National Pollution Funds Center Determination

Claim Number and Name:	UCGPM23039-OC04 – LPV *Venezia* Mona Island Emergency Restoration
Claimant:	National Oceanic and Atmospheric Administration (NOAA)
Amount Requested:	$448,080.00
Offer Amount:	$448,080.00
Determination Date:	October 19, 2023
NPFC Claims Manager:	[redacted]

I. Discussion of Factual, Legal, and Administrative Basis for Claim

Summary of Incident and Claim

The *Venezia*, a drug runner fiberglass sailboat modified to operate as a submarine (low profile vessel [LPV]) grounded on Mona Island, Puerto Rico on or about August 31, 2023, on the rocky southern shore of Mona, in the vicinity of Playa Mujeres,[1] an active sea turtle nesting beach. Mona is managed by the Puerto Rico Department of Natural and Environmental Resources (PRDNER) and is a particularly environmentally sensitive island of Puerto Rico. As described by NOAA and PRDNER, "Remote and pristine, Mona is located approximately 42 miles west of the main island. Puerto Rico has designated Mona as a Natural Reserve, managed by DNER, and the National Park Service designated Mona a U.S. Natural Landmark. With critical nesting beaches for sea turtles, critical habitat for endangered corals, a significant endemic biota, and important seabird rookery areas, Mona is perhaps the most environmentally sensitive area in Puerto Rico."[2] Critically endangered Hawksbill sea turtles (*Eretmochelys imricata*), threatened green sea turtles (*Chelonia mydas*), and seven species of threatened coral are all in the vicinity of Playa Mujeres and of the grounded vessel.

PRDNER staff on the island reported finding the grounded abandoned vessel on the morning of August 31, 2023, noting that the vessel was leaking diesel fuel, and that there were four 600-gallon tanks on board that appeared to be full. [3] The U.S. Coast Guard's Emergency Consultation under the Endangered Species Act further described the reported presence of pooled oil on the rocks, and that the area is designated critical habitat for the hawksbill sea turtle, elkhorn coral, staghorn coral, and migratory birds.[4]

On September 5, 2023, contractors for the U.S. Coast Guard removed approximately 330 gallons of oily water and two cubic yards of oil saturated debris from the vessel. There was no active sheening at cessation of response activities, but potential sources of oil remained inside the intact hull, including saturated mattresses, the diesel engine, and residual oil remaining in the intact

[1] POLREP 1, September 5, 2023
[2] NOAA and PRDNER. Emergency restoration action for the submersible drug runner pollution event, Mona Island, Puerto Rico. (Claim) October 2, 2023.
[3] NRC reports 137766 and 1377772 were both submitted by PRDNER staff between 09:45 and 10:15 ET on August 31, 2023, and indicated a sheen in the water, heavy fumes, and the presence of four 600-gallon fuel tanks.
[4] USCG Emergency Consultation under section 7 of the Endangered Species Act, for the LPV *Venezia* incident FPN UCGPM23039, September 1, 2023.

fuel tanks. Against the Trustees recommendations,[5] on September 18, 2023, the Federal On-Scene Coordinator (FOSC) determined not to take additional response measures as the FOSC concluded that attempts to remove the remaining residual oil may result in greater damage to the sensitive marine environment and species in the area than that posed by the remaining oil and therefore additional removal actions under OPA were not warranted.[6]

On September 20, 2023, the National Oceanic and Atmospheric Administration (NOAA) and the U.S. Fish and Wildlife Service (FWS) requested funding from the Oil Spill Liability Trust Fund (OSLTF or Fund) on behalf of themselves and the PRDNER, to initiate a Natural Resource Damage Assessment (NRDA) and evaluate the need for Emergency Restoration actions to avoid irreversible loss of natural resources and prevent or reduce any continuing danger to natural resources.

PRDNER staff visited the site on September 27, 2023, and reported the continued presence of the wrecked vessel, interior spaces with observable coating of oil, and excessive oil fumes emanating from the wreck - all indicating a concerning quantity of oil remaining on the vessel.[7] As of September 29, 2023, PRDNER recorded 90+ turtle nests on Playa Mujeres.[8]

On October 2, 2023, the NPFC received a claim from NOAA for $448,080 to implement emergency restoration actions (the Claim). The actions include vessel removal, transport, and disposal, and the necessary supporting activities (i.e., in-water evaluation of extraction path and oversight, environmental compliance and implementation of BMPs, public notice, reporting and administration) to eliminate the threat of oil and related injury to nesting critically endangered hawksbill and threatened green sea turtles, their eggs and hatchlings; threatened coral in the nearshore; and other onshore and nearshore species.[9]

Claimant Eligibility

Federal natural resource trustees are designated by the President pursuant to OPA. 33 U.S.C. §2706 (b)(2). Federal trustees designated under this section assess natural resource damages (NRD) for natural resources under their trusteeship (33 U.S.C. §2706(c)(1)(A)) and may present claims to the Oil Spill Liability Trust Fund (OSLTF or the Fund) for uncompensated natural resource damages.

This claim for emergency restoration costs was submitted by NOAA on behalf of itself, the FWS, and PRDNER. NOAA and FWS under the authority of the Secretary of Commerce and Secretary of the Interior, respectively, are designated federal natural resource trustees pursuant to the President's designation of federal trustees under OPA, Executive Order 12777 (56 Fed. Reg. 54757, October 22, 1991), and Subpart G of the National Oil and Hazardous Substances Pollution Contingency Plan (40 C.F.R. §300.600). PRDNER is a designated natural resource

[5] Various emails from FWS to USCG Sector San Juan IMD, September 6, 2023, and letter from PRDNER to the USCG Sector Commander, Sector San Juan, September 18, 2023.
[6] FOSC Decision Memo, USCG September 18, 2023
[7] Claim p. 9 and additional information received
[8] Claim p. 3
[9] Claim p. 10

trustee for Puerto Rico per Puerto Rican Law 23 (for natural resources generally) and Puerto Rican Law 147 (for coral resources specifically).[10]

Jurisdictional Information

To be eligible for payment from the OSLTF, the claim must arise from an incident as defined by OPA, 33 U.S.C. §2701 et seq. The incident must involve a discharge, or a substantial threat of discharge, of oil from a vessel or facility into navigable waters of the United States. Based on the information summarized in the previous sections, the NPFC has determined that this incident resulted from the discharge of oil, and substantial threat of discharge, from the *LPV Venezia*, a vessel, into the Caribbean Sea, a navigable waterway, on or about August 31, 2023. The NPFC therefore finds that this is an incident as defined by OPA.

General NRD Claim Requirements

Pursuant to 33 U.S.C. § 2713(e), the President promulgated regulations for the presentation, filing, processing, adjudication, and settlement of claims against the Fund. The Claims Regulations are found at 33 C.F.R. Part 136.

No responsible party (RP) has been identified for this incident; therefore, there is no RP presentment requirement. 33 C.F.R. §136.103.

The NPFC received NOAA's Claim on October 2, 2023. NOAA presented a sum certain claim in writing to the Director, NPFC. Additionally, Trustee claimants are required to provide certain certifications as to the integrity of the claim in accordance with 33 C.F.R. §136.105 and §209, including whether the assessment was conducted in accordance with applicable provisions of the NRDA regulations, 15 C.F.R. Part 990, promulgated under 33 U.S.C. §2706(e)(1). The Claim includes the requisite certifications.

Because this is a claim for Emergency Restoration, NOAA is not required to submit a publicly reviewed plan. 33 U.S.C. §2712(h). However, NOAA must provide notice to the public, to the extent practicable, of the planned emergency restoration actions and meet certain post action public notice requirements, 15 C.F.R. §990.26(d). NOAA indicated their intent to provide public notice of the emergency restoration actions and results.[11]

NRD Claims to the NPFC must be presented within three years after the date on which the injury and its connection with the incident in question were reasonably discoverable with the exercise of due care, or within three years from the date of completion of NRDA under OPA (33 U.S.C. §2706(e)), whichever is later. 33 U.S.C. §2712(h)(2), 33 C.F.R. §136.101(a)(1)(ii). This Claim is for Emergency Restoration precedes completion of the assessment and was submitted less than one month from completion of response activities. The Claim was received within the time limitation for NRD claims.

[10] PR Law 23, Organic Act of the Department of Natural and Environmental Resources, June 20, 1972, as amended. PR Law 147, Coral Reef Conservation Act of 1999, July 15, 1999

[11] Claim presentment letter, October 02, 2023, and Claim, p. 10

Accordingly, the NPFC has determined that NOAA met the above statutory and regulatory requirements for an NRD Emergency Restoration claim against the Fund.

The Trustees' Burden of Proof and the NPFC's Review Process

Trustees bear the burden of providing all evidence, information and documentation deemed necessary by the Director, NPFC, to support the claim. 33 C.F.R. §136.105(a).

The Trustees are pursuing emergency actions under 15 C.F.R. §990.26. As such, the NPFC evaluated the Trustees' Claim according to those regulations along with the regulations for claims against the OSLTF at 33 C.F.R. Part 136.

Ultimately, during the adjudication of claims against the OSLTF, the NPFC acts as the finder of fact. In this role, the NPFC considers all relevant evidence and weighs its probative value when adjudicating a claim. The NPFC is not bound by the findings or conclusions reached by other entities. If there is conflicting evidence in the record, the NPFC makes a determination as to what evidence is more credible or deserves greater weight, and finds facts based on the preponderance of the credible evidence. In its adjudication, the NPFC considered all the documentation provided by NOAA and independently conducted fact finding. As this determination is based on the unique facts giving rise to this claim, it should not be viewed as controlling over future NPFC claims determinations.

Prohibition Against Double Recovery

Under 33 U.S.C. §2706(d)(3), double recovery for natural resource damages is prohibited. This prohibition includes payment of duplicative costs for damage assessment or restoration, rehabilitation, replacement, or acquisition for the same incident and natural resource.

Interim Claim

Payment of this emergency restoration claim may be considered an interim claim under 33 U.S.C. §2713(d).

II. Analysis of Proposed Emergency Restoration Action

The NRDA regulations provide that trustees may take emergency restoration action before completing the NRDA process, provided that: (1) The action is needed to avoid irreversible loss of natural resources, or to prevent or reduce any continuing danger to natural resources or similar need for emergency action; (2) The action will not be undertaken by the lead response agency; (3) The action is feasible and likely to succeed; (4) Delay of the action to complete the restoration planning process established in this part likely would result in increased natural resource damages; and (5) The costs of the action are not unreasonable. 15 C.F.R §990.26 (a)(1)-(5). The following summarizes NOAA's claim with regard to each element of 990.26 (a) and the NPFC's findings.

Is the action needed to avoid irreversible loss of natural resources, or to prevent or reduce any continuing danger to natural resources? 15 C.F.R §990.26(a)(1).

Resources at risk – As described in Section I of this determination, Mona Island has an assemblage of rare and endangered species, many of which are highly sensitive to oil pollution and are in the vicinity of the wrecked vessel. Per the Trustees' Claim,[12]

> "The benthic habitat adjacent to Las Mujeres Beach is designated critical habitat for Acroporid and non-Acroporid coral and all species of listed corals have been observed in the area. Based on existing data for coral in this vicinity and multiple recent field visits during September, the hard corals are dominated by mountainous star coral (*Orbicella faveolata*) cavernous star coral (*Montastrea cavernosa*), starlet coral (*Siderastrea* spp), smooth brain coral (*Pseudodiploria strigosa*), mustard hill coral (*Porites astreoides*), finger coral (*Porites porites*) and pillar coral (*Dendrogyra cylindricus*), and elliptical star coral (*Dichocoenia stokesii*). Branching calcareous hydroids (*Millepora spp*) and other subdominant hard corals such as butterprint brain coral (*Meandrina* sp), grooved brain coral (*Diploria labyrinthiformis*), and *Eusmilia fastigiata*. Elkhorn corals (*Acropora palmata*), a federally threatened species, were observed in the shallow areas. There are also numerous branching soft corals at the site including the sea fan (*Gorgonia flabellum*), and several species of sea rods and sea plumes (*Pseudopterogorgia* sp*, Pterogorgia* sp*, Plexaura* sp*, Plexaurella* sp*, Muricea* sp*, Eunicia* sp). Biota cover in addition to hard and soft corals includes encrusting and branching sponges and coralline and crustose algae. Numerous large barrel sponges (*Xestospongia muta*) among others are scattered throughout the coral community. Based on existing data in this vicinity, other benthic invertebrates in the area likely include sea cucumbers, mollusks, brittle stars and small crustaceans."

Similarly, as described in the Claim,[13]

> "The sand beaches both north and south of the vessel are important habitat for nesting sea turtles, primarily the Endangered Hawksbill and the Threatened Green. The beaches of Mona Island, including Las Mujeres beach, are designated critical habitat for hawksbill sea turtles and have been proposed as critical habitat for Green sea turtles. Las Mujeres beach usually has over 140 sea turtle nests a year and data from DNER showed that there were over 50 active hawksbill and green sea turtle nests in this stretch of beach at the time of the grounding on August 31, 2023. As of September 29, over 90 nests had been established on the beach some of which have already hatched."

Danger presented by remaining situation - The Trustees contend that, left unattended, each passing tropical weather event increases the likelihood of vessel break-up,[14,15] at which time any remaining oil, both diesel and engine oil, will discharge from the vessel. Diesel and used motor oil are both highly toxic, and Playa Mujeres is down-current from the grounded vessel. Free

[12] Claim pp. 4-6
[13] Claim, p. 3
[14] Claim, p. 9
[15] On August 11,2023, the National Weather Service Climate Prediction Center increased their prediction for the ongoing 2023 Atlantic hurricane season to an "above normal" level of activity. Current outlook includes 70% chance of 14-21 named storms, of which 6-11 could become hurricanes, and 2-5 could become major hurricanes.

product and oil-soaked debris are expected to contaminate the beach and nearshore water column, further imperiling critically endangered hawksbill turtles and other species. As described by the local NOAA Scientific Support Coordinator (SSC) early during the response, "concerns for diesel would likely be local, short-lived, non-persistent but of concern to nearby water column resources that could be exposed as the diesel disperses."[16] This indicates an additional threat to shallow nearshore threatened coral and their critical habitat. The NPFC further recognizes that oil toxicity to shallow (or near surface) biota is exacerbated by UV radiation, further imperiling these sensitive nearshore coral species.[17,18] Even more concerning, as described in the Claim,[19]

> "For sea turtles, when oil comes ashore on turtle nesting beaches, females, eggs, hatchlings, and nesting habitat are at risk. Oil impacting nesting beaches can have a number of harmful effects on sea turtles depending on the timing of the spill relative to egg laying, incubation, and emergence of hatchlings. Oil can cause embryo mortality and adversely affect development (Fritts and McGehee 1982;[20] Bell et al. 2006;[21] Van Meter et al. 2006[22]). Hatchlings can easily become mired in oil as they emerge from their nest and transit to the ocean or as they attempt to swim to offshore areas. Nesting females may be exposed as they crawl through contaminated areas or while they remain at sea near their nesting beaches between emergences. **Due to the threatened and endangered status of the sea turtles and the designated critical habitat of the nesting beaches on Mona, even small spills have the potential to cause irreversible loss for these imperiled species**." (Emphasis added)

The FWS expanded on the threats to turtles, explaining, "the impacts to wildlife here are subtle, would be the fuel being released and moving into the coarse grain coral sand beach, which can readily absorb the product, the concern being the impacts of the product on the sand beach and sea turtles moving through it, both adults and hatchling and possible contamination of nest cavity by contaminated adult flippers or cloaca.[23] The NPFC has also learned that even the presence of diesel odor can impact sea turtles' ability to navigate.[24] This is concerning given that, as described by the SSC, "odor thresholds for diesel are very low so it is not surprising that there

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[16] SSC SITREP September 2, 2023 from ResponseLink.orr.noaa.gov

[17] Barron, M. Oil and UV Interactions. SpillCon and Spill Master Class, Perth, WA, Australia, May 16-24, 2019. And Nordborg, F.M. 2021. Comparative sensitivity of the early life stages of a coral to heavy fuel oil and UV radiation. Science for the Total Environment. Vol 781, 2021, 146676, ISSN 0048-9697, https://doi.org/10.1016/j.scitotenv.2021.146676.)

[18] Yender, R.A and J. Michel, Eds. 2010. Chapter 3. Oil Toxicity to Corals; Oil Spills in Coral Reefs: Planning and Response Considerations. NOAA. 2nd Edition

[19] Claim, p. 8

[20] Fritts, T.H. and M.A. McGehee. 1982. Effects of Petroleum on the Development and Survival of Marine Turtle Embryos. USFWS Biological Services Program. FWS/OBS-82/37. 41 pages

[21] Bell, B. et al. 2006. High incidence of deformity in aquatic turtles in the john Heinz national Wildlife Refuge. Environmental Pollution Volume 142, pp. 457-465

[22] Van Meter, R.J, et al. 2006. Polycyclic aromatic hydrocarbons affect survival and development of common snapping turtle (*Chelydra serpentina*) embryos and hatchlings. Environmental Pollution, Volume 142, pp. 466-475

[23] Email from FWS Alternate regional Emergency Coordinator to USCG, FWS, NOAA. September 2, 2023. Subject: Low Profile vessel on Mona Island: Urgent

[24] Shigenaka, Gary, Ed. 2010. Section: Indirect Effects of Oil on Sea Turtles; Chapter 4 Oil Toxicity and Impacts on Sea Turtles; Oil and Sea Turtles Biology, Planning, and Response. NOAA.

are reports of diesel odors."[25] Diesel odors continue to persist at the site[26] and would become more broadly pronounced if the vessel breaks up and oil and oily debris litter the shoreline.

Evidence that restoration action will reduce/eliminate risk of oiling – The Trustees are proposing vessel removal as the emergency actions that will reduce or eliminate the dangers to natural resources under their trusteeship. [27] The Trustees are selecting amongst proven methods and will be working with best management practices (BMPs) to assure continued protection of threatened and endangered species and their critical habitat.[28] Extraction of the vessel in a controlled manner allows for immediate mitigation of any potential discharge,[29] versus allowing the vessel to breakup over time distributing oil and oily debris across the shoreline, indiscriminately endangering sea turtles during the sensitive nesting season and the nearshore corals.

NPFC Finding – The NPFC finds that the Trustees' have sufficiently evidenced that the action is needed to avoid irreversible loss of natural resources from oil pollution, or to prevent or reduce any continuing danger of oiling to natural resources. The FOSC does not dispute the continued presence of oil in the vessel, and a recent site visit by PRDNER confirms continued presence of the vessel and residual oil. The condition of the vessel and the environment where the unsecured vessel sits assures its near future demise.[30] The species of concern in the area have special protected status (many are threatened or endangered), are highly sensitive to injury from oil, and are extremely challenging to restore.[31,32] Loss of any individuals of a critically endangered species constitutes irreversible loss of genetic diversity.[33] Removal of the vessel in a controlled extraction will result in the least possible injury due to oiling and overall protection of the most imperiled of the species at risk.

Will the action not be undertaken by the lead response agency? 15 C.F.R §990.26(a)(2).

The FOSC issued a Decision Memorandum, dated September 18, 2023, stipulating that "any additional actions by the Coast Guard would be beyond my authority as the Federal On Scene Coordinator and beyond the authorities of the Coast Guard broadly."[34] The FOSC further issued a

[25] SSC SITREP September 2, 2023, from ResponseLink.orr noaa.gov and Email from NOAA SSC to FWS September 2, 2023, Subject: Low Profile vessel on Mona Island: Urgent
[26] PRDNER noted the persistence of strong diesel odor on September 27, 2023
[27] Claim, pp. 8-10
[28] Claim, p. 9
[29] Additional information received October 3, 2023
[30] The environmental conditions discussed in the Danger presented by Remaining Situation Section along with the FOSC's assessment that further response action posed a significant threat of the vessel breaking apart are highly suggestive that left unattended, the vessel would break apart on its own.
[31] Elkhorn Coral, by example, form thickets in very shallow water providing important habitat for other reef animals. They live for hundreds of years, and the greatest recovery challenge is the lack of reproductive recruitment, requiring costly coral nursery establishment and out-planting. Elkhorn Coral Fact Sheet. NOAA Elkhorn Coral | NOAA Fisheries
[32] Hawksbill Sea Turtles, by example, reach sexual maturity in 20-35 years and are estimated to live to 50-60 years and females return to nest on or near their hatching site every 1-5 years in remote beach locations. Hawksbill turtles are subject to many human threats at all stages of their lives. Restoration generally focuses on intensively policing human activity that kill turtles (bycatch, vessel strikes, nest destruction) and conserving remote beach nesting locations through land conservation. Hawksbill Sea Turtle Fact Sheet. NOAA. Hawksbill Turtle | NOAA Fisheries
[33] https://education nationalgeographic.org/resource/endangered-species/
[34] FOSC Decision Memorandum to File. September 18, 2023

final Pollution Report (POLREP) on September 21, 2023 indicating that response actions were completed.[35]

NPFC Finding – The NPFC finds that the action will not be undertaken by the lead response agency. The USCG has issued its final Decision Memorandum and final Pollution Report, has ceased response activities.

Is the action feasible and likely to succeed? 15 C.F.R §990.26(a)(3).

As described above, the Trustees propose to remove the vessel and its contents to avoid the potential for future oiling. The Trustees are actively engaging various wreck removal companies, including the contractor for the USCG for the response operation. The trustees have received positive assurance of the ability to remove the vessel within the budget provided in their Claim with precautions to mitigate any potential for discharge during the process,[36]and the Trustees believe the risks associated with the emergency action are less than the potential impacts to the threatened and endangered natural resources from a discharge.[37]

In contrast, the FOSC stated in his Decision memorandum,

> "The U.S. Coast Guard reviewed three potential actions to address the remaining pollution threat, including: (1) wreck removal and scuttle in accordance with the General Permit found in 40 C.F.R. Part 229, (2) wreck removal and tow to Puerto Rico for disposal, (3) move the vessel higher up on shore. Additionally, the Coast Guard could choose to take no further action. All plans proposed by Resolve Marine were reviewed by the Coast Guard Salvage Engineering Response Team (SERT). Both Resolve and SERT stressed that any further response action posed a significant threat of the vessel breaking apart, resulting in loose debris impacting the shore."[38]

The NPFC is not privy to the particular assessments provided by the various contractors as asserted by the Trustees or the FOSC. However, as described previously, in the absence of a controlled extraction, the vessel condition and weather are such that the vessel will likely break up distributing oil, oil-soaked debris, and other wreck debris across the shoreline and shallow nearshore waters. The Trustees, authors of the best management practices for vessel groundings in Puerto Rico,[39] have stipulated that they will adhere to BMPs for the specific situation and that precautions are being taken to mitigate any potential for discharge during the vessel removal process. NOAA and PRDNER have extensive experience removing vessels and have the experience necessary to manage this project. NOAA manages the federal government's Marine Debris Program[40] and PRDNER conducts extensive vessel salvage and wreck removal following hurricane events. Finally, NOAA does not argue that there is no potential for the vessel to break up during extraction (as suggested by the FOSC), but NOAA does make a compelling case that

[35] POLREP 4 and Final, September 21, 2023
[36] Additional Information received from NOAA October 3, 2023.
[37] Additional information received from NOAA October 4, 2023.
[38] FOSC Decision Memorandum to File. September 18, 2023.
[39] Sector San Juan Area Contingency Plan 2020, Annex J – CRRT Grounded Vessel in Coral Reef & Seagrass Habitats Guidance
https://homeport.uscg mil/Lists/Content/Attachments/2349/2020%20PR%20and%20USVI%20ACP.pdf
[40] OR&R's Marine Debris Program | (noaa.gov)

left unmitigated, the potential adverse impacts from oil are greater than the risks posed by a controlled extraction. [41]

NPFC finding – The NPFC finds that NOAA's proposal to extract the vessel has reasonable likelihood of success and is the best solution for eliminating the risk of injury from unmitigated oil pollution, which presents a greater threat to hawksbill turtles and other species than the most likely impacts from a controlled vessel extraction.

Would delay of the action to complete the restoration planning process likely result in increased natural resource damages? 15 C.F.R §990.26(a)(4).

As noted by the Trustees, each passing tropical weather event increases the likelihood of vessel break-up that would result in oil and oily debris impacting threatened and endangered sea turtles and corals. Turtles continue to build nests on the adjacent beaches and baby turtles are currently hatching and making their way back to the water. When the vessel was discovered, there were 50 nests on the Playa Mujeres. As of September 29, there were over 90 nests, and new nests continue to be added. In essence, the number of animals in danger is increasing, therefore, any delay may compound the potential injury.

Additionally, completing the restoration planning process requires a full assessment of the injuries. Trustees would need to assess the injuries that have already resulted from past discharge of oil and the FOSC's response actions along with injuries caused by any oil pollution until and upon breakup of the vessel in order to develop a restoration plan that compensates for the total injuries caused by the incident. Assessing injury (including differentiating between injury caused by oil (or exacerbated by oil) and injury from marine debris is costly and restoring injured resources – sea turtles and coral – is very costly and time consuming[42] (and any genetic diversity lost in the sea turtle population cannot be restored).

NPFC Finding - The NPFC finds that waiting to complete the restoration planning process will not only likely increase the natural resources damages but would also increase the cost and complexity of a damage assessment, and unnecessarily further imperil species with special protected status.

Are the costs of the action not unreasonable? 15 C.F.R §990.26(a)(5).

The Trustees' Claim for $448,080 includes plan and site evaluation, extraction, transport and disposal of the vessel, environmental compliance, public notice requirements, and administrative costs for the project and for the Claim. Wreck removal operations in remote sensitive environments are more costly than operations in populous or less environmentally sensitive areas and these costs are well within wreck removal costs experienced for similar sized vessels in

[41] Likely impact from vessel extraction are described in the Sector San Juan Area Contingency Plan, Annex J and generally involve danger to coral from cables, prop wash, and vessel strikes. BMPs help to eliminate these and other potential dangers.

[42] Although individual species restoration and recovery projects vary in cost, green sea turtle recovery topped the list for estimated cost for recovery of selected high-priority species in a 1996 Government Accountability Office Report (estimated at $1.6B to recover). Report 96-34r. Coral restoration projects range from $6,000-$4M USD/ha with a median of $400,000 USD/ha according to Bayraktarov et al. 2019. Motivations, success, and cost of coral reef restoration. Restoration Ecology pp 981-991

remote or sensitive environments.[43] Additionally, the cost of the proposed emergency action as compared to the potential natural resource damages[44] that could result from the incident further evidence the reasonableness of the emergency action. Two comparable examples include the F/V *Jin Shiang Fa* which grounded and broke apart at Rose Atoll in 1993 and the grounding of the *Won Yang* fishing fleet in Pago Pago Harbor in America Samoa in 1999. In the case of the F/V *Jin Shiang Fa*, the Trustees pursued restoration in the form of wreck debris removal following breakup of the vessel (to remove toxic levels of iron) at a cost over $1.4M to pursue coral restoration for coral reef impacts from the discharged oil from the vessel.[45] As of 2022, the coral reef had not fully recovered from the damage caused by the oil pollution. In Pago Pago the trustees pursued emergency restoration actions to remove the nine fishing vessels at a cost of ~$6.8M (or $750K each) to avoid devastating harm to the sensitive coastal environment.[46]

NPFC finding – The NPFC finds the costs of the proposed emergency action not unreasonable in the context of the estimated cost of similar actions in similar situations and the potential resulting damages if the emergency actions are not pursued.

III. Conclusion

After careful review of the claim and supporting documents, the NPFC finds that the Trustees followed 15 C.F.R. §990.26 and met the requirements for an emergency restoration claim to the Fund under 33 C.F.R. Part 136. The NPFC further finds that the actions are necessary to avoid irreversible loss of natural resources and to reduce continuing danger to natural resources. The costs are reasonable and appropriate given the facts of the incident and the proposed action has a reasonable likelihood of success. The NPFC has, therefore, determined that the claimed amount of $448,080 is compensable from the Fund.

Revolving Trust Fund and Return of Unused Funds to the OSLTF

As established by OPA (33 U.S.C. §2706(f)) and the NRDA regulations (15 C.F.R. §990.65), sums recovered by trustees for natural resource damages must be retained in a non-appropriated revolving trust account for use only to implement the assessment and restoration activities addressed in this determination in accordance with NOAA's Plan. Upon receipt of the signed Acceptance/Release from the Authorized Official for NOAA, the NPFC will deposit $448,080 into NOAA's Damage Assessment and Restoration Revolving Fund (DARRF). NOAA has demonstrated that the DARRF is a non-appropriated account that meets these requirements. NOAA 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. 33 U.S.C. §2706(f) and 33 C.F.R. 136.211(b).

[43] The NPFC's Oil Pollution Act Limit of Liability in 2020 Report to Congress indicates a fairly common occurrence of relatively small vessel OPA incident costs exceeding the limit of liability under OPA (~$1M).
[44] Including the complexity and additional cost of differentiating between oil caused impacts and debris caused impacts.
[45] NPFC Determination, Claim 144002-OI2, July 7, 2003
[46] NPFC Determination, Claim H99024-DN1, September 17, 1999

Cost Documentation, Progress Reporting, and Final Report

As the claimant, NOAA shall ensure that all expenditures of OSLTF funds for future activities are documented appropriately and spent according to the claimed activities and this determination. Any funds not spent, not appropriately documented, or which constitute double-recovery, shall be returned to the Fund. 33 U.S.C. §2706(f).

NOAA shall submit a final report within 120 days from the date all claim approved activities are complete. This report should include:

1. Certification by NOAA that all expenditures of OSLTF funds were in accordance with this Determination.
2. A description of work accomplished, any unexpected problems which arose, and any future actions that the Trustees may take with regard to the incident or emergency response actions.
3. Documentation of OSLTF funds remaining in the DARRF for this claim, including account balance and any interest earned.
4. A copy of the public notice under §990.26(d).
5. Documentation of all expenditures as follows:
    a. Labor: For each employee –
        i. A narrative description of the work accomplished by each individual and how that work fit into the actions taken. Enough detail should be included to determine reasonableness of costs; and
        ii. The number of hours worked, labor rate, and indirect rate. An explanation of indirect rate expenditures, if any, will be necessary.
    b. Travel: Paid travel reimbursement vouchers and receipts.
    c. Contract: Activities undertaken, lists of deliverables, and contract invoices and receipts.
    d. Purchases/Expendables: Invoices and receipts, along with an explanation of costs.
    e. Government Equipment: Documentation of costs, including the rate (i.e., hourly, weekly) and time for all equipment used for which costs were incurred.

Upon receipt of the final report and associated cost documentation, the NPFC will reconcile costs, and all remaining funds and/or inadequately documented costs will be returned to the OSLTF.

The NPFC has prepared standardized templates with instructions to facilitate final cost reporting (available on request).