CHAPTER 7

Claims

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This chapter explains the procedures for designation, advertising, and filing claims for removal costs or damages resulting from oil spills. The material is divided into the following subchapters:

SUBCHAPTER	CONTAINS DETAILED INFORMATION ABOUT
Claims Regulations	• Oil Pollution Act of 1990 interim regulations for filing claims for removal costs or damages resulting from oil spills. (33CFR Section136.) • Notice of Designation (136.305) requirements for a written notice to the source of an oil discharge. • The Advertisement section (136.309) which describes the need for advertisements to potential claimants.
Claimant's Guide	• 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.
Supplement to Claimant's Information Guide	• Incorporated into Claimant's Guide June 2003

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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

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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

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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/hq/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: ClaimsInfo@ballston.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: ClaimsInfo@ballston.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.**

NRD Guidelines: **Subsistence claims are often unique; to decide how to best document your loss, call or email:**

kmorsell@ballston.uscg.mil
(800) 280-7118 or (202) 493- 6860

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.

NRD Guidelines: Subsistence claims are often unique; to decide how to best document your loss, call or email:

kmorsell@ballston.uscg.mil
(800) 280-7118 or (202) 493- 6860

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

$ 0.00 *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. _____

e 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: _____