



National Pollution Funds Center and the Oil Spill Liability Trust Fund

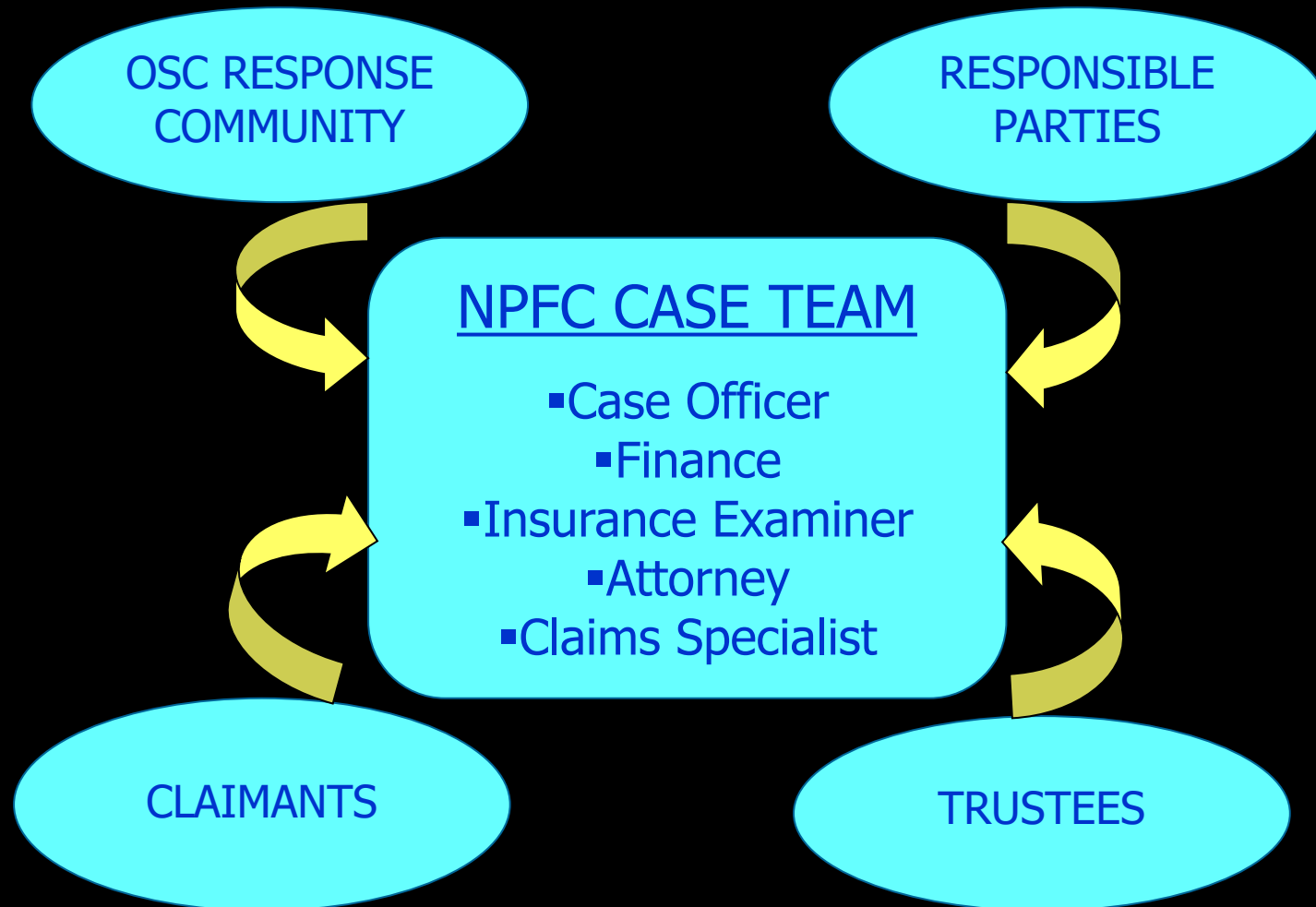


Area Committee Meeting
October 13, 2022
Valdez, AK

Major Missions of the NPFC

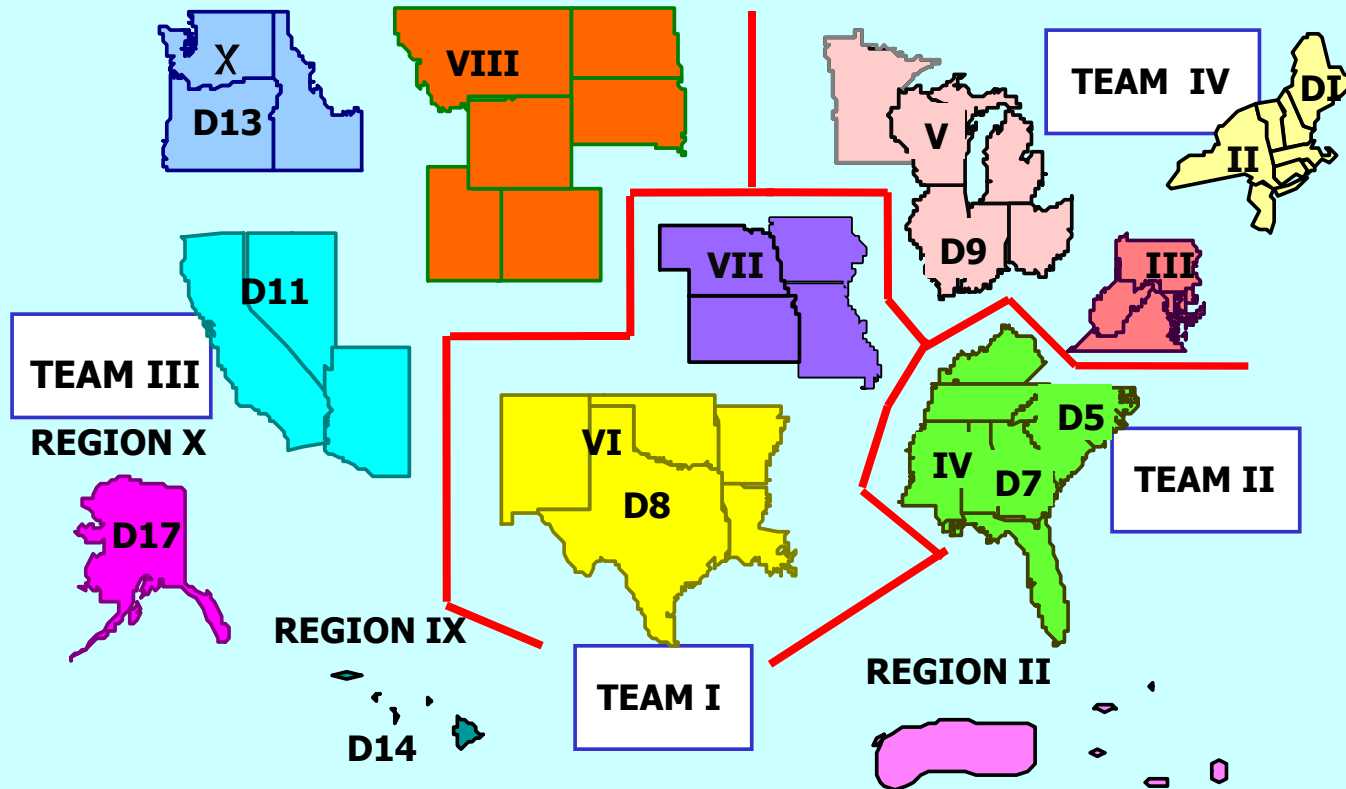
- Administer the Oil Spill Liability Trust Fund (OSLTF)
 - Provide Funding for Oil Removal Activities and the Initiation of Natural Resource Damage Assessments (NRDA) Related to Oil Discharges
 - Pay Claims for Loss and Damage from Oil Discharges
 - Recover Costs from Responsible Parties
- Administer the Certificate of Financial Responsibility (COFR) Program
- CERCLA Funding Manager for the Coast Guard
- Stafford Act ESF-10 Funding Manager for the Coast Guard

NPFC Case Team and its Customers



NPFC Case Teams

NPFC Team Boundaries: CG Districts & EPA Regions

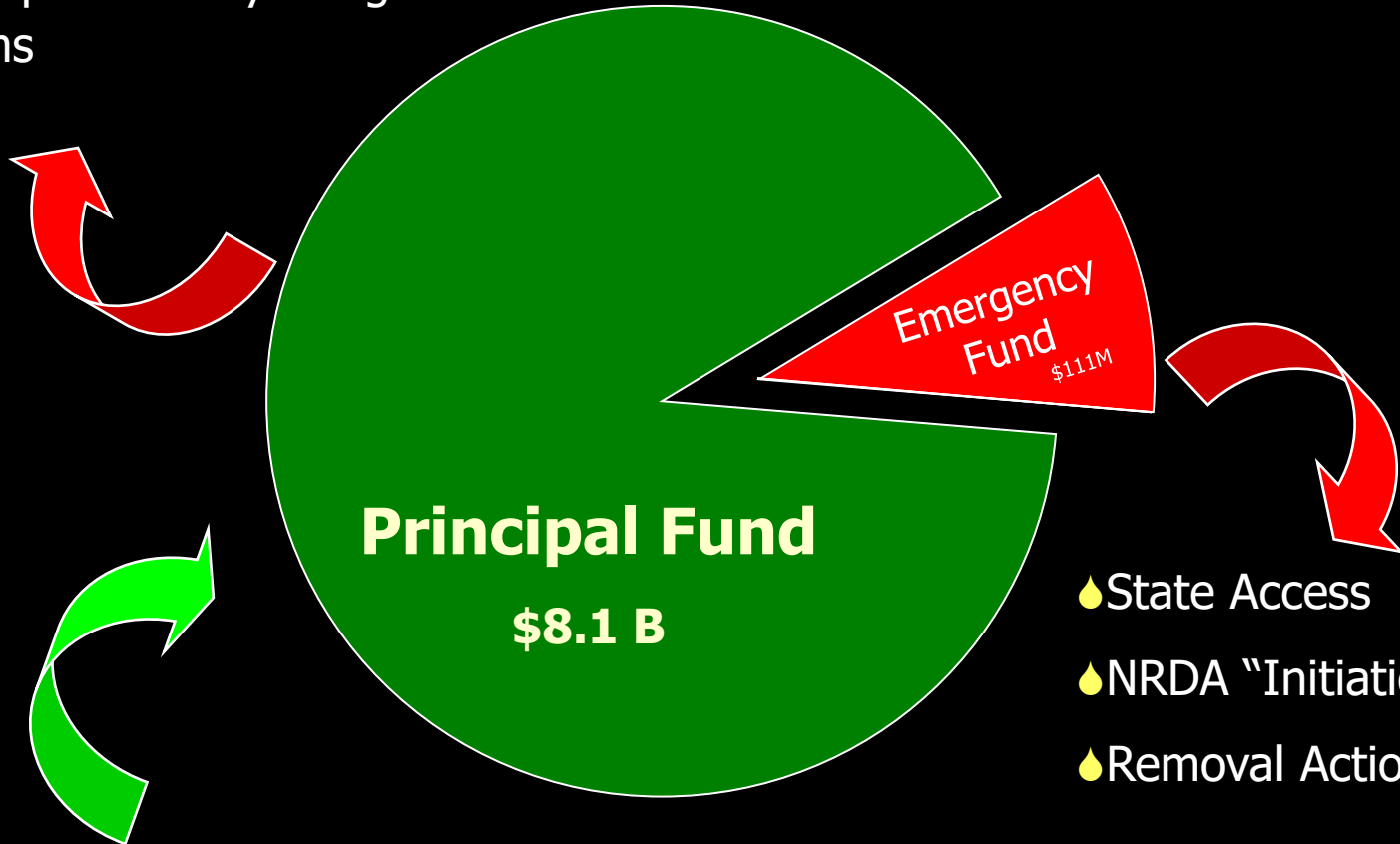


Primary Fund Sources

- The OSLTF is Replenished From:
 - Nine Cents per Barrel Tax –expires 12/31/2025
 - Investment Interest on the Fund's Principal
 - Costs Recovered from Responsible Parties
 - CWA Penalties Paid By Responsible Parties
 - Transfers from Other Funds (**Completed**)

Seven Point Eight Billion Dollar Fund

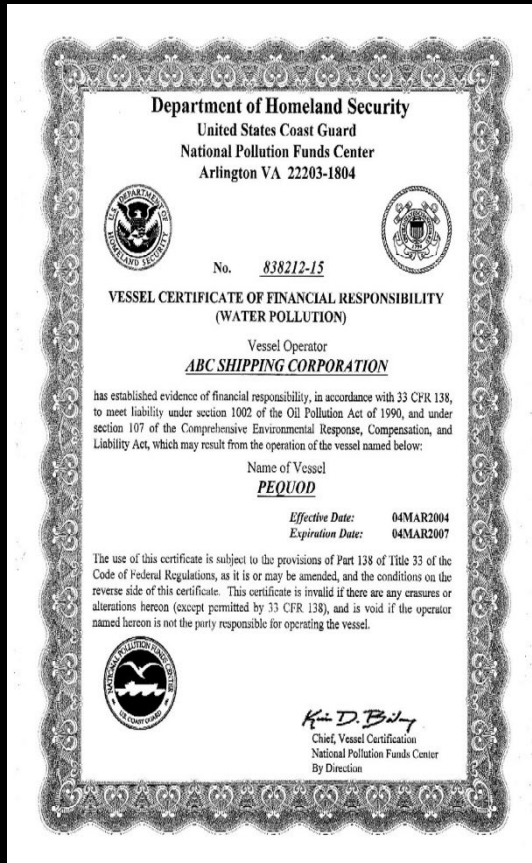
- ◆ Appropriations by Congress
- ◆ Claims



- ◆ Tax collections, recoveries, fines, penalties, interest

- ◆ State Access
- ◆ NRDA "Initiation"
- ◆ Removal Actions

Certificates of Financial Responsibility



- Enhance the “polluter pays” concept
- Assure that the responsible party (RP) has resources to pay removal costs and damages up to OPA limits of liability
- Operational control
 - 300 GT
 - Denial of Entry
 - Legitimacy of operations

Limitation of Liability



- LOL set by regulation 33 CFR Part 138
- Adjusted for inflation; current limits went into effect November 12, 2019
- \$3,700/GT – Single Hull Tank Vessels
- \$2,300/GT – Double Hull Tank Vessels
- \$1,200/GT – Non-tank vessels
- \$27.4/\$19.9M min. liability – SH/DH TVs
- \$7.5/\$5M if <3,000 GT – SH/DH TVs
- \$997.1k – minimum liability F/V; P/C etc.
- Facilities: \$672.5 M
- Reaching LOL can trigger transition to FOSC-lead if RP withdraws from the response
- SILC, NPFC, and IMAT Roles Grow
- SMT, Contracting, LSC, FSC roles grow

Four Phases of Response Operations



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

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**?

Substantial Threat

- Complex assessment & evaluation of incident by the Federal On-Scene Coordinator
- OSLTF may be used to respond to substantial threats of discharge of oil
- The Federal On-Scene Coordinator has sole authority to make these determinations
- The FOSC determines when threat has been mitigated
- Determinations have significant funding and liability implications for Marine Environmental Responses and Responsible Parties

Threat vs. Substantial Threat



- A threat may be defined as a possibility of a discharge due to the occurrence of some extraordinary and undesired event outside the scope of normal operations. Threat conditions are relatively static and may be easily controlled. Conditions are unlikely to deteriorate before the threat is eliminated. The threat may be eliminated in the near term.



What is a “Substantial Threat of a Discharge of Oil?”

- A substantial threat can be considered the real and immediate probability of a discharge due to the occurrence of some extraordinary and undesired event outside the scope of normal operations which continues, or is apt to continue to deteriorate until intervention to stabilize present conditions can be accomplished and before the threat may be eliminated. There is a near term uncertainty of stabilizing conditions and eliminating the threat before an actual discharge occurs.



Determination of Substantial Threat is a Subjective Judgement

- If possible, the decision maker must be reasonably close to threat
- The decision maker must have the expertise to evaluate both the vessel conditions and the spill probabilities.
- Experience will be a key requisite since decisions must often be made with poor initial information in emergent circumstances.
- The person who makes this decision is the Federal On-Scene Coordinator.

Factors to Consider

- 1. The likelihood of a discharge under the circumstances; that the situation presents an unacceptable probability that a discharge will occur without FOSC intervention.
- 2. The proximity to navigable waters, the quantity of oil which may be discharged, and the lack of barriers to stop the oil from flowing to the water indicate that a spill will impact navigable waters.
- 3. The flow path to surface waters (for land based discharges) as indicated by slope, soil permeability, water table, storm drains, curtain drains, natural or manufactured conduits, or the like.

Factors to Consider (continued)

- 4. The condition of or damage to the source, and the environmental factors or weather which may change the conditions, indicate that a spill will occur.
- 5. The potential impact of a discharge on the particular environment, including proximity to environmentally sensitive areas, populous areas, etc.
- 6. That action must be taken quickly to prevent a spill.

Substantial Threat Incidents: Who Pays?



T/V Pine Galaxy

- Sometimes problematic
- CG & underwriters disagree over whether or not activities are “removal actions consistent with the NCP”
- OSLTF funding & cost recovery vs. traditional marine insurance practices

Substantial Threat Determinations Have Endpoints

- FOSC determines response actions appropriate under the NCP
- Substantial threat determinations have discrete chronological endpoints
- OPA/OSLTF costs (and OPA claims potential) accrue until the threat has been mitigated

Substantial Threat Documentation

- ▣ NOFI
- ▣ CANAPS FPN Notification Message
- ▣ SITREP-POL (Subject line)
- ▣ Decision Memo
- ▣ ADMIN / COTP Order
- ▣ NOFA
- ▣ ICS Forms 201/202/202A/204/209/IAP

CANAPS Transaction

Vessel Type:	FISHING VESSEL
Vessel Identification Number (VIN):	No Data Entered
Responsible Party:	No Data Entered
Type of Product Spilled:	Oil
Amount Spilled:	No Data Entered
Unit of Measure:	No Data Entered
Substantial Threat:	Yes
Potential Amount Spilled:	1,200
Potential Amount Unit of Measure:	Gallons
Description of Substantial Threat:	VESSEL RAN AGROUND AND IN SURF-LINE WITH POTENTIAL OF 1200 GALLONS OF DIESEL. (Note: This field has a small character limit. Use the general comment field below to further describe the incident/threat and initial response actions)
Project Long Name:	No Data Entered
Incident Description:	No Data Entered
FOSC Unit:	Sector Los Angeles/Long Beach(LA/LB)
POC/FOSC Name:	LT JEREMY MAGINOT
POC/FOSC Email:	No Data Entered
POC/FOSC Phone:	(805)896-6789
POC/FOSC FAX:	No Data Entered
Requesting Unit:	Sector Los Angeles/Long Beach(LA/LB)
Requestor Name:	MST2 ZACHARY STRACK
Requestor Phone:	(310)710-8829
Requestor Email Address(es):	ZACHARY.D.STRACK@USCG.MIL,JEREMY.D.MAGINOT@USCG.MIL
Accounting String:	2/L/SZ/111/95/0/A16010/37260/XXXX
Document Control Number:	DD/16/31/6/L/YA/YYY
Related CERCLA Project:	No
NRC Incident Number:	No Data Entered
MISLE Case/Activity Number:	No Data Entered
CGMS Message Reference:	
Comments:	No Data Entered (Note: Use this field to further describe the incident/threat and initial response actions)

Substantial Threat Guidance

- MERMAN Chapter 9.5, App J
- NPFC Policy Doc Cm13
- NPFC TOPS for determining removal costs
- Your NPFC Case Officer
- **CLEARLY DOCUMENT YOUR DETERMINATION**
- Consider issuing an Admin Order to the RP
- *40 CFR 300.322: Substantial Threat to public health & welfare of the U.S.* Rare & large spills

Show Me the Money: Accessing the Fund



- FOSCs use CANAPS
- Estimating Ceiling
- Direct OSLTF Charges
- CG Personnel & Equipment
 - Billable
 - Thoroughly document the “Level of Effort”

When should you open a Federal Project?

- If you have determined there is an **OPA incident** AND
 - If you need \$ to respond
 - Significant personnel hours req'd to monitor RP efforts
 - If you need \$ to bring in support elements (NSF; IMAT; DOL-92; NPFC, PIAT etc.)
 - If you use more than \$3,500 in CG resources (CG people, boats, cutters, aircraft), *even if the RP is responding appropriately*, to enable cost recovery
 - RBS - \$1,910/hr; RBM -\$6,839/hr; 87' CGC-\$4,213; H60-\$15,562/hr; H65-\$10,853; E-5 \$67/hr ; MSSR2 - \$104/hr; O-3 \$107/hr; O-5 \$140/hr; O-6 \$159/hr
- *We cannot cost recover without a Federal Project!*

Show Me the Money: Funding Mechanisms



- Pollution Removal Funding Authorization (PRFA)
- Military Interdepartmental Purchase Request (MIPR)
- Initiate IAG – NRDA Activities, not removal
- Contracts
- Uncompensated Removal Cost Claims

Pollution Removal Funding Authorizations (PRFAs)



“No, I don’t think of you as an ATM...ATMs don’t lecture you before they give you money.”

- A Financial Document
- Commits the OSLTF
- Two Types
 - Federal Agency
 - Non-Federal Agency
- Two Key Elements
 - Scope of Work
 - Estimated Cost
- PRFA Amendments

PRFA Uses



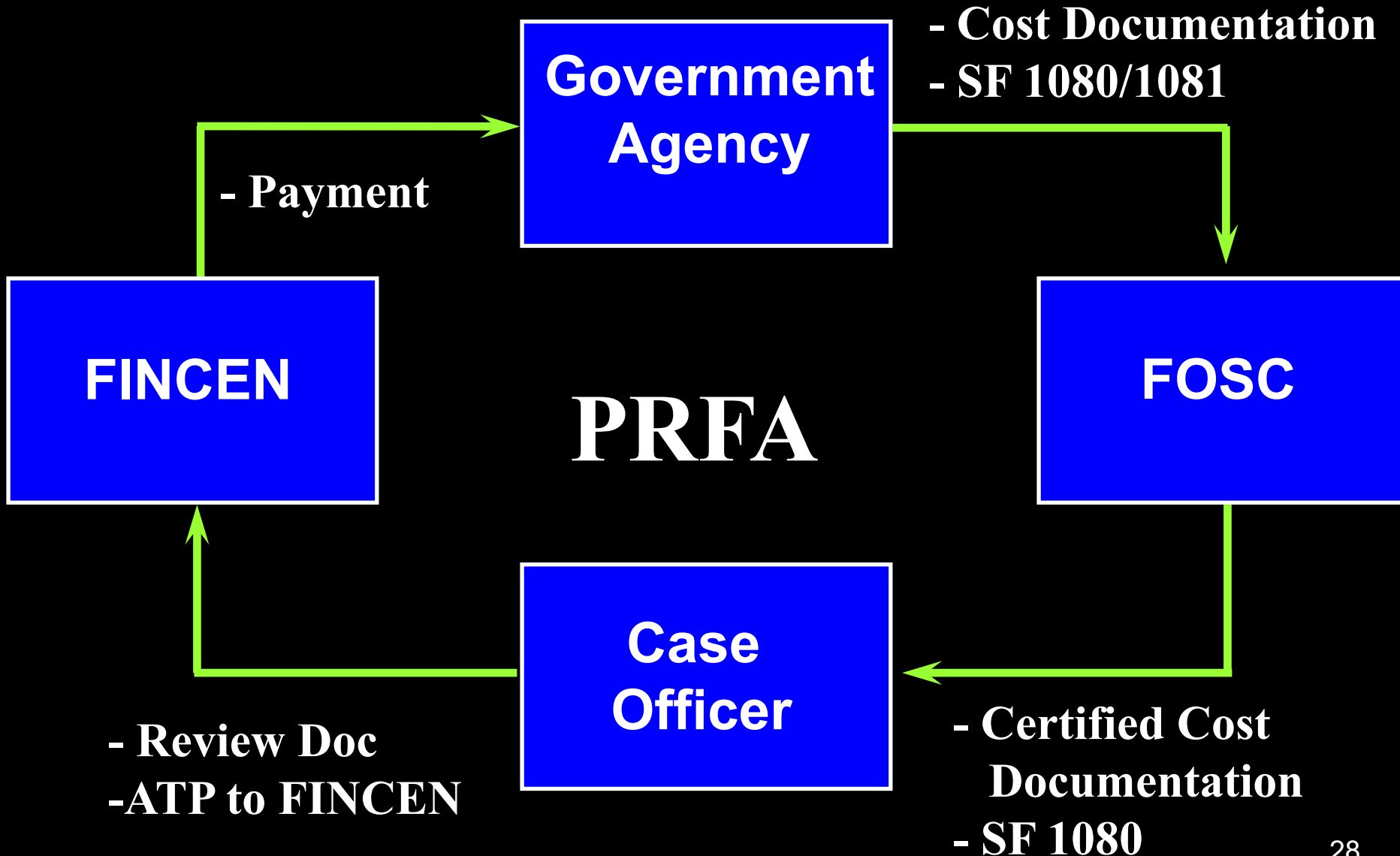
- PRFA – Incident Management
- PRFA – Removal (Agency or using Contractors)
- PRFA – Wildlife Branch & Environmental Unit
- PRFA – ESA Section 7
- In Most Coastal States
 - SOSC agencies
 - Counties/Cities
 - DOI - FWS/NPS/MMS/USGS
 - DOI – OEPC/BLM/BuRec
 - NOAA



PRFA Recipient Agency Accounting Responsibilities

- NPFC Resource Cost Documentation Package or Equivalent Agency Documentation
- CG-5136 Series of Forms
- Keep NRD activities separate from removal activities
- Daily activity log (WWWWW)

PRFA Reimbursement Process



Does CERCLA Apply?



- Hazardous Substance or unknown Pollutant or Contaminant
- Released into the environment
- Imminent and substantial danger to public health and welfare for Ps & Cs
- USCG FOSC: Marine incidents; leave the dirt jobs to EPA

Show Me the Money: CERCLA

How do you access the Superfund?



- Use CANAPS
- FPN & CPN together?
- Mixed Substances
- An EPA Action Memo is required on ceilings of \$250K or greater
- CERCLA projects initially limited to \$25K but ask for what you need in your CANAPS request

Stafford Act ESF-10 – Mission Assignment

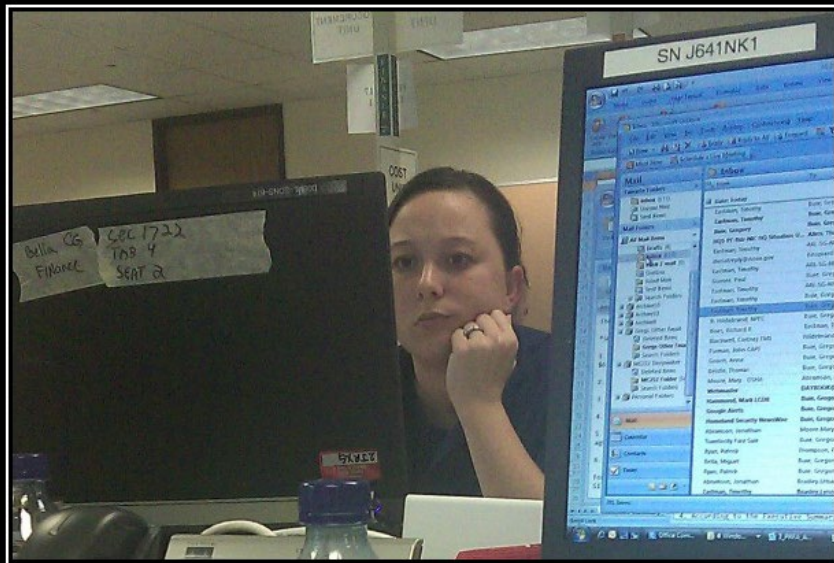


- Issued by FEMA or sub-tasks by EPA
- District accepts MA
- Responding unit tracks costs
- CG-835 seeks cost reimbursement

SERVICES NPFC CAN PROVIDE DURING A SPILL

- Spokesperson for all OSLTF access, documentation, and claims issues
- Assure ceiling levels are adequate
- Assist with financial reporting
- Assist in RP identification
- Help the Finance Section succeed
- Provide legal advice in coordination w/ FOSC's lawyers
- Provide COFR & Guarantor information
- Provide info on RPs' Limits of Liability
- Prepare Notice of Designation
- Ensure OPA claims are addressed by RP or NPFC
- Negotiate & execute PRFAs
- Negotiate, execute, & coordinate INRDA IAG w/FLAT

SERVICES NPFC **CANNOT** PROVIDE DURING A SPILL



- NPFC case officers are not contracting officers; DOL-92 KOs will help you
- NPFC case officers will not serve as your FSC or LSC
- NPFC case officers will not serve as your Time Unit Leader or Cost Unit Leader
- NPFC case officers will not validate utilization of resources
- Unit WQSB should address initial logs & finance staffing
- Request NSF & IMAT staffing; esp. for Type 2 & 1 incidents

BEAN COUNTING FOR A BETTER EARTH

Because this cost documentation isn't going to fix itself.

Cost Documentation



- IRAT – due 120 Days after demob
- 5136 Workbook
- Supporting Documentation
 - POLREPS
 - Decision Memos
 - 213RR/PR/TO-TVS etc
- Use CM01 principles to manage your case
- Use the Cost Documentation Checklist!
- Scan and E-mail certified cost doc

OPA 90 Claims



Compensation & Liability



- OPA Title I
- Polluter liable for costs and damages
- Claimants present claims to polluter
- Claims denied or not settled in 90 days
- Claimants may go to court or present claim to OSLTF
- OSLTF recovers claims and Federal response costs from polluter

Scope of OPA Claims



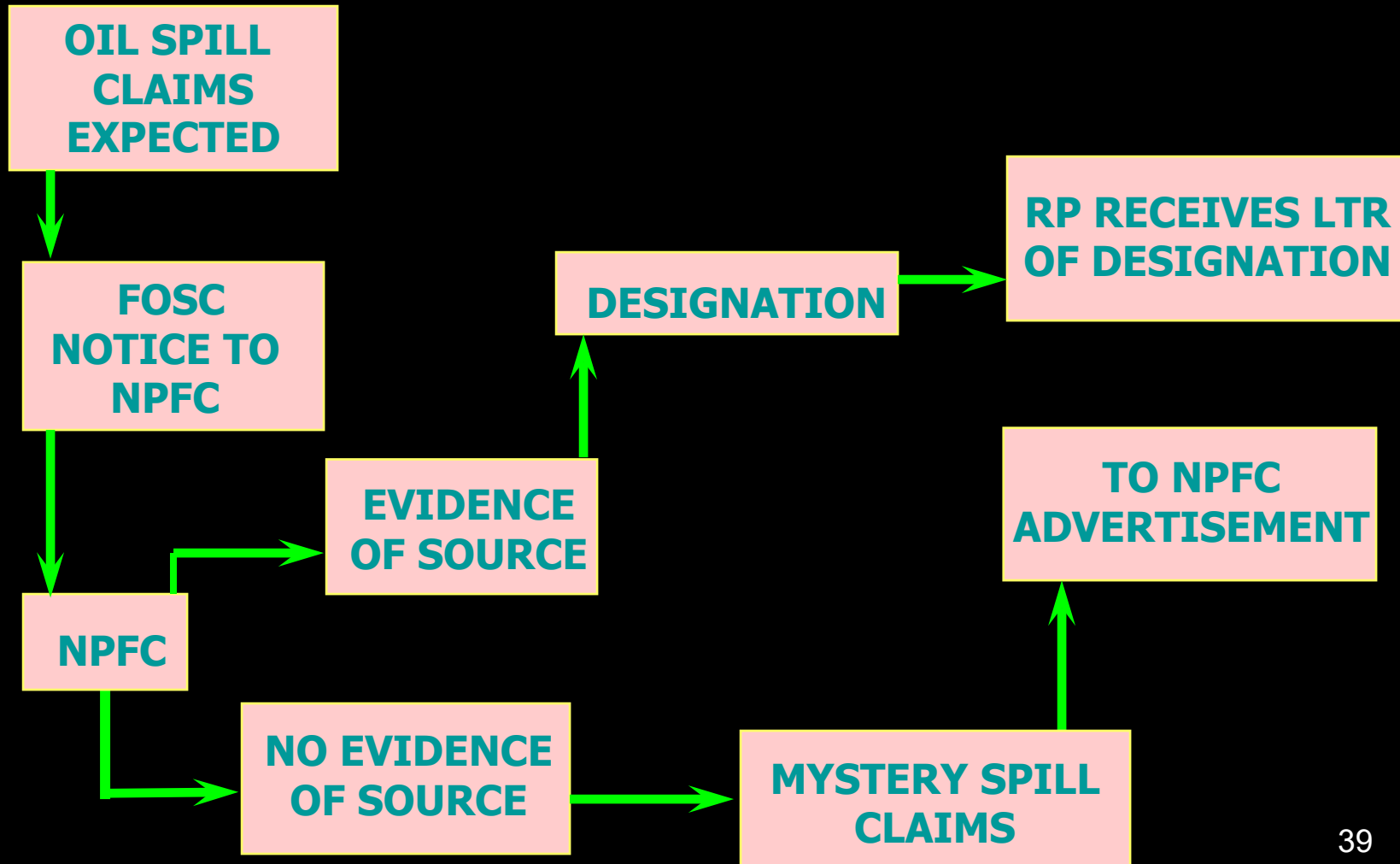
- Uncompensated removal costs
- Damages to real or personal property
- Loss of profits and earning capacity
- Loss of subsistence use
- Loss of government revenues
- Increased costs of public services
- Natural Resource Damages

Claims cannot be submitted for:



- Personal injury, including loss of income solely from personal injury
- Punitive damages
- Pain and suffering
- Legal costs

Claims Designation of Source



Natural Resource Damage Claims

- Submitted by Federal, State, and Tribal Natural Resource Trustees
- For assessing and restoring injured natural resources
- Received 4-5 years after spill response complete



Claims by a Responsible Party

- Defenses to liability under Section 1003
 - OPA provides certain narrowly construed complete defenses to liability where the discharge and costs and damages are **solely** caused by an Act of God, Act of War or act of a third party.
 - OPA limits and defenses are not available to an RP that fails to report the spill or fails to cooperate with the FOSC or carry out FOSC directions without sufficient cause.
- Limitation of liability under Section 1004
 - RP must show documentation addressing each element of the limitation of liability (33 U.S.C. 2704), as applicable
 - Must show claimed removal costs & damages are included under OPA (33 U.S.C. 2708)
 - Must present **all** costs and paid claims to NPFC

Adjudication of Uncompensated Removal Cost Claims

- NPFC Claims Managers may reach out to a Sector for assistance with the adjudication of an uncompensated removal costs claim.
- Six-year statute of limitations presents challenges for NPFC
- Claims managers start with NRC reports and MISLE; but often ask Sectors to provide additional information
- NPFC is seeking verification that the claimant's removal actions were taken to prevent or reduce the effects of the spill, were reasonable, and consistent with the NCP
- Key question: was the FOSC notified of the claimants actions at the time of the response?

Final thoughts from a Case Officer's prospective

QUESTIONS?

Case Management Division Team III West Coast

CG National Pollution Funds Center
U.S. Coast Guard STOP 7605
2703 Martin Luther King JR Avenue SE
Washington, DC 20593-7605

Office: (202) 795-6060

Fax: (202) 372-8357

Mobile: (415) 717-4492

Web: <http://www.uscg.mil/npfc>