

U.S. Department of  
Homeland Security

**United States  
Coast Guard**



Director  
United States Coast Guard  
National Pollution Funds Center

US COAST GUARD STOP 7605  
2703 MARTIN LUTHER KING JR AVE SE  
WASHINGTON, DC 20593-7605  
Staff Symbol: CA  
Toll-Free: 800-280-7118  
FAX: (202) 372-8397

**NPFC INSTRUCTION M5890.3B**

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**Technical Operating Procedures Relating to  
Designation of Source and Advertisement  
Under  
The Oil Pollution Act of 1990**

U.S. Department of  
Homeland Security

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13 NOV 2017

NATIONAL POLLUTION FUNDS CENTER (NPFC) INSTRUCTION M5890.3B

Subj: Technical Operating Procedures (TOPs) Relating To Designation of Source and Advertisement under the Oil Pollution Act of 1990 (OPA 90)

Ref: (a) NPFC Technical Operating Procedures Series Resource Documentation TOPs (NPFCINST 16451-2)  
(b) Marine Safety Manual, Volume IX, COMDTINST M16000.14

1. **PURPOSE.** The enclosed directive has been developed to provide guidance and procedures on appropriate notification and "designation of source" requirements under OPA 90. It 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) and National Pollution Funds Center (NPFC) personnel shall be guided by this directive in identifying, notifying and designating a source of an oil discharge or the substantial threat of a discharge into the navigable waters of the United States.
3. **DIRECTIVES AFFECTED.** This directive cancels NPFCINST M5890.3A, Technical Operating Procedures for Designation of Source under OPA90 and clarifies guidance issued in the Marine Safety Manual, COMDINST M16000.14, Volume IX, relating to Designation of Source.
4. **MAJOR CHANGES.** Information on the availability of the NPFC to advertise for claims if the RP denies designation or if no RP is identified; guidance on when the issuance of a Notice of Designation (NOD) is appropriate (Appendix 2A); guidance on the issuance of an NOD for a train derailment (Appendix 5); freight train derailment and the issuance of a NOD flowchart (Enclosure 1 to Appendix 5); guidance on the issuance of a NOD for loss of subsistence use in Alaska (Appendix 6); and a sample NOD issued by the NPFC (Appendix 7).
5. **REQUEST FOR CHANGES.** The NPFC welcomes your comments regarding changes to NPFCINST M5890.3B. Please address your remarks to: Director (CA); NPFC; U.S. Coast Guard Stop 7605, 2703 Martin Luther King Jr. Ave SE, Washington DC, 20593-7605. This document will be redistributed, as necessary.
6. **RECORDS MANAGEMENT CONSIDERATIONS.** This directive has been thoroughly reviewed during the clearance process, and it has been determined there are no further records scheduling requirements, in accordance with Federal Records

Act, 44 U.S.C. 3101 et seq., NARA requirements, and Information and Life Cycle Management Manual, COMDTINST M5212.12 (series). This policy does not have any significant or substantial change to existing records management requirements.”

7. ENVIRONMENTAL ASPECT AND IMPACT CONSIDERATIONS.

- a. The development of this directive and the general policies contained within it have been thoroughly reviewed by the originating office and are categorically excluded under current USCG categorical exclusion 22 from further environmental analysis, in accordance with Section 2.B.2. and Figure 2-1 of the National Environmental Policy Act (NEPA), Implementing Procedures and Policy for Considering Environmental Impacts, COMDTINST M16475.1 (series).
- b. This directive will not have any of the following: significant cumulative impacts on the human environment; substantial controversy or substantial change to existing environmental conditions; or inconsistencies with any Federal, State, or local laws or administrative determinations relating to the environment. All future specific actions resulting from the general policies in this directive must be individually evaluated for compliance with the NEPA, Council on Environmental Policy, at 40 CFR Parts 1500-1508, Department of Homeland Security (DHS) and Coast Guard NEPA policies, and all other environmental mandates.

8. FORMS / REPORTS. Notice of Designation (4-15) (Appendix 4 Sample)

9. DISCUSSION. Pursuant to the Oil Pollution Act of 1990 (OPA) § 1002, (33 U.S.C. § 2702(a)), each responsible party (RP) for a vessel or a facility from which oil is discharged, or which poses a substantial threat of a discharge, into or upon the navigable waters or adjoining shorelines or the Exclusive Economic Zone is liable for the removal costs and damages specified in § 2702(b) of the statute. When possible and appropriate the source of the discharge shall be designated and the Responsible Party and Guarantor, if known, shall be notified of that designation. 33 U.S.C. § 2714 (a). Unless the designation is denied, the Responsible Party or Guarantor shall advertise the designation and procedures by which claims may be presented. If the designation is denied or the Responsible Party unidentified, the NPFC shall advertise or notify potential claimants of procedures for presenting claims to the NPFC for payment from the Oil Spill Liability Trust Fund. 33 U.S.C. 2714(b). This instruction provides guidance and procedures for NPFC personnel and Federal On Scene Coordinators regarding designation of a source and notification under 33 USC § 2714; and for a Responsible Party’s advertising of claims procedures under 33 C.F.R. Part 136 subpart D.

## CHAPTER 1 DESIGNATION

### A. General:

1. Generally, the FOSC identifies the source of a discharge and contacts the NPFC when the potential for claims exists. The NPFC will notify the responsible party (RP) and any guarantor of this designation by issuing a Notice of Designation letter. See Appendix 2(A) for criteria on when designation may be appropriate. A source is designated pursuant to OPA § 1014 (33 U.S.C. § 2714). The designation process is designed to notify a responsible party and its guarantor, if applicable, of their liability and the notice of designation notifies them of their responsibility to advertise for claims and start a claims process. If the RP or guarantor denies the designation or fails to advertise; the NPFC will work with the cognizant FOSC and advertise for claims in their place.
2. Designation and notice to the RP or guarantor is not required in order to establish liability under OPA. The fact that designation and notice is not issued with respect to any particular RP or guarantor for an incident does not affect the liability of any RP, guarantor or any other person.
3. The purpose of the notice of designation is to notify RPs and any guarantors of their designation as owner/operator/guarantor of the source of an incident, their potential liability under OPA and their responsibilities to advertise for claims. An RP for the designated source does not have to take action to accept the designation. A designated RP may deny the designation. An RP may also advertise without accepting responsibility for the incident.
4. Designation and notice does not affect an FOSC's directions or notices to an RP, or potential RP, to ensure effective and immediate removal of a discharge and mitigation or prevention of a substantial threat of a discharge of oil; (ii) administrative orders under the Federal Water Pollution Control Act (FWCPA) § 311, (33 U.S.C. § 1321(c) and (e)); (iii) notices of federal interest or assumption; or (iv) cost recovery demand letters and invoices enforcing liability under OPA and federal claims collection law.
5. Notice of Designation.
  - a. Identified RPs or Guarantors: Generally, when a source is identified and the FOSC and/or NPFC determine that designation is appropriate, the notice will be sent to all identified RPs and Guarantors. However, in order to avoid confusion of potential claimants, the NPFC prefers and recommends that any one responsible party and/or guarantor initiate the advertisement process (approved by the NPFC) and establish the claims process.
  - b. Later Identified RPs or Guarantors: If additional RPs or Guarantors are identified at a later date, the NPFC shall coordinate the need for any additional

notices of designation and the decision will depend on whether further advertisement by later identified RPs or Guarantors is determined to be helpful and “reasonably calculated to advise the public how to present a claim.” 33 C.F.R. § 136.303. The notice may be issued advising that the preexisting advertising by the earlier-identified RPs is sufficient.

- c. In the event the RP denies designation or an RP is not identified, the NPFC is prepared to advertise for claims and respond to the claims surge as needed. The scope and magnitude of the spill and potential claims would be the primary driver related to how the NPFC would advertise, but historically the NPFC has been successful working closely with the FOSC and/or Public Affairs Officer to gauge the potential for claims and advertise for claims as needed.

## CHAPTER 2 PROCEDURES FOR DESIGNATION AND NOTIFICATION OF AN RP

### A. General Procedures.

#### 1. Federal On-Scene Coordinator's (FOSC) Duties and Responsibilities.

- a. The FOSC will conduct investigations, to the extent practicable, to identify the source of the discharge or substantial threat of discharge, and where it involves a vessel or a facility, identify all potential RPs and obtain all relevant information as outlined in Appendix 2.
- b. FOSCs should assess the possibility or likelihood for OPA third-party claims for removal costs or damages due to the incident. Appendix 1 provides further details of OPA claim categories.
- c. While a Coast Guard FOSC has the authority to issue a Notice of Designation (NOD), the NPFC strongly encourages all FOSCs to notify the NPFC of the source vessel or facility, the known RP(s) and the possibility or likelihood of third-party claims due to the incident. The information listed in Appendix 1 and 2 is designed to assist FOSCs in identifying the information necessary for the NPFC to properly designate the source and to ensure that an NOD is issued when appropriate.
- d. FOSCs can contact an NPFC Case Officer through the 24-hour-manned NPFC Command Duty Officer (CDO) phone at (202) 494-9118.

#### 2. The NPFC Case Team's Duties and Responsibilities.

- a. A Case Officer will engage the appropriate people within the NPFC Case Team who will assess the need to designate and advertise for claims. The NPFC Case Team will always include a representative from the NPFC Claims Adjudication staff. If the NPFC Claims Adjudication staff determines that designation is appropriate, they will coordinate their efforts with the FOSC and request that the FOSC provide the source and RP information detailed in Appendix 2.

#### 3. The FOSC, in coordination with the NPFC Case Officer or Claims Manager, must determine the appropriate means of advertising to reach potentially injured parties. NPFC Claims Adjudication management and/or staff will determine the method and frequency of advertising that must occur.

- a. Either the NPFC or FOSC will arrange for the written Notice of Designation letter identifying the source and providing notification to the appropriate RP(s) and guarantor(s) based upon the information described in Appendix 2. Appendix 3 provides the content of the Notice of Designation. Appendix 4 is a sample Notice of Designation with enclosures.
- b. The designation shall advise the RP(s) that any denial must be made in writing to the NPFC within 5 days of the transmittal of the notice of designation as

indicated in the designation letter. The FOSC may receive the RP's denial and must notify the NPFC upon receipt.

- c. If the RP does not deny designation, but fails to advertise as required, the NPFC may advertise for claims. If the RP and guarantor both deny designation and fail to advertise, the NPFC may advertise for claims to be submitted to the Oil Spill Liability Trust Fund via the NPFC. In this case, generally, the NPFC will advertise for claims to be submitted directly to the Fund in situations where the RP or guarantor does not advertise.
- d. If no RP is identified and the FOSC has determined the potential for third-party OPA claims, the NPFC will coordinate with the FOSC and advertise for claims to be submitted to the Oil Spill Liability Trust Fund via the NPFC.



## CHAPTER 3 ADVERTISING REQUIREMENTS

- A. General. The NPFC will determine whether it is appropriate to issue a NOD. It is not necessary to issue a NOD unless there is a potential for claims and a need for the RP(s) to advertise their procedures for accepting third-party OPA claims and to implement a claims process. Appendix 2(A) provides guidelines for appropriateness of issuing a NOD.
- B. Forms of Advertising. 33 C.F.R. § 136.309, authorizes the Director, NPFC, to determine for each incident, the type, geographic scope, frequency, and duration of advertisement required. 33 C.F.R. § 136.311 clarifies the form of advertisements.
1. Paid advertisements in newspapers having general circulation which encompasses the area affected by the spill.
  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 potential claimants or categories of potential claimants, e.g., towboats which may have been delayed by a waterway closing.
  4. Personal delivery of notices to known individual potential claimants, such as local waterfront businesses.
  5. News releases or paid announcements on radio or television broadcasts serving the general area.
  6. Online publications or websites maintained for the maritime community.
  7. Other advertising methods as specified by the NPFC.
- C. Content of Advertising. 33 C.F.R. § 136.313 clarifies the content required in each advertisement or notification or where to obtain the information.
1. Location, date and time of the incident.
  2. Specific body of water and 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



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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-term damages representing less than the full amount to which the claimant ultimately may be entitled. Payment of an interim claim shall not preclude recovery for later damages not reflected in the paid or settled partial claim.
8. Notification that if the RP 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 Director, National Pollution Funds Center (CA), U.S. Coast Guard Stop 7605, 2703 Martin Luther King Jr. Ave SE, Washington DC, 20593-7605 for consideration for payment from the Oil Spill Liability Trust Fund.
9. Advertisement/Notification should be made in English. Circumstances may dictate the consideration of additional languages. The NPFC can assist an FOSC in addressing these additional needs.

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W. R. GRAWE

Director, National Pollution Funds Center

- Enclosure (1) Categories of Costs or Damages Which May be the Subject of Claims under OPA
- Enclosure (2) Information Required to Issue a Notice of Designation
- Enclosure (3) When Issuing a Notice of Designation is Appropriate
- Enclosure (4) Content of Notice of Designation
- Enclosure (5) Sample Notice of Designation, Content of Advertisement, Sample Advertisement
- Enclosure (6) Issuance of a Notice of Designation for a train derailment
- Enclosure (7) Freight Train Derailment Notice of Designation Flowchart
- Enclosure (8) Issuance of a Notice of Designation for Loss of Subsistence Use in Alaska
- Enclosure (9) Sample of Actual Notice Provided by the NPFC

## Appendix 1

### Categories of Costs or Damages Which May be the Subject of Claims Under OPA

#### Definitions:

33 U.S.C. § 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;

33 U.S.C. § 2702 (b), describes 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 (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) 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.

## Appendix 2

### Information Required to Issue a Notice of Designation

FOSCs will be guided by this Appendix when gathering information necessary to issue a NOD. When requesting that the NPFC issue a NOD, all FOSCs should provide the information in items 1-9. When assessing the potential for either removal cost claims or damage claims, FOSCs will take into consideration items 10 and 11. FOSCs should be prepared to describe, based on the information below, why a NOD is required in the current case. The NPFC will rely heavily upon the FOSC's recommendation in determining whether to issue a NOD.

1. The name and other unique identifying information of the vessel or facility designated as the source.
2. List known or suspected RP(s) and guarantors. Provide addresses where possible.
3. If the source is a vessel, whether the vessel holds a Certificate of Financial Responsibility.
4. Actual and projected magnitude of the spill.
5. The location, date, and time of the incident.
6. The specific body of water affected or threatened.
7. 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) or damages as a result of the spill.
8. Contact information for the FOSC or FOSC's representative.
9. Recommended media outlets or mechanism best for the advertisement of claims.
10. Assessing Removal Costs: When recommending that a NOD be issued, FOSCs should take into account the following factors when assessing potential removal cost claims.
  - a. Are State or local agencies responding to the spill? If so, kindly identify.
  - b. Is there an Indian tribe responding to the spill? If so, kindly identify.
  - c. How many other Federal agencies are responding to the spill?
  - d. Has the FOSC recommended or approved the use of any Pollution Removal Funding Authorizations (PRFAs)?

- e. Provide a brief summary of the number of other organizations engaged in removal actions and summary of actions taken. Summary can be provided in the form of a POLREP.

11. Anticipating Damages: When recommending that a NOD be issued, FOSCs should take into account the following factors when assessing potential damage claims.

- a. Impact upon environmentally sensitive areas. Obtain preliminary evaluation by Scientific Support Coordinator and/or cognizant federal, state, or Indian tribe trustee if available.
- b. Impact upon real or personal property. Check impact on boats, docks, nets, beach, shoreline, marinas, etc.
- c. Impact upon areas of potential subsistence use. Query local Fish and Wildlife or state representatives.
- d. Impact upon business or property generating governmental revenues. Check with state or local officials concerning tax, royalty, or fee assessments.
- e. Impact upon businesses or private enterprises. Check if the discharge of oil or removal operations has affected vessels or waterfront businesses; prevents access to commercial enterprise; closes areas used for transit of water traffic 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 should mitigate damages.)
- f. Any situations where state and local representatives needed to provide increased or additional services in connection with the incident such as security, traffic control, evacuations, or arranging access.
- g. Consider the type of oil spilled, length of time in one area, and the concentration.
- f. Consider the type of natural resources potentially affected. Again, seek advice from the Scientific Support Coordinator, and/or cognizant federal, state, or Indian tribe trustee.
- h. 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.

## Appendix 2(A)

### When Issuing a Notice of Designation is Appropriate

The NPFC will use its discretion based on its expertise and experience given the facts and circumstances of the particular incident to determine whether a NOD should be issued. When determining the propriety of issuing NODs, the NPFC should consider whether the source of the oil, the RP, and potential third-party claimants can be identified, and the likelihood that valid OPA claims will arise and that the RP will entertain claims.<sup>1</sup> The NPFC will, designate and notify an RP when the discharge can be positively attributed to a source owned or operated by the RP and the potential removal costs and damages incurred by third party claimants can be directly attributed to the RP's oil discharge.

#### An incident with multiple RPs.

When an incident involves one discharge of oil and there are several RPs and/or guarantors, the NPFC typically issues NODs to each responsible party and/or guarantor; however, the NPFC prefers that one RP and/or guarantor take responsibility for advertising for claims and establishing a claims procedure. In this case all the RPs and/or guarantors are liable for the removal costs and damages

#### Multiple incidents with multiple discharges of oil and multiple RPs and/or guarantors.

When there are multiple incidents that result in more than one discharge of oil and the oils intermix, it may be possible to identify the RP for each discharge but not to identify specific damages or removal costs for each incident. In this case it may be appropriate to issue a NOD to all identified RPs and the NPFC, at its discretion, will determine the RP responsible for advertising and establishing a claims process. If the oils and resulting removal costs and damages are not distinguishable the RPs for both incidents are jointly and severally liable for the removal costs and damages. The NPFC should ensure that issuing the NOD to one or all the RPs does not disrupt the FOSC's response action or create confusion among potential claimants.

#### Catastrophic events.

Catastrophic events, i.e., hurricanes, tsunamis, may result in numerous oil spill incidents. These events cause oil to discharge into the waters of the United States from a multitude of sources including vessels and facilities as defined by the Oil Pollution Act of 1990. The National Incident Commander (NIC) may treat the many releases of oil as one spill and may fund the oil removal activities from the OSLTF in accordance with the National Contingency Plan (NCP).

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<sup>1</sup> It would be pointless to instruct a bankrupt or defunct RP to advertise for claims.

In such catastrophic instances, it would be impractical to instruct all potential RPs to advertise for claims. Claimants would have to identify the particular RP or RPs and their claims to the RP, and then many individuals and entities that were damaged during the catastrophic event could find themselves liable under OPA. In most cases it would be almost impossible to attribute any contamination or damage to any one RP's oil. In these situations the NPFC may choose to refrain from issuing numerous NODs to RPs or issue a single NOD if there was a distinct or discreet OPA incident occurring within the event.

In the event that an RP can be identified for a discreet discharge of oil, the normal NOD process is followed. However, if the discharged oils are indistinguishable and cannot be attributed to a specific facility or vessel, then an RP for the purpose of advertising will not be designated, and no NODs are issued. When the NPFC chooses not to issue NODs, OPA and its regulations will still be in effect. The FOSC will still be able to obtain funding for the response.



### **Appendix 3**

#### **Contents of Notice of Designation**

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 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 FOOSC 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.

**Appendix 4**

**Sample Notice of Designation**

U.S. Department of  
Homeland Security

**United States  
Coast Guard**



Commanding Officer  
United States Coast Guard  
Command

Command  
US COAST GUARD  
Address  
Staff Symbol: ()  
Phone:  
Fax:  
Email:

16480

[DATE]

CERTIFIED MAIL - RETURN RECEIPT REQUESTED  
CERTIFIED MAIL NUMBER: 0000 0000 0000 0000 0000

RP ADDRESS BLOCK

RE: SUBJECT

FPN: PROJECT NUMBER

Dear Sir:

On or about INCIDENT DATE, the U.S. Coast Guard responded to an oil pollution incident that occurred near INCIDENT LOCATION/BODY OF WATER. Our records indicate that the VESSEL/FACILITY NAME has been identified as the source of the pollution incident. The incident resulted after the VESSEL/FACILITY NAME discharged oil into the BODY OF WATER, a navigable water of the United States. Our records indicate that you were the RP TYPE (i.e. Owner and/or Operator) of the vessel or facility at the time of the incident. As such, you may be liable as a responsible party for the resulting removal costs and damages.

Unless they can establish a defense to liability, owners and operators of vessels or facilities that either pose a substantial threat of a discharge of oil or are the source of an oil discharge into navigable waters of the United States are liable for removal costs and damages, as specified in the Oil Pollution Act of 1990 (33 USC 2701 et. seq.).

The Oil Pollution Act of 1990 requires that we formally designate the VESSEL/FACILITY NAME as the source of the discharge and notify you that as its RP TYPE (i.e. OWNER and/or OPERATOR), you incur certain legal responsibilities to the U.S. Government and others damaged by this incident. You may be 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 the newspaper(s) having general circulation in the area(s) where claimants may be affected. We also require that you post notices in marinas and provide direct notification where 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 a 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, size of the advertisement and how often the advertisement will appear, as appropriate. You must send us copies of the advertisement in advance of your publication for review; 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 the NPFC advertises, you will be charged for their 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 PERSON SIGNING THE NOD at the above address. If you deny this designation, the National Pollution Funds Center will advertise for claims. If the NPFC advertises for claims and you are later judged to be responsible for the discharge, you will be charged for their costs, as well as for the costs of any administration, adjudication, and payment of claims.

Sincerely,

[Name of Signer]  
Claims Manager or FOOSC  
By direction

Encl.: (1) Content of Advertisements  
(2) Sample Advertisements

Copy: [FOOSC], other RPs, Guarantors, as applicable

## **Enclosure (1) to Appendix 4**

### **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 Director, National Pollution Funds Center (CA), US COAST GUARD STOP 7605, 2703 MARTIN LUTHER KING JR AVE SE, WASHINGTON, DC 20593-7605, for our consideration. We will then evaluate the claim and take appropriate action.
9. Unless noted below, the advertisement/notification must be in English.

**Enclosure (2) to Appendix 4**

**Sample Advertisement**

**PUBLIC NOTICE**

In accordance with the Oil Pollution Act of 1990 (33 USC 2714(c)), the VESSEL/FACILITY NAME, owned and/or operated by RP NAME, has been named as the source of a discharge of oil into the BODY OF WATER on or about INCIDENT DATE. This spill impacted the INCIDENT LOCATION area, and as the RP TYPE (i.e. Owner and/or Operator) of the vessel/facility, RP NAME is accepting claims for certain uncompensated damages and removal costs.

Removal costs and damages which may be compensated include removal costs performed in accordance with the National Contingency Plan; 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 a 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:

Director  
National Pollution Funds Center (CA)  
US COAST GUARD STOP 7605  
2703 MARTIN LUTHER KING JR AVE SE  
WASHINGTON, DC 20593-7605

## **Appendix 5**

### **Issuance of a Notice of Designation for a train derailment**

In the case of a discharge of oil or substantial threat of a discharge of oil from railcars, the owner of the rail car(s) from which oil discharged may be the responsible party. The operator may be the railway company or other entity. In the past when oil discharged from rail cars the railway company has notified the NPFC that it would take responsibility for removal costs, damages and claims. In the future this may not be the case. Passenger train derailments will be handled on a case by case basis with an expectation of the owner/operator of the passenger train being designated to advertise for claims.

As is common with most train derailments, much of the damage and potential for claims results from the fire, explosion or mixed spill resulting from the contents of chemical rail cars mixing with the diesel fuel carried in the saddle tanks of the train. In some cases homes close to the railroad may be evacuated for safety reasons. Also, there may be an issue of whether the discharge of oil discharges or is a substantial threat of discharge to a navigable waterway. Close coordination with the FOSC is critical to manage the expectations of home and business owners who are displaced from their residences or places of business as result of fire, smoke, explosion hazard or mixed spill as those are not OPA compensable damages.

#### **Background:**

The Department of Transportation's Federal Railroad Administration (FRA) promotes and regulates the railroads that operate on more than 140,000 miles of track across the United States. The FRA has classified freight railroads into seven (7) Class 1 railroads, twenty-one (21) regional railroads and five-hundred and ten (510) local railroads. Class 1 railroads have annual operating revenues in excess of \$432 million a year and account for 67% of industry mileage. The Class 1 freight railroads include:

Burlington Northern and Santa Fe (BNSF) Railway, CSX Transportation, Grand Trunk Corporation, Kansas City Southern Railway, Norfolk Southern Combined Railroad Subsidiaries, Soo Line Railroad, and Union Pacific Railroad.

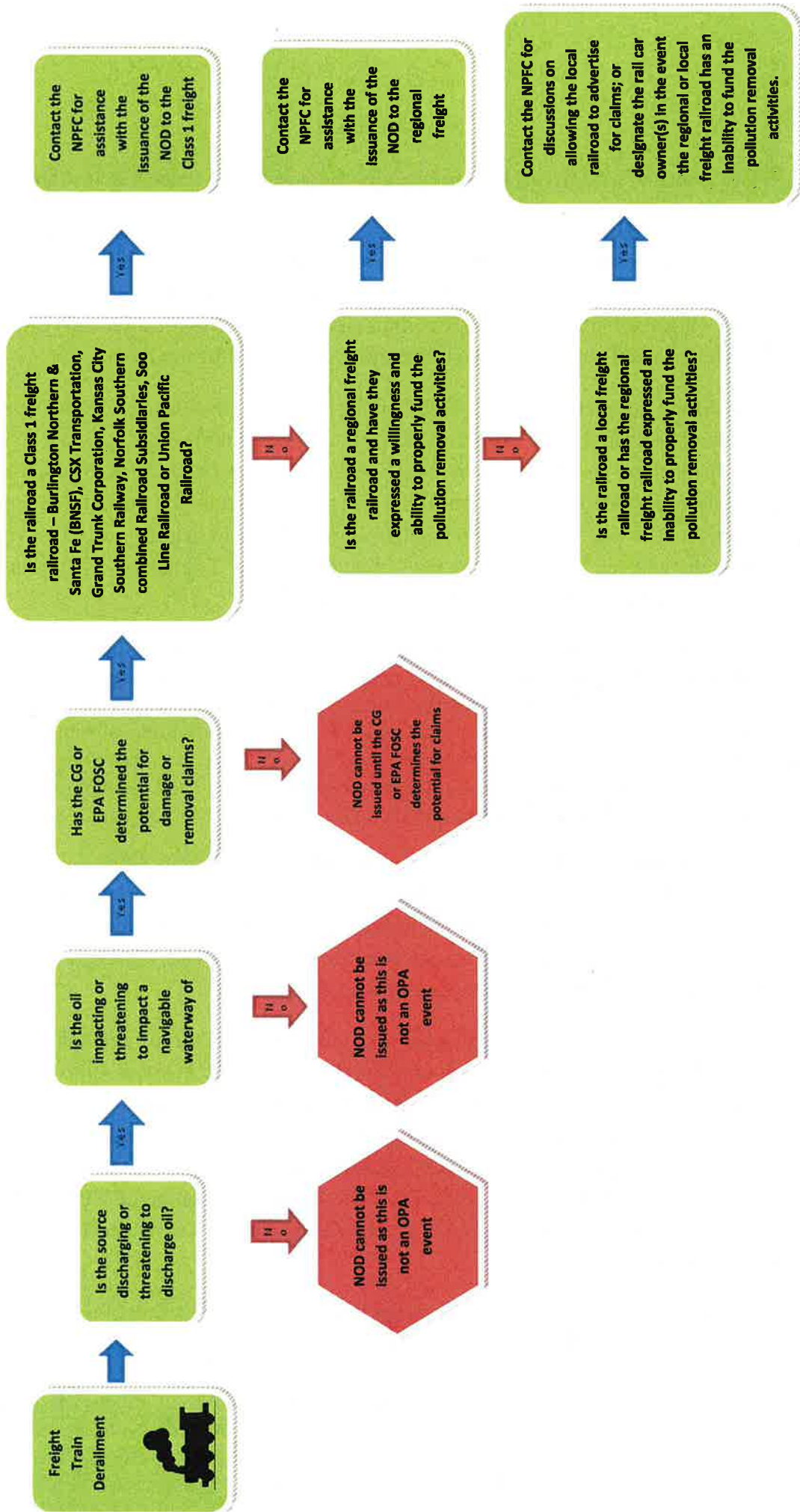
As most railroads don't own the rail cars they are hauling, the possibility of multiple RPs in the event of a train derailment is inevitable. However, as not to confuse the public and to remain consistent with NPFC TOPs guidance when dealing with multiple RPs, only one RP should be designated to advertise for claims. When dealing with a freight train derailment involving a Class 1 railroad, designation of the Class 1 railroad is desired. Close coordination between the FOSC and NPFC is important in the proper designation of source.

The twenty-one (21) regional freight railroads have annual operating revenues of less than \$432 million but more than \$27.8 million and operate on more than 350 miles of track. These freight railroads are either independently owned (Iowa Interstate); owned as part of large corporations (Watco's Wisconsin & Southern and Genesee & Wyoming's Buffalo & Pittsburgh) or State owned (Alaska Railroad). When dealing with a freight train derailment involving a regional freight railroad, designation of the regional freight railroad is desired. Close coordination between the FOSC and NPFC is imperative in the proper designation of source as there may be regional freight railroads that have an inability to fund a response to an oil spill resulting from a train derailment. In that case, the rail car owner(s) will be identified and one of the car owners may be designated to advertise for claims. The NPFC would advertise for claims in the event the regional freight railroad and rail car owner(s) were unable to fund the response.

The five-hundred and ten (510) local railroads have annual operating revenues of less than \$27.8 million dollars and operate on less than 350 miles of track. Depending on the size and location of the train derailment, these local railroads may not have the financial means available to respond to an oil spill resulting from a train derailment. In this event, the rail car owner(s) will be identified and one of the car owners may be designated to advertise for claims. Coordination between the FOSC and NPFC is required to properly identify and designate the proper source. The NPFC would advertise for claims in the event the local freight railroad and rail car owner(s) were unable to fund the response.



**Enclosure (1) to Appendix 5 Freight Train Derailment Notice of Designation Flowchart**



## Appendix 6

### Issuance of a Notice of Designation for Loss of Subsistence Use in Alaska

In the event that a discharge of oil or substantial threat of a discharge of oil to a navigable water the NPFC, with cooperation with the FOSC, will determine if a NOD should be issued to the responsible party to advertise for claims for loss of subsistence use. The determination will be made in part when the FOSC can identify communities and families are affected by the oil spill and who suffer a loss of subsistence use that may be reimbursed by the Fund.

Close coordination between the FOSC, NPFC, CG d17 Tribal Liaison and Alaska Department of Fish and Game is essential in the proper identification of communities and families dependent on subsistence fishing and the subsequent issuance of the Notice of Designation. The CG d17 Tribal Liaison maintains a comprehensive list of tribes native to Alaska which includes their geographic locations; points of contact along with telephone numbers and email addresses. This list is updated annually and can be obtained by contacting the CG d17 Tribal Liaison by email at [susan.d.hargis@uscg.mil](mailto:susan.d.hargis@uscg.mil) or by telephone at 907-463-2034.

Also, the Alaska Department of Fish and Game maintains an on-line database of subsistence harvest information organized by community called the Community Subsistence Information System. There is also a link on this page that contains an interactive map of geographic survey data that shows every community in the state and indicates the availability of subsistence information. Simply clicking on a community from the interactive map identifies the tribe native to that area and provides information about their subsistence use. The link and interactive map can be found at: <http://www.adfg.alaska.gov/sb/CSIS/index.cfm?ADFG=main.CommObs>

The Alaska Department of Fish and Game also maintains a Community Database Online, which is maintained by the Division of Community and Regional Affairs and presents a wide variety of information in the form of hundreds of data attributes about each community in the State of Alaska, to include municipal officials and community/regional contact information. The link can be found at: <https://www.commerce.alaska.gov/dcra/DCRAExternal>

Even with the information available to identify communities and families dependent on subsistence fishing as sources of nutrition or cultural practices, the FOSC is still strongly encouraged to contact and work with the NPFC on the designation of source. Specifically, the NPFC maintains a current copy of the CG d17 tribal listing and is readily available to assist in whatever means necessary to ensure the RP is designated and the proper communities and families have been identified to receive the RP's advertisement. Lastly, the NPFC would advertise for claims in the event that the RP denied designation or was financially unable; or if an RP was not identified.

Please note that the loss of subsistence use is not limited to Alaska. A loss of subsistence use could occur in any other state of the United States.

## Appendix 7

### Sample of Actual Notice Provided by the NPFC

U.S. Department of  
Homeland Security

United States  
Coast Guard



DIRECTOR  
NATIONAL POLLUTION FUNDS CENTER

US COAST GUARD STOP 7100  
4200 WILSON BLVD STE 1000  
ARLINGTON VA 20598-7100  
Staff Symbol: Ca  
Phone: 202-493-6831  
Toll-Free: 1-800-358-2897 Ext. 36831  
FAX: 202-493-6937  
Email: Thomas.S.Morrison@uscg.mil

16480  
April 28, 2010

**CERTIFIED MAIL:** 7008 3230 0001 9575 2556

BP Exploration & Production Inc.  
200 Westlake Park Boulevard  
Houston, TX 77079

RE: DEEPWATER HORIZON  
FPN: N10036

Dear Sir:

On or about April 21, 2010 an incident under the Oil Pollution Act of 1990, 33 USC § § 2701 et. seq., occurred approximately 45 miles offshore from Louisiana on Mississippi Canyon Block 252 in the Gulf of Mexico. The incident involved an explosion and fires on the Mobile Offshore Drilling Unit (MODU) Deepwater Horizon, which subsequently sank. Our information indicates that the resulting oil discharges include discharges from the MODU on or above the surface of the water as well as ongoing discharges of oil from the well head. This notice designates the offshore facility as a source of an oil discharge pursuant to 33 USC § 2714 (a) and notifies BP Exploration & Production Inc., a responsible party, of its responsibility to advertise for claims. By copy of this letter, we are also notifying your guarantor, BP Corporation North America Inc., of this designation and its responsibility for advertising.

Unless you deny designation pursuant to 33 USC § 2714 (b) 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 the newspaper(s) having general circulation in the area(s) where claimants may be affected. We also require that you post notices in marinas, marine supply stores, bait and tackle shops located in the areas impacted by the incident. You must also provide direct notification where 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. The advertisement must 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. And that payment of such claim shall not preclude recovery for damages not reflected in the paid or settled partial claim. Because of the potential magnitude of this incident additional advertising may be required.

You are directed to inform us of the specifics of your advertising, including the name of any newspaper(s) or other publication(s) in which the advertisements run, the geographical area covered by the publications, 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. If we do not receive these documents, we will assume that you did not comply. 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.

