

U.S. Department  
of Homeland Security

United States  
Coast Guard



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National Pollution Funds Center

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16480  
19 February 2014

## MEMORANDUM

From: Fredy Hernandez [REDACTED]  
CLAIMS MANAGER, NPFC

To: Tony Penn  
DEPUTY CHIEF, ASSESSMENT AND RESTORATION DIVISION, NOAA

Subj: Claim: N10036-OC18 – *Deepwater Horizon* Oil Spill Assessment

1. On October 30, 2013, the National Pollution Funds Center (NPFC) received a claim from the National Oceanic Atmospheric Administration (NOAA) for costs to assess potential natural resources injuries resulting from the *Deepwater Horizon* oil spill (N10036-OC18). The claim totaled \$147,902,421 to implement 38 assessment activities that are detailed in NOAA's 2014 Assessment Plan.
2. On February 3, 2014, the NPFC issued a partial determination that approved 16 of the 38 assessment activities; and NOAA later withdrew one additional activity. The NPFC is now issuing the enclosed second partial determination and offer to pay \$12,585,574 for nine of the remaining 21 claimed activities and associated NOAA agency costs, while we continue to adjudicate the remaining \$78,938,902 claimed for 12 activities. 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 (33 C.F.R. Part 136 and 15 C.F.R. 990 *et seq.*). A copy of the determination and offer to pay the amount of \$12,585,574 is enclosed.
3. If you accept this offer, please complete the enclosed Acceptance/Release Form and return to:  
Director (cn)  
National Pollution Funds Center  
U.S. Coast Guard Stop 7100  
4200 Wilson Boulevard, Suite 1000  
Arlington, VA 20598-7100
4. If we do not receive the signed Acceptance/Release Form within 60 days of the date of this memo, 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 instruction for the transfer of funds to your Damage Assessment Restoration and Revolving Fund Account with the signed Form.
5. If you have any questions about this determination, please feel free to contact me at 703-872-6054.

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Enclosures: (1) NPFC determination  
(2) Acceptance/Release Form

## National Pollution Funds Center Determination

Claim Number and Name:	N10036-OC18, <i>Deepwater Horizon</i> Oil Spill Assessment
Claimant:	National Oceanic Atmospheric Administration
Type of Claim:	NRDA, Upfront Assessment Costs
Claim Manager:	Fredy Hernandez
Offer Amount:	\$12,585,574
Determination Date:	19 February 2014

### Summary of the Incident and Claim

On April 20, 2010, the *Deepwater Horizon* mobile offshore drilling unit exploded and sank, discharging an estimated 210<sup>1</sup> million gallons of oil into the Gulf of Mexico until the well was capped on July 15, 2010. Responders to the discharge dispensed approximately 1.84 million gallons of dispersants<sup>2</sup> to keep, or delay, the oil from reaching sensitive shorelines. The U.S. Coast Guard designated the source of the spill as an offshore facility located on an area leased by BP Exploration & Production, Inc. (BP). BP accepted the designation and advertised its claims process pursuant to the Oil Pollution Act (OPA).

Upon notification of the spill, the Department of Commerce, National Oceanic Atmospheric Administration (NOAA), along with the Department of the Interior, Fish and Wildlife Service (FWS), and five Gulf Coast states<sup>3</sup>, acting as natural resource trustees designated under OPA and appropriate state laws, initiated an assessment of natural resource damages resulting from the discharges and response to discharges of oil. By the August-September 2010 period, the trustees observed over 950 miles of oiled shoreline habitat, 400 oiled sea turtles, and over 1,500 oiled birds<sup>4</sup>; and identified numerous other natural resources at risk to include fish, marine mammals, oysters, and associated habitats. The trustees have continued to work together to develop and implement assessment plans to determine the nature and extent of these losses.

On October 30, 2013, NOAA presented the National Pollution Funds Center (NPFC) with a claim for \$147,902,421 to implement their 2014 assessment and restoration planning activities. The costs associated with this claim are with respect to NOAA's Third Interim, Partial Claim for Assessment and Restoration Planning Costs (2014 Assessment Plan). The Plan describes 38 assessment activities, many of which involve continuation of assessment and injury quantification efforts initiated, or analyses of samples collected, in cooperation with, and/or funding from, BP and the Oil Spill Liability Trust Fund (The Fund or OSLTF) in 2012 and 2013. NOAA reduced the claim sum certain for the 38 assessment activities to \$137,915,045<sup>5</sup>.

On February 3, 2014, the NPFC issued a partial determination for this claim that approved \$46,390,569 for 16 assessment activities included in the October 30, 2013 claim, and made the following findings with respect to the incident, NOAA claimant, and claim:

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<sup>1</sup> "Deepwater Horizon Oil Spill Early Restoration Plan." *Gulf Spill Restoration Publications*. National Oceanic Atmospheric Administration, December 1, 2011.

<sup>2</sup> 1.07 million gallons on the surface and 771,000 gallons sub-sea. "The Ongoing Administration-Wide Response to the Deepwater BP Oil Spill." *Deepwater Horizon Incident Joint Information Center*, September 9, 2010.

<sup>3</sup> The state trustees are Louisiana, Mississippi, Alabama, Florida, and Texas.

<sup>4</sup> *Federal Register*, Vol. 75, No. 190, Pgs. 60800-60802, October 1, 2010

<sup>5</sup> December 3, 2013 and January 31, 2014 emails from NOAA to NPFC

1. The *Deepwater Horizon* oil spill occurred after OPA's date of enactment (August 18, 1990) and is an OPA incident with respect to OPA damages to natural resource damages and the reasonable cost of assessing those damages. 33 U.S.C. §§2702(b)(2)(A); 33 U.S.C. § 2706(d)(1)(C).
2. NOAA is a federal trustee designated by the President and its responsibilities include the assessment of natural resource damages under its trusteeship and the development and implementation of a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent of the natural resources under its trusteeship. 33 U.S.C. §2706(b)(1); 33 U.S.C. §§2706(c)(1)(A) and (C), and 33 C.F.R. §136.207.
3. NOAA determined that there is jurisdiction to pursue restoration for this incident under OPA. 15 C.F.R. §990.41.
4. NOAA's claim for assessment costs is based on its 2014 Assessment Plan, which the public was given an opportunity to review and to provide comments. 33 U.S.C. §2706(c)(5).
5. NOAA presented its claim for assessment costs (\$147,902,421) based on its 2014 Assessment Plan to BP on July 11, 2013. This claim was not settled within 90 days by payment by any party, allowing presentment to the NPFC as a claim for uncompensated natural resource damages.
6. The claim was presented to the Fund within the period of limitations for claims. 33 U.S.C. §§2713(h)(2); 33 C.F.R. §136.101, 15 C.F.R. 990.64(b).

This second determination adopts these findings, and provides the following additional findings specific to the nine<sup>6</sup> assessment activities included in NOAA's claim submitted to the NPFC on October 30, 2013. The remaining 12 activities not included in the February 3, 2014, and this determination remain under adjudication<sup>7</sup>.

### **NPFC Review of Claim and Associated Costs**

NOAA's 2014 Assessment Plan and claim include 37<sup>8</sup> assessment activities with a revised total implementation cost of \$137,915,045<sup>9</sup>. This section presents the NPFC findings for nine of the 37 claimed activities. The organization of this section follows the claim submission, which presents claimed activities under three categories: (I) Offshore Aquatic Habitat and Resource Investigations, (II) Nearshore Habitat and Resource Investigations, and (III) Other. Within these three categories, specific activities are presented by resource type.

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<sup>6</sup> Sea Turtle Exposure and Injury Assessment Report; Estuarine Dolphins; Coastal/Shelf Dolphins; Oceanic Marine Mammals; Inhalation; Characterizing Nearshore Sediment Contamination; Characterizing Nearshore Biota Contamination; Completing Analysis of Benthic Injury; and Integrate and Interpret Findings Regarding Nearshore Exposure Injury and Prepare Reports

<sup>7</sup> Soft Bottom Sediment; Hard Ground Corals; Mesophotic Reefs; Benthic Megafauna; Strandings: Necropsies, and Management, Transport and Storage of Sea Turtles and Marine Mammals; Coastal and Estuarine Cetacean Strandings; Continued Monitoring of Subtidal Oyster Injury (Abundance and Biomass); Continued Monitoring of Subtidal Oyster Injury (Recruitment); Continued Monitoring and Analysis of Nearshore Oyster Injury; Comprehensive Integration of Oyster Injury Assessment Elements; Contaminant Analytical Chemistry; and Restoration Planning

<sup>8</sup> NOAA withdrew the "Supplemental Collection and Analysis of Nearshore Sediment Data" activity from consideration on January 31, 2014

<sup>9</sup> \$147,902,421 (original claimed amount) - \$2,525,312 (costs withdrawn on December 3, 2013) - \$2 (withdrawn on January 16, 2014) - \$7,462,062 (costs withdrawn on January 31, 2014) = \$137,915,045 (revised claimed amount)

Table 1 (attached) lists the 38 claimed assessment activities, identifying the 16 that were approved on February 3, 2014; one that was withdrawn on January 31, 2014; nine that are subject to this partial determination; and the 12 that remain under NPFC adjudication.

## I. OFFSHORE AQUATIC HABITAT AND RESOURCE INVESTIGATIONS

### A. Offshore Benthic Habitat and Communities

NOAA claims funds for four activities<sup>10</sup>, all of which remain under adjudication.

### B. Bluefin Tuna

The NPFC approved the claimed costs for one activity in its February 3, 2014 determination.

### C. Transport, Fate, and Effects Modeling

The NPFC approved the claimed costs for three activities in its February 3, 2014 determination.

### D. Fish and Plankton

The NPFC approved the claimed costs for two activities in its February 3, 2014 determination.

### E. Sargassum

The NPFC approved the claimed costs for one activity in its February 3, 2014 determination.

### F. Sea Turtles

NOAA claims funds for two activities. The costs for one of the two activities is addressed below; the second remains under adjudication<sup>11</sup>.

#### *Activity F1. Sea Turtle Exposure and Injury Assessment Report*

In 2012/13, the trustees collected and analyzed data to document exposure and injury to oceanic, shallow water, and nesting sea turtles<sup>12</sup>. In 2014, NOAA plans to (1) synthesize the data generated by the 2012/13 efforts and (2) review existing literature on sea turtle densities at different life stages and effects of exposure to oil and resulting injury. NOAA will then integrate data from the literature with findings from 2012/13 injury assessment activities to estimate biological impacts by degree of oiling and draft a technical report summarizing exposure and injury to sea turtles.

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<sup>10</sup> Soft Bottom Sediment (\$7,270,219), Hard Ground Corals (\$712,421), Mesophotic Reefs (\$7,329,433), and Benthic Megafauna (\$3,447,389)

<sup>11</sup> The second sea turtle activity that remains under adjudication is Activity F2. Strandings: Necropsies, and Management, Transport, and Storage of Sea Turtles and Marine Mammals.

<sup>12</sup> Such as sea turtle tissue analysis data, including PAH concentrations detected in samples of various tissues; abundance estimates using dive data from sea turtles fitted with satellite tags; inhalation exposure analysis; and estimates of pelagic sea turtle habitat (Sargassum).

NOAA claims \$1,096,604 for contractors to complete the sea turtle injury assessment and quantify injury (\$804,200), coordinate data review and interpretation (\$190,451), and draft summary injury assessment report (\$101,953). The claim record identifies the principal investigators and describes their expertise related to implementing this assessment activity.

#### *Determination with respect to the Sea Turtle Assessment Activities*

After reviewing NOAA's 2014 Assessment Plan and additional claim information provided by NOAA, the NPFC finds that the (1) Activity described above is an appropriate procedure under 15 C.F.R. §990.27(b) that is capable of providing valid and reliable information to quantify injury and (2) costs claimed for this activity are reasonable for the proposed level of effort given the complexity of the incident relating the nature and extent of oiling, geographic extent of exposure of natural resources to oil, and magnitude of potential injury. 15 C.F.R. 990.27(c). Therefore, claimed costs of \$1,096,604 for this activity are compensable from the Fund. 33 U.S.C. §2706 (d)(1)(C), 33 C.F.R. §136.209 and .211, and 33 U.S.C. §2712(a)(4).

#### G. Marine Mammals

NOAA is assessing potential injury to marine mammals through a combination of photographic monitoring to assess overall abundance over time, capture-release health assessments to diagnose disease conditions potentially indicative of oil related toxic effects, and information from stranded animals surveys. NOAA reports that findings to date have found endocrine, respiratory, and hepatic disease in dolphins consistent with adverse health effects as reported from experimental oil exposure studies. These health conditions were observed in Barataria Bay, LA, an area that experienced heavy oiling, but were not observed in dolphins from Sarasota Bay, FL, an area that was not oiled.

NOAA claims funds for five Activities. Costs for four of the five Activities are addressed below; the fifth remains under adjudication<sup>13</sup>.

#### *Activity G1. Estuarine Dolphins*

Under this activity NOAA plans to continue estuarine dolphin assessment activities in 2014 that began in 2012. Specifically, NOAA plans to conduct: additional photographic surveys to document reproductive outcomes correlated to the health assessment conducted in 2013; capture - release health assessments<sup>14</sup> in two additional areas of the northern Gulf of Mexico; analyses of photographs from both Mississippi Sound, MS, and Barataria Bay, LA, to assess abundance and survival; and genetic analyses of samples previously collected to confirm sex of the dolphin and help determine the stock (i.e., coastal or offshore) the dolphin belongs to (information that will provide a better understanding of the impacts to the individual and population or sub-population)<sup>15</sup>.

NOAA claims \$3,983,212 for contractors to prepare field studies (\$220,800); conduct photo surveys (\$787,000), health assessments (\$561,023), laboratory analyses (\$652,164), and genetic

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<sup>13</sup> The fifth Sea Turtle activity that remains under adjudication is Activity G3: Coastal and Estuarine Cetacean Strandings.

<sup>14</sup> Health assessment activities include: physical examination, diagnostic ultrasound, and blood and tissue sampling.

<sup>15</sup> November 19, 2013 email from NPFC to NOAA

analyses (\$96,000); coordinate data review and findings (\$1,337,578); and report findings (\$328,647). The claim record identifies the principal investigators and describes their expertise related to implementing this assessment activity.

*Activity G2: Coastal/Shelf Dolphins*

NOAA plans to develop a model to assess injury to dolphins in coastal and continental shelf waters using data on health and survival from the estuarine dolphin activity (see Activity G1 above), inhalation risk evaluations (see Activity G5), and abundance estimates from aerial surveys done in 2010-2012. NOAA claims \$254,002 for contractors to integrate health assessment, inhalation, and abundance survey data (\$36,000), develop and run the model (\$73,540), coordinate data review and interpretation (\$120,000), and report results (\$24,462). The claim record identifies the principal investigators and describes their expertise related to implementing this assessment activity.

*Activity G4: Oceanic Marine Mammals*

NOAA reports that in 2010, marine mammals were observed by helicopter and photographs in ocean waters near the *Deepwater Horizon* spill site. In 2014, NOAA plans to assess injury to marine mammals in oceanic waters by integrating health and survival data from the estuarine dolphin activity (see Activity G1 above), inhalation risk evaluations (see Activity G5), marine mammal abundance surveys<sup>16</sup>, and telemetry data<sup>17</sup>. NOAA will use the data to model injury to oceanic marine mammals in the Gulf of Mexico.

NOAA claims \$363,579 for contractors to integrate health assessment, inhalation, and abundance survey data (\$17,402), model injury (\$197,745) coordinate data review and interpretation (\$120,000), and report results (\$28,432). The claim record identifies the principal investigators and describes their expertise related to implementing this assessment activity.

*Activity G5: Inhalation*

NOAA has observed marine mammals that may have been injured by oil inhalation during the spill<sup>18</sup>. In 2012, NOAA conducted a literature review of the toxicity of inhaled oil, collected air monitoring data, and modeled the oil compounds that existed near the water surface, which indicated potential injury to marine mammals from oil inhalation. In 2013, NOAA conducted inhalation risk assessments based on the modeling data from 2012 and marine mammal injury threshold levels<sup>19</sup>, which indicated that injury to marine mammals from oil inhalation was likely. In 2014, NOAA plans to model the impacts of airborne contaminants<sup>20</sup> from discharged oil to marine mammals to determine the short term health effects and correlate the model results with findings from the dolphin health assessments (see Activity G1) to determine long term effects<sup>21</sup>.

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<sup>16</sup> NOAA has measured abundance through shipboard observations and underwater acoustic arrays that detect mammals through sound waves.

<sup>17</sup> NOAA tracked the movements and behavioral changes of sperm whales in 2010-2012 through satellite tagging.

<sup>18</sup> 2014 Assessment Plan, page 101

<sup>19</sup> NOAA has reviewed toxicology literature to establish toxicity thresholds for marine mammals.

<sup>20</sup> Airborne contaminants result from volatilization of oil as well as the generation of particulate matter and products of incomplete combustion during controlled burns conducted during the response effort

NOAA claims \$439,267 for contractors to model impacts of airborne contaminants using health, toxicity, and exposure data (\$287,120) and report results (\$152,147). The claim record identifies the principal investigators and describes their expertise related to implementing this assessment activity.

#### *Determination with respect to the Marine Mammal Assessment Activities*

After reviewing NOAA's 2014 Assessment Plan and additional claim information provided by NOAA, the NPFC finds that (1) Activities G1, G2, G4, and G5 described above are appropriate procedures under 15 C.F.R. §990.27(b) that are capable of providing valid and reliable information to quantify injury and (2) costs claimed for these activities are reasonable for the proposed level of effort given the complexity of the incident relating the nature and extent of oiling, geographic extent of exposure of natural resources to oil, and magnitude of potential injury. 15 C.F.R. 990.27(c). Therefore, claimed costs of \$5,040,060 for these activities are compensable from the Fund. 33 U.S.C. §2706 (d)(1)(C), 33 C.F.R. §136.209 and .211, and 33 U.S.C. §2712(a)(4).

#### H. Shoreline

The NPFC approved claimed costs for three activities in its February 3, 2014 determination.

#### I. Nearshore Sediment and Biota

NOAA is assessing potential injury to the nearshore environment through a combination of evaluating sediment and tissue samples to determine the level of contaminants, reviewing oiling maps to understand the spatial extent of oiling, and analyzing the potential transfer of contaminants to higher trophic levels.

NOAA claims funds for four activities. Costs for three of the four activities are addressed below; the fourth activity and associated claimed costs were withdrawn on January 31, 2014<sup>22</sup>.

#### *Activity II. Characterizing Nearshore Sediment Contamination*

Through this activity, NOAA will validate, analyze, and map the data<sup>23</sup> from previously collected sediment samples. By understanding the scope and scale of sediment contamination in the nearshore area of the Gulf of Mexico, NOAA will be able to document oil pathway and exposure to nearshore habitats and biota. The results from this activity will be used as an input for Completing Analysis of Nearshore Benthic Injury (see Activity I3 below)<sup>24</sup> and Integration of Nearshore Exposure and Injury (see Activity J1 below)<sup>25</sup>.

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<sup>21</sup> This information will be used to assess injury to estuarine dolphins, coastal/shelf dolphins, and oceanic marine mammals, which are all separate activities.

<sup>22</sup> Supplemental Collection and Analysis of Nearshore Sediment Data

<sup>23</sup> Data includes PAH concentrations, persistence of oil, and baseline conditions.

<sup>24</sup> 2014 Assessment Plan, page 119

<sup>25</sup> 2014 Assessment Plan, page 124

NOAA claims \$726,916 for contractors to validate, analyze, and map sediment samples (\$561,383), coordinate data review (\$116,327), and report findings (\$49,207). The claim record identifies the principal investigators and describes their expertise related to implementing this assessment activity.

#### *Activity I2. Characterizing Nearshore Biota Contamination*

Under this activity, NOAA will validate, analyze, and map the data from previously collected biota tissue samples. Throughout the assessment, NOAA has conducted various activities<sup>26</sup> that involved sampling biota tissues for oil contamination. By understanding the scope and scale of biota contamination in the nearshore area of the Gulf of Mexico, NOAA can document oil pathway and exposure to nearshore biota and oil pathway for higher trophic level organisms, such as sea turtles and marine mammals, which prey upon nearshore biota. The results from this activity will be used as an input under Activity J1: Integration of Nearshore Exposure and Injury<sup>27</sup>, as well as a reference for various other injury categories (e.g., oysters, marine mammals, sea turtles).

NOAA claims \$323,565 for contractors to validate, analyze, and map biota tissue samples (\$186,713), coordinate data review (\$82,673), and report findings (\$54,179). The claim record identifies the principal investigators and describes their expertise related to implementing this assessment activity.

#### *Activity I3. Completing Analysis of Nearshore Benthic Injury*

NOAA is quantifying injury to the nearshore benthic region by developing a model to estimate the number of lost benthic organisms over multiple years. NOAA is integrating toxicity information, sediment contamination data<sup>28</sup>, and literature values of species density to construct the injury model. The injury results from the activity will then be used as an input for the Integration of Nearshore Exposure and Injury (see Activity J1)<sup>29</sup>.

NOAA claims \$330,969 for contractors to validate, analyze, and map benthic samples<sup>30</sup> (\$38,550), develop the injury model (\$185,608), coordinate data review (\$57,913) and prepare a report (\$48,898). The claim record identifies the principal investigators and describes their expertise related to implementing this assessment activity.

#### *Activity I4. Supplemental Collection and Analysis of Nearshore Sediment Data*

NOAA withdrew this activity and associated costs from consideration<sup>31</sup>.

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<sup>26</sup> The assessment activities that involved biota tissue sampling include: marsh edge sandy shore sampling plan, submerged aquatic vegetation oil exposure plan, marine mammal and turtle prey plan, 2012 oyster intertidal plan, oyster sampling plan, oyster transition plan, spring 2011 oyster recruitment plan, and 2012 oyster recruitment monitoring plan.

<sup>27</sup> 2014 Assessment Plan, page 124

<sup>28</sup> Characterizing Nearshore Sediment Contamination

<sup>29</sup> 2014 Assessment Plan, page 124

<sup>30</sup> NOAA will pair sediment samples with incident specific toxicity thresholds.

<sup>31</sup> January 31, 2014 email from NOAA to NPFC



## *Determination with respect to the Nearshore Sediment and Biota Activities*

After reviewing NOAA's 2014 Assessment Plan and additional claim information provided by NOAA, the NPFC finds that Activities I1, I2, and I3 described above are appropriate procedures under 15 C.F.R. §990.27(b) that are capable of providing valid and reliable information to quantify injury and (2) costs claimed for these activities are reasonable for the proposed level of effort given the complexity of the incident relating the nature and extent of oiling, geographic extent of exposure of natural resources to oil, and magnitude of potential injury. 15 C.F.R. 990.27(c). Therefore, claimed costs of \$1,381,450 for these Activities are compensable from the Fund. 33 U.S.C. §2706 (d)(1)(C), 33 C.F.R. §136.209 and .211, and 33 U.S.C. §2712(a)(4).

### J. Integration of Nearshore Exposure and Injury

The nearshore environment is a complex ecosystem that provides benefits to other zones of the Gulf of Mexico<sup>32</sup>. Oiling of vegetated and beach shorelines creates a pathway for exposure and injury to nearshore biota. NOAA will integrate injury findings from all nearshore environments and develop a high-level, ecosystem-scale description of injuries.

#### *Activity J1. Integration of Nearshore Exposure and Injury Activity*

Under this activity, NOAA plans to integrate analysis and results from other injury categories<sup>33</sup> to describe pathways, exposure and injury in the nearshore environment including coastal wetland vegetation and fauna, beaches, nearshore fish, oysters, gulf sturgeon, nesting turtles, and submerged aquatic vegetation (SAV); and to develop final injury quantification<sup>34</sup> for the nearshore environment, which will inform the appropriate types and scales of restoration projects needed to compensate the public for injuries to natural resources.

NOAA claims \$2,361,607 for contractors to analyze and synthesize data (\$938,368), to quantify final injury, to select inputs for restoration scaling equivalency models (\$505,930), to coordinate with trustees (\$302,391), and to develop the final technical report (\$614,918). The claim record identifies the principal investigators and describes their expertise related to implementing this assessment activity.

## *Determination with respect to Integration of Nearshore Exposure and Injury*

After reviewing NOAA's 2014 Assessment Plan and additional claim information provided by NOAA, the NPFC finds that the (1) Activity described above is an appropriate procedure under 15 C.F.R. §990.27(b) that is capable of providing valid and reliable information to quantify injury and (2) costs claimed for this activity are reasonable for the proposed level of effort given the complexity of the incident relating the nature and extent of oiling, geographic extent of exposure of natural resources to oil, and magnitude of potential injury. 15 C.F.R. 990.27(c). Therefore, claimed costs of \$2,361,607 for this activity are compensable from the Fund. 33 U.S.C. §2706 (d)(1)(C), 33 C.F.R. §136.209 and .211, and 33 U.S.C. §2711(a)(4).

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<sup>32</sup> 2014 Assessment Plan, page 124

<sup>33</sup> Shoreline, Nearshore, and Oysters

<sup>34</sup> In the nearshore integration activity, NOAA will pull together injury findings from the nearshore activities to construct a combined injury position for the nearshore aquatic environment; and linked to integrated shoreline and oyster injury findings using desktop software.

K. Oysters

NOAA claims funds for four Activities<sup>35</sup>, all of which remain under adjudication.

III. OTHER

L. Restoration Planning Activities

*Activity LI. Restoration Planning Activity*

NOAA claims funds for one Activity, which remains under adjudication.

M. Toxicity to Aquatic Organisms

The NPFC approved the costs for one claimed Activity in its February 3, 2014 determination.

N. Chemistry

NOAA claims funds for one Activity, which remains under adjudication.

O. Data Management and Visualization

The NPFC approved the costs for two claimed activities in its February 3, 2014 determination.

P. Injury Assessment Management and Administration

The NPFC approved the costs for two activities in its February 3, 2014 determination.

NOAA Labor

NOAA claims \$22,080,565<sup>36</sup> for agency labor, travel, supplies, and ship time associated with the 37 assessment activities claimed. NOAA staff consists of more than one hundred administrative support specialists, scientists, restoration specialists, attorneys, and program managers working on the natural resource damage assessment. NOAA labor includes data management, scientific documentation, legal review of analyses and technical deliverables; oversight of technical support contractors and associated work products; coordination with co-trustees, the public, and representatives from the RP<sup>37</sup>, and the preparation or review of technical materials to support public communications and injury assessment. Under this determination, the NPFC approves

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<sup>35</sup> Continued Monitoring of Subtidal Oyster Injury (\$3,514,114), Continued Monitoring of Subtidal Oyster Injury (\$7,493,605), Continued Monitoring and Analysis of Nearshore Oyster Injury (\$5,551,672), and Comprehensive Integration of Oyster Injury Assessment Elements (\$5,098,406)

<sup>36</sup> Revised on December 3, 2013 and January 31, 2014.

<sup>37</sup> Coordination under this Activity is related to oversight, support, and general information, which differs from coordination costs claimed above for other activities that are for coordination within the technical work groups and related specifically to technical aspects of an injury category.

\$2,705,853<sup>38</sup> in NOAA claimed labor costs associated with the nine<sup>39</sup> above-described activities determined to be compensable from the Fund.

After reviewing NOAA's 2014 Assessment Plan and additional claim information provided by NOAA, the NPFC finds that the (1) the activity described above for NOAA agency costs is an appropriate activity necessary to complete the 2014 assessment and (2) costs claimed for this activity are reasonable for the proposed level of effort given the complexity of the incident relating the nature and extent of oiling, geographic extent of exposure of natural resources to oil, and amount of data collected. 15 C.F.R. 990.27(c). Therefore, the NPFC finds that \$2,705,853 of the \$22,080,565 costs claimed for this activity is compensable from the Fund. 33 U.S.C. §2706 (d)(1)(C), 33 C.F.R. §136.209 and .211, and 33 U.S.C. §2712(a)(4).

## **Summary**

The NPFC has reviewed the claim submitted by NOAA for costs to implement its 2014 Assessment Plan for the *Deepwater Horizon* incident in accordance with OPA (33 U.S.C. 2701 *et seq.*) and its implementing regulations (15 C.F.R. 990 *et seq.* and 33 C.F.R. §136). Through this partial determination, the NPFC offers \$12,585,574 to implement nine activities detailed in NOAA's 2014 Assessment Plan; the remaining 12 activities and associated NOAA labor costs remain under adjudication, and will be subject to future determinations.

This offer constitutes full and final payment for the costs associated with the nine activities and related NOAA labor costs addressed in this determination.

## **Revolving Trust Fund and Return of Unused Funds to the OSLTF**

As established by OPA (33 U.S.C. §2706(f)) and the Natural Resource Damage Assessment regulations (15 C.F.R. §990.65), sums recovered by trustees for natural resource damages must be retained in a non-appropriated revolving trust account for use only to implement the nine activities addressed in this determination in accordance with the 2014 Assessment Plan. For this claim, the NPFC will deposit \$12,585,574 into NOAA's Damage Assessment Restoration and Revolving Fund Account, which NOAA has demonstrated<sup>40</sup> to be a non-appropriated, revolving trust fund.

## **Cost Documentation, Progress Reporting, and Final Report**

As the claimant, NOAA shall ensure that all expenditures of OSLTF funds are documented appropriately and spent according to the nine activities of the 2014 Assessment Plan approved in this determination. Any funds not spent or appropriately documented shall be returned to the Fund. 33 U.S.C. § 2706(f).

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<sup>38</sup> NOAA identified certain agency costs associated with each assessment activity, which the NPFC used to determine the amount compensable for each activity.

<sup>39</sup> Sea Turtle Exposure and Injury Assessment Report; Estuarine Dolphins; Coastal/Shelf Dolphins; Oceanic Marine Mammals; Inhalation; Characterizing Nearshore Sediment Contamination; Characterizing Nearshore Biota Contamination; Completing Analysis of Benthic Injury; Supplemental Data Collection (withdrawn); and Integrate and Interpret Findings Regarding Nearshore Exposure Injury and Prepare Reports

<sup>40</sup> October 15, 2013 email from NOAA to NPFC

One year from the date of this determination, and annually thereafter, NOAA shall provide the NPFC with a report on the status of implementation and expenditures for the nine activities approved in this determination. These annual progress reports should include:

1. Certification by NOAA that all assessment activities have been conducted in accordance with the 2014 Assessment Plan as approved in this determination;
2. A progress report that includes a description of work accomplished, timeline for future activities, and any unexpected problems incurred during implementation;
3. A summary of expenditures by category (i.e., labor, consultant/contractors, and travel); and
4. A narrative description of the work accomplished by each individual and how that work fits into the overall progress 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.

NOAA shall submit a final progress report within 120 days from the date an approved activity is complete. This report should include:

1. Certification by NOAA that all expenditures of OSLTF funds were in accordance with the plan as approved by the NPFC;
2. A summary of findings;
3. Copies of final reports and/or studies;
4. Documentation of OSLTF funds remaining in the Revolving Trust Fund for this claim, including account balance and interest earned; and
5. Documentation of all expenditures as follows:
  - a. Labor: For each employee –
    - i. A narrative description of the work accomplished by each individual and how that work fit into the 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 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 OSLTF.

The NPFC has prepared standardized templates with instructions to facilitate final cost reporting.

If you have any questions or would like to discuss this partial determination, please contact me by phone (703-872-6054) or email at [Fredy.e.hernandez@uscg.mil](mailto:Fredy.e.hernandez@uscg.mil).

ENCL: (1) Table 1. Summary of Claimed Activities  
(2) Acceptance/ Release Form

**Table 1. Summary of Claimed Activities**

Resource Category	Claimed Activity	Previously Approved	Approved This Determination	Pending
A. Offshore Benthic Habitat and Communities	Soft Bottom Sediment			\$6,950,836
	Hard Ground Corals			\$595,013
	Mesophotic Reefs			\$5,884,710
	Benthic Megafauna			\$1,134,409
B. Bluefin Tuna	Bluefin Tuna Spawning Habitat Analyses	\$692,085		
C. Transport, Fate, and Effects Modeling	Oil Fate Modeling and Comparisons with Observational Data	\$2,975,364		
	Hydrodynamics Modeling	\$1,414,703		
	Exposure and Injury Modeling and Data Inputs	\$1,653,583		
	Analysis of Field Data from 2010-2011	\$2,655,454		
	Documentation of Oil Pathway, Water Column Organisms Exposed and Injuries	\$1,458,851		
	E. Sargassum	Sargassum Communities	\$991,010	
F. Sea Turtles	Sea Turtle Exposure and Injury Assessment		\$1,096,604	
	Strandings: Management, Transport and Storage of Sea Turtles and Marine Mammals			\$2,722,782
G. Marine Mammals	Estuarine Dolphins		\$3,983,212	
	Coastal/Shelf Dolphins		\$254,002	
	Coastal and Estuarine Cetacean Strandings			\$5,444,345
	Oceanic Marine Mammals		\$363,579	
	Inhalation		\$439,267	
H. Shoreline	Assessing Recovery of Coastal Wetlands	\$2,156,617		
	Completing Analysis of Coastal Wetland Injury	\$152,601		
	Completing Analysis of Coastal Wetland Erosion	\$902,850		
I. Nearshore Sediment and Biota	Characterizing Nearshore Sediment Contamination		\$726,916	
	Characterizing Nearshore Biota Contamination		\$323,565	
	Completing Analysis of Nearshore Benthic Injury		\$330,969	
	Supplemental Nearshore Sediment Sampling		<i>Withdrawn</i>	
J. Integration of Nearshore Exposure and Injury	Integrate and Interpret Findings Regarding Nearshore Exposure and Injury and Prepare Reports		\$2,361,607	
K. Oysters	Continued Monitoring of Subtidal Oyster Injury (Abundance and Biomass)			\$3,514,114
	Continued Monitoring of Subtidal Oyster Injury (Recruitment)			\$7,493,605
	Continued Monitoring and Analysis of Nearshore Oyster Injury			\$5,551,672
	Comprehensive Integration of Oyster Injury Assessment Elements			\$5,098,406
L. Restoration Planning Activities	Restoration Planning Activities			\$9,805,118
M. Toxicity to Aquatic Organisms	Toxicity to Aquatic Organisms	\$8,196,986		
N. Chemistry	Contaminant Analytical Chemistry			\$13,769,500
	Storage and Long Term Archive of Samples	\$3,668,409		
O. Data Management and Visualization	Data Management: Infrastructure	\$2,811,524		
	Data Management: Documentation	\$977,948		
	Injury Assessment and Legal Case Management	\$4,381,584		
	<i>Deepwater Horizon</i> Electronic Content Management and Oil Pollution Act Administrative Record Management System	\$2,900,680		
NOAA Labor		\$8,400,320	\$2,705,853	\$10,974,392
<b>Total</b>		\$46,390,569	\$12,585,574	\$78,938,902



Claim Number: N10036-OC18

Claimant Name: National Oceanic Atmospheric Administration

The National Oceanic Atmospheric Administration (NOAA), the undersigned, accepts the offer of \$12,585,574 as partial payment of the claim listed above.

On October 30, 2013, NOAA presented a claim to the Oil Spill Liability Trust Fund (OSLTF or the Fund) in the total amount of \$147,902,421 for upfront costs to assess potential damages to natural resources resulting from the discharge of oil on or about April 20, 2010, from an area of offshore land leased to BP Exploration & Petroleum (BP) (the *Deepwater Horizon* incident). The NPFC assigned Claim Number N10036-OC18 to this claim. NOAA subsequently reduced the claim amount to \$137,915,045, which includes funding for 37 activities. On February 3, 2014 the NPFC approved partial payment of this claim in the amount of \$46,390,569 to fund 16 activities outlined in the claim. This offer of \$12,585,574, dated February 19, 2014, is a second partial payment of Claim Number N10036-OC18 to fund nine additional activities.

The NOAA accepts the settlement offer of \$12,585,574 as full and final compensation for the costs to implement the nine assessment activities as described in the February 19, 2014 determination (N10036-OC18).

The NOAA agrees to comply with 33 U.S.C. § 2706(f) by depositing into a revolving trust account the \$12,585,574 awarded in the February 19, 2014 determination.

The NOAA hereby assigns, transfers, and subrogates to the United States 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 payment of the \$12,585,574 payable and paid from the Fund for Claim Number N10036-OC18. The NOAA authorizes the United States to sue, compromise or settle in the name of NOAA and the NPFC be fully substituted for, and acquires all NOAA rights arising from the February 19, 2014 determination.

The NOAA acknowledges that the United States has pending legal actions associated with the *Deepwater Horizon* incident in federal district court but warrants that no settlement will be made by any person on behalf of the NOAA with any other party to recover the compensation paid by the OSLTF for this February 19, 2014 determination and NOAA will cooperate fully with the NPFC in any claim and/or action by the United States against any person or party to recover the compensation paid by the OSLTF. The cooperation shall include, but not be limited to, immediately reimbursing the OSLTF any compensation received from any other source for the same claim, and providing any documentation, evidence, testimony, and other support, as may be necessary for the NPFC to recover from any other party or person.

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

**FOR THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION**

\_\_\_\_\_  
Tony Penn  
NOAA Office of Response and Restoration

\_\_\_\_\_  
Date