

## CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: A11024-0001
Claimant	: State of California
Type of Claimant	: State
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$590,280.02

### **FACTS:**

On March 11, 2011 at approximately 0713, a tsunami surge impacted several areas of the California coast line: Santa Cruz, Del Norte and San Luis Obispo Counties. The tsunami surge resulted from a tsunami that was generated by an earthquake in Japan. The U.S. Coast Guard, Sector San Francisco served as the federal onscene coordinator (FOOSC) and was in charge of the oil removal activities in these areas. The Coast Guard opened three federal project numbers (FPNs) to fund these areas: FPN #A11023 for Santa Cruz County; FPN #A11024 for Del Norte County, and FPN #A11025 for San Luis Obispo County. Sector San Francisco contracted with NRCES, Global Diving and MM Diving to conduct removal activities and to raise sunken vessels.

On April 28, 2011, the Federal Emergency Management Agency (FEMA) noticed the public of a Presidential declaration of a major disaster for the State of California for Del Norte and Santa Cruz Counties for public assistance.<sup>1</sup> This declaration entitled persons and governments in these counties affected by the tsunami to seek assistance under the Stafford Act.

One area impacted and the focus of this claim is Crescent City, Del Norte County. The tsunami surge impacted marinas and boats in the Crescent City Harbor. Some vessels in the Crescent City Harbor broke free from their moorings and sank.

Claimant sought, and the U.S. Coast Guard approved, a Pollution Removal Funding Authorization (PRFA) in the amount of \$144,000 to fund Claimant's personnel, travel, equipment and operating expenses for oil removal activities from March 11, 2011- March 20, 2011.

### **THE CLAIM AND CLAIMANT:**

On July 13, 2011, the State of California, Department of Fish and Game, Office of Spill Prevention and Response (OSPR), presented a claim for costs they incurred associated with the March 2011 Northern California Tsunami Disaster. OSPR is seeking reimbursement of \$590,280.02.

<sup>1</sup> FEMA-1968-DR; Effective Date April 18, 2011, public notice in 76 FR 23831-32.

OSPR submitted copies of the following: cover letter, dated 7/6/2011; an OSLTF Optional Claim Form, a California Summary Voucher Form 1081 that indicates the enclosed costs are associated with Federal Project Numbers A11024 & A11025, a OSPR Summary of Costs Incurred Sheet, a listing of 143 employees listed under personnel expenses, travel costs associated with 60 individuals, a listing of miscellaneous operating expenses, a listing of OSPR owned vehicle expenses, and a listing of OSPR owned facility, equipment and supply expenses, various supporting documents and receipts, a document entitled scope of work, and an itemized listing of costs also submitted to FEMA under the Presidential Disaster Declaration for this incident.

The NPFC requested additional information in August 2011, seeking (1) a breakdown of each person billed, their start/stop dates and duties for each day, the identification of the vessel for which that person was conducting pollution removal activities, and (2) the identification of each piece of equipment and materials billed, the hours billed, the location and the person using that equipment or material, and the vessel for which it was conducting pollution removal activities.

The NPFC denied the claim on April 3, 2012 because Claimant failed to provide sufficient and specific information establishing that the costs claimed were associated with removal activities as required by OPA, that the activities were approved by the FOSC or consistent with the NCP. Specifically, Claimant did not cross reference each cost to a particular vessel demonstrating a pollution threat as opposed to disaster response work overall that would be more appropriately covered under the presidential Disaster Declaration for the State of California. The NPFC recommended that if Claimant sought reconsideration it should provide the information requested in the August 2011 request for further information (listed above).

#### **REQUEST FOR RECONSIDERATION:**

On May 30, 2012, the Claimant sent a request for reconsideration to the NPFC stating they would like the NPFC to reconsider the claim. The Claimant made three arguments in support of its reconsideration request and provided additional documentation to support its arguments. The arguments are as follows:

1. Claimant asserts it coordinated with the Federal On Scene Coordinator (FOSC) for its response actions associated with both the Santa Cruz County location (identified under FPN # A11023) and the Crescent City location (identified under FPN # A11024). The Claimant provided a Memo from the FOSC, CAPT [REDACTED] dated May 23, 2012 providing coordination to the Claimant for its response actions undertaken during this tsunami incident;
2. Claimant asserts that it reviewed its claim submission to determine if any costs presented were for general tsunami disaster response vice oil pollution response. Claimant further stated that it identified \$51,271.84 in general tsunami response costs associated with FPN # A11023 that should be removed from the claim submission. Claimant stated that it will accept

\$144,000.00 pursuant to the PRFA approved by the FOSC for costs associated with the Santa Cruz County location;

3. The Claimant provided a list of all response actions undertaken at the Crescent City location (FPN # A11024) for which it requests compensation as oil pollution response. It is important to note that the list, which is broken down by date, only identifies 15 days which it can identify vessels to which they responded, along with three days of demob from response. The other 15 days claimed do not evidence activities affiliated with specific vessel response.

### **NPFC Determination on Reconsideration**

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 § 136.203, “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].

The NPFC considered all the documentation submitted by the Claimant. The request for reconsideration must be in writing and include the factual or legal grounds for the relief requested, providing any additional support for the claim. 33 CFR 136.115(d).

The NPFC performed a *de novo* review of the entire claim submission upon reconsideration.

Upon review of all of the Claimant’s information, this determination will first address all the costs denied on reconsideration. The US Coast Guard initially contracted with National Response Corporation Environmental Services (NRCES) and Global Diving and Salvage to handle assessment and mitigation of any pollution threat from damaged/sunken vessels.

The Coast Guard contracted with the Claimant for a PRFA under FPN # A11023, specifically for oil removal activities and services between March 11, 2011 and March 20, 2011 in the Santa Cruz, CA vicinity. The Coast Guard approved payment of \$144,000 and Claimant was paid \$144,000.00 for their response work under the PRFA for the Santa Cruz response (FPN #A11023) on or about March 4, 2013.<sup>2</sup>

Based on the USCG approving \$144,000.00 in costs under the PRFA, the NPFC has identified each of those line items associated with payment of that PRFA and those line

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<sup>2</sup> See, Appendix A to PRFA for FPN # A11023.

items have been denied in this determination as having been compensated. Those line items are delineated in green in the attached NPFC Summary of Costs spread sheet.<sup>3</sup>

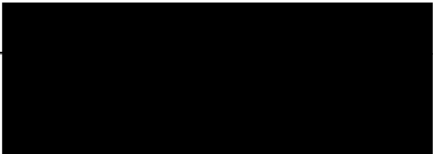
Costs associated with general tsunami response actions in the amount of \$51,271.84 and associated with FPN # A11023.<sup>4</sup> These costs were withdrawn by the Claimant in Exhibit 4 attached to its Request for Reconsideration. Those line items are delineated in purple in the attached NPFC Summary of Costs spread sheet.

Finally, the NPFC denies \$211,645.47 in costs because the activities associated with these costs were not identified by Claimant as oil spill response activities to a specific vessel. The NPFC reviewed all of the handwritten daily logs for personnel and was not able to identify descriptions of pollution response activities associated with vessels; therefore, the NPFC considers these to be tsunami response and security. These denied costs are delineated as white in the NPFC Summary of Costs spread sheet.

The Claimant identified 15 days for which it asserts it performed oil spill vessel response and for which it provided the names of the vessels to which it responded. The NPFC has approved a total of \$183,362.71 in oil spill pollution response costs. This includes the allowance of the three day decontamination and demobilization activities undertaken by the Claimant from April 10<sup>th</sup> through the 12<sup>th</sup>, 2011 following the end of their response to this incident. All line items approved for payment are delineated in teal in the NPFC Summary of Costs spread sheet. The NPFC determines that those costs have been coordinated with the FOSC in accordance with 33 CFR §136.203 & 205.<sup>5</sup>

Based on the foregoing, the NPFC hereby determines that it will offer \$183,362.71 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # A11024-0001. All costs are for charges incurred by the Claimant for removal actions as defined in OPA and are compensable removal costs, payable by the OSLTF.

**AMOUNT: \$183,362.71**

Claim Supervisor: 


Date of Supervisor's review:

Supervisor Action: *Offer on reconsideration approved*

Supervisor's Comments:

<sup>3</sup> See, NPFC Summary of Costs spread sheet

<sup>4</sup> See, Claimant's Request For Reconsideration letter, page 2, section III, subparagraph 2.

<sup>5</sup> See, Memo from CAPT  FOSC, to NPFC dated May 23, 2012.