



The Oil Spill Liability Trust Fund

Supporting Tribal Response Operations and
Recovery of Damages from Oil Spills



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Part I

- Overview of OPA, OSLTF, and the NPFC
- Tribal participation in response and compensation for response costs
- Removal Cost claims

Part II

- Designation of Source and Advertisement
- Types of Damage Claims and the claims process
- Pre-incident planning to reduce need for claims

Part III

- Natural Resource Damage Assessment funding opportunities and limitations
- Influencing response objectives from the NRD lens



Part I – Tribal response under OPA and recovery of response costs

- OPA, OSLTF, and NPFC Overview
- Tribal Response Authorities under OPA
- Response Cost funding through the FOSC
- Uncompensated Removal Cost Claims
- Cost documentation

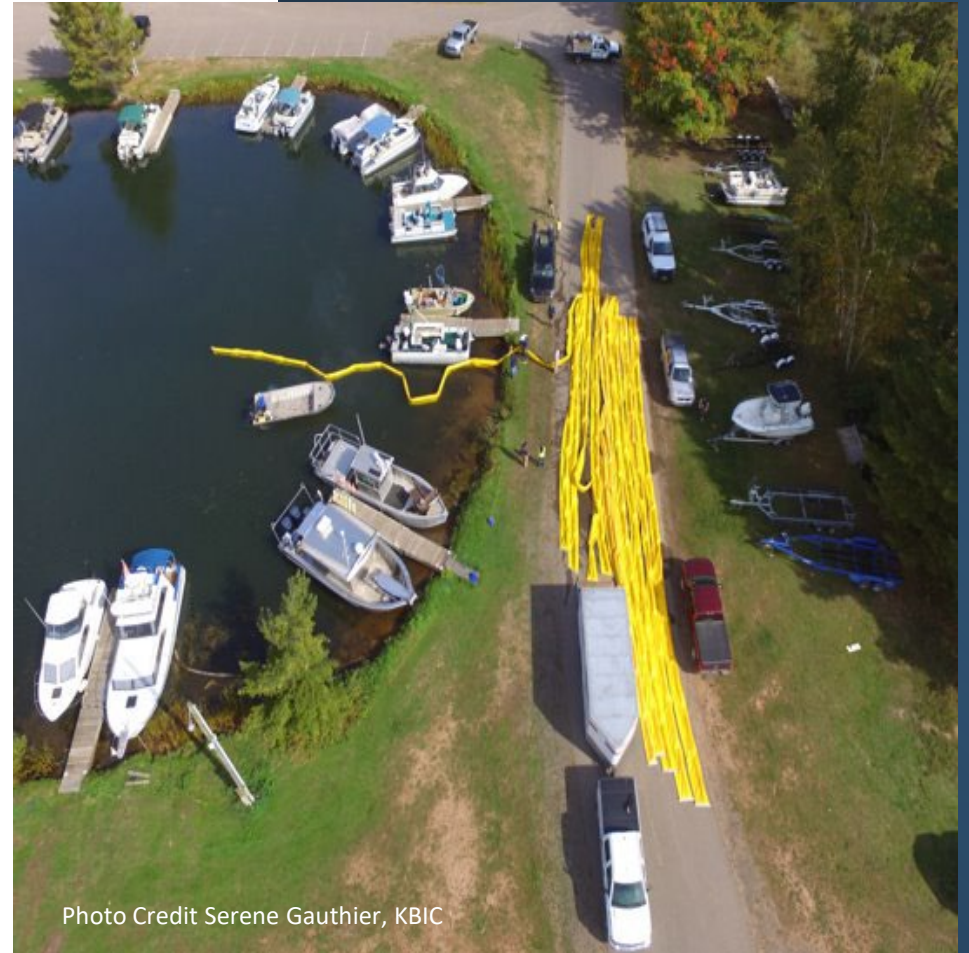


Photo Credit Serene Gauthier, KBIC



The Oil Pollution Act of 1990 (OPA90) Title I **33 U.S.C. §§2701-2720**

- Funded the Oil Spill Liability Trust Fund - **OSLTF**
- Created the National Pollution Funds Center - **NPFC**
- Established new and higher Limits of Liability - **LoL** - for oil spills, with commensurate changes to financial responsibility requirements.
- Broadened the scope of damages, including natural resource damages - **NRD**
- Authorized expenditures from the OSLTF up to \$1 billion per incident to pay for expeditious oil removal and uncompensated damages – **Per Incident Cap (recently changed to \$1.5 billion)**

EXXON VALDEZ
WILMINGTON DEL.



NPFC Missions

Administer the Oil Spill Liability Trust Fund (OSLTF)

- Provide funding for oil removal activities and the initiation of Natural Resource Damage Assessments (NRDA) related to oil discharges
- Pay damage claims
- Recover costs from Responsible Parties

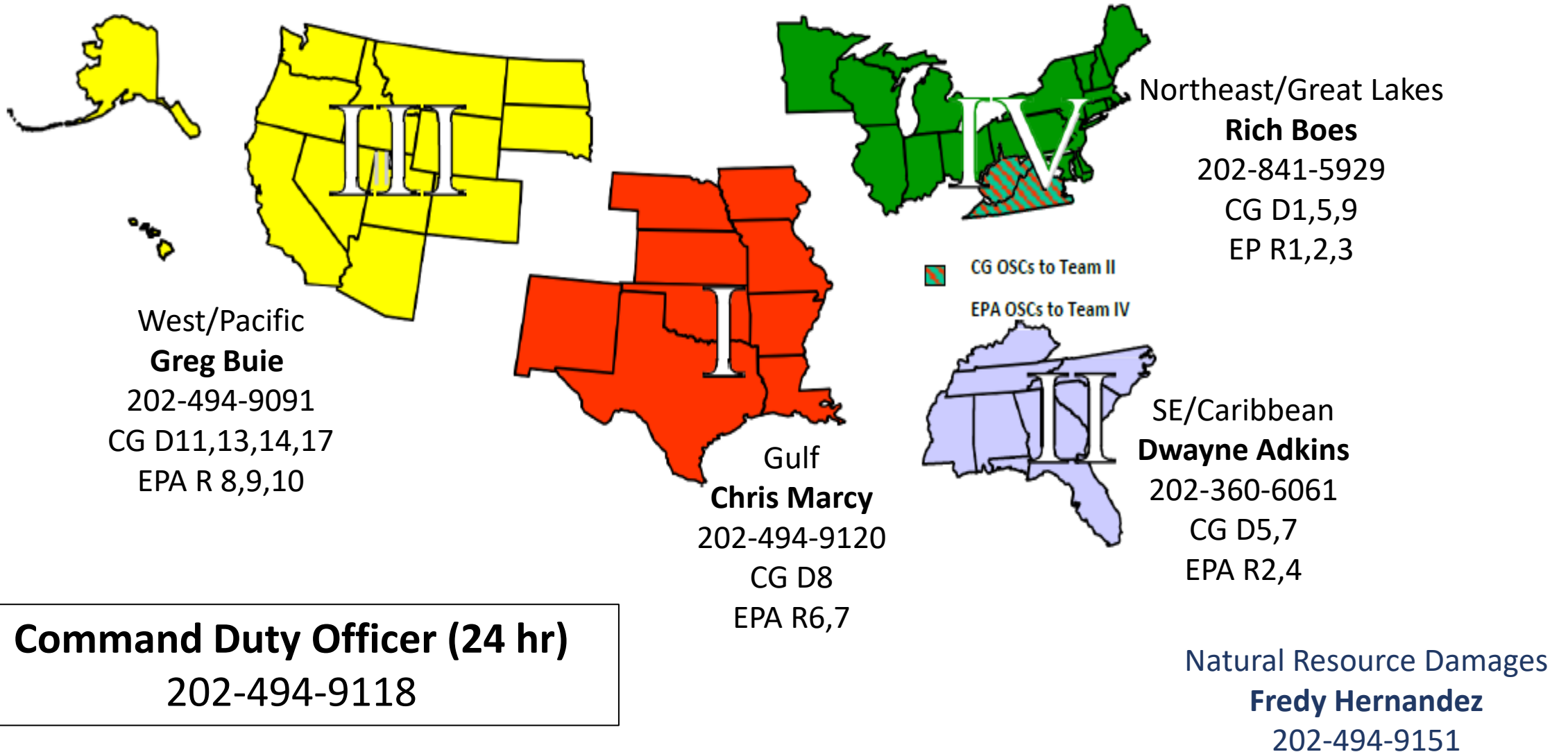
Administer the Certificate of Financial Responsibility (COFR) Program

Manage CERCLA Funding for the Coast Guard

Manage Stafford Act ~~ESF-10~~ Funding for the Coast Guard



NPFC Contacts



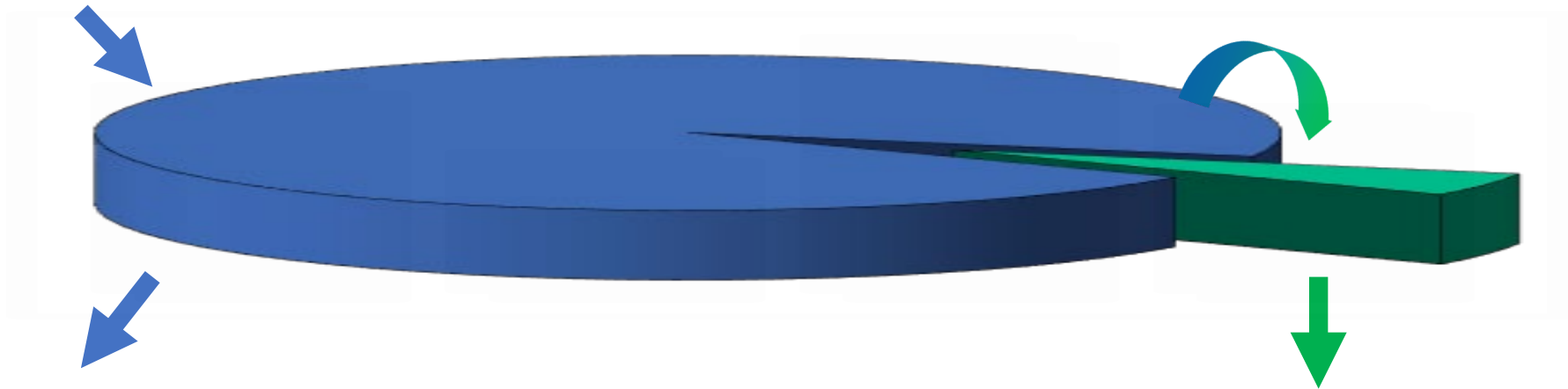
Oil Spill Liability Trust Fund (OSLTF)

Principal Fund - \$8+ Billion

- Tax collections - 9¢/barrel tax on domestic and imported oil
- Recoveries, fines, penalties, interest

Emergency Fund - \$82 Million (as of April 19, 2023)

- Annual \$50 million transfer from the Principal Fund



- Appropriations by Congress
- Claims

Claims Process 33 CFR Part 136

- Removal actions
- NRDA Initiation

Funded through Reimbursable Agreements



Per Incident Cap just increased to \$1.5 Billion, with up to \$750 Million for Natural Resource Damages

Threshold Issues

- Is the substance **oil**?
- Is there a **discharge** or **substantial threat of a discharge** of oil?
- Is the discharge or threat of discharge into **navigable waters**?



Four Phases of Response Operations

- Q Notification & Discovery
- \$ Assessment & Initial Action
- \$ Containment & Countermeasures (a.k.a. Removal Activities)
- \$ Documentation & Cost Recovery



OSLTF funding mechanisms for Tribal government agencies incurring response costs

- Pollution Removal Funding Authorization (PRFA)
- Uncompensated Removal Cost Claim



Pollution Removal Funding Authorization (PRFA)

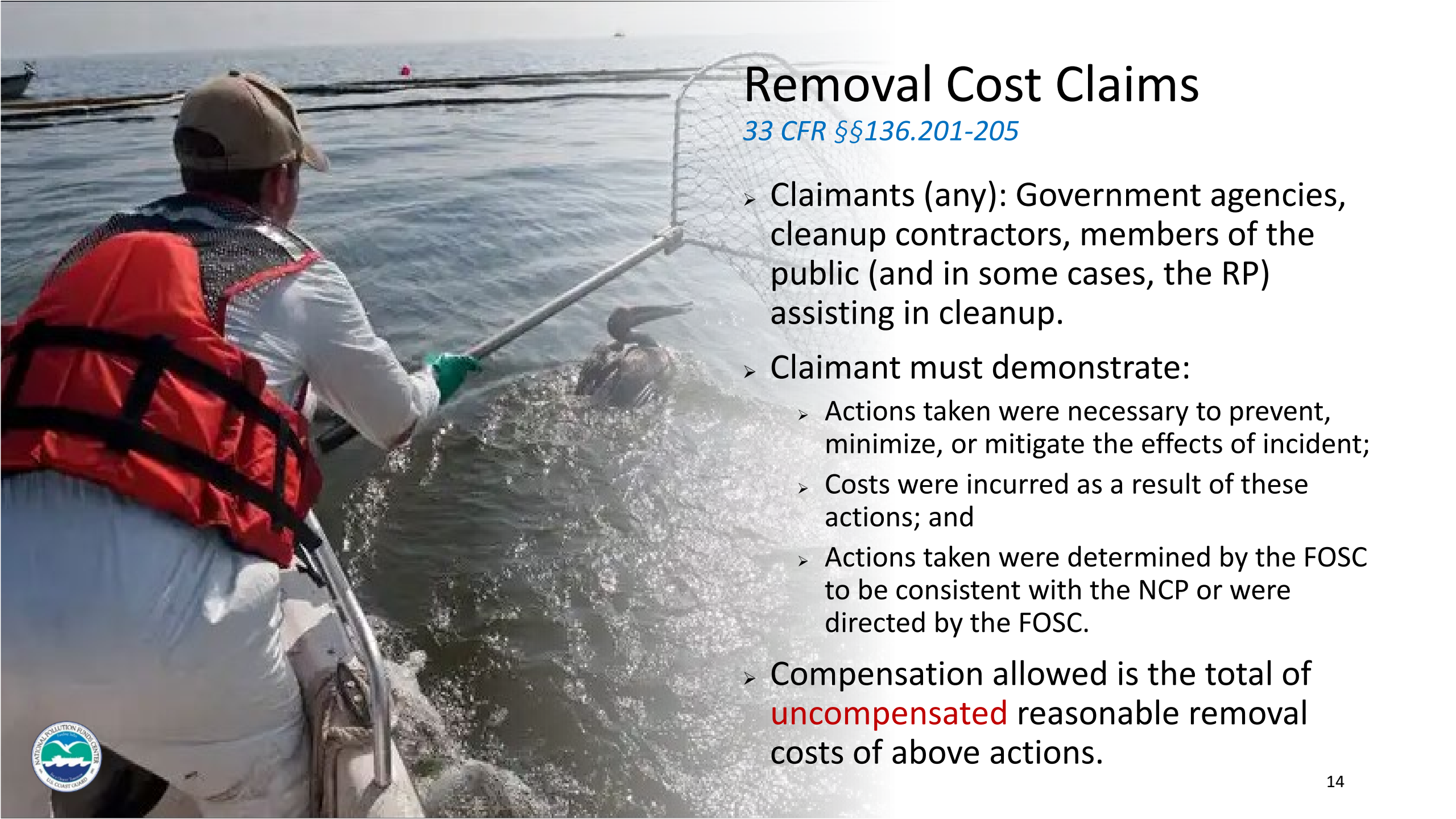
- For FOSCs to obtain needed services and assistance from *other government agencies* (federal, state, local and tribal) to respond to oil spills.
- Obligates the OSLTF to *reimburse* costs incurred for FOSC-authorized pollution response activities undertaken by another government agency working for the FOSC.
- Provides a *ceiling, scope of work, and period of service*.
- Agency responsible for monitoring burn rate and activities
- Flexible – can be *increased, extended, and expanded*.
- Requires submission of detailed cost documentation *to the FOSC* for reimbursement
- May be used to reimburse for contract expenses – must be coordinated with FOSC



PRFA Pitfalls

- Activities outside agreed Scope of Work
- Failure to amend the PRFA ceiling
- “What was this person doing?”
- No SF-1080 (Invoicing Document)
- Forget to submit to FOSC for certification
- Mixing removal and NRDA activities
- Waiting until a certain threshold of costs are incurred before requesting a PRFA





Removal Cost Claims

33 CFR §§136.201-205

- Claimants (any): Government agencies, cleanup contractors, members of the public (and in some cases, the RP) assisting in cleanup.
- Claimant must demonstrate:
 - Actions taken were necessary to prevent, minimize, or mitigate the effects of incident;
 - Costs were incurred as a result of these actions; and
 - Actions taken were determined by the FOSC to be consistent with the NCP or were directed by the FOSC.
- Compensation allowed is the total of **uncompensated** reasonable removal costs of above actions.



Documenting Costs

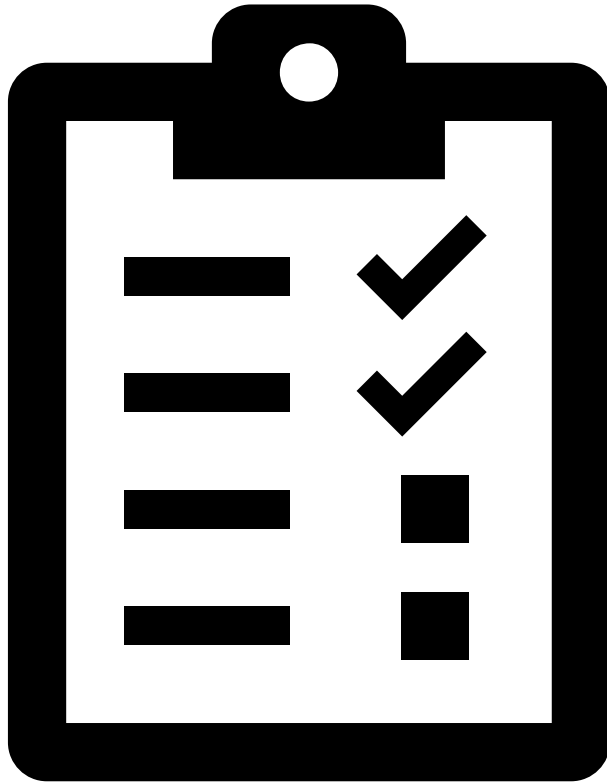
- Time sheets, rates, activities –
 - Helpful if individuals and activities are identified on relevant ICS forms (e.g., ICS 204s and 211s)
- Travel Vouchers (must include purpose)
- Contracts with associated SOW, Invoice(s), and Proof of Payment
- Purchase Receipts, Proof of Disposition of any equipment
- Indirect Rate support

Individual agency daily time sheets may be required, especially if the same individual worked on both PRFA and NRDA activities (to be discussed shortly)

Instructions for preparing PRFA cost documentation:

<https://www.uscg.mil/Mariners/National-Pollution-Funds-Center/Publications/tops/>





Poll: How many oil spills do you respond to within a year?

1. ≤ 1 per year
2. 2-5 per year
3. > 5 per year

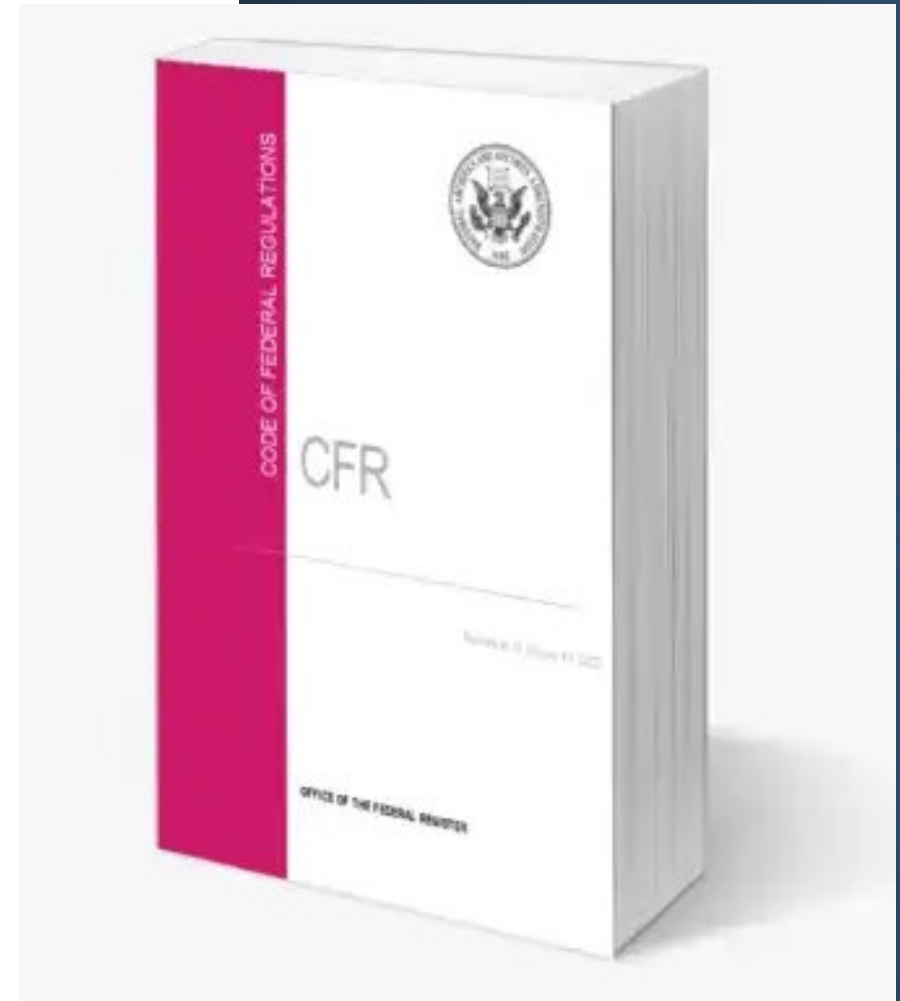
Questions regarding Response Funding?

Please submit your questions in the chat.

Part II – Impacts of Oil Spills and Damage Claims

- Designating the Source and Advertisement for claims
- Types of damages for which the OSLTF can pay claims
- The relationship among damages
- Overview of the OSLTF claims process
- Pre-incident planning to reduce damages and need for claims

33 C.F.R. Part 136 Oil Spill Liability Trust Fund; Claims Procedures; Designation of Source; and Advertisement



Source Designation and Advertisement

- The Federal On-Scene Coordinator identifies and designates the source
- NPFC issues a Notice of Designation (NOD) to the Responsible Party (RP) and Guarantor, if known
 - NOD advises the identified RP of its potential liability and provides advertisement instructions
 - If RP denies designation, NPFC may advertise

PUBLIC NOTICE

In accordance with the Oil Pollution Act of 1990 (33 USC 2714(c)), the [REDACTED] owned and operated by [REDACTED] has been named as the source of a discharge of oil into the [REDACTED] on or about [REDACTED] 2022. This spill impacted the [REDACTED], close to [REDACTED], [REDACTED], Washington, and as the Owner/Operator of the vessel, [REDACTED] is accepting claims for certain uncompensated damages and removal costs.

Removal costs and damages which may be compensated include removal costs performed in accordance with the National Contingency Plan; damage to natural resources; damage to or loss of real or personal property; loss of subsistence use of natural resources; loss of government revenues; loss of profits and earnings capacity; and increased cost of public services.

Claims should be in writing, signed by the claimant, for a specified amount; and should include all evidence to support the damages. Claims presented may include claims for interim short-term damages representing less than the full amount to which the claimant ultimately may be entitled. It should be noted that payment of such a claim shall not preclude recovery for damages not reflected in the paid or settled partial claims. Claims should be mailed to the following address:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Hours are from 9:00 AM to 5:00 PM PDT, Monday through Friday, except holidays. Claimants may call [REDACTED] for information.

Any claims which are denied, or which are not resolved within 90 days after the date of submission to our claims representative may be submitted to:

Director
National Pollution Funds Center (Ca), US COAST GUARD STOP 7605
2703 MARTIN LUTHER KING JR AVE SE
WASHINGTON, DC 20593-7605



Effective advertising - reaching the impacted community - relies on local knowledge

Natural Resource Damages

33 CFR §§ 136.207-211



- Only designated natural resource trustees can submit NRD claims.
- Trustee(s) may present a claim for the reasonable cost of assessing natural resources damages separately from a restoration cost claim.
- A publicly reviewed plan serves as the basis for an assessment and/or restoration claim.
- Compensation allowable is the reasonable cost of assessing damages and the cost of restoring, rehabilitating, replacing, or acquiring the equivalent of the damaged natural resources.



Real or Personal Property Damage

33 CFR §§ 136.213-217

- Claimant: Any owner or lessee of property that has sustained damage from a discharge of oil.
- Must establish:
 - Ownership/leasehold interest in the property;
 - That the property was injured or destroyed;
- Compensation allowable, **the lesser of** :
 - Actual or estimated net cost of repairs necessary to restore the property to substantially the same condition which existed immediately before the damage;
 - The difference between value of the property before and after the damage; **or**
 - The replacement value.



Loss of Subsistence Use

33 CFR §§ 136.219-223

- A claimant that uses, for subsistence, the natural resources which have been injured, destroyed, or lost without regard to ownership or management of the resources.
- Claimants must:
 - Identify each specific natural resource for which compensation for loss of subsistence use is claimed;
 - Describe the actual subsistence use made of each specific natural resource, and how and to what extent the subsistence use was affected;
 - Describe efforts made to mitigate loss of subsistence use, and alternative source or means of subsistence available;
- Compensation allowable is the reasonable replacement cost of the subsistence loss suffered by the claimant



Loss of Government Revenues

33 CFR §§ 136.225-229

- Government entities (Government of the United States, a State, or a political subdivision thereof) which lose taxes, royalties, rent, fees, or profit share.
- Claimants must establish:
 - The identification and description of the economic loss, including the applicable authority, property affected, method of assessment, rate and method and dates of collection;
 - That the loss was due to the injury to, destruction of, or loss of real or personal property, or natural resources;
 - The net loss of revenue.
- Compensation allowable is the total net revenue lost.



Loss of Profits and Earning Capacity

33 CFR §§ 136.231-235

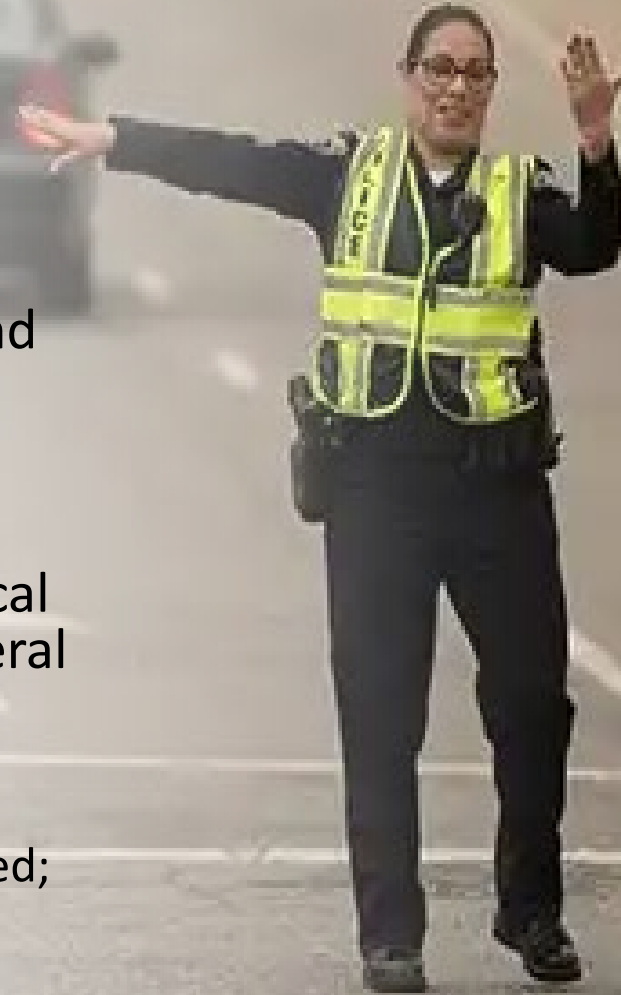
- Any claimant (does not have to be the owner of the damaged property or resources)
- Claimants must demonstrate:
 - That real or personal property or natural resources have been injured, destroyed or lost.
 - Income was reduced due to the above, and amount of that reduction.
- Compensation limited to the net reduction or loss of earnings or profits suffered



Government Public Services

33 CFR §§ 136.237-241

- Public services include, but are not limited to protection from fire, safety and health hazards and usually include entities such as:
 - Police/Fire Departments
 - Emergency Managers
- Claims may only be presented by a state or political subdivision of a State incurring the costs (no Federal entities).
- Claimants must establish:
 - The nature and need of specific services provided;
 - The services occurred during or after removal activities;
 - The services were provided as a result of a discharge of oil and would not have otherwise been provided;
- Allowable compensation is the net cost of the increased or additional service provided.



Notable Claim Requirements



Time limitations on claims

- **Damages - 3 years** after the date on which the injury and its connection with the discharge in question were reasonably discoverable
- In the case of natural resources damages, above or within **3 years from the date of completion of the NRDA**.
- **Removal Costs - within 6 years** after the date of completion of all removal actions for the incident, OR the date the FOSC determines that the removal actions which form the basis for the costs being claimed are complete, whichever is earlier.



RETURNED
NOT PAID

Claims must *first be presented to the responsible party (RP)*



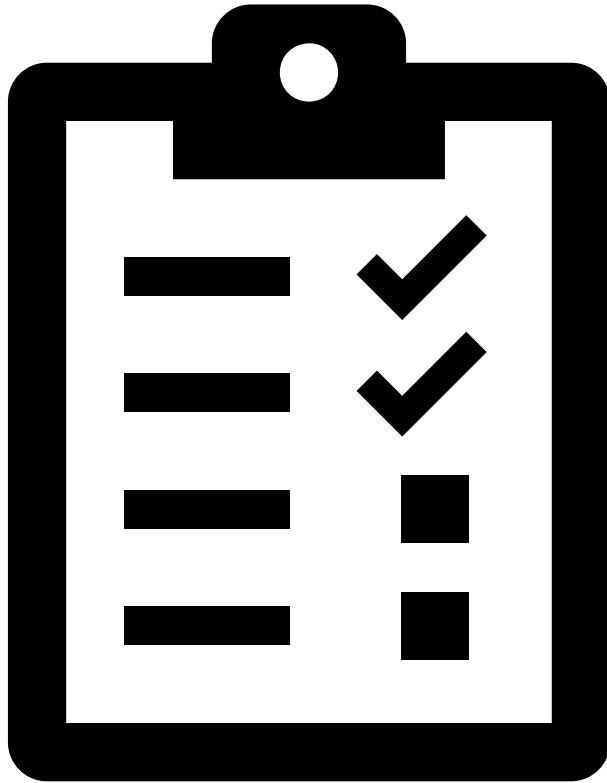
Claimant bears the burden of providing all evidence, information, and documentation deemed necessary by the Director, NPFC to support the claim.



What can you do now to prepare for future claims?

- Participate in Area Contingency Planning in your area to ensure Tribal (and tribal member) concerns and associated risks are addressed
- With regard to closure plans - criteria for reopening and strategy for communicating reopening to the community
- Consider response strategies that will minimize claims in your area
- Maintain records on background/current conditions





Poll: Based on this brief description of the types of damage claims, for likely oil spill scenarios in your area, which types of damages are your Tribe most vulnerable (pick up to three)?

1. Natural Resource Damages
2. Real or Personal Property Damage
3. Loss of Subsistence Use
4. Loss of Government Revenue
5. Loss of Profits and Earning Capacity
6. Increased Cost of Government Public Services

Questions regarding Damage Claims?

Please submit your questions in the chat.

Part III – Natural Resource Damages

- NRDA overview
- Initiation of Natural Resource Damage Assessment through a reimbursable “Initiate” agreement
- Natural Resource Damage Claims
- Leveraging NRDA to influence response objectives



Initiation of Natural Resource Damage Assessment

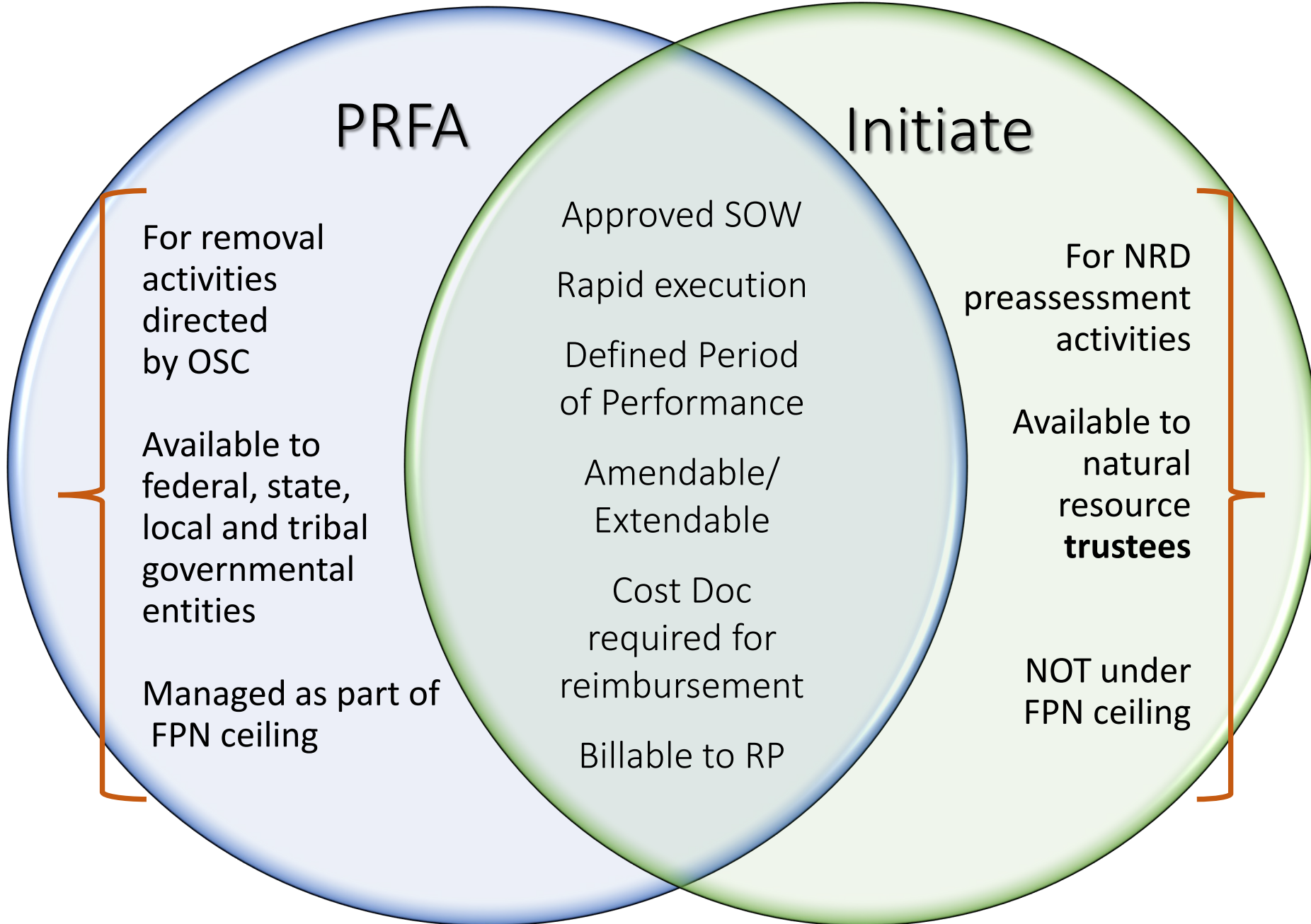
The OSLTF can fund the *initiation of assessment* (preassessment) outside of the claims process, through an *Initiate Agreement*

- Activities associated with preassessment are those listed in 15 CFR 990 Subpart D
- Funding for NRDA Initiation is similar to a PRFA except it *does not* go through the FOSC but is a direct agreement with the NPFC
- As quickly as an agency can secure a PRFA, a *natural resource trustee* can also secure a NRDA Initiate Agreement





Authorized, developed & reimbursed through agreement **with the FOSC** and collaboration with NPFC Case Officer



Authorized, developed & reimbursed through agreement **with the NPFC NRD Claims Manager**

Natural Resource Damage Claims

Assessment and/or Restoration – Trustee(s) may present a claim for the reasonable cost of assessing natural resources damages *separately* from a claim for restoration implementation

Past Costs and/or Future Costs – future cost claims required reconciliation and any funds remaining must be returned to the OSLTF

Primary Restoration and/or Compensatory Restoration – return to baseline and interim loss

Direct Loss, Reduced Functions, Reduced Services – Incorporates lost human use to include lost cultural use of natural resources



Special Considerations for NRD Claims

- OPA NRDA Regulations *15 C.F.R. Part 990*
- Highly recommend joint claims with other natural resource trustees
 - Avoids issues related to the Statute of Limitations (SOL) and double recovery
- All claims are **based on a Plan**
- Statute of Limitations - 3 years after the date on which the injury and its connection with the discharge in question were reasonably discoverable with the exercise of due care, or within **3 years from the date of completion of the NRDA**, whichever is later.
- **Excess funds are returned** to the OSLTF



Shellfish Alert

Shellfish in this area may have been impacted by the recent petroleum spill.

To avoid any potential health risk, avoid harvesting and consumption of shellfish where you can see or smell oil and/or sheens on the beach or in the water.

Don't eat shellfish if you see or smell oil on the animals.



Photo credit: Port Gamble S'Klallam Tribe

Influencing response objectives from the NRD lens

...timely and effective response that minimizes adverse impacts to the environment. 40 CFR 300.317(c)

Intimate connection to the environment = clearer understanding of the potential adverse effects of a spill and response operation

Intimate connection to the environment = clearer understanding of the challenges associated with recovery of potentially impacted natural resources and available alternatives

DON'T UNDERESTIMATE YOUR VALUE TO A RESPONSE EFFORT AND TO PLANNING AND PREPAREDNESS EFFORTS



New Developments at the NPFC

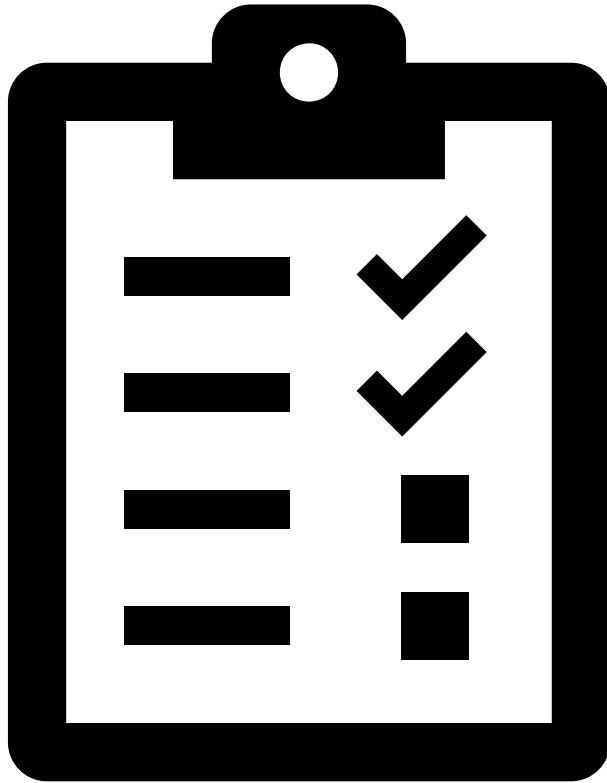
NPFC drafting updates to 33 C.F.R. Part 136

- The regulation presents the NPFC's claims procedures, requirements regarding advertising for claims, and designating the source for OPA incidents.
- Stakeholders are encouraged to make comments when the Notice of Proposed Rule Making is published.

NPFC currently pursuing an updated case and claim management system which will have an external portal for claim submission (eta 2024)

- Projected to allow for:
 - Smoother submission process
 - Options to provide certifications directly in the system
 - Notifications and communications directly in system
 - Reduction in email communications and the associated records management requirements
 - Automated notifications





Poll: What is your level of experience with NRDA?

1. None - not in my portfolio
2. None - no opportunity yet
3. Have participated in NRDA for one or more CERCLA incidents or Superfund sites
4. Have participated in a Trustee council for an oil spill
5. Have settled for NRD under OPA or have filed a claim with an RP or with the NPFC

Questions regarding Natural Resource Damage Assessment?

Please submit your questions in the chat.



Additional Resources

Inland Oil Spill for Response DOI Webinar Series

The Oil Spill Liability Trust Fund (Part 1) – Supporting
Spill Response Operations & Natural Resource
Damage Assessments

The Oil Spill Liability Trust Fund (Part 2) – Access to
the Fund through Appropriations and Claims

NPFC's website

<https://www.uscg.mil/Mariners/National-Pollution-Funds-Center/>



Thank you for your time and sharing with us!



For more information, visit:

<https://www.uscg.mil/Mariners/National-Pollution-Funds-Center/>

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Regional Manager
Western States and Pacific Region
Case Management

Eric Bunin
Claims Manager
Claims Adjudication
Monica Rusk
Claims Manager
Natural Resource Damages

*If you have questions in the days ahead, please send them to
Nick Nichols, EPA @ Nichols.Nick@epa.gov*

Please Register for Incident Notifications



- ▶ Tribes can apply for incident notification directly to U.S. Coast Guard
 - ▶ To request a notification application to receive spill reports you must contact the National Response Center (NRC) via fax to (202) 267-1322 or email to nrc@uscg.mil

