



U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric
Administration
Damage Assessment, Remediation and
Restoration Program
Silver Spring, Maryland 20910

April 7, 2021

Fredy Hernandez, Division Chief
Natural Resource Damage Claims Division
U.S. Coast Guard National Pollution Funds Center
U.S. Coast Guard Stop 7605
2703 Martin Luther King Jr. Ave. SE
Washington, DC 20593-7605

Re: Request for Reconsideration of Claim N06008-OC01- *DBL-152 Oil Spill Assessment and Restoration Costs*

Dear Fredy:

The National Oceanic and Atmospheric Administration (NOAA) received your memorandum dated February 8, 2021 with the National Pollution Funds Center (NPFC) final determination for the DBL-152 oil spill assessment and restoration cost claim. After an initial offer of zero dollars for restoration, the NPFC revised its position and offered a total of \$4,839,407.50 (\$4,532,941.59 for compensatory restoration and \$306,465.91 in past assessment costs) and denied restoration costs of \$8,631,627.96 in accordance with its final determination. Despite the upward change, the offered amount still fails to make the public whole.

Moreover, NPFC's final determination has forestalled ongoing discussions on concerns raised by NOAA regarding this matter. The unexpected issue of a take-it-or-leave-it offer tied to a sixty day deadline has placed NOAA in a very difficult situation: take nothing or accept significantly less than required to compensate the public for a nearly two million gallon release of heavy fuel oil into the Gulf of Mexico.

Given no good choice, NOAA accepts the NPFC's offered amount of \$4,839,407.50 and will do as much restoration as possible to make the public whole in accordance with the Final Damage Assessment and Restoration Plan (DARP) for this incident. This acceptance, however, is made with objection to the process and outcome.

NOAA accepts the funds under the following assumptions that are consistent with our March 24, 2021 conversation with you:

- NOAA has significant uncertainty that the amount of \$4,532,941.59 is enough funding to implement the compensatory restoration of 1.47 miles of estuarine shoreline protection and salt marsh restoration unilaterally determined by NPFC as adequate to compensate the public. Because of cost economies of scale, NOAA is unlikely to be able to

implement the full 1.47 miles, i.e., a percent reduction in cost does not translate to an equal reduction in project size. However, NOAA will strive to implement as much of the 1.47 miles as possible. As such, NOAA anticipates that the compensatory restoration completed will fall short of the amount necessary to make the public whole according to both NOAA's scientific analysis (4.23 miles of estuarine shoreline protection and salt marsh restoration) and the NPFC's final determination (1.47 miles).

- NOAA will provide the NPFC with a new line item budget for estimated costs associated with planning, implementation, monitoring and trustee oversight responsibilities. This budget will be provided at some point in the reasonably near future with the goal of ensuring that NOAA and the NPFC have a shared understanding of anticipated future costs and associated activities. This new line item budget estimate will serve as the foundation for future cost accounting reports. If the budget estimate changes through time, NOAA will communicate these changes to the NPFC.
- Given that NOAA had previously provided the public an opportunity to comment on a publicly reviewed Draft RP/EA and released a Final RP/EA, NOAA is obligated to notify the public of the change in scope/scale of the project. Through consultation with Agency counsel, we will determine how to fulfill our required OPA/NEPA responsibilities.
- Consistent with NOAA's discussion with the NPFC on March 24, 2021, we expect that these restoration planning and trustee oversight responsibilities are fully reimbursable costs, consistent with the OPA regulations. NOAA expects to include these costs as a line item in our future modified budget to the NPFC. We understand that the NPFC expects those restoration planning costs to be reimbursed to NOAA from the \$4,532,941.59, resulting in a decrease in funds available to implement the compensatory restoration project.

NOAA reiterates our concerns with NPFC's claim review process in this particular matter, as well as the ultimate outcome. NOAA faithfully discharged our obligation to develop a plan that is consistent with the NCP, best available science, and NOAA's duty to act as a natural resource trustee on behalf of the public. In modifying a claim that was developed this way, NPFC has overstepped its authority and stepped into the role of natural resource trustee. NPFC's approach will stifle further work to make the public whole from oil spill incidents that impact their communities and natural resources they rely on.

An outcome where NOAA considers NPFC claims determinations regularly insufficient and/or does not contemplate the use of the OSLTF to pay for restoration claims is unacceptable. Congress' intended purpose for the OSLTF is to provide quick and efficient cleanup of oil spills, compensate victims of such spills, including through the restoration of natural resources, and internalize the costs of spills within the petroleum industry. NOAA will continue to work with the NPFC, trustees, Congress, and other stakeholders to redress this scenario so that the OSLTF is accessible and the Nation's injured natural resources are fully restored to the public as quickly and cost effectively as possible.

The formal acceptance form is enclosed. Please direct the payment to NOAA's Damage Assessment and Restoration Revolving Fund via IPAC using the agency location code of 13-14-0001 and the Treasury accounting symbol 13x4316.

We look forward to our continued discussions and remain hopeful that we can work cooperatively to resolve our disagreements.

Sincerely,

Tony Penn, Chief
Assessment & Restoration Division
Office of Response & Restoration
National Ocean Service

Chris Doley, Chief
Restoration Center
Office of Habitat Conservation
National Marine Fisheries Service

Chauncey Kelly, Chief
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