

U.S. Department  
of Homeland Security

United States  
Coast Guard



Director  
National Pollution Funds Center

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16480  
3 February 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 30 October 2013, the National Pollution Funds Center (NPFC) received a claim from the National Oceanic Atmospheric Administration (NOAA) for costs to assess potential natural resources injuries resulting from the *Deepwater Horizon* oil spill (N10036-OC18). The claim totals \$145,377,107 to implement 38 assessment activities that are detailed in NOAA's 2014 Assessment Plan.
2. The NPFC is issuing the enclosed partial determination and offer to pay \$46,390,569 for 16 of the 38 claimed activities and associated NOAA agency costs, while we continue to adjudicate the remaining 22 activities that total \$98,986,538. This partial determination was made 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 amount of \$46,390,569 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 about this determination, please feel free to contact me at 703-872-6054.

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

## NPFC DETERMINATION

Claim Number and Name: N10036-OC18, *Deepwater Horizon* Oil Spill Assessment  
Claimant: National Oceanic Atmospheric Administration  
Type of Claim: Natural Resource Damage Assessment, Upfront Assessment Costs  
Claim Manager: Fredy Hernandez  
Offer Amount: \$46,390,569  
Determination Date: 3 February 2014

### Summary of the Incident and Claim

On April 20, 2010, the *Deepwater Horizon* mobile offshore drilling unit exploded and sank, discharging an estimated 210<sup>1</sup> 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 dispersants<sup>2</sup> 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 represented by the National Oceanic Atmospheric Administration (NOAA), along with the Department of the Interior and five Gulf Coast states<sup>3</sup>, 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, 1,500 oiled birds<sup>4</sup>, and identified numerous other natural resources at risk to include fish, marine mammals, oysters, and associated habitats. The trustees have continued 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 to implement their 2014 assessment and restoration planning activities. The claim totaled \$147,902,421, and was supported by NOAA's 2014 Assessment Plan<sup>5</sup> that describes 38 assessment activities, many of which involve continuation of assessment and injury quantification efforts initiated, or analyses of samples collected, in cooperation with, and/or

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

<sup>2</sup> 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. Accessed September 25, 2013. <http://www.restorethegulf.gov/release/2010/08/06/ongoing-administrationwide-response-deepwater-bp-oil-spill>.

<sup>3</sup> The state trustees participating in the assessment are Louisiana, Mississippi, Alabama, Florida, and Texas.

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

<sup>5</sup> NOAA's 2014 assessment plan is entitled "Third Interim, Partial Claim for Assessment and Restoration Planning Costs".

funding from, BP and the Oil Spill Liability Trust Fund (The Fund or OSLTF). NOAA subsequently reduced the claim sum certain for the 38 assessment activities to \$145,377,107<sup>6</sup>.

This determination presents the NPFC's findings with respect to claimed costs (contract and agency) for 16 of the 38 activities presented in the 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.

### **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, the NPFC has determined that the activities included and approved in this determination are 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)(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 OSLTF 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 (NRDA) 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).

### **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 NRDA 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 October 30, 2013; therefore, the claim was received within the period of limitations for claims.

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<sup>6</sup> December 3, 2013 and January 16, 2014 emails from Troy Baker (NOAA) to Fredy Hernandez (NPFC)

In accordance with OPA, the OSLTF is available to pay claims for uncompensated natural resource damages. 33 USC §2712(a)(4). Natural resource damages 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 are determined with respect to plans adopted under 33 U.S.C. §2706(d)(2) that are developed and implemented after adequate public notice, opportunity for a hearing, and consideration of all public comment. 33 U.S. §2706(c)(5). NOAA states that the 2014 Assessment Plan that forms the basis of this claim was published on the NOAA gulf spill restoration website on October 22, 2013, thereby meeting this requirement<sup>7</sup>. NOAA states that they have not received any comments on their plan.

### **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).

NOAA presented its 2014 Assessment Plan and claim for implementation costs to BP on July 11, 2013<sup>8</sup>. The plan identified potential injuries to natural resources resulting from the incident and 38 specific assessment and/or restoration planning activities. For each of the 38 activities, NOAA's Plan describes the general assessment or restoration planning approach, need for the activity and how it connects to the NRDA process, data collection and deliverables to be produced, level of effort, principal investigators, timeline, and cost estimates for contractors and NOAA personnel. The cost to implement the 38 planned activities, as presented to the BP, was \$147,902,421. NOAA verified that all costs included in their 2014 Assessment Plan are separate and distinct from any and all previous funding requests and claims to both BP and the NPFC<sup>9</sup>.

BP responded to NOAA by letter on October 9, 2013, agreeing to fund four<sup>10</sup> of the assessment activities under certain conditions and declining to pay for the remaining activities<sup>11</sup>. Notwithstanding that BP offered to fund the four activities, BP has not done so at this time; therefore, the NPFC continues to adjudicate the four assessment activities.

On October 30, 2013, more than 90 days after presenting its claim to BP for \$147,902,421 to implement its 2014 Assessment Plan, NOAA presented this claim to the NPFC<sup>12</sup>. The NPFC notified BP on November 7, 2013 that this claim had been received<sup>13</sup>. BP further stated its objections to paying the claim by letter to the NPFC dated December 9, 2013<sup>14</sup>.

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<sup>7</sup> December 3, 2013 email from NOAA to NPFC

<sup>8</sup> July 11, 2013 letter from NOAA to BP transmitting their Third Interim, Partial Claim for Assessment Costs

<sup>9</sup> 2014 Assessment Plan, page 21

<sup>10</sup> Soft Bottom Sediment, Mesophotic Reefs, Benthic Megafauna, and Supplemental Collection and Analysis of Nearshore Sediment Data

<sup>11</sup> October 9, 2013 letter from BP to NOAA

<sup>12</sup> October 30, 2013 email from NOAA to NPFC

<sup>13</sup> November 7, 2013 RP notification letter from NPFC to BP

<sup>14</sup> Letter dated December 9, 2013, from BP (Bea Stong) to NPFC (Donna Hellberg)

Based on the above facts, the NPFC finds that NOAA's claim to the NPFC for 2014 assessment costs was presented to the RP in accordance with OPA.

### **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 is following 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 damages<sup>15</sup>, issued a notice of intent to conduct restoration planning<sup>16</sup>, invited BP to participate in the NRDA<sup>17</sup>, prepared a plan that the public was given an opportunity to review<sup>18</sup>, and are maintaining an administrative record that is available for public review<sup>19</sup>.

### **NPFC Review of Claim Activities and Associated Costs**

NOAA's assessment plan and claim includes 38 assessment activities with a revised total implementation cost of \$145,377,107. This section presents the NPFC findings for 16 of the 38 claimed activities for which NPFC adjudication is complete. The organization of this section follows the claim submission, which presents claimed activities under three categories: (I) Offshore Aquatic Habitat and Resource Investigations, (II) Nearshore Habitat and Resource Investigations, and (III) Other. Within these three categories, specific activities are presented by resource type. For each activity subject to this determination, the claim record identifies the principle investigators and describes their expertise related to the activity.

Table 1 (attached) lists the 38 claimed assessment activities, identifying the 16 that are subject to this partial determination and the 22 that remain under NPFC adjudication.

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<sup>15</sup> 2014 Assessment Plan, page 16

<sup>16</sup> "Notice of Intent to Conduct Restoration Planning" *Gulf Spill Restoration Publications*. National Oceanic Atmospheric Administration. Accessed November 12, 2013. <http://www.gulfspillrestoration.noaa.gov/wp-content/uploads/2011/02/Deepwater-Horizon-Final-NOI-Fully-Executed.pdf>

<sup>17</sup> "Invitation to Participate in Natural Resource Damage Assessment" *Deepwater Horizon Administrative Record*. Department of the Interior, September 27, 2012. Accessed November 12, 2013. [http://www.doi.gov/deepwaterhorizon/adminrecord/upload/NRDA-Invitation-Letter-w-NOI-attachment-9\\_27\\_10.pdf](http://www.doi.gov/deepwaterhorizon/adminrecord/upload/NRDA-Invitation-Letter-w-NOI-attachment-9_27_10.pdf)

<sup>18</sup> 2014 Assessment Plan, page 20

<sup>19</sup> 2014 Assessment Plan, page 20

## I. OFFSHORE AQUATIC HABITAT AND RESOURCE INVESTIGATIONS

### A. Offshore Benthic Habitat and Communities

NOAA claims funds for four activities<sup>20</sup>, all of which remain under adjudication.

### B. Bluefin Tuna

#### *Activity B1. Bluefin Tuna Spawning Habitat Analyses*

The *Deepwater Horizon* oil spill occurred in known bluefin tuna spawning habitat during the spawning period, exposing all life stages from eggs to adults to oil and chemical dispersants<sup>21</sup>. In 2010 through 2012, NOAA tracked the migratory movements of bluefin tuna<sup>22</sup>, which documented contaminant pathway and exposure<sup>23</sup>, and reviewed data from field surveys for larval fish abundance and commercial catch information. NOAA now intends to develop a model to quantify injury, (both direct loss and production foregone) based on spawning and ranging areas that were oiled and exceeded toxicity thresholds.

For 2014, NOAA claims \$692,085 in contract costs to update the spawning habitat analyses with the latest catch and larval data and finalize the model that will be used to quantify injury. Specific tasks include: providing final analysis of spawning habitat injury (\$74,855), calculating injury to larvae with updated field data (\$117,048) and habitat and larvae data (\$115,507), technology support for increased data processing costs (\$45,601), coordination and data review (\$261,310), and reporting (\$77,766).

#### *Determination with respect to Bluefin Tuna Spawning Habitat Analyses Activity*

After reviewing NOAA's 2014 Assessment Plan and additional claim information provided by NOAA, the NPFC finds that the (1) activity described above is an appropriate procedure under 15 C.F.R. 990.27(b)(iii) that is capable of providing valid and reliable information to quantify injury 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 magnitude of potential injury. Therefore claimed costs of \$692,085 for this activity 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).

### C. Transport, Fate, and Effects Modeling

NOAA claims funds for three activities focused on assessing potential injuries to water column resources (i.e., plankton, fish, invertebrates) resulting from exposure to oil and dispersants through a modeling analysis of the transport, fate, and effects of the spill. This overall model,

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<sup>20</sup> Soft Bottom Sediment (\$7,270,218), Hard Ground Corals (\$712,421), Mesophotic Reefs (\$7,329,432), and Benthic Megafauna (\$3,447,389)

<sup>21</sup> 2014 Assessment Plan, page 40

<sup>22</sup> In 2013, a total of 27 new animal tracks were recorded with satellite transmitters.

<sup>23</sup> NOAA has documented bluefish tuna spawning in oiled waters and that tuna eggs and larvae killed due to oil exposure.

referred to as Spill Impact Mapping and Assessment Program (SIMAP)<sup>24</sup>, is composed of several model components, as depicted in Figure C-1 of NOAA's 2013 Assessment Plan<sup>25</sup>.

#### *Activity C1. Oil Fate Modeling and Comparisons with Observational Data*

For 2014, NOAA plans to model the distribution, mass, and characteristic of oil in the water column, on the water surface, on shorelines, and in the sediments through time (referred to as the "oil fates" SIMAP model component). NOAA will evaluate physical, chemical, and remotely-sensed data to validate model outputs, and then compile the results into a technical report with videos that simulate the oil as it moved from the spill site through the Gulf of Mexico. The output of this "fates" model will then be used to further model the nature and extent of resource exposure to oil and dispersants (see claim Activity C3. Exposure and Injury Modeling and Data Inputs) and corresponding level of injury using established toxicity thresholds (see claim Activity M1. Toxicity to Aquatic Organisms).

NOAA claims \$2,975,364 for contractors to develop and run the "fates" model (\$833,750), analyze remotely sensed data (\$657,773), review and interpret data (\$1,392,232), and report results (\$91,609).

#### *Activity C2. Hydrodynamic Modeling*

Hydrodynamic modeling is being used to establish and document the movement of oil and dispersants from the spill. To date, NOAA has employed several different models<sup>26</sup>, using wind and other environmental data as inputs, to simulate the currents that moved oil through the Gulf. Model results are then compared and calibrated with observed data, before input into the SIMAP model as a source of information used to establish the pathway to natural resource exposure and injury.

NOAA claims \$1,414,703 for contractors to update and finalize the hydrodynamic model (\$210,000), coordinate trustee data review and integrate the hydrodynamic model simulations into the final SIMAP model that will estimate total injury to water column resources (\$437,500), and report results (\$767,203).

#### *Activity C3. Exposure and Injury Modeling and Data Inputs*

Under this activity, NOAA will model the exposure of aquatic resources (i.e., plankton, fish, invertebrates) throughout the water column to oil and dispersants, and estimate direct injuries. This injury modeling uses: (1) biological information on behavior, movement, and life history of water column biota from published literature and incident-specific studies (see, for example, Activity D1. Evaluation of Historical Biological Data and Analysis of Field Data from 2010-2011), (2) information from the oil fates model on the distribution, mass, and characteristic of oil

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<sup>24</sup> SIMAP provides detailed predictions of the three-dimensional trajectory, fate, biological effects, and other impacts of spilled oil and fuels.

<sup>25</sup> Figure C-1 is referenced on page 48 in NOAA's Second Interim, Partial Claim for Assessment and Restoration Planning Costs (2013 Assessment Plan).

<sup>26</sup> NOAA indicates that it has employed the ROMS models SABGOM and IASROMS and ADCIRC model to provide hindcasts of currents in the Gulf of Mexico, and that such models are well established and supported by both government agencies and industry for application to the Gulf of Mexico (see page 51 of NOAA's plan).

(see Activity C1. Oil Fate Modeling and Comparisons with Observational Data), and (3) information developed from toxicity studies (see claimed Activity M1. Toxicity to Aquatic Organisms) and available literature.

NOAA claims \$1,653,583 for contractors to model the exposure of aquatic resources. Specific tasks involve: (1) continuing to integrate biological data as remaining samples are processed (e.g., see Activity D1: Fish and Plankton), integrating NRDA toxicity studies as they become available, and finalizing the “exposure and injury” model for input into SIMAP (\$230,001), (2) refining and running SIMAP for injury quantification (\$336,234), (3) coordinating data review and interpretation (\$662,882), and report results (\$424,466).

#### *Determination with respect to Transport, Fate, and Effects Modeling Activities*

After reviewing NOAA’s 2014 Assessment Plan and additional claim information provided by NOAA, the NPFC finds that the (1) three activities described above are appropriate procedures under 15 C.F.R. 990.27(b)(iii) that are capable of providing valid and reliable information to model and quantify injury and (2) costs claimed for these activities 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 magnitude of potential injury. Therefore claimed costs of \$6,043,650<sup>27</sup> for the three activities 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).

#### D. Fish and Plankton

##### *Activity D1. Evaluation of Historical Biological Data and Analysis of Field Data from 2010-2011*

NOAA is developing detailed information on the spatial and temporal abundance of water column organisms in the spill area using a combination of historical data gathered by the Southeast Area Monitoring and Assessment Program (SEAMAP) and field data gathered by NOAA during 2010 and 2011. This information will be used in the SIMAP modeling effort to assess total injury to fish and plankton

NOAA claims \$2,655,454 for contractors to process water column samples that were collected during eight different cruises in 2010-2011 (\$1,719,898), coordinate data review and interpretation (\$519,941), and report results (\$415,615).

##### *Activity D2. Documentation of Oil Pathway, Water Column Organisms Exposed and Injured*

NOAA has observed oil from the water surface down through deep offshore slope areas (1000-1300 meters), which has exposed a variety of fish, invertebrates, and plankton to oil throughout the water column. Under this activity, NOAA is compiling empirical evidence from numerous

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<sup>27</sup> \$2,975,364 for the oil fates modeling, \$1,414,703 for the Hydrodynamic modeling, and \$1,653,583 for the exposure modeling



sources<sup>28</sup> and then performing statistical and mathematical analysis of the data to establish oil pathway, exposure, and injury to water column organisms. NOAA will also use the results from this activity to support and validate the oil transport, fate, and effects modeling results.

NOAA claims \$1,458,851 for contractors to provide statistical evaluations of fish, invertebrates, and plankton abundance trends (\$640,000); coordinate data review and interpretation of the data to establish oil pathway, exposure, and injury (\$519,941); and report results (\$298,910).

#### *Determination with respect to Fish and Plankton Activities*

After reviewing NOAA's 2014 Assessment Plan and additional claim information provided by NOAA, the NPFC finds that the (1) two activities described above are appropriate procedures under 15 C.F.R. 990.27(b)(iii) that are capable of providing valid and reliable information to model and quantify injury to aquatic resources and (2) costs claimed for these activities 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 magnitude of potential injury. Therefore claimed costs of \$4,114,305<sup>29</sup> for the two activities 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).

#### E. Sargassum

##### *Activity E1. Sargassum Communities, Mapping and Injury Assessment*

NOAA is assessing injury to floating brown algae, known as *Sargassum*, and the invertebrate and vertebrate species assemblages that use these habitats as nursery habitats in early life stages, resulting from exposure to oil and response activities (i.e., chemical dispersants, burns, etc). This involves mapping *Sargassum* communities throughout the spill area using aerial imagery and characterizing the type, abundance and size/frequency of organisms through direct sampling, and determining injury by combining *Sargassum* maps and biota counts with oiling maps, PAH water column concentrations, and toxicity data.

NOAA claims \$991,010 for contractors to analyze samples (\$121,000), map *Sargassum* (\$161,654), review and coordinate data (\$297,912), and draft reports (\$410,444).

#### *Determination with respect to Sargassum Communities, Mapping, and Injury Assessment Activity*

After reviewing NOAA's 2014 Assessment Plan and additional claim information provided by NOAA, the NPFC finds that (1) the activity described above is an appropriate procedure under 15 C.F.R. 990.27(b)(iii) that is capable of providing valid and reliable information to quantify injury to *Sargassum* communities and (2) the 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

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<sup>28</sup> NOAA is using information collected from water chemistry observations, instrument records, imaging data, surface oil observations, photographic data, remote sensing observations, and sediment and chemical samples

<sup>29</sup> \$2,655,454 for the Evaluation of Historical Biological Data and Analysis of Field Data from 2010-2011 activity and \$1,458,851 for the Documentation of Oil Pathway, Water Column Organisms Exposed and Injured activity

oiling, geographic extent of exposure of natural resources to oil, and magnitude of potential injury. Therefore claimed costs of \$991,010 for this activity 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).

#### F. Sea Turtles

NOAA claims funds for two activities<sup>30</sup>, both of which remain under adjudication.

#### G. Marine Mammals

NOAA claims funds for five activities<sup>31</sup>, all of which remain under adjudication.

### II. NEARSHORE HABITAT AND RESOURCE INVESTIGATIONS

#### H. Shoreline

NOAA is assessing injury to coastal marshes and mangroves resulting from exposure to oil through investigations designed to detect changes in primary production, reproduction, and soil function. Over the past three years, NOAA has conducted several studies at more than 200 sites across the Gulf of Mexico involving field observations and measurements of the nature and extent of oiling, condition of vegetation (e.g., percent live and dead vegetation, canopy height, chlorophyll content, light adapted fluorescence), and associated animal life. Soil and vegetation samples were also collected for PAH analyses and chemical fingerprinting, as well as assessment of general characteristics and conditions. NOAA reports that initial data analyses show adverse impacts to coastal wetland vegetation in oiled areas compared to unoiled areas, particularly along the edge of marshes that were heavily oiled<sup>32</sup>.

##### *Activity H1. Assessing Recovery of Coastal Wetlands*

Under this activity NOAA plans to process and analyze<sup>33</sup> data (field observation<sup>34</sup> and laboratory data<sup>35</sup>) collected during 2013 investigations and integrate findings with those from data collected in 2011 to establish whether recovery to baseline conditions has occurred and, if not, when full recovery will occur, if ever. Additionally, NOAA plans to analyze data collected as part of two independent studies performed by BP. NOAA will then coordinate data review and interpretation and document findings in a recovery report.

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<sup>30</sup> Sea Turtle Exposure and Injury Assessment Report (\$1,096,604) and Strandings: Necropsies, and Management, and Storage of Sea Turtles and Marine Mammals (\$2,722,782)

<sup>31</sup> Estuarine Dolphins (\$3,983,212), Coastal/Shelf Dolphins (\$254,002), Coastal and Estuarine Cetacean Strandings (\$5,444,345), Oceanic Marine Mammals (\$363,579), and Inhalation (\$439,267)

<sup>32</sup> 2014 Assessment Plan, page 104

<sup>33</sup> Sampling includes lab analysis costs, which NOAA estimates to be \$215,200 for analysis of approximately 87 belowground biomass cores, 88 above ground vegetative clips, 176 soil cores for nutrient analyses, and 176 soil cores for physical analysis.

<sup>34</sup> Field observations include visual measures of oiling, vegetative condition, percent live and dead vegetative cover, canopy height, and elevation.

<sup>35</sup> Soil and vegetative biomass samples have also been collected from each zone for a variety of metrics, including PAHs and chemical fingerprinting, sediment grain size, soil bulk density, soil organic matter, nutrients, and extractable elements.

NOAA claims \$2,156,617 for contractors to process and analyze data (\$645,267), assess recovery of wetlands (\$585,300), analyze data collected by BP (\$67,791), coordinate data review and interpretation (\$298,505), document findings (\$336,469), and develop a recovery report (\$223,285).

#### *Activity H2. Completing Analysis of Coastal Wetland Injury*

Under this activity, NOAA plans to analyze PAHs and soil chemistry data collected during 2011 and 2012 to determine injury to plants and associated biota based on injury thresholds established through toxicity testing results. The objective of this work is to document and connect oil exposure, pathway, and injury to plant and wetland biota. NOAA plans to build off existing exposure and injury studies conducted in coastal wetlands and integrate field-collected soil data; literature-based information on species density and toxicity thresholds; and incident-specific toxicity information (see Activity M1: Toxicity to Aquatic Organisms) to model injury. NOAA will also coordinate with trustee agencies and draft technical reports.

NOAA claims \$152,601 for contractors to model biota and plant injury from PAHs (\$75,146), coordinate data review and interpretations among the trustees (\$50,609) and report findings (\$26,846).

#### *Activity H3. Completing Analysis of Coastal Wetland Erosion*

NOAA has collected data that documents erosion of coastal wetlands resulting from the loss of vegetation exposed to oil<sup>36</sup>. To determine the degree and spatial extent of coastal erosion over time that is attributable to oiling, NOAA claims additional funding to further analyze the data<sup>37</sup> and collect and analyze additional data from other areas potentially subject to oil-caused erosion.

NOAA claims \$902,850 for contractors to analyze existing data on oil-caused erosion (\$739,896), coordinate data review (\$140,930), and report findings (\$22,024).

#### *Determination with respect to Shoreline Activities*

After reviewing NOAA's 2014 Assessment Plan and additional claim information provided by NOAA, the NPFC finds that the (1) three activities described above are appropriate procedures under 15 C.F.R. 990.27(b)(iii) that are capable of providing valid and reliable information to quantify injury and (2) costs claimed for these activities 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 magnitude of potential injury. Therefore claimed costs of \$3,212,068<sup>38</sup> for the two activities 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).

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<sup>36</sup> 2014 Assessment Plan, page 111

<sup>37</sup> Includes historical erosion data, erosion data (rate of erosion) in oiled and unoled areas, aerial imagery, and Real Time Kinematic and LiDAR data collected in 2013.

<sup>38</sup> \$2,156,617 for Assessing Recovery of Coastal Wetlands, \$152,601 for Completing Analysis of Coastal Wetland Injury, and \$902,850 for Completing Analysis of Coastal Wetland Erosion

### I. Nearshore Sediment and Biota

NOAA claims funds for four activities<sup>39</sup>, all of which remain under adjudication.

### J. Integration of Nearshore Exposure and Injury

NOAA claims funds for one activity, which remains under adjudication.

### K. Oysters

NOAA claims funds for four activities<sup>40</sup>, all of which remain under adjudication.

### III. OTHER

### L. Restoration Planning Activities

NOAA claims funds for one activity, which remains under adjudication.

### M. Toxicity to Aquatic Organisms

#### *Activity M1: Toxicity to Aquatic Organisms*

In 2012, NOAA initiated studies designed to assess the concentrations at which *Deepwater Horizon* oil and dispersants released into the water column during the incident adversely affect animal and plant health and the environment. These studies focus on 26 representative species<sup>41</sup> in the Gulf of Mexico, with the objective to correlate an adverse effect with exposure to the discharged oil and dispersants and determine the concentrations, or thresholds, at which the effect occurs. As such, these proposed toxicity studies serve the fundamental role in the overall damage assessment of explaining or predicting levels of injury to natural resources associated with a range of exposure conditions.

NOAA claims \$8,196,986 for contractors to continue and complete toxicity testing and establish toxicity thresholds for organisms exposed to discharged oil and/or dispersants (\$6,960,160), coordinate data review and interpretation (\$203,000), and draft technical reports (\$1,033,826).

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<sup>39</sup> Characterizing Nearshore Sediment Contamination (\$726,916), Characterizing Nearshore Biota Contamination (\$323,565), Completing Analysis of Nearshore Benthic Injury (\$330,969), and Supplemental Collection and Analysis of Nearshore Sediment Data (\$5,031,357)

<sup>40</sup> Continued Monitoring of Subtidal Oyster Injury (\$3,514,114), Continued Monitoring of Subtidal Oyster Injury (\$7,493,605), Continued Monitoring and Analysis of Nearshore Oyster Injury (\$5,551,672), and Comprehensive Integration of Oyster Injury Assessment Elements (\$5,098,406)

<sup>41</sup> Amberjack, Amphipods, Blackfun Tuna, Blue Crab, Bluefin Tuna, Cobia, Comb Jelly, Eastern Oyster, Fiddler Crab, Goggle Eye, Glass Shrimp, Inland Silverside, Killifish, Mahi-Mahi, Moon Jelly, Pacific Mackerel, Polychaete Worm, Red Drum, Red-Eared Slider, Sea Urchin, Sheepshead Minnow, Southern Flounder, Snapping Turtle, Speckled Sea Trout, and Yellowfin Tuna

NOAA has contracts with nine different laboratories<sup>42</sup> that will use current scientific testing and analytical methods.

*Determination with respect to Toxicity to Aquatic Organisms Activity*

After reviewing NOAA's 2014 Assessment Plan and additional claim information provided by NOAA, the NPFC finds that the (1) activity described above is an appropriate procedure under 15 C.F.R. 990.27(b)(iii) that is capable of providing valid and reliable information quantify injury 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 magnitude of potential injury. Therefore claimed costs of \$8,196,986 for this activity 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).

N. Chemistry

*Activity N1: Contaminant Analytical Chemistry*

NOAA claims funds for one activity, which remains under adjudication.

*Activity N2: Storage and Long Term Archive of Samples*

NOAA claims \$3,668,409 to store the large quantities of chemistry and oil samples collected during past and proposed NRDA studies. Many of these samples are currently being held at the laboratories conducting the analytical analyses, and, as part of this activity, NOAA will consolidate storage of those samples. Claimed costs include the cost to transport, track, and store samples (\$3,203,600) in a centralized location and ensure data integrity throughout the process (\$464,809).

*Determination with respect to Storage and Long Term Archive of Samples Activity*

After reviewing NOAA's 2014 Assessment Plan and additional claim information provided by NOAA, the NPFC finds that the (1) activity described above is an appropriate procedure necessary to complete the 2014 assessment 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 magnitude of potential injury. Therefore claimed costs of \$3,668,409 for this activity 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).

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<sup>42</sup> Auburn University, Florida Gulf Coast University, Miami University of Ohio, Stanford University, University of Maryland, University of Miami, University of North Texas, University of Southern Mississippi, and Pacific Eco Risk

## O. Data Management and Visualization

### *Activity O1. Data Management Infrastructure*

NOAA plans to manage, maintain, and preserve the large amount of information collected as part of the assessment. Information includes data from over 20,000 field event collections, comprising over one million individual data forms and associated files, seven million contaminant chemistry sample analytical records, and a half million records of instrument data, photographs, telemetry data, and observational data. NOAA maintains and accesses this information in five data management systems:

- Environmental Response Management Application (ERMA), which allows integration of datasets to produce interactive maps that facilitate visual analyses of data;
- NOAANRDA.org, which provides on-demand and user defined access to information related to different resource and habitat types and their related NRDA studies;
- QueryManager, which serves as a repository for analytical chemistry results;
- Photologger, which is searchable database of photographs taken during field events; and
- Data Warehouse, which allows the trustees to query and visualize data.

NOAA claims \$2,811,524 in contract costs for user administration, maintenance of the information management servers, server patching and rebooting, testing and development environments, system backups and security, equipment, and database management.

### *Activity O2: Data and System Documentation*

NOAA claims \$977,948 to document and track all of the collected data. NOAA will (1) facilitate delivery of data to trustees and scientists through short help guides and (2) attach metadata, which acts as an electronic catalog for each piece of data, that provides the trustees visibility on the origin of the data and how the data is modified by the trustees and used for injury assessment. NOAA will also update the security of all data management systems and ensure that the data is being stored and organized according to governmental requirements

### *Determination with respect to Data Management and Visualization Activities*

After reviewing NOAA's 2014 Assessment Plan and additional claim information provided by NOAA, the NPFC finds that the (1) two activities described above are appropriate procedures necessary to complete the 2014 assessment and (2) costs claimed for these activities 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. Therefore claimed costs of \$3,789,472 for this activity 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).

## P. Injury Assessment Management and Administration

### *Activity P1. Injury Assessment and Legal Case Management*

NOAA claims \$4,381,584 for contract management (\$2,723,126) and field operations support (\$1,658,458), focused on a wide variety of contract administration tasks such as establishment and management of sub-contracts, budget planning, budget execution, overall contract management, and communication on incident-wide project management issues. This activity will also allow field operations support such as vessel procurement, safety and logistics, shipping samples and equipment, and coordinating data intake teams. NOAA agency costs to complete similar tasks are claimed separately (See activity NOAA Labor).

### *Activity P2. Deepwater Horizon Electronic Content Management and Oil Pollution Act Administrative Record Management System (ECMS)*

NOAA claims \$2,900,680 for contractors to continue support such as oversight, regulatory compliance, process design, processes integration, content identification, and records management associated with the ECMS. The ECMS is a document repository that was developed and implemented in 2013, which allows NOAA to efficiently organize, locate, and retrieve documents, and search document content. The system facilitates the effort to develop and maintain an administrative record for the *Deepwater Horizon* NRDA and facilitate efforts to securely manage electronic records in compliance with Federal regulations such as Federal Information Security Management Act.

### *Determination with respect to Injury Assessment Management and Administration Activities*

After reviewing NOAA's 2014 Assessment Plan and additional claim information provided by NOAA, the NPFC finds that the (1) two activities described above are appropriate procedures necessary to complete the 2014 assessment and (2) costs claimed for these activities 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. Therefore claimed costs of \$7,282,264 for this activity 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).

### *NOAA Labor*

NOAA claims \$23,058,552 for agency labor, travel, supplies, and ship time associated with the 38 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-trustees, the public, and representatives from the RP<sup>43</sup>; and the preparation or review of technical materials to support public communications and injury

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<sup>43</sup> 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.

assessment. Under this determination, the NPFC has determined that \$8,400,320<sup>44</sup> is appropriate to complete the 16 activities<sup>45</sup> subject to this determination and (2) costs 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. Therefore the NPFC finds that \$8,400,320 of the \$23,058,552 claimed for this activity is 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**

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 its implementing regulations (15 C.F.R. 990 *et seq.* and 33 C.F.R. §136). Through this partial determination, the NPFC offers \$46,390,569 to implement 16 activities detailed in NOAA's 2014 Assessment Plan; the remaining 22 activities and associated NOAA labor costs remain under adjudication, and will be subject to future determinations. Table 1 (attached) summarizes the amount offered for each of the 16 activities included in this determination, as well as the amount pending adjudication for the remaining 22 activities.

This offer constitutes full and final payment for the 16 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 16 activities addressed in this determination in accordance with the 2014 Assessment Plan. For this claim, the NPFC will deposit \$46,390,569 into NOAA's Damage Assessment Restoration and Revolving Fund Account, which NOAA has demonstrated<sup>46</sup> 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 as approved in this determination. Any funds not spent or appropriately documented shall be returned to the Fund.

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<sup>44</sup> NOAA's 2014 Assessment Plan identifies agency costs specific to each assessment activity, which the NPFC used to determine the amount compensable.

<sup>45</sup> Bluefin Tuna Spawning Habitat Analyses (\$414,123), Oil Fate Modeling and Comparisons with Observational Data (\$513,693), Hydrodynamics Modeling (\$345,433), Exposure and Injury Modeling and Data Inputs (\$449,147), Analysis of Field Data from 2010-2011 (\$355,996), Documentation of Oil Pathway, Water Column Organisms Exposed and Injuries (\$497,075), Sargassum Communities (\$137,140), Assessing Recovery of Coastal Wetlands (\$329,608), Completing Analysis of Coastal Wetland Injury (\$11,458), Completing Analysis of Coastal Wetland Erosion (\$54,092), Toxicity to Aquatic Organisms (\$791,407), Storage and Long Term Archive of Samples (\$0), Data Management: Infrastructure (\$488,300), Data Management: Documentation (\$121,000), Injury Assessment and Legal Case Management (\$3,077,448), Deepwater Horizon Electronic Content Management and Oil Pollution Act Administrative Record Management System (\$814,400)

<sup>46</sup> October 15, 2013 email from NOAA to NPFC



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 have been conducted in accordance with the 2014 Assessment Plan as approved in this determination;
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 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 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 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
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.

If you have any questions or would like to discuss this partial determination, please contact me by phone (703-872-6054) or email at [Fredy.e.hernandez@uscg.mil](mailto:Fredy.e.hernandez@uscg.mil).

ENCL: (1) Table 1. Summary of Claimed Activities  
(2) Acceptance/ Release Form

**Table 1. Summary of Claimed Activities**

<b>Resource Category</b>	<b>Claimed Activity</b>	<b>Amount Approved</b>	<b>Pending</b>
A. Offshore Benthic Habitat and Communities	Soft Bottom Sediment		\$6,950,836
	Hard Ground Corals		\$595,013
	Mesophotic Reefs		\$5,884,710
	Benthic Megafauna		\$1,134,409
B. Bluefin Tuna	Bluefin Tuna Spawning Habitat Analyses	\$692,085	
C. Transport, Fate, and Effects Modeling	Oil Fate Modeling and Comparisons with Observational Data	\$2,975,364	
	Hydrodynamics Modeling	\$1,414,703	
	Exposure and Injury Modeling and Data Inputs	\$1,653,583	
	Analysis of Field Data from 2010-2011	\$2,655,454	
	Documentation of Oil Pathway, Water Column Organisms Exposed and Injuries	\$1,458,851	
E. Sargassum	Sargassum Communities	\$991,010	
F. Sea Turtles	Sea Turtle Exposure and Injury Assessment		\$1,096,604
	Strandings: Management, Transport and Storage of Sea Turtles and Marine Mammals		\$2,722,782
G. Marine Mammals	Estuarine Dolphins		\$3,983,212
	Coastal/Shelf Dolphins		\$254,002
	Coastal and Estuarine Cetacean Strandings		\$5,444,345
	Oceanic Marine Mammals		\$363,579
	Inhalation		\$439,267
H. Shoreline	Assessing Recovery of Coastal Wetlands	\$2,156,617	
	Completing Analysis of Coastal Wetland Injury	\$152,601	
	Completing Analysis of Coastal Wetland Erosion	\$902,850	
I. Nearshore Sediment and Biota	Characterizing Nearshore Sediment Contamination		\$726,916
	Characterizing Nearshore Biota Contamination		\$323,565
	Completing Analysis of Nearshore Benthic Injury		\$330,969
	Supplemental Nearshore Sediment Sampling		\$5,031,357
J. Integration of Nearshore Exposure and Injury	Integrate and Interpret Findings Regarding Nearshore Exposure and Injury and Prepare Reports		\$2,361,607
K. Oysters	Continued Monitoring of Subtidal Oyster Injury (Abundance and Biomass)		\$3,514,114
	Continued Monitoring of Subtidal Oyster Injury (Recruitment)		\$7,493,605
	Continued Monitoring and Analysis of Nearshore Oyster Injury		\$5,551,672
	Comprehensive Integration of Oyster Injury Assessment Elements		\$5,098,406
L. Restoration Planning Activities	Restoration Planning Activities		\$11,257,836
M. Toxicity to Aquatic Organisms	Toxicity to Aquatic Organisms	\$8,196,986	
N. Chemistry	Contaminant Analytical Chemistry		\$13,769,500
	Storage and Long Term Archive of Samples	\$3,668,409	
O. Data Management and Visualization	Data Management: Infrastructure	\$2,811,524	
	Data Management: Documentation	\$977,948	
	Injury Assessment and Legal Case Management	\$4,381,584	
	<i>Deepwater Horizon</i> Electronic Content Management and Oil Pollution Act Administrative Record Management System	\$2,900,680	
NOAA Labor		\$8,400,320	\$14,658,232
<b>Total</b>		\$46,390,569	\$98,986,538

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-OC18

Claimant Name: National Oceanic Atmospheric Administration

The National Oceanic Atmospheric Administration (NOAA), the undersigned, accepts the offer of \$46,390,569 as partial payment of the claim listed above.

On October 3, 2012, 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). NOAA subsequently reduced the claim amount to \$145,377,107, which includes funding for 38 activities. The NPFC has reviewed 16 of the 38 activities and adjudicated the costs associated with these 16 activities. This offer is for the 16 activities only. The NPFC continues to adjudicate the costs associated with the remaining 22 activities.

The NOAA accepts the settlement offer of \$46,390,569 as full and final compensation for the costs to implement the 16 assessment activities as described in the February 3, 2014 determination (N10036-OC18).

The NOAA agrees to comply with 33 U.S.C. § 2706(f) by depositing into a revolving trust account the \$46,390,569 awarded in the February 3, 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 \$46,390,569 payable and paid from the Fund for Claim No. 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 February 3, 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 February 3, 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**

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Tony Penn  
NOAA Office of Response and Restoration

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Date