

U.S. Department
of Homeland Security

**United States
Coast Guard**



Director
United States Coast Guard
National Pollution Funds Center

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National Pollution Funds Center
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16480

December 18, 2012

David G. Westerholm
1315 East-West Highway
Silver Spring, MD 20910

RE: Claim Number: M12037-OC02 – *M/V Jireh* Oil Spill, Emergency Restoration

Dear Mr. Westerholm:

The National Pollution Funds Center (NPFC) has completed its review of the claim presented to the Oil Spill Liability Trust Fund (the Fund or the OSLTF) by the National Oceanic Atmospheric Administration (NOAA) on behalf of itself and the Puerto Rico Department of Natural and Environmental Resources (PRDNER). The claim totals \$201,587.50 for upfront costs to implement emergency actions to restore natural resource injuries resulting from the *M/V Jireh* incident. We have determined that \$201,587.50 of claimed costs is compensable in accordance with the Oil Pollution Act (OPA) and the OPA claims regulations. 33 U.S.C. §2701 *et seq.*; 33 C.F.R. Part 136. The basis of our determination follows.

Summary of the Incident and Claim

On June 21, 2012, the coastal freighter *M/V Jireh* ran aground on the south shore of Mona Island, located 40 miles west of the main island of Puerto Rico. The vessel grounded on a rocky shoreline within a designated natural reserve with known coral reef habitat. The United States Coast Guard (USCG) determined that the vessel presented a substantial threat of oil discharge and initiated response actions to remove the threat by dismantling and disposing of the vessel¹. During these response efforts, the USCG used anchors and tow lines to stabilize the *M/V Jireh* and secure platforms for the salvage operation. These cables and anchors dislodged, damaged, and broke an estimated 950 corals, including 12 colonies of Elkhorn coral (a federally threatened species). The trustees temporarily righted and stabilized these corals during the response activities to destroy the vessel.² The response action was completed on October 5, 2012. No responsible party has been identified for the incident.

On November 16, 2012, the NPFC received a claim from NOAA for costs to implement emergency restoration actions to permanently reattach the dislodged, damaged and broken corals injured by the

¹ Memo from CAPT M.D. Stegman dated July 5, 2012

² Funding for the temporary stabilization of the corals was provided under the Interagency Grant (IAG) and is not part of this claim.

response actions. NOAA's claim, as initially presented, totaled \$170,025.50, for costs to reattach dislodged, damaged and broken corals. On December 10, 2012, NOAA revised their sum certain to \$201,587.50, reflecting an error in their original claim submission.

Jurisdictional Information

The NPFC first considered whether the claimed damages arose from an incident as defined under OPA (33 U.S.C. 2701 *et seq.*). To be covered, the incident must involve a discharge of oil or a substantial threat of discharge of oil from a vessel or facility into navigable waters of the United States after August 18, 1990. Based on the information in the claim record, the NPFC finds that this claim is for natural resource damages resulting from an OPA incident.

Claimant Eligibility

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

This claim for emergency restoration costs was submitted by NOAA on behalf of itself and PRDNER. NOAA, under the authority of the Secretary of Commerce is a designated federal natural resource trustee pursuant to the President's designation of federal trustees under OPA, Executive Order 12777 (56 Fed. Reg. 54757, October 22, 1991), and Subpart G of the National Oil and Hazardous Substances Pollution Contingency Plan (40 C.F.R. §300.600). PRDNER is a designated natural resource trustee for Puerto Rico based on a delegation letter from the Governor of Puerto Rico on file with the NPFC³.

Claim Presentment to the Responsible Party

No responsible party (RP) has been identified for this incident; therefore, there is no RP presentment requirement.

Claimant's Burden of Proof and Adherence to NRDA Regulations

Under OPA, trustees bear the burden of proving their entitlement to the amount claimed for compensation of natural resource damages. 33 C.F.R. §136.105. Any determination or assessment of damages to natural resources for the purposes of OPA by a trustee in accordance with the NOAA regulations at 15 C.F.R. Part 990 shall have the force and effect of a rebuttable

³ Letter from Anibal Acevedo Vila (Governor of Puerto Rico) to Christopher Abrams (NPFC) dated February 1, 2006

presumption on behalf of the trustee in any administrative or judicial proceeding under this Act. 33 U.S.C. § 2706(e)(2).

Determination to Conduct Emergency Restoration

The NOAA regulations provide that trustees may take emergency restoration before completing the process under this part, provided that: (1) The action is needed to avoid irreversible loss of natural resources, or to prevent or reduce any continuing danger to natural resources or similar need for emergency action; (2) The action is feasible and likely to succeed; (4) Delay of the action to complete the restoration planning process established in this part likely would result in increased natural resource damages; and (4) The costs of the action are not unreasonable. 15 C.F.R §990.26 (a)(1)-(5).⁴

The trustees determined that the proposed emergency actions to permanently reattach corals broken and or dislodged by response action is needed to avoid the irreversible loss of the corals because it will prevent ongoing harm to the established corals reefs. If broken corals are reattached in a timely fashion their chance of survival is good. Also, stabilization and reattachment of corals and loose rubble is critical to prevent or reduce further injury because loose coral has the potential to move with wave action and injure the loose coral that may have survived and any nearby coral that it may strike. The proposed methods of reattachment have been used successfully for this type of restoration effort and proposed costs are not unreasonable for the proposed effort. Accordingly, the NPFC finds that the trustees met the requirements for proceeding with emergency restoration actions. 15 C.F.R. §990.26.

15 C.F.R. 990.26(d) provides that the Trustees must provide notice to the public, to the extent practicable, of the planned emergency restoration actions and must provide public notice of the justification for, nature and extent of, and results of emergency restoration within a reasonable time frame after completion of such actions. The Trustees prepared a bilingual “Notice of Emergency Restoration Actions for the M/V/ Jireh Grounding Incident” and posted it on the Puerto Rico Department of Natural and Environmental Resources website.

NPFC Review of Claim and Associated Costs

The trustees claim a total of \$201,587.50 for efforts to permanently reattach the +/-950 corals to ensure further injuries do not occur and to monitor the survival of the corals. Costs include vessel charters, contract personnel, trustee agency labor, supplies and equipment, and travel⁵. The majority of costs are for agency⁶ and contract⁷ labor (\$95,070) to reattach and monitor the coral and vessel charters (\$38,800) for a total of 20 days.

⁴ 15 CFR 990.26 also provides that the emergency action will not be undertaken by the lead agency and if the response actions are not complete trustees must coordinate with the onscene coordinator. In this claim the response action is complete and no onscene coordination is required.

⁵ \$96,215.50 to tag and reattach coral, \$31,562 to monitor attached coral (45 days), \$40,410 for December 2013 monitoring, and \$33,400 for trustee administrative costs

⁶ NOAA Restoration Field Manager, NOAA Coral Restoration Coordinator, and PRDNER Biologist

⁷ Project Mgr / Dive Master, Scientific Diver(2), Support/Safety Diver, M/V Coral Queen II Captain, and M/V Coral Queen II Deck Hand(2)

The trustees emergency restoration plan describes the methods for coral reattachment, which have been used successfully in similar coral restoration efforts. The plan also details the proposed effort to tag 10 percent of reattached coral for monitoring, scheduled to occur 45 days after reattachment with final monitoring after one year.

After careful review of the claim and supporting documents, the NPFC finds that the trustees followed 15 C.F.R. Part 990 *et seq.* NOAA certifies that the elements of the claim were developed in cooperation with other trustees to ensure no double recovery of damages; the trustees, prepared a emergency restoration plan that was reviewed by the public, and they are maintaining an administrative record.

The NPFC finds that the trustees have meet the requirements for an emergency restoration claim under OPA and that claimed costs are reasonable and appropriate given the facts of the incident. The NPFC has, therefore, determined that claimed amount of \$201,587.50 is compensable from the Fund. 33 C.F.R. §136.211. 33 C.F.R. §136.105.

Revolving Trust Fund and Return of Unused Funds to the OSLTF

As established by OPA (33 U.S.C. §2706(f)) and NRDA regulations (15 C.F.R. §990.65), sums recovered by trustees for natural resource damages must be retained by the trustees in a revolving trust account. All sums must be used to implement the trustees' emergency restoration plan, as approved by this determination. All unused funds shall be returned to the OSLTF in a timely basis and no later than six months from the completion of the work as described in this determination in accordance with 15 C.F.R. §990.65.

Cost Documentation, Progress Reporting, and Final Report

As the Lead Administrative Trustee, NOAA shall ensure that all expenditures of OSLTF funds are documented appropriately and spent according to the Plan approved by this determination. NOAA shall provide the NPFC with a final report no later than 120 days from the completion of the work that includes the following:

1. Certification by NOAA that all expenditures of OSLTF funds were in accordance with the plan as approved by the NPFC;
2. A narrative description of the work accomplished by each individual and how that work fits into the overall progress of the work for the year. Enough detail should be included to determine reasonableness of costs for each employee when cost documentation is received with the final report;
3. An accounting, including the source and value, of any additional compensation received for the work approved in this determination;
4. A summary of completed work;
5. Copies of final reports;
6. Documentation of OSLTF funds remaining, including account balance and interest earned;
7. 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 fits into the approved plan. Enough detail should be included to determine reasonableness of costs; and
- ii. The number of hours worked, labor rate, and indirect rate. An explanation of indirect rate expenditures, if any, will be necessary;
- b. Travel: Paid travel reimbursement vouchers and receipts;
- c. Contract: Activities undertaken, lists of deliverables, and contract invoices, work plans, 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. All unused funds shall be returned to the OSLTF on a timely basis and no later than six months from the completion of the work as described in this determination in accordance with 15 C.F.R. §990.65(f).

The NPFC has prepared standardized templates with detailed instructions to facilitate annual progress and final cost reporting. These templates are provided as an attachment that accompanies this determination.

Summary

The NPFC has reviewed the claim submitted by NOAA for the costs to implement the emergency restoration plan in accordance with OPA and its implementing regulations. 33 U.S.C. §2701 *et seq.* and 33 C.F.R. Part 136. We have determined that the proposed plan and associated costs are reasonable and appropriate for the incident and \$201,587.50 is compensable.

This offer constitutes full and final payment to NOAA for costs to implement the emergency restoration plan associated with the *M/V Jireh* incident. If you accept this offer, please sign the enclosed Acceptance/Release Form and return to:

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

If we do not receive the signed original 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 issued within 30 days of receipt of the form. Please provide account information including Agency Locator Codes (ALC), Treasury Accounting Symbol (TAS) number, and instruction for the transfer of funds when you submit the Release Form.

If you have any questions about this determination, you may write me at the above address or contact me by phone at [REDACTED].

Sincerely



Fredy Hernandez
Natural Resource Damages
Claims Manager

Enclosures: Acceptance/ Release Form

U.S. Department of
Homeland Security

United States
Coast Guard



Director
National Pollution Funds Center

US COAST GUARD MS 7100
4200 Wilson Blvd. Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CN)

Phone: [REDACTED]@uscg mil

16480

Claim Number: M12037-OC02	Claimant Name: National Oceanic Atmospheric Administration
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On November 16, 2012, the National Oceanic Atmospheric Administration (NOAA) presented a claim to the Oil Spill Liability Trust Fund (OSLTF or the Fund) in the total amount of \$201,587.50 for upfront costs to implement emergency restoration actions for injuries resulting from the *M/V Jireh* incident.

The NOAA accepts the settlement offer of \$201,587.50 as full compensation for Claim Number M12037-OC01. The settlement does not include any additional funding for contingency. This settlement represents full and final release and satisfaction of all damage costs described in the December 18, 2012 determination.

NOAA agrees to provide annual and final reports to the NPFC as directed in the determination. NOAA agrees to comply with 33 U.S.C. §2706(f) and 33 C.F.R. §136.211 by depositing into a revolving trust account the amounts awarded in the December 18, 2012 determination and any amounts in excess of those required for these reimbursements to accomplish the work approved in the determination shall be deposited to the OSLTF.

NOAA hereby assigns, transfers, and subrogates to the National Pollution Funds Center (NPFC) all rights, claims, interest and rights of action, that it may have against any party, person, firm or corporation that may be liable for the damage. NOAA authorizes the NPFC to sue, compromise or settle in the name of NOAA and that the NPFC be fully substituted for NOAA and subrogated to all NOAA rights arising from the December 18, 2012 determination.

NOAA certifies that to the best of its knowledge and belief the information contained in this claim represents all material facts and is true, and understands that misrepresentation of facts is subject to prosecution under federal law, including but not limited to 18 U.S.C. §§287 and 1001.

_____	_____
Title of Person Signing	Date of Signature
_____	_____
Typed or Printed Name of Claimant or Name of Authorized Representative	Signature

Claim Number: M12037-OC02

_____	_____
Title of Witness	Date of Signature
_____	_____
Typed or Printed Name of Witness	Signature

_____	_____	_____
ALC Required for Payment	Bank Routing Number	Bank Account Number