

CLAIM SUMMARY / DETERMINATION

Claim Number:	N12062-0003
Claimant:	State of Louisiana
Type of Claimant:	State
Type of Claim:	Removal Costs
Claim Manager:	(b) (6)
Amount Requested:	\$74,225.52

FACTS:

Oil Spill Incident: On August 29, 2012, Hurricane Isaac made landfall over various states, including Louisiana, for over 60 hours, causing substantial flooding and multiple waterway closures. Sector New Orleans opened FPN N12062.

On September 02, 2012, Sector New Orleans stood up a Unified Command with the United States Environmental Protection Agency (EPA), Louisiana Oil Spill Coordinator's Office (LOSCO) and Louisiana Department of Environmental Quality (LDEQ). In collaboration with Oil Spill Responders (OSROs) and partners from the Unified Command, the operations section responded and mitigated several incidents, while assessing potential and / or actual pollution incidents. Operations were conducted on a daily basis.

The Unified Command with the assistance of the National Oceanic and Atmospheric Administration (NOAA) Scientific Support Coordinator (SSC) continuously assessed the impact of pollution on the Louisiana shoreline.¹

The Claimant: The State of Louisiana Oil Spill Coordinator's Office (LOSCO) serves as the single point of contact for all programs related to oil spills in Louisiana. Its mission is to respond to oil spill events, restore natural resources, protect economic infrastructure, and safeguard public health. LOSCO is funded by a two-cent barrel tax on all oil transported to or from vessels at Louisiana marine terminals. LOSCO coordinates the state's oil spill response efforts, making sure that cleanups are properly completed.²

The Claim: On July 20, 2016, LOSCO presented a removal cost claim to the National Pollution Funds Center (NPFC) for reimbursement of its uncompensated removal costs in the amount of **\$74,225.52** for its services that they provided from August 29, 2012 through October 02, 2012.

Description of Removal Actions Performed: Representatives from Louisiana's responding agencies were on scene working with the United States Coast Guard (USCG) as part of the Unified Command to oversee the cleanup process. A description of the roles and responsibilities of the state agencies are as follows:

¹ FPN N12062, SITREP-POL ONE, ACTUAL, HURRICANE ISAAC RESPONSE

² Losco.state.la.us

LOSCO filled a leadership role on behalf of the State of Louisiana in response to oil spills resulting from Hurricane Isaac. A representative³ was present at the incident command post serving as State On-Scene Coordinator (SOSC) for this incident and worked alongside the Federal On-Scene Coordinator (FOSC) to coordinate response activities. Additionally, LOSCO was responsible for the coordination of other State agencies as well as local stakeholders in response to the oil spills and ensured adequate staffing for the designated state functions in the incident command.

The Louisiana Department of Environmental Quality (LDEQ), under the direction and control of the Louisiana Oil Spill Coordinator, served as the lead technical agency for response to the discharges of oil and for cleanup of the oil pollution and served as the Deputy State On-Scene Coordinator (DSOSC). LDEQ partnered with NOAA to provide technical guidance for the response.

The Operation Section – The Deputy of Operations Section Chief prioritized the response strategies and targeted areas that required boom. The Hazard Evaluation Branch Task Force Leader provided a fixed wing aircraft (AC-50) with a pilot and observer which provided a visual of the areas that required clean up operations.⁴

The Planning Section – The Environmental Unit was responsible for the hazard evaluation, developed cleanup endpoints, worked in the Unified Command and oversaw the sign-offs for each response area. The Environmental Unit also provided technical support for the cleanup operations, decontamination, and wildlife. LDEQ provided Shoreline Cleanup Assessment Teams (SCAT). The SCAT teams deployed to monitor the status of the cleanup operations and the sign off sites as meeting the established Unified Command clean up endpoints.⁵

The Louisiana Department of Natural Resources (LDNR) under the direction and control of the Louisiana Oil Spill Coordinator, monitored and responded to oil spills that threatened or impacted natural resources and provided oversight of the cleanup operations in order to minimize and mitigate natural resource impacts. LDNR also provided quality control assistance to the Data Unit Leader on oil target information and assisted with staffing the SCAT teams that were deployed.⁶

The Department of Wildlife and Fisheries (LDWF) under the direction and control of the Louisiana Oil Spill Coordinator, monitored and responded to oil spills that threatened or impacted wildlife and fishery resources and provided oversight of the clean-up operations in order to minimize and mitigate wildlife impacts.

The Wildlife Rehab Task Force coordinated with the Unified Command on all field response operations and provided field personnel to evaluate the potential for wildlife impacts from oil spills throughout the affected area. LDWF surveyed impacted areas to evaluate wildlife impacts and made recommendations to protect sensitive areas and wildlife hazing operations. LDWF documented all wildlife impacts and provided observations of the impacted areas, as well as,

³ [REDACTED] and [REDACTED]

⁴ [REDACTED] – Pilot and (b) (6)

⁵ [REDACTED]

⁶ [REDACTED] and [REDACTED]

responding to reports of oiled wildlife, collected all live and oiled wildlife. The wildlife was transported to the wildlife rehabilitation center for cleaning and storage.⁷

LDWF coordinated with rehabilitation centers on all incoming wildlife as well as the status of wildlife within the wildlife rehabilitation center. LDWF reported all wildlife that was recovered for rehabilitation and all dead and oiled wildlife that was collected by field teams to the Unified Command.⁸

For further information regarding names, dates and activities that were performed, please consult the Hurricane Isaac Workbook that the Claimant provided.⁹

APPLICABLE LAW:

"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.

⁷ (b) (6) - Veterinarian

⁸ Several Biologists – see NPFC Summary of Costs.

⁹ The NPFC used the data from the Hurricane Isaac workbook to adjudicate the costs that are demonstrated in the NPFC spreadsheet of Costs.

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].

DETERMINATION OF LOSS:

A. Overview:

1. FOSC Coordination has been established via USCG Sector New Orleans.¹⁰ 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4);
2. The incident involved a discharge of “oil” as defined in OPA 90, 33 U.S.C. § 2701(23), to navigable waters.
3. The claim was submitted to NPFC within the six year statute of limitations for removal costs. 33 U.S.C. § 2712(h)(1).
4. A Responsible Party has not been identified. 33 U.S.C. § 2701(32).
5. In accordance with 33 CFR § 136.105(e)(12), the claimant has certified that no suit has been filed by or on behalf of the claimant in court for the claimed uncompensated removal costs.
6. The NPFC Claims Manager has thoroughly reviewed all documentation submitted by the Claimant with the claim, and has determined which of the removal costs presented were incurred for removal actions taken by the Claimant in accordance with the National Contingency Plan (NCP) and whether the costs for these actions were reasonable and allowable under OPA 90 and 33 CFR § 136.205.

B. Analysis:

NPFC, Claims Division, reviewed the Claimant’s cost documentation to confirm that the Claimant had incurred all costs claimed. The review focused on: (1) whether the actions taken were compensable “removal actions” under OPA and the claims regulations at 33 CFR 136 (e.g., actions to prevent, minimize, mitigate the effects of the incident); (2) whether the costs were incurred as a result of these actions; (3) whether the actions taken were determined by the FOSC,

¹⁰ See, POLREPS for FPN. Oil Spill Analysis for Hurricane Isaac was provided by Sector New Orleans, Case/Activity Number 4438391 and the Marine Safety Laboratory.

to be consistent with the NCP or directed by the FOOSC, and (4) whether the costs were adequately documented and reasonable.

The NPFC validated the costs that were incurred by the Claimant and determined which costs were reasonable, necessary, and performed, in accordance with the NCP.

Claimant provided a well-documented claim¹¹ to show which of the actions it performed were for OPA compensable activities. The Claimant also demonstrated that the work performed was for response to oil and for the cleanup of pollution that were determined to be consistent with the NCP.

Based upon the evidence presented in this claim submission and for the actions undertaken by LOSCO and all associated state entities, the NPFC hereby determines that the LOSCO incurred **\$73,584.25** in uncompensated removal costs and that that amount is payable by the OSLTF as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # N12062-0003. Please see the attached Summary of Costs spreadsheet for a detailed breakdown of costs.

The denied costs pertain to mileage that LDEQ presented. The NPFC denied \$641.27 because there was a variance between what the Claimant was claiming and what the documentation supported.¹²

Determined Amount:

The NPFC hereby determines that the OSLTF will pay **\$73,584.25** as full compensation for the claimed removal costs incurred by the claimant and submitted to the NPFC under claim # N12062-0003.

(b) (6)

Claim Supervisor: **(b) (6)**

Date of Supervisor's review: **9/19/16**

Supervisor Action: **Approved**

¹¹ See Claimant's Hurricane Isaac Workbook.

¹² See, Daily Vehicle Log.