CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: A08029-0001
Claimant	: State of California
Type of Claimant	: State
Type of Claim	: Removal Costs
Claim Manager	: [redacted]
Amount Requested	: $7,770.61

FACTS:

Oil Spill Incident: On July 8, 2008, Coast Guard Marine Safety Detachment (MSD) Santa Barbara received notification from Coast Guard Sector LA Long Beach Command Duty Officer (CDO) of a grounded vessel, JOSEPHIEN, OFF THE Morro Bay South Jetty entrance, a navigable waterway of the US. California Department of Fish & Game, Office of Spill Prevention and Response (OSPR) jointly responded to the incident along with the Coast Guard.

The USCG opened a Federal Project Number – A08029 and hired ACTI for fuel removal aboard the vessel. Pollution Investigators that responded found approximately 10 gallons of diesel in the water where the vessel went aground. As the situation progressed, the vessel began to sink with the tide change. After accessing the situation, ACTI determined they would not be able to remove the fuel from the sunken vessel.

In order to safely remove the substantial threat, Ocean Blue Environmental was hired to conduct Phase 3 pollution response along with dive operations.[1] The incident was reported to the National Response Center (NRC) via report # 876593. The NPFC issued a Responsible Party Notification letter to [redacted] dated July 9, 2012.[2]

Description of Removal Activities for this claimant: OSPR performed joint investigation and assessment with the Coast Guard and remained on scene until all activities concluded.

The Claim: On June 26, 2012, OSPR presented a removal cost claim to the National Pollution Fund Center (NPFC) for reimbursement of their uncompensated removal costs in the amount of $7,770.61.

OSPR is claiming personnel expenses in the amount of $7,770.61.

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).

[1] See, USCG Pollution Report One dated July 9, 2008.
[2] See, NPFC RP letter dated July 9, 2012.

"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. PO [redacted] and PO [redacted] of Sector Santa Barbara provided FOSC coordination.
2. The incident involved the report of a discharge and substantial threat of discharge of "oil" as defined in OPA 90, 33 U.S.C. § 2701(23), to navigable waters.
3. The claim was submitted within the six year statute of limitations. 33 U.S.C. § 2712(h)(2)
4. A Responsible Party was determined for this incident. 33 U.S.C. § 2701(32).
5. 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.
6. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that the removal costs presented were for actions in accordance with the NCP, and if the costs for these actions were indeed reasonable and allowable under OPA and 33 CFR § 136.205.
7.

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 this claim submission, the NPFC verified the timesheets of hours worked by personnel in response to the incident and determined hours were billed appropriately as documented. The NPFC also confirmed the amounts billed were in accordance with the appropriate pay scale for the employees billed. On that basis, the Claims Manager hereby determines that the Claimant did in fact incur $7,770.61 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 #A08029-0001. The Claimant states that all costs claimed are for uncompensated removal costs incurred by the Claimant for this incident on July 8, 2008.

C. *Determined Amount:*

The NPFC hereby determines that the OSLTF will pay $7,770.61 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # A08029-0001. All costs claimed are for charges paid for or incurred 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: $7,770.61

Claim Supervisor: [redacted]

Date of Supervisor's review: ***7/23/12***

Supervisor Action: ***Approved***