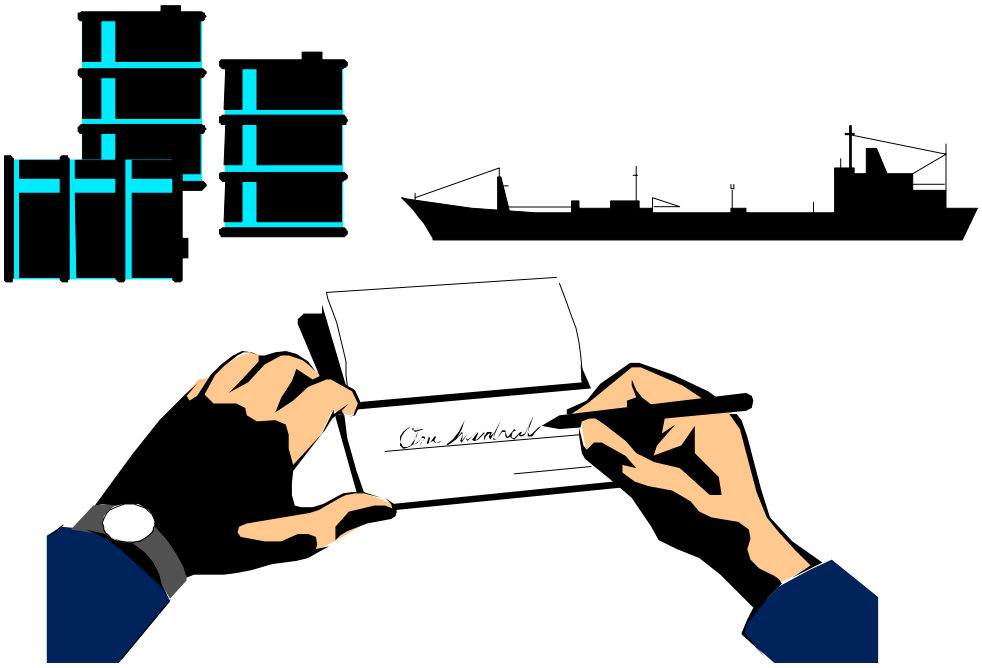
NPFC User Reference Guide

Supplement to the

Coast Guard Marine Safety Manual

Volume X

July 2002



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RECORD OF CHANGES			
CHANGE NUMBER	**DATE OF CHANGE**	**DATE ENTERED**	**ENTERED BY**
01	August 1994	INCORPORATED	(cp)
02	March 1995	INCORPORATED	(cp)
03	July 1995	INCORPORATED	(cp)
04	January 1996	January 1996	(cs)
05	June 1996	INCORPORATED	(cs)
06	January 1997	INCORPORATED	(cs)
07	June 1999	INCORPORATED	(cs)
08	May 2000	INCORPORATED	(cs)
09	May 2001	INCORPORATED	(cs)
10	July 2002	INCORPORATED	(cs)

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RECORD OF CHANGES

CHANGE 01 - **August 1994.** Consolidates NPFC Technical Operating Procedures (TOPs), policies, and procedures. **ACTION:** Establishes the "NPFC Oil Spill Liability Trust Fund User Guide."

CHANGE 02 - **March 1995.** Consolidates NPFC TOPs, policies, and procedures. **ACTION:** Replace August 1994 "NPFC Oil Spill Liability Trust Fund User Guide" in its entirety with March 1995 "NPFC User Reference Guide."

CHANGE 03 - **July 1995.** Consolidates NPFC TOPs policies, and procedures. **ACTION:** Replace March 1995 "NPFC User Reference Guide" in its entirety with July 1995 "NPFC User Reference Guide."

CHANGE 04 - **January 1996.** Add NPFCINST M7300.1 Technical Operating Procedures for Determining Removal Costs Under the Oil Pollution Act of 1990 (OPA90). **ACTION:** Replace Chapter 3, subtab 3 draft "NPFC TOPs for Determining Removal Costs Under the Oil Pollution Act of 1990 (OPA90)" dated 15 May 1995 with NPFCINST M7300.1 dated 16 January 1996.

CHANGE 05 - **June 1996.** Consolidates NPFC TOPs, policies, and procedures. **ACTION:** Replace July 1995 "NPFC Fund User Reference Guide" in its entirety with July 1996 "NPFC User Reference Guide."

CHANGE 06 - **January 1997.** Consolidates NPFRC TOPs, policies, and procedures. **ACTION:** Replace July 1996 "NPFC User Reference Guide" in its entirety with January 1997 "NPFC User Reference Guide."

CHANGE 07 - **June 1999.** Annual update and reorganization of Reference Guide contents. **ACTION:** Replace January 1997 "NPFC User Reference Guide" in its entirety with June 1999 "NPFC User Reference Guide."

CHANGE 08 - **May 2000.** Annual update and reorganization of Reference Guide contents. **ACTION:** Replace June 1999 "NPFC User Reference Guide" in its entirety with May 2000 "NPFC User Reference Guide."

CHANGE 09 - **May 2001.** Annual update and reorganization of Reference Guide contents. **ACTION:** Replace May 2000 "NPFC User Reference Guide" in its entirety with March 2001 "NPFC User Reference Guide."

CHANGE 10 - **July 2002.** Annual update and reorganization of the Reference Guide contents. **ACTION:** Replace May 2001 "NPFC User Reference Guide" in its entirety with the July 2002 " NPFC User Reference Guide."

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US Department
of Transportation

United States
Coast Guard

Foreword

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

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

Jan P. Lane, Director
National Pollution Funds Center

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Table of Contents

NPFC User Reference Guide

Chapter 1: How to Use the NPFC User Reference Guide

How to Use the Reference Guide

Chapter 2: Introduction to OPA and the NPFC

Introduction
Overview of OPA and the NPFC
NPFC Functional Contacts
Overview of the National Response System
Acronyms

Chapter 3: Removal Actions: Oil and Hazardous Substances

Introduction
FOSC Finance and Resource Management Field Guide
Procedures for Accessing Funds
- Overview of Procedures for Accessing Funds
- FOSC Financial Management Checklist – OIL
- FOSC Financial Management Checklist – HAZMAT
- Accounting Information

Funds Management During Incidents
Management of Civilian Overtime, COMDTINST 12550.41
Removal Cost Technical Operating Procedures (TOPs) – Oil
Removal Cost Policy and Operating Procedures – CERCLA
Resource Documentation TOPs
Standard Rates
Contracting Information
- Coast Guard Acquisition Procedures (excerpt)
- MLC Atlantic Area Procedures
- MLC Pacific Area Procedures

Emergency Contracting Procedures (G-MOR Guidance)
Action Memo Guidance
Strike Team Guidance
Long Term Removals
CERCLA Non-Incident Funding

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Chapter 4: Designation	Introduction TOPs for Designation
Chapter 5: State Access	Introduction Regulations for 1012(d)(1) State Access TOPs
Chapter 6: Natural Resource Damage Assessment (NRDA)	Introduction Interagency Agreement for Initiation of Natural Resource Damage Assessments
Chapter 7: Claims	Introduction Claims Regulations Claimant's Guide for Submitting OSLTF Claims
Appendix A	Memoranda of Understanding (MOU)
Appendix B	Funding Guidance for Oil Spills and Hazardous Materials Releases

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CHAPTER 1

How to Use the NPFC User Reference Guide

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

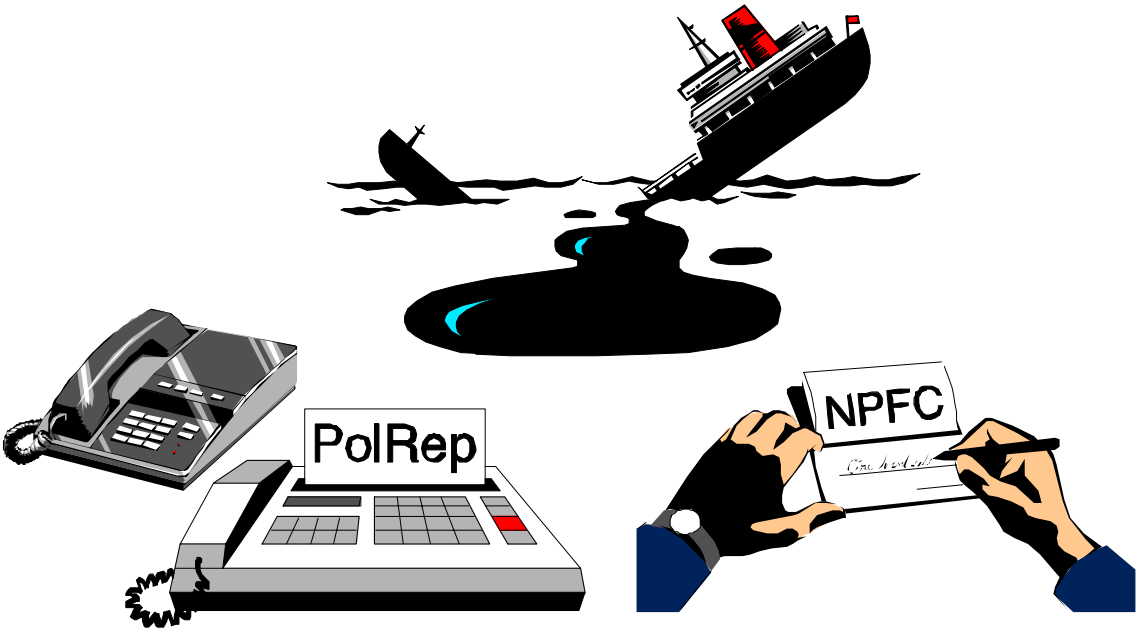
The *Reference Guide* is divided into a series of major chapters separated by tabs, as described in the table below. (Some chapters are further divided into subchapters, as described at the beginning of each chapter.)

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

THE TAB	CONTAINS	TO BE USED BY
Chapter 6	Natural Resource Damage Assessment (NRDA)	• Staff members for federal agency and tribal trustees, and others who become involved in NRDAs. • Staff members in state departments of Environmental Protection, Environmental Conservation, and related areas.
Chapter 7	Claims	• Anyone who needs to know about procedures for filing claims for uncompensated removal costs or damages resulting from oil spills. • Staff members in state departments of Environmental Protection, Environmental Conservation, and related areas.
Appendix A	Memoranda of Understanding	• Anyone interested in reviewing MOUs between USCG and other Federal agencies.
Appendix B	OSLTF Guidance Information for Use During an Oil Spill	• Anyone needing general information during an oil spill.

CHAPTER 2

Introduction to OPA and the NPFC



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

SUBCHAPTER	CONTAINS DETAILED INFORMATION ABOUT
Overview of OPA and NPFC	• History of OPA and the OSLTF, NPFC roles and missions, Case Teams, and roles of organizations that use pollution funds.
NPFC Functional Contacts	• Points of contact, including Regional Managers and Senior Management and their phone numbers and areas of responsibility.
National Response System Overview	• Overview of the National Response System functions and components.
Acronyms	• Acronyms commonly used by the environmental response community.

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OVERVIEW OF OPA and NPFC

Origins

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

Roles and Missions

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

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

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

Oil Spill Liability Trust Fund (OSLTF)

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

CERCLA/ Superfund

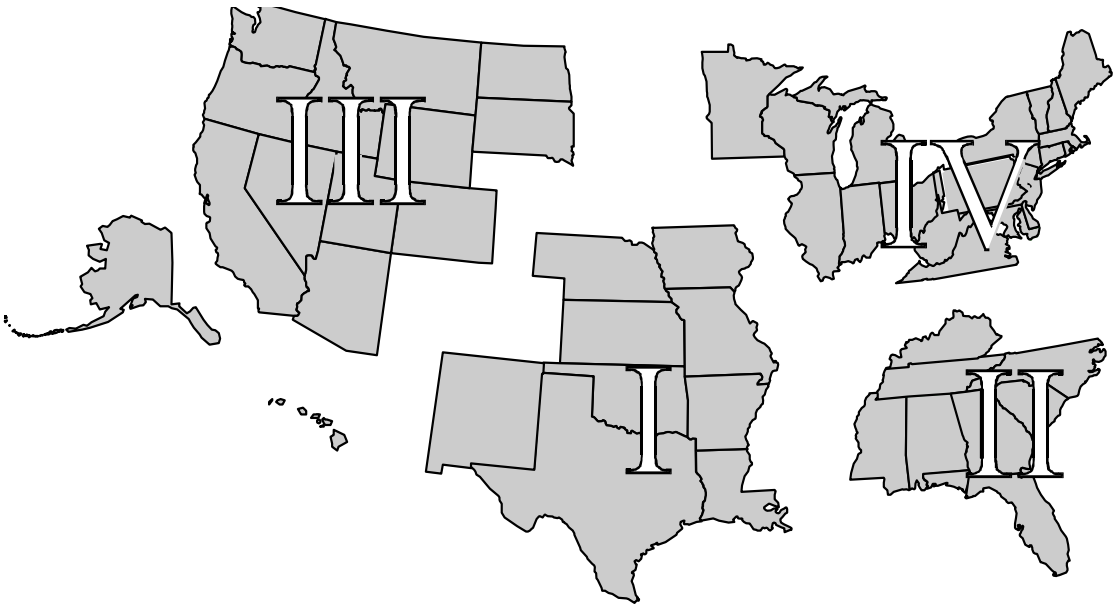
The NPFC also serves as the Coast Guard's Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)/ Superfund manager for funds provided by EPA for hazardous substance incident response. CERCLA funding is used to provide Coast Guard FOSCs with the training and equipment to respond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

THE CASE TEAM CONCEPT

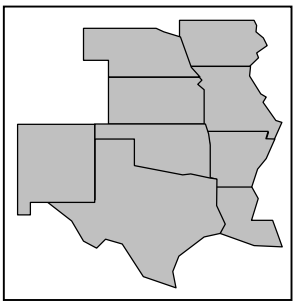
Case Officer/ Case Team Concept

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

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

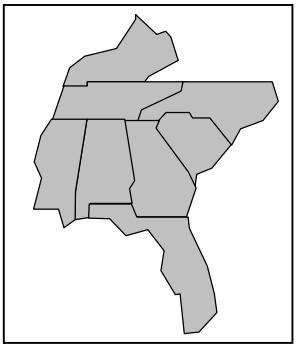


NPFC FUNCTIONAL CONTACTS



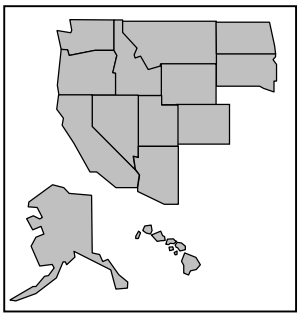
TEAM I **(202) 493-6723**

Responsible for most of CGD8 and EPA Regions VI and VII. Includes: Texas, New Mexico, Louisiana, Arkansas, Oklahoma, Missouri, Kansas, Nebraska, and Iowa. Does not include CGD8 Mobile, Memphis, Paducah, Louisville, Huntington, or Pittsburgh COTP zones.



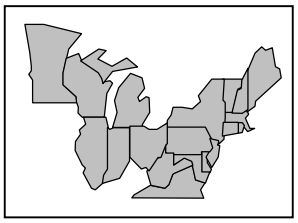
TEAM II **(202) 493-6726**

Responsible for CGD7, portions of CGD5 and CGD8, EPA Region II (Caribbean Section) and EPA Region IV. Includes CGD8 Mobile, Memphis, Paducah, Louisville, Huntington, and Pittsburgh COTP zones; CDG5 Hampton Roads and Wilmington COTP zones; and Virgin Islands, Puerto Rico, Florida, Georgia, South Carolina, Tennessee, North Carolina, Kentucky, Alabama, Mississippi, Virginia (COTP Hampton Roads zone only), and Pennsylvania (COTP Pittsburgh zone only).



TEAM III **(202) 493-6729**

Responsible for CGD11, CGD13, CDG14, CDG17, and EPA Regions VIII, IX, and X. Includes Arizona, California, Nevada, Utah, Colorado, North Dakota, South Dakota, Wyoming, Montana, Idaho, Washington, Oregon, Alaska, Hawaii, Guam, and American Samoa.



TEAM IV **(202) 493-6732**

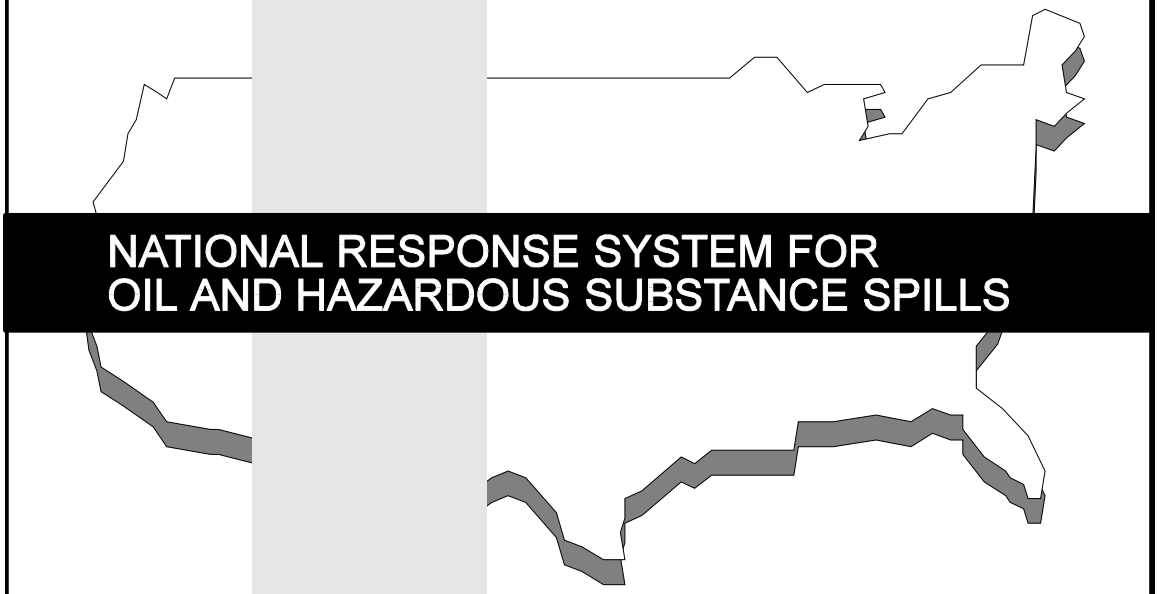
Responsible for CGD1, CGD9, portions of CGD5, and EPA Regions I, II, III, and V. Includes CDG5 COTP Philadelphia and Baltimore zones, Minnesota, Michigan, Wisconsin, Illinois, Indiana, Ohio, New York, Vermont, New Hampshire, New Jersey, Connecticut, Rhode Island, Massachusetts, Maine, Virginia (except COTP Hampton Roads zone), West Virginia, Pennsylvania (except COTP Pittsburgh zone), Maryland, Delaware, and Washington, DC.

Other Contacts

General Information	**(202) 493-6700**
CERCLA	**(202) 493-6811**
CLAIMS and NRD Claims	**(800) 280-7118**
Case Management	**(800) 358-2897**
Command Duty Officer Pager	**(800) 759-7243**
	(PIN # 2073906)
Outreach Coordinator	**(202) 493-6999**

NPFC SENIOR MANAGEMENT

Director	Ms. Jan P. Lane (202) 493-6700
Deputy Director	Mr. William R. Grawe (202) 493-6700
Chief, Case Management	Mr. Timothy G. Eastman (202) 493-6721
Chief, Claims	Mr. Thomas S. Morrison (202) 493-6831
Chief, Customer Service	Ms. Dana C. Compton (202) 493-6713
Chief, Financial Management Acting	Ms. Patti Lavell (202) 493-6812
Chief, Information Technology	Mr. George A. Cognet (202) 493-6761
Chief, Legal	Mr. Derek A. Capizzi (202) 493-6751
Chief, Natural Resource Damage Claims	Ms. Carolyn L. Boltin (202) 493-6864
Chief, Vessel Certification	Mr. Kevin D. Bailey (202) 493-6792 COFR Inquiries (202) 493-6780 Vessel Certification FAX (202) 493-6781



NATIONAL RESPONSE SYSTEM FOR OIL AND HAZARDOUS SUBSTANCE SPILLS

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FOREWORD

In March of 1967, the oil tanker Torrey Canyon ran aground off the southwestern coast of England, resulting in a spill of over 30 million gallons of oil that caused massive environmental and economic damage on the English and French shorelines. Following this incident, President Lyndon Johnson ordered the Departments of Interior and Transportation to study the capabilities of the United States to respond to an incident of this magnitude off our shores. This study, entitled *Oil Pollution: A Report to the President*, concluded that there was a need for public action. The Secretary of the Interior was directed to take the lead in an effort to complete a multi-agency contingency plan for responding to such incidents, and in September 1968, the *National Multi-agency Oil and Hazardous Materials Contingency Plan (NCP)* was completed and signed. This first NCP established a "National Response System" comprised of a hierarchy of organizations charged with coordinating response activities at the national and regional levels.

The resulting National Response System has developed over the years into a dynamic, constantly evolving example of coordinated effort by all levels of government. It is a simple, comprehensive, executable crisis management system capable of handling a wide range of spills or environmental crises. The Oil Pollution Act of 1990 brought about significant changes in the National Response System that have further increased the U.S.'s ability to prepare for and respond to oil and hazardous substance spills.

By its very nature, a response system has to be capable of being continually modified and improved. The success of the National Response System depends on the combined efforts of all agencies and organizations working together at the national, regional, state, and local levels. Every representative plays a vital role in both planning for and responding to an incident.

The purpose of this document is to describe the system in general terms, and to examine and explain the interrelationships between the components of that system.

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NATIONAL RESPONSE SYSTEM FOR OIL AND HAZARDOUS CHEMICAL SPILLS

TABLE OF CONTENTS

I. OVERVIEW OF NATIONAL RESPONSE SYSTEM 2-15

II. NRS COMPONENTS AND RESPONSIBILITIES 2-17

National Level
- National Response Team 2-18
- National Response Center 2-20
- National Strike Force 2-21
- Public Information Assist Team 2-22
- District Response Groups 2-22
- District Response Advisory Teams 2-23
- Natural Resources Trustees 2-23
- National Pollution Funds Center 2-24
- Environmental Response Team 2-26
- Scientific Support Coordinators 2-26
- Radiological Emergency Response Teams 2-26

Regional Level
- Regional Response Teams 2-27

Area Level
- Federal On-Scene Coordinator 2-29
- Area Committees 2-29
- Special Teams 2-31

III. RESPONSE OPERATIONS 2-32

Discovery or Notification 2-32
Preliminary Assessment and Initiation of Action 2-32
Containment, Countermeasures, Cleanup, and Disposal 2-33
Documentation and Cost Recovery 2-33

Table of Contents (continued)

IV. CONTINGENCY PLANNING 2-34

National Contingency Plan 2-34
Regional Contingency Plans 2-34
Area Contingency Plans 2-34
Relation to Other Plans 2-34

V. PREPAREDNESS 2-37

NPREP 2-37
Spills of National Significance 2-37

APPENDIX I

Acronyms 2-38

I. OVERVIEW OF NATIONAL RESPONSE SYSTEM

The National Response System (NRS), which has been in place for over 20 years, is a dynamic, constantly evolving example of coordinated efforts to manage environmental emergencies. It provides the national structure for a coordinated response to oil discharges and hazardous substance releases into all media — air, water, and soil. It is a simple, comprehensive, executable, crisis management system capable of expanding or contracting to accommodate the response effort required by the size or complexity of the discharge or release.

The NRS is designed and structured to foster coordination and cooperation with the numerous organizations involved both before and during a spill. Elements of the NRS also provide funding, equipment, manpower, and logistical and scientific support during a spill.

The protocols and guidance for the NRS are established in the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which lays out the organizational framework of the Federal government and other state and local agencies during oil and hazardous substance spills. It specifies "who's in charge" and the responsibilities and authorities of the various actors operating under the NRS.

The NCP provides the key components and defines basic organizational relationships for the NRS. It establishes the National Response Team and Regional Response Team management functions. It designates two lead response agencies — the Environmental Protection Agency for inland incidents, and the U.S. Coast Guard for coastal incidents. The NCP uses existing standard Federal regions as the regional response framework, and establishes operational responsibilities and authorities for the On-Scene Coordinator.

The most critical component of the National Response System is the field commander, who is called the predesignated On-Scene Coordinator (OSC). This is the individual who puts it all together — local preparedness planning, contracts, and response personnel. The OSC is the operational decision maker.

The NCP describes the three levels of contingency planning under the NRS: National, Regional and Area, the latter being a new requirement under the Oil Pollution Act of 1990. The NCP also establishes "special forces" to assist the On-scene Coordinator:

- ***National Strike Force,*** has three strike teams of highly trained, experienced specialists in areas of spill response techniques and operations documentation; NSF Coordination Center**,** which provides "command" focus, logistics, and support services to its teams and On-Scene Coordinators; and Public Information Assist Team, which consists of experienced public affairs specialists assigned to the NSF, and coordinates the demands for information during major incidents.

- ***Environmental Response Team,*** provides expert advice on hazard evaluation, risk assessment, and material treatment technology.

- ***Scientific Support Coordinators,*** provided through the National Oceanic and Atmospheric Administration and EPA, advise the OSC on fate and effects of spills, and coordinate input and concerns of the involved scientific community.

  - ***National Response Center,*** receives and relays reports of incidents to appropriate agencies 24 hours a day.

  - ***National Pollution Funds Center,*** administers the relevant portions of the Oil Spill Liability Trust Fund (OSLTF), provides prompt funding to response organizations for removal of oil discharge and mitigation of substantial threats, administers certificates of responsibility; and recovers money from Responsible Parties.

  - ***District Response Groups (DRGs)***. Each DRG assists the OSC by providing technical assistance, personnel, and equipment, including pre-positioned equipment. The DRG includes a District Response Advisory Team (DRAT) consisting of several full-time spill professionals who can assist the OSC in the event a spill exceeds local response capabilities.

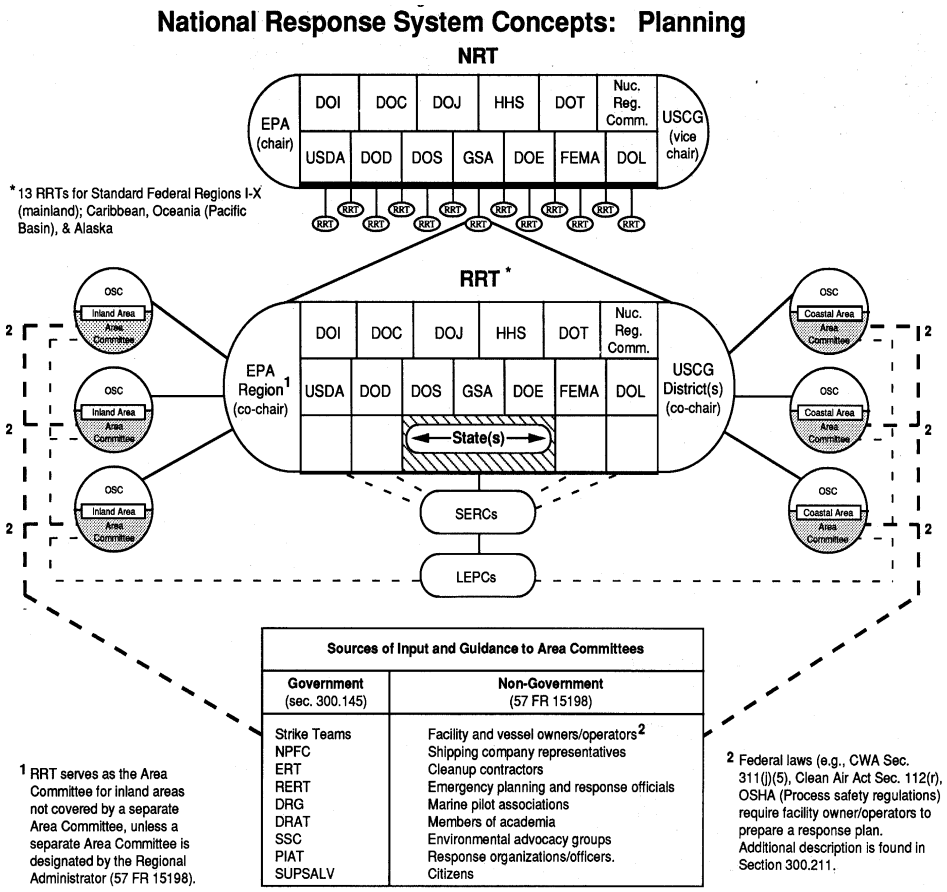
  - ***Radiological Emergency Response Teams (RERTs)***. RERTs provide response support for incidents involving radiological hazards through resources provided by the EPA Office of Radiation and Indoor Air Programs.

The key to making the NRS work is the extensive, ongoing interagency coordination conducted in Washington, DC, by the National Response Team (NRT), and the similar spirit of cooperation experienced on a regional level by Regional Response Teams (RRTs).

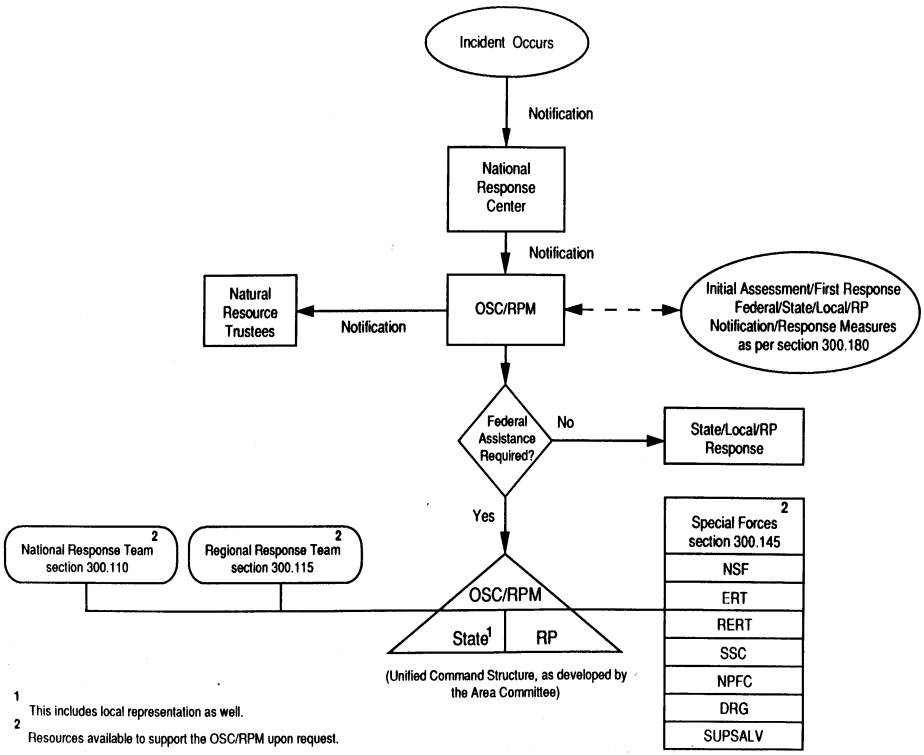
When a spill of oil or hazardous substances occurs, an effective, well organized and seasoned protocol exists, namely the National Response System. If the “crisis de jour” warrants the use of Federal resources, this National Response System infrastructure will be activated. It is effective because it is used every day, it has a strong legal foundation, and it has a source of funds to implement it.

II. NRS COMPONENTS AND RESPONSIBILITIES

As structured under the NCP, the NRS is a three-tiered response and preparedness mechanism that supports an OSC during environmental emergencies by coordinating national, regional, and local government agencies, and by monitoring or directing the actions of the Responsible Party. The organizational concepts of the NRS are depicted in the following two figures.



National Response System Concepts: Response



NATIONAL LEVEL

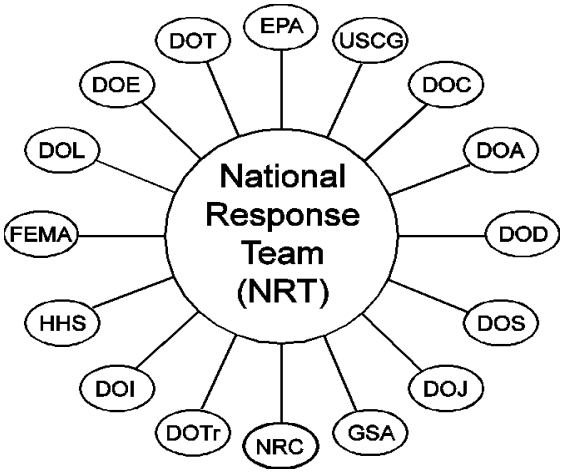
NATIONAL RESPONSE TEAM

National planning and coordination is accomplished through the National Response Team (NRT), which oversees the nation's ability to respond effectively and efficiently to oil and hazardous substance incidents. One key to making the NRS work is the extensive coordination among the 16 member Federal agencies:

- U.S. Coast Guard (USCG),
- U. S. Environmental Protection Agency (EPA),
- Federal Emergency Management Agency (FEMA),
- Department of Defense (DOD),
- Department of the Treasury (DOTr),
- Department of Energy (DOE),
- Department of Agriculture (DOA),
- Department of Commerce (DOC),
- Department of Health and Human Services (HHS),
- Department of the Interior (DOI),
- Department of Justice (DOJ),

- Department of Labor (DOL),
- Department of Transportation (DOT),
- Department of State (DOS),
- Nuclear Regulatory Commission (NRC), and
- General Services Administration (GSA).

Each agency designates a member with oil or hazardous materials response expertise to the team with sufficient alternatives to ensure representation.



The NRT functions as the Federal "Board of Directors" for spill response. It has two primary roles which are interrelated but distinct. The first is to operate in a planning and coordinating role prior to spills and to take lessons learned from spills and incorporate necessary changes and revisions to the NCP. The second is to be available and active during an incident to provide advice, special expertise, and logistical support as necessary. These complementary roles require continued cooperation and contact by agencies; the NRT holds monthly meetings to assist in this process.

Direct planning and preparedness responsibilities of the NRT include:

- Maintaining national preparedness to respond to a major discharge of oil or release of a hazardous substance that is beyond regional capabilities;

- Monitoring incoming reports from all RRTs and activating for a response action, when necessary;

- Coordinating a national program to assist member agencies in preparedness planning and response, and enhancing coordination of member agency preparedness programs;

- Developing procedures, in coordination with the NSFCC, as appropriate, to ensure the coordination of Federal, state, and local governments, and private response to oil discharges and releases of hazardous substances;

- Monitoring response-related research and development, testing, and evaluation activities of NRT agencies to enhance coordination, avoid duplication of effort, and facilitate research in support of response activities;

- Developing recommendations for response training and for enhancing the coordination of available resources among agencies with training responsibilities under the NCP;

- Reviewing regional responses to oil discharges and hazardous substance releases, including an evaluation of equipment readiness and coordination among responsible public agencies and private organizations; and

- Assisting in developing a national exercise program, in coordination with the NSFCC, to ensure preparedness and coordination nationwide.

The NRT should be activated as an emergency response team when an oil discharge or hazardous substance release exceeds the response capability of the region in which it occurs, transacts regional boundaries, or involves a substantial threat to the public health or welfare or the environment, substantial amounts of property, or substantial threats to natural resources.

The NRT also should be activated if requested by any NRT member. When activated, the NRT may:

- Monitor and evaluate reports and recommend actions to combat the discharge or release;

- Request other Federal, state and local governments, or private agencies, to provide resources under their existing authorities to combat a discharge, or to monitor response operations; and

- Coordinate the supply of equipment, personnel, or technical advice to the affected region from other regions or districts.

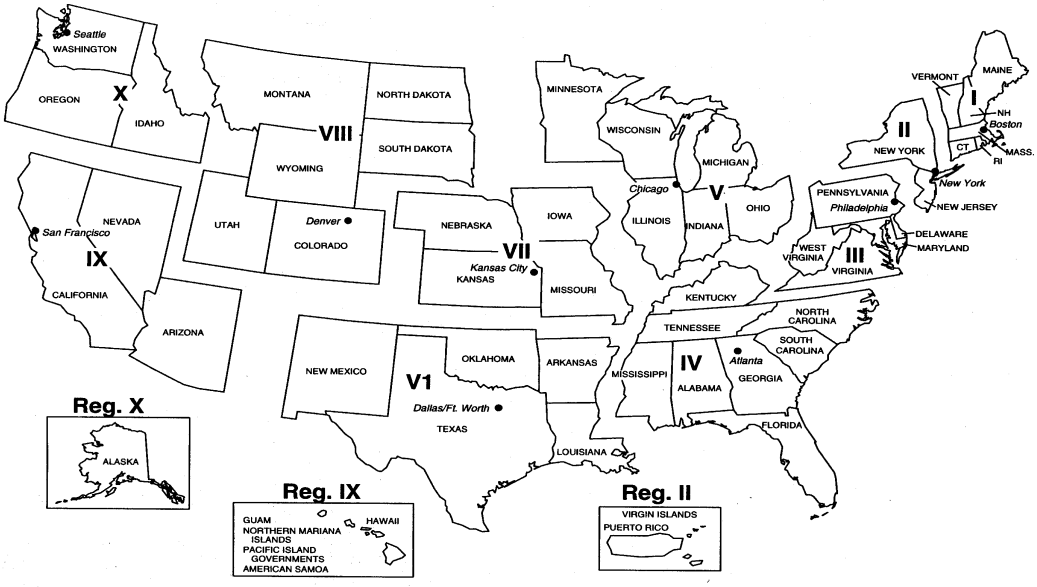
NATIONAL RESPONSE CENTER

If an incident involves a spill of more than the legally specified quantities of oil or hazardous substances, the Responsible Party is required by law to immediately notify the National Response Center (NRC). The NRC is located at USCG Headquarters, in Washington, DC. It is continuously manned for handling activities related to response actions. It acts as the single point of contact for all pollution incident reporting. Notice of discharges must be made through a 24-hour toll free phone number (1-800-424-8802). The NRC receives and immediately relays telephone notices of discharges or releases to the appropriate predesignated OSC.

The telephone report is distributed to all interested NRT member agencies or Federal entities that have established a written agreement or understanding with the NRC. The Center is funded by DOT and EPA, and is staffed by Coast Guard officers and Marine Science technicians trained to collect specific information.

The National Strike Force is a unique, highly trained group of Coast Guard professionals who maintain and rapidly deploy specialized equipment to support OSCs as they prepare for and respond to oil and hazardous substance incidents. The NSF is composed of four units: three 35-member strike teams (Atlantic Strike Team, Fort Dix, NJ; Gulf Strike Team, Mobile, AL; Pacific Strike Team, Novato, CA); and the National Strike Force Coordination Center (NSFCC) (Elizabeth City, NC), which manages other units.

Figure 2 -- Standard Regional Boundaries for Ten Regions



The NSF plays an important role by assisting the OSCs with such expertise as:

- Operating spill response equipment (barriers, skimmers, pumps, temporary storage containers, etc.);
- Supervising and monitoring of personnel at spill sites;
- Implementing site safety requirements at hazardous material/spill sites;
- Preparing cost documentation and reports; and
- Supplying command, control, and communications support.

The strike team equipment includes such things as containment barriers and other spill equipment, mobile command posts and communications equipment, personnel protective gear, and photographic supplies.

The NSFCC is located in Elizabeth City, North Carolina, and may assist the OSC by providing information on available spill removal resources, personnel, and equipment. The NSFCC will:

- Compile and maintain a comprehensive list of spill removal resources, personnel, and equipment that is available worldwide and within the areas served by the Area Committees;

- Provide technical assistance, equipment, and other resources as requested by the OSC;
- Coordinate use of private and public personnel and equipment to remove a worst case discharge and to mitigate or prevent a substantial threat of such discharge from a vessel, offshore facility, or onshore facility operating in or near an area served by an Area Committee;
- Provide technical assistance in the preparation of Area Contingency Plans (ACPs);
- Administer Coast Guard strike teams;
- Maintain all Area Contingency Plans approved by the Federal government; and
- Review each of those plans that affects its responsibilities.

The NSFCC provides support and standardization guidance to the three strike teams. It is the home to the Public Information Assist Team (PIAT), and the National Preparedness for Response Exercise Program (NPREP).

PUBLIC INFORMATION ASSIST TEAM

The PIAT consists of public affairs specialists who are familiar with response procedures. The primary function of the PIAT is to meet the demands for public information during a response or exercise. PIAT staff also are available to teach crisis media relations techniques and to help OSCs develop pollution response exercises and drills. PIAT uses state-of-the-art video equipment set up at the NSFCC, and provides a full range of photo, video and graphics services to support NSF activities. For example, PIAT provides video and still photos taken at responses or training exercises, which can be used by the news media, the strike teams, and throughout the Coast Guard.

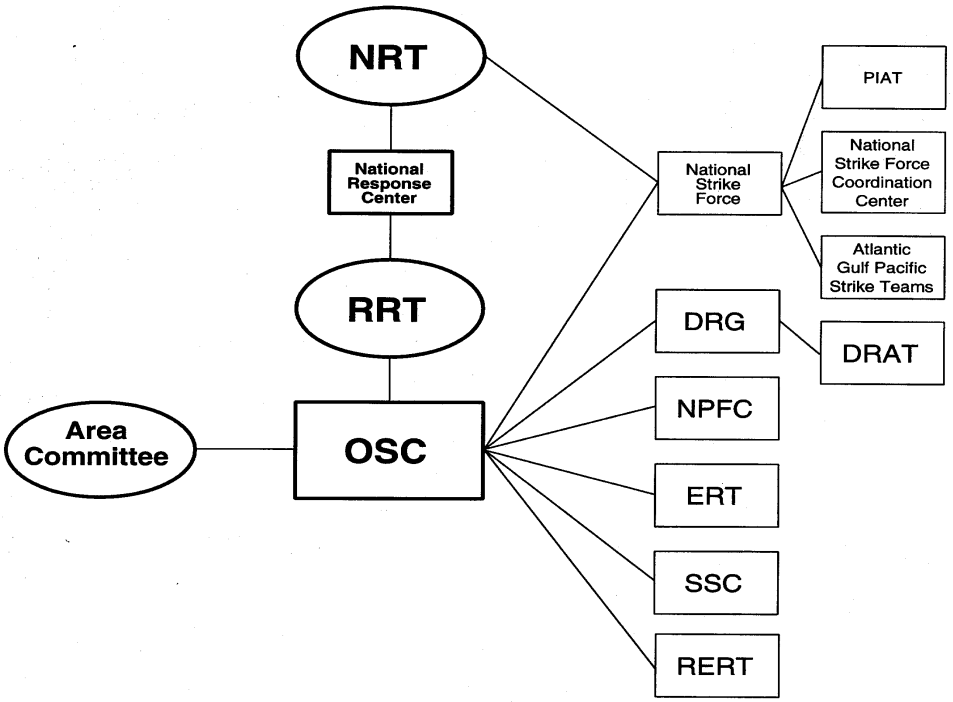
DIRECT RESPONSE GROUPS

DRGs assist the OSC by providing technical assistance, personnel and equipment. Each DRG consists of all Coast Guard personnel and equipment, including marine firefighting equipment, in its district, additional pre-positioned equipment and a DRAT that is available to provide support to the OSC in the event that a spill exceeds local response capabilities.

Each DRG provides available assistance, equipment, and resources when requested by an OSC through the Coast Guard representative to the RRT. It ensures maintenance of all response equipment in its district, and may provide technical assistance in the preparation of the ACP and review each of those plans that affect its area of geographic responsibility.

In deciding where to locate personnel and equipment, the Coast Guard gives priority emphasis to the availability of facilities for loading and unloading equipment by barge, the proximity to an airport capable of supporting large military transport aircraft, the flight time to provide response to spills in all areas of the district with the potential for marine casualties, the availability of trained local personnel, and areas where large quantities of petroleum products are transported.

National Response System Organization



DISTRICT RESPONSE ADVISORY TEAMS

The District Response Advisory Team (DRAT) is a component of the Coast Guard District (m) staff. The primary function of the DRAT is to coordinate the planning for and deployment of District Response Group resources to support the OSC during incident responses. DRATs are responsible for coordinating delivery of field unit training. They also must maintain and deploy equipment. To support these functions, the DRATs must identify and acquire resources needed on scene. DRATs also work with other district staff elements to assure that standard operating procedures (SOPs) are developed, consistent with existing SOPs for other emergencies within the district. This would include ensuring that district resources are trained, exercised, and available to respond when needed.

NATURAL RESOURCES TRUSTEES

A Trustee is an official of a Federal natural resources management agency or a designated state official or Indian tribe or, (in the case of discharge covered by the OPA) a foreign government official, who may pursue claims for damages under Section 1006 of the OPA and Section 107(f) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

Where there are multiple trustees because of contiguous or concurrent natural resources or jurisdictions, they should coordinate and cooperate in carrying out their responsibilities.

Upon notification or discovery of injury, threat, loss, or destruction of natural resources, trustees may take the following actions, pursuant to section 107(f) of CERCLA or Section 311(f)(5) of the CWA:

- Conduct a preliminary survey of the area to determine resources that are or may be affected;

- Cooperate with the OSC in coordinating assessments, investigations, and planning;

- Carry out damage assessments; or

- Devise and carry out a plan for restoration, rehabilitation, replacement, or acquisition of equivalent natural resources.

Upon notification or discovery of damages resulting from a discharge of oil occurring after August 18, 1990, the trustees, pursuant to section 1006 of the OPA, are to take the following actions:

- Determine the need for assessment, collect necessary data, and assess natural resource damages; and

- As appropriate, develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent of the natural resources under their trusteeship.

The trustees will provide advice on actions concerning resources that are potentially affected by a discharge of oil; this may include providing assistance to the OSC with response techniques, and predesignating shoreline types and areas in ACPs.

When possible, the OSC shares the use of federal response resources (including aircraft, vessels, and booms to contain and remove discharged oil) with the trustees. The lead administrative trustee is responsible for efficient communications with the OSC and for applying to the OSC for non-monetary resources on behalf of all trustees. The lead administrative trustee is also responsible for applying to the NPFC for funding for damage assessment on natural resources.

Actions which may be taken by any trustee include, but are not limited to the following:

- Requesting that an authorized agency issue an administrative order or injunction against the parties responsible for the discharge or release; or

- Requesting that the lead agency remove or arrange for the removal of any oil or hazardous substances from a contaminated medium.

NATIONAL POLLUTION FUNDS CENTER

The National Pollution Funds Center (NPFC) is responsible for implementing those portions of Title I of the Oil Pollution Act 90 (OPA 90) that have been delegated to the Secretary of Transportation. The NPFC funds most Federal responses to discharges and threats of discharges affecting the waters of the U.S. The NPFC:

- Issues Certificates of Financial Responsibility to owners and operators of vessels who demonstrate their ability to pay for costs and damages that are incurred by their vessels as a result of oil discharges;
- Provides funding to various response organizations for timely removal actions related to oil discharges;

- Provides compensation to claimants for removal costs and damages caused by oil discharges when the Responsible Party fails to do so;
- Recovers money from persons liable for costs and damages resulting from oil discharges; and
- Provides funds to initiate natural resources damage assessments.

As the fiduciary agency for the Oil Spill Liability Trust Fund (OSLTF), and the portion of Superfund available to the Coast Guard, the NPFC manages liability and compensation regimes pertaining to pollution from oil or hazardous substance spills. The NPFC has established a system that provides funds 24 hours a day to OSCs who need immediate funding for removal actions at an incident, to monitor Responsible Party actions, or to initiate an assessment of damages to natural resources.

OSLTF Access. There are four primary ways to access the OSLTF for compensation of response activities.

1. OSC. In the role of first responder and primary coordinator at responses, the OSC has responsibility to manage the response. The OSC determines whether Federal funds are required. The OSC also may hire contractors and mobilize response equipment, resources, and personnel to contain, remove, and dispose of spilled material.

2. State Access. A state may access the OSLTF in one of three ways:

- Upon request of a state governor or pursuant to an agreement with a state, the NPFC may obligate the OSLTF for payment in an amount not to exceed $250,000 per incident for removal costs consistent with the NCP. These funds may be used only for the immediate removal of a discharge, or the mitigation or prevention of a substantial threat of a discharge (see 33 CFR Part 133).
- The state may submit a claim to the OSLTF for removal costs or damages.
- The state may be hired as a contractor by the OSC.

3. Claims. Claims may be presented to the OSLTF for certain uncompensated removal costs or uncompensated damages resulting from the discharge of oil from a vessel or facility into navigable waters, adjoining shorelines, or the exclusive economic zone of the United States (see 33 CFR Parts 135, 136, and 137).

4. Natural Resource Damage Assessments and Restorations. The OSLTF can be used for initiating the assessment of natural resource damages, and for developing and implementing plans for restoration by Federal, state, and Indian tribal Trustees. OPA 90 provides for immediate funding to initiate assessment of natural resource damages. All requests to the NPFC for payment of such damages must be made through the lead Administrative Trustee designated at the time of the incident (see 33 CFR Part 136).

Documentation and Cost Recovery. It is important for all users of the OSLTF to promptly establish record keeping for all resources used and costs incurred. This documentation, used for cost recovery purposes as well as for overall fund management, must identify the source and circumstances of the incident, the Responsible Party or Parties, and present and potential impacts on public health and welfare, and to the environment. When appropriate, documentation also will be collected for

scientific understanding of the environment and for research and development of improved response methods and techniques.

ENVIRONMENTAL RESPONSE TEAM

The Environmental Response Team (ERT) is established by EPA in accordance with its disaster and emergency response responsibilities. The ERT has expertise in treatment technology, biology, chemistry, hydrology, geology, and engineering. It can provide access to special decontamination equipment, and provide advice to the OSC in hazard evaluation, risk assessment, multimedia sampling and analysis, on-site safety, including development and implementation plans, cleanup techniques and priorities, water supply decontamination and protection, application of dispersants, environmental assessment, degree of cleanup required, and disposal of contaminated material. The ERT also provides both introductory and intermediate-level training courses to prepare response personnel.

SCIENTIFIC SUPPORT COORDINATORS

The Scientific Support Coordinators (SSCs) are technical personnel provided to the Coast Guard by NOAA. (EPA provides SSCs in the inland zones.) They advise the OSC on the fate and effects of the spill. They also serve as a clearinghouse to coordinate the input and consider the concerns of the scientific community involved in the incident response.

RADIOLOGICAL EMERGENCY RESPONSE TEAMS

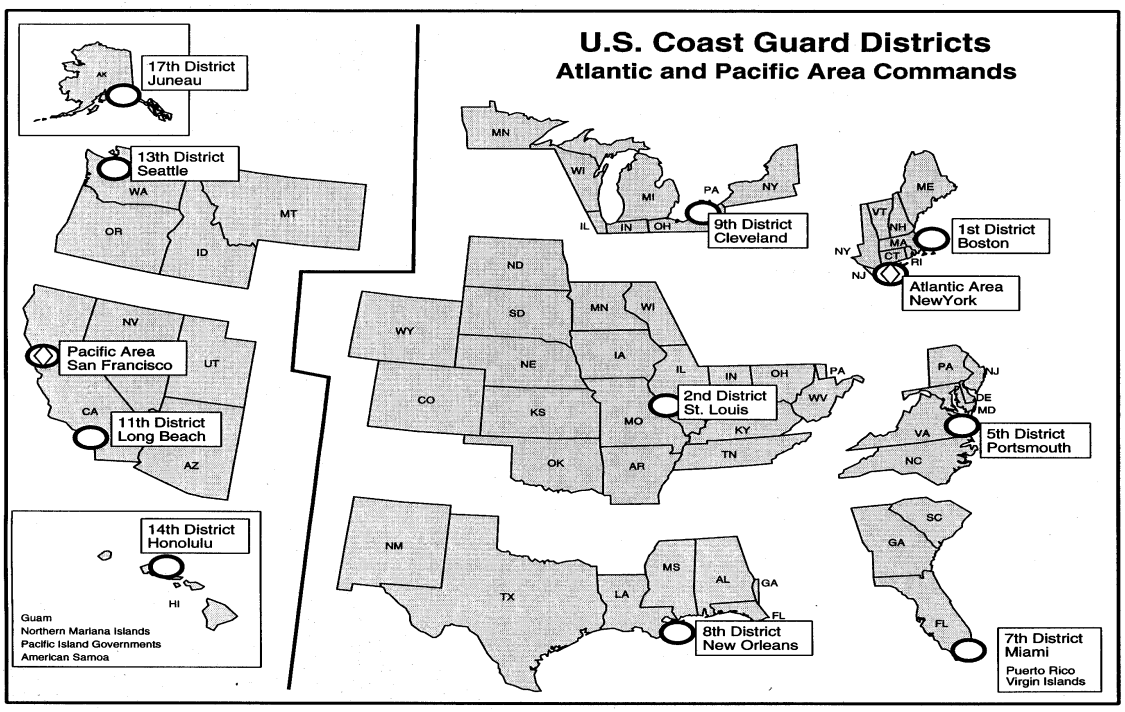
Radiological Emergency Response Teams (RERTs) have been established by EPA's Office of Radiation and Indoor Air Programs to provide response and support for incidents or sites containing radiological hazards. Expertise is available in radiation monitoring, radionuclide analysis, radiation health physics, and risk assessment. RERTs can provide on-site support, including mobile monitoring laboratories for field analyses of samples and fixed laboratories for radiochemical sampling and analyses.

Requests for support may be made 24 hours a day via the NRC or directly to the Radiological Response Coordinator in the EPA Office of Radiation and Indoor Air Programs. Assistance is also available from the Department of Energy and other Federal agencies.

REGIONAL LEVEL

REGIONAL RESPONSE TEAMS

Regional planning and coordination of preparedness and response actions is accomplished through the Regional Response Team (RRT). In the case of a discharge of oil, preparedness activities will be carried out in conjunction with Area Committees, as appropriate. The RRT agency membership parallels that of the NRT, but also includes state and local representation. The RRT provides: (1) the appropriate regional mechanism for development and coordination of preparedness activities before a response action is taken, (2) coordination of assistance and advice to the OSC during such response actions; and (3) guidance to Area Committees to ensure inter-area consistency of individual ACPs with the Regional Contingency Plan (RCP) and the NCP.



The two principal components of the RRT mechanism are a standing team, which consists of designated representatives from each participating Federal agency, state governments, and local governments (as agreed upon by the states); and incident-specific teams formed from the standing team when the RRT is activated for a response. On incident-specific teams, participation by RRT member agencies will be determined by the nature of the incident and its geographic location.

The standing team's jurisdiction corresponds to the 10 standard Federal regions, except for Alaska, Oceania in the Pacific, and the Caribbean area, each of which has a separate standing RRT. The roles of the standing RRTs include communications systems and procedures, planning, coordination, training, evaluation, preparedness, and related matters on a region-wide basis. It also involves facilitating coordination of Area Committees for these functions in areas within their respective regions, as appropriate.

Representatives of the EPA and the USCG act as co-chairs of the RRTs, except when the RRT is activated. When the RRT is activated for response actions, the chair is the member agency providing the OSC.

Each participating agency designates one member and at least one alternate member to the RRT. Agencies whose regional subdivisions do not correspond to the standard Federal regions may designate additional representatives to the standing RRT to ensure appropriate coverage of the standard Federal region. Participating states also may designate one member and at least one alternate member to the RRT. Indian tribal governments may arrange with the RRT for representation appropriate to their geographical location. All agencies and states may also provide additional representatives as observers to meetings of the RRT.

The state's RRT representative should keep the State Emergency Response Commission (SERC) apprised of RRT activities, and coordinate RRT activities with the SERC. Local governments are invited to participate in activities on the appropriate RRT as provided by state law or as arranged by the state's representative. Indian tribes also are invited to participate in such activities.

The RRT should review and comment, to the extent practicable, on local emergency response plans or other issues related to the preparation, implementation, or exercise of such plans upon request of a local emergency planning committee. In addition, the RRT should:

- Evaluate regional and local responses to discharges or releases on a continuing basis (and recommend improvements), considering available legal remedies, equipment readiness, and coordination among responsible public agencies and private organizations;
- Recommend revisions of the NCP to the NRT, based on observations of response operations;
- Review OSC actions to ensure that RCPs and ACPs are effective;
- Encourage the state and local response community to improve its preparedness for response;
- In coordination with Area Committees, conduct advance planning for the use of dispersants, surface washing agents, surface collecting agents, burning agents, bioremediation agents, or other chemical agents;
- Be prepared to provide response resources to major discharges or releases outside the region;
- Conduct or participate in training and exercises as necessary to encourage preparedness activities of the response community within the region; and
- Ensure maximum participation in the national program for announced and unannounced exercises.

The RRT may be activated by the chair as an incident-specific response team when a discharge or release: (1) exceeds the response capability available to the OSC in the place where it occurs; (2) transacts state boundaries; (3) may pose a substantial threat to the public health or welfare or the environment, or to regionally significant amounts of property; or (4) is a worst case discharge.

The role of the incident-specific team is determined by the operational requirements of the response to a specific discharge or release. Appropriate levels of activation and/or notification of the incident-specific RRT, including participation by state and local governments, will be determined by the designated RRT chair for the incident, based on the RCP. The incident-specific RRT supports the designated OSC. The designated OSC manages response efforts and coordinates all other efforts at the scene of a discharge.

RRTs, when activated for a discharge or release, may request other Federal, State, or local governments, or private agencies to provide resources under their existing authorities to respond to a discharge or release or to monitor response operations. The RRT also may help the OSC prepare information releases for the public and for communication with the NRT.

AREA LEVEL

FEDERAL ON-SCENE COORDINATOR

The OSC is the predesignated Federal official responsible for ensuring proper response. The USCG designates OSCs for the U.S. coastal zones, while the EPA designates OSCs for the U.S. inland zones. In all oil discharge- or hazardous substance release-related incidents within the geographical zone (either inland or coastal), the OSC will be the lead official in directing or monitoring the response on scene.

The OSC plans and coordinates the response strategy on-scene, in accordance with the National Contingency Plan (NCP), using the support of the NRT, RRTs, Area Committees, and Responsible Parties. Through these resources, the OSC obtains trained personnel, equipment, and scientific support needed to conduct an immediate and effective response to any oil discharge or hazardous substance release. The OSC provides for unified coordination of actions by Federal, state, and local governments, industry, civic groups, natural resource trustees, and other response participants.

While the Federal government is either removing or directing or monitoring the removal of an oil discharge, the designated OSC will have the final decision on all actions by other Federal, state, and local responders. Once the OSC determines (in consultation with the governors of the affected states) that the cleanup has been completed in a manner consistent with the NCP, state or local government coordinators may continue any specific cleanup within their own jurisdictions by using their own authority and funds.

The following describes the four key functions and responsibilities of On-Scene Coordinators:

1. Assessments. OSC evaluates extent of incident, potential hazards, types of resources needed, and ability of Responsible Party to handle incident.

2. Monitoring. When RP or locals respond, OSC may monitor the response and may provide technical advice to ensure that the steps taken are appropriate and effective.

3. Response Action. OSC decides whether Federal funds are necessary to handle the incident. Using either the Oil Spill Liability Trust Fund (for oil discharges) or Superfund (for hazardous substance releases), the OSC may secure contractors and mobilize response equipment, resources, and personnel to contain, remove, and dispose of the spilled material.

4. Reports. The OSC files pollution reports during incidents; as requested by the NRT or RRT, at the end of a response action, OSCs file reports to summarize the actions taken, the resources committed, and the problems encountered.

AREA COMMITTEES

The Area Committees, made up of Federal, state and local government representatives, support the OSC at the area level. Area Committees, which are primarily preparedness and planning committees, are responsible for: (1) preparing an ACP for their areas; (2) working with Federal, state and local officials to enhance the contingency planning of those officials, and to assure pre-planning of joint response efforts, including appropriate procedures for mechanical recovery, dispersal, shoreline

cleanup, protection of sensitive environmental areas, and protection, rescue, and rehabilitation of fisheries and wildlife; and (3) working with Federal, state and local officials to expedite decisions for the use of dispersants and other mitigating substances and devices.

SPECIAL TEAMS

The special teams, which have been described in previous sections, are Federally funded, and may provide resources locally to the OSC. These teams may provide the following: scientific information, manpower, equipment, support information systems, training, cleanup expertise, and public information coordination assistance. Special teams include: NOAA/EPA Scientific Support Coordinators (SSCs); EPA Environmental Response Team (ERT); and USCG National Strike Force (NSF), District Response Groups (DRGs), and the National Pollution Funds Center (NPFC) (see Section II).

III. RESPONSE OPERATIONS

The NCP identifies four phases of response operations for oil discharges: (1) discovery or notification, (2) preliminary assessment and initiation of action, (3) containment, countermeasures, cleanup, and disposal, and (4) documentation and cost recovery.

1 DISCOVERY OR NOTIFICATION

A discharge of oil may be discovered through a report submitted by the person in charge of a vessel or facility (in accordance with statutory requirements); deliberate search by patrols; random or incidental observation by government agencies or the public; or other sources. Any person in charge of a vessel or a facility shall immediately notify the NRC (at its toll free telephone number, 800-424-8802, or 202-267-2675), as soon as he or she has knowledge of any discharge from such vessel or facility in violation of the reporting requirements under Section 311 of the Clean Water Act. Reports may be made to the Coast Guard or EPA predesignated OSC for the geographical area where the discharge occurs, if immediate reporting to the NRC is not practicable.

2 PRELIMINARY ASSESSMENT AND INITIATION OF ACTION

The OSC is responsible for promptly initiating a preliminary assessment, which will be conducted using available information, supplemented where necessary and possible by on-scene inspection. The OSC will evaluate the magnitude and severity of the discharge or threat to public health or welfare or the environment; assess the feasibility of removal; and, to the extent practicable, identify Responsible Parties and assess their initial response actions. The OSC may allow the Responsible Party to voluntarily and promptly perform removal actions, except when the OSC is required to direct the response to a discharge that may pose a substantial threat to the public health or welfare.

If the Responsible Party does conduct the removal action, the OSC must ensure adequate surveillance over the initiated actions. If effective actions are not taken to eliminate the threat, or if removal is not being properly done, the OSC should so advise the Responsible Party.

When the OSC receives a report of a discharge, the OSC's actions normally follow this sequence:

- Investigate the report to determine pertinent information, such as the threat posed to the public health or welfare, and the type, quantity, and source of the discharge.

- Officially classify the size (minor, medium, major) and type (substantial threat, worst case discharge), and determine the course of action to be followed.

- Determine whether the Responsible Party or other person is properly carrying out the removal, if the OSC has determined that effective and immediate removal, mitigation, or prevention can be achieved by private party efforts. (A Responsible Party’s removal efforts will not be considered improper unless specifically determined by the OSC.)

- Notify the Responsible Party of the potential liability for Federal response costs incurred by the OSC, if the Responsible Party does not respond properly.

- When the Responsible Party is not known, unwilling, or unable to respond, or if the incident exceeds the capabilities of the initial responders, remove or arrange the removal of the discharge using available resources.

- When appropriate, determine whether a state has the ability to carry out any or all removal actions.

- Ensure prompt notification of the Trustees of affected natural resources.

3 CONTAINMENT, COUNTERMEASURES, CLEANUP, AND DISPOSAL

Removal is considered complete when so determined by the OSC, in consultation with the Governor(s) of the affected state(s).

Oil recovered in cleanup operations will be disposed of in accordance with the RCP, ACP, and any applicable requirements. RRT and Area Committee guidelines may identify the available disposal options and should address: the sampling, testing, and classifying of recovered oil and oiled debris; the segregation and stockpiling of recovered oil and oiled debris; prior state disposal approvals and permits; the routes, methods, and sites for the proper disposal of collected oil, oiled debris, and animal carcasses; and procedures for obtaining waivers, exemptions, or authorizations associated with handling or transporting waste materials.

4 DOCUMENTATION AND COST RECOVERY

All users of the OSLTF must maintain detailed records for all resources and costs incurred in responding to a spill incident. Documentation will identify the impact on the waters of the U.S., the source and circumstances of the incident, the responsible party or parties, and impacts and potential impacts to public health and welfare and the environment. Failure to submit timely and complete documentation can result in delays in reimbursement for removal costs and payments to contractors. When appropriate, documentation also will be collected for scientific understanding of the environment and for research and development of improved response methods and technology. The OCS will make the documentation available to natural resource trustees to help them determine the actual or potential natural resource injuries.

IV. CONTINGENCY PLANNING

This section summarizes emergency planning and coordinating activities relating to discharges of oil and hazardous substances, and describes the three levels of contingency planning under the National Response System.

NATIONAL CONTINGENCY PLAN

The National Contingency Plan (NCP)--the Federal government's blueprint for responding to oil discharges and hazardous substance releases--was developed to provide the organizational structure and procedures to guide the actions of government personnel, Responsible Parties, and other spill response participants. One of the original purposes of the NCP was to ensure that the resources and expertise of the Federal government would be immediately available for those relatively rare, but very serious, oil or hazardous substance incidents that require a national or regional response. The NCP established a hierarchy of mechanisms and organizations that together form the National Response System. OPA 90 required that the NCP be revised to further strengthen the ability of the NRS to address major incidents, such as the *Exxon Valdez* spill.

The NCP provides for efficient, coordinated, and effective response to discharges of oil and releases of hazardous substances. It provides for:

- A national response organization that may be activated in response actions, specifying responsibilities among the Federal, state, and local governments and describes resources that are available for response;
- Establishment of requirements for Federal, Regional, and Area Contingency Plans;
- Procedures for undertaking removal actions;
- Procedures for involving state governments in the initiation, development, selection, and implementation of response actions;
- Designation of Federal trustees for natural resources (for purposes of the CWA);
- Procedures for the participation of other persons in response actions; and
- National procedures for the use of dispersants and other chemicals in removals under the CWA.

REGIONAL CONTINGENCY PLANS

Working with the States, the RRTs are required to develop RCPs for each standard Federal region, Alaska, Oceania in the Pacific, and the Caribbean to coordinate timely, effective response by various Federal agencies and other organizations to discharges of oil. RCPs shall include information on all useful facilities and resources in the region, from government, commercial, academic, and other sources. To the greatest extent possible, RCPs shall follow the format of the NCP, and be coordinated with ACPs, as well as with the state emergency response plans, and local emergency response plans required by the Emergency Preparedness and Community Right-To-Know Act.

AREA CONTINGENCY PLANS

Under the direction of an OSC, each Area Committee is required to develop an Area Contingency Plan (ACP) for its area. This plan, when implemented in conjunction with other provisions of the NCP, must be adequate to remove a worst case discharge and to mitigate or prevent a substantial threat of such a discharge, from a vessel, offshore facility, or onshore facility operating in or near the area.

ACPs must include the following information:

- A description of the area covered by the plan, including the areas of special economic or environmental importance that might be impacted by a discharge;

- A detailed description of the responsibilities of an owner or operator and of Federal, state, and local agencies in removing a discharge, and in mitigating or preventing a substantial threat of a discharge;

The NRS has been revised to include several new organizations, such as Area Committees and DRGs, the NSFCC, and organizational elements to respond to substantial threat discharges, worst case discharges, and SONS (discussed in Section V).

- A list of equipment (including firefighting equipment), dispersants, or other mitigating substances and devices, and available personnel to ensure an effective and immediate removal of a discharge;

- A description of procedures to be followed for obtaining an expedited decision regarding the use of dispersants;

- A detailed description of how the plan is integrated into other ACPs and tank vessel, offshore facility, and onshore facility response plans, and into operating procedures of the NSFCC; and

- A Fish and Wildlife and Sensitive Environments Plan, as an annex to the ACP.

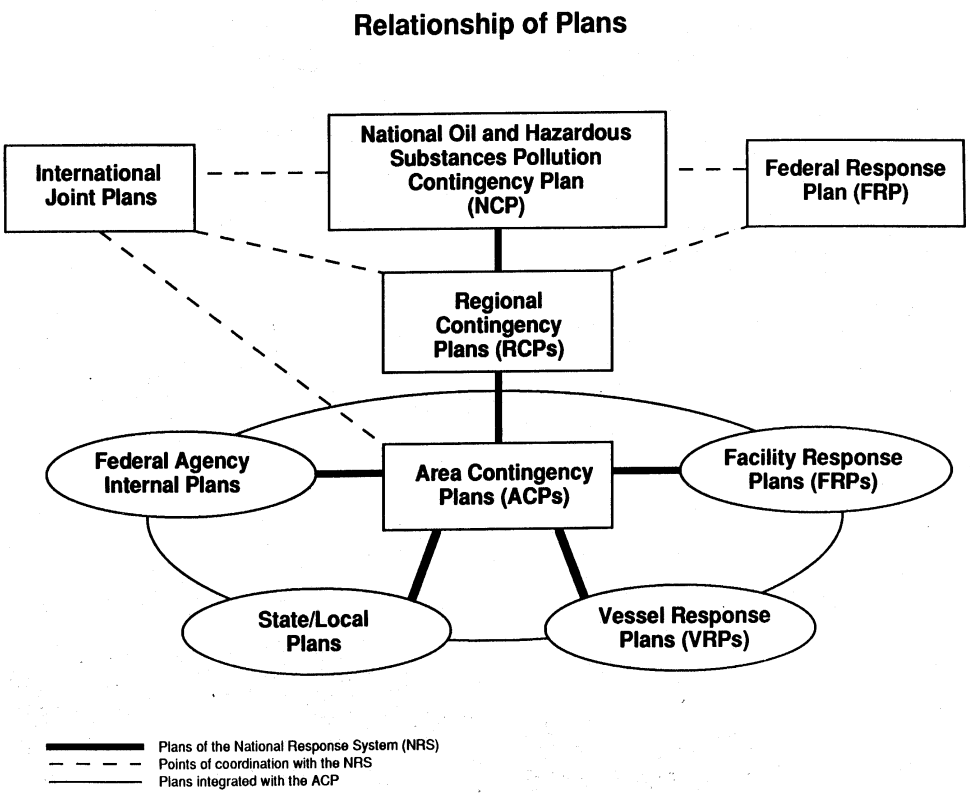
Pre-Approved Authorization. RRTs and Area Committees will address, as part of their planning activities, the desirability of using appropriate dispersants, surface washing agents, surface collecting agents, bioremediation agents, or miscellaneous oil spill control agents listed on the NCP Product Schedule.

RELATION TO OTHER PLANS

These planning activities must also coordinate with planning activities involving Federal Response Plans for natural disaster response, as well as tank vessel and facility response plans.

Federal Response Plans. In the event of a declaration of a major disaster by the President, the Federal Emergency Management Agency (FEMA) may activate the Federal Response Plan (FRP). A Federal Coordinating Officer, designated by the President, may implement the FRP and coordinate and direct emergency assistance and disaster relief of impacted individuals, businesses, and public services. Delivery of Federal assistance is facilitated through 12 functional annexes to the FRP

known as Emergency Support Functions. EPA coordinates activities under ESF #10 – Hazardous Materials, which addresses preparedness and response to hazardous materials and oil incidents caused by a natural disaster or other catastrophic event. In such cases, the ESF #10 Chair coordinates response activities with the Federal OSC in accordance with the NCP.



Tank Vessel and Facility Response Plans. Under OPA 90, tank vessels, offshore facilities, and certain onshore facilities are required to prepare and submit response plans for review and approval for the carriage, storage, and transportation of oil and hazardous substances. Separate regulations published by the appropriate Federal agencies provide requirements for response plan development and approval. These plans are developed to coordinate Responsible Party actions with the OSC and the ACP response strategies, for response to oil discharges within the inland and coastal zones of the United States.

V. PREPAREDNESS

NPREP

The National Preparedness for Response Exercise Program (NPREP) is a "table top exercise program" which brings the OSC and associated staff together with members of the local response community to respond to a simulated oil spill or hazardous substance release. The table top nature of these exercises allows for extensive interaction, but does not require the participants to actually move equipment. The OSC will periodically conduct these drills under relevant tank vessel and facility response plans. Some will be conducted without prior notice. Six such exercises are conducted annually. Each is designed to be performed by a team of representatives from the Coast Guard, EPA, National Oceanic and Atmospheric Administration (NOAA), and other related Federal, state, and local agencies. They incorporate the use of an Incident Command System, and also include a system to evaluate preparedness around the country.

The NSFCC coordinates this program, serving as a clearinghouse for exercises and participating in the development, execution, and evaluation to the fullest extent practicable. The EPA Administrator and the Secretary of Transportation may publish annual reports on these drills, including an assessment of the effectiveness of the plans and a list of amendments made to improve plans. The NSFCC may, in conjunction with the program managers of the USCG and EPA, impose unannounced area or multi-area exercises.

SPILLS OF NATIONAL SIGNIFICANCE

Efforts to respond to the *Exxon Valdez* spill showed that responders had to be better prepared. A response management system had to be developed to provide more efficient and effective response to particularly severe spills, or Spills of National Significance (SONS).

A SONS means a spill that, due to its severity, size, location, actual or potential impact on the public health and welfare or the environment, or the necessary response effort, is so complex that it requires extraordinary coordination of Federal, state, local, and Responsible Party resources to contain and clean up. A discharge may be classified as a SONS by the EPA Administrator for the inland zone and by the Coast Guard Commandant for the coastal zone.

For a SONS in the inland zone, EPA may name a senior EPA official to assist the OSC in communicating with affected parties and the public, and in coordinating Federal, state, local, and international resources at the national level. The strategic coordination will involve, as appropriate, the NRT, RRTs, Governors of affected states, and the mayors or other chief executives of local governments.

For a SONS in the coastal zone, the Coast Guard may name a National Incident Commander who will assume the role of OSC in communicating with affected parties and the public, and in coordinating Federal, state, local, and international resources at the national level. This strategic coordination will involve, as appropriate, the NRT, RRTs, Governors of affected states, and the mayors or other chief executives of local governments.

ACRONYMNS

(A) Department and Agency Title Abbreviations:

DOC	Department of Commerce
DOD	Department of Defense
DOE	Department of Energy
DOI	Department of Interior
DOJ	Department of Justice
DOL	Department of Labor
DOS	Department of State
DOT	Department of Transportation
DOTr	Department of the Treasury
EPA	Environmental Protection Agency
FAA	Federal Aviation Administration
FEMA	Federal Emergency Management Agency
GSA	General Services Administration
HHS	Department of Health and Human Services
NOAA	National Oceanic and Atmospheric Administration
USCG	United States Coast Guard

(B) Operational Abbreviations:

ACP	Area Contingency Plan
DRAT	District Response Advisory Team
DRG	District Response Group
ERT	Environmental Response Team
ESF	Emergency Support Functions
FPN	Federal Project Number
FRP	Federal Response Plan
NCP	National Contingency
NPFC	National Pollution Funds Center
NRC	National Response Center
NRS	National Response System
NRT	National Response Team
NSF	National Strike Force
NSFCC	National Strike Force Coordination Center
OPA or OPA 90	Oil Pollution Act of 1990
OSC	On-Scene Coordinator
OSLTF	Oil Spill Liability Trust Fund
PIAT	Public Information Assist team
RCP	Regional contingency Plan
RERT	Radiological Emergency Response Team
RP	Responsible Party
RRT	Regional Response Team
SERC	State Emergency Response Commission
SONS	Spill of National Significance

ACRONYMS

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

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

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

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

CHAPTER 3

Removal Actions -

Oil and Hazardous Substances

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This chapter provides detailed procedures for cost documentation of an oil spill. The material is divided into the following subchapters:

SUBCHAPTER	CONTAINS DETAILED INFORMATION ABOUT
FOSC Finance and Resource Management Field Guide	• General guidance on all aspects of OSTLF access, uses, and funds management during a spill. The FOSC Financial Field Guide is published as a pocket guide.
Fund Access Overview	• Guidance describing procedures for USCG or EPA FOSCs performing oil removal or hazardous material response operations under the National Contingency Plan.
FOSC Financial Management Checklist - OIL	• Step-by-step guidance for CG and EPA FOSCs who are using the Emergency Fund and must monitor cost documentation during an oil spill response.
FOSC Financial Management Checklist - HAZMAT	• Step-by-step guidance for CG FOSCs who are using CERCLA/Superfund and must monitor cost documentation during a response to a hazardous materials release.
Accounting Information	• Accounting strings and codes for CG FOSCs and Strike Teams when directly expending pollution response funds (OSLTF and CERCLA) in the CG Accounting System.
Funds Management During Incidents	• Describes processes for ceiling management and obligation record keeping, as well as government credit card use procedures.
Management of Civilian Overtime, COMDTINST 12550.41	• Document describing procedures for approval and control of Coast Guard civilian overtime for all appropriations.
Removal Cost Technical Operating Procedures (TOPs) - Oil	• NPFC Technical Operating Procedures (TOPs) providing guidance for determining valid removal costs for oil discharges or substantial threats of discharges to the extent possible.
Removal Cost Policy and Operating Procedures - CERCLA	• NPFC guidance for hazardous material discharges to the extent possible
Resource Documentation TOPs	• NPFC TOPs for accessing the OSLTF. It includes procedures for resource documentation, use of CANAPS, ceiling management and copies of forms that must be filled out.
Standard Rates	• Rates used to reimburse the Coast Guard for certain spill-related activities, used when filling out many of the forms contained in the TOPs.

SUBCHAPTER	CONTAINS DETAILED INFORMATION ABOUT
Contracting Information	
Coast Guard Acquisition Procedures (excerpt)	• Provides guidance on Coast Guard contracting procedures for containment and cleanup of oil and hazardous substance spills.
MLC Atlantic Area Procedures	• Procedures for hiring contractors to clean up an oil spill or hazardous material release in USCG districts within the Atlantic area.
MLC Pacific Area Procedures	• Procedures for hiring contractors to clean up an oil spill or hazardous material release in USCG districts within the Pacific area.
Emergency Contracting Procedures (G-MOR Guidance)	• Provides policy and guidance to Coast Guard personnel to facilitate emergency contracting for oil spill and hazardous substance response.
Action Memo Guidance	• This EPA-generated document provides guidance in the preparation of action memos for Superfund removal operations, particularly administrative record requirements for reserving removal funding.
Strike Team Guidance	• Document providing guidance to NSF on use of CERCLA funding when in support of EPA FOSCs.
Long Term Removals	• Document describing policies on cases which may present unique challenges to the OSC, based upon their extended response time periods.
CERCLA Non-Incident Funding	• Guidance concerning management and use of CERCLA non-incident funds

U.S. Coast Guard
Federal On Scene Coordinator
(FOSC)

Finance and Resource Management Field Guide

The Finance and Resource Management Field Guide (FFARM) is being updated and will be included in the 2003 version of the User Reference Guide. If the updated version of the FFARM guide is available before the publication of the 2003 version of the User Reference Guide, NPFC will post it on the NPFC website at http://www.uscg.mil/hq/npfc/npfc.htm.

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Procedures for Accessing the Funds

OIL

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

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

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

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

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

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

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

VII. FPN Construction.

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

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

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

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

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

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

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

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

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

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

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

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

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

Procedures for Accessing the Funds

HAZARDOUS SUBSTANCES /CERCLA

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

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

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

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

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

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

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

OIL SPILLS
FOSC FINANCIAL MANAGEMENT CHECKLIST

(For Coast Guard FOSC financial management ONLY; operational steps are NOT included)

When The Spill Occurs

☐ **Does OSLTF apply? _____yes _____no**

If you answer yes to both of these questions, OSLTF funding applies.

1. Was there a discharge of oil, or a substantial threat of a discharge of oil (i) into navigable waters; (ii) on the adjoining shorelines; (iii) into the waters of the exclusive economic zone; or (iv) it may affect natural resources under exclusive management authority of the United States?
2. Are further actions necessary to ensure effective and immediate removal, mitigation or prevention of the substantial threat?

☐ **Collect incident information.**

Name of incident: _____

Location (body of water, city, state): _____

Latitude and longitude: _____

Type of oil: _____

___ Visual Observation
___ Field testing
___ Lab analysis
___ Report by knowledgeable party
___ Other _____

Quantity of oil: _____

Description of substantial threat: _____

Potential quantity of total oil discharge: _____

Date of incident: _____

Date of discovery: _____

☐ **Collect source and responsible party (RP) information.**

Vessel or facility name:	_____
How was source identified?	___ Visual Observation ___ Reported ___ Other _____
Who identified source?	_____
Responsible party (owner):	name _____ address_____ _____ SSN/TIN* _____ contact _____
Responsible party (operator):	name _____ address_____ _____ SSN/TIN* _____
Responsible party (other):	contact _____ name _____ address_____ SSN/TIN* _____
How was RP identified?	___ FOSC investigation ___ Report by RP ___ Report by third party
Who identified RP?	_____ _____

*Social Security Number/Tax Identification Number (SSN/TIN). The Data Collection Act requires USCG to obtain the SSN or TIN of the RP in order to pursue cost recovery.

☐ **Estimate the OSLTF funding ceiling required**

Estimated contractor costs: _____

Estimated FOSC personnel costs:_____

Estimated FOSC equipment costs: _____

Estimated TDY/travel costs:_____

Estimated miscellaneous costs:_____

Estimated OGA costs: _____

Estimated Reservist costs:_____

Total ceiling required:_____

☐ **Access CANAPS to request ceilings.**

Federal Project Number: _____

Authorized ceiling: _____

Funding citation(s):_____

CANAPS will issue record message traffic to appropriate units.

NOTE: If you are unable to access CANAPS or use any surrogate to access CANAPS or contact the NPFC Command Duty Officer, as the FOSC, you are authorized to obligate up to $25,000 for response actions.

☐ **For NPFC assistance, contact your NPFC regional case manager.**

Gulf Coast and Midwest:	Team I	(202) 493-6723
Southeast (Philadelphia and South):	Team II	(202) 493-6726
West Coast, AK, HI:	Team III	(202) 493-6729
Northeast and Great Lakes:	Team IV	(202) 493-6732

On weekends, holidays, or after hours, you will hear recorded instructions for paging.

Assigned case officer:_____

If your regional manager is not available, page the duty case officer by calling (800) 759-7243, PIN 2073906, **OR** call the duty case officer through the CGHQ Command Center (202) 267-2100 or (800) 424-8802.

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

In the *NPFC User Reference Guide*, turn to Chapter 3, Subtab Resource Documentation.

Ceiling Management Forms:

_____ For a Level I spill (estimated ceiling under $50,000), use **CG-5136 Series, Pollution Incident Daily Resource Report – Ceiling Management & Incident Obligation Log – Short Form**

_____ For a Level II spill (estimated ceiling $50,000-$200,000) or Level III spill (over $200,000), use **CG-5136F, Environmental Response Ceiling Management Form** to estimate and manage the ceiling. Record each activity as it occurs on **Daily Record Worksheets**

Daily Cost Documentation Forms (all levels):

_____ Use the appropriate **Pollution Incident Daily Resource Reports**, (CG-5136 series) to consolidate daily totals.

_____ Electronic version of CG-5136 series available on disk in Excel format from the NPFC.

☐ **Follow guidance in the *NPFC User Reference Guide* for use of funds and to arrange response actions. Contract through appropriate MLC (fcp) and use Pollution Removal Funding Authorizations (PRFA's) for other government agencies.**

During Cleanup - Every Day

☐ **Monitor contractors.**

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

____ Date stamp all invoices upon receipt.

____ Within seven days of receipt of invoices, certify that work was performed as ordered. (As FOSC, you should not certify work that was not ordered.)

____ All invoices must be forwarded to arrive at MLC within 10 days of receipt.

☐ **Monitor Coast Guard units.**

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

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

☐ **Monitor other government agencies.**

____ Issue **Pollution Removal Funding Authorizations** (PRFAs) to other federal and state agencies participating in the FOSC-directed response. (See *NPFC User Reference Guide*, Chapter 3, Resource Documentation.)

____ Collect OGA (Other Government Agencies) **SF-1080** or **SF-1081** vouchers and supporting documentation in accordance with the PRFA. (See *NPFC User Reference Guide*, Chapter 3, Resource Documentation)

____ Review **SF-1080/1081** vouchers from OGAs and certify that work was performed as ordered.

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

Use the **Ceiling Management** forms in the *NPFC User Reference Guide,* Chapter 3, Subtab Resource Documentation:

____ Include Type I Obligations: contracts, removal authorizations, travel orders, direct expenses.

____ Include Type II Obligations: **anticipated costs (estimates)** of Coast Guard resources (personnel, vehicles, aircraft, boats, cutters, and Strike Team pollution equipment) based on Coast Guard Standard Rates (See *NPFC Reference Guide*, Section 3, Resource Documentation.)

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

☐ **If the ceiling must be increased, access CANAPS.**

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

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

After The Response Action Is Completed

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

> Insure that all certification for receipt of services is in accordance with standard MLC and Finance Center procedures. (Contact appropriate MLC contracting officer if questions arise, or if invoice cannot be certified. The FOSC is certifying receipt of invoiced goods and services in quantities indicated. Costs are verified by the cognizant contracting officer.)

☐ **Forward certified contractor invoices to MLCLANT (fcp-2) or MLCPAC (fcp), as appropriate.**

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

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

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

> See the *NPFC User Reference Guide*, Chapter 3, Subtab "Resource Documentation", for a description of the Financial Summary report, which includes:
>
> ____ Incident Report; FOSC Pollution Incident Daily Resource Reports; Contractor Invoices and Daily Resource Reports; Other Government Agencies Resource Documentation (SF-1080/1081 with invoices, Daily Resource Reports, Pollution Removal Funding Authorization); Out-of-Pocket expense; Inventory of Equipment Purchased.
>
> ____ If you are using Excel forms, DO NOT throw away the original handwritten invoices, dailies, and notes. In court, the Excel sheets may not be considered "original" documentation.

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HAZARDOUS SUBSTANCES
FOSC FINANCIAL MANAGEMENT CHECKLIST

(For Coast Guard FOSC financial management ONLY; operational steps are NOT included)

When A Release Occurs

☐ **Does CERCLA apply? ____yes ____no**

If you answer yes to these three questions, CERCLA probably applies.

1. Has a hazardous substance been released (or is there substantial probability that it will be released)?
2. Does this present an imminent and substantial threat to public health or welfare?
3. Is the responsible party failing to take appropriate action, or is it necessary to monitor its actions?

☐ **Collect incident information.**

Name of incident: _____

Location: _____

_____

Latitude and longitude: _____

_____

Type of substance: _____

___ Visual Observation
___ Field testing
___ Lab analysis
___ Report by knowledgeable party
___ Other_____

Quantity of substance: _____

Description of substantial threat:_____

_____

_____

Potential quantity of total release:_____

Date of incident: _____

Date of discovery: _____

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

Name of facility or vessel: _____

How was source identified?
___ Visual Observation
___ Reported
___ Other _____

Who identified source? _____

Responsible party (owner):
name _____
address _____
SSN/TIN* _____

Responsible party (operator):
_____
contact _____
name _____
address _____
SSN/TIN* _____

Responsible party (other):
_____
contact _____
name _____
address _____
SSN/TIN* _____

How was RP identified?
___ FOSC investigation
___ Report by RP
___ Report by third party _____

Who identified RP? _____

*Social Security Number/Tax Identification Number (SSN/TIN). The Data Collection Act requires USCG to obtain the SSN or TIN of the RP in order to pursue cost recovery.

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

Estimated contractor costs: _____

Estimated FOSC personnel costs: _____

Estimated FOSC equipment costs: _____

Estimated TDY/travel costs: _____

Estimated miscellaneous costs: _____

Estimated OGA costs: _____

Estimated Reservist costs: _____

Estimate Strike Team costs: _____

Total ceiling required: _____

☐ **Access CANAPS for issuance of CPNs and authorized ceilings.**

CERCLA Project Number: _____

Authorized ceiling: _____

CPN accounting string: _____

Document Control Construction: _____

CANAPS will confirm by message.

☐ **If the estimated ceiling is equal to or greater than $250,000, contact your NPFC Regional Manager for assistance in submitting an Action Memorandum to EPA before obligating the amount.**

☐ **If the estimated ceiling is less than $250,000, document the finding of imminent and substantial endangerment in POLREP One.**

☐ **For NPFC assistance.**

Gulf Coast and Midwest:	Team I	(202) 493-6723
Southeast (Hampton Roads and South):	Team II	(202) 493-6726
West Coast, AK, HI:		
Northeast and Great Lakes:	Team III	(202) 493-6729
	Team IV	(202) 493-6732

On weekends, holidays, or after hours, you will hear recorded instructions for paging.

If your regional manager is not available, page the duty case officer by calling (800) 759-7243, PIN 2073906, **OR** call the duty case officer through the CGHQ Command Center (202) 267-2100 or (800) 424-8802. **If you are not able to contact NPFC, as the FOSC you may obligate up to $25K for response actions.**

☐ **Obtain information from your NPFC regional manager.**

Assigned case officer: _____

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

In the *NPFC User Reference Guide*, turn to Chapter 3, Subtab Resource Documentation.

Ceiling Management Forms:

_____ For all responses use **CG-5136F, Environmental Response Ceiling Management Form** to estimate and manage the ceiling. Record each activity as it occurs on **Daily Record Worksheets.**

Daily Cost Documentation Forms (all levels):

_____ Use the appropriate **Pollution Incident Daily Resource Reports** (CG-5136 series), or the Excel versions of these forms, to consolidate daily totals.

☐ **Follow guidance in the *NPFC User Reference Guide* for use of funds and to arrange response actions. Contract through appropriate MLC (fcp) and use Pollution Removal Funding Authorizations (PRFA's) for other government agencies.**

During Cleanup -- Every Day

☐ **Monitor contractors.**

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

____ Within seven days of receipt of invoices, certify that work was performed as ordered. (As FOSC, you should not certify work that was not ordered.)

____ Within seven days of receipt of invoices, certify that work was performed as ordered. (As FOSC, you should not certify work that was not ordered.)

____ All invoices must be forwarded to arrive at MLC within 10 days of receipt.

☐ **Monitor Coast Guard units.**

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

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

☐ **Monitor other government agencies.**

____ Issue **Pollution Removal Funding Authorizations** (PRFAs) to other federal and state agencies participating in the FOSC-directed response. (See *NPFC User Reference Guide*, Chapter 3, Resource Documentation.)

____ Collect OGA (Other Government Agencies) **SF-1080** or **SF-1081** vouchers and supporting documentation in accordance with the PRFA. (See *NPFC User Reference Guide*, Chapter 3, Resource Documentation.)

____ Review **SF-1080/1081** vouchers from OGAs and certify that work was performed as ordered.

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

Use the **Ceiling Management** forms in the *NPFC User Reference Guide,* Chapter 3, Subtab Resource Documentation:

____ Include Type I Obligations: contracts, removal authorizations, travel orders, direct expenses…

____ Include Type II Obligations: **anticipated costs (estimates)** of Coast Guard resources (personnel, vehicles, aircraft, boats, cutters, and Strike Team pollution equipment) based on Coast Guard Standard Rates (See *NPFC User Reference Guide*, Section 3, Resource Documentation).

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

☐ **If the ceiling must be increased, access CANAPS.**

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

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

After the Response Action is Completed

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

> Insure that all certification for receipt of services is in accordance with standard MLC and Finance Center procedures. (Contact appropriate MLC contracting officer if questions arise, or if invoice cannot be certified. The FOSC is certifying receipt of invoiced goods and services in quantities indicated. Costs are verified by the cognizant contracting officer.)

☐ **Forward certified contractor invoices to MLCLANT (fcp-2) or MLCPAC (fcp), as appropriate.**

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

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

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

> See the *NPFC User Reference Guide*, Chapter 3, Subtab Resource Documentation, for a description of the Financial Summary report, which includes:
>
> ____ Incident Report; FOSC Pollution Incident Daily Resource Reports; Contractor Invoices and Daily Resource Reports; Other Government Agencies Resource Documentation (SF-1080 with invoices, Daily Resource Reports, Pollution Removal Funding Authorization); Out-of-Pocket expense; Inventory of Equipment Purchased.
>
> ____ If you are using Excel forms, DO NOT throw away the original handwritten invoices, dailies, and notes. In court, the Excel sheets may not be considered "original" documentation.

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NATIONAL POLLUTION FUNDS CENTER ACCOUNTING STRINGS AND DOCUMENT CONTROL NUMBERS FORMAT REQUIREMENTS

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TABLE OF CONTENTS

Accounting Strings for OPA Cases.....3-32

Accounting Strings for Special Cercla Reimbursable Cases..3-33

Document Control Number Format for OPA and Cercla Cases...3-34

Appendix A Administrative Target Units "ATU's".....3-35

Appendix B OPFAC Numbers 3-36

Appendix C Object Class Numbers 3-37

Appendix D DAFIS Document Types 3-38

Appendix E Procurement Site Code 3-39

Appendix F 2 Digit Program Element for DCN's 3-40

DAFIS ACCOUNTING STRINGS
FOR OIL SPILLS & CLAIMS
TO BE USED BY ALL "CG" UNITS

FORMAT:
X / X / XX / XXX / XX / X / XXXXXX / XXXXX / XXXX
(1) (2) (3) (4) (5) (6) (7) (8) (9)

(1)	Agency	1-digit	2 = Coast Guard
(2)	District/Region	1-digit	H= HQ (Emergency fund always uses H)
(3)	Appropriation	2-digits	SZ = Emergency Fund SX = Claims
(4)	Appropriation Code Limitation (LIM Code)	3-digits	Position #1: 1 = direct funds Position #2 & #3 = ATU of OSC's district (see Appendix "A")
(5)	Allotment Fund Control (AFC)	2-digits	95 = OPA 90 (Emergency Fund) 00 = SX/Claims
(6)	Allotment Level Indicator (ALI)	1-digit	This field is not used by the CG and will always be 0.
(7)	Program Element	6-digits	Federal Project Number.
(8)	Cost Center	5-digits	The OPFAC # of the FOSC who is accessing the Emergency Fund. **Note:** When the EPA is the FOSC,the OPFAC # will be the appropriate CG District office having oversight. (see Appendix "B").
(9)	Object Class	4-digits	The first two digits are assigned by OMB. The last two are assigned by the Coast Guard. (For applicable Object Class numbers, see Appendix "C").

DAFIS ACCOUNTING STRINGS
FOR CERCLA CASES
(SPECIAL REIMBURSABLE ACCOUNTS)

Coordinated with the NPFC

FORMAT:

X / X / XXX / XXX / XX / X / XXXXXX / XXXXX / XXXX
(1) (2) (3) (4) (5) (6) (7) (8) (9)

(1)	Agency	1-digit	2 = Coast Guard
(2)	District/Region	1-digit	H = HQ (Cercla always uses H)
(3)	Appropriation	3-digits	Last digit of current FY + 01 = operating expense (OE Appropriation)
(4)	Appropriation Code Limitation (LIM Code)	3-digits	Position #1: 8 = reimbursable account Position #2 & #3 = 72 always (ATU for NPFC)
(5)	Allotment Fund Control (AFC)	2-digits	80 = generic reimbursable account
(6)	Allotment Level Indicator (ALI)	1-digit	This field is not used by the CG and will always be 0.
(7)	Program Element	6-digits	Cercla case number. Applies to NPFC assigned case number.
(8)	Cost Center	5-digits	The OPFAC # of the FOSC who is accessing the special reimbursable account.
(9)	Object Class	4-digits	See Appendix "C".

Additional Information: In a text block on the commitment and obligating documents, write "EPA Reimbursable Agreement "X X X X X X" using the 6-digit Cercla case number as the agreement identifier.

DAFIS DOCUMENT CONTROL NUMBER

FOR OPA - EMERGENCY FUND & CERCLA CASES

TO BE USED BY ALL "CG" UNITS

FORMAT:

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

(1)	Document Type	2-digits	DAFIS document type (see Appendix "D")
(2)	Fiscal Year (Funding Year)	2-digits	Last two digits of current fiscal year or funding year.
(3)	Procurement Site Code	2-digits	46 = NPFC 23 = CGHQ (see Appendix "E")
(4)	Fiscal Year	1-digit	Last digit of the year of initial contract award
(5)	Region/District	1-digit	H = HQ (Emergency Fund always uses H)
(6)	Program Element	2-digits	ATU for OPA (Emergency Fund & Cercla cases only) (see Appendix "F")
(7)	Document Sequence Number	3-digits	Unique sequential number assigned by unit preparing the document

APPENDIX "A"

ADMINISTRATIVE TARGET UNITS (ATU)'S

FOR

ACCOUNTING STRINGS

(1 X X = DIRECT FUNDS)

The next two digits of this three position field represents the Administrative Target Unit

---

CCGD1	Boston, MA	01
CCGD5	Portsmouth, VA	05
CCGD7	Miami, FL	07
CCGD8	New Orleans, LA	08
CCGD9	Cleveland, OH	09
CCGD11	Alameda, CA	11
CCGD13	Seattle, WA	13
CCGD14	Honolulu, HI	14
CCGD17	Juneau, AK	17
MLC - Atlantic, Portsmouth, VA		32
MLC - Pacific, Alameda, CA		33
CG Finance Center, Chesapeake, VA		36
NPFC, Arlington, VA		72
CG Headquarters		99

APPENDIX "B"

OPFAC NUMBERS

DISTRICT OFFICES:	OPFAC #		
Boston	71101	**NPFC**	74100
Portsmouth	71105	**MLC LANT**	75130
Miami	71107	**MLC PAC**	75160
New Orleans	71108		
Cleveland	71109	**NSFCC**	34359
Alameda	71111	Atlantic Team	34361
Seattle	71113	Gulf Team	34340
Honolulu	71114	Pacific Team	34360
Juneau	71117		
MSO's (Alphabetically)			
Anchorage	32280	Milwaukee	33248
Baltimore (COMCOGARDACT)	73133	Mobile	33214
Boston	33200	Morgan City	33293
Buffalo	33254	New Orleans	33292
Charleston	33233	New York (COMCOGARDACT)	73136
Chicago	33247	Paducah	33205
Cleveland	33253	Philadelphia	33211
Corpus Christi	33240	Pittsburgh	33206
Detroit	33250	Port Arthur	33241
Duluth	33287	Portland, ME	33285
Galveston (MSU)	33265	Portland, OR	33270
Guam	33296	Providence	33286
Hampton Roads	33220	Puget Sound	33271
Honolulu	33275	San Diego	33255
Houston	33244	San Francisco	33260
Huntington, WV	33207	San Juan	33239
Jacksonville	33231	Sault Ste Marie	33246
Juneau	33281	Savannah	33232
Long Beach	33261	St. Louis	33201
COTP Long Island Sound	36229	Tampa	33230
Louisville	33209	Toledo	33252
Memphis	33204	Valdez	33283
Miami	33215	Wilmington	33225

APPENDIX "C"

OBJECT CLASS NUMBERS

Recommended Codes

1181	Reimbursements to Other Agencies
2100	CONUS Travel - Site Visit - Ops Travel
2110	OVERSEAS Travel - Site Visit - Ops Travel
2170	Lease of aircraft
2171	Lease of vehicle - government
2172	Lease of vehicle - commercial
2204	Rental of trucks
2521	Contracts - DOD
2522	Contracts - OGA
2523	Contracts - Other
2662	Office Supplies
2664	Other Documents
2669	Safety Supplies
2684	Telephone Supplies
2696	Other Supplies
4202	Indemnities & Claims
4204	Other Indemnities & Claims

APPENDIX "D"
FOR DOCUMENT CONTROL NUMBERS
DAFIS DOCUMENT TYPES

01 - Appropriation
02 - Apportionment
03 - Non expenditure trans
04 - Allotment (Funds)
05 - Allotment (Contract Liquidation Authority)
06 - HQ program plan
07 - Regional plans
08 - Project Authorization
09 - Activity plan
11 - TAD/TDY travel orders
12 - PCS travel orders
13 - Reserve travel orders
14 - GTR (PCS & TAD)
15 - GBL (PCS & TAD)
16 - Blanket GTR's
19 - Miscellaneous
20 - Cash
21 - Procurement requests (Brown Sheets)
22 - Purchase orders / SF-44
23 - Purchase order
24 - Contracts
26 - PO Dining facility
27 - Auxiliary orders
28 - Interagency agreements
30 - Training
31 - Work order-utilities-GSA
33 - Purchases/miscellaneous
34 - GSA Job Order
35 - Fedstrip
36 - GSA stores
37 - Printing & medical pmnts
38 - Blanket purchase order
39 - SIBAC/DAFIS control group
40 - Fixed leases
41 - Rental contracts
42 - Janitorial contracts
43 - Other fixed contracts
44 - Utility / electric
45 - Utility / telephone
46 - Utility / water
47 - Gasoline & Oil
48 - SIBAC - Recurring
49 - Utility/Natural Gas
51 - Reimbursement Agreement - Direct Chg (MIPR's)
52 - Reimbursement Agreement - Overhead, Operations
53 - Reimbursement Agreement - Overhead, GF
55 - Accounts receivable
56 - Other accounts receivable
61 - Imprest Funds / SF 1129
62 - Cancelled checks / SF 1098
63 - Disbursement-non-federal Obligations
64 - Collections - confirmation
65 - Disbursements - confirmation
66 - Collections
68 - Collections - debit voucher
69 - Disbursement/Collections Adj.
70 - Payroll collection
71 - Payroll gross costs
72 - Payroll - schedule of disbursement
73 - Supplementary payments & adjustments
74 - IOTV - costs
75 - IOTV - obligations & costs
77 - IOTV - other assets
78 - Adjustment entries
79 - Closing entries
81 - Labor distribution reports
82 - Depreciation & interest - AMA
83 - Cost estimates
87 - Discounts lost
88 - Discounts lost - cost effective
89 - Interest/penalty paid

UNDERLINED ITEMS ARE DOCUMENT TYPES MOST OFTEN USED.

APPENDIX "E"

FOR DOCUMENT CONTROL NUMBERS

PROCUREMENT SITE CODE

23	CG HQ
24	CCGD1
27	CCGD5
28	CCGD7
29	CCGD8
30	CCGD9
31	CCGD11
33	CCGD13
34	CCGD14
35	CCGD17
46	NPFC

APPENDIX "F"

FOR DOCUMENT CONTROL NUMBERS
2 DIGIT PROGRAM ELEMENT FOR OPA & CERCLA ONLY

X1 First District

XA MSO Portland, ME
XB MSO Boston
XC MSO Providence
XD COMCOGARDACT New York
XE COTP Long Island Sound

X5 Fifth District

XM COMCOGARDACT Baltimore
XN MSO Hampton Roads
XP MSO Philadelphia
XQ MSO Wilmington

X7 Seventh District

XR MSO Miami
XS MSO Jacksonville
XT MSO Tampa
XU MSO Savannah
XV MSO Charleston
XW MSO San Juan

Y8 Eight District

YZ MSO New Orleans
YY MSO Morgan City
YX MSO Corpus Christi
YW MSU Galveston
YV MSO Mobile
YU MSO Port Arthur
XY MSO Houston
XF MSO St. Louis
XG MSO Huntington, WV
XH MSO Louisville
XJ MSO Memphis
XK MSO Paducah
XL MSO Pittsburgh

Y9 Ninth District

YT MSO Buffalo
YS MSO Chicago
YR MSO Cleveland
YQ MSO Detroit
YP MSO Duluth
YN MSO Milwaukee
YM MSO Toledo
YK MSO Sault Ste. Marie

Y1 Eleventh District

YA MSO Long Beach
YB MSO San Diego
YC MSO San Francisco

Y3 Thirteenth District

YD MSO Portland, OR
YE MSO Puget Sound

Y4 Fourteenth District

YF MSO Honolulu
XX MSO Guam

Y7 Seventeenth District

YG MSO Juneau
YH MSO Anchorage
YJ MSO Valdez

XZ NPFC

E1 NSFCC

E2 AST
E3 GST
E4 PST

NPFC USE ONLY

X2 Site Specific IAG with EPA Region
X3 Initiate Agreement for Natural Resource Damage Assessment
X4 State Access Cooperative Agreement
X6 NRD CLAIMS payments & costs.

Funds Management During Incidents

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

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FUND MANAGEMENT DURING INCIDENTS

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

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

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

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

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

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

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

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

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

USE OF CG RESERVISTS

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

I. Use of CG Reservists

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

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

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

CREDIT CARDS

II. Use of Credit Cards

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

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

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

D. How to obtain/activate

1. Existing card

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

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

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

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

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

2. New card

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

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

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

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

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

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

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

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

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

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U.S. Department
of Transportation

United States
Coast Guard

Commandant
United States Coast Guard

2100 Second Street, S.W.
Washington DC 20593-0001
Staff Symbol: (G-PC - 1)
Phone: (202) 267-1706

COMDTINST 2550.4I
MAR 5, 1993

COMMANDANT INSTRUCTION 12550.4I

Subj: Management of Civilian Overtime

Ref: (a) COMDTINST 12550.7 (series), Premium Pay for Civilian Employees
(b) COMDTINST 12550.3 (series), Special Overtime Pay and Reimbursable Charges for Documentation Specialists and Marine Inspectors
(c) Manual of Budgetary Administration, COMDTINST M7100.3 (series)
(d) Time and Attendance Handbook - Uniform Payroll System, FAA Order 2730.8 (NOTAL)

1. PURPOSE. This Instruction provides general guidelines on approval and control of civilian overtime for all appropriations. It should be distinguished from references (a) and (b) which respectively set forth the Commandant's policy for the administration of: (1) premium pay for General Schedule and Federal wage system employees, and (2) special overtime pay for Documentation Specialists and Marine Inspectors.

2. DIRECTIVE AFFECTED. COMDTINST 12550.4H is canceled.

3. DISCUSSION. Although costly, civilian overtime is occasionally necessary to meet operational emergencies and administrative deadlines. Temporary hiring freezes and reduced personnel ceilings can also create situations which may necessitate the selective use of overtime. To keep the use of overtime to an absolute minimum, each level of command is responsible for periodic review, evaluation, and continuing improvement of its internal overtime control system.

DISTRIBUTION - SDL No. 130

	a	b	c	d	e	f	g	h	i	j	k	l	m	n	o	p	q	r	s	t	u	v	w	x	y	z
A																										
B		4	20		12	10	2	2	3	2	5	2	2	4	2			2	2		1	1	2	1		
C	2	*		2	1						3	1	3													
D											1												1			
E											1	1			1											
F																										
G																										
H																										

NON-STANDARD DISTRIBUTION: C:b: Port Angeles and Sitka only (1)

4. RESPONSIBILITIES.

a. Commandant (G-PC) sets overtime limits for Allotment Fund Code (AFC)-08. It is also responsible for developing innovative methods to improve management's access to information that will assist in the process of monitoring and controlling overtime expenditures. The primary tool for use in this regard is the Department of Transportation's (DOT) Interactive Payroll (INPAY) System, an automated system that provides actual personnel costs, including overtime data, by appropriation and AFC, to the individual cost center. Updated each biweekly pay period, INPAY is a read-only system formatted in user friendly, menu-driven fashion. It is now available at each location having a civilian personnel office (e.g., New York City, NY; Portsmouth, VA; Curtis Bay, MD; Alameda, CA; and Washington, DC). Fiscal year expenditures reported by INPAY are measured on the same basis as used by the Federal Government for reporting Full-Time Equivalency (FTE) consumption. The "FTE" fiscal year begins with the start of the first biweekly pay period closest to, but not later than 1 October. As a result, it may begin and end up to 13 calendar days earlier than the "standard" fiscal year.

b. Area and district commanders, commanders of maintenance and logistics commands, unit commanding officers, and chiefs of offices and special staff divisions in Headquarters are responsible for managing the use of overtime in accordance with references (a) through (d), and the following guidelines:

(1) Control of Overtime.

(a) Explore all reasonable alternatives before using overtime. Alternatives may include reallocation of staff resources, adjustment of work schedules, and use of temporary employees.

(b) Maintain internal controls for the approval and monitoring of overtime to avoid abuses, inadvertent or otherwise, by supervisors or employees. Internal controls shall, as a minimum, include the following:

1 Supervisors shall compare the amount of Regular Overtime authorized on CG Form 4358 (enclosure (1)), Civilian Overtime Authorization, for each employee to whom overtime was paid as shown in the Consolidated Uniform Payroll System (CUPS) Overtime Report, SYS-CTL-076. For each cost center, this report portrays the amount of Regular Overtime (hours and payments) used by each employee during the most recent quarter, and during the past year. Using this report, supervisors shall periodically compare the hours of overtime for which an employee has been paid with the security desk sign-in/sign-out log when available.

2 Supervisors shall be present or, as a minimum, spot check for the presence of personnel during periods of authorized overtime.

3 Supervisors shall spot check overtime authorizations, CG Form 4358, against overtime hours worked as indicated on the Time and Attendance (T&A) Report, DOT Form 2740.2, retained by T&A clerks. Second level supervisors shall ensure that these spot checks are occurring.

4.b.(1)(b)(4) 4 Second level supervisors shall periodically review work accomplished during overtime for quality and quantity.

(c) Monitor AFC-08 overtime usage reports and projections provided on a periodic basis by Commandant (G-PC).

(2) Monetary Limits on Paid Overtime.

(a) Operating Expenses (OE).

1 General Schedule and Related Employees, Overtime limits for employees paid from AFC-08 are established and announced by Commandant (G-PC) annually by ALDIST or E-Mail. Further guidance is provided in enclosure (2). The limits provided are segregated according to the type of overtime performed. Firefighter overtime is exempted from the controls imposed by this Instruction, unless the Firefighter works more than 144 hours during the pay period. Separate limits are provided for regular overtime, administratively uncontrollable overtime for criminal investigators as discussed in reference (a), and special, reimbursable overtime as discussed in reference (b). In all cases, it is to be recognized that these limits are established as a necessary budget control mechanism and that they may not always match the local command's perception of its needs. (In particular, commands which have approved administratively uncontrollable overtime on an individual basis for civilians in criminal investigator positions, should be aware that funding allocated by the Commandant for this purpose may not fully accommodate the amounts approved locally. As with other types of overtime, the Commandant does not write a "blank check" for overtime approved on an "administratively uncontrollable" basis for criminal investigators.)
When any of these three separate limits are exceeded, or when it is known that the limits will be exceeded, an amount of money to cover the unauthorized overtime expenditure shall be transferred by the responsible activity to compensate the AFC-08 fund. For purposes of communication regarding AFC-08 overtime expenditures, each command allocated an overtime limit shall designate an AFC-08 overtime management contact point, and shall so inform Commandant (G-PC). As necessary, Commandant (G-PC) will advise the contact point directly in writing of any detected or projected overexpenditure of AFC-08 overtime funds, and the requirement to
compensate the AFC-08 fund for the excess. At the same time, local unit commanding officers are reminded of their responsibility to effect internal monitoring procedures as identified in paragraph 4.b.(l) and to initiate procedures to compensate AFC-08 when required, independent of prior notification by Commandant (G-PC).

2 Wage Grade Employees - Limits are established and overtime is approved by the official whose funds are to be charged (commanding officer, division chief, etc.). Overtime dollars are included in the wage grade funding provided to an Administrative Target Unit (ATU). When a unit commanding officer/office chief exceeds the allotted total wage grade funding, additional overtime must come from a unit's operating funds.

4.b.(2)(a)(2)(b) (b) Reserve Training (RT). Overtime limits for employees paid from AFC-98 are established by Commandant (G-RSP) annually by ALDIST or E-Mail. Further guidance is provided in enclosure (3).

(c) Acquisition, Construction, and Improvement (AC&I). All requests for overtime by AC&I funded employees, or employees funded by other appropriations doing AC&I work, will be forwarded to Commandant (G-ES) for approval. All requests shall indicate the project being supported, the grade of the employee and the appropriation the employee's salary is paid from. Requests should be divided into quarterly requirements. All costs associated with AC&I overtime will be coordinated and executed through Commandant (G-ES).

(d) Research, Development, Test, and Evaluation (RDT&E). Overtime for RDT&E funded personnel at the U. S. Coast Guard Research and Development Center must be approved by the Commanding Officer, U.S. Coast Guard Research and Development Center. Overtime for other RDT&E funded employees must be approved by Commandant (G-ER).

(e) Yard Fund (YF). As prescribed by the Commanding Officer, Coast Guard Yard.

(f) Environmental Compliance and Restoration (EC&R). As prescribed by Commandant (G-ECV). Requests for EC&R overtime require advance approval from Commandant (G-ECV). Authorization can be made on a quarterly basis. Requests must contain the amount requested, the applicable project and project number(s) and a description of the work to be accomplished.

(3) Reimbursements.

(a) Reimbursements between Coast Guard Organizations. If an employee whose pay is normally charged to one account (command, appropriation, etc.) works paid overtime for another account (command, appropriation, etc.), funds shall be transferred between organizations as mutually agreed to cover such costs. Transfer of overtime costs between organizations should be effected at the time the expenses are incurred.

(b) Reimbursements between Other DOT Administrations, Federal Agencies, and Non-Federal Activities. For reimbursable paid overtime provided by Coast Guard to other DOT administrations, Federal agencies, and non-Federal activities, see Chapter 5, Section G of reference (d).

(c) Pollution Response Overtime. Coast Guard civilian employees may be called on to support an On Scene Coordinator (OSC) who is responding to an oil spill or hazardous chemical incident under the Federal Water Pollution Control Act (FWPCA)/OPA 90 or Comprehensive Environmental Response, Compensation and Liability Act/Superfund Amendment Reauthorization Acts (CERCLA/SARA). If overtime is being performed on such an emergency basis, funding is available from the Oil Spill Liability Trust Fund or Superfund, respectively, to reimburse AFC-08 for overtime costs. Paid overtime is

appropriate for these instances, and compensatory time off should be used only when legislated annual pay caps will be exceeded by the individual employee. Specific instructions are provided in enclosure (4).

4.b.(2)(a)(4) (4) Identification of Funding Source. The source of funding for each civilian employee is identified in the Civilian Personnel Management Information System (CIVPMIS). All payroll-related costs (e.g., salary, overtime, pay differentials, benefits, awards, etc.) are based on the appropriation and AFC information indicated in CIVPMIS. Identified errors should be corrected through the involvement and participation of the servicing civilian personnel office and its CIVPMIS manager.

(5) Time and Attendance and Related Documentation. Regular Overtime worked by an employee shall be recorded on the T&A as prescribed by reference (d). Administratively Uncontrollable Overtime will be approved on an individual basis and will be recorded in the CIVPMIS against the data element AUO PCT and any other associated data elements.

5. ACTION. Area and district commanders, commanders of maintenance and logistics commands, unit commanding officers, and chiefs of offices and special staff divisions in Headquarters shall comply with the contents of this Instruction when approving civilian overtime.

6. FORMS AVAILABILITY. Form DOT F-2740.2, Time and Attendance Report, may be obtained from Commandant, G-PC. Form CG-4358, Civilian Overtime Authorization may be obtained from Supply Center Brooklyn, using SN 7530-01-GF2-9040, U/I (SH), or Forms Plus Laser (FPL). Form CG-5136 may be obtained from the National Pollution Funds Center (NPFC).

J. M. LOY
Chief, Office of Personnel and Training

Encl: (1) Civilian Overtime Authorization, CG Form 4358
(2) Overtime Limitations for Classified OE and RT Employees
(3) Reimbursable Overtime for Pollution Responses

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DEPARTMENT OF TRANSPORTATION U.S. COAST GUARD CG–4358 (Rev. 6-67)	CIVILIAN OVERTIME AUTHORIZATION	☐ PAID ☐ COMP

SECTION 1 – REQUEST FOR OVERTIME

FROM:	TO: VIA;	
PERIOD FROM TO	NO HOURS REQUESTED	ESTIMATED COST (*Paid Overtime Only*)

JUSTIFICATION: (*Explain why tasks cannot be accomplished within normal working hours or by temporary detail of personnel from other organizational components*)

DATE	SIGNATURE AND TITLE

SECTION II – AUTHORIZATION OF OVERTIME WORK
(For use only by Approving Official)

RETURNED ☐ APPROVED ☐ DISAPPROVED (See Comments)	AUTHORIZATION NUMBER

COMMENTS:

DATE	SIGNATURE AND TITLE OF AUTHORIZING OFFICIAL

PREVIOUS EDITION MAY BE USE

Overtime Limitations for Employees Paid from AFC-08.

1. Annual Limitations. The limitations established by Commandant (G-PC) apply separately to the various types of overtime funded from AFC-08 including regular, administratively uncontrollable, and "special" overtime pay. (Administratively uncontrollable overtime is discussed in reference (a); special overtime is discussed in reference (b).) These allocations are to be administered by area and district commanders, commanders of maintenance and logistics commands, Headquarters unit commanding officers, and chiefs of Headquarters offices on a fiscal year basis. The limitations are provided to meet both the mandatory paid overtime requirements of current regulations, and critical peak workload demands which cannot be met by compensatory time or other administrative means.

2. Modification of Limitations. Annually established allocations can only be exceeded when the responsible activity compensates the AFC-08 fund by transferring to AFC-08 an amount of money equal to the amount of excess. To increase its overtime ceiling, the responsible command must:

   a. Determine an offsetting source of funds, e.g., AFC-30;
   b. Advise Commandant (G-PC) of the intention to make a transfer; and
   c. Provide Commandant (G-CFM-2 and G-CBU-2) via E-mail an identification of the offsetting source of funds, including the AFC used, its accounting string, the time period of occurrence (quarter), the amounts, and the justification for the transfer. The accounting string to be referenced for AFC-08 in the transaction is: X01 299 08 0 00 where X indicates the fiscal year, e.g., for FY93, X - 3.

   Expenditure transfers (G-Schedule) to AFC-08 should not be used to increase an allocation. (Expenditure transfers referred to here are defined as an accounting process whereby one AFC's expenditure is decreased by the Finance Center while another is respectively increased by a corresponding amount.) Commands having questions about the current transfer procedures to use should contact Commandant (G-PC).

3. Documentation. Paid overtime shall be approved by senior officials designated by area and district commanders, commanders of maintenance and logistics commands, commanding officers of Headquarters units, and by deputy office chiefs in Headquarters on CG Form 4358, Civilian Overtime Authorization. Paid overtime for employees within the Office of the Commandant (G-C) shall be approved by the Executive Assistant to the Commandant, except for the Commandant's Secretary whose overtime shall be approved by the Vice Commandant. Prior to approval, each form shall be endorsed indicating the total monetary limitation for the period, and the unused balance if the requested overtime is approved. A file of approved CG-4358 forms shall be maintained by the approving command or office.

4. Overtime Limitations for Classified Reserve Training Employees.

1. Annual Limitations. The limitations addressed here apply to overtime pay funded from AFC-98 and are provided to meet both mandatory paid overtime requirements and critical peak workload demands of the Reserve forces program which cannot be met more efficiently by other means. They are to be administered by district commanders (r), commanding officers of Headquarters units, and Commandant (G-RSP) on a fiscal year basis.

2. Documentation. Paid overtime shall be approved on CG Form 4358, Civilian Overtime

Authorization, and endorsed indicating the total monetary limitation for the period, and the unused balance if approved. A file of approved CG-4358 forms shall be maintained by the approving office.

3. Modification of Limitations. Overtime in excess of announced limitations must be approved by Commandant (G-RSP). Requests to exceed these limitations shall include supporting documentation.

Reimbursable Overtime for Pollution Responses.

1. Management and Control. During an incident, the On Scene Coordinator (OSC) is the direct manager of all resources being used in the pollution removal or response effort. The OSC has great latitude under the various laws and the National Contingency Plan (40 CFR 300) to employ whatever Federal, State, or private personnel and equipment are necessary to rapidly address the incident. In the Coast Guard, predesignated OSCs are the Commanding Officers of Marine Safety Offices and Captains of the Port (COTP). Environmental Protection Agency (EPA) OSC's are assigned to EPA Regional Offices, and may also request CG support, through the district commander (m). OSC's manage civilian overtime no different than all other obligations incurred during an incident.

2. Approval. The OSC is the approving official for overtime in pollution incidents.

   a. In the event the OSC is from an agency other than the Coast Guard:

      (1) The Coast Guard civilian employee's supervisor may be the approving official, so long as the supervisor ensures that the overtime has been authorized by the OSC and funding has been set aside from the authorized ceiling for the removal or response, and

      (2) The supervisor shall coordinate such actions with the district commander (mep).

3. Documentation Required. Approved overtime must be documented in both the incident records, to reflect the obligation and costs of the overtime, and in the civilian pay system, to ensure personnel are in fact paid and that a record of the amount required for reimbursement is maintained.

   a. Incident Documentation. The OSC is required by National Pollution Funds Center (NPFC) policies and procedures to document all costs incurred during the response, including civilian overtime. The OSC shall use existing form CG-5136B, POLLUTION INCIDENT DAILY RESOURCE REPORT GOVERNMENT PERSONNEL to document government employee costs for each incident. This form reflects total hours, by employee, by day, and provides sufficient detail to verify overtime for any given day for every civilian Coast Guard employee working under the direction of the OSC.

   b. Civilian Payroll System. Following the procedures in enclosure (2) to reference (b), the approving official shall complete CG Form CG-829, Summary of Overtime Services, to document the approval. When completing the form, the approving official shall indicate under "PORT" at the top of the form, the command serving as the OSC, or the agency and region if the OSC is from another agency. In the space immediately below the title line headed "DURING THE PAY PERIOD ...", insert: POLLUTION RESPONSE OVERTIME FOR FEDERAL PROJECT NUMBER _____.

Each form should be distributed to payroll in time to meet the customary deadlines for processing. With each submission of CG-829, enclose copies of CG-5136B which document the approval and use of overtime for the incident. Copies of each submission, including the enclosed CG-5136B, shall be sent to the Director, National Pollution Funds Center (cfl), and Commandant (G-PC-1).

4. Obligation of Funds. The approval of overtime by the OSC constitutes an obligation of funds for the incident. The OSC shall apply this obligation against the approved Fund ceiling and record it on appropriate ceiling management forms (CG-5136F) or CG-5136F-1).

5. Billing Procedures. For pollution incidents, billing procedures established by reference (b) are not to be followed. Billing will be according to the NPFC Technical Operating Procedures.

6. Reimbursement Procedures. The Commandant (G-PC-1), upon receipt of supporting documentation, and in coordination with the Director, National Pollution Funds Center, will initiate a Change in Financial Plan (CIFP) to reimburse AFC-08 for amounts of overtime paid for pollution incidents.

Supplement to Commandant Instruction 12550.01 Management of Civilian Overtime

CIVILIAN OVERTIME FOR CG EMPLOYEES

Overview: Civilian overtime on spills. These procedures apply when CG OSCs use CG Civilian employees on a spill and overtime work is performed.

(A) For the employee to be paid, the employee's work station/unit shall follow standard Civilian time card or automated payroll recording procedures. Record the overtime for the specific pay period during which the work was performed.

(B) Follow the policy and procedures of COMDTINST 12550.4I, Enclosure (4) for documenting the overtime. CG OSCs shall use CG-829 to authorize overtime.

(C) Attach the completed CG-829 to the individual's time card as documentation for the overtime submitted on the time card. Reference the form for automated submissions.

(D) The time clerk shall:
   (i) retain the time card and the completed CG 829 according to standard procedures.
   (ii) provide a copy of each individual's time card back to the OSC who authorized the overtime.

(E) The OSC shall:
   (i) match the time cards received with the civilian overtime authorized on the approved CG 829.
   (ii) submit the CG-829 and associated time cards with the cost summary report sent to the NPFC.

DEPARTMENT OF
TRANSPORTATION
U.S. COAST GUARD

CG-829 (Rev. 3-67)

UNITED STATES COAST GUARD

SUMMARY OF OVERTIME SERVICES PERFORMED AT THE PORT OF _____

DURING THE PAY PERIOD _____

NAMES OF EMPLOYEES RENDERING OVERTIME SERVICE	DATE OF SERVICE	TIME CHARGED		NATURE OF SERVICES	BASIC PAY PER DIEM	AMOUNT
		FROM	TO			
I certify that the facts and amounts as shown above are true and correct.					TOTAL	

_____

Title _____

Technical Operating Procedures

for

Determining Removal Costs

under

The Oil Pollution Act of 1990

U.S. COAST GUARD
NATIONAL POLLUTION FUNDS CENTER

JUNE 1999

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U.S. Department
of Transportation

United States
Coast Guard

Director
United States Coast Guard
National Pollution Funds Center
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Arlington, VA 22203
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NATIONAL POLLUTION FUNDS CENTER (NPFC) INSTRUCTION M7300.1

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

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

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

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

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

DANIEL F. SHEEHAN
Director
National Pollution Funds Center

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

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

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TECHNICAL OPERATING PROCEDURES
FOR DETERMINING REMOVAL COSTS

Table of Contents

CHAPTER 1 — OSLTF REMOVAL COSTS OVERVIEW

A. General 3-67
B. Basic Criteria for Removal Costs 3-67
C. Consistency with the National Consistency Plan (NCP) 3-67
   1. Four Phases of Response 3-67
   2. Consistency (NCP) & Substantial Compliance 3-67
   3. Exceptions 3-68

CHAPTER 2 —- ROLES AND RESPONSIBILITIES

A. The Federal On-Scene Coordinator's (FOSC) Role 3-69
   1. Authority..... 3-69
   2. Determination 3-69
   3. Documenting Removal Costs 3-69
B. National Pollution Funds Center Role 3-69
   1. Authority..... 3-69
   2. Case Officer / Case Team 3-69

CHAPTER 3 —- PHASE I – DISCOVERY AND NOTIFICATION

A. Activities and Removal Costs 3-70

CHAPTER 4 —- PHASE II — PRELIMINARY ASSESSMENT AND INITIAL ACTIONS

(Including Assessment Phase)

A. Phase II Activities 3-71
B. Assessment Phase 3-71
C. Initial Actions 3-71
D. Examples of Activities 3-71
E. Assessment – Eligible Costs for Direct Charge 3-72
F. Initial Action – Eligible Cost for Direct Charge 3-72

CHAPTER 5 — PHASE III — CONTAINMENT, COUNTERMEASURES, CLEANUP AND DISPOSAL

A. Phase III Activities 3-73
B. Examples of Federal Activities (RP Performs Cleanup) 3-73
C. OSLTF – Chargeable Costs 3-73

D. Examples of Federal Removal Activities (RP Unknown or Fails to Perform)..... 3-73
E. Examples of Eligible Costs (Supplement to RP's Efforts or in Lieu of)..... 3-74

CHAPTER 6 — PHASE IV — DOCUMENTATION AND COST RECOVERY

A. Phase IV Activities..... 3-75
B. Examples of Phase IV Activities..... 3-75
C. Examples of Eligible OSLTF Costs 3-75

CHAPTER 7 — REMOVAL COST ISSUES AND SPECIFIC LIMITATIONS

A. Removal Costs..... 3-76
B. Substantial Threats of Discharge..... 3-76
1. Determining to Respond to a Substantial Threat..... 3-76
2. Documentation 3-76
C. Groundwater Contamination 3-76
D. Multi-mission Activities..... 3-77
E. Assessment Phase Costs..... 3-77
F. Use of Reservists..... 3-77
G. Acquisition and Disposal of Property 3-77
H. Overflights..... 3-79
I. Replenishments of Inventory..... 3-79
J. Use of Standards Costs..... 3-79
K. Spills from Federal Vessels or Facilities..... 3-79
L. Spills Involving Removal Costs and Personal Damages..... 3-80
M. Mixed Substance Spills 3-80
N. Mixed Spills 3-80
O. Research and Development (R&D) Activities 3-80
P. Use of State and Local Response Resources..... 3-81
Q. Oil Wells/Pits/Facilities..... 3-81
R. ESA Consultants 3-82
S. Site Remediation 3-82

APPENDIX ONE

Documentation for Identification of Owner/Operators for Onshore and Offshore Wells and Other Facilities……3-83

APPENDIX TWO

PRFA Sample Statement of Work for Removal Actions 3-85

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

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

B. Basic Criteria for Removal Costs:

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAPTER 2 — ROLES AND RESPONSIBILITIES IN DETERMINING REMOVAL

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

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

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

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

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

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

B. National Pollution Funds Center Role.

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

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

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

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

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

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

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

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

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

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

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

1. Assessment.

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

2. Initiation of action.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. Examples of Phase IV Activities:

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

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

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

CHAPTER 7 — REMOVAL COST ISSUES AND SPECIFIC LIMITATIONS

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

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

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

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

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

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

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

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

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

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

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

D. Multi-mission Activities.

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

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

E. Assessment Phase Costs.

See Chapter 4.

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

G. Acquisition of Property Items.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

I. Replenishments of Inventory.

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

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

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

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

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

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

L. Spills Involving Both Removal Costs and Potential Claims.

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

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

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

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

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

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

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

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

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

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

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

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

Q. Oil Wells/Pits/Facilities.

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

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

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

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

R. ESA Consultations.

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

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

APPENDIX ONE

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

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

Organization of the Deed and Title Search For Onshore Wells And Other Facilities **3-85**

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

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

ONSHORE WELLS AND OTHER FACILITIES

The information required to establish the Responsible Party is described below.

Source of information may be found in the county office for recording deeds, the Secretary of State office for the state where the property is located, and the applicable tax assessors office.

The report shall include documents covering the period 10 years prior to the drilling of the well or the construction of the facility, up until the present:

1. Identification of past and present owners of the surface interest, mineral interest, and leasehold interest including:

   a. Narrative describing title search results;
   b. The time periods during which the person or company owned the interest;
   c. Provide complex title analysis narrative if necessary; and
   d. Current addresses, phone numbers and corporate status of each present owner.

2. Legal descriptions for each parcel.

3. An ownership history table by parcel which details the owners of the surface interest, mineral interests, and leasehold interest of each parcel separately described for the site, with approximate percentages of interest.

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

5. A survey of the site, drawn to scale, identifying the facilities (i.e. oil wells, tanks, piping, etc.), the threatened waterway, the property lines, and the current property owners.

6. Copies of Title documents including titles, deeds, mineral deeds, liens, leases, assignments, agreements, title transfers, satisfied and unsatisfied mortgages including deeds of trust and releases of deeds of trust, easements and encumbrances. The contractor shall provide legible copies whenever possible. If legible copies are not available, a description of the information conveyed in the document shall precede the document.

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

documents exceeds $500, then only those documents that relate to the formation and the dissolution of the company shall be obtained.

8. All available documents from the local tax assessor's office that relate to the site, including but not limited to all records for both real and personal property taxes assessed against the site.

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

10. Any other documents relating to ownership of equipment, fixtures, and structures on the land.

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

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

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

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

Section I - Summary of the contractor's findings. This summary shall include the legal description for each parcel, identification of past and present owners of the surface rights, mineral interests and leasehold interest including:

A. Narrative describing title search results
B. Time periods during which the person or company owned the interest
C. Complex title analysis narrative if necessary
D. Current addresses, phone numbers and corporate status of each present owner

Section II – Ownership History Table. This table shall identify by parcel all documents that detail the owners of the surface interest, mineral interest and leasehold interest with approximate percentages of interest. Copies of these documents shall be tabbed as follows:

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

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

Section II C 1-99 – Copies of all oil and gas leases, mineral deeds, assignments of oil and gas interests, and any other document relating to the mineral estate. These documents

should be listed in reverse chronological order (the newest document will be first and the oldest document will be the last) and separated with numbered tabs.

Section II D 1-99 – Copies of all surface estate titles, leases, deeds, liens, assignments, agreements, title transfers, satisfied and unsatisfied mortgages including deeds of trust and releases of deeds of trust, easements, encumbrances and any other document relating to the surface estate. These documents shall be listed in reverse chronological order (the newest document will be the first and the oldest will be the last) and separated with numbered tabs.

Section III – Copies of maps and survey. One Plat map which includes the searched parcel or parcels. This map shall identify the parcels so that they can be identified on the ownership table. This section should also include the survey of the site, drawn to scale, identifying the facilities (i.e. oil wells, tanks, piping, etc.), the threatened waterway, the property lines, and the current property owners.

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

Section V – All documents from the local tax assessor's office that relate to the site, including but not limited to, all records relating to both real and personal property taxes assessed against the site.

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

Section VII - Any other documents relating to ownership of equipment, fixtures, and structures on the land.

OFFSHORE WELLS AND OTHER FACILITIES

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

Source of information - State regulatory / leasing authority

Owner identification:

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

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

Provide copies of the following documents including:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

APPENDIX TWO

PRFA
SAMPLE STATEMENT OF WORK FOR REMOVAL ACTIONS

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

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

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

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

Removal Cost Policy and Operating Procedures (CERCLA)

United States Coast Guard

National Pollution Funds Center

4200 Wilson Blvd., Suite 1000

Arlington, VA 22203-1804

CERCLA INCIDENT COST POLICY AND PROCEDURES FOR COAST GUARD FOSCs

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

Fund Access

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

ACTIONS THAT CAN BE FUNDED UNDER CERCLA

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

FUNDING OTHER AGENCIES SUPPORTING THE FOSC

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

FUND MANAGEMEENT DURING THE RESPONSE

Ceiling Management and Obligation Log

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

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

Use of LUFS

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

Maximum Fund Limits

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

SPECIAL FOSC REQUIREMENTS FOR CERCLA INCIDENTS

Finding of Imminent and Substantial Endangerment

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

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

Action Memorandum

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

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

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

Resource Documentation Requirements

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

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

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

National Pollution Funds Center

U.S. Department of Transportation

United States Coast Guard

NPFC INSTRUCTION 16451.2

Technical Operating Procedures for Resource Documentation

under The Oil Pollution Act of 1990

JUNE 1999

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U. S. Department
of Transportation

**United States
Coast Guard**

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

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

NATIONAL POLLUTION FUNDS CENTER INSTRUCTION 16451.2

Subj: Resource Documentation and Cost Documentation Technical Operating Procedures

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

II. DISCUSSION.

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

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

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

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

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

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

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

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

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

DANIEL F. SHEEHAN
Director
National Pollution Funds Center

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

Request for Comments:

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

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

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RECORD OF CHANGES			
CHANGE NUMBER	**DATE OF CHANGE**	**DATE ENTERED**	**ENTERED BY**
#1	1 JANUARY 1994	INCORPORATED	NPFC (cm)
#2	1 JANUARY 1995	INCORPORATED	NPFC (cm)
#3	1 JUNE 1995	INCORPORATED	NPFC (cm)
#4	1 JUNE 1996	INCORPORATED	NPFC (cm)
#5	1 NOVEMBER 1998	INCORPORATED	NPFC (cm)
#6	16 MARCH 2000	INCORPORATED	NPFC (cm)

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Technical Operating Procedures
for Resource Documentation

Table of Contents

NATIONAL POLLUTION FUNDS CENTER INSTRUCTION 16451.2 3-93
REQUEST FOR COMMENTS 3-95
RECORD OF CHANGES 3-97

PAGE

1. Introduction 3-101
2. How To Use This Guide 3-103
3. Chapter 1 - Ceiling Management 3-105
4. Chapter 2 - Three Levels of Response & Documentation Flow 3-119
5. Chapter 3 - Methods of Documentation 3-125
6. Chapter 4 - FOSC's Financial Summary Report 3-127
7. Chapter 5 - Pollution Incident Report and Transmittal 3-131
8. Chapter 6 - Pollution Incident Daily Resource Reports 3-145
9. Chapter 7 - Acquisition of Property Using OSLTF Funds 3-165
10. Chapter 8 - Pollution Removal Funding Authorization 3-169
11. Chapter 9 - Standard Form 1080 3-179
12. Chapter 10 - Unit Fund Reimbursement 3-183

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INTRODUCTION

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

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

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

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

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

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

G. **Electronic Forms**. CG-5136 forms (and others) mentioned in this manual are available for downloading to hardcopy from the NPFC homepage within the Technical Operating Procedures section. The capability to conduct interactive electronic transmission of information directly over the internet is under development and should be available within the near future.

Contact your Regional Manager for more information.

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HOW TO USE THIS GUIDE

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

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

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

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

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

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

6. Chapter 6 provides descriptions of **Pollution Incident Daily Resource Reports**. The type of information that should be collected from contractors, Coast Guard units and other government agencies is explained. This is where information on any of the eight standard forms for documenting resource use is located. The Coast Guard forms are available in electronic form. Contact your Regional Manager for more information on how to obtain a floppy copy for MAC or DOS.

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

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

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

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

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

10. **Appendix A** is provided to give an example of what the FOSC Financial Summary Report should include prior to submitting it to the NPFC.

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

Chapter 1

CEILING MANAGEMENT

CHAPTER 1 - CEILING MANAGEMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

d. CODE: Note appropriate code on form.

e. OBLIGATED: List obligations incurred.

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

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

DEPARTMENT OF TRANSPORTATION U.S. COAST GUARD CG-5136F (01-93)	**ENVIRONMENTAL RESPONSE CEILING MANAGEMENT**	CEILING MANAGEMENT & INCIDENT OBLIGATION LOG (RCN-16451-1)

PAGE OF
FEDERAL PROJ.#_____

FOSC:_____
APPROVED PROJECT CEILING: _____
(REPORT ON POLREP)

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

DESCRIPTION: Identify what the obligation is for.

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

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

C. DAILY RECORD WORKSHEETS (VARIOUS).

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

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

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

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

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

DAILY RECORD WORKSHEET - CONTRACTS

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

OSC: _____ FPN: _____

Contract with: Contract Amount: _____

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

DESCRIPTION	DATE	COST REPORTED BY CONTRACTOR	DOLLARS REMAINING ON CONTRACT
FOR PAPER FORM DATA FOR NEXT PAGE:			

This Form is Available on EXCEL 2.2 for the Macintosh and EXCEL 3.0 for MS/DOS

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

OSC:_____ FPN: _____
Removal Authorization With: Removal Authorization Amount: _____
(Record here and on Ceiling Management Form CG5136F when Authorization Issued)

DESCRIPTION	DATE	COST REPORTED BY AGENCY	DOLLARS REMAINING ON AUTHORIZATION

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

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

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

DESCRIPTION	DATE	COST REPORTED	DOLLARS REMAINING ON AUTHORIZATION

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

OSC _____ FPN _____

Travel Authorized For: Obligation Amount _____

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

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

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

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

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

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

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

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

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

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

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

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

DEPARTMENT OF TRANSPORTATION U.S. Coast Guard CG 5136F-1 (01-93)	POLLUTION INCIDENT DAILY RESOURCE REPORT	CEILING MANAGEMENT & INCIDENT OBLIGATION LOG SHORT FORM (RCN-16451-1)

DATE: FOSC:

FEDERAL PROJECT NUMBER: _____ APPROVED PROJECT CEILING _____

(REPORT ON POLREP)

A. CEILING CHANGES

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

B. OBLIGATIONS AGAINST CEILING

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

DEPARTMENT OF TRANSPORTATION U.S. Coast Guard CG 5136F-1 (01-93)	POLLUTION INCIDENT DAILY RESOURCE REPORT (Continued)	CEILING MANAGEMENT & INCIDENT OBLIGATION LOG SHORT FORM (RCN-16451-1)
DATE:	FOSC:	
FEDERAL PROJECT NUMBER: _____	APPROVED PROJECT CEILING	_____ (REPORT ON POLREP)

C. DAILY COSTS SUMMARY

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

This Form is Available on EXCEL 2.2 for the Macintosh and EXCEL 3.0 for MS/DOS.

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Chapter 2

THREE LEVELS OF RESPONSE

&

DOCUMENTATION FLOW

CHAPTER 2 - LEVELS OF CASES & DOCUMENTATION FLOW

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

1. Level I - Routine:

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

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

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

2. Level II - Moderately Complex:

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

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

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

3. Level III - Significantly Complex:

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

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

Documentation is submitted as in Level II.

DOCUMENTATION FLOW - FOR ALL LEVELS

B. FOSC ACTIONS:

1. Responsibilities/Document Flow:

a. Include removal ceiling information in each POLREP for:

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

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

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

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

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

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

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

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

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

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

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

2. Ceiling Management Requirements:

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

3. Resource Documentation Requirements:

   a. CG Form CG-5136A through 5136E

C. CONTRACTOR ACTIONS**:**

1. Responsibilities/Document Flow:

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

2. Resource Documentation Requirements:

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

D. OTHER GOVERNMENT AGENCIES ACTIONS**:**

1. Responsibilities/Document Flow:

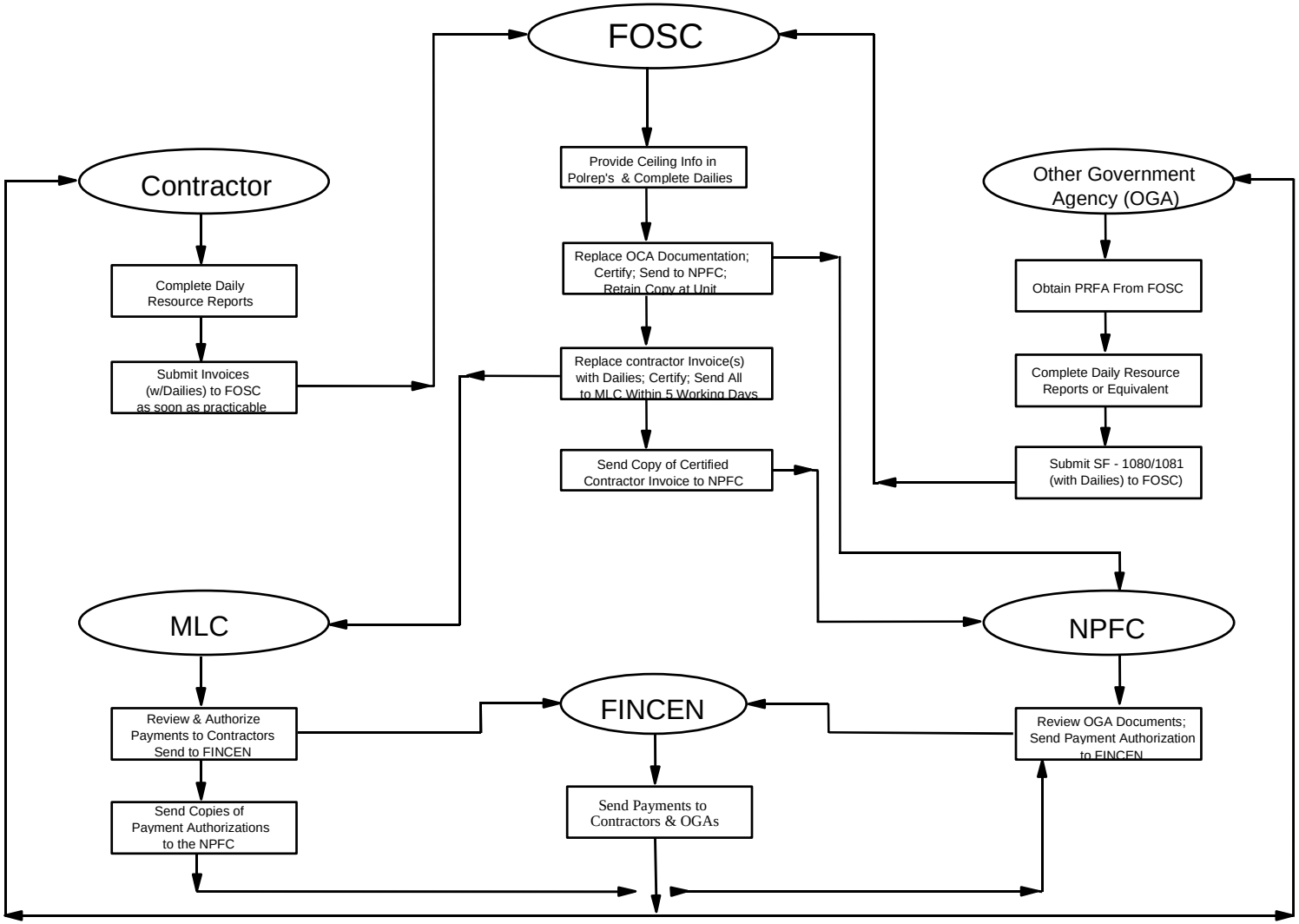
   a. Obtain "Pollution Removal Funding Authorization" (PRFA) from FOSC for removal activities (See Chapter 8).
   b. Maintain Daily Resource Reports (Dailies) or equivalent forms approved by the NPFC, and submit to the FOSC upon completion of removal activities.
   c. Government agencies should prepare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

2. Resource Documentation Requirements:

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

Documentation Flow

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



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

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Chapter 3

METHODS OF DOCUMENTATION

CHAPTER 3 - METHODS OF DOCUMENTATION

A. THERE ARE TWO METHODS OF DOCUMENTING COSTS:

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

2. A NPFC Approved Alternate Record Keeping System.

B. POLLUTION INCIDENT DAILY RESOURCE REPORTING SYSTEM

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

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

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

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

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

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

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

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

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

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

Chapter 4

FOSC'S FINANCIAL SUMMARY REPORT

CHAPTER 4 - FOSC'S FINANCIAL SUMMARY REPORT

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

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

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

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

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

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

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

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

1. This report format cannot be used if:

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

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

Incident Summary

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

Personnel

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

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

Equipment

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

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

Obligations

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

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

Incident Summary:

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

No RP could be located.

Personnel:

02	6 Hours
E5	6 Hours

Equipment:

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

Obligations:

Contractor BOA OSRO	Riedel-Peterson	24 95 23 5 H YE 012	$2,023.14
PRFA Assisted in Response	State of Alaska	28 95 33 5 H YE 013	$500.00
Purchase 4 sample kits	Spill Supplies Inc	23 95 33 5 H YE 014	$75.00
Analysis 6 samples	USCG Marine Safety Lab	*none*	$600.00

Example of an Abbreviated Financial Report

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

Chapter 5

POLLUTION INCIDENT REPORT

AND

TRANSMITTAL

CHAPTER 5 - INCIDENT REPORT AND TRANSMITTAL

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

SUMMARY

Instructions on completing Page 1

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

Incident Information

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

Fund Information

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

Source Designation

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

Signature Block

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

Enclosures

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

Incident Report and Transmittal Page 1

Date: _____

From: _____

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

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

Incident Information:

Federal Project No. / CERCLA Case No.: _____

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

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

Date OPA/CERCLA Actions completed: _____

Location of Incident: _____

_____

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

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

Water or Resource Affected: _____

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

Fund Information

Total Authorized Ceiling: $_____

Total Coast Guard Costs: $_____

Total Contractor Costs: $_____

Total OGA Costs: $_____

Source Designation Information

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

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

FOSC's Approval

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

_____

(FOSC's Signature or Designated Rep)

Enclosures:

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

__) _____

__) _____

__) _____

__) _____

__) _____

__) _____

__) _____

B. HOW TO COMPLETE PAGE 2 - SOURCE INFORMATION

1. **Identification - Vessel.** Complete this section when the source of the discharge is a vessel.
   Vessel Name: Insert the name of the vessel involved in an incident.
   Flag/Nationality: Insert the legal flag of the vessel involved.
   Official Number/Call Sign/State Number: Insert the official number, call sign, or the state number of a vessel involved in an incident.
   Gross Tons: Insert the gross tonnage of a vessel (if applicable).
   Home Port: Insert the official home port of the vessel.
   Type Of Vessel: Insert the type of vessel (e.g., fishing vessel, tank vessel, freight vessel, or pleasure craft).
   Master's Name: Insert the name of the master of the vessel, or on smaller vessels, the name of the person operating the vessel (if applicable).
   Designated As A Source: If the vessel has been designated as a source with notification given to the appropriate responsible parties, check yes.
   U.S. Agent: For commercial vessels, having an agent in port, insert the name of the agency.
   Address: Insert the address of the local agent.
   Contact: Insert the name of the contact at the U.S. agency office.
2. **Identification - Facility.** Complete this section when the source of the discharge is a facility.
   Facility Name: Insert the complete legal name for the facility (e.g., ABC Facility at Bayway, N.J.).
   Facility Address: Insert the mailing street address of the facility .
   Type Of Facility: Insert the type of facility (i.e., tank storage, tank truck, gas station, or private home).
   Designated As Source: Check the appropriate block.
3. **Responsible Parties.** (Owner, Operator, Insurance Company, and Other Parties may have entries in each of the categories listed below)
   Company Name: Insert the name of the company that owns, operates, or insures the facility or vessel. If the owner is a private individual, insert their name.
   Company Address: Insert the address of record for the owner, operator, or insurer; try to obtain street address.
   Contact Name: Insert the name of the person at the company with whom you have made contact.
   Contact Phone Number: Insert the contact person's phone number.
   Notified Of Designation: If the owner, operator, or insurer was notified that the designation of his facility or vessel is a source, check yes.
   Date Notified: Insert the date of the letter providing notification.
   Accepted Designation: If the owner, operator, or insurer formally accepted designation as a source, check yes. If the owner either rejected designation, or simply did not reply to designation, check no.
   Rejected Designation: If the owner, operator, or insurer formally rejected designation as a source, check yes. If the owner either accepted designation or simply did not reply to designation, check no.
   Advertised: If the owner, operator, or insurer advertised in accordance with instructions given to him in the designation letter, check yes. If the owner did not advertise, or if the advertisement was not in accordance with the instructions given, check no. Provide a copy of advertisement.

Incident Report **Source Information**
Page 2

Identification - Vessels

Vessel Name _____ Flag / Nationality _____
Official Number/ Call Sign / State Number _____ Gross Tons _____
Home Port _____ Type of Vessel _____
Masters Name _____ Designated as Source? _____ Yes _____ No

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

Identification - Facility

Facility Name: _____
Facility Address: _____
_____
Type of Facility: _____ Designated as Source? _____ Yes _____ No

Responsible Parties

Owner

Company Name _____
_____
Company Address _____
_____
_____
_____
Contact Name _____
Contact Phone _____
Notified of Designation: _____ Yes _____ No
Date Notified _____
Accepted Designation? _____ Yes _____ No
Rejected Designation? _____ Yes _____ No
Advertised? _____ Yes _____ No

Insurance Company

Company Name _____
_____
Company Address _____
_____
_____
_____
Contact Name _____
Contact Phone _____
Notified of Designation: _____ Yes _____ No
Date Notified _____
Accepted Designation? _____ Yes _____ No
Rejected Designation? _____ Yes _____ No
Advertised? _____ Yes _____ No

Operator

Company Name _____
_____
Company Address _____
_____
_____
_____
Contact Name _____
Contact Phone _____
Notified of Designation: _____ Yes _____ No
Date Notified _____
Accepted Designation? _____ Yes _____ No
Rejected Designation? _____ Yes _____ No
Advertised? _____ Yes _____ No

Other

Company Name _____
_____
Company Address _____
_____
_____
_____
Contact Name _____
Contact Phone _____
Notified of Designation: _____ Yes _____ No
Date Notified _____
Accepted Designation? _____ Yes _____ No
Rejected Designation? _____ Yes _____ No
Advertised? _____ Yes _____ No

Attach Copies of all designation letters and any other related correspondence

(Local Reproduction 01-93)

C. HOW TO COMPLETE PAGE 3 - CONTRACTORS

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

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

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

Company: _____

Address: _____

_____

Contact:

Telephone: _____

Authorized
Ceiling Amount: _____

Contract No: _____

Attach copy of Certified Contractor's Invoice(s)

Primary Function_____

_____

_____

_____

_____

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D. HOW TO COMPLETE PAGE 4 - OTHER GOVERNMENT AGENCIES

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

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

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

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

Agency _____

Unit: _____

Address: _____
_____
_____

Contact: _____

Telephone: _____

Authorized
Ceiling Amount: _____

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

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

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E. HOW TO COMPLETE PAGE 5 - KEY PARTIES

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

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

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

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

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

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

(Local Reproduction 01-93)

Chapter 6

POLLUTION INCIDENT DAILY RESOURCE REPORTS

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

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

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

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

B. <u>HOW TO COMPLETE FORM</u>:

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

DEPARTMENT OF TRANSPORTATION U.S. COAST GUARD CG-5136A (01-93)	**POLLUTION INCIDENT DAILY RESOURCE REPORT**	GOVERNMENT SUMMARY SHEET (RCN-16451-1)

REPORT TYPE

INTERIM ____ FINAL _____

ACTIVITY

OPA _____ CERCLA _____ NRDA _____

INCIDENT DATA

FPN/CERCLA # _____ DATE _____

PERIOD COVERED _____ TO _____

AGENCY REPORTING _____ UNIT REPORTING _____

DESCRIPTION OF ACTIVITIES

(Attach additional pages, if needed)

_____

_____

_____

_____

_____

_____

_____

REPORTS ATTACHED

SHORT FORMS _____ DAILY PERSONNEL FORMS _____

DAILY EQUIPMENT FORMS _____ DAILY PURCHASE FORMS _____

KEY PARTIES

DOCUMENTATION

Name _____

Agency _____

Telephone _____

CONTRACTOR

Name _____

Agency _____

Telephone _____

REMARKS:

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

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

How to complete this form:

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

Government Personnel

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

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

DEPARTMENT OF TRANSPORTATION U.S. COAST GUARD CG-5136B (01-93)	**POLLUTION INCIDENT DAILY RESOURCE REPORT**	GOVT PERSONNEL Page ____ of ____ (RCN-16451-1)

FPN/CERCLA NUMBER _____ DATE _____

PARENT UNIT _____ FOSC/REP/LEAD TRUSTEE SIGNATURE

_____

GOVERNMENT PERSONNEL

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

TOTAL PERSONNEL COSTS FOR THIS DATE _____

REMARKS:

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

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

How to complete form:

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

Government Equipment

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

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

DEPARTMENT OF TRANSPORTATION U.S. COAST GUARD CG-5136C (01-93)	**POLLUTION INCIDENT DAILY RESOURCE REPORT**	GOVT EQUIPMENT Page ____ of ____ (RCN-16451-1)

FPN/CERCLA NUMBER _____ DATE _____

PARENT UNIT _____ FOSC/REP/LEAD TRUSTEE SIGNATURE

_____

GOVERNMENT EQUIPMENT

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

TOTAL EQUIPMENT COSTS FOR THIS DATE _____

REMARKS:

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

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

How to complete form:

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

Purchases/Expendables

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

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

Travel Orders

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

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

Contractors

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

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

Other Agencies Involved (For FOSC Use)

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

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

DEPARTMENT OF TRANSPORTATION U.S. COAST GUARD CG-5136D (01-93)	**POLLUTION INCIDENT DAILY RESOURCE REPORT**	GOVT PURCHASES/ EXPENDABLES/TRAVEL ORDERS/CONTRACTORS Page ____ of ____(RCN-16451-1)

FPN/CERCLA NUMBER _____ DATE _____

PARENT UNIT _____ FOSC/REP/LEAD TRUSTEE SIGNATURE

_____

PURCHASES/EXPENDABLES

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

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

If no, complete information below

DESCRIPTION OF ITEM	PURCHASE ORDER NUMBER	COST	OFFICE

TOTAL COST FOR THIS DATE:_____

TRAVEL ORDERS

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

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

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

If no, submit when liquidated

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

ESTIMATED TOTAL TRAVEL COST: _____

CONTRACTORS

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

NAME	P.O./CONTRACTOR NUMBER	OFFICE USE

OTHER AGENCIES INVOLVED

(For FOSC or Lead Trustee Use)

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

NAME	AGREEMENT NUMBER	OFFICE USE

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

How to complete form:

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

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

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

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

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

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

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

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

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

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

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

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

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

DEPARTMENT OF TRANSPORTATION U.S. COAST GUARD CG-5136E (01-93)	**POLLUTION INCIDENT DAILY RESOURCE REPORT**	GOVERNMENT SHORT FORM (RCN-16451-1)

FPN/CERCLA NUMBER _____ DATE _____

PARENT UNIT _____ OSC/REP/LEAD TRUSTEE SIGNATURE

_____

PERSONNEL

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

Total Cost This Date:_____

EQUIPMENT

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

Total Cost This Date: _____

PURCHASES/EXPENDABLES

Were any purchase orders completed? YES G NO G If yes, how many: _____
If yes, are they attached? YES G NO G If yes, how many: _____
If no, complete information below

DESCRIPTION OF ITEM	PURCHASE ORDER NUMBER	COST	OFFICE

Total Cost This Date:_____

TRAVEL ORDERS

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

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

Estimated Total Travel Cost: _____

CONTRACTORS

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

NAME	P.O./CONTRACTOR NUMBER	OFFICE USE

OTHER FEDERAL/STATE/LOCAL AGENCIES INVOLVED

(For FOSC or Lead Trustee Use)

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

NAME	AGREEMENT NUMBER	OFFICE USE

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

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

How to complete form:

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

Contractor Personnel

Provide the following information for each individual.

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

DEPARTMENT OF TRANSPORTATION U.S. COAST GUARD CG-5136E-1 (01-93)	**POLLUTION INCIDENT DAILY RESOURCE REPORT**	GOVT PERSONNEL Page ____ of ____ (RCN-16451-1)

FPN/CERCLA NUMBER _____ DATE _____

CONTRACTOR: _____ PO/CONTRACT NO: _____

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

CONTRACTOR PERSONNEL

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

TOTAL PERSONNEL COSTS FOR THIS DATE_____

CONTRACTOR'S CERTIFICATION:

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

_____

Contractor's Authorized Representative

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

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

_____

FOSC/Lead Trustee

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

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

How to complete form:

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

Contractor Equipment

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

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

DEPARTMENT OF TRANSPORTATION U.S. COAST GUARD CG-5136E-2 (01-93)	**POLLUTION INCIDENT DAILY RESOURCE REPORT**	CONTRACTOR EQUIPMENT Page ____ of ____ (RCN-16451-1)

FPN/CERCLA NUMBER _____ DATE _____

CONTRACTOR: _____ PO/CONTRACT NO: _____

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

CONTRACTOR EQUIPMENT

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

TOTAL EQUIPMENT COSTS FOR THIS DATE _____

CONTRACTOR'S CERTIFICATION:

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

_____

Contractor's Authorized Representative

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

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

_____

FOSC/Lead Trustee

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

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

How to complete form:

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

Subcontractors

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

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

Materials Used/Other Expenses

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

DEPARTMENT OF TRANSPORTATION U.S. COAST GUARD CG-5136E-3 (01-93)	**POLLUTION INCIDENT DAILY RESOURCE REPORT**	CONTRACTOR/ SUBCONTRACTOR MATERIALS/OTHER EXPENSES Page ____ of ____ (RCN-16451-1)

FPN/CERCLA NUMBER _____ DATE _____

CONTRACTOR: _____ PO/CONTRACTOR NO: _____

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

SUBCONTRACTORS

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

CLIN	SUBCONTRACTOR'S NAME	COST	ADMIN FEE	TOTAL COST

TOTAL COST OF SUBCONTRACTORS FOR THIS DATE:_____

MATERIALS USED/OTHER EXPENSES

CLIN	DESCRIPTION	UNITS	UNITS USED	UNIT COST	TOTAL COST

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

CONTRACTOR'S CERTIFICATION

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

_____
Contractor's Authorized Representative

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

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

_____
FOSC/Lead Trustee

K. POLLUTION INCIDENT DAILY RESOURCE REPORT -- CG-5136E-4 CONTRACTOR SHORT FORM. **This can be used in lieu of long forms CG-5136E-(1-3).**

How to complete form:

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

Contractor Personnel Provide the following information for each individual.

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

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

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

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

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

Materials Used/Other Expenses

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

DEPARTMENT OF TRANSPORTATION U.S. COAST GUARD CG-5136E-4 (01-93)	**POLLUTION INCIDENT DAILY RESOURCE REPORT**	CONTRACTOR SHORT FORM (RCN-16451-1) Page ____ of ____ (RCN-16451-1)

FPN/CERCLA NUMBER _____ DATE _____

CONTRACTOR: _____ PO/CONTRACT NO:_____

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

PERSONNEL

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

TOTAL COST THIS DATE:_____

EQUIPMENT

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

TOTAL COST THIS DATE:_____

SUBCONTRACTORS

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

CLIN	SUBCONTRACTOR'S NAME	COST	ADMIN FEE	TOTAL COST

TOTAL COST OF SUBCONTRACTORS FOR THIS DATE:_____

MATERIALS USED/OTHER EXPENSES

CLIN	DESCRIPTION	UNIT DESC.	UNITS USED	UNIT COST	TOTAL COST

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

CONTRACTOR'S CERTIFICATION:

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

_____

Contractor's Authorized Representative

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

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

_____

FOSC/Lead Trustee

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Chapter 7

ACQUISITION OF PROPERTY USING OSLTF

Chapter 7 - Acquisition of Property Using OSLTF

A. Acquisition of Property.

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

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

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

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

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

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

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

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

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

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

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

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

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

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Chapter 8

Pollution Removal Funding Authorization (PRFAs)

CHAPTER 8 - POLLUTION REMOVAL FUNDING AUTHORIZATIONS (PRFAs)

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

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

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

1. Personnel salary costs, including overtime;

2. Travel and per diem expenses;

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

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

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

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

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

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

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

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

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

G. **Accounting Data for PRFA**. PRFAs are a Type "28" document. Construct the Document Control Number on all authorizations using the format found in "Accounting Information," Chapter 3, Tab (4). Contact the NPFC if assistance is needed.

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

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

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

2. Costs which are not adequately documented.

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

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

_____

FOSC's Signature and Date

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

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Federal Agency
Pollution Removal Funding Authorization

Recipient Agency: _____

Address: _____

_____

_____

1. Purpose

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

2. Approved Functions and Reimbursement Limit

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

Maximum limit of authorization: $_____.

3. Conditions

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

4. Period of Authorization

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

5. Reimbursement Procedure

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

6. Accounting Data

Document Control Number: _____
Accounting String: _____

7. Points of Contact

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

8. Authorizing Official

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

Attachments: (1) Scope of Work

Non-Federal Agency
Pollution Removal Funding Authorization

Recipient Agency: _____

Recipient: _____
_____
_____

1. Purpose

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

2. Approved Functions and Reimbursement Limit

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

Maximum limit of authorization: $_____.

3. Conditions

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

4. Period of Authorization

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

5. Reimbursement Procedure

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

6. Hold Harmless and Indemnify

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

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

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

7. No Agency

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

8. Accounting Data

Document Control Number: _____
Accounting String: _____

9. Points of Contact

D. _____ FOSC	Telephone: _____ FAX: _____ E-Mail: _____
E. _____ Recipient Agency Representative	Telephone: _____ FAX: _____ E-Mail: _____
F. _____ NPFC Case Officer	Telephone: _____ FAX: _____ E-Mail: _____

10. Authorizing Official

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

Attachments: (1) Scope of Work

AMENDMENT TO
POLLUTION REMOVAL FUNDING AUTHORIZATION

Issued To (Recipient Agency): _____

By (FOSC): _____

Date of Original Authorization: _____

Document Number of original Authorization: _____

The Authorization cited above is amended as follows:

_____

_____

_____

_____

Document Control Number of this amendment: _____

Authorizing Official

Signature: _____

Title: Federal On Scene Coordinator_____ Date: _____

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Chapter 9

STANDARD FORM 1080/1081

CHAPTER 9 - SF 1080/1081: VOUCHER FOR TRANSFERS BETWEEN APPROPRIATIONS AND/OR FUNDS

A. The SF-1080/1081 is used by other government agencies to request reimbursement from the Coast Guard.

1. Documentation should be organized and summarized, to provide a clear audit trail from the detail to the SF-1080/1081 or invoice submitted for reimbursement. These submittals will be reviewed by the NPFC staff for continuity and propriety. Incomplete submittals will be returned to sender for corrective action.

B. HOW TO COMPLETE SF-1080/1081/GENERAL INFORMATION:

1. **Voucher No:** Inserted by the agency submitting the SF-1080/1081.
2. **Schedule No:** Inserted by the agency submitting the SF-1080/1081.
3. **Department, establishment, bureau, or other receiving funds:** Federal agency submitting SF-1080/1081 (usually complete mailing address).
4. **Bill No:** Used by federal agencies to identify accompanied invoice number.
5. **Department, establishment, bureau, or office charged:** Address of CG-FOSC agency receiving reimbursement request.
6. **Paid By:** Leave blank.
7. **Order No:** Varies according to agency; numerical identifier for job (e.g. 0001, etc.).
8. **Date of Delivery:** Date work began and was completed.
9. **Articles or Services:** Brief explanation of how expenses were incurred; ensure Pollution Removal Funding Authorization Accounting String and Document Control Number are listed. Some agencies may choose to include their own in-house accounting information.
10. **Quantity:** Entry varies.
11. **Unit Price:** Entries depend on how specific work is identified; normally accompanied by an invoice and dailies to explain work specifics.
12. **Amount:** Exact dollar amount of reimbursement.
13. **Total:** Same as above.
14. **Remittance in payment hereof should be sent to:** Mailing address of agency submitting SF-1080/1081.

C. ACCOUNTING CLASSIFICATION - OFFICE RECEIVING FUNDS

1. This section is completed by agency submitting SF-1080/1081. There should be a name listed as a point of contact with a telephone number.

D. CERTIFICATE OF OFFICE CHARGED

1. This is to be completed by NPFC staff after the SF-1080/1081 and its attached documentation has been reviewed.

E. ACCOUNTING CLASSIFICATION - OFFICE CHARGED

1. This section is completed by NPFC staff.

Standard Form 1080 Revised April 1982 Department of the Treasury 1 TFRM 2-2500 1080-109	**VOUCHER FOR TRANSFERS BETWEEN APPROPRIATIONS AND/OR FUNDS**	VOUCHER NO. SCHEDULE NO.

Department, establishment, bureau, or office receiving funds

BILL NO.

Department, establishment, bureau, or office charged

PAID BY

Director (CM)
National Pollution Funds Center
Case Management Division
4200 Wilson Blvd., Suite 1000
Arlington, VA 22203-1804

ORDER	DATE OF DELIVERY	ARTICLE OR SERVICES	QUANTITY	UNIT PRICE		AMOUNT
				COST	PER	DOLLARS AND CENTS
					TOTAL	

Remittance in payment hereof should be sent to –

ACCOUNTING CLASSIFICATION C *Office Receiving Funds*

CERTIFICATE OF OFFICE CHARGED

I certify that the above articles were received and accepted or the services performed as stated and should be charged to the appropriation(s) and/or fund(s) as indicated below; or that the advance payment requested is approved and should be paid as indicated.

_____

(Authorized administrative or certifying officer)

_____
(Date)

_____
(Title)

ACCOUNTING CLASSIFICATION C *Office Charged*

Paid by Check No.

MSN 7540-00634-4220 PREVIOUS EDITIONS ARE USABLE

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STANDARD FORM 1081 Revised September 1982 Department of the Treasury ITFRM 2-2500	**VOUCHER AND SCHEDULE OF WITHDRAWAL AND CREDITS**	

CHARGE AND CREDIT WILL BE REPORTED ON CUSTOMER AGENCY STATEMENT OF TRANSACTION FOR ACCOUNTING PERIOD ENDING	Transaction Date Document No.

CUSTOMER AGENCY		**BILLING AGENCY**	
Agency Location Code (ALC)	Customer Agency Voucher No.	Agency Location Code (ALC)	Billing Agency Voucher No.
DEPARTMENT BUREAU ADDRESS		DEPARTMENT BUREAU ADDRESS	

SUMMARY		**SUMMARY**	
APPROPRIATION, FUND, OR RECEIPT SYMBOL	AMOUNT	APPROPRIATION, FUND, OR RECEIPT SYMBOL	AMOUNT
(MUST AGREE WITH BILLING AGENCY) **TOTAL**		(MUST AGREE WITH BILLING AGENCY) **TOTAL**	

Details of charges or reference to attached supporting documents

BILLING AGENCY CONTACT:
PREPARED BY
APPROVED BY
TELEPHONE NO.

CERTIFICATION OF CUSTOMER OFFICE

I certify that the items listed herein are correct and proper for payment from and to the appropriation(s) designated.

(*Date*) (*Authorized administrative or certifying officer*)

(*Telephone*)

PREVIOUS EDITION NOT USABLE

Original - Forward to Customer for Payment

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Chapter 10

UNIT FUND REIMBURSEMENT

CHAPTER 10 - UNIT FUND REIMBURSEMENT

Ref: (a) NPFCINST M7300.1: TOPs for Determining Removal Costs Under the Oil Pollution Act of 1990

A. During a pollution response, FOSC's should attempt to charge incident specific costs directly to the applicable Federal Project Number (is this limited only to FPN's or is it applicable to CPN's also?) to simplify the FOSC's responsibilities for both ceiling management and cost recovery. When this is not possible, circumstances have sometimes forced units to use their own funds. An example of a reimbursable cost is phone charges on a unit phone bill made in support of an oil pollution removal case. This Chapter provides instructions on how to request a reimbursement from the NPFC.

B. Only appropriate removal costs may be refunded. Reimbursements may be authorized for items purchased for removal operations related to a specific FPN and to replace a unit's stock if they were expended as a result of the specific incident. Refer to ref (a) for general guidance on property purchases and acquisitions.

C. Requests for reimbursement may be submitted via email to your case officer and should include the following:

   a. The total dollar amount of the reimbursement request as well as a break down of the individual expenditures that make up the total dollar amount.
   b. The date each expenditure was incurred.
   c. The document control number for each expenditure, as well as the line of accounting each expenditure was charged against.
   d. Facsimile of:

      i. Itemized bill with items for reimbursement clearly highlighted or otherwise indicated;
      ii. PES Report documenting that the expenditures were paid out of the unit's account and:
      iii. For credit card purchases, include a copy of credit card statement with the items for reimbursement highlighted or otherwise indicated.

D. FOSCs must continue to track the estimated totals for all categories of applicable costs against the assigned ceiling. Upon approval of reimbursement requests for out-of-pocket expenses, the FOSC should record those reimbursed expenditures on the Pollution Daily Resource Report. Such reimbursements would reduce the amount of remaining ceiling by the amount of the reimbursements approved.

E. Units may only be reimbursed in the fiscal year in which expenses were incurred. Requests for reimbursement should be received prior to 15 August to ensure adequate time for obligation of the "reimbursed" funds prior to the end of the fiscal year. NPFC will attempt to expedite reimbursements received after 15 August, but may be constrained by G-CFM SOP's for Fiscal Year Closeout.

R 141301Z NOV 02 ZUI ASN-A00318000002
FM COMDT COGARD WASHINGTON DC//G-MOR//
TO AIG 8903
COMCOGARD MLC PAC ALAMEDA CA//FCP//
COMCOGARD MLC LANT NORFOLK VA//FCP//
COGARD FINCEN CHESAPEAKE VA//OG//
BT
UNCLAS //N16450//
SUBJ: CHANGE IN COAST GUARD STANDARD RATES COMDTINST 7310.1H
A. NPFC USER REFERENCE GUIDE
B. COMDTINST 7310.1H DATED 4 OCT 2002
C. COMDTINST 7310.1G DATED 29 MAY 2001
1. REF A REQUIRES USE OF CG STANDARD RATES WHEN PREPARING COST DOC ASSOCIATED WITH OSLTF AND CERCLA POLLUTION RESPONSE CASES. REF B PROVIDES UPDATED CG STANDARD RATES. THIS MESSAGE PROVIDES CLARIFICATION AND GUIDANCE ON WHEN TO USE RATES IN REF B, OR CONTINUE TO USE RATES PUBLISHED IN REF C.
2. REF B ESTABLISHES 4 OCT 2002 AS THE IMPLEMENTATION DATE FOR NEW CG STANDARD RATES. CG RESOURCES USED ON OSLTF OR CERCLA FUNDED RESPONSES SHALL USE REF B RATES FOR ALL RESOURCES EMPLOYED ON OR AFTER 4 OCT 2002.
3. FOR CASES IN PROGRESS ON 4 OCT 2002, CG RESOURCE USE UP TO AND INCLUDING 3 OCT 2002 SHALL USE RATES PUBLISHED IN REF C. SHIFT TO REF B RATES ON 4 OCT 2002 AND THEREAFTER. NOTE IN COST SUMMARY SUBMITTED IAW REF A THAT BOTH RATES WERE USED, AND THAT RESOURCES USED ON/AFTER 4 OCT 2002 WERE COSTED IAW REF B.
4.FOR CASES IN PROGRESS ON 4 OCT 2002 WHERE INTERIM COST DOC USING REF C HAS BEEN FORWARDED TO THE NPFC, FUTURE COST DOC FOR THAT CASE WILL FOLLOW POLICY IN PARA (3). UNITS SHALL NOT REDO PREVIOUSLY FORWARDED COST DOC. NOTE IN COST DOC TRANSMITTAL LETTER THAT BOTH RATES WERE USED, AND THAT RESOURCES USED ON/AFTER 4 OCT 2002 WERE COSTED IAW REF B.
5. UNITS SHALL USE REF B IN ESTIMATING AND REPORTING CEILING USE FOR CASES IN ACTIVE STATUS, AS REQ BY REF A.
6. THIS GUIDANCE AND REF B WILL BE INCORPORATED IN FUTURE CHANGES TO REF A.
7. UNITS HAVING QUESTIONS REGARDING THIS MESSAGE OR REF B ARE ENCOURAGED TO CONTACT THEIR NPFC CASE OFFICER OR REGIONAL MANAGER.
8. THE TEXT AND RATES IMPLEMENTED BY REF B CAN BE VIEWED ON THE INTERNET AT:
HTTP://CGWEB.COMDT.USCG.MIL/G-CFP/G-CFS-2/CFS2.HTM
9. INTERNET RELEASE AUTHORIZED.
BT
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U.S. Department of Transportation
United States Coast Guard

Commandant
United States Coast Guard

2100 Second Street, S.W.
Washington, DC 20593-0001
Staff Symbol: G-CFS-2
Phone: (202) 267-0263

COMDTINST 7310.1H
OCTOBER 4, 2002

COMMANDANT INSTRUCTION 7310.1H

Subj: STANDARD RATES

1. PURPOSE. This Instruction establishes standard rates to be used in computing reimbursable charges.

2. ACTION. Area and district commanders, commanders of maintenance and logistics commands, commanding officers of headquarters units, assistant commandants for directorates, Chief Counsel and special staff offices at Headquarters shall ensure that the guidelines prescribed within this Instruction are followed. Internet release authorized.

3. DIRECTIVES AFFECTED. Standard Rates, COMDTINST 7310.lG is cancelled.

4. DISCUSSION.

   a. The Coast Guard enters into reimbursable agreements with other government agencies in which the cost of the service provided must be recovered. The Coast Guard also has specific authority for reimbursement of certain services provided to the private sector. The enclosed rates represent the full cost to the Coast Guard for use of its resources.

   b. An overview of the methodology used to calculate these standard rates can be downloaded at the following website: http://cgweb.comdt.uscg.mil/g-cfp/g-cfs-1/deliver/ARIFAS/arifas.htm

5. POLICY.

   a. The enclosed rates are effective as of the date of this Instruction (indicated above). Use the “Outside Government” rate for services provided to customers outside the federal government on or after this date. Use the “Inside Government” rate for intra-governmental services provided on or after this date.

DISTRIBUTION – SDL No. 139

	a	b	c	d	e	f	g	h	i	j	k	l	m	n	o	p	q	r	s	t	u	v	w	x	y	z
A																										
B	1	5	10		12	2	2	2	2		2	2	2	2	2		2	2		4						2
C	2	2	2	2	2	2	2		2		4		2	4									2			
D	2	2		2	4																					
E														2	2											
F																										
G																										
H																										

NON-STANDARD DISTRIBUTION:

b. The "direct" portion of the standard rates includes both fixed and variable components. Therefore, these rates should not be used to calculate reimbursement for FEMA, foreseeable costs related to contracting actions, cost justification for use of military aircraft or incremental operational costs. Rates for these purposes shall be promulgated separately.

c. Reimbursable rates for services provided which are not covered by this Instruction should be developed in consultation with Commandant (G-CFS). The Coast Guard currently has a negotiated rate of $20,000/day for certain government users of the Polar class icebreakers.

d. Supplement these rates with out-of pocket costs such as:

(1) extra maintenance required due to extraordinary facility use or abuse, based on the actual costs of the additional materials and labor;

(2) incidental personnel expenses such as travel and per diem; and

(3) the cost of any special equipment purchased solely for the purpose of providing a reimbursable service.

e. Update or delete any existing rates in manuals or other publications which are based on prior issues of this instruction.

6. INQUIRES. Address questions concerning these standard rates or the determination of other charges to Commandant (G-CFS) at (202) 267-0263.

7. FORMS AVAILABILITY. Coast Guard Form, CG-5460A, Status Profile (Rev. 9-92) and Coast Guard Form, CG-5460B, Visit Profile (Rev. 9-92) can be obtained from Jetform Filler.

R. S. HOROWITZ
Director of Finance, Procurement and Internal Security

Encl: (1) Hourly Standard Rates for Cutters, Boats, and Aircraft
(2) Hourly Standard Rates for Personnel
(3) Standard Rates for Replacement or Repair to Damaged Aids to Navigation
(4) Hourly Standard Rates for Pollution Clean-up Equipment
(5) Standard Rates for Vehicles
(6) Standard Rates for Outpatient Visits

HOURLY STANDARD RATES FOR CUTTERS, BOATS, AND AIRCRAFT

General

The hourly standard rates for cutters, boats, and aircraft are divided into two categories "Inside Government" and "Outside Government." The "Inside Government" rate is for use when charging other agencies within the federal government. The "Outside Government" rate is for use when charging all others.

Inside Government – The following are the components of the "Inside Government" rate:

Direct Costs: Represents direct costs incurred by a particular asset class. This includes labor, employee benefits, fuel, maintenance, etc.

Support Costs: Costs allocated to a particular asset class for support received from Coast Guard support activities, including but not limited to, area commands, maintenance and logistics commands, districts, groups, Integrated Support Commands (ISCs), Naval Engineering Support Units (NESUs), etc.

General and Administrative (G&A): Costs allocated to a particular asset class to represent benefit received from Coast Guard general and administrative activities such as legal services, payroll processing, etc.

Outside Government – In addition to the costs listed in the "Inside Government" rate, the following additional costs are included in the "Outside Government" rate:

Pension Benefit Adjustment: Costs incurred for retirement pay and medical expenses.

Operating Asset Depreciation: Depreciation by class of cutter, aircraft, and boat.

Other Asset Depreciation: Depreciation of buildings, structures, electronics, and other assets.

Operating Asset Cost of Capital: The annual rate of return (equal to the average long-term Treasure bond rate) applied to the net book value of cutters, aircraft, and boat asset classes.

Other Asset Cost of Capital: The annual rate of return (equal to the average long-term Treasure bond rate) applied to the net book value of buildings, structures, and other assets.

Hourly Standard Rates for Cutters, Boats, and Aircraft FY00

		Inside Government Rate				Outside Government Rate (added components)							
		Direct	Support	G&A	Total	Pension Adjustment	Op Asset Depreciation	Other Asset Depreciation	Op Asset Cost of Cap	Other Asset Cost of Cap	Total	FY99 Total	Delta
Cutters	WHEC	$2,905	$1,619	$1,174	$5,697	$791	$842	$98	$730	$71	$8,229	$7,497	10%
	WMEC 270	$2,045	$965	$708	$3,718	$518	$509	$56	$545	$33	$5,379	$4,983	8%
	WAGB MACKINAW	$3,221	$2,433	$1,376	$7,029	$934	$0	$144	$0	$104	$8,211	$7,283	13%
	WLI	$542	$370	$209	$1,121	$141	$0	$23	$0	$16	$1,301	$1,111	17%
	WLIC	$698	$397	$225	$1,320	$173	$3	$25	$2	$18	$1,541	$1,353	14%
	WYTL	$468	$481	$272	$1,221	$175	$0	$29	$0	$21	$1,446	$1,424	2%
	WTGB	$1,417	$833	$471	$2,722	$368	$257	$55	$209	$39	$3,650	$3,234	13%
	WLR	$585	$480	$271	$1,336	$182	$9	$29	$10	$21	$1,587	$1,509	5%
	HEALY CUTTER CLASS (CO)	$1,169	$1,446	$818	$3,433	$500	3380	$47	$6,060	$32	$13,452		
	WMEC 210	$1,557	$811	$619	$2,987	$440	$374	$57	$291	$31	$4,180	$3,831	9%
	WPB 82	$383	$330	$187	$900	$128	$1	$20	$0	$15	$1,064	$1,035	3%
	WPB 110	$485	$767	$314	$1,567	$199	$94	$52	$112	$42	$2,066	$1,751	18%
	WLB 180	$1,536	$1,320	$746	$3,602	$348	$93	$63	$30	$45	$4,181	$4,032	4%
	WLB 225	$1,651	$1,225	$693	$3,569	$552	$683	$79	$1,163	$57	$6,103	$6,168	-1%
	WLM 175	$1,495	$742	$419	$2,655	$358	$641	$49	$1,127	$35	$4,865	$4,333	12%
	WAGB POLAR	$5,897	$2,803	$1,585	$10,285	$1,181	$990	$153	$393	$108	$13,110	$11,103	18%
	WPB 87	$284	$737	$417	$1,439	$153	$131	$31	$237	$22	$2,013	$1,200	68%
	WMEC 213_230	$1,840	$3,043	$1,016	$5,898	$721	$0	$283	$0	$300	$7,202	$7,162	1%
Boats	ANB (55' & 63')	$378	$191	$114	$683	$113	$26	$24	$15	$24	$885	$847	5%
	BU/BUSL (45', 46' & 49')	$327	$130	$78	$536	$140	$270	$19	$317	$19	$1,301	$1,113	17%
	MLB/UTB (41', 44', 47', & 52')	$771	$679	$405	$1,855	$288	$22	$84	$25	$79	$2,353	$2,162	9%
	PWB (28')	$199	$27	$16	$243	$44	$20	$9	$14	$9	$339	$334	1%
	SRB (30')	$305	$27	$16	$347	$65	$40	$13	$6	$13	$484	$485	0%
	TANB/TPSB (21', 22' & 25')	$245	$143	$85	$474	$77	$13	$23	$11	$22	$620	$577	7%
	FR/WP/SKI (12', 14', 16' & 18')	$172	$178	$106	$456	$70	$1	$21	$0	$20	$568	$519	10%
	RIB/UTL (13', 15', 16', 21' 25', & 28')	$421	$461	$275	$1,157	$176	$10	$66	$2	$61	$1,472	$1,322	11%
Aircraft	HH65A (CO)	$3,184	$935	$1,020	$5,139	$611	$320	$209	$129	$113	$6,521	$6,528	0%
	HU25 (CO)	$4,240	$719	$785	$5,744	$533	$608	$197	$104	$103	$7,289	$7,503	-3%
	HC130H (CO)	$5,674	$1,369	$1,494	$8,537	$1,082	$1,160	$365	$345	$185	$11,674	$11,554	1%
	HH60J (CO)	$4,405	$1,350	$1,473	$7,228	$875	$1,224	$303	$925	$164	$10,719	$10,566	1%
	VC4A (CO)	$1,017	$969	$1,058	$3,044	$280	$24	$75	$4	$67	$3,494	$3,500	0%
	C2OB (CO)	$4,803	$0	$1,390	$6,192	$369	$1,109	$29	$965	$16	$8,680	$7,680	13%

HOURLY STANDARD RATES FOR PERSONNEL

Rate Computation

The hourly standard rates for personnel services are based on prevailing annual standard personnel costs related to employee productive hours as reflected in Staffing Standards Manual, COMDTINST M5312.11(series). The rates are presented on the following page. A factor representing incurred but unfunded retirement and medical cost is included for customer effort external to the federal government.

Rate Application

The average hourly rates for customers inside and outside the federal government are presented for those situations that require computations on an hourly basis. For reimbursable agreements that involve extended periods of time (e.g., monthly or yearly) contact Commandant (G-CFS) at (202) 267-0263 for appropriate guidance.

It is important to note that charges for normal crews are contained within the rates for cutters, aircraft and small boats. Therefore, use the standard personnel rates listed below only where additional personnel reimbursement is appropriate.

Actual costs for travel and per diem, if applicable, must also be included in the reimbursement.

HOURLY RATES FOR PERSONNEL ($)

Rank	In Govn't ($) Rate	Out Govn't ($) Rate
O-6	86	109
O-5	73	92
O-4	64	80
O-3	55	69
O-2	42	52
O-1	34	42
CADET	13	17
W-4	59	74
W-3	52	67
W-2	46	59
E-10	61	76
E-9	53	67
E-8	47	58
E-7	46	56
E-6	40	49
E-5	34	41
E-4	26	32
E-3	22	27
E-2	22	27
E-1	22	27

Grade	In Govn't ($) Rate	Out Govn't ($) Rate
GS-15	79	86
GS-14	70	76
GS-13	61	66
GS-12	53	57
GS-11	44	48
GS-10	42	46
GS-09	37	40
GS-08	35	38
GS-07	32	34
GS-06	30	32
GS-05	26	28
GS-04	25	27
GS-03	24	25
WG-15	40	43
WG-14	38	42
WG-13	37	40
WG-12	36	39
WG-11	35	38
WG-10	34	37
WG-09	33	36
WG-08	31	34
WG-07	29	32
WG-06	28	31
WG-05	28	30
WG-04	27	29
WG-03	23	25
WG-02	22	24

STANDARD RATES FOR REPLACEMENT OR REPAIR OF DAMAGED AIDS TO NAVIGATION

Rate Application:

There are two possible components that may apply when computing a charge for repair or replacement of a damaged or destroyed aid. These components are discussed below, however, they do not include vessel, boat or vehicle time which must be determined separately based upon this instruction. Additional policy on charges for aids to navigation work is contained in 33 CFR Part 74.

Replacement Costs

For the replacement of buoys, chains and the related transportation cost, see Commandant (G-SEC) website at the following URL: http://www.uscg.mil/systems/gse/gse2/Products.htm
Units which do not have access to the internet can obtain hard copies of these rates from Commandant (G-CFS) at (202) 267-0263.

Use actual costs for sinkers, lighting and power equipment. Include costs to install equipment on the buoy (retro, wiring, etc.)

Replacement cost for structures should be actual cost of materials. If replacement is accomplished using a contractor, charges should include contract cost, contract management cost (including inspection) and actual cost of government furnished equipment.

Charges shall include the cost of temporary floating aids until the damaged aid is replaced.

Replacement costs shall also include government labor and shall be computed using the personnel rates contained in this Instruction.

Temporary Aids

Charges for temporary aids shall include actual cost for retro and signal equipment needed to place the aid in the water. After retrieval of the temporary aid include cost (either ISC or unit) to place buoy in ready for issue condition.

Monthly servicing costs vary throughout the Coast Guard and shall be computed locally at the District level by prorating costs based upon the following categories and time periods. For example, the monthly servicing cost for a steel buoy would be computed by dividing the six year overhaul cost by seventy-two.

A 6 year overhaul cost for steel buoys
A 6 year life for lighting and power equipment
A 2 year life for moorings
A 20 year life for steel buoys with the exception of 4th and 6th class
A 2 year life for 4th and 6th class buoys
A 8 year life for foam buoys
A 6 year life for plastic buoys

For the purposes of applying these computed rates, a month is considered to be 16 or more days of use.

Labor for buoy servicing at support facilities shall be computed using the personnel rates contained in this instruction.

Questions concerning computing charges for damaged aids shall be referred to Commandant (G-OPN).

HOURLY STANDARD RATES FOR POLLUTION CLEAN-UP EQUIPMENT

Rate Application

Apply these charges for every full or fractional hour of use, excluding transit time. Make separate charges for: (1) cost of Coast Guard Strike Team personnel operating and/or supervising the operations of the equipment based on the standard rates for personnel, enclosure (2); (2) actual fuel costs associated with operational use of the equipment; (3) the cost of transporting the equipment to and from the job site; and (4) actual reimbursement cost when performed by a contractor. To obtain cost guidance on any other equipment not listed below contact Commandant (G-MOR).

HOURLY STANDARD RATES FOR POLLUTION CLEAN-UP EQUIPMENT

Equipment Type	Rate	Equipment Type	Rate
Voss System trailer	$228	Fast Sweep Boom	$27
DESMI 250 Skimmer and Control Std	$35	Large Pump System w/ Trailer	$224
High Speed Skimmer	$67	Small Pump System	$69
Deutz Prime Mover	$23	Non-Submersible Pumps	$19
Highstar Prime Mover	$24	Storage Inflatable Barge	$70
CCN-150 Pump	$34	Boom Mooring System	$92
DOP 250 Pump	$41	Dracone Off-Loading Pump Systems	$207
650 Ft Inflatable Boom (1 reel)	$42	Storage Seaslugs	$123
Inflatable Boom (5 reels) w/ trailer	$201	Pollution Response Trailers Command/Comms Offices	$325
500 ft Foam Boom	$26		
500 ft Foam Boom, 3 Boxes w/Trailer	$53		

STANDARD RATES FOR VEHICLES

The GSA Web site has moved to
http://apps.fss.gsa.gov/vehicles/leasing/2004/

Rate Computation

The standard rates for vehicles are available from GSA at the following web site: ~~http://www.fss.gsa.gov/vehicles/leasing/2001/index.cfm~~ These rates represent averages for similar vehicle types from different regions of the country. Units which do not have access to the internet can obtain hard copies of these rates from Commandant (G-CFS) at (202) 267-0263.

Rate Application

The rates are applied for every full or fractional mile or month of use. These rates can be prorated to a daily rate if necessary. If the vehicle is a commercial rental or GSA lease, charge the actual cost of the rental if available. Include a charge for personnel if the driver is not attached to another unit (such as cutter, aircraft or small boat) involved in the operation.

STANDARD RATES FOR OUTPATIENT VISITS

All authorized non-Coast Guard beneficiaries provided care in Coast Guard medical facilities are entered in the Composite Health Care System (CHCS). CHCS generates monthly DD Form 7A (Part B): Outpatient Treatment Furnished reports based on Outpatient Itemized Billing Methodology. Each CG facility will provide as required, to Commandant (G-WRP-2), a Detail and Summary DD7A for each Military Branch of Service and NOAA. The Coast Guard Finance Center bills the appropriate Uniformed Service in accordance with the annually updated, inter-agency rates published in the Federal Register and the procedures established in existing Memorandums of Agreement (MOA).

Routine Medical care should not be furnished to personnel other than those specifically entitled by Title 10, United States Code. Non-routine care will be billed on a case-by-case basis, depending on actual circumstances, in accordance with the procedures outlined above.

Contact Commandant (G-WRP) for further guidance.

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U.S. Department
of Transportation

United States
Coast Guard

Coast Guard Acquisition Procedures (EXCERPT)

COMDTINST M4200.19F

CGAP SUBCHAPTER 1217.92
CONTRACTING FOR CONTAINMENT AND CLEAN-UP OF OIL AND HAZARDOUS SUBSTANCES SPILLS

CGAP SUBCHAPTER 1217.9200 Scope of subpart.

The Coast Guard responsibilities for the removal of oil and hazardous substances in waterways and adjoining shorelines are specified in the National Contingency Plan, 40 CFR 300, the Federal Water Pollution Control Act of 1971, as amended, the Comprehensive Environmental Response Cleanup and Liability Act (CERCLA) of 1980, as amended, and the Oil Pollution Act (OPA) of 1990.

CGAP SUBCHAPTER 1217.9201 General.

In order to expedite the processing of contracts for containment and clean-up of oil and hazardous substance spills, the preferred Coast Guard method of contracting is through the placement of orders against Basic Ordering Agreements (BOAs) as defined in FAR 16.703, using a time and materials pricing arrangement; however, other methods of contracting can be used when appropriate.

CGAP SUBCHAPTER 1217.9202 Reserved.

CGAP SUBCHAPTER 1217.9203 Competition.

(a) The nature of contracting for containment and clean-up of oil and hazardous substances makes full and open competition impossible; however, competition shall be obtained to the maximum extent possible as governed by the response time needed in any given emergency. These conditions are documented by Commandant (G-CPM) in a Class Justification for Other Than Full and Open Competition which Coast Guard contracting officers can use for all contracts and orders for oil and hazardous substance clean-up services.

(b) Market Survey. MLC contracting officers will conduct market surveys for additional sources at least annually, using Commerce Business Daily synopses and other appropriate techniques. Any sources expressing an interest in a BOA in the interim shall be provided a solicitation.

(c) Service Contract Act wage determinations. MLC contracting officers shall request wage determinations on an annual basis, or required, from the Department of Labor (DOL). If possible, the DOL should be requested to make the wage determinations applicable to all contracts for oil and hazardous substance containment and cleanup services in the same geographic areas.

(d) Competition Documentation for each Incident. Orders against BOAs shall not be awarded on a rotational basis among qualified contractors without pricing considerations. Orders shall be awarded to the contractor who offers the lowest price for those response times determined adequate considering the circumstances involved. Contracting officers (includes OSCs) shall document the following information which shall be included in each order file:

(1) The action(s) taken to obtain competition or the reasons(s) why competition was not feasible.

(2) The name(s) and point(s) of contact for the contractors contacted.

(3) The rationale for awarding an order to the successful offeror.

(4) A written determination that the Service Contract Act applies if the incident is for services and exceeds $2,500. If the incident requires construction that exceeds $2,000, the OSC shall contact the MLC contracting officer to determine whether the Davis Bacon Act has been incorporated into the BOA. If the Davis Bacon Act has been incorporated into the BOA, provide a written determination that the Davis Bacon Act applies. If the Davis Bacon Act has not been incorporated into the BOA, and the incident requires construction that exceeds $2,000, the MLC contracting officer must contract for the required construction.

CGAP SUBCHAPTER 1217.9204 Authorization to proceed.

(a) Coast Guard OSCs shall issue a written Authorization to Proceed (ATP) when it becomes necessary to authorize a contractor to commence performance of oil or hazardous substance clean-up services against existing BOAs. ATPs shall not exceed $25,000 per incident. During the initial stages of an incident, OSCs may verbally authorize a contractor to commence performance, provided an ATP is issued within 24 hours confirming the verbal authorization. As a minimum, the ATP shall include reference to: (1) the Federal Project Number; (2) the BOA number; (3) maximum dollar value of the commitment; (4) cognizant MLC point of contact; (5) accounting office address; (6) contractor's name, address, point of contact, and signature; and (7) name and signature of the OSC.

(b) The Coast Guard OSC shall notify the MLC(fcp) by message and/or forward a copy of the ATP by overnight mail or FAX within 24 hours after issuance of the ATP.

(c) The Coast Guard OSC shall prepare all competition documentation required by CGAP Subchapter 1217.9203 and provide it, along with a copy of the ATP, to the MLC(fcp) within 3 days after issuance of the ATP.

(d) This subchapter is not mandatory for Coast Guard OSCs in the MLCPAC area when the incident is $50,000 or less. When the incident is within this threshold, the Coast Guard OSC shall prepare and distribute the delivery order. The Coast Guard OSC shall forward a copy of the delivery order and the supporting competition documentation required by CGAP Subchapter 1217.9203 to MLCPAC(fcp) within 3 days of the incident.

(e) This subchapter is also not mandatory for Coast Guard OSCs in the MLCLANT area if all of the following conditions apply: the COCO of MLCLANT (fcp) authorizes the applicable OSC to prepare and distribute the BOA order; the incident is $50,000 or less; and the OSC forwards a copy of the BOA order and the supporting competition documentation required by CGAP Subchapter 1217.9203 to MLCLANT (fcp) within 3 days of the incident.

CGAP SUBCHAPTER 1217.9205 Issuing delivery orders against BOAs.

The MLC(fcp) shall review the ATP issued by the OSC and issue the confirming BOA order, except see CGAP Subchapter 1217.9204(d) and (e) above. The MLC (fcp) shall distribute the order to the Coast Guard Finance Center within 7 working days of an incident for the purpose of documenting and recording the obligation of funds. All invoices will be paid by the Coast Guard Finance Center.

CGAP SUBCHAPTER 1217.9206 BOA delivery order number.

The BOA order number consists of the BOA contract number plus the individual order number. The individual order number shall be consistent with the procedure set forth at CGAP Subchapter 1204.602-90(c)(6)(iv). If additional identification is needed, i.e., FPN, MSO port code, number of orders per incident, the identification shall be placed on the order in such a location as to separate it from the order number.

CGAP SUBCHAPTER 1217.9207 BOA order, file documentation, and file maintenance.

Issuance of the BOA order, file documentation, and file maintenance is the responsibility of the MLC (fcp), except see CGAP Subchapter 1217.9204(d) and (e) above. The following minimum file documentation must be maintained for each order issued against a BOA: (1) a copy of the CANAPS message that assigns the FPN and fund ceiling (this normally includes evidence of funds availability); (2) a record of the sources contacted or, if only one source was contacted, the reasons why competition was not feasible and why the particular contractor was selected (this record should include dates, names of individuals, companies, and factors influencing choice); (3) a copy of the ATP issued by the OSC and all competition documentation required by CGAP Subchapter 1217.9203; (4) a copy of the order issued on an OF-347; (5) modifications, if any, to the order issued on an SF-30; and (6) copies of invoices certified by the OSC together with supporting documentation.

CGAP SUBCHAPTER 1217.9208 Non-BOA purchases of supplies/services.

When supplies or services are required that are not covered under an existing BOA, the requirement shall be referred to the MLC contracting officer.

(a) Contracting Authority (other than OSC). If the MLC(fcp) contracting officer agrees, a field contracting activity may elect to issue purchase orders for non-BOA supplies or services if the requirement is within, and is not likely to exceed at some future date, the field activities' contracting authority.

(b) OSC Contracting Authority. If the MLC(fcp) contracting officer cannot be contacted in a timely manner, Coast Guard OSCs are authorized to issue purchase orders for non-BOA supplies or services, on an emergency basis only, not to exceed $25,000 per incident. The OSC must contact the MLC(fcp) by message and/or forward a copy of the purchase order and competition documentation required by CGAP Subchapter 1217.9203 by overnight mail or FAX within 24 hours after exercising this authority. If a message is used to notify the MLC(fcp), all information contained in the purchase order and the competition documentation must be summarized in the message. The OSC, in his/her contracting officer capacity, is required to advise the contractor, when any purchase order for services exceeding $2,500 is issued, that the Service Contract Act of 1965, as amended, is applicable.

CGAP SUBCHAPTER 1217.9209 Disposal of salvageable products.

OSCs shall keep an accurate record of the quantity of recovered product suitable for reclamation or sale. The General Services Administration has declined to take custody of any recovered oil since they do not have appropriate storage facilities. The contracting officer may initiate action for sale of the recovered oil, with the proceeds being applied as a credit to the clean-up costs.

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Contracting Requirements for Use of a Basic Ordering Agreement (BOA)

Maintenance and Logistics Command -- Atlantic Area

United States Coast Guard

Maintenance and Logistics Command Atlantic Area (fcp-2)

Norfolk, VA 23510-9113

OSC ORDERING INSTRUCTIONS MLCLANT **Amended June 2002**

Ref: (a) COMDTINST M4200.19F (CH2), [Coast Guard Acquisition Procedures] 1217.92
(b) MLCLANT SOP I-2-39
(c) FEDERAL ACQUISITION REGULATIONS

1. Funding:

Obtain FPN or CERCLA funding via CANAPS.

2. Hiring/Selection Of Boa Contractor

A contractor is hired by the issuance of an Authorization to Proceed (ATP). A delivery order is issued by MLCLANT under an existing Basic Ordering Agreement.

a) OSC selects in accordance with ref.(a). Selection factors: capability, response time, and of BOA contractors meeting first two factors, estimated low price. Contractors shall not be selected on a rotational basis per ref (a) CGAP 1217-9203(d).

b) OSC may issue **up to $25,000.** For ATPs that **exceed $25,000**, the OSC must contact the Contracting Officer as soon as possible to issue the ATP. (See 4 below.)

c) Issues ATP MESSAGE* within 24 hours. Ensure MLCLANT-"FCP 2" is "TO" addressee.
*** MLCPAC** procedures differ.

d) ATP MESSAGE MUST INCLUDE:

i. Brief reason why individual BOA company chosen. For example, only one meeting response time or best response time, or lowest evaluated price, or only firm in area meeting specific technical requirements for this cleanup. Contractors should not be chosen on a rotational basis.

ii. Identify contractor not-to-exceed ceiling amount. This amount is different than the ceiling for the cleanup.

iii. Date work started.

3. Hiring Non-Boa Contractor

a) AT ANY DOLLAR AMOUNT: OSC requests Contracting Officer to place Simplified Acquisition or contract.

b) OSC provides company name and phone number for any firm which can perform the required cleanup services in the required time frame.

c) **If OSC cannot reach the Contracting Officer**, which should be rare if utilizing the MLCLANT pager after-hours (see 4 below), the **OSC** is authorized under ref.(a) to issue orders for **$25,000. or less** for non-BOA supplies or services on an emergency basis.

d) OSC must:

i. advise non-BOA contractor that the Service Contract Act applies

ii. advise contractor to fax or mail a copy of commercial price list to the Contracting Officer (who will contact the company to negotiate prices, terms and conditions).

iii. OSC must NOTIFY THE CONTRACTING OFFICER no later than **24 hours** of exercising this emergency authority.

iv. Issue ATP message within 24 hours providing contractor name, address, phone number and point of contact.
NOTE: An OSC may leave voice-mail, e-mail or FAX if unable to contact Contracting Officer via after-hours pager. (see 4(f) below.)

4. Contracting The Contracting Officer After Working Hours

After normal working hours, the MLCLANT Finance Division Contracting Officer can be reached directly via beeper. The beeper number is **1-800-SKY-8888 Pin** 2024525. As the contractor cannot be permitted to access the CDO, the OSC must make the initial CDO contact. The names and telephone numbers of all Contracting Officers, Contract Specialists and SK's can be found at the MLCLANT Intranet web site.

5. Subcontracts/Non-Boa Priced Items Needed From Boa Contractor

a) Only the **contracting officer** may negotiate and approve pricing for any subcontracted or BOA company owned item that **has not been negotiated, approved and priced in the boa.**

b) The OSC must notify the Contracting Officer that non BOA priced items are needed, providing when and where such is needed, the project number and funds if the cost will cause the initial estimated ceiling price of the BOA order to be exceeded.

c) The **OSC approves the technical acceptability** of the proposed sources and/or item. The Contracting Officer approval is solely a price issue. The Contracting Officer will

assume that the OSC has agreed to the sources solicited and/or technical issues involved in subcontracts/non BOA priced items unless notified differently by the OSC.

d) Contractors who fail to obtain Contracting Officer approval on subcontracts or non BOA item are penalized at the time of invoice payment.

e) All BOA contractors have agreed by signing their BOA to negotiate and obtain Contracting Officer approvals on these items. (Section H of all BOAs, Subcontracts/Non-BOA Items clause.)

f) During **non-work hours**, the OSC must contact the Contracting Officer for the BOA contractor. (See section 4 above.) A contractor may also leave voice mail, e-mail or fax for the Contracting Officer.

g) As with 3d above, if the need is of such urgency and a Contracting Officer cannot be reached without **an actual negative impact on the response,** the OSC may direct the BOA contractor to proceed. The OSC must advise the BOA contractor that the Contracting Officer must be contacted within 24 hours to negotiate prices.

h) Regardless of whether subcontract source(s) are BOA companies or not, the Contracting Officer may determine that the required items can be more effectively acquired by a direct Government contract with another company in lieu of subcontracting the requirement under a BOA firm. The OSC will be contacted to determine if any special requirements exist which preclude this method.

***EXAMPLE*:** Disposal costs are estimated at $100,000. the dollars involved make this alternate method more cost effective and rarely would the cleanup BOA contractor add value to the subcontract beyond identifying sources. Cost savings would be realized by eliminating the BOA contractor's "markup", e.g. 5% on $100,000 would be a $5,000 savings, 10%, $10,000 etc.

Amended June 2002

OSC ORDERING INSTRUCTIONS (USCG)
CONTRACTOR INVOICES (OPA, CERCLA)

1. Allowable Time For Invoice Processing By Osc Unit

TEN DAY ALLOWABLE TIME FOR INVOICE PROCESSING BY OSC UNIT

a) Contractor submits invoice to OSC for acceptance or rejection of charges.

b) THE ***OSC MUST DATE-STAMP THE DATE OF RECEIPT OF THE INVOICE at the OSC's office.***

c) If receipt is not officially noted on the invoice, the date of invoice governs the payment due date and therefore interest accruals. As the date on the contractor's invoice is always earlier than the actual date of receipt of the invoice by the OSC, failure to date stamp receipt will result in excess interest charges being due the contractor.

d) ***OSC forwards invoice, within 10 calendar days of receipt,*** certified either as accepted or rejected, directly to Contracting Officer**,** ***MLCLANT, FCP-2. Facsimile or express mail should be used*** so that interest does not accrue due to mailing time.

2. OSC Acceptance/Rejection Responsibilities

a) OSC **verifies** hours, numbers of personnel, equipment, supplies.

NOTE: USCG Basic Ordering Agreements REQUIRE MONITORING BY the OSC/R and completion of "Dailies" by the Contractor and the OSC/OSCR. Verification of invoices hours, equipment, personnel, materials then requires comparison of the numbers charged on the invoice to the "daily" records for the response. ,

b) **OSC does not verify that prices** are in accordance with the BOA; Contracting Officer/Contract Specialist/SK will verify prices on the daily(s) and invoice.

c) **Disputed** hours, equipment should be **identified** to the Contracting Officer/Contract Specialist who will then issue written notification to contractor.

d) Any invoices that include **correct charges** but are **not paid within THIRTY DAYS OF RECEIPT BY THE OSC accrue INTEREST.** Invoices which are received and are incorrect may still accrue interest if the Government does not furnish the contractor timely notice of invoice rejection. Three Coast Guard units plus the Treasury Department must take actions during the thirty-day period. If one of the units takes more than ten (10) calendar days, then payment of interest becomes likely.

The unit taking more than ten days then carries the responsibility for interest being accrued. Interest is a negative entry on the CFO Financial Report; interest on OPA and CERCLA cases is scrutinized not only by MLC and FINCEN but also by G-CFS, NPFC and the DOT-IG.

e) OSC must forward complete invoice package as received from the contractor with the OSC acceptance/rejection certification e.g. copies of signed dailies, subcontract invoices, copies of proof of legal disposal.

f) Upon receipt of the invoice package, MLC verifies pricing and compliance with the BOA terms and conditions. Action is taken to correct improper invoices when necessary. All MLC invoice responsibilities must be completed so that the invoice with the OSC and Contracting Officer certifications is at Fincen on the tenth day after receipt at the MLC (fcp).

g) FINCEN takes all necessary steps to input the payment data. It is electronically transmitted to Kansas City and then to the Department of Treasury who makes the actual payment to the contractor. Fincen and Treasury must complete their responsibilities within ten days of Fincen's receipt of the invoice from the MLC.

30 days from receipt of a proper invoice or interest is due:

10 days (**OSC** receives, reviews and has at MLC(fcp)
10 days **(MLC** reviews, takes action and has at Fincen)
+ **10** days **(FINCEN/Treasury** take all actions to effect actual payment.

_____
30 days

<u>0 days available for any delays by the OSC, MLC, Fincen or Treasury!</u>

Amended June 2002

OSC ORDERING INSTRUCTIONS MLCLANT

SPECIAL INSTRUCTIONS CONCERNING USE OF BASIC ORDERING AGREEMENTS:

Orders under the Basic Ordering Agreement for pollution cleanup are done under the authority of Federal Acquisition Regulations, FAR 6.302-2, URGENCY.

LONG TERM PROJECTS: Emergency Response needed for part of the cleanup but then remediation type rather than emergency response is sufficient:

1. (a) Contact MLCLANT, preferably in writing.

(b) Advise nature and scope of work (specific if possible, general at a minimum);

(c) Identify required completion date and est. project duration.

2. Contracting will evaluate in conjunction with the OSC and the technical and time requirements of the project to determine if a fixed work statement and pricing possible for later phases of the project; if possible, various types of contractual solicitation are available depending on the exact type and timing of need.

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Contracting Requirements for Use of a Basic Ordering Agreement (BOA)

Maintenance and Logistics Command -- Pacific Area

United States Coast Guard

Maintenance and Logistics Command Pacific Area (fcp-1)

Coast Guard Island, Building 54-A

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BOA TRAINING AGENDA

1. THE BASIC ORDERING AGREEMENT (BOA)

A. WHAT IS A BOA.
B. WHY A BOA.
C. CIRCUMSTANCES FOR USE.
D. HOW BOAs ARE PROCURED.
E. KEY AREAS OF A BOA.
F. WHO CAN USE THE BOAs.
G. COAST GUARD ON-SCENE COORDINATOR (OSC) AUTHORITY.

II. THE JUSTIFICATION FOR OTHER THAN FULL AND OPEN COMPETITION (JOTFOC)

III. PROCUREMENT REQUEST (PR)

A. THE OSC OBTAINS INFORMATION AND PREPARES THE PR.
B. USE OF CERCLA FUNDS FOR HAZARDOUS SUBSTANCE SPILLS INLAND

IV. DELIVERY ORDERS

A. WHAT IS A DELIVERY ORDER.
B. WHICH OFFICE ISSUES THE DELIVERY ORDER.
C. WHO CAN SIGN/ISSUE DELIVERY ORDERS.
D. CONTENT AND CEILING AMOUNT.

V. ITEMS OR SERVICES NOT COVERED UNDER A BOA

A. SUBCONTRACTING.
B. NON-BOA (OPEN MARKET) CONTRACTS.
C. MIPRs.

VI. COMPLETION

A. PAYMENTS.
B. DISPUTES.

VII. MLCPAC (fcp) CONTRACTING SUPPORT

A. WHEN TO CONTACT MLCPAC.
B. CONTRACTING SUPPORT.
C. MLCPAC CONTRACTING OFFICERS.

(FOOTNOTE: MSRC)

I. THE BASIC ORDERING AGREEMENT (BOA)

A. WHAT IS A BOA:

1. A BOA is not a contract and does not provide any contractual relationship between the Government and the Contractor.

2. A BOA is a written understanding that's already been negotiated between a contracting office and a contractor and is the preferred method of contracting for oil spill cleanup. (Refer to the JOTFOC.)

3. A BOA contains the terms and conditions that will apply to Delivery Orders that are issued against it. The terms and conditions contain i), fixed prices and a detailed description of the supplies or services to be provided, and ii), instructions on the procedures and authority for the issuance, administration and payment of Delivery Orders.

4. Every individual authorized to issue Delivery Orders against a BOA is responsible for reviewing and understanding the terms and conditions of each BOA.

B. WHY A BOA:

1. The Coast Guard and other Government Agencies have a need for an ongoing agreement with contractors that can provide services, supplies and equipment to contain, cleanup and/or mitigate the harmful effects of spilled petroleum products and hazardous substances.

2. The Contractor is on-call 24 hours a day, 365 days a year and usually has to respond on short notice.

3. CGAP Subchapter 1217.9203 (a) reads: "The nature of contracting for containment and clean-up of oil and hazardous substances makes full and open competition impossible; however, competition shall be obtained to the maximum extent possible as governed by the response time needed in any given emergency. These conditions are documented by Commandant (G-CPM) in a Class Justification for Other Than Full and Open Competition which Coast Guard contracting officers can use for all contracts and orders for oil and hazardous substance clean-up services." (Refer to CGAP Subchapter 1217.92)

C. CIRCUMSTANCES FOR USE:

2. BOAs are **strictly for emergency use** only. Under no circumstances may they be used for routine actions. A lack of planning does not justify using a BOA. Delivery Orders cannot be issued to order boom, sorbent pads, or take care of work that either could have, or should have, been done through normal procurement procedures.

D. HOW BOAs ARE PROCURED:

1. The Competition In Contracting Act (CICA) mandates that proposals be solicited to the fullest extent. In addition, the necessity for a quick response to an oil spill requires that we have as many BOAs in effect as possible. The BOAs must also provide for all of the personnel, supplies, equipment, etc., necessary for a cleanup.

2. The first step is to publicize the solicitation in the Commerce Business Daily (CBD). The CBD announces all Government solicitations and contract awards nationwide. A list of the firm's that have requested the solicitation is then compiled. Firms that presently have BOAs are not solicited because their BOAs do not expire.

3. During the announcement period the statement of work and list of items/services on the price schedule is sent to the (mso) to be updated. The (mso) then forwards their recommendations to (fcp), who in turn issues the solicitation.

4. Proposals are submitted and then evaluated by (fcp) for compliance with all of the solicitation requirements. The prices are entered into a spreadsheet which computes a competitive range for each line item based on the average offered price for the item. After this negotiations commence with each offeror. Please note that offerors are not required to submit prices on all of the items in the price schedule. (fcp) performs a preaward survey to determine that offerors are responsible. As part of the survey, the MSO may be asked to determine the response capabilities of some offerors.

5. In keeping with the requirements of paragraph 1, BOAs are awarded to all firms that fall within the competitive range, and distributed to all of the activities that are authorized to issue Delivery Orders against them.

E. KEY AREAS OF A BOA:

1. The Price Schedule. This is Attachment J.1 of the BOAs and lists the prices for all of the supplies, personnel and equipment that the contractor can provide.

2. Section C, Description/Specifications, contains definitions, the scope of work, contractor personnel and equipment requirements, and cleanup and disposal methods.

3. Section F, Deliveries or Performance, addresses response time, area(s) of response, contractor failure to respond, termination of Delivery Orders, annual reviews and termination of the BOA.

4. Section G, Contract Administration Data, states who can issue Delivery Orders, addresses Government and Contractor obligations, documentation, how the Government will determine allowable billing costs, and payment.

5. Section H, Special Contract Requirements, stipulates that subcontracts may be approved only by the MLCPAC Contracting Officer.

F. WHO CAN USE THE BOAs:

1. Only authorized Contracting Officers and On-Scene Coordinators (OSCs) located at an Authorized Ordering Office may issue Delivery Orders under a BOA. This authority may not be delegated.

2. For the purposes of consistency other Government agencies are authorized to issue Delivery Orders against the BOAs.

3. The U.S. Coast Guard has a Memorandum Of Understanding (MOU) with the Environmental Protection Agency (EPA) which states that the Coast Guard will provide contracting support. There is no Coast Guard involvement for Delivery Orders issued by the Navy, Maritime Administration, Corps of Engineers, etc. Questions from these organizations must be directed to the MLCPAC (fcp) Contracting Officer - not the (mer)s or (mso)s.

G. COAST GUARD ON-SCENE-COORDINATOR (OSC) AUTHORITY:

1. OSC's are <u>not</u> authorized to take any action, either directly or indirectly that could result in a change in the pricing, quality, established response time frames, or any other terms and conditions of the BOA; or, to direct the accomplishment of effort which would exceed the scope of the BOA. Whenever there is the potential that discussions may impact areas such as described above, the OSC must contact the MLCPAC (fcp) Contracting Officer.

2. The OSC is not required to superintend, in any manner, so as to relieve the contractor of any responsibility, or consequence of neglect by the contractor, his subordinates, subcontractors or suppliers.

II. THE JUSTIFICATION FOR OTHER THAN FULL AND OPEN COMPETITION (JOTFOC)

A. The JOTFOC is a document approved by the Commandant of the U. S. Coast Guard that authorizes emergency procurement actions during an oil spill cleanup.

B. This authorization is a Class Justification which allows the use of BOAs, subcontracting procedures and the emergency procurement of supplies and services not covered under BOAs.

C. The JOTFOC is only for cleanup incidents handled by the Coast Guard, and does not apply to other Government agencies.

D. A copy of the JOTFOC is in each BOA, and a copy must be inserted in each individual Delivery Order file.

III. PROCUREMENT REQUEST (PR)

A. THE OSC OBTAINS INFORMATION AND PREPARES THE PR: (Note: 1 and 2 below do not apply to CG generated spills.)

1. The OSCobtains an FPN/Ceiling via CANAPS (www.nprf.gov/canaps). The District is automatically a recipient of the CANAPS-generated message.

2. The (mso) creates the Document Number using DAFIS instructions and the (mso) Document Number list.

3. The (mso) prepares a PR consisting of the following information:

a. Federal Project Number (FPN)
b. Fund Citation (i.e. Document No., Accounting Data)
c. Dollar amount of funds to be obligated under the PO/Delivery Order. (Don't include the full amount of funds issued by the NPFC for administrative support - travel, personnel, etc. Include only the amount to be obligated under the Delivery Order.)
d. Date(s) the services and/or equipment are required
e. Suggested Contractor(s) and Phone Number(s)
f. BOA Number(s) (if applicable).
g. Coast Guard POC and Phone Number.
h. A brief description of the project.
i. Reasons for no competition or for going to a higher cost source. Brief determination or sole source statement of why the OSC has determined that the services or equipment can, or should, only be obtained from one source or may only be procured from one source due to response time requirements.

NOTE: SPACE OUT THE FUNDING *(DON'T USE UP ALL OF YOUR MONEY AT ONCE. IF SOMETHING'S NEEDED FOR A MONTH, OBLIGATE ENOUGH FUNDS FOR A WEEK. SCHEDULE FUNDING TO RUN OUT ON THURSDAYS–NOT FRIDAYS)*

B. USE OF CERCLA FUNDS FOR HAZARDOUS SUBSTANCE SPILLS INLAND:

1. CERCLA fund use is now basically the same as IIIA. above.

2. CERCLA project numbers are obtained via CANAPS (e.g., C02401).

IV. DELIVERY ORDERS

A. WHAT IS A DELIVERY ORDER:

1. The document that makes a definitized written commitment between the Contractor and the Government (CG).

2. Obligates funding to cover the Government cost and allows the contractor to get paid.

B. WHICH OFFICE ISSUES THE DELIVERY ORDER:

1. FPN UNDER $50K - If the FPN ceiling is expected to remain under $50,000.00 the OSC/MSO issues a Delivery Order. ***MSO DISTRIBUTES THE ORDER WITHIN 8 WORKING HOURS TO CONTRACTOR AND FINANCE CENTER. SEND A COPY TO MLCPAC (fcp-1) WITHIN 3 DAYS.***

2. FPN OVER $50K - If the FPN ceiling is expected to exceed $50,000.00 the MLCPAC (fcp) issues a Delivery Order. ***MSO FORWARDS PR TO MLCPAC (fcp) FOR ACTION.***

C. WHO CAN SIGN/ISSUE DELIVERY ORDERS:

1. Coast Guard On-Scene-Coordinators (OCSs) as limited Contracting Officers have the authority to place orders against existing BOAs for oil and hazardous substance response actions with a limit not to exceed $50,000 per incident. (i.e., This is the ceiling amount of the FPN.) This authority may not be delegated. (Refer to CGAP Subchapter 1217.9204(a))

2. Over $50K per incident must be issued by authorized Contracting Officers at MLCPAC (fcp).

3. During the initial stages of an incident the OSC may verbally authorize the BOA Contractor to commence performance provided a confirmation DO is issued within 8 hours.

D. CONTENT AND CEILING AMOUNT:

1. Each Delivery Order must:

   a. Specify the name and telephone number of the Ordering or Contracting Officer, amount of funds, payment office and the address of the office where the invoices are to be sent.

   b. Be for an emergency requirement for oil spill/hazardous waste cleanup within the Scope of the BOA.

   c. Contain:
      1) Federal Project No.
      2) The BOA, Delivery Order, and Document Numbers.
      3) Not To Exceed (NTE) ceiling price.
      4) Contractor's name, address.
      5) Name and signature of OSC.
      6) Incorporate all provisions of the BOA.
      7) Accounting data.

2. DO File documentation: (Refer to CGAP Subchapters 1217.9203 & 9207)

   a. Copy of CANAPS e-mail confirmation.

   b. Copy of the Authorization To Proceed (ATP), if one is issued.

   c. Justification for award to other than small business.

   d. Copy of class JOTFOC.

   e. Copy of the determination from the individual issuing the Delivery Order (i.e., OSC or MLCPAC Contracting Officer) that the Service Contract Act applies.

   f. Competitive documentation:

      i. Action taken to obtain competition or why competition was not feasible.

      ii. The name(s) and points of contact for contractor's contacted.

      iii. Rationale for awarding DO to successful offeror.

   g. A copy of the DO and any modifications.

   h. Copies of invoices with supporting documentation.

V. ITEMS OR SERVICES NOT COVERED UNDER A BOA

A. SUBCONTRACTING:

1. Basis for limitations and how it works (Mitigation of costs requirements, etc.).

2. Subcontracts for materials versus services.

B. NON-BOA (OPEN MARKET) CONTRACTS:

1. Why not just subcontract under the BOA.

   a. Mitigation of costs.
   b. Cheaper for CG to procure than pay Contractor handling or mark-up change.

2. Who can order off-BOA supplies or services.

   a. The OSC only has authority for BOA items - all requirements for non-BOA cleanup services, equipment, materials and must be referred to the MLCPAC (fcp) Contracting Officer.

      i. If the appropriate Contracting Officer cannot be contacted in a timely manner, the OSC is authorized to issue non-BOA purchase orders, on an emergency basis only, with a limit not to exceed $25,000 per incident. The OSC must contact the MLC (or the Contracting Officer to whom this responsibility has been delegated) within twenty-four (24) hours after exercising this emergency authority and provide documentation of competition.

   b. If the FPN is under $25K only authorized Contracting Officer, i.e., MLCPAC or DRAT team KO, or District (a) office.

      i. IAW COMMANDANT Instruction 16465.41, DRAT personnel shall include a KO with Level I Warrant and serve as a KO when requested by OSC. (Remember: MUST HAVE WARRANT FOR SERVICES = TO ORDERS ISSUED).

      ii. District may have KO with warrant (again Warrant = to order $). If the FPN is over $25K only the MLCPAC Contracting Officer.

C. MIPRS:

1. Must be issued by the MLCPAC Contracting Officer, not OSC.

2. Payment - "The Agency" (e.g., Navy) submits billing and support documents to the OSC.

   a. The OSC forwards the billing documents to NPFC case officer within 7 days.

b. NPFC case officer will arrange reimbursement to the Agency.

VI. COMPLETION

A. PAYMENTS:

1. Prompt Payment Act (FAR 52.232-25 applies)
   a. Total 30 days from receipt of correct invoice.
   b. Reject incorrect/incomplete invoice within 5 days.
   c. Date stamp invoice - FINCEN uses date of receipt by the OSC as the start date for interest payment.

2. On-Scene-Coordinator
   a. Receives and date-stamps invoice.
   b. Verifies that supplies/services have been authorized and received. Verifies hours, number of personnel, equipment, subcontract costs (supported by posted receipts) and that removal actions were performed properly.
   c. Forwards approved invoice with supporting documentation to cognizant KO within 7 days. Make sure invoice is marked partial or final - FINCEN will deobligate excess funds. (Refer to COMDT Message 021657Z Nov 95)

3. Contracting Officer
   a. Reviews invoice and insures prices are the prices set forth in the BOA.
   b. Forwards invoice to FINCEN for payment with copy to NPFC case officer within 10 days.

(NOTE: MLCPAC MUST ALWAYS SEE AND APPROVE BOA ORDER INVOICES REGARDLESS OF $ VALUE).

B. DISPUTES:

1. All clarifications and discrepancies, must be directed to the BOA Contractor or their authorized representative. When there is a conflict between the OSC's interpretation of the BOA and that of the Contractor, the OSC shall refer the matter to the Contracting Officer. If the OSC is uncertain of the intent and interpretations of the BOA, he/she shall contact the MLCPAC (fcp) Contracting Officer for the governing interpretation.

2. The OSC shall attempt to resolve any disparities in the billing with the Contractor. The OSC must document any disputed hours, equipment, etc., and send the basis for the dispute to the Contracting Officer, who will then issue a written notification to the Contractor of the items under contention, and request the Contractor to either submit another invoice, or justification for the amount invoiced.

VII. MLCPAC (fcp) CONTRACTING SUPPORT:

A. WHEN TO CONTACT MLCPAC:

1. Always send MLCPAC (fcp) a copy of every POLREP.

2. Contact (fcp) as soon as you think the order will exceed $25,000.

3. Anytime you have questions regarding BOAs or Delivery Orders.

B. CONTRACTING SUPPORT:

1. Contracting Officers are always available to answer questions regardless of which office issues the Delivery Order.
2. A Contracting Officer, Primary Alternate and Secondary Alternate is assigned to each spill.
3. For a major spill the MLCPAC legal office is alerted to provide assistance if large dollar non-BOA contractual actions are necessary.
4. During a major spill a Contracting Officer will be sent TDY to the Incident Command Center.

C. MLCPAC CONTRACTING OFFICERS:

Pollution Incident Coordinator/Lead Contracting Officer:

Mike Leonard:	(510) 437-5932 (Phone and FAX) (510) 437-3014

1. The Contracting Officers for the Eleventh and Seventeenth Districts are:

Janet Weaver, Section Chief	(510) 437-3010
Isabel Burge	(510) 437-5915
Marcus Tikotsky	(510) 437-3074

2. The Contracting Officers for the Thirteenth and Fourteenth Districts are:

Lynne Beard, Section Chief	(510) 437-3732
Robert Townsend	(510) 437-3009
Joclyn Brox-Chester	(510) 437-5913

3. The FAX number for the Contracting Officers is (510) 437-5913.

4. To reach an (fcp-1) Contracting Officer during non-duty hours, contact the PACAREA OPCEN at (510) 437-3700 or (510) 437-3708.

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U.S. Department
of Transportation

United States
Coast Guard

Commandant
US Coast Guard

2100 Second Street, SW
Washington, DC 20593-001
Staff Symbol: G-MRC
Phone: (202) 267-0518

COMMANDANT INSTRUCTION 16460.5

Subj: EMERGENCY CONTRACTS FOR RESPONDING TO DISCHARGES WHICH POSE SUBSTANTIAL THREAT TO PUBLIC HEALTH OR WELFARE

Ref: (a) Federal Water Pollution Control Act (FWPCA), Section 311(c)(2)
(b) The National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR 300)
(c) COMDTINST 4200.19E, Coast Guard Acquisition Procedures (CGAP)

1. PURPOSE. Section 311(c)(2) of the Federal Water Pollution Control Act (reference (a)), as amended by OPA 90, provides for suspension of the Federal Acquisition Regulations (FAR) to facilitate contracting for emergency response resources when the federal on-scene coordinator (OSC) determines that a discharge of oil or hazardous substances poses a substantial threat to public health or welfare. This Instruction provides policy and guidance to maintenance and logistics commands, districts, Headquarters and field units to facilitate emergency contracting for oil spill and hazardous substance response, as provided for in reference (a), when the OSC makes such a determination.

2. ACTION. Area and district commanders, commanding officers of marine safety offices, contracting officers, and commanding officers of Headquarters units shall ensure compliance with this Instruction. OSCs shall comply with this Instruction and, in accordance with reference (b), determine whether provisions of reference (a) apply.

DISTRIBUTION - SDL No 133

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NON-STANDARD DISTRIBUTION

3. DIRECTIVES AFFECTED. This Instruction augments guidance provided in the preamble to reference (b) (47384 F.R//Vol. 59, No.178/Thursday, Sept. 15, 1994) regarding specific action that may be taken to prevent or mitigate the threat or effect of a substantially harmful discharge of oil or a hazardous substance and by providing guidance for On-Scene Coordinators on when and when not to invoke the provisions of Section 311(c)(2) of FWPCA. This guidance will be incorporated into new Volume IX of the Marine Safety Manual (Marine Environmental Protection) and into the next revision of reference (c).

4. BACKGROUND.

a. Reference (a) states "if a discharge, or a substantial threat of a discharge, of oil or a hazardous substance from a vessel, offshore facility, or onshore facility is of such a size or character as to be a substantial threat to the public health or welfare of the United States (including but not limited to fish, shellfish, wildlife, other natural resources, and the public and private beaches and shorelines of the United States), the President shall direct all Federal, state, and private actions to remove the discharge or to mitigate or prevent the threat of the discharge" without regard to any other provision of law governing contract procedures or employment of personnel by the Federal Government.

b. Reference (b) provides for the OSC to be solely responsible for the determination of whether a substantial threat to public health or welfare exists.

5. DISCUSSION.

a. The intent of reference (a) is to provide the OSC with emergency authority to bypass the FAR and the normal agency contracting process and to execute contracts with response resources when it is necessary to protect human health and welfare from substantial harm, or the threat of substantial harm, caused by a discharge of oil or hazardous substances. It is contrary to the intent of Congress to use this authority to bypass the contracting process for responding to a discharge which does not substantially harm, or pose a substantial threat to, public health or welfare. The OPA 90 Conference Report (House Conf. Rep. No. 101-653) specifically referred to the EXXON VALDEZ, AMERICAN TRADER, and MEGA BORG discharges in 1990 when discussing the "substantial harm" and "threat of substantial harm" provisions of reference (a).

b. In accordance with reference (b) factors to be considered by the OSC in making the determination of "substantial harm" or "threat of substantial harm" include, but are not limited to, the size of the discharge, the character of the discharge, and the nature of the threat to public health or welfare of the United States. As discussed in the preamble to reference (b), in evaluating the size of the discharge the OSC should consider factors such as the quantity discharged, the quantity threatened to be discharged, and the rate of discharge. In considering the character of the discharge the OSC should, as appropriate, consider the toxicity of the discharge, the potential for explosion or fire, and the rate at which the discharged quantity is likely to spread and dissipate considering weather and water conditions. In considering the public health or welfare, the OSC should, as appropriate, consider the threat of serious, irreparable, or immediate harm or damage to human populations, drinking water and food supplies (including subsistence resources), and proximity to environmentally sensitive areas, including fish and wildlife and their habitats (including breeding areas, feeding grounds, nurseries, wetlands, significant

concentrations of birds, mammals, threatened or endangered species, and other living resources).

c. It is expected that most discharges, or threatened discharges, will be of a "routine" nature and not be identified by OSCs as substantial threats to public health or welfare. Invoking the provisions of reference (a) should be the exception, rather than the rule Generally speaking, a discharge, or a threatened discharge, of oil or hazardous substance may not pose a substantial threat, or may not result in substantial harm, if:

* it does not impact, or threaten to impact, the intertidal zone (including public and private shoreline), sensitive natural resources, or other critical marine habitat; or

* it dissipates, or is likely to dissipate, sufficiently through weathering (photo-degradation, bio-degradation, dissolution, evaporation, etc.) that the actual, or likely, impact volume is less than that which would threaten, or result in, substantial harm to the environment; or

* will not result in irreparable, or irrecoverable, damage to natural, scenic, or economic resources; or

* can be prevented, or largely mitigated, by available resources, either contracted or publicly owned, without bypassing the normal procurement process as described in the FAR.

d. Nothing in reference (a) relieves the OSC of the responsibility to gather sufficient facts to enable him or her to make an informed decision about the likelihood of substantial harm to the environment. Reference (b) gives the OSC both the authority and the responsibility to gather information sufficient to make a supportable "substantial harm" decision. While the public interest may be well served, in exceptional circumstances, by bypassing provisions of the FAR, the overriding public interest is, in all but those exceptional circumstances, best served by conducting acquisition and procurement activities in accordance with the FAR.

6. PROCEDURES.

a. The OSC is familiar with waterways, resources, and commonly transported cargoes within the Captain of the Port (COTP) zone. In assessing a discharge or release, the OSC shall consider factors such as currents, tides, water depths, weather, seasonal patterns, and the locations of natural collection areas, breeding areas and sensitive natural, cultural, and industrial resources (i.e., water intakes) that are critical to predicting the harmful impact of a discharge. The OSC will also consider the grade of the discharged cargo (46 CFR 30) its specific gravity, toxicity, volatility, and any other factors that are critical to predicting harmful impact and estimating the fate and effect of a discharge on the environment.

b. The standard(s) by which the OSC determines whether a spill has caused, or poses a threat of, substantial harm to the environment must be clearly established in the planning process. Because the OSC's determination may result in incidental suspension of the FAR, it is important that the decision elements be as objective as possible. Predetermined standards for "substantial harm" and "threat of substantial harm" lend validity and supportability to the OSC's determination.

c. Enclosure (1) is a Coast Guard-approved contract form for use by the OSC to facilitate the contracting process when the OSC determines that the provisions of reference (a) have been met. Other "letter form" contracts, some proprietary, have been employed by OSCs prior to publication of this Instruction. This form has been approved by Headquarters for field use and is preferred for any discharge in which the conditions of reference (a) are invoked. Any other "letter form" contracts should have Headquarters approval before they can be employed for any given incident.

d. The OSC may delegate on-site contracting authority to a Coast Guard contracting officer who will implement the provisions of this Instruction. On-site contracting authority resides with the OSC so long as the provisions of reference (a) are invoked. The OSC will return contracting authority to the Contracting Officer when he or she determines that the spill no longer causes, or threatens to cause, substantial harm to the environment. Further contracting activity will, therefore, be in accordance with the provisions of the FAR. At all times, whatever the OSC's determination, the Contracting Officer and OSC should work closely together to facilitate effective response, minimize contractual difficulties, and resolve contractual disputes and disagreements quickly, amicably and in the best interests of the public.

e. When contracting resources through this mechanism, the OSC should ensure sufficient on-scene monitors, or "surveyors", are available to communicate directions and supervise the mobilization, effective use, transfer, and demobilization of contracted resources. Written directions and signed approvals will be necessary to facilitate prompt payment of contractors by the Coast Guard, as well as subsequent government recovery of spill response costs after the response effort is complete.

7. REPORTING.

a. When a discharge, or a substantial threat of a discharge, is of such a size or character as to cause the OSC to invoke the provisions of this Instruction and issue an emergency contract by completing enclosure (1), the OSC shall classify the discharge, or threatened discharge, as "major" in the next POLREP, note the contracting action, provide the name of the private contractor and the contract amount. The POLREP must include as INFO addressees COMDT (G-MRO), COMDT (G-CPM), COMCOGARD NPFC, and the respective MLC Contracting Branch.

KENT H. WILLIAMS
Chief of Staff

Encl: (1) Emergency Contractor Agreement for Response to Discharges that Pose a Substantial Threat to Public Health or Welfare

EMERGENCY CONTRACTOR AGREEMENT
FOR RESPONSE TO DISCHARGES THAT POSE A SUBSTANTIAL THREAT TO PUBLIC HEALTH OR WELFARE (OPA 90 §311(c)(2))

This agreement, (contract number) _____ is made effective as of the _____ day of _____, 19 _____, by and between the United States Coast Guard (USCG) and _____ having its offices at _____for labor, material, equipment and/or services to be provided for the purpose of performing response activities in accordance with the scope of work hereinafter specified.

ARTICLE 1. SCOPE OF WORK

l.1 Contractor Work. The USCG hereby contracts with the contractor as an independent contractor to reform the portion of the Work which is descried in the Contractor's Scope of Work attached hereto as Exhibit a (hereinafter called the "Contractor Work"), under the general direction of the USCG and in accordance with this Agreement.

ARTICLE 2. SCHEDULE OF WORK

2.1 Conduct of Contractor Work. The Contractor shall cooperate with the USCG in scheduling and performing the Contractor Work to avoid conflicts, delays in or interference with the Contractor Work. The Contractor shall promptly commence the Contractor Work upon receiving from USCG oral notice to proceed, and diligently and efficiently prosecute Contractor's Work until its completion or termination pursuant to the terms of Article 10. Oral notice will be confirmed in writing within 48 hours.

ARTICLE 3. COMPENSATION

3.1 Fee Schedule. Contractor Work will be compensated at the rates and charges set forth in the Contractor's published price list attached to this Agreement as Exhibit B.

3.2 Payment Requests. On or before the first (1st) and fifteenth (15th) day of each month, the Contractor will submit to the USCG a request for payment, which shall include a detailed description of unpaid amounts earned by the Contractor since the previous invoice period and such other supporting documentation as reasonably requested by the USCG.

3.3 Payments. Requests for payment that are received from the Contractor by the first (1st) and fifteenth (15th) day of the month shall be paid to the Contractor within fourteen (14) days following USCG's receipt of said payment request from the Contractor. Should the USCG deem the request for payment deficient, written notice must be given to the Contractor within seven (7) days of receiving the request for payment specifying the deficiency and the remedy or information required by the USCG. to process the request for payment.

3.4 Release of Liens. The Contractor shall defend, indemnify and hold harmless the USCG from all claims of lien for labor, materials and equipment furnished under this Agreement. Prior to the final payment, the Contractor shall furnish to the USCG, as a part of its final payment request: (1) a certification, satisfactory to the USCG, that all the Contractor's obligations, monetary claims and indebtedness relating to the Contractor's Work have been satisfied and paid; and (2) complete and legally effective releases or waivers, satisfactory to the USCG, of all liens which could arise out of,

arising out of or filed in connection with the Contractor Work, including 'Liens of Contractor's suppliers of materials and labor.

3.5 Final Payment. Upon completion of all the Contractor Work under this Agreement, the Contractor shall certify to the USCG, in writing, that it has fully performed its obligations pursuant to this Agreement and shall request final payment. Upon receipt of such certification, the USCG will inspect the Contractor Work and, if the Contractor work is acceptable, the USCG shall pay to the Contractor all remaining monies due it under the provisions of this Agreement within thirty (30) days of receiving an acceptable final payment request from the Contractor. The acceptance by the Contractor of the final payment shall release the USCG or its contractors related to all things done or furnished in connection with the Contractor Work, from all claims which could be brought by the Contractor or its subcontractors related to all things done or furnished in connection with the Contractor Work, unless the Contractor has provided to the USCG, in writing, the nature and amount of the dispute prior to acceptance of the final payment. If there is a dispute between the USCG and/or the Contractor, such dispute shall be settled prior to said releases being granted. No payment, however, final or otherwise, shall operate to release the Contractor or its sureties from obligations under this Agreement, the performance bond, payment bond, if any, and warranties made by the Contractor.

ARTICLE 4. CHANGES AND DELAY

4.1 Changes. The USCG may order changes in the Contractor Work not inconsistent with the general scope of this Agreement.

4.2 Change Orders. As provided in Section 4.1, all additions to or deductions from the Contractor Work shall be performed only pursuant to an approved change order signed by the USCG. Adjustments in the compensation, if any, resulting from such changes shall be set forth in said change order. No claim for compensation shall be valid unless changes in the Contractor Work are properly authorized by a change order signed by the USCG as provided herein. The Contractor must assert its right to an adjustment under this clause within 10 days after receipt of a written change order. No proposal by the Contractor for an adjustment shall be allowed if asserted after final payment under this agreement. Failure to agree to any adjustment shall be a dispute under Article 12, Section 12.8. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

4.3 Claims for Compensation. Any claim by the Contractor for an equitable adjustment in compensation resulting from a change in the Contractor Work under this Article must be asserted, in writing, within ten (10) days from the date of receipt by the Contractor of any written change order authorization from the USCG. Said claim shall be supplemented and supported by such factual information as may be reasonably requested by USCG.

4.4 Time of the Essence. It is expressly understood and agreed that the time of prompt initiation and prosecution of the Contractor Work are the essence of this Agreement. The Contractor Work shall be prosecuted at such time and in or on such parts of the project as may be required to complete the project as contemplated by this Agreement and further specified in schedules attached hereto and made a part hereof.

4.5 Delays. If the progress of the Contractor Work is delayed by any act or omission of the USCG, any separate contractor employed by the USCG or by occurrence of Force Majeure events beyond Contractor's reasonable control, such as fires, floods, strikes, riots, explosions, adverse weather conditions not reasonably anticipated, unavoidable casualties, acts of God or of the public enemy, and if the Contractor, within twenty-four (24) hours of the start of the occurrence of the delay,

gives written notice to the USCG of the cause of the potential delay and an estimate of the possible time of extension involved, and, within seven (7) days after the cause of the delay has been remedied, the Contractor gives written notice to the USCG of any actual time extension requested as a result of the aforementioned occurrence, then the time for the Contractor Work may be extended by change order for such reasonable time as USCG determines. it is agreed that no claims shall be made or allowed for any damages or additional compensation which may arise out of any delay caused by the occurrences of Force Majeure events, other than claims for the appropriate extension of time.

ARTICLE 5. CONTRACTOR'S OBLIGATIONS

5.1 Laws and Permits. The Contractor shall give all required notices and perform the Contractor Work in conformance with the Agreement and in compliance with all applicable federal, state and local laws, executive orders, rules, regulations and ordinances, the Site safety and health plan, and any safety program established by the USCG. The Contractor shall secure and pay for all permits and governmental approvals, licenses and inspections necessary for proper execution and completion of the Contractor Work, as required by law and/or by this Agreement.

5.2 Warranty. The Contractor warrants that all Contractor Work to be performed under this Agreement shall be performed in a manner and according to methods and procedures consistent with applicable professional standards and the level of care and skill ordinarily exercised under similar circumstances. Unless otherwise specified, the Contractor warrants that all materials shall be good quality.

5.3 Contractor Responsibilities. The Contractor shall independently perform all Contractor Work under this Agreement and shall not be considered as an agent of the USCG, nor shall the Contractor’s subcontractors, material, men or suppliers or employees of any of them be considered subagents of the USCG. The Contractor shall be responsible for the payment of all applicable taxes covering its employees, including withholding, social security deductions and unemployment taxes. The Contractor shall furnish, at its own cost and expense, all of the labor, materials, equipment, services, transportation, tools, machinery, appliances, fuel, heat, utilities and other facilities and items, including such health protection devices and training which are reasonably necessary for the lawful and proper performance and completion of the contractor Work. The Contractor shall be solely responsible for the safety of its employees.

5.4 Inspections. The USCG, its agents and any person as authorized by law, may inspect Contractor Work performed at the Site and off-site at any reasonable time, and Contractor shall maintain the areas of the Site where it is performing Contractor Work in a safe condition for inspections.

5.5 Deliverables. The Contractor shall promptly furnish to the USCG all such deliverables required by this Agreement.

a. Delivery Orders

Where USCG has placed a delivery order for resources for a designated project which has been accepted by the Contractor, the Contractor will agree not to release any additional resources to another environmental contractor who may be servicing the same project without first contacting USCG. USCG will be allowed a reasonable time, for at least five (5) and not to exceed eight (8) hours, to either issue a delivery order for those resources or release resources to another contractor.

b. Standby Orders

In the event that USCG places a standby order to possibly provide resources, the Contractor will be required not to release any services to another environmental contractor responding to the same incident without first contacting USCG. USCG will be allowed, up to a five (5) hour period, to either release the resources or issue a delivery order.

The aforementioned conditions will not apply when Contractor has received a delivery order directly from USCG's customer, provided Contractor receives verification of the status as customer from USCG.

In the event Contractor is a vendor of supplies and has committed to maintain an allotment of supplies attached as Exhibit C, Contractor warrants it will not release said allocation to any party without first receiving permission from USCG.

5.6 Site Cleanliness. The Contractor shall, at all times, keep the Contractor Work area clean and orderly and keep the Site and adjacent property free from accumulations of waste material or rubbish caused by its employees or by the Contractor Work. At the completion of the Contractor Work, the Contractor shall remove all of its tools, temporary structures, vehicles, equipment, machinery, surplus materials, debris and rubbish from and around the site. The contractor shall properly decontaminate all its personnel, equipment, material or vehicles which have been located or working in an area of potential hazardous materials.

5.7 Accidents. If death or serious injuries occur in connection with the Contractor Work, such accident shall be immediately reported by telephone or messenger to the USCG. In addition, the Contractor must promptly report in writing to the USCG all accidents of any nature whatsoever arising out of, or in connection with, the performance of the Contractor Work, whether on, adjacent to or off the Site, giving full details and statements of witnesses.

5.8 Performance and Payment Bonds. Where applicable, the Contractor shall provide the performance bonds and/or payment bonds described in Exhibit A attached hereto.

ARTICLE 6. INSURANCE

6.1 Workers' Compensation and Employer’s Liability Insurance. The Contractor shall maintain during the Contractor Work: (a) workers' compensation insurance in the statutory amount; and (b) employer’s liability insurance in an amount not less than $500,000 for all employees engaged in Contractor Work under this Agreement.

6.2 Liability Insurance. The Contractor shall maintain during the Contractor Work commercial general liability and automobile liability insurance as will provide coverage for claims for personal injury, including accidental death, as well as claims for property damage which may arise directly or indirectly from performance of the Contractor Work under this Agreement. The Contractor shall comply with applicable Federal and State workers' compensation and occupational disease statutes. Employer's liability coverage of at least $100,000 is required, except in States with exclusive or monopolistic funds that do not permit workers' compensation to be written by private carriers. The Contractor shall obtain bodily injury liability insurance coverage written on the comprehensive form of policy of at least $500,000 per occurrence. The Contractor shall obtain automobile liability insurance written on the comprehensive form of policy. The policy shall provide for bodily injury and property damage liability covering the operation of all automobiles used in connection with performing the Contractor Work. Policies covering automobiles shall provide coverage of at least S200,000 per person and $500,000 per occurrence for bodily injury and $20,000

per occurrence for property damage. The Contractor shall obtain vessel collision liability and protection and indemnity liability insurance. The amount of liability coverage on other policies shall be commensurate to meet normal and customary claims.

6.3 Coverage. Coverage for property damage shall be on a "broad form" basis, with no exclusion for "X, C&U." The amount of commercial general liability insurance to be provided shall be not less than $500,000 combined single limit, plus umbrella excess liability insurance in an amount not less than $l,000,000. The general liability insurance shall include a broad form contractual liability endorsement applicable to Contractor's obligations under Article 9.

6.4 Notice of Cancellation. The Contractor shall maintain in effect all insurance coverage required under this Agreement at the Contractor's sole expense and with insurance companies acceptable to the USCG. All insurance policies and each certificate of insurance furnished hereunder shall contain a provision that the coverages afforded thereunder shall not be canceled, not renewed, materially altered or restrictively modified until thirty (30) days' prior written notice has been given to the USCG.

6.5 Certificates. Certificates of insurance showing the type, amount, class of operations covered, effective dates and expiration dates or certified copies of all policies required under this Article 6, acceptable to the USCG, shall be furnished to the USCG Federal On-Scene Coordinator prior to the commencement of the Contractor Work.

6.6 Waiver of Subrogation. The Contractor waives all rights against USCG and its employees, and any separate contractors and any of their subcontractors, sub-subcontractors, agents and employees for damages caused by fire or other perils to the extent covered by property insurance provided under this Agreement or other property insurance applicable to the Contractor Work. In the event any cost is associated with issuance of a waiver, said cost shall be invoiced at direct cost to the USCG.

ARTICLE 7. RECORDS, CONFIDENTIALITY AND PUBLICITY

7.1 Records. Contractor shall Maintain such reports, records, drawings, plans, maps and other documents as are appropriate and as required by law or this Agreement regarding: (a) the Contractor Work; and (b) all testing, sampling and investigatory services of the Contractor performed pursuant to the Contractor Work. All such documents will be available at reasonable times for review by USCG and shall be turned over to the USCG upon request or upon completion of the Contractor Work.

7.2 Samples. The Contractor shall preserve such soil, rock, water and other samples collected during the Contractor Work for forty-five (45) days after the issuance to the USCG of any document that includes the data obtained from those samples. After the forty-five (45) day period has expired, the Contractor may lawfully dispose of such samples if it first notifies the USCG in writing of its intent to dispose and the USCG does not object. If the USCG so requests or orders, the contractor shall preserve the samples beyond the stated forty-five (45) day period, and the contractor shall be reimbursed by change order for all costs associated with the storage and preservation of such samples.

7.3 Confidentiality. All information, technical data, discussions, reference documents and other materials involved in the performance of the Contractor Work, including, but not limited to, any confidential business information received from government agencies, are strictly confidential. The Contractor agrees not to reproduce or distribute internally any such materials except as necessary to perform the Contractor Work, and not to divulge any such material either verbally or in writing to any third party without the prior written consent of the USCG, except as may be required by law. The

Contractor shall obtain the written consent of the USCG prior to entering into any subcontract that will involve the disclosure of confidential business information by the Contractor to its subcontractor. The Contractor shall include this Section 7.3 in all subcontracts awarded that require the furnishing of confidential business information to its subcontractor.

7.4 Publicity. No publicity or advertising, including releasing any information, except as required by law, to the news media or publishing or delivering technical papers, regarding any Contractor Work shall be released by either party without the prior written approval of the other party.

ARTICLE 8. LIMITATION OF LIABILITY

8.1 No Consequential Damages. In no event shall the USCG be liable for consequential damages, including, without limitation, loss of use or loss of profits, incurred by the Contractor or its subsidiaries or successors, regardless of whether such claim is based upon alleged breach of contract, willful misconduct or negligent act or omission of the USCG or its employees, agents or subcontractors.

ARTICLE 9. INDEMNIFICATION

9.1 Indemnity to USCG. To the fullest extent Permitted by law, the Contractor shall indemnify, hold harmless, protect and defend the USCG and its employees from any and all claims, demands, actions, causes of action, liabilities, losses, fines, damages, penalties, costs or expenses of any kind or nature including, but not limited to, court costs, consultants, experts and attorneys' fees) [hereinafter in this Article 9 collectively referred to as "Claims"], including, without limitation, those arising from any bodily injury to or death of any person or destruction or damage to any property arising, in whole or in part, out of or in any way connected with: (1) the Contractor's breach of its warranties, representations, certifications or obligations under this Agreement; (2) spills and releases of hazardous or toxic wastes, substances or chemicals caused by the negligent acts or emissions of Contractor; (3) contamination of subsurface areas or damage or injury to subsurface objects as the result of drilling or sampling processes negligently performed by Contractor or resulting from contractor’s willful misconduct; or (4) the negligent performance of Contractor Work by the Contractor, its subcontractors or anyone employed by any of them or anyone for whose acts any of them may be liable; provided, however, Contractor shall have no liability for any such Claims to the extent such Claims are directly caused by the USCG's negligence or willful misconduct or USCG's breach of its obligations under this Agreement.

9.2 Indemnity to Contractor. USCG shall, subject to the availability of funds therefore, indemnify, hold harmless protect and defend Contractor and any of its affiliates, directors, officers and employees from any and all Claims, including, without limitation, those arising from any bodily injury to or death of any person or destruction or damage to any property to the extent such Claims are directly caused by USCG's negligence or willful misconduct or USCG's breach of its obligations under this Agreement. USCG's liability hereunder shall apply only if Contractor notifies USCG in writing of its claim for indemnity within one (1) year of the completion of the Contractor Work and such claim sets forth in reasonable detail all the facts upon which it is based.

ARTICLE 10. TERMINATION

10.1 Termination for Default. Without prejudice to any other right or remedy, either party may terminate, in whole or in part, this Agreement for default in the event that the other party fails to perform any of the provisions of this Agreement; provided, however, that the terminating party

provides the defaulting party forty-eight (48) hours' notice of its intent to terminate this Agreement and said notice sets forth sufficient details describing the alleged breach and provides the breaching party an opportunity to cure the alleged breach within this forty-eight (48) hour period. In the event that the breaching party fails to cure said breach within this forty-eight (48) hour period or longer, if mutually agreed to by the parties, then this Agreement shall terminate.

ARTICLE 11. REMEDIES

11.1 Change Orders. If any dispute arises under this Agreement with respect to the Contractor Work, and the dispute is not promptly resolved and, in the USCG's judgment, further delays would adversely affect performance under this Agreement, USCG may, in its discretion, in addition to and without prejudice to any other rights or remedies, issue a separate change order with respect to the matter in dispute, subject to a reservation of rights as to resolution of the dispute, and the Contractor will promptly perform and furnish the services covered by the change order. Subject to USCG's reservation of rights, the change order shall provide for payment at the rates or prices specified in this Agreement or at Contractor's quoted price if the rates are not specified in this Agreement.

11.2 Costs. Should Contractor incur attorneys' fees in order to enforce the terms and conditions of this Agreement, whether or not a Legal action is instituted, Contractor may be entitled to reimbursement of such attorneys' fees. Reimbursement shall be at rates not to exceed those allowable under existing authority to pay attorneys' fees as set forth in Equal Access to Justice Act and costs in addition to all other remedies either party may have at law or in equity. Should any legal action be instituted, the Contractor, if it prevails, shall be entitled to recover all litigation costs, including reasonable attorneys' fees subject to the limitations set forth above.

11.3 Non-Exclusive Rights. The rights and remedies of USCG pursuant to Articles 10 and 11 hereof shall not be exclusive and are in addition to any other rights and remedies provided by law or equity.

ARTICLE 12. MISCELLANEOUS PROVISIONS

12.1 Waiver. Any waiver by either party of any provision or condition of this Agreement shall not be construed or deemed to be a waiver of any other provision or condition of this Agreement, or a waiver of a subsequent breach of the same provision or condition, unless such waiver be so expressed in writing and signed by the party to be bound.

12.2 Construction. The validity, interpretation and performance of this Agreement shall be governed and construed in accordance with the federal acquisition laws and the precedents of the Department of Transportation Board of Contract Appeals. All Article and Section headings herein are for convenience only and are in no way to be construed as part of this Agreement or as a limitation of the scope of the particular provisions to which they may refer.

12.3 Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect or impair any other provisions contained herein.

12.4 Successors and Assigns. The covenants, agreements obligations contained in this Agreement shall apply to, inure to the benefit of and be binding upon the parties hereto and upon their respective successors and assigns. No assignment shall be made without written permission and written acceptance from the USCG.

12.5 Assignment. Contractor shall not assign or further subcontract its duties and obligations Hereunder without the prior written consent of the USCG, which consent shall not be unreasonably withheld.

12.6 Notice. Any notice, communication or statement required or permitted to be given hereunder shall be in writing and deemed to have been sufficiently given when delivered in person or by registered or certified mail, postage prepaid, return receipt requested, to the address of the respective party listed above or by filled-in telefacsimile acknowledgment. Either party may, by ten (10) days' advance written notice to the other, change the addresses set forth above.

12.7 Entire Agreement. This Agreement, with its Exhibits, represents the entire understanding and agreement between the parties hereto and supersedes any and all prior agreements whether written or oral, that may exist between the parties regarding same. No terms, conditions, prior courses of dealing, courses of performance, usage or trade, understandings, purchase orders or agreements purporting to modify, vary, supplement or explain any provision of this Agreement shall be effective unless in writing and signed by each party's representative who is authorized to amend this Agreement. Other than properly signed change orders, this Agreement may be amended or modified only by a written amendment to this Agreement signed by both parties.

12.8 Dispute Resolution. Every attempt shall be made to settle all disputes arising under this agreement between the parties to this agreement. At the time a claim by the Contractor is presented to the USCG contracting officer, the parties, by mutual consent, shall agree on the means of dispute resolution. The Contractor shall proceed diligently with performance of the Contractor Work pending final resolution of any claim arising under this agreement.

12.9 Survival. The terms and conditions of Article 6 and Sections 3.5, 5.2, 7.1, 7.3, 7.4, 8.1, 9.1, 9.2, 11.2 and 12.1 through and including Section 12.9 shall survive the completion, termination or expiration of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the day and year first above written.

UNITED STATES COAST GUARD

By _____ By _____

Its _____ Its _____

United States
Environmental Protection
Agency

Office of Emergency and
Remedial Response
OS-210

September 1990
OSWER Directive
9360.3-01

Superfund

EPA

SUPERFUND REMOVAL PROCEDURES

Action Memorandum Guidance

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September 1990

SUPERFUND REMOVAL PROCEDURES

Action Memorandum Guidance

OSWER Directive 9360.3-01

Office of Emergency and Remedial Response
U.S. Environmental Protection Agency
Washington, D.C. 20460

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON. D.C. 20460

SEP 26 1990

OFFICE SOLID WASTE AND
EMERGENCY RESPONSE

MEMORANDUM

SUBJECT: Transmittal of Superfund Removal Procedures Manual-Action Memorandum Guidance (OSWER Directive 9360.3-01)

FROM: Henry L. Longest II, Director
Off ice of Emergency and Remedial Response

TO: Director, Waste Management Division
Regions I, IV, V, VII, VIII
Director, Emergency and Remedial Response Division
Region II
Director, Hazardous Waste Management Division
Regions III, VI
Director, Toxic and Hazardous Waste Management Division
Region IX
Director, Hazardous Waste Division
Region X
Director, Environmental Services Division
Regions I, VI, VII
OHM Coordinators, Regions I-X

Purpose

To transmit new guidance on the preparation of Action Memorandums for Superfund removal actions.

Background

EPA issued the third edition of the Superfund Removal Procedures (SRP) Manual in May 1988. The next edition is planned for completion in 1990-91 and calls for restructuring the manual into ten stand-alone documents, each of which will cover a separate topic. We believe that this will make the manual easier to use. The first volume of the new SRP Manual addresses the preparation of Action Memorandums. Other volumes, which will address such topics as Response Reporting, Enforcement, and Community Relations, will be published over the next several months.

Implementation

Improving the quality Of Superfund Action memos is a high priority for the Office of Emergency and Remedial Response. Please ensure that all staff involved with preparation or review of Action Memos are provided this guidance. Bound copies of the guidance document will be shipped directly to the Regions for distribution in several weeks.

If you have any questions on this guidance, please contact Elizabeth Zeller at FTS 382-7735.

Attachment

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This document is part of a ten-volume series of guidance documents collectively titled Superfund Removal Procedures. These stand-alone volumes update and replace OSWER Directive 9360.0-3B, the single-volume Superfund Removal Procedures manual, issued in February 1988.

Each volume in the series is dedicated to a particular aspect of the removal process and includes a volume-specific Table of Contents, and Reference list. The series comprises the following nine procedural volumes:

The Removal Response Decision: Site Discovery to Response Decision

Action Memorandum Guidance

Response Management: Removal Start-up to Close-out

Removal Enforcement Guidance for On-Scene Coordinators

Public Participation Guidance for On-Scene Coordinators: Community Relations and the Administrative Record

Removal Response Reporting

Special Requirements

Guidance on the Consideration of ARARs During Removal Actions

State Participation.

In addition, the series includes an Overview volume, containing a comprehensive Table of Contents, List of Exhibits, List of Acronyms, and Glossary, for use as a quick reference.

As the day-to-day managers of removal responses conducted under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), On-Scene Coordinators (OSCs) are responsible for a variety of activities. Among the most basic, yet highly important tasks, is the preparation of Action Memoranda, more commonly referred to as Action Memos.

An Action Memo provides a concise written record of the decision selecting a removal action. It describes the site's history, current activities, and health and environmental threats outlines the proposed actions and costs; and documents approval of the proposed action by the proper Headquarters' or Regional authority. An addendum to the Action Memo, which is not part of the decision to select a removal action, sets forth the enforcement strategy.

An adequate Action Memo, however, must be more than a summary of past, current, and proposed activities. It must document consideration of the factors affecting the removal decision. Specifically, the Action Memo must substantiate the need for a removal action based upon criteria in the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). Because Action Memos are the primary decision documents to select and authorize removal actions, they are the critical component of the administrative record. The importance of a well-prepared Action Memo cannot be overstated. The following pages outline the minimum requirements for Action Memos, presenting illustrative exhibits and examples when appropriate.

Preparing Action Memos is an integral part of an OSCs job.

TABLE OF CONTENTS

List of Exhibits 3-248

Key to Symbols 3-249

Action Memoranda 3-251

Action Memorandum Purpose 3-251
The Action Memo as Part of the Administrative Record for Selection of the Removal Action 3-251
Action Memorandum Roles and Responsibilities 3-253

Model Action Memorandum 3-256

Overview 3-256
Model 3-258

Action Memoranda for Special Circumstances 3-277

Overview 3-277
Combined Removal and Statutory Exemption Requests 3-277
Action Memoranda to Continue Response Actions 3-282

Action Memoranda Supplements 3-295

Action Memoranda Attachments 3-295
Role of Headquarters Addenda 3-297

Review and Approval Procedures 3-299

Need for Review 3-299
Resources for Review 3-299
Approval and Concurrence Procedures 3-305

Appendix A. References 3-309

LIST OF EXHIBITS

Exhibit Number

1 Administrative Record Requirements For Time-Critical Removals 3-252

2 Administrative Record Requirements For Non-Time-Critical Removals 3-253

3 Action Memo Roles and Responsibilities 3-254

4 Basic Action Memo Outline 3-257

5 Sample Removal Project Ceiling Estimate.....3-273

6 Information Requirements for Removal and 12-Month or $2 Million Exemption Request Action Memos 3-278

7 Information Requirements for Action Memos to Continue Responses.....3-284

8 Sample Project Ceiling Increase Estimate.....3-290

9 Review Checklist.....3-300

10 Concurrence for Nationally Significant or Precedent-Setting Removals 3-307

KEY TO SYMBOLS

Three types of symbols appear throughout this document to assist readers with obtaining additional information on certain topics or focus attention on specific points. Each of three symbols is described below. In addition, footnotes and cross-references are used to provide further clarification.

Bracketed numbers [#] appear in the text and exhibits and corresponds to specific references in Appendix A. This appendix provides a comprehensive list of supporting guidance documents that may be consulted for more detailed explanations of removal program procedures or policies affecting the preparation of Action Memos. Appropriate sections of statutes and regulations are also cited throughout the text, with a full citation of each statute and regulation appearing in Appendix A.

The remaining two symbols are used in the model Action Memo portion of this document (see pp. 3-320–3-360) to highlight specific information to include in Action Memos. Information that the OSC must include in all Action Memos is denoted by the symbol ⇨. Other information requirements outlined in the model, but not accompanied by this symbol, should be discussed as appropriate given the circumstances of the removal. Information required for Action Memos that is also needed for entry into the Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS) is indicated by the symbol ©. This symbol is intended to help OSCs flag items for CERCLIS, so they can then distribute copies of the Action Memo to data coding staff for coding onto a CERCLIS Removal Information Form or a Site Information Form.

NOTICE

The procedures set out in this document are intended solely for the guidance of Government personnel. They are not intended, nor can they be relied upon to create any rights enforceable by any party in litigation with the United States. EPA officials may decide to follow the guidance provided in this document, or to act at variance with the guidance, based on an analysis of site circumstances. The Agency also reserves the right to change this guidance at any time without public notice.

ACTION MEMORANDA

Action Memorandum Purpose

An Action Memo serves as the primary decision document substantiating the need for a removal response, identifying the proposed action and explaining the rationale for the removal. An Action Memo also reserves funds for a removal response, which are then activated by a signed delivery order. OSCs must prepare an Action Memo for all Fund-financed removal actions prior to the start of a response, or after the fact for removals initiated under an OSC's $50,000 authority.

If circumstances change, supplemental Action Memos may be required later in the response to support the need to continue a removal action beyond 12 months, to increase the total project ceiling, to increase the total project ceiling beyond $2 million, to change the scope of the removal action, or combinations thereof. To initiate a removal action where, at the outset, the project is expected to exceed 12 months in duration or the total cost of the project is expected to exceed $2 million, the OSC must prepare an Action Memo that justifies the need to undertake a removal and also meets the statutory exemption criteria from these limits.

Each Action Memo to initiate a removal must follow the standard model discussed in this guidance to ensure completeness (see p. 3-314). Instructions on how to cover the special circumstances noted above are supplied as well.

The Action Memo as Part of the Administrative Record for Selection of the Removal Action

The Action Memo is the critical component of the administrative record because it is the primary decision document for a removal response [21]. Section 113(k) of CERCLA, as amended, requires the establishment of an administrative record for the selection of a CERCLA response action. The administrative record is the body of information used by the Agency to select a response action. The *administrative record serves two purposes:*

- First, it is the basis judicial review of any issues concerning the selection of a response action. Because a proposed removal action must be supported by the administrative record, the OSC must ensure the adequacy of the administrative record in the event the decision is challenged, such as in a subsequent cost recovery case.

- Second, EPA, through access to the administrative record, provides for public participation, whenever practical, in Superfund decisions, with opportunity as appropriate for comment on the response action selection.

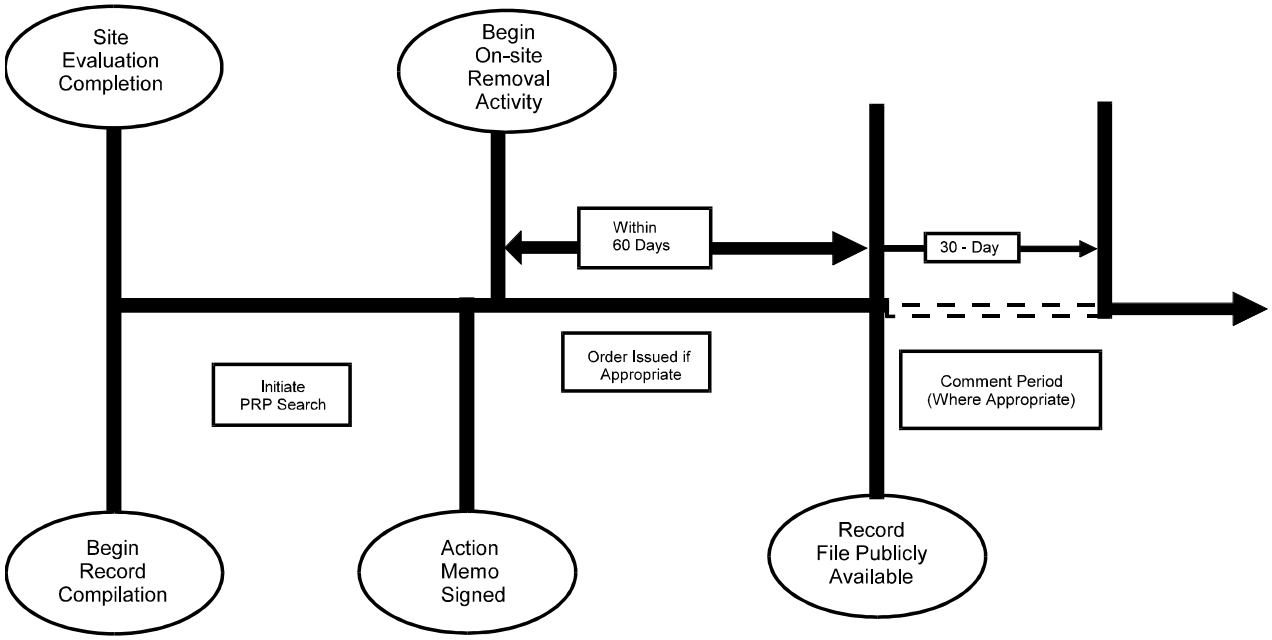
To meet both of these requirements, the administrative record must contain all documents used by the Agency in making its decision to undertake a removal action. As the primary decision document, the Action Memo must demonstrate consideration of the factors affecting the removal decision. Action Memos that do not adequately substantiate the need for a removal action or the selected cleanup method can undermine the Agency's case for a cost recovery action.

ACTION MEMO OUTLINE

Public availability requirements for the administrative record for a removal action as set forth in section 300.820 of the NCP are affected by the urgency of the situation and the preparation of decision documents. The administrative record file for *time-critical removal actions*, including emergency responses, must be made available for public inspection no later than 60 days after the initiation of on-site activity. Public comment periods should be held in appropriate situations at the time the record file is made available. Exhibit 1 illustrates this process for time-critical removals. Although the signing of the Action Memo generally signifies the completion of the response selection decision making, documents relevant to the response may be added to the record file later in certain situations as described in the NCP.

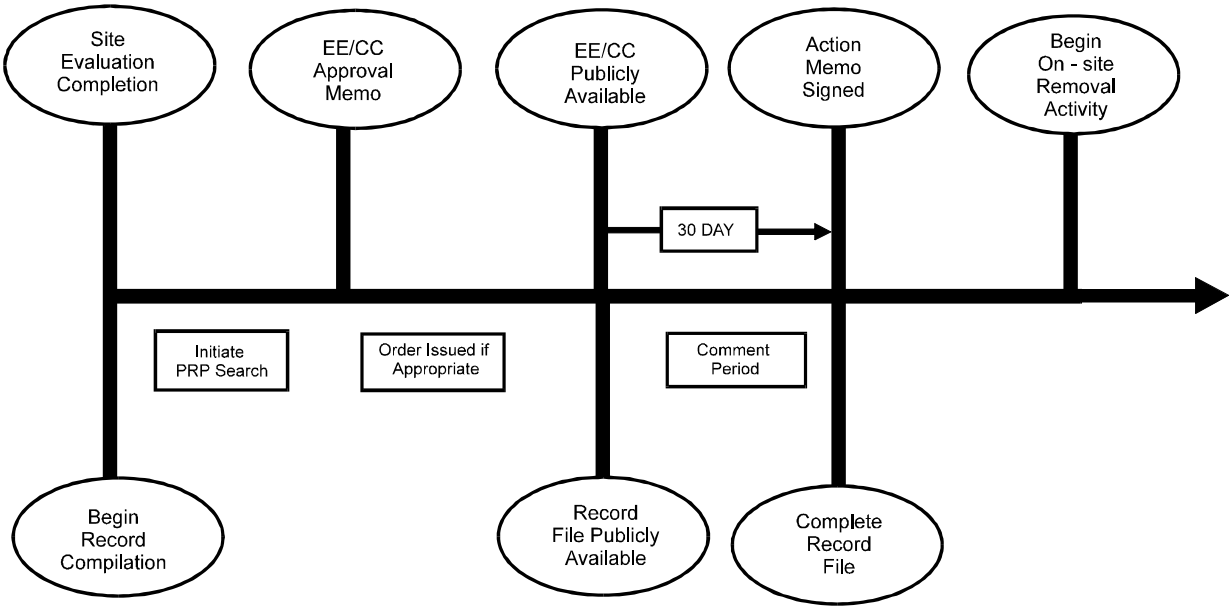
For non-time-critical removal actions, a 30-day public comment period is required on the Engineering Evaluation/Cost Analysis (EE/CA) and any supporting documentation at the time the EE/CA is made available for public comment [1]. The administrative record file must be made available for public inspection at the same time the EE/CA is made available. Exhibit 2, on the next page, illustrates this process for non-time-critical removals.

EXHIBIT 1. ADMINISTRATIVE RECORD REQUIREMENTS FOR TIME - CRITICAL REMOVALS [21]



NOTE: Order of events for illustrative purposes only. Some events may be concurrent.

EXHIBIT 2. ADMINISTRATIVE RECORD REQUIREMENTS FOR NON - TIME - CRITICAL REMOVALS [21]



Action Memorandum Roles and Responsibilities

Regions

OSCs must prepare Action Memos for all Fund-financed actions conducted under removal authority. OSCs should include the Office of Regional Counsel (ORC) or Regional enforcement coordinators in every decision to initiate a removal. In all situations, OSCs should strive to ensure the completeness and accuracy of Action Memos and document conclusions with available information. For instance, OSCs should use attachments to the Action Memo where appropriate to provide additional supporting information. When possible, OSCs should also involve appropriate staff from TSCA, RCRA, and other Agency programs in the removal documentation process. Regional roles and responsibilities are detailed in Exhibit 3, on the next page.

Generally, draft Action Memos should be routed through Regional management for programmatic review and to ensure that proposed removal actions are managed within the Regions' removal advice of allowance as recorded in CERCLIS. Concurrence and/or approval from various Regional program managers is also required in certain situations. OSCs should arrange for Regional review of the Action Memo and must alert Headquarters in a timely fashion of all Action Memos requiring Headquarters' approval. Specific Regional review and approval responsibilities are discussed later in this document (see p. 3-357). In addition, OSCs may want to provide completed Action Memos to personnel in Regional Public Affairs offices to facilitate public notice efforts.

ACTION MEMO OUTLINE

EXHIBIT 3. ACTION MEMO ROLES AND RESPONSIBILITIES	
ON-SCENE COORDINATOR	• Prepares all Action Memos • Alerts the ERD Regional Coordinator to Action Memos requiring Headquarters' approval • Provides copies of all Regionally approved Action Memos to ERD Regional Coordinator • Arranges for review of draft Action Memos by other EPA personnel • May approve Action Memos for up to $50,000 for emergency removals.
REGIONAL REMEDIAL PROJECT OFFICER	• Concurs in writing on the use of the consistency exemption when a site is proposed for or listed on the NPL
REGIONAL COUNSEL/ REGIONAL ENFORCEMENT PERSONNEL	• Reviews all Action Memos • Reviews enforcement section of Action Memos
PERSONNEL ADMINISTRATOR	• Approves all Action Memos for removals less than $2 million and subsequent ceiling increases to $2 million (except for nationally significant or precedent-setting non-NPL removals) • Approves all Action Memos for removals exceeding 12 months
ERD REGIONAL COORDINATOR	• Coordinates the concurrence process for Action Memos requiring Headquarters' concurrence/approval • Advises (upon request) on the preparation of all Active Memos • Prepares addenda as necessary and/or advises Regions on preparation of such addenda
DIRECTOR, ERD	• Approves the use of innovative or emerging alternative technologies, and technologies with uncertain development status • Reviews/concurs on all Action Memos requiring Headquarters' approval/ concurrence
DIRECTOR, OERR	• Concurs on nationally significant or precedent-setting actions at non-NPL sites • Reviews/concurs on all Action Memos requiring AA, OSWER approval
AA, OSWER	• Approves all $2 million exemption requests and subsequent ceiling increases
OFFICE OF WASTE PROGRAMS ENFORCEMENT	• Concurs on exemption requests
OFFICE OF GENERAL COUNSEL	• Concurs on exemption requests, and on nationally significant or precedent- setting actions

ACTION MEMO OUTLINE

Action Memos must also be prepared for removals to be conducted by potentially responsible parties (PRPs). An Action Memo for an enforcement-lead removal need not include estimated costs or authorization for funding, but in all other respects it should look the same as a Fund-lead Action Memo. Because of the difference between the two with regard to costs and funding, Regions may designate an enforcement-lead memo as "Action Memo/Enforcement".

Regions may use a Fund-lead Action Memo they have already prepared as documentation for an enforcement-lead case. Some Regions have found a Fund-lead Action Memo, with estimated costs and authorization for funding, to be useful in negotiations to indicate EPA's resolve to go ahead if the PRP does not act. Regions may initiate negotiations with PRPs prior to drafting an Action Memo, but a completed Action Memo (or Action Memo/Enforcement) must be in hand by the time an order is issued to a PRP.

As with Fund-lead removals, the timing for preparing the Action Memo/Enforcement will depend on the urgency of the action. In time-critical situations, it may be necessary for the PRP to initiate action prior to the preparation of an Action Memo or enforcement order.

Headquarters

Regional Coordinators in the Emergency Response Division's (ERD) Response Operations Branch are available to provide assistance in preparation for and/or during a removal action, including the preparation of Action Memos. ERD personnel also occasionally prepare addenda to Action Memos to clarify or supersede information contained in the Action Memo (see p. 3-337). The Office of Waste Programs Enforcement (OWPE) is available to provide assistance in preparing enforcement addenda for Action Memos (see p. 3-333). In addition, senior managers at Headquarters concur on or approve Action Memos under certain circumstances, as described later in this document (see p. 3-363). Exhibit 3 provides further detail on Headquarters' roles and responsibilities.

ACTION MEMO OUTLINE

MODEL ACTION MEMORANDUM

Overview

An Action Memo is used to initiate all Fund-financed removals, or is prepared after the fact for those begun under the OSC's $50,000 authority. Because Action Memos can affect future policy (e.g., precedent-setting actions, attaining specific cleanup levels), OSCs themselves, not response action contractors, must prepare all Action Memos, including drafts. Action Memos for removals initiated under the OSC's $50,000 authority must be prepared and approved by the OSC within one week after the start of removal actions, depending on the extent of mitigation efforts. OSCs should send copies of $50,000 Action Memos to their appropriate Regional management representative and Regional Coordinator, and place a copy in the site file.

Action Memos to initiate a removal follow a standard format outlined on the following pages. *OSCs must cover all of the topics presented in the outline to demonstrate that the incident meets statutory, NCP, and delegations requirements for removals.* For removal actions determined at the outset to exceed $2 million or 12 months in duration, the original Action Memo should also substantiate the need for a statutory exemption, as discussed later in this guidance [8].

Exhibit 4, on the next page, presents the basic outline for Action Memos. The exhibit is followed by a model Action Memo that addresses the major statutory, regulatory, policy, and program requirements affecting removal decisions. Abbreviated examples are provided for additional guidance; however, more detailed statements are expected in actual Action Memos.

EXHIBIT 4. BASIC ACTION MEMO OUTLINE

Heading

I. Purpose

II. Site Conditions and Background
- A. Site Description
  1. Removal site evaluation
  2. Physical location
  3. Site characteristics
  4. Release or threatened release into the environment of a hazardous substance, or pollutant or contaminant
  5. NPL status
  6. Maps, pictures, and other graphic representations
- B. Other Actions to Date
  1. Previous actions
  2. Current actions
- C. State and Local Authorities' Role
  1. State and local actions to date
  2. Potential for continued State/local response

III. Threats to Public Health or Welfare or the Environment, and Statutory and Regulatory Authorities
- A. Threats to Public Health or Welfare
- B. Threats to the Environment

IV. Endangerment Determination

V. Proposed Actions and Estimated Costs
- A. Proposed Actions
  1. Proposed action description
  2. Contribution to remedial performance
  3. Description of alternative technologies
  4. EE/CA
  5. ARARs
  6. Project schedule
- B. Estimated Costs

VI. Expected Change in the Situation Should Action Be Delayed or Not Taken

VII Outstanding Policy Issues

VIII. Enforcement

IX. Recommendation

Enforcement Addendum

Attachments

[Regional Letterhead]

MEMORANDUM

DATE: Month, day, year

SUBJECT: Request for a Removal Action at _____ Site, City, County, State

FROM: Name, OSC

TO: Regional Administrator (RA) or designee (or to the file, through the RA, if the response is initiated under the OSC's $50,000 authority and will not exceed that cost)[1]

THRU: Regional Division Director, as appropriate

Site ID #: _ _ [2 digit number]

I. PURPOSE

⇨ Provide a statement of purpose indicating the type of action being requested (e.g., approval of a removal action or a ceiling increase), the site's name and location (including exact street address with zip code if available), the name of the lead respondent if there is an enforcement order, whether the response was initiated under the OSC's $50,000 authority, and, for non-NPL sites, if there are any nationally significant or precedent-setting issues associated with the response (if so, attach the concurrence memo shown in Exhibit 10.

⇨ *Example:* - *The purpose* of *this Action Memo is to request and document approval of the proposed removal action described herein for the _____ site, City , County, State.*

II. SITE CONDITIONS AND BACKGROUND

⇨ Identify the 12-digit CERCLIS ID number[2] and the category of removal (i.e., emergency, time-critical, non-time-critical). Provide an overview of the site's history and current characteristics. Indicate the nature of the contamination and describe the information obtained in the removal site evaluation. Ensure that the information contained in this section provides an accurate assessment of current site conditions, using relevant supporting data where possible.

A. <u>Site Description</u>

[1] Regional routing instructions may vary.
[2] Some emergencies may not have CERCLIS ID numbers.

1. Removal site evaluation

⇨ • Discuss the history of the incident or release, including the time, date and location of the incident, the type of incident that occurred, and the facts concerning the discovery of the release.

Examples:
- *Train derailment resulted in tank rupture and vapor release.*
- *A storage lagoon in the south corner of the site overflowed due to heavy rains.*
- *Drums washed up on the beach and were reported by park rangers.*

• Indicate that if a preliminary assessment (PA), Superfund site investigation (SSI), or listing site inspection (LSI) has been conducted for the site, regardless of the site's status on the National Priorities list (NPL), substantial background information may already exist.

⇨ • List all of the site's key problem areas.

Examples:
- *Stacked drums*
- *Bulked Liquids*
- *Lagoons*
- *Contaminated soils.*

2. Physical location

⇨ • Describe the site's physical location in terms of surrounding land use, population size, and distances to nearest populations and other reference points.

Examples
- *A school is within 1/4 mile of the site.*
- *There are 1,000 residences within 1 mile of the site, 10 of which are adjacent*
- *The area is mainly suburban residential with some light industrial areas.*

⇨ • Describe adjacent areas in terms of vulnerable or sensitive populations, habitats, and natural resources [5].

Example:
- *The site is adjacent to wetlands and a tributary to the Red River flows nearby.*

3. Site characteristics

⇨ • Describe the current use of the site, the nature and type of facility, and business activities that May have or are currently contributing to the incident

Examples:
- *The site was a sanitary landfill that accepted industrial wastes.*
- *The site has been used for a midnight dump of PCB wastes.*
- *There is an operating metal fabrication facility on the site.*

• Indicate if the site is an Federally-owned facility, identify the operators of the facility if other than the Federal Agency, and describe the type of facility. (Note: DOD and DOE have the responsibility to conduct all responses at their facilities. Fund-lead removals may only be conducted at other Federal facilities in cases of emergency.)

Example: - *The spill occurred on National Park Service land and required an emergency removal..*

- Indicate if a State or local government body is in owner or operator (Note: this is particularly important if an NPL site is involved because of the need for cost sharing by the State or local government.

⇨ • Indicate whether this is the first removal at the site or a restart. If the removal is a restart, previous actions should be described in section II.B of the Action Memo.

4. Release or threatened release into the environment of a hazardous substance, or pollutant or contaminant

⇨ • List materials known on-site and whether they are hazardous substances as defined by section 10 I (I 4) of CERCLA, or pollutants or contaminants as defined by section 101(33) of CERCLA.

⇨ • Provide estimates of the quantities involved, identify the source of information, and refer to sampling and analytical data.

Examples:
- *Site records and conversations with the plant manager indicate that 10 drums of PCB-contaminated sludge are buried on-site.*
- *Preliminary sampling has found drinking water to exceed the removal action level for toluene at two residences.*

- Highlight substances of critical concern such as PCBs and dioxins (if the information is presented in chart form, identify the substance, quantity, location, and any existing standards for comparison). Explain all data presented.

- Identify any unique characteristics of the materials involved, such as mixed or radioactive wastes.

⇨ • Describe the mechanism for the past, present, or future release; observable or probable migration route(s) of contaminants; and the basis for this determination. Common routes of exposure include fire/explosion and resulting emissions, human contact, and soil contamination that could lead to ingestion or contamination of ground or surface water. Discuss site features or characteristics, weather conditions, human events, or other conditions that would either cause, spread, or accelerate the release of materials. Describe the rate of release and physical properties of the substance that influence to determine the form and speed at which it travels. Support these descriptions with documentation, as appropriate.

Examples:
- *Substantial fire/explosion hazard and fumes would drift into nearby neighborhood.*
- *Transformer lying on its side has been drained of PCB-contaminated oil; surrounding surface soil is heavily stained, and is readily accessed by children.*
- *Vegetation on the north bank of the stream, approximately 50 yards below the ruptured tank, is dead.*

5. NPL status

⇨ • State whether or not the site is listed on the NPL. If it is an NPL site, indicate whether or not remedial activities are in progress or when remedial action is expected (note that contribution to remedial performance is discussed in the "Proposed Action" section) [24].

If it is not an NPL site:

- Note whether or not the site has been proposed for the NPL.

- State whether or not it has received, or is expected to receive, a Hazard Ranking System (HRS) rating and indicate the score, if available. Also note whether it is being evaluated by the Agency for Toxic Substances and Disease Registry (ATSDR) for the need to dissociate residents from threats.
  Example: - *The site received an HRS of 46.5 In June 1989.*

- Indicate whether or not the site is being referred to the site assessment program.
  Example: - *The site has been referred to the site assessment program for a site investigation.*

6. Maps, pictures and other graphic representations

- Refer to attached pictures, diagrams, maps, and/or sketches if they substantiate the conditions at the site and strengthen the background section of the memo, and provide them as an attachment.

B. <u>Other Actions to Date</u>

1. Previous actions

- Describe any government or private actions (including community relations) that have been undertaken in the past and not previously discussed. Include both CERCLA and any other responses conducted previously, such as spill responses under section 311 of the Clean Water Act or private party cleanup attempts.

- Indicate the dates, costs, and effectiveness of these actions.

2. Current actions

- Describe any other government or private activities that currently are being performed but have not been previously discussed. Indicate the dates, costs, and effectiveness of these activities.

- Discuss how proposed EPA actions will relate to current activities described above.

C. State and/Local Authorities' Roles

1. State and local actions to date

- Indicate whether the State and/or local governments requested EPA assistance and the name of specific agencies/officials making the request.
  Example : - *The State Department of Natural Resources sent a letter to the EPA Regional office describing threats posed by leaking aboveground storage tanks at ABC site.*

- Summarize any "first responded" or other actions these or other agencies have taken to protect public health and the environment. Note the date and effectiveness of such actions.
  Examples: - *Local government evacuated a one-square mile area.*
  - *Police were posted on February 10 to restrict public access, and no further vandalism has occurred.*

- Indicate State/local government cooperation in assessing the release/threat, and whether State/local personnel remain at the site.

2. Potential for continued State/local response

- Describe actions State/local government personnel are taking and their future roles.
  Example : - *Site security provided by State highway patrol*
  - *Water main hookups to be installed by local water authority.*

- Indicate specifically:

  - Whether the State is able to obtain funds or must delay the response for an unacceptable period of time to provide funding

  - Whether the State/locality will fund the removal or require funding

  - Whether the State will lead the response under a cooperative agreement [17].

III. THREATS TO PUBLIC HEALTH OR WELFARE OR THE ENVIRONMENT, AND STATUTORY AND REGULATORY AUTHORITIES

⇨ • Explain how this incident meets the requirement of a threat to public health or welfare or a threat to the environment[3] for initiating a removal. *For the two sections below, discuss only those threats that will be addressed by the removal action, beginning with the most serious, and relate the discussion to appropriate statutory and regulatory authorities.*

A. <u>Threats to Public Health or Welfare</u>

- Detail the threats to public health or welfare as they relate to the criteria (provided below) from section 300.415(b)(2) of the NCP. Attach and refer to or incorporate any final ATSDR[4] health consultations or site-specific health advisories, or other health risk advice, and explain any deviations from final ATSDR documents.

  - Actual or potential exposure to hazardous substances or pollutants or contaminants by nearby populations or the food chain. Identify substances of concern, realistic exposure scenarios, and how the levels of hazardous substance(s) exceed site-specific action level(s), and/or acute, and if appropriate, chronic toxicological standards. Tailor the description to the concentrations of contaminants on the site and receptors. Describe any reports of human health effects (e.g., illness, injury, or death) that appear linked to the exposure and describe any effects of human exposure.
    Examples:
    - *Volatilization of hazardous substances contained within the deteriorating building threatens surrounding residents with airborne exposure.*
    - *It is estimated that residents within a 2-mile radius may be exposed to toxic fumes at substantial levels in the event of an explosion/fire.*
    - *Studies have identified nausea and respiratory dysfunction as the primary health effects.*
  - Actual or potential contamination of drinking water supplies. Identify the substances of concern, realistic exposure scenarios explaining how the water supply is threatened, and the immediacy and gravity of the threat. Describe the location of the affected aquifer and its use. Indicate if the numeric removal action levels for drinking water are exceeded in the aquifer or site-specific factors otherwise indicate that a significant health threat exists.

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[3] CERCLA section 104(a) authorized removal responses "whenever (A) any hazardous substance is released or there is a substantial threat of such a release into the environment, or (B) there is a release or substantial threat of release into the environment of any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare." Note that removals are not allowed under section 104(a)(3) of CERCLA when there is a release or threat of release: of a naturally occurring substance in its unilateral form, or altered solely through naturally occurring processes or phenomena, from a location where it is naturally found; from products which are part of the structure of, and result in exposure within, residential buildings or business or community structures; or into public or private drinking water supplies due to deterioration of the system through ordinary use. EPA may respond, however, to these situations when an emergency exists and no authority can respond in a timely manner.

[4] ATSDR should be consulted for emergencies and emergency criteria exemptions involving contaminated soil, and may also be Pulled for exemption requests involving drinking water and radiation. The OSC should ensure that EPA's proposed actions and ATSDR findings are consistent.

Examples:
- *Degreasers and other solvents dumped on the ground have migrated through the soil containing 14 wells downgradient of the site.*
- *Samples taken within a 2-block radius showed the removal action level for action barium is exceeded at the top in four houses.*

- Hazardous substances or pollutants or contaminants in drums, barrels, tanks, or other bulk storage containers, that may pose a threat of release. Identify the substances of concern and estimate their quantities; and describe the number, type, and conditions of containers. Provide realistic exposure scenarios based upon site conditions and the proximity of sensitive or nearby populations. Describe the effects of human exposure.

  Examples:
  - *The chemicals are contained in 2 leaking 5,000 gallon pressure vessels located on deteriorating concrete pads. An elementary school is located 1/4 mile away.*
  - *There are approximately 10 uncovered drums surrounded by a partially collapsed chain-link fence on the site, which is crossed by a footpath frequently used by neighboring residents to get to the train station.*

- High levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface, that may migrate. Identify the substances of concern, estimated amounts, realistic pathways and exposure scenarios, and how the levels exceed standards. Describe the soil characteristics, the extent of the contamination, and factors may affect migration.

  Examples:
  - *The hazardous substances were dumped in a 20-ft. square area and have penetrated the top soil to a depth of approximately 1 foot. The aquifer is 6 feet below the surface and contamination would create a substantial plume.*
  - *The residue from the lagoon lies on top of a hardpacked clay surface, with contaminants migrating from the site in stormwater runoff to a nearby stream used for drinking water.*

- Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released. Describe the conditions of concern and provide an estimate of the likelihood of their occurrence. Explain how these conditions would affect exposure scenarios and migration.

  Examples:
  - *Spring floods carried an estimated 20 barrels and more than 50 drums of volatile organics into the Green River, the drinking water source for more than 5,000 people. Further flooding is predicted.*
  - *Before containment measures are implemented, heavy summer cloudbursts may wash pollutants across the concrete yard and into municipal storm sewers. This could affect a nearby watercourse used for swimming.*

- Threat of fire or explosion. Identify the substances of concern, and realistic exposure scenarios including the gravity and immediacy of the threat. Be specific about the

number of people exposed, the proximity of sensitive or nearby populations, and the geographic area affected.

Example:
- *The site contains nearly 30 drums of non-compatible volatile organics stored next to each other. A hospital is less than four blocks away.*
- *Vandals have set two fires at the unsecured site, necessitating evaluation of five rowhouses adjacent to the drum storage area.*

- Other situations or factors that may pose threats to public health or welfare.

B. <u>Threats to the Environment</u>

- Detail the threats to the environment as they relate to the criteria provided below from section 300.415(b)(2) of the NCP (discuss only those categories of threats that apply to existing or potential conditions):

  - Actual or potential exposure to hazardous substances or pollutants or contaminants by nearby animals or the food chain. Identify the substances of concern, probable exposure pathways, evidence of prior animal exposures (either directly or through the food chain), and results of any available analyses. Relate the information to the contaminants of concern and the known or probable receptors. Report any known illness, injury, or death linked to the exposure.

    Examples:
    - *Significant levels of dioxin were found in crayfish and sediment samples taken in Black Creek downstream of the storm sewer, which carries contaminated runoff from the site.*
    - *Large fishkill (4 million) reported in 1986; potential repeat if 2-million gallon lagoon overflows again, releasing sludges and supernatant liquid.*

  - Actual or potential contamination of sensitive ecosystems. Identify the substances of concern, contaminant migration routes, and the immediacy and severity of the threat to sensitive ecosystems. Describe any ecosystem effects that appear to be linked to contaminant exposures.

    Examples
    - *Site is partly located in a wetland. Hazardous substances kill algae which are a critical part of the ecosystem. State has documented ground-water contamination.*
    - *State Department of Natural Resources reports high levels of mercury and other heavy metals in fish in a nearby recreational lake, which receives stormwater runoff from this abandoned electroplating facility.*

  - Hazardous substances or pollutants or contaminants in drums, barrels, tanks, or other bulk storage containers, that may pose a threat of release. Describe the number, type, and condition of containers and identify the substances they contain. Estimate quantities of hazardous substances. Describe the known effects of these substances on plant and animal life.

    Examples:
    - *Approximately 800 drums containing volatile organics, about half of which are damaged, are strewn across the southwest corner of the property. Vegetation in the vicinity of the drum site is dead.*
    - *Pesticide residues are present in many open containers on the landfill surface. Deer have been observed walking through the landfill area and grazing nearby. These pesticides are toxic at these levels to deer.*

- High levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface, that may migrate. Identify the substances of concern and the source(s) of any releases to the soil, estimate the extent of contamination, and describe probable exposure scenarios. Describe the soil characteristics and factors that may affect migration.
  Examples:
  - *PCB contaminant levels in the soil at the property line exceed 200 ppm. A neighboring horse farm that has access to trails on-site is adjacent. Contaminants would be toxic to horses at these levels.*
  - *Fugitive dust has been observed escaping the site during periods of high wind and moving towards the vicinity of a trout hatchery less than 1/4 mile downwind.*

- Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released. Describe the conditions of concern and the likelihood of their occurrence. Explain how these conditions contribute to contaminant migration or to likely exposures to plant or wildlife populations. Describe recurring weather patterns that create or aggravate threats to the environment.
  Examples:
  - *Snow melt runs through the mine drainage area each spring, depositing tailings in Rush Creek, which is used for recreational fishing. Record snowfalls were reported in January and February.*
  - *Heavy rains are expected to continue, which could result in a second lagoon overflow into the adjacent wetland when migratory bird populations are at their peak.*

- Threat of fire or explosion. Identify the substances of concern and the immediacy and severity of the threat. Describe any illness, injury, or death to flora or fauna resulting from fires or explosions. be the geographic area affected and any special environmental concerns.
  Examples:
  - *Hunters using the grounds of the abandoned chemical reclamation facility for target practice detonated discarded munitions, creating a fire that devastated more than 4 areas of the wildlife management area and killed an unknown number of birds and other wildlife.*
  - *Reactive chemicals are stored haphazardly throughout the dilapidated warehouse, and in some instances are exposed to the elements, creating potential for explosion and fire. The nursery for the county arboretum is approximately 600 yards from the south wall of the warehouse.*

- Other situations or factors that may pose threats to the entertainment.

IV. ENDANGERMENT DETERMINATION

⇨ All Action Memos must contain an endangerment determination. Depending on the types of substances involved, one of the following two statements must be used.

- For removals involving hazardous substances:

  Actual or threatened releases of hazardous substances from this site, if not addressed by implementing the response action selected in this Action Memorandum, may present an imminent and substantial endangerment to public health, or welfare, or the environment.

- For removals involving only pollutants or contaminants:

  Actual or threatened releases of pollutants and contaminants from this site, if not addressed by implementing the response action selected in this Action Memorandum, may present an imminent and substantial endangerment to public health, or welfare, or the environment

V. PROPOSED ACTIONS AND ESTIMATED COSTS

Explain proposed and alternative actions, and estimated costs for both proposed and alternative actions, and the project schedule. State how the action addresses the threat. Explain why obvious alternatives were determined not to be feasible.

Example - *Removal of waste solvents and off-site RCRA disposal is the only feasible solution for mitigating threats posed by the situation. Site stabilization without disposal would provide only a temporary solution to the threats posed by the site.*

A. <u>Proposed Actions</u>

1. Proposed action description

⇨ • Describe the specific tasks involved in the proposed response to the public health, welfare, and environmental threats discussed in section III of the Action Memo. Be sure to describe the full extent of the removal, including ultimate disposition of contaminants, and explain what will be left at the site when the removal is completed. Discuss the rationale for choosing the option and provide supporting data for the decision; state why the proposed actions are appropriate for this situation in light of the threats and explain how they achieve timely response and protection of human health and the environment. Describe the technical feasibility and probable effectiveness of the proposed action.

  Examples:
  - *Installation of an interceptor well will block the migration of contaminants and greatly reduce the threat of contaminating the stream bordering the site. Contaminated water will be treated on-site and discharged into the stream.*
  - *Excavation of the contaminated soil and disposal in a RCRA-permitted landfill will mitigate the public health threat posed by direct human contact and inhalation of airborne particles.*

- State whether any further information is needed before all response actions can be decided and the approximate date when a final decision will be reached.

  Example: - *Further sampling to determine the extent of soil contamination will be completed within 30 days.*

⇨ • Ensure that the extent of contamination has been or will be verified by sampling and property documented. Refer to the Sampling Quality Assurance/Quality Control (QA/QC) Plan and summarize the contents if necessary.
Examples: - *EPA will use a split sampling technique. Water samples will be analyzed daily using automated sampling techniques.*

• Describe how any vulnerable or sensitive populations, habitats, or natural resources identified in section II.A might affect removal activities.
Example: - *Location in a floodplain might hamper removal activities in spring.*

• Where known and appropriate, list other uncertainties affecting implementation of the proposed action.
Examples: - *Mobile incinerators will not be available until next quarter.*
- *Steep slope of site may prevent permanent capping.*

• Discuss the need for and feasibility of relying on institutional controls at the State or local level, if applicable [23]. (Note: This is most important for removals involving excavation where contaminated soil remains below clean fill according to specific cleanup plans.)
Examples: - *Deed restrictions are needed to prevent incompatible future activities.*
- *Prohibitions on drilling new water wells can be instituted at the County level.*

• Describe available information concerning off-site disposal, such as the estimated quantity or type of waste(s) requiring off-site treatment or disposal, the facility selected, and the extent to which the substance can be treated.
Examples: - *Five drums containing an unidentified mixture of solvents will require off-site disposal.*
- *Arrangements will be made for disposal of the 300 tons of contaminated soil at the ABC RCRA-approved facility.*

⇨ • State the intent to comply with the off-site policy when the type or amount of waste is not known, or indicate that compliance with the policy is not an issue at the site. For non-time-critical removals involving off-site disposal, indicate that the appropriate State environmental officials have been notified [22,6].
Example: - *Since the material is being stabilized on-site, off-site disposal is not required.*

• Discuss the need for provision of post-removal site control (PRSC) and note whether the State, local government, or the PRPs have agreed to provide for PRSC, if applicable. Identify any other agreement that exists to provide PRSC. (Note: as stated in section 300.415(k) of the NCP, OSCs are strongly encouraged to obtain a commitment to provide for PRSC when necessary before initiating removal activities that will require PRSC.) [16]
Example: - *Post-removal site control activities will be managed by the Regional remedial program.*

• Indicate if the scope of proposed work has changed as a result of public comment on the EE/CA for non-time-critical removals.

Example: - *Further drinking water sampling will be conducted in response to comments received at the public meeting.*

- Identify cross-media relationships and potential adverse impacts associated with intermediate steps.
  Examples: - *Excavation of soils from highway shoulder will require traffic diversion and will be coordinated with local police.*
  - *Local traffic and noise levels will increase during the response; therefore, hazardous substances will not be moved off-site during school bus operating hours.*

2. Contribution to remedial performance

⇨ • Discuss how the proposed actions will, to the extent practicable, contribute to the efficient performance of any long-term remedial action with respect to the release or threatened release concerned [10]. For this discussion, document the conclusions resulting from consideration of the following questions:

- What is the long-term cleanup plan for the site? For sites with signed Records of Decisions (RODs), briefly describe the remedial action selected. For proposed and final NPL sites where no remedial action has been selected, identify a range of feasible alternatives based upon a review of existing site information and professional judgment. For non-NPL sites where remedial plans are unknown or not anticipated, state that the proposed action will not impede future responses based upon available information.
- Which threats will require attention prior to the start of the long-term cleanup if there is one? For proposed or final NPL sites, where remedial action is planned or likely, identify specific threats and explain why and how they must be addressed prior to long-term cleanup. For non-NPL sites with no long-term cleanup plans, refer to all threats meeting the NCP section 300.415(b)(2) removal criteria identified in section III of the Action Memo (see p. 3-321).
- How far should the removal go to ensure that threats are adequately abated? For proposed or final NPL sites, where remedial action is planned or likely, explain (1) which threats must be abated entirely and which must be stabilized to protect public health, welfare, and the environment until a permanent remedy can be effected and (2) how abatement or stabilization is accomplished by the proposed actions in section V of the Action Memo. For non-NPL sites where these are no plans for long-term action, the threats that meet the NCP removal criteria should be completely cleaned up.
- Is the proposed removal action consistent with the long-term remedy, if known? Describe how the removal contributes to, or is at least consistent with, the permanent remedy. Explain if complying with contribution to remedial performance provisions conflicts with other program goals such as pursuit of PRP cleanup.

OR

- Note that no further action is required if the proposed removal action completes the cleanup, or if an emergency existed that precluded an analysis of how the removal related to long-term actions.

3. Description of alternative technologies

- Indicate what, if any, alternatives to land disposal have been considered [18]. If an alternative technology is selected as the proposed action, provide an in-depth description in Section V.A(l): "Proposed action description."

- Explain how the two objectives of the alternative technology policy - timely response and protection of human health and the environment - would be achieved by each alternative technology.
  Examples: - *Bioremediation techniques in conjunction with site stabilization will protect the surrounding environment in a timely manner.*
  - *PCB incineration will effectively eliminate the threat to adjacent residences.*

- Explain how well each alternative technology meets the three alternative technology selection criteria (effectiveness, implementability, and cost).
  Examples: - *Bioremediation would be less costly than other technologies, but its effectiveness on organic and heavy metal mixed contaminants is questionable.*
  - *Recycling of the liquid wastes is the least expensive disposal option.*

- Indicate ERD Director approval for technologies that are "innovative" or "emerging" or when the status of the technology is uncertain, and attach the Alternative Technology Approval Memo (see p. 3-353).

4. EE/CA[5]

- Attach and refer to the EE/CA and the EE/CA Approval Memorandum for a discussion of alternative actions considered for non-time-critical removals (see p.3-354) [1].

- Attach and refer to the written response to significant comments on the EE/CA and supporting documentation in the administrative level.

5. Applicable or relevant and appropriate requirements (ARARS)

<u>Federal</u>

- List Federal ARARs identified for the site that are deemed practicable, if any.

  Example: - *Federal ARARs determined to be practicable for the site are the Clean Water Act, the Toxic Substances Control Act, and the Endangered Species Act.*

- Explain, if necessary, that Federal ARARs were not considered before removal activities were undertaken during an emergency situation.

[5] This section applies only to non-time-critical removals.

State

⇨ • Describe efforts to identify State ARARs and indicate if State response has been timely.
Example: - *Received list of ARARs for XYZ site from State representatives within two weeks of request.*

• Where there has been time to assess State ARARS, list those which are deemed practicable.
Example: - *Proposed response will attain State water quality criteria.*

• Explain, if appropriate, that State ARARs were not identified or considered prior to removal initiation due to emergency circumstances.

6. Project schedule

⇨ • Specify the time needed to perform the preventative, stabilizing, and/or mitigative (cleanup) response actions to the threats posed by the site, and how quickly response activities can begin.

• Show when the State/local/PRP/remedial program commitment to provide PRSC takes effect, if applicable [16].

B. Estimated Costs

⇨ • Use the Removal Cost Management System (RCMS) [29] to summarize the estimated total project ceiling[6] with a breakdown of costs highlighting the following categories:

Extramural costs coming out of the Regional allowance:[7]

- Emergency Response Cleanup Services (ERCS), Regional ERCS, subcontractors, pre-qualified vendors and other site-specific contracts letter contracts, order for services, notices to proceed, and interagency agreements (IAGs) with other Federal agencies such as the U.S. Coast Guard, Federal Emergency Management Agency, Bureau of Land Management, and Bureau of Land Reclamation.

[6] The total project ceiling is the proposed removal total cost estimate added to the previously approved total project ceiling; i.e., the total of all approved project ceilings for a site.
[7] Costs formerly referred to as "'extramural cleanup contractor costs" are actually Regional removal allowance all costs and should be referred to as such.

Other extramural costs not funded from the Regional allowance:

- Technical Assistance Team (TAT), including multiplier costs[8]

- National Contract Laboratory Program (NCLP)

- Response Engineering and Analytical Contract (REAC).

EPA intramural costs. (Note: See the Removal Cost Management Manual for the formula for calculating intramural direct and indirect costs [27]. Contact the Regional Financial Officer for current direct and indirect cost rates to be used in the formula.)

Exhibit 5 shows a sample project ceiling estimate. (Note: Do not include any CERCLA section 104(b) investigatory costs in the estimate, because they do not count against the project ceiling or the $2 million statutory limit)

⇨ • Include contingencies[9] in the cost estimate. Two contingencies should be supplied:

  - 10-20% contingency for Regional removal allowance costs, based on best engineering judgment.

  - 20% contingency applied to total extramural project costs (all costs but EPA intramural costs).

• Include the cost of previous CERCLA removal actions taken at the site (if applicable) considering expenditures in all areas described above. For actions approved prior to 1984, contact the appropriate Regional Coordinator at Headquarters to query the Financial Management System in order to determine costs other than extramural cleanup contractor expenditures. For more recently discovered sites, CERCLIS data reflects accurate total project ceilings.

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[8] To cover administrative costs of the TAT program, an administrative multiplier, which includes overhead expenses, is applied towards all TAT expenses. This factor, available through a TAT leader or Zone Program Management Office, is multiplied by the sum of the personnel and expense amounts listed above, to estimate total TAT expenses for the removal action.

[9] Contingencies allow for unforeseen expenses that may arise during a removal action (e.g., discovery of additional hazardous materials and delays resulting from poor weather conditions or equipment failure). Contingencies may be applied to either the extramural or intramural portion of the total project ceiling as needed.

EXHIBIT 5. SAMPLE REMOVAL PROJECT CEILING ESTIMATE[1] [29]

Extramural Costs:		
Regional Allowance Costs:		
Total Cleanup Contractor Costs (This cost category includes OSC estimates for. ERCS, Regional ERCS, subcontractors, Letter Contracts, orders for services, Notices to Proceed, Alternative Technology Contracts, and IAGs with other Federal agencies. Also includes a 10-20% contingency.)		$862,500
Other Extramural Costs Not Funded From the Regional Allowance:		
Total TAT, including multiplier costs		$50,000
Total NCLP		$100,000
Total ERT/REAC	$100,000	
Subtotal, Extramural Costs	$1,112,500	
Extramural Costs Contingency (20% of Subtotal, Extramural Costs; round to nearest thousand)		+ $223,000
TOTAL, EXTRAMURAL COSTS		$1,335,500
Intramural Costs:		
Intramural Direct Costs	$9,900	
Intramural Indirect Costs		$18,000
TOTAL, INTRAMURAL COSTS		$27,900
TOTAL, REMOVAL PROJECT CEILING		**$1,363,400**

[1] Format and line items correspond to RCMS output.

VI. EXPECTED CHANGE IN THE SITUATION SHOULD ACTION BE DELAYED OR NOT TAKEN

⇨ • Describe any expected changes in the situation should action be delayed or not taken, such as changes in the scope or nature of contamination, increased threats, or the need for additional response actions. Include a worst-case scenario.

Examples:
- *Contamination will most likely spread from the site to a nearby stream which serves as a municipal water supply.*
- *Delayed action will increase public health risks to the adjacent population through prolonged exposure to airborne contaminates.*

VII. OUTSTANDING POLICY ISSUES

⇨ • Discuss remaining policy issues not previously discussed, if applicable, or state "None" if no other policy issues are associated with the site.

Examples:
- *Provisions for cost-sharing for the proposed response are an issue because EPA has decided to seek State cost-share under CERCLA section 104(c)(3)(ii).*
- *The removal involves nationally significant and precedent-setting issues because it involves releases from consumer products on Indian Tribal lands.*
- *The site comprises two noncontiguous sites located 1/4 mile apart.*

VIII. ENFORCEMENT

The purpose of an original Action Memo is to document the decision to undertake a removal action. For administrative purposes, the enforcement strategy is included with the original Action Memo.

As stated in NCP section 300-415(a)(2), EPA's policy concerning removal enforcement is that where PRPs are known, an effort shall be made, to the extent practicable, to determine whether they can and will perform the necessary removal action promptly and properly [281]. The urgency determination (emergency, time critical, or non-time-critical), however, is a deciding factor in determining the amount of time that can be devoted to a PRP search and negotiations prior to on-site action. OSCs should be prepared to obtain the necessary approval to conduct a Fund-lead response if no PRPs can be identified. Efforts to locate PRPS, however, should continue throughout the removal action to support cost recovery efforts and possible PRP involvement in any future response actions.

⇨ • Provide a summary statement indicating the extent to which PRPs are known, and whether they can and will perform the proposed response promptly and properly.

⇨ • *Place all remaining information concerning the enforcement strategy in a separate addendum labeled "enforcement sensitive"* and note here that the enforcement strategy is not part of the Action Memo for purposes of NCP consistency.

IX. RECOMMENDATION

⇨ • The following statement must appear in all Action Memos to document that the proposed response is in compliance with statutory and regulatory removal provisions:

This decision document represents the selected removal action for the _____ site, in _____ (location), developed in accordance with CERCLA as amended, and not inconsistent with the NCP. This decision is based on the administrative record for the site.

⇨ • Provide an approval statement indicating that NCP removal requirements have been substantiated and stating the total project ceiling and the Regional removal allowance costs.

Example: - *Conditions at the site meet the NCP section 300.415(b)(2) criteria for a removal and I recommend your approval of the proposed removal action. the total project ceiling if approved will be $1,363,400. Of this, an estimated $862,500 comes from the Regional removal allowance.*

⇨ • Include spaces for approval or disapproval signatures and dates**.**

ENFORCEMENT ADDENDUM:

⇨ Type the site name and date on each enforcement addendum and label clearly "Enforcement Sensitive." The enforcement addendum must be detached from the Action Memo before placing the Action Memo in the administrative record file. Discuss the following topics in the addendum using the assistance of Regional enforcement staff to compile information [2, 3, 28]:

A. <u>PRP Search</u>

- Detail PRP search progress to date, including PRPs identified, their financial status, and how much waste they contributed to the site (volumetric contribution).

  Examples:
  - *Title searches and examination of on-site accounting records are being conducted to identify PRPs.*
  - *The 104(e) information requests have been issued.*
  - *The PRP has failed to take part in removal actions.*

- Describe the PRP search strategy for the future, including the schedule and expedited components (if applicable).

B. <u>Notification of PRPs of Potential Liability and of the Required Removal Action</u>

- Indicate if notices have been sent, to whom, and the response of PRPs to date. (Note: notification is not always possible in emergency situations.)

  Example: - *Fifty notice letters have been sent to identified PRPs.*

- Describe future notice activities planned and their implementation schedule.

C. Decision Whether to Issue an Order

- Discuss consideration of the primary factors affecting the decision to issue an order including the immediacy of the need to respond, evidence indicating PRP liability, and the financial ability of PRPs to respond.
  Example: - *The agency has identified viable PRPs and has issued a Unilateral Administrative Order under section 106* of *CERCLA.*

- Discuss consideration of the secondary factors affecting the decision to issue an order including the ability and need to precisely define the removal, willingness of the PRPs to conduct the removal (this is not dispositive), availability of the Fund, and technical problems such as the oversight technical capabilities of the PRP.
  Example: - *Action is being taken under RCRA section 7003.*

- Identify any other strategic concerns regarding the issuance of an order.

D. Negotiation and Order Issuance Strategy

Discuss the timeline/deadline for issuance of an Administrative Order on Consent, the date for issuance of a Unilateral Administrative Order (UAO) if no settlement is reached, and the status of order drafting.

Example: - *A 2-week timeframe for negotiations has been established starting June 1. If no agreement is reached, a UAO will be immediately issued.*

- Indicate whether the appropriate State agency has been notified.

- Indicate any access issues and how they have been addressed.
  Example: - The site owner initially refused access to response personnel but has since relented.

- Describe the status of Statement of Work preparation.
  Example: - *The PRPs have contracted with a national cleanup firm, provided EPA with a copy of the work plan, and site investigation is underway.*

- Discuss the availability and thoroughness of the documentation of past costs.

ATTACHMENTS

- Append attachments referred to in the body of the Action Memo.

ACTION MEMORANDA FOR SPECIAL CIRCUMSTANCES

Overview

In addition to requesting approval of an initial removal response, Action Memos are used to request ceiling increases, statutory exemptions, changes in the scope of response, or combinations of these categories. This section provides instructions on preparing the basic types of Action Memos used in special circumstances (i.e., combined removal and statutory exemption requests, 12-month exemption requests, ceiling increase requests, $2 million exemption/ceiling increase requests, and requests for changes in the scope of response). For removal actions involving combinations of these scenarios, OSCs should consult the instructions for each type of request to ensure that all appropriate information is included.

Combined Removal and Statutory Exemption Requests

Overview

For removals of magnitude, an OSC can usually determine at the initiation of a response that an exemption to the statutory limitations under CERCLA will be needed [8]:

- To initiate a removal action where the project is expected at the outset to exceed 12 months[10]

- To initiate a removal action where the total project cost is expected at the outset to exceed $2 million.

Action Memos that combine exemption requests with requests for initial approval of removal actions must contain the information discussed below, in addition to the information detailed in the model Action Memo provided in the preceding section. The new information described below should be inserted into the appropriate section of the model Action Memo, as indicated by the shaded portions of Exhibit 6. The section numbers shown below correspond to the basic Action Memo outline presented in Exhibit 4.

[10] The 12-month clock starts when on-site removal action response activity begins (not when the contractor is authorized) and runs for 12 consecutive months, including time that passes between restarts. CERCLA section 104(b) investigatory studies are not removal action response activities that count toward the 12-month time limit when they precede the initial start date.

EXHIBIT 6. INFORMATION REQUIREMENTS FOR REMOVAL AND 12-MONTH OR $2 MILLION EXEMPTION REQUEST ACTION MEMOS

Heading

I. Purpose

II. Site Conditions and Background

III. Threats to Public Health or Welfare or the Environment

IV. Endangerment Determination

V. Exemption from Statutory Limits

VI. Proposed Actions and Estimated Costs

VII. Outstanding Policy Issues

IX. Enforcement

X. Recommendation

Enforcement Addendum

Attachments

12-Month Exemption

An Action Memo requesting initial approval of a removal combined with a 12-month exemption request is used when the OSC can determine at the outset of the response that the removal action will exceed the statutory time limitation of 12 months [8]. Like the model Action Memo described in the preceding section, this Action Memo must be sent to the RA for approval, and addressed from the OSC through the Regional Division Director (as appropriate). In situations where an extension is sought for a proposed or final NPL site based upon the consistency exemption, the appropriate official in the Region's remedial program must also concur in writing (RAs are authorized to approve time exemptions based upon the consistency exemption for both NPL and non-NPL sites) [9].

$2 Million Exemption

Action Memos that combine requests for an initial removal with an exemption from the $2 million limitation are used when the OSC can determine at the outset of the response that the total cost of the removal action will exceed $2 million [8]. Unlike the model Action Memo described in the preceding section, this combined Memo must be submitted to Headquarters for approval. ERD Regional Coordinators at Headquarters should be alerted to the need for Headquarters' approval as soon as possible. Where an exemption is sought for a proposed or final NPL site based upon the consistency exemption, the appropriate official in the Region's remedial program must also concur before the Action Memo is sent to Headquarters. [9].

The Action Memo, signed by the RA, must be addressed to the Assistant Administrator, Office of Solid Waste and Emergency Response (AA, OSWER) through the Director, Office of Emergency and Remedial Response (OERR) to the attention of the Director, ERD. The Memo should be sent to the appropriate Regional Coordinator at least three weeks before the exemption is needed. The Regional Coordinator will obtain the necessary Headquarters' concurrence and submit the Action Memo to the AA, OSWER for final approval. If additional Headquarters assistance is needed, OSCs are encouraged to send Action Memos earlier to avoid lengthening the three-week Headquarters' processing time. For example, OSCs may submit draft Action Memos to Headquarters for comment to expedite final processing. In an emergency situation, the OSC may obtain oral approval of a combined removal and statutory exemption request from the AA, OSWER, which must be followed by a written Action Memo within 48 hours.

ADDITIONS TO MODEL ACTION MEMO

In addition to providing the information described in the model Action Memo, the "Purpose" and "Recommendation" sections of the removal and exemption request Action Memo should be modified as discussed below. A new section on the exemption from statutory limits must also be added.

Purpose
(Section 1)

- Modify the "Purpose" statement described in the model Action Memo (p. 3-322) to specify a combined initial removal and 12-month or $2 million exemption request.

Exemption from Statutory Limits
(New section V: follows "Endangerment Determination")

- Place this section immediately following the "Threats" section and use the threat information to justify the need for a 12-month or $2 million exemption [8]. Ensure that the severity of the threats is sufficiently documented to warrant the exemption request. Demonstrate that the removal meets one of the two CERCLA section 104(c) exemptions listed below (it is not necessary to justify both exemptions). The two CERCLA section 104(c) exemptions are commonly referred to as the "emergency exemption" and the “consistency exemption." Note that a higher threshold is used to evaluate emergency exemption requests than for responses within statutory limits or consistency exemptions. Therefore, OSCs must *ensure that all three components of the emergency exemption are sufficiently addressed* when requesting exemption from statutory limits.

A. Emergency Exemption:

1. **There is an immediate risk to public health or welfare or the environment**, the key word being <u>immediate:</u> focus on how soon the public or the environment is at risk or will be in the immediate future. Describe site conditions that constitute an immediate risk; indicate all hazardous substances involved, refer to and interpret tables of data, and define the immediacy of the risk to affected human populations and environmental resources. Discuss the time needed to address the hazards involved and adverse weather conditions that may exacerbate the situation. Make

reference to and attach any final ATSDR findings. Refer to and interpret data contained in any attached tables that support the need for an exemption.

Examples:
- *The retaining wall for the lagoon is highly unstable and on the verge of collapse. Frequent rains expected in the next 4-6 weeks may hasten this collapse, which would cause approximately 20,000 gallons of waste contaminated with heavy metals to spill into Twining Creek, approximately 1/2 mile above the public water supply intake.*
- *Volatile and explosive substances (see Table 1 for names and estimated quantities) are contained in 43 rapidly deteriorating drums. Incompatible substances are stored next to, and on top of, each other, presenting a high risk of fire/explosion and subsequent spread of toxic fumes to the 25 homes within a 1/4 mile radius of the site.*

And

2. **Continued response actions are immediately required to prevent, limit, or mitigate an emergency**, the key words being <u>emergency and continued response actions are immediately required</u>: describe the emergency by referring to the release or threat of release of hazardous substances identified in the "Threats" section, citing specific concentrations, identifying deteriorating site conditions, and describing the type of threats. Ensure that each element of the response is justified by the emergency criteria and documented accordingly (be sure to include ATSDR health consultations/assessments/advisories that support an emergency finding). Explain the emergency consequences of not granting the exemption.

Examples:
- *The TCE-contaminated contents of two 5,000 gallon tanks will be drained and disposed of off-site. Continued actions are necessary, however, to dismantle and remove the rusting tanks so that toxic residues do not wash off-site into a neighboring stream.*
- *10 partially buried drums of dioxin-contaminated wastes were discovered during the emergency removal of 120 drums from the surface of the* site. *Some of the content have already leaked into the surrounding soil, presenting a serious threat to residents of 18 neighboring homes and wildlife. Contaminated soil must be excavated and removed to eliminate risk of ingestion by neighborhood children or migrating wildlife.*

And

3. **Assistance will not otherwise be provided on a timely basis**, the key words being <u>timely basis:</u> describe why State/local governments cannot address the site within an appropriate timeframe. If applicable, cite the enforcement addendum for discussion of PRP's role. Discuss the remedial timeframe to address the site if it is listed on the NPL.

Examples:
- *A deteriorating storage shed threatens to expose explosive substances to the atmosphere, and local responders do not have appropriate expertise for safely mitigating the threat.*
- *Neither the State nor county government has access to or resources to acquire the proper incineration equipment and services needed.*

Or

B. Consistency Exemption[11]:

1. **Continued response actions are otherwise appropriate and consistent with the remedial action to be taken**: Demonstrate that the proposed removal meets the criteria for consistency (at a minimum, the removal does not foreclose the remedial action) **and appropriateness** the activity is necessary to: avoid a foreseeable threat; or, prevent further migration of contaminants; or, use alternatives to land disposal; or, comply with the off-site policy [9, 18, 22]. Describe what Federal, State, or PRP-lead remedial actions are planned (citing the ROD if available), or anticipate likely remedial actions if plans are not yet made.

   Example - *Excavating and removing the buried drums will not interfere with likely remedial alternatives to address soil and ground-water contamination. The removal action is also appropriate because the drums and their contents will be incinerated, not disposed of in a landfill.*

Recommendation
(Section IX**)**

- Refer to both removal criteria and statutory exemption criteria in a Regional recommendation statement For Action Memos requiring Headquarters approval, state when funding is planned and the source of funding.

  Examples:

  - *Conditions at the site meet the NCP section 300.415(b)(2) criteria for a removal and the CERCLA section 104(c) consistency exemption from the 12-month limitation, and I recommend your approval of the proposed removal action and 12-month exemption. The total project ceiling, if approved, will be $125,000. Of this, an estimated $100,000 will be from the Regional removal allowance.*
  - *Conditions at the site meet the NCP section 300.415(b)(2) criteria for a removal and the CERCLA section 104(c) emergency exemption from the $2 million limitation, and I recommend your approval of the proposed removal action and $2 million exemption. The total project ceiling, if approved, will be $4.5 million, of which an estimated $3.8 million will be funded from FY 89 and FY 90 Regional removal allowances.*

[11] This exemption is generally only for use at NPL sites. The limited situations where use of the exemption is appropriate for non-NPL sites will be determined by the AA, OSWER on a case-by basis [9].

Action Memoranda to Continue Response Actions

Overview

Action Memos are also occasionally required to continue work approved by an original Action Memo, or to restart work at the same site if the statutory limitation on time has been exceeded. The basic types of requests contained in these additional Action Memos are:

- To extend a removal action beyond 12 months
- To increase the total project ceiling
- To increase the total project ceiling beyond $2 million
- To change the scope of response for the removal action.

General instructions for preparing these Action Memos are discussed in the following paragraph, followed by the specific information requirements for each type of request. Action Memos combining several types of requests must fulfill all appropriate information requirements.

Action Memos to continue response actions must cover each of the sections required in the basic Action Memo outline (see Exhibit 4), but may refer to the most recently approved Action Memo (which should be attached) to avoid duplication. *Specific points to consider in* preparing exemption requests, ceiling increases, requests for changes in the scope of response, or other combinations thereof include the following:

- The "Subject" line in the heading should specify the type of request (e.g., ceiling increase, $2 million exemption, 12-month exemption, or change in the scope of response request) followed by the words "Action Memorandum" on the next line.
- If the Action Memo requires an extension of the 12-month limit or an increase in the project ceiling that raises costs over $2 million, justification for the exemption must be presented in a new section, "Exemption from Statutory Limits". If previous Action Memos were based upon different exemption criteria (e.g., the consistency exemption was used instead of the emergency exemption), the OSC must ensure that the new request contains appropriate and sufficient information. Additionally, if site conditions have changed from those documented in a previous exemption request but continue to meet the same exemption criteria, the new request must demonstrate that current conditions meet the same criteria.
- If the Action Memo requires a project ceiling in increase or a redirection of funds, a detailed cost breakdown of previous and requested ceilings should be provided.
- For the remaining sections of Action Memos to continue response actions:
    - If information contained in the previous Action Memo is still current and correct, the OSC should indicate "Refer to previous Action Memo" for that section.

- If new or additional information is available, the OSC should include it under the appropriate section number in the Action Memo and indicate that this supplements or supersedes information in previous Action Memos. Note that exemption requests based upon the emergency exemption will likely require expanded sections with updated information.

The discussion below identifies specific information requirements for ceiling increases, exemption requests, and changes in the scope of response request, as illustrated by the shaded portions of Exhibit 7. References to the appropriate section numbers in an original Action Memo, as outlined in Exhibit 4, are included.

12-Month Exemption

A 12-month exemption request Action Memo is required when it becomes necessary to extend the response time of an already-approved removal beyond the statutory limit of 12 months [8]. The 12-month exemption request, specifying the additional time required to complete the removal action, must be sent to the RA for approval and addressed from the OSC through the Regional Division Director (as appropriate). If a subsequent time exemption or change in scope of response is required, the new request must state that the removal continues to meet the original exemption criteria or demonstrate that new exemption criteria are met. Where an extension is sought for a proposed or final NPL site based upon the consistency exemption, the appropriate official in the Region's remedial program must also concur before the Action Memo is sent to Headquarters [9].

Additions to Model Action Memo

Where appropriate, the previous Action Memo should be referred to and the "Purpose," "Site Conditions and Background," "Threats," "Proposed Actions," and "Recommendation" sections should be modified as discussed below. Any updated or new information should be discussed under the appropriate heading. A section on the proposed exemption from statutory limits must also be included.

Purpose
(Section 1)

- Modify the "Purpose" statement described in the model Action Memo (p. 3-316) to specify that a 12-month exemption request is sought.

EXHIBIT 7. INFORMATION REQUIREMENTS FOR ACTION MEMOS TO CONTINUE RESPONSES

12-Month Exemption	**Ceiling Increase ***
Heading	Heading
I. Purpose	**I. Purpose**
II. Site Conditions and Background	**II. Site Conditions and Background**
III Threats to Public Health or Welfare or the Environment, and Statutory and Regulatory Authorities.	**III. Threats to Public Health or Welfare or the Environment, and Statutory and Regulatory Authorities.**
IV. Endangerment Determination	IV. Endangerment Determination
V. Exemption from Statutory Limits	**V. Exemption from Statutory Limits**
VI. Proposed Actions and Estimated Costs	**VI. Proposed Actions and Estimated Costs**
VII. Expected Change in the Situation Should Action Be Delayed or Not Taken	VII. Expected Change in the Situation Should Action Be Delayed or Not Taken
VIII. Outstanding Policy Issues	VIII. Outstanding Policy Issues
IX. Enforcement	IX. Enforcement
X. Recommendation	**X. Recommendation**
Enforcement Addendum	Enforcement Addendum
Attachments	Attachments

$2 Million Exemption/Ceiling Increase	**Change In Scope of Response**
Heading	Heading
I. Purpose	**I. Purpose**
II. Site Conditions and Background	**II. Site Conditions and Background**
III. Threats to Public Health or Welfare or the Environment, and Statutory and Regulatory Authorities.	**III. Threats to Public Health or Welfare or the Environment, and Statutory and Regulatory Authorities.**
IV. Endangerment Determination	IV. Endangerment Determination
V. Exemption from Statutory Limits	**V. Proposed Actions and Estimated Costs**
VI. Proposed Actions and Estimated Costs	**VI.** Expected Change in the Situation Should Action Be Delayed or Not Taken
VII. Expected Change in the Situation Should Action Be Delayed or Not Taken	VII. Outstanding Policy Issues
VIII. Outstanding Policy Issues	VIII. Enforcement
IX. Enforcement	**IX. Recommendation**
X. Recommendation	Enforcement Addendum
Enforcement Addendum	Attachments
Attachments	

* All ceiling increase requests for removal actions with total project costs over $2 million must state that the removal continues to meet previously documented statutory exemption criteria or demonstrate that the response meets other exemption criteria in a section on “Exemption From Statutory Limits”.

Site Conditions and Background
(Section II)

- Discuss who initiated the action, the date the action was approved in the original Action Memo, and the date response activities began on site.

- Describe the actions initially approval, actions to date, and actions to be completed.
  Example: - *Of the three actions initially approved — staging of drums, soil excavation, final disposal at a RCRA-approved facility — all but disposal have been completed.*

- Describe the problems or conditions at the site that have led to the 12-month limit exemption request.
  Examples: - *Severe flooding delayed cleanup work and exposed more drums.*
  - *Contract lab delays disrupted scheduled response activities.*

Threats to Public Health or Welfare or the Environment, and Statutory and Regulatory Authorities
(Section III)

- A new/revised/updated section is required if the 12-month exemption is needed to respond to threats that are different from those addressed in previous Action Memos. Section III of the model Action Memo describes the information that should be included.

Exemption From Statutory Limits
(New Section V: follows "Endangerment Determination")

- Demonstrate that the site meets either the emergency or consistency exemption according to the instructions in the discussion of the combined removal and exemption request Action Memo. *Remember that a higher threshold is used to evaluate the threats in an emergency request* than in an original Action Memo within statutory limits; therefore, substantiate the request accordingly [8, 9]. If a subsequent time extension or change in scope of work is needed, the new Action Memo must state that the removal continues to meet the original exemption criteria or demonstrate that new exemption criteria are met.

Proposed Actions and Estimated Costs
(Section V)

- Describe what actions are required to complete the removal action, addressing the same issues raised in the "Proposed Actions" section of the model Action Memo.

- Describe any ARARs that will be complied with as a result of the exemption request and address the same issues outlined in the "Proposed Actions" section of the model Action Memo (see p. 3-325).

Recommendation
(Section IX)

- Provide an approval statement that briefly presents the rationale and time schedule for the removal.
  Example: - *Conditions at the site meet criteria for the CERCLA section 104(c) consistency exemption, and I recommend that you approve an exemption from the 12-month limit to allow a continued removal response. The total project ceiling is $730,000, of which an estimated $650,000 comes from the Regional removal allowance.*

- Include any special conditions or provisions that pertain to this exemption.

Ceiling Increase

A ceiling increase Action Memo is used for approval of all ceiling increase requests. The RA can approve ceiling increases, addressed from the OSC, that do not result in total project costs over $2 million. If the ceiling increase will bring the total project ceiling above $2 million for the first time, the OSC should prepare a combined $2 million exemption and ceiling increase (see p. 336). Requests for ceiling increases for projects already totaling over $2 million require approval from Headquarters and must state that the removal still meets the same exemption criteria (i.e., emergency or consistency) specified in the original $2 million exemption request/ceiling increase Action Memo or demonstrate that the response meets other exemption criteria. Therefore, all ceiling increases for projects totaling over $2 million need to reiterate or demonstrate that exemption criteria are met.

Additions to Model Action Memo

Where appropriate, the original or most recent Action Memo should be referred to in order to avoid unnecessary duplication of information. The "Purpose," "Site Conditions and Background," "Threats," "Proposed Actions," and "Recommendation" sections should be modified as described below.

Purpose
(Section 1)

- Modify the "Purpose" statement described in the model Action Memo (p. 3-316) to specify that a ceiling increase is requested.

Site Conditions and Background
(Section II)

- State the date action was approved in the original Action Memo and the date response activities began on site.
  Example: - *The removal was initiated by EPA on December 2, 1988.*

- Discuss the present status of the removal action.
  Examples: - *Actions already taken are staging and overpacking of drums, and pumping down lagoons.*
  - *Drums currently awaiting disposal at a RCRA-approved disposal site.*

- Describe the site conditions and the reasons for a ceiling increase request.
  Examples - *Additional drums were discovered buried near the property lines.*
  - *Unexpected freezing temperatures required the use of specialized equipment.*

- Describe what the ceiling increase will be used for.
  Example: - *Disposal of additional drums that washed ashore after the removal action began.*

- Describe a worst-case scenario should the ceiling increase not be granted.

- Include any other information that may help substantiate the need for a ceiling in e and attach any new enforcement information, ATSDR health advice, or other useful documents.

Threats to Public Health or Welfare or the Environment, and Statutory and Regulatory Authorities
(Section III)

- A new/revised/updated section is required if the ceiling increase will be used to respond to threats that are different from those addressed in previous Action Memos. Section III of the model Action Memo (see p. 3-321) describes the type of information that should be included in order to substantiate the request for a funding increase.

Exemption From Statutory Limits[12]
(New Section V: follows "Endangerment Determination")

- State that site conditions continue to meet the exemption criteria (i.e., emergency or consistency exemption) specified in the original $2 million exemption/ceiling increase Action Memo. If site conditions have changed but continue to meet the same criteria specified in the original exemption request, demonstrate here that the new conditions meet the exemption criteria. If site conditions do not continue to meet the same exemption criteria, the Action Memo must demonstrate that criteria for the other exemption are met according to the instructions for the combined exemption and removal request Action Memo (see p. 3-335). *Remember that a higher threshold is used to evaluate the threats in an emergency exemption request* than in an original Action Memo within statutory limits; therefore substantiate the request accordingly [8, 9].

[12] This section is only required if a $2 million exemption has been previously approved. Renumber subsequent sections as appropriate.

Proposed Actions and Estimated Costs
(Section V)

- Describe what actions are required to complete the response, addressing the same issues raised in the "Proposed Actions" section of the model Action Memo (see p. 3-331).
  Example: - *Sampling for compatibility remains to be completed before final disposal may be undertaken.*

- Provide a detailed breakdown of costs for both the current and proposed ceiling (see Exhibit 8) [29].

Recommendation
(Section IX)

- Present the Region's recommendations rationale, and project costs in an approval statement. Summarize what the additional funds will be used for and state how much the approval would increase the total project ceiling. If the ceiling increase is for a removal with a total project ceiling of more than $2 million, specify the exemption criteria met, the source of funding, and when funding is planned.
  Examples: - *Site conditions continue to meet the NCP section 300.415(b)(2) criteria for a removal, and I recommend your approval of the proposed ceiling increase of $600,000. The total project ceiling, if approved, will be $1,774,00, of which an estimated $1,387,000 will be funded from the Regional removal allowance.*
  - *Site conditions continue to meet the NCP section 300.415(b)(2) criteria for a removal and the CERCLA section 104(c) consistency exemption, and I recommend your approval of the proposed project ceiling increase of $400,000. The total project ceiling, if approved, will be $3.5 million, of which an estimated $2.9 million will be funded from FY 89 and FY 90 Regional removal allowances.*

$2 Million Exemption and Ceiling Increase

The $2 million exemption request and ceiling increase Action Memo is used when a ceiling increase will bring the total project ceiling above $2 million for the first time or when addressing new threats in subsequent ceiling increases [8]. This dual request Action Memo requires approval from Headquarters, and must be addressed to the AA, OSWER from the RA, through the Director, OERR to the attention of the Director, ERD. In situations where an exemption is sought for a proposed or final NPL site based upon the consistency exemption, the appropriate official from the Regional remedial program must also concur [9].

Additions to Model Action Memo

Where appropriate, the original or most recent Action Memo should be referred to in order to avoid unnecessary duplication of material. Additionally, the combined exemption and ceiling increase Action Memo should contain the information discussed below.

EXHIBIT 8. SAMPLE PROJECT CEILING INCREASE ESTIMATE [27]

Extramural Costs	Current Ceiling	Costs to Date	Proposed Ceiling
Regional Allowance Costs:			
(This cost category includes OSC estimates for: ERCS, Regional ERCS, subcontractors, Letter Contracts, order for services, Notices to Proceed, Alternative Technology Contracts, and IAGs with other Federal agencies. Also includes a 10-20% contingency)	$837,000	$825,000	$1,387,000
Other Extramural Costs Not Funded From the Regional Allowance:			
Total TAT, including multiplier costs	$10,000	$5,000	$10,000
Total NCLP	$20,000	$15,000	$20,000
Total ERT/REAC	$20,000	$15,000	$20,000
Subtotal, Extramural Costs	$887,000	$860,000	$1,437,000
Extramural Costs Contingency (20% of Subtotal, Extramural Costs; round to nearest thousand)	$177,000	$172,000	$287,000
TOTAL, EXTRAMURAL COSTS AND CONTINGENCY	$1,064,000	$1,032,000	$1,724,000
Intramural Costs:			
Intramural Direct Costs (HQ and Region)	$17,000	$16,000	$19,000
Intramural Indirect Costs	$33,000	$30,000	$34,200
TOTAL PROJECT CEILING	$1,114,000	$1,078,000	$1,777,200

Threats to Public Health or Welfare or the Environment, and Statutory and Regulatory Authorities
(Section III)

- A new/revised/updated section is required if the $2 million exemption and ceiling increase will be used to respond to threats that are different from those addressed in previous Action Memos. Section III of the model Action Memo (see p. 3-321) describes the information that should be included.

Exemption from Statutory Limits
(New Section V: follows "Endangerment Determination")

- Place this section immediately following the "Threats" section and use the threat information to justify the need for a $2 million exemption. Ensure that the severity of the threats is sufficiently documented to warrant the exemption request *(remember that a higher threshold is used to evaluate the threats in an emergency exemption request than in an original Action Memo).* Demonstrate that the removal meets either the emergency or consistency exemption under CERCLA section 104(c). See the exemption section of the combined removal and exemption request (p. 3-335) for $2 million exemption documentation requirements [8, 9].

Proposed Actions and Estimated Costs
(Section V)

- Refer to the "Proposed Actions" section of the ceiling increase Action Memo discussed previously (see p. 3-325) and Exhibit 8 for documentation requirements.

Recommendation
(Section IX)

- Present the Region's recommendations, rationale, and project costs in an approval statement. Identify the source of funding and when funding is planned.
  Example: - *Conditions at the site meet criteria for a CERCLA section 104(c) emergency exemption, and I recommend your approval of an exemption from the $2 million limitation and a ceiling increase of $50.000. The total project ceiling, if approved, will be $4.2 million, of which an estimated $3.7 million will be funded from the FY 89 and FY 90 Regional removal allowances.*

Change In The Scope Of Response

The request for a change in the scope of response is used when the proposed actions and/or removal response goals have changed from those outlined in the "Proposed Action" section of the current Action Memo. The format provided below is used when there is a change in the scope of work and redirection of funds at a site, but no change in total project ceiling. This Action Memo should be sent for approval to the RA from the OSC through the Regional Division Director (as appropriate), unless the removal was initially or subsequently (in the case of a $2 million exemption request) approved by Headquarters. In these two instances, Headquarters' approval is required, and the Action Memo should be routed in the same way as a $2 million exemption request. When a change in the scope of response is required for an

approved removal action totaling more than $2 million, the Action Memo requesting the change must state that the statutory exemption criteria are still met.

Additions to Model Action Memo

Where appropriate, refer to the original or most recent Action Memo. Additional modifications to the "Purpose," "Site Conditions and Background," "Threats," "Proposed Actions," and "Recommendation " sections as discussed below.

Purpose
(Section I)

Modify the "Purpose" statement provided in the model Action Memo (p. 3-316) to specify that a change in the scope of response is requested.

Site Conditions and Background
(Section II)

- Detail key site characteristics such as location, current conditions, and NPL status. Attach the original Action Memo and refer to it as appropriate in order to avoid repeating site description information used to describe the same threats in the original Action Memo.

- Discuss who initiated the action, the date the action was approved in the original Action Memo, and the date response activities began on site.

- Describe the conditions or situations that have led to the proposed change in the scope of the response.
  Example: - *Initially, incineration was identified as the sole method of treatment and disposal, but tests have shown that incineration is not feasible for all the waste, so some of the waste will be solidified on-site.*

- Include a chronological description of steps taken to address the conditions or situations leading to this request.

- Identify any key problems or complications that have developed or are anticipated.

Threats to Public Health or Welfare or the Environment, and Statutory and Regulatory Authorities
(Section III)

- A new/revised/updated section is required if the change in the scope of response is needed to respond to threats that are different from those addressed in previous Action Memos. Section III of the model Action Memo (see p. 3-321) describes the type of information that should be included.

Proposed Actions and Estimated Costs
(Section V)

- List and describe all the approved project tasks remaining to be accomplished for completion of the removal action.

- Describe any ARARs that will be complied with as a result of the proposed change in work, addressing the same issues outlined in the "Proposed Actions" section of the model Action Memo (see p. 3-325).

- State that the costs will remain within the current approved total project ceiling (no separate cost summary is required).

Recommendation
(Section IX)

- State that the response continues to meet NCP removal criteria and present the OSC's recommendations for a redirection of approved funds in an approval statement.
  Example: - *Conditions at the site continue to meet the NCP section 300.415(b)(2) criteria for a removal, and I recommend your approval for redirection of funds as indicated. Specifically, I recommend that the TAT and CLP portions of the total project ceiling be reestablished at $25,000 and $20,000, respectively, with no increase in the total project ceiling.*

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ACTION MEMORANDA SUPPLEMENTS

Action Memoranda Attachments

The proper use of attachments can save time in preparing Action Memos as well as increase the effectiveness of the Action Memo as the primary decision document for removal activities. While certain attachments are required for approval of the Action Memo, the OSC may utilize other existing material or easily created attachments to enhance the overall clarity and usefulness of this document. The relevance of and information contained in all scientific documents must be explained and summarized within the body of every Action Memo.

Required Attachments

The following documents must be attached to the Action Memo and referred to as indicated:

- EE/CA Approval Memo and the EE/CA: To avoid repetition of information and for organizational purposes, OSCs must attach and refer to the EE/CA and its approval memo. EE/CAs are required for all non-time-critical removals [I].

- Written response to significant comments: This document must be attached to the Action Memo and referred to in the "Proposed Actions" section (see p. 3-325). If a public comment period was held pursuant to section 300.820(b) of the NCP (required for all non-time-critical removals), the Action Memo must document that significant comments were considered. A written response to all significant comments must be included in the administrative record and may be appended to the Action Memo after the comment period closes [21].

- Final ATSDR Health Advisories and Health Consultation Memos or other health advice: If the OSC has received such information, it must be attached and referred to in the "Threats" section of the Action Memo (see p. 3-321).

- Enforcement information: This addendum includes information described on p. 3-333. The addendum must be attached and referred to, and may be prepared by enforcement personnel [28].

- Concurrence Memo for Nationally Significant or Precedent-Setting Actions: If necessary, this approval memo must be attached and referred to in the "Outstanding Policy Issues" section (see p. 3-332) [14].

Recommended Attachments

In addition to the required attachments, OSCs are encouraged to use other documentation to substantiate their findings presented in the Action Memo. Suggested attachments include:

- Administrative Record Index: The Index may be attached and referred to in the "Site Conditions and Background" section (see p. 3-316) [21].

- Previously approved Action Memos: If other Action Memos have been approved for the site, they should be attached and referred to where appropriate to avoid unnecessary duplication of information (see the discussions on Action Memos for special circumstances, pp. 3-341–3-351).

- Alternative Technology Approval Memorandum: As with the EE/CA, OSCs may attach the approval memorandum for the use of alternative technologies to assist the reviewer. Approval is required for innovative or emerging technologies, or when the development status of a technology is uncertain [18].

- Documentation of site characteristics: These may be hand-drawn or professionally produced pictures, photographs, diagrams, maps, or other illustrations of the area around the site, the site itself, and prominent site features related to the incident or its response. These documents may be referred to where appropriate in the "Site Conditions and Background" section of the Action Memo (see p. 3-316).

- Sampling results: "This includes charts, graphs, or other forms of documentation indicating the extent of contamination based upon sampling results, such as PA, SSI, or LSI reports. All data presented either in the Action Memo or in an attachment must be discussed and their relevance to the removal fully explained. If a chart is used, identify in column format the substance, quantity, location, and existing standards. The attachment should be referred to in the "Site Conditions and Background" section of the Action Memo (see p. 3-316).

- Project schedule: Charts can be used to illustrate various tasks and their anticipated duration (to avoid potential problems, the OSC might measure the time in terms of number of days instead of specific dates). The schedule should be referred to in the "Proposed Actions" section of the Action Memo (see p. 3-325).

- Soil and debris treatability variances: Generally, a request for a treatability variance for contaminated soil and debris is a memorandum attached to the Action Memo. When insufficient information exists about the need for a variance at the time the Action Memo is signed, the Action Memo should be amended to include the request for the variance when information becomes available. For non-time-critical actions, the information to justify a variance should be included in a memorandum attached to the EE/CA. In all cases, public comment on treatability variances should be solicited whenever possible, in accordance with NCP requirements.

- Delisting evaluation: If delisting of hazardous wastes is viable at a site, the technical basis for the delisting should be included in an addendum to the Action Memo. The evaluation should consider all identified RCRA wastes and discuss the reasons why the wastes should be disposed of as solid wastes (pursuant to RCRA Subtitle D requirements).

If other information is readily available and, based on professional judgment, the OSC believes the attachments will strengthen or clarify the material presented in the Action Memo, the use of additional attachments is encouraged.

Role of Headquarters Addenda

Occasionally it is necessary to make minor modifications to Action Memos submitted to Headquarters that do not require the development of an entirely new original Action Memo, exemption request, ceiling increase, or a request for a change in the scope of work. Addenda are succinct documents issued from Headquarters that clarify and supersede certain parts of the Action Memo by:

- Providing supplemental information to clarify or elaborate upon the need for a removal action
- Revising wording to avoid misinterpretation
- Incorporating new information to reflect a change in the situation since the submission of the Action Memo to Headquarters.
- Providing partial approval of a proposed removal action (i.e., approval for less than the requested amount).

Addenda are addressed from the Director, ERD, to the AA, OSWER, through the Director, OERR, and conclude with an approval statement similar to that of the Action Memo. The AA, OSWER, signs the addendum, not the original Action Memo, to signify approval of the request. These addenda are not intended to serve a quality assurance/control function. Regional staff should ensure that Action Memos are accurate and complete before forwarding them to Headquarters.

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REVIEW AND APPROVAL PROCEDURES

Need for Review

Because judicial review is limited to the contents of the administrative record, and the Action Memo is the primary decision document used to initiate removals, the importance of a thorough review process cannot be overstated. Thorough review procedures are needed to ensure that the Action Memo sufficiently and accurately justifies the decision to undertake a removal. Careful reviews can also avert unnecessary delays due to typographical errors, organizational problems, and other minor errors.

Each Region should allot time for adequate review of the Action Memo (based on the exigencies of the situation) and adhere to a consistent review process. In addition to a thorough proofreading for typographical errors and other minor problems, OSCs should refer to the checklist provided in Exhibit 9 to ensure that the Action Memo is sufficient for administrative record purposes.

State-lead actions

OSCs also need to plan for the additional time required for intergovernmental review (IGR) of Action Memos for State-lead removals.[13] Funds will not be obligated until State representatives have had an opportunity to comment on the proposed removal in accordance with their review process. IGR should be initiated at least one quarter prior to the obligation of funds for a removal and should take place concurrently with cooperative agreement application development and review. OSCs should plan accordingly for the additional review time required for State-lead actions [17].

Resources for Review

When possible, the OSC should have an outside reviewer examine the document from a fresh perspective. This will help the OSC evaluate the Action Memo as a sufficient decision document. Two valuable resources an OSC has for review are Regional Counsels and the ERD Regional Coordinators.

OSCs should have Regional Counsel or reinforcement staff review the "Enforcement" section of all Action Memos as time permits. In particular, Regional enforcement personnel should review Action Memos requiring Headquarters' concurrence and approval as well as 12-month exemption requests. With the increasing emphasis on removal enforcement, OSCs must ensure that each Action Memo contains sufficient detail on enforcement activities to justify funding a removal [28].

OSCs can also contact their Regional Coordinators in ERD for advice and assistance throughout the removal process. OSCs are strongly encouraged to submit $2 million exemption requests for Regional Coordinator review. In addition, the OSC should notify the Coordinator of forthcoming exemption requests as soon as possible following the determination that an exemption will be needed.

[13] Under 40 CFR Part 29, States with established review processes are required to issue formal notice to their designated State contacts, directly affected governmental entities, and Regional/areawide planning agencies that they are seeking Federal assistance.

EXHIBIT 9. REVIEW CHECKLIST

The following checklist has been developed to help ensure that all types of Action Memos are complete. A comprehensive list of topics for inclusion in original Action Memo is provided, with additional information requirements for Action Memos for special circumstances listed as well. OSCs should review all Action Memos against the checklist and add their own procedures if they desire.

Removal Request:

The Action Memo has:

____ Provided a statement of purpose (section I).*

____ Indicated if the response was initiated under the OSC's $50,000 authority (section I).

____ Described the site thoroughly and accurately and includes:

- Location
- NPL status
- Past and present uses (section II).*

____ Identified the proper CERCLA response authority (section II).*

____ Indicated if a Federal facility is involved (section II).

____ Indicated if a State or local government body is an owner or operator (section II).

____ Identified the materials on site (section II).*

____ Stated whether the materials are hazardous substances, pollutants or contaminants (section II).*

____ Described the migration patterns of the substances, pollutants or contaminants (section II).*

____ Indicated the State and local authorities' past, current, and likely future involvement, and funding capabilities (section II).

____ Described any previous or current actions by the Federal Government or private parties (section II).

_____

* Denotes information required for all Action Memos. Other items should be discussed as appropriate, given site circumstances.

EXHIBIT 9(2). REVIEW CHECKLIST

Removal Request (continued)

____ Identified and discussed threats to public health or welfare or the environment in relation to NCP criteria (section III).

____ Incorporated an appropriate endangerment determination based upon the substances involved (section IV).*

____ Described tasks involved in the proposed response(section V).*

____ Substantiated the need for a removal by addressing the threats found at the site (section V).*

____ Identified the need to defer decisions pending further information (section V).

____ Referred to the sampling QA/QC plan for further information concerning site sampling plans (section V).*

____ Discussed the need for institutional controls (section V).

____ Indicated compliance with the off-site disposal policy (section V).*

____ Discussed commitments to provide post-removal site control (section V).

____ Stated the contribution to efficient performance of remedial actions (section V).*

____ Indicated consideration of alternative actions and technologies (section V).

____ Attached and referred to the EE/CA for an analysis of alternative actions (section V).

____ Discussed the effort to identify ARARs and listed those deemed practicable (section V).*

____ Summarized the estimated total project ceiling with a breakdown of the costs involved (section V).*

____ Described the expected change in the situation should action be delayed or not taken (section VI).*

____ Identified important policy issues (section VII).

_____

* Denotes information required for all Action Memos. Other items should be discussed as appropriate, given site circumstances.

EXHIBIT 9(3). REVIEW CHECKLIST

Removal Request (continued)

____ Provided a summary statement indicating the extent of PRP involvement in the proposed response action (section VIII).*

____ Provided a recommendation statement and spaces for signatures and date (section IX).*

____ Identified the strategy for and results of the PRP search and notification process (Enforcement Addendum).*

____ Discussed consideration of the factors affecting the decision to issue an order (Enforcement Addendum).

____ Described the negotiation and order issuance strategy and schedule (Enforcement Addendum).

____ Appended all attachments.

Removal and Exemption Request:

____ Provided a specific statement of purpose (section I).*

____ Substantiated the need for 12-month and/or $2 million exemption based upon the emergency or consistency exemptions (new section V).*

____ Provided a specific recommendation statement and documented the approval of appropriate program managers (section X).*

12-Month Exemption Request:

____ Provided a specific statement of purpose (section I).*

____ Described previous actions and current problems (section II).*

____ Discussed any new threats to public health, welfare, or the environment as they relate to NCP criteria (section III).

____ Demonstrated that the site meets the emergency or consistency exemption requirements (section V).*

____ Described remaining actions (section VI).*

_____

* Denotes information required for all Action Memos. Other items should be discussed as appropriate, given site circumstances.

EXHIBIT 9(4). REVIEW CHECKLIST

12-Month Exemption Request (continued)

____ Described any ARARs that will be complied with as a result of the exemption request (section VI).

____ Provided a specific recommendation statement and documented approval of appropriate program managers (section X).*

Ceiling Increase Request:

____ Provided a specific statement of purpose (section I).*

____ Described previous actions and current problems (section II).*

____ Describe what the ceiling increase will be used for (section 1I).*

____ Discussed any new threats to public health, welfare, or the environment as they relate to NCP criteria (section III).

____ Demonstrated that the site meets emergency or consistency exemption requirements if a $2 million exemption has been granted previously (section V, if applicable).

____ Described remaining actions (section V).*

____ Summarized costs of the current and proposed ceilings (section V).*

____ Provided a specific recommendation statement and documented approval of appropriate program managers (section IX).*

$2 Million Exemption and Ceiling Increase Request:

____ Provided a specific statement of purpose (section I).*

____ Described previous actions and current problems (section II).*

____ Described what the ceiling increase will be used for (section II).*

____ Discussed new threats to public health, welfare, or the environment as they relate to NCP criteria (section III).

_____

* Denotes information required for all Action Memos. Other items should be discussed as appropriate, given site circumstances.

EXHIBIT 9(5). REVIEW CHECKLIST

$2 Million Exemption and Ceiling Increase Required (continued)

____ Demonstrated that the site meets the emergency or consistency exemption requirements (section V).*

____ Described remaining actions (section VI).*

____ Summarized costs of the current and proposed ceilings (section VI).*

____ Provided a specific recommendation statement and documented approval of appropriate program managers (section X).*

Change in the Scope of Response Request:

____ Provided a specific statement of purpose (section I).*

____ Described previous actions and current problems (section II).*

____ Discussed any new threats to public health, welfare, or the environment as they relate to NCP criteria (section III).

____ Described remaining actions (section V).*

____ Described any ARARs that will be complied with as a result of the proposed change in work (section V).

____ Stated that costs will remain within the current project ceiling (section V).*

____ Provided a specific recommendation statement and documented approval of appropriate program managers (section IX).*

_____

* Denotes information required for all Action Memos. Other items should be discussed as appropriate, given site circumstances.

Approval and Concurrence Procedures

The required approval and concurrence procedures for Action Memos are determined by two factors:

- The type of action being requested (e.g., an initial removal action, 12-month exemption, $2 million exemption, or change in the scope of response)

- The unique circumstances for each removal (e.g., use of alternative technology, involvement of nationally significant or precedent-setting issues, use of the consistency exemption, invoicing of the OSC's $50,000 authority).

Exhibit 3 details approval and concurrence responsibilities at both the Regional and Headquarters levels.

Regions

The RA or the Division Director, in Regions where authority has been delegated according to Delegation 14-1-A, must approve the following removal actions by signing all final Action Memos: initial removals costing up to $2 million, 12-month exemption requests, ceiling increases up to $2 million, and changes in the scope of response for removals costing up to $2 million. In addition to RA approval, when the consistency exemption is used and the site in question is proposed for or listed on the NPL, the appropriate official in the Region's remedial program must concur in writing (9).

Procedures for obtaining the necessary approvals and concurrences from Regional personnel vary among Regions. OSCs should check with program managers to determine existing procedures for obtaining RA concurrence and coordinating with the remedial program (if necessary).

Headquarters

The AA, OSWER must approve all $2 million exemption requests and subsequent ceiling increases [8]. The AA, OSWER also determines whether or not the use of the consistency exemption to exceed the $2 million limit at non-NPL sites is appropriate on a case-by-case basis [9]. In addition to the AA, OSWER, OWPE and the Office of General Counsel (OGC) concur on $2 million exemption requests.[14] Exemption requests will not be approved if there has not been adequate enforcement effort to obtain responses from PRPs.

In addition to exemption requests, two other actions require Headquarters approval or concurrence. The Director, OERR must concur on nationally significant or precedent-setting removal actions at non-NPL sites. Exhibit 10 provides a sample of the concurrence memo that must accompany all Action Memos involving nationally significant or precedent-setting issues [14]. The Director, ERD must approve the use of innovative or emerging alternative technologies, or cases where the development status of a proposed technology is uncertain. Approval of alternative technologies may be required prior to preparing the Action Memo because treatability studies may be necessary in advance of implementing the response [18].

[14] OGC concurrence is not required for ceiling increase requests that do not involve a change in the scope of response.

Action Memos requiring Headquarters' approval should be sent to the appropriate Regional Coordinator in ERD at least three weeks before the requested action is (and after appropriate Regional signatures have been obtained). OSCs can contact their Regional Coordinator at 8-382-2188 during regular working hours for assistance with Action Memos.

The Regional Coordinator will obtain the necessary program concurrences and submit the Action Memo to the AA, OSWER for final approval. If additional Headquarters' assistance is needed, OSCs are encouraged to send final Action Memos to Regional Coordinators more than three weeks in advance in order to avoid lengthening Headquarters' processing time.

EXHIBIT 10. CONCURRENCE FOR NATIONALLY SIGNIFICANT OR PRECEDENT-SETTING REMOVALS

Subject: Request for Concurrence on Proposed Nationally Significant or Precedent-Setting Removal

From: Regional Administrator

To: Director
Office of Emergency and Remedial Response

The purpose of this memorandum is to request your concurrence on the proposed removal action at the _____ non-NPL site in [location]. Redelegation of Authority R-14-1-A gives you the authority to concur on nationally significant or precedent-setting removals at non-NPL sites.

The OSC has discussed this proposed removal with staff of the HQ Emergency Response Division. ERD has advised the OSC that this removal is considered nationally significant or precedent-setting because _____
_____
_____

The action memorandum is attached for your review. My approval awaits your concurrence.

Concur:

_____
Director, Office of Emergency and Remedial Response Date

According to the redelegation, authority to non-concur remains with the Assistant Administrator,
OSWER. If you choose not to concur on this action, please forward this memo to the Assistant
Administrator.

Non-Concur:

_____
Assistant Administrator for Solid Waste and Emergency Response Date

Concur:

_____
Assistant Administrator for Solid Waste and Emergency Response Date

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APPENDIX A. REFERENCES[15]

Guidance

[1] "Engineering Evaluation/Cost Analysis Guidance Outline," Memorandum from T.Fields to Superfund Branch Chiefs (March 30, 1988)

[2] "Guidance on Use and Enforcement of CERCLA Information Requests and Administrative Subpoenas" (August 25, 1988)

[3] "Interim Guidance on Notice Letters, Negotiations, and Information Exchange," Memorandum from J. Winston Porter to Regional Administrators (October 19, 1987)

[4] "New Method for Determination of Indirect Costs in Superfund Removal Project Ceilings," Comptroller Policy Announcement No. 87-15 (July 15, 1987)

[5] OSWER Dir. 9280.0-02B, "Policy on Floodplains and Wetlands Assessments for CERCLA Actions" (August 6, 1988)

[61 OSWER Dir. 9330.2-07, "Notification of Out-of-State Shipment of Superfund Site Wastes" (September 14, 1989)

[7] OSWER Dir. 9360.0-8, "Removal Actions at Methane Release Sites (Release of 'Naturally Occurring' Substances)" (January 23, 1986)

[8] OSWER Dir. 9360.0-12, Guidance on Implementation of the Revised Statutory Limits on Removal Actions" (April 6, 1987)

[9] OSWER Dir. 9360.0-12A, "Guidance on Implementation of the ‘Consistency’ Exemption for Removals" (June 12, 1989)[16]

[10] OSWER Dir. 9360.0-13, "Guidance on Implementation of the 'Contribute to Remedial Performance’ Provision" (April 6,1987)

[11] OSWER Dir. 9360.0-15, "The Role of Expedited Response Actions Under SARA" (April 21, 1987)

[12] OSWER Dir. 9360.0-16, "Interim Guidance for Conducting Federal-Lead Underground Storage Tank Corrective Actions" (June 4, 1987)

[13] OSWER Dir. 9360.0-18, "Removal Program Priorities" (March 31, 1988)

[14] OSWER Dir. 9360.0-19 (supplement), "Guidance on Non-NPL Removal Actions Involving Nationally Significant or Precedent-Setting Issues" (March 3, 1989)

[15] OSWER Dir.9360.1-0l, "Interim Final Guidance on Removal Action Level at Contaminated Drinking Water Sites" (October 6, 1987)

[15] Bracketed numbers appear throughout the text and correspond to the references listed in this appendix. These references may be consulted for additional information on specific topics affecting the preparation and content of Action Memos.

[16] Draft document.

[16] OSWER Dir. 9360.2-02, "Policy on Management of Post-Removal Site Control"[17]

[17] OSWER Dir. 9375.14-W, "Guidance for State-Lead Removal Actions" (July 10, 1987)

[18] OSWER Dir. 9380.2-1, "Administrative Guidance for Removal Program Use of Alternatives to Land Disposal" (August 1988)

[191 OSWER Dir. 9832.1, "Cost Recovery Actions Under CERCLA" (August 1983)

[20] OSWER Dir. 9832.13, "The Superfund Cost Recovery Strategy" (July 29, 1988)

[21] OSWER Dir. 9833.3A, "Interim Guidance on Administrative Records for Selection of CERCLA Response Actions" (March 1, 1989)

[22) OSWER Dir. 9834.11, "Revised Procedures for Implementing Off-Site Response Actions" (November 13, 1987)

[23] "Policy on Use of Institutional Controls at Hazardous Waste Sites," Memorandum from E. LaPointe to H. Longest et. al. (October 28, 1988)

[24) "Use of Removal Authority to Completely Clean Up NPL Sites," Memorandum from T. Fields to Regional Branch Chiefs (January 29, 1988)

Manuals

[25] CERCLIS Applications for the Removal Program Emergency Response Division, Office of Emergency and Remedial Response (October 1988)

[26] OSWER Dir. 9234.1-01 and -02, CERCLA Compliance With Other Laws Manual, Parts I and II, Publications 540/G-89/006 and 540/G-89/009 (August 1988 and 1989)[2]

[27] OSWER Dir. 9360.0-02B, Removal Cost Management Manual (April 1988)

[28] OSWER Dir. 9837.2, Enforcement Project Management Handbook (July 1989)

[29] Removal Cost Management System User's Guide, Version 3.2 (June 1989)

[30] Superfund Indirect Cost Manual for Cost Recovery Purposes, Office of the Comptroller, Office of Administration and Resources Management (March 1986; updated 1/5/87 and 12/17/87)

Statutes and Regulations

The Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 USC Sections 9601-9675

The National Oil and Hazardous Substances Pollution Contingency Plan, 55 FR 8666-8865 (March 8, 1990)

[17] Draft document.

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

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

Funding procedures

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

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

Financial procedures

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

Response documentation and financial close-out

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

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

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

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

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

Long Term Removals

Long term removals have administrative characteristics that require special treatment. If an IAG is involved, it should be unique to that case so that the case will not prevent the orderly closeout of an annual blanket IAG in a reasonable period of time. Lost or forgotten removals, especially when facilities are installed for removal, can generate unacceptable amounts of work when they are brought to the attention of the NPFC again, even if they do not involve very high levels of funding. If high levels of funding are involved, the financial surprise could be a serious problem.

Defined by Time & Money Thresholds, and Installed Facilities

These rules apply to any case that qualifies under one of the following criteria:

1) The OSC estimates that $100,000 or more will be spent after the first anniversary of the opening of the removal (issuance of the FPN);

2) The OSC estimates that the removal will continue past the second anniversary of the FPN, i.e., into the third year of removal;

3) Any case that involves an improvement to real property.

Initial Requirements

FINANCIAL PLAN

The OSC will submit a life cycle removal plan to NPFC containing all resource considerations relating to the removal project from its inception to completion, including disposal of all real and personal property procured for the removal. If improvements to real property are involved, the plan shall contain, at a minimum, a description of the removal system including components and system operation, initial setup costs, annual recurring costs, annual non-recurring costs, termination costs and other costs. The removal plan will list these cost categories by federal fiscal year.

SEPARATE IAG

If the removal funds are provided by the NPFC under an IAG, a long term removal can not be charged to a blanket IAG. The OSC must immediately notify NPFC so that the removal can be funded under a separate IAG. The initial amount provided in an IAG will normally be the amount needed for the first 12 months.

REAL PROPERTY -- ADVANCE PLANNING FOR DISPOSAL

If improvements, long term facilities, are constructed on real property, the OSC must document the improvements to support cost recovery and potential litigation and to facilitate disposal upon closure. The OSC must be prepared to defend the selection of removal technology chosen. This is not financial information per se, and need only be documented to the extent needed to assure that the current OSC or successors can successfully defend the government's interests in the event of litigation. When the time for disposal arrives, records should be available to

show purchase costs, accurate descriptions of structures and installed equipment, understandings or arrangements made in advance with any other parties, title holder to the property involved at the time the improvements were installed, and any other information needed to dispose of the type of improvement involved.

Subsequent Requirements

ANNUAL ADMINISTRATIVE CYCLE

At every twelve month anniversary of the removal project, the removal plan shall be reviewed and updated to show all actual costs to date and current best estimates of future costs, as well as changes in the nature of the spill or the technology being employed. This will include a separate summary of cost data since the last report. Based on this information, the OSC should request additional ceiling in the amount needed for the next 12 months and initiate an amendment to the IAG. The OSC should also prepare an interim financial summary and submit a billing package at this time.

REAL PROPERTY

When improvements to real property are involved, there are two choices regarding disposal and closure. One option is demolition with disposal of the refuse via a DRMO. The other option is to list the improvements (empty structure) and the land, if included, on an SF-120 with a cover letter to the NPFC Case Officer for disposal through GSA. The cover letter can recommend transfer of the building to a state or local government. Generally no one in the federal government will be interested in such sites and the building can be transferred in about 30 days. The only possible glitch may be the ownership of the land. These situations will be evaluated on a case by case basis. The removable property (machinery and equipment), can be treated in accordance with the NPFC personal property policy. Another option is to include that property along with the building on the SF-120. Note, however, that this would slow the disposal process as GSA would have to start by making the personal property available to the rest of the federal government.

NPFC Personal Property Policy

RECOMMENDED OPTION: use the NPFC personal property policy for disposal through a DRMO, and list the improvements, and real estate if any, on an SF-120 for disposal through GSA.

The NPFC's policy for acquisition and disposal of personal property is in Chapter 7 of the NPFC Technical Operating Procedures for RESOURCE DOCUMENTATION (included in Chapter 3 of this manual).

U.S. Department
of Transportation

United States
Coast Guard

Director
United States Coast Guard
National Pollution Funds Center

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7000
7 MAR 2001

From: Chief Financial Officer, National Pollution Funds Center
Chief, Office of Response, Marine Safety and Environmental Protection Directorate
To: Distribution

Subj: CERCLA MANAGEMENT AND SUPPORT FUNDING GUIDE

1. PURPOSE: This Guide contains Coast Guard standard operating procedures for use of and transactions involving CERCLA Management & Support funds.

2. AUTHORITY: The National Pollution Funds Center is responsible for the overall management of the CERCLA Management & Support account, and the Office of Response is the Program Manager for the Coast Guard's Marine Environmental Response Program. This program is the core user of the funds.

3. ACTION: All Coast Guard users of CERCLA funds should follow the rules and procedures in this Guide. Please distribute this Guide to your commands and units that receive CERCLA funding. Corrections and suggestions for improvements are welcome. Please forward them to your Cost Center Manager or the CERCLA Account Manager at NPFC.

D. W. Neily
By direction

D. G. WESTERHOLM
By direction

Encl: (1) CERCLA Management & Support Funding Guide

Distribution: (1) Director, National Pollution Funds Center
(2) Chief, Office of Response, Marine Safety and Environmental Protection Directorate
(3) Chief, Headquarters Command Center, Operations Policy Directorate
(4) Chief, Human Factors Division, Health and Safety Directorate
(5) Chief, Training Division, Marine Safety Schools, TC Yorktown

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Comprehensive Environmental Response, Compensation and Liability Act

(CERCLA)

Management & Support Funding Guide

National Pollution Funds Center
United States Coast Guard

March 2001

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TABLE OF CONTENTS

Page

1. BACKGROUND & PURPOSE 3-321
2. INCIDENT SPECIFIC & MANAGEMENT & SUPPORT SPECIFIC FUNDS 3-321
3. CERCLA FUND USE 3-322
4. INVENTORY & REPLACEMENT 3-322
5. ANNUAL BUDGETS 3-323
   - A. Budget Formulation 3-323
   - B. Budget Execution 3-323
   - C. Spend Down Rates 3-324
   - D. End of Year Spending Deadlines 3-324
   - E. Fall-Out Funding 3-325
6. ACCOUNTING PROCEDURES 3-325
   - A. Appropriation Limitation Code (LIM) Conflicts 3-325
   - B. Object Class 3-326
   - C. Large Unit financial System (LUFS) 3-326
   - D. Program Element Status Reports (PES Reports) 3-326
   - E. Change in Financial Plan (CIFP) 3-326
7. RECORD KEEPING & AUDITS 3-327
8. CERCLA PROPERTY MANAGEMENT 3-327
   - A. Property Records 3-328
   - B. Disposal 3-328
     - 1. Transfer 3-328
     - 2. Notification 3-329
     - 3. Disposal through DRMO or GSA 3-329
   - C. Standard Rates 3-329
   - D. Capitalized Property 3-330
9. QUARTERLY REPORTS 3-330
   - A. Reporting Dates 3-330
   - B. Report Form 3-330
   - C. Submit Corrections 3-331
   - D. Narrative Section of Report 3-332
10. OTHER END OF QUARTER & YEAR REQUIREMENTS 3-332
    - A. Validation of FAM Entries 3-332
    - B. Reconciliation of Accounting Records 3-332
    - C. Deobligations & Prior Year Transactions 3-332
11. DAFIS ACOUNTING DATA FOR CERCLA TRANSACTIONS 3-334
    - A. Construction of DAFIS Account Strings 3-334
    - B. Construction of DAFIS Document Control Numbers 3-335

Appendices

A– E ACCOUNTING DATA for USE IN ACCOUNT LINES & DCNs 3-336–343

F APPROVED TRAINING LIST & OTHER USES OF CERCLA FUNDS 3-344

G QUARTERLY REPORT 3-346

H TELEPHONE NUMBERS OF CERCLA MANAGERS 3-350

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SECTION 1. BACKGROUND and PURPOSE

Section 104 of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA, 42 USC 9604) became law on December 11, 1980 and authorizes the President to act "Whenever (A) any hazardous substance is released or there is a substantial threat of such a release into the environment, or (B) there is a release or substantial threat of release into the environment of any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare... ." To comply with the first Executive Order (E.O. 12316 dated August 14, 1981), the Coast Guard and the USEPA signed a Memorandum of Understanding (MOU) on January 4, 1982. Following the Superfund Amendments and Reauthorization Act of October 17, 1986, a new Executive Order (12580 dated January 23, 1987) continued delegation of authority and responsibility for response to hazardous substance incidents to the Administrator of the USEPA and the Secretary of the Department of Transportation. Effective May 27, 1988, the two agencies executed the Instrument of Redelegation that assigns all responsibility for remediation of waste sites to the EPA. The 1982 MOU was superseded by a new MOU, dated September 8, 1994, that describes the current funding coordination mechanism that provides the Coast Guard with access to funding from the Hazardous Substance Superfund, the trust fund established under CERCLA.

This Guide addresses CERCLA funds provided for support of the Coast Guard's hazardous substance removal capability. The funds are limited in application, and some procedures for use are different from standard Coast Guard Operational Expense funds. The Guide defines the correct applications and the required procedures. It is published by the CERCLA Account Manager (National Pollution Funds Center) and the Marine Environmental Program Manager (G-MOR).

SECTION 2. INCIDENT-SPECIFIC and MANAGEMENT & SUPPORT CERCLA FUNDS

The Coast Guard uses two kinds of CERCLA (also called Superfund) funds: Management and Support (M&S) funds, also called non-incident funds, and incident specific funds. Incident specific funds are used to respond to hazardous substance incidents in the Coastal Zone, including costs for contractors, and Strike Team operations. Guidance for use of incident specific CERCLA funds is in the National Pollution Funds Center Reference Guide and the National Contingency Plan.

The Coast Guard's CERCLA M&S funds are used for the functions, activities and equipment/property purchases needed to build or maintain the Coast Guard's capability to respond to hazardous substance incidents in the Coastal Zone. This includes training, response equipment and its maintenance, hazardous substance spill drills and exercises, NRT/RRT meetings and support costs, medical support, and National Response Center communications capability. In addition, the National Contingency Plan (40 CFR 300) categorizes the Coast Guard National Strike Force (NSF) as a Special Force, a national asset, available to assist any OSC in either the coastal or Inland Zone. CERCLA M&S funds are used to build NSF capability to respond to releases of hazardous substances.

There are five cost centers responsible for these funds: Commandant (G-MOR), Commandant (G-WKS), TRACEN Yorktown, the National Response Center (G-OPF), and the National Pollution Funds Center (NPFC). G-MOR coordinates the use of CERCLA funds by the National Strike Force (the NSF consists of the Atlantic, Pacific and Gulf Strike Teams and the National Strike Force Coordination Center), Coast Guard districts and field units. In addition to the discretionary use of these funds, a number of Coast Guard billets/positions are designated as reimbursable and are paid from Superfund.

All funding from the Superfund for all Federal Agencies passes through EPA. The Coast Guard submits budget requests to EPA two years in advance for inclusion in EPA's submission to OMB and then the Congress. The amount appropriated by Congress is included in EPA's budget and they convey it to the coast Guard in an IAG. This budget process is the only way the Coast Guard receives CERCLA M&S funding.

Each fiscal year, an Interagency Agreement (IAG) transfers the funds from the EPA to the Coast Guard. Based on the amount of funding transferred in the IAG, the Coast Guard establishes the AFC-88 reimbursable accounts and bills EPA for reimbursement of expenditures against the accounts.

SECTION 3. CERCLA FUND USE

CERCLA M&S funds may be used only for support of the Coast Guard's hazardous substance response capability. It is important to note that the DOT Inspector General conducts audits of the use of CERCLA funds. Training is a common use, but a training course that addresses oil spills in its title demands justification and is probably not appropriate for these funds. DOT auditors have challenged the use of CERCLA funds to purchase an item for general use at a unit. The most easily justified procurement is for an item or service that is used exclusively for hazardous substance response capability. More difficult, but still possible, is a procurement that is essential for the hazardous substance response mission, with occasional additional use for other purposes. An item intended to support multiple purposes or programs should be purchased with funds from sources appropriate to each of the purposes or programs. For general use items, this would mean Coast Guard AFC-30 funds in addition to the CERCLA funds. Exclusive use of CERCLA funds may be considered only if the other uses are incidental and incur no additional CERCLA costs, and CERCLA activities always have priority. Prudent judgment is required in this case.

APPENDIX F contains the list of approved training and examples of activities, materials, and equipment that have been deemed acceptable uses of CERCLA funds at the field level. This is not an exhaustive list.

SECTION 4. INVENTORY & REPLACEMENT

The majority of CERCLA property and equipment is held in the National Strike Force haz-chem response inventory, which is used for both training and incident response. When equipment from the inventory is consumed or ruined during a CERCLA response, the full cost of replacing the equipment is charged to the CERCLA incident account rather than the M&S account.

The M&S budget shall only fund the following equipment purchases:

- Equipment consumed during training;
- New items added to the inventory, and;
- Other property needed to support haz-chem response capability but not bought for a specific response.

SECTION 5. ANNUAL BUDGETS

There are annual formulation and execution cycles for the CERCLA budget which are part of the annual federal budget process, but they do not follow the Coast Guard budget process. All CERCLA funds used by Federal agencies are obtained through the Environmental Protection Agency's budget, and all Coast Guard CERCLA budget activity is conducted through EPA.

NPFC and the primary cost center managers use a Budget Model (think of it as a standardized budget plan) to manage the budgeting of these funds. First, it is used to estimate the funding we will need in two years (FY+2); this is input for the budget request that we present to EPA two years in advance of the budget year (formulation). Second, it is used to distribute the available funds in the beginning of each fiscal year following EPA's confirmation of the exact amount we get from the Superfund budget that they get from the Congress (execution).

It is important for Coast Guard CERCLA fund managers at all levels to understand the Budget Model and use it carefully. NPFC needs a solid basis for estimating and justifying the FY+2 budget request. Cost Center managers need to plan for the things that the Model will fund and the things not included in the Model, both in FY+2 and in the beginning of each new FY. We must work with the Budget Model twice a year.

A. Budget Formulation

In the spring, the input estimates for the FY+2 budget request must be constructed. To some extent, this is really a validation that the Budget Model accurately describes the way we expect to conduct business in two years. NPFC and the primary cost center managers build the FY+2 budget request on this input. NPFC partners with G-MOR to prepare the final document for presentation to EPA management. The date for submission to EPA can be as early as mid-May or as late as the second week in July. If the FY+2 formulation is accurate and EPA is successful in obtaining funds, the total funding will be sufficient for the total need.

B. Budget Execution

Prior to October 1, the beginning of the FY, NPFC works with the primary cost center managers to develop a spend plan that is fair to all users and maximizes the benefit of the CERCLA funds to the Coast Guard. This requires the users to review the Budget Model again and provide specific data for the coming year. This is not a repetition of the FY+2 formulation process, because execution both allows and requires the application of better knowledge of the specific conditions in each unit for the approaching fiscal year. For instance, specific personnel

onboard and expected rotations should be known, and this allows exact training needs to be identified. Near the beginning of the fiscal year, EPA notifies the Coast Guard of the amount of funding in the budget from Congress. If total funding is less than the need, the Model provides a rational way to optimize the benefit of the available funds with minimum damage to individual units and the Program.

C. Spend Down Rates

CERCLA funds must be managed with the same discipline that applies to OE funds (AFC-30, etc) and excessive spending at the end of the fiscal year indicates a lack of discipline. The annual funding letter specifies the Spend Down Rates for the year, and the procedures are similar to the OE procedures. Funds must be obligated in DAFIS by the specified dates, or the CERCLA Account Manager in NPFC will rescind unobligated differences. For planning purposes, assume that 45% of your budget must be obligated by the end of the second quarter (31 March) and 70% by the end of the third quarter (30 June). Final rates will be in the budget letter at the beginning of each fiscal year. To assure that the Account Manager does not rescind any funds, check your PES reports periodically to verify that transactions in LUFS have communicated correctly with DAFIS. If DAFIS does not reflect all of the valid transactions in your LUFS system or if there are other reasons to delay obligation of funds, send correspondence (e-mail is acceptable) to the Account Manager in NPFC requesting an extension. Field units should send a copy to the appropriate Cost Center Manager (G-MOR or G-WKS).

D. End of Year Spending Deadline

On the 1st of September, the Account Manager rescinds all unobligated balances in DAFIS. Verify that all of your obligations in LUFS are recorded in DAFIS. If DAFIS does not contain all of your transactions, send correspondence to the Account Manager. Field units should send a copy to the appropriate Cost Center Manager (G-MOR or G-WKS). It is very important to verify that all LUFS transactions are recorded in DAFIS. Obligations that hit DAFIS late will cause a deficiency in the CERCLA account, and those responsible will have to provide an alternative source to fund the deficiency. If you are certain that you have obligated funds and that the obligation will be executed but the obligation is not recorded in DAFIS, send correspondence to the CERCLA Account Manager in NPFC prior to 1 September. Field units should send a copy to the appropriate Cost Center Manager (G-MOR or G-WKS).

If you have plans to obligate CERCLA funds in September and have the funds in your budget, send a September spending plan that details and justifies the use of CERCLA funds in September to the CERCLA Account Manager in NPFC no later than 15 August. Field units, send correspondence to your Cost Center Manager. September spending must be guaranteed to go to completion. You may not retain funds for contingencies. If you have serious contingencies to consider, include them in your September spending plan or a fallout request (see below).

E. Fall-Out Funding

In August, Cost Center Managers should consolidate their lists of unfunded or unexpected needs and forward them to the Account Manager for possible fall out funding. If the Account Manager can identify unobligated funds after the 1st of September, requests for the use of those funds will be prioritized and funds will be distributed. Do not request fall out funds if you are not certain the funds can be obligated before the end of the fiscal year.

SECTION 6. ACCOUNTING PROCEDURES

A. Appropriation Limitation Code (LIM) Conflicts

DAFIS has limitations that can affect the way some Cost Center managers have to manage account lines. When two different units (or users) have CERCLA account lines with the same LIM code (Appropriation Limitation Code), there can be conflicts in document numbering, even if they use different Cost Center Codes (usually the unit's OPFAC number). If two transactions, one from each unit, have the same Document Control Number (DCN), the second transaction entered into DAFIS (not LUFS – DAFIS is where the transaction information goes after transmission by LUFS) will fail.

To prevent this, account line managers (district CERCLA managers and others who have a CERCLA budget and a unique CERCLA account line) should assure that their units or spenders use unique Document Control Numbers. This is not a problem across district lines, because each district has its own LIM code which makes the account lines different, and the Procurement Site Codes in the DCNs are different for each district. One possibility for districts is a process whereby each MSO or spender is assigned a unique sequence of document numbers (logbook numbers): i.e., the district office gets 1-99, MSO A gets 100-199, MSO B gets 200-299, etc.

B. Object Class

Use only the Object Class codes listed in Appendix "C" of this Guide. There are other valid Object Class codes in the accounting system, but they may not be appropriate uses of CERCLA M&S funds. Even this list of selected codes must be used with care. Availability of a code in Appendix C does not imply approval of such items in your budget if they would not otherwise be appropriate uses of CERCLA funds. If it is necessary to use a code that is not in Appendix "C," contact the CERCLA M&S Account Manager in NPFC.

Object Class codes are important because the Coast Guard's financial reports to EPA are sorted on Object Class. In addition, an Object Class code could indicate an inappropriate use of CERCLA funds and even a violation of law. For example, codes 2642 and 3110 (supplies and non-capitalized equipment) are for the Environmental Compliance and Restoration Program that addresses pollution caused by the Coast Guard or on Coast Guard-owned sites. CERCLA M&S funds may not be used for such internal agency cleanups.

C. Large Unit Financial System (LUFS)

All CERCLA transactions should be conducted through LUFS. All of the management and reconciliation tools in LUFS should be used as needed to assure the correct entry of all transactions, deobligation of unused balances, and identification and correction of erroneous transactions charged to your CERCLA account.

Sometimes LUFS support is not available in the office that manages CERCLA funds and it must be obtained from a different part of the unit. Proper management of CERCLA funds is not optional, even if it is difficult to obtain effective LUFS support. Contact the staff running LUFS and work out a support arrangement. If that does not work, use your chain of command and demand support. If that cannot be done, contact your cost center manager or the CERCLA manager in NPFC, because failure to properly manage these funds will result in a reduction or loss of funding.

D. Program Element Status (PES) Reports

Proper management of an account using LUFS NT requires reconciliation of the Program Element Status (PES) reports, which are downloaded weekly, against the transactions in your CERCLA account. The LUFS staff can assist you, but you must determine the status and validity of all transactions against your account. Only you know which transactions are valid. The best status report on reconciliation is the 5-line report. Absent a 5-line report, you cannot accurately describe the status of your CERCLA account. If PES reports are not available, contact Customer Service at FINCEN (757-523-6940). If the problem cannot be resolved that way, contact NPFC for assistance.

E. `Change in Financial Plan (CIFP)

Transactions that require a Change in Financial Plan are allowed only when they adhere strictly to the funds flow pattern below. When CERCLA funds are transferred by an incorrect CIFP out of AFC-88 into a different AFC, the accounting records show a reduction in the CERCLA funding available rather than an expenditure. This conceals the audit trail for those funds and prevents the reimbursement process from working. Absent reimbursement , Coast Guard OE funds must be charged and from a financial perspective the transaction ceases to be a CERCLA transaction.

Funds flow pattern for CERCLA CIFPs:

2/H/101/8nn/88/0/8n	(--)	this is your account line
2/H/101/899/80/0/SK	(+)	
2/H/101/399/75/0/SK	(--)	
2/H/101/1nn/30/0/prog. el.	(+)	this is the targeted account line

The CIFP must be routed for approval through the CERCLA account manager in NPFC and Ms. Loretta McRae in G-CBU.

CIFPs may be required when a CERCLA spender wants to procure equipment or services from a large contract that is funded from a single AFC-30 account or other non-CERCLA account. To use such contracts, it is necessary either to add money to the AFC-30 account that was originally obligated to establish the contract or to amend the contract to recognize an additional source of funds (contracting officers are usually unwilling to amend such contracts). Transferring funding from another AFC-30 account does not require a CIFP, which is the reason such contracts are not usually a problem. Plan ahead, and do not plan to use contracts that can only be funded from specific AFC-30 accounts.

SECTION 7. RECORD KEEPING AND AUDITS

There is a requirement in CERCLA for the Inspector General of each Department using CERCLA funds to conduct an annual audit of all transactions to assure proper administration and use. All users of CERCLA funds should act with full accountability just as for any of their official actions, but this audit requirement brings the accountability into better focus. The transactions must follow the established accounting protocols and the purpose of each transaction must be appropriate for CERCLA funds.

All users of these funds are required to keep records of each transaction and must be able to account for all transactions recorded against the accounting strings entrusted to their use. This responsibility begins with the five cost center managers (G-MOR, G-OPF, G-WKS, TRACEN Yorktown, and NPFC). In the case of G-MOR, there are NSF and district managers responsible for accounting strings assigned to the G-MOR cost center. Each district CERCLA funds manager (and each unit CERCLA funds manager if so directed by the district) is required to validate all transactions charged against the manager's CERCLA account line and make corrections if needed.

This audit accountability extends to the property and equipment purchased with CERCLA funds. The inventory of CERCLA equipment must be complete and correspond to the procurement records.

SECTION 8. CERCLA PROPERTY MANAGEMENT

The Coast Guard Property Management Manual, COMDTINST M4500.5, states in Chapter 1 that custodians have the responsibility to maintain "current custodial records" for property which they have signed for. This responsibility must be taken seriously. Property purchased with CERCLA funds is subject to the Coast Guard accountability requirements, but there are some unique features.

The Memorandum of Understanding (MOU) between the Coast Guard and EPA (titled "Procedures for United States Coast Guard Access to SUPERFUND, to Support Coast Guard Implementation of CERCLA") places two specific requirements on the Coast Guard's use of CERCLA funds to procure property:

- USCG must maintain an up-to-date inventory of CERCLA property, and
- USCG must consult with EPA prior to disposition of CERCLA property with an aggregate fair market value of $1000 or more to assure the disposition method properly reflects the interests of Superfund.

A. Property Records

The purchaser must enter all non-consumable property purchased with CERCLA funds and with a cost of $500 or more into the Coast Guard's Oracle Fixed Assets Management (FAM)-system.

The entry of CERCLA property into FAM requires two additional notations to flag the item as belonging to the CERCLA inventory. In the field titled "Item Name Code", the purchaser of the item must enter "**CERCL**." The notation is a truncation of CERCLA, because there are only 5 spaces in the field. In the field titled "Local Use", the purchaser must enter "**CERCL**." This is also a 5-character field.

Use the automated features in FAM and LUFS to access data for entry into FAM. The entry of the "CERCL" notation into the "INC" and "Local Use" fields is entirely manual as is the entry of the serial number of the item, which is ordinarily not available until delivery.

B. Disposal

Disposal of CERCLA property does not follow standard Coast Guard rules. Prior to disposal, the Coast Guard must notify EPA to assure they agree that the method of disposal reflects the interests of Superfund. In addition, CERCLA property with residual value cannot be given away or transferred to non-CERCLA use; it must be sold and the proceeds returned to Superfund.

Executive Order 12999 authorizes transfer of excess computers and related equipment to schools and non-profit organizations, but it does not apply to CERCLA funded property.

1. Transfer. When CERCLA property with useful life remaining is no longer needed where it is located, try to find an alternative CERCLA-related use within the Coast Guard. A transfer to another CERCLA user within the Coast Guard is not disposal. Use SF-1149 and assure that FAM is updated to show the correct location for the item.

A transfer of CERCLA property to a CERCLA user in another federal agency requires EPA approval first. The Coast Guard does not have the authority to transfer the property directly to a state or local entity for CERCLA use. This would be a grant and the funding agreement with EPA does not include authority for the Coast Guard to issue CERCLA grants.

A transfer to a non-CERCLA Coast Guard user is not allowed without payment to Superfund. Removal of the property from CERCLA use is disposal (from the CERCLA perspective), and the new Coast Guard user must pay the fair market value for the property. Prior to completion of such a transaction, NPFC has to notify EPA. Please contact the CERCLA account Manager in NPFC for further guidance in transferring the funds.

A transfer of CERCLA property to any other non-CERCLA-related party (federal, state, local or non-profit) is disposal and requires sale.

2. Notification. For property with an aggregate fair market value of $1000 or more, send correspondence to the CERCLA manager in NPFC(cf-2) describing the property and the proposed method of disposal. Include item description, model number, condition, and any other information needed to understand the item (such as age) so that EPA can consider alternative uses and disposal methods. Include proposals, if any, to transfer the property to another federal CERCLA user. The CERCLA manager will notify EPA. Form CG-5269 (Report of Survey) contains all key information and may be used in lieu of letter correspondence.

3. Disposal through DRMO or GSA. When no alternative CERCLA uses within the Coast Guard have been found and EPA has been notified and has concurred, transfer property with remaining value to the General Services Administration (GSA) or the Defense Reutilization and Marketing Office (DRMO) for sale. On the transfer form SF 120 or DD 1348-1, indicate that this is CERCLA property and the proceeds from the sale are to be deposited into US Treasury Account 20X8145.3 (Superfund receipts).

C. Standard Rates

When non-expendable equipment (able to be used more than once) is used for an incident response, a standard rate must be included in the documentation of costs for the incident. When an item in the inventory is replaced, review the standard rate to assure that it applies to the new equipment. Cost of the item or number of expected uses may have changed. When a new type of response equipment is added to the inventory, a standard rate must be created. Contact the Business Analysis Division (G-CFS-2) in the Directorate of Finance and Procurement in Headquarters. G-CFS-2 will need the following information to construct the rate:

- Full cost of the item (including any modifications)
- Residual value – estimated salvage (or trade-in) value when this item will be replaced
- Annual warehouse cost – based on annual rent plus O&M cost for the facility where the item is stored
- estimated equipment life in days of use
- Projected days of use per year
- Preventive maintenance cost per year (does not include repair or refurbishment due to use)

If these variables do not appear to apply to the item for which a rate is needed, consult with G-CFS-2 to determine the best way to proceed. Documentation of response cost involving the use of an item with a standard rate includes the standard rate times the number of standard rate units used, plus the following:

- Personnel costs for operating the equipment, if not recorded elsewhere
- Refurbishment and repair related to use
- Mobilization and demobilization costs
- Shipping cost
- Disposal costs, if any
- Consumables needed for the equipment, if any

D. Capitalized Property

The minimum threshold for capitalized property is $25,000. It is essential to select the correct Object Class for the accounting data when making a capital purchase. Note that the same item will have a different object class when cost exceeds $25,000. The additional management and record keeping requirements for capitalized property are automated, but the correct Object Class must be used for the automation to work.

SECTION 9. QUARTERLY REPORTS

The five cost center managers (G-MOR, G-OPF, G-WKS, TRACEN Yorktown, and NPFC) are required to report quarterly on progress in achieving the fiscal year's plan for these funds. Within the G-MOR cost center, the each District will submit a consolidated report that includes all district units, and the National Strike Force Coordination Center will submit a consolidated report that includes the three Strike Teams. All subordinate units with CERCLA M&S funds are required to submit quarterly reports to the command providing their CERCLA funds. Districts and the National Strike Force submit their reports to Commandant (G-MOR). G-MOR, G-OPF, G-WKS, and TRACEN Yorktown submit reports to NPFC.

A. Reporting Dates

Reports are due at the NPFC by the 21st of the month following the end of the quarter. The report consists of the following:

B. Report Form

An Excel form is used to record the routine statistical measures of activity and accomplishment (see Appendix G). The form captures the following data:

1. TIME MEASUREMENT. The measurement of time for training (for both instructor(s) and students) and other CERCLA activities serves three purposes:

a) The MOU and the annual IAG require "Documentation" for the Coast Guard's CERCLA reimbursed billets and positions. Such documentation does not naturally exist in the Coast Guard, an organization that does not use time cards. The time data in the Quarterly Reports is converted to a count of Full Time Equivalents (FTEs) (both billets and positions). The FTE number is used as surrogate documentation (justification) to satisfy the requirements of the MOU and the IAG. So, please provide comprehensive estimates of time spent on all CERCLA related business – use the space marked "Other CERCLA Activity" whenever necessary.

b) The Coast Guard Program Manager uses the data to understand training needs and workload.

c) The data provides a substantive set of measures to report to EPA, which helps the Coast Guard to compete for available funds in the Superfund budget and helps EPA justify funding that may be threatened in the administration or by congressional political processes.

2. TRAINING. Appendix F of this Guide shows the training considered most important by program managers. If you feel you must use the "Unlisted Course" line too much for unlisted courses that you consider valuable or necessary, please send correspondence to G-MOR, copy to NPFC, and provide identification of the course(s) plus justification for their importance. G-OPF, G-WKS and TRACEN Yorktown contact NPFC directly. This part of the report is intended to be useful for management in the Coast Guard and not just a recitation of numbers in a report. Please be proactive in keeping the list of courses relevant.

3. Individual units and districts do NOT report training figures for members attending PODC and MSPOC. TRACEN Yorktown reports these figures.

4. In addition to the actual training hours, TRACEN Yorktown (and any other unit offering training) should include staff-hours for class/exercise setup, maintenance of publications and equipment, training of staff, and administration.

5. The National Response Center (G-OPF) should include the number of CERCLA and non-CERCLA discharge reports processed, and the number of CERCLA-related FOIA inquiries.

C. Submit Corrections

In the 2nd, 3rd and 4th quarters please include a separate form with adjustments for the prior quarter(s), if you discover that adjustments are needed. Care should be taken to assure that all reports are as accurate as possible.

D. Narrative Section of Report

Attach additional page(s) to the form containing a narrative description of the following (for an example, see Appendix G):

1. A summary of any significant CERCLA events including but not limited to chemical responses, chemical training, chemical exercises and meetings.

2. Suggestions for improving business practices. If problems are identified, recommend solution(s).

This is a very important part of the report. The narrative record is the only consistent record available to the managers in HQ and NPFC describing events and activities. Such descriptions carry weight in management choices within the Coast Guard and in the management dialogue with EPA.

SECTION 10. OTHER END OF QUARTER & END OF YEAR REQUIREMENTS

The MOU requires the Quarterly Reports to include an inventory of CERCLA property acquired year to date and an accounting of obligations sorted by EPA specified budget categories. NPFC will provide these parts of the quarterly reports, but the users must assure that the records in the property and accounting systems are completely accurate.

A. Validation of FAM Entries

It is the responsibility of the users to assure that all non-consumable CERCLA property is recorded in **FAM** with "CERCL" in the Item Name Code and Local Use fields no later than the end of the quarter. Relocations and deletions of property must also be entered. Cost center managers and sub-managers are encouraged to require their units to provide reports designed to assure compliance with these requirements.

B. Reconciliation of Accounts

Similarly, all users must review, validate and correct ALL transactions charged to their respective accounts no later than the end of the quarter. Use of the reconciliation tools in LUFS can simplify this process. Cost center managers and sub-managers are encouraged to require their units to provide reports designed to assure compliance with this requirement. If necessary, the NPFC can be contacted to obtain a summary of DAFIS activity under a particular account.

C. Deobligations & Prior Year Transactions

The last step in any transaction is to reconcile the data in the accounting system (LUFS). Specifically, as soon as a transaction is complete and the final expenditure is available in LUFS, the CERCLA manager responsible for the account and the transaction must verify that no obligated balance (also called a UDO or UnDelivered Order) remains in the accounting system. Quarterly and annually, the manager should review all of the open obligations in the account.

Any obligation that is not needed for further (possible) expenditures must be reduced to zero. This is called a deobligation. A balance remaining in a contract obligation or purchase order (document type 24 and 23) is normally eliminated by amending the contract or purchase order down to the exact value of the total paid on the invoice(s). Failure to do this prevents your unit or any other unit from spending those balances.

Each manager is responsible for managing all transactions against his/her CERCLA account line, <u>including prior fiscal years</u>. Particular attention should be devoted to prior year UDOs in the account. It may not be possible to close a prior year account if a UDO must remain open for that year. It is entirely valid to keep an obligation open for years, but the manager must be able to identify and defend any prior fiscal year obligations remaining open in his/her account.

SECTION 11. DAFIS ACCOUNTING DATA FOR CERCLA TRANSACTIONS

A. Construction of DAFIS Account Lines

FORMAT: X - X - XXX - XXX - XX - X - XXXXXX - XXXXX - XXXX
(1) (2) (3) (4) (5) (6) (7) (8) (9)

(1)	Agency	1-digit	2 = Coast Guard
(2)	District/Region	1-digit	Always = H for CERCLA Mgt. & Support
(3)	Appropriation	3-digit	Position #1 = Last digit of current FY Position #2 & 3 = 01 (indicates operating expense, i.e. OE Appropriation)
(4)	Appropriation Limitation Code (LIM Code)	3-digit	Position #1 = 8 (reimbursable account) Position #2 & #3 = ATU for authorized spending Unit **(See Appendix "A")**
(5)	Allotment Fund Code (AFC)	2-digits	Always = 88
(6)	Allotment Level Indicator	1-digit	Always = 0 (This field is not used by CG .)
(7)	Program Element	2-digits	88, except as below: Medical = 87 NRC = 89 AST = 81 PST = 82 GST = 83 **(NOTE –** These distinctions are necessary for the Program Element Status (PES) Reports to be generated correctly.)
(8)	Cost Center	5-digits	The OPFAC# of the authorized spending unit **(See Appendix "B")**
(9)	Object Class	4-digits	(**See Appendix "C")**
SYSDATA Field:		5-digits	Hxxxx Reimbursable Agreement Number Position #1 = H Position #2-#5 = four-digit number assigned by NPFC and FINCEN for each account line (district or cost center) each year. (Enter this data in the System Data field in LUFS or write it in a text block on paper commitment and obligation documents.)

B. Construction of DAFIS Document Control Numbers

FORMAT: XX - XX - XX - X - X - XX – XXX - XXX
(1) (2) (3) (4) (5) (6) (7) (8)

(1)	Document Type	2-digits	DAFIS document type **(See Appendix "D")**
(2)	Fiscal Year	2-digits	xx = Last two digits of current Fiscal Year (i.e., the funding year).
(3)	Procurement Site Code	2 -digits	23 = CGHQ **(For others see Appendix "E")**
(4)	Fiscal Year	1-digit	x = last digit of the FY (usually the current fiscal year, but could be a prior year; for contracts, use FY of initial contract award.)
(5)	Region/District	1-digit	H (CERCLA Mgt. & Support always uses H)
(6)	Program Element	2-digits	88 (CERCLA Mgt. & Support always uses 88 in the Program Element component of the Document Control Number.)
(7)	Document Sequence unit Number	3-digits	xxx = Unique sequential number assigned by preparing the document
(8)	Suffix	3-digits	Usually 000 (001 could be the 1st amendment to a contract or travel order)

APPENDIX "A"
ADMINISTRATIVE TARGET UNITS (ATUs)

CCGD1	Boston, MA	01
CCGD5	Portsmouth, VA	05
CCGD7	Miami, FL	07
CCGD8	New Orleans, LA	08
CCGD9	Cleveland, OH	09
CCGD11	Alameda, CA	11
CCGD13	Seattle, WA	13
CCGD14	Honolulu, HI	14
CCGD17	Juneau, AK	17

MLC - Atlantic, Portsmouth, VA	32
MLC - Pacific, Alameda, CA	33
CG Finance Center, Chesapeake, VA	36
National Strike Force	58
NPFC, Arlington, VA	72
TRACEN Yorktown	75
CG Headquarters	99
Marine Safety Center	39

APPENDIX "B"
COST CENTER CODES (OPFAC Numbers)

DISTRICT OFFICES:		OTHER	
Boston (1)	**71101**	**G-MOR**	**70586**
Portsmouth (5)	**71105**	**G-WKS**	**70456**
Miami (7)	**71107**	**MLC - LANT**	**75130**
New Orleans (8)	71108	MLC - PAC	75160
Cleveland (9)	71109	NPFC	74100
Alameda (11)	71111	NRC	70529
Seattle (13)	71113	TRACEN Yorktown	63100
Honolulu (14)	71114	Marine Safety Center	70411
Juneau (17)	71117		

MSOs and Activities (Alphabetically):			
Anchorage	**33280**	**Morgan City**	**33293**
Baltimore	73133	New Orleans	33292
Boston	33200	New York	73136
Buffalo	33254	Paducah	33205
Charleston	33233	Philadelphia	33211
Chicago	33247	Pittsburgh	33206
Cleveland	33253	Port Arthur	33241
Corpus Christi	33240	Portland, ME	33285
Detroit	33250	Portland, OR	33270
Duluth	33287	Providence	33286
Galveston	33265	Puget Sound	33271
Grand Haven	36257	San Diego	33255
Guam	33296	San Francisco Bay	33260
Hampton Roads	33220	San Juan	33239
Honolulu	33275	Sault Ste Marie	36259
Houston	33244	Savannah	33232
Huntington, WV	33207	St. Louis	33201
Jacksonville	33231	Tampa	33230
Juneau	33281	Toledo	33252
Los Angeles/Long Beach	33261	Valdez	33283
Long Island Sound	36229	Wilmington	33225
Louisville	33209		
Memphis	33204	NSFCC	34359
Miami	**33215**	**Atlantic Strike Team**	**34361**
Milwaukee	33248G	Gulf Strike Team	34340
Mobile	**33214**	**Pacific Strike Team**	**34360**

APPENDIX "C"
LIST OF SELECTED OBJECT CLASS CODES
(See FINCEN SOP Appendix F for complete descriptions)

Object Class	Description
1133	Intermittent Appointments
1151	Overtime
1152	Holiday Pay
1153	Sunday Pay
1154	Night Pay
117J	TAD/TEMAC/SADT Pay, Commissioned & Warrant Officers
117K	TAD/TEMAC/SADT Pay, Enlisted
2100	US Travel – Site Visit – Operational Travel
2101	US Travel – Information Meeting
2103	US Travel – Conference Attendance including speech, presentation, or participation
2109	US Travel – Other/Program support
2110	Overseas Travel – Site Visit – Operational Travel
2113	Overseas Travel – Conference Attendance (inc. AK, HI, Caribbean & Pac. Islands)
2119	Overseas Travel – Other/Program Support
2133	Civilian Training Travel – Gov't & non-Gov't., short term & long term
2150	Officer Training Travel
2151	Enlisted Training Travel
2171	Lease of Motor Vehicles, Government (paid to other Gov't Agencies)
2172	Lease of Motor Vehicles, Commercial
2199	Late Payment Interest Penalty—Travel
2201	Mail & Messenger Services
2204	Rental – Trucks & Other Equipment
2210	Transportation of ADP equipment and software
2211	Transportation of Gov't Property
2223	Transportation of Things – Other
2299	Late Payment Interest—Transportation
2323	Office Space – Regions, Field Offices – Other Than GSA (rental of office space)
2326	Rental of building or space – not GSA
233A	Other Communication Services (not classified elsewhere)
233B	Rental – ADP Equipment
233C	Rental – ADP Terminals & Other Peripherals
233E	Rental – Duplicating Equipment (includes copy and service charges)

Object Class	Description
233F	Rental – Telephone Equipment & Systems
233H	Rental – Other Equipment (not classified elsewhere)
233X	Telecommunications Services – Commercial
2334	Leased Radio Equipment
2335	Local telephone service & installation (not through DOT Working Capital Fund)
2338	Mail & Messenger Services – Postage (for costs not provided through the OST Working Capital Fund. Includes payments to the Postal Service & express mail service for letters. Excludes Parcel Post & express mail service for freight.)
2399	Late Payment Interest Penalty – Rent, Communications & Utilities
2402	Visuals & Graphics Services (includes design & layout of pubs, exhibits, illustrations, charts, awards, etc., not provided through OST Working Capital Fund)
2404	Hot Copy Services – in-house photocopying services not provided through the OST Working Capital Fund
2409	Printing & Reproduction
2411	Printing & Reproduction – Training (manuals, aids, curriculum materials, etc.)
2499	Late Payment Interest Penalty – Printing & Reproduction
2508	Audiovisual Services
251E	Consulting Service – Mgmt & Professional Support Services
251F	Consulting Service – studies, analyses & evaluations – policy, etc.
251G	Consulting Service – Engineering & Technical Service
252B	ADP Contract Support Services
252D	ADP Systems Analysis & Programming
2521	Contractual Services – DOD Agencies (includes DCAA charges)
2522	Contractual Services – Other Gov't Agencies (includes reimbursable agreements)
2523	Contractual Services – Other
2534	Maintenance & Repair – ADP Equipment
2537	Maintenance & Repair – Electronic Equipment
2538	Maintenance & Repair – Office Furniture & Equipment
2539	Maintenance & Repair – Operating Equipment—Technical
2540	Maintenance & Repair of structures, vehicles & equipment at shore units
2544	Maintenance & Repair—MER Pollution Equipment
255F	Technical Services—Other
2559	Training – Facilities (rental of conference rooms & related services)
256D	Training – Non-Gov't – All

Object Class	Description
256G	Training – Government – costs rel. to on-duty training provided by a Fed. agency
2561	Training – Officers
2562	Training – Enlisted
2563	Training – Other
2596	Other Services – Not Otherwise Classified
2599	Late Payment Interest Penalty – Other Services
2608	Automatic Data Processing (ADP) Supplies
2609	Automotive Lubricants, Maintenance & Supplies (general & special purpose vehicles including heavy equipment
2617	Supplies to repair & maintain electronic equipment
2643	Equipment Maintenance Materials, including tools & replacement items
2655	Laboratory, Scientific & Testing Supplies
2656	Marine Environmental Response (MER) Equipment – Supplies & Materials (spare parts, maintenance, etc,)
2660	Medical Supplies – Nonfederal, Noncontract Sources
2662	Office Supplies
2664	Periodicals, Newspapers, Pamphlets & documents
2668	Photographic Supplies
2669	Safety Supplies (safety devices & personnel protective equipment)
2674	Shore Units – Housekeeping
2675	Shore Units – Maintenance Supplies
2676	Shore Units – Supplies & Materials
2684	Telecommunications & Telephone Supplies
2687	Training – Training Materials
2696	Other Supplies, not otherwise classified
2697	Lost Discounts – Supplies
2699	Late Payment Interest Penalty – Supplies
3104	Audio Visual & Photographic Equipment – Noncapitalized
3105	Automatic Data Processing (ADP) Equipment – Noncapitalized
3111	Furniture & Office Equipment – Noncapitalized (includes filing & storage, copiers, calculators, etc)
3115	Machinery – Noncapitalized
3116	Marine Environmental Response (MER) Equipment—Noncapitalized (Purchase of containment, recovery, sensing, control, data reduction, and communication equipment primarily designed for the MER Program.)
3120	Operating & Technical Equipment – Noncapitalized (includes tools, portable & benchtop machinery, instruments, work stands, etc.)

Object Class	Description
3123	Safety Equipment – Noncapitalized
3125	Sensitive, Special Purpose Equipment – Noncapitalized. (Items considered sensitive including cameras, televisions, appliances, gauges, etc.)
3127	Telephone Equipment – Noncapitalized (includes modifications to existing systems and installation)
3128	Test Equipment – Noncapitalized (for measuring & calibrating other equipment)
3129	Training Equipment – Noncapitalized (training aids)
3130	Automatic Data Processing (ADP) Software -- Noncapitalized
3140	Other Equipment – Noncapitalized, not otherwise classified
3146	Automatic Data Processing (ADP) Equipment – Capitalized (over $25,000)
3147	Automatic Data Processing (ADP) Software—Capitalized (over $25,000)
3148	Books for Permanent Collections (administrative, technical, legal, medical)
3154	Furniture & Office Equipment – Capitalized (over $25,000)
3159	Marine Environmental Response Equipment (MER) Equipment – Capitalized (over $25,000)
3169	Telephone Equipment – Capitalized (equipment, installation, expansion & modification—over $25,000)
3178	Other Equipment – Capitalized, not otherwise classified (over $25,000)
3197	Lost Discounts – Equipment
3199	Late Payment Interest Penalty – Equipment
3202	Buildings – Additions, Improvements that significantly extend useful life or increase capacity for service (excludes repairs, modifications, relocations, replacements)
3299	Late Payment Interest Penalty – Land & Structures

APPENDIX "D"
DAFIS DOCUMENT TYPES

01 - Appropriation	42 - Janitorial contracts
02 - Apportionment	43 - Other fixed contracts
03 - Non expenditure transaction	44 - Utility / electric
04 - Allotment (Funds)	45 - Utility / telephone
05 - Allotment (Contract Liquidation Authority)	46 - Utility / water
06 - HQ program plan	47 - Gasoline & Oil
07 - Regional plans	48 - SIBAC - Recurring
08 - Project Authorization	49 - Utility/Natural Gas
09 - Activity plan	51 - Reimbursement Agreement - Direct Charge (MIPRs)
11 - TAD/TDY travel orders	52 - Reimbursement Agreement - Overhead, Operations
12 - PCS travel orders	53 - Reimbursement Agreement - Overhead, GF
13 - Reserve travel orders	55 - Accounts receivable
14 - GTR (PCS & TAD)	56 - Other accounts receivable
15 - GBL (PCS & TAD)	61 - Imprest Funds / SF 1129
16 - Blanket GTRs	62 - Canceled checks / SF 1098
19 - Miscellaneous	63 - Disbursement-non-federal Obligations
20 - Cash	64 - Collections - confirmation
21 - Procurement requests (Brown Sheets)	65 - Disbursements - confirmation
22 - Purchase order-Invoice-Voucher (SF-44)	66 - Collections
23 - Purchase order	68 - Collections - debit voucher
24 - Contracts	69 - Disbursement/Collections Adj.
26 - PO Dining facility	70 - Payroll collection
27 - Auxiliary orders	71 - Payroll gross costs
28 - Interagency agreements	72 - Payroll - schedule of disbursement (Reserve Pay)
30 - Training	73 - Supplementary payments & adjustments
31 - Work order-utilities-GSA	74 - IOTV - costs
32 – IMPAC / credit card	75 - IOTV - obligations & costs
33 - Purchases/miscellaneous	77 - IOTV - other assets
34 - GSA Job Order	78 - Adjustment entries
35 - Fedstrip	79 - Closing entries
36 - GSA stores	81 - Labor distribution reports
37 - Printing & medical payments	82 - Depreciation & interest - AMA
38 - Blanket purchase order	83 - Cost estimates
39 - SIBAC/DAFIS control group	87 - Discounts lost
40 - Fixed leases	88 - Discounts lost - cost effective
41 - Rental contracts	89 - Interest/penalty paid

APPENDIX "E"

PROCUREMENT SITE CODES

23	CG HQ
24	CCGD1
27	CCGD5
28	CCGD7
29	CCGD8
30	CCGD9
31	CCGD11
33	CCGD13
34	CCGD14
35	CCGD17
90	FINCEN
84	MLCLANT
89	MLCPAC
46	Marine Safety Center (through NMC/NPFC)
46	NPFC (also 23 when large purchases are done in CGHQ)
41	TRACEN Yorktown
26	NSFCC
26	Atlantic Strike Team
26	Gulf Strike Team
26	Pacific Strike Team

APPENDIX "F"

APPROVED TRAINING LIST & OTHER USES OF CERCLA FUNDS

Training for District and MSO Personnel

- Advanced Air Sampling – EPA
- Air surveillance – EPA
- Basic Chemistry

Chemical Information Systems

- Chemical Tanker Safety
- Chlorine Response
- CSTI Modules A&B (equivalent)
- HAZCAT Training – UCDAVIS
- Hazardous Chemical Identification
- Hazardous Material Incident Response Course (HMIR) - EPA
- HAZMAT Transportation
- HAZWOPER
- Incident Command System (ICS-100, 200, 300 & 400)
- Introduction to Groundwater Investigation
- Marine HAZMAT
- PODC/MSPOC (partial funding by CERCLA)
- Princeton Groundwater
- Removal Cost Management System – EPA
- Respiratory Protection – NIOSH

Risk Assessment

- Sampling for HAZMAT – EPA
- Spill Planning, Exercise and Response System (SPEARS) HAZMAT
- Tank Car Safety

Training for National Strike Force Personnel

- Asbestos Training
- All Manufacturer Courses on HAZMAT Response Equipment (MSA, Bauer, etc.)

Basic Air Monitoring *

- Chemical Tanker Safety
- Chemistry for the Non-Chemist
- Chemistry of Hazardous Materials
- Compressor training
- Confined Space Entry
- Designs for Air Impact Assessment *
- Emergency Medical Technician
- Emergency Medical Technician (re-qual)
- Fire Chemistry 1 & 2 --NFA
- Handling Radioactive Accidents by Emergency Personnel—REAC/TS
- HAZCAT training (UCDAVIS or equivalent)
- HAZMAT Incident Commander—TTC

- HMIR *
- Incident Command System (ICS-200, 300, 400 and Planning Section Workshop)
- Inland Response *

Instructor Training

- Marine Firefighting

OSC2 Training

OSC Crisis Management

Radiation Safety *

- Removal Cost Mgmt System *
- Respiratory Protection
- Risk Assessment *
- Risk Communications Course
- Safety and Occupational Health Coordinator
- SCBA Regulator Repair (high and low pressure systems)
- Shipyard Competent Person
- Tank Car Safety

Tank Car Specialist

- Tankerman/PIC Training (Dangerous Liquids)
  - Transportation of Hazardous Materials
  - Weapons of Mass Destruction **

** = EPA provided course*
***= WMD related or "to be developed" courses (may be funded from other sources)*

<u>Activities</u>

- RRT Meetings
- HAZMAT Exercises
- HAZMAT Conferences or Symposiums

<u>Equipment & Materials</u>

- EPA Standard Operating Safety Guides
- Eye Wash Solution
- HAZMAT detection instruments
- HAZMAT personnel protection equipment for responders
- HAZMAT or Chemical Safety Publications
- NIOSH Pocket Guides
- Threshold Limitation Values (TLV) Guides/Index

APPENDIX "G"
Quarterly Report

A. Description of Quarterly Report

The Quarterly Report consists of an Excel form to capture standard data and a free-form narrative section in a separate Microsoft Word document Examples of both follow this description.. P***lease submit both portions of the report via e-mail.***

Section 1, Training.

The following applies to Lines (1-a) and (1-b):

Given This applies primarily to TRACEN Yorktown and training by the NSF. It is prepared and presented by unit personnel. If your unit **hires** an instructor and you fill a room, including personnel from other units or organizations, you are still receiving training.

Received This applies to most training, with the exception of PODC and MSPOC. Personnel attending the resident pipeline training at TraCen Yorktown are reported by TraCen Yorktown.

No. of Persons Enter the total number of persons giving or receiving training. A member who attends (or teaches) two training courses is still only one member. If possible, do not report the same member again in a subsequent quarter of the same fiscal year. A member who both gives and receives training is counted once in each category. This is aimed at identifying the number of people in the Coast Guard's CERCLA training universe.

Total Days Enter the total number of days of training. If three members attend an 8 hour course, this counts as 3 days. Include partial days of training as needed. A half day or 4 hour course is counted as 0.5 day per person attending. Time spent drafting orders and travelling certainly counts, but is tallied on Line (2-j).

The following applies to Line (1-c).

Set Up & Admin applies primarily to TRACEN Yorktown and National Strike Force training, but unit training by a contract or OGA instructor can also require set-up and administrative time. The blanks under No. of Persons are marked "NA" because these are not people trained. Use Line (2-j) to capture the time for writing orders, travel, and other normal workload associated with training.

Section 2, Other Time Estimates.

Include CERCLA National Contingency Plan related activities by all Coast Guard personnel, not just those in reimbursed billets and positions. There are only Total Days blanks in Section 2 and the distinction between Given and Received does not apply. The 10 categories of CERCLA activities are intended to capture all CERCLA work done by the Coast Guard in building or maintaining the capability to respond to HAZSUB incidents. This measure is very important as it is used to calculate the total FTE employed by the Coast Guard for CERCLA work. The FTE data is used to justify the CERCLA reimbursed billets and positions in the Coast Guard. Be totally inclusive of all CERCLA NCP related activity except actual response. Note that it excludes everything related to HAZSUB releases by the Coast Guard (i.e., Environmental Compliance and Restoration).

Section 3, National Response Center.

This Section is for the specialized activities of the NRC. All other units should ignore this Section.

Section 4, Narrative Description of CERCLA Accomplishments.

Follow the directions on the form. The Narrative can help CGHQ and NPFC stay in touch with CERCLA activity in the front line offices, as well as problems or opportunities you are aware of. It provides “ammunition” that NPFC and G-MOR need to defend Coast Guard requests for funding. There is no prescribed length for the Narrative. A couple of paragraphs to a couple of pages is probably reasonable. If there is nothing noteworthy to report for a quarter, please report that; you are not obligated to report trivia.

SURROGATE FOR QUATERLY REPORTS

(For detailed instructions, refer to the CERCLA Management & Support Funding Guide)

Unit / Activity _____

1. Number of Response Personnel _____

(Total personnel required to be trained)

2. Training

	Given		Received	
	No. of Persons	***Total Days***	***No. of Persons***	***Total Days***
a.) Listed Courses	_____	_____	_____	_____
(See Appendix F of CERCLA Guide for list of courses)				
b.) Unlisted courses		_____	_____	_____
(Please identify unlisted courses in Part 5, Narrative Description of Accomplishments)				
c.) Set Up & Admin		_____	NA	NA

3. Other Time Estimates

a.) Response	_____	_____	f.) Equipment Maint.	_____	_____
b.) Planning	_____	_____	g.) Property Mgmt.	_____	_____
c.) Conferences	_____	_____	h.) LEPC Support	_____	_____
d.) Meetings	_____	_____	I.) SERC Support	_____	_____
e.) Exercises	_____	_____	j.) Other CERCLA Activity	_____	_____

4. National Response Center *(To be completed by NRC only)*

	Reports Received	**Notifications**	**FOIA Responses**
CERCLA	_____	_____	_____
Other	_____	_____	_____

5. Narrative Description of CERCLA Accomplishments *(Attach on separate page or pages)*

Attach a narrative description of accomplishments, i.e. events or training that characterize the results obtained from the use of CERCLA non-incident funds. Noteworthy training or meetings are worth mentioning, particularly if they may be models for other units to follow. The degree of response preparedness at units is of special interest, as these funds are ultimately intended for capability building. Recommendations relating to CERCLA Management & Support may be included.

Signature _____ Date _____

B. Example Narrative Section of the Quarterly Report

Narrative Description of CERCLA Accomplishments
From: District 4 FY - xxxx Qtr - 2
Events:

On 17 February MSO Crested Butte responded to the Gehenna landfill where 17 drums of methyl-ethyl-chickenwire were discovered. Nine of the drums were leaking and the Gehenna elementary school had to be evacuated for a week while the drums were overpacked and removed. The four senior responders in the Port Ops division had recently completed HMIR training and the XO commented that the timing was fortunate. The drums posed a real danger to both the responders and the community nearby.

March 2-4, MSO Peapod Harbor collaborated with the training team from the Washington County Fire Department Hazmat Unit to conduct Hazwoper training for members of the Port Ops division and members of the Group Peapod Harbor boat crews. Several members of the city police department and the county Sheriff's department also attended. Participants and observers agreed that the quality of the training was excellent, and the cost was limited to consumables used in training. In addition to being cost effective, the interaction with other area responders is beneficial.

On March 17, the Region XX RRT met in Metropolis. In addition to ongoing business, a discussion of (*the hot issue*) took place and Captain Gotfour, the RRT XX co-chair, suggested a new approach to this problem. (*Describe the new approach.*) The plan was well received, but it will require several member agencies to consult with their legal staffs to assure the legality of their participation. More to follow on this subject.

Recommendation for improved business practice:

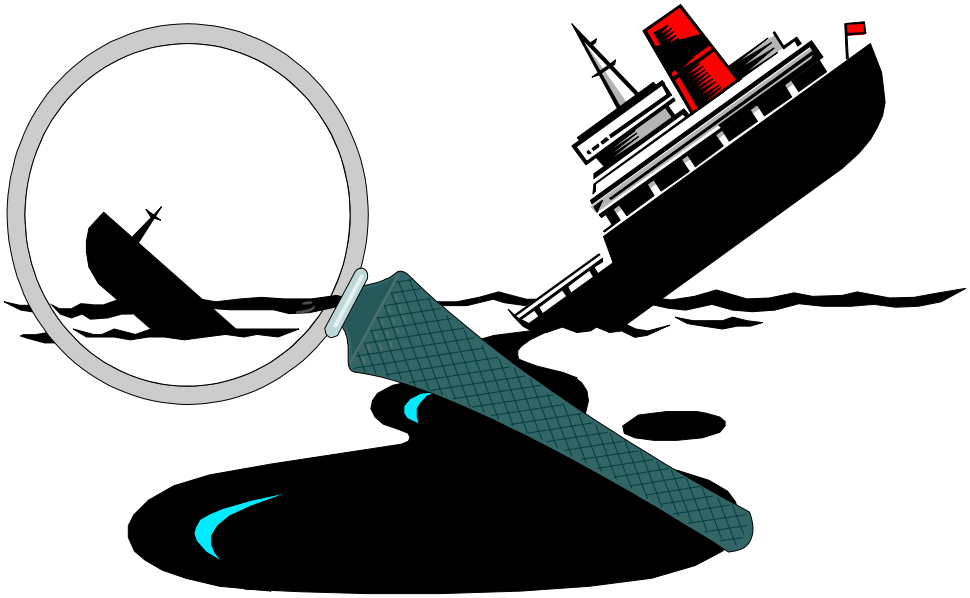
Portable computers procured with CERCLA funds in all District 4 units have required replacement of the hard drive. In addition to the cost, this disabled the Cameo capability at those units while the computers were being repaired. The district reprogrammed $nnnn from this year's CERCLA funds to purchase service contracts for all of these computers, and we expect to save money. The contract can also provide loaner computers under some conditions. We recommend that G-MOR investigate the possibility of a national contract, which should cost less per machine than contracting for each district.

APPENDIX "H"
Telephone Numbers of CERCLA Managers

G-OPF (National Response Center)	(202) 267-2184 (SK1)
Marine Safety Center	(202) 366-6482 (CDR)
G-WKS (Medical Support)	(202) 267-2969 (Civilian)
MLCLANT (IH)	(757) 628-4423 (Civilian)
MLCPAC (IH)	((510) 437-3591 (CDR)
TRACEN Yorktown	(757) 898-2335 (LT)
G-MOR (Program Manager, Response)	(202) 267-0439 (LT) (202) 267-0421 (CDR)
D-1	(617) 223-8587 (LCDR)
D-5	(757) 398-6620 (LT) (757) 398-6364 (Civilian)
D-7	(305) 536-6503 (Civilian) (305) 536-5539 (CPO)
D-8	(504) 589-3642 (LT) (504) 589-4339 (CPO)
D-9	(216) 902-6053 (Civilian) (216) 902-6054 (Civilian)
D-11	(510) 437-2958 (LT)
D-13	(206) 220-7222 (Civilian) (206) 220-7221 (CDR)
D-14	(808) 541-2118 (CDR) (808) 541-2118 (SK1)
D-17	(907) 463-2210 (CDR) (907) 463-2816 (Civilian)
NSFCC	(252) 331-6000 X3003 (CWO)
AST	(609) 724-0008 (CWO)
GST	(334) 441-5914 (CWO)
PST	(415) 883-3311 X212 (CWO)
NPFC	(703) 493-6811 (Civilian)

CHAPTER 4

Designation



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The material in this Chapter presents methods for designating sources, notifying responsible parties, and conducting investigations to identify sources and responsible parties under OPA 90. The material is divided into the following subchapters:

Subchapter	Contains Detailed Information About
TOPs for Designation of Source	• Guidance needed by FOSCs and SOSCs on designation and corresponding investigative requirements under OPA 90.

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National Pollution Funds Center

U.S. Department
of Transportation

**United States
Coast Guard**

NPFC INSTRUCTION M5890.3

Technical Operating Procedures for Designation of Source

under
The Oil Pollution Act of 1990

DRAFT - May 20, 1996

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U.S. Department
of Transportation

United States
Coast Guard

Director
United States Coast Guard
National Pollution Funds Center

4200 Wilson Blvd.
Suite 1000
Arlington, VA 22203
Staff Symbol: cm
Phone: (202) 493-6830

NPFCINST
M5890.3
24 Oct 96

NATIONAL POLLUTION FUNDS CENTER (NPFC) INSTRUCTION M5890.3

Subj: Technical Operating Procedures (TOPs) for Designation of Source under the Oil Pollution Act of 1990

Ref: (a) NPFC Technical Operating Procedures Series Resource Documentation TOPs (NPFCINST 16451-2) and State Access TOPs (NPFCINST 16451-1)

1. PURPOSE. The enclosed Manual has been developed to provide guidance on "designation of source", and the corresponding investigative requirements under the statute. This Manual is intended as internal guidance only, and is not intended to create any right or benefit, substantive or procedural, enforceable by law.

2. ACTION. Federal On-Scene Coordinators (FOSCs), State On-Scene Coordinator (SOCSs), and National Pollution Funds Center (NPFC) personnel shall be guided by this Instruction in conducting investigations to identify and designate the source of an oil discharge or the substantial threat of a discharge into the navigable water of the United States, and to subsequently notify associated responsible parties and guarantors.

3. DIRECTIVES AFFECTED. The procedures in this document are supported by the Cost Documentation TOPs and the State Access TOPs. The Cost Documentation TOPs serves as guidance to users operating as or in support of the FOSC. The State Access TOPs provides a mechanism for requesting funding by a State for the immediate removal of a discharge, or the mitigation or prevention of a discharge of oil.

4. CHANGES. The NPFC welcomes your comments regarding changes to this Manual. Please address your remarks to: Director (cm); National Pollution Funds Center (NPFC); U.S. Coast Guard; 4200 Wilson Blvd., Suite 1000; Arlington, Virginia 22203-1804. This document will be reprinted and redistributed, as necessary.

5. DISCUSSION. One of the fundamental objectives of OPA is to "make the polluter pay" for certain costs of oil spills up to established limits of liability and damages. The procedures outlined in this TOPs support this objective. In accordance with these procedures:

   a. The NPFC is responsible for the designation of source and notification of associated responsible parties and guarantors.

      (1) Coast Guard FOSCs have also been delegated this authority for use in rare circumstances as outlined in this TOPs.

(2) Environmental Protection Agency FOSCs have not been delegated this authority; however, they must still determine the source of oil pollution. When the source involves a vessel or facility, they should identify all potential responsible parties, and ascertain their intentions with respect to removing the oil or the threat of the discharge.

(3) All FOSCs should provide timely information to the NPFC to allow for designation and notification, or to confirm that these actions have already been taken.

DANIEL F. SHEEHAN

TABLE OF CONTENTS

NPFCINST M5890.3 4-7
Table of Contents and Appendices 4-9

CHAPTER 1 — INTRODUCTION AND BACKGROUND

A. General 4-11
B. Authorities and Responsibilities 4-11

CHAPTER 2 — INVESTIGATIVE CONSIDERATIONS

A. Objectives of the FOSC's Investigation/Fact Gathering 4-13
B. NPFC Case Office/Case Team 4-15

CHAPTER 3 — DESIGNATION OF SOURCE AND NOTIFICATION OF RP

A. General Procedures 4-17
B. Contents of Notification Letter 4-18
C. Categories of Costs or Damages for OPA 90 Claims 4-19
D. Criteria for Evaluating Possibilities of Claims 4-20

CHAPTER 4 — ADVERTISING REQUIREMENTS

A. General Procedures 4-23
B. Forms of Advertising 4-23
C. Content of Advertising 4-23
D. General Claims Processing Requirements 4-24

APPENDICES

1. Sample NPFC Notice of Designation with Advertising 4-25

2. Sample Coast Guard OSC Notice of Designation 4-29

3. Sample NPFC Notice of Designation without Advertising 4-31

4. Sample NPFC Notice to Guarantor 4-33

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CHAPTER 1 INTRODUCTION AND BACKGROUND

A. General: Responsible parties (RPs) for a vessel or a facility are liable for removal costs and damages, including interest thereon, resulting from their OPA incident (i.e., oil discharged into, or the substantial thereof to, U.S. surface waters including the Exclusive Economic Zone (EEZ) on or after 19 August 1990). RPs are also responsible for handling claims for such removal costs or damages; if they do not, then they are also liable for the costs incurred by the Fund in handling claims. To begin the claims process, OPA 1014, 33 USC 2714, provides that once an incident becomes known, the source or sources of a discharge or threat shall be designated where possible and appropriate. And, if the designated source is a vessel or a facility, the RP and the guarantor, if known, shall be immediately notified of the designation.

"Designation" is an OPA term of art used in connection with the initiation of the claims process and is more properly aimed at the advertisement of RP responsibility to potential claimants. It frequently overlaps with On Scene Coordinators'(OSCs) need to identify the potential RPs to ascertain their present intentions with respect to removing the oil or its threat. Typically the FOSC will issue administrative orders and letter of Federal Interest (LOFI) to assert the need for positive RP action. However, formal notification of designation, through the process set in a 1014(b) includes a five day period after receipt in which to deny the designation. This will likely not assist OSCs in determining what immediate action needs to be taken to remove the oil.

B. Authorities and Responsibilities.

1. Secretary of Department in which the Coast Guard is Operating. Executive Order 12777 delegated the functions vested in the President by section 1014 of OPA to the Secretary of Department in which the Coast Guard is operating (Department of Transportation).

2. Commandant of the Coast Guard. The Secretary of Transportation delegated those functions to the Commandant of the Coast Guard in 49 CFR Part 1.

3. Chief of the Office of Marine Safety, Security, and Environmental Protection. The Commandant of the Coast Guard redelegated those functions pertaining to designation of source and notification of responsible parties to the Chief of the Office of Marine Safety, Security, and Environmental Protection, and Coast Guard predesignated On-Scene Coordinators.

4. Director, National Pollution Funds Center. The Commandant of the Coast Guard redelegated those functions pertaining to advertising for claims under 1014 (b) to the Director, National Pollution Funds Center. The Chief of the Office of Marine Safety, Security, and Environmental Protection redelegated the functions pertaining to designation of source and notification of responsible parties and guarantors 1014(a) to the Director, National Pollution Funds Center jointly with Coast Guard predesignated On-Scene Coordinators.

5. Coast Guard On-Scene Coordinators. The Chief of the Office of Marine Safety, Security, and Environmental Protection redelegated the functions pertaining to designation of source and notification of responsible parties and guarantors to Coast Guard predesignated on-scene Coordinators jointly with the Director, National Pollution Funds Center.

6. Federal On-Scene Coordinators. The National Contingency Plan requires, "The OSC/Remedial Project Manager (RPM) shall, to the extent practicable, collect pertinent facts about the identification of potentially responsible parties; the nature, amount, and location of the discharged or released materials; the probable direction of travel of discharged or released materials; whether the discharge is a worst case discharge as discussed in section 300.324; the pathways to human and environmental exposure; the potential impact on human health, welfare, and safety and the environment; whether the discharge or release poses a substantial threat to the public health or welfare of the United States as discussed in section 300.322; the potential impact on natural resources and property which may be affected; priorities for protecting human health and welfare and the environment; and appropriate cost documentation."

CHAPTER 2 INVESTIGATIVE CONSIDERATIONS

A. Objectives of the FOSC's Investigation/Fact Gathering.

1. Identify the source of the discharge or substantial threat of discharge.
2. Confirm whether the substance discharged or threatened to be discharged is oil, as defined by OPA.
3. Identify the navigable water into which the oil was discharged or which is threatened by a discharge.
4. Establish the pathway from the source to the navigable water.
5. Determine the occurrence or series of occurrences which resulted in the discharge or substantial threat of discharge.
6. Fully identify the responsible party(ies): the owners and operators of the vessel or facility that was the source of the discharge, as defined in OPA section 1001. Strive to get as much timely information as possible including names, addresses, telephone/telex/fax numbers, resident agent(s) for service of process, those authorized to speak and act for the RP in this situation (particularly where the RP is an organization), how they can be contacted, their tax ID numbers, and the pertinent structure of the organization. Pertinent OPA definitions are:

"(26) 'owner or operator' means (A) in the case of a vessel, any person owning, operating, or chartering by demise, the vessel, and (B) in the case of an onshore facility, and an offshore facility, any person owning or operating such onshore facility or offshore facility, and (C) in the case of any abandoned offshore facility, the person who owned or operated such facility immediately prior to such abandonment;"

"(32) 'responsible party' means the following:

(A) VESSELS. — In the case of a vessel, any person owning, operating, or demise chartering the vessel.

(B) ONSHORE FACILITIES. — In the case of an onshore facility (other than a pipeline), any person owning or operating the facility, except a Federal agency, State, municipality, commission, or political subdivision of a State, or any interstate body, that as the owner transfers possession and right to use the property to another person by lease, assignment, or permit.

(C) OFFSHORE FACILITIES. — In the case of an offshore facility (other than a pipeline or a deepwater port licensed under the Deepwater Port Act of 1974 (33 U. *S.* C. 1501 et seq.)), the lessee or permittee of the area in which the facility is located or the holder of a right of use and easement granted under applicable State law or the Outer Continental Shelf Lands Act (43 U. S. C. 1301-1356) for the area in which the facility is located (if the holder is a different person than the lessee or permittee), except a Federal agency, State, municipality, commission, or political subdivision of a State, or any interstate body, that as owner transfers possession and right to use the property to another person by lease, assignment, or permit.

(D) DEEPWATER PORTS. — In the case of a deepwater port licensed under the Deepwater Port Act of 1974 (33 U. S. C. 1501-1524), the licensee.

(E) (E) PIPELINES. — In the case of a pipeline, any person owning or operating the pipeline."

7. Establish facts to support a determination as to whether the responsible party may have a defense to liability under OPA section 1003 (a). If an RP raises a potential defense or it appears to the FOSC that the OPA incident may involve a defense, the FOSC should contact the NPFC for further guidance. In no case should the FOSC (or other government personnel) make any statements about whether the defense is valid or not; that is a legal conclusion to be made at the appropriate time during the cost recovery/claims/civil penalty process by someone authorized to do so. OPA section 1003(a) states (emphasis added):

   "A responsible party is not liable for removal costs or damages under section 1002 if the responsible party establishes, by a preponderance of the evidence, that the discharge or substantial threat of a discharge of oil and the resulting damages or removal costs, respectively, were **caused solely by—**

   (1) an act of God;

   (2) an act of war;

   (3) an act or omission of a third party other than an employee or agent of the responsible party or a third party whose act or omission occurs in connection with any contractual relationship with the responsible party (except where the sole contractual arrangement arises in connection with carriage by a common carrier by rail), if the responsible party establishes, by a preponderance of the evidence, that the responsible party —

      (A) exercised due care with respect to the oil concerned, taking into consideration the characteristics of the oil and in light of all relevant facts and circumstances; and

      (B) took precautions against foreseeable acts or omissions of any such third party and the foreseeable consequences of those acts or omissions; or

   (4) any combination of paragraphs (1), (2), and (3)."

8. Determine whether exceptions to limits of liability may apply in accordance with OPA section 1004 (c):

   "(c) EXCEPTIONS. —

   (1) ACTS OF RESPONSIBLE PARTY. —Subsection (a) does not apply if the incident was proximately caused by—

      (A) gross negligence or willful misconduct of, or

      (B) the violation of an applicable Federal safety, construction, or operating regulation by, the responsible party, an agent or employee of the responsible party, or person acting pursuant to a contractual relationship with the responsible party.

(2) FAILURE OR REFUSAL OF RESPONSIBLE PARTY. — Subsection (a) does not apply if the responsible party fails or refuses —

(A) to report the incident as required by law and the responsible party knows or has reason to know of the incident;

(B) to provide all reasonable cooperation and assistance requested by a responsible official in connection with removal activities; or

(C) without sufficient cause, to comply with an order issued under subsection (c) or (e) of section 311 of the Federal Water Pollution Control Act (33 U. S. C. 1321), as amended by this Act, or the Intervention on the High Seas Act (33 U. S. C. 1471 et seq.).

(3) OCS FACILITY OR VESSEL. —Notwithstanding the limitations established under subsection (a) and the defenses of section 1003, all removal costs incurred by the United States Government or any State or local official or agency in connection with a discharge or substantial threat of discharge of oil from any Outer Continental Shelf facility or a vessel carrying oil as cargo from such a facility shall be borne by the owner or operator of such facility or vessel."

9. Evaluate the possibility of claims as outlined in the following chapter.

B. NPFC Case Officer/Case Team. OSCs are encouraged to contact the NPFC Case Officer for advice and assistance whenever questions on these investigative requirements arise.

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CHAPTER 3 DESIGNATION OF SOURCE AND NOTIFICATION OF RP

A. General Procedures.

1. Federal On-Scene Coordinators (and State On-Scene Coordinators using the OSLTF under OPA State Access).

   a. Conduct investigations, to the extent practicable, to identify the source of the discharge or substantial threat of discharge. FOSCs should promptly determine the source of the oil pollution, and where it involves a vessel or a facility, identify any potential RPs to ascertain their present intentions with respect to removing the oil or the threat of its discharge. In doing so, they should attempt to fully identify the potential RPs: names, addresses, telephone/telex/fax numbers, resident agents or agents for service of process, those authorized to speak and act for the RP in this situation (particularly where the RP is an organization) and how they can be contacted, their tax ID number, and information concerning RP organizational structures which could assist in this endeavor.

   b. Assess possibility for OPA claims. The OSC must determine whether third party claims for removal costs or damages due to the incident are possible. Criteria for determining the possibility of claims are listed in section *D Criteria for Evaluating Possibility of Claims* below. When the possibility of claims is unknown, the OSC should request that the NPFC issue a Notice of Designation. The NPFC should be advised of the potential for claims and provided with all identification information in every case.

   c. Advise/work with NPFC. If claims are reasonably possible due to the incident, the OSC must notify the NPFC either by phone or message of the identity of the source vessel or facility and the responsible party(ies). The notification must include the address and contact information for the responsible party(ies). The OSC must work with the NPFC case officer to select the appropriate means of advertising or direct notifications to reach potentially injured parties.

2. NPFC Case Team.

   a. Assess. The NPFC Case Team will also assess the possibility of claims based on their experience with similar incidents. If they determine that designation is appropriate, they may contact the OSC and request that the OSC provide source and responsible party information. Again, the OSC should advise the NPFC of the potential for claims and provided with all identification information in every case.

   b. Make Designation. The NPFC claims manager shall arrange for the formal designation and notification to the responsible parties and guarantors, if known. In those rare situations which require immediate or expedited designation, the OSC may make the formal designation and notification to the local representative of responsible party, but the OSC should coordinate that designation with the NPFC case officer. The FOSC's immediate concerns, however, will normally be better served with the use of administrative orders, thus leaving the formal notice of designation to the NPFC.

c. Accept denial/advertising. The designation should advise the responsible party that any denial must be made in writing within 5 days of receipt to the NPFC Claims Manager as indicated in the designation letter. If the OSC elects to receive the RP's denial, the OSC must then establish a process to ensure that any denial is received within the required time and that the NPFC Case Team is notified.

d. Monitor/Advertise for Fund or RP. The RP's failure to advertise as required is considered a denial of the designation and the NPFC will generally advertise on behalf of the Fund. If the RP fails to advertise as required, the NPFC may advertise on the RP's behalf.

3. Coast Guard On-Scene Coordinators.

a. Under unusual circumstances, such as high level of visibility or public concern, the Coast Guard OSC may designate the source and notify the responsible parties.

b. The actions should, to the extent possible, be coordinated with the NPFC to allow the NPFC to notify any guarantors, establish advertising requirements, and track the responsible parties actions.

c. The OSC shall as soon as possible notify the NPFC Case Team of the designation and provide copies of the notification documents.

d. OSCs are encouraged to contact the NPFC Case Team for advice and assistance as necessary. Typically, initial contact is with the case officer.

B. <u>Contents of notifying letter:</u>

1. The name and other unique identifying information of the vessel or facility designated as the source.

2. The location, date, and time of the incident.

3. The specific body(ies) of water affected or threatened.

4. Procedures to deny designation and requirement to deny in writing within 5 days after receipt of notification.

5. The name, address, phone and fax numbers of the federal official to be contacted for additional information or denial of designation.

6. Requirements for advertising for claims (or information that the NPFC will establish requirements for advertising through separate correspondence when the Coast Guard OSC issues the notification) as outlined in chapter 4 including that the NPFC will advertise on behalf of the RP if the RP fails to deny the designation and then does not comply with the advertising requirements.

7. The date of the designation and the date that the notification was issued.

C. Categories of costs or damages which may be the subject of claims under OPA.

1. OPA section 1002 (b), 33 USC 2702 (b), describes covered removal costs and damages.

"COVERED REMOVAL COSTS AND DAMAGES. —

(1) REMOVAL COSTS. — The removal costs referred to in subsection (a) are —

(A) all removal costs incurred by the United States, a State, or an Indian tribe under subsection (c), (d), (e), or (1) of section 311 of the Federal Water Pollution Control Act (33 U. S. C. 1321), as amended by this Act, under the Intervention on the High Seas Act (33 U. S. C. 1471 et seq.), or under State law; and

(B) any removal costs incurred by any person for acts taken by the person which are consistent with the National Contingency Plan.

(2) DAMAGES. — The damages referred to in subsection (a) are the following:

(A) NATURAL RESOURCES. — Damages for injury to, destruction of, loss of, or loss of use of, natural resources, including the reasonable costs of assessing the damage, which shall be recoverable by a United States trustee, a State trustee, an Indian tribe trustee, or a foreign trustee.

(B) REAL OR PERSONAL PROPERTY. — Damages for injury to, or economic losses resulting from destruction of, real or personal property. which shall be recoverable by a claimant who owns or leases that property.

(C) SUBSISTENCE USE. — Damages for loss of subsistence use of natural resources, which shall be recoverable by any claimant who so uses natural resources which have been injured, destroyed, or lost, without regard to the ownership or management of the resources.

(D) REVENUES. — Damages equal to the net loss of taxes, royalties, rents, fees, or net profit shares due to the injury, destruction, or loss of real property, personal property, or natural resources, which shall be recoverable by the Government of the United States, a State, or a political subdivision thereof.

(E) PROFITS AND EARNING CAPACITY. — Damages equal to the loss of profits or impairment of earning capacity due to the injury, destruction, or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant.

(F) PUBLIC SERVICES. — Damages for net costs of providing increased or additional public services during or after removal activities, including protection from fire, safety, or health hazards, caused by a discharge of oil, which shall be recoverable by a State, or a political subdivision of a State."

2. OPA section 1001, 33 USC 2701, defines "removal", "removal costs", "damages", and "natural resources" as follows:

   "remove" or "removal" means containment or removal of oil or a hazardous substance from water and shorelines or the taking of other actions as may be necessary to minimize or mitigate damage to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, and public and private property, shorelines, and beaches;

   "removal costs" means the costs of removal that are incurred after a discharge of oil has occurred or, in any case in which there is a substantial threat of a discharge of oil, the costs to prevent, minimize, or mitigate oil pollution from such an incident;

   "damages" means damages specified in section 1002(b) of this Act, and includes the cost of assessing these damages;

   "natural resources" includes land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the exclusive economic zone), any State or local government or Indian tribe, or any foreign government;

D. <u>Criteria for evaluating possibilities of claims</u>:

1. Removal costs (consistent with the NCP and under normal circumstances coordinated with the FOSC) may be the subject of OPA claims when incurred by:

   a. State or local agencies responded to the spill.

   b. Indian tribe responded to the spill.

   c. Federal agencies responded to the spill.
   Note that the FOSC should consider use of Pollution Removal Funding Authorizations (PRFAs) when other federal, state, or local agencies are conducting removal actions under the direction of the FOSC. Use of PRFAs establishes the scope of work and assures funding, and thus is preferred over the claims process. See the NPFC TOPs on Resource Documentation for PRFA procedures.

   d. Other persons conducted removal actions.

   f. The FOSC should determine the nature, amount, and location of the discharged oil; the probable direction of travel of the oil; and whether or not the spill was contained in determining **if other entities may incur removal costs** to remove oil from water, shorelines, or property.

2. Damages may be anticipated as a result of an oil spill depending on:

   a. Magnitude of the spill.

   b. Area of the spill and impact on:

      (1) Environmentally sensitive areas - obtain preliminary evaluation by Scientific Support Coordinator and/or cognizant federal, state, or Indian tribe trustee.

(2) Real or personal property - check impact on boats, docks, nets, beach, shoreline, marinas, etc.

(3) Areas of potential subsistence use - query local Fish and Wildlife or cognizant state representatives.

(4) Business or property generating governmental revenues - check with state or local officials concerning tax, royalty, or fee assessments.

(5) Business or private enterprise causing change in income or profits - check if the clean up prevents access to commercial enterprise, closes areas used for transit of watercraft or closes bridges affecting vehicle traffic, affects use of beaches, or damages inventory of waterside businesses such as hatcheries. (Note alternative income or profits available as a result of the incident or reasonable under the situation since claimants are required to mitigate damages.)

(6) Activities of state and local representatives in providing increased or additional services in connection with the incident such as security, traffic control, evacuations, arranging access.

c. Consider the type of oil spilled, length of time in one area, and the concentration.

d. Consider the type of natural resource potentially affected. Again, seek advice from the Scientific Support Coordinator, and/or cognizant federal, state, or Indian tribe trustee.

e. Consider the effectiveness, or anticipated effectiveness, of the removal activities, including how much of the oil was contained, whether all the oil can be removed, etc.

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CHAPTER 4 ADVERTISING REQUIREMENTS

A. General. It is not necessary to require public advertising in every Notice of Designation. Use of the OSLTF by the OSC gives rise to a potential claim against the RP for federal removal costs, and the Notice of Designation also serves to make the RPs aware of this liability under OPA. When required, however, the advertising should be designed to reach as many potential claimants as possible.

B. Forms of Advertising. The forms of advertisement are specified in 33 CFR 136.311 and include the following:

1. Paid advertisements in newspapers having general circulation which encompasses the spill area.

2. Posting notices at marinas, marine supply stores, bait and tackle shops, and other appropriate business establishments or public facilities in the specific area.

3. Direct mailing of notices to known individual claimants or categories of potential claimants, e.g., towboats which may have been delayed by a waterway closing.

4. News releases or paid announcements on radio or television broadcasts serving the general area.

5. Other advertising methods as specified by the NPFC.

C. Content of Advertising. The content of advertisements is specified in 33 CFR 136.313. Each advertisement or notification is to contain the following information or to indicate where this information may be obtained:

1. Location, date and time of the incident.

2. Geographical area affected.

3. Quantity/type of oil involved (when pertinent).

4. Name or other description of the designated source.

5. Name of the responsible party (the person to whom the Notice of Designation is addressed unless otherwise stipulated).

6. Name, address, telephone number, office hours, and work days of the person or persons to whom claims are to be presented and from whom claim information can be obtained.

7. The procedures by which a claim may be presented, including a statement that indicates that a claimant may present a claim for interim, short-tem damages representing less than the full amount to which the claimant ultimately may be entitled. Payment of such claim shall not preclude recovery for damages not reflected in the paid or settled partial claim.

8. Notification that if the RP you denies or does not resolve a claim within 90 days after the date it is properly presented, the claimant may then submit the claim to the National

Pollution Funds Center (ca), claims division, 4200 Wilson Boulevard, Suite 1000, Arlington, VA 22203-1804, for consideration for payment from the Oil Spill Liability Trust Fund.

9. Unless specifically authorized by the NPFC, the advertisement/notification must be in English.

D. General Claims Processing Requirements.

1. The content of claims presented to the RP should also comply with the OPA claims regulations in 33 CFR part 136 and be as complete as possible. The RP must have the opportunity to pay the claim. If claimant pass only cursory invoices/claims to the RP and then submit well documented claims to the NPFC, the intent of OPA will be circumvented.

2. If claimants come to the Fund after making a proper prior presentment to the RP, they must provide the Fund with a copy of their claim presented to the RP and any other correspondence between the claimant and the RP concerning the claim. Normally, the NPFC's adjudication of the claim will not consider materials which were not presented to the RP, except obvious omissions which will perfect the claim. If new materials are included, claimants should also provide the RPs with copies and so state in their claims application (as they should with any correspondence with the NPFC regarding the claim). Copies of all correspondence between the NPFC and a claimant or the RP regarding a claim should be provided by the sender to the other interested party (i.e., the claimant or the RP) at the same time.

1. SAMPLE NPFC NOTICE OF DESIGNATION WITH ADVERTISING

U.S. Department
of Transportation

United States Coast Guard
Director, National Pollution Funds Center
4200 Wilson Blvd.
Suite 1000
Arlington, VA 22203-1804
Staff Symbol: (cm)
Phone: (202) 493-6832

5890
07/30/97

Certified Mail Return Receipt Requested
Number: Certified

Mailed

Company Name:
Company Address:

Subject: NOTICE OF DESIGNATION
Re: Federal Project Number _____

Dear Sir:

On [date of incident], your vessel/facility the [name vessel or identify location of facility] discharged oil into the Mississippi River, a navigable water of the United States. The Oil Pollution Act of 1990, 33 USC 2701 et. seq., requires that we formally designate the [name of vessel or facility] as the source of the discharge and notify you that as its owner, you incur certain legal responsibilities to the U.S. Government and others damaged by this incident. You are liable for removal costs and damages as specified in 33 USC 2702 and must advertise the procedures by which persons who have claims for removal costs and damages may submit their claims to you, as specified in 33 USC 2714.

You must publicly advertise this designation and the procedures by which claims may be presented to you. The advertisement must begin within 15 days of the date of this letter and must continue for no less than 30 days. Enclosure (1) outlines the required content of this advertisement and enclosure (2) is a sample advertisement. You may choose to follow this sample but are not required to do so as long as your advertisement contains the required information. Your advertisement must be disseminated in such a manner that all potential claimants are notified. To accomplish this, we require that you advertise in a newspaper having general circulation in the area(s) affected. We also require that you post notices in marinas affected and provide direct notification to individuals have been identified as receiving damages from your spill. You may propose other methods of advertisement and notification, but they may be used only when approved in advance by the National Pollution Funds Center. Please note that a claimant may present a claim for interim short-term damages representing less than the full amount to which the claimant ultimately may be entitled.

Payment of such claim shall not preclude recovery for damages not reflected in the paid or settled partial claim.

You are directed to inform us of the specifics of your advertising, including the name of any newspaper or other publication in which the advertisement is run, the geographical area covered by the publication, and how often the advertisement will appear, as appropriate. Send us copies of the advertisement and advise us in writing that you have begun advertising within 20 days of receipt of this letter, otherwise we will assume that you did not comply with these requirements. If you do not comply with these requirements, the National Pollution Funds Center will advertise for claims. If we advertise, you will be charged for our costs, as well as for the costs of any administration, adjudication and payment of claims.

You may deny this designation within 5 days of receipt of this Notice of Designation. Your denial must be in writing, identify this Notice of Designation, give the reasons for the denial, include a copy of all supporting documents, and must be submitted to [claims manager's name], Claims Manager, at the above address. If you deny this designation, the National Pollution Funds Center will advertise for claims. If we advertise and you are later judged to be responsible for the discharge, you will be charged for our costs, as well as for the costs of any administration, adjudication and payment of claims.

You may contact the Claims Manager, [name] at (202) 493-6____ or (800) 280-7118 if you have any questions. The FAX number is (202) 493-6896.

Sincerely,

_____ [Claims Manager Name]
U.S. Coast Guard
Claims Manager

Encl: (1) Content of Advertisement
(2) Sample Advertisement

Copy: NPFC (cm)
[FOSC]
[Other RPs]
[Guarantors]

Encl: (2) Content of Advertisement

Each advertisement/notification is to contain the following information or to indicate where this information may be contained:

1. Location, date and time of the incident.

2. Geographical area affected.

3. Quantity of oil involved.

4. Name or other description of the designated source.

5. Name of the responsible party (you).

6. Name, address, telephone number, office hours, and work days of the person or persons to whom claims are to be presented and from whom claim information can be obtained.

7. The procedures by which a claim may be presented, including a statement that indicates that claimant may present a claim for interim short-term damages representing less than the full amount to which the claimant ultimately may be entitled. Payment of such claim shall not preclude recovery for damages not reflected in the paid or settled partial claim.

8. Notification that if you deny or do not resolve a claim within 90 days after the date of submission, the claimant may then submit the claim to the National Pollution Funds Center (ca), 4200 Wilson Boulevard, Suite 1000, Arlington, VA 22203-1804, for our consideration. We will then evaluate the claim and take appropriate action.

9. Unless noted below, the advertisement/notification must be in English.

Encl: (2) Sample Advertisement

PUBLIC NOTICE

In accordance with the Oil Pollution Act of 1990 (33 USC 2714(c)), the [name of vessel of facility] has been named as the source of a discharge of oil into the [name of navigable water] on or about [date of incident]. This spill impacted [describe area impacted] and the owner of the [your name] is accepting claims for certain uncompensated damages and removal costs.

Removal costs and damages which may be compensated include: removal costs; damage to natural resources; damage to or loss of real or personal property; loss of subsistence use of natural resources; loss of government revenues; loss of profits and earnings capacity; and increased cost of public services.

Claims should be in writing, signed by the claimant, for a specified amount; and should include all evidence to support the damages. Claims presented may include claims for interim short-term damages representing less than the full amount to which the claimant ultimately may be entitled. It should be noted that payment of such claim shall not preclude recovery for damages not reflected in the paid or settled partial claims. Claims should be mailed to the following address:

[Address to which claims should be sent]

Office hours are from 9:00 AM to 5:00 PM ET, Monday through Friday, except holidays. Claimants may call [Telephone number for claims] for information.

Any claims which are denied or which are not resolved within 90 days after the date of submission to our claims representative may be submitted to the National Pollution Funds Center (ca), 4200 Wilson Blvd., Suite 1000, Arlington, VA 22203-1804 for consideration.

2. SAMPLE COAST GUARD OSC NOTICE OF DESIGNATION

5890
[date]

Certified Mail Return Receipt Requested Number:

RP Name
RP Address
RP City, State, Zip Code

Subject: NOTICE OF DESIGNATION
Re: Federal Project Number [FPN]

This is formal Notice of Designation under the Oil Pollution Act of 1990 (OPA), 33 USC 2701 et seq. On [date of incident], the [source] [discharged/posed a substantial threat of a discharge of] oil [into/to] the [body of water]. You have been identified as the (owner/operator/licensee/ lessee/permittee/holder] of the [vessel/facility] that has been designated as the source of the [discharge/substantial threat of a discharge].

As such, you are considered an OPA responsible party, and 33 USC 2714 requires that you be notified of this designation.

You should accept or deny this designation within 5 days of receipt of this Notice. Any denial must be in writing, referencing this Notice of Designation, and be sent to the [above address] [the FOSC's/NPFC's address]. The denial should also include any reasons for the denial and copies of any supporting documentation.

Under OPA, responsible parties have a duty to handle the removal of their discharges or their threats and are liable for costs and damages, as specified in 33 USC 2702 and 2715, and interest thereon. As the Federal On-Scene Coordinator, I have presently obtained funding in the amount of [current ceiling] to conduct the cleanup; this amount may increase as removal operations continue.

[SELECT ONE OF THE FOLLOWING TWO PARAGRAPHS]

I am unaware at this time of any other potential liability. However, if you do not deny this designation and the National Pollution Funds Center (NPFC) should later determine that third-party claims are possible, they will require that you advertise the procedures by which persons may submit claims to you under 33 USC 2713 and 2714 and the claims regulations at 33 CFR part 136.

[OR]

In addition to federal removal costs, there is also a likelihood of third-party claims arising out this incident. If you do not deny this designation, you are required to advertise the procedures by which persons may submit claims to you under 33 USC 2713 and 2714 and the claims regulations at 33 CFR part 136.

5890
[date]

Subject: NOTICE OF DESIGNATION
Re: Federal Project Number [FPN]

The advertisement must begin within 15 days of the date of this designation and must continue for no less than 30 days. Enclosure (1) outlines the required content of the advertisement, and enclosure (2) is a sample advertisement. You may choose to follow the sample or craft your own as long as your advertisement contains the required information. The advertisement must be disseminated in a manner that is likely to ensure that all potential claimants are notified. To accomplish this, the NPFC normally requires at a minimum that the advertisement be run in newspapers having general circulation in the areas affected, that notices be posted at affected marinas or public facilities, and that direct notification be given to those individuals who have been identified as receiving damages from the spill. other methods of advertisement may be used with prior permission from the NPFC.

When you advertise, you must inform the NPFC of the specifics (including the names of the newspaper or other publications in which the advertisement was run, the geographical areas covered by the publications, how often the advertisement will appear, etc.) as necessary to demonstrate that potential claimants are likely to receive notification. Copies of the advertisements are to be provided to the NPFC within 20 days of receipt of this letter, or the NPFC will assume that you are not advertising. At that point, the NPFC will advertise for claims, and the costs for such advertising, as well as any other costs with handling and paying claims, are chargeable to you. The same is true if you deny designation and are still found to be a guarantor.

You may contact me at [the above] [address and phone/fax numbers]. You may contact the NPFC by writing to the Director (ca), USCG National Pollution Funds Center, 4200 Wilson Blvd., Suite 1000, Arlington, Virginia, 22203-1804, or by phone number at (202) 493- the claims manager's extension]] or by fax at (202) 493-6937, if you have any questions.

Sincerely,

[name of Coast Guard OSC]
[title]

[INCLUDE IF ADVERTISING REQUIRED]
Encl.: (1) Content of Advertisements
(2) Sample Advertisements

[SEE NPFC DESIGNATION LETTER W/ADVERTISEMENTS FOR ENCLOSURES]

Copy: NPFC, other Rps, Guarantors

3. SAMPLE NPFC NOTICE OF DESIGNATION WITHOUT ADVERTISING

5890
[date]

Certified Mail Return Receipt Requested Number:

RP Name
RP Address
RP City, State, Zip Code

NOTICE OF DESIGNATION
Re: Federal Project Number XXXXXX

This is formal **Notice of Designation** under the Oil Pollution Act of 1990 (OPA), 33 USC 2701 et seq. On [date of incident], the [source] [discharged/posed a substantial threat of a discharge of] oil [into/to] the [body of water].

You have been identified as the [owner/operator/licensee/lessee/permittee/holder] of the (vessel/facility] that has been designated as the source of the [discharge/substantial threat of a discharge]. As such, you are considered an OPA responsible party, and 33 USC 2714 requires that you be notified of this designation.

You should accept or deny this designation within 5 days of receipt of this Notice. Any **denial must be in writing,** referencing this Notice of Designation, and be sent to the above address. The denial should also include any reasons for the denial and copies of any supporting documentation.

Under OPA, responsible parties have a duty to handle the removal of their discharges or their threats and are liable for costs and damages, as specified in 33 USC 2702 and 2715, and interest thereon. If you are not already doing so, you should cooperate fully with the Federal On-Scene Coordinator in carrying out removal activities.

The Federal On-Scene Coordinator has presently obtained funding in the amount of [current ceiling) to conduct the cleanup; this amount may increase as removal operations continue. We are unaware at this time of any other potential liability. However, if you do not deny this designation and we should later determine that third-party claims are possible, we will require that you advertise the procedures by which persons may submit claims to you under 33 USC 2713 and 2714 and the claims regulations at 33 CFR part 136.

5890
[date]

NOTICE OF DESIGNATION
Re: Federal Project Number XXXXXX

I have enclosed additional material concerning OPA for your information. You may contact me at the above address and phone number or at fax number (202) 493-6896, if you have any questions.

Sincerely,

[signature]

Encl.: (1) OPA Title I
(2) 33 CFR part 136

Copy: FOSC, other RPs, Guarantors

4. SAMPLE NPFC NOTICE TO GUARANTOR

5890
06/06/95

Certified Mail Return Receipt Requested Number:

Name
Address
City, State ZIP

Subject: NOTICE OF DESIGNATION
Re: Federal Project Number [FPN]

On [date of incident] the [name of vessel/facility] [discharged oil into the / ran aground and created a substantial threat of a discharge of oil in] [body of water], a navigable water of the United States. The Oil Pollution Act of 1990, 33 USC 2701, requires that we formally designate the [name of vessel/facility] as the source of the discharge. You are on record as the insurer of this vessel under insurance certificate No. [insurance #], which you issued in accordance with section 311 of the Clean Water Act, and corresponding Certificate of Financial Responsibility No. [COFR #], expiring, [expiration date]. This letter notifies you of this designation. The procedures which the owner and operator must follow are described in the attached letters to the owner and operator.

You may contact the Claims Manager, [Claims Manager] at [Telephone #] if you have any questions. The FAX number is [Fax #].

Sincerely,

[claims manager's name] [title]

Encl. (1) Notice of Designation
(2) Letter to [RP name]

CC: NPFC

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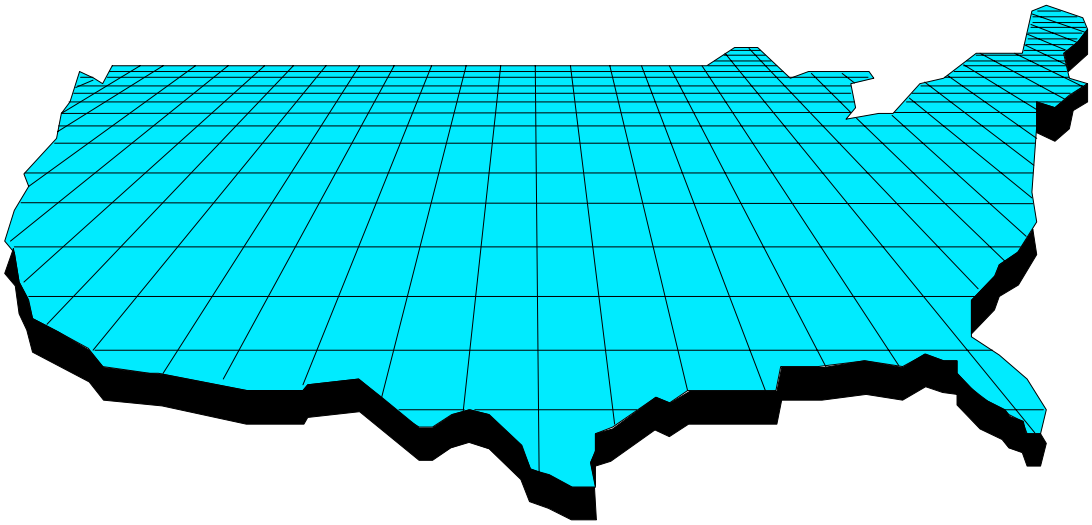
CHAPTER 5

State Access



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This chapter provides the Federal Register of detailed procedures for state access to the Oil Spill Liability Trust Fund for Removal Costs under the Oil Pollution Act of 1990. The material consists of the following:

SUBCHAPTER	CONTAINS DETAILED INFORMATION ABOUT
Federal Register: Department of Transportation (Coast Guard) 33 CFR Part 133 State Access to the Oil Spill Liability Trust Fund for Removal Costs Under the Oil Pollution Act of 1990; Interim Rule	• Provisions of the Oil Pollution Act of 1990 concerning the procedures by which the Governor of a State can request payments of up to $250,000 from the Oil Spill Liability Trust Fund for removal costs of an oil discharge or the mitigation or prevention of a substantial threat of an oil discharge.
NPFC Instruction 16451.1 - Technical Operating Procedures for State Access Under Section 1012(d)(1) of OPA 90	• Procedures for accessing the OSLTF, requirements for documenting expenses, investigation requirements, and how to submit documentation for reimbursement.

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U.S. Department
of Transportation

United States
Coast Guard

Commandant
U.S. Coast Guard

2100 Second St., SW
Washington, DC 20593-0001
Staff Symbol: G-MEP
Phone: (202) 267-0518

NOV 6 1992

5711/11

From: Commandant
To: Distribution

Subj.: FORWARDING OF INTERIM RULE ON STATE ACCESS TO THE OIL SPILL LIABILITY TRUST FUND FOR REMOVAL COSTS UNDER THE OIL POLLUTION ACT OF 1990 (PURSUANT TO SECTION 1012(D) (1)) AND TECHNICAL OPERATING PROCEDURES (TOPs)

1. The interim rule, 33 CFR 133, implementing Section 1012 (d) (1) of the Oil Pollution Act of 1990 (OP 90) (PL 101380) which accord States access to Oil Spill Liability Trust Funds for the immediate removal of a discharge, or the mitigation or prevention of a substantial threat of a discharge of oil was signed by the Commandant 5 November 1992 and is effective the day of publication in the Federal Register. The Director, National Pollution Funds Center (NPFC) has distributed a copy of this rule and Technical Operating Procedures (TOPs) to facilitate administration of the Fund. I am forwarding a copy of both the interim rule and the TOPs for further distribution to Coast Guard OSCs in your district.

2. A natural working group of NPFC staff, an Environmental Protection Agency representative, and members of my staff developed these TOPs. To the extent we were able, these procedures were drafted for use by all parties: the NPFC, the States, OSCs, the District and Commandant (G-MEP). These procedures were also written to allow for maximum flexibility to allow the OSC to work with State officials in a mutually comfortable manner.

3. We also did not want to burden the OSC with unnecessary paperwork. So, for example the OSC is not required to review state cost accounting paperwork: however we directed that the NPFC case officer consult with the OSC on questions of an operational nature. We also assumed that the State/OSC relationship with respect to State access under this rule would be addressed in the Coast Guard/State Memoranda of Agreement.

I understand that we are breaking new ground, procedural as well as programmatic. We have already heard talk of the states using the Fund for abandoned oil well clean up. This will likely increase unit workload. And because the OSC has final authority

Subj.: FORWARDING OF INTERIM RULE ON STATE ACCESS TO THE OIL SPILL LIABILITY TRUST FUND FOR REMOVAL COSTS UNDER THE OIL POLLUTION ACT OF 1990 (PURSUANT TO SECTION 1012 (D) (1)) AND TECHNICAL OPERATING PROCEDURES (TOPs)

on granting State access, we recognize that the OSC will be placed in awkward position at times. I therefore encourage constructive comments on the rule and the TOPs, not only on their content, but also to better define the Coast Guard/State relationship and our response to oil spills. Comments should be dual addressed to the Director, NPFC and Commandant (G-ME). Commandant (G-ME) will address those concerns related to operational matters and impact on work load. NPFC will address those concerns related to Fund administration. My point of contact is Commander Bruce Russell, Commandant (G-ME-3) at (202) 267-0421.

Encl: (1) Interim Rule
(2) Technical Operating Procedures for State Access under Section 1012 (d) (1) of the Oil Pollution Act of 1990 (PL 101-380)

Dist: All District (m)
RTC Yorktown
NSFCC

federal register

Friday
November 13, 1992

Part II

Department of Transportation

Coast Guard

33 CFR Part 133
State Access to the Oil Spill Liability Trust Fund for Removal costs Under the Oil Pollution Act of 1990; Interim rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 133
[CGD 92-014]
RIN 2115-AE19

State Access to the Oil Spill Liability Trust Fund for Removal Costs Under the Oil Pollution Act of 1990

AGENCY: Coast Guard. DOT.
ACTION: Interim rule with request for comments.

SUMMARY: This rulemaking implements the provisions of the Oil Pollution Act of 1990 (OPA 90) concerning the procedures by which the Governor of a State can request payments of up to $250,000 from the Oil Spill Liability Trust Fund (the Fund) for removal costs required for the immediate removal of a discharge, or the mitigation or prevention of a substantial threat of a discharge of oil.

This action is a temporary measure needed primarily to provide a procedure by which the Governor of a State can make a request for payments from the Fund. This interim rule will be replaced by a more comprehensive rule that addresses, in addition to requests by Governors, formal agreements between the States and the Coast Guard providing specific procedures for fund use.

DATES: This rule is effective on November 13, 1992. Comments must be received on or before February 11, 1993.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G-LRA/3406) (CGD 92-014), U.S. Coast Guard Headquarters, 2100 Second Street, SW, Washington, DC 20593-0001, or may be delivered to room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 287-1477. Comments on collection of information requirements also must be mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection of copying at room 3406, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Mr. Donald Taylor (Project Manager), National Pollution Funds Center, (703) 235-4805.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Comments are specifically requested on the effect the U.S. Department of Transportation regulations regarding cooperative agreements may have on State access to the Fund. These regulations are contained in 49 CFR parts 18, 20, 29, and 90. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 92-014) and the specific section of the rule to which each comment applies, and give the reason for each comment. Each person wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this rule in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under "ADDRESSES". If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice of the Federal Register.

Drafting Information

The principal person involved in drafting this document is Donald Taylor, Project Manager, National Pollution funds Center.

Regulatory Information

This rule is being published as an interim rule and is being made effective on the date of publication to provide a procedure whereby funds for the immediate removal of an oil discharge, or the mitigation or prevention of a substantial threat of an oil discharge, may be made available as soon as possible. A delay in providing a procedure may delay the payment of the necessary funds. Such a delay would be contrary to the intent of Congress under the Oil Pollution Act of 1990 (OPA 90) and to the interests of the public. For these reasons, the Coast Guard for good cause finds, under 5 U.S.C.553 (b)(3)(B) and (d)(3), that notice and public procedure thereon before the effective date of the interim rule are unnecessary and that the interim rule should be made effective in less than 30 days after publication.

In addition to this rulemaking, the Coast Guard is developing a second, separate rule which will replace this rule. A notice of proposed rulemaking and opportunity for public comment will be provided. The second rulemaking address not only requests by State Governors for payments between the States and the Coast Guard that may provide for advance payments to facilitate immediate removal of oil discharges, or the mitigation or prevention of substantial threats of oil discharges.

The Coast Guard consulted with representatives from the States at regional meetings held in December 1991 and January 1992. There was general support for the content of this rulemaking. A synopsis of the discussions that took place at those meetings is in the public docket for this rulemaking.

This rulemaking (CGD 92-014) is separate from the Coast Guard's ongoing claims regulations project (CGD 91-035). The state access regulations concern payment to the States outside the normal claims process.

Discussion of the Regulations

This interim rule implements the provision under section 1012(d)(1) of the Oil Pollution Act of 1990 (Pub. L.101-380; August 18, 1990) (OPA 90) which states that in accordance with regulations promulgated under section 1012(d)(1), the President, upon the request of the Governor of a State, may obligate the Fund for payment in an amount not to exceed $250,000 for removal costs consistent with the National Contingency Plan required for the immediate removal of a discharge, or the mitigation or prevention of a substantial threat of a discharge, of oil.

The objective of this rulemaking is to develop the basic request procedures. Elaboration of this procedure, if deemed necessary after further consultation with the States and consideration of the comments on this rule, will be handled in the second rulemaking discussed under "Regulatory Information" in this preamble.

The interim rule addresses only requests by Governors or their representatives. Requests are made directly to the On-Scene Coordinator (OSC). The OSC reviews the request for eligibility both under section 1012(d) and under the interim rule and approves or denies the Governor's request. To guide the OSC in making eligibility recommendations, the

interim rule provides minimum standards. This provides consistency in applying the interim rule. The States are required to coordinate their removal actions with the OSC and retain records of expenditures of the funds. The provisions of the Federal Grant and Cooperative Agreement Act and the regulations of the U.S. Department of Transportation regarding Federal assistance programs apply to payments from the Fund.

In developing this rule, the Coast Guard consulted with the Environmental Protection Agency.

Regulatory Evaluation

This rule is not major under Executive Order 12291. It is significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). This rulemaking is considered significant because of the substantial interest by the States. The Coast Guard expects the economic impact of this rule to be so minimal that a separate Regulatory Evaluation is unnecessary. Though the Coast Guard expects the economic impact of this rule to be minimal, it specifically requests comments and data on this subject.

The impacts of this rule arise from the procedures the Governor of a State must follow requesting payments for immediate removal costs from the Fund and from the recordkeeping by the State necessary to account for their expenditures. The cost of making a request is expected to be as little as the cost of making a telephone call or sending a facsimile. The cost of conforming with Federal cooperative agreement administrative requirements is expected to be minimal. This cost is intrinsic to all of the cooperative agreements a State may have with the Federal government. The costs of transferring and expending funds and keeping records of the expenditures of the payments obligated from the Fund would vary with the nature of the removal activity. Recordkeeping of removal activities and costs, however, is required already for actions consistent with the National Contingency Plan.

Small Entities

The entities affected by this rulemaking are State governments. This rulemaking does not affect "small entities", as the term is defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*.). Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Federalism

The Coast Guard has analyzed this rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient implications to warrant the preparation of a Federalism Assessment. Though this rulemaking affects the States by providing a procedure whereby they may request money from the Fund, the implications of that procedure are not sufficient enough, under the Department of Transportation's federalism guide, to warrant the preparation of a Federalism Assessment. In addition, States are not preempted from utilizing their own funds in a removal activity.

Collection of Information

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq*.), the Office of Management and Budget (OMB) reviews each rule that contains a "collection of information requirement" to determine whether the practical value of the information is worth the burden imposed by its collection. Collection of information requirements include reporting, recordkeeping, notification, and other similar requirements.

This rule prescribes requirements for requesting access to the Fund, for following up those requests with a confirmation, and for keeping records of expenditures. These requirements are discussed in the "Regulatory Evaluation" section of this preamble.

The Coast Guard has submitted the collection of information requirements to OMB for review under section 3504(h) of the Paperwork Reduction Act. Persons submitting comments on the requirements should submit their comments both to OMB and to the Coast Guard where indicated under "ADDRESSES".

For further information, contact the Information Requirements Division, M-34, Office of the Secretary of Transportation, 4400 Seventh Street, SW, Washington, DC 20590, (202) 366-4735; the Desk Officer, U.S. Coast, at the Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503, (202) 395-7340; or the person under "FOR FURTHER INFORMATION CONTACT" in this preamble.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. This rule concerns procedures relating to a request for payments to expedite the removal of an oil discharge or the mitigation or prevention of a substantial threat of an oil discharge This action concerns internal administrative procedure. A Categorical Exclusion Determination is available in the docket for inspecting or coping where indicated under "ADDRESSES".

List of Subject in 33 CFR Part 133

Administrative practice and procedure, intergovernmental relations, Oil pollution, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR chapter I as follows:

1. Part 133 is added to read as follows:

PART 133 OIL SPILL LIABILITY TRUST FUND; STATE ACCESS

Sec.

133.1 Purpose.
133.3 Definitions.
133.5 Requests: General.
133.7 Requests: Amount.
133.9 Requests: Where made.
133.11 Requests: Contents.
133.13 Removal actions eligible for funding.
133.15 Determination of eligibility for funding.
133.17 Conduct of removal actions.
133.19 Recordkeeping.
133.21 Records retention.
133.23 Investigation to determine the source and responsible party.
133.25 Notification of Governor's designee.

Authority: 33 U.S.C. 2712(e): E.O. 12777 (3 CFR, 1991 Comp., p. 351); 49 CFR 1.48.

§ 133.1 Purpose.

This part prescribes procedures for the Governor of a State to request payments from he Oil Spill Liability Trust Fund (the Fund) for oil pollution removal costs under section 1012(d)(1) of the Oil Pollution Act of 1990 (the Act) (33 U.S.C. 2712(d)(1)).

§ 133.3 Definitions.

(a) As used in this case the following terms have the same meaning as set forth in section 100 of the Act (33 U.S.C. 2701): "discharge", "inclusive economic zone", "Fund", "incident", "National Contingency Plan", "navigable waters", "oil", "remove", "removal", "removal costs", "responsible party", "State", and "United States".

(b) As used in this part—

Act means Title I of the Oil Pollution Act of 1990 (33 U.S.C. 2701 through 2719).

Director, NPFC, means the person in charge of the U.S. Coast Guard National Pollution Funds Center or that person's authorized representative.

NPFC means the U.S. Coast Guard National Pollution Funds Center, 4200 Wilson Boulevard, Suite 1000, Arlington, Virginia 22203-1804.

On-Scene Coordinator or OSC means the Federal-official predesignated by the Environmental Protection Agency or the U.S. Coast Guard to direct and coordinate all efforts for removal of a discharge, or the mitigation or the prevention of a substantial threat of a discharge, of oil.

Removal action means an incident-specific activity taken under this part to contain or remove a discharge, or to mitigate or prevent a substantial threat of a discharge, of oil.

§ 133.5 Requests: General.

(a) Upon a request submitted in accordance with this part by the Governor of a State or his or her designated State official, the OSC may obtain a Federal Project Number (FPN) and a ceiling not to exceed $250,000 per incident for removal costs. The removal costs must be for the immediate removal of a discharge, or the mitigation or prevention of a substantial threat of a discharge, of oil.

(b) Before a request under this part is made, the State official shall ensure that the procedures in the National Contingency Plan (40 CFR part 300) for notifying Federal authorities of the discharge or threat of discharge have been met.

(c) The Federal Grant and Cooperative Agreement Act of 1977 (31 U.S.C. 8301-8308) and 49 CFR parts 18, 20, 29, and 90 apply to fund monies obligated for payment under this part.

§ 133.7 Requests: Amount.

(a) The amount of funds that may be requested under this part

(1) Is limited to the amount anticipated for immediate removal action for a single oil pollution incident, but, in any event, may not exceed $250,000 per incident;

(2) Must be for removal costs consistent with the National Contingency Plan; and

(3) Must be reasonable for the removal actions proposed, considering such factors as quantity and composition of the oil, weather conditions and customary costs of similar services in the locale.

(b) The funds requested are obligated only to the extent they are determined to be for immediate removal actions which are reasonable and otherwise eligible for payment under this part.

§ 133.9 Requests: Where made.

Requests for access to the Fund under § 133.5 must be made by telephone or other rapid means to the OSC.

§ 133.11 Request: contents.

In making a request for access to the Fund, the person making the request shall

(a) Indicate that the request is a State access request under 33 CFR part 133;

(b) Give his or her name, title, department, and State;

(c) Describe the incident in sufficient detail to allow a determination of jurisdiction, including at a minimum the date of the occurrence, type of product discharged, estimated quantity of the discharge, body of water involved, and proposed removal actions for which funds are being requested under the part; and

(d) indicate the amount of funds being requested.

§ 133.13 Removal actions eligible for funding.

To be eligible for funding under this part, each removal action must meet the following:

(a) Must be for an incident, occurring after August 18, 1990, which resulted in a discharge, or the substantial threat of a discharge, of oil into or upon the navigable waters or adjoining shorelines.

(b) Must comply with the National Contingency Plan.

(c) must be an immediate removal action.

§ 133.15 Determination of eligibility for funding.

Upon receipt of the information under § 133.11 and, if necessary, from other sources determined to be appropriate at his or her discretion, the OSC will determine whether the proposed removal actions meet the requirements of **§** 133.13. If necessary, the OSC may seek further clarification of the proposed actions from the State official. The OSC shall expeditiously notify the State official and the Director, NPFC, of his or her decision.

§ 133.17 Conduct of removal actions.

Removal actions funded under this part must be coordinated with the OSC and conducted in accordance with the National Contingency Plan**.**

§ 133.19 Recordkeeping.

(a) The State official shall maintain detailed records of expenditures made from the funds provided under this part, including records of

(1) Daily expenditures for each individual worker, giving the individual's name, title or position, activity performed, time on task, salary or hourly rate, travel costs, per diem, out-of-pocket or extraordinary expenses, and whether the individual is normally available for oil spill removal;

(2) equipment purchased or rented each day, with the daily or hourly rate;

(3) Miscellaneous materials and expendables purchased each day; and

(4) Daily contractor or consultant fees, including costs for their personnel and contractor-owned or rented equipment, as well as that of any subcontractor.

(b) The State official shall submit a copy of these records and a summary document stating the total of all expenditures made to the NPFC official specified in § 133.25(c) within thirty days after completion of the removal actions. A copy of these documents shall also be submitted to the cognizant OSC.

(c) Upon request of the OSC or the NPFC, the State official shall make the original records available for inspection.

(d) If, after inspecting the records, the Director, NPFC, determines that expenditures by a State official from funds obligated under this part were not eligible for funding under this part and the expenditures were not made with the good faith understanding that they were eligible under this part, the Director, NPFC, may seek reimbursement to the Fund from the State.

§ 133.21 Records retention.

(a) The State official shall maintain all records for ten years following completion of the removal actions.

(b) If any litigation, claim, negotiation, audit, cost recovery, or other action involving the records has been started before the expiration of the two-year period, he records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular ten-year period, whichever is later.

§ 133.23 Investigation to determine the source and responsible party.

(a) The State official shall promptly make a thorough investigation to determine the source of the incident and the responsible party.

(b) Upon completion of the investigation, the State official shall forward the results of the investigation and copies of the supporting evidence identifying the source and the responsible party to both the cognizant OSC and the NPFC official specified in **§** 133.25(c).

§ 133.25 Notification of Governor's designee.

(a) If the Governor of a State anticipates the need to access the Fund under this part, he or she must advise the NPFC in writing of a specific individual who is designated to make requests under this part.

(b) This designation must include the individual's name, address, telephone number, and title or capacity in which employed.

(c) The information required by paragraph (b) of this section must be forwarded to the Chief, Case Management Division, National Pollution Funds Center, Suite 1000, 4200 Wilson Boulevard, Arlington, Virginia 22203-1804.

Dated: November 5, 1992.

J.W. Kime,

Admiral, U.S. Coast Guard Commandant.

[FR Doc. 92-27392 Filed 11-12-92; 8:45 am]

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Technical Operating Procedures

for

STATE ACCESS

under

The Oil Pollution Act of 1990

U.S. COAST GUARD
NATIONAL POLLUTION FUNDS CENTER

NOVEMBER 1992

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U.S. Department
of
Transportation

United States
Coast Guard

Director
United States Coast Guard
National Pollution Funds Center

4200 Wilson Boulevard
Suite 1000

Staff Symbol: (cp)
Phone: (202) 493-6830

NPFCINST 16451.1

OCT 30 1992

NATIONAL POLLUTION FUNDS CENTER INSTRUCTION 16451.1

Subj: Technical Operating Procedures for State Access under Section 1012 (d) (1) of the Oil Pollution Act of 1990 (P.L. 101-380)

1. PURPOSE. The enclosed Technical Operating Procedures (TOPs) are to be used by the National Pollution Funds Center (NPFC) to provide guidance to Federal On-Scene Coordinators (FOSCs) and Coast Guard Districts concerning a State Governor's request for access to the Oil Spill Liability Trust Fund (Fund) under section 1012 (d) (1) of the Oil Pollution Act of 1990 (OPA 90) (P.L. 101-380). These procedures have been developed to support the published interim rule (33 CFR 133) which accords the Governor of a State or the designated State official the opportunity to request funding for the immediate removal of a discharge, or the mitigation or prevention of a substantial threat of a discharge, of oil.

2. DISCUSSION.

   a. The National Pollution Funds Center administers the Fund. The NPFC is responsible for developing regulations to implement section 1012 (d).

   b. The interim rule implements section 1012 (d) (1) of OPA 90 whereby the Governor of a State or a designated State official may request funding for removal costs concordant with the National Contingency Plan (NCP) not exceeding $250,000 per incident. At a later date, this interim rule may be incorporated into a Notice of Proposed Rulemaking covering all provisions of section 1012 (d).

   c. This TOPs is designed solely to facilitate the administration of the Fund by the NPFC. It should not be construed to confer any legal right or cause of action upon any party, nor to create any legal obligation on the NPFC.

3. CHANGES. Changes to TOPs will be published by the NPFC for distribution to FOSCs, Coast Guard district offices, and other established users. Changes will be numbered consecutively.

NPFCINST 16451.1
OCT 30 1992

4. ACTION. The enclosed TOPs shall be used as guidance for any obligation of the Fund for State Access under section 1012 (d) (1).

D. F. SHEEHAN
Director
National Pollution Funds Center

Encl: (1) Technical Operating Procedures for State Access under Section 1012 (d) (1) of the Oil Pollution Act of 1990 (P.L. 101-380)

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

REQUEST FOR COMMENTS.

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

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

To submit comments on the regulations (33 CFR 133-State Access to OPA 90), follow the procedure specified in the Supplementary Information section of the preamble to 33 CFR 133.

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RECORD OF CHANGES			
CHANGE NUMBER	DATE OF CHANGE	DATE ENTERED	BY WHOM ENTERED
CH-1	12 Feb 93	12 Feb 93	RH, CWO2

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STATE ACCESS TO OIL SPILL LIABILITY TRUST FUND
TECHNICAL OPERATING PROCEDURES
TABLE OF CONTENTS

REQUEST FOR COMMENTS 5-17
RECORD OF CHANGES 5-19
TABLE OF CONTENTS 5-21

PAGE

1. INTRODUCTION 5-23
   A. PURPOSE 5-23
   B. SCOPE 5-23
   C. BACKGROUND 5-23
   D. ADDITIONAL INFORMATION 5-24

2. REQUESTING FUNDS 5-24
   A. ELIGIBILITY CONSIDERATIONS 5-24
   B. COSTS INCURRED BEFORE FOSC CONTACT 5-24
   C. CONTACTING THE FOSC 5-24
   D. EVALUATION BY FOSC 5-24
   E. OBLIGATION OF FUND AND ASSIGNMENT OF FPN/CEILING 5-25
   F. RAISING THE CEILING 5-25
   G. OIL DISCHARGE REMOVAL AUTHORIZATION 5-25
   H. TERMINATION OF STATE ACCESS FUNDING 5-26

3. DESIGNATION OF SOURCE & IDENTIFICATION OF RESPONSIBLE PARTIES 5-26
   A. INVESTIGATION AND NOTIFICATIONS 5-26
   B. LETTER OF DESIGNATION 5-26

4. REMOVAL COSTS 5-26
   A. CONTRACT COSTS 5-26
   B. OUT OF POCKET EXPENSES 5-26
   C. STATE SALARY, EQUIPMENT, AND OVERHEAD COSTS 5-26

5. POLLUTION REPORTS (POLREPS) 5-27
   A. POLREP CONTENTS 5-27
   B. POLREP FREQUENCY 5-27
   C. POLREP COMMUNICATION 5-27

6. RECORDKEEPING 5-27
   A. DOCUMENTING COSTS-GENERAL 5-27
   B. DOCUMENTING SALARY, EQUIPMENT, & ADMINISTRATION COSTS 5-28
   C. INCIDENT REPORT 5-28

PAGE

7. REQUESTING PAYMENT 5-29
   A. DISBURSEMENT VOUCHER 5-29
   B. INCIDENT REPORT 5-29
   C. REMOVAL COSTS 5-29
   D. CERTIFICATIONS 5-30
   E. OVERALL CERTIFICATION 5-30
   F. COPIES TO FOSC 5-30
   G. TIMELINESS 5-30
8. REVIEW OF DOCUMENTATION 5-30
9. PAYMENT PROCESS 5-31
10. COOPERATION IN COST RECOVERY/LITIGATION 5-31
11. DOCUMENTATION AND THE FOSC 5-31

12. RELATIONSHIP TO COOPERATIVE AGREEMENT REQUIREMENTS 5-31
   A. REQUIRED FORMS/REPORTS 5-31
   B. WAIVER OF CERTAIN FORMS/REPORTS 5-32
   C. FEDERAL AUDIT 5-32

13. NPFC POINT OF CONTACT 5-32

Figure 1 STATE ACCESS FLOW CHART 5-33

Appendix A STATE OIL DISCHARGE REMOVAL AUTHORIZATION 5-35

Appendix B CERTIFICATIONS 5-41

Appendix C SF-LLL (Disclosure of Lobbying Activities) 5-48

Appendix D SF-1080 (Voucher for Transfers Between Funds) 5-52

TECHNICAL OPERATING PROCEDURES

STATE ACCESS TO OIL SPILL LIABILITY TRUST FUND

1. INTRODUCTION. Section 1012 (d) (1) of the Oil Pollution Act of 1990 (Public Law 101-380, hereafter referred to as "OPA 90") provides that the President, upon request of the Governor of a State or his or her designated state official, may obligate the Oil Spill Liability Trust Fund (Fund) for payment in an amount not to exceed $250,000 per incident for removal costs consistent with the National Contingency Plan (NCP) (40 CFR 300). The removal costs must be required for the immediate removal of a discharge, or the mitigation or prevention of a substantial threat of discharge, of oil. Pursuant to the authority delegated to the Coast Guard in Executive Order 12777, the Coast Guard has published an interim regulation (33 CFR Part 133) to implement the provisions of section 1012 (d) (1) of OPA 90.

A. PURPOSE. The purpose of this document is to provide technical operating procedures concerning eligibility, communications, financial management, and recordkeeping for States requesting access to the Fund, Federal On-Scene Coordinators (FOSCs), and Coast Guard (USCG) District staffs.

B. SCOPE. The technical operating procedures described herein apply specifically to requests for funding under section 1012 (d) (1) of OPA 90. Funding under section 1012 (d) (1) will herein be referred to as "State Access." These technical operating procedures focus on information that is needed to support cost recovery efforts of the Coast Guard National Pollution Funds Center (NPFC). Refer to Figure 1 for a flowchart of the State Access process.

These procedures do not address the provisions of Section 1012 (d) (2) of OPA 90 (e.g., advance agreements with individual States, advance payments from the Fund, or access to the Fund by political subdivisions of a State). These procedures are intended as a supplement to, and not as a substitute for, the regulations contained in 33 CFR Part 133. Compliance with 33 CFR 133 is required whenever utilizing State Access to the Fund. Nothing in this document supersedes the requirements of the NCP. Of particular note, the designated state official, in accordance with 33 CFR 133.5 (b) and section 300.320 (a) (6) of the NCP, assumes the responsibility for notifying the trustees of natural resources affected/potentially affected by the incident.

C. BACKGROUND. State Access to the Fund provides a new avenue for States to receive Federal funds for immediate removal costs resulting from their response to actual or threatened discharges of oil. State Access does not supersede or preclude the use of existing Federal payment regimes. The State should not seek and will not receive payments for the same costs from more than one payment regime. Generally, there are two other payment regimes which the States may initiate to obtain Federal funding for oil spill incident removal actions:

1. ACTING AS FOSC CONTRACTOR. State agencies may perform removal actions under the direct supervision of the FOSC. In these situations, the FOSC issues an Oil Spill Response Authorization to the State to establish a contractual relationship and obligate the Fund. With this method of funding the State is not limited to $250,000 per incident, and the FOSC is actively directing the State's response actions.

2. CLAIMS. Section 1012 (a) (4) of OPA 90 authorizes use of the Fund for "the payment of claims in accordance with section 1013 for uncompensated removal costs determined by the President to be consistent with the National Contingency Plan or uncompensated damages". Regulations describing claims procedures are found in 33

CFR Part 136. States may submit claims for uncompensated removal costs, which may include those salaries, equipment, and administrative costs directly related to a specific incident. A State may submit claims for removal costs directly to the Fund even if the responsible party is known. Claims other than for removal costs must first be submitted to the designated responsible party. Claims payments are not limited to $250,000 per incident.

D. ADDITIONAL INFORMATION. For additional information regarding these procedures or related subjects, State representatives, FOSCs, Coast Guard district staffs, and other interested parties are urged to contact the NPFC (see paragraph 13).

2. REQUESTING FUNDS.

A. ELIGIBILITY CONSIDERATIONS. Pursuant to 33 CFR 133.5, 133.7, and 133.13, the following will be evaluated by the FOSC when contacted by the State requesting funds under section 1012 (d) (1):

1. Is the incident eligible for immediate removal under the Clean Water Act, as amended by OPA 90?

2. Is the substance discharged/threatening discharge oil?

3. Did the incident occur after August 18, 1990?

4. Is the aggregate amount of the request equal to or less than S250,000?

5. Are the proposed actions consistent with the NCP (including 40 CFR 300.305 (c)'s requirement that a reasonable effort is made to have the discharger voluntarily and promptly perform removal actions)?

6 . Are the proposed level of response, proposed actions, and amounts requested appropriate for the circumstances?

7. Has the State the means to complete the immediate removal?

B. COSTS INCURRED BEFORE FOSC CONTACT. Immediate removal costs involving a specific oil discharge incident which, due to exigent circumstances, were incurred by the State prior to the initial request to the FOSC for State Access, are allowable under State Access if the FOSC determines that: 1) notification is timely; 2) the response was consistent with the magnitude of the incident; and 3) costs incurred were otherwise reasonable under the circumstances and in all other respects were allowable.

C. CONTACTING THE FOSC. In accordance with 33 CFR 133.9, the Governor or designated State official (henceforth referred to as the State official) shall request access to the Fund from the FOSC who is pre-designated for the area of the incident. The best method for contacting the FOSC is the telephone, because it allows for discussions and conference-calling.

D. EVALUATION BY FOSC. Considering the NCP, 33 CFR 133.15, and the criteria in paragraph 2.A. above, the FOSC determines whether or not the proposed removal actions are eligible for funding. The FOSC may contact the NPFC case officer whenever questions arise. The decision by the FOSC is final. The FOSC may respond as follows:

1. If the FOSC concludes that the incident is not eligible for Federal removal under the NCP, that any of the criteria in paragraph 2.A. above are not met, or otherwise does not find State Access to be the appropriate removal mechanism for the incident, he/she will deny the request for State Access. The FOSC may conclude that the incident is eligible for removal under the NCP, but that a Federally led response is more appropriate to the situation. In this event, the FOSC may decide to utilize State resources through contract (see paragraph l.C.1.). Whenever a request for State Access is denied for any reason (including a decision for a Federally led response or a decision for no Federal response), the FOSC will, by the next business day following his/her decision, notify the NPFC Case Management Division (NPFC (cm)) and District (m) office, as appropriate, of the request and the specific reason(s) for denial.

2. If the FOSC concludes that all of the criteria in paragraph 2.A. above are fulfilled and that State Access to the Fund is the best method to address the incident, he/she may then approve the request for State Access and contact the NPFC for assignment of a case-specific Federal Project Number (FPN) and a removal action funding ceiling (ceiling). The FOSC is responsible for ensuring that the State official is expeditiously informed of the FPN/ceiling.

E. OBLIGATION OF THE FUND AND ASSIGNMENT OF THE FEDERAL PROJECT NUMBER AND FUNDING CEILING.

1. The FOSC will pass the same information to the NPFC district representative that he/she would pass for other types of oil discharge responses when accessing the Fund through CANAPS. The FOSC identifies this as a State Access removal (in the comments block of CANAPS) which he/she has approved, requests assignment of an FPN/ceiling, and provides the name and telephonic/electronic/postal mail contact information of the requesting State official. With the issuance of an FPN/ceiling for the incident, the Coast Guard has obligated the Fund for payment. All further communications by all parties regarding the oil discharge incident should include the FPN and ceiling.

2. The Fund is obligated for payment to the State and a cooperative agreement between the Coast Guard and the State is in effect when the NPFC assigns the FPN to this project. At this point the State may begin incurring costs against the FPN/ceiling.

3. NPFC will access CANAPS to process the assignment of the FPN/ceiling. The message should include the NPFC, the FOSC, and the cognizant Regional Response Team (RRT) members as addressees, and should also be faxed to the cognizant State official. In addition to the information which is usually included in this type of notification, this message includes as a reference the telephone conference between the FOSC and the NPFC in which the FPN and ceiling were assigned, specifically notes that the funds were provided for State Access, and includes the telephonic, electronic, and mail contact information of the State official.

F. RAISING THE CEILING. Requests for raising the amount of the FPN's ceiling are made to the cognizant FOSC. The procedure is identical to that outlined in subparagraphs 2.A-E. above. Requests for a higher ceiling shall not raise the overall ceiling above the $250,000/incident limit.

G. OIL DISCHARGE REMOVAL AUTHORIZATION. An "Oil Discharge Removal Authorization" (see Appendix A) documents the cooperative agreement between the State and the Coast Guard. Upon issuance of the CANAPS message assigning the FPN/ceiling, the NPFC case officer forwards the Oil Discharge Removal Authorization and a certifications package (see

paragraph 7.D. below) to the State official. The State official should contact the NPFC case officer listed in the Authorization if any questions arise.

H. TERMINATION OF STATE ACCESS FUNDING. If, at any time after approving a request for State Access, the FOSC determines that any of the criteria in paragraph 2.A. above were not/are no longer applicable to the immediate removal action, the FOSC may terminate State Access to the Fund. In this event, the State may receive payment for its allowable immediate removal costs that were incurred in good faith prior to the termination. While it is normally expected that the State official will notify the FOSC via POLREP (see paragraph 5 below) upon determination that the immediate removal is complete, the FOSC retains the authority to unilaterally declare completion of a Federal removal and terminate further Federal funding of the removal at any time the FOSC determines that immediate removal is complete.

3. DESIGNATION OF SOURCE & IDENTIFICATION OF RESPONSIBLE PARTY.

A. INVESTIGATION AND NOTIFICATIONS. In accordance with the Section 300.305 of the NCP and 33 CFR 133.23, the State shall promptly complete a thorough investigation to determine the source of discharge and to identify the responsible party(ies) (RP--normally, the owner or operator of the vessel or facility, including vehicles). The State should include this information in its POLREPs (see paragraph 5) and pass it directly to the NPFC case officer and FOSC via telephone as soon as it is known.

B. LETTER OF DESIGNATION. Following receipt from the State of source and RP information, the NPFC case manager issues a Letter of Designation to the RP(s) to notify them of their designation as an RP and their responsibilities as an RP under Federal law. Also, the NPFC will send a copy of the Letter of Designation to the FOSC and State official.

4. REMOVAL COSTS. Funds provided to the State under OPA 90 Section 1012 (d) (1) are for "immediate removal" of a discharge or substantial threat of a discharge. Pursuant to OPA 90 Sections 1001(31) and 1012 (a) (1), and 33 CFR 133.13, allowable removal costs are all direct costs incurred to prevent, minimize, and mitigate oil pollution from the specific incident, including the costs of monitoring removal actions taken by the responsible party(ies) and the costs to prepare required documentation. State Access may only be used to pay for removal costs that are directly related to the specific incident. Costs must generally be incurred at the site or in support of on-site activities. State Access to the Fund is for immediate removal costs only, and will not be utilized for long-term removal or remediation costs, nor the costs of natural resource damage assessments. If questions arise, contact the NPFC case manager. Allowable costs include:

A. CONTRACT COSTS. The State may be paid for contract costs incurred specifically for the removal action (e.g., cleanup contractor costs, waste disposal contractor costs, administrative contractor costs (for on-site cost documentation), etc.).

B. OUT OF POCKET EXPENSES. The State may also be paid for unbudgeted out-of-pocket State costs incurred specifically for the removal action, (e.g., OSHA and RCRA costs for the incident, travel to the site, consumable materials purchased specifically for the removal action, transportation or shipping costs for bringing materials to the site, equipment rentals, etc.).

C. STATE SALARY, EQUIPMENT, AND OVERHEAD COSTS. The State may be paid for the salaries of personnel directly employed in the removal activities (including documenting those activities), the costs associated with the use of State equipment, and applicable overhead costs as may

be applied in accordance with OMB Circular A-87. Incorporating the State's predetermined standard rates for the period of use (usually hours or days) is the preferred method.

5. POLLUTION REPORTS (POLREPs). The incident reporting requirements specified in 300.315 of the NCP apply to the State official during immediate removals conducted under 33 CFR 133.

A. POLREP CONTENTS. Each POLREP must clearly describe the source, location, situation, actions taken, and future plans. The POLREP shall identify the responsible party, if known. The POLKEP should also note any potential damages incurred by third parties as a result of the incident which may give rise to claims under OPA 90. These may include private removal actions not funded through the Coast Guard; damages to natural resources or property (real or personal); loss of subsistence use of natural resources; loss of revenues by Federal, State, or local governments; loss of profits or earning capacity; and costs of State or local governments in providing increased or additional public services. The POLREP should cite the FPN and assigned ceiling and list the amount of obligations against that ceiling.

B. POLREP FREQUENCY. POLREPs are sent as significant developments occur during response actions, and a final POLREP should be sent within 48 hours following the completion of immediate removal actions. It is envisioned that removal actions conducted under State Access will typically be of short duration, and the State may only need to file one POLREP (i.e., POLREP One and Final).

C. POLREP COMMUNICATION. The State official shall submit POLREPs through communications networks or procedures established by the RRT. POLREPs are forwarded to the following:

1. FOSC who authorized the State Access request;
2. NPFC (cm);
3. RRT; and
4. Others as specified in area/local contingency plans.

The POLREP should be delivered in writing by expeditious means (e.g., facsimile (fax), overnight mail, electronic mail, etc.) and may be provided by phone only when other expeditious means are unavailable.

6. RECORDKEEPING. In accordance with 33 CFR Part 133.19 and Section 300.315 of the NCP, the State shall establish sufficient controls and procedures to provide documentation as follows:

A. DOCUMENTING COSTS-GENERAL. The State should clearly identify the costs of immediate removal activities, the need for incurring those costs, the source of the spill, the identity of the responsible parties, and the facts which support those conclusions.

1. WORK/PURCHASE WAS AUTHORIZED. Provide documentation that the work or purchase was authorized, (e.g., contracts, travel orders, purchase orders, work orders, rental contracts, etc.). The documentation should indicate why that activity was necessary and show the relationship to the removal actions at the specific site. A supervisor's certification is sufficient for State direct labor costs.

2. WORK/PURCHASE RECEIVED AND ACCEPTED. Provide documentation that the work or purchase was reviewed and accepted as complying with the authorization (e.g., receiving reports, delivery tickets with receipt signatures, ad hoc reports, etc.).

3. BILLED FOR THE WORK. Provide documentation of the cost of the work or purchase and that the State was properly billed for those costs, (e.g., contractor's/vendor's invoice, cash register receipts, travel reimbursement vouchers, employee timesheets or logs, etc.).

a. Work performed. The documentation should show the work performed - the service provided, the equipment used, the persons employed, etc. - and the quantity of each item of work performed each day (i.e., the delivered work product). Contractors performing work should prepare the documentation of the work performed. The State is responsible for ensuring the documentation of salary and equipment usage costs for the State.

b. Work unit. The documentation should identify costs according to the unit of work for each item. For contracts, that unit of work is established by the contract line items (CLINs). For time and material based contracts, the unit of work is normally hours. The delivered work product for documentation purposes is, however, the number of units of the item provided per day (unless otherwise specified). For State employee salary costs, the unit is hours of work. For State equipment, the work unit is also typically hours, unless specific daily rates are established for that equipment.

c. Cost of work. The documentation should show the cost of each unit of each item of work per day (or other time period set in the controlling agreement for that item) and the extended total cost. As discussed in paragraph 4.C., State salary and equipment usage costs should be determined using the State's standard rates.

4. PAID FOR THE WORK. Provide documentation that the amount invoiced, shown on receipts, or presented on travel vouchers was paid or authorized for payment. State certification that the cost is authorized for payment and will be paid through normal State processes is sufficient for requesting payment from the Fund, provided that any later corrections or changes to the amount paid are promptly reported to the NPFC.

B. DOCUMENTING SALARY, EQUIPMENT USAGE, AND ADMINISTRATIVE COSTS. State salary, equipment, and administrative costs are documented as follows for each day of removal activity:

1. Date
2. Identification (employee ID, equipment ID or description, function for removal action)
3. Category (e.g., grade level, equipment type)
4. Number of hours charged for that day
5. Rate
6. Total cost (hours times rate)
7. Cumulative total for all days

C. INCIDENT REPORT. The State official requesting Fund access should ensure that an Incident Report is submitted to the NPFC and the FOSC within 30 days after the completion of immediate removal activities. The Incident Report is a summary of the incident removal, and is used for recovery from the RP and various statistical purposes. The Incident Report should describe the incident and list parties of interest. The Incident Report should also include copies of any related State reports, violation reports, etc., available at the time. The Incident Report may be included as

part of a POLREP, provided that the Incident Report portion is specifically identified and all necessary information is presented.

1. INCIDENT DESCRIPTION. The Incident Report includes the following:

a. Report Date
b. Federal Project Number and Ceiling
c. Name and address of State agency submitting report and name of FOSC
d. Name and phone number of contact person
e. Date of incident
f. Dates and times removal actions began and ended
g. Location of incident
h. Material involved
i. Quantity discharged
j. Nature of substantial threat if no discharge
k. Body of water affected
1. Ambient conditions which may affect removal
m. Source of discharge or substantial threat
n. Short description of the incident and removal activities (if not adequately described in POLREPS)
o. Short description of damage to any potential natural resource or other damages due to the incident

2. PARTIES OF INTEREST. In addition to the information describing the incident, the Incident Report should include information identifying all parties of interest (e.g., State participants in the removal activities, the responsible parties, witnesses) as follows:

a. Names and addresses of responsible parties, owners and operators of vessels or facilities
b. Names, identification numbers, and phone numbers of State employees involved in the removal activities
c. Names, addresses, and phone numbers of local municipality participants, (e.g., fire department employees, local police)
d. Names, addresses, and phone numbers of any witnesses

7. REQUESTING PAYMENT. The State should forward the documents listed in subparagraphs A.-D. below to NPFC (cm). The State will receive payment for allowable immediate removal costs after the documentation has been received and reviewed favorably by the NPFC.

A. DISBURSEMENT VOUCHER. The State requests payment using either 1) SF-1080 (see Appendix D), Voucher for Transfers Between Appropriations and/or Funds (preferred), 2) SF 270, Request for Advance or Reimbursement, or 3) an equivalent State invoice acceptable to the NPFC.

B. INCIDENT REPORT (See paragraph 6.C. above). Submitting a properly-documented request for a partial payment is encouraged if preparing the submission of a request for full payment would delay the NPFC's receipt of the Incident Report longer than 30 days beyond the completion of the immediate removal.

C. REMOVAL COSTS (See paragraph 4).

D. CERTIFICATIONS. Certain certifications (see Appendix B) involving cooperative agreements between Federal and State agencies are required by 49 CFR Parts 18, 20, and 29 (see paragraph 12.A. below for a complete description). Accordingly, the State official shall ensure compliance with, sign, and return the following certifications:

1. Certification Regarding Lobbying.

2. Certification Regarding Debarment, Suspension, and Other Responsibility Matters.

   a. The certification for Primary Covered Transactions is required from the State itself.

   b. The certifications for Lower Tier Covered Transactions shall be submitted by the State on behalf of each of its contractors.

3. Certification Regarding Drug-Free Workplace Requirements.

   a. Required from the State to certify its employees. If, in accordance with 49 CFR 29.630 (c), the State has a current blanket Drug-Free Workplace certification, the State official may forward a copy of it in lieu of signing an incident-specific certification.

E. OVERALL CERTIFICATION. By the act of submitting the request for payment, the State official is certifying that costs incurred were consistent with the advance approval by the FOSC, that costs were directly related to removal actions for the specific incident, and that the State will pay or has paid the amounts presented.

F. COPIES TO FOSC. The State shall submit a copy of the Incident Report and cost documentation (see paragraphs 7.B.-C. above) to the cognizant FOSC.

G. TIMELINESS. In accordance with 33 CFR 133.19 (b), the request for payment, Incident Report, cost documentation, and certifications described in paragraphs VII.A-D. above should reach the NPFC no later than 30 days after the completion of immediate removal actions. In the event that certain documentation is unavailable or delayed, the State should submit that portion of the documentation that is available and forward a supplemental request for payment as the additional records become available. This information is needed rapidly to allow the NPFC to expeditiously pay the State and seek reimbursement from responsible parties. In accordance with 49 CFR 18.41 (b) (4), the NPFC may deobligate the Fund for payment if all required documentation is not received by the NPFC and found to be complete and satisfactory within 90 days following completion of an immediate removal action. The State is ineligible for payment under 33 CFR 133 following deobligation of the Fund.

8. REVIEW OF DOCUMENTATION. Upon receipt of the documents in paragraphs 7.A.-D. above, the NPFC will review them for completeness and to ensure that all removal costs are eligible for payment. If the documentation is not complete, the NPFC will promptly notify the State of what information is missing. If the NPFC determines that there are costs of an operational nature which may be ineligible for payment, the NPFC will confer with the cognizant FOSC. If the NPFC concludes that certain removal costs are ineligible for payment, it will delete those costs from the payment request made to the USCG Finance Center, and will promptly send a report of the disallowed costs to the State and to the FOSC. If, 90 days following the completion of the immediate removal, the State has failed to submit documentation to the NPFC which the NPFC finds to be complete and satisfactory, the NPFC may deobligate the Fund for payment of any removal costs which remain unsubstantiated.

9. PAYMENT PROCESS. After the State documents are reviewed and found to be complete and satisfactory, the NPFC Case Manager authorizes payment and the NPFC Financial Manager promptly processes the payment request through the USCG Finance Center.

10. COOPERATION IN COST RECOVERY/LITIGATION. By requesting State Access to the Fund, the State agrees to cooperate fully in any cost recovery actions and/or litigation to enforce the provisions of OPA 90.

11. DOCUMENTATION AND THE FOSC. Copies of the FPN/ceiling authorization, Oil Discharge Removal Authorization, Incident Report, cost documentation, and report of disallowed costs are sent to the FOSC for informational purposes only. The FOSC is not obligated to review or retain these documents.

12. RELATIONSHIP TO COOPERATIVE AGREEMENT REQUIREMENTS. As described in 33 CFR 133.5 (c), the Federal Grant and Cooperative Agreement Act of 1977 (31 USC 6301-6308) and 49 CFR Parts 18, 20, 29, and 90 apply to Fund monies obligated for payment under the State Access provisions of Section 1012 (d) (1) of the Oil Pollution Act. While compliance with these laws and regulations requires the submission of certain forms/reports from the State to the Federal government, some of the forms/reports have been waived because the nature of immediate removal actions obviates the need them.

A. REQUIRED FORMS/REPORTS. (refer to procedures throughout this document for a complete description of all forms/reports required under State Access). The following forms/reports are required by 49 CFR 18, 20, and 29, have not been waived, and should be submitted concurrently with the Incident Report and cost documentation:

1. SF 270, Request for Advance or Reimbursement

   This form or the optional/preferred SF 1080 (Voucher for Transfers Between Appropriations) or a State invoice acceptable to the NPFC is used by States to request payment from the Fund.

2. Certification Regarding Lobbying

   (See paragraph 7.D.1.) Required by 49 CFR 20. A copy of this certification is included in the certifications package provided by the NPFC to the State.

3. Certification Regarding Debarment, Suspension, and other Responsibility Matters

   (See paragraph 7.D.2.) Required by 49 CFR 29. A copy of this certification is included in the certifications package provided by the NPFC to the State. The cooperative agreement between the State and the Coast Guard is a primary covered transaction. A contract between the State and a private contractor is a lower-tier covered transaction.

4. Certification Regarding Drug-Free Workplace Requirements

   (See paragraph 7.D.3) Required by 49 CFR 29. A copy of this certification is included in the certifications package provided by the NPFC to the State (see paragraph 7.D.3.a. for blanket certification exception).

B. WAIVER OF CERTAIN FORMS/REPORTS. The requirements in 49 CFR Parts 18, 20, and 29 regarding the following specific forms and reports are waived as follows for State Access under 1012 (d) (1) of the Oil Pollution Act:

1. SF 424, Application for Federal Assistance

   The requirement for use of this form is waived. The request made by the Governor or his/her designated representative to the FOSC for access to the Fund suffices as an application.

2. SF 272, Federal Cash Transactions Report

   This form is not required since, under OPA 90 Sect. 1012 (d) (1), the Fund only pays States for costs already incurred.

3. SF 424A, Budget Information - Non-construction Programs

   This form is not required since, under OPA 90 Sect. 1012 (d) (1), the Fund only pays States for those costs already incurred, and each incident represents a separate agreement between the State and the Fund.

4. SF 424C, Budget Information - Construction Programs

   This form is not required because removal actions are not considered construction programs.

5. SF 269A, Financial Status Report

   The requirement for this report is waived. The State's request for payment that is submitted with the Incident Report and accompanying cost documentation meets all financial reporting requirements. it is envisioned that each incident would be completed in substantially less than three months.

6. Nonconstruction performance reports

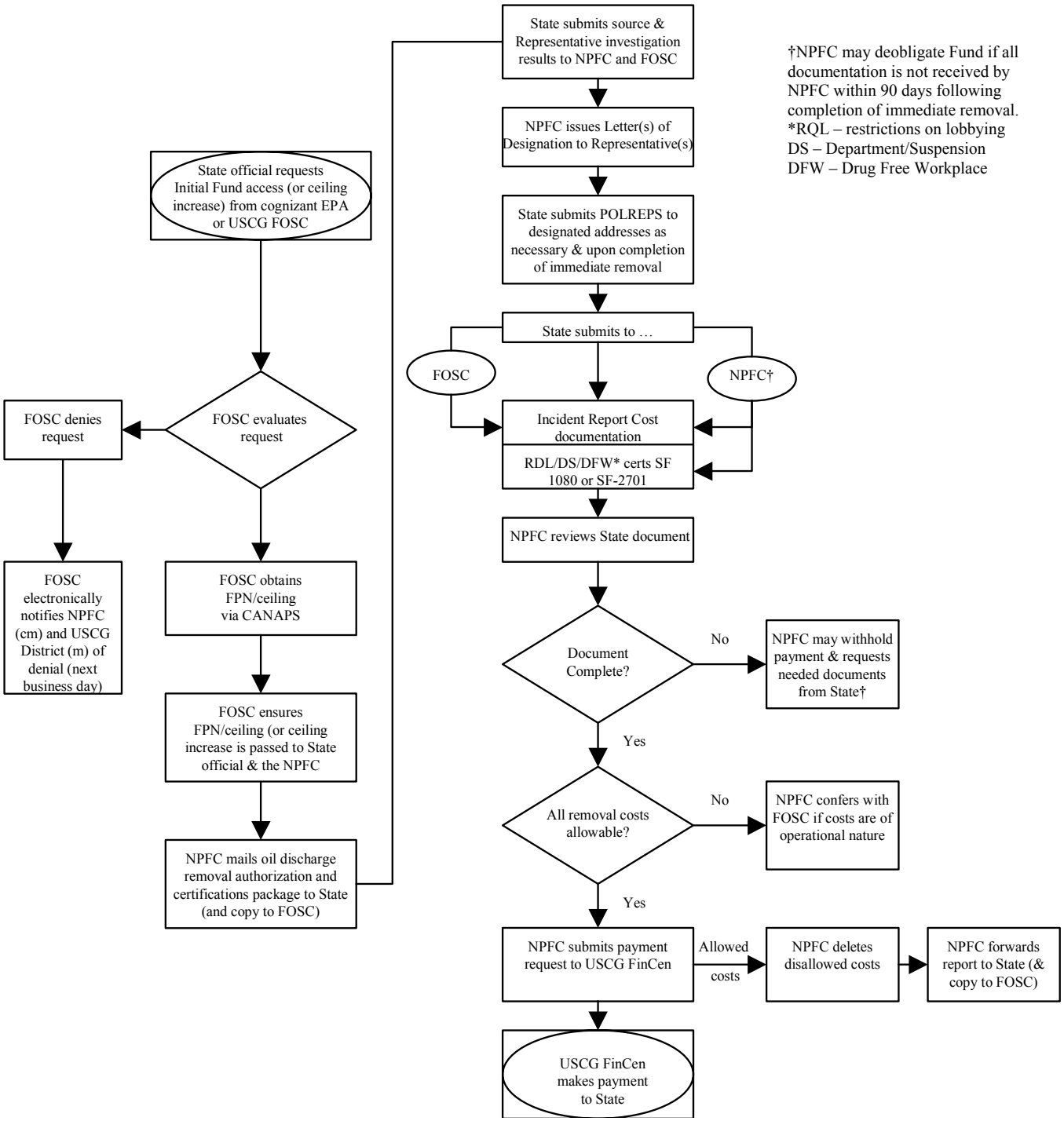
   The requirement for this report is waived. Performance information available from subsequent applications contains sufficient information to meet programmatic needs.

C. FEDERAL AUDIT. In accordance with 49 CFR 90, acceptance of Federal funds through a cooperative agreement may make the State subject to an annual or biennial Statewide Federal audit of all of its grants and cooperative agreements with the Federal government.

13. NPFC POINT OF CONTACT. The NPFC case management officer can be contacted as follows:

Director (cm)
U.S. Coast Guard
National Pollution Funds Center
4200 Wilson Blvd Ste 1000 Tel. (202) 493-6732
Arlington VA 22203-1804 Fax. (202) 493-6896

FLOW
State Access to OSLTF Under Secretary. 1012(d)(1) of OPA 90



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STATE OIL DISCHARGE REMOVAL AUTHORIZATION

FOR

THE OIL POLLUTION ACT OF 1990

(PUBLIC LAW 101-380)

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STATE OIL DISCHARGE REMOVAL AUTHORIZATION

Recipient State: _____

Address: _____

_____

_____

1. Purpose

This document obligates the Oil Spill Liability Trust Fund (Fund) for payment to the Recipient State for certain removal costs incurred in response to the following pollution incident: _____, FPN #_____.

This funding authorization is contingent upon the Recipient's compliance with the requirements contained herein, the National Contingency Plan (40 CFR Part 300), 33 CFR Part 133, and 49 CFR Parts 18, 20, 29, and 90.

2. Approved Functions and Pay Limit

Payment will be made only for actions that are consistent with the initial authorization or approved in advance by the FOSC. Approval may be verbal or written. Assessment, restoration, rehabilitation, or replacement of Natural Resources damaged by the spill are not covered.

Maximum limit of authorization: $ _____.

3. Conditions

See attached page(s) for special conditions, dates of performance, direction, or approvals.

4. Period of Authorization

This authorization shall remain in effect until the designated State official notifies the FOSC and NPFC that the immediate removal has been completed or the FOSC terminates Federal funding of the immediate removal.

5. Payment Procedure

The Recipient State will submit the required documents in accordance with 33 CFR Part 133 upon completion of removal activities.

The Coast Guard may deobligate the Fund for payment of any costs for which proper documentation has not been received within 90 days following the date of the completion of the immediate removal.

6. Hold Harmless and Indemnify

By performing any action or seeking any reimbursement under this funding authorization, the Recipient State agrees to indemnify and hold harmless the United States of America, and all of its departments and agencies, including without limitation the U.S. Coast Guard and the Oil Spill Liability Trust Fund ("United States"), with respect to any and all suits, actions and claims, of whatever kind or nature, arising from or relating to the Recipient's; actions, omissions, or other involvement in this spill. Recipient State further agrees to waive any rights of action and/or claims which it may have against the United States arising from or relating to its actions, omissions, or other involvement in this spill.

7. No Agency

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

B. Accounting Data

Document Control Number: _____

9. Points of Contact

A. _____Tel ( ) _____Fax ( ) _____
FOSC

B. _____Tel ( ) _____Fax ( ) _____
Recipient State Representative

C. _____Tel ( ) _____Fax ( ) _____
NPFC Case Officer

10. Authorizing Official

Signature: _____

Title: _____ Date: _____

Attachments: No _____ Yes _____

AMENDMENT TO

STATE OIL DISCHARGE REMOVAL AUTHORIZATION

Issued to (Recipient State):_____

By (NPFC Case Officer): _____

Date of Original Authorization: _____

FPN # of Original Authorization:_____

The Authorization cited above is amended as follows:

_____

_____

_____

_____

Document Control Number (if applicable): _____

Authorizing Official

Signature: _____

Title: _____Date: _____

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CERTIFICATIONS

FOR

CONTRACTS, GRANTS, LOANS, AND COOPERATIVE AGREEMENTS

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APPENDIX A TO PART 49 CFR 20
CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and

Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying." (See Appendix C) in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,00 for each such failure.

SIGNATURE _____

TITLE _____

FPN# _____

Return signed originals to:
National Pollution Funds Center (cm)
4200 Wilson Blvd.
Arlington, VA 2203-1804

APPENDIX A TO PART 29
CERTIFICATION REGARDING DEPARTMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS
PRIMARY COVERED TRANSACTION

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a, person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However. failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended. declared ineligible, or voluntarily excluded from participation into this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitation for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List (Tel. (202) 366-4268).

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, and
other Responsibility Matters
Primary Covered Transactions

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency:

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction: violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property:

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1) (b) of this certification: and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

SIGNATURE _____ FPN # _____

TITLE _____

APPENDIX B to 49 CFR PART 29
CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

LOWER TIER COVERED TRANSACTIONS

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definition and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List (Tel. (202) 366-4268).
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding, Debarment, Suspension, Ineligibility, and Voluntary Exclusion
Transactions Lower Tier Covered

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily included from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

SIGNATURE _____

TITLE _____

FPN # _____

APPENDIX C TO 49 CFR PART 29
CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS
Instructions for Certification

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.
2. The certification set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.
3. For grantees other than individuals, Alternate I applies.
4. For grantees who are individuals, Alternate II applies.
5. Workplace under grants, for grantees other than individuals. need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.
6. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation. State employees in each local unemployment office, performers in concert halls or radio studios).
7. If the workplace identified to the agency changes during the performance of the grant,.the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph five).
8. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

Controlled substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15):

Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes:

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance:

Employee means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All direct charge employees: (ii) All indirect charge employees unless their impact or involvement is insignificant to the performance of the grant: and, (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

Certification Regarding Drug-Free Workplace Requirements
Alternate I. (Grantees Other Than Individuals)

A. The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about--

(1) The dangers of drug abuse in the workplace;
(2) The grantee's policy of maintaining a drug-free workplace;
(3) Any available drug counseling, rehabilitation, and employee assistance programs; and
(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will--

(1) Abide by the terms of the statement; and
(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under paragraph (d) (2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d) (2), with respect to any employee who is so convicted--

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency:

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the sites(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

Check if there are workplaces on file that are not identified here.

SIGNATURE _____ FPN # _____

TITLE _____

APPENDIX C TO 49 CFR PART 29
CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

Instructions for Certification

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.
2. The certification set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.
3. For grantees other than individuals, Alternate I applies.
4. For grantees who are individuals, Alternate II applies.
5. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.
6. Workplace identification must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).
7. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph five).
8. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

Controlled substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15):

Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes:

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

Employee means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All direct charge employees: (ii) All indirect charge employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee’s payroll. This definition does not include workers not On the payroll of the grantee (e.g,. volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

Certification Regarding Drug-Free Workplace Requirements
Alternate II. (Grantees Who Are Individuals)

(a) The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant:

(b) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

SIGNATURE _____

TITLE _____

FPN # _____

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB

0345-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action: a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	**2. Status of Federal Action:** a. bid/offer/application b. initial award c. post-award	**3. Report Type:** a. initial filing b. material change **For Material Change Only**: year _____ quarter _____ date of last report _____
4. Name and Address of Reporting Entity: Prime Subawardee Tier _____, *if known:* Congressional District, *if known*:	**5. If Reporting Entity is No. 4 in Subawardee, Enter Name and Address of Prime:** Congressional District, *if known*:	
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable*: _____	
8. Federal Action Number, *if known*:	**9. Award Amount, *if known*:** $	
10. a. Name and Address of Lobbying Entity *(if individual, last name, first name, MI):*	**b. Individuals Performing Services *(including address if different from No. 10a)*** *(last name, first name, MI):*	
(attach Continuation Sheet(s) SF-LLL-A, if necessary)		
11. Amount of Payment *(check all that apply)*: $ _____ actual planned	**13. Type of Payment *(check all that apply):*** a. retainer b. one-time fee c. commission d. contingent fee e. deferred f. other, specify: _____	
12. Form of Payment *(check all that apply):* a. cash b. in-kind; specify: nature _____ value _____		
14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11: *(attach Continuation Sheet(s) SF-LLL-A, if necessary)*		
15. Continuation Sheet(s) SF-LLL-A attached: Yes No		
16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which NPFC was placed by the tier above when this transaction was made or entered into. This disclosure is requested pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the requested disclosure shall be subject to a civil penalty of not less than $10,000 and nor more than $100,000 for each such failure.	**Signature:** _____ **Print Name:** _____ **Title:** _____ **Telephone No.:** _____ **Date:** _____	
		Authorized for Local Reproduction Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in Item 4 checks “Subawardee”, then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., “RFP-DE-90-001.”

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in Item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (Item 4) to the lobbying entity (Item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify he nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and relative activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minimum per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (03-48-0046), Washington, D.C. 20503.

DISCLOSURE OF LOBBYING ACTIVITIES Approved by OMB

CONTINUATION SHEET 0348-0046

Reporting Entity: _____ Page _____ of _____

Authorized for Local Reproduction

Standard Form 1080 Revised April 1982 Department of the Treasury FRM 2-2500 1080-109	**VOUCHER FOR TRANSFERS BETWEEN APPROPRIATIONS AND/OR FUNDS**	VOUCHER NO. SCHEDULE NO.
Department, establishment, bureau, or office receiving funds		BILL NO.
Department, establishment, bureau, or office charged Director (CM) United States Coast Guard National Pollution funds Center 4200 Wilson Blvd. Suite 1000 Arlington, VA 22203-1804		PAID BY

ORDER NO.	DATE OF DELIVERY	ARTICLE OR SERVICES	QUAN-TITY	UNIT PRICE COST	UNIT PRICE PER	AMOUNT DOLLARS AND CENTS
			TOTAL			

Remittance in payment hereof should be sent to

ACCOUNTING CLASSIFICATION *Office Receiving Funds*

CERTIFICATE OF OFFICE CHARGED

I certify that the above articles ere received and accepted or the services performed as stated and should be charged to the appropriations(s) and/or fund)s) as indicated below; or that the advance payment requested is approved and should be paid as indicated.

.....
(Authorized administrative or certifying officer)

.....
(Date)

.....
(Title)

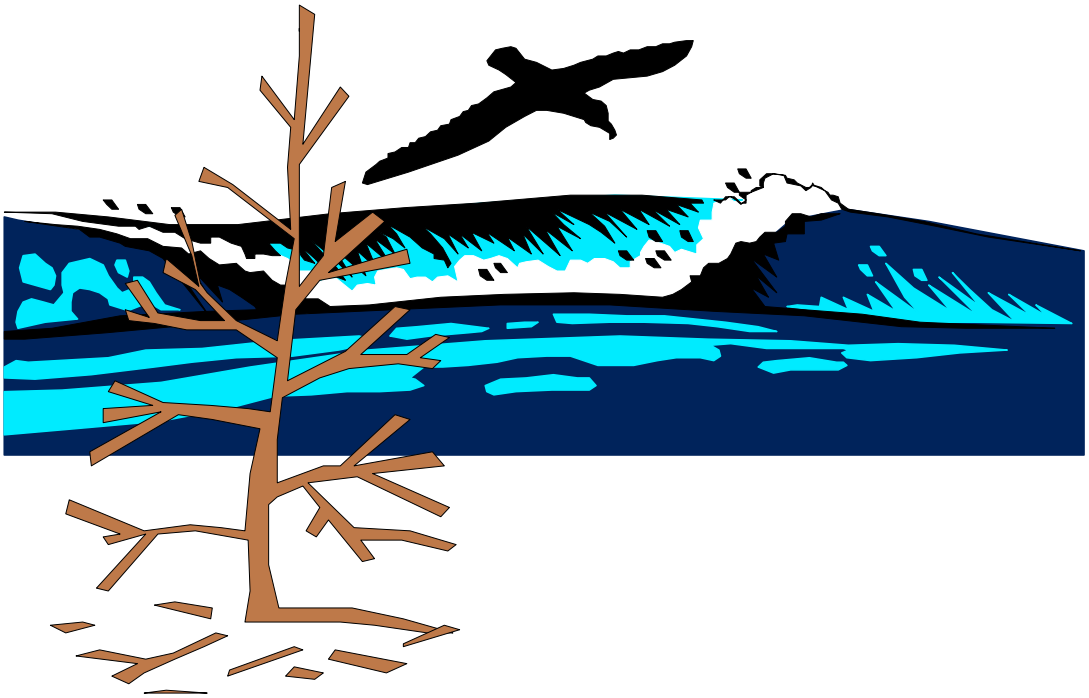
ACCOUNTING CLASSIFICATION *Office Charged*

Paid by Check No

NSN 7540-00-634-4230 U.S. G. F. C. 1983 - 381 526-8279 Previous Editions Are Usable
Standard Form - LLL-A

CHAPTER 6

Initiate Requests and Natural Resource Damage (NRD) Claims



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Initiation of Natural Resource Damage Assessments (INRDA)

The material in this Chapter explains the process for the initiation of Natural Resource Damage Assessment as well as addresses the regulations and procedures of Natural Resource Damage Claims. The material is divided into the following subchapters:

SUBCHAPTER	CONTAINS DETAILED INFORMATION ABOUT
Natural Resource Damage (NRD) Funding Guidelines	• Initiate Funding Guidance • NRD Claims Guidance
Supplemental Documentation	• OPA 1990 Selected Provisions (33 U.S.C. 2701 et. seq.) • Natural Resource Damage Assessment Regulations (15 CFR 990) • Interim Claims Regulations (33 CFR 136) – General (Subpart A) – General Procedures (Subpart B) – Natural Resources (Subpart C 136.207-136.211)

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May 7, 2002

United States Coast Guard
National Pollution Funds Center
Natural Resource Damage Claims Division

4200 Wilson Blvd., Suite 1000
Arlington, VA 22203-1804

TABLE OF CONTENTS

Page

I. Introduction 7

II. Initiate Funding Guidance 11

Initiate Funding Terms and Conditions 12

Attachment IIA Interagency Agreement to Initiate Natural Resource Damage Assessment under OPA between the National Pollution Funds Center and the Federal Lead Administrative Trustee .. 17

III. Natural Resource Damage Claims Guidlines 23

Natural Resource Damage Claim Guidelines 24

Attachment III A: Natural Resource Damage Claims Using the Damage Assessment Regulations at 15 CFR 990 32

Attachment III B Emergency Restoration Claims 35

Attachment III C: Information Pertinent to Submitting and Adjudicating Natural Resource Damage Claims 38

SECTION I

INTRODUCTION

Introduction

This is a guidance document prepared by the Natural Resource Damage Claims Division of the United States Coast Guard National Pollution Funds Center (NPFC). This guidance document addresses both initiate funding requests as well as claims for assessments and restoration plans developed during the execution of oil spill natural resource damage assessments. **For claim adjudication purposes, the NPFC does not specify the format that claim submissions must take. The claimant may use any system for documenting the NRDA claim as long as it meets the statutory and regulatory requirements for content. Claims lacking this information may be returned to the claimant with a request for required information before further claim processing can occur.**

NPFC is committed to payment of valid claims for natural resource damage assessment and restoration under OPA. NPFC believes, in those cases where the party responsible for injuries to natural resources and their services resulting from an OPA incident cannot or will not pay compensation, that the will of Congress was that NPFC make prompt and fair payment of such claims to trustees so that timely assessment and restoration can be accomplished. Therefore, these guidelines are intended to aid, where necessary, natural resource trustees and, ultimately, the environment.

Section II of this document provides guidance for initiate funding. The guidance provided in Section II begins with the terms and conditions for using the Oil Spill Liability Trust Fund (OSLTF) for initiating a Natural Resource Damage Assessment. Section II has been developed to provide guidance and funding for "initiation" activities under the statute. Trustees who incur costs and are reimbursed by the OSLTF will also be guided by this Instruction. Attachment II A at the end of Section II is an Interagency Agreement for "Providing Funding to Natural Resource Trustees to Conduct the Initiation of an Assessment of Natural Resource Damages under the Oil Pollution Act of 1990 (OPA)".

Section III of this document provides guidance for assessment and restoration claims conducted pursuant to OPA and the NRD regulations. The Natural Resource Damage (NRD) Claim Guidelines and supplemental guidelines may be used for submitting claims to the NPFC to document natural resource damages resulting from an incident under OPA. Original documentation is preferred for cost recovery and should not be retyped, even when hand written. Accordingly, the claimant must establish sufficient controls and procedures to provide the requested information and documentation.

While some of the information requested for claims is easily compiled (e.g., claimant name and contact information), other documentation requests are complex (e.g., estimates of natural recovery of impacted environments). Much of the information requested may already be incorporated into other documents (e.g., the Final Restoration Plan). In these cases, simply reference the location of the requested information within the claim submission materials to include the document, page, and paragraph, as appropriate.

These guidelines establish no new requirements. They discuss and frequently paraphrase OPA and the implementing claims regulations. The guidelines do not create new rights or liabilities. They are intended to give practical guidance only. Controlling legal authority for NRD claims resides in the Oil Pollution Act of 1990 (33 US Code §2701 et seq.) and the interim claims regulations (33 CFR Part 136). In the event of any conflict between these guidelines and any statute or regulation, including the Damage Assessment Regulations found at 15 CFR Part 990 (e.g., for definitions or to determine if in compliance

with those regulations), the statute or regulation governs. NPFC reserves the right to modify this guidance document without prior notice.

The Natural Resource Damage Claim Guidelines are for all claimants. The three supplemental guidelines at the end of Section III address Natural Resource Damage Claims Following the Damage Assessment Regulations at 15 CFR 990 (Attachment III A), Emergency Restoration Claims (Attachment III B) and Information Pertinent to Submitting and Adjudicating Natural Resource Damage Claims (Attachment III C). Attachment III A contains supplemental guidelines that are intended for claimants asserting that they followed the Damage Assessment Regulations at 15 CFR 990 and are suggested to be completed in addition to the appropriate portions of the NRD Funding Guidelines. Attachment III B contains supplemental guidelines that are intended for claimants submitting an emergency restoration claim and are suggested to be completed in addition to the appropriate portions of the NRD Claim Guidelines. Attachment III C Provides a listing of information requests that will facilitate the submission and adjudication of natural resource damage claims. Though Attachment III C can be used as a supplemental guide for identifying information needs in general natural resource damage claims, it is primarily intended to be used as an aid to both claimants and NPFC Claims Managers in ensuring that the determinations listed in Attachment III A have been met. The supplemental guidelines are tailored to specific circumstances and may be used in addition to the NRD Funding Guidelines.

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SECTION II

INITIATE FUNDING GUIDANCE

INITIATE FUNDING TERMS AND CONDITIONS

Section 1. OVERVIEW

A. Background. Section 6002 (b) of the Oil Pollution Act of 1990 (OPA90) provides that the OSLTF Emergency Fund is available "to initiate the assessment of natural resource damages" (Initiate/Initiation). For the purpose of this agreement, Initiate activities have been defined as those Preassessment activities as outlined in 15 CFR 990, Subpart D.

1. Executive Order 12777 limits funding for Initiation to the Federal Trustees, who are as follows:

   a. Department of the Interior;
   b. Department of Commerce;
   c. Department of Agriculture;
   d. Department of Defense; and
   e. Department of Energy.

2. Executive Order 12777 introduced the Federal Lead Administrative Trustee (FLAT) concept to provide a focal point for addressing natural resource issues associated with a specific incident. The NPFC will only accept requests for Initiation from, and normally works directly with, the FLAT. State and Tribal Trustees must work through a FLAT. Those State and Tribal Trustees acting in the event of a spill may join with the designated Federal Trustees to name a FLAT.

B. Case Questions. NRD Claims Managers are available to address specific questions that may not be covered in these procedures.

Section 2. CRITERIA FOR INITIATION

A. Threshold. Initiation of a natural resource damage assessment (NRDA) must be in response to an OPA incident, i.e., a discharge or substantial threat of a discharge of oil into or upon the navigable waters or the adjoining shorelines or the exclusive economic zone of the United States.

B. Emergency Restoration. Emergency restoration of natural resources is not NRD Initiation. Trustees should bring potential oil impact situations to the FOSC's immediate attention, so a determination may be made as to whether such action is an appropriate removal activity or needs to be submitted as an emergency restoration claim. Refer to Section III B of this document for guidance on filing an emergency restoration claim.

Section 3. PROCEDURES FOR ACCESSING THE OSLTF TO INITIATE NRDA'S

A. Funding Requests.

1. The Trustees are encouraged, however are not required, to first seek Initiate Funding from the responsible parties for preassessment activities. This puts the responsible party on notice and facilitates cost recovery from the responsible party. Initiate Funding is available from the OSLTF Emergency Fund when time is of the essence and consultation with the responsible party is not feasible or would be clearly futile; or when the responsible party declines, is not known, or is unable to provide the requested funding.

2. Trustee funding requests to responsible parties should be clear and fully documented for future reference; written requests to responsible parties are advisable. Even when immediate funding from the OSLTF is required to start Preassessment activities, Trustees should continue to pursue responsible party restoration funding as they coordinate and consult.

3. It is anticipated that most initial preassessment activities will occur concurrently with FOSC-directed removal activities or fairly soon after the removal has been completed. Since Initiate Funding is *emergency funding* from the OSLTF, the NPFC expects the Trustees to make prompt funding requests. In most circumstances this means no later than 30 days after the completion of the removal.

4. The NPFC recognizes that in some circumstances a significant amount of time may lapse before evidence of resource injury appears; in those cases, requests for Initiate Funding should be made as soon as practicable after the evidence of injury manifests itself and a Trustee decides to start preassessment activities.

5. The OSLTF Emergency Fund will also provide Initiate funding for mystery cases.

B. Funding Approval. The NPFC is committed to providing funding approval within 24 hours after receipt of a proper request. Approval for increases in funding may be given over the phone with documentation to follow the next business day.

C. Inter-Agency Agreement.

1. The NPFC NRD Claims Manager will work with the FLAT to complete the IAG.

2. The NRD Claims Manager shall establish the amount authorized and obligated for Initiation, and assign the appropriate document control number (DCN). The Federal Project Number (FPN) assigned shall be the same as applies to the removal action, unless no FPN has been issued, in which case, the NPFC will assign an FPN. The NRD Claims Manager will ensure that the Pre-Designated FOSC is notified that Initiation activities have begun.

3. The FLAT may contact the NRD Claims Manager at any time when questions arise.

4. Once the IAG is executed by the NPFC, the amount is obligated against the OSLTF, and becomes a budgetary resource to the FLAT as described in OMB Circular A-34. The funding amount provided by the IAG is then available for obligation immediately by the FLAT. If the FLAT is distributing funds to other Trustees, then they are responsible for subsequent disbursements.

D. Ceiling Management and Supplemental Requests For Funding. The FLAT manages the funds available for NRDA Initiation. The NPFC is committed to providing funds to the Trustees as quickly as possible. Conversely, the Trustees will exercise concomitant responsibility for effective ceiling management while the incident is ongoing.

Section 4. PURCHASE OF PERSONAL PROPERTY

A. Purchase of Accountable Personal Property and Equipment. The purchase of personal property (e.g., items of equipment, computers, cameras) is not encouraged and should be done only when necessary for Initiation activities. The FLAT should, therefore, attempt to lease rather than purchase property and equipment (non-consumable items) unless the purchase can be clearly shown to be cost-beneficial to the OSLTF considering the costs necessary to purchase, maintain, and dispose of the property. When property must be purchased, the FLAT should first ask the responsible party to supply the equipment. All purchases of equipment or other personal property with the OSLTF must be done in accordance with the FLAT's or Trustee's standard agency procurement policy and authority, and shall be administered throughout its service in the initiate activity in accordance with the Federal Property Management Regulations. If the FLAT or a participating Trustee uses the OSLTF to buy equipment under the Initiation IAG, the Federal Government owns the property, and the FLAT is responsible for proper management, accounting, and disposition of the property. The FLAT must establish and maintain a system of control and accountability to ensure that the date of acquisition and costs of property/equipment funded by the OSLTF can be clearly documented.

B. Disposal of Property. The property should not be transferred at any cost to another government agency, but rather should be turned in to the FLAT's or Trustee's appropriate agency property management or disposal center. In accordance with an agency's regulatory procedures, non-expendable property/equipment purchased with OSLTF monies should be deemed excess, and processed for disposal as soon as Initiate activities are completed. The steps for disposal are as follows: a) The SF-120 or an appropriate equivalent document should be used to report the excess items; b) Turn the property over to the nearest property management entity (Flat's agency, GSA, or local DOD DRMO); and c) Forward documentation to the NPFC to allow the maintenance of an audit trail on all such purchases, transfers, and disposals. Absence of disposal documentation may delay timely reimbursement.

Section 5. RECORDKEEPING

A. Cost Documentation. In order to recover costs, expenses must be documented to provide responsible parties with an accounting of all Initiate costs that were incurred by the Trustees.

B. The Pollution Incident Daily Resource Reporting System. The FLAT and participating Trustees are encouraged to document costs using the NPFC Pollution Incident Daily Resource Reporting

System, i.e., the 5136 Series of forms. These forms and accompanying Instructions on their use can be found in the "Resource Documentation and Cost Documentation Technical Operating Procedures", available from the NPFC at http://www.uscg.mil/hq/npfc/fosc.htm. This system was originally designed as an easy to use process for FOSCs to document removal costs, but it may also be used by Trustees for Initiation activities. Note that because these forms are multi-purpose, they mention CERCLA, however, CERCLA incidents are not eligible for Initiation funding.

C. Content of Documentation. The NPFC does not specify the format that documentation must take. The FLAT may use any system for documenting the Preassessment as long as it meets the requirements for content. It is important to note, however, that original documentation is preferred for cost recovery, and should not be retyped, even when hand written. Accordingly, the FLAT must establish sufficient controls and procedures to provide documentation as follows:

1. Work/purchase authorization. Show that the work or purchase was authorized by appropriate authority, e.g., contracts, travel orders, work orders, rental contracts, purchase orders.

2. Work/purchase receipt and acceptance. Show that the goods or services were received and accepted as complying with the authorization, e.g., receiving reports, delivery tickets with receipt signatures, ad hoc reports, with the date of receipt and acceptance.

3. Work billed. Provide the cost of the work or purchase and show that these costs were properly billed to the Trustee, e.g., contractor's invoice, cash register receipts, travel reimbursement vouchers, employee timesheets or logs.

   a. Work performed. Show the work performed (the service provided, the equipment used, the persons employed, etc.) and the quantitative factors involved in each item of work performed each day, i.e., the delivered work product.

   b. Work unit. Identify costs according to the unit of work for each item. For contracts, that unit of work is established by the contract line item (CLIN). For time and material based contracts, the unit of work is normally hours, and the delivered work product is the number of hours per day.

   c. Work cost. Show the cost of each unit of each item of work per day (or other time period set in the controlling agreement for that item) and the extended total cost, e.g., eight hours supervisor services per day at $50 per hour times 7 days (specifically identified by date) equals $2800 total cost.

4. Work payment. Show the amount billed was paid or authorized for payment. The FLAT should certify the cost authorized for payment is sufficient for requesting reimbursement from the OSLTF, provided that any later adjustments or corrections to the amount paid are promptly reported to the NPFC.

5. Trustee's internal costs. Documentation should include the following information for salary, equipment, and administrative costs for each day of Preassessment activity:

   a. Date;

   b. Identification (employee name or ID, equipment description or ID, function performed);

   c. Category, e.g., grade level, equipment type;

   d. Number of hours charged for that day;

   e. Rate (include basis for any standard rates);

   f. Total cost (hours time rate); and

   g. Cumulative total cost for all days.

Section 6. NPFC CONTACT INFORMATION

A. For initiate preassessment requests, please contact the NRD Claims Division at (202) 493-6860 or at (800) 280-7118.

B. For funding requests outside of business hours, call (800) 759-7243 PIN number 2073906.

ATTACHMENT IIA
INTERAGENCY AGREEMENT TO
INITIATE
NATURAL RESOURCE DAMAGE ASSESSMENT UNDER OPA
BETWEEN THE
NATIONAL POLLUTION FUNDS CENTER AND THE
FEDERAL LEAD ADMINISTRATIVE TRUSTEE

(Revised July 20, 2001)

FPN _____ IAG _____

I. As the Federal Lead Administrative Trustee (FLAT), the Department of (Departmental Name (Acronym))_____ requests the obligation of funds under this Inter-Agency Agreement (the "Agreement") between the National Pollution Funds Center (NPFC) and the FLAT to Initiate a Natural Resource Damage Assessment (NRDA) for the following oil spill incident (the "Incident"):

Name: _____
Date Occurred: _____
Location: _____

This Agreement should be submitted in writing on behalf of the affected Natural Resource Damage (NRD) Trustees to the NPFC NRD Claims Division. A NRD Claims Manager will be assigned to coordinate access to the Oil Spill Liability Trust Fund (OSLTF).

II. Potential Trustee Notifications:

	Contacted	Participating
	Yes / No	Yes / No
Department of Agriculture (USDA)	____/____	____/____
Department of Defense (DOD)	____/____	____/____
Department of Energy (DOE)	____/____	____/____
Department of the Interior (DOI)	____/____	____/____
Department of Commerce (DOC)	____/____	____/____
State/Commonwealth/Territory of ____	____/____	____/____
State/Commonwealth/Territory of ____	____/____	____/____
State/Commonwealth/Territory of ____	____/____	____/____
Tribal Representative(s)	____/____	____/____
Tribal Representative(s)	____/____	____/____
Other	____/____	____/____
Other	____/____	____/____
Other	____/____	____/____

III. Request for Funds:

Amount of this request	$_____
Previous amount	$_____
Total Amount requested	$_____

The amount requested may be generated by the FLAT's field representative, however, the request must be signed by a federal official with the authority to sign such funding agreements.

IV. Uses: These funds are to be used only for the preassessment phase activities in the initiation of a NRDA. This is the process by which trustees must determine whether there is jurisdiction to pursue restoration under OPA and, if so, whether it is appropriate to do so. Preassessment activities are outlined in 15 CFR 990, Subpart D, and include data collection, determination of jurisdiction, notice of intent to conduct restoration planning, administrative record, and determination to conduct restoration planning. Trustees not using the 15 CFR regulations may still want to use the preassessment activities listed there as guidance for appropriate initiation activities.

V. FLAT's Allocation Plan for Use of Funds: The plan for use of funds should include the participants, a list of activities to be performed, the resources required to perform each activity, and the estimated cost of those resources. It must include input from all participating Trustees. The NPFC will review the plan for consistency, reasonableness of cost for specific resources, and mathematical accuracy.

A. Participant's Use of Funds:

	Estimated Costs
DOI	_____
DOC	_____
USDA	_____
DOE	_____
DOD	_____
State/Commonwealth/Territory of	_____
State/Commonwealth/Territory of	_____
Tribal Representative(s)	_____
Tribal Representative(s)	_____
Other	_____
Other	_____
Other	_____
TOTAL (All of the Above Trustees)	_____

B. Estimated Cost and Completion Dates For Activities:

	Estimated Cost	**Date of Completion**
1. Notifications/Coordination	_____	_____
2. Travel and Per Diem	_____	_____
3. Equipment and Supplies (if not covered elsewhere)	_____	_____
4. Administration/Management	_____	_____
5. Data collection, sampling, and analysis		
Task 1 – Insert title/brief description	_____	_____
Task 2 – Insert title/brief description	_____	_____
Task 3 – Insert title/brief description	_____	_____
Task 4 – Insert title/brief description	_____	_____
6. Report Preparation (including notice documents)	_____	_____
Total Requested Amount	_____	

Activity summaries, budget breakdowns, and computations or other basis of each of these estimates (including personnel [(# persons)x($/day)], equipment [(# days)x($/day] and contractor estimates) should be attached to this IAG.

VI. Documentation and Reimbursement: As previously explained in Chapter II, "Initiate Funding Terms and Conditions", Section 5C, the FLAT coordinates all Initiate activities and subsequently provides documentation to the NPFC of all expenditures, costs, and activities conducted under this Agreement for which the FLAT will be reimbursed. This documentation shall itemize costs incurred to Initiate the NRDA, including: daily expenditures by individual, giving name, title or position, activity performed, time on task, salary or hourly rate, travel cost, per diem, out of pocket or extraordinary expenses; equipment purchased or rented, with the daily or hourly rate; and materials and consulting fees. All documentation will be compiled on a daily, weekly, bi-weekly or at a minimum a monthly basis. Costs may be based on standard rates, including an overhead and/or indirect cost charge. If Trustee(s) choose this approach, they must also provide the justification or rationale for the rates so that they can be defended in cost recovery. OMB Circular A-87 principles and standards will apply, as appropriate for State Trustees and Tribal Trustees.

Documentation shall include details of payments they have received from the responsible party, guarantor, a third party source, or a Congressional appropriation. The FLAT will review all of the cost documentation and certify that the costs submitted by each of the participating Trustees were reasonable and consistent with 15 CFR 990 Subpart D, and further that the amounts requested have not been and will not be sought from any other source.

The FLAT submits an SF-1080 (or SF-1081 or equivalent voucher) along with cost documentation to the NPFC to obtain direct reimbursement. When the FLAT wants the NPFC to reimburse the participating

Trustees directly, the FLAT should submit separate vouchers for each Trustee. The FLAT must identify in its final request for reimbursement the remaining unexpended balance to be deobligated under this IAG.

Within 120 days of the completion of Preassessment activities, the FLAT will provide a written invoice to the NPFC using form SF-1080, Voucher for Transfer Between Appropriations, or SF-1081, or an equivalent form, accompanied by the documentation as described. Transfer instructions will be provided on the SF-1080.

The FLAT should also provide a copy of the Preassessment documentation, as soon as it is available. If Preassessment activities are not finished upon clean-up or completion, the NPFC requires Interim Reports and related cost documentation submissions every 90 days after clean-up is complete.

If the NPFC does not receive the Final Report within 120 days after the completion of Initiation activities, the NPFC will advise the FLAT in writing that funding may be deobligated. In the event of extenuating circumstances, extensions will be granted upon written request.

The Final Report should involve a narrative summary explaining what was done and why. This report will help to support cost recovery efforts.

VII. Cost Recovery: The Fund obtains the rights to recover these costs once paid. The amount reimbursed to Trustees will be billed to the responsible parties. The FLAT shall ensure that all Trustees involved in this Incident agree to assign cost recovery actions arising from this Incident to the OSLTF, to the extent they represent costs reimbursed pursuant to this Agreement. In addition, the FLAT agrees to support cost recovery efforts and to cooperate fully with the NPFC in any claim or action by the OSLTF against the responsible party, guarantor, or other persons to recover costs from this Incident. The FLAT shall notify the NPFC of any negotiation(s) to execute an agreement between any Trustee and responsible party/guarantor.

VIII. Supplemental Requests: Nothing in this Authorization prohibits the FLAT from requesting supplemental funds for the same Incident. Whenever it appears that actual costs may exceed the initially requested amount, the FLAT should promptly request supplemental funding in the same manner as the original request. Until such supplemental funds are obligated by an amendment to the IAG, the FLAT must take appropriate action to prevent exceeding the previously obligated amount. The NPFC will not reimburse the FLAT for costs in excess of the signed Agreement and supplemental.

IX. Deobligation: This Agreement will be closed 120 calendar days from the date of completion of the Preassessment Activities. As previously stated in Section VI of this Agreement, if cost documentation is not forthcoming within that time, the NPFC will advise the FLAT in writing that funding may be deobligated. If required, extensions will be granted upon written request.

X. Agreement Certification And Assignment of Contact Person: I certify that (Department Name, Acronym)_____is the FLAT, and that I am authorized to sign this document on behalf of the Trustees. I further certify that all actions to be funded are for Initiate activities, as described in 15 CFR 990, Subpart D.

_____

_____
(Name of FLAT)
(Position of FLAT within the Trustee Agency)

_____
For the Department Name (Acronym)

_____
(Date)

FLAT Contact Person: _____
Address: _____
_____
Phone: _____
Fax: _____

XI. Authorization and Authority:

In accordance with Oil Pollution Act of 1990 (33 USC 2752(b)), the NPFC authorizes the obligation of funds to the (Department Name, Acronym) _____ to initiate an NRDA for the Incident and activities described in the request dated _____ (to agree with date in Paragraph X). Total amount of funds available under this Agreement shall not exceed $_____. The Federal Project Number _____ and the Inter-Agency Agreement Number _____ must be referenced on cost documentation and all requests for reimbursement from the OSLTF.

_____
(Signature of NPFC NRD Claims Manager)

_____
Date

NPFC Contact Person: _____
Address: _____
_____
_____

Telephone: (202) 493-_____
Fax: (202) 493-6939

Enclosures:

SECTION III

NATURAL RESOURCE DAMAGE CLAIMS GUIDELINES

NATURAL RESOURCE DAMAGE CLAIM GUIDELINES

To facilitate comprehensive and efficient adjudication of natural resource damage claims that follow the Oil Pollution Act of 1990 (OPA) and the associated National Pollution Funds Center (NPFC) Interim Claims Regulations (33 CFR 136), the U.S. Coast Guard, National Pollution Funds Center (NPFC) suggests that the claimant use the Natural Resource Damage (NRD) Claim Guidelines. Though it is not required by the NPFC that a claimant use these guidelines, use of the NRD Claim Guidelines will facilitate the generation of a complete claim. This will allow for efficient and comprehensive evaluation of claims, minimizing the need for repeated information requests of the claimant.

Natural resource damage assessment (NRDA) regulations are available under OPA at 15 CFR Part 990. Those NRDA regulations set out a process for assessing injuries to natural resources and planning the restoration of those injured natural resources. Trustees are **not** required to use the NRDA regulations and may use some other natural resource damage assessment process. However, the review of NRD assessments that were conducted using the 15 CFR 990 regulations have a more favorable statute of limitations, are granted a rebuttable presumption of correctness and will generally be reviewed by the NPFC upon the administrative record of the assessment.

General Guidelines for Completing Natural Resource Damage Claims:

- Refer to the text of OPA (33 U.S.C. 2701 et seq.) AND the NPFC Interim Claims Regulations (33 CFR 136).
- Upfront funding of costs for assessment and/or of developing a publicly reviewed restoration plan may be obtained from NPFC.
- The claimant may reference information and its location in the NRD claim. Ensure that at all times, the information provided is sufficient and clearly stated such that the NPFC can understand the response to the requirement. In certain cases, one reference may pertain to multiple information requests in this document.
- Further description of the types of information useful in submitting and evaluating these claims can be found in Attachment III C to these funding guidelines.

1. Claim Information

A. Claimant Information

i. Provide the name of the claimant, agency affiliation, address, telephone number, fax number, email address and other pertinent contact information.

B. Incident Information

i. Provide the date, time, name of the vessel or facility causing injury, geographic location of the incident, and a brief description of the incident.

ii. Provide a description of the trustee's basis for determining that the oil spill (or a threat of an oil spill) is an incident as defined by the Oil Pollution Act (OPA) at 33 U.S.C. 2701(14). Specifically, provide a description of the trustee's basis for determining that the incident is:

a) Not allowed under a permit issued under federal, state or local law;

b) Not from a public vessel;

c) Not from an onshore facility subject to the Trans-Alaska Pipeline Authority Act (43 U.S.C. 1651 et seq.).

C. Responsible Party(ies) Information

i. Has a responsible party(ies) been identified for this incident?

a) If yes, please provide contact information for the responsible party(ies).

b) If no, please explain the circumstances under which the responsible party(ies) could not be identified, and skip to section D.

ii. Has the claimant released any responsible party(ies) or other person from liability, in whole or part, for NRD, or other damages or removal costs?

a) If yes, provide a copy(ies) of the release(s).

iii. Has the claim been submitted to the responsible party(ies)?

a) If yes,

1) Provide the date that the claim was submitted.

2) Attach a copy of written communications between the claimant and the responsible party(ies).

3) Describe the substance of verbal communications between the claimant and the responsible party(ies).

4) Describe any action regarding the claim that has been taken by the Responsible Party(ies).

5) Has the claimant commenced any action in court against the responsible party(ies)?

(i) If yes, provide the name/address/telephone number/fax number/email of the attorney(s) representing the trustee(s), the court in which the action is pending, and the civil action number.

D. Claim Elements and Total Amount of Costs and Damages Claimed

i. Please indicate which of the components listed below are included in the claim. Include documentation to support each as described below.

a) The reasonable cost of assessing natural resource damages resulting from the incident identified above. Indicate the total amount claimed and attach a copy of the assessment plan and Administrative Record Index.

b) The cost of restoring, rehabilitating, replacing or acquiring the equivalent of the injured natural resources (including the diminution in value of those resources pending restoration). Indicate the total amount claimed and attach a copy of the assessment and restoration plans (or, if using the 15 CFR 990 regulations attach a copy of the Damage Assessment and Restoration Plan) and Administrative Record Index.

c) Emergency Restoration costs for actions required to avoid irreversible loss of natural resources or to prevent or reduce any continuing danger to natural resources or similar need for emergency action. Indicate the total amount claimed and attach a copy of the emergency restoration plan and/or any post emergency restoration reports with documentation supporting such need for emergency restoration. (Refer to Section III B for further details.)

ii. Please provide the following supporting cost documentation, as applicable:

a) Summary of Past and Proposed Costs: Provide a summary of both past (e.g., injury assessment and restoration planning) and proposed (e.g., assessment and restoration project implementation) costs.

b) Any Inter-Trustee and Trustee-Responsible Party NRDA Memoranda regarding this Incident: Provide a copy of memoranda of agreement or understanding regarding the execution of the claimed NRDA.

c) Costs Already Incurred: Provide supporting documentation of the cost's associated with past actions in compliance with the assessment and/or (emergency) restoration plan(s). Include:

1) Actions Undertaken: The following types of documentation supporting past actions should be included in the claim, as appropriate:

(i) Description of actions: provide sufficient narrative allowing for a rapid and complete review of claimed actions taken. Include dates that actions were executed. Claimants are encouraged to use form CG-5136A (available from the National Pollution Funds Center website, http://www.uscg.mil/hq/npfc/resource.pdf) or other status report formats to document actions taken during the execution of the NRDA. It is intended that these reports provide further detail and clarification of actions undertaken and referenced in the overall case narrative.

(ii) Demonstration that actions were authorized: Show that the work or purchase was authorized by an appropriate authority (e.g., contracts, travel orders, work/task orders, rental contracts and purchase orders). For task orders issued to contractors/consultants by claimant(s), include the funding amount, activities to be undertaken, lists of deliverables, schedule of deliverables, and all task order modifications.

(iii) Demonstration that actions were completed (e.g., provide reference to contemporaneous reports or field notes)

(iv) Demonstration that actions were received and accepted (e.g., receiving reports, delivery tickets with receipt signatures)

2) Personnel, Equipment and Other Miscellaneous Resources Used: Personnel (government and contractor), equipment and other miscellaneous resources used should be documented on a daily, weekly, bi-weekly or at a minimum a monthly basis. Claimants should provide the length of time all personnel and equipment were used; and an inventory of all materials used.

3) Personnel, Equipment and Other Miscellaneous Costs: Provide the cost of the work or purchase and show that these costs were properly billed to the Claimant, e.g., include Federal/State costs (i.e., standard rates, costs for the personnel, equipment, etc.), contractor's invoices, cash register receipts, travel reimbursement vouchers and employee timesheets or logs. Claimants are encouraged to document costs using the NPFC Pollution Incident Daily Resource Reporting System, i.e., the 5136 Series of forms. These forms and accompanying Instructions on their use can be found in the "Resource Documentation and Cost Documentation Technical Operating Procedures", available from the National Pollution Funds Center website, http://www.uscg.mil/hq/npfc/resource.pdf.

d) Future Costs: Provide supporting documentation of the cost's associated with anticipated actions identified in the assessment and/or (emergency) restoration plan(s). Include:

1) Work to be performed

2) Schedule of work

3) Detailed estimated level of resources and time (i.e., government/contractor personnel, equipment, contracts).

4) Standard rates, cost estimates for the personnel, equipment, etc. The basis for estimates should be stated (e.g., multiple cost bids, goods and services cost estimates, standard/published rates and costs, etc.). Where applicable, the results of multiple bid quotes should be provided with an explanation of why the lowest bid used in the claimed cost was not chosen. Rationale for ancillary costs (e.g., contingency costs) and their respective magnitude should be explained.

e) Documentation of Any Payments Received: Provide documentation of payments received from the Responsible Party(ies), or any other source, for NRD and any other damages or removal costs as a result of this oil pollution incident. A description of these payments should accompany this documentation.

f) Standard Form 1080/1081 (for Federal Claimants only).

E. Statute of Limitations

i. The Statute of Limitations (SOL) under OPA for the filing of NRD claims with the NPFC is the later of the following:

a) Three years from the date the injury and connection with the discharge was reasonably discoverable with due care;

b) Or three years from the date of completion of the natural resource damage assessment under the damage assessment regulations published by the National Oceanic and Atmospheric Administration (NOAA) at 15 CFR Part 990.

ii. Please provide documentation or otherwise demonstrate that this claim has been filed within the Statute of Limitations under OPA (33 U.S.C. 2712(h)(2), 33 C.F.R. 136.101). Include the date that the NRD assessment was completed if the assessment was prepared using the Damage Assessment Regulations at 15 CFR 990.

2. Adherence to Damage Assessment Regulations

A. Does the claimant (on behalf of self and other involved trustee(s)) certify that the NRDA was conducted[1]:

i. Using the Damage Assessment Regulations at 15 CFR Part 990 (promulgated by NOAA)?

ii. ***If yes, claimant may wish to consider completing Attachment III A: Natural Resource Damage Claims Using the Damage Assessment Regulations at 15 CFR 990. If Attachment III A is completed then claimants can go directly to paragraph 7, Opening an Account for Recovered Damages, and paragraph 8, Witnesses and Certifications, below.***

iii. Using the NRD regulations at 43 CFR Part 11 (promulgated by the U.S. Department of the Interior)? or

iv. Using other or additional NRD regulations or processes?

a) Describe the other regulation(s) or processes used.

[1] Use of the Damage Assessment Regulations at 15 CFR 990 is not required for submitting a claim to the NPFC for reimbursement from the OSLTF. However, completing an NRDA using 15 CFR 990 extends the SOL period for submitting a claim to three years from the date that the assessment is completed.

3. Trustee Information

A. Trustee Designation

i. Has the involved trustee(s) previously submitted proof to the NPFC of their authority to act as trustee(s) of natural resources on behalf of the government they represent?

ii. If no, or trustee designation has changed, please submit proper designation with this claim.

iii. If not applicable, please state why.

B. Trustee Coordination

i. Indicate whether the claimant is acting as lead administrative trustee on behalf of other trustees for purposes of this claim. If not applicable, please state why.

ii. Provide contact information for each additional trustee involved in the claim.

C. Double Recovery

i. To your knowledge, in addition to the trustees listed above, are there any other trustees who have a right to present a claim for the same natural resource injuries?

ii. If yes, provide contact information for these trustees.

D. Public Notice Requirements

i. Describe the nature of the public notification of the intent to conduct restoration planning, assessment and/or restoration plan development and implementation.

ii. Provide the date of the public hearing(s) on assessment or restoration plan development and implementation, or discuss the reason for not holding hearings.

iii. Describe public comment solicitation activities and how public comments were considered in developing and implementing the assessment and/or restoration plan.

4. Assessment Information

A. Fully explain the assessment method(s) used to assess injury(ies), including the scientific and technical basis(es) of the method(s). Include all evidence that the use of such method(s) is(are) valid and reliable for this incident.

B. Provide and describe the data used to support the assessment results and explain how it supports the determination as to the nature and scope of the injury(ies).

C. Explain any quality assurance and chain of custody procedure(s) used in the assessment.

D. Describe the nature and scope of the injured natural resource(s).

E. Demonstrate how the oil incident caused the injury(ies); establish the pathway from the incident to the natural resource; establish exposure; and demonstrate an adverse change in the resource(s) caused by that exposure.

F. Quantify the injury(ies) as to severity and spatial and temporal extent.

G. Demonstrate and quantify any resulting lost natural resource service(s), if applicable.

H. Estimate time for natural recovery.

I. Explain the method(s) used to determine any lost public use values or to scale the restoration actions to compensate for interim losses. Include supporting data.

J. Provide any additional comments that you believe will enhance the NPFC's understanding of this injury assessment.

5. Avoidance or Minimization of Injuries

A. Describe actions taken to avoid or minimize injuries.

6. Restoration Information

A. Please explain how the proposed restoration plan restores, rehabilitates, replaces, or acquires the equivalent of the injured natural resource(s) and service(s).

7. Opening an Account for Recovered Damages

A. Demonstrate that all sums recovered by the trustee(s), in satisfaction of a NRD claim, will be placed in a revolving trust fund(s), without further appropriation.

B. Describe how the trustee(s) will maintain appropriate accounting and reporting procedures to document expenditures from such accounts.

C. Describe how the trustee(s) will ensure that any sums not used to either reimburse trustees for past assessment and emergency restoration costs or to implement restoration will be returned to the NPFC for re-deposit into the Oil Spill Liability Trust Fund (OSLTF).

8. Points of Contact and Certifications

A. Points of Contact

i. Provide the full name, street and mailing address, and telephone number of the parties to the claim.

B. Certifications and Signature

I, the undersigned, certify the accuracy and integrity of this claim and certify that actions taken or proposed were or will be conducted in accordance with the Oil Pollution Act of 1990 and consistent with all applicable laws and regulations.

I, the undersigned, certify that, to the best of my knowledge and belief, no trustee(s) other than those identified in this claim has the right to present a claim for the same natural resource injuries and that payment of any subpart of this claim would not constitute double recovery for the same natural resource injuries.

I, the undersigned, agree that upon acceptance of any compensation from the Fund, I will cooperate fully with the United States in any claim or action by the United States to recover the compensation. The cooperation shall include, but is not limited to, immediately reimbursing to the Fund any compensation received from any other source for the same costs and/or damages and, providing any documentation, evidence, testimony, and other support, as may be necessary for the Fund to recover such compensation.

I, the undersigned, certify that, to the best of my knowledge and belief, the information contained in this claim represents all material facts and is true. I understand that misrepresentation of facts is subject to prosecution under Federal law (including but not limited to 18 U.S.C. 287 and 1001).

I, the undersigned, certify that the assessment was conducted in accordance with the Damage Assessment Regulations at 15 CFR 990 (promulgated by NOAA) – **No __ Yes __**

_____ _____
Claimant's Authorized Representative Date

Mail Claim and Address Questions to:

National Pollution Funds Center
Natural Resource Damage Claims Division
4200 Wilson Blvd., Suite 1000
Arlington, VA 22203-1804
Phone: (202) 493-6860
Fax: (202) 493-6939

ATTACHMENT III A: NATURAL RESOURCE DAMAGE CLAIMS USING THE DAMAGE ASSESSMENT REGULATIONS AT 15 CFR 990

To facilitate comprehensive and efficient adjudication of natural resource damage claims that follow the Damage Assessment Regulations for oil spills at 15 CFR 990 (promulgated by NOAA), the U.S. Coast Guard, National Pollution Funds Center (NPFC) suggests that the claimant use this supplemental guideline - *for claims based on NRDAs that use the Damage Assessment Regulations (15 CFR 990) process only*. Though it is not required by the NPFC that a claimant use this supplement, use of this supplement will facilitate efficient and comprehensive evaluation of claims, minimizing the need for repeated information requests of the claimant.

This supplement to the Natural Resource Damage (NRD) Claim Guidelines for all claimants should guide all claimants using the Damage Assessment Regulations (15 CFR 990). Use of the Damage Assessment Regulations obtains, for the claimant, the force and effect of a rebuttable presumption and also confers a favorable statute of limitations period for the claim. These issues in the supplement should be addressed in conjunction with the NRD Claim Guidelines to submit a valid claim to the NPFC.

General Guidelines for Completing Attachment III A: Natural Resource Damage Claims Using the Damage Assessment Regulations at 15 CFR 990:

- Please provide information requested in paragraphs 1, 2, 7, and 8 of the Natural Resource Damage (NRD) Claim Guidelines.
- Refer to the text of the Damage Assessment Regulations (15 CFR 990).
- If Attachment III A suggests the claimant provide information that has been previously provided by the claimant in the NRD Claim Guidelines, the claimant may reference that information and its location in the NRD claim. Ensure that at all times, the information provided is sufficient and clearly stated such that the NPFC can understand the response to the requirement of the regulation. In certain cases, one reference may pertain to multiple information requests in this document.

1. Damage Assessment Regulations

A. Does the NRDA follow the Damage Assessment Regulations at 15 CFR part 990 (promulgated by NOAA)?

i. If no, then it is not necessary to use this supplement in order to submit a claim to the NPFC. Completing the NRD Claim Guidelines (Section III) is sufficient.

ii. If yes, then Attachment III A to the NRD Claim Guidelines should be used in addition to paragraphs 1, 2, 7, and 8 of the NRD Claim Guidelines when submitting a claim to the NPFC.

iii. *Also, please provide the Final Restoration Plan and the index to the Administrative Record sufficient to document the required Determinations listed below.* Clarification of the types of information needed for submission and evaluation of these determinations can be found in

Attachment III C to these funding guidelines. For further information each determination below is followed parenthetically by a cross reference to the applicable section number in the 15 CFR 990 regulations and the pertaining section of Attachment III C.

a) Jurisdiction to pursue restoration under OPA was determined (990.41; Attachment III C1);

b) Conditions for collection of data during preassessment phase were appropriate (§ 990.43);

c) Conditions for proceeding with assessment beyond the preassessment phase were determined (§ 990.42; Attachment III C2);

d) Findings and conditions for conducting emergency restoration were determined (§ 990.26; Attachment III B);

e) Notice of Intent to Conduct Restoration Planning was produced (§ 990.44; Attachment III C9);

f) Administrative record of the assessment was established (§ 990.45; Attachment III C10);

g) Lead Administrative Trustee was designated for jointly conducted assessment (§ 990.14(a); Attachment III C3);

h) Coordination efforts with co-trustees, response agencies, and public are documented (§ 990.14); Responsible party was invited to participate in the assessment (§ 990.14(c); Attachment III C3-6);

i) **For spills occurring between August 1990 and January 1996**, election to complete pre-rule assessments under either CERCLA or OPA rule was made (§ 990.20);

j) Injury was determined, along with exposure and pathway where required (§ 990.51); Appropriate injuries were selected to include in assessment and restoration planning (§ 990.51(f)); Injuries resulted from the incident (§ 990.51(a); Attachment III C8);

k) Injuries were quantified (§ 990.52(a); Attachment III C8);

l) Analysis of natural recovery was conducted (§ 990.52(c); Attachment III C11);

m) Range of feasible restoration alternatives was identified, including: (a) primary restoration, includes natural recovery alternative; (b) compensatory restoration alternatives considerations; (c) explanation of scaling of restoration alternatives (§ 990.53); use of regional restoration or other existing project plan as one of alternatives considered (§ 990.56; Attachment III C11);

n) Restoration alternatives were evaluated and preferred alternative(s) was selected (§ 990.54; Attachment III C12);

o) Draft Restoration Plan and Final Restoration Plan were developed (§ 990.55; Attachment III C12);

p) Assessment methodologies met required standards (§ 990.27; Attachment III C7);

q) Assessment costs were certified as reasonable (§ 990.30; Attachment III C7); and

r) Demand was presented to responsible party and responsible party's response is documented (§ 990.62; Attachment III C15, 17).

Mail Claim and Address Questions to:

National Pollution Funds Center
Natural Resource Damage Claims Division
4200 Wilson Blvd., Suite 1000
Arlington, VA 22203-1804
Phone: (202) 493-6860
Fax: (202) 493-6939

ATTACHMENT III B
EMERGENCY RESTORATION CLAIMS

To facilitate comprehensive and efficient adjudication of natural resource damage claims submitted for emergency restoration claims, the U.S. Coast Guard, National Pollution Funds Center (NPFC) suggests that the claimant use this supplemental guideline. Though it is not required by the NPFC that a claimant use this supplement, use of the Emergency Restoration Claims Supplement will facilitate efficient and comprehensive evaluation of claims, minimizing the need for repeated information requests of the claimant.

Emergency restoration of natural resources is not NRD Initiation. Trustees should bring potential oil impact situations to the FOSC's immediate attention, so a determination may be made as to whether such action is an appropriate removal activity or needs to be submitted as an emergency restoration claim.

General Guidelines for Completing Natural Resource Damage Claim Guidelines:

- Provide information requested in paragraphs 1, 3, 5, 7, and 8 of the Natural Resource Damage (NRD) Claim Guidelines.
- Refer to the text of OPA (33 U.S.C. 2701 et seq.), the NPFC Interim Claims Regulations (33CFR 136), and/or the Damage Assessment Regulations at 15 CFR 990 (promulgated by NOAA)
- Emergency restoration claims may be submitted prior to emergency restoration for up-front funding.
- If Attachment III B suggests the claimant provide information that has been previously provided by the claimant in the NRD Claim Guidelines, the claimant may reference that information and its location in the NRD claim. Ensure that at all times, the information provided is sufficient and clearly stated such that the NPFC can understand the response to the requirement of the regulation.

Emergency Restoration

1. Did the trustee(s) undertake any emergency restoration actions before completing the natural resource damage assessment?

   A. If yes, please provide information to verify the following:

   i. That the action(s) was(were) needed to minimize continuing injury(ies) or prevent additional injury(ies).

   ii. That the action(s) was(were) feasible and likely to minimize continuing injury(ies) or prevent additional injury(ies).

   iii. That the costs of each emergency action are/were not unreasonable.

2. If response actions were underway at the time of the emergency restoration action, did the trustee's(s') Regional Response Team (RRT) member (or designee) coordinate with the On-Scene Coordinator (OSC) before undertaking any emergency restoration actions?

   A. If yes, please provide the following information:

      i. Describe coordination efforts (e.g., dates of coordination, outcome).

      ii. Provide the name, affiliation, address, telephone and fax numbers, and e-mail of the RRT member (or designee) that provided coordination between the trustee(s) and the OSC.

      iii. Provide the name, affiliation, address, telephone and fax numbers, and email of the OSC.

   B. If no, please explain why.

3. Did the trustee(s) provide notice to the identified responsible party(ies) of any emergency restoration action(s)?

   A. If yes, please provide a description of the notice or append a copy of the notice. Include the date sent and the contact for each responsible party.

   B. If no, please explain why.

4. Did the trustee(s) invite the participation of the responsible party(ies) in the conduct of the emergency restoration action(s)?

   A. If yes, please provide a description of the invitation or append a copy of the invitation. Include the nature by which the notice was provided and the date(s).

   B. If no, please explain why.

5. Did the trustee(s) provide notice to the public of the planned emergency restoration action(s)?

   A. If yes, please provide a description of the notice to the public or append a copy. Provide the date of the notice.

   B. If no, please explain why.

6. Did the trustee(s) provide public notice of the justification for, nature and extent of, and results of the emergency restoration action(s) within a reasonable time frame after completion of such action(s)?

   A. If yes, please provide a description of the notice to the public or append a copy. Provide the date of the notice.

B. If no, please explain why.

7. Please attach a copy of the emergency restoration plan and/or any post emergency restoration reports. If there is no emergency restoration plan, please explain why one was not produced.

8. Please attach an itemized estimate of funds needed to carry out the emergency restoration.

Mail Claim and Address Questions to:

National Pollution Funds Center
Natural Resource Damage Claims Division
4200 Wilson Blvd., Suite 1000
Arlington, VA 22203-1804
Phone: (202) 493-6860
Fax: (202) 493-6939

ATTACHMENT III C: INFORMATION PERTINENT TO SUBMITTING AND ADJUDICATING NATURAL RESOURCE DAMAGE CLAIMS

This attachment provides a listing of information requests that will facilitate the submission and adjudication of natural resource damage claims that have followed the damage assessment regulations at 15 CFR 990. Though the information needs listed below pertain primarily to 15 CFR 990-based claims, many of the questions listed below also pertain to general NRD claims (i.e., as described in Section III of these funding guidelines). This attachment is primarily intended to be used to as an aid to both claimants and NPFC Claims Managers in ensuring that the determinations listed in Attachment IIIA have been met.

1. Determination of Jurisdiction

A. Describe how the trustee(s) determined that there was jurisdiction to pursue restoration planning under OPA by providing to the following:

i. Natural Resources under the trusteeship of the trustee(s) may have been, or may be, injured as a result of the incident.

2. Determination to Conduct Restoration Planning

A. Describe how the trustee(s) determined to conduct restoration planning by providing the following:

i. Describe how the trustee(s) determined whether injuries have resulted, or are likely to result, from the incident.

ii. Describe how the trustee(s) determined that response actions have not adequately addressed, or are not expected to address, the injuries resulting from the incident.

iii. Describe how the trustee(s) determined that feasible primary and/or compensatory restoration actions exist to address the potential injuries.

3. Trustee Coordination

A. Does the incident affect the interests of multiple trustees?

B. If yes, please provide the following information:

i. Did the trustees act jointly when conducting the assessment?

ii. List the trustees involved in the joint assessment. For each trustee, provide the name, affiliation, address, telephone, fax, and email of the point of contact. Indicate which trustee(s), if any, is(are) acting independently.

iii. Describe how the trustees are acting jointly to achieve full restoration without double recovery of damages (e.g., formation of a Trustee Council, cooperation on assessment studies, etc.).

iv. If this claim is based on a joint assessment, indicate which trustee(s) from the list provided in 3(b)(ii) is acting as the Lead Administrative Trustee (LAT).

v. If this claim is based on a joint assessment and a LAT has not been designated, please explain why.

4. Coordination with Response Agencies

A. Were trustee(s)' activities that were conducted concurrently with response operations coordinated with the response agencies?

i. If yes, please describe the nature of the coordination efforts (e.g., interactions with the Unified Command, On-Scene Coordinator briefings, etc.).

ii. If no, please provide an explanation as to why trustee(s)' activities were not coordinated with the response agencies.

5. Coordination with Responsible Party(ies)

A. Did the trustee(s) invite the responsible party(ies) to participate in the NRDA?

i. If yes, please provide the following information:

a) Describe the nature of the invitation (e.g., whether it was written or verbal, the date it was submitted to the responsible party(ies)) and attach the written invitation, if applicable.

b) Identify whether the date of the invitation predates the delivery of the Notice of Intent (NOI) to Conduct Restoration Planning (include both dates in your response).

c) Did the trustee(s) receive a written response from the responsible party(ies) accepting or declining the invitation?

1) If yes, please attach the response.

ii. If no, please explain why.

6. Coordination with the Public

A. Did the trustee(s) provide opportunities for public involvement following the trustee(s)' decision to develop restoration plans (or issuance of any notices to that effect)?

i. If yes, please provide the following information:

a) Please provide the date that the trustee(s) issued a Notice of Intent to Conduct Restoration Planning.

b) Describe the nature of the public involvement opportunities (e.g., method and duration of advertisements for public input, hearings, period for comment on written notice).

ii. If no, please explain why.

7. Standards for Assessment Procedures

A. Describe how each assessment procedure used was capable of providing assessment information of use in determining the type and scale of restoration appropriate for each injury addressed in the claim.

B. If an additional cost was incurred by utilizing a more complex assessment procedure(s), describe how the additional cost of the more complex assessment procedure(s) was(were) reasonably related to the expected increase in the quantity and/or quality of relevant information provided by the more complex procedure(s). Do so for all relevant procedures.

C. Describe how each assessment procedure used was reliable and valid for the particular incident.

D. Describe how the trustee(s) considered the following when selecting each assessment procedure:

i. The range of procedures available;

ii. The nature, severity, and spatial and temporal extent of the injury;

iii. The potential restoration actions for the injury;

iv. The relevance and adequacy of information generated by the procedures to meet information requirements of restoration planning; and

v. The most cost-effective procedure was used when a range of assessment procedures, which provided the same type and quality of information, was available.

8. Injury Determination and Quantification

A. Describe how the trustee(s) determined that an injury(ies), as defined in section 15 CFR 990.30, has occurred and how the nature of the injury(ies) was(were) identified.

B. Where applicable, describe how the trustee(s) determined that natural resources were exposed, either directly or indirectly, to the discharged oil from the incident. Include an estimate of the amount or concentration and spatial and temporal extent of the exposure.

C. Describe how the trustee(s) determined the pathway(s) linking the incident to the injury(ies).

D. Provide the information used to quantify the injury(ies) resulting from the incident. If this material is provided elsewhere within the claim, state where this information can be found.

E. For claimed injuries caused by response actions, and/or those caused by the substantial threat of discharge, demonstrate how the trustees determined that natural resources were injured.

F. Provide the information used to quantify or qualify the time required for natural recovery while factoring in any response actions.

9. Notice of Intent (NOI) to Conduct Restoration Planning

A. Attach a copy of the NOI to Conduct Restoration Planning.

B. Describe how the NOI addresses:

i. The trustee(s)' determination of jurisdiction to pursue restoration under OPA.

ii. The trustee(s)' determination to conduct restoration planning.

C. Describe how the NOI was made publicly available (include any date(s) of advertisement and method(s) of advertisement).

D. Describe how the trustee(s) delivered a copy of the NOI to the responsible party(ies). Include the date of receipt of the NOI.

10. Administrative Record

A. Provide documentation that the trustee(s) opened a publicly available Administrative Record to document the basis for their decisions pertaining to restoration.

B. Provide documentation that the Administrative Record was opened concurrently with the publication of the NOI.

C. Describe how and where the public can view the Administrative Record. If there is an Administrative Record file index, please provide a copy (Provide the name, address, telephone and fax numbers, and email of the Administrative Record point of contact).

D. Describe how the Federal trustee(s) will maintain the Administrative Record in a manner consistent with the Administrative Procedures Act (5 U.S.C. 551-59, 701-06).

11. Developing Restoration Alternatives

A. Describe the restoration objective(s) that was (were) established by the trustee(s).

B. Demonstrate that a reasonable range of restoration alternatives were considered before selecting the preferred alternative for each resource or service claimed to be injured.

C. Demonstrate that each of the following considerations was addressed while developing each restoration alternative:

i. Primary restoration was considered for each restoration alternative;

ii. Natural recovery was considered for each restoration alternative (natural recovery is a restoration alternative in which no human intervention is undertaken to directly restore

injured natural resources and services to baseline, i.e., the state of the natural resource(s) had the incident not occurred); and

iii. Demonstrate that each restoration alternative considers compensatory restoration actions that are designed to compensate for the interim loss of natural resources and services pending recovery.

a) Describe how the trustee(s) considered compensatory restoration actions that provide services of the same type, quality and of comparable value as those injured.

b) If, in the judgment of the trustee(s), it is not possible to identify a reasonable range of alternatives based on compensatory actions that provide services of the same type and quality and comparable value as those injured, describe how the trustee(s) identified other actions that provide natural resources and services of comparable type, quality and value as those provided by the injured natural resources.

D. Demonstrate how the trustee(s) determined the scale for each of the identified types of restoration actions that will make the environment and public whole.

i. Describe how the trustee(s) considered the use of a resource-to-resource or service-to-service scaling approach.

ii. If the trustee(s) determined that neither resource-to-resource nor service-to-service scaling is appropriate, describe how the trustee(s) considered the valuation scaling approach(es).

E. Demonstrate how the trustee(s) evaluated the uncertainties associated with the projected consequences of the restoration action.

F. Demonstrate how the trustee(s) discounted all service quantities and/or values to the date the demand is presented to the responsible party(ies).

12. Developing Restoration Plans

A. Attach copies of the Draft and Final Restoration Plans.

i. Describe how the preferred restoration alternative(s) was (were) selected.

ii. Describe the monitoring component(s) to the Restoration Plan.

B. How were the costs of restoration implementation and monitoring that are identified in the restoration plan determined or estimated.

C. Describe the nature of the public review for both the Draft and Final Restoration Plans.

i. Demonstrate that the time period for public review on the Draft Restoration Plan/Environmental Assessment was consistent with the federal trustee agency's National Environmental Policy Act requirements, and no less than 30 calendar days.

ii. If an EIS was warranted, demonstrate that the Draft Restoration Plan/Environmental Impact Statement (EIS) was made available for public review for a minimum of 45 calendar days.

iii. If an EIS was warranted, demonstrate that the Final Restoration Plan/EIS was made available for public review for a minimum of 30 calendar days.

iv. Demonstrate how the Final Restoration Plan considered all public comments on the Draft Restoration Plan.

13. Closing the Administrative Record for Restoration Planning

A. Provide the date, after the trustee(s) completed restoration planning, that the Administrative Record was closed.

i. If the Administrative Record was not closed, explain why not.

14. Restoration Implementation

A. Was an Administrative Record opened for implementation of restoration?

i. If yes, provide the date on which the Administrative Record was opened.

ii. If yes, describe how and where the public can view the Administrative Record. If there is an Administrative Record file index, please provide a copy (Provide the name, address, telephone and fax numbers, and email of the Administrative Record point of contact).

15. Presenting a Demand

A. Demonstrate that the trustees presented a written demand to the responsible party(ies). Include the date of receipt of the demand by the responsible party(ies).

B. Provide a copy of the written demand and describe how it invites the responsible party(ies) to participate.

16. Discounting and Compounding

A. Demonstrate that the trustee(s) discounted all estimated future costs of implementing a Final Restoration Plan back to the date the demand was presented.

i. Provide the discount rate used and the basis for the rate used.

B. Demonstrate that the trustee(s) compounded all calculated present value assessment and emergency restoration costs already incurred forward to the date the demand was presented.

i. Provide the rate used and the basis for the rate used.

17. Unsatisfied Demands

A. Did the responsible party(ies) respond to the demand within 90 calendar days from their receipt of the demand? If yes, provide their response. If no, have the trustee(s) filed a judicial action for damages or do they plan to file such an action?

B. If judicial action has been filed or if a claim has been filed, demonstrate that such an action or claim has been filed within three years after the Final Restoration Plan or Notice of Intent to Use a Regional Restoration Plan or Existing Restoration Project is made publicly available.

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U.S. Code

TITLE 33 - NAVIGATION AND NAVIGABLE WATERS
CHAPTER 40 - OIL POLLUTION
SUBCHAPTER I - OIL POLLUTION LIABILITY AND COMPENSATION
(selected provisions)

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2702. Elements of liability

(a) In general. Notwithstanding any other provision or rule of law, and subject to the provisions of this Act, each responsible party for a vessel or a facility from which oil is discharged, or which poses the substantial threat of a discharge of oil, into or upon the navigable waters or adjoining shorelines or the exclusive economic zone is liable for the removal costs and damages specified in subsection (b) of this section that result from such incident.

(b) Covered removal costs and damages

(1) Removal costs. The removal costs referred to in subsection (a) of this section are -

(A) all removal costs incurred by the United States, a State, or an Indian tribe under subsection (c), (d), (e), or (l) of section 1321 of this title, under the Intervention on the High Seas Act (33 U.S.C. 1471 et seq.), or under State law; and

(B) any removal costs incurred by any person for acts taken by the person which are consistent with the National Contingency Plan.

(2) Damages. The damages referred to in subsection (a) of this section are the following:

(A) Natural resources. Damages for injury to, destruction of, loss of, or loss of use of, natural resources, including the reasonable costs of assessing the damage, which shall be recoverable by a United States Trustee, a State Trustee, an Indian tribe Trustee, or a foreign Trustee.

(B) Real or personal property. Damages for injury to, or economic losses resulting from destruction of, real or personal property, which shall be recoverable by a claimant who owns or leases that property.

(C) Subsistence use. Damages for loss of subsistence use of natural resources, which shall be recoverable by any claimant who so uses natural resources which have been injured, destroyed, or lost, without regard to the ownership or management of the resources.

(D) Revenues. Damages equal to the net loss of taxes, royalties, rents, fees, or net profit shares due to the injury, destruction, or loss of real property, personal property, or natural resources, which shall be recoverable by the Government of the United States, a State, or a political subdivision thereof.

(E) Profits and earning capacity. Damages equal to the loss of profits or impairment of earning capacity due to the injury, destruction, or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant.

(F) Public services. Damages for net costs of providing increased or additional public services during or after removal activities, including protection from fire, safety, or health hazards, caused by a discharge of oil, which shall be recoverable by a State, or a political subdivision of a State.

(c) Excluded discharges. This subchapter does not apply to any discharge -

(1) permitted by a permit issued under Federal, State, or local law;

(2) from a public vessel; or

(3) from an onshore facility which is subject to the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1651 et seq.).

(d) Liability of third parties

(1) In general

(A) Third party treated as responsible party. Except as provided in subparagraph (B), in any case in which a responsible party establishes that a discharge or threat of a discharge and the resulting removal costs and damages were caused solely by an act or omission of one or more third parties described in section 2703(a)(3) of this title (or solely by such an act or omission in combination with an act of God or an act of war), the third party or parties shall be treated as the responsible party or parties for purposes of determining liability under this subchapter.

(B) Subrogation of responsible party. If the responsible party alleges that the discharge or threat of a discharge was caused solely by an act or omission of a third party, the responsible party -

(i) in accordance with section 2713 of this title, shall pay removal costs and damages to any claimant; and

(ii) shall be entitled by subrogation to all rights of the United States Government and the claimant to recover removal costs or damages from the third party or the Fund paid under this subsection.

(2) Limitation applied

(A) Owner or operator of vessel or facility. If the act or omission of a third party that causes an incident occurs in connection with a vessel or facility owned or operated by the third party, the liability of the third party shall be subject to the limits provided in section 2704 of this title as applied with respect to the vessel or facility.

(B) Other cases. In any other case, the liability of a third party or parties shall not exceed the limitation which would have been applicable to the responsible party of the vessel or facility from which the discharge actually occurred if the responsible party were liable.

2706. Natural resources

(a) Liability. In the case of natural resource damages under section 2702(b)(2)(A) of this title, liability shall be -

(1) to the United States Government for natural resources belonging to, managed by, controlled by, or appertaining to the United States;

(2) to any State for natural resources belonging to, managed by, controlled by, or appertaining to such State or political subdivision thereof;

(3) to any Indian tribe for natural resources belonging to, managed by, controlled by, or appertaining to such Indian tribe; and

(4) in any case in which section 2707 of this title applies, to the government of a foreign country for natural resources belonging to, managed by, controlled by, or appertaining to such country.

(b) Designation of Trustees

(1) In general. The President, or the authorized representative of any State, Indian tribe, or foreign government, shall act on behalf of the public, Indian tribe, or foreign country as Trustee of natural resources to present a claim for and to recover damages to the natural resources.

(2) Federal Trustees. The President shall designate the Federal officials who shall act on behalf of the public as Trustees for natural resources under this Act.

(3) State Trustees. The Governor of each State shall designate State and local officials who may act on behalf of the public as Trustee for natural resources under this Act and shall notify the President of the designation.

(4) Indian tribe Trustees. The governing body of any Indian tribe shall designate tribal officials who may act on behalf of the tribe or its members as Trustee for natural resources under this Act and shall notify the President of the designation.

(5) Foreign Trustees. The head of any foreign government may designate the Trustee who shall act on behalf of that government as Trustee for natural resources under this Act.

(c) Functions of Trustees

(1) Federal Trustees. The Federal officials designated under subsection (b)(2) of this section -

(A) shall assess natural resource damages under section 2702(b)(2)(A) of this title for the natural resources under their Trusteeship;

(B) may, upon request of and reimbursement from a State or Indian tribe and at the Federal officials' discretion, assess damages for the natural resources under the State's or tribe's Trusteeship; and

(C) shall develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent, of the natural resources under their Trusteeship.

(2) State Trustees. The State and local officials designated under subsection (b)(3) of this section -

(A) shall assess natural resource damages under section 2702(b)(2)(A) of this title for the purposes of this Act for the natural resources under their Trusteeship; and

(B) shall develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent, of the natural resources under their Trusteeship.

(3) Indian tribe Trustees. The tribal officials designated under subsection (b)(4) of this section -

(A) shall assess natural resource damages under section 2702(b)(2)(A) of this title for the purposes of this Act for the natural resources under their Trusteeship; and

(B) shall develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent, of the natural resources under their Trusteeship.

(4) Foreign Trustees. The Trustees designated under subsection (b)(5) of this section -

(A) shall assess natural resource damages under section 2702(b)(2)(A) of this title for the purposes of this Act for the natural resources under their Trusteeship; and

(B) shall develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent, of the natural resources under their Trusteeship.

(5) Notice and opportunity to be heard. Plans shall be developed and implemented under this section only after adequate public notice, opportunity for a hearing, and consideration of all public comment.

(d) Measure of damages

(1) In general. The measure of natural resource damages under section 2702(b)(2)(A) of this title is -

(A) the cost of restoring, rehabilitating, replacing, or acquiring the equivalent of, the damaged natural resources;

(B) the diminution in value of those natural resources pending restoration; plus

(C) the reasonable cost of assessing those damages.

(2) Determine costs with respect to plans. Costs shall be determined under paragraph (1) with respect to plans adopted under subsection (c) of this section.

(3) No double recovery. There shall be no double recovery under this Act for natural resource damages, including with respect to the costs of damage assessment or restoration, rehabilitation, replacement, or acquisition for the same incident and natural resource.

(e) Damage assessment regulations

(1) Regulations. The President, acting through the Under Secretary of Commerce for Oceans and Atmosphere and in consultation with the Administrator of the Environmental Protection Agency, the Director of the United States Fish and Wildlife Service, and the heads of other affected agencies, not later than 2 years after August 18, 1990, shall promulgate regulations for the assessment of natural resource damages under section 2702(b)(2)(A) of this title resulting from a discharge of oil for the purpose of this Act.

(2) Rebuttable presumption. Any determination or assessment of damages to natural resources for the purposes of this Act made under subsection (d) of this section by a Federal, State, or Indian Trustee in accordance with the regulations promulgated under paragraph (1) shall have the force and effect of a rebuttable presumption on behalf of the Trustee in any administrative or judicial proceeding under this Act.

(f) Use of recovered sums. Sums recovered under this Act by a Federal, State, Indian, or foreign Trustee for natural resource damages under section 2702(b)(2)(A) of this title shall be retained by the Trustee in a revolving trust account, without further appropriation, for use only to reimburse or pay costs incurred by the Trustee under

subsection (c) of this section with respect to the damaged natural resources. Any amounts in excess of those required for these reimbursements and costs shall be deposited in the Fund.

(g) Compliance. Review of actions by any Federal official where there is alleged to be a failure of that official to perform a duty under this section that is not discretionary with that official may be had by any person in the district court in which the person resides or in which the alleged damage to natural resources occurred. The court may award costs of litigation (including reasonable attorney and expert witness fees) to any prevailing or substantially prevailing party. Nothing in this subsection shall restrict any right which any person may have to seek relief under any other provision of law.

2712. Uses of Fund

(a) Uses generally. The Fund shall be available to the President for -

(1) the payment of removal costs, including the costs of monitoring removal actions, determined by the President to be consistent with the National Contingency Plan -

(A) by Federal authorities; or

(B) by a Governor or designated State official under subsection (d) of this section;

(2) the payment of costs incurred by Federal, State, or Indian tribe Trustees in carrying out their functions under section 2706 of this title for assessing natural resource damages and for developing and implementing plans for the restoration, rehabilitation, replacement, or acquisition of the equivalent of damaged resources determined by the President to be consistent with the National Contingency Plan;

(3) the payment of removal costs determined by the President to be consistent with the National Contingency Plan as a result of, and damages resulting from, a discharge, or a substantial threat of a discharge, of oil from a foreign offshore unit;

(4) the payment of claims in accordance with section 2713 of this title for uncompensated removal costs determined by the President to be consistent with the National Contingency Plan or uncompensated damages;

(5) the payment of Federal administrative, operational, and personnel costs and expenses reasonably necessary for and incidental to the implementation, administration, and enforcement of this Act (including, but not limited to, sections 1004(d)(2), 1006(e), 4107, 4110, 4111, 4112, 4117, 5006, 8103, and title VII) and subsections (b), (c), (d), (j), and (l) of section 1321 of this title with respect to prevention, removal, and enforcement related to oil discharges, provided that -

(A) not more than $25,000,000 in each fiscal year shall be available to the Secretary for operating expenses incurred by the Coast Guard;

(B) not more than $30,000,000 each year through the end of fiscal year 1992 shall be available to establish the National Response System under section 1321(j) of this title, including the purchase and prepositioning of oil spill removal equipment; and

(C) not more than $27,250,000 in each fiscal year shall be available to carry out subchapter IV of this chapter.

(b) Defense to liability for Fund. The Fund shall not be available to pay any claim for removal costs or damages to a particular claimant, to the extent that the incident, removal costs, or damages are caused by the gross negligence or willful misconduct of that claimant.

(c) Obligation of Fund by Federal officials. The President may promulgate regulations designating one or more Federal officials who may obligate money in accordance with subsection (a) of this section.

(d) Access to Fund by State officials

(1) Immediate removal. In accordance with regulations promulgated under this section, the President, upon the request of the Governor of a State or pursuant to an agreement with a State under paragraph (2), may obligate the Fund for payment in an amount not to exceed $250,000 for removal costs consistent with the National Contingency Plan required for the immediate removal of a discharge, or the mitigation or prevention of a substantial threat of a discharge, of oil.

(2) Agreements

(A) In general. The President shall enter into an agreement with the Governor of any interested State to establish procedures under which the Governor or a designated State official may receive payments from the Fund for removal costs pursuant to paragraph (1).

(B) Terms. Agreements under this paragraph -

(i) may include such terms and conditions as may be agreed upon by the President and the Governor of a State;

(ii) shall provide for political subdivisions of the State to receive payments for reasonable removal costs; and

(iii) may authorize advance payments from the Fund to facilitate removal efforts.

(e) Regulations. The President shall -

(1) not later than 6 months after August 18, 1990, publish proposed regulations detailing the manner in which the authority to obligate the Fund and to enter into agreements under this subsection shall be exercised; and

(2) not later than 3 months after the close of the comment period for such proposed regulations, promulgate final regulations for that purpose.

(f) Rights of subrogation. Payment of any claim or obligation by the Fund under this Act shall be subject to the United States Government acquiring by subrogation all rights of the claimant or State to recover from the responsible party.

(g) Audits. The Comptroller General shall audit all payments, obligations, reimbursements, and other uses of the Fund, to assure that the Fund is being properly administered and that claims are being appropriately and expeditiously considered. The Comptroller General shall submit to the Congress an interim report one year after August 18, 1990. The Comptroller General shall thereafter audit the Fund as is appropriate. Each Federal agency shall cooperate with the Comptroller General in carrying out this subsection.

(h) Period of limitations for claims

(1) Removal costs. No claim may be presented under this subchapter for recovery of removal costs for an incident unless the claim is presented within 6 years after the date of completion of all removal actions for that incident.

(2) Damages. No claim may be presented under this section for recovery of damages unless the claim is presented within 3 years after the date on which the injury and its connection with the discharge in question were reasonably discoverable with the exercise of due care, or in the case of natural resource damages under section 2702(b)(2)(A) of this title, if later, the date of completion of the natural resources damage assessment under section 2706(e) of this title.

(3) Minors and incompetents. The time limitations contained in this subsection shall not begin to run -

(A) against a minor until the earlier of the date when such minor reaches 18 years of age or the date on which a legal representative is duly appointed for the minor, or

(B) against an incompetent person until the earlier of the date on which such incompetent's incompetency ends or the date on which a legal representative is duly appointed for the incompetent.

(i) Limitation on payment for same costs. In any case in which the President has paid an amount from the Fund for any removal costs or damages specified under subsection (a) of this section, no other claim may be paid from the Fund for the same removal costs or damages.

(j) Obligation in accordance with plan

(1) In general. Except as provided in paragraph (2), amounts may be obligated from the Fund for the restoration, rehabilitation, replacement, or acquisition of natural resources only in accordance with a plan adopted under section 2706(c) of this title.

(2) Exception. Paragraph (1) shall not apply in a situation requiring action to avoid irreversible loss of natural resources or to prevent or reduce any continuing danger to natural resources or similar need for emergency action.

(k) Preference for private persons in area affected by discharge

(1) In general. In the expenditure of Federal funds for removal of oil, including for distribution of supplies, construction, and other reasonable and appropriate activities, under a contract or agreement with a private person, preference shall be given, to the extent feasible and practicable, to private persons residing or doing business primarily in the area affected by the discharge of oil.

(2) Limitation. This subsection shall not be considered to restrict the use of Department of Defense resources.

2713. Claims procedure

(a) Presentation. Except as provided in subsection (b) of this section, all claims for removal costs or damages shall be presented first to the responsible party or guarantor of the source designated under section 2714(a) of this title.

(b) Presentation to Fund

(1) In general. Claims for removal costs or damages may be presented first to the Fund -

(A) if the President has advertised or otherwise notified claimants in accordance with section 2714(c) of this title;

(B) by a responsible party who may assert a claim under section 2708 of this title;

(C) by the Governor of a State for removal costs incurred by that State; or
(D) by a United States claimant in a case where a foreign offshore unit has discharged oil causing damage for which the Fund is liable under section 2712(a) of this title.

(2) Limitation on presenting claim. No claim of a person against the Fund may be approved or certified during the pendency of an action by the person in court to recover costs which are the subject of the claim.

(c) Election. If a claim is presented in accordance with subsection (a) of this section and -

(1) each person to whom the claim is presented denies all liability for the claim, or
(2) the claim is not settled by any person by payment within 90 days after the date upon which

(A) the claim was presented, or
(B) advertising was begun pursuant to section 2714(b) of this title, whichever is later, the claimant may elect to commence an action in court against the responsible party or guarantor or to present the claim to the Fund.

(d) Uncompensated damages. If a claim is presented in accordance with this section and full and adequate compensation is unavailable, a claim for the uncompensated damages and removal costs may be presented to the Fund.

(e) Procedure for claims against Fund. The President shall promulgate, and may from time to time amend, regulations for the presentation, filing, processing, settlement, and adjudication of claims under this Act against the Fund.

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TITLE 15

COMMERCE AND FOREIGN TRADE CHAPTER IX NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE PART 990

NATURAL RESOURCE DAMAGE ASSESSMENTS

Subpart A--Introduction

Sec 990.10 Purpose.
990.11 Scope.
990.12 Overview.
990.13 Rebuttable presumption.
990.14 Coordination.
990.15 Considerations to facilitate restoration.

Subpart B--Authorities

990.20 Relationship to the CERCLA **natural resource damage** assessment regulations.
990.21 Relationship to the NCP.
990.22 Prohibition on double recovery.
990.23 Compliance with NEPA and the CEQ regulations.
990.24 Compliance with other applicable laws and regulations.
990.25 Settlement.
990.26 Emergency restoration.
990.27 Use of assessment procedures.

Subpart C—Definitions

990.30 Definitions.

Subpart D--Preassessment Phase

990.40 Purpose.
990.41 Determination of jurisdiction.
990.42 Determination to conduct restoration planning.
990.43 Data collection.
990.44 Notice of Intent to Conduct Restoration Planning.
990.45 Administrative record.

Subpart E--Restoration Planning Phase

990.50 Purpose.
990.51 Injury assessment--injury determination.
990.52 Injury assessment--quantification.
990.53 Restoration selection--developing restoration alternatives.
990.54 Restoration selection--evaluation of alternatives.
990.55 Restoration selection--developing restoration plans.
990.56 Restoration selection--use of a Regional Restoration Plan or existing restoration project.

Subpart F--Restoration Implementation Phase

990.60 Purpose.
990.61 Administrative record.
990.62 Presenting a demand.
990.63 Discounting and compounding.
990.64 Unsatisfied demands.
990.65 Opening an account for recovered damages.
990.66 Additional considerations.

Authority: 33 U.S.C. 2701 et seq. Source: 61 FR 500, Jan. 5, 1996, unless otherwise noted.

Subpart A--Introduction

Sec. 990.10 Purpose. The goal of the Oil Pollution Act of 1990 (OPA), 33 U.S.C. 2701 et seq., is to make the environment and public whole for injuries to **natural** resources and services resulting from an incident involving a discharge or substantial threat of a discharge of oil (incident). This goal is achieved through the return of the injured **natural** resources and services to baseline and compensation for interim losses of such **natural** resources and services from the date of the incident until recovery. The purpose of this part is to promote expeditious and cost-effective restoration of **natural** resources and services injured as a result of an incident. To fulfill this purpose, this part provides a **natural resource damage** assessment process for developing a plan for restoration of the injured **natural** resources and services and pursuing implementation or funding of the plan by responsible parties. This part also provides an administrative process for involving interested parties in the assessment, a range of assessment procedures for identifying and evaluating injuries to **natural** resources and services, and a means for

selecting restoration actions from a reasonable range of alternatives.

Sec. 990.11 Scope. The Oil Pollution Act of 1990 (OPA), 33 U.S.C. 2701 et seq., provides for the designation of federal, state, and, if designated by the Governor of the state, local officials to act on behalf of the public as trustees for **natural** resources and for the designation of Indian tribe and foreign officials to act as trustees for **natural** resources on behalf of, respectively, the tribe or its members and the foreign government. This part may be used by these officials in conducting **natural resource damage assessments** when **natural** resources and/or services are injured as a result of an incident involving an actual or substantial threat of a discharge of oil. This part is not intended to affect the recoverability of **natural resource** damages when recoveries are sought other than in accordance with this part.

Sec. 990.12 Overview. This part describes three phases of a **natural resource damage** assessment. The Preassessment Phase, during which trustees determine whether to pursue restoration, is described in subpart D of this part. The Restoration Planning Phase, during which trustees evaluate information on potential injuries and use that information to determine the need for, type of, and scale of restoration, is described in subpart E of this part. The Restoration Implementation Phase, during which trustees ensure implementation of restoration, is described in subpart F of this part.

Sec. 990.13 Rebuttable presumption. Any determination or assessment of damages to **natural** resources made by a Federal, State, or Indian trustee in accordance with this part shall have the force and effect of a rebuttable presumption on behalf of the trustee in any administrative or judicial proceeding under OPA.

Sec. 990.14 Coordination. (a) Trustees. (1) If an incident affects the interests of multiple trustees, the trustees should act jointly under this part to ensure that full restoration is achieved without double recovery of damages. For joint **assessments**, trustees must designate one or more Lead Administrative Trustee(s) to act as coordinators. (2) If there is a reasonable basis for dividing the **natural resource damage** assessment, trustees may act independently under this part, so long as there is no double recovery of damages. (3) Trustees may develop pre-incident or incident-

specific memoranda of understanding to coordinate their activities. (b) Response agencies. Trustees must coordinate their activities conducted concurrently with response operations with response agencies consistent with the NCP and any pre-incident plans developed under Sec. 990.15(a) of this part. Trustees may develop pre-incident memoranda of understanding to coordinate their activities with response agencies. (c) Responsible parties--(1) Invitation. Trustees must invite the responsible parties to participate in the **natural resource damage** assessment described in this part. The invitation to participate should be in writing, and a written response by the responsible parties is required to confirm the desire to participate. (2) Timing. The invitation to participate should be extended to known responsible parties as soon as practicable, but not later than the delivery of the ``Notice of Intent to Conduct Restoration Planning,'' under Sec. 990.44 of this part, to the responsible party. (3) Agreements. Trustees and responsible parties should consider entering into binding agreements to facilitate their interactions and resolve any disputes during the assessment. To maximize cost-effectiveness and cooperation, trustees and responsible parties should attempt to develop a set of agreed-upon facts concerning the incident and/or assessment. (4) Nature and extent of participation. If the responsible parties accept the invitation to participate, the scope of that participation must be determined by the trustees, in light of the considerations in paragraph (c)(5) of this section. At a minimum, participation will include notice of trustee determinations required under this part, and notice and opportunity to comment on documents or plans that significantly affect the nature and extent of the assessment. Increased levels of participation by responsible parties may be developed at the mutual agreement of the trustees and the responsible parties. Trustees will objectively consider all written comments provided by the responsible parties, as well as any other recommendations or proposals that the responsible parties submit in writing to the Lead Administrative Trustee. Submissions by the responsible parties will be included in the administrative record. Final authority to make determinations regarding injury and restoration rest solely with the trustees. Trustees may end participation by responsible parties who, during the conduct of the assessment, in the sole judgment of the trustees, cause interference with the trustees' ability to fulfill their responsibilities under OPA and this part. (5)

Considerations. In determining the nature and extent of participation by the responsible parties or their representatives, trustees may consider such factors as: (i) Whether the responsible parties have been identified; (ii) The willingness of responsible parties to participate in the assessment; (iii) The willingness of responsible parties to fund assessment activities; (iv) The willingness and ability of responsible parties to conduct assessment activities in a technically sound and timely manner and to be bound by the results of jointly agreed upon studies; (v) The degree of cooperation of the responsible parties in the response to the incident; and (vi) The actions of the responsible parties in prior **assessments**. (6) Request for alternative assessment procedures. (i) The participating responsible parties may request that trustees use assessment procedures other than those selected by the trustees if the responsible parties: (A) Identify the proposed procedures to be used that meet the requirements of Sec. 990.27 of this part, and provide reasons supporting the technical adequacy and appropriateness of such procedures for the incident and associated injuries; (B) Advance to the trustees the trustees' reasonable estimate of the cost of using the proposed procedures; and (C) Agree not to challenge the results of the proposed procedures. The request from the responsible parties may be made at any time, but no later than, fourteen (14) days of being notified of the trustees' proposed assessment procedures for the incident or the injury. (ii) Trustees may reject the responsible parties' proposed assessment procedures if, in the sole judgment of the trustees, the proposed assessment procedures: (A) Are not technically feasible; (B) Are not scientifically or technically sound; (C) Would inadequately address the **natural** resources and services of concern; (D) Could not be completed within a reasonable time frame; or (E) Do not meet the requirements of Sec. 990.27 of this part. (7) Disclosure. Trustees must document in the administrative record and Restoration Plan the invitation to the responsible parties to participate, and briefly describe the nature and extent of the responsible parties' participation. If the responsible parties' participation is terminated during the assessment, trustees must provide a brief explanation of this decision in the administrative record and Restoration Plan. (d) Public. Trustees must provide opportunities for public involvement after the trustees' decision to develop restoration plans or issuance of any notices to that effect, as provided in Sec. 990.55 of this part. Trustees may also provide

opportunities for public involvement at any time prior to this decision if such involvement may enhance trustees' decisionmaking or avoid delays in restoration.

Sec. 990.15 Considerations to facilitate restoration. In addition to the procedures provided in subparts D through F of this part, trustees may take other actions to further the goal of expediting restoration of injured **natural** resources and services, including: (a) Pre-incident planning. Trustees may engage in pre-incident planning activities. Pre-incident plans may identify **natural resource damage** assessment teams, establish trustee notification systems, identify support services, identify **natural** resources and services at risk, identify area and regional response agencies and officials, identify available baseline information, establish data management systems, and identify assessment funding issues and options. Potentially responsible parties, as well as all other members of the public interested in and capable of participating in **assessments**, should be included in pre-incident planning to the fullest extent practicable. (b) Regional Restoration Plans. Where practicable, incident-specific restoration plan development is preferred, however, trustees may develop Regional Restoration Plans. These plans may be used to support a claim under Sec. 990.56 of this part. Regional restoration planning may consist of compiling databases that identify, on a regional or watershed basis, or otherwise as appropriate, existing, planned, or proposed restoration projects that may provide appropriate restoration alternatives for consideration in the context of specific incidents.

Subpart B--Authorities

Sec. 990.20 Relationship to the CERCLA **natural resource damage** assessment regulations. (a) General. Regulations for assessing **natural resource** damages resulting from hazardous substance releases under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9601 et seq., and the Federal Water Pollution Control Act (Clean Water Act), 33 U.S.C. 1321 et seq., are codified at 43 CFR part 11. The CERCLA regulations originally applied to **natural resource** damages resulting from oil discharges as well as hazardous substance releases. This part supersedes 43 CFR part 11 with regard to oil discharges covered by OPA. (b) **Assessments** commenced before February 5, 1996. If trustees commenced a **natural resource damage** assessment for an oil

discharge under 43 CFR part 11 prior to February 5, 1996 they may complete the assessment in compliance with 43 CFR part 11, or they may elect to use this part, and obtain a rebuttable presumption. (c) Oil and hazardous substance mixtures. For **natural resource** damages resulting from a discharge or release of a mixture of oil and hazardous substances, trustees must use 43 CFR part 11 in order to obtain a rebuttable presumption.

Sec. 990.21 Relationship to the NCP. This part provides procedures by which trustees may determine appropriate restoration of injured **natural** resources and services, where such injuries are not fully addressed by response actions. Response actions and the coordination with **damage** assessment activities are conducted pursuant to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300.

Sec. 990.22 Prohibition on double recovery. When taking actions under this part, trustees are subject to the prohibition on double recovery, as provided in 33 U.S.C. 2706(d)(3) of OPA

Sec. 990.23 Compliance with NEPA and the CEQ regulations. (a) General. The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 et seq. and Council on Environmental Quality (CEQ) regulations implementing NEPA, 40 CFR chapter V, apply to restoration actions by federal trustees, except where a categorical exclusion or other exception to NEPA applies. Thus, when a federal trustee proposes to take restoration actions under this part, it must integrate this part with NEPA, the CEQ regulations, and NEPA regulations promulgated by that federal trustee agency. Where state NEPA-equivalent laws may apply to state trustees, state trustees must consider the extent to which they must integrate this part with their NEPA-equivalent laws. The requirements and process described in this section relate only to NEPA and federal trustees. (b) NEPA requirements for federal trustees. NEPA becomes applicable when federal trustees propose to take restoration actions, which begins with the development of a Draft Restoration Plan under Sec. 990.55 of this part. Depending upon the circumstances of the incident, federal trustees may need to consider early involvement of the public in restoration planning in order to meet their NEPA compliance requirements. (c) NEPA process for federal trustees. Although the steps in the NEPA process may vary among different federal trustees, the

process will generally involve the need to develop restoration plans in the form of an Environmental Assessment or Environmental Impact Statement, depending upon the trustee agency's own NEPA regulations. (1) Environmental Assessment. (i) Purpose. The purpose of an Environmental Assessment (EA) is to determine whether a proposed restoration action will have a significant (as defined under NEPA and Sec. 1508.27 of the CEQ regulations) impact on the quality of the human environment, in which case an Environmental Impact Statement (EIS) evaluating the impact is required. In the alternative, where the impact will not be significant, federal trustees must issue a Finding of No Significant Impact (FONSI) as part of the restoration plans developed under this part. If significant impacts to the human environment are anticipated, the determination to proceed with an EIS may be made as a result, or in lieu, of the development of the EA. (ii) General steps. (A) If the trustees decide to pursue an EA, the trustees may issue a Notice of Intent to Prepare a Draft Restoration Plan/EA, or proceed directly to developing a Draft Restoration Plan/EA. (B) The Draft Restoration Plan/EA must be made available for public review before concluding a FONSI or proceeding with an EIS. (C) If a FONSI is concluded, the restoration planning process should be no different than under Sec. 990.55 of this part, except that the Draft Restoration Plan/EA will include the FONSI analysis. (D) The time period for public review on the Draft Restoration Plan/ EA must be consistent with the federal trustee agency's NEPA requirements, but should generally be no less than thirty (30) calendar days. (E) The Final Restoration Plan/EA must consider all public comments on the Draft Restoration Plan/EA and FONSI. (F) The means by which a federal trustee requests, considers, and responds to public comments on the Draft Restoration Plan/EA and FONSI must also be consistent with the federal agency's NEPA requirements. (2) Environmental Impact Statement. (i) Purpose. The purpose of an Environmental Impact Statement (EIS) is to involve the public and facilitate the decisionmaking process in the federal trustees' analysis of alternative approaches to restoring injured **natural** resources and services, where the impacts of such restoration are expected to have significant impacts on the quality of the human environment. (ii) General steps. (A) If trustees determine that restoration actions are likely to have a significant (as defined under NEPA and Sec. 1508.27 of the CEQ regulations) impact on the environment, they must issue a Notice of Intent to Prepare

a Draft Restoration Plan/EIS. The notice must be published in the Federal Register. (B) The notice must be followed by formal public involvement in the development of the Draft Restoration Plan/EIS. (C) The Draft Restoration Plan/EIS must be made available for public review for a minimum of forty-five (45) calendar days. The Draft Restoration Plan/EIS, or a notice of its availability, must be published in the Federal Register. (D) The Final Restoration Plan/EIS must consider all public comments on the Draft Restoration Plan/EIS, and incorporate any changes made to the Draft Restoration Plan/EIS in response to public comments. (E) The Final Restoration Plan/EIS must be made publicly available for a minimum of thirty (30) calendar days before a decision is made on the federal trustees' proposed restoration actions (Record of Decision). The Final Restoration Plan/EIS, or a notice of its availability, must be published in the Federal Register. (F) The means by which a federal trustee agency requests, considers, and responds to public comments on the Final Restoration Plan/EIS must also be consistent with the federal agency's NEPA requirements. (G) After appropriate public review on the Final Restoration Plan/ EIS is completed, a Record of Decision (ROD) is issued. The ROD summarizes the trustees' decisionmaking process after consideration of any public comments relative to the proposed restoration actions, identifies all restoration alternatives (including the preferred alternative(s)), and their environmental [[Page 354]] consequences, and states whether all practicable means to avoid or minimize environmental harm were adopted (e.g., monitoring and corrective actions). The ROD may be incorporated with other decision documents prepared by the trustees. The means by which the ROD is made publicly available must be consistent with the federal trustee agency's NEPA requirements. (d) Relationship to Regional Restoration Plans or an existing restoration project. If a Regional Restoration Plan or existing restoration project is proposed for use, federal trustees may be able to tier their NEPA analysis to an existing EIS, as described in Secs. 1502.20 and 1508.28 of the CEQ regulations.

Sec. 990.24 Compliance with other applicable laws and regulations. (a) Worker health and safety. When taking actions under this part, trustees must comply with applicable worker health and safety considerations specified in the NCP for response actions. (b) **Natural** Resources protection. When acting under this part, trustees

must ensure compliance with any applicable consultation, permitting, or review requirements, including but not limited to: the Endangered Species Act of 1973, 16 U.S.C. 1531 et seq.; the Coastal Zone Management Act of 1972, 16 U.S.C. 1451 et seq.; the Migratory Bird Treaty Act, 16 U.S.C. 703 et seq.; the National Marine Sanctuaries Act, 16 U.S.C. 1431 et seq.; the National Historic Preservation Act, 12 U.S.C. 470 et seq.; the Marine Mammal Protection Act, 16 U.S.C. 1361 et seq.; and the Archaeological Resources Protection Act, 16 U.S.C. 470 et seq.

Sec. 990.25 Settlement. Trustees may settle claims for **natural resource** damages under this part at any time, provided that the settlement is adequate in the judgment of the trustees to satisfy the goal of OPA and is fair, reasonable, and in the public interest, with particular consideration of the adequacy of the settlement to restore, replace, rehabilitate, or acquire the equivalent of the injured **natural** resources and services. Sums recovered in settlement of such claims, other than reimbursement of trustee costs, may only be expended in accordance with a restoration plan, which may be set forth in whole or in part in a consent decree or other settlement agreement, which is made available for public review.

Sec. 990.26 Emergency restoration. (a) Trustees may take emergency restoration action before completing the process established under this part, provided that: (1) The action is needed to minimize continuing or prevent additional injury; (2) The action is feasible and likely to minimize continuing or prevent additional injury; and (3) The costs of the action are not unreasonable. (b) If response actions are still underway, trustees, through their Regional Response Team member or designee, must coordinate with the On- Scene Coordinator (OSC) before taking any emergency restoration actions. Any emergency restoration actions proposed by trustees should not interfere with on-going response actions. Trustees must explain to response agencies through the OSC prior to implementation of emergency restoration actions their reasons for believing that proposed emergency restoration actions will not interfere with on-going response actions. (c) Trustees must provide notice to identified responsible parties of any emergency restoration actions and, to the extent time permits, invite their participation in the conduct of those actions as provided in Sec. 990.14(c) of this part. (d) Trustees must provide notice to the public, to the extent

practicable, of these planned emergency restoration actions. Trustees must also provide public notice of the justification for, nature and extent of, and results of emergency restoration actions within a reasonable time frame after completion of such actions. The means by which this notice is provided is left to the discretion of the trustee.

Sec. 990.27 Use of assessment procedures. (a) Standards for assessment procedures. Any procedures used pursuant to this part must comply with all of the [[Page 355]] following standards if they are to be in accordance with this part: (1) The procedure must be capable of providing assessment information of use in determining the type and scale of restoration appropriate for a particular injury; (2) The additional cost of a more complex procedure must be reasonably related to the expected increase in the quantity and/or quality of relevant information provided by the more complex procedure; and (3) The procedure must be reliable and valid for the particular incident. (b) Assessment procedures available. (1) The range of assessment procedures available to trustees includes, but is not limited to: (i) Procedures conducted in the field; (ii) Procedures conducted in the laboratory; (iii) Model-based procedures, including type A procedures identified in 43 CFR part 11, subpart D, and compensation formulas/schedules; and (iv) Literature-based procedures. (2) Trustees may use the assessment procedures in paragraph (b)(1) of this section alone, or in any combination, provided that the standards in paragraph (a) of this section are met, and there is no double recovery. (c) Selecting assessment procedures. (1) When selecting assessment procedures, trustees must consider, at a minimum: (i) The range of procedures available under paragraph (b) of this section; (ii) The time and cost necessary to implement the procedures; (iii) The potential nature, degree, and spatial and temporal extent of the injury; (iv) The potential restoration actions for the injury; and (v) The relevance and adequacy of information generated by the procedures to meet information requirements of restoration planning. (2) If a range of assessment procedures providing the same type and quality of information is available, the most cost-effective procedure must be used.

Subpart C—Definitions

Sec. 990.30 Definitions. For the purpose of this rule, the term:

Baseline means the condition of the **natural** resources and services that would have existed had the incident not occurred. Baseline data may be estimated using historical data, reference data, control data, or data on incremental changes (e.g., number of dead animals), alone or in combination, as appropriate.

Cost-effective means the least costly activity among two or more activities that provide the same or a comparable level of benefits, in the judgment of the trustees

CEQ regulations means the Council on Environmental Quality regulations implementing NEPA, 40 CFR chapter V.

Damages means damages specified in section 1002(b) of OPA (33 U.S.C. 1002(b)), and includes the costs of assessing these damages, as defined in section 1001(5) of OPA (33 U.S.C. 2701(5)).

Discharge means any emission (other than **natural** seepage), intentional or unintentional, and includes, but is not limited to, spilling, leaking, pumping, pouring, emitting, emptying, or dumping, as defined in section 1001(7) of OPA (33 U.S.C. 2701(7)).

Exclusive Economic Zone means the zone established by Presidential Proclamation 5030 of March 10, 1983 (3 CFR, 1984 Comp, p. 22), including the ocean waters of the areas referred to as ``eastern special areas'' in Article 3(1) of the Agreement between the United States of America and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990, as defined in section 1001(8) of OPA (33 U.S.C. 2701(8)).

Exposure means direct or indirect contact with the discharged oil. Facility means any structure, group of structures, equipment, or device (other than a vessel) which is used for one or more of the following purposes: exploring for, drilling for, producing, storing, handling, transferring, processing, or transporting oil. This term includes any motor vehicle, rolling stock, or pipeline used for one or more of these purposes, as defined in section 1001(9) of OPA (33 U.S.C. 2701(9)).

Fund means the Oil Spill Liability Trust Fund, established by section 9509 of the Internal Revenue Code of 1986 (26 U.S.C. 9509), as defined in section 1001(11) of OPA (33 U.S.C. 2701(11)).

Incident means any occurrence or series of occurrences having the same origin, involving one or more vessels, facilities, or any combination thereof, resulting in the discharge or substantial threat of discharge of oil into or upon navigable waters or adjoining shorelines or the Exclusive Economic Zone, as defined in section 1001(14) of OPA (33 U.S.C. 2701(14)).

Indian tribe (or tribal) means any Indian tribe, band, nation, or other organized group or community, but not including any Alaska Native regional or village corporation, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians and has governmental authority over lands belonging to or controlled by the tribe, as defined in section 1001(15) of OPA (33 U.S.C. 2701(15)).

Injury means an observable or measurable adverse change in a **natural resource** or impairment of a **natural resource** service. Injury may occur directly or indirectly to a **natural resource** and/or service. Injury incorporates the terms ``destruction,'' ``loss,'' and ``loss of use'' as provided in OPA.

Lead Administrative Trustee(s) (or LAT) means the trustee(s) who is selected by all participating trustees whose **natural** resources or services are injured by an incident, for the purpose of coordinating **natural resource damage** assessment activities. The LAT(s) should also facilitate communication between the OSC and other **natural resource** trustees regarding their activities during the response phase.

NCP means the National Oil and Hazardous Substances Pollution Contingency Plan (National Contingency Plan) codified at 40 CFR part 300, which addresses the identification, investigation, study, and response to incidents, as defined in section 1001(19) of OPA (33 U.S.C. 2701(19)).

Natural resource damage assessment (or assessment) means the process of collecting and analyzing information to

evaluate the nature and extent of injuries resulting from an incident, and determine the restoration actions needed to bring injured **natural** resources and services back to baseline and make the environment and public whole for interim losses.

Natural resources means land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the Exclusive Economic Zone), any state or local government or Indian tribe, or any foreign government, as defined in section 1001(20) of OPA (33 U.S.C. 2701(20)).

Navigable waters means the waters of the United States, including the territorial sea, as defined in section 1001(21) of OPA (33 U.S.C. 2701(21)).

NEPA means the National Environmental Policy Act, 42 U.S.C. 4321 et seq. Oil means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil. However, the term does not include petroleum, including crude oil or any fraction thereof, that is specifically listed or designated as a hazardous substance under 42 U.S.C. 9601(14)(A) through (F), as defined in section 1001(23) of OPA (33 U.S.C. 2701(23)).

On-Scene Coordinator (or OSC) means the official designated by the U.S. Environmental Protection Agency or the U.S. Coast Guard to coordinate and direct response actions under the NCP, or the government official designated by the lead response agency to coordinate and direct response actions under the NCP.

OPA means the Oil Pollution Act of 1990, 33 U.S.C. 2701 et seq.

Pathway means any link that connects the incident to a **natural resource** and/or service, and is associated with an actual discharge of oil.

Person means an individual, corporation, partnership, association, state, municipality, commission, or political subdivision of a state, or any interstate body, as defined in section 1001(27) of OPA (33 U.S.C. 2701(27)).

Public vessel means a vessel owned or bareboat chartered and operated by the United States, or by a state or

political subdivision thereof, or by a foreign nation, except when the vessel is engaged in commerce, as defined in section 1001(29) of OPA (33 U.S.C. 2701(29)).

Reasonable assessment costs means, for **assessments** conducted under this part, assessment costs that are incurred by trustees in accordance with this part. In cases where assessment costs are incurred but trustees do not pursue restoration, trustees may recover their reasonable assessment costs provided that they have determined that assessment actions undertaken were premised on the likelihood of injury and need for restoration. Reasonable assessment costs also include: administrative, legal, and enforcement costs necessary to carry out this part; monitoring and oversight costs; and costs associated with public participation.

Recovery means the return of injured **natural** resources and services to baseline.

Response (or remove or removal) means containment and removal of oil or a hazardous substance from water and shorelines or the taking of other actions as may be necessary to minimize or mitigate **damage** to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, and public and private property, shorelines, and beaches, as defined in section 1001(30) of OPA (33 U.S.C. 2701(30)).

Responsible party means: (a) Vessels. In the case of a vessel, any person owning, operating, or demise chartering the vessel. (b) Onshore facilities. In the case of an onshore facility (other than a pipeline), any person owning or operating the facility, except a federal agency, state, municipality, commission, or political subdivision of a state, or any interstate body, that as the owner transfers possession and right to use the property to another person by lease, assignment, or permit. (c) Offshore facilities. In the case of an offshore facility (other than a pipeline or a deepwater port licensed under the Deepwater Port Act of 1974 (33 U.S.C. 1501 et seq.)), the lessee or permittee of the area in which the facility is located or the holder of a right of use and easement granted under applicable state law or the Outer Continental Shelf Lands Act (43 U.S.C. 1301-1356) for the area in which the facility is located (if the holder is a different person than the lessee or permittee), except a federal agency, state, municipality, commission, or political subdivision of a

state, or any interstate body, that as owner transfers possession and right to use the property to another person by lease, assignment, or permit. (d) Deepwater ports. In the case of a deepwater port licensed under the Deepwater Port Act of 1974 (33 U.S.C. 1501-1524), the licensee. (e) Pipelines. In the case of a pipeline, any person owning or operating the pipeline. (f) Abandonment. In the case of an abandoned vessel, onshore facility, deepwater port, pipeline, or offshore facility, the persons who would have been responsible parties immediately prior to the abandonment of the vessel or facility, as defined in section 1001(32) of OPA (33 U.S.C. 2701(32)).

Restoration means any action (or alternative), or combination of actions (or alternatives), to restore, rehabilitate, replace, or acquire the equivalent of injured **natural** resources and services. Restoration includes: (a) Primary restoration, which is any action, including **natural** recovery, that returns injured **natural** resources and services to baseline; and (b) Compensatory restoration, which is any action taken to compensate for interim losses of **natural** resources and services that occur from the date of the incident until recovery.

Services (or **natural resource** services) means the functions performed by a **natural resource** for the benefit of another **natural resource** and/or the public.

Trustees (or **natural resource** trustees) means those officials of the federal and state governments, of Indian tribes, and of foreign governments, designated under 33 U.S.C. 2706(b) of OPA.

United States and State means the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Marianas, and any other territory or possession of the United States, as defined in section 1001(36) of OPA (33 U.S.C. 2701(36)).

Value means the maximum amount of goods, services, or money an individual is willing to give up to obtain a specific good or service, or the minimum amount of goods, services, or money an individual is willing to accept to forgo a specific good or service. The total value of a **natural resource** or service includes the value individuals derive from direct use of the **natural resource**, for example, swimming, boating, hunting, or birdwatching, as well as the

value individuals derive from knowing a **natural resource** will be available for future generations.

Vessel means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water, other than a public vessel, as defined in section 1001(37) of OPA (33 U.S.C. 2701(37)).

Subpart D--Preassessment Phase

Sec. 990.40 Purpose. The purpose of this subpart is to provide a process by which trustees determine if they have jurisdiction to pursue restoration under OPA and, if so, whether it is appropriate to do so.

Sec. 990.41 Determination of jurisdiction. (a) Determination of jurisdiction. Upon learning of an incident, trustees must determine whether there is jurisdiction to pursue restoration under OPA. To make this determination, trustees must decide if: (1) An incident has occurred, as defined in Sec. 990.30 of this part; (2) The incident is not: (i) Permitted under a permit issued under federal, state, or local law; or (ii) From a public vessel; or (iii) From an onshore facility subject to the Trans-Alaska Pipeline Authority Act, 43 U.S.C. 1651, et seq.; and (3) **Natural** resources under the trusteeship of the trustee may have been, or may be, injured as a result of the incident. (b) Proceeding with preassessment. If the conditions listed in paragraph (a) of this section are met, trustees may proceed under this part. If one of the conditions is not met, trustees may not take additional action under this part, except action to finalize this determination. Trustees may recover all reasonable assessment costs incurred up to this point provided that conditions in paragraphs (a)(1) and (a)(2) of this section were met and actions were taken with the reasonable belief that **natural** resources or services under their trusteeship might have been injured as a result of the incident.

Sec. 990.42 Determination to conduct restoration planning. (a) Determination on restoration planning. If trustees determine that there is jurisdiction to pursue restoration under OPA, trustees must determine whether: (1) Injuries have resulted, or are likely to result, from the incident; (2) Response actions have not adequately addressed, or are not expected to address, the injuries resulting from the incident; and (3) Feasible primary and/or compensatory restoration actions exist to address the potential

injuries. (b) Proceeding with preassessment. If the conditions listed in paragraph (a) of this section are met, trustees may proceed under Sec. 990.44 of this part. If one of these conditions is not met, trustees may not take additional action under this part, except action to finalize this determination. However, trustees may recover all reasonable assessment costs incurred up to this point.

Sec. 990.43 Data collection. Trustees may conduct data collection and analyses that are reasonably related to Preassessment Phase activities. Data collection and analysis during the Preassessment Phase must be coordinated with response actions such that collection and analysis does not interfere with response actions. Trustees may collect and analyze the following types of data during the Preassessment Phase: (a) Data reasonably expected to be necessary to make a determination of jurisdiction under Sec. 990.41 of this part, or a determination to conduct restoration planning under Sec. 990.42 of this part; (b) Ephemeral data; and (c) Information needed to design or implement anticipated assessment procedures under subpart E of this part.

Sec. 990.44 Notice of Intent to Conduct Restoration Planning. (a) General. If trustees determine that all the conditions under Sec. 990.42(a) of this part are met and trustees decide to proceed with the **natural resource damage** assessment, they must prepare a Notice of Intent to Conduct Restoration Planning. (b) Contents of the notice. The Notice of Intent to Conduct Restoration Planning must include a discussion of the trustees' analyses under Secs. 990.41 and 990.42 of this part. Depending on information available at this point, the notice may include the trustees' proposed strategy to assess injury and determine the type and scale of restoration. The contents of a notice may vary, but will typically discuss: (1) The facts of the incident; (2) Trustee authority to proceed with the assessment; (3) **Natural** resources and services that are, or are likely to be, injured as a result of the incident; (4) Potential restoration actions relevant to the expected injuries; and (5) If determined at the time, potential assessment procedures to evaluate the injuries and define the appropriate type and scale of restoration for the injured **natural** resources and services. (c) Public availability of the notice. Trustees must make a copy of the Notice of Intent to Conduct Restoration Planning publicly available. The means by which the notice is made

publicly available and whether public comments are solicited on the notice will depend on the nature and extent of the incident and various information requirements, and is left to the discretion of the trustees. (d) Delivery of the notice to the responsible parties. Trustees must send a copy of the notice to the responsible parties, to the extent known, in such a way as will establish the date of receipt, and invite responsible parties' participation in the conduct of restoration planning. Consistent with Sec. 990.14(c) of this part, the determination of the timing, nature, and extent of responsible party participation will be determined by the trustees on an incident-specific basis.

Sec. 990.45 Administrative record. (a) If trustees decide to proceed with restoration planning, they must open a publicly available administrative record to document the basis for their decisions pertaining to restoration. The administrative record should be opened concurrently with the publication of the Notice of Intent to Conduct Restoration Planning. Depending on the nature and extent of the incident and assessment, the administrative record should include documents relied upon during the assessment, such as: (1) Any notice, draft and final restoration plans, and public comments; (2) Any relevant data, investigation reports, scientific studies, work plans, quality assurance plans, and literature; and (3) Any agreements, not otherwise privileged, among the participating trustees or with the responsible parties. (b) Federal trustees should maintain the administrative record in a manner consistent with the Administrative Procedure Act, 5 U.S.C. 551- 59, 701-06.

Subpart E--Restoration Planning Phase

Sec. 990.50 Purpose. The purpose of this subpart is to provide a process by which trustees evaluate and quantify potential injuries (injury assessment), and use that information to determine the need for and scale of restoration actions (restoration selection).

Sec. 990.51 Injury assessment--injury determination. (a) General. After issuing a Notice of Intent to Conduct Restoration Planning under Sec. 990.44 of this part, trustees must determine if injuries to **natural** resources and/or services have resulted from the incident. (b) Determining injury. To make the determination of injury, trustees must evaluate if: (1) The definition of injury has been met, as defined in Sec. 990.30 of this part; and

(2)(i) An injured **natural resource** has been exposed to the discharged oil, and a pathway can be established from the discharge to the exposed **natural resource**; or (ii) An injury to a **natural resource** or impairment of a **natural resource** service has occurred as a result of response actions or a substantial threat of a discharge of oil. (c) Identifying injury. Trustees must determine whether an injury has occurred and, if so, identify the nature of the injury. Potential categories of injury include, but are not limited to, adverse changes in: survival, growth, and reproduction; health, physiology and biological condition; behavior; community composition; ecological processes and functions; physical and chemical habitat quality or structure; and public services. (d) Establishing exposure and pathway. Except for injuries resulting from response actions or incidents involving a substantial threat of a discharge of oil, trustees must establish whether **natural** resources were exposed, either directly or indirectly, to the discharged oil from the incident, and estimate the amount or concentration and spatial and temporal extent of the exposure. Trustees must also determine whether there is a pathway linking the incident to the injuries. Pathways may include, but are not limited to, the sequence of events by which the discharged oil was transported from the incident and either came into direct physical contact with a **natural resource**, or caused an indirect injury. (e) Injuries resulting from response actions or incidents involving a substantial threat of a discharge. For injuries resulting from response actions or incidents involving a substantial threat of a discharge of oil, trustees must determine whether an injury or an impairment of a **natural resource** service has occurred as a result of the incident. (f) Selection of injuries to include in the assessment. When selecting potential injuries to assess, trustees should consider factors such as: (1) The **natural** resources and services of concern; (2) The procedures available to evaluate and quantify injury, and associated time and cost requirements; (3) The evidence indicating exposure; (4) The pathway from the incident to the **natural resource** and/or service of concern; (5) The adverse change or impairment that constitutes injury; (6) The evidence indicating injury; (7) The mechanism by which injury occurred; (8) The potential degree, and spatial and temporal extent of the injury; (9) The potential **natural** recovery period; and (10) The kinds of primary and/or compensatory restoration actions that are feasible.

Sec. 990.52 Injury assessment--quantification. (a) General. In addition to determining whether injuries have resulted from the incident, trustees must quantify the degree, and spatial and temporal extent of such injuries relative to baseline. (b) Quantification approaches. Trustees may quantify injuries in terms of: (1) The degree, and spatial and temporal extent of the injury to a **natural resource**; (2) The degree, and spatial and temporal extent of injury to a **natural resource**, with subsequent translation of that adverse change to a reduction in services provided by the **natural resource**; or (3) The amount of services lost as a result of the incident. (c) **Natural** recovery. To quantify injury, trustees must estimate, quantitatively or qualitatively, the time for **natural** recovery without restoration, but including any response actions. The analysis of **natural** recovery may consider such factors as: (1) The nature, degree, and spatial and temporal extent of injury; (2) The sensitivity and vulnerability of the injured **natural resource** and/or service; (3) The reproductive and recruitment potential; (4) The resistance and resilience (stability) of the affected environment; (5) The **natural** variability; and (6) The physical/chemical processes of the affected environment.

Sec. 990.53 Restoration selection--developing restoration alternatives. (a) General. (1) If the information on injury determination and quantification under Secs. 990.51 and 990.52 of this part and its relevance to restoration justify restoration, trustees may proceed with the Restoration Planning Phase. Otherwise, trustees may not take additional action under this part. However, trustees may recover all reasonable assessment costs incurred up to this point. (2) Trustees must consider a reasonable range of restoration alternatives before selecting their preferred alternative(s). Each restoration alternative is comprised of primary and/or compensatory restoration components that address one or more specific injury(ies) associated with the incident. Each alternative must be designed so that, as a package of one or more actions, the alternative would make the environment and public whole. Only those alternatives considered technically feasible and in accordance with applicable laws, regulations, or permits may be considered further under this part. (b) Primary restoration-- (1) General. For each alternative, trustees must consider primary restoration actions, including a **natural** recovery alternative. (2) **Natural** recovery. Trustees must consider a **natural** recovery alternative in

which no human intervention would be taken to directly restore injured **natural** resources and services to baseline. (3) Active primary restoration actions. Trustees must consider an alternative comprised of actions to directly restore the **natural** resources and services to baseline on an accelerated time frame. When identifying such active primary restoration actions, trustees may consider actions that: (i) Remove conditions that would prevent or limit the effectiveness of any restoration action (e.g., residual sources of contamination); (ii) May be necessary to return the physical, chemical, and/or biological conditions necessary to allow recovery or restoration of the injured **natural** resources (e.g., replacing substrate or vegetation, or modifying hydrologic conditions); or (iii) Return key **natural** resources and services, and would be an effective approach to achieving or accelerating a return to baseline (e.g., replacing essential species, habitats, or public services that would facilitate the replacement of other, dependent **natural resource** or service components). (c) Compensatory restoration-- (1) General. For each alternative, trustees must also consider compensatory restoration actions to compensate for the interim loss of **natural** resources and services pending recovery. (2) Compensatory restoration actions. To the extent practicable, when evaluating compensatory restoration actions, trustees must consider compensatory restoration actions that provide services of the same type and quality, and of comparable value as those injured. If, in the judgment of the trustees, compensatory actions of the same type and quality and comparable value cannot provide a reasonable range of alternatives, trustees should identify actions that provide **natural** resources and services of comparable type and quality as those provided by the injured **natural** resources. Where the injured and replacement **natural** resources and services are not of comparable value, the scaling process will involve valuation of lost and replacement services. (d) Scaling restoration actions-- (1) General. After trustees have identified the types of restoration actions that will be considered, they must determine the scale of those actions that will make the environment and public whole. For primary restoration actions, scaling generally applies to actions involving replacement and/or acquisition of equivalent of **natural** resources and/or services. (2) **Resource**-to-**resource** and service-to-service scaling approaches. When determining the scale of restoration actions that provide **natural** resources and/or services of

the same type and quality, and of comparable value as those lost, trustees must consider the use of a **resource**-to-**resource** or service-to-service scaling approach. Under this approach, trustees determine the scale of restoration actions that will provide **natural** resources and/or services equal in quantity to those lost. (3) Valuation scaling approach. (i) Where trustees have determined that neither **resource**-to-**resource** nor service-to-service scaling is appropriate, trustees may use the valuation scaling approach. Under the valuation scaling approach, trustees determine the amount of **natural** resources and/or services that must be provided to produce the same value lost to the public. Trustees must explicitly measure the value of injured **natural** resources and/or services, and then determine the scale of the restoration action necessary to produce **natural** resources and/or services of equivalent value to the public. (ii) If, in the judgment of the trustees, valuation of the lost services is practicable, but valuation of the replacement **natural** resources and/or services cannot be performed within a reasonable time frame or at a reasonable cost, as determined by Sec. 990.27(a)(2) of this part, trustees may estimate the dollar value of the lost services and select the scale of the restoration action that has a cost equivalent to the lost value. The responsible parties may request that trustees value the **natural** resources and services provided by the restoration action following the process described in Sec. 990.14(c) of this part. (4) Discounting and uncertainty. When scaling a restoration action, trustees must evaluate the uncertainties associated with the projected consequences of the restoration action, and must discount all service quantities and/or values to the date the demand is presented to the responsible parties. Where feasible, trustees should use risk-adjusted measures of losses due to injury and of gains from the restoration action, in conjunction with a riskless discount rate representing the consumer rate of time preference. If the streams of losses and gains cannot be adequately adjusted for risks, then trustees may use a discount rate that incorporates a suitable risk adjustment to the riskless rate.

Sec. 990.54 Restoration selection--evaluation of alternatives. (a) Evaluation standards. Once trustees have developed a reasonable range of restoration alternatives under Sec. 990.53 of this part, they must evaluate the proposed alternatives based on, at a minimum: (1) The cost to carry out the alternative; (2) The extent to which each

alternative is expected to meet the trustees' goals and objectives in returning the injured **natural** resources and services to baseline and/or compensating for interim losses; (3) The likelihood of success of each alternative; (4) The extent to which each alternative will prevent future injury as a result of the incident, and avoid collateral injury as a result of implementing the alternative; (5) The extent to which each alternative benefits more than one **natural resource** and/or service; and (6) The effect of each alternative on public health and safety. (b) Preferred restoration alternatives. Based on an evaluation of the factors under paragraph (a) of this section, trustees must select a preferred restoration alternative(s). If the trustees conclude that two or more alternatives are equally preferable based on these factors, the trustees must select the most cost-effective alternative. (c) Pilot projects. Where additional information is needed to identify and evaluate the feasibility and likelihood of success of restoration alternatives, trustees may implement restoration pilot projects. Pilot projects should only be undertaken when, in the judgment of the trustees, these projects are likely to provide the information, described in paragraph (a) of this section, at a reasonable cost and in a reasonable time frame.

Sec. 990.55 Restoration selection--developing restoration plans. (a) General. OPA requires that damages be based upon a plan developed with opportunity for public review and comment. To meet this requirement, trustees must, at a minimum, develop a Draft and Final Restoration Plan, with an opportunity for public review of and comment on the draft plan. (b) Draft Restoration Plan. (1) The Draft Restoration Plan should include: (i) A summary of injury assessment procedures used; (ii) A description of the nature, degree, and spatial and temporal extent of injuries resulting from the incident; (iii) The goals and objectives of restoration; (iv) The range of restoration alternatives considered, and a discussion of how such alternatives were developed under Sec. 990.53 of this part, and evaluated under Sec. 990.54 of this part; (v) Identification of the trustees' tentative preferred alternative(s); (vi) A description of past and proposed involvement of the responsible parties in the assessment; and (vii) A description of monitoring for documenting restoration effectiveness, including performance criteria that will be used to determine the success of restoration or need for

interim corrective action. (2) When developing the Draft Restoration Plan, trustees must establish restoration objectives that are specific to the injuries. These objectives should clearly specify the desired outcome, and the performance criteria by which successful restoration will be judged. Performance criteria may include structural, functional, temporal, and/ or other demonstrable factors. Trustees must, at a minimum, determine what criteria will: (i) Constitute success, such that responsible parties are relieved of responsibility for further restoration actions; or (ii) Necessitate corrective actions in order to comply with the terms of a restoration plan or settlement agreement. (3) The monitoring component to the Draft Restoration Plan should address such factors as duration and frequency of monitoring needed to gauge progress and success, level of sampling needed to detect success or the need for corrective action, and whether monitoring of a reference or control site is needed to determine progress and success. Reasonable monitoring and oversight costs cover those activities necessary to gauge the progress, performance, and success of the restoration actions developed under the plan. (c) Public review and comment. The nature of public review and comment on the Draft and Final Restoration Plans will depend on the nature of the incident and any applicable federal trustee NEPA requirements, as described in Secs. 990.14(d) and 990.23 of this part. (d) Final Restoration Plan. Trustees must develop a Final Restoration Plan that includes the information specified in paragraph (a) of this section, responses to public comments, if applicable, and an indication of any changes made to the Draft Restoration Plan.

Sec. 990.56 Restoration selection--use of a Regional Restoration Plan or existing restoration project. (a) General. Trustees may consider using a Regional Restoration Plan or existing restoration project where such a plan or project is determined to be the preferred alternative among a range of feasible restoration alternatives for an incident, as determined under Sec. 990.54 of this part. Such plans or projects must be capable of fulfilling OPA's intent for the trustees to restore, rehabilitate, replace, or acquire the equivalent of the injured **natural** resources and services and compensate for interim losses. (b) Existing plans or projects--(1) Considerations. Trustees may select a component of a Regional Restoration Plan or an existing restoration project as the preferred alternative,

provided that the plan or project: (i) Was developed with public review and comment or is subject to public review and comment under this part; (ii) Will adequately compensate the environment and public for injuries resulting from the incident; (iii) Addresses, and is currently relevant to, the same or comparable **natural** resources and services as those identified as having been injured; and (iv) Allows for reasonable scaling relative to the incident. (2) Demand. (i) If the conditions of paragraph (b)(1) of this section are met, the trustees must invite the responsible parties to implement that component of the Regional Restoration Plan or existing restoration project, or advance to the trustees the trustees' reasonable estimate of the cost of implementing that component of the Regional Restoration Plan or existing restoration project. (ii) If the conditions of paragraph (b)(1) of this section are met, but the trustees determine that the scale of the existing plan or project is greater than the scale of compensation required by the incident, trustees may only request funding from the responsible parties equivalent to the scale of the restoration determined to be appropriate for the incident of concern. Trustees may pool such partial recoveries until adequate funding is available to successfully implement the existing plan or project. (3) Notice of Intent To Use a Regional Restoration Plan or Existing Restoration Project. If trustees intend to use an appropriate component of a Regional Restoration Plan or existing restoration project, they must prepare a Notice of Intent to Use a Regional Restoration Plan or Existing Restoration Project. Trustees must make a copy of the notice publicly available. The notice must include, at a minimum: (i) A description of the nature, degree, and spatial and temporal extent of injuries; and (ii) A description of the relevant component of the Regional Restoration Plan or existing restoration project; and (iii) An explanation of how the conditions set forth in paragraph (b)(1) of this section are met.

Subpart F--Restoration Implementation Phase

Sec. 990.60 Purpose. The purpose of this subpart is to provide a process for implementing restoration.

Sec. 990.61 Administrative record. (a) Closing the administrative record for restoration planning. Within a reasonable time after the trustees have completed restoration planning, as provided in Secs. 990.55 and 990.56 of this part, they must close the administrative

record. Trustees may not add documents to the administrative record once it is closed, except where such documents: (1) Are offered by interested parties that did not receive actual or constructive notice of the Draft Restoration Plan and the opportunity to comment on the plan; (2) Do not duplicate information already contained in the administrative record; and (3) Raise significant issues regarding the Final Restoration Plan. (b) Opening an administrative record for restoration implementation. Trustees may open an administrative record for implementation of restoration, as provided in Sec. 990.45 of this part. The costs associated with the administrative record are part of the costs of restoration. Ordinarily, the administrative record for implementation of restoration should document, at a minimum, all Restoration Implementation Phase decisions, actions, and expenditures, including any modifications made to the Final Restoration Plan.

Sec. 990.62 Presenting a demand. (a) General. After closing the administrative record for restoration planning, trustees must present a written demand to the responsible parties. Delivery of the demand should be made in a manner that establishes the date of receipt by the responsible parties. (b) When a Final Restoration Plan has been developed. Except as provided in paragraph (c) of this section and in Sec. 990.14(c) of this part, the demand must invite the responsible parties to either: (1) Implement the Final Restoration Plan subject to trustee oversight and reimburse the trustees for their assessment and oversight costs; or (2) Advance to the trustees a specified sum representing trustee assessment costs and all trustee costs associated with implementing the Final Restoration Plan, discounted as provided in Sec. 990.63(a) of this part. (c) Regional Restoration Plan or existing restoration project. When the trustees use a Regional Restoration Plan or an existing restoration project under Sec. 990.56 of this part, the demand will invite the responsible parties to implement a component of a Regional Restoration Plan or existing restoration project, or advance the trustees' estimate of damages based on the scale of the restoration determined to be appropriate for the incident of concern, which may be the entire project or a portion thereof. (d) Response to demand. The responsible parties must respond within ninety (90) calendar days in writing by paying or providing binding assurance they will reimburse trustees' assessment costs and implement the plan or pay assessment

costs and the trustees' estimate of the costs of implementation. (e) Additional contents of demand. The demand must also include: (1) Identification of the incident from which the claim arises; (2) Identification of the trustee(s) asserting the claim and a statement of the statutory basis for trusteeship; (3) A brief description of the injuries for which the claim is being brought; (4) An index to the administrative record; (5) The Final Restoration Plan or Notice of Intent to Use a Regional Restoration Plan or Existing Restoration Project; and (6) A request for reimbursement of: (i) Reasonable assessment costs, as defined in Sec. 990.30 of this part and discounted as provided in Sec. 990.63(b) of this part; (ii) The cost, if any, of conducting emergency restoration under Sec. 990.26 of this part, discounted as provided in Sec. 990.63(b) of this part; and (iii) Interest on the amounts recoverable, as provided in section 1005 of OPA (33 U.S.C. 2705), which allows for prejudgment and post- judgment interest to be paid at a commercial paper rate, starting from thirty (30) calendar days from the date a demand is presented until the date the claim is paid.

Sec. 990.63 Discounting and compounding. (a) Estimated future restoration costs. When determining estimated future costs of implementing a Final Restoration Plan, trustees must discount such future costs back to the date the demand is presented Trustees may use a discount rate that represents the yield on recoveries available to trustees. The price indices used to project future inflation should reflect the major components of the restoration costs. (b) Past assessment and emergency restoration costs. When calculating the present value of assessment and emergency restoration costs already incurred, trustees must compound the costs forward to the date the demand is presented. To perform the compounding, trustees may use the actual U.S. Treasury borrowing rate on marketable securities of comparable maturity to the period of analysis. For costs incurred by state or tribal trustees, trustees may compound using parallel state or tribal borrowing rates. (c) Trustees are referred to Appendices B and C of OMB Circular A-94 for information about U.S. Treasury rates of various maturities and guidance in calculation procedures. Copies of Appendix C, which is regularly updated, and of the Circular are available from the OMB Publications Office (202-395-7332).

Sec. 990.64 Unsatisfied demands. (a) If the responsible parties do not agree to the demand within ninety (90) calendar days after trustees present the demand, the trustees may either file a judicial action for damages or seek an appropriation from the Oil Spill Liability Trust Fund, as provided in section 1012(a)(2) of OPA (33 U.S.C. 2712(a)(2)). (b) Judicial actions and claims must be filed within three (3) years after the Final Restoration Plan or Notice of Intent to Use a Regional Restoration Plan or Existing Restoration Project is made publicly available, in accordance with 33 U.S.C. 2717(f)(1)(B) and 2712(h)(2).

Sec. 990.65 Opening an account for recovered damages. (a) General. Sums recovered by trustees in satisfaction of a **natural resource damage** claim must be placed in a revolving trust account. Sums recovered for past assessment costs and emergency restoration costs may be used to reimburse the trustees. All other sums must be used to implement the Final Restoration Plan or all or an appropriate component of a Regional Restoration Plan or an existing restoration project. b) Joint trustee recoveries. (1) General. Trustees may establish a joint account for damages recovered pursuant to joint assessment activities, such as an account under the registry of the applicable federal court. (2) Management. Trustees may develop enforceable agreements to govern management of joint accounts, including agreed-upon criteria and procedures, and personnel for authorizing expenditures out of such joint accounts. (c) Interest-bearing accounts. Trustees may place recoveries in interest-bearing revolving trust accounts, as provided by section 1006(f) of OPA (33 U.S.C. 2706(f)). Interest earned on such accounts may only be used for restoration. (d) Escrow accounts. Trustees may establish escrow accounts or other investment accounts. (e) Records. Trustees must maintain appropriate accounting and reporting procedures to document expenditures from accounts established under this section. (f) Oil Spill Liability Trust Fund. Any sums remaining in an account established under this section that are not used either to reimburse trustees for past assessment and emergency restoration costs or to implement restoration must be deposited in the Oil Spill Liability Trust Fund, as provided by section 1006(f) of OPA (33 U.S.C. 2706(f)).

Sec. 990.66 Additional considerations. (a) Upon settlement of a claim, trustees should consider the following actions to facilitate implementation of restoration: (1) Establish

a trustee committee and/or memorandum of understanding or other agreement to coordinate among affected trustees, as provided in Sec. 990.14(a)(3) of this part; (2) Develop more detailed workplans to implement restoration; (3) Monitor and oversee restoration; and (4) Evaluate restoration success and the need for corrective action. (b) The reasonable costs of such actions are included as restoration costs.

Code of Federal Regulations

TITLE 33--NAVIGATION AND NAVIGABLE WATERS
CHAPTER I--COAST GUARD, DEPARTMENT OF TRANSPORTATION (CONTINUED)
PART 136--OIL SPILL LIABILITY TRUST FUND; CLAIMS PROCEDURES; DESIGNATION OF SOURCE; AND ADVERTISEMENT

Subpart A--General

Sec.
136.1 Purpose and applicability.
136.3 Information.
136.5 Definitions.
136.7 Foreign claimants.
136.9 Falsification of claims.

Subpart B--General Procedure

136.101 Time limitations on claims.
136.103 Order of presentment.
136.105 General requirements for a claim.
136.107 Subrogated claims.
136.109 Removal costs and multiple items of damages.
136.111 Insurance.
136.113 Other compensation.
136.115 Settlement and notice to claimant.

Subpart C--Procedure for Particular Claims

Removal Costs

136.201 Authorized claimants.
136.203 Proof.
136.205 Compensation allowable.

Natural Resources

136.207 Authorized claimants.
136.209 Proof.
136.211 Compensation allowable.

Real or Personal Property

136.213 Authorized claimants.
136.215 Proof.
136.217 Compensation allowable.

Subsistence Use

136.219 Authorized claimants.
136.221 Proof.
136.223 Compensation allowable.

Government Revenues

136.225 Authorized claimants.
136.227 Proof.
136.229 Compensation allowable.

Profits and Earning Capacity

136.231 Authorized claimants.
136.233 Proof.
136.235 Compensation allowable.

Government Public Services

136.237 Authorized claimants.
136.239 Proof.
136.241 Compensation allowable.

Subpart D--Designation of Source and Advertisement

General

136.301 Purpose.
136.303 Definitions.

Designation of Source

136.305 Notice of designation.
136.307 Denial of designation.

Advertisement

136.309 Advertisement determinations.
136.311 Types of advertisement.
136.313 Content of advertisement.

Authority: 33 U.S.C. 2713, 2714; E.O. 12777, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46.

Source: CGD 91-035, 57 FR 36316, Aug. 12, 1992, unless otherwise noted.

Subpart A--General

Sec. 136.1 Purpose and applicability.

(a) This part prescribes regulations for—
  (1) Presentation, filing, processing, settlement, and adjudication of claims authorized to be presented to the Oil Spill Liability Trust Fund (the Fund) under section 1013 of the Oil Pollution Act of 1990 (the Act) (33 U.S.C. 2713) for certain uncompensated removal costs or uncompensated damages resulting from the discharge, or substantial threat of discharge, of oil from a vessel or facility into or upon the navigable waters, adjoining shorelines, or the exclusive economic zone;
  (2) Designation of the source of the incident, notification to the responsible party of the designation, and advertisement of the designation and claims procedures; and
  (3) Other related matters.
(b) This part applies to claims resulting from incidents occurring after August 18, 1990.
(c) Nothing in this part--
  (1) Preempts the authority of any State or political subdivision thereof from imposing any additional liability or requirements with respect to--
    (i) The discharge of oil or other pollution by oil within such State; or
    (ii) Any removal activities in connection with such a discharge; or
  (2) Affects or modifies in any way the obligations or liabilities of any person under the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.) or State law, including common law; or
  (3) Affects the authority of any State--
    (i) To establish, or to continue in effect, a fund any purpose of which is to pay for costs or damages arising out of, or directly resulting from, oil pollution or the substantial threat of oil pollution; or
    (ii) To require any person to contribute to such a fund; or
  (4) Affects the authority of the United States or any State or political subdivision thereof to impose additional liability or additional requirements relating to a discharge, or substantial threat of a discharge, of oil.

Sec. 136.3 Information.

Anyone desiring to file a claim against the Fund may obtain general information on the procedure for filing a claim from the Director, National Pollution Funds Center, suite 1000, 4200 Wilson Boulevard, Arlington, Virginia 22203-1804, (703) 235-4756.

Sec. 136.5 Definitions.

(a) As used in this part, the following terms have the same meaning as set forth in sections 1001 and 1007(c) of the Act (33 U.S.C. 2701 and 2707(c)): Claim, claimant, damages, discharge, exclusive economic zone, facility, foreign claimant, foreign offshore unit, Fund, guarantor, incident, National Contingency Plan, natural resources, navigable waters, offshore facility, oil, onshore facility, owner or operator, person, removal costs, responsible party, State, United States, and vessel.

(b) As used in this part—

Act means title I of the Oil Pollution Act of 1990 (Pub. L. 101-380; 33 U.S.C. 2701 through 719).

Director, NPFC, means the person in charge of the U.S. Coast Guard National Pollution Funds Center or that person's authorized representative.

FOSC means the Federal On-Scene Coordinator designated under the National Contingency Plan or that person's authorized representative.

NPFC means the U.S. Coast Guard National Pollution Funds Center, suite 1000, 4200 Wilson Boulevard, Arlington, Virginia 22203-1804.

Sec. 136.7 Foreign claimants.

In addition to other applicable limitations on presenting claims to the Fund, claims by foreign claimants to recover removal costs or damages may be presented only when the requirements of section 1007 of the Act (33 U.S.C. 2707) are met.

Sec. 136.9 Falsification of claims.

Persons submitting false claims or making false statements in connection with claims under his part may be subject to prosecution under Federal law, including but not limited to 18 U.S.C. 287 and 1001. In addition, persons submitting written documentation in support of claims under this part which they know, or should know, is false or omits a material fact may be subject to a civil penalty for each claim. If any payment is made on the claim, the claimant may also be subject to an assessment of up to twice the amount claimed. These civil sanctions may be imposed under the Program Fraud Civil Remedies Act, 31 U.S.C. 3801-3812, as implemented in 49 CFR part 31.

[CGD 91-035, 57 FR 36316, Aug. 12, 1992, as amended by CGD 96-052, 62 FR 16703, Apr. 8, 1997]

Subpart B--General Procedure

Sec. 136.101 Time limitations on claims.

(a) Except as provided under section 1012(h)(3) of the Act (33 U.S.C. 2712(h)(3)) (minors and incompetents), the Fund will consider a claim only if presented in writing to the Director, NPFC, within the following time limits:

(1) For damages, within three years after--

(i) The date on which the injury and its connection with the incident in question were reasonably discoverable with the exercise of due care.

(ii) In the case of natural resources damages under section 1002(b)(2)(A) of the Act (33 U.S.C. 2702(b)(2)(A)), the date under paragraph (a)(1)(i) of this section, or within three years from the date of completion of the natural resources damage assessment under section 1006(e) of the Act (33 U.S.C. 2706(e)), whichever is later.

(2) For removal costs, within six years after the date of completion of all removal actions for the incident. As used in this paragraph, "date of completion of all removal actions" is defined as the actual date of completion of all removal actions for the incident or the date the FOSC determines that the removal actions which form the basis for the costs being claimed are completed, whichever is earlier.

(b) Unless the Director, NPFC, directs in writing that the claim be submitted elsewhere, a claim is deemed presented on the date the claim is actually received at the National Pollution Funds Center, suite 1000, 4200 Wilson Boulevard, Arlington, Virginia 22203-1804. If the Director, NPFC, directs that the claim be presented elsewhere, the claim is deemed presented on the date the claim is actually received at the address in the directive.

[CGD 91-035, 57 FR 36316, Aug. 12, 1992; 57 FR 41104, Sept. 9, 1992]

Sec. 136.103 Order of presentment.

(a) Except as provided in paragraph (b) of this section, all claims for removal costs or damages must be presented first to the responsible party or guarantor of the source designated under Sec. 136.305.

(b) Claims for removal costs or damages may be presented first to the Fund only--

(1) By any claimant, if the Director, NPFC, has advertised, or otherwise notified claimants in writing, in accordance with Sec. 136.309(e);

(2) By a responsible party who may assert a claim under section 1008 of the Act (33 U.S.C. 2708);

(3) By the Governor of a State for removal costs incurred by that State; or

(4) By a United States claimant in a case where a foreign offshore unit has discharged oil causing damage for which the Fund is liable under section 1012(a) of the Act (33 U.S.C. 712(a)).

(c) If a claim is presented in accordance with paragraph (a) of this section and—

(1) Each person to whom the claim is presented denies all liability for the claim; or

(2) The claim is not settled by any person by payment within 90 days after the date upon which (A) the claim was presented, or (B) advertising was begun pursuant to Sec. 136.309(d), whichever is later, the claimant may elect to commence an action in court against the responsible party or guarantor or to present the claim to the Fund.

(d) No claim of a person against the Fund will be approved or certified for payment during the pendency of an action by the person in court to recover costs which are the subject of the claim.

[CGD 91-035, 57 FR 36316, Aug. 12, 1992; 57 FR 41104, Sept. 9, 1992]

Sec. 136.105 General requirements for a claim.

(a) The claimant bears the burden of providing all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim.
(b) Each claim must be in writing for a sum certain for compensation for each category of uncompensated damages or removal costs (as described in Subpart C of this part) resulting from an incident. If at any time during the pendency of a claim against the Fund the claimant receives any compensation for the claimed amounts, the claimant shall immediately amend the claim.
(c) Each claim must be signed in ink by the claimant certifying to the best of the claimant's knowledge and belief that the claim accurately reflects all material facts.
(d) In addition to the other requirements of this section, any claim presented by a legal representative of the claimant must also be signed by the legal representative and--
  (1) Be presented in the name of the claimant;
  (2) Show the title or legal capacity of the representative; and
  (3) Provide proof of authority to act for the claimant.
(e) Each claim must include at least the following, as applicable:
  (1) The full name, street and mailing addresses of residence and business, and telephone numbers of the claimant.
  (2) The date, time, and place of the incident giving rise to the claim.
  (3) The identity of the vessel, facility, or other entity causing or suspected to have caused the removal costs or damages claimed and the basis for such identity or belief.
  (4) A general description of the nature and extent of the impact of the incident, the costs associated with removal actions, and damages claimed, by category as delineated in Subpart C of this part, including, for any property, equipment, or similar item damaged, the full name, street and mailing address, and telephone number of the actual owner, if other than the claimant.
  (5) An explanation of how and when the removal costs or damages were caused by, or resulted from, an incident.
  (6) Evidence to support the claim.
  (7) A description of the actions taken by the claimant, or other person on the claimant's behalf, to avoid or minimize removal costs or damages claimed.
  (8) The reasonable costs incurred by the claimant in assessing the damages claimed. This includes the reasonable costs of estimating the damages claimed, but not attorney's fees or other administrative costs associated with preparation of the claim.
  (9) To the extent known or reasonably identifiable by the claimant, the full name, street and mailing address, and telephone number of each witness to the incident, to the discharge, or to the removal costs or damages claimed, along with a brief description of that person's knowledge.
  (10) A copy of written communications and the substance of verbal communications, if any, between the claimant and the responsible party or guarantor of the source designated under Sec. 136.305 and a statement indicating that the claim was presented to the responsible party or guarantor,

the date it was presented, that it was denied or remains not settled and, if known, the reason why it was denied or remains not settled.

(11) If the claimant has insurance which may cover the removal costs or damages claimed, the information required under Sec. 136.111.

(12) A statement by the claimant that no action has been commenced in court against the responsible party or guarantor of the source designated under Sec. 136.305 or, if an action has been commenced, a statement identifying the claimant's attorney and the attorney's address and phone number, the civil action number, and the court in which the action is pending.

(13) In the discretion of the Director, NPFC, any other information deemed relevant and necessary to properly process the claim for payment.

Sec. 136.107 Subrogated claims.

(a) The claims of subrogor (e.g., insured) and subrogee (e.g., insurer) for removal costs and damages arising out of the same incident should be presented together and must be signed by all claimants.

(b) A fully subrogated claim is payable only to the subrogee.

(c) A subrogee must support a claim in the same manner as any other claimant.

Sec. 136.109 Removal costs and multiple items of damages.

(a) A claimant must specify all of the claimant's known removal costs or damages arising out of a single incident when submitting a claim.

(b) Removal costs and each separate category of damages (as described in subpart C of this part) must be separately listed with a sum certain attributed to each type and category listed.

(c) At the sole discretion of the Director, NPFC, removal costs and each separate category of damages may be treated separately for settlement purposes.

Sec. 136.111 Insurance.

(a) A claimant shall provide the following information concerning any insurance which may cover the removal costs or damages for which compensation is claimed:

(1) The name and address of each insurer.

(2) The kind and amount of coverage.

(3) The policy number.

(4) Whether a claim has been or will be presented to an insurer and, if so, the amount of the claim and the name of the insurer.

(5) Whether any insurer has paid the claim in full or in part or has indicated whether or not payment will be made.

(b) If requested by the Director, NPFC, the claimant shall provide a copy of the following material:

(1) All insurance policies or indemnification agreements.
(2) All written communications, and a summary of all oral communications, with any insurer or indemnifier.

(c) A claimant shall advise the Director, NPFC, of any changes in the information provided under this section.

Sec. 136.113 Other compensation.

A claimant must include an accounting, including the source and value, of all other compensation received, applied for, or potentially available as a consequence of the incident out of which the claim arises including, but not limited to, monetary payments, goods or services, or other benefits.

Sec. 136.115 Settlement and notice to claimant.

(a) Payment in full, or acceptance by the claimant of an offer of settlement by the Fund, is final and conclusive for all purposes and, upon payment, constitutes a release of the Fund for the claim. In addition, acceptance of any compensation from the Fund precludes the claimant from filing any subsequent action against any person to recover costs or damages which are the subject of the compensated claim. Acceptance of any compensation also constitutes an agreement by the claimant to assign to the Fund any rights, claims, and causes of action the claimant has against any person for the costs and damages which are the subject of the compensated claims and to cooperate reasonably with the Fund in any claim or action by the Fund against any person to recover the amounts paid by the Fund. The cooperation shall include, but is not limited to, immediately reimbursing the Fund for any compensation received from any other source for the same costs and damages and providing any documentation, evidence, testimony, and other support, as may be necessary for the Fund to recover from any person.

(b) Claimant's failure to accept an offer of settlement within 60 days after the date the offer was mailed to the claimant automatically voids the offer. The Director, NPFC, reserves the right to revoke an offer at any time.

(c) A claimant will be notified in writing sent by certified or registered mail whenever a claim against the Fund is denied. The failure of the Director, NPFC, to make final disposition of a claim within six months after it is filed shall, at the option of the claimant any time thereafter, be deemed a final denial of the claim.

(d) The Director, NPFC, upon written request of the claimant or of a person duly authorized to act on the claimant's behalf, reconsiders any claim denied. The request for reconsideration must be in writing and include the factual or legal grounds for the relief requested, providing any additional support for the claim. The request must be received by the Director, NPFC, within 60 days after the date the denial was mailed to the claimant or within 30 days after receipt of the denial by the claimant, whichever date is earlier. Reconsideration may only be requested once for each claim denied. The Director, NPFC will provide the claimant seeking reconsideration with written notification of the decision within 90 days after receipt of the request for reconsideration. This written decision is final. The failure of the Director, NPFC, to make final disposition of a reconsideration within 90 days after

it is received shall, at the option of the claimant any time thereafter, be deemed a final denial of the reconsideration.

Subpart C--Procedures for Particular Claims

Removal Costs

Sec. 136.201 Authorized claimants.

A claim for removal costs may be presented by any claimant.

Sec. 136.203 Proof.

In addition to the requirements of Subparts A and B of this part, a claimant must establish--

(a) That the actions taken were necessary to prevent, minimize, or mitigate the effects of the incident;
(b) That the removal costs were incurred as a result of these actions;
(c) That the actions taken were determined by the FOSC to be consistent with the National Contingency Plan or were directed by the FOSC.

Sec. 136.205 Compensation allowable.

The amount of compensation allowable is the total of uncompensated reasonable removal costs of actions taken that were determined by the FOSC to be consistent with the National Contingency Plan or were directed by the FOSC. Except in exceptional circumstances, removal activities for which costs are being claimed must have been coordinated with the FOSC.

Natural Resources

Sec. 136.207 Authorized claimants.

(a) Claims for uncompensated natural resource damages may be presented by an appropriate natural resources Trustee. However, in order to facilitate the processing of these claims with respect to a single incident where multiple Trustees are involved and to prevent double recovery, the affected Trustees should select a lead administrative Trustee who will present consolidated claims on behalf of the Trustees.
(b) A Trustee may present a claim for the reasonable cost of assessing natural resources damages separately from a claim for the cost of developing and implementing plans for the restoration, rehabilitation, replacement, or acquisition of the equivalent of the natural resources damaged.

Sec. 136.209 Proof.

In addition to the requirements of subparts A and B of this part, a Trustee must do the following:

(a) Submit the assessment and restoration plans which form the basis of the claim.

(b) Provide documented costs and cost estimates for the claim. Final cost estimates for conducting damage assessments or implementing a restoration plan may form the basis for a claim against the Fund for an uncompensated natural resources damage claim.

(c) Identify all Trustees who may be potential claimants for the same natural resources damaged.

(d) Certify the accuracy and integrity of any claim submitted to the Fund, and certify that any actions taken or proposed were or will be conducted in accordance with the Act and consistent with all applicable laws and regulations.

(e) Certify whether the assessment was conducted in accordance with applicable provisions of the natural resources damage assessment regulations promulgated under section 1006(e)(1) of the Act (33 U.S.C. 2706(e)(1)). Identify any other or additional damage assessment regulations or methodology utilized.

(f) Certify that, to the best of the Trustee's knowledge and belief, no other Trustee has the right to present a claim for the same natural resources damages and that payment of any subpart of the claim presented would not constitute a double recovery for the same natural resources damages.

Sec. 136.211 Compensation allowable.

(a) The amount of compensation allowable is the reasonable cost of assessing damages, and the cost of restoring, rehabilitating, replacing, or acquiring the equivalent of the damaged natural resources.

(b) In addition to any other provision of law respecting the use of sums recovered for natural resources damages, Trustees shall reimburse the Fund for any amounts received from the Fund in excess of that amount required to accomplish the activities for which the claim was paid.

Real or Personal Property

Sec. 136.213 Authorized claimants.

(a) A claim for injury to, or economic losses resulting from the destruction of, real or personal property may be presented only by a claimant either owning or leasing the property.
(b) Any claim for loss of profits or impairment of earning capacity due to injury to, destruction of, or loss of real or personal property must be included as subpart of the claim under this section and must include the proof required under Sec. 136.233.

Sec. 136.215 Proof.

(a) In addition to the requirements of subparts A and B of this part, a claimant must establish—
    (1) An ownership or leasehold interest in the property;
    (2) That the property was injured or destroyed;
    (3) The cost of repair or replacement; and
    (4) The value of the property both before and after injury occurred.
(b) In addition, for each claim for economic loss resulting from destruction of real or personal property, the claimant must establish--
    (1) That the property was not available for use and, if it had been, the value of that use;
    (2) Whether or not substitute property was available and, if used, the costs thereof; and
    (3) That the economic loss claimed was incurred as the result of the injury to or destruction of the property.

Sec. 136.217 Compensation allowable.

(a) The amount of compensation allowable for damaged property is the lesser of—
    (1) Actual or estimated net cost of repairs necessary to restore the property to substantially the same condition which existed immediately before the damage;
    (2) The difference between value of the property before and after the damage; or
    (3) The replacement value.
(b) Compensation for economic loss resulting from the destruction of real or personal property may be allowed in an amount equal to the reasonable costs actually incurred for use of substitute commercial property or, if substitute commercial property was not reasonably available, in an amount equal to the net economic loss which resulted from not having use of the property. When substitute commercial property was reasonably available, but not used, allowable compensation for loss of use is limited to the cost of the substitute commercial property, or the property lost,

whichever is less. Compensation for loss of use of noncommercial property is not allowable.

(c) Compensation for a claim for loss of profits or impairment of earning capacity under Sec. 136.213(b) is limited to that allowable under Sec. 136.235.

Subsistence Use

Sec. 136.219 Authorized claimants.

(a) A claim for loss of subsistence use of natural resources may be presented only by a claimant who actually uses, for subsistence, the natural resources which have been injured, destroyed, or lost, without regard to the ownership or management of the resources.

(b) A claim for loss of profits or impairment of earning capacity due to loss of subsistence use of natural resources must be included as part of the claim under this section and must include the proof required under Sec. 136.233.

Sec. 136.221 Proof.

In addition to the requirements of subparts A and B of this part, a claimant must provide--

(a) The identification of each specific natural resource for which compensation for loss of subsistence use is claimed;

(b) A description of the actual subsistence use made of each specific natural resource by the claimant;

(c) A description of how and to what extent the claimant's subsistence use was affected by the injury to or loss of each specific natural resource;

(d) A description of each effort made by the claimant to mitigate the claimant's loss of subsistence use; and

(e) A description of each alternative source or means of subsistence available to the claimant during the period of time for which loss of subsistence is claimed, and any compensation available to the claimant for loss of subsistence.

Sec. 136.223 Compensation allowable.

(a) The amount of compensation allowable is the reasonable replacement cost of the subsistence loss suffered by the claimant if, during the period of time for which the loss of subsistence is claimed, there was no alternative source or means of subsistence available.

(b) The amount of compensation allowable under paragraph (a) of this section must be reduced by—

(1) All compensation made available to the claimant to compensate for subsistence loss;

(2) All income which was derived by utilizing the time which otherwise would have been used to obtain natural resources for subsistence use; and
(3) Overheads or other normal expenses of subsistence use not incurred as a result of the incident.

(c) Compensation for a claim for loss of profits or impairment of earning capacity under Sec. 136.219(b) is limited to that allowable under Sec. 136.235.

Government Revenues

Sec. 136.225 Authorized claimants.

A claim for net loss of revenue due to the injury, destruction, or loss of real property, personal property, or natural resources may be presented only by an appropriate claimant sustaining the loss. As used in this section and Sec. 136.277, ``revenue" means taxes, royalties, rents, fees, and net profit shares.

Sec. 136.227 Proof.

In addition to the requirements of Subparts A and B, a claimant must establish--

(a) The identification and description of the economic loss for which compensation is claimed, including the applicable authority, property affected, method of assessment, rate, and method and dates of collection;
(b) That the loss of revenue was due to the injury to, destruction of, or loss of real or personal property or natural resources;
(c) The total assessment or revenue collected for comparable revenue periods; and
(d) The net loss of revenue.

Sec. 136.229 Compensation allowable.

The amount of compensation allowable is the total net revenue actually lost.

Profits and Earning Capacity

Sec. 136.231 Authorized claimants.

(a) A claim for loss of profits or impairment of earning capacity due to the injury to, destruction of, or loss of real or personal property or natural resources may be presented by a claimant sustaining the loss or impairment. The claimant need not be the owner of the damaged property or resources to recover for lost profits or income.
(b) A claim for loss of profits or impairment of earning capacity that also involves a claim for injury to, or economic losses resulting from destruction of, real or personal property must be claimed under Sec. 136.213.
(c) A claim for loss of profits or impairment of earning capacity that also involves a claim for loss of subsistence use of natural resources must be claimed under Sec. 136.219.

Sec. 136.233 Proof.

In addition to the requirements of subparts A and B of this part, a claimant must establish the following:

(a) That real or personal property or natural resources have been injured, destroyed, or lost.

(b) That the claimant's income was reduced as a consequence of injury to, destruction of, or loss of the property or natural resources, and the amount of that reduction.

(c) The amount of the claimant's profits or earnings in comparable periods and during the period when the claimed loss or impairment was suffered, as established by income tax returns, financial statements, and similar documents. In addition, comparative figures for profits or earnings for the same or similar activities outside of the area affected by the incident also must be established.

(d) Whether alternative employment or business was available and undertaken and, if so, the amount of income received. All income that a claimant received as a result of the incident must be clearly indicated and any saved overhead and other normal expenses not incurred as a result of the incident must be established.

Sec. 136.235 Compensation allowable.

The amount of compensation allowable is limited to the actual net reduction or loss of earnings or profits suffered. Calculations for net reductions or losses must clearly reflect adjustments for--

(a) All income resulting from the incident;

(b) All income from alternative employment or business undertaken;

(c) Potential income from alternative employment or business not undertaken, but reasonably available;

(d) Any saved overhead or normal expenses not incurred as a result of the incident; and

(e) State, local, and Federal taxes.

Government Public Services

Sec. 136.237 Authorized claimants.

A claim for net costs of providing increased or additional public services during or after removal activities, including protection from fire, safety, or health hazards, caused by a discharge of oil may be presented only by a State or a political subdivision of a State incurring the costs.

Sec. 136.239 Proof.

In addition to the requirements of subparts A and B of this part, a claimant must establish--

(a) The nature of the specific public services provided and the need for those services;
(b) That the services occurred during or after removal activities;
(c) That the services were provided as a result of a discharge of oil and would not otherwise have been provided; and
(d) The net cost for the services and the methods used to compute those costs.

Sec. 136.241 Compensation allowable.

The amount of compensation allowable is the net cost of the increased or additional service provided by the State or political subdivision.

Subpart D--Designation of Source and Advertisement

General

Sec. 136.301 Purpose.

This subpart prescribes the requirements concerning designation of the source or sources of the discharge or threat of discharge and advertisement of these designations, including the procedures by which claims may be presented to the responsible party or guarantor.

Sec. 136.303 Definitions.

As used in this subpart--
Advertisement means the dissemination of information, including but not limited to paid advertisements, that are reasonably calculated to advise the public how to present a claim.
Designated source means a source designated under Sec. 136.305.

Designation of Source

Sec. 136.305 Notice of designation.

(a) When information of an incident is received, the source or sources of the discharge or threat are designated, where possible and appropriate. If the designated source is a vessel or facility, the responsible party and the guarantor, if known, are notified by telephone, telefax, or other rapid means of that designation. The designation will be confirmed by a written Notice of Designation.

(b) A Notice of Designation normally contains, to the extent known--
  (1) The name of the vessel or facility designated as the source;
  (2) The location, date, and time of the incident;
  (3) The type of quantity of oil involved;
  (4) The date of the designation;
  (5) The procedures for accepting or denying the designation; and
  (6) The name, address, telephone number, and, if available, telefax number of the responsible Federal official to whom further communication regarding the incident, advertisement of the incident, or denial of designation should be directed.

Sec. 136.307 Denial of designation.

(a) Within five days after receiving a Notice of Designation under Sec. 136.305, the responsible party or guarantor may deny the designation.
(b) A denial of designation must—
  (1) Be in writing;
  (2) Identify the Notice of Designation;
  (3) Give the reasons for the denial and provide a copy of all supporting documents; and
  (4) Be submitted to the official named in the Notice of Designation.
(c) A denial is deemed received on the date the denial is actually received by the official named in the Notice of Designation.

Advertisement

Sec. 136.309 Advertisement determinations.

(a) The Director, NPFC, determines for each incident the type, geographic scope, frequency, and duration of advertisement required.
(b) In making the determination specified in paragraph (a) of this section, the Director, NPFC, may consider--
  (1) The nature and extent of economic losses that have occurred or are likely to occur;
  (2) The potential claimants who are likely to incur economic losses;
  (3) The geographical area that is or will likely be affected;
  (4) The most effective method of reasonably notifying potential claimants of the designation and procedures of submitting claims; and
  (5) Relevant information or recommendations, if any, submitted by, or on behalf of, the responsible party or guarantor of the designated source.
(c) The Director, NPFC, provides the specific requirements for advertisement for each incident to the responsible party or guarantor of the designated source.

(d) If a responsible party or guarantor has not denied designation in accordance with Sec. 136.307, the party or guarantor shall advertise, in accordance with the requirements of this subpart, the designation and the procedures by which claims may be presented. The advertisement must begin not later than 15 days after the date of the designation made under Sec. 136.305.

(e) If there is no designation under Sec. 136.305, if the source of the discharge or threat is a public vessel, or if the responsible party and guarantor of the source designated have denied the designation or failed to meet the requirements for advertisement in this section, the Director, NPFC, may advertise procedures for presenting claims.

Sec. 136.311 Types of advertisement.

Advertisement required by the Director, NPFC, will normally include one or more of the following:

(a) Paid advertisements in a newspaper or newspapers having general circulation in the area designated by the Director, NPFC.

(b) Notice posted in marinas, marine supply stores, bait and tackle shops, and other appropriate business establishments or public facilities in the area designated by the Director, NPFC.

(c) News releases to newspapers, radio stations, television stations, and cable services having general circulation in the area designated by the Director, NPFC.

(d) Other means approved by the Director, NPFC, under the circumstances of each case.

Sec. 136.313 Content of advertisement.

Each advertisement required by this subpart may be required to contain the following information or to indicate where this information may be contained:

(a) Location, date, and time of the incident.

(b) Geographical area affected, as determined by the FOSC or Director, NPFC.

(c) Type and quantity of oil involved.

(d) Name or other description of the source designated by the FOSC or Director, NPFC.

(e) Name of the responsible party and guarantor of the designated source.

(f) Name, address, telephone number, office hours, and work days of the person or persons to whom claims are to be presented and from whom claim information can be obtained.

(g) The procedures by which a claim may be presented.

(h) Other information required by the Director, NPFC, under the circumstances of each case.

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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

Subpart A - General Sec.

136.1 Purpose and applicability.
136.3 Information.
136.5 Definitions.
136.7 Foreign claimants.
136.9 Falsification of claims.

Subpart B - General Procedure

136.101 Time limitation on claims.
136.103 Order of presentment.
136.105 General requirements for a claim.
136.107 Subrogated claims.
136.109 Removal costs and multiple items of damages.
136.111 Insurance.
136.113 Other compensation.
136.115 Settlement and notice to claimant.

Subpart C - Procedure for Particular Claims

REMOVAL COSTS
136.201 Authorized claimants.
136.203 Proof
136.205 Compensation allowable.

NATURAL RESOURCES
136.207 Authorized claimants.
136.209 Proof.
136.211 Compensation allowable.

REAL OR PERSONAL PROPERTY
136.213 Authorized claimants.
136.215 Proof.
136.217 Compensation allowable.

SUBSISTENCE USE
136.219 Authorized claimants.
136.221 Proof.
136.223 Compensation allowable.

GOVERNMENT REVENUES
136.225 Authorized claimants.
136.227 Proof.
136.229 Compensation allowable.

PROFITS AND EARNING CAPACITY
136.231 Authorized claimants.
136.233 Proof.
136.235 Compensation allowable.

GOVERNMENT PUBLIC SERVICES
136.237 Authorized claimants.
136.239 Proof.
136.241 Compensation allowable.

Subpart D - Designation of Source and Advertisement

GENERAL

136.301 Purpose.
136.303 Definitions.

DESIGNATION OF SOURCE
136.305 Notice of designation.
163.307 Denial of designation.

ADVERTISEMENT

136.309 Advertisement determinations.
136.311 Types of advertisement.
136.313 Content of advertisement.

AUTHORITY: 33 US.C. 2713,2714; E.O. 12777,(56 FR 54757); 49 CFR 1.46.

Subpart A - General

§ 136.1 Purpose and applicability.

(a) This part prescribes regulations for --
  (1) Presentation, filing, processing, settlement, and adjudication of claims authorized to be presented to the Oil Spill Liability Trust Fund (the Fund) under section 1013 of the Oil Pollution Act of 1990 (the Act) (33 US.C. 2713) for certain uncompensated removal costs or uncompensated damages resulting from the discharge, or substantial threat of discharge, of oil from a vessel or facility into or upon the navigable waters, adjoining shorelines, or the exclusive economic zone;
  (2) Designation of the source of the incident, notification to the responsible party of the designation, and advertisement of the designation and claims procedures; and
  (3) Other related matters.
(b) This part applies to claims resulting from incidents occurring after August 18, 1990.
(c) Nothing in this part --
  (1) Preempts the authority of any State or political subdivision thereof from imposing any additional liability or requirements with respect to --
    (i) The discharge of oil or other pollution by oil within such State; or
    (ii) Any removal activities in connection with such a discharge; or
  (2) Affects or modifies in any way the obligations or liabilities of any person under the Solid Waste
  Disposal Act (42 U.S.C. 6901 et seq.) or State law, including common law; or
  (3) Affects the authority of any State --
    (i) To establish, or to continue in effect, a fund any purpose of which is to pay for costs or damages arising out of, or directly resulting from, oil pollution or the substantial threat of oil pollution; or
    (ii) To require any person to contribute to such a fund; or
  (4) Affects the authority of the United States or any State or political subdivision thereof to impose additional liability or additional requirements relating to a discharge, or substantial threat of a discharge, of oil.

§ 136.3 Information.

Anyone desiring to file a claim against the Fund may obtain general information on the procedure for filing a claim from the Director, National Pollution Funds Center, Suite 1000, 4200 Wilson Boulevard, Arlington, Virginia 22203-1804, (202) 493-6830.

§ 136.5 Definitions.

(a) As used in this part, the following terms have the same meaning as set forth in sections 1001 and 1007(c) of the Act (33 U.S.C. 2701 and 2707(c)): "claim", "claimant", "damages", "discharge", "exclusive economic zone", "facility", "foreign claimant", "foreign offshore unit", "Fund', "guarantor", "incident", "National Contingency Plan", "natural resources", "navigable waters", "offshore", "facility", "oil", "onshore facility", "owner or operator", "Person", "removal costs", "responsible party", "State", "United States", and "vessel".
(b) As used in this part
  "Act means Title I of the Oil Pollution Act of 1990 (Pub.L. 101-380; 33 U.S.C 2701 through 2719).

"Director, NPFC" means the person in charge of the U.S. Coast Guard National Pollution Funds Center or that person's authorized representative.
'FOSC' means the Federal On-Scene Coordinator designated under the National Contingency Plan or that person's authorized representative.
"NPFC" means the U.S. Coast Guard National Pollution Funds Center, Suite 1000, 4200 Wilson Boulevard, Arlington, Virginia 22203-1804.

§ 136.7 Foreign claimants.

In addition to other applicable limitations on presenting claims to the Fund, claims by foreign claimants to recover removal costs or damages may be presented only when the requirements of section 1007 of the Act (33 U.S.C. 2707) are met.

§ 136.9 Falsification of claims.

Persons submitting false claims or making false statements in connection with claims under this part may be subject to prosecution under Federal law, including but not limited to 18 U.S.C. 287 and 1001. In addition, persons submitting written documentation in support of claims under this part which they know, or should know, is false or omits a material fact may be subject to a civil penalty of up to $5,000 for each claim. If any payment is made on the claim, the claimant may also be subject to an assessment of up to twice the amount claimed. These civil sanctions may be imposed under the Program Fraud Civil Remedies Act, 31 U.S.C. 3801-3812, as implemented in 49 CFR Part 31.

Subpart B - General Procedure

§ 136.101 Time limitations on claims.

(a) Except as provided under section 1012(h)(3) of the Act (33 U.S.C. 2712(h)(3)) (minors and incompetents), the Fund will consider a claim only if presented in writing to the Director, NPFC, within the following time limits:
(1) For damages, within three years after --
(i) The date on which the injury and its connection with the incident in question were reasonably discoverable with the exercise of due care.
(ii)In the case of natural resources damages under section 1002(b)(2)A) of the Act (33 U.S.C. 2702(b)(2)(A)), the date under paragraph (a)(1)(i) of this section, or within three years from the date of completion of the natural resources damage assessment under section 1006(c) of the Act (33 U.S.C. 2706(c)), whichever is later.
(2) For removal costs, within six years after the date of completion of all removal actions for the incident. As used in this paragraph, "date of completion of all removal actions" is defined as the actual date of completion of all removal actions for the incident or the date the FOSC determines that the removal actions which form the basis for the costs being claimed are complete, whichever is earlier.
(b)Unless the Director, NPFC, directs in writing that the claim be submitted elsewhere, a claim is deemed presented on the date the claim is actually received at the National Pollution Funds Center, Suite 1000, 4200 Wilson Boulevard, Arlington, Virginia 22203-1804. If the Director, NPFC, directs that the claim be presented elsewhere, the claim is deemed presented on the date the claim is actually received at the address in the Commander's directive.

§ 136.103 Order of Presentment.

(a) Except as provided in paragraph (b) of this section, all claims for removal costs or damages must be presented first to the responsible party or guarantor of the source designated under § 136-305.

(b) Claims for removal costs or damages may be presented first to the Fund only --
  (1) By any claimant, if the Director, NPFC, has advertised, or otherwise notified claimants in writing, in accordance with § 136.309(c);
  (2) By a responsible party who may assert a claim under section 1008 of the Act (33 U.S.C. 2708);
  (3) By the Governor of a State for removal costs incurred by that State; or
  (4) By a United States claimant in a case where a foreign offshore unit has discharged oil causing damage for which the Fund is liable under section 1012(a) of the Act (33 U.S.C. 2712(a)).

(c) If a claim is presented in accordance with paragraph (a) of this section and --
  (1) Each person to whom the claim is presented denies all liability for the claim; or
  (2) The claim is not settled by any person by payment within 90 days after the date upon which (A) the claim was presented, or (B) advertising was begun pursuant to § 136.309(d), whichever is later, the claimant may elect to commence an action in court against the responsible party or guarantor or to present the claim to the Fund.

(d) No claim of a person against the Fund will be approved or certified for payment during the pendency of an action by the person in court to recover costs which are the subject of the claim.

§ 136.105 General requirements for a claim.

(a) The claimant bears the burden of providing all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim.

(b) Each claim must be in writing for a sum certain for compensation for each category of uncompensated damages or removal costs (as described in Subpart C of this part) resulting from an incident. If at any time during the pendency of a claim against the Fund the claimant receives any compensation for the claimed amounts, the claimant shall immediately amend the claim.

(c) Each claim must be signed in ink by the claimant certifying to the best of the claimant's knowledge and belief that the claim accurately reflects all material facts.

(d) In addition to the other requirements of this section, any claim presented by a legal representative of the claimant must also be signed by the legal representative and
  (1) Be presented in the name of the claimant;
  (2) Show the title or legal capacity of the representative; and
  (3) Provide proof of authority to act for the claimant.

(e) Each claim must include at least the following, as applicable.:
  (1) The full name, street and mailing addresses of residence and business, and telephone numbers of the claimant.
  (2) The date, time, and place of the incident giving rise to the claim.
  (3) The identity of the vessel, facility, or other entity causing or suspected to have caused the removal costs or damages claimed and the basis for such identity or belief.
  (4) A general description of the nature and extent of the impact of the incident, the costs associated with removal actions, and damages claimed, by category as delineated in Subpart C of this part, including, for any property, equipment, or similar item damaged, the full name, street and mailing address, and telephone number of the actual owner, if other than the claimant.
  (5) An explanation of how and when the removal costs or damages were caused by, or resulted from, an incident.
  (6) Evidence to support the claim.
  (7) A description of the actions taken by the claimant, or other person on the claimant's behalf, to avoid or minimize removal costs or damages claimed.

(8) The reasonable costs incurred by the claimant in assessing the damages claimed. This includes the reasonable costs of estimating the damages claimed, but not attorney's fees or other administrative costs associated with preparation of the claim.

(9) To the extent known or reasonably identifiable by the claimant, the full name, street and mailing address, and telephone number of each witness to the incident, to the discharge, or to the removal costs or damages claimed, along with a brief description of that person's knowledge.

(10) A copy of written communications and the substance of verbal communications, if any, between the claimant and the responsible party or guarantor of the source designated under ' § 136.305 and a statement indicating that the claim was presented to the responsible party or guarantor, the date it was presented, that it was denied or remains not settled and, if known, the reason why it was denied or remains not settled.

(11) If the claimant has insurance which may cover the removal costs or damages claimed, the information required under § 136.111.

(12) A statement by the claimant that no action has been commenced in court against the responsible party or guarantor of the source designated under § 136-305 or, if an action has been commenced, a statement identifying the claimant's attorney and the attorney's address and phone number, the civil action number, and the court in which the action is pending.

(13) In the discretion of the Director, NPFC, any other information deemed relevant and necessary to properly process the claim for payment.

§ 136.107 Subrogated claims.

(a) The claims of subrogate (e.g., insured) and subrogee (e.g., insurer) for removal costs and damages arising out of the same incident should be presented together and must be signed by all claimants.

(b) A fully subrogated claim is payable only to the subrogee.

(c) A subrogee must support a claim in the same manner as any other claimant.

§ 136.109 Removal costs and multiple items of damages.

(a) A claimant must specify all of the claimant's known removal costs or damages arising out of a single incident when submitting a claim.

(b) Removal costs and each separate category of damages (as described in Subpart C of this part) must be separately listed with a sum certain attributed to each type and category listed.

(c) At the sole discretion of the Director, NPFC, removal costs and each separate category of damages may be treated separately for settlement purposes.

§ 136.111 Insurance.

(a) A claimant shall provide the following information concerning any insurance which may cover the removal costs or damages for which compensation is claimed:

(1) The name and address of each insurer.

(2) The kind and amount of coverage.

(3) The policy number.

(4) Whether a claim has been or will be presented to an insurer and, if so, the amount of the claim and the name of the insurer.

(5) Whether any insurer has paid the claim in full or in part or has indicated whether or not payment will be made.

(b) If requested by the Director, NPFC, the claimant shall provide a copy of the following material:

(1) All insurance policies or indemnification agreements.
(2) All written communications, and a summary of all oral communications, with any insurer or indemnifier.

(c) A claimant shall advise the Director, NPFC, of any changes in the information provided under this section.

§ 136.113 Other compensation.

A claimant must include an accounting, including the source and value, of all other compensation received, applied for, or potentially available as a consequence of the incident out of which the claim arises including, but not limited to, monetary payments, goods or services, or other benefits.

§ 136.115 Settlement and notice to claimant.

(a) Payment in full, or acceptance by the claimant of an offer of settlement by the Fund, is final and conclusive for all purposes and, upon payment, constitutes a release of the Fund for the claim. In addition, acceptance of any compensation from the Fund precludes the claimant from filing any subsequent action against any person to recover costs or damages which are the subject of the compensated claim. Acceptance of any compensation also constitutes an agreement by the claimant to assign to the Fund any rights, claims, and causes of action the claimant has against any person for the costs and damages which are the subject of the compensated claims and to cooperate reasonably with the Fund in any claim or action by the Fund against any person to recover the amounts paid by the Fund. The cooperation shall include, but is not limited to, immediately reimbursing the Fund for any compensation received from any other source for the same costs and damages and providing any documentation, evidence, testimony, and other support, as may be necessary for the Fund to recover from any person.

(b) Claimant's failure to accept an offer of settlement within 60 days after the date the offer was mailed to the claimant automatically voids the offer. The Director, NPFC, reserves the right to revoke an offer at any time.

(c) A claimant will be notified in writing sent by certified or registered mail whenever a claim against the Fund is denied. The failure of the Director, NPFC, to make final disposition of a claim within six months after it is filed shall, at the option of the claimant any time thereafter, be deemed a final denial of the claim.

(d) The Director, NPFC, upon written request of the claimant or of a person duly authorized to act on the claimant's behalf, reconsiders any claim denied. The request for reconsideration must be in writing and include the factual or legal grounds for the relief requested, providing any additional support for the claim. The request must be received by the Director, NPFC, within 60 days after the date the denial was mailed to the claimant or within 30 days after receipt of the denial by the claimant, whichever date is earlier. Reconsideration may only be requested once for each claim denied. The Director, NPFC will provide the claimant seeking reconsideration with written notification of the decision within 90 days after receipt of the request for reconsideration. This written decision is final. The failure of the Director, NPFC, to make final disposition of a reconsideration within 90 days after it is received shall, at the option of the claimant any time thereafter, be deemed a final denial of the reconsideration.

Subpart C - Procedures for Particular Claims

REMOVAL COSTS

§ 136.201 Authorized claimants.

A claim for removal costs may be presented by any claimant.

§ 136.203 Proof.

In addition to the requirements of Subparts A and B of this part, a claimant must establish--

(a) That the actions taken were necessary to prevent, minimize, or mitigate the effects of the incident;

(b) That the removal costs were incurred as a result of these actions;

(c) That the actions taken were determined by the FOSC to be consistent with the National Contingency Plan or were directed by the FOSC.

§ 136.205 Compensation allowable.

The amount of compensation allowable is the total of uncompensated reasonable removal costs of actions taken that were determined by the FOSC to be consistent with the National Contingency Plan or were directed by the FOSC. Except in exceptional circumstances, removal activities for which costs are being claimed must have been coordinated with the FOSC.

NATURAL RESOURCES

§ 136.207 Authorized claimants.

(a) Claims for uncompensated natural resource damages may be presented by an appropriate natural resources trustee. However, in order to facilitate the processing of these claims with respect to a single incident where multiple trustees are involved and to prevent double recovery, the affected trustees should select a lead administrative trustee who will present consolidated claims on behalf of the trustees.

(b) A trustee may present a claim for the reasonable cost of assessing natural resources damages separately from a claim for the cost of developing and implementing plans for the restoration, rehabilitation, replacement, or acquisition of the equivalent of the natural resources damaged.

§ 136.209 Proof.

In addition to the requirements of Subparts A and B of this part, a trustee must do the following:

(a) Submit the assessment and restoration plans which form the basis of the claim.

(b) Provide documented costs and cost estimates for the claim. Final cost estimates for conducting damage assessments or implementing a restoration plan may form the basis for a claim against the Fund for an uncompensated natural resources damage claim.

(c) Identify all trustees who may be potential claimants for the same natural resources damaged.

(d) Certify the accuracy and integrity of any claim submitted to the Fund, and certify that any actions taken or proposed were or will be conducted in accordance with the Act and consistent with all applicable laws and regulations.

(e) Certify whether the assessment was conducted in accordance with applicable provisions of the natural resources damage assessments regulations promulgated under section 1006(e)(l) of the Act (33 U.S.C. 2706(e)(1)). Identify any other or additional damage assessment regulations or methodology utilized.

(f) Certify that, to the best of the trustee's knowledge and belief, no other trustee has the right to present a claim for the same natural resources damages and that payment of any subpart of the claim presented would not constitute a double recovery for the same natural resources damages.

§ 136.211 Compensation allowable.

(a) The amount of compensation allowable is the reasonable cost of assessing damages, and the cost of restoring, rehabilitating, replacing, or acquiring the equivalent of the damaged natural resources.

(b) In addition to any other provision of law respecting the use of sums recovered for natural resources damages, trustees shall reimburse the Fund for any amounts received from the Fund in excess of that amount required to accomplish the activities for which the claim was paid.

REAL OR PERSONAL PROPERTY

§ 136.213 Authorized claimants.

(a) A claim for injury to, or economic losses resulting from the destruction of, real or personal property may be presented only by a claimant either owning or leasing the property. (b) Any claim for loss of profits or impairment of earned capacity due to injury to, destruction of, or loss of real or personal property must be included as subpart of the claim under this section and must include the proof required under § 136.233.

§ 136.215 Proof.

(a) In addition to the requirements of Subparts A and B of this part, a claimant must establish --

(1) An ownership or leasehold interest in the property;
(2) That the property was injured or destroyed;
(3) The cost of repair or replacement; and
(4) The value of the property both before and after injury occurred.

(b) In addition, for each claim for economic loss resulting from destruction of real or personal property, the claimant must establish --

(1) That the property was not available for use and, if it had been, the value of that use;
(2) Whether or not substitute property was available and, if used, the costs thereof; and
(3) That the economic loss claimed was incurred as the result of the injury to or destruction of the property.

§ 136.217 Compensation allowable.

(a) The amount of compensation allowable for damaged property is the lesser of --

(1) Actual or estimated net cost of repairs necessary to restore the property to substantially the same condition which existed immediately before the damage;
(2) The difference between value of the property before and after the damage; or
(3) The replacement value.

(b) Compensation for economic loss resulting from the destruction of real or personal property may be allowed in an amount equal to the reasonable costs actually incurred for use of substitute commercial property or, if substitute commercial property was not reasonably available, in an amount equal to the net economic loss which resulted from not having use of the property. When substitute commercial property was reasonably available, but not used, allowable compensation for loss of use is limited to the cost of the substitute commercial property, or the property lost, whichever is less. Compensation for loss of use of noncommercial property is not allowable.

(c) Compensation for a claim for loss of profits or impairment of earnings capacity under § 136.213(b) is limited to that allowable under § 136.235.

SUBSISTENCE USE

§ 136.219 Authorized claimants.

(a) A claim for loss of subsistence use of natural resources may be presented only by a claimant who actually uses, for subsistence, the natural resources which have been injured destroyed, or lost, without regard to the ownership or management of the resources.

(b) A claim for loss of profits or impairment of earning capacity due to loss of subsistence use of natural resources must be included as part of the claim under this section and must include the proof required under § 136.233.

§ 136.221 Proof.

In addition to the requirements of Subparts A and B of this part, a claimant must provide

(a) The identification of each specific natural resource for which compensation for loss of subsistence use is claimed;

(b) A description of the actual subsistence use made of each specific natural resource by the claimant;

(c) A description of how and to what extent the claimant's subsistence use was affected by the injury to or loss of each specific natural resource;

(d) A description of each effort made by the claimant to mitigate the claimant's loss of subsistence use; and

(e) A description of each alternative source or means of subsistence available to the claimant during the period of time for which loss of subsistence is claimed, and any compensation available to the claimant for loss of subsistence.

§ 136.223 Compensation allowable.

(a) The amount of compensation allowable is the reasonable replacement cost of the subsistence loss suffered by the claimant if, during the period of time for which the loss of subsistence is claimed, there was no alternative source or means of subsistence available.

(b) The amount of compensation allowable under paragraph (a) of this section must be reduced by --

(1) All compensation made available to the claimant to compensate for subsistence loss;

(2) All income which was derived by utilizing the time which otherwise would have been used to obtain natural resources for subsistence use; and

(3) Overheads or other normal expenses of subsistence use not incurred as a result of the incident.

(c) Compensation for a claim for loss of profits or impairment of earning capacity under ' § 136.219(b) is limited to that allowable under § 136.235.

GOVERNMENT REVENUES

§ 136.225 Authorized claimants.

A claim for net loss of revenue due to the injury, destruction, or loss of real property, personal property, or natural resources may be presented only by an appropriate claimant sustaining the loss. As used in this section and § 136.227, "revenue" means taxes, royalties, rents, fees, and net profit shares.

§ 136.227 Proof.

In addition to the requirements of Subparts A and B, a claimant must establish --

(a) The identification and description of the economic loss for which compensation is claimed, including the applicable authority, property affected, method of assessment, rate, and method and dates of collection;

(b) That the loss of revenue was due to the injury to, destruction of, or loss of real or personal property or natural resources;
(c) The total assessment or revenue collected for comparable revenue periods; and
(d) The net loss of revenue.

§ 136.229 Compensation allowable.

The amount of compensation allowable is the total net revenue actually lost.

PROFITS AND EARNING CAPACITY

§ 136-231 Authorized claimants.

(a) A claim for loss of profits or impairment of earning capacity due to the injury to, destruction of, or loss of real or personal property or natural resources may be presented by a claimant sustaining the loss or impairment. The claimant need not be the owner of the damaged property or resources to recover for lost profits or income.
(b) A claim for loss of profits or impairment of earning capacity that also involves a claim for injury to, or economic losses resulting from destruction of, real or personal property must be claimed under § 136.213.
(c) A claim for loss of profits or impairment of earning capacity that also involves a claim for loss of subsistence use of natural resources must be claimed under § 136.219.

§ 136.233 Proof.

In addition to the requirements of Subparts A and B of this part, a claimant must establish the following--

(a) That real or personal property or natural resources have been injured, destroyed, or lost.
(b) That the claimant's income was reduced as a consequence of injury to, destruction of, or loss of the property or natural resources, and the amount of that reduction.
(c) The amount of the claimant's profits or earnings in comparable periods and during the period when the claimed loss or impairment was suffered, as established by income tax returns, financial statements, and similar documents. In addition, comparative figures for profits or earnings for the same or similar activities outside of the area affected by the incident also must be established.
(d) Whether alternative employment or business was available and undertaken and, if so, the amount of income received. All income that a claimant receives as a result of the incident must be clearly indicated and any saved overhead and other normal expenses not incurred as a result of the incident must be established.

§ 136-235 Compensation allowable.

The amount of compensation allowable is limited to the actual net reduction or loss of earnings or profits suffered. Calculations for net reductions or losses must clearly reflect adjustments for --

(a) All income resulting from the incident;
(b) All income from alternative employment or business undertaken;
(c) Potential income from alternative employment or business not undertaken, but reasonably available;
(d) Any saved overhead or normal expenses not incurred as a result of the incident; and
(e) State, local, and Federal taxes.

GOVERNMENT PUBLIC SERVICES

§ 136.237 Authorized claimants.

A claim for net costs of providing increased or additional public services during or after removal activities, including protection from fire, safety, or health hazards, caused by a discharge of oil may be presented only by a State or a political subdivision of a State incurring the costs.

§ 136.239 Proof.

In addition to the requirements of Subparts A and B of this part, a claimant must establish--

(a) The nature of the specific public services provided and the need for those services;
(b) That the services occurred during or after removal activities;
(c) That the services were provided as a result of a discharge of oil and would not otherwise have been provided; and
(d) The net cost for the services and the methods used to compute those costs.

§ 136.241 Compensation allowable.

The amount of compensation allowable is the net cost of the increased or additional service provided by the State or political subdivision. Subpart D - Designation of Source and Advertisement

GENERAL

§ 136.301 Purpose.

This subpart prescribes the requirements concerning designation of the source or sources of the discharge or threat of discharge and advertisement of these designations, including the procedures by which claims may be presented to the responsible party or guarantor.

§ 136.303 Definitions.

As used in this subpart --

"Advertisement" means the dissemination of information, including but not limited to paid advertisements, that are reasonably calculated to advise the public how to present a claim.
"Designated source" means a source designated under § 136.305.

DESIGNATION OF SOURCE

§ 136.305 Notice of designation.

(a) When information of an incident is received, the source or sources of the discharge or threat are designated, where possible and appropriate. If the designated source is a vessel or facility, the responsible party and the guarantor, if known, are notified by telephone, telefax, or other rapid means of that designation. The designation will be confirmed by a written Notice of Designation.
(b) A Notice of Designation normally contains, to the extent known --
    (1) The name of the vessel or facility designated as the source;
    (2) The location, date, and time of the incident;
    (3) The type and quantity of oil involved;
    (4) The date of the designation;
    (5) The procedures for accepting or denying the designation; and
    (6) The name, address, telephone number, and, if available, telefax number of the responsible Federal official to whom further communication regarding the incident, advertisement of the incident or denial of designation should be directed.

§ 136.307 Denial of designation.

(a) Within five days after receiving a Notice of Designation under § 136.305, the responsible party or guarantor may deny the designation.

(b) A denial of designation must --

(1) Be in writing;

(2) Identify the Notice of Designation;

(3) Give the reasons for the denial and provide a copy of all supporting documents; and

(4) Be submitted to the official named in the Notice of Designation.

(c) A denial is deemed received on the date the denial is actually received by the official named in the Notice of Designation.

ADVERTISEMENT

§ 136.309 Advertisement determinations.

(a) The Director, NPFC, determines for each incident the type, geographic scope, frequency, and duration of advertisement required.

(b) In making the determination specified in paragraph (a) of this section, the Director, NPFC may
consider --

(1) The nature and extent of economic losses that have occurred or are likely to occur,

(2) The potential claimants who are likely to incur economic losses;

(3) The geographical area that is or will likely be affected;

(4) The most effective method of reasonably notifying potential claimants of the designation and procedures of submitting claims; and

(5) Relevant information or recommendations, if any, submitted by, or on behalf of, the responsible party or guarantor of the designated source.

(c) The Director, NPFC, provides the specific requirements for advertisement for each incident to the responsible party or guarantor of the designated source.

(d) If a responsible party or guarantor has not denied designation in accordance with § 136.307, the party or guarantor shall advertise, in accordance with the requirements of this subpart, the designation and the procedures by which claims may be presented. The advertisement must begin not later than 15 days after the date of the designation made under
§ 136.305.

(e) If there is no designation under § 136.305, if the source of the discharge or threat is a public vessel, or if the responsible party and guarantor of the source designated have denied the designation or failed to meet the requirements for advertisement in this section, the Director, NPFC, may advertise procedures for presenting claims.

§ 136.311 Types of advertisement.

Advertisement required by the Director, NPFC, will normally include one or more of the following:

(a) Paid advertisements in a newspaper or newspapers having general circulation in the area designated by the Director, NPFC.

(b) Notice posted in marinas, marine supply stores, bait and tackle shops, and other appropriate business establishments or public facilities in the area designated by the Director, NPFC.

(c) News releases to newspapers, radio stations, television stations, and cable services having general circulation in the area designated by the Director, NPFC.

(d) Other means approved by the Director, NPFC, under the circumstances of each case.

§ 136.313 Content of advertisement.

Each advertisement required by this subpart may be required to contain the following information or to indicate where this information may be contained:

(a) Location, date, and time of the incident.
(b) Geographical area affected, as determined by the FOSC or Director, NPFC.
(c) Type and quantity of oil involved.
(d) Name or other description of the source designated by the FOSC or Director, NPFC.
(e) Name of the responsible party and guarantor of the designated source.
(f) Name, address, telephone number, office hours, and work days of the person or persons to whom claims are to be presented and from whom claim information can be obtained.
(g) The procedures by which a claim may be presented.
(h) Other information required by the Director, NPFC, under the circumstances of each case.

PART 137 - DEEPWATER PORT LIABILITY FUND

8. The authority citation for Part 137 continues to read as follows:
Authority: 33 U.S.C. 1509(a), 1512(a), 1517(j)(1); 49 CFR 1.46.

Subpart F [Removed and Reserved]

9. In Part 137, Subpart F, Claims Procedures, is removed and reserved.

Dated:

_____

Daniel F. Sheehan, Director
National Pollution Funds Center

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Claimant's Guide for Submitting Oil Spill Liability Trust Fund Claims

A Compliance Guide

April 2003

Claimant's Guide

A Compliance Guide
for Submitting Claims
Under the Oil Pollution Act of 1990

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

April 2003

Table of Contents

PART I - INTRODUCTION **1**
How to Use This Guide 1

PART II - GENERAL INFORMATION **2**
Background 2
What Claims may be Submitted? 2
Who is Eligible to Submit a Claim? 3
Lawsuits 3
Insurance 3
Double Payments 3
Mitigation 3
False Claims 3

PART III - GENERAL CLAIM REQUIREMENTS **4**
Do You Qualify? 4
Where Do I Submit a Claim? 4
What You Need to Submit to the NPFC 4
Claim Format 5
Time Limits 6
The Adjudication Process 6

PART IV - SPECIFIC CLAIM REQUIREMENTS **7**
A. Removal Costs 8
B. Real or Personal Property Damages 9
C. Loss of Profits and Earning Capacity 10
D. Loss of Government Revenue 12
E. Cost of Increased Public Services 13
F. Loss of Subsistence Use of Natural Resources 14
G. Natural Resource Damages 15
H. Claims by a Responsible Party (RP) 16

KEY DEFINITIONS **17**

ACRONYM LIST **18**

PRIVACY ACT STATEMENT **19**

OPTIONAL OSLTF CLAIM FORM — INSTRUCTIONS **19**

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 a person whose family subsists on natural resources from a river that is polluted by an OPA incident. You may have a claim for the cost of getting substitute subsistence products.

Eligible Claimant: Anyone who, for subsistence use, actually depends on natural resources that have been injured, destroyed, or lost. It does not matter who owns or manages the natural resources.

NRD Guidelines: Subsistence claims are often unique. A separate Natural Resource Damage Funding Guidelines publication includes subsistence provisions. Those guidelines are available on the NPFC's Web page:

www.uscg.mil/hq/npfc/nrd.htm

You may also call the NPFC's toll-free number with claims questions: (800) 280-7118

G. Natural Resource Damages

Natural Resource Damages: Damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing the damage.

Example of a Typical Claim: You are the designated trustee agency for a state wildlife refuge that is oiled from an OPA incident. As trustee, you may have a claim for natural resource damages to cover the costs of assessing injuries and restoring the refuge to its pre-spill condition.

Eligible Claimant: Federal, state, foreign and Indian tribal trustees.

NRD Guidelines: Natural Resource Damage claims are often unique. A separate Natural Resource Damage Funding Guidelines publication is available on the NPFC Web page:

www.uscg.mil/hq/npfc/nrd.htm

You may also call the NPFC's toll-free number with claims questions: (800) 280-7118

H. Claims by a Responsible Party (RP)

Claims by a Responsible Party: OPA Section 1008 (33 U.S.C. 2708) provides that an RP may assert a claim for removal costs and damages only if the RP demonstrates that the RP is entitled to a defense to liability under Section 1003 or to a limitation of liability under Section 1004.

Example of a Typical Claim: You are the owner of a recreational boat that sank after being hit by another vessel. Your vessel caused a gasoline and motor oil spill. If you can prove that the incident was caused solely by the other vessel, you may have a claim for amounts you paid for oil removal costs and damages.

RP Claims Must Show the Following:

- Documentation addressing each element of the complete defense to liability (33 U.S.C. 2703) or limitation of liability (33 U.S.C. 2704), as applicable
- That other claimants paid by the RP had presented their claims within OPA's time limits
- That the RP presented its claim to the NPFC within three years of the date the paid claims were presented to the RP
- Removal costs and damages for which compensation is requested are included under OPA (33 U.S.C. 2708)
- That individual claims paid meet the applicable regulatory requirements for claims against the OSLTF
- If the claim is for costs in excess of your limit of liability you must disclose—
    - All costs and paid claims (not just those exceeding the limit of liability) and
    - How those costs and paid claims meet OPA requirements

The NPFC will first evaluate your entitlement to the defense to liability or limitation of liability claimed before taking further action. You will be notified of this determination.

If your entitlement to the limitation of liability or complete defense to liability is upheld, the NPFC will measure the uncompensated removal costs and damages in accordance with the claims regulations for each claim type.

If the claim is for costs in excess of your limit of liability, the NPFC will measure the total acceptable costs for the incident and will deduct the limit of liability amount from the measurement.

KEY DEFINITIONS

Damages. OPA damages means damages to natural resources, to real or personal property, for loss of subsistence use of natural resources, for loss of governmental revenues, for loss of profits or earning capacity, and for increased or additional public services. These damages are specified in Section 1002(b) of OPA and are amplified in Section IV of this guide.

Discharge. Any emission (other than natural seepage), intentional or unintentional, and includes, but is not limited to spilling, leaking, pumping, pouring, emitting, or dumping.

Guarantor. Any person who provides evidence of financial responsibility for an RP under OPA.

Natural Resources. Land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the exclusive economic zone), any State or local government or Indian tribe, or any foreign government.

Oil. Oil of any kind or in any form, including petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil, but does not include any substance which is specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of Section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601) and which is subject to the provisions of that Act [42 U.S.C. §9601 et seq.].

Oil Spill. An occurrence or series of occurrences having the same origin, involving one or more vessels, facilities, or any combination thereof, resulting in the discharge or substantial threat of discharge of oil into or upon navigable waters of the United States, adjoining shorelines, or the exclusive economic zone (e.g., oil spill in coastal waters from a tanker). A spill that impacts ground water, but not the navigable waters of the U.S., is not an OPA spill.

Removal Costs. The costs of removal that are incurred after a discharge of oil has occurred or, in any case in which there is a substantial threat of a discharge of oil, the costs to prevent, minimize, or mitigate oil pollution from such an incident.

Responsible Party.

In the case of a vessel, any person owning, operating, or demise chartering the vessel;

In the case of an onshore facility (other than a pipeline), any person owning or operating the facility, except a Federal agency, State, municipality, commission, or political subdivision of a State, or any interstate body, that as the owner transfers possession and right to use the property to another person by lease, assignment, or permit;

In the case of an offshore facility (other than a pipeline or a deepwater port licensed under the Deepwater Port Act of 1974 (33 U.S.C. 1501 et seq.)), the lessee or permittee of the area in which the facility is located or the holder of a right of use and easement granted under applicable State law or the Outer Continental Shelf Lands Act (43 U.S.C. 1301-1356) for the area in which the facility is located (if the holder is a different person than the lessee or permittee), except a Federal agency, State, municipality, commission, or political subdivision of a State, or any interstate body, that as owner transfers possession and right to use the property to another person by lease, assignment, or permit;

In the case of a deepwater port licensed under the Deepwater Port Act of 1974 (33 U.S.C. 1501-1524), the licensee;

In the case of a pipeline, any person owning or operating the pipeline; and,

In the case of an abandoned vessel, onshore facility, deepwater port, pipeline, or offshore facility, the persons who would have been responsible parties immediately prior to the abandonment of the vessel or facility.

ACRONYM LIST

CFR	Code of Federal Regulations
EPA	Environmental Protection Agency
FOSC	Federal On-Scene Coordinator (either U.S. Coast Guard or EPA)
NPFC	National Pollution Funds Center
OPA	Oil Pollution Act of 1990 (also known as 33 U.S.C. 2701 et. seq.)
OSLTF	Oil Spill Liability Trust Fund
RP	Responsible Party
U.S.C.	United States Code
USCG	United States Coast Guard

PRIVACY ACT STATEMENT

AUTHORITY: 33 U.S.C. 2713. **PRINCIPAL PURPOSE:** To aid the Coast Guard in adjudicating claims for reimbursement of removal costs and damages from oil spills when the Responsible Party has not paid. **ROUTINE USES:** Information on reimbursements may be provided to the Internal Revenue Service for tax purposes and may be provided to the Department of Justice for litigation against the Responsible Party. **DISCLOSURE:** Decision to submit a claim is voluntary; but, if proper information is not furnished by the claimant, the Government may be unable to evaluate or pay a claim.

This information applies to all claims against the Oil Spill Liability Trust Fund, whether or not the Optional OSLTF Claim Form is used.

OPTIONAL OSLTF CLAIM FORM — INSTRUCTIONS

Please provide all information, evidence, and documentation that supports the removal costs and/or damage(s) claimed. **Use additional sheets or pages, as necessary,** to provide information, evidence, and documentation. The following numbered paragraphs correspond to the numbers on the optional claim form:

1. Complete name, street, city, state, ZIP and phone number of the claimant (party that incurred damage and is seeking reimbursement).

2. If known, provide the following incident information on the oil spill or threat of oil spill causing or suspected of causing the removal costs and/or damage(s) claimed:
   - The identity of the vessel, facility or entity causing or suspected of causing the incident.
   - Describe the geographic area and waterway directly affected by the oil spill or threat of oil spill.
   - Briefly describe any known information regarding the occurrence of the oil spill or threat of oil spill.

3. Indicate the amounts by the type of claim(s) being submitted. Provide the total amount claimed.

4. Indicate if claimant has had any communication (written or verbal) with the entity causing or suspected of causing the damage(s) claimed.

5. Has the claimant or the claimant's legal representative submitted the claim(s) to the entity causing or suspected of causing the damage claimed? If yes, include the date submitted.

6. If claim was submitted to the responsible party, indicate any response (written or verbal) or any payment you have received. Provide the date the claim was submitted.

7. Indicate if the claimant is pursing a claim(s) against the responsible party by legal representation in a court of law. If yes, provide all information that will enable us to contact your legal representative and identify your case.

*** * At the bottom of the first page of the form, please initial and date the page. * ***

8. Indicate if claimant is pursuing payment from an insurance carrier for costs that are included in the claim. If yes, provide all information that will enable us to contact the insurer and identify the claimant's policy.

9. Provide detailed information, evidence, and documentation that describes the extent of the damage(s) claimed. Attach copies, if necessary, of all pertinent information.

10. Provide any information, evidence, and documentation that will help describe how the oil spill, or threat of oil spill, caused the removal costs and/or damage(s) claimed.

11. Provide any information, evidence, and documentation that describe the actions of the claimant or any other person on the claimant's behalf to reduce or avoid the damage(s) claimed.

12. Provide the name, address and telephone number (if known) of any witness to the damage(s) claimed. On a separate page provide a summary of each witness's knowledge of the damage(s) claimed or the incident causing or suspected of causing the damage(s) claimed.

13. If you provide additional documents, please list them here or on a separate piece of paper.

14. If the claimant is an individual, that person must sign the claim. If the claimant is a corporation, an officer of the company must sign the claim. All signatures must be in ink to be valid.

15. If the claim is presented by a legal representative, that legal representative must also sign the claim. Provide the complete address and phone number of that legal representative.

Submit your claim, with any necessary information, evidence, and documentation to:

Director (ca)
National Pollution Funds Center
4200 Wilson Blvd., Suite 1000
Arlington, VA 22203-1804

Claims for Natural Resource Damages or for Loss of Subsistence Use of Natural Resources may be addressed to "Director (cn)" .

We recommend that you keep the Privacy Act Statement and a copy of the claim for your files.

Department of Homeland Security U.S. Coast Guard National Pollution Funds Center 4200 Wilson Boulevard, Suite 1000 Arlington, VA 22203-1804	**Optional OSLTF Claim Form** CG NPFC-CA1 (Rev. April 03)

PURPOSE: This form may be used for submitting claims to the U.S. Coast Guard, National Pollution Funds Center, for potential compensation from the Oil Spill Liability Trust Fund for uncompensated removal costs or damages resulting from an incident under the Oil Pollution Act of 1990 (OPA). You may use your own version of this form. PLEASE PRINT OR TYPE.

1. Claimant Information: Name: _____

Address: _____

_____

_____

Home Tel. #: _____ Work Tel. #: _____

Fax Number: _____ E-mail: _____

2. Incident Information: Date: _____ Time: _____ NRC Report #:_____

Name of vessel or facility causing damage: _____

Geographic location of incident: _____

Brief description of the incident: _____

_____

_____

_____

3. Type(s) of claim(s) and total amount for costs and damage(s) claimed:

$ _____ Removal Costs

$_____ Subsistence Use $_____ Profits & Earning Capacity $ _____ Public Services

$_____ Natural Resources $ _____ Government Revenues $ _____ Real or Personal Property

*$*_____ *Total Amount Claimed*

4. Has claimant communicated with the responsible party? ☐ No ☐ Yes

5. Has the claim been submitted to the responsible party? ☐ No ☐ Yes Date Submitted: _____

6. If the claim has been submitted to the responsible party, what action has the responsible party taken?

☐ No Action ☐ Denied ☐ Other – Explain:

_____

_____

7. Has claimant commenced an action in court to recover costs which are the subject of the claim?

☐ No ☐ Yes If yes, provide the name, address, phone number of your attorney, the court in which action is pending and the civil action number: _____

_____

_____

_____

8. Has claimant submitted or planned to submit the loss to an insurer? ☐ No ☐ Yes Please provide the name, address, and phone number of your insurer, the policy number, and explain any compensation received:

_____

_____

9. Description of the nature and extent of damages claimed (Attach additional information as necessary**):** _____

_____

_____

10. Description of how the incident caused the damage: _____

_____

_____

11. Description of actions taken by claimant/representative to avoid or minimize damages: _____

_____

_____

12. Witnesses:

Name: _____ Tel. No.: _____

Address: _____

_____

Name: _____ Tel. No.: _____

Address: _____

_____

13. List Documents or Attachments (Attach additional information as necessary**):**

a. _____

b. _____

c. _____

d. _____

e. _____

I, the undersigned, agree that upon acceptance of any compensation from the Fund, I will cooperate fully with the United States in any claim or action by the United States to recover the compensation. The cooperation shall include, but is not limited to, immediately reimbursing to the Fund any compensation received from any other source for the same costs and/or damages and, providing any documentation, evidence, testimony, and other support, as may be necessary for the Fund to recover such compensation.

I, the undersigned, certify that, to the best of my knowledge and belief, the information contained in this claim represents all material facts and is true. I understand that misrepresentation of facts is subject to prosecution under Federal law (including but not limited to 18 U.S.C. 287 & 1001 and 31 U.S.C. 3729).

14. _____
Claimant's Signature Date
Printed Name of Signer: _____

15. _____
Legal Representative Date
Title/Legal Capacity: _____

Appendix A

Memorandum of Understanding

Oil (CG and EPA) 3

CERCLA (CG and EPA) 29

SSC Support (CG and NOAA) 71

Endangered Species Act MOA [CG, EPA, DOI (USFWS), and NOAA (NMFS; NOS)]: 91

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MEMORANDUM OF UNDERSTANDING

BETWEEN

THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

and

THE UNITED STATES COAST GUARD

*** * ***

For use of the

Oil Spill Liability Trust Fund

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TABLE OF CONTENTS

I. PURPOSE ---------- 7
II. AUTHORITY ---------- 7
III. DEFINITIONS ---------- 8
IV. USES OF THE OSLTF ---------- 8
V. MIXED SPILLS ---------- 8
VI. ACCESSING THE OSLTF ---------- 9
VII. REPORTING ---------- 9
VIII. COST DOCUMENTATION ---------- 9
IX. PROPERTY & EQUIPMENT PURCHASES ---------- 9
X. DESIGNATION OF SOURCE AND CLAIMS ---------- 10
XI. BILLING ---------- 10
XII CONTRACTING ---------- 10
XIII. COST RECOVERY & LITIGATION SUPPORT ---------- 10
XIV. MODIFICATION AND TERMINATION ---------- 10
XV. PERIOD OF AGREEMENT ---------- 11
XVI. SIGNATURES ---------- 11

APPENDIX 1. NPFC USER REFERENCE GUIDE ---------- 13
A. Organizations Using Pollution funds ---------- 13
B. Introduction to NPFC ---------- 13
C. Removal Actions ---------- 13
D. Investigative Considerations ---------- 13
E. State Access ---------- 13
F. Natural Resource Damage Assessments ---------- 13
G. Claims ---------- 13

APPENDIX 2. USES OF THE OSLTF ---------- 14
A. Extramural Costs ---------- 14
B. Intramural Costs ---------- 14
C. Mixed Spills ---------- 14

APPENDIX 3. FUND TRANSFERS, FPN AND CEILING ---------- 15
A. Multi-Incident IAG ---------- 15
B. FPN ---------- 15
C. Ceiling Categories ---------- 15
D. Incident Specific IAG ---------- 15
E. Long Term Removals ---------- 16

APPENDIX 4. REPORTING AND COORDINATION ---------- 17

APPENDIX 5. COST DOCUMENTATION ---------- 18
A. Incident Specific Documentation ---------- 18
B. Other Government Agency Costs ---------- 20
C. Oil & Gas Well Site Specific Costs ---------- 20
D. Documentation Custodian & Point of Contact ---------- 21
E. Timely Submission of Documentation ---------- 21
F. Documentation Retention Period ---------- 21
G. USEPA Indirect Cost Model ---------- 21
H. Forensic Documentation ---------- 21

APPENDIX 6. PROPERTY & EQUIPMENT PURCHASES ---------- 23
A. Buy Vs. Lease ---------- 23
B. Disposal & Property Records ---------- 23
C. Defense Reutilization & Marketing Office (DRMO) ---------- 23
D. DRMO & Property Survey Records ---------- 23
E. Real Property ---------- 24
F. Additional Information ---------- 24

APPENDIX 7. DESIGNATION OF SOURCE & CLAIMS ---------- 25

APPENDIX 8. BILLING ---------- 26
A. The Billing Process ---------- 26
B. Billing Summary ---------- 26
C. Timetables ---------- 26

APPENDIX 9. CONTRACTING ---------- 27
A. Authorization For Use Of BOAs ---------- 27

I. PURPOSE

This Memorandum of Understanding (MOU) between the United States Environmental Protection Agency (USEPA) and the United States Coast Guard (USCG) establishes the agreement by which USEPA accesses the Oil Spill Liability Trust Fund (OSLTF or the Fund), administered by the National Pollution Funds Center (NPFC), in order to carry out oil removal under 33 USC 1321(c) [Clean Water Act (CWA) or Federal Water Pollution Control Act (FWPCA)], with the concomitant USEPA responsibility to fully account for OSLTF funds and support the NPFC's efforts to recover the Federal government's costs from responsible parties (RPs). This MOU also describes the NPFC's responsibility to fully support the USEPA by providing timely funding and other support to carry out oil removals.

II. AUTHORITY

This MOU is entered into under the authority of the Oil Pollution Act of 1990 (OPA), 33 USC 2701 et seq., as implemented by E.O. 12777 (and subsequent delegations), to carry out oil removal activities under the Clean Water Act and the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR 300. OPA 6002, 33 USC 2752, makes available annually a portion of the OSLTF to carry out oil removals under CWA. Subject to OPA 6002, OPA 1012(a) makes the OSLTF available for the payment of those Federal costs, including the costs of monitoring removal actions, that are consistent with the NCP.

Executive Order (EO) 12777 delegates the authority and responsibility for implementing the provisions of Title I and various other sections of OPA, pertaining to management of the OSLTF for use in removals, to the Secretary of the Department of Transportation (DOT). DOT has redelegated these responsibilities to the Commandant of the USCG, who has further redelegated those responsibilities to the Director of the NPFC.

The National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR 300, contains details for implementing removals under OPA and the CWA, including the role of the On-Scene Coordinator (OSC). Under the EO, the USEPA is responsible for removal of oil spills in the Inland Zone of the US as defined in the NCP. The USCG is responsible for removal of oil spills in the Coastal Zone. The USCG and the USEPA assign OSCs to direct these removals.

The principal organizations within the two agencies with fiscal responsibilities for these matters are the Office of Solid Waste and Emergency Response (OSWER) for the USEPA and the National Pollution Funds Center for the USCG.

III. DEFINITIONS

"Oil", is defined by section 1001 of OPA [33 USC 2701(23)] as oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil, but does not include petroleum, including crude oil or any fraction thereof, which is specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601) and which is subject to the provisions of that Act.

"Remove" or "removal" is defined in OPA 1001 (30), 33 USC 2701 (30), to mean "containment and removal of oil or a hazardous substance from water and shorelines or the taking of other actions as may be necessary to minimize or mitigate damage to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, and public and private property, shorelines, and beaches."

"Removal costs", is defined by OPA 1001 (31), 33 USC 2701 (31), OPA as "the costs of removal that are incurred after a discharge of oil has occurred or, in any case in which there is a substantial threat of a discharge of oil, the costs to prevent, minimize, or mitigate oil pollution from such an incident."

IV. USES OF THE OSLTF

Before the OSLTF can be made available for removal costs, there must be an OPA incident. In Polrep-1 (or as soon as possible), the OSC shall document the following facts: that oil was discharged into, or is a substantial threat to, the navigable waters of the U.S., the adjoining shorelines, or the EEZ.

If these prerequisites are met, the OSLTF is available to reimburse the EPA via Interagency Agreements (IAGs) for removal costs resulting from their activities conducted under 33 USC 1321(c) necessitated by the OPA incident. To be reimbursable from the Fund, the removal activities which resulted in the costs being incurred must be consistent with the NCP. See Appendix 2.

V. MIXED SPILLS

The term "mixed spills" is used in this agreement to describe discharges which involve oil and other substances. This is different from "mixed events" or "mixed sites" which are terms used to describe locations where discharges of OPA oil and releases of CERCLA hazardous substances are co-located, but remain separate and distinct problems.

The substances involved in a mixed spill will dictate whether its removal may be funded by either the OSLTF or Superfund. Both funds will not be used on the same mixed substance.

For removal to be funded by the OSLTF, the composition of the mixture must be such that it can be considered oil subject to OPA. Appendix 2 specifies criteria for selecting a funding source for removal of a mixed spill.

VI. ACCESSING THE OSLTF

To initiate funding for an oil removal, the USEPA OSC must obtain a Federal Project Number (FPN) and an approved project ceiling from the USCG no later than the conclusion of the preliminary assessment described in the NCP, Subpart D Section 300.305, "Phase II - Preliminary Assessment and Initiation of Action." See Appendix 3.

VII. REPORTING

The USEPA shall send pollution reports (Polreps) consistent with the NCP, Subpart B Section 300.135(m), to the NPFC. The USEPA OSC shall document the OPA incident, removal activities and their connection to the incident, and resulting costs. The USEPA will also provide status reports in accordance with current NPFC reporting requirements, as detailed in Appendix 4.

VIII. COST DOCUMENTATION

The USEPA shall provide full and timely documentation of all costs, both reimbursable and non-reimbursable, in every case to support reimbursement of the USEPA and to support recovery of costs from the responsible parties and other liable persons. USEPA OSCs shall also review all costs incurred during the removal operation and certify that they are proper and consistent with the NCP. In lengthy or cost intensive cases, the USEPA will provide interim documentation to enable the NPFC to bill the RP(s) and start the interest clock for monies owed to the government. See Appendix 5.

IX. PROPERTY & EQUIPMENT PURCHASES

The OSC may use OSLTF funds for purposes deemed necessary for an oil removal. This includes the purchase of non-consumable property and equipment when operational necessity dictates it or when it is clearly cost effective for the government. If the total acquisition is not exclusively for oil removal, other funding sources must be applied in appropriate proportion. The OSC has custody of such property and equipment, and must dispose of it in accordance with NPFC guidance. Following the conclusion of a removal, all property and equipment not consumed must be inventoried and reported in the case documentation. To avoid the need for disposal, equipment should be leased whenever possible. See Appendix 6.

X. DESIGNATION OF SOURCE & CLAIMS

USEPA OSCs will make reasonable efforts to promptly determine the source of the oil pollution and, when it involves a vessel or facility, to identify any potential RPs, and will provide the information to the NPFC case officer. OPA 1014, 33 USC 2714, requires designation of source(s), where possible and appropriate, and requires notification of the responsible parties (RPs) to initiate the claims process. USEPA OSCs have not been delegated the authority to formally designate sources for purposes of claims advertising OPA. See Appendix 7.

XI. BILLING

To obtain reimbursement for eligible costs, USEPA will present billing documentation supported by case documentation to the NPFC. See Appendix 8.

XII. CONTRACTING.

The USEPA and the USCG will provide contracting support to OSCs to enable them to obtain commercial services needed to conduct removals. The agencies will make these resources available according to agreements and procedures in Appendix 9.

XIII. COST RECOVERY AND LITIGATION SUPPORT

USEPA shall fully support NPFC with respect to all USEPA uses of OSLTF funds following removal activities when NPFC proceeds to recover the Federal Government's removal costs from the RP(s).

XIV. MODIFICATION AND TERMINATION

Either the USCG or the USEPA may propose changes to this MOU. Both agencies must approve a change before it becomes effective. Either agency may terminate the MOU by giving a thirty (30) day advance written notice to the other Agency. Adding or changing appendices or attachments does not constitute modification of the overall MOU. Such additions or changes may be made by agreement of officials responsible for the specific subject area in the USEPA and USCG. The officials making any such change shall immediately bring the change to the attention of the signers of this MOU, or their successors, and then shall disseminate a notice of the change so as to inform all users of the MOU.

XV. PERIOD OF AGREEMENT

This MOU shall continue in effect until terminated, modified or amended. This MOU shall become effective on the date of the last signature below.

XIV. SIGNATURES

_____/s/_____

Date_____

Daniel F. Sheehan
Director
National Pollution Funds Center
United States Coast Guard

_____/s/_____

Date_____

Elliott P. Laws
Assistant Administrator
Office of Solid Waste and
Emergency Response
U.S. Environmental Protection Agency

_____/s/_____

Date_____

William H. Campbell
Director of Finance and Procurement
United States Coast Guard

_____/s/_____

Date_____

Harvey B. Pippen, Jr.
Director
Office of Grants and Debarment
U.S. Environmental Protection Agency

_____/s/_____

Date_____

Betty L. Bailey
Director
Office of Acquisition Management
U.S. Environmental Protection Agency

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APPENDIX 1. NPFC USER REFERENCE GUIDE

NPFC publishes the NPFC User Reference Guide. It addresses for OSCs the use of the OSLTF and Superfund, along with applicable regulations and background information. Due to its extensive nature, the material is published separately as a Supplement to the Marine Safety Manual. It can be obtained by contacting the NPFC's Customer Service Division at (703) 235-4709. To assure that the Guide is available where needed, the USEPA will annually provide NPFC a list of HQ and Regional organizations that employ or support OSCs. The list shall include the address and NPFC will supply each with a copy of the Reference guide and updates as necessary. The Reference Guide is divided into a series of topics briefly explained as follows.

A. Organizations Using Pollution Funds. This provides information on entities able to access the Funds managed by NPFC and includes Federal Agencies, States and Trustees.

B. Introduction to NPFC. This describes the origins, roles, missions, case teams and regions, functional contacts, and frequently used acronyms.

C. Removal Actions. This provides procedures for accessing the Funds for Clean Water Act and CERCLA removals. It includes OSC financial management checklists, guidance on mystery spills, ACP guidance, and reports. The Technical Operating Procedures (TOPS) for Removal Costs and the TOPS for Resource and Cost Documentation are included in this chapter.

D. Investigative Considerations. This addresses liability limits, proximate cause, designation of source, notification and advertising, and potential responsible parties.

E. State Access. This includes the State Access TOPS and the State Access regulations issued under OPA, Section 1012(d)(1). It also addresses procedures for requesting funds, removal costs, pollution reports, payment, litigation, and cooperative agreements.

F. Natural Resource Damage Assessments. This includes the NRDA/Initiate TOPS which contains initiation criteria, purchase of property, reporting, and requests for reimbursement.

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

APPENDIX 2. USES OF THE OSLTF

The OSC may use the OSLTF for the payment of incident-specific removal costs, which includes the cost of monitoring removal actions by responsible parties and others. This includes all costs directly related to specific removals, including administrative, operational, and personnel expenses. The costs are both extramural and intramural, as defined below.

A. Extramural Costs. Extramural costs are those costs incurred external to the USEPA: contractor/vendor, other government agencies, etc. See Appendix 8 for contracting mechanisms to obtain extramural services. Examples of extramural costs include, but are not limited to, the following:

1. Contractor and consulting costs, including lease or rental of equipment supplied by a removal contractor or subcontractor.

2. Supplies, materials and equipment (including transportation costs) procured, leased or rented for the specific removal activity.

3. Reimbursement of allowable costs incurred by other Federal agencies (e.g., U. S. Army Corps of Engineers), or State or local governments. An Interagency Agreement (IAG) between USEPA and another federal agency supporting a removal action is an extramural cost.

4. Other incident-specific obligations or purchases of services used in conducting removals.

B. Intramural Costs. Intramural costs include internal costs incurred by the USEPA directly in support of removal activities. Intramural costs include:

1. Travel and per diem for USEPA personnel.

2. Salaries for USEPA personnel not normally available for oil spill removal, as well as overtime hours for all personnel. USEPA determines who is not normally available for oil spill removal.

3. Supplies used in support of a removal activity.

4. Charges for use of equipment and resources owned by the USEPA.

5. Replacement, repair, renovation or cleaning of USEPA equipment (including consumables) due to unavoidable oiling normally inherent in conducting removal.

C. Mixed Spills. (To be developed)

APPENDIX 3. FUNDS TRANSFERS, FPN & CEILING

A. Multi-Incident IAG. Annually, the NPFC will execute an IAG with USEPA to transfer funding from the OSLTF to USEPA to support the activities of USEPA in conducting oil removals. The funding is for incident specific costs. The USEPA accounting and financial data systems shall track expenditures and provide documentation to support subsequent cost recovery actions by the NPFC. The signed IAG will be delivered to EPA no later than October 1 of each year.

B. FPN. The OSC must contact the appropriate Coast Guard District Office and obtain an FPN and a ceiling for each incident no later than the conclusion of the pre-assessment phase (NCP Subpart D, Section 300.305, Phase II - Preliminary Assessment and Initiation of Action").

C. Ceiling Categories. The following are the categories of costs funded by the OSLTF under an FPN and ceiling. The OSC is required to keep the costs in items (1), (2), and (3) within the approved ceiling.

1. Incident specific obligations and other costs to date, such as purchases or contracts for services.

2. Incident specific USEPA reimbursable costs recorded in the USEPA accounting system (such as travel, per diem, overtime, plus salaries for personnel <u>not</u> normally available for oil spill response - USEPA determines who is not normally available for oil spill response.).

3. Incident specific costs for all other Federal Agencies (e.g. NOAA, DOI-FWS, etc.) including obligations and costs recorded in the Coast Guard accounting system (Strike Team assistance costs, equipment, etc.).

4. Incident specific salary costs of personnel who are normally available for oil spill response. These costs are recoverable from the Responsible Party (RP) but not reimbursable from the OSLTF.

D. Incident Specific IAG. For certain removal actions, an Incident Specific IAG may be the preferred funding mechanism. In that case, the OSC will still obtain an FPN and ceiling from the appropriate Coast Guard District Office and start the removal. The OSC/USEPA Region and the NPFC will then negotiate the IAG.

An Incident Specific IAG can support better management when: removals are lengthy; large ceilings are involved; multiple agencies are involved; a chosen contracting mechanism introduces complexities, or some other condition requires extra management attention. The OSC and the NPFC should both consider the use of an incident-specific IAG under the following conditions:

1. The OSC estimates that an additional $100,000 or more will be required after the first anniversary of the opening of the removal (issuance of the FPN). (Case

ceiling would be at least $100,000 plus costs incurred in the first 12 months of removal.)

2. The OSC estimates that the removal will continue past the second anniversary of the FPN, i.e., into the third year of removal.

3. Any case that involves improvements to real property. The case officer can assist in determining what is considered an improvement.

E. Long Term Removals. If one or more of the conditions identified in Section D, above, occurs, then the following requirements apply:

1. FINANCIAL PLANNING. The OSC shall submit a Long Term Removal Plan to NPFC containing all resource considerations relating to the removal project from its inception to completion, including disposal of all real and personal property procured for the removal. If improvements to real property are involved, the Plan shall contain, at a minimum, a description of the removal system including components and system operation, initial setup costs, annual recurring costs, annual non-recurring costs, termination costs and other costs. The Plan shall list these cost categories by federal fiscal year. The Fund may be used to purchase fixtures for real property if this is the only cost-effective way to effect a removal; however, this does not eliminate other requirements concerning real property acquisitions, particularly using/taking non-RP property without due process of law.

2. REAL PROPERTY -- ADVANCE PLANNING FOR DISPOSAL. If improvements (long term facilities) are constructed on real property, the OSC must document the improvements to support cost recovery and potential litigation and to facilitate disposal upon closure. When the time for disposal arrives, records should be available to show purchase costs, accurate descriptions of structures and installed equipment, understandings or arrangements made in advance with any other parties, title holder to the property involved at the time the improvements were installed, and any other information needed to dispose of the specific type of improvement involved.

3. SEPARATE IAG. A long term removal can not be charged to a multi-incident IAG. The OSC must immediately notify NPFC so that the removal can be funded under an incident-specific IAG. The initial amount provided in an IAG will normally be the amount needed for the first 12 months. The NPFC will provide continued funding, through annual amendments, for long term actions that are consistent with the NCP and within the scope of the Long Term Removal Plan.

4. ANNUAL ADMINISTRATIVE CYCLE. At every twelve month anniversary of the removal project, the Long Term Removal Plan shall be reviewed and updated to show all actual costs to date and current best estimates of future costs, as well as changes in the nature of the spill or the technology being employed. Based on this information, the OSC should request additional ceiling in the amount needed for the next 12 months and initiate an amendment to the IAG.

APPENDIX 4. REPORTING AND COORDINATION

It is essential that the NPFC Case Officer be kept informed about the financial progress of a removal. Polreps are a logical and effective way to accomplish this. Every Polrep should show the financial status of the removal: current ceiling, obligations to date, an estimate of all other costs to date (see Appendix 2-D, above), and any other facts or figures that explain the current status or have value for planning subsequent activities. In the event that the OSC has no reason to generate Polreps, the need to keep the Case Officer informed is not diminished, and the OSC must convey the financial status information by some other kind of written communication.

The OSC is encouraged to contact the NPFC case officer if questions arise concerning the financing or documenting of a case. This may include agreements to fund participation by other government agencies, documentation of sources and identification of responsible parties, and special considerations for billing responsible parties. The OSC and the case officer will work together to find solutions that are in the best interest of the government.

At the conclusion of a removal, the USEPA OSC shall submit a termination or closure report to the NPFC Case Officer and shall also send a copy to the USEPA Cincinnati Financial Management Center (CFMC). The report shall contain an estimate of the total cost for the project, with reasonable allowances for uncertainty, and a request to reduce the project ceiling to that amount, thus releasing the balance for use elsewhere. There is no need for the full identification of RP(s) and address(es) unless they were not provided previously. This can be a Final Polrep or other written communication as above. If not a Polrep, a copy of the report must be sent to the USCG District (m) Office from which the FPN was obtained, in addition to the NPFC Case Officer.

APPENDIX 5. COST DOCUMENTATION

To support cost recovery, documentation of all removal costs incurred as a result of an incident is required. These costs are recoverable from the responsible party. Some of these costs are also reimbursable to USEPA from the OSLTF. These include costs for personnel who are not normally available for oil spill response (whose USEPA fixed account number is not for oil), premium pay (overtime, hazardous duty pay) for all personnel working at an incident, travel vouchers, contractor invoices, contractor cost letter reports, and any other charges related to an incident which have been charged to the reimbursable account number. Costs that are recoverable, but not reimbursable, include personnel normally available for oil spill response (under a USEPA fixed account number for oil), contractor invoices and all other costs associated with an incident but not charged to the reimbursable account.

A. Incident-Specific Documentation. The USEPA OSC shall produce a comprehensive written record supporting all expenditures and costs incurred in each removal. This documentation will support reimbursement of USEPA costs and NPFC's cost recovery on behalf of the OSLTF. Upon request of the OSC and contingent upon availability, a case officer will go to the scene of a removal and assist the OSC with documentation. USEPA may use: (1) the standard resource documentation procedures available from the Case Officer; or (2) alternative documentation that provides the following:

1. USEPA Personnel Costs. USEPA agrees to charge actual USEPA personnel labor costs for all USEPA personnel participating in an incident specific removal. Documentation must show each employee's name, grade, hours, appropriate subtotals and an overall total. Also included is the name and telephone number of the appropriate USEPA official to contact for additional information, if not the OSC. USEPA must include a copy of the Payroll Distribution Timesheets (EPA Form 2560-28) for all pay periods identifying the site/FPN and incident specific hours chargeable for each participating employee and a document showing payroll hours by pay period for all hours applicable to the incident. (NOTE: Timesheets and payroll reports must be redacted to remove data protected by the Privacy Act such as social security numbers, etc.)

2. USEPA Personnel Travel Costs. All incident specific travel costs must be documented. This shall include a summary indicating the employee's name, Travel Authorization (TA) number, amount, employee subtotal and overall incident total. Documentation must include copies of each TA, liquidated Travel Vouchers and expense receipts as required of the traveler. (NOTE: TA's, Vouchers and receipts must be redacted to remove data protected by the Privacy Act such as social security numbers, etc.)

3. Other USEPA Costs. Documentation for costs of USEPA vehicles and other government owned equipment shall contain a description of the item, unit of use (i.e. per hour or day, etc.), applicable rate and the total charge. Government owned equipment utilization is recorded on a daily basis.

4. Contractor Costs: USEPA shall document contractor costs for all incident specific contractor related response costs.

(a) A cover sheet shall contain site name and FPN, the applicable Tasking Document Number(s), date(s) of contractor work performance, labor costs, travel costs, contractor purchases, G&A, overhead, base and award fee (if appropriate), total invoice amount and a brief description of the contractor activity performed under the Tasking Document(s);

(b) Copies of each Tasking Document and any amendments for contractor related response activity for the site. For each Tasking Document Number, the record shall contain daily line item detail by person for all contractor personnel participating in response activity under that Tasking Document;

(c) Copies of all contractor billing statements which enumerate the final cumulative direct costs by applicable Tasking Document Number with the applicable line items underlined. For contracts that are billed in summary amounts, USEPA shall provide a report of the tasking documents and associated costs to support the amount billed. (NOTE: If the cumulative cost totals for any Tasking Document Numbers listed on the billing statement are not the final costs, the contractor cover sheet must clearly state this with an estimate of anticipated additional costs and the expected date of completion. If there are any adjustments to the actual contractor payment, the cover sheet must state the Tasking Document Number and the actual amount paid).

(d) For each person, the daily line item detail shall include the employee name, job title, professional level or hourly rate and hours;

(e) Line item detail shall record any other applicable contractor costs, such as equipment rentals and purchases of supplies. Equipment rented for a period of time can be recorded once, provided the line item clearly indicates the time period.

5. Documenting Contractor Costs for USCG Basic Ordering Agreements (BOAs). When the USEPA contracting officer places orders against USCG BOAs, contractor cost documentation requirements stipulated in the USCG BOA shall apply. The USEPA OSC, or the USEPA OSC's authorized representative (who must be a federal employee) signs each daily contractor cost report. BOA contractor invoices are sent directly by the USEPA OSC to the servicing USEPA contracting officer. A copy of each OSC-certified invoice must be retained in the required documentation. See Appendix 8.

6. Status Reports. The NPFC will assemble a complete set of the Polreps and other status reports submitted by the USEPA OSC and incorporate them into the cost documentation package.

B. Other Government Agency Costs: USEPA may use a Pollution Removal Funding Authorization (PRFA) or other agency agreement to employ another government agency in a removal action.

1. USEPA shall obtain cost documentation from other government agencies (federal, state and local) participating in a removal under the auspices of a USEPA OSC in accordance with the requirements specified in any applicable USEPA/Other Agency agreement (i.e., IAG, Cooperative Agreement, letter contract, etc.). When USEPA uses an Other Agency agreement, USEPA will obtain reimbursement from the OSLTF and will reimburse the other agency.
2. A USEPA OSC may, at his or her discretion, use a Pollution Removal Funding Authorization (PRFA), as described in NPFC Technical Operating Procedures for Standard Cost Documentation (TOPS), in lieu of the agreement mentioned above. In the absence of a USEPA/Other Agency agreement, a PRFA will be executed.

3. If the OSC requests assistance from the NPFC in executing a PRFA, the NPFC may authorize reimbursement directly to the other agencies from the OSLTF. The USEPA OSC must assure that the correct USCG accounting data is entered on the PRFA and that a copy is sent to the NPFC for this type of transaction to work properly. PRFAs are intended to be issued by the OSC pursuant to instructions contained in the NPFC Technical Operating Procedures (TOPS) for Resource Documentation. When USEPA issues a PRFA, other agency reimbursements will be processed in accordance with the TOPS.. Assistance in the use of PRFAs may be obtained from the NPFC Case Officer.

4. Cost documentation provided by other agencies shall include:

   (a) Copies of tasking documents issued by the OSC which describe the equipment or services provided by the other agency;

   (b) Copies of records detailing work performed, travel, labor, equipment and any additional items used, with unit costs and subtotals for each category, and an overall reimbursable total.

C. Oil & Gas Well Site Specific Costs. Costs for each well in a field or cluster treated in a removal project funded under a single FPN must be documented separately. Direct costs not attributable to a specific well must be allocated on a consistent basis against all wells subject to removal activity in any such project with combined funding. The resource documentation for the project must include: all costs for each individual well; the method of allocating each category of direct allocable costs; and the identity of the prospective responsible party or parties associated with each well. Examples of direct well site costs include, but are not limited to the following: removal of production tubing,

casing, well head assemblies, or gathering lines; plugging; grading and restoration of surface well site terrain (including treatment of contaminated soil); and construction and removal of temporary access. Examples of direct costs not attributable to a specific well, which must be allocated, include: treatment of contaminated soil or water not associated with a particular well; removal of central field storage tank batteries and heater treaters, compressors, dryers, etc.; closure of waste oil pits; disposal; and OSC authorized miscellaneous purchases, administrative, travel, and monitoring costs, including technical assistance contractor costs, if any.

D. USEPA Documentation Custodian & Point of Contact. USEPA shall retain the entire documentation package until such time as NPFC Case Officer requires it to support negotiation or litigation following billing. The holder of the completed files shall be the USEPA Regions. CFMC bills the USCG for reimbursement from the OSLTF and must hold complete billing documentation inclusive of all adjustments to calculate the correct reimbursement amount and support it.

In the event of a challenge to the removal cost documentation records following billing, the NPFC Case Officer may request additional documentation from CFMC for resolution with a copy of the request to the OSC.

E. Timely Submission of Documentation. To support prompt billing of the responsible party (RP), documentation of costs is required at NPFC not later than 90 days following receipt of contractor invoice of costs and/or receipt of payment of EPA travel vouchers. The cognizant EPA official shall advise the NPFC if a delay is expected, the reason for the delay, and the date the documentation will be provided.

Six months from initiation of the removal action and every six months thereafter until site completion, the OSC must assemble an interim cost documentation package and forward copies to the CFMC and NPFC. The cost documentation package will contain all of the elements described in the Cost Documentation Appendix.

F. Documentation Retention Period. The USEPA agrees to retain all cost documentation for a minimum of six years following completion of incident removal activity unless otherwise advised by the NPFC. USEPA must retain only that cost documentation which was not forwarded to the NPFC under section VII of this agreement.

G. USEPA Indirect Cost Model. The USEPA agrees to develop an indirect cost model that will support USEPA reimbursement of all indirect cost expenditures. The USEPA shall coordinate this project with the NPFC at reasonable intervals to assure that it will support cost recovery actions against RPs.

H. Forensic Documentation. When the source of an oil spill is in question, the OSC may use forensic laboratory analysis to compare the spilled oil with suspected sources. The OSC must employ sampling collection and handling procedures that assure uncontaminated samples and an unbroken chain of custody from collection through

analysis. The forensic process should be able to withstand challenge in court to be of value in cost recovery.

The USEPA OSC may use the Coast Guard Marine Safety Laboratory in Groton, Connecticut, or other labs that are approved under the USEPA Contract Lab Program (CLP) and shall provide, if necessary, expert testimony in cost recovery litigation.

APPENDIX 6. PROPERTY & EQUIPMENT PURCHASES

A. Buy Vs. Lease. All property purchased with OSLTF funds under an incident-specific FPN remains property for which the NPFC has a fiduciary interest. OSCs should only purchase property with OSLTF funds when operational necessity directly related to a removal dictates or when it is clearly more beneficial to the government than leasing. Otherwise, leasing is the preferred choice. When making decisions to buy versus lease property, and operational conditions permit, OSCs should factor in the costs necessary for acquisition, maintenance and disposal/disposition of the property. Many of these considerations can be addressed in the planning process before a spill occurs. Documentation of the factors considered in purchasing property during a spill are critical in cost recovery and litigation and shall be documented to the greatest extent possible. OSCs should be aware that property purchased to support a removal will be billed to the responsible party at 100% of the cost. Accordingly, the OSC should provide the responsible party the opportunity to purchase or otherwise directly supply the property needed. Upon completion of the removal, any property provided by the responsible party shall be transferred directly to the responsible party.

B. Disposal and Property Records. All property purchased with OSLTF funds must be accounted for in the cost documentation. However, not all OSLTF purchased property requires documented disposal/disposition. For example, all consumable items are considered expended during the removal activity. Therefore, consumable property remaining at the completion of removal action only requires cost effective disposal/disposition. Lots of consumable property having a cost in excess of $1,000 shall be treated as non-consumables. The USEPA shall retain documentation or evidence of disposal/disposition action taken for all non-consumable property and consumables in lots worth more than $1,000. Non-consumable property includes items costing over $1,000 and items of lower cost but high interest (e.g., radios, FAX machines, cellular phones, computers, pagers, copiers, photographic equipment, protective clothing, test equipment, etc.).

C. Defense Reutilization & Marketing Office (DRMO). To properly dispose of non-consumable property, the OSC shall use the closest Defense Reutilization and Marketing Office (DRMO). Transportation costs associated with disposal/disposition of property may be charged to the FPN. The DRMO usually requires a form DD-1348 for each group of like items. Where the form requests a Department of Defense Activity Address Code (DODAAC), use “Z74100.”

D. DRMO & Property Survey Records. The OSC shall forward copies of DD-1348(s) to the NPFC in the billing summary and case completion report following completion of the removal. A copy shall also be placed in the complete case file. Lost property, stolen property, and damaged property that is not suitable for transfer to a DRMO must be surveyed in accordance with federal property management guidelines. A copy of the survey report must be forwarded to the NPFC case officer in the billing summary and case completion report, and a copy shall also be placed in the complete case file.

E. Real Property. The Fund may be used to make improvements to real property if it is the necessary or the cost-effective way to effect the removal; however, this does not obviate other requirements pertaining to real property acquisitions, particularly taking and compensation issues. Upon completion of the cleanup, removable fixtures should be disposed of in the same manner as personal property purchased with OSLTF funds (see Appendix 6); permanent improvements to real property should be removed, abandoned or excessed, as appropriate, as permitted by the ownership of the real property.

F. Additional Information. If questions should arise about property or related issues, such as DRMOs, the OSC should call the case officer.

APPENDIX 7. DESIGNATION OF SOURCE & CLAIMS

OPA requires where possible and appropriate that the source of each discharge or substantial threat of discharge be designated and the RP notified. Subpart B of the NCP section 300.135(c) states that "the OSC shall, to the extent practicable, collect pertinent facts about the discharge or release, such as its source and cause; the identification of potentially responsible parties; the nature, amount, and location of discharged or released material; the probable direction and time of travel of discharged or released materials; ... the pathways to human and environmental exposure..."; etc. The NPFC is responsible for claims and will notify the RP for USEPA incidents following receipt from the USEPA OSC of the RP's identity and address (including, as appropriate: telephone, telex, and fax numbers; resident agents or agents for service of process; those authorized to speak and act for the RP in this situation, particularly when the RP is an organization, and how they can be contacted; tax ID numbers; and any other information concerning RP organizational structure(s) which could assist the case officer). The USEPA OSC shall scope out the potential for third party claims arising out of the incident. The OSC shall promptly make this information available to the NPFC Case Officer to support the evaluation of the impact of claims, as well as enabling designation and notification. Upon request of the OSC and contingent upon availability, a claims officer will go to the scene of a removal to assist the OSC in evaluating the potential for claims and in identifying sources and potentially responsible parties.

APPENDIX 8. BILLING

A. The Billing Process. The USEPA OSC must submit all financial documentation to CFMC for verification and final adjustments. CFMC shall submit a preview copy of the Billing Summary to NPFC for validation of costs to be billed. Once agreement between CFMC and NPFC has been reached on the total amount to be billed, CFMC will initiate reimbursement. CFMC will use the U.S. Treasury's On-Line Payment And Collection System (OPAC) to send the total bill for reimbursement directly to the USCG Finance Center in Chesapeake, Virginia (ALC = 69-02-5102). As part of the same action, CFMC shall send (by mail or fax) a copy of the Billing Summary to the NPFC at the following Address:

National Pollution Funds Center (cm)
4200 Wilson Boulevard, Suite 1000
Arlington, Virginia 22203-1804

(703) 235-4837 fax

B. Billing Summary. The Billing Summary is based on supporting documentation for all recoverable costs, including both reimbursable and non-reimbursable. The Summary must contain a line item showing the total dollar amount for each of the major categories of costs:

1. USEPA Personnel
2. USEPA Travel
3. Contractors (list each separately)
4. Other Government Agency Costs (list each separately)
5. Marine Safety Lab
6. Miscellaneous

The Summary should also provide explanations for any unclear elements or issues.

C. Timetables. The preview copy of the Billing summary must be received by NPFC not later than 90 days following the OSC's receipt of contractor invoice(s) and/or payment of USEPA travel vouchers. Once NPFC has validated costs on the preview copy of the Billing Summary, CFMC will initiate reimbursement via OPAC. CFMC shall forward to the NPFC and USCG Finance Center the Billing Summary and OPAC accounting information by fax or mail within five working days after submitting the OPAC.

APPENDIX 9. CONTRACTING

A. AUTHORIZATION FOR USE OF UNITED STATES COAST GUARD BASIC ORDERING AGREEMENTS FOR POLLUTION CLEANUP SERVICES AND EQUIPMENT. USEPA may act as an ordering office under the USCG Basic Ordering Agreements (BOAs) issued by Commander (fcp), Maintenance and Logistics Command Atlantic and Commander (fcp), Maintenance and Logistics Command Pacific. This ordering authority is subject to the following conditions:

1. Only Contracting Officers or On-Scene-Coordinators duly warranted by the USEPA in accordance with the Federal Acquisition Regulations (FAR) may issue delivery orders, up to the maximum authority of their warrant, under the BOAs. This authority may not be redelegated. Within 30 days of the execution of this MOU, USEPA will provide a list of the names and addresses of all contracting officers executing delivery orders under the BOAs. The list will include the geographic area of responsibility for each contracting officer. Annually, USEPA will update the list. The initial list and the updates will be provided to the two USCG offices listed in paragraph 13 of this appendix.

2. If a USEPA OSC does not have a Contracting Officer's Warrant, all requirements for BOA services and supplies must be referred to a warranted USEPA Contracting Officer.

3. USEPA Contracting Officers and warranted OSCs shall be responsible for reviewing, understanding and complying with the provisions of the BOAs.

4. All delivery orders shall be within the scope of the BOA and documented as required by the FAR, supplemental agency regulations and the BOA.

5. Delivery orders shall be issued only when emergency cleanup is required and internal USEPA procedures and regulations authorize contracting under the authority of FAR 6.302-2, Unusual and Compelling Urgency; when required, the USEPA shall prepare a Justification for Other than Full and Open Competition (JOTFOC); and under no circumstances shall the BOAs be used for remediation, routine or planned actions.

6. All delivery orders issued by the USEPA shall contain the following information: full address of the contract administration office and name and telephone number of the USEPA Contracting Officer; the full address of the USEPA payment office; the full address where invoices are to be sent; and the name of the entity responsible for certifying receipt and acceptance of services and supplies.

7. The USEPA shall be responsible to certify the receipt and acceptance of the services and supplies in accordance with all laws and regulations, and the terms and conditions of the BOA.

8. Funding for delivery orders shall comply with applicable provisions elsewhere in this MOU.

9. All payments shall be made by the USEPA authorized payment office cited on each individual delivery order and shall be made in accordance with the Prompt Payment Act and FAR 52.232-25, Prompt Payment.

10. Any interest payable shall be funded by the OSLTF and paid by the USEPA. USEPA shall report to the NPFC total interest paid in the prior fiscal year no later than 15 November of each year.

11. The USEPA shall not take any action, either directly or indirectly, that could result in a change to the pricing, quality, established response timeframes, or any other terms and conditions of the BOA; or direct the accomplishment of effort which would exceed the scope of the BOA.

12. The USEPA shall resolve all disputes arising from or relating to delivery orders that they issue. All disputes settled in favor of the contractor will be funded out of the OSLTF and in no event will they be paid out of Coast Guard operating funds.

13. Within forty-eight (48) working hours after issuance of a delivery order the USEPA shall forward a copy (minus enclosures) to the NPFC and the appropriate address below:

Commander (fcp), Maintenance and Logistics Command Pacific
Building 54A, Coast Guard Island
Alameda, CA 94501-5100
Commander (fcp-2), Maintenance and Logistics Command Atlantic
300 East Main Street, Suite 965
Norfolk, VA 23510-9113

14. The USEPA shall provide the appropriate contracting office listed above with a list of closed out delivery orders by May 15 and November 15 each year.

-End-

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

James C. Card
Rear Admiral, U.S. Coast Guard
Chief, Office of Marine Safety,
Security and Environmental Protection

Dear Admiral Card:

I am pleased to send you two copies of the U.S. Coast Guard (USCG) and U.S. Environmental Protection Agency (USEPA) Superfund Memorandum of Understanding (MOU), and request that you sign it. The MOU establishes funding coordination mechanisms for USCG access to Superfund, and it supersedes the MOU of January 4, 1982.

This MOU is the result of the joint USCG and USEPA MOU workgroup effort begun on June 9, 1993. The workgroup represented all concerned offices in both agencies. The resultant MOU will improve procedures for USCG access to the Superfund and will better serve both agencies' interests.

If you have any questions concerning the MOU please contact:

Jack Crawford	Mark Mjoness
National Pollution Funds Center	Emergency Response Division
USCG	USEPA
703-235-4742	703-603-8727

Please have your staff contact Mr. Mjoness after the MOU is signed and we will make arrangements for obtaining our copy.

I am pleased that the staff of our agencies were able to cooperate on the MOU.

Sincerely,

Elliott P. Laws
Assistant Administrator

U.S. Department
of Transportation
United States
Coast Guard

Aug 17 1994

Elliott P. Laws
Assistant Administrator
Office of Solid Waste and
Emergency Response
U.S. Environmental Protection Agency

James C. Card
Rear Admiral, U.S. Coast Guard
Chief, Office of Marine Safety,
Security and Environmental Protection

Harvey G. Pippen, Jr.
Director
Office of Grants and Debarment
U.S. Environmental Protection Agency

Daniel F. Sheehan
Director
National Pollution Funds Center
U.S. Coast Guard

Gentlemen:

We, the members of the joint U.S. Coast Guard (USCG) and U.S. Environmental Protection Agency (USEPA) Superfund Memorandum of Understanding (MOU) Workgroup, request that you sign the enclosed MOU between our agencies. The workgroup represents all concerned offices in both agencies. The MOU establishes funding coordination mechanisms for USCG access to Superfund, and it supersedes the MOU of January 4, 1982.

The MOU is the result of the workgroup effort begun on June 9, 1993. The resultant MOU will improve procedures for USCG access to the Superfund and will better serve both agencies' interests.

If you have any questions concerning the MOU please contact:

Mark Mjoness
Emergency Response Division
USEPA
703-603-8727

Jack Crawford
National Pollution Funds Center
USCG
703-235-4742

We are pleased to have been part of the joint effort.

Sincerely,

U.S. ENVIRONMENTAL PROTECTION AGENCY	**U.S. COAST GUARD**
Mark Mjoness Emergency Response Division	Darrell Neily National Pollution Funds Center
Joseph Rauscher Emergency Response Division	Jack Crawford National Pollution Funds Center
Esther Williford Emergency Response Division	CDR Kenneth Keane Marine Environmental Protection Division
Susan Dax Financial Management Division	Margaret Dougherty National Pollution Funds Center
Kristen Skogebo Financial Management Division	John Andrzewjewski National Pollution Funds Center
Nelson Price Financial Management Division	CDR Robert Douville National Pollution Funds Center

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MEMORANDUM OF UNDERSTANDING

Between

THE UNITED STATES COAST GUARD

and

THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Procedures for United States Coast Guard Access to

Superfund, to Support Coast Guard Implementation of CERCLA

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TABLE OF CONTENTS

I. PURPOSE 37
II. AUTHORITY 37
A. DEFINITIONS 37
III. CERCLA COSTS 37
A. REMOVAL COSTS 38
1. Extramural Costs 38
2. Intramural Costs 38
B. USCG COSTS IN SUPPORT OF USEPA REMOVAL ACTIONS 39
C. ONGOING RESPONSIBILITIES COSTS 39
IV. ACCOUNTING FOR ONGOING RESPONSIBILITIES COSTS 39
V. INCIDENT CASE FILE 40
A. FINDING OF IMMINENT AND SUBSTANTIAL ENDANGERMENT 40
B. ACTION MEMORANDUM 40
VI. QUALITY ASSURANCE 40
VII. MODIFICATION AND TERMINATION 41
VIII. PERIOD OF AGREEMENT 41
IX. SIGNATURES 42
APPENDIX A
PROCEDURES FOR MULTI-INCIDENT REMOVAL
INTERAGENCY AGREEMENTS (IAGs) 43
APPENDIX B
PROCEDURES FOR "ONGOING RESPONSIBILITIES
INTERAGENCY AGREEMENTS (IAGs) 47
APPENDIX C
RECORDKEEPING 49
ATTACHMENT A
INSTRUMENTS OF REDELEGATION 53
ATTACHMENT B
ENDANGERMENT DETERMINATION 65

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I. PURPOSE

This Memorandum of Understanding (MOU) establishes funding and coordination mechanisms between the United States Coast Guard (USCG) and the United States Environmental Protection Agency (USEPA). USEPA is the fiduciary for Superfund as established under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) , as amended. This MOU supersedes the MOU of January 4, 1982, between the USCG and USEPA, and its subsequent amendments.

II. AUTHORITY

Section 104 of CERCLA (42 USC 9604) authorizes the President to act " ... whenever (A) any hazardous substance is released or there is a substantial threat of such a release into the environment, or (B) there is a release or substantial threat of release into the environment of any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare...." Executive Order 12580 delegates certain authority and responsibility for response to the Administrator of the USEPA and the Secretary of the Department of Transportation (DOT). On October 9, 1981, and May 27, 1988, the USCG redelegated authority back to the USEPA for certain response actions at hazardous waste sites that require response action (see Attachment A). The USCG and the USEPA enter into this agreement to carry out their responsibilities under CERCLA.

A. DEFINITIONS:

1. "Remove or removal" as defined by section 101(23) of CERCIA, means the cleanup or removal of released hazardous substances from the environment; such actions as may be necessary taken in the event of the threat of release of hazardous substances into the environment; such actions as may be necessary to monitor, assess, and evaluate the release or threat of release of hazardous substances; the disposal of removed material; or the taking of such other actions as may be necessary to prevent, minimize, or mitigate damage to the public health or welfare or to the environment, which may otherwise result from a release or threat of release. The term includes, in addition, without being limited to, security fencing or other measures to limit access, provision of alternative water supplies, temporary evacuation and housing of threatened individuals not otherwise provided for, action taken under section 104(b) of CERCLA, and any emergency assistance which may be provided under the Disaster Relief Act of 1974. The term also includes enforcement activities related thereto.

2. "Incident" means the same as the term "site" for accounting and cost recovery purposes.

III. CERCLA COSTS

The Hazardous Substance Superfund (Superfund) is the source of funds for CERCLA removal costs incurred by the USCG. These costs are identified in three major categories:

USCG removal actions, USCG support of USEPA removal actions, and USCG ongoing responsibilities. Such costs are reimbursed by the USEPA via interagency agreements (IAGs) between the USEPA and USCG. These IAGs are prepared in accordance with the procedures in Appendices (A) and (B), and the USEPA's Interagency Agreement Policy and Procedures Compendium of September 1988.

A. REMOVAL COSTS:

USCG Federal On-Scene Coordinators (OSCs) conduct CERCLA removals. All incident-specific removal costs incurred by the USCG qualify as allowable costs under Superfund. These costs are extramural and intramural in nature.

1. Extramural Costs

Extramural costs are those costs incurred external to the USCG: contractor/vendor, other government, etc. Examples of extramural costs include, but are not limited to, the following:

a. Contractor and consulting costs including lease or rental of equipment supplied by
the removal contractor and subcontractor(s);

b. Supplies, materials and equipment (including transportation costs) procured, leased or rented for the specific removal activity; and

c. Reimbursement of allowable costs incurred by other Federal agencies (e.g., NOAA), or State or local governments.

2. Intramural Costs

Intramural costs include internal costs incurred by the USCG directly in support of removal activities.

Intramural costs include:

a. Travel and per diem for USCG military and civilian personnel;

b. USCG military and civilian personnel costs including civilian overtime costs;

c. Supplies used in support of a removal activity;

d. Charges for use of USCG owned equipment and resources;

e. Replacement or repair of USCG equipment destroyed or damaged as a result of a removal; and

f. Other miscellaneous expenses.

B. USCG COSTS IN SUPPORT OF USEPA REMOVAL ACTIONS:

USCG costs in support of USEPA removal actions are incident-specific costs incurred by USCG units in providing direct support to a USEPA OSC conducting a CERCLA removal action. Funding for these costs is through IAGs between each USEPA regional office and the USCG. In such cases, the USEPA OSC will be responsible for certifying USCG costs.

C. ONGOING RESPONSIBILITIES COSTS:

Pursuant to responsibilities under CERCLA, the USCG conducts removals and monitors removals by responsible parties. Ongoing responsibilities costs are generally non-incident-specific costs for support of the following ongoing activities required to create and maintain the capability to conduct and monitor removals:

- Emergency Removal Training and Equipment
- Enforcement
- National Response Center Support
- Medical Monitoring
- Information Systems
- Program Management
- Response Readiness - National Response Team (NRT) and Regional Response Team (RRT) Support

Funding for these costs is transferred annually to the USCG in an "Ongoing Responsibilities" IAG. The costs may be extramural or intramural. The annual IAG is prepared in accordance with the procedures in Appendix B.

IV. ACCOUNTING FOR ONGOING RESPONSIBILITIES COSTS

Superfund accounting and recordkeeping requirements apply to costs funded under the annual ongoing responsibilities IAG. All expenditures under the IAG are recoverable from responsible parties through the application of the USEPA indirect cost model and must be documented. Personnel levels are addressed in the approved personnel model entitled "Alternative Documentation for USCG Salaries Reimbursed by Superfund." The model justifies the number of reimbursable Full Time Equivalents (FTEs) under the ongoing responsibilities IAG. It analyzes workload and calculates FTE, but does not provide a funding amount for personnel cost reimbursement. If the number of Superfund reimbursed FTEs is greater than the number justified by the model, the USEPA will be reimbursed the difference using average standard personnel costs.

This model is used during the annual DOT Superfund audit process to show how the USCG Superfund activities translate into USCG billets reimbursed by Superfund. The model was jointly developed and approved by the USEPA and USCG, and it can be revised upon the concurrence of both agencies.

V. INCIDENT CASE FILE

The lead agency OSC (USCG or USEPA) shall maintain a case file for each incident. The case file includes the administrative record as defined in the National Contingency Plan (NCP) and contains information for determining liability and pursuing cost recovery. For each USCG CERCLA removal or support action for a USEPA CERCLA removal, the case file will contain documentation of all resources used and financial transactions associated with the incident, per Appendix A, and the following:

A. FINDING OF IMMINENT AND SUBSTANTIAL ENDANGERMENT:

For incidents with total estimated project costs less than $250,000, the USCG will document the finding of imminent and substantial endangerment (endangerment determination) in the case file. This documentation will provide sufficient information describing the need for the CERCLA removal action including the threat or potential threat posed by the situation, hazardous substances present (if known) and the selected removal action. Attachment B is provided as a sample format for documenting this finding. The USCG OSC may elect to use either this endangerment determination format or to document the endangerment determination through another format (e.g., within a pollution report - POLREP). The endangerment determination should be made and documented before removal actions take place, circumstances permitting, or as early as possible after emergency removal actions begin.

B. ACTION MEMORANDUM:

For incidents with total estimated project costs equal to or greater than $250,000, the USCG will submit an approved action memorandum, which includes an endangerment determination, to the Director, Emergency Response Division (ERD), USEPA prior to obligating funds in excess of $250,000 (see "Superfund Removal Procedures, Action Memorandum Guidance," USEPA Publication Number: EPA/540/P-90/004, OSWER Directive 9360.3-01, December 1990).

For incidents with total estimated project costs equal to or greater than $250,000 and requiring an amendment to increase the funding authorized in the IAG, the USCG will submit a draft action memorandum to the Director, ERD, USEPA for review and timely comment, and coordination with the IAG amendment. When a USCG OSC needs to act immediately, ERD, USEPA may extend an oral commitment of funding. Oral commitments will be confirmed in writing.

In all cases, the action memorandum must describe the threat and the rationale for choosing a particular remedy - including the technical basis for the decision.

VI. QUALITY ASSURANCE

The USCG will comply with its internal Quality Assurance (QA)/chain of custody policies and procedures, published in USCG Commandant Instructions, in responding to releases

of hazardous substances, pollutants and contaminants. Commandant Instructions M16465.29 and M16465.30 specifically address responses under CERCLA. The Marine Safety Manual, Commandant Instruction M16000 series, includes policy for pollution removal activities. These instructions address the conduct of operations, personnel protection associated with operations, decision making, and identification and disposal of recovered pollutants, and documentation.

The USCG utilizes commercial laboratories to identify substances in pollution incidents. To assure that the information from these laboratories is reliable, the USCG will utilize all available information, including USEPA performance data, to evaluate candidate laboratories.

For non-time-critical removals, the USCG will assure that the quality of physical, chemical, and biological data developed in the assessment and operational phases of a removal is addressed per the NCP and will be addressed as needed in removal contracts.

USEPA agrees to provide clause(s), or other language suitable for use in contractual statements of work, as requested, to assist the USCG in the preparation of these contracts.

VII. MODIFICATION AND TERMINATION

Either the USCG or the USEPA may propose changes to this MOU. Both agencies must approve a change before it becomes effective. Either party may terminate the MOU by giving a thirty (30) day written notice. Adding or changing appendices or attachments to this MOU does not constitute modification of the overall MOU.
Such additions or changes may be made by agreement of officials responsible for the specific subject area in the USEPA and USCG. The officials making any such change will immediately bring the change to the attention of the signers of this MOU, or their successors, and then publish the change so as to inform all users of the MOU.

VIII. PERIOD OF AGREEMENT

This MOU shall continue in effect until terminated, or modified or amended. This MOU shall become effective on the date of the last signature below.

IX. SIGNATURES

_____	_____
Elliott P. Laws	James C. Card
Assistant Administrator	Rear Admiral, U.S. Coast Guard
Office of Solid Waste and Emergency Response	Chief, Office of Marine Safety, Security and Environmental Protection
U.S. Environmental Protection Agency	
DATE: _____	DATE: _____

_____	_____
Harvey G. Pippen Jr.	Daniel F. Sheehan
Director	Director
Office of Grants and Debarment	National Pollution Funds Center
U.S. Environmental Protection Agency	
DATE: _____	DATE: _____

APPENDIX A

PROCEDURES FOR MULTI-INCIDENT REMOVAL INTERAGENCY AGREEMENTS (IAGS)

The following procedures apply to IAGs funding CERCLA removals conducted by USCG OSCs:

1. ORIGINATION PHASE

Incidents can occur any day of the year, and the USCG must have funding to respond on the first day of the fiscal year. The following procedures are structured with the objective of providing funding without fiscal year transition interruption. If experience indicates a need for change, the procedures should be modified to meet the objective. In the absence of a current fiscal year budget, the USCG may incur incident-specific removal costs, pursuant to CERCLA, Executive Order 12580, and the NCP. In such cases, the USEPA will certify those costs as necessary and appropriate to the IAG project and in the government's best interests.

A. The ERD, USEPA HQ, in cooperation with the National Pollution Funds Center (NPFC), USCG HQ, will develop the next fiscal year's cost estimate, budget, scope of work and special condition information for the IAG by August 31of each fiscal year.

B. The ERD will prepare the IAG funding package three (3) original IAGS, a decision Memorandum and a commitment notice] and forward it to the Assistant Administrator, Office of Solid Waste and Emergency Response (AA, OSWER) or designee for review and signature.

C. When approved, the IAG funding package will be forwarded to the Grants Administration Division (GAD), USEPA for legal and administrative review and USEPA Action Official signature.

D. Following USEPA Action Official signature, GAD transmits two complete IAGs to the NPFC, USCG. GAD keeps the third as back-up.

E. The NPFC, USCG official shall review the IAG and, if acceptable, sign the two originals, retain one signed original and return the other to GAD.

F. GAD shall retain the signed original and transmit one copy to the Cincinnati Financial Management Center (CFMC) , USEPA for obligation and one copy to the ERD, USEPA.

2. EXECUTION PHASE

A. NOTIFICATION:
Within 24 hours following initiation of a CERCLA removal, the NPFC, USCG will provide to the ERD, USEPA information (endangerment determination, POLREP or action memorandum) on the incident and a cost estimate. In return, ERD will provide to NPFC a USEPA Site/Spill Identification (SSID) number to link the USCG and USEPA records, tracking and financial systems.

B. INCIDENT CASE FILE:
The lead agency OSC (USCG or USEPA) will maintain each incident's case file. For each USCG CERCIA removal or support action for an USEPA CERCLA removal, the case file contains documentation of all resources used and financial transactions associated with the incident.

C. POLLUTION REPORTS:
The USCG shall provide copies of pollution reports (POLREPS) to the Director, ERD, USEPA to provide CERCLA removal and fund obligation data. The initial POLREP shall be provided within 72 hours of initiating CERCLA removal. Progress POLREPs should be provided on a routine basis.

No later than 2 weeks after completion of each incident removal, the USCG shall forward a final POLREP to the ERD for inclusion in the USEPA's incident case file.

D. EQUIPMENT:
1. Purchase of equipment to support a removal will be recorded in the IAG and the cost documentation records in the case file.

2. Replacement of items in the National Strike Force (NSF) inventory will be subject to the NSF CERCLA inventory controls.

3. Replacement of USCG equipment or assets is an agency reimbursement, not an equipment purchase for purposes of CERCLA recordkeeping.

4. All equipment purchase records and the equipment will be available for audit.

E. BILLING:
The USCG will submit a bill to:

USEPA Cincinnati Financial Management Center
ATTN: Financial Management Officer
26 West Martin Luther King Drive
Cincinnati, OH 45268

Each bill shall cite: 1) the number of the IAG providing the funding and 2) an incident-specific breakdown of charges. Within 30 days of the billing, NPFC will provide the ERD Project Officer and CFMC additional accounting system reports detailing the costs on the bill by individual incidents using USEPA assigned SSID numbers. CFMC will forward the bill to the USEPA Project Officer for review and approval. Inadequately supported bills will not be paid, or in the case of OPACs will be charged back.

F. USEPA REVIEW:
The USEPA Project Officer will review the billing documents and the other supporting accounting system reports for reasonableness and will approve the payment or, if questions arise, contact NPFC for clarification.

G. PRIOR NOTIFICATION OF COSTS:
The USCG will notify the USEPA Project officer before it incurs costs in excess of 80% of total budget amount for any IAG or in anticipation of undertaking a high cost removal action. In such cases, upon the approval of the USEPA Project Officer, the USCG and the USEPA will develop an amendment to the IAG for increased funding.

H. REPORTING REQUIREMENTS:

1. The USCG will submit quarterly progress reports to the USEPA Project Officer showing obligations in each budget category, balance remaining, summary of activities and property inventory. Reports will be cumulative and the fourth quarterly report of the year will be the final report for the year.

2. The USCG will maintain a list of funded incidents showing open/closed status (i.e., whether further obligations will occur) and will send it to the USEPA Project Officer with the quarterly progress reports.

3. A detailed cost report for each incident will be provided to the USEPA Project Officer with each quarterly report. Each incident-specific cost report will detail costs by the elements which constitute the budget categories appearing on Item 22, EPA IAG Form (1610-1) and all items of equipment purchased outside standard inventory costing over $1,000.

I. ADMIRALTY LAW CASES:
When a USCG OSC leads a CERCLA response involving certain time-sensitive litigation such as an injunction, a vessel arrest or an action by a vessel owner to limit liability, the USCG may be asked to provide the best available information directly to the Department of Justice (DOJ), and it may be appropriate to do so. DOJ often must respond within strict time limits set by the court, which may be before the cost documentation records normally are ready to be forwarded to the USEPA. The USCG agrees to cooperate in such matters, and also will immediately notify the USEPA.

3. CLOSE-OUT PHASE

A. NOTIFICATION OF COMPLETION:
When the USCG has completed removal work on all incidents funded under the IAG for a fiscal year, NPFC will submit, within 60 days, the fourth quarter progress report. That report will serve as a final report to the USEPA Project Officer and include:

1. A list of incidents funded, showing the USEPA SSID number and total cost for each incident.

2. A summary of expenditures by budget category showing the balance of funds remaining.

3. A property inventory for non-expendable items costing over $1,000 each.

B. OSC REPORTS:
When an OSC report is prepared pursuant to the NCP, 40 CFR 300.165 (OSC reports), the USCG will submit a copy of the OSC report to the USEPA Project Officer for inclusion in the incident case file.

C. CLOSE-OUT:
Upon receipt of the final report the USEPA Project Officer will initiate close-out procedures.

D. PROPERTY DISPOSITION:
The USCG will consult the USEPA prior to disposition of property acquired under the IAG to assure that the disposition method properly reflects the interests of Superfund.

APPENDIX B

PROCEDURES FOR "ONGOING RESPONSIBILITIES INTERAGENCY AGREEMENTS (IAGs)

The following procedures are for IAGs to reimburse costs incurred by the USCG for support, training and maintenance of its removal capabilities:

1. ORIGINATION PHASE

   A. The ERD, USEPA HQ, in cooperation with the NPFC, USCG HQ, develops the next fiscal year cost estimate, budget, scope of work and special condition information for the IAG by August 31 of each fiscal year.

   B. The ERD shall prepare the IAG funding package [three (3) original IAGs, a decision memorandum and a commitment notice] and forward it to the AA, OSWER or designee for review and signature.

   C. When approved, the IAG funding package will be forwarded to the GAD, USEPA for legal and administrative review and USEPA Action Official signature.

   D. Following USEPA Action Official signature, GAD transmits two IAG forms to the NPFC, USCG. GAD keeps the third copy as back-up.

   E. The NPFC, USCG official shall review and, if acceptable, sign the two original IAGs, retain one signed original and return the other to GAD, USEPA.

   F. GAD shall retain the signed original and transmit one copy to the CFMC, USEPA for obligation and one copy to the ERD.

2. EXECUTION PHASE

   A. BILLING:
   To receive reimbursement for costs incurred under the IAG, the USCG shall submit a bill to:

      USEPA Cincinnati Financial Management Center
      ATTN: Financial Management Officer
      26 West Martin Luther King Drive
      Cincinnati, OH 45268

   CFMC will forward the bill to the USEPA Project Officer for review and approval. Inadequately supported bills will not be paid, or in the case of OPACs will be charged back.

   Each bill shall contain the IAG number.

The USEPA Project Officer will review the bill for reasonableness and will approve the payment or, if questions arise, contact NPFC for clarification.

B. REPORTING REQUIREMENTS:

The USCG will provide the USEPA Project Officer with the ongoing responsibilities project workplan by December 31 of each year. The workplan will include:

- distribution of reimbursed FTEs by organizational location (specific field office or division in Headquarters);

- identification of organizational elements with CERCLA responsibilities and eligibility for funding under this agreement. Categorize each organization's function under one or more of the following:

  - Emergency Removal Training and Equipment
  - Enforcement
  - National Response Center Support
  - Medical Monitoring
  - Information Systems
  - Program Management
  - Response Readiness - NRT and RRT Support

1. The USCG will submit quarterly progress reports to the USEPA Project Officer showing obligations in each budget category, balance remaining, summary of activities and property inventory. Reports will be cumulative and the fourth quarterly report of the year will be the final report for the year.

2. The USEPA Project Officer will file the workplan and the quarterly progress reports in the ERD IAG file.

3. CLOSE-OUT PHASE:

A. When the USCG has completed work on all activities funded under that IAG, NPFC will submit, within 60 days, the fourth quarter progress report. That will serve as a final report to the USEPA Project Officer and include:

1. Summary of activities;

2. Property inventory for non-expendable items costing over $1000 each;

3. Summary of expenditures by budget category and balance of funds remaining.

B. Upon receipt of the final report, the USEPA Project Officer will initiate close-out procedures.

C. The USCG will consult the USEPA prior to disposition of property acquired under this agreement to assure that the disposition method properly reflects the interests of Superfund.

APPENDIX C

RECORDKEEPING

Under CERCLA, the Federal government is authorized to recover removal costs from responsible parties, including investigatory, cleanup, enforcement and administrative costs. The USEPA intends to recover all such costs. The USCG has established the NPFC which, among other functions, administers USCG use of CERCLA funds.

The USCG will follow the Superfund financial management and recordkeeping guidelines contained in the USEPA's "Superfund Financial Management and Recordkeeping Guidance for Federal Agencies" (January 1989), unless specifically addressed in this MOU or an IAG. Consistent with this, the USCG will create a case file for each incident funded under a multi-incident IAG. The case file will contain a complete set of cost records. The USCG also will create files for cost records for transactions under the ongoing responsibilities IAGs.

1. COST RECOVERY DOCUMENTATION

   The USCG records for Superfund activities will meet the following criteria needed for cost recovery:

   A. CONSISTENT FILING PROTOCOL:
   The USCG will maintain consistent records showing uses of Superfund. The USCG will use its own filing protocols.

   B. TIMELY RESPONSE TO COST RECOVERY DOCUMENTATION REQUESTS:
   The USCG will provide these records to the USEPA upon request within 30 days, unless otherwise agreed.

   C. RECORDS RETAINED:
   The USCG will retain the following cost documentation:

      1. Direct Costs
         Standard Personnel Costs (Including Fringe Benefits)
         Travel
         Extramural (e.g., contractor)
         Materials and Supplies
         Equipment
         Construction

      2. Indirect Costs

      3. Interagency Agreement Documents

D. RECONCILIATION:
Periodically the USCG will reconcile cost documentation with data produced by its accounting system.

E. PERSONNEL COST REIMBURSEMENT MODEL:
The USCG does not employ a universal timecard system that reflects CERCLA activities. To provide detailed and accurate records of personnel costs reimbursed under the ongoing responsibilities IAG, the USCG will periodically generate data using the "Alternative Documentation for USCG Salaries Reimbursed by Superfund" model. If the model justifies fewer than the number of existing CERCLA billets, the USCG will reimburse Superfund for the unsupported number of billets, using the average personnel cost of all the reimbursed billets. The USCG will report the models' computation results in the fourth quarterly progress report. If the model documents more FTEs than the number of existing CERCLA reimbursed billets, reimbursement will not exceed the total amount agreed in the current annual ongoing responsibilities IAG. Increased funding to support additional FTEs in subsequent fiscal years may occur in the annual budget process.

F. STORAGE MEDIA & RECORD SAFETY:
USCG records will be located in the offices where they are used or other areas as secure as possible from fire, water and other damage. Similar provision will be made for safe long-term storage of inactive documentation.

G. IMAGED DOCUMENTS:
Use of imaged documents for cost documentation, billing, and all audit resolution is acceptable under the following conditions:

1. The imaging system is used in the normal course of business.

2. The USCG can certify the accuracy of the system.

H. RECORD RETENTION:
The USCG or its contractors will retain all cost documentation on-site or at a Federal Records Center for a minimum of ten years after submission of a final IAG payment request. If legal action regarding an incident is initiated within the ten year period, records will be retained until the conclusion of legal action. In addition, the USCG will obtain written permission from the USEPA IAG Action Official prior to disposing of any Superfund cost records. Lack of response from the USEPA IAG Action Official within 30 days will constitute approval.

I. AUDITS:
CERCLA requires the Inspector General of each Agency using Superfund to conduct an annual audit of all transactions by that Agency involving the Superfund. USCG cost documentation will be available for audit or verification upon request of the DOT Inspector General. If, based on an audit by the DOT Inspector General, the USCG

determines that any direct or indirect costs charged to Superfund are unallowable, the USCG will immediately notify the USEPA and promptly reimburse Superfund.

2. IAG RECORDS

The USCG financial and program management offices will maintain records for the multi-incident and ongoing responsibilities IAGs. Those records will include, when applicable:

A. FINANCIAL RECORDS:

- IAG forms executed by both agencies.
- Invoices and payment records.
- Closeout documentation, if different from above.

B. PROGRAM RECORDS:

- Record of discussions and contacts and the resulting decisions.
- IAG forms executed by both agencies.
- Endangerment Determinations
- Action Memoranda
- POLREPs
- Invoices and payment records.
- Closeout documentation, if different from above.

ATTACHMENT A

INSTRUMENTS OF REDELEGATION

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THE SECRETARY OF TRANSPORTATION

WASHINGTON, D.C. 20590

OCT 2 1981

The Honorable Anne M. Gorsuch
Administrator
U. S. Environmental Protection Agency
401 "M" Street, S.W.
Washington, D. C. 20460

Dear Mrs. Gorsuch:

Our respective staffs have worked out the attached redelegation instrument for certain functions contained in the "Comprehensive Environmental Response, Compensation and Liability Act of 1980, P.L. 96-510" and Executive Order 12316, "Responses to Environmental Damage". The redelegating instrument is drafted consistent with Section 8 (f) of the Executive Order which authorizes redelegations of functions, with the consent of the head of the agency to which the functions are redelegated.

I am confident that the redelegation agreement properly assigns authority and responsibility consistent with the structure and delegations which you envision for the revised "National Oil and Hazardous Substances Pollution Contingency Plan". I request that you countersign and return the enclosed redelegation instrument, thereby indicating your consent to the redelegation.

Sincerely,

1 Enclosure

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INSTRUMENT OF REDELEGATION

In accordance with Section 8 (f) of Executive Order 12316 of August 14, 1981, the Secretary of the Department in which the Coast Guard is operating hereby redelegates to the Administrator, Environmental Protection Agency, subject to the Administrator's consent, all functions specified in Sections 2 (d), 2 (f), 2 (g), 3 (a), and 4 (b) of that Executive Order with the exception of the following:

a. Functions related to responses to releases or threats of releases from vessels;
b. Functions related to immediate removal action concerning releases or threats of releases at facilities other than active or inactive "hazardous waste management facilities" (as defined in 40 CFR 122.3); and
c. Functions related to immediate removal action concerning releases or threats of releases at active or inactive "hazardous waste management facilities" when the Coast Guard On-Scene Coordinator determines that such action must be taken pending the arrival on scene of an Environmental Protection Agency On-Scene Coordinator. Unless otherwise agreed upon by EPA and Coast Guard, this authority will not be exercised unless the EPA OSC is scheduled to arrive on scene within 48 hours of notification of the release or threat.

For purposes of this instrument: the term "immediate removal action" includes any removal action which, in the view of the Coast Guard On-Scene Coordinator, must be taken immediately to prevent or mitigate immediate and significant harm to human life or health, to the environment, or to real or personal off-site property. Situations in which such action may be taken include, but are not limited to, fire, explosions, and other sudden releases; human, animal, or food chain exposure to acutely toxic substances; and the contamination of a drinking water supply.

All functions described in this instrument, whether redelegated or retained, include the authority to contract for, obligate monies for, and otherwise arrange for and coordinate the responses included within such functions.

_____ _____

Andrew L. Lewis, Jr. Date
Secretary of Transportation

I hereby consent to the redelegation as set forth in this instrument

_____ _____

Anne M. Gorsuch Date
Administrator

PRESIDENTIAL DOCUMENTS

EXECUTIVE ORDER 12316 OF AUGUST 14, 1981

RESPONSES TO ENVIRONMENTAL DAMAGE

By the authority vested in me as President of the United States of America by Section 115 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (94 Stat. 2796; 42 U.S.C. 9615), it is hereby ordered as follows:

Section 1. *National Contingency Plan.*

(a) The National Contingency Plan, hereinafter referred to as the NCP and which was originally published pursuant to Section 311 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1321) shall be amended to contain the implementing procedures for the coordination of response actions to releases of hazardous substances into the environment.

(b) The NCP shall contain a concept of a national response team composed of representatives of appropriate Executive agencies for the coordination of response actions. The national response team shall, in addition to representatives of other appropriate agencies, include representatives of the following: Department of State, Department of Defense, Department of Justice, Department of the Interior, Department of Agriculture, Department of Commerce, Department of Labor, Department of Health and Human Services, Department of Transportation, Department of Energy, Environmental Protection Agency, Federal Emergency Management Agency, and United States Coast Guard.

(c) The responsibility for the amendment of the NCP and all of the other functions vested in the President by Section 105 of the Comprehensive Environmental Response. Compensation, and Liability Act of l980, hereinafter referred to as the Act (42 U.S.C. 9605), is delegated to the Administrator of the Environmental Protection Agency.

(d) In accord with Section 111(h)(1) of the Act and Section 311(f)(5) of the Federal Water Pollution Control Act, as amended (33 U.S.C., 1321(f)(5)), the following shall be among those designated in the NCP as Federal trustees for natural resources:

(1) Secretary of Defense.
(2) Secretary of the Interior.
(3) Secretary of Agriculture.
(4) Secretary of Commerce.

(e) Amendments to the NCP shall be coordinated with members of the national response team prior to publication for notice and comment. Amendments shall also be coordinated with the Federal Emergency Management Agency and the Nuclear Regulatory Commission in order to avoid inconsistent or duplicative requirements in the emergency planning responsibilities of those agencies.

(f) All amendments to the NCP, whether in proposed or final form, shall be subject to review and approval by the Director of the Office of Management and Budget.

Section.2. *Response authorities*.

(a) The functions vested in the President by the first sentence of Section 104(b) of the Act relating to "illness, disease, or complaints thereof" are delegated to the Secretary of Health and Human Services who shall, in accord with Section 104(i) of the Act, perform those functions through the Public Health Service.

(b) (1) The functions vested in the President by Section 101(24) of the Act, to the extent they require a determination by the President that "permanent relocation of residents and businesses and community facilities" is included within the terms "remedy" or "remedial action" as defined in Section 101(24) of the Act, are delegated to the Director of the Federal Emergency Management Agency.

(2) The functions vested in the President by Section 104(a) of the Act, to the extent they require permanent relocation of residents, businesses, and community facilities or temporary evacuation and housing of threatened individuals not otherwise provided for, are delegated to the Director of the Federal Emergency Management Agency.

(c) The functions vested in the President by Section 104 (a) and (b) of the Act are delegated to the Secretary of Defense with respect to releases from Department of Defense facilities or vessels, including vessels owned or bare-boat chartered and operated.

(d) Subject to subsections (a), (b), and (c) of this Section, the functions vested in the President by Sections 101(24) and 104 (a) and (b) of the Act are delegated to the Secretary of the Department in which the Coast Guard is operating, hereinafter referred to as the Coast Guard, with respect to any release or threatened release involving the coastal zone, Great Lakes waters, ports, and harbors.

(e) Subject to subsections (a), (b), (c), and (d) of this Section, the functions vested in the President by Sections 10(24) and 104 (a) and (b) of the Act are delegated to the Administrator of the Environmental Protection Agency, hereinafter referred to as the Administrator.

(f) The functions vested in the President by Section 104 (c), (d), (f), (g), and (h) of the Act are delegated to the Coast Guard, the Secretary of Health and Human Services, the Director of the Federal Emergency Management Agency, and the Administrator in order to carry out the functions delegated to them by subsections (a), (b), (d), and (e) of this Section. The exercise of authority under Section 104(h)

of the Act shall be subject to the approval of the Administrator of the Office of Federal Procurement Policy.

(g) The functions vested in the President by Section 104(e)(2)(C) of the Act are delegated to the Administrator, all other functions vested in the President by Section 104(e) of the Act are delegated to the Secretary of Defense, the Secretary of Health and Human Services, the Coast Guard, the Director of the Federal Emergency Management Agency, and the Administrator of the Environmental Protection Agency, in order to carry out the functions delegated to them by this Section.

Section 3. *Abatement Action*.

(a) The functions vested in the President by Section 206(a) of the Act are delegated to the Coast Guard with respect to any release or threatened release involving the coastal zone, Great Lakes water, ports, and harbors.

(b) Subject to subsection (a) of this Section, the functions vested in the President by Section 106(a) of the Act are delegated to the Administrator.

Section 4. *Liability*.

(a) The function vested in the President by Section 107)(c)(i)(C) of the Act is delegated to the Secretary of Transportation.

(b) The Functions vested in the President by Section 107(c)() of the Act are delegated to the Coast Guard with respect in any release or threatened release involving the coastal zone, Great Lakes waters, ports, and harbors.

(c) Subject to subsection (b) of this Section, the functions vested in the President by Section 107(c)(3) of the Act are delegated to the Administrator.

(d) The functions vested in the President by Section 107(f) of the Act are delegated to each of the Federal trustees for natural resources set forth in Section 1(d) of this Order to resources under their trusteeship.

Section 5. *Financial Responsibility*.

(a) The functions vested in the President by Section 107(k)(6)(B) of the Act are delegated to the Secretary of the Treasury. The Administrator will provide the Secretary with such technical information and assistance as the Administrator may have available.

(b) The functions vested in the President by Section 108(a) of the Act are delegated to the Federal Maritime Commission. Notwithstanding Section 1(d) of Executive Order No. 12291, the regulations issued pursuant to this authority shall be issued in accordance with that Order. The Commission shall be responsible, in accord with Section 109 of the Act, for the enforcement of civil penalties for violations of the regulations issued under Section 108(a) of the Act.

(c) The functions vested in the President by Section 108(b) of the Act are delegated to the Secretary of Transportation with respect of all transportation related facilities, including any pipeline, motor vehicle, rolling stock, or aircraft.

(d) Subject to subsection (c) of this Section, the functions vested in the President by Section 108(b) of the Act are delegated to the Administrator.

Section.6. *Employee Protection and Notice to Injured*.

(a) The functions vested in the President by Section 110(e) of the Act are delegated to the Secretary of Labor.

(b) The functions vested in the President by Section 111(g) of the Act are delegated to the Secretary of Defense with respect to releases from Department of Defense facilities or vessels, including vessels owned or bare-boat chartered and operated.

(c) Subject to subsection (b) of this Section, the functions vested in the President by Section 111(g) of the Act are delegated to the Administrator.

Section 7. *Management of the Hazardous Substance Response Trust Fund and Claims*.

(a) The functions vested in the President by Section 111(a) of the Act are delegated to the Administrator, subject to the provisions of this Section and applicable provisions of this Order.

(b) The Administrator shall transfer, to transfer appropriation accounts for other agencies, from the Hazardous Substance Response Trust Fund, out of sums appropriated, such amounts as the Administrator may determine necessary to carry out the purposes of the Act. These allocations shall be consistent with the President's Budget, within the amounts approved by the Congress, unless a revised allocation is approved by the Director of the Office of Management and Budget.

(c) The Administrator shall chair a budget task force composed of representatives of agencies having responsibilities under this Order or the Act. The Administrator shall also, as part of the budget request for the Environmental Protection Agency, submit a budget for the Hazardous Substance Response Trust Fund which is based on recommended allocations developed by the budget task force. The Administrator may prescribe reporting and other forms, procedures, and guidelines to be used by the agencies of the Task Force in preparing the budget request.

(d) The Administrator and each agency head in whom funds are allocated pursuant to this Section, with respect to funds allocated to them, are authorized in accordance with Section 111(f) of the Act to designate Federal officials who may obligate such funds.

(e) The functions vested in the President by Section 112 of the Act are delegated to the Administrator for all claims presented pursuant to Section III.

Section 8. *General Provisions*.

(a) Notwithstanding any other provision of this Order, any representation pursuant to or under this Order in any judicial or quasi-judicial proceedings shall be by or through the Attorney General. The conduct and control of all litigation arising under the Act shall be the responsibility of the Attorney General.

(b) Notwithstanding any other provision of this Order, the President's authority under the Act to require the Attorney General to commence litigation is retained by the President.

(c) The functions vested in the President by Section 301 of the Act are delegated as following:

(1) With respect to subsection (a), to the Administrator in consultation with the Secretary of the Treasury.
(2) With respect to subsection (b), to the Secretary of the Treasury.
(3) With respect to subsection (c), to the Secretary of the Interior.
(4) With respect to subsection (f), to the Administrator.

(d) The Attorney General shall manage and coordinate the study provided for in Section 301(e) of the Act.

(e) The performance of any function under this Order shall be done in consultation with interested agencies represented on the national response team, as well as with any other interested agency.

(f) Certain functions vested in the President by the Act which have been delegated or assigned by this Order may be redelegated to the head of any agency with his consent; those functions which may be redelegated are those set forth in Sections 2, 3, 4(b), 4(c), and 6(c) of this Order.

(g) Executive Order No. 12286 of January 19, 1981, is revoked.

THE WHITE HOUSE
August 14, 1981.

[FR Doc. 81-24411
Filed 8-16-81, 1:23 pm]
Billing code 3125-01-M

INSTRUMENT OF REDELEGATION

1. Except as provided in paragraph 2 below, in accordance with Section 11(g) of Executive Order 12580 of January 23, 1987, the Secretary of the Department in which the Coast Guard is operating hereby delegates to the Administrator, Environmental Protection Agency (EPA), subject to the Administrator's consent.
   a. all functions specified in Sections 2(f) 4(c), and 5(b) of that Executive Order; and
   b. the functions specified in Sections 2(i), 2(j)(2), 2(k), and 6(c) of that Executive Order to the extent that those functions relate to the functions specified in Section 2(f) of that Executive Order.

2. The functions redelegated under this Instrument of Redelegation do not include;
   a. functions related to responses to releases or threats of releases from vessels;
   b. functions related to emergency action concerning releases or threats of releases at facilities other than active or inactive "hazardous waste management facilities" (as defined in 40 CFR 270.2); and
   c. functions related to emergency action concerning releases or threats of releases at active or inactive "hazardous waste management facilities" when the Coast Guard On-Scene Coordinator (OSC) determines that such action must be taken pending the arrival on scene of an EPA OSC. Unless otherwise agreed upon by the EPA and Coast Guard, this authority will not be exercised unless the EPA OSC is scheduled to arrive on scene within 48 hours of notification of the release or threat of release.

3. For purposes of this Instrument, the term "emergency action", includes any removal action which, in the view of the Coast Guard OSC, must be taken immediately to prevent or mitigate immediate and significant danger to the public health, welfare or the environment. Situations in which such actions may be taken include, but are not limited to, fire, explosions, and other sudden releases; human, animal, or food chain exposure to acutely toxic substance, and the contamination of a drinking water supply.

4. All functions described in this document, whether redelegated or retained, include the authority to contract for, obligate monies for, and otherwise arrange for and coordinate the responses included within such functions.

_____

(Acting) Date

Secretary of Transportation

I hereby consent to the redelegation as set forth in this instrument.

_____

Date

Administrator, Environmental Protection Agency

ATTACHMENT B

ENDANGERMENT DETERMINATION

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FINDING OF IMMINENT AND SUBSTANTIAL ENDANGERMENT
AT THE
SUPERFUND INCIDENT

Because of the factors outlined below, I have determined that a threat exists to the public health or welfare or the environment at the _____ Superfund incident. An imminent and substantial endangerment to the public health or welfare or the environment exists because of an actual or threatened release of a hazardous substance at or from the incident.

1. SUPERFUND INCIDENT INFORMATION

Incident Name: _____

Incident Number: _____

Incident Location: _____
(County, and State)

USCG Contractor: _____

Potentially Responsible Party: _____

Access: _____ Restricted _____ Unrestricted

NPL Status: _____

Removal Start Date: _____

2. THREAT TO PUBLIC HEALTH OR WELFARE OR THE ENVIRONMENT

A. Chronological Background _____

_____

_____

_____

(e.g., when incident initially identified and by whom, number of drums, etc.)

B. Hazardous Substances Present _____

_____

_____

(if known, otherwise indicate "suspected hazardous substance")

C. Nature of Actual or Threatened Release of Hazardous Substance at or from the Incident _____

_____

_____

_____

(e.g., drum of unknown materials washed ashore, leaking drum, unknown material released into a stream resulting in a fish kill, level of security provided to minimize threat, etc.)

Check applicable factors (from Section 300.415 of the National Contingency Plan NCP) which were considered in determining the appropriateness of a removal action:

_____300.415(b) (2) (i) Actual or potential exposure sure to nearby human populations, animals, or the food chain from hazardous substances or pollutants or contaminants.

_____300.415(b) (2) (ii) Actual or potential contamination of drinking water supplies or sensitive ecosystems.

_____300.415(b) (2) (iii) Hazardous substances or pollutants or contaminants in drums, barrels, tanks, or other bulk storage containers, that pose a threat of release.

_____300.415(b) (2) (iv) High levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface, that may migrate.

_____300.415(b) (2) (v) Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released.

_____300.415(b) (2) (vi) Threat of fire or explosion.

_____300.415(b) (2) (vii) The availability of other appropriate Federal or State response mechanisms to respond to the release.

_____Other situations or factors that may pose threats to public health or welfare or the environment.

3. SELECTED REMOVAL ACTION (briefly describe removal; e.g., disposal of drums, neutralization of corrosive, conduct of analysis to determine hazardous substances present, security provided to eliminate threat, etc.)

This finding of imminent and substantial endangerment has been entered in the incident's administrative record.

_____

(Signature)

(_____typed name _____)

(_____title___ _____)

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MEMORANDUM OF UNDERSTANDING

between

THE NATIONAL OCEAN SERVICE/NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

and

THE NATIONAL POLLUTION FUNDS CENTER/UNITED STATES COAST GUARD

For Funding and Reimbursement in Support of

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

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I. PURPOSE

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

II. DEFINITIONS

A. Federal On-Scene Coordinator (FOSC)

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

B. Scientific Support Coordinator (SSC)

When designated by the FOSC, the NOAA SSC is the principal advisor for scientific issues, communication with the scientific community, and coordination of requests for assistance from state and Federal agencies regarding scientific studies. The SSC may serve on the FOSC's staff supporting the Unified Command or within the Planning or Operational Component of the Incident Command System and may, at the FOSC's request lead a scientific team to provide scientific support for operational decisions.

C. Regional Response Team (RRT)

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

D. Remove or Removal

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

E. Removal Costs

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

F. NOAA Hazardous Materials Response Division (HAZMAT)

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

III. REFERENCES AND AUTHORITIES

A. NOAA

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

B. Coast Guard

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

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

IV. NOAA SUPPORT TO AN OIL OR HAZARDOUS MATERIALS SPILL

A. Scientific Support Team (SST) Support

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

B. Other Support Services From NOAA

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

V. POLLUTION REMOVAL FUNDING AUTHORIZATION (PRFA)

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

A. Non-Reimbursable Costs

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

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

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

salary, overtime, compensatory time, and, if applicable, holiday pay and hazardous duty pay;

2. NOAA overhead costs for labor (distribution rates) as published annually by the NOAA Comptroller;
3. Travel and per diem expenses;
4. Established charges for using NOAA-owned equipment or facilities, including NOAA-owned aircraft, ships, and associated indirect costs;
5. Actual expenses authorized by the FOSC as removal costs.

C. Incident Cost Documentation File

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

D. Equipment

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

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

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

E. Cost Documentation

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

F. Billing

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

VI. MODIFICATION AND TERMINATION

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

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

VII. OTHER PROVISIONS

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

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

VIII. PERIOD OF AGREEMENT

This MOU shall continue to be in effect until terminated, modified, or amended. This MOU shall become effective on the date of the last signature below.

IX. SIGNATURES

Date 8/30/99

Date 9/15/99

Daniel F. Sheehan
Director
National Pollution Funds Center
United States Coast Guard
4200 Wilson Blvd, Suite 1000
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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APPENDIX A

NPFC USER REFERENCE GUIDE

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

1. Organizations Using Pollution Funds. This provides information on entities able to access the Funds managed by NPFC and includes: MSOS, G-M, G-MOR, Strike Teams, PIAT, EPA, MECs, FINCEN, Other Federal Agencies, States, and Trustees.

2. Introduction to NPFC. This describes the origins, roles, missions, case teams, regions, functional contacts, and frequently used acronyms.

3. Removal Actions. This provides procedures for accessing the Funds for Clean Water Act and CERCLA removals. It includes FOSC financial management checklists, guidance on mystery spills, ACP guidance, and reports. The Technical Operating Procedures (TOPS) for Removal Costs and the TOPS for Resource and Cost Documentation are included in this chapter.

4. Investigative Considerations. This addresses liability limits, proximate cause, designation of source, notification advertising, and potential responsible parties.

5. State Access. This includes the State Access TOPS and the State Access regulations issued under OPA, Section 1012(d)(1). It also addresses procedures to be used by states for requesting funds, removal costs, pollution reports, payment, litigation, and cooperative agreements.

6. Natural Resource Damage Assessments. This includes the NRDA/Initiate TOPS, which contains initiation criteria, purchase of property, reporting, and requests for reimbursement.

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

APPENDIX B

PROCEDURES FOR "COST REIMBURSEMENT" UNDER THE POLLUTION REMOVAL FUNDING AUTHORIZATION (PRFA)

The following are cost reimbursement protocols for those services provided by NOAA as part of an oil or hazardous materials response.

I . Execution Phase

A. Following a request for NOAA support services, the Scientific Support Coordinator (SSC) or SSC representative will notify and provide HAZMAT's Program Support Group (PSG) with information pertaining to resource utilization and the associated FPN or CPN (Federal Project Number for oil incidents, CERCLA Project Number for hazardous substance incidents), FOSC (or representative), and telephone number.

B. PSG will prepare an estimate of actual costs for resources used and pre-approved by the FOSC. The estimate is sent to the FOSC (or representative) and the NPFC case officer.

C. The FOSC (or representative) will provide PSG with a Pollution Removal Funding Authorization (PRFA). The PRFA documents the pollution incident name, identification number (FPN or CPN), funding limit point of contact, and FOSC billing address.

D. The PSG confers with the SSC when costs incurred begin to reach the PRFA funding limit. Updates to NOAA's estimated costs are provided to the FOSC through the SSC and to the NPFC as needed but no more than twice during a seven-day period.

E. PSG provides the FOSC and NPFC with the updated cost estimate from which the FOSC develops a PRFA amendment. Depending on the length of the response, the PRFA may be amended several times.

2. Reimbursement of Expenses

A. PSG collects all cost documentation associated with an incident as costs are incurred. (See Section 3 for reimbursement procedure for the post performance audit charges.)

B. PSG reviews the incident file with NOAA's financial management information system to determine if chargeable costs are accurate and makes any corrections.

C. Once all incident costs are accurately recorded in NOAA's financial management system or 120 days after removal activities are complete (whichever comes first), PSG prepares a cost spreadsheet billing for submission to the NPFC via the incident FOSC. The FOSC must verify that the actual costs on the spreadsheet are for resources that were used as approved during the specific incident. The spreadsheet will cite: 1) the pollution incident name, 2) FPN or CPN identification number and 3) an incident-specific breakdown of charges.

D. Concurrently, PSG notifies the Office of Response and Restoration (OR&R), HAZMAT's parent organization, to initiate a request to the NOAA Comptroller's office to prepare an SF-1081 that is sent to the FOSC, copy to NPFC, within 120 days after removal activities are complete. The SF-1081 includes the agency's address, agency location code, fiscal year, Treasury symbol, and task code associated with the billing costs.

The address and agency location code of the NPFC are:

(Case officer name)
National Pollution Funds Center (cm)
4200 Wilson Boulevard, Suite 1000
Arlington, VA 22203-1804
Re: FPN_____
Agency Location Code: 69-025102

E. The Coast Guard FOSC and NPFC will review NOAA's SF-1081 billing, authorize it for payment, and forward it to the USCG Finance Center within 30 days of receipt, unless there are substantial problems with the SF-1081 package. Reimbursement is accomplished through the OPAC (On Line Payment and Collection) System.

F. In the event of a lengthy or large incident, NOAA will submit an interim billing as agreed upon between the NPFC case officer and PSG. The interim billing process uses the same procedures as outlined in A through E above.

3. Post-Performance Audit Charges

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

A. PSG will notify the NPFC that a contract is under a post-performance audit review and the incidents that are associated with the contract.

B. If the audit identifies an additional cost, PSG will bill the NPFC for the post-performance audit charge. If the audit identifies that NOAA overcharged and was reimbursed too much, PSG will prepare a refund using the OPAC process.

C. Once post-performance audit charges or overcharges are accurately recorded in NOAA's financial management system, PSG prepares a cost spreadsheet billing with the post performance audit charges/refund for submission to the NPFC. The spreadsheet will cite: 1) each pollution incident name associated with the contract, 2) FPN or CPN identification number, and 3) the post-performance audit charge/refund.

D. Concurrently, PSG notifies OR&R to initiate a request to the NOAA Comptroller's office to prepare an SF-1081 that is sent to the NPFC within 60 days after the audit. The SF-1081 includes the agency's address, agency location code, fiscal year, Treasury symbol, and task code associated with the billing costs. The address and agency location code of the NPFC is:

National Pollution Funds Center (cf)
4200 Wilson Boulevard, Suite 1000
Arlington, VA 22203-1804
Re: FPN_____
Agency Location Code: 69-025102

E. NPFC will review NOAA's SF-1081 billing, authorize it for payment, and forward it to the USCG Finance Center within 30 days of receipt, unless there are substantial problems with the SF-1081 package. Reimbursement or refunds are accomplished through the OPAC (On Line Payment and Collection) System.

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.

Inter-agency Memorandum of Agreement Regarding Oil Spill Planning and Response Activities Under the Federal Water Pollution Control Act's National Oil and Hazardous Substances Pollution Contingency Plan and the Endangered Species Act

INTRODUCTION

A. Parties. The Parties to this agreement are the U.S. Coast Guard (USCG), the U.S. Environmental Protection Agency (USEPA), the Department of the Interior (DOI) Office of Environmental Policy and Compliance, the U.S. Fish and Wildlife Service (USFWS), and the National Oceanic and Atmospheric Administration's (NOAA's) - National Marine Fisheries Service (NMFS) and National Ocean Service (NOS).

B. The Parties have conducted a review of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) and associated oil spill response activities to coordinate their actions under Section 1321(d) of the Clean Water Act and Section 7(a)(1) of the Endangered Species Act, as amended (16 U.S.C. 1531 et seq.) (ESA). Section 1321(d) of the Clean Water Act establishes the NCP and assigns responsibilities to Federal agencies in mitigating damage from oil and hazardous materials spills, including the conservation of fish and wildlife. Section 7(a)(1) of the ESA requires all Federal agencies, in consultation with and with the assistance of the Secretaries of the Interior or Commerce, as appropriate, to review their programs and utilize their authorities in furtherance of the purposes of the ESA by carrying out programs for the conservation of listed species. As a result of this review, recommended procedures have been developed that will achieve better conservation of listed species and critical habitat during implementation of oil spill response activities.

C. This agreement provides a general framework for cooperation and participation among the Parties in the exercise of their oil spill planning and response responsibilities. Following the recommended procedures presented in this agreement will better provide for the conservation

of listed species, improve the oil spill planning and response procedures delineated in the NCP, and ultimately streamline the process required by Section 7(a)(2) of the ESA.

PURPOSE

A. This agreement is intended to be used at the area committee level primarily to identify and incorporate plans and procedures to protect listed species and designated critical habitat during spill planning and response activities. Proactive regional planning may also take into consideration concerns for proposed and candidate species, as well as listed species' habitat not yet designated as critical.[1]

B. This agreement coordinates the consultation requirements specified in the ESA regulations, 50 CFR 402, with the pollution response responsibilities outlined in the NCP, 40 CFR 300. It addresses three areas of oil spill response activities: pre-spill planning activities, spill response event activities, and post-spill activities. The agreement identifies the roles and responsibilities of each agency under each activity. By working proactively before a spill to identify potential effects of oil spill response activities on listed species and critical habitat, and jointly developing response plans and countermeasures (response strategies) to minimize or avoid adverse effects, impacts to listed species and critical habitat should be reduced or avoided completely. Should a spill occur, response plans and countermeasures will be used to implement response actions to minimize damage from oil discharges in a manner that reduces or eliminates impacts to listed species and critical habitat. In the event that oil spill response actions may result in effects on listed species or critical habitat, the agreement provides guidance on how to conduct emergency consultation under the ESA. It also describes the steps for completing formal consultation, if necessary, after the case is closed, if listed species or critical habitat have been adversely affected.

C. The goal of this agreement is to engage in informal consultation wherever possible during planning and response. With adequate planning and ongoing, active involvement by all participants, impacts to listed species and critical habitat and the resulting need to conduct subsequent ESA Section 7(a)(2) consultations will be minimized or obviated.

LEGAL AUTHORITIES

A. The Federal Water Pollution Control Act (FWPCA), 33 U.S.C. § 1321., requires that when a spill occurs, the President take such action as necessary to ensure effective and immediate removal of a discharge, and mitigation or prevention of a substantial risk of a discharge of oil into the waters of the United States. The National Contingency Plan (NCP), 40 CFR Part

[1] Adverse effects on non-designated critical habitat used by listed species has a potential for having an adverse affect on these listed species. Therefore, planners should consider these areas if information is available.

300, prepared in accordance with the FWPCA, assigns duties to Federal agencies to protect the public health and welfare, including fish, wildlife, natural resources and the public. The NCP designates the Federal On Scene Coordinator (FOSC) as the person responsible for coordinating an oil spill response. (The abbreviation OSC is used in the NCP, while the abbreviation for Federal On Scene Coordinator is FOSC in this agreement.) Nothing in this agreement limits the authority of the Federal On Scene Coordinator as defined in the NCP.

B. The Endangered Species Act of 1973 (ESA), as amended, 16 U.S.C. §1531 et seq., provides a means to protect threatened and endangered species and the ecosystems upon which they depend. The ESA requires that Federal agencies insure that the actions they authorize, fund, or carry out do not jeopardize listed species or adversely modify their designated critical habitat. Regulations for conducting Section 7 consultation are set forth in 50 CFR Part 402.

DEFINITIONS

The following definitions apply to this agreement and are taken from the definitions contained in either the NCP or the March 1998 USFWS & NMFS Endangered Species Consultation Handbook. For definitions of terms not listed below, refer to the USFWS & NMFS Endangered Species Consultation Handbook and the NCP as appropriate.

Area Committee - the entity appointed by the President consisting of members from qualified personnel of Federal, state, and local agencies with responsibilities that include preparing an area contingency plan for an area designated by the President. The chairs of the Area Committee are the USCG for coastal and Great Lakes plans, and the USEPA for inland plans. In some instances the Regional Response Team (RRT) may act as the Area Committee. In this MOA, the term Area Committee also includes the RRT acting as the Area Committee.

Area Contingency Plan (ACP) - the plan prepared by an Area Committee (or the RRT acting as the Area Committee) that is developed to be implemented in conjunction with the NCP and Regional Contingency Plan (RCP), in part to address removal of a worst case discharge and to mitigate or prevent a substantial threat of such a discharge from a vessel, offshore facility, or onshore facility operating in or near an area designated by the President. A detailed annex containing a Fish and Wildlife and Sensitive Environments Plan prepared in consultation with the USFWS, NOAA, and other interested natural resource management agencies should be incorporated into each ACP. In this MOA, the term ACP also includes sub-area ACP's, sub-area contingency plans, geographic response plans and geographic response strategies as per 40 CFR 300.210.

Biological Assessment - information prepared by or under the direction of the Federal action agency (USCG or USEPA) regarding: 1) listed and proposed species and designated critical habitat that may be affected by proposed actions; and, (2) the evaluation of potential effects of the proposed actions on such species and habitat.

Biological Opinion - document which includes: (1) the opinion of the USFWS or NMFS as to whether or not a Federal action is likely to jeopardize the continued existence of listed species, or result in the destruction or adverse modification of designated critical habitat; (2) a summary of the information on which the opinion is based; and (3) a detailed discussion of the effects of the action on listed species or designated critical habitat. This document will also contain an incidental take statement, that, if appropriate, exempts the Federal actions from the ESA Section 9 take prohibitions.

Candidate species – plant and animal taxa considered for possible addition to the List of Threatened and Endangered Species.

Case is Closed – When removal operations are complete in accordance with 40 CFR 300.320(b).

Critical habitat - areas designated by the USFWS and NMFS pursuant to Section 4 of the ESA for the purposes of identifying areas essential for the conservation of a threatened or endangered species and which may require special management considerations.

Emergency Consultation – an expedited consultation process that takes place during an emergency (natural disaster or other calamity) (50 CFR 402.05). The Services have determined that oil spill response activities qualify as an emergency action. The consultation may be initiated informally. The emergency continues to exist until the removal operations are completed and the case is closed in accordance with 40 CFR 300.320(b). The FOSC will continue to conduct emergency consultations, if needed, until the emergency is over and the case is closed. Formal, or informal, consultation is initiated after the emergency is over, at which time the USFWS and/or NMFS evaluates the nature of the emergency actions, the justification for the expedited consultation, and any impacts to listed species and their habitats.

Federal On Scene Coordinator (FOSC) - the Federal official predesignated by USEPA or the USCG to coordinate and direct responses under the FWPCA as defined in the NCP.

Formal Consultation[2] - a process between USFWS or NMFS and the Federal action agency (USCG or USEPA) that: (1) determines whether a proposed Federal action is likely to jeopardize the continued existence of listed species or destroy or adversely modify designated critical habitat; (2) begins with a Federal agency's written request and submission of a complete Section 7 consultation initiation package; and (3) concludes with the issuance of a biological opinion and incidental take statement, as appropriate, by either of the Services. If a proposed Federal action may affect a listed species or designated critical habitat, formal consultation is required (except when the Services concur, in writing, that a proposed action "is not likely to adversely affect" listed species or designated critical habitat. See informal consultation).

Incidental Take - take of listed fish or wildlife species that results from, but is not the purpose of, carrying out an otherwise lawful activity conducted by a Federal agency or applicant.

Informal Consultation - an optional process that includes all discussions and correspondence between the USFWS or NMFS and the Federal agency (USCG or USEPA) or designated non-Federal representative, prior to formal consultation, to determine whether a proposed Federal action may affect listed species or critical habitat. This process allows the Federal agency to utilize the Services' expertise to evaluate the agency's assessment of potential effects or to suggest possible modifications to the proposed action, which could avoid potential adverse effects. If a proposed Federal action may affect a listed species or designated critical habitat, formal consultation is required (except when the Services concur, in writing, that a proposed action "is not likely to adversely affect" listed species or designated critical habitat).

Listed Species – for the purposes of this MOA, any species of fish, wildlife or plant, which has been determined to be endangered or threatened under Section 4 of the ESA.

National Contingency Plan (NCP) – National Oil and Hazardous Substances Pollution Contingency Plan. The NCP is a national plan that provides the organizational structure and procedures for preparing for and responding to discharges of oil and releases of hazardous substances, pollutants and contaminants. The NCP is set forth in 40 CFR 300.

[2] Formal consultation can occur during planning or after the conclusion of emergency consultation if listed species or critical habitat have been affected.

National Response Team (NRT) - a national team, defined under the NCP, responsible for national planning, policy, and coordination for hazardous substance and oil spill preparedness and response, consisting of representatives from agencies named in 40 CFR 300.175(b).

Regional Response Team (RRT) - a regional team of agency representatives that acts in two modes: the standing RRT and incident specific RRT. The Co-chairs are the USCG and USEPA. The standing team is comprised of designated representatives from each participating Federal agency, state governments and local governments (as agreed upon by the states). Incident-specific teams are formed from the standing team when activated for a response. The role of the standing RRT includes establishing regional communications and procedures, planning, coordination, training, evaluation, preparedness and related matters on a region-wide basis. It also includes assisting Area Committees in coordinating these functions in areas within their specific regions. The role and composition of the incident-specific team is determined by the operational requirements of the response. During an incident, it is chaired by the agency providing the FOSC.

Services – Term used to refer to both the USFWS and NMFS.

PROCEDURES

Oil spill planning and response procedures are set forth in the NCP. This agreement is intended to facilitate compliance with the ESA without degrading the quality of the response conducted by the FOSC, to improve the oil spill planning and response process, and ensure continued inter-agency cooperation to protect, where possible, listed species and critical habitat.

A. PRE-SPILL PLANNING

(1) While drafting Area Contingency Plans themselves may not result in effects to listed species, actions implemented under the plans may. It is essential that the Area Committee engage USFWS and NMFS during the ACP planning process while developing or modifying the ACP and response strategies. This informal consultation can be used to determine the presence of listed species or critical habitat, and the effects of countermeasures, and to ensure that measures to reduce or avoid impacts to listed species and critical habitats during oil spill response activities are developed. By consulting on the anticipated effects prior to implementing response actions, decisions can be made rapidly during the spill, harm from response actions can be minimized, and implementation of response strategies specifically designed to protect listed species and critical habitat can be achieved.

(2) The pre-spill planning process is shown as a flow chart in Appendix A. The Area Committee Chair will request, in writing, that endangered species expertise and a species list be provided by the Services.[3] The request should also describe the area and include a general description of the countermeasures being considered and the planning process to be used (e.g., a workgroup). In order to document the request for consultation and planning involvement, the request shall be sent to both NOAA and USFWS. To obtain NMFS assistance, a request

[3] 40 CFR 300.170(a).

should be sent to the Department of Commerce (DOC) RRT representative, with a copy to the NOAA Scientific Support Coordinator (SSC) and the NMFS Regional Field Office. For USFWS support, a request should be sent to the local USFWS field office(s), with a copy to the USFWS Regional Response Coordinator (RRC) at the appropriate USFWS Regional Office(s) and the DOI RRT representative. It is the responsibility of the USFWS RRC, acting through the Ecological Services Assistant Regional Director, and the NOAA SSC to act as a liaison between the respective Service and the Area Committee. USFWS and NMFS will orally respond to the request within 30 days of receipt and provide a written response within 60 days. The response should include designation of a listed species expert to assist the Area Committee.

(3) If listed species or critical habitat are present in the planning area being considered the Area Committee should use a planning process that ensures engagement of Service experts.[4] This process shall ensure that the appropriate participants jointly gather and analyze the information needed to complete the Planning Template in Appendix C. This planning process constitutes informal consultation.[5] The goals of this planning process are to identify the potential for oil spill response activities to adversely affect listed species and critical habitat and to identify for inclusion in the ACP information on sensitive areas, emergency response notification contacts, and any other information needed. Methods should be developed to minimize identified adverse effects and, where necessary, the plan should be modified accordingly. If specific sources of potential adverse effects are identified and removed, the Services will provide a concurrence letter and Section 7(a)(2) requirements will be deemed to have been met.[6]

(4) If, after the process in Appendix C has been followed, it cannot be determined that adverse effects will not occur during a response action, the USCG or USEPA, as appropriate, will initiate formal consultation using the information gathered in Appendix C; this information will be used by the Services to complete formal consultation.[7] This will be a programmatic consultation that generally addresses oil spill response activities at issue in the plan area. At times when specific information is available about certain oil spill response methods and listed species and critical habitat, it may be possible to pre-approve particular activities that may be implemented in the event there is insufficient time to initiate emergency consultation before the need to take action.[8]

(5) All parties recognize that development and modification of the ACP is an ongoing process. Changes, including modifications to response actions or changes to the species list, should be addressed regularly through a dynamic planning process. The Services should contact the

[4] Process options include using an informal workgroup; formal workgroup, Environmental Risk Assessment process, or other process based on Area Committee needs.
[5] This process does not negate any regional consultations that have already occurred, nor alter the strategies/procedures in the ACP until the ACP is officially modified in consultation with USFWS or NMFS.
[6] Letter is required for the administrative record. See Appendix E.
[7] Letter is required for the administrative record. See Appendix E.
[8] Due to time constraints associated with spill response, this does not mean that immediate spill response actions cannot occur to meet the requirements of 40 CFR 300.317. However, planning should address specific procedures for initiating emergency consultation for activities that are pre-approved and for those that have not been pre-approved.

Area Committee or workgroup if they become aware of newly listed species that may be affected by planned response activities. The Area Committee should likewise notify the Services of changes to planned response activities. The Area Committee or workgroup should evaluate any changes and assess the need for additional consultation as needed.

B. OIL SPILL RESPONSE

During an oil spill event which may affect listed species and/or critical habitat, emergency consultations under the ESA are implemented (50 CFR 402.05) for oil spill response actions.[9] Emergency consultation may be conducted informally through the procedures that follow (See Appendix A). Emergency consultation procedures allow the FOSC to incorporate listed species concerns into response actions during an emergency. "Response" is defined in this agreement as the actions taken by the FOSC in accordance with the NCP. The FOSC conducts response operations in accordance with the NCP and agreement established in the ACP.

(1) As per the NCP and ACP, the FOSC will notify the RRT representatives of DOI and DOC through the established notification process regardless of whether listed species or critical habitat is present. Upon notification, the DOC and DOI representatives shall contact the NOAA SSC and RRC, respectively, and other appropriate Service contacts as provided in internal DOC or DOI plans, guidance, or other documents. If established in the ACP, the FOSC may also contact the Service regional or field offices directly (see Section V(A)(3) above). If listed species and/or critical habitat are present or could be present, the FOSC shall initiate emergency consultation by contacting the Services. The NOAA SSC and RRC shall coordinate appropriate listed species expertise. This may require timely on-scene expertise from the Services' local field offices. These Service representatives may, as appropriate, be asked by the FOSC to participate within the FOSC's Incident Command System and provide information to the FOSC.[10]

(2) The ACP, including any agreed upon references cited in the ACP, should form the basis for immediate information on response actions. As part of emergency consultation, the Services shall provide the FOSC with any timely recommendations to avoid and/or minimize impacts to listed species and critical habitat.[11] The NOAA SSC should also be involved in these communications as appropriate. If incidental take is anticipated, and if no means of reducing or avoiding this take are apparent, the FOSC should also be advised and the incidental take documented. If available, the FOSC should consider this information in conjunction with the national response priorities established in the NCP.[12] The FOSC makes the final determination of appropriate actions.

(3) It is the responsibility of both the FOSC and the Services' listed species representatives to maintain a record of written and oral communications during the oil spill response. The checklist contained in Appendix B is information required to initiate a formal consultation in those instances where listed species and/or critical habitat have been adversely affected by

[9] Based on pre-spill planning or discovered during the response.
[10] 40 CFR 300.175(b)(7) & (b)(9); 40 CFR 300.305(e).
[11] See Section 8.1 of the USFWS & NMFS Endangered Species Consultation Handbook (http://endangered.fws.gov/consultations/s7hndbk/s7hndbk.htm).
[12] 40 CFR 300.317 National Response Priorities.

response actions.[13] If it is anticipated that listed species and/or critical habitat may be affected, the FOSC may request that the USFWS and/or NMFS representative to the Incident Command System oversee and be responsible for the gathering of the required information in Appendix B while the response is still ongoing.[14] The FOSC may also choose to designate another individual to be responsible for collecting the information.[15] Although in some instances the drafting of information for Appendix B may be completed after field removal operations have ceased, it is anticipated that collection of the information should be complete before the case is officially closed and that no further studies will be necessary.

(4) It is the responsibility of the FOSC to notify the Services' representatives in the Incident Command System of changes in response operations due to weather, extended operations, or some other circumstance. It is the responsibility of the Services to notify the FOSC of seasonal variances (e.g., bird migration), or other natural occurrences affecting the resource. If there is no Service representative in the Incident Command System, the FOSC will ensure that the NOAA SSC and/or DOI representative to the RRT remains apprised of the situation. The Services will continue to offer recommendations, taking into account any changes, to avoid jeopardizing the continued existence of listed species or adversely modifying critical habitat, and to minimize the take of listed species associated with spill response activities.

[13] See Section 8.2(B) of the USFWS & NMFS Endangered Species Consultation Handbook.
[14] If requested by the FOSC, the NOAA Scientific Support Coordinator (SSC) may coordinate this data collection.
[15] See Appendix D for example Pollution Removal Funding Authorization (PRFA) Statement of Work language.

C. POST RESPONSE

If listed species or critical habitat have been adversely affected by oil spill response activities, a formal consultation is required, as appropriate.[16] Informal emergency consultation shall remain active until the case is closed. The FOSC will initiate consultation on the effect of oil spill response activities (not the spill itself) after the case is closed. Every effort shall be made to ensure that relevant information generated as part of the consultation process is made available for use in the Natural Resource Damage Assessment (NRDA) process. (Note: NRDA activities are separate from this consultation.)

(1) After the FOSC determines that removal operations are complete in accordance with 40 CFR 300.320(b), the impacts of the response activities on listed species and critical habitat will be jointly evaluated by the FOSC and the Services.

(2) If listed species or critical habitat were adversely affected by oil spill response activities, the FOSC will follow the procedural requirements of 50 CFR 402.05(b) (see Appendix A). The document developed by following Appendix B, information required to initiate a formal consultation following an emergency, should be included with a cover letter to the Services requesting consultation and signed by the FOSC. The FOSC will work with the Services and the NOAA SSC, as appropriate, to ensure that Appendix B is complete.[17] This document comprises the FOSC's formal request for consultation.

(3) The Services normally issue a biological opinion within 135 days of receipt of the Section 7 consultation request (50 CFR 402.14). When a longer period is necessary, and all agencies agree, the consultation period may be extended. The final biological opinion will be prepared by the Services and provided to the FOSC, USFWS RRC, NOAA SSC, DOI and DOC RRT members, and the Area Committee Chair so that recommendations can be reviewed by the Area Committee, and where appropriate, implemented to minimize and/or avoid effects to listed species and critical habitat from future oil spill response actions.[18] The result of the consultation should be considered by the FOSC for inclusion in a lessons learned system so changes can be made to the ACP, as necessary, for the benefit of future oil spill response actions. If such changes to the ACP modify the anticipated effects to listed species or critical habitat, the Services should appropriately document the anticipated changes in future effects and complete any appropriate administrative steps.

[16] If only proposed species or proposed critical habitat have been adversely affected, a formal consultation is not required; however, ESA conference procedures should be followed as appropriate. See the USFWS & NMFS Endangered Species Consultation Handbook for conference information.
[17] The NOAA SSC may also assist.
[18] Recommendations may also be provided for addressing effects caused by spill response actions. This information should be provided to the NRDA process as appropriate.

VI. Points of Contact. The following are the points of contact for each Party:

USCG: Chief, Office of Response, Coast Guard Headquarters (G-MOR), (202) 267-0516.

USEPA: Oil Program Center, U.S. Environmental Protection Agency, (703) 603-8823.

NOAA - NMFS: Section 7 Coordinator, Endangered Species Division, Office of Protected Resources, (301) 713-1401.

USFWS: National Spill Response Coordinator, U.S. Fish and Wildlife Service, Division of Environmental Quality, (703) 358-2148.

NOAA - NOS: Director, Office of Response and Restoration, (301) 713-2989 x101.

DOI: Office of Environmental Policy and Compliance, (202) 208-6304.

VII. Funding and Resources. This agreement is not a fiscal or funds obligation document. Nothing in this agreement shall be construed as obligating any of the Parties to the expenditure of funds in excess of appropriations authorized by law or otherwise commit any of the Parties to actions for which it lacks statutory authority. It is understood that the level of resources to be expended under this agreement will be consistent with the level of resources available to the Parties to support such efforts. Any activities involving reimbursement or contribution of funds between the Parties to this agreement will be handled in accordance with applicable laws, regulations and procedures. Such activities will be documented in separate agreements with specific projects between the Parties spelled out. The separate agreements will reference this general agreement.

VIII. Effective Date. The terms of this agreement are effective upon signature by all Parties.

IX. Modification. This agreement may be modified upon the mutual written consent of the Parties.

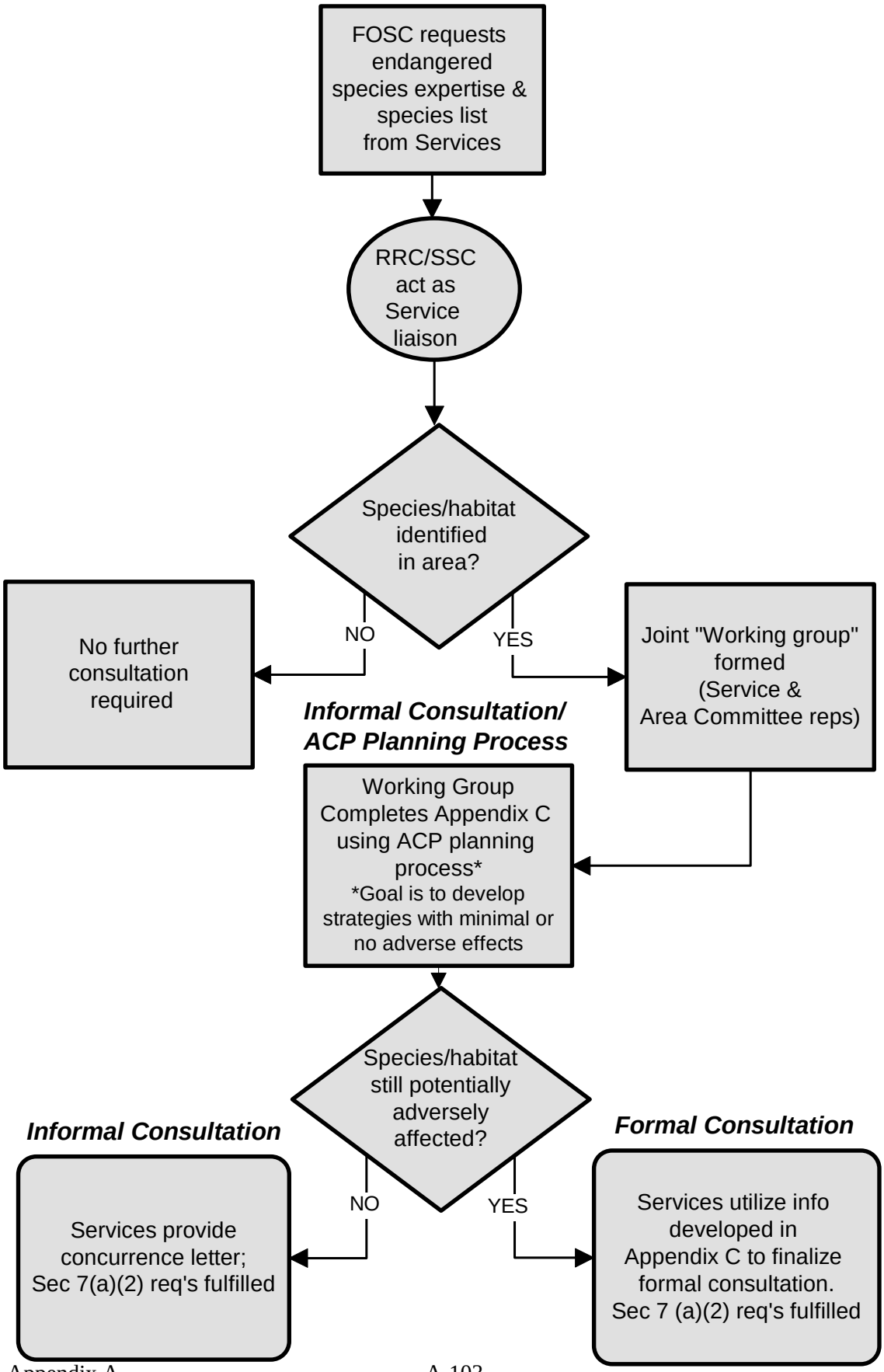
X. Termination. The terms of this agreement, as modified, with the consent of all Parties, will remain in effect until terminated. Any Party upon 60 days written notice to the other Parties may terminate their involvement in this agreement.

Inter-agency Memorandum of Agreement Regarding Oil Spill Planning and Response Activities Under the Federal Water Pollution Control Act's

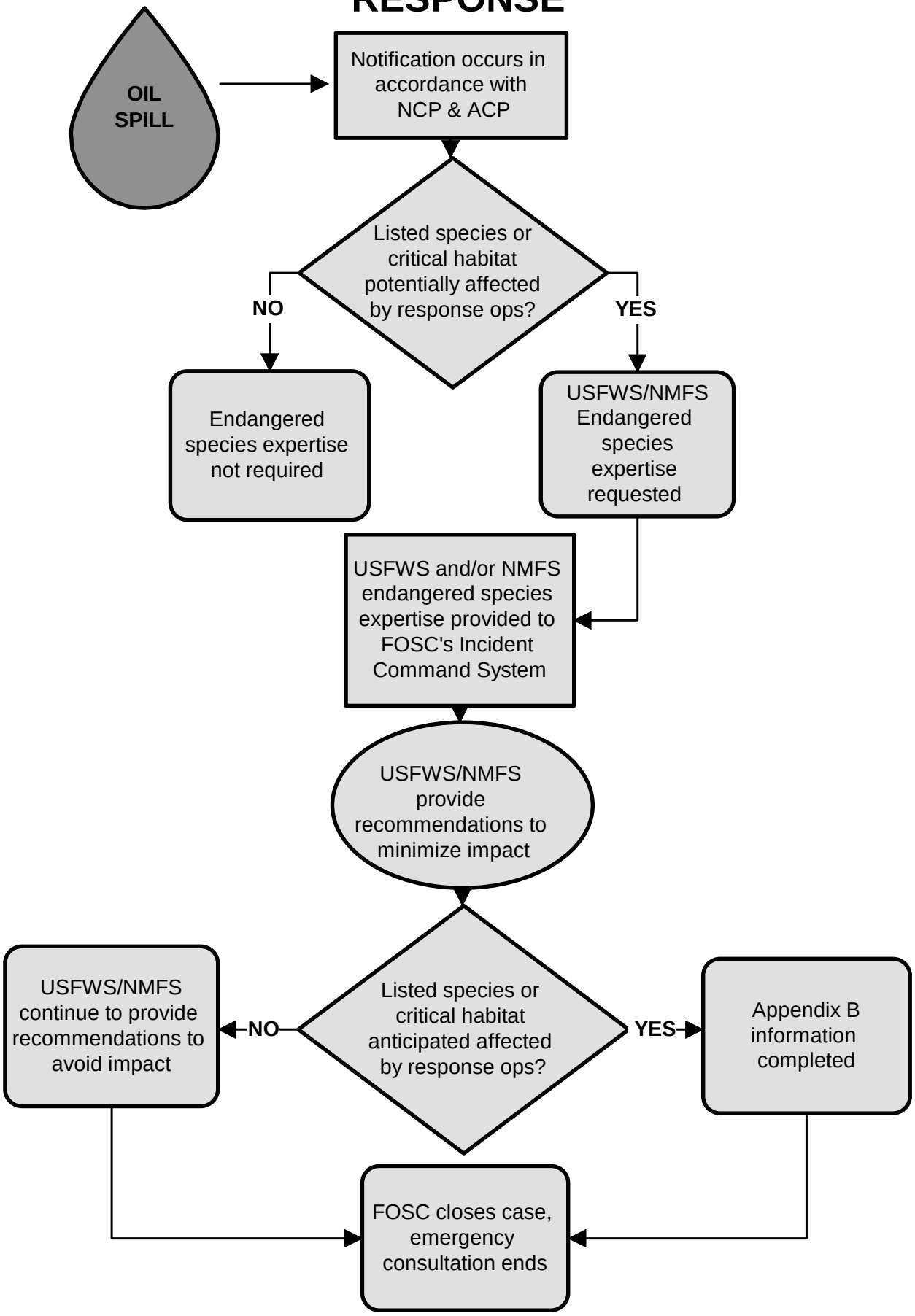
National Oil and Hazardous Substances Pollution Contingency Plan and the Endangered Species Act

Approved By:	**Date:**
Assistant Commandant for Marine Safety and Environmental Protection U.S. Coast Guard	5/25/01
Acting Assistant Administrator Office of Solid Waste and Emergency Response U.S. Environmental Protection Agency	7/22/01
Acting Director U.S. Fish and Wildlife Service	8 June 2001
Acting Assistant Administrator for Fisheries National Marine Fisheries Service National Oceanic and Atmospheric Administration	5/15/01
for Assistant Administrator National Ocean Service National Oceanic and Atmospheric Administration	5/30/01
Director Office of Environmental Policy and Compliance Department of the Interior	6/13/01

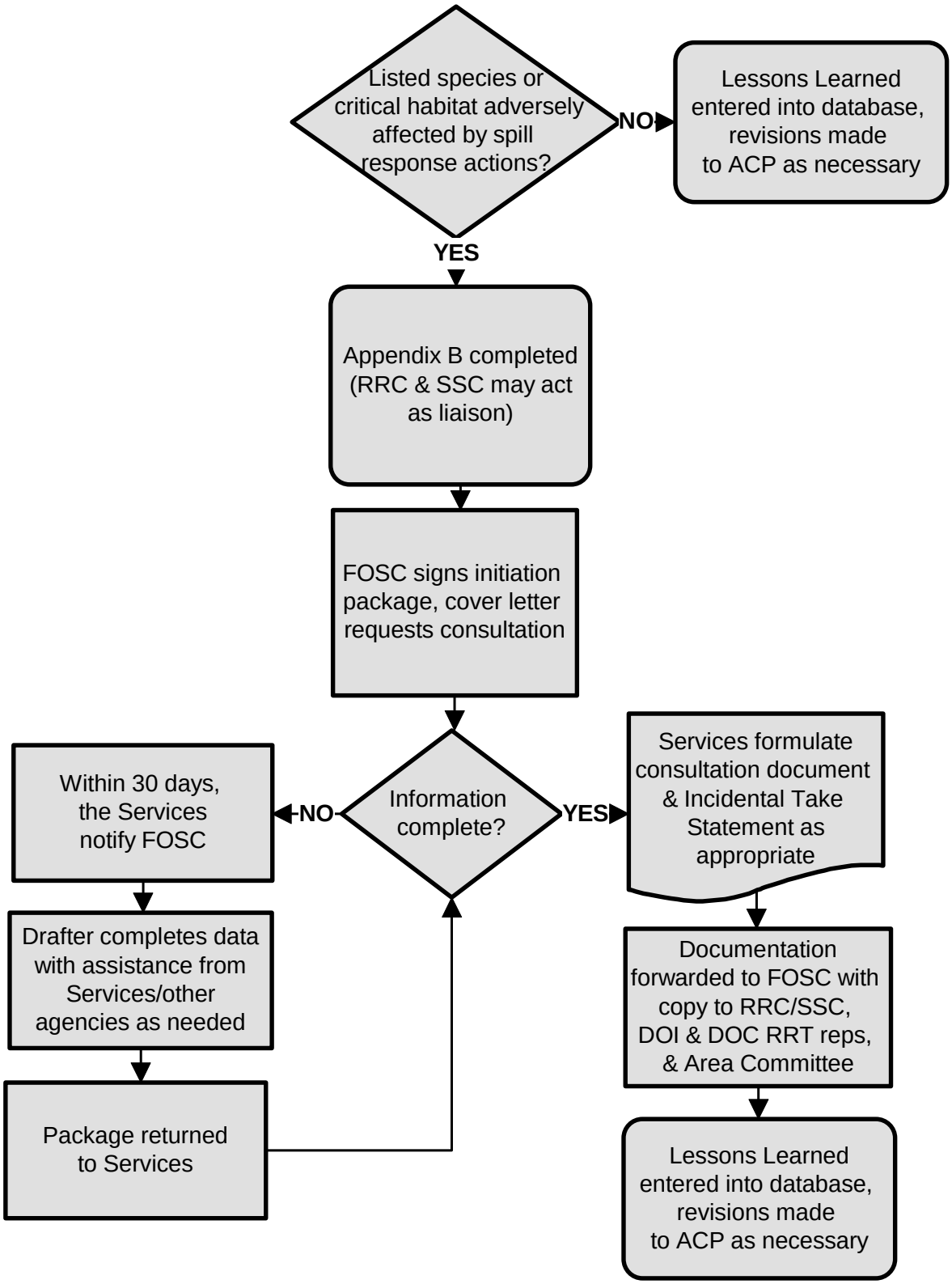
PRE-SPILL PLANNING



RESPONSE


OIL SPILL
Notification occurs in accordance with NCP & ACP
Listed species or critical habitat potentially affected by response ops?
NO
YES
Endangered species expertise not required
USFWS/NMFS Endangered species expertise requested
USFWS and/or NMFS endangered species expertise provided to FOSC's Incident Command System
USFWS/NMFS provide recommendations to minimize impact
Listed species or critical habitat anticipated affected by response ops?
NO
YES
USFWS/NMFS continue to provide recommendations to avoid impact
Appendix B information completed
FOSC closes case, emergency consultation ends

POST RESPONSE



APPENDIX B

EMERGENCY CONSULTATION
INFORMATION CHECKLIST IN ANTICIPATION OF FOLLOW-UP FORMAL CONSULTATION (50 CFR 402.05)

As soon as practicable after the emergency is under control, which occurs when the case is closed, the FOSC initiates consultation (either formal or informal, as appropriate) with the Services if listed species and/or critical habitat have been affected. The FOSC should ensure that the following checklist is completed before the case is closed. After the case is closed, this information along with a cover letter requesting consultation will be sent to the Services.

1. Provide a description of the emergency (the oil spill response).

2. Provide an evaluation of the emergency response actions and their impacts on listed species and their habitats, including documentation of how the Services' recommendations were implemented, and the results of implementation in minimizing take.

3. Provide a comparison of the emergency response actions as described in #2 above with the pre-planned countermeasures and information in the ACP.

APPENDIX C

PLANNING TEMPLATE

One of the goals of the Area Contingency Plan (ACP) planning process is to develop strategies or actions that reduce the potential for planned oil spill response activities to adversely affect listed species and designated critical habitat. The planning process may also develop strategies that purposefully protect these resources. The following template is recommended for use by a working group of both Service and Area Committee representatives to develop a document that 1) is used to complete consultation pursuant to Section 7 (a)(2) of the Endangered Species Act of 1973, as amended, and 2) produces information to be included in the appropriate sections of the ACP. To streamline the consultation process, the various sections of this document could be drafted during the planning process and used to develop or modify the ACP.[19] This development process will assist all parties in gaining a thorough understanding of the actions under review and provide opportunities for any Section 7 consultation related issues to be raised and addressed in the planning process, rather than during the oil spill response action.

This template is intended to guide the thought process of creating consultation documents and incorporates content requirements set forth in 50 CFR 402.12 as well as information pertinent to the National Contingency Plan requirements under the Fish and Wildlife Annex; not every item will be applicable to every situation.[20]

Introduction

This section generally should be completed in one, or possibly two paragraphs.

- General overview of the response strategy including: (1) a brief description - one to two sentences; (2) background, history, etc. as appropriate; (3) purpose of the response strategy; (4) identification of the species and designated critical habitat that may be affected (for consultations that will address large numbers of species, it may be desirable to present this list in the form of a table either attached or presented in another section. Also, if species that may potentially occur in the area are not included in this document, explain why).

This should be developed jointly by the action agency and the Services.

Description of the Proposed Response Strategy

- Provide a description of the response strategy being considered. This is likely to be a detailed description taken substantially from the ACP. It should include how the

[19] It is not required that this planning template be formally written or completed during informal consultation, especially if no modifications to the strategy are required. However, it can be very useful in documenting the [team's] thought process for the administrative record, serving as a guide, or providing additional documentation as needed.

[20] The guide on "Developing Consensus Ecological Risk Assessments" provides procedures which may be helpful in exploring and analyzing these issues. Copies can be obtained from USCG Headquarters (G-MOR-2).

response action will be implemented, including equipment and methods. Examples include use of dispersants to avoid shoreline impacts, and deployment of booms to protect sensitive areas. Include all known aspects of the action, such as time frames, why the action is appropriate, indirect effects, etc. An example of an indirect effect may be hauling boom on, or driving vehicles through, a sensitive dune area to gain access to a spill site.

This should be developed by the action agency with the assistance of the Services.

- Provide a description of specific area that may be affected by the response strategy (i.e. Sample Bay, 100-mile section of outer coastline, etc.). Include some measure of the area potentially impacted (i.e., "This plan addresses oil spill response activities that may be conducted out two miles from the coast throughout the 100 mile coastline area encompassed by this ACP"). If different activities are being proposed in different areas, identify this. The team should discuss the appropriateness of presenting this information in terms of the activities that will be conducted within each area, or the areas where each activity will be conducted. For example, "Dispersants may be applied throughout the 10 mile coastline length of Area A and the 25 mile coastline length of Area B." Maps may be useful.

  This should be developed mainly by the action agency; however, modifications may be made with the assistance of the Services and subject to the approval process for chemical countermeasures in the NCP as appropriate.

- Identify how to quickly obtain species/habitat information during a spill (i.e. first refer to ACP and site summary sheet, call State FWS, check website, etc.).

This should be developed jointly by the action agency and the Services.

- Identify emergency response points of contact to be notified during a spill. Establish spill parameters for notification as necessary. These should be included in emergency

notification numbers as well as on any site summary sheets, in geographic response plans, etc.

This should be developed jointly by the action agency and the Services.

Description of the Affected Environment

- Describe the listed species and designated critical habitat areas that may be affected by the action in terms of overall range and population status. Include the number and location of known subpopulations within and adjacent to the action area (i.e., identify the areas known to be used by the species and, if appropriate, identify the specific times periods of use, such as February - April). Discuss the action area in relation to the distribution of the entire population (e.g., edge of the range, center of population abundance, key reproductive area, etc.). Present views of Service recognized experts on the species, if appropriate.
  This should be provided by the Services.

- Ensure that these sensitive areas are referenced in the ACP (i.e. via ESI maps, specially generated GIS maps, site summary sheets, or other digitized format, etc.).
  This should be completed by the action agency.

- Provide biological data on listed species: historical use, presence, and potential use of habitat areas within the action area. Literature and other documents containing such information may be incorporated by reference. Provide species observation information, and recent results of species surveys, including, if appropriate, a description of methods, time of year surveys were performed, level of effort, and confidence intervals. Again, literature and other documents containing such information may be incorporated by reference. Maps may be useful to depict this information.
  The Services should assist in developing this information. In many instances the Services will be able to supply this information from their records.

- Identify other designated sensitive areas, both adjacent to and within the proposed action area. These include National Wildlife Refuges, National Marine Sanctuaries, etc.

This should be developed jointly by the action agency and the Services.

Analysis of the Effects of the Action

- Describe all effects of the response strategy relative to the listed species of concern and its habitat, including designated critical habitat. This should include direct, indirect, beneficial, and cumulative effects as well as effects from interrelated and interdependent actions, if any.
  This should be developed jointly by the action agency and the Services.

- Describe any measures that may avoid or lessen adverse effects as well as any measures that will enhance the species' present condition. If appropriate, delineate the locations of such measures. A discussion of environmental "tradeoffs" (including no action) may be appropriate. For example, "Dispersants may be toxic to the listed aquatic species when used in concentrations above 70%; however, oil coming ashore and smothering the listed species in tidal marshes is of greater concern due to the extremely poor conservation status of this species." Reference any already completed relevant reports, studies, biological assessments, etc.

This should be developed jointly by the action agency and the Services.

Modification to Strategy (as needed)

If necessary, after joint analysis of the information, the action or strategy may be modified.

- Describe the new strategy or action. For example, "Dispersants will not be used in concentrations above X% or in areas less than three feet deep. They may be used in Area A and Area B. A Service representative from Regional

field office B will be contacted during an oil spill response during the months of February - April in Area B."

This should be developed jointly by the action agency and the Services.

Documentation

This template is a guide to help you through the planning process, however, when sections are written out as the process is completed, the final document serves the same purpose as a biological assessment. It may be used to complete consultation pursuant to Section 7 of the ESA.

- The document should be maintained on file by the Services and may be referred to during an oil spill response.

- The Area Committee will ensure that this document becomes part of the ACP as appropriate such as:
  - Included as an appendix to the Dispersant or In Situ Burn Operations Plan;
  - Included as a reference document in the appropriate section of the ACP;
  - Include relevant information in sections of the ACP such as Notifications, Site Summary Sheets, Geographic Response Plans, GIS maps, etc.

- The document should include points of contact from both the action agency and the Services.

APPENDIX D

SAMPLE POLLUTION REMOVAL FUND AUTHORIZATION (PRFA) LANGUAGE*

This Statement of Work (SOW) language is intended as sample language only. The language can be tailored to ensure that the FOSC is provided with the resources needed to meet the desired activities or functions required. Accordingly, more precise or succinct language may be used.

PRFA SOW additional/optional work elements to meet the FOSC's ESA mandated activities associated with removal actions:
…..
To arrange for, and as appropriate coordinate with, the resources needed to meet the conference and consultation requirements of the ESA.
Specific activities anticipated under this requirement include:
(a) Providing the expertise needed to make sensitive removal decisions which could potentially impact on listed species or critical habitats associated with this incident;
(b) Gathering and documenting the information needed to provide input into the aforementioned decisions and to document the resulting impact of removal actions; and
(c) As required, preparing the consultations required of the FOSC for the Service(s).

Funding under this agreement is provided for:
(a) Salaries, travel and per diem;
(b) Appropriate charges for use of equipment or facilities;
(c) Any actual expenses for goods and/or services reasonably obtained in order to provide the agreed upon support to the FOSC removal activities (including contracts.)

* Developed by the National Pollution Funds Center

APPENDIX E

SAMPLE LETTERS FOR REQUESTING CONCURRENCE
OR FORMAL CONSULTATION

These sample letters have been developed to assist the Parties to this agreement in documenting the requirements of the Endangered Species Act. This is suggested wording only and may be used to complete the administrative record as needed. The request for concurrence can be used after the planning process for a particular area or countermeasure when it has been determined that no adverse effects will occur. The Services will provide a concurrence letter, as appropriate, for documentation. Alternatively, the request for formal consultation can be used after planning results indicate that adverse effects may still occur. If this is the case, the Services will evaluate the information developed jointly by the workgroup and issue a biological opinion.

Request for Concurrence Letter:

Mr./Ms. xxx
U.S. Fish and Wildlife Service/National Marine Fisheries Service
Division of Endangered Species

Dear Mr./Ms. xxx:

In accordance with the requirements of Section 7 of the Endangered Species Act, I am seeking your concurrence that the [Coast Guard's/EPA's] implementation of the [name of plan] is not likely to adversely affect the [identify the listed species and designated critical habitat that may be affected. Note, in cases where many listed species or critical habitat designations may be involved, it may be appropriate to refer to an attached list]. This [name of plan] has been developed with the assistance of [name of Service staff] of the U.S. Fish and Wildlife Service/National Marine Fisheries Service and in accordance with the procedures identified at 40 CFR Part 300, the National Contingency Plan. To assist in completing informal consultation, please find attached the Biological Evaluation that has been produced through the planning process described in the Inter-agency Memorandum of Agreement Regarding Oil Spill Planning and Response Activities Under the Federal Water Pollution Control Act's National Oil and Hazardous Substances Pollution Contingency Plan and the Endangered Species Act using the Planning Template contained in Appendix C of that Agreement.

Thank you for your efforts in this matter. If you require additional information, please contact [provide a contact with a telephone number].

Sincerely,

Request for formal consultation:

Mr./Ms. xxx:
U.S. Fish and Wildlife Service/National Marine Fisheries Service
Division of Endangered Species

Dear Mr./Ms. xxx:

In accordance with the requirements of Section 7 of the Endangered Species Act, I am requesting the initiation of Formal Consultation on the effects of the [Coast Guard's/EPA's] implementation of the [name of plan]. Through informal consultation with your staff [or identify the appropriate Service office(s)], we have determined that implementation of spill response activities in accordance with the subject [name of plan] is likely to result in adverse effects to [identify the listed species and designated critical habitat that may be affected. Note, in cases where many listed species or critical habitat designations may be involved, it may be appropriate to refer to an attached list]. This [name of plan] has been developed with the assistance of [name of Service staff] of the U.S. Fish and Wildlife Service/National Marine Fisheries Service and in accordance with the procedures identified at 40 CFR Part 300, the National Contingency Plan. While these actions may result in short-term adverse effects, it is our belief that the species [and designated critical habitat areas] will ultimately benefit from them. To assist in completing Formal Consultation, please find attached the Biological Evaluation that has been produced through the planning process described in the Inter-agency Memorandum of Agreement Regarding Oil Spill Planning and Response Activities Under the Federal Water Pollution Control Act's National Oil and Hazardous Substances Pollution Contingency Plan and the Endangered Species Act using the Planning Template contained in Appendix C of that Agreement.

Thank you for your efforts in this matter. If you require additional information, please contact [provide a contact with a telephone number].

Sincerely,

Appendix B

Funding Guidance for Oil Spills and Hazardous Materials Releases

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Funding Guidance for Oil Spills and Hazardous Materials Releases

April 2003

PURPOSE

This document is designed to assist Federal On-Scene Coordinators (FOSCs) during oil spill and other hazardous material responses. The intent of this document is to provide quick guidance on financial aspects of spill response issues. It is not intended to be an all-inclusive guide on spill management issues or on the rights and liabilities of polluters and those damaged by pollution as defined by the Oil Pollution Act (OPA) or the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

Funding Guidance for Oil Spills and Hazardous Materials Releases

TABLE OF CONTENTS

TABLE OF CONTENTS ..... **II**

I. WHAT IS THE OSLTF? **1**

II. ACCESS TO THE OSLTF **1**

FEDERAL WATER POLLUTION CONTROL ACT OIL SPILL RESPONSE AUTHORITY 1
WHO CAN ACCESS THE FUND 1
COSTS FOR THE FOLLOWING CAN BE CHARGED TO THE OSLTF 2
LIMITATIONS TO ACCESSING THE OSLTF 2

III. NATIONAL POLLUTION FUNDS CENTER SUPPORT ROLE **2**

SERVICES NPFC *CAN* PROVIDE DURING A SPILL 2
SERVICES THAT NPFC *CANNOT* PROVIDE DURING A SPILL 3

IV. OPA RESPONSIBLE PARTY LIABILITY ISSUES **4**

COFR REQUIREMENTS/ROLE OF GUARANTOR 4
DETERMINING LIMITS OF LIABILITY 4
RP'S ROLE IN THE RESPONSE PROCESS 4
RP'S ROLE IN THE CLAIMS PROCESS 5

V. FUNDS MANAGEMENT **5**

CANAPS 5
CONSIDERATIONS FOR ESTIMATING THE TOTAL COSTS OF THE SPILL 6
TRACKING DAILY BURN RATE FOR REMOVAL 7
ANALYZING AND MONITORING POTENTIAL DAMAGE CLAIMS COSTS 7
FUNDING CONSIDERATIONS FOR NRDAS 8
CEILING MANAGEMENT IN THE EVENT OF MULTIPLE INCIDENTS 8
OSLTF EMERGENCY FUND ADVANCEMENT AUTHORITY 8
FUNDING CONSIDERATIONS FOR MULTIPLE RP INCIDENTS 8
FUNDING CONSIDERATIONS FOR MIXED OIL AND CERCLA INCIDENTS 8

VI. CLAIMS PROCESS **9**

WHAT CLAIMS ARE COMPENSABLE 9
RP'S ROLE 9
NPFC'S ROLE IF RP DENIES DESIGNATION OR IS UNKNOWN 10
NEED FOR ON-SITE CLAIMS OFFICE 10
REQUIREMENT TO PAY INTERIM CLAIMS 10
IMPORTANCE OF ADDRESSING CLAIMS ISSUES IN PRESS RELEASES 10

VII. NATURAL RESOURCE DAMAGES **10**

DEFINITION 10
WHO ARE THE NATURAL RESOURCE TRUSTEES 10

FEDERAL 10
STATE 11
TRIBAL 11
ROLE OF TRUSTEES IN THE FUNDING PROCESS 11
COMPENSABLE NATURAL RESOURCE DAMAGES 11
COORDINATION FOR NRD WITH THE RESPONSIBLE PARTY 11
NRD CLAIMS PROCESS – ROLE OF OSLTF/NPFC IF RP DOESN'T PAY 11
NRD IMPACT ON THE LIFE CYCLE COST OF SPILL 12

VIII. CERCLA / WEAPONS OF MASS DESTRUCTION 12

COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA) FUND USE CRITERIA 12
LEGAL/REGULATORY FRAMEWORK FOR RESPONSE 12
NON-COAST GUARD PARTICIPANTS 12

IX. STAFFORD ACT / FEMA 13

STAFFORD ACT FUND USE CRITERIA 13
LEGAL/REGULATORY FRAMEWORK FOR RESPONSE 13
NON-COAST GUARD PARTICIPANTS 13

X. TERRORISM AND FEDERAL RESPONSE AUTHORITY 14

ADDITIONAL REFERENCES 15

ACRONYM LIST 16

I. WHAT IS THE OSLTF?

The Oil Spill Liability Trust Fund (OSLTF or Fund) is a billion-dollar fund established as a source of money to pay removal and certain other costs and damages resulting from oil spills or substantial threats of oil spills to navigable waters of the United States. The OSLTF is used for costs not directly paid by a responsible party (RP) or guarantor, including costs to respond to "mystery spills" for which there is no identified RP.

The United States Coast Guard's National Pollution Funds Center (NPFC), in Arlington, Virginia, manages the OSLTF.

II. ACCESS TO THE OSLTF

FEDERAL WATER POLLUTION CONTROL ACT OIL SPILL RESPONSE AUTHORITY

- Federal On-Scene Coordinators may access the OSLTF Emergency Fund to respond to an oil spill under the President's FWPCA authority (33 U.S. Code § 1321(c)).
- Removal of a discharge or prevention and mitigation of a substantial threat of a discharge of oil into or on the navigable waters, adjoining shorelines, and the Exclusive Economic Zone (EEZ).

WHO CAN ACCESS THE FUND

- **All Federal On-Scene Coordinators (FOSCs)** obtain immediate access to a funding account and ceiling for incident response by accessing the Ceiling and Number Assignment Processing System (CANAPS) on the Internet: www.npfc.gov/canaps (see page 5).
- **Other Federal, state, local, and Indian tribal government agencies** assisting the FOSC get reimbursable funding authority via a FOSC-approved Pollution Removal Funding Authorization (PRFA). NPFC will work with the FOSCs, the agencies, and the Incident Command (IC)/Unified Command (UC) to set PRFAs in place.
- **States** may opt to access up to $250,000 via the Oil Pollution Act's State Access provision. FOSCs still provide initial coordination of the request and subsequent oversight and coordination.
- **Federal Lead Administrative Trustees (FLATs)** may submit an Initiate Request to the NPFC to fund the initiation of a Natural Resource Damage Assessment (NRDA).
- **Natural Resource Trustees** designated by the President of the United States, state, territorial governor, or Indian tribal governing authority may submit natural resource damage (NRD) claims to the NPFC for NRD costs not paid by the RP.
- **Claimants** (individuals, corporations, and government entities) can submit claims for uncompensated removal costs or certain damages (natural resources, real/personal property, loss of profits, loss of subsistence use of natural resources, loss of government revenues, and increased costs of government services) caused by the oil spill to the NPFC if the RP does not satisfy their claims. NPFC adjudicates the claims and pays those with merit. RPs can submit claims provided that:

- the total of all response costs and damage claims exceed the RP's statutory limit of liability, or
- the spill was solely caused by a third party, an Act of God, or an Act of War.

COSTS FOR THE FOLLOWING CAN BE CHARGED TO THE OSLTF

- **Removal** – includes cleanup contractors (Oil Spill Response Organizations or OSROs), overtime for government personnel, equipment used in removal (generally at established standard rates or lease costs), testing to identify the type and source of oil, disposal of recovered oil and oily debris, and preparation of associated cost documentation
- **Natural Resource Damages** – refers to costs to restore, rehabilitate, replace, or acquire the equivalent of the injured resource; any interim lost use or diminution in value of the injured resource pending restoration; and the reasonable cost of assessing those damages
- **Claims** for removal and damages

LIMITATIONS TO ACCESSING THE OSLTF

- The maximum, per case, is $1 billion, or the balance in the OSLTF, whichever is less.
- Removal funding (including response to a substantial threat) and Initiate request funding are limited to the funds available in the OSLTF Emergency Fund that receives and additional $50 million on October 1st of each fiscal year.
- There is a maximum of $500 million per case to satisfy NRD claims and assessments.
- Initiation of NRDA costs may be paid out of the Emergency Fund, subject to its availability and the process through which the funding was requested.
- The discharge (or substantial threat of discharge) must impact navigable waters of the United States [including the 200-mile Exclusive Economic Zone (EEZ)].

III. NATIONAL POLLUTION FUNDS CENTER SUPPORT ROLE

SERVICES NPFC *CAN* PROVIDE DURING A SPILL

- Serve as troubleshooters and the spokesperson for all OSLTF access, documentation, and claims issues. NPFC personnel can be dispatched to the Incident Commander (IC). In a Spill of National Significance (SONS), NPFC may be called upon to head the Finance Section under the Unified Command System (UCS) or Incident Command System (ICS)
- Assure that the OSLTF ceiling for the FOSC's removal efforts remains adequate and is adjusted as needed
- Assist in tracking obligations against the ceiling
- Advise the FOSC of the remaining ceiling balance

- Advise and assist in RP identification
- Provide information concerning validity of an RP's Certificate of Financial Responsibility (COFR) and guarantor identity for vessel spills
- Provide information concerning RP limits of liability (LOL)
- Prepare and deliver, with FOSC concurrence, Notices of Designation (including appropriate advertising requirements) to RPs
- Advise the FOSC and act as the FOSC's spokesperson on any matters related to the RP's response to the Notice of Designation
- Oversee the RP's efforts to advertise for claims or arrange for NPFC to advertise if the RP fails to do so or if an RP has not been identified
- Help negotiate and execute Pollution Removal Funding Authorizations (PRFAs) with any other Federal, state, local or Indian tribal government agency that the FOSC decides to use as part of the incident response and work with representatives of other agencies to ensure that their cost documentation is adequate for approval of reimbursement and supports cost recovery from the RP
- Negotiate and execute any requested funding agreement for Initiation of Natural Resource Damage Assessments (NRDA) with the Federal Lead Administrative Trustee (FLAT); Initiate requests are handled directly between the NPFC and the FLAT, but NPFC personnel coordinate the preassessment activities of the NRDA with the FOSC
- Handle all OPA claims-related issues, assist the FOSC in documenting the incident's impact with respect to potential claims, notify all RPs and guarantors when there are multiple RPs and arrange for adjudication of claims either directly or by the RP and answer claims-related questions for the FOSC
- Provide guidance on gathering/consolidating daily cost data and preparing the daily cost estimate summary for inclusion in Pollution Reports (POLREPs)
- Provide financial advice and forms for daily resource cost documentation and ensure that Coast Guard resources participating under the FOSC's direction satisfactorily complete this documentation and monitor and help troubleshoot cost documentation problems
- Provide legal advice, as required, in coordination with the relevant Command's servicing legal office

SERVICES THAT NPFC *CANNOT* PROVIDE DURING A SPILL

- NPFC case officers **do not** have contracting authority and cannot act as a contracting officer (KO). With the exception of contractor support for RP identification, support for commercial contracts for oil spill clean-up actions must come from the District staff or from the Maintenance and Logistics Command (MLC) contracting staff. This may require that a KO be temporarily assigned to the UCS/ICS.
- NPFC case officers **do not** act as the FOSC's general finance officer or logistics officer, **other than** in the capacity of designated UCS Finance Section Chief during a SONS.
- NPFC **does not** validate utilization of resources. It is important that the FOSC assign individuals under FOSC direction to validate and track personnel and equipment

employed during the spill response. This includes both Coast Guard and commercial resources used at specific clean-up sites and within the UCS/ICS. Generally, the individuals who validate the use of personnel and equipment are separate from the FOSC's pollution response on-scene representatives. **Other governmental agencies (OGAs)** must document their own costs of participation in order to be reimbursed under their PRFA agreements. Individuals responsible for validating resource utilization should, where possible, note the movement of OGA personnel into and out of a site.

IV. OPA RESPONSIBLE PARTY LIABILITY ISSUES

COFR REQUIREMENTS/ROLE OF GUARANTOR

- Prior to any vessel >300 gross tons operating in U.S. waters, the owner/operator must obtain a Certificate of Financial Responsibility (COFR). This COFR is only issued if the owner/operator provides evidence of financial responsibility to pay for removal costs and damages up to the vessel's limit of liability (LOL). A vessel's liability limit is based on its gross tonnage and vessel type (e.g., higher limits apply to tank vessels than cargo vessels).

- RPs are permitted to self-insure their financial responsibility requirements. In most cases that involve self-insurers, they also have other insurance through a guarantor who is contractually obligated to pay. In these cases, the U.S. government does not have OPA Direct Action Rights against the other insurer.

DETERMINING LIMITS OF LIABILITY

- When vessel identity is reported in a spill incident, NPFC will provide information regarding potential statutory LOL to which an RP may be entitled; however, entitlement to the LOL is not usually well defined until long after the response. This issue may be resolved in litigation.

- What happens if the RP can only pay to their LOL?

  - *The OSLTF will provide continued funding if the RP stands down or cannot pay.*

- What happens if the RP pays more than their LOL?

  - *The RP may submit a claim to the NPFC for excess removal costs and damages. The claim will be adjudicated according to the claims provisions in OPA and the claims regulation. The RP will be compensated for all excess removal costs and damages to which the RP is entitled under OPA.*

- Entitlement to the LOL is lost if the RP fails or refuses:

  - to report the incident as required by law
  - to provide all reasonable cooperation and assistance requested by the FOSC in connection with removal activities; or
  - without sufficient cause, to comply with an order issued by the FOSC

RP'S ROLE IN THE RESPONSE PROCESS

- **The RP has primary responsibility** for response to a spill incident, including setting up the ICS and joining with the FOSC and state on-scene coordinator (SOSC) in the UC.

- Even when the RP leads a reasonable response effort, **the FOSC is always in ultimate command** and may decide to direct specific action or, for whatever reason it is deemed necessary, actually take the lead role in the response.

- The RP faces challenges to balance their corporate response with the desires of the FOSC given cost, environmental, political, and public relations/media impacts. The FOSC's responsibility extends further than taking appropriate action if the RP's response is inadequate. The FOSC should be aware that the RP might request reimbursement from the OSLTF via the claims route if the RP exceeds the LOL or has a complete defense to liability. The FOSC should identify those times when a response may be inflated beyond the level necessary to ensure removal of the oil and should notify the RP and the NPFC of this observation.

RP'S ROLE IN THE CLAIMS PROCESS

- An RP has primary responsibility for handling claims, including advertising, adjudication, and payment.

- The RP may establish a claims office to serve the affected area for spills with large claims potential.

- If the RP is deficient, NPFC will perform the claims adjudication function and charge the cost to the RP.

- The NPFC will assure that all of the above responsibilities are met.

V. FUNDS MANAGEMENT

CANAPS

- The Ceiling and Number Assignment Processing System (CANAPS) automates and centralizes the creation and management of project numbers and ceilings for Federally funded responses initiated by Federal On-Scene Coordinators (FOSCs).

- CANAPS is a Web-based tool available at: http://www.npfc.gov/canaps

- CANAPS collects basic incident information via a user-friendly, Internet "wizard" and immediately assigns a project number and the requested spending ceiling – up to a preset limit. An email confirmation of the project number and ceiling is sent to the requesting FOSC. CANAPS then creates the required official message and releases it through the Coast Guard Messaging System (CGMS).

- A field user tutorial is available. The tutorial is a helpful, comprehensive document that steps users through the process of opening and modifying a Federal Project. The tutorial is available at:

  http://www.uscg.mil/hq/npfc/canaps/Tutorial/CANAPS_Field_Tutorial.pdf

- Ceiling and Project Limits
  - Federal Project Numbers (FPNs) can be opened by EPA and USCG FOSCs for the removal of oil using the Oil Spill Liability Trust Fund (OSLTF).
  - CERCLA Project Numbers (CPNs) can be opened by USCG FOSCs for the removal of hazardous substances using Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) funds. The EPA has its own process for opening Superfund projects outside of CANAPS.
  - The need to manage the respective funds requires limits to the amount of money that can be obligated automatically by the CANAPS system before having to speak to the National Pollution Funds Center (NPFC).
  - The USCG can open FPNs up to $500K and CPNs up to $249,999.
  - The EPA can open FPNs up to $250,000.
  - These thresholds are subject to change based on the availability of funds. Additional money is available. If the project is going to grow beyond these limits, contact the NPFC to request additional funding.
- User IDs and Passwords
  - Access to CANAPS is controlled by use of user IDs and passwords, which are administered by the NPFC and are specific to the FOSC's Unit or Region.
  - Access keys are changed quarterly.
- Demonstration Version
  - A demonstration version of the CANAPS software is available at: http://www.npfc.gov/canapsv2demo
  - The user ID for the demonstration version is Demo, and the password is DEMO.

CONSIDERATIONS FOR ESTIMATING THE TOTAL COSTS OF THE SPILL

- RP Limits of Liability (LOL)
  - An RP can't be assured LOL will hold until investigation and possible litigation are resolved.
  - An RP who holds a COFR and exceeds the established LOL is expected to continue the response and file a claim for the actual costs in excess of the LOL.
  - An RP's involvement – and the increased probability of cost recovery – is more likely with the presence of a COFR guarantor or "other insurer."
  - An RP's P&I coverage, the "other insurance," is often considerably greater than the LOL.

- RP Responsiveness
  - Media and public interest and political awareness often influence an RP's responsiveness.
- RP Spending Past LOL
  - RPs and their guarantors often continue to provide funding and support after exceeding the LOL (for which the RP may subsequently submit a claim to the NPFC for excess costs). The determination of whether or not this will be the case must be made as soon as it is feasible to minimize potential transition issues and to quickly estimate potential impacts to the OSLTF.
  - RP's spending and applicability of liability limits are usually not well defined until long after the response, especially in cases subject to litigation.

TRACKING DAILY BURN RATE FOR REMOVAL

- The FOSC tracks the daily costs (burn rate) for an incident. The RP may not be forthcoming with this data for legal or public relations reasons. These costs include:
  - costs incurred by the OSLTF **plus** USCG resource usage (personnel, equipment, Marine Safety Laboratory, etc.)
  - other government agencies (Federal, state, local) support costs
- Early warning is required to forecast ceiling increases so NPFC can estimate time to Fund depletion by tracking burn rates for each activity

NOTE: Regardless of whether the RP or the FOSC directs the response, government personnel, and equipment used in the response are considered a billable resource.

ANALYZING AND MONITORING POTENTIAL DAMAGE CLAIMS COSTS

- Typically, claims are presented long after removal is over. Claims must be first submitted to the RP. If the RP denies responsibility, or if 90 days passes without a settlement, claimants can submit the claim to the NPFC.
- Claims costs may be far greater than removal costs.
- Some key factors that drive up claims costs are:
  - area and length of time for fisheries closures [National Marine Fisheries Service (NMFS) may make this call]
  - affected traffic and length of time for shipping lane closures
  - population and commercial density of affected area
  - magnitude and length of time for business interruptions
  - extent of impact on environmentally sensitive areas

FUNDING CONSIDERATIONS FOR NRDAS

- FLATs may request obligation of funds from NPFC for NRDA initiation.
- Ceiling allocations and reimbursement for initiation of NRDAs are funded from the OSLTF Emergency Fund.
- Up-front or after-the-fact funding for assessment, restoration, and/or emergency restoration is available from the OSLTF through the claims process.
- Any natural resource trustee (Federal, state, or tribal) may submit claims for NRD.
- Claims payments are based on approved plans.
- SONS presents high potential that removal costs and other claims may consume most of the OSLTF prior to NRD needs being met

CEILING MANAGEMENT IN THE EVENT OF MULTIPLE INCIDENTS

- Two or more major spills (non-SONS) may deplete the Emergency Fund.
- The Emergency Fund apportionment of $50 million per annum occurs at the start of each fiscal year. The Fund is drawn down for the rest of the year and could be substantially depleted by late in the fiscal year.
- Starting in FY 2003, advancements of up to $100 million are available.

OSLTF EMERGENCY FUND ADVANCEMENT AUTHORITY

- **May supplement the Emergency Fund** – The Coast Guard was recently given authority to advance up to $100 million from the OSLTF to supplement Emergency Fund shortfalls.
- **Notification** – The Coast Guard must notify Congress within 30 days after an advance as to the amount advanced and the facts and circumstances necessitating the advance.
- **Impact on Responses** – This advancement authority does not provide for any new or different uses of the Emergency Fund for Federal response, but may help the Coast Guard ensure funds will be available for Federal response when needed and are not delayed when a costly response threatens the balance of the Emergency Fund.

FUNDING CONSIDERATIONS FOR MULTIPLE RP INCIDENTS

- Spill size alone does not determine the impact on the Fund. The RP's LOL, assets, and responsiveness are equally important.
- FOSCs must segregate all costs among incidents.
- Portions of discharged oil from multiple incidents could eventually co-mingle. RPs may need to decide how to pay claims resulting from the co-mingled oil, usually after removal operations cease.

FUNDING CONSIDERATIONS FOR MIXED OIL AND CERCLA INCIDENTS

- Presence of hazardous substances may create a mixed spill [co-mingled oil and hazardous substance(s)] or constitute a single response.

- A co-mingling scenario will generally be a Superfund response, although EPA and the USCG have not established a precise definition to distinguish between the two types of responses.
- A mixed site scenario requires that all costs be assigned to separate records for OSLTF or CERCLA cases. The FOSC must have both an FPN (Federal Project Number) for the OSLTF-funded removal actions and a CPN (CERCLA Project Number) for the hazardous substance response actions.

  NOTE: FPN/CPN generated by CANAPS
- When substances are not mixed, a single incident may also include a response that falls under OSLTF and CERCLA.
- The NPFC **cannot** pay claims for uncompensated removal costs or damages arising from a release of a hazardous substance.

VI. CLAIMS PROCESS

WHAT CLAIMS ARE COMPENSABLE

- uncompensated removal costs
- loss of profits or earning capacity
- net loss of Federal, state, or local government revenues
- net costs to state or local governments for increased public services
- loss of subsistence use of natural resources
- damages to real or personal property
- natural resource damages

RP'S ROLE

- The RP and guarantor will receive a Notice of Designation (NOD). The RP has five days to deny designation.
- If the RP does not deny the designation, they have 15 days to respond by advertising their designation and the procedures for submitting claims.
- The RP, if fully responsive to the requirements in OPA, will assume the entirety of claims responsibilities: advertising, receipt, adjudication, and payment of claims. The NPFC will monitor closely to assure compliance.
- Claimants (other than states submitting claims for uncompensated removal costs) must first present their claims to the RP or the RP's guarantor.
- State removal cost claims are permitted to go directly to the NPFC.
- A claimant can elect to commence action in court against the RP or present the claim to the NPFC if the RP does not settle a claim within 90 days after filing.

NPFC'S ROLE IF RP DENIES DESIGNATION OR IS UNKNOWN

- The NPFC, if assuming claims responsibility, will arrange for advertising, receipt, adjudication, and payment of claims.
- The NPFC will assume claims responsibility if the RP denies designation; if the RP's claims response does not comply with OPA; or if the RP cannot be identified.
- The NPFC also accepts claims when the claimant has presented a claim to the RP and the RP does not settle it within 90 days of presentment.

NEED FOR ON-SITE CLAIMS OFFICE

For a major spill, either the RP or the NPFC may establish one or more claims offices in the area of greatest impact.

REQUIREMENT TO PAY INTERIM CLAIMS

- Either the RP or the NPFC can pay interim claims with appropriate documentation.
- An interim payment does not limit a claimant's right to claim for other damages not paid or addressed under the interim claim.

IMPORTANCE OF ADDRESSING CLAIMS ISSUES IN PRESS RELEASES

- Damaged parties are major public affairs clients.
- NPFC will provide information to help the Joint Information Center (JIC) educate the public. This may be a copy of the RP's advertisement and explanation of the RP's claims process and/or copies of the NPFC Claimant's Guide and phone numbers.
- Claims will be paid more quickly if the public knows the procedures. The need for good documentation by the claimant is especially important and is something that should be stressed in press releases.

VII. NATURAL RESOURCE DAMAGES

DEFINITION

"Natural resources" includes land, fish, wildlife, air, water, ground water, surface water, and other such resources belonging to, managed by, held in trust by, pertaining to, or otherwise controlled by the United States [including Exclusive Economic Zone (EEZ) resources], any state or local government or Indian tribe, or any foreign government.

WHO ARE THE NATURAL RESOURCE TRUSTEES

FEDERAL

- Department of Agriculture
- Department of Commerce
- Department of Defense
- Department of Energy
- Department of the Interior

STATE

State trustees are any state agency designated by the state's Governor to serve as the natural resource trustee.

TRIBAL

Tribal trustees are federally recognized tribes that have governmental authority over lands. This does not include Alaska native regional or village corporations.

ROLE OF TRUSTEES IN THE FUNDING PROCESS

- Trustees must coordinate with each other during all phases of NRDA to ensure no double recovery of damages.
- In the pre-assessment phase of a NRDA, all affected trustees must select a Federal Lead Administrative Trustee (FLAT), who is then responsible for coordinating the effort and submitting necessary paperwork to NPFC.
- Trustees assess damages for "injury to, destruction of, loss of, or loss of use of" natural resources.
- Trustees develop restoration alternatives to address any injury to natural resources, from which they select the most appropriate alternative to implement.
- Trustees must also coordinate with the FOSC during the NRDA process to avoid interference with the ongoing response.

COMPENSABLE NATURAL RESOURCE DAMAGES

- Costs to restore, rehabilitate, replace, or acquire the equivalent of the injured resource
- Any interim loss of use or diminution in value of the injured resource pending restoration
- The reasonable cost of assessing NRD damages

COORDINATION FOR NRD WITH THE RESPONSIBLE PARTY

- The RP has primary responsibility to pay all of the costs/damages listed in previous sections.
- The trustees are encouraged, but are not required, to first seek Initiate funding from the RP for pre-assessment activities.
- Trustees must first present claims to the RP or the RP's guarantor. If the RP is not responsive and/or refuses to pay, trustees can come to the Fund for relief.
- If the RP does not settle a claim within 90 days after filing, a claimant can elect to commence action in court against the RP or present the claim to the NPFC.

NRD CLAIMS PROCESS – ROLE OF OSLTF/NPFC IF RP DOESN'T PAY

- If the NPFC assumes claims responsibility, then NPFC will arrange for receipt, adjudication, and payment of claims.
- A contractor may be hired to analyze the supporting information submitted by the claimants.

NRD IMPACT ON THE LIFE CYCLE COST OF SPILL

- Natural resource damage costs can become substantial.
- Damages in environmentally sensitive areas (e.g., wetlands) may be very costly. Many variables figure into the overall cost, including the nature of the product spilled, duration of spill, time of year, response-related conditions, etc.
- Costs may not be known or estimable for months or years after the response is complete.

VIII. CERCLA / WEAPONS OF MASS DESTRUCTION

COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA) FUND USE CRITERIA

- The spilled substance must be a hazardous substance, pollutant, or contaminant.
- The substance cannot be oil; if oil is contaminated with CERCLA substances, then it is a CERCLA substance (e.g., oil contaminated with PCBs).
- The substance must impact land, water, or air in U.S. states, territories, possessions, and the EEZ.
- The substance must pose an imminent and substantial threat to public health or welfare.
- Immediate emergency response is necessary.
- CERCLA allows the FOSC to pre-position response assets, such as the Strike Teams, when there is potential for an incident involving a vessel offshore.
- CERCLA allows Coast Guard and EPA FOSCs response flexibility in dealing with threats of an unknown nature (e.g., an anthrax response).

LEGAL/REGULATORY FRAMEWORK FOR RESPONSE

- The Commanding Officer of the Marine Safety Office (MSO) is the pre-designated FOSC and is in charge of the response.
- CERCLA, as amended, is the statutory basis for response.
- Response operations must comply with the NCP.

NON-COAST GUARD PARTICIPANTS

- The funding process for the OSLTF and CERCLA, from the FOSC perspective, is the same. When the FOSC accesses the Superfund for response, the full resources of the NCP are at his/her disposal.
- The FOSC can hire contractors through BOA agreements or new contracts.
- The FOSC, as with oil spills, can provide funding to Federal, state, and local government responders through incident-specific PRFAs.
- For CERCLA cases, costs are tracked and RPs are billed for those costs. CERCLA does not, however, have the same claims provisions as OPA. Generally, CERCLA does not pay claims filed by injured third parties who must pursue damages through the courts.

IX. STAFFORD ACT / FEMA

STAFFORD ACT FUND USE CRITERIA

- There must be a Presidential Declaration of Disaster (natural or other).
- The affected state that has requested assistance will contribute matching funds.
- FEMA has to issue a Mission Assignment (MA) to the Coast Guard identifying the work to be done and authorizing spending.
- Use of Stafford Act funds differs from typical pollution response. States are expected to deal with most problems, and the Federal government only becomes involved when state resources are not sufficient for the disaster response.
- Stafford Act responses can be geographically limited (e.g., certain counties in a state).

LEGAL/REGULATORY FRAMEWORK FOR RESPONSE

- When the President issues a Disaster Declaration, FEMA establishes a senior official as the Federal Coordinating Officer (FCO). The FCO determines which parts of the Federal Response Plan (FRP)- will be activated and which actions the Federal government will support.
- The FCO is paired with a state counterpart, the State Coordinating Officer (SCO), and the two, working together, oversee the combined state/Federal response.
- The SCO also must approve all Mission Assignments, since the state normally must provide matching resources or funds (10% - 25%) for every Stafford Act dollar spent.
- Under certain circumstances, the Presidential Declaration may waive the matching fund (State Match) requirement. (e.g., this was done for the World Trade Center and the Shuttle Columbia responses).

NON-COAST GUARD PARTICIPANTS

- The funding process for Stafford Act Pollution Response (ESF-10), from the FOSC perspective is similar but not identical to oil or hazardous materials responses.
- Coast Guard Stafford Act responses must have an approved FEMA Mission Assignment (MA) in place or the Coast Guard cannot seek reimbursement after the response is completed. The FEMA MA defines what is to be done, where, and sets a spending limit.
- When the FOSC utilizes Stafford Act Funds, most of the resources of the NCP are at his/her disposal, including contractors and other Federal agencies (but not state or local agencies).
- The FOSC can hire contractors through BOA Agreements.
- The FOSC can provide funding to Federal government responders through incident-specific PRFAs (but not state or local agencies).
- The Stafford Act provides separate and distinct claims procedures for Third Party claims within its overall disaster response system in the FRP.

X. TERRORISM AND FEDERAL RESPONSE AUTHORITY

- Whether terrorism or any other criminal act is the cause of an oil spill does not affect the President's authority to respond to the spill or use the OSLTF Emergency Fund in that response, nor does not affect the applicability of the OPA Title I liability and compensation regime. The OSLTF is available to pay if the responsible party does not pay removal cost and damages claims.
- Terrorism or other criminal acts that cause an oil spill MAY present a liability defense. Such acts that cause a spill may give rise to a defense from OPA liability for responsible parties (e.g., owners or operators of vessels) if certain defense criteria are met. Whether a defense may apply often requires a fact-intensive analysis and often cannot be resolved until the circumstances of the spill have been fully investigated.

ADDITIONAL REFERENCES

Available via http://www.uscg.mil/hq/npfc

- NPFC User Reference Guide – available on CD-ROM
- Interim Claims Regulation
- Claimant Guide
- Supplemental Claims Guidance
- Natural Resource Damage Funding Guidelines
- Technical Operating Procedures
  - Resource Documentation
  - Removal Cost (Oil)
  - Removal Cost (CERCLA)
  - Designation of Source

ACRONYM LIST

BOA	Basic Ordering Agreement
CANAPS	Ceiling and Number Assignment Processing System
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
CGMS	Coast Guard Messaging System
COFR	Certificate of Financial Responsibility
CPN	CERCLA Project Number
EEZ	Exclusive Economic Zone
EPA	U.S. Environmental Protection Agency
ESF-10	Emergency Support Function #10 (Hazardous Materials Annex – Federal Response Plan)
FCO	Federal Coordinating Officer
FEMA	Federal Emergency Management Agency
FLAT	Federal Lead Administrative Trustee
FOSC	Federal On-Scene Coordinator
FPN	Federal Project Number
FRP	Federal Response Plan
FWPCA	Federal Water Pollution Control Act
IC	Incident Commander
ICS	Incident Command System
JIC	Joint Information Center
KO	Contracting Officer
LOL	Limit of Liability
MA	Mission Assignment
MLC	Maintenance and Logistic Command
MSO	Marine Safety Office (USCG)
NCP	National Contingency Plan
NMFS	National Marine Fisheries Service
NPFC	National Pollution Funds Center
NOD	Notice of Designation
NRD	Natural Resource Damage
NRDA	Natural Resource Damage Assessment
OGA	Other Government Agency(ies)
OPA	Oil Pollution Act
OSLTF	Oil Spill Liability Trust Fund (the Fund)
OSRO	Oil Spill Response Organization
P & I	Protection and Indemnity Insurance
PCB	Polychlorinated biphenyls
PRFA	Pollution Removal Funding Authorization
POLREPS	Pollution Reports
RP	Responsible Party
SCO	State Coordinating Officer
SOSC	State On-Scene Coordinator
SONS	Spill of National Significance
UC	Unified Commander
UCS	Unified Command System
USCG	United States Coast Guard