

## CLAIM SUMMARY / DETERMINATION

<b>Claim Number:</b>	917024-0001
<b>Claimant:</b>	State of California Dept. of Fish & Wildlife, OSPR
<b>Type of Claimant:</b>	State
<b>Type of Claim:</b>	Removal Costs
<b>Claim Manager:</b>	██████████
<b>Amount Requested:</b>	\$5,322.53

### **FACTS:**

On February 12, 2015, a diesel fuel spill was reported in the Clinton Basin of Alameda County, California. The Clinton Basin is a navigable water of the U.S. The U.S. Coast Guard Incident Management Division (Sector San Francisco) hired a contractor to clean up the spill. The responsible party is unknown and the spill is considered a mystery spill. Wildlife was affected and one bird was removed for care and cleaning.

### **CLAIMANT AND CLAIM:**

The Claimant is the California Department of Fish and Wildlife, Office of Spill Prevention and Response (OSPR). It seeks reimbursement of its uncompensated “response costs” related to the personnel time, vehicle costs, sample analysis costs and animal rescue contractor costs that it expended in order to respond to the incident. The Claimant requests reimbursement in the total amount of \$5,322.53.

### **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.

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:**

#### **A. Overview:**

1. The U.S. Coast Guard Incident Management Division (Sector San Francisco) hired a contractor to clean up the spill. The response was directed by a FOSC or determined by him/her to be consistent with the National Contingency Plan (NCP). 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4);
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 C.F.R. § 136.105(e)(12), the claimant certified that it has not filed an action in court for the claimed costs;
4. The claim was submitted within the six-year statute of limitations. 33 U.S.C. § 2712(h)(1);
5. As a State, the Claimant can submit its claim directly to the Fund under 33 U.S.C. §2713.

#### **B. Analysis:**

The NPFC Claims Manager reviewed the documentation provided by the Claimant. 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.

The NPFC hereby determines that \$3,826.71 of the Claimant’s costs represent necessary and reasonable actions that were performed in accordance with the NCP, and that the rates charged by the Claimant were in accordance with the Claimant’s published rates at the time services were provided. Further, the third party wildlife rescue contractor’s costs and activities were reasonable and necessary and properly documented. \$1,495.82 of the claimed costs are denied. The costs related to the Information Officer totaling \$800.25 for labor and \$261.71 for travel expenses are unjustified as response costs. They are not costs for minimizing or mitigating the effects of an oil discharge. Additionally, the \$433.86 for the Environmental Program Manager is denied because there is no documentation in the record showing his presence on scene or any activities performed during the response.

The NPFC hereby determines that the OSLTF will pay **\$3,826.71** as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #917024-

0001. All reimbursable costs are for charges 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.

Claim Supervisor: [REDACTED]

Date of Supervisor's review: *6/7/17*

Supervisor Action: *Approved*