

CLAIM SUMMARY / DETERMINATION

Claim Number:	917041-0001
Claimant:	State of Louisiana
Type of Claimant:	State
Type of Claim:	Removal Costs
Claim Manager:	[REDACTED]
Amount Requested:	\$1,578.28

FACTS:

Oil Spill Incident: On December 17, 2013, the Louisiana Department of Wildlife and Fisheries (LDWF) received a report indicating an oily sheen from an unknown source in Barataria Bay.¹ Barataria Bay flows into the Gulf of Mexico, both of which are navigable waterways of the US.

On December 18, 2013, the United States Coast Guard (USCG) Air Station New Orleans made an over-flight of the area,² indicating a sheen emanating from the south and east sides of both Queen Bess and Mendicant Islands. The following day, state personnel traveled to the site to investigate the waters and shoreline in and around both Queen Bess and Mendicant Islands. They observed no confirmable observations or collections of oiled wildlife during the visit; however, there were two white pelicans with suspicious chest stains and a clump of oiled, smooth cord grass was detected. The oil sheen in and around Queen Bess Island varied between two and six inches wide and approximately 300 yards long, whereas the oil sheen in and around Mendicant Island was approximately three inches wide and 75 yards long. State personnel felt that there was not enough oil on site to have any meaningful impacts to wildlife and this did not recommend that cleanup activities be initiated.

No Responsible Party (RP) has been identified. This incident was reported to the National Response Center (NRC) via NRC Report # 1068791.³

Description of removal actions performed:

LDWF response actions included meeting with, working with, and following up with State Trustees and USCG, as well as preparing the spill report regarding the incident.

THE CLAIMANT AND THE CLAIM:

On September 12, 2017, the Louisiana Oil Spill Coordinator's Office (LOSCO) presented a removal cost claim on behalf of the LDWF to the NPFC for reimbursement of its uncompensated removal costs in the amount of **\$1,578.28** for its services that it provided on December 17, 2013 through December 26, 2013. These costs include travel/response time, equipment (boat and mileage) and materials (field backpacks).

¹ See, LDWF Report of unknown sheen undated.

² See, Sector New Orleans Case Report # 666383, opened 12/17/2013.

³ See, NRC Report # 1068791, opened 12/17/2013.

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 OF LOSS:

A. Overview:

1. The Claimant’s removal actions were coordinated with the FOSC via USCG Sector New Orleans.⁴ 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4);
2. The incident involved a discharge of “oil” as defined in OPA 90, 33 U.S.C. § 2701(23), to navigable waters.
3. The claim was submitted to NPFC within the six year statute of limitations. 33 U.S.C. § 2712(h)(1).
4. A Responsible Party has not been identified. 33 U.S.C. § 2701(32).
5. In accordance with 33 CFR § 136.105(e)(12), the Claimant has certified that no suit has been filed by or on behalf of the Claimant in court for the claimed uncompensated removal costs.
6. The NPFC Claims Manager has thoroughly reviewed all documentation submitted by the Claimant with the claim and has determined which of the removal costs presented were incurred for removal actions taken by the Claimant in accordance with the National Contingency Plan (NCP), and whether the costs for these actions were reasonable and allowable under OPA 90 and 33 CFR § 136.205.

B. Analysis:

The NPFC Claims Division (CA) reviewed the cost invoices and dailies submitted by the Claimant to determine whether the Claimant had incurred all costs claimed. The review focused on: (1) whether the actions taken were compensable “removal actions” under OPA 90 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 were reasonable and necessary.

The Claimant, LOSCO, submitted a well-documented claim to demonstrate that the actions it performed were OPA 90 removal actions, and that the work performed mitigated the effects of the oil spill that was discharged into Barataria Bay and also threatened the Gulf of Mexico, both navigable waterways of the US. Upon adjudication of the claim, the NPFC verified that the rates charged were billed in accordance with the Labor and Equipment Records provided to LOSCO by LDWF. The NPFC confirmed the dates and times charged by State personnel along with a description of the nature of the work being invoiced. As such, the NPFC has determined that the amounts invoiced and paid, were reasonable.

Based upon the evidence presented in this claim submission and for the actions undertaken by LOSCO and all associated state entities, the NPFC hereby determines that LOSCO incurred **\$1,578.28** in costs that were reasonable and necessary, and that amount is payable by the OSLTF

⁴ See, USCG Sector New Orleans Case Report # 666383, opened 12/17/2013.

as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #917021-0001. Those costs claimed are for uncompensated removal costs incurred by the Claimant for this incident for removal actions by the claimant on December 19, 2013 that are consistent with the NCP.

C. Determined Amount:

The NPFC hereby determines that the OSLTF will pay **\$1,578.28** as full compensation for the claimed removal costs incurred by the claimant and submitted to the NPFC under claim # 917041-0001.

AMOUNT: \$1,578.28

Claim Supervisor: [REDACTED]

Date of Supervisor's review: *9/20/17*

Supervisor Action: *Approved*