U.S. Department
of Homeland Security

**United States
Coast Guard**

Director
United States Coast Guard
National Pollution Funds Center

Natural Resource Damage Claims Division
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16480

January 4, 2010

CERTIFIED MAIL Number: 7008 3230 0001 9574 6197

Susan Moore, Field Supervisor
U.S. Department of the Interior
Sacramento Fish and Wildlife Office
2800 Cottage Way W-2605
Sacramento, CA 95825

Re: *S.S. Jacob Luckenbach* Natural Resource Damage Claim
Claim Number: A02005-OI2

Dear Ms. Moore:

The National Pollution Funds Center (NPFC) has reviewed the claim submitted by the U.S. Fish and Wildlife Service (USFWS) for natural resource damages (NRD) resulting from the sunken *S.S. Jacob Luckenbach* (hereinafter *Luckenbach*) and other unknown sources. We are issuing this second partial determination for this claim that approves **$16,980,459.08** to implement seven projects described in the trustees' damage assessment and restoration plan (DARP) subject to the caveats set forth in the footnote below.[1] This second partial determination adjudicates the amounts necessary to

[1] This claim presents an issue of first impression for the NPFC because it involves projects in foreign countries. These projects include the Shearwater Colony Protection project in New Zealand, the Rat Eradication project in Canada, and the Seabird Colony Restoration and Protection projects in Mexico (hereinafter collectively referred to as the "Foreign Projects"). As discussed in this determination, the NPFC agrees with the scientific rationale supporting the selection of these projects. However, it's not clear from the record whether the trustees are authorized under fiscal law principles to fund the proposed Foreign Projects.

The fiscal law issues surrounding the Foreign Projects are illustrated by the Comptroller's Decision in The Honorable Bill Alexander U.S. House of Representatives, 63 Comp. Gen. 422, 1984 WL 43540 (1984). In that case, the Comptroller General held that the Department of Defense ("DOD") lacked authority to fund civic and humanitarian projects in a foreign country because those activities were included within the scope of more specific appropriations for Department of State ("DOS") activities under the Foreign Assistance Act of 1961, 22 U.S.C. § 2151 et seq. As a result, the Comptroller General concluded that DOD's funding was improper and potentially amounted to a violation of the Antideficiency Act. Id. at 4456-47. See also, 22 U.S.C. § 2381 note (Executive Order 12163 as amended delegates the President's functions under the Foreign Assistance Act to the Secretary of State.).

In this claim, the Foreign Projects appear to fall within the scope the provisions in the Foreign Assistance Act that address U.S. funding of environmental projects overseas. Specifically, 22 U.S.C. § § 2151 (p) and 2151(q) provide authority for funding projects that protect natural resources and maintain wildlife habitats

implement the seven projects ($16,211,492.00), oversee implementation ($475,417.00), report on approved projects ($211,198.00), and pay past assessment costs ($82,352.08). This second partial determination was made in accordance with the Oil Pollution Act (OPA, 33 U.S.C. §§2701 et seq.) and the OPA regulations found at 33 C.F.R. §136 and 15 C.F.R. Part 990.

Summary of Claim

On December 4, 2006, the NPFC received a NRD claim from the USFWS, on behalf of itself, the National Park Service (NPS), National Oceanic and Atmospheric Administration (NOAA), and California Department of Fish and Game (CDFG) (collectively, the trustees). The claim totaled $25,514,774, representing $25,012,038 to implement 14 projects to compensate for natural resource losses resulting from the *Luckenbach* vessel incident and $502,736 for past assessment costs. The NPFC received a revised NRD claim from the USFWS on September 4, 2007 that totaled $24,748,525, which included $24,127,216 to implement the same 14 restoration projects and $621,309 for past assessment costs.

On October 2, 2008, the NPFC issued a partial determination to enable implementation of those projects for which our evaluation was complete. This partial determination provided the NPFC findings that the:

1. claimants are eligible to present the claim (33 C.F.R. §166.207);
2. claim was presented within the statute of limitation (33 U.S.C. §§2713(h)(2) and 2717(f)(1), 33 C.F.R. §136.101, 15 C.F.R. §990.64(b));

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in foreign countries. Based on the current record, it's not clear whether the trustee's authority for implementing the Foreign Projects would be a more general authority than the authorities provided by the Foreign Assistance Act. As a result, it's not clear whether the trustees would be precluded from funding the Foreign Projects under the rationale in The Honorable Bill Alexander U.S. House of Representatives, 63 Comp. Gen. 422, 1984 WL 43540 (1984). It's also not clear whether the Foreign Projects amount to an improper augmentation of the DOS. See, GAO, Principles of Federal Appropriations Law, GAO-06-382SP, p.6-235 (Washington, D.C.: Feb. 2006)("Another way of stating the augmentation rules is that when Congress appropriates funds for an activity, the appropriation represents a limitation Congress has fixed for that activity, and all expenditures for that activity must come from that appropriation absent express authority to the contrary.").

As 15 C.F.R. § 990.53 (a) and 33 C.F.R. § 136.105 (a) place the burden on the trustees to show that the Foreign Projects comply with all applicable laws, the trustees must satisfactorily explain these fiscal law issues before the NPFC will release funding for the Foreign Projects. Specifically, even though this determination agrees that the Foreign Projects properly compensate under the OPA for natural resource damages resulting from the Luckenbach incident, the trustees must satisfactorily resolve the following questions before the NPFC will release funding for the Foreign Projects:

1. What statutory authority do the trustees rely on to implement the Foreign Projects?
2. In light of the GAO's opinion cited above, can the trustees explain why OSLTF funding for the Foreign Projects would not violate the Antideficiency Act? Can the trustees explain why the Foreign Projects would not improperly augment the DOS?
3. What plans, if any, do the trustees have to coordinate implementation of the Foreign Projects with the DOS as required by 22 U.S.C. § 2151 (b) and 22 C.F.R. Part 181?

3. discharges that occurred after OPA's date of enactment (August 18, 1990) from the *Luckenbach* are an OPA vessel incident for which the trustees have jurisdiction (15 C.F.R. §990.41);
4. claim was presented pursuant to a plan developed under the NRDA regulations at 15 C.F.R. Part 990;
5. trustee estimates of direct species mortality and lost bird-years for waterfowl, Grebes, Procellarids, Brown Pelicans, Cormorants, Gulls, other shorebirds, Common Murres, and other Alcids are reasonable and comply with 15 C.F.R. §990.27, 15 C.F.R. §§990.51-52, and 15 C.F.R. §990.53(d);
6. $621,309 of claimed past assessment costs are reasonable and appropriate;
7. $2,769,215 of claimed restoration costs is reasonable and appropriate to implement five preferred projects to compensate for injuries resulting from the *Luckenbach* vessel incident, as follows -
   a. Reading Rock Colony Restoration to compensate for a portion of the Common Murre losses (project restores 10,217 of the 1,821,554 estimated lost Common Murre-years) ($250,000),
   b. Grebe Colony Protection at Northern California Lakes to compensate for Grebe losses ($774,060),
   c. Protection of Nesting Areas in Kokechik Flats, AK to compensate for waterfowl and other seabirds losses ($600,000),
   d. Nesting Habitat at Ano Nuevo Island to compensate for Rhinoceros Auklet losses ($1,024,000), and
   e. Sea Otter Pathogen and Outreach to compensate for Sea Otter losses ($121,155);
8. $462,568 of claimed trustee oversight costs for the five restoration projects is reasonable and appropriate; and
9. $415,382 of claimed contingency costs is available under the NPFC contingency policy to implement the five restoration projects.

This second partial determination adopts the NPFC findings from the October 2008 determination summarized above, and provides our findings with respect to the trustees':

1. claimed injuries to Snowy Plovers and Marbled Murrelets;
2. seven preferred restoration projects that were not considered in the October 2008 determination, as follows -
   a. Mouse Eradication on the Farallon Islands ($992,313) and Shearwater Colony Protection at Taiaroa Head, New Zealand ($55,649) to compensate for Procellarid losses,
   b. Common Murre Colony Protection ($11,264,140) and Corvid Management at Point Reyes to compensate for remaining Common Murre losses ($400,000),
   c. Seabird Colony Restoration and Protection at Baja Islands, Mexico to compensate for losses of Brown Pelicans, Cormorants, and Cassin's Auklets ($2,955,116),
   d. Dune Habitat Restoration at Point Reyes National Seashore (PRNS) to compensate for Snowy Plover losses ($370,835),
   e. Rat Eradication in the Queen Charlotte Islands, Canada to compensate for Ancient Murrelet losses ($193,439);

3. claimed costs to oversee the seven restoration projects ($475,417), report on approved project implementation and expenditures ($211,198), and conduct the assessment and plan restoration ($82,352), and
4. claimed contingency costs for the seven restoration projects ($2,450,181).

The partial determinations issued by the NPFC on October 2008 and herein present NPFC findings on all aspects of the trustees' claim except for compensation of Marbled Murrelet injuries and the fiscal law issues raised in Footnote 1. The trustees' have requested that the NPFC delay adjudication on the compensation for Marbled Murrelet injuries to allow them to identify and evaluate appropriate restoration alternatives for this species.

Determination and Quantification of Snowy Plover Losses

The trustees documented 22 oiled Snowy Plovers following the *Luckenbach* vessel incident. Using these and additional accounts of observed (but not collected) oiled Snowy Plovers, the trustees estimated that 30 died as a result of the incident.

In an email sent to the trustees on February 20, 2008, the NPFC requested more information to support their estimate of 30 dead Snowy Plovers. The trustees responded on May 9, 2008, with a revised injury estimate of 20 Snowy Plovers, supported by tracking information showing two of the three oiled and banded Snowy Plovers disappeared soon after they were observed oiled, while the third was last seen four years after the spill. The trustees calculated their revised injury estimate by applying this 2:3 ratio to the total number of oiled Snowy Plovers observed (22) to estimate mortality of 14. The trustees then estimated that an additional nine oiled Snowy Plovers were not located by observers, six of which would have died based on the ratio developed from the banding data. The revised total mortality estimate was therefore calculated as 20 Snowy Plovers.

The trustees used a Single Generation Stepwise Replacement Model (Stepwise Model) to estimate total injury (direct and indirect). This biologically-based population model estimates lost bird-years based on the production of juveniles from the remaining live birds. Incorporating the revised mortality estimate of 20 Snowy Plovers into the model, the trustees quantified total Snowy Plover injury as 100 discounted bird-years.

While recognizing the limitations of the additional data from the three banded Snowy Plovers, the NPFC finds that the trustees' use of this information to estimate mortality is reasonable. The NPFC recognizes that the number of oiled birds observed after an oil spill represents a fraction of the number of birds affected by the spill. Oiled and dead birds are not observed or recovered because they hide, drift out to sea, are scavenged, or are overlooked by search teams. Therefore, the NPFC accepts the trustees' assertion that some oiled Snowy Plovers were not observed and the revised mortality estimate of 20. Similarly, based on a review of the Stepwise Model, the NPFC accepts the trustees' estimate of total injury as 100 discounted Snowy Plover-years.

Determination and Quantification of Marbled Murrelet Losses

The trustees collected three dead Marbled Murrelets following the *Luckenbach* vessel incident. A total of 45 were estimated killed, resulting in a total (direct and indirect) loss of 451 Marbled Murrelet-years.

The trustees' DARP states that a Swept-Through model was used to estimate Marbled Murrelet injury. During review of the claim, the trustees clarified that injury was actually estimated by applying the oiling rates of Grebes to the Marbled Murrelet population known to be in the area, with a Monte-Carlo analysis used to quantify total lost Marbled Murrelet-years (Attachment B, question 4; DARP Appendix J; Ford et al. (2006)[2]).

Upon review of the trustees' assessment of Marbled Murrelet injury, the NPFC determined that more information was needed to affirm the reasonableness of their approach. The trustees, on September 24, 2008, provided a detailed explanation of the Monte Carlo approach, including all of the parameters used in the analyses and histograms showing the total lost number of Marbled Murrelet-years estimated by the different parameter combinations used in the model.

After reviewing the information provided by the trustees, the NPFC accepts the estimates of 45 dead Marbled Murrelets and 451 lost Marbled Murrelet-years. In making this determination, the NPFC observes that the trustees' estimate of total injury (45) is 15 times the number observed dead (3). This total birds injured/birds recovered ratio for the *Luckenbach* vessel incident is comparable to the estimate for the *M/V Kure* oil spill, where the trustees' calculation yielded a ratio of 14:1.

Restoration of Procellarid Losses (primarily Northern Fulmars, but also Shearwaters and Storm-Petrels)

The trustees estimated that 4,796 birds within the seabird family Procellidae were killed, with an estimated total injury of 75,781 lost Procellarid-years. The NPFC accepted this injury estimate in the October 2008 determination.

The trustees evaluated 10 projects to restore Procellarid injuries, selecting two preferred alternatives: Mouse Eradication on the Farallon Islands, California, and Shearwater Colony Protection at Taiaroa Head, New Zealand. The eradication of the non-native House Mouse from the Farallon Islands will restore high-value seabird nesting habitat for Ashy Storm-Petrels. Introduced House Mice are affecting the breeding success of nesting seabirds, with up to 12 percent of the Ashy Storm-Petrel eggs and chicks on the Farallon Islands lost to predation[3]. The trustees believe that mouse eradication on these

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[2] Ford, R.G., N. A. Strom, and J. L. Casey. 2006. Acute seabird mortality resulting from the *S.S. Luckenbach* and associated mystery oil spills, 1990-2003. Report prepared for the *Luckenbach* Trustee Council.

[3] Ainley and Boekelhide. 1990. Seabirds of the Farrallon Islands: Ecology, Structure and Dynamics of an Upwelling System Community. Stanford University Press. Palo Alto, CA.

islands is a realistic, achievable goal, based on successful removal programs on other islands and commitments by the Farallon Islands National Wildlife Refuge to prevent accidental reintroduction of mice.

The Mouse Eradication project will be implemented over a five-year period. The proposed budget for this project (excluding contingency) is $992,313, which includes costs for environmental compliance, distribution of a rodenticide, and monitoring. The trustees did not claim $157,520 of past costs for initial environmental compliance work.

The trustees scaled this project to the estimated injury by assuming eradication of House Mice will increase Ashy Storm-Petrel fecundity by five to ten percent and adult survivorship from 88.0 to 90.2 percent. Using these assumptions, the project restores between 36,277 and 57,390 Procellarid-years (DARP, Appendix F).

The Shearwater Colony Protection project involves constructing a 700 meter fence to protect an important nesting area from disturbances by humans, sheep, and predators. The trustees state that the probability of project success is high due to an established relationship with the landowner through implementation of similar fencing projects, and an existing long-term conservation easement that, under New Zealand law, is binding on both current and successor landowners.

The budget for this project is $55,649. Major costs include fence materials and labor, project management, colony surveying, and reporting. The private landowner will monitor and maintain the fence.

The trustees scaled this project to the injury based on the assumption that annual Shearwater survivorship will increase from 87.5 to 90.9 percent, and female offspring per female will increase 20 percent, from 0.30 to 0.36 female. The project is scheduled to continue to 2100, thus generating an estimated 13,334 to 17,922 Shearwater-years.

Combined, the Mouse Eradication and Shearwater Colony Protection projects will produce an estimated 49,621 to 75,312 Procellarid-years. While this range is less than the injury estimate of 75,781 Procellarid-years, the trustees state that these two projects will adequately compensate for injuries to Procellarids (DARP, Appendix F).

The trustees considered, but did not select, eight projects to compensate for Procellarid losses. These non-preferred alternatives, and the trustees' stated reason for not selecting them, as provided in the DARP, are listed in Table 1.

Table 1. Procellarids: Non-Preferred Restoration Alternatives.		
Restoration Alternative	**Target Species**	**Reason for Rejection**
Reduce plastic waste at sea	Procellarids	No feasible projects
Eradicate rabbits on Santa Clara Island, Chile	Pink-footed Shearwater	Species was among least impacted Procellarid
Restore breeding habitat in Chile		
Protect the Shearwater colony at Isla Mocha, Chile		
Improve habitat at the Farallon Islands, California	Ashy Storm-Petrel, Cassin's Auklet	Feasibility concerns, and Cassin's Auklets are benefiting from another project
Eradicate rats at Northeast Titi Islands, New Zealand	Sooty Shearwater	Project is too large relative to injury
Sooty Shearwater burrow-cam in New Zealand	Sooty Shearwater	Educational project that provides no direct benefits to seabirds
Eradicate Ground Squirrels on the Semidi Islands, Alaska	Northern Fulmar, Storm-Petrels, Alcids	Uncertain whether the Ground Squirrel is a native species

During review of the claim, the NPFC requested that the trustees provide additional justification for their decision to select preferred Procellarid restoration alternatives that primarily restore Shearwaters and Storm-Petrels, rather than Northern Fulmars, which account for about 96 percent of lost Procellarid-years (Attachment B, question 25). The trustees responded that they considered a potential project that would benefit the Northern Fulmar (Eradicate Ground Squirrels on the Semidi Islands, AK), but it was not selected due to uncertainty of whether the squirrels are native to these islands. The trustees also responded that Fulmars, Storm-Petrels, and Shearwaters are in the same order, and provide similar resource services.

The NPFC also requested that the trustees provide additional information to support the selection of the Mouse Eradication alternative. Specifically, the NPFC requested that the trustees affirm the reasonableness of the assumption that this project will provide benefits through the year 2100 (Attachment B, question 26), and address the potential for negative impacts from the use of mouse poison on the island. The trustees responded that assuming benefits through 2010 is reasonable, given the remoteness of the islands and strict access limitations, and that there is limited risk to other species as a result of using poison (Attachment B, question 27).

The NPFC noted that a restoration project proposed to restore Brown Pelican, Cormorant, Gull, and Cassin's Auklet losses (i.e., the Seabird Colony Restoration and Protection at Baja Islands, discussed below) included decoys and playback calls for Storm-Petrels. In an email on April 25, 2008, the NPFC requested that the trustees provide the rationale for not estimating ancillary Procellarid benefits from this project, which, when considered with the Mouse Eradication and Shearwater Colony Protection projects, could overcompensate for the Procellarid losses. Responding to this email on April 30, 2008,

the trustees' stated that the budget spreadsheet was in error, that no restoration actions were planned for Procellarids at the Baja Islands project, and reduced the budget for the Seabird Colony Restoration and Protection at the Baja Islands project, accordingly.

The NPFC also requested additional information about the proposed intertidal study ($15,000) in the Mouse Eradication project budget. The trustees responded, in an email on September 18, 2008 that the study would evaluate the potential effects of the rodenticide on marine life in the intertidal community. The trustees stated that this monitoring is required because this area is designated as an Area of Special Biological Significance by the Water Resources Control Board of California.

Finally, the NPFC requested that the trustees provide additional information about how the proposed Videography ($20,000) and Outreach Materials and Coordination ($49,400) components of the Mouse Eradication project budget contributes to restoration of Procellarid-years. In response, the trustees described the educational nature of the video, the scientific community's interest in the project, and that the video would highlight the role of the trustee agencies and the Oil Spill Liability Trust Fund (OSLTF). The trustees also stated that the funding requested for Outreach Materials and Coordination will pay for materials and personnel to coordinate community relation efforts that are necessary because rodent eradication on islands can be controversial, and providing accurate information to the public will avert potentially costly project delays.

The NPFC carefully reviewed the trustees' evaluation of alternatives and additional information provided by the trustees. Based on that review and subject to the caveats raised in Footnote 1, the NPFC finds that the selection of Shearwater Colony Protection at Taiaroa Head and Mouse Eradication on the Farallon Islands as the preferred restoration alternatives to compensate for injuries to Procellarids is reasonable and appropriate (15 C.F.R. §§990.53-54, 33 U.S.C. §2706 (d)(1), 33 C.F.R. §136.211). Assuming that the trustees satisfactorily respond to the issues raised in Footnote 1, all claimed costs to restore Procellarid injuries via Shearwater Colony Protection at Taiaroa Head ($55,649) are compensable. For the Farallon Islands Mouse Eradication project, the NPFC has determined that $972,313 of the total amount requested ($992,313) is compensable, and denies $20,000 for the Videography. The NPFC agrees that the production of a video could be an asset to the scientific community and appreciates the trustees' desire to highlight the role of the OSLTF in funding the project. However, the trustees have not shown that the video will contribute to the success of the project and, thus, increase production of lost Procellarid-years.

Restoration of Brown Pelican, Cormorant, Gull, and Cassin's Auklet Losses

Table 2 summarizes the trustees' estimates of injury to Brown Pelicans, Cormorants, Gulls, and Cassin's Auklets that were accepted by the NPFC in the October 2008 determination. The trustees evaluated three alternatives to restore these losses, selecting Seabird Colony Restoration and Protection at Baja Islands, Mexico as the preferred project. The trustees considered, but did not select, restoration alternatives involving

Roost Site Protection in Northern California and Angler Education (to reduce Pelicans entanglement in fishing gear) because similar projects are ongoing.

The goal of the selected project is to restore and protect seabird populations on six islands along the Pacific Coast of Baja: San Martin, San Jeronimo, San Benito, Natividad, San Roque, and Asuncion. Actions will include social attraction techniques (using decoys and playback of bird calls), redesigning paths and walkways to manage human traffic, shielding light sources, restoring native vegetation, and reducing disturbance of nesting birds through public outreach and education. The trustees believe that the project will be successful and result in long-term benefits to the target species based on past experience working with the Mexican government to remove non-native species and reduce human disturbance on these islands, ongoing efforts by the Mexican government to conserve and protect seabirds through designation of the islands as a biosphere reserve, and their ability to contract this work with an American company that has a successful record on similar international island restoration projects.

The trustees scaled this project to the injury using an assumed colony growth rate of ten nests or three percent per year for each species on each island, whichever was greater (Appendix G, DARP). Table 2 shows the injury and number of bird-years expected to be compensated for by the project as initially proposed.

Table 2. Injury and Restoration Credit: Seabird Colony Restoration and Protection at Baja Islands, Mexico.

Species	Number Killed	Injury (bird-years)	Restoration Credit (bird-years)
Brown Pelicans	278	2,083	2,067
Cormorants	1,460	7,070	6,831
Gulls	2,388	Not Calculated	
Cassin's Auklets	1,509	10,773	17,152

The project will be implemented over six years. Project costs, as initially proposed, totaled $3,802,848 for personnel, travel, equipment, construction (paths, boardwalk, etc.), and operating supplies.

Following review of the trustees' technical approach to scaling this project, the NPFC requested additional information, including justification of the assumed colony growth rate (three percent or ten nests per year) resulting from the project, the rationale for not calculating the number of gull-years that would be restored through the project, and clarification of how much disturbance/threat mitigation (i.e., restoration) will be achieved given existing protections and access restrictions. The specific technical questions and trustee responses are provided in Attachment B (questions 31-34).

The NPFC further requested that the trustees provide the rationale for not estimating Cormorant restoration benefits resulting from the Common Murre Colony Restoration Project (selected to restore Common Murres), which could reduce the need for and level of restoration at the Baja Islands. The trustees agreed that the Common Murre Colony

Restoration project will fully compensate for Cormorant injury, as well as provide benefits to Brown Pelicans. To avoid overcompensating for these two species, the trustees proposed to eliminate one of the six islands from the Baja Islands project (San Benito Island), reducing project costs by $859,732. The revised five islands project, however, only restores 60 percent of the Cassin's Auklet injury. Accordingly, the trustees proposed to extend the maintenance of the boardwalk on San Jeronimo Island intended to prevent trampling of Cassin Auklet nests at an increased cost of $12,000. The revised restoration cost for the five islands with additional boardwalk maintenance is therefore $2,955,116[4].

After review of the claim and additional information, the NPFC concludes that, subject to the caveats in Footnote 1, the trustees' identification of restoration alternatives, the selection of a preferred restoration alternative (Seabird Colony Restoration and Protection at Baja Islands), and the scaling of the preferred alternative is reasonable and appropriate (15 C.F.R. §§990.53-54, 33 U.S.C. §2706 (d)(1), 33 C.F.R. §136.211). The NPFC finds that $2,955,116 of the revised request is compensable so long as the trustees satisfactorily respond to the issues raised in Footnote 1.

Restoration of Common Murre Losses

A total of 3,865 oiled Common Murres were collected during the *Luckenbach* vessel incident. The trustees quantified total injury as 31,806 dead, resulting in a loss of 1,821,554 Common Murre-years. The NPFC accepted this injury estimate in the October 2008 determination.

The trustees considered five projects to compensate for Common Murre losses, selecting three as preferred: Reading Rock Common Murre Colony Protection, Corvid Management at PRNS, and Common Murre Colony Protection. In the October 2008 determination, the NPFC accepted the Reading Rock Common Murre Colony Protection project, which generates 10,217 Common Murre-years. Our determination with respect to the two projects claimed to restore the remaining 1,811,337 Common Murre-years follows.

Corvid Management at PRNS

Corvid Management at PRNS aims to improve breeding success by reducing the population of predatory ravens through land management practices at cattle ranches near PRNS. The project, as described in the DARP, identified $500,000 to pay farmers that implement land management practices that limit raven access to food. In response to a NPFC request for further detail, the trustees identified four specific actions (cow feeding bins that restrict ravens from cattle feed; fencing to keep cows from seabird colonies, removing debris that attracts ravens, and removing ravens that focus on murre colonies) at a reduced cost of $400,000.

[4] $3,802,848 (claimed six island project) - $859,732 (withdrawn San Benito Island specific costs) + $12,000 (additional boardwalk maintenance for Cassin's Auklets) = $2,955,116

The trustees developed the modified project in consultation with biologists at PRNS. The four identified actions have reduced corvid predation on threatened Snowy Plovers in a different area of the Park and the biologists are confident that these measures will protect murres in this area. The trustees estimate that the modified project would increase Common Murre nest success from 81 percent of the area-wide average to 90 percent of that average, which would generate an estimated 363,605 Common Murre-years.

After review of all applicable documentation, including trustee revisions to the project, the NPFC concludes that the Corvid Management at PRNS project is reasonable and appropriate (15 C.F.R. §§990.53-54, 33 U.S.C. §2706 (d)(1), 33 C.F.R. §136.211). All claimed costs ($400,000) to implement this project are compensable.

Common Murre Colony Protection

This project aims to improve breeding success by reducing human disturbance at breeding colonies through an educational program involving signs, buoys, and outreach materials. The project focuses on five colonies in California where significant disturbance events have been documented: Farallon Islands, Point Reyes, Drakes Bay, Devil's Slide Rock, and Castle Rock/Hurricane Point. Project costs are approximately $563,207 per year, totaling $11,264,140 for the proposed 20-year duration.

The trustees scaled this project using a population model of the Central California murre population, comparing the benefits of increasing nest success to the loss of breeding birds associated with oil spills. Specifically, the model shows that a project that lasts 20 years, and increases fecundity by five percent will generate 670,165 Common Murre-years.

In reviewing the trustees' scaling approach, the NPFC requested further justification of the five percent increase in fecundity assumed to result from the project. The trustees responded by citing a previous project at the Three Arches National Wildlife Refuge in Oregon[5] (Attachment B, question 39), where the human disturbance decreased by 39 percent. The NPFC notes that the relationship between reduced disturbance events and increased fecundity was not established in the Three Arches project, and that the five percent fecundity increase appears to be based on professional judgment, in recognition of the observations at Three Arches. While the NPFC has reservations about the basis of the five percent estimate, the NPFC does not have alternate evidence to rebut this estimate. Further, the trustees only seek to restore 62 percent of the Common Murre injury through the three proposed Common Murre restoration projects (Table 3). Assuming an alternative increased fecundity rate of 10 percent from the Murre Colony Protection project, which the trustees state is beyond the upper bound of what is possible due to a variety of natural factors, the total productivity of this project, combined with the other two projects, would still be less than the total estimated injury to Common Murres. Thus, the NPFC accepts the trustees scaling approach.

[5] Reimer, S.D. and R.F. Brown. 1997. Monitoring Human-Wildlife Interactions and Disturbance of Seabirds and Pinnipeds at Three Arch Rocks National Wildlife Refuge, 1993-1994. Oregon Department of Fish and Game, Wildlife Diversity Program, Newport, OR. Technical Report #97-6-01. 27p.

After review of all applicable documentation and trustee responses to NPFC requests for additional information, the NPFC concludes that the Common Murre Colony Protection project is reasonable and appropriate (15 C.F.R. §§990.53-54, 33 U.S.C. §2706 (d)(1), 33 C.F.R. §136.211). All claimed costs ($11,264,140) to implement this project are compensable.

Table 3. Summary of Common Murre Injury (bird-years) and Restoration Achieved by the Three Selected Projects.

	Bird-Years Lost	Bird-Years Restored
Injury	1,821,554	
Common Murre Colony Protection		670,165
Corvid Management at PRNS		363,605
Reading Rock Colony Restoration[a]		10,217
Total	1,821,554	1,043,987

[a] project approved in NPFC October 2008 determination

Restoration of Snowy Plover Losses

As stated previously in this determination, the NPFC accepts the trustees' revised mortality estimate of 20 Snowy Plovers, with a total injury estimate of 100 Snowy Plover-years. The trustees considered two alternatives to compensate for this loss, selecting Dune Habitat Restoration at PRNS as the preferred restoration alternative over a Corvid Management alternative that was initiated with other funds.

The PRNS contains significant Snowy Plover nesting and rearing habitat that is threatened by invasive plants. The goal of this project is to remove the non-native vegetation to facilitate recolonization of native plants, reestablish natural processes controlling dune development, and maintain the nesting and rearing habitat. The trustees are confident that this project will be successful, based on a successful pilot project at PRNS.

The trustees used the pilot project to scale the Dune Habitat Restoration project to the injury, determining that 30 acres of dune restoration would establish at least four new nests and 150 Snowy Plover-years. The trustees assume that the project will have a "ramp up" period of two years, during which the project will generate less than four nests annually, and after eight years, the non-native vegetation will begin to recolonize, resulting in a decline of restoration benefits from this point.

The trustees' budget for the project as originally proposed was $505,200. As the trustees revised their mortality estimate downward from 30 to 20 Snowy Plovers (and lost Snowy Plover-years from 150 to 100), the size of the project was proportionally reduced from 30 to 20 acres. Since the number of Snowy Plover-years generated by the project is assumed to be a linear function of the number of project acres (0.47 Snowy Plover-years per acre), the NPFC finds that the trustees proposal to reduce the acres of restoration by one-third due to the reduction of the injury estimate by one-third is appropriate. Thus, the 20-acre

project will generate 100 discounted Snowy Plover-years. Accordingly, the project budget was revised to $370,835, reflecting reduced costs for planning, removal of invasive dune grass, monitoring, and public education and outreach.

During review of the claim, the NPFC requested that the trustees clarify the purpose and benefits of the public education/outreach component of the project, as it did not appear that benefits from these activities were accounted for in the project scaling. The NPFC also noted that there appeared to be potential for Snowy Plover habitat outside the project area to benefit from the public education/outreach. The trustees responded in an email on November 12, 2008, that the public education/outreach component of the project will keep people from trampling newly grown native vegetation on the project site, as well as address anticipated complaints of large construction equipment digging up the beach in a national park. The trustees also stated that this public education/outreach will be limited to this project and will not provide restoration benefits to nearby Snowy Plover projects.

The NPFC has determined that the proposed 20 acre Dune Habitat Restoration at PRNS is reasonable and appropriate to compensate for the revised Snowy Plover injury estimated by the trustees (15 C.F.R. §§990.53-54, 33 U.S.C. §2706 (d)(1), 33 C.F.R. §136.211). All claimed costs ($370,835) to implement this project are compensable.

Restoration of Ancient Murrelet Losses

The trustees collected 21 dead Ancient Murrelets, estimating a total loss of 428 birds and 1,867 bird-years. The NPFC accepted this injury estimate in the October 2008 determination.

The trustees considered six alternatives to compensate for the Ancient Murrelet losses, selecting Rat Eradication at Queen Charlotte Islands, Canada as the preferred alternative. This project involves removing non-native Norway Rats from several small, forested islands along the western coast of the Queen Charlotte Islands to enable Ancient Murrelets to recolonize and nest. According to published literature[6], the Queen Charlotte Islands support as much as 25 to 50 percent of the total Ancient Murrelet population.

The total cost of the project is $193,439, which is expected to take three years to complete. The first year consists of environmental compliance and monitoring, rat eradication occurs in the second year, and post-eradication monitoring in the third year.

For restoration scaling, the trustees assumed a recolonization rate of two nests per year and an average fledgling production rate of 1.65 fledglings per nest[5]. The trustees estimate that implementation of this project will generate 1,813 lost Ancient Murrelet-years by 2100 (Appendix K, DARP).

The trustees evaluated several restoration alternatives in Canada and Alaska, all of which were proposed by outside experts. The project on Queen Charlotte Island was selected

[6] Gaston, A. J. 1994. Status of the Ancient Murrelet, *Synthliboramphus antiquus*, in Canada and the effects of introduced predators. Canadian Field-Naturalist 108:211-222.

because of the ease of access and relatively low cost. The trustees believe that the project has a high likelihood of success, based on past experiences with mammal eradications, the relatively small size of this project, and a written commitment to monitoring and project management received from staff at the Gwaii Haanas National Park Reserve that encompasses the islands selected for eradication efforts.

During review of the claim, the NPFC requested that the trustees provide the basis for the assumption that this project would provide benefits through the year 2100. The trustees responded that the National Park is committed to the project and that reintroduction of rats is unlikely (Attachment B, question 52). The NPFC also requested that the trustees explain the need for genetic/mitigation analysis and related travel to collect samples ($19,500) given scientific consensus that the rats are both a non-native and nuisance species. The trustees responded that this is a standard component of many invasive species eradication projects, and this particular analysis will allow the trustees to identify any rats found in the future as "new", or as survivors of the eradication effort.

After review of all applicable documentation and trustee responses to NPFC requests for additional information, the NPFC concludes that, subject to the caveats in Footnote 1, the Rat Eradication at Queen Charlotte Islands project is reasonable and appropriate (15 C.F.R. §§990.53-54, 33 U.S.C. §2706 (d)(1), 33 C.F.R. §136.211). All claimed costs ($193,439) to implement this project are compensable so long as the trustees resolve the issues raised in Footnote 1.

Trustee Oversight

In the October 2008 determination, the NPFC affirmed the reasonableness of the trustees' request for $1,079,326 in trustee oversight costs for the fourteen restoration projects included in the claim. That determination approved $462,578 of the total request, calculated as a proportional percent of the projects-years (i.e., number of projects times the number of years of active project management) approved in the October 2008 determination.

For the seven projects approved in this partial determination, there are 37 active project-years. Thus, the total trustee oversight requested by the trustees and hereby approved by the NPFC for the seven projects (37 project-years) is $475,417.

Through the October 2008 determination and this determination, the NPFC has provided $937,995 for trustee oversight of 13 projects. The NPFC will consider the remaining $141,331 as part of our review of any revised claim for compensation of Marbled Murrelet losses that the trustees submit at a later date.

Trustee Assessment Costs

In the October 2008 determination, the NPFC approved $621,309, representing all of the trustees' assessment costs included in the revised claim submitted on September 4, 2007. Additional assessment costs totaling $82,352.08 were submitted to the NPFC after

September 4, 2007. These include: (1) CDFG contractor invoices and associated overhead that the trustees mistakenly omitted from the September 4, 2007 claim ($12,976.41); and (2) additional assessment costs for CDFG ($21,915.63), USFWS ($22,915.54), and NOAA ($24,544.67) that were also incurred in response to NPFC requests for additional information to support the claim. The NPFC has reviewed the documentation of these costs and finds that they are reasonable and compensable (33 U.S.C. §2706 (d)(1), 33 C.F.R. §136.211).

NPFC Treatment of Contingency

The trustees claim $2,450,181 as contingency funding for "unforeseen" future NRDA costs. The NPFC recognizes that costs of approved projects are estimates and may unexpectedly increase as a result of new and/or unforeseeable circumstances. However, the NPFC's policy is to pay contingency when and if needed, and supported by appropriate justification and documentation of costs incurred to date. Accordingly, the NPFC denies the trustees' claim for $2,450,181 of contingency funds at this time. The OSLTF will, however, remain available for contingency costs that arise during the implementation of the approved projects. The amount available ($2,431,723) is provided by restoration project in Table 4, and was assigned based on the NPFC's determination of the degree of each project's complexity or potential for unknown events. In a rare case, additional contingency may be granted if adequate documentation and rationale are provided.

If the need for contingency funds arises, DOI should make a formal request to the NPFC. Such a request can be made through the annual cost and progress reporting described below, and must include a justification for the additional funds and documentation of past expenditures.

Table 4. NPFC-Approved Contingency Amounts.

Restoration Project	Approved Project	Contingency	Amount
Mouse Eradication on the Farallon Islands	$972,313	15%	$145,847
Shearwater Colony Protection, Taiaroa Head	$55,649	15%	$8,347
Seabird Colony Restoration and Protection, Baja Islands	$2,955,116	15%	$443,267
Dune Habitat Restoration at PRNS	$370,835	15%	$55,625
Seabird Colony Protection Program	$11,264,140	15%	$1,689,621
Corvid Management at Point Reyes	$400,000	15%	$60,000
Rat Eradication in the Queen Charlotte Islands	$193,439	15%	$29,016
TOTAL			$2,431,723

Cost Documentation and Progress Reporting

As the designated LAT for this claim, DOI shall ensure that all expenditures of NPFC funds (including interest earned) are documented appropriately, spent according to the

DARP as approved by this determination, and reported to the NPFC. Any funds not spent or appropriately documented shall be returned to the Fund. Complete, accurate, and timely cost documentation is also required to support any requests for contingency funds.

One year from the date of this determination, and annually thereafter, DOI shall provide the NPFC with a report on the status of each restoration project. These annual progress reports should include the following for each funded project:

1. certification by DOI that all expenditures of NPFC funds were in accordance with the DARP as approved by the NPFC;
2. a summary of work accomplished, the timeline for future activities, and any unexpected problems incurred during implementation;
3. a summary of expenditures by category (labor, contracts, purchases/expendables, travel, government equipment);
4. a description of the work accomplished by each individual and how that work fits into the overall progress of the project for the year. Enough detail should be included to determine reasonableness of costs; and
5. available project implementation photos showing pre-construction and various phases of construction.

A final report should be submitted to the NPFC for each approved project within 120 days of project completion. This report shall include:

1. certification by DOI that all expenditures of NPFC funds (including interest earned) were in accordance with the DARP as approved by the NPFC.
2. a summary of project implementation and restoration benefits achieved;
3. copies of final reports and/or studies;
4. available final project implementation photos;
5. documentation of NPFC funds remaining in the Revolving Trust Fund established for this claim, including account balance and interest earned;
6. 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 project. Enough detail should be included to determine reasonableness of costs.
        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; and
    e. Government Equipment: Documentation of costs, including the rate (*i.e.* hourly, weekly) and time for all equipment used for which costs were incurred.

With the final report(s), the NPFC will reconcile costs and all remaining funds and/or inadequately documented costs will be returned to the NPFC.

The NPFC has prepared a standardized template with detailed instructions to facilitate annual progress and final cost reporting. These templates are provided on the compact disc included with this determination.

To comply with the cost documentation and reporting requirements described in this section, the trustees, as part of their original claim, requested $148,708 for ten years of cost accounting and reporting support. The trustees revised this claimed amount to $211,198 (an increase of $62,490) on May 4, 2009, reflecting adjustments for inflation (i.e., three percent rate of inflation from 2009 to 2018), additional labor hours based on recent experience with another case, and updated labor rates.

The NPFC has reviewed the costs associated with this most recent statement and work, and found these costs to reasonable and compensable.

Summary of Second Partial Determination

The NPFC has reviewed the revised claim for natural resource damages resulting from the *Luckenbach* vessel incident in accordance with OPA (33 U.S.C. §§2701 et seq.) and its implementing regulations (15 C.F.R. Part 990 and 33 C.F.R. §136). Through this second partial determination, we have determined that subject to the caveats in Footnote 1:

1. claimed injuries to Snowy Plovers and Marbled Murrelets are reasonable and appropriate;
2. $16,980,459.08 is reasonable and appropriate for restoration of injuries to Procellarids, Snowy Plovers, Brown Pelicans, Cormorants, Cassin's Auklets, Gulls, Ancient Murrelets, and Common Murres that resulted from the *Luckenbach* vessel incident, as follows –
   a. $16,211,492 for seven restoration projects;
   b. $475,417.00 for trustee oversight of the seven restoration projects;
   c. $211,198.00 for trustee cost and progress reporting; and
   d. $82,352.08 for additional trustee past assessment costs.
3. $20,000 for Videography claimed under the Mouse Eradication on the Farallon Islands project proposed to restore Procellarids is not compensable; and
4. $3,000 claimed for contingency is not compensable at this time; however, the OSLTF will be available up to the amounts listed in Table 4.

Revolving Trust Fund and Return of Unused Funding to the OSLTF

As established by OPA (33 U.S.C. §2706(f)), the NPFC claims regulations (33 C.F.R. §136.211), and the NRDA regulations (15 C.F.R. §990.65), sums recovered for NRD must be retained by the trustees in a revolving trust account. Accordingly, subject to the caveats in Footnote 1, the NPFC will deposit $16,980,459.08 into the DOI Restoration

Fund codified at 43 U.S.C. §1474 (b), which DOI has demonstrated to be a non-appropriated, revolving trust fund. All unused funds, including interest earned, shall be returned to the OSLTF in accordance with section 1006(f) of OPA and 15 C.F.R. §990.65(f).

Conclusion

Subject to the caveats in Footnote 1, the NPFC offers $16,980,459.08 as full and final payment for injuries to Procellarids, Snowy Plovers, Brown Pelicans, Cormorants, Cassin's Auklets, Gulls, Ancient Murrelets, and Common Murres that resulted from the *Luckenbach* vessel incident and other unknown sources. Claimed costs to restore these resources totaling $20,000 and contingencies ($2,450,181) are denied. The OSLTF, however, will remain open in consideration of potential cost increases. You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and include the factual or legal basis of the request and any additional support for the claim. Reconsideration will be based upon the additional information provided and a claim may be reconsidered only once. Disposition of the reconsideration will constitute final agency action. Failure of the NPFC to issue a written decision within 90 days after receipt of a timely request for reconsideration shall, at the option of the claimant, be deemed final agency action.

If you accept this offer, please sign and return the enclosed Acceptance/Release Form. Reconsideration requests and/or signed Acceptance/Release Forms must be submitted to:

Director (Cn)
U.S. Coast Guard
National Pollution Funds Center
4200 Wilson Boulevard, Suite 1000
Arlington, VA 20598-7100

If we do not receive the original signed Acceptance/Release Form within 60 days of the date of this letter, the offer is void. If the settlement is accepted, your payment will be mailed within 30 days of receipt of the Release Form. Please provide account information and instructions for transferring funds to your trustee account when you submit the Release Form.

If you have any questions about this determination, please feel free to write me at the above address or contact me by phone at (202) 493-6865.

Sincerely,

[redacted]

Chief, NRDC Claims Division

ENCLOSURES: (1) Attachment A. Summary of NPFC Findings made in this Second Partial Determination
(2) Attachment B. NPFC Technical Questions and Trustee responses
(3) Acceptance/Release Form
(4) Annual progress and cost reporting templates

ENCLOSURES: (1) Attachment A. Summary of NPFC Findings made in this Second Partial Determination
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(4) Annual progress and cost reporting templates to be sent electronically

Attachment A. Summary of NPFC Findings made in this Second Partial Determination.							
Species	**Injury (species-years)**	**Preferred Restoration Alternative**	**Restoration (species-years)**	**Initial Claimed Amount[7]**	**Revised Claim Amount [8]**	**Approved Amount**	**Denied Amount**
Snowy Plovers	100	Dune Habitat Restoration at PRNS	103	$505,200	$370,835	$370,835	$0
Marbled Murrelet	451	TBD	TBD	TBD	TBD	TBD	TBD
Common Murre	1,821,554	Common Murre Colony Protection Program	670,165	$11,264,140	n/a	$11,264,140	$0
		Corvid Management at Point Reyes	363,605	$500,000	$400,000	$400,000	$0
Procellarids	75,781	Mouse Eradication on the Farallon Islands	36,277-57,390	$992,313	n/a .	$972,313	$20,000
		Shearwater Colony Protection at Taiaroa Head	13,334-17,992	$55,649	n/a .	$55,649	$0
Ancient Murrelets	1,867	Rat Eradication in the Queen Charlotte Islands	1,813	$193,439	n/a	$193,439	$0
Brown Pelicans	2,083	Seabird Colony Restoration and Protection, Baja Islands	2,067	$3,863,817	$2,955,116	$2,955,116	$0
Cormorants	7,070		6,831				
Gulls	n/a		n/a				
Cassin's Auklet	10,773		17,152				
Restoration Project Subtotal				**$17,374,557**	**$16,292,461**	**$16,272,461**	**$20,000**
CDFG Assessment Costs				$12,976	n/a	$12,976	$0
NOAA Assessment Costs				$24,545	n/a	$24,544	
USFWS Assessment Costs				$22,916	n/a	$22,915	$0
CDFG Assessment Costs				$21,916	n/a	$21,915	$0
Trustee Oversight				$475,417	n/a	$475,417	$0
Cost Documentation and Progress Reporting				$148,708	$211,198	$211,198	$0
Total				**$18,081,034.08**	**$17,061,428.08**	**$16,980,459.08**	**$20,000**
Contingency					$2,450,181	$2,431,723	$3,000

[8] This column reflects trustee revisions to the project budgets subsequent to the official claim submission.

U.S. Department
of Homeland Security

**United States
Coast Guard**

Director
United States Coast Guard
National Pollution Funds Center

Natural Resource Damage Claims Division
4200 Wilson Blvd., Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CN)

RE: Claim Number: A02005-O12

On behalf of the U.S. Fish and Wildlife Service, National Park Service, National Oceanic and Atmospheric Administration, and California Department of Fish and Game (hereinafter collectively referred to as "trustees"), we, the undersigned, ACCEPT the payment/settlement offer of **$16,980,459.08** as set forth in the National Pollution Fund Center's (NPFC) Determination, dated January 4, 2010, as a full and final release and satisfaction of the trustees' November 30, 2006 claim (as amended) for costs and damages for injuries to Procellarids, Snowy Plovers, Brown Pelicans, Cormorants, Cassin's Auklets, Gulls, Ancient Murrelets, and Common Murres. The costs and damages paid herein resulted from the (1) discharge of an unknown quantity of oil from the sunken *S.S. Jacob Luckenbach* between 1990 and December 2003, and (2) "mystery" spills from unknown anthropogenic sources (the Incident). The trustees' claim arises under the Oil Pollution Act of 1990 (33 U.S.C. 2712(a)(2)) for natural resource damages caused by the oil discharges during the Incident.

This settlement and release is for damages to implement the following projects, only:

- Mouse Eradication on the Farallon Islands;
- Shearwater Colony Protection at Taiaroa Head, New Zealand;
- Seabird Colony Restoration on and Protection at Baja Islands, Mexico;
- Dune Habitat Restoration at Point Reyes National Seashore;
- Seabird Colony Protection Program;
- Corvid Management at Point Reyes National Seashore; and
- Rat Eradication in the Queen Charlotte Islands, Canada.

Notwithstanding any other language in this release, the trustees acknowledge that they must provide additional information to satisfactorily resolve the issues raised in Footnote 1 of the NPFC's Determination before any funding will be released for the Shearwater Colony Protection Project in New Zealand, the Rat Eradication Project in Canada, and the Seabird Colony Restoration and Protection Projects in Mexico (hereinafter collectively referred to as the "Foreign Projects"). If the trustees fail to convince the NPFC that the trustees are authorized to implement the Foreign Projects, then the funding for the foreign projects will be denied ($55,649 for the Shearwater Colony Protection Project, $193,439 for the Rat Eradication Project, and $2,955,116 for the Seabird Colony Restoration and Protection Projects).

Although this settlement and release does not actually pay the contingency amounts, the trustees acknowledge that any future contingency payments for these projects will be limited to fifteen percent of the amount awarded by NPFC for each project as detailed in the NPFC's Determination of the trustees' claim. The NPFC will authorize actual payment of these contingency awards from the Oil Spill Liability Trust Fund if and when a permissible contingency actually occurs during the implementation of the above projects. To support a request for contingency payment, the trustees acknowledge that they will have to fully document that the request for payment complies with NPFC's policy for Natural Resource Damage Contingency Payments. Because no contingency amount is actually being determined at present, the trustees reserve the right to challenge the NPFC's future determinations as to whether permissible contingencies have occurred.

This settlement is not an admission of liability by any party. We, the trustees, hereby assign, transfer, and subrogate to the NPFC all rights, claims, interests and rights of action, that the trustees may have against any party, person, firm or corporation that may be liable for the costs and damages reimbursed pursuant to NPFC's Determination. We, the trustees, authorize the NPFC to request that the United States Department of Justice sue, compromise or settle in the name of the trustees and agree that the NPFC be fully substituted for the trustees and subrogated to those claims reimbursed pursuant to NPFC's Determination.

We, the trustees, agree that upon acceptance of any damages or compensation from the Fund, the trustees will cooperate fully with the NPFC and the United States Department of Justice in any claim and/or action by the United States against any person or party to recover the damages or compensation. The cooperation shall include, but is not limited to, immediately reimbursing the Fund for any damages or compensation received from any other source for the same claim, providing any documentation, evidence, testimony, and other support, as may be necessary for the United States to recover from any other person or party.

This Agreement is not intended to, nor shall it, vest rights in persons who are not parties to it. We, the trustees, certify that to the best of our knowledge and belief the information contained in this claim represents all material facts and is true. We, the trustees, understand that misrepresentation of facts is subject to prosecution under Federal law (including, but not limited to 18 U.S.C. 287 and 1001).

_____ DUNs/TIN/EIN Number	_____ Bank Routing and Account Number

(The release may be signed in counterparts.)

Ren Lohoefener
Regional Director, California and Nevada Region
U.S. Fish and Wildlife Service
2800 Cottage Way, Room W-2605
Sacramento, CA 95825-1888

Date

Craig R. O'Connor
Special Counsel for Natural Resources
NOAA/GCNR-DACNW
7600 Sand Point Way NE
Seattle, WA 98115-6349

Date

Stephen Edinger
Administrator, California Department of Fish and Game
Office of Spill Prevention and Response
1700 K Street, Suite 250
Sacramento, CA 95811

Date