U.S. Department of
Homeland Security

**United States
Coast Guard**

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CERTIFIED MAIL – RETURN RECEIPT REQUESTED

August 18, 2008

Number: 7006 2760 0003 6206 8504

State of Texas General Land Office
ATTN: Mr. Eddie Fisher, Director
Coastal Resources Division
P.O. Box 12873
Austin, TX 78711- 2873

Re: Claim Description: Galveston Bay Area Oil Spills - 11/22/06
Claim Numbers: GB01-903013-TX1, GB02-N05041-TX1, GB03-N01016-TX1, GB04-903051-TX1, GB05-903023-TX1, GB06-T07001-TX1, GB07-N00095-TX1, GB08-T07002-TX1, GB09-N01098-TX1, GB10-N01357-TX1, GB11-903137-TX1, GB12-T07003-TX1, GB13-T07004-TX1, GB14-N05019-TX1

Dear Mr. Fisher:

The National Pollution Funds Center (NPFC) has reviewed the combined claim, submitted by the Texas General Land Office (TGLO) for past and future natural resource damage assessment (NRDA) costs associated with 13 oil spills in the Galveston Bay area. We have determined that $451,942 is compensable, which includes $95,383 for past assessment costs and $356,559 for future assessment activities. Our determination was made in accordance with the Oil Pollution Act (OPA, 33 U.S.C. 2701, et seq.) and the OPA regulations found at 33 CFR 136 (claims regulations) and 15 CFR 990 (NRDA regulations), including provisions for determining claimant eligibility and claim requirements. The basis for our decision follows.

Summary of Claim

On November 22, 2006, the NPFC received a $1,006,003 claim from TGLO for the cost of past and future assessment activities associated with 14 different spills in the Galveston Bay area. On March 23, 2007, TGLO requested that one of the spills (GB07-

N00095-TX1) be withdrawn from the claim. Accordingly, the revised claim is for 13 spills and totals $909,680 (Exhibit 1).

The 13 spills included in this claim occurred in the same general geographic vicinity of Galveston Bay between October 1999 and December 2004. Four of the 13 spills were in the Gulf of Mexico and nine were in nearby bays and coastal waterways. The volume of each spill ranged from 100 to 9,460 gallons, with a cumulative total of 17,881 gallons.

The claim includes $95,383 for past assessment costs incurred by the trustees during preliminary efforts to model potential natural resource impacts and develop an NRDA strategy. The trustees relied on this preliminary modeling to support their determination to conduct restoration planning and claim for funding of future assessment activities.

The trustees' Assessment Plan notes significant uncertainty in the preliminary modeling estimates of biological injury[1]. The trustees are claiming $708,085 for future assessment activities to: (1) update model input parameters (*i.e.,* current and habitat data, oil type, start time, and spill duration) and injury estimates, (2) conduct site visits to validate modeling results and monitor the extent and degree of natural recovery, and (3) prepare a Damage Assessment and Restoration Plan in accordance with OPA and 15 CFR 990.

Statute of Limitation

Under section 1012(b)(2) of OPA, 33 U.S.C. 2712(h)(2),15 CFR 990.64(b) and 33 CFR 136.101, natural resource damage (NRD) claims may be presented to the NPFC for consideration of payment from the Oil Spill Liability Trust Fund (OSLTF) up to three years from completion of the natural resource damage assessment (NRDA). Although the Galveston Bay area spills occurred five to nine years ago, an assessment has not yet been completed for any of these spills. Since this claim is presented as a proposal to complete an assessment, the claim falls within the statute of limitation.

Claimant Eligibility

Pursuant to 33 CFR 136.207, natural resource trustees may present claims to the OSLTF for uncompensated natural resource damages and the reasonable cost of assessing those damages. Natural resource trustees are designated according to section 1006(b) of OPA (33 U.S.C. 2706 (b)); specifically, Federal trustees are designated by the President and state trustees by their respective Governors.

This claim for past and future assessment costs associated with the 13 Galveston Bay area oil spills was submitted by TGLO. TGLO, serving as the lead administrative trustee (LAT), developed this claim with the Texas Commission on Environmental Quality (TCEQ) and the Texas Parks and Wildlife Department (TPWD). TGLO, TPWD, and

[1] According to claim documentation (Assessment Plan, attachment 3, page 18), the uncertainty of wildlife estimates is about an order of magnitude – *i.e.*, within a factor of 10 of field based estimates 81 percent of the time.

TCEQ have been designated as state trustees by the Governor of Texas. Accordingly, the NPFC finds that these claimants are eligible to present claims to the NPFC.

Claim Presentation

TGLO, acting as the LAT, submitted this claim to the NPFC on November 22, 2006. The claim was submitted in writing for a sum certain, along with a cover letter and Administrative Record documents, including an Assessment Plan and documentation of the claim components and costs. The trustees notified the public of this claim to the NPFC by posting a notice on the TGLO Coastal Resources Program website (http://www.glo.state.tx.us/coastal.html). The NPFC finds that this claim meets the general requirements for a claim as set out in the claims regulations (33 CFR 136.105.

Pursuant to 33 CFR 136.103, all claims for damages must be presented first to the responsible party (RP), if an RP has been designated. Mystery spills, for which no known RPs exist, may come directly to the NPFC for payment.

TGLO investigated each of the 13 incidents to determine the source of the spills. For spills GB01-GB06 and GB08-GB13, TGLO could not identify an RP, concluding that they were mystery spills. For GB14, Highland Bayou, TGLO identified the following potential RPs:

- Viking Resources, Designated Operator of the Maco Stewart *et al.* lease;
- Roger W. Chambers, President of Viking Resources;
- Tomahawk Resources Inc.;
- Thomas C. Jensen Esq. (Representing Maco Stewart Cerda, Stewart M. Stewart Maco Stewart, IV, and Steward Minerals); and
- Luke C. Kellogg, Esq. (Representing the Louise Bisbey Stewart Heirs' Trust, Mr. Wells Stewart, and the Estate of Virginia Ball).

TGLO submitted the portion of this claim specific to GB14 ($536,053) to each of the parties listed above on November 16, 2006. The required 90-day period for the RPs' response closed on February 20, 2007. TGLO notified the NPFC on March 5, 2007 that one response was received from Thomas C. Jensen, refusing the offer to participate in the assessment and denying any liability as an RP. The NPFC finds that the efforts described above satisfy the presentment requirements of OPA, as provided in 33 CFR 136.103.

NPFC Review of Past Assessment Activities and Costs

The initial claim submitted by TGLO for 14 spills (with GB07) included $102,823 in past assessment costs. Upon TGLO's notification to NPFC of the trustees' decision to withdraw GB07 from the claim, the NPFC reduced the claim amount for past costs to $95,383[2].

[2] The revised past assessment costs were calculated as follows: $102,823 (total costs for 14 spills) - $6,110 (GB14 specific costs) = $96,712 (total cost spills 1-13). The amount attributed to each of the remaining 13 spills (including withdrawn incident) was calculated by dividing $96,712 by 13 to equal $7,439. To

Reasonable past assessment costs incurred may be compensable, provided that: the costs are in respect to an OPA incident (15 CFR 990.41(a)(1)); the incident was not permitted, from a public vessel, or from an onshore facility subject to the Trans-Alaska Pipeline Authority Act (TAPAA) (33 U.S.C. 2702(c), 15 CFR 990.41(a)(2)); the costs are determined to have been incurred in respect to a plan (33 U.S.C. 2706); and the actions are taken with the reasonable belief that natural resources and/or services may have been affected as a result of the incident (15 CFR 990.41(b)). Trustees bear the burden of documenting all costs incurred, and proving that the costs were both reasonable and accepted (*e.g.*, commitment and/or execution of payment).

As discussed further below in respect to future costs, NPFC finds that the requirements of 15 CFR 990.41(a)(1) and (a)(2) are met in respect to all 13 claims. In respect to the other requirements, Section 6.3 of the trustees' Assessment Plan describes past assessment activities being claimed by the trustees. These costs are limited to staff time by the NRDA technical lead and contract support to collect and analyze ephemeral data and develop an assessment strategy for the multiple spills. Claimed costs do not include preliminary assessment research that would not be compensable under OPA (Assessment Plan, attachment 5).

The NPFC reviewed the time sheets, travel vouchers and receipts submitted by the trustees for accuracy, completeness, and reasonableness. Consistency was ensured by comparing a summary of all past assessment costs to the amount of each individual invoice. In addition, the incident case file was reviewed to ensure that there was no overlap in between costs reported for the assessment claim and response activities. The NPFC also reviewed a copy of the contract between TGLO and Lighthouse Technical Consultants, Inc., which commits TGLO to pay Lighthouse for technical support it provided in support of this claim.

After review of all of the information provided by the trustees, the NPFC finds that the (1) past assessment costs were incurred in respect to a plan, (2) past assessment activities were reasonable and taken with the reasonable belief that natural resources and/or services may have been affected as a result of the incident, and (3) the claimed past assessment costs are appropriately documented and reasonable. Accordingly, NPFC determines that the revised claimed amount of $95,383 in past assessment costs for the 13 spills is compensable.

Future Assessment Activities and Costs

The trustees' seek funds to continue assessment activities over a two year period. The first year would focus on refining the parameters used in the preliminary modeling. During the second year, the trustees would complete the final Restoration

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account for the withdrawn incident, $7,439 was then subtracted from $102,823 (initial 14 spill total) to yield a 13 spill total of $95,383.

Plan/Environmental Assessment. The trustees anticipate that the final plan would then be submitted to the NPFC to support a claim for restoration funding.

Under OPA, trustees must make certain determinations in order to pursue injury assessment and restoration planning. Specifically, trustees must determine if they have jurisdiction to pursue restoration under OPA (15 CFR 990.41, Determination of Jurisdiction) and whether it is appropriate to do so (15 CFR 990.42, Determination to Conduct Restoration Planning). For incidents meeting these requirements, the NRDA regulations provide that the trustees must use appropriate assessment procedures (15 CFR 990.27). This section outlines these OPA requirements. This is followed by our analyses and determinations with respect to these requirements for each of the 13 spills included in this claim. Finally, future assessment costs are determined for approved assessment activities.

Determination of Jurisdiction (15 CFR 990.41)

Upon learning of an incident, trustees must determine whether there is jurisdiction to pursue restoration under OPA before proceeding to subsequent steps of the damage assessment process. To make this determination, trustees must decide:

(1) Did an OPA incident occur?

The NRDA regulations define an "incident" to be "any occurrence or series of occurrences having the same origin, involving one or more vessels, facilities, or any combination thereof, resulting in the discharge or substantial threat of discharge of oil into or upon navigable waters or adjoining shorelines or the Exclusive Economic Zone ..." (15 CFR 990.30). Therefore, each of the 13 spills included in this claim must be considered independently and meet this criterion for jurisdiction. In general, any event where oil is observed in navigable waters or adjoining shorelines qualifies as an incident.

(2) Is the incident excluded from OPA consideration?

OPA does not apply to certain types of discharges, including (in relevant part) permitted discharges, any discharge from a public vessel. For incidents from a known source, the trustees need to present information sufficient to demonstrate that the incident is not excluded from OPA. In the event of a mystery spill, the trustees should make a good faith effort to determine whether or not the incident is subject to OPA. This standard could be met in a variety of ways, including (but not limited to) evaluating whether any public vessels, onshore facilities subject to the TAPAA, and/or sources permitted to discharge oil were present in the spill area when the incident likely occurred, comparisons of oil samples from the spill with samples from potential sources, and/or preliminary spill transport modeling.

(3) Trustee resources may have been, or may be, injured as a result of the incident.

In some cases, injury to trustee resources will be clearly demonstrated (*e.g.*, observations of dead biota or heavily oiled habitat). In other cases, the likelihood that injury occurred will be less clear. The "*may have been injured*" threshold in this section of the NRDA regulations (15 CFR 990.41(a)(3)) can be met by demonstrating that resources were exposed to oil. If exposure occurred, the possibility of injury exists *(i.e.,* injury "may" be present).

Determination to Conduct Restoration Planning (15 CFR 990.42)

If trustees determine that there is jurisdiction to pursue restoration under OPA, they must next determine:

(1) Did injuries result, or are they likely to result, from the incident?

The determination to conduct restoration planning depends first on whether injuries have resulted, or are *likely* to result, from the incident (15 CFR 990.42(a)(1)). NRDA regulations define injury to be "an observable or measurable adverse change in a natural resource or impairment of a natural resource service" (15 CFR 990.30). In this instance, resource exposure to oil, by itself, is not sufficient to demonstrate that injury occurred or is likely to occur. Rather, trustees should show that injury more likely than not occurred. For example, implementation of food consumption advisories, beach closures, or field evidence of biota mortality clearly would be sufficient to meet this criterion. Observations of moderately or heavily oiled vegetation would also qualify because past experience with oil spill damage assessments strongly suggests that injury will occur in such circumstances. For similar reasons, observations of oiled birds would be sufficient, as even small amounts of oiling often are sufficient to injure many bird species. For modeling-based claims, preliminary modeling results should provide a reasonable level of confidence that trustee resources were exposed to oil at levels likely to cause injury, based on injury thresholds from the technical literature or other relevant information.

Ultimately, the NPFC applies a weight-of-evidence approach when evaluating information presented by the trustees to determine whether it is more likely than not that injury occurred or is likely to occur. In cases where arguments can be made for both points of view and this judgment is difficult to make, we defer to the trustees' professional judgment, thereby allowing them to collect more information and perform additional analysis to confirm the presence of injury. In such circumstances, it may be appropriate to authorize a phased Assessment Plan initially focused on a targeted set of activities needed to confirm the presence of injury before committing more substantial effort and resources to the assessment.

(2) Were response actions sufficient to address injury?

Trustees must evaluate this issue. If the previous criterion (*i.e.,* demonstration that injury occurred or is likely to occur) is met, this one also likely will be met. Conversely, if the previous criterion was not met for a particular claim this one is also not likely met.

(3) Do feasible restoration actions exist to address potential injuries?

A brief description of potential primary and/or compensatory restoration actions in claim documentation is sufficient to meet this criterion.

Use of Assessment Procedures (15 CFR 990.27)

The NRDA regulations require that all NRDA procedures be tailored to the circumstances of the incident and the information needed to determine appropriate restoration for that incident. Standards provided by 15 CFR 990.27(a) include:

(1) The procedure(s) must be capable of providing assessment information of use in determining the type and scale of restoration appropriate for a particular injury.

Claim documentation should show how information expected to be generated by proposed assessment procedures will benefit injury determination, injury quantification, and/or restoration selection efforts. Demonstrating that assessment procedures are "capable" of providing relevant assessment information is likely to be straightforward in cases that rely on "generally accepted" damage assessment methods. Nevertheless, when "generally accepted" methods are proposed, trustees should consider: (a) the presence of confounding factors (*e.g.*, high background concentrations of oil unrelated to the incident), and (b) whether information needed for the method to produce credible, defensible results is likely to be available (*e.g.*, for modeling analyses). Finally, proposed assessment procedures that are new, novel, or untested in the damage assessment context merit particular scrutiny. Claim documentation should explain the need for such methods and provide sufficient information to demonstrate their capability of generating useable, relevant data.

(2) The additional cost of a more complex procedure must be reasonably related to the expected increase in the quantity and/or quality of relevant information provided by the more complex procedure.

Claim documentation should provide an evaluation of the extent to which proposed assessment methods (and associated effort and expense) are likely to result in an appreciable change in the required type and/or quantity of required restoration, compared to information already available for the incident. Particularly for small spills, application of more complex procedures may have a low probability of significantly altering restoration conclusions. Similarly, to the extent multiple assessment methods could be used to obtain information needed by the trustees, claim

documentation should include a discussion of the cost and data quality tradeoffs associated with each method and a rationale for the trustees' final choice of methodology.

(3) The procedure must be reliable and valid for the particular incident.

Claim documentation should demonstrate that the trustees have given consideration to information needs, confounding factors and other issues that might limit the reliability or validity of methodological results. It is not enough to indicate that proposed methods are commonly applied in damage assessments; the trustees should show that they have given thought to site-specific issues that may affect the implementation of proposed methods for the particular incident(s) in question.

NPFC Review of and Determinations for GB01-GB14

Our determinations of jurisdiction, restoration planning, and use of appropriate assessment procedures are provided on a case-by-case basis below.

GB01-903013-TX1 Buffalo Bayou

On July 5, 2002, TGLO discovered 30 barrels of red dye diesel in Buffalo Bayou. Diesel stained the shoreline of a small creek leading into the main channel of Buffalo Bayou. Oiled shoreline vegetation was cleaned with pressured water. According to claim documentation, no visible sheen remained following response actions. TGLO received $5573.14 from the OSLTF for removal costs (claim # 903013-001) associated with this incident.

Determination of Jurisdiction
The NPFC finds that this is an OPA incident based on the observation of oil discharged into or upon navigable waters and adjoining shorelines. TGLO investigated potential pathways and nearby vessels within a four-mile radius and investigated potential releases from nearby Union Pacific railway operations, meeting the conditions of 15 CFR 990.41(a)(2). Oil was observed in the water and on shoreline vegetation, indicating that natural resources may have been injured. The NPFC finds that the trustees have complied with the requirements of 15 CFR 990.41, and have jurisdiction to pursue restoration planning.

Determination to Conduct Restoration Planning
There are no field-based observations of injury documented in the claim materials. Although the incident data sheets indicate that red dye diesel "stained the shoreline" and "shoreline vegetation (was) oiled" (Assessment Plan, attachment 2, pages 2-3), it is unclear if the magnitude and duration of exposure was likely to result in injury. The claim materials state that the term "stain/ film" refers to less than 0.1 mm thickness of oil, while mortality of vegetation in marshes occurs at oiling thickness above 14 mm (Assessment Plan, attachment 3, page 19). This information suggests that oiling levels

were unlikely to injure shoreline vegetation. Similarly, preliminary model runs predict that up to 562 square meters (about 0.14 acre) of rocky/artificial habitat were exposed to some amount of oil, but sufficient information is not provided to indicate that this level of oiling is reasonably likely to injure such habitats or the biota that use them. Preliminary modeling also predicts that about one bird (1.1) was impacted by the spill. No impacts to other wildlife, fish, or invertebrates were predicted. Given uncertainties in bird modeling estimates identified in the claim (see, footnote 1, above), the very low modeled estimate of bird impacts is not sufficient to demonstrate that injury likely occurred.

Based on the above, the NPFC finds that the trustees have not provided sufficient information to demonstrate that it is more likely than not that injury occurred or is likely to occur.

Preliminary and Proposed Future Assessment Procedures

The proposed assessment procedures (research and review of incident parameters; oil spill impact modeling) are capable of providing valid information for determining the type and scale of restoration. However, given the spill size and location and the level of impacts suggested by preliminary model runs, claim documentation does not sufficiently address whether the effort and expense of additional, more complex assessment activities is warranted for this spill (*i.e.*, likely to appreciably change estimates of restoration need based on currently available information). For example, claim documentation states "based on model results and biological injuries estimated here, we recommend that most if not all these spills be examined in further detail for a damage claim. **Likely those with little impact will remain so**, but the total analysis will show significant injuries resulting from some of the larger spills" (emphasis added) (Assessment Plan, attachment 3, page 19). Based on this information, the trustees have not met the burden of demonstrating that additional assessment efforts will significantly alter estimates of restoration needs.

NPFC Determination

After review of applicable documentation, the NPFC denies funding for future assessment costs for claim GB01 because the trustees have not provided sufficient evidence to show that injury likely occurred and further assessment activities are warranted.

GB02-N05041-TX1 Houston Ship Channel

On March 28, 2005, approximately 420 gallons of black waste oil and oily water were discovered in the Houston Ship Channel near city dock #31. The spill originated from a sewer culvert, and reached the shoreline. Most of the oil was recovered by the U.S. Coast Guard (USCG) response, though a noticeable sheen remained and traveled east from the incident site. TGLO received $15,277.97 from the OSLTF for removal costs (claim # N05041-001) associated with this incident.

Determination of Jurisdiction

The NPFC finds that this is an OPA incident based on the observation of oil discharged into or upon navigable waters and adjoining shorelines. Although the release was in an area near public vessels, it occurred through a culvert. This is unlikely to be a permitted release or from a public vessel, and therefore satisfies the requirements of 15 CFR 990.41(a)(2). Following the cleanup, a sheen remained on the water and oil was in contact with the shoreline, indicating that natural resources may have been injured, as required per 15 CFR 990.41(a)(3). The NPFC finds that the trustees have complied with the requirements of 15 CFR 990.41, and have jurisdiction to pursue restoration planning.

Determination to Conduct Restoration Planning
There are no field-based observations of injury. Preliminary modeling predicts that up to 562 square meters (about 0.14 acre) of rocky/artificial habitat were exposed to some amount of oil, but sufficient information is not provided to indicate that this level of oil exposure is reasonably likely to injure such habitats or the biota that use them. Although preliminary model runs predict injury to 2.4 waterfowl, given uncertainties in bird modeling estimates identified in claim materials[1] and the absence of field observations or other information confirming the presence of birds in the spill pathway, we find that the trustees have not provided sufficient information to demonstrate that injury likely occurred.

Preliminary and Proposed Future Assessment Procedures
The proposed assessment procedures (research and review of incident parameters; oil spill impact modeling) are capable of providing valid information for determining the type and scale of restoration. However, given spill size and location and the level of impacts suggested by preliminary model runs, claim documentation does not sufficiently address whether the effort and expense of additional, more complex assessment activities is warranted for this spill (*i.e.*, likely to appreciably change estimates of restoration need based on currently available information). For example, claim documentation states "based on model results and biological injuries estimated here, we recommend that most if not all these spills be examined in further detail for a damage claim. **Likely those with little impact will remain so**, but the total analysis will show significant injuries resulting from some of the larger spills" (emphasis added) (Assessment Plan, attachment 3, page 19). Based on this information, the trustees have not met the burden of demonstrating that additional assessment efforts will significantly alter estimates of restoration needs.

NPFC Determination
After review of applicable documentation, the NPFC denies funding for future assessment costs for claim GB02 because the trustees have not provided sufficient evidence to show that injury likely occurred and further assessment activities are warranted.

GB03-N01016-TX1 Houston Ship Channel

On October 14, 2000, a half mile by 300 yard sheen was reported in the Houston Ship Channel near the Manchester #3 dock area. Approximately 168 gallons of Naphtha were reported to have been spilled, with no source identified. Fifteen-hundred feet of channel

rock/rip-rap/debris was oiled and reported as not cleanable. Three oiled mallard ducks and two oiled geese were discovered, and the Department of the Interior rehabilitated five injured birds. The initial incident report indicated that the Valero Refinery was the RP. Further investigation indicated that this was not the case, and the source has not been identified. TGLO received $713.13 from the OSLTF for removal costs (claim # N01016-001) associated with this incident.

Determination of Jurisdiction
The NPFC finds that this is an OPA incident based on the observation of oil discharged into or upon navigable waters and adjoining shorelines. TGLO's investigation of the source of the spill concluded that no RP could be identified, thereby meeting the conditions of 15 CFR 990.41(a)(2). Oil was in contact with the shoreline and oiled birds were recovered, indicating that natural resources may have been injured. The NPFC finds that the trustees have complied with the requirements of 15 CFR 990.41, and have jurisdiction to pursue restoration planning.

Determination to Conduct Restoration Planning
The NPFC finds that the observation of oiled wildlife satisfies the condition that injuries are likely to have resulted from the incident. The fate of the oiled and cleaned birds is not described in the claim; however, response actions for injured wildlife (*i.e.*, cleaning) did not completely address injuries resulting from the incident, either due to subsequent mortality of the injured wildlife or to incomplete observations of oiled wildlife. The trustees also present a variety of restoration options for injured wildlife (Assessment Plan, pages 3-7).

Preliminary and Proposed Future Assessment Procedures
The proposed assessment procedures (research and review of incident parameters; oil spill impact modeling) are capable of providing valid information for determining the type and scale of restoration. Given the field observations of oiled birds and the reasonable likelihood that some injured birds may not have been observed, further assessment effort is warranted to more completely quantify injury and associated restoration.

NPFC Determination
After review of applicable documentation, the NPFC has determined that the trustees' have met the requirements of jurisdiction and restoration planning and propose appropriate assessment procedures for this claim. Accordingly, we find that future assessment activities and costs for claim GB03 are reasonable and appropriate.

GB04-903051-TX1 Houston Ship Channel

On December 9, 2002, approximately 100 gallons of Bunker C and other heavy fuel oils were discovered in the Houston Ship Channel near the Vopak Terminals. Black oil appeared along the shoreline near the barge dock, with a heavy concentration of oil extending from the barge dock approximately 400 feet to the east. The oil was contained

along the shoreline and most of the oil was removed, though some oil located between the barges and bulkhead was deemed not recoverable. TGLO received $3,003.39 from the OSLTF for uncompensated removal costs associated with this incident. TGLO received $3003.39 from the OSLTF for removal costs (claim # 903051-001) associated with this incident.

Determination of Jurisdiction
The NPFC finds that this is an OPA incident based on the observation of oil discharged into or upon navigable waters and adjoining shorelines. TGLO investigated pathways and nearby vessels, satisfying the conditions of 15 CFR 990.41(a)(2). Oil contacted the water and shoreline, indicating that natural resources may have been injured, as required per 15 CFR 990.41(a)(3). The NPFC finds that the trustees have complied with the requirements of 15 CFR 990.41, and have jurisdiction to pursue restoration planning.

Determination to Conduct Restoration Planning
The incident is reported as being contained within the berths at the Vopak Terminals. There are no field-based observations of injury. Preliminary modeling results predict exposure of 2,811 square meters (about 0.7 acres) of rocky/artificial habitat to some amount of oil, but sufficient information is not provided to indicate that this level of oiling is reasonably likely to injure such habitats or the biota that use them. Although preliminary model runs predict injury to approximately 12 birds, given substantial uncertainties in such injury estimates acknowledged in the claim[1] and the absence of field observations or other information confirming the presence of birds in the spill pathway, the NPFC finds that the trustees have not provided sufficient information to demonstrate that injury likely occurred.

Preliminary and Proposed Future Assessment Procedures
The proposed assessment procedures (research and review of incident parameters; oil spill impact modeling) are capable of providing valid information for determining the type and scale of restoration. However, given spill size and location and the level of impacts suggested by preliminary model runs, claim documentation does not sufficiently address whether the effort and expense of additional, more complex assessment activities is warranted for this spill (*i.e.*, likely to appreciably change estimates of restoration need based on currently available information). For example, claim documentation states "based on model results and biological injuries estimated here, we recommend that most if not all these spills be examined in further detail for a damage claim. **Likely those with little impact will remain so**, but the total analysis will show significant injuries resulting from some of the larger spills" (emphasis added) (Assessment Plan, attachment 3, page 19). Based on this information, the trustees have not met the burden of demonstrating that additional assessment efforts will significantly alter estimates of restoration needs.

NPFC Determination
After review of applicable documentation, the NPFC denies funding for future assessment costs for claim GB04 because the trustees have not provided sufficient

evidence to show that injury likely occurred and further assessment activities are warranted.

GB05-903023-TX1 Houston Ship Channel

At about 8:00 a.m. on December 16, 2001, Exxon Mobil Corporation in Baytown, TX, reported a "mystery" oil sheen at their waterfront facility, near the #1 dock. The state on-scene response officer's report states that when he arrived on-site at 8:30 a.m., 126 gallons of diesel were in the Houston Ship Channel, whereas the federal on-scene coordinator's (FOSC) report at approximately 10:00 a.m. indicates that the spill was "less than 5 gallons of red dye diesel". A 30 feet by 30 feet oil sheen was observed on the water, but no cleanable quantities were observed and no clean-up was directed. The NPFC denied Exxon's claim for response costs based on the FOSC's determination of the spill volume.

Determination of Jurisdiction
The NPFC finds that this is an OPA incident based on the observation of oil discharged into or upon navigable waters. TGLO could not identify the RP, satisfying the conditions of 15 CFR 990.41(a)(2). Oil was in contact with the water and shoreline, indicating that natural resources may have been injured, as required per 15 CFR 990.41(a)(3). The NPFC finds that the trustees have complied with the requirements of 15 CFR 990.41, and have jurisdiction to pursue restoration planning.

Determination to Conduct Restoration Planning
The incident is reported to have been contained within the Exxon Bayway docks. There are no field-based observations of injury. Preliminary modeling predicts exposure of 1,125 square meters (about 0.3 acres) of rocky/artificial habitat to some amount of oil, but sufficient information is not provided to indicate that this level of oiling is reasonably likely to injure such habitats or the biota that use them. Although preliminary model runs predict injury to approximately 9 birds, given substantial uncertainties in such injury estimates acknowledged in the claim[1] and the absence of field observations or other information confirming the presence of birds in the spill pathway, the NPFC finds that the trustees have not provided sufficient information to demonstrate that injury likely occurred.

Preliminary and Proposed Future Assessment Procedures
The proposed assessment procedures (research and review of incident parameters; oil spill impact modeling) are capable of providing valid information for determining the type and scale of restoration. However, given spill size and location and the level of impacts suggested by preliminary model runs, claim documentation does not sufficiently address whether the effort and expense of additional, more complex assessment activities is warranted for this spill (*i.e.*, likely to appreciably change estimates of restoration need based on currently available information). For example, claim documentation states "based on model results and biological injuries estimated here, we recommend that most if not all these spills be examined in further detail for a damage claim. **Likely those with little impact will remain so**, but the total analysis will show significant injuries resulting

from some of the larger spills" (emphasis added) (Assessment Plan, attachment 3, page 19). Based on this information, the trustees have not met the burden of demonstrating that additional assessment efforts will significantly alter estimates of restoration needs.

NPFC Determination
After review of applicable documentation, the NPFC denies funding for future assessment costs for claim GB05 because the trustees have not provided sufficient evidence to show that injury likely occurred and further assessment activities are warranted.

GB06-T07001-TX1 Trinity Bay

On October 11, 1999, a leaking pipeline was reported to TPWD by a shrimper in Trinity Bay. The broken pipeline released approximately 3,150 gallons of crude oil into the bay, forming a one mile by two miles slick in open water. The TGLO investigation found that the line was an abandoned two inch pipeline coming from shore and was not connected to any wells in the bay. The abandoned line was cut and plugged.

Determination of Jurisdiction
The NPFC finds that this is an OPA incident based on the observation of oil discharged into or upon navigable waters. The release occurred through an abandoned pipeline. This is unlikely to be a permitted release or one from a public vessel. Although the trustees' investigation that failed to identify the owner of the pipe, it meets the conditions of 15 CFR 990.41(a)(2). Oil was observed in the water, indicating that natural resources may have been injured, as required per 15 CFR 990.41(a)(3). The NPFC finds that the trustees have complied with the requirements of 15 CFR 990.41 and have jurisdiction to pursue restoration planning.

Determination to Conduct Restoration Planning
Although there are no field observations of injury, given the size of the oil slick (one mile by two miles) and information from preliminary model runs (2,236 waterfowl and 166 seabirds impacted), the NPFC finds that it is likely that some amount of injury occurred. Response actions for injured wildlife did not completely address these injuries, either due to subsequent mortality of the injured wildlife or to incomplete observation of oiled wildlife. The trustees present a variety of restoration options for injured wildlife (Assessment Plan, pages 3-7). Thus, all three criteria for the determination to conduct restoration planning have been met.

Preliminary and Proposed Future Assessment Procedures
Proposed Modeling-related assessment procedures (research and review of incident parameters; oil spill impact modeling) are reasonable for assessment of potential natural resource injuries resulting from this incident. Given the relatively large size of the spill and potential impacts, improvements to modeling parameters may lead to substantially different and more reliable estimates of injury and the type and scale of appropriate restoration than those derived from currently available information. The modeling-related assessment procedures (incident research/review and oil spill impact modeling)

are capable of providing information for determining the type and scale of restoration necessary to compensate for the losses.

NPFC Determination
After review of applicable documentation, the NPFC has determined that the trustees have met the requirements of jurisdiction and restoration planning, and propose appropriate assessment procedures for this claim. Accordingly, we find that future assessment activities and costs for claim GB06 are reasonable and appropriate.

GB07–N00095-TX1 Texas Ship Channel

The trustees withdrew this spill from consideration.

GB08-T07002-TX1 Texas City Ship

On May 17, 2002, oil and sheen were reported in the Texas City inner harbor by a dock operator at British Petroleum (BP). Estimates of oil in the water ranged from 126 to 168 gallons. Two docks and the Bollinger Shipyard bulkhead were oiled; BP conducted cleanup operations. Heavy rain spread the oil across the surface of the water. The incident data sheet states that no private property or wildlife was affected.

Determination of Jurisdiction
The NPFC finds that this is an OPA incident based on the observation of oil discharged into or upon navigable waters. The trustees' investigation of the source of the discharge, including analyses of oil samples concluded that no RP could be found. The investigation meets the conditions of 15 CFR 990.41(a)(2). The claim indicates that the shoreline was exposed to oil, indicating that injuries may have occurred. The NPFC finds that the trustees have complied with the requirements of 15 CFR 990.41, and have jurisdiction to pursue restoration planning.

Determination to Conduct Restoration Planning
The incident is reported as being contained within the Texas City docks and the Bollinger Shipyard. There are no field-based observations of injury. Preliminary modeling predicts oiling of up to 1,125 square meters (about 0.3 acres) of rocky/artificial habitat and 2,811 square meters (about 0.7 acres) of sand and gravel habitat were exposed to some amount of oil, but sufficient information is not provided to indicate that this predicted level of oiling is reasonably likely to injure such habitats or the biota that use them. The incident data sheets state that no wildlife was affected, wildlife loss predicted by preliminary modeling predicts less than one bird was impacted, and the claim documentation states that this spill "most likely involved oiling of less than 1 bird (or none)" (Assessment Plan, attachment 3, page 19). Based on the above, the NPFC finds that the trustees have not provided sufficient information to demonstrate that injury likely occurred.

Preliminary and Proposed Future Assessment Procedures

The proposed assessment procedures (research and review of incident parameters; oil spill impact modeling) are capable of providing valid information for determining the type and scale of restoration. However, given spill size and location and the level of impacts suggested by preliminary model runs, claim documentation does not sufficiently address whether the effort and expense of additional, more complex assessment activities is warranted for this spill (*i.e.*, likely to appreciably change estimates of restoration need based on currently available information). For example, claim documentation states "based on model results and biological injuries estimated here, we recommend that most if not all these spills be examined in further detail for a damage claim. **Likely those with little impact will remain so**, but the total analysis will show significant injuries resulting from some of the larger spills" (emphasis added) (Assessment Plan, attachment 3, page 19). Based on this information, the trustees have not met the burden of demonstrating that additional assessment efforts will significantly alter estimates of restoration needs.

NPFC Determination
After review of applicable documentation, the NPFC denies funding for future assessment costs for claim GB08 because the trustees have not provided sufficient evidence to show that injury likely occurred and further assessment activities are warranted.

GB09-N01098-TX1 Galveston Ship Channel

On December 14, 2000, an oil slick of approximately 100 gallons of red dye diesel was reported by the USCG at the Houston Pilots Dock. The spill was contained to that area and cleaned; shoreline (rip rap material) along one dock was oiled. Responders sampled the spill as well as all pilot vessels in the area, but a match was not found. TGLO received $477.18 from the OSLTF for removal costs (claim # N01098-001) associated with this incident.

Determination of Jurisdiction
The NPFC finds that this is an OPA incident based on the observation of oil discharged into or upon navigable waters and adjoining shorelines. A reasonable effort including oil sample analyses was made to verify that the incident was not a permitted release or from a public vessel and that the conditions of 15 CFR 990.41(a)(2) are met. The shoreline was exposed to oil, indicating that resources may have been injured. The NPFC finds that the trustees have complied with the requirements of 15 CFR 990.41 and have jurisdiction to pursue restoration planning.

Determination to Conduct Restoration Planning
The incident is described as oiling rip rap shoreline along the Houston Pilots dock. There are no field-based observations of injury. Preliminary modeling predict exposure of up to 1,125 square meters (about 0.3 acres) of rocky/artificial habitat to some amount of oil, but sufficient information is not provided to indicate that this level of oiling is reasonably likely to injure such habitats or the biota that use them. Predicted wildlife losses are less than one bird, with claim documentation stating that this spill "most likely involved

oiling of less than 1 bird (or none)" (Assessment Plan , attachment 3, page 19). Based on the above, the NPFC finds that the trustees have not provided sufficient information to demonstrate that injury likely occurred.

Preliminary and Proposed Future Assessment Procedures
The proposed assessment procedures (research and review of incident parameters; oil spill impact modeling) are capable of providing valid information for determining the type and scale of restoration. However, given spill size and location and the level of impacts suggested by preliminary model runs, claim documentation does not sufficiently address whether the effort and expense of additional, more complex assessment activities is warranted for this spill (*i.e.*, likely to appreciably change estimates of restoration need based on currently available information). For example, claim documentation states "based on model results and biological injuries estimated here, we recommend that most if not all these spills be examined in further detail for a damage claim. **Likely those with little impact will remain so**, but the total analysis will show significant injuries resulting from some of the larger spills" (emphasis added) (Assessment Plan, attachment 3, page 19). Based on this information, the trustees have not met the burden of demonstrating that additional assessment efforts will significantly alter estimates of restoration needs.

NPFC Determination
After review of applicable documentation, the NPFC denies funding for future assessment costs for claim GB09 because the trustees have not provided sufficient evidence to show that injury likely occurred and further assessment activities are warranted.

GB10-N01357-TX1 Gulf of Mexico

On July 15, 2004, approximately 840 gallons of Bunker C and other heavy fuel oil were found by the M/V Clyde Spirit in the Gulf of Mexico at the Galveston Fairway Anchorage. Oil from the vessel reporting the spill was sampled and was not found to have been the source. TGLO received a $1,576.61 reimbursement from the OSLTF for removal costs (claim # N01357-001) associated with this incident.

Determination of Jurisdiction
The NPFC finds that this is an OPA incident based on the observation of oil discharged into or upon navigable waters. The trustees' investigation of potential RPs meets the conditions of 15 CFR 990.41(a)(2). Given the spill size and oil type, the water column was likely exposed to oil during the incident. Therefore, it is reasonable to assume that natural resources may have been injured, as required per 15 CFR 990.41(a)(3). The NPFC finds that the trustees have complied with the requirements of 15 CFR 990.41 and have jurisdiction to pursue restoration planning.

Determination to Conduct Restoration Planning
There are no field-based observations of injury. Preliminary modeling results predict exposure of up to 562 square meters (about 0.14 acres) of rocky/artificial habitat and 8,434 square meters (about 2.1 acres) of sand and gravel habitat to some amount of oil,

but sufficient information is not provided to indicate that the level of oiling is reasonably likely to injure such habitats or the biota that use them. In addition, in contrast to preliminary model runs, which predict oiled shoreline, field observations indicate that the spill dissipated before reaching shore. Predicted wildlife losses are less than one bird, with claim documentation stating that this spill "most likely involved oiling of less than 1 bird (or none)" (Assessment Plan, attachment 3, page 19). Based on this information, the NPFC finds that the trustees have not provided sufficient information to demonstrate that injury likely occurred.

Preliminary and Proposed Future Assessment Procedures
The proposed assessment procedures (research and review of incident parameters; oil spill impact modeling) are capable of providing valid information for determining the type and scale of restoration. However, given spill size and location and the level of impacts suggested by preliminary model runs, claim documentation does not sufficiently address whether the effort and expense of additional, more complex assessment activities is warranted for this spill (*i.e.*, likely to appreciably change estimates of restoration need based on currently available information). For example, claim documentation states "based on model results and biological injuries estimated here, we recommend that most if not all these spills be examined in further detail for a damage claim. **Likely those with little impact will remain so**, but the total analysis will show significant injuries resulting from some of the larger spills" (emphasis added) (Assessment Plan, attachment 3, page 19). Based on this information, the trustees have not met the burden of demonstrating that additional assessment efforts will significantly alter estimates of restoration needs.

NPFC Determination
After review of applicable documentation, the NPFC denies funding for future assessment costs for claim GB10 because the trustees have not provided sufficient evidence to show that injury likely occurred and further assessment activities are warranted.

GB11-903137-TX1 Gulf of Mexico

On April 25, 2003, the City of Jamaica Beach reported a tar ball measuring five feet by seven feet, estimated to represent a spill of approximately 235 gallons, on its beach. The tar ball was removed and, according to the incident data sheet, no effects were observed. The tar ball appeared to have been weathering for months. Since the time and location of the spill could not be determined, no investigation was conducted. No responsible party was found. TGLO received a $2,102.53 reimbursement from the OSLTF for removal costs (claim # 903137-001) associated with this incident.

Determination of Jurisdiction
The NPFC finds that this is an OPA incident based on the observation of oil discharged into or upon navigable waters and adjoining shorelines. The trustees have shown that the conditions of 15 CFR 990.41(a)(2) are met for this "mystery" spill. The field observations show that the shoreline was exposed to oil during the incident. Therefore, it is reasonable to assume that natural resources may have been injured, as required per 15

CFR 990.41(a)(3). The NPFC finds that the trustees have complied with the requirements of 15 CFR 990.41, and have jurisdiction to pursue restoration planning.

Determination to Conduct Restoration Planning
There are no field-based observations of injury. Preliminary modeling predicts up to 11,245 square meters (2.77 acres) of sand and gravel habitat were exposed to oil, but sufficient information is not provided to indicate that this level of oiling is reasonably likely to injure such habitats or the biota that use them. The model also predicts that less than one bird (0.15) was impacted, with claim documentation stating that this spill "most likely involved oiling of less than 1 bird (or none)" (Assessment Plan, attachment 3, page 19). Claim documentation does not sufficiently explain how a modeling exercise, where the only known information is the location, size, type and approximate age of the tar ball, can demonstrate that injury likely occurred. The NPFC therefore finds that the trustees have not provided sufficient information to demonstrate that injury likely occurred.

Preliminary and Proposed Future Assessment Procedures
The proposed assessment procedures (research and review of incident parameters; oil spill impact modeling) are capable of providing valid information for determining the type and scale of restoration. However, given spill size and location and the level of impacts suggested by preliminary model runs, claim documentation does not sufficiently address whether the effort and expense of additional, more complex assessment activities is warranted for this spill (*i.e.*, likely to appreciably change estimates of restoration need based on currently available information). For example, claim documentation states "based on model results and biological injuries estimated here, we recommend that most if not all these spills be examined in further detail for a damage claim. **Likely those with little impact will remain so**, but the total analysis will show significant injuries resulting from some of the larger spills" (emphasis added) (Assessment Plan, attachment 3, page 19). Based on this information, the trustees have not met the burden of demonstrating that additional assessment efforts will significantly alter estimates of restoration needs.

NPFC Determination
After review of applicable documentation, the NPFC denies funding for future assessment costs for claim GB11 because the trustees have not provided sufficient evidence to show that injury likely occurred and further assessment activities are warranted.

GB12-T07003-TX1 Gulf of Mexico

On July 17, 2000, tar balls were found along approximately four miles of beach from San Luis Pass to Surfside Beach. The incident data sheets indicate that all observed tar balls on the beach were removed and no impacts to wildlife were observed. The time and location of the spill were unable to be determined; no investigation was conducted. No source was found.

Determination of Jurisdiction

The NPFC finds that this is an OPA incident based on the observation of oil discharged into or upon navigable waters and adjoining shorelines. The trustees have shown that the conditions of 15 CFR 990.41(a)(2) are met for this "mystery" spill. The shoreline was exposed to oil during the incident. Therefore, it is reasonable to assume that natural resources may have been injured, as required per 15 CFR 990.41(a)(3). The NPFC finds that the trustees have complied with the requirements of 15 CFR 990.41, and have jurisdiction to pursue restoration planning.

Determination to Conduct Restoration Planning
The incident data sheet indicates that tarballs, totaling an estimated 210 gallons, were observed on the shore and in nearshore waters. The tarballs were removed, and there are no field-based observations of injury. Preliminary modeling predicts that up to 2,811 square meters (about 0.7 acres) of sand and gravel were exposed to oil, but sufficient information is not provided to indicate that this level of oiling is reasonably likely to injure such habitats or the biota that use them. The model also predicts that less than one bird (0.04) was impacted, with claim documentation stating that this spill "most likely involved oiling of less than 1 bird (or none)" (Assessment Plan, attachment 3, page 19). Further, claim documentation does not sufficiently explain how a modeling exercise, where the only known information is the location, size, type and approximate age of the tar balls, can demonstrate that injury likely occurred. The NPFC therefore finds that the trustees have not provided sufficient information to demonstrate that injury likely occurred.

Preliminary and Proposed Future Assessment Procedures
The proposed assessment procedures (research and review of incident parameters; oil spill impact modeling) are capable of providing valid information for determining the type and scale of restoration. However, given spill size and location and the level of impacts suggested by preliminary model runs, claim documentation does not sufficiently address whether the effort and expense of additional, more complex assessment activities is warranted for this spill (*i.e.*, likely to appreciably change estimates of restoration need based on currently available information). For example, claim documentation states "based on model results and biological injuries estimated here, we recommend that most if not all these spills be examined in further detail for a damage claim. **Likely those with little impact will remain so**, but the total analysis will show significant injuries resulting from some of the larger spills" (emphasis added) (Assessment Plan, attachment 3, page 19). Based on this information, the trustees have not met the burden of demonstrating that additional assessment efforts will significantly alter estimates of restoration needs.

NPFC Determination
After review of applicable documentation, the NPFC denies funding for future assessment costs for claim GB12 because the trustees have not provided sufficient evidence to show that injury likely occurred and further assessment activities are warranted.

GB13-T07004-TX1 Gulf of Mexico

On September 7, 2001, TGLO observed quarter-sized, tan "grease balls" on the beach from Jamaica Beach to San Luis Pass. TGLO estimated 185 gallons of oil spilled along five miles of coastline. Due to the decrease in size of the grease balls over a 24-hour period, clean-up was not initiated. The time and location of the spill were not determined, and no investigation was conducted. No source was identified for the spill.

Determination of Jurisdiction
The NPFC finds that this is an OPA incident based on the observation of oil discharged into or upon navigable waters and adjoining shorelines. The trustees have shown that the conditions of 15 CFR 990.41(a)(2) are met for this "mystery" spill. The shoreline was exposed to oil during the incident. Therefore, it is reasonable to assume that natural resources may have been injured, as required per 15 CFR 990.41(a)(3). The NPFC finds that the trustees have complied with the requirements of 15 CFR 990.41 and have jurisdiction to pursue restoration planning.

Determination to Conduct Restoration Planning
The incident data sheet indicates that "no impacts were observed". Preliminary modeling predicts that up to 2,811 square meters (about 0.7 acres) of sand and gravel were exposed to oil, but sufficient information is not provided to indicate that this level of oiling is reasonably likely to injure such habitats or the biota that use them. The model also predicts that less than one bird (0.04) was impacted, with claim documentation stating that this spill "most likely involved oiling of less than 1 bird (or none)" (Assessment Plan, attachment 3, page 19). Claim documentation does not sufficiently explain how a modeling exercise, where the only known information is the location, size, type and approximate age of the grease balls, can demonstrate that injury likely occurred. Therefore, the NPFC finds that the trustees have not provided sufficient information to demonstrate that injury likely occurred.

Preliminary and Proposed Future Assessment Procedures
The proposed assessment procedures (research and review of incident parameters; oil spill impact modeling) are capable of providing valid information for determining the type and scale of restoration. However, given spill size and location and the level of impacts suggested by preliminary model runs, claim documentation does not sufficiently address whether the effort and expense of additional, more complex assessment activities is warranted for this spill (*i.e.*, likely to appreciably change estimates of restoration need based on currently available information). For example, claim documentation states "based on model results and biological injuries estimated here, we recommend that most if not all these spills be examined in further detail for a damage claim. **Likely those with little impact will remain so**, but the total analysis will show significant injuries resulting from some of the larger spills" (emphasis added) (Assessment Plan, attachment 3, page 19). Based on this information, the trustees have not met the burden of demonstrating that additional assessment efforts will significantly alter estimates of restoration needs.

NPFC Determination
After review of applicable documentation, the NPFC denies funding for future assessment costs for claim GB13 because the trustees have not provided sufficient

evidence to show that injury likely occurred and further assessment activities are warranted.

GB14-N05019-TX Highland Bayou

On December 14, 2004, an abandoned, corroded tank battery released about 9,460 gallons of crude oil into the surrounding marsh and Highland Bayou. TGLO reported oiled birds were found. Multiple potential responsible parties were identified and contacted (see "Claim Presentation" section). TGLO received $55,757.25 from the NPFC for removal costs associated with this incident (FPN: N05019).

Determination of Jurisdiction
The NPFC finds that this is an OPA incident based on the observation of oil discharged into or upon navigable waters and adjoining shorelines. Multiple potential responsible parties have been identified and the incident is not a permitted release or one from a public vessel. The trustees have met the conditions of 15 CFR 990.41(a)(2). The shore and biota were exposed to oil during the incident. Therefore, it is reasonable to assume that natural resources may have been injured. The NPFC finds that the trustees have complied with the requirements of 15 CFR 990.41, and have jurisdiction to pursue restoration planning.

Determination to Conduct Restoration Planning
The NPFC finds that the observation of oiled wildlife satisfies the condition that injuries are likely to have resulted from the incident. Field observations showed oiled birds and shrimp, as well as oiling to Highland Bayou shoreline and surrounding marsh. Response actions for injured wildlife did not completely address these injuries, either due to subsequent mortality of the injured wildlife or to incomplete observation of oiled wildlife. The trustees present a variety of restoration options for injured wildlife (Assessment Plan, pages 3-7).

Preliminary and Proposed Future Assessment Procedures
The proposed assessment procedures (research and review of incident parameters; oil spill impact modeling) are reasonable for this incident. Given the relatively large size of the spill and its location within Highland Bayou, improvements to modeling parameters may lead to substantially different and more reliable estimates of injury and the type and scale of appropriate restoration than those derived from currently available information.

NPFC Determination
After review of applicable documentation, the NPFC has determined that the trustees have met the requirements of jurisdiction and restoration planning and propose appropriate assessment procedures for this claim. Accordingly, we find that future assessment activities and costs for claim GB14 presented in the trustees' claim are reasonable and appropriate.

Summary of Determinations

The NPFC has determined that the trustees have met the general claim requirements for statute of limitation, claimant eligibility, and claim presentation set forth in 33 CFR 136 and 15 CFR 990 for all claims. We have determined that all the claimed past assessment costs are compensable. After reviewing the information provided with the claim specific to the 13 incidents for which future assessment costs are being claimed, we find that it is reasonable and appropriate to proceed with assessment for GB03, GB06, and GB14, and that the costs claimed are reasonable. For the remaining ten incidents, we find that the claimant did not prove their entitlement to the amount claimed for future assessment activities. Specifically, for each of these incidents, the claimant did not meet their burden of demonstrating that injuries likely occurred as a result of the releases and that further assessment activities are warranted.

The following table summarizes our findings with respect to the OPA requirements.

SUMMARY OF FINDINGS FOR GALVESTON BAY INCIDENTS										
Spill	Determination of Jurisdiction			Determination to Conduct Restoration Planning			Assessment Procedures			Determination
	OPA INCIDENT	NOT EXCLUDED INCIDENT	INJURY MAY HAVE OCCURRED	INJURY LIKELY OCCURRED	RESPONSE ACTIONS NOT ADEQUATE TO ADDRESS INJURY	FEASIBLE RESTORATION ALTERNATIVES EXIST	INFORMATION FOR TYPE AND SCALE OF RESTORATION	COST OF COMPLEX PROCEDURES	RELIABLE AND VALID FOR INCIDENT	
GB01	✓	✓	✓	X	✓	✓	X	X	✓	Denied
GB02	✓	✓	✓	X	✓	✓	X	X	✓	Denied
GB03	✓	✓	✓	✓	✓	✓	✓	✓	✓	Approved
GB04	✓	✓	✓	X	✓	✓	X	X	✓	Denied
GB05	✓	✓	✓	X	✓	✓	X	X	✓	Denied
GB06	✓	✓	✓	✓	✓	✓	✓	✓	✓	Approved
GB07	withdrawn									
GB08	✓	✓	✓	X	✓	✓	X	X	✓	Denied
GB09	✓	✓	✓	X	✓	✓	X	X	✓	Denied
GB10	✓	✓	✓	X	✓	✓	X	X	✓	Denied
GB11	✓	✓	✓	X	✓	✓	X	X	X	Denied
GB12	✓	✓	✓	X	✓	✓	X	X	X	Denied
GB13	✓	✓	✓	X	✓	✓	X	X	X	Denied
GB14	✓	✓	✓	✓	✓	✓	✓	✓	✓	Approved
✓ = conditions met; X = conditions not met										

Future Assessment Activity Costs

The trustees claim, as originally submitted by TGLO for 14 spills (including GB07), included $767,703 for future assessment (excluding contingency). The NPFC, in consultation with TGLO[3], allocated this total to each spill to determine the amount of the claim attributable to (1) GB07, the incident that the trustees requested be withdrawn, and (2) the incidents for which funding was approved (*i.e.*, GB03, GB06, and GB14).

The NPFC allocation approach recognized that the amount of funding for each spill may be contingent upon the: (1) number of incidents, and (2) volume of oil spilled. We determined that a reasonable approach is to proportionally allocate 50 percent of the funding request ($383,851.50) equally to each incident and 50 percent to each incident based on the estimated volume spilled. The table below provides this per-spill allocation of future assessment costs

PER SPILL ALLOCATION OF CLAIMED FUTURE ASSESSMENT COSTS

Spill	Cost per Incident	Quantity of Oil Spilled	Cost by Quantity Spilled	Total
Total Allocation				
GB01-GB14	$383,851.50 [1]	17,881	$383,851.50 [1]	$767,703
Spill Allocation				
GB01	$27,417.96	1260	$27,048.43	$54,466.39
GB02	$27,417.96	420	$9,016.14	$36,434.10
GB03	$27,417.96	168	$3,606.46	$31,024.42
GB04	$27,417.96	100	$2,146.70	$29,564.66
GB05	$27,417.96	126	$2,704.84	$30,122.80
GB06	$27,417.96	3150	$67,621.06	$95,039.02
GB07	$27,417.96	1500	$32,200.51	$59,618.47
GB08	$27,417.96	126	$2,704.84	$30,122.80
GB09	$27,417.96	100	$2,146.70	$29,564.66
GB10	$27,417.96	840	$18,032.28	$45,450.24
GB11	$27,417.96	236	$5,066.21	$32,484.17
GB12	$27,417.96	210	$4,508.07	$31,926.03
GB13	$27,417.96	185	$3,971.40	$31,389.36
GB14	$27,417.96	9460	$203,077.86	$230,495.82

[1] 50% of total claimed costs ($383,851.50) are distributed equally to each of the 14 incidents.
[2] 50% of total claimed costs ($383,851.50) are proportionally distributed to each incident based on the number of gallons spilled in each incident.

[3] See July 24, 2007 TGLO response to NPFC questions and issues dated May 16, 2007

Based on the allocation described above, the NPFC has determined to pay $356,559 for future assessment activities associated with GB03, GB06, and GB14 ($31,024 for GB03; $95,039 for GB06; and $230,496 for GB14).

Revolving Trust Fund

The NPFC will deposit $451,942, which include $95,383 for approved past costs and $356,559 for approved future assessment costs into the non-appropriated revolving trust fund at the Texas Treasury Safekeeping Trust Company established by TGLO for this claim. TGLO has demonstrated that this is a revolving trust fund account set-up pursuant to OPA (33 U.S.C. Sec. 2706(f)), the claims regulations (33 CFR 136.211), and the NRDA regulations (15 CFR 990.65) (Assessment Plan, section 6.6 and attachment 7).

NPFC Treatment of Contingency

TGLO requests $106,213, or 15 percent of the claimed cost for future assessment activities, to address "unforeseen" future NRDA costs. NPFC recognizes that the costs in this plan are estimates, and that these costs may unexpectedly increase, and/or new and unforeseeable costs may surface in the future. To address this concern, the NPFC has determined that the OSLTF will remain available to provide "contingency" funding. Due to the uncertain nature of the requested contingencies at the time of this determination, contingent amounts will be paid only if and when the need arises. Future contingency payments will be available on a project-specific basis under the following criteria:

(1) The potential in complex project plans to overlook certain activities/costs that are later found to be necessary to complete the project; and
(2) The potential that certain specific significant costs of a plan are subject to later developments or events that result in an increase in costs, and that can be described in reasonable detail and within reasonable cost parameters (*e.g.*, a plan to purchase property may be subject to the future availability of property for purchase and/or the outcome of purchase negotiations).

In the future, if the need for additional funding arises under either of the two criteria above, the trustees may request it from the NPFC. Any request for additional funding must document that:

(1) Funding is needed for the completion of the activities outlined in the plan;
(2) The request complies with the above two criteria;
(3) The increased costs are reasonable; and
(4) Previously provided funds were spent appropriately.

Accurate and timely documentation of all expenditures (labor, contract, purchases/expendables, travel, government equipment *etc.*) is required to support any requests for contingency funding. Requests for contingency funding that meet the two criteria and provide documentation of the four items above, if approved, will be paid by the NPFC expeditiously.

The maximum amount of contingency funding available to the trustees for this determination is detailed below. In a rare case, an increase to the determined amounts may be granted if adequate documentation and rationale are provided. Further, contingency payments are only available for a limited period of time after NPFC payment of the original plan. Contingency payments are only available from the OSLTF for 4 years after payment is made to the trustees, as after that time the assessment is expected to be completed.

The maximum contingency percentage assigned for this claim is provided in the following table. The amounts are based on the claimant's request and NPFC's determination of the degree of complexity and potential for unknown events.

CONTINGENCY FUNDS FOR APPROVED INCIDENTS		
Spill	**Claim Amount**	**Maximum Approved Contingency (15%)**
GB03	$31,024	$4,654
GB06	$95,039	$14,256
GB14	$230,496	$34,574
TOTAL		**$53,484**

Cost Documentation and Progress Reporting

TGLO shall ensure that all claim expenditures are documented appropriately and spent according to the Assessment Plan for the approved portions of the claim. Any funds not spent or appropriately documented shall be returned to the Fund. Complete, accurate, and timely cost documentation is also required to support any requests for contingency funding.

The NPFC requires that claimants receiving funds for future assessment activities provide annual and final reports on assessment activities and expenditures. Annual progress reports must be submitted by the TGLO beginning one year from the date of this determination, and annually thereafter. Reports are due 90 days after the reporting period ends. Annual reports should provide:

1. Certification by TGLO that all assessment activities for the approved portions of the claim have been conducted in accordance with the Assessment Plan;
2. A progress report that includes a description of work accomplished, a timeline for future activities, and any unexpected problems incurred during implementation;
3. A summary of expenditures by category (labor, contracts, purchases/expendables, travel, government equipment); and

4. A narrative description of the work accomplished by each individual and how that work fits into the overall progress of the project for the year. Enough detail should be included to determine reasonableness of costs

The final report should be submitted to the NPFC within 120 days of the date implementation of the plan is complete. This report should include:

1. Certification by the TGLO that all assessment activities for the approved portion of the claim were conducted in accordance with the Assessment Plan.
2. A summary of plan implementation;
3. Copies of final reports and/or studies developed as part of the assessment;
4. The final Damage Assessment and Restoration Plan; and
5. Documentation of all expenditures to determine what, if any, remaining funds need to be returned to the NPFC. Expenditures should be documented 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 project. Enough detail should be included to determine reasonableness of costs for each.
        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.

The NPFC has prepared a standardized template to facilitate annual progress and final cost reporting. These templates are provided on the compact disc included with this determination.

Conclusion

The NPFC has reviewed this claim in accordance with OPA (33 U.S.C. 2701 *et seq.*) and it's implementing regulations (15 CFR 990 and 33 CFR 136). We have determined that $95,383 in past assessment costs and $356,559 for future assessment activities relating to spills GB03, GB06, and GB14 are compensable.

All NRDA costs that are not being offered for reimbursement are considered denied. You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the requests for reconsideration, providing any additional support for the claim. Reconsideration will be based upon the additional information provided and a claim may be reconsidered only once. Disposition of the reconsideration will constitute final agency action. Failure of the NPFC to issue a written decision within

90 days after receipt of a timely request for reconsideration shall, at the option of the claimant, be deemed final agency action.

If you accept this offer, please sign and return the enclosed Acceptance/Release Form to the address indicated below.

Reconsideration requests and signed Acceptance/Release forms must be submitted to:

Director (Cn)
U.S. Coast Guard
National Pollution Funds Center
4200 Wilson Boulevard, Suite 1000
Arlington, VA 22203-1804

If we do not receive the signed original Acceptance/Release Form within 60 days of the date of this letter, the offer is void. If the settlement is accepted, your payment will be mailed within 30 days of receipt of the Release Form.

If you have any questions regarding this claim, you may contact me at 202-493-6789.

Sincerely,

Kristina N. Williams

KRISTINA N. WILLIAMS
Claims Manager
Natural Resource Damage Claims Division
U.S. Coast Guard

ENCL: (1) Acceptance/Release Form
(2) Standardized Template for Progress and Cost Reporting (CD)

Exhibit 1. Claim Accounting Summary

Initial Claimed Amount	*Claim Components*
$102,823	Past Assessment Costs for Incidents GB01-GB14
$767,703	Future Costs for Incidents GB01-GB14
$135,477	Contingency
$1,006,003	**Total natural resource damages claimed**

Revised Claimed Amount (GB07 withdrawn)	*Claim Components*
$95,383	Past Assessment Costs for Incidents GB01-GB14
$708,085	Future Costs for Incidents GB01-GB14
$106,213	Contingency
$ 909,680	**Total natural resource damages claimed**

Decision Amount	*Approved Claim Components*
$356,559	Future Assessment Costs for Incidents GB03 ($31,024.42), GB06 ($95,039.02), and GB14 ($230,495.82)
$95,383	Past Assessment Costs for Incidents: GB01-GB14, excluding GB07
$451,942	**Total compensable natural resource damages**

Decision Amount	*Maximum Approved Contingency (15%)*
$4,654	GB03
$14,256	GB06
$34,574	GB14
$53,484	**Total Approved Contingency Funds**

Decision Amount	*Denied Claim Components*
$52,729	Contingency
$351,525	Future Assessment Costs for Incidents: GB01,GB02, GB04, GB05, GB08, GB09, GB10, GB11, GB12, GB13
$404,254	**Total Denied**

U.S. Department of Homeland Security

United States Coast Guard

Director
United States Coast Guard
National Pollution Funds Center

4200 Wilson Blvd.
Suite 1000
Arlington, VA 22203-1804
Staff Symbol: (Cn)
Phone: 202-493-6789
E-mail: kristina.n.williams@uscg.mil

Galveston Bay Area Oil Spills Claim - Claim Numbers: GB01-903013 -TX1, GB02-N05041-TX1, GB03-N01016- TX1, GB04- 903051-TX1, GB05-903023-TX1, GB06-T07001-TX1, GB08-T07002-TX1, GB09-N01098-TX1, GB10-N01357-TX1, GB11-903137-TX1, GB12-T07003-TX1, GB13-T07004-TX1, GB14-N05019-TX1	Claimant Name: State of Texas General Land Office ATTN: Mr. Eddie Fisher Coastal Resources Division 1700 North Congress Avenue Austin, TX 78707-1495

I, the undersigned, on behalf of the State of Texas General Land Office as the Natural Resource Damages Lead Administrative Trustee (LAT) acting for all claimant trustees, ACCEPT the settlement offer of $ 451,942 as full compensation for the assessment claims of all spills associated with the claim numbers identified above.

This settlement represents full and final release and satisfaction of all costs for assessment actions and studies of natural resource damages discussed in the NPFC determination for the claim numbers noted above, addressed to Mr. Eddie Fisher and described in the damage assessment claim the LAT presented to the NPFC dated 22 November 2006 under the Oil Pollution Act of 1990 (33 U.S.C. 2712(a)(4)), arising from oil pollution incidents in the Galveston Bay area. This settlement is not an admission of liability by any party.

I, on behalf of the State of Texas General Land Office as the Natural Resource Damages LAT and all the claimant trustees:

(1) hereby assign, transfer, and subrogate to the United States all rights, claims, interest and rights of action, that the claimant trustees may have against any party, person, firm or corporation that may be liable for the loss;
(2) authorize the United States to sue, compromise or settle in the name of the claimant trustees and that the United States be fully substituted for the claimant trustees and subrogated to all of the claimant trustees' rights arising from the incident;
(3) warrant that no legal action has been brought by any claimant trustee regarding this matter and no settlement has been or will be made by the State of Texas General Land Office as the Natural Resource Damages LAT or any person on behalf of the claimant trustees with any other party for costs which are the subject of the claim against the Oil Spill Liability Trust Fund (Fund); and
(4) will cooperate fully with the United States in any claim and/or action by the United States against any person or party to recover the compensation paid by the Fund. The cooperation shall include, but is not limited to, immediately reimbursing the Fund 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 United States to recover from any other person or party.

I, the undersigned, on behalf of the State of Texas General Land Office as the National Resource Damages LAT acting for all claimant trustees, certify that to the best of my knowledge and belief the information contained in this claim represents all material facts and is true, and understand

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

Title of Person Signing	Date of Signature
Typed or Printed Name of Claimant or Name of Authorized Representative	Signature
Title of Witness	Date of Signature
Typed or Printed Name of Witness	Signature

DUNs/TIN/EIN or SSN	Bank Routing and Account Number	Initial if ONE TIME ONLY Claimant