

## CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: A15011-0001
Claimant	: State of California Department Fish & Wildlife, Office of Spill Prevention and Response
Type of Claimant	: State
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$15,981.79

### **FACTS:**

- 1. Oil Spill Incident:** The USCG Sector San Francisco Command Center (SCC SF) reports<sup>1</sup> that on February 10, 2015, it received a notification from the NRC regarding a mystery sheen in the Alameda Marina. The reporting party stated that a sheen was observed from an unknown source with a strong diesel odor. SCC SF briefed the Incident Management Division (IMD) and District 11 (D11). D11 briefed Security on base as well as the base Officer On Duty (OOD). The OOD investigated the Base, as well as the cutters moored and no discrepancies were found. Alameda Fire Battalion 1 arrived on scene and saw a very light sheen throughout the Alameda Marina and estuary, but could not find the source. SCC SF briefed IMD on the information from Battalion 1, and IMD stated it would follow up.

On February 13, 2015, SCC SF received notification from IMD that the OSRO, National Response Corporation (NRC), finalized the demobilization of its resources. Cleanups were considered complete at this time.

This incident was reported to the National Response Center via incident #1162655.<sup>2</sup>

- 2. Description of removal actions performed:** The Claimant, OSPR, responded on-scene, sampling the release, as well as alerting the public via various sources of media—news, radio and social media.

### **THE CLAIMANT AND THE 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 \$15,981.79 for the services provided February 10 through 13, 2017. This claim is for removal costs based on the rate schedule in place at the time services were provided. A copy of the vendor rate schedule is provided with the claim.

### **APPLICABLE LAW:**

<sup>1</sup> See, Case Report 716267, dated 2/11/2015.

<sup>2</sup> See, NRC Report # 1107844, dated 2/10/2015.

"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 at 33 USC § 2701(31) 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 USC §2713(a), all claims for removal costs or damages must (with certain exceptions not applicable here) be presented first to the responsible party or guarantor of the designated source of the incident. Then, as provided in 33 U.S.C. §2713(d), "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 Director, 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."

In addition, 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 Sector San Francisco FOSC via Sector San Francisco Case Report # 716267.<sup>3</sup> 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 further documentation provided by USCG Sector San Francisco, 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 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 \$10,762.08 of the Claimant’s costs represent OPA compensable response 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. \$1,513.89 of the claimed costs are denied. The costs related to the Information Officer totaling \$1,309.50 for labor and \$204.39 for travel expenses are not OPA removal costs. They are not costs for minimizing or mitigating the

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<sup>3</sup> See, Case Report 716267, dated 2/11/2015.

effects of an oil discharge. Additionally, \$3,705.82 in claimed Environmental Scientists and equipment/material costs related to them are also denied because there is no documentation in the record demonstrating that their presence on scene or their activities performed during the response were associated with the removal of oil. Should the claimant seek reconsideration of these denied costs, it would need to provide the proper support/documentation for them. Please see the attached NPFC Summary of Costs spreadsheet for further itemization of the denied costs.<sup>4</sup>

The NPFC hereby determines that the OSLTF will pay **\$10,762.08** as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #A15011-0001. 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. Of the claimed costs, a total of \$5,219.71 are denied.

**AMOUNT: \$10,762.08**

Claim Supervisor: [REDACTED]
Date of Supervisor's review: <i>7/17/17</i>
Supervisor Action: <i>Approved</i>
Supervisor's Comments:

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<sup>4</sup> See, NPFC Summary of Costs spreadsheet.