-readiness, are conducted prior to execution of a Stipulation for each of the Early Restoration projects. BP and the trustees execute a Stipulation for each project only after the restoration projects and injury offsets are agreed upon by the parties. At that time, BP provides funding for implementation of that particular project. Thus, the trustees do not have funds to support the identification, or planning efforts for the Early Restoration projects. The NPFC finds that pre-Stipulation claimed costs are payable from the Fund. 33 U.S.C. §2706 (d)(1)(C); 33 C.F.R. §136.211(a), §2713(c)(2).

4. Post Stipulation Early Restoration Project Management and Implementation (\$2,356,000): These costs are claimed for NOAA's labor associated with Phases I, II, and III non-NOAA led Early Restoration projects. As represented by NOAA, these costs would be incurred after the execution of the Stipulations for these projects. NOAA withdrew these claimed costs on January 30, 2014¹⁷.

5. Leadership, Management and Oversight (\$2,569,000): This category includes costs to manage and oversee restoration planning activities for NOAA led projects. NOAA senior managers are responsible for managing a NRDA for the largest spill in U.S. history. It is actively engaged with prioritizing and coordinating day-to-day work for NRDA teams and is responsible for coordinating relevant information with other NOAA line offices, the DOI and other Federal agencies, state co-trustees, and members of the public. This effort requires protocols, internal controls, and periodic audits to govern what may be decades worth of restoration implementation. There is no precedent for multi-state and Federal trustees governance agreements; therefore, crafting procedures that will facilitate restoration implementation in the future will take a significant amount of time and effort. NOAA acknowledged that some of these claimed costs include work on Early Restoration projects incurred after execution of the Stipulations and subsequently withdrew \$69,000 of these costs¹⁸. The NPFC determines that the remaining \$2,500,000 is compensable from the Fund.

6. Finance (\$2,067,000): NOAA is responsible for broad financial oversight and fiscal management of the NRDA projects. The size and scope of the *Deepwater Horizon* NRDA requires a significant amount of time and effort. These claimed costs are to fund budget planning, tracking and execution, as well as documenting expenditures for cost recovery. It also includes funding for financial oversight of restoration funds and a contract to hire an accounting firm to provide independent review of cost documentation and to provide audit services. Some of these claimed costs include oversight of Early

¹⁷ January 31, 2014, email from NOAA to NPFC

¹⁸ NOAA withdrew \$69k from this activity related to post stipulation work.

Restoration projects occurring post-Stipulation and are not reimbursable from the Fund. NOAA withdrew \$900k and subsequently withdrew \$67k from this category¹⁹. The NPFC determines that the remaining \$1.1m is compensable from the Fund.

7. Data Management (\$2,075,000): These claimed costs are to fund a data management team to develop and maintain solutions for managing and tracking Early Restoration projects through project planning, implementation and long term monitoring^{20,21} as well as for other projects. NOAA acknowledged that some of these claimed costs include work on Early Restoration projects incurred after execution of the Stipulations and subsequently withdrew \$22k from consideration^{22,23}; therefore, the NPFC has determined that the remaining \$2.075m is compensable from the Fund.

8. Communications (\$440,118). These claimed costs are for a communications team that provides information to the public and manages its social media channels and the Gulf Spill Restoration website regarding restoration projects, including Early Restoration projects²⁴. NOAA acknowledged that some of these claimed costs include work on Early Restoration projects incurred after execution of the Stipulations and subsequently withdrew \$18k from consideration^{25,26}; therefore, the NPFC has determined that the remaining \$.440m is compensable from the Fund.

9. Early Restoration Project Regulatory and Environmental Compliance (\$1,693,000). The costs associated with this category include efforts to meet numerous environmental compliance responsibilities for maintaining and tracking Early Restoration projects through project planning, implementation and long term monitoring²⁷. NOAA acknowledged that some of these claimed costs include work for environmental compliance associated with Early Restoration projects for which stipulations have already been signed (i.e., Phase I and Phase II) and NOAA subsequently withdrew \$18k from consideration^{28,29}; therefore, the NPFC has determined that the remaining \$1.693m is compensable from the Fund.

In summary, the NPFC approves \$14.369m³⁰ for the Restoration Planning Activity (Table 1). Approved funds are provided with the understanding that:

- 1) NOAA will not use any NPFC funds for Early Restoration projects (planning or implementation) after Stipulations have been executed for Early Restoration projects.

¹⁹ NOAA withdrew \$900k on December 3, 2013, and \$69k on March 14, 2014, from consideration.

²⁰ NOAA's 2014 Assessment Plan, page 149

²¹ It is not clear to the NPFC whether this work is exclusive to pre stipulation project planning, or includes work to obtain permits for post stipulation projects.

²² NOAA withdrew \$22,000 on April 23, 2014, from consideration for post stipulation work.

²³ April 23, 2014 email from NOAA to NPFC

²⁴ NOAA's 2014 Assessment Plan, page 149

²⁵ NOAA withdrew \$18,000 on April 23, 2014, from consideration for post stipulation work.

²⁶ April 23, 2014 email from NOAA to NPFC

²⁷ NOAA's 2014 Assessment Plan, page 149

²⁸ NOAA withdrew \$18,000 on April 23, 2014, from consideration for post stipulation work.

²⁹ April 23, 2014 email from NOAA to NPFC

³⁰ Includes \$4,631,400 of NOAA labor costs.

- 2) NOAA’s cost accounting will distinguish between costs incurred with respect to Early Restoration projects subject to Stipulation Agreements and other restoration planning costs that may be payable from the Fund. NOAA will retain the right to recover costs of developing Early Restoration projects incurred before signing a Stipulation for such project(s), and such rights shall be subrogated to the United States as a condition of receiving funds for such costs from the Fund. In the event that any moneys paid from the Fund are used to fund Early Restoration projects after Stipulations are executed, NOAA will return the funds to the OSLTF.

Table 1. Restoration Planning Determination Summary

Restoration Planning Cost Category	Claimed Amount	NPFC Determination
Programmatic Environmental Impact Statement (PEIS) and Programmatic Restoration Plan (PRP)	\$5.919m	Approve \$5.919m
Early Restoration Planning and Offset Development	\$0.642m	Approve \$0.642m
Emergency Restoration	\$0.214m	Withdrawn
Post-Stipulation Early Restoration Project Management and Implementation	\$2.356m	Withdrawn
Leadership, Management, and Oversight	\$2.569	Approve \$2.5m
Finance	\$2.067	Approve \$1.1m
Early Restoration Project Regulatory and Environmental Compliance	\$1.711m	Approve \$1.693m
Data Management	\$2.097m	Approve \$2.075m
Communications	\$0.458m	Approve \$0.440m

NOAA Labor

NOAA claims \$21,659,558³¹ for agency labor, travel, supplies, and ship time associated with the 36 assessment activities claimed. NOAA staff consists of more than one hundred administrative support specialists, scientists, restoration specialists, attorneys, and program managers working on the NRDA. NOAA labor includes data management, scientific documentation, legal review of analyses and technical deliverables; oversight of technical support contractors and associated work products; coordination with co-trustees³², the public, and representatives from the RP³³; and the preparation or review of technical materials to support public communications and injury assessment.

³¹ Revised on December 3, 2013, January 31, 2014, March 14, 2014, April 10, 2014, and April 23, 2014

³² The description of NOAA labor costs associated with the Restoration Planning Activity are not included here; but rather included under *Activity LI. Restoration Planning* costs.

³³ Coordination under this activity is related to oversight, support, and general information, which differs from coordination costs claimed above for other activities that are for coordination within the technical work groups and related specifically to technical aspects of an injury category.

The NPFC identified \$4,778,003³⁴ in NOAA labor costs associated with the two³⁵ activities adjudicated in this determination. The NPFC approves \$4,631,400 as the NOAA labor costs associated with and needed to complete the approved portions of the Plan. The NPFC denies \$114,603 because these costs are associated with denied portions of the Plan and are not compensable.

After reviewing NOAA's 2014 Assessment Plan and additional claim information provided by NOAA, the NPFC finds that the (1) the activity described above for NOAA agency costs is an appropriate activity necessary to complete the approved 2014 assessment activities and (2) costs claimed for this activity are reasonable for the proposed level of effort given the complexity of the incident relating the nature and extent of oiling, geographic extent of exposure of natural resources to oil, and amount of data collected. 15 C.F.R. 990.27(c). The NPFC finds that \$4,631,400 of the \$21,659,558 costs claimed for this activity is compensable from the Fund. 33 U.S.C. §2706 (d)(1)(C), 33 C.F.R. §136.209 and .211, and 33 U.S.C. §2712(a)(4).

Reconsideration of Denied Costs

All contract and NOAA agency costs pertaining to the activities included in this determination that are not being offered for payment are considered denied³⁶. NOAA may make a written request for reconsideration of this determination. The reconsideration request must be received by the NPFC within 60 days after the date of this determination. The request for reconsideration must be in writing and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. Reconsideration will be based upon the information provided and a claim may be reconsidered only once. Disposition of the reconsideration will constitute final agency action. Failure of the NPFC to issue a written decision within 90 days after receipt of a timely request for reconsideration shall, at the option of the claimant, be deemed final agency action. All correspondence should include the corresponding claim number N10036-OC18.

Summary

The NPFC has reviewed the claim submitted by NOAA for costs to implement its 2014 Assessment Plan for the *Deepwater Horizon* incident in accordance with OPA (33 U.S.C. §2701 *et seq.*) and associated regulations (15 C.F.R. Part 990 and 33 C.F.R. Part 136). Through this fifth and final determination, the NPFC offers \$14,620,918 to implement approved portions of two activities detailed in NOAA's 2014 Assessment Plan.

³⁴ In the plan, NOAA described the level of effort for each activity and later identified agency costs associated with each assessment activity, which the NPFC used to determine the total amount of labor costs compensable for each approved activity.

³⁵ Strandings: Necropsies, and Management, Transport and Storage of Sea Turtles and Marine Mammals (\$114,603) and Restoration Planning (\$4,631,400)

³⁶ \$2,470,982 is denied for the Strandings: Management, Transport and Storage of Sea Turtles and Marine Mammals Activity; \$3,272,118 is denied for the Restoration Planning Activity; and \$1,108,603 is denied for NOAA labor.

This offer constitutes full and final payment for the two activities addressed in this determination.

Revolving Trust Fund and Return of Unused Funds to the OSLTF

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 in a non-appropriated revolving trust account for use only to implement the nine activities addressed in this determination in accordance with the 2014 Assessment Plan. For this claim, the NPFC will deposit \$14,620,918 into NOAA's Damage Assessment Restoration and Revolving Fund Account, which NOAA has demonstrated³⁷ to be a non-appropriated, revolving trust fund.

Cost Documentation, Progress Reporting, and Final Report

As the claimant, NOAA shall ensure that all expenditures of OSLTF funds are documented appropriately and spent according to the 2014 Assessment Plan for the two activities approved in this determination. Any funds not spent or appropriately documented shall be returned to the Fund. 33 U.S.C. §2706(f).

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

1. Certification by NOAA that all assessment activities approved in this determination have been conducted in accordance with the 2014 Assessment Plan;
2. A progress report that includes a description of work accomplished, timeline for future activities, and any unexpected problems incurred during implementation;
3. A summary of expenditures by category (i.e., labor, consultant/contractors, and travel); and
4. A narrative description of the work accomplished by each individual and how that work fits into the overall progress of the work for the year. Enough detail should be included to determine reasonableness of costs for each employee when cost documentation is received with the final report.

NOAA shall submit a final progress report within 120 days from the date an approved activity is complete. This report should include:

1. Certification by NOAA that all expenditures of OSLTF funds were in accordance with the plan as approved by the NPFC;
2. A summary of findings;
3. Copies of final reports and/or studies;
4. Documentation of OSLTF funds remaining in the 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 –

³⁷ October 15, 2013 email from NOAA to NPFC

- 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 standardized templates with instructions to facilitate final cost reporting (enclosed).

Enclosure 1. Summary of Claimed Activities

Resource Category	Claimed Activity	Approved 2/3/14	Approved 2/19/14	Approved 3/7/14	Denied 3/7/14	Approved 04/17/14	Approved in this Determination	Denied in this Determination
A. Offshore Benthic Habitat and Communities	1. Soft Bottom Sediment			\$6,950,836				
	2. Hard Ground Corals			\$595,013				
	3. Mesophotic Reefs			\$5,884,710				
	4. Benthic Megafauna			\$1,134,409				
B. Bluefin Tuna	1. Bluefin Tuna Spawning Habitat Analyses	\$692,085						
C. Transport, Fate, and Effects Modeling	1. Oil Fate Modeling and Comparisons with Observational Data	\$2,975,364						
	2. Hydrodynamics Modeling	\$1,414,703						
	3. Exposure and Injury Modeling and Data Inputs	\$1,653,583						
D. Fish and Plankton	1. Analysis of Field Data from 2010-2011	\$2,655,454						
	2. Documentation of Oil Pathway, Water Column Organisms Exposed and Injuries	\$1,458,851						
E. Sargassum	1. <i>Sargassum</i> Communities	\$991,010						
F. Sea Turtles	1. Sea Turtle Exposure and Injury Assessment		\$1,096,604					
	2. Strandings: Management, Transport and Storage of Sea Turtles and Marine Mammals						\$251,800	\$2,470,982
G. Marine Mammals	1. Estuarine Dolphins		\$3,983,212					
	2. Coastal/Shelf Dolphins		\$254,002					
	3. Coastal and Estuarine Cetacean Strandings			\$3,563,271	\$1,881,074			
	4. Oceanic Marine Mammals		\$363,579					
	5. Inhalation		\$439,267					
H. Shoreline	1. Assessing Recovery of Coastal Wetlands	\$2,156,617						
	2. Completing Analysis of Coastal Wetland Injury	\$152,601						
	3. Completing Analysis of Coastal Wetland Erosion	\$902,850						
I. Nearshore Sediment and Biota	1. Characterizing Nearshore Sediment Contamination		\$726,916					
	2. Characterizing Nearshore Biota Contamination		\$323,565					
	3. Completing Analysis of Nearshore Benthic Injury		\$330,969					
	4. Supplemental Nearshore Sediment Sampling							<i>Withdrawn</i>

Resource Category	Claimed Activity	Approved 2/3/14	Approved 2/19/14	Approved 3/7/14	Denied 3/7/14	Approved 04/17/14	Approved in this Determination	Denied in this Determination
J. Integration of Nearshore Exposure and Injury	1. Integrate and Interpret Findings Regarding Nearshore Exposure and Injury and Prepare Reports		\$2,361,607					
K. Oysters	1. Continued Monitoring of Subtidal Oyster Injury (Abundance and Biomass)					\$3,514,114		
	2. Continued Monitoring of Subtidal Oyster Injury (Recruitment)					\$7,493,605		
	3. Continued Monitoring and Analysis of Nearshore Oyster Injury	<i>Withdrawn</i>						
	4. Comprehensive Integration of Oyster Injury Assessment Elements					\$5,098,406		
L. Restoration Planning Activity						\$9,737,718		
M. Toxicity to Aquatic Organisms	1. Toxicity to Aquatic Organisms	\$8,196,986						
N. Chemistry	1. Contaminant Analytical Chemistry					\$10,321,910		
	2. Storage and Long Term Archive of Samples	\$3,668,409						
O. Data Management and Visualization	1. Data Management: Infrastructure	\$2,811,524						
	2. Data Management: Documentation	\$977,948						
P. Injury Assessment Management and Administration	1. Injury Assessment and Legal Case Management	\$4,381,584						
	2. <i>Deepwater Horizon</i> Electronic Content Management and Oil Pollution Act Administrative Record Management System	\$2,900,680						
NOAA Labor		\$8,400,320	\$2,705,853	\$5,176,848		\$630,534	\$4,631,400	\$114,603
Total		\$46,390,569	\$12,585,574	\$23,305,087	\$1,881,074	\$27,058,569	\$14,620,918	\$2,585,585

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

E-mail: [REDACTED]@uscg.mil

Claim Number: N10036-OC18

Claimant Name: National Oceanic Atmospheric Administration

The National Oceanic Atmospheric Administration (NOAA), the undersigned, accepts the offer of \$14,620,918 as the fifth and final payment of the claim listed above.

On October 30, 2013, NOAA presented a claim to the Oil Spill Liability Trust Fund (OSLTF or the Fund) in the total amount of \$147,902,421 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 offshore land leased to BP Exploration & Petroleum (BP) (the *Deepwater Horizon* incident). The NPFC assigned Claim Number N10036-OC18 to this claim. NOAA subsequently reduced the claim amount to \$128,427,376, which includes funding for 36 activities. On February 3, 2014, February 19, 2014, March 7, 2014, and April 17, 2014, the NPFC approved partial payments of this claim in the amount of \$46,390,569, \$12,585,574, \$23,305,087, and \$27,058,569 respectively. This offer of \$14,620,918, dated April 24, 2014, is a fifth and final payment for Claim Number N10036-OC18 to fund two additional activities.

The NOAA accepts the settlement offer of \$14,620,918 as full and final compensation for the costs to implement two assessment activities as described in the April 24, 2014 determination (N10036-OC18).

The NOAA agrees to comply with 33 U.S.C. § 2706(f) by depositing into a revolving trust account the \$14,620,918 awarded in the April 24, 2014 determination.

The 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 \$14,620,918 payable and paid from the Fund for Claim Number N10036-OC18. The 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 April 24, 2014 determination.

The 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 to recover the compensation paid by the OSLTF for this April 24, 2014 determination 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.

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

FOR THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Tony Penn
NOAA Office of Response and Restoration

Date