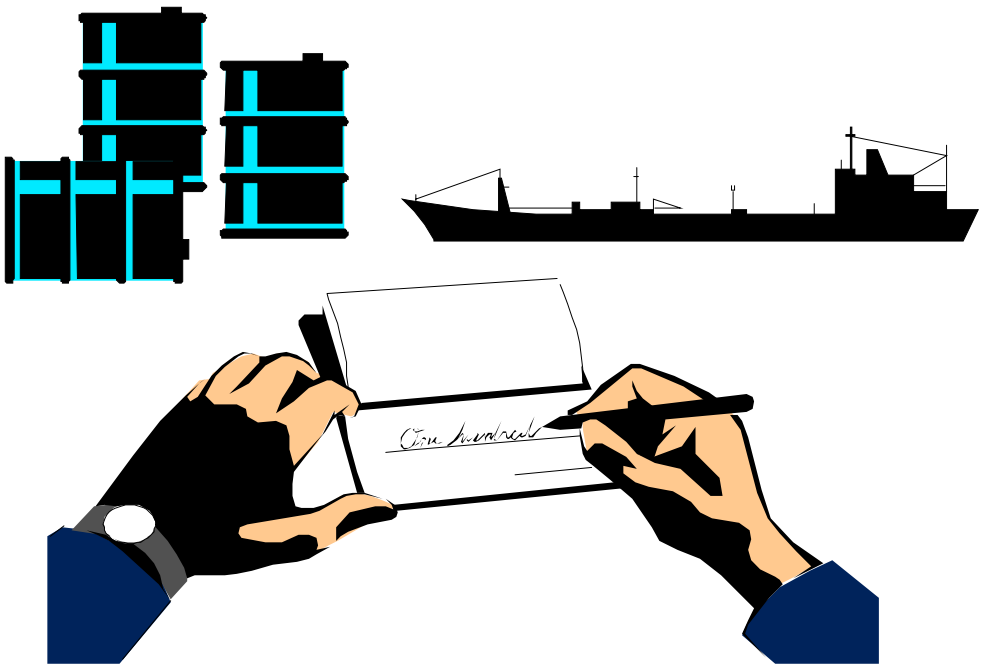
NPFC User Reference Guide

Supplement to the

Coast Guard Marine Safety Manual

Volume X

July 2007



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User Reference Guide Updates

As sections of the printed User Reference Guide are updated, NPFC posts the updated versions on its Web site. These changes will be incorporated into the next printed copy. In the meantime, this page lists all approved changes to the URG. All changes have been incorporated into the online version of the URG.

Related Information

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Date	Change	Action
7/5/2007	Table of Contents (220 KB PDF File) Chapter 1 (75 KB PDF File) Chapter 2 (200 KB PDF File) Chapter 3 (4.5 MG PDF File)	Remove the following documents, which have become outdated and/or are not owned by the NPFC: • National Response System Overview (pages 2-9 to 2-38) • FFARM Guide (pages 3-5 to 3-6) • Management of Civilian Overtime, COMDTINST 12550.41 (pages 3-49 to 3-60) • Contracting documents (pages 3-199 to 3-238) • Long Term Removals (pages 3-313 to 3-314) Make Strike Team Guidance (pages 3-311 to 3-312) and enclosure to CERCLA Removal TOPs (pages 3-87 to 3-90). Update all tables of contents.
6/8/2007	NRD Funding Guidelines (550 KB PDF File)	Add last 6 pages (NRD Claims and Initiate Requests Quarterly Progress and Cost Documentation Reporting Forms Instructions) to end of document.
5/3/2007	Cost Documentation TOPs (350 KB PDF File)	Replace pages 3-91 to 3-184 with updated document; see Record of Changes in revised document for details.
4/11/2007	Updated Contact Information (50 KB PDF File)	Replace pages 2-7 and 2-8 with the updated document.
3/27/2007	Accounting Data for Special Pollution Response Funds (200 KB PDF File)	Replace pages 3-29 to 3-40 in Chapter 3 with the updated document.
3/27/2007	PRFA Accounting Number Change (550 KB PDF File)	Replace pages 3-130 and 3-171 in the Cost Documentation TOPs with the updated ones.
3/27/2007	MOU between NPFC & NOAA (100 KB PDF File)	Replace pages A-71 to A-901 in Appendix A with the newer MOU, signed September 2005.
3/27/2007	Updated Contact Information (50 KB PDF File)	Replace pages 2-7 and 2-8 with the updated document.
2/26/2007	Sample PRFA Statement of Work (50 KB PDF File)	Insert the PRFA Sample SOW after page 3-177 in the Cost Doc TOPs.
1/16/2007	Responsible Party Claim Submission Guidance (400 KB PDF File)	Add new document at the end of Chapter 7.

1/3/2007	FOSC Financial Management Checklist (350 KB PDF File)	Replace the Oil Spils and Hazardous Substances Financial Management Checklists (pages 3-13 to 3-27) with the new combined FOSC Financial Management Checklist.
1/3/2007	Cost Documentation Checklist (50 KB PDF File)	Add new checklist to the end of the Resource Documentation TOPs (after page 3-184).
4/27/2006	Updated Standard Rates (400 KB PDF File)	Replace pages 3-185 to 3-195 in Chapter 3 with the new rates in COMDTINST 7310.1J.
3/28/2006	Loss of Subsistence Use of Natural Resources Claims Guidelines (350 KB PDF File)	Add new document at the end of Chapter 7. (Also updated email and Web addresses in other documents in Chapter 7.)
11/30/2005	Frequently Asked Questions from Oil Spill Response Organizations (OSROs) (400 KB PDF File)	Add new document at the end of Chapter 7.
7/19/2005	Updated Contact Information (50 KB PDF File)	Replace pages 2-7 and 2-8 with the updated document.
4/11/2005	CANAPS Field User Tutorial (1,600 KB PDF File)	Replace previous copy of CANAPS Tutorial with document for CANAPS Version 2.3.
3/18/2005	Updated Standard Rates (200 KB PDF File)	Replace pages 3-187 to 3-196 in Chapter 3 with the new rates.
3/18/2005	Claims for Loss of Subsistence Use of Natural Resources (450 KB PDF File)	Replace page 16 in the Claimant's Guide with updated information.
12/22/2004	OSLTF Disbursements: Internal Controls and Audits (451 KB PDF File)	Insert new document at the end of Chapter 3.
12/16/2004	CANAPS Field User Tutorial (1,300 KB PDF File)	Insert new document at the end of Chapter 3.
10/21/2004	Updated Contact Information (50 KB PDF File)	Replace pages 2-7 and 2-8 with the updated document.
11/3/2004	Coast Guard Acquisition Procedures (CGAP) Part 3017 (Special Contracting Methods) (800 KB PDF File)	Replace pages 3-199 to 3-204 with the updated document (COMDTINST M4200.19H).
11/2/2004	CERCLA Management & Support Funding Guide (550 KB PDF File)	Replace pages 3-315 to 3-350 with the updated document.
10/21/2004	Updated Contact Information (50 KB PDF File)	Replace pages 2-7 and 2-8 with the updated document.
7/12/2004	Converted Optional OSLTF Claims Form to an electronically fillable format. (100 KB PDF File)	Replace the last 2 pages of the Claimant's Guide in Chapter 7 with the updated document.
4/7/2004	Updated Senior Management (50 KB PDF File)	Replace page 2-8 with the updated document.
3/18/2004	Appendix C	Remove Appendix C.
3/8/2004	Vehicle Standard Rates Link (250 KB PDF File)	Replace pages 3-187 to 3-196 in Chapter 3.
2/17/2004	Updated Contact Information & Case Team Descriptions (50 KB PDF File)	Replace pages 2-7 and 2-8 with the updated document.
2/17/2004	Revised PRFA Amendment (650 KB PDF File)	Replace page 3-177 with the updated form.

6/25/2003	Documents for Identification of Owner/ Operators for Onshore & Offshore Wells and Other Facilities (250 KB PDF File)	Replace Appendix 1 in the Removal Costs (Oil) TOP in Chapter 3 with the updated document.
6/13/2003	Claimant's Guide for Submitting OSLTF Claims (350 KB PDF File)	Replace the Claimant Information Guide and Supplemental Information in Chapter 7 with the new Claimant's Guide, which contains the revised claimant form.
5/12003	FOSC Funding Guidance for Oil Spills & Hazardous Materials Releases (500 KB PDF File)	Replace Appendix B with the updated FOSC Funding Guidance document.
4/23/2003	SF1081 Form (680 KB PDF File)	Insert the SF1081 form after page 3-182 and remove the sample Non-Federal PRFA on pages 3-141 to 3-142 of the *Resource Documentation TOPS* in Chapter 3.
1/31/2003	CG5136A Form (680 KB PDF File)	Replace CG5136A form on page 3-147 in Chapter 3 with corrected form.
1/31/2003	Table of Contents for Removal Costs TOP (140 KB PDF File)	Replace table of contents on page 3-65 in Chapter 3 with corrected page.
1/31/2003	Introduction for NRD Chapter (38 KB PDF File)	Replace page 6-3 in Chapter 6 with the corrected page.
11/30/2002	FY03 Standard Rates (155 KB PDF File)	Replace pages 3-187 to 3-196 in Chapter 3 with the new rates.
11/30/2002	CG Message on New Rates (21 KB PDF File)	Replace page 3-185 in Chapter 3 with the CG message introducing the new rates.
11/30/2002	Case Team Descriptions (61 KB PDF File)	Move MSO Mobile from Team 1 to Team 2 on page 2-7 in Chapter 2.
11/30/2002	NRD Funding Guidelines (229 KB PDF File)	Replace pages 6-5 to 6-44 in Chapter 6 with the Natural Resource Damages, dated May 7, 2002.

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US Department
of Transportation

United States
Coast Guard

Foreword

I am quite proud of the continuing progress the National Pollution Funds Center (NPFC) has made in reaching our customers since we first opened for business in February 1991. The core philosophy behind our dynamic outreach program has always been to provide the environmental response community with the information they need to do their jobs the right way the first time. This provides significant benefits to the NPFC as well, in that the quality of cost documentation has increased significantly with commensurate reduction in turn-around time to settle claims and recover response costs. To maintain this state of preparation, we work to ensure that our diverse group of customers has the available training and "how to" information they need to comply with the administrative requirements that accompany utilization of the Oil Spill Liability Trust Fund (OSLTF). The primary audience includes Coast Guard and EPA On-Scene Coordinators, natural resource trustees, cleanup contractors, and the maritime industry.

This NPFC User Reference Guide is a key component of our training and outreach program and is the primary textbook given to those who participate in our outreach seminars. It is a dynamic and comprehensive information reference that is continuously being revised, based upon ongoing customer feedback, as well as NPFC experience and policy developments. I hope you, the Fund user, will find it a valuable tool to accomplish your environmental response mission.

Jan P. Lane, Director
National Pollution Funds Center

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Appendix B	FOSC Funding Guidance for Oil Spills and Hazardous Materials Releases

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CHAPTER 1

How to Use the NPFC User Reference Guide

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The *NPFC User Reference Guide* was designed to provide a single source for reference information to be used by a variety of groups that may need to access the Oil Spill Liability Trust Fund (OSLTF) or the Comprehensive Environmental Response Compensation Liability Act (CERCLA) fund (also known as the "Superfund"). This is the tenth edition of the *National Pollution Funds Center User Reference Guide*. As updates are issued, they should be inserted into a three-ring binder to replace outdated materials.

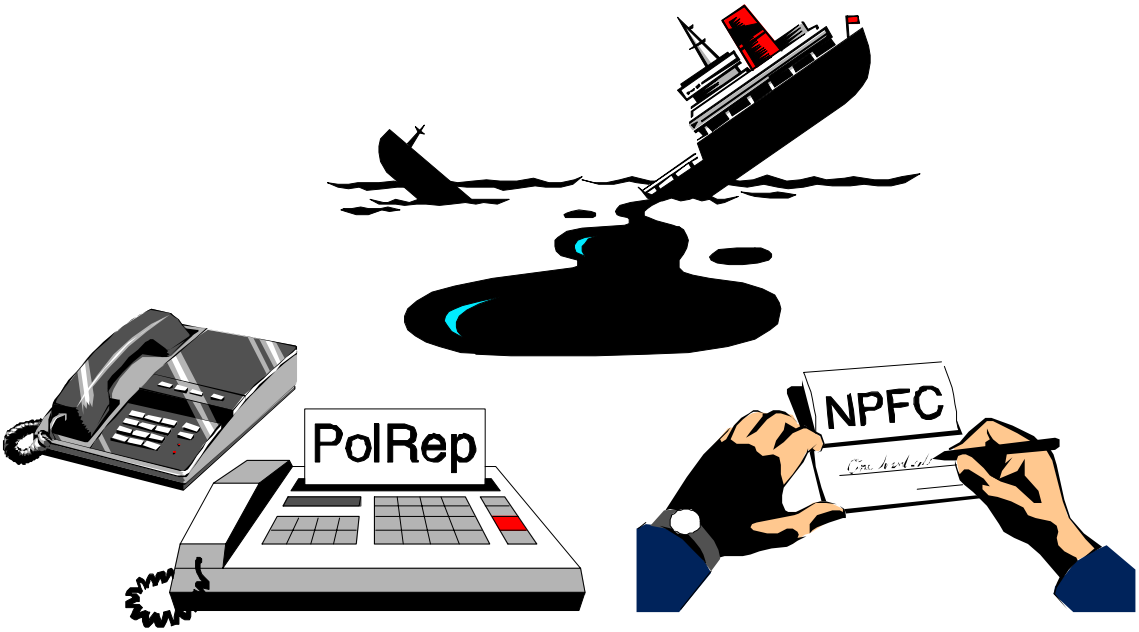
The *Reference Guide* is divided into a series of major chapters separated by tabs, as described in the table below. (Some chapters are further divided into subchapters, as described at the beginning of each chapter.)

THE TAB	CONTAINS	TO BE USED BY
Chapter 1	How to Use the NPFC User Reference Guide	• Anyone who wants an overview of this Reference Guide.
Chapter 2	Overview of OPA and the NPFC	• Anyone who wants an overview of OPA and the NPFC's background, mission, or organization.
Chapter 3	Removal Actions - Oil and Hazardous Materials	• CG and EPA On-Scene Coordinators (OSCs) who must maintain cost documentation for an oil spill. • CG OSCs who must maintain cost documentation for a hazardous material release. • Port Operations staff and others involved in spill cleanup who need information about removal costs, documentation, accounting, standard rates, and contracting guidance.
Chapter 4	Designation	• Federal and state OSCs who need guidance on "designation" of Responsible Parties and the corresponding investigative considerations under OPA.
Chapter 5	State Access	• Staff members in state departments of Environmental Protection, Environmental Conservation, and related areas.

THE TAB	CONTAINS	TO BE USED BY
Chapter 6	Initiate Requests and Natural Resource Damage (NRD) Claims	• Staff members for federal agency and tribal trustees, and others who become involved in natural resource damage assessments. • Staff members in state departments of Environmental Protection, Environmental Conservation, and related areas.
Chapter 7	Claims	• Anyone who needs to know about procedures for filing claims for uncompensated removal costs or damages resulting from oil spills. • Staff members in state departments of Environmental Protection, Environmental Conservation, and related areas. • Oil Spill Response Organizations (OSROs) who may need to submit claims for uncompensated removal costs. • Responsible Parties (RPs) who are asserting either an affirmative defense or an entitlement to a limit on liability.
Appendix A	Memoranda of Understanding	• Anyone interested in reviewing MOUs between USCG and other Federal agencies.
Appendix B	FOSC Funding Guidance for Oil Spills and Hazardous Materials Releases	• CG and EPA On-Scene Coordinators (OSCs) who must obtain funding for cleaning up an oil spill.

CHAPTER 2

Introduction to OPA and the NPFC



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Chapter 2: Introduction to OPA and the NPFC

The material in this chapter is designed to provide an overview of the background, mission, and organization of the National Pollution Funds Center.

Download	Description
Entire Chapter 2 00 KB PDF	Download entire chapter.
Introduction 50 KB PDF	Cover page, table of contents .
Mission Overview of NPFC 830 KB PDF	History of OPA and the OSLTF, NPFC roles and missions, Case Teams, and roles of organizations that use pollution funds.
NPFC Functional Contacts 60 KB PDF	Points of contact, including Regional Managers and Senior Management and their phone numbers and areas of responsibility.
Acronyms 50 KB PDF	Acronyms commonly used by the environmental response community.

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MISSION OVERVIEW

Origins

The Oil Pollution Act of 1990 (OPA) became law on 18 August 1990 in response to the need for legislation to govern the discharge or substantial threat of discharge of oil into the navigable waters, adjoining shorelines, and "exclusive economic zone" of the United States. The Oil Spill Liability Trust Fund (OSLTF) was designated by OPA as a funding source to carry out the Statute and its administration and management was delegated to the United States Coast Guard. In response to this fiduciary responsibility, the Commandant established the National Pollution Funds Center (NPFC) on 20 February 1991. The NPFC is an independent Coast Guard Headquarters Unit reporting directly to the Chief of Staff.

Roles and Missions

The NPFC is the fiduciary agent for the OSLTF and the portion of the Superfund used by the US Coast Guard for response to hazardous substance released in the coastal zone. In accordance with OPA, and other pertinent laws and regulations, the NPFC executes programs to accomplish the following principal objectives:

1. Provide funding to permit timely removal actions;
2. Provide funding for the initiation of natural resource damage assessments (NRDA) for oil spill incidents;
3. Compensate claimants who demonstrate certain types of damages caused by oil pollution;
4. Recover funds owed by parties responsible for oil pollution costs and damages; and
5. Certify the financial responsibility of vessel owners and operators;
6. Manage the US Coast Guard use of the Superfund for response to hazardous material releases.

Assisting the Coast Guard with the administration of the OSLTF is the Treasury Department which is the Trustee for the Fund, the Environmental Protection Agency (EPA) which coordinates the cleanup of inland oil spills, and trustees who oversee the restoration of natural resource damages.

Oil Spill Liability Trust Fund (OSLTF)

The OSLTF consists of the Emergency Fund and the Principal Fund, which together may reach $1 billion. Annually,the Emergency Fund is provided with $50 million no-year money to fund removal actions by the On-Scene Coordinator (OSC), initiation of NRDAs by federal trustees, and immediate removal actions by states. The Principal Fund, the remainder of the OSLTF, is comprised of monies from tax collections, recoveries, fines, penalties, and interest. It is used to pay claims and for Congressional appropriations to carry out other OPA requirements.

CERCLA/ Superfund

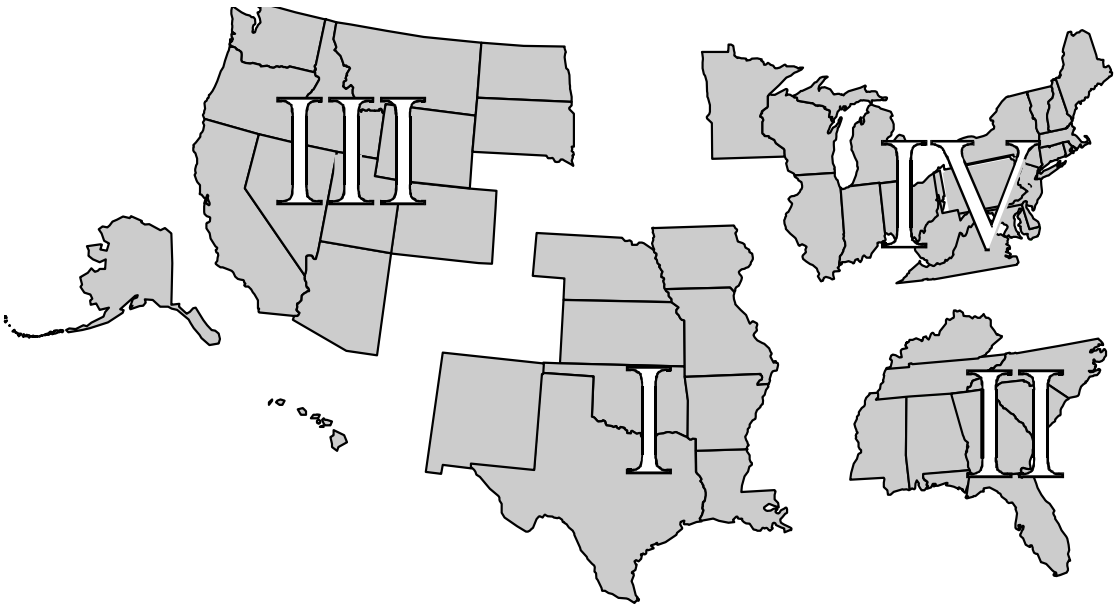
The NPFC also serves as the Coast Guard's Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)/ Superfund manager for funds provided by EPA for hazardous substance incident response. CERCLA funding is used to provide Coast Guard FOSCs with the training and equipment to respond to hazardous substance incidents.

THE CASE TEAM CONCEPT

Case Officer/ Case Team Concept

The NPFC operates within a Case Team concept for incident-specific regional actions. There are four case teams assigned to the geographic areas of the United States, specifically: the Southeast, the Gulf Coast, the West Coast, and the Northeast. The Case Team includes legal, financial, and claims specialists. In any incident, the Case Team is responsible for carrying out NPFC missions, which include fund management, cost recovery, and OPA claims adjudication.

The NPFC Regional Manager and Case Team work directly with the FOSC to carry out NPFC responsibilities and to assist the FOSC. Case officers are available to provide advice and assistance 24 hours a day. Information relating to specific cases may be obtained from the Regional Manager.



Contact Us

General Information | COFR Contacts | Claims Contacts | Case Management Teams | Senior Management

The email addresses for all NPFC personnel have changed!
As of December 4, any emails sent to an address ending with *@ballston.uscg.mil* will not be delivered. Valid NPFC email addresses now end with *@uscg.mil*.

General Information

Main Number	202-493-6700	**Address**	**Business Hours**
Main Fax	202-493-4900	National Pollution Funds Center 4200 Wilson Blvd Suite 1000 Arlington, VA 22203	Monday - Friday 7:30 a.m. - 4:00 p.m. Eastern Standard Time
External Coordination	202-493-6999		
FOIA Requests	202-493-6708		

COFR Contacts

COFR Phone	202-493-6780	**Address**	**Business Hours**	
COFR Fax	202-493-6781	National Pollution Funds Center ATTN: Vessel Certification 4200 Wilson Blvd., Suite 1000 Arlington, VA 22203-1804 USA	**Monday - Friday**	**Saturday**
			7:00 a.m. - 5:00 p.m.	8:30 a.m. - 5:00 p.m.

Claims Contacts

General Claims Inquiries	800-280-7118 or 202-493-6830 or arl-pf-npfcclaimsinfo@uscg.mil	
Natural Resource Damage (NRD) Claims	800-280-7118 or 202-493-6860	For more details, see Claims Contacts.
Removal Claims (Ms. Donna Hellberg)	202-493-6839	
Damages Claims (Mr. Augusto Rios, Jr.)	202-493-6845	

Case Management Teams

Case Inquiries	CANAPS	CERCLA Funding	After Business Hours
800-358-2897	See CANAPS POCs.	202-493-6719	**Command Duty Officer (CDO)** Pager No. 1-800-759-7243, PIN 2073906

Case Team	Regional Manager	Area of Responsbility
Team 1	Mr. Jon Abramson 202-493-6745	Most of CGD8 and EPA Regions VI and VII. Includes Texas, New Mexico, Louisiana, Arkansas, Oklahoma, Missouri, Kansas, Nebraska, and Iowa. Does not include CGD8 Mobile, Memphis, Paducah, Louisville, Huntington, or Pittsburgh.
Team 2	Mr. Miguel Bella 202-493-6726	CGD7, portions of CGD5 and CGD8, EPA Region II (Caribbean Section), and EPA Region IV. Includes CGD8 Mobile, Memphis, Paducah, Louisville, Huntington, and Pittsburgh; CGD5 Hampton Roads and Wilmington; Virgin Islands, Puerto Rico, Florida, Georgia, South Carolina, Tennessee, North Carolina, Kentucky, Alabama, Mississippi, Virginia (Hampton Roads only), and Pennsylvania (Pittsburgh only).
Team 3	Mr. Greg Buie 202-493-6729	CGD11, CGD13, CGD14, CGD17, and EPA Regions VIII, IX, and X. Includes Arizona, California, Nevada, Utah, Colorado, North Dakota, South Dakota, Wyoming, Hawaii, Guam, American Samoa, Montana, Idaho, Washington, Oregon, and Alaska.
Team 4	Mr. Pat Ryan 202-493-6732	CGD1, CGD9, portions of CGD5, and EPA Regions I, II, III, and V. Includes Philadelphia and Baltimore, Minnesota, Michigan, Wisconsin, Illinois, Indiana, Ohio, New York, Vermont, New Hampshire, New Jersey, Connecticut, Rhode Island, Massachusetts, Maine, Virginia (except Hampton Roads), West Virginia, Pennsylvania (except Pittsburgh), Maryland, Delaware, and Washington, DC.

Senior Management

Director (Acting)	Mr. William Grawe	202-493-6700
Deputy Director	Mr. William Grawe	202-493-6700
Division Chiefs		
Case Management	Mr. Tim Eastman	202-493-6721
Financial Management	Mr. Craig Bennett	202-493-6800
Vessel Certification	Mr. Kevin Bailey	202-493-6792
Claims	Mr. Tom Morrison	202-493-6831
Natural Resource Damage Claims	Mr. Jim Hoff	202-493-6865
Legal	Mr. Derek Capizzi	202-493-6751
Information Technology Services	Mr. George Cognet	202-493-6761
Customer Services	Mr. George Cognet	202-493-6761

ACRONYMS

AIRSTA	USCG Air Station
ACP	Area Contingency Plan
AOR	Area of Responsibility
AST	USCG Atlantic Strike Team - Ft. Dix, New Jersey
ATSDR	Agency for Toxic Substances and Disease Registry
BOA	Basic Ordering Agreement
CANAPS	Ceiling and Number Assignment Processing System
CAMEO	Computer Aided Management of Emergency Operations
CDC	Center for Disease Control and Prevention
CERCLA	Comprehensive Environmental Response Compensation and Liability Act of 1980
CGAP	Coast Guard Acquisition Procedures
CHRIS	Chemical Hazards Response Information System
COFR	Certificate of Financial Responsibility
COIL	USCG Central Oil Identification Laboratory (see MSL)
COTP	USCG Captain of the Port
CRISTAL	Contract Regarding Interim Supplement to Tanker Liability (for oil pollution)
CWA	Clean Water Act
DHHS	Department of Health and Human Services
DOC	Department of Commerce
DOD	Department of Defense
DOE	Department of Energy
DOI	Department of the Interior
DOJ	Department of Justice
DOL	Department of Labor
DOS	Department of State
DOSC	Deputy On-Scene Coordinator
DOT	Department of Transportation
DRFA	Disaster Response Field Office
DRG	Disaster Response Group
EPA	Environmental Protection Agency
ERC	Emergency Response Coordinator, U.S. Public Health Service
ERT	Environmental Response Team

FDA	Food and Drug Administration
FEMA	Federal Emergency Management Agency
FFARM	FOSC Finance and Resource Management
FINCEN	Coast Guard Finance Center
FOIA	Freedom of Information Act
FOSC/R	Federal On-Scene Coordinator/Representative
FPN	Federal Project Number
FWS	Fish and Wildlife Service
FWPCA	Federal Water Pollution Control Act
FY	Fiscal Year
GRU	USCG Group
GST	USCG Gulf Strike Team - Mobile, Alabama
HACS	Hazard Assessment Computer System
HAZMAT	Hazardous Materials
HUD	Department of Housing and Urban Development
IAG	Interagency Agreement
ICS	Incident Command System
IMO	International Maritime Organization
INS	Immigration and Naturalization Service
INTERTANKO	International Association of Independent Tanker Owners
IOPCF	International Oil Pollution Compensation Fund
JRC	Joint Response Center
LCP	Local Contingency Plan
MARAD	Maritime Administration
MARPOL	International Convention for the Prevention of Pollution from Ships
MIO	Marine Inspection Office
MIPR	Military Interdepartmental Purchase Request
MISLE	Marine Information for Safety and Law Enforcement
MLC	USCG Maintenance and Logistics Command
MMS	Minerals Management Service
MOU	Memorandum of Understanding
MRL	Minimum Response Levels
MRO	Marine Response Division, Coast Guard Office of Marine Safety, Security and Environmental Protection

MSL	Marine Safety Lab (see COIL)
MSO	USCG Marine Safety Office
NAVSUPSALV	U.S. Navy Supervisor of Salvage
NCP	National Contingency Plan (40 CFR 300)
NIOSH	National Institute for Occupational Safety and Health
NMFS	National Marine Fisheries Service
NOAA	National Oceanic and Atmospheric Administration
NPFC	National Pollution Funds Center
NPRM	Notice of Proposed Rulemaking
NPS	National Park Service
NRC	Nuclear Regulatory Commission
NRDA	Natural Resource Damage Assessment
NRT	National Response Team
NSF	USCG National Strike Force
NSFCC	National Strike Force Coordination Center
OPA/OPA 90	Oil Pollution Act of 1990
OSC	On-Scene Coordinator
OSC/RPM	OSC Remedial Project Manager, position held by assigned Emergency Response Coordinator when operating under subsection 300.180(a) of the NAP (40 CRT 300)
OSHA	Occupational Safety and Health Administration
OSLTF	Oil Spill Liability Trust Fund
OSRO	Oil Spill Response Organization
P&I	Protection and Indemnity (Association/Club)
PAWMIS	Port and Waterways Management Information System
PHS	Public Health Service
PIAT	USCG Public Information Assistance Team
PIO	Public Information Officer
POLREP	USCG Pollution Report Message
PRFA	Pollution Removal Funding Authorization
PRP	Potential Responsible Party
PRIA	Preliminary Regulatory Impact Analysis
RCP	Regional Contingency Plan
RCRA	Resource Conservation and Recovery Act
RP	Responsible Party

RRC	Regional Response Center
RRT	Regional Response Team
SAR	Search and Rescue
SAR STA	USCG Search and Rescue Small Boat Station
SARA	Superfund Amendments and Reauthorization Act
SITREP	Situation Report Message
SMC	Search and Rescue Mission Coordinator
SONS	Spill of National Significance
SOP	Standard Operating Procedure or Practices
SOSC	State On-Scene Coordinator
SRG	State Response Group
SSC	Scientific Support Coordinator
TAT	Technical Assistance Team
TEAP	Transportation Emergency Action Plan
TOPs	Technical Operating Procedures
TOVALOP	Tanker Owners' Voluntary Agreement (concerning) Liability (for) Oil Pollution (damage)
USA	U.S. Army
USACOE	U.S. Army Corps of Engineers
USAF	U.S. Air Force
USCG	U.S. Coast Guard
USCG/NRC	USCG National Response Center
USDA	U.S. Department of Agriculture
USFS	U.S. Forest Service
USFWS	U.S. Fish and Wildlife Service
USGS	U.S. Geological Survey
USMC	U.S. Marine Corps
USN	U.S. Navy
USPHS	U.S. Public Health Service
VOSS	Vessel of Opportunity Skimming System
VTS	Vessel Traffic Service

CHAPTER 3

Removal Actions -

Oil and Hazardous Substances

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Chapter 3: Removal Actions: Oil and Hazardous Substances

This chapter provides detailed procedures for cost documentation of an oil spill.

Download	Document
Entire Chapter 4.5 MB PDF	Download entire chapter.
Introduction 160 KB PDF	Cover page, table of contents.
Procedures for Accessing the Funds 80 KB PDF	Guidance describing procedures for USCG or EPA FOSCs performing oil removal or hazardous material response operations under the National Contingency Plan.
FOSC Financial Management Checklist 350 KB PDF	Step-by-step guidance for CG and EPA FOSCs who are using the OSLTF Emergency Fund or CERCLA Superfund and must monitor cost documentation during an oil spill or HAZMAT response.
Accounting Data for Special Pollution Response Funds 200 KB PDF	Accounting strings and Document Control Number formats for CG FOSCs and Strike Teams when directly expending pollution response funds (OSLTF, CERCLA, and Disaster) in the Coast Guard Accounting System.
Funds Management During Incidents 75 KB PDF	Describes processes for ceiling management and obligation record keeping, as well as government credit card use procedures.
Oil Removal Cost TOPs 400 KB PDF	NPFC Technical Operating Procedures (TOPs) providing guidance for determining valid removal costs for oil discharges or substantial threats of discharges to the extent possible under the Oil Pollution Act of 1990.
CERCLA Removal Cost TOPs 100 KB PDF	NPFC guidance for hazardous material discharges to the extent possible under CERCLA. Includes guidance for the National Strike Force (NSF) on use of CERCLA funding when supporting EPA FOSCs.
Cost Documentation TOPs 350 KB PDF	NPFC TOPs for accessing the OSLTF. It includes procedures for resource documentation, use of CANAPS, ceiling management, and copies of forms.
COMDTINST 7310.1J, Standard Rates 100 KB PDF	Rates used to reimburse the Coast Guard for certain spill-related activities, used when filling out many of the forms contained in the TOPs.
Action Memo Guidance 550 KB PDF	This EPA document provides guidance in the preparation of action memos for Superfund removal operations, particularly administrative record requirements for reserving removal funding.
CERCLA M&S Funding Guide 300 KB PDF	Covers the management and support of non-incident funds under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)
CANAPS Field User Tutorial 1.4 MB PDF	Walks the user through each of the CANAPS Internet Wizard functions. Includes instructions on what data is required to be entered, screen shots for each step in the wizard, and sample outputs.
OSLTF Disbursements: Internal Controls and Audits 400 KB PDF	Provides guidance on documentation and approval requirements for disbursements from the OSLTF, which are subject to random audits.

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Procedures for Accessing the Funds

OIL

Overview: Procedures for Accessing the OSLTF. These procedures apply to OSCs (either Coast Guard or EPA) who are performing oil removal operations under the National Contingency Plan and require funding support from the OSLTF.

I. The FOSC accesses CANAPS via the Internet and requests issuance of an FPN and a corresponding ceiling amount.

II. CANAPS will confirm via email and issue all necessary notifications by priority message. The message format is generated by CANAPS and sent via CGMS.

III. Authorized users of CANAPS can act as surrogates to request a ceiling ON BEHALF OF other authorized users when their access to CANAPS is disrupted. District OPCENs have this authority/capability for units within their AOR, including EPA Federal On-Scene Coordinators (FOSCs)/Regions. EPA Regions are also able to act as surrogates for their FOSCs when available. The NPFC has the ability to act as a surrogate for any authorized CG or EPA field user of CANAPS. NPFC can also issue numbers manually in the event CANAPS is completely unavailable.

IV. All ceiling messages, POLREPS, or other messages related to the incident where the OSLTF has been accessed shall include the FOSC, NPFC, CG FINCEN, and cognizant MLC contracting branch as INFO addees, in addition to current reporting requirements.

V. If no funding has been expended against an FPN for the removal, the FOSC can request cancellation of the FPN via CANAPS.

VI. The OSC ensures that obligations from the OSLTF remain within the authorized ceiling, and if necessary, promptly obtains additional ceiling via CANAPS.

VII. FPN Construction.

1. FY98 and Prior: FPNs for FY98 and prior years, back to FY86, consists of six digits. The first two digits delineate the Coast Guard District. The third digit is the last digit of the fiscal year and the remaining three digits constitute the sequential case numbers issued by the respective district offices. Although the construct is very functional, in that it allows the user to obtain the district, year of the case, and sequential case number, an overlap of cases will occur in 1999 due to the fact that only one digit is used for the fiscal year of the case.

2. FY99 through 2001: The FPN uses a smart numbering scheme, ensuring the ability of the user to identify the district, fiscal year, and sequential number of the case. To avoid overlapping of current cases, the FPN was changed to an alphanumeric value where the first character is a letter delineating the district, the second and third characters are the fiscal year, and characters four through six are the sequential number of each district's cases which can be alphanumeric if necessary.

A. The first character will be the first letter of each city that the respective district headquarters are located in with the exception of the Ninth District which will be the letter "G" (Great Lakes) as "C" is already taken for CERCLA cases and would result in duplications if utilized. If the case is not an oil removal effort, the first character will represent the type of business being conducted. The following is a detailed listing of all first digit codes for FPNs:

- B - First District
- P - Fifth District
- M - Seventh District
- N - Eighth District
- G - Ninth District
- A - Eleventh District
- S - Thirteenth District
- H - Fourteenth District

- J - Seventeenth District
- C - CERCLA Cases
- 9 - Claims

B. The second and third characters are the two last digits of the fiscal year the case was opened. This resolves problems regarding duplication of FPNs for over ninety-nine years.

C. The fourth, fifth and sixth characters will create a sequence number that starts numerically until reaching the one-thousandth case at which time it changes to alphanumeric. If all 36 possibilities were exhausted in each of the three placesettings it would take 46,656 cases in a single fiscal year to exhaust all FPN possibilities. Following are examples of how the new construct would work:

- The first case for the Eighth District in 1999: N99001
- The one-thousandth case for the Eight District in 1999: N99A01
- The eleven-hundredth case for the Eighth District in 1999: N99B01
- And so on . . .

3. CANAPS Generated FPNs/CPNs. CANAPS automatically generates FPN's and CPN's. FPN construction is as follows

USCG: First character is based on the District Office of the FOSC as follows:

- B - First District
- P - Fifth District
- M - Seventh District
- N - Eighth District
- G - Ninth District
- A - Eleventh District
- S - Thirteenth District
- H - Fourteenth District
- J - Seventeenth District
- C - CERCLA Cases
- 9 - Claims

The next two characters indicate the fiscal year. The final three characters are sequential based on the FPN's issued in that district during the current fiscal year.

EPA: All EPA FPN's star with the letter "E" followed by the two digit fiscal year. The fourth character indicates the number of the EPA region with a "0" indicating EPA region 10. The last two characters are sequential based on the number of FPN's issued to that region in that fiscal year.

Procedures for Accessing the Funds

HAZARDOUS SUBSTANCES /CERCLA

Overview: Procedures for Accessing the SUPERFUND/CERCLA. These procedures apply only to CG OSCs who are performing hazardous substance response operations under the National Contingency Plan and require funding support from SUPERFUND, also known as the CERCLA Fund.

I. The CG OSC accesses CANAPS via the internet and request issuance of a CERCLA Project Number (CPN) and a corresponding ceiling amount. CANAPS prepares all record message traffic via CGMS and delivers it to the appropriate units.

II. Initial CERCLA ceiling requests will not exceed $250,000. NPFC receives CERCLA funding authority in limited amounts from EPA each year and all ceilings are drawn from it. Funding requests that are equal to or greater than $250,000 must be supported by an Action Memorandum prepared by the OSC. See Subtab "Action Memo Guidance" for guidance on CERCLA Action Memorandums. If the nature of the emergency requires a higher initial ceiling, the NFPC will coordinate such requests with the CG OSC, CG District, COMDT (G-MOR), and the EPA on a case-by-case basis.

III. All messages, POLREPS, or other messages related to the incident where CERCLA/ SUPERFUND has been accessed shall include the OSC, NPFC, CG FINCEN, cognizant Coast Guard District (m), and cognizant MLC contracting branch as INFO addees, in addition to current reporting requirements.

IV. The OSC ensures that obligations from CERCLA remain within the authorized ceiling, and if necessary, promptly requests increased ceiling authorizations via CANAPS. The OSC shall request the increase sufficiently in advance to avoid exceeding the ceiling at any point during response activities.

V. Special OSC Requirements for CERCLA Incidents. The CG/EPA Memorandum of Understanding and its resulting funding agreement place special requirements on the OSC. If a response requires less than $250,000 in funding, the OSC must document a finding of imminent and substantial endangerment. This finding may be included in the situation description section of POLREP One, and at a minimum must include:

- the hazardous substance(s), pollutant(s), or contaminant(s) involved;
- description of what is affected or threatened (people, animals, crops, drinking water, etc.
- a statement indicating that this situation presents an imminent and substantial threat to public health, welfare, or the environment;
- description of the response action necessary to neutralize the threat.

Department of Homeland Security
U.S. Coast Guard

National Pollution Funds Center
4200 Wilson Boulevard, Suite 1000
Arlington, VA 22203-1804
202/493-6700 www.uscg.mil/npfc

FOSC Financial Management Checklist for Oil Spills & HAZMAT Releases

Step-by-step guidance for USCG & EPA FOSCs who are using the OSLTF or CERCLA/Superfund and must monitor cost documentation during response to a spill or release.

When a Spill or Release Occurs

☐ **Determine funding source.** _____ OPA/OSLTF _____ CERCLA/Superfund

OSLTF Funding is available for federal oil removal activities under the authority of Section 311(c) of the FWPCA, 33 U.S.C. §1321(c). **In general,** ***when:***

- ✓ There is a discharge of oil or a substantial threat of a discharge of oil
- ✓ EITHER into or on U.S. navigable waters, adjoining shorelines, or the waters of the U.S. economic zone
- ✓ OR that may affect natural resources belonging to the U.S. or under U.S. exclusive management authority,

The FOSC may:

- ✓ Remove or arrange for removal of a discharge and mitigate or prevent a substantial threat of a discharge;
- ✓ Direct or monitor all Federal, State, and private actions to remove a discharge;
- ✓ Remove and, if necessary, destroy a vessel discharging or threatening to discharge (may require Commandant approval).

For Coast Guard FOSCs, Coast Guard CERCLA Funding applies if the requirements for Response Authorities in Section 104 of CERCLA, 42 U.S.C. §9604 are met. **In general,** ***when:***

- ✓ There is a release of a hazardous substance (other than oil) or substantial threat of a release into the environment that presents an imminent and substantial threat to public health or welfare
- ✓ OR there is a release of a pollutant or contaminant that may present an imminent and substantial danger to the public health and welfare,

The FOSC may:

- ✓ Take action to remove or arrange for the removal of and provide for remedial action relating to such hazardous substance, pollutant, or contaminant at any time.

For more information on OPA, the OSLTF, CERCLA, and Superfund, see About Us on NPFC's home page (www.uscg.mil/NPFC/About Us).

☐ **Collect incident information.**

Name of incident _____

Location (body of water, city, state) _____

Latitude and longitude _____

Type of oil/substance _____

_____ Visual Observation

_____ Field Testing

_____ Lab analysis

_____ Report by knowledgeable party

_____ Other _____

_____

_____

_____

Quantity of oil/substance _____

_____

_____

_____

Description of substantial threat _____

_____

_____

_____

_____

Potential quantity of total oil discharge/HAZMAT release _____

_____

_____

_____

_____

Date of incident _____

Date of discovery _____

☐ **Collect source and responsible party information.**

Name of vessel/facility _____

How was source identified? _____ Visual Observation

_____ Reported

_____ Other _____

Who identified source? _____

Responsible Party (Owner)

Name _____

SSN/TIN* _____

Contact _____

Address

_____

Responsible Party (Operator)

Name _____

SSN/TIN* _____

Contact _____

Address

_____

Responsible Party (Other)

Name _____

SSN/TIN* _____

Contact _____

Address

_____

How was RP identified? _____ FOSC investigation

_____ Report by RP

_____ Report by third party _____

Who identified RP? _____

**Social Security Number/Tax Identification Number (SSN/TIN). The Debt Collection Improvement Act (31 U.S.C. 3701) requires the USCG to obtain the SSN or TIN of the RP in order to pursue cost recovery.*

☐ **Estimate the OSTLF/CERCLA funding ceiling required.**

Estimated Direct Costs (reflected against ceiling)	
Contractor costs	
Travel costs	
Purchases	
PRFA (OGA) costs	
EPA costs	
Total (Ceiling)	

Estimated Indirect Costs (tracked but not reflected against ceiling)	
CG personnel	
CG equipment	

Include Strike Team costs in appropriate categories.

☐ **Access CANAPS to get FPN/CPN and request ceilings (www.npfc.gov/canaps/).**

OSLTF Responses	
Federal Project Number	
Final Authorized ceiling	

CERCLA Responses	
CERCLA Project Number	
Final Authorized ceiling	

Refer to CANAPS message for accounting line and Document Control Number (DCN) construction.

If you cannot access CANAPS:

1. Contact another FOSC who can submit the request as a surrogate for you.

> Any FOSC can be a surrogate for any other FOSC in their agency; any EPA FOSC can open an FPN for any other EPA FOSC, and any USCG FOSC can open a project for any other USCG FOSC. In addition, a USCG FOSC can open a project for an EPA FOSC.

2. Contact the NPFC Command Duty Officer (see next page).
3. As the FOSC, you are authorized to obligate up to $25,000 for response actions.

☐ **CERCLA Only. If the estimated ceiling is:**

- ***Equal to or greater than $250,000*, contact your NPFC Regional Manager for assistance in submitting an Action Memorandum to EPA before obligating the amount.**
- ***Less than $250,000*, document the finding of imminent and substantial endangerment in POLREP One.**

> The finding at a minimum must include:
> ✓ The hazardous substance(s), pollutant(s), or contaminant(s) involved;
> ✓ A description of what is affected or threatened (people, animals, crops, drinking water, etc.);
> ✓ A statement indicating that this situation presents an imminent and substantial threat to public health, welfare, or the environment; and
> ✓ A description of the response action necessary to neutralize the threat.

☐ **Contact the NPFC for assistance.** Assigned Case Officer _____

Gulf Coast & Midwest	Team I	202/493-6723	*On weekends, holiday, and after hours, you will hear recorded instructions for paging.*
Southeast (Philadelphia & South)	Team II	202/493-6726	
West Coast, Alaska, Hawaii	Team III	202/493-6729	
Northeast & Great Lakes	Team IV	202/493-6732	

If your regional manager is not available:

- Page the duty case officer by calling 800/759-7243, PIN 2073906
- OR call the Command Duty Officer through the CGHQ Command Center at 202/267-2100 or 800/424-8802

☐ **Locate the proper forms for ceiling management and for documenting all costs.**

Download the optional CG-5136 forms from NPFC's Web site (www.uscg.mil/npfc/Response/Cost Documentation/cg5136.asp).

➢ **Ceiling Management Forms**

OSLTF Responses

- ***If estimated ceiling is under $50,000***, use **CG-5136-F1** (Ceiling Management & Incident Obligation Log Short Form).
- ***If estimated ceiling is over $50,000***, use:
  - **CG-5136-F** (Ceiling Management & Incident Obligation Log) to estimate and manage the ceiling, and
  - **Daily Record Worksheets** to record each activity as it occurs.

CERCLA Responses

For all responses, use:

- **CG-5136-F** (Ceiling Management & Incident Obligation Log) to estimate and manage the ceiling, and
- **Daily Record Worksheets** to record each activity as it occurs.

➢ **Daily Cost Documentation Forms**

Use the appropriate **Pollution Incident Daily Resource Reports (CG-5136B-E)** to consolidate daily totals. This form is also available (through the CG-51356 Forms page) as an Excel spreadsheet to automatically calculate your entries.

☐ **Follow the NPFC's guidance for use of funds and to arrange response actions. Contract through appropriate MLC (fcp) and use Pollution Removal Funding Authorizations (PRFAs) for other government agencies. EPA FOSCs use their START or ERC contracting services, but may use USCG BOA contracts, if needed.**

Resources on NPFC's Web Site (www.uscg.mil/npfc)

➢ The NPFC's User Reference Guide (URG) includes guidance on contracting (www.uscg.mil/npfc/urg/).

➢ PRFA forms and instructions are available on NPFC's Web site (www.uscg.mil/npfc/Response/Cost Documentation/prfa.htm) as well as in the URG.

During Cleanup—Every Day

☐ **Monitor Contractors.**

☐ Collect contractor **daily worksheets or delivery tickets** and/or **Pollution Incident Daily Resource Reports**.

> Oil spill response contractors may use the Parts E1 to E4 of the CG-5136 form to track and submit daily costs. These forms are available on NPFC's Web site (www.uscg.mil/npfc/Response/Cost Documentation/cg5136.htm) as well as in the URG.

☐ Date-stamp all invoices upon receipt. (Prompt Payment Act applies; payment is due to the contractor within 30 days.)

☐ Within 10 days of receipt of invoices, certify that work was performed as ordered (as FOSC, you should not certify work that was not ordered) and forward to MLC.

> Follow the 10-10-10 Rule!
> 1) Forward invoices to MLC within 10 days.
> 2) MLC forwards payment authorization to FINCEN within 10 days of receipt.
> 3) FINCEN pays the contractor within 10 days of receipt.

☐ **Monitor Coast Guard Units.**

☐ Consolidate all daily reports for your unit onto the **Pollution Incident Daily Resource Reports**. (This should cover all unit resources involved in removal activity.)

☐ Collect **Pollution Incident Daily Resource Reports** or official records (i.e., **aircraft utilization records** and **cutter navigation logs**) from other Coast Guard units.

☐ **OSLTF Cases Only**. Keep copies of all travel claim packages. (Members are also required to keep copies of all travel claim packages for 6 years and 3 months.)

> Each travel claims package must include:
> ✓ Copy of signed original orders (which ***must*** be signed by an approving official and Funds Certifying Officer, including those generated by Direct Access)
> ✓ Copy of all signed amendments
> ✓ Copy of Travel Voucher Summery (TVS)
> In addition, if a Government Travel Request (GTR) was used, include a copy of the airfare itinerary to show the GTA account was used to pay airfare.

☐ **Monitor other government agencies (OGAs).**

☐ Issue **Pollution Removal Funding Authorizations** (PRFAs) and definitive scopes of work (SOWs) to other Federal and state agencies participating in the FOSC-directed response.

> PRFA forms and instructions are available on NPFC's Web site (www.uscg.mil/npfc/Response/Cost Documentation/prfa.htm) as well as in the URG.

☐ Collect OGA **SF1080** and **SF1081** vouchers and supporting documentation in accordance with the PRFA.

> SF1080 and SF1081 forms and instructions are available on NPFC's Web site (www.uscg.mil/npfc/Response/Cost Documentation/sf1080.htm) as well as in the URG.

☐ Review OGA **SF1080** and **SF1081** vouchers and certify that work was performed as ordered.

☐ **Add up obligations and track them against the ceiling.**

☐ Use the **Ceiling Management** forms.

> You may use the **electronic CG-5136 forms** (an Excel spreadsheet), or you may print out and manually complete the **CG-5136-F** or **CG-5136-F1** form. These forms are available on NPFC's Web site (www.uscg.mil/npfc/Response/Cost Documentation/cg5136.htm) as well as in the URG.

☐ Include direct expenses (contracts, removal authorizations, travel orders, direct expenses)

☐ Include indirect expenses (anticipated costs/estimates of Coast Guard resources based on Coast Guard Standard Rates such as USCG personnel, vehicles, aircraft, boats, cutters, and Strike Team pollution equipment).

> USCG Standard Rates are available on NPFC's Web site (www.uscg.mil/npfc/Response/Cost Documentation as well as in the URG.

☐ Make sure each POLREP includes the total ceiling authorized and cumulative obligations to date. (NPFC should be an INFO ADDEE for all POLREPs.)

☐ **Use CANAPS if you must increase the ceiling (www.npfc.gov/canaps/).**

> For example, if you have reached $40K against a $50K ceiling, and you expect the total costs to exceed $50K, increase your ceiling to accommodate the anticipated needs of the response.

☐ **Contact your NPFC case officer or the MLC contracting officer, as appropriate, any time you need assistance.**

After the Response Action Is Completed

☐ **Certify contractor invoices within 10 working days of receipt of invoices.**

> Ensure that all certification for receipt of services is in accordance with the standard MLC and Finance Center procedures. (Contact appropriate MLC contracting officer if questions arise, or if invoice cannot be certified. The FOSC certifies receipt of invoiced goods and services in quantities indicated; the cognizant contracting officer verifies costs.).

☐ **Forward certified contractor invoices to MLCLANT (fcp) or MLCPAC (fcp), as appropriate.**

☐ **Keep copies of all certified contractor invoices for the unit's files.**

☐ **Compile an inventory of all equipment purchases.**

- ☐ Provide disposition reports on all property and comply with COMDTINST M4500.5 (series), Property Management Manual (Chapter 8).
- ☐ Complete DD-1348 forms or equivalent for all property delivered to DRMO.

☐ **Within 120 days of completion of cleanup, send the Financial Summary report to the NPFC.**

- ☐ The Financial Summary report includes:
  - **Incident Report and Transmittal** (IRAT)

    > The Incident Report and Transmittal form serves as a coversheet to the project's Financial Summary report. It is available on NPFC's Web site (www.uscg.mil/npfc/Response/Cost Documentation/irat.htm) as well as in the URG.

  - FOSC Pollution Daily Resource Reports
  - Contactor Invoices & Daily Resource Reports
  - Other Government Agencies Resource Documentation (SF1080/1081 with invoices, Daily Resource Reports, PRFAs with SOWs)
  - Inventory of Equipment Purchased
- ☐ If you are using the electronic CG-5136 forms (i.e., the Excel spreadsheets) in lieu of the manually completed CG-5136B-E forms, do NOT throw away the original, handwritten invoices, dailies, and notes. In court, the electronic forms may not be considered "original" documentation.

☐ **Retain records according to the USCG's Records Schedule; keep case file for:**

- ***Major spills*** **for 10 years before forwarding them to NARA as permanent records.**
- ***Medium and minor spills*** **for 20 years before destroying them.**
- **The NPFC may request a longer retention period for a particular case to support cost recovery or other litigation efforts.**

OSLTF case files are subject to auditing by the NPFC; they must contain all paperwork relevant to the response effort, including but not limited to:

- Procurement paperwork
- Travel documentation
- POLREPS
- News clips
- Credit card information paperwork

More information on OSLTF internal controls and audits is available on NPFC's Web site (www.uscg.mil/npfc/Response/Cost Documentation).

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ICS Job Aid

ACCOUNTING DATA

FOR SPECIAL POLLUTION RESPONSE FUNDS

- - - - - -

★ OIL SPILL (OPA/CWA)
&
★ HAZCHEM (CERCLA)
&
★ DISASTER - Stafford Act/ESF-10

U. S. Coast Guard
National Pollution Funds Center

March 2007

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ACCOUNTING STRINGS FOR OIL SPILL RESPONSE FUNDING & OPA CLAIMS

FORMAT:

2	H	XX	1XX	XX	0	XXXXXX	XXXXX	XXXX
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)

(1)	Agency	1 character	2 = Coast Guard
(2)	District/Region	1 character	H= HQ (Pollution is always H)
(3)	Appropriation	2 characters	SZ = Emergency Fund SX = Oil Pollution Act Claims
(4)	Appropriation Limitation Code (LIM Code)	3 characters	1 = direct funds nn = ATU # of OSC's district (See Appendix A)
(5)	Allotment Fund Control (AFC)	2 characters	95 = OSLTF Emergency Fund 00 = OPA Claims
(6)	Allotment Level Indicator (ALI)	1 character	This field is not used by the CG and will always be 0.
(7)	Program Element	6 characters	Federal Project Number.
(8)	Cost Center	5 characters	The OPFAC # of the FOSC who is accessing the Emergency Fund. (See Appendix B) <u>Note</u>: When EPA is the FOSC, the OPFAC # is 74100 (NPFC)
(9)	Object Class	4 characters	The first two digits are assigned by OMB. The last two are assigned by the Coast Guard. (See Appendix C).

ACCOUNTING STRINGS FOR CERCLA & ESF-10 DISASTER RESPONSE FUNDING

FORMAT:

2	H	X01	872	80	0	XXXXXX	XXXXX	XXXX
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)

(1)	Agency	1 character	2 = Coast Guard
(2)	District/Region	1 character	Always H
(3)	Appropriation	3 characters	#1 = Last digit of current FY 01 = operating expense (OE Appropriation)
(4)	Appropriation Limitation Code (LIM Code)	3 characters	Always 872 8 = reimbursable funds 72 = ATU for NPFC
(5)	Allotment Fund Control (AFC)	2 characters	80 = reimbursable funding account
(6)	Allotment Level Indicator (ALI)	1 character	This field is not used by the CG and will always be 0.
(7)	Program Element	6 characters	CERCLA (CPN) or Disaster (DPN) Project Number.
(8)	Cost Center	5 characters	The OPFAC # of the FOSC who is accessing the funds. (See Appendix B)
(9)	Object Class	4 characters	(See Appendix C).

Reimbursable Agreement Number (RAN): The RAN is a required part of a reimbursable Accounting String in FPD. It goes in the System Data Field, which is one of the blocks in FPD that appear under the account line. The RAN is the same as the CERCLA case number (CPN) or Disaster case number (DPN). For Cases that extend across Fiscal Years, the RAN is the CPN, with the newer Fiscal Year Appropriation Code added at the end.(Eg: 2005 case C05049 becomes C05049<u>601</u> in 2006). The system needs an "R" in the front and the "R" should already be in the little window. Enter the CPN or DPN and click the "•••". The same CPN should appear in the window that opens. Select it and accept it. If you get a list of CPNs/DPNs in the selection window, make certain to select the same CPN/DPN as the Program Element.

CERCLA PROJECT NUMBER (CPN) FOR USCG FOSCS

FORMAT

C	XX	XXX
(1)	**(2)**	**(3)**

(1)	Case Type	1 character	C = CERCLA
(2)	Fiscal Year	2 characters	FY the case began & CPN was established
(3)	Sequence #	3 characters	Sequence # of the incident for that FY

(CPNs for USCG FOSCs are assigned by CANAPS)

STRIKE TEAM CPN FOR ASSISTING EPA FOSC CERCLA RESPONSE

FORMAT

C	XX	X	XX
(1)	**(2)**	**(3)**	**(4)**

(1)	Case Type	1 character	C = CERCLA
(2)	Fiscal Year	2 characters	FY the case began & CPN was established
(3)	Strike Team ID	1 character	A=AST G=GST P=PST
(4)	Sequence Number	2 characters	Sequence number of the incident for that Strike Team

NOTE: Strike Teams are authorized to issue their own CPNs for assisting EPA FOSCs. See discussion on page 16. Strike Team CPNs are generated manually by the Strike Team and sent via USCG message or email to NPFC.

DISASTER/ESF-10 PROJECT NUMBER (DPN)

FORMAT:

D	XX	X	X	X
(1)	(2)	(3)	(4)	(5)

(1)	Case Type	1 character	D = DISASTER
(2)	Fiscal Year	2 characters	Last two digits of the FY the Disaster was declared by FEMA.
(3)	Disaster	1 character	A, B, C, etc (identifies disasters in chronological sequence in that FY)
(4)	State	1 character	A, B, C, etc. (identifies state for which the Mission Assignment is issued in same disaster)
(5)	Sequence Number	1 character	Sequential number identifying Mission Assignments issued for a particular state

IMPORTANT

1. FEMA issues Mission Assignments on a Disaster by Disaster, State by State, and ESF by ESF basis. There are also different kinds of mission assignments within an ESF.

   DPNs are based specifically on the corresponding FEMA Mission Assignments or related EPA IAGs/EAs providing the funding.

   Coast Guard spending must follow the same logic and be documented and billed according to this structure or FEMA will disallow Coast Guard billings for reimbursement. A failure to recover costs would force the Coast Guard to cover the costs out of its own OE Appropriation.

2. ESF-10 DPNS are generated manually by the NPFC Financial Management Division and sent via official USCG message to the Coast Guard unit being assigned the funds. The message identifies the disaster by name, the state, allowed use based on tasking in the mission assignment, and other management information.

DOCUMENT CONTROL NUMBERS FOR OSLTF (FPN), CERCLA (CPN), & ESF-10 DISASTER (DPN) TRANSACTIONS

FORMAT:

XX	/	XX	/	XX	/	X	/	X	/	XX	/	XXX
(1)		**(2)**		**(3)**		**(4)**		**(5)**		**(6)**		**(7)**

(1)	Document Type	2 characters	FINCEN document type (See Appendix D)
(2)	Fiscal Year* (Funding Year)	2 digits	Last two digits of current fiscal year or funding year.
(3)	Procurement Site Code*	2 characters	(See Appendix E)
(4)	Fiscal Year*	1 digit	Last digit of the year of initial contract award (normally the same FY)
(5)	Region/District*	1 character	Always H
(6)	Program Element*	2 characters	(See list of Unit Identifiers in Appendix F)
(7)	Document Sequence Number	3 digits	Unique sequential number assigned by unit preparing the document

*The Account line template is supplied in the official DPN Notification Message from NPFC.

APPENDIX A:
ADMINISTRATIVE TARGET UNITS (ATUS)

for Constructing Appropriation Limitation (LIM) Codes

		ATU
D1	Boston, MA	01
D5	Portsmouth, VA	05
D7	Miami, FL	07
D8	New Orleans, LA	08
D9	Cleveland, OH	09
D11	Alameda, CA	11
D13	Seattle, WA	13
D14	Honolulu, HI	14
D17	Juneau, AK	17
MLC – Atlantic	Portsmouth, VA	32
MLC – Pacific	Alameda, CA	33
CG Finance Center	Chesapeake, VA	36
National Strike Force & NSFCC		58
NPFC	Arlington, VA	72
CG Headquarters		99

APPENDIX B:
OPFAC NUMBERS

for Use as Cost Center in Account Lines

DISTRICT OFFICES:	*OPFAC #*	*OTHER UNITS*	*OPFAC #*
D-1 Boston	71101	NPFC	74100
D-5 Portsmouth	71105	MLC LANT	75130
D-7 Miami	71107	MLC PAC	75160
D-8 New Orleans	71108		
D-9 Cleveland	71109	NSFCC	34359
D-11 Alameda	71111	Atlantic Strike Team	34361
D-13 Seattle	71113	Gulf Strike Team	34340
D-14 Honolulu	71114	Pacific Strike Team	34360
D-17 Juneau	71117		
CG FOSCs (Sectors unless noted)	***OPFAC #***	***CG FOSCs (Sectors unless noted)***	***OPFAC #***
Anchorage	37380	Mobile	37240
Baltimore	37060	Morgan City (MSU)	33272
Boston	37010	New Orleans	33292
Buffalo	37210	New York	37040
Charleston	37090	North Carolina	37080
Chicago (NOT FOSC)	----	North. New England	37000
Cleveland (NOT FOSC)	----	Ohio Valley	37200
Corpus Christi	37180	Paducah (NOT FOSC)	----
Delaware Bay	37050	Pittsburgh (MSU)	33256
Detroit	37220	Port Arthur (MSU)	33274
Duluth (MSU)	33262	Portland, OR	37310
Galveston (MSU)	33277	Providence (MSO)	33286
Guam	37350	San Diego	37250
Hampton Roads	37070	San Francisco	37270
Honolulu	37340	San Juan	37120
Houston/Galveston	37170	Sault Ste Marie	37230
Huntington (NOT FOSC)	----	Savannah (MSU)	33264
Jacksonville	37100	Seattle	37320
Juneau	37360	St. Petersburg	37130
Lake Michigan	37240	Toledo (NOT FOSC)	----
Los Angeles/Long Beach	37260	Sector Upper Miss. River	37390
Long Island Sound	37030	Valdez (MSO)	33283
Lower Miss. River	37190	Wilmington (MSU)	33269
Miami	37110		

APPENDIX C:
SELECTED OBJECT CLASS CODES

(From Appendix F of the FINCEN SOP)

Recommended Codes

1181	Reimbursements to Other Agencies
2100	CONUS Travel - Site Visit - Ops Travel
2110	OVERSEAS Travel - Site Visit - Ops Travel
2170	Lease of aircraft
2171	Lease of vehicle - government
2172	Lease of vehicle - commercial
2204	Rental of trucks
2521	Contracts - DOD
2522	Contracts – OGA (USE FOR PRFAs)
2523	Contracts - Other
2656	Marine Environmental Response Equipment
2664	Other Documents
2669	Safety Supplies
2684	Telephone Supplies
2696	Other Supplies
4202	Indemnities & Claims
4204	Other Indemnities & Claims

Note: These object class codes are often used for pollution cases. If a transaction does not fit one of these, the full list available to the Coast Guard is in Appendix F of the FINCEN SOP.

APPENDIX D:
DOCUMENT TYPES

For Use in Document Control Numbers

01 – Appropriation
02 - Apportionment
03 - Non expenditure transaction
04 - Allotment (Funds)
05 - Allotment (Contract Liquidation Authority)
06 - HQ program plan
08 - Project Authorization
09 - Activity Plan
11 - TAD/TDY/Local Travel Orders
12 - PCS Travel Orders
13 - Continuous Travel Orders
14 - GTR & GTA (PCS & TAD)
15 - GBL (PCS & TAD)
17 - Household Goods Shipments
19 - Miscellaneous Obligations
20 - Cash Purchases
21 - Procurement Requests (Brown Sheets)
22 - Purchase Order/Invoice/Voucher (SF-44)
23 - Purchase Order / Delivery Order
24 - Contracts
26 - PO Dining Facility (food only)
27 - Auxiliary Patrol Orders
28 - ISSA-MIPR-IAG, UNICOR
30 - Training
31 - Industrial Service Order
32 - Credit Cards, Express Shipments
33 - Miscellaneous Costs, etc.
34 – PRFAs*, GSA Job Order - RWA (bldg. repair)
35 - ARMS (MILSTRIP), SERVMART OGA Bills (SF-1080) Aviation fuel, etc.
37 - Printing & Pubs (DOD/GSA/GPO) Medical Payments (NIPS)
38 - Blanket Purchase Agreement
39 - IPAC
40 - Real Property Leases
44 - Utilities / Electric
45 - Utilities / Commercial Telephone
46 - Utilities / Water
48 - GSA Vehicle Charges
49 - Utilities - Natural Gas
51 - Reimbursable Overtime for Marine Inspection
54 - Reimbursable Marine Vessel O/T Adjusting Journal Entry (FINCEN)
60 - Limited Pay Ability
62 – Reissue of Cancelled check (SF 1098)
66 - Collections -- Check
66 – IPAC Credit, Administrative Offset
68 - Collections - Debit Voucher
71 - Reserve Orders:
IADT, Emergency Involuntary Recall
ADSW-AC/RC >/= 140 Days
Voluntary Recall >/= 140 Days
72 - Reserve Orders:
ADT-AT/OTD
ADSW-AC/RC </ = 139 Days
Voluntary Recall </= 139 Days
ADSW-AC Reimb. by Other Agency
78 - Adjustment entries (FINCEN)
87 - Discounts lost
88 - Discounts lost - cost effective

Source: Based on Appendix G to the FINCEN SOP
* Added March 2007

APPENDIX E:
PROCUREMENT SITE CODES

For Use in OPA, CERCLA, & Disaster/ESF-10 Document Control Numbers

23	CG HQ
24	CCGD1
26	National Strike Force & NSFCC
27	CCGD5
28	CCGD7
29	CCGD8
30	CCGD9
31	CCGD11
33	CCGD13
34	CCGD14
35	CCGD17
41	USCG Reserve Training Center Yorktown
46	NPFC
84	MLCLANT(fcp)
89	MLCPAC

See FINCEN SOP, Appendix H, for additional codes (ISCs, CEUs, & other USCG units).

APPENDIX F:
NPFC SPECIAL PROGRAM ELEMENT CODES

For Use in OPA, CERCLA, & Disaster/ESF-10 Document Control Numbers Only

X1	**District-1 Office, Boston**
XB	Sector Boston
XE	Sector Long Island Sound
XD	Sector New York
XA	Sector Northern New England
XC	MSO Providence
X5	**District-5 Office, Portsmouth**
XM	Sector Baltimore
XP	Sector Delaware Bay
XN	Sector Hampton Roads
XK	Sector North Carolina
XQ	MSU Wilmington
X7	**District-7 Office, Miami**
XV	Sector Charleston
XS	Sector Jacksonville
XG	Sector Key West
XR	Sector Miami
XW	Sector San Juan
XU	MSU Savannah
XT	Sector St. Petersburg
Y8	**District-8 Office, New Orleans**
YX	MSO Corpus Christi
YW	MSU Galveston
XY	Sector Houston-Galveston
XJ	Sector Lower Mississippi River
YV	Sector Mobile
YY	MSU Morgan City
YZ	Sector New Orleans
XH	Sector Ohio Valley
XK	MSO Paducah
YU	MSO Port Arthur
XF	Sector Upper Miss. River
Y9	**District-9 Office, Cleveland**
YT	Sector Buffalo
YQ	Sector Detroit
YP	MSU Duluth
YN	Sector Lake Michigan
YK	Sector Sault Ste. Marie
Y1	**District-11 Office, Alameda**
YA	Sector Los Angeles/Long Beach
YB	Sector San Diego
YC	Sector San Francisco
Y3	**District-13 Office, Seattle**
YD	Sector Portland, OR
YE	Sector Seattle
Y4	**District-14 Office, Honolulu**
XX	Sector Guam
YF	Sector Honolulu
Y7	**District-17 Office, Juneau**
YH	Sector Anchorage
YG	Sector Juneau
YJ	MSO Valdez
XZ	**NPFC**
E1	**NSFCC**
E2	AST
E3	GST
E4	PST

NPFC Use Only

X2 Site Specific IAG with EPA Region
X3 NRDA Initiate Agreement
X4 State Access Cooperative Agreement
X6 NRD Claims payments & costs

APPENDIX G:
NPFC PROJECT NUMBER CONSTRUCTION

1. FEDERAL PROJECT NUMBERS **FOSC Oil Spill Removal**

A) USCG FOSC (Coastal Zone):

X XX XXX
(1) (2) (3)

(1)	District Identifier	1 character	District issuing the FPN (See table below)
(2)	Fiscal Year	2 digits	FY the case began & FPN was established
(3)	Sequence #	3 characters	Sequence # of the incident in that district for that FY

DISTRICT ID

D-1	Boston, MA	B
D-5	Portsmouth, VA	P
D-7	Miami, FL	M
D-8	New Orleans, LA	N
D-9	Cleveland, OH	G
D-11	Alameda, CA	A
D-13	Seattle, WA	S
D-14	Honolulu, HI	H
D-17	Juneau, AK	J
EPA		E. (began 2002 when CANAPS started)

B) EPA FOSC (Inland Zone):

In FY-2002 (CANAPS launched), EPA project numbers begin with “E”.

E XX X XX
(1) (2) (3) (4)

(1)	Identifier	1 character	Always E (for EPA)
(2)	Fiscal Year	2 digits	FY the case began & FPN was established
(3)	EPA Region	1 digit	Identifier for EPA Region (See table below)
(4)	Sequence #	1 digit	Sequence # of the incident in the respective USCG District for that year.

EPA Region Identifiers

Region 1	Boston, MA	1	Region 6	Dallas, TX	6
Region 2	New York ,NY	2	Region 7	Kansas City, KS	7
Region 3	Philadelphia, PA	3	Region 8	Denver, CO	8
Region 4	Atlanta, GS	4	Region 9	Alameda, CA	9
Region 5	Chicago, IL	5	Region 10	Seattle, WA	0

2. <u>OPA CLAIMS PROJECT NUMBERS</u> **Oil Fund Claim(s) Paid by NPFC** (1993 & after)

9	XX	XXX
(1)	**(2)**	**(3)**

(1)	Identifier	1 character	Always 9 for a claim(s)-only incident
(2)	Fiscal Year	2 digits	FY the first claim was received for the incident
(3)	Sequence #	3 characters	Sequence # of the incident for that FY, established in the Claims Processing System (CPS) and NPFC Oracle Project Accounting (PA)

3. <u>CERCLA PROJECT NUMBERS</u> **CG FOSC HAZCHEM Response** (1994 & after)

C	XX	XXX
(1)	**(2)**	**(3)**

(1)	Identifier	1 character	Character "C" signifies a CERCLA incident
(2)	Fiscal Year	2 characters	FY the case began & CPN was established
(3)	Sequence #	3 characters	Sequence # of the incident for that FY

4. <u>DISASTER PROJECT NUMBERS</u> **CG Response to oil and hazardous materials incidents under ESF-10 of the National Response Plan (Stafford Act Funds)**

D	XX	X	X	X
(1)	**(2)**	**(3)**	**(4)**	**(5)**

(1)	Identifier	1 character	Character "D" signifies a Disaster incident
(2)	Fiscal Year	2 characters	FY the case began & DPN was established
(3)	Disaster Identifier	1 character	Sequential for FY (A, B, C, etc.)
(4)	State Identifier	1 character	Sequential for specific disaster (A, B, C, etc.)
(5)	Mission Assignment Identifier	1 character	Sequential for specific state (1, 2, 3, etc.)

5. STRIKE TEAM CERCLA PROJECT NUMBERS **USCG NSF Strike Team Support to an EPA FOSC for CERCLA response only (1999 & after)**

C	XX	X	XX
(1)	(2)	(3)	(4)

(1)	Identifier	1 character	Character "C" signifies a CERCLA incident
(2)	Fiscal Year	2 characters	FY the case began & CPN was established
(3)	Strike Team Identifier	1 character	A = Atlantic Strike Team G = Gulf Strike Team P = Pacific Strike Team
(4)	Sequence #	2 characters	Sequence # of the incident for the respective Strike Team for that FY

6. OLD FEDERAL PROJECT NUMBERS **FOSC OIL SPILL REMOVAL ACTIONS (1984-1998)**

XX	X	XXX
(1)	(2)	(3)

(1)	District Identifier	2 characters	District Issuing the FPN (see below)
(2)	Fiscal Year	1 character	FY the case began & FPN was established
(3)	Sequence #	3 characters	Sequence # of the incident in the respective district for that FY

DISTRICT ID NUMERALS		
CCGD1	Boston, MA	01
CCGD2	St. Louis, MO	02 (Closed FY 1994)
CCGD3	New York, NY	03 (Closed FY 1986)
CCGD5	Portsmouth, VA	05
CCGD7	Miami, FL	07
CCGD8	New Orleans, LA	08
CCGD9	Cleveland, OH	09
CCGD11	Long Beach CA	11
CCGD12	San Francisco, CA	12 (Closed FY 1994)
CCGD13	Seattle, WA	13
CCGD14	Honolulu, HI	14
CCGD17	Juneau, AK	17

Funds Management During Incidents

United States Coast Guard
National Pollution Funds Center
4200 Wilson Blvd., Suite 1000
Arlington, VA 22203-1804

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FUND MANAGEMENT DURING INCIDENTS

The OSC is the key individual responsible for financial management during incidents, whether oil or chemical. Every direction the OSC issues and every resource the OSC calls upon uses funds from the ceiling that has been issued for the incident. The OSC may use existing management tools (e.g., LUFS, CG-5136-F) to help address this responsibility, or the OSC may develop local tools. Commandant (G-CFS) has now mandated that all obligations must be entered in LUFS, including OSLTF and CERCLA obligations. This section defines what must be done, and leaves open to the OSC how the OSC chooses to meet these requirements.

A) Ceiling Management and Obligation Log. The OSC must always know the current financial status of a response. On large, complex cases, including SONS, the OSC should compare the authorized ceiling against cumulative obligations daily. For other cases, this must be done for each POLREP. The OSC must maintain a running log of obligations issued against the ceiling, and adjust the resulting ceiling balance accordingly. This ensures that the OSC does not commit more funds than are available against the ceiling authorized through CANAPS. An obligation log (also known as a Document Control Number Log) is required by the Coast Guard for financial management of all funds.

B) Obligation Examples. The OSC must record not only traditional obligations, such as "Contract Authorizations to Proceed" to response contractors; but also TONOs for travel orders; "Pollution Removal Funding Authorizations" to other government agencies; and local procurement for lodging, meeting facilities, utilities, or the rental of equipment needed by the OSC. Finally, the use of Coast Guard personnel, boats, aircraft, cutters, and pollution removal equipment must also be estimated and charged against the ceiling, using standard rates.

C) Obligations as Estimates. Many obligations result in a liquidated payment or an expenditure that is different from the initial obligation (e.g., travel). The OSC should not delay recording obligations until exact costs are known. An obligation log ensures three things. First, the OSC can track spending decisions while the removal or response is taking place. Second, the OSC has a reference to consult when authorizing further use of the incident ceiling. Finally, there is a record that will support the review and reconciliation of PES data from the Coast Guards Accounting System after actual costs are known.

D) Recordkeeping. The OSC must use an organized system to track an authorized ceiling, authorize obligations against the ceiling, and to compute the cumulative obligations. Use CG – 5136F or a locally generated ceiling log. As noted above, use LUFS for all standard Coast Guard obligations noted in (B) above.

1) Record in LUFS approved obligated amounts and subsequent changes. Before attempting to enter obligations, ensure that the local LUFS systems manager has set up LUFS using the correct accounting string, FPN/CPN, and Object Codes.

2) Enter contracts, purchase orders, PRFAs, cash purchases, TONOs, etc., in LUFS. Take care to avoid entering unit AFC-30 purchases against the FPN or CPN, or incident purchases against the unit's AFC-30 funds. When more than one LUFS terminal is used on a spill (i.e., MSO and MLC(fcp)) each LUFS location will generate its own DCN log. The OSC financial staff must then collect the data from each log. Using LUFS facilitates keeping a Document Control Number (DCN) log. If LUFS is not used, then the unit must establish and maintain a "purchases" DCN log for the incident.

3) LUFS does not accept non-purchase obligations. Examples of other non-LUFS obligations are civilian overtime costs, medical care under contract personnel, vehicles, boats, cutters, aircraft, or specialized pollution response equipment, physicians for military personnel assigned to the incident, or GSA imposed vehicle charges specifically attributable to the incident paid under preexisting AFC-30 contracts. The OSC must use a local log system to record these obligations as they are incurred. One example is CG-5136F, which is an optional form included in the NPFC Technical Operating Procedures for Resource and Cost Documentation (TOPs). CG-5136F is available in EXCEL for either the Windows or Macintosh operating systems. The OSC may craft a local form that serves the same purpose.

E) Reporting. When an incident is funded under either the OSLTF/Emergency Fund or CERCLA, the OSC must report in every POLREP the authorized ceiling and the cumulative removal obligations to date for the incident. The NPFC must be included as an Info Addressee on these messages.

USE OF CG RESERVISTS

When Reservists are activated by the OSC, issue the orders using the accounting line for the respective fund and the specific FPN(OSLTF) or CPN(CERCLA). Issue a unique TONO for each reservist.

I. Use of CG Reservists

A) Use PMIS to issue the orders. Orders for reservists include pay, allowances, and travel do not issue separate travel orders to reservists. Contact PPC if PMIS will not accept the accounting data for the incident. If PPC is not able to resolve the issue, bring it to the attention of the NPFC case officer.

B) As reservists report in, collect a copy of the orders for personnel management, ceiling management, and subsequent cost documentation.

C) The amount paid for individual reservists orders will be reported by DAFIS for each specific TONO issued.

CREDIT CARDS

II. Use of Credit Cards

A. Guidelines for when to use. The Government-wide Purchase card can be a tremendous asset when used in the right situations. The primary reason to consider activating a card is when no other expedient means exits to obtain urgently needed small purchases in support of the FOSC.

B. What it can be used for. Generally, the Government-wide Purchase card can be used for anything normally obtained under small purchase rules. It can also be used to rent small equipment, such as a cellular phone, or obtain temporary services, such as a telephone line.

C. What it can not be used for. The Government-Wide Purchase card can NOT be used for travel, lodging or meals.

D. How to obtain/activate

1. Existing card

a. An existing Government-wide Purchase card can be converted to use for FPN specific use if it has been unused since the last monthly statement was received. Once converted, the card cannot be re-converted to another accounting string for at least 1 billing statement period of no activity.

b. First, determine and verify the accounting string for the FPN.

c. Send the requested accounting line change to FINCEN by E-mail to: PurchaseCard@fincen.uscg.mil.

d. The E-mail must include: card number; cardholder name; old line of accounting; new line of accounting; name and phone number of point of contact. NOTE: The FINCEN point of contact is: FINCEN OPQ (757) 523-6777.

e. This procedure is in effect 24 hours a day, 7 days a week.

2. New card

a. Only order a new card if an existing card is not available for conversion.

b. First, determine and verify the accounting string for the FPN.

c. Call the Purchase Card Administrator in the District Office and ask them to process an emergency issuance request with Bank of America Be sure you specify that you need an "Emergency Card".

d. Generally, an emergency card will be Federal Expressed by The Bank of America and in hand within 48 to 72 hours, maximum.

e. You can speed up the process if you can complete the information required in the application instruction pamphlet. If you don't already have one, call your District Card Administrator to obtain a copy for future reference and keep it in the safe with your units Purchase cards.

f. This procedure is only available during District business hours, unless other alternatives are developed between you and the District Purchase Card Administrator.

E. Documentation. All documentation procedures currently in effect for normal Government-Wide Purchase Card orders purchases apply to cards converted to FPN specific use. A current log of all purchases must be maintained listing the date, vendor, item/service, amount, and whether or not the order was placed by

telephone (no sales slip). Brown sheets are highly encouraged.

F. Statements and payments. Statements from Bank of America will be received in the normal manner and time cycle. Standard certification, documentation and payment practices will be adhered to. Copies of all certified statements and supporting documentation will be made before forwarding to FINCEN for payment and included in the FOSCs documentation package for later forwarding to NPFC Case Management.

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Technical Operating Procedures

for

Determining Removal Costs

under

The Oil Pollution Act of 1990

U.S. COAST GUARD
NATIONAL POLLUTION FUNDS CENTER

JUNE 1999

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U.S. Department
of Transportation

United States
Coast Guard

Director
United States Coast Guard
National Pollution Funds Center
Staff Symbol: cm

4200 Wilson Blvd.,
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Arlington, VA 22203
Phone: (202) 493-6811

NATIONAL POLLUTION FUNDS CENTER (NPFC) INSTRUCTION M7300.1

Subj: TECHNICAL OPERATING PROCEDURES (TOPs) FOR DETERMINING REMOVAL COSTS UNDER THE OIL POLLUTION ACT OF 1990 (OPA90)

1. PURPOSE. The enclosed Manual establishes procedures necessary to determine oil spill removal costs.

2. ACTION. Military and civilian employees of the NPFC shall follow these procedures to review and approve removal costs. Other government agencies and employees, and Coast Guard field units, are strongly encouraged to follow these procedures for timely and consistent removal cost reimbursement.

3. DIRECTIVES AFFECTED. This is the third of a series of NPFC Manuals which together establish uniform operating procedures for Oil Spill Liability Trust Fund access, documentation, reimbursement, and cost recovery. See NPFCINST 16451.1, Technical Operating Procedures for State Access under Section 1012 (d) (1) of OPA90; and NPFCINST 1645.2, Technical Operating Procedures for Resource and Cost documentation.

4. DISCUSSION. This Manual sets forth roles and activities involved in removal cost issues.

DANIEL F. SHEEHAN
Director
National Pollution Funds Center

Encl: (1) Technical Operating Procedures for Determining Removal Costs Under the Oil Pollution Act of 1990

Distribution: COMDT (G-M)
MLCLANT (F)
MLCPAC (F)
All CGD (M)
FINCEN (OCD)

Record of Changes			
Change #	**Description**	**Effective Date**	**Authorized By**
CH-1	Replace pages 3-83 to 3-87 with the revised Appendix table of contents, the Deed & Title Search Request Form, and the Deed & Title Search Statement of Work for Onshore Facilities.	10/12/2005	Mark McEwen
CH-2			
CH-3			
CH-4			
CH-5			
CH-6			
CH-7			
CH-8			
CH-9			
CH-10			

TECHNICAL OPERATING PROCEDURES
FOR DETERMINING REMOVAL COSTS

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CHAPTER 1 — OIL SPILL LIABILITY TRUST FUND (OSLTF) COSTS OVERVIEW

A. General: Responsible Parties (RPs) are liable for "all removal costs" incurred by the government that result from the RPs oil pollution incident. Although not necessary for RP liability, removal costs must be "consistent with the NCP" to be payable from the OSLTF. Federal On-Scene Coordinators (FOSCs) are responsible for exercising effective financial management and cost controls during the response, including verification of removal costs and certification of consistency with the NCP, as outlined in this TOPs.

B. Basic Criteria for Removal Costs:

1. The prerequisites which must be met before a removal cost can be paid from the Fund are:

   a. The removal costs must result from an Oil Pollution Act (OPA) incident: a discharge or substantial threat of discharge of oil, into or upon navigable waters (surface waters) of the United States or adjoining shorelines or the exclusive economic zone.

   b. The action giving rise to the removal costs must be consistent with the National Contingency Plan.

2. If the prerequisites are met, any action necessary to contain or remove oil from water or shorelines, or otherwise necessary to minimize or mitigate damage to the public health and welfare may be deemed removal and incur costs payable from the OSLTF. This includes ancillary support and administrative activities necessary for the response. It should be recognized, however, that all costs, and particularly any unusual costs, will usually be scrutinized closely by the responsible parties (RP) . If removal costs can be avoided by encouraging the RP to clean up their spills, that is always the preferred course of action. As with any Government funds, spending should be sensible, whether or not the costs may ultimately be recovered from the RP.

3. Examples of removal costs included in this TOPs are presented with the assumption that the actions and resulting costs comply with the fundamental requirements set out above.

C. Consistency with the National Consistency Plan (NCP).

1. The National Contingency Plan (40 CFR Part 300), Subpart D, OPERATIONAL RESPONSE PHASES FOR OIL REMOVAL, outlines the scope of activities which constitute a response to an oil incident to conduct removal. The four phases of response are as follows:

   I. Discovery or Notification.
   II. Preliminary Assessment and Initiation of Action.
   III. Containment, countermeasures, cleanup, and disposal.
   IV. Documentation and Cost Recovery.

2. The concept of consistency encompasses carrying out the purposes of the NCP and substantially complying with the NCP process, specifically:

a. The removal activity was deemed necessary for the cleanup or the prevention of an oil spill and not otherwise contrary to the NCP (e.g., the limitations on use of dispersants or in-situ burning).

b. The removal activity was authorized by a federally approved response plan, the FOSC or the RP, or was condoned by the FOSC or RP.

c. The removal activity was within the scope of the tasking, either in the federally approved response plan or given by the FOSC or RP. Absent clear tasking, it must be shown that the activity conducted was a customary removal action under the circumstances or there was good cause for the deviation from the norm. The FOSC may terminate authorized activities and may ratify unauthorized ones for good cause if they are otherwise consistent with the NCP.

3. Not all the response phase activities qualify for funding from the OSLTF as removal costs, e.g., Phase I, Discovery or Notification.

CHAPTER 2 — ROLES AND RESPONSIBILITIES IN DETERMINING REMOVAL

A. The Federal On-Scene Coordinator's (FOSC) Role.

1. Authority. The FOSC has been delegated the authority to ensure effective and immediate removal of a discharge, and mitigation or prevention of a substantial threat of a discharge of oil into U.S. surface waters (including the Exclusive Economic Zone). The FOSC verifies whether a particular cost was incurred for removal and was consistent with the NCP. The FOSC should not incur costs which are unnecessary for the removal or inconsistent with the NCP. In other words, the FOSC removal activities should be as effective and economical as possible under the circumstances.

2. Establishing the purpose for which a removal cost was incurred. In making the determination regarding removal actions and resulting costs, the FOSC is guided by the criteria in Chapter 1 and should, therefore, be prepared to document the following:

   a. Why a particular action was necessary to contain or remove oil pollution, or necessary to minimize or mitigate oil pollution damage to the public's health and welfare.

   b. That the action falls within phases II-IV, Operational Phases of Response for Oil Removal.

3. Documenting removal costs. NCP Sections 300.315 and 5.7 of Appendix E to the NCP require the FOSC to collect and maintain documentation "to support full cost recovery". Such documentation should include both reimbursable and non-reimbursable Government costs allocable to the removal effort (non-reimbursable costs are those costs which cannot be reimbursed to the agency because it has already received appropriated funds for that purpose). Routine incidents are responded to in a routine manner, and the response activities are clearly outlined in FOSC POLREPs and reports. When the purpose of the cost is not clear, however, the FOSC may be required to provide further explanation of the determinations made regarding removal actions.

B. National Pollution Funds Center Role.

1. Authority. The NPFC has been solely delegated authority to pay removal costs. The NPFC was established as a separate Coast Guard Headquarters Unit to maintain a degree of independence from the operational environmental protection programs. Thus, the NPFC has a responsibility to establish and enforce appropriate limits on the use of the OSLTF, balanced against the operational requirements of the FOSC.

2. The Case Officer/Case Team. The Case Officer represents the NPFC for all incident specific matters with the exception of particular claims matters. The Case Officer and the Case Team support the operational requirements of the FOSC while also ensuring that the uses of the OSLTF are appropriate. They are tasked with verifying that the resource/cost documentation meets all the guidelines herein.

CHAPTER 3 — PHASE I DISCOVERY AND NOTIFICATION – ACTIVITIES AND REMOVAL COSTS

A. Phase I Activities. These activities are conducted to discover oil spills or to notify appropriate authorities of oil spills, for example, patrols, notifications to the National Response Center, notifications to the predesignated FOSC. With the exception of the costs incurred by the FOSC to notify appropriate Federal, State, and local officials of an OPA incident, these costs are not directly chargeable to the OSLTF as removal costs but are funded through normal operating appropriations (e.g., Coast Guard OE).

CHAPTER 4 — PHASE II PRELIMINARY ASSESSMENT AND INITIATION OF ACTION – ACTIVITIES AND REMOVAL COSTS INCLUDING ASSESSMENT PHASE COSTS

A. Phase II Activities. These activities are conducted to gather information about the reported incident and plan appropriate actions. These activities are necessary whether or not the RP is taking action. The costs incurred in this phase are eligible for funding from the OSLTF subject to thresholds for access to the Fund defined in subparagraph 4.D.2 below. Phase II also includes the "initiation of action" activities which would immediately follow the determination by the FOSC that further action is required.

B. Assessment Phase. Phase II includes the "assessment phase" between notification of a discharge and the determination by the FOSC: i) that either nothing beyond initial assessment needs to be done; or ii) that further action or presence is required. The nature of pollution response sometimes results in an initial mobilization of more resources than are actually needed to respond to an incident. Because this mobilization of resources may potentially result in costs which appear to exceed those necessary to conduct the actual cleanup, the CG has elected not to charge the RP for assessment phase costs depending on such circumstances as whether the RP is responding responsibly to the incident. The discretion to bill an RP for some or all Federal removal costs incurred during the assessment phase rests with the NPFC, and FOSCs should not advise RPs about whether certain charges will or will not be billed.

C. Use of OSLTF for Phase II Costs. The FOSC should obtain an FPN and corresponding ceiling (and begin documenting all Federal removal costs) when:

1. The FOSC expects to incur "out-of-pocket" costs to conduct the assessment phase or any part of the response; or

2. The FOSC determines that a continued presence is required to ensure proper removal actions (the initiation of action part of Phase II) and no "out-of-pocket" costs are expected, but internal costs (costs of FOSC personnel and equipment) are expected to exceed $500.

D. Examples of Phase II – activities are as follows:

1. Assessment.

   a. Evaluate magnitude/severity.
   b. Assess feasibility of removal.

2. Initiation of action.

   a. Identify the RP. A generic list of documents to be acquired or incorporated into the statement of work to determine liability is provided in Appendix One of this TOPs.
   b. Notify affected natural resource trustees and other affected agencies.
   c. Plan further action.
   d. Indicate RP to clean up.
   e. Issue administrative orders.

E. Some Examples of Costs Eligible for Direct Charge to the OSLTF for Phase II Activities for Assessment though these Costs may be Recovered from the RP as discussed in subparagraph 4.B above:

1. Temporary Duty per diem, travel and transportation in accordance with Federal travel regulations.
2. Contractor costs, such as drilling test wells, performing hydrological surveys.
3. Consumables or services specifically purchased during the response, such as film purchased to document the incident.
4. Replacement, repair, renovation or cleaning of equipment (whichever is most cost effective) to the extent that the loss or damage is due to the specific response and not the result of improper maintenance, improper use of the equipment, or the actions of others unrelated to the removal.
5. Long distance telephone charges.
6. Costs of transporting and staging of required supplies and equipment.

F. Some Examples of Costs Eligible for Charge to the OSLTF for Phase II Activities for Initiation of Action and Subsequent Recovery from the RPs.

1. Local and Temporary Duty travel, transportation, and any per diem.
2. Contractor costs, such as contract cleanup expertise.
3. Consumables or services specifically purchased during the response, such as sorbent, supplies, incident-specific vehicle and equipment lease/rentals.
4. Replacement, repair, renovation or cleaning of equipment to the extent that the loss or damage is due to the specific response and not the result of improper maintenance, improper use of the equipment, or the actions of others unrelated to the removal.
5. Reservist orders.
6. Auxiliarist orders.
7. Government personnel assigned, such as scientific support, FOSC personnel, strike team personnel, legal support for administrative orders, etc., at standard costs.
8. Government facility use, such as office space at standard cost.
9. Government vehicles, boats, aircraft use at standard costs.
10. Government systems use.
11. Costs of transporting and staging of required supplies and equipment.

CHAPTER 5 — PHASE III – CONTAINMENT, COUNTERMEASURES, CLEANUP, AND DISPOSAL – ACTIVITIES AND REMOVAL COSTS

A. Phase III Activities. These activities are the traditional cleanup activities. If the RPs are taking proper action, the FOSC only conducts those activities necessary to ensure that immediate and effective removal takes place. Monitoring activities should be limited to those necessary to ensure proper removal and should not become so onerous as to discourage RPs from conducting their own cleanups. Again, the costs incurred in this phase are eligible for funding from the OSLTF subject to thresholds for access to the Fund specified in paragraph 4.C.

B. Examples of Federal Phase III Removal Activities when the RP Performs Cleanup:

1. Analyze water samples to determine source.
2. Analyze water samples to determine spread.
3. Measure and sample.
4. Monitor fate and effect of oil.
5. Restrict access to area, control traffic.
6. Review and direct actions by the RP.

C. Examples of Costs Eligible for Charge to the OSLTF for Phase III Removal Activities when the RP Performs Cleanup:

1. Local and Temporary Duty travel, transportation, and any per diem.
2. Contractor costs, such as security contractors, technical assist team contractors.
3. Consumables or services specifically purchased during the response, such as supplies, sorbent, incident specific vehicle and equipment lease/rentals.
4. Replacement, repair, renovation or cleaning of equipment - to the extent that the loss or damage is due to the specific response and not the result of improper maintenance, improper use of the equipment, or the actions of others unrelated to the removal.
5. Long distance telephone charges.
6. Reservist orders.
7. Auxiliarist orders.
8. Government personnel assigned, such as scientific support, FOSC personnel, strike team personnel, legal support for administrative orders, etc., at standard costs.
9. Government or leased facility use, such as office space at standard cost, mobile command post lease.
10. Government vehicles, boats, aircraft use at standard costs.
11. Government systems use, such as telecommunications systems, computer systems.
12. Government or contract laboratory sample analysis, such as Coast Guard Marine Safety Lab services at standard costs.
13. Costs of transporting and staging of required supplies and equipment.

D. Examples of Federal Removal Activities in Addition to those Listed in 5.B when the RP is not Known or Fails to Perform Immediate and Effective Removal:

1. Controlling the source of discharge.
2. Controlling the spread of oil.
3. Placement of physical barriers to deter the spread of the oil and to protect the natural resources and sensitive ecosystems.

4. Controlling of the water discharged from upstream impoundment.
5. Capturing, cleaning, and emergency care for oiled animals.
6. Cleaning oil from beaches, shoreline, piers, boats, private and public property.
7. Excavating contaminated soils.
8. Providing alternative drinking water.
9. Providing for temporary relocation or evacuation where necessary to protect public health.
10. Removing debris from shorelines prior to oiling to facilitate later cleanup.
11. Removing and, if necessary, destroying a vessel to limit discharge when properly authorized.
12. Using chemicals and other materials in accordance with subchapter J of the NCP to restrain the spread of oil and mitigate its effects.
13. Properly disposing of recovered oil and contaminated materials.

E. Examples of Costs Eligible for Charge to the OSLTF in Addition to those Listed in 5.C for Phase III removal Activities when the FOSC Determines it Necessary to Arrange for Removal, in Addition to, or instead of, a RP's Removal Efforts:

1. Purchase of equipment, such as boom, skimmers, transfer systems, pumping systems, dracones, vapor analyzers, gas indicators, protective gear. Purchase of nonexpendable equipment (generally those items, of value greater than $1000 with useful life greater than 1 year); see Paragraph 7.G for further information regarding purchase of equipment.
2. Government equipment inventory use at standard cost, such as boom, skimmers, transfer systems, pumping systems, dracones, vapor analyzers, gas indicators, protective gear.
3. Purchase of water as alternative drinking water.
4. Contract for temporary lodging for evacuees.
5. Contract for temporary feeding for evacuees.
6. Contract for cleanup labor.
7. Contract for diving, and when necessary to control the source or spread of oil, salvage operations.
8. Contract for disposal.
9. In special circumstances, contract for temporary docking of salvaged vessel.
10. Rental/purchase of fencing, barricades, and security material.
11. Traffic control.
12. Contract for capturing, cleaning and emergency care for oiled animals, such as costs to capture, clean, temporarily care for, and release birds oiled by spill, or dispose of dead animals.
13. Repair of damages caused by cleanup activities, such as damage to lawns by vehicles. [Note that such costs may also be the subject of a claim for property damage per standard NPFC claims procedures if not handled as part of the removal.]
14. Replacement of oiled equipment and property which cannot be cleaned cost-effectively.
15. Decontamination of oiled equipment.
16. Replacement of excavated soils.

CHAPTER 6 — PHASE IV – GOVERNMENTAL DOCUMENTATION AND COST RECOVERY – ACTIVITIES AND REMOVAL COSTS

A. Phase IV Activities. These activities are the documentation and reporting activities necessary to support cost recovery and record uses of the OSLTF. The costs incurred in this phase are also eligible for funding from the OSLTF to the extent that they can be identified with and attributed to specific incidents.

B. Examples of Phase IV Activities:

1. Collect and safeguard information, samples, and reports.
2. Interview witnesses and investigate causes.
3. Consolidate information and prepare reports.
4. Transmit reports to appropriate officials.
5. Verify report information.
6. Bill RPs.

C. Examples of Costs Eligible for Charge to the OSLTF for Phase IV Removal Activities:

1. Local and TDY travel and transportation.
2. Reservists orders.
3. Government personnel services.
4. Government and leased facility use, such as office space.
5. Lease/purchase computer systems.
6. Government systems use at standard cost.
7. Overnight/express delivery services.
8. Warehousing/storage services, such as costs to store records, samples.
9. Contract clerical services.
10. Contract documentation services.
11. Government or leased communications systems, such as paging systems, cellular phones, and facsimile equipment normally charged at standard rates plus any identifiable direct costs.

CHAPTER 7 — REMOVAL COST ISSUES AND SPECIFIC LIMITATIONS

A. Removal Costs. As already discussed, generally, the removal costs incurred should be appropriate under the circumstances and costs incurred should generally be proportionate to the size of the spill. This chapter provides guidance on specific situations or types of removal costs.

B. Substantial Threats of Discharge. The OSLTF may be used to respond to a substantial threat of a discharge to prevent, minimize, or mitigate oil pollution from such an incident. Each FOSC has the authority to determine whether particular situations present substantial threats of discharge.

1. In making a determination to respond to a substantial threat of discharge, the FOSC should consider the following factors in the context of the overall situation:

   a. The likelihood of a discharge under the circumstances; that the situation presents an unacceptable probability that a discharge will occur without FOSC intervention.

   b. The proximity to navigable waters, the quantity of oil which may be discharged, and the lack of barriers to stop the oil from flowing to the water indicate that a spill will impact navigable waters.

   c. The flow path to surface waters (for land based discharges) as indicated by slope, soil permeability, water table, storm drains, curtain drains, natural or manufactured conduits, or the like.

   d. The condition of or damage to the source, and the environmental factors or weather which may change the conditions, indicate that a spill will occur.

   e. The potential impact of a discharge on the particular environment, including proximity to environmentally sensitive areas, populous areas, etc.

   f. That action must be taken quickly to prevent a spill.

2. As outlined in Chapters 1 and 2, the FOSC must document the factors considered and the basis for the decision that a specific situation presented a substantial threat of discharge.

C. Groundwater Contamination. Removal costs may be incurred and paid from the OSLTF to handle oil discharges in groundwater where the FOSC has a reasonable basis to conclude that there is a clear hydrological nexus to surface waters and such nexus causes a discharge or poses a substantial threat of discharge to surface waters. The OSLTF is not available for removal actions to clean up groundwater when the groundwater does not discharge or pose a substantial threat to surface waters. Nor can the OSLTF be used to fund groundwater remediation activities after the discharge or the substantial threat of the discharge to surface waters has ended.

D. Multi-mission Activities.

The federal response may include search and rescue (SAR), law enforcement, safety of navigation, port safety or security, in addition to marine pollution response. In those situations, when resources are employed principally for their missions, their costs should not be charged to the OSLTF. Only those actions, whose primary purpose is removal, (i.e., the containment or removal of oil pollution or necessary to minimize or mitigate oil pollution damage to the public health and welfare) and which are consistent with the NCP, may be paid or reimbursed by the OSLTF. Removal cost must be incurred in the normal course of a removal effort under the FOSC's direction, following an FOSC's determination that there is an OPA incident requiring a response. In all multi-mission cases in which OSLTF funding is involved, FOSCs should document all costs while clearly identifying those relating to other mission activities and indicate why such costs should or should not be charged to the OSLTF.

The following operative purposes test should be applied: would the actions taken in the response have been required absent marine environmental protection requirements, such as 1) when the Coast Guard interdicts a Haitian vessel or seizes a vessel carrying drugs, the costs of controlling that vessel including any costs to prevent pollution from that vessel should not be charged to the OSLTF, or 2) when Coast Guard vessels enforce a safety zone around a grounded vessel in or near the entrance channel to a harbor area, the grounded vessel may pose a threat of pollution but the primary purpose of the safety zone and therefore the primary use of the resources enforcing it is for the safety of the traffic navigating around the grounded vessel into and out of the port.

E. Assessment Phase Costs.

See Chapter 4.

F. Use of Reservists. The OSLTF may be used to fund temporary active duty for Reservists related to a specific incident. The Reservists should be employed directly in the response unless otherwise authorized in advance by the NPFC.

G. Acquisition of Property Items.

1. FOSCs should only purchase property with OSLTF funds when operational necessity directly related to the removal dictates or when it is clearly more beneficial to the Government than leasing. When making decisions to buy versus lease property, and operational conditions permit, units should factor in the costs necessary to acquire, maintain, and dispose of the property, not just the purchase price versus the costs of leasing. Many of these considerations are appropriately addressed through the planning process before a spill occurs. Documentation of the factors considered in purchasing property during a spill are critical in cost recovery and litigation efforts and shall be documented to the greatest extent possible.

2. FOSCs should be aware that property purchased for removal activities will be billed to the RP at 100% of the cost. Accordingly, whenever feasible, the FOSC should provide the responsible party the opportunity to purchase or otherwise directly supply the property needed for removal activities. Upon case completion, any property purchased and provided by the responsible party shall be returned to the responsible party. Property purchased with the OSLTF, however, shall be disposed of in accordance with the procedures outlined below.

3. All property purchased must be accounted for in the cost documentation portion of the FOSC completion report.

4. For FOSCs, All "non-consumable" items, which includes any item or system having a cost of $2,500 or items of high interest (such as radios, fax machines, cellular phones, computers, pagers, copiers, photographic equipment, protective clothing, meters, and similar items) regardless of cost require evidence of disposal action. FOSCs shall dispose of such items through the closest Defense Reutilization and Marketing Office (DRMO).

   a. Document the transfer of each group of like items to the DRMO using form DD-1348 or other form acceptable to the specific DRMO. FOSCs should contact the DRMO prior to any transfer to determine specific requirements.

   b. After the transfer, forward the original transfer document to the NPFC as part of the FOSC interim or final Completion Report. The FOSC should maintain a copy of the form for local records.

   c. All lost, stolen, or damaged non-consumable property which is not available or suitable for transfer to the DRMO must be surveyed in accordance with agency property management guidelines and the Federal Property Management Regulations. Copies of approved survey reports shall be forwarded to the NPFC to provide the evidence of disposition.

   d. All consumable items (items not classified as nonconsumable property) are considered expended during the removal activity and should be disposed of in the most cost-effective manner. Lots of unused consumable property with a cost of more than $2,500, however, must be disposed of - and documented - in the same manner as non-consumable items.

   e. If questions arise on whether a particular item is consumable or non-consumable, or on the reporting requirements, FOSCs should contact the cognizant NPFC case officer. Coast Guard FOSCs may contact Commandant (G-CFM-3) with questions concerning DRMO availability or procedures for disposal.

5. EPA FOSCs should refer to their agency guidance relating to proper purchase, accounting, and disposal of property. Copies of all documentation related to the property purchase and disposal should be provided with the incident documentation.

6. Items which meet requirements for capitalization may be charged to the OSLTF but the amount charged to the specific incident shall be based upon an appropriate standard cost or allocation of the acquisition cost to the useful life. FOSCs should identify such items separately in the documentation. The NPFC shall make appropriate adjustments to the incident specific costs. Any such items purchased with the OSLTF belongs to the OSLTF until properly disposed of as excess property.

7. Purchase of major property items (land, buildings, structures, etc.), or major pieces of equipment that will remain in use for long periods of time present special problems not only for disposition but in planning for maintenance and operation as well. FOSCs contemplating such acquisitions should contact the cognizant NPFC Regional Manager

prior to purchase to discuss available options and to ensure that proper financial planning and analysis is performed.

H. Overflights. Aircraft overflights provide a valuable tool to the FOSC in assessing the extent and movement of the spilled oil and evaluating the progress of cleanup efforts. Such overflights, however, should be carefully scheduled to minimize avoidable charges. This could include the use of less expensive commercial aircraft when made available by the RP provided that Coast Guard policies governing the use of non-contract commercial aircraft are followed. Overflights primarily for VIP orientation, for example, should not be charged to the OSLTF.

I. Replenishments of Inventory.

1. FOSCs routinely draw on existing inventory of response equipment for specific responses. The OSLTF may be used to return that equipment to inventory after the response in the same condition it was before the response. Inventory items used up in the response or damaged beyond economical repair may be replaced. The unit replacing inventory items must follow existing agency guidance regarding survey of lost or damaged property. Any survey should establish whether the damages were directly due to a specific response or otherwise due to manufacturer defect, improper maintenance, improper use of the equipment, or the actions of others unrelated to the removal.

2. If the response equipment is replaced as a result of damage incurred during the response, the OSLTF will normally pay for the replacement. The OSLTF should not, however, be charged the standard rate for use of that particular item of equipment during the response.

J. Use of Standard Costs. The OSLTF may be used for the cost of Federal resources used in oil spill response. The costs of Federal resources should be charged at standard costs or at direct cost plus a standard overhead or surcharge. (Equipment replaced due to damage as a result of the response or purchased using the OSLTF during the response should not be also charged at a standard rate.) The agency presenting costs based on standard rates or surcharges should be able to show that such rates are the official rates of that agency, i.e., published in agency directives or set by appropriate authority. The agency must certify to the NPFC that it followed practices consistent with generally accepted accounting practice, and OMB and GAO guidance in developing its standard costs.

K. Spills from Federal Vessels or Facilities. While Title I of OPA excludes discharges from public vessels and federal facilities and there is no OPA liability for such public vessels and federal facilities, the NCP provides that a federal agency owning or operating the public vessel or federal facility is responsible for funding and handling the removal activities. If the federal agency cannot fund or handle the removal activities, the FOSC may access the OSLTF to fund the clean up or prevention of a discharge.

1. If the OSLTF is used to clean up a discharge from a public vessel or federal facility, the NPFC will seek reimbursement from the responsible agency. FOSCs should immediately notify the appropriate NFPC regional manager whenever it appears necessary to use the OSLTF for a federal spill. Additionally, if the Government takes custody of property prior to an OPA incident having been declared by the appropriate FOSC, the costs of handling the property and any oil associated with it are not chargeable to the OSLTF.

2. When the responsible agency is capable of funding the cleanup but lacks the resources to properly conduct the cleanup, the FOSC should attempt to establish a Military Interdepartmental Purchase Request (MIPR) or similar reimbursable agreement, as time permits, to establish direct upfront funding of the FOSC removal activities. FOSCs are encouraged to contact the cognizant NPFC Regional Manager for assistance in establishing such agreements.

L. Spills Involving Both Removal Costs and Potential Claims.

1. When an incident involves removal actions under the direction of the FOSC as well as potential damage claims under OPA, the actions of the FOSC should be coordinated with the NPFC case officer/claims representatives to ensure a cost-effective use of all OSLTF monies.

2. There are overlaps between removal costs and damages. For example, the cost incurred by the FOSC for cleaning boats oiled due to a spill is a valid removal cost while costs incurred by individuals for cleaning their own boats oiled due to a spill are also valid claims. Further, a boat owner may have a property damage claim for permanent damage to the boat even after the FOSC has cleaned it. In most cases, it is more efficient to handle boat cleaning as a removal cost because this ensures control over the disposition of the oil and the costs of the cleaning. Any property damage can be handled separately as a claim.

3. Additionally, there are situations where property is cleaned by the FOSC only to be replaced as the result of a claim. An example might be oiled wooden piers which although cleaned by the FOSC as removal must still be torn out and replaced due to the residual damage. Close coordination allows the selection of the most cost-effective approach which in some cases is to simply replace the property as a removal cost in the first place.

M. Mixed substance spills. The OSLTF may be used to fund removal activities for a discharge or substantial threat of a discharge of oil. An oil is any oil except those subject to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. 9601 et seq. OPA oils include the following: (1) petroleum with naturally occurring CERCLA-listed hazardous substances; (2) petroleum to which additives have been added during the refining process; and (3) petroleum provided that hazardous substances have not been added during its use nor increased by its use. If a discharge consists of both an OPA oil and a CERCLA substance, its clean up cannot be funded from the OSLTF.

N. Mixed spills. If an incident includes a distinct discharge of an OPA oil and a distinct discharge of a CERCLA hazardous substance, the clean up of the discharge of oil may be funded from the OSLTF. The clean up of CERCLA hazardous substances must be funded from CERCLA's Superfund. For instance, a vessel carrying containers of hazardous substances sinks and discharges its diesel. The clean up of the diesel may be funded by the OSLTF; clean up of the hazardous substances would be funded by CERCLA's Superfund.

O. Research and Development (R&D) Activities. The OSLTF Emergency Fund is not available for R&D. The Emergency Fund is available for removal costs which may involve new or novel methods of cleanup (with untried and unproven methods being turned to only as a last resort), as long as the method is otherwise consistent with the NCP. R&D may incidentally

benefit from the fact that the FOSC finds it appropriate to use a new method or product to deal with a particular discharge or threat thereof. However, the fact that R&D may benefit from the use of new technology should not be a factor in the FOSC's normal decision process in ascertaining how a particular spill will be dealt with. The FOSC may permit R&D to be conducted on a "spill-of opportunity" if it does not otherwise interfere with the FOSC's removal effort, but the R&D must be underwritten with R&D funds.

P. Use of State and Local Response Resources. Section 300.135 of the NCP requires FOSCs to coordinate response efforts with appropriate state agencies. It adds, "State and local Governments, however, are not authorized to take actions under subparts D and E of the NCP that involve expenditures of the Oil Spill Liability Trust Fund or CERCLA funds unless an appropriate contract or cooperative agreement has been established." To carry out this requirement, the following applies to funding of state participation in oil spill response:

1. The FOSC should establish from the outset whether State resources are necessary for removal actions for an incident and info the State OSC. The FOSC should use incident action plans or similar planning and documentation tools to define the scope of expected State actions and allow the NPFC to make decisions on potential claims. To the extent possible, appropriate State roles should be described in Area Contingency Plans (ACP).

2. When a state responds to a spill, either as agreed in an Area Contingency Plan or by specific FOSC request, a Pollution Removal Funding Authorization (PRFA) should be executed to ensure they are reimbursed for specific work performed at the request of the FOSC. As part of the PRFA, the FOSC must attach a Statement of Work to describe the required removal actions. A generic Statement of Work provided in Appendix Two, of this TOPS may be used.

3. When the FOSC determines that State resources were not necessary for an effective response, then the OSLTF is generally not available to pay the State for its actions. There may be, however, some legitimate State costs incurred by the first Government representatives on scene which could be either funded directly through a PRFA or the subject of a claim.

4. These provisions only apply to those incidents to which the FOSC actually responds. If a State has properly coordinated a response with the predesignated FOSC and conducts oil spill removal actions consistent with the NCP, then the State is generally eligible for reimbursement of removal costs through the OPA claims process and corresponding claims regulations.

Q. Oil Wells/Pits/Facilities.

1. The OSLTF is available for removal of oil discharged, or substantial threat of discharge, from "abandoned" wells, pits, and related facilities. The use of the term "abandoned" in this context indicates that such wells are no longer in active production, but does not mean that they were properly abandoned in accordance with applicable state law. Generally, these facilities are "orphans" presenting special problems in identifying the responsible parties for the discharge or substantial threat.

2. The OSLTF may be used to fund discharges or substantial threats of discharges from facilities. A facility is any structure, group of structures, equipment or device used to explore for, drill for, produce, store, handle, transfer, process, or transport oil (except

vessels). It includes but is not limited to oil wells, wellheads, pits, pipelines, gathering lines, storage tanks, and tank batteries, pits, and containment areas.

3. Identification of Responsible Party. The FOSC should begin appropriate research, including title searches, tax records, and bills of sale, as early as possible to identify the responsible parties. This may require the hiring of appropriate services. The costs of such services may be charged to the FPN as removal costs. For advice and assistance, FOSCs should contact the appropriate NPFC Regional Manager or case officer. A generic list of necessary documents for an RP search is provided in Appendix One of this TOPS.

R. ESA Consultations.

1. During the removal action, if an emergency consultation under section 7 of the Endangered Species Act is required, it can be funded by the FPN as a removal cost. Please see The "Inter-agency Memorandum of Agreement Regarding Oil Spill Planning and Response Activities Under the Federal Water Pollution Control Act's National Oil and Hazardous Substances Pollution Contingency Plan and the Endangered Species Act" for details of the agreement and a sample Pollution Removal Funding Agreement and Statement of Work.

S. Site Remediation. Discharges from storage tanks, oil wells or related facilities, and other similar facilities often may have caused extensive subsurface soil or groundwater contamination. Where such underground contamination has migrated so as to cause an actual surface discharge or substantial threat of discharge into navigable waters, the OSLTF may be used for removal. The OSLTF is available to remove oil pollution when it represents a substantial threat to U.S. surface waters, however, this does not extend to the remediation of contaminated soil or shorelines which no longer represent a substantial threat to U.S. surface waters. Once the necessary steps have been taken to eliminate the substantial threat of further discharge to the navigable water, further actions to permanently remedy the affects of an oil pollution incident, including long term treatment of underground contamination, are beyond the scope of OSLTF emergency removal funding.

APPENDIX ONE

DOCUMENTS FOR IDENTIFICATION OF OWNER/OPERATORS FOR ONSHORE AND OFFSHORE WELLS AND OTHER FACILITIES

ONSHORE WELLS AND OTHER FACILITIES ***3-84***

Deed & Title Search Request Form

Deed & Title Search Statement of Work for Onshore Facilities

OFFSHORE WELLS AND OTHER FACILITIES ***3-87***

Organization of the Deed and Title Search For Offshore Wells And Other Facilities **3-88**

Department of Homeland Security
U.S. Coast Guard

National Pollution Funds Center
4200 Wilson Boulevard, Suite 1000
Arlington, VA 22203-1804

Deed & Title Search Request

CG NPFC-CM1
(Rev. August 05)

PURPOSE: Federal On-Scene Coordinators may use this form to request the U.S. Coast Guard, National Pollution Funds Center, to perform a deed and title search to identify the responsible party of a Federal project. Any cost incurred in the search will be charged against the project as a removal cost.

FAX: Please fax the completed form to **(202) 493-6896, Attention: Case Management Division.**

OSC POINT OF CONTACT	FPN
PHONE NUMBER	DATE OF REQUEST
FAX NUMBER	HAS REMOVAL BEEN COMPLETED? ☐ YES ☐ NO
CHECK ONE ☐ ON SHORE ☐ OFF SHORE	DATE OF INCIDENT

CHECK ALL THAT APPLY ☐ FACILITY ☐ OIL WELL ☐ OTHER (Explain)

WELL NUMBER	WELL NUMBER	WELL NUMBER	WELL NUMBER
WELL NUMBER	WELL NUMBER	WELL NUMBER	WELL NUMBER

List additional well numbers in the Other Pertinent Information section below.

COUNTY/PARISH	STATE

ADDRESS/LOCATION/BLOCK

Complete the following, if known.

FIELD NAME	FIELD NUMBER

SECTION	TOWNSHIP	RANGE

LAST OPERATOR

LEGAL DESCRIPTION

OTHER PERTINENT INFORMATION

OSC SIGNATURE

This section to be completed by NPFC.

CASE OFFICER NAME

ACCOUNTING DATA

Previous edition can be used

Deed & Title Search
Statement of Work for Onshore Facilities

The contractor is to prepare a Deed and Title Search Report and is to include information and documents covering the period 10 years prior to the drilling of the well or the construction of any other facility, up until the present. The report is to contain the following information, as indicated by the initials of the requestor as well as information for each facility (e.g., well, tank, tank battery, pit, etc.) listed on the Deed and Title Search Request form.

In the event that partial information has already been provided by the Federal On-Scene Coordinator and is **not required** for this report, the requestor will initial "GFI" (Government Furnished Information) in the appropriate blocks.

_____ 1. The names, current or last known street addresses of all entities or individuals that have owned a surface interest, a mineral interest, and/or who have held a leasehold interest in the real property on which each of the facilities is located, and provide the time periods during which each such entity or individual owned the interest in question.

_____ 2. A clearly marked section setting forth the author's conclusions on who is (are) the current owner(s) of the surface rights, mineral interest, and leasehold interest in the real property on which each facility is located and who owns each such facility. Additionally, this section should also set forth the author's conclusion as to who was (were) the owner(s) of each such interest and each such facility on the date of the incident identified on the Deed and Title Search Request. (In situations where an oil discharge (e.g., a spill) occurred, the date of the incident for this purpose will be the date of the discharge. In situations where an oil discharge has not occurred, but the United States took steps to address a substantial threat of a discharge, the date of the incident for this purpose will be the date on which the response action commenced.)

_____ 3. A title analysis narrative, which clearly and fully explains the basis for each of the author's conclusions identified in #2.

4. With respect to each owner identified in #2:

_____ A. The phone number, fax number and, if available, e-mail address.

_____ B. If such owner is an individual who is deceased, so indicate, and provide information on the status of decedent's estate (i.e. whether it is currently being administered or has been closed), and if it has not been closed, the name and address of the probate court, the caption of the probate proceedings, the docket number, the name, address and phone number of the executor, administrator or personal representative.

_____ C. If such owner is currently in bankruptcy (whether the owner(s) are individuals, partnerships or corporations), or has been in bankruptcy at any time during the 10 years prior to the date of the incident, provide the caption of the bankruptcy case, the docket number and the name and address of the bankruptcy court.

5. With respect to each person or entity identified in #1 as owning or having owned a surface interest, a mineral interest, or holding or having held a leasehold interest during the 10 year period preceding the date of the incident:

_____ A. If such entity is a corporation, provide the legal status of the corporation (i.e. whether it is a corporation in good standing in its state of incorporation, whether it has been voluntarily or involuntarily dissolved).

_____ B. If such entity is a partnership, provide the names, current addresses, and phone numbers of each partner and the legal status of the partnership.

_____ 6. Legal descriptions for the parcel on which each facility is located.

_____ 7. Copies of title documents including titles, deeds, mineral deeds, liens, leases, assignments, agreements, title transfers, satisfied and unsatisfied mortgages including deeds of trust and releases of deeds of trust, easements and encumbrances. If legible copies are not available, a description of the information conveyed in the document should precede the document.

_____ 8. All documents filed with the applicable Secretary of State that relate to any corporation, partnership, or limited liability company that owned or operated each facility on the date of the incident. If there was no apparent owner or operator of the facility on the date of the incident~~,~~ then all documents filed with the applicable Secretary of State relating to any corporation, partnership, or limited liability company that was the last apparent owner or operator of the facility. These documents should include, but not be limited to, articles of incorporation, partnership agreements, annual reports, voluntary or involuntary dissolution~~s~~ papers, etc. However, if the expense of obtaining all relevant documents exceeds $500, then only those documents that relate to the formation and the dissolution of the companies should be obtained.

_____ 9. All available documents from the local tax assessor's office that relate to the property on which each facility is located, including but not limited to all records for both real and personal property taxes assessed.

_____ 10 All documents held by the state regulatory or licensing agency that relate to either the construction or the operation of each facility. These documents should include, but not be limited to, permits, applications for permits, documents submitted in support of an application for a permit, any historical file maintained by the agency for the oil well or other facility, etc.

_____ 11 Any other documents relating to ownership of equipment, fixtures, and structures comprising or that are part of the facility or leases of such equipment, fixtures and structures.

_____ 12 An ownership history table by parcel which details the owners of the surface interest, mineral interests, and leasehold interest of each parcel on which each facility is located with approximate percentages of interest.

_____ 13 One Plat map which includes the searched parcel or parcels. This map should identify the parcels so that they can be identified on the ownership table.

_____ 14 A survey of the site, drawn to scale, identifying each facility (e.g., oil well, tank, pit, piping, etc.), the property lines, the current property owners and the threatened waterway.

OFFSHORE WELLS AND OTHER FACILITIES

The types of information required to establish the responsible party are described below.

Source of information - State regulatory / leasing authority

Owner identification:

Identify the owners of the submerged surface and mineral owners as of the date of the Federal On-Scene Coordinator ("FOSC") discovers the discharge or determines that the facility poses a substantial threat of a discharge of oil to navigable waters; and

Identify current addresses, phone numbers and corporate status of each past and present lessee, permittee, and submerged surface and mineral owners. The addresses and phone numbers shall be verified and corrected by the contractor.

Provide copies of the following documents including:

a. The lease under which the facility was last operated;

b. The lease, covering the area where the facility is located, that is in effect on the date the FOSC discovers the discharge or determines that the facility poses a substantial threat of a discharge of oil to navigable waters. A copy of this lease is required, whether or not the facility was ever operated under this lease.

c. Copies of all assignments of any interest for all leases noted above;

d. Copies of all releases of any interest for all leases noted above;

e. Copies of all subleases of all leases noted above;

f. All documents held by the state regulatory or licensing agency that relate to either the construction or the operation of the facility. These documents shall include, but not be limited to, permits, applications for permits, documents submitted in support of an application for a permit, any historical file maintained by the agency for the oil well, etc. (may be with state agency other than leasing agency);

g. Copy of the plat shall be attached if it is not already with the permit or lease; and

h. All documents filed with the applicable Secretary of State that relate to any corporation, partnership, or limited liability company that owned or operated the well at the time of the response. If there was no apparent owner/operator of the well at the time when the FOSC discovered the discharge or determined that the well posed a substantial threat of discharge, then all documents filed with the applicable Secretary of State that relate to any corporation, partnership, or limited liability company that was the last apparent owner/operator of the well. These documents shall include, but not be limited, articles of incorporation, partnership agreement, annual reports, involuntary dissolutions, etc. However, if the expense of

obtaining all relevant documents exceeds $500, then only those documents relating to the formation and the dissolution of the company will be obtained.

Organization of the Deed and Title Search For Offshore Wells And Other Facilities

The Deed and Title search shall contain a table of contents to assist the user in locating tabbed documents.

The contractor shall provide the NPFC three (3) copies of the Deed and Title search. Two (2) copies shall be paper copies and be tabbed accordingly. The final copy shall be on CD.

The Deed and Title search shall be sectioned and tabbed as outlined below:

Section I - Summary of the contractor's findings. This summary shall include the legal description for the area where the facility is located, identification of past and present owners and operators of the facility including:

a. Narrative describing the search results;
b. Time periods during which the person or company owned or operated the facility;
c. Complex title analysis narrative if necessary; and
d. Current addresses, phone numbers and corporate status of each present owner.

Section II – Ownership History Table. This table shall identify all documents that detail the owners or operators of the facility with approximate percentages of interest. Copies of these documents shall be tabbed as follows:

Section II A - lease under which the well was last operated

Section II B - Copy of the area lease covering the area where the well was located, that was in effect on the date the FOSC discovered the discharge or determined that the well posed a substantial threat of discharge into navigable waters. A copy of this lease is required, whether or not the well was ever operated under this lease.

Section II C 1-99 – Copies of all oil and gas leases, mineral deeds, assignments of oil and gas interests, subleases of all oil and gas leases, releases of any oil and gas interest covering the area where the well was located. These documents shall be listed in reverse chronological order (the newest document will be first and the oldest document will be the last) and separated with numbered tabs.

Section III – Copies of the plat covering the area where the facility is located.

Section IV – Copies of all documents held by any state regulatory or licensing authority that relate to either the construction or operation of the facility. These documents shall include, but not be limited to, permits, applications for permits, documents submitted in support of an application for a permit, any historical file maintained by the agency for the oil well, etc.

Section V – All documents filed with the applicable Secretary of State that relate to any corporation, partnership, or limited liability company that owned or operated the well at the time of the response. If there is no apparent owner/operator of the well at the time when the FOSC discovered the discharge or determined that the well posed a substantial threat of discharge, then all documents filed with the applicable Secretary of State relating to any corporation, partnership, or limited liability company that was the last apparent owner/operator of the well. These documents shall include, but not be limited, articles of incorporation, partnership agreement, annual reports, involuntary dissolutions, etc. However, if the expense of obtaining all relevant documents exceeds $500, then only those documents relating to the formation and the dissolution of the company will be obtained.

APPENDIX TWO

PRFA
SAMPLE STATEMENT OF WORK FOR REMOVAL ACTIONS

The task list below addresses the specific removal actions that are ordered through PRFA's (Pollution Removal Funding Authorization) in support of FOSC's/OSC's. When modification or amendment to this PRFA is required, the "Amendment to Pollution Removal Funding Authorization" shall be used and a new task list shall be assigned if new tasking is identified.

The recipient agency of the PRFA shall perform the following (as identified by the appropriate check marks below):

— collect facts regarding the discharge of oil into navigable waters, to include its source and cause;
— identify potentially responsible parties (RP's);
— analyze the nature, amount, and location of discharged oil;
— analyze the probable direction and time of travel of discharged oil;
— identify pathways to human and environmental exposure;
— provide analysis of discharges posing a substantial threat to the public health or welfare of the United States;
— provide temporary/permanent stabilization prior to the mobilization of other responders;
— provide appropriate personnel, equipment, and supplies to contain and remove discharged oil from navigable waters and shoreline;
— document all site-specific costs incurred by the contractor and the recipient agency for the removal actions;
— identify active or historical facility processes or operations that may have contributed to the discharge of oil;
— prepare a sampling plan that describes the number, type, and location of samples and the type of analysis (for example, sampling and analysis plans for collection of multimedia environmental samples; petrochemical product or waste oil or crude oil);
— collect representative oil sample(s) and submit them to the U. S. Coast Guard Marine Safety Lab for appropriate analyses;
— develop site specific Health and Safety Plans (HSP's);
— review, prepare, and submit all required accounting/accounting records in accordance with the National Pollution Funds Center (NPFC) Instruction 16451, "Technical Operating Procedures for Resource Documentation under the Oil Pollution Act (OPA) of 1990";
— submit Pollution Reports (POLREPS) at periodic intervals as specified by the issuing FOSC/OSC;
— provide daily progress reports and/or consultations to the OSC/FOSC, as necessary;
— develop health and safety procedures for response activities, such as OSHA levels of protection associated with a site;
— recommend cleanup and disposal options;
— review completeness of disposal documentation, such as manifests, waste profile data, and other information;

- obtain permits from local, state or federal agencies, associated with the contractor's response activities;
- provide or arrange for site security to prevent unauthorized access of any persons or animals to preserve public safety, such as armed or unarmed security services;
- identify concerned local and elected officials;
- conduct deed and title searches as appropriate;
- conduct waste profile analysis;
- perform and advise on wildlife capture, recovery, and stabilization.

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Removal Cost Policy and Operating Procedures (CERCLA)

United States Coast Guard

National Pollution Funds Center

4200 Wilson Blvd., Suite 1000

Arlington, VA 22203-1804

CERCLA INCIDENT COST POLICY AND PROCEDURES FOR COAST GUARD FOSCs

CG FOSCs, operating under the National Contingency Plan, 40 CFR 300, Subpart E - Hazardous Substance Response, have access to SUPERFUND/CERCLA Fund on a reimbursable basis when responding to a hazardous substance incident. EPA annually provides to the CG NPFC an Inter-Agency Agreement (IAG), which supplies limited funding for CG FOSC hazardous substance removals in the coastal zone. Under an instrument of Redelegation between the Coast Guard and EPA, the Coast Guard does not perform remedial actions under CERCLA/SARA in the coastal zone. Rather, EPA Remedial Project Managers perform these.

Fund Access

CG FOSCs shall contact the NPFC and follow the procedures for access to the CERCLA fund when responding to a hazardous substance incident.

ACTIONS THAT CAN BE FUNDED UNDER CERCLA

The NCP, Subpart E, Sections 400, 405, 410, and 415 lay out a wide range of actions which CG FOSCs may take when responding to a CERCLA incident. Any action consistent with this Subpart of the NCP can be funded under CERCLA. In addition, action taken under Section 104(b) of CERCLA and emergency assistance under the Disaster Relief Act of 1974 (Stafford Act) may be funded. Finally, CERCLA may fund enforcement activities related to hazardous substance responses. However, CG FOSCs are cautioned that CERCLA, unlike the OSLTF, does not contain provisions for paying claims to injured third parties, nor does EPA authorize funding via the CG to Natural Resource Trustees conducting Natural Resource Damage Assessments.

FUNDING OTHER AGENCIES SUPPORTING THE FOSC

As when responding to oil incidents, the FOSC is encouraged to utilize other agencies and participants within the National Response System. FOSCs may fund these authorized activities using PRFAs and other incident specific funding tools that cite the CERCLA reimbursable funds provided to the FOSC by the NPFC. Some federal agencies receive funding directly from EPA for certain case specific activity. The FOSC should advise the NFPC case officer of any PRFAs issued to federal agencies to ensure that the CG is not issuing duplicate funding.

FUND MANAGEMEENT DURING THE RESPONSE

Ceiling Management and Obligation Log

The FOSC must always know the current financial status of a response. On large, complex cases the FOSC should compare the authorized ceiling against cumulative obligations daily. For other cases, this must be done for each POLREP. The FOSC must maintain a running

log of obligations issued against the ceiling, and adjust the resulting ceiling balance accordingly. This ensures that the FOSC does not commit more funds than are available against the ceiling authorized by the District or the NPFC. An obligation log (also known as a Document Control Number Log) is required by the Coast Guard for financial management of all funds.

Use of LUFS

Units that are LUFS certified shall use LUFS when processing purchases and all other obligations aid for CERCLA reimbursable funds. Enter contracts, purchase orders, PRFAs, cash purchases, TONOS, etc., in LUFS. Take care to avoid entering unit AFC-30 purchases against the CPN, or incident purchases against the unit's AFC-30 funds. When more than one LUFS terminal is used on a spill (i.e., MSO and MLC(fcp), each LUFS location will generate its own DCN log. The FOSC financial staff must then collect the data from each log. Using LUFS facilitates keeping a Document Control Number (DCN) log. If LUFS is not used, then the unit must establish and maintain a "purchases" DCN log for the incident.

Maximum Fund Limits

1) CG FOSCs may not obligate more than $250,000 for an incident without an approved Action Memorandum. (See Paragraph 6.)
2) CERCLA limits removal actions to no more than $2,000,000 or 12 months' duration. EPA may grant incident specific waivers to this requirement.

SPECIAL FOSC REQUIREMENTS FOR CERCLA INCIDENTS

Finding of Imminent and Substantial Endangerment

The CG/EPA Memoranda of Understanding and its resulting funding agreement place special requirements on the FOSC. If a response requires less than $250,000 in funding, the FOSC must document a finding of imminent and substantial endangerment. This finding may be included in the situation description section of POLREP One, and at a minimum must include:

1) the hazardous substance(s), pollutant(s), or contaminant(s) involved;
2) description of what is affected or threatened (people, animals, crops, drinking water, etc.);
3) a statement indicating that this situation presents an imminent and substantial threat to public health, welfare, or the environment;
4) description of the response action necessary to neutralize the threat.

Action Memorandum

Coast Guard FOSCs are required to prepare an Action Memorandum whenever the removal ceiling exceeds $250,000.

1) An Action Memorandum is a standard EPA document used in managing Superfund. Detailed instructions are contained in EPA publication, 0SWER DIRECTIVE 9360.3-01, Superfund Removal Procedures. A copy of this directive is found at Chapter 3, Subtab "Action Memo Guidance". If necessary, NPFC(cf) can provide a copy. Use the model Action Memorandum to define the substance of the memorandum, skipping references and sections specific to EPA.

2) Action Memorandums shall be prepared by the FOSC and forwarded via the chain of command to Commandant (G-MRO). The FOSC shall concurrently provide a copy of the Action Memorandum and subsequent endorsements to the NPFC.
3) The NPFC and COMDT (G-MRO) will coordinate approval of the Action Memorandum and any funding issues, including IAG Amendments, that accompany it.
4) When the CG has sufficient funds to cover the ceiling and additional funding is not required from EPA, COMDT (G-MRO) will approve the Action Memorandum, advise NPFC, and forward the Action Memorandum to EPA/ERD prior to the CG FOSC obligating more than $250,000.
5) When NPFC advises COMDT (G-MRO) that additional funding is required from EPA, COMDT (G-MEP) will forward the draft Action Memorandum to EPA/ERD for review and timely comment. The NPFC will coordinate the IAG Amendment that provides the additional funding with EPA/ERD. Upon concurrence by EPA/ERD with the draft Action Memorandum and the IAG increase, COMDT (G-MRO) will approve the Action Memorandum and NPFC will increase the incident ceiling to the approved amount.
6) When a CG FOSC needs to act immediately while an Action Memorandum is being prepared, advise the NPFC. EPA/ERD may extend an oral commitment of funding and/or permission for the FOSC to exceed the $250,000 obligation limit.

Resource Documentation Requirements

CG FOSCs shall follow the procedures of the NPFC Resource Documentation TOPs for all CERCLA incidents. The forms are equally applicable to CERCLA funded incidents. CG FOSCs must be guided by the fact that all CERCLA costs are reimbursable in nature. The Coast Guard pays them initially, and then must bill EPA for replenishment of the funds. Costs that are not adequately documented and reported to the NPFC, and therefore cannot be billed to EPA, must be paid by the Coast Guard from existing budgeted operating funds.

1) Within 30 days of the completion of a CERCLA response, CG FOSCs shall submit the Cost Summary Report required by the NPFC Resource Documentation TOPs.

2) Units shall retain all records associated with a CERCLA response for 10 years following submission of the Cost Summary Report to the NPFC.

NATIONAL STRIKE FORCE (NSF) GUIDANCE ON CERCLA RESPONSES WHEN SUPPORTING EPA OSCS

The NSF, when called upon as a special force to assist an EPA OSC on a CERCLA case, operates using reimbursable funding authorized by the EPA's OSC and their respective Region, provided to the Coast Guard in an Inter-Agency Agreement (IAG) negotiated between the EPA Region and the NPFC. These IAGs may be either incident specific or "blanket" for a set period of time, usually one year.

Funding procedures

Strike Teams or PIAT, upon receipt of an EPA OSC request and after determining that the strike team will respond, are authorized to issue a locally generated CERCLA Project Number (CPN) and associated ceiling. The Strike Team will promptly advise NPFC via the Strike Team Launch Message that the CPN has been issued and the amount of ceiling the EPA FOSC has authorized. If the Strike Team must obligate funds in advance of the launch message being sent, the Strike Team will notify the NPFC by message and request activation of the CPN in the Coast Guard accounting system.

NPFC(cf), upon receipt of a strike team request, will promptly verify the availability of funds. If funds are not available, the NPFC will immediately initiate negotiations with the respective EPA Region to ensure funds are made available. However, the Strike Team is authorized to continue the response while those negotiations proceed, unless the NPFC specifically directs the Strike Team that funds are not available and the CG actions in support of the EPA FOSC must be paid for in some other way.

Financial procedures

Strike teams shall not request CPNs and ceilings from the NFPC when they are supporting a CG OSC on a CERCLA response. They shall seek funding from the respective CG OSC, and use the CERCLA accounting string assigned to the CG OSC by the NPFC.

Response documentation and financial close-out

Strike Teams/PIAT shall use LUFS to record appropriate obligations and expenditures when using CERCLA reimbursable funds on a response.
Strike Teams/ PIAT shall follow the NPFC Resource Documentation TOPs in documenting the daily cost of CG personnel, equipment, and other CG provided services (e.g.: MSL) used during a response. If the EPA OSC is using EPA's RCMS system and recording these costs in RCMS, then RCMS printouts, signed by the EPA OSC, are acceptable alternative documentation. Strike Teams shall retain supporting documentation for a period of 10 years from the conclusion of the response.

Strike Teams/PIAT shall document obligations and resulting expenditures using LUFS. NFPC(cf) will provide Unbilled Expenditure Reports to allow the strike team to compare local records against official DAFIS records. Once the Strike Team has corrected all discrepancies, including submitting PES error reports when necessary, the Strike Team may endorse Unbilled Expenditure Reports and return it to NFPC(cf). This will serve as adequate documentation of all spending under the respective CPN. Strike Teams shall retain supporting documentation (purchase orders, travel claims, etc.) for a period of 10 years from the conclusion of the response.

When the response has concluded, or when extended operations last more than 6 months, the Coast Guard will bill EPA under the IAG for the costs incurred to date. The NPFC is responsible for compiling the bill and directing FINCEN to bill EPA. The Strike Team is responsible for providing NPFC the cost information supporting the bill.

For an interim bill, the NPFC will coordinate with the respective strike team a timetable for the strike team to submit cost documentation to the NFPC.

Within 90 days of the conclusion of any Strike Team support to an EPA OSC under CERCLA, the strike team shall provide a cost summary report to the NPFC for the response. The cost summary report shall have the format as specified in the NPFC Resource Documentation TOPs.

National Pollution Funds Center

U.S. Department of Homeland Security

United States Coast Guard

NPFC INSTRUCTION 16451.2

Technical Operating Procedures for Resource Documentation

under The Oil Pollution Act of 1990

JUNE 1999

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U. S. Department
of Transportation

**United States
Coast Guard**

**Director
U.S. Coast Guard
National Pollution Funds Center**

**4200 Wilson Blvd.
Suite 100
Arlington, VA 22203
Staff Symbol: cp
Phone: (202) 493-6811**

NATIONAL POLLUTION FUNDS CENTER INSTRUCTION 16451.2

Subj: Resource Documentation and Cost Documentation Technical Operating Procedures

I. PURPOSE. The enclosed Technical Operating Procedures (TOPs) for Resource Documentation under The Oil Pollution Act of 1990 (P.L. 101-380) have been developed to provide guidance to users operating as, or in support of, the Federal On-Scene Coordinator.

II. DISCUSSION.

A. The National Pollution Funds Center (NPFC) is Administrator of the Oil Spill Liability Trust Fund (OSLTF). One of the major missions of the NPFC is the recovery of costs from responsible parties for removal activities. The term "removal cost" found throughout the text of this TOPs refers to the costs of removal that are incurred after a discharge of oil has occurred or, in any case in which there is a substantial threat of a discharge of oil, the costs to prevent, minimize, or mitigate oil pollution from such an incident.

B. Attached are instructions and formats for the preparation and submission of resources and cost documentation for cost recovery.

C. COMDT (G-MOR) has indicated that it will require Coast Guard program personnel to utilize the Resource Documentation and Cost Documentation for cost recovery.

D. EPA (OERR) has adopted Resource Documentation per the CG/EPA MOU "For the Use of OSLTF" dated 12/19/96.

E. Other government and state agencies involved in removal activities that require reimbursement from the OSLTF may make use of these procedures, or request NPFC approval of alternate resource documentation. Alternate systems should cover the same elements and level of detail as the NPFC's TOPs. Additionally, requests should allow sufficient time for the NPFC to review and coordinate approval (see Chapter 3).

III. CHANGES. When necessary, changes to these TOPs will be made by the Case Management Division. They will appear as consecutively-numbered changes implemented by a NPFCNOTE.

IV. FORMS AND REPORTS. Pollution Incident Completion Report (RCN 16451-1) applies. The following forms included in enclosure (1) may be locally reproduced.

Pollution Incident Daily Resource Report (PIDRR)
Government Summary Sheet (CG-5136A)
PIDRR Government Personnel (CG-5136B)
PIDRR Government Equipment (CG-5136C)
PIDRR Government Purchases/Expendables/Travel (CG-5136D)
PIDRR Government Short Form (CG-5136E)
PIDRR Contractor Personnel (CG-5136E-1)
PIDRR Contractor Equipment (CG-5136E-2)
PIDRR Contractor/Subcontractor Materials (CG-5136E-3)
PIDRR Contractor Short Form (CG-5136E-4)
Environmental Response Ceiling Management
Incident Obligation Log (CG-5136F)
Pollution Incident Daily Resource Report (CG-5136F-1)

IV. ACTION. This Instruction and its provisions will be adhered to by all NPFC personnel.

DANIEL F. SHEEHAN
Director
National Pollution Funds Center

Encl: (1) Technical Operating Procedures for Resource Documentation and Cost Documentation Under The Oil Pollution Act of 1990 (P.L. 101-380)

Request for Comments:

The NPFC desires comments concerning these technical operating procedures. Please address comments to:

Director (CD)
National Pollution Funds Center
U.S. Coast Guard
4200 Wilson Blvd., Ste 1000
Arlington, Virginia 22203-1804

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RECORD OF CHANGES			
CHANGE NUMBER	**DATE OF CHANGE**	**DESCRIPTION**	
#1	1 JANUARY 1994	INCORPORATED	NPFC (cm)
#2	1 JANUARY 1995	INCORPORATED	NPFC (cm)
#3	1 JUNE 1995	INCORPORATED	NPFC (cm)
#4	1 JUNE 1996	INCORPORATED	NPFC (cm)
#5	1 NOVEMBER 1998	INCORPORATED	NPFC (cm)
#6	16 MARCH 2000	INCORPORATED	NPFC (cm)
#7	31 JANUARY 2003	Corrected CG5136A form (p. 3-147)	
#8	23 APRIL 2003	Added SF 1081 (Chapter 9) & removed the sample Non-Federal PRFA (Chapter 5)	
#9	17 FEBRUARY 2004	Revised PRFA Amendment (Chapter 8)	
#10	26 FEBRUARY 2007	Added Sample PRFA SOW at the end of Chapter 8	
#11	1 MARCH 2007	Added Cost Doc Checklist as Appendix A	
#12	27 MARCH 2007	PRFA Doc Type changed to 34 (pp. 3-128, 169)	
#13	3 MAY 2007	Updated Table of Contents, Introduction, & How to Use This Guide	
		Updated CG5136 forms (chapters 1 & 6) & page 2 of the Incident Report & Transmittal (chapter 5)	
		Added flowchart of how to enter PRFAs into FPD (Chapter 8)	

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Technical Operating Procedures
for Resource Documentation

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INTRODUCTION

A. The procedures outlined in this manual have been updated to reflect changes recommended from the field and improved business practices at the NPFC. These procedures cover ceiling management and resource documentation recommended for use by the Federal On Scene Coordinator (FOSC).

B. These procedures implement current cost documentation requirements that provide a system of accounting to support proper payment, case ceiling management, and recovery of costs incurred in removal activities.

C. Generally, responsible parties are held liable for all damages and costs incurred as a result of an oil pollution incident and/or threat. In order to recover costs, expenses must be properly documented to provide the responsible party with an accurate accounting of payments due. Furthermore, if litigation is required, documentation must be admissible in federal district courts. The procedures outlined are designed to meet such requirements.

D. Information collected by field units should be delivered to the NPFC in a timely manner. The guidance in this TOPs provides basic documentation requirements. A Financial Summary Report should be submitted by the Coast Guard FOSC within 120 days after the removal activities are completed (120 days from contractor invoice date for EPA FOSCs). When unusual circumstances prevent collecting all cost documentation, the FOSC should submit a partial report, and forward remaining documentation to the NPFC case officer within an agreed-upon schedule.

E. During the course of a removal operation the FOSC should track expenses and project costs to facilitate judgments on proposed actions and additional funding. In response to numerous requests from field units, the enclosed procedures provide an effective method to maintain this system. NPFC case officers are available to address specific case questions that may not be covered in these procedures. In addition, NPFC can deploy a case team, upon request by the FOSC, when an incident exceeds existing FOSC capabilities.

F. Any alternative documentation package requires NPFC review and approval prior to acceptance for use.

G. **Electronic Forms**. All forms mentioned in this manual are available from the NPFC Web site at www.uscg.mil/npfc (click on **Home > Response > Cost Documentation**). In most cases, the forms can be completed electronically.

Contact your Regional Manager for more information.

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HOW TO USE THIS GUIDE

A. The main purpose of this manual is to assist the FOSC in documenting and reporting resources associated with removal activity. **All forms in this manual can be locally reproduced**.

1. This manual provides detailed guidance and standard forms to keep track of, report, and document the use of removal resources. Considering the potential for litigation with the responsible party, supporting documentation must be able to withstand judicial review. Therefore, it is imperative that the FOSC prepare accurate and complete cost documentation consistent with this guidance.

2. **Ceiling Management** procedures and forms for use by an FOSC while the response is ongoing are discussed in Chapter 1. Use these forms or existing unit obligation logs when tracking the use of funds assigned under a FPN, whether the case is an oil removal (OSLTF Emergency Fund) or a hazardous materials response (CERCLA/SUPERFUND).

3. The NPFC has developed a three level system for recording and reporting costs under a FPN. The FOSC determines the appropriate level based on parameters given in Chapter 2. Note that the transition from one level to another is not always clear. The FOSC may shift from one level to a greater or lower level depending on the complexity of the case. The documentation required for each level is also discussed in Chapter 2.

4. An overview of the elements of the **FOSC's Financial Summary Report** are given in Chapter 4. This overview is a good way to see all the components of this report. An abbreviated Financial Report is now available for mystery spills under $25,000.00; see Chapter 4 for more details.

5. A detailed description of information entry requirements for each of the five separate forms comprising the **Pollution Incident Report and Transmittal** can be found in Chapter 5. Details are also given on the types of existing reports which may be attached in lieu of duplicating information.

6. Chapter 6 provides descriptions of **Pollution Incident Daily Resource Reports**. The type of information that should be collected from contractors, Coast Guard units and other government agencies is explained. This is where information on any of the eight standard forms for documenting resource use is located. The Coast Guard forms are available in electronic form from the NPFC's Web site (www.uscg.mil/npfc, click on **Spill Response Funding > Cost Documentation > CG-5136 Forms**).

7. **Coast Guard/EPA Purchases of Equipment**. The OSLTF provides a funding mechanism for the FOSC to utilize whatever resources are necessary to mitigate a pollution discharge. If resources cannot be obtained through leasing or renting, and

a purchase is required to obtain specific resources, the FOSC shall follow guidelines addressed in Chapter 7 for documenting all purchases using funds from the OSLTF.

8. A key document for use by non-Coast Guard agencies working for the FOSC is the **Pollution Removal Funding Authorization (PRFA)**. A sample form with detailed instructions for completion can be found in Chapter 8.

   Note: It is important to follow directions for completing the accounting data section of the PRFA to ensure that an agency prepares its billing properly. Each federal agency must submit a request for reimbursement using SF-1080/1081, which is explained in Chapter 9.

9. Procedures for the **Reimbursement of Coast Guard units** for expenses incurred during a pollution incident are discussed in Chapter 10.

10. **Appendix A: Case/Cost Documentation Checklist** can serve as a job aide to help FOSCs collect, prepare, and finalize their cost documentation packages for submission to the NPFC.

B. Please forward any recommendations for improving these chapters to the NPFC (Cs).

Chapter 1

CEILING MANAGEMENT

CHAPTER 1 - CEILING MANAGEMENT

A. GENERAL. The FOSC is the key individual who must manage the funds available for oil removal or hazardous materials incident response. Within the Coast Guard, great efforts are made to provide funds to the FOSC as quickly as possible. However, this flexibility and delegated authority demand that the FOSC exercise concomitant responsibility for effective ceiling management while the incident is ongoing.

1. Ceiling management is akin to keeping a checkbook. The ceiling assigned at the start of the case can be considered to be a deposit. As the FOSC issues contracts, enters into removal authorizations, assigns travel orders, or otherwise makes operational decisions that involve the use of funds, the ceiling balance is lowered accordingly. If the FOSC reaches the ceiling and the removal continues, he or she must request an increase in the ceiling, which is "deposited", and the process is continued. Under no circumstances can the FOSC obligate funds or incur costs in excess of the ceiling authorized. The FOSC must include two key financial measures in all POLREPs. They are:

   1) The Approved Project Ceiling; and
   2) Cumulative Obligations to date.

2. There are **two general categories of obligation entries within Ceiling Management**. The first is for contracts, pollution removal funding authorizations (PRFAs), travel orders (TONOs), direct expenses, etc., which involve an obligation (by the FOSC or a contracting officer) which will eventually be paid by the CG Finance Center. This type of obligation results in either a LUFS entry or the completion of a paper form (Brown Sheet, Removal Authorization, Travel Order, SF-44, etc.). These obligations (Type I Obligations) are charged against the authorized ceiling.

3. The second category (Type II Obligations) is a change from past Coast Guard policy and practice. FOSCs are now required to record, as an obligation against the ceiling, the anticipated cost of Coast Guard resources utilized during the incident (personnel, vehicles, aircraft, boats, cutters, and Strike Team pollution equipment). While these anticipated costs do not result in Brown Sheets, Removal Authorizations, Travel Orders, or similar "purchase" documents tracked by the CG Finance Center, they represent costs that (for a major incident or series of major incidents) the OSLTF may reimburse to the Coast Guard's operating funds. Type II obligations should be based on rates published in the Coast Guard Standard Rates Instruction (COMDTINST 7310.1 Series). **Remember, these obligations may be estimates - their purpose is to keep the FOSC apprised of how much of the ceiling remains**.

4. The "Cumulative Obligations to Date" which the FOSC must include in the POLREP is the total of Type I and Type II obligations. We recommend the FOSC record obligations, whether Type I or Type II, against the FPN Ceiling on a daily basis. However, the FOSC may exercise flexibility as to when this information is recorded against the ceiling, so long as the obligation is recorded before the resources are used**.**

5. The differences between ceiling management and cost documentation are timing and precision (not to be confused with accuracy). Ceiling management is done when a decision is made – before the action is taken (what is planned) and the precise cost of the action is

known. Cost documentation takes place as soon as precise costs are known (actuals), which is usually after the action has taken place.

> For example, a contract is issued before any work takes place, and thus must be an estimate, expressed in the contract as a "Not to Exceed" amount. The "Not to Exceed" amount is recorded as an obligation against the FPN ceiling. However, the exact cost of the contract on day two is only known at the end of day two or later - this is the amount that is recorded in the cost documentation (see Chapter 6) for day two. In this example, note that costs for the contract on day two are not recorded against the ceiling again.

6. Both ceiling management and cost documentation are vital and complementary, but one cannot replace the other. Ceiling management allows the FOSC to know, as the case progresses, what funds have been "promised" to parties working alongside the FOSC on removal. Cost documentation ensures that the precise amount spent, or exact resources used are accurately recorded as soon as they are known, so they can be billed to the responsible party at a later date.

7. **POLLUTION REPORTS (POLREPS) AND FPN MANAGEMENT.** All POLREPs and other messages related to an incident where the Fund has been accessed shall include the OSC, NPFC, FINCEN, and cognizant MLC contracting branch as info addees, in addition to current reporting requirements.

   a. Upon notification by the OSC that no funding has been expended against an FPN for response/removal, the FOSC cancels the FPN via CANAPS and the ceiling amount will be reduced to zero. If canceled FPNs currently exist at a district, the canceled numbers shall not be reissued.

   b. The FOSC ensures that obligations from the Fund remain within the ceiling and, if necessary, promptly requests increased ceiling through CANAPS.

B. CG-5136F - CEILING MANAGEMENT AND INCIDENT OBLIGATION LOG

1. General Comments: This form was designed to assist the FOSC in monitoring the Authorized Project Ceiling and compute Cumulative Obligations against an FPN during an incident. It can also be used to provide the amount of ceiling remaining at any point in the incident. The FOSC must use it or a similar, local obligation log already developed and in use by the unit. No other standard obligation log or form has been promulgated Coast Guard wide. This form was also designed to comply with the broad standards included in current contracting and accounting requirements.

2. Use this form to record changes to the ceiling and obligations the FOSC incurred during an entire spill. It is not a daily form. Enter obligations as the FOSC orders the actions taken. If more than one page is needed, continue on as many pages as necessary until the response is over, and no more funds or resources are being used.

   a. CEILING CHANGES: Enter the date, and the amount of the increase or decrease obtained through CANAPS. Record the Approved Project Ceiling at the top/right of the form, and report on the next POLREP. The computerized form will compute the New Approved Ceiling and enter it in all appropriate blocks

b. CODES: Cases for Type I Obligations are shown in the left column, Type II obligations are shown in the right column. Use whichever applies.

c. DESCRIPTION: For a Type I Obligation, include the Document Control Number (DCN) of the obligation. For a Type II Obligation of more than one day, note the period of time the obligation covers. If the FOSC prefers to minimize entering a large number of small obligations (such as local purchases, TONOs, etc.) on this form, enter the estimated amount for the type of obligation, and then record the individual entries on the appropriate worksheet. (Worksheet description/instructions follow this page.)

d. CODE: Note appropriate code on form.

e. OBLIGATED: List obligations incurred.

f. CUMULATIVE OBLIGATIONS: Sum all the obligations entered to date for the incident. Report along with the Approved Project Ceiling.

g. CEILING REMAINING: To compute the Ceiling Remaining, subtract Cumulative Obligations from the Approved Project Ceiling. This is how much is available should the FOSC need to order additional actions to respond to the incident.

DEPARTMENT OF HOMELAND SECURITY U.S. COAST GUARD CG-5136F (06-04)	**ENVIRONMENTAL RESPONSE CEILING MANAGEMENT**	CEILING MANAGEMENT & INCIDENT OBLIGATION LOG (RCN-16451-1)

PAGE OF FOSC: _____

FEDERAL PROJ.#_____ APPROVED PROJECT CEILING: _____

(REPORT ON POLREP)

CEILING CHANGES	DATE	EXISTING CEILING	INCREASE (DECREASE)	NEW APPROVED CEILING

DESCRIPTION: Identify what the obligation is for.

Activity Requiring the Obligation	CODE		CODE
COMMERCIAL CONTRACTS	C	STANDARD RATES - PERSONNEL	SR-P
REMOVAL AUTHORIZATIONS	R	STANDARD RATES - VEHICLES	SR-V
TRAVEL AND RESERVE ORDERS	T	STANDARD RATES - BOATS	SR-B
OSC APPROVED PURCHASES	P	STANDARD RATES - AIRCRAFT	SR-A
EQUIPMENT EXPENSES	E	STANDARD RATES - CUTTERS	SR-C
		STANDARD RATES - POLLUTION EQUIP.	SR-E

DESCRIPTION	CODE	OBLIGATED	CUMULATIVE OBLIGATIONS	CEILING REMAINING
FOR PAPER FORM DATA FROM PRECEEDING PAGE:				

C. DAILY RECORD WORKSHEETS (VARIOUS).

1. This is a simple worksheet with four variations, depending on the FOSC's activities. Its use is entirely optional; experience over many years has demonstrated the usefulness of this kind of log. FOSCs are encouraged to use this whenever they want to know what is left on a contract.

2. When an obligation is approved and signed by the FOSC, it is recorded on CG-5136F. This amount is then entered on the worksheet in the blank labeled "Contract Amount", "Removal Authorization Amount", or "Obligated Amount".

3. As costs are reported by the contractor, TONOs issued, or small purchases made, record each item and the date it occurred on a separate line. Use the far right column to monitor how much of the "Obligation" remains. If that figure approaches zero before the FOSC is finished with the removal, then make another Obligation and record on the CG-5136F (ensuring there's enough Approved Project Ceiling), and add the increase onto the existing worksheet or start a new worksheet.

4. For this worksheet to serve its intended purpose, the only thing the FOSC must do is **record the activity as it happens**.

5. An advantage of this worksheet is that it does not have to be "totaled" every day to provide "Total Cumulative Obligations" for the POLREP. Attentive scanning by the FOSC will ensure that every necessary entry has been made, and that total entries do not exceed the "Obligated Amount." Remember - the "Obligated Amount" has already been recorded on the CG-5136F, and thus reported in the "Total Cumulative Obligations" for the incident.

DAILY RECORD WORKSHEET - CONTRACTS

This optional worksheet is to help the OSC keep track of costs covered by Contracts.

OSC: _____ FPN: _____

Contract with: Contract Amount: _____

(Record here and on Ceiling Management Form CG5136F when contract begins)

DESCRIPTION	DATE	COST REPORTED BY CONTRACTOR	DOLLARS REMAINING ON CONTRACT

DAILY RECORD WORKSHEET - REMOVAL AUTHORIZATION

This optional worksheet is to help the OSC
keep track of costs covered by Removal Authorizations
With other Federal Agencies, States, or Indian Tribes.

OSC:_____ FPN: _____

Removal Authorization With: Removal Authorization Amount: _____

(Record here and on Ceiling Management Form CG5136F when Authorization Issued)

DESCRIPTION	DATE	COST REPORTED BY AGENCY	DOLLARS REMAINING ON AUTHORIZATION

DAILY RECORD WORKSHEET - GENERAL
This optional worksheet is to help the OSC
keep track of costs incurred in an Obligation
that has already been logged against the Approved Ceiling

OSC:_____ FPN: _____
Obligation For: Obligation Amount: _____

(Record here and on Ceiling Management Form CG5136F when Authorization Issued)

DESCRIPTION	DATE	COST REPORTED	DOLLARS REMAINING ON AUTHORIZATION

DAILY RECORD WORKSHEET - TRAVEL AND RESERVE ORDERS ISSUED
This optional worksheet is to help the OSC
keep track of TONOS issued and their estimated amounts,
Compared with the amount obligated against the authorized Ceiling.

OSC _____ FPN _____

Travel Authorized For: Obligation Amount _____

(Record here and on Ceiling Management Form CG5136F when Travel Authorized)

LAST NAME, INITIAL, RANK	TONO	DATE	ESTIMATED COST	DOLLARS REMAINING ON OBLIGATION

FOR PAPER FORM
DATA FOR NEXT PAGE:

D. CG-5136F-1 - CEILING MANAGEMENT AND INCIDENT OBLIGATION LOG (SHORT FORM)

1. GENERAL COMMENTS**:** This simplified form was designed to assist the FOSC in monitoring the authorized project ceiling and compute cumulative obligations against an FPN during a Level I spill. It will provide the amount of the authorized project ceiling remaining at any point in the incident. In addition, it includes a section the FOSC may use to track the "draw down" of obligations such as contracts or removal authorizations, the same function served as the worksheets discussed earlier. The FOSC may use this form or a similar local obligation log already developed and in use by the unit. No standard obligation log or form has been promulgated Coast Guard wide. This form was designed to comply with the broad standards included in current contracting and accounting requirements.

   a. FOSCs are advised to use this only for Level I cases - use in more complicated cases will require more documentation than the regular CG-5136F.

2. THIS IS A DAILY FORM. Use the form entitled, "Ceiling Changes," to record changes to the ceiling and the form entitled, "Obligations Against Ceiling," to record obligations the FOSC incurred each day. Enter obligations as the FOSC orders the actions taken, then record the obligation in the bottom part of the form entitled, "Daily Costs Summary."

   a. FORM LIMITATIONS: This form can accept up to two ceiling increases, two contracts, two Pollution Removal Funding Authorizations (PRFA), and two Coast Guard units (including the FOSC) over the duration of the spill. If more than one page is needed each day to track this activity, then the FOSC should use the standard CG-5136F and worksheets, as needed.

   b. CEILING CHANGES: Enter the date, and the amount of the increase or decrease obtained through CANAPS. Record the approved project ceiling at the top/right of the form, and report on the next POLREP. The computerized form will compute the new approved ceiling and enter it in all appropriate blocks

   c. OBLIGATIONS AGAINST CEILING: Enter who the obligation is to and what it's for, and include the Document Control Number (DCN) of the obligation. For "Government Personnel" and "Government Equipment" enter the unit's name; if the obligation is for more than one day, note the period of time the obligation covers. Finally, enter the respective identity and obligation amount under the "Daily Costs Summary."

   d. CUMULATIVE OBLIGATIONS**:** Sum all the obligations entered so far for the incident, and report along with the approved project ceiling.

   e. CEILING REMAINING: To compute the ceiling remaining, subtract cumulative obligations from the approved project ceiling. This is how much is available should the FOSC need to order additional action to respond to an incident.

   f. DAILY COSTS SUMMARY: This section is designed to give the FOSC a quick, snapshot view of how obligations are drawn down as the case progresses; and requires daily updating. Each day, record the daily reported costs (pulled from daily resource report sheets), and add to the previous day's cumulative total. The resulting "cumulative total" for the project, when compared to the "obligation," provides the FOSC with a quick review of whether the costs for individual obligations are close to or exceeding the "obligation" against the approved project ceiling.

DEPARTMENT OF HOMELAND SECURITY U.S. Coast Guard CG 5136F-1 (06-04)	POLLUTION INCIDENT DAILY RESOURCE REPORT	CEILING MANAGEMENT & INCIDENT OBLIGATION LOG SHORT FORM (RCN-16451-1)
DATE: FEDERAL PROJECT NUMBER: _____	FOSC: APPROVED PROJECT CEILING	_____ (REPORT ON POLREP)

A. CEILING CHANGES

DATE	EXISTING CEILING	INCREASE (DECREASE)	NEW APPROVED CEILING
_____	_____		
_____	_____		

B. OBLIGATIONS AGAINST CEILING

CONTRACTS	DATE	OBLIGATED	CUMULATIVE OBLIGATIONS	CEILING REMAINING
REMOVAL AUTHORIZATIONS				
TRAVEL/RESERVE ORDERS				
PURCHASES				
GOVERNMENT PERSONNEL				
GOVERNMENT EQUIPMENT				
TOTALS FOR THIS PAGE				

C. DAILY COSTS SUMMARY

CONTRACTS	OBLIGATION	TODAY'S COSTS	PREVIOUS DAY'S CUMULATIVE TOTAL	CUMULATIVE TOTAL FOR PROJECT
NAME:				
NAME:				
REMOVAL AUTHORIZATIONS				
NAME:				
NAME:				
TRAVEL/RESERVE ORDERS				
ORG:				
ORG:				
PURCHASE				
ITEM:				
ITEM:				
GOVERNMENT PERSONNEL				
ORG:				
ORG:				
GOVERNMENT EQUIPMENT				
ORG:				
ORG:				
TOTALS				

This form is available as an Excel spreadsheet from the NPFC Web site or as a fillable form from the USCG Adobe Forms.

Chapter 2

THREE LEVELS OF RESPONSE

&

DOCUMENTATION FLOW

CHAPTER 2 - LEVELS OF CASES & DOCUMENTATION FLOW

A. Based on historical data, a three level system was designed to help determine the complexity of a case and its required resource documentation. Some factors for determining the level of a spill are given below. The FOSC is considered to be the best judge of the factors involved in an event and is expected to select the level of documentation appropriate for the circumstances.

1. Level I - Routine:

Routine incidents represent approximately 85% of all oil incidents. A routine incident is one where:

a. Total removal costs to the government will not exceed $50,000;
b. Removal activities will probably be completed within one to two weeks;
c. Removal activities are localized;
d. Primarily unit resources are involved.

Documentation from all resources is submitted to the FOSC at completion of removal activities.

2. Level II - Moderately Complex:

Level II cases represent 10-15% of all oil incidents. A moderately complex incident is one where:

a. Total removal costs are between $50,000 and $200,000;
b. Removal activities take place in several locations;
c. There are several external resources such as a strike team, a state agency, and other government units involved; and
d. Removal activities will take longer than two weeks to complete.

Documentation from all resources is submitted to the FOSC as often as practical (daily if possible) until final removal activities are completed.

3. Level III - Significantly Complex:

Level III cases typically represent less than 5% of all oil incidents. A significantly complex incident is one where:

a. Total removal costs are greater than $200,000;
b. Removal activities involve numerous contractors;
c. Removal activities take place at several locations; and
d. As in Level II, there are several external resources involved.

Documentation is submitted as in Level II.

DOCUMENTATION FLOW - FOR ALL LEVELS

B. FOSC ACTIONS:

1. Responsibilities/Document Flow:

a. Include removal ceiling information in each POLREP for:

1. The Approved Project Ceiling; and
2. Total Cumulative Obligations against the ceiling (See Chapter 1).

b. Complete the Incident Report when removal activities are finished (See Chapter 5).

c. Complete the Daily Resource Report (Dailies) covering unit resources involved 2in removal activities (See Chapter 6).

d. Collect Daily Resource Reports and official records (i.e., aircraft blue sheets and cutter navigation logs) from other Coast Guard units.

e. Issue "Pollution Removal Funding Authorizations" (PRFA) to other government agencies for removal activities (See Chapter 8).

f. Review the SF-1080/1081 and Daily Resource Reports submitted by other government agencies, and certify that services were authorized and completed. (See Chapter 8). Documentation should be provided that supports a clear audit trail for reimbursement. The FOSC should send this documentation to the NPFC where it will be reviewed for continuity and propriety. The NPFC may return incomplete submittals to other government agencies.

g. Review contractor invoices against Daily Resource Reports, and certify that services were authorized and completed. The FOSC:

(1) Sends the "original" invoice with daily reports to the appropriate contracting officer (MLCLANT or MLCPAC);
(2) Sends a copy of certified invoice to the NPFC **(Do not send contractor dailies to the NPFC)**; and
(3) Keeps a copy for the unit's file.

The FOSC is not required to validate the invoice(s) against the BOA to verify personnel, equipment, etc.

h. Resolve any discrepancies between government agencies and contractors prior to submitting documentation.

i. Consolidate information and submit a Financial Summary Report to the NPFC (See Chapter 4).

2. Ceiling Management Requirements:

   a. For Ceiling Management, use CG Form CG-5136F, CG-5136F-1, or a local log.

3. Resource Documentation Requirements:

   a. CG Form CG-5136A through 5136E

C. CONTRACTOR ACTIONS:

1. Responsibilities/Document Flow:

   a. Complete Daily Resource Reports for removal activities.
   b. Prepare an invoice supported by Daily Resource Reports upon completion of removal activities or in at least 30 day periods (for long term removal activities) to the FOSC.

2. Resource Documentation Requirements:

   a. Use CG-5136E (1-4).
   b. Use in-house invoices to bill for removal activities prepared from the forms mentioned above.

D. OTHER GOVERNMENT AGENCIES ACTIONS:

1. Responsibilities/Document Flow:

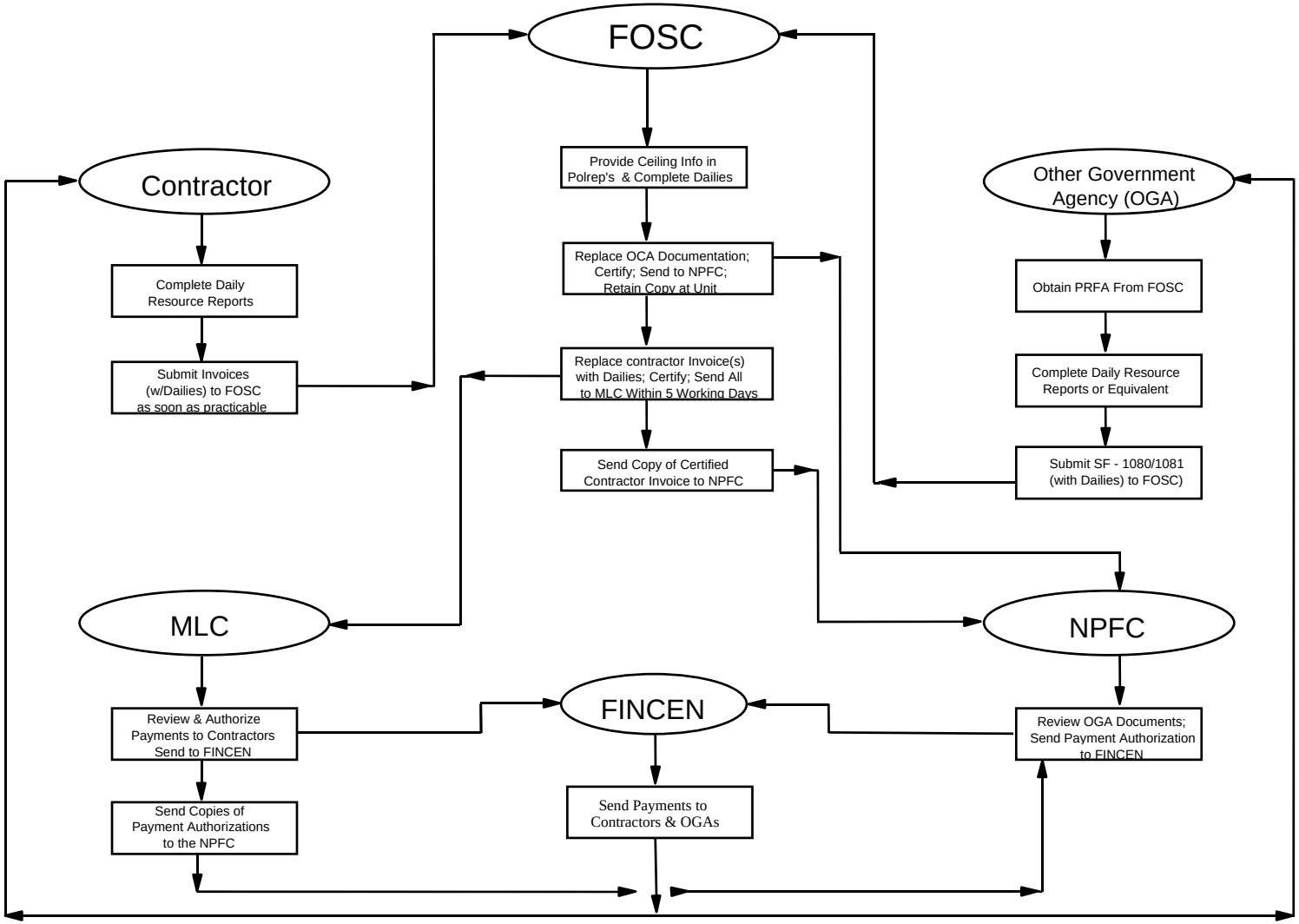
   a. Obtain "Pollution Removal Funding Authorization" (PRFA) from FOSC for removal activities (See Chapter 8).
   b. Maintain Daily Resource Reports (Dailies) or equivalent forms approved by the NPFC, and submit to the FOSC upon completion of removal activities.
   c. Government agencies should prepare a SF-1080/1081 based on information gathered from Daily Resource Reports. This task is usually handled by the agency's accounting office. Documentation should be organized that provides a clear audit trail for reimbursement. (The NPFC may return incomplete submittals to other government agencies for corrective action.)
   d. Send the SF-1080/1081 with Daily Resource Reports as required in the PRFA within 30 days after completion of removal activities to the FOSC.
   e. Identify a point of contact on resource documentation for discrepancy resolution.

2. Resource Documentation Requirements:

   a. Use one of the following: CG-5136A-E, or another equivalent form approved by the NPFC.
   b. Government agencies should use SF-1080/1081 to request reimbursement for removal costs, attaching copies of Daily Resource Reports.

Documentation Flow

The following flowchart shows the documentation flow for Levels I, II, and III incidents. See text in preceding pages for detailed information.



Note: LEVEL 1 documentation should be submitted at the completion of removal activities.
LEVEL II and II documentation should be submitted as soon as practicable (at least in 30 day cycles)

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Chapter 3

METHODS OF DOCUMENTATION

CHAPTER 3 - METHODS OF DOCUMENTATION

A. THERE ARE TWO METHODS OF DOCUMENTING COSTS:

1. The Pollution Incident Daily Resource Reporting System, as outlined in this guide, or

2. A NPFC Approved Alternate Record Keeping System.

B. POLLUTION INCIDENT DAILY RESOURCE REPORTING SYSTEM

1. This is a series of forms, instructions, and submission schedules used to document costs associated with removal activities under OPA. It is based on the use of standard rates.

2. Contractors - use rates in the Basic Ordering Agreement or as agreed to with a contracting Officer .

3. Coast Guard units - use standard rates found in Commandant Instruction 7310.1 (Series).

4. Other Government agencies - may have a publication listing standard rates to be used for all of their resources. The agency should provide this to the FOSC, if possible.

C. AN APPROVED ALTERNATE RECORD KEEPING SYSTEM FOR FEDERAL, STATES AND OTHER AGENCIES

1. An existing, alternate system for documenting activities and costs associated with removal under OPA. Alternative systems will be approved by the NPFC on a case-by-case basis. Proposed systems will be addressed by the NPFC in a timely fashion.

2. Alternative systems are generally preexisting systems designed by government agencies which do not use standard rates.

D. Resource documentation identifies costs as personnel, equipment, or services. It also includes brief descriptions of actions taken and their justification. Original documentation is preferred for cost recovery, and should not be retyped, even when handwritten.

E. Alternate systems must be approved by NPFC prior to submitting forms for a specific incident.

F. The NPFC will investigate the best method of interfacing with Oracle as soon as all units have transferred to SWSIII.

Chapter 4

FOSC'S FINANCIAL SUMMARY REPORT

CHAPTER 4 - FOSC'S FINANCIAL SUMMARY REPORT

A. **Financial Summary Report**. This report consists of several components that address all the necessary information required for cost recovery. This report should be **submitted within 120 days upon completion of final removal activities**. There is "**no cover letter required**" for this report, if the following components are enclosed in the order listed.

1. **Incident Report & Transmittal** - This is considered the cover letter for the report. The FOSC signs the bottom of this form ensuring all applicable enclosures are attached. See Chapter 5 of this guide for more detailed information.

2. **FOSC Pollution Incident Daily Resource Reports** - If other Coast Guard resources are used (e.g. air station, small boat units), these units should provide copies of the official records/logs (CG-4377: aircraft flight records, cutter logs, etc.) to the FOSC. The FOSC is ultimately responsible for obtaining these supporting documents as part of the Financial Summary Report.

3. **Copy of Certified Contractor Invoices** - If the contractor has not submitted all the invoices, submit the Financial Summary Report with the exceptions noted. Forward copies of the certified invoices when they are received. **Send the original certified invoices (with Daily Resource Reports) to the respective Contracting Officer. Do not send the contractor's dailies to the NPFC.**

4. **Other Government Agencies Resource Documentation** - When a Federal Agency is involved, this agency should submit an SF-1080/1081 with invoices, Daily Resource Reports, and Pollution Removal Funding Authorization (PRFA) to the FOSC. If the agency has not submitted the SF-1080/1081, submit the Financial Summary Report with the PRFA. The SF-1080/1081 and supporting documentation should be forwarded when received.

5. **Out-of-pocket expenses** - If the unit incurred any out-of-pocket expenses, these expenses must be substantiated by attached documentation providing a clear audit trail, and marked as an "Out of Pocket Expense."

***NOTE:** If a case is expected to last for several months, an interim report should be submitted at 30 day intervals. Each interim report should contain all original documentation up to the date being submitted and in the format specified above. However, submissions from EPA are required six months from initiation of the removal action and every six months thereafter until site completion. The FOSC must assemble an interim cost documentation package and forward copies to the CFMC and NPFC. The cost documentation package should contain all of the elements described in this document.

B. **Abbreviated FOSC Financial Report**. For incidents with no identifiable responsible party (RP) and costs do not exceed $25,000, in lieu of the regular report required above, FOSCs can file an Abbreviated Financial Report.

1. This report format cannot be used if:

    a. There is an identified RP; or
    b. The total cost of the case exceeds $25,000; or,
    c. the response was funded by CERCLA (a CPN).

2. The content of the Abbreviated Financial Report is as follows.

Incident Summary

This section of the Abbreviated Financial report provides a "thumbnail" summary of the response, including the date and location of the response.

Personnel

This section summarizes the personnel employed during the response. It includes the pay grade and total hours worked by each person.

Personnel hours are reported in half-hours, do not track time to any finer level of detail. Costs or totals do not have to be provided.

Equipment

This section summarizes the equipment employed during the response. It includes a description and identifying information (license plate number, GSA vehicle type code, tail number etc.) and total hours it was operated.

Equipment hours are reported in half-hours, do not track time any finer level of detail. Costs or totals do not have to be provided.

Obligations

This section summarizes the obligations made during the response -- Contractors, PRFAs, Purchases, etc. It includes the type of obligation, the name of the vendor, the Document Control Number (DCN) assigned the amount of the obligation the estimated cost is sufficient) and a short description.

3. For Coast Guard FOSC's, NPFC will use DAFIS, contacts with the cognizant contracting officers and finance centers to confirm actual paid amounts. For EPA FOSC's, a SCORPIOS financial summary should be provided. With this information, the NPFC Case Officer will calculate the total cost for the incident. No further financial report is required.

Incident Summary:

On 02JAN01 oil was discovered in the NW cover of No-Name Harbor, AK.

No RP could be located.

Personnel:

02	6 Hours
E5	6 Hours

Equipment:

41 Ft UTB	2 Hours
Lt. Truck (GSA: 4100)	1 Day
Lt. Truck (GSA: 4100)	50 Miles

Obligations:

Contractor BOA OSRO	Riedel-Peterson	24 95 23 5 H YE 012	$2,023.14
PRFA Assisted in Response	State of Alaska	34 95 33 5 H YE 013	$500.00
Purchase 4 sample kits	Spill Supplies Inc	23 95 33 5 H YE 014	$75.00
Analysis 6 samples	USCG Marine Safety Lab	*none*	$600.00

Example of an Abbreviated Financial Report

4. Forwarding the Report. The Abbreviated Financial Report may be faxed, mailed, or e-mailed to the NPFC Case Officer, or included in the final incident POLREP.

Chapter 5

POLLUTION INCIDENT REPORT

AND

TRANSMITTAL

CHAPTER 5 - INCIDENT REPORT AND TRANSMITTAL

A. The Incident Report serves two purposes: (1) it provides necessary case-related information on the pollution incident, and (2) it serves as a transmittal form to forward the FOSC's Financial Summary Report to the NPFC. The FOSC should prepare and submit this report and appropriate enclosures within 120 days after completion of removal activities.

SUMMARY

Instructions on completing Page 1

1. **Date:** Insert the date report is completed.
2. **From:** Insert the unit's name.
3. **To:** Director, National Pollution Funds Center.
4. **Subj:** Insert the FPN/CPN/DPN.

Incident Information

5. **FPN/CPN/DPN:** Insert the Federal, CERCLA, or Disaster Project Number.
6. **MISLE Information**: Enter the "MC" and "MV" numbers.
7. **Date of Incident:** Insert the date the incident occurred, was reported, or discovered.
8. **Date OPA/CERCLA Action Started:** Insert the date unit commenced operations.
9. **Date OPA/CERCLA Actions Completed:** Insert the date unit concluded removal operations.
10. **Location of Incident:** Provide the location of the incident, for example, insert the Saint Lawrence River, off Alexandria Bay, New York.
11. **Material Involved:** Insert the type of oil(s) or hazardous substance(s) discharged or that posed a substantial threat of discharge.
12. **Quantity Discharged:** Insert the amount of oil or hazardous substance discharged (best estimate).
13. **Was There A Substantial Threat:** Check the appropriate block.
14. **Water or Resource Affected:** Enter body of water affected by the discharge.
15. **Primary Unit Contact and phone number:** Insert the name of person designated with the responsibility to complete documentation.

Fund Information

16. **Total Authorized Ceiling:** Insert the dollar amount of the final removal ceiling for this incident.
17. **Total Coast Guard Costs:** Insert the total dollar amount of all Coast Guard costs.
18. **Total Contractor Costs:** Insert the total dollar amount of all contractor costs.
19. **Total OGA Costs:** Insert the total dollar amount of all other government agencies' costs.

Source Designation

20. **Has Source Been Identified:** Check the appropriate block.
21. **Has Source Been Designated:** Check the appropriate block.

Signature Block

22. **Submitted By:** Signature of person completing report.
23. **Approved By:** Signature of Federal On-Scene Coordinator or his designated representative.

Enclosures

24. **Complete as appropriate:** List all other applicable enclosures attached to the report.

Incident Report and Transmittal Page 1

Date: _____

From: _____

To: **Director, National Pollution Funds Center**

Subj: Forwarding of Financial Summary Report for FPN/CPN/DPN: _____

Incident Information:

Federal Project No. / CERCLA Case No.: _____

MISLE Info: MC _____; **MV** _____

Date of Incident: _____ **Date OPA/CERCLA Actions started:** _____

Date OPA/CERCLA Actions completed: _____

Location of Incident: _____

_____

Material Involved: _____ **Quantity Discharged:** _____

Was there a Substantial Threat? _____ **Yes** _____ **No**

Water or Resource Affected: _____

(Primary Unit Contact) _____**(Telephone No)** _____

Fund Information

Total Authorized Ceiling: $_____

Total Coast Guard Costs: $_____

Total Contractor Costs: $_____

Total OGA Costs: $_____

Source Designation Information

Has source been identified? _____ **Yes** _____ **No** **If Yes, attach "Page 2 Source Information"**

Has source been designated? _____ **Yes** _____ **No**

FOSC's Approval

Submitted By: _____ ***Approved By:***

_____

(FOSC's Signature or Designated Rep)

Enclosures:

__) **Incident Report (Page 2)**

__) _____

__) _____

__) _____

__) _____

__) _____

__) _____

__) _____

B. HOW TO COMPLETE PAGE 2 - SOURCE INFORMATION

1. **Identification - Vessel.** Complete this section when the source of the discharge is a vessel.
   Vessel Name: Insert the name of the vessel involved in an incident.
   Flag/Nationality: Insert the legal flag of the vessel involved.
   Official Number/Call Sign/State Number: Insert the official number, call sign, or the state number of a vessel involved in an incident.
   Gross Tons: Insert the gross tonnage of a vessel (if applicable).
   Home Port: Insert the official home port of the vessel.
   Type Of Vessel: Insert the type of vessel (e.g., fishing vessel, tank vessel, freight vessel, or pleasure craft).
   Master's Name: Insert the name of the master of the vessel, or on smaller vessels, the name of the person operating the vessel (if applicable).
   Source Identified: If you have identified the source of the discharge, check yes. This is usually followed by the Pollution Investigator's issuing a Notice of Federal Interest (NOFI) to the owner of the source. If the source has not been identified, check no. Occasionally, this is delayed until the Marine Safety Lab finalizes the oil sample analysis (if applicable).
   U.S. Agent: For commercial vessels having an agent in port, insert the name of the agency.
   Address: Insert the address of the local agent.
   Contact: Insert the name of the contact at the U.S. agency office.
2. **Identification - Facility.** Complete this section when the source of the discharge is a facility.
   Facility Name: Insert the complete legal name for the facility (e.g., ABC Facility at Bayway, N.J.).
   Facility Address: Insert the mailing street address of the facility.
   Type Of Facility: Insert the type of facility (i.e., tank storage, tank truck, gas station, or private home).
   Source Identified: Check the appropriate block.
3. **Responsible Parties.** (Owner, Operator, Insurance Company, and Other Parties may have entries in each of the categories listed below)
   Company Name: Insert the name of the company that owns, operates, or insures the facility or vessel. If the owner is a private individual, insert their name.
   Company Address: Insert the address of record for the owner, operator, or insurer; try to obtain street address.
   Contact Name: Insert the name of the person at the company with whom you have made contact.
   Contact Phone Number: Insert the contact person's phone number.
   Notice of Designation: The NPFC will complete this section with coordination from the FOSC's staff.
   - **Notified Of Designation:** If the owner, operator, or insurer was notified of the need to advertise for claims, check yes.
   - **Date Notified:** Insert the date of the letter providing notification.
   - **Accepted Designation:** If the owner, operator, or insurer formally accepted designation as a source, check yes. If the owner either rejected designation, or simply did not reply to designation, check no.
   - **Rejected Designation:** If the owner, operator, or insurer formally rejected designation as a source, check yes. If the owner either accepted designation or simply did not reply to designation, check no.

- **Advertised:** If the owner, operator, or insurer advertised in accordance with instructions given to him in the designation letter, check yes. If the owner did not advertise, or if the advertisement was not in accordance with the instructions given, check no. Provide a copy of advertisement.

Incident Report
Page 2

Source Information

Identification - Vessels

Vessel Name _____
Official Number/ Call Sign / State Number _____
Home Port _____
Masters Name _____

Flag / Nationality _____
Gross Tons _____
Type of Vessel _____
Source Identified? _____ Yes _____ No

U.S. Agent _____
Address _____
_____
Contact _____
Phone _____

Identification - Facility

Facility Name: _____
Facility Address: _____
_____
Type of Facility: _____ Source Identified? _____ Yes _____ No

Responsible Parties

Owner

Company Name _____
_____
Company Address _____
_____
_____
_____
Contact Name _____
Contact Phone _____

Notice of Designation *(To be completed by NPFC)*
Notified of Designation? _____ Yes _____ No
Date Notified _____
Accepted Designation? _____ Yes _____ No
Rejected Designation? _____ Yes _____ No
Advertised? _____ Yes _____ No

Insurance Company

Company Name _____
_____
Company Address _____
_____
_____
_____
Contact Name _____
Contact Phone _____

Notice of Designation *(To be completed by NPFC)*
Notified of Designation? _____ Yes _____ No
Date Notified _____
Accepted Designation? _____ Yes _____ No
Rejected Designation? _____ Yes _____ No
Advertised? _____ Yes _____ No

Operator

Company Name _____
_____
Company Address _____
_____
_____
_____
Contact Name _____
Contact Phone _____

Notice of Designation *(To be completed by NPFC)*
Notified of Designation? _____ Yes _____ No
Date Notified _____
Accepted Designation? _____ Yes _____ No
Rejected Designation? _____ Yes _____ No
Advertised? _____ Yes _____ No

Other

Company Name _____
_____
Company Address _____
_____
_____
_____
Contact Name _____
Contact Phone _____

Notice of Designation *(To be completed by NPFC)*
Notified of Designation? _____ Yes _____ No
Date Notified _____
Accepted Designation? _____ Yes _____ No
Rejected Designation? _____ Yes _____ No
Advertised? _____ Yes _____ No

Attach copies of all designation letters and any other related correspondence
(Local Reproduction 11-05)

C. HOW TO COMPLETE PAGE 3 - CONTRACTORS

1. Complete one page for each contractor involved in the pollution incident. Attach copy of certified contractor's invoice.

   a. Company: List the name of the company that was hired to assist and operate in removal activities under the direction of the FOSC.
   b. Address: List the formal address of the company.
   c. Contact: Provide the name of the person with whom the FOSC or staff dealt with on-scene.
   d. Telephone: Provide the contact person's telephone number.
   e. Authorized Ceiling Amount: Provide the total ceiling amount the FOSC authorized for the contractor's activity.
   f. Contract Number: This is the purchase order number (DCN) assigned for the specific job under a BOA Contract (i.e. 24/94/84/4/H/XN/024). It is not the BOA contract number.
   g. Primary Function: Provide a brief description of the activities this contractor provided. For example: "conducted general cleanup operations." An example of one that might be somewhat different would be "provided disposal services in accordance with RCRA." This section does not need to be completed for subcontractors, only for primary contractors.

List Contractors that
assisted in Removal Operations
under the direction of the PreDesignated Federal On-Scene Coordinator.
Duplicate and enumerate for multiple contractors.

Company: _____

Address: _____

_____

Contact:

Telephone: _____

Authorized
Ceiling Amount: _____

Contract No: _____

Attach copy of Certified Contractor's Invoice(s)

Primary Function_____

_____

_____

_____

_____

(Local Reproduction 01-93)

D. HOW TO COMPLETE PAGE 4 - OTHER GOVERNMENT AGENCIES

1. Complete one page for each agency involved in the pollution incident. Attach copies of all Pollution Removal Funding Authorizations.

- **a. Agency:** Provide the name of the agencies involved. For example, U.S. Coast Guard; U.S. Environmental Protection Agency; Commonwealth of Massachusetts, Department of Environmental Protection, etc.
- **b. Unit:** Provide the particular part or subunit that was involved in the operations. For example, Station Alexandria, Region III Emergency Response Team, Bayonne State Response Unit, etc.
- **c. Address:** Provide the address of the unit responding.
- **d. Contact:** Provide the name of the person with whom the FOSC or his staff dealt with at that agency.
- **e. Telephone:** Provide the telephone number of the contact.
- **f. Authorized Ceiling Amount:** Insert the total ceiling authorized to this agency for its activities in removal.
- **g. Comments:** Provide explanatory comments, as necessary, so that the case team and subsequent parties involved understand the relationship of this agency to the removal effort.

Incident Report	**Other Government Agencies** (Federal, State, and Local)	Page 4

List Government Agencies that
assisted in Removal Operations
under the direction of the PreDesignated Federal On-Scene-Coordinator.
Duplicate and enumerate for multiple government agencies.

Agency _____

Unit: _____

Address: _____
_____
_____

Contact: _____

Telephone: _____

Authorized
Ceiling Amount: _____

Attach copy of Certified Cost Documentation (PRFAs, etc.)

Comments: _____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

(Local Reproduction 01-93)

[Removed Sample Non-Federal PRFA (originally pp. 3-141 to 3-142).]

E. HOW TO COMPLETE PAGE 5 - KEY PARTIES

1. This section is provided so that other persons, who did not work directly for the FOSC, but were involved in removal efforts can be identified. Examples of this type of entity would be witnesses to the removal effort; state and local agencies that assisted, but did not request funding; and private individuals or voluntary organizations that assisted, and did not request funding. Use as many pages as required.

a. **Person/Agency/Company:** Provide the appropriate entry.
b. **Address:** Provide the address of the person/agency/company noted.
c. **Contact:** For an agency or company, provide the name of the person with whom the FOSC or his staff dealt with during the incident.
d. **Telephone:** Provide the contact person's number.
e. **Relationship To Case:** Describe what effect this person had on the removal efforts, and what the relationship of this person/agency/company is to the removal activity.

List other person(s) or companies that are important to
the case and not listed elsewhere.
Duplicate and enumerate for multiple key parties.

Person / Agency / Company: _____
Address: _____
_____
Contact: _____Telephone: _____
Relationship to the case: _____
_____
_____
_____

Person / Agency / Company: _____
Address: _____
_____
Contact: _____Telephone: _____
Relationship to the case: _____
_____
_____
_____

Person / Agency / Company: _____
Address: _____
_____
Contact: _____Telephone: _____
Relationship to the case:
_____
_____
_____
_____

(Local Reproduction 01-93)

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Chapter 6

POLLUTION INCIDENT DAILY RESOURCE REPORTS

CHAPTER 6 - POLLUTION INCIDENT DAILY RESOURCE REPORT CG-5136A GOVERNMENT SUMMARY SHEET

A. This form summarizes all personnel, equipment, and other resources used during the removal activities of each incident. Each Coast Guard or EPA unit must complete their own documentation. All agencies being funded by a PRFA must complete these forms.

1. **Level I cases:** All parties involved must submit documentation to the FOSC at the completion of removal activities.

2. **Level II & III cases:** All parties involved must submit documentation to the FOSC as often as practical until removal activities are completed (at least in 30 day cycles).

B. HOW TO COMPLETE FORM:

1. **Report Type (Interim/Final):** If the submission does not include all costs associated with the incident, check the interim report, otherwise, if the submission is the final submission of resource documentation, check the final report.
2. **OPA/CERCLA/NRDA:** Check the one that applies to the incident.
3. **(Incident Data) FPN/CPN/CPN:** The Federal, CERCLA, or Disaster Project Number assigned to the incident.
4. **Date:** The date of the submission.
5. **Period Covered**: The period (dates) for which resource documentation is being submitted.
6. **Agency Reporting:** The agency submitting documentation
7. **Unit Reporting:** The CG Marine Safety Office or EPA Regional Office collecting resource documentation.
8. **Description of Activities:** Brief description of removal activities performed, and the objective of each activity. If more space is required, attach additional pages.
9. **Reports Attached:** This is a number reflecting how many of each form is completed and attached.
10. **Key Parties:** Include information for key parties authorized by the FOSC who can provide information on resource documentation. This could include the FOSC's representative, persons authorized by the FOSC to supervise on-site operations, other government agency personnel, and persons preparing cost documentation (e.g., storekeeper, accounting clerk, etc.).

DEPARTMENT OF HOMELAND SECURITY U.S. COAST GUARD CG-5136A (06-04)	**POLLUTION INCIDENT DAILY RESOURCE REPORT**	GOVERNMENT SUMMARY SHEET (RCN-16451-1)

REPORT TYPE

INTERIM ____ FINAL _____

ACTIVITY

OPA _____ CERCLA _____ NRDA _____

INCIDENT DATA

FPN/CPN/DPN _____ DATE _____

PERIOD COVERED _____ TO _____

AGENCY REPORTING _____ UNIT REPORTING _____

DESCRIPTION OF ACTIVITIES

(Attach additional pages, if needed)

_____

_____

_____

_____

_____

_____

_____

REPORTS ATTACHED

SHORT FORMS _____ DAILY PERSONNEL FORMS _____

DAILY EQUIPMENT FORMS _____ DAILY PURCHASE FORMS _____

KEY PARTIES

DOCUMENTATION

Name _____

Agency _____

Telephone _____

CONTRACTOR

Name _____

Agency _____

Telephone _____

REMARKS:

This form is available as a fillable form from the NPFC Web site or the USCG Adobe Forms.

C. POLLUTION INCIDENT DAILY RESOURCE REPORT -- CG-5136B GOVERNMENT PERSONNEL

This form should be completed for government personnel costs incurred for each day of removal activity.

How to complete this form:

1. **FPN/CPN/DPN:** The Federal, CERCLA, or Disaster Project Number assigned to the incident.
2. **Date:** The date that costs are reported.
3. **Parent Unit:** The parent unit of the party completing the form. The command for CG reports (i.e., MSO Hampton Roads, Station Portsmouth) or the regional office, division and field office for EPA (i.e., Region X, Emergency Response Division, Portland Field Office).
4. **FOSC or Representative/Lead Trustee Signature:** Certification by the FOSC. The FOSC certifies that the personnel listed were authorized for the date being reported.

Government Personnel

Supply the following information for each person involved in removal activities.

5. **Name:** First and last names of the government personnel involved in removal activities.
6. **Pay Grade/Labor Category:** Pay grade or labor category of the personnel involved in removal activity (i.e., O4, E5, GS12).
7. **Duty:** Specific duty during removal activity (i.e., monitor, driver, FOSC).
8. **Hours:** Actual hours spent performing removal duty.
9. **Standard Rate:** The standard rate for the pay grade/labor category in accordance with OMB Circular A-87. Attach the agency's standard rate table or information presenting the computation and derivation of the rate (may be completed by agency's accounting office). For all Coast Guard equipment and personnel, use COMDTINST 7310.1E, outside government rates only.
10. **Total Cost:** The standard rate multiplied by the hours (may be completed by the agency's accounting office).
11. **Office Use:** Used by NPFC Staff.
12. **Total Personnel Costs For This Date:** The sum of the amounts entered in the total column (may be completed by agency's accounting office).
13. **Remarks:** Any amplifying information considered important by the FOSC for this particular day.

DEPARTMENT OF HOMELAND SECURITY U.S. COAST GUARD CG-5136B (06-04)	**POLLUTION INCIDENT DAILY RESOURCE REPORT**	GOVT PERSONNEL Page ____ of ____ (RCN-16451-1)

FPN/CPN/DPN _____ DATE _____

PARENT UNIT _____ _____

FOSC/REP/LEAD TRUSTEE SIGNATURE

GOVERNMENT PERSONNEL

NAME (LAST, FIRST)	PAY GRADE	DUTY	HOURS	STANDARD RATE	TOTAL	OFFICE USE

TOTAL PERSONNEL COSTS FOR THIS DATE _____

REMARKS:

This form is available as an Excel spreadsheet from the NPFC Web site or as a fillable form from the USCG Adobe Forms.

D. POLLUTION INCIDENT DAILY RESOURCE REPORT -- CG-5136C GOVERNMENT EQUIPMENT

This form should be completed for government equipment costs incurred for each day of removal activity.

How to complete form:

1. **FPN/CPN/DPN:** The Federal, CERCLA, or Disaster Project Number assigned to the incident.
2. **Date:** The date costs are reported.
3. **Parent Unit:** The Parent Unit of the party completing the form. The command for CG reports (i.e., MSO Hampton Roads, Station Portsmouth) or the regional office, division and field office for EPA (i.e., Region X, Emergency Response Division, Portland Field Office).
4. **FOSC or Representative/Lead Trustee Signature:** Certification by the FOSC; the FOSC certifies that the equipment listed was authorized for the date reported.

Government Equipment

Supply the following information for each piece of equipment involved in removal activities.

5. **Item Description:** Description of the equipment used for removal activities.
6. **Rate Basis:** The basis used for charging equipment costs (e.g., hourly, daily, weekly).
7. **# Units:** The number of units for which the equipment was utilized, defined in terms of the rate basis (i.e., number of hours, days, weeks).
8. **Rate/Unit:** The rate charged per unit; attach the agency's standard rate table or a computation showing how the rate was derived (may be completed by agency's accounting office).
9. **Rate Charges:** The rate per unit multiplied by the number of units (may be completed by agency's accounting office).
10. **Non-Rate Charges:** The total charges related to the equipment not charged on a per unit basis (i.e., mileage, fuel, setup/takedown charges) may be completed by agency's accounting office.
11. **Total:** The sum of the Rate Charges and the Non-Rate Charges (may be completed by agency's accounting office).
12. **Office Use:** Used by NPFC Staff.
13. **Total Equipment Costs For This Date:** The sum of the amounts entered in the Total column (may be completed by agency's accounting office).
14. **Remarks:** Any amplifying information considered important by the FOSC for this particular day.

DEPARTMENT OF HOMELAND SECURITY U.S. COAST GUARD CG-5136C (04-07)	**POLLUTION INCIDENT DAILY RESOURCE REPORT**	GOVT EQUIPMENT Page ____ of ____ (RCN-16451-1)

FPN/CPN/DPN _____ DATE _____

PARENT UNIT _____ _____

FOSC/REP/LEAD TRUSTEE SIGNATURE

GOVERNMENT EQUIPMENT

ITEM DESCRIPTION	RATE BASIS	# UNITS	RATE/ UNIT	RATE CHARGE	NON-RATE CHARGES	TOTAL	OFFICE USE

TOTAL EQUIPMENT COSTS FOR THIS DATE _____

REMARKS:

This form is available as an Excel spreadsheet from the NPFC Web site.

F. POLLUTION INCIDENT DAILY RESOURCE REPORT C CG-5136D GOVERNMENT PURCHASES/EXPENDABLES/TRAVEL ORDERS/ CONTRACTORS/OTHER AGENCIES

This form should be completed for government purchases and expendables incurred for each day of removal activity. Additionally, the form is used to identify travel orders issued, contractors authorized to perform removal activities, and (for FOSC use) other government agencies involved in removal activities.

How to complete form:

1. **FPN/CPN/DPN:** The Federal, CERCLA, or Disaster Project Number assigned to the incident.
2. **Date:** Report the date costs were incurred.
3. **Parent Unit:** The parent unit of the party completing the form, the command for CG reports (i.e., MSO Hampton Roads, Station Portsmouth); or the Regional Office, division and field office for EPA (i.e., Region X, Emergency Response Division, Portland Field Office).
4. **FOSC or Representative/Lead Trustee Signature:** Certification by the FOSC/Lead Trustee. The FOSC certifies that purchases or other items listed were authorized for the date reported.

Purchases/Expendables

Indicate whether purchase orders were completed, how many purchase orders were completed, the number of purchase orders attached, if any. Also, indicate the total purchases/expendables for the date reported. If copies of purchase orders are not attached, complete the remainder of the Purchase/Expendables section.

5. **Description of Item:** Description of item purchased.
6. **Purchase Order Number:** Purchase Order Number issued for the item.
7. **Cost:** The cost of the item purchased.
8. **Office Use:** Used by NPFC Staff.
9. **Total Purchases/Expendables For This Date:** The sum of the items purchased.

Travel Orders

Indicate whether travel orders were issued, the number issued, and copies attached. If copies are not attached, complete the remainder of the travel orders section. Also indicate whether liquidated (i.e., paid) travel claims are attached and if so, how many are attached. If liquidated travel claims are not attached, submit copies when the claims have been liquidated.

10. **Name:** First and last name of traveler.
11. **Travel Order No:** The number assigned to the travel orders.
12. **Issued By:** The agency issuing the travel order.
13. **Estimated Cost**: This is the estimated cost on each individual travel order.
14. **Office Use:** Used by NPFC Staff.

Contractors

Indicate whether contractors were authorized to perform services on the date reported. Only list contractors who are contracted and paid through your agency. If marked YES, complete the following for each authorized contractor.

15. **Name:** Indicate name of company.
16. **P.O./Contract Number:** List the contract number, purchase order number, and delivery order number for this contract.

Other Agencies Involved (For FOSC Use)

Indicate whether other government agencies were authorized to perform removal activities on the date reported. If marked Yes, complete the following information for each agency:

17. **Name:** Agency name.
18. **Agreement Number:** The applicable Pollution Removal Funding Authorization number (FPN, DCN). Attach copies of authorizations used by the other agencies (if not previously submitted).
19. **Office Use:** Used by NPFC Staff.

DEPARTMENT OF HOMELAND SECURITY U.S. COAST GUARD CG-5136D (06-04)	**POLLUTION INCIDENT DAILY RESOURCE REPORT**	GOVT PURCHASES/ EXPENDABLES/TRAVEL ORDERS/CONTRACTORS Page ____ of ____(RCN-16451-1)

FPN/CPN/DPN _____ DATE _____

PARENT UNIT _____ _____

FOSC/REP/LEAD TRUSTEE SIGNATURE

PURCHASES/EXPENDABLES

Were any purchase orders completed? YES ☐ NO ☐ If yes, how many: _____

If yes, are they attached? YES ☐ NO ☐ If yes, how many: _____

If no, complete information below

DESCRIPTION OF ITEM	PURCHASE ORDER NUMBER	COST	OFFICE

TOTAL COST FOR THIS DATE:_____

TRAVEL ORDERS

Were travel orders issued? YES ☐ NO ☐ If yes, how many: _____

If yes, are copies attached? YES ☐ NO ☐ If no, complete below information

Are the liquidated travel claims attached? YES ☐G NO ☐ If yes, how many: _____

If no, submit when liquidated

NAME (LAST, FIRST)	TRAVEL ORDER NO.	ISSUED BY	EST. COST	OFFICE USE

ESTIMATED TOTAL TRAVEL COST: _____

CONTRACTORS

Are contractor services authorized for this date? YES ☐ NO ☐ If yes, list contractors hired

NAME	P.O./CONTRACTOR NUMBER	OFFICE USE

OTHER AGENCIES INVOLVED

(For FOSC or Lead Trustee Use)

Were agencies authorized to act? YES ☐ NO ☐ If yes, list other agencies and attach copy of authorization

NAME	AGREEMENT NUMBER	OFFICE USE

This form is available as an Excel spreadsheet from the NPFC Web site or as a fillable form from the USCG Adobe Forms.

G. POLLUTION INCIDENT DAILY RESOURCE REPORT -- CG-5136E GOVERNMENT SHORT FORM (May be used as a CG-5136 (B-D)).

How to complete form:

1. **FPN/CPN/DPN:** The Federal, CERCLA, or Disaster Project Number assigned to the incident.
2. **Date:** The date which costs are reported.
3. **Parent Unit:** The parent unit of the party completing the form. The command for Coast Guard reports (i.e., MSO Hampton Roads, Station Portsmouth) or the Regional Office, division and field office for EPA (i.e., Region X, Emergency Response Division, Portland Field Office).
4. **FOSC or Representative/Lead Trustee Signature:** Certification by the FOSC. The FOSC certifies that the items listed were authorized for the date reported.

Government Personnel Supply the following information for each person involved in removal activities.

5. **Name:** First and last names of government personnel involved in removal activity.
6. **Pay Grade/Labor Category:** Pay grade or labor category of the personnel involved in removal activity
7. **Duty:** Specific duty during removal activity (i.e., monitor, driver, FOSC).
8. **Hours:** Hours spent performing removal duty.
9. **Standard Rate:** The standard rate for the pay grade/labor category in accordance with OMB A-87.
10. **Total Cost:** The standard rate multiplied by the hours.
11. **Office Use:** Used by NPFC Staff.
12. **Total Personnel Costs For This Date:** The sum of the amounts entered in the Total column .
13. **Remarks:** Amplifying information considered important by the FOSC for this particular day.

Government Equipment Supply the following information for each piece of equipment used in removal activities.

14. **Item Description:** Description of the equipment used for removal activities.
15. **Rate Basis:** The basis used for charging equipment costs (i.e., hourly, daily, weekly).
16. **# Units:** The number of units the equipment was used for defined in terms of the rate basis (i.e., number of hours, days, weeks).
17. **Rate/Unit:** The rate charged per unit, attach the agency's standard rate table or a computation showing how the rate was derived.
18. **Rate Charges:** The rate per unit multiplied by the number of units
19. **Non-Rate Charges:** The total charges related to the equipment, not charged on a per unit basis (i.e., mileage, fuel, setup/takedown charges).
20. **Total:** The sum of the rate charges and the non-rate charges
21. **Office Use:** Used by NPFC Staff.
22. **Total Equipment Costs For This Date:** The sum of the amounts entered in the Total column.
23. **Remarks:** Any amplifying information considered important by the FOSC for this particular day.

Purchases/Expendables Indicate the number of purchase orders and copies attach to this form. Also, indicate the total purchases/expendables for the date reported. If copies of purchase orders are not attached, complete the remainder of the Purchase/Expendables section.

24. **Description of Item:** Description of item purchased.
25. **Purchase Order Number:** Purchase Order Number issued for the item.
26. **Cost:** The cost of the item purchased.
27. **Office Use:** Used by NPFC Staff.
28. **Total Purchases/Expendables For This Date:** The sum of the items purchased.

Travel Orders Indicate whether travel orders were issued, and the number of travel orders attached. If copies are not attached, complete the remainder of the travel orders section. Also indicate the number of liquidated travel claims attached. If the claims are not attached, submit copies when the claims have been liquidated.

29. **Name:** First and last name of traveler.
30. **Travel Order No:** The number assigned to the travel orders.
31. **Issued By:** The agency issuing the travel order.
32. **Estimated Cost**: This is the estimated cost on each individual travel order.
33. **Office Use:** Used by NPFC Staff.

Contractors Indicate whether contractors were authorized to perform services on the date reported. Only list contractors who are contracted and paid through your agency. If marked YES, complete the following for each authorized contractor.

34. **Name:** Indicate name of company.
35. **P.O./Contract Number:** List the contract, purchase order , and delivery order numbers for this contract.

Other Agencies Involved (For FOSC Use) Indicate whether other government agencies were authorized to perform removal activities on the date reported. If marked Yes, complete the following information for each agency:

36. **Name:** Agency name.
37. **Agreement Number:** The applicable Pollution Removal Funding Authorization number (FPN, DCN). Attach copies of authorizations with other agencies (if not previously submitted).

DEPARTMENT OF HOMELAND SECURITY U.S. COAST GUARD CG-5136E (06-04)	**POLLUTION INCIDENT DAILY RESOURCE REPORT**	GOVERNMENT SHORT FORM (RCN-16451-1)

FPN/CPN/DPN _____ DATE _____

PARENT UNIT _____

_____
FOSC/REP/LEAD TRUSTEE SIGNATURE

PERSONNEL

NAME (LAST, FIRST)	PAY GRADE	DUTY	HOURS	STANDARD RATE	TOTAL	OFFICE USE

Total Cost This Date:_____

EQUIPMENT

ITEM DESCRIPTION	RATE BASIS	# UNITS	RATE/UNIT	RATE CHARGE	NON-RATE CHARGE	TOTAL	OFFICE USE

Total Cost This Date: _____

PURCHASES/EXPENDABLES

Were any purchase orders completed? YES ☐ NO☐ If yes, how many: _____

If yes, are they attached? YES ☐ NO ☐ If yes, how many: _____
If no, complete information below

DESCRIPTION OF ITEM	PURCHASE ORDER NUMBER	COST	OFFICE

Total Cost This Date:_____

TRAVEL ORDERS

Were travel orders issued? YES ☐ NO ☐ If yes, how many: _____
If yes, are copies attached? YES ☐ NO ☐ If no, complete below information
Are the liquidated travel claims attached? YES ☐ NO ☐ If yes, how many: _____
If no, submit when liquidated

NAME (LAST, FIRST)	TRAVEL ORDER NO.	ISSUED BY	EST. COST	OFFICE USE

Estimated Total Travel Cost: _____

CONTRACTORS

Are contractor services authorized for this date? YES ☐ NO ☐ If yes, list contractors hired

NAME	P.O./CONTRACTOR NUMBER	OFFICE USE

OTHER FEDERAL/STATE/LOCAL AGENCIES INVOLVED

(For FOSC or Lead Trustee Use)

Were agencies authorized to act? YES ☐ NO ☐ If yes, list other agencies and attach copy of authorization

NAME	AGREEMENT NUMBER	OFFICE USE

This form is available as an Excel spreadsheet from the NPFC Web site or as a fillable form from the USCG Adobe Forms.

H. POLLUTION INCIDENT DAILY RESOURCE REPORT -- CG-5136E-1 CONTRACTOR PERSONNEL

This form should be completed for contractor personnel costs incurred for each day of removal activity.

How to complete form:

1. **FPN/CPN/DPN:** The Federal, CERCLA, or Disaster Project Number assigned to the incident.
2. **Date:** Report the date costs were incurred.
3. **Contractor:** Name of contractor; indicate if supporting documentation is attached.

Contractor Personnel

Provide the following information for each individual.

4. **CLIN:** The applicable contract line item number.
5. **Name:** First and last names of contract personnel involved in removal activity.
6. **Job Description:** What was the employee's job (i.e., supervisor, equipment operator, laborer). This may require an abbreviation to be entered.
7. **Hours Employed:** The starting and ending times during which the personnel were performing removal activities.
8. **Total Hours:** Hours spent performing removal duty.
9. **Hourly Rate:** The hourly rate of pay for personnel.
10. **Rate Charge:** The number of hours multiplied by the hourly rate of pay.
11. **Per Diem:** Per diem costs incurred by the personnel. This assumes a flat rate per diem is authorized by the contract. Otherwise, per diem costs should be documented as other expenses on the CG-5136E-3 form.
12. **Total Cost:** The sum of the Rate Charge and the Per Diem costs.
13. **Total Personnel Costs For This Date:** The sum of the amount entered in the Total column.
14. **Contractor's Certification:** Contractor's certification of the validity of the information presented.
15. **FOSC/Trustee Signature:** Certification by the FOSC/Lead Trustee. The FOSC certifies that personnel listed were authorized for the date reported. **The FOSC does not certify contract rates or costs.**

DEPARTMENT OF HOMELAND SECURITY U.S. COAST GUARD CG-5136E-1 (06-04)	**POLLUTION INCIDENT DAILY RESOURCE REPORT**	CONTRACTOR PERSONNEL Page ____ of ____ (RCN-16451-1)

FPN/CPN/DPN_____ DATE _____

PARENT UNIT _____ _____

FOSC/REP/LEAD TRUSTEE SIGNATURE

If information described below is documented separately, in a form or format previously reviewed and found acceptable by the National Pollution Funds Center and the Contracting Officer, this form need not be completed.

CONTRACTOR PERSONNEL

CLIN	NAME (LAST, FIRST)	JOB DESCRIPTION	HOURS FRM	HOURS TO	TOT HRS	HOURLY RATE	RATE CHARGE	PER DIEM	TOTAL COST

TOTAL PERSONNEL COSTS FOR THIS DATE_____

CONTRACTOR'S CERTIFICATION:

I certify that this report is a true and complete record of the materials, labor, equipment and subcontractors provided by the contractor on the date listed above for the project number cited above:

_____

Contractor's Authorized Representative

ON SCENE COORDINATOR'S/LEAD TRUSTEE'S REVIEW:

I certify that inspection and acceptance of the listed items has been made by me or under my supervision, except as noted herein or on supporting documents.

_____

FOSC/Lead Trustee

This form is available as an Excel spreadsheet from the NPFC Web site or as a fillable form from the USCG Adobe Forms.

I. POLLUTION INCIDENT DAILY RESOURCE REPORT -- CG-5136E-2 CONTRACTOR EQUIPMENT

This form should be completed for contractor equipment costs incurred for each day of removal activity.

How to complete form:

1. **FPN/CPN/DPN:** The Federal, CERCLA, Disaster Project Number assigned to the incident.
2. **Date:** Report the date costs were incurred.
3. **Contractor:** Name of contractor; indicate if supporting documentation is attached.

Contractor Equipment

Provide the following information for each piece of equipment used in removal activities.

4. **CLIN:** The applicable contract line item number.
5. **Item Description:** Description of the equipment used for removal activities.
6. **Rate Basis:** The basis used for charging equipment costs (i.e., hourly, daily, weekly).
7. **Employed From/To:** The period of time equipment was used.
8. **Units:** The number of units the equipment was used for expressed in terms of the rate basis (i.e., numbers of hours, days, weeks).
9. **Rate/Unit:** The rate charged per unit.
10. **Rate Charges:** The rate per unit multiplied by the number of units.
11. **Non Rate Charges:** Total charges related to the equipment, not charged on a per unit basis (i.e., mileage, fuel, setup/takedown charges).
12. **Total Cost:** The sum of the Rate Charge and the Non-Rate Charges.
13. **Total Equipment Costs For This Date:** The sum of the amounts entered in the Total Costs column.
14. **Contractor's Certification:** Contractor's certification of the validity of the information presented.
15. **FOSC/Trustee Signature:** Certification by FOSC/Lead Trustee. The FOSC certifies the equipment listed was authorized for the date reported. **The FOSC does not certify contract rates or costs.**

DEPARTMENT OF HOMELAND SECURITY U.S. COAST GUARD CG-5136E-2 (06-04)	**POLLUTION INCIDENT DAILY RESOURCE REPORT**	CONTRACTOR EQUIPMENT Page ____ of ____ (RCN-16451-1)

FPN/CPN/DPN _____ DATE _____

CONTRACTOR: _____ PO/CONTRACT NO: _____

If information described below is documented separately, in a form or format previously reviewed and found acceptable by the National Pollution Funds Center and the Contracting Officer, this form need not be completed.

CONTRACTOR EQUIPMENT

CLIN	ITEM DESCRIPTION	RATE BASIS	EMPLOYED FRM	TO	# UNITS	RATE/ UNIT	RATE CHARGES	NON-RATE CHARGES	TOTAL COST

TOTAL EQUIPMENT COSTS FOR THIS DATE _____

CONTRACTOR'S CERTIFICATION:

I certify that this report is a true and complete record of the materials, labor, equipment and subcontractors provided by the contractor on the date listed above for the project number cited above:

_____

Contractor's Authorized Representative

ON SCENE COORDINATOR'S/LEAD TRUSTEE'S REVIEW:

I certify that inspection and acceptance of the listed items has been made by me or under my supervision, except as noted herein or on supporting documents.

_____

FOSC/Lead Trustee

This form is available as an Excel spreadsheet from the NPFC Web site or as a fillable form from the USCG Adobe Forms.

J. POLLUTION INCIDENT DAILY RESOURCE REPORT -- CG-5136E-3 CONTRACTOR/ SUBCONTRACTOR/MATERIALS/OTHER EXPENSES

This form should be completed by the contractor for costs incurred by subcontractors, and for materials and other expenses for each day of removal activities.

How to complete form:

1. **FPN/CPN/DPN:** The Federal, CERCLA, or Disaster Project number assigned to the incident.
2. **Date:** Report the date costs were incurred.
3. **Contractor:** Name of contractor. Indicate if supporting documentation is attached.

Subcontractors

Indicate whether subcontractors were hired. If marked Yes, complete the remainder of the subcontractors section and attach copies of the subcontractor's Daily Resource Reports. Subcontractors should complete CG-5136E (1-3) or CG-5136E-EZ forms as applicable.

4. **CLIN:** The applicable contract line item number.
5. **Subcontractor's Name:** Name of the subcontractor.
6. **Cost:** Costs incurred by the subcontractor for this date.
7. **Admin. Fee:** Fee charged for administering the subcontractor.
8. **Total Cost:** The sum of subcontractor costs and administration costs.
9. **Total Cost Of Subcontractors For This Date:** The sum of the amount entered in the Total Cost column.

Materials Used/Other Expenses

10. **CLIN:** The applicable contract line item number.
11. **Description:** Description of material or item used or purchased.
12. **Units:** Units of material or items used (e.g., pads, rolls, feet, etc.).
13. **Units Used:** Units of material or items used or purchased.
14. **Unit Cost:** Cost per unit.
15. **Total Cost:** Units used multiplied by the Unit Cost.
16. **Total Cost Of Materials Used/Other Expenses For This Date:** The sum of the amount entered in the Total Cost column.
17. **Subcontractor's Name:** Name of the subcontractor.
18. **Contractor's Certification:** Contractor's certification of the validity of the information presented.
19. **FOSC/Trustee Signature:** Certification by FOSC/Lead Trustee. The FOSC certifies that the items listed were authorized for the date reported. **The FOSC does not certify contract rates or costs.**

DEPARTMENT OF HOMELAND SECURITY U.S. COAST GUARD CG-5136E-3 (06-04)	**POLLUTION INCIDENT DAILY RESOURCE REPORT**	CONTRACTOR/ SUBCONTRACTOR MATERIALS/OTHER EXPENSES Page ____ of ____ (RCN-16451-1)

FPN/CPN/DPN _____ DATE _____

CONTRACTOR: _____ PO/CONTRACTOR NO: _____

If information described below is documented separately, in a form or format previously reviewed and found acceptable by the National Pollution Funds Center and the Contracting Officer, this form need not be completed

SUBCONTRACTORS

Were any subcontractors hired? YES ☐ NO ☐ If yes, list them below and attach subcontractor Daily Reports

CLIN	SUBCONTRACTOR'S NAME	COST	ADMIN FEE	TOTAL COST

TOTAL COST OF SUBCONTRACTORS FOR THIS DATE:_____

MATERIALS USED/OTHER EXPENSES

CLIN	DESCRIPTION	UNITS	UNITS USED	UNIT COST	TOTAL COST

TOTAL COST OF MATERIALS USED/OTHER EXPENSES FOR THIS DATE _____

CONTRACTOR'S CERTIFICATION

I certify that this report is a true and complete record of the materials, labor, equipment and subcontractors provided by the contractor on the date listed above for the project number cited above for the project number cited above:

_____

Contractor's Authorized Representative

ON SCENE COORDINATOR'S/LEAD TRUSTEE'S REVIEW:

I certify that inspection and acceptance of the listed items has been made by me or under my supervision, except as noted herein or on supporting documents.

_____

FOSC/Lead Trustee

This form is available as an Excel spreadsheet from the NPFC Web site or as a fillable form from the USCG Adobe Forms.

K. POLLUTION INCIDENT DAILY RESOURCE REPORT -- CG-5136E-4 CONTRACTOR SHORT FORM

This can be used in lieu of long forms CG-5136E-(1-3).

How to complete form:

1. **FPN/CPN/DPN:** The Federal, CERCLA, or Disaster Project Number assigned to the incident.
2. **Date:** Report the date costs were incurred.
3. **Contractor:** Name of contractor; indicate if supporting documentation is attached.

Contractor Personnel Provide the following information for each individual.

4. **CLIN:** The applicable contract line item number.
5. **Name:** First and last names of contractor personnel involved in removal activity.
6. **Job:** What was the employees job (i.e., supervisor, equipment operator, laborer); this may require an abbreviation to be entered.
7. **Hours Employed:** The starting and ending times during which personnel were performing removal activities.
8. **Total Hours:** Hours spent performing removal duty.
9. **Hourly Rate:** The hourly rate of pay for the personnel.
10. **Rate Charge:** The number of hours multiplied by the hourly rate of pay.
11. **Per Diem:** Per diem costs incurred by the personnel. This assumes a flat rate per diem is authorized by the contract. Otherwise, per diem type costs should be documented as other expenses on the CG-5136E-3 form.
12. **Total Cost:** The sum of the Rate Charge and the Per Diem costs.
13. **Total Personnel Costs For This Date:** The sum of the amount entered in the Total column.

Contractor Equipment Provide the following information for each piece of equipment used in removal activities.

14. **CLIN:** The applicable contract line item number.
15. **Item Description:** Description of the equipment used for removal activities.
16. **Rate Basis:** The basis used for charging equipment costs (i.e., hourly, daily, weekly).
17. **Employed From/To:** The period of time the equipment was used.
18. **Units:** The number of units for which the equipment was utilized expressed in terms of the rate basis (i.e., numbers of hours, days, weeks).
19. **Rate/Unit:** The rate charged per unit.
20. **Rate Charges:** The rate per unit multiplied by the number of units.
21. **Non Rate Charges:** Total charges related to the equipment, not charged on a per unit basis (i.e., mileage, fuel, setup/takedown charges).
22. **Total Cost:** The sum of the Rate Charge and the Non-Rate Charges.
23. **Total Equipment Costs For This Date:** The sum of the amounts entered in the Total Costs column.

Subcontractors Indicate whether subcontractors were hired. If marked Yes, complete the remainder of the subcontractors section and attach copies of the subcontractor's Daily Resource Reports. Subcontractors should complete CG-5136E (1-4) forms as applicable.

24. **CLIN:** The applicable contract line item number.
25. **Subcontractor's Name:** Name of the subcontractor.
26. **Cost:** Costs incurred by the subcontractor for this date.
27. **Admin. Fee:** Fee charged for the subcontractors administration.
28. **Total Cost:** The sum of subcontractor costs and administration costs.
29. **Total Cost Of Subcontractors For This Date:** The sum of the amount entered in the Total Cost column.

Materials Used/Other Expenses

30. **CLIN:** The applicable contract line item number.
31. **Description:** Description of material or items used or purchased.
32. **Unit Desc:** Type of units if not apparent in "description."
33. **Units Used:** Units of material or items used or purchased.
34. **Unit Cost:** Cost per unit.
35. **Total Cost:** Units used multiplied by the Unit Cost.
36. **Total Cost Of Materials Used/Other Expenses For This Date:** The sum of the amount entered in the Total Cost column.
37. **Subcontractor's Name:** Name of the subcontractor.
38. **Contractor's Certification:** Contractor's certification of the validity of the information presented.
39. **FOSC/Trustee Signature:** Certification by FOSC/Lead Trustee; the FOSC certifies that the items listed were authorized for the date reported. **The FOSC does not certify contract rates or costs.**

DEPARTMENT OF HOMELAND SECURITY U.S. COAST GUARD CG-5136E-4 (06-04)	**POLLUTION INCIDENT DAILY RESOURCE REPORT**	CONTRACTOR SHORT FORM Page ____ of ____ (RCN-16451-1)

FPN/CPN/DPN _____ DATE _____

CONTRACTOR: _____ PO/CONTRACT NO:_____

If information described below is documented separately, in a form or format previously reviewed and found acceptable by the National Pollution Funds Center and the Contracting Officer, this form need not be completed

PERSONNEL

CLIN	NAME (LAST, FIRST)	HOURS FROM	TO	TOTAL HOUS	HOURLY RATE	RATE CHARGE	PER DIEM	TOTAL COST

TOTAL COST THIS DATE:_____

EQUIPMENT

CLIN	ITEM DESCRIPTION	RATE BASIS	EMPLOYED FROM	TO	# UNITS	RATE/ UNIT	RATE CHARGE	NON-RATE CHARGE	TOTAL

TOTAL COST THIS DATE:_____

SUBCONTRACTORS

Were any subcontractors hired? YES ☐ NO ☐ If yes, how many: _____

CLIN	SUBCONTRACTOR'S NAME	COST	ADMIN FEE	TOTAL COST

TOTAL COST OF SUBCONTRACTORS FOR THIS DATE:_____

MATERIALS USED/OTHER EXPENSES

CLIN	DESCRIPTION	UNIT DESC.	UNITS USED	UNIT COST	TOTAL COST

TOTAL COST OF MATERIALS USED/OTHER EXPENSES FOR THIS DATE _____

CONTRACTOR'S CERTIFICATION:

I certify that this report is a true and complete record of the materials, labor, equipment and subcontractors provided by the contractor on the date listed above for the project number cited above for the project number cited above:

_____

Contractor's Authorized Representative

ON SCENE COORDINATOR'S/LEAD TRUSTEE'S REVIEW:

I certify that inspection and acceptance of the listed items has been made by me or under my supervision, except as noted herein or on supporting documents.

_____

FOSC/Lead Trustee

This form is available as an Excel spreadsheet from the NPFC Web site or as a fillable form from the USCG Adobe Forms.

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Chapter 7

ACQUISITION OF PROPERTY USING OSLTF

Chapter 7 - Acquisition of Property Using OSLTF

A. Acquisition of Property.

1. FOSCs should only purchase property with OSLTF funds when operational necessity directly related to the removal dictates or when it is clearly more beneficial to the government than leasing. When making decisions to buy versus lease property, and operational conditions permit, units should factor in the costs necessary to acquire, maintain, and dispose of the property, not just the purchase price versus the costs of leasing. Many of these considerations are appropriately addressed through the planning process before a spill occurs. Except in unusually urgent situations, the FOSCs should contact the NPFC Regional Manager prior to beginning process of procuring/purchasing property with OSLTF funds. Documentation of the factors considered in purchasing property during a spill are critical in cost recovery and litigation efforts and shall be documented to the greatest extent possible. FOSCs should be aware that property purchased for removal activities will be billed to the RP at 100% of the cost. Accordingly, whenever feasible, the FOSC should provide the responsible party the opportunity to purchase or otherwise directly supply the property needed for removal activities. Upon case completion, any property purchased and provided by the responsible party shall be returned to the responsible party. Property purchased with the OSLTF, however, shall be disposed of in accordance with the procedures outlined below.

2. All property purchased must be accounted for in the cost documentation portion of the FOSC Completion Report (Financial Summary Report).

3. All **non-consumable** items, which includes any item or system having a cost of over $2,500 or items of lower cost, but high interest (such as radios, fax machines, cellular phones, computers, pagers, copiers, photographic equipment, protective clothing, meters, and similar items) require evidence of disposal action. FOSCs shall dispose of such items through the closest Defense Reutilization and Marketing Office (DRMO).

   a. Document the transfer of each group of like items to the DRMO using form DD-1348 or other form acceptable to the specific DRMO. FOSCs should contact the DRMO prior to any transfer to determine specific requirements.

   b. After the transfer, forward the original transfer document to the NPFC as part of the FOSC Interim or Final Completion Report (Financial Summary Report). The FOSC should maintain a copy of the form for local records.

   c. All lost, stolen, or damaged non-consumable property which is not available or suitable for transfer to the DRMO must be surveyed in accordance with agency property management guidelines and the Federal Property Management Regulations. Copies of approved survey reports shall be forwarded to the NPFC to provide the evidence of disposition.

d. **Consumable** items (items not classified as non-consumable property) remaining at the end of the removal activity should be disposed of in the most cost-effective manner. Unused consumable property with a cost of more than $2,500 shall require the same documented disposal action as non-consumable property.

e. If questions arise on whether a particular item is consumable or non-consumable, or on clarification of the reporting requirements, FOSCs should contact the cognizant NPFC case officer for guidance. Coast Guard FOSCs may contact Commandant (G-CFM-3) with questions concerning DRMO availability or procedures for disposal.

3. Items which meet requirements for capitalization may be charged to the OSLTF, but the amount charged to the specific incident shall be based upon an appropriate standard cost or allocation of the acquisition cost to the useful life. FOSCs should identify such items separately in the documentation. The NPFC shall make appropriate adjustments to the incident specific costs. Any such items purchased with the OSLTF belongs to the OSLTF until properly disposed of as excess property.

4. Purchase of major property items (land, buildings, structures, etc.), or major pieces of equipment that will remain in use for long periods of time, presents special problems not only for disposition, but in planning for maintenance and operation as well. FOSCs contemplating such acquisitions should contact the cognizant NPFC Regional Manager to ensure that proper financial planning and analysis is performed.

B. <u>Replenishments of inventory</u>.

1. FOSCs routinely draw on existing inventory of response equipment for specific responses. The OSLTF may be used to return that equipment to inventory after the response in the same condition it was before the response. Inventory items used up in the response or damaged beyond economical repair may be replaced. The unit replacing inventory items must follow existing agency guidance regarding survey of lost or damaged property. Any survey should establish whether the damages were directly due to a specific response or otherwise due to manufacturer defect, improper maintenance, improper use of the equipment, or the actions of others unrelated to the removal.

2. If the equipment is replaced as a result of damage incurred during the response, the OSLTF will pay for the replacement. The OSLTF should not, however, be charged the standard rate for use of that particular item of equipment during the response.

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Chapter 8

Pollution Removal Funding Authorization (PRFAs)

CHAPTER 8 - POLLUTION REMOVAL FUNDING AUTHORIZATIONS (PRFAS)

A. **General**. The Pollution Removal Funding Authorization (PRFA) is a tool available to FOSCs to quickly obtain needed services and assistance from other government agencies (federal, state, or local) in oil spill and hazardous materials response actions. There are **two types of PRFA forms**, one for Federal agencies and one for non-federal agencies.

B. **Financial Obligation Document**. The PRFA commits the OSLTF to payment, by reimbursement, of costs incurred in pollution response activities undertaken by another government agency working for the FOSC.

C. **Agency Reimbursement**. Under the terms of a PRFA, an FOSC may agree to reimburse another government agency for costs incurred in providing any agreed upon removal services and assistance to the FOSC, consistent with the NCP. Some of the costs which are reimbursable under a PRFA include, but are not necessarily limited to:

1. Personnel salary costs, including overtime;

2. Travel and per diem expenses;

3. Appropriate charges for the utilization of other government agency owned equipment or facilities; and

4. Actual expenses for contractor or vendor supplied goods and services obtained by the other government agency, through its own purchasing process, to provide agreed upon assistance and support to the FOSC.

D. **Clear Agreement as to Support Provided.** The FOSC and the other government agency must agree upon and document:

1. The specific goods and services to be provided; and

2. A good faith estimate of the total anticipated costs, with a line item breakdown of the principal expense categories. This need not be more than a single page, and can be made an attachment to the PRFA.

E. **Amendment**. The PRFA may be amended, at the FOSC's discretion, to increase the authorized maximum reimbursement ceiling, if additional assistance and support is desired, or if costs incurred for services provided exceed the original estimate. In essence, the PRFA creates a ceiling and makes funding available to the other government agency.

F. **Other Agency Cost Tracking and Documentation.** The other government agency (OGA) receiving a PRFA must track its costs and provide documentation to support reimbursement and federal cost recovery actions against RPs, as appropriate. Cost documentation must follow the guidance stated in Chapter 2 of this manual or equivalent agency documentation. All alternative documentation schemes must be pre-approved by the NPFC prior to use.

1. **NOAA**. The NOAA Scientific Support Coordinators (SSC) and their associated services are the most frequently called other government agency resources which participate in Coast Guard pollution responses. Unless NOAA specifically declines the need for a PRFA, the FOSC must prepare a PRFA each time the SSC is called for incident specific response support. Based on input from the SSC for each prospective PRFA, NOAA's Office of Ocean Resources Conservation and Assessment (ORCA) in Seattle, Washington will provide the FOSC with a spreadsheet showing the estimated costs for the PRFA. The FOSC shall attach the spreadsheet to the PRFA using it to support the maximum funding authorized by the PRFA.

2. If the level of services provided by NOAA changes, e.g., either by shortening or lengthening the response, changing the nature of NOAA support, NOAA will issue a new estimate which becomes part of the PRFA package. If the funding authorization increases, a PRFA amendment must be issued to show the increase in the authorized funding (decreases do not need to have a amendment issued). Following the completion of a response, NOAA will issue a final cost spreadsheet to the FOSC. Under an agreement with the NPFC, this document will serve as NOAA's resource and cost documentation for inclusion with the FOSC's Financial Summary Report to the NPFC. NOAA has agreed to provide NPFC with a more detailed report upon request to support cost recovery action.

G. **Accounting Data for PRFA**. PRFAs are a Type "34" document. Construct the Document Control Number on all authorizations using the format found in "Accounting Information," in Chapter 3 of the NPFC's User Reference Guide (URG). Contact the NPFC for assistance.

H. **Authorizing Officer**: Signature of FOSC or authorized representative.

I. **Invoicing**. Reimbursements against a PRFA are invoiced to the NPFC, through the FOSC, on Standard Federal Form 1080/1081. The NPFC will not approve payment of charges against a PRFA for:

1. Costs of goods and services which fall outside of those which the FOSC authorized and requested, as to either amount or kind; and

2. Costs which are not adequately documented.

J. **FOSC Certification.** In certifying an invoice for reimbursement against a PRFA, the FOSC is not verifying the various cost categories, but is attesting that the goods and services are consistent with those agreed upon and authorized. An example that can be used is:

I certify that this agency performed removal activities in accordance with the issued Pollution Removal Funding Authorization and reimbursement of costs is authorized, unless otherwise indicated.

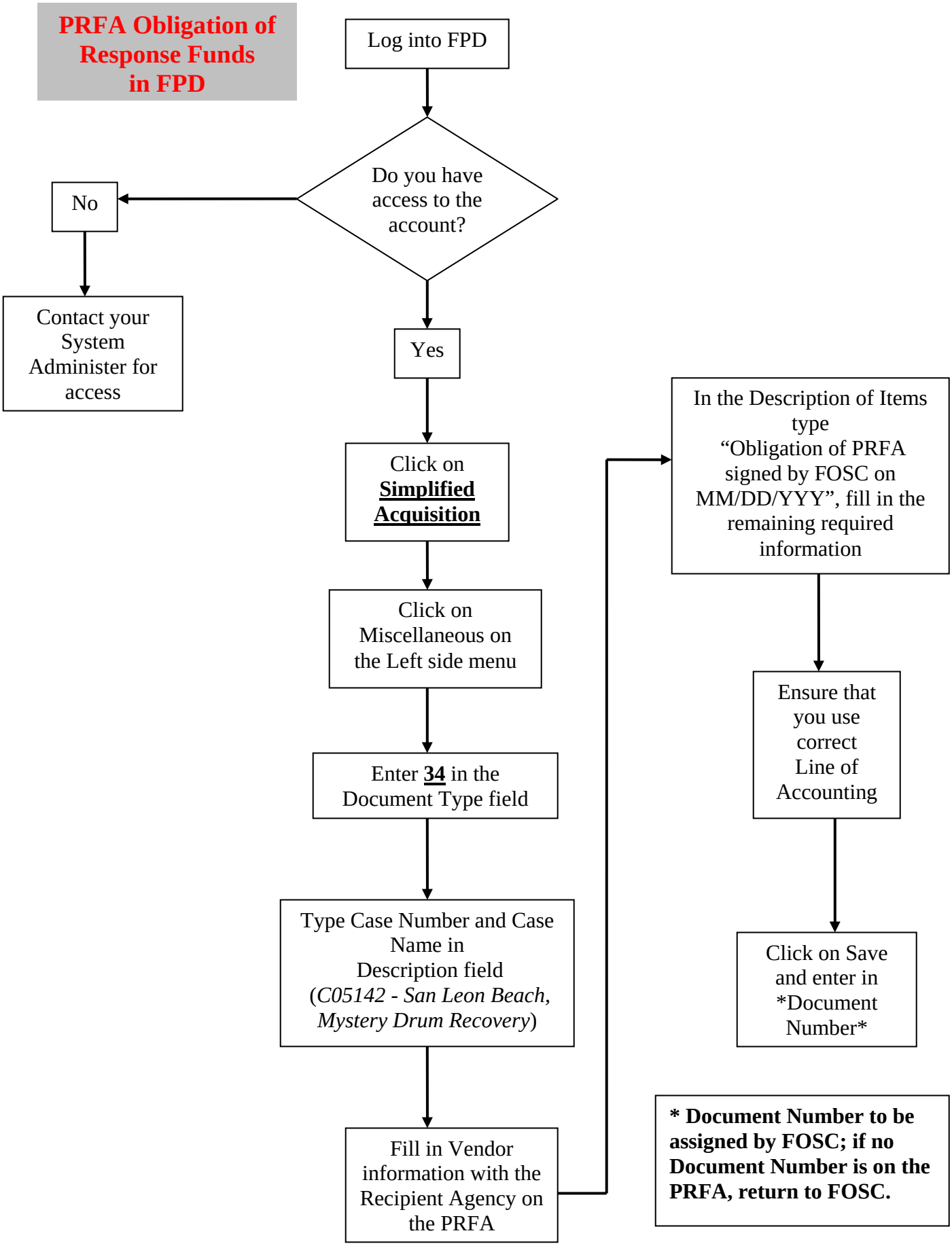
_____

FOSC's Signature and Date

K. **Limitations on use of PRFAs.** The PRFA may not be used by the FOSC to obtain goods or services directly from private individuals, groups, or companies. It should also not be used to obligate funds for the initiation of Natural Resources Damage Assessments (NRDA), further assessment actions, or payment of damages.

L. **Entering PRFAs into FPD**. The flowchart on the following page shows the steps Coast Guard personnel should follow for using FPD to obligate OSLTF, CERCLA, and Disaster funds for PRFAs.

PRFA Obligation of Response Funds in FPD



Federal Agency
Pollution Removal Funding Authorization

Recipient Agency: _____

Address: _____

_____

_____

1. Purpose

This document authorizes reimbursement to the Recipient Agency from the Oil Spill Liability Trust Fund or CERCLA funds for certain removal costs incurred in response to the following pollution incident, _____, Federal Project Number/CERCLA Project Number, _____. This funding authorization is expressly contingent on the Recipient's compliance with all requirements contained herein.

2. Approved Functions and Reimbursement Limit

Costs will be reimbursed only for actions that are directed or approved in advance by the FOSC. Approval may be verbal or written. Assessment, restoration, rehabilitation or replacement of natural resources damaged by the spill are not covered.

Maximum limit of authorization: $_____.

3. Conditions

See attached page(s) for scope of work, special conditions, date of performance, directions or approvals.

4. Period of Authorization

This authorization shall remain in effect until the completion date specified by the FOSC (which normally corresponds to the date of final removal activities).

5. Reimbursement Procedure

Upon completion of removal activities, the Recipient Agency will submit a SF-1080/1081 to the FOSC with detailed records of expenditures and activities for which reimbursement is sought. The agency may elect to use its own records providing an equivalent amount of documentation which has NPFC approval, or the agency may elect to use NPFC's Resource Cost Documentation package. The agency must submit the final request for reimbursement, supported by the required documentation, within 90 days following the completion date. If OMB Circular A-87 cost rates apply, cost certifications must be included. If at the end of the 90 days from final removal activities, there are any costs for which reimbursement has not been requested, written notice will be sent to the agency and 30 days later any balance remaining in the account will be deobligated.

6. Accounting Data

Document Control Number: _____
Accounting String: _____

7. Points of Contact

A. _____ ____ FOSC	Telephone: _____ FAX: _____ E-Mail: _____
B. _____ ____ Recipient Agency Representative	Telephone: _____ FAX: _____ E-Mail: _____
C. _____ ____ NPFC Case Officer	Telephone: _____ FAX: _____ E-Mail: _____

8. Authorizing Official

Signature:_____
Title: Federal On Scene Coordinator Date: _____

Attachments: (1) Scope of Work

Non-Federal Agency
Pollution Removal Funding Authorization

Recipient Agency: _____

Recipient: _____
_____
_____

1. Purpose

This document authorizes reimbursement to the Recipient Agency from the Oil Spill Liability Trust Fund or CERCLA funds for certain removal costs incurred in response to the following pollution incident, _____, Federal Project Number/CERCLA Project Number, _____. This funding authorization is expressly contingent on the Recipient's compliance with all requirements contained herein.

2. Approved Functions and Reimbursement Limit

Costs will be reimbursed only for actions that are directed or approved in advance by the Federal On-Scene Coordinator (FOSC). Approval may be verbal or written. Assessment, restoration, rehabilitation or replacement of natural resources damaged by the spill are not covered.

Maximum limit of authorization: $_____.

3. Conditions

See attached page(s) for scope of work, special conditions, date of performance, directions or approvals.

4. Period of Authorization

This authorization shall remain in effect until the completion date specified by the FOSC (which normally corresponds to the date of final removal activities).

5. Reimbursement Procedure

Upon completion of removal activities, the Recipient Agency will submit a SF-1080/1081 to the FOSC with detailed records of expenditures and activities for which reimbursement is sought. The agency may elect to use its own records providing an equivalent amount of documentation which has NPFC approval, or the agency may elect to use NPFC's Resource Cost Documentation package. The agency must submit the final request for reimbursement, supported by the required documentation, within 90 days following the completion date. If OMB Circular A-87 cost rates apply, cost certifications must be included. If at the end of the 90 days from final removal activities, there are any costs for which reimbursement has not been requested, written notice will be sent to the agency and 30 days later any balance remaining in the account will be deobligated.

6. Hold Harmless and Indemnify

By performing any action or seeking any reimbursement under this funding authorization, the Recipient Agency agrees that the United States of America and all of its departments and agencies, including, but not limited to, the U.S. Coast Guard and the Oil Spill Liability Trust Fund

6. (cont) ("United States"), shall not be liable to any party for damage, injury or loss to persons or property resulting from the acts or omissions of Recipient Agency, its employees, agents or contractors, related to the Recipient Agency's performance of this Agreement.

The Recipient agency agrees to indemnify and hold harmless the United States from all actions, claims or suits for damage, injury or loss to persons or property resulting from the acts or omissions of Recipient Agency, its employees, agents or contractors related to Recipient Agency's performance of this Agreement. This agreement to hold harmless and indemnify the United States is subject to the availability of Recipient Agency funds. The Recipient agrees in good faith to use available Agency funds and to undertake all reasonable effort to acquire such funds if not otherwise available.

7. No Agency

Nothing in this funding authorization is intended to create an agency relationship between the Recipient Agency and the United States of America (or any of its departments, agencies, or employees). Nor shall anything in this funding authorization be construed as creating an agency relationship. By performing any action or seeking any reimbursement under this funding authorization, the Recipient Agency agrees that it has not been authorized to act as an agent of the United States, and shall not act in any such capacity.

8. Accounting Data

Document Control Number: _____
Accounting String: _____

9. Points of Contact

D. _____ FOSC	Telephone: _____ FAX: _____ E-Mail: _____
E. _____ Recipient Agency Representative	Telephone: _____ FAX: _____ E-Mail: _____
F. _____ NPFC Case Officer	Telephone: _____ FAX: _____ E-Mail: _____

10. Authorizing Official

Signature:_____
Title: Federal On Scene Coordinator Date: _____

Attachments: (1) Scope of Work

AMENDMENT TO
POLLUTION REMOVAL FUNDING AUTHORIZATION

An electronic, fillable form is available from the NPFC Web site at www.uscg.mil/npfc/response (under Cost Documentation).

Issued To (Recipient Agency): _____

Address: _____

By (FOSC): _____

Date of Original Authorization: _____

Document Number of Original Authorization: _____

The Authorization cited above is amended as follows:

_____

_____

_____

_____

Document Control Number of this Amendment: _____

Authorizing Official

Signature: _____

Title: __Federal On Scene Coordinator_____ Date: _____

PRFA

SAMPLE STATEMENT OF WORK FOR REMOVAL ACTIONS

The task list below addresses the specific removal actions that are ordered through PRFA's (Pollution Removal Funding Authorization) in support of FOSC's/OSC's. When modification or amendment to this PRFA is required, the "Amendment to Pollution Removal Funding Authorization" shall be used and a new task list shall be assigned if new tasking is identified.

The recipient agency of the PRFA shall perform the following (as identified by the appropriate check marks below):

— collect facts regarding the discharge of oil into navigable waters, to include its source and cause;
— identify potentially responsible parties (RP's);
— analyze the nature, amount, and location of discharged oil;
— analyze the probable direction and time of travel of discharged oil;
— identify pathways to human and environmental exposure;
— provide analysis of discharges posing a substantial threat to the public health or welfare of the United States;
— provide temporary/permanent stabilization prior to the mobilization of other responders;
— provide appropriate personnel, equipment, and supplies to contain and remove discharged oil from navigable waters and shoreline;
— document all site-specific costs incurred by the contractor and the recipient agency for the removal actions;
— identify active or historical facility processes or operations that may have contributed to the discharge of oil;
— prepare a sampling plan that describes the number, type, and location of samples and the type of analysis (for example, sampling and analysis plans for collection of multimedia environmental samples; petrochemical product or waste oil or crude oil);
— collect representative oil sample(s) and submit them to the U. S. Coast Guard Marine Safety Lab for appropriate analyses;
— develop site specific Health and Safety Plans (HSP's);
— review, prepare, and submit all required accounting/accounting records in accordance with the National Pollution Funds Center (NPFC) Instruction 16451, "Technical Operating Procedures for Resource Documentation under the Oil Pollution Act (OPA) of 1990";
— submit Pollution Reports (POLREPS) at periodic intervals as specified by the issuing FOSC/OSC;
— provide daily progress reports and/or consultations to the OSC/FOSC, as necessary;
— develop health and safety procedures for response activities, such as OSHA levels of protection associated with a site;
— recommend cleanup and disposal options;
— review completeness of disposal documentation, such as manifests, waste profile data, and other information;
— obtain permits from local, state or federal agencies, associated with the contractor's response activities;

See www.uscg.mil/npfc/Response/Cost Documentation/prfa.htm for more information

- provide or arrange for site security to prevent unauthorized access of any persons or animals to preserve public safety, such as armed or unarmed security services;
- identify concerned local and elected officials;
- conduct deed and title searches as appropriate;
- conduct waste profile analysis;
- perform and advise on wildlife capture, recovery, and stabilization.

See www.uscg.mil/npfc/Response/Cost Documentation/prfa.htm for more information

Chapter 9

STANDARD FORM 1080/1081

CHAPTER 9 - SF 1080/1081: VOUCHER FOR TRANSFERS BETWEEN APPROPRIATIONS AND/OR FUNDS

A. The SF-1080/1081 is used by other government agencies to request reimbursement from the Coast Guard.

1. Documentation should be organized and summarized, to provide a clear audit trail from the detail to the SF-1080/1081 or invoice submitted for reimbursement. These submittals will be reviewed by the NPFC staff for continuity and propriety. Incomplete submittals will be returned to sender for corrective action.

B. HOW TO COMPLETE SF-1080/1081/GENERAL INFORMATION:

1. **Voucher No:** Inserted by the agency submitting the SF-1080/1081.
2. **Schedule No:** Inserted by the agency submitting the SF-1080/1081.
3. **Department, establishment, bureau, or other receiving funds:** Federal agency submitting SF-1080/1081 (usually complete mailing address).
4. **Bill No:** Used by federal agencies to identify accompanied invoice number.
5. **Department, establishment, bureau, or office charged:** Address of CG-FOSC agency receiving reimbursement request.
6. **Paid By:** Leave blank.
7. **Order No:** Varies according to agency; numerical identifier for job (e.g. 0001, etc.).
8. **Date of Delivery:** Date work began and was completed.
9. **Articles or Services:** Brief explanation of how expenses were incurred; ensure Pollution Removal Funding Authorization Accounting String and Document Control Number are listed. Some agencies may choose to include their own in-house accounting information.
10. **Quantity:** Entry varies.
11. **Unit Price:** Entries depend on how specific work is identified; normally accompanied by an invoice and dailies to explain work specifics.
12. **Amount:** Exact dollar amount of reimbursement.
13. **Total:** Same as above.
14. **Remittance in payment hereof should be sent to:** Mailing address of agency submitting SF-1080/1081.

C. ACCOUNTING CLASSIFICATION - OFFICE RECEIVING FUNDS

1. This section is completed by agency submitting SF-1080/1081. There should be a name listed as a point of contact with a telephone number.

D. CERTIFICATE OF OFFICE CHARGED

1. This is to be completed by NPFC staff after the SF-1080/1081 and its attached documentation has been reviewed.

E. ACCOUNTING CLASSIFICATION - OFFICE CHARGED

1. This section is completed by NPFC staff.

Standard Form 1080 Revised April 1982 Department of the Treasury 1 TFRM 2-2500 1080-109	**VOUCHER FOR TRANSFERS BETWEEN APPROPRIATIONS AND/OR FUNDS**	VOUCHER NO. SCHEDULE NO.

Department, establishment, bureau, or office receiving funds

BILL NO.

Department, establishment, bureau, or office charged

PAID BY

Director (CM)
National Pollution Funds Center
Case Management Division
4200 Wilson Blvd., Suite 1000
Arlington, VA 22203-1804

ORDER	DATE OF DELIVERY	ARTICLE OR SERVICES	QUANTITY	UNIT PRICE		AMOUNT
				COST	PER	DOLLARS AND CENTS
					TOTAL	

Remittance in payment hereof should be sent to –

ACCOUNTING CLASSIFICATION C *Office Receiving Funds*

CERTIFICATE OF OFFICE CHARGED

I certify that the above articles were received and accepted or the services performed as stated and should be charged to the appropriation(s) and/or fund(s) as indicated below; or that the advance payment requested is approved and should be paid as indicated.

_____
(Authorized administrative or certifying officer)

_____
(Date)

_____
(Title)

ACCOUNTING CLASSIFICATION C *Office Charged*

Paid by Check No.

MSN 7540-00634-4220 PREVIOUS EDITIONS ARE USABLE

STANDARD FORM 1081 Revised September 1982 Department of the Treasury ITFRM 2-2500	**VOUCHER AND SCHEDULE OF WITHDRAWAL AND CREDITS**	

CHARGE AND CREDIT WILL BE REPORTED ON CUSTOMER AGENCY STATEMENT OF TRANSACTION FOR ACCOUNTING PERIOD ENDING	Transaction Date Document No.

CUSTOMER AGENCY		**BILLING AGENCY**	
Agency Location Code (ALC)	Customer Agency Voucher No.	Agency Location Code (ALC)	Billing Agency Voucher No.
DEPARTMENT BUREAU ADDRESS		DEPARTMENT BUREAU ADDRESS	

SUMMARY		**SUMMARY**	
APPROPRIATION, FUND, OR RECEIPT SYMBOL	AMOUNT	APPROPRIATION, FUND, OR RECEIPT SYMBOL	AMOUNT
(MUST AGREE WITH BILLING AGENCY) **TOTAL**		(MUST AGREE WITH BILLING AGENCY) **TOTAL**	

Details of charges or reference to attached supporting documents

BILLING AGENCY CONTACT:
PREPARED BY
APPROVED BY
TELEPHONE NO.

CERTIFICATION OF CUSTOMER OFFICE

I certify that the items listed herein are correct and proper for payment from and to the appropriation(s) designated.

(*Date*) (*Authorized administrative or certifying officer*)

(*Telephone*)

PREVIOUS EDITION NOT USABLE

Original - Forward to Customer for Payment

Chapter 10

UNIT FUND REIMBURSEMENT

CHAPTER 10 - UNIT FUND REIMBURSEMENT

Ref: (a) NPFCINST M7300.1: TOPs for Determining Removal Costs Under the Oil Pollution Act of 1990

A. During a pollution response, FOSC's should attempt to charge incident specific costs directly to the applicable Federal Project Number (is this limited only to FPN's or is it applicable to CPN's also?) to simplify the FOSC's responsibilities for both ceiling management and cost recovery. When this is not possible, circumstances have sometimes forced units to use their own funds. An example of a reimbursable cost is phone charges on a unit phone bill made in support of an oil pollution removal case. This Chapter provides instructions on how to request a reimbursement from the NPFC.

B. Only appropriate removal costs may be refunded. Reimbursements may be authorized for items purchased for removal operations related to a specific FPN and to replace a unit's stock if they were expended as a result of the specific incident. Refer to ref (a) for general guidance on property purchases and acquisitions.

C. Requests for reimbursement may be submitted via email to your case officer and should include the following:

   a. The total dollar amount of the reimbursement request as well as a break down of the individual expenditures that make up the total dollar amount.
   b. The date each expenditure was incurred.
   c. The document control number for each expenditure, as well as the line of accounting each expenditure was charged against.
   d. Facsimile of:

      i. Itemized bill with items for reimbursement clearly highlighted or otherwise indicated;
      ii. PES Report documenting that the expenditures were paid out of the unit's account and:
      iii. For credit card purchases, include a copy of credit card statement with the items for reimbursement highlighted or otherwise indicated.

D. FOSCs must continue to track the estimated totals for all categories of applicable costs against the assigned ceiling. Upon approval of reimbursement requests for out-of-pocket expenses, the FOSC should record those reimbursed expenditures on the Pollution Daily Resource Report. Such reimbursements would reduce the amount of remaining ceiling by the amount of the reimbursements approved.

E. Units may only be reimbursed in the fiscal year in which expenses were incurred. Requests for reimbursement should be received prior to 15 August to ensure adequate time for obligation of the "reimbursed" funds prior to the end of the fiscal year. NPFC will attempt to expedite reimbursements received after 15 August, but may be constrained by G-CFM SOP's for Fiscal Year Closeout.

Appendix A

COST DOCUMENTATION CHECKLIST

Department of Homeland Security
U.S. Coast Guard

National Pollution Funds Center
4200 Wilson Boulevard, Suite 1000
Arlington, VA 22203-1804
202/493-6700 www.uscg.mil/npfc

Case/Cost Documentation Checklist for Federal Project Numbers (FPNs), CERCLA Project Numbers (CPNs), and Disaster Project Numbers (DPNs)

Checklist for FOSCs as they collect, prepare, and finalize cost documentation packages for submission to the NPFC.

- ☐ **Incident Report and Transmittal Form (IRAT) (5 pages)**
  - ☐ Page 1—Complete all applicable sections. Identify all supplemental documents as enclosures to this IRAT. *Ensure this is signed by the FOSC or designated person.*
  - ☐ Page 2—Complete all applicable sections. Provide name, address, and phone numbers of all involved parties (owner, operator, guarantor, or insurance representative).
  - ☐ Page 3—Complete all applicable sections about the contractors hired by the CG.
  - ☐ Page 4—Complete all applicable sections about other government agencies (OGAs) involved in this case.
  - ☐ Page 5—Complete this section identifying all other key parties, including other CG units involved.
- ☐ **Strike Team Participation**
  - ☐ Capture all members of the Strike Team on the dailies, unless they do a separate daily.
  - ☐ Collect a copy of each member's travel orders and liquidated travel claim (TVS). **Note**: Each traveler is required to hold a copy of his/her documents for 6 years and 3 months, no exceptions.
  - ☐ Collect a copy of the Strike Team Summary Report and include it as an enclosure to the IRAT.
- ☐ **Ceiling Messages, Situation Reports, Pollution Reports, Strike Team Launch Messages, NRC Messages**
  - ☐ Collect copies of all these messages as they pertain to this case and include them as enclosures to the IRAT.
- ☐ **Other Correspondence** (COTP Orders, Administrative Orders, Decision Memos, MISLE Documents, Marine Safety Lab Reports, Vessel Critical Profiles, RP Correspondence)
  - ☐ Ensure all applicable documents listed above are included as enclosures to the IRAT
- ☐ **Coast Guard Cost Documentation**
  - ☐ Ensure all the dailies are completed and signed by FOSC/FOSCR.
  - ☐ Ensure all personnel involved in the response are listed on the dailies.
  - ☐ Ensure all equipment physically used in the response is listed on the dailies.
    - ☐ Aircraft—Get a copy of the Aircraft Bluesheet from the Air Station.
    - ☐ Cutters—Get a copy of the cutter nav log and abstract of ops report.
  - ☐ Ensure all the TONOs are "accounted for or noted" on the dailies.
    - ☐ Include a copy of all signed travel orders.
    - ☐ Include a copy of all liquidated travel claims (TVS). (Member is required to hold these records for 6 years 3 months.)
    - ☐ Ensure all GTRs used are "accounted for or noted" on the dailies.
      - ☐ Include a copy of flight itinerary showing payment made on GTA account (not member's travel card) if over $1,000.
  - ☐ Ensure all purchase requests (PRs), CG ICS 213RRs, purchase orders (POs), and credit card purchases are "accounted for or noted" on the dailies.
    - ☐ Include copies of all obligation documents, which must be signed.
    - ☐ Include copies of all receipts for purchases (i.e., the receipts the vendors provide for a purchase or for services rendered). Include all DRMO receipts for property purchases that require disposal at a DRMO or approved receiving agency.
  - ☐ Include any MIPR (DOD Assets). (Rarely used by CG units, these documents are coordinated through the MLC office.)
- ☐ **Pollution Removal Funding Authorizations (PRFAs)** (These documents are all obligated in FPD by NPFC)
  - ☐ Include a signed copy of the PRFA(s) in the documentation.
  - ☐ Include a copy of any amendments to PRFAs in documentation.
  - ☐ Include the completed SF-1080 or SF-1081 from agency under the PRFA.
  - ☐ Include the completed cost documentation package from agency under the PRFA.
  - ☐ Ensure FOSC endorsement is evident on the agency cost documentation package.
- ☐ **Contractor Services**
  - ☐ Include a copy of the signed PR and OF 347 (Delivery Order) and any amendments.
  - ☐ Include a copy of the Authorization to Proceed (ATP) to contractor (if applicable) or message ATP.
  - ☐ Include a copy of the contractor's invoice, with FOSC endorsement on services rendered.
  - ☐ Include a copy of the Contractor Dailies signed by contractor and FOSCR (CG-5136 forms or equivalent as authorized by NPFC/MLC).
  - ☐ Include a copy of the Contractor's Waste Manifest for disposal.

See NPFC's Web site (www.uscg.mil/npfc) at Home > Response > Cost Documentation for forms and instructions.

U.S. Department of Homeland Security
United States Coast Guard

Commandant
United States Coast Guard

2100 Second Street, S.W.
Washington, DC 20593-0001
Staff Symbol: G-83
Phone: (202) 267-1064
Fax: (202) 267-4153

COMDTINST 7310.1J
MAR 15 2006

COMMANDANT INSTRUCTION 7310.1J

Subj: STANDARD RATES

1. PURPOSE. This Instruction establishes standard rates to be used in computing reimbursable charges.

2. ACTION. Area and district commanders, commanders of maintenance and logistics commands, commanding officers of headquarters units, assistant commandants for directorates, Judge Advocate General and special staff offices at Headquarters shall ensure that the guidelines prescribed within this Instruction are followed. Internet release authorized.

3. DIRECTIVES AFFECTED. Standard Rates, COMDTINST 7310.1I is cancelled.

4. DISCUSSION.

   a. The Coast Guard enters into reimbursable agreements with other government agencies in which the cost of the service provided must be recovered. The Coast Guard also has specific authority for reimbursement of certain services provided to the private sector. The enclosed rates represent the full cost to the Coast Guard for use of its resources.

   b. An overview of the methodology used to calculate these standard rates can be downloaded at CG Central, http://cgcentral.uscg.mil, key word "SRUF".

5. POLICY.

   a. The enclosed rates are effective as of the date of this Instruction (indicated above). Use the "Outside Government" rate for services provided to customers outside the federal government on or after this date. Use the "Inside Government" rate for intra-governmental services provided on or after this date.

DISTRIBUTION – SDL No. 144

	a	b	c	d	e	f	g	h	i	j	k	l	m	n	o	p	q	r	s	t	u	v	w	x	y	z
A																										
B	1	5	10		12	2	2	2	2		2	2	2	2	2		2	2		4						2
C	2	2	2	2	2	2	2		2		4		2	4									2		1	
D	2	2		2	4																					
E														2	2											
F																										
G																										
H																										

NON-STANDARD DISTRIBUTION:

b. The Coast Guard currently has a negotiated rate for certain government users of the Polar class icebreakers.

c. The "direct" portion of the standard rates includes both fixed and variable components. Therefore, these rates should not be used to calculate reimbursement for FEMA and foreseeable costs related to contracting actions, cost justification for use of military aircraft or incremental operations costs. Rates for these purposes shall be promulgated separately.

d. Reimbursable rates for services provided which are not covered by this Instruction should be developed in consultation with Commandant (CG-832).

e. These rates, where appropriate, should be supplemented with out-of-pocket costs such as:

(1) Extra maintenance required due to extraordinary facility use or abuse, based on the actual costs of the additional materials and labor;

(2) Incidental personnel expenses such as travel and per diem; and

(3) The cost of any special equipment purchased solely for the purpose of providing a reimbursable service.

f. Update or delete any existing rates in manuals or other publications which are based on prior issues of this instruction.

6. INQUIRIES. Address questions concerning these standard rates or the determination of other charges to Commandant (CG-832), specifically the Strategic Cost Team.

7. ENVIRONMENTAL ASPECT AND IMPACT CONSIDERATIONS. Environmental considerations were examined in the development of this Instruction and have been determined to be not applicable.

8. FORMS AVAILABILITY. None.

R. S. HOROWITZ /s/
Chief Financial Officer

Encl: (1) Hourly Standard Rates for Cutters, Boats, and Aircraft
(2) Hourly Standard Rates for Personnel
(3) Standard Rates for Replacement or Repair to Damaged Aids to Navigation
(4) Hourly Standard Rates for Pollution Clean-up Equipment
(5) Standard Rates for Vehicles
(6) Standard Rates for Outpatient Visits
(7) Standard Rates for Canine Teams

HOURLY STANDARD RATES FOR CUTTERS, BOATS, AND AIRCRAFT

General

The hourly standard rates for cutters, boats, and aircraft are divided into two categories "Inside Government" and "Outside Government." The "Inside Government" rate is for use when charging other agencies within the federal government. The "Outside Government" rate is for use when charging all others.

Inside Government – The following are the components of the "Inside Government" rate:

Direct Costs: Represents direct costs incurred by a particular asset class. This includes labor, employee benefits, fuel, maintenance, etc.

Support Costs: Costs allocated to a particular asset class for support received from Coast Guard support activities, including but not limited to, area commands, maintenance and logistics commands, districts, groups, Integrated Support Commands (ISCs), Naval Engineering Support Units (NESUs), etc.

General and Administrative (G&A): Costs allocated to a particular asset class to represent benefit received from Coast Guard general and administrative activities such as legal services, payroll processing, etc.

Outside Government – In addition to the costs listed in the "Inside Government" rate, the following additional costs are included in the "Outside Government" rate:

Pension Benefit Adjustment: Costs incurred for retirement pay and medical expenses.

Operating Asset Depreciation: Depreciation by class of cutter, aircraft, boats, buildings, structures, electronics, and other assets.

Operating Asset Cost of Capital: The annual rate of return (equal to the average long-term Treasury bond rate) applied to the net book value of cutters, aircraft, boats, buildings, structures, and other assets.

Hourly Standard Rates for Cutters, Boats, and Aircraft

		Inside Government Rate				Outside Government Rate (added components)			
		Direct	Support	G&A	Total	Pension Adjustment	Op & Other Asset Depreciation	Op & Other Asset Cost of Cap	Total
Cutters	WHEC	$3,383	$1,719	$2,957	$8,059	$969	$1,155	$910	$11,094
	WMEC 270	$1,987	$772	$1,882	$4,642	$615	$581	$452	$6,290
	WAGB MACKINAW	$2,894	$2,192	$2,508	$7,594	$814	$124	$333	$8,865
	WMEC 282	$3,126	$2,992	$2,803	$8,921	$941	$851	$700	$11,412
	WLI	$1,569	$2,581	$1,829	$5,979	$587	$154	$92	$6,812
	WLIC	$1,096	$685	$767	$2,548	$251	$39	$35	$2,873
	WYTL	$730	$838	$795	$2,362	$254	$79	$70	$2,766
	WTGB	$1,363	$950	$1,351	$3,664	$440	$1,053	$363	$5,520
	WLR	$797	$739	$929	$2,465	$302	$91	$89	$2,947
	WAGB HEALY	$4,426	$1,787	$1,554	$7,767	$548	$2,692	$665	$11,672
	WMEC 210	$1,674	$669	$1,534	$3,877	$498	$449	$278	$5,102
	WPB 110/123	$692	$522	$694	$1,909	$220	$323	$106	$2,558
	WLB 180	$870	$589	$938	$2,396	$305	$42	$59	$2,803
	WLB 225	$1,957	$841	$1,719	$4,517	$572	$798	$205	$6,091
	WLM 175	$1,891	$649	$1,374	$3,914	$455	$530	$159	$5,058
	WAGB POLAR	$3,346	$2,408	$2,691	$8,445	$904	$1,026	$1,085	$11,461
	WPB 87	$430	$407	$522	$1,359	$170	$129	$40	$1,699
	WMEC 213 & 230	$2,021	$2,281	$2,227	$6,530	$740	$195	$214	$7,679
Boats	ANB (55', 63', 64' & 65')	$270	$802	$431	$1,502	$136	$130	$78	$1,847
	ANBX (27', 34', & 38')	$126	$2,485	$1,019	$3,629	$541	$61	$94	$4,325
	BU (45' BUOY BOAT)	$212	$666	$373	$1,250	$119	$117	$73	$1,559
	BUSL (49' BUOY BOAT)	$374	$813	$438	$1,625	$136	$161	$105	$2,027
	MLB (44', 47 & 52')	$594	$502	$604	$1,701	$185	$145	$93	$2,123
	RBS	$304	$137	$323	$764	$107	$41	$25	$937
	SKF (SKIFF)	$259	$188	$337	$785	$110	$27	$16	$938
	TANB (21')	$350	$342	$474	$1,167	$155	$53	$36	$1,410
	TPSB (22' & 25')	$220	$187	$312	$719	$103	$12	$8	$843
	UTB/ATB (41')	$524	$378	$545	$1,447	$166	$109	$70	$1,792
	UTL/PWB (15' - 24')	$862	$98	$980	$1,941	$318	$51	$29	$2,340
	UTM/SRB (25' - 40')	$90	$170	$159	$419	$48	$28	$15	$511
Aircraft	HU25 (CO)	$6,211	$643	$1,995	$8,849	$598	$637	$497	$10,581
	HC130H (CO)	$6,350	$1,957	$2,959	$11,266	$955	$1,108	$908	$14,237
	HH60J (CO)	$4,886	$1,178	$2,841	$8,905	$885	$1,072	$850	$11,712
	HH65A(CO)	$3,580	$646	$2,050	$6,277	$638	$654	$514	$8,083
	C37 (CO)	$6,551	$1,901	$5,829	$14,280	$1,496	$180	$87	$16,043
	MH68	$2,426	$381	$2,470	$5,277	$814	$111	$86	$6,288

HOURLY STANDARD RATES FOR PERSONNEL

Rate Computation

The hourly standard rates for personnel services are based on prevailing annual standard personnel costs related to employee productive hours as reflected in Staffing Standards Manual, COMDTINST M5312.11(series). The rates are presented on the following page. A factor representing incurred but unfunded retirement and medical costs is included for customer effort external to the federal government.

Rate Application

The average hourly rates for customers inside and outside the federal government are presented for those situations that require computations on an hourly basis. For reimbursable agreements that involve extended periods of time (e.g., monthly or yearly) contact Commandant (CG-832), specifically the Strategic Cost Team for appropriate guidance.

It is important to note that charges for normal crews are contained within the rates for cutters, aircraft and small boats. Therefore, use the standard personnel rates listed below only where additional personnel reimbursement is appropriate.

Actual costs for travel and per diem, if applicable, must also be included in the reimbursement.

HOURLY RATES FOR PERSONNEL ($)

Rank	In Gov't ($) Rate	Out Gov't ($) Rate	Grade	In Gov't ($) Rate	Out Gov't ($) Rate
O-6	94	115	GS-15	87	95
O-5	81	99	GS-14	76	82
O-4	73	89	GS-13	66	71
O-3	62	75	GS-12	57	61
O-2	49	59	GS-11	48	52
O-1	41	49	GS-10	45	49
CADET	17	19	GS-09	41	44
			GS-08	39	42
W-4	68	83	GS-07	35	38
W-3	60	75	GS-06	33	35
W-2	54	67	GS-05	29	31
			GS-04	27	29
E-10	68	83	GS-03	26	28
E-9	65	78			
E-8	57	68	WG-15	51	55
E-7	51	61	WG-14	49	53
E-6	46	55	WG-13	47	51
E-5	40	47	WG-12	44	48
E-4	33	38	WG-11	42	45
E-3	30	35	WG-10	40	43
E-2	29	34	WG-09	38	41
E-1	28	32	WG-08	37	40
			WG-07	35	38
			WG-06	34	36
			WG-05	32	34
			WG-04	29	32
			WG-03	27	30
			WG-02	25	27

STANDARD RATES FOR REPLACEMENT OR REPAIR OF DAMAGED AIDS TO NAVIGATION

Rate Application

There are two possible components that may apply when computing a charge for repair or replacement of a damaged or destroyed aid. These components are discussed below, however, they do not include vessel, boat or vehicle time which must be determined separately based upon this instruction. Additional policy on charges for aids to navigation work is contained in 33 CFR Part 74.

Replacement Costs

For the replacement of buoys, chains and the related transportation cost, see Commandant (CG-43) website at the following URL: http://www.uscg.mil/systems/gse/gse2/Products.htm
Units which do not have access to the internet can obtain hard copies of these rates from Commandant (CG-832), specifically the Strategic Cost Team.

Use actual costs for sinkers, lighting and power equipment. Include costs to install equipment on the buoy (retro, wiring, etc.).

Replacement cost for structures should be actual cost of materials. If replacement is accomplished using a contractor, charges should include contract cost, contract management cost (including inspection) and actual cost of government furnished equipment.

Charges shall include the cost of temporary floating aids until the damaged aid is replaced.

Replacement costs shall also include government labor and shall be computed using the personnel rates contained in this Instruction.

Temporary Aids

Charges for temporary aids shall include actual cost for retrofit and signal equipment needed to place the aid in the water. After retrieval of the temporary aid, include cost (either ISC or unit) to place buoy in ready for issue condition.

Monthly servicing costs vary throughout the Coast Guard and shall be computed locally at the District level by prorating costs based upon the following categories and time periods. For example, the monthly servicing cost for a steel buoy would be computed by dividing the six year overhaul cost by seventy-two.

A 6 year overhaul cost for steel buoys
A 6 year life for lighting and power equipment
A 2 year life for moorings
A 20 year life for steel buoys with the exception of 4th and 6th class
A 2 year life for 4th and 6th class buoys
A 8 year life for foam buoys
A 6 year life for plastic buoys

For the purposes of applying these computed rates, a month is considered to be 16 or more days of use.

Labor for buoy servicing at support facilities shall be computed using the personnel rates contained in this instruction.

Questions concerning computing charges for damaged aids shall be referred to Commandant (G-PWM3).

HOURLY STANDARD RATES FOR POLLUTION CLEAN-UP EQUIPMENT

Rate Application

Apply these charges for every full or fractional hour of use, excluding transit time. Make separate charges for: (1) cost of Coast Guard Strike Team personnel operating and/or supervising the operations of the equipment based on the standard rates for personnel, enclosure (2); (2) actual fuel costs associated with operational use of the equipment; (3) the cost of transporting the equipment to and from the job site; and (4) actual reimbursement cost when performed by a contractor. To obtain cost guidance on any other equipment not listed below contact G-RPP.

HOURLY STANDARD RATES FOR POLLUTION CLEAN-UP EQUIPMENT

Equipment Type	Rate	Equipment Type	Rate
Voss System Trailer	$238	Fast Sweep Boom	$29
DESMI 250 Skimmer and Control Std	$36	Large Pump System w/ Trailer	$234
High Speed Skimmer	$70	Small Pump System	$72
Deutz Prime Mover	$24	Non-Submersible Pumps	$20
Highstar Prime Mover	$25	Storage Inflatable Barge	$73
CCN-150 Pump	$35	Boom Mooring System	$96
DOP 250 Pump	$43	Dracone Off-Loading Pump Systems	$216
650 Ft Inflatable Boom (1 reel)	$44	Storage Seaslugs	$129
Inflatable Boom (5 reels) w/ Trailer	$210	Pollution Response Trailers Command/Comms Offices	$339
500 ft Foam Boom	$27		
500 ft Foam Boom, 3 Boxes w/Trailer	$56		

STANDARD RATES FOR VEHICLES

Rate Computation

The standard rates for vehicles are available from GSA at the following web site:
http://www.gsa.gov/Portal/gsa/ep/channelView.do?pageTypeId=8211&channelPage=%2Fep%2Fchannel%2FgsaOverview.jsp&channelId=-13038
These rates represent averages for similar vehicle types from different regions of the country. Units which do not have access to the internet can obtain hard copies of these rates from Commandant (CG-832), specifically the Strategic Cost Team.

Rate Application

The rates are applied for every full or fractional mile or month of use. These rates can be prorated to a daily rate if necessary. If the vehicle is a commercial rental or GSA lease, charge the actual cost of the rental if available. Include a charge for personnel if the driver is not attached to another unit (such as cutter, aircraft or small boat) involved in the operation.

STANDARD RATES FOR OUTPATIENT VISITS

All authorized Coast Guard and DoD beneficiaries provided care in Coast Guard medical treatment facilities are entered in the Composite Health Care System (CHCS). CHCS generates monthly DD Form 7A (Part B): Outpatient Treatment Furnished reports based on Outpatient Itemized Billing Methodology. Commandant (CG-10) is solely responsible for extracting, auditing and validating DD7A bills for each of the military service's within DoD. The Coast Guard Finance Center then bills the appropriate Uniformed Service in accordance with the annually updated, inter-agency rates published in the Federal Register and the procedure established in existing Memorandums of Agreement (MOA).

Routine medical care should not be furnished to personnel other than those specifically entitled by Title 10, United States Code. Non-routine care will be billed on a case-by-case basis, depending on actual circumstances, in accordance with the procedures outlined above.

Contact Commandant (CG-10) for further guidance.

STANDARD RATES FOR CANINE TEAMS

Rate Computation

When computing the standard rates for a canine team's services, the following charges should apply:

(1) Canine handler based on the standard rates for personnel, enclosure (2);
(2) The standard rate for vehicles, enclosure (5); and
(3) Parking and Toll fees.

For reimbursable agreements that involve 2 or more days, or travel outside the team's designated Law Enforcement Ashore Operating Area, contact Commandant (G-RPL). The standard rates for this type of request should include the following, if applicable:

(1) Air Fare;
(2) Vehicle rental;
(3) Per Diem;
(4) Kenneling fees;
(5) Canine fees at the rate of $5.00 per day.

Rate Application

The rates should be applied for every full hour of use, and should include vehicle mileage to and from the team's home base to the requesting authority's site. Kenneling, canine fees and per diem should be charged for missions that required overnight stays outside the team's commuting area.

NOTE: When calculating "usage" charges, personnel off-duty time should not be included.

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United States
Environmental Protection
Agency

Office of Emergency and
Remedial Response
OS-210

September 1990
OSWER Directive
9360.3-01

Superfund

EPA

SUPERFUND REMOVAL PROCEDURES

Action Memorandum Guidance

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September 1990

SUPERFUND REMOVAL PROCEDURES

Action Memorandum Guidance

OSWER Directive 9360.3-01

Office of Emergency and Remedial Response
U.S. Environmental Protection Agency
Washington, D.C. 20460

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON. D.C. 20460

SEP 26 1990

OFFICE SOLID WASTE AND
EMERGENCY RESPONSE

MEMORANDUM

SUBJECT: Transmittal of Superfund Removal Procedures Manual-Action Memorandum Guidance (OSWER Directive 9360.3-01)

FROM: Henry L. Longest II, Director
Off ice of Emergency and Remedial Response

TO: Director, Waste Management Division
Regions I, IV, V, VII, VIII
Director, Emergency and Remedial Response Division
Region II
Director, Hazardous Waste Management Division
Regions III, VI
Director, Toxic and Hazardous Waste Management Division
Region IX
Director, Hazardous Waste Division
Region X
Director, Environmental Services Division
Regions I, VI, VII
OHM Coordinators, Regions I-X

Purpose

To transmit new guidance on the preparation of Action Memorandums for Superfund removal actions.

Background

EPA issued the third edition of the Superfund Removal Procedures (SRP) Manual in May 1988. The next edition is planned for completion in 1990-91 and calls for restructuring the manual into ten stand-alone documents, each of which will cover a separate topic. We believe that this will make the manual easier to use. The first volume of the new SRP Manual addresses the preparation of Action Memorandums. Other volumes, which will address such topics as Response Reporting, Enforcement, and Community Relations, will be published over the next several months.

Implementation

Improving the quality Of Superfund Action memos is a high priority for the Office of Emergency and Remedial Response. Please ensure that all staff involved with preparation or review of Action Memos are provided this guidance. Bound copies of the guidance document will be shipped directly to the Regions for distribution in several weeks.

If you have any questions on this guidance, please contact Elizabeth Zeller at FTS 382-7735.

Attachment

cc: Timothy Fields, Jr.
Bruce Diamond
Clem Rastatter
Paul Nadeau
Larry Reed
Stephen Luftig
Elizabeth Zeller
Earl Salo
Betti VanEpps

This document is part of a ten-volume series of guidance documents collectively titled Superfund Removal Procedures. These stand-alone volumes update and replace OSWER Directive 9360.0-3B, the single-volume Superfund Removal Procedures manual, issued in February 1988.

Each volume in the series is dedicated to a particular aspect of the removal process and includes a volume-specific Table of Contents, and Reference list. The series comprises the following nine procedural volumes:

The Removal Response Decision: Site Discovery to Response Decision

Action Memorandum Guidance

Response Management: Removal Start-up to Close-out

Removal Enforcement Guidance for On-Scene Coordinators

Public Participation Guidance for On-Scene Coordinators: Community Relations and the Administrative Record

Removal Response Reporting

Special Requirements

Guidance on the Consideration of ARARs During Removal Actions

State Participation.

In addition, the series includes an Overview volume, containing a comprehensive Table of Contents, List of Exhibits, List of Acronyms, and Glossary, for use as a quick reference.

As the day-to-day managers of removal responses conducted under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), On-Scene Coordinators (OSCs) are responsible for a variety of activities. Among the most basic, yet highly important tasks, is the preparation of Action Memoranda, more commonly referred to as Action Memos.

An Action Memo provides a concise written record of the decision selecting a removal action. It describes the site's history, current activities, and health and environmental threats outlines the proposed actions and costs; and documents approval of the proposed action by the proper Headquarters' or Regional authority. An addendum to the Action Memo, which is not part of the decision to select a removal action, sets forth the enforcement strategy.

An adequate Action Memo, however, must be more than a summary of past, current, and proposed activities. It must document consideration of the factors affecting the removal decision. Specifically, the Action Memo must substantiate the need for a removal action based upon criteria in the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). Because Action Memos are the primary decision documents to select and authorize removal actions, they are the critical component of the administrative record. The importance of a well-prepared Action Memo cannot be overstated. The following pages outline the minimum requirements for Action Memos, presenting illustrative exhibits and examples when appropriate.

Preparing Action Memos is an integral part of an OSCs job.

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LIST OF EXHIBITS

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KEY TO SYMBOLS

Three types of symbols appear throughout this document to assist readers with obtaining additional information on certain topics or focus attention on specific points. Each of three symbols is described below. In addition, footnotes and cross-references are used to provide further clarification.

Bracketed numbers [#] appear in the text and exhibits and corresponds to specific references in Appendix A. This appendix provides a comprehensive list of supporting guidance documents that may be consulted for more detailed explanations of removal program procedures or policies affecting the preparation of Action Memos. Appropriate sections of statutes and regulations are also cited throughout the text, with a full citation of each statute and regulation appearing in Appendix A.

The remaining two symbols are used in the model Action Memo portion of this document (see pp. 3-320–3-360) to highlight specific information to include in Action Memos. Information that the OSC must include in all Action Memos is denoted by the symbol ⇨. Other information requirements outlined in the model, but not accompanied by this symbol, should be discussed as appropriate given the circumstances of the removal. Information required for Action Memos that is also needed for entry into the Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS) is indicated by the symbol ©. This symbol is intended to help OSCs flag items for CERCLIS, so they can then distribute copies of the Action Memo to data coding staff for coding onto a CERCLIS Removal Information Form or a Site Information Form.

NOTICE

The procedures set out in this document are intended solely for the guidance of Government personnel. They are not intended, nor can they be relied upon to create any rights enforceable by any party in litigation with the United States. EPA officials may decide to follow the guidance provided in this document, or to act at variance with the guidance, based on an analysis of site circumstances. The Agency also reserves the right to change this guidance at any time without public notice.

ACTION MEMORANDA

Action Memorandum Purpose

An Action Memo serves as the primary decision document substantiating the need for a removal response, identifying the proposed action and explaining the rationale for the removal. An Action Memo also reserves funds for a removal response, which are then activated by a signed delivery order. OSCs must prepare an Action Memo for all Fund-financed removal actions prior to the start of a response, or after the fact for removals initiated under an OSC's $50,000 authority.

If circumstances change, supplemental Action Memos may be required later in the response to support the need to continue a removal action beyond 12 months, to increase the total project ceiling, to increase the total project ceiling beyond $2 million, to change the scope of the removal action, or combinations thereof. To initiate a removal action where, at the outset, the project is expected to exceed 12 months in duration or the total cost of the project is expected to exceed $2 million, the OSC must prepare an Action Memo that justifies the need to undertake a removal and also meets the statutory exemption criteria from these limits.

Each Action Memo to initiate a removal must follow the standard model discussed in this guidance to ensure completeness (see p. 3-314). Instructions on how to cover the special circumstances noted above are supplied as well.

The Action Memo as Part of the Administrative Record for Selection of the Removal Action

The Action Memo is the critical component of the administrative record because it is the primary decision document for a removal response [21]. Section 113(k) of CERCLA, as amended, requires the establishment of an administrative record for the selection of a CERCLA response action. The administrative record is the body of information used by the Agency to select a response action. The *administrative record serves two purposes:*

- First, it is the basis judicial review of any issues concerning the selection of a response action. Because a proposed removal action must be supported by the administrative record, the OSC must ensure the adequacy of the administrative record in the event the decision is challenged, such as in a subsequent cost recovery case.

- Second, EPA, through access to the administrative record, provides for public participation, whenever practical, in Superfund decisions, with opportunity as appropriate for comment on the response action selection.

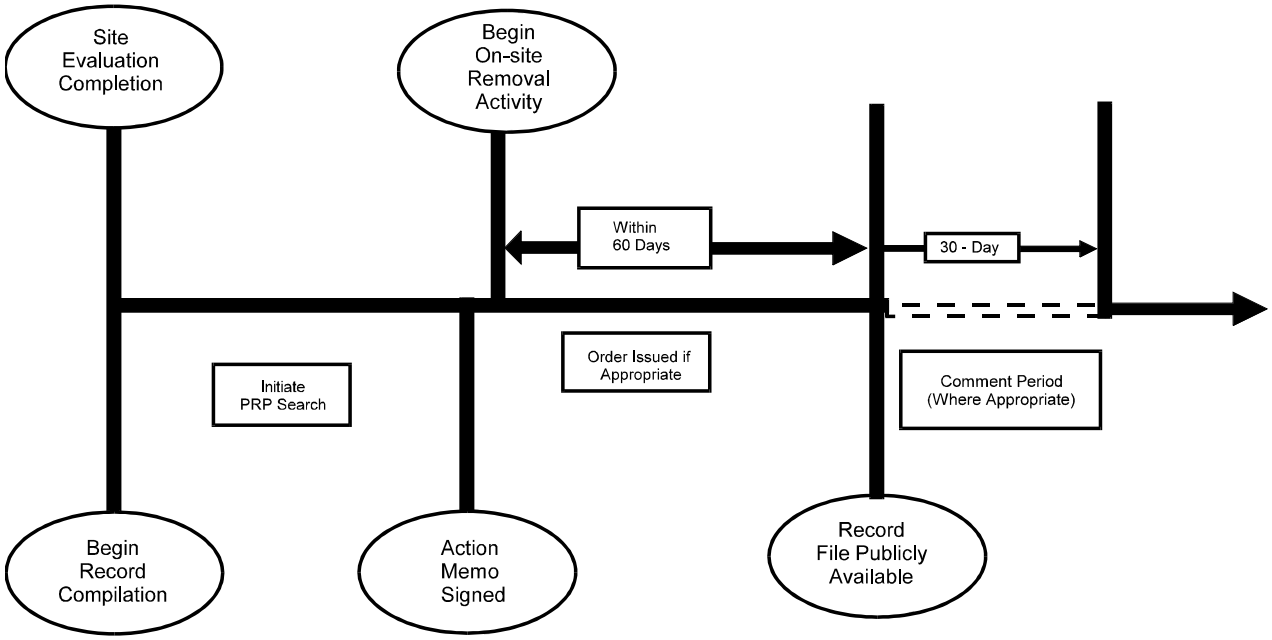
To meet both of these requirements, the administrative record must contain all documents used by the Agency in making its decision to undertake a removal action. As the primary decision document, the Action Memo must demonstrate consideration of the factors affecting the removal decision. Action Memos that do not adequately substantiate the need for a removal action or the selected cleanup method can undermine the Agency's case for a cost recovery action.

ACTION MEMO OUTLINE

Public availability requirements for the administrative record for a removal action as set forth in section 300.820 of the NCP are affected by the urgency of the situation and the preparation of decision documents. The administrative record file for *time-critical removal actions*, including emergency responses, must be made available for public inspection no later than 60 days after the initiation of on-site activity. Public comment periods should be held in appropriate situations at the time the record file is made available. Exhibit 1 illustrates this process for time-critical removals. Although the signing of the Action Memo generally signifies the completion of the response selection decision making, documents relevant to the response may be added to the record file later in certain situations as described in the NCP.

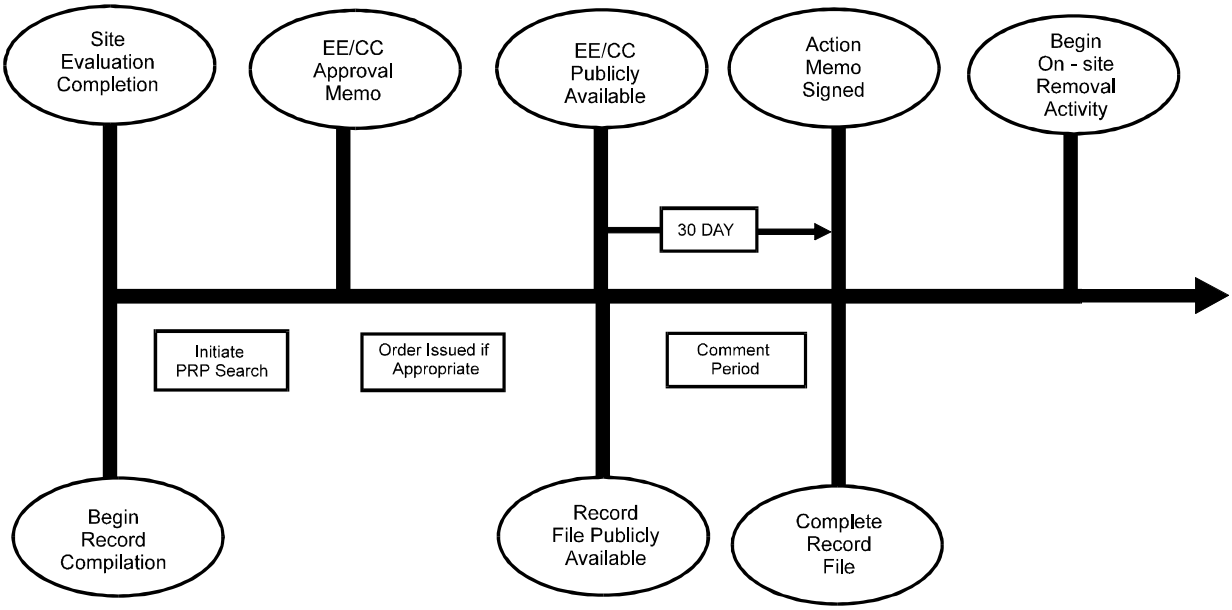
For non-time-critical removal actions, a 30-day public comment period is required on the Engineering Evaluation/Cost Analysis (EE/CA) and any supporting documentation at the time the EE/CA is made available for public comment [1]. The administrative record file must be made available for public inspection at the same time the EE/CA is made available. Exhibit 2, on the next page, illustrates this process for non-time-critical removals.

EXHIBIT 1. ADMINISTRATIVE RECORD REQUIREMENTS FOR TIME - CRITICAL REMOVALS [21]



NOTE: Order of events for illustrative purposes only. Some events may be concurrent.

EXHIBIT 2. ADMINISTRATIVE RECORD REQUIREMENTS FOR NON - TIME - CRITICAL REMOVALS [21]



Action Memorandum Roles and Responsibilities

Regions

OSCs must prepare Action Memos for all Fund-financed actions conducted under removal authority. OSCs should include the Office of Regional Counsel (ORC) or Regional enforcement coordinators in every decision to initiate a removal. In all situations, OSCs should strive to ensure the completeness and accuracy of Action Memos and document conclusions with available information. For instance, OSCs should use attachments to the Action Memo where appropriate to provide additional supporting information. When possible, OSCs should also involve appropriate staff from TSCA, RCRA, and other Agency programs in the removal documentation process. Regional roles and responsibilities are detailed in Exhibit 3, on the next page.

Generally, draft Action Memos should be routed through Regional management for programmatic review and to ensure that proposed removal actions are managed within the Regions' removal advice of allowance as recorded in CERCLIS. Concurrence and/or approval from various Regional program managers is also required in certain situations. OSCs should arrange for Regional review of the Action Memo and must alert Headquarters in a timely fashion of all Action Memos requiring Headquarters' approval. Specific Regional review and approval responsibilities are discussed later in this document (see p. 3-357). In addition, OSCs may want to provide completed Action Memos to personnel in Regional Public Affairs offices to facilitate public notice efforts.

ACTION MEMO OUTLINE

EXHIBIT 3. ACTION MEMO ROLES AND RESPONSIBILITIES	
ON-SCENE COORDINATOR	• Prepares all Action Memos • Alerts the ERD Regional Coordinator to Action Memos requiring Headquarters' approval • Provides copies of all Regionally approved Action Memos to ERD Regional Coordinator • Arranges for review of draft Action Memos by other EPA personnel • May approve Action Memos for up to $50,000 for emergency removals.
REGIONAL REMEDIAL PROJECT OFFICER	• Concurs in writing on the use of the consistency exemption when a site is proposed for or listed on the NPL
REGIONAL COUNSEL/ REGIONAL ENFORCEMENT PERSONNEL	• Reviews all Action Memos • Reviews enforcement section of Action Memos
PERSONNEL ADMINISTRATOR	• Approves all Action Memos for removals less than $2 million and subsequent ceiling increases to $2 million (except for nationally significant or precedent-setting non-NPL removals) • Approves all Action Memos for removals exceeding 12 months
ERD REGIONAL COORDINATOR	• Coordinates the concurrence process for Action Memos requiring Headquarters' concurrence/approval • Advises (upon request) on the preparation of all Active Memos • Prepares addenda as necessary and/or advises Regions on preparation of such addenda
DIRECTOR, ERD	• Approves the use of innovative or emerging alternative technologies, and technologies with uncertain development status • Reviews/concurs on all Action Memos requiring Headquarters' approval/ concurrence
DIRECTOR, OERR	• Concurs on nationally significant or precedent-setting actions at non-NPL sites • Reviews/concurs on all Action Memos requiring AA, OSWER approval
AA, OSWER	• Approves all $2 million exemption requests and subsequent ceiling increases
OFFICE OF WASTE PROGRAMS ENFORCEMENT	• Concurs on exemption requests
OFFICE OF GENERAL COUNSEL	• Concurs on exemption requests, and on nationally significant or precedent- setting actions

ACTION MEMO OUTLINE

Action Memos must also be prepared for removals to be conducted by potentially responsible parties (PRPs). An Action Memo for an enforcement-lead removal need not include estimated costs or authorization for funding, but in all other respects it should look the same as a Fund-lead Action Memo. Because of the difference between the two with regard to costs and funding, Regions may designate an enforcement-lead memo as "Action Memo/Enforcement".

Regions may use a Fund-lead Action Memo they have already prepared as documentation for an enforcement-lead case. Some Regions have found a Fund-lead Action Memo, with estimated costs and authorization for funding, to be useful in negotiations to indicate EPA's resolve to go ahead if the PRP does not act. Regions may initiate negotiations with PRPs prior to drafting an Action Memo, but a completed Action Memo (or Action Memo/Enforcement) must be in hand by the time an order is issued to a PRP.

As with Fund-lead removals, the timing for preparing the Action Memo/Enforcement will depend on the urgency of the action. In time-critical situations, it may be necessary for the PRP to initiate action prior to the preparation of an Action Memo or enforcement order.

Headquarters

Regional Coordinators in the Emergency Response Division's (ERD) Response Operations Branch are available to provide assistance in preparation for and/or during a removal action, including the preparation of Action Memos. ERD personnel also occasionally prepare addenda to Action Memos to clarify or supersede information contained in the Action Memo (see p. 3-337). The Office of Waste Programs Enforcement (OWPE) is available to provide assistance in preparing enforcement addenda for Action Memos (see p. 3-333). In addition, senior managers at Headquarters concur on or approve Action Memos under certain circumstances, as described later in this document (see p. 3-363). Exhibit 3 provides further detail on Headquarters' roles and responsibilities.

ACTION MEMO OUTLINE

MODEL ACTION MEMORANDUM

Overview

An Action Memo is used to initiate all Fund-financed removals, or is prepared after the fact for those begun under the OSC's $50,000 authority. Because Action Memos can affect future policy (e.g., precedent-setting actions, attaining specific cleanup levels), OSCs themselves, not response action contractors, must prepare all Action Memos, including drafts. Action Memos for removals initiated under the OSC's $50,000 authority must be prepared and approved by the OSC within one week after the start of removal actions, depending on the extent of mitigation efforts. OSCs should send copies of $50,000 Action Memos to their appropriate Regional management representative and Regional Coordinator, and place a copy in the site file.

Action Memos to initiate a removal follow a standard format outlined on the following pages. *OSCs must cover all of the topics presented in the outline to demonstrate that the incident meets statutory, NCP, and delegations requirements for removals.* For removal actions determined at the outset to exceed $2 million or 12 months in duration, the original Action Memo should also substantiate the need for a statutory exemption, as discussed later in this guidance [8].

Exhibit 4, on the next page, presents the basic outline for Action Memos. The exhibit is followed by a model Action Memo that addresses the major statutory, regulatory, policy, and program requirements affecting removal decisions. Abbreviated examples are provided for additional guidance; however, more detailed statements are expected in actual Action Memos.

EXHIBIT 4. BASIC ACTION MEMO OUTLINE

Heading

I. Purpose

II. Site Conditions and Background
- A. Site Description
  1. Removal site evaluation
  2. Physical location
  3. Site characteristics
  4. Release or threatened release into the environment of a hazardous substance, or pollutant or contaminant
  5. NPL status
  6. Maps, pictures, and other graphic representations
- B. Other Actions to Date
  1. Previous actions
  2. Current actions
- C. State and Local Authorities' Role
  1. State and local actions to date
  2. Potential for continued State/local response

III. Threats to Public Health or Welfare or the Environment, and Statutory and Regulatory Authorities
- A. Threats to Public Health or Welfare
- B. Threats to the Environment

IV. Endangerment Determination

V. Proposed Actions and Estimated Costs
- A. Proposed Actions
  1. Proposed action description
  2. Contribution to remedial performance
  3. Description of alternative technologies
  4. EE/CA
  5. ARARs
  6. Project schedule
- B. Estimated Costs

VI. Expected Change in the Situation Should Action Be Delayed or Not Taken

VII Outstanding Policy Issues

VIII. Enforcement

IX. Recommendation

Enforcement Addendum

Attachments

[Regional Letterhead]

MEMORANDUM

DATE: Month, day, year

SUBJECT: Request for a Removal Action at _____ Site, City, County, State

FROM: Name, OSC

TO: Regional Administrator (RA) or designee (or to the file, through the RA, if the response is initiated under the OSC's $50,000 authority and will not exceed that cost)[1]

THRU: Regional Division Director, as appropriate

Site ID #: _ _ [2 digit number]

I. PURPOSE

⇨ Provide a statement of purpose indicating the type of action being requested (e.g., approval of a removal action or a ceiling increase), the site's name and location (including exact street address with zip code if available), the name of the lead respondent if there is an enforcement order, whether the response was initiated under the OSC's $50,000 authority, and, for non-NPL sites, if there are any nationally significant or precedent-setting issues associated with the response (if so, attach the concurrence memo shown in Exhibit 10.

⇨ *Example:* - *The purpose* of *this Action Memo is to request and document approval of the proposed removal action described herein for the _____ site, City , County, State.*

II. SITE CONDITIONS AND BACKGROUND

⇨ Identify the 12-digit CERCLIS ID number[2] and the category of removal (i.e., emergency, time-critical, non-time-critical). Provide an overview of the site's history and current characteristics. Indicate the nature of the contamination and describe the information obtained in the removal site evaluation. Ensure that the information contained in this section provides an accurate assessment of current site conditions, using relevant supporting data where possible.

A. <u>Site Description</u>

[1] Regional routing instructions may vary.
[2] Some emergencies may not have CERCLIS ID numbers.

1. Removal site evaluation

⇨ • Discuss the history of the incident or release, including the time, date and location of the incident, the type of incident that occurred, and the facts concerning the discovery of the release.

Examples:
- *Train derailment resulted in tank rupture and vapor release.*
- *A storage lagoon in the south corner of the site overflowed due to heavy rains.*
- *Drums washed up on the beach and were reported by park rangers.*

• Indicate that if a preliminary assessment (PA), Superfund site investigation (SSI), or listing site inspection (LSI) has been conducted for the site, regardless of the site's status on the National Priorities list (NPL), substantial background information may already exist.

⇨ • List all of the site's key problem areas.

Examples:
- *Stacked drums*
- *Bulked Liquids*
- *Lagoons*
- *Contaminated soils.*

2. Physical location

⇨ • Describe the site's physical location in terms of surrounding land use, population size, and distances to nearest populations and other reference points.

Examples
- *A school is within 1/4 mile of the site.*
- *There are 1,000 residences within 1 mile of the site, 10 of which are adjacent*
- *The area is mainly suburban residential with some light industrial areas.*

⇨ • Describe adjacent areas in terms of vulnerable or sensitive populations, habitats, and natural resources [5].

Example:
- *The site is adjacent to wetlands and a tributary to the Red River flows nearby.*

3. Site characteristics

⇨ • Describe the current use of the site, the nature and type of facility, and business activities that May have or are currently contributing to the incident

Examples:
- *The site was a sanitary landfill that accepted industrial wastes.*
- *The site has been used for a midnight dump of PCB wastes.*
- *There is an operating metal fabrication facility on the site.*

• Indicate if the site is an Federally-owned facility, identify the operators of the facility if other than the Federal Agency, and describe the type of facility. (Note: DOD and DOE have the responsibility to conduct all responses at their facilities. Fund-lead removals may only be conducted at other Federal facilities in cases of emergency.)

Example: - *The spill occurred on National Park Service land and required an emergency removal..*

- Indicate if a State or local government body is in owner or operator (Note: this is particularly important if an NPL site is involved because of the need for cost sharing by the State or local government.

⇨ • Indicate whether this is the first removal at the site or a restart. If the removal is a restart, previous actions should be described in section II.B of the Action Memo.

4. Release or threatened release into the environment of a hazardous substance, or pollutant or contaminant

⇨ • List materials known on-site and whether they are hazardous substances as defined by section 10 I (I 4) of CERCLA, or pollutants or contaminants as defined by section 101(33) of CERCLA.

⇨ • Provide estimates of the quantities involved, identify the source of information, and refer to sampling and analytical data.

Examples:
- *Site records and conversations with the plant manager indicate that 10 drums of PCB-contaminated sludge are buried on-site.*
- *Preliminary sampling has found drinking water to exceed the removal action level for toluene at two residences.*

- Highlight substances of critical concern such as PCBs and dioxins (if the information is presented in chart form, identify the substance, quantity, location, and any existing standards for comparison). Explain all data presented.

- Identify any unique characteristics of the materials involved, such as mixed or radioactive wastes.

⇨ • Describe the mechanism for the past, present, or future release; observable or probable migration route(s) of contaminants; and the basis for this determination. Common routes of exposure include fire/explosion and resulting emissions, human contact, and soil contamination that could lead to ingestion or contamination of ground or surface water. Discuss site features or characteristics, weather conditions, human events, or other conditions that would either cause, spread, or accelerate the release of materials. Describe the rate of release and physical properties of the substance that influence to determine the form and speed at which it travels. Support these descriptions with documentation, as appropriate.

Examples:
- *Substantial fire/explosion hazard and fumes would drift into nearby neighborhood.*
- *Transformer lying on its side has been drained of PCB-contaminated oil; surrounding surface soil is heavily stained, and is readily accessed by children.*
- *Vegetation on the north bank of the stream, approximately 50 yards below the ruptured tank, is dead.*

5. NPL status

⇨ • State whether or not the site is listed on the NPL. If it is an NPL site, indicate whether or not remedial activities are in progress or when remedial action is expected (note that contribution to remedial performance is discussed in the "Proposed Action" section) [24].

If it is not an NPL site:

- Note whether or not the site has been proposed for the NPL.

- State whether or not it has received, or is expected to receive, a Hazard Ranking System (HRS) rating and indicate the score, if available. Also note whether it is being evaluated by the Agency for Toxic Substances and Disease Registry (ATSDR) for the need to dissociate residents from threats.
  Example: - *The site received an HRS of 46.5 In June 1989.*

- Indicate whether or not the site is being referred to the site assessment program.
  Example: - *The site has been referred to the site assessment program for a site investigation.*

6. Maps, pictures and other graphic representations

- Refer to attached pictures, diagrams, maps, and/or sketches if they substantiate the conditions at the site and strengthen the background section of the memo, and provide them as an attachment.

B. <u>Other Actions to Date</u>

1. Previous actions

- Describe any government or private actions (including community relations) that have been undertaken in the past and not previously discussed. Include both CERCLA and any other responses conducted previously, such as spill responses under section 311 of the Clean Water Act or private party cleanup attempts.

- Indicate the dates, costs, and effectiveness of these actions.

2. Current actions

- Describe any other government or private activities that currently are being performed but have not been previously discussed. Indicate the dates, costs, and effectiveness of these activities.

- Discuss how proposed EPA actions will relate to current activities described above.

C. State and/Local Authorities' Roles

1. State and local actions to date

- Indicate whether the State and/or local governments requested EPA assistance and the name of specific agencies/officials making the request.
  Example : - *The State Department of Natural Resources sent a letter to the EPA Regional office describing threats posed by leaking aboveground storage tanks at ABC site.*

- Summarize any "first responded" or other actions these or other agencies have taken to protect public health and the environment. Note the date and effectiveness of such actions.
  Examples: - *Local government evacuated a one-square mile area.*
  - *Police were posted on February 10 to restrict public access, and no further vandalism has occurred.*

- Indicate State/local government cooperation in assessing the release/threat, and whether State/local personnel remain at the site.

2. Potential for continued State/local response

- Describe actions State/local government personnel are taking and their future roles.
  Example : - *Site security provided by State highway patrol*
  - *Water main hookups to be installed by local water authority.*

- Indicate specifically:

  - Whether the State is able to obtain funds or must delay the response for an unacceptable period of time to provide funding

  - Whether the State/locality will fund the removal or require funding

  - Whether the State will lead the response under a cooperative agreement [17].

III. THREATS TO PUBLIC HEALTH OR WELFARE OR THE ENVIRONMENT, AND STATUTORY AND REGULATORY AUTHORITIES

⇨ • Explain how this incident meets the requirement of a threat to public health or welfare or a threat to the environment[3] for initiating a removal. *For the two sections below, discuss only those threats that will be addressed by the removal action, beginning with the most serious, and relate the discussion to appropriate statutory and regulatory authorities.*

A. <u>Threats to Public Health or Welfare</u>

- Detail the threats to public health or welfare as they relate to the criteria (provided below) from section 300.415(b)(2) of the NCP. Attach and refer to or incorporate any final ATSDR[4] health consultations or site-specific health advisories, or other health risk advice, and explain any deviations from final ATSDR documents.

  - Actual or potential exposure to hazardous substances or pollutants or contaminants by nearby populations or the food chain. Identify substances of concern, realistic exposure scenarios, and how the levels of hazardous substance(s) exceed site-specific action level(s), and/or acute, and if appropriate, chronic toxicological standards. Tailor the description to the concentrations of contaminants on the site and receptors. Describe any reports of human health effects (e.g., illness, injury, or death) that appear linked to the exposure and describe any effects of human exposure.
    Examples:
    - *Volatilization of hazardous substances contained within the deteriorating building threatens surrounding residents with airborne exposure.*
    - *It is estimated that residents within a 2-mile radius may be exposed to toxic fumes at substantial levels in the event of an explosion/fire.*
    - *Studies have identified nausea and respiratory dysfunction as the primary health effects.*
  - Actual or potential contamination of drinking water supplies. Identify the substances of concern, realistic exposure scenarios explaining how the water supply is threatened, and the immediacy and gravity of the threat. Describe the location of the affected aquifer and its use. Indicate if the numeric removal action levels for drinking water are exceeded in the aquifer or site-specific factors otherwise indicate that a significant health threat exists.

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[3] CERCLA section 104(a) authorized removal responses "whenever (A) any hazardous substance is released or there is a substantial threat of such a release into the environment, or (B) there is a release or substantial threat of release into the environment of any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare." Note that removals are not allowed under section 104(a)(3) of CERCLA when there is a release or threat of release: of a naturally occurring substance in its unilateral form, or altered solely through naturally occurring processes or phenomena, from a location where it is naturally found; from products which are part of the structure of, and result in exposure within, residential buildings or business or community structures; or into public or private drinking water supplies due to deterioration of the system through ordinary use. EPA may respond, however, to these situations when an emergency exists and no authority can respond in a timely manner.

[4] ATSDR should be consulted for emergencies and emergency criteria exemptions involving contaminated soil, and may also be Pulled for exemption requests involving drinking water and radiation. The OSC should ensure that EPA's proposed actions and ATSDR findings are consistent.

Examples:
- *Degreasers and other solvents dumped on the ground have migrated through the soil containing 14 wells downgradient of the site.*
- *Samples taken within a 2-block radius showed the removal action level for action barium is exceeded at the top in four houses.*

- Hazardous substances or pollutants or contaminants in drums, barrels, tanks, or other bulk storage containers, that may pose a threat of release. Identify the substances of concern and estimate their quantities; and describe the number, type, and conditions of containers. Provide realistic exposure scenarios based upon site conditions and the proximity of sensitive or nearby populations. Describe the effects of human exposure.

  Examples:
  - *The chemicals are contained in 2 leaking 5,000 gallon pressure vessels located on deteriorating concrete pads. An elementary school is located 1/4 mile away.*
  - *There are approximately 10 uncovered drums surrounded by a partially collapsed chain-link fence on the site, which is crossed by a footpath frequently used by neighboring residents to get to the train station.*

- High levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface, that may migrate. Identify the substances of concern, estimated amounts, realistic pathways and exposure scenarios, and how the levels exceed standards. Describe the soil characteristics, the extent of the contamination, and factors may affect migration.

  Examples:
  - *The hazardous substances were dumped in a 20-ft. square area and have penetrated the top soil to a depth of approximately 1 foot. The aquifer is 6 feet below the surface and contamination would create a substantial plume.*
  - *The residue from the lagoon lies on top of a hardpacked clay surface, with contaminants migrating from the site in stormwater runoff to a nearby stream used for drinking water.*

- Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released. Describe the conditions of concern and provide an estimate of the likelihood of their occurrence. Explain how these conditions would affect exposure scenarios and migration.

  Examples:
  - *Spring floods carried an estimated 20 barrels and more than 50 drums of volatile organics into the Green River, the drinking water source for more than 5,000 people. Further flooding is predicted.*
  - *Before containment measures are implemented, heavy summer cloudbursts may wash pollutants across the concrete yard and into municipal storm sewers. This could affect a nearby watercourse used for swimming.*

- Threat of fire or explosion. Identify the substances of concern, and realistic exposure scenarios including the gravity and immediacy of the threat. Be specific about the

number of people exposed, the proximity of sensitive or nearby populations, and the geographic area affected.

Example:
- *The site contains nearly 30 drums of non-compatible volatile organics stored next to each other. A hospital is less than four blocks away.*
- *Vandals have set two fires at the unsecured site, necessitating evaluation of five rowhouses adjacent to the drum storage area.*

- Other situations or factors that may pose threats to public health or welfare.

B. <u>Threats to the Environment</u>

- Detail the threats to the environment as they relate to the criteria provided below from section 300.415(b)(2) of the NCP (discuss only those categories of threats that apply to existing or potential conditions):

  - Actual or potential exposure to hazardous substances or pollutants or contaminants by nearby animals or the food chain. Identify the substances of concern, probable exposure pathways, evidence of prior animal exposures (either directly or through the food chain), and results of any available analyses. Relate the information to the contaminants of concern and the known or probable receptors. Report any known illness, injury, or death linked to the exposure.

    Examples:
    - *Significant levels of dioxin were found in crayfish and sediment samples taken in Black Creek downstream of the storm sewer, which carries contaminated runoff from the site.*
    - *Large fishkill (4 million) reported in 1986; potential repeat if 2-million gallon lagoon overflows again, releasing sludges and supernatant liquid.*

  - Actual or potential contamination of sensitive ecosystems. Identify the substances of concern, contaminant migration routes, and the immediacy and severity of the threat to sensitive ecosystems. Describe any ecosystem effects that appear to be linked to contaminant exposures.

    Examples
    - *Site is partly located in a wetland. Hazardous substances kill algae which are a critical part of the ecosystem. State has documented ground-water contamination.*
    - *State Department of Natural Resources reports high levels of mercury and other heavy metals in fish in a nearby recreational lake, which receives stormwater runoff from this abandoned electroplating facility.*

  - Hazardous substances or pollutants or contaminants in drums, barrels, tanks, or other bulk storage containers, that may pose a threat of release. Describe the number, type, and condition of containers and identify the substances they contain. Estimate quantities of hazardous substances. Describe the known effects of these substances on plant and animal life.

    Examples:
    - *Approximately 800 drums containing volatile organics, about half of which are damaged, are strewn across the southwest corner of the property. Vegetation in the vicinity of the drum site is dead.*
    - *Pesticide residues are present in many open containers on the landfill surface. Deer have been observed walking through the landfill area and grazing nearby. These pesticides are toxic at these levels to deer.*

- High levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface, that may migrate. Identify the substances of concern and the source(s) of any releases to the soil, estimate the extent of contamination, and describe probable exposure scenarios. Describe the soil characteristics and factors that may affect migration.
  Examples:
  - *PCB contaminant levels in the soil at the property line exceed 200 ppm. A neighboring horse farm that has access to trails on-site is adjacent. Contaminants would be toxic to horses at these levels.*
  - *Fugitive dust has been observed escaping the site during periods of high wind and moving towards the vicinity of a trout hatchery less than 1/4 mile downwind.*

- Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released. Describe the conditions of concern and the likelihood of their occurrence. Explain how these conditions contribute to contaminant migration or to likely exposures to plant or wildlife populations. Describe recurring weather patterns that create or aggravate threats to the environment.
  Examples:
  - *Snow melt runs through the mine drainage area each spring, depositing tailings in Rush Creek, which is used for recreational fishing. Record snowfalls were reported in January and February.*
  - *Heavy rains are expected to continue, which could result in a second lagoon overflow into the adjacent wetland when migratory bird populations are at their peak.*

- Threat of fire or explosion. Identify the substances of concern and the immediacy and severity of the threat. Describe any illness, injury, or death to flora or fauna resulting from fires or explosions. be the geographic area affected and any special environmental concerns.
  Examples:
  - *Hunters using the grounds of the abandoned chemical reclamation facility for target practice detonated discarded munitions, creating a fire that devastated more than 4 areas of the wildlife management area and killed an unknown number of birds and other wildlife.*
  - *Reactive chemicals are stored haphazardly throughout the dilapidated warehouse, and in some instances are exposed to the elements, creating potential for explosion and fire. The nursery for the county arboretum is approximately 600 yards from the south wall of the warehouse.*

- Other situations or factors that may pose threats to the entertainment.

IV. ENDANGERMENT DETERMINATION

⇨ All Action Memos must contain an endangerment determination. Depending on the types of substances involved, one of the following two statements must be used.

- For removals involving hazardous substances:

  Actual or threatened releases of hazardous substances from this site, if not addressed by implementing the response action selected in this Action Memorandum, may present an imminent and substantial endangerment to public health, or welfare, or the environment.

- For removals involving only pollutants or contaminants:

  Actual or threatened releases of pollutants and contaminants from this site, if not addressed by implementing the response action selected in this Action Memorandum, may present an imminent and substantial endangerment to public health, or welfare, or the environment

V. PROPOSED ACTIONS AND ESTIMATED COSTS

Explain proposed and alternative actions, and estimated costs for both proposed and alternative actions, and the project schedule. State how the action addresses the threat. Explain why obvious alternatives were determined not to be feasible.

Example - *Removal of waste solvents and off-site RCRA disposal is the only feasible solution for mitigating threats posed by the situation. Site stabilization without disposal would provide only a temporary solution to the threats posed by the site.*

A. <u>Proposed Actions</u>

1. Proposed action description

⇨ • Describe the specific tasks involved in the proposed response to the public health, welfare, and environmental threats discussed in section III of the Action Memo. Be sure to describe the full extent of the removal, including ultimate disposition of contaminants, and explain what will be left at the site when the removal is completed. Discuss the rationale for choosing the option and provide supporting data for the decision; state why the proposed actions are appropriate for this situation in light of the threats and explain how they achieve timely response and protection of human health and the environment. Describe the technical feasibility and probable effectiveness of the proposed action.

  Examples:
  - *Installation of an interceptor well will block the migration of contaminants and greatly reduce the threat of contaminating the stream bordering the site. Contaminated water will be treated on-site and discharged into the stream.*
  - *Excavation of the contaminated soil and disposal in a RCRA-permitted landfill will mitigate the public health threat posed by direct human contact and inhalation of airborne particles.*

- State whether any further information is needed before all response actions can be decided and the approximate date when a final decision will be reached.

  Example: - *Further sampling to determine the extent of soil contamination will be completed within 30 days.*

⇨ • Ensure that the extent of contamination has been or will be verified by sampling and property documented. Refer to the Sampling Quality Assurance/Quality Control (QA/QC) Plan and summarize the contents if necessary.
Examples: - *EPA will use a split sampling technique. Water samples will be analyzed daily using automated sampling techniques.*

• Describe how any vulnerable or sensitive populations, habitats, or natural resources identified in section II.A might affect removal activities.
Example: - *Location in a floodplain might hamper removal activities in spring.*

• Where known and appropriate, list other uncertainties affecting implementation of the proposed action.
Examples: - *Mobile incinerators will not be available until next quarter.*
- *Steep slope of site may prevent permanent capping.*

• Discuss the need for and feasibility of relying on institutional controls at the State or local level, if applicable [23]. (Note: This is most important for removals involving excavation where contaminated soil remains below clean fill according to specific cleanup plans.)
Examples: - *Deed restrictions are needed to prevent incompatible future activities.*
- *Prohibitions on drilling new water wells can be instituted at the County level.*

• Describe available information concerning off-site disposal, such as the estimated quantity or type of waste(s) requiring off-site treatment or disposal, the facility selected, and the extent to which the substance can be treated.
Examples: - *Five drums containing an unidentified mixture of solvents will require off-site disposal.*
- *Arrangements will be made for disposal of the 300 tons of contaminated soil at the ABC RCRA-approved facility.*

⇨ • State the intent to comply with the off-site policy when the type or amount of waste is not known, or indicate that compliance with the policy is not an issue at the site. For non-time-critical removals involving off-site disposal, indicate that the appropriate State environmental officials have been notified [22,6].
Example: - *Since the material is being stabilized on-site, off-site disposal is not required.*

• Discuss the need for provision of post-removal site control (PRSC) and note whether the State, local government, or the PRPs have agreed to provide for PRSC, if applicable. Identify any other agreement that exists to provide PRSC. (Note: as stated in section 300.415(k) of the NCP, OSCs are strongly encouraged to obtain a commitment to provide for PRSC when necessary before initiating removal activities that will require PRSC.) [16]
Example: - *Post-removal site control activities will be managed by the Regional remedial program.*

• Indicate if the scope of proposed work has changed as a result of public comment on the EE/CA for non-time-critical removals.

Example: - *Further drinking water sampling will be conducted in response to comments received at the public meeting.*

- Identify cross-media relationships and potential adverse impacts associated with intermediate steps.
  Examples: - *Excavation of soils from highway shoulder will require traffic diversion and will be coordinated with local police.*
  - *Local traffic and noise levels will increase during the response; therefore, hazardous substances will not be moved off-site during school bus operating hours.*

2. Contribution to remedial performance

⇨ • Discuss how the proposed actions will, to the extent practicable, contribute to the efficient performance of any long-term remedial action with respect to the release or threatened release concerned [10]. For this discussion, document the conclusions resulting from consideration of the following questions:

- What is the long-term cleanup plan for the site? For sites with signed Records of Decisions (RODs), briefly describe the remedial action selected. For proposed and final NPL sites where no remedial action has been selected, identify a range of feasible alternatives based upon a review of existing site information and professional judgment. For non-NPL sites where remedial plans are unknown or not anticipated, state that the proposed action will not impede future responses based upon available information.
- Which threats will require attention prior to the start of the long-term cleanup if there is one? For proposed or final NPL sites, where remedial action is planned or likely, identify specific threats and explain why and how they must be addressed prior to long-term cleanup. For non-NPL sites with no long-term cleanup plans, refer to all threats meeting the NCP section 300.415(b)(2) removal criteria identified in section III of the Action Memo (see p. 3-321).
- How far should the removal go to ensure that threats are adequately abated? For proposed or final NPL sites, where remedial action is planned or likely, explain (1) which threats must be abated entirely and which must be stabilized to protect public health, welfare, and the environment until a permanent remedy can be effected and (2) how abatement or stabilization is accomplished by the proposed actions in section V of the Action Memo. For non-NPL sites where these are no plans for long-term action, the threats that meet the NCP removal criteria should be completely cleaned up.
- Is the proposed removal action consistent with the long-term remedy, if known? Describe how the removal contributes to, or is at least consistent with, the permanent remedy. Explain if complying with contribution to remedial performance provisions conflicts with other program goals such as pursuit of PRP cleanup.

OR

- Note that no further action is required if the proposed removal action completes the cleanup, or if an emergency existed that precluded an analysis of how the removal related to long-term actions.

3. Description of alternative technologies

- Indicate what, if any, alternatives to land disposal have been considered [18]. If an alternative technology is selected as the proposed action, provide an in-depth description in Section V.A(l): "Proposed action description."

- Explain how the two objectives of the alternative technology policy - timely response and protection of human health and the environment - would be achieved by each alternative technology.
  Examples: - *Bioremediation techniques in conjunction with site stabilization will protect the surrounding environment in a timely manner.*
  - *PCB incineration will effectively eliminate the threat to adjacent residences.*

- Explain how well each alternative technology meets the three alternative technology selection criteria (effectiveness, implementability, and cost).
  Examples: - *Bioremediation would be less costly than other technologies, but its effectiveness on organic and heavy metal mixed contaminants is questionable.*
  - *Recycling of the liquid wastes is the least expensive disposal option.*

- Indicate ERD Director approval for technologies that are "innovative" or "emerging" or when the status of the technology is uncertain, and attach the Alternative Technology Approval Memo (see p. 3-353).

4. EE/CA[5]

- Attach and refer to the EE/CA and the EE/CA Approval Memorandum for a discussion of alternative actions considered for non-time-critical removals (see p.3-354) [1].

- Attach and refer to the written response to significant comments on the EE/CA and supporting documentation in the administrative level.

5. Applicable or relevant and appropriate requirements (ARARS)

<u>Federal</u>

- List Federal ARARs identified for the site that are deemed practicable, if any.

  Example: - *Federal ARARs determined to be practicable for the site are the Clean Water Act, the Toxic Substances Control Act, and the Endangered Species Act.*

- Explain, if necessary, that Federal ARARs were not considered before removal activities were undertaken during an emergency situation.

[5] This section applies only to non-time-critical removals.

State

⇨ • Describe efforts to identify State ARARs and indicate if State response has been timely.
Example: - *Received list of ARARs for XYZ site from State representatives within two weeks of request.*

• Where there has been time to assess State ARARS, list those which are deemed practicable.
Example: - *Proposed response will attain State water quality criteria.*

• Explain, if appropriate, that State ARARs were not identified or considered prior to removal initiation due to emergency circumstances.

6. Project schedule

⇨ • Specify the time needed to perform the preventative, stabilizing, and/or mitigative (cleanup) response actions to the threats posed by the site, and how quickly response activities can begin.

• Show when the State/local/PRP/remedial program commitment to provide PRSC takes effect, if applicable [16].

B. Estimated Costs

⇨ • Use the Removal Cost Management System (RCMS) [29] to summarize the estimated total project ceiling[6] with a breakdown of costs highlighting the following categories:

Extramural costs coming out of the Regional allowance:[7]

- Emergency Response Cleanup Services (ERCS), Regional ERCS, subcontractors, pre-qualified vendors and other site-specific contracts letter contracts, order for services, notices to proceed, and interagency agreements (IAGs) with other Federal agencies such as the U.S. Coast Guard, Federal Emergency Management Agency, Bureau of Land Management, and Bureau of Land Reclamation.

[6] The total project ceiling is the proposed removal total cost estimate added to the previously approved total project ceiling; i.e., the total of all approved project ceilings for a site.
[7] Costs formerly referred to as "'extramural cleanup contractor costs" are actually Regional removal allowance all costs and should be referred to as such.

Other extramural costs not funded from the Regional allowance:

- Technical Assistance Team (TAT), including multiplier costs[8]

- National Contract Laboratory Program (NCLP)

- Response Engineering and Analytical Contract (REAC).

EPA intramural costs. (Note: See the Removal Cost Management Manual for the formula for calculating intramural direct and indirect costs [27]. Contact the Regional Financial Officer for current direct and indirect cost rates to be used in the formula.)

Exhibit 5 shows a sample project ceiling estimate. (Note: Do not include any CERCLA section 104(b) investigatory costs in the estimate, because they do not count against the project ceiling or the $2 million statutory limit)

⇨ • Include contingencies[9] in the cost estimate. Two contingencies should be supplied:

  - 10-20% contingency for Regional removal allowance costs, based on best engineering judgment.

  - 20% contingency applied to total extramural project costs (all costs but EPA intramural costs).

• Include the cost of previous CERCLA removal actions taken at the site (if applicable) considering expenditures in all areas described above. For actions approved prior to 1984, contact the appropriate Regional Coordinator at Headquarters to query the Financial Management System in order to determine costs other than extramural cleanup contractor expenditures. For more recently discovered sites, CERCLIS data reflects accurate total project ceilings.

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[8] To cover administrative costs of the TAT program, an administrative multiplier, which includes overhead expenses, is applied towards all TAT expenses. This factor, available through a TAT leader or Zone Program Management Office, is multiplied by the sum of the personnel and expense amounts listed above, to estimate total TAT expenses for the removal action.

[9] Contingencies allow for unforeseen expenses that may arise during a removal action (e.g., discovery of additional hazardous materials and delays resulting from poor weather conditions or equipment failure). Contingencies may be applied to either the extramural or intramural portion of the total project ceiling as needed.

EXHIBIT 5. SAMPLE REMOVAL PROJECT CEILING ESTIMATE[1] [29]

Extramural Costs:		
Regional Allowance Costs:		
Total Cleanup Contractor Costs (This cost category includes OSC estimates for. ERCS, Regional ERCS, subcontractors, Letter Contracts, orders for services, Notices to Proceed, Alternative Technology Contracts, and IAGs with other Federal agencies. Also includes a 10-20% contingency.)		$862,500
Other Extramural Costs Not Funded From the Regional Allowance:		
Total TAT, including multiplier costs		$50,000
Total NCLP		$100,000
Total ERT/REAC	$100,000	
Subtotal, Extramural Costs	$1,112,500	
Extramural Costs Contingency (20% of Subtotal, Extramural Costs; round to nearest thousand)		+ $223,000
TOTAL, EXTRAMURAL COSTS		$1,335,500
Intramural Costs:		
Intramural Direct Costs	$9,900	
Intramural Indirect Costs		$18,000
TOTAL, INTRAMURAL COSTS		$27,900
TOTAL, REMOVAL PROJECT CEILING		**$1,363,400**

[1] Format and line items correspond to RCMS output.

VI. EXPECTED CHANGE IN THE SITUATION SHOULD ACTION BE DELAYED OR NOT TAKEN

⇨ • Describe any expected changes in the situation should action be delayed or not taken, such as changes in the scope or nature of contamination, increased threats, or the need for additional response actions. Include a worst-case scenario.

Examples:
- *Contamination will most likely spread from the site to a nearby stream which serves as a municipal water supply.*
- *Delayed action will increase public health risks to the adjacent population through prolonged exposure to airborne contaminates.*

VII. OUTSTANDING POLICY ISSUES

⇨ • Discuss remaining policy issues not previously discussed, if applicable, or state "None" if no other policy issues are associated with the site.

Examples:
- *Provisions for cost-sharing for the proposed response are an issue because EPA has decided to seek State cost-share under CERCLA section 104(c)(3)(ii).*
- *The removal involves nationally significant and precedent-setting issues because it involves releases from consumer products on Indian Tribal lands.*
- *The site comprises two noncontiguous sites located 1/4 mile apart.*

VIII. ENFORCEMENT

The purpose of an original Action Memo is to document the decision to undertake a removal action. For administrative purposes, the enforcement strategy is included with the original Action Memo.

As stated in NCP section 300-415(a)(2), EPA's policy concerning removal enforcement is that where PRPs are known, an effort shall be made, to the extent practicable, to determine whether they can and will perform the necessary removal action promptly and properly [281]. The urgency determination (emergency, time critical, or non-time-critical), however, is a deciding factor in determining the amount of time that can be devoted to a PRP search and negotiations prior to on-site action. OSCs should be prepared to obtain the necessary approval to conduct a Fund-lead response if no PRPs can be identified. Efforts to locate PRPS, however, should continue throughout the removal action to support cost recovery efforts and possible PRP involvement in any future response actions.

⇨ • Provide a summary statement indicating the extent to which PRPs are known, and whether they can and will perform the proposed response promptly and properly.

⇨ • *Place all remaining information concerning the enforcement strategy in a separate addendum labeled "enforcement sensitive"* and note here that the enforcement strategy is not part of the Action Memo for purposes of NCP consistency.

IX. RECOMMENDATION

⇨ • The following statement must appear in all Action Memos to document that the proposed response is in compliance with statutory and regulatory removal provisions:

This decision document represents the selected removal action for the _____ site, in _____ (location), developed in accordance with CERCLA as amended, and not inconsistent with the NCP. This decision is based on the administrative record for the site.

⇨ • Provide an approval statement indicating that NCP removal requirements have been substantiated and stating the total project ceiling and the Regional removal allowance costs.

Example: - *Conditions at the site meet the NCP section 300.415(b)(2) criteria for a removal and I recommend your approval of the proposed removal action. the total project ceiling if approved will be $1,363,400. Of this, an estimated $862,500 comes from the Regional removal allowance.*

⇨ • Include spaces for approval or disapproval signatures and dates**.**

ENFORCEMENT ADDENDUM:

⇨ Type the site name and date on each enforcement addendum and label clearly "Enforcement Sensitive." The enforcement addendum must be detached from the Action Memo before placing the Action Memo in the administrative record file. Discuss the following topics in the addendum using the assistance of Regional enforcement staff to compile information [2, 3, 28]:

A. <u>PRP Search</u>

- Detail PRP search progress to date, including PRPs identified, their financial status, and how much waste they contributed to the site (volumetric contribution).

  Examples:
  - *Title searches and examination of on-site accounting records are being conducted to identify PRPs.*
  - *The 104(e) information requests have been issued.*
  - *The PRP has failed to take part in removal actions.*

- Describe the PRP search strategy for the future, including the schedule and expedited components (if applicable).

B. <u>Notification of PRPs of Potential Liability and of the Required Removal Action</u>

- Indicate if notices have been sent, to whom, and the response of PRPs to date. (Note: notification is not always possible in emergency situations.)

  Example: - *Fifty notice letters have been sent to identified PRPs.*

- Describe future notice activities planned and their implementation schedule.

C. Decision Whether to Issue an Order

- Discuss consideration of the primary factors affecting the decision to issue an order including the immediacy of the need to respond, evidence indicating PRP liability, and the financial ability of PRPs to respond.
  Example: - *The agency has identified viable PRPs and has issued a Unilateral Administrative Order under section 106* of *CERCLA.*

- Discuss consideration of the secondary factors affecting the decision to issue an order including the ability and need to precisely define the removal, willingness of the PRPs to conduct the removal (this is not dispositive), availability of the Fund, and technical problems such as the oversight technical capabilities of the PRP.
  Example: - *Action is being taken under RCRA section 7003.*

- Identify any other strategic concerns regarding the issuance of an order.

D. Negotiation and Order Issuance Strategy

Discuss the timeline/deadline for issuance of an Administrative Order on Consent, the date for issuance of a Unilateral Administrative Order (UAO) if no settlement is reached, and the status of order drafting.

Example: - *A 2-week timeframe for negotiations has been established starting June 1. If no agreement is reached, a UAO will be immediately issued.*

- Indicate whether the appropriate State agency has been notified.

- Indicate any access issues and how they have been addressed.
  Example: - The site owner initially refused access to response personnel but has since relented.

- Describe the status of Statement of Work preparation.
  Example: - *The PRPs have contracted with a national cleanup firm, provided EPA with a copy of the work plan, and site investigation is underway.*

- Discuss the availability and thoroughness of the documentation of past costs.

ATTACHMENTS

- Append attachments referred to in the body of the Action Memo.

ACTION MEMORANDA FOR SPECIAL CIRCUMSTANCES

Overview

In addition to requesting approval of an initial removal response, Action Memos are used to request ceiling increases, statutory exemptions, changes in the scope of response, or combinations of these categories. This section provides instructions on preparing the basic types of Action Memos used in special circumstances (i.e., combined removal and statutory exemption requests, 12-month exemption requests, ceiling increase requests, $2 million exemption/ceiling increase requests, and requests for changes in the scope of response). For removal actions involving combinations of these scenarios, OSCs should consult the instructions for each type of request to ensure that all appropriate information is included.

Combined Removal and Statutory Exemption Requests

Overview

For removals of magnitude, an OSC can usually determine at the initiation of a response that an exemption to the statutory limitations under CERCLA will be needed [8]:

- To initiate a removal action where the project is expected at the outset to exceed 12 months[10]

- To initiate a removal action where the total project cost is expected at the outset to exceed $2 million.

Action Memos that combine exemption requests with requests for initial approval of removal actions must contain the information discussed below, in addition to the information detailed in the model Action Memo provided in the preceding section. The new information described below should be inserted into the appropriate section of the model Action Memo, as indicated by the shaded portions of Exhibit 6. The section numbers shown below correspond to the basic Action Memo outline presented in Exhibit 4.

[10] The 12-month clock starts when on-site removal action response activity begins (not when the contractor is authorized) and runs for 12 consecutive months, including time that passes between restarts. CERCLA section 104(b) investigatory studies are not removal action response activities that count toward the 12-month time limit when they precede the initial start date.

EXHIBIT 6. INFORMATION REQUIREMENTS FOR REMOVAL AND 12-MONTH OR $2 MILLION EXEMPTION REQUEST ACTION MEMOS

Heading

I. Purpose

II. Site Conditions and Background

III. Threats to Public Health or Welfare or the Environment

IV. Endangerment Determination

V. Exemption from Statutory Limits

VI. Proposed Actions and Estimated Costs

VII. Outstanding Policy Issues

IX. Enforcement

X. Recommendation

Enforcement Addendum

Attachments

12-Month Exemption

An Action Memo requesting initial approval of a removal combined with a 12-month exemption request is used when the OSC can determine at the outset of the response that the removal action will exceed the statutory time limitation of 12 months [8]. Like the model Action Memo described in the preceding section, this Action Memo must be sent to the RA for approval, and addressed from the OSC through the Regional Division Director (as appropriate). In situations where an extension is sought for a proposed or final NPL site based upon the consistency exemption, the appropriate official in the Region's remedial program must also concur in writing (RAs are authorized to approve time exemptions based upon the consistency exemption for both NPL and non-NPL sites) [9].

$2 Million Exemption

Action Memos that combine requests for an initial removal with an exemption from the $2 million limitation are used when the OSC can determine at the outset of the response that the total cost of the removal action will exceed $2 million [8]. Unlike the model Action Memo described in the preceding section, this combined Memo must be submitted to Headquarters for approval. ERD Regional Coordinators at Headquarters should be alerted to the need for Headquarters' approval as soon as possible. Where an exemption is sought for a proposed or final NPL site based upon the consistency exemption, the appropriate official in the Region's remedial program must also concur before the Action Memo is sent to Headquarters. [9].

The Action Memo, signed by the RA, must be addressed to the Assistant Administrator, Office of Solid Waste and Emergency Response (AA, OSWER) through the Director, Office of Emergency and Remedial Response (OERR) to the attention of the Director, ERD. The Memo should be sent to the appropriate Regional Coordinator at least three weeks before the exemption is needed. The Regional Coordinator will obtain the necessary Headquarters' concurrence and submit the Action Memo to the AA, OSWER for final approval. If additional Headquarters assistance is needed, OSCs are encouraged to send Action Memos earlier to avoid lengthening the three-week Headquarters' processing time. For example, OSCs may submit draft Action Memos to Headquarters for comment to expedite final processing. In an emergency situation, the OSC may obtain oral approval of a combined removal and statutory exemption request from the AA, OSWER, which must be followed by a written Action Memo within 48 hours.

ADDITIONS TO MODEL ACTION MEMO

In addition to providing the information described in the model Action Memo, the "Purpose" and "Recommendation" sections of the removal and exemption request Action Memo should be modified as discussed below. A new section on the exemption from statutory limits must also be added.

Purpose
(Section 1)

- Modify the "Purpose" statement described in the model Action Memo (p. 3-322) to specify a combined initial removal and 12-month or $2 million exemption request.

Exemption from Statutory Limits
(New section V: follows "Endangerment Determination")

- Place this section immediately following the "Threats" section and use the threat information to justify the need for a 12-month or $2 million exemption [8]. Ensure that the severity of the threats is sufficiently documented to warrant the exemption request. Demonstrate that the removal meets one of the two CERCLA section 104(c) exemptions listed below (it is not necessary to justify both exemptions). The two CERCLA section 104(c) exemptions are commonly referred to as the "emergency exemption" and the “consistency exemption." Note that a higher threshold is used to evaluate emergency exemption requests than for responses within statutory limits or consistency exemptions. Therefore, OSCs must *ensure that all three components of the emergency exemption are sufficiently addressed* when requesting exemption from statutory limits.

A. Emergency Exemption:

1. **There is an immediate risk to public health or welfare or the environment**, the key word being <u>immediate:</u> focus on how soon the public or the environment is at risk or will be in the immediate future. Describe site conditions that constitute an immediate risk; indicate all hazardous substances involved, refer to and interpret tables of data, and define the immediacy of the risk to affected human populations and environmental resources. Discuss the time needed to address the hazards involved and adverse weather conditions that may exacerbate the situation. Make

reference to and attach any final ATSDR findings. Refer to and interpret data contained in any attached tables that support the need for an exemption.

Examples:
- *The retaining wall for the lagoon is highly unstable and on the verge of collapse. Frequent rains expected in the next 4-6 weeks may hasten this collapse, which would cause approximately 20,000 gallons of waste contaminated with heavy metals to spill into Twining Creek, approximately 1/2 mile above the public water supply intake.*
- *Volatile and explosive substances (see Table 1 for names and estimated quantities) are contained in 43 rapidly deteriorating drums. Incompatible substances are stored next to, and on top of, each other, presenting a high risk of fire/explosion and subsequent spread of toxic fumes to the 25 homes within a 1/4 mile radius of the site.*

And

2. **Continued response actions are immediately required to prevent, limit, or mitigate an emergency**, the key words being <u>emergency and continued response actions are immediately required</u>: describe the emergency by referring to the release or threat of release of hazardous substances identified in the "Threats" section, citing specific concentrations, identifying deteriorating site conditions, and describing the type of threats. Ensure that each element of the response is justified by the emergency criteria and documented accordingly (be sure to include ATSDR health consultations/assessments/advisories that support an emergency finding). Explain the emergency consequences of not granting the exemption.

Examples:
- *The TCE-contaminated contents of two 5,000 gallon tanks will be drained and disposed of off-site. Continued actions are necessary, however, to dismantle and remove the rusting tanks so that toxic residues do not wash off-site into a neighboring stream.*
- *10 partially buried drums of dioxin-contaminated wastes were discovered during the emergency removal of 120 drums from the surface of the* site. *Some of the content have already leaked into the surrounding soil, presenting a serious threat to residents of 18 neighboring homes and wildlife. Contaminated soil must be excavated and removed to eliminate risk of ingestion by neighborhood children or migrating wildlife.*

And

3. **Assistance will not otherwise be provided on a timely basis**, the key words being <u>timely basis:</u> describe why State/local governments cannot address the site within an appropriate timeframe. If applicable, cite the enforcement addendum for discussion of PRP's role. Discuss the remedial timeframe to address the site if it is listed on the NPL.

Examples:
- *A deteriorating storage shed threatens to expose explosive substances to the atmosphere, and local responders do not have appropriate expertise for safely mitigating the threat.*
- *Neither the State nor county government has access to or resources to acquire the proper incineration equipment and services needed.*

Or

B. Consistency Exemption[11]:

1. **Continued response actions are otherwise appropriate and consistent with the remedial action to be taken**: Demonstrate that the proposed removal meets the criteria for consistency (at a minimum, the removal does not foreclose the remedial action) **and appropriateness** the activity is necessary to: avoid a foreseeable threat; or, prevent further migration of contaminants; or, use alternatives to land disposal; or, comply with the off-site policy [9, 18, 22]. Describe what Federal, State, or PRP-lead remedial actions are planned (citing the ROD if available), or anticipate likely remedial actions if plans are not yet made.

   Example - *Excavating and removing the buried drums will not interfere with likely remedial alternatives to address soil and ground-water contamination. The removal action is also appropriate because the drums and their contents will be incinerated, not disposed of in a landfill.*

Recommendation
(Section IX**)**

- Refer to both removal criteria and statutory exemption criteria in a Regional recommendation statement For Action Memos requiring Headquarters approval, state when funding is planned and the source of funding.

  Examples:

  - *Conditions at the site meet the NCP section 300.415(b)(2) criteria for a removal and the CERCLA section 104(c) consistency exemption from the 12-month limitation, and I recommend your approval of the proposed removal action and 12-month exemption. The total project ceiling, if approved, will be $125,000. Of this, an estimated $100,000 will be from the Regional removal allowance.*
  - *Conditions at the site meet the NCP section 300.415(b)(2) criteria for a removal and the CERCLA section 104(c) emergency exemption from the $2 million limitation, and I recommend your approval of the proposed removal action and $2 million exemption. The total project ceiling, if approved, will be $4.5 million, of which an estimated $3.8 million will be funded from FY 89 and FY 90 Regional removal allowances.*

[11] This exemption is generally only for use at NPL sites. The limited situations where use of the exemption is appropriate for non-NPL sites will be determined by the AA, OSWER on a case-by basis [9].

Action Memoranda to Continue Response Actions

Overview

Action Memos are also occasionally required to continue work approved by an original Action Memo, or to restart work at the same site if the statutory limitation on time has been exceeded. The basic types of requests contained in these additional Action Memos are:

- To extend a removal action beyond 12 months
- To increase the total project ceiling
- To increase the total project ceiling beyond $2 million
- To change the scope of response for the removal action.

General instructions for preparing these Action Memos are discussed in the following paragraph, followed by the specific information requirements for each type of request. Action Memos combining several types of requests must fulfill all appropriate information requirements.

Action Memos to continue response actions must cover each of the sections required in the basic Action Memo outline (see Exhibit 4), but may refer to the most recently approved Action Memo (which should be attached) to avoid duplication. *Specific points to consider in* preparing exemption requests, ceiling increases, requests for changes in the scope of response, or other combinations thereof include the following:

- The "Subject" line in the heading should specify the type of request (e.g., ceiling increase, $2 million exemption, 12-month exemption, or change in the scope of response request) followed by the words "Action Memorandum" on the next line.
- If the Action Memo requires an extension of the 12-month limit or an increase in the project ceiling that raises costs over $2 million, justification for the exemption must be presented in a new section, "Exemption from Statutory Limits". If previous Action Memos were based upon different exemption criteria (e.g., the consistency exemption was used instead of the emergency exemption), the OSC must ensure that the new request contains appropriate and sufficient information. Additionally, if site conditions have changed from those documented in a previous exemption request but continue to meet the same exemption criteria, the new request must demonstrate that current conditions meet the same criteria.
- If the Action Memo requires a project ceiling in increase or a redirection of funds, a detailed cost breakdown of previous and requested ceilings should be provided.
- For the remaining sections of Action Memos to continue response actions:
    - If information contained in the previous Action Memo is still current and correct, the OSC should indicate "Refer to previous Action Memo" for that section.

- If new or additional information is available, the OSC should include it under the appropriate section number in the Action Memo and indicate that this supplements or supersedes information in previous Action Memos. Note that exemption requests based upon the emergency exemption will likely require expanded sections with updated information.

The discussion below identifies specific information requirements for ceiling increases, exemption requests, and changes in the scope of response request, as illustrated by the shaded portions of Exhibit 7. References to the appropriate section numbers in an original Action Memo, as outlined in Exhibit 4, are included.

12-Month Exemption

A 12-month exemption request Action Memo is required when it becomes necessary to extend the response time of an already-approved removal beyond the statutory limit of 12 months [8]. The 12-month exemption request, specifying the additional time required to complete the removal action, must be sent to the RA for approval and addressed from the OSC through the Regional Division Director (as appropriate). If a subsequent time exemption or change in scope of response is required, the new request must state that the removal continues to meet the original exemption criteria or demonstrate that new exemption criteria are met. Where an extension is sought for a proposed or final NPL site based upon the consistency exemption, the appropriate official in the Region's remedial program must also concur before the Action Memo is sent to Headquarters [9].

Additions to Model Action Memo

Where appropriate, the previous Action Memo should be referred to and the "Purpose," "Site Conditions and Background," "Threats," "Proposed Actions," and "Recommendation" sections should be modified as discussed below. Any updated or new information should be discussed under the appropriate heading. A section on the proposed exemption from statutory limits must also be included.

Purpose
(Section 1)

- Modify the "Purpose" statement described in the model Action Memo (p. 3-316) to specify that a 12-month exemption request is sought.

EXHIBIT 7. INFORMATION REQUIREMENTS FOR ACTION MEMOS TO CONTINUE RESPONSES	
12-Month Exemption	**Ceiling Increase ***
Heading	Heading
I. Purpose	**I. Purpose**
II. Site Conditions and Background	**II. Site Conditions and Background**
III Threats to Public Health or Welfare or the Environment, and Statutory and Regulatory Authorities.	**III. Threats to Public Health or Welfare or the Environment, and Statutory and Regulatory Authorities.**
IV. Endangerment Determination	IV. Endangerment Determination
V. Exemption from Statutory Limits	**V. Exemption from Statutory Limits**
VI. Proposed Actions and Estimated Costs	**VI. Proposed Actions and Estimated Costs**
VII. Expected Change in the Situation Should Action Be Delayed or Not Taken	VII. Expected Change in the Situation Should Action Be Delayed or Not Taken
VIII. Outstanding Policy Issues	VIII. Outstanding Policy Issues
IX. Enforcement	IX. Enforcement
X. Recommendation	**X. Recommendation**
Enforcement Addendum	Enforcement Addendum
Attachments	Attachments

$2 Million Exemption/Ceiling Increase	**Change In Scope of Response**
Heading	Heading
I. Purpose	**I. Purpose**
II. Site Conditions and Background	**II. Site Conditions and Background**
III. Threats to Public Health or Welfare or the Environment, and Statutory and Regulatory Authorities.	**III. Threats to Public Health or Welfare or the Environment, and Statutory and Regulatory Authorities.**
IV. Endangerment Determination	IV. Endangerment Determination
V. Exemption from Statutory Limits	**V. Proposed Actions and Estimated Costs**
VI. Proposed Actions and Estimated Costs	**VI.** Expected Change in the Situation Should Action Be Delayed or Not Taken
VII. Expected Change in the Situation Should Action Be Delayed or Not Taken	VII. Outstanding Policy Issues
VIII. Outstanding Policy Issues	VIII. Enforcement
IX. Enforcement	**IX. Recommendation**
X. Recommendation	Enforcement Addendum
Enforcement Addendum	Attachments
Attachments	

* All ceiling increase requests for removal actions with total project costs over $2 million must state that the removal continues to meet previously documented statutory exemption criteria or demonstrate that the response meets other exemption criteria in a section on “Exemption From Statutory Limits”.

Site Conditions and Background
(Section II)

- Discuss who initiated the action, the date the action was approved in the original Action Memo, and the date response activities began on site.

- Describe the actions initially approval, actions to date, and actions to be completed.
  Example: - *Of the three actions initially approved — staging of drums, soil excavation, final disposal at a RCRA-approved facility — all but disposal have been completed.*

- Describe the problems or conditions at the site that have led to the 12-month limit exemption request.
  Examples: - *Severe flooding delayed cleanup work and exposed more drums.*
  - *Contract lab delays disrupted scheduled response activities.*

Threats to Public Health or Welfare or the Environment, and Statutory and Regulatory Authorities
(Section III)

- A new/revised/updated section is required if the 12-month exemption is needed to respond to threats that are different from those addressed in previous Action Memos. Section III of the model Action Memo describes the information that should be included.

Exemption From Statutory Limits
(New Section V: follows "Endangerment Determination")

- Demonstrate that the site meets either the emergency or consistency exemption according to the instructions in the discussion of the combined removal and exemption request Action Memo. *Remember that a higher threshold is used to evaluate the threats in an emergency request* than in an original Action Memo within statutory limits; therefore, substantiate the request accordingly [8, 9]. If a subsequent time extension or change in scope of work is needed, the new Action Memo must state that the removal continues to meet the original exemption criteria or demonstrate that new exemption criteria are met.

Proposed Actions and Estimated Costs
(Section V)

- Describe what actions are required to complete the removal action, addressing the same issues raised in the "Proposed Actions" section of the model Action Memo.

- Describe any ARARs that will be complied with as a result of the exemption request and address the same issues outlined in the "Proposed Actions" section of the model Action Memo (see p. 3-325).

Recommendation
(Section IX)

- Provide an approval statement that briefly presents the rationale and time schedule for the removal.
  Example: - *Conditions at the site meet criteria for the CERCLA section 104(c) consistency exemption, and I recommend that you approve an exemption from the 12-month limit to allow a continued removal response. The total project ceiling is $730,000, of which an estimated $650,000 comes from the Regional removal allowance.*

- Include any special conditions or provisions that pertain to this exemption.

Ceiling Increase

A ceiling increase Action Memo is used for approval of all ceiling increase requests. The RA can approve ceiling increases, addressed from the OSC, that do not result in total project costs over $2 million. If the ceiling increase will bring the total project ceiling above $2 million for the first time, the OSC should prepare a combined $2 million exemption and ceiling increase (see p. 336). Requests for ceiling increases for projects already totaling over $2 million require approval from Headquarters and must state that the removal still meets the same exemption criteria (i.e., emergency or consistency) specified in the original $2 million exemption request/ceiling increase Action Memo or demonstrate that the response meets other exemption criteria. Therefore, all ceiling increases for projects totaling over $2 million need to reiterate or demonstrate that exemption criteria are met.

Additions to Model Action Memo

Where appropriate, the original or most recent Action Memo should be referred to in order to avoid unnecessary duplication of information. The "Purpose," "Site Conditions and Background," "Threats," "Proposed Actions," and "Recommendation" sections should be modified as described below.

Purpose
(Section 1)

- Modify the "Purpose" statement described in the model Action Memo (p. 3-316) to specify that a ceiling increase is requested.

Site Conditions and Background
(Section II)

- State the date action was approved in the original Action Memo and the date response activities began on site.
  Example: - *The removal was initiated by EPA on December 2, 1988.*

- Discuss the present status of the removal action.
  Examples: - *Actions already taken are staging and overpacking of drums, and pumping down lagoons.*
  - *Drums currently awaiting disposal at a RCRA-approved disposal site.*

- Describe the site conditions and the reasons for a ceiling increase request.
  Examples - *Additional drums were discovered buried near the property lines.*
  - *Unexpected freezing temperatures required the use of specialized equipment.*

- Describe what the ceiling increase will be used for.
  Example: - *Disposal of additional drums that washed ashore after the removal action began.*

- Describe a worst-case scenario should the ceiling increase not be granted.

- Include any other information that may help substantiate the need for a ceiling in e and attach any new enforcement information, ATSDR health advice, or other useful documents.

Threats to Public Health or Welfare or the Environment, and Statutory and Regulatory Authorities
(Section III)

- A new/revised/updated section is required if the ceiling increase will be used to respond to threats that are different from those addressed in previous Action Memos. Section III of the model Action Memo (see p. 3-321) describes the type of information that should be included in order to substantiate the request for a funding increase.

Exemption From Statutory Limits[12]
(New Section V: follows "Endangerment Determination")

- State that site conditions continue to meet the exemption criteria (i.e., emergency or consistency exemption) specified in the original $2 million exemption/ceiling increase Action Memo. If site conditions have changed but continue to meet the same criteria specified in the original exemption request, demonstrate here that the new conditions meet the exemption criteria. If site conditions do not continue to meet the same exemption criteria, the Action Memo must demonstrate that criteria for the other exemption are met according to the instructions for the combined exemption and removal request Action Memo (see p. 3-335). *Remember that a higher threshold is used to evaluate the threats in an emergency exemption request* than in an original Action Memo within statutory limits; therefore substantiate the request accordingly [8, 9].

[12] This section is only required if a $2 million exemption has been previously approved. Renumber subsequent sections as appropriate.

Proposed Actions and Estimated Costs
(Section V)

- Describe what actions are required to complete the response, addressing the same issues raised in the "Proposed Actions" section of the model Action Memo (see p. 3-331).
  Example: - *Sampling for compatibility remains to be completed before final disposal may be undertaken.*

- Provide a detailed breakdown of costs for both the current and proposed ceiling (see Exhibit 8) [29].

Recommendation
(Section IX)

- Present the Region's recommendations rationale, and project costs in an approval statement. Summarize what the additional funds will be used for and state how much the approval would increase the total project ceiling. If the ceiling increase is for a removal with a total project ceiling of more than $2 million, specify the exemption criteria met, the source of funding, and when funding is planned.
  Examples: - *Site conditions continue to meet the NCP section 300.415(b)(2) criteria for a removal, and I recommend your approval of the proposed ceiling increase of $600,000. The total project ceiling, if approved, will be $1,774,00, of which an estimated $1,387,000 will be funded from the Regional removal allowance.*
  - *Site conditions continue to meet the NCP section 300.415(b)(2) criteria for a removal and the CERCLA section 104(c) consistency exemption, and I recommend your approval of the proposed project ceiling increase of $400,000. The total project ceiling, if approved, will be $3.5 million, of which an estimated $2.9 million will be funded from FY 89 and FY 90 Regional removal allowances.*

$2 Million Exemption and Ceiling Increase

The $2 million exemption request and ceiling increase Action Memo is used when a ceiling increase will bring the total project ceiling above $2 million for the first time or when addressing new threats in subsequent ceiling increases [8]. This dual request Action Memo requires approval from Headquarters, and must be addressed to the AA, OSWER from the RA, through the Director, OERR to the attention of the Director, ERD. In situations where an exemption is sought for a proposed or final NPL site based upon the consistency exemption, the appropriate official from the Regional remedial program must also concur [9].

Additions to Model Action Memo

Where appropriate, the original or most recent Action Memo should be referred to in order to avoid unnecessary duplication of material. Additionally, the combined exemption and ceiling increase Action Memo should contain the information discussed below.

EXHIBIT 8. SAMPLE PROJECT CEILING INCREASE ESTIMATE [27]

Extramural Costs	Current Ceiling	Costs to Date	Proposed Ceiling
Regional Allowance Costs:			
(This cost category includes OSC estimates for: ERCS, Regional ERCS, subcontractors, Letter Contracts, order for services, Notices to Proceed, Alternative Technology Contracts, and IAGs with other Federal agencies. Also includes a 10-20% contingency)	$837,000	$825,000	$1,387,000
Other Extramural Costs Not Funded From the Regional Allowance:			
Total TAT, including multiplier costs	$10,000	$5,000	$10,000
Total NCLP	$20,000	$15,000	$20,000
Total ERT/REAC	$20,000	$15,000	$20,000
Subtotal, Extramural Costs	$887,000	$860,000	$1,437,000
Extramural Costs Contingency (20% of Subtotal, Extramural Costs; round to nearest thousand)	$177,000	$172,000	$287,000
TOTAL, EXTRAMURAL COSTS AND CONTINGENCY	$1,064,000	$1,032,000	$1,724,000
Intramural Costs:			
Intramural Direct Costs (HQ and Region)	$17,000	$16,000	$19,000
Intramural Indirect Costs	$33,000	$30,000	$34,200
TOTAL PROJECT CEILING	$1,114,000	$1,078,000	$1,777,200

Threats to Public Health or Welfare or the Environment, and Statutory and Regulatory Authorities
(Section III)

- A new/revised/updated section is required if the $2 million exemption and ceiling increase will be used to respond to threats that are different from those addressed in previous Action Memos. Section III of the model Action Memo (see p. 3-321) describes the information that should be included.

Exemption from Statutory Limits
(New Section V: follows "Endangerment Determination")

- Place this section immediately following the "Threats" section and use the threat information to justify the need for a $2 million exemption. Ensure that the severity of the threats is sufficiently documented to warrant the exemption request *(remember that a higher threshold is used to evaluate the threats in an emergency exemption request than in an original Action Memo).* Demonstrate that the removal meets either the emergency or consistency exemption under CERCLA section 104(c). See the exemption section of the combined removal and exemption request (p. 3-335) for $2 million exemption documentation requirements [8, 9].

Proposed Actions and Estimated Costs
(Section V)

- Refer to the "Proposed Actions" section of the ceiling increase Action Memo discussed previously (see p. 3-325) and Exhibit 8 for documentation requirements.

Recommendation
(Section IX)

- Present the Region's recommendations, rationale, and project costs in an approval statement. Identify the source of funding and when funding is planned.
  Example: - *Conditions at the site meet criteria for a CERCLA section 104(c) emergency exemption, and I recommend your approval of an exemption from the $2 million limitation and a ceiling increase of $50.000. The total project ceiling, if approved, will be $4.2 million, of which an estimated $3.7 million will be funded from the FY 89 and FY 90 Regional removal allowances.*

Change In The Scope Of Response

The request for a change in the scope of response is used when the proposed actions and/or removal response goals have changed from those outlined in the "Proposed Action" section of the current Action Memo. The format provided below is used when there is a change in the scope of work and redirection of funds at a site, but no change in total project ceiling. This Action Memo should be sent for approval to the RA from the OSC through the Regional Division Director (as appropriate), unless the removal was initially or subsequently (in the case of a $2 million exemption request) approved by Headquarters. In these two instances, Headquarters' approval is required, and the Action Memo should be routed in the same way as a $2 million exemption request. When a change in the scope of response is required for an

approved removal action totaling more than $2 million, the Action Memo requesting the change must state that the statutory exemption criteria are still met.

Additions to Model Action Memo

Where appropriate, refer to the original or most recent Action Memo. Additional modifications to the "Purpose," "Site Conditions and Background," "Threats," "Proposed Actions," and "Recommendation " sections as discussed below.

Purpose
(Section I)

Modify the "Purpose" statement provided in the model Action Memo (p. 3-316) to specify that a change in the scope of response is requested.

Site Conditions and Background
(Section II)

- Detail key site characteristics such as location, current conditions, and NPL status. Attach the original Action Memo and refer to it as appropriate in order to avoid repeating site description information used to describe the same threats in the original Action Memo.

- Discuss who initiated the action, the date the action was approved in the original Action Memo, and the date response activities began on site.

- Describe the conditions or situations that have led to the proposed change in the scope of the response.
  Example: - *Initially, incineration was identified as the sole method of treatment and disposal, but tests have shown that incineration is not feasible for all the waste, so some of the waste will be solidified on-site.*

- Include a chronological description of steps taken to address the conditions or situations leading to this request.

- Identify any key problems or complications that have developed or are anticipated.

Threats to Public Health or Welfare or the Environment, and Statutory and Regulatory Authorities
(Section III)

- A new/revised/updated section is required if the change in the scope of response is needed to respond to threats that are different from those addressed in previous Action Memos. Section III of the model Action Memo (see p. 3-321) describes the type of information that should be included.

Proposed Actions and Estimated Costs
(Section V)

- List and describe all the approved project tasks remaining to be accomplished for completion of the removal action.

- Describe any ARARs that will be complied with as a result of the proposed change in work, addressing the same issues outlined in the "Proposed Actions" section of the model Action Memo (see p. 3-325).

- State that the costs will remain within the current approved total project ceiling (no separate cost summary is required).

Recommendation
(Section IX)

- State that the response continues to meet NCP removal criteria and present the OSC's recommendations for a redirection of approved funds in an approval statement.
  Example: - *Conditions at the site continue to meet the NCP section 300.415(b)(2) criteria for a removal, and I recommend your approval for redirection of funds as indicated. Specifically, I recommend that the TAT and CLP portions of the total project ceiling be reestablished at $25,000 and $20,000, respectively, with no increase in the total project ceiling.*

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ACTION MEMORANDA SUPPLEMENTS

Action Memoranda Attachments

The proper use of attachments can save time in preparing Action Memos as well as increase the effectiveness of the Action Memo as the primary decision document for removal activities. While certain attachments are required for approval of the Action Memo, the OSC may utilize other existing material or easily created attachments to enhance the overall clarity and usefulness of this document. The relevance of and information contained in all scientific documents must be explained and summarized within the body of every Action Memo.

Required Attachments

The following documents must be attached to the Action Memo and referred to as indicated:

- EE/CA Approval Memo and the EE/CA: To avoid repetition of information and for organizational purposes, OSCs must attach and refer to the EE/CA and its approval memo. EE/CAs are required for all non-time-critical removals [I].

- Written response to significant comments: This document must be attached to the Action Memo and referred to in the "Proposed Actions" section (see p. 3-325). If a public comment period was held pursuant to section 300.820(b) of the NCP (required for all non-time-critical removals), the Action Memo must document that significant comments were considered. A written response to all significant comments must be included in the administrative record and may be appended to the Action Memo after the comment period closes [21].

- Final ATSDR Health Advisories and Health Consultation Memos or other health advice: If the OSC has received such information, it must be attached and referred to in the "Threats" section of the Action Memo (see p. 3-321).

- Enforcement information: This addendum includes information described on p. 3-333. The addendum must be attached and referred to, and may be prepared by enforcement personnel [28].

- Concurrence Memo for Nationally Significant or Precedent-Setting Actions: If necessary, this approval memo must be attached and referred to in the "Outstanding Policy Issues" section (see p. 3-332) [14].

Recommended Attachments

In addition to the required attachments, OSCs are encouraged to use other documentation to substantiate their findings presented in the Action Memo. Suggested attachments include:

- Administrative Record Index: The Index may be attached and referred to in the "Site Conditions and Background" section (see p. 3-316) [21].

- Previously approved Action Memos: If other Action Memos have been approved for the site, they should be attached and referred to where appropriate to avoid unnecessary duplication of information (see the discussions on Action Memos for special circumstances, pp. 3-341–3-351).

- Alternative Technology Approval Memorandum: As with the EE/CA, OSCs may attach the approval memorandum for the use of alternative technologies to assist the reviewer. Approval is required for innovative or emerging technologies, or when the development status of a technology is uncertain [18].

- Documentation of site characteristics: These may be hand-drawn or professionally produced pictures, photographs, diagrams, maps, or other illustrations of the area around the site, the site itself, and prominent site features related to the incident or its response. These documents may be referred to where appropriate in the "Site Conditions and Background" section of the Action Memo (see p. 3-316).

- Sampling results: "This includes charts, graphs, or other forms of documentation indicating the extent of contamination based upon sampling results, such as PA, SSI, or LSI reports. All data presented either in the Action Memo or in an attachment must be discussed and their relevance to the removal fully explained. If a chart is used, identify in column format the substance, quantity, location, and existing standards. The attachment should be referred to in the "Site Conditions and Background" section of the Action Memo (see p. 3-316).

- Project schedule: Charts can be used to illustrate various tasks and their anticipated duration (to avoid potential problems, the OSC might measure the time in terms of number of days instead of specific dates). The schedule should be referred to in the "Proposed Actions" section of the Action Memo (see p. 3-325).

- Soil and debris treatability variances: Generally, a request for a treatability variance for contaminated soil and debris is a memorandum attached to the Action Memo. When insufficient information exists about the need for a variance at the time the Action Memo is signed, the Action Memo should be amended to include the request for the variance when information becomes available. For non-time-critical actions, the information to justify a variance should be included in a memorandum attached to the EE/CA. In all cases, public comment on treatability variances should be solicited whenever possible, in accordance with NCP requirements.

- Delisting evaluation: If delisting of hazardous wastes is viable at a site, the technical basis for the delisting should be included in an addendum to the Action Memo. The evaluation should consider all identified RCRA wastes and discuss the reasons why the wastes should be disposed of as solid wastes (pursuant to RCRA Subtitle D requirements).

If other information is readily available and, based on professional judgment, the OSC believes the attachments will strengthen or clarify the material presented in the Action Memo, the use of additional attachments is encouraged.

Role of Headquarters Addenda

Occasionally it is necessary to make minor modifications to Action Memos submitted to Headquarters that do not require the development of an entirely new original Action Memo, exemption request, ceiling increase, or a request for a change in the scope of work. Addenda are succinct documents issued from Headquarters that clarify and supersede certain parts of the Action Memo by:

- Providing supplemental information to clarify or elaborate upon the need for a removal action
- Revising wording to avoid misinterpretation
- Incorporating new information to reflect a change in the situation since the submission of the Action Memo to Headquarters.
- Providing partial approval of a proposed removal action (i.e., approval for less than the requested amount).

Addenda are addressed from the Director, ERD, to the AA, OSWER, through the Director, OERR, and conclude with an approval statement similar to that of the Action Memo. The AA, OSWER, signs the addendum, not the original Action Memo, to signify approval of the request. These addenda are not intended to serve a quality assurance/control function. Regional staff should ensure that Action Memos are accurate and complete before forwarding them to Headquarters.

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REVIEW AND APPROVAL PROCEDURES

Need for Review

Because judicial review is limited to the contents of the administrative record, and the Action Memo is the primary decision document used to initiate removals, the importance of a thorough review process cannot be overstated. Thorough review procedures are needed to ensure that the Action Memo sufficiently and accurately justifies the decision to undertake a removal. Careful reviews can also avert unnecessary delays due to typographical errors, organizational problems, and other minor errors.

Each Region should allot time for adequate review of the Action Memo (based on the exigencies of the situation) and adhere to a consistent review process. In addition to a thorough proofreading for typographical errors and other minor problems, OSCs should refer to the checklist provided in Exhibit 9 to ensure that the Action Memo is sufficient for administrative record purposes.

State-lead actions

OSCs also need to plan for the additional time required for intergovernmental review (IGR) of Action Memos for State-lead removals.[13] Funds will not be obligated until State representatives have had an opportunity to comment on the proposed removal in accordance with their review process. IGR should be initiated at least one quarter prior to the obligation of funds for a removal and should take place concurrently with cooperative agreement application development and review. OSCs should plan accordingly for the additional review time required for State-lead actions [17].

Resources for Review

When possible, the OSC should have an outside reviewer examine the document from a fresh perspective. This will help the OSC evaluate the Action Memo as a sufficient decision document. Two valuable resources an OSC has for review are Regional Counsels and the ERD Regional Coordinators.

OSCs should have Regional Counsel or reinforcement staff review the "Enforcement" section of all Action Memos as time permits. In particular, Regional enforcement personnel should review Action Memos requiring Headquarters' concurrence and approval as well as 12-month exemption requests. With the increasing emphasis on removal enforcement, OSCs must ensure that each Action Memo contains sufficient detail on enforcement activities to justify funding a removal [28].

OSCs can also contact their Regional Coordinators in ERD for advice and assistance throughout the removal process. OSCs are strongly encouraged to submit $2 million exemption requests for Regional Coordinator review. In addition, the OSC should notify the Coordinator of forthcoming exemption requests as soon as possible following the determination that an exemption will be needed.

[13] Under 40 CFR Part 29, States with established review processes are required to issue formal notice to their designated State contacts, directly affected governmental entities, and Regional/areawide planning agencies that they are seeking Federal assistance.

EXHIBIT 9. REVIEW CHECKLIST

The following checklist has been developed to help ensure that all types of Action Memos are complete. A comprehensive list of topics for inclusion in original Action Memo is provided, with additional information requirements for Action Memos for special circumstances listed as well. OSCs should review all Action Memos against the checklist and add their own procedures if they desire.

Removal Request:

The Action Memo has:

____ Provided a statement of purpose (section I).*

____ Indicated if the response was initiated under the OSC's $50,000 authority (section I).

____ Described the site thoroughly and accurately and includes:

- Location
- NPL status
- Past and present uses (section II).*

____ Identified the proper CERCLA response authority (section II).*

____ Indicated if a Federal facility is involved (section II).

____ Indicated if a State or local government body is an owner or operator (section II).

____ Identified the materials on site (section II).*

____ Stated whether the materials are hazardous substances, pollutants or contaminants (section II).*

____ Described the migration patterns of the substances, pollutants or contaminants (section II).*

____ Indicated the State and local authorities' past, current, and likely future involvement, and funding capabilities (section II).

____ Described any previous or current actions by the Federal Government or private parties (section II).

_____

* Denotes information required for all Action Memos. Other items should be discussed as appropriate, given site circumstances.

EXHIBIT 9(2). REVIEW CHECKLIST

Removal Request (continued)

____ Identified and discussed threats to public health or welfare or the environment in relation to NCP criteria (section III).

____ Incorporated an appropriate endangerment determination based upon the substances involved (section IV).*

____ Described tasks involved in the proposed response(section V).*

____ Substantiated the need for a removal by addressing the threats found at the site (section V).*

____ Identified the need to defer decisions pending further information (section V).

____ Referred to the sampling QA/QC plan for further information concerning site sampling plans (section V).*

____ Discussed the need for institutional controls (section V).

____ Indicated compliance with the off-site disposal policy (section V).*

____ Discussed commitments to provide post-removal site control (section V).

____ Stated the contribution to efficient performance of remedial actions (section V).*

____ Indicated consideration of alternative actions and technologies (section V).

____ Attached and referred to the EE/CA for an analysis of alternative actions (section V).

____ Discussed the effort to identify ARARs and listed those deemed practicable (section V).*

____ Summarized the estimated total project ceiling with a breakdown of the costs involved (section V).*

____ Described the expected change in the situation should action be delayed or not taken (section VI).*

____ Identified important policy issues (section VII).

_____

* Denotes information required for all Action Memos. Other items should be discussed as appropriate, given site circumstances.

EXHIBIT 9(3). REVIEW CHECKLIST

Removal Request (continued)

____ Provided a summary statement indicating the extent of PRP involvement in the proposed response action (section VIII).*

____ Provided a recommendation statement and spaces for signatures and date (section IX).*

____ Identified the strategy for and results of the PRP search and notification process (Enforcement Addendum).*

____ Discussed consideration of the factors affecting the decision to issue an order (Enforcement Addendum).

____ Described the negotiation and order issuance strategy and schedule (Enforcement Addendum).

____ Appended all attachments.

Removal and Exemption Request:

____ Provided a specific statement of purpose (section I).*

____ Substantiated the need for 12-month and/or $2 million exemption based upon the emergency or consistency exemptions (new section V).*

____ Provided a specific recommendation statement and documented the approval of appropriate program managers (section X).*

12-Month Exemption Request:

____ Provided a specific statement of purpose (section I).*

____ Described previous actions and current problems (section II).*

____ Discussed any new threats to public health, welfare, or the environment as they relate to NCP criteria (section III).

____ Demonstrated that the site meets the emergency or consistency exemption requirements (section V).*

____ Described remaining actions (section VI).*

_____

* Denotes information required for all Action Memos. Other items should be discussed as appropriate, given site circumstances.

EXHIBIT 9(4). REVIEW CHECKLIST

12-Month Exemption Request (continued)

____ Described any ARARs that will be complied with as a result of the exemption request (section VI).

____ Provided a specific recommendation statement and documented approval of appropriate program managers (section X).*

Ceiling Increase Request:

____ Provided a specific statement of purpose (section I).*

____ Described previous actions and current problems (section II).*

____ Describe what the ceiling increase will be used for (section 1I).*

____ Discussed any new threats to public health, welfare, or the environment as they relate to NCP criteria (section III).

____ Demonstrated that the site meets emergency or consistency exemption requirements if a $2 million exemption has been granted previously (section V, if applicable).

____ Described remaining actions (section V).*

____ Summarized costs of the current and proposed ceilings (section V).*

____ Provided a specific recommendation statement and documented approval of appropriate program managers (section IX).*

$2 Million Exemption and Ceiling Increase Request:

____ Provided a specific statement of purpose (section I).*

____ Described previous actions and current problems (section II).*

____ Described what the ceiling increase will be used for (section II).*

____ Discussed new threats to public health, welfare, or the environment as they relate to NCP criteria (section III).

_____

* Denotes information required for all Action Memos. Other items should be discussed as appropriate, given site circumstances.

EXHIBIT 9(5). REVIEW CHECKLIST

$2 Million Exemption and Ceiling Increase Required (continued)

____ Demonstrated that the site meets the emergency or consistency exemption requirements (section V).*

____ Described remaining actions (section VI).*

____ Summarized costs of the current and proposed ceilings (section VI).*

____ Provided a specific recommendation statement and documented approval of appropriate program managers (section X).*

Change in the Scope of Response Request:

____ Provided a specific statement of purpose (section I).*

____ Described previous actions and current problems (section II).*

____ Discussed any new threats to public health, welfare, or the environment as they relate to NCP criteria (section III).

____ Described remaining actions (section V).*

____ Described any ARARs that will be complied with as a result of the proposed change in work (section V).

____ Stated that costs will remain within the current project ceiling (section V).*

____ Provided a specific recommendation statement and documented approval of appropriate program managers (section IX).*

_____

* Denotes information required for all Action Memos. Other items should be discussed as appropriate, given site circumstances.

Approval and Concurrence Procedures

The required approval and concurrence procedures for Action Memos are determined by two factors:

- The type of action being requested (e.g., an initial removal action, 12-month exemption, $2 million exemption, or change in the scope of response)

- The unique circumstances for each removal (e.g., use of alternative technology, involvement of nationally significant or precedent-setting issues, use of the consistency exemption, invoicing of the OSC's $50,000 authority).

Exhibit 3 details approval and concurrence responsibilities at both the Regional and Headquarters levels.

Regions

The RA or the Division Director, in Regions where authority has been delegated according to Delegation 14-1-A, must approve the following removal actions by signing all final Action Memos: initial removals costing up to $2 million, 12-month exemption requests, ceiling increases up to $2 million, and changes in the scope of response for removals costing up to $2 million. In addition to RA approval, when the consistency exemption is used and the site in question is proposed for or listed on the NPL, the appropriate official in the Region's remedial program must concur in writing (9).

Procedures for obtaining the necessary approvals and concurrences from Regional personnel vary among Regions. OSCs should check with program managers to determine existing procedures for obtaining RA concurrence and coordinating with the remedial program (if necessary).

Headquarters

The AA, OSWER must approve all $2 million exemption requests and subsequent ceiling increases [8]. The AA, OSWER also determines whether or not the use of the consistency exemption to exceed the $2 million limit at non-NPL sites is appropriate on a case-by-case basis [9]. In addition to the AA, OSWER, OWPE and the Office of General Counsel (OGC) concur on $2 million exemption requests.[14] Exemption requests will not be approved if there has not been adequate enforcement effort to obtain responses from PRPs.

In addition to exemption requests, two other actions require Headquarters approval or concurrence. The Director, OERR must concur on nationally significant or precedent-setting removal actions at non-NPL sites. Exhibit 10 provides a sample of the concurrence memo that must accompany all Action Memos involving nationally significant or precedent-setting issues [14]. The Director, ERD must approve the use of innovative or emerging alternative technologies, or cases where the development status of a proposed technology is uncertain. Approval of alternative technologies may be required prior to preparing the Action Memo because treatability studies may be necessary in advance of implementing the response [18].

[14] OGC concurrence is not required for ceiling increase requests that do not involve a change in the scope of response.

Action Memos requiring Headquarters' approval should be sent to the appropriate Regional Coordinator in ERD at least three weeks before the requested action is (and after appropriate Regional signatures have been obtained). OSCs can contact their Regional Coordinator at 8-382-2188 during regular working hours for assistance with Action Memos.

The Regional Coordinator will obtain the necessary program concurrences and submit the Action Memo to the AA, OSWER for final approval. If additional Headquarters' assistance is needed, OSCs are encouraged to send final Action Memos to Regional Coordinators more than three weeks in advance in order to avoid lengthening Headquarters' processing time.

EXHIBIT 10. CONCURRENCE FOR NATIONALLY SIGNIFICANT OR PRECEDENT-SETTING REMOVALS

Subject: Request for Concurrence on Proposed Nationally Significant or Precedent-Setting Removal

From: Regional Administrator

To: Director
Office of Emergency and Remedial Response

The purpose of this memorandum is to request your concurrence on the proposed removal action at the _____ non-NPL site in [location]. Redelegation of Authority R-14-1-A gives you the authority to concur on nationally significant or precedent-setting removals at non-NPL sites.

The OSC has discussed this proposed removal with staff of the HQ Emergency Response Division. ERD has advised the OSC that this removal is considered nationally significant or precedent-setting because _____
_____
_____

The action memorandum is attached for your review. My approval awaits your concurrence.

Concur:

_____
Director, Office of Emergency and Remedial Response Date

According to the redelegation, authority to non-concur remains with the Assistant Administrator,
OSWER. If you choose not to concur on this action, please forward this memo to the Assistant
Administrator.

Non-Concur:

_____
Assistant Administrator for Solid Waste and Emergency Response Date

Concur:

_____
Assistant Administrator for Solid Waste and Emergency Response Date

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APPENDIX A. REFERENCES[15]

Guidance

[1] "Engineering Evaluation/Cost Analysis Guidance Outline," Memorandum from T.Fields to Superfund Branch Chiefs (March 30, 1988)

[2] "Guidance on Use and Enforcement of CERCLA Information Requests and Administrative Subpoenas" (August 25, 1988)

[3] "Interim Guidance on Notice Letters, Negotiations, and Information Exchange," Memorandum from J. Winston Porter to Regional Administrators (October 19, 1987)

[4] "New Method for Determination of Indirect Costs in Superfund Removal Project Ceilings," Comptroller Policy Announcement No. 87-15 (July 15, 1987)

[5] OSWER Dir. 9280.0-02B, "Policy on Floodplains and Wetlands Assessments for CERCLA Actions" (August 6, 1988)

[61 OSWER Dir. 9330.2-07, "Notification of Out-of-State Shipment of Superfund Site Wastes" (September 14, 1989)

[7] OSWER Dir. 9360.0-8, "Removal Actions at Methane Release Sites (Release of 'Naturally Occurring' Substances)" (January 23, 1986)

[8] OSWER Dir. 9360.0-12, Guidance on Implementation of the Revised Statutory Limits on Removal Actions" (April 6, 1987)

[9] OSWER Dir. 9360.0-12A, "Guidance on Implementation of the ‘Consistency’ Exemption for Removals" (June 12, 1989)[16]

[10] OSWER Dir. 9360.0-13, "Guidance on Implementation of the 'Contribute to Remedial Performance’ Provision" (April 6,1987)

[11] OSWER Dir. 9360.0-15, "The Role of Expedited Response Actions Under SARA" (April 21, 1987)

[12] OSWER Dir. 9360.0-16, "Interim Guidance for Conducting Federal-Lead Underground Storage Tank Corrective Actions" (June 4, 1987)

[13] OSWER Dir. 9360.0-18, "Removal Program Priorities" (March 31, 1988)

[14] OSWER Dir. 9360.0-19 (supplement), "Guidance on Non-NPL Removal Actions Involving Nationally Significant or Precedent-Setting Issues" (March 3, 1989)

[15] OSWER Dir.9360.1-0l, "Interim Final Guidance on Removal Action Level at Contaminated Drinking Water Sites" (October 6, 1987)

[15] Bracketed numbers appear throughout the text and correspond to the references listed in this appendix. These references may be consulted for additional information on specific topics affecting the preparation and content of Action Memos.

[16] Draft document.

[16] OSWER Dir. 9360.2-02, "Policy on Management of Post-Removal Site Control"[17]

[17] OSWER Dir. 9375.14-W, "Guidance for State-Lead Removal Actions" (July 10, 1987)

[18] OSWER Dir. 9380.2-1, "Administrative Guidance for Removal Program Use of Alternatives to Land Disposal" (August 1988)

[191 OSWER Dir. 9832.1, "Cost Recovery Actions Under CERCLA" (August 1983)

[20] OSWER Dir. 9832.13, "The Superfund Cost Recovery Strategy" (July 29, 1988)

[21] OSWER Dir. 9833.3A, "Interim Guidance on Administrative Records for Selection of CERCLA Response Actions" (March 1, 1989)

[22) OSWER Dir. 9834.11, "Revised Procedures for Implementing Off-Site Response Actions" (November 13, 1987)

[23] "Policy on Use of Institutional Controls at Hazardous Waste Sites," Memorandum from E. LaPointe to H. Longest et. al. (October 28, 1988)

[24) "Use of Removal Authority to Completely Clean Up NPL Sites," Memorandum from T. Fields to Regional Branch Chiefs (January 29, 1988)

Manuals

[25] CERCLIS Applications for the Removal Program Emergency Response Division, Office of Emergency and Remedial Response (October 1988)

[26] OSWER Dir. 9234.1-01 and -02, CERCLA Compliance With Other Laws Manual, Parts I and II, Publications 540/G-89/006 and 540/G-89/009 (August 1988 and 1989)[2]

[27] OSWER Dir. 9360.0-02B, Removal Cost Management Manual (April 1988)

[28] OSWER Dir. 9837.2, Enforcement Project Management Handbook (July 1989)

[29] Removal Cost Management System User's Guide, Version 3.2 (June 1989)

[30] Superfund Indirect Cost Manual for Cost Recovery Purposes, Office of the Comptroller, Office of Administration and Resources Management (March 1986; updated 1/5/87 and 12/17/87)

Statutes and Regulations

The Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 USC Sections 9601-9675

The National Oil and Hazardous Substances Pollution Contingency Plan, 55 FR 8666-8865 (March 8, 1990)

[17] Draft document.

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United States Coast Guard

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SECTION 1. BACKGROUND AND PURPOSE

Section 104 of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA, 42 USC 9604) became law on December 11, 1980 and authorizes the President to act "Whenever (A) any hazardous substance is released or there is a substantial threat of such a release into the environment, or (B) there is a release or substantial threat of release into the environment of any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare... ." To comply with the first Executive Order (E.O. 12316 dated August 14, 1981), the Coast Guard and the USEPA signed a Memorandum of Understanding (MOU) on January 4, 1982. Following the Superfund Amendments and Reauthorization Act of October 17, 1986, a new Executive Order (12580 dated January 23, 1987) continued delegation of authority and responsibility for response to hazardous substance incidents to the Administrator of the USEPA and the Secretary of the Department of Transportation. Effective May 27, 1988, the two agencies executed the Instrument of Redelegation that assigns all responsibility for remediation of waste sites to the EPA. The 1982 MOU was superseded by a new MOU, dated September 8, 1994, that describes the current funding coordination mechanism that provides the Coast Guard with access to funding from the Hazardous Substance Superfund, the trust fund established under CERCLA.

This Guide addresses CERCLA funds provided for support of the Coast Guard's hazardous substance removal capability. The funds are limited in application, and some procedures for use are different from standard Coast Guard Operational Expense funds. The Guide defines the correct applications and the required procedures. It is published by the CERCLA Account Manager (National Pollution Funds Center) and the Marine Environmental Program Manager (G-MOR).

SECTION 2. INCIDENT-SPECIFIC AND MANAGEMENT & SUPPORT CERCLA FUNDS

The Coast Guard uses two kinds of CERCLA (also called Superfund) funds: Management and Support (M&S) funds, also called non-incident funds, and incident specific funds. Incident specific funds are used to respond to hazardous substance incidents in the Coastal Zone, including costs for contractors, and Strike Team operations. Guidance for use of incident specific CERCLA funds is in the National Pollution Funds Center Reference Guide and the National Contingency Plan.

The Coast Guard's CERCLA M&S funds are used for the functions, activities and equipment/property purchases needed to build or maintain the Coast Guard's capability to respond to hazardous substance incidents in the Coastal Zone. This includes training, response equipment and its maintenance, hazardous substance spill drills and exercises, NRT/RRT meetings and support costs, medical support, and National Response Center communications capability. In addition, the National Contingency Plan (40 CFR 300) categorizes the Coast Guard National Strike Force (NSF) as a Special Force, a national asset, available to assist any OSC in either the coastal or Inland Zone. CERCLA M&S funds are used to build NSF capability to respond to releases of hazardous substances.

There are five cost centers responsible for these funds: Commandant (G-MOR), Commandant (G-WKS), TRACEN Yorktown, the National Response Center (G-OPF), and the National Pollution Funds Center (NPFC). G-MOR coordinates the use of CERCLA funds by the National

Strike Force (the NSF consists of the Atlantic, Pacific and Gulf Strike Teams and the National Strike Force Coordination Center), the Marine safety Center, Coast Guard districts and field units. In addition to the discretionary use of these funds, a number of Coast Guard billets/positions are designated as reimbursable and are paid from Superfund.

All funding from the Superfund for all Federal Agencies passes through EPA. The Coast Guard submits budget requests to EPA two years in advance for inclusion in EPA's submission to OMB and then the Congress. The amount appropriated by Congress is included in EPA's budget and they convey it to theCoast Guard in an IAG. This budget process is the only way the Coast Guard receives CERCLA M&S funding.

Each fiscal year, an Interagency Agreement (IAG) transfers the funds from the EPA to the Coast Guard. Based on the amount of funding transferred in the IAG, the Coast Guard establishes the AFC-88 reimbursable accounts and bills EPA for reimbursement of expenditures against the accounts.

SECTION 3. CERCLA FUND USE

CERCLA M&S funds may be used only for support of the Coast Guard's hazardous substance response capability. It is important to note that the Inspector General conducts audits of the use of CERCLA funds. Training is a common use, but a training course that addresses oil spills in its title demands justification and is probably not appropriate for these funds. Auditors have challenged the use of CERCLA funds to purchase an item for general use at a unit. The most easily justified procurement is for an item or service that is used exclusively for hazardous substance response capability. More difficult, but still possible, is a procurement that is essential for the hazardous substance response mission, with occasional additional use for other purposes. An item intended to support multiple purposes or programs should be purchased with funds from sources appropriate to each of the purposes or programs. For general use items, this would mean Coast Guard AFC-30 funds in addition to the CERCLA funds. Exclusive use of CERCLA funds may be considered only if the other uses are incidental and incur no additional CERCLA costs, and CERCLA activities always have priority. Prudent judgment is required in this case.

SECTION 4. INVENTORY & REPLACEMENT

The majority of CERCLA property and equipment is held in the National Strike Force haz-chem response inventory, which is used for both training and incident response. When equipment from the inventory is consumed or ruined during a CERCLA response, the full cost of replacing the equipment is charged to the CERCLA incident account rather than the M&S account.
The M&S budget shall only fund the following equipment purchases:

- Equipment consumed during training;
- New items added to the inventory, and;
- Other property needed to support haz-chem response capability but not bought for a specific response.

SECTION 5. ANNUAL BUDGETS

There are annual formulation and execution cycles for the CERCLA budget which are part of the annual federal budget process, but they do not follow the Coast Guard budget process. Most CERCLA funds used by Federal agencies are obtained through the Environmental Protection Agency's budget, and all Coast Guard CERCLA budget activity is conducted through EPA.

A. Budget Execution

Near the beginning of the fiscal year, EPA notifies the Coast Guard of the amount of funding in the budget from Congress, and NPFC then works with the primary cost center managers to develop a spend plan that is fair to all users and maximizes the benefit of the CERCLA funds to the Coast Guard. Spend plans and accounting strings are issued through funds transfer as early in the fiscal year as possible.

B. Spend Down Rates

CERCLA funds must be managed with the same discipline that applies to OE funds (AFC-30, etc). The guidance for OE spending will also apply to CERCLA funding. The procedures are similar to the OE procedures. Funds must be obligated by the approved dates throughout the year, or the CERCLA Account Manager in NPFC will rescind unobligated amounts or balances. For planning purposes, assume that 45% of your budget must be obligated by the end of the second quarter (31 March) and 70% by the end of the third quarter (30 June). Other rates may be set at the beginning of each fiscal year. To assure the Account Manager does not rescind any funds, reconcile your transactions, in FPD, periodically. If FPD does not contain all of your valid transactions, or if there are other reasons to delay obligation of funds, send correspondence (e-mail is acceptable) to the Account Manager in NPFC requesting an extension. Field units should send a copy to the appropriate Cost Center Manager (G-MOR or G-WKS).

C. End of Year Spending Deadline

On the 1st of September, the Account Manager rescinds all unobligated balances in Coast Guard Oracle Financials (CGOF). Verify that all of your obligations are recorded in CGOF. If CGOF does not contain all of your transactions, send correspondence to the Account Manager. Field units should send a copy to the appropriate Cost Center Manager (G-MOR or G-WKS). It is very important to verify that all CGOF transactions are recorded. Obligations that are entered late will cause a deficiency in the CERCLA account, and those responsible will have to provide an alternative source to fund the deficiency. If you are certain that you have obligated funds and that the obligation will be executed but the obligation is not recorded in CGOF, send correspondence to the CERCLA Account Manager in NPFC prior to 1 September. Field units should send a copy to the appropriate Cost Center Manager (G-MOR or G-WKS).

If you have plans to obligate CERCLA funds in September and have the funds in your budget, send a September spending plan that details and justifies the use of CERCLA funds in September to the CERCLA Account Manager in NPFC no later

than 15 August. Field units, send correspondence to your Cost Center Manager. September spending must be guaranteed to go to completion. You may not retain funds for contingencies. If you have serious contingencies to consider, include them in your September spending plan or a fallout request (see below).

D. Fall-Out Funding

In August, Cost Center Managers should consolidate their lists of unfunded or unexpected needs and forward them to the Account Manager for possible fall out funding. If the Account Manager can identify unobligated funds after the 1st of September, requests for the use of those funds will be prioritized and funds will be distributed. Do not request fall out funds if you are not certain the funds can be obligated before the end of the fiscal year.

SECTION 6. ACCOUNTING PROCEDURES

A. Appropriation Limitation Code (LIM) Conflicts

The accounting system has limitations that can affect the way some Cost Center managers have to manage account lines. When two different units (or users) have CERCLA account lines with the same LIM code (Appropriation Limitation Code), there can be conflicts in document numbering, even if they use different Cost Center Codes (usually the unit's OPFAC number). If two transactions, one from each unit, have the same Document Control Number (DCN), the second transaction will fail.

To prevent this, account line managers (district CERCLA managers and others who have a CERCLA budget and a unique CERCLA account line) should assure that their units or spenders use unique Document Control Numbers. This is not a problem across district lines, because each district has its own LIM code, which makes the account lines different, and the Procurement Site Codes in the DCNs are different for each district. One possibility for districts is a process whereby each MSO or spender is assigned a unique sequence of document numbers (logbook numbers): i.e., the district office gets 1-99, MSO A gets 100-199, MSO B gets 200-299, etc.

B. Object Class

Use only the Object Class codes listed in Appendix "C" of this Guide. There are other valid Object Class codes in the accounting system, but they may not be appropriate uses of CERCLA M&S funds. Even this list of selected codes must be used with care. Availability of a code in Appendix C does not imply approval of such items in your budget or guarantee appropriate use of CERCLA funds. If it is necessary to use a code that is not in Appendix "C," contact the CERCLA M&S Account Manager in NPFC.

Object Class codes are important because the Coast Guard's financial reports to EPA are sorted on Object Class. In addition, an Object Class code could indicate an inappropriate use of CERCLA funds and even a violation of law. For example, codes

2642 and 3110 (supplies and non-capitalized equipment) are for the Environmental Compliance and Restoration Program that addresses pollution caused by the Coast Guard or on Coast Guard-owned sites. CERCLA M&S funds may not be used for such internal agency cleanups.

C. Financial Procurement Desktop (FPD)

All CERCLA transactions should be conducted through FPD. All of the management and reconciliation tools in FPD should be used as needed to assure the correct entry of all transactions, deobligation of unused balances, and identification and correction of erroneous transactions charged to your CERCLA account.

Sometimes FPD support is not available in the office that manages CERCLA funds and it must be obtained from a different part of the unit. Proper management of CERCLA funds is not optional, even if it is difficult to obtain effective FPD support. Contact the staff running FPD and work out a support arrangement. If that does not work, use your chain of command and demand support. If that cannot be done, contact your cost center manager or the CERCLA manager in NPFC, because failure to properly manage these funds will result in a reduction or loss of funding.

D. Program Element Status (PES) Reports

Reconciliation of Accounts

Similarly, all users must review, validate and correct ALL transactions charged to their respective accounts no later than the end of the quarter. Use of the reconciliation tools in FPD can simplify this process. Cost center managers and sub-managers are encouraged to require their units to provide reports designed to assure compliance with this requirement. If necessary, the NPFC can be contacted to obtain a summary of activity under a particular account.

Proper management of an account using FPD requires reconciliation of the transactions in your CERCLA account. The FPD staff can assist you, but only you can determine the status and validity of all transactions against your account. Only you know which transactions are valid. Use the Reports in FPD to review all transactions against your CERCLA account. If you need help, contact Customer Service at FINCEN (757-523-6940). If the problem cannot be resolved that way, contact NPFC for assistance.

E. Change in Financial Plan (CIFP)

Transactions that require a Change in Financial Plan are allowed only when they adhere strictly to the funds flow pattern below. When CERCLA funds are transferred by an incorrect CIFP out of AFC-88 into a different AFC, the accounting records show a reduction in the CERCLA funding available rather than an expenditure. This conceals the audit trail for those funds and prevents the reimbursement process from working. Absent reimbursement, Coast Guard OE funds must be charged and from a financial perspective the transaction ceases to be a CERCLA transaction.

Funds flow pattern for CERCLA CIFPs:

2/H/101/8nn/88/0/8n	(--) this is your account line
2/H/101/899/80/0/SK	(+)
2/H/101/399/75/0/SK	(--)
2/H/101/1nn/30/0/prog. el.	(+) this is the targeted account line

The CIFP must be routed for approval through the CERCLA account manager in NPFC and Ms. Loretta McRae in G-831.

CIFPs may be required when a CERCLA spender needs to procure equipment or services from a large contract that is funded from a single AFC-30 account or other non-CERCLA account. To use such contracts, it is necessary either to add money to the AFC-30 account that was originally obligated to establish the contract or to amend the contract to recognize an additional source of funds (contracting officers are usually unwilling to amend such contracts). Transferring funding from another AFC-30 account does not require a CIFP, which is the reason such contracts are not usually a problem. Plan ahead, and do not plan to use contracts that can only be funded from specific AFC-30 accounts.

Deobligations & Prior Year Transactions

The last step in any transaction is to reconcile the data in the accounting system (FPD). Specifically, as soon as a transaction is complete and the final expenditure is available in FPD, the CERCLA manager responsible for the account must verify that no obligated balance (also called a UDO or UnDelivered Order) remains in the accounting system. Quarterly and annually, the manager should review all of the open obligations in the account. Any obligation that is not needed for further (possible) expenditures must be reduced to zero. This is called a deobligation. A balance remaining in a contract obligation or purchase order (document type 24 and 23) is normally eliminated by amending the contract or purchase order down to the exact value of the total paid on the invoice(s). Failure to do this prevents your unit or any other unit from spending those balances.

Each manager is responsible for managing all transactions against his/her CERCLA account line, <u>including prior fiscal years</u>. Particular attention should be devoted to prior year UDOs in the account. It may not be possible to close a prior year account if a UDO must remain open for that year. It is entirely valid to keep an obligation open for years, but the manager must be able to identify and defend any prior fiscal year obligations remaining open in his/her account.

SECTION 7. RECORD KEEPING AND AUDITS

There is a requirement in CERCLA for the Inspector General of each Department using CERCLA funds to conduct an annual audit of all transactions to assure proper administration and use. All users of CERCLA funds should act with full accountability just as for any of their official actions, but this audit requirement brings the accountability into better focus. The transactions must follow the established accounting protocols and the purpose of each transaction must be appropriate for CERCLA funds.

All users of these funds are required to keep records of each transaction and must be able to account for all transactions recorded against the accounting strings entrusted to their use. This responsibility begins with the five cost center managers (G-MOR, G-OPF, G-WKS, TRACEN Yorktown, and NPFC). In the case of G-MOR, there are NSF and district managers responsible for accounting strings assigned to the G-MOR cost center. Each district CERCLA funds manager (and each unit CERCLA funds manager if so directed by the district) is required to validate all transactions charged against the manager's CERCLA account line and make corrections if needed.

This audit accountability extends to the property and equipment purchased with CERCLA funds. The inventory of CERCLA equipment must be complete and correspond to the procurement records.

SECTION 8. CERCLA PROPERTY MANAGEMENT

The Coast Guard Property Management Manual, COMDTINST M4500.5, states in Chapter 1 that custodians have the responsibility to maintain "current custodial records" for property which they have signed for. This responsibility must be taken seriously. Property purchased with CERCLA funds is subject to the Coast Guard accountability requirements, but there are some unique features.

The Memorandum of Understanding (MOU) between the Coast Guard and EPA (titled "Procedures for United States Coast Guard Access to SUPERFUND, to Support Coast Guard Implementation of CERCLA") places two specific requirements on the Coast Guard's use of CERCLA funds to procure property:

- USCG must maintain an up-to-date inventory of CERCLA property, and
- USCG must consult with EPA prior to disposition of CERCLA property with an aggregate fair market value of $1000 or more to assure the disposition method properly reflects the interests of Superfund.

A. Property Records

The purchaser must enter all non-consumable property purchased with CERCLA funds and with a cost of $500 or more into the Coast Guard's Fixed Assets Management (FAM)-system. For additional information, see the CG-842 intranet site; http://cgweb.comdt.uscg.mil/CG8/CG84/cg842/Overview.htm.

The entry of CERCLA property into FAM requires two additional notations to flag the item as belonging to the CERCLA inventory. In the field titled "Item Name Code", the purchaser of the item must enter "**CERCL**." The notation is a truncation of CERCLA, because there are only 5 spaces in the field. In the field titled "Local Use", the purchaser must enter "**CERCL**." This is also a 5-character field.

Use the automated features in FAM and FPD to access data for entry into FAM. The entry of the "CERCL" notation into the "INC" and "Local Use" fields is entirely manual as is the entry of the serial number of the item, which is ordinarily not available until delivery.

B. Disposal

Disposal of CERCLA property does not follow standard Coast Guard rules. Prior to disposal, the Coast Guard must notify EPA to assure they agree that the method of disposal reflects the interests of Superfund. In addition, CERCLA property with residual value cannot be given away or transferred to non-CERCLA use; it must be sold and the proceeds returned to Superfund.

Executive Order 12999 authorizes transfer of excess computers and related equipment to schools and non-profit organizations, but it does not apply to CERCLA funded property.

1. Transfer. When CERCLA property with useful life remaining is no longer needed where it is located, try to find an alternative CERCLA-related use within the Coast Guard. A transfer to another CERCLA user within the Coast Guard is not disposal. Use SF-1149 and assure that FAM is updated to show the correct location for the item.

A transfer of CERCLA property to a CERCLA user in another federal agency requires EPA approval first. The Coast Guard does not have the authority to transfer the property directly to a state or local entity for CERCLA use. This would be a grant and the funding agreement with EPA does not include authority for the Coast Guard to issue CERCLA grants.

A transfer to a non-CERCLA Coast Guard user is not allowed without payment to Superfund. Removal of the property from CERCLA use is disposal (from the CERCLA perspective), and the new Coast Guard user must pay the fair market value for the property. Prior to completion of such a transaction, NPFC has to notify EPA. Please contact the CERCLA account Manager in NPFC for further guidance in transferring the funds.

A transfer of CERCLA property to any other non-CERCLA-related party (federal, state, local or non-profit) is disposal and requires sale.

2. Notification. For property with an aggregate fair market value of $1000 or more, send correspondence to the CERCLA manager in NPFC(cf-2) describing the property and the proposed method of disposal. Include item description, model number, condition, and any other information needed to understand the item (such as age) so that EPA can consider alternative uses and disposal methods. Include proposals, if any, to transfer the property to another federal CERCLA user. The CERCLA manager will notify EPA. Form CG-5269 (Report of Survey) contains all key information and may be used in lieu of letter correspondence.

3. Disposal through DRMO or GSA. When no alternative CERCLA uses within the Coast Guard have been found and EPA has been notified and has concurred, transfer property with remaining value to the General Services Administration (GSA) or the Defense Reutilization and Marketing Office (DRMO) for sale. On the transfer form SF 120 or DD 1348-1, indicate that this is CERCLA property and the proceeds from the sale are to be deposited into US Treasury Account 20X8145.3 (Superfund receipts).

C. Standard Rates

When non-expendable equipment (able to be used more than once) is used for an incident response, a standard rate must be included in the documentation of costs for the incident. When an item in the inventory is replaced, review the standard rate to assure that it applies to the new equipment. Cost of the item or number of expected uses may have changed. When a new type of response equipment is added to the inventory, a standard rate must be created. Contact the Financial Analysis Division (G-832) in the Directorate of Planning Resources and Procurement in Headquarters. G-832 will need the following information to construct the rate:

- Full cost of the item (including any modifications)
- Residual value – estimated salvage (or trade-in) value when this item will be replaced
- Annual warehouse cost – based on annual rent plus O&M cost for the facility where the item is stored
- Estimated equipment life in days of use
- Projected days of use per year
- Preventive maintenance cost per year (does not include repair or refurbishment due to use)

If these variables do not appear to apply to the item for which a rate is needed, consult with G-832 to determine the best way to proceed. Documentation of response cost involving the use of an item with a standard rate includes the standard rate times the number of standard rate units used, plus the following:

- Personnel costs for operating the equipment, if not recorded elsewhere
- Refurbishment and repair related to use
- Mobilization and demobilization costs
- Shipping cost
- Disposal costs, if any
- Consumables needed for the equipment, if any

D. Capitalized Property

The minimum threshold for capitalized property is $25,000. It is essential to select the correct Object Class for the accounting data when making a capital purchase. Note that the same item will have a different object class when cost exceeds $25,000. The additional management and record keeping requirements for capitalized property are automated, but the correct Object Class must be used for the automation to work.

SECTION 9. OTHER END OF QUARTER & END OF YEAR REQUIREMENTS

The MOU requires the Quarterly Reports to include an inventory of CERCLA property acquired year to date and an accounting of obligations sorted by EPA specified budget categories. NPFC will provide these parts of the quarterly reports, but the users must assure that the records in the property and accounting systems are completely accurate.

A. Validation of FAM Entries

It is the responsibility of the users to assure that all non-consumable CERCLA property is recorded in **FAM** with "CERCL" in the Item Name Code and Local Use fields no later than the end of the quarter. Relocations and deletions of property must also be entered. Cost center managers and sub-managers are encouraged to require their units to provide reports designed to assure compliance with these requirements.

SECTION 10. CGOF ACCOUNTING DATA FOR CERCLA TRANSACTIONS

A. Construction of CGOF Account Lines

FORMAT: X - X - XXX - XXX - XX - X - XXXXXX - XXXXX - XXXX

(1) (2) (3) (4) (5) (6) (7) (8) (9)

(1)	Agency	1-digit	2 = Coast Guard
(2)	District/Region	1-digit	Always = H for CERCLA Mgt. & Support
(3)	Appropriation	3-digits	Position #1 = Last digit of current FY Position #2 & 3 = 01 (indicates operating expense, i.e. OE Appropriation)
(4)	Appropriation Limitation Code (LIM Code)	3-digits	Position #1 = 8 (reimbursable account) Position #2 & #3 = ATU for authorized spending Unit **(See Appendix "A")**
(5)	Allotment Fund Code (AFC)	2-digits	Always = 88
(6)	Allotment Level Indicator	1-digit	Always = 0 (This field is not used by CG)
(7)	Program Element	2-digits	88, except as below:
			Medical = 87 NRC = 89 AST = 81 PST = 82 GST = 83 **NOTE** – These distinctions are necessary for the Program Element Status (PES) Reports to be generated correctly.)
(8)	Cost Center	5-digits	The OPFAC# of the authorized spending unit **(See Appendix "B")**
(9)	Object Class	4-digits	(**See Appendix "C")**
SYSDATA Field		5-digits	Hxxxx Reimbursable Agreement Number Position #1 = H Position #2-#5 = four-digit number assigned by NPFC and FINCEN for each account line (district or cost center) each year. (Enter this data in the System Data field in FPD or write it in a text block on paper commitment and obligation documents.)

B. Construction of CGOF Document Control Numbers

FORMAT: X X- X X- XX - X - X - XX - XXX - XXX

(1) (2) (3) (4) (5) (6) (7) (8)

(1)	Document Type	2-digits	FPD document type **(See Appendix "D")**
(2)	Fiscal Year	2-digits	xx = Last two digits of current Fiscal Year (i.e., the funding year)
(3)	Procurement Site Code	2 -digits	23 = CGHQ **(For others, see Appendix "E")**
(4)	Fiscal Year	1-digit	x = last digit of the FY (usually the current fiscal year, but could be a prior year; for contracts, use FY of initial contract award)
(5)	Region/District	1-digit	H (CERCLA Mgt. & Support always uses H)
(6)	Program Element	2-digits	88 (CERCLA Mgt. & Support always uses 88 in the Program Element component of the Document Control Number)
(7)	Document Sequence Number	3-digits	xxx = Unique sequential number assigned by unit preparing the document
(8)	Suffix	3-digits	Usually 000 (001 could be the 1st amendment to a contract or travel order)

APPENDIX A: ADMINISTRATIVE TARGET UNITS (ATUS)

CCGD1	Boston, MA	01
CCGD5	Portsmouth, VA	05
CCGD7	Miami, FL	07
CCGD8	New Orleans, LA	08
CCGD9	Cleveland, OH	09
CCGD11	Alameda, CA	11
CCGD13	Seattle, WA	13
CCGD14	Honolulu, HI	14
CCGD17	Juneau, AK	17
MLC - Atlantic	Portsmouth, VA	32
MLC - Pacific	Alameda, CA	33
CG Finance Center	Chesapeake, VA	36
National Strike Force		58
NPFC	Arlington, VA	72
TRACEN Yorktown		75
CG Headquarters		99
Marine Safety Center		39

APPENDIX B: COST CENTER CODES (OPFAC NUMBERS)

DISTRICT OFFICES		OTHER	
Boston (1)	71101	G-MOR	70586
Portsmouth (5)	71105	G-WKS	70456
Miami (7)	71107	MLC - LANT	75130
New Orleans (8)	71108	MLC - PAC	75160
Cleveland (9)	71109	NPFC	74100
Alameda (11)	71111	NRC	70529
Seattle (13)	71113	TRACEN Yorktown	63100
Honolulu (14)	71114	Marine Safety Center	70411
Juneau (17)	71117		

MSOS, SECTORS, AND ACTIVITIES (ALPHABETICALLY)

Anchorage	33280	Morgan City	33293
Baltimore	73133	New Orleans	33292
Boston	33200	New York	73136
Buffalo	33254	Paducah	33205
Charleston	33233	Philadelphia	33211
Chicago	33247	Pittsburgh	33206
Cleveland	33253	Port Arthur	33241
Corpus Christi	33240	Portland, ME	33285
Detroit	33250	Portland, OR	33270
Duluth	33287	Providence	33286
Galveston	33265	Puget Sound	33271
Grand Haven	36257	San Diego	33255
Guam	33296	San Francisco Bay	33260
Hampton Roads	33220	San Juan	33239
Honolulu	33275	Sault Ste Marie	36259
Houston	33244	Savannah	33232
Huntington, WV	33207	St. Louis	33201
Jacksonville	33231	Tampa	33230
Juneau	33281	Toledo	33252
Los Angeles/Long Beach	33261	Valdez	33283
Long Island Sound	36229	Wilmington	33225
Louisville	33209		
Memphis	33204	NSFCC	34359
Miami	33215	Atlantic Strike Team	34361
Milwaukee	33248G	Gulf Strike Team	34340
Mobile	33214	Pacific Strike Team	34360

APPENDIX C: LIST OF SELECTED OBJECT CLASS CODES

(See FINCEN SOP Appendix F for complete descriptions)

Object Class	Description
1133	Intermittent Appointments
1151	Overtime
1152	Holiday Pay
1153	Sunday Pay
1154	Night Pay
117J	TAD/TEMAC/SADT Pay, Commissioned & Warrant Officers
117K	TAD/TEMAC/SADT Pay, Enlisted
2100	US Travel – Site Visit – Operational Travel
2101	US Travel – Information Meeting
2103	US Travel – Conference Attendance including speech, presentation, or participation
2109	US Travel – Other/Program support
2110	Overseas Travel – Site Visit – Operational Travel
2113	Overseas Travel – Conference Attendance (inc. AK, HI, Caribbean & Pac. Islands)
2119	Overseas Travel – Other/Program Support
2133	Civilian Training Travel – Gov't & non-Gov't., short term & long term
2150	Officer Training Travel
2151	Enlisted Training Travel
2171	Lease of Motor Vehicles, Government (paid to other Gov't Agencies)
2172	Lease of Motor Vehicles, Commercial
2199	Late Payment Interest Penalty—Travel
2201	Mail & Messenger Services
2204	Rental – Trucks & Other Equipment
2210	Transportation of ADP equipment and software
2211	Transportation of Gov't Property
2223	Transportation of Things – Other
2299	Late Payment Interest—Transportation
2323	Office Space – Regions, Field Offices – Other Than GSA (rental of office space)
2326	Rental of building or space – not GSA
233A	Other Communication Services (not classified elsewhere)
233B	Rental – ADP Equipment
233C	Rental – ADP Terminals & Other Peripherals
233E	Rental – Duplicating Equipment (includes copy and service charges)

Object Class	Description
233F	Rental – Telephone Equipment & Systems
233H	Rental – Other Equipment (not classified elsewhere)
233X	Telecommunications Services – Commercial
2334	Leased Radio Equipment
2335	Local telephone service & installation (not through DOT Working Capital Fund)
2338	Mail & Messenger Services – Postage (for costs not provided through the OST Working Capital Fund. Includes payments to the Postal Service & express mail service for letters. Excludes Parcel Post & express mail service for freight.)
2399	Late Payment Interest Penalty – Rent, Communications & Utilities
2402	Visuals & Graphics Services (includes design & layout of pubs, exhibits, illustrations, charts, awards, etc., not provided through OST Working Capital Fund)
2404	Hot Copy Services – in-house photocopying services not provided through the OST Working Capital Fund
2409	Printing & Reproduction
2411	Printing & Reproduction – Training (manuals, aids, curriculum materials, etc.)
2499	Late Payment Interest Penalty – Printing & Reproduction
2508	Audiovisual Services
251E	Consulting Service – Mgmt & Professional Support Services
251F	Consulting Service – studies, analyses & evaluations – policy, etc.
251G	Consulting Service – Engineering & Technical Service
252B	ADP Contract Support Services
252D	ADP Systems Analysis & Programming
2521	Contractual Services – DOD Agencies (includes DCAA charges)
2522	Contractual Services – Other Gov't Agencies (includes reimbursable agreements)
2523	Contractual Services – Other
2534	Maintenance & Repair – ADP Equipment
2537	Maintenance & Repair – Electronic Equipment
2538	Maintenance & Repair – Office Furniture & Equipment
2539	Maintenance & Repair – Operating Equipment—Technical
2540	Maintenance & Repair of structures, vehicles & equipment at shore units
2544	Maintenance & Repair—MER Pollution Equipment
255F	Technical Services—Other
2559	Training – Facilities (rental of conference rooms & related services)
256D	Training – Non-Gov't – All

Object Class	Description
256G	Training – Government – costs rel. to on-duty training provided by a Fed. agency
2561	Training – Officers
2562	Training – Enlisted
2563	Training – Other
2596	Other Services – Not Otherwise Classified
2599	Late Payment Interest Penalty – Other Services
2608	Automatic Data Processing (ADP) Supplies
2609	Automotive Lubricants, Maintenance & Supplies (general & special purpose vehicles including heavy equipment
2617	Supplies to repair & maintain electronic equipment
2643	Equipment Maintenance Materials, including tools & replacement items
2655	Laboratory, Scientific & Testing Supplies
2656	Marine Environmental Response (MER) Equipment – Supplies & Materials (spare parts, maintenance, etc,)
2660	Medical Supplies – Nonfederal, Noncontract Sources
2662	Office Supplies
2664	Periodicals, Newspapers, Pamphlets & documents
2668	Photographic Supplies
2669	Safety Supplies (safety devices & personnel protective equipment)
2674	Shore Units – Housekeeping
2675	Shore Units – Maintenance Supplies
2676	Shore Units – Supplies & Materials
2684	Telecommunications & Telephone Supplies
2687	Training – Training Materials
2696	Other Supplies, not otherwise classified
2697	Lost Discounts – Supplies
2699	Late Payment Interest Penalty – Supplies
3104	Audio Visual & Photographic Equipment – Noncapitalized
3105	Automatic Data Processing (ADP) Equipment – Noncapitalized
3111	Furniture & Office Equipment – Noncapitalized (includes filing & storage, copiers, calculators, etc)
3115	Machinery – Noncapitalized
3116	Marine Environmental Response (MER) Equipment—Noncapitalized (Purchase of containment, recovery, sensing, control, data reduction, and communication equipment primarily designed for the MER Program.)
3120	Operating & Technical Equipment – Noncapitalized (includes tools, portable & benchtop machinery, instruments, work stands, etc.)
3123	Safety Equipment – Noncapitalized

Object Class	Description
3125	Sensitive, Special Purpose Equipment – Noncapitalized. (Items considered sensitive including cameras, televisions, appliances, gauges, etc.)
3127	Telephone Equipment – Noncapitalized (includes modifications to existing systems and installation)
3128	Test Equipment – Noncapitalized (for measuring & calibrating other equipment)
3129	Training Equipment – Noncapitalized (training aids)
3130	Automatic Data Processing (ADP) Software -- Noncapitalized
3140	Other Equipment – Noncapitalized, not otherwise classified
3146	Automatic Data Processing (ADP) Equipment – Capitalized (over $25,000)
3147	Automatic Data Processing (ADP) Software—Capitalized (over $25,000)
3148	Books for Permanent Collections (administrative, technical, legal, medical)
3154	Furniture & Office Equipment – Capitalized (over $25,000)
3159	Marine Environmental Response Equipment (MER) Equipment – Capitalized (over $25,000)
3169	Telephone Equipment – Capitalized (equipment, installation, expansion & modification—over $25,000)
3178	Other Equipment – Capitalized, not otherwise classified (over $25,000)
3197	Lost Discounts – Equipment
3199	Late Payment Interest Penalty – Equipment
3202	Buildings – Additions, Improvements that significantly extend useful life or increase capacity for service (excludes repairs, modifications, relocations, replacements)
3299	Late Payment Interest Penalty – Land & Structures

APPENDIX D: FPD DOCUMENT TYPES

01 - Appropriation	42 - Janitorial contracts
02 - Apportionment	43 - Other fixed contracts
03 - Non expenditure transaction	44 - Utility / electric
04 - Allotment (Funds)	45 - Utility / telephone
05 - Allotment (Contract Liquidation Authority)	46 - Utility / water
06 - HQ program plan	47 - Gasoline & Oil
07 - Regional plans	48 - SIBAC - Recurring
08 - Project Authorization	49 - Utility/Natural Gas
09 - Activity plan	51 - Reimbursement Agreement - Direct Charge (MIPRs)
11 - TAD/TDY travel orders	52 - Reimbursement Agreement - Overhead, Operations
12 - PCS travel orders	53 - Reimbursement Agreement - Overhead, GF
13 - Reserve travel orders	55 - Accounts receivable
14 - GTR (PCS & TAD)	56 - Other accounts receivable
15 - GBL (PCS & TAD)	61 - Imprest Funds / SF 1129
16 - Blanket GTRs	62 - Canceled checks / SF 1098
19 - Miscellaneous	63 - Disbursement-non-federal Obligations
20 - Cash	64 - Collections - confirmation
21 - Procurement requests (Brown Sheets)	65 - Disbursements - confirmation
22 - Purchase order-Invoice-Voucher (SF-44)	66 - Collections
23 - Purchase order	68 - Collections - debit voucher
24 - Contracts	69 - Disbursement/Collections Adj.
26 - PO Dining facility	70 - Payroll collection
27 - Auxiliary orders	71 - Payroll gross costs
28 - Interagency agreements	72 - Payroll - schedule of disbursement (Reserve Pay)
30 - Training	73 - Supplementary payments & adjustments
31 - Work order-utilities-GSA	74 - IOTV - costs
32 – IMPAC / credit card	75 - IOTV - obligations & costs
33 - Purchases/miscellaneous	77 - IOTV - other assets
34 - GSA Job Order	78 - Adjustment entries
35 - Fedstrip	79 - Closing entries
36 - GSA stores	81 - Labor distribution reports
37 - Printing & medical payments	82 - Depreciation & interest - AMA
38 - Blanket purchase order	83 - Cost estimates
39 - SIBAC/FPD control group	87 - Discounts lost
40 - Fixed leases	88 - Discounts lost - cost effective
41 - Rental contracts	89 - Interest/penalty paid

APPENDIX E: PROCUREMENT SITE CODES

23	CG HQ
24	CCGD1
27	CCGD5
28	CCGD7
29	CCGD8
30	CCGD9
31	CCGD11
33	CCGD13
34	CCGD14
35	CCGD17
90	FINCEN
84	MLCLANT
89	MLCPAC
46	Marine Safety Center (through NMC/NPFC)
46	NPFC (also 23 when large purchases are done in CGHQ)
41	TRACEN Yorktown
26	NSFCC
26	Atlantic Strike Team
26	Gulf Strike Team
26	Pacific Strike Team

APPENDIX F: APPROVED TRAINING LIST & OTHER USES OF CERCLA FUNDS

Training for District and MSO Personnel

- Advanced Air Sampling – EPA
- Air surveillance – EPA
- Basic Chemistry
- Chemical Information Systems
- Chemical Tanker Safety
- Chlorine Response
- CSTI Modules A&B (equivalent)
- HAZCAT Training – UCDAVIS
- Hazardous Chemical Identification
- Hazardous Material Incident Response Course (HMIR) - EPA
- HAZMAT Transportation
- HAZWOPER
- Incident Command System (ICS-100, 200, 300 & 400)
- Introduction to Groundwater Investigation
- Marine HAZMAT
- PODC/MSPOC (partial funding by CERCLA)
- Princeton Groundwater
- Removal Cost Management System – EPA
- Respiratory Protection – NIOSH
- Risk Assessment
- Sampling for HAZMAT – EPA
- Spill Planning, Exercise and Response System (SPEARS) HAZMAT
- Tank Car Safety

Training for National Strike Force Personnel

- Asbestos Training
- All Manufacturer Courses on HAZMAT Response Equipment (MSA, Bauer, etc.)
- Basic Air Monitoring *
- Chemical Tanker Safety
- Chemistry for the Non-Chemist
- Chemistry of Hazardous Materials
- Compressor training
- Confined Space Entry
- Designs for Air Impact Assessment *
- Emergency Medical Technician
- Emergency Medical Technician (re-qual)
- Fire Chemistry 1 & 2 --NFA
- Handling Radioactive Accidents by Emergency Personnel—REAC/TS
- HAZCAT training (UCDAVIS or equivalent)

- HAZMAT Incident Commander—TTC
- HMIR *
- Incident Command System (ICS-200, 300, 400 and Planning Section Workshop)
- Inland Response *
- Instructor Training
- Marine Firefighting
- OSC Crisis Management
- Radiation Safety *
- Removal Cost Mgmt System *
- Respiratory Protection
- Risk Assessment *
- Risk Communications Course
- Safety and Occupational Health Coordinator
- SCBA Regulator Repair (high and low pressure systems)
- Shipyard Competent Person
- Tank Car Safety
- Tank Car Specialist
- Tankerman/PIC Training (Dangerous Liquids)
- Transportation of Hazardous Materials
- Weapons of Mass Destruction **

** = EPA provided course*

***= WMD related or "to be developed" courses (may be funded from other sources)*

<u>Activities</u>
- RRT Meetings
- HAZMAT Exercises
- HAZMAT Conferences or Symposiums

<u>Equipment & Materials</u>
- EPA Standard Operating Safety Guides
- Eye Wash Solution
- HAZMAT detection instruments
- HAZMAT personnel protection equipment for responders
- HAZMAT or Chemical Safety Publications
- NIOSH Pocket Guides
- Threshold Limitation Values (TLV) Guides/Index

APPENDIX G: TELEPHONE NUMBERS OF CERCLA MANAGERS

G-OPF (National Response Center)	(202) 267-2184 (SK1)
Marine Safety Center	(202) 366-6482 (CDR)
G-WKS (Medical Support)	(202) 267-2969 (Civilian)
MLCLANT (IH)	(757) 628-4423 (Civilian)
MLCPAC (IH)	((510) 437-3591 (CDR)
TRACEN Yorktown	(757) 898-2335 (LT)
G-MOR (Program Manager, Response)	(202) 267-0439 (LT) (202) 267-0421 (CDR)
D-1	(617) 223-8587 (LCDR)
D-5	(757) 398-6620 (LT) (757) 398-6364 (Civilian)
D-7	(305) 536-6503 (Civilian) (305) 536-5539 (CPO)
D-8	(504) 589-3642 (LT) (504) 589-4339 (CPO)
D-9	(216) 902-6053 (Civilian) (216) 902-6054 (Civilian)
D-11	(510) 437-2958 (LT)
D-13	(206) 220-7222 (Civilian) (206) 220-7221 (CDR)
D-14	(808) 541-2118 (CDR) (808) 541-2118 (SK1)
D-17	(907) 463-2210 (CDR) (907) 463-2816 (Civilian)
NSFCC	(252) 331-6000 X3003 (CWO)
AST	(609) 724-0008 (CWO)
GST	(334) 441-5914 (CWO)
PST	(415) 883-3311 X212 (CWO)
NPFC	(703) 493-6811 (Civilian)

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CEILING AND NUMBER ASSIGNMENT PROCESSING SYSTEM (CANAPS) VERSION 2.4

FIELD USER TUTORIAL

REVISED JULY 2007

RECORD OF CHANGES			
Change #	**Description**	**Effective Date**	**Authorized By**
CH-1	Added more FAQs. Updated New Project CGMS Message	12/17/2004	Greg Buie
CH-2	Revised screens and instructions to reflect version 2.3 changes to project ceiling into separate categories for CG Costs and OSLTF/CERCLA fund costs	03/23/2005	Greg Buie
CH-3	Revised screens and instructions to reflect addition of two new option data fields (Project Long Name and Description of Incident) and new data integrity check to prevent entry of Vessel Type or Vessel/Facility Name when Source of Spill = “Mystery”.	07/19/2007	Greg Buie

CANAPS VERSION 2.4 FIELD USER TUTORIAL

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OVERVIEW

The Ceiling And Number Assignment Processing System (CANAPS) supports the assignment of Oil Spill Liability Trust Fund (OSLTF) Federal Project Numbers (FPNs) and Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Project Numbers (CPNs), and associated project funding ceilings.

The CANAPS Internet Wizard provides the following functions:

- Request New Project Number and Ceiling
- Change Project Ceiling
- Cancel Project
- Check Ceiling for a Project

System Help

- Browse through the CANAPS FAQs available through the Welcome screen.
- Each screen has a Help button in the top left corner that explains how to complete each field in the screen.

  Click on

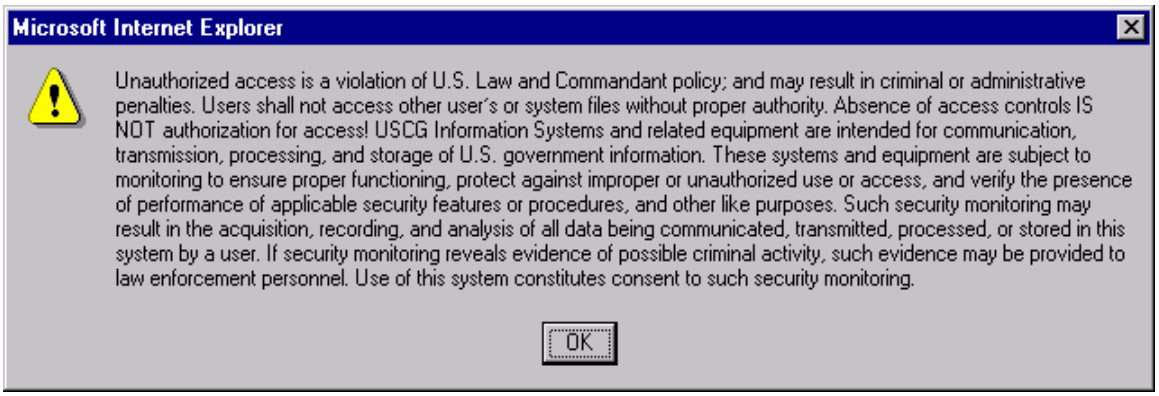
in your browser to return to the Wizard.

HOW TO LOG ON

1. Start Internet Explorer or Netscape.
2. Go to the CANAPS Web site.
   - The Demo site is at www.npfc.gov/canaps2demo.
   - The Production software site is at www.npfc.gov/canaps.
3. When the **Enter Network Password** window appears, enter the valid **User Name** and **Password** for ***your*** unit.

   Be sure to enter your User ID and Password correctly. The **User Name** and **Password** fields are case sensitive. You will not be able to proceed if invalid values are entered.

4. Click OK to proceed.
5. Read the Advisory Notice when it appears. Click OK to enter CANAPS.



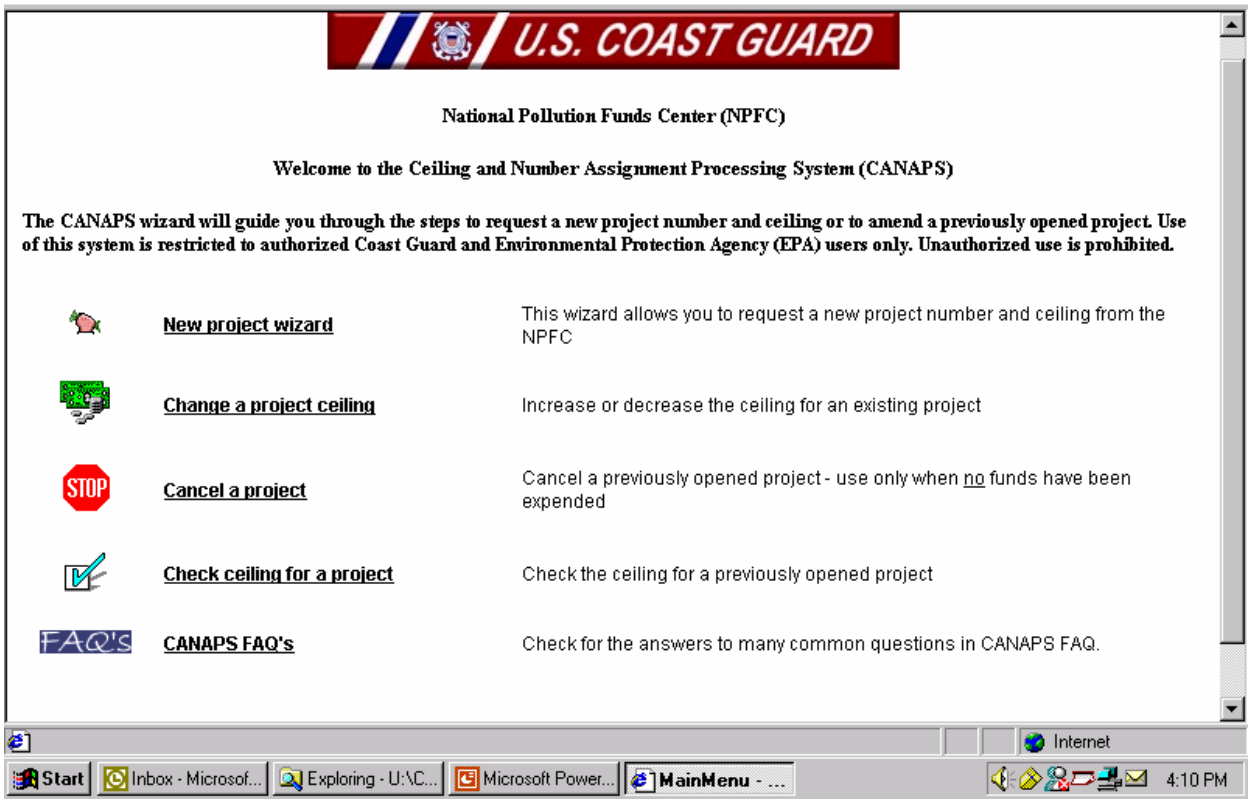
6. You are now at the **CANAPS Welcome** screen, from which you can create, amend, cancel, and view information on a project.

THE CANAPS WELCOME SCREEN

From the **Welcome Screen**, you can perform five functions. The CANAPS Wizard will guide you through the steps to request a new project number and ceiling, or to amend a previously opened project. Each of these functions is described in the following pages.

Use of this system is restricted to authorized Coast Guard and Environmental Protection Agency (EPA) users only. Unauthorized use is prohibited.

FUNCTION	PERFORMS
New Project Wizard	Request a new project number and ceiling from the NPFC
Change a Project Ceiling	Increase or decrease the ceiling for an existing project
Cancel a Project	Cancel a previously opened project - use only when no funds have been expended
Check Ceiling for a Project	Check the current ceiling for a previously opened project
CANAPS FAQ's	Check for the answers to common questions in CANAPS FAQ.



CANAPS Navigation

- Select an option from the Welcome screen
- Click on Next >> in the Wizard to go to the next step.
- Asterisks (*) throughout the Wizard indicate required fields. If you select Next >> before entering all of these fields, the system will prompt you to complete them.
- The system does NOT allow you to continue to the next step until all required fields have been entered.
- To return to a previous screen to review or change entered information, click on Back in your browser.

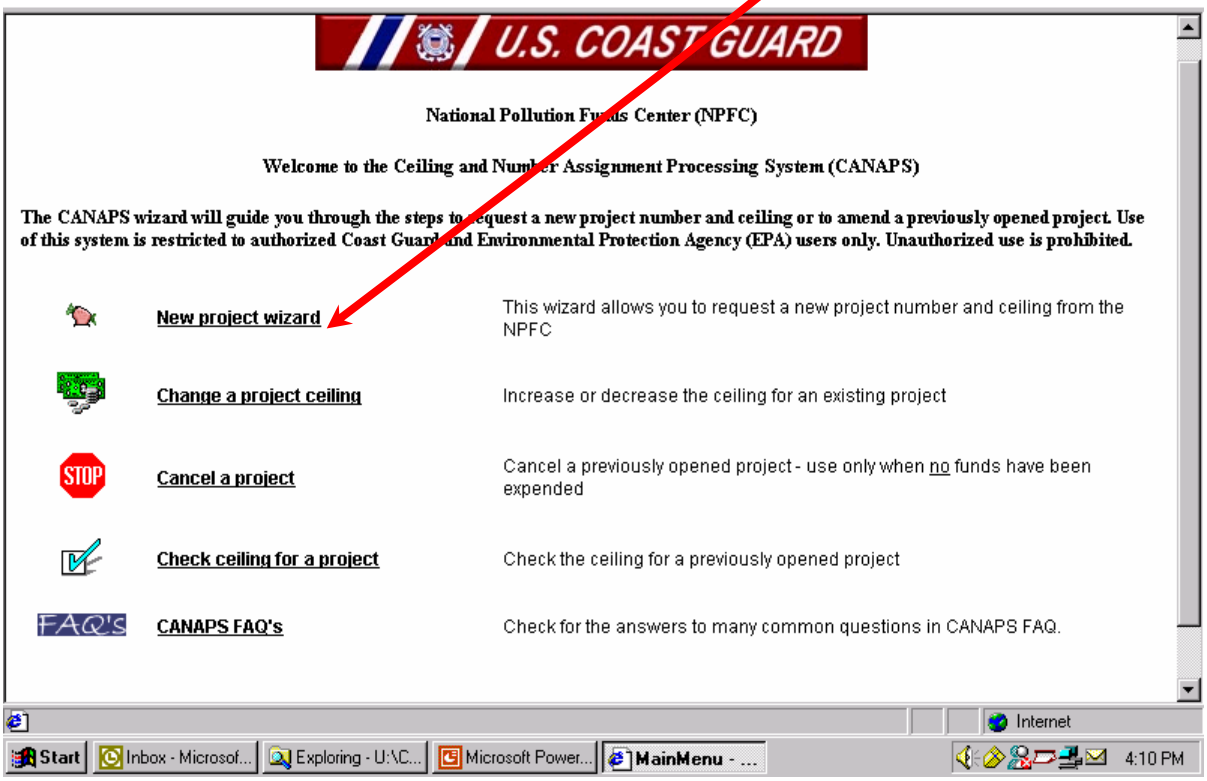
CANAPS FAQs

What is CANAPS?	CANAPS stands for Ceiling and Number Assignment Processing System. It's an automated system that allows USCG and EPA FOSCs in the field to get project numbers and authorized budget ceilings.
Does CANAPS use cookies?	CANAPS only uses cookies to maintain state during the session. No information is stored in cookies.
What does the (*) mean?	Asterisks (*) indicate required fields. If the user selects the "Next" button before entering all required fields, the system will prompt you to complete them. The system will not allow the user to proceed to the next step until all required fields are entered.
Do CANAPS sessions time out?	If a user leaves the CANAPS session inactive (in other words, hits no keys or enters no data in any field), the browser will time out after 30 minutes. Time-Outs can be avoided by entering data or pressing any key, such as the "Next" or "Back" button on the browser.
What is my CANAPS User ID and Access Key (password)?	CANAPS has its own set of User IDs. CG Unit User IDs are MISLE port codes (BOSMS, LOSMS, etc.). EPA User IDs are EPAR1, EPAR2, etc. Access keys are case sensitive. Make sure the caps lock key is not on. Some keys have the number "zero" (0) in them; NO keys have the letter "oh" (o). Some keys have the number “one” in them; NO keys have the lower case letter “ell” (l). Contact gregory.w.buie@uscg.mil or mark.l.mcewen@uscg.mil if you have questions about your specific Access Key.
Why am I locked out?	Five (5) failed logon attempts will lock the user out for two (2) minutes. Wait the required period and try again. Contact the NPFC if problems persist.
What if I have trouble launching CANAPS?	Always start any troubleshooting from a freshly opened browser session. Close ALL browser windows and exit Internet Explorer or Netscape. Re-launch the browser and then type in the URL (www.npfc.gov/canaps). After you get past the logon screen, you will be at the main menu. Contact the NPFC if problems persist.
How can I enter multiple email addresses to receive copies of the confirmation email for my transaction?	Separate each address by a semi-colon (;) or comma (,). Do not use other special characters. If you cut and paste the addresses from another document, be sure hidden characters aren’t embedded in them.

.

HOW TO ENTER A NEW PROJECT

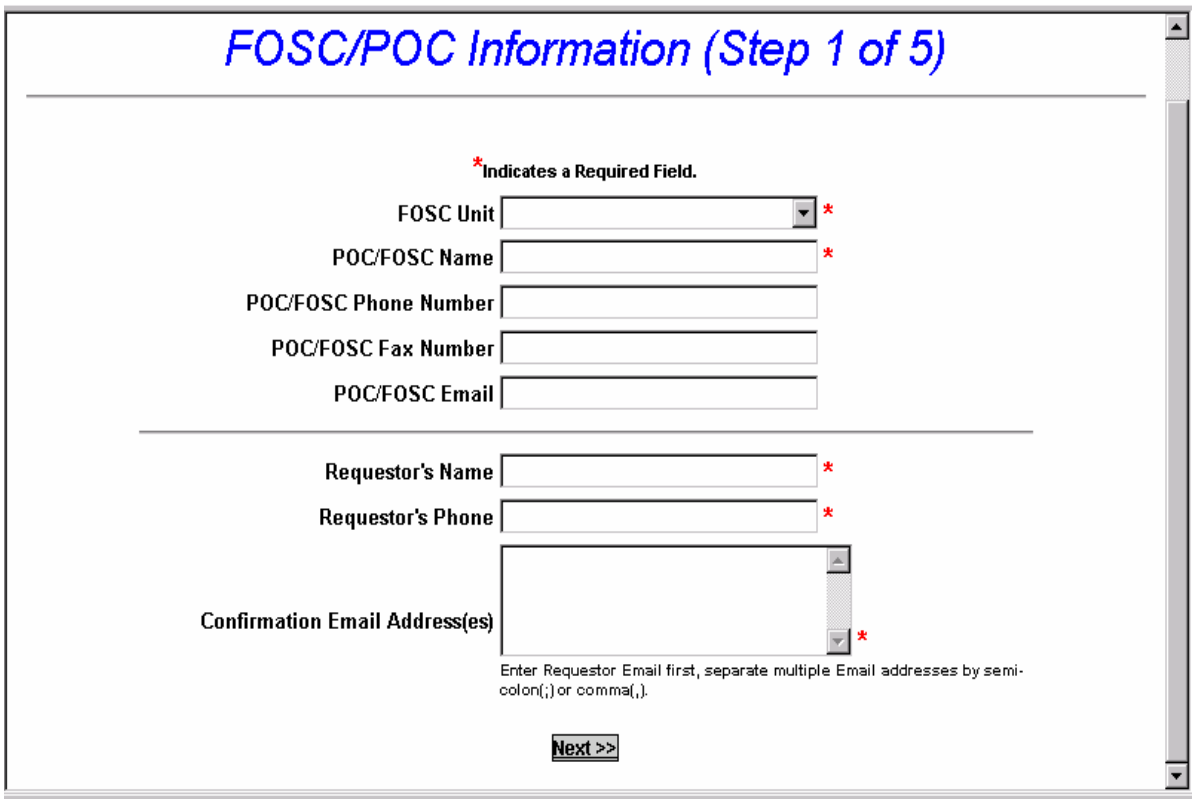
- Start by clicking on New Project Wizard (the first link) on the CANAPS Welcome screen.
- Step 1: Enter the Incident FOSC/POC information.
- Step 2: Enter the Incident/Threat information.
- Step 3: Enter Spill information.
- Step 4: Enter FOSC Response information.
- Step 5: Address the CGMS Message.
- Confirm entered information before submitting the request.
- Submit the request to CANAPS.
- Receive the CANAPS Response and Confirmation Messages



Step 1: Enter FOSC/POC Information

Use the **FOSC/POC Information** screen to enter information about the FOSC/Point of Contact (POC). There is a Help Screen for each step in the Wizard. The table below explains how to complete each field.

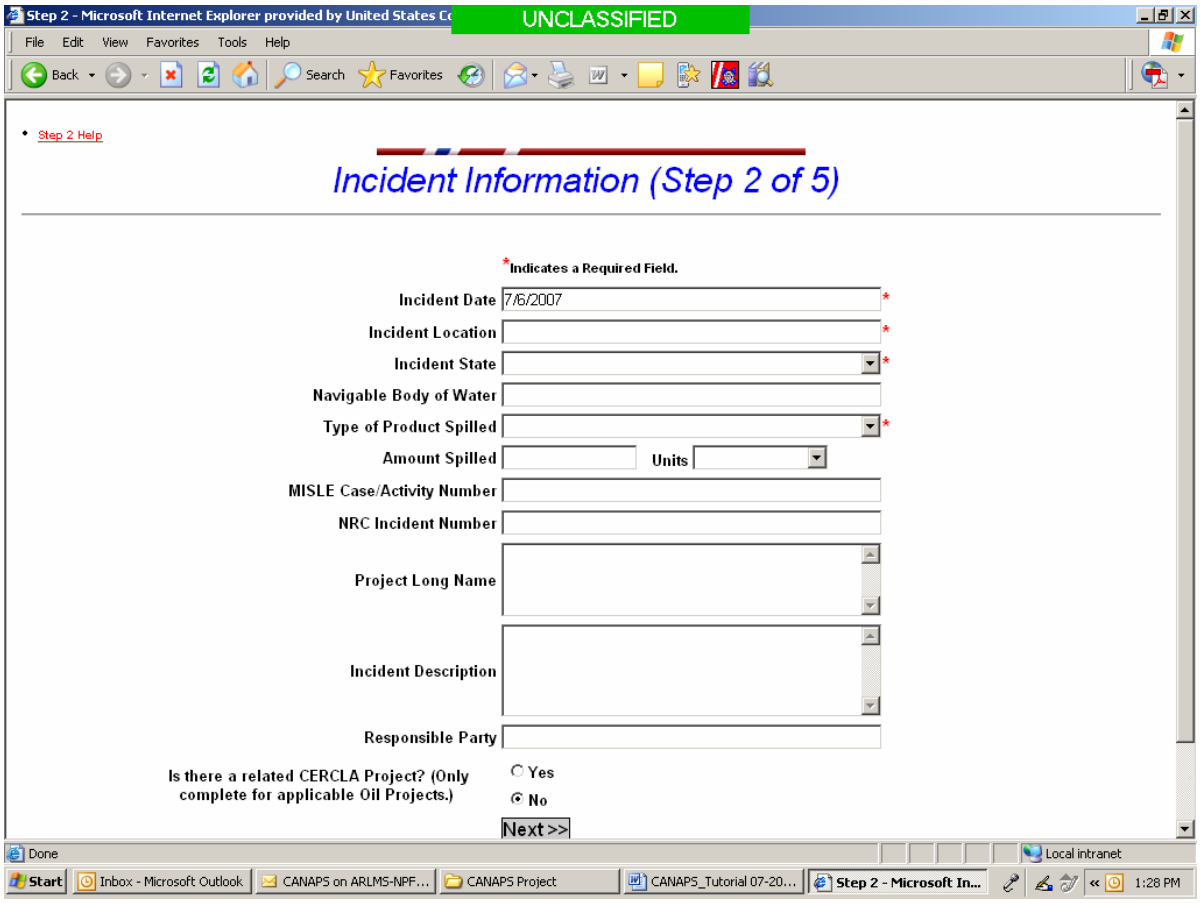
FIELD	REQUIRED	INSTRUCTIONS
FOSC Unit	Yes	Select the requesting unit from the drop down list. If necessary, you may request a project on behalf of another unit. • You should not do so, however, without the prior concurrence of the responsible unit. • If you are acting as a surrogate, i.e., requesting a project for another unit, select that unit from the drop down list.
POC/FOSC Name	Yes	Enter the FOSC/POC name in the following format: Title/Rank, First Name, Last Name, [Suffix]. If you are acting as a surrogate, enter the responsible unit's FOSC/POC information.
POC/FOSC Phone Number		Enter the FOSC/POC's phone number, including the Area Code. You do not need to enter formatting characters (e.g., parentheses or dashes), only the ten (10) digits.
POC/FOSC Fax Number		Enter the FOSC/POC's fax number, including the Area Code. You do not need to enter formatting characters (e.g., parentheses or dashes), only the ten (10) digits.
POC/FOSC Email		Enter the FOSC/POC's Email address.
Requestor's Name	Yes	Enter your name in the Requestor's Name field in the following format: Title/Rank, First Name, Last Name, [Suffix].
Requestor's Phone	Yes	Enter your phone number, including the Area Code. You do not need to enter formatting characters (e.g., parentheses or dashes), only the ten (10) digits. This number will be used by the NPFC Case Officer to contact you if there are any questions.
Confirmation Email Address(es)	Yes	Enter the Email address(es) that you want the new Project information to be sent to. • You can send up to 25 different Confirmation Emails by separating the Email addresses with semi-colons (;) or commas (,). • Put the Requestor's Email address first. Be sure to enter the Email address(es) correctly or the message will not be received.
Next >>	Yes	Click the **Next** button after you have filled in all the required fields to move to the next step.


FOSC/POC Information (Step 1 of 5)
*Indicates a Required Field.
FOSC Unit *
POC/FOSC Name *
POC/FOSC Phone Number
POC/FOSC Fax Number
POC/FOSC Email
Requestor's Name *
Requestor's Phone *
Confirmation Email Address(es) *
Enter Requestor Email first, separate multiple Email addresses by semi-colon(;) or comma(,).
Next >>

Step 2: Enter Incident/Threat Information

Use the **Incident Information** screen to enter information about the incident or threat of incident. The table below explains how to complete each field.

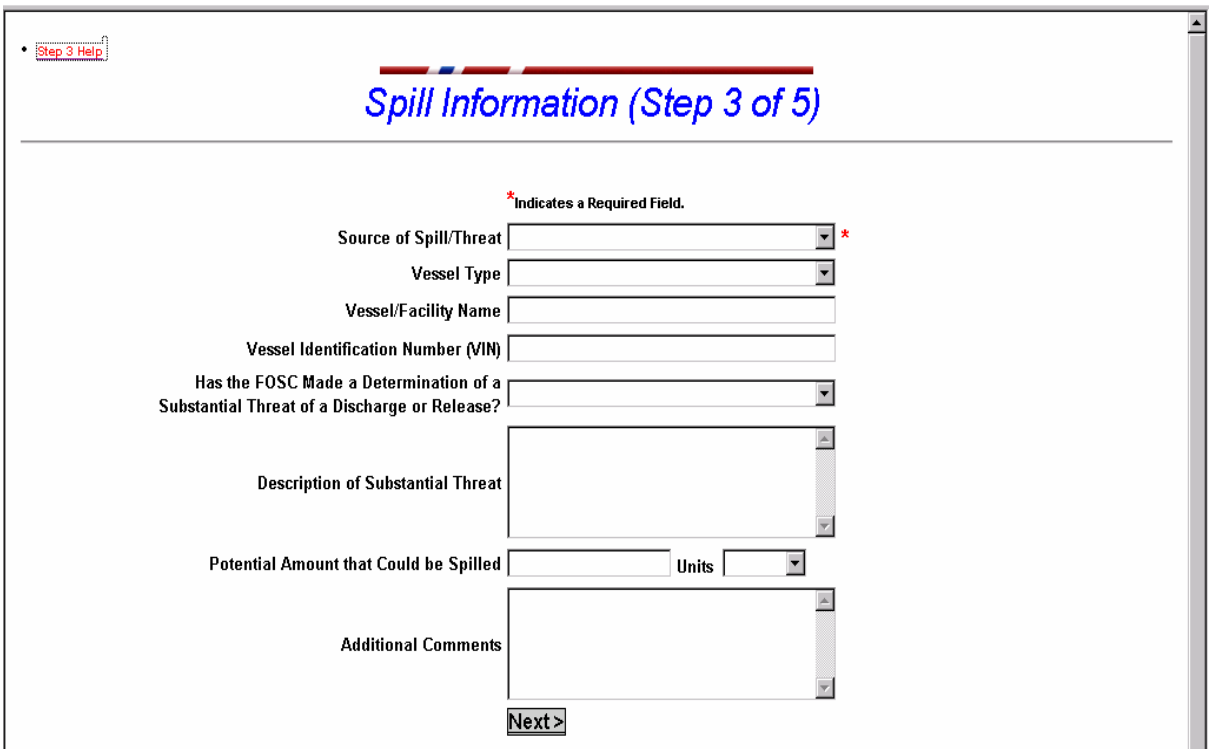
FIELD	REQUIRED	INSTRUCTIONS
Incident Date	Yes	Date that the discharge or release occurred or the threat commenced. This field may be changed to a prior date, but not one in the future. It defaults to the current date.
Incident Location	Yes	For example, the city, county, mile marker, or buoy number where the incident occurred. Maximum of 100 alphanumeric characters.
Incident State	Yes	Pick the state where the incident occurred. You may scroll through the drop down list or type the first letter of the state to more quickly locate the correct state.
Navigable Body of Water		Body of water where the incident occurred. This is required for Oil cases.
Type of Product Spilled	Yes	Select the type of product spilled from the drop down list. EPA users will only see OIL in the drop down list.
Amount Spilled		Enter the numeric quantity that was spilled.
Units		Pick the unit of measure from the drop down list for the quantity spilled.
MISLE Case/Activity Number		Enter the MISLE Case/Activity number if it is known.
NRC Incident Number		Enter the NRC Incident number if it is known.
Project Long Name		Optional text field that may be used to provide a more descriptive name for the project. Maximum of 240 alphanumeric characters.
Incident Description		Optional text field that may be used to provide more descriptive information about the incident. Maximum of 250 alphanumeric characters.
Responsible Party		Enter the Responsible Party's name if known.
Related CERCLA Project		If this incident/threat involves un-mixed Oil and Hazmat products, then check "Yes" to indicate that a related CERCLA project is also being opened. Only complete for the applicable Oil case.
Next >>	Yes	Click the **Next** button after you have filled in all the required fields to move to the next step.


Step 2 - Microsoft Internet Explorer provided by United States C
UNCLASSIFIED
File Edit View Favorites Tools Help
Back Search Favorites
Step 2 Help
Incident Information (Step 2 of 5)
*Indicates a Required Field.
Incident Date 7/6/2007
Incident Location
Incident State
Navigable Body of Water
Type of Product Spilled
Amount Spilled
Units
MISLE Case/Activity Number
NRC Incident Number
Project Long Name
Incident Description
Responsible Party
Is there a related CERCLA Project? (Only complete for applicable Oil Projects.)
Yes
No
Next >>
Done
Local intranet
Start
Inbox - Microsoft Outlook
CANAPS on ARLMS-NPF...
CANAPS Project
CANAPS_Tutorial 07-20...
Step 2 - Microsoft In...
1:28 PM

Step 3: Enter Spill Information

Use the **Spill Information** screen to enter information about the spill. The table below explains how to complete each field.

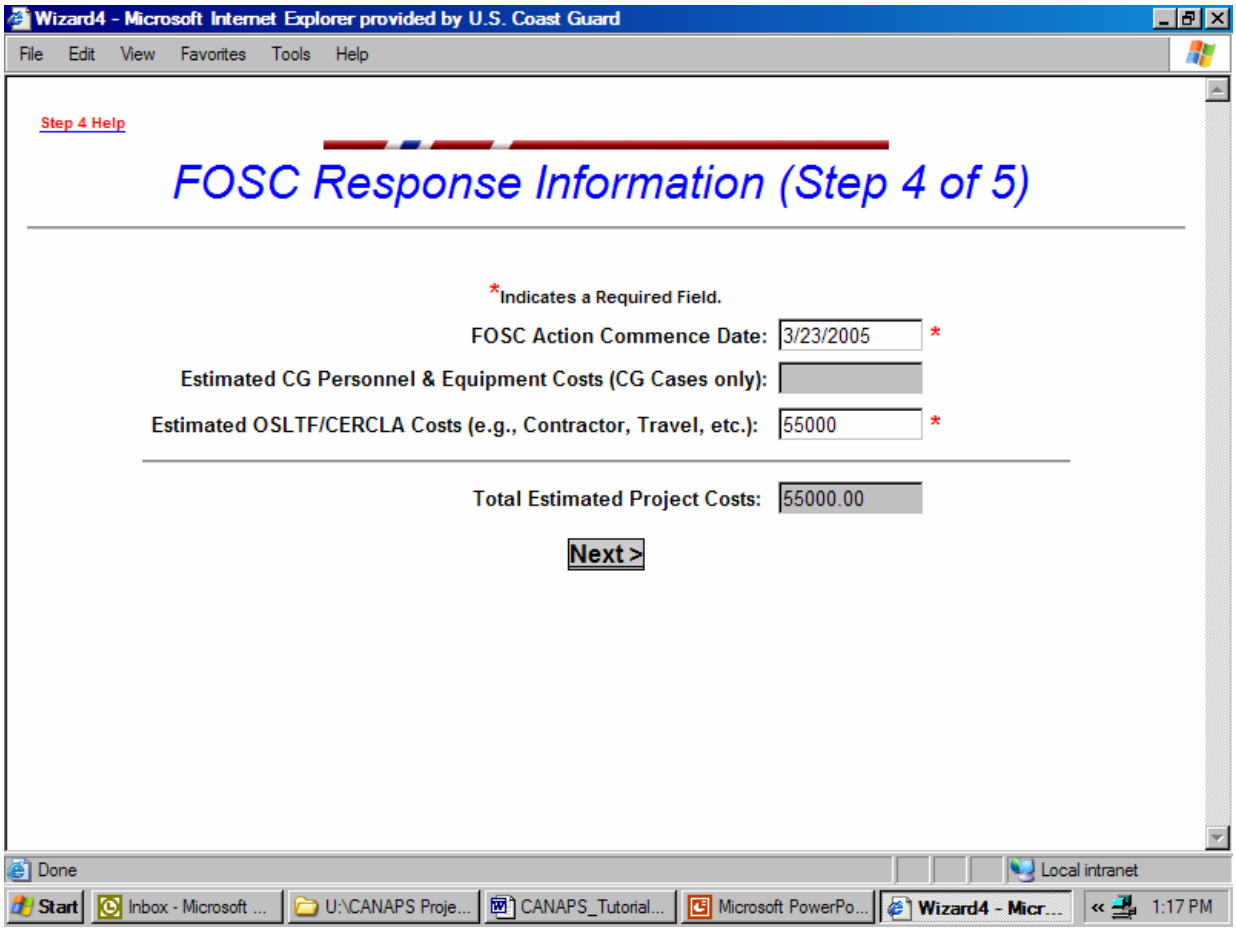
FIELD	REQUIRED	INSTRUCTIONS
Source of Spill	Yes	Select the Source of Spill from the drop down list.
Vessel Type		Pick the vessel type from the list. This is required if the Source of Spill is Vessel_COFR or Vessel_Non_COFR. Disabled if the Source of Spill is "mystery."
Vessel/Facility Name		Enter the Vessel/Facility Name. This is required if the Source of Spill is a Vessel (COFR or Non-COFR) or Facility. Maximum 21 characters. Disabled if the Source of Spill is "mystery."
Vessel Identification Number (VIN)		Enter the Vessel Identification Number, if known. Disabled if the Source of Spill is "mystery."
Substantial Threat		Indicate whether the FOSC has made a determination that there is a substantial threat of discharge for oil or hazardous materials. Choose the answer from the list provided. This field is required if no amount has been spilled yet (you did not fill out the Amount Spilled in Step 2).
Description of Substantial Threat		Enter a description of the substantial threat. This is required if "Yes" was picked from the Substantial Threat Indicator drop down list.
Potential Amount That Could be Spilled		Enter the numeric quantity that could be spilled.
Units		Pick the unit of measure from the drop down list for the potential amount that could be spilled.
Additional Comments		Add any additional comments (maximum 2,000 characters).
Next >>	Yes	Click the **Next** button after you have filled in all the required fields to move to the next step.


Step 3 Help
Spill Information (Step 3 of 5)
*Indicates a Required Field.
Source of Spill/Threat
Vessel Type
Vessel/Facility Name
Vessel Identification Number (VIN)
Has the FOSC Made a Determination of a Substantial Threat of a Discharge or Release?
Description of Substantial Threat
Potential Amount that Could be Spilled
Units
Additional Comments
Next >

Step 4: Request a Project Ceiling

Use the **FOSC Response Information** screen to request a project ceiling. The table below explains how to complete each field.

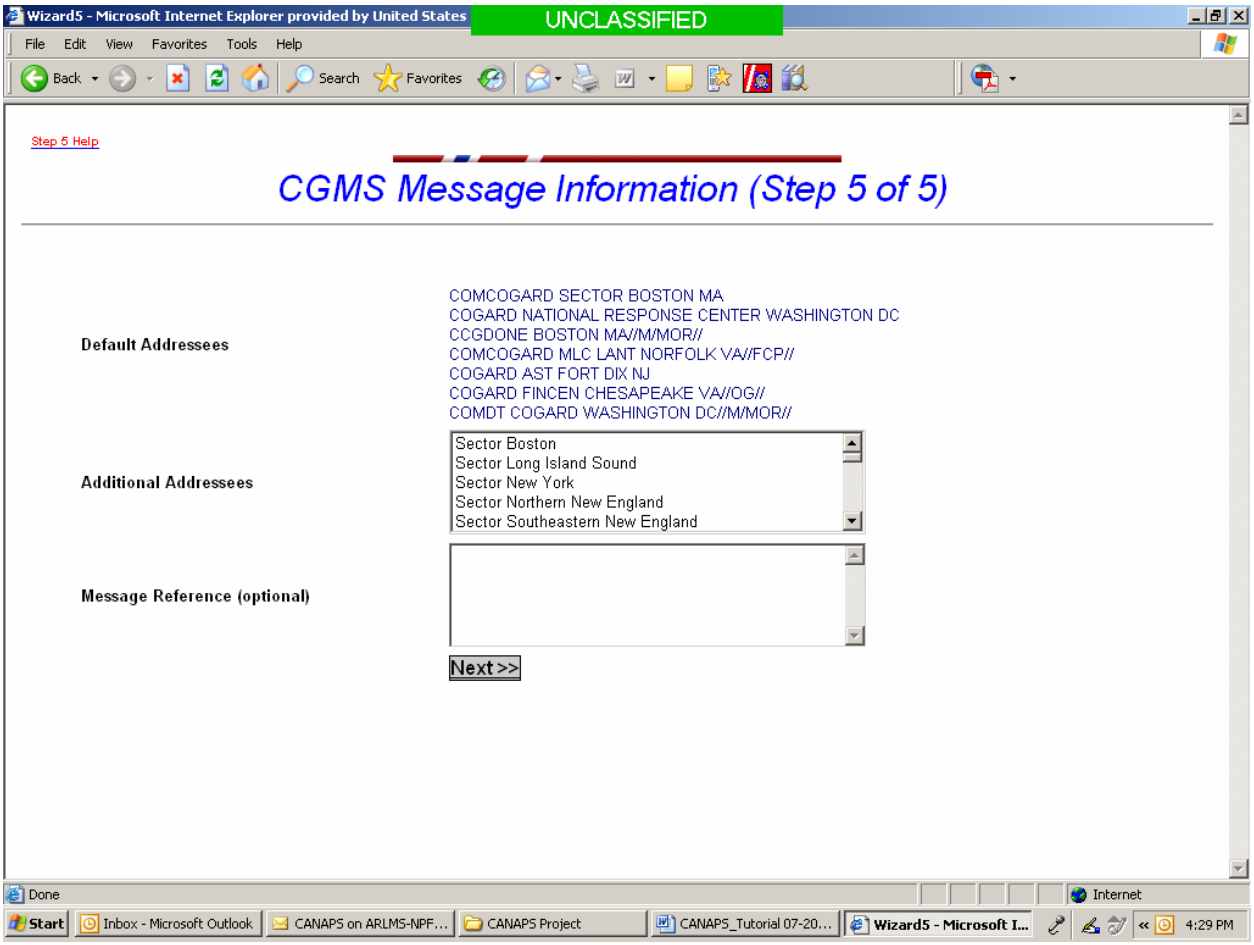
FIELD	REQUIRED	INSTRUCTIONS
FOSC Action Commence Date	Yes	Enter the action commence date. The date defaults to today's date. It may be changed to an earlier date, but cannot be earlier than the Incident Date.
Estimated CG Personnel & Equipment Costs		This field is presently inactive. When activated in a later version of CANAPS, it will capture estimated CG personnel and equipment costs.
Estimated OSLTF/ CERCLA Costs	Yes	This field captures the estimated costs that will be incurred against the OSLTF Emergency Fund (EF) on oil cases or the CERCLA Fund for hazardous material cases. Enter the Requested Amount. • If the amount requested is greater than $50,000, you will be prompted to confirm the amount. • Please be advised that the NPFC and EPA have established ceiling thresholds in order to manage OSLTF and CERCLA funds. • Threshold values may vary at times due to the availability of funds. • CANAPS will only issue a ceiling up to the allowable threshold. • The confirming Email will advise you of the amount authorized and provide additional information if the amount requested exceeded the threshold. • The system will automatically notify the NPFC if you have requested a higher ceiling.
Total Estimated Project Costs		The system will automatically calculate the sum of the previous two fields (Estimated CG Costs and Estimated OSLTF/CERCLA Costs) and display the total in this field.
Next >>	Yes	Click the **Next** button after you have filled in all the required fields to move to the next step. If the amount requested is greater than $50,000, the system will prompt you to click the **Next** button again to confirm the requested amount.


Wizard4 - Microsoft Internet Explorer provided by U.S. Coast Guard
File Edit View Favorites Tools Help
Step 4 Help
FOSC Response Information (Step 4 of 5)
*Indicates a Required Field.
FOSC Action Commence Date: 3/23/2005 *
Estimated CG Personnel & Equipment Costs (CG Cases only):
Estimated OSLTF/CERCLA Costs (e.g., Contractor, Travel, etc.): 55000 *
Total Estimated Project Costs: 55000.00
Next >
Done
Local intranet
Start
Inbox - Microsoft ...
U:\CANAPS Proje...
CANAPS_Tutorial...
Microsoft PowerPo...
Wizard4 - Micr...
1:17 PM

Step 5: Address the CGMS Message

Use the **CGMS Message Information** screen to address the CGMS message. The table below explains how to complete each field.

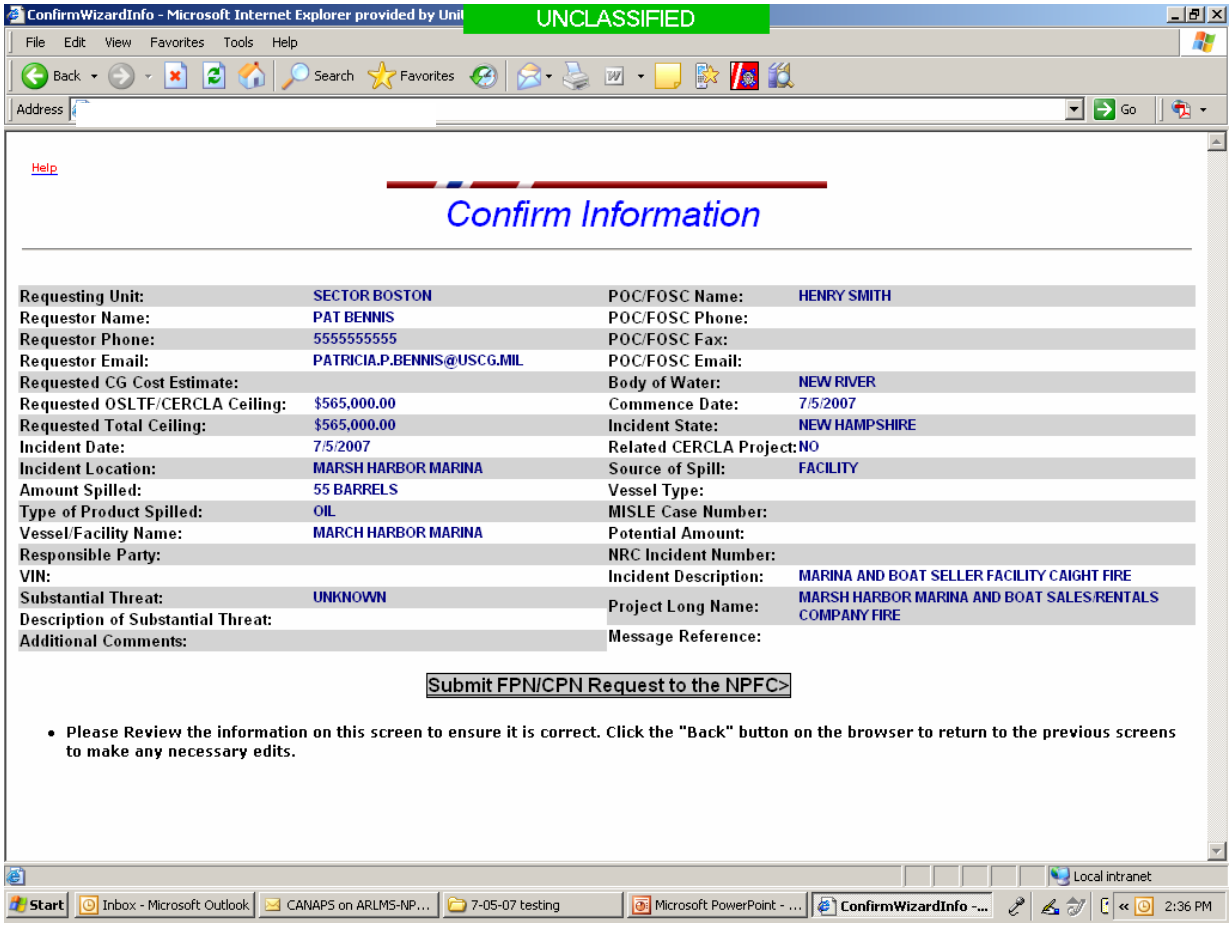
FIELD	REQUIRED	INSTRUCTIONS
Default Addressees		This section of this screen lists all of the addressees to whom the official CGMS message will be sent automatically. The default addressees are specific to each CG Sector/MSU/District or EPA Region.
Additional Addressees		If there are additional addressees that you want to add to this specific message, select them from the drop down list. Hold the "CTRL" key while highlighting items with the mouse to select more than 1 additional addressee.
Message References		Enter a message reference, if desired.
Next >>	Yes	Click the **Next** button to review the message information prior to submitting the request.



Step 6: Confirm the Information and Submit the Request

Use the **Confirm Information** screen to verify that the new information you have entered is correct.

- If any item is in error or needs revision, click Back in the browser as many times as needed to return to the specific data entry screen where that data is located.
- After making the changes, proceed again through the Wizard.
- By clicking Submit FPN/CPN Request to the NPFC>, you are submitting your request to the NPFC. The system will provide you with the message confirmation information you need to proceed with your response activities.



You can confirm the following information on this page:

Requesting Unit	POC/FOSC Name	Incident Date	FOSC Action Commence Date
Requestor Name	POC/FOSC Phone	Incident Location	Substantial Threat Indicator
Requestor Phone	POC/FOSC FAX	Incident State	Description of Substantial Threat
Requestor Email	POC/FOSC Email	Body of Water	NRC Incident Number
Source of Spill	Type of Product Spilled	Amount Spilled	MISLE Case Number
Vessel Type	Vessel/Facility Name	VIN	Additional Comments
Requested CG Cost Estimate		Responsible Party	CGMS Message Reference
Requested OSLTF/CERCLA Cost Ceiling		Potential Amount That Could Be Spilled	
Requested Total Ceiling		Related CERCLA Project Indicator	
Project Long Name		Incident Description	

Step 7: Get the Project Number and Approved Ceiling

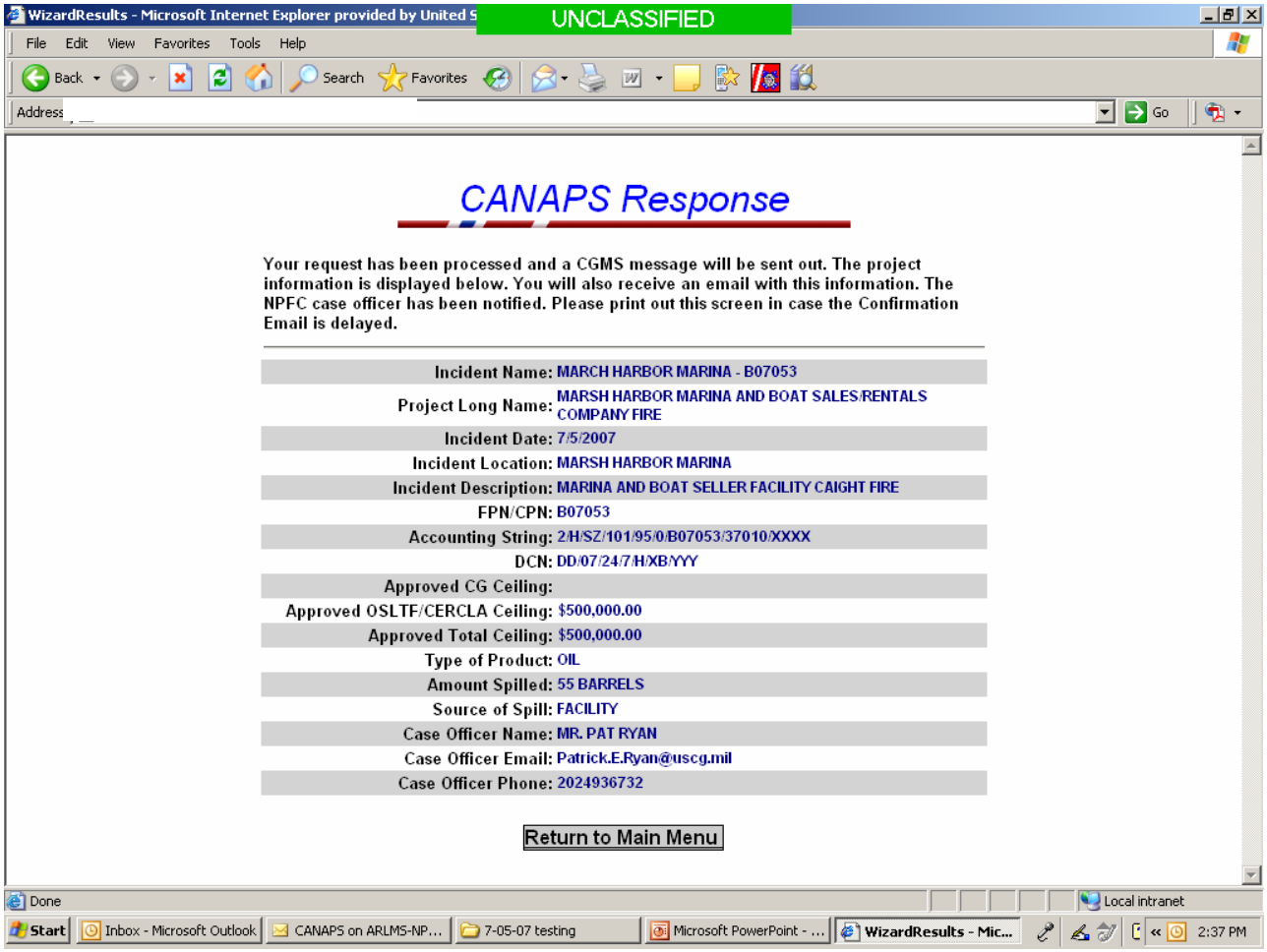
The CANAPS Response screen then informs you that your request has been processed and that a CGMS message will be sent. The Response screen displays selected project information, including the new project number (FPN/CPN) and approved ceiling for the spill. Information you can find on the screen includes:

Incident Name	Project Long Name	Incident Description	Source of Spill
Incident Date	Project Number (FPN/CPN)	Type of Product	Amount Spilled
Incident Location	Accounting String	Document Control Number (DCN)	
Approved CG Ceiling		NPFC Case Officer Name	
Approved OSLTF/CERCLA Ceiling		NPFC Case Officer Email	
Approved Total Ceiling		NPFC Case Officer Phone Number	

This screen also advises you that you (and other designated recipients) will receive a Confirmation Email with this information, and that the designated NPFC Case Officer has been notified.

Print out a copy of the screen in case the Confirmation Email is delayed.

Click on Return to Main Menu to return to the **CANAPS Welcome** screen to perform another CANAPS function. Click on ☒ at the top of the browser's window to close the CANAPS session.



Step 8: CANAPS Sends a New Project Confirmation Email

The Email below is a sample Confirmation Email that CANAPS creates once you complete the New Project Wizard. Note that the Subject of the Email includes the type of CANAPS transaction (i.e., new project) and Project Number.

The body of the message includes the new **Project Number** and **Approved Ceiling** amounts. If you have requested an amount that exceeds the established limit, the message will advise you to contact the NPFC for additional funds.

The message also includes **NPFC Case Officer Contact** and **Accounting Line** information. The Case Officer is assigned based on FOSC District for USCG cases and by Incident State for EPA cases.

From: AutoResponseCANAPS@ballston.uscg.mil
Sent: Thursday, July 05, 2007 2:37 PM
To: Bennis, Patricia
Subject: B07053 - New CANAPS Project

CANAPS has processed a NEW OIL PROJECT NUMBER REQUEST. However, the amount requested exceeds the current maximum threshold. The maximum amount has been approved. Please contact the NPFC Case Officer identified below during normal business hours (Eastern Time) to discuss the need for additional funds.

If you need to contact someone after business hours (Eastern Time), page the NPFC Case Duty Officer (CDO) at (800)759-7243 PIN#2073906. You may also email the CDO Pager at 2073906@skytel.com. Please be advised that messages to the pager cannot exceed 500 characters.

Below is all of the information entered by the requestor or calculated by CANAPS. This Email serves as confirmation that the request has been processed. An official Coast Guard Messaging System (CGMS) message will be automatically generated.

Recipients are reminded that the issuance of this project number and ceiling does not in any way change the authorizations or restrictions in the instructions/guidance for emergency acquisition procedures.

CANAPS Transaction Type:	NEW PROJECT
Project Number:	B07053
Project Date:	05 JUL 2007.
Incident Date:	05 JUL 2007.
Incident Name:	MARSH HARBOR MARINA - B07053
CG Cost Amount Requested:	No Data Entered
OSLTF/CERCLA Amount Requested:	$565,000.00
Total Amount Requested:	$565,000.00
Approved CG Cost Ceiling:	No Data Entered
Approved OSLTF/CERCLA Ceiling:	$500,000.00
Approved Total Ceiling:	$500,000.00
Action Commence Date:	05 JUL 2007.
Incident Location:	MARSH HARBOR MARINA
Incident State:	NH
Body of Water:	NEW RIVER
Source of Spill:	Facility
Vessel/Facility Name:	MARSH HARBOR MARINA
Vessel Type:	No Data Entered
Vessel Identification Number (VIN):	No Data Entered
Responsible Party:	No Data Entered
Type of Product Spilled:	Oil
Amount Spilled:	55
Unit of Measure:	Barrels
Substantial Threat:	U
Potential Amount Spilled:	No Data Entered
Potential Amount Unit of Measure:	No Data Entered
Description of Substantial Threat:	No Data Entered
Project Long Name:	MARSH HARBOR MARINA AND BOAT SALES/RENTALS COMPANY FIRE

Incident Description:	MARINA AND BOAT SELLER FACILITY CAUGHT FIRE
FOSC Unit:	Sector Boston
POC/FOSC Name:	HENRY SMITH
POC/FOSC Email:	No Data Entered
POC/FOSC Phone:	No Data Entered
POC/FOSC FAX:	No Data Entered
Requesting Unit:	Sector Boston
Requestor Name:	PAT BENNIS
Requestor Phone:	(555)555-5555
Requestor Email Address(es)	PATRICIA.P.BENNIS@USCG.MIL
Case Officer Name:Mr.	Pat Ryan
Case Officer Phone:	(202)493-6732
Case Officer Cell Phone :	(202)841-5929
Case Officer FAX:	(202)493-6896
Case Officer Email:	Patrick.E.Ryan@uscg.mil
Accounting String:	2/H/SZ/101/95/0/B07053/37010/XXXX
Document Control Number:	DD/07/24/7/H/XB/YYY
Related CERCLA Project:	N
NRC Incident Number:	No Data Entered
MISLE Case/Activity Number:	No Data Entered
CGMS Message Reference:	
Comments:	No Data Entered

Step 9: CANAPS Creates a New Project CGMS Message

Below is a sample CGMS message that CANAPS creates once you complete the New Project Wizard. Note that the message includes the new **Project Number** and **Approved Ceiling** (in paragraphs 1 and 2). It also includes the **NPFC Case Officer Contact Information**. (in paragraph 13) and **Accounting Line** information (in paragraphs 15 and 16).

```
P 060329Z JUL 07
FM COMCOGARD NPFC WASHINGTON DC//CANAPS//
TO COMCOGARD SECTOR BOSTON MA
INFO COGARD NATIONAL RESPONSE CENTER WASHINGTON DC
CCGDONE BOSTON MA//DR/DRM//
COGARD AST FORT DIX NJ
COGARD FINCEN CHESAPEAKE VA//OG//
COMCOGARD MLC LANT NORFOLK VA//FCP//
COMDT COGARD WASHINGTON DC//CG-3R/CG-3RPP//
BT
UNCLAS //N16465//
SUBJ: FPN NOTIFICATION MARSH HARBOR MARINA - B07053.
1.  FPN ISSUED FOR THIS RESPONSE IS B07053.
2.  AUTHORIZED CEILING:   $500,000.00.
3.  PROJECT DATES:
   A.  INCIDENT DATE:  05 JUL 2007.
   B.  FOSC ACTION COMMENCE DATE:  05 JUL 2007.
   C.  DATE PROJECT CREATED:  05 JUL 2007.
4.  INCIDENT LOCATION: MARSH HARBOR MARINA , NH.
5.  BODY OF WATER: NEW RIVER.
6.  SUSPECTED SOURCE: FACILITY.
7.  ESTIMATED QUANTITY OF OIL DISCHARGED: 55 Barrels.
8.  FOSC DETERMINATION OF SUBSTANTIAL THREAT: U.
9.  DESCRIPTION OF SUBSTANTIAL THREAT: N/A.
10. EST POTENTIAL QUANTITY THAT COULD BE DISCHARGED: N/A.
11. PROJECT LONG NAME: MARSH HARBOR MARINA AND BOAT SALES/RENTALS COMPANY FIRE.
12. INCIDENT DESCRIPTION: MARINA AND BOAT SELLER FACILITY CAUGHT FIRE.
13. NPFC POINT OF CONTACT:
   A.  NAME: MR. PAT RYAN.
   B.  PHONE: (202)493-6732.
   C.  CELL PHONE: (202)841-5929.
   D.  FAX: (202)493-6896.
   E.  EMAIL: PATRICK.E.RYAN@USCG.MIL.
14. FOSC POINT OF CONTACT:
   A.  NAME: HENRY SMITH.
   B.  PHONE: N/A.
   C.  FAX: N/A.
   D.  EMAIL: N/A.
15. CAS ACCOUNTING STRING: 2/H/SZ/101/95/0/B07053/37010/XXXX,
    WHERE XXXX IS OBJECT CLASS.
16. DOCUMENT CONTROL NUMBER: DD/07/24/7/H/XB/YYY.
    WHERE DD IS THE DOCUMENT TYPE AND YYY IS THE UNIT SEQUENCE NUMBER.
17. FOLLOW NPFC TOPS FOR FUND MANAGEMENT, CEILING MANAGEMENT, AND
    RESOURCE DOCUMENTATION.
18. POLREPS
    A.  ON ALL POLREPS FOR THIS CASE, FOSC MUST INCLUDE COMCOGARD NPFC,
        COGARD FINCEN(OGQ), COGARD NSFCC, AND COMCOGARD MLC LANT
        AS INFO ADDRESSEES.
    B.  INCLUDE AUTHORIZED CEILING AND DAILY COST DATA IN POLREPS.
19. CONTRACTING INFO:
   A.  IF HIRING A CONTRACTOR UNDER A BOA, ENSURE AN ATP
       (AUTHORIZATION TO PROCEED) MESSAGE IS ISSUED. OTHERWISE,
```

IF OTHER CONTRACTING SUPPORT IS REQUIRED, CONTACT MLCA(FCP-2).
CERTIFY CONTRACTOR INVOICES IAW MLC PROCEDURES.
CONTACT MLCA (FCP-2) IF QUESTIONS ARISE.

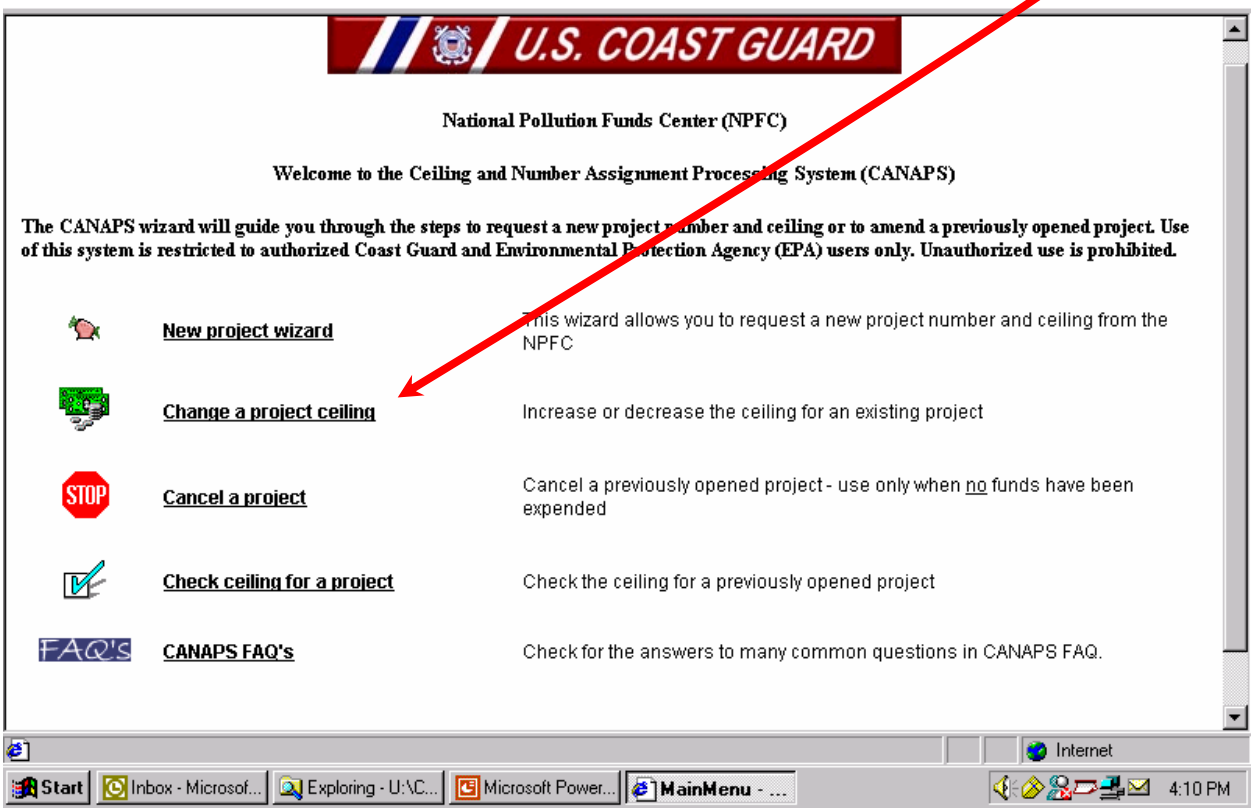
20. ALL PRFAS SHOULD BE OBLIGATED IN FPD BY THE UNIT. FORWARD PRFAS, THEIR CERTIFIED INVOICES, AND SUPPORTING COST DOCUMENTATION TO THE NPFC POC NOTED ABOVE.
21. ALL OBLIGATIONS COMPLETED BY THE UNIT (I.E., PURCHASE ORDERS) WILL BE PAID BY THE FINANCE CENTER. ENTER OBLIGATIONS IN FPD. FORWARD CERTIFIED INVOICES IAW STANDARD PROCEDURES TO THE FINANCE CENTER.
22. THIS MESSAGE WAS AUTOMATICALLY GENERATED BY THE CANAPS SYSTEM.
23. CIMS_EMAIL FPN: B07053 TYPE: CEILING AUTHORIZATION
24. CANAPS ID 060329Z JUL 07

BT
NNNN

HOW TO CHANGE A PROJECT CEILING

CANAPS has a **Change a Project Ceiling** Wizard that allows you to increase or decrease the ceiling for an existing project.

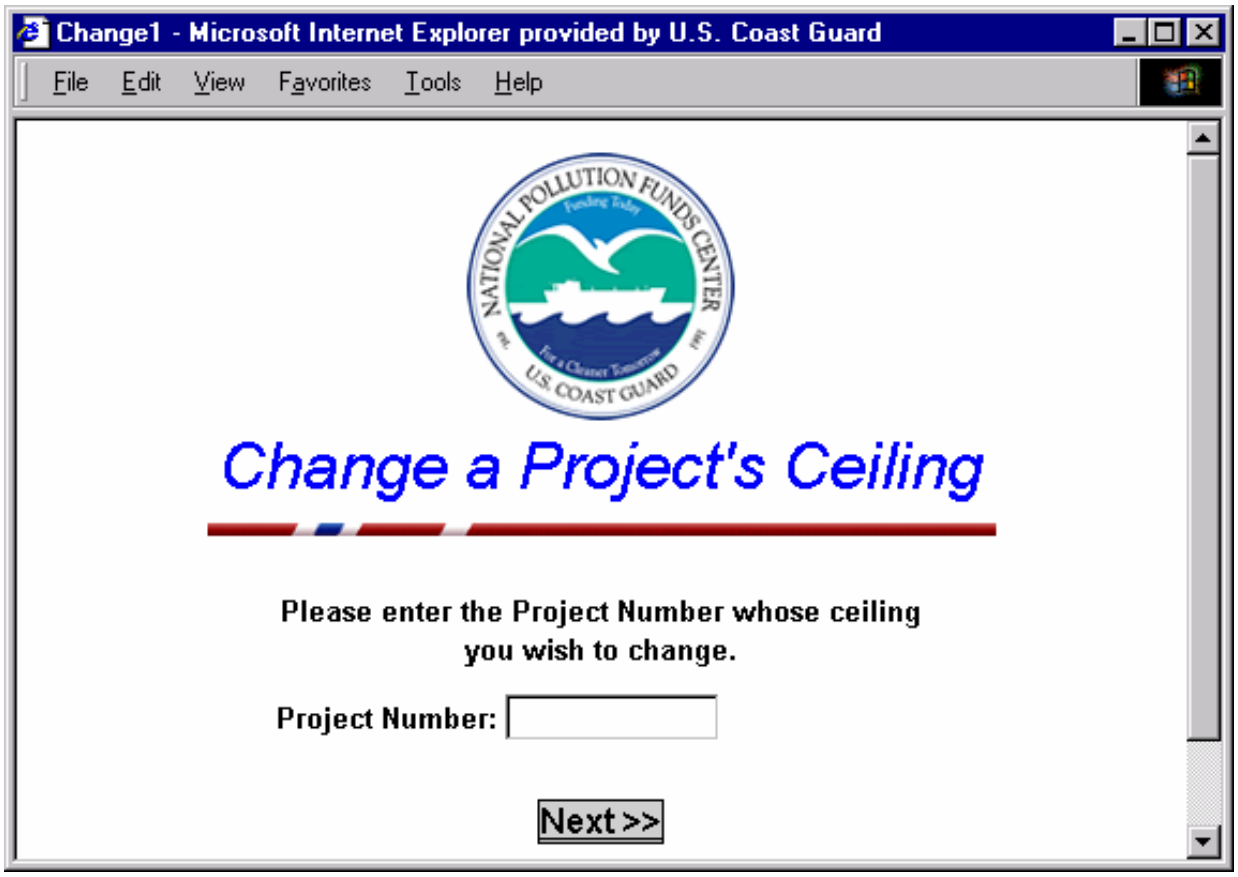
- Start by clicking on **Change a Project Ceiling** (the second link) on the CANAPS Welcome screen.
- Step 1: Enter the Project Number.
- Step 2: Review selected project information and enter the new ceiling amount.
- Step 3: Address the CGMS Message.
- Step 4: Confirm the Information and submit the request.
- Receive the CANAPS Response and Confirmation Messages.



Step 1: Enter the Project Number

Use the **Change a Project's Ceiling** screen to enter the project whose ceiling you wish to amend. The table below explains how to complete each field.

FIELD	REQUIRED	INSTRUCTIONS
Project Number	Yes	Enter the Project Number for which you wish to amend the ceiling.
Next >>	Yes	Click the **Next** button after you have filled in all the required fields to move to the next step.



Step 2: Enter the New Ceiling

Review the information displayed on the **Project Information** screen first to confirm you are amending the correct project. If you have the wrong project, use

in your browser to return to the previous screen to enter the correct project number.

The screen lists the following information to help you verify the project:

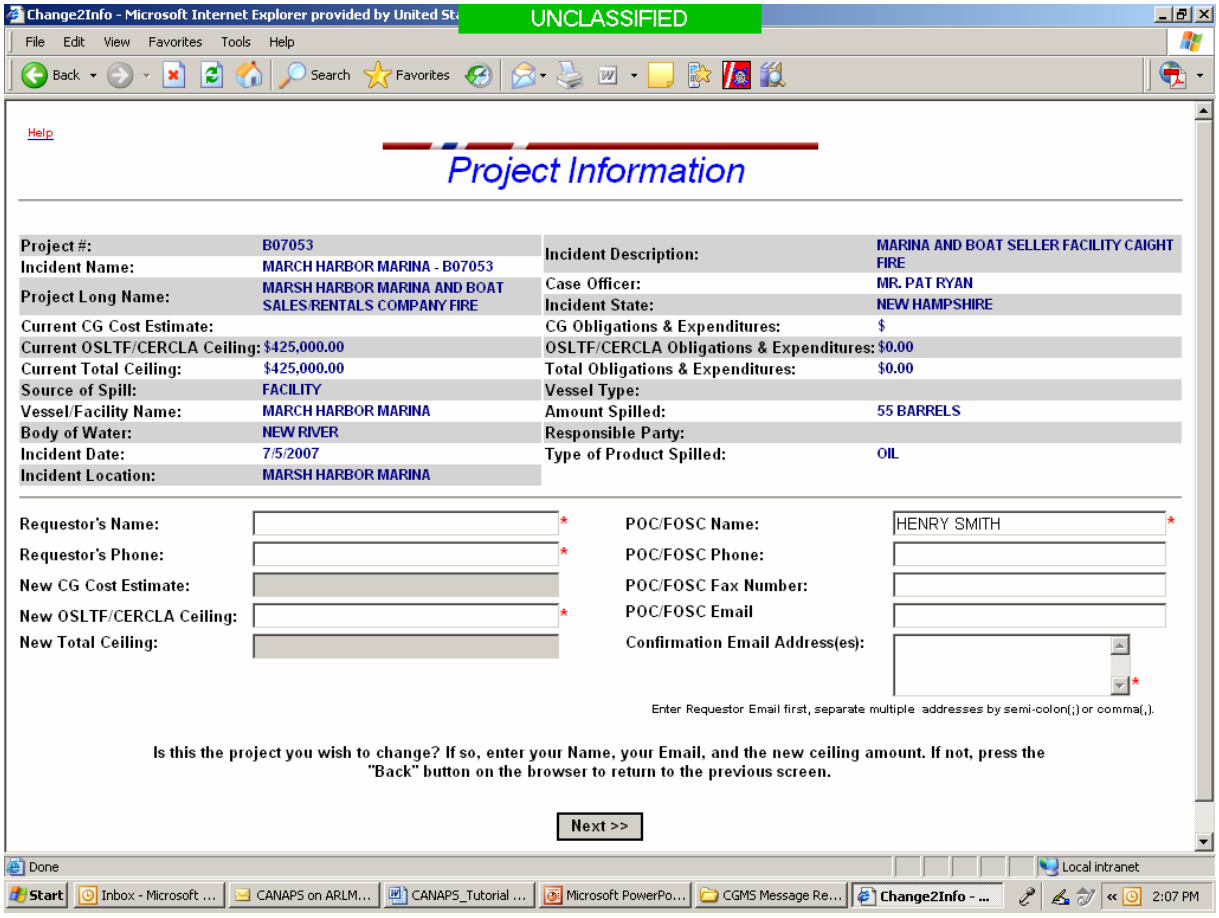
Project Number	Incident Name	Project Long Name	Incident Description
Incident Date	Case Officer	Body of Water	Responsible Party
Incident Location	Incident State	Source of Spill	Vessel Type
Type of Product Spilled		Amount Spilled	Vessel/Facility Name
Current CG Cost Estimate		CG Obligations & Expenditures	
Current OSLTF/CERCLA Ceiling		OSLTF/CERCLA Obligations & Expenditures	
Current Total Ceiling		Total Obligations & Expenditures	

Note that the system displays the current sum of Obligations and Expenditures (if any) for the selected project. It will warn you if the new Ceiling Total is less than this and ask you to confirm that the variance is intended. NPFC will be notified of the variance and will contact the POC/FOSC to resolve the issue.

Once you are sure you have the correct project, enter your change request. The table below explains how to complete each field.

FIELD	REQUIRED	INSTRUCTIONS
Requestor's Name	Yes	Enter your name in the Requestor's Name field in the following format: Title/Rank, First Name, Last Name, [Suffix].
Requestor's Phone	Yes	Enter your phone number, including the Area Code. You do not need to enter formatting characters (e.g., parentheses or dashes), only the ten (10) digits. This number will be used by the NPFC Case Officer to contact you if there are any questions.
New CG Cost Estimate		This field is presently inactive. When activated in a later version of CANAPS, it will capture estimated CG personnel and equipment costs.
New OSLTF/ CERCLA Ceiling	Yes	Enter the New Requested OSLTF/CERCLA Ceiling Amount TOTAL. • If the amount requested is greater than $50,000, you will be prompted to confirm the amount. • Please be advised that the NPFC and EPA have established ceiling thresholds in order to manage the OSLTF and CERCLA funds. • Threshold values may vary at times due to the availability of funds. • CANAPS will only issue a ceiling up to the allowable threshold. • The confirming Email will advise you of the amount authorized and provide additional information if the amount requested exceeded the threshold. • The system will automatically notify the NPFC that you have requested a higher ceiling.

FIELD	REQUIRED	INSTRUCTIONS
New Total Ceiling		The system will automatically calculate the sum of the previous two fields (Estimated CG Costs and Estimated OSLTF/CERCLA Costs) and display the total in this field.
Confirmation Email Address(es)	Yes	Enter the Email address(es) that you want the new Project information to be sent to: • You can send up to 25 different Confirmation Emails by separating the Email addresses with semi-colons (;) or commas (,). • Put the Requestor's Email address first. Be sure to enter the Email address(es) correctly or the message will not be received.
POC/FOSC Name	Yes	This field is automatically populated with data from the most recent prior CANAPS transaction for this case. Please review and update this data as necessary.
POC/FOSC Phone Number		This field is automatically populated with data from the most recent prior CANAPS transaction for this case. Please review and update this data as necessary.
POC/FOSC Fax Number		This field is automatically populated with data from the most recent prior CANAPS transaction for this case. Please review and update this data as necessary.
POC/FOSC Email		This field is automatically populated with data from the most recent prior CANAPS transaction for this case. Please review and update this data as necessary.
Next >>	Yes	Click the **Next** button after you have filled in all the required fields to move to the next step.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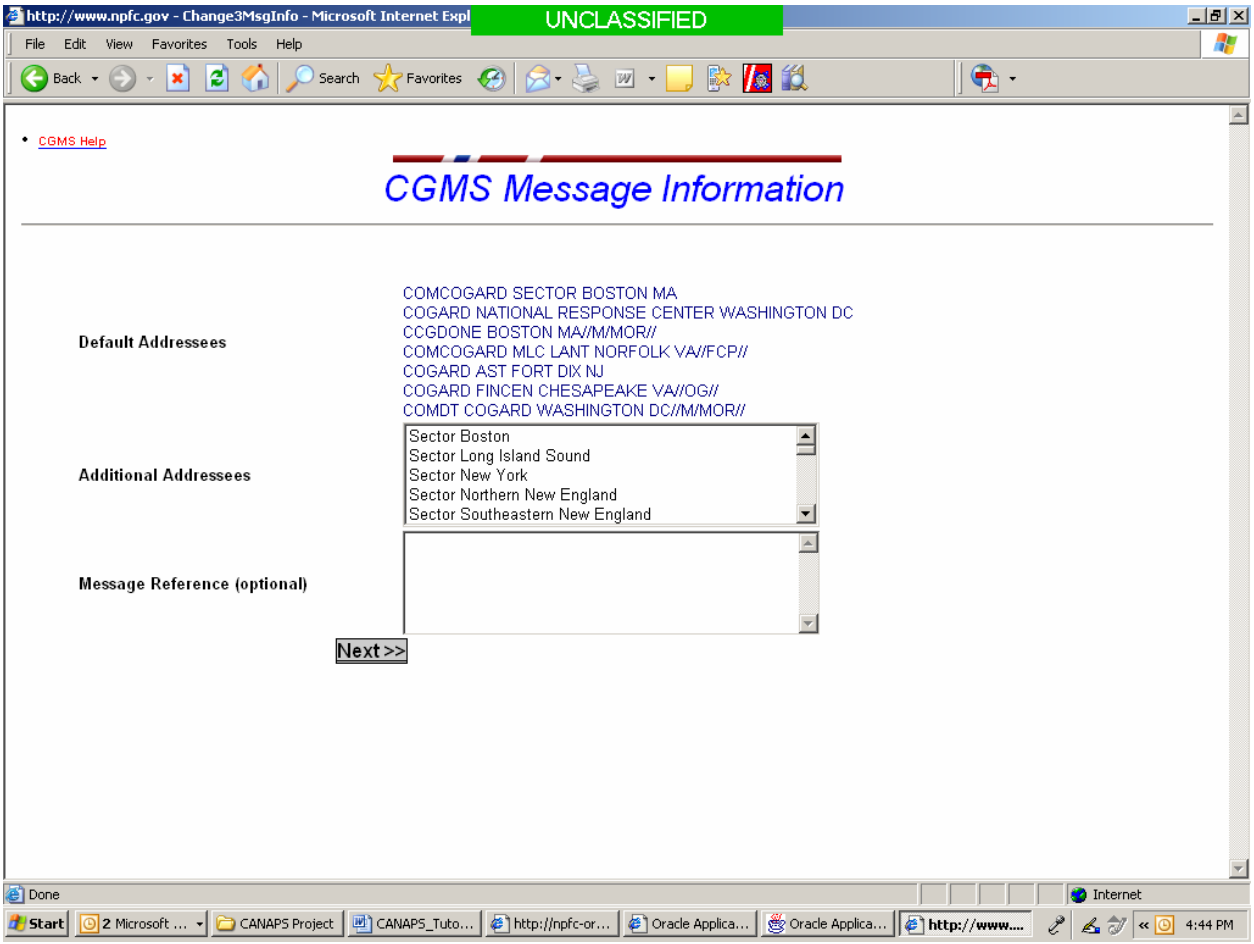
UNCLASSIFIED
File Edit View Favorites Tools Help
Back Search Favorites
Help
Project Information
Project #: B07053
Incident Name: MARCH HARBOR MARINA - B07053
Project Long Name: MARSH HARBOR MARINA AND BOAT SALES/RENTALS COMPANY FIRE
Current CG Cost Estimate:
Current OSLTF/CERCLA Ceiling: $425,000.00
Current Total Ceiling: $425,000.00
Source of Spill: FACILITY
Vessel/Facility Name: MARCH HARBOR MARINA
Body of Water: NEW RIVER
Incident Date: 7/5/2007
Incident Location: MARSH HARBOR MARINA
Incident Description: MARINA AND BOAT SELLER FACILITY CAIGHT FIRE
Case Officer: MR. PAT RYAN
Incident State: NEW HAMPSHIRE
CG Obligations & Expenditures: $
OSLTF/CERCLA Obligations & Expenditures: $0.00
Total Obligations & Expenditures: $0.00
Vessel Type:
Amount Spilled: 55 BARRELS
Responsible Party:
Type of Product Spilled: OIL
Requestor's Name:
Requestor's Phone:
New CG Cost Estimate:
New OSLTF/CERCLA Ceiling:
New Total Ceiling:
POC/FOSC Name: HENRY SMITH
POC/FOSC Phone:
POC/FOSC Fax Number:
POC/FOSC Email
Confirmation Email Address(es):
Enter Requestor Email first, separate multiple addresses by semi-colon(;) or comma(,).
Is this the project you wish to change? If so, enter your Name, your Email, and the new ceiling amount. If not, press the "Back" button on the browser to return to the previous screen.
Next >>
Done
Local intranet
Start
Inbox - Microsoft ...
CANAPS on ARLM...
CANAPS_Tutorial ...
Microsoft PowerPo...
CGMS Message Re...
Change2Info - ...
2:07 PM

Step 3: Address the CGMS Message

Use the **CGMS Message Information** screen to address the CGMS message. The table below explains how to complete each field.

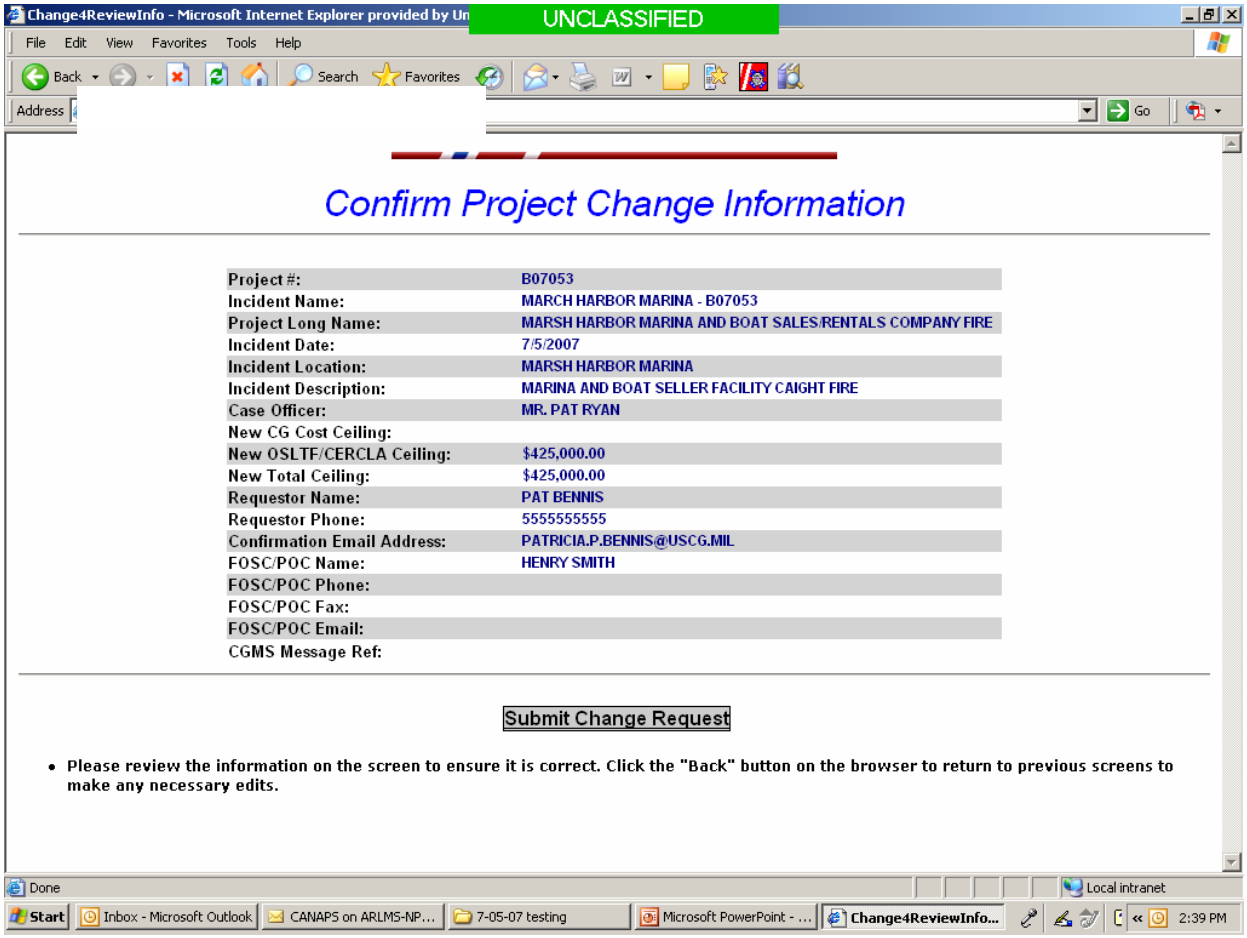
FIELD	REQUIRED	INSTRUCTIONS
Default Addressees		This section of this screen lists all of the addressees to whom the official CGMS message will be sent automatically.
Additional Addressees		If there are additional addressees that you want to add to this specific message, select them from the drop down list. Hold the "CTRL" key while highlighting items with the mouse to select more than 1 additional addressee.
Message References		Enter a message reference, if necessary.
Next >>	Yes	Click the **Next** button to review the message information prior to submitting the request.



Step 4: Confirm the Information

Use the **Confirm Project Change Information** screen to verify that new information you have entered is correct.

- If any item is in error or needs revision, click Back in the browser to return to the previous screen and make the change.
- By clicking Submit Change Request, you are submitting your request to the NPFC. The system will provide you with the message confirmation information you need to proceed with your response activities.



You can confirm the following information on this page:

Project Number	Incident Name	Project Long Name	
Incident Date	Incident Location	Incident Description	
NPFC Case Officer	Requestor Name	Requestor Phone Number	Confirmation Email Address
FOSC/POC Name	FOSC/POC Phone Number	FOSC/POC FAX Number	FOSC/POC Email
New CG Cost Ceiling	New OSLTF/CERCLA Ceiling		CGMS Message Reference
New Total Ceiling			

Step 5: Get the New Ceiling

The **CANAPS Response** screen informs you that your request has been processed and that a CGMS message will be sent. **The Response screen shows you the project's new approved ceiling amounts and issues a Confirmation Email to the specified addressees.**

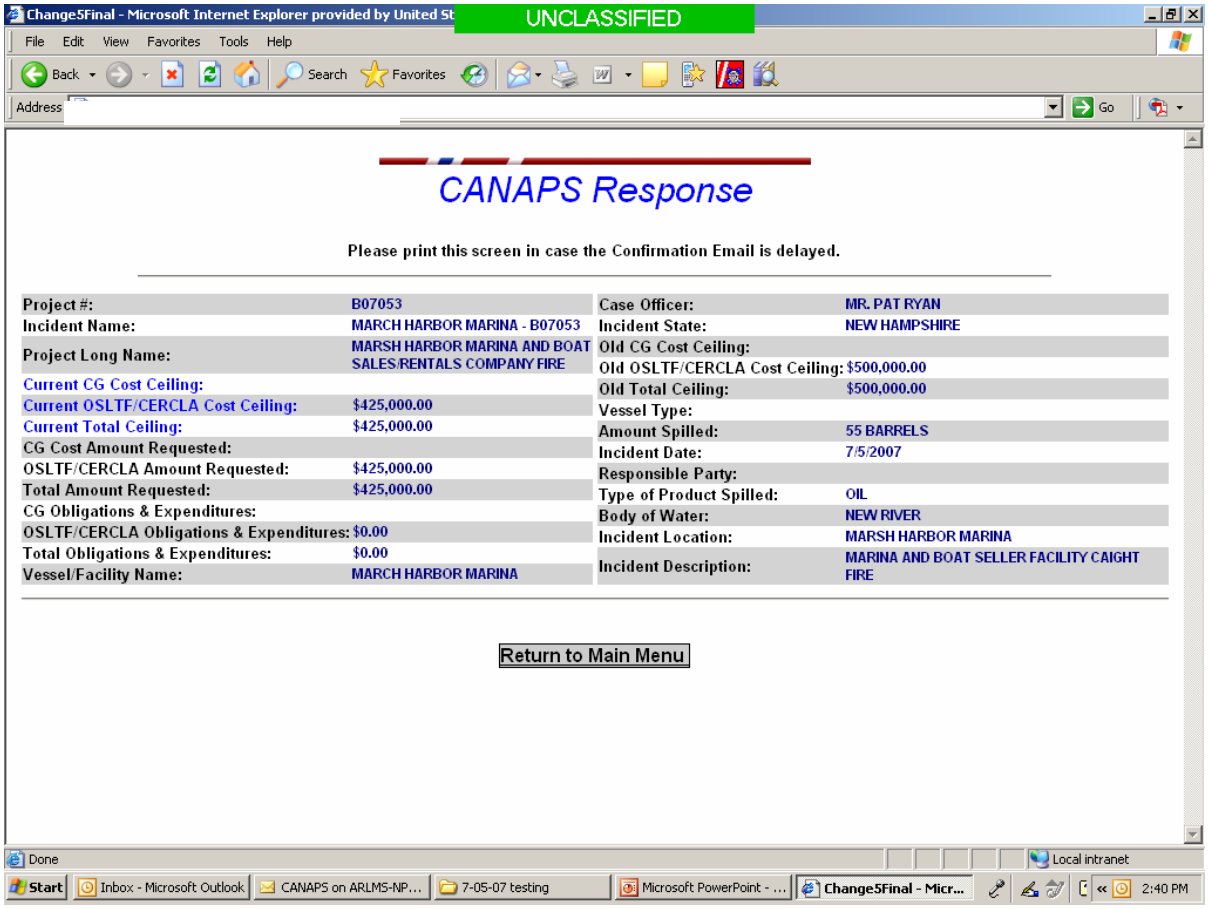
If you have requested an amount that exceeds the established limit, the system will only issue a ceiling up to the defined limit and a message near the bottom of the page will advise you to contact the NPFC Case Officer to request additional funds.

This screen displays certain project information, including the project number, your requested ceiling, and the approved amount. Information you can find on the screen includes:

Project Number	Incident Name	Project Long Name	
Incident Location	Incident Date	Incident Description	
Incident State	Body of Water	Type of Product Spilled	Amount Spilled
Vessel Type	Vessel/Facility Name	Responsible Party	NPFC Case Officer Name
Current CG Cost Ceiling	CG Cost Amount Requested	Old CG Cost Amount	CG Obligations & Expenditures
Current OSLTF/ CERCLA Ceiling	OSLTF/CERCLA Amount Requested	Old OSLTF/CERCLA Ceiling	OSLTF/CERCLA Obligations & Expenditures
Current Total Ceiling	Total Amount Requested	Old Total Ceiling	Total Obligations & Expenditures

Print out a copy of the screen in case the Confirmation Email is delayed.

Click on Return to Main Menu to return to the **CANAPS Welcome** screen to perform another CANAPS function, or click on ☒ at the top of your browser's window to close the CANAPS session.



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UNCLASSIFIED

File Edit View Favorites Tools Help

Back Search Favorites

Address Go

CANAPS Response

Please print this screen in case the Confirmation Email is delayed.

Project #:	B07053	Case Officer:	MR. PAT RYAN
Incident Name:	MARCH HARBOR MARINA - B07053	Incident State:	NEW HAMPSHIRE
Project Long Name:	MARSH HARBOR MARINA AND BOAT SALES/RENTALS COMPANY FIRE	Old CG Cost Ceiling:	
Current CG Cost Ceiling:		Old OSLTF/CERCLA Cost Ceiling:	$500,000.00
Current OSLTF/CERCLA Cost Ceiling:	$425,000.00	Old Total Ceiling:	$500,000.00
Current Total Ceiling:	$425,000.00	Vessel Type:	
CG Cost Amount Requested:		Amount Spilled:	55 BARRELS
OSLTF/CERCLA Amount Requested:	$425,000.00	Incident Date:	7/5/2007
Total Amount Requested:	$425,000.00	Responsible Party:	
CG Obligations & Expenditures:		Type of Product Spilled:	OIL
OSLTF/CERCLA Obligations & Expenditures:	$0.00	Body of Water:	NEW RIVER
Total Obligations & Expenditures:	$0.00	Incident Location:	MARSH HARBOR MARINA
Vessel/Facility Name:	MARCH HARBOR MARINA	Incident Description:	MARINA AND BOAT SELLER FACILITY CAIGHT FIRE

Return to Main Menu

Done Local intranet

Start Inbox - Microsoft Outlook CANAPS on ARLMS-NP... 7-05-07 testing Microsoft PowerPoint - ... Change5Final - Micr... 2:40 PM

Step 6: CANAPS Sends an Amended Project Confirmation Email

The Email below is a sample Confirmation Email that CANAPS creates once you complete the Change Project Ceiling Wizard. Note that the Subject of the Email includes the type of CANAPS transaction (i.e., Update CANAPS Project) and Project Number.

If you have requested an amount that exceeds the established limit, the message will advise you who to contact for additional funds.

The message also includes the Project Number, the Previous Ceiling Amounts, Amounts Requested, and New Approved Ceiling Amounts.

From: AutoResponseCANAPS@ballston.uscg.mil
Sent: Thursday, July 05, 2007 2:40 PM
To: Bennis, Patricia
Subject: B07053 - Update CANAPS Project

CANAPS has processed a CEILING UPDATE REQUEST. Below is all of the information entered by the user or calculated by CANAPS. This Email serves as a confirmation that the request has been processed. An official Coast Guard Messaging System (CGMS) message will be automatically generated.

Recipients are reminded that the issuance of this project number and ceiling does not in any way change the authorizations or restrictions in the instructions/guidance for emergency acquisition procedures.

If you need to contact someone after business hours (Eastern Time) page the NPFC Case Duty Officer (CDO) at (800)759-7243 PIN#2073906.

CANAPS Transaction Type:	CEILING UPDATE
Project Number:	B07053
Ceiling Update Date:	05 JUL 2007.
Incident Date:	05 JUL 2007.
Incident Name:	MARSH HARBOR MARINA - B07053
Previous CG Cost Ceiling:	No Data Entered
Previous OSLTF/CERCLA Ceiling:	$500,000.00
Previous Total Ceiling:	$500,000.00
CG Cost Amount Requested:	No Data Entered
OSLTF/CERCLA Amount Requested:	$425,000.00
Total Amount Requested:	$425,000.00
Approved CG Cost Ceiling:	No Data Entered
Approved OSTLF/CERCLA Ceiling:	$425,000.00
Approved Total Ceiling:	$425,000.00
CG Cost Obligations/Expenditures:	No Data Entered
OSLTF/CERCLA Obligations/Expenditures:	$0.00
Total Obligations/Expenditures:	$0.00
Incident Location:	MARSH HARBOR MARINA
Incident State:	NH
FOSC Unit:	Sector Boston
POC/FOSC Name:	HENRY SMITH
POC/FOSC Email:	No Data Entered
POC/FOSC Phone:	No Data Entered
POC/FOSC FAX:	No Data Entered
Requesting Unit:	Sector Boston
Requestor Name:	PAT BENNIS
Requestor Phone:	(555)555-5555
Requestor Email Address(es):	PATRICIA.P.BENNIS@USCG.MIL
CGMS Reference:	
Case Officer Name:	Mr. Pat Ryan
Case Officer Phone:	(202)493-6732
Case Officer Cell Phone:	(202)841-5929

Case Officer FAX: (202)493-6896
Case Officer Email: Patrick.E.Ryan@uscg.mil

Step 7: CANAPS Creates an Amend Project CGMS Message

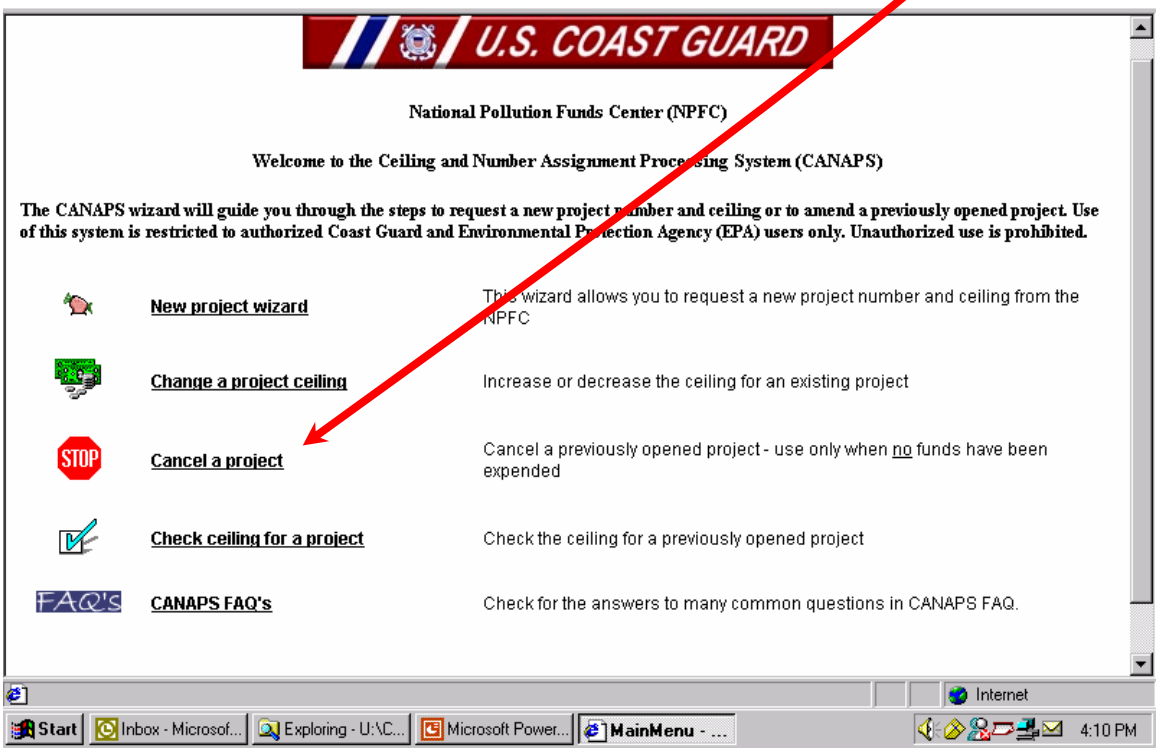
Below is a sample CGMS message that CANAPS creates once you amend a project ceiling. Note that the message includes the **Project Number** in the Subject line and the new **Approved Ceiling** in the first paragraph of the message.

```
P 060332Z JUL 07
FM COMCOGARD NPFC WASHINGTON DC//CANAPS//
TO COMCOGARD SECTOR BOSTON MA
INFO COGARD NATIONAL RESPONSE CENTER WASHINGTON DC
CCGDONE BOSTON //DR/DRM//
COGARD AST FORT DIX NJ
COGARD FINCEN CHESAPEAKE VA//OG//
COMCOGARD MLC LANT NORFOLK VA//FCP//
COMDT COGARD WASHINGTON DC// CG-3R/CG-3RPP //
BT
UNCLAS //N16465//
SUBJ: FPN CEILING AMENDMENT FOR MARSH HARBOR MARINA - B07053.
1. AUTHORIZED CEILING IS CHANGED FROM $500,000.00 TO $425,000.00.
2. CEILING CHANGE DATE:  05 JUL 2007.
3. INCIDENT LOCATION:  MARSH HARBOR MARINA , NH.
4. NPFC POINT OF CONTACT:
   A.  NAME: MR. PAT RYAN.
   B.  PHONE: (202)493-6732.
   C.  CELL PHONE: (202)841-5929.
   D.  FAX: (202)493-6896.
   E.  EMAIL: PATRICK.E.RYAN@USCG.MIL.
5. FOSC POINT OF CONTACT:
   A.  NAME: HENRY SMITH.
   B.  PHONE: N/A.
   C.  FAX: N/A.
   D.  EMAIL: N/A.
6.  CAS ACCOUNTING STRING: 2/H/SZ/101/95/0/B07053/37010/XXXX,
    WHERE XXXX IS OBJECT CLASS.
7.  DOCUMENT CONTROL NUMBER:  DD/07/24/7/H/XB/YYY.
    WHERE DD IS THE DOCUMENT TYPE AND YYY IS THE UNIT SEQUENCE NUMBER.
8.  FOLLOW NPFC TOPS FOR FUND MANAGEMENT, CEILING MANAGEMENT, AND
    RESOURCE DOCUMENTATION.
9.  POLREPS
    A.  ON ALL POLREPS FOR THIS CASE, FOSC MUST INCLUDE COMCOGARD NPFC,
        COGARD FINCEN(OGQ), COGARD NSFCC, AND COMCOGARD MLC LANT/MLC
        PAC AS INFO ADDRESSEES.
    B.  INCLUDE AUTHORIZED CEILING AND DAILY COST DATA ON POLREPS.
10. THIS MESSAGE WAS AUTOMATICALLY GENERATED BY THE CANAPS SYSTEM.
11. CIMS_EMAIL FPN: B07053 TYPE: CEILING AMENDMENT
12. CANAPS ID 060332Z JUL 07
BT
NNNN
```

HOW TO CANCEL A PROJECT

CANAPS has a **Cancel a Project** Wizard that allows you to cancel a previously opened project, provided no funds have been expended.

- Start by clicking on **Cancel a Project** (the third link) on the CANAPS Welcome screen.
- Step 1: Enter the Project Number.
- Step 2: Review selected project information.
- Step 3: Address the CGMS Message
- Step 4: Confirm the information and submit the request.
- Receive the CANAPS Response and Confirmation Messages.

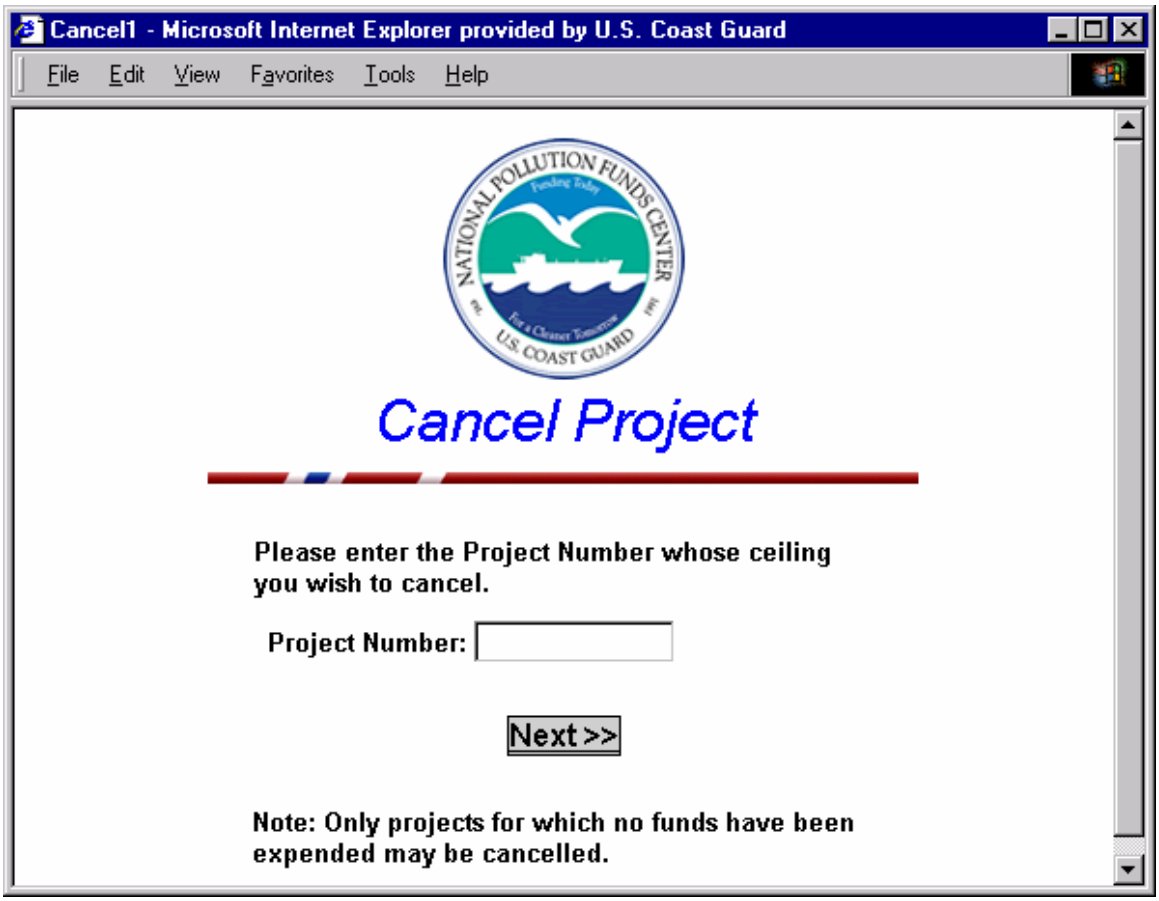


Step 1: Enter the Project Number

Use the **Cancel Project** screen to enter the project whose ceiling you wish to cancel. Only projects for which ***no*** funds have been expended may be cancelled. The system will ***not*** allow you to use this function to close a completed case.

The table below explains how to complete each field.

FIELD	REQUIRED	INSTRUCTIONS
Project Number	Yes	Enter the Project Number you wish to cancel.
Next >>	Yes	Click the **Next** button after you have filled in all the required fields to move to the next step.



Step 2: Confirm You're Canceling the Correct Project

Review the **Project Information** screen first to confirm you are canceling the correct project.

If you have the wrong project, use

in your browser to return to the previous screen to enter the correct project number.

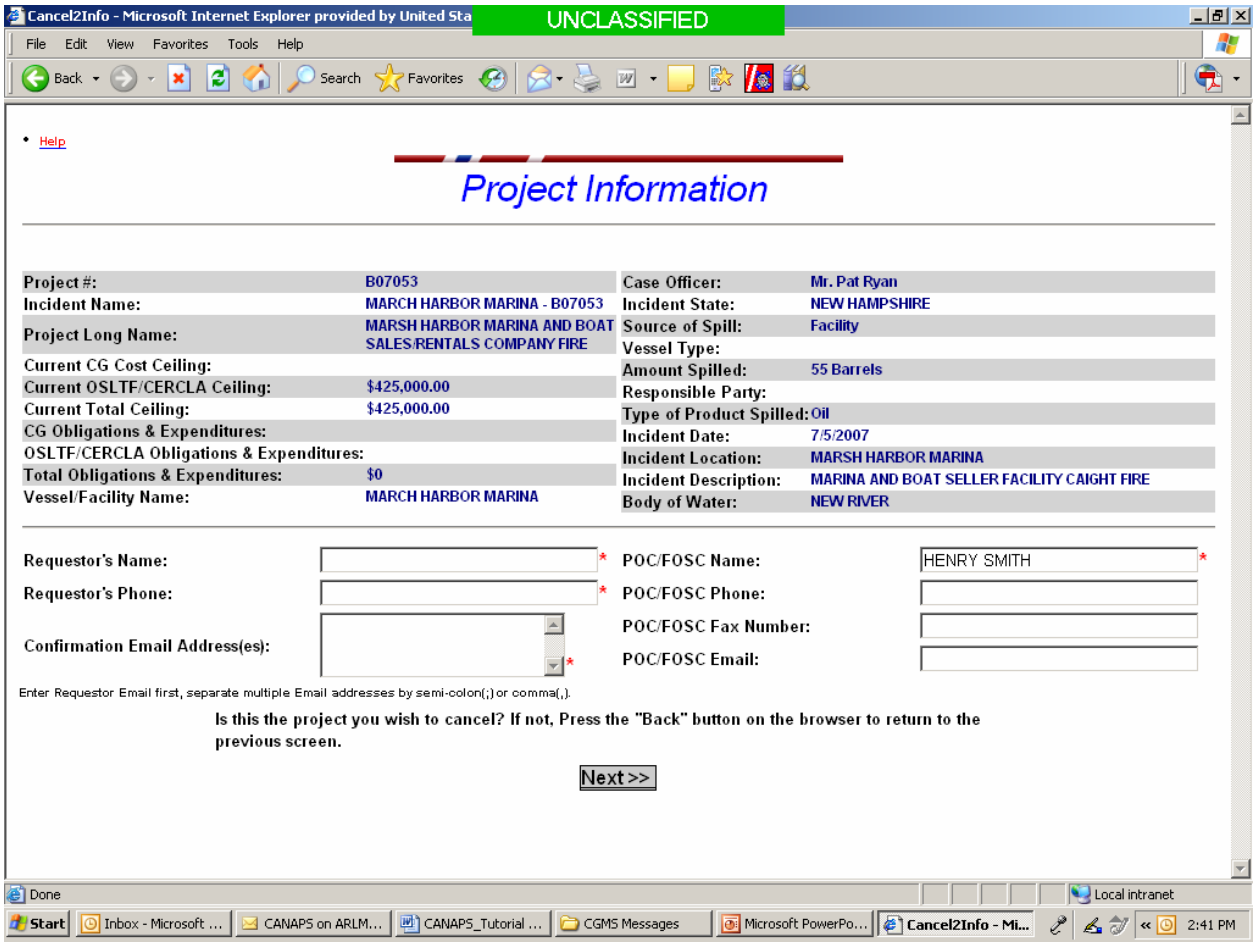
The screen lists the following information to help you verify the project:

Project Number	Case Officer	Incident Name	Project Long Name
Incident Location	Incident State	Incident Date	Incident Description
Body of Water	Source of Spill	Vessel Type	Vessel/Facility Name
Type of Product Spilled		Amount Spilled	Responsible Party
Current CG Cost Ceiling		CG Obligations & Expenditures	
Current OSLTF/CERCLA Ceiling		OSLTF/CERCLA Obligations & Expenditures	
Current Total Ceiling		Total Obligations & Expenditures	

Once you are sure you have the correct project, enter the appropriate information. The table below explains how to complete each field.

FIELD	REQUIRED	INSTRUCTIONS
Requestor's Name	Yes	Enter your name in the Requestor's Name field in the following format: Title/Rank, First Name, Last Name, [Suffix].
Requestor's Phone	Yes	Enter your phone number, including the Area Code. You do not need to enter formatting characters (e.g., parentheses or dashes), only the ten (10) digits. This number will be used by the NPFC Case Officer to contact you if there are any questions.
Confirmation Email Address(es)	Yes	Enter the Email address(es) that you want the Cancel Project information to be sent to. • You can send up to 25 different Confirmation Emails by separating the Email addresses with semi-colons (;) or commas (,). • Put the Requestor's Email address first. Be sure to enter this correctly or you will <u>not</u> receive the Confirmation Email from CANAPS.
POC/FOSC Name	Yes	This field is automatically populated with data from the most recent prior CANAPS transaction for this case. Please review and update this data as necessary.
POC/FOSC Phone Number		This field is automatically populated with data from the most recent prior CANAPS transaction for this case. Please review and update this data as necessary.
POC/FOSC Fax Number		This field is automatically populated with data from the most recent prior CANAPS transaction for this case. Please review and update this data as necessary.

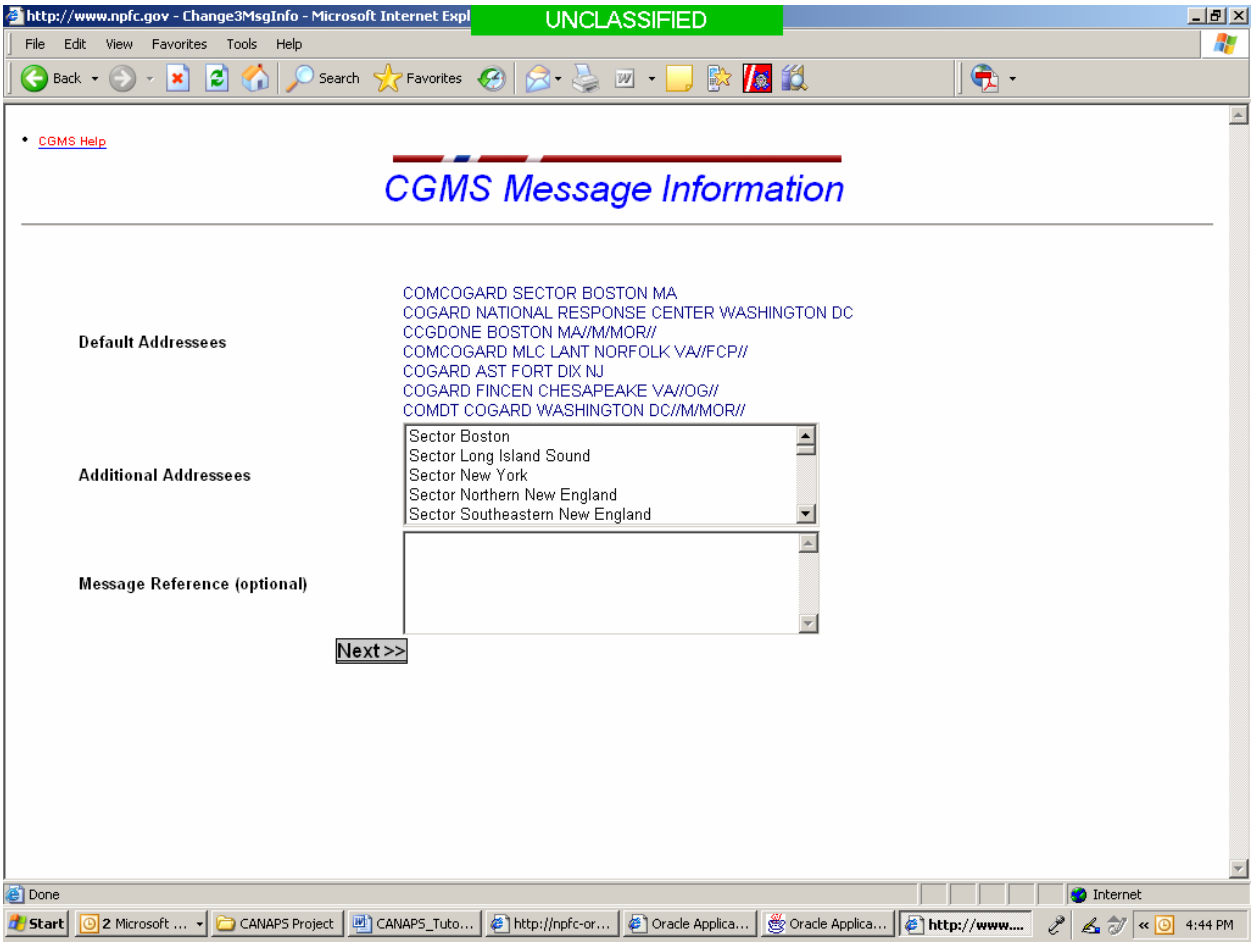
FIELD	REQUIRED	INSTRUCTIONS
POC/FOSC Email		This field is automatically populated with data from the most recent prior CANAPS transaction for this case. Please review and update this data as necessary.
Next >>	Yes	Click the **Next** button after you have filled in all the required fields to move to the next step.



Step 3: Address the CGMS Message

Use the **CGMS Message Information** screen to address the CGMS message. The table below explains how to complete each field.

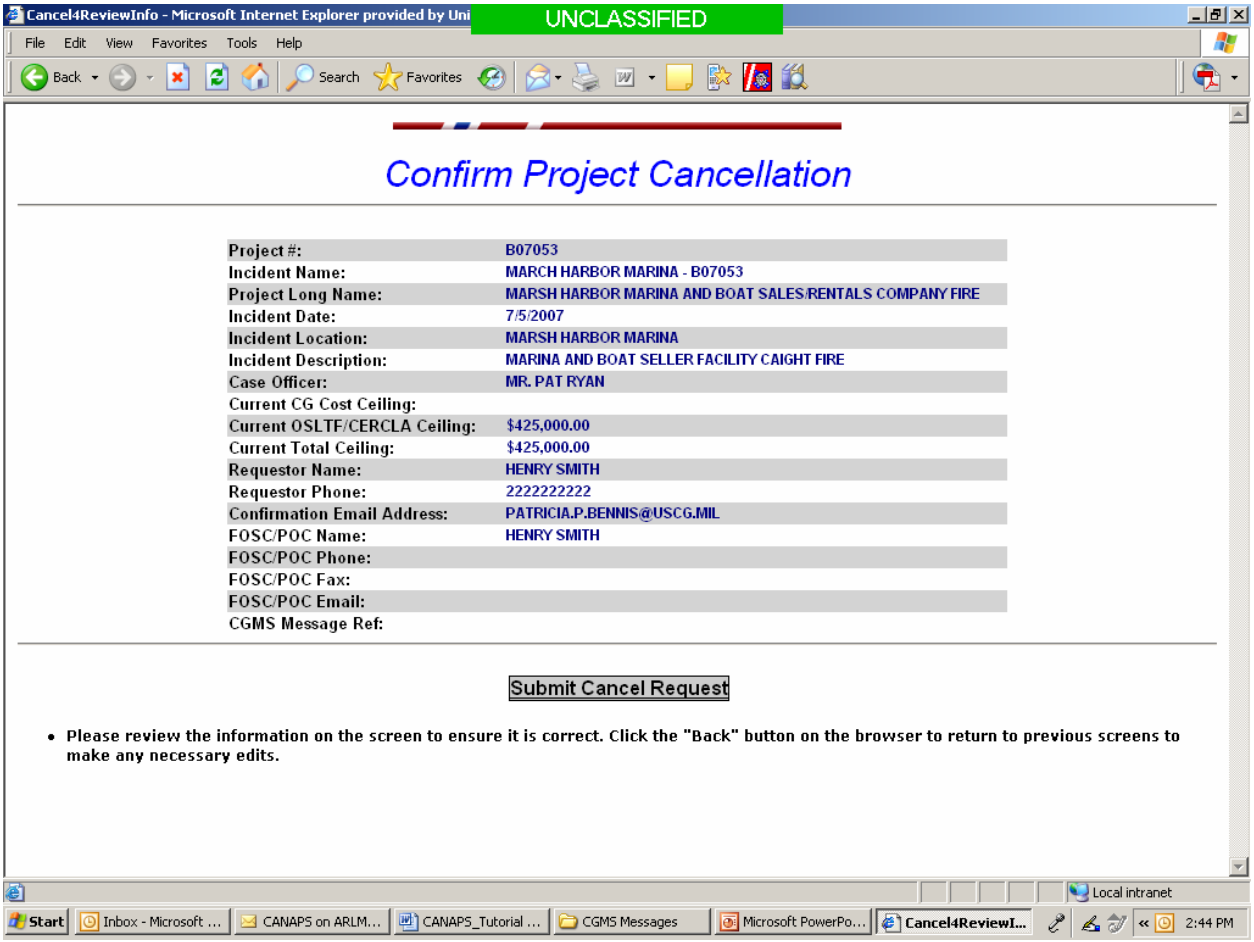
FIELD	REQUIRED	INSTRUCTIONS
Default Addressees		This section of this screen lists all of the addressees to whom the official CGMS message will be sent automatically.
Additional Addressees		If there are additional addressees that you want to add to this specific message, select them from the drop down list. Hold the "CTRL" key while highlighting items with the mouse to select more than 1 additional addressee.
Message References		Enter a message reference, if necessary.
Next >>	Yes	Click the **Next** button to review the message information prior to submitting the request.



Step 4: Confirm the Information

Use the **Confirm Project Cancellation** screen to verify that you are canceling the correct project and that the Email and message information is correct.

- If any item is in error or needs revision, click Back in the browser to return to the previous screen and make the change.
- By clicking Submit Cancel Request, you are submitting your request to the NPFC. The system will provide you with the message confirmation information you need to proceed with your response activities.



You can confirm the following information on this page:

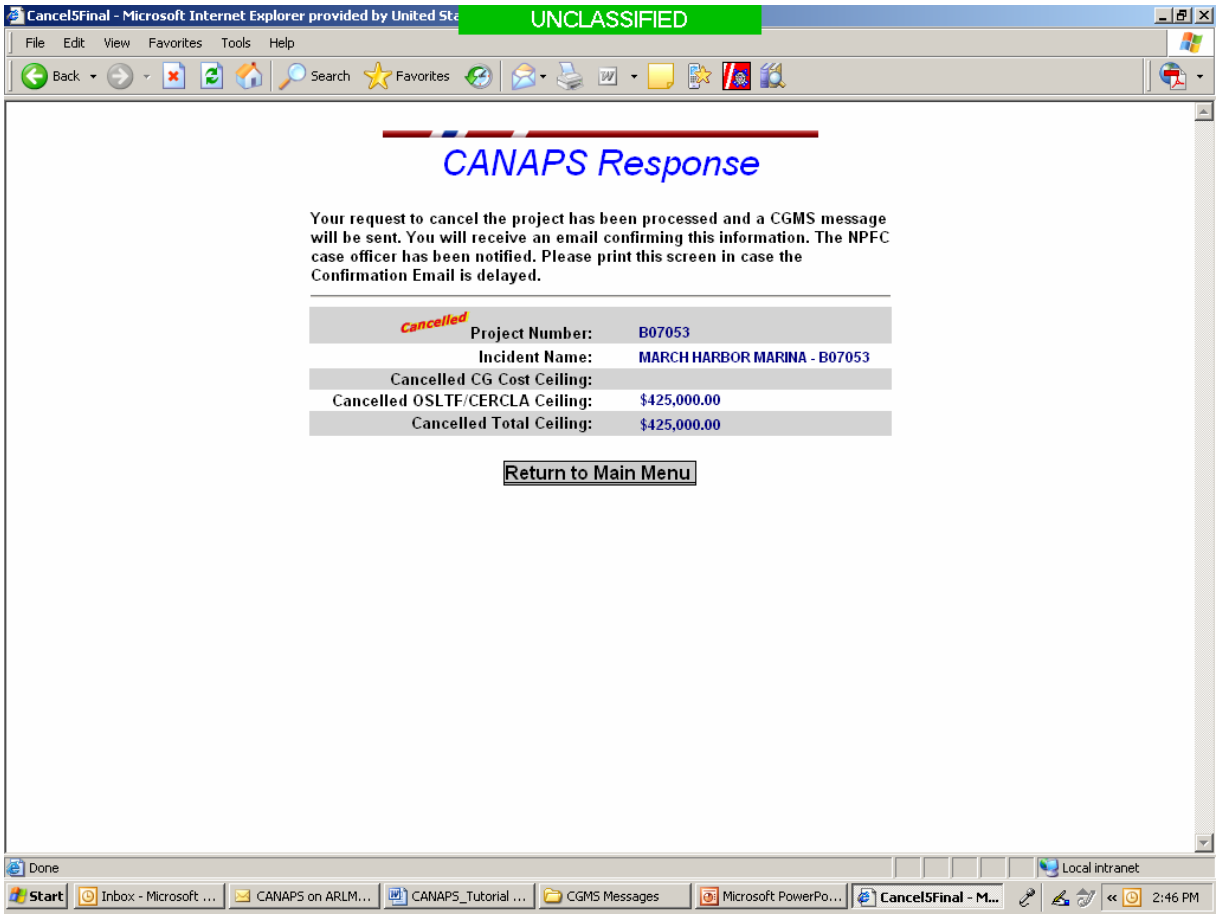
Project Number	Incident Name	Project Long Name
Incident Date	Incident Location	Incident Description
Requestor Name	Requestor Phone Number	Confirmation Email Address
FOSC/POC Name	FOSC/POC Phone Number	NPFC Case Officer
FOSC/POC FAX Number	FOSC/POC Email	CGMS Message Reference
Current CG Cost Ceiling	Current OSLTF/CERCLA Ceiling	Current Total Ceiling

Step 5: Confirm the Project Cancellation

The **CANAPS Response** screen then confirms that the project along with its ceiling has been cancelled. It reminds you that a CGMS message will be sent, that you will receive a Confirmation Email, and that the NPFC Case Officer has been notified.

Print out a copy of the screen in case the Confirmation Email is delayed.

Click on Return to Main Menu to return to the **CANAPS Welcome** screen to perform another CANAPS function, or click on ☒ at the top of your browser's window to close the CANAPS session.



Step 6: CANAPS Sends a Cancelled Project Confirmation Email

The Email below is a sample Confirmation Email that CANAPS creates once you complete the **Cancel Project Ceiling** Wizard. Note that the Subject of the Email includes the **Type of CANAPS Transaction** (i.e., Cancel CANAPS Project) and **Project Number**. It shows that the **Ceiling Amount** has been set to $0.00

From: AutoResponseCANAPS@ballston.uscg.mil
Sent: Friday, July 06, 2007 2:47 PM
To: Bennis, Patricia
Subject: B07053 - Cancel CANAPS Project

CANAPS has processed a PROJECT CANCELLATION REQUEST. Below is all of the information entered by the requestor or calculated by CANAPS. This Email serves as confirmation that the request has been processed. An official Coast Guard Messaging System (CGMS) message will be automatically generated.

If you need to contact someone after business hours (Eastern Time) page the NPFC Case Duty Officer (CDO) at (800)759-7243 PIN#2073906.

CANAPS Transaction Type:	PROJECT CANCELLATION
Project Number:	B07053
Project Cancellation Date:	06 JUL 2007.
Incident Date:	05 JUL 2007.
Previous CG Cost Ceiling:	No Data Entered
Previous OSLTF/CERCLA Ceiling:	$425,000.00
Previous Total Ceiling:	$425,000.00
CG Cost Amount Requested:	No Data Entered
OSLTF/CERCLA Amount Requested:	$0.00
Total Amount Requested:	$0.00
CG Cost Approved Ceiling:	No Data Entered
OSLTF/CERCLA Approved Ceiling:	$0.00
Total Approved Ceiling:	$0.00
Incident Location:	MARSH HARBOR MARINA
Incident State:	NH
FOSC Unit:	Sector Boston
POC/FOSC Name:	HENRY SMITH
POC/FOSC Email:	No Data Entered
POC/FOSC Phone:	No Data Entered
POC/FOSC FAX:	No Data Entered
Requesting Unit:	Sector Boston
Requestor Name:	HENRY SMITH
Requestor Phone:	(222)222-2222
Requestor Email Address(es):	PATRICIA.P.BENNIS@USCG.MIL
CGMS Reference:	
Case Officer Name:	Mr. Pat Ryan
Case Officer Phone:	(202)493-6732
Case Officer Cell Phone:	(202)841-5929
Case Officer FAX:	(202)493-6896
Case Officer Email:	Patrick.E.Ryan@uscg.mil

Step 7: CANAPS Creates a Cancel Project CGMS Message

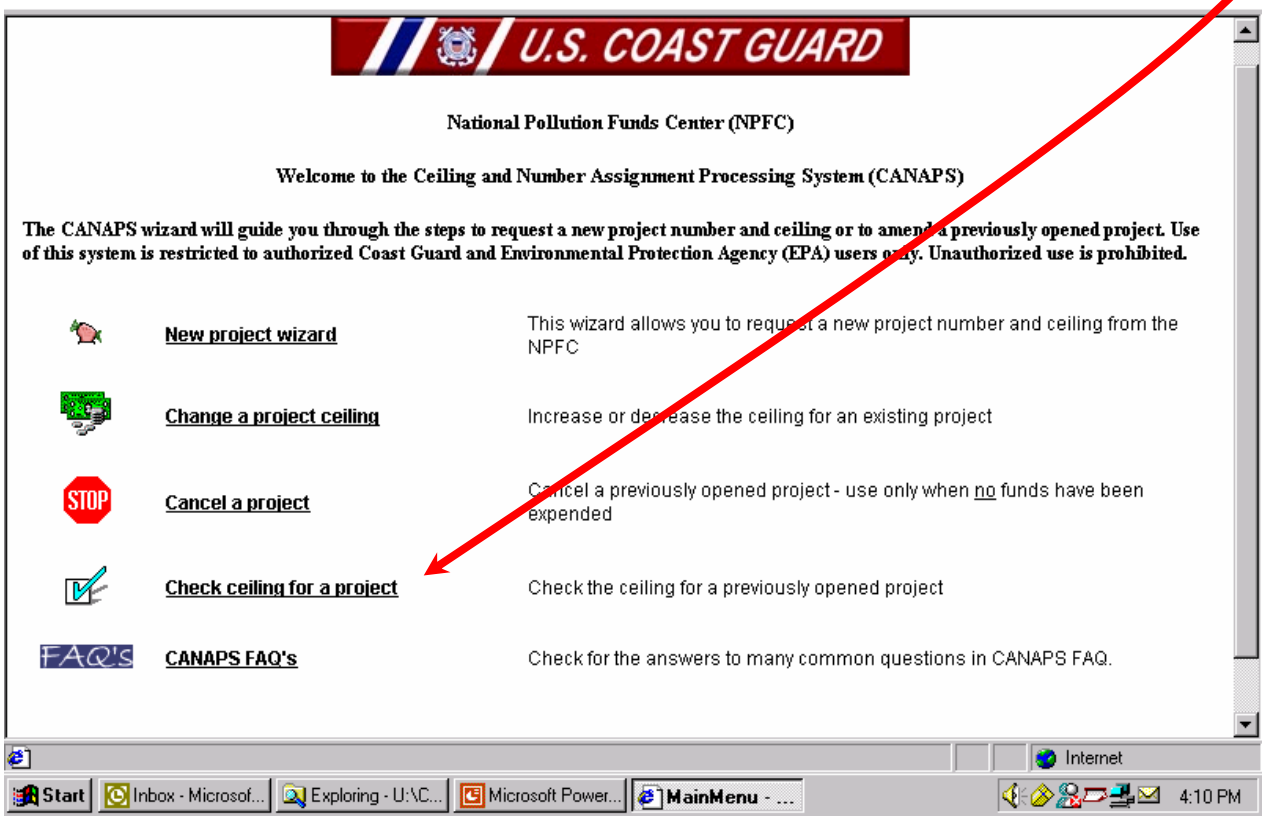
Below is a sample CGMS message that CANAPS creates once you cancel a project. Note that the **Project Number** and **Type of CANAPS Transaction** are in the Subject and first paragraph of the message.

```
P 060442Z JUL 07
FM COMCOGARD NPFC WASHINGTON DC//CANAPS//
TO COMCOGARD SECTOR BOSTON MA
INFO COGARD NATIONAL RESPONSE CENTER WASHINGTON DC
CCGDONE BOSTON //DR/DRM//
COGARD AST FORT DIX NJ
COGARD FINCEN CHESAPEAKE VA//OG//
COMCOGARD MLC LANT NORFOLK VA//FCP//
COMDT COGARD WASHINGTON DC// CG-3R/CG-3RPP //
BT
UNCLAS //N16465//
SUBJ: CANCEL FPN AND CEILING FOR MARSH HARBOR MARINA - B07053.
1. FPN B07053 ISSUED FOR THIS RESPONSE IS CANCELLED.
2. AUTHORIZED CEILING IS CHANGED FROM $425,000.00 TO $0.00.
3. DATE CASE CANCELLED:  06 JUL 2007.
4. FOSC CERTIFIES NO FEDERAL FUNDS EXPENDED ON THIS CASE.
5. FOSC POINT OF CONTACT:
   A.  NAME: HENRY SMITH.
   B.  PHONE: (222)222-2222.
   C.  FAX: (222)333-5555.
   D.  EMAIL: N/A.
6. THIS MESSAGE WAS AUTOMATICALLY GENERATED BY THE CANAPS SYSTEM.
7. CIMS_EMAIL FPN: B07053 TYPE: CEILING CANCELLATION
8. CANAPS ID 060442Z JUL 07
BT
NNNN
```

HOW TO CHECK A PROJECT'S CEILING

CANAPS allows you to check the ceiling of any previously opened project.

- Start by clicking on **Check Ceiling for a Project** (the fourth link) on the CANAPS Welcome screen.
- Step 1: Enter the project number.
- Step 2: View project information.

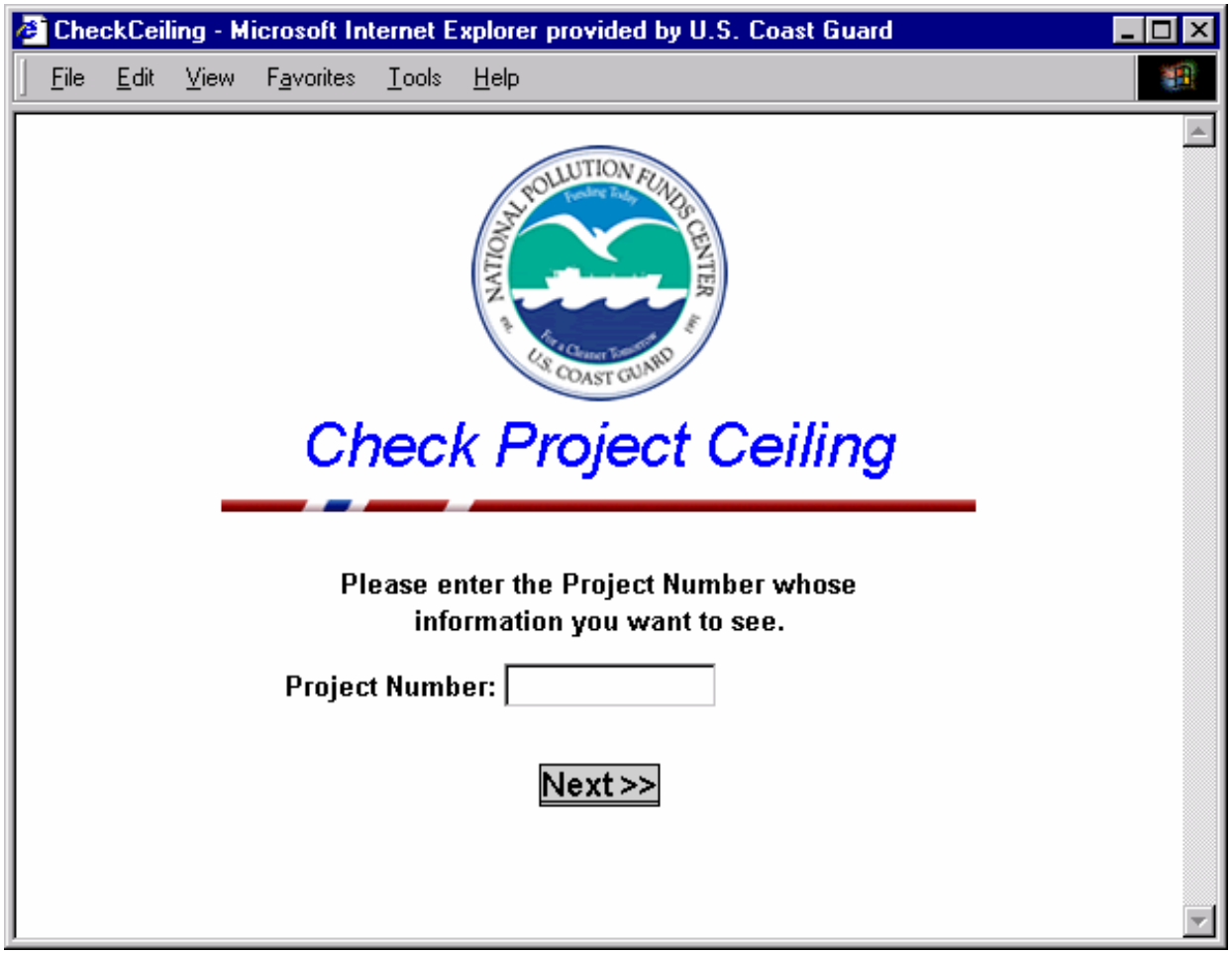


Step 1: Enter the Project Number

Use the **Check Project Ceiling** screen to look up information on a specific project.

The table below explains how to complete each field.

FIELD	REQUIRED	INSTRUCTIONS
Project Number	Yes	Enter the Project Number you wish to look up.
Next >>	Yes	Click the **Next** button after you have filled in all the required fields to move to the next step.



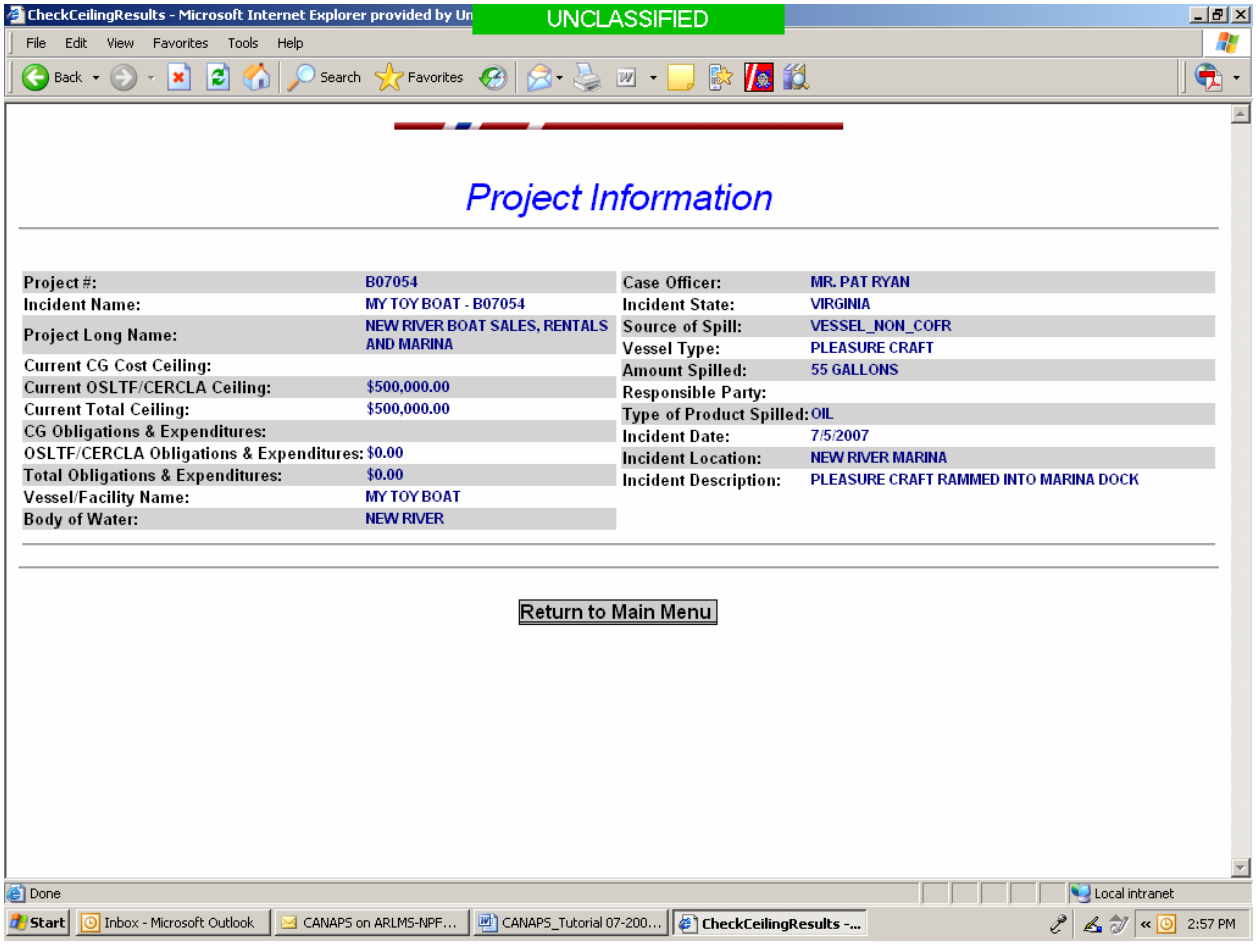
Step 2: View the Information

Find the information you want on the **Project Information** screen.

If you have the wrong project, use Back in your browser to return to the previous screen to enter the correct project number. The screen lists the following information:

Project Number	Incident Name	Project Long Name	
Incident Location	Incident State	Incident Description	
Type of Product Spilled	Amount Spilled	Source of Spill	Vessel Type
Body of Water	NPFC Case Officer	Responsible Party	Vessel/Facility Name
Current CG Cost Ceiling		CG Obligations & Expenditures	
Current OSLTF/CERCLA Ceiling		OSLTF/CERCLA Obligations & Expenditures	
Current Total Ceiling		Total Obligations & Expenditures	

Click on Return to Main Menu to return to the **CANAPS Welcome** screen to perform another CANAPS function, or click on ☒ at the top of your browser's window to close the CANAPS session.



CONTACT US

U.S. Coast Guard

National Pollution Funds Center

4200 Wilson Boulevard, Suite 1000

Arlington, Virginia 22203-1804

Phone: (202) 493-6999

www.uscg.mil/npfc

U.S. Department of
Homeland Security

United States
Coast Guard

OSLTF Disbursements

Internal Controls and Audits

NATIONAL POLLUTION FUNDS CENTER
Funding Today
For a Cleaner Tomorrow
est. 1991
U.S. COAST GUARD

November 2004

OSLTF DISBURSEMENTS
INTERNAL CONTROLS AND AUDITS

Ref:
(a) Property Management Manual, COMDTINST M4500.5 (series)
(b) Supply Policy & Procedures Manual, COMDTINST M4400.19A (Ch-2)
(c) Coast Guard Acquisition Procedures, COMDTINST M4200.19F
(d) Simplified Acquisition Handbook (SAP), COMDTINST M4200.13E
(e) FINCEN Standard Operating Procedures, FINCENINST M7000.1 (Ch-2A)
(f) Federal Acquisition Regulations (FAR), Title 48 Federal Acquisition Regulation System
(g) Financial Resource Management Manual, COMDTINST M7100.3
(h) Department of Homeland Security Acquisition Manual (HSAM)
(i) Department of Homeland Security Acquisition Regulations (HSAR)
(j) Personnel and Pay Procedures Manual, M1000.2A, Change 10
(k) Travel Claim Quick Reference Guide
(l) UTS Quick Reference Guide
(m) Information and Life Cycle Management Manual, COMDTINST M5212.12A

Overview

In an effort to reinforce documentation and approval requirements for disbursements from the OSLTF, the NPFC has established a system of internal controls over OSLTF funding and disbursements. All OSLTF expenditures are now subject to random audits. NPFC audits will focus on the following areas:

1. Obtaining funding,
2. Funds availability certification,
3. Use of OSLTF Funds,
4. Documentation and file retention requirements, and
5. Disposition of equipment/supplies obtained using OSLTF monies.

We note this audit could be viewed as the same review conducted by MLC compliance teams. MLC compliance audits do not focus on OSLTF disbursements; however they do fulfill the general procurement requirements under various laws (i.e., file requirements and file retention), and their efforts will speed up our auditing efforts.

Realizing the audit might be perceived as an added burden to field units, rest assured we are taking the necessary steps to minimize your involvement. For example, we will conduct the audits within the NPFC Case Management Division. Refer to the following pages for an expanded view of the audit requirements.

1. Obtaining Funding

Pre-designated USCG FOSCs can open Federal Project Numbers (FPNs) for the removal of oil using the Ceiling and Number Assignment Processing System (CANAPS). CANAPS automates and centralizes the creation and management of these project numbers and assigns ceilings.

CANAPS is a Web-based tool available at:

www.npfc.gov/canaps

CANAPS allows field units to request:

1. New FPN and initial project ceilings,
2. FPN ceiling amendments (increases or decreases),
3. FPN cancellations, and
4. Current ceiling status of existing FPN.

CANAPS collects basic incident information via a user-friendly, Internet "wizard" and immediately assigns a project number and the requested spending ceiling (up to a preset limit). Access to CANAPS is controlled by use of user IDs and passwords, which are administered by the NPFC and are specific to the FOSC's unit or region. Access keys are changed quarterly.

An email confirmation of the project number and ceiling is sent to the requesting FOSC. **The unit should retain this document and any amendments as documentation of authority to spend OSLTF resources on a particular incident.** CANAPS then creates the required official message and releases it through the Coast Guard Messaging System (CGMS).

The need to manage the respective funds requires limits to the amount of money that can be obligated automatically by the CANAPS system before having to speak to the NPFC. The USCG can open FPNs up to $500K. This threshold is subject to change based on the availability of funds. If the project is going to grow beyond these limits, contact the NPFC to request additional funding.

Coast Guard users are also reminded that CANAPS does not alter existing emergency contracting authorities or limitations already in place for both the USCG Atlantic and Pacific Maintenance and Logistics Commands (MLCLANT and MLCPAC).

2. Funds Availability Certification

The FOSC must ensure the unit follows guidelines for funds availability certification as is required by references (c) and (e)**.** As is common practice at the field unit level, certification can be obtained by:

- use of the procurement request form (brown sheet), block 5,
- a stamp on the document with signature and date attached, or
- use of a locally produced form.

FOSCs may designate subordinate personnel to certify OSLTF funds availability for response purchases. Should the unit have an instruction commonly referred to as "assignment of collateral duties" wherein the signatures are listed and the duties of Funds Certifying Officer are

assigned to individuals, this instruction will suffice to document this designation. Individual letters designating Funds Certifying Officer authority may also be used.

If a procurement request (DOT 4200) is not used to document Funds Certifying Officer approval, the following statement can be stamped, hand written, or typed onto the funding document:

"I certify that funds are available from the OSLTF as assigned to FPN _____."

3. Use of OSLTF Funds

OSLTF purchases are subject to the same acquisition requirements as normal unit operating funds. Therefore, applicability of the same discretion is required by the FOSC when leading an OSLTF funded response.

There are several contracting vehicles the FOSC can use to assist in the response effort. However, the dollar amount of the purchase will dictate which mechanism to use.

- For credit card purchases, adhere to the rules and regulations found in reference (d).
- For all purchases less than $100,000, the FOSC must follow the guidelines set forth in reference (d) and (f). For purchases over $100,000, follow the guidelines set forth in reference (f).
- For use of Basic Ordering Agreements (BOA), units shall follow the appropriate MLC guidance.

4. Documentation and Records Retention

As listed elsewhere in the NPFC User Reference Guide (URG), documentation requirements are a little different than a field unit might be accustomed to when using OSLTF resources. The difference may seem trivial at the field level, but there is a difference.

The NPFC maintains a record of the case file documents received either by email or as part of the FOSC report. The FOSC is ultimately responsible to ensure that records of ***all*** transactions authorized are retained in the unit case file.

In finance, the procurement file has items within the file that must be included (e.g., signatures, receipts, etc.) as described in references (c) and (d). However, when OSLTF funds are used, the requirement is a little more stringent. The procurement file is but one part of the entire case file.

The case file differs from the procurement file in that the case file must contain all paperwork (e.g., procurement and credit card information paperwork, POLREPS, news clips, travel documentation, etc.) relevant to the response effort.

While travelers are personally responsible for retaining their travel records for 6 years, 3 months, travel records for all travel on a Federal Project Number (FPN) must also be retained in the case file. Consistent with references (j)-(l), the case file travel claims package will consist of:

- Copy of signed original orders (all original travel orders MUST be signed by an approving official and Funds Certifying Officer (FCO) including those generated by Direct Access);
- Copy of all signed amendments;
- Copy of travel claim (1351-2 electronically signed by traveler and UAO);

- Copy of itemized receipt(s) for all lodging;
- Copy of airfare itinerary(s), which must reflect the cost of airfare;
- Copy of rental vehicle contract(s) (estimate receipts are not acceptable); and
- Copy of receipts for all reimbursable expenses of $75 or more.

In accordance with reference (m), the case file is considered a permanent record for "major" spills and is sent to the National Archives and Records Administration (NARA) after ten years. For "medium" and "minor" spills, case files should be retained for twenty years unless the command is given specific direction by NPFC to retain the record for a longer period. The reason for these extended retention periods is that once the unit has completed the case, the NPFC or Department of Justice might have a need for the case file to support cost recovery or other litigation requirements. If the unit forwards case files to an archive or records center, it is very important that the archive information be retained and readily available for immediate retrieval should the need arise.

5. Property Accountability

Property requirements found in reference (a) must be adhered to when procuring items using OSLTF resources. In addition to reference (a), **all** non-consumable property (regardless of cost) purchased for the response using OSLTF money is considered excess to the unit and must be disposed of in accordance with reference (a) upon completion of the response. If property is purchased to replace unit property that was surveyed (lost, stolen, damaged, etc.), a copy of the survey shall be included in the case file.

Audit Procedures

The NPFC will randomly pick OSLTF financial transactions for audit. The unit will be notified via email or memo with specific instructions of what to provide to support the documentation history. Upon notification, the unit must obtain the case file and have it ready for any documentation required by the audit. The NPFC will try to conduct the audit with the case paperwork already at the NPFC, but in some cases the unit will need to provide additional input.

NPFC will advise units by memo of the audit results.

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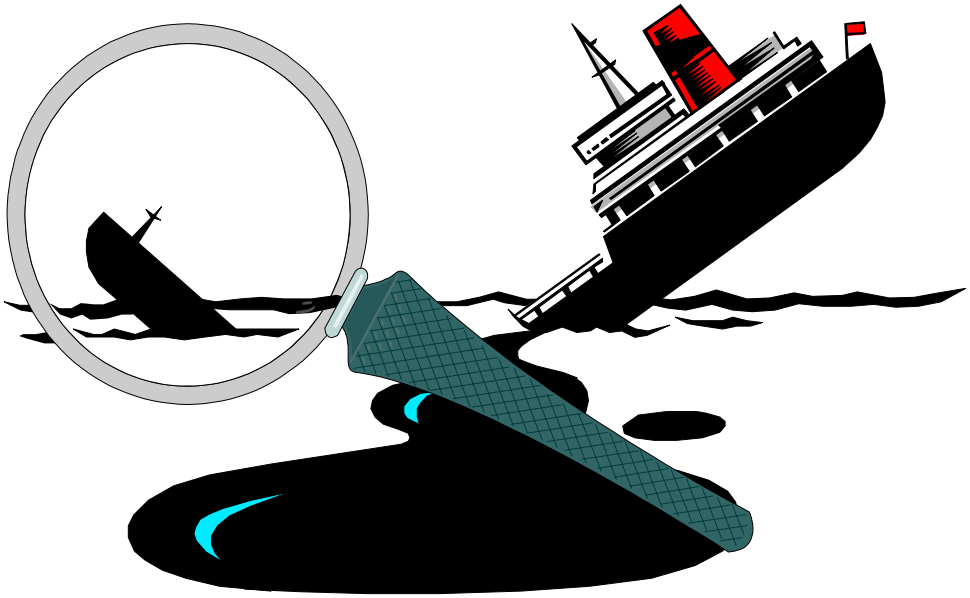
CHAPTER 4

Designation



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The material in this Chapter presents methods for designating sources, notifying responsible parties, and conducting investigations to identify sources and responsible parties under OPA 90. The material is divided into the following subchapters:

Subchapter	Contains Detailed Information About
TOPs for Designation of Source	• Guidance needed by FOSCs and SOSCs on designation and corresponding investigative requirements under OPA 90.

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National Pollution Funds Center

U.S. Department
of Transportation

**United States
Coast Guard**

NPFC INSTRUCTION M5890.3

Technical Operating Procedures for Designation of Source

under
The Oil Pollution Act of 1990

DRAFT - May 20, 1996

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U.S. Department
of Transportation

United States
Coast Guard

Director
United States Coast Guard
National Pollution Funds Center

4200 Wilson Blvd.
Suite 1000
Arlington, VA 22203
Staff Symbol: cm
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NPFCINST
M5890.3
24 Oct 96

NATIONAL POLLUTION FUNDS CENTER (NPFC) INSTRUCTION M5890.3

Subj: Technical Operating Procedures (TOPs) for Designation of Source under the Oil Pollution Act of 1990

Ref: (a) NPFC Technical Operating Procedures Series Resource Documentation TOPs (NPFCINST 16451-2) and State Access TOPs (NPFCINST 16451-1)

1. PURPOSE. The enclosed Manual has been developed to provide guidance on "designation of source", and the corresponding investigative requirements under the statute. This Manual is intended as internal guidance only, and is not intended to create any right or benefit, substantive or procedural, enforceable by law.

2. ACTION. Federal On-Scene Coordinators (FOSCs), State On-Scene Coordinator (SOCSs), and National Pollution Funds Center (NPFC) personnel shall be guided by this Instruction in conducting investigations to identify and designate the source of an oil discharge or the substantial threat of a discharge into the navigable water of the United States, and to subsequently notify associated responsible parties and guarantors.

3. DIRECTIVES AFFECTED. The procedures in this document are supported by the Cost Documentation TOPs and the State Access TOPs. The Cost Documentation TOPs serves as guidance to users operating as or in support of the FOSC. The State Access TOPs provides a mechanism for requesting funding by a State for the immediate removal of a discharge, or the mitigation or prevention of a discharge of oil.

4. CHANGES. The NPFC welcomes your comments regarding changes to this Manual. Please address your remarks to: Director (cm); National Pollution Funds Center (NPFC); U.S. Coast Guard; 4200 Wilson Blvd., Suite 1000; Arlington, Virginia 22203-1804. This document will be reprinted and redistributed, as necessary.

5. DISCUSSION. One of the fundamental objectives of OPA is to "make the polluter pay" for certain costs of oil spills up to established limits of liability and damages. The procedures outlined in this TOPs support this objective. In accordance with these procedures:

   a. The NPFC is responsible for the designation of source and notification of associated responsible parties and guarantors.

      (1) Coast Guard FOSCs have also been delegated this authority for use in rare circumstances as outlined in this TOPs.

(2) Environmental Protection Agency FOSCs have not been delegated this authority; however, they must still determine the source of oil pollution. When the source involves a vessel or facility, they should identify all potential responsible parties, and ascertain their intentions with respect to removing the oil or the threat of the discharge.

(3) All FOSCs should provide timely information to the NPFC to allow for designation and notification, or to confirm that these actions have already been taken.

DANIEL F. SHEEHAN

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CHAPTER 1 INTRODUCTION AND BACKGROUND

A. General: Responsible parties (RPs) for a vessel or a facility are liable for removal costs and damages, including interest thereon, resulting from their OPA incident (i.e., oil discharged into, or the substantial thereof to, U.S. surface waters including the Exclusive Economic Zone (EEZ) on or after 19 August 1990). RPs are also responsible for handling claims for such removal costs or damages; if they do not, then they are also liable for the costs incurred by the Fund in handling claims. To begin the claims process, OPA 1014, 33 USC 2714, provides that once an incident becomes known, the source or sources of a discharge or threat shall be designated where possible and appropriate. And, if the designated source is a vessel or a facility, the RP and the guarantor, if known, shall be immediately notified of the designation.

"Designation" is an OPA term of art used in connection with the initiation of the claims process and is more properly aimed at the advertisement of RP responsibility to potential claimants. It frequently overlaps with On Scene Coordinators'(OSCs) need to identify the potential RPs to ascertain their present intentions with respect to removing the oil or its threat. Typically the FOSC will issue administrative orders and letter of Federal Interest (LOFI) to assert the need for positive RP action. However, formal notification of designation, through the process set in a 1014(b) includes a five day period after receipt in which to deny the designation. This will likely not assist OSCs in determining what immediate action needs to be taken to remove the oil.

B. Authorities and Responsibilities.

1. Secretary of Department in which the Coast Guard is Operating. Executive Order 12777 delegated the functions vested in the President by section 1014 of OPA to the Secretary of Department in which the Coast Guard is operating (Department of Transportation).

2. Commandant of the Coast Guard. The Secretary of Transportation delegated those functions to the Commandant of the Coast Guard in 49 CFR Part 1.

3. Chief of the Office of Marine Safety, Security, and Environmental Protection. The Commandant of the Coast Guard redelegated those functions pertaining to designation of source and notification of responsible parties to the Chief of the Office of Marine Safety, Security, and Environmental Protection, and Coast Guard predesignated On-Scene Coordinators.

4. Director, National Pollution Funds Center. The Commandant of the Coast Guard redelegated those functions pertaining to advertising for claims under 1014 (b) to the Director, National Pollution Funds Center. The Chief of the Office of Marine Safety, Security, and Environmental Protection redelegated the functions pertaining to designation of source and notification of responsible parties and guarantors 1014(a) to the Director, National Pollution Funds Center jointly with Coast Guard predesignated On-Scene Coordinators.

5. Coast Guard On-Scene Coordinators. The Chief of the Office of Marine Safety, Security, and Environmental Protection redelegated the functions pertaining to designation of source and notification of responsible parties and guarantors to Coast Guard predesignated on-scene Coordinators jointly with the Director, National Pollution Funds Center.

6. Federal On-Scene Coordinators. The National Contingency Plan requires, "The OSC/Remedial Project Manager (RPM) shall, to the extent practicable, collect pertinent facts about the identification of potentially responsible parties; the nature, amount, and location of the discharged or released materials; the probable direction of travel of discharged or released materials; whether the discharge is a worst case discharge as discussed in section 300.324; the pathways to human and environmental exposure; the potential impact on human health, welfare, and safety and the environment; whether the discharge or release poses a substantial threat to the public health or welfare of the United States as discussed in section 300.322; the potential impact on natural resources and property which may be affected; priorities for protecting human health and welfare and the environment; and appropriate cost documentation."

CHAPTER 2 INVESTIGATIVE CONSIDERATIONS

A. Objectives of the FOSC's Investigation/Fact Gathering.

1. Identify the source of the discharge or substantial threat of discharge.
2. Confirm whether the substance discharged or threatened to be discharged is oil, as defined by OPA.
3. Identify the navigable water into which the oil was discharged or which is threatened by a discharge.
4. Establish the pathway from the source to the navigable water.
5. Determine the occurrence or series of occurrences which resulted in the discharge or substantial threat of discharge.
6. Fully identify the responsible party(ies): the owners and operators of the vessel or facility that was the source of the discharge, as defined in OPA section 1001. Strive to get as much timely information as possible including names, addresses, telephone/telex/fax numbers, resident agent(s) for service of process, those authorized to speak and act for the RP in this situation (particularly where the RP is an organization), how they can be contacted, their tax ID numbers, and the pertinent structure of the organization. Pertinent OPA definitions are:

"(26) 'owner or operator' means (A) in the case of a vessel, any person owning, operating, or chartering by demise, the vessel, and (B) in the case of an onshore facility, and an offshore facility, any person owning or operating such onshore facility or offshore facility, and (C) in the case of any abandoned offshore facility, the person who owned or operated such facility immediately prior to such abandonment;"

"(32) 'responsible party' means the following:

(A) VESSELS. — In the case of a vessel, any person owning, operating, or demise chartering the vessel.

(B) ONSHORE FACILITIES. — In the case of an onshore facility (other than a pipeline), any person owning or operating the facility, except a Federal agency, State, municipality, commission, or political subdivision of a State, or any interstate body, that as the owner transfers possession and right to use the property to another person by lease, assignment, or permit.

(C) OFFSHORE FACILITIES. — In the case of an offshore facility (other than a pipeline or a deepwater port licensed under the Deepwater Port Act of 1974 (33 U. *S.* C. 1501 et seq.)), the lessee or permittee of the area in which the facility is located or the holder of a right of use and easement granted under applicable State law or the Outer Continental Shelf Lands Act (43 U. S. C. 1301-1356) for the area in which the facility is located (if the holder is a different person than the lessee or permittee), except a Federal agency, State, municipality, commission, or political subdivision of a State, or any interstate body, that as owner transfers possession and right to use the property to another person by lease, assignment, or permit.

(D) DEEPWATER PORTS. — In the case of a deepwater port licensed under the Deepwater Port Act of 1974 (33 U. S. C. 1501-1524), the licensee.

(E) (E) PIPELINES. — In the case of a pipeline, any person owning or operating the pipeline."

7. Establish facts to support a determination as to whether the responsible party may have a defense to liability under OPA section 1003 (a). If an RP raises a potential defense or it appears to the FOSC that the OPA incident may involve a defense, the FOSC should contact the NPFC for further guidance. In no case should the FOSC (or other government personnel) make any statements about whether the defense is valid or not; that is a legal conclusion to be made at the appropriate time during the cost recovery/claims/civil penalty process by someone authorized to do so. OPA section 1003(a) states (emphasis added):

   "A responsible party is not liable for removal costs or damages under section 1002 if the responsible party establishes, by a preponderance of the evidence, that the discharge or substantial threat of a discharge of oil and the resulting damages or removal costs, respectively, were **caused solely by—**

   (1) an act of God;

   (2) an act of war;

   (3) an act or omission of a third party other than an employee or agent of the responsible party or a third party whose act or omission occurs in connection with any contractual relationship with the responsible party (except where the sole contractual arrangement arises in connection with carriage by a common carrier by rail), if the responsible party establishes, by a preponderance of the evidence, that the responsible party —

      (A) exercised due care with respect to the oil concerned, taking into consideration the characteristics of the oil and in light of all relevant facts and circumstances; and

      (B) took precautions against foreseeable acts or omissions of any such third party and the foreseeable consequences of those acts or omissions; or

   (4) any combination of paragraphs (1), (2), and (3)."

8. Determine whether exceptions to limits of liability may apply in accordance with OPA section 1004 (c):

   "(c) EXCEPTIONS. —

   (1) ACTS OF RESPONSIBLE PARTY. —Subsection (a) does not apply if the incident was proximately caused by—

      (A) gross negligence or willful misconduct of, or

      (B) the violation of an applicable Federal safety, construction, or operating regulation by, the responsible party, an agent or employee of the responsible party, or person acting pursuant to a contractual relationship with the responsible party.

(2) FAILURE OR REFUSAL OF RESPONSIBLE PARTY. — Subsection (a) does not apply if the responsible party fails or refuses —

(A) to report the incident as required by law and the responsible party knows or has reason to know of the incident;

(B) to provide all reasonable cooperation and assistance requested by a responsible official in connection with removal activities; or

(C) without sufficient cause, to comply with an order issued under subsection (c) or (e) of section 311 of the Federal Water Pollution Control Act (33 U. S. C. 1321), as amended by this Act, or the Intervention on the High Seas Act (33 U. S. C. 1471 et seq.).

(3) OCS FACILITY OR VESSEL. —Notwithstanding the limitations established under subsection (a) and the defenses of section 1003, all removal costs incurred by the United States Government or any State or local official or agency in connection with a discharge or substantial threat of discharge of oil from any Outer Continental Shelf facility or a vessel carrying oil as cargo from such a facility shall be borne by the owner or operator of such facility or vessel."

9. Evaluate the possibility of claims as outlined in the following chapter.

B. NPFC Case Officer/Case Team. OSCs are encouraged to contact the NPFC Case Officer for advice and assistance whenever questions on these investigative requirements arise.

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CHAPTER 3 DESIGNATION OF SOURCE AND NOTIFICATION OF RP

A. General Procedures.

1. Federal On-Scene Coordinators (and State On-Scene Coordinators using the OSLTF under OPA State Access).

   a. Conduct investigations, to the extent practicable, to identify the source of the discharge or substantial threat of discharge. FOSCs should promptly determine the source of the oil pollution, and where it involves a vessel or a facility, identify any potential RPs to ascertain their present intentions with respect to removing the oil or the threat of its discharge. In doing so, they should attempt to fully identify the potential RPs: names, addresses, telephone/telex/fax numbers, resident agents or agents for service of process, those authorized to speak and act for the RP in this situation (particularly where the RP is an organization) and how they can be contacted, their tax ID number, and information concerning RP organizational structures which could assist in this endeavor.

   b. Assess possibility for OPA claims. The OSC must determine whether third party claims for removal costs or damages due to the incident are possible. Criteria for determining the possibility of claims are listed in section *D Criteria for Evaluating Possibility of Claims* below. When the possibility of claims is unknown, the OSC should request that the NPFC issue a Notice of Designation. The NPFC should be advised of the potential for claims and provided with all identification information in every case.

   c. Advise/work with NPFC. If claims are reasonably possible due to the incident, the OSC must notify the NPFC either by phone or message of the identity of the source vessel or facility and the responsible party(ies). The notification must include the address and contact information for the responsible party(ies). The OSC must work with the NPFC case officer to select the appropriate means of advertising or direct notifications to reach potentially injured parties.

2. NPFC Case Team.

   a. Assess. The NPFC Case Team will also assess the possibility of claims based on their experience with similar incidents. If they determine that designation is appropriate, they may contact the OSC and request that the OSC provide source and responsible party information. Again, the OSC should advise the NPFC of the potential for claims and provided with all identification information in every case.

   b. Make Designation. The NPFC claims manager shall arrange for the formal designation and notification to the responsible parties and guarantors, if known. In those rare situations which require immediate or expedited designation, the OSC may make the formal designation and notification to the local representative of responsible party, but the OSC should coordinate that designation with the NPFC case officer. The FOSC's immediate concerns, however, will normally be better served with the use of administrative orders, thus leaving the formal notice of designation to the NPFC.

c. Accept denial/advertising. The designation should advise the responsible party that any denial must be made in writing within 5 days of receipt to the NPFC Claims Manager as indicated in the designation letter. If the OSC elects to receive the RP's denial, the OSC must then establish a process to ensure that any denial is received within the required time and that the NPFC Case Team is notified.

d. Monitor/Advertise for Fund or RP. The RP's failure to advertise as required is considered a denial of the designation and the NPFC will generally advertise on behalf of the Fund. If the RP fails to advertise as required, the NPFC may advertise on the RP's behalf.

3. Coast Guard On-Scene Coordinators.

a. Under unusual circumstances, such as high level of visibility or public concern, the Coast Guard OSC may designate the source and notify the responsible parties.

b. The actions should, to the extent possible, be coordinated with the NPFC to allow the NPFC to notify any guarantors, establish advertising requirements, and track the responsible parties actions.

c. The OSC shall as soon as possible notify the NPFC Case Team of the designation and provide copies of the notification documents.

d. OSCs are encouraged to contact the NPFC Case Team for advice and assistance as necessary. Typically, initial contact is with the case officer.

B. <u>Contents of notifying letter:</u>

1. The name and other unique identifying information of the vessel or facility designated as the source.

2. The location, date, and time of the incident.

3. The specific body(ies) of water affected or threatened.

4. Procedures to deny designation and requirement to deny in writing within 5 days after receipt of notification.

5. The name, address, phone and fax numbers of the federal official to be contacted for additional information or denial of designation.

6. Requirements for advertising for claims (or information that the NPFC will establish requirements for advertising through separate correspondence when the Coast Guard OSC issues the notification) as outlined in chapter 4 including that the NPFC will advertise on behalf of the RP if the RP fails to deny the designation and then does not comply with the advertising requirements.

7. The date of the designation and the date that the notification was issued.

C. Categories of costs or damages which may be the subject of claims under OPA.

1. OPA section 1002 (b), 33 USC 2702 (b), describes covered removal costs and damages.

"COVERED REMOVAL COSTS AND DAMAGES. —

(1) REMOVAL COSTS. — The removal costs referred to in subsection (a) are —

(A) all removal costs incurred by the United States, a State, or an Indian tribe under subsection (c), (d), (e), or (1) of section 311 of the Federal Water Pollution Control Act (33 U. S. C. 1321), as amended by this Act, under the Intervention on the High Seas Act (33 U. S. C. 1471 et seq.), or under State law; and

(B) any removal costs incurred by any person for acts taken by the person which are consistent with the National Contingency Plan.

(2) DAMAGES. — The damages referred to in subsection (a) are the following:

(A) NATURAL RESOURCES. — Damages for injury to, destruction of, loss of, or loss of use of, natural resources, including the reasonable costs of assessing the damage, which shall be recoverable by a United States trustee, a State trustee, an Indian tribe trustee, or a foreign trustee.

(B) REAL OR PERSONAL PROPERTY. — Damages for injury to, or economic losses resulting from destruction of, real or personal property. which shall be recoverable by a claimant who owns or leases that property.

(C) SUBSISTENCE USE. — Damages for loss of subsistence use of natural resources, which shall be recoverable by any claimant who so uses natural resources which have been injured, destroyed, or lost, without regard to the ownership or management of the resources.

(D) REVENUES. — Damages equal to the net loss of taxes, royalties, rents, fees, or net profit shares due to the injury, destruction, or loss of real property, personal property, or natural resources, which shall be recoverable by the Government of the United States, a State, or a political subdivision thereof.

(E) PROFITS AND EARNING CAPACITY. — Damages equal to the loss of profits or impairment of earning capacity due to the injury, destruction, or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant.

(F) PUBLIC SERVICES. — Damages for net costs of providing increased or additional public services during or after removal activities, including protection from fire, safety, or health hazards, caused by a discharge of oil, which shall be recoverable by a State, or a political subdivision of a State."

2. OPA section 1001, 33 USC 2701, defines "removal", "removal costs", "damages", and "natural resources" as follows:

   "remove" or "removal" means containment or removal of oil or a hazardous substance from water and shorelines or the taking of other actions as may be necessary to minimize or mitigate damage to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, and public and private property, shorelines, and beaches;

   "removal costs" means the costs of removal that are incurred after a discharge of oil has occurred or, in any case in which there is a substantial threat of a discharge of oil, the costs to prevent, minimize, or mitigate oil pollution from such an incident;

   "damages" means damages specified in section 1002(b) of this Act, and includes the cost of assessing these damages;

   "natural resources" includes land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the exclusive economic zone), any State or local government or Indian tribe, or any foreign government;

D. Criteria for evaluating possibilities of claims:

1. Removal costs (consistent with the NCP and under normal circumstances coordinated with the FOSC) may be the subject of OPA claims when incurred by:

   a. State or local agencies responded to the spill.

   b. Indian tribe responded to the spill.

   c. Federal agencies responded to the spill.
   Note that the FOSC should consider use of Pollution Removal Funding Authorizations (PRFAs) when other federal, state, or local agencies are conducting removal actions under the direction of the FOSC. Use of PRFAs establishes the scope of work and assures funding, and thus is preferred over the claims process. See the NPFC TOPs on Resource Documentation for PRFA procedures.

   d. Other persons conducted removal actions.

   f. The FOSC should determine the nature, amount, and location of the discharged oil; the probable direction of travel of the oil; and whether or not the spill was contained in determining **if other entities may incur removal costs** to remove oil from water, shorelines, or property.

2. Damages may be anticipated as a result of an oil spill depending on:

   a. Magnitude of the spill.

   b. Area of the spill and impact on:

      (1) Environmentally sensitive areas - obtain preliminary evaluation by Scientific Support Coordinator and/or cognizant federal, state, or Indian tribe trustee.

(2) Real or personal property - check impact on boats, docks, nets, beach, shoreline, marinas, etc.

(3) Areas of potential subsistence use - query local Fish and Wildlife or cognizant state representatives.

(4) Business or property generating governmental revenues - check with state or local officials concerning tax, royalty, or fee assessments.

(5) Business or private enterprise causing change in income or profits - check if the clean up prevents access to commercial enterprise, closes areas used for transit of watercraft or closes bridges affecting vehicle traffic, affects use of beaches, or damages inventory of waterside businesses such as hatcheries. (Note alternative income or profits available as a result of the incident or reasonable under the situation since claimants are required to mitigate damages.)

(6) Activities of state and local representatives in providing increased or additional services in connection with the incident such as security, traffic control, evacuations, arranging access.

c. Consider the type of oil spilled, length of time in one area, and the concentration.

d. Consider the type of natural resource potentially affected. Again, seek advice from the Scientific Support Coordinator, and/or cognizant federal, state, or Indian tribe trustee.

e. Consider the effectiveness, or anticipated effectiveness, of the removal activities, including how much of the oil was contained, whether all the oil can be removed, etc.

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CHAPTER 4 ADVERTISING REQUIREMENTS

A. General. It is not necessary to require public advertising in every Notice of Designation. Use of the OSLTF by the OSC gives rise to a potential claim against the RP for federal removal costs, and the Notice of Designation also serves to make the RPs aware of this liability under OPA. When required, however, the advertising should be designed to reach as many potential claimants as possible.

B. Forms of Advertising. The forms of advertisement are specified in 33 CFR 136.311 and include the following:

1. Paid advertisements in newspapers having general circulation which encompasses the spill area.

2. Posting notices at marinas, marine supply stores, bait and tackle shops, and other appropriate business establishments or public facilities in the specific area.

3. Direct mailing of notices to known individual claimants or categories of potential claimants, e.g., towboats which may have been delayed by a waterway closing.

4. News releases or paid announcements on radio or television broadcasts serving the general area.

5. Other advertising methods as specified by the NPFC.

C. Content of Advertising. The content of advertisements is specified in 33 CFR 136.313. Each advertisement or notification is to contain the following information or to indicate where this information may be obtained:

1. Location, date and time of the incident.

2. Geographical area affected.

3. Quantity/type of oil involved (when pertinent).

4. Name or other description of the designated source.

5. Name of the responsible party (the person to whom the Notice of Designation is addressed unless otherwise stipulated).

6. Name, address, telephone number, office hours, and work days of the person or persons to whom claims are to be presented and from whom claim information can be obtained.

7. The procedures by which a claim may be presented, including a statement that indicates that a claimant may present a claim for interim, short-tem damages representing less than the full amount to which the claimant ultimately may be entitled. Payment of such claim shall not preclude recovery for damages not reflected in the paid or settled partial claim.

8. Notification that if the RP you denies or does not resolve a claim within 90 days after the date it is properly presented, the claimant may then submit the claim to the National

Pollution Funds Center (ca), claims division, 4200 Wilson Boulevard, Suite 1000, Arlington, VA 22203-1804, for consideration for payment from the Oil Spill Liability Trust Fund.

9. Unless specifically authorized by the NPFC, the advertisement/notification must be in English.

D. General Claims Processing Requirements.

1. The content of claims presented to the RP should also comply with the OPA claims regulations in 33 CFR part 136 and be as complete as possible. The RP must have the opportunity to pay the claim. If claimant pass only cursory invoices/claims to the RP and then submit well documented claims to the NPFC, the intent of OPA will be circumvented.

2. If claimants come to the Fund after making a proper prior presentment to the RP, they must provide the Fund with a copy of their claim presented to the RP and any other correspondence between the claimant and the RP concerning the claim. Normally, the NPFC's adjudication of the claim will not consider materials which were not presented to the RP, except obvious omissions which will perfect the claim. If new materials are included, claimants should also provide the RPs with copies and so state in their claims application (as they should with any correspondence with the NPFC regarding the claim). Copies of all correspondence between the NPFC and a claimant or the RP regarding a claim should be provided by the sender to the other interested party (i.e., the claimant or the RP) at the same time.

1. SAMPLE NPFC NOTICE OF DESIGNATION WITH ADVERTISING

U.S. Department
of Transportation

United States Coast Guard
Director, National Pollution Funds Center
4200 Wilson Blvd.
Suite 1000
Arlington, VA 22203-1804
Staff Symbol: (cm)
Phone: (202) 493-6832

5890
07/30/97

Certified Mail Return Receipt Requested
Number: Certified

Mailed

Company Name:
Company Address:

Subject: NOTICE OF DESIGNATION
Re: Federal Project Number _____

Dear Sir:

On [date of incident], your vessel/facility the [name vessel or identify location of facility] discharged oil into the Mississippi River, a navigable water of the United States. The Oil Pollution Act of 1990, 33 USC 2701 et. seq., requires that we formally designate the [name of vessel or facility] as the source of the discharge and notify you that as its owner, you incur certain legal responsibilities to the U.S. Government and others damaged by this incident. You are liable for removal costs and damages as specified in 33 USC 2702 and must advertise the procedures by which persons who have claims for removal costs and damages may submit their claims to you, as specified in 33 USC 2714.

You must publicly advertise this designation and the procedures by which claims may be presented to you. The advertisement must begin within 15 days of the date of this letter and must continue for no less than 30 days. Enclosure (1) outlines the required content of this advertisement and enclosure (2) is a sample advertisement. You may choose to follow this sample but are not required to do so as long as your advertisement contains the required information. Your advertisement must be disseminated in such a manner that all potential claimants are notified. To accomplish this, we require that you advertise in a newspaper having general circulation in the area(s) affected. We also require that you post notices in marinas affected and provide direct notification to individuals have been identified as receiving damages from your spill. You may propose other methods of advertisement and notification, but they may be used only when approved in advance by the National Pollution Funds Center. Please note that a claimant may present a claim for interim short-term damages representing less than the full amount to which the claimant ultimately may be entitled.

Payment of such claim shall not preclude recovery for damages not reflected in the paid or settled partial claim.

You are directed to inform us of the specifics of your advertising, including the name of any newspaper or other publication in which the advertisement is run, the geographical area covered by the publication, and how often the advertisement will appear, as appropriate. Send us copies of the advertisement and advise us in writing that you have begun advertising within 20 days of receipt of this letter, otherwise we will assume that you did not comply with these requirements. If you do not comply with these requirements, the National Pollution Funds Center will advertise for claims. If we advertise, you will be charged for our costs, as well as for the costs of any administration, adjudication and payment of claims.

You may deny this designation within 5 days of receipt of this Notice of Designation. Your denial must be in writing, identify this Notice of Designation, give the reasons for the denial, include a copy of all supporting documents, and must be submitted to [claims manager's name], Claims Manager, at the above address. If you deny this designation, the National Pollution Funds Center will advertise for claims. If we advertise and you are later judged to be responsible for the discharge, you will be charged for our costs, as well as for the costs of any administration, adjudication and payment of claims.

You may contact the Claims Manager, [name] at (202) 493-6____ or (800) 280-7118 if you have any questions. The FAX number is (202) 493-6896.

Sincerely,

_____ [Claims Manager Name]
U.S. Coast Guard
Claims Manager

Encl: (1) Content of Advertisement
(2) Sample Advertisement

Copy: NPFC (cm)
[FOSC]
[Other RPs]
[Guarantors]

Encl: (2) Content of Advertisement

Each advertisement/notification is to contain the following information or to indicate where this information may be contained:

1. Location, date and time of the incident.

2. Geographical area affected.

3. Quantity of oil involved.

4. Name or other description of the designated source.

5. Name of the responsible party (you).

6. Name, address, telephone number, office hours, and work days of the person or persons to whom claims are to be presented and from whom claim information can be obtained.

7. The procedures by which a claim may be presented, including a statement that indicates that claimant may present a claim for interim short-term damages representing less than the full amount to which the claimant ultimately may be entitled. Payment of such claim shall not preclude recovery for damages not reflected in the paid or settled partial claim.

8. Notification that if you deny or do not resolve a claim within 90 days after the date of submission, the claimant may then submit the claim to the National Pollution Funds Center (ca), 4200 Wilson Boulevard, Suite 1000, Arlington, VA 22203-1804, for our consideration. We will then evaluate the claim and take appropriate action.

9. Unless noted below, the advertisement/notification must be in English.

Encl: (2) Sample Advertisement

PUBLIC NOTICE

In accordance with the Oil Pollution Act of 1990 (33 USC 2714(c)), the [name of vessel of facility] has been named as the source of a discharge of oil into the [name of navigable water] on or about [date of incident]. This spill impacted [describe area impacted] and the owner of the [your name] is accepting claims for certain uncompensated damages and removal costs.

Removal costs and damages which may be compensated include: removal costs; damage to natural resources; damage to or loss of real or personal property; loss of subsistence use of natural resources; loss of government revenues; loss of profits and earnings capacity; and increased cost of public services.

Claims should be in writing, signed by the claimant, for a specified amount; and should include all evidence to support the damages. Claims presented may include claims for interim short-term damages representing less than the full amount to which the claimant ultimately may be entitled. It should be noted that payment of such claim shall not preclude recovery for damages not reflected in the paid or settled partial claims. Claims should be mailed to the following address:

[Address to which claims should be sent]

Office hours are from 9:00 AM to 5:00 PM ET, Monday through Friday, except holidays. Claimants may call [Telephone number for claims] for information.

Any claims which are denied or which are not resolved within 90 days after the date of submission to our claims representative may be submitted to the National Pollution Funds Center (ca), 4200 Wilson Blvd., Suite 1000, Arlington, VA 22203-1804 for consideration.

2. SAMPLE COAST GUARD OSC NOTICE OF DESIGNATION

5890
[date]

Certified Mail Return Receipt Requested Number:

RP Name
RP Address
RP City, State, Zip Code

Subject: NOTICE OF DESIGNATION
Re: Federal Project Number [FPN]

This is formal Notice of Designation under the Oil Pollution Act of 1990 (OPA), 33 USC 2701 et seq. On [date of incident], the [source] [discharged/posed a substantial threat of a discharge of] oil [into/to] the [body of water]. You have been identified as the (owner/operator/licensee/ lessee/permittee/holder] of the [vessel/facility] that has been designated as the source of the [discharge/substantial threat of a discharge].

As such, you are considered an OPA responsible party, and 33 USC 2714 requires that you be notified of this designation.

You should accept or deny this designation within 5 days of receipt of this Notice. Any denial must be in writing, referencing this Notice of Designation, and be sent to the [above address] [the FOSC's/NPFC's address]. The denial should also include any reasons for the denial and copies of any supporting documentation.

Under OPA, responsible parties have a duty to handle the removal of their discharges or their threats and are liable for costs and damages, as specified in 33 USC 2702 and 2715, and interest thereon. As the Federal On-Scene Coordinator, I have presently obtained funding in the amount of [current ceiling] to conduct the cleanup; this amount may increase as removal operations continue.

[SELECT ONE OF THE FOLLOWING TWO PARAGRAPHS]

I am unaware at this time of any other potential liability. However, if you do not deny this designation and the National Pollution Funds Center (NPFC) should later determine that third-party claims are possible, they will require that you advertise the procedures by which persons may submit claims to you under 33 USC 2713 and 2714 and the claims regulations at 33 CFR part 136.

[OR]

In addition to federal removal costs, there is also a likelihood of third-party claims arising out this incident. If you do not deny this designation, you are required to advertise the procedures by which persons may submit claims to you under 33 USC 2713 and 2714 and the claims regulations at 33 CFR part 136.

5890
[date]

Subject: NOTICE OF DESIGNATION
Re: Federal Project Number [FPN]

The advertisement must begin within 15 days of the date of this designation and must continue for no less than 30 days. Enclosure (1) outlines the required content of the advertisement, and enclosure (2) is a sample advertisement. You may choose to follow the sample or craft your own as long as your advertisement contains the required information. The advertisement must be disseminated in a manner that is likely to ensure that all potential claimants are notified. To accomplish this, the NPFC normally requires at a minimum that the advertisement be run in newspapers having general circulation in the areas affected, that notices be posted at affected marinas or public facilities, and that direct notification be given to those individuals who have been identified as receiving damages from the spill. other methods of advertisement may be used with prior permission from the NPFC.

When you advertise, you must inform the NPFC of the specifics (including the names of the newspaper or other publications in which the advertisement was run, the geographical areas covered by the publications, how often the advertisement will appear, etc.) as necessary to demonstrate that potential claimants are likely to receive notification. Copies of the advertisements are to be provided to the NPFC within 20 days of receipt of this letter, or the NPFC will assume that you are not advertising. At that point, the NPFC will advertise for claims, and the costs for such advertising, as well as any other costs with handling and paying claims, are chargeable to you. The same is true if you deny designation and are still found to be a guarantor.

You may contact me at [the above] [address and phone/fax numbers]. You may contact the NPFC by writing to the Director (ca), USCG National Pollution Funds Center, 4200 Wilson Blvd., Suite 1000, Arlington, Virginia, 22203-1804, or by phone number at (202) 493- the claims manager's extension]] or by fax at (202) 493-6937, if you have any questions.

Sincerely,

[name of Coast Guard OSC]
[title]

[INCLUDE IF ADVERTISING REQUIRED]
Encl.: (1) Content of Advertisements
(2) Sample Advertisements

[SEE NPFC DESIGNATION LETTER W/ADVERTISEMENTS FOR ENCLOSURES]

Copy: NPFC, other Rps, Guarantors

3. SAMPLE NPFC NOTICE OF DESIGNATION WITHOUT ADVERTISING

5890
[date]

Certified Mail Return Receipt Requested Number:

RP Name
RP Address
RP City, State, Zip Code

NOTICE OF DESIGNATION
Re: Federal Project Number XXXXXX

This is formal **Notice of Designation** under the Oil Pollution Act of 1990 (OPA), 33 USC 2701 et seq. On [date of incident], the [source] [discharged/posed a substantial threat of a discharge of] oil [into/to] the [body of water].

You have been identified as the [owner/operator/licensee/lessee/permittee/holder] of the (vessel/facility] that has been designated as the source of the [discharge/substantial threat of a discharge]. As such, you are considered an OPA responsible party, and 33 USC 2714 requires that you be notified of this designation.

You should accept or deny this designation within 5 days of receipt of this Notice. Any **denial must be in writing,** referencing this Notice of Designation, and be sent to the above address. The denial should also include any reasons for the denial and copies of any supporting documentation.

Under OPA, responsible parties have a duty to handle the removal of their discharges or their threats and are liable for costs and damages, as specified in 33 USC 2702 and 2715, and interest thereon. If you are not already doing so, you should cooperate fully with the Federal On-Scene Coordinator in carrying out removal activities.

The Federal On-Scene Coordinator has presently obtained funding in the amount of [current ceiling) to conduct the cleanup; this amount may increase as removal operations continue. We are unaware at this time of any other potential liability. However, if you do not deny this designation and we should later determine that third-party claims are possible, we will require that you advertise the procedures by which persons may submit claims to you under 33 USC 2713 and 2714 and the claims regulations at 33 CFR part 136.

5890
[date]

NOTICE OF DESIGNATION
Re: Federal Project Number XXXXXX

I have enclosed additional material concerning OPA for your information. You may contact me at the above address and phone number or at fax number (202) 493-6896, if you have any questions.

Sincerely,

[signature]

Encl.: (1) OPA Title I
(2) 33 CFR part 136

Copy: FOSC, other RPs, Guarantors

4. SAMPLE NPFC NOTICE TO GUARANTOR

5890
06/06/95

Certified Mail Return Receipt Requested Number:

Name
Address
City, State ZIP

Subject: NOTICE OF DESIGNATION
Re: Federal Project Number [FPN]

On [date of incident] the [name of vessel/facility] [discharged oil into the / ran aground and created a substantial threat of a discharge of oil in] [body of water], a navigable water of the United States. The Oil Pollution Act of 1990, 33 USC 2701, requires that we formally designate the [name of vessel/facility] as the source of the discharge. You are on record as the insurer of this vessel under insurance certificate No. [insurance #], which you issued in accordance with section 311 of the Clean Water Act, and corresponding Certificate of Financial Responsibility No. [COFR #], expiring, [expiration date]. This letter notifies you of this designation. The procedures which the owner and operator must follow are described in the attached letters to the owner and operator.

You may contact the Claims Manager, [Claims Manager] at [Telephone #] if you have any questions. The FAX number is [Fax #].

Sincerely,

[claims manager's name] [title]

Encl. (1) Notice of Designation
(2) Letter to [RP name]

CC: NPFC

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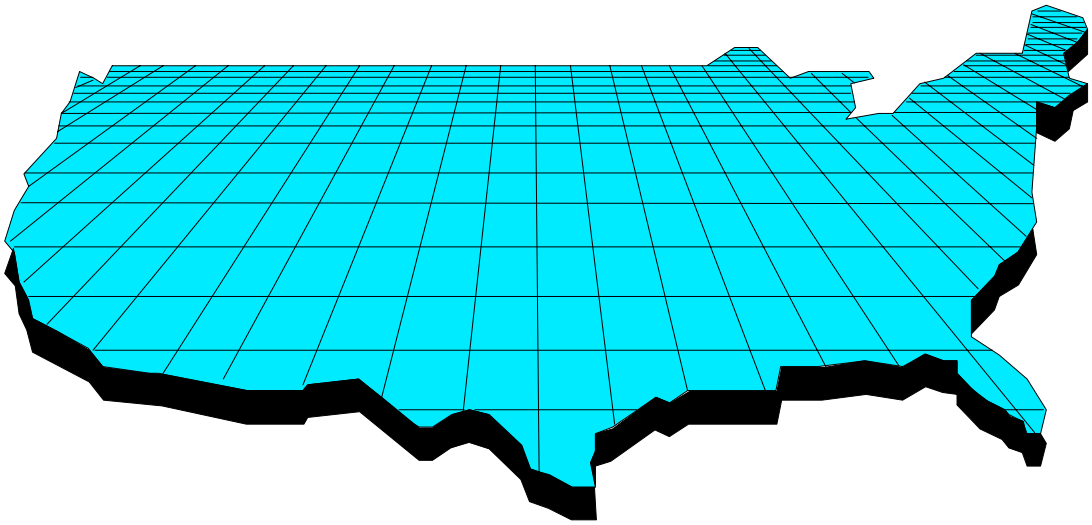
CHAPTER 5

State Access



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Chapter 5: State Access

This chapter provides detailed procedures for state access to the Oil Spill Liability Trust Fund by which the Governor of a State can request payments of up to $250,000 for removal costs of an oil discharge or the mitigation or prevention of a substantial threat of an oil discharge under the Oil Pollution Act of 1990 (OPA).

Download	Description
Entire Chapter 350 KB PDF	Download entire chapter.
Introduction 30 KB PDF	Cover, table of contents.
33 CFR 133 150 KB PDF	33 CFR Part 133, State Access to the Oil Spill Liability Trust Fund for Removal costs Under the Oil Pollution Act of 1990, Interim Rule.
State Access TOPs 200 KB PDF	Procedures for accessing the OSLTF, requirements for documenting expenses, investigation requirements, and instructions for submitting documentation for reimbursement.

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U.S. Department
of Transportation

United States
Coast Guard

Commandant
U.S. Coast Guard

2100 Second St., SW
Washington, DC 20593-0001
Staff Symbol: G-MEP
Phone: (202) 267-0518

NOV 6 1992

5711/11

From: Commandant
To: Distribution

Subj.: FORWARDING OF INTERIM RULE ON STATE ACCESS TO THE OIL SPILL LIABILITY TRUST FUND FOR REMOVAL COSTS UNDER THE OIL POLLUTION ACT OF 1990 (PURSUANT TO SECTION 1012(D) (1)) AND TECHNICAL OPERATING PROCEDURES (TOPs)

1. The interim rule, 33 CFR 133, implementing Section 1012 (d) (1) of the Oil Pollution Act of 1990 (OP 90) (PL 101380) which accord States access to Oil Spill Liability Trust Funds for the immediate removal of a discharge, or the mitigation or prevention of a substantial threat of a discharge of oil was signed by the Commandant 5 November 1992 and is effective the day of publication in the Federal Register. The Director, National Pollution Funds Center (NPFC) has distributed a copy of this rule and Technical Operating Procedures (TOPs) to facilitate administration of the Fund. I am forwarding a copy of both the interim rule and the TOPs for further distribution to Coast Guard OSCs in your district.

2. A natural working group of NPFC staff, an Environmental Protection Agency representative, and members of my staff developed these TOPs. To the extent we were able, these procedures were drafted for use by all parties: the NPFC, the States, OSCs, the District and Commandant (G-MEP). These procedures were also written to allow for maximum flexibility to allow the OSC to work with State officials in a mutually comfortable manner.

3. We also did not want to burden the OSC with unnecessary paperwork. So, for example the OSC is not required to review state cost accounting paperwork: however we directed that the NPFC case officer consult with the OSC on questions of an operational nature. We also assumed that the State/OSC relationship with respect to State access under this rule would be addressed in the Coast Guard/State Memoranda of Agreement.

I understand that we are breaking new ground, procedural as well as programmatic. We have already heard talk of the states using the Fund for abandoned oil well clean up. This will likely increase unit workload. And because the OSC has final authority

Subj.: FORWARDING OF INTERIM RULE ON STATE ACCESS TO THE OIL SPILL LIABILITY TRUST FUND FOR REMOVAL COSTS UNDER THE OIL POLLUTION ACT OF 1990 (PURSUANT TO SECTION 1012 (D) (1)) AND TECHNICAL OPERATING PROCEDURES (TOPs)

on granting State access, we recognize that the OSC will be placed in awkward position at times. I therefore encourage constructive comments on the rule and the TOPs, not only on their content, but also to better define the Coast Guard/State relationship and our response to oil spills. Comments should be dual addressed to the Director, NPFC and Commandant (G-ME). Commandant (G-ME) will address those concerns related to operational matters and impact on work load. NPFC will address those concerns related to Fund administration. My point of contact is Commander Bruce Russell, Commandant (G-ME-3) at (202) 267-0421.

Encl: (1) Interim Rule
(2) Technical Operating Procedures for State Access under Section 1012 (d) (1) of the Oil Pollution Act of 1990 (PL 101-380)

Dist: All District (m)
RTC Yorktown
NSFCC

federal register

Friday
November 13, 1992

Part II

Department of Transportation

Coast Guard

33 CFR Part 133
State Access to the Oil Spill Liability Trust Fund for Removal costs Under the Oil Pollution Act of 1990; Interim rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 133
[CGD 92-014]
RIN 2115-AE19

State Access to the Oil Spill Liability Trust Fund for Removal Costs Under the Oil Pollution Act of 1990

AGENCY: Coast Guard. DOT.
ACTION: Interim rule with request for comments.

SUMMARY: This rulemaking implements the provisions of the Oil Pollution Act of 1990 (OPA 90) concerning the procedures by which the Governor of a State can request payments of up to $250,000 from the Oil Spill Liability Trust Fund (the Fund) for removal costs required for the immediate removal of a discharge, or the mitigation or prevention of a substantial threat of a discharge of oil.

This action is a temporary measure needed primarily to provide a procedure by which the Governor of a State can make a request for payments from the Fund. This interim rule will be replaced by a more comprehensive rule that addresses, in addition to requests by Governors, formal agreements between the States and the Coast Guard providing specific procedures for fund use.

DATES: This rule is effective on November 13, 1992. Comments must be received on or before February 11, 1993.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G-LRA/3406) (CGD 92-014), U.S. Coast Guard Headquarters, 2100 Second Street, SW, Washington, DC 20593-0001, or may be delivered to room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 287-1477. Comments on collection of information requirements also must be mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection of copying at room 3406, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Mr. Donald Taylor (Project Manager), National Pollution Funds Center, (703) 235-4805.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Comments are specifically requested on the effect the U.S. Department of Transportation regulations regarding cooperative agreements may have on State access to the Fund. These regulations are contained in 49 CFR parts 18, 20, 29, and 90. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 92-014) and the specific section of the rule to which each comment applies, and give the reason for each comment. Each person wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this rule in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under "ADDRESSES". If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice of the Federal Register.

Drafting Information

The principal person involved in drafting this document is Donald Taylor, Project Manager, National Pollution funds Center.

Regulatory Information

This rule is being published as an interim rule and is being made effective on the date of publication to provide a procedure whereby funds for the immediate removal of an oil discharge, or the mitigation or prevention of a substantial threat of an oil discharge, may be made available as soon as possible. A delay in providing a procedure may delay the payment of the necessary funds. Such a delay would be contrary to the intent of Congress under the Oil Pollution Act of 1990 (OPA 90) and to the interests of the public. For these reasons, the Coast Guard for good cause finds, under 5 U.S.C.553 (b)(3)(B) and (d)(3), that notice and public procedure thereon before the effective date of the interim rule are unnecessary and that the interim rule should be made effective in less than 30 days after publication.

In addition to this rulemaking, the Coast Guard is developing a second, separate rule which will replace this rule. A notice of proposed rulemaking and opportunity for public comment will be provided. The second rulemaking address not only requests by State Governors for payments between the States and the Coast Guard that may provide for advance payments to facilitate immediate removal of oil discharges, or the mitigation or prevention of substantial threats of oil discharges.

The Coast Guard consulted with representatives from the States at regional meetings held in December 1991 and January 1992. There was general support for the content of this rulemaking. A synopsis of the discussions that took place at those meetings is in the public docket for this rulemaking.

This rulemaking (CGD 92-014) is separate from the Coast Guard's ongoing claims regulations project (CGD 91-035). The state access regulations concern payment to the States outside the normal claims process.

Discussion of the Regulations

This interim rule implements the provision under section 1012(d)(1) of the Oil Pollution Act of 1990 (Pub. L.101-380; August 18, 1990) (OPA 90) which states that in accordance with regulations promulgated under section 1012(d)(1), the President, upon the request of the Governor of a State, may obligate the Fund for payment in an amount not to exceed $250,000 for removal costs consistent with the National Contingency Plan required for the immediate removal of a discharge, or the mitigation or prevention of a substantial threat of a discharge, of oil.

The objective of this rulemaking is to develop the basic request procedures. Elaboration of this procedure, if deemed necessary after further consultation with the States and consideration of the comments on this rule, will be handled in the second rulemaking discussed under "Regulatory Information" in this preamble.

The interim rule addresses only requests by Governors or their representatives. Requests are made directly to the On-Scene Coordinator (OSC). The OSC reviews the request for eligibility both under section 1012(d) and under the interim rule and approves or denies the Governor's request. To guide the OSC in making eligibility recommendations, the

interim rule provides minimum standards. This provides consistency in applying the interim rule. The States are required to coordinate their removal actions with the OSC and retain records of expenditures of the funds. The provisions of the Federal Grant and Cooperative Agreement Act and the regulations of the U.S. Department of Transportation regarding Federal assistance programs apply to payments from the Fund.

In developing this rule, the Coast Guard consulted with the Environmental Protection Agency.

Regulatory Evaluation

This rule is not major under Executive Order 12291. It is significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). This rulemaking is considered significant because of the substantial interest by the States. The Coast Guard expects the economic impact of this rule to be so minimal that a separate Regulatory Evaluation is unnecessary. Though the Coast Guard expects the economic impact of this rule to be minimal, it specifically requests comments and data on this subject.

The impacts of this rule arise from the procedures the Governor of a State must follow requesting payments for immediate removal costs from the Fund and from the recordkeeping by the State necessary to account for their expenditures. The cost of making a request is expected to be as little as the cost of making a telephone call or sending a facsimile. The cost of conforming with Federal cooperative agreement administrative requirements is expected to be minimal. This cost is intrinsic to all of the cooperative agreements a State may have with the Federal government. The costs of transferring and expending funds and keeping records of the expenditures of the payments obligated from the Fund would vary with the nature of the removal activity. Recordkeeping of removal activities and costs, however, is required already for actions consistent with the National Contingency Plan.

Small Entities

The entities affected by this rulemaking are State governments. This rulemaking does not affect "small entities", as the term is defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*.). Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Federalism

The Coast Guard has analyzed this rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient implications to warrant the preparation of a Federalism Assessment. Though this rulemaking affects the States by providing a procedure whereby they may request money from the Fund, the implications of that procedure are not sufficient enough, under the Department of Transportation's federalism guide, to warrant the preparation of a Federalism Assessment. In addition, States are not preempted from utilizing their own funds in a removal activity.

Collection of Information

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq*.), the Office of Management and Budget (OMB) reviews each rule that contains a "collection of information requirement" to determine whether the practical value of the information is worth the burden imposed by its collection. Collection of information requirements include reporting, recordkeeping, notification, and other similar requirements.

This rule prescribes requirements for requesting access to the Fund, for following up those requests with a confirmation, and for keeping records of expenditures. These requirements are discussed in the "Regulatory Evaluation" section of this preamble.

The Coast Guard has submitted the collection of information requirements to OMB for review under section 3504(h) of the Paperwork Reduction Act. Persons submitting comments on the requirements should submit their comments both to OMB and to the Coast Guard where indicated under "ADDRESSES".

For further information, contact the Information Requirements Division, M-34, Office of the Secretary of Transportation, 4400 Seventh Street, SW, Washington, DC 20590, (202) 366-4735; the Desk Officer, U.S. Coast, at the Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503, (202) 395-7340; or the person under "FOR FURTHER INFORMATION CONTACT" in this preamble.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. This rule concerns procedures relating to a request for payments to expedite the removal of an oil discharge or the mitigation or prevention of a substantial threat of an oil discharge This action concerns internal administrative procedure. A Categorical Exclusion Determination is available in the docket for inspecting or coping where indicated under "ADDRESSES".

List of Subject in 33 CFR Part 133

Administrative practice and procedure, intergovernmental relations, Oil pollution, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR chapter I as follows:

1. Part 133 is added to read as follows:

PART 133 OIL SPILL LIABILITY TRUST FUND; STATE ACCESS

Sec.
133.1 Purpose.
133.3 Definitions.
133.5 Requests: General.
133.7 Requests: Amount.
133.9 Requests: Where made.
133.11 Requests: Contents.
133.13 Removal actions eligible for funding.
133.15 Determination of eligibility for funding.
133.17 Conduct of removal actions.
133.19 Recordkeeping.
133.21 Records retention.
133.23 Investigation to determine the source and responsible party.
133.25 Notification of Governor's designee.

Authority: 33 U.S.C. 2712(e): E.O. 12777 (3 CFR, 1991 Comp., p. 351); 49 CFR 1.48.

§ 133.1 Purpose.

This part prescribes procedures for the Governor of a State to request payments from he Oil Spill Liability Trust Fund (the Fund) for oil pollution removal costs under section 1012(d)(1) of the Oil Pollution Act of 1990 (the Act) (33 U.S.C. 2712(d)(1)).

§ 133.3 Definitions.

(a) As used in this case the following terms have the same meaning as set forth in section 100 of the Act (33 U.S.C. 2701): "discharge", "inclusive economic zone", "Fund", "incident", "National Contingency Plan", "navigable waters", "oil", "remove", "removal", "removal costs", "responsible party", "State", and "United States".

(b) As used in this part—

Act means Title I of the Oil Pollution Act of 1990 (33 U.S.C. 2701 through 2719).

Director, NPFC, means the person in charge of the U.S. Coast Guard National Pollution Funds Center or that person's authorized representative.

NPFC means the U.S. Coast Guard National Pollution Funds Center, 4200 Wilson Boulevard, Suite 1000, Arlington, Virginia 22203-1804.

On-Scene Coordinator or OSC means the Federal-official predesignated by the Environmental Protection Agency or the U.S. Coast Guard to direct and coordinate all efforts for removal of a discharge, or the mitigation or the prevention of a substantial threat of a discharge, of oil.

Removal action means an incident-specific activity taken under this part to contain or remove a discharge, or to mitigate or prevent a substantial threat of a discharge, of oil.

§ 133.5 Requests: General.

(a) Upon a request submitted in accordance with this part by the Governor of a State or his or her designated State official, the OSC may obtain a Federal Project Number (FPN) and a ceiling not to exceed $250,000 per incident for removal costs. The removal costs must be for the immediate removal of a discharge, or the mitigation or prevention of a substantial threat of a discharge, of oil.

(b) Before a request under this part is made, the State official shall ensure that the procedures in the National Contingency Plan (40 CFR part 300) for notifying Federal authorities of the discharge or threat of discharge have been met.

(c) The Federal Grant and Cooperative Agreement Act of 1977 (31 U.S.C. 8301-8308) and 49 CFR parts 18, 20, 29, and 90 apply to fund monies obligated for payment under this part.

§ 133.7 Requests: Amount.

(a) The amount of funds that may be requested under this part

(1) Is limited to the amount anticipated for immediate removal action for a single oil pollution incident, but, in any event, may not exceed $250,000 per incident;

(2) Must be for removal costs consistent with the National Contingency Plan; and

(3) Must be reasonable for the removal actions proposed, considering such factors as quantity and composition of the oil, weather conditions and customary costs of similar services in the locale.

(b) The funds requested are obligated only to the extent they are determined to be for immediate removal actions which are reasonable and otherwise eligible for payment under this part.

§ 133.9 Requests: Where made.

Requests for access to the Fund under § 133.5 must be made by telephone or other rapid means to the OSC.

§ 133.11 Request: contents.

In making a request for access to the Fund, the person making the request shall

(a) Indicate that the request is a State access request under 33 CFR part 133;

(b) Give his or her name, title, department, and State;

(c) Describe the incident in sufficient detail to allow a determination of jurisdiction, including at a minimum the date of the occurrence, type of product discharged, estimated quantity of the discharge, body of water involved, and proposed removal actions for which funds are being requested under the part; and

(d) indicate the amount of funds being requested.

§ 133.13 Removal actions eligible for funding.

To be eligible for funding under this part, each removal action must meet the following:

(a) Must be for an incident, occurring after August 18, 1990, which resulted in a discharge, or the substantial threat of a discharge, of oil into or upon the navigable waters or adjoining shorelines.

(b) Must comply with the National Contingency Plan.

(c) must be an immediate removal action.

§ 133.15 Determination of eligibility for funding.

Upon receipt of the information under § 133.11 and, if necessary, from other sources determined to be appropriate at his or her discretion, the OSC will determine whether the proposed removal actions meet the requirements of § 133.13. If necessary, the OSC may seek further clarification of the proposed actions from the State official. The OSC shall expeditiously notify the State official and the Director, NPFC, of his or her decision.

§ 133.17 Conduct of removal actions.

Removal actions funded under this part must be coordinated with the OSC and conducted in accordance with the National Contingency Plan.

§ 133.19 Recordkeeping.

(a) The State official shall maintain detailed records of expenditures made from the funds provided under this part, including records of

(1) Daily expenditures for each individual worker, giving the individual's name, title or position, activity performed, time on task, salary or hourly rate, travel costs, per diem, out-of-pocket or extraordinary expenses, and whether the individual is normally available for oil spill removal;

(2) equipment purchased or rented each day, with the daily or hourly rate;

(3) Miscellaneous materials and expendables purchased each day; and

(4) Daily contractor or consultant fees, including costs for their personnel and contractor-owned or rented equipment, as well as that of any subcontractor.

(b) The State official shall submit a copy of these records and a summary document stating the total of all expenditures made to the NPFC official specified in § 133.25(c) within thirty days after completion of the removal actions. A copy of these documents shall also be submitted to the cognizant OSC.

(c) Upon request of the OSC or the NPFC, the State official shall make the original records available for inspection.

(d) If, after inspecting the records, the Director, NPFC, determines that expenditures by a State official from funds obligated under this part were not eligible for funding under this part and the expenditures were not made with the good faith understanding that they were eligible under this part, the Director, NPFC, may seek reimbursement to the Fund from the State.

§ 133.21 Records retention.

(a) The State official shall maintain all records for ten years following completion of the removal actions.

(b) If any litigation, claim, negotiation, audit, cost recovery, or other action involving the records has been started before the expiration of the two-year period, he records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular ten-year period, whichever is later.

§ 133.23 Investigation to determine the source and responsible party.

(a) The State official shall promptly make a thorough investigation to determine the source of the incident and the responsible party.

(b) Upon completion of the investigation, the State official shall forward the results of the investigation and copies of the supporting evidence identifying the source and the responsible party to both the cognizant OSC and the NPFC official specified in **§** 133.25(c).

§ 133.25 Notification of Governor's designee.

(a) If the Governor of a State anticipates the need to access the Fund under this part, he or she must advise the NPFC in writing of a specific individual who is designated to make requests under this part.

(b) This designation must include the individual's name, address, telephone number, and title or capacity in which employed.

(c) The information required by paragraph (b) of this section must be forwarded to the Chief, Case Management Division, National Pollution Funds Center, Suite 1000, 4200 Wilson Boulevard, Arlington, Virginia 22203-1804.

Dated: November 5, 1992.

J.W. Kime,

Admiral, U.S. Coast Guard Commandant.

[FR Doc. 92-27392 Filed 11-12-92; 8:45 am]

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Technical Operating Procedures

for

STATE ACCESS

under

The Oil Pollution Act of 1990

U.S. COAST GUARD
NATIONAL POLLUTION FUNDS CENTER

NOVEMBER 1992

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U.S. Department
of
Transportation

United States
Coast Guard

Director
United States Coast Guard
National Pollution Funds Center

4200 Wilson Boulevard
Suite 1000

Staff Symbol: (cp)
Phone: (202) 493-6830

NPFCINST 16451.1

OCT 30 1992

NATIONAL POLLUTION FUNDS CENTER INSTRUCTION 16451.1

Subj: Technical Operating Procedures for State Access under Section 1012 (d) (1) of the Oil Pollution Act of 1990 (P.L. 101-380)

1. PURPOSE. The enclosed Technical Operating Procedures (TOPs) are to be used by the National Pollution Funds Center (NPFC) to provide guidance to Federal On-Scene Coordinators (FOSCs) and Coast Guard Districts concerning a State Governor's request for access to the Oil Spill Liability Trust Fund (Fund) under section 1012 (d) (1) of the Oil Pollution Act of 1990 (OPA 90) (P.L. 101-380). These procedures have been developed to support the published interim rule (33 CFR 133) which accords the Governor of a State or the designated State official the opportunity to request funding for the immediate removal of a discharge, or the mitigation or prevention of a substantial threat of a discharge, of oil.

2. DISCUSSION.

   a. The National Pollution Funds Center administers the Fund. The NPFC is responsible for developing regulations to implement section 1012 (d).

   b. The interim rule implements section 1012 (d) (1) of OPA 90 whereby the Governor of a State or a designated State official may request funding for removal costs concordant with the National Contingency Plan (NCP) not exceeding $250,000 per incident. At a later date, this interim rule may be incorporated into a Notice of Proposed Rulemaking covering all provisions of section 1012 (d).

   c. This TOPs is designed solely to facilitate the administration of the Fund by the NPFC. It should not be construed to confer any legal right or cause of action upon any party, nor to create any legal obligation on the NPFC.

3. CHANGES. Changes to TOPs will be published by the NPFC for distribution to FOSCs, Coast Guard district offices, and other established users. Changes will be numbered consecutively.

NPFCINST 16451.1
OCT 30 1992

4. ACTION. The enclosed TOPs shall be used as guidance for any obligation of the Fund for State Access under section 1012 (d) (1).

D. F. SHEEHAN
Director
National Pollution Funds Center

Encl: (1) Technical Operating Procedures for State Access under Section 1012 (d) (1) of the Oil Pollution Act of 1990 (P.L. 101-380)

Distribution: COMDT (G-M)
MLCLANT(f)
MLCPAC(f)
All CGD(m)
FINCEN (OCD)

REQUEST FOR COMMENTS.

The NPFC desires comments concerning these technical operating procedures. Please address comments to:

Director (cp)
U.S. Coast Guard
National Pollution Funds Center
4200 Wilson Blvd Ste 1000
Arlington VA 22203-1804

To submit comments on the regulations (33 CFR 133-State Access to OPA 90), follow the procedure specified in the Supplementary Information section of the preamble to 33 CFR 133.

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RECORD OF CHANGES			
CHANGE NUMBER	DATE OF CHANGE	DATE ENTERED	BY WHOM ENTERED
CH-1	12 Feb 93	12 Feb 93	RH, CWO2

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STATE ACCESS TO OIL SPILL LIABILITY TRUST FUND
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TECHNICAL OPERATING PROCEDURES

STATE ACCESS TO OIL SPILL LIABILITY TRUST FUND

1. INTRODUCTION. Section 1012 (d) (1) of the Oil Pollution Act of 1990 (Public Law 101-380, hereafter referred to as "OPA 90") provides that the President, upon request of the Governor of a State or his or her designated state official, may obligate the Oil Spill Liability Trust Fund (Fund) for payment in an amount not to exceed $250,000 per incident for removal costs consistent with the National Contingency Plan (NCP) (40 CFR 300). The removal costs must be required for the immediate removal of a discharge, or the mitigation or prevention of a substantial threat of discharge, of oil. Pursuant to the authority delegated to the Coast Guard in Executive Order 12777, the Coast Guard has published an interim regulation (33 CFR Part 133) to implement the provisions of section 1012 (d) (1) of OPA 90.

A. PURPOSE. The purpose of this document is to provide technical operating procedures concerning eligibility, communications, financial management, and recordkeeping for States requesting access to the Fund, Federal On-Scene Coordinators (FOSCs), and Coast Guard (USCG) District staffs.

B. SCOPE. The technical operating procedures described herein apply specifically to requests for funding under section 1012 (d) (1) of OPA 90. Funding under section 1012 (d) (1) will herein be referred to as "State Access." These technical operating procedures focus on information that is needed to support cost recovery efforts of the Coast Guard National Pollution Funds Center (NPFC). Refer to Figure 1 for a flowchart of the State Access process.

These procedures do not address the provisions of Section 1012 (d) (2) of OPA 90 (e.g., advance agreements with individual States, advance payments from the Fund, or access to the Fund by political subdivisions of a State). These procedures are intended as a supplement to, and not as a substitute for, the regulations contained in 33 CFR Part 133. Compliance with 33 CFR 133 is required whenever utilizing State Access to the Fund. Nothing in this document supersedes the requirements of the NCP. Of particular note, the designated state official, in accordance with 33 CFR 133.5 (b) and section 300.320 (a) (6) of the NCP, assumes the responsibility for notifying the trustees of natural resources affected/potentially affected by the incident.

C. BACKGROUND. State Access to the Fund provides a new avenue for States to receive Federal funds for immediate removal costs resulting from their response to actual or threatened discharges of oil. State Access does not supersede or preclude the use of existing Federal payment regimes. The State should not seek and will not receive payments for the same costs from more than one payment regime. Generally, there are two other payment regimes which the States may initiate to obtain Federal funding for oil spill incident removal actions:

1. ACTING AS FOSC CONTRACTOR. State agencies may perform removal actions under the direct supervision of the FOSC. In these situations, the FOSC issues an Oil Spill Response Authorization to the State to establish a contractual relationship and obligate the Fund. With this method of funding the State is not limited to $250,000 per incident, and the FOSC is actively directing the State's response actions.

2. CLAIMS. Section 1012 (a) (4) of OPA 90 authorizes use of the Fund for "the payment of claims in accordance with section 1013 for uncompensated removal costs determined by the President to be consistent with the National Contingency Plan or uncompensated damages". Regulations describing claims procedures are found in 33

CFR Part 136. States may submit claims for uncompensated removal costs, which may include those salaries, equipment, and administrative costs directly related to a specific incident. A State may submit claims for removal costs directly to the Fund even if the responsible party is known. Claims other than for removal costs must first be submitted to the designated responsible party. Claims payments are not limited to $250,000 per incident.

D. ADDITIONAL INFORMATION. For additional information regarding these procedures or related subjects, State representatives, FOSCs, Coast Guard district staffs, and other interested parties are urged to contact the NPFC (see paragraph 13).

2. REQUESTING FUNDS.

A. ELIGIBILITY CONSIDERATIONS. Pursuant to 33 CFR 133.5, 133.7, and 133.13, the following will be evaluated by the FOSC when contacted by the State requesting funds under section 1012 (d) (1):

1. Is the incident eligible for immediate removal under the Clean Water Act, as amended by OPA 90?

2. Is the substance discharged/threatening discharge oil?

3. Did the incident occur after August 18, 1990?

4. Is the aggregate amount of the request equal to or less than S250,000?

5. Are the proposed actions consistent with the NCP (including 40 CFR 300.305 (c)'s requirement that a reasonable effort is made to have the discharger voluntarily and promptly perform removal actions)?

6 . Are the proposed level of response, proposed actions, and amounts requested appropriate for the circumstances?

7. Has the State the means to complete the immediate removal?

B. COSTS INCURRED BEFORE FOSC CONTACT. Immediate removal costs involving a specific oil discharge incident which, due to exigent circumstances, were incurred by the State prior to the initial request to the FOSC for State Access, are allowable under State Access if the FOSC determines that: 1) notification is timely; 2) the response was consistent with the magnitude of the incident; and 3) costs incurred were otherwise reasonable under the circumstances and in all other respects were allowable.

C. CONTACTING THE FOSC. In accordance with 33 CFR 133.9, the Governor or designated State official (henceforth referred to as the State official) shall request access to the Fund from the FOSC who is pre-designated for the area of the incident. The best method for contacting the FOSC is the telephone, because it allows for discussions and conference-calling.

D. EVALUATION BY FOSC. Considering the NCP, 33 CFR 133.15, and the criteria in paragraph 2.A. above, the FOSC determines whether or not the proposed removal actions are eligible for funding. The FOSC may contact the NPFC case officer whenever questions arise. The decision by the FOSC is final. The FOSC may respond as follows:

1. If the FOSC concludes that the incident is not eligible for Federal removal under the NCP, that any of the criteria in paragraph 2.A. above are not met, or otherwise does not find State Access to be the appropriate removal mechanism for the incident, he/she will deny the request for State Access. The FOSC may conclude that the incident is eligible for removal under the NCP, but that a Federally led response is more appropriate to the situation. In this event, the FOSC may decide to utilize State resources through contract (see paragraph l.C.1.). Whenever a request for State Access is denied for any reason (including a decision for a Federally led response or a decision for no Federal response), the FOSC will, by the next business day following his/her decision, notify the NPFC Case Management Division (NPFC (cm)) and District (m) office, as appropriate, of the request and the specific reason(s) for denial.

2. If the FOSC concludes that all of the criteria in paragraph 2.A. above are fulfilled and that State Access to the Fund is the best method to address the incident, he/she may then approve the request for State Access and contact the NPFC for assignment of a case-specific Federal Project Number (FPN) and a removal action funding ceiling (ceiling). The FOSC is responsible for ensuring that the State official is expeditiously informed of the FPN/ceiling.

E. OBLIGATION OF THE FUND AND ASSIGNMENT OF THE FEDERAL PROJECT NUMBER AND FUNDING CEILING.

1. The FOSC will pass the same information to the NPFC district representative that he/she would pass for other types of oil discharge responses when accessing the Fund through CANAPS. The FOSC identifies this as a State Access removal (in the comments block of CANAPS) which he/she has approved, requests assignment of an FPN/ceiling, and provides the name and telephonic/electronic/postal mail contact information of the requesting State official. With the issuance of an FPN/ceiling for the incident, the Coast Guard has obligated the Fund for payment. All further communications by all parties regarding the oil discharge incident should include the FPN and ceiling.

2. The Fund is obligated for payment to the State and a cooperative agreement between the Coast Guard and the State is in effect when the NPFC assigns the FPN to this project. At this point the State may begin incurring costs against the FPN/ceiling.

3. NPFC will access CANAPS to process the assignment of the FPN/ceiling. The message should include the NPFC, the FOSC, and the cognizant Regional Response Team (RRT) members as addressees, and should also be faxed to the cognizant State official. In addition to the information which is usually included in this type of notification, this message includes as a reference the telephone conference between the FOSC and the NPFC in which the FPN and ceiling were assigned, specifically notes that the funds were provided for State Access, and includes the telephonic, electronic, and mail contact information of the State official.

F. RAISING THE CEILING. Requests for raising the amount of the FPN's ceiling are made to the cognizant FOSC. The procedure is identical to that outlined in subparagraphs 2.A-E. above. Requests for a higher ceiling shall not raise the overall ceiling above the $250,000/incident limit.

G. OIL DISCHARGE REMOVAL AUTHORIZATION. An "Oil Discharge Removal Authorization" (see Appendix A) documents the cooperative agreement between the State and the Coast Guard. Upon issuance of the CANAPS message assigning the FPN/ceiling, the NPFC case officer forwards the Oil Discharge Removal Authorization and a certifications package (see

paragraph 7.D. below) to the State official. The State official should contact the NPFC case officer listed in the Authorization if any questions arise.

H. TERMINATION OF STATE ACCESS FUNDING. If, at any time after approving a request for State Access, the FOSC determines that any of the criteria in paragraph 2.A. above were not/are no longer applicable to the immediate removal action, the FOSC may terminate State Access to the Fund. In this event, the State may receive payment for its allowable immediate removal costs that were incurred in good faith prior to the termination. While it is normally expected that the State official will notify the FOSC via POLREP (see paragraph 5 below) upon determination that the immediate removal is complete, the FOSC retains the authority to unilaterally declare completion of a Federal removal and terminate further Federal funding of the removal at any time the FOSC determines that immediate removal is complete.

3. DESIGNATION OF SOURCE & IDENTIFICATION OF RESPONSIBLE PARTY.

A. INVESTIGATION AND NOTIFICATIONS. In accordance with the Section 300.305 of the NCP and 33 CFR 133.23, the State shall promptly complete a thorough investigation to determine the source of discharge and to identify the responsible party(ies) (RP--normally, the owner or operator of the vessel or facility, including vehicles). The State should include this information in its POLREPs (see paragraph 5) and pass it directly to the NPFC case officer and FOSC via telephone as soon as it is known.

B. LETTER OF DESIGNATION. Following receipt from the State of source and RP information, the NPFC case manager issues a Letter of Designation to the RP(s) to notify them of their designation as an RP and their responsibilities as an RP under Federal law. Also, the NPFC will send a copy of the Letter of Designation to the FOSC and State official.

4. REMOVAL COSTS. Funds provided to the State under OPA 90 Section 1012 (d) (1) are for "immediate removal" of a discharge or substantial threat of a discharge. Pursuant to OPA 90 Sections 1001(31) and 1012 (a) (1), and 33 CFR 133.13, allowable removal costs are all direct costs incurred to prevent, minimize, and mitigate oil pollution from the specific incident, including the costs of monitoring removal actions taken by the responsible party(ies) and the costs to prepare required documentation. State Access may only be used to pay for removal costs that are directly related to the specific incident. Costs must generally be incurred at the site or in support of on-site activities. State Access to the Fund is for immediate removal costs only, and will not be utilized for long-term removal or remediation costs, nor the costs of natural resource damage assessments. If questions arise, contact the NPFC case manager. Allowable costs include:

A. CONTRACT COSTS. The State may be paid for contract costs incurred specifically for the removal action (e.g., cleanup contractor costs, waste disposal contractor costs, administrative contractor costs (for on-site cost documentation), etc.).

B. OUT OF POCKET EXPENSES. The State may also be paid for unbudgeted out-of-pocket State costs incurred specifically for the removal action, (e.g., OSHA and RCRA costs for the incident, travel to the site, consumable materials purchased specifically for the removal action, transportation or shipping costs for bringing materials to the site, equipment rentals, etc.).

C. STATE SALARY, EQUIPMENT, AND OVERHEAD COSTS. The State may be paid for the salaries of personnel directly employed in the removal activities (including documenting those activities), the costs associated with the use of State equipment, and applicable overhead costs as may

be applied in accordance with OMB Circular A-87. Incorporating the State's predetermined standard rates for the period of use (usually hours or days) is the preferred method.

5. POLLUTION REPORTS (POLREPs). The incident reporting requirements specified in 300.315 of the NCP apply to the State official during immediate removals conducted under 33 CFR 133.

A. POLREP CONTENTS. Each POLREP must clearly describe the source, location, situation, actions taken, and future plans. The POLREP shall identify the responsible party, if known. The POLKEP should also note any potential damages incurred by third parties as a result of the incident which may give rise to claims under OPA 90. These may include private removal actions not funded through the Coast Guard; damages to natural resources or property (real or personal); loss of subsistence use of natural resources; loss of revenues by Federal, State, or local governments; loss of profits or earning capacity; and costs of State or local governments in providing increased or additional public services. The POLREP should cite the FPN and assigned ceiling and list the amount of obligations against that ceiling.

B. POLREP FREQUENCY. POLREPs are sent as significant developments occur during response actions, and a final POLREP should be sent within 48 hours following the completion of immediate removal actions. It is envisioned that removal actions conducted under State Access will typically be of short duration, and the State may only need to file one POLREP (i.e., POLREP One and Final).

C. POLREP COMMUNICATION. The State official shall submit POLREPs through communications networks or procedures established by the RRT. POLREPs are forwarded to the following:

1. FOSC who authorized the State Access request;
2. NPFC (cm);
3. RRT; and
4. Others as specified in area/local contingency plans.

The POLREP should be delivered in writing by expeditious means (e.g., facsimile (fax), overnight mail, electronic mail, etc.) and may be provided by phone only when other expeditious means are unavailable.

6. RECORDKEEPING. In accordance with 33 CFR Part 133.19 and Section 300.315 of the NCP, the State shall establish sufficient controls and procedures to provide documentation as follows:

A. DOCUMENTING COSTS-GENERAL. The State should clearly identify the costs of immediate removal activities, the need for incurring those costs, the source of the spill, the identity of the responsible parties, and the facts which support those conclusions.

1. WORK/PURCHASE WAS AUTHORIZED. Provide documentation that the work or purchase was authorized, (e.g., contracts, travel orders, purchase orders, work orders, rental contracts, etc.). The documentation should indicate why that activity was necessary and show the relationship to the removal actions at the specific site. A supervisor's certification is sufficient for State direct labor costs.

2. WORK/PURCHASE RECEIVED AND ACCEPTED. Provide documentation that the work or purchase was reviewed and accepted as complying with the authorization (e.g., receiving reports, delivery tickets with receipt signatures, ad hoc reports, etc.).

3. BILLED FOR THE WORK. Provide documentation of the cost of the work or purchase and that the State was properly billed for those costs, (e.g., contractor's/vendor's invoice, cash register receipts, travel reimbursement vouchers, employee timesheets or logs, etc.).

a. Work performed. The documentation should show the work performed - the service provided, the equipment used, the persons employed, etc. - and the quantity of each item of work performed each day (i.e., the delivered work product). Contractors performing work should prepare the documentation of the work performed. The State is responsible for ensuring the documentation of salary and equipment usage costs for the State.

b. Work unit. The documentation should identify costs according to the unit of work for each item. For contracts, that unit of work is established by the contract line items (CLINs). For time and material based contracts, the unit of work is normally hours. The delivered work product for documentation purposes is, however, the number of units of the item provided per day (unless otherwise specified). For State employee salary costs, the unit is hours of work. For State equipment, the work unit is also typically hours, unless specific daily rates are established for that equipment.

c. Cost of work. The documentation should show the cost of each unit of each item of work per day (or other time period set in the controlling agreement for that item) and the extended total cost. As discussed in paragraph 4.C., State salary and equipment usage costs should be determined using the State's standard rates.

4. PAID FOR THE WORK. Provide documentation that the amount invoiced, shown on receipts, or presented on travel vouchers was paid or authorized for payment. State certification that the cost is authorized for payment and will be paid through normal State processes is sufficient for requesting payment from the Fund, provided that any later corrections or changes to the amount paid are promptly reported to the NPFC.

B. DOCUMENTING SALARY, EQUIPMENT USAGE, AND ADMINISTRATIVE COSTS. State salary, equipment, and administrative costs are documented as follows for each day of removal activity:

1. Date
2. Identification (employee ID, equipment ID or description, function for removal action)
3. Category (e.g., grade level, equipment type)
4. Number of hours charged for that day
5. Rate
6. Total cost (hours times rate)
7. Cumulative total for all days

C. INCIDENT REPORT. The State official requesting Fund access should ensure that an Incident Report is submitted to the NPFC and the FOSC within 30 days after the completion of immediate removal activities. The Incident Report is a summary of the incident removal, and is used for recovery from the RP and various statistical purposes. The Incident Report should describe the incident and list parties of interest. The Incident Report should also include copies of any related State reports, violation reports, etc., available at the time. The Incident Report may be included as

part of a POLREP, provided that the Incident Report portion is specifically identified and all necessary information is presented.

1. INCIDENT DESCRIPTION. The Incident Report includes the following:

a. Report Date
b. Federal Project Number and Ceiling
c. Name and address of State agency submitting report and name of FOSC
d. Name and phone number of contact person
e. Date of incident
f. Dates and times removal actions began and ended
g. Location of incident
h. Material involved
i. Quantity discharged
j. Nature of substantial threat if no discharge
k. Body of water affected
1. Ambient conditions which may affect removal
m. Source of discharge or substantial threat
n. Short description of the incident and removal activities (if not adequately described in POLREPS)
o. Short description of damage to any potential natural resource or other damages due to the incident

2. PARTIES OF INTEREST. In addition to the information describing the incident, the Incident Report should include information identifying all parties of interest (e.g., State participants in the removal activities, the responsible parties, witnesses) as follows:

a. Names and addresses of responsible parties, owners and operators of vessels or facilities
b. Names, identification numbers, and phone numbers of State employees involved in the removal activities
c. Names, addresses, and phone numbers of local municipality participants, (e.g., fire department employees, local police)
d. Names, addresses, and phone numbers of any witnesses

7. REQUESTING PAYMENT. The State should forward the documents listed in subparagraphs A.-D. below to NPFC (cm). The State will receive payment for allowable immediate removal costs after the documentation has been received and reviewed favorably by the NPFC.

A. DISBURSEMENT VOUCHER. The State requests payment using either 1) SF-1080 (see Appendix D), Voucher for Transfers Between Appropriations and/or Funds (preferred), 2) SF 270, Request for Advance or Reimbursement, or 3) an equivalent State invoice acceptable to the NPFC.

B. INCIDENT REPORT (See paragraph 6.C. above). Submitting a properly-documented request for a partial payment is encouraged if preparing the submission of a request for full payment would delay the NPFC's receipt of the Incident Report longer than 30 days beyond the completion of the immediate removal.

C. REMOVAL COSTS (See paragraph 4).

D. CERTIFICATIONS. Certain certifications (see Appendix B) involving cooperative agreements between Federal and State agencies are required by 49 CFR Parts 18, 20, and 29 (see paragraph 12.A. below for a complete description). Accordingly, the State official shall ensure compliance with, sign, and return the following certifications:

1. Certification Regarding Lobbying.

2. Certification Regarding Debarment, Suspension, and Other Responsibility Matters.

   a. The certification for Primary Covered Transactions is required from the State itself.

   b. The certifications for Lower Tier Covered Transactions shall be submitted by the State on behalf of each of its contractors.

3. Certification Regarding Drug-Free Workplace Requirements.

   a. Required from the State to certify its employees. If, in accordance with 49 CFR 29.630 (c), the State has a current blanket Drug-Free Workplace certification, the State official may forward a copy of it in lieu of signing an incident-specific certification.

E. OVERALL CERTIFICATION. By the act of submitting the request for payment, the State official is certifying that costs incurred were consistent with the advance approval by the FOSC, that costs were directly related to removal actions for the specific incident, and that the State will pay or has paid the amounts presented.

F. COPIES TO FOSC. The State shall submit a copy of the Incident Report and cost documentation (see paragraphs 7.B.-C. above) to the cognizant FOSC.

G. TIMELINESS. In accordance with 33 CFR 133.19 (b), the request for payment, Incident Report, cost documentation, and certifications described in paragraphs VII.A-D. above should reach the NPFC no later than 30 days after the completion of immediate removal actions. In the event that certain documentation is unavailable or delayed, the State should submit that portion of the documentation that is available and forward a supplemental request for payment as the additional records become available. This information is needed rapidly to allow the NPFC to expeditiously pay the State and seek reimbursement from responsible parties. In accordance with 49 CFR 18.41 (b) (4), the NPFC may deobligate the Fund for payment if all required documentation is not received by the NPFC and found to be complete and satisfactory within 90 days following completion of an immediate removal action. The State is ineligible for payment under 33 CFR 133 following deobligation of the Fund.

8. REVIEW OF DOCUMENTATION. Upon receipt of the documents in paragraphs 7.A.-D. above, the NPFC will review them for completeness and to ensure that all removal costs are eligible for payment. If the documentation is not complete, the NPFC will promptly notify the State of what information is missing. If the NPFC determines that there are costs of an operational nature which may be ineligible for payment, the NPFC will confer with the cognizant FOSC. If the NPFC concludes that certain removal costs are ineligible for payment, it will delete those costs from the payment request made to the USCG Finance Center, and will promptly send a report of the disallowed costs to the State and to the FOSC. If, 90 days following the completion of the immediate removal, the State has failed to submit documentation to the NPFC which the NPFC finds to be complete and satisfactory, the NPFC may deobligate the Fund for payment of any removal costs which remain unsubstantiated.

9. PAYMENT PROCESS. After the State documents are reviewed and found to be complete and satisfactory, the NPFC Case Manager authorizes payment and the NPFC Financial Manager promptly processes the payment request through the USCG Finance Center.

10. COOPERATION IN COST RECOVERY/LITIGATION. By requesting State Access to the Fund, the State agrees to cooperate fully in any cost recovery actions and/or litigation to enforce the provisions of OPA 90.

11. DOCUMENTATION AND THE FOSC. Copies of the FPN/ceiling authorization, Oil Discharge Removal Authorization, Incident Report, cost documentation, and report of disallowed costs are sent to the FOSC for informational purposes only. The FOSC is not obligated to review or retain these documents.

12. RELATIONSHIP TO COOPERATIVE AGREEMENT REQUIREMENTS. As described in 33 CFR 133.5 (c), the Federal Grant and Cooperative Agreement Act of 1977 (31 USC 6301-6308) and 49 CFR Parts 18, 20, 29, and 90 apply to Fund monies obligated for payment under the State Access provisions of Section 1012 (d) (1) of the Oil Pollution Act. While compliance with these laws and regulations requires the submission of certain forms/reports from the State to the Federal government, some of the forms/reports have been waived because the nature of immediate removal actions obviates the need them.

A. REQUIRED FORMS/REPORTS. (refer to procedures throughout this document for a complete description of all forms/reports required under State Access). The following forms/reports are required by 49 CFR 18, 20, and 29, have not been waived, and should be submitted concurrently with the Incident Report and cost documentation:

1. SF 270, Request for Advance or Reimbursement

   This form or the optional/preferred SF 1080 (Voucher for Transfers Between Appropriations) or a State invoice acceptable to the NPFC is used by States to request payment from the Fund.

2. Certification Regarding Lobbying

   (See paragraph 7.D.1.) Required by 49 CFR 20. A copy of this certification is included in the certifications package provided by the NPFC to the State.

3. Certification Regarding Debarment, Suspension, and other Responsibility Matters

   (See paragraph 7.D.2.) Required by 49 CFR 29. A copy of this certification is included in the certifications package provided by the NPFC to the State. The cooperative agreement between the State and the Coast Guard is a primary covered transaction. A contract between the State and a private contractor is a lower-tier covered transaction.

4. Certification Regarding Drug-Free Workplace Requirements

   (See paragraph 7.D.3) Required by 49 CFR 29. A copy of this certification is included in the certifications package provided by the NPFC to the State (see paragraph 7.D.3.a. for blanket certification exception).

B. WAIVER OF CERTAIN FORMS/REPORTS. The requirements in 49 CFR Parts 18, 20, and 29 regarding the following specific forms and reports are waived as follows for State Access under 1012 (d) (1) of the Oil Pollution Act:

1. SF 424, Application for Federal Assistance

   The requirement for use of this form is waived. The request made by the Governor or his/her designated representative to the FOSC for access to the Fund suffices as an application.

2. SF 272, Federal Cash Transactions Report

   This form is not required since, under OPA 90 Sect. 1012 (d) (1), the Fund only pays States for costs already incurred.

3. SF 424A, Budget Information - Non-construction Programs

   This form is not required since, under OPA 90 Sect. 1012 (d) (1), the Fund only pays States for those costs already incurred, and each incident represents a separate agreement between the State and the Fund.

4. SF 424C, Budget Information - Construction Programs

   This form is not required because removal actions are not considered construction programs.

5. SF 269A, Financial Status Report

   The requirement for this report is waived. The State's request for payment that is submitted with the Incident Report and accompanying cost documentation meets all financial reporting requirements. it is envisioned that each incident would be completed in substantially less than three months.

6. Nonconstruction performance reports

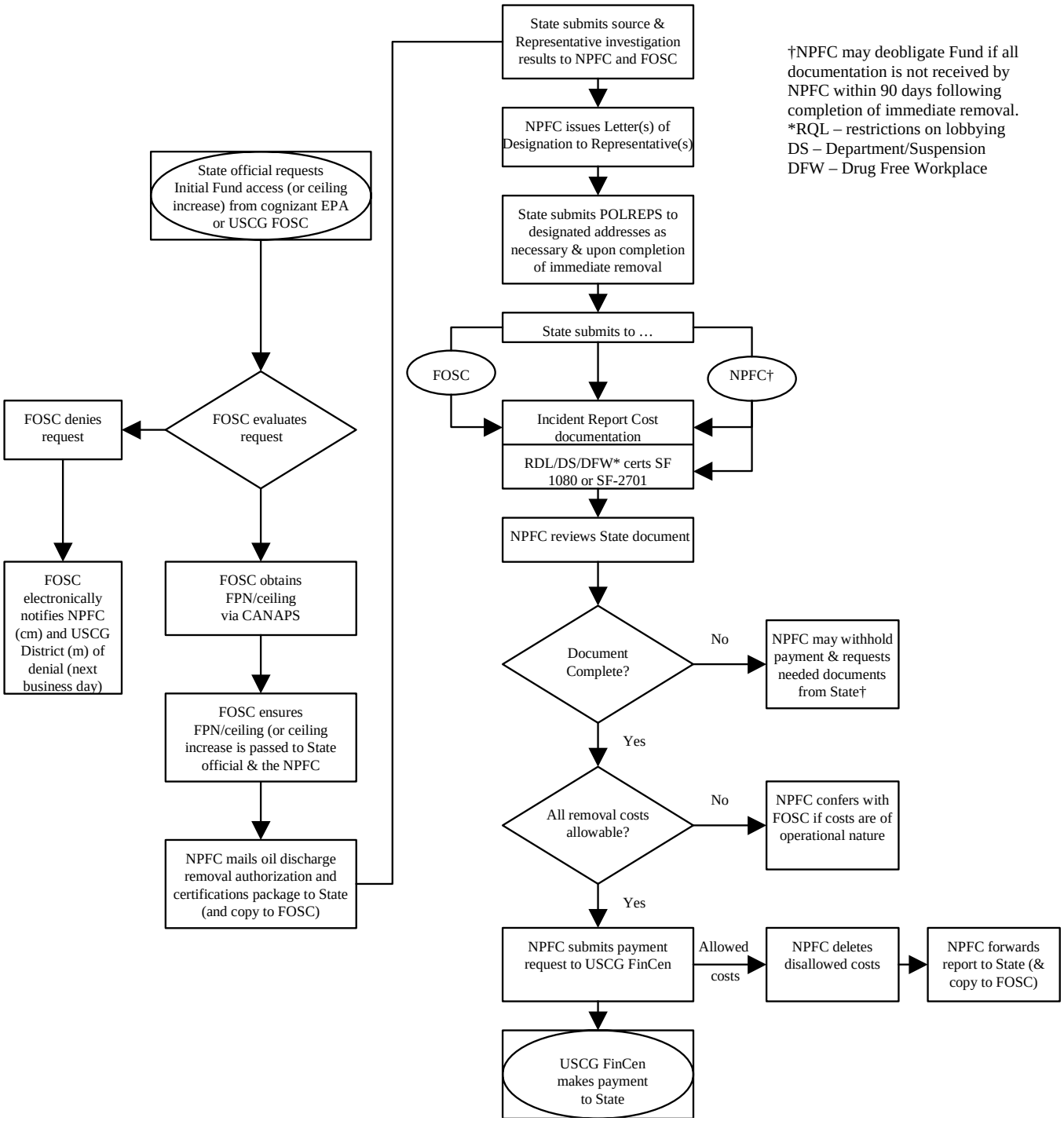
   The requirement for this report is waived. Performance information available from subsequent applications contains sufficient information to meet programmatic needs.

C. FEDERAL AUDIT. In accordance with 49 CFR 90, acceptance of Federal funds through a cooperative agreement may make the State subject to an annual or biennial Statewide Federal audit of all of its grants and cooperative agreements with the Federal government.

13. NPFC POINT OF CONTACT. The NPFC case management officer can be contacted as follows:

Director (cm)
U.S. Coast Guard
National Pollution Funds Center
4200 Wilson Blvd Ste 1000 Tel. (202) 493-6732
Arlington VA 22203-1804 Fax. (202) 493-6896

FLOW
State Access to OSLTF Under Secretary. 1012(d)(1) of OPA 90



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STATE OIL DISCHARGE REMOVAL AUTHORIZATION

FOR

THE OIL POLLUTION ACT OF 1990

(PUBLIC LAW 101-380)

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STATE OIL DISCHARGE REMOVAL AUTHORIZATION

Recipient State: _____

Address: _____

_____

_____

1. Purpose

This document obligates the Oil Spill Liability Trust Fund (Fund) for payment to the Recipient State for certain removal costs incurred in response to the following pollution incident: _____, FPN #_____.

This funding authorization is contingent upon the Recipient's compliance with the requirements contained herein, the National Contingency Plan (40 CFR Part 300), 33 CFR Part 133, and 49 CFR Parts 18, 20, 29, and 90.

2. Approved Functions and Pay Limit

Payment will be made only for actions that are consistent with the initial authorization or approved in advance by the FOSC. Approval may be verbal or written. Assessment, restoration, rehabilitation, or replacement of Natural Resources damaged by the spill are not covered.

Maximum limit of authorization: $ _____.

3. Conditions

See attached page(s) for special conditions, dates of performance, direction, or approvals.

4. Period of Authorization

This authorization shall remain in effect until the designated State official notifies the FOSC and NPFC that the immediate removal has been completed or the FOSC terminates Federal funding of the immediate removal.

5. Payment Procedure

The Recipient State will submit the required documents in accordance with 33 CFR Part 133 upon completion of removal activities.

The Coast Guard may deobligate the Fund for payment of any costs for which proper documentation has not been received within 90 days following the date of the completion of the immediate removal.

6. Hold Harmless and Indemnify

By performing any action or seeking any reimbursement under this funding authorization, the Recipient State agrees to indemnify and hold harmless the United States of America, and all of its departments and agencies, including without limitation the U.S. Coast Guard and the Oil Spill Liability Trust Fund ("United States"), with respect to any and all suits, actions and claims, of whatever kind or nature, arising from or relating to the Recipient's; actions, omissions, or other involvement in this spill. Recipient State further agrees to waive any rights of action and/or claims which it may have against the United States arising from or relating to its actions, omissions, or other involvement in this spill.

7. No Agency

Nothing in this funding authorization is intended to create an agency relationship between the Recipient State and the United States of America (or any of its departments, agencies, or employees). Nor shall anything in this funding authorization be construed as creating an agency relationship. By performing any action or seeking any reimbursement under this funding authorization, the Recipient State agrees that it has not been authorized to act as an agent of the United States, and shall not act in any such capacity.

B. Accounting Data

Document Control Number: _____

9. Points of Contact

A. _____Tel ( ) _____Fax ( ) _____
FOSC

B. _____Tel ( ) _____Fax ( ) _____
Recipient State Representative

C. _____Tel ( ) _____Fax ( ) _____
NPFC Case Officer

10. Authorizing Official

Signature: _____

Title: _____ Date: _____

Attachments: No _____ Yes _____

AMENDMENT TO

STATE OIL DISCHARGE REMOVAL AUTHORIZATION

Issued to (Recipient State): _____

By (NPFC Case Officer): _____

Date of Original Authorization: _____

FPN # of Original Authorization: _____

The Authorization cited above is amended as follows:

_____

_____

_____

_____

Document Control Number (if applicable): _____

Authorizing Official

Signature: _____

Title: _____ Date: _____

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CERTIFICATIONS

FOR

CONTRACTS, GRANTS, LOANS, AND COOPERATIVE AGREEMENTS

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APPENDIX A TO PART 49 CFR 20
CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and

Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying." (See Appendix C) in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,00 for each such failure.

SIGNATURE _____

TITLE _____

FPN# _____

Return signed originals to:
National Pollution Funds Center (cm)
4200 Wilson Blvd.
Arlington, VA 2203-1804

APPENDIX A TO PART 29
CERTIFICATION REGARDING DEPARTMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS
PRIMARY COVERED TRANSACTION

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a, person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However. failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended. declared ineligible, or voluntarily excluded from participation into this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitation for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List (Tel. (202) 366-4268).

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, and
other Responsibility Matters
Primary Covered Transactions

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency:

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction: violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property:

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1) (b) of this certification: and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

SIGNATURE _____ FPN # _____

TITLE _____

APPENDIX B to 49 CFR PART 29
CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

LOWER TIER COVERED TRANSACTIONS

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definition and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List (Tel. (202) 366-4268).
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding, Debarment, Suspension, Ineligibility, and Voluntary Exclusion
Transactions Lower Tier Covered

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily included from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

SIGNATURE _____

TITLE _____

FPN # _____

APPENDIX C TO 49 CFR PART 29
CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS
Instructions for Certification

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.
2. The certification set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.
3. For grantees other than individuals, Alternate I applies.
4. For grantees who are individuals, Alternate II applies.
5. Workplace under grants, for grantees other than individuals. need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.
6. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation. State employees in each local unemployment office, performers in concert halls or radio studios).
7. If the workplace identified to the agency changes during the performance of the grant,.the grantee shall inform the agency of the change(s), if it previously identified the
workplaces in question (see paragraph five).
8. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

Controlled substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15):
Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes:

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance:
Employee means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All direct charge employees: (ii) All indirect charge employees unless their impact or involvement is insignificant to the performance of the grant: and, (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

Certification Regarding Drug-Free Workplace Requirements
Alternate I. (Grantees Other Than Individuals)

A. The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about--

(1) The dangers of drug abuse in the workplace;
(2) The grantee's policy of maintaining a drug-free workplace;
(3) Any available drug counseling, rehabilitation, and employee assistance programs; and
(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will--
(1) Abide by the terms of the statement; and
(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under paragraph (d) (2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d) (2), with respect to any employee who is so convicted--
(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency:

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the sites(s) for the performance of work done in connection with the specific grant:
Place of Performance (Street address, city, county, state, zip code)

Check if there are workplaces on file that are not identified here.

SIGNATURE _____ FPN # _____

TITLE _____

APPENDIX C TO 49 CFR PART 29
CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

Instructions for Certification

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.
2. The certification set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.
3. For grantees other than individuals, Alternate I applies.
4. For grantees who are individuals, Alternate II applies.
5. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.
6. Workplace identification must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).
7. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph five).
8. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

Controlled substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15):

Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes:

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

Employee means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All direct charge employees: (ii) All indirect charge employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not On the payroll of the grantee (e.g,. volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

Certification Regarding Drug-Free Workplace Requirements
Alternate II. (Grantees Who Are Individuals)

(a) The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant:

(b) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

SIGNATURE _____

TITLE _____

FPN # _____

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB

0345-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action: a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	**2. Status of Federal Action:** a. bid/offer/application b. initial award c. post-award	**3. Report Type:** a. initial filing b. material change **For Material Change Only**: year _____ quarter _____ date of last report _____
4. Name and Address of Reporting Entity: Prime Subawardee Tier _____, *if known:* Congressional District, *if known*:	**5. If Reporting Entity is No. 4 in Subawardee, Enter Name and Address of Prime:** Congressional District, *if known*:	
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable*: _____	
8. Federal Action Number, *if known*:	**9. Award Amount, *if known*:** $	
10. a. Name and Address of Lobbying Entity *(if individual, last name, first name, MI):*	**b. Individuals Performing Services *(including address if different from No. 10a)*** *(last name, first name, MI):*	
(attach Continuation Sheet(s) SF-LLL-A, if necessary)		
11. Amount of Payment *(check all that apply)*: $ _____ actual planned	**13. Type of Payment *(check all that apply)*:** a. retainer b. one-time fee c. commission d. contingent fee e. deferred f. other, specify: _____	
12. Form of Payment *(check all that apply)*: a. cash b. in-kind; specify: nature _____ value _____		
14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11: *(attach Continuation Sheet(s) SF-LLL-A, if necessary)*		
15. Continuation Sheet(s) SF-LLL-A attached: Yes No		
16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which NPFC was placed by the tier above when this transaction was made or entered into. This disclosure is requested pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the requested disclosure shall be subject to a civil penalty of not less than $10,000 and nor more than $100,000 for each such failure.	**Signature:** _____ **Print Name:** _____ **Title:** _____ **Telephone No.:** _____ **Date:** _____	
		Authorized for Local Reproduction Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in Item 4 checks “Subawardee”, then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., “RFP-DE-90-001.”

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in Item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (Item 4) to the lobbying entity (Item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify he nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and relative activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minimum per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (03-48-0046), Washington, D.C. 20503.

DISCLOSURE OF LOBBYING ACTIVITIES Approved by OMB

CONTINUATION SHEET 0348-0046

Reporting Entity: _____ Page _____ of _____

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Standard Form 1080 Revised April 1982 Department of the Treasury FRM 2-2500 1080-109	**VOUCHER FOR TRANSFERS BETWEEN APPROPRIATIONS AND/OR FUNDS**	VOUCHER NO. SCHEDULE NO.
Department, establishment, bureau, or office receiving funds		BILL NO.
Department, establishment, bureau, or office charged Director (CM) United States Coast Guard National Pollution funds Center 4200 Wilson Blvd. Suite 1000 Arlington, VA 22203-1804		PAID BY

ORDER NO.	DATE OF DELIVERY	ARTICLE OR SERVICES	QUAN-TITY	UNIT PRICE COST	UNIT PRICE PER	AMOUNT DOLLARS AND CENTS
			TOTAL			

Remittance in payment hereof should be sent to

ACCOUNTING CLASSIFICATION *Office Receiving Funds*

CERTIFICATE OF OFFICE CHARGED

I certify that the above articles ere received and accepted or the services performed as stated and should be charged to the appropriations(s) and/or fund)s) as indicated below; or that the advance payment requested is approved and should be paid as indicated.

.....
(Authorized administrative or certifying officer)

.....
(Date)

.....
(Title)

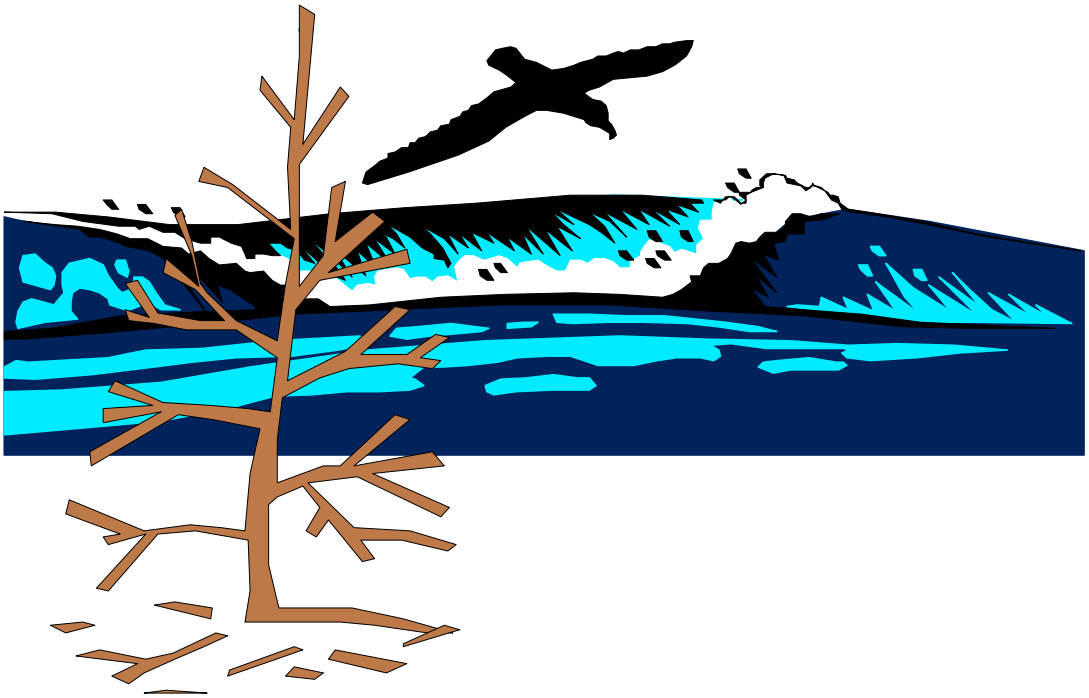
ACCOUNTING CLASSIFICATION *Office Charged*

Paid by Check No

NSN 7540-00-634-4230 U.S. G. F. C. 1983 - 381 526-8279 Previous Editions Are Usable
Standard Form - LLL-A

CHAPTER 6

Initiate Requests and Natural Resource Damage (NRD) Claims



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Chapter 6: Initiate Requests and Natural Resource Damage (NRD) Claims

The material in this chapter explains the process for the Initiation of Natural Resource Damage Assessment (INRDA) as well as addresses the regulations and procedures of natural resource damage claims.

Download	Document
Entire Chapter 5 70 KB PDF	Download entire chapter.
Introduction 40 KB PDF	Cover, table of contents.
NRD Funding Guidelines 400 KB PDF	Addresses both initiate funding requests as well as claims for assessments and restoration plans developed during the execution of oil spill natural resource damage assessments.
NRD Laws & Regulations 200 KB PDF	Includes sections of the Oil Pollution Act related to natural resource damages (NRD) (33 U.S.C. 2701 et seq.); NOAA regulations on natural resource damage assessments (15 CFR 990) and USCG interim claims regulations (33 CFR 136).

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May 7, 2002

United States Coast Guard
National Pollution Funds Center
Natural Resource Damage Claims Division

4200 Wilson Blvd., Suite 1000
Arlington, VA 22203-1804

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Enclosure (added June 2007)

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SECTION I

INTRODUCTION

Introduction

This is a guidance document prepared by the Natural Resource Damage Claims Division of the United States Coast Guard National Pollution Funds Center (NPFC). This guidance document addresses both initiate funding requests as well as claims for assessments and restoration plans developed during the execution of oil spill natural resource damage assessments. **For claim adjudication purposes, the NPFC does not specify the format that claim submissions must take. The claimant may use any system for documenting the NRDA claim as long as it meets the statutory and regulatory requirements for content. Claims lacking this information may be returned to the claimant with a request for required information before further claim processing can occur.**

NPFC is committed to payment of valid claims for natural resource damage assessment and restoration under OPA. NPFC believes, in those cases where the party responsible for injuries to natural resources and their services resulting from an OPA incident cannot or will not pay compensation, that the will of Congress was that NPFC make prompt and fair payment of such claims to trustees so that timely assessment and restoration can be accomplished. Therefore, these guidelines are intended to aid, where necessary, natural resource trustees and, ultimately, the environment.

Section II of this document provides guidance for initiate funding. The guidance provided in Section II begins with the terms and conditions for using the Oil Spill Liability Trust Fund (OSLTF) for initiating a Natural Resource Damage Assessment. Section II has been developed to provide guidance and funding for "initiation" activities under the statute. Trustees who incur costs and are reimbursed by the OSLTF will also be guided by this Instruction. Attachment II A at the end of Section II is an Interagency Agreement for "Providing Funding to Natural Resource Trustees to Conduct the Initiation of an Assessment of Natural Resource Damages under the Oil Pollution Act of 1990 (OPA)".

Section III of this document provides guidance for assessment and restoration claims conducted pursuant to OPA and the NRD regulations. The Natural Resource Damage (NRD) Claim Guidelines and supplemental guidelines may be used for submitting claims to the NPFC to document natural resource damages resulting from an incident under OPA. Original documentation is preferred for cost recovery and should not be retyped, even when hand written. Accordingly, the claimant must establish sufficient controls and procedures to provide the requested information and documentation.

While some of the information requested for claims is easily compiled (e.g., claimant name and contact information), other documentation requests are complex (e.g., estimates of natural recovery of impacted environments). Much of the information requested may already be incorporated into other documents (e.g., the Final Restoration Plan). In these cases, simply reference the location of the requested information within the claim submission materials to include the document, page, and paragraph, as appropriate.

These guidelines establish no new requirements. They discuss and frequently paraphrase OPA and the implementing claims regulations. The guidelines do not create new rights or liabilities. They are intended to give practical guidance only. Controlling legal authority for NRD claims resides in the Oil Pollution Act of 1990 (33 US Code §2701 et seq.) and the interim claims regulations (33 CFR Part 136). In the event of any conflict between these guidelines and any statute or regulation, including the Damage Assessment Regulations found at 15 CFR Part 990 (e.g., for definitions or to determine if in compliance

with those regulations), the statute or regulation governs. NPFC reserves the right to modify this guidance document without prior notice.

The Natural Resource Damage Claim Guidelines are for all claimants. The three supplemental guidelines at the end of Section III address Natural Resource Damage Claims Following the Damage Assessment Regulations at 15 CFR 990 (Attachment III A), Emergency Restoration Claims (Attachment III B) and Information Pertinent to Submitting and Adjudicating Natural Resource Damage Claims (Attachment III C). Attachment III A contains supplemental guidelines that are intended for claimants asserting that they followed the Damage Assessment Regulations at 15 CFR 990 and are suggested to be completed in addition to the appropriate portions of the NRD Funding Guidelines. Attachment III B contains supplemental guidelines that are intended for claimants submitting an emergency restoration claim and are suggested to be completed in addition to the appropriate portions of the NRD Claim Guidelines. Attachment III C Provides a listing of information requests that will facilitate the submission and adjudication of natural resource damage claims. Though Attachment III C can be used as a supplemental guide for identifying information needs in general natural resource damage claims, it is primarily intended to be used as an aid to both claimants and NPFC Claims Managers in ensuring that the determinations listed in Attachment III A have been met. The supplemental guidelines are tailored to specific circumstances and may be used in addition to the NRD Funding Guidelines.

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SECTION II

INITIATE FUNDING GUIDANCE

INITIATE FUNDING TERMS AND CONDITIONS

Section 1. OVERVIEW

A. Background. Section 6002 (b) of the Oil Pollution Act of 1990 (OPA90) provides that the OSLTF Emergency Fund is available "to initiate the assessment of natural resource damages" (Initiate/Initiation). For the purpose of this agreement, Initiate activities have been defined as those Preassessment activities as outlined in 15 CFR 990, Subpart D.

1. Executive Order 12777 limits funding for Initiation to the Federal Trustees, who are as follows:

   a. Department of the Interior;
   b. Department of Commerce;
   c. Department of Agriculture;
   d. Department of Defense; and
   e. Department of Energy.

2. Executive Order 12777 introduced the Federal Lead Administrative Trustee (FLAT) concept to provide a focal point for addressing natural resource issues associated with a specific incident. The NPFC will only accept requests for Initiation from, and normally works directly with, the FLAT. State and Tribal Trustees must work through a FLAT. Those State and Tribal Trustees acting in the event of a spill may join with the designated Federal Trustees to name a FLAT.

B. Case Questions. NRD Claims Managers are available to address specific questions that may not be covered in these procedures.

Section 2. CRITERIA FOR INITIATION

A. Threshold. Initiation of a natural resource damage assessment (NRDA) must be in response to an OPA incident, i.e., a discharge or substantial threat of a discharge of oil into or upon the navigable waters or the adjoining shorelines or the exclusive economic zone of the United States.

B. Emergency Restoration. Emergency restoration of natural resources is not NRD Initiation. Trustees should bring potential oil impact situations to the FOSC's immediate attention, so a determination may be made as to whether such action is an appropriate removal activity or needs to be submitted as an emergency restoration claim. Refer to Section III B of this document for guidance on filing an emergency restoration claim.

Section 3. PROCEDURES FOR ACCESSING THE OSLTF TO INITIATE NRDA'S

A. Funding Requests.

1. The Trustees are encouraged, however are not required, to first seek Initiate Funding from the responsible parties for preassessment activities. This puts the responsible party on notice and facilitates cost recovery from the responsible party. Initiate Funding is available from the OSLTF Emergency Fund when time is of the essence and consultation with the responsible party is not feasible or would be clearly futile; or when the responsible party declines, is not known, or is unable to provide the requested funding.

2. Trustee funding requests to responsible parties should be clear and fully documented for future reference; written requests to responsible parties are advisable. Even when immediate funding from the OSLTF is required to start Preassessment activities, Trustees should continue to pursue responsible party restoration funding as they coordinate and consult.

3. It is anticipated that most initial preassessment activities will occur concurrently with FOSC-directed removal activities or fairly soon after the removal has been completed. Since Initiate Funding is *emergency funding* from the OSLTF, the NPFC expects the Trustees to make prompt funding requests. In most circumstances this means no later than 30 days after the completion of the removal.

4. The NPFC recognizes that in some circumstances a significant amount of time may lapse before evidence of resource injury appears; in those cases, requests for Initiate Funding should be made as soon as practicable after the evidence of injury manifests itself and a Trustee decides to start preassessment activities.

5. The OSLTF Emergency Fund will also provide Initiate funding for mystery cases.

B. Funding Approval. The NPFC is committed to providing funding approval within 24 hours after receipt of a proper request. Approval for increases in funding may be given over the phone with documentation to follow the next business day.

C. Inter-Agency Agreement.

1. The NPFC NRD Claims Manager will work with the FLAT to complete the IAG.

2. The NRD Claims Manager shall establish the amount authorized and obligated for Initiation, and assign the appropriate document control number (DCN). The Federal Project Number (FPN) assigned shall be the same as applies to the removal action, unless no FPN has been issued, in which case, the NPFC will assign an FPN. The NRD Claims Manager will ensure that the Pre-Designated FOSC is notified that Initiation activities have begun.

3. The FLAT may contact the NRD Claims Manager at any time when questions arise.

4. Once the IAG is executed by the NPFC, the amount is obligated against the OSLTF, and becomes a budgetary resource to the FLAT as described in OMB Circular A-34. The funding amount provided by the IAG is then available for obligation immediately by the FLAT. If the FLAT is distributing funds to other Trustees, then they are responsible for subsequent disbursements.

D. Ceiling Management and Supplemental Requests For Funding. The FLAT manages the funds available for NRDA Initiation. The NPFC is committed to providing funds to the Trustees as quickly as possible. Conversely, the Trustees will exercise concomitant responsibility for effective ceiling management while the incident is ongoing.

Section 4. PURCHASE OF PERSONAL PROPERTY

A. Purchase of Accountable Personal Property and Equipment. The purchase of personal property (e.g., items of equipment, computers, cameras) is not encouraged and should be done only when necessary for Initiation activities. The FLAT should, therefore, attempt to lease rather than purchase property and equipment (non-consumable items) unless the purchase can be clearly shown to be cost-beneficial to the OSLTF considering the costs necessary to purchase, maintain, and dispose of the property. When property must be purchased, the FLAT should first ask the responsible party to supply the equipment. All purchases of equipment or other personal property with the OSLTF must be done in accordance with the FLAT's or Trustee's standard agency procurement policy and authority, and shall be administered throughout its service in the initiate activity in accordance with the Federal Property Management Regulations. If the FLAT or a participating Trustee uses the OSLTF to buy equipment under the Initiation IAG, the Federal Government owns the property, and the FLAT is responsible for proper management, accounting, and disposition of the property. The FLAT must establish and maintain a system of control and accountability to ensure that the date of acquisition and costs of property/equipment funded by the OSLTF can be clearly documented.

B. Disposal of Property. The property should not be transferred at any cost to another government agency, but rather should be turned in to the FLAT's or Trustee's appropriate agency property management or disposal center. In accordance with an agency's regulatory procedures, non-expendable property/equipment purchased with OSLTF monies should be deemed excess, and processed for disposal as soon as Initiate activities are completed. The steps for disposal are as follows: a) The SF-120 or an appropriate equivalent document should be used to report the excess items; b) Turn the property over to the nearest property management entity (Flat's agency, GSA, or local DOD DRMO); and c) Forward documentation to the NPFC to allow the maintenance of an audit trail on all such purchases, transfers, and disposals. Absence of disposal documentation may delay timely reimbursement.

Section 5. RECORDKEEPING

A. Cost Documentation. In order to recover costs, expenses must be documented to provide responsible parties with an accounting of all Initiate costs that were incurred by the Trustees.

B. The Pollution Incident Daily Resource Reporting System. The FLAT and participating Trustees are encouraged to document costs using the NPFC Pollution Incident Daily Resource Reporting

System, i.e., the 5136 Series of forms. These forms and accompanying Instructions on their use can be found in the "Resource Documentation and Cost Documentation Technical Operating Procedures", available from the NPFC at http://www.uscg.mil/hq/npfc/fosc.htm. This system was originally designed as an easy to use process for FOSCs to document removal costs, but it may also be used by Trustees for Initiation activities. Note that because these forms are multi-purpose, they mention CERCLA, however, CERCLA incidents are not eligible for Initiation funding.

C. Content of Documentation. The NPFC does not specify the format that documentation must take. The FLAT may use any system for documenting the Preassessment as long as it meets the requirements for content. It is important to note, however, that original documentation is preferred for cost recovery, and should not be retyped, even when hand written. Accordingly, the FLAT must establish sufficient controls and procedures to provide documentation as follows:

1. Work/purchase authorization. Show that the work or purchase was authorized by appropriate authority, e.g., contracts, travel orders, work orders, rental contracts, purchase orders.

2. Work/purchase receipt and acceptance. Show that the goods or services were received and accepted as complying with the authorization, e.g., receiving reports, delivery tickets with receipt signatures, ad hoc reports, with the date of receipt and acceptance.

3. Work billed. Provide the cost of the work or purchase and show that these costs were properly billed to the Trustee, e.g., contractor's invoice, cash register receipts, travel reimbursement vouchers, employee timesheets or logs.

   a. Work performed. Show the work performed (the service provided, the equipment used, the persons employed, etc.) and the quantitative factors involved in each item of work performed each day, i.e., the delivered work product.

   b. Work unit. Identify costs according to the unit of work for each item. For contracts, that unit of work is established by the contract line item (CLIN). For time and material based contracts, the unit of work is normally hours, and the delivered work product is the number of hours per day.

   c. Work cost. Show the cost of each unit of each item of work per day (or other time period set in the controlling agreement for that item) and the extended total cost, e.g., eight hours supervisor services per day at $50 per hour times 7 days (specifically identified by date) equals $2800 total cost.

4. Work payment. Show the amount billed was paid or authorized for payment. The FLAT should certify the cost authorized for payment is sufficient for requesting reimbursement from the OSLTF, provided that any later adjustments or corrections to the amount paid are promptly reported to the NPFC.

5. Trustee's internal costs. Documentation should include the following information for salary, equipment, and administrative costs for each day of Preassessment activity:

   a. Date;

   b. Identification (employee name or ID, equipment description or ID, function performed);

   c. Category, e.g., grade level, equipment type;

   d. Number of hours charged for that day;

   e. Rate (include basis for any standard rates);

   f. Total cost (hours time rate); and

   g. Cumulative total cost for all days.

Section 6. NPFC CONTACT INFORMATION

A. For initiate preassessment requests, please contact the NRD Claims Division at (202) 493-6860 or at (800) 280-7118.

B. For funding requests outside of business hours, call (800) 759-7243 PIN number 2073906.

ATTACHMENT IIA
INTERAGENCY AGREEMENT TO
INITIATE
NATURAL RESOURCE DAMAGE ASSESSMENT UNDER OPA
BETWEEN THE
NATIONAL POLLUTION FUNDS CENTER AND THE
FEDERAL LEAD ADMINISTRATIVE TRUSTEE

(Revised July 20, 2001)

FPN _____ IAG _____

I. As the Federal Lead Administrative Trustee (FLAT), the Department of (Departmental Name (Acronym))_____ requests the obligation of funds under this Inter-Agency Agreement (the "Agreement") between the National Pollution Funds Center (NPFC) and the FLAT to Initiate a Natural Resource Damage Assessment (NRDA) for the following oil spill incident (the "Incident"):

Name: _____
Date Occurred: _____
Location: _____

This Agreement should be submitted in writing on behalf of the affected Natural Resource Damage (NRD) Trustees to the NPFC NRD Claims Division. A NRD Claims Manager will be assigned to coordinate access to the Oil Spill Liability Trust Fund (OSLTF).

II. Potential Trustee Notifications:

	Contacted	Participating
	Yes / No	Yes / No
Department of Agriculture (USDA)	____/____	____/____
Department of Defense (DOD)	____/____	____/____
Department of Energy (DOE)	____/____	____/____
Department of the Interior (DOI)	____/____	____/____
Department of Commerce (DOC)	____/____	____/____
State/Commonwealth/Territory of ____	____/____	____/____
State/Commonwealth/Territory of ____	____/____	____/____
State/Commonwealth/Territory of ____	____/____	____/____
Tribal Representative(s)	____/____	____/____
Tribal Representative(s)	____/____	____/____
Other	____/____	____/____
Other	____/____	____/____
Other	____/____	____/____

III. Request for Funds:

Amount of this request	$_____
Previous amount	$_____
Total Amount requested	$_____

The amount requested may be generated by the FLAT's field representative, however, the request must be signed by a federal official with the authority to sign such funding agreements.

IV. Uses: These funds are to be used only for the preassessment phase activities in the initiation of a NRDA. This is the process by which trustees must determine whether there is jurisdiction to pursue restoration under OPA and, if so, whether it is appropriate to do so. Preassessment activities are outlined in 15 CFR 990, Subpart D, and include data collection, determination of jurisdiction, notice of intent to conduct restoration planning, administrative record, and determination to conduct restoration planning. Trustees not using the 15 CFR regulations may still want to use the preassessment activities listed there as guidance for appropriate initiation activities.

V. FLAT's Allocation Plan for Use of Funds: The plan for use of funds should include the participants, a list of activities to be performed, the resources required to perform each activity, and the estimated cost of those resources. It must include input from all participating Trustees. The NPFC will review the plan for consistency, reasonableness of cost for specific resources, and mathematical accuracy.

A. Participant's Use of Funds:

	Estimated Costs
DOI	_____
DOC	_____
USDA	_____
DOE	_____
DOD	_____
State/Commonwealth/Territory of	_____
State/Commonwealth/Territory of	_____
Tribal Representative(s)	_____
Tribal Representative(s)	_____
Other	_____
Other	_____
Other	_____
TOTAL (All of the Above Trustees)	_____

B. Estimated Cost and Completion Dates For Activities:

	Estimated Cost	**Date of Completion**
1. Notifications/Coordination	_____	_____
2. Travel and Per Diem	_____	_____
3. Equipment and Supplies (if not covered elsewhere)	_____	_____
4. Administration/Management	_____	_____
5. Data collection, sampling, and analysis		
Task 1 – Insert title/brief description	_____	_____
Task 2 – Insert title/brief description	_____	_____
Task 3 – Insert title/brief description	_____	_____
Task 4 – Insert title/brief description	_____	_____
6. Report Preparation (including notice documents)	_____	_____
Total Requested Amount	_____	

Activity summaries, budget breakdowns, and computations or other basis of each of these estimates (including personnel [(# persons)x($/day)], equipment [(# days)x($/day] and contractor estimates) should be attached to this IAG.

VI. Documentation and Reimbursement: As previously explained in Chapter II, "Initiate Funding Terms and Conditions", Section 5C, the FLAT coordinates all Initiate activities and subsequently provides documentation to the NPFC of all expenditures, costs, and activities conducted under this Agreement for which the FLAT will be reimbursed. This documentation shall itemize costs incurred to Initiate the NRDA, including: daily expenditures by individual, giving name, title or position, activity performed, time on task, salary or hourly rate, travel cost, per diem, out of pocket or extraordinary expenses; equipment purchased or rented, with the daily or hourly rate; and materials and consulting fees. All documentation will be compiled on a daily, weekly, bi-weekly or at a minimum a monthly basis. Costs may be based on standard rates, including an overhead and/or indirect cost charge. If Trustee(s) choose this approach, they must also provide the justification or rationale for the rates so that they can be defended in cost recovery. OMB Circular A-87 principles and standards will apply, as appropriate for State Trustees and Tribal Trustees.

Documentation shall include details of payments they have received from the responsible party, guarantor, a third party source, or a Congressional appropriation. The FLAT will review all of the cost documentation and certify that the costs submitted by each of the participating Trustees were reasonable and consistent with 15 CFR 990 Subpart D, and further that the amounts requested have not been and will not be sought from any other source.

The FLAT submits an SF-1080 (or SF-1081 or equivalent voucher) along with cost documentation to the NPFC to obtain direct reimbursement. When the FLAT wants the NPFC to reimburse the participating

Trustees directly, the FLAT should submit separate vouchers for each Trustee. The FLAT must identify in its final request for reimbursement the remaining unexpended balance to be deobligated under this IAG.

Within 120 days of the completion of Preassessment activities, the FLAT will provide a written invoice to the NPFC using form SF-1080, Voucher for Transfer Between Appropriations, or SF-1081, or an equivalent form, accompanied by the documentation as described. Transfer instructions will be provided on the SF-1080.

The FLAT should also provide a copy of the Preassessment documentation, as soon as it is available. If Preassessment activities are not finished upon clean-up or completion, the NPFC requires Interim Reports and related cost documentation submissions every 90 days after clean-up is complete.

If the NPFC does not receive the Final Report within 120 days after the completion of Initiation activities, the NPFC will advise the FLAT in writing that funding may be deobligated. In the event of extenuating circumstances, extensions will be granted upon written request.

The Final Report should involve a narrative summary explaining what was done and why. This report will help to support cost recovery efforts.

VII. Cost Recovery: The Fund obtains the rights to recover these costs once paid. The amount reimbursed to Trustees will be billed to the responsible parties. The FLAT shall ensure that all Trustees involved in this Incident agree to assign cost recovery actions arising from this Incident to the OSLTF, to the extent they represent costs reimbursed pursuant to this Agreement. In addition, the FLAT agrees to support cost recovery efforts and to cooperate fully with the NPFC in any claim or action by the OSLTF against the responsible party, guarantor, or other persons to recover costs from this Incident. The FLAT shall notify the NPFC of any negotiation(s) to execute an agreement between any Trustee and responsible party/guarantor.

VIII. Supplemental Requests: Nothing in this Authorization prohibits the FLAT from requesting supplemental funds for the same Incident. Whenever it appears that actual costs may exceed the initially requested amount, the FLAT should promptly request supplemental funding in the same manner as the original request. Until such supplemental funds are obligated by an amendment to the IAG, the FLAT must take appropriate action to prevent exceeding the previously obligated amount. The NPFC will not reimburse the FLAT for costs in excess of the signed Agreement and supplemental.

IX. Deobligation: This Agreement will be closed 120 calendar days from the date of completion of the Preassessment Activities. As previously stated in Section VI of this Agreement, if cost documentation is not forthcoming within that time, the NPFC will advise the FLAT in writing that funding may be deobligated. If required, extensions will be granted upon written request.

X. Agreement Certification And Assignment of Contact Person: I certify that (Department Name, Acronym)_____is the FLAT, and that I am authorized to sign this document on behalf of the Trustees. I further certify that all actions to be funded are for Initiate activities, as described in 15 CFR 990, Subpart D.

_____

_____
(Name of FLAT)
(Position of FLAT within the Trustee Agency)

_____
For the Department Name (Acronym)

_____
(Date)

FLAT Contact Person: _____
Address: _____
_____
Phone: _____
Fax: _____

XI. Authorization and Authority:

In accordance with Oil Pollution Act of 1990 (33 USC 2752(b)), the NPFC authorizes the obligation of funds to the (Department Name, Acronym) _____ to initiate an NRDA for the Incident and activities described in the request dated _____ (to agree with date in Paragraph X). Total amount of funds available under this Agreement shall not exceed $_____. The Federal Project Number _____ and the Inter-Agency Agreement Number _____ must be referenced on cost documentation and all requests for reimbursement from the OSLTF.

_____
(Signature of NPFC NRD Claims Manager)

_____
Date

NPFC Contact Person: _____
Address: _____
_____
_____

Telephone: (202) 493-_____
Fax: (202) 493-6939

Enclosures:

SECTION III

NATURAL RESOURCE DAMAGE CLAIMS GUIDELINES

NATURAL RESOURCE DAMAGE CLAIM GUIDELINES

To facilitate comprehensive and efficient adjudication of natural resource damage claims that follow the Oil Pollution Act of 1990 (OPA) and the associated National Pollution Funds Center (NPFC) Interim Claims Regulations (33 CFR 136), the U.S. Coast Guard, National Pollution Funds Center (NPFC) suggests that the claimant use the Natural Resource Damage (NRD) Claim Guidelines. Though it is not required by the NPFC that a claimant use these guidelines, use of the NRD Claim Guidelines will facilitate the generation of a complete claim. This will allow for efficient and comprehensive evaluation of claims, minimizing the need for repeated information requests of the claimant.

Natural resource damage assessment (NRDA) regulations are available under OPA at 15 CFR Part 990. Those NRDA regulations set out a process for assessing injuries to natural resources and planning the restoration of those injured natural resources. Trustees are **not** required to use the NRDA regulations and may use some other natural resource damage assessment process. However, the review of NRD assessments that were conducted using the 15 CFR 990 regulations have a more favorable statute of limitations, are granted a rebuttable presumption of correctness and will generally be reviewed by the NPFC upon the administrative record of the assessment.

General Guidelines for Completing Natural Resource Damage Claims:

- Refer to the text of OPA (33 U.S.C. 2701 et seq.) AND the NPFC Interim Claims Regulations (33 CFR 136).
- Upfront funding of costs for assessment and/or of developing a publicly reviewed restoration plan may be obtained from NPFC.
- The claimant may reference information and its location in the NRD claim. Ensure that at all times, the information provided is sufficient and clearly stated such that the NPFC can understand the response to the requirement. In certain cases, one reference may pertain to multiple information requests in this document.
- Further description of the types of information useful in submitting and evaluating these claims can be found in Attachment III C to these funding guidelines.

1. Claim Information

A. Claimant Information

i. Provide the name of the claimant, agency affiliation, address, telephone number, fax number, email address and other pertinent contact information.

B. Incident Information

i. Provide the date, time, name of the vessel or facility causing injury, geographic location of the incident, and a brief description of the incident.

ii. Provide a description of the trustee's basis for determining that the oil spill (or a threat of an oil spill) is an incident as defined by the Oil Pollution Act (OPA) at 33 U.S.C. 2701(14). Specifically, provide a description of the trustee's basis for determining that the incident is:

a) Not allowed under a permit issued under federal, state or local law;

b) Not from a public vessel;

c) Not from an onshore facility subject to the Trans-Alaska Pipeline Authority Act (43 U.S.C. 1651 et seq.).

C. Responsible Party(ies) Information

i. Has a responsible party(ies) been identified for this incident?

a) If yes, please provide contact information for the responsible party(ies).

b) If no, please explain the circumstances under which the responsible party(ies) could not be identified, and skip to section D.

ii. Has the claimant released any responsible party(ies) or other person from liability, in whole or part, for NRD, or other damages or removal costs?

a) If yes, provide a copy(ies) of the release(s).

iii. Has the claim been submitted to the responsible party(ies)?

a) If yes,

1) Provide the date that the claim was submitted.

2) Attach a copy of written communications between the claimant and the responsible party(ies).

3) Describe the substance of verbal communications between the claimant and the responsible party(ies).

4) Describe any action regarding the claim that has been taken by the Responsible Party(ies).

5) Has the claimant commenced any action in court against the responsible party(ies)?

(i) If yes, provide the name/address/telephone number/fax number/email of the attorney(s) representing the trustee(s), the court in which the action is pending, and the civil action number.

D. Claim Elements and Total Amount of Costs and Damages Claimed

i. Please indicate which of the components listed below are included in the claim. Include documentation to support each as described below.

a) The reasonable cost of assessing natural resource damages resulting from the incident identified above. Indicate the total amount claimed and attach a copy of the assessment plan and Administrative Record Index.

b) The cost of restoring, rehabilitating, replacing or acquiring the equivalent of the injured natural resources (including the diminution in value of those resources pending restoration). Indicate the total amount claimed and attach a copy of the assessment and restoration plans (or, if using the 15 CFR 990 regulations attach a copy of the Damage Assessment and Restoration Plan) and Administrative Record Index.

c) Emergency Restoration costs for actions required to avoid irreversible loss of natural resources or to prevent or reduce any continuing danger to natural resources or similar need for emergency action. Indicate the total amount claimed and attach a copy of the emergency restoration plan and/or any post emergency restoration reports with documentation supporting such need for emergency restoration. (Refer to Section III B for further details.)

ii. Please provide the following supporting cost documentation, as applicable:

a) Summary of Past and Proposed Costs: Provide a summary of both past (e.g., injury assessment and restoration planning) and proposed (e.g., assessment and restoration project implementation) costs.

b) Any Inter-Trustee and Trustee-Responsible Party NRDA Memoranda regarding this Incident: Provide a copy of memoranda of agreement or understanding regarding the execution of the claimed NRDA.

c) Costs Already Incurred: Provide supporting documentation of the cost's associated with past actions in compliance with the assessment and/or (emergency) restoration plan(s). Include:

1) Actions Undertaken: The following types of documentation supporting past actions should be included in the claim, as appropriate:

(i) Description of actions: provide sufficient narrative allowing for a rapid and complete review of claimed actions taken. Include dates that actions were executed. Claimants are encouraged to use form CG-5136A (available from the National Pollution Funds Center website, http://www.uscg.mil/hq/npfc/resource.pdf) or other status report formats to document actions taken during the execution of the NRDA. It is intended that these reports provide further detail and clarification of actions undertaken and referenced in the overall case narrative.

(ii) Demonstration that actions were authorized: Show that the work or purchase was authorized by an appropriate authority (e.g., contracts, travel orders, work/task orders, rental contracts and purchase orders). For task orders issued to contractors/consultants by claimant(s), include the funding amount, activities to be undertaken, lists of deliverables, schedule of deliverables, and all task order modifications.

(iii) Demonstration that actions were completed (e.g., provide reference to contemporaneous reports or field notes)

(iv) Demonstration that actions were received and accepted (e.g., receiving reports, delivery tickets with receipt signatures)

2) Personnel, Equipment and Other Miscellaneous Resources Used: Personnel (government and contractor), equipment and other miscellaneous resources used should be documented on a daily, weekly, bi-weekly or at a minimum a monthly basis. Claimants should provide the length of time all personnel and equipment were used; and an inventory of all materials used.

3) Personnel, Equipment and Other Miscellaneous Costs: Provide the cost of the work or purchase and show that these costs were properly billed to the Claimant, e.g., include Federal/State costs (i.e., standard rates, costs for the personnel, equipment, etc.), contractor's invoices, cash register receipts, travel reimbursement vouchers and employee timesheets or logs. Claimants are encouraged to document costs using the NPFC Pollution Incident Daily Resource Reporting System, i.e., the 5136 Series of forms. These forms and accompanying Instructions on their use can be found in the "Resource Documentation and Cost Documentation Technical Operating Procedures", available from the National Pollution Funds Center website, http://www.uscg.mil/hq/npfc/resource.pdf.

d) Future Costs: Provide supporting documentation of the cost's associated with anticipated actions identified in the assessment and/or (emergency) restoration plan(s). Include:

1) Work to be performed

2) Schedule of work

3) Detailed estimated level of resources and time (i.e., government/contractor personnel, equipment, contracts).

4) Standard rates, cost estimates for the personnel, equipment, etc. The basis for estimates should be stated (e.g., multiple cost bids, goods and services cost estimates, standard/published rates and costs, etc.). Where applicable, the results of multiple bid quotes should be provided with an explanation of why the lowest bid used in the claimed cost was not chosen. Rationale for ancillary costs (e.g., contingency costs) and their respective magnitude should be explained.

e) Documentation of Any Payments Received: Provide documentation of payments received from the Responsible Party(ies), or any other source, for NRD and any other damages or removal costs as a result of this oil pollution incident. A description of these payments should accompany this documentation.

f) Standard Form 1080/1081 (for Federal Claimants only).

E. Statute of Limitations

i. The Statute of Limitations (SOL) under OPA for the filing of NRD claims with the NPFC is the later of the following:

a) Three years from the date the injury and connection with the discharge was reasonably discoverable with due care;

b) Or three years from the date of completion of the natural resource damage assessment under the damage assessment regulations published by the National Oceanic and Atmospheric Administration (NOAA) at 15 CFR Part 990.

ii. Please provide documentation or otherwise demonstrate that this claim has been filed within the Statute of Limitations under OPA (33 U.S.C. 2712(h)(2), 33 C.F.R. 136.101). Include the date that the NRD assessment was completed if the assessment was prepared using the Damage Assessment Regulations at 15 CFR 990.

2. Adherence to Damage Assessment Regulations

A. Does the claimant (on behalf of self and other involved trustee(s)) certify that the NRDA was conducted[1]:

i. Using the Damage Assessment Regulations at 15 CFR Part 990 (promulgated by NOAA)?

ii. ***If yes, claimant may wish to consider completing Attachment III A: Natural Resource Damage Claims Using the Damage Assessment Regulations at 15 CFR 990. If Attachment III A is completed then claimants can go directly to paragraph 7, Opening an Account for Recovered Damages, and paragraph 8, Witnesses and Certifications, below.***

iii. Using the NRD regulations at 43 CFR Part 11 (promulgated by the U.S. Department of the Interior)? or

iv. Using other or additional NRD regulations or processes?

a) Describe the other regulation(s) or processes used.

[1] Use of the Damage Assessment Regulations at 15 CFR 990 is not required for submitting a claim to the NPFC for reimbursement from the OSLTF. However, completing an NRDA using 15 CFR 990 extends the SOL period for submitting a claim to three years from the date that the assessment is completed.

3. Trustee Information

A. Trustee Designation

i. Has the involved trustee(s) previously submitted proof to the NPFC of their authority to act as trustee(s) of natural resources on behalf of the government they represent?

ii. If no, or trustee designation has changed, please submit proper designation with this claim.

iii. If not applicable, please state why.

B. Trustee Coordination

i. Indicate whether the claimant is acting as lead administrative trustee on behalf of other trustees for purposes of this claim. If not applicable, please state why.

ii. Provide contact information for each additional trustee involved in the claim.

C. Double Recovery

i. To your knowledge, in addition to the trustees listed above, are there any other trustees who have a right to present a claim for the same natural resource injuries?

ii. If yes, provide contact information for these trustees.

D. Public Notice Requirements

i. Describe the nature of the public notification of the intent to conduct restoration planning, assessment and/or restoration plan development and implementation.

ii. Provide the date of the public hearing(s) on assessment or restoration plan development and implementation, or discuss the reason for not holding hearings.

iii. Describe public comment solicitation activities and how public comments were considered in developing and implementing the assessment and/or restoration plan.

4. Assessment Information

A. Fully explain the assessment method(s) used to assess injury(ies), including the scientific and technical basis(es) of the method(s). Include all evidence that the use of such method(s) is(are) valid and reliable for this incident.

B. Provide and describe the data used to support the assessment results and explain how it supports the determination as to the nature and scope of the injury(ies).

C. Explain any quality assurance and chain of custody procedure(s) used in the assessment.

D. Describe the nature and scope of the injured natural resource(s).

E. Demonstrate how the oil incident caused the injury(ies); establish the pathway from the incident to the natural resource; establish exposure; and demonstrate an adverse change in the resource(s) caused by that exposure.

F. Quantify the injury(ies) as to severity and spatial and temporal extent.

G. Demonstrate and quantify any resulting lost natural resource service(s), if applicable.

H. Estimate time for natural recovery.

I. Explain the method(s) used to determine any lost public use values or to scale the restoration actions to compensate for interim losses. Include supporting data.

J. Provide any additional comments that you believe will enhance the NPFC's understanding of this injury assessment.

5. Avoidance or Minimization of Injuries

A. Describe actions taken to avoid or minimize injuries.

6. Restoration Information

A. Please explain how the proposed restoration plan restores, rehabilitates, replaces, or acquires the equivalent of the injured natural resource(s) and service(s).

7. Opening an Account for Recovered Damages

A. Demonstrate that all sums recovered by the trustee(s), in satisfaction of a NRD claim, will be placed in a revolving trust fund(s), without further appropriation.

B. Describe how the trustee(s) will maintain appropriate accounting and reporting procedures to document expenditures from such accounts.

C. Describe how the trustee(s) will ensure that any sums not used to either reimburse trustees for past assessment and emergency restoration costs or to implement restoration will be returned to the NPFC for re-deposit into the Oil Spill Liability Trust Fund (OSLTF).

8. Points of Contact and Certifications

A. Points of Contact

i. Provide the full name, street and mailing address, and telephone number of the parties to the claim.

B. Certifications and Signature

I, the undersigned, certify the accuracy and integrity of this claim and certify that actions taken or proposed were or will be conducted in accordance with the Oil Pollution Act of 1990 and consistent with all applicable laws and regulations.

I, the undersigned, certify that, to the best of my knowledge and belief, no trustee(s) other than those identified in this claim has the right to present a claim for the same natural resource injuries and that payment of any subpart of this claim would not constitute double recovery for the same natural resource injuries.

I, the undersigned, agree that upon acceptance of any compensation from the Fund, I will cooperate fully with the United States in any claim or action by the United States to recover the compensation. The cooperation shall include, but is not limited to, immediately reimbursing to the Fund any compensation received from any other source for the same costs and/or damages and, providing any documentation, evidence, testimony, and other support, as may be necessary for the Fund to recover such compensation.

I, the undersigned, certify that, to the best of my knowledge and belief, the information contained in this claim represents all material facts and is true. I understand that misrepresentation of facts is subject to prosecution under Federal law (including but not limited to 18 U.S.C. 287 and 1001).

I, the undersigned, certify that the assessment was conducted in accordance with the Damage Assessment Regulations at 15 CFR 990 (promulgated by NOAA) – **No __ Yes __**

_____ _____
Claimant's Authorized Representative Date

Mail Claim and Address Questions to:

National Pollution Funds Center
Natural Resource Damage Claims Division
4200 Wilson Blvd., Suite 1000
Arlington, VA 22203-1804
Phone: (202) 493-6860
Fax: (202) 493-6939

ATTACHMENT III A: NATURAL RESOURCE DAMAGE CLAIMS USING THE DAMAGE ASSESSMENT REGULATIONS AT 15 CFR 990

To facilitate comprehensive and efficient adjudication of natural resource damage claims that follow the Damage Assessment Regulations for oil spills at 15 CFR 990 (promulgated by NOAA), the U.S. Coast Guard, National Pollution Funds Center (NPFC) suggests that the claimant use this supplemental guideline - *for claims based on NRDAs that use the Damage Assessment Regulations (15 CFR 990) process only*. Though it is not required by the NPFC that a claimant use this supplement, use of this supplement will facilitate efficient and comprehensive evaluation of claims, minimizing the need for repeated information requests of the claimant.

This supplement to the Natural Resource Damage (NRD) Claim Guidelines for all claimants should guide all claimants using the Damage Assessment Regulations (15 CFR 990). Use of the Damage Assessment Regulations obtains, for the claimant, the force and effect of a rebuttable presumption and also confers a favorable statute of limitations period for the claim. These issues in the supplement should be addressed in conjunction with the NRD Claim Guidelines to submit a valid claim to the NPFC.

General Guidelines for Completing Attachment III A: Natural Resource Damage Claims Using the Damage Assessment Regulations at 15 CFR 990:

- Please provide information requested in paragraphs 1, 2, 7, and 8 of the Natural Resource Damage (NRD) Claim Guidelines.
- Refer to the text of the Damage Assessment Regulations (15 CFR 990).
- If Attachment III A suggests the claimant provide information that has been previously provided by the claimant in the NRD Claim Guidelines, the claimant may reference that information and its location in the NRD claim. Ensure that at all times, the information provided is sufficient and clearly stated such that the NPFC can understand the response to the requirement of the regulation. In certain cases, one reference may pertain to multiple information requests in this document.

1. Damage Assessment Regulations

A. Does the NRDA follow the Damage Assessment Regulations at 15 CFR part 990 (promulgated by NOAA)?

i. If no, then it is not necessary to use this supplement in order to submit a claim to the NPFC. Completing the NRD Claim Guidelines (Section III) is sufficient.

ii. If yes, then Attachment III A to the NRD Claim Guidelines should be used in addition to paragraphs 1, 2, 7, and 8 of the NRD Claim Guidelines when submitting a claim to the NPFC.

iii. *Also, please provide the Final Restoration Plan and the index to the Administrative Record sufficient to document the required Determinations listed below.* Clarification of the types of information needed for submission and evaluation of these determinations can be found in

Attachment III C to these funding guidelines. For further information each determination below is followed parenthetically by a cross reference to the applicable section number in the 15 CFR 990 regulations and the pertaining section of Attachment III C.

a) Jurisdiction to pursue restoration under OPA was determined (990.41; Attachment III C1);

b) Conditions for collection of data during preassessment phase were appropriate (§ 990.43);

c) Conditions for proceeding with assessment beyond the preassessment phase were determined (§ 990.42; Attachment III C2);

d) Findings and conditions for conducting emergency restoration were determined (§ 990.26; Attachment III B);

e) Notice of Intent to Conduct Restoration Planning was produced (§ 990.44; Attachment III C9);

f) Administrative record of the assessment was established (§ 990.45; Attachment III C10);

g) Lead Administrative Trustee was designated for jointly conducted assessment (§ 990.14(a); Attachment III C3);

h) Coordination efforts with co-trustees, response agencies, and public are documented (§ 990.14); Responsible party was invited to participate in the assessment (§ 990.14(c); Attachment III C3-6);

i) **For spills occurring between August 1990 and January 1996**, election to complete pre-rule assessments under either CERCLA or OPA rule was made (§ 990.20);

j) Injury was determined, along with exposure and pathway where required (§ 990.51); Appropriate injuries were selected to include in assessment and restoration planning (§ 990.51(f)); Injuries resulted from the incident (§ 990.51(a); Attachment III C8);

k) Injuries were quantified (§ 990.52(a); Attachment III C8);

l) Analysis of natural recovery was conducted (§ 990.52(c); Attachment III C11);

m) Range of feasible restoration alternatives was identified, including: (a) primary restoration, includes natural recovery alternative; (b) compensatory restoration alternatives considerations; (c) explanation of scaling of restoration alternatives (§ 990.53); use of regional restoration or other existing project plan as one of alternatives considered (§ 990.56; Attachment III C11);

n) Restoration alternatives were evaluated and preferred alternative(s) was selected (§ 990.54; Attachment III C12);

o) Draft Restoration Plan and Final Restoration Plan were developed (§ 990.55; Attachment III C12);

p) Assessment methodologies met required standards (§ 990.27; Attachment III C7);

q) Assessment costs were certified as reasonable (§ 990.30; Attachment III C7); and

r) Demand was presented to responsible party and responsible party's response is documented (§ 990.62; Attachment III C15, 17).

Mail Claim and Address Questions to:

National Pollution Funds Center
Natural Resource Damage Claims Division
4200 Wilson Blvd., Suite 1000
Arlington, VA 22203-1804
Phone: (202) 493-6860
Fax: (202) 493-6939

ATTACHMENT III B
EMERGENCY RESTORATION CLAIMS

To facilitate comprehensive and efficient adjudication of natural resource damage claims submitted for emergency restoration claims, the U.S. Coast Guard, National Pollution Funds Center (NPFC) suggests that the claimant use this supplemental guideline. Though it is not required by the NPFC that a claimant use this supplement, use of the Emergency Restoration Claims Supplement will facilitate efficient and comprehensive evaluation of claims, minimizing the need for repeated information requests of the claimant.

Emergency restoration of natural resources is not NRD Initiation. Trustees should bring potential oil impact situations to the FOSC's immediate attention, so a determination may be made as to whether such action is an appropriate removal activity or needs to be submitted as an emergency restoration claim.

General Guidelines for Completing Natural Resource Damage Claim Guidelines:

- Provide information requested in paragraphs 1, 3, 5, 7, and 8 of the Natural Resource Damage (NRD) Claim Guidelines.
- Refer to the text of OPA (33 U.S.C. 2701 et seq.), the NPFC Interim Claims Regulations (33CFR 136), and/or the Damage Assessment Regulations at 15 CFR 990 (promulgated by NOAA)
- Emergency restoration claims may be submitted prior to emergency restoration for up-front funding.
- If Attachment III B suggests the claimant provide information that has been previously provided by the claimant in the NRD Claim Guidelines, the claimant may reference that information and its location in the NRD claim. Ensure that at all times, the information provided is sufficient and clearly stated such that the NPFC can understand the response to the requirement of the regulation.

Emergency Restoration

1. Did the trustee(s) undertake any emergency restoration actions before completing the natural resource damage assessment?

   A. If yes, please provide information to verify the following:

   i. That the action(s) was(were) needed to minimize continuing injury(ies) or prevent additional injury(ies).

   ii. That the action(s) was(were) feasible and likely to minimize continuing injury(ies) or prevent additional injury(ies).

   iii. That the costs of each emergency action are/were not unreasonable.

2. If response actions were underway at the time of the emergency restoration action, did the trustee's(s') Regional Response Team (RRT) member (or designee) coordinate with the On-Scene Coordinator (OSC) before undertaking any emergency restoration actions?

   A. If yes, please provide the following information:

      i. Describe coordination efforts (e.g., dates of coordination, outcome).

      ii. Provide the name, affiliation, address, telephone and fax numbers, and e-mail of the RRT member (or designee) that provided coordination between the trustee(s) and the OSC.

      iii. Provide the name, affiliation, address, telephone and fax numbers, and email of the OSC.

   B. If no, please explain why.

3. Did the trustee(s) provide notice to the identified responsible party(ies) of any emergency restoration action(s)?

   A. If yes, please provide a description of the notice or append a copy of the notice. Include the date sent and the contact for each responsible party.

   B. If no, please explain why.

4. Did the trustee(s) invite the participation of the responsible party(ies) in the conduct of the emergency restoration action(s)?

   A. If yes, please provide a description of the invitation or append a copy of the invitation. Include the nature by which the notice was provided and the date(s).

   B. If no, please explain why.

5. Did the trustee(s) provide notice to the public of the planned emergency restoration action(s)?

   A. If yes, please provide a description of the notice to the public or append a copy. Provide the date of the notice.

   B. If no, please explain why.

6. Did the trustee(s) provide public notice of the justification for, nature and extent of, and results of the emergency restoration action(s) within a reasonable time frame after completion of such action(s)?

   A. If yes, please provide a description of the notice to the public or append a copy. Provide the date of the notice.

B. If no, please explain why.

7. Please attach a copy of the emergency restoration plan and/or any post emergency restoration reports. If there is no emergency restoration plan, please explain why one was not produced.

8. Please attach an itemized estimate of funds needed to carry out the emergency restoration.

Mail Claim and Address Questions to:

National Pollution Funds Center
Natural Resource Damage Claims Division
4200 Wilson Blvd., Suite 1000
Arlington, VA 22203-1804
Phone: (202) 493-6860
Fax: (202) 493-6939

ATTACHMENT III C: INFORMATION PERTINENT TO SUBMITTING AND ADJUDICATING NATURAL RESOURCE DAMAGE CLAIMS

This attachment provides a listing of information requests that will facilitate the submission and adjudication of natural resource damage claims that have followed the damage assessment regulations at 15 CFR 990. Though the information needs listed below pertain primarily to 15 CFR 990-based claims, many of the questions listed below also pertain to general NRD claims (i.e., as described in Section III of these funding guidelines). This attachment is primarily intended to be used to as an aid to both claimants and NPFC Claims Managers in ensuring that the determinations listed in Attachment IIIA have been met.

1. Determination of Jurisdiction

A. Describe how the trustee(s) determined that there was jurisdiction to pursue restoration planning under OPA by providing to the following:

i. Natural Resources under the trusteeship of the trustee(s) may have been, or may be, injured as a result of the incident.

2. Determination to Conduct Restoration Planning

A. Describe how the trustee(s) determined to conduct restoration planning by providing the following:

i. Describe how the trustee(s) determined whether injuries have resulted, or are likely to result, from the incident.

ii. Describe how the trustee(s) determined that response actions have not adequately addressed, or are not expected to address, the injuries resulting from the incident.

iii. Describe how the trustee(s) determined that feasible primary and/or compensatory restoration actions exist to address the potential injuries.

3. Trustee Coordination

A. Does the incident affect the interests of multiple trustees?

B. If yes, please provide the following information:

i. Did the trustees act jointly when conducting the assessment?

ii. List the trustees involved in the joint assessment. For each trustee, provide the name, affiliation, address, telephone, fax, and email of the point of contact. Indicate which trustee(s), if any, is(are) acting independently.

iii. Describe how the trustees are acting jointly to achieve full restoration without double recovery of damages (e.g., formation of a Trustee Council, cooperation on assessment studies, etc.).

iv. If this claim is based on a joint assessment, indicate which trustee(s) from the list provided in 3(b)(ii) is acting as the Lead Administrative Trustee (LAT).

v. If this claim is based on a joint assessment and a LAT has not been designated, please explain why.

4. Coordination with Response Agencies

A. Were trustee(s)' activities that were conducted concurrently with response operations coordinated with the response agencies?

i. If yes, please describe the nature of the coordination efforts (e.g., interactions with the Unified Command, On-Scene Coordinator briefings, etc.).

ii. If no, please provide an explanation as to why trustee(s)' activities were not coordinated with the response agencies.

5. Coordination with Responsible Party(ies)

A. Did the trustee(s) invite the responsible party(ies) to participate in the NRDA?

i. If yes, please provide the following information:

a) Describe the nature of the invitation (e.g., whether it was written or verbal, the date it was submitted to the responsible party(ies)) and attach the written invitation, if applicable.

b) Identify whether the date of the invitation predates the delivery of the Notice of Intent (NOI) to Conduct Restoration Planning (include both dates in your response).

c) Did the trustee(s) receive a written response from the responsible party(ies) accepting or declining the invitation?

1) If yes, please attach the response.

ii. If no, please explain why.

6. Coordination with the Public

A. Did the trustee(s) provide opportunities for public involvement following the trustee(s)' decision to develop restoration plans (or issuance of any notices to that effect)?

i. If yes, please provide the following information:

a) Please provide the date that the trustee(s) issued a Notice of Intent to Conduct Restoration Planning.

b) Describe the nature of the public involvement opportunities (e.g., method and duration of advertisements for public input, hearings, period for comment on written notice).

ii. If no, please explain why.

7. Standards for Assessment Procedures

A. Describe how each assessment procedure used was capable of providing assessment information of use in determining the type and scale of restoration appropriate for each injury addressed in the claim.

B. If an additional cost was incurred by utilizing a more complex assessment procedure(s), describe how the additional cost of the more complex assessment procedure(s) was(were) reasonably related to the expected increase in the quantity and/or quality of relevant information provided by the more complex procedure(s). Do so for all relevant procedures.

C. Describe how each assessment procedure used was reliable and valid for the particular incident.

D. Describe how the trustee(s) considered the following when selecting each assessment procedure:

i. The range of procedures available;

ii. The nature, severity, and spatial and temporal extent of the injury;

iii. The potential restoration actions for the injury;

iv. The relevance and adequacy of information generated by the procedures to meet information requirements of restoration planning; and

v. The most cost-effective procedure was used when a range of assessment procedures, which provided the same type and quality of information, was available.

8. Injury Determination and Quantification

A. Describe how the trustee(s) determined that an injury(ies), as defined in section 15 CFR 990.30, has occurred and how the nature of the injury(ies) was(were) identified.

B. Where applicable, describe how the trustee(s) determined that natural resources were exposed, either directly or indirectly, to the discharged oil from the incident. Include an estimate of the amount or concentration and spatial and temporal extent of the exposure.

C. Describe how the trustee(s) determined the pathway(s) linking the incident to the injury(ies).

D. Provide the information used to quantify the injury(ies) resulting from the incident. If this material is provided elsewhere within the claim, state where this information can be found.

E. For claimed injuries caused by response actions, and/or those caused by the substantial threat of discharge, demonstrate how the trustees determined that natural resources were injured.

F. Provide the information used to quantify or qualify the time required for natural recovery while factoring in any response actions.

9. Notice of Intent (NOI) to Conduct Restoration Planning

A. Attach a copy of the NOI to Conduct Restoration Planning.

B. Describe how the NOI addresses:

i. The trustee(s)' determination of jurisdiction to pursue restoration under OPA.

ii. The trustee(s)' determination to conduct restoration planning.

C. Describe how the NOI was made publicly available (include any date(s) of advertisement and method(s) of advertisement).

D. Describe how the trustee(s) delivered a copy of the NOI to the responsible party(ies). Include the date of receipt of the NOI.

10. Administrative Record

A. Provide documentation that the trustee(s) opened a publicly available Administrative Record to document the basis for their decisions pertaining to restoration.

B. Provide documentation that the Administrative Record was opened concurrently with the publication of the NOI.

C. Describe how and where the public can view the Administrative Record. If there is an Administrative Record file index, please provide a copy (Provide the name, address, telephone and fax numbers, and email of the Administrative Record point of contact).

D. Describe how the Federal trustee(s) will maintain the Administrative Record in a manner consistent with the Administrative Procedures Act (5 U.S.C. 551-59, 701-06).

11. Developing Restoration Alternatives

A. Describe the restoration objective(s) that was (were) established by the trustee(s).

B. Demonstrate that a reasonable range of restoration alternatives were considered before selecting the preferred alternative for each resource or service claimed to be injured.

C. Demonstrate that each of the following considerations was addressed while developing each restoration alternative:

i. Primary restoration was considered for each restoration alternative;

ii. Natural recovery was considered for each restoration alternative (natural recovery is a restoration alternative in which no human intervention is undertaken to directly restore

injured natural resources and services to baseline, i.e., the state of the natural resource(s) had the incident not occurred); and

iii. Demonstrate that each restoration alternative considers compensatory restoration actions that are designed to compensate for the interim loss of natural resources and services pending recovery.

a) Describe how the trustee(s) considered compensatory restoration actions that provide services of the same type, quality and of comparable value as those injured.

b) If, in the judgment of the trustee(s), it is not possible to identify a reasonable range of alternatives based on compensatory actions that provide services of the same type and quality and comparable value as those injured, describe how the trustee(s) identified other actions that provide natural resources and services of comparable type, quality and value as those provided by the injured natural resources.

D. Demonstrate how the trustee(s) determined the scale for each of the identified types of restoration actions that will make the environment and public whole.

i. Describe how the trustee(s) considered the use of a resource-to-resource or service-to-service scaling approach.

ii. If the trustee(s) determined that neither resource-to-resource nor service-to-service scaling is appropriate, describe how the trustee(s) considered the valuation scaling approach(es).

E. Demonstrate how the trustee(s) evaluated the uncertainties associated with the projected consequences of the restoration action.

F. Demonstrate how the trustee(s) discounted all service quantities and/or values to the date the demand is presented to the responsible party(ies).

12. Developing Restoration Plans

A. Attach copies of the Draft and Final Restoration Plans.

i. Describe how the preferred restoration alternative(s) was (were) selected.

ii. Describe the monitoring component(s) to the Restoration Plan.

B. How were the costs of restoration implementation and monitoring that are identified in the restoration plan determined or estimated.

C. Describe the nature of the public review for both the Draft and Final Restoration Plans.

i. Demonstrate that the time period for public review on the Draft Restoration Plan/Environmental Assessment was consistent with the federal trustee agency's National Environmental Policy Act requirements, and no less than 30 calendar days.

ii. If an EIS was warranted, demonstrate that the Draft Restoration Plan/Environmental Impact Statement (EIS) was made available for public review for a minimum of 45 calendar days.

iii. If an EIS was warranted, demonstrate that the Final Restoration Plan/EIS was made available for public review for a minimum of 30 calendar days.

iv. Demonstrate how the Final Restoration Plan considered all public comments on the Draft Restoration Plan.

13. Closing the Administrative Record for Restoration Planning

A. Provide the date, after the trustee(s) completed restoration planning, that the Administrative Record was closed.

i. If the Administrative Record was not closed, explain why not.

14. Restoration Implementation

A. Was an Administrative Record opened for implementation of restoration?

i. If yes, provide the date on which the Administrative Record was opened.

ii. If yes, describe how and where the public can view the Administrative Record. If there is an Administrative Record file index, please provide a copy (Provide the name, address, telephone and fax numbers, and email of the Administrative Record point of contact).

15. Presenting a Demand

A. Demonstrate that the trustees presented a written demand to the responsible party(ies). Include the date of receipt of the demand by the responsible party(ies).

B. Provide a copy of the written demand and describe how it invites the responsible party(ies) to participate.

16. Discounting and Compounding

A. Demonstrate that the trustee(s) discounted all estimated future costs of implementing a Final Restoration Plan back to the date the demand was presented.

i. Provide the discount rate used and the basis for the rate used.

B. Demonstrate that the trustee(s) compounded all calculated present value assessment and emergency restoration costs already incurred forward to the date the demand was presented.

i. Provide the rate used and the basis for the rate used.

17. Unsatisfied Demands

A. Did the responsible party(ies) respond to the demand within 90 calendar days from their receipt of the demand? If yes, provide their response. If no, have the trustee(s) filed a judicial action for damages or do they plan to file such an action?

B. If judicial action has been filed or if a claim has been filed, demonstrate that such an action or claim has been filed within three years after the Final Restoration Plan or Notice of Intent to Use a Regional Restoration Plan or Existing Restoration Project is made publicly available.

Natural Resource Damage (NRD) Claims and Initiate Requests
Quarterly Progress and Cost Documentation Reporting Forms

Who is to use these forms?

These Quarterly Progress and Cost Documentation Reporting Forms may be used by **Natural Resource Trustees** to comply with National Pollution Funds Center's (NPFC) reporting requirements for natural resource damage claims and Initiates funded by the Oil Spill Liability Trust Fund (OSLTF). Although using these forms isn't required, all claims or progress reporting must contain the information listed on these forms tracked on a quarterly basis by project for both progress and cost documentation purposes.

These forms cover all OSLTF funding mechanisms for NRD, which includes initiate obligations and claims submitted to the NPFC for reimbursement or for upfront funding for assessment and/or restoration.

Initiate Requests*: An initiate request is an obligation to fund Trustee pre-assessment activity costs based on an Inter-Agency Agreement (IAG) between the NPFC and the Trustee(s).*

Claims for Reimbursement of Past Costs*: These claims come to the NPFC for reimbursement of uncompensated NRD-related incurred costs. The NPFC will review the package of Progress and Cost Documentation reports as part of the overall claim adjudication process. Trustees approaching the NPFC for reimbursement of costs for damages associated with spills occurring after the date of publication of these forms are expected to utilize these forms during implementation of NRD activities. Trustees should use these forms to keep a contemporaneous record of activities and related costs so that the NPFC can establish compensability in a quick and efficient manner when considering the claim for payment.*

Claims Requesting Upfront Funding for Assessment and/or Restoration*: These claims request funding in advance of work to implement NRD Assessment and/or Restoration Plans. Such claims may also include a request for reimbursement of past costs associated with the plan.*

How are these forms to be completed and submitted?

Costs are to be tracked on a quarterly basis. This is true even for claims submitted for reimbursement. Although trustees need only submit a final reporting package with their claim for reimbursement, progress and costs should be tracked on a quarterly basis and all quarterly packages should be submitted with the final report. For claims receiving upfront funding, Trustees should complete and submit progress and cost documentation reports quarterly.

Getting Started

1. For claims requesting reimbursement, the Lead Administrative Trustee (LAT) should start by dividing the claim into a number of projects and assigning an integer number (i.e., 1, 2, 3,) to each project because the forms are designed to track costs by projects. For claims funded upfront, the NPFC will have already done this and entered the information into the NRD Claims Quarterly Progress and Cost Documentation Reporting Forms.
2. The LAT should then forward the ***NRD Claims Quarterly Cost Documentation Reporting Forms*** (the Excel spreadsheet) and the list of projects and project numbers to each trustee involved in the NRD action to track costs by quarter.

At the End of Every Quarter

1. Each trustee agency involved in the NRD action should fill out and submit to the LAT an ***NRD Claims Quarterly Cost Documentation Report*** for which costs were incurred. Trustees should include with their reports all required supporting documentation (e.g., vouchers) as described on the form. The cost documentation reporting form is an Excel file that has been designed to simplify the reporting process.
2. The LAT collects the Quarterly Cost Documentation Reports from each trustee agency, and uses that data to complete the ***NRD Claims Quarterly Progress Report***, which summarizes the expenses and progress on each project during the quarter. The LAT then submits the document to the NPFC with all the Quarterly Cost Documentation Reports and their supporting documentation no later than 30 days after end of each quarter.

More specific instructions on completing these reports are below. If questions remain after reading these instructions, please contact the NPFC NRD Claims Division at 202-493-6860.

Instructions for the NRD Claims Quarterly *Cost Documentation* Reporting Form

The NRD Claims Quarterly Cost Documentation Reporting Form is an Excel file that contains the initial summary page plus separate worksheets for labor, travel, contracts, government expenditures-expendables, and government equipment costs. The file is available at www.uscg.mil/npfc/NRD/nrd_progress_report.htm.

For all sheets the following instructions apply:

1) All costs should be reported per project.

2) Assign each project/study under a claim a separate number for the purposes of these reports. Each number must be a consecutive integer (i.e., 1, 2, 3).

   - That project number should refer to a specific project under the claim as described in the NRD Claims Progress Report, such as *Bird Injury Study*, *Wetland Mitigation Project*, *Case Management*, *Trustee Council*, etc.
   - **Claims Funded in Advance and Initiates**. When the NPFC funds a claim in advance of implementation or obligates funds for an Initiate, it sets up the NRD Claims Progress and Cost Documentation Reporting Forms for the LAT; trustees should follow the same project numbering as on this form.
   - **For Cost Tracking in Advance of Claim Submittal**. Before requesting quarterly cost documentation reports from co-trustees, the LAT should first assign numbers the projects and activities so they are used consistently by all trustees. NPFC is available to assist trustees in developing a list of projects/activities that will be included in their claim for reporting purposes.

3) Enter the project number in the far right column for each reported cost.

If used properly, each of the worksheets will tally the costs per activity at the bottom of the page per category of costs (i.e., the Labor sheet, the Travel sheet, etc.) The summary page (sheet 1) will import those totals automatically.

Below are instructions for filling out the cost documentation form for those entries that may warrant further explanation.

Throughout the document it is important to note the following:

1) **Inserting More Rows**: Always insert from within the table boundaries of a section. Then "**copy and paste**" data from existing rows in that section. Overtype the newly formed data lines with new data (which will eliminate the need to edit formulas).

2) **Protecting Sheets**: All sheets in the workbook are currently protected, and certain data fields in the workbook are locked so that fields, such as formulas and titles, are not unintentionally over-written. The document is not password protected, however, so that any user can modify this status. To unprotect a sheet (each must be done individually), use "Tools" from the drop down menu, select "Protection," then "Unprotect Sheet." To reinstate protection for a given sheet, the process is the same except select "Protect Sheet". Normal operation of the workbook should not require modification of the locked cells within these sheets unless formulas must be modified.

Summary Report

Trustee Agency Contact. The contact person should be someone that the NPFC can call to get further information regarding the report or on the status of the claim. That individual could be the person in charge of the overall claim or their representative.

Certification by Designated Natural Resource Trustee or their Designate (the Designated Official). This official should be the administrative official taking legal and financial responsibility for this claim, that is, the highest ranking official in the agency that must sign to submit claims to the NPFC for payment.

Date. This should be the date that the Designated Official reviewed and signed this form.

Labor Cost

This labor reporting form is intended to replace the need for each agency to submit timesheets and USCG form 1051. This streamlined process should minimize the time and documentation necessary to report to the NPFC for each claim. It does require, however, that each agency align their process to properly document each government employee's time on a per project basis for each day, as has always been required for NRD claims, and that the senior level designating official for that agency sign off on these reports for labor hours. The NPFC no longer requires,

and in fact no longer will accept, time sheets for employees that do not track their hours per project and would prefer not to have timesheets submitted as evidence of labor cost expenditures. Anything less than the information included on this form will not allow for an efficient, effective review of costs and will no longer be accepted as adequate cost documentation reporting.

Description of Employee Function/Title. This table should identify each person working on projects/activities under this claim for which hours have been attributed for the reporting period. Trustees should also include a description of the person's function in the process. For example – John Doe, wildlife biologist or Bob Jones, project manager.

Labor Report Table: This table should have entries that represent hours worked by each person on a daily basis per project. That is, a separate entry should be made for each individual for each day that they worked on a project. For example, if John Doe worked on 12/12/06 for three hours on project #1 and two hours on project #2, then two separate entries should be made to explain labor hours for that person for that day. This is necessary in order to accurately attribute the correct costs per project. The table will then automatically sum the hours per project for all individuals at the end of each sheet and bring those totals forward to the summary page.

Note on Indirect Rate Calculations: As you will see in the cells for indirect rates, a basic indirect rate calculator has been installed. It is not expected that agencies will necessarily be able to utilize these formulas in order to calculate their own indirect rates to accurately attribute labor costs per person per hour. Instead, it is a place holder for such calculations to be installed by each agency for their own specific use.

***Attach supporting documentation to explain indirect rate(s). This can be done once for the initial reporting period and not again until the rate(s) change.

Travel Cost

Agencies must submit signed travel vouchers as evidence of actual travel costs incurred. Authorization forms for travel and receipts do not need to be submitted to the NPFC. All travel must be signed off by the designated official to verify that all cost information is accurate and legitimate under the claim.

Instructions for NRD Claims Quarterly *Progress* Report

This report is a Microsoft Word document that utilizes macros to automate many calculations. Each quarter, the LAT creates a new report using input from the NRD Claims Quarterly *Cost Documentation* Report from each co-trustee. The report can be used for Initiates and claims for reimbursement or upfront funding, but it will function slightly differently. The file is available at www.uscg.mil/npfc/NRD/nrd_progress_report.htm.

Claims for Reimbursement of Past Costs. Since claimants have not received a determination amount from the NPFC, an allocation amount does not need to be entered for each project. However, if you wish to establish and track against your own internal budget, you may use the allocation fields for this purpose.

- If you leave the allocation fields blank, the fields that track remaining funding and amounts returned to the OSLTF do not calculate.
- You may change your mind at any time; simply enter an amount in the allocation fields and click the Calculate Fields button to track against a budget, or enter $0 and click the button again to remove budget tracking.
- The Total Costs for the final quarter represents the final total and the amount of the claim to the NPFC.

Initiates and Claims Receiving Upfront Funding for Assessment and/or Restoration. The NPFC will tailor the report templates to include all projects, studies, or activities included in the Initiate or the funded plan after settlement of the claim and send the forms electronically to the LAT for dissemination to any co-trustees. The LAT then completes the quarterly Progress Report using information from co-Trustees' cost documentation reports and other progress information. All cost documentation reports and the single progress report are then sent to the NPFC.

Automatic Calculations & Automated Functions

Enable Macros. The form uses macros for many of its functions and calculations. In order for them to work properly, you must choose to **Enable Macros** if prompted. If you find that the macros are not working:

1) Close the document without saving it.
2) Select **Tools > Macro > Security**, and select the ***Medium*** security level.
   (If you don't have permission to change your security level, speak to your system administrator.)
3) Re-open the document, this time clicking **Enable Macros** when prompted.
   Warning: If you're unexpectedly prompted to Enable Macros on a document, don't do it—it could be a virus!

Automatic Updates. To decrease the amount of mathematical errors as well as the number of fields users have to complete manually, we have tried to automatically calculate amounts whenever possible. You will not be able to update these fields. The only fields you need to update are those marked in blue with gray shading. If you use the **Tab** key on your keyboard, you will move to the next updateable field. Most calculations are not performed automatically; you must use the buttons below to update the fields. (If you don't see the buttons below, select **View > Toolbars > NRD Claims Progress Report**.)

Calculate Fields
Calculate Fields

Use this button any time you wish to total costs, see how much of your funding you have left, or update any other fields. You can recalculate at any time and as often as you want; note that it will calculate all projects and the summary page each time. See below for information on specific fields.

Add a New Project
Add New Project

Use this button to add a new, blank project to the end of the report. Only trustees tracking a past cost claim need to use this button; NPFC will have already entered all projects for upfront funding requests. The button will assign the new project the next consecutive project number; note that all projects must be consecutively numbered beginning with "1"; you cannot rearrange the order once you add them to the report.

Prepare Report for the Next Quarter
Start New Quarter

Once you have entered the data for the first quarter, you can use this button to start your report for the next quarter. Clicking this button:

1) Saves the file for the old quarter.
2) Updates all Quarters to the next number.
3) Adds This Quarter amounts to Previous Quarter amounts.
4) Resets This Quarter amounts to $0 (so you can then update as needed).
5) Recalculates all fields.
6) Saves the new report.

Summary Page (Page 1)

Below is an explanation of each field that appears on the first page of the report.

Claim #/Incident Name. Enter the FPN or claim number, if known. Otherwise, enter a succinct name (generally the vessel or facility that is the source of the spill). NPFC will complete this field for Upfront Funding claims.

Date Prepared. Enter the date you completed this quarter's report. The field recognizes most common date formats.

Reporting Period. The first reporting period begins on the date of settlement and extends for three months. Whatever you enter here appears in the Reporting Period field for each of the projects.

Quarter. The first reporting quarter, Quarter 1, corresponds to the date of the first reporting period. The number you enter here appears in the Quarter field for each of the projects. Start New Quarter automatically updates this number.

NRD Claims Cost Summary Box. These amounts are automatically updated from the amounts entered for each project. Click Calculate Fields to update.

- **Total Allocation**. Totals all **Project Allocation** fields from each project. (Can be $0 for claims that have not received upfront funding.)
- **Total Cost**. Totals all **Previous Quarter and This Quarter costs** from each project.
- **Previous Quarters**. Totals all **Previous Quarters** fields from each project.
- **This Quarter**. Totals all **This Quarter** fields from each project.
- **Total Funding Remaining**. Totals all **Remaining Project Funding** fields from each project. (Will be $0 for claims that don not track against an allocated amount.)
- **Total Returned to OSLTF** Totals the **Returned to OSLTF** fields from each project. (If claimants are tracking against their own budget, then this shows the amount by which completed projects have come in under budget.)

Executive Summary. Compose a brief narrative describing the overall progress towards completion of the plan. Any milestones reached or missed should be noted, as well as major obstacles encountered and how they were or will be resolved. Include an updated timeline, if necessary.

Projects Completed. This line lists the number of all projects whose **Project Completed** box is checked. Click Calculate Fields to update.

Certification. Once the report is completed, the LAT must print and sign the document to certify that it is correct to the best of his/her knowledge.

Project Pages

When developing the first quarterly report, create a new page for each project by clicking Add New Project for each project. Below is an explanation of each field that appears on the project pages of the report. (The NPFC will have created all projects for Upfront Funding Claims.)

Study/Project #. The number is automatically created when you use Add New Project to create the new project. Make sure you and all other trustees are using the same number to refer to the same project.

Quarter and Reporting Period. These fields are automatically updated from the **Reporting Period** and **Quarter** fields on the first page; click Calculate Fields to update.

Basic Information Box. Enter the **Name** and **Objective** of each project. These two fields should not change each quarter.

Costs This Quarter Box. Enter the total costs for each category from the **Summary Page** of the NRD Claims Quarterly Cost Documentation Report. The **Total Cost** field will total the amounts when you click Calculate Fields.

Costs This Quarter. Totals the amounts in the **Costs This Quarter** box. Click Calculate Fields to update.

Project Allocation.

- For claims funded upfront and Initiates, the NPFC enters the determination or obligation amount for the project in this box before sending the report template to the LAT. If you later receive a contingency amount, enter the total (original funding plus contingency) in this field.
- If you have not received upfront funding, you can leave the field blank, or you may enter an amount to represent your own internal budget.

Total Project Cost. Totals the **Previous Quarter** and **This Quarter** cost fields. Click Calculate Fields to update.

Previous Quarters. Enter all costs from past quarters.

This Quarter. Same as the **Total Cost** field in the **Cost This Quarter** box. Click Calculate Fields to update.

Remaining Funding. Subtracts the **Total Project Cost** from the **Project Allocation** amount. If the result is less than $0, a warning appears below, and the field becomes ***$0***. Similarly, if the project is completed, any remaining funding appears in the **Returned to OSLTF** field, and the **Remaining Funding** becomes ***$0***. Click Calculate Fields to update.

Study Project Progress. Describe the overall progress towards completion of the plan. Any milestones reached or missed should be noted, as well as major obstacles encountered and how they were or will be resolved. Include an updated timeline, if necessary. At project completion, please include any pictures available for documentation.

Project Completed. Click on this box once the entire project is completed. Doing so automatically updates the Quarter Completed and the Returned to OSLTF fields when you click Calculate Fields. If you erroneously mark the project complete, uncheck the box and click Calculate Fields to recalculate.

Quarter Completed. This field is automatically completed with the current quarter when **Project Completed** is checked. However, you can also change the quarter manually, if needed; you may only enter integers.

Returned to OSLTF. Shows the unused amount of the **Project Allocation**, if any, once **Project Completed** is checked. Click Calculate Fields to recalculate.

U.S. Code

TITLE 33 - NAVIGATION AND NAVIGABLE WATERS
CHAPTER 40 - OIL POLLUTION
SUBCHAPTER I - OIL POLLUTION LIABILITY AND COMPENSATION
(selected provisions)

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2702. Elements of liability

(a) In general. Notwithstanding any other provision or rule of law, and subject to the provisions of this Act, each responsible party for a vessel or a facility from which oil is discharged, or which poses the substantial threat of a discharge of oil, into or upon the navigable waters or adjoining shorelines or the exclusive economic zone is liable for the removal costs and damages specified in subsection (b) of this section that result from such incident.

(b) Covered removal costs and damages

(1) Removal costs. The removal costs referred to in subsection (a) of this section are -

(A) all removal costs incurred by the United States, a State, or an Indian tribe under subsection (c), (d), (e), or (l) of section 1321 of this title, under the Intervention on the High Seas Act (33 U.S.C. 1471 et seq.), or under State law; and

(B) any removal costs incurred by any person for acts taken by the person which are consistent with the National Contingency Plan.

(2) Damages. The damages referred to in subsection (a) of this section are the following:

(A) Natural resources. Damages for injury to, destruction of, loss of, or loss of use of, natural resources, including the reasonable costs of assessing the damage, which shall be recoverable by a United States Trustee, a State Trustee, an Indian tribe Trustee, or a foreign Trustee.

(B) Real or personal property. Damages for injury to, or economic losses resulting from destruction of, real or personal property, which shall be recoverable by a claimant who owns or leases that property.

(C) Subsistence use. Damages for loss of subsistence use of natural resources, which shall be recoverable by any claimant who so uses natural resources which have been injured, destroyed, or lost, without regard to the ownership or management of the resources.

(D) Revenues. Damages equal to the net loss of taxes, royalties, rents, fees, or net profit shares due to the injury, destruction, or loss of real property, personal property, or natural resources, which shall be recoverable by the Government of the United States, a State, or a political subdivision thereof.

(E) Profits and earning capacity. Damages equal to the loss of profits or impairment of earning capacity due to the injury, destruction, or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant.

(F) Public services. Damages for net costs of providing increased or additional public services during or after removal activities, including protection from fire, safety, or health hazards, caused by a discharge of oil, which shall be recoverable by a State, or a political subdivision of a State.

(c) Excluded discharges. This subchapter does not apply to any discharge -

(1) permitted by a permit issued under Federal, State, or local law;

(2) from a public vessel; or

(3) from an onshore facility which is subject to the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1651 et seq.).

(d) Liability of third parties

(1) In general

(A) Third party treated as responsible party. Except as provided in subparagraph (B), in any case in which a responsible party establishes that a discharge or threat of a discharge and the resulting removal costs and damages were caused solely by an act or omission of one or more third parties described in section 2703(a)(3) of this title (or solely by such an act or omission in combination with an act of God or an act of war), the third party or parties shall be treated as the responsible party or parties for purposes of determining liability under this subchapter.

(B) Subrogation of responsible party. If the responsible party alleges that the discharge or threat of a discharge was caused solely by an act or omission of a third party, the responsible party -

(i) in accordance with section 2713 of this title, shall pay removal costs and damages to any claimant; and

(ii) shall be entitled by subrogation to all rights of the United States Government and the claimant to recover removal costs or damages from the third party or the Fund paid under this subsection.

(2) Limitation applied

(A) Owner or operator of vessel or facility. If the act or omission of a third party that causes an incident occurs in connection with a vessel or facility owned or operated by the third party, the liability of the third party shall be subject to the limits provided in section 2704 of this title as applied with respect to the vessel or facility.

(B) Other cases. In any other case, the liability of a third party or parties shall not exceed the limitation which would have been applicable to the responsible party of the vessel or facility from which the discharge actually occurred if the responsible party were liable.

2706. Natural resources

(a) Liability. In the case of natural resource damages under section 2702(b)(2)(A) of this title, liability shall be -

(1) to the United States Government for natural resources belonging to, managed by, controlled by, or appertaining to the United States;

(2) to any State for natural resources belonging to, managed by, controlled by, or appertaining to such State or political subdivision thereof;

(3) to any Indian tribe for natural resources belonging to, managed by, controlled by, or appertaining to such Indian tribe; and

(4) in any case in which section 2707 of this title applies, to the government of a foreign country for natural resources belonging to, managed by, controlled by, or appertaining to such country.

(b) Designation of Trustees

(1) In general. The President, or the authorized representative of any State, Indian tribe, or foreign government, shall act on behalf of the public, Indian tribe, or foreign country as Trustee of natural resources to present a claim for and to recover damages to the natural resources.

(2) Federal Trustees. The President shall designate the Federal officials who shall act on behalf of the public as Trustees for natural resources under this Act.

(3) State Trustees. The Governor of each State shall designate State and local officials who may act on behalf of the public as Trustee for natural resources under this Act and shall notify the President of the designation.

(4) Indian tribe Trustees. The governing body of any Indian tribe shall designate tribal officials who may act on behalf of the tribe or its members as Trustee for natural resources under this Act and shall notify the President of the designation.

(5) Foreign Trustees. The head of any foreign government may designate the Trustee who shall act on behalf of that government as Trustee for natural resources under this Act.

(c) Functions of Trustees

(1) Federal Trustees. The Federal officials designated under subsection (b)(2) of this section -

(A) shall assess natural resource damages under section 2702(b)(2)(A) of this title for the natural resources under their Trusteeship;

(B) may, upon request of and reimbursement from a State or Indian tribe and at the Federal officials' discretion, assess damages for the natural resources under the State's or tribe's Trusteeship; and

(C) shall develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent, of the natural resources under their Trusteeship.

(2) State Trustees. The State and local officials designated under subsection (b)(3) of this section -

(A) shall assess natural resource damages under section 2702(b)(2)(A) of this title for the purposes of this Act for the natural resources under their Trusteeship; and

(B) shall develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent, of the natural resources under their Trusteeship.

(3) Indian tribe Trustees. The tribal officials designated under subsection (b)(4) of this section -

(A) shall assess natural resource damages under section 2702(b)(2)(A) of this title for the purposes of this Act for the natural resources under their Trusteeship; and

(B) shall develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent, of the natural resources under their Trusteeship.

(4) Foreign Trustees. The Trustees designated under subsection (b)(5) of this section -

(A) shall assess natural resource damages under section 2702(b)(2)(A) of this title for the purposes of this Act for the natural resources under their Trusteeship; and

(B) shall develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent, of the natural resources under their Trusteeship.

(5) Notice and opportunity to be heard. Plans shall be developed and implemented under this section only after adequate public notice, opportunity for a hearing, and consideration of all public comment.

(d) Measure of damages

(1) In general. The measure of natural resource damages under section 2702(b)(2)(A) of this title is -

(A) the cost of restoring, rehabilitating, replacing, or acquiring the equivalent of, the damaged natural resources;

(B) the diminution in value of those natural resources pending restoration; plus

(C) the reasonable cost of assessing those damages.

(2) Determine costs with respect to plans. Costs shall be determined under paragraph (1) with respect to plans adopted under subsection (c) of this section.

(3) No double recovery. There shall be no double recovery under this Act for natural resource damages, including with respect to the costs of damage assessment or restoration, rehabilitation, replacement, or acquisition for the same incident and natural resource.

(e) Damage assessment regulations

(1) Regulations. The President, acting through the Under Secretary of Commerce for Oceans and Atmosphere and in consultation with the Administrator of the Environmental Protection Agency, the Director of the United States Fish and Wildlife Service, and the heads of other affected agencies, not later than 2 years after August 18, 1990, shall promulgate regulations for the assessment of natural resource damages under section 2702(b)(2)(A) of this title resulting from a discharge of oil for the purpose of this Act.

(2) Rebuttable presumption. Any determination or assessment of damages to natural resources for the purposes of this Act made under subsection (d) of this section by a Federal, State, or Indian Trustee in accordance with the regulations promulgated under paragraph (1) shall have the force and effect of a rebuttable presumption on behalf of the Trustee in any administrative or judicial proceeding under this Act.

(f) Use of recovered sums. Sums recovered under this Act by a Federal, State, Indian, or foreign Trustee for natural resource damages under section 2702(b)(2)(A) of this title shall be retained by the Trustee in a revolving trust account, without further appropriation, for use only to reimburse or pay costs incurred by the Trustee under

subsection (c) of this section with respect to the damaged natural resources. Any amounts in excess of those required for these reimbursements and costs shall be deposited in the Fund.

(g) Compliance. Review of actions by any Federal official where there is alleged to be a failure of that official to perform a duty under this section that is not discretionary with that official may be had by any person in the district court in which the person resides or in which the alleged damage to natural resources occurred. The court may award costs of litigation (including reasonable attorney and expert witness fees) to any prevailing or substantially prevailing party. Nothing in this subsection shall restrict any right which any person may have to seek relief under any other provision of law.

2712. Uses of Fund

(a) Uses generally. The Fund shall be available to the President for -

(1) the payment of removal costs, including the costs of monitoring removal actions, determined by the President to be consistent with the National Contingency Plan -

(A) by Federal authorities; or

(B) by a Governor or designated State official under subsection (d) of this section;

(2) the payment of costs incurred by Federal, State, or Indian tribe Trustees in carrying out their functions under section 2706 of this title for assessing natural resource damages and for developing and implementing plans for the restoration, rehabilitation, replacement, or acquisition of the equivalent of damaged resources determined by the President to be consistent with the National Contingency Plan;

(3) the payment of removal costs determined by the President to be consistent with the National Contingency Plan as a result of, and damages resulting from, a discharge, or a substantial threat of a discharge, of oil from a foreign offshore unit;

(4) the payment of claims in accordance with section 2713 of this title for uncompensated removal costs determined by the President to be consistent with the National Contingency Plan or uncompensated damages;

(5) the payment of Federal administrative, operational, and personnel costs and expenses reasonably necessary for and incidental to the implementation, administration, and enforcement of this Act (including, but not limited to, sections 1004(d)(2), 1006(e), 4107, 4110, 4111, 4112, 4117, 5006, 8103, and title VII) and subsections (b), (c), (d), (j), and (l) of section 1321 of this title with respect to prevention, removal, and enforcement related to oil discharges, provided that -

(A) not more than $25,000,000 in each fiscal year shall be available to the Secretary for operating expenses incurred by the Coast Guard;

(B) not more than $30,000,000 each year through the end of fiscal year 1992 shall be available to establish the National Response System under section 1321(j) of this title, including the purchase and prepositioning of oil spill removal equipment; and

(C) not more than $27,250,000 in each fiscal year shall be available to carry out subchapter IV of this chapter.

(b) Defense to liability for Fund. The Fund shall not be available to pay any claim for removal costs or damages to a particular claimant, to the extent that the incident, removal costs, or damages are caused by the gross negligence or willful misconduct of that claimant.

(c) Obligation of Fund by Federal officials. The President may promulgate regulations designating one or more Federal officials who may obligate money in accordance with subsection (a) of this section.

(d) Access to Fund by State officials

(1) Immediate removal. In accordance with regulations promulgated under this section, the President, upon the request of the Governor of a State or pursuant to an agreement with a State under paragraph (2), may obligate the Fund for payment in an amount not to exceed $250,000 for removal costs consistent with the National Contingency Plan required for the immediate removal of a discharge, or the mitigation or prevention of a substantial threat of a discharge, of oil.

(2) Agreements

(A) In general. The President shall enter into an agreement with the Governor of any interested State to establish procedures under which the Governor or a designated State official may receive payments from the Fund for removal costs pursuant to paragraph (1).

(B) Terms. Agreements under this paragraph -

(i) may include such terms and conditions as may be agreed upon by the President and the Governor of a State;

(ii) shall provide for political subdivisions of the State to receive payments for reasonable removal costs; and

(iii) may authorize advance payments from the Fund to facilitate removal efforts.

(e) Regulations. The President shall -

(1) not later than 6 months after August 18, 1990, publish proposed regulations detailing the manner in which the authority to obligate the Fund and to enter into agreements under this subsection shall be exercised; and

(2) not later than 3 months after the close of the comment period for such proposed regulations, promulgate final regulations for that purpose.

(f) Rights of subrogation. Payment of any claim or obligation by the Fund under this Act shall be subject to the United States Government acquiring by subrogation all rights of the claimant or State to recover from the responsible party.

(g) Audits. The Comptroller General shall audit all payments, obligations, reimbursements, and other uses of the Fund, to assure that the Fund is being properly administered and that claims are being appropriately and expeditiously considered. The Comptroller General shall submit to the Congress an interim report one year after August 18, 1990. The Comptroller General shall thereafter audit the Fund as is appropriate. Each Federal agency shall cooperate with the Comptroller General in carrying out this subsection.

(h) Period of limitations for claims

(1) Removal costs. No claim may be presented under this subchapter for recovery of removal costs for an incident unless the claim is presented within 6 years after the date of completion of all removal actions for that incident.

(2) Damages. No claim may be presented under this section for recovery of damages unless the claim is presented within 3 years after the date on which the injury and its connection with the discharge in question were reasonably discoverable with the exercise of due care, or in the case of natural resource damages under section 2702(b)(2)(A) of this title, if later, the date of completion of the natural resources damage assessment under section 2706(e) of this title.

(3) Minors and incompetents. The time limitations contained in this subsection shall not begin to run -

(A) against a minor until the earlier of the date when such minor reaches 18 years of age or the date on which a legal representative is duly appointed for the minor, or

(B) against an incompetent person until the earlier of the date on which such incompetent's incompetency ends or the date on which a legal representative is duly appointed for the incompetent.

(i) Limitation on payment for same costs. In any case in which the President has paid an amount from the Fund for any removal costs or damages specified under subsection (a) of this section, no other claim may be paid from the Fund for the same removal costs or damages.

(j) Obligation in accordance with plan

(1) In general. Except as provided in paragraph (2), amounts may be obligated from the Fund for the restoration, rehabilitation, replacement, or acquisition of natural resources only in accordance with a plan adopted under section 2706(c) of this title.

(2) Exception. Paragraph (1) shall not apply in a situation requiring action to avoid irreversible loss of natural resources or to prevent or reduce any continuing danger to natural resources or similar need for emergency action.

(k) Preference for private persons in area affected by discharge

(1) In general. In the expenditure of Federal funds for removal of oil, including for distribution of supplies, construction, and other reasonable and appropriate activities, under a contract or agreement with a private person, preference shall be given, to the extent feasible and practicable, to private persons residing or doing business primarily in the area affected by the discharge of oil.

(2) Limitation. This subsection shall not be considered to restrict the use of Department of Defense resources.

2713. Claims procedure

(a) Presentation. Except as provided in subsection (b) of this section, all claims for removal costs or damages shall be presented first to the responsible party or guarantor of the source designated under section 2714(a) of this title.

(b) Presentation to Fund

(1) In general. Claims for removal costs or damages may be presented first to the Fund -

(A) if the President has advertised or otherwise notified claimants in accordance with section 2714(c) of this title;

(B) by a responsible party who may assert a claim under section 2708 of this title;

(C) by the Governor of a State for removal costs incurred by that State; or
(D) by a United States claimant in a case where a foreign offshore unit has discharged oil causing damage for which the Fund is liable under section 2712(a) of this title.

(2) Limitation on presenting claim. No claim of a person against the Fund may be approved or certified during the pendency of an action by the person in court to recover costs which are the subject of the claim.

(c) Election. If a claim is presented in accordance with subsection (a) of this section and -

(1) each person to whom the claim is presented denies all liability for the claim, or
(2) the claim is not settled by any person by payment within 90 days after the date upon which

(A) the claim was presented, or
(B) advertising was begun pursuant to section 2714(b) of this title, whichever is later, the claimant may elect to commence an action in court against the responsible party or guarantor or to present the claim to the Fund.

(d) Uncompensated damages. If a claim is presented in accordance with this section and full and adequate compensation is unavailable, a claim for the uncompensated damages and removal costs may be presented to the Fund.

(e) Procedure for claims against Fund. The President shall promulgate, and may from time to time amend, regulations for the presentation, filing, processing, settlement, and adjudication of claims under this Act against the Fund.

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TITLE 15

COMMERCE AND FOREIGN TRADE CHAPTER IX NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE PART 990

NATURAL RESOURCE DAMAGE ASSESSMENTS

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Authority: 33 U.S.C. 2701 et seq. Source: 61 FR 500, Jan. 5, 1996, unless otherwise noted.

Subpart A--Introduction

Sec. 990.10 Purpose. The goal of the Oil Pollution Act of 1990 (OPA), 33 U.S.C. 2701 et seq., is to make the environment and public whole for injuries to **natural** resources and services resulting from an incident involving a discharge or substantial threat of a discharge of oil (incident). This goal is achieved through the return of the injured **natural** resources and services to baseline and compensation for interim losses of such **natural** resources and services from the date of the incident until recovery. The purpose of this part is to promote expeditious and cost-effective restoration of **natural** resources and services injured as a result of an incident. To fulfill this purpose, this part provides a **natural resource damage** assessment process for developing a plan for restoration of the injured **natural** resources and services and pursuing implementation or funding of the plan by responsible parties. This part also provides an administrative process for involving interested parties in the assessment, a range of assessment procedures for identifying and evaluating injuries to **natural** resources and services, and a means for

selecting restoration actions from a reasonable range of alternatives.

Sec. 990.11 Scope. The Oil Pollution Act of 1990 (OPA), 33 U.S.C. 2701 et seq., provides for the designation of federal, state, and, if designated by the Governor of the state, local officials to act on behalf of the public as trustees for **natural** resources and for the designation of Indian tribe and foreign officials to act as trustees for **natural** resources on behalf of, respectively, the tribe or its members and the foreign government. This part may be used by these officials in conducting **natural resource damage assessments** when **natural** resources and/or services are injured as a result of an incident involving an actual or substantial threat of a discharge of oil. This part is not intended to affect the recoverability of **natural resource** damages when recoveries are sought other than in accordance with this part.

Sec. 990.12 Overview. This part describes three phases of a **natural resource damage** assessment. The Preassessment Phase, during which trustees determine whether to pursue restoration, is described in subpart D of this part. The Restoration Planning Phase, during which trustees evaluate information on potential injuries and use that information to determine the need for, type of, and scale of restoration, is described in subpart E of this part. The Restoration Implementation Phase, during which trustees ensure implementation of restoration, is described in subpart F of this part.

Sec. 990.13 Rebuttable presumption. Any determination or assessment of damages to **natural** resources made by a Federal, State, or Indian trustee in accordance with this part shall have the force and effect of a rebuttable presumption on behalf of the trustee in any administrative or judicial proceeding under OPA.

Sec. 990.14 Coordination. (a) Trustees. (1) If an incident affects the interests of multiple trustees, the trustees should act jointly under this part to ensure that full restoration is achieved without double recovery of damages. For joint **assessments**, trustees must designate one or more Lead Administrative Trustee(s) to act as coordinators. (2) If there is a reasonable basis for dividing the **natural resource damage** assessment, trustees may act independently under this part, so long as there is no double recovery of damages. (3) Trustees may develop pre-incident or incident-

specific memoranda of understanding to coordinate their activities. (b) Response agencies. Trustees must coordinate their activities conducted concurrently with response operations with response agencies consistent with the NCP and any pre-incident plans developed under Sec. 990.15(a) of this part. Trustees may develop pre-incident memoranda of understanding to coordinate their activities with response agencies. (c) Responsible parties--(1) Invitation. Trustees must invite the responsible parties to participate in the **natural resource damage** assessment described in this part. The invitation to participate should be in writing, and a written response by the responsible parties is required to confirm the desire to participate. (2) Timing. The invitation to participate should be extended to known responsible parties as soon as practicable, but not later than the delivery of the ``Notice of Intent to Conduct Restoration Planning,'' under Sec. 990.44 of this part, to the responsible party. (3) Agreements. Trustees and responsible parties should consider entering into binding agreements to facilitate their interactions and resolve any disputes during the assessment. To maximize cost-effectiveness and cooperation, trustees and responsible parties should attempt to develop a set of agreed-upon facts concerning the incident and/or assessment. (4) Nature and extent of participation. If the responsible parties accept the invitation to participate, the scope of that participation must be determined by the trustees, in light of the considerations in paragraph (c)(5) of this section. At a minimum, participation will include notice of trustee determinations required under this part, and notice and opportunity to comment on documents or plans that significantly affect the nature and extent of the assessment. Increased levels of participation by responsible parties may be developed at the mutual agreement of the trustees and the responsible parties. Trustees will objectively consider all written comments provided by the responsible parties, as well as any other recommendations or proposals that the responsible parties submit in writing to the Lead Administrative Trustee. Submissions by the responsible parties will be included in the administrative record. Final authority to make determinations regarding injury and restoration rest solely with the trustees. Trustees may end participation by responsible parties who, during the conduct of the assessment, in the sole judgment of the trustees, cause interference with the trustees' ability to fulfill their responsibilities under OPA and this part. (5)

Considerations. In determining the nature and extent of participation by the responsible parties or their representatives, trustees may consider such factors as: (i) Whether the responsible parties have been identified; (ii) The willingness of responsible parties to participate in the assessment; (iii) The willingness of responsible parties to fund assessment activities; (iv) The willingness and ability of responsible parties to conduct assessment activities in a technically sound and timely manner and to be bound by the results of jointly agreed upon studies; (v) The degree of cooperation of the responsible parties in the response to the incident; and (vi) The actions of the responsible parties in prior **assessments**. (6) Request for alternative assessment procedures. (i) The participating responsible parties may request that trustees use assessment procedures other than those selected by the trustees if the responsible parties: (A) Identify the proposed procedures to be used that meet the requirements of Sec. 990.27 of this part, and provide reasons supporting the technical adequacy and appropriateness of such procedures for the incident and associated injuries; (B) Advance to the trustees the trustees' reasonable estimate of the cost of using the proposed procedures; and (C) Agree not to challenge the results of the proposed procedures. The request from the responsible parties may be made at any time, but no later than, fourteen (14) days of being notified of the trustees' proposed assessment procedures for the incident or the injury. (ii) Trustees may reject the responsible parties' proposed assessment procedures if, in the sole judgment of the trustees, the proposed assessment procedures: (A) Are not technically feasible; (B) Are not scientifically or technically sound; (C) Would inadequately address the **natural** resources and services of concern; (D) Could not be completed within a reasonable time frame; or (E) Do not meet the requirements of Sec. 990.27 of this part. (7) Disclosure. Trustees must document in the administrative record and Restoration Plan the invitation to the responsible parties to participate, and briefly describe the nature and extent of the responsible parties' participation. If the responsible parties' participation is terminated during the assessment, trustees must provide a brief explanation of this decision in the administrative record and Restoration Plan. (d) Public. Trustees must provide opportunities for public involvement after the trustees' decision to develop restoration plans or issuance of any notices to that effect, as provided in Sec. 990.55 of this part. Trustees may also provide

opportunities for public involvement at any time prior to this decision if such involvement may enhance trustees' decisionmaking or avoid delays in restoration.

Sec. 990.15 Considerations to facilitate restoration. In addition to the procedures provided in subparts D through F of this part, trustees may take other actions to further the goal of expediting restoration of injured **natural** resources and services, including: (a) Pre-incident planning. Trustees may engage in pre-incident planning activities. Pre-incident plans may identify **natural resource damage** assessment teams, establish trustee notification systems, identify support services, identify **natural** resources and services at risk, identify area and regional response agencies and officials, identify available baseline information, establish data management systems, and identify assessment funding issues and options. Potentially responsible parties, as well as all other members of the public interested in and capable of participating in **assessments**, should be included in pre-incident planning to the fullest extent practicable. (b) Regional Restoration Plans. Where practicable, incident-specific restoration plan development is preferred, however, trustees may develop Regional Restoration Plans. These plans may be used to support a claim under Sec. 990.56 of this part. Regional restoration planning may consist of compiling databases that identify, on a regional or watershed basis, or otherwise as appropriate, existing, planned, or proposed restoration projects that may provide appropriate restoration alternatives for consideration in the context of specific incidents.

Subpart B--Authorities

Sec. 990.20 Relationship to the CERCLA **natural resource damage** assessment regulations. (a) General. Regulations for assessing **natural resource** damages resulting from hazardous substance releases under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9601 et seq., and the Federal Water Pollution Control Act (Clean Water Act), 33 U.S.C. 1321 et seq., are codified at 43 CFR part 11. The CERCLA regulations originally applied to **natural resource** damages resulting from oil discharges as well as hazardous substance releases. This part supersedes 43 CFR part 11 with regard to oil discharges covered by OPA. (b) **Assessments** commenced before February 5, 1996. If trustees commenced a **natural resource damage** assessment for an oil

discharge under 43 CFR part 11 prior to February 5, 1996 they may complete the assessment in compliance with 43 CFR part 11, or they may elect to use this part, and obtain a rebuttable presumption. (c) Oil and hazardous substance mixtures. For **natural resource** damages resulting from a discharge or release of a mixture of oil and hazardous substances, trustees must use 43 CFR part 11 in order to obtain a rebuttable presumption.

Sec. 990.21 Relationship to the NCP. This part provides procedures by which trustees may determine appropriate restoration of injured **natural** resources and services, where such injuries are not fully addressed by response actions. Response actions and the coordination with **damage** assessment activities are conducted pursuant to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300.

Sec. 990.22 Prohibition on double recovery. When taking actions under this part, trustees are subject to the prohibition on double recovery, as provided in 33 U.S.C. 2706(d)(3) of OPA

Sec. 990.23 Compliance with NEPA and the CEQ regulations. (a) General. The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 et seq. and Council on Environmental Quality (CEQ) regulations implementing NEPA, 40 CFR chapter V, apply to restoration actions by federal trustees, except where a categorical exclusion or other exception to NEPA applies. Thus, when a federal trustee proposes to take restoration actions under this part, it must integrate this part with NEPA, the CEQ regulations, and NEPA regulations promulgated by that federal trustee agency. Where state NEPA-equivalent laws may apply to state trustees, state trustees must consider the extent to which they must integrate this part with their NEPA-equivalent laws. The requirements and process described in this section relate only to NEPA and federal trustees. (b) NEPA requirements for federal trustees. NEPA becomes applicable when federal trustees propose to take restoration actions, which begins with the development of a Draft Restoration Plan under Sec. 990.55 of this part. Depending upon the circumstances of the incident, federal trustees may need to consider early involvement of the public in restoration planning in order to meet their NEPA compliance requirements. (c) NEPA process for federal trustees. Although the steps in the NEPA process may vary among different federal trustees, the

process will generally involve the need to develop restoration plans in the form of an Environmental Assessment or Environmental Impact Statement, depending upon the trustee agency's own NEPA regulations. (1) Environmental Assessment. (i) Purpose. The purpose of an Environmental Assessment (EA) is to determine whether a proposed restoration action will have a significant (as defined under NEPA and Sec. 1508.27 of the CEQ regulations) impact on the quality of the human environment, in which case an Environmental Impact Statement (EIS) evaluating the impact is required. In the alternative, where the impact will not be significant, federal trustees must issue a Finding of No Significant Impact (FONSI) as part of the restoration plans developed under this part. If significant impacts to the human environment are anticipated, the determination to proceed with an EIS may be made as a result, or in lieu, of the development of the EA. (ii) General steps. (A) If the trustees decide to pursue an EA, the trustees may issue a Notice of Intent to Prepare a Draft Restoration Plan/EA, or proceed directly to developing a Draft Restoration Plan/EA. (B) The Draft Restoration Plan/EA must be made available for public review before concluding a FONSI or proceeding with an EIS. (C) If a FONSI is concluded, the restoration planning process should be no different than under Sec. 990.55 of this part, except that the Draft Restoration Plan/EA will include the FONSI analysis. (D) The time period for public review on the Draft Restoration Plan/ EA must be consistent with the federal trustee agency's NEPA requirements, but should generally be no less than thirty (30) calendar days. (E) The Final Restoration Plan/EA must consider all public comments on the Draft Restoration Plan/EA and FONSI. (F) The means by which a federal trustee requests, considers, and responds to public comments on the Draft Restoration Plan/EA and FONSI must also be consistent with the federal agency's NEPA requirements. (2) Environmental Impact Statement. (i) Purpose. The purpose of an Environmental Impact Statement (EIS) is to involve the public and facilitate the decisionmaking process in the federal trustees' analysis of alternative approaches to restoring injured **natural** resources and services, where the impacts of such restoration are expected to have significant impacts on the quality of the human environment. (ii) General steps. (A) If trustees determine that restoration actions are likely to have a significant (as defined under NEPA and Sec. 1508.27 of the CEQ regulations) impact on the environment, they must issue a Notice of Intent to Prepare

a Draft Restoration Plan/EIS. The notice must be published in the Federal Register. (B) The notice must be followed by formal public involvement in the development of the Draft Restoration Plan/EIS. (C) The Draft Restoration Plan/EIS must be made available for public review for a minimum of forty-five (45) calendar days. The Draft Restoration Plan/EIS, or a notice of its availability, must be published in the Federal Register. (D) The Final Restoration Plan/EIS must consider all public comments on the Draft Restoration Plan/EIS, and incorporate any changes made to the Draft Restoration Plan/EIS in response to public comments. (E) The Final Restoration Plan/EIS must be made publicly available for a minimum of thirty (30) calendar days before a decision is made on the federal trustees' proposed restoration actions (Record of Decision). The Final Restoration Plan/EIS, or a notice of its availability, must be published in the Federal Register. (F) The means by which a federal trustee agency requests, considers, and responds to public comments on the Final Restoration Plan/EIS must also be consistent with the federal agency's NEPA requirements. (G) After appropriate public review on the Final Restoration Plan/ EIS is completed, a Record of Decision (ROD) is issued. The ROD summarizes the trustees' decisionmaking process after consideration of any public comments relative to the proposed restoration actions, identifies all restoration alternatives (including the preferred alternative(s)), and their environmental [[Page 354]] consequences, and states whether all practicable means to avoid or minimize environmental harm were adopted (e.g., monitoring and corrective actions). The ROD may be incorporated with other decision documents prepared by the trustees. The means by which the ROD is made publicly available must be consistent with the federal trustee agency's NEPA requirements. (d) Relationship to Regional Restoration Plans or an existing restoration project. If a Regional Restoration Plan or existing restoration project is proposed for use, federal trustees may be able to tier their NEPA analysis to an existing EIS, as described in Secs. 1502.20 and 1508.28 of the CEQ regulations.

Sec. 990.24 Compliance with other applicable laws and regulations. (a) Worker health and safety. When taking actions under this part, trustees must comply with applicable worker health and safety considerations specified in the NCP for response actions. (b) **Natural** Resources protection. When acting under this part, trustees

must ensure compliance with any applicable consultation, permitting, or review requirements, including but not limited to: the Endangered Species Act of 1973, 16 U.S.C. 1531 et seq.; the Coastal Zone Management Act of 1972, 16 U.S.C. 1451 et seq.; the Migratory Bird Treaty Act, 16 U.S.C. 703 et seq.; the National Marine Sanctuaries Act, 16 U.S.C. 1431 et seq.; the National Historic Preservation Act, 12 U.S.C. 470 et seq.; the Marine Mammal Protection Act, 16 U.S.C. 1361 et seq.; and the Archaeological Resources Protection Act, 16 U.S.C. 470 et seq.

Sec. 990.25 Settlement. Trustees may settle claims for **natural resource** damages under this part at any time, provided that the settlement is adequate in the judgment of the trustees to satisfy the goal of OPA and is fair, reasonable, and in the public interest, with particular consideration of the adequacy of the settlement to restore, replace, rehabilitate, or acquire the equivalent of the injured **natural** resources and services. Sums recovered in settlement of such claims, other than reimbursement of trustee costs, may only be expended in accordance with a restoration plan, which may be set forth in whole or in part in a consent decree or other settlement agreement, which is made available for public review.

Sec. 990.26 Emergency restoration. (a) Trustees may take emergency restoration action before completing the process established under this part, provided that: (1) The action is needed to minimize continuing or prevent additional injury; (2) The action is feasible and likely to minimize continuing or prevent additional injury; and (3) The costs of the action are not unreasonable. (b) If response actions are still underway, trustees, through their Regional Response Team member or designee, must coordinate with the On- Scene Coordinator (OSC) before taking any emergency restoration actions. Any emergency restoration actions proposed by trustees should not interfere with on-going response actions. Trustees must explain to response agencies through the OSC prior to implementation of emergency restoration actions their reasons for believing that proposed emergency restoration actions will not interfere with on-going response actions. (c) Trustees must provide notice to identified responsible parties of any emergency restoration actions and, to the extent time permits, invite their participation in the conduct of those actions as provided in Sec. 990.14(c) of this part. (d) Trustees must provide notice to the public, to the extent

practicable, of these planned emergency restoration actions. Trustees must also provide public notice of the justification for, nature and extent of, and results of emergency restoration actions within a reasonable time frame after completion of such actions. The means by which this notice is provided is left to the discretion of the trustee.

Sec. 990.27 Use of assessment procedures. (a) Standards for assessment procedures. Any procedures used pursuant to this part must comply with all of the [[Page 355]] following standards if they are to be in accordance with this part: (1) The procedure must be capable of providing assessment information of use in determining the type and scale of restoration appropriate for a particular injury; (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; and (3) The procedure must be reliable and valid for the particular incident. (b) Assessment procedures available. (1) The range of assessment procedures available to trustees includes, but is not limited to: (i) Procedures conducted in the field; (ii) Procedures conducted in the laboratory; (iii) Model-based procedures, including type A procedures identified in 43 CFR part 11, subpart D, and compensation formulas/schedules; and (iv) Literature-based procedures. (2) Trustees may use the assessment procedures in paragraph (b)(1) of this section alone, or in any combination, provided that the standards in paragraph (a) of this section are met, and there is no double recovery. (c) Selecting assessment procedures. (1) When selecting assessment procedures, trustees must consider, at a minimum: (i) The range of procedures available under paragraph (b) of this section; (ii) The time and cost necessary to implement the procedures; (iii) The potential nature, degree, and spatial and temporal extent of the injury; (iv) The potential restoration actions for the injury; and (v) The relevance and adequacy of information generated by the procedures to meet information requirements of restoration planning. (2) If a range of assessment procedures providing the same type and quality of information is available, the most cost-effective procedure must be used.

Subpart C—Definitions

Sec. 990.30 Definitions. For the purpose of this rule, the term:

Baseline means the condition of the **natural** resources and services that would have existed had the incident not occurred. Baseline data may be estimated using historical data, reference data, control data, or data on incremental changes (e.g., number of dead animals), alone or in combination, as appropriate.

Cost-effective means the least costly activity among two or more activities that provide the same or a comparable level of benefits, in the judgment of the trustees

CEQ regulations means the Council on Environmental Quality regulations implementing NEPA, 40 CFR chapter V.

Damages means damages specified in section 1002(b) of OPA (33 U.S.C. 1002(b)), and includes the costs of assessing these damages, as defined in section 1001(5) of OPA (33 U.S.C. 2701(5)).

Discharge means any emission (other than **natural** seepage), intentional or unintentional, and includes, but is not limited to, spilling, leaking, pumping, pouring, emitting, emptying, or dumping, as defined in section 1001(7) of OPA (33 U.S.C. 2701(7)).

Exclusive Economic Zone means the zone established by Presidential Proclamation 5030 of March 10, 1983 (3 CFR, 1984 Comp, p. 22), including the ocean waters of the areas referred to as ``eastern special areas'' in Article 3(1) of the Agreement between the United States of America and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990, as defined in section 1001(8) of OPA (33 U.S.C. 2701(8)).

Exposure means direct or indirect contact with the discharged oil. Facility means any structure, group of structures, equipment, or device (other than a vessel) which is used for one or more of the following purposes: exploring for, drilling for, producing, storing, handling, transferring, processing, or transporting oil. This term includes any motor vehicle, rolling stock, or pipeline used for one or more of these purposes, as defined in section 1001(9) of OPA (33 U.S.C. 2701(9)).

Fund means the Oil Spill Liability Trust Fund, established by section 9509 of the Internal Revenue Code of 1986 (26 U.S.C. 9509), as defined in section 1001(11) of OPA (33 U.S.C. 2701(11)).

Incident means 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, as defined in section 1001(14) of OPA (33 U.S.C. 2701(14)).

Indian tribe (or tribal) means any Indian tribe, band, nation, or other organized group or community, but not including any Alaska Native regional or village corporation, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians and has governmental authority over lands belonging to or controlled by the tribe, as defined in section 1001(15) of OPA (33 U.S.C. 2701(15)).

Injury means an observable or measurable adverse change in a **natural resource** or impairment of a **natural resource** service. Injury may occur directly or indirectly to a **natural resource** and/or service. Injury incorporates the terms ``destruction,'' ``loss,'' and ``loss of use'' as provided in OPA.

Lead Administrative Trustee(s) (or LAT) means the trustee(s) who is selected by all participating trustees whose **natural** resources or services are injured by an incident, for the purpose of coordinating **natural resource damage** assessment activities. The LAT(s) should also facilitate communication between the OSC and other **natural resource** trustees regarding their activities during the response phase.

NCP means the National Oil and Hazardous Substances Pollution Contingency Plan (National Contingency Plan) codified at 40 CFR part 300, which addresses the identification, investigation, study, and response to incidents, as defined in section 1001(19) of OPA (33 U.S.C. 2701(19)).

Natural resource damage assessment (or assessment) means the process of collecting and analyzing information to

evaluate the nature and extent of injuries resulting from an incident, and determine the restoration actions needed to bring injured **natural** resources and services back to baseline and make the environment and public whole for interim losses.

Natural resources means land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the Exclusive Economic Zone), any state or local government or Indian tribe, or any foreign government, as defined in section 1001(20) of OPA (33 U.S.C. 2701(20)).

Navigable waters means the waters of the United States, including the territorial sea, as defined in section 1001(21) of OPA (33 U.S.C. 2701(21)).

NEPA means the National Environmental Policy Act, 42 U.S.C. 4321 et seq. Oil means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil. However, the term does not include petroleum, including crude oil or any fraction thereof, that is specifically listed or designated as a hazardous substance under 42 U.S.C. 9601(14)(A) through (F), as defined in section 1001(23) of OPA (33 U.S.C. 2701(23)).

On-Scene Coordinator (or OSC) means the official designated by the U.S. Environmental Protection Agency or the U.S. Coast Guard to coordinate and direct response actions under the NCP, or the government official designated by the lead response agency to coordinate and direct response actions under the NCP.

OPA means the Oil Pollution Act of 1990, 33 U.S.C. 2701 et seq.

Pathway means any link that connects the incident to a **natural resource** and/or service, and is associated with an actual discharge of oil.

Person means an individual, corporation, partnership, association, state, municipality, commission, or political subdivision of a state, or any interstate body, as defined in section 1001(27) of OPA (33 U.S.C. 2701(27)).

Public vessel means a vessel owned or bareboat chartered and operated by the United States, or by a state or

political subdivision thereof, or by a foreign nation, except when the vessel is engaged in commerce, as defined in section 1001(29) of OPA (33 U.S.C. 2701(29)).

Reasonable assessment costs means, for **assessments** conducted under this part, assessment costs that are incurred by trustees in accordance with this part. In cases where assessment costs are incurred but trustees do not pursue restoration, trustees may recover their reasonable assessment costs provided that they have determined that assessment actions undertaken were premised on the likelihood of injury and need for restoration. Reasonable assessment costs also include: administrative, legal, and enforcement costs necessary to carry out this part; monitoring and oversight costs; and costs associated with public participation.

Recovery means the return of injured **natural** resources and services to baseline.

Response (or remove or removal) means containment and removal of oil or a hazardous substance from water and shorelines or the taking of other actions as may be necessary to minimize or mitigate **damage** to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, and public and private property, shorelines, and beaches, as defined in section 1001(30) of OPA (33 U.S.C. 2701(30)).

Responsible party means: (a) Vessels. In the case of a vessel, any person owning, operating, or demise chartering the vessel. (b) Onshore facilities. In the case of an onshore facility (other than a pipeline), any person owning or operating the facility, except a federal agency, state, municipality, commission, or political subdivision of a state, or any interstate body, that as the owner transfers possession and right to use the property to another person by lease, assignment, or permit. (c) Offshore facilities. In the case of an offshore facility (other than a pipeline or a deepwater port licensed under the Deepwater Port Act of 1974 (33 U.S.C. 1501 et seq.)), the lessee or permittee of the area in which the facility is located or the holder of a right of use and easement granted under applicable state law or the Outer Continental Shelf Lands Act (43 U.S.C. 1301-1356) for the area in which the facility is located (if the holder is a different person than the lessee or permittee), except a federal agency, state, municipality, commission, or political subdivision of a

state, or any interstate body, that as owner transfers possession and right to use the property to another person by lease, assignment, or permit. (d) Deepwater ports. In the case of a deepwater port licensed under the Deepwater Port Act of 1974 (33 U.S.C. 1501-1524), the licensee. (e) Pipelines. In the case of a pipeline, any person owning or operating the pipeline. (f) Abandonment. In the case of an abandoned vessel, onshore facility, deepwater port, pipeline, or offshore facility, the persons who would have been responsible parties immediately prior to the abandonment of the vessel or facility, as defined in section 1001(32) of OPA (33 U.S.C. 2701(32)).

Restoration means any action (or alternative), or combination of actions (or alternatives), to restore, rehabilitate, replace, or acquire the equivalent of injured **natural** resources and services. Restoration includes: (a) Primary restoration, which is any action, including **natural** recovery, that returns injured **natural** resources and services to baseline; and (b) Compensatory restoration, which is any action taken to compensate for interim losses of **natural** resources and services that occur from the date of the incident until recovery.

Services (or **natural resource** services) means the functions performed by a **natural resource** for the benefit of another **natural resource** and/or the public.

Trustees (or **natural resource** trustees) means those officials of the federal and state governments, of Indian tribes, and of foreign governments, designated under 33 U.S.C. 2706(b) of OPA.

United States and State means the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Marianas, and any other territory or possession of the United States, as defined in section 1001(36) of OPA (33 U.S.C. 2701(36)).

Value means the maximum amount of goods, services, or money an individual is willing to give up to obtain a specific good or service, or the minimum amount of goods, services, or money an individual is willing to accept to forgo a specific good or service. The total value of a **natural resource** or service includes the value individuals derive from direct use of the **natural resource**, for example, swimming, boating, hunting, or birdwatching, as well as the

value individuals derive from knowing a **natural resource** will be available for future generations.

Vessel means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water, other than a public vessel, as defined in section 1001(37) of OPA (33 U.S.C. 2701(37)).

Subpart D--Preassessment Phase

Sec. 990.40 Purpose. The purpose of this subpart is to provide a process by which trustees determine if they have jurisdiction to pursue restoration under OPA and, if so, whether it is appropriate to do so.

Sec. 990.41 Determination of jurisdiction. (a) Determination of jurisdiction. Upon learning of an incident, trustees must determine whether there is jurisdiction to pursue restoration under OPA. To make this determination, trustees must decide if: (1) An incident has occurred, as defined in Sec. 990.30 of this part; (2) The incident is not: (i) Permitted under a permit issued under federal, state, or local law; or (ii) From a public vessel; or (iii) From an onshore facility subject to the Trans-Alaska Pipeline Authority Act, 43 U.S.C. 1651, et seq.; and (3) **Natural** resources under the trusteeship of the trustee may have been, or may be, injured as a result of the incident. (b) Proceeding with preassessment. If the conditions listed in paragraph (a) of this section are met, trustees may proceed under this part. If one of the conditions is not met, trustees may not take additional action under this part, except action to finalize this determination. Trustees may recover all reasonable assessment costs incurred up to this point provided that conditions in paragraphs (a)(1) and (a)(2) of this section were met and actions were taken with the reasonable belief that **natural** resources or services under their trusteeship might have been injured as a result of the incident.

Sec. 990.42 Determination to conduct restoration planning. (a) Determination on restoration planning. If trustees determine that there is jurisdiction to pursue restoration under OPA, trustees must determine whether: (1) Injuries have resulted, or are likely to result, from the incident; (2) Response actions have not adequately addressed, or are not expected to address, the injuries resulting from the incident; and (3) Feasible primary and/or compensatory restoration actions exist to address the potential

injuries. (b) Proceeding with preassessment. If the conditions listed in paragraph (a) of this section are met, trustees may proceed under Sec. 990.44 of this part. If one of these conditions is not met, trustees may not take additional action under this part, except action to finalize this determination. However, trustees may recover all reasonable assessment costs incurred up to this point.

Sec. 990.43 Data collection. Trustees may conduct data collection and analyses that are reasonably related to Preassessment Phase activities. Data collection and analysis during the Preassessment Phase must be coordinated with response actions such that collection and analysis does not interfere with response actions. Trustees may collect and analyze the following types of data during the Preassessment Phase: (a) Data reasonably expected to be necessary to make a determination of jurisdiction under Sec. 990.41 of this part, or a determination to conduct restoration planning under Sec. 990.42 of this part; (b) Ephemeral data; and (c) Information needed to design or implement anticipated assessment procedures under subpart E of this part.

Sec. 990.44 Notice of Intent to Conduct Restoration Planning. (a) General. If trustees determine that all the conditions under Sec. 990.42(a) of this part are met and trustees decide to proceed with the **natural resource damage** assessment, they must prepare a Notice of Intent to Conduct Restoration Planning. (b) Contents of the notice. The Notice of Intent to Conduct Restoration Planning must include a discussion of the trustees' analyses under Secs. 990.41 and 990.42 of this part. Depending on information available at this point, the notice may include the trustees' proposed strategy to assess injury and determine the type and scale of restoration. The contents of a notice may vary, but will typically discuss: (1) The facts of the incident; (2) Trustee authority to proceed with the assessment; (3) **Natural** resources and services that are, or are likely to be, injured as a result of the incident; (4) Potential restoration actions relevant to the expected injuries; and (5) If determined at the time, potential assessment procedures to evaluate the injuries and define the appropriate type and scale of restoration for the injured **natural** resources and services. (c) Public availability of the notice. Trustees must make a copy of the Notice of Intent to Conduct Restoration Planning publicly available. The means by which the notice is made

publicly available and whether public comments are solicited on the notice will depend on the nature and extent of the incident and various information requirements, and is left to the discretion of the trustees. (d) Delivery of the notice to the responsible parties. Trustees must send a copy of the notice to the responsible parties, to the extent known, in such a way as will establish the date of receipt, and invite responsible parties' participation in the conduct of restoration planning. Consistent with Sec. 990.14(c) of this part, the determination of the timing, nature, and extent of responsible party participation will be determined by the trustees on an incident-specific basis.

Sec. 990.45 Administrative record. (a) If trustees decide to proceed with restoration planning, they must open a publicly available administrative record to document the basis for their decisions pertaining to restoration. The administrative record should be opened concurrently with the publication of the Notice of Intent to Conduct Restoration Planning. Depending on the nature and extent of the incident and assessment, the administrative record should include documents relied upon during the assessment, such as: (1) Any notice, draft and final restoration plans, and public comments; (2) Any relevant data, investigation reports, scientific studies, work plans, quality assurance plans, and literature; and (3) Any agreements, not otherwise privileged, among the participating trustees or with the responsible parties. (b) Federal trustees should maintain the administrative record in a manner consistent with the Administrative Procedure Act, 5 U.S.C. 551- 59, 701-06.

Subpart E--Restoration Planning Phase

Sec. 990.50 Purpose. The purpose of this subpart is to provide a process by which trustees evaluate and quantify potential injuries (injury assessment), and use that information to determine the need for and scale of restoration actions (restoration selection).

Sec. 990.51 Injury assessment--injury determination. (a) General. After issuing a Notice of Intent to Conduct Restoration Planning under Sec. 990.44 of this part, trustees must determine if injuries to **natural** resources and/or services have resulted from the incident. (b) Determining injury. To make the determination of injury, trustees must evaluate if: (1) The definition of injury has been met, as defined in Sec. 990.30 of this part; and

(2)(i) An injured **natural resource** has been exposed to the discharged oil, and a pathway can be established from the discharge to the exposed **natural resource**; or (ii) An injury to a **natural resource** or impairment of a **natural resource** service has occurred as a result of response actions or a substantial threat of a discharge of oil. (c) Identifying injury. Trustees must determine whether an injury has occurred and, if so, identify the nature of the injury. Potential categories of injury include, but are not limited to, adverse changes in: survival, growth, and reproduction; health, physiology and biological condition; behavior; community composition; ecological processes and functions; physical and chemical habitat quality or structure; and public services. (d) Establishing exposure and pathway. Except for injuries resulting from response actions or incidents involving a substantial threat of a discharge of oil, trustees must establish whether **natural** resources were exposed, either directly or indirectly, to the discharged oil from the incident, and estimate the amount or concentration and spatial and temporal extent of the exposure. Trustees must also determine whether there is a pathway linking the incident to the injuries. Pathways may include, but are not limited to, the sequence of events by which the discharged oil was transported from the incident and either came into direct physical contact with a **natural resource**, or caused an indirect injury. (e) Injuries resulting from response actions or incidents involving a substantial threat of a discharge. For injuries resulting from response actions or incidents involving a substantial threat of a discharge of oil, trustees must determine whether an injury or an impairment of a **natural resource** service has occurred as a result of the incident. (f) Selection of injuries to include in the assessment. When selecting potential injuries to assess, trustees should consider factors such as: (1) The **natural** resources and services of concern; (2) The procedures available to evaluate and quantify injury, and associated time and cost requirements; (3) The evidence indicating exposure; (4) The pathway from the incident to the **natural resource** and/or service of concern; (5) The adverse change or impairment that constitutes injury; (6) The evidence indicating injury; (7) The mechanism by which injury occurred; (8) The potential degree, and spatial and temporal extent of the injury; (9) The potential **natural** recovery period; and (10) The kinds of primary and/or compensatory restoration actions that are feasible.

Sec. 990.52 Injury assessment--quantification. (a) General. In addition to determining whether injuries have resulted from the incident, trustees must quantify the degree, and spatial and temporal extent of such injuries relative to baseline. (b) Quantification approaches. Trustees may quantify injuries in terms of: (1) The degree, and spatial and temporal extent of the injury to a **natural resource**; (2) The degree, and spatial and temporal extent of injury to a **natural resource**, with subsequent translation of that adverse change to a reduction in services provided by the **natural resource**; or (3) The amount of services lost as a result of the incident. (c) **Natural** recovery. To quantify injury, trustees must estimate, quantitatively or qualitatively, the time for **natural** recovery without restoration, but including any response actions. The analysis of **natural** recovery may consider such factors as: (1) The nature, degree, and spatial and temporal extent of injury; (2) The sensitivity and vulnerability of the injured **natural resource** and/or service; (3) The reproductive and recruitment potential; (4) The resistance and resilience (stability) of the affected environment; (5) The **natural** variability; and (6) The physical/chemical processes of the affected environment.

Sec. 990.53 Restoration selection--developing restoration alternatives. (a) General. (1) If the information on injury determination and quantification under Secs. 990.51 and 990.52 of this part and its relevance to restoration justify restoration, trustees may proceed with the Restoration Planning Phase. Otherwise, trustees may not take additional action under this part. However, trustees may recover all reasonable assessment costs incurred up to this point. (2) Trustees must consider a reasonable range of restoration alternatives before selecting their preferred alternative(s). Each restoration alternative is comprised of primary and/or compensatory restoration components that address one or more specific injury(ies) associated with the incident. Each alternative must be designed so that, as a package of one or more actions, the alternative would make the environment and public whole. Only those alternatives considered technically feasible and in accordance with applicable laws, regulations, or permits may be considered further under this part. (b) Primary restoration-- (1) General. For each alternative, trustees must consider primary restoration actions, including a **natural** recovery alternative. (2) **Natural** recovery. Trustees must consider a **natural** recovery alternative in

which no human intervention would be taken to directly restore injured **natural** resources and services to baseline. (3) Active primary restoration actions. Trustees must consider an alternative comprised of actions to directly restore the **natural** resources and services to baseline on an accelerated time frame. When identifying such active primary restoration actions, trustees may consider actions that: (i) Remove conditions that would prevent or limit the effectiveness of any restoration action (e.g., residual sources of contamination); (ii) May be necessary to return the physical, chemical, and/or biological conditions necessary to allow recovery or restoration of the injured **natural** resources (e.g., replacing substrate or vegetation, or modifying hydrologic conditions); or (iii) Return key **natural** resources and services, and would be an effective approach to achieving or accelerating a return to baseline (e.g., replacing essential species, habitats, or public services that would facilitate the replacement of other, dependent **natural resource** or service components). (c) Compensatory restoration-- (1) General. For each alternative, trustees must also consider compensatory restoration actions to compensate for the interim loss of **natural** resources and services pending recovery. (2) Compensatory restoration actions. To the extent practicable, when evaluating compensatory restoration actions, trustees must consider compensatory restoration actions that provide services of the same type and quality, and of comparable value as those injured. If, in the judgment of the trustees, compensatory actions of the same type and quality and comparable value cannot provide a reasonable range of alternatives, trustees should identify actions that provide **natural** resources and services of comparable type and quality as those provided by the injured **natural** resources. Where the injured and replacement **natural** resources and services are not of comparable value, the scaling process will involve valuation of lost and replacement services. (d) Scaling restoration actions-- (1) General. After trustees have identified the types of restoration actions that will be considered, they must determine the scale of those actions that will make the environment and public whole. For primary restoration actions, scaling generally applies to actions involving replacement and/or acquisition of equivalent of **natural** resources and/or services. (2) **Resource**-to-**resource** and service-to-service scaling approaches. When determining the scale of restoration actions that provide **natural** resources and/or services of

the same type and quality, and of comparable value as those lost, trustees must consider the use of a **resource**-to-**resource** or service-to-service scaling approach. Under this approach, trustees determine the scale of restoration actions that will provide **natural** resources and/or services equal in quantity to those lost. (3) Valuation scaling approach. (i) Where trustees have determined that neither **resource**-to-**resource** nor service-to-service scaling is appropriate, trustees may use the valuation scaling approach. Under the valuation scaling approach, trustees determine the amount of **natural** resources and/or services that must be provided to produce the same value lost to the public. Trustees must explicitly measure the value of injured **natural** resources and/or services, and then determine the scale of the restoration action necessary to produce **natural** resources and/or services of equivalent value to the public. (ii) If, in the judgment of the trustees, valuation of the lost services is practicable, but valuation of the replacement **natural** resources and/or services cannot be performed within a reasonable time frame or at a reasonable cost, as determined by Sec. 990.27(a)(2) of this part, trustees may estimate the dollar value of the lost services and select the scale of the restoration action that has a cost equivalent to the lost value. The responsible parties may request that trustees value the **natural** resources and services provided by the restoration action following the process described in Sec. 990.14(c) of this part. (4) Discounting and uncertainty. When scaling a restoration action, trustees must evaluate the uncertainties associated with the projected consequences of the restoration action, and must discount all service quantities and/or values to the date the demand is presented to the responsible parties. Where feasible, trustees should use risk-adjusted measures of losses due to injury and of gains from the restoration action, in conjunction with a riskless discount rate representing the consumer rate of time preference. If the streams of losses and gains cannot be adequately adjusted for risks, then trustees may use a discount rate that incorporates a suitable risk adjustment to the riskless rate.

Sec. 990.54 Restoration selection--evaluation of alternatives. (a) Evaluation standards. Once trustees have developed a reasonable range of restoration alternatives under Sec. 990.53 of this part, they must evaluate the proposed alternatives based on, at a minimum: (1) The cost to carry out the alternative; (2) The extent to which each

alternative is expected to meet the trustees' goals and objectives in returning the injured **natural** resources and services to baseline and/or compensating for interim losses; (3) The likelihood of success of each alternative; (4) The extent to which each alternative will prevent future injury as a result of the incident, and avoid collateral injury as a result of implementing the alternative; (5) The extent to which each alternative benefits more than one **natural resource** and/or service; and (6) The effect of each alternative on public health and safety. (b) Preferred restoration alternatives. Based on an evaluation of the factors under paragraph (a) of this section, trustees must select a preferred restoration alternative(s). If the trustees conclude that two or more alternatives are equally preferable based on these factors, the trustees must select the most cost-effective alternative. (c) Pilot projects. Where additional information is needed to identify and evaluate the feasibility and likelihood of success of restoration alternatives, trustees may implement restoration pilot projects. Pilot projects should only be undertaken when, in the judgment of the trustees, these projects are likely to provide the information, described in paragraph (a) of this section, at a reasonable cost and in a reasonable time frame.

Sec. 990.55 Restoration selection--developing restoration plans. (a) General. OPA requires that damages be based upon a plan developed with opportunity for public review and comment. To meet this requirement, trustees must, at a minimum, develop a Draft and Final Restoration Plan, with an opportunity for public review of and comment on the draft plan. (b) Draft Restoration Plan. (1) The Draft Restoration Plan should include: (i) A summary of injury assessment procedures used; (ii) A description of the nature, degree, and spatial and temporal extent of injuries resulting from the incident; (iii) The goals and objectives of restoration; (iv) The range of restoration alternatives considered, and a discussion of how such alternatives were developed under Sec. 990.53 of this part, and evaluated under Sec. 990.54 of this part; (v) Identification of the trustees' tentative preferred alternative(s); (vi) A description of past and proposed involvement of the responsible parties in the assessment; and (vii) A description of monitoring for documenting restoration effectiveness, including performance criteria that will be used to determine the success of restoration or need for

interim corrective action. (2) When developing the Draft Restoration Plan, trustees must establish restoration objectives that are specific to the injuries. These objectives should clearly specify the desired outcome, and the performance criteria by which successful restoration will be judged. Performance criteria may include structural, functional, temporal, and/ or other demonstrable factors. Trustees must, at a minimum, determine what criteria will: (i) Constitute success, such that responsible parties are relieved of responsibility for further restoration actions; or (ii) Necessitate corrective actions in order to comply with the terms of a restoration plan or settlement agreement. (3) The monitoring component to the Draft Restoration Plan should address such factors as duration and frequency of monitoring needed to gauge progress and success, level of sampling needed to detect success or the need for corrective action, and whether monitoring of a reference or control site is needed to determine progress and success. Reasonable monitoring and oversight costs cover those activities necessary to gauge the progress, performance, and success of the restoration actions developed under the plan. (c) Public review and comment. The nature of public review and comment on the Draft and Final Restoration Plans will depend on the nature of the incident and any applicable federal trustee NEPA requirements, as described in Secs. 990.14(d) and 990.23 of this part. (d) Final Restoration Plan. Trustees must develop a Final Restoration Plan that includes the information specified in paragraph (a) of this section, responses to public comments, if applicable, and an indication of any changes made to the Draft Restoration Plan.

Sec. 990.56 Restoration selection--use of a Regional Restoration Plan or existing restoration project. (a) General. Trustees may consider using a Regional Restoration Plan or existing restoration project where such a plan or project is determined to be the preferred alternative among a range of feasible restoration alternatives for an incident, as determined under Sec. 990.54 of this part. Such plans or projects must be capable of fulfilling OPA's intent for the trustees to restore, rehabilitate, replace, or acquire the equivalent of the injured **natural** resources and services and compensate for interim losses. (b) Existing plans or projects--(1) Considerations. Trustees may select a component of a Regional Restoration Plan or an existing restoration project as the preferred alternative,

provided that the plan or project: (i) Was developed with public review and comment or is subject to public review and comment under this part; (ii) Will adequately compensate the environment and public for injuries resulting from the incident; (iii) Addresses, and is currently relevant to, the same or comparable **natural** resources and services as those identified as having been injured; and (iv) Allows for reasonable scaling relative to the incident. (2) Demand. (i) If the conditions of paragraph (b)(1) of this section are met, the trustees must invite the responsible parties to implement that component of the Regional Restoration Plan or existing restoration project, or advance to the trustees the trustees' reasonable estimate of the cost of implementing that component of the Regional Restoration Plan or existing restoration project. (ii) If the conditions of paragraph (b)(1) of this section are met, but the trustees determine that the scale of the existing plan or project is greater than the scale of compensation required by the incident, trustees may only request funding from the responsible parties equivalent to the scale of the restoration determined to be appropriate for the incident of concern. Trustees may pool such partial recoveries until adequate funding is available to successfully implement the existing plan or project. (3) Notice of Intent To Use a Regional Restoration Plan or Existing Restoration Project. If trustees intend to use an appropriate component of a Regional Restoration Plan or existing restoration project, they must prepare a Notice of Intent to Use a Regional Restoration Plan or Existing Restoration Project. Trustees must make a copy of the notice publicly available. The notice must include, at a minimum: (i) A description of the nature, degree, and spatial and temporal extent of injuries; and (ii) A description of the relevant component of the Regional Restoration Plan or existing restoration project; and (iii) An explanation of how the conditions set forth in paragraph (b)(1) of this section are met.

Subpart F--Restoration Implementation Phase

Sec. 990.60 Purpose. The purpose of this subpart is to provide a process for implementing restoration.

Sec. 990.61 Administrative record. (a) Closing the administrative record for restoration planning. Within a reasonable time after the trustees have completed restoration planning, as provided in Secs. 990.55 and 990.56 of this part, they must close the administrative

record. Trustees may not add documents to the administrative record once it is closed, except where such documents: (1) Are offered by interested parties that did not receive actual or constructive notice of the Draft Restoration Plan and the opportunity to comment on the plan; (2) Do not duplicate information already contained in the administrative record; and (3) Raise significant issues regarding the Final Restoration Plan. (b) Opening an administrative record for restoration implementation. Trustees may open an administrative record for implementation of restoration, as provided in Sec. 990.45 of this part. The costs associated with the administrative record are part of the costs of restoration. Ordinarily, the administrative record for implementation of restoration should document, at a minimum, all Restoration Implementation Phase decisions, actions, and expenditures, including any modifications made to the Final Restoration Plan.

Sec. 990.62 Presenting a demand. (a) General. After closing the administrative record for restoration planning, trustees must present a written demand to the responsible parties. Delivery of the demand should be made in a manner that establishes the date of receipt by the responsible parties. (b) When a Final Restoration Plan has been developed. Except as provided in paragraph (c) of this section and in Sec. 990.14(c) of this part, the demand must invite the responsible parties to either: (1) Implement the Final Restoration Plan subject to trustee oversight and reimburse the trustees for their assessment and oversight costs; or (2) Advance to the trustees a specified sum representing trustee assessment costs and all trustee costs associated with implementing the Final Restoration Plan, discounted as provided in Sec. 990.63(a) of this part. (c) Regional Restoration Plan or existing restoration project. When the trustees use a Regional Restoration Plan or an existing restoration project under Sec. 990.56 of this part, the demand will invite the responsible parties to implement a component of a Regional Restoration Plan or existing restoration project, or advance the trustees' estimate of damages based on the scale of the restoration determined to be appropriate for the incident of concern, which may be the entire project or a portion thereof. (d) Response to demand. The responsible parties must respond within ninety (90) calendar days in writing by paying or providing binding assurance they will reimburse trustees' assessment costs and implement the plan or pay assessment

costs and the trustees' estimate of the costs of implementation. (e) Additional contents of demand. The demand must also include: (1) Identification of the incident from which the claim arises; (2) Identification of the trustee(s) asserting the claim and a statement of the statutory basis for trusteeship; (3) A brief description of the injuries for which the claim is being brought; (4) An index to the administrative record; (5) The Final Restoration Plan or Notice of Intent to Use a Regional Restoration Plan or Existing Restoration Project; and (6) A request for reimbursement of: (i) Reasonable assessment costs, as defined in Sec. 990.30 of this part and discounted as provided in Sec. 990.63(b) of this part; (ii) The cost, if any, of conducting emergency restoration under Sec. 990.26 of this part, discounted as provided in Sec. 990.63(b) of this part; and (iii) Interest on the amounts recoverable, as provided in section 1005 of OPA (33 U.S.C. 2705), which allows for prejudgment and post- judgment interest to be paid at a commercial paper rate, starting from thirty (30) calendar days from the date a demand is presented until the date the claim is paid.

Sec. 990.63 Discounting and compounding. (a) Estimated future restoration costs. When determining estimated future costs of implementing a Final Restoration Plan, trustees must discount such future costs back to the date the demand is presented Trustees may use a discount rate that represents the yield on recoveries available to trustees. The price indices used to project future inflation should reflect the major components of the restoration costs. (b) Past assessment and emergency restoration costs. When calculating the present value of assessment and emergency restoration costs already incurred, trustees must compound the costs forward to the date the demand is presented. To perform the compounding, trustees may use the actual U.S. Treasury borrowing rate on marketable securities of comparable maturity to the period of analysis. For costs incurred by state or tribal trustees, trustees may compound using parallel state or tribal borrowing rates. (c) Trustees are referred to Appendices B and C of OMB Circular A-94 for information about U.S. Treasury rates of various maturities and guidance in calculation procedures. Copies of Appendix C, which is regularly updated, and of the Circular are available from the OMB Publications Office (202-395-7332).

Sec. 990.64 Unsatisfied demands. (a) If the responsible parties do not agree to the demand within ninety (90) calendar days after trustees present the demand, the trustees may either file a judicial action for damages or seek an appropriation from the Oil Spill Liability Trust Fund, as provided in section 1012(a)(2) of OPA (33 U.S.C. 2712(a)(2)). (b) Judicial actions and claims must be filed within three (3) years after the Final Restoration Plan or Notice of Intent to Use a Regional Restoration Plan or Existing Restoration Project is made publicly available, in accordance with 33 U.S.C. 2717(f)(1)(B) and 2712(h)(2).

Sec. 990.65 Opening an account for recovered damages. (a) General. Sums recovered by trustees in satisfaction of a **natural resource damage** claim must be placed in a revolving trust account. Sums recovered for past assessment costs and emergency restoration costs may be used to reimburse the trustees. All other sums must be used to implement the Final Restoration Plan or all or an appropriate component of a Regional Restoration Plan or an existing restoration project. b) Joint trustee recoveries. (1) General. Trustees may establish a joint account for damages recovered pursuant to joint assessment activities, such as an account under the registry of the applicable federal court. (2) Management. Trustees may develop enforceable agreements to govern management of joint accounts, including agreed-upon criteria and procedures, and personnel for authorizing expenditures out of such joint accounts. (c) Interest-bearing accounts. Trustees may place recoveries in interest-bearing revolving trust accounts, as provided by section 1006(f) of OPA (33 U.S.C. 2706(f)). Interest earned on such accounts may only be used for restoration. (d) Escrow accounts. Trustees may establish escrow accounts or other investment accounts. (e) Records. Trustees must maintain appropriate accounting and reporting procedures to document expenditures from accounts established under this section. (f) Oil Spill Liability Trust Fund. Any sums remaining in an account established under this section that are not used either to reimburse trustees for past assessment and emergency restoration costs or to implement restoration must be deposited in the Oil Spill Liability Trust Fund, as provided by section 1006(f) of OPA (33 U.S.C. 2706(f)).

Sec. 990.66 Additional considerations. (a) Upon settlement of a claim, trustees should consider the following actions to facilitate implementation of restoration: (1) Establish

a trustee committee and/or memorandum of understanding or other agreement to coordinate among affected trustees, as provided in Sec. 990.14(a)(3) of this part; (2) Develop more detailed workplans to implement restoration; (3) Monitor and oversee restoration; and (4) Evaluate restoration success and the need for corrective action. (b) The reasonable costs of such actions are included as restoration costs.

Code of Federal Regulations

TITLE 33--NAVIGATION AND NAVIGABLE WATERS
CHAPTER I--COAST GUARD, DEPARTMENT OF TRANSPORTATION (CONTINUED)
PART 136--OIL SPILL LIABILITY TRUST FUND; CLAIMS PROCEDURES; DESIGNATION OF SOURCE; AND ADVERTISEMENT

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Authority: 33 U.S.C. 2713, 2714; E.O. 12777, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46.

Source: CGD 91-035, 57 FR 36316, Aug. 12, 1992, unless otherwise noted.

Subpart A--General

Sec. 136.1 Purpose and applicability.

(a) This part prescribes regulations for—
  (1) Presentation, filing, processing, settlement, and adjudication of claims authorized to be presented to the Oil Spill Liability Trust Fund (the Fund) under section 1013 of the Oil Pollution Act of 1990 (the Act) (33 U.S.C. 2713) for certain uncompensated removal costs or uncompensated damages resulting from the discharge, or substantial threat of discharge, of oil from a vessel or facility into or upon the navigable waters, adjoining shorelines, or the exclusive economic zone;
  (2) Designation of the source of the incident, notification to the responsible party of the designation, and advertisement of the designation and claims procedures; and
  (3) Other related matters.
(b) This part applies to claims resulting from incidents occurring after August 18, 1990.
(c) Nothing in this part--
  (1) Preempts the authority of any State or political subdivision thereof from imposing any additional liability or requirements with respect to--
    (i) The discharge of oil or other pollution by oil within such State; or
    (ii) Any removal activities in connection with such a discharge; or
  (2) Affects or modifies in any way the obligations or liabilities of any person under the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.) or State law, including common law; or
  (3) Affects the authority of any State--
    (i) To establish, or to continue in effect, a fund any purpose of which is to pay for costs or damages arising out of, or directly resulting from, oil pollution or the substantial threat of oil pollution; or
    (ii) To require any person to contribute to such a fund; or
  (4) Affects the authority of the United States or any State or political subdivision thereof to impose additional liability or additional requirements relating to a discharge, or substantial threat of a discharge, of oil.

Sec. 136.3 Information.

Anyone desiring to file a claim against the Fund may obtain general information on the procedure for filing a claim from the Director, National Pollution Funds Center, suite 1000, 4200 Wilson Boulevard, Arlington, Virginia 22203-1804, (703) 235-4756.

Sec. 136.5 Definitions.

(a) As used in this part, the following terms have the same meaning as set forth in sections 1001 and 1007(c) of the Act (33 U.S.C. 2701 and 2707(c)): Claim, claimant, damages, discharge, exclusive economic zone, facility, foreign claimant, foreign offshore unit, Fund, guarantor, incident, National Contingency Plan, natural resources, navigable waters, offshore facility, oil, onshore facility, owner or operator, person, removal costs, responsible party, State, United States, and vessel.

(b) As used in this part—

Act means title I of the Oil Pollution Act of 1990 (Pub. L. 101-380; 33 U.S.C. 2701 through 719).

Director, NPFC, means the person in charge of the U.S. Coast Guard National Pollution Funds Center or that person's authorized representative.

FOSC means the Federal On-Scene Coordinator designated under the National Contingency Plan or that person's authorized representative.

NPFC means the U.S. Coast Guard National Pollution Funds Center, suite 1000, 4200 Wilson Boulevard, Arlington, Virginia 22203-1804.

Sec. 136.7 Foreign claimants.

In addition to other applicable limitations on presenting claims to the Fund, claims by foreign claimants to recover removal costs or damages may be presented only when the requirements of section 1007 of the Act (33 U.S.C. 2707) are met.

Sec. 136.9 Falsification of claims.

Persons submitting false claims or making false statements in connection with claims under his part may be subject to prosecution under Federal law, including but not limited to 18 U.S.C. 287 and 1001. In addition, persons submitting written documentation in support of claims under this part which they know, or should know, is false or omits a material fact may be subject to a civil penalty for each claim. If any payment is made on the claim, the claimant may also be subject to an assessment of up to twice the amount claimed. These civil sanctions may be imposed under the Program Fraud Civil Remedies Act, 31 U.S.C. 3801-3812, as implemented in 49 CFR part 31.

[CGD 91-035, 57 FR 36316, Aug. 12, 1992, as amended by CGD 96-052, 62 FR 16703, Apr. 8, 1997]

Subpart B--General Procedure

Sec. 136.101 Time limitations on claims.

(a) Except as provided under section 1012(h)(3) of the Act (33 U.S.C. 2712(h)(3)) (minors and incompetents), the Fund will consider a claim only if presented in writing to the Director, NPFC, within the following time limits:

(1) For damages, within three years after--

(i) The date on which the injury and its connection with the incident in question were reasonably discoverable with the exercise of due care.

(ii) In the case of natural resources damages under section 1002(b)(2)(A) of the Act (33 U.S.C. 2702(b)(2)(A)), the date under paragraph (a)(1)(i) of this section, or within three years from the date of completion of the natural resources damage assessment under section 1006(e) of the Act (33 U.S.C. 2706(e)), whichever is later.

(2) For removal costs, within six years after the date of completion of all removal actions for the incident. As used in this paragraph, "date of completion of all removal actions" is defined as the actual date of completion of all removal actions for the incident or the date the FOSC determines that the removal actions which form the basis for the costs being claimed are completed, whichever is earlier.

(b) Unless the Director, NPFC, directs in writing that the claim be submitted elsewhere, a claim is deemed presented on the date the claim is actually received at the National Pollution Funds Center, suite 1000, 4200 Wilson Boulevard, Arlington, Virginia 22203-1804. If the Director, NPFC, directs that the claim be presented elsewhere, the claim is deemed presented on the date the claim is actually received at the address in the directive.

[CGD 91-035, 57 FR 36316, Aug. 12, 1992; 57 FR 41104, Sept. 9, 1992]

Sec. 136.103 Order of presentment.

(a) Except as provided in paragraph (b) of this section, all claims for removal costs or damages must be presented first to the responsible party or guarantor of the source designated under Sec. 136.305.

(b) Claims for removal costs or damages may be presented first to the Fund only--

(1) By any claimant, if the Director, NPFC, has advertised, or otherwise notified claimants in writing, in accordance with Sec. 136.309(e);

(2) By a responsible party who may assert a claim under section 1008 of the Act (33 U.S.C. 2708);

(3) By the Governor of a State for removal costs incurred by that State; or

(4) By a United States claimant in a case where a foreign offshore unit has discharged oil causing damage for which the Fund is liable under section 1012(a) of the Act (33 U.S.C. 712(a)).

(c) If a claim is presented in accordance with paragraph (a) of this section and—

(1) Each person to whom the claim is presented denies all liability for the claim; or

(2) The claim is not settled by any person by payment within 90 days after the date upon which (A) the claim was presented, or (B) advertising was begun pursuant to Sec. 136.309(d), whichever is later, the claimant may elect to commence an action in court against the responsible party or guarantor or to present the claim to the Fund.

(d) No claim of a person against the Fund will be approved or certified for payment during the pendency of an action by the person in court to recover costs which are the subject of the claim.

[CGD 91-035, 57 FR 36316, Aug. 12, 1992; 57 FR 41104, Sept. 9, 1992]

Sec. 136.105 General requirements for a claim.

(a) The claimant bears the burden of providing all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim.
(b) Each claim must be in writing for a sum certain for compensation for each category of uncompensated damages or removal costs (as described in Subpart C of this part) resulting from an incident. If at any time during the pendency of a claim against the Fund the claimant receives any compensation for the claimed amounts, the claimant shall immediately amend the claim.
(c) Each claim must be signed in ink by the claimant certifying to the best of the claimant's knowledge and belief that the claim accurately reflects all material facts.
(d) In addition to the other requirements of this section, any claim presented by a legal representative of the claimant must also be signed by the legal representative and--
  (1) Be presented in the name of the claimant;
  (2) Show the title or legal capacity of the representative; and
  (3) Provide proof of authority to act for the claimant.
(e) Each claim must include at least the following, as applicable:
  (1) The full name, street and mailing addresses of residence and business, and telephone numbers of the claimant.
  (2) The date, time, and place of the incident giving rise to the claim.
  (3) The identity of the vessel, facility, or other entity causing or suspected to have caused the removal costs or damages claimed and the basis for such identity or belief.
  (4) A general description of the nature and extent of the impact of the incident, the costs associated with removal actions, and damages claimed, by category as delineated in Subpart C of this part, including, for any property, equipment, or similar item damaged, the full name, street and mailing address, and telephone number of the actual owner, if other than the claimant.
  (5) An explanation of how and when the removal costs or damages were caused by, or resulted from, an incident.
  (6) Evidence to support the claim.
  (7) A description of the actions taken by the claimant, or other person on the claimant's behalf, to avoid or minimize removal costs or damages claimed.
  (8) The reasonable costs incurred by the claimant in assessing the damages claimed. This includes the reasonable costs of estimating the damages claimed, but not attorney's fees or other administrative costs associated with preparation of the claim.
  (9) To the extent known or reasonably identifiable by the claimant, the full name, street and mailing address, and telephone number of each witness to the incident, to the discharge, or to the removal costs or damages claimed, along with a brief description of that person's knowledge.
  (10) A copy of written communications and the substance of verbal communications, if any, between the claimant and the responsible party or guarantor of the source designated under Sec. 136.305 and a statement indicating that the claim was presented to the responsible party or guarantor,

the date it was presented, that it was denied or remains not settled and, if known, the reason why it was denied or remains not settled.

(11) If the claimant has insurance which may cover the removal costs or damages claimed, the information required under Sec. 136.111.

(12) A statement by the claimant that no action has been commenced in court against the responsible party or guarantor of the source designated under Sec. 136.305 or, if an action has been commenced, a statement identifying the claimant's attorney and the attorney's address and phone number, the civil action number, and the court in which the action is pending.

(13) In the discretion of the Director, NPFC, any other information deemed relevant and necessary to properly process the claim for payment.

Sec. 136.107 Subrogated claims.

(a) The claims of subrogor (e.g., insured) and subrogee (e.g., insurer) for removal costs and damages arising out of the same incident should be presented together and must be signed by all claimants.

(b) A fully subrogated claim is payable only to the subrogee.

(c) A subrogee must support a claim in the same manner as any other claimant.

Sec. 136.109 Removal costs and multiple items of damages.

(a) A claimant must specify all of the claimant's known removal costs or damages arising out of a single incident when submitting a claim.

(b) Removal costs and each separate category of damages (as described in subpart C of this part) must be separately listed with a sum certain attributed to each type and category listed.

(c) At the sole discretion of the Director, NPFC, removal costs and each separate category of damages may be treated separately for settlement purposes.

Sec. 136.111 Insurance.

(a) A claimant shall provide the following information concerning any insurance which may cover the removal costs or damages for which compensation is claimed:

(1) The name and address of each insurer.

(2) The kind and amount of coverage.

(3) The policy number.

(4) Whether a claim has been or will be presented to an insurer and, if so, the amount of the claim and the name of the insurer.

(5) Whether any insurer has paid the claim in full or in part or has indicated whether or not payment will be made.

(b) If requested by the Director, NPFC, the claimant shall provide a copy of the following material:

(1) All insurance policies or indemnification agreements.
(2) All written communications, and a summary of all oral communications, with any insurer or indemnifier.

(c) A claimant shall advise the Director, NPFC, of any changes in the information provided under this section.

Sec. 136.113 Other compensation.

A claimant must include an accounting, including the source and value, of all other compensation received, applied for, or potentially available as a consequence of the incident out of which the claim arises including, but not limited to, monetary payments, goods or services, or other benefits.

Sec. 136.115 Settlement and notice to claimant.

(a) Payment in full, or acceptance by the claimant of an offer of settlement by the Fund, is final and conclusive for all purposes and, upon payment, constitutes a release of the Fund for the claim. In addition, acceptance of any compensation from the Fund precludes the claimant from filing any subsequent action against any person to recover costs or damages which are the subject of the compensated claim. Acceptance of any compensation also constitutes an agreement by the claimant to assign to the Fund any rights, claims, and causes of action the claimant has against any person for the costs and damages which are the subject of the compensated claims and to cooperate reasonably with the Fund in any claim or action by the Fund against any person to recover the amounts paid by the Fund. The cooperation shall include, but is not limited to, immediately reimbursing the Fund for any compensation received from any other source for the same costs and damages and providing any documentation, evidence, testimony, and other support, as may be necessary for the Fund to recover from any person.

(b) Claimant's failure to accept an offer of settlement within 60 days after the date the offer was mailed to the claimant automatically voids the offer. The Director, NPFC, reserves the right to revoke an offer at any time.

(c) A claimant will be notified in writing sent by certified or registered mail whenever a claim against the Fund is denied. The failure of the Director, NPFC, to make final disposition of a claim within six months after it is filed shall, at the option of the claimant any time thereafter, be deemed a final denial of the claim.

(d) The Director, NPFC, upon written request of the claimant or of a person duly authorized to act on the claimant's behalf, reconsiders any claim denied. The request for reconsideration must be in writing and include the factual or legal grounds for the relief requested, providing any additional support for the claim. The request must be received by the Director, NPFC, within 60 days after the date the denial was mailed to the claimant or within 30 days after receipt of the denial by the claimant, whichever date is earlier. Reconsideration may only be requested once for each claim denied. The Director, NPFC will provide the claimant seeking reconsideration with written notification of the decision within 90 days after receipt of the request for reconsideration. This written decision is final. The failure of the Director, NPFC, to make final disposition of a reconsideration within 90 days after

it is received shall, at the option of the claimant any time thereafter, be deemed a final denial of the reconsideration.

Subpart C--Procedures for Particular Claims

Removal Costs

Sec. 136.201 Authorized claimants.

A claim for removal costs may be presented by any claimant.

Sec. 136.203 Proof.

In addition to the requirements of Subparts A and B of this part, a claimant must establish--

(a) That the actions taken were necessary to prevent, minimize, or mitigate the effects of the incident;
(b) That the removal costs were incurred as a result of these actions;
(c) That the actions taken were determined by the FOSC to be consistent with the National Contingency Plan or were directed by the FOSC.

Sec. 136.205 Compensation allowable.

The amount of compensation allowable is the total of uncompensated reasonable removal costs of actions taken that were determined by the FOSC to be consistent with the National Contingency Plan or were directed by the FOSC. Except in exceptional circumstances, removal activities for which costs are being claimed must have been coordinated with the FOSC.

Natural Resources

Sec. 136.207 Authorized claimants.

(a) Claims for uncompensated natural resource damages may be presented by an appropriate natural resources Trustee. However, in order to facilitate the processing of these claims with respect to a single incident where multiple Trustees are involved and to prevent double recovery, the affected Trustees should select a lead administrative Trustee who will present consolidated claims on behalf of the Trustees.
(b) A Trustee may present a claim for the reasonable cost of assessing natural resources damages separately from a claim for the cost of developing and implementing plans for the restoration, rehabilitation, replacement, or acquisition of the equivalent of the natural resources damaged.

Sec. 136.209 Proof.

In addition to the requirements of subparts A and B of this part, a Trustee must do the following:

(a) Submit the assessment and restoration plans which form the basis of the claim.

(b) Provide documented costs and cost estimates for the claim. Final cost estimates for conducting damage assessments or implementing a restoration plan may form the basis for a claim against the Fund for an uncompensated natural resources damage claim.

(c) Identify all Trustees who may be potential claimants for the same natural resources damaged.

(d) Certify the accuracy and integrity of any claim submitted to the Fund, and certify that any actions taken or proposed were or will be conducted in accordance with the Act and consistent with all applicable laws and regulations.

(e) Certify whether the assessment was conducted in accordance with applicable provisions of the natural resources damage assessment regulations promulgated under section 1006(e)(1) of the Act (33 U.S.C. 2706(e)(1)). Identify any other or additional damage assessment regulations or methodology utilized.

(f) Certify that, to the best of the Trustee's knowledge and belief, no other Trustee has the right to present a claim for the same natural resources damages and that payment of any subpart of the claim presented would not constitute a double recovery for the same natural resources damages.

Sec. 136.211 Compensation allowable.

(a) The amount of compensation allowable is the reasonable cost of assessing damages, and the cost of restoring, rehabilitating, replacing, or acquiring the equivalent of the damaged natural resources.

(b) In addition to any other provision of law respecting the use of sums recovered for natural resources damages, Trustees 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.

Real or Personal Property

Sec. 136.213 Authorized claimants.

(a) A claim for injury to, or economic losses resulting from the destruction of, real or personal property may be presented only by a claimant either owning or leasing the property.
(b) Any claim for loss of profits or impairment of earning capacity due to injury to, destruction of, or loss of real or personal property must be included as subpart of the claim under this section and must include the proof required under Sec. 136.233.

Sec. 136.215 Proof.

(a) In addition to the requirements of subparts A and B of this part, a claimant must establish—
    (1) An ownership or leasehold interest in the property;
    (2) That the property was injured or destroyed;
    (3) The cost of repair or replacement; and
    (4) The value of the property both before and after injury occurred.
(b) In addition, for each claim for economic loss resulting from destruction of real or personal property, the claimant must establish--
    (1) That the property was not available for use and, if it had been, the value of that use;
    (2) Whether or not substitute property was available and, if used, the costs thereof; and
    (3) That the economic loss claimed was incurred as the result of the injury to or destruction of the property.

Sec. 136.217 Compensation allowable.

(a) The amount of compensation allowable for damaged property is the lesser of—
    (1) Actual or estimated net cost of repairs necessary to restore the property to substantially the same condition which existed immediately before the damage;
    (2) The difference between value of the property before and after the damage; or
    (3) The replacement value.
(b) Compensation for economic loss resulting from the destruction of real or personal property may be allowed in an amount equal to the reasonable costs actually incurred for use of substitute commercial property or, if substitute commercial property was not reasonably available, in an amount equal to the net economic loss which resulted from not having use of the property. When substitute commercial property was reasonably available, but not used, allowable compensation for loss of use is limited to the cost of the substitute commercial property, or the property lost,

whichever is less. Compensation for loss of use of noncommercial property is not allowable.

(c) Compensation for a claim for loss of profits or impairment of earning capacity under Sec. 136.213(b) is limited to that allowable under Sec. 136.235.

Subsistence Use

Sec. 136.219 Authorized claimants.

(a) A claim for loss of subsistence use of natural resources may be presented only by a claimant who actually uses, for subsistence, the natural resources which have been injured, destroyed, or lost, without regard to the ownership or management of the resources.

(b) A claim for loss of profits or impairment of earning capacity due to loss of subsistence use of natural resources must be included as part of the claim under this section and must include the proof required under Sec. 136.233.

Sec. 136.221 Proof.

In addition to the requirements of subparts A and B of this part, a claimant must provide--

(a) The identification of each specific natural resource for which compensation for loss of subsistence use is claimed;

(b) A description of the actual subsistence use made of each specific natural resource by the claimant;

(c) A description of how and to what extent the claimant's subsistence use was affected by the injury to or loss of each specific natural resource;

(d) A description of each effort made by the claimant to mitigate the claimant's loss of subsistence use; and

(e) A description of each alternative source or means of subsistence available to the claimant during the period of time for which loss of subsistence is claimed, and any compensation available to the claimant for loss of subsistence.

Sec. 136.223 Compensation allowable.

(a) The amount of compensation allowable is the reasonable replacement cost of the subsistence loss suffered by the claimant if, during the period of time for which the loss of subsistence is claimed, there was no alternative source or means of subsistence available.

(b) The amount of compensation allowable under paragraph (a) of this section must be reduced by—

(1) All compensation made available to the claimant to compensate for subsistence loss;

(2) All income which was derived by utilizing the time which otherwise would have been used to obtain natural resources for subsistence use; and
(3) Overheads or other normal expenses of subsistence use not incurred as a result of the incident.

(c) Compensation for a claim for loss of profits or impairment of earning capacity under Sec. 136.219(b) is limited to that allowable under Sec. 136.235.

Government Revenues

Sec. 136.225 Authorized claimants.

A claim for net loss of revenue due to the injury, destruction, or loss of real property, personal property, or natural resources may be presented only by an appropriate claimant sustaining the loss. As used in this section and Sec. 136.277, ``revenue'' means taxes, royalties, rents, fees, and net profit shares.

Sec. 136.227 Proof.

In addition to the requirements of Subparts A and B, a claimant must establish--

(a) The identification and description of the economic loss for which compensation is claimed, including the applicable authority, property affected, method of assessment, rate, and method and dates of collection;
(b) That the loss of revenue was due to the injury to, destruction of, or loss of real or personal property or natural resources;
(c) The total assessment or revenue collected for comparable revenue periods; and
(d) The net loss of revenue.

Sec. 136.229 Compensation allowable.

The amount of compensation allowable is the total net revenue actually lost.

Profits and Earning Capacity

Sec. 136.231 Authorized claimants.

(a) A claim for loss of profits or impairment of earning capacity due to the injury to, destruction of, or loss of real or personal property or natural resources may be presented by a claimant sustaining the loss or impairment. The claimant need not be the owner of the damaged property or resources to recover for lost profits or income.
(b) A claim for loss of profits or impairment of earning capacity that also involves a claim for injury to, or economic losses resulting from destruction of, real or personal property must be claimed under Sec. 136.213.
(c) A claim for loss of profits or impairment of earning capacity that also involves a claim for loss of subsistence use of natural resources must be claimed under Sec. 136.219.

Sec. 136.233 Proof.

In addition to the requirements of subparts A and B of this part, a claimant must establish the following:

(a) That real or personal property or natural resources have been injured, destroyed, or lost.

(b) That the claimant's income was reduced as a consequence of injury to, destruction of, or loss of the property or natural resources, and the amount of that reduction.

(c) The amount of the claimant's profits or earnings in comparable periods and during the period when the claimed loss or impairment was suffered, as established by income tax returns, financial statements, and similar documents. In addition, comparative figures for profits or earnings for the same or similar activities outside of the area affected by the incident also must be established.

(d) Whether alternative employment or business was available and undertaken and, if so, the amount of income received. All income that a claimant received as a result of the incident must be clearly indicated and any saved overhead and other normal expenses not incurred as a result of the incident must be established.

Sec. 136.235 Compensation allowable.

The amount of compensation allowable is limited to the actual net reduction or loss of earnings or profits suffered. Calculations for net reductions or losses must clearly reflect adjustments for--

(a) All income resulting from the incident;

(b) All income from alternative employment or business undertaken;

(c) Potential income from alternative employment or business not undertaken, but reasonably available;

(d) Any saved overhead or normal expenses not incurred as a result of the incident; and

(e) State, local, and Federal taxes.

Government Public Services

Sec. 136.237 Authorized claimants.

A claim for net costs of providing increased or additional public services during or after removal activities, including protection from fire, safety, or health hazards, caused by a discharge of oil may be presented only by a State or a political subdivision of a State incurring the costs.

Sec. 136.239 Proof.

In addition to the requirements of subparts A and B of this part, a claimant must establish--

(a) The nature of the specific public services provided and the need for those services;
(b) That the services occurred during or after removal activities;
(c) That the services were provided as a result of a discharge of oil and would not otherwise have been provided; and
(d) The net cost for the services and the methods used to compute those costs.

Sec. 136.241 Compensation allowable.

The amount of compensation allowable is the net cost of the increased or additional service provided by the State or political subdivision.

Subpart D--Designation of Source and Advertisement

General

Sec. 136.301 Purpose.

This subpart prescribes the requirements concerning designation of the source or sources of the discharge or threat of discharge and advertisement of these designations, including the procedures by which claims may be presented to the responsible party or guarantor.

Sec. 136.303 Definitions.

As used in this subpart--
Advertisement means the dissemination of information, including but not limited to paid advertisements, that are reasonably calculated to advise the public how to present a claim.
Designated source means a source designated under Sec. 136.305.

Designation of Source

Sec. 136.305 Notice of designation.

(a) When information of an incident is received, the source or sources of the discharge or threat are designated, where possible and appropriate. If the designated source is a vessel or facility, the responsible party and the guarantor, if known, are notified by telephone, telefax, or other rapid means of that designation. The designation will be confirmed by a written Notice of Designation.

(b) A Notice of Designation normally contains, to the extent known--
  (1) The name of the vessel or facility designated as the source;
  (2) The location, date, and time of the incident;
  (3) The type of quantity of oil involved;
  (4) The date of the designation;
  (5) The procedures for accepting or denying the designation; and
  (6) The name, address, telephone number, and, if available, telefax number of the responsible Federal official to whom further communication regarding the incident, advertisement of the incident, or denial of designation should be directed.

Sec. 136.307 Denial of designation.

(a) Within five days after receiving a Notice of Designation under Sec. 136.305, the responsible party or guarantor may deny the designation.
(b) A denial of designation must—
  (1) Be in writing;
  (2) Identify the Notice of Designation;
  (3) Give the reasons for the denial and provide a copy of all supporting documents; and
  (4) Be submitted to the official named in the Notice of Designation.
(c) A denial is deemed received on the date the denial is actually received by the official named in the Notice of Designation.

Advertisement

Sec. 136.309 Advertisement determinations.

(a) The Director, NPFC, determines for each incident the type, geographic scope, frequency, and duration of advertisement required.
(b) In making the determination specified in paragraph (a) of this section, the Director, NPFC, may consider--
  (1) The nature and extent of economic losses that have occurred or are likely to occur;
  (2) The potential claimants who are likely to incur economic losses;
  (3) The geographical area that is or will likely be affected;
  (4) The most effective method of reasonably notifying potential claimants of the designation and procedures of submitting claims; and
  (5) Relevant information or recommendations, if any, submitted by, or on behalf of, the responsible party or guarantor of the designated source.
(c) The Director, NPFC, provides the specific requirements for advertisement for each incident to the responsible party or guarantor of the designated source.

(d) If a responsible party or guarantor has not denied designation in accordance with Sec. 136.307, the party or guarantor shall advertise, in accordance with the requirements of this subpart, the designation and the procedures by which claims may be presented. The advertisement must begin not later than 15 days after the date of the designation made under Sec. 136.305.

(e) If there is no designation under Sec. 136.305, if the source of the discharge or threat is a public vessel, or if the responsible party and guarantor of the source designated have denied the designation or failed to meet the requirements for advertisement in this section, the Director, NPFC, may advertise procedures for presenting claims.

Sec. 136.311 Types of advertisement.

Advertisement required by the Director, NPFC, will normally include one or more of the following:

(a) Paid advertisements in a newspaper or newspapers having general circulation in the area designated by the Director, NPFC.

(b) Notice posted in marinas, marine supply stores, bait and tackle shops, and other appropriate business establishments or public facilities in the area designated by the Director, NPFC.

(c) News releases to newspapers, radio stations, television stations, and cable services having general circulation in the area designated by the Director, NPFC.

(d) Other means approved by the Director, NPFC, under the circumstances of each case.

Sec. 136.313 Content of advertisement.

Each advertisement required by this subpart may be required to contain the following information or to indicate where this information may be contained:

(a) Location, date, and time of the incident.

(b) Geographical area affected, as determined by the FOSC or Director, NPFC.

(c) Type and quantity of oil involved.

(d) Name or other description of the source designated by the FOSC or Director, NPFC.

(e) Name of the responsible party and guarantor of the designated source.

(f) Name, address, telephone number, office hours, and work days of the person or persons to whom claims are to be presented and from whom claim information can be obtained.

(g) The procedures by which a claim may be presented.

(h) Other information required by the Director, NPFC, under the circumstances of each case.

CHAPTER 7

Claims

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Chapter 7: OPA Claims

This chapter explains the procedures for designation, advertising, and filing claims for removal costs or damages resulting from oil spills.

Download	Description
Entire Chapter 1.7 MB PDF	Download entire chapter.
Introduction 75 KB PDF	Cover, table of contents.
Interim Claims Regulations 100 KB PDF	Includes regulations for filing claims for removal costs or damages resulting from oil spills (33 CFR 136); Notice of Designation requirements for a written notice to the source of an oil discharge (136 CFR 305); and the advertisement section, which describes the need for advertisements to potential claimants (136 CFR 309).
Claimant's Guide 170 KB PDF	Guidance for anyone who has suffered a loss due to an oil spill. It describes compensation available from the Oil Spill Liability Trust Fund (OSLTF) and the process of submitting a claim. Includes Optional OSLTF Claim Form).
OSRO FAQs 350 KB PDF	Frequently Asked Questions (FAQs) from Oil Spill Response Organizations (OSROs) on submitting claims for uncompensated oil spill removal costs to the National Pollution Funds Center and suggestions to make the claim preparation process easier and the approval processes quicker.
Responsible Party Claim Submission Guidance 400 KB PDF	Guidance for responsible parties (RPs) on how to submit a claim for reimbursement of Oil Pollution Act of 1990 (OPA) removal costs and damages that asserts either an affirmative defense or an entitlement to a limit on liability.

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Oil Pollution Act of 1990
Interim Claims Regulations

The enclosed is the body of the text that was
supplied to the Federal Register by
Commandant.

October 28, 1992

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List of Subjects

33 CFR Part 135

Advertising, Claims, Continental shelf, Oil pollution.

33 CFR Part 136

Administration practice and procedure, Claims, Oil pollution.

33 CFR Part 137

Claims, Harbors, Insurance, Oil pollution, Reporting and recordkeeping requirements, Vessels.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR Parts 135, 136, and 137 as follows:

PART 135 - OFFSHORE OIL POLLUTION COMPENSATION FUND

1. The authority citation for Part 135 is revised to read as follows:

   Authority: 33 U.S.C. 2701-2719; E.O. 12777, 56 FR 54757; 49 CFR 1.46.

2. The heading for Subpart D is revised to read as follows:

   Subpart D - Notification of Pollution Incidents

   Subpart D [Amended]

3. In Subpart D, remove the undesignated section headings "Notification", "Designation", and "Advertisement".

§ 135.301 [Removed]

4. Section 135.301, Purpose, is removed.

§ 135.303 [Amended]

5. In § 135.303, remove Paragraphs (a)(l) and (a)(2) and redesignate paragraph (a)(3) as an undesignated paragraph.

§ 135.309 through 135.319 [Removed]

6. Sections 135.309 through 135.319 are removed.
7. Part 136 and its authority citation arc revised to read as follows:

PART 136 - OIL SPILL LIABILITY TRUST FUND; CLAIMS PROCEDURES; DESIGNATION OF SOURCE; AND ADVERTISEMENT

Subpart A - General Sec.

136.1 Purpose and applicability.
136.3 Information.
136.5 Definitions.
136.7 Foreign claimants.
136.9 Falsification of claims.

Subpart B - General Procedure

136.101 Time limitation on claims.
136.103 Order of presentment.
136.105 General requirements for a claim.
136.107 Subrogated claims.
136.109 Removal costs and multiple items of damages.
136.111 Insurance.
136.113 Other compensation.
136.115 Settlement and notice to claimant.

Subpart C - Procedure for Particular Claims

REMOVAL COSTS
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136.231 Authorized claimants.
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Subpart D - Designation of Source and Advertisement

GENERAL

136.301 Purpose.
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DESIGNATION OF SOURCE
136.305 Notice of designation.
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ADVERTISEMENT

136.309 Advertisement determinations.
136.311 Types of advertisement.
136.313 Content of advertisement.

AUTHORITY: 33 US.C. 2713,2714; E.O. 12777,(56 FR 54757); 49 CFR 1.46.

Subpart A - General

§ 136.1 Purpose and applicability.

(a) This part prescribes regulations for --
  (1) Presentation, filing, processing, settlement, and adjudication of claims authorized to be presented to the Oil Spill Liability Trust Fund (the Fund) under section 1013 of the Oil Pollution Act of 1990 (the Act) (33 US.C. 2713) for certain uncompensated removal costs or uncompensated damages resulting from the discharge, or substantial threat of discharge, of oil from a vessel or facility into or upon the navigable waters, adjoining shorelines, or the exclusive economic zone;
  (2) Designation of the source of the incident, notification to the responsible party of the designation, and advertisement of the designation and claims procedures; and
  (3) Other related matters.
(b) This part applies to claims resulting from incidents occurring after August 18, 1990.
(c) Nothing in this part --
  (1) Preempts the authority of any State or political subdivision thereof from imposing any additional liability or requirements with respect to --
    (i) The discharge of oil or other pollution by oil within such State; or
    (ii) Any removal activities in connection with such a discharge; or
  (2) Affects or modifies in any way the obligations or liabilities of any person under the Solid Waste
  Disposal Act (42 U.S.C. 6901 et seq.) or State law, including common law; or
  (3) Affects the authority of any State --
    (i) To establish, or to continue in effect, a fund any purpose of which is to pay for costs or damages arising out of, or directly resulting from, oil pollution or the substantial threat of oil pollution; or
    (ii) To require any person to contribute to such a fund; or
  (4) Affects the authority of the United States or any State or political subdivision thereof to impose additional liability or additional requirements relating to a discharge, or substantial threat of a discharge, of oil.

§ 136.3 Information.

Anyone desiring to file a claim against the Fund may obtain general information on the procedure for filing a claim from the Director, National Pollution Funds Center, Suite 1000, 4200 Wilson Boulevard, Arlington, Virginia 22203-1804, (202) 493-6830.

§ 136.5 Definitions.

(a) As used in this part, the following terms have the same meaning as set forth in sections 1001 and 1007(c) of the Act (33 U.S.C. 2701 and 2707(c)): "claim", "claimant", "damages", "discharge", "exclusive economic zone", "facility", "foreign claimant", "foreign offshore unit", "Fund', "guarantor", "incident", "National Contingency Plan", "natural resources", "navigable waters", "offshore", "facility", "oil", "onshore facility", "owner or operator", "Person", "removal costs", "responsible party", "State", "United States", and "vessel".
(b) As used in this part
  "Act means Title I of the Oil Pollution Act of 1990 (Pub.L. 101-380; 33 U.S.C 2701 through 2719).

"Director, NPFC" means the person in charge of the U.S. Coast Guard National Pollution Funds Center or that person's authorized representative.
'FOSC' means the Federal On-Scene Coordinator designated under the National Contingency Plan or that person's authorized representative.
"NPFC" means the U.S. Coast Guard National Pollution Funds Center, Suite 1000, 4200 Wilson Boulevard, Arlington, Virginia 22203-1804.

§ 136.7 Foreign claimants.

In addition to other applicable limitations on presenting claims to the Fund, claims by foreign claimants to recover removal costs or damages may be presented only when the requirements of section 1007 of the Act (33 U.S.C. 2707) are met.

§ 136.9 Falsification of claims.

Persons submitting false claims or making false statements in connection with claims under this part may be subject to prosecution under Federal law, including but not limited to 18 U.S.C. 287 and 1001. In addition, persons submitting written documentation in support of claims under this part which they know, or should know, is false or omits a material fact may be subject to a civil penalty of up to $5,000 for each claim. If any payment is made on the claim, the claimant may also be subject to an assessment of up to twice the amount claimed. These civil sanctions may be imposed under the Program Fraud Civil Remedies Act, 31 U.S.C. 3801-3812, as implemented in 49 CFR Part 31.

Subpart B - General Procedure

§ 136.101 Time limitations on claims.

(a) Except as provided under section 1012(h)(3) of the Act (33 U.S.C. 2712(h)(3)) (minors and incompetents), the Fund will consider a claim only if presented in writing to the Director, NPFC, within the following time limits:
(1) For damages, within three years after --
(i) The date on which the injury and its connection with the incident in question were reasonably discoverable with the exercise of due care.
(ii)In the case of natural resources damages under section 1002(b)(2)A) of the Act (33 U.S.C. 2702(b)(2)(A)), the date under paragraph (a)(1)(i) of this section, or within three years from the date of completion of the natural resources damage assessment under section 1006(c) of the Act (33 U.S.C. 2706(c)), whichever is later.
(2) For removal costs, within six years after the date of completion of all removal actions for the incident. As used in this paragraph, "date of completion of all removal actions" is defined as the actual date of completion of all removal actions for the incident or the date the FOSC determines that the removal actions which form the basis for the costs being claimed are complete, whichever is earlier.
(b)Unless the Director, NPFC, directs in writing that the claim be submitted elsewhere, a claim is deemed presented on the date the claim is actually received at the National Pollution Funds Center, Suite 1000, 4200 Wilson Boulevard, Arlington, Virginia 22203-1804. If the Director, NPFC, directs that the claim be presented elsewhere, the claim is deemed presented on the date the claim is actually received at the address in the Commander's directive.

§ 136.103 Order of Presentment.

(a) Except as provided in paragraph (b) of this section, all claims for removal costs or damages must be presented first to the responsible party or guarantor of the source designated under § 136-305.

(b) Claims for removal costs or damages may be presented first to the Fund only --
  (1) By any claimant, if the Director, NPFC, has advertised, or otherwise notified claimants in writing, in accordance with § 136.309(c);
  (2) By a responsible party who may assert a claim under section 1008 of the Act (33 U.S.C. 2708);
  (3) By the Governor of a State for removal costs incurred by that State; or
  (4) By a United States claimant in a case where a foreign offshore unit has discharged oil causing damage for which the Fund is liable under section 1012(a) of the Act (33 U.S.C. 2712(a)).

(c) If a claim is presented in accordance with paragraph (a) of this section and --
  (1) Each person to whom the claim is presented denies all liability for the claim; or
  (2) The claim is not settled by any person by payment within 90 days after the date upon which (A) the claim was presented, or (B) advertising was begun pursuant to § 136.309(d), whichever is later, the claimant may elect to commence an action in court against the responsible party or guarantor or to present the claim to the Fund.

(d) No claim of a person against the Fund will be approved or certified for payment during the pendency of an action by the person in court to recover costs which are the subject of the claim.

§ 136.105 General requirements for a claim.

(a) The claimant bears the burden of providing all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim.

(b) Each claim must be in writing for a sum certain for compensation for each category of uncompensated damages or removal costs (as described in Subpart C of this part) resulting from an incident. If at any time during the pendency of a claim against the Fund the claimant receives any compensation for the claimed amounts, the claimant shall immediately amend the claim.

(c) Each claim must be signed in ink by the claimant certifying to the best of the claimant's knowledge and belief that the claim accurately reflects all material facts.

(d) In addition to the other requirements of this section, any claim presented by a legal representative of the claimant must also be signed by the legal representative and
  (1) Be presented in the name of the claimant;
  (2) Show the title or legal capacity of the representative; and
  (3) Provide proof of authority to act for the claimant.

(e) Each claim must include at least the following, as applicable.:
  (1) The full name, street and mailing addresses of residence and business, and telephone numbers of the claimant.
  (2) The date, time, and place of the incident giving rise to the claim.
  (3) The identity of the vessel, facility, or other entity causing or suspected to have caused the removal costs or damages claimed and the basis for such identity or belief.
  (4) A general description of the nature and extent of the impact of the incident, the costs associated with removal actions, and damages claimed, by category as delineated in Subpart C of this part, including, for any property, equipment, or similar item damaged, the full name, street and mailing address, and telephone number of the actual owner, if other than the claimant.
  (5) An explanation of how and when the removal costs or damages were caused by, or resulted from, an incident.
  (6) Evidence to support the claim.
  (7) A description of the actions taken by the claimant, or other person on the claimant's behalf, to avoid or minimize removal costs or damages claimed.

(8) The reasonable costs incurred by the claimant in assessing the damages claimed. This includes the reasonable costs of estimating the damages claimed, but not attorney's fees or other administrative costs associated with preparation of the claim.

(9) To the extent known or reasonably identifiable by the claimant, the full name, street and mailing address, and telephone number of each witness to the incident, to the discharge, or to the removal costs or damages claimed, along with a brief description of that person's knowledge.

(10) A copy of written communications and the substance of verbal communications, if any, between the claimant and the responsible party or guarantor of the source designated under ' § 136.305 and a statement indicating that the claim was presented to the responsible party or guarantor, the date it was presented, that it was denied or remains not settled and, if known, the reason why it was denied or remains not settled.

(11) If the claimant has insurance which may cover the removal costs or damages claimed, the information required under § 136.111.

(12) A statement by the claimant that no action has been commenced in court against the responsible party or guarantor of the source designated under § 136-305 or, if an action has been commenced, a statement identifying the claimant's attorney and the attorney's address and phone number, the civil action number, and the court in which the action is pending.

(13) In the discretion of the Director, NPFC, any other information deemed relevant and necessary to properly process the claim for payment.

§ 136.107 Subrogated claims.

(a) The claims of subrogate (e.g., insured) and subrogee (e.g., insurer) for removal costs and damages arising out of the same incident should be presented together and must be signed by all claimants.

(b) A fully subrogated claim is payable only to the subrogee.

(c) A subrogee must support a claim in the same manner as any other claimant.

§ 136.109 Removal costs and multiple items of damages.

(a) A claimant must specify all of the claimant's known removal costs or damages arising out of a single incident when submitting a claim.

(b) Removal costs and each separate category of damages (as described in Subpart C of this part) must be separately listed with a sum certain attributed to each type and category listed.

(c) At the sole discretion of the Director, NPFC, removal costs and each separate category of damages may be treated separately for settlement purposes.

§ 136.111 Insurance.

(a) A claimant shall provide the following information concerning any insurance which may cover the removal costs or damages for which compensation is claimed:

(1) The name and address of each insurer.

(2) The kind and amount of coverage.

(3) The policy number.

(4) Whether a claim has been or will be presented to an insurer and, if so, the amount of the claim and the name of the insurer.

(5) Whether any insurer has paid the claim in full or in part or has indicated whether or not payment will be made.

(b) If requested by the Director, NPFC, the claimant shall provide a copy of the following material:

(1) All insurance policies or indemnification agreements.
(2) All written communications, and a summary of all oral communications, with any insurer or indemnifier.

(c) A claimant shall advise the Director, NPFC, of any changes in the information provided under this section.

§ 136.113 Other compensation.

A claimant must include an accounting, including the source and value, of all other compensation received, applied for, or potentially available as a consequence of the incident out of which the claim arises including, but not limited to, monetary payments, goods or services, or other benefits.

§ 136.115 Settlement and notice to claimant.

(a) Payment in full, or acceptance by the claimant of an offer of settlement by the Fund, is final and conclusive for all purposes and, upon payment, constitutes a release of the Fund for the claim. In addition, acceptance of any compensation from the Fund precludes the claimant from filing any subsequent action against any person to recover costs or damages which are the subject of the compensated claim. Acceptance of any compensation also constitutes an agreement by the claimant to assign to the Fund any rights, claims, and causes of action the claimant has against any person for the costs and damages which are the subject of the compensated claims and to cooperate reasonably with the Fund in any claim or action by the Fund against any person to recover the amounts paid by the Fund. The cooperation shall include, but is not limited to, immediately reimbursing the Fund for any compensation received from any other source for the same costs and damages and providing any documentation, evidence, testimony, and other support, as may be necessary for the Fund to recover from any person.

(b) Claimant's failure to accept an offer of settlement within 60 days after the date the offer was mailed to the claimant automatically voids the offer. The Director, NPFC, reserves the right to revoke an offer at any time.

(c) A claimant will be notified in writing sent by certified or registered mail whenever a claim against the Fund is denied. The failure of the Director, NPFC, to make final disposition of a claim within six months after it is filed shall, at the option of the claimant any time thereafter, be deemed a final denial of the claim.

(d) The Director, NPFC, upon written request of the claimant or of a person duly authorized to act on the claimant's behalf, reconsiders any claim denied. The request for reconsideration must be in writing and include the factual or legal grounds for the relief requested, providing any additional support for the claim. The request must be received by the Director, NPFC, within 60 days after the date the denial was mailed to the claimant or within 30 days after receipt of the denial by the claimant, whichever date is earlier. Reconsideration may only be requested once for each claim denied. The Director, NPFC will provide the claimant seeking reconsideration with written notification of the decision within 90 days after receipt of the request for reconsideration. This written decision is final. The failure of the Director, NPFC, to make final disposition of a reconsideration within 90 days after it is received shall, at the option of the claimant any time thereafter, be deemed a final denial of the reconsideration.

Subpart C - Procedures for Particular Claims

REMOVAL COSTS

§ 136.201 Authorized claimants.

A claim for removal costs may be presented by any claimant.

§ 136.203 Proof.

In addition to the requirements of Subparts A and B of this part, a claimant must establish--

(a) That the actions taken were necessary to prevent, minimize, or mitigate the effects of the incident;

(b) That the removal costs were incurred as a result of these actions;

(c) That the actions taken were determined by the FOSC to be consistent with the National Contingency Plan or were directed by the FOSC.

§ 136.205 Compensation allowable.

The amount of compensation allowable is the total of uncompensated reasonable removal costs of actions taken that were determined by the FOSC to be consistent with the National Contingency Plan or were directed by the FOSC. Except in exceptional circumstances, removal activities for which costs are being claimed must have been coordinated with the FOSC.

NATURAL RESOURCES

§ 136.207 Authorized claimants.

(a) Claims for uncompensated natural resource damages may be presented by an appropriate natural resources trustee. However, in order to facilitate the processing of these claims with respect to a single incident where multiple trustees are involved and to prevent double recovery, the affected trustees should select a lead administrative trustee who will present consolidated claims on behalf of the trustees.

(b) A trustee may present a claim for the reasonable cost of assessing natural resources damages separately from a claim for the cost of developing and implementing plans for the restoration, rehabilitation, replacement, or acquisition of the equivalent of the natural resources damaged.

§ 136.209 Proof.

In addition to the requirements of Subparts A and B of this part, a trustee must do the following:

(a) Submit the assessment and restoration plans which form the basis of the claim.

(b) Provide documented costs and cost estimates for the claim. Final cost estimates for conducting damage assessments or implementing a restoration plan may form the basis for a claim against the Fund for an uncompensated natural resources damage claim.

(c) Identify all trustees who may be potential claimants for the same natural resources damaged.

(d) Certify the accuracy and integrity of any claim submitted to the Fund, and certify that any actions taken or proposed were or will be conducted in accordance with the Act and consistent with all applicable laws and regulations.

(e) Certify whether the assessment was conducted in accordance with applicable provisions of the natural resources damage assessments regulations promulgated under section 1006(e)(l) of the Act (33 U.S.C. 2706(e)(1)). Identify any other or additional damage assessment regulations or methodology utilized.

(f) Certify that, to the best of the trustee's knowledge and belief, no other trustee has the right to present a claim for the same natural resources damages and that payment of any subpart of the claim presented would not constitute a double recovery for the same natural resources damages.

§ 136.211 Compensation allowable.

(a) The amount of compensation allowable is the reasonable cost of assessing damages, and the cost of restoring, rehabilitating, replacing, or acquiring the equivalent of the damaged natural resources.

(b) In addition to any other provision of law respecting the use of sums recovered for natural resources damages, trustees 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.

REAL OR PERSONAL PROPERTY

§ 136.213 Authorized claimants.

(a) A claim for injury to, or economic losses resulting from the destruction of, real or personal property may be presented only by a claimant either owning or leasing the property. (b) Any claim for loss of profits or impairment of earned capacity due to injury to, destruction of, or loss of real or personal property must be included as subpart of the claim under this section and must include the proof required under § 136.233.

§ 136.215 Proof.

(a) In addition to the requirements of Subparts A and B of this part, a claimant must establish --

(1) An ownership or leasehold interest in the property;
(2) That the property was injured or destroyed;
(3) The cost of repair or replacement; and
(4) The value of the property both before and after injury occurred.

(b) In addition, for each claim for economic loss resulting from destruction of real or personal property, the claimant must establish --

(1) That the property was not available for use and, if it had been, the value of that use;
(2) Whether or not substitute property was available and, if used, the costs thereof; and
(3) That the economic loss claimed was incurred as the result of the injury to or destruction of the property.

§ 136.217 Compensation allowable.

(a) The amount of compensation allowable for damaged property is the lesser of --

(1) Actual or estimated net cost of repairs necessary to restore the property to substantially the same condition which existed immediately before the damage;
(2) The difference between value of the property before and after the damage; or
(3) The replacement value.

(b) Compensation for economic loss resulting from the destruction of real or personal property may be allowed in an amount equal to the reasonable costs actually incurred for use of substitute commercial property or, if substitute commercial property was not reasonably available, in an amount equal to the net economic loss which resulted from not having use of the property. When substitute commercial property was reasonably available, but not used, allowable compensation for loss of use is limited to the cost of the substitute commercial property, or the property lost, whichever is less. Compensation for loss of use of noncommercial property is not allowable.

(c) Compensation for a claim for loss of profits or impairment of earnings capacity under § 136.213(b) is limited to that allowable under § 136.235.

SUBSISTENCE USE

§ 136.219 Authorized claimants.

(a) A claim for loss of subsistence use of natural resources may be presented only by a claimant who actually uses, for subsistence, the natural resources which have been injured destroyed, or lost, without regard to the ownership or management of the resources.

(b) A claim for loss of profits or impairment of earning capacity due to loss of subsistence use of natural resources must be included as part of the claim under this section and must include the proof required under § 136.233.

§ 136.221 Proof.

In addition to the requirements of Subparts A and B of this part, a claimant must provide

(a) The identification of each specific natural resource for which compensation for loss of subsistence use is claimed;

(b) A description of the actual subsistence use made of each specific natural resource by the claimant;

(c) A description of how and to what extent the claimant's subsistence use was affected by the injury to or loss of each specific natural resource;

(d) A description of each effort made by the claimant to mitigate the claimant's loss of subsistence use; and

(e) A description of each alternative source or means of subsistence available to the claimant during the period of time for which loss of subsistence is claimed, and any compensation available to the claimant for loss of subsistence.

§ 136.223 Compensation allowable.

(a) The amount of compensation allowable is the reasonable replacement cost of the subsistence loss suffered by the claimant if, during the period of time for which the loss of subsistence is claimed, there was no alternative source or means of subsistence available.

(b) The amount of compensation allowable under paragraph (a) of this section must be reduced by --

(1) All compensation made available to the claimant to compensate for subsistence loss;

(2) All income which was derived by utilizing the time which otherwise would have been used to obtain natural resources for subsistence use; and

(3) Overheads or other normal expenses of subsistence use not incurred as a result of the incident.

(c) Compensation for a claim for loss of profits or impairment of earning capacity under ' § 136.219(b) is limited to that allowable under § 136.235.

GOVERNMENT REVENUES

§ 136.225 Authorized claimants.

A claim for net loss of revenue due to the injury, destruction, or loss of real property, personal property, or natural resources may be presented only by an appropriate claimant sustaining the loss. As used in this section and § 136.227, "revenue" means taxes, royalties, rents, fees, and net profit shares.

§ 136.227 Proof.

In addition to the requirements of Subparts A and B, a claimant must establish --

(a) The identification and description of the economic loss for which compensation is claimed, including the applicable authority, property affected, method of assessment, rate, and method and dates of collection;

(b) That the loss of revenue was due to the injury to, destruction of, or loss of real or personal property or natural resources;
(c) The total assessment or revenue collected for comparable revenue periods; and
(d) The net loss of revenue.

§ 136.229 Compensation allowable.

The amount of compensation allowable is the total net revenue actually lost.

PROFITS AND EARNING CAPACITY

§ 136-231 Authorized claimants.

(a) A claim for loss of profits or impairment of earning capacity due to the injury to, destruction of, or loss of real or personal property or natural resources may be presented by a claimant sustaining the loss or impairment. The claimant need not be the owner of the damaged property or resources to recover for lost profits or income.
(b) A claim for loss of profits or impairment of earning capacity that also involves a claim for injury to, or economic losses resulting from destruction of, real or personal property must be claimed under § 136.213.
(c) A claim for loss of profits or impairment of earning capacity that also involves a claim for loss of subsistence use of natural resources must be claimed under § 136.219.

§ 136.233 Proof.

In addition to the requirements of Subparts A and B of this part, a claimant must establish the following--

(a) That real or personal property or natural resources have been injured, destroyed, or lost.
(b) That the claimant's income was reduced as a consequence of injury to, destruction of, or loss of the property or natural resources, and the amount of that reduction.
(c) The amount of the claimant's profits or earnings in comparable periods and during the period when the claimed loss or impairment was suffered, as established by income tax returns, financial statements, and similar documents. In addition, comparative figures for profits or earnings for the same or similar activities outside of the area affected by the incident also must be established.
(d) Whether alternative employment or business was available and undertaken and, if so, the amount of income received. All income that a claimant receives as a result of the incident must be clearly indicated and any saved overhead and other normal expenses not incurred as a result of the incident must be established.

§ 136-235 Compensation allowable.

The amount of compensation allowable is limited to the actual net reduction or loss of earnings or profits suffered. Calculations for net reductions or losses must clearly reflect adjustments for --

(a) All income resulting from the incident;
(b) All income from alternative employment or business undertaken;
(c) Potential income from alternative employment or business not undertaken, but reasonably available;
(d) Any saved overhead or normal expenses not incurred as a result of the incident; and
(e) State, local, and Federal taxes.

GOVERNMENT PUBLIC SERVICES

§ 136.237 Authorized claimants.

A claim for net costs of providing increased or additional public services during or after removal activities, including protection from fire, safety, or health hazards, caused by a discharge of oil may be presented only by a State or a political subdivision of a State incurring the costs.

§ 136.239 Proof.

In addition to the requirements of Subparts A and B of this part, a claimant must establish--

(a) The nature of the specific public services provided and the need for those services;
(b) That the services occurred during or after removal activities;
(c) That the services were provided as a result of a discharge of oil and would not otherwise have been provided; and
(d) The net cost for the services and the methods used to compute those costs.

§ 136.241 Compensation allowable.

The amount of compensation allowable is the net cost of the increased or additional service provided by the State or political subdivision. Subpart D - Designation of Source and Advertisement

GENERAL

§ 136.301 Purpose.

This subpart prescribes the requirements concerning designation of the source or sources of the discharge or threat of discharge and advertisement of these designations, including the procedures by which claims may be presented to the responsible party or guarantor.

§ 136.303 Definitions.

As used in this subpart --

"Advertisement" means the dissemination of information, including but not limited to paid advertisements, that are reasonably calculated to advise the public how to present a claim.
"Designated source" means a source designated under § 136.305.

DESIGNATION OF SOURCE

§ 136.305 Notice of designation.

(a) When information of an incident is received, the source or sources of the discharge or threat are designated, where possible and appropriate. If the designated source is a vessel or facility, the responsible party and the guarantor, if known, are notified by telephone, telefax, or other rapid means of that designation. The designation will be confirmed by a written Notice of Designation.
(b) A Notice of Designation normally contains, to the extent known --
    (1) The name of the vessel or facility designated as the source;
    (2) The location, date, and time of the incident;
    (3) The type and quantity of oil involved;
    (4) The date of the designation;
    (5) The procedures for accepting or denying the designation; and
    (6) The name, address, telephone number, and, if available, telefax number of the responsible Federal official to whom further communication regarding the incident, advertisement of the incident or denial of designation should be directed.

§ 136.307 Denial of designation.

(a) Within five days after receiving a Notice of Designation under § 136.305, the responsible party or guarantor may deny the designation.

(b) A denial of designation must --

(1) Be in writing;

(2) Identify the Notice of Designation;

(3) Give the reasons for the denial and provide a copy of all supporting documents; and

(4) Be submitted to the official named in the Notice of Designation.

(c) A denial is deemed received on the date the denial is actually received by the official named in the Notice of Designation.

ADVERTISEMENT

§ 136.309 Advertisement determinations.

(a) The Director, NPFC, determines for each incident the type, geographic scope, frequency, and duration of advertisement required.

(b) In making the determination specified in paragraph (a) of this section, the Director, NPFC may
consider --

(1) The nature and extent of economic losses that have occurred or are likely to occur,

(2) The potential claimants who are likely to incur economic losses;

(3) The geographical area that is or will likely be affected;

(4) The most effective method of reasonably notifying potential claimants of the designation and procedures of submitting claims; and

(5) Relevant information or recommendations, if any, submitted by, or on behalf of, the responsible party or guarantor of the designated source.

(c) The Director, NPFC, provides the specific requirements for advertisement for each incident to the responsible party or guarantor of the designated source.

(d) If a responsible party or guarantor has not denied designation in accordance with § 136.307, the party or guarantor shall advertise, in accordance with the requirements of this subpart, the designation and the procedures by which claims may be presented. The advertisement must begin not later than 15 days after the date of the designation made under
§ 136.305.

(e) If there is no designation under § 136.305, if the source of the discharge or threat is a public vessel, or if the responsible party and guarantor of the source designated have denied the designation or failed to meet the requirements for advertisement in this section, the Director, NPFC, may advertise procedures for presenting claims.

§ 136.311 Types of advertisement.

Advertisement required by the Director, NPFC, will normally include one or more of the following:

(a) Paid advertisements in a newspaper or newspapers having general circulation in the area designated by the Director, NPFC.

(b) Notice posted in marinas, marine supply stores, bait and tackle shops, and other appropriate business establishments or public facilities in the area designated by the Director, NPFC.

(c) News releases to newspapers, radio stations, television stations, and cable services having general circulation in the area designated by the Director, NPFC.

(d) Other means approved by the Director, NPFC, under the circumstances of each case.

§ 136.313 Content of advertisement.

Each advertisement required by this subpart may be required to contain the following information or to indicate where this information may be contained:

(a) Location, date, and time of the incident.
(b) Geographical area affected, as determined by the FOSC or Director, NPFC.
(c) Type and quantity of oil involved.
(d) Name or other description of the source designated by the FOSC or Director, NPFC.
(e) Name of the responsible party and guarantor of the designated source.
(f) Name, address, telephone number, office hours, and work days of the person or persons to whom claims are to be presented and from whom claim information can be obtained.
(g) The procedures by which a claim may be presented.
(h) Other information required by the Director, NPFC, under the circumstances of each case.

PART 137 - DEEPWATER PORT LIABILITY FUND

8. The authority citation for Part 137 continues to read as follows:
Authority: 33 U.S.C. 1509(a), 1512(a), 1517(j)(1); 49 CFR 1.46.

Subpart F [Removed and Reserved]

9. In Part 137, Subpart F, Claims Procedures, is removed and reserved.

Dated:

_____

Daniel F. Sheehan, Director
National Pollution Funds Center

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Claimant's Guide for Submitting Oil Spill Liability Trust Fund Claims

A Compliance Guide

April 2003

Claimant's Guide

A Compliance Guide
for Submitting Claims
Under the Oil Pollution Act of 1990

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

April 2003

Record of Changes

Change #	Description	Effective Date
CH-1	Updated information on claims for loss of subsistence use of natural resources	3/18/2005
CH-2	Updated claims email and Internet addresses	3/28/2006

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PART I - INTRODUCTION

How to Use This Guide

If you believe you have uncompensated removal costs or damages resulting from an oil spill to the navigable waters or the threat of an oil spill to the navigable waters, you may be entitled to compensation from the Oil Spill Liability Trust Fund (OSLTF). The National Pollution Funds Center (NPFC) created this guide to assist you in determining whether you have damages that may be covered and, if so, how to properly submit a claim.

This guide is intended to assist individuals and small entities (e.g., small businesses, not-for-profit organizations, and small governmental jurisdictions) with submitting a claim or claims to the NPFC. This guide also provides assistance to states and larger entities. This guide is divided into four parts: "Introduction," "General Information," "General Claim Requirements," and "Specific Claim Requirements."

To help determine whether you are eligible, Part II (pages 2-3) provides background information on the NPFC, OSLTF, the Oil Pollution Act (OPA), the types of claims that can be submitted, and who is eligible to submit claims.

To help you learn about the submission process, deadlines, etc., Part III (pages 4-6) addresses information that is applicable to submission of all claims, regardless of claim type. Format, time limits, and the adjudication process are discussed in this section.

To learn about specific proof and supporting information for different claim types, Part IV (pages 7-16) addresses the specific requirements for each claim type and lists additional information that may be required to process your claim. General Claim Requirements also apply.

Key Definitions and an Acronym List can be found on pages 17 and 18, respectively. A Privacy Act Statement and instructions for the optional claim form can be found on page 19. A copy of the Optional OSLTF Claim Form is inserted with the guide.

Additional information may be obtained from the NPFC Web site: **www.uscg.mil/npfc**

This guide is intended to help claimants submit a claim against the OSLTF. **IT IS NOT A LEGAL REFERENCE**. The Oil Pollution Act of 1990 (OPA) (33 U.S.C. 2701 et. seq.) is the law that established the OSLTF and covers incidents involving oil spills. Claimants should consult the claims regulations in 33 CFR Part 136 to address legal and regulatory issues. If there is a conflict between this guide and OPA or the regulations at 33 CFR Part 136 the statute and regulations prevail.

If any claims-related questions are not answered by this guide or if you do not have internet access, you may contact the NPFC in writing, by phone, fax, or email:

National Pollution Funds Center
Claims Adjudication Division
4200 Wilson Boulevard, Suite 1000
Arlington, Virginia 22203-1804

Telephone: (800) 280-7118
Fax: (202) 493-6937 or (202) 493-6938

Claims-related email questions can be sent to the NPFC: **arl-pf-npfcclaimsinfo@uscg.mil**

Normal business hours are weekdays from 7:30 a.m. to 4:00 p.m. eastern time.

PART II - GENERAL INFORMATION

Background

OPA dictates that the spiller (responsible party or RP) pay compensation for certain removal costs or damages suffered as a result of an oil spill. The types of costs or damages covered under OPA are listed on page 2, under "What Claims may be Submitted?"

The OSLTF was established to provide—

- Funds for Federal cleanup
- Funds to assess and restore damaged natural resources
- Compensation to claimants for certain removal costs and damages resulting from an oil spill incident
- Cost recovery from responsible parties for costs and damages paid from the OSLTF

The USCG, through the NPFC, manages the OSLTF by—

- Disbursing funds for Federal cleanup
- Monitoring the sources and uses of funds
- Adjudicating claims submitted to the OSLTF for payment
- Pursuing reimbursement from the RP for costs and damages paid by the OSLTF

After the NPFC evaluates your claim, a determination is made to accept or deny all or part of your claim. You will have 60 days to accept or reject the claim determination. If you accept the claim determination, then the NPFC will process the payment of the amount offered. If you reject the claim determination, you can request reconsideration of your claim and provide additional information. On reconsideration, the NPFC may re-evaluate your entire claim, based on the new information/documentation that you provide.

What Claims may be Submitted?

OPA incidents involve a discharge or substantial threat of a discharge of oil from a vessel or facility into or on the navigable waters of the U.S., adjoining shoreline, or the exclusive economic zone. Claim types allowed under OPA include—

- Removal Costs (see page 8)
- Real or Personal Property Damage (see page 9)
- Loss of Profits and Earning Capacity (see page 10)
- Loss of Government Revenue (see page 12)
- Cost of Increased Public Services (see page 13)
- Subsistence Loss (see page 14)
- Natural Resource Damage (see page 15)

Under certain conditions, OPA also allows an RP to submit a claim to the NPFC for removal costs and damages paid by the RP (see page 16).

Who is Eligible to Submit a Claim?

A claimant can be—

- An individual
- A corporation, partnership, or association
- The United States government
- Federal, state, foreign, or Indian tribe trustee
- States, the District of Columbia, municipalities, and political subdivisions of States
- The Commonwealth of Puerto Rico, Guam, American Samoa, the U.S. Virgin Islands, the Commonwealth of the Northern Marianas Islands, and any other territory or possession of the United States
- Certain foreign claimants, in accordance with Section 1007 of OPA (33 U.S.C. 2707)
- An RP who establishes entitlement to a defense to liability or limitation of liability in accordance with Section 1008 of OPA (33 U.S.C. 2708)

Lawsuits

The NPFC cannot evaluate, decide, or pay any claim that is part of a court case, including a class action suit, to recover the costs or damages in your claim.

Insurance

Claimants are not required to have insurance for OPA removal costs or damages. If you do have insurance that may cover the removal cost or damage, you are not required to use it, but you must report that you have it.

Double Payments

If a removal cost or damage claim has already been paid, no other claim for the same removal costs or damages can be paid from the OSLTF. For example, if a removal contractor accepts payment from the OSLTF for his removal costs, but then fails to pay his subcontractor, the subcontractor cannot be paid from the OSLTF for the same removal activity.

Mitigation

The Coast Guard considers that each claimant has a responsibility to make reasonable efforts to mitigate—that is, to avoid or minimize—the losses from an oil spill incident. Additional expenses related to avoiding or minimizing losses by a claimant can be included in the claim as additional expenses. The claimed amount of a direct loss will be adjusted for extra expenses and/or income related to avoidance/minimization efforts.

False Claims

If you submit a false claim you can be subject to civil and criminal prosecution under Federal law (18 U.S.C. 287 and 1001; 31 U.S.C. 3729).

PART III - GENERAL CLAIM REQUIREMENTS

Do You Qualify?

To qualify as an OPA claim, the following must be true:

- The incident (events surrounding the spill or threat of a spill) must have occurred on or after August 18, 1990.
- The incident involved the discharge, or substantial threat of discharge, of oil. (OPA expressly exempts discharges from public vessels, such as a U.S. Naval vessel; from an onshore facility subject to the Trans-Alaska Pipeline Authorization Act; and from discharges permitted by Federal, state, or local permit.)
- The discharge or substantial threat of a discharge was into or upon the navigable waters of the U.S., their adjoining shorelines, or the Exclusive Economic Zone of the United States. A spill that impacts or potentially impacts ground water but not the navigable waters of the U.S. is not an OPA spill.
- The cost or damage is a type covered by OPA (see listing of claim types on page 2).

Where Do I Submit a Claim?

You must first submit the claim to the RP—

- Unless you fall under one of the exceptions noted in the following text, you must always first submit your claim to the RP or its insurer. (This guide does not address procedures for submitting claims to the RP. The RP must establish and advertise those procedures.)
- Your submission to the RP should state that you are filing a claim under Section 2713(a) of the Oil Pollution Act. Simply submitting an invoice or a bill to the RP is not sufficient unless the bill or invoice clearly states that it is a claim under OPA.

The exceptions for sending your claim directly to the NPFC rather than submitting it first to the RP are—

- The NPFC advertises or notifies claimants to submit claims directly to the NPFC.
- An RP asserting a claim under Section 1008 of OPA (33 U.S.C. 2708).
- A Governor of a State submitting for removal costs incurred by the State.
- A U.S. claimant suffers removal costs or damages from oil pollution from a foreign offshore unit.

After submitting your claim to the RP can you submit the claim to the NPFC?

- Yes. If the RP or its insurer denies your claim or does not pay within 90 days of the date you presented your claim to them or the RP's advertising began (whichever is later), you can submit your claim to the NPFC.

What You Need to Submit to the NPFC

- You must provide the NPFC with the information, documentation, and evidence needed to support your claim. If more information is needed, the NPFC will ask you for it. To make the process as quick as possible on your behalf, submit complete and detailed supporting information with your claim. *Receipt of incomplete information is the most common cause for delay in processing claims!*

- You will be reimbursed for reasonable removal costs and damages covered under OPA, including the reasonable cost of assessing you damage. For example, you can be reimbursed the costs of an accountant's assessing your business losses, but you will not be reimbursed for the accountant's costs of assisting you in preparing the claim.
- Businesses should identify, when appropriate, any "Confidential Business Information" included with your claim and provide the reason(s) you consider the information to be confidential. Under Federal law the government may be required to release documents to the general public.

  (NOTE: Detailed information needed for each claim category is included in Part IV.)

Claim Format

There is no required format for OSLTF claims. You must, however, support your claim with evidence, information, and documentation; an optional claim form and instructions are included with this guide and may be used as an aid.

You do not need a lawyer to file a claim. You will not be compensated for any attorney's fees if you use a lawyer to assist in preparing or filing a claim.

Claims must be made in writing; we cannot accept verbal claims. Claims must follow the requirements for a claim (33 CFR 136.105), including the following information:

- Type and amount of damages for each type of claim
- Total amount claimed
- Your full name, street and mailing address(es), and telephone numbers for your home and business
- Time, date, and geographic location of the oil spill; identification of the navigable water impacted; and an explanation of how the oil impacted the water
- Identify the vessel, facility, or person causing or suspected of causing the spill, if possible, and include an explanation of why you suspect the vessel, facility, or person to have caused the spill
- A general description of the impact of the spill, including the removal costs or damages claimed by category
- Explanation of how the damage happened, the location, and the date and time (this may/may not be the same as the location, date, or time of the spill)
- Descriptions of actions taken to minimize or avoid damages
- Costs of assessing the damage (do not include attorney's fees or other costs for claim preparation or filing)
- Name, street and mailing address(es), and telephone numbers of any witnesses and a brief description of what the witness knows
- Copies of any written communications and content of any verbal communications with the RP, including any claims submitted to the RP
- Information on any attempts to submit claims to the person or company responsible for the oil pollution
- Information on any insurance claim made for removal costs or damages
- Any compensation you have received for removal costs or damages from the spill

- Statement that no action has been taken in court or, if action has been taken, the status of the pending court case
- Certification statement of the accuracy of the claim to the best of your knowledge and belief
- Your signature and, if applicable, your legal representative's signature

If necessary, the NPFC may ask you for additional information.

Time Limits

Claims for Damages: Damage claims must be made within three (3) years after the date on which the damage and its connection with the spill was reasonably discoverable with the exercise of due care. The only exception is for natural resource damage claims – see the Natural Resource Damage Funding Guidelines link in Section G of Part IV.

Claims for Removal Costs: A removal cost claim must be made within six (6) years after the date of completion of all removal actions for the incident.

NPFC considers the claim as "presented" on the day it is received.

The Adjudication Process

The NPFC processes claims in the order received.

The NPFC reviews the claim to see if all the information is included. If additional information is needed, the NPFC will request that you forward the information. If the information requested is not received within 90 days, NPFC will complete adjudication of the claim with the information it has. This may result in a reduction of possible compensation or denial of the claim.

Once the NPFC sends you a claim determination, you must accept or reject the offer within 60 days—

- If you accept, you must sign a release.
- If you take no action within 60 days, the offer to pay will be voided and the claim closed.
- If you reject the offer, you may provide additional information and ask NPFC to reconsider your claim. This may start an entirely new review process. Another claim determination will be made as a result of reconsideration and this determination on reconsideration becomes final agency action. “Reconsideration” is not “negotiation.”

Claims are paid in the order that they are approved. Payment normally takes 30 days after the NPFC receives your signed release.

PART IV - SPECIFIC CLAIM REQUIREMENTS

Sections A through H address the specific requirements for each category of claim and lists additional information above that listed in the General Claims Requirements that may be required to process your claim.

If any claims-related questions are not answered by this guide or if you do not have internet access, you may contact the NPFC in writing, by phone, fax, or e-mail:

National Pollution Funds Center
Claims Adjudication Division
United States Coast Guard
4200 Wilson Boulevard, Suite 1000
Arlington, Virginia 22203-1804

Telephone: (800) 280-7118
Fax: (202) 493-6937 or (202) 493-6938

Claims-related email questions can be sent to the NPFC: **arl-pf-npfcclaimsinfo@uscg.mil**

Normal business hours are weekdays from 7:30 a.m. to 4:00 p.m. eastern time.

A. Removal Costs

Removal Costs: "Removal Costs" means the costs of removal that are incurred after a discharge of oil has occurred or, in any case in which there is a substantial threat of a discharge of oil, the costs to prevent, minimize, or mitigate oil pollution from such an incident.

Example of a Typical Claim: You own waterfront property where a boat and dock were oiled from an OPA incident. You notified the National Response Center of the incident, discussed it with the FOSC, and hired a local contractor to remove the oil. You may have a claim for the cost of the contractor used to remove the oil from your property.

Eligible Claimant: Anyone incurring removal costs.

What you Must Prove: In addition to the information required in Part III, you must provide information that is specific to removal cost claims to prove that—

- Necessary actions were taken to prevent or reduce the effects of the spill.
- Removal costs resulted from these actions.
- Actions taken were reasonable and consistent with the National Contingency Plan.

Examples of Supporting Information:

Evidence of Spill:

- FOSC report
- Information on EPA or USCG notification
- Newspaper reports describing the spill
- Witness(es) statement(s)

General Information:

- Detailed description of actions
- Dates on which work was performed
- Analysis of spill substance
- Map of area
- Pictures of area, damage, and spill

Costs:

- Receipts, invoices, or similar records with description of work
- How rates were determined and any comparison of rates
- Daily records of personnel costs including details on labor rates, hours, travel, and transportation
- Daily records of equipment costs including description and use
- Signed disposal manifests and proof of payment for disposal
- Payroll verification of hourly rate at the time of spill
- Verification of standard equipment rates for equipment used

B. Real or Personal Property Damages

Real or Personal Property Damages: "Real or Personal Property Damages" means damages for injury to, or economic losses resulting from destruction of, real or personal property.

(NOTE: Injury to real or personal property does not include personal injury!)

Example of a Typical Claim: You own a recreational boat or waterfront property that was oiled by an OPA incident. You may have a claim for the cost of restoring your property to its pre-spill condition.

Eligible Claimant: Person or entity who owns or leases the property.

You Must Provide Information Showing:

- Your ownership or leasehold interest in the property
- That property was injured or destroyed
- Value of property both before and after injury
- Cost of repair or replacement of the property

If you lost money, show:

- The property was not usable because of the oil spill
- The value of your property before and after the spill
- Whether or not substitute property was available, and, if you did use substitute property, what the costs were
- How you lost money from the damage to the property

Examples of Documentation to Support Claim:

Evidence of Spill:

- FOSC report
- Information on EPA or USCG notification
- Newspaper reports describing the spill
- Witness(es) statement(s)

General Information:

- Copy of title, deed, lease, or license to property in your name
- Pictures or videotape of property and/or damage
- Maps or legal documents showing the location of the property within the spill area
- If you sold the property, professional property appraisals for the value of the property prior to and after the spill, actual selling price of the property, and evidence connecting the depressed selling price to the oil spill rather than to other economic or real property factors
- Copies of bills paid for repair of damage or two estimates showing activities and costs to repair the damage
- Any expenses or money lost while the property was unavailable because of spill damage
- Lease or rental agreement of any substitute property used

C. Loss of Profits and Earning Capacity

Loss of Profits and Earning Capacity: "Loss of profits and earning capacity" means damages equal to the loss of profits or impairment of earning capacity due to the injury, destruction, or loss of real property, personal property, or natural resources.

You do not have to own the damaged property or resources to submit a claim under this category.

Example of a Typical Claim: You lease a commercial charter boat that was trapped in port when the Coast Guard closed the river to remove oil. You may have a claim for lost profits or earnings during the time the river was officially closed. The recreational fishermen whose trip was cancelled would not have a loss of profits or earnings.

Eligible Claimant: Anyone with loss of profits or income.

You Must Provide Information Showing:

- Property or natural resources that were damaged, destroyed or lost, resulting in your loss
- Your income was reduced due to the damage or loss of the property or natural resources and how much it was reduced
- Amount of profits and earnings in similar time periods
- If alternative employment or business was available, what, if any, income was received from it
- Savings to overhead and other normal expenses not paid as a result of the spill (e.g., commuting costs, utility fees)

Examples of Documentation to Support Claim:

Evidence of Spill:

- FOSC report
- Information on EPA or USCG notification
- Newspaper reports describing the spill
- Photos of damaged property (before and after the spill)

General Information for Employee Claims:

- Statement on how the spill caused a loss in income
- Affidavit from your employer on the impact on your work or income due to the spill and if the company will be filing a claim for lost profits
- Copies of pay stubs, receipts, etc., from before, during, and after the spill
- Personnel records from your employer before, during, and after the spill, showing employment
- Description of efforts to reduce your loss, including job search
- Copies of any job-hunting expenses (e.g., travel costs)
- Signed copies of income tax returns and schedules for at least two years prior to spill
- Details of employment expenses not paid during period being claimed (e.g., commuting costs)
- Copies of pay stubs, etc., from alternative employment during time of spill

General Information for Claims by Businesses:

- Description and documentation of business losses due to spill
- Copies of letters of business cancellations caused by the spill damage
- Maps or descriptions of the area showing the business location and the spill impact area
- Financial statements for at least two years prior to spill and from the year of the spill
- Signed copies of income tax returns and schedules for at least three years prior to spill
- Details on efforts to mitigate losses or why no efforts were taken
- Statement from you or witnesses on how the spill led to loss of income or earning capacity; explain any earnings anomalies
- For hotels, daily and monthly occupancy information for two years prior to spill and the year of the spill

General Information on Claims by Fishing or Marine Charters:

- Description of business losses caused by the spill
- Evidence that vessel(s) were in the area impacted by the spill and were unable to carry on their business due to the spill
- Maps or descriptions of the area showing business location within spill area
- Statement from you or witnesses on how the spill caused the loss of income; explain any earnings anomalies
- Signed copies of income tax returns and schedules for at least three years prior to spill
- Details on expenses not paid out during period being claimed (e.g., wages)
- Booking records for three years prior to spill and year of spill
- List of charter rates, including any services the business specializes in (e.g., sport fishing)
- Copies of any logs relating to boating activities for the year prior to and the year of the spill
- Registration documents for the vessel(s), copies of business license, vessel license, fishing license, captain's license

D. Loss of Government Revenue

Loss of Government Revenue: Damages equal to the net loss of taxes, royalties, rents, fees, or net profit shares due to the injury, destruction, or loss of real property, personal property, or natural resources.

Example of a Typical Claim: A city charges fees for parking at a lot near a public beach. The beach is closed while an oil spill is being cleaned. The city may have a claim for loss of revenue during the beach closure.

Eligible Claimant: Federal government, a State, or a political subdivision of a State.

You Must Provide Information Showing:

- That the loss of revenue was caused by the injury to, destruction of, or loss of real or personal property or natural resources caused by the discharge
- The amount, identity, and description of the revenue loss for which compensation is claimed, including the applicable authority for collecting the revenue, method of assessment, applicable rate, and dates of collection or periods of loss
- Expenditures saved because revenue was not collected
- The total assessment or revenue collected and related expenditures for comparable revenue periods, typically covering two years

Examples of Documentation to Support Claim:

Evidence of Spill:

- FOSC report
- Information on EPA or USCG notification
- Newspaper reports describing the spill
- Witness(es) statement(s)

General Information:

- Description of what revenues were impacted and how the spill caused a loss of revenues
- Copies of statutes, regulations, ordinances, etc., outlining applicable authority to raise such revenues, property affected, method of assessment, rate of assessment, and method and dates of collection of assessment
- Government financial reports showing total assessment or revenue collected for comparable periods, typically covering two years
- Details of any expenses not paid out by government during the period being claimed
- Details and explanation of net loss of revenue

E. Cost of Increased Public Services

Cost of Increased Public Services: "Cost of Increased Public Services" are damages for net costs of providing increased or additional public services during or after removal activities, including protection from fire, safety, or health hazards, caused by a discharge of oil or directly attributable to response to the oil spill incident.

Example of a Typical Claim: You are the manager of a coastal town that must provide emergency traffic control in the vicinity of an OPA incident. The town may have a claim for the costs of providing those emergency services.

Eligible Claimant: State or political subdivision of a State.

You Must Provide Information Showing:

- Justification for the public services provided, including documentation of what specific services were provided and showing their relationship to the spill
- When services were provided (during or after the removal activities)
- Services were in addition to services normally provided
- Net cost for the services and the methods used to compute those costs

Examples of Documentation to Support Claim:

Evidence of Spill:

- FOSC report
- Information on EPA or USCG notification
- Newspaper reports describing the spill
- Witness(es) statement(s)

General Information:

- Reports showing the increased public services were required and if the services were due to fire, health, or safety hazards
- Detailed description of what increased services were necessary and why, including a distinction between removal activities, safety acts, and law enforcement acts, and if the increase was actually incurred or if normal resources were diverted for use
- Daily reports on the activities of the government personnel and equipment involved

Government Labor and Equipment Rates:

- Payroll verification of the government hourly rate at the time
- Verification of the standard government equipment rates for any equipment claimed
- Signed and dated records of the spill including hourly rates for labor and equipment
- Explanation as to whether rates are fully loaded or not and formulas used; states should provide rates under OMB Circular A-87
- Certification that rates used reflected actual costs incurred and did not include punitive damages or fees

F. Loss of Subsistence Use of Natural Resources

Loss of Subsistence Use of Natural Resources: "Loss of Subsistence Use of Natural Resources" means damages for loss of subsistence use of natural resources which have been injured, destroyed, or lost, without regard to the ownership or management of the resources.

Example of a Typical Claim: **You are an individual or family that subsists on natural resources from a river that has been polluted from an OPA incident. You may submit a claim for the cost of mitigating your loss of subsistence use of natural resources via the commercial market, additional cost of traveling to another location, or other similar methods.**

Eligible Claimant: **Anyone who experiences a loss of subsistence use of natural resources as the result of an OPA incident.**

Guidelines: **The *Loss of Subsistence Use Claim Guidelines & Forms* is an NPFC publication that provides detailed information on and forms specific for submitting claims for loss of subsistence, which can be unique from other types of claims. You can find the latest version of this document from NPFC's Web site at www.uscg.mil/npfc/Claims/claims_docs.htm. For additional assistance, contact:**

Kristina.N.Morsell@uscg.mil
(800) 280-7118 or (202) 493- 6860

G. Natural Resource Damages

Natural Resource Damages: Damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing the damage.

Example of a Typical Claim: You are the designated trustee agency for a state wildlife refuge that is oiled from an OPA incident. As trustee, you may have a claim for natural resource damages to cover the costs of assessing injuries and restoring the refuge to its pre-spill condition.

Eligible Claimant: Federal, state, foreign and Indian tribal trustees.

NRD Guidelines: Natural Resource Damage claims are often unique. A separate Natural Resource Damage Funding Guidelines publication is available on the NPFC Web page:

www.uscg.mil/npfc/NRD/

You may also call the NPFC's toll-free number with claims questions: (800) 280-7118

H. Claims by a Responsible Party (RP)

Claims by a Responsible Party: OPA Section 1008 (33 U.S.C. 2708) provides that an RP may assert a claim for removal costs and damages only if the RP demonstrates that the RP is entitled to a defense to liability under Section 1003 or to a limitation of liability under Section 1004.

Example of a Typical Claim: You are the owner of a recreational boat that sank after being hit by another vessel. Your vessel caused a gasoline and motor oil spill. If you can prove that the incident was caused solely by the other vessel, you may have a claim for amounts you paid for oil removal costs and damages.

RP Claims Must Show the Following:

- Documentation addressing each element of the complete defense to liability (33 U.S.C. 2703) or limitation of liability (33 U.S.C. 2704), as applicable
- That other claimants paid by the RP had presented their claims within OPA's time limits
- That the RP presented its claim to the NPFC within three years of the date the paid claims were presented to the RP
- Removal costs and damages for which compensation is requested are included under OPA (33 U.S.C. 2708)
- That individual claims paid meet the applicable regulatory requirements for claims against the OSLTF
- If the claim is for costs in excess of your limit of liability you must disclose—
    - > All costs and paid claims (not just those exceeding the limit of liability) and
    - > How those costs and paid claims meet OPA requirements

The NPFC will first evaluate your entitlement to the defense to liability or limitation of liability claimed before taking further action. You will be notified of this determination.

If your entitlement to the limitation of liability or complete defense to liability is upheld, the NPFC will measure the uncompensated removal costs and damages in accordance with the claims regulations for each claim type.

If the claim is for costs in excess of your limit of liability, the NPFC will measure the total acceptable costs for the incident and will deduct the limit of liability amount from the measurement.

KEY DEFINITIONS

Damages. OPA damages means damages to natural resources, to real or personal property, for loss of subsistence use of natural resources, for loss of governmental revenues, for loss of profits or earning capacity, and for increased or additional public services. These damages are specified in Section 1002(b) of OPA and are amplified in Section IV of this guide.

Discharge. Any emission (other than natural seepage), intentional or unintentional, and includes, but is not limited to spilling, leaking, pumping, pouring, emitting, or dumping.

Guarantor. Any person who provides evidence of financial responsibility for an RP under OPA.

Natural Resources. Land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the exclusive economic zone), any State or local government or Indian tribe, or any foreign government.

Oil. Oil of any kind or in any form, including petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil, but does not include any substance which is specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of Section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601) and which is subject to the provisions of that Act [42 U.S.C. §9601 et seq.].

Oil Spill. An 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 of the United States, adjoining shorelines, or the exclusive economic zone (e.g., oil spill in coastal waters from a tanker). A spill that impacts ground water, but not the navigable waters of the U.S., is not an OPA spill.

Removal Costs. The costs of removal that are incurred after a discharge of oil has occurred or, in any case in which there is a substantial threat of a discharge of oil, the costs to prevent, minimize, or mitigate oil pollution from such an incident.

Responsible Party.

In the case of a vessel, any person owning, operating, or demise chartering the vessel;

In the case of an onshore facility (other than a pipeline), any person owning or operating the facility, except a Federal agency, State, municipality, commission, or political subdivision of a State, or any interstate body, that as the owner transfers possession and right to use the property to another person by lease, assignment, or permit;

In the case of an offshore facility (other than a pipeline or a deepwater port licensed under the Deepwater Port Act of 1974 (33 U.S.C. 1501 et seq.)), the lessee or permittee of the area in which the facility is located or the holder of a right of use and easement granted under applicable State law or the Outer Continental Shelf Lands Act (43 U.S.C. 1301-1356) for the area in which the facility is located (if the holder is a different person than the lessee or permittee), except a Federal agency, State, municipality, commission, or political subdivision of a State, or any interstate body, that as owner transfers possession and right to use the property to another person by lease, assignment, or permit;

In the case of a deepwater port licensed under the Deepwater Port Act of 1974 (33 U.S.C. 1501-1524), the licensee;

In the case of a pipeline, any person owning or operating the pipeline; and,

In the case of an abandoned vessel, onshore facility, deepwater port, pipeline, or offshore facility, the persons who would have been responsible parties immediately prior to the abandonment of the vessel or facility.

ACRONYM LIST

CFR	Code of Federal Regulations
EPA	Environmental Protection Agency
FOSC	Federal On-Scene Coordinator (either U.S. Coast Guard or EPA)
NPFC	National Pollution Funds Center
OPA	Oil Pollution Act of 1990 (also known as 33 U.S.C. 2701 et. seq.)
OSLTF	Oil Spill Liability Trust Fund
RP	Responsible Party
U.S.C.	United States Code
USCG	United States Coast Guard

PRIVACY ACT STATEMENT

AUTHORITY: 33 U.S.C. 2713. **PRINCIPAL PURPOSE:** To aid the Coast Guard in adjudicating claims for reimbursement of removal costs and damages from oil spills when the Responsible Party has not paid. **ROUTINE USES:** Information on reimbursements may be provided to the Internal Revenue Service for tax purposes and may be provided to the Department of Justice for litigation against the Responsible Party. **DISCLOSURE:** Decision to submit a claim is voluntary; but, if proper information is not furnished by the claimant, the Government may be unable to evaluate or pay a claim.

This information applies to all claims against the Oil Spill Liability Trust Fund, whether or not the Optional OSLTF Claim Form is used.

OPTIONAL OSLTF CLAIM FORM — INSTRUCTIONS

Please provide all information, evidence, and documentation that supports the removal costs and/or damage(s) claimed. **Use additional sheets or pages, as necessary,** to provide information, evidence, and documentation. The following numbered paragraphs correspond to the numbers on the optional claim form:

1. Complete name, street, city, state, ZIP and phone number of the claimant (party that incurred damage and is seeking reimbursement).

2. If known, provide the following incident information on the oil spill or threat of oil spill causing or suspected of causing the removal costs and/or damage(s) claimed:
   - The identity of the vessel, facility or entity causing or suspected of causing the incident.
   - Describe the geographic area and waterway directly affected by the oil spill or threat of oil spill.
   - Briefly describe any known information regarding the occurrence of the oil spill or threat of oil spill.

3. Indicate the amounts by the type of claim(s) being submitted. Provide the total amount claimed.

4. Indicate if claimant has had any communication (written or verbal) with the entity causing or suspected of causing the damage(s) claimed.

5. Has the claimant or the claimant's legal representative submitted the claim(s) to the entity causing or suspected of causing the damage claimed? If yes, include the date submitted.

6. If claim was submitted to the responsible party, indicate any response (written or verbal) or any payment you have received. Provide the date the claim was submitted.

7. Indicate if the claimant is pursing a claim(s) against the responsible party by legal representation in a court of law. If yes, provide all information that will enable us to contact your legal representative and identify your case.

*** * At the bottom of the first page of the form, please initial and date the page. * ***

8. Indicate if claimant is pursuing payment from an insurance carrier for costs that are included in the claim. If yes, provide all information that will enable us to contact the insurer and identify the claimant's policy.

9. Provide detailed information, evidence, and documentation that describes the extent of the damage(s) claimed. Attach copies, if necessary, of all pertinent information.

10. Provide any information, evidence, and documentation that will help describe how the oil spill, or threat of oil spill, caused the removal costs and/or damage(s) claimed.

11. Provide any information, evidence, and documentation that describe the actions of the claimant or any other person on the claimant's behalf to reduce or avoid the damage(s) claimed.

12. Provide the name, address and telephone number (if known) of any witness to the damage(s) claimed. On a separate page provide a summary of each witness's knowledge of the damage(s) claimed or the incident causing or suspected of causing the damage(s) claimed.

13. If you provide additional documents, please list them here or on a separate piece of paper.

14. If the claimant is an individual, that person must sign the claim. If the claimant is a corporation, an officer of the company must sign the claim. All signatures must be in ink to be valid.

15. If the claim is presented by a legal representative, that legal representative must also sign the claim. Provide the complete address and phone number of that legal representative.

Submit your claim, with any necessary information, evidence, and documentation to:

Director (ca)
National Pollution Funds Center
4200 Wilson Blvd., Suite 1000
Arlington, VA 22203-1804

Claims for Natural Resource Damages or for Loss of Subsistence Use of Natural Resources may be addressed to "Director (cn)" .

We recommend that you keep the Privacy Act Statement and a copy of the claim for your files.

Department of Homeland Security U.S. Coast Guard National Pollution Funds Center 4200 Wilson Boulevard, Suite 1000 Arlington, VA 22203-1804	**Optional OSLTF Claim Form** CG NPFC-CA1 (Rev. April 03)

PURPOSE: This form may be used for submitting claims to the U.S. Coast Guard, National Pollution Funds Center, for potential compensation from the Oil Spill Liability Trust Fund for uncompensated removal costs or damages resulting from an incident under the Oil Pollution Act of 1990 (OPA). You may use your own version of this form. PLEASE PRINT OR TYPE:

1. Claimant Information: Name: _____

Address: _____

_____

_____

Home Tel. #: _____ Work Tel. #: _____

Fax Number: _____ E-mail: _____

2. Incident Information: Date: _____ Time: _____ NRC Report #:_____

Name of vessel or facility causing damage: _____

Geographic location of incident: _____

Brief description of the incident: _____

_____

_____

_____

3. Type(s) of claim(s) and total amount for costs and damage(s) claimed:

$ _____ Removal Costs

$_____ Subsistence Use $_____ Profits & Earning Capacity $ _____ Public Services

$_____ Natural Resources $ _____ Government Revenues $ _____ Real or Personal Property

*$*_____ *Total Amount Claimed*

4. Has claimant communicated with the responsible party? ☐ No ☐ Yes

5. Has the claim been submitted to the responsible party? ☐ No ☐ Yes Date Submitted: _____

6. If the claim has been submitted to the responsible party, what action has the responsible party taken?

☐ No Action ☐ Denied ☐ Other – Explain:

_____

_____

7. Has claimant commenced an action in court to recover costs which are the subject of the claim?

☐ No ☐ Yes If yes, provide the name, address, phone number of your attorney, the court in which action is pending and the civil action number: _____

_____

_____

_____

8. Has claimant submitted or planned to submit the loss to an insurer? ☐ No ☐ Yes Please provide the name, address, and phone number of your insurer, the policy number, and explain any compensation received:

_____

_____

9. Description of the nature and extent of damages claimed (Attach additional information as necessary**):** _____

_____

_____

10. Description of how the incident caused the damage: _____

_____

_____

11. Description of actions taken by claimant/representative to avoid or minimize damages: _____

_____

_____

12. Witnesses:

Name: _____ Tel. No.: _____

Address: _____

_____

Name: _____ Tel. No.: _____

Address: _____

_____

13. List Documents or Attachments (Attach additional information as necessary**):**

a. _____

b. _____

c. _____

d. _____

e. _____

I, the undersigned, agree that upon acceptance of any compensation from the Fund, I will cooperate fully with the United States in any claim or action by the United States to recover the compensation. The cooperation shall include, but is not limited to, immediately reimbursing to the Fund any compensation received from any other source for the same costs and/or damages and, providing any documentation, evidence, testimony, and other support, as may be necessary for the Fund to recover such compensation.

I, the undersigned, certify that, to the best of my knowledge and belief, the information contained in this claim represents all material facts and is true. I understand that misrepresentation of facts is subject to prosecution under Federal law (including but not limited to 18 U.S.C. 287 & 1001 and 31 U.S.C. 3729).

14. _____

Claimant's Signature Date

Printed Name of Signer: _____

15. _____

Legal Representative Date

Title/Legal Capacity: _____

U.S. Department of Homeland Security

United States Coast Guard

NPFC Claims Process

Frequently Asked Questions
from
Oil Spill Response Organizations (OSROs)

NOVEMBER 2005

RECORD OF CHANGES

Change #	Description	Effective Date
CH-1	Updated claims email addresses	3/28/2006

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1. Introduction

A. Purpose of Document

This document is designed to help Oil Spill Removal Organizations (OSROs) better understand how to submit a claim for uncompensated removal costs to the National Pollution Funds Center (NPFC). This document also provides suggestions to make the claim preparation process easier and the approval processes quicker. It serves as a supplement to the *Claimant's Guide for Submitting OSLTF Claims*, which contains more detailed information on submitting any type of claim. This OSRO FAQ document and the Claimant's Guide are available from NPFC's Claims webpage at www.uscg.mil/npfc/claims.

B. Oil Pollution Act of 1990

The Oil Pollution Act (OPA) established a national Oil Spill Liability Trust Fund (OSLTF), which funds cleanup activities and provides compensation for damages from oil spills. The law also allows organizations, such as OSROs, that have helped clean up a spill but haven't received payment for their expenses to submit a claim for reimbursement from the OSLTF.

C. National Pollution Funds Center

The Coast Guard established the National Pollution Funds Center (NPFC) to administer the OSLTF. Three of the NPFC's major missions in support of oil spill response include:

- Provide funding for Federal On-Scene Coordinator (FOSC) removal activities for oil spills covered under OPA.
- Recover from responsible parties (RPs) the costs expended by the FOSC as well as the claims paid by the NPFC for an OPA oil spill incident.
- Pay claims for uncompensated removal costs and damages for an OPA incident.

D. Oil Spill Removal Organizations

Oil Spill Removal Organizations (OSROs) often work as direct contractors to the FOSC; in these cases, the OSROs are paid from the OSLTF according to the terms of their contracts with the Federal government. However, OSROs may also work for the party responsible for the spill; but if the RP doesn't reimburse the OSRO, the OSRO may submit a claim to the NPFC for reimbursement from the OSLTF. In the latter instance, the OSRO's claim is processed and approved in accordance with claims regulations.

E. Claims Regulations

The regulations governing submittal and approval of claims under OPA are found at 33 C.F.R. §136. The complete regulations can be downloaded from the NPFC Laws and Regulations webpage, www.uscg.mil/npfc/laws_and_regulations.htm.

F. Claimant's Guide and Claimant's Form

For more detailed information on submitting both damage and removal cost claims, see the *Claimant's guide for Submitting OSLTF Claims*, which is available at www.uscg.mil/npfc/claims. The document also includes the Optional OSLTF Claim Form.

2. How is reimbursement through the claims process different from payment through a contract or BOA?

Being reimbursed for oil spill removal costs through the OPA claims process is different in several respects from being paid through a contract or Basic Ordering Agreement (BOA) with an FOSC. The table below lists some of the main differences.

	Contract/BOA with FOSC	**OPA Claims Process**
Funding Source/Statutory Authority	OSLTF Emergency Fund; OPA Sec.1012 (a)(1)	OSLTF Principal Fund; OPA Sec.1012 (a)(4); Sec. 1013
Terms and Conditions	As stated in contract or BOA	As authorized in OPA Sec. 1012 and 1013, and described in Claims Regulations 33 C.F.R. §136
OSRO is Paid	According to prices listed in contract or BOA	Only for uncompensated, reasonable *removal costs* for actions determined by the FOSC to be consistent with the National Contingency Plan (NCP) or actions directed by the FOSC

When working for an RP, OSROs typically utilize a published price list of commercial rates. When working for an FOSC under a BOA delivery order, OSROs use negotiated rates, which are included as part of the BOA. In each of these instances, except for some possible differences on level of effort or documentation, OSROs will be paid the rates that are invoiced.

If an RP does not pay or pays only a portion of the invoice, OSROs may take legal action against the RP for a breech of contract or under OPA if the RP does not pay its presented OPA claim.

In addition to the previous options, there is another compensation option available. Under OPA, OSROs may present a claim to the NPFC for uncompensated reasonable removal costs. This claims process is like a safety net to provide an alternative to taking legal action or taking no action and absorbing losses.

However, the claims process is distinctly different from a contractual arrangement with an RP or even with the FOSC under the BOA process**.** With the claims process, there are no contractual agreements and there are no “agreed to” rates for resources. The NPFC is authorized to reimburse claimants for uncompensated reasonable removal costs only.

3. What do I need to include when submitting a claim to the NPFC?

The information you need to provide with your claim is discussed in the General Requirements section of the Claims Procedures Regulations, 33 C.F.R. §136, and in Part III of the *Claimant's Guide for Submitting OSLTF Claims*. The regulations require three areas of evidence for approving a claim:

1. Proof that an OPA incident occurred, and that the actions taken were necessary to mitigate the effects of the incident,
2. Proof that the removal costs were reasonable and were incurred as a result of those actions, and
3. Proof that the actions taken were determined by the Federal On-Scene Coordinator (FOSC) to be consistent with the National Contingency Plan (NCP) or were directed by the FOSC.

By completing the Optional OSLTF Claim Form (or providing analogous information) and providing the cost documentation and incident information described below, OSROs will generally meet these requirements.

Obtaining Documents

All regulations, documents, and forms are available on the NPFC Web site at Hwww.uscg.mil/npfc/claimsH.

See the Additional Information section at the end of this document for more information on contacting the NPFC or requesting paper copies.

A. Submitting a Claim -- Written Documentation Required.

Claims must be submitted in writing, and the claimant bears the burden of proving their claim. The NPFC cannot accept verbal communication as part of the claims record. We require a written record on anything the claimant would like us to consider on its claim. In the end, claims must be supported with evidence, information, and documentation to prove a claim of uncompensated, reasonable removal costs.

B. Submitting a Claim -- Optional Claims Form.

To simplify the claim submittal process, use the Optional OSLTF Claim Form (CG NPFC–CA1), located in the back of the *Claimant's Guide for Submitting OSLTF Claims* found at www.uscg.mil/npfc/claims and carefully follow the instructions in the guide for filling out this claim form. Properly completing the claim form provides the NPFC with much of the basic information it needs to adjudicate a claim. If you prefer not to use the form, you may submit another document as long as it contains the same information as that required in the form.

In addition to the information provided in the claim form, submit the cost documentation and incident information listed on the following pages to support a removal claim.

C. Submitting a Claim -- Cost Documentation.

Type of Cost Documentation	Description
Invoices	Copies of invoices originally submitted to the Responsible Party (RP) or the party that hired your company to respond to the incident. Ensure invoices meet the requirements of a properly presented claim under OPA. Any cover letters or other correspondence with this party regarding invoices is also helpful. Provide a copy of any contracts or work agreements entered into with the party that hired your company. Also provide a copy of the applicable rate schedule that was in place for the particular response you are seeking compensation for.
Invoice Summaries	If your invoices are not broken out by daily costs, provide copies of invoice summary sheets that show, on a day-to-day basis, how your invoiced amount was determined.
Daily Worksheets	Copies of all worksheets, filled out daily, onsite, and signed by your company's representative and a representative of the party that hired your company. These worksheets should list all personnel, equipment, materials, and subcontractors utilized during the response for each day and must indicate the date and location where the work was performed and the arrival and departure times for all personnel and equipment.
Subcontractor Costs	If you hired subcontractor services during the spill response and your company has paid for those services, provide copies of the subcontractors' invoices and proof of your payment of those invoices. • If the subcontractors provided personnel, equipment, and materials, provide the same level of support detail noted in the items above. • If the subcontractor provided only equipment and/or materials, provide sufficient detail to properly identify the equipment, hours of operation, and applicable rates. • Receipts for materials purchased during the response should be dated and should clearly identify the materials purchased, number of units purchased, and price per unit. If not clearly indicated on the receipt or invoice, provide proof that these costs have been paid (i.e., proof of payment).
Waste Disposal Costs	Provide copies of Waste Manifests, invoices for costs related to the disposal of waste resulting from the cleanup (e.g., sampling) and proof of your payment of those costs. Also provide verification of refunds/credits whenever recycling is involved as a result of a disposal action.

Carefully review all cost documentation before submitting your claim. NPFC's claims manager must carefully verify the *sum certain* (the total amount you are claiming) against these documents. Any discrepancies found at this level result in unwanted delays as the claims manager must determine the reason for the discrepancy and will likely need to request additional information or clarification from you before moving forward with the adjudication of your claim.

D. Submitting a Claim -- Incident Information

Type of Information	Description
Incident Description & OSRO Response Actions	Provide a description of the incident and your response actions, including dates and times of discovery, notifications, and the activation of your company to respond. Explain why the level of effort reflected in your daily worksheets was necessary; depending on the circumstances, this explanation may need to be detailed, especially if unusual procedures or costs are involved. Identify on-scene representatives for the various parties involved. Sometimes pictures and maps can be helpful in demonstrating the special circumstances of an incident and your response actions.
RP Information	Provide information that identifies the RP or the party (facility, vessel, etc.) that activated your company to respond to the incident and provide the details of that activation (date, time, what was requested, contact information, etc.). • If the party that activated your company to respond was a vessel, provide information regarding the vessel's owners, operators, agents, and applicable insurers (e.g., P&I Club, Local Correspondents, H&M Underwriters). • Identify the person or persons who were providing the management oversight and supervision of your response actions. • Provide, with as much detail as possible, the contact information and latest billing address(es) you are aware of for the RP. The NPFC must contact the RP when the claim package arrives, and we need the best possible contact information. Often when we notify the RP that we are reviewing the claim, the RP decides to pay the claim, which is the best result for all concerned. Your diligence in this area may result in an even speedier resolution of your claim.
FOSC, State, and Other Agency Reports	If available to you, provide copies of any agency reports, such as Pollution Reports (POLREPS) or Situation Reports (SITREPS) that help describe the incident and the response actions taken. • If samples were taken and analyzed, provide the results of the sample analysis and information to identify who took the samples. This greatly assists us in determining the composition of the product you removed, a claim threshold issue we must address prior to making a determination on your claim. • If such reports are not available, provide information identifying any agency representatives that were notified or responded to the incident.

4. Why must I submit my claim to the RP first?

The Oil Pollution Act requires that all claims for removal costs be presented first to the responsible party (RP). OPA then states that if a claim is properly presented and each person to whom the claim is presented denies all liability for the claim, or if the claim is not settled by payment within 90 days after the date upon which the claim was presented, you may either:

- Commence action in court against the responsible party or
- Present the claim to the Fund (i.e., submit the claim to the NPFC).

5. What does "order of presentment" of a claim mean?

The regulation at 33 C.F.R. §136.103 lists the order and timing for submitting a claim to the RP and the NPFC. In almost all cases, claims must be submitted to the RP first before submitting it to NPFC (see the FAQ below for exceptions).

When the NPFC receives a claim, the claims manager will again send a request for payment to the RP; but it is still the responsibility of the claimant to present the claim first. If the claimant has not submitted the claim to the RP, the NPFC will ask them to do so before adjudicating the claim.

Before you can submit the claim to the NPFC, the regulations require you to wait 90 days after submitting your claim to the RP or until the RP responds and denies your request, whichever is earlier.

6. Can I ever submit a claim to the NPFC first?

The only time an OSRO may submit a claim directly to the NPFC without first presenting it to the RP is when the NPFC advertises for claims or notifies claimants to submit claims directly to the NPFC. This may occur when the RP is not identified and the spill is designated a "mystery spill" or when the RP denies liability for claims.

7. How much time do I have to submit a claim to the NPFC?

You must present a removal cost claim to the NPFC within six years of the date of completion of all removal actions for the incident. The NPFC considers the claim as "presented" on the day it is received at the NPFC.

The FOSC determines the incident's date of completion of all removal actions. If the FOSC was not on-scene and did not make such a determination, then you must provide sufficient information so the claims manager can determine the date that cleanup was completed. The more information you provide in this regard, the quicker the claims manager will be able to review the circumstances and make a determination.

8. How does the NPFC review my claim?

The NPFC assigns your claim to a claims manager who specializes in removal actions and removal cost claims. Generally, the claims manager follows the steps below.

1. The claims manager reviews the claim to verify that the claim is related to an OPA incident, and that all documentation is complete.
2. The claims manager sends you a letter acknowledging that the NPFC received the claim.
3. The claims manager also sends a letter notifying the RP that you have submitted a claim for a certain dollar amount and offering the RP an opportunity to provide information regarding the claim.
4. If additional information is needed, the claims manager will inform you (usually by letter but sometimes via phone or email) of what specific information is needed to adjudicate the claim. Typically, the claims manager initiates a dialogue to address specific concerns.
   - If the information requested is not received in a reasonable time frame, usually within 60 days, the NPFC completes adjudication of the claim with the information it has on hand. This may be detrimental to you as it can result in a partial payment or denial of the claim.
5. Upon receiving all information you provide, the claims manager:
   - Adjudicates the claim;
   - Decides whether the claim should be approved, denied in part, or denied as presented; and determines the amount of reimbursement, if any, that should be authorized.
6. NPFC's Removal Claims Branch Chief then reviews and makes a decision to approve or require further information regarding the claims manager's determination.
7. Larger or more complex claims may require a further review by NPFC and Coast Guard legal staff.
8. The NPFC sends you a notice of the determination.

9. I have just received my determination and don't agree with it. What options do I have?

Once the NPFC sends you a claim determination, you must accept or reject the offer within 60 days. The determination is NOT a negotiable item; however, if you find minor errors (i.e., a math error), please bring this to our attention early.

If you accept the determination, you must sign the release the NPFC includes with the determination.

If you take no action within 60 days, the offer to pay is void and the claim is denied.

If your claim is denied, in whole or in part, or you want to reject the offer, you may provide additional information supporting the area where you are seeking a re-evaluation and ask NPFC to "reconsider" your claim. As part of your reconsideration package, you should provide:

- Any documentation that was not previously provided,
- Any new evidence to support your claim, and/or

- Your explanation with supporting documentation on the particular issue(s) on which you disagree with the NPFC's determination.

Your request for reconsideration of your claim may start an entirely new review process. When the process is complete the NPFC extends another, the claim's final determination, as a result of your request for reconsideration.

The NPFC's reconsideration determination is not negotiable and is considered a final agency action and you cannot request a second reconsideration.

10. What does NPFC consider "uncompensated reasonable removal costs"?

The law (OPA Section 1013 (d), 33 C.F.R §136.205), requires the NPFC to reimburse claimants only for "uncompensated reasonable removal costs." What this means is that with the claims process, there are no contractual agreements and there are no "agreed to" rates for resources that it is bound by or has to honor. Given this, the NPFC determines what the reasonable removal costs were; which may or may not be the same as the rates you charge through your contractual agreements. Be sure to always include the applicable rate schedule with your claim submission to the NPFC for consideration in support of your invoicing.

A. Necessary Actions and Level of Effort

Another part of NPFC's reasonableness determination involves the "level of effort" required to clean up the oil spill. You must establish that the "actions taken were necessary" and were determined by the FOSC to be consistent with the National Contingency Plan (NCP). For example, would a response that cost $200K and included 50 workers for a solid week seem reasonable for a 5-gallon spill? Not likely; but there may be mitigating circumstances that justify such an expense. In such a situation, you should provide additional information/documentation/evidence to explain, justify, and support these costs; then perhaps reasonableness can be established. The NPFC has a staff of claims managers who have extensive oil spill response expertise, with Federal and industry experience or extensive claims adjusting expertise. These are the folks who make the reasonableness determination, and whenever deemed necessary can obtain additional resources and expertise as required to evaluate a claim.

If you find that you disagree with NPFC's reasonableness determination on level of effort or costs, please consider the following:

- Reviewing the documentation that you provided in your claim and assessing whether or not the information you provided was enough to explain why the costs were reasonable to someone unfamiliar with the situation at hand?
- Did you provide information that explained and supported that the level of effort expended was necessary?
- Did you ascertain what documentation is missing or needs further explanation?

These questions will help you in engaging the claims reconsideration process in a way that may shed light on what wasn't presented before and therefore needs to be provided. As this becomes evident, the reconsideration process is sped up and hopefully together we can bridge the gap between your expectation and our determination.

B. Uncompensated "Incurred" Costs

Whenever submitting a claim, you must also prove that you have actually incurred the removal costs that you are claiming. The NPFC requires you to provide Proof of Payment for subcontractors, service providers, and miscellaneous purchases of materials. Your claim submission should include this information. Otherwise, we will need to request additional information which will only delay the adjudication of your claim further.

Subcontractors: Sometimes a prime contractor submits a removal cost claim to the NPFC that includes costs incurred by a subcontractor. If the prime contractor has not paid the subcontractor for its services, the prime has not incurred the cost and therefore cannot submit those costs as a part of its claim. In these situations, the NPFC either requires the prime to pay the subcontractor before considering those costs or makes the subcontractor's costs into a separate claim that can be submitted by the subcontractor.

C. Some Examples

Situation	Determination
As a prime contractor, you hire a subcontractor during a response and submit those costs as part of your claim to the NPFC. However, you have not paid the subcontractor, waiting instead to be paid yourself first.	To submit a removal cost claim to the NPFC, you must have incurred costs associated with the oil spill response. These costs may include your own company's costs for labor, equipment, and materials, as well as costs for resources supplied by a subcontractor. If you have not paid the subcontractor, then your company does not have an *uncompensated* removal cost for that particular subcontractor's work. Until you pay the subcontractor, you are not out any money—and you don't have an uncompensated cost.
The RP has made a partial payment but still owes you for services provided.	In cases where the RP has made a partial payment but does not pay you for the remainder of the bill, you may seek reimbursement from NPFC for the remainder. However, the claims manager must ask you to provide documentation for all your costs related to the response, not just the unpaid portion. Why? Because the claims manager is responsible for determining that the costs incurred throughout the response are reasonable. Once you have provided this documentation and the claims manager has made a determination concerning the reasonable costs of the response, the claims manager subtracts whatever partial payment you have already received from that amount.
The RP has paid the prime contractor's invoice but the prime contractor has not paid you, a subcontractor invoiced through the prime.	The situation of most concern to subcontractors is when the RP does pay the prime contractor and then the prime does not pay the sub's bills. Unfortunately, in this particular instance, you, the subcontractor, cannot use the NPFC claims process. Why? Because the cost of the cleanup (i.e., the prime's costs as presented to the RP) has been paid by the RP. The NPFC cannot make payment for activities that have already been paid; as this is an unfortunate contractual dispute between you and the prime, and where there is no recourse through the NPFC claims process.

11. What does "consistent with the NCP" mean?

The NCP is the National Contingency Plan, Federal Regulation 40 C.F.R. §300. It outlines approved procedures and removal activities when responding to an oil and/or hazardous substance spill/release. OPA claims procedures require that all removal activities be consistent with the NCP.

When you are working for the FOSC under a BOA, the FOSC ensures all activities are consistent with the NCP. This is usually true also when you are working for a state under a BOA. The Federal or state On-Scene Coordinator outlines the approved removal activities and resources. When you are not working for the FOSC, it is your responsibility to obtain the FOSC's determination that the actions taken were consistent with the NCP. Early communication with the FOSC is encouraged and strongly recommended.

The NCP identifies four phases of response operations for oil discharges:

I Discovery and Notification
II Preliminary Assessment and Initiation of Action
III Containment, Countermeasures, Cleanup, and Disposal
IV Documentation and Costs Recovery

The NPFC claims manager must verify consistency with the following NCP requirements.

Notification	The RP or spiller and the person in charge of a vessel or facility are required to notify the National Response Center FOSC (1-800-424-8802) upon the discovery of an oil discharge. Notification can also be made directly to the FOSC
Coordination	Response activities must be completed with the coordination of the FOSC and as outlined in the vessel- or facility-approved response plan.
RP Identification	The Responsible Party (owner/operator of the source of discharge) must be identified, when applicable.
Approved Methodologies	Removal activities must be outlined and approved by the NCP and/or directed by the FOSC.
Disposal	Recovered oil must be properly sampled (laboratory oil sample analysis) and disposal conducted in accordance with applicable Federal and state laws.

12. Who is responsible for paying me? For whom am I working?

Whether working directly for the FOSC, or submitting a claim to the NPFC, OSROs often believe that they are working for the Coast Guard. However, that is not the case. The emergency portion of the OSLTF is available to the FOSC when hiring you under a BOA, but different OPA statutes, rules and regulations apply when you present a claim to the NPFC. In the latter case, any reimbursements come from the principal portion of the OSLTF, whose statutory authorities and regulations are different from the Emergency Fund.

Working ***with or alongside*** the FOSC during an oil spill response does not necessarily equate to working ***for*** the FOSC. During a response to larger oil spills, a Unified Command post is normally established. The Unified Command involves the FOSC, state OSC, and the RP, which may have hired you. The FOSC may direct the RP to provide resources and then monitor the removal activities, but you are still working under a contract with the RP.

When you are working directly for the FOSC, the pre-negotiated BOA rates apply for all equipment and labor, and you submit your invoices to the FOSC under the terms of the BOA contract.

Obtaining a BOA

If you don't have an existing BOA with the Coast Guard, you may contact its Maintenance and Logistics Command (MLC) on either coast.

Atlantic (MLC LANT	Pamela Barker	757/628-4128,	HPBarker@MLCA.uscg.milH
Gulf (MLC LANT)	Michelle Blake	757/628-4110	HMBlake@MLCA.uscg.milH
Pacific (MLC PAC)	Mike Leonard	510/437-5942	HMLeonard@D11.uscg.milH

The FOSC may also hire the state OSC to run the oil spill response. The state in turn may then hire you. In this case, the state is responsible for paying you.

13. What can I do to protect myself?

Whether working for an FOSC under a BOA delivery order or for an RP under a commercial contract, you want to be paid the full amount of your invoices. Typically, if you experience problems with receiving payment, you should pursue contract remedies. The NPFC claims process allows only for reimbursement for uncompensated and reasonable removal costs incurred; unfortunately, this does not always match the full amount of any invoice you may have sent to the RP. Unlike the contracting process when working for the FOSC or the RP, the claims adjudication process is not a negotiation - you must prove your claim. Failure to do so may cause your claim to be denied in whole or in part. Listed below are some suggestions that might help you avoid common problems.

A. What to Do When a Spill Occurs

- Require the RP to place a deposit or advance of funds. Based on your experience with the company, the company's financial status, etc, make a conscious business decision on whether or not the RP is "good for the total cost of the cleanup."

- If the spill cleanup effort will be lengthy, negotiate with the RP for periodic payments for work completed.
- Advise the FOSC if payment from the RP becomes questionable. Question the FOSC if the FOSC tells you to "just do the work and submit a claim."
- Understand that when you are working for the RP, taking any direction from the FOSC does not constitute a delivery order or contract with the FOSC.
- Keep daily records of activities (e.g., daily worksheets) that show level of effort and personnel and equipment on scene at a response, including whether the equipment is being used or on standby. Have your dailies signed by the RP's representative who is managing your work.
- If directions from the RP are unclear, obtain clarification. Remember: activities that are inconsistent with the NCP may not be reimbursed. Make sure the FOSC knows.
- Understand that the NPFC cannot blindly accept contract rates and is not bound by any contract you have with the RP. Similarly, the NPFC is not bound by the rates within any BOA delivery order that you have with the FOSC. Some generally accepted contract items, such as using hourly rates exclusively when a daily rate is clearly warranted, might not be considered reasonable uncompensated removal costs under the claims regulations.
- Make sure the FOSC clearly knows your actual capability to respond to different size spills in different locations.

B. Problems That May Arise During a Response

- Directions from the FOSC may appear to be direct tasking to the OSRO. Remember who hired you; resolve any apparent inconsistencies through communication with the RP and the FOSC.
- Response efforts may go beyond what an FOSC would consider "consistent with the NCP." This may include directions from an RP or a state OSC that are in conformance with state law but which exceed what the FOSC would require. Be clear as to where the line is, since anything inconsistent with the NCP is not compensable by the NPFC.
- The RP may also desire to do additional work that goes beyond removal of oil from navigable waters and adjoining shorelines or actions to prevent or mitigate a substantial threat of discharge to navigable waters and adjoining shorelines. Consistency with NCP becomes an even larger issue when this is the case.
- The FOSC may be in a "monitoring" mode and may not indicate what or when actions go beyond what is required. The "how clean is clean" determination may not be clear unless you communicate with the FOSC.
- If the FOSC never shows up, the issues of reasonableness and consistency with the NCP will require "after-the-fact" coordination with the FOSC. To avoid this, communicate with the FOSC during the response. In the absence of any FOSC input, the NPFC must rely on documentation provided in the claim to determine consistency with the NCP and the reasonableness of your claimed costs for uncompensated removal costs incurred.
- If no sampling is done to identify the RP, the likelihood that the RP may refuse to pay you may rise. FOSC/SOSC may take samples. While sampling is part of the proper disposal process, unless there are source samples to compare to, the identification of the RP may be difficult.

C. How to Improve Success in the Claims Process

- Always document your activities and level of effort, and provide explanation of why actions were necessary or required. Provide documentation to support actions taken.
- Maintain an accurate record of personnel and equipment utilized as they are used. "Dailies" are the best form of documentation.
- Verify your accounting. Daily worksheets, daily invoice summaries, and final invoices must match up and support each other. Claimed amount or "sum certain" of claim should match the final invoice total, unless an explanation is provided. Provide documentation to support costs claimed.
- Provide a complete claim file. Include your written demand for a sum certain to the RP clearly expressed as a claim for uncompensated removal costs incurred for which the RP is liable under OPA. Your invoices as a demand for payment under a contract with the RP are not sufficient. (The NPFC claims manager will be communicating with the RP regarding your claimed costs.)
- Obtain FOSC coordination at the time of your response and document it. If this is not done, request the FOSC to review your response "after the fact." Remember that a determination of substantial threat can be made only by the FOSC and that the FOSC is not expected to evaluate your rates but should provide input on your level of effort and activities.
- Make sure you present your invoice to the RP right away. Provide reasonable documentation that you have done so when you submit your claim.

14. Where can I find additional information?

In addition to removal claims, the NPFC makes available claim requirements for OPA damages that include:

- Real or personal property damages,
- Loss of profits and earning capacity,
- Loss of government revenue,
- Costs of increased public services,
- Loss of subsistence use of natural resources, and
- Natural resource damages.

Information on the claims adjudication process is available through any of the avenues listed below.

NPFC Mailing Address	National Pollution Funds Center Claims Adjudication Division 4200 Wilson Blvd., Suite 1000 Arlington, Va. 22203-1804		
NPFC Claims Phone	1-800-280-7118	**NPFC Claims Web**	www.uscg.mil/npfc/claims Available for Download: • *Claimant's Guide for Submitting OSLTF Claims* • *Optional OSLTF Claim Form* • *OSRO FAQs*
NPFC Claims Fax Numbers	1-202-493-6937 or 1-202-493-6938		
NPFC Claims Email	**arl-pf-npfcclaimsinfo@uscg.mil**		
After Business Hours	Command Duty Officer Pager 1-800-759-7243 PIN 2073906		

Removal Claims	**Donna M. Hellberg** 202/493-6839 **Donna.M.Hellberg@uscg.mil**	**Damages Claims**	**Augusto "Augie" Rios** 202/493-6845 **Augusto.C.Rios@uscg.mil**
Natural Resource Damages	**Jim Hoff** 202/493-6865 **James.G.Hoff@uscg.mil**		

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U.S. Department of Homeland Security

United States Coast Guard

NPFC Claims Process

Responsible Party Claim Submission Guidance

JANUARY 2007

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I. Introduction

A. Purpose of Document

This document provides assistance to Responsible Parties (RPs) on how to submit a claim for reimbursement of Oil Pollution Act of 1990 (OPA) removal costs and damages that asserts either an affirmative defense or an entitlement to a limit on liability (33 USC 2708, 33 USC 2703). It provides suggestions and best practices that have proven effective for RPs and answers many of the questions that typically come up with first-time RP claimants. Our ultimate goal is to make your claim preparation process easier and reduce the time it takes us to adjudicate your claim.

This document serves as a supplement to the *Claimant's Guide for Submitting OSLTF Claims*, which contains more detailed information on submitting different types of claims and is available through the NPFC's Claims page at www.uscg.mil/npfc/claims/.

It is important to note that this document has been prepared as an aid in submitting claims. Nothing contained within this document establishes new rights or requirements under OPA and the implementing regulations. In the event of conflict between this document and statute, regulation, or agency policy, the statute, regulation, or agency policy will govern.

B. Oil Pollution Act of 1990

Our guiding statute is OPA, which established and provides for the use of the Oil Spill Liability Trust Fund (OSLTF) to pay for federal oil cleanup activities and compensate third party claims for removal costs and OPA defined damages from oil spills.

Claimants must ensure that claim submissions are made in a timely fashion. The statute has deadlines that must be adhered to by claimants:

- **Claims for removal costs** must be presented within six years after the date of completion of all removal actions for that incident.
- **Claims for damages** must be presented within three years after the damage was reasonably discoverable with the exercise of due care. Claims for natural resource damages (NRD) may be submitted within three years from the date of completion of the NRD assessment under the damage assessment regulations at 15 CFR Part 990.

C. National Pollution Funds Center

The Coast Guard established the National Pollution Funds Center (NPFC) to administer the OSLTF. Three of the NPFC's major missions in support of oil spill response include:

1. Provide funding for Federal On-Scene Coordinator (FOSC) removal activities for oil spills covered under OPA.
2. Recover from RPs the costs expended by the FOSC as well as the claims paid by the NPFC for an OPA oil spill incident.
3. Pay claims for uncompensated removal costs and damages for an OPA incident.

D. Responsible Party

Pursuant to the provisions of OPA, an RP is strictly liable for all costs incurred and damages suffered as a result of an oil pollution incident (33 USC 2702). An RP may limit its liability or establish a complete defense to liability if it can meet the requirements set forth in 33 USC 2703 or 2704. As with all claimants presenting claims to the OSLTF, RPs bear the burden of proving all elements of their claims (33 CFR 136.105(a)).

Under 33 USC 2708, *"The responsible party for a vessel or facility from which oil is discharged, or which poses the substantial threat of a discharge of oil, may assert a claim for removal costs and damages under section 2713 of this title* ***only if the responsible party demonstrates*** *that--*

> *(1) the responsible party is entitled to a defense to liability under section 2703 of this title; or*
>
> *(2) the responsible party is entitled to a limitation of liability under section 2704 of this title*."

E. Claims Regulations

The regulations governing submittal and approval of claims under OPA are found at 33 C.F.R. §136. The complete set of regulations can be downloaded from the NPFC Laws and Regulations Web page, www.uscg.mil/npfc/laws_and_regulations.htm.

F. Claimant's Guide and Claim Form

For more detailed information on submitting both uncompensated damage and removal cost claims, see the *Claimant's Guide for Submitting OSLTF Claims*, which is available at www.uscg.mil/npfc/claims/. The document also includes the Optional OSLTF Claim Form.

II. Types of Responsible Party (RP) Claims

There are two types of claims that may be presented by RPs to the Fund:

(1) An entitlement to a defense of liability and

(2) An entitlement to limit liability.

In both types of claims, the RP is seeking reimbursement for removal costs and damages incurred.

A. Entitlement to a Defense to Liability

33 USC 2703 provides that:

A responsible party is not liable for removal costs or damages . . . if the responsible party establishes by a preponderance of the evidence, that the discharge or the substantial threat of a discharge of oil and the resulting damages or removal costs were ***solely*** *caused by:*"

(1) an act of God;
[OPA, in 33 USC 2701, defines an act of God as: "*an unanticipated grave natural disaster or other natural phenomenon of exceptional, inevitable, and irresistible character the effects of which could not have been prevented or avoided by the exercise of due care or foresight*."]

(2) an act of war;
[Such an act can be described as a hostile act of violence by one state or sovereign against another state or sovereign.]

(3) [sole fault of a third party.]
[OPA states in 33USC 2703 that this is "*an act or omission of a third party, other than an employee or agent of the responsible party or a third party whose act or omission occurs in connection with any contractual relationship with the responsible party . . . if the responsible party establishes by a preponderance of the evidence, that the responsible party--*

(A) exercised due care with respect to the oil . . . taking into consideration the characteristics of the oil and in light of all the relevant facts and circumstances; and

(B) took precautions against foreseeable acts or omissions of any such third party and the foreseeable consequences of those acts or omissions."]

However, 33 USC 2703(b) states that:

[A defense to liability] does not apply with respect to a responsible party who fails or refuses to--

(1) report the incident as required by law if the responsible party knows or has reason to know of the incident;

(2) to provide all reasonable cooperation and assistance requested by a responsible official in connection with removal activities; or

(3) without sufficient cause, to comply with an order issued under subsection (c) or (e) of section 1321 of this title or the Intervention on the High Seas Act (33 U.S.C. 1471 et seq.)

B. Entitlement to Limit Liability

A responsible party may limit its liability and recover removal costs and damages incurred by the responsible party to the extent that incurred costs asserted under 33 USC 2713 exceed the amount of total liability of the responsible party as determined under 33 USC 2702.

An RP is not entitled to limit its liability if the incident was proximately caused by:

- Gross negligence or willful misconduct on the part of the RP; or
- The violation of an applicable Federal safety, construction, or operating regulation by the responsible party, an agent or employee of the responsible party, or a person acting pursuant to a contractual relationship with the responsible party (except where the sole contractual arrangement arises in connection with carriage by a common carrier by rail);

Or if the responsible party fails or refuses:

- To report the incident as required by law and the responsible party knows or has reason to know of the incident;
- To provide all reasonable cooperation and assistance requested by a responsible official in connection with removal activities; or
- Without sufficient cause, to comply with an order issued under 33 U.S.C. 1321 (c) or (e) or the Intervention on the High Seas Act (33 U.S.C. 1471 et seq.)

The NPFC uses the following definitions when relevant to adjudicating RP claims:

- **Gross Negligence**. Negligence is a failure to exercise the degree of care, which a person of ordinary caution and prudence would exercise under the circumstances. A greater degree of care is required when the circumstances present a greater apparent risk. Negligence is “gross” when there is an extreme departure from the care required under the circumstances or a failure to exercise even slight care.
- **Willful Misconduct**. An act, intentionally done, with knowledge that the performance will probably result in injury, or done in such a way as to allow an inference of a reckless disregard of the probable consequences.

III. RP Claims Submission Requirements

A. Standard of Review

NPFC uses a preponderance of the evidence standard in adjudicating all claims. The claims regulations provide that claimants bear the burden of proving all elements of claims (33 CFR 136).

B. Required Information

The NPFC requires all information necessary to fully understand the situation and circumstances that lead up to and caused the release. The regulations provide some basic guidelines concerning required information, but basically the claimant must present anything and everything necessary for the NPFC to fully understand the situation, circumstances and events leading up to and through the incident and release in order to make a reasonable determination as to the cause(s) and contributing factors of the incident and release.

C. Claims Process

Every incident and every claim is different, so it is difficult to provide specific or exact timelines and interactions a claimant can anticipate or expect from the NPFC. Similarly, it is difficult to set out specific types of information and documentation that will be required in every claim or type of claim. However, the NPFC does follow a process when receiving and adjudicating claims, which is described below and is provided to assist in the management of expectations during the process.

Once a claim is received from an RP, it is duly date stamped, then reviewed and assigned to a claims manager. The claims manager will acknowledge receipt and possibly request additional information that he/she has determined on first review to be necessary. The claims manager will then include the claim in his/her portfolio of other claims and begin the process of fully reviewing the submitted claim information. This full review will likely include peer and supervisory feedback and interaction and will most likely result in a follow up request for information or documentation.

In the case of entitlement to limit liability claims, the NPFC uses a two-phase process. The entitlement is adjudicated first; and, once it is established, the NPFC proceeds with the review of cost data to determine the OPA-compensable amount.

After a determination to uphold an entitlement is issued, a different claims manager may be assigned the claim in order to determine the OPA compensability of the removal costs and damages paid and incurred and to determine ultimate compensation the RP is entitled to receive. Following this process may result in several claims for compensation being generated as the NPFC may split costs to hasten adjudication. For example, third party damage claims may be lumped as one claim while removal costs are reviewed by a different claims manager. Each separate resulting claim will have its own adjudication, determination, and reconsideration process, which may require additional information.

In some cases, the NPFC may be able to work an initial review of costs and damages concurrently with the entitlement, but that is dependent upon the availability of information. Also when adjudicating removal costs and damages, the NPFC may opt to issue interim or partial payments. Again, this is dependent on the information and documentation provided to support the claimed costs.

Once the claims manager reaches a determination he/she obtains supervisory concurrence and issues a determination. Once the determination is issued, the claimant (RP in this case) may accept the outcome or request that it be reconsidered by submitting in writing a request for reconsideration which includes the factual or legal grounds for the request. Requests for reconsideration must be submitted within 60 days of when the determination is mailed (33 CFR 136.115). The reconsideration process is the internal agency appeal process, and there is no further administrative process when it is complete.

Claims are processed as information is received and can be analyzed. Workload has to be managed and to that end, any claim in which the RP's claimed costs are pending in court, is set aside and not acted on, pending the litigation outcome. Depending upon actions by the court, an RP can end up being precluded from consideration by the NPFC because the costs are eventually compensated in full or in part, are settled, or potential responsible parties are released. The NPFC may hold a timely submitted claim in abeyance, which means that it has been received and the statute of limitations has been tolled. No work or action will be taken on the claim until such time that the litigation is resolved or it becomes clear to the NPFC that it may proceed with adjudication, as no claimed costs are the subject of pending litigation. OPA's basic premise is that polluters should pay. Using this as a guiding principle, it is very important to us that we seek to protect the ability for the OSLTF to pursue any ultimate RP for recovery. This includes protecting the subrogable rights of any claimant to rightfully pursue someone else who may be responsible (33 USC 2712).

D. Evidence and Documentation

This will vary based upon the facility and or vessel, and the facts of the incident, but a partial list of the types of documentation that have been required in the past is provided below. It is very helpful if the documents are carefully organized, tabbed in binders, and outlined with a table of contents that describes documents contained in each binder.

1. General Incident Documentation

- Coast Guard Marine Casualty Investigations (per Federal Regulation Notice USCG – 2006-25843, published Friday, 13 October 2006)
- Report of Incident (CG Form 2692)
- Police reports
- Internal company analysis and reports of the incident
- Insurance reports, Hull and Machinery Underwriters, reports to P&I on incident
- Copies of applicable insurance policies that were in place at the time of the incident (include summary of oral communications with insurance companies and copies of all written communications with insurance companies)
- P&I report
- NTSB or governmental agency report investigating the incident or circumstances surrounding the incident
- Any report of survey or investigation conducted by any claimant regarding this incident such as hull underwriters, etc.

- Independently contracted studies or analyses

2. Vessel Specific Information:

- Vessel logs
- Shipboard and/or company operating procedures and checklists that were in place at the time of the incident
- Engine tape (analogous to the "black box" on trailer trucks)
- Course recorders
- All manuals or documents onboard the vessel at the time of the incident that relate to the navigation and/or transiting procedures to be used by the crew
- Local navigation information, including established depths, charted depths, survey data, and local pilot history
- Depth recorder history of the waterway for the specific date, time of day, and location
- Copies of all written directives from owners and master to crew on operating procedures and requirements
- All manuals or documents onboard the vessel at the time of the incident that direct the navigation and/or transiting procedures to be used by the crew

3. Facility Specific Information

- Facility Response Plan (FRP) or Spill Prevention, Control and Countermeasure Plan (SPCC)
- Measures in place and evidence about the security at the location of the incident
- Industry standards that govern the particular industry involved, including construction standards (such as applicable American Petroleum Institute standards, or State Local Standards or Federal Agency standards and requirements, or the Mineral Management Service requirements for offshore facilities and pipelines) and any and all corporate or company standards, requirements, and recommendations
- Published precautions and safety and engineering safety practices
- Facility Response Training Plan
- Incident history for facility (all incidents of releases or threats of releases reported internally or required reporting to agencies within Federal, State, and local governments)
- History of inspections and drills, including local and corporate records as well as those provided to different governmental agencies
- Engineering inspections with regard to valves, pipelines, tanks, pumps, and structures
- All manuals or documents onboard the facility at the time of the incident that direct the operation of the facility

4. Crew or Personnel Specific information

    - Crew list or shift list
    - List of people on watch and position to which assigned, as well as watch/rest schedule in preceding 24 hours
    - Licenses, qualifications, and training for personnel involved
    - Witness list (any and all people that had or could have impact on incident or actually observed circumstances leading up to the incident)
    - Drug test results
    - Statements and affidavits from personnel on scene at the time of the release

5. Incident/Circumstances/Situational Documentation

    - Weather forecasts
    - Data buoy readings
    - Coast Guard broadcast notices to mariners
    - "Coast Pilots" or other sailing or shipping guidance for the geographical area where incident occurred
    - Sailing directions and recommendations for the area
    - Harbor regulations
    - Marine advisories in place at the time of the incident

6. Other Supporting Documentation

    - Copies and supporting documentation regarding any other litigation in which the RP is involved resulting from the incident
    - Contracts designating counsel or representation regarding the claim and other actions
    - Certificates of Financial Responsibility (COFRs) for vessels involved in the incident

Although the information provided above is detailed, it is not exhaustive; and, depending on the facts of the incident and all facts and circumstances taken as a whole, additional and other types of evidence may be requested and required by the NPFC. The purpose of this document is to provide guidance to RPs when contemplating submitting a claim to the NPFC.

IV. Documentation of Removal Costs and Damages

This section of this document assumes that an RP has successfully asserted its defense or has been granted an entitlement to limit its liability, and that it is now ready to submit a claim for its costs and damages to the OSLTF.

A. Removal Cost Documentation

The following is a list of the removal cost documentation required.

- Invoices
- Daily work logs
- Rental invoices, agreements and receipts for special purchases
- Proofs of payment
- Disposal manifests/records
- Sample analysis reports
- Signed Incident Action Plans
- Photographs of all equipment/on-scene removal activity
- Separate listing of personnel receiving Per Diem
- Hotel receipts
- *Itemized* receipts for any and all incidental expenses such as airfare, meals, etc. (Ensure all receipts can be clearly cross-referenced to or for the person or people with which they are associated. In large removal cost claims, we are finding that a well organized submission greatly assists our ability to provide a more timely review.)

1. Recommended Documentation Organization

In large removal cost claims, we are finding that a well organized submission greatly assists our ability to provide a more timely review.

You may want to consider submitting your claim in either a tabbed binder or an accordion folder broken out by vendor(s). We recommend this format for ease of review, and also so that consideration can be given to interim payments by vendor during the adjudication process if required.

Example of Recommended Binder Organization

Binder 1
- Tab A – Company X
  - Zone NJ 1
  - Zone PA 3
- Tab B – Company Y
  - Zone DE 1
  - Zone NJ 10
- Tab C – Company Z

Preferably, each tab will have all invoices in date order by zone for that particular vendor. The vendor should invoice its costs in accordance with zone activity. If that is not possible, the daily work logs should indicate the zone area being worked. This will make it easier for our office to cross-reference the activity to the applicable Incident Action Plans (IAPs). In the event the daily work logs also do not indicate the zone, please provide that level of detail separately to assist in expediting the adjudication process.

Behind each separate invoice, provide all associated paperwork to validate the invoiced amount (i.e., daily logs, applicable receipts, explanations, underlying invoices for products or services the vendor obtained from a secondary source (i.e., port-a-let rental, roll-off box rental with associated pickup and delivery charges, specialty equipment a vendor may have rented). In the event there are multiple pickup and delivery charges for items such as roll-off boxes and the reason is a change in staging location etc., please provide an explanation so the Claims Manager understands what was happening in the field.

Behind each invoice provide a copy of the proof of payment for that invoice. Note that if the invoice was paid by wire transfer, an itemization must be attached to the copy of the wire transfer specifying what invoices and amounts were covered by that wire transfer. If check copies are provided, a copy of the front and back of the check that coincides with the associated invoice is requested.

2. Spill Management Team (SMT) Documentation

- Ensure there are daily activity sheets that provide start and stop times for each member of the spill management team.
- Ensure there is a description of duties performed daily on all members.
- Provide copies of all documentation of SMT review of contractor invoices that explain/outline any and all costs reduced, denied or adjusted.

3. Types of Costs That Are Frequent Problem Areas Due to Lack of Substantiation/Justification

- **Scope of work or level-of-effort issues**. Not all of the actions taken as a result of incidents are meant to remove or respond to the oil threat. Hull salvage, cargo offload, bottom surveys, and site remediation, while desirable by all parties (RP and spill responders), may not be OPA compensable. Additionally, these costs may be compensated through other avenues.
- **Salvage operations**. When a vessel casualty occurs, oil pollution removal or mitigation activities that are payable from the OSLTF may be occurring alongside other activities for other purposes (e.g., navigation safety, salvage and safety of life and property at sea). In such mixed circumstances, the NPFC looks to the principal purpose of activities to determine qualifying oil removal costs.
- **Movie rental and miscellaneous costs included in hotel bills**. Detailed explanations that directly link the expenses to the removal activities must be provided in order to substantiate the cost(s). For example, if a hotel conference room and audio visual equipment were rented to train local residents in shoreline response, this purpose must be demonstrated in the documentation, and also must be corroborated by the Federal On Scene Coordinator.
- **Miscellaneous meal expenses that cannot be associated with particular individuals**. Receipts for food expenses in general and especially meal expenses that cannot be associated with particular individuals are not compensated without further details that directly link the

expenses to the removal activities. Group meals and catered meals can be documented through several different approaches, from sign-in sheets to contracts for meals delivered to sites.

- **Car wash expenses**. Car wash expenses for rented or privately owned vehicles are not considered response related unless the reason is tied to the pollution response.
- **Administrative, legal, and P & I correspondent costs**. These costs need detailed documentation substantiating that the underlying activity supports and furthers oil removal consistent with the National Contingency Plan (NCP).
- **Per Diem Expenses**. In a large response with numerous contractors, when requesting per diem, please ensure it is clear by vendor, the individual dates, names of individuals, and amount of per diem requested on a daily basis. If the vendor's invoice and daily work logs do not clearly delineate this, please ensure your submission has an adequate breakdown and itemization so these costs can be evaluated in an expeditious manner.
- **Lodging expenses**. This is a very confusing area in claim submissions when the response is extremely large and extends over a lengthy period of time and when responders are working shifts with numerous individuals cycling in and out of rooms, and the hotel bill only identifies one party. If this appears to be an issue in your anticipated removal cost claim, you must provide a detailed report on who was in what room, on what days, so the associated hotel bills coincide with what you are claiming. It is the responsibility of the claimant to submit this information in an orderly and discernable fashion in order to consider these costs. Also, if room rates are very expensive, you should provide detailed justification for "high end" rooms (e.g., if they are the only available rooms, you must provide supporting documentation).

B. Damage Claim Documentation

Only those damages expressly described in OPA are compensable from the Fund. Damages claimed must be measurable and must result from the discharge or substantial threat of discharge of oil to navigable waters, the adjoining shorelines or the exclusive economic zone. The following is a list of supporting documentation that may assist in presenting and providing the damage suffered. The types of documentation/information normally requested are sub-categorized below by the type of damage claim, but much of the documentation is useful across the various damage claim types.

1. General Guidance

- At a minimum provide all evidence/documentation relied on to fix the sum certain of the claim.
- Include pictures as much as possible to document the damage and/or include contemporaneous newspaper articles that support the damage being claimed.
- Document how the damage resulted from the discharge or substantial threat of discharge of oil.

2. Damage to Real or Personal Property

- Pictures are "worth a thousand words," for example, when a marina requests compensation for cleaned and or repaired piers or docks. Pictures documenting conditions before and after a spill are also very useful.
- Quotes or estimates for repair, cleaning or replacement from local sources.

- Removal activities may result in compensable damage, but require more evidence to demonstrate the connection to the oil. Again, pictures, or written statements, and/or affidavits from responders provide this link. An example is the need for the incident response personnel to reach the site by creating an access through a private landowner's property. The damage to that property, which was a direct consequence of the access needed for response crews, is an OPA compensable damage. The cost to return conditions to their undamaged state may also be treated as a removal cost.

3. Loss of Profits and Earning Capacity

- Financial reports (annual, monthly, seasonal, etc.) may be of use in determining the validity of the compensation to be reimbursed.
- Copies of contracts for committed business dealings impacted.
- Business financial statements, customer affidavits, receipts, invoices, charter party, etc.
- A quantification of damage claimed with accountant's analysis and comparable business performance from other years, similar seasons, etc.
- Analyses, reports, newspaper articles.
- Mitigation of the damage (how you attempted to minimize the impact).
- For fisheries, documentation of the actual impact of the oil on the fishery over an appropriate period of time.
- For fisheries, state and local geographical closure histories for an appropriate period of time.
- For local businesses, the full picture of the impact. While hotels on a beach may lose tourist bookings, a large response typically offsets the loss, as the personnel responding often place strains on lodging and other accommodations.

4. Increased Cost of Public Services

- This type of claim addresses "*Damages for net costs of providing increased or additional public services during or after removal activities, including protection from fire, safety or health hazards, caused by a discharge of oil, [which shall be recoverable] by a State, or a political subdivision of a State*" (33 CFR 136.237); this is not intended to pay for a "shuffling of the deck cards" with the personnel already on duty at the time of the incident.
- Provide a list of the people assigned to the regular shift, which is not compensable, and supplement it with the additional personnel called on to respond and who incurred overtime pay.
- Describe the duties performed and/or materials used along with the location(s) to which the personnel was/were deployed.
- Provide names and titles of authorizing supervisors.
- Any government agency that incurs and pays differential pay (overtime, time and a half, double time, triple time) must substantiate such payments with a copy of the labor contract where the applicable circumstances are spelled out as well as the methodology that effects such payments.

5. Loss of Government Revenue

   - These typically involve beach resorts and the like, where access fees are charged to the public. They may also involve concession stands that are operated by the local government or which pay royalties to operate in the affected beach or, in some cases, reduced tax income.
   - Description of revenue lost.
   - Analysis and historic documentation of revenue for comparable time period.
   - Documentation that shows direct causation to the incident.
   - Documentation on the saved expenses (utilities, salaries, etc.).

6. Loss of Subsistence Use of Natural Resources

   - Claimants must establish a pattern of past use of natural resources for the purpose of subsistence. This may be done through the inclusion of objective affidavits, witness statements, and/or other documentation.
   - Documentation of personal income and means may be required.
   - More information is available on the NPFC's Web site at www.uscg.mil/NPFC/Claims/subsistence_use_claims.htm.

7. Natural Resource Damages

   - For specific guidance, please see www.uscg.mil/NPFC/NRD/.

V. Other Frequently Encountered Difficulties in Adjudicating RP Claims

A. Lack of Organized Documentation Adequately Explaining the Nature of the Activities and Reconciling the Costs in an Understandable Format

The Fund must be provided enough information to make a determination. The Fund needs to understand all circumstances surrounding an incident and the condition and operation of the vessel or facility and assigned personnel leading up to, during, and immediately following the incident.

B. Purpose of the Removal Activity

Often salvage activities are conducted for other than removing the threat of oil.

Often legal representatives are working on more issues than just removal activities.

C. Pending Litigation

A claimant has the choice to pursue compensation through either the courts or the Fund, but not both. If pursuing through the Fund, the Fund must be able to ultimately pursue recovery from others responsible. Litigation in process that does or could be interpreted to involve the OPA compensable costs included in a claim submission can preclude adjudication and will preclude payment of claims.

D. Settlements, Agreements, and Dismissal with Prejudice

Releases, covenants not to sue and dismissals with prejudice indicate that the costs have been considered and settled. The Federal Government must be provided subrogable rights in exchange for compensation.

For More Information

NPFC Web Site	www.uscg.mil/npfc
NPFC Mailing Address	Director (Ca) National Pollution Funds Center 4200 Wilson Blvd., Suite 1000 Arlington, Va. 22203-1804
Chief, Claims Adjudication Division	Tom Morrison Thomas.S.Morrison@uscg.mil 202-493-6831
Chief, Damages Claims Branch	Augie Rios Augusto.C.Rios@uscg.mil 202-493-6845
Chief, Removal Claims Branch	Donna Hellberg Donna.M.Hellberg@uscg.mil 202-493-6839
Chief, Natural Resource Damage Claims Division	Chris Abrams Christopher.W.Abrams@uscg.mil 202-493-6865

Appendix A: Memoranda of Understanding (MOU)

This appendix includes memoranda of understanding/agreement between the U.S. Coast Guard/NPFC and several other Federal agencies.

Download	Document
Entire Appendix 5 50 KB PDF	Download entire appendix.
Introduction 25 KB PDF	Cover, table of contents.
USCG & EPA (Oil) 125 KB PDF	Oil Spill Liability Trust Fund (OSLTF) MOU Between the U.S. Coast Guard and the U.S. Environmental Protection Agency.
USCG & EPA (CERCLA) 175 KB PDF	Superfund/Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) MOU between the U.S. Coast Guard and the U.S. Environmental Protection Agency.
NPFC & NOAA 75 KB PDF	Scientific Support Coordinator (SSC) MOU Between NPFC and NOAA
Endangered Species Act MOA 175 KB PDF	Endangered Species Act (ESA) MOU Among USCG, EPA, DOI (USFWS), & NOAA (NMFS and NOS)

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MEMORANDUM OF UNDERSTANDING

BETWEEN

THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

and

THE UNITED STATES COAST GUARD

*** * ***

For use of the

Oil Spill Liability Trust Fund

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I. PURPOSE

This Memorandum of Understanding (MOU) between the United States Environmental Protection Agency (USEPA) and the United States Coast Guard (USCG) establishes the agreement by which USEPA accesses the Oil Spill Liability Trust Fund (OSLTF or the Fund), administered by the National Pollution Funds Center (NPFC), in order to carry out oil removal under 33 USC 1321(c) [Clean Water Act (CWA) or Federal Water Pollution Control Act (FWPCA)], with the concomitant USEPA responsibility to fully account for OSLTF funds and support the NPFC's efforts to recover the Federal government's costs from responsible parties (RPs). This MOU also describes the NPFC's responsibility to fully support the USEPA by providing timely funding and other support to carry out oil removals.

II. AUTHORITY

This MOU is entered into under the authority of the Oil Pollution Act of 1990 (OPA), 33 USC 2701 et seq., as implemented by E.O. 12777 (and subsequent delegations), to carry out oil removal activities under the Clean Water Act and the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR 300. OPA 6002, 33 USC 2752, makes available annually a portion of the OSLTF to carry out oil removals under CWA. Subject to OPA 6002, OPA 1012(a) makes the OSLTF available for the payment of those Federal costs, including the costs of monitoring removal actions, that are consistent with the NCP.

Executive Order (EO) 12777 delegates the authority and responsibility for implementing the provisions of Title I and various other sections of OPA, pertaining to management of the OSLTF for use in removals, to the Secretary of the Department of Transportation (DOT). DOT has redelegated these responsibilities to the Commandant of the USCG, who has further redelegated those responsibilities to the Director of the NPFC.

The National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR 300, contains details for implementing removals under OPA and the CWA, including the role of the On-Scene Coordinator (OSC). Under the EO, the USEPA is responsible for removal of oil spills in the Inland Zone of the US as defined in the NCP. The USCG is responsible for removal of oil spills in the Coastal Zone. The USCG and the USEPA assign OSCs to direct these removals.

The principal organizations within the two agencies with fiscal responsibilities for these matters are the Office of Solid Waste and Emergency Response (OSWER) for the USEPA and the National Pollution Funds Center for the USCG.

III. DEFINITIONS

"Oil", is defined by section 1001 of OPA [33 USC 2701(23)] as oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil, but does not include petroleum, including crude oil or any fraction thereof, which is specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601) and which is subject to the provisions of that Act.

"Remove" or "removal" is defined in OPA 1001 (30), 33 USC 2701 (30), to mean "containment and removal of oil or a hazardous substance from water and shorelines or the taking of other actions as may be necessary to minimize or mitigate damage to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, and public and private property, shorelines, and beaches."

"Removal costs", is defined by OPA 1001 (31), 33 USC 2701 (31), OPA as "the costs of removal that are incurred after a discharge of oil has occurred or, in any case in which there is a substantial threat of a discharge of oil, the costs to prevent, minimize, or mitigate oil pollution from such an incident."

IV. USES OF THE OSLTF

Before the OSLTF can be made available for removal costs, there must be an OPA incident. In Polrep-1 (or as soon as possible), the OSC shall document the following facts: that oil was discharged into, or is a substantial threat to, the navigable waters of the U.S., the adjoining shorelines, or the EEZ.

If these prerequisites are met, the OSLTF is available to reimburse the EPA via Interagency Agreements (IAGs) for removal costs resulting from their activities conducted under 33 USC 1321(c) necessitated by the OPA incident. To be reimbursable from the Fund, the removal activities which resulted in the costs being incurred must be consistent with the NCP. See Appendix 2.

V. MIXED SPILLS

The term "mixed spills" is used in this agreement to describe discharges which involve oil and other substances. This is different from "mixed events" or "mixed sites" which are terms used to describe locations where discharges of OPA oil and releases of CERCLA hazardous substances are co-located, but remain separate and distinct problems.

The substances involved in a mixed spill will dictate whether its removal may be funded by either the OSLTF or Superfund. Both funds will not be used on the same mixed substance.

For removal to be funded by the OSLTF, the composition of the mixture must be such that it can be considered oil subject to OPA. Appendix 2 specifies criteria for selecting a funding source for removal of a mixed spill.

VI. ACCESSING THE OSLTF

To initiate funding for an oil removal, the USEPA OSC must obtain a Federal Project Number (FPN) and an approved project ceiling from the USCG no later than the conclusion of the preliminary assessment described in the NCP, Subpart D Section 300.305, "Phase II - Preliminary Assessment and Initiation of Action." See Appendix 3.

VII. REPORTING

The USEPA shall send pollution reports (Polreps) consistent with the NCP, Subpart B Section 300.135(m), to the NPFC. The USEPA OSC shall document the OPA incident, removal activities and their connection to the incident, and resulting costs. The USEPA will also provide status reports in accordance with current NPFC reporting requirements, as detailed in Appendix 4.

VIII. COST DOCUMENTATION

The USEPA shall provide full and timely documentation of all costs, both reimbursable and non-reimbursable, in every case to support reimbursement of the USEPA and to support recovery of costs from the responsible parties and other liable persons. USEPA OSCs shall also review all costs incurred during the removal operation and certify that they are proper and consistent with the NCP. In lengthy or cost intensive cases, the USEPA will provide interim documentation to enable the NPFC to bill the RP(s) and start the interest clock for monies owed to the government. See Appendix 5.

IX. PROPERTY & EQUIPMENT PURCHASES

The OSC may use OSLTF funds for purposes deemed necessary for an oil removal. This includes the purchase of non-consumable property and equipment when operational necessity dictates it or when it is clearly cost effective for the government. If the total acquisition is not exclusively for oil removal, other funding sources must be applied in appropriate proportion. The OSC has custody of such property and equipment, and must dispose of it in accordance with NPFC guidance. Following the conclusion of a removal, all property and equipment not consumed must be inventoried and reported in the case documentation. To avoid the need for disposal, equipment should be leased whenever possible. See Appendix 6.

X. DESIGNATION OF SOURCE & CLAIMS

USEPA OSCs will make reasonable efforts to promptly determine the source of the oil pollution and, when it involves a vessel or facility, to identify any potential RPs, and will provide the information to the NPFC case officer. OPA 1014, 33 USC 2714, requires designation of source(s), where possible and appropriate, and requires notification of the responsible parties (RPs) to initiate the claims process. USEPA OSCs have not been delegated the authority to formally designate sources for purposes of claims advertising OPA. See Appendix 7.

XI. BILLING

To obtain reimbursement for eligible costs, USEPA will present billing documentation supported by case documentation to the NPFC. See Appendix 8.

XII. CONTRACTING.

The USEPA and the USCG will provide contracting support to OSCs to enable them to obtain commercial services needed to conduct removals. The agencies will make these resources available according to agreements and procedures in Appendix 9.

XIII. COST RECOVERY AND LITIGATION SUPPORT

USEPA shall fully support NPFC with respect to all USEPA uses of OSLTF funds following removal activities when NPFC proceeds to recover the Federal Government's removal costs from the RP(s).

XIV. MODIFICATION AND TERMINATION

Either the USCG or the USEPA may propose changes to this MOU. Both agencies must approve a change before it becomes effective. Either agency may terminate the MOU by giving a thirty (30) day advance written notice to the other Agency. Adding or changing appendices or attachments does not constitute modification of the overall MOU. Such additions or changes may be made by agreement of officials responsible for the specific subject area in the USEPA and USCG. The officials making any such change shall immediately bring the change to the attention of the signers of this MOU, or their successors, and then shall disseminate a notice of the change so as to inform all users of the MOU.

XV. PERIOD OF AGREEMENT

This MOU shall continue in effect until terminated, modified or amended. This MOU shall become effective on the date of the last signature below.

XIV. SIGNATURES

_____/s/_____

Date_____

Daniel F. Sheehan
Director
National Pollution Funds Center
United States Coast Guard

_____/s/_____

Date_____

Elliott P. Laws
Assistant Administrator
Office of Solid Waste and
Emergency Response
U.S. Environmental Protection Agency

_____/s/_____

Date_____

William H. Campbell
Director of Finance and Procurement
United States Coast Guard

_____/s/_____

Date_____

Harvey B. Pippen, Jr.
Director
Office of Grants and Debarment
U.S. Environmental Protection Agency

_____/s/_____

Date_____

Betty L. Bailey
Director
Office of Acquisition Management
U.S. Environmental Protection Agency

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APPENDIX 1. NPFC USER REFERENCE GUIDE

NPFC publishes the NPFC User Reference Guide. It addresses for OSCs the use of the OSLTF and Superfund, along with applicable regulations and background information. Due to its extensive nature, the material is published separately as a Supplement to the Marine Safety Manual. It can be obtained by contacting the NPFC's Customer Service Division at (703) 235-4709. To assure that the Guide is available where needed, the USEPA will annually provide NPFC a list of HQ and Regional organizations that employ or support OSCs. The list shall include the address and NPFC will supply each with a copy of the Reference guide and updates as necessary. The Reference Guide is divided into a series of topics briefly explained as follows.

A. Organizations Using Pollution Funds. This provides information on entities able to access the Funds managed by NPFC and includes Federal Agencies, States and Trustees.

B. Introduction to NPFC. This describes the origins, roles, missions, case teams and regions, functional contacts, and frequently used acronyms.

C. Removal Actions. This provides procedures for accessing the Funds for Clean Water Act and CERCLA removals. It includes OSC financial management checklists, guidance on mystery spills, ACP guidance, and reports. The Technical Operating Procedures (TOPS) for Removal Costs and the TOPS for Resource and Cost Documentation are included in this chapter.

D. Investigative Considerations. This addresses liability limits, proximate cause, designation of source, notification and advertising, and potential responsible parties.

E. State Access. This includes the State Access TOPS and the State Access regulations issued under OPA, Section 1012(d)(1). It also addresses procedures for requesting funds, removal costs, pollution reports, payment, litigation, and cooperative agreements.

F. Natural Resource Damage Assessments. This includes the NRDA/Initiate TOPS which contains initiation criteria, purchase of property, reporting, and requests for reimbursement.

G. Claims. This includes the Claims regulations and the Claimant's Information Guide, which explain compensation available, filing a claim, notice of designation, advertising, and the settlement process.

APPENDIX 2. USES OF THE OSLTF

The OSC may use the OSLTF for the payment of incident-specific removal costs, which includes the cost of monitoring removal actions by responsible parties and others. This includes all costs directly related to specific removals, including administrative, operational, and personnel expenses. The costs are both extramural and intramural, as defined below.

A. Extramural Costs. Extramural costs are those costs incurred external to the USEPA: contractor/vendor, other government agencies, etc. See Appendix 8 for contracting mechanisms to obtain extramural services. Examples of extramural costs include, but are not limited to, the following:

1. Contractor and consulting costs, including lease or rental of equipment supplied by a removal contractor or subcontractor.

2. Supplies, materials and equipment (including transportation costs) procured, leased or rented for the specific removal activity.

3. Reimbursement of allowable costs incurred by other Federal agencies (e.g., U. S. Army Corps of Engineers), or State or local governments. An Interagency Agreement (IAG) between USEPA and another federal agency supporting a removal action is an extramural cost.

4. Other incident-specific obligations or purchases of services used in conducting removals.

B. Intramural Costs. Intramural costs include internal costs incurred by the USEPA directly in support of removal activities. Intramural costs include:

1. Travel and per diem for USEPA personnel.

2. Salaries for USEPA personnel not normally available for oil spill removal, as well as overtime hours for all personnel. USEPA determines who is not normally available for oil spill removal.

3. Supplies used in support of a removal activity.

4. Charges for use of equipment and resources owned by the USEPA.

5. Replacement, repair, renovation or cleaning of USEPA equipment (including consumables) due to unavoidable oiling normally inherent in conducting removal.

C. Mixed Spills. (To be developed)

APPENDIX 3. FUNDS TRANSFERS, FPN & CEILING

A. Multi-Incident IAG. Annually, the NPFC will execute an IAG with USEPA to transfer funding from the OSLTF to USEPA to support the activities of USEPA in conducting oil removals. The funding is for incident specific costs. The USEPA accounting and financial data systems shall track expenditures and provide documentation to support subsequent cost recovery actions by the NPFC. The signed IAG will be delivered to EPA no later than October 1 of each year.

B. FPN. The OSC must contact the appropriate Coast Guard District Office and obtain an FPN and a ceiling for each incident no later than the conclusion of the pre-assessment phase (NCP Subpart D, Section 300.305, Phase II - Preliminary Assessment and Initiation of Action").

C. Ceiling Categories. The following are the categories of costs funded by the OSLTF under an FPN and ceiling. The OSC is required to keep the costs in items (1), (2), and (3) within the approved ceiling.

1. Incident specific obligations and other costs to date, such as purchases or contracts for services.

2. Incident specific USEPA reimbursable costs recorded in the USEPA accounting system (such as travel, per diem, overtime, plus salaries for personnel <u>not</u> normally available for oil spill response - USEPA determines who is not normally available for oil spill response.).

3. Incident specific costs for all other Federal Agencies (e.g. NOAA, DOI-FWS, etc.) including obligations and costs recorded in the Coast Guard accounting system (Strike Team assistance costs, equipment, etc.).

4. Incident specific salary costs of personnel who are normally available for oil spill response. These costs are recoverable from the Responsible Party (RP) but not reimbursable from the OSLTF.

D. Incident Specific IAG. For certain removal actions, an Incident Specific IAG may be the preferred funding mechanism. In that case, the OSC will still obtain an FPN and ceiling from the appropriate Coast Guard District Office and start the removal. The OSC/USEPA Region and the NPFC will then negotiate the IAG.

An Incident Specific IAG can support better management when: removals are lengthy; large ceilings are involved; multiple agencies are involved; a chosen contracting mechanism introduces complexities, or some other condition requires extra management attention. The OSC and the NPFC should both consider the use of an incident-specific IAG under the following conditions:

1. The OSC estimates that an additional $100,000 or more will be required after the first anniversary of the opening of the removal (issuance of the FPN). (Case

ceiling would be at least $100,000 plus costs incurred in the first 12 months of removal.)

2. The OSC estimates that the removal will continue past the second anniversary of the FPN, i.e., into the third year of removal.

3. Any case that involves improvements to real property. The case officer can assist in determining what is considered an improvement.

E. Long Term Removals. If one or more of the conditions identified in Section D, above, occurs, then the following requirements apply:

1. FINANCIAL PLANNING. The OSC shall submit a Long Term Removal Plan to NPFC containing all resource considerations relating to the removal project from its inception to completion, including disposal of all real and personal property procured for the removal. If improvements to real property are involved, the Plan shall contain, at a minimum, a description of the removal system including components and system operation, initial setup costs, annual recurring costs, annual non-recurring costs, termination costs and other costs. The Plan shall list these cost categories by federal fiscal year. The Fund may be used to purchase fixtures for real property if this is the only cost-effective way to effect a removal; however, this does not eliminate other requirements concerning real property acquisitions, particularly using/taking non-RP property without due process of law.

2. REAL PROPERTY -- ADVANCE PLANNING FOR DISPOSAL. If improvements (long term facilities) are constructed on real property, the OSC must document the improvements to support cost recovery and potential litigation and to facilitate disposal upon closure. When the time for disposal arrives, records should be available to show purchase costs, accurate descriptions of structures and installed equipment, understandings or arrangements made in advance with any other parties, title holder to the property involved at the time the improvements were installed, and any other information needed to dispose of the specific type of improvement involved.

3. SEPARATE IAG. A long term removal can not be charged to a multi-incident IAG. The OSC must immediately notify NPFC so that the removal can be funded under an incident-specific IAG. The initial amount provided in an IAG will normally be the amount needed for the first 12 months. The NPFC will provide continued funding, through annual amendments, for long term actions that are consistent with the NCP and within the scope of the Long Term Removal Plan.

4. ANNUAL ADMINISTRATIVE CYCLE. At every twelve month anniversary of the removal project, the Long Term Removal Plan shall be reviewed and updated to show all actual costs to date and current best estimates of future costs, as well as changes in the nature of the spill or the technology being employed. Based on this information, the OSC should request additional ceiling in the amount needed for the next 12 months and initiate an amendment to the IAG.

APPENDIX 4. REPORTING AND COORDINATION

It is essential that the NPFC Case Officer be kept informed about the financial progress of a removal. Polreps are a logical and effective way to accomplish this. Every Polrep should show the financial status of the removal: current ceiling, obligations to date, an estimate of all other costs to date (see Appendix 2-D, above), and any other facts or figures that explain the current status or have value for planning subsequent activities. In the event that the OSC has no reason to generate Polreps, the need to keep the Case Officer informed is not diminished, and the OSC must convey the financial status information by some other kind of written communication.

The OSC is encouraged to contact the NPFC case officer if questions arise concerning the financing or documenting of a case. This may include agreements to fund participation by other government agencies, documentation of sources and identification of responsible parties, and special considerations for billing responsible parties. The OSC and the case officer will work together to find solutions that are in the best interest of the government.

At the conclusion of a removal, the USEPA OSC shall submit a termination or closure report to the NPFC Case Officer and shall also send a copy to the USEPA Cincinnati Financial Management Center (CFMC). The report shall contain an estimate of the total cost for the project, with reasonable allowances for uncertainty, and a request to reduce the project ceiling to that amount, thus releasing the balance for use elsewhere. There is no need for the full identification of RP(s) and address(es) unless they were not provided previously. This can be a Final Polrep or other written communication as above. If not a Polrep, a copy of the report must be sent to the USCG District (m) Office from which the FPN was obtained, in addition to the NPFC Case Officer.

APPENDIX 5. COST DOCUMENTATION

To support cost recovery, documentation of all removal costs incurred as a result of an incident is required. These costs are recoverable from the responsible party. Some of these costs are also reimbursable to USEPA from the OSLTF. These include costs for personnel who are not normally available for oil spill response (whose USEPA fixed account number is not for oil), premium pay (overtime, hazardous duty pay) for all personnel working at an incident, travel vouchers, contractor invoices, contractor cost letter reports, and any other charges related to an incident which have been charged to the reimbursable account number. Costs that are recoverable, but not reimbursable, include personnel normally available for oil spill response (under a USEPA fixed account number for oil), contractor invoices and all other costs associated with an incident but not charged to the reimbursable account.

A. Incident-Specific Documentation. The USEPA OSC shall produce a comprehensive written record supporting all expenditures and costs incurred in each removal. This documentation will support reimbursement of USEPA costs and NPFC's cost recovery on behalf of the OSLTF. Upon request of the OSC and contingent upon availability, a case officer will go to the scene of a removal and assist the OSC with documentation. USEPA may use: (1) the standard resource documentation procedures available from the Case Officer; or (2) alternative documentation that provides the following:

1. USEPA Personnel Costs. USEPA agrees to charge actual USEPA personnel labor costs for all USEPA personnel participating in an incident specific removal. Documentation must show each employee's name, grade, hours, appropriate subtotals and an overall total. Also included is the name and telephone number of the appropriate USEPA official to contact for additional information, if not the OSC. USEPA must include a copy of the Payroll Distribution Timesheets (EPA Form 2560-28) for all pay periods identifying the site/FPN and incident specific hours chargeable for each participating employee and a document showing payroll hours by pay period for all hours applicable to the incident. (NOTE: Timesheets and payroll reports must be redacted to remove data protected by the Privacy Act such as social security numbers, etc.)

2. USEPA Personnel Travel Costs. All incident specific travel costs must be documented. This shall include a summary indicating the employee's name, Travel Authorization (TA) number, amount, employee subtotal and overall incident total. Documentation must include copies of each TA, liquidated Travel Vouchers and expense receipts as required of the traveler. (NOTE: TA's, Vouchers and receipts must be redacted to remove data protected by the Privacy Act such as social security numbers, etc.)

3. Other USEPA Costs. Documentation for costs of USEPA vehicles and other government owned equipment shall contain a description of the item, unit of use (i.e. per hour or day, etc.), applicable rate and the total charge. Government owned equipment utilization is recorded on a daily basis.

4. Contractor Costs: USEPA shall document contractor costs for all incident specific contractor related response costs.

(a) A cover sheet shall contain site name and FPN, the applicable Tasking Document Number(s), date(s) of contractor work performance, labor costs, travel costs, contractor purchases, G&A, overhead, base and award fee (if appropriate), total invoice amount and a brief description of the contractor activity performed under the Tasking Document(s);

(b) Copies of each Tasking Document and any amendments for contractor related response activity for the site. For each Tasking Document Number, the record shall contain daily line item detail by person for all contractor personnel participating in response activity under that Tasking Document;

(c) Copies of all contractor billing statements which enumerate the final cumulative direct costs by applicable Tasking Document Number with the applicable line items underlined. For contracts that are billed in summary amounts, USEPA shall provide a report of the tasking documents and associated costs to support the amount billed. (NOTE: If the cumulative cost totals for any Tasking Document Numbers listed on the billing statement are not the final costs, the contractor cover sheet must clearly state this with an estimate of anticipated additional costs and the expected date of completion. If there are any adjustments to the actual contractor payment, the cover sheet must state the Tasking Document Number and the actual amount paid).

(d) For each person, the daily line item detail shall include the employee name, job title, professional level or hourly rate and hours;

(e) Line item detail shall record any other applicable contractor costs, such as equipment rentals and purchases of supplies. Equipment rented for a period of time can be recorded once, provided the line item clearly indicates the time period.

5. Documenting Contractor Costs for USCG Basic Ordering Agreements (BOAs). When the USEPA contracting officer places orders against USCG BOAs, contractor cost documentation requirements stipulated in the USCG BOA shall apply. The USEPA OSC, or the USEPA OSC's authorized representative (who must be a federal employee) signs each daily contractor cost report. BOA contractor invoices are sent directly by the USEPA OSC to the servicing USEPA contracting officer. A copy of each OSC-certified invoice must be retained in the required documentation. See Appendix 8.

6. Status Reports. The NPFC will assemble a complete set of the Polreps and other status reports submitted by the USEPA OSC and incorporate them into the cost documentation package.

B. Other Government Agency Costs: USEPA may use a Pollution Removal Funding Authorization (PRFA) or other agency agreement to employ another government agency in a removal action.

1. USEPA shall obtain cost documentation from other government agencies (federal, state and local) participating in a removal under the auspices of a USEPA OSC in accordance with the requirements specified in any applicable USEPA/Other Agency agreement (i.e., IAG, Cooperative Agreement, letter contract, etc.). When USEPA uses an Other Agency agreement, USEPA will obtain reimbursement from the OSLTF and will reimburse the other agency.
2. A USEPA OSC may, at his or her discretion, use a Pollution Removal Funding Authorization (PRFA), as described in NPFC Technical Operating Procedures for Standard Cost Documentation (TOPS), in lieu of the agreement mentioned above. In the absence of a USEPA/Other Agency agreement, a PRFA will be executed.

3. If the OSC requests assistance from the NPFC in executing a PRFA, the NPFC may authorize reimbursement directly to the other agencies from the OSLTF. The USEPA OSC must assure that the correct USCG accounting data is entered on the PRFA and that a copy is sent to the NPFC for this type of transaction to work properly. PRFAs are intended to be issued by the OSC pursuant to instructions contained in the NPFC Technical Operating Procedures (TOPS) for Resource Documentation. When USEPA issues a PRFA, other agency reimbursements will be processed in accordance with the TOPS.. Assistance in the use of PRFAs may be obtained from the NPFC Case Officer.

4. Cost documentation provided by other agencies shall include:

   (a) Copies of tasking documents issued by the OSC which describe the equipment or services provided by the other agency;

   (b) Copies of records detailing work performed, travel, labor, equipment and any additional items used, with unit costs and subtotals for each category, and an overall reimbursable total.

C. Oil & Gas Well Site Specific Costs. Costs for each well in a field or cluster treated in a removal project funded under a single FPN must be documented separately. Direct costs not attributable to a specific well must be allocated on a consistent basis against all wells subject to removal activity in any such project with combined funding. The resource documentation for the project must include: all costs for each individual well; the method of allocating each category of direct allocable costs; and the identity of the prospective responsible party or parties associated with each well. Examples of direct well site costs include, but are not limited to the following: removal of production tubing,

casing, well head assemblies, or gathering lines; plugging; grading and restoration of surface well site terrain (including treatment of contaminated soil); and construction and removal of temporary access. Examples of direct costs not attributable to a specific well, which must be allocated, include: treatment of contaminated soil or water not associated with a particular well; removal of central field storage tank batteries and heater treaters, compressors, dryers, etc.; closure of waste oil pits; disposal; and OSC authorized miscellaneous purchases, administrative, travel, and monitoring costs, including technical assistance contractor costs, if any.

D. USEPA Documentation Custodian & Point of Contact. USEPA shall retain the entire documentation package until such time as NPFC Case Officer requires it to support negotiation or litigation following billing. The holder of the completed files shall be the USEPA Regions. CFMC bills the USCG for reimbursement from the OSLTF and must hold complete billing documentation inclusive of all adjustments to calculate the correct reimbursement amount and support it.

In the event of a challenge to the removal cost documentation records following billing, the NPFC Case Officer may request additional documentation from CFMC for resolution with a copy of the request to the OSC.

E. Timely Submission of Documentation. To support prompt billing of the responsible party (RP), documentation of costs is required at NPFC not later than 90 days following receipt of contractor invoice of costs and/or receipt of payment of EPA travel vouchers. The cognizant EPA official shall advise the NPFC if a delay is expected, the reason for the delay, and the date the documentation will be provided.

Six months from initiation of the removal action and every six months thereafter until site completion, the OSC must assemble an interim cost documentation package and forward copies to the CFMC and NPFC. The cost documentation package will contain all of the elements described in the Cost Documentation Appendix.

F. Documentation Retention Period. The USEPA agrees to retain all cost documentation for a minimum of six years following completion of incident removal activity unless otherwise advised by the NPFC. USEPA must retain only that cost documentation which was not forwarded to the NPFC under section VII of this agreement.

G. USEPA Indirect Cost Model. The USEPA agrees to develop an indirect cost model that will support USEPA reimbursement of all indirect cost expenditures. The USEPA shall coordinate this project with the NPFC at reasonable intervals to assure that it will support cost recovery actions against RPs.

H. Forensic Documentation. When the source of an oil spill is in question, the OSC may use forensic laboratory analysis to compare the spilled oil with suspected sources. The OSC must employ sampling collection and handling procedures that assure uncontaminated samples and an unbroken chain of custody from collection through

analysis. The forensic process should be able to withstand challenge in court to be of value in cost recovery.

The USEPA OSC may use the Coast Guard Marine Safety Laboratory in Groton, Connecticut, or other labs that are approved under the USEPA Contract Lab Program (CLP) and shall provide, if necessary, expert testimony in cost recovery litigation.

APPENDIX 6. PROPERTY & EQUIPMENT PURCHASES

A. Buy Vs. Lease. All property purchased with OSLTF funds under an incident-specific FPN remains property for which the NPFC has a fiduciary interest. OSCs should only purchase property with OSLTF funds when operational necessity directly related to a removal dictates or when it is clearly more beneficial to the government than leasing. Otherwise, leasing is the preferred choice. When making decisions to buy versus lease property, and operational conditions permit, OSCs should factor in the costs necessary for acquisition, maintenance and disposal/disposition of the property. Many of these considerations can be addressed in the planning process before a spill occurs. Documentation of the factors considered in purchasing property during a spill are critical in cost recovery and litigation and shall be documented to the greatest extent possible. OSCs should be aware that property purchased to support a removal will be billed to the responsible party at 100% of the cost. Accordingly, the OSC should provide the responsible party the opportunity to purchase or otherwise directly supply the property needed. Upon completion of the removal, any property provided by the responsible party shall be transferred directly to the responsible party.

B. Disposal and Property Records. All property purchased with OSLTF funds must be accounted for in the cost documentation. However, not all OSLTF purchased property requires documented disposal/disposition. For example, all consumable items are considered expended during the removal activity. Therefore, consumable property remaining at the completion of removal action only requires cost effective disposal/disposition. Lots of consumable property having a cost in excess of $1,000 shall be treated as non-consumables. The USEPA shall retain documentation or evidence of disposal/disposition action taken for all non-consumable property and consumables in lots worth more than $1,000. Non-consumable property includes items costing over $1,000 and items of lower cost but high interest (e.g., radios, FAX machines, cellular phones, computers, pagers, copiers, photographic equipment, protective clothing, test equipment, etc.).

C. Defense Reutilization & Marketing Office (DRMO). To properly dispose of non-consumable property, the OSC shall use the closest Defense Reutilization and Marketing Office (DRMO). Transportation costs associated with disposal/disposition of property may be charged to the FPN. The DRMO usually requires a form DD-1348 for each group of like items. Where the form requests a Department of Defense Activity Address Code (DODAAC), use “Z74100.”

D. DRMO & Property Survey Records. The OSC shall forward copies of DD-1348(s) to the NPFC in the billing summary and case completion report following completion of the removal. A copy shall also be placed in the complete case file. Lost property, stolen property, and damaged property that is not suitable for transfer to a DRMO must be surveyed in accordance with federal property management guidelines. A copy of the survey report must be forwarded to the NPFC case officer in the billing summary and case completion report, and a copy shall also be placed in the complete case file.

E. Real Property. The Fund may be used to make improvements to real property if it is the necessary or the cost-effective way to effect the removal; however, this does not obviate other requirements pertaining to real property acquisitions, particularly taking and compensation issues. Upon completion of the cleanup, removable fixtures should be disposed of in the same manner as personal property purchased with OSLTF funds (see Appendix 6); permanent improvements to real property should be removed, abandoned or excessed, as appropriate, as permitted by the ownership of the real property.

F. Additional Information. If questions should arise about property or related issues, such as DRMOs, the OSC should call the case officer.

APPENDIX 7. DESIGNATION OF SOURCE & CLAIMS

OPA requires where possible and appropriate that the source of each discharge or substantial threat of discharge be designated and the RP notified. Subpart B of the NCP section 300.135(c) states that "the OSC shall, to the extent practicable, collect pertinent facts about the discharge or release, such as its source and cause; the identification of potentially responsible parties; the nature, amount, and location of discharged or released material; the probable direction and time of travel of discharged or released materials; ... the pathways to human and environmental exposure..."; etc. The NPFC is responsible for claims and will notify the RP for USEPA incidents following receipt from the USEPA OSC of the RP's identity and address (including, as appropriate: telephone, telex, and fax numbers; resident agents or agents for service of process; those authorized to speak and act for the RP in this situation, particularly when the RP is an organization, and how they can be contacted; tax ID numbers; and any other information concerning RP organizational structure(s) which could assist the case officer). The USEPA OSC shall scope out the potential for third party claims arising out of the incident. The OSC shall promptly make this information available to the NPFC Case Officer to support the evaluation of the impact of claims, as well as enabling designation and notification. Upon request of the OSC and contingent upon availability, a claims officer will go to the scene of a removal to assist the OSC in evaluating the potential for claims and in identifying sources and potentially responsible parties.

APPENDIX 8. BILLING

A. The Billing Process. The USEPA OSC must submit all financial documentation to CFMC for verification and final adjustments. CFMC shall submit a preview copy of the Billing Summary to NPFC for validation of costs to be billed. Once agreement between CFMC and NPFC has been reached on the total amount to be billed, CFMC will initiate reimbursement. CFMC will use the U.S. Treasury's On-Line Payment And Collection System (OPAC) to send the total bill for reimbursement directly to the USCG Finance Center in Chesapeake, Virginia (ALC = 69-02-5102). As part of the same action, CFMC shall send (by mail or fax) a copy of the Billing Summary to the NPFC at the following Address:

National Pollution Funds Center (cm)
4200 Wilson Boulevard, Suite 1000
Arlington, Virginia 22203-1804

(703) 235-4837 fax

B. Billing Summary. The Billing Summary is based on supporting documentation for all recoverable costs, including both reimbursable and non-reimbursable. The Summary must contain a line item showing the total dollar amount for each of the major categories of costs:

1. USEPA Personnel
2. USEPA Travel
3. Contractors (list each separately)
4. Other Government Agency Costs (list each separately)
5. Marine Safety Lab
6. Miscellaneous

The Summary should also provide explanations for any unclear elements or issues.

C. Timetables. The preview copy of the Billing summary must be received by NPFC not later than 90 days following the OSC's receipt of contractor invoice(s) and/or payment of USEPA travel vouchers. Once NPFC has validated costs on the preview copy of the Billing Summary, CFMC will initiate reimbursement via OPAC. CFMC shall forward to the NPFC and USCG Finance Center the Billing Summary and OPAC accounting information by fax or mail within five working days after submitting the OPAC.

APPENDIX 9. CONTRACTING

A. AUTHORIZATION FOR USE OF UNITED STATES COAST GUARD BASIC ORDERING AGREEMENTS FOR POLLUTION CLEANUP SERVICES AND EQUIPMENT. USEPA may act as an ordering office under the USCG Basic Ordering Agreements (BOAs) issued by Commander (fcp), Maintenance and Logistics Command Atlantic and Commander (fcp), Maintenance and Logistics Command Pacific. This ordering authority is subject to the following conditions:

1. Only Contracting Officers or On-Scene-Coordinators duly warranted by the USEPA in accordance with the Federal Acquisition Regulations (FAR) may issue delivery orders, up to the maximum authority of their warrant, under the BOAs. This authority may not be redelegated. Within 30 days of the execution of this MOU, USEPA will provide a list of the names and addresses of all contracting officers executing delivery orders under the BOAs. The list will include the geographic area of responsibility for each contracting officer. Annually, USEPA will update the list. The initial list and the updates will be provided to the two USCG offices listed in paragraph 13 of this appendix.

2. If a USEPA OSC does not have a Contracting Officer's Warrant, all requirements for BOA services and supplies must be referred to a warranted USEPA Contracting Officer.

3. USEPA Contracting Officers and warranted OSCs shall be responsible for reviewing, understanding and complying with the provisions of the BOAs.

4. All delivery orders shall be within the scope of the BOA and documented as required by the FAR, supplemental agency regulations and the BOA.

5. Delivery orders shall be issued only when emergency cleanup is required and internal USEPA procedures and regulations authorize contracting under the authority of FAR 6.302-2, Unusual and Compelling Urgency; when required, the USEPA shall prepare a Justification for Other than Full and Open Competition (JOTFOC); and under no circumstances shall the BOAs be used for remediation, routine or planned actions.

6. All delivery orders issued by the USEPA shall contain the following information: full address of the contract administration office and name and telephone number of the USEPA Contracting Officer; the full address of the USEPA payment office; the full address where invoices are to be sent; and the name of the entity responsible for certifying receipt and acceptance of services and supplies.

7. The USEPA shall be responsible to certify the receipt and acceptance of the services and supplies in accordance with all laws and regulations, and the terms and conditions of the BOA.

8. Funding for delivery orders shall comply with applicable provisions elsewhere in this MOU.

9. All payments shall be made by the USEPA authorized payment office cited on each individual delivery order and shall be made in accordance with the Prompt Payment Act and FAR 52.232-25, Prompt Payment.

10. Any interest payable shall be funded by the OSLTF and paid by the USEPA. USEPA shall report to the NPFC total interest paid in the prior fiscal year no later than 15 November of each year.

11. The USEPA shall not take any action, either directly or indirectly, that could result in a change to the pricing, quality, established response timeframes, or any other terms and conditions of the BOA; or direct the accomplishment of effort which would exceed the scope of the BOA.

12. The USEPA shall resolve all disputes arising from or relating to delivery orders that they issue. All disputes settled in favor of the contractor will be funded out of the OSLTF and in no event will they be paid out of Coast Guard operating funds.

13. Within forty-eight (48) working hours after issuance of a delivery order the USEPA shall forward a copy (minus enclosures) to the NPFC and the appropriate address below:

Commander (fcp), Maintenance and Logistics Command Pacific
Building 54A, Coast Guard Island
Alameda, CA 94501-5100
Commander (fcp-2), Maintenance and Logistics Command Atlantic
300 East Main Street, Suite 965
Norfolk, VA 23510-9113

14. The USEPA shall provide the appropriate contracting office listed above with a list of closed out delivery orders by May 15 and November 15 each year.

-End-

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

James C. Card
Rear Admiral, U.S. Coast Guard
Chief, Office of Marine Safety,
Security and Environmental Protection

Dear Admiral Card:

I am pleased to send you two copies of the U.S. Coast Guard (USCG) and U.S. Environmental Protection Agency (USEPA) Superfund Memorandum of Understanding (MOU), and request that you sign it. The MOU establishes funding coordination mechanisms for USCG access to Superfund, and it supersedes the MOU of January 4, 1982.

This MOU is the result of the joint USCG and USEPA MOU workgroup effort begun on June 9, 1993. The workgroup represented all concerned offices in both agencies. The resultant MOU will improve procedures for USCG access to the Superfund and will better serve both agencies' interests.

If you have any questions concerning the MOU please contact:

Jack Crawford	Mark Mjoness
National Pollution Funds Center	Emergency Response Division
USCG	USEPA
703-235-4742	703-603-8727

Please have your staff contact Mr. Mjoness after the MOU is signed and we will make arrangements for obtaining our copy.

I am pleased that the staff of our agencies were able to cooperate on the MOU.

Sincerely,

Elliott P. Laws
Assistant Administrator

U.S. Department
of Transportation
United States
Coast Guard

Aug 17 1994

Elliott P. Laws
Assistant Administrator
Office of Solid Waste and
Emergency Response
U.S. Environmental Protection Agency

James C. Card
Rear Admiral, U.S. Coast Guard
Chief, Office of Marine Safety,
Security and Environmental Protection

Harvey G. Pippen, Jr.
Director
Office of Grants and Debarment
U.S. Environmental Protection Agency

Daniel F. Sheehan
Director
National Pollution Funds Center
U.S. Coast Guard

Gentlemen:

We, the members of the joint U.S. Coast Guard (USCG) and U.S. Environmental Protection Agency (USEPA) Superfund Memorandum of Understanding (MOU) Workgroup, request that you sign the enclosed MOU between our agencies. The workgroup represents all concerned offices in both agencies. The MOU establishes funding coordination mechanisms for USCG access to Superfund, and it supersedes the MOU of January 4, 1982.

The MOU is the result of the workgroup effort begun on June 9, 1993. The resultant MOU will improve procedures for USCG access to the Superfund and will better serve both agencies' interests.

If you have any questions concerning the MOU please contact:

Mark Mjoness
Emergency Response Division
USEPA
703-603-8727

Jack Crawford
National Pollution Funds Center
USCG
703-235-4742

We are pleased to have been part of the joint effort.

Sincerely,

U.S. ENVIRONMENTAL PROTECTION AGENCY	**U.S. COAST GUARD**
Mark Mjoness Emergency Response Division	Darrell Neily National Pollution Funds Center
Joseph Rauscher Emergency Response Division	Jack Crawford National Pollution Funds Center
Esther Williford Emergency Response Division	CDR Kenneth Keane Marine Environmental Protection Division
Susan Dax Financial Management Division	Margaret Dougherty National Pollution Funds Center
Kristen Skogebo Financial Management Division	John Andrzewjewski National Pollution Funds Center
Nelson Price Financial Management Division	CDR Robert Douville National Pollution Funds Center

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MEMORANDUM OF UNDERSTANDING

Between

THE UNITED STATES COAST GUARD

and

THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Procedures for United States Coast Guard Access to

Superfund, to Support Coast Guard Implementation of CERCLA

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I. PURPOSE

This Memorandum of Understanding (MOU) establishes funding and coordination mechanisms between the United States Coast Guard (USCG) and the United States Environmental Protection Agency (USEPA). USEPA is the fiduciary for Superfund as established under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) , as amended. This MOU supersedes the MOU of January 4, 1982, between the USCG and USEPA, and its subsequent amendments.

II. AUTHORITY

Section 104 of CERCLA (42 USC 9604) authorizes the President to act " ... whenever (A) any hazardous substance is released or there is a substantial threat of such a release into the environment, or (B) there is a release or substantial threat of release into the environment of any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare...." Executive Order 12580 delegates certain authority and responsibility for response to the Administrator of the USEPA and the Secretary of the Department of Transportation (DOT). On October 9, 1981, and May 27, 1988, the USCG redelegated authority back to the USEPA for certain response actions at hazardous waste sites that require response action (see Attachment A). The USCG and the USEPA enter into this agreement to carry out their responsibilities under CERCLA.

A. DEFINITIONS:

1. "Remove or removal" as defined by section 101(23) of CERCIA, means the cleanup or removal of released hazardous substances from the environment; such actions as may be necessary taken in the event of the threat of release of hazardous substances into the environment; such actions as may be necessary to monitor, assess, and evaluate the release or threat of release of hazardous substances; the disposal of removed material; or the taking of such other actions as may be necessary to prevent, minimize, or mitigate damage to the public health or welfare or to the environment, which may otherwise result from a release or threat of release. The term includes, in addition, without being limited to, security fencing or other measures to limit access, provision of alternative water supplies, temporary evacuation and housing of threatened individuals not otherwise provided for, action taken under section 104(b) of CERCLA, and any emergency assistance which may be provided under the Disaster Relief Act of 1974. The term also includes enforcement activities related thereto.

2. "Incident" means the same as the term "site" for accounting and cost recovery purposes.

III. CERCLA COSTS

The Hazardous Substance Superfund (Superfund) is the source of funds for CERCLA removal costs incurred by the USCG. These costs are identified in three major categories:

USCG removal actions, USCG support of USEPA removal actions, and USCG ongoing responsibilities. Such costs are reimbursed by the USEPA via interagency agreements (IAGs) between the USEPA and USCG. These IAGs are prepared in accordance with the procedures in Appendices (A) and (B), and the USEPA's Interagency Agreement Policy and Procedures Compendium of September 1988.

A. REMOVAL COSTS:

USCG Federal On-Scene Coordinators (OSCs) conduct CERCLA removals. All incident-specific removal costs incurred by the USCG qualify as allowable costs under Superfund. These costs are extramural and intramural in nature.

1. Extramural Costs

Extramural costs are those costs incurred external to the USCG: contractor/vendor, other government, etc. Examples of extramural costs include, but are not limited to, the following:

a. Contractor and consulting costs including lease or rental of equipment supplied by
the removal contractor and subcontractor(s);

b. Supplies, materials and equipment (including transportation costs) procured, leased or rented for the specific removal activity; and

c. Reimbursement of allowable costs incurred by other Federal agencies (e.g., NOAA), or State or local governments.

2. Intramural Costs

Intramural costs include internal costs incurred by the USCG directly in support of removal activities.

Intramural costs include:

a. Travel and per diem for USCG military and civilian personnel;

b. USCG military and civilian personnel costs including civilian overtime costs;

c. Supplies used in support of a removal activity;

d. Charges for use of USCG owned equipment and resources;

e. Replacement or repair of USCG equipment destroyed or damaged as a result of a removal; and

f. Other miscellaneous expenses.

B. USCG COSTS IN SUPPORT OF USEPA REMOVAL ACTIONS:

USCG costs in support of USEPA removal actions are incident-specific costs incurred by USCG units in providing direct support to a USEPA OSC conducting a CERCLA removal action. Funding for these costs is through IAGs between each USEPA regional office and the USCG. In such cases, the USEPA OSC will be responsible for certifying USCG costs.

C. ONGOING RESPONSIBILITIES COSTS:

Pursuant to responsibilities under CERCLA, the USCG conducts removals and monitors removals by responsible parties. Ongoing responsibilities costs are generally non-incident-specific costs for support of the following ongoing activities required to create and maintain the capability to conduct and monitor removals:

- Emergency Removal Training and Equipment
- Enforcement
- National Response Center Support
- Medical Monitoring
- Information Systems
- Program Management
- Response Readiness - National Response Team (NRT) and Regional Response Team (RRT) Support

Funding for these costs is transferred annually to the USCG in an "Ongoing Responsibilities" IAG. The costs may be extramural or intramural. The annual IAG is prepared in accordance with the procedures in Appendix B.

IV. ACCOUNTING FOR ONGOING RESPONSIBILITIES COSTS

Superfund accounting and recordkeeping requirements apply to costs funded under the annual ongoing responsibilities IAG. All expenditures under the IAG are recoverable from responsible parties through the application of the USEPA indirect cost model and must be documented. Personnel levels are addressed in the approved personnel model entitled "Alternative Documentation for USCG Salaries Reimbursed by Superfund." The model justifies the number of reimbursable Full Time Equivalents (FTEs) under the ongoing responsibilities IAG. It analyzes workload and calculates FTE, but does not provide a funding amount for personnel cost reimbursement. If the number of Superfund reimbursed FTEs is greater than the number justified by the model, the USEPA will be reimbursed the difference using average standard personnel costs.

This model is used during the annual DOT Superfund audit process to show how the USCG Superfund activities translate into USCG billets reimbursed by Superfund. The model was jointly developed and approved by the USEPA and USCG, and it can be revised upon the concurrence of both agencies.

V. INCIDENT CASE FILE

The lead agency OSC (USCG or USEPA) shall maintain a case file for each incident. The case file includes the administrative record as defined in the National Contingency Plan (NCP) and contains information for determining liability and pursuing cost recovery. For each USCG CERCLA removal or support action for a USEPA CERCLA removal, the case file will contain documentation of all resources used and financial transactions associated with the incident, per Appendix A, and the following:

A. FINDING OF IMMINENT AND SUBSTANTIAL ENDANGERMENT:

For incidents with total estimated project costs less than $250,000, the USCG will document the finding of imminent and substantial endangerment (endangerment determination) in the case file. This documentation will provide sufficient information describing the need for the CERCLA removal action including the threat or potential threat posed by the situation, hazardous substances present (if known) and the selected removal action. Attachment B is provided as a sample format for documenting this finding. The USCG OSC may elect to use either this endangerment determination format or to document the endangerment determination through another format (e.g., within a pollution report - POLREP). The endangerment determination should be made and documented before removal actions take place, circumstances permitting, or as early as possible after emergency removal actions begin.

B. ACTION MEMORANDUM:

For incidents with total estimated project costs equal to or greater than $250,000, the USCG will submit an approved action memorandum, which includes an endangerment determination, to the Director, Emergency Response Division (ERD), USEPA prior to obligating funds in excess of $250,000 (see "Superfund Removal Procedures, Action Memorandum Guidance," USEPA Publication Number: EPA/540/P-90/004, OSWER Directive 9360.3-01, December 1990).

For incidents with total estimated project costs equal to or greater than $250,000 and requiring an amendment to increase the funding authorized in the IAG, the USCG will submit a draft action memorandum to the Director, ERD, USEPA for review and timely comment, and coordination with the IAG amendment. When a USCG OSC needs to act immediately, ERD, USEPA may extend an oral commitment of funding. Oral commitments will be confirmed in writing.

In all cases, the action memorandum must describe the threat and the rationale for choosing a particular remedy - including the technical basis for the decision.

VI. QUALITY ASSURANCE

The USCG will comply with its internal Quality Assurance (QA)/chain of custody policies and procedures, published in USCG Commandant Instructions, in responding to releases

of hazardous substances, pollutants and contaminants. Commandant Instructions M16465.29 and M16465.30 specifically address responses under CERCLA. The Marine Safety Manual, Commandant Instruction M16000 series, includes policy for pollution removal activities. These instructions address the conduct of operations, personnel protection associated with operations, decision making, and identification and disposal of recovered pollutants, and documentation.

The USCG utilizes commercial laboratories to identify substances in pollution incidents. To assure that the information from these laboratories is reliable, the USCG will utilize all available information, including USEPA performance data, to evaluate candidate laboratories.

For non-time-critical removals, the USCG will assure that the quality of physical, chemical, and biological data developed in the assessment and operational phases of a removal is addressed per the NCP and will be addressed as needed in removal contracts.

USEPA agrees to provide clause(s), or other language suitable for use in contractual statements of work, as requested, to assist the USCG in the preparation of these contracts.

VII. MODIFICATION AND TERMINATION

Either the USCG or the USEPA may propose changes to this MOU. Both agencies must approve a change before it becomes effective. Either party may terminate the MOU by giving a thirty (30) day written notice. Adding or changing appendices or attachments to this MOU does not constitute modification of the overall MOU.
Such additions or changes may be made by agreement of officials responsible for the specific subject area in the USEPA and USCG. The officials making any such change will immediately bring the change to the attention of the signers of this MOU, or their successors, and then publish the change so as to inform all users of the MOU.

VIII. PERIOD OF AGREEMENT

This MOU shall continue in effect until terminated, or modified or amended. This MOU shall become effective on the date of the last signature below.

IX. SIGNATURES

_____	_____
Elliott P. Laws	James C. Card
Assistant Administrator	Rear Admiral, U.S. Coast Guard
Office of Solid Waste and Emergency Response	Chief, Office of Marine Safety, Security and Environmental Protection
U.S. Environmental Protection Agency	
DATE: _____	DATE: _____

_____	_____
Harvey G. Pippen Jr.	Daniel F. Sheehan
Director	Director
Office of Grants and Debarment	National Pollution Funds Center
U.S. Environmental Protection Agency	
DATE: _____	DATE: _____

APPENDIX A

PROCEDURES FOR MULTI-INCIDENT REMOVAL INTERAGENCY AGREEMENTS (IAGS)

The following procedures apply to IAGs funding CERCLA removals conducted by USCG OSCs:

1. ORIGINATION PHASE

Incidents can occur any day of the year, and the USCG must have funding to respond on the first day of the fiscal year. The following procedures are structured with the objective of providing funding without fiscal year transition interruption. If experience indicates a need for change, the procedures should be modified to meet the objective. In the absence of a current fiscal year budget, the USCG may incur incident-specific removal costs, pursuant to CERCLA, Executive Order 12580, and the NCP. In such cases, the USEPA will certify those costs as necessary and appropriate to the IAG project and in the government's best interests.

A. The ERD, USEPA HQ, in cooperation with the National Pollution Funds Center (NPFC), USCG HQ, will develop the next fiscal year's cost estimate, budget, scope of work and special condition information for the IAG by August 31of each fiscal year.

B. The ERD will prepare the IAG funding package three (3) original IAGS, a decision Memorandum and a commitment notice] and forward it to the Assistant Administrator, Office of Solid Waste and Emergency Response (AA, OSWER) or designee for review and signature.

C. When approved, the IAG funding package will be forwarded to the Grants Administration Division (GAD), USEPA for legal and administrative review and USEPA Action Official signature.

D. Following USEPA Action Official signature, GAD transmits two complete IAGs to the NPFC, USCG. GAD keeps the third as back-up.

E. The NPFC, USCG official shall review the IAG and, if acceptable, sign the two originals, retain one signed original and return the other to GAD.

F. GAD shall retain the signed original and transmit one copy to the Cincinnati Financial Management Center (CFMC) , USEPA for obligation and one copy to the ERD, USEPA.

2. EXECUTION PHASE

A. NOTIFICATION:
Within 24 hours following initiation of a CERCLA removal, the NPFC, USCG will provide to the ERD, USEPA information (endangerment determination, POLREP or action memorandum) on the incident and a cost estimate. In return, ERD will provide to NPFC a USEPA Site/Spill Identification (SSID) number to link the USCG and USEPA records, tracking and financial systems.

B. INCIDENT CASE FILE:
The lead agency OSC (USCG or USEPA) will maintain each incident's case file. For each USCG CERCIA removal or support action for an USEPA CERCLA removal, the case file contains documentation of all resources used and financial transactions associated with the incident.

C. POLLUTION REPORTS:
The USCG shall provide copies of pollution reports (POLREPS) to the Director, ERD, USEPA to provide CERCLA removal and fund obligation data. The initial POLREP shall be provided within 72 hours of initiating CERCLA removal. Progress POLREPs should be provided on a routine basis.

No later than 2 weeks after completion of each incident removal, the USCG shall forward a final POLREP to the ERD for inclusion in the USEPA's incident case file.

D. EQUIPMENT:
1. Purchase of equipment to support a removal will be recorded in the IAG and the cost documentation records in the case file.

2. Replacement of items in the National Strike Force (NSF) inventory will be subject to the NSF CERCLA inventory controls.

3. Replacement of USCG equipment or assets is an agency reimbursement, not an equipment purchase for purposes of CERCLA recordkeeping.

4. All equipment purchase records and the equipment will be available for audit.

E. BILLING:
The USCG will submit a bill to:

USEPA Cincinnati Financial Management Center
ATTN: Financial Management Officer
26 West Martin Luther King Drive
Cincinnati, OH 45268

Each bill shall cite: 1) the number of the IAG providing the funding and 2) an incident-specific breakdown of charges. Within 30 days of the billing, NPFC will provide the ERD Project Officer and CFMC additional accounting system reports detailing the costs on the bill by individual incidents using USEPA assigned SSID numbers. CFMC will forward the bill to the USEPA Project Officer for review and approval. Inadequately supported bills will not be paid, or in the case of OPACs will be charged back.

F. USEPA REVIEW:
The USEPA Project Officer will review the billing documents and the other supporting accounting system reports for reasonableness and will approve the payment or, if questions arise, contact NPFC for clarification.

G. PRIOR NOTIFICATION OF COSTS:
The USCG will notify the USEPA Project officer before it incurs costs in excess of 80% of total budget amount for any IAG or in anticipation of undertaking a high cost removal action. In such cases, upon the approval of the USEPA Project Officer, the USCG and the USEPA will develop an amendment to the IAG for increased funding.

H. REPORTING REQUIREMENTS:

1. The USCG will submit quarterly progress reports to the USEPA Project Officer showing obligations in each budget category, balance remaining, summary of activities and property inventory. Reports will be cumulative and the fourth quarterly report of the year will be the final report for the year.

2. The USCG will maintain a list of funded incidents showing open/closed status (i.e., whether further obligations will occur) and will send it to the USEPA Project Officer with the quarterly progress reports.

3. A detailed cost report for each incident will be provided to the USEPA Project Officer with each quarterly report. Each incident-specific cost report will detail costs by the elements which constitute the budget categories appearing on Item 22, EPA IAG Form (1610-1) and all items of equipment purchased outside standard inventory costing over $1,000.

I. ADMIRALTY LAW CASES:
When a USCG OSC leads a CERCLA response involving certain time-sensitive litigation such as an injunction, a vessel arrest or an action by a vessel owner to limit liability, the USCG may be asked to provide the best available information directly to the Department of Justice (DOJ), and it may be appropriate to do so. DOJ often must respond within strict time limits set by the court, which may be before the cost documentation records normally are ready to be forwarded to the USEPA. The USCG agrees to cooperate in such matters, and also will immediately notify the USEPA.

3. CLOSE-OUT PHASE

A. NOTIFICATION OF COMPLETION:
When the USCG has completed removal work on all incidents funded under the IAG for a fiscal year, NPFC will submit, within 60 days, the fourth quarter progress report. That report will serve as a final report to the USEPA Project Officer and include:

1. A list of incidents funded, showing the USEPA SSID number and total cost for each incident.

2. A summary of expenditures by budget category showing the balance of funds remaining.

3. A property inventory for non-expendable items costing over $1,000 each.

B. OSC REPORTS:
When an OSC report is prepared pursuant to the NCP, 40 CFR 300.165 (OSC reports), the USCG will submit a copy of the OSC report to the USEPA Project Officer for inclusion in the incident case file.

C. CLOSE-OUT:
Upon receipt of the final report the USEPA Project Officer will initiate close-out procedures.

D. PROPERTY DISPOSITION:
The USCG will consult the USEPA prior to disposition of property acquired under the IAG to assure that the disposition method properly reflects the interests of Superfund.

APPENDIX B

PROCEDURES FOR "ONGOING RESPONSIBILITIES INTERAGENCY AGREEMENTS (IAGs)

The following procedures are for IAGs to reimburse costs incurred by the USCG for support, training and maintenance of its removal capabilities:

1. ORIGINATION PHASE

   A. The ERD, USEPA HQ, in cooperation with the NPFC, USCG HQ, develops the next fiscal year cost estimate, budget, scope of work and special condition information for the IAG by August 31 of each fiscal year.

   B. The ERD shall prepare the IAG funding package [three (3) original IAGs, a decision memorandum and a commitment notice] and forward it to the AA, OSWER or designee for review and signature.

   C. When approved, the IAG funding package will be forwarded to the GAD, USEPA for legal and administrative review and USEPA Action Official signature.

   D. Following USEPA Action Official signature, GAD transmits two IAG forms to the NPFC, USCG. GAD keeps the third copy as back-up.

   E. The NPFC, USCG official shall review and, if acceptable, sign the two original IAGs, retain one signed original and return the other to GAD, USEPA.

   F. GAD shall retain the signed original and transmit one copy to the CFMC, USEPA for obligation and one copy to the ERD.

2. EXECUTION PHASE

   A. BILLING:
   To receive reimbursement for costs incurred under the IAG, the USCG shall submit a bill to:

      USEPA Cincinnati Financial Management Center
      ATTN: Financial Management Officer
      26 West Martin Luther King Drive
      Cincinnati, OH 45268

   CFMC will forward the bill to the USEPA Project Officer for review and approval. Inadequately supported bills will not be paid, or in the case of OPACs will be charged back.

   Each bill shall contain the IAG number.

The USEPA Project Officer will review the bill for reasonableness and will approve the payment or, if questions arise, contact NPFC for clarification.

B. REPORTING REQUIREMENTS:

The USCG will provide the USEPA Project Officer with the ongoing responsibilities project workplan by December 31 of each year. The workplan will include:

- distribution of reimbursed FTEs by organizational location (specific field office or division in Headquarters);

- identification of organizational elements with CERCLA responsibilities and eligibility for funding under this agreement. Categorize each organization's function under one or more of the following:

  - Emergency Removal Training and Equipment
  - Enforcement
  - National Response Center Support
  - Medical Monitoring
  - Information Systems
  - Program Management
  - Response Readiness - NRT and RRT Support

1. The USCG will submit quarterly progress reports to the USEPA Project Officer showing obligations in each budget category, balance remaining, summary of activities and property inventory. Reports will be cumulative and the fourth quarterly report of the year will be the final report for the year.

2. The USEPA Project Officer will file the workplan and the quarterly progress reports in the ERD IAG file.

3. CLOSE-OUT PHASE:

A. When the USCG has completed work on all activities funded under that IAG, NPFC will submit, within 60 days, the fourth quarter progress report. That will serve as a final report to the USEPA Project Officer and include:

1. Summary of activities;

2. Property inventory for non-expendable items costing over $1000 each;

3. Summary of expenditures by budget category and balance of funds remaining.

B. Upon receipt of the final report, the USEPA Project Officer will initiate close-out procedures.

C. The USCG will consult the USEPA prior to disposition of property acquired under this agreement to assure that the disposition method properly reflects the interests of Superfund.

APPENDIX C

RECORDKEEPING

Under CERCLA, the Federal government is authorized to recover removal costs from responsible parties, including investigatory, cleanup, enforcement and administrative costs. The USEPA intends to recover all such costs. The USCG has established the NPFC which, among other functions, administers USCG use of CERCLA funds.

The USCG will follow the Superfund financial management and recordkeeping guidelines contained in the USEPA's "Superfund Financial Management and Recordkeeping Guidance for Federal Agencies" (January 1989), unless specifically addressed in this MOU or an IAG. Consistent with this, the USCG will create a case file for each incident funded under a multi-incident IAG. The case file will contain a complete set of cost records. The USCG also will create files for cost records for transactions under the ongoing responsibilities IAGs.

1. COST RECOVERY DOCUMENTATION

   The USCG records for Superfund activities will meet the following criteria needed for cost recovery:

   A. CONSISTENT FILING PROTOCOL:
      The USCG will maintain consistent records showing uses of Superfund. The USCG will use its own filing protocols.

   B. TIMELY RESPONSE TO COST RECOVERY DOCUMENTATION REQUESTS:
      The USCG will provide these records to the USEPA upon request within 30 days, unless otherwise agreed.

   C. RECORDS RETAINED:
      The USCG will retain the following cost documentation:

      1. Direct Costs
         Standard Personnel Costs (Including Fringe Benefits)
         Travel
         Extramural (e.g., contractor)
         Materials and Supplies
         Equipment
         Construction

      2. Indirect Costs

      3. Interagency Agreement Documents

D. RECONCILIATION:
Periodically the USCG will reconcile cost documentation with data produced by its accounting system.

E. PERSONNEL COST REIMBURSEMENT MODEL:
The USCG does not employ a universal timecard system that reflects CERCLA activities. To provide detailed and accurate records of personnel costs reimbursed under the ongoing responsibilities IAG, the USCG will periodically generate data using the "Alternative Documentation for USCG Salaries Reimbursed by Superfund" model. If the model justifies fewer than the number of existing CERCLA billets, the USCG will reimburse Superfund for the unsupported number of billets, using the average personnel cost of all the reimbursed billets. The USCG will report the models' computation results in the fourth quarterly progress report. If the model documents more FTEs than the number of existing CERCLA reimbursed billets, reimbursement will not exceed the total amount agreed in the current annual ongoing responsibilities IAG. Increased funding to support additional FTEs in subsequent fiscal years may occur in the annual budget process.

F. STORAGE MEDIA & RECORD SAFETY:
USCG records will be located in the offices where they are used or other areas as secure as possible from fire, water and other damage. Similar provision will be made for safe long-term storage of inactive documentation.

G. IMAGED DOCUMENTS:
Use of imaged documents for cost documentation, billing, and all audit resolution is acceptable under the following conditions:

1. The imaging system is used in the normal course of business.

2. The USCG can certify the accuracy of the system.

H. RECORD RETENTION:
The USCG or its contractors will retain all cost documentation on-site or at a Federal Records Center for a minimum of ten years after submission of a final IAG payment request. If legal action regarding an incident is initiated within the ten year period, records will be retained until the conclusion of legal action. In addition, the USCG will obtain written permission from the USEPA IAG Action Official prior to disposing of any Superfund cost records. Lack of response from the USEPA IAG Action Official within 30 days will constitute approval.

I. AUDITS:
CERCLA requires the Inspector General of each Agency using Superfund to conduct an annual audit of all transactions by that Agency involving the Superfund. USCG cost documentation will be available for audit or verification upon request of the DOT Inspector General. If, based on an audit by the DOT Inspector General, the USCG

determines that any direct or indirect costs charged to Superfund are unallowable, the USCG will immediately notify the USEPA and promptly reimburse Superfund.

2. IAG RECORDS

The USCG financial and program management offices will maintain records for the multi-incident and ongoing responsibilities IAGs. Those records will include, when applicable:

A. FINANCIAL RECORDS:

- IAG forms executed by both agencies.
- Invoices and payment records.
- Closeout documentation, if different from above.

B. PROGRAM RECORDS:

- Record of discussions and contacts and the resulting decisions.
- IAG forms executed by both agencies.
- Endangerment Determinations
- Action Memoranda
- POLREPs
- Invoices and payment records.
- Closeout documentation, if different from above.

ATTACHMENT A

INSTRUMENTS OF REDELEGATION

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THE SECRETARY OF TRANSPORTATION

WASHINGTON, D.C. 20590

OCT 2 1981

The Honorable Anne M. Gorsuch
Administrator
U. S. Environmental Protection Agency
401 "M" Street, S.W.
Washington, D. C. 20460

Dear Mrs. Gorsuch:

Our respective staffs have worked out the attached redelegation instrument for certain functions contained in the "Comprehensive Environmental Response, Compensation and Liability Act of 1980, P.L. 96-510" and Executive Order 12316, "Responses to Environmental Damage". The redelegating instrument is drafted consistent with Section 8 (f) of the Executive Order which authorizes redelegations of functions, with the consent of the head of the agency to which the functions are redelegated.

I am confident that the redelegation agreement properly assigns authority and responsibility consistent with the structure and delegations which you envision for the revised "National Oil and Hazardous Substances Pollution Contingency Plan". I request that you countersign and return the enclosed redelegation instrument, thereby indicating your consent to the redelegation.

Sincerely,

1 Enclosure

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INSTRUMENT OF REDELEGATION

In accordance with Section 8 (f) of Executive Order 12316 of August 14, 1981, the Secretary of the Department in which the Coast Guard is operating hereby redelegates to the Administrator, Environmental Protection Agency, subject to the Administrator's consent, all functions specified in Sections 2 (d), 2 (f), 2 (g), 3 (a), and 4 (b) of that Executive Order with the exception of the following:

a. Functions related to responses to releases or threats of releases from vessels;
b. Functions related to immediate removal action concerning releases or threats of releases at facilities other than active or inactive "hazardous waste management facilities" (as defined in 40 CFR 122.3); and
c. Functions related to immediate removal action concerning releases or threats of releases at active or inactive "hazardous waste management facilities" when the Coast Guard On-Scene Coordinator determines that such action must be taken pending the arrival on scene of an Environmental Protection Agency On-Scene Coordinator. Unless otherwise agreed upon by EPA and Coast Guard, this authority will not be exercised unless the EPA OSC is scheduled to arrive on scene within 48 hours of notification of the release or threat.

For purposes of this instrument: the term "immediate removal action" includes any removal action which, in the view of the Coast Guard On-Scene Coordinator, must be taken immediately to prevent or mitigate immediate and significant harm to human life or health, to the environment, or to real or personal off-site property. Situations in which such action may be taken include, but are not limited to, fire, explosions, and other sudden releases; human, animal, or food chain exposure to acutely toxic substances; and the contamination of a drinking water supply.

All functions described in this instrument, whether redelegated or retained, include the authority to contract for, obligate monies for, and otherwise arrange for and coordinate the responses included within such functions.

_____ _____

Andrew L. Lewis, Jr. Date
Secretary of Transportation

I hereby consent to the redelegation as set forth in this instrument

_____ _____

Anne M. Gorsuch Date
Administrator

PRESIDENTIAL DOCUMENTS

EXECUTIVE ORDER 12316 OF AUGUST 14, 1981

RESPONSES TO ENVIRONMENTAL DAMAGE

By the authority vested in me as President of the United States of America by Section 115 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (94 Stat. 2796; 42 U.S.C. 9615), it is hereby ordered as follows:

Section 1. *National Contingency Plan.*

(a) The National Contingency Plan, hereinafter referred to as the NCP and which was originally published pursuant to Section 311 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1321) shall be amended to contain the implementing procedures for the coordination of response actions to releases of hazardous substances into the environment.

(b) The NCP shall contain a concept of a national response team composed of representatives of appropriate Executive agencies for the coordination of response actions. The national response team shall, in addition to representatives of other appropriate agencies, include representatives of the following: Department of State, Department of Defense, Department of Justice, Department of the Interior, Department of Agriculture, Department of Commerce, Department of Labor, Department of Health and Human Services, Department of Transportation, Department of Energy, Environmental Protection Agency, Federal Emergency Management Agency, and United States Coast Guard.

(c) The responsibility for the amendment of the NCP and all of the other functions vested in the President by Section 105 of the Comprehensive Environmental Response. Compensation, and Liability Act of l980, hereinafter referred to as the Act (42 U.S.C. 9605), is delegated to the Administrator of the Environmental Protection Agency.

(d) In accord with Section 111(h)(1) of the Act and Section 311(f)(5) of the Federal Water Pollution Control Act, as amended (33 U.S.C., 1321(f)(5)), the following shall be among those designated in the NCP as Federal trustees for natural resources:

(1) Secretary of Defense.
(2) Secretary of the Interior.
(3) Secretary of Agriculture.
(4) Secretary of Commerce.

(e) Amendments to the NCP shall be coordinated with members of the national response team prior to publication for notice and comment. Amendments shall also be coordinated with the Federal Emergency Management Agency and the Nuclear Regulatory Commission in order to avoid inconsistent or duplicative requirements in the emergency planning responsibilities of those agencies.

(f) All amendments to the NCP, whether in proposed or final form, shall be subject to review and approval by the Director of the Office of Management and Budget.

Section.2. *Response authorities*.

(a) The functions vested in the President by the first sentence of Section 104(b) of the Act relating to "illness, disease, or complaints thereof" are delegated to the Secretary of Health and Human Services who shall, in accord with Section 104(i) of the Act, perform those functions through the Public Health Service.

(b) (1) The functions vested in the President by Section 101(24) of the Act, to the extent they require a determination by the President that "permanent relocation of residents and businesses and community facilities" is included within the terms "remedy" or "remedial action" as defined in Section 101(24) of the Act, are delegated to the Director of the Federal Emergency Management Agency.

(2) The functions vested in the President by Section 104(a) of the Act, to the extent they require permanent relocation of residents, businesses, and community facilities or temporary evacuation and housing of threatened individuals not otherwise provided for, are delegated to the Director of the Federal Emergency Management Agency.

(c) The functions vested in the President by Section 104 (a) and (b) of the Act are delegated to the Secretary of Defense with respect to releases from Department of Defense facilities or vessels, including vessels owned or bare-boat chartered and operated.

(d) Subject to subsections (a), (b), and (c) of this Section, the functions vested in the President by Sections 101(24) and 104 (a) and (b) of the Act are delegated to the Secretary of the Department in which the Coast Guard is operating, hereinafter referred to as the Coast Guard, with respect to any release or threatened release involving the coastal zone, Great Lakes waters, ports, and harbors.

(e) Subject to subsections (a), (b), (c), and (d) of this Section, the functions vested in the President by Sections 10(24) and 104 (a) and (b) of the Act are delegated to the Administrator of the Environmental Protection Agency, hereinafter referred to as the Administrator.

(f) The functions vested in the President by Section 104 (c), (d), (f), (g), and (h) of the Act are delegated to the Coast Guard, the Secretary of Health and Human Services, the Director of the Federal Emergency Management Agency, and the Administrator in order to carry out the functions delegated to them by subsections (a), (b), (d), and (e) of this Section. The exercise of authority under Section 104(h)

of the Act shall be subject to the approval of the Administrator of the Office of Federal Procurement Policy.

(g) The functions vested in the President by Section 104(e)(2)(C) of the Act are delegated to the Administrator, all other functions vested in the President by Section 104(e) of the Act are delegated to the Secretary of Defense, the Secretary of Health and Human Services, the Coast Guard, the Director of the Federal Emergency Management Agency, and the Administrator of the Environmental Protection Agency, in order to carry out the functions delegated to them by this Section.

Section 3. *Abatement Action*.

(a) The functions vested in the President by Section 206(a) of the Act are delegated to the Coast Guard with respect to any release or threatened release involving the coastal zone, Great Lakes water, ports, and harbors.

(b) Subject to subsection (a) of this Section, the functions vested in the President by Section 106(a) of the Act are delegated to the Administrator.

Section 4. *Liability*.

(a) The function vested in the President by Section 107)(c)(i)(C) of the Act is delegated to the Secretary of Transportation.

(b) The Functions vested in the President by Section 107(c)() of the Act are delegated to the Coast Guard with respect in any release or threatened release involving the coastal zone, Great Lakes waters, ports, and harbors.

(c) Subject to subsection (b) of this Section, the functions vested in the President by Section 107(c)(3) of the Act are delegated to the Administrator.

(d) The functions vested in the President by Section 107(f) of the Act are delegated to each of the Federal trustees for natural resources set forth in Section 1(d) of this Order to resources under their trusteeship.

Section 5. *Financial Responsibility*.

(a) The functions vested in the President by Section 107(k)(6)(B) of the Act are delegated to the Secretary of the Treasury. The Administrator will provide the Secretary with such technical information and assistance as the Administrator may have available.

(b) The functions vested in the President by Section 108(a) of the Act are delegated to the Federal Maritime Commission. Notwithstanding Section 1(d) of Executive Order No. 12291, the regulations issued pursuant to this authority shall be issued in accordance with that Order. The Commission shall be responsible, in accord with Section 109 of the Act, for the enforcement of civil penalties for violations of the regulations issued under Section 108(a) of the Act.

(c) The functions vested in the President by Section 108(b) of the Act are delegated to the Secretary of Transportation with respect of all transportation related facilities, including any pipeline, motor vehicle, rolling stock, or aircraft.

(d) Subject to subsection (c) of this Section, the functions vested in the President by Section 108(b) of the Act are delegated to the Administrator.

Section.6. *Employee Protection and Notice to Injured*.

(a) The functions vested in the President by Section 110(e) of the Act are delegated to the Secretary of Labor.

(b) The functions vested in the President by Section 111(g) of the Act are delegated to the Secretary of Defense with respect to releases from Department of Defense facilities or vessels, including vessels owned or bare-boat chartered and operated.

(c) Subject to subsection (b) of this Section, the functions vested in the President by Section 111(g) of the Act are delegated to the Administrator.

Section 7. *Management of the Hazardous Substance Response Trust Fund and Claims*.

(a) The functions vested in the President by Section 111(a) of the Act are delegated to the Administrator, subject to the provisions of this Section and applicable provisions of this Order.

(b) The Administrator shall transfer, to transfer appropriation accounts for other agencies, from the Hazardous Substance Response Trust Fund, out of sums appropriated, such amounts as the Administrator may determine necessary to carry out the purposes of the Act. These allocations shall be consistent with the President's Budget, within the amounts approved by the Congress, unless a revised allocation is approved by the Director of the Office of Management and Budget.

(c) The Administrator shall chair a budget task force composed of representatives of agencies having responsibilities under this Order or the Act. The Administrator shall also, as part of the budget request for the Environmental Protection Agency, submit a budget for the Hazardous Substance Response Trust Fund which is based on recommended allocations developed by the budget task force. The Administrator may prescribe reporting and other forms, procedures, and guidelines to be used by the agencies of the Task Force in preparing the budget request.

(d) The Administrator and each agency head in whom funds are allocated pursuant to this Section, with respect to funds allocated to them, are authorized in accordance with Section 111(f) of the Act to designate Federal officials who may obligate such funds.

(e) The functions vested in the President by Section 112 of the Act are delegated to the Administrator for all claims presented pursuant to Section III.

Section 8. *General Provisions*.

(a) Notwithstanding any other provision of this Order, any representation pursuant to or under this Order in any judicial or quasi-judicial proceedings shall be by or through the Attorney General. The conduct and control of all litigation arising under the Act shall be the responsibility of the Attorney General.

(b) Notwithstanding any other provision of this Order, the President's authority under the Act to require the Attorney General to commence litigation is retained by the President.

(c) The functions vested in the President by Section 301 of the Act are delegated as following:

(1) With respect to subsection (a), to the Administrator in consultation with the Secretary of the Treasury.
(2) With respect to subsection (b), to the Secretary of the Treasury.
(3) With respect to subsection (c), to the Secretary of the Interior.
(4) With respect to subsection (f), to the Administrator.

(d) The Attorney General shall manage and coordinate the study provided for in Section 301(e) of the Act.

(e) The performance of any function under this Order shall be done in consultation with interested agencies represented on the national response team, as well as with any other interested agency.

(f) Certain functions vested in the President by the Act which have been delegated or assigned by this Order may be redelegated to the head of any agency with his consent; those functions which may be redelegated are those set forth in Sections 2, 3, 4(b), 4(c), and 6(c) of this Order.

(g) Executive Order No. 12286 of January 19, 1981, is revoked.

THE WHITE HOUSE
August 14, 1981.

[FR Doc. 81-24411
Filed 8-16-81, 1:23 pm]
Billing code 3125-01-M

INSTRUMENT OF REDELEGATION

1. Except as provided in paragraph 2 below, in accordance with Section 11(g) of Executive Order 12580 of January 23, 1987, the Secretary of the Department in which the Coast Guard is operating hereby delegates to the Administrator, Environmental Protection Agency (EPA), subject to the Administrator's consent.
   a. all functions specified in Sections 2(f) 4(c), and 5(b) of that Executive Order; and
   b. the functions specified in Sections 2(i), 2(j)(2), 2(k), and 6(c) of that Executive Order to the extent that those functions relate to the functions specified in Section 2(f) of that Executive Order.

2. The functions redelegated under this Instrument of Redelegation do not include;
   a. functions related to responses to releases or threats of releases from vessels;
   b. functions related to emergency action concerning releases or threats of releases at facilities other than active or inactive "hazardous waste management facilities" (as defined in 40 CFR 270.2); and
   c. functions related to emergency action concerning releases or threats of releases at active or inactive "hazardous waste management facilities" when the Coast Guard On-Scene Coordinator (OSC) determines that such action must be taken pending the arrival on scene of an EPA OSC. Unless otherwise agreed upon by the EPA and Coast Guard, this authority will not be exercised unless the EPA OSC is scheduled to arrive on scene within 48 hours of notification of the release or threat of release.

3. For purposes of this Instrument, the term "emergency action", includes any removal action which, in the view of the Coast Guard OSC, must be taken immediately to prevent or mitigate immediate and significant danger to the public health, welfare or the environment. Situations in which such actions may be taken include, but are not limited to, fire, explosions, and other sudden releases; human, animal, or food chain exposure to acutely toxic substance, and the contamination of a drinking water supply.

4. All functions described in this document, whether redelegated or retained, include the authority to contract for, obligate monies for, and otherwise arrange for and coordinate the responses included within such functions.

_____

(Acting) Date

Secretary of Transportation

I hereby consent to the redelegation as set forth in this instrument.

_____

Date

Administrator, Environmental Protection Agency

ATTACHMENT B

ENDANGERMENT DETERMINATION

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FINDING OF IMMINENT AND SUBSTANTIAL ENDANGERMENT
AT THE
SUPERFUND INCIDENT

Because of the factors outlined below, I have determined that a threat exists to the public health or welfare or the environment at the _____ Superfund incident. An imminent and substantial endangerment to the public health or welfare or the environment exists because of an actual or threatened release of a hazardous substance at or from the incident.

1. SUPERFUND INCIDENT INFORMATION

Incident Name: _____

Incident Number: _____

Incident Location: _____
(County, and State)

USCG Contractor: _____

Potentially Responsible Party: _____

Access: _____ Restricted _____ Unrestricted

NPL Status: _____

Removal Start Date: _____

2. THREAT TO PUBLIC HEALTH OR WELFARE OR THE ENVIRONMENT

A. Chronological Background _____

_____

_____

_____

(e.g., when incident initially identified and by whom, number of drums, etc.)

B. Hazardous Substances Present _____

_____

_____

(if known, otherwise indicate "suspected hazardous substance")

C. Nature of Actual or Threatened Release of Hazardous Substance at or from the Incident _____

_____

_____

_____

(e.g., drum of unknown materials washed ashore, leaking drum, unknown material released into a stream resulting in a fish kill, level of security provided to minimize threat, etc.)

Check applicable factors (from Section 300.415 of the National Contingency Plan NCP) which were considered in determining the appropriateness of a removal action:

_____300.415(b) (2) (i) Actual or potential exposure sure to nearby human populations, animals, or the food chain from hazardous substances or pollutants or contaminants.

_____300.415(b) (2) (ii) Actual or potential contamination of drinking water supplies or sensitive ecosystems.

_____300.415(b) (2) (iii) Hazardous substances or pollutants or contaminants in drums, barrels, tanks, or other bulk storage containers, that pose a threat of release.

_____300.415(b) (2) (iv) High levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface, that may migrate.

_____300.415(b) (2) (v) Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released.

_____300.415(b) (2) (vi) Threat of fire or explosion.

_____300.415(b) (2) (vii) The availability of other appropriate Federal or State response mechanisms to respond to the release.

_____Other situations or factors that may pose threats to public health or welfare or the environment.

3. SELECTED REMOVAL ACTION (briefly describe removal; e.g., disposal of drums, neutralization of corrosive, conduct of analysis to determine hazardous substances present, security provided to eliminate threat, etc.)

This finding of imminent and substantial endangerment has been entered in the incident's administrative record.

_____

(Signature)

(_____typed name _____)

(_____title___ _____)

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MEMORANDUM OF UNDERSTANDING

BETWEEN THE

NATIONAL POLLUTION FUNDS CENTER
UNITED STATES COAST GUARD

AND THE

OFFICE OF RESPONSE AND RESTORATION
NATIONAL OCEAN SERVICE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
U.S. DEPARTMENT OF COMMERCE

FOR FUNDING AND REIMBURSEMENT IN SUPPORT OF
UNITED STATES COAST GUARD ON-SCENE COORDINATOR
FOR OIL AND/OR HAZARDOUS SUBSTANCE REMOVAL

NOS Agreement Code: MOA-2005-052/7086
USCG Agreement Code: _____ ***[Insert No.]***

I. PARTIES AND PURPOSE

A. This multi-year Memorandum of Understanding is between the National Pollution Funds Center (NPFC), U.S. Coast Guard (USCG), mad through the Office of Response and Restoration (OR&R), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce (DOC). This Agreement supersedes the Agreement executed on September 15, 1999.

B. The USCG is responsible for ensuring removal of discharges or releases of oil and/or hazardous substances in the coastal zone. Upon request by the USCG Federal On-Scene Coordinator (FOSC), the NOAA Scientific Support Coordinator (SSC) provides support services to the FOSC related to scientific issues affecting the removal. NOS may also provide other services to the FOSC during a removal as a member of the Regional Response Team. This Agreement identifies the cost reimbursement protocols for those services. This Agreement does not address protocols, services, or incident costs associated with Natural Resource Damage Assessment activities.

II. BACKGROUND

A. Definitions

1. Federal On-Scene Coordinator (FOSC)

The FOSC is the Federal official pre-designated by the USCG to coordinate and direct responses under subpart D or E of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) (40 CFR § 300.5).

2. NOAA Scientific Support Coordinator (SSC)

When designated by the FOSC, the NOAA SSC is the principal advisor for scientific issues, communication with the scientific community, and coordination of requests for assistance from state and Federal agencies regarding scientific studies. The SSC may serve on the FOSC's staff supporting the Unified Command or within the Planning or Operational Component of the Incident Command System and may at the FOSC's request, lead a scientific team to provide scientific support for operational decisions.

3. Regional Response Team (RRT)

The National Response System (NKS) is the mechanism for coordinating response actions by all levels of government in support of the FOSC. The NRS organization is divided into national, regional, and area levels. National planning and coordination is accomplished through the National

Response Team (NRT). The NRT consists of representatives from 16 Federal agencies. Regional planning and coordination of preparedness and response actions is the responsibility of the RRT. The RRT agency membership parallels that of the NRT, but also includes state, and sometimes, local representation. RRT members provide FOSCs with assistance from their respective Federal agencies commensurate with agency responsibilities, resources, and capabilities within that region.

4. Remove or Removal

"Remove" or "removal" is defined in 33 USC 1321(a) to mean "containment and removal of the oil or hazardous substances from the water and shorelines or the taking of such other actions as may be necessary to minimize or mitigate damage to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, and public and private property, shorelines, and beaches."

5. Removal Cost

"Removal costs" is defined in 33 USC 2701(31) as "the costs of removal that are incurred after a discharge of oil has occurred or, in any case in which there is a substantial threat of a discharge of oil, the costs to prevent, minimize, or mitigate oil pollution from such an incident." Note that the terms "response" and "remediation" are not used in the Oil Pollution Act (OPA).

6. NOAA Hazardous Materials Response Division (HAZMAT)

HAZMAT provides critical advice on science and other natural resource issues to the FOSCs during the Federal government's response to coastal• oil and hazardous materials spills or substantial threat of release. SSCs lead the scientific support team at spills, drawing on HAZMAT's spill trajectory estimates, chemical hazards analyses, assessments of the sensitivity of biological and human-use resources, and other types of expertise to help the FOSC make timely and appropriate operational decisions. NOAA spill response personnel work closely with the FOSC to respond to about 100 accidental releases each year. HAZMAT also typically provides Department of Commerce representation on the RRT during planning and removal phases.

III. AUTHORITIES

A. The authorities for NOAA to enter into this Agreement are:

1. Public Law 102-567 .authorizes the types of allowable costs to be reimbursed to NOAA for spill response. The allowable costs include incremental and base salaries, ships, aircraft, and associated indirect costs. Allowable costs do not include base salaries and benefits of NOAA Scientific Support Coordinators.

2. Costs incurred by NOAA or other entities for conducting scientific studies not in support of the FOSCs' actions (40 CFR § 300.33j(d)) are not covered under the provisions of this Agreement.

B. The authorities for the USCG to enter into this Agreement are:

1. 40 CFR § 300.145 provides for the FOSC to request and utilize a NOAA SSC as the principal advisor for scientific issues, communication with the scientific community, and coordination of requests for assistance from state and Federal agencies regarding scientific studies. Where the USCG FOSC requests assistance from OR&R under this paragraph or other provisions of this Agreement, the Parties will execute a Pollution Removal Funding Authorization (PRFA) National Pollution Fund Center (NPFC) Technical Operating Procedures, Ch. 3 to govern reimbursement.

2. Under 40 CFR § 300.322(c)(3), the lead agency or Regional Response Team shall dispatch appropriate personnel to the scene of the discharge to assist the FOSC upon his request. This assistance may include technical support in the agency's areas of expertise and disseminating information to the public. Where the USCG FOSC requests assistance from OR&R under this paragraph or other provisions of this Agreement, the Parties will execute a Pollution Removal Funding Authorization (PRFA) National Pollution Fund Center (NPFC) Technical Operating Procedures, Ch. 3 to govern reimbursement.

3. USCG is the fiduciary for the Oil Spill Liability Trust Fund (OSLTF) established under Title 26 USC 9509. OPA 90 and Presidential delegation have assigned management of the use of the OSLTF to the USCG. The OSLTF is available to pay oil removal costs that are consistent with the NCP (33 USC 2712 (a)).

4. Section 104 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) authorizes the President to act "...whenever (a) any hazardous substance is released or there is a substantial threat of such a release into the environment, or (b) there is a release or substantial threat of release into the environment of any pollutant or contaminant which may present an imminent and

substantial danger to the public health or welfare..." Superfund is the source of funds for CERCLA removal costs incurred by the USCG. Such costs are reimbursed by the EPA via interagency agreements between the EPA and USCG. The agreement and applicable instrument of redelegation covers costs incurred by the USCG in carrying out functions related to immediate removal actions at facilities and responses to releases or threats of releases from vessels. Costs incurred by OR&R under CERCLA in support of the USCG are covered through this Agreement; OR&R's costs are reimbursed to the USCG through the USCG/EPA interagency agreement to the extent OR&R's costs have not already been paid by Superfund.

5. The FOSC and the trustees shall coordinate assessments, evaluations, investigations, and planning that impacts removal actions. The FOSC shall consult with the affected trustees on the appropriate removal action to be taken. The trustees will provide timely advice concerning recommended actions with regard to trustee resources potentially affected (40 CFR § 300.305(e)).

6. When requested by the FOSC, the lead agency or RRT shall dispatch appropriate personnel to the scene of the release (of a hazardous substance) to assist the FOSC. This assistance may include technical support in the agency's areas of expertise (40 CFR §300.415(c)(3)(iii)).

7. Chapter 3 (Removal Actions-Oil & HAZMAT) of the National Pollution Funds Center User Reference Guide provides guidance on the use of the OSLTF and Superfund, along with applicable regulations and background information. The Reference Guide is divided into topics that are briefly explained in Appendix A.

IV. TERMS AND CONDITIONS

A. OR&R agrees to provide the following support to an oil or hazardous materials spill:

1. <u>Scientific Support Team (SST) Support</u>

Depending upon the magnitude of the spill, HAZMAT SSCs can be supported by a Scientific Support Team (SST). The expertise of the SST includes oil spill tracking; pollutant transport modeling; biological assessments; evaluation of environmental tradeoffs resulting from specific countermeasures and cleanup techniques; assessment of natural resources at risk; environmental chemistry; chemical hazard assessment; weather conditions and predictions, health and safety; and information management. The team may also be augmented by other Federal, state, or academic experts and is tailored to the specific scientific requirements of the incident and the local expertise available. During the response the

SSC and members of the SST work closely with the FOSC staff, USCG personnel, and other response personnel to provide scientific advice and other technical guidance. The SSC and specific members of the OR&R SST can serve in many of the standard Incident Command System positions as referenced in the USCG's Incident Management Handbook (COMDTPUB P3120.17). The SSC will recommend the number of team members for each level and type of response.

2. Other Support Services From OR&R

NOAA data and resources to support a response may be requested by the FOSC from the Department of Commerce (DOC) Regional Response Team (RRT) representative through the SSC or through the RRT Co-chairs. This support might include tide and circulation information; nautical charts; satellite imagery; meteorological, hydrologic, ice, and oceanographic data for marine, coastal, and certain inland waters; information on marine fisheries, marine mammals and certain endangered species from NOAA's National Marine Fisheries Service; technical support from NOAA's National Marine Sanctuaries; use of the NOAA ResponseLink information system and National Weather Service communications networks; special-purpose HAZMAT aircraft and/or ships; and other expertise within NOAA.

B. USCG agrees to provide funding to cover the costs associated with the above support from OR&R. The following fiscal and accounting data applies.

1. USCG
DUNS No.: 806754677
Employer ID: 52-9980000
OMB MAX Code: 024-60-8349
Agency Location Code: 69-025102
Appropriation Code (for billing): 70x8349

2. NOAA
DUNS No,: 78-4769085
Employer ID: 52-0821608
OMB MAX Code: 006-48. .
Agency Location Code: 13-14-0001
Appropriation Code:(for collection): 13x1450

V. POLLUTION REMOVAL FUNDING AUTHORIZATION (PRFA)

The PRFA is a tool available to FOSCs for quickly obtaining needed removal services and assistance from other government agencies in oil spill and/or hazardous materials response actions. Appendix B includes detailed procedures for processing PRFAs. Using a PRFA, the FOSC authorizes reimbursement to NOAA for services, equipment, and other support that were requested and approved by the FOSC. The OR&R SSC or

DOC RRT member will ensure the requested services and other support are specified in an FOSC approved PRFA prior to providing such services and other support. If oral requests are made by the FOSC and agreed to by the OR&R SSC or DOC RRT Member, the FOSC will document the request using a PRFA as soon thereafter as possible. PRFA general terms follow:

A. Non-Reimbursable Costs

1. OR&R will not seek reimbursement for costs associated with team members who do not serve FOSC approved response functions. Information about the specifics of an incident is often sketchy during the first hours of a response. In these situations, OR&R sometimes assembles and dispatches a team before the exact nature of the response is known. This is the best way to ensure that the FOSC has timely support during major spills. However, when team members are sent who do not fit the response needs, OR&R will immediately demobilize those SST members.

2. OR&R will not seek reimbursement for the associated costs to send personnel to participate in the response who are in a training status.

3. OR&R will not seek reimbursement for SSC regular salary costs.

4. OR&R will not seek reimbursement for other support services from OR&R or participation by the DOC RRT Member that were not FOSC requested or FOSC approved.

B. Reimbursable Costs

Costs of FOSC approved support services to be reimbursed include, but are not limited to:

1. Personnel salary costs (excluding the SSC regular salary), including regular salary, overtime, compensatory time, and, if applicable, holiday pay and hazardous duty pay;

2. OR&R overhead costs for labor (distribution rates including divisional overheads) as determined annually by the NOAA Comptroller and NOAA accountants;

3. Travel and per diem expenses;

4. Established charges for using NOAA-owned aircraft, ships, and associated indirect costs;

5. Actual costs of NOAA contractors performing activities approved by the FOSC.

6. Costs of NOAA Business Services Group (BSG) to track costs and prepare NOAA cost documentation for submittal to NPFSC.

7. Costs of U.S. Department of the Interior/Bureau of Land Management (BLM) technical employees supporting their Remote Automated Weather Station equipment at a spill if approved by the FOSC. Costs associated with BLM employees will consist of travel and overtime expenses only.

8. Actual expenses authorized by the FOSC as removal costs.

C. Incident Cost Documentation File

1. NOAA's Business Services Group (BSG) will maintain each incident's cost documentation file in accordance with Appendix C. BSG is responsible for all budget and fiscal matters related to NOAA RRT members, SSCs, SSTs and other NOAA components supporting a response.

2. The cost documentation file will include both reimbursable and non-reimbursable costs. Reimbursable costs include costs for personnel who are not normally available for oil spill removal, premium pay (overtime, hazardous duty pay, etc.) for all personnel working at an incident, travel vouchers, contractor invoices, and other charges related to an incident. The cost documentation will also include costs that are recoverable from a responsible party, but not reimbursable to OR&R, such as regular salary costs associated with SSCs.

3. BSG will provide a status report of OR&R costs by incident to NPFC for all incidents for the current fiscal year upon request.

D. Equipment

1. NOAA personnel should only purchase property with OSLTF funds when operational necessity directly related to the removal dictates or when it is clearly more beneficial to the Government than leasing. When making decisions to buy versus lease property, and operational conditions permit, personnel should factor in the costs necessary to acquire, maintain, and dispose of the property, not just the purchase price versus the costs of leasing. Many of these considerations are appropriately addressed through the planning process before a spill occurs. Documentation of the factors considered in purchasing property during a spill is critical in cost recovery and litigation efforts and shall be documented to the greatest extent possible.

2. NOAA personnel should be aware that property purchased for removal activities will be billed to the RP at 100% of the cost. Accordingly, whenever feasible, the FOSC and NOAA should provide the responsible party the opportunity to purchase or otherwise directly supply the property

needed for removal activities. Upon case completion, any property purchased and provided by the responsible party shall be returned to the responsible party. Property purchased with the OSLTF, however, shall be disposed of in accordance with the procedures outlined below.

3. NOAA may request reimbursement for repair or replacement of equipment that is damaged or lost during an incident. The request should describe the cause of the loss, and any efforts to avoid or minimize damage. The request will be submitted to NPFC via the FOSC. The FOSC will comment on the request and forward it to the NPFC. The NPFC will consider the merits of reimbursement for repairing or replacing the damaged or lost equipment on a case-by-case basis. Reimbursement will not be allowed for equipment that is damaged as a result of normal wear-and-tear, neglect, alteration, or improper use, including failure to follow instructions for operation, maintenance, and use under specific environmental conditions prescribed in the equipment manuals. NOAA will not seek reimbursement for use of an item of equipment when the equipment's replacement is also reimbursed.

4. Consumable equipment remaining at the completion of removal action should be disposed of in a cost-effective manner. Multiple items of consumable equipment in lots having a cost per lots of over $1,000 shall be treated as non-consumables. NOAA shall forward to NPFC documentation such as Form DD-1348 or other evidence of disposal/disposition action taken for all non-consumable equipment and consumables in lots worth more than $1,000. Non-consumable equipment includes items costing over $1,000 and items of lower cost but high interest (e.g., radios, ax machines, cellular phones, computers, pagers, copiers, photographic equipment, protective clothing, test equipment). Costs, including shipping and .transportation costs, for disposal/disposition, are reimbursable via the PRFA.

E. Cost Documentation

A copy of the cost documentation to support the charges will be provided to the Incident NPFC Case Officer, when requested (See Appendix C).

F. Billing

To obtain reimbursement for eligible costs, OR&R will present a bill to the FOSC with a copy to the NPFC. See Appendix B for procedures.

VI. CONTACTS

A. The contacts for coordinating activities under this Agreement are:

NOAA
William Conner
Chief, Hazardous Materials
Response Division
office of Response' and Restoration
National Ocean Service
National Oceanic and Atmospheric
Administration
1305 East West Highway
SSMC4 Station 10216
Silver Spring, MD 20910
Phone: (301) 713-3038
Fax: (301) 713~4387 ~,
Email: WilliamConner@noaa.gov

USCG
Jan Lane
Director
National Pollution Funds
Center
United States Coast Guard
4200 Wilson Blvd.
Suite 1000
Arlington, WA 22203-1804
Phone: 202-493-6702
Fax: 202-493-6900
Email: jlane@ballston.uscg.mil

B. The Parties agree that if there is a change regarding the information in this section, the Party making the change wilt notify the other Party in writing of such change.

VII. DURATION OF AGREEMENT, AMENDMENTS, AND TERMINATION

A. This Agreement will become effective after being signed by all Parties. This Agreement will remain in effect through September 30, 2010.

B. This Agreement may be amended within the scope of this Agreement or extended before the expiration, through the written mutual consent of the Parties. Adding or changing appendices does not constitute an amendment of the overall Agreement. Such additions and/or changes may be made by mutual written consent of the officials responsible for the specific subject area(s) in the USCG and OR&R. The officials making such change shall immediately bring the change to the attention of the persons signing this Agreement, or their successors, and then shall disseminate the change to all users of the Agreement.

C. The Parties will review this Agreement at least once every three years to determine whether it should be revised or terminated.

D. This Agreement may be terminated by (1) mutual written consent; (2) 30 days advance written notice by either Party, or (3) completion of the operation/terms of this Agreement. In the event of termination, USCG shall continue to be responsible for all reimbursable costs properly incurred by OR&R under the provision of this Agreement prior to termination.

VIII. RESOLUTION OF DISAGREEMENTS

A. Nothing herein is intended to conflict with current NOAA or USCG directives. If the terms of this Agreement are inconsistent with existing directives of either of the agencies entering into this Agreement, then those portions of this Agreement which are determined to be inconsistent shall be invalid, but the remaining terms and conditions not affected by the inconsistency shall remain in full force and effect. At the first opportunity for review of the Agreement, all necessary changes will be accomplished either by an amendment to this Agreement or by entering into a new agreement, whichever is deemed expedient to the interest of both Parties.

B. Should disagreement arise on the interpretation of the provisions of this Agreement, or amendments and/or revisions thereto that cannot be resolved at the operating level, the area(s) of disagreement shall be stated in writing by each Party and presented to the other Party for consideration

IX. APPROVALS

This Agreement is entered into and made effective as of the date later in time indicated below.

ACCEPTED AND APPROVED FOR THE
U.S. DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND
ATMOSPHERIC ADMINISTRATION
NATIONAL OCEAN SERVICE

BY:_____//s//_____
David Kennedy
Director
Office of Response and Restoration
National Ocean Service
SSMC4 - N/ORR
1305 East-West Highway
Silver Spring, MD 20910

DATE:_____//9/16/05//_____

ACCEPTED AND APPROVED FOR THE
U.S. COAST GUARD
NATIONAL POLLUTION FUNDS
CENTER

BY:_____//s//_____
Jan Lane
Director
National Pollution Funds Center
United States Coast Guard
4200 Wilson Blvd., Suite 1000
Arlington, WA 22203-1804

DATE:_____//9/29/05//_____

APPENDIX A

NPFC USER REFERENCE GUIDE

NPFC publishes the NPFC User Reference Guide. It provides guidance on the use of the OSLTF and Superfund, along with applicable regulations and background information. Due to its extensive nature, the material is published separately as a Supplement to the Marine Safety Manual. The NPFC shall provide BSG with the most current version of the NPFC User Reference Guide. The reference Guide is divided into a series of topics briefly explained as follows.

1. Organizations Using Pollution Funds. This provides information on entities able to access the Funds managed by NPFC and includes: Sectors, MS0s, G-M, G-MOR, Strike Teams, PIAT, EPA, MLCs, FINCEN, Other Federal Agencies, States, and Trustees.

2. Introduction to NPFC. This describes the origins, roles, missions, case teams, regions, functional contacts, and frequently used acronyms.

3. Removal Actions. This provides procedures for accessing the Funds for Clean Water Act and CERCLA removals. It includes FOSC financial management checklists, guidance on mystery spills, ACP guidance, and reports. The Technical Operating Procedures (TOPS) for Removal Costs and the TOPS for Resource and Cost Documentation are included in this chapter.

4. Investigative Considerations. This addresses liability limits, proximate cause, designation of source, notification advertising, and potential responsible parties.

5. State Access. This includes the State Access TOPS and the State Access regulations issued under OPA, Section 1012(d)(1). It also addresses procedures to be used by States for requesting funds, removal costs, pollution reports, payment, litigation, and cooperative agreements.

6. Natural Resource Damage Assessments. This includes the NRDA/Initiate TOPS, which contains initiation criteria, purchase of property, reporting, and requests for reimbursement.

7. Claims. This includes the Claims regulations and the Claimant's Information Guide, which explain available compensation, filing a claim, notice of designation, advertising, and the settlement process.

APPENDIX B

PROCEDURES FOR "COST REIMBURSEMENT" UNDER THE POLLUTION REMOVAL FUNDING AUTHORIZATION (PRFA)

The following are cost reimbursement protocols for those services provided by NOAA as part of an oil or hazardous materials response.

1. Execution Phase

   A. Following a request for OR&R support services, the Scientific Support Coordinator (SSC) or SSC representative will notify and provide HAZMAT's Business Services Group (BSG) with information pertaining to resource utilization and the associated FPN (Federal Project Number for oil incidents) or CPN (CERCLA Projects Number for hazardous substance incidents) number, FOSC (or representative), and telephone number.

   B. BSG will prepare an estimate of actual costs for resources used and pre-approved by the FOSC. The estimate is sent to the FOSC (or representative) and the NPFC case officer.

   C. The FOSC (or representative) will provide BSG with a Pollution Removal Funding Authorization (PRFA). The PRFA documents the pollution incident name, identification number (FPN or CPN), funding limit, a Statement of Work to be performed (i.e., task orders) points of contact, and FOSC billing address.

   D. BSG confers with the SSC when costs incurred begin to reach the PRFA funding limit. Updates to NOAA's estimated costs are provided to the FOSC through the SSC and to the NPFC as needed but no more than twice during a seven-day period.

   E. BSG provides the FOSC and NPFC with the updated cost estimate from which the FOSC develops a PRFA amendment. Depending on the length of the response, the PRFA may be amended several times.

2. Reimbursement of Expenses

   A. BSG collects all cost documentation associated with an incident as costs are incurred. (See Section 3 for reimbursement procedure for the post performance audit charges.)

   B. BSG reviews the incident file with NOAA's financial management information system to determine if chargeable costs are accurate and makes any corrections.

C. Once all incident costs are accurately recorded in NOAA's financial management system or 120 days after removal activities are complete (whichever comes first), BSG prepares a cost spreadsheet billing for submission to the NPFC via the incident FOSC. The FOSC will verify that the actual costs on the spreadsheet are for resources that were used as approved during the specific incident. The spreadsheet will cite: 1) the pollution incident name, 2) FPN or CPN identification number and 3) an incident-specific breakdown of charges.

D. Concurrently, BSG notifies the Office of Response and Restoration (OR&R), HAZMAT's parent organization, to initiate a request to the NOAA Comptroller's office to prepare an SF-1081 that is sent to the FOSC, copy to NPFC, within 120 days after removal activities are complete. The SF-1081 includes the agency's address, agency location code, fiscal year, Treasury symbol, and task code associated with the billing costs. The address of the NPFC is:

Case Officer Name:_____
National Pollution Funds Center (cm) -
4200 Wilson Boulevard, Suite 1000
Arlington, VA 22203-1804
Re: FPN_____

E. The Coast Guard FOSC and NPFC will review NOAA's SF-1081 billing, authorize it for payment, and forward it to the USCG Finance Center within 30 days of receipt, unless there are substantial problems with the SF-1081 package. Reimbursement is accomplished through the Intra-governmental Payment and Collection (IPAC) System.

F. In the event of a lengthy or large incident, OR&R will submit an interim billing as agreed upon between the NPFC case officer and BSG. The. interim billing process uses the same procedures as outlined in A through E above.

APPENDIX C

COST DOCUMENTATION

NOAA will produce a comprehensive written record supporting all expenditures and costs incurred in each removal. This documentation will support reimbursement of OR&R costs and NPFC's cost recovery on behalf of the OSLTF. NOAA will use an alternate method of record keeping for cost documentation rather than the standard resource documentation procedures outlined in NPFCs User Reference Guide. Time sheets, payroll reports, travel orders, etc., will be redacted to remove data protected by the Privacy Act such as social security numbers.

1. NOAA Personnel Costs Documentation will show each employee's name, grade, hours, function, appropriate subtotals, and an overall total. In addition, NOAA will indicate whether the employee if Off Site or On Scene. OR&R will include copies of the Civilian Time and Attendance Daily Reports, CD-440PC, indicating incident-specific hours. NOAA Corps Officers are not required to maintain a CD-440PC, but will record incident-specific hours on a Timekeeping Record Worksheet.

2. NOAA Travel Costs Incident-specific travel documentation will include copies of each Travel Order, CD-29, or NOAA Form 56-1 for Corps Officers; Travel Voucher, CD-370, with supporting receipts as required by the applicable federal travel regulations; and/or Claim for Reimbursement for Expenditures on Official Business, SF-1164, with appropriate subtotals and an overall total.

3. Contractor Costs Documentation will include copies of the contract incident-specific tasking orders (technical directions), modifications (where applicable), statements of work, and invoices associated with incident-specific costs. Contractor costs will have appropriate subtotals and an overall total.

4. Other NOAA Costs Documentation for transportation, rents/leases, and supplies/equipment will be included when applicable.

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Inter-agency Memorandum of Agreement Regarding Oil Spill Planning and Response Activities Under the Federal Water Pollution Control Act's National Oil and Hazardous Substances Pollution Contingency Plan and the Endangered Species Act

INTRODUCTION

A. Parties. The Parties to this agreement are the U.S. Coast Guard (USCG), the U.S. Environmental Protection Agency (USEPA), the Department of the Interior (DOI) Office of Environmental Policy and Compliance, the U.S. Fish and Wildlife Service (USFWS), and the National Oceanic and Atmospheric Administration's (NOAA's) - National Marine Fisheries Service (NMFS) and National Ocean Service (NOS).

B. The Parties have conducted a review of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) and associated oil spill response activities to coordinate their actions under Section 1321(d) of the Clean Water Act and Section 7(a)(1) of the Endangered Species Act, as amended (16 U.S.C. 1531 et seq.) (ESA). Section 1321(d) of the Clean Water Act establishes the NCP and assigns responsibilities to Federal agencies in mitigating damage from oil and hazardous materials spills, including the conservation of fish and wildlife. Section 7(a)(1) of the ESA requires all Federal agencies, in consultation with and with the assistance of the Secretaries of the Interior or Commerce, as appropriate, to review their programs and utilize their authorities in furtherance of the purposes of the ESA by carrying out programs for the conservation of listed species. As a result of this review, recommended procedures have been developed that will achieve better conservation of listed species and critical habitat during implementation of oil spill response activities.

C. This agreement provides a general framework for cooperation and participation among the Parties in the exercise of their oil spill planning and response responsibilities. Following the recommended procedures presented in this agreement will better provide for the conservation

of listed species, improve the oil spill planning and response procedures delineated in the NCP, and ultimately streamline the process required by Section 7(a)(2) of the ESA.

PURPOSE

A. This agreement is intended to be used at the area committee level primarily to identify and incorporate plans and procedures to protect listed species and designated critical habitat during spill planning and response activities. Proactive regional planning may also take into consideration concerns for proposed and candidate species, as well as listed species' habitat not yet designated as critical.[1]

B. This agreement coordinates the consultation requirements specified in the ESA regulations, 50 CFR 402, with the pollution response responsibilities outlined in the NCP, 40 CFR 300. It addresses three areas of oil spill response activities: pre-spill planning activities, spill response event activities, and post-spill activities. The agreement identifies the roles and responsibilities of each agency under each activity. By working proactively before a spill to identify potential effects of oil spill response activities on listed species and critical habitat, and jointly developing response plans and countermeasures (response strategies) to minimize or avoid adverse effects, impacts to listed species and critical habitat should be reduced or avoided completely. Should a spill occur, response plans and countermeasures will be used to implement response actions to minimize damage from oil discharges in a manner that reduces or eliminates impacts to listed species and critical habitat. In the event that oil spill response actions may result in effects on listed species or critical habitat, the agreement provides guidance on how to conduct emergency consultation under the ESA. It also describes the steps for completing formal consultation, if necessary, after the case is closed, if listed species or critical habitat have been adversely affected.

C. The goal of this agreement is to engage in informal consultation wherever possible during planning and response. With adequate planning and ongoing, active involvement by all participants, impacts to listed species and critical habitat and the resulting need to conduct subsequent ESA Section 7(a)(2) consultations will be minimized or obviated.

LEGAL AUTHORITIES

A. The Federal Water Pollution Control Act (FWPCA), 33 U.S.C. § 1321., requires that when a spill occurs, the President take such action as necessary to ensure effective and immediate removal of a discharge, and mitigation or prevention of a substantial risk of a discharge of oil into the waters of the United States. The National Contingency Plan (NCP), 40 CFR Part

[1] Adverse effects on non-designated critical habitat used by listed species has a potential for having an adverse affect on these listed species. Therefore, planners should consider these areas if information is available.

300, prepared in accordance with the FWPCA, assigns duties to Federal agencies to protect the public health and welfare, including fish, wildlife, natural resources and the public. The NCP designates the Federal On Scene Coordinator (FOSC) as the person responsible for coordinating an oil spill response. (The abbreviation OSC is used in the NCP, while the abbreviation for Federal On Scene Coordinator is FOSC in this agreement.) Nothing in this agreement limits the authority of the Federal On Scene Coordinator as defined in the NCP.

B. The Endangered Species Act of 1973 (ESA), as amended, 16 U.S.C. §1531 et seq., provides a means to protect threatened and endangered species and the ecosystems upon which they depend. The ESA requires that Federal agencies insure that the actions they authorize, fund, or carry out do not jeopardize listed species or adversely modify their designated critical habitat. Regulations for conducting Section 7 consultation are set forth in 50 CFR Part 402.

DEFINITIONS

The following definitions apply to this agreement and are taken from the definitions contained in either the NCP or the March 1998 USFWS & NMFS Endangered Species Consultation Handbook. For definitions of terms not listed below, refer to the USFWS & NMFS Endangered Species Consultation Handbook and the NCP as appropriate.

Area Committee - the entity appointed by the President consisting of members from qualified personnel of Federal, state, and local agencies with responsibilities that include preparing an area contingency plan for an area designated by the President. The chairs of the Area Committee are the USCG for coastal and Great Lakes plans, and the USEPA for inland plans. In some instances the Regional Response Team (RRT) may act as the Area Committee. In this MOA, the term Area Committee also includes the RRT acting as the Area Committee.

Area Contingency Plan (ACP) - the plan prepared by an Area Committee (or the RRT acting as the Area Committee) that is developed to be implemented in conjunction with the NCP and Regional Contingency Plan (RCP), in part to address removal of a worst case discharge and to mitigate or prevent a substantial threat of such a discharge from a vessel, offshore facility, or onshore facility operating in or near an area designated by the President. A detailed annex containing a Fish and Wildlife and Sensitive Environments Plan prepared in consultation with the USFWS, NOAA, and other interested natural resource management agencies should be incorporated into each ACP. In this MOA, the term ACP also includes sub-area ACP's, sub-area contingency plans, geographic response plans and geographic response strategies as per 40 CFR 300.210.

Biological Assessment - information prepared by or under the direction of the Federal action agency (USCG or USEPA) regarding: 1) listed and proposed species and designated critical habitat that may be affected by proposed actions; and, (2) the evaluation of potential effects of the proposed actions on such species and habitat.

Biological Opinion - document which includes: (1) the opinion of the USFWS or NMFS as to whether or not a Federal action is likely to jeopardize the continued existence of listed species, or result in the destruction or adverse modification of designated critical habitat; (2) a summary of the information on which the opinion is based; and (3) a detailed discussion of the effects of the action on listed species or designated critical habitat. This document will also contain an incidental take statement, that, if appropriate, exempts the Federal actions from the ESA Section 9 take prohibitions.

Candidate species – plant and animal taxa considered for possible addition to the List of Threatened and Endangered Species.

Case is Closed – When removal operations are complete in accordance with 40 CFR 300.320(b).

Critical habitat - areas designated by the USFWS and NMFS pursuant to Section 4 of the ESA for the purposes of identifying areas essential for the conservation of a threatened or endangered species and which may require special management considerations.

Emergency Consultation – an expedited consultation process that takes place during an emergency (natural disaster or other calamity) (50 CFR 402.05). The Services have determined that oil spill response activities qualify as an emergency action. The consultation may be initiated informally. The emergency continues to exist until the removal operations are completed and the case is closed in accordance with 40 CFR 300.320(b). The FOSC will continue to conduct emergency consultations, if needed, until the emergency is over and the case is closed. Formal, or informal, consultation is initiated after the emergency is over, at which time the USFWS and/or NMFS evaluates the nature of the emergency actions, the justification for the expedited consultation, and any impacts to listed species and their habitats.

Federal On Scene Coordinator (FOSC) - the Federal official predesignated by USEPA or the USCG to coordinate and direct responses under the FWPCA as defined in the NCP.

Formal Consultation[2] - a process between USFWS or NMFS and the Federal action agency (USCG or USEPA) that: (1) determines whether a proposed Federal action is likely to jeopardize the continued existence of listed species or destroy or adversely modify designated critical habitat; (2) begins with a Federal agency's written request and submission of a complete Section 7 consultation initiation package; and (3) concludes with the issuance of a biological opinion and incidental take statement, as appropriate, by either of the Services. If a proposed Federal action may affect a listed species or designated critical habitat, formal consultation is required (except when the Services concur, in writing, that a proposed action "is not likely to adversely affect" listed species or designated critical habitat. See informal consultation).

Incidental Take - take of listed fish or wildlife species that results from, but is not the purpose of, carrying out an otherwise lawful activity conducted by a Federal agency or applicant.

Informal Consultation - an optional process that includes all discussions and correspondence between the USFWS or NMFS and the Federal agency (USCG or USEPA) or designated non-Federal representative, prior to formal consultation, to determine whether a proposed Federal action may affect listed species or critical habitat. This process allows the Federal agency to utilize the Services' expertise to evaluate the agency's assessment of potential effects or to suggest possible modifications to the proposed action, which could avoid potential adverse effects. If a proposed Federal action may affect a listed species or designated critical habitat, formal consultation is required (except when the Services concur, in writing, that a proposed action "is not likely to adversely affect" listed species or designated critical habitat).

Listed Species – for the purposes of this MOA, any species of fish, wildlife or plant, which has been determined to be endangered or threatened under Section 4 of the ESA.

National Contingency Plan (NCP) – National Oil and Hazardous Substances Pollution Contingency Plan. The NCP is a national plan that provides the organizational structure and procedures for preparing for and responding to discharges of oil and releases of hazardous substances, pollutants and contaminants. The NCP is set forth in 40 CFR 300.

[2] Formal consultation can occur during planning or after the conclusion of emergency consultation if listed species or critical habitat have been affected.

National Response Team (NRT) - a national team, defined under the NCP, responsible for national planning, policy, and coordination for hazardous substance and oil spill preparedness and response, consisting of representatives from agencies named in 40 CFR 300.175(b).

Regional Response Team (RRT) - a regional team of agency representatives that acts in two modes: the standing RRT and incident specific RRT. The Co-chairs are the USCG and USEPA. The standing team is comprised of designated representatives from each participating Federal agency, state governments and local governments (as agreed upon by the states). Incident-specific teams are formed from the standing team when activated for a response. The role of the standing RRT includes establishing regional communications and procedures, planning, coordination, training, evaluation, preparedness and related matters on a region-wide basis. It also includes assisting Area Committees in coordinating these functions in areas within their specific regions. The role and composition of the incident-specific team is determined by the operational requirements of the response. During an incident, it is chaired by the agency providing the FOSC.

Services – Term used to refer to both the USFWS and NMFS.

PROCEDURES

Oil spill planning and response procedures are set forth in the NCP. This agreement is intended to facilitate compliance with the ESA without degrading the quality of the response conducted by the FOSC, to improve the oil spill planning and response process, and ensure continued inter-agency cooperation to protect, where possible, listed species and critical habitat.

A. PRE-SPILL PLANNING

(1) While drafting Area Contingency Plans themselves may not result in effects to listed species, actions implemented under the plans may. It is essential that the Area Committee engage USFWS and NMFS during the ACP planning process while developing or modifying the ACP and response strategies. This informal consultation can be used to determine the presence of listed species or critical habitat, and the effects of countermeasures, and to ensure that measures to reduce or avoid impacts to listed species and critical habitats during oil spill response activities are developed. By consulting on the anticipated effects prior to implementing response actions, decisions can be made rapidly during the spill, harm from response actions can be minimized, and implementation of response strategies specifically designed to protect listed species and critical habitat can be achieved.

(2) The pre-spill planning process is shown as a flow chart in Appendix A. The Area Committee Chair will request, in writing, that endangered species expertise and a species list be provided by the Services.[3] The request should also describe the area and include a general description of the countermeasures being considered and the planning process to be used (e.g., a workgroup). In order to document the request for consultation and planning involvement, the request shall be sent to both NOAA and USFWS. To obtain NMFS assistance, a request

[3] 40 CFR 300.170(a).

should be sent to the Department of Commerce (DOC) RRT representative, with a copy to the NOAA Scientific Support Coordinator (SSC) and the NMFS Regional Field Office. For USFWS support, a request should be sent to the local USFWS field office(s), with a copy to the USFWS Regional Response Coordinator (RRC) at the appropriate USFWS Regional Office(s) and the DOI RRT representative. It is the responsibility of the USFWS RRC, acting through the Ecological Services Assistant Regional Director, and the NOAA SSC to act as a liaison between the respective Service and the Area Committee. USFWS and NMFS will orally respond to the request within 30 days of receipt and provide a written response within 60 days. The response should include designation of a listed species expert to assist the Area Committee.

(3) If listed species or critical habitat are present in the planning area being considered the Area Committee should use a planning process that ensures engagement of Service experts.[4] This process shall ensure that the appropriate participants jointly gather and analyze the information needed to complete the Planning Template in Appendix C. This planning process constitutes informal consultation.[5] The goals of this planning process are to identify the potential for oil spill response activities to adversely affect listed species and critical habitat and to identify for inclusion in the ACP information on sensitive areas, emergency response notification contacts, and any other information needed. Methods should be developed to minimize identified adverse effects and, where necessary, the plan should be modified accordingly. If specific sources of potential adverse effects are identified and removed, the Services will provide a concurrence letter and Section 7(a)(2) requirements will be deemed to have been met.[6]

(4) If, after the process in Appendix C has been followed, it cannot be determined that adverse effects will not occur during a response action, the USCG or USEPA, as appropriate, will initiate formal consultation using the information gathered in Appendix C; this information will be used by the Services to complete formal consultation.[7] This will be a programmatic consultation that generally addresses oil spill response activities at issue in the plan area. At times when specific information is available about certain oil spill response methods and listed species and critical habitat, it may be possible to pre-approve particular activities that may be implemented in the event there is insufficient time to initiate emergency consultation before the need to take action.[8]

(5) All parties recognize that development and modification of the ACP is an ongoing process. Changes, including modifications to response actions or changes to the species list, should be addressed regularly through a dynamic planning process. The Services should contact the

[4] Process options include using an informal workgroup; formal workgroup, Environmental Risk Assessment process, or other process based on Area Committee needs.
[5] This process does not negate any regional consultations that have already occurred, nor alter the strategies/procedures in the ACP until the ACP is officially modified in consultation with USFWS or NMFS.
[6] Letter is required for the administrative record. See Appendix E.
[7] Letter is required for the administrative record. See Appendix E.
[8] Due to time constraints associated with spill response, this does not mean that immediate spill response actions cannot occur to meet the requirements of 40 CFR 300.317. However, planning should address specific procedures for initiating emergency consultation for activities that are pre-approved and for those that have not been pre-approved.

Area Committee or workgroup if they become aware of newly listed species that may be affected by planned response activities. The Area Committee should likewise notify the Services of changes to planned response activities. The Area Committee or workgroup should evaluate any changes and assess the need for additional consultation as needed.

B. OIL SPILL RESPONSE

During an oil spill event which may affect listed species and/or critical habitat, emergency consultations under the ESA are implemented (50 CFR 402.05) for oil spill response actions.[9] Emergency consultation may be conducted informally through the procedures that follow (See Appendix A). Emergency consultation procedures allow the FOSC to incorporate listed species concerns into response actions during an emergency. "Response" is defined in this agreement as the actions taken by the FOSC in accordance with the NCP. The FOSC conducts response operations in accordance with the NCP and agreement established in the ACP.

(1) As per the NCP and ACP, the FOSC will notify the RRT representatives of DOI and DOC through the established notification process regardless of whether listed species or critical habitat is present. Upon notification, the DOC and DOI representatives shall contact the NOAA SSC and RRC, respectively, and other appropriate Service contacts as provided in internal DOC or DOI plans, guidance, or other documents. If established in the ACP, the FOSC may also contact the Service regional or field offices directly (see Section V(A)(3) above). If listed species and/or critical habitat are present or could be present, the FOSC shall initiate emergency consultation by contacting the Services. The NOAA SSC and RRC shall coordinate appropriate listed species expertise. This may require timely on-scene expertise from the Services' local field offices. These Service representatives may, as appropriate, be asked by the FOSC to participate within the FOSC's Incident Command System and provide information to the FOSC.[10]

(2) The ACP, including any agreed upon references cited in the ACP, should form the basis for immediate information on response actions. As part of emergency consultation, the Services shall provide the FOSC with any timely recommendations to avoid and/or minimize impacts to listed species and critical habitat.[11] The NOAA SSC should also be involved in these communications as appropriate. If incidental take is anticipated, and if no means of reducing or avoiding this take are apparent, the FOSC should also be advised and the incidental take documented. If available, the FOSC should consider this information in conjunction with the national response priorities established in the NCP.[12] The FOSC makes the final determination of appropriate actions.

(3) It is the responsibility of both the FOSC and the Services' listed species representatives to maintain a record of written and oral communications during the oil spill response. The checklist contained in Appendix B is information required to initiate a formal consultation in those instances where listed species and/or critical habitat have been adversely affected by

[9] Based on pre-spill planning or discovered during the response.
[10] 40 CFR 300.175(b)(7) & (b)(9); 40 CFR 300.305(e).
[11] See Section 8.1 of the USFWS & NMFS Endangered Species Consultation Handbook (http://endangered.fws.gov/consultations/s7hndbk/s7hndbk.htm).
[12] 40 CFR 300.317 National Response Priorities.

response actions.[13] If it is anticipated that listed species and/or critical habitat may be affected, the FOSC may request that the USFWS and/or NMFS representative to the Incident Command System oversee and be responsible for the gathering of the required information in Appendix B while the response is still ongoing.[14] The FOSC may also choose to designate another individual to be responsible for collecting the information.[15] Although in some instances the drafting of information for Appendix B may be completed after field removal operations have ceased, it is anticipated that collection of the information should be complete before the case is officially closed and that no further studies will be necessary.

(4) It is the responsibility of the FOSC to notify the Services' representatives in the Incident Command System of changes in response operations due to weather, extended operations, or some other circumstance. It is the responsibility of the Services to notify the FOSC of seasonal variances (e.g., bird migration), or other natural occurrences affecting the resource. If there is no Service representative in the Incident Command System, the FOSC will ensure that the NOAA SSC and/or DOI representative to the RRT remains apprised of the situation. The Services will continue to offer recommendations, taking into account any changes, to avoid jeopardizing the continued existence of listed species or adversely modifying critical habitat, and to minimize the take of listed species associated with spill response activities.

[13] See Section 8.2(B) of the USFWS & NMFS Endangered Species Consultation Handbook.
[14] If requested by the FOSC, the NOAA Scientific Support Coordinator (SSC) may coordinate this data collection.
[15] See Appendix D for example Pollution Removal Funding Authorization (PRFA) Statement of Work language.

C. POST RESPONSE

If listed species or critical habitat have been adversely affected by oil spill response activities, a formal consultation is required, as appropriate.[16] Informal emergency consultation shall remain active until the case is closed. The FOSC will initiate consultation on the effect of oil spill response activities (not the spill itself) after the case is closed. Every effort shall be made to ensure that relevant information generated as part of the consultation process is made available for use in the Natural Resource Damage Assessment (NRDA) process. (Note: NRDA activities are separate from this consultation.)

(1) After the FOSC determines that removal operations are complete in accordance with 40 CFR 300.320(b), the impacts of the response activities on listed species and critical habitat will be jointly evaluated by the FOSC and the Services.

(2) If listed species or critical habitat were adversely affected by oil spill response activities, the FOSC will follow the procedural requirements of 50 CFR 402.05(b) (see Appendix A). The document developed by following Appendix B, information required to initiate a formal consultation following an emergency, should be included with a cover letter to the Services requesting consultation and signed by the FOSC. The FOSC will work with the Services and the NOAA SSC, as appropriate, to ensure that Appendix B is complete.[17] This document comprises the FOSC's formal request for consultation.

(3) The Services normally issue a biological opinion within 135 days of receipt of the Section 7 consultation request (50 CFR 402.14). When a longer period is necessary, and all agencies agree, the consultation period may be extended. The final biological opinion will be prepared by the Services and provided to the FOSC, USFWS RRC, NOAA SSC, DOI and DOC RRT members, and the Area Committee Chair so that recommendations can be reviewed by the Area Committee, and where appropriate, implemented to minimize and/or avoid effects to listed species and critical habitat from future oil spill response actions.[18] The result of the consultation should be considered by the FOSC for inclusion in a lessons learned system so changes can be made to the ACP, as necessary, for the benefit of future oil spill response actions. If such changes to the ACP modify the anticipated effects to listed species or critical habitat, the Services should appropriately document the anticipated changes in future effects and complete any appropriate administrative steps.

[16] If only proposed species or proposed critical habitat have been adversely affected, a formal consultation is not required; however, ESA conference procedures should be followed as appropriate. See the USFWS & NMFS Endangered Species Consultation Handbook for conference information.
[17] The NOAA SSC may also assist.
[18] Recommendations may also be provided for addressing effects caused by spill response actions. This information should be provided to the NRDA process as appropriate.

VI. Points of Contact. The following are the points of contact for each Party:

USCG: Chief, Office of Response, Coast Guard Headquarters (G-MOR), (202) 267-0516.

USEPA: Oil Program Center, U.S. Environmental Protection Agency, (703) 603-8823.

NOAA - NMFS: Section 7 Coordinator, Endangered Species Division, Office of Protected Resources, (301) 713-1401.

USFWS: National Spill Response Coordinator, U.S. Fish and Wildlife Service, Division of Environmental Quality, (703) 358-2148.

NOAA - NOS: Director, Office of Response and Restoration, (301) 713-2989 x101.

DOI: Office of Environmental Policy and Compliance, (202) 208-6304.

VII. Funding and Resources. This agreement is not a fiscal or funds obligation document. Nothing in this agreement shall be construed as obligating any of the Parties to the expenditure of funds in excess of appropriations authorized by law or otherwise commit any of the Parties to actions for which it lacks statutory authority. It is understood that the level of resources to be expended under this agreement will be consistent with the level of resources available to the Parties to support such efforts. Any activities involving reimbursement or contribution of funds between the Parties to this agreement will be handled in accordance with applicable laws, regulations and procedures. Such activities will be documented in separate agreements with specific projects between the Parties spelled out. The separate agreements will reference this general agreement.

VIII. Effective Date. The terms of this agreement are effective upon signature by all Parties.

IX. Modification. This agreement may be modified upon the mutual written consent of the Parties.

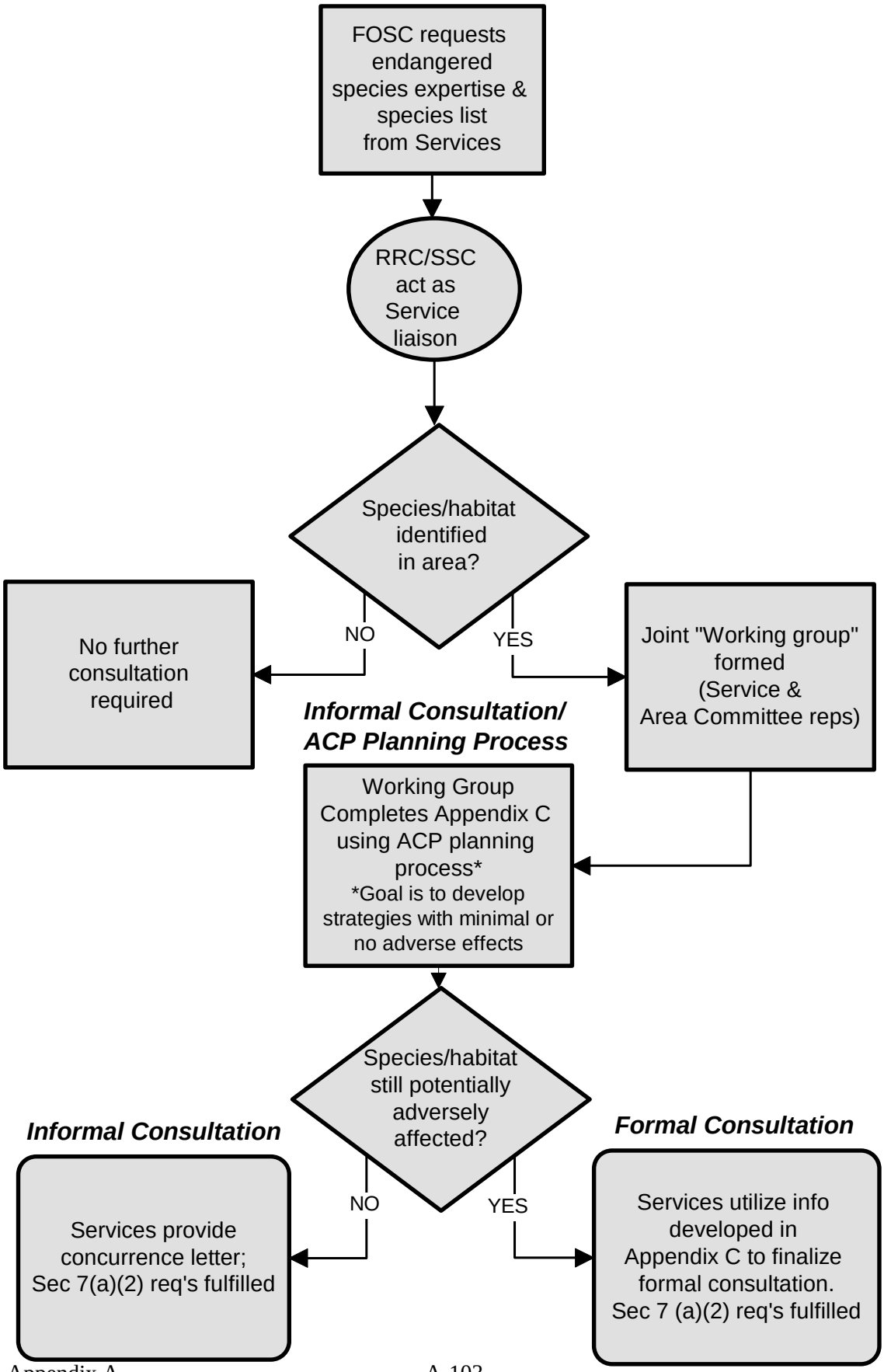
X. Termination. The terms of this agreement, as modified, with the consent of all Parties, will remain in effect until terminated. Any Party upon 60 days written notice to the other Parties may terminate their involvement in this agreement.

Inter-agency Memorandum of Agreement Regarding Oil Spill Planning and Response Activities Under the Federal Water Pollution Control Act's

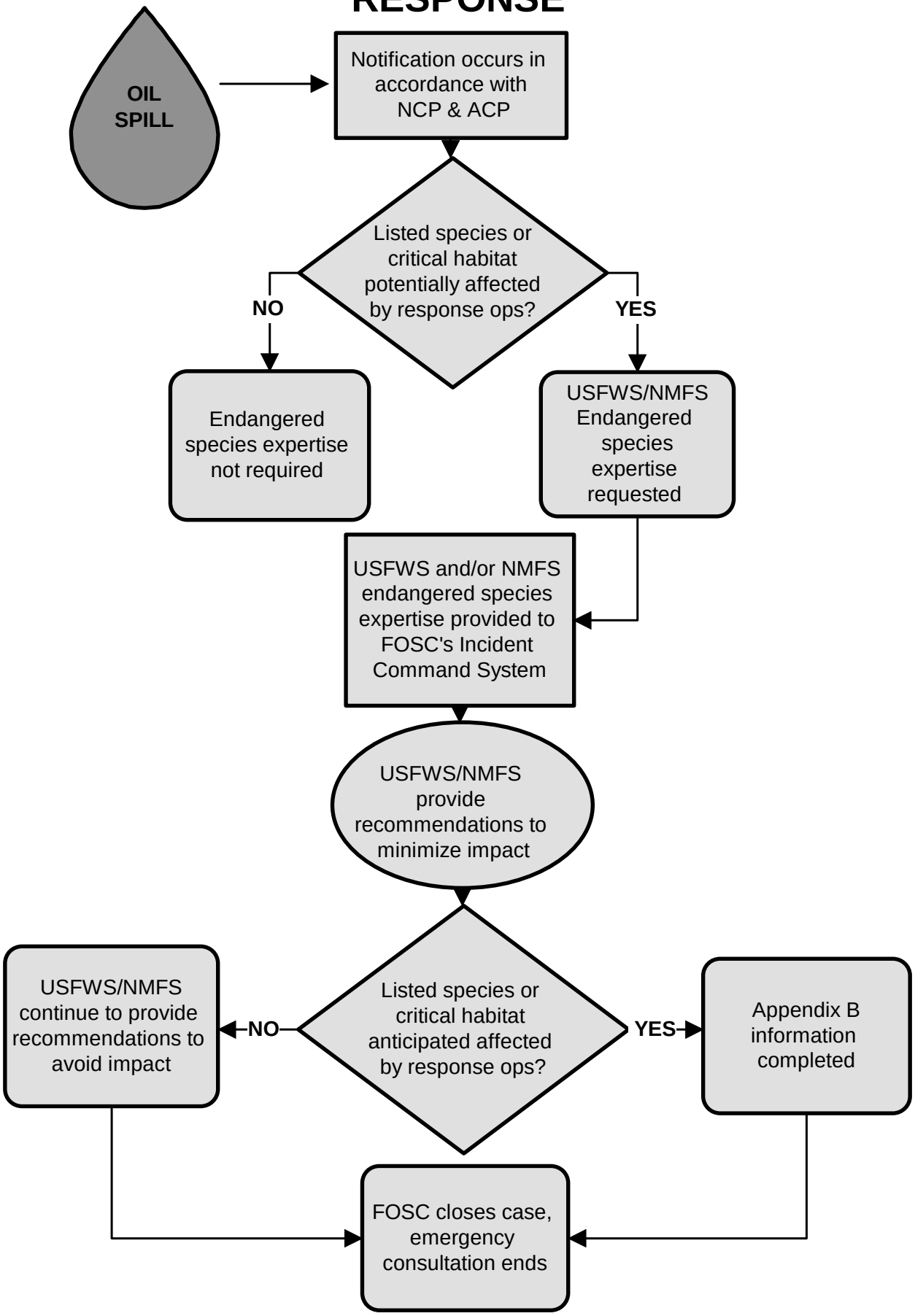
National Oil and Hazardous Substances Pollution Contingency Plan and the Endangered Species Act

Approved By:	**Date:**
Assistant Commandant for Marine Safety and Environmental Protection U.S. Coast Guard	5/25/01
Acting Assistant Administrator Office of Solid Waste and Emergency Response U.S. Environmental Protection Agency	7/22/01
Acting Director U.S. Fish and Wildlife Service	8 June 2001
Acting Assistant Administrator for Fisheries National Marine Fisheries Service National Oceanic and Atmospheric Administration	5/15/01
for Assistant Administrator National Ocean Service National Oceanic and Atmospheric Administration	5/30/01
Director Office of Environmental Policy and Compliance Department of the Interior	6/13/01

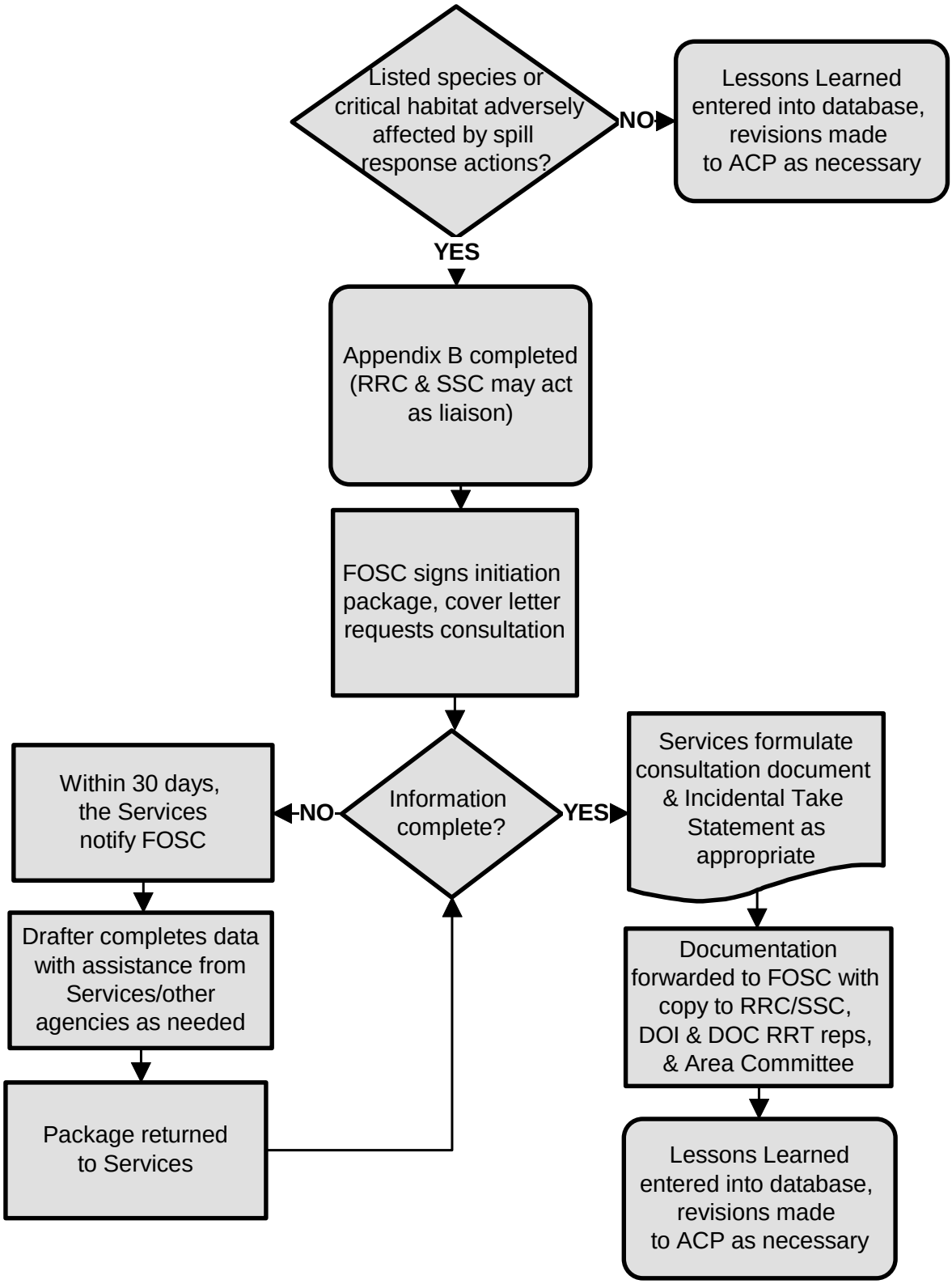
PRE-SPILL PLANNING



RESPONSE


OIL SPILL
Notification occurs in accordance with NCP & ACP
Listed species or critical habitat potentially affected by response ops?
NO
YES
Endangered species expertise not required
USFWS/NMFS Endangered species expertise requested
USFWS and/or NMFS endangered species expertise provided to FOSC's Incident Command System
USFWS/NMFS provide recommendations to minimize impact
Listed species or critical habitat anticipated affected by response ops?
NO
YES
USFWS/NMFS continue to provide recommendations to avoid impact
Appendix B information completed
FOSC closes case, emergency consultation ends

POST RESPONSE



APPENDIX B

EMERGENCY CONSULTATION
INFORMATION CHECKLIST IN ANTICIPATION OF FOLLOW-UP FORMAL CONSULTATION (50 CFR 402.05)

As soon as practicable after the emergency is under control, which occurs when the case is closed, the FOSC initiates consultation (either formal or informal, as appropriate) with the Services if listed species and/or critical habitat have been affected. The FOSC should ensure that the following checklist is completed before the case is closed. After the case is closed, this information along with a cover letter requesting consultation will be sent to the Services.

1. Provide a description of the emergency (the oil spill response).

2. Provide an evaluation of the emergency response actions and their impacts on listed species and their habitats, including documentation of how the Services' recommendations were implemented, and the results of implementation in minimizing take.

3. Provide a comparison of the emergency response actions as described in #2 above with the pre-planned countermeasures and information in the ACP.

APPENDIX C

PLANNING TEMPLATE

One of the goals of the Area Contingency Plan (ACP) planning process is to develop strategies or actions that reduce the potential for planned oil spill response activities to adversely affect listed species and designated critical habitat. The planning process may also develop strategies that purposefully protect these resources. The following template is recommended for use by a working group of both Service and Area Committee representatives to develop a document that 1) is used to complete consultation pursuant to Section 7 (a)(2) of the Endangered Species Act of 1973, as amended, and 2) produces information to be included in the appropriate sections of the ACP. To streamline the consultation process, the various sections of this document could be drafted during the planning process and used to develop or modify the ACP.[19] This development process will assist all parties in gaining a thorough understanding of the actions under review and provide opportunities for any Section 7 consultation related issues to be raised and addressed in the planning process, rather than during the oil spill response action.

This template is intended to guide the thought process of creating consultation documents and incorporates content requirements set forth in 50 CFR 402.12 as well as information pertinent to the National Contingency Plan requirements under the Fish and Wildlife Annex; not every item will be applicable to every situation.[20]

Introduction

This section generally should be completed in one, or possibly two paragraphs.

- General overview of the response strategy including: (1) a brief description - one to two sentences; (2) background, history, etc. as appropriate; (3) purpose of the response strategy; (4) identification of the species and designated critical habitat that may be affected (for consultations that will address large numbers of species, it may be desirable to present this list in the form of a table either attached or presented in another section. Also, if species that may potentially occur in the area are not included in this document, explain why).

This should be developed jointly by the action agency and the Services.

Description of the Proposed Response Strategy

- Provide a description of the response strategy being considered. This is likely to be a detailed description taken substantially from the ACP. It should include how the

[19] It is not required that this planning template be formally written or completed during informal consultation, especially if no modifications to the strategy are required. However, it can be very useful in documenting the [team's] thought process for the administrative record, serving as a guide, or providing additional documentation as needed.

[20] The guide on "Developing Consensus Ecological Risk Assessments" provides procedures which may be helpful in exploring and analyzing these issues. Copies can be obtained from USCG Headquarters (G-MOR-2).

response action will be implemented, including equipment and methods. Examples include use of dispersants to avoid shoreline impacts, and deployment of booms to protect sensitive areas. Include all known aspects of the action, such as time frames, why the action is appropriate, indirect effects, etc. An example of an indirect effect may be hauling boom on, or driving vehicles through, a sensitive dune area to gain access to a spill site.

This should be developed by the action agency with the assistance of the Services.

- Provide a description of specific area that may be affected by the response strategy (i.e. Sample Bay, 100-mile section of outer coastline, etc.). Include some measure of the area potentially impacted (i.e., "This plan addresses oil spill response activities that may be conducted out two miles from the coast throughout the 100 mile coastline area encompassed by this ACP"). If different activities are being proposed in different areas, identify this. The team should discuss the appropriateness of presenting this information in terms of the activities that will be conducted within each area, or the areas where each activity will be conducted. For example, "Dispersants may be applied throughout the 10 mile coastline length of Area A and the 25 mile coastline length of Area B." Maps may be useful.

  This should be developed mainly by the action agency; however, modifications may be made with the assistance of the Services and subject to the approval process for chemical countermeasures in the NCP as appropriate.

- Identify how to quickly obtain species/habitat information during a spill (i.e. first refer to ACP and site summary sheet, call State FWS, check website, etc.).

This should be developed jointly by the action agency and the Services.

- Identify emergency response points of contact to be notified during a spill. Establish spill parameters for notification as necessary. These should be included in emergency

notification numbers as well as on any site summary sheets, in geographic response plans, etc.

This should be developed jointly by the action agency and the Services.

Description of the Affected Environment

- Describe the listed species and designated critical habitat areas that may be affected by the action in terms of overall range and population status. Include the number and location of known subpopulations within and adjacent to the action area (i.e., identify the areas known to be used by the species and, if appropriate, identify the specific times periods of use, such as February - April). Discuss the action area in relation to the distribution of the entire population (e.g., edge of the range, center of population abundance, key reproductive area, etc.). Present views of Service recognized experts on the species, if appropriate.
  This should be provided by the Services.

- Ensure that these sensitive areas are referenced in the ACP (i.e. via ESI maps, specially generated GIS maps, site summary sheets, or other digitized format, etc.).
  This should be completed by the action agency.

- Provide biological data on listed species: historical use, presence, and potential use of habitat areas within the action area. Literature and other documents containing such information may be incorporated by reference. Provide species observation information, and recent results of species surveys, including, if appropriate, a description of methods, time of year surveys were performed, level of effort, and confidence intervals. Again, literature and other documents containing such information may be incorporated by reference. Maps may be useful to depict this information.
  The Services should assist in developing this information. In many instances the Services will be able to supply this information from their records.

- Identify other designated sensitive areas, both adjacent to and within the proposed action area. These include National Wildlife Refuges, National Marine Sanctuaries, etc.

This should be developed jointly by the action agency and the Services.

Analysis of the Effects of the Action

- Describe all effects of the response strategy relative to the listed species of concern and its habitat, including designated critical habitat. This should include direct, indirect, beneficial, and cumulative effects as well as effects from interrelated and interdependent actions, if any.
  This should be developed jointly by the action agency and the Services.

- Describe any measures that may avoid or lessen adverse effects as well as any measures that will enhance the species' present condition. If appropriate, delineate the locations of such measures. A discussion of environmental "tradeoffs" (including no action) may be appropriate. For example, "Dispersants may be toxic to the listed aquatic species when used in concentrations above 70%; however, oil coming ashore and smothering the listed species in tidal marshes is of greater concern due to the extremely poor conservation status of this species." Reference any already completed relevant reports, studies, biological assessments, etc.

This should be developed jointly by the action agency and the Services.

Modification to Strategy (as needed)

If necessary, after joint analysis of the information, the action or strategy may be modified.

- Describe the new strategy or action. For example, "Dispersants will not be used in concentrations above X% or in areas less than three feet deep. They may be used in Area A and Area B. A Service representative from Regional

field office B will be contacted during an oil spill response during the months of February - April in Area B."

This should be developed jointly by the action agency and the Services.

Documentation

This template is a guide to help you through the planning process, however, when sections are written out as the process is completed, the final document serves the same purpose as a biological assessment. It may be used to complete consultation pursuant to Section 7 of the ESA.

- The document should be maintained on file by the Services and may be referred to during an oil spill response.

- The Area Committee will ensure that this document becomes part of the ACP as appropriate such as:
  - Included as an appendix to the Dispersant or In Situ Burn Operations Plan;
  - Included as a reference document in the appropriate section of the ACP;
  - Include relevant information in sections of the ACP such as Notifications, Site Summary Sheets, Geographic Response Plans, GIS maps, etc.

- The document should include points of contact from both the action agency and the Services.

APPENDIX D

SAMPLE POLLUTION REMOVAL FUND AUTHORIZATION (PRFA) LANGUAGE*

This Statement of Work (SOW) language is intended as sample language only. The language can be tailored to ensure that the FOSC is provided with the resources needed to meet the desired activities or functions required. Accordingly, more precise or succinct language may be used.

PRFA SOW additional/optional work elements to meet the FOSC's ESA mandated activities associated with removal actions:
…..
To arrange for, and as appropriate coordinate with, the resources needed to meet the conference and consultation requirements of the ESA.
Specific activities anticipated under this requirement include:
(a) Providing the expertise needed to make sensitive removal decisions which could potentially impact on listed species or critical habitats associated with this incident;
(b) Gathering and documenting the information needed to provide input into the aforementioned decisions and to document the resulting impact of removal actions; and
(c) As required, preparing the consultations required of the FOSC for the Service(s).

Funding under this agreement is provided for:
(a) Salaries, travel and per diem;
(b) Appropriate charges for use of equipment or facilities;
(c) Any actual expenses for goods and/or services reasonably obtained in order to provide the agreed upon support to the FOSC removal activities (including contracts.)

* Developed by the National Pollution Funds Center

APPENDIX E

SAMPLE LETTERS FOR REQUESTING CONCURRENCE
OR FORMAL CONSULTATION

These sample letters have been developed to assist the Parties to this agreement in documenting the requirements of the Endangered Species Act. This is suggested wording only and may be used to complete the administrative record as needed. The request for concurrence can be used after the planning process for a particular area or countermeasure when it has been determined that no adverse effects will occur. The Services will provide a concurrence letter, as appropriate, for documentation. Alternatively, the request for formal consultation can be used after planning results indicate that adverse effects may still occur. If this is the case, the Services will evaluate the information developed jointly by the workgroup and issue a biological opinion.

Request for Concurrence Letter:

Mr./Ms. xxx
U.S. Fish and Wildlife Service/National Marine Fisheries Service
Division of Endangered Species

Dear Mr./Ms. xxx:

In accordance with the requirements of Section 7 of the Endangered Species Act, I am seeking your concurrence that the [Coast Guard's/EPA's] implementation of the [name of plan] is not likely to adversely affect the [identify the listed species and designated critical habitat that may be affected. Note, in cases where many listed species or critical habitat designations may be involved, it may be appropriate to refer to an attached list]. This [name of plan] has been developed with the assistance of [name of Service staff] of the U.S. Fish and Wildlife Service/National Marine Fisheries Service and in accordance with the procedures identified at 40 CFR Part 300, the National Contingency Plan. To assist in completing informal consultation, please find attached the Biological Evaluation that has been produced through the planning process described in the Inter-agency Memorandum of Agreement Regarding Oil Spill Planning and Response Activities Under the Federal Water Pollution Control Act's National Oil and Hazardous Substances Pollution Contingency Plan and the Endangered Species Act using the Planning Template contained in Appendix C of that Agreement.

Thank you for your efforts in this matter. If you require additional information, please contact [provide a contact with a telephone number].

Sincerely,

Request for formal consultation:

Mr./Ms. xxx:
U.S. Fish and Wildlife Service/National Marine Fisheries Service
Division of Endangered Species

Dear Mr./Ms. xxx:

In accordance with the requirements of Section 7 of the Endangered Species Act, I am requesting the initiation of Formal Consultation on the effects of the [Coast Guard's/EPA's] implementation of the [name of plan]. Through informal consultation with your staff [or identify the appropriate Service office(s)], we have determined that implementation of spill response activities in accordance with the subject [name of plan] is likely to result in adverse effects to [identify the listed species and designated critical habitat that may be affected. Note, in cases where many listed species or critical habitat designations may be involved, it may be appropriate to refer to an attached list]. This [name of plan] has been developed with the assistance of [name of Service staff] of the U.S. Fish and Wildlife Service/National Marine Fisheries Service and in accordance with the procedures identified at 40 CFR Part 300, the National Contingency Plan. While these actions may result in short-term adverse effects, it is our belief that the species [and designated critical habitat areas] will ultimately benefit from them. To assist in completing Formal Consultation, please find attached the Biological Evaluation that has been produced through the planning process described in the Inter-agency Memorandum of Agreement Regarding Oil Spill Planning and Response Activities Under the Federal Water Pollution Control Act's National Oil and Hazardous Substances Pollution Contingency Plan and the Endangered Species Act using the Planning Template contained in Appendix C of that Agreement.

Thank you for your efforts in this matter. If you require additional information, please contact [provide a contact with a telephone number].

Sincerely,

Appendix B

FOSC Funding Information for Oil Spills and Hazardous Materials Releases

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FOSC Funding Information for Oil Spills and Hazardous Materials Releases

U.S. Department of Homeland Security
United States Coast Guard

April 2003

PURPOSE

This document is designed to assist Federal On-Scene Coordinators (FOSCs) during oil spill and other hazardous material responses. The intent of this document is to provide an overview of financial aspects of spill response issues. It is not intended to be an all-inclusive guide on spill management issues or on the rights and liabilities of polluters and those damaged by pollution as defined by the Oil Pollution Act (OPA) or the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

FOSC Funding Information for Oil Spills and Hazardous Materials Releases

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I. WHAT IS THE OSLTF?

The Oil Spill Liability Trust Fund (OSLTF or Fund) is a billion-dollar fund established as a source of money to pay removal and certain other costs and damages resulting from oil spills or substantial threats of oil spills to navigable waters of the United States. The OSLTF is used for costs not directly paid by a responsible party (RP) or guarantor, including costs to respond to "mystery spills" for which there is no identified RP.

The United States Coast Guard's National Pollution Funds Center (NPFC), in Arlington, Virginia, manages the OSLTF.

II. ACCESS TO THE OSLTF

FEDERAL WATER POLLUTION CONTROL ACT OIL SPILL RESPONSE AUTHORITY

- Federal On-Scene Coordinators may access the OSLTF Emergency Fund to respond to an oil spill under the President's FWPCA authority (33 U.S. Code § 1321(c)).
- Removal of a discharge or prevention and mitigation of a substantial threat of a discharge of oil into or on the navigable waters, adjoining shorelines, and the Exclusive Economic Zone (EEZ).

WHO CAN ACCESS THE FUND

- **All Federal On-Scene Coordinators (FOSCs)** obtain immediate access to a funding account and ceiling for incident response by accessing the Ceiling and Number Assignment Processing System (CANAPS) on the Internet: www.npfc.gov/canaps (see page 5).
- **Other Federal, state, local, and Indian tribal government agencies** assisting the FOSC get reimbursable funding authority via a FOSC-approved Pollution Removal Funding Authorization (PRFA). NPFC will work with the FOSCs, the agencies, and the Incident Command (IC)/Unified Command (UC) to set PRFAs in place.
- **States** may opt to access up to $250,000 via the Oil Pollution Act's State Access provision. FOSCs still provide initial coordination of the request and subsequent oversight and coordination.
- **Federal Lead Administrative Trustees (FLATs)** may submit an Initiate Request to the NPFC to fund the initiation of a Natural Resource Damage Assessment (NRDA).
- **Natural Resource Trustees** designated by the President of the United States, state, territorial governor, or Indian tribal governing authority may submit natural resource damage (NRD) claims to the NPFC for NRD costs not paid by the RP.
- **Claimants** (individuals, corporations, and government entities) can submit claims for uncompensated removal costs or certain damages (natural resources, real/personal property, loss of profits, loss of subsistence use of natural resources, loss of government revenues, and increased costs of government services) caused by the oil spill to the NPFC if the RP does not satisfy their claims. NPFC adjudicates the claims and pays those with merit. RPs can submit claims provided that:

- the total of all response costs and damage claims exceed the RP's statutory limit of liability, or
- the spill was solely caused by a third party, an Act of God, or an Act of War.

COSTS FOR THE FOLLOWING CAN BE CHARGED TO THE OSLTF

- **Removal** – includes cleanup contractors (Oil Spill Response Organizations or OSROs), overtime for government personnel, equipment used in removal (generally at established standard rates or lease costs), testing to identify the type and source of oil, disposal of recovered oil and oily debris, and preparation of associated cost documentation
- **Natural Resource Damages** – refers to costs to restore, rehabilitate, replace, or acquire the equivalent of the injured resource; any interim lost use or diminution in value of the injured resource pending restoration; and the reasonable cost of assessing those damages
- **Claims** for removal and damages

LIMITATIONS TO ACCESSING THE OSLTF

- The maximum, per case, is $1 billion, or the balance in the OSLTF, whichever is less.
- Removal funding (including response to a substantial threat) and Initiate request funding are limited to the funds available in the OSLTF Emergency Fund that receives and additional $50 million on October 1st of each fiscal year.
- There is a maximum of $500 million per case to satisfy NRD claims and assessments.
- Initiation of NRDA costs may be paid out of the Emergency Fund, subject to its availability and the process through which the funding was requested.
- The discharge (or substantial threat of discharge) must impact navigable waters of the United States [including the 200-mile Exclusive Economic Zone (EEZ)].

III. NATIONAL POLLUTION FUNDS CENTER SUPPORT ROLE

SERVICES NPFC *CAN* PROVIDE DURING A SPILL

- Serve as troubleshooters and the spokesperson for all OSLTF access, documentation, and claims issues. NPFC personnel can be dispatched to the Incident Commander (IC). In a Spill of National Significance (SONS), NPFC may be called upon to head the Finance Section under the Unified Command System (UCS) or Incident Command System (ICS)
- Assure that the OSLTF ceiling for the FOSC's removal efforts remains adequate and is adjusted as needed
- Assist in tracking obligations against the ceiling
- Advise the FOSC of the remaining ceiling balance
- Advise and assist in RP identification

- Provide information concerning validity of an RP's Certificate of Financial Responsibility (COFR) and guarantor identity for vessel spills
- Provide information concerning RP limits of liability (LOL)
- Prepare and deliver, with FOSC concurrence, Notices of Designation (including appropriate advertising requirements) to RPs
- Advise the FOSC and act as the FOSC's spokesperson on any matters related to the RP's response to the Notice of Designation
- Oversee the RP's efforts to advertise for claims or arrange for NPFC to advertise if the RP fails to do so or if an RP has not been identified
- Help negotiate and execute Pollution Removal Funding Authorizations (PRFAs) with any other Federal, state, local or Indian tribal government agency that the FOSC decides to use as part of the incident response and work with representatives of other agencies to ensure that their cost documentation is adequate for approval of reimbursement and supports cost recovery from the RP
- Negotiate and execute any requested funding agreement for Initiation of Natural Resource Damage Assessments (NRDA) with the Federal Lead Administrative Trustee (FLAT); Initiate requests are handled directly between the NPFC and the FLAT, but NPFC personnel coordinate the preassessment activities of the NRDA with the FOSC
- Handle all OPA claims-related issues, assist the FOSC in documenting the incident's impact with respect to potential claims, notify all RPs and guarantors when there are multiple RPs and arrange for adjudication of claims either directly or by the RP and answer claims-related questions for the FOSC
- Provide guidance on gathering/consolidating daily cost data and preparing the daily cost estimate summary for inclusion in Pollution Reports (POLREPs)
- Provide financial advice and forms for daily resource cost documentation and ensure that Coast Guard resources participating under the FOSC's direction satisfactorily complete this documentation and monitor and help troubleshoot cost documentation problems
- Provide legal advice, as required, in coordination with the relevant Command's servicing legal office

SERVICES THAT NPFC *CANNOT* PROVIDE DURING A SPILL

- NPFC case officers **do not** have contracting authority and cannot act as a contracting officer (KO). With the exception of contractor support for RP identification, support for commercial contracts for oil spill clean-up actions must come from the District staff or from the Maintenance and Logistics Command (MLC) contracting staff. This may require that a KO be temporarily assigned to the UCS/ICS.
- NPFC case officers **do not** act as the FOSC's general finance officer or logistics officer, **other than** in the capacity of designated UCS Finance Section Chief during a SONS.
- NPFC **does not** validate utilization of resources. It is important that the FOSC assign individuals under FOSC direction to validate and track personnel and equipment employed during the spill response. This includes both Coast Guard and commercial resources used at specific clean-up sites and within the UCS/ICS. Generally, the

individuals who validate the use of personnel and equipment are separate from the FOSC's pollution response on-scene representatives. **Other governmental agencies (OGAs)** must document their own costs of participation in order to be reimbursed under their PRFA agreements. Individuals responsible for validating resource utilization should, where possible, note the movement of OGA personnel into and out of a site.

IV. OPA RESPONSIBLE PARTY LIABILITY ISSUES

COFR REQUIREMENTS/ROLE OF GUARANTOR

- Prior to any vessel >300 gross tons operating in U.S. waters, the owner/operator must obtain a Certificate of Financial Responsibility (COFR). This COFR is only issued if the owner/operator provides evidence of financial responsibility to pay for removal costs and damages up to the vessel's limit of liability (LOL). A vessel's liability limit is based on its gross tonnage and vessel type (e.g., higher limits apply to tank vessels than cargo vessels).
- RPs are permitted to self-insure their financial responsibility requirements. In most cases that involve self-insurers, they also have other insurance through a guarantor who is contractually obligated to pay. In these cases, the U.S. government does not have OPA Direct Action Rights against the other insurer.

DETERMINING LIMITS OF LIABILITY

- When vessel identity is reported in a spill incident, NPFC will provide information regarding potential statutory LOL to which an RP may be entitled; however, entitlement to the LOL is not usually well defined until long after the response. This issue may be resolved in litigation.
- What happens if the RP can only pay to their LOL?
  - *The OSLTF will provide continued funding if the RP stands down or cannot pay.*
- What happens if the RP pays more than their LOL?
  - *The RP may submit a claim to the NPFC for excess removal costs and damages. The claim will be adjudicated according to the claims provisions in OPA and the claims regulation. The RP will be compensated for all excess removal costs and damages to which the RP is entitled under OPA.*
- Entitlement to the LOL is lost if the RP fails or refuses:
  - to report the incident as required by law
  - to provide all reasonable cooperation and assistance requested by the FOSC in connection with removal activities; or
  - without sufficient cause, to comply with an order issued by the FOSC

RP'S ROLE IN THE RESPONSE PROCESS

- **The RP has primary responsibility** for response to a spill incident, including setting up the ICS and joining with the FOSC and state on-scene coordinator (SOSC) in the UC.

- Even when the RP leads a reasonable response effort, **the FOSC is always in ultimate command** and may decide to direct specific action or, for whatever reason it is deemed necessary, actually take the lead role in the response.

- The RP faces challenges to balance their corporate response with the desires of the FOSC given cost, environmental, political, and public relations/media impacts. The FOSC's responsibility extends further than taking appropriate action if the RP's response is inadequate. The FOSC should be aware that the RP might request reimbursement from the OSLTF via the claims route if the RP exceeds the LOL or has a complete defense to liability. The FOSC should identify those times when a response may be inflated beyond the level necessary to ensure removal of the oil and should notify the RP and the NPFC of this observation.

RP'S ROLE IN THE CLAIMS PROCESS

- An RP has primary responsibility for handling claims, including advertising, adjudication, and payment.

- The RP may establish a claims office to serve the affected area for spills with large claims potential.

- If the RP is deficient, NPFC will perform the claims adjudication function and charge the cost to the RP.

- The NPFC will assure that all of the above responsibilities are met.

V. FUNDS MANAGEMENT

CANAPS

- The Ceiling and Number Assignment Processing System (CANAPS) automates and centralizes the creation and management of project numbers and ceilings for Federally funded responses initiated by Federal On-Scene Coordinators (FOSCs).

- CANAPS is a Web-based tool available at: http://www.npfc.gov/canaps

- CANAPS collects basic incident information via a user-friendly, Internet "wizard" and immediately assigns a project number and the requested spending ceiling – up to a preset limit. An email confirmation of the project number and ceiling is sent to the requesting FOSC. CANAPS then creates the required official message and releases it through the Coast Guard Messaging System (CGMS).

- A field user tutorial is available. The tutorial is a helpful, comprehensive document that steps users through the process of opening and modifying a Federal Project. The tutorial is available at:

  http://www.uscg.mil/hq/npfc/canaps/Tutorial/CANAPS_Field_Tutorial.pdf

- Ceiling and Project Limits
  - Federal Project Numbers (FPNs) can be opened by EPA and USCG FOSCs for the removal of oil using the Oil Spill Liability Trust Fund (OSLTF).
  - CERCLA Project Numbers (CPNs) can be opened by USCG FOSCs for the removal of hazardous substances using Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) funds. The EPA has its own process for opening Superfund projects outside of CANAPS.
  - The need to manage the respective funds requires limits to the amount of money that can be obligated automatically by the CANAPS system before having to speak to the National Pollution Funds Center (NPFC).
  - The USCG can open FPNs up to $500K and CPNs up to $249,999.
  - The EPA can open FPNs up to $250,000.
  - These thresholds are subject to change based on the availability of funds. Additional money is available. If the project is going to grow beyond these limits, contact the NPFC to request additional funding.
- User IDs and Passwords
  - Access to CANAPS is controlled by use of user IDs and passwords, which are administered by the NPFC and are specific to the FOSC's Unit or Region.
  - Access keys are changed quarterly.
- Demonstration Version
  - A demonstration version of the CANAPS software is available at: http://www.npfc.gov/canapsv2demo
  - The user ID for the demonstration version is Demo, and the password is DEMO.

CONSIDERATIONS FOR ESTIMATING THE TOTAL COSTS OF THE SPILL

- RP Limits of Liability (LOL)
  - An RP can't be assured LOL will hold until investigation and possible litigation are resolved.
  - An RP who holds a COFR and exceeds the established LOL is expected to continue the response and file a claim for the actual costs in excess of the LOL.
  - An RP's involvement – and the increased probability of cost recovery – is more likely with the presence of a COFR guarantor or "other insurer."
  - An RP's P&I coverage, the "other insurance," is often considerably greater than the LOL.

- RP Responsiveness
  - Media and public interest and political awareness often influence an RP's responsiveness.
- RP Spending Past LOL
  - RPs and their guarantors often continue to provide funding and support after exceeding the LOL (for which the RP may subsequently submit a claim to the NPFC for excess costs). The determination of whether or not this will be the case must be made as soon as it is feasible to minimize potential transition issues and to quickly estimate potential impacts to the OSLTF.
  - RP's spending and applicability of liability limits are usually not well defined until long after the response, especially in cases subject to litigation.

TRACKING DAILY BURN RATE FOR REMOVAL

- The FOSC tracks the daily costs (burn rate) for an incident. The RP may not be forthcoming with this data for legal or public relations reasons. These costs include:
  - costs incurred by the OSLTF **plus** USCG resource usage (personnel, equipment, Marine Safety Laboratory, etc.)
  - other government agencies (Federal, state, local) support costs
- Early warning is required to forecast ceiling increases so NPFC can estimate time to Fund depletion by tracking burn rates for each activity

NOTE: Regardless of whether the RP or the FOSC directs the response, government personnel, and equipment used in the response are considered a billable resource.

ANALYZING AND MONITORING POTENTIAL DAMAGE CLAIMS COSTS

- Typically, claims are presented long after removal is over. Claims must be first submitted to the RP. If the RP denies responsibility, or if 90 days passes without a settlement, claimants can submit the claim to the NPFC.
- Claims costs may be far greater than removal costs.
- Some key factors that drive up claims costs are:
  - area and length of time for fisheries closures [National Marine Fisheries Service (NMFS) may make this call]
  - affected traffic and length of time for shipping lane closures
  - population and commercial density of affected area
  - magnitude and length of time for business interruptions
  - extent of impact on environmentally sensitive areas

FUNDING CONSIDERATIONS FOR NRDAS

- FLATs may request obligation of funds from NPFC for NRDA initiation.
- Ceiling allocations and reimbursement for initiation of NRDAs are funded from the OSLTF Emergency Fund.
- Up-front or after-the-fact funding for assessment, restoration, and/or emergency restoration is available from the OSLTF through the claims process.
- Any natural resource trustee (Federal, state, or tribal) may submit claims for NRD.
- Claims payments are based on approved plans.
- SONS presents high potential that removal costs and other claims may consume most of the OSLTF prior to NRD needs being met

CEILING MANAGEMENT IN THE EVENT OF MULTIPLE INCIDENTS

- Two or more major spills (non-SONS) may deplete the Emergency Fund.
- The Emergency Fund apportionment of $50 million per annum occurs at the start of each fiscal year. The Fund is drawn down for the rest of the year and could be substantially depleted by late in the fiscal year.
- Starting in FY 2003, advancements of up to $100 million are available.

OSLTF EMERGENCY FUND ADVANCEMENT AUTHORITY

- **May supplement the Emergency Fund** – The Coast Guard was recently given authority to advance up to $100 million from the OSLTF to supplement Emergency Fund shortfalls.
- **Notification** – The Coast Guard must notify Congress within 30 days after an advance as to the amount advanced and the facts and circumstances necessitating the advance.
- **Impact on Responses** – This advancement authority does not provide for any new or different uses of the Emergency Fund for Federal response, but may help the Coast Guard ensure funds will be available for Federal response when needed and are not delayed when a costly response threatens the balance of the Emergency Fund.

FUNDING CONSIDERATIONS FOR MULTIPLE RP INCIDENTS

- Spill size alone does not determine the impact on the Fund. The RP's LOL, assets, and responsiveness are equally important.
- FOSCs must segregate all costs among incidents.
- Portions of discharged oil from multiple incidents could eventually co-mingle. RPs may need to decide how to pay claims resulting from the co-mingled oil, usually after removal operations cease.

FUNDING CONSIDERATIONS FOR MIXED OIL AND CERCLA INCIDENTS

- Presence of hazardous substances may create a mixed spill [co-mingled oil and hazardous substance(s)] or constitute a single response.

- A co-mingling scenario will generally be a Superfund response, although EPA and the USCG have not established a precise definition to distinguish between the two types of responses.
- A mixed site scenario requires that all costs be assigned to separate records for OSLTF or CERCLA cases. The FOSC must have both an FPN (Federal Project Number) for the OSLTF-funded removal actions and a CPN (CERCLA Project Number) for the hazardous substance response actions.

  NOTE: FPN/CPN generated by CANAPS
- When substances are not mixed, a single incident may also include a response that falls under OSLTF and CERCLA.
- The NPFC **cannot** pay claims for uncompensated removal costs or damages arising from a release of a hazardous substance.

VI. CLAIMS PROCESS

WHAT CLAIMS ARE COMPENSABLE

- uncompensated removal costs
- loss of profits or earning capacity
- net loss of Federal, state, or local government revenues
- net costs to state or local governments for increased public services
- loss of subsistence use of natural resources
- damages to real or personal property
- natural resource damages

RP'S ROLE

- The RP and guarantor will receive a Notice of Designation (NOD). The RP has five days to deny designation.
- If the RP does not deny the designation, they have 15 days to respond by advertising their designation and the procedures for submitting claims.
- The RP, if fully responsive to the requirements in OPA, will assume the entirety of claims responsibilities: advertising, receipt, adjudication, and payment of claims. The NPFC will monitor closely to assure compliance.
- Claimants (other than states submitting claims for uncompensated removal costs) must first present their claims to the RP or the RP's guarantor.
- State removal cost claims are permitted to go directly to the NPFC.
- A claimant can elect to commence action in court against the RP or present the claim to the NPFC if the RP does not settle a claim within 90 days after filing.

NPFC'S ROLE IF RP DENIES DESIGNATION OR IS UNKNOWN

- The NPFC, if assuming claims responsibility, will arrange for advertising, receipt, adjudication, and payment of claims.
- The NPFC will assume claims responsibility if the RP denies designation; if the RP's claims response does not comply with OPA; or if the RP cannot be identified.
- The NPFC also accepts claims when the claimant has presented a claim to the RP and the RP does not settle it within 90 days of presentment.

NEED FOR ON-SITE CLAIMS OFFICE

For a major spill, either the RP or the NPFC may establish one or more claims offices in the area of greatest impact.

REQUIREMENT TO PAY INTERIM CLAIMS

- Either the RP or the NPFC can pay interim claims with appropriate documentation.
- An interim payment does not limit a claimant's right to claim for other damages not paid or addressed under the interim claim.

IMPORTANCE OF ADDRESSING CLAIMS ISSUES IN PRESS RELEASES

- Damaged parties are major public affairs clients.
- NPFC will provide information to help the Joint Information Center (JIC) educate the public. This may be a copy of the RP's advertisement and explanation of the RP's claims process and/or copies of the NPFC Claimant's Guide and phone numbers.
- Claims will be paid more quickly if the public knows the procedures. The need for good documentation by the claimant is especially important and is something that should be stressed in press releases.

VII. NATURAL RESOURCE DAMAGES

DEFINITION

"Natural resources" includes land, fish, wildlife, air, water, ground water, surface water, and other such resources belonging to, managed by, held in trust by, pertaining to, or otherwise controlled by the United States [including Exclusive Economic Zone (EEZ) resources], any state or local government or Indian tribe, or any foreign government.

WHO ARE THE NATURAL RESOURCE TRUSTEES

FEDERAL

- Department of Agriculture
- Department of Commerce
- Department of Defense
- Department of Energy
- Department of the Interior

STATE

State trustees are any state agency designated by the state's Governor to serve as the natural resource trustee.

TRIBAL

Tribal trustees are federally recognized tribes that have governmental authority over lands. This does not include Alaska native regional or village corporations.

ROLE OF TRUSTEES IN THE FUNDING PROCESS

- Trustees must coordinate with each other during all phases of NRDA to ensure no double recovery of damages.
- In the pre-assessment phase of a NRDA, all affected trustees must select a Federal Lead Administrative Trustee (FLAT), who is then responsible for coordinating the effort and submitting necessary paperwork to NPFC.
- Trustees assess damages for "injury to, destruction of, loss of, or loss of use of" natural resources.
- Trustees develop restoration alternatives to address any injury to natural resources, from which they select the most appropriate alternative to implement.
- Trustees must also coordinate with the FOSC during the NRDA process to avoid interference with the ongoing response.

COMPENSABLE NATURAL RESOURCE DAMAGES

- Costs to restore, rehabilitate, replace, or acquire the equivalent of the injured resource
- Any interim loss of use or diminution in value of the injured resource pending restoration
- The reasonable cost of assessing NRD damages

COORDINATION FOR NRD WITH THE RESPONSIBLE PARTY

- The RP has primary responsibility to pay all of the costs/damages listed in previous sections.
- The trustees are encouraged, but are not required, to first seek Initiate funding from the RP for pre-assessment activities.
- Trustees must first present claims to the RP or the RP's guarantor. If the RP is not responsive and/or refuses to pay, trustees can come to the Fund for relief.
- If the RP does not settle a claim within 90 days after filing, a claimant can elect to commence action in court against the RP or present the claim to the NPFC.

NRD CLAIMS PROCESS – ROLE OF OSLTF/NPFC IF RP DOESN'T PAY

- If the NPFC assumes claims responsibility, then NPFC will arrange for receipt, adjudication, and payment of claims.
- A contractor may be hired to analyze the supporting information submitted by the claimants.

NRD IMPACT ON THE LIFE CYCLE COST OF SPILL

- Natural resource damage costs can become substantial.
- Damages in environmentally sensitive areas (e.g., wetlands) may be very costly. Many variables figure into the overall cost, including the nature of the product spilled, duration of spill, time of year, response-related conditions, etc.
- Costs may not be known or estimable for months or years after the response is complete.

VIII. CERCLA / WEAPONS OF MASS DESTRUCTION

COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA) FUND USE CRITERIA

- The spilled substance must be a hazardous substance, pollutant, or contaminant.
- The substance cannot be oil; if oil is contaminated with CERCLA substances, then it is a CERCLA substance (e.g., oil contaminated with PCBs).
- The substance must impact land, water, or air in U.S. states, territories, possessions, and the EEZ.
- The substance must pose an imminent and substantial threat to public health or welfare.
- Immediate emergency response is necessary.
- CERCLA allows the FOSC to pre-position response assets, such as the Strike Teams, when there is potential for an incident involving a vessel offshore.
- CERCLA allows Coast Guard and EPA FOSCs response flexibility in dealing with threats of an unknown nature (e.g., an anthrax response).

LEGAL/REGULATORY FRAMEWORK FOR RESPONSE

- The Commanding Officer of the Marine Safety Office (MSO) is the pre-designated FOSC and is in charge of the response.
- CERCLA, as amended, is the statutory basis for response.
- Response operations must comply with the NCP.

NON-COAST GUARD PARTICIPANTS

- The funding process for the OSLTF and CERCLA, from the FOSC perspective, is the same. When the FOSC accesses the Superfund for response, the full resources of the NCP are at his/her disposal.
- The FOSC can hire contractors through BOA agreements or new contracts.
- The FOSC, as with oil spills, can provide funding to Federal, state, and local government responders through incident-specific PRFAs.
- For CERCLA cases, costs are tracked and RPs are billed for those costs. CERCLA does not, however, have the same claims provisions as OPA. Generally, CERCLA does not pay claims filed by injured third parties who must pursue damages through the courts.

IX. STAFFORD ACT / FEMA

STAFFORD ACT FUND USE CRITERIA

- There must be a Presidential Declaration of Disaster (natural or other).
- The affected state that has requested assistance will contribute matching funds.
- FEMA has to issue a Mission Assignment (MA) to the Coast Guard identifying the work to be done and authorizing spending.
- Use of Stafford Act funds differs from typical pollution response. States are expected to deal with most problems, and the Federal government only becomes involved when state resources are not sufficient for the disaster response.
- Stafford Act responses can be geographically limited (e.g., certain counties in a state).

LEGAL/REGULATORY FRAMEWORK FOR RESPONSE

- When the President issues a Disaster Declaration, FEMA establishes a senior official as the Federal Coordinating Officer (FCO). The FCO determines which parts of the Federal Response Plan (FRP)- will be activated and which actions the Federal government will support.
- The FCO is paired with a state counterpart, the State Coordinating Officer (SCO), and the two, working together, oversee the combined state/Federal response.
- The SCO also must approve all Mission Assignments, since the state normally must provide matching resources or funds (10% - 25%) for every Stafford Act dollar spent.
- Under certain circumstances, the Presidential Declaration may waive the matching fund (State Match) requirement. (e.g., this was done for the World Trade Center and the Shuttle Columbia responses).

NON-COAST GUARD PARTICIPANTS

- The funding process for Stafford Act Pollution Response (ESF-10), from the FOSC perspective is similar but not identical to oil or hazardous materials responses.
- Coast Guard Stafford Act responses must have an approved FEMA Mission Assignment (MA) in place or the Coast Guard cannot seek reimbursement after the response is completed. The FEMA MA defines what is to be done, where, and sets a spending limit.
- When the FOSC utilizes Stafford Act Funds, most of the resources of the NCP are at his/her disposal, including contractors and other Federal agencies (but not state or local agencies).
- The FOSC can hire contractors through BOA Agreements.
- The FOSC can provide funding to Federal government responders through incident-specific PRFAs (but not state or local agencies).
- The Stafford Act provides separate and distinct claims procedures for Third Party claims within its overall disaster response system in the FRP.

X. TERRORISM AND FEDERAL RESPONSE AUTHORITY

- Whether terrorism or any other criminal act is the cause of an oil spill does not affect the President's authority to respond to the spill or use the OSLTF Emergency Fund in that response, nor does not affect the applicability of the OPA Title I liability and compensation regime. The OSLTF is available to pay if the responsible party does not pay removal cost and damages claims.
- Terrorism or other criminal acts that cause an oil spill MAY present a liability defense. Such acts that cause a spill may give rise to a defense from OPA liability for responsible parties (e.g., owners or operators of vessels) if certain defense criteria are met. Whether a defense may apply often requires a fact-intensive analysis and often cannot be resolved until the circumstances of the spill have been fully investigated.

ADDITIONAL REFERENCES

Available via http://www.uscg.mil/hq/npfc

- NPFC User Reference Guide – available on CD-ROM
- Interim Claims Regulation
- Claimant Guide
- Supplemental Claims Guidance
- Natural Resource Damage Funding Guidelines
- Technical Operating Procedures
  - Resource Documentation
  - Removal Cost (Oil)
  - Removal Cost (CERCLA)
  - Designation of Source

ACRONYM LIST

BOA	Basic Ordering Agreement
CANAPS	Ceiling and Number Assignment Processing System
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
CGMS	Coast Guard Messaging System
COFR	Certificate of Financial Responsibility
CPN	CERCLA Project Number
EEZ	Exclusive Economic Zone
EPA	U.S. Environmental Protection Agency
ESF-10	Emergency Support Function #10 (Hazardous Materials Annex – Federal Response Plan)
FCO	Federal Coordinating Officer
FEMA	Federal Emergency Management Agency
FLAT	Federal Lead Administrative Trustee
FOSC	Federal On-Scene Coordinator
FPN	Federal Project Number
FRP	Federal Response Plan
FWPCA	Federal Water Pollution Control Act
IC	Incident Commander
ICS	Incident Command System
JIC	Joint Information Center
KO	Contracting Officer
LOL	Limit of Liability
MA	Mission Assignment
MLC	Maintenance and Logistic Command
MSO	Marine Safety Office (USCG)
NCP	National Contingency Plan
NMFS	National Marine Fisheries Service
NPFC	National Pollution Funds Center
NOD	Notice of Designation
NRD	Natural Resource Damage
NRDA	Natural Resource Damage Assessment
OGA	Other Government Agency(ies)
OPA	Oil Pollution Act
OSLTF	Oil Spill Liability Trust Fund (the Fund)
OSRO	Oil Spill Response Organization
P & I	Protection and Indemnity Insurance
PCB	Polychlorinated biphenyls
PRFA	Pollution Removal Funding Authorization
POLREPS	Pollution Reports
RP	Responsible Party
SCO	State Coordinating Officer
SOSC	State On-Scene Coordinator
SONS	Spill of National Significance
UC	Unified Commander
UCS	Unified Command System
USCG	United States Coast Guard