CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: A08006-0001
Claimant	: State of California
Type of Claimant	: State
Type of Claim	: Removal Costs
Claim Manager	: [redacted]
Amount Requested	: $3,234.79

FACTS:

1. ***Oil Spill Incident:*** On the evening of December 10, 2007, California Department of Fish & Game, Office of Spill Prevention and Response (OSPR) states that at about 1645 hours, OSPR Warden observed a sheen from as many as three derelict vessels beached at Sherman Island. OSPR reports that the initial threat appeared to be less than one barrel of mixed oil and diesel fuel. OSPR dispatched a field response team to investigate.

   On December 11 , 2007, Sector San Francisco reports that the sailing vessel *Sun Chaser* was anchored off the southern point of Sherman Island. Due to inclement weather, the anchor broke free and the vessel was pushed ashore next to an environmentally sensitive area. CG reports that the vessel is hard aground, sitting at a 45 degree list to port, and has taken on water in all compartments. A CG incident management pollution team was dispatched to the scene along with a Warden from OSPR.

   Upon arrival, the team noticed a rainbow colored sheen that was half a mile in length and had washed up along the shore. The team was able to board the subject vessel and estimated that about 150 to 200 gallons of diesel was in the fuel tanks. The team also noticed a second vessel, CF 1134 SS, in the vicinity that was partially submerged with a potential of 50 gallons of gasoline. The responsible party (RP) of the sailing vessel was on scene but was not compliant with the instructions from the CG and OSPR.

   At approximately 1130 hours, the CG opened a Federal Project and activated Universal Environmental to boom the areas around the vessel, mitigate the oil that had discharged, and pump out the remaining fuel in all the tanks. The CG determined all response completed on December 16, 2007 after monitoring two tide cycles following completion of response actions on December 14, 2007.[1]

2. ***Description of Removal Actions:*** The Claimant arrived on scene on December 10, 2007 and provided joint oversight along with Sector San Francisco during the removal actions performed by Universal Environmental who was hired by the CG.

3. ***The Claim:*** California Department of Fish & Game, Office of Prevention and Response (OSPR) presented a removal cost claim to the National Pollution Funds Center (NPFC) in the amount of $3,234.79. The claim consists of OSPR personnel

[1] See CG Pollution Report # 3 and Final dated December 14, 2007.

costs in the amount of $3,234.79 for their presence on scene from December 10, 2007 through December 16, 2007.

The claim consists of OSPR Incident Summary Sheet, OSPR payroll time sheet records, OSPR incident report, OSLTF Claim Form, and OSPR Investigation Report, witness lists, evidence sample log, copies of photos from the incident, and copies of disposal manifests.

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].

DETERMINATION OF LOSS:

A. Overview:

1. FOSC coordination was made by Sector San Francisco via Federal Project Number # A08006.
2. The incident involved the discharge of "oil" as defined in OPA 90, 33 U.S.C. § 2701(23), to navigable waters.
3. In accordance with 33 CFR § 136.105(e)(12), the claimant has certified no suit has been filed in court for the claimed uncompensated removal costs.
4. The claim was submitted within the six year statute of limitations. 33 U.S.C. § 2712(h)(1)
5. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that the majority of removal costs presented were for actions in accordance with the NCP and that the costs for these actions were indeed reasonable and allowable under OPA and 33 CFR § 136.205.

B. Analysis:

NPFC CA reviewed the actual cost invoices and dailies 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, to be consistent with the NCP or directed by the FOSC, and (4) whether the costs were adequately documented and reasonable.

Upon review of the claim submission, the NPFC has determined that the majority of the removal costs presented and incurred were billed appropriately at the time services were rendered. The NPFC performed independent research into the incident and obtained copies of the Coast Guard Pollution Reports and a copy of all evidence in the Coast Guard MISLE system.

The Claimant billed personnel time only in the amount of $3,138.51 from December 10, 2007 through December 16, 2007, equipment costs for OSPR vehicle was also billed in the amount of $82.50, and OSPR also billed $13.78 in indirect/admin costs.

The NPFC confirmed the presence of the Claimant throughout the incident response and activities.

The NPFC denies the $13.78 in indirect/admin costs as unsubstantiated and therefore not a proper use of the OSLTF.

On that basis, the Claims Manager hereby determines that the Claimant did in fact incur $3,221.01 of 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 #A08006-0001.

The Claimant states that all costs claimed are for uncompensated removal costs incurred by the Claimant for this incident. The Claimant represents that all costs paid by the Claimant are compensable removal costs, payable by the OSLTF as presented by the Claimant.

C. ***Determined Amount:***

The NPFC hereby determines that the OSLTF will pay $3,221.01 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # A08006-0001. All costs claimed are for charges paid for by the Claimant for removal actions as that term is defined in OPA and, are compensable removal costs, payable by the OSLTF as presented by the Claimant.

AMOUNT: $3,221.01

[redacted]

Claim Supervisor: [redacted]

Date of Supervisor's review: *4/30/12*

Supervisor Action: ***Approved***

Supervisor's Comments: