

1 **MEMORANDUM OF UNDERSTANDING**

2 **between**

3 **THE NATIONAL OCEAN SERVICE/NATIONAL OCEANIC AND ATMOSPHERIC**
4 **ADMINISTRATION**

5 **and**

6 **THE NATIONAL POLLUTION FUNDS CENTER/UNITED STATES COAST GUARD**

7 **For Funding and Reimbursement in Support of**

8 **United States Coast Guard On-Scene Coordinator**
9 **for Oil and/or Hazardous Substance Removal**

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1 **I. PURPOSE**

2
3 Under Section 311 of the Clean Water Act, and Section 104 of the Comprehensive
4 Environmental Response, Compensation and Liability Act of 1980 (CERCLA), the
5 United States Coast Guard (USCG) is responsible for ensuring removal of discharges or
6 releases of 1) oil and/or 2) hazardous substances in the coastal zone as defined by the
7 National Oil and Hazardous Substances Pollution Contingency Plan (NCP). Upon request
8 by the Federal On-Scene Coordinator (FOSC), the National Oceanic and Atmospheric
9 Administration (NOAA) Scientific Support Coordinator (SSC), provides support services
10 to the FOSC related to scientific issues affecting the removal. NOAA may also provide
11 other services to the FOSC during a removal as a member of the Regional Response
12 Team. This Memorandum of Understanding (MOU) identifies the cost reimbursement
13 protocols for those services. This agreement does not address protocols, services, or
14 incident costs associated with the Natural Resource Damage Assessment activities.

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1 **II. DEFINITIONS**

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3 A. Federal On-Scene Coordinator (FOSC)

4 The FOSC is the Federal official pre-designated by the USCG to coordinate and direct
5 responses under subpart D or E of the NCP (40 CFR §300.5).

6
7 B. Scientific Support Coordinator (SSC)

8 When designated by the FOSC, the NOAA SSC is the principal advisor for
9 scientific issues, communication with the scientific community, and coordination of
10 requests for assistance from state and Federal agencies regarding scientific studies.

11 The SSC may serve on the FOSC's staff supporting the Unified Command or within
12 the Planning or Operational Component of the Incident Command System and may, at
13 the FOSC's request lead a scientific team to provide scientific support for operational
14 decisions.

15
16 C. Regional Response Team (RRT)

17 The National Response System (NRS) is the mechanism for coordinating response
18 actions by all levels of government in support of the FOSC. The NRS organization is
19 divided into national, regional, and area levels. National planning and coordination is
20 accomplished through the National Response Team (NRT). The NRT consists of
21 representatives from 16 Federal agencies. Regional planning and coordination of
22 preparedness and response actions is the responsibility of the RRT. The RRT agency
23 membership parallels that of the NRT, but also includes state, and sometimes, local
24 representation. RRT members provide FOSCs with assistance from their respective
25 Federal agencies commensurate with agency responsibilities, resources, and
26 capabilities within that region.

1 D. Remove or Removal

2 “Remove” or “removal” is defined in 33 USC 1321 (a) to mean “containment and
3 removal of the oil or hazardous substances from the water and shorelines or the taking
4 of such other actions as may be necessary to minimize or mitigate damage to the
5 public health or welfare, including, but not limited to, fish, shellfish, wildlife, and
6 public and private property, shorelines, and beaches.”

7
8 E. Removal Costs

9 “Removal costs” is defined in 33 USC 2701 (31) as “the costs of removal that are
10 incurred after a discharge of oil has occurred or, in any case in which there is a
11 substantial threat of a discharge of oil, the costs to prevent, minimize, or mitigate oil
12 pollution from such an incident.” Note that the terms “response” and “remediation” are
13 not used in OPA.

14
15 F. NOAA Hazardous Materials Response Division (HAZMAT)

16 HAZMAT provides critical advice on science and other natural resource issues to the
17 Federal On-Scene Coordinators (FOSCs) during the Federal government’s response to
18 coastal oil and hazardous materials spills or substantial threat of release. Scientific
19 Support Coordinators (SSCs) lead the scientific support team at spills, drawing on the
20 team’s spill trajectory estimates, chemical hazards analyses, and assessments of the
21 sensitivity of biological and human-use resources to help the FOOSC make timely
22 operational decisions. NOAA spill response personnel work closely with the FOOSC to
23 respond to about 100 accidental releases each year.

1 **III. REFERENCES AND AUTHORITIES**

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4 A. NOAA

- 5 1. Costs incurred by NOAA or other entities for conducting scientific studies not in
6 support of the FOSCs' actions (40 CFR §300.33j (d)) are not covered under the
7 provisions of this MOU.
- 8 2. Public Law 102-567 authorizes the types of allowable costs to be reimbursed to
9 NOAA for spill response. The allowable costs include incremental and base
10 salaries, ships, aircraft, and associated indirect costs. Allowable costs do not
11 include base salaries and benefits of NOAA [Scientific] Support Coordinators.

12
13 B. Coast Guard

- 14 1. 40 CFR §300.145 provides for the FOSC to request and utilize a NOAA SSC as the
15 principal advisor for scientific issues, communication with the scientific
16 community, and coordination of requests for assistance from state and Federal
17 agencies regarding scientific studies.
- 18 2. Under 40 CFR § 300.322(c)(3), the lead agency or Regional Response Team (RRT)
19 shall dispatch appropriate personnel to the scene of the discharge to assist the FOSC
20 upon his request. This assistance may include technical support in the agency's
21 areas of expertise and disseminating information to the public. Where the USCG
22 FOSC requests assistance from a Federal agency, the parties will execute a
23 Pollution Removal Funding Authorization (PRFA) (NPFC Technical Operating
24 Procedures, Ch. 3) to govern reimbursement.
- 25 3. The USCG is the fiduciary for the Oil Spill Liability Trust Fund (OSLTF)
26 established under Title 26 USC 9509. OPA 90 and Presidential delegation have
27 assigned management of the use of the OSLTF to the USCG. The OSLTF is
28 available to pay oil removal costs that are consistent with the NCP (33 USC
29 2712(a)).
- 30

- 1 4. Section 104 of the Comprehensive Environmental Response, Compensation and
2 Liability Act of 1980 (CERCLA) authorizes the President to act "...whenever (a)
3 any hazardous substance is released or there is a substantial threat of such a release
4 into the environment, or (b) there is a release or substantial threat of release into the
5 environment of any pollutant or contaminant which may present an imminent and
6 substantial danger to the public health or welfare ..." Superfund is the source of
7 funds for CERCLA removal costs incurred by the USCG. Such costs are
8 reimbursed by the EPA via interagency agreements between the EPA and USCG.
9 The agreement and applicable instrument of re delegation covers costs incurred by
10 the USCG in carrying out functions related to immediate removal actions at
11 facilities and responses to releases or threats of releases from vessels. Costs
12 incurred by NOAA under CERCLA in support of the USCG are covered through
13 this MOU; NOAA's costs are reimbursed to the USCG through the USCG/EPA
14 interagency agreement to the extent NOAA's costs have not already been paid by
15 Superfund.
- 16 5. The FOSC and the trustees shall coordinate assessments, evaluations,
17 investigations, and planning that impacts removal actions. The FOSC shall consult
18 with the affected trustees on the appropriate removal action to be taken. The
19 trustees will provide timely advice concerning recommended actions with regard to
20 trustee resources potentially affected (40 CFR § 300.305(e)).
- 21 6. When requested by the FOSC, the lead agency or RRT shall dispatch appropriate
22 personnel to the scene of the release (of a hazardous substance) to assist the FOSC.
23 This assistance may include technical support in the agency's areas of expertise (40
24 CFR § 300.415(c)(3)(iii)).
- 25 7. Chapter 3 (Removal Actions-Oil & HAZMAT) of the National Pollution Funds
26 Center User Reference Guide provides guidance on the use of the OSLTF and
27 Superfund, along with applicable regulations and background information. The
28 Reference Guide is divided into topics that are briefly explained in Appendix A.
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1 **IV. NOAA SUPPORT TO AN OIL OR HAZARDOUS MATERIALS SPILL**

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3 **A. Scientific Support Team (SST) Support**

4 Depending upon the magnitude of the spill, HAZMAT SSCs can be supported by a
5 Scientific Support Team (SST). The expertise of the SST includes oil spill tracking;
6 pollutant transport modeling; biological assessments; evaluation of environmental
7 tradeoffs resulting from specific countermeasures and cleanup techniques; assessment
8 of natural resources at risk; environmental chemistry; chemical hazard assessment;
9 health and safety; and information management. The team may also be augmented by
10 other Federal, state, or academic experts and is tailored to the specific scientific
11 requirements of the incident and the local expertise available. During the response the
12 SSC and members of the SST work closely with the FOSC, staff, USCG's Marine
13 Safety Office personnel, and other response personnel to provide scientific advice and
14 other technical guidance. The SSC and specific members of the NOAA SST can serve
15 in many of the standard ICS positions as referenced in the USCG's Oil Spill Field
16 Operations Guide (ICS-OS-420-1). The SSC will recommend the number of team
17 members for each level and type of response.

18
19 **B. Other Support Services From NOAA**

20 NOAA data and resources to support a response may be requested by the FOSC from
21 the Department of Commerce (DOC) Regional Response Team (RRT) representative
22 through the SSC or through the RRT Co-chairs. This support might include tide and
23 circulation information; nautical charts; satellite imagery; meteorological, hydrologic,
24 ice, and oceanographic data for marine, coastal, and certain inland waters; information
25 on marine fisheries, marine mammals, and certain endangered species from NOAA's
26 National Marine Fisheries Service; technical support from NOAA's National Marine
27 Sanctuaries; use of the NOAA First Class and National Weather Service
28 communications networks; special-purpose HAZMAT aircraft and/or ships; and other
29 expertise within NOAA.

1 **V. POLLUTION REMOVAL FUNDING AUTHORIZATION (PRFA)**

2
3 The PRFA is a tool available to FOSCs for quickly obtaining needed removal services
4 and assistance from other government agencies in oil spill and/or hazardous materials
5 response actions. Appendix B includes detailed procedures for processing PRFAs. Using
6 a PRFA, the FOSC authorizes reimbursement to NOAA for services, equipment, and
7 support that were requested and approved by the FOSC. The NOAA SSC or DOC RRT
8 member will ensure the requested services and support are specified in an FOSC-
9 approved PRFA prior to providing said services and support. If oral requests are made by
10 the FOSC and agreed to by the NOAA SSC or DOC RRT member, the FOSC will
11 document the request using a PRFA as soon thereafter as possible. PRFA general terms
12 follow:

13
14 **A. Non-Reimbursable Costs**

- 15 1. NOAA will not seek reimbursement for costs associated with team members who
16 do not serve FOSC-approved response functions. Information about the specifics of
17 an incident is often sketchy during the first hours of a response. In these situations,
18 NOAA sometimes assembles and dispatches a team before the exact nature of the
19 response is known. This is the best way to ensure that the FOSC has timely support
20 during major spills. However, when team members are sent who do not fit the
21 response needs, NOAA will return those SST members to their origin.
- 22 2. NOAA will not seek reimbursement for the associated costs to send personnel to
23 participate in the response who are in training.
- 24 3. NOAA will not seek reimbursement for SSC regular salary costs.
- 25 4. NOAA will not seek reimbursement for other support services from NOAA or
26 participation by the DOC RRT member that were not FOSC requested or FOSC
27 approved.

28
29 **B. Reimbursable Costs: Costs of FOSC-approved support services to be reimbursed**
30 **include, but are not limited to:**

- 31 1. Personnel salary costs (excluding the SSC regular salary), including regular

- 1 salary, overtime, compensatory time, and, if applicable, holiday pay and hazardous
- 2 duty pay;
- 3 2. NOAA overhead costs for labor (distribution rates) as published annually by the
- 4 NOAA Comptroller;
- 5 3. Travel and per diem expenses;
- 6 4. Established charges for using NOAA-owned equipment or facilities, including
- 7 NOAA-owned aircraft, ships, and associated indirect costs;
- 8 5. Actual expenses authorized by the FOSC as removal costs.

9 10 C. Incident Cost Documentation File

- 11 1. HAZMAT's Program Support Group (PSG) will maintain each incident's cost
- 12 documentation file in accordance with Appendix C. PSG is responsible for all
- 13 budget and fiscal matters related to NOAA RRT members, SSCs, SSTs and other
- 14 NOAA components supporting a response.
- 15 2. The cost documentation file will include both reimbursable and non-reimbursable
- 16 costs. Reimbursable cost include costs for personnel who are not normally available
- 17 for oil spill removal, premium pay (overtime, hazardous duty pay, etc.) for all
- 18 personnel working at an incident, travel vouchers, contractor invoices, and other
- 19 charges related to an incident. The cost documentation must also include costs that
- 20 are recoverable from a responsible party, but not reimbursable to NOAA, such as
- 21 regular salary costs associated with personnel normally available for oil spill
- 22 removal (SSC).
- 23 3. PSG will provide a status report of NOAA costs by incident to NPFC for all
- 24 incidents for the current fiscal year upon request.

25 26 D. Equipment

- 27 1. NOAA may request reimbursement for repair or replacement of equipment that is
- 28 damaged or lost during an incident. The request should describe the cause of the
- 29 loss, and any efforts to avoid or minimize damage. The NPFC will consider the
- 30 merits of reimbursement for repairing or replacing the damaged or lost equipment
- 31 on a case-by-case basis. Reimbursement will not be allowed for equipment that is

1 damaged as a result of normal wear-and-tear, neglect, alteration, or improper use,
2 including failure to follow instructions for operation, maintenance, and use under
3 specific environmental conditions prescribed in the equipment manuals. NOAA
4 will not seek reimbursement for use of an item of equipment when the equipment's
5 replacement is also reimbursed.

- 6 2. Consumable equipment remaining at the completion of removal action should be
7 disposed of in a cost-effective manner. Multiple items of consumable equipment in
8 lots having a cost per lot of over \$1,000 shall be treated as non-consumables.
9 NOAA shall forward to NPFC documentation such as Form DD-1348 or other
10 evidence of disposal/disposition action taken for all non-consumable equipment and
11 consumables in lots worth more than \$1,000. Non-consumable equipment
12 includes items costing over \$1,000 and items of lower cost but high interest (e.g.,
13 radios, FAX machines, cellular phones, computers, pagers, copiers, photographic
14 equipment, protective clothing, test equipment). Costs, including shipping and
15 transportation costs, for disposal/disposition, are reimbursable via the PRFA.

16
17 E. Cost Documentation

18 A copy of the cost documentation to support the charges will be provided to the
19 Incident NPFC Case Officer, when requested (see Appendix C).

20
21 F. Billing

22 To obtain reimbursement for eligible costs, NOAA shall present a bill to the FOSC
23 with a copy to the NPFC. See Appendix B for procedures.

1 **VI. MODIFICATION AND TERMINATION**

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3 Either the USCG or NOAA may propose changes to this MOU. Both agencies must
4 approve a change before it becomes effective. Either agency may terminate the MOU by
5 giving a 30-day advance written notice to the other agency. Adding or changing
6 appendices does not constitute modification of the overall MOU.

7 Such additions and/or changes may be made by agreement of officials responsible for the
8 specific subject area in the USCG and NOAA. The officials making any such change
9 shall immediately bring the change to the attention of the signers of this MOU, or their
10 successors, and then shall disseminate the change to inform all users of the MOU.

11
12 **VII. OTHER PROVISIONS**

13
14 Nothing herein is intended to conflict with current NOAA or USCG directives. If the
15 terms of this agreement are inconsistent with existing directives of either of the agencies
16 entering into this agreement then those portions of this agreement which are determined
17 to be inconsistent shall be invalid; but the remaining terms and conditions not affected by
18 the inconsistency shall remain in full force and effect. At the first opportunity for review
19 of the agreement, all necessary changes will be accomplished by either an amendment to
20 this agreement or by entering into a new agreement, whichever is deemed expedient to
21 the interest of both parties.

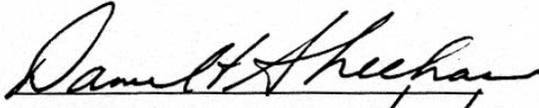
22
23 Should disagreement arise on the interpretation of the provisions of this agreement, or
24 amendments and/or revisions thereto, that cannot be resolved at the operating level, the
25 area(s) of disagreement shall be stated in writing by each party and presented to the other
26 party for consideration.

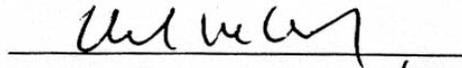
1 **VIII. PERIOD OF AGREEMENT**

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3 This MOU shall continue to be in effect until terminated, modified, or amended.

4 This MOU shall become effective on the date of the last signature below.

5
6 **IX. SIGNATURES**

7

Date 8/30/99


Date 9/15/99

8 Daniel F. Sheehan
9 Director
10 National Pollution Funds Center
11 United States Coast Guard
12 4200 Wilson Blvd, Suite 1000
13 Arlington, VA 22203-1804

Mr. David Kennedy
Director, Office of Response & Restoration
National Ocean Survey
National Oceanic & Atmospheric
Administration
1305 East-West Highway
SSMC4, Station 9232
Silver Spring, MD 20910-3281

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1 **APPENDIX A**

2 **NPFC USER REFERENCE GUIDE**

3
4 NPFC publishes the NPFC User Reference Guide. It provides guidance on the use of the OSLTF
5 and Superfund, along with applicable regulations and background information. Due to its
6 extensive nature, the material is published separately as a Supplement to the Marine Safety
7 Manual. The NPFC shall provide PSG with the most current version of the NPFC User
8 Reference Guide. The Reference Guide is divided into a series of topics briefly explained as
9 follows.

- 10
- 11 1. Organizations Using Pollution Funds. This provides information on entities able to access
12 the Funds managed by NPFC and includes: MSOS, G-M, G-MOR, Strike Teams, PIAT,
13 EPA, MECs, FINCEN, Other Federal Agencies, States, and Trustees.
 - 14
 - 15 2. Introduction to NPFC. This describes the origins, roles, missions, case teams, regions,
16 functional contacts, and frequently used acronyms.
 - 17
 - 18 3. Removal Actions. This provides procedures for accessing the Funds for Clean Water Act
19 and CERCLA removals. It includes FOSC financial management checklists, guidance on
20 mystery spills, ACP guidance, and reports. The Technical Operating Procedures (TOPS)
21 for Removal Costs and the TOPS for Resource and Cost Documentation are included in
22 this chapter.
 - 23
 - 24 4. Investigative Considerations. This addresses liability limits, proximate cause, designation
25 of source, notification advertising, and potential responsible parties.
 - 26
 - 27 5. State Access. This includes the State Access TOPS and the State Access regulations issued
28 under OPA, Section 1012(d)(1). It also addresses procedures to be used by states for
29 requesting funds, removal costs, pollution reports, payment, litigation, and cooperative
30 agreements.
 - 31
 - 32 6. Natural Resource Damage Assessments. This includes the NRDA/Initiate TOPS, which
33 contains initiation criteria, purchase of property, reporting, and requests for reimbursement.
 - 34

1 7. Claims. This includes the Claims regulations and the Claimant's Information Guide, which
2 explain available compensation, filing a claim, notice of designation, advertising, and the
3 settlement process.

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1 2. Reimbursement of Expenses

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- 3 A. PSG collects all cost documentation associated with an incident as costs are incurred.
4 (See Section 3 for reimbursement procedure for the post performance audit charges.)
- 5
- 6 B. PSG reviews the incident file with NOAA’s financial management information system
7 to determine if chargeable costs are accurate and makes any corrections.
- 8
- 9 C. Once all incident costs are accurately recorded in NOAA’s financial management
10 system or 120 days after removal activities are complete (whichever comes first), PSG
11 prepares a cost spreadsheet billing for submission to the NPFC via the incident FOSC.
12 The FOSC must verify that the actual costs on the spreadsheet are for resources that
13 were used as approved during the specific incident. The spreadsheet will cite: 1) the
14 pollution incident name, 2) FPN or CPN identification number and 3) an incident-
15 specific breakdown of charges.
- 16
- 17 D. Concurrently, PSG notifies the Office of Response and Restoration (OR&R),
18 HAZMAT’s parent organization, to initiate a request to the NOAA Comptroller’s
19 office to prepare an SF-1081 that is sent to the FOSC, copy to NPFC, within 120 days
20 after removal activities are complete. The SF-1081 includes the agency’s address,
21 agency location code, fiscal year, Treasury symbol, and task code associated with the
22 billing costs.

23

24 The address and agency location code of the NPFC are:

25

26 (Case officer name)
27 National Pollution Funds Center (cm)
28 4200 Wilson Boulevard, Suite 1000
29 Arlington, VA 22203-1804
30 Re: FPN _____
31 Agency Location Code: 69-025102

- 32
- 33 E. The Coast Guard FOSC and NPFC will review NOAA’s SF-1081 billing, authorize it
34 for payment, and forward it to the USCG Finance Center within 30 days of receipt,
35 unless there are substantial problems with the SF-1081 package. Reimbursement is
36 accomplished through the OPAC (On Line Payment and Collection) System.
- 37
- 38 F. In the event of a lengthy or large incident, NOAA will submit an interim billing as
39 agreed upon between the NPFC case officer and PSG. The interim billing process uses
40 the same procedures as outlined in A through E above.

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2 3. Post-Performance Audit Charges
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4 NOAA cost reimbursable contracts are subject to post-performance audits and the audit may
5 produce additional charges or a credit for an overcharge for incident specific work performed.
6 The audit is performed at the end of the contract (contracts are usually five years) and additional
7 charges or overcharges, if any, are usually known within one year following audit initiation.
8 NOAA's policy [NOAA Budget Handbook Chapter 2, Section 3.1.b.(4)], is to recover full costs,
9 both direct and indirect, for performance of services for others. Direct costs include any pay
10 increases that might be approved after negotiation of the agreement (PRFA) and any overruns in
11 cost that are incurred in performance of the agreement.
12

- 13 A. PSG will notify the NPFC that a contract is under a post-performance audit review and
14 the incidents that are associated with the contract.
15
- 16 B. If the audit identifies an additional cost, PSG will bill the NPFC for the post-
17 performance audit charge. If the audit identifies that NOAA overcharged and was
18 reimbursed too much, PSG will prepare a refund using the OPAC process.
19
- 20 C. Once post-performance audit charges or overcharges are accurately recorded in
21 NOAA's financial management system, PSG prepares a cost spreadsheet billing with
22 the post performance audit charges/refund for submission to the NPFC. The spreadsheet
23 will cite: 1) each pollution incident name associated with the contract, 2) FPN or CPN
24 identification number, and 3) the post-performance audit charge/refund.
25
- 26 D. Concurrently, PSG notifies OR&R to initiate a request to the NOAA
27 Comptroller's office to prepare an SF-1081 that is sent to the NPFC within 60 days after
28 the audit. The SF-1081 includes the agency's address, agency location code, fiscal year,
29 Treasury symbol, and task code associated with the billing costs. The address and
30 agency location code of the NPFC is:
31
- 32 National Pollution Funds Center (cf)
33 4200 Wilson Boulevard, Suite 1000
34 Arlington, VA 22203-1804
35 Re: FPN _____
36 Agency Location Code: 69-025102
37
- 38 E. NPFC will review NOAA's SF-1081 billing, authorize it for payment, and forward it to
39 the USCG Finance Center within 30 days of receipt, unless there are substantial
40 problems with the SF-1081 package. Reimbursement or refunds are accomplished
41 through the OPAC (On Line Payment and Collection) System.
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APPENDIX C

COST DOCUMENTATION

NOAA shall produce a comprehensive written record supporting all expenditures and costs incurred in each removal. This documentation will support reimbursement of NOAA 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 NPFC User Reference Guide. Time sheets, payroll reports, travel orders, etc., must be redacted to remove data protected by the Privacy Act such as social security numbers.

1. NOAA Personnel Costs. Documentation must show each employee's name, grade, hours, function, appropriate subtotals, and an overall total. In addition, NOAA must indicate whether the employee is Off Site or On Scene. NOAA must 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 must 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.