

SETX & SWLA AREA CONTINGENCY PLAN

MSU Area Contingency Plan Section 6000 Finance/Administration

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6000 Finance/Administration

The Finance Section is responsible for the centralized tracking and complete documentation of all incident costs and advising the Incident Commander on current and future expenditures, budget status and anticipated shortfalls. The finance section is also responsible for ensuring the appropriateness of contractor costs and issuing contracts for support items.

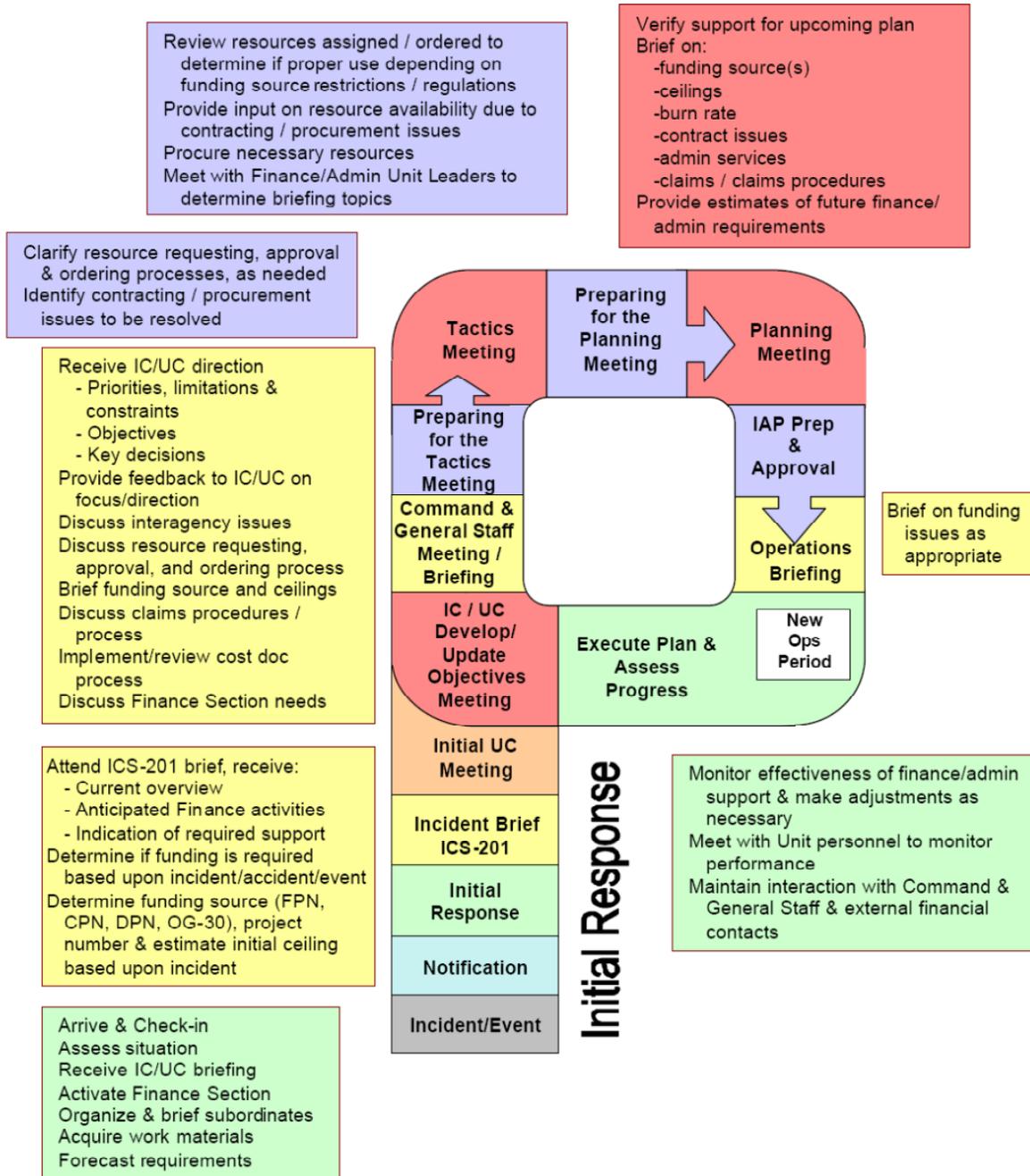
Refer to the “U. S. Coast Guard Federal on Scene Coordinator’s (FOSC) Finance and Resource Management Field Guide” for requirements and policies concerning contracting and financial management of oil and hazardous substance response activities.

Useful References:

- (a) Finance/Administration Section Chief Job Aid
- (b) NPFC FOSC Financial Management Checklist
- (c) U.S. Coast Guard Personal Property Management Manual, COMDTINST M4500.5 (series)
<http://www.uscg.mil/hq/npfc/index.htm>

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Operational Planning “P” for Finance/Administration Section Activities



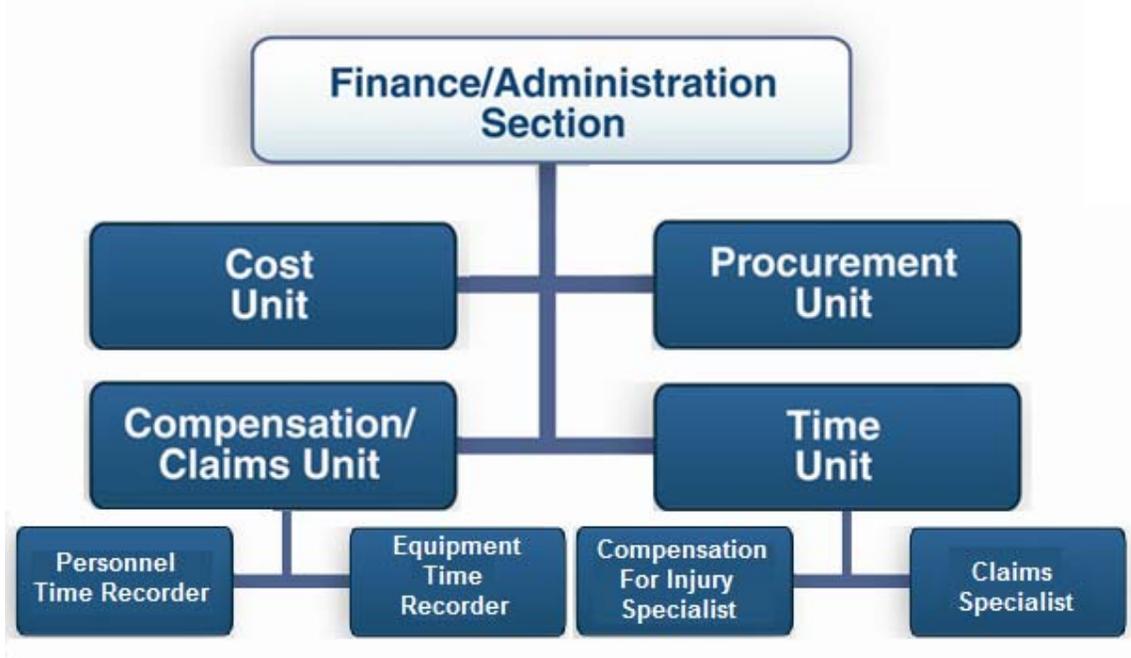
6100 Finance/Administrative Section Organization

The Finance/Administration Section Chief is a member of the General Staff. Responsibilities include all financial, administrative and cost analysis, and for supervising members of the Finance/Administrative Section.

The following is an organizational chart of the Finance/Administrative Section and its subordinate units. It serves as an example and is not meant to be all-inclusive. The functions of

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the Finance/Administrative Section must be accomplished during an incident; however, they can be performed by one individual or be expanded, as needed, into additional organization units with appropriate delegation of authority. Creating a plan and the procedures for the acquisition of necessary response capabilities is on the Area Committee work list, and will be improved as part of the 2014 annual update cycle. Please refer to the 2013 ACP Work List.



6110 Finance Section Chief

The Finance/Administration Section is usually staffed in large-scale or complex incidents. Since most of the activities of the Finance/Administration Section do not require face-to-face communication, these operations may be located remotely from the incident site. A description of the Finance/Administration Section with organizational chart and responsibilities of the Section and subordinate Units can be found in the U.S. Coast Guard Incident Management Handbook, COMDTPUB P3120.17A August 2006, and Chapter 10.

6110.1 Finance Section Chief Responsibilities

The Finance Section Chief (FSC) must provide documentation of all incident costs and guidance to the UC/IC on financial issues that may have an impact on incident operations. These responsibilities include:

- Manage all financial aspects of an incident including,
- Future Payments,
- Future budgeting,
- Payment and personnel costs,
- Cost recovery,

- Provide financial aspects of an incident,
- Gather pertinent information from briefings with response agencies,
- Develop an operating plan for the Finance/Administration Section,
- Fill supply and support needs,
- Determine the need to set up and operate an incident commissary,
- Meet with Assisting and Cooperating Agency Representatives as needed,
- Maintain daily contact with agency(s) administrative headquarters on Finance/Administrative matters,
- Ensure that all personnel time records are accurately completed and transmitted to home agencies according to policy,
- Provide financial input to demobilization planning,
- Ensure that all obligation documents initiated at the incident are properly prepared and completed,
- Brief agency administrative personnel on all incident-related financial issues needing attention or follow-up prior to leaving incident,
- Develop recommended list of Section resources to be demobilized and initial recommendation for release when appropriate, and
- Receive and implement applicable portions of the Incident Demobilization Plan
- Maintain status of response costs and “burn rate” of expenditures,
- Maintain awareness of Responsible Party’s limit of liability

The FSC is responsible for all finance functions needed for an incident. This individual should establish functional units when needed to maintain an acceptable workload and span of control. Subordinate Finance functions may be combined when workload permits.

The FSC should be assigned before implementation of subordinate units to prevent an excessive span of control or information overload for the ICS.

The FSC may have Deputy FSCs, who may be from the same agency or from an assisting agency. The Deputy FSC must have the same qualifications as the person for whom they work, as they must be ready to take over that position at any time.

6110.2 Time Unit

The primary function of the Time Unit is to manage time for personnel working at an incident. To do this effectively each agency, responsible party, and all contractors will need to address this function to the degree where it is integrated into a similar format/procedure and the entire system will work more smoothly. To ensure this happens, each agency, responsible party, contractor, etc., should have some formalized method of checking in and out for all personnel. The Time Unit Leader responsibilities include:

- Equipment and personnel time records;
- Establish contact with appropriate company/agency personnel/representatives;
- Establish Time Unit Objectives;
- Ensure daily personnel and equipment time recording documents are prepared in compliance with time policies;
- Submit cost estimate data forms to Cost Unit, as required;
- Provide for records security; and
- Ensure all records are current or complete prior to demobilization.

The accurate reporting of time for personnel and equipment shall be conducted in the following manner:

Personnel

- Establish and maintain a file for personnel time reports within the first operational period. Initiate, gather, or update a time report from all applicable personnel assigned to the incident for each operational period. Maintain a log of excessive hours worked and give to the Time Unit Leader daily.
- Ensure that all personnel identification information is verified to be corrected on the time report
- Post personnel travel and work hours, transfers, promotions, specific pay provisions and terminations to personnel time documents
- Ensure that time reports are signed. Close out time documents prior to personnel leaving the incident. Distribute all time documents according to agency policy.

Equipment

- Advise Ground Support Unit, Facilities, and Air Support Group of the requirement to establish and maintain a file of daily records from equipment time reports. Assist units in establishing a system for collection these equipment time reports.

- Post all equipment time tickets within four hours after the end of each operational period.
- Prepare a use and summary invoice for equipment (as required) within 12 hours after equipment arrival at the incident
- Submit data to Time Unit Leader for cost effectiveness analysis
- Maintain current posting on all charges or credits for fuel, parts, services, and commissary
- Verify all time data and deductions with owner/operator of equipment
- Complete all forms according to agency specifications. Close out forms prior to demobilization. Distribute copies per agency and incident policy

The Logistics Section of the ICS can arrange to have meals purchased from local establishments (e.g., supermarket deli box lunch) and charge to the fund. All USCG that are TAD at the spill site must have these meals annotated on their orders.

6110.3 Procurement Unit

When incident operations require procurement of goods or services from vendors, the Procurement Unit manages the following functions:

- Administer all financial matters pertaining to vendor contracts;
- Coordinate with local jurisdictions on plans and supply sources;
- Prepare and sign contracts and land use agreements, as needed;
- Draft memorandums of understanding;
- Establish contracts with supply vendors, as required;
- Interpret contracts/agreements and resolve claims or disputes within delegated authority;
- Coordinate with Compensation/Claims Unit on procedures for handling claims;
- Finalize all agreements and contracts;
- Coordinate use of imprest funds, as required;
- Complete final processing and send documents for payment; and
- Coordinate cost data in contracts with Cost Unit Leader.

6110.4 Compensation / Claims Unit

The function of the Compensation/Claims Unit involves record-keeping and financial claims related to damages created by an incident. The Compensation/Claims Unit Leader responsibilities include:

- Overall management and direction of all administrative matters pertaining to compensation-for-injury and claims-related activity for an incident;
- Establish contact with Safety Officer, Liaison Officer, and company/ agency representatives;
- Determine the need for compensation for injury and claims specialists and order personnel, as needed;

- If possible, co-locate compensation-for-injury work area with the Medical Unit;
- Coordinate with Procurement Unit on procedures for handling claims; and
- Ensure all compensation-for-injury and claims documents are up to date and routed to the proper company/agency.

6110.5 Compensation / Claims Unit

The principal functions of the Cost Unit are tracking costs, analyzing cost data, making cost estimates, contracts, and recommending cost-saving measures.

Note: It is critical that all parties in the Unified Command adopt consistent cost documentation for later cost recovery from the Responsible Party, Federal, and/or State funds.

The Cost Unit Leader responsibilities include:

- Collection of all cost data, performing cost-effectiveness analyses, and providing cost estimates/cost-saving recommendations for the incident;
- Coordinate with company/agency headquarters on cost-reporting procedures;
- Obtain and record all cost data;
- Prepare incident cost summaries;
- Prepare resource-use cost estimates for Planning;
- Make recommendations for cost-saving to Finance/Administration Section Chief;
- Maintain cumulative incident cost records;
- Ensure all cost documents are accurately prepared; and complete all records prior to demobilization.

6110.6 Contracting Officer Authority

When the USCG is accessing the OSLTF/Superfund, a BOA contractor must be selected over a non-BOA Contractor, if available. BOA contractors are initially hired by verbal order followed by a written contract (Authorization to Proceed) for each incident, which will include the specific number of personnel and equipment needed, estimated cost, and the FPN.

Unless the contractor cannot provide a timely and adequate response, selection of a non-BOA contractor by an FOSC is not authorized. A Shore Infrastructure Logistics Center (SILC) contracting officer is generally the only person authorized to hire a non-BOA contractor. If the contracting officer cannot be reached in a timely manner, the FOSC is authorized to issue non-BOA purchase orders, on an emergency basis only, with an initial limit not to exceed \$5000, and a total limit not to exceed \$25,000 per incident. The FOSC must contact the contracting officer within 24 hours after exercising this emergency authority. If the FOSC determines that another agency can assist in a removal effort, the FOSC may authorize that agency to perform removal actions, before executing a Pollution Removal Funding Authorization.

6200 Fund Access

6210 FOSC Access to the Federal Fund

Federal removal actions are authorized by the FWPCA and CERCLA as the required elements of jurisdiction exist. In the event of a discharge or release, if the responsible party is not acting promptly or is not known, the Federal On-Scene Coordinator (FOSC) may initiate federal removal under the authority of Section 311(o)(1) of the FWPCA or section 104(a) of the CERCLA. The responsible party is liable for government removal costs in accordance with Section 311(f) of the FWPCA and Section 107 of the CERCLA. The NCP, 40 CFR Part 300.58, outlines the types of funds which may be available to remove certain oil and hazardous substance discharges/releases.

6210.1 National Pollution Fund Center

The National Pollution Fund Center (NPFC) manages the Oil Spill Liability Trust Fund (OSLTF), a source for payment of removal costs and damages resulting for oil spills or incidents that threaten to spill oil into navigable waters of the United States, adjoining shorelines, or the Exclusive Economic Zone (EEZ). The NPFC:

- Acts as the fiduciary agency for the OSLTF and administers the Coast Guard portion of CERCLA;
- Provides 24-hour funding to FOSCs for immediate removal actions to an incident, to monitor Responsible Party's actions, or to initiate an assessment of damages to natural resources; and
- Issues Federal Project Numbers (FPN/CPN) as requested by the FOSC.

The NPFC operates within a case team concept. There are four case teams: Southeast, Gulf Coast, West Coast, and Northeast. Each case team includes legal, financial, natural resource damage claims, and OSLTF claims specialists.

6210.2 Accessing the Oil Spill Liability Trust Fund

The OSLTF was established by Section 311(k) of the FWPCA and is administered by the Coast Guard. Title 33 CFR Subchapter M provides regulatory information on state access to the OSLTF, claims procedures, financial responsibility for vessels, and other topics. Additional information on the OSLTF can be found in the "NPFC User Reference Guide" and in Chapter 7 of the Coast Guard Marine Safety Manual Vol VI (COMDTINST M16000.11). The NPFC Users Reference Guide can be found at:

<http://www.uscg.mil/npfc/URG/default.asp>.

In the event of an oil spill, the FOSC, states, claimants, and trustees can obtain access to federal funds. The FOSC can obtain immediate access to a funding account and ceiling for incident response by accessing the Ceiling and Number Assignment Processing System (CANAPS) on the internet: <http://www.uscg.mil/npfc/Response/CANAPS/default.asp>.

The following funding limitations exist in accessing the OSLTF:

The maximum, per case is \$1 billion, or the balance in the OSLTF, whichever is less;

Removal funding (including response to a substantial threat) are limited to the funds available in the OSLTF Emergency Fund. However, the NPFC may transfer funds into the Emergency Fund to continue removal actions.

There is a maximum of \$500 million per case to satisfy NRD claims and assessments;

Initiation of NRDA costs may be paid out of the Emergency Fund, subject to its availability and the process through which funding was requested.

The discharge (or substantial threat of discharge) must impact navigable waters of the United States (including the EEZ).

6210.3 Hazardous Substance Response Trust Fund

An MOU between the USCG and EPA allows the USCG to access the Hazardous Substance Trust Fund (Superfund) when the USCG undertakes response activities pursuant to CERCLA, Executive Order 12316, and the provisions of Subpart E of the NCP. When EPA provides the FOSC, the FOSC has the authority to spend up to \$200,000 in emergency situations. The EPA Regional Administrator has authority to approve Trust Fund expenditures not to exceed \$6,000,000. Expenditures exceeding \$6,000,000 must be approved by EPA Headquarters.

When the USCG provides the FOSC, the FOSC has the authority to approve Trust Fund expenditures not to exceed \$50,000. USCG FOSCs can receive approval for CERCLA Trust Fund expenditures up to \$250,000 through the Commander, Eight Coast Guard District. For additional expenditures, approval from the EPA office of Emergency and Remedial Response (OERR) is necessary. To access the fund, an account number must be obtained from EPA Headquarters.

Other Federal agencies have authority to expend Trust Fund money in accordance with Interagency Agreements (IAG) and MOUs with EPA. Reimbursement of agency expenditures will be in accordance with the procedures specified in these IAGs and MOUs. The CERCLA statute allows state access to Superfund monies only through a Cooperative Agreement between EPA and the State.

In accordance with 40 CFR Part 300.415(b)(2), Trust Funds may be used to undertake immediate removal actions when the agency proving the FOSC determines that such action will prevent or mitigate immediate and significant harm to human life or health or to the environment from such situations as:

- Human, animal, or food chain exposure to acutely toxic substances;
- Contamination of a drinking water supply;
- Fire and/or explosion; and
- Similar acute situations.

- In the event of a hazardous substance release or imminent threat of a release, the FOSC can obtain access to federal funds through CERCLA.
- The FOSC determined if federal funds are required and requests a spending ceiling and CERCLA Project Number (CPN) for the NPFC Cast Officer/Region Manager. The FOSC can fund USCG resources contractors, OGAs, and contractor costs through the CPN, (NPFC User's Guide Chapter 2).

CERCLA Access Criteria and Limitations:

- The release or substantial threat of a release of a hazardous substance, pollutant, or contaminate must impact the environment. "Environment" is defined in CERCLA as waters of the U.S., other surface waters, ground water, drinking water supply, land surface or subsurface, or ambient air;
- Removal funding is limited to no more than \$2,000,000 or 12 month duration. EPA may grant incident specific waivers to this requirement;
- FOSCs may only obligate less than \$250,000 for an incident without an approved Action memorandum. (See NPFC User Guide, Chapter 2, section entitled "CERCLA Removal Cost TOPs");
- There is no provision for state access;
- There are no provisions for funding pre-assessment phase activities of NRDA;
- Compensation to claimants damaged by hazardous substances is no available; and
- The substance must not be oil as defined by 33 USC Section 2701(23).

6220 Other Access to Funds

6220.1 Access through Pollution Removal Funding Authorizations

FOSC Access to the Federal Fund

Federal, state, local, and tribal governments assisting the FOSC may receive reimbursable funding authority through a Pollution Removal Funding Authorization (PRFA). The NPFC can be consulted regarding PRFAs, but authorization to establish and use this funding source is provided by the FOSC. PRFAs must be approved by the FOSC.

6220.2 Military Interdepartmental Purchase Request

When the responsible party is a federal agency owning/operating a public vessel or federal facility is capable of funding cleanup but lacks the resources to properly conduct the cleanup, the FOSC should attempt to establish a Military Interdepartmental Purchase Request (MIPR) or similar reimbursable agreement, to establish direct upfront funding of the removal activities. MIPRS are also used in lieu of PRFAs when using a DOD agency to assist the FOSC (i.e. SUPSALV)

6220.3 State Access to the OSLTF

OPA 90 allows state Governors to request payment of up to \$250,000 from the OSLTF for removal costs required for the immediate removal of a discharge, or the mitigation or prevention of a substantial threat of a discharge of oil. Requests are made directly to the FOSC who will determine eligibility. If a state anticipates the need to access the Fund, they must submit a request which shall include the person's name, title, address, telephone number, and the capacity in which they are employed. FOSCs will provide initial coordination of the request and subsequent coordination and oversight.

6220.3.1.1 Cost Recovery

The EPA will make all decisions regarding recovery of expenditures from the Superfund. All agencies expending Superfund money must submit an itemized account of all funds expended in accordance with provisions of contracts, Interagency Agreements (IAG), or Cooperative Agreements with EPA. These agreements must be in place prior to the expenditure of funds.

6220.3.2 Eligibility for State Access to the OSLTF

The following eligibility consideration will be evaluated by the FOSC when contacted by the State requesting OSLTF monies:

- Is the incident eligible for immediate removal under the CWA, as amended by OPA90;
- If the substance discharged/threatening discharge oil;
- Is the aggregate amount of the request equal to or less than \$250,000;
- Are the proposed actions consistent with the NCP (including the requirement in 40 CFR Part 300.305(c) that a reasonable effort was voluntarily made by the discharger to promptly perform removal actions);
- Are the proposed level of response, proposed actions, and amounts requested appropriate for the circumstances; and
- Does the State have the means to complete immediate removal?

The FOSC will then notify the NPFC Director and the State of his/her decision.

More information regarding State access to the OSLTF is contained in the NPFC Instruction 16451.1, Technical Operating Procedures for State Access under Section 1012(d)(1) of the Oil Pollution Act of 1990 (<http://www.uscg.mil/npfc/docs/PDFs/urg/Ch4/NPFCTOPSstate.pdf>)

6220.3.3 Required Record Keeping

The State shall maintain records of expenditures for fund monies including:

- Daily expenditures for each individual worker, giving the individual's name, title or position, activity performed, time on task, salary or hourly rate, travel costs, per diem,

out-of-pocket or extraordinary expenses, and whether the individual is normally available for oil spill removal;

- Equipment purchased or rented each day, with the daily or hourly rate;
- Miscellaneous materials and expendables purchased each day; and
- Daily contractor or consultant fees, including costs for their personnel and contractor-owned or rented equipment, as well as that of any subcontractor.

The state shall submit a copy of these records and a summary document stating the total of all expenditures made to the NPFC within 30 days after completion of the removal actions. A copy of these documents shall also be submitted to the FOSC.

6220.3.4 Reimbursement Procedures

Reimbursement of agency expenditures will be in accordance with procedures specified in contracts, IAGs, or Cooperative Agreements with EPA.

Local governments may request reimbursement of costs to carry out temporary measures without a contract or cooperative agreement. All costs for which local governments are seeking reimbursement must be consistent with the NCP and Federal cost principles outlined by the Office of Management and Budget.

6220.4 Lead Administrative Trustee Access to the OSLTF

Section 6002(b) of OPA90 provides that the OSLTF Emergency Fund is available “to initiate the assessment of natural resource damages” . For the purpose of this agreement, initiate activities have been defined as those pre-assessment activities as outline in 15 CFR Part 990, Subpart D.

Executive Order 12777 limits funding for initiation to the Federal Trustees, who are as follows:

- Department of the Interior;
- Department of Commerce;
- Department of Agriculture;
- Department of Defense; and
- Department of Energy

Executive Order 12777 introduced the Federal Lead Administrative Trustee (FLAT) concept to provide a focal point for addressing natural resource issues associated with a specific incident. The NPFC will only accept requests for initiation from, and normally work directly with the FLAT. State and Tribal Trustees must work through a FLAT. Those State and Tribal Trustees acting in the event of a spill may join with the designated Federal Trustees to name a FLAT.

Criteria for Initiation

Threshold initiation of a natural resource damage assessment (NRDA) must be in response to an OPA incident, i.e., a discharge or substantial threat of a discharge of oil into or upon the navigable waters or the adjoining shorelines or the exclusive economic zone of the United States.

6250 Local and Tribal Government Access to the Superfund

Local and federally recognized tribal governments may request reimbursement of cost to carry out temporary measures to protect human health and the environment without a contract or cooperative agreement. All costs for which local governments are seeking reimbursement must be consistent with the NCP and Federal cost principles outlined by the Office of Management and Budget. Reimbursements are limited to \$25,000 per hazardous substance response. In addition, reimbursement must not supplement local government funds normally provided for emergency response. States are not eligible for reimbursement and no state may request reimbursement on behalf of political subdivisions within the state.

More information on the Local Government Reimbursement (LGR) program may be found at: www.epa.gov/osweroe1/content/1gr/.

6260 Louisiana State Oil Spill Contingency Fund

Pursuant to Section 2448 of the Louisiana Oil Spill Prevention and Response Act (OSPRA), and with respect to clean-up and response specifically, money in the Louisiana State Oil Spill Contingency Fund may be disbursed for the following purposes and no other:

- Removal costs related to abatement and containment of actual or threatened discharges of oil incidental to unauthorized discharges of hazardous substances;
- Removal costs and damages related to actual or threatened unauthorized discharges of oil as provided in the OSPRA;
- Protection, assessment, restoration, rehabilitation, or replacement of or mitigation of damage to natural resource damaged by an unauthorized discharge of oil as provided in the OSPRA;
- Operating costs and contracts for response and prevention as provided in the OSPRA not to exceed \$500,000 in any fiscal year; and
- Other costs and damages authorized in the OSPRA.

The Louisiana Oil Spill Coordinator (LOSC) has set forth the procedures by which an entity eligible to receive funds from, or be reimbursed for expenditures made, is able to gain access to the state oil spill contingency fund. Any state trustee or local governing authority seeking funds from the state oil spill contingency fund must submit all claims to the LOSC on Louisiana Oil Spill Coordinator's Office (LOSCO) approved forms. Copies of these forms may be obtained from LOSCO.

Expenditures from the state oil spill contingency fund will not be authorized unless and until all Federal remedies have been exhausted. Access may only be used to pay from removal costs that are directly related to a specific incident. The Louisiana Department of Environmental Quality (LDEQ), which is the LOSC's lead technical advisor, will advise the LOSC of the standards/efforts necessary to complete clean-up. The Louisiana Department of Natural Resources/Office of Conservation will be the LOSC's lead technical advisor with respect to appropriate steps to abate the threat of a discharge or halt an ongoing release. Costs must generally be incurred at the site or in support of on-site activities. Access to the state oil spill

contingency fund is for the immediate removal costs only and will not be utilized for long-term removal or remediation costs.

6260.1 Documentation and Cost Recovery Procedures

In the event that an entity, entitled to reimbursement from the state oil spill contingency fund discovers or is notified of an actual/threat of an incident, they shall notify the U.S. Coast Guard/National Response Center and LOSCO. This entity must submit all appropriate necessary information for LOSCO to make determination on eligibility for funding. In order to make such a determination the following information must be provided:

- Evidence of notification;
- Evidence of federal unwillingness or inability to respond;
- Evidence of unwillingness or inability of the responsible party to respond;
- Evidence that costs are not reimbursable from the Fisherman's Gear compensation fund;
- A response plan is approved by the USCG and/or EPA, and/or LDEQ;
- Estimate of costs to be incurred;
- Proposed cleanup contactor(s). These organizations must all have appropriate certifications from the USCG unless the certifications are superseded by a process developed by the LOSC; and
- Estimate of costs necessary to complete response/cleanup.

Upon receipt of the above information, the LOSC will notify the entity seeking funds of the eligibility of its request for funding. This determination will consist of the LOSC's determination of eligibility, the limits of funds that can be expended, and any special conditions attached to the expenditures. The entity receiving the determination of eligibility will be responsible for the following:

- Contracting for all services needed according to all appropriate laws, rules, and regulations.
- Oversight of all contract deliverables and certification that all tasks are accomplished as set out in contract; and
- An administrative record which includes all documents relevant to the response.

In addition to performing contractual acquisition services, the entity receiving the determination of eligibility will provide all of the following documentation items. These will be due to the LOSC within 60 days of completion of the response actions which were included within the LOSC's determination of eligibility.

- Copies of all invoices received from the contactor, as well as a statement certifying all expenditures as necessary and within the constraints of the determination of eligibility;
- Reports detailing the progress of the response effort; and

- Any changes in the scope of the response effort that may be necessitated due to unforeseen or unpredicted events (before any monies are committed for these changes they must be, at a minimum, verbally approved by the LOSC).

6300 Cost Unit

6310 Federal Fund Documentation and Cost Recovery Procedures

Through Executive Orders the President has delegated certain functions and responsibilities vested to him by the FWPCA and CERCLA to the EPA and the USCG. Under CERCLA the Superfund has been set up to fund federal responses to hazardous substances, pollutants, or contaminants as defined by CERCLA, that may present an imminent or substantial threat to public health or the environment. Responses to discharges of petroleum products are specifically excluded from CERCLA. Section 311 of the CWA, as amended by OPA90, established the OSLTF for response to discharges of petroleum products. Response includes conducting Natural Resource Damage Assessments and paying claims for removal costs or damages. The EPA and USCG both have access to both funds through MOU/MOAs established between both agencies. Only costs incurred during containment, countermeasures, clean-up, and disposal during a Federal Response to an oil pollution incident are recoverable from the OSLTF and must be certified by the FOSC. The NCP contains information and procedures with regards to both the FWPCA and CERCLA, and contains sections regarding documentation and cost recovery for both acts.

6320 Reimbursable Expenses

OPA authorizes payment of removal costs, including the costs of monitoring removal actions consistent with the National Contingency Plan. This allows payment of incident-specific costs authorized by an FOSC, including costs of monitoring a responsible Party's cleanup, as well as actual Federal cleanup activities. The fund may reimburse:

- Costs of containment and removal of oil from water and shorelines;
- Costs to prevent, minimize, or mitigate oil pollution where there is a substantial threat of discharge of oil; and
- Costs of taking other related actions necessary to minimize or mitigate damage to the public health or welfare, including, but not limited to, damage to fish, shellfish, wildlife, public and private property, shorelines, and beaches

6320.1 Procedures for Reimbursement

To seek reimbursement from the Federal Fund, Federal agencies must submit their reimbursable expenses on Form SF 1080 "Voucher for Transfer between Appropriations and/or Funds," to the FOSC for certification. The FOSC will submit certified requests for reimbursements to NPFC within 60 days after completion of the cleanup action (33 CFR Part 153.417). The USCG will effect transfer of funds to the agency requesting reimbursements, and prepare a billing for the

discharger from information on recoverable expenditures on the USCG Form “Personnel Vehicle and Miscellaneous Cost Accounting Sheet” (available from the USCG).

State agencies that do not have a formal agreement must submit a letter to the OSC requesting reimbursement. This letter must include a detailed itemized statement of reimbursable expenditures. Refer to the USCG Marine Safety Manual for additional information.

6320.2 Recoverable Costs

The discharger incurs liability up to the discharger's legal limit of liability for all actual costs associated with Federal removal following Federal assumption of response activities. Recoverable costs include:

- Direct expenditures from the fund (i.e., payment of contractors or vendors);
- All reimbursable agency expenses;
- All personnel costs, including salaries of response personnel;
- Equipment costs, including depreciation and maintenance;
- Administrative overhead; and
- Pollution removal damage claims.

6320.3 Liability Limits

OPA sets limits of liability which apply to all removal costs and damages sought under the act. The limits may be adjusted for inflation every 3 years, based upon the consumer price index. The OPA sets the following limits:

- Tank vessels: \$1,200 per gross ton; \$10 million if 3,000 gross tons or greater; \$2 million if less than 3,000 gross tons;
- Any other vessel: \$600 per gross ton or \$500,000;
- Offshore facility except Deep Water Ports: \$75,000,000; and
- Onshore facility and Deep Water Ports: \$350,000,000.

There are certain exceptions to these liability limits. These limits do not apply to the following situations:

- If the incident was caused by gross negligence or willful misconduct;
- If the incident was a result of a violation of applicable Federal safety, construction, or operating regulations; and

- If the responsible party fails to report the incident, provide all reasonable cooperation and assistance required by a response official, or comply with an order issued by the Federal OSC.

In addition, OPA does not preempt State laws regarding liability, so in areas where State law places a higher limit, compensation for damages up to the liability limit established by the State law may be pursued. Responsible Parties who exceed their limits of liability are highly encouraged to continue funding all removal actions.

6330 Letters

6330.1 Notice of Federal Interest for an Oil Pollution Incident (Form CG-5549)

The FOSC shall present a Notice of Federal Interest for an Oil Pollution Incident (NOFI) to every suspected discharger (Note: this requirement is internal direction only. The failure of an FOSC to present a NOFI in any given case does not affect any liability of any person which may arise in that case.) This informs the suspected discharger of a potential violation of the FWPCA, as amended and of his/her possible liability to a civil penalty per day per violation or up to three times the cost incurred by the OSLTF. Notice should also be made in potential incidents when the actions of the potential discharger to abate the threat are considered insufficient, and Federal action is contemplated. The FOSC shall retain a copy of the NOFI that is signed and dated by the suspected discharger. If the discharger refuses to sign, the NOFI will still be served. The circumstances will be noted on the NOFI and signed and dated by the FOSC (or representative). If the suspected discharger is unavailable, the NOFI shall be sent via certified mail, return receipt requested. As sample NOFI can be found in Marine Safety Manual Vol VI Chapter 7.B.3.a. COMDTINST 16000.11.

6330.2 Administrative Order

Administrative Orders are issued to protect public health and welfare under Section 106(a) of CERCLA or Section 311(e)(1)(B) of the FWPCA to a vessel (Note: CERCLA Administrative Orders cannot be issued to a vessel) or facility requiring corrective measures when there is a discharge/release or threat of discharge/release involving oil, hazardous substance, pollutant, or contaminate.

Any person directly affected by an Administrative Order may request reconsideration by the FOSC. If not satisfied with the decision of the FOSC, that person may appeal in writing to the Eighth Coast Guard District Commander. The District Commander's decision is final.

6330.3 Notice of Federal Assumption

Under FWPCA Section 311 (c) (1), whenever a polluter is unknown or not acting responsibly, or when removal efforts are insufficient, or to prevent the substantial threat of a discharge, the FOSC may assume total or partial control of response activities. The FOSC must inform the

polluter, if know, of this action by issuing a Notice of Federal Assumption, even if the polluter has not initiated any action. This notice references the NOFI and indicates the date and time the Federal response was initiated. The same procedures used for issuing and obtaining signatures for the NOFI apply. (Note: this requirement is for CG internal direction only. The failure of an FOSC to present a Notice of Federal Assumption in a given case does not affect any liability of any person which may arise in that case.) In some instances, the FOSC may determine that the polluter's response efforts should continue, but that some Federal assistance is necessary to augment the clean-up (e.g., clean-up resources that the polluter cannot or will not provide). Whenever it is necessary for the operation, for the purposes other than monitoring, the FOSC should declare a Federal spill for the area(s) for which he/she is assuming control, activate the OSLTF to cover expenses and take whatever actions are necessary to ensure a proper cleanup. In these cases, the Notice of Federal Assumption shall clearly delineate those actions or areas for which the FOSC is assuming control or providing other resources. (Note: the term "declare a Federal spill" as used in this section means: in the case where a suspected polluter has been identified, the presentation of the Notice of Federal Assumption; or in other cases, the initiation of Federal Removal operations.) For an example of a Notice of Federal Assumption see the sample letter attached below.

U.S. Department of
Homeland Security

United States
Coast Guard



Federal On Scene Coordinator
United States Coast Guard
Marine Safety Unit Port Arthur

2901 Turtle Creek Dr.
Port Arthur, TX 77642
Phone: (409) 723-6500
Fax: (409) 723-6534

16460
2 December, 2009

Tom's Welding, Inc.
Attn: Khai Dinh
1420 Four St.
Wego, LA. 70094

NOTICE OF FEDERAL ASSUMPTION FOR AN OIL POLLUTION INCIDENT

Mr. Dinh:

My first letter dated **October 08, 2009** notified you of our federal interest in an actual or potential oil pollution incident on the **Sabine River in the Port of Orange, TX**, for which you are presently considered financially responsible. Furthermore, my second letter dated **November 18, 2009** identified specific actions for your immediate attention towards rectifying this pollution incident.

As a result, you are hereby given notice that your actions to abate this threat and to remove the substances or mitigate its effects to the waters and adjacent shoreline have been evaluated as being unsatisfactory by the U. S. Coast Guard's Federal On-Scene Coordinator (FOSC). Therefore, effective **December 02, 2009** at **1600** CST, the Coast Guard will conduct all response activities under the authority of Section 311(c)(1) of the Federal Water Pollution Control Act (FWPCA), as amended.

Removal will be effected in accordance with the criteria of the National Oil and Hazardous Substances Pollution Contingency Plan and federal regulations. You may then be liable for all removal costs incurred by the federal government as set forth in Section 311(f) of the FWPCA.

Should you require further information concerning this matter, you should contact: Marine Safety Unit Port Arthur, **LT XXXXXXXX**, (409) **XXX-XXXX**.

Sincerely,

G. J. Paitl
Captain, U. S. Coast Guard
Federal On Scene Coordinator

6330.4 Letter of Designation of Source

The NPFC is responsible for the designation of source and notification of associated responsible parties and guarantors for an oil pollution incident. The USCG FOSC has also been delegated this authority for use in rare circumstances as outlined in the NPFC Instruction M5890.3, Technical Operating Procedures (TOPs) for Designation of Source under the Oil Pollution Act of 1990 (<http://www.uscg.mil/npfc/docs/PDFs/urg/Ch3/NPFC TOPS.pdf>).

6330.5 Reports

FOSC reports will be submitted as determined necessary by the RRT for a particular incident. Pollution Reports (POLREPS) shall be submitted for the coastal zone in accordance with the requirements outlined in Marine Safety Manual Vol VI, Chapter 7.B.5.b. For inland zone, POLREPS shall follow the format outlines in EPA's Superfund Removal Procedures: Removal Response Reporting guidance.

6400 Time

The accurate reporting of time for personnel and equipment shall be conducted in the following manner:

Personnel

- Establish and maintain a file for personnel time reports within the first operational period. Initiate, gather, or update a time report from all applicable personnel assigned to the incident for each operational period. Maintain a log of excessive hours worked and give to the Time Unit Leader daily.
- Ensure that all personnel identification information is verified to be corrected on the time report
- Post personnel travel and work hours, transfers, promotions, specific pay provisions and terminations to personnel time documents
- Ensure that time reports are signed. Close out time documents prior to personnel leaving the incident. Distribute all time documents according to agency policy.

Equipment

- Advise Ground Support Unit, Facilities, and Air Support Group of the requirement to establish and maintain a file of daily records fro equipment time reports. Assist units in establishing a system for collection these equipment time reports.
- Post all equipment time tickets within four hours after the end of each operational period.
- Prepare a use and summary invoice for equipment (as required) within 12 hours after equipment arrival at the incident

- Submit data to Time Unit Leader for cost effectiveness analysis
- Maintain current posting on all charges or credits for fuel, parts, services, and commissary
- Verify all time data and deductions with owner/operator of equipment
- Complete all forms according to agency specifications. Close out forms prior to demobilization. Distribute copies per agency and incident policy

The Logistics Section of the ICS can arrange to have meals purchased from local establishments (e.g., supermarket deli box lunch) and charge to the fund. All USCG that are TAD at the spill site must have these meals annotated on their orders.

6500 Compensation/Claims

Creating the procedures for coordinating with the Procurement Unit on handling claims and for Compensation for Injury and Claims is on the Area Committee work list, and will be improved as part of the 2014 annual update cycle. Please refer to the 2013 ACP Work List.

6510 Claims Against the OSLTF

Claimants (individuals, corporations, and government entities) can submit claims for uncompensated removal costs or certain damages (natural resources, real/personal property, loss of profits, loss of subsistence use of natural resources, loss of government revenues, and increased cost of government services) caused by an oil spill to the NPFC if the Responsible Party for the Discharge does not satisfy their claim. This is in addition to the response cost recovery procedures covered in sections 6200 and 6300. The NPFC adjudicates claims and pays those with merit.

The Responsible Party can submit claims to the NPFC provided that:

- The total of all response costs and damage claims exceed the Responsible Party's statutory limit of liability; or
 - The spill was solely caused by a third party, an Act of God, or an Act of War.
- The categories of uncompensated losses covered by the OSLTF are:
- Removal costs,
 - Real or personal property damages,
 - Loss of profits or earning capacity,
 - Loss of subsistence,
 - Loss of government revenues,
 - Cost of increases public services, and
 - Damages to natural resources.

Generally, claims for all costs and damages resulting from an oil pollution incident must be presented first to the Responsible Party or its guarantor. The guarantor is typically the Responsible Party's insurer.

Reimbursements are limited to \$250,000 per hazardous substance response. In addition, reimbursement must not supplant local government funds normally provided for emergency response. States are not eligible for reimbursement and no state may request reimbursement on its own behalf or on behalf of political subdivisions within the state.

The NPFC Claimant's Guide can be found at

<http://www.uscg.mil/npfc/docs/PDFs/urg/Ch6/NPFCClaimantGuide.pdf>

6520 Damage Assessment Procedures

The National Oceanic and Atmospheric Administration (NOAA) published a final rule to guide trustees in assessing damages to natural resources from discharges of oil. The rule provides a blueprint that enables natural resource trustees to focus on significant environmental injuries, to plan and implement efficient and effective restoration of the injured natural resources and services, and to encourage public and responsible party involvement in the restoration process.

Under the rule, the natural resource damage assessment (NRDA) process is divided into three phases:

- Pre-assessment: The trustees evaluate injury and determine whether they have the authority to pursue restoration and if it is appropriate to do so;
- Restoration Planning: The trustees evaluate and quantify potential injuries and use that information to determine the appropriate type and scale of restoration actions; and
- Restoration Implementation: The trustees and/or responsible parties implement restoration, including monitoring and corrective actions.

This process is designed to rapidly restore injured natural resources and services to the condition that would have existed had the spill not occurred and to compensate the public for the losses experienced from the date of the spill until the affected natural resources and services have been recovered.

6600 Procurement

Creating the procedures for establishing expedited contracts, developing MOU's and land use agreements, and coordination with the Compensation/Claim Unit on handling claims is on the Area Committee work list, and will be improved as part of the 2014 annual update cycle. Please refer to the 2013 ACP Work List.

6610 Contracting Officer Authority

When the USCG is accessing the OSLTF/Superfund, a BOA contractor must be selected over a non-BOA Contractor, if available. BOA contractors are initially hired by verbal order followed by a written contract (Authorization to Proceed) for each incident, which will include the specific number of personnel and equipment needed, estimated cost, and the FPN/CPN.

Unless the contractor cannot provide a timely and adequate response, selection of a non-BOA contractor by an FOSC is not authorized. A Shore Infrastructure Logistics Center (SILC) contracting officer is generally the only person authorized to hire a non-BOA contractor. If the contracting officer cannot be reached in a timely manner, the FOSC is authorized to issue non-

BOA purchase orders, on an emergency basis only, with an initial limit not to exceed \$5000, and a total limit not to exceed \$25,000 per incident. The FOSC must contact the contracting officer within 24 hours after exercising this emergency authority. If the FOSC determines that another agency can assist in a removal effort, the FOSC may authorize that agency to perform removal actions, before executing a Pollution Removal Funding Authorization.

6700 Reserved

6800 Reserved

6900 Reserved for Area/District