



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Pacific Southwest Region
2800 Cottage Way, Room W-2606
Sacramento, California 95825-1846



In Reply Refer To:
FWS/R8/EC

DEC - 9 2015

Mr. William R. Grawe
Director (Cn)
U.S. Coast Guard
National Pollution Funds Center USCG Stop 7605
2703 Martin Luther King Jr. Ave SE
Washington, DC 20593-7605

Dear Mr. Grawe:

Please find enclosed the signed claim release for the *S.S. Jacob Luckenbach* (Luckenbach) Natural Resource Damage Assessment and Restoration (NRDAR) case. The U.S. Fish and Wildlife Service (USFWS), National Oceanic and Atmospheric Administration (NOAA) and California Department of Fish and Wildlife Office of Spill Prevention and Response (OSPR) are the Trustees for the case; U.S. Fish and Wildlife Service is the Federal Lead Administrative Trustee. The Trustees have reviewed the Contingency Funds Request determination in the amount of \$191,115.03 for the National Pollution Funds Center claim number A02005-OI2 issued by your staff on October 20, 2015. The Trustees have adopted Trustee Council Resolution 16-1 accepting terms and conditions in the attached claim release and authorizing USFWS to accept the Contingency Request Determination offer. Please accept this release and make funds available for the purposes stated in the Contingency Request Determination.

I wish to thank you and your staff for your continued support and work on the Luckenbach claim. If you have any questions, please call Janet Whitlock of the Bay Delta Fish and Wildlife Office at (916) 414-6599.

Sincerely,


Acting Regional Director

Enclosure

cc:

Clark Miller, DOI Solicitor's Office, Washington, DC
Jennifer Boyce, NOAA, Long Beach, CA
Laurie Lee, NOAA, Long Beach, CA
Mark Wilcox, NPFC, Washington, DC
Fredy Hernandez, NPFC, Washington, DC
Dave Press, NPS, Point Reyes, CA
Steve Hampton, CDFW, Sacramento, CA
Katherine Verrue-Slater, CDFW, Sacramento, CA
Damian Higgins, USFWS, Sacramento, CA
Janet Whitlock, USFWS, Sacramento, CA
Rustico Bigalbal, USFWS, Sacramento, CA
Carolyn Marn, USFWS, Sacramento, CA
Bruce Nessler, DOI, Washington, DC

U.S. Department of
Homeland Security

United States
Coast Guard



Director
National Pollution Funds Center

US COAST GUARD MS 7100
4200 Wilson Blvd. Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CN)
Phone: 703-872-6054
E-mail: Fredy.E.Hernandez@uscg.mil

16480

Claim Number: A02005-OI2

Claimant Name: The U.S. Department of the Interior

On February 5, 2015, the NPFC received a request from the Department of the Interior (DOI) for contingency funds totaling \$329,996 to complete five of the 14 previously approved restoration projects funded by the NPFC for this incident and pay additional trustee oversight costs. DOI revised this request on May 13, 2015, reducing the sum certain to \$326,911 to complete four of the 14 restoration projects and augment trustee oversight activities.

On June 16, 2015, the NPFC issued its determination to DOI's request offering \$110,832.03 to fund the Kokechik Flats and Grebe Colony Protection restoration projects; and denying \$216,078.97 for the Reading Rock project, the Año Nuevo project, and Trustee Council Oversight.

DOI did not accept the June 16, 2015 offer and on August 13, 2015, DOI submitted a written request for reconsideration and additional information for the Año Nuevo project. DOI did not seek reconsideration of the NPFC's denial of the Reading Rock Common Murre Colony Protection project or for Trustee Council Oversight, nor did it provide additional information to support these projects or oversight costs. However, the trustees have until August 20, 2016, to request contingency funds for Trustee Council Oversight costs under the NPFC's contingency policy.

The DOI accepts the settlement offer of \$191,115.03 as full and final compensation for the Kokechik Flats, Grebe Colony Protection, and Año Nuevo projects as described in the October 20, 2015 determination.

This settlement represents full and final release and satisfaction of all damage assessment costs described in the October 20, 2015 determination.

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 October 20, 2015 determination and any amounts in excess of those required to complete the restoration projects shall be deposited to 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 October 20, 2015 determination.

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.

<u>Deputy Regional Director</u>	<u>12.17.15</u>
Title of Person Signing	Date of Signature
<u>Alexandra Pitts</u>	<u>Alexandra Pitts</u>
Typed or Printed Name of Claimant or Name of Authorized Representative	Signature

<u>Regional Coordinator - Environmental Quality</u>	<u>12-17-2015</u>
Title of Witness	Date of Signature
<u>Damian K. Higgins</u>	<u>Damian K. Higgins</u>
Typed or Printed Name of Witness	Signature

<u>14-01-0001</u>	<u>Tax ID: 53-0196949</u>	<u>DUNS: 114715092</u>
ALC Required for Payment	Bank Routing Number	Bank Account Number
Treasury Acct Symbol: 14X5198	Discretionary Field: Luckenbach Oil Spill #0388	

Adopted 12/15

Luckenbach Trustee Council
Resolution Regarding Restoration Project Acceptance of Contingency
Settlement from the National Pollution Funds Center

1. The State of California, acting through the Department of Fish and Wildlife (CDFW); the National Oceanic and Atmospheric Administration (NOAA); and the Department of the Interior, acting through the U.S. Fish and Wildlife Service (USFWS) and the National Park Service (NPS), are the trustees responsible for restoring those natural resources injured by the release of oil from the *SS Jacob Luckenbach*.
2. The Trustees have entered into a Memorandum of Understanding (MOU) among themselves for the purpose of coordinating their trust responsibilities. The MOU further requires the Trustee Council to memorialize all expenditures of funds deposited into the Luckenbach Natural Resource Damages Account within the Natural Resource Damage Assessment and Restoration (NRDAR) Fund in a Trustee Council Resolution signed by the participating voting members.
3. The National Pollution Funds Center (NPFC), in adjudicating the Luckenbach Natural Resource Damage Assessment claim, deposited funds for restoration projects, Trustee Council administration and oversight, cost documentation and reporting, and past assessment costs incurred by the Trustee agencies, into the Luckenbach NRDAR Account. However, the Trustees, at the request of the NPFC, had removed both inflation and 15% contingency from the budgets in the initial claim relying on the NPFC's commitment to fund these if and when the need arose. The purpose of this resolution is to accept the Luckenbach Contingency Determination dated October 20, 2015, totaling \$191,115.03 for 3 of the projects in the First Partial Determination and authorize the USFWS, on behalf of the Luckenbach Trustee Council, to sign the release from the NPFC.
4. The Trustee Council approved a contingency request (Resolution 15-5 on 2/3/15) for inflation funds from the NPFC for the following projects:
 - \$3,085 for Sea Otter Pathogens Education and Outreach
 - \$109,196 for Nest Protection at Kokechik Flats, Alaska
 - \$69,550 for Grebe Colony Protection at Northern California Lakes
 - \$38,317 for Reading Rock Common Murre Colony Restoration
 - \$80,283 for Nesting Habitat Restoration on Año Nuevo Island, and
 - \$29,565 for Trustee Council Administrative Oversight.


The Trustee Council subsequently removed the request for funds for the Sea Otter project as funds were no longer needed.

5. The Trustee Council hereby accepts the terms and conditions in the October 20, 2015 NPFC reconsideration determination of the Luckenbach Contingency request and settlement for the following restoration projects:
 - \$41,282.03 for Nest Protection at Kokechik Flats, Alaska,

Luckenbach Trustee Council Resolution 15-5 (cont.)

- \$69,550 for Grebe Colony Protection at Northern California Lakes, and
 - \$80,283 for Nesting Habitat Restoration on Año Nuevo Island.
6. The Trustee Council hereby authorizes the USFWS, as the Authorized Official, to accept the settlement offer from the NPFC for the aforementioned restoration project contingencies.
 7. This Resolution may be executed in counterparts. A copy with all original executed signature pages affixed shall constitute the original Resolution and be retained by the Lead Administrative Trustee that maintains records.
 8. The effective date of this resolution shall be the date on which the last Trustee Signs this resolution.

Concurred in by the following who are the duly authorized Luckenbach Trustee Council representatives:



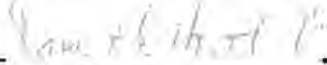
Steve Hampton
California Department of Fish and Wildlife

11/30/15
Date



Jennifer Boyce
National Oceanic and Atmospheric Administration

11/23/15
Date



Janet Whitlock
U.S. Fish and Wildlife Service

11/30/15
Date

U.S. Department
of Homeland Security

United States
Coast Guard



Director
National Pollution Funds Center

U.S. Coast Guard Stop 7100
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CN)
Phone: 703-872-6054
E-mail: fredy.c.hernandez@uscg.mil

16480
October 20, 2015

MEMORANDUM

From: Fredy Hernandez
Claims Manager, NPFC

To: Ren Lohofener
Authorized Official, U.S. Department of the Interior

Subj: Claim: A02005-OI2 – *S.S. Jacob Luckenbach*, NRD Restoration – Contingency Funds
Request dated February 5, 2015

1. The National Pollution Funds Center (NPFC) issued three determinations offering to pay a total of \$26,474,897.08 for the U.S. Department of the Interior's (DOI) past assessment and future costs to implement 14 projects to restore natural resource damages resulting from the *Luckenbach* incident. These determinations also approved up to \$3,094,005 for potential unforeseen or contingency costs, to be paid when, and if, needed in accordance with the NPFC's Contingency Policy.
2. On February 6, 2015, the NPFC received a request from DOI for contingency funds totaling \$329,996 to complete five of the 14 restoration projects previously approved and funded by the NPFC. This request also included a proposal to shift approved project funding from the Reading Rock to the Point Reyes Corvid Management Project. DOI later revised the sum certain to \$326,911.
3. On June 16, 2015, the NPFC issued its determination offering to pay DOI \$110,832.03 for two of the 14 projects and denying additional contingency funding for the remaining two projects and trustee oversight costs. DOI did not accept this offer and submitted a request for the NPFC to reconsider this determination on August 13, 2015.
4. Upon reconsideration, the NPFC approves contingency funds totaling \$191,115.03 for three of the four restoration projects for which additional funds were originally requested. The enclosed determination provides the basis of this decision. If you have any questions about this determination, please feel free to contact me at 703-872-6052.

Encl: (1) NPFC reconsideration contingency determination
(2) Release

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NPFC DETERMINATION

Claim Number and Name:	A02005-OI2, <i>S.S. Jacob Luckenbach</i> , NRD Restoration
Claimant:	U.S. Department of the Interior (DOI)
Type of Request:	Contingency Funds Request dated February 5, 2015
Request Amount:	\$326,911 (final revised sum)
Offer Amount:	\$191,115.03
Determination Date:	October 20, 2015
NPFC Claim Manager:	Fredy Hernandez

History of the Claim

The National Pollution Funds Center (NPFC) previously paid or approved \$26,474,897.08 to the U.S. Department of the Interior (DOI) from the Oil Spill Liability Trust Fund (OSLTF) for natural resource damages resulting from the *Luckenbach* oil spill incident¹. Of this total, the NPFC paid \$21,386,707 to implement 14 projects to restore natural resources injured by the spill, \$1,079,326 for trustee oversight of the restoration projects, \$703,661.08 for past assessment costs, and \$211,198 for progress and cost reporting. The NPFC also approved an additional \$3,094,005 for potential unforeseen or contingency, costs, to be paid when, and if, needed in accordance with the contingency policy outlined in the NPFC determinations.

On September 19, 2012, the NPFC received DOI's first request for contingency funds totaling \$1,662,167.49 to complete four of the approved restoration projects². The NPFC approved \$185,082.49 for three of the projects on April 2, 2015³. Following this payment, \$2,908,922.51 of approved contingency remained available.

Current Request

On February 5, 2015, the NPFC received a second request from the DOI for contingency funds totaling \$329,996 to complete five of the 14 previously approved restoration projects funded by the NPFC for this incident and pay additional trustee oversight costs⁴. This request also included a proposal to shift approved project funding from the Reading Rock to the Point Reyes Corvid Management Project. DOI revised this request on May 13, 2015, reducing the sum certain to \$326,911 to complete four of the 14 restoration projects and augment trustee oversight activities.

¹ The NPFC's determinations to pay claim A02005-OI2 were issued in three partial determinations (dated September 29, 2008, January 4, 2010, and July 6, 2010).

² DOI's first request for contingency funds received on September 19, 2012 requested \$1,662,167.49 to complete the following 4 approved restoration projects: Nesting Habitat on Ano Nuevo Island (\$153,600) Rat Eradication on Haidi Gwaii (formerly Rat Eradication at Queen Charlotte) (\$29,016), Shearwater Colony Protection (\$2,466.49), and Mouse Eradication on the Farallon islands (\$1,477,085).

³ The NPFC's April 2, 2015 determination approved contingency payments totaling \$185,082.49 for the following three projects: Nesting Habitat on Ano Nuevo Island (\$153,600) Rat Eradication on Haidi Gwaii (formerly Rat Eradication at Queen Charlotte) (\$29,016), and Shearwater Colony Protection (\$2,466.49).

⁴ DOI's request for contingency funds received on February 6, 2015, requested \$329,996 to complete the following five approved restoration projects and Trustee Council Oversight: Sea Otter Pathogen Education and Outreach (\$3,085), Nest Protection at Kokechik Flats, AK (\$109,196), Grebe Colony Protection at Northern California Lakes (\$69,550), Reading Rock Common Murre Colony Restoration (\$38,317), Nesting Habitat Restoration on Ano Nuevo Island (\$80,283), and Trustee Council Oversight (\$29,565).

NPFC Review and Determination of Request to Reconsider (Año Nuevo Project)

The NPFC conducts a *de novo* review of requests for reconsideration. Upon this review, the NPFC determined that DOI previously demonstrated a need for the \$41,282 in additional contingency funding to complete the Nest Protection at Kokechik Flats Project and \$69,550 in additional contingency funding to complete the Grebe Colony Protection at Northern California Lakes project.

DOI provided the NPFC with additional facts to support its request for reconsideration for contingency funds to complete Año Nuevo project. Specifically, with the request included an accounting of all funds¹², budgets for the remaining three years of the project, scope of work for the same time period, trustee resolutions, and additional cost documentation to support their request for additional contingency funds.

The NPFC reviewed the additional information provided and determined that, based on the revised budget, DOI needs \$343,937¹³ to complete the project. To date DOI has spent \$738,744¹⁴ of the \$1,177,600¹⁵ provided and obligated an additional \$295,606 on contracts. The remaining amount available to complete the project is \$143,250, resulting in a shortfall of \$200,687¹⁶. Thus, DOI demonstrated a need for \$80,283 of additional contingency funding.

While DOI demonstrated a need for additional contingency funds, the NPFC's prior contingency approval of \$153,600 pursuant to the April 2, 2015 determination exhausted the 15% contingency approved for this project.

NPFC policy provides that increased contingency funds may be approved in a rare case where the claimant has provided the rationale and adequate documentation to establish a need for additional funds. The NPFC acknowledges that it requested DOI remove inflation adjustments from the budgets in their original claim in 2007, thus creating a situation where the trustees may not have enough funds to implement the project as planned. The NPFC and DOI both agreed that any shortfalls would be considered under the NPFC's contingency policy^{17,18}.

The NPFC's instruction to DOI to remove inflation from its original claim budgets resulted in a shortfall of funding and provides a basis for the NPFC to grant DOI a "rare case" exception. Thus, the NPFC approves \$80,283 in additional contingency funding for the Año Nuevo project.

The NPFC paid \$1,024,000 and approved \$153,600 in contingency funds on February 9, 2009, to implement DOI's 10-year plan to restore native plant communities used as bird nesting habitat

¹² Funds spent, obligated, or otherwise committed.

¹³ \$110,841 for FY16, \$114,253 for FY17, and \$118,843 for FY18. These estimates are based on spending from the previous years.

¹⁴ DOI documented the amount spent through annual progress reports (FY09-FY13), which included cost documentation.

¹⁵ \$1,024,000 paid on February 9, 2009, and \$153,600 paid on April 2, 2015.

¹⁶ \$343,937 needed to complete the final years of monitoring minus the \$143,250 available.

¹⁷ June 26, 2007 email from Steve Hampton to Chris Abrams and December 3, 2013 email from Janet Whitlock to NPFC summarizing conference call

¹⁸ \$153,600 or 15% as approved by the Septemebr 29, 2008 determination.

On June 16, 2015, the NPFC issued its determination to DOI's request with the following findings:

1. DOI submitted its contingency request within the six year time limit for contingency.
2. DOI met its burden of demonstrating a need for \$41,282 in additional contingency funds to complete the Nest Protection at Kokechik Flats project⁵.
3. DOI met its burden of demonstrating a need for \$69,550 in additional contingency funds to complete the Grebe Colony Protection at Northern California Lakes project⁶.
4. DOI did not meet its burden of demonstrating a need for \$38,317 in additional contingency funds to complete the Reading Rock Common Murre Colony Protection project⁷.
5. DOI did not meet its burden of demonstrating a need for \$29,565 in additional contingency funds for trustee oversight costs; however, the trustees have until August 20, 2016⁸, to request contingency funds under the NPFC's contingency policy⁹.
6. DOI did not meet its burden of demonstrating a need for \$80,283 in additional contingency funds to complete the Año Nuevo project. DOI's request for additional contingency funds was based on "lost purchasing power" due to inflation, using the CPI-U¹⁰ to account for the increased inflationary costs to implement the project over the 10-year project implementation and monitoring period. DOI calculated past inflation costs of \$61,979, future inflation of \$7,445, and \$10,859 as a "contingency inflation adjustment"¹¹. The NPFC determined that based on DOI's budget, which allocated 176,000 (\$88,000 per year) for the last two years of monitoring and the payment to DOI on April 2, 2015, for additional contingency funds totaling \$153,600, DOI did not need the full \$80,283, but rather only needed \$22,400 to complete the monitoring component of the project.

On August 13, 2015, DOI timely submitted a written request for reconsideration and included a factual basis for the request with supporting documentation for the Año Nuevo project. It provided no additional information for the Reading Rock Common Murre Colony Protection project or the \$29,565 in additional contingency funding for trustee oversight costs.

⁵ See June 16, 2015 determination for detailed description of the NPFC's findings for this project.

⁶ See June 16, 2015 determination for detailed description of the NPFC's findings for this project.

⁷ See June 16, 2015 determination for detailed description of the NPFC's findings for this project.

⁸ December 3, 2013 email from Janet Whitlock to NPFC summarizing conference call

⁹ DOI did not claim contingency for trustee oversight costs in their original claim to the NPFC.

¹⁰ Consumer Price Index for all urban consumers (CPI-U) is a measure of changes in the price of goods and services purchased by urban consumers.

¹¹ Adjustment of the \$153,600 paid as contingency for inflation.

on Año Nuevo Island. On April 2, 2015¹⁹, the NPFC approved \$153,600 of contingency funds needed to construct a barrier to prevent sea lions from trampling the newly restored plants. With the approved additional funding of \$80,283 in this determination, the total amount approved for payment for the Año Nuevo project is \$1,257,883²⁰. This is full and final payment for the Año Nuevo project and no other OSLTF funds will be available for this project.

Summary of Contingency Determination

The NPFC has reviewed DOI's request, as revised, for contingency funds to implement three of the projects approved and funded by the NPFC to restore natural resource injuries resulting from the *Luckenbach* incident. The NPFC has determined that it is reasonable and appropriate to offer \$191,115.03, which includes funding for the Kokechik Flats (\$41,282.03) and Grebe Colony projects (\$69,550) offered in the June 16, 2015 determination, and Nesting Habitat on Año Nuevo Island (\$80,283) herein offered upon reconsideration. Table 1 summarizes the amounts approved with respect to DOI's February 5, 2015 request for contingency funds.

Project/ Item	NPFC Determination (September 29, 2008)		DOI Contingency Request (February 5, 2015)		DOI Reconsideration Request (August 13, 2015)	
	Project Costs Paid	Project Contingency Costs Approved	Amount Requested	Amount Offered	Amount Requested	Amount Offered
Kokechik Flats	\$600,000	\$90,000	\$109,196	\$41,282.03	\$0	\$0
Grebe Colony Protection	\$774,060	\$116,109	\$69,550	\$69,550	\$0	\$0
Reading Rock/Common Murre	\$250,000	\$37,500	\$38,317	\$0 ²¹	\$0	\$0
Nesting Habitat on Año Nuevo Island	\$1,024,000	\$153,600	\$80,283	\$0	\$80,283	\$80,283
Trustee Council Oversight	\$462,568	\$0	\$29,565	\$0 ²²	\$0	\$0
SUB TOTALS	\$3,231,783	\$415,382	\$329,996	\$110,832.03	\$80,283	\$80,283
TOTAL OFFER AMOUNT UPON RECONSIDERATION				\$191,115.03		

¹⁹ The NPFC's April 2, 2015 determination approved contingency payments totaling \$185,082.49 for the following four projects: Nesting Habitat on Año Nuevo Island (\$153,600) Rat Eradication on Haidi Gwaih (formerly Rat Eradication at Queen Charlotte) (\$29,016) and Shearwater Colony Protection (\$2,466.49).

²⁰ \$1,024,000 provided on February 9, 2009; \$153,600 provided on May 21, 2015; and \$80,283 approved under this determination.

²¹ No reconsideration requested

²² NPFC is allowing a revised contingency request to be consolidated with Wave 2 and 3 Trustee Council needs and considered under the Wave 3 deadline, August 20, 2016.