

## CLAIM SUMMARY / DETERMINATION

<b>Claim Number:</b>	A11002-0001
<b>Claimant:</b>	State of California Department Fish & Wildlife
<b>Type of Claimant:</b>	State
<b>Type of Claim:</b>	Removal Costs
<b>Claim Manager:</b>	[REDACTED]
<b>Amount Requested:</b>	\$955.40

### FACTS:

#### The Incident

On 7 October 2010, the vessel, Pacific Tides, sank and discharged approximately 25 gallons of red dye diesel into the waters of the Oakland Estuary, a navigable waterway of the United States. At the time of the incident, the vessel was moored near the Dennison Street Bridge in the Oakland Estuary. The owner of the vessel was unable to meet his financial obligation to clean up the spill, so the United States Coast Guard (USCG) Sector San Francisco opened a Federal Project in order to handle the incident. U.S. Coast Guard, Sector San Francisco responded as the Federal On Scene Coordinator (FOSC). Response contractors, Parker Diving and NRC (NRC) Environmental Services were contracted to boom off the vessel and plug the vents of the sunken vessel. NRC was notified via report # 956288.

#### The Claim & Claimant

On 11 June 2013, this claim was presented to the Oil Spill Liability Trust Fund (OSLTF) via the National Pollution Funds Center (NPFC) by the State of California, Department of Fish and Wildlife for reimbursement of their uncompensated removal costs in the amount of \$955.40 for personnel costs. The Claimant's personnel, responded to the incident and were present on scene during response. The Claimant's presence on scene was corroborated by U. S. Coast Guard's official record.<sup>1</sup> See, MISLE Case Report and POLREP's issued as a result of this incident.

### 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".

<sup>1</sup> See, MISLE Case Report, 524974 & POLREP, Two & Final

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].

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:**

### **Overview:**

1. FOSC coordination was provided by Sector San Francisco via Federal Project Number A11002-0001.
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 136.195 (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 all of the removal costs presented were for actions in accordance with the NCP and the costs for these actions were indeed reasonable and allowable under OPA and 33 CFR 136.205

**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 claims submission, the NPFC has determined that all of the removal costs presented and incurred were billed appropriately at the time services were rendered. The NPFC confirmed via MISLE Case Report and POLREPs that the Claimant was present on scene during the incident response activities. The costs claimed are for personnel who responded to the incident. Their costs were in line with the established hourly rates for the labor categories involved.

**Determined Amount:**

The NPFC hereby determines that the OSLTF will pay \$955.40 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim number A11002-0001. All costs claimed are for charges associated with removal actions as that term is defined in OPA and are compensable removal costs payable by the OSLTF, as presented by the claimant.

**Amount: \$955.40**

Claim Supervisor 

Date of Supervisor's review: *7/1/13*

Supervisor Action: *Approved*