

U.S. Department
of Homeland Security

United States
Coast Guard



Director
National Pollution Funds Center

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16480
December 17, 2014

MEMORANDUM

From: Jim Hoff, Ph.D. [REDACTED]
Chief, NRD Claims Division

To: Cynthia Dohner
Authorized Official, Department of the Interior

Subj: Claim: N10036-OI23 Reconsideration – *Deepwater Horizon* Oil Spill Assessment

1. On April 14, 2014, the National Pollution Funds Center (NPFC) received a claim from the U.S. Department of the Interior (DOI) seeking \$2,262,694 to implement its Technical and Logistical Support Plan in support of its natural resource damage assessment (NRDA) for the *Deepwater Horizon* oil spill (claim number N10036-OI23). The NPFC denied this claim on September 24, 2014, because the claim submission did not provide the information necessary for the NPFC to determine that the Plan and associated costs were reasonable and appropriate.

2. Pursuant to 33 C.F.R. §136.115(d), DOI requested that the NPFC reconsider its decision to deny claim N10036-OI23 on October 10, 2014.

3. Based on careful review of DOI's request for reconsideration and the submitted information, we are issuing the enclosed determination and offer to pay \$1,967,560. This determination upon reconsideration was made in accordance with the Oil Pollution Act (OPA, 33 U.S.C. §2701 *et seq.*) and the associated regulations (33 C.F.R. Part 136 and 15 C.F.R. Part 990).

4. 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

5. This determination upon reconsideration constitutes final action for claim number N10036-OI23. 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, payment will be transferred to DOI's Damage Assessment Restoration and Revolving Fund Account via the Intra-Governmental Payment and Collection System within 30 days of receipt of the Acceptance/Release Form. Please provide account information and instructions for the transfer of funds with the signed Form.

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

NPFC DETERMINATION

Claim Number and Name:	N10036-OI23, <i>Deepwater Horizon</i> Oil Spill Assessment
Claimant:	U.S. Department of the Interior
Type of Claim:	Natural Resource Damage Assessment, Upfront Assessment Costs (Reconsideration)
Claim Amount:	\$2,262,694
Offer Amount:	\$1,967,560
Determination Date:	December 17, 2014
Reviewing Official:	Jim Hoff, Ph.D., Chief NRD Claims Division

Claim History

On April 14, 2014, the Department of the Interior (DOI) presented a claim to the Oil Spill Liability Trust Fund (OSLTF or the Fund) seeking \$2,262,694 for contractors to provide technical and logistical support to DOI staff involved in the *Deepwater Horizon* NRDA¹. The claim was based on DOI's Technical and Logistical Support Plan, which was presented by letter to BP and included in the claim submission to the NPFC. DOI's Plan briefly described three implementation tasks: (1) technical and logistical support, (2) data quality assurance/quality control (QA/QC), and (3) peer review of reports and findings².

During a meeting with DOI to review the claim on May 6, 2014, the NPFC explained that the submission lacked specific detail, failed to tie the various supporting documents together clearly, did not provide a context within the greater *Deepwater Horizon* NRDA framework, and did not clearly distinguish this work from previously funded work to ensure that the claimed costs do not constitute double recovery, particularly where costs associated with these activities were paid by the NPFC and/or BP in previous claims³. Following this meeting, on May 23, 2014, the NPFC sent DOI a written request for the additional information needed to determine that claimed costs are compensable under OPA⁴. Specifically, the NPFC requested a more comprehensive and clear explanation of the work DOI planned to perform.

DOI did not respond to the request for additional information, and, on September 24, 2014, the NPFC denied the claim on the grounds that DOI did not meet its burden of proving its claim for implementation costs with relevant and necessary information to determine that the work planned and associated costs were reasonable and appropriate. More specifically, the NPFC found that the claim submission did not include sufficient information to determine:

¹ The Department of the Interior (DOI) leads aspects of the *Deepwater Horizon* natural resource damage assessment (NRDA) that are focused on resources for which they have trust responsibilities (i.e., birds, sea turtles, sturgeon, etc.). The purpose of these assessments is to evaluate damages to natural resources resulting from the *Deepwater Horizon* oil spill in order to develop a damage assessment restoration plan (DARP).

² January 31, 2014, letter from DOI to BP providing additional information

³ May 14, 2014, email from Mark Wilcox to Debora McClain summarizing May 6, 2014, meeting

⁴ May 23, 2014, letter from NPFC to DOI requesting additional information

1. When DOI made its Technical and Logistical Support Plan available for public review;
2. What information would be collected or analyzed;
3. The appropriate level of effort and cost (i.e., labor, travel, contractor, indirect rates);
4. How the information will be used to determine injury or to plan appropriate restoration and fits into the overall assessment strategy; and
5. How the activities in the claim relate to assessment and restoration planning efforts previously funded by BP and/or the OSLTF, including work carried out by NOAA.

The NPFC's determination to deny the claim issued the following findings:

1. The *Deepwater Horizon* oil spill is an OPA incident that resulted in damages to natural resources. 33 U.S.C. §2702(b)(2)(A).
2. DOI is a federal trustee designated by the President with responsibilities to assess natural resource damages under its trusteeship and to develop and implement plans to restore, rehabilitate, replace, or acquire the equivalent of the natural resources under its trusteeship. 33 U.S.C. §2706(b)(2)); 33 U.S.C. §§2706(c)(1)(A) and (C), and 33 C.F.R. §136.207.
3. DOI has jurisdiction to pursue restoration for this incident under OPA and the Natural Resource Damages Assessments Regulations (15 C.F.R. §990.41).
4. DOI presented its claim for assessment costs to BP on October 10, 2013. The claim was based on its Technical and Logistical Support Plan, with total implementation costs of \$1,967,560. The contingency costs (\$295,134) were not presented to BP. The claim presented to BP for implementation costs was not settled within 90 days by payment by any party, allowing presentment to the NPFC as a claim for uncompensated natural resource damages. 33 U.S.C. §§ 2713(a) and (c)(2).
5. DOI presented its claim for uncompensated costs to implement its Technical and Logistical Support Plan to the Fund within the period of limitations for claims. 33 U.S.C. §2713(h)(2); 33 C.F.R. §136.101(a)(1)(ii),

The NPFC denied the claim on September 24, 2014, noting that if DOI sought reconsideration it should provide the additional information listed above.

On October 10, 2014, DOI requested that the NPFC reconsider its determination to deny its claim for implementation costs. DOI's request included the following information: responses to the NPFC's May 23, 2014, request for additional information, a letter from BP agreeing to provide partial funding⁵, and DOI's comprehensive 2014 Assessment Plan⁶.

⁵ June 10, 2014, letter from BP to DOI agreeing to fund \$700,000 for data QA/QC, one of the three tasks described in the Technical and Logistical Support Plan, and denying funds for the remaining two tasks (Technical and Logistical Support (\$800,000), and Peer Review (\$467,560)). As noted in the September 24, 2014 determination, the NPFC notified BP on April 18, 2014, that it had received claim number N10036-OI23 for costs to implement the Technical and Logistical Support Plan. As of this determination, BP has not informed the NPFC of any payments for this claim and DOI states that BP has not provided any funds identified in the Technical and Logistical Support Plan.

⁶ DOI's comprehensive 2014 Assessment Plan describes 14 assessment activities that DOI wants to implement in 2014. One of these activities is the Technical and Logistical Support work that was initially presented to BP on October 10, 2013, and submitted to the NPFC support of claim number N10036-OI23 on April 14, 2014, as a separate Plan.

Requirements for Reconsideration of Claim Determinations

Pursuant to 33 C.F.R. §136.115(d), claimants may make a written request for reconsideration of NPFC claim determinations. The request must be received by the NPFC within 60 days of the date of the NPFC determination and must include the factual or legal basis for the request for reconsideration and provide any additional support for the claim. Reconsideration is based on the information provided and a claim may only be reconsidered once. Disposition of the reconsideration constitutes final agency action.

DOI's request for reconsideration was received on October 10, 2014, within 60 days of the date of the NPFC determination.

NPFC's Analysis on Reconsideration

When reconsidering the denial of a claim, the NPFC reviews the claim *de novo*. It incorporates the initial denial by reference. Thus, the NPFC adopts the findings (1-5) issued in its initial denial and analyzed the additional information submitted by DOI in its request for reconsideration.

1. DOI explained that its Technical and Logistical Support Plan is a component of its comprehensive 2014 Assessment Plan⁶. DOI states the Plan, dated October 9, 2013, forms the basis of the claim that was published on the DOI *Deepwater Horizon* Response & Restoration website on October 9, 2013⁷. DOI also provided a link to the website location⁸.
2. DOI clarified that its claim does not request funds to collect or analyze any additional data, but rather to provide funding for contractor support to manage and validate data previously collected. For instance, DOI's response to NPFC's request for additional information submitted with the reconsideration request lists other assessment activities that previously generated data, for which DOI now seeks funding to manage and validate⁹.
3. DOI's reconsideration request described the planned work by linking claimed contractor costs to specific assessment activities¹⁰. DOI further added that the claimed costs were derived from an estimate of the level of effort and travel costs based on previous experience, and current published labor rates for the contractors.
4. DOI clarified how the information collected will be used to determine injury and/or to plan appropriate restoration. As noted above, DOI submitted its comprehensive 2014 Assessment Plan¹¹, which presents the Technical and Logistical Support work in the

⁷ DOI's response to NPFC's request for additional information submitted with the reconsideration request
⁸ <http://www.interior.gov/deepwaterhorizon/upload/FINAL-Technical-and-Logistical-Assessment-Support-Work-Plan-1092013.pdf>

⁹ See comprehensive 2014 Assessment Plan, pgs 38-41.

¹⁰ Comprehensive 2014 Assessment Plan and DOI's response to NPFC's request for additional information submitted with the reconsideration request

¹¹ DOI's request for reconsideration also states that they provided this comprehensive 2014 Assessment Plan to BP on October 4, 2014.

context of other assessment activities and offers additional detail on the work DOI wants to implement in 2014 and how the costs relate to overall assessment effort for DOI¹². More specifically, the Plan describes contractor work to coordinate ongoing and planned assessment, facilitate third party data verification and validation, and peer review of reports and findings. DOI states that the claimed costs for the work described will lead to a comprehensive and integrated injury case and will provide the framework for developing the Damage Assessment and Restoration Plan¹³.

DOI provided documentation that further describes its three proposed tasks (with associated costs): (1) technical and logistical support (\$800,000); (2) QA/QC (\$700,000) for third party data verification and validation¹⁴, and (3) peer review of reports and findings (\$467,560)¹⁵.

Technical and logistical support includes coordinating ongoing and planned assessment activities with cotrustees and BP, as appropriate. It includes developing agendas and coordinating participation by relevant individuals or parties¹⁶. Data review includes third party QA/QC and data verification/validation to ensure the Trustees and the public that the data are accurate and complete. Peer review support services include the development and incorporation of a rigorous peer review process for reports and findings developed as part of the assessment. A consistently applied peer review process with specific requirements will improve reliability and ensure standardized methods and analyses that are defensible. Each of these tasks will be implemented by contractors during the January 2014 through December 2015 period.

5. DOI's reconsideration request included an accounting of all funds provided by BP and the NPFC¹⁷. DOI also certified that: (a) funds claimed are for different work not included in previous claims to BP and the NPFC, and (b) DOI has not received payment from any source for costs claimed to implement the Technical and Logistical Support Plan. For example, costs previously paid to DOI for claims that included QA/QC activities were for the principle investigators (PI) to review specific aspects of their data collection process, whereas costs claimed in this claim are for a third party contractors to conduct QA/QC activities and to verify and validate the PIs' data.

¹² DOI's comprehensive 2014 Assessment Plan, pg. 38

¹³ DOI's comprehensive 2014 Assessment Plan, pg. 38

¹⁴ DOI's response to the NPFC's request for additional information submitted with the request for reconsideration and the comprehensive 2014 Assessment Plan (pg. 40-41) included a list of funded assessment activities (2011-2013) that DOI has implemented and is now seeking funding in this claim for the Data QA/QC, including data verification and validation task.

¹⁵ DOI states that this task will continue beyond 2014 into 2015 and end no later than December 31, 2015 because DOI must wait for the completion of other assessment activities planned in 2014 and results from studies implemented from 2011-2013 to complete this work.

¹⁶ As stated above, DOI leads and is implementing several assessment activities for several areas of the *Deepwater Horizon* NRDA; thus, this support is needed to continue to participate in technical work groups, trustee council meetings, etc. that address and discuss DOI's assessment activities. Additionally, DOI is responsible for managing and maintaining the incident-wide Administrative Record; therefore, participation in meetings is appropriate to carry out their responsibilities.

¹⁷ DOI's response to NPFC's request for additional information submitted with the reconsideration request.

In summary the additional information submitted by DOI, clarified that the proposed work and claimed costs fit within the overall strategy to integrate individual assessment activities – some of which were implemented in 2011-2014 – into a comprehensive and integrated injury case that will result in a DARP.

After reviewing the additional information, the NPFC, upon reconsideration, finds that the claimed costs 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 study area, and magnitude of potential injury, and are not duplicative.

Therefore, the NPFC offers \$1,967,560 to implement the Technical and Logistical Support Plan. As noted above, the requested \$295,134 in contingency funding was denied because it was not properly presented to the responsible party prior to submitting the claim to the Fund¹⁸.

Summary

The NPFC has reviewed the claim submitted by DOI for costs to implement its Technical and Logistical Support Plan for the *Deepwater Horizon* incident in accordance with OPA (33 U.S.C. §2701 *et seq.*), its implementing regulations (33 C.F.R. Part 136) and the Natural Resource Damage Assessments regulations (15 C.F.R. Part 990.). Through this determination, the NPFC offers \$1,967,560 to implement the Technical and Logistical Support Plan. This offer constitutes full and final payment.

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 Assessments regulations (15 C.F.R. §990.65(a)), sums recovered by trustees for natural resource damages must be retained in a non-appropriated revolving trust account for use only to implement the Technical and Logistical Support Plan activities addressed in this determination. For this claim, the NPFC will deposit \$1,967,560 into DOI's Natural Resource Damage Assessment and Restoration (NRDAR) Fund. DOI has demonstrated that the NRDAR Fund is a non-appropriated account that meets these requirements¹⁹. Any amounts in excess of those required for these reimbursements and costs shall be deposited in the Fund. 33 U.S.C. §2706(f), 33 C.F.R. §136.211 (b), and 15 C.F.R. §990.65(f).

¹⁸ The NPFC previously denied these costs and DOI did not submit any additional information in their reconsideration request to show that the claimed contingency was properly presented to BP.

¹⁹ The Department of the Interior and Related Agencies Appropriation Act, 1992 (H.R. 2686/ P.L. 102-154) permanently authorized receipts for damage assessment and restoration activities to be available without further appropriation until expended. The Dire Emergency Supplemental Appropriations for Fiscal Year 1992 <<http://www.doi.gov/restoration/hjres157.cfm>> (H.J.RES. 157 /P.L. 102-229) provides that the fund's receipts are authorized to be invested and available until expended. Additionally, the Department of the Interior and Related Agencies Appropriation Act, 1996 <<http://www.doi.gov/restoration/upload/pl104-134.pdf>> (P.L. 104-134) provides authority to make transfers of settlement funds to other Federal trustees and payments to non-Federal trustees.

Cost Documentation, Progress Reporting, and Final Report

As the claimant, DOI shall ensure that all expenditures of OSLTF funds are documented appropriately and spent according to the Technical and Logistical Support Plan as approved in this determination. Any funds not spent or appropriately documented shall be returned to the Fund.

One year from the date of this determination, and annually thereafter until the Plan is completed, DOI shall provide the NPFC with a report on the status of implementation and expenditures. These annual progress reports should include:

1. Certification by DOI that all assessment activities have been conducted in accordance with the Technical and Logistical Support 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.

DOI shall provide the NPFC with a final report 120 days after completion of these activities. The report should include:

1. Certification by DOI 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;
4. Documentation of OSLTF funds remaining for this claim; 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 or other proof of payment;
 - d. Purchases/Expendables: Invoices and receipts, along with an explanation of costs or justifications for high-value purchases; 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 a standardized template (enclosed) with detailed instructions to facilitate annual progress and final cost reporting. We highly recommend using this template or a similar format with the elements found in the template to ensure supporting documentation is organized for expeditious processing.

If you have any questions or would like to discuss this determination, please contact me by phone (703-872-6051) or email (james.g.hoff@uscg.mil).

Enclosure: (1) NPFC reporting forms

U.S. Department of
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16480

Claim Number: N10036-OI24

Claimant Name: U.S. Department of the Interior

On April 14, 2014, the U.S. Department of the Interior (DOI) presented a claim to the Oil Spill Liability Trust Fund (OSLTF or the Fund) in the total amount of \$2,262,694 for upfront costs for technical and logistical support to assess injuries resulting from the discharge of oil on or about April 20, 2010, from a facility located on an area of land leased by BP (the *Deepwater Horizon* incident).

DOI accepts the settlement offer of \$1,967,560 as full compensation for the Technical and Logistical Support Plan as described in the December 17, 2014 determination (N10036-OI23). The settlement does not include any additional funding for contingency.

This settlement represents full and final release and satisfaction of all damage assessment costs described in the December 17, 2014 determination, Claim Number N10036-OI23.

DOI agrees to provide annual and final reports to the NPFC as directed in the determination. DOI 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 17, 2014 determination and any amounts in excess of those required to accomplish the activities for which the claim was paid and approved in the determination shall be deposited into the OSLTF.

DOI hereby assigns, transfers, and subrogates to the United States all rights, claims, interest and rights of action under any other law that it may have against any party, person, firm, or corporation for compensation paid from the Fund for this claim. DOI authorizes the United States to sue, compromise, or settle in the name of DOI, and that the NPFC be fully substituted for DOI and subrogated to all DOI rights arising from the December 17, 2014 determination.

DOI 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 DOI with any other party for costs that are the subject of the claim against the OSLTF without consultation with the NPFC. DOI 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.

DOI 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

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

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