

U.S. Department  
of Homeland Security

United States  
Coast Guard



Director  
National Pollution Funds Center

US Coast Guard Stop 7605  
2703 Martin Luther King Jr Ave. SE  
Washington, DC 20593-7605  
Staff Symbol: (CN)  
Phone: 202-795-6055

16480  
March 24, 2016

## MEMORANDUM

From:



NATIONAL POLLUTION FUNDS CENTER (NPFC)

To:



, Department of the Interior (DOI)

Subj: Claim: **S99028-OI01** – *Oregon/Washington Coast Mystery* Oil Spill Assessment Costs

1. On March 30, 2015, the NPFC received a claim from DOI for costs to assess potential natural resource injuries resulting from the *Oregon/Washington Coast Mystery* oil spill (S99028-OI01) that occurred in March 1999. The claim totaled \$1,406,169 for past (\$387,633) and future (\$1,018,536) costs to assess injuries to birds resulting from the spill and conduct restoration planning activities. On November 4, 2015, DOI reduced the claim sum certain to \$1,306,783 (\$380,217 for past costs and \$926,566 for future costs).

2. Through the enclosed determination, the NPFC offers to pay \$540,439 for past assessment and restoration costs and future assessment costs and approves an additional \$27,952 for future assessment contingency funding. The NPFC also defers adjudication of \$533,183 in future restoration planning costs to allow DOI time to provide a valid and reliable estimate of injury. This 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).

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

Director (cn)  
National Pollution Funds Center  
U.S. Coast Guard Stop 7605  
2703 Martin Luther King Jr. Ave. SE  
Washington, DC 20593-7605

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 processed within 30 days of receipt of the Release Form. Please provide account information and instruction for the transfer of funds to your Natural Resource Damage Assessment and Restoration Fund account with the signed form.

6. If you have any questions about this determination, please feel free to contact me at 202-795-6055.

Claim Number: S99028-OI01  
1 of 16

**Subj: Claim: S99028-OI01 – Oregon/Washington Coast Mystery Oil Spill Assessment Costs**

**Enclosures: (1) NPFC determination  
(2) Acceptance/Release Form  
(3) NPFC Contingency Policy**

## National Pollution Funds Center Determination

Claim Number and Name:	<b>S99028-OI01, Oregon/Washington Coast Mystery Oil Spill Assessment Costs</b>
Claimant:	Department of the Interior (DOI)
Claim Type:	NRDA, Past and Upfront Assessment Costs
Amount Requested:	\$1,306,783
Offer Amount:	\$540,439
Available Contingency:	\$27,952
Deferred:	\$533,183
Determination Date:	March 24, 2016
NPFC Claim Manager:	[REDACTED]

### Summary of the Incident and Claim

In March 1999, the U.S. Coast Guard received reports of tar balls and oiled birds washing ashore on the beaches of northern Oregon<sup>1</sup> and southern Washington<sup>2,3</sup>. Responders to the incident conducted beach cleanup operations and wildlife surveys from March 4, 1999 through March 10, 1999, collecting a total of 272 seabird carcasses. Spill responders initially suspected that the oil originated from the *M/V New Carissa* incident<sup>4</sup>; however, subsequent laboratory analysis of oil taken from the tar balls and bird feathers did not match the *New Carissa* reference samples<sup>5</sup>. The source of the spill was never identified.<sup>6</sup>

Following the spill, DOI, along with the State of Washington<sup>7</sup>, acting as natural resource trustees designated under OPA and appropriate state laws, initiated an assessment of natural resource damages resulting from the discharge. Based on the bird carcasses recovered, the trustees developed a Natural Resource Damage Assessment Plan (Plan) to quantify the total bird injury associated with the incident and plan appropriate restoration of those injured resources.

On March 30, 2015, DOI presented the National Pollution Funds Center (NPFC) with a claim that totaled \$1,406,169 for the past costs incurred and future costs to implement their Plan. On November 4, 2015, DOI reduced their claimed costs to \$1,306,783. This determination presents the NPFC's findings with respect to certain of these claimed costs.

<sup>1</sup> POLREP 3, MSO Portland, Oregon, 070213Z MAR 99

<sup>2</sup> The response to the Washington beaches was conducted under a separate FPN (S99029).

<sup>3</sup> POLREP 3, MSO Portland, Oregon, 070509Z MAR 99

<sup>4</sup> The *M/V New Carissa* was a freighter that released between 70,000 and 140,000 gallons of oil after grounding along the central Oregon coast near Coos Bay on February 4, 1999.

<sup>5</sup> ADL Laboratories. 2001. Analysis of Feather Samples After the New Carissa Oil Spill, Final Report. Prepared by Arthur D. Little, Inc. for Polaris Applied Sciences, Inc.

<sup>6</sup> Marine Casualty Investigation Report, Case Number MC990002837, July 30, 1999

<sup>7</sup> Represented by the Washington Department of Fish and Wildlife

## **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 to restore, rehabilitate, replace, or acquire the equivalent of those injured natural resources. 33 U.S.C. §§2706(c)(1)(A) and (C). Pursuant to 33 C.F.R. §136.207, natural resource trustees may present claims to the Oil Spill Liability Trust Fund (OSLTF or the Fund) for uncompensated natural resource damages (NRD), 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 DOI. DOI, under the authority of the Secretary of the Interior, 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) and Section 1006(b)(2) of OPA. 33 U.S.C. §2706(b)(2).

## **Jurisdictional Information**

Claims to the NPFC must arise 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 claimed activities are for natural resource damages resulting from an OPA incident.

## **General Claim Requirements**

This NRD claim submitted by DOI was received on March 30, 2015. It was presented in writing to the Director, NPFC, composed of a Plan that describes the assessment and restoration planning activities, need for the activities and how they connect to the NRDA process, deliverables to be produced, level of effort, principal investigators, timeframe, and cost estimates for contractors and agency personnel, and provided a sum certain. The claim package meets the general requirements for a claim.

Claims to the Fund must be presented to the 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 to assess the nature and extent of NRD resulting from the March 1999 incident. The assessment was not complete when the claim was received on March 30, 2015; therefore, the claim was received within the period of limitations for claims.

In accordance with OPA, the OSLTF is available to pay claims for uncompensated removal costs and damages. 33 U.S.C. §2712(a)(4). Covered damages include NRD, 33 U.S.C. §2702(b)(2)(A), which are for injury to, destruction of, loss of, or loss of use of natural resources, including the reasonable costs to assess those damages. 33 U.S.C. §2706(d)(1)(C). 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 comments. 33 U.S.C. §2706(c)(5). DOI states that the Plan that forms the basis of this claim was published on DOI's website on November 18, 2014<sup>8</sup>, and that one comment was received from the public regarding a missing citation, which DOI subsequently added to the Plan.

### **Claimant's Burden of Proof**

Under OPA, trustees bear the burden of proving all evidence, information and documentation deemed necessary by the Director, NPFC, to support the claim. 33 C.F.R. §136.105(a). To satisfy this requirement, the trustee claimant must submit its plan, which forms the basis of the claim, along with other supporting information so the NPFC can determine that work and associated costs are reasonable and appropriate.

The following section of this determination summarizes the NPFC's review of the Plan and supporting information submitted by DOI, along with a determination with respect to 33 C.F.R. §136.105(a).

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

DOI's claim, as initially submitted to the NPFC, totaled \$1,406,169 for past assessment and restoration planning costs incurred to date (\$387,633), future costs to implement their Plan (\$814,829), and contingency costs (\$203,707) for unforeseen activities associated with plan implementation. DOI later decreased their claimed costs to \$1,306,783 for past costs (\$380,217), future costs (\$814,285), and contingency costs (\$112,281)<sup>9</sup>. This determination presents the NPFC's findings with respect to the Plan and claimed costs.

#### **Past Assessment and Restoration Planning Costs**

DOI did not separate its past assessment costs from past restoration planning costs, but the record indicates that those activities included collecting, organizing, and analyzing data from bird carcasses<sup>10</sup> collected during the response, initiating discussions with a contractor about developing a model to quantify the full injury due to the spill, compiling and reviewing case documents, and coordinating efforts and findings with other trustees. DOI also began to identify and evaluate potential restoration alternatives for the injured birds species<sup>11</sup> represented by the recovered carcasses. These activities were conducted from March 2005 through March 2014. DOI's initial claim submission sought \$387,633<sup>12</sup> for these past efforts, which was initially presented as \$384,680.42 for agency labor and indirect costs, \$510.50 for agency travel, and \$2,442.45 for contract costs.

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<sup>8</sup> DOI Assessment Plan, page 10

<sup>9</sup> October 22, 2015 Letter from DOI to NPFC

<sup>10</sup> Data from morgue records and response survey reports.

<sup>11</sup> 196 of the 272 carcasses recovered during the response were alcids, with the rhinoceros auklets representing the majority of those carcasses.

<sup>12</sup> Amount rounded by DOI.

On May 27, 2015<sup>13</sup>, the NPFC requested that DOI provide additional information about certain fiscal year (FY) 2006 labor rate charges<sup>14</sup> and a description of the work completed for several employees' labor charges. DOI's response, received by the NPFC on November 4, 2015<sup>15</sup>, stated that it was reducing its claimed labor costs for FY 2006 by \$173.70, with the revised claimed amount supported by the labor rate sheet that the NPFC has on file. DOI also indicated that the labor costs for the specific employees where a description of work was missing were incorrectly charged to this spill and further reduced their claimed past costs by an additional \$7,242.24. Cumulatively, DOI reduced their claim for past costs by \$7,416<sup>16</sup> to \$380,217.

The revised \$380,217 total for claimed past costs included \$181,245 for direct costs (DOI labor, contract, travel) and \$198,972 for indirect costs associated with DOI labor. Of the total indirect costs, \$79,669 is claimed for (1) DOI headquarters (HQ) and U.S. Fish and Wildlife Service (FWS) indirect charges applied to labor costs incurred prior to FY 2011 calculated in accordance with DOI policy at that time<sup>17</sup>, and (2) DOI HQ indirect charges applied to FY 2011-2014 labor costs. For FWS labor costs incurred in FY 2011-2014, indirect charges (\$119,303) were calculated using (1) DOI's Cost Documentation Tool (CDT)<sup>18</sup> (\$95,331), and (2) a "bio-day" methodology applied to Michael Szumski's FY 2011 labor (\$23,972).

The NPFC's May 27, 2015 request for additional information noted that the claimed bio-day methodology DOI applied to Michael Szumski's FY 2011 labor is not in accordance with the current DOI policy that uses the CDT. DOI's November 4, 2015 response stated that they are unable to resubmit these indirect labor costs according to official DOI policy because too much time has passed to reorganize the costs within DOI's CDT, and requested that the NPFC make an exception and reimburse DOI according to the originally claimed indirect rates.

The NPFC also initiated contact with DOI regarding the claimed indirects applied to labor costs incurred after FY 2010 that were calculated using DOI's CDT (\$95,331). Specifically, despite written requests<sup>19</sup> and teleconference meetings over the past six months, DOI has not provided the NPFC with documentation necessary to demonstrate that the CDT is a reliable and valid method to calculate indirect charges<sup>20</sup>.

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<sup>13</sup> May 27, 2015 Email from NPFC to DOI

<sup>14</sup> The NPFC had a 2006 bio-day rate sheet on file supporting an hourly labor rate of \$75.70, while DOI claimed an hourly rate of \$80.96.

<sup>15</sup> October 22, 2015 Letter from DOI to NPFC

<sup>16</sup> Amount rounded by DOI

<sup>17</sup> Prior to FY 2011, DOI policy allowed field offices to apply the bio-day methodology to calculate indirect costs applied to direct labor. The bio-day methodology included an increased labor rate that was calculated by field offices on an annual basis to more fully capture indirect costs incurred by the field office during that year. In addition to the marked up labor rate, the bio-day methodology included the application of USFWS's standard indirect rate of 29.5% and DOI HQ's standard indirect rate of 16.84%.

<sup>18</sup> The CDT incorporates actual costs incurred by individual field offices on a quarterly basis. DOI's indirect cost methodology that employed the CDT was first issued in FY 2011, and then revamped in FY 2013.

<sup>19</sup> Emails from NPFC to DOI on August 26, 2015, September 17, 2015, and February 29, 2016.

<sup>20</sup> Specifically, the NPFC questions DOI's inclusion of indirect costs associated with field offices not involved in the assessment activities.

### *Determination with Respect to Claimed Past Assessment and Restoration Planning Costs*

After reviewing DOI's claim and additional information specific to past assessment and restoration planning costs, the NPFC finds:

- (1) activities for which costs were claimed are appropriate and provide assessment information of use in determining the type and scale of restoration in accordance with 15 C.F.R. §§990.27, 990.53, and 990.55; direct costs claimed for these activities totaling \$181,245 are, therefore, compensable;
- (2) indirect costs applied to labor costs incurred prior to FY 2011 and DOI HQ indirect rate charges from FY 2011-2014 totaling \$79,669 was calculated in accordance with DOI policy at that time<sup>21</sup>, and, therefore, are compensable;
- (3) indirect costs applied to Michael Szumski's FY 2011 direct labor totaling \$23,972<sup>22</sup> determined by the bio-day indirect methodology are not appropriately documented in accordance with DOI policy, and, therefore, are denied; and
- (4) indirect costs applied to direct labor totaling \$95,331 are not appropriately documented in accordance with a methodology that has been demonstrated by DOI as being valid and reliable (i.e. CDT-related), and, therefore, are denied.

In summary, claimed costs of \$260,914 for past costs are the reasonable costs of assessing damages and are compensable from the Fund; indirect costs totaling \$119,303 are denied. 33 U.S.C. §2706 (d)(1)(C), 33 C.F.R. §136.211(a), 15 C.F.R. §990.30.

### Future Assessment and Restoration Planning Costs

DOI's revised claim seeks \$814,285 for future assessment and restoration planning costs and an additional \$112,281 in contingency costs for these planned activities.

#### *Future Assessment Costs*

Of the \$814,285 DOI seeks for future assessment and restoration planning, \$357,621 is claimed for future assessment activities, comprised of \$251,084 in direct costs and \$106,537 in indirect costs. DOI also claimed a 25% contingency (\$89,315) for these planned activities.

DOI states that the 272 bird carcasses recovered during the incident represent a portion of the total bird injury because dead birds were lost at sea, carcasses were scavenged by predators, and searchers were unable to locate all of the birds that washed ashore. To quantify the full extent of bird injury, DOI will develop a Beached Bird Model (BBM), conduct two field studies to develop model inputs, and develop an oil spill trajectory model to provide information on the predicted oil release point and travel path.

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<sup>21</sup> See footnote 17

<sup>22</sup> Determined as the claimed indirect costs related to the bio-day and 29.5% rates described above.

The BBM is an established model used to estimate spill-induced mortality as a function of carcass recovery, considering natural mortality, birds lost at sea, carcass removal from scavengers, searcher effort and efficiency, unsearched areas, birds removed or buried by tides/waves, and injured birds healthy enough to leave the shoreline prior to expiration. The two field studies aim to provide estimates of natural mortality and carcass removal by scavengers for the model. Similarly, the oil spill trajectory model is a component of the BBM that may provide information for the BBM on the predicted oil release point and travel path by hindcasting from the time and place where oil is known to have come ashore using winds and currents from the time of the incident.

The trustees plan to use the estimate of injured birds provided by the BBM with a resource equivalency analysis (REA) to determine the amount of compensatory restoration required to offset the bird injury. The REA uses values taken from scientific literature to calculate the amount of natural resource services lost for each species of bird that was injured. The amount of bird injury calculated through the REA will be expressed in terms of the number of bird-years lost.

The NPFC’s request for additional information dated May 27, 2015<sup>23</sup> sought further budget detail (i.e., budget the combined agency costs between injury assessment and restoration planning) and justification to support the claimed 25% contingency.

DOI’s response received by the NPFC on November 4, 2015<sup>24</sup> provided further budget detail (Table 1) and reduced their claim contingency costs to 10% (\$35,762) based on the potential for unknown coordination and unforeseen complications to the estimated schedule and costs.

In reviewing the revised claim amount, the NPFC notes that claimed indirect charges total \$106,537, of which \$78,096 were determined by DOI’s CDT, which, as stated above, DOI has not demonstrated as a valid and reliable methodology.

<b>Table 1. Summary of Claim for Future Assessment Costs</b>	
<b>Cost Description</b>	<b>Amount Claimed</b>
BBM Model	\$36,000
Field Studies	\$20,300
Trajectory Model	\$32,000
<b><i>Contractor Total</i></b>	<b><i>\$88,300</i></b>
REA/Injury Assessment	\$106,115
Case Management	\$163,206
<b><i>Agency Total</i></b>	<b><i>\$269,321</i></b>
<b><i>Sub-Total</i></b>	<b><i>\$357,621</i></b>
<b><i>Contingency (10%)</i></b>	<b><i>\$35,762</i></b>
<b><i>Assessment Total</i></b>	<b><i>\$393,383</i></b>

<sup>23</sup> May 27, 2015 Email from NPFC to DOI

<sup>24</sup> October 22, 2015 Letter from DOI to NPFC



### *Determination with Respect to Claimed Future Assessment Costs*

After reviewing DOI's claim and additional information for future assessment costs, the NPFC finds that injury assessment activities for which costs were claimed are based on the use of an established model (BBM) and scaling methodology (REA) that, for other incidents, have provided valid and reliable information to help determine the type and scale of restoration in accordance with 15 C.F.R. §990.27(b) and may be reliable in this claim. The NPFC also finds that costs associated with these activities are as follows:

- (1) direct costs for the claimed injury activities totaling \$251,084 are reasonable and appropriate for the level of effort described, and, therefore, are compensable;
- (2) indirects costs determined by the applicable methodology at the time costs will be incurred (and, specifically, not by DOI's CDT) totaling \$28,441 are appropriately documented as established by valid and reliable methods, and, therefore, are compensable;
- (3) the availability of contingency in the amount of \$27,952 is approved, determined as 10% of direct (\$251,084) and indirect (\$28,441) costs determined to be compensable;
- (4) indirect costs determined by DOI's CDT totaling \$78,096 are not appropriately documented in accordance with a methodology that has been demonstrated by DOI as being valid and reliable, and, therefore, are denied; and
- (5) contingency in the amount of \$7,810 is denied, determined as 10% of indirect costs (\$78,096) determined not to be compensable.

In summary, claimed direct and indirect costs for future injury assessment totaling \$279,525 are compensable from the Fund and costs totaling \$85,906<sup>25</sup> are denied. 33 U.S.C. §2706 (d)(1)(C), 33 C.F.R. §136.211, 15 C.F.R. §990.30. The NPFC also approves the availability of an additional \$27,952 in contingency funds.

Contingency funding approved for injury assessment will be made available in accordance with the NPFC Contingency Policy (enclosed) when, and if, needed, and when supported by appropriate justification and documentation of costs incurred to date. If the need for contingency funds arises, DOI should make a formal request to the NPFC. Such a request can be made through the annual cost and progress reporting described below, and must include a justification for the additional funds and documentation of past expenditures. In a rare case additional contingency may be granted if adequate documentation and rationale are provided.

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<sup>25</sup> \$78,096 in claimed labor costs and \$7,810 in associated contingency (10%).

Cost Description	Amount Claimed	Approved	Denied
BBM Model	\$36,000	\$36,000	\$0
Field Studies	\$20,300	\$20,300	\$0
Trajectory Model	\$32,000	\$32,000	\$0
<b>Contractor Total</b>	<b>\$88,300</b>	<b>\$88,300</b>	<b>\$0</b>
REA/Injury Assessment	\$106,115	\$74,819	\$31,296
Case Management	\$163,206	\$116,406	\$46,800
<b>Agency Total</b>	<b>\$269,321</b>	<b>\$191,225</b>	<b>\$78,096</b>
<b><u>Sub-Total</u></b>	<b><u>\$357,621</u></b>	<b><u>\$279,525</u></b>	<b><u>\$78,096</u></b>
<i>Contingency (10%)</i>	<i>\$35,762</i>	<i>\$27,952</i>	<i>\$7,810</i>
<b>Assessment Total</b>	<b>\$393,383</b>	<b>\$307,477</b>	<b>\$85,906</b>

### *Future Restoration Planning Costs*

DOI's Plan also describes restoration activities and associated costs to continue identifying and evaluating potential restoration alternatives to compensate for bird injuries resulting from the spill and to develop a draft Damage Assessment Restoration Plan (DARP) for public review that will describe how DOI will restore the natural resources injured by the discharge of oil. Of the \$814,285 DOI seeks for future assessment and restoration planning, \$456,664 is claimed for future restoration planning activities, comprised of \$353,979 in direct costs and \$102,685 in indirect costs. DOI also originally claimed a 25% contingency (\$114,302<sup>26</sup>) for unforeseen events.

The NPFC's request for additional information dated May 27, 2015<sup>27</sup> sought further budget detail (i.e., budget the combined agency costs between injury assessment and restoration planning), justification to support the claimed 25% contingency, and an invoice and proof of payment to support payment of \$22,471 in 2011 contractor costs that had already been incurred.

DOI's response received by the NPFC on November 4, 2015<sup>28</sup> provided further budget detail (Table 3) and reduced their claim contingency costs to 10% for agency costs (\$25,098) based on the potential for unknown and unforeseen events and provided further justification for the 25% contingency claimed on contractor costs (\$51,421), citing unknown complications with travel to island locations among other unknown coordination and potential unforeseen complications. With respect to the request for invoice and proof of payment to support the payment of the past contract work, via their November 4, 2015 response, DOI withdrew their request for the past work, and submitted a new statement of work for future restoration site evaluation work to be conducted by the same contractor and reduced their request from \$22,471 to \$21,927.

<sup>26</sup> Based on the original claimed restoration planning costs of \$457,208

<sup>27</sup> May 27, 2015 Email from NPFC to DOI

<sup>28</sup> October 22, 2015 Letter from DOI to NPFC

In reviewing the claim and DOI's response with additional information, the NPFC notes that claimed indirect charges total \$102,685, of which \$65,520 were determined by DOI's CDT, which, as stated above, DOI has not established as a valid and reliable methodology.

<b>Table 3. Summary of Claim for Future Restoration Costs</b>	
Cost Description	Amount Claimed
Contract Costs Described in Plan	\$183,755
Contract Costs Outside the Plan	\$21,927
<b><i>Contractor Total</i></b>	<b><i>\$205,682</i></b>
Restoration Project Development	\$102,726
DARP Development	\$114,356
Travel	\$33,900
<b><i>Agency Total</i></b>	<b><i>\$250,982</i></b>
<b><i>Sub-Total</i></b>	<b><i>\$456,664</i></b>
25% Contingency on Contractor Costs	\$51,421
10% Contingency on Agency Costs	\$25,098
<b><i>Contingency Total</i></b>	<b><i>\$76,519</i></b>
<b><i>Restoration Total</i></b>	<b><i>\$533,183</i></b>

*Determination with Respect to Claimed Future Restoration Planning Costs*

DOI requests \$533,183 for future restoration planning efforts, which includes \$21,927 for “new” contract costs and an associated contingency of \$5,482, and \$505,774 for additional restoration planning based on the results of the injury assessment based on the BBM.

With respect to these future restoration planning costs in the amount of \$533,183, the NPFC defers its decision for a period of up to up to three years from the date of this determination to allow DOI to support and produce a valid and reliable estimate of injury.

The NPFC recognizes that the BBM is a tool that is capable of providing assessment information of use in determining the type and scale of appropriate restoration. However, the BBM relies on (and is sensitive to) accurate estimates of several spill-specific and environmental parameters (e.g., search effort<sup>29</sup>, carcass persistence, background deposition rates<sup>30</sup>, wind, and current conditions). DOI may be able to develop a valid estimate of the injury using the BBM if it can recreate the actual incident-specific and environmental conditions that are necessary for the model to produce a valid and reliable estimate of total injury that occurred 16 years ago.

<sup>29</sup> DOI states that carcasses were not searched for systematically during the response which, while the spill is of limited time period and scope, will still necessitate that DOI reconstruct this search effort from the records of various untrained responders who searched with varying levels of intensity

<sup>30</sup> Field studies to replicate carcass persistence and background deposition rates could also be affected by the 16 years that have elapsed since the spill occurred. Potential changes to oceanography, beach topography, bird populations, and land usage, among other factors, could influence the results of these studies.

The NPFC's determination to defer its decision for the claimed restoration planning costs in the amount of \$533,183 allows DOI sufficient time to complete its BBM and to determine the extent of the bird injury resulting from the 1999 spill. The NPFC will hold these funds in a contingency account for a period of three years from the date of this determination. Before the end of this period, DOI shall present a description and findings of the assessment efforts in sufficient detail for the NPFC to determine that the estimate of total injury is reliable and valid. The NPFC will issue its determination with respect to these claimed costs at that time based on the results of the documentation submitted. If DOI fails to submit such findings within the three year period, these claimed costs are denied.

### Summary

The NPFC has reviewed the claim submitted by DOI for costs to implement its injury assessment and restoration planning activities for the *Oregon/ Washington Mystery Spill* 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 determination, the NPFC offers \$540,439 for past assessment and restoration planning costs incurred by DOI (\$260,914) and costs to implement approved injury assessment activities detailed in DOI's Plan (\$279,525). The NPFC also approves \$27,952 in available contingency funding for future injury assessment activities that may be provided to DOI contingent on demonstrated need.

The NPFC denies payment of \$205,209 based on indirect rates calculated according to the bio-day methodology (\$23,972), unsupported indirect rates (\$173,427), and the contingency related to the denied future costs (\$7,810). Lastly, the NPFC defers its decision for \$533,183 of future restoration planning costs, which will be available for a period up to three years until DOI has submitted documentation that supports a valid and reliable injury estimate.

<b>Table 4. Summary of Adjudicated Costs</b>					
	Claimed	Approved	Approved Contingency (Need Based)	Deferred (Injury Based)	Denied
Past Costs	\$380,217	\$260,914	\$0.00	\$0.00	\$119,303
Future Assessment	\$393,383	\$279,525	\$27,952	\$0.00	\$85,906
Future Restoration	\$533,183	\$0.00	\$0.00	\$533,183	\$0.00
<b>Total</b>	<b>\$1,306,783</b>	<b>\$540,439</b>	<b>\$27,952</b>	<b>\$533,183</b>	<b>\$205,209</b>

### Reconsideration of Denied Costs

Through this determination, the NPFC has denied the following costs: \$23,972 of FY 2011 indirect costs calculated according to the bio-day methodology, \$95,331 of FY 2011-2014 past indirect costs calculated using the CDT, \$78,096 of future indirect costs for injury assessment

that were calculated using the CDT, and \$7,810 of contingency associated with the \$78,096 of denied indirect costs. Collectively, this amounts to \$205,209 in denied costs.

DOI 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. All correspondence should include the corresponding claim number S99028-OI01.

### **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 assessment and restoration planning activities addressed in this determination in accordance with DOI's Plan. For this claim, the NPFC will deposit \$540,439 into DOI's Natural Resource Damage Assessment and Restoration Fund (NRDAR Fund). DOI has demonstrated that the NRDAR Fund is a non-appropriated account that meets these requirements<sup>31</sup>. DOI shall reimburse the Fund for any amounts received from the Fund in excess of that amount required to accomplish the activities for which the claim was paid. 33 U.S.C. §2706(f) and 33 CFR 136.211(b).

### **Cost Documentation, Progress Reporting, and Final Report**

As the claimant, DOI shall ensure that all expenditures of OSLTF funds for future activities are documented appropriately and spent according to the Plan for the 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, DOI shall provide the NPFC with a report on the status of implementation and expenditures. These annual progress reports should include:

1. Certification by DOI that all assessment activities approved in this determination have been conducted in accordance with the 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

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<sup>31</sup> The Department of the Interior and Related Agencies Appropriation Act, 1992 (H.R. 2686/P.L. 102-154) permanently authorized receipts for damage assessment and restoration activities to be available without further appropriation until expended. The Dire Emergency Supplemental Appropriations for Fiscal Year 1992 <<http://www.doi.gov/restoration/hjres157.cfm>> (H.J.RES. 157/P.L. 102-229) provides that the fund's receipts are authorized to be invested and available until expended. Additionally, the Department of the Interior and Related Agencies Appropriation Act, 1996 <<http://www.doi.gov/restoration/upload/pl104-134.pdf>> (P.L. 104-134) provides authority to make transfers of settlement funds to other Federal trustees and payments to non-Federal trustees.

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.

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

1. Certification by DOI 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 –
    - 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).