

U.S. Department of  
Homeland Security

United States  
Coast Guard



Director  
National Pollution Funds Center

4200 Wilson Blvd Stop 7100  
Arlington VA 20598-7100  
Staff Symbol: Ca  
Toll-Free: 1-800-280-7118  
Fax: 703-872-6113  
Email: ARL-PF-  
NPFCCCLAIMSINFO@uscg.mil

5890  
November 15, 2012

VIA EMAIL: [REDACTED]@ospr.dfg.ca.gov

State of California  
ATTN: Kelly Abe  
Dept of Fish and Game  
Office of Spill Prevention and Response  
P.O. Box 944209  
Sacramento, CA 94233-2090

RE: A08027-0001

Dear Ms. Abe:

The National Pollution Funds Center (NPFC) in accordance with the Oil Pollution Act (OPA) (33 U.S.C. 2701 et seq.), has determined that \$2,001.69 is compensable for OPA claim number A08027-0001. This reconsideration determination is based on an analysis of information submitted. All costs that are not determined as compensable are considered denied.

Disposition of this reconsideration constitutes final agency action.

Sincerely,

[REDACTED]  
Thomas S. Morrison  
Chief, Claims Adjudication Division  
United States Coast Guard

## CLAIM SUMMARY / DETERMINATION

<b>Claim Number:</b>	A08027-0001
<b>Claimant:</b>	State of California
<b>Type of Claimant:</b>	State
<b>Type of Claim:</b>	Removal Costs
<b>Claim Manager:</b>	Galen Wetzel
<b>Amount Requested:</b>	\$3,523.88

### **FACTS:**

On June 19, 2008 the F/V Reward, a 40 foot commercial fishing vessel, was observed by two USCG vessels departing from Pier 45 in San Francisco fully loaded with crab pots. The vessel heeled to the port then righted itself before capsizing with four people on board. All four people were recovered from the water. It was determined that an estimated 300 gallons of diesel fuel was on board the vessel. The vessel was approximately 95% submerged sitting on its side in position 37-48.71N 122-25.13W. Debris from the vessel was reported in the water as well as a sheen.<sup>1</sup>

National Response Corporation (NRC) was contracted by the Federal On Scene Coordinator (FOOSC) to salvage the vessel when the vessel owner was not taking effective action. The vessel was partially refloated, utilizing float bags, and towed inside the breakwall securing it to Pier 45. Containment boom was placed around the vessel and the fuel vents were plugged to prevent any further discharge into the marine environment.

On June 20, 2008 NRC refloated the vessel and had it moved to the Hyde Street Pier where it was safely moored.

### **CLAIM AND CLAIMANT:**

On June 20, 2012, State of California Department of Fish and Game, Office of Spill Prevention and Response (DFG OSPR), presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$3,523.88 seeking reimbursement of their alleged uncompensated removal costs. The costs are for OSPR personnel costs, vehicle costs and administrative costs.

The NPFC made an initial offer on the original claim submission in the amount of \$1,026.90 on October 12, 2012. The remaining costs were denied because:

- Claimant failed to provide the additional information that was requested by NPFC, or
- Costs were not reasonable response costs, or
- Costs were unsubstantiated.

### **REQUEST FOR RECONSIDERATION:**

On October 29, 2012, the Claimant sent an email request for reconsideration to the NPFC along with supplemental supporting documentation. The Claimant provided Daily Activity Reports to support the personnel cost associated with two people involved in the response that were previously denied by NPFC. This documentation was not included in original submission.

The Claimant asserts in their first submission they did not have access, within the specified time frame, to all the documentation requested by the NPFC.

<sup>1</sup> USCG MISLE Case Report #408900.

**NPFC Determination on Reconsideration**

Under 33 CFR §136.105(a) and 136.105(e)(6), the claimant bears the burden of providing to the NPFC all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim. Under 33 CFR § 136.233, a claimant must establish loss of profits or impairment of earning capacity and that the loss was due to the destruction or injury to real or personal property or natural resources. The NPFC considered all the documentation submitted by the Claimant. The request for reconsideration must be in writing and include the factual or legal grounds for the relief requested, providing any additional support for the claim. 33 CFR § 136.115(d).

The NPFC performed a *de novo* review of the entire claim submission upon reconsideration.

Upon consideration of all information and arguments made by the Claimant on reconsideration, the NPFC offers the following:

1. The Daily Activity Reports submitted to support the personnel costs for Mr. Arnold are incomplete. The reports do not contain start and/or stop times so NPFC is unable to determine total time spent by this individual in support of the response. NPFC determines \$714.60 in personnel costs remain unsubstantiated and denied;
2. The Daily Activity Reports submitted to support the personnel costs for Mr. Murtha adequately shows his involvement in the spill response. The NPFC has determined OPA compensable personnel costs for Mr. Murtha is approved in the amount of \$1,387.62.
3. Vehicle usage costs were originally denied for Mr. Murtha because his personal time was denied due to inadequate documentation to support his response activities. Now that Mr. Murtha's response time has been approved, the affiliated vehicle usage costs in the amount of \$67.50 are also approved.

Based on the foregoing and in light of the new documentation provided, the NPFC has determined that \$2,001.69 is OPA compensable. The NPFC has denied \$1,522.19 for which the Claimant has not requested reconsideration or produced new information to overturn the original denial of said costs.

**DETERMINED AMOUNT ON RECONSIDERATION: \$2001.69**

Claim Supervisor: 

Date of Supervisor's Review: *11/15/12*

Supervisor Action: *Approved on reconsideration as stated above*

Supervisor's Comments:

## ACCEPTANCE / RELEASE AGREEMENT

Claim Number: A08027-0001	Claimant Name: State of California
---------------------------	------------------------------------

I, the undersigned, ACCEPT this settlement offer of \$2,001.69 as full and final compensation for the removal costs arising from the specific claim number identified above. With my signature, I also acknowledge that I accept as final agency action all costs submitted with subject claim that were denied in the determination and for which I received no compensation.

This settlement represents full and final release and satisfaction of the amounts paid from the Oil Spill Liability Trust Fund under the Oil Pollution Act of 1990 for this claim. I hereby assign, transfer, and subrogate to the United States all rights, claims, interest and rights of action, that I may have against any party, person, firm or corporation that may be liable for the amounts paid for which I have been compensated under this claim. I authorize the United States to sue, compromise or settle in my name and the United States fully substituted for me and subrogated to all of my rights arising from and associated with those amounts paid for which I am compensated for with this settlement offer. I warrant that no legal action has been brought regarding this matter and no settlement has been or will be made by me or any person on my behalf with any other party for amounts paid which is the subject of this claim against the Oil Spill Liability Trust Fund (Fund).

This settlement is not an admission of liability by any party.

With my signature, I acknowledge that I accept as final agency action all amounts paid for this claim and amounts denied in the determination for which I received no compensation.

I, the undersigned, agree that, upon acceptance of any compensation from the Fund, I will cooperate fully with the United States in any claim and/or action by the United States against any person or party to recover the compensation. The cooperation shall include, but is not limited to, immediately reimbursing the Fund for any compensation received from any other source for those amounts paid for which the Fund has provided compensation, by providing any documentation, evidence, testimony, and other support, as may be necessary for the United States to recover from any other person or party.

I, the undersigned, certify that to the best of my knowledge and belief the information contained in this claim represents all material facts and is true. I understand that misrepresentation of facts is subject to prosecution under federal law (including, but not limited to 18 U.S.C. §§ 287 and 1001).

_____	_____
Title of Person Signing	Date of Signature
_____	_____
Printed Name of Claimant or Authorized Representative	Signature

_____	_____
Title of Witness	Date of Signature
_____	_____
Printed Name of Witness	Signature

_____	_____	_____
<b>*DUNS/EIN/SSN</b>	Bank Routing Number	Bank Account Number
<b>*Required for Payment</b>		