

U.S. Department of  
Homeland Security

United States  
Coast Guard



Director  
United States Coast Guard  
National Pollution Funds  
Center

NPFC CA MS 7100  
US COAST GUARD  
4200 Wilson Blvd. Suite  
1000  
Arlington, VA 20598-7100  
Staff Symbol: (CA)  
Phone: 202-493-6824  
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[REDACTED]@uscg.mil  
Fax: 202-493-6937

5890  
7/7/2011

SENT VIA EMAIL WITH ATTACHMENT

State of California  
ATTN: Ms. Kelly Abe  
Department of Fish and Game  
P.O. Box 944209  
Sacramento, CA 94233-2090

Re: NPFC Claim Number 911074-0001  
PCA Code:

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 **\$\$651.60** is full compensation for OPA claim number 911074-0001.

This determination is based on an analysis of the information submitted. Please see the attached determination for further details regarding the rationale for this decision.

All costs that are not determined as compensable are considered denied. You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claims. Reconsideration will be based upon the information provided and a claim may be reconsidered only once. Disposition of the reconsideration will constitute final agency action. Failure of the NPFC to issue a written decision within 90 days after receipt of a timely request for reconsideration shall, at the option of the claimant, be deemed final agency action. All correspondence should include corresponding claim number.

Mail reconsideration request to:

Director (ca)  
NPFC CA MS 7100  
US COAST GUARD  
4200 Wilson Blvd, Suite 1000  
Arlington, VA 20598-7100

If you accept this determination, please sign the enclosed Acceptance/Release Form where indicated and return to the above address.

If we do not receive the signed original Acceptance/Release Form within 60 days of the date of this letter, the determination is void. If the determination is accepted, an original signature and a valid tax identification number (EIN or SSN) are required for payment. If you are a Claimant that has submitted other claims to the National Pollution Funds Center, you are required to have a valid Central Contractor Registration (CCR) record prior to payment. If you do not, you may register free of charge at [www.ccr.gov](http://www.ccr.gov). Your payment will be mailed or electronically deposited in your account within 60 days of receipt of the Release Form.

If you have any questions or would like to discuss the matter, you may contact me at the above address or by phone at 202-493-6824.

Sincerely,

A solid black rectangular box redacting the signature of Mark R. Erbe.

Mark R. Erbe  
Claims Manager

ENCL: Claim Summary / Determination Form  
Acceptance/Release Form

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Claim Number: 911074-0001	Claimant Name: State of California ATTN: Ms. Kelly Abe Department of Fish and Game P.O. Box 944209 Sacramento, CA 94233-2090
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I, the undersigned, ACCEPT the determination of \$651.60 as full compensation for the removal costs incurred.

This determination represents full and final release and satisfaction of all removal costs incurred under the Oil Pollution Act of 1990 (33 U.S.C. 2712(a)(4)), associated with the above referenced claim. This determination is not an admission of liability by any party. 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 loss. 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 the incident. 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 costs which are the subject of the claim against the Oil Spill Liability Trust Fund (Fund).

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 any compensation received from any other source for the same claim, 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
_____	_____
Typed or Printed Name of Claimant or Name of Authorized Representative	Signature

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

_____	_____	_____
TIN Required for Payment	Bank Routing Number	Bank Account Number

## CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: 911074-0001
Claimant	: State of California
Type of Claimant	: State
Type of Claim	: Removal Costs
Claim Manager	: Mark Erbe
Amount Requested	: \$2,434.95

### ***I. FACTS:***

#### ***Incident:***

On June 11, 2006, the M/V PHOENIX, a 110-foot glass bottom vessel, was in-route to San Francisco to be refitted as a floating restaurant. The vessel carried approximately 250-gallons of diesel in its fuel tanks and carried additional diesel fuel in ten 55-gallon poly-drums on its deck.

At 0730 US Coast Guard, Sector Los Angeles/ Long Beach received a report that the M/V PHOENIX had lost power and was taking on water about two-miles off Point Dume, near Malibu, CA. The Los Angeles County Lifeguard rescued the crew and at 1028 the M/V PHOENIX broke-up and sank discharging approximately 250-gallons.<sup>1</sup> Residual oil sheen was observed on surface waters of the Pacific Ocean and within navigable waters of the U.S.<sup>2</sup>

#### ***Responsible Party:***

Frederick Parker, the Owner and Captain of the M/V PHOENIX, was designated as the Responsible Party for the oil spill by the US Coast Guard who was the Federal On-Scene Coordinator (FOSC). Mr. Parker who was onboard the vessel at the time it started to sink and he cooperated with the FOSC by hiring Blue Ocean, the oil spill response organization that cleaned up the sheen and recovered several sealed drums.<sup>3</sup>

#### ***Claimant:***

The Claimant is the California Department of Fish and Game (DFG), Office of Oil Spill Prevention and Response (OSPR). DFG-OSPR has primary authority to direct removal, abatement, response, containment and cleanup efforts for any spill in State waters.

#### ***Claim:***

The NPFC received DFG-OSPR claim on May 3, 2011 seeking compensation for removal costs in the amount of \$2,434.95. The removal claim was received within the six-year statute of limitations under Oil Pollution Act of 1990 (OPA).

Submitted with its claim were the following: a NPFC OSLTF Standard Claim Form, a Governor's Office of Emergency Services - Hazardous Materials Spill Report, a Voucher for Transfers Between Funds, a DFG-OSPR Incident Billing Summary of Costs Incurred, a DFG Investigation report (without narrative), a copy of Monthly Travel Log (C. Kong). Also, two Attendance and Labor Distribution Reports for its personnel hours and a separate invoice with

<sup>1</sup> See POLREP ONE and FINAL part 1.A

<sup>2</sup> See USCG Enforcement Summary under Factual Elements

<sup>3</sup> Ibid, part 2.D & G

supporting documents from the Claimant's vendor, the International Bird Rescue and Research Center (IBRRC) of Fairfield, CA.

**Description of Removal Actions Performed:**

The DFG-OSPR's claim indicated that its personnel were sent to the scene for "response and damage assessment" on the beach where debris and residual diesel oil could potentially wash ashore.<sup>4</sup>

**II. APPLICABLE LAW:**

Under OPA 90, at 33 USC § 2702(a), responsible parties are liable for removal costs and damages resulting from the discharge of oil into navigable waters and adjoining shorelines, as described in Section 2702(b) of OPA 90. A responsible party's liability will include "removal costs incurred by any person for acts taken by the person which are consistent with the National Contingency Plan". 33 USC § 2702(b)(1)(B).

"Oil" is defined in relevant part, at 33 USC § 2701(23), to mean "oil of any kind or in any form, including petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil."

The Oil Spill Liability Trust Fund (OSLTF), which is administered by the NPFC, is available, pursuant to 33 USC §§ 2712(a)(4) and 2713 and the OSLTF claims adjudication regulations at 33 CFR Part 136, to pay claims for uncompensated removal costs that are determined to be consistent with the National Contingency Plan and uncompensated damages. Removal costs are defined as "the costs of removal that are incurred after a discharge of oil has occurred or, in any case in which there is a substantial threat of a discharge of oil, the costs to prevent, minimize, or mitigate oil pollution from an incident."

Under 33 USC §2713(b)(2) and 33 CFR 136.103(d) no claim against the OSLTF may be approved or certified for payment during the pendency of an action by the claimant in court to recover the same costs that are the subject of the claim. See also, 33 USC §2713(c) and 33 CFR 136.103(c)(2) [claimant election].

33 U.S.C. §2713(d) provides that "If a claim is presented in accordance with this section, including a claim for interim, short-term damages representing less than the full amount of damages to which the claimant ultimately may be entitled, and full and adequate compensation is unavailable, a claim for the uncompensated damages and removal costs may be presented to the Fund."

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 136.105(b) each claim must be in writing, for a sum certain for each category of uncompensated damages or removal costs resulting from an incident. In addition, under 33 CFR 136, the claimant bears the burden to prove the removal actions were reasonable in response to the scope of the oil spill incident, and the NPFC has the authority and responsibility to perform a reasonableness determination. Specifically, under 33 CFR 136.203, "a claimant must establish -

- (a) That the actions taken were necessary to prevent, minimize, or mitigate the effects of the incident;
- (b) That the removal costs were incurred as a result of these actions;
- (c) That the actions taken were determined by the FOSC to be consistent with the National Contingency Plan or were directed by the FOSC."

Under 33 CFR 136.205 "the amount of compensation allowable is the total of uncompensated *reasonable* removal costs of actions taken that were determined by the FOSC to be consistent with the National Contingency Plan or were directed by the FOSC. Except in exceptional circumstances, removal *activities* for which costs are being claimed must have been coordinated with the FOSC." [Emphasis added].

<sup>4</sup> See USCG POLREP ONE and FINAL part J.K.

### **III. DETERMINATION OF LOSS:**

#### ***Analysis:***

The Claims Manager reviewed the DFG-OSPR's invoice (Reimbursement PCA V1195) and finds personnel costs are for an "Environmental Scientist." There is no further explanation or description as to what removal actions were taken by the Environmental Scientist. Personnel costs for the Environmental Scientist are \$694.56 (12hrs x \$57.88/hr = \$694.56) and for DFG's Owned Vehicle Usage is \$83.78, (142 mi x .59 per mile = \$83.78) for a subtotal of \$778.34.

Additionally, the DFG-OSPR's invoice, seeks compensation for "Operational Expenses" described as "Wildlife Operations" and its vendor cost for two "Wildlife Recovery & Transport Supervisors"<sup>5</sup> for a subtotal of \$826.87.<sup>6</sup> The vendor is the International Bird Rescue Research Center (IBRRC) of Fairfield, CA. The IBRRC invoice (#100622) is addressed to Lavonne Hull, at the University of California Davis, Oiled Wildlife Center (OWC). On its Reimbursement Request dated June 13, 2006, the note reads: "*Glass bottom oil spill, Activated by IBRRC and OWCN for search and collection, OSPR Reference # N300-F1195.*"<sup>7</sup> There is a charge for Overhead of \$107.85 or 15% of the personnel and mileage costs of \$719.08, for total of \$826.87.

#### ***Determination:***

Under OPA 33 CFR 136.203 and its governing regulations, the Claimant must establish that removal actions were necessary to prevent, minimize or mitigate the effects of an incident. The Claims Manager finds the Claimant lacks evidence showing its Environmental Scientist or its vendor were engaged in removal actions as defined under OPA.

Additionally, under 33 CFR 136.205, "a Claimant must establish that actions taken were determined by the FOSC to be consistent with the National Contingency Plan (NCP) or were directed by the FOSC. The Claims Manager finds that the Claimant has failed to establish that either its Environmental Scientist or its vendor's actions were directed by or coordinated with the FOSC.

Based on the foregoing, the NPFC denies all costs for the Environmental Scientist (\$694.56) and associated vehicle usage (\$83.78) for a total of \$778.34 and the NPFC denies the Claimant's operational expenses of \$826.97 for vendor costs as discussed above.

The NPFC has determined that the DFG-OSPR's costs for a Game Warden to observe and assess damage to the State's shoreline is an activity to prevent, mitigate and minimize the incident is a removal action as defined under OPA and the associated costs of \$616.20 (\$47.40 per hour for 13 hours (13 hrs x \$47.40 = \$616.20) and DFG vehicle usage (4WD) of \$35.40 representing 60 miles are compensable removal costs as defined under OPA.

The Claimant submitted \$178.14 for Administrative Costs. The Claims Manager finds that the Claimant's invoice for Administrative Costs does not provide sufficient detail to determine what portion of the administrative cost is a compensable removal cost under OPA. Therefore, the total Admin Cost of \$178.14 for this category is denied.

<sup>5</sup> See sub-WildRescue Invoice for Work Performed Susan Kaveggia & Rebecca Dmytryk invoiced by IRBCC

<sup>6</sup> See DFG=OSPR invoice PCAV1195 4/20/06

<sup>7</sup> See IBRRC invoice #100622 dated 8/17/2006 in the admin record

***C. Determined Amount:***

The NPFC determines that the Oil Spill Liability Trust Fund will pay \$651.50 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim 911074-0001.

**AMOUNT:** \$651.60

Claim Supervisor: *Donna Henberg*

Date of Supervisor's review: *7/7/11*

Supervisor Action: *Approved*

Supervisor's Comments: