

CLAIM SUMMARY / DETERMINATION

Claim Number:	A15019-0001
Claimant:	State of California Department of Fish and Wildlife
Type of Claimant:	State
Type of Claim:	Removal Costs
Claim Manager:	[REDACTED]
Amount Requested:	\$860.75

FACTS:

Oil Spill Incident: On May 30, 2015, the State of California Department of Fish and Wildlife’s Office of Spill Prevention and Response (OSPR) was notified by the United State Coast Guard’s (USCG) Incident Management Division (IMD) of the F/V DENISE being grounded in the Half Moon Bay, California, and a resulting petroleum spill consisting of approximately 60 gallons of diesel fuel.¹ OSPR personnel coordinated with USCG IMD, who permitted OSPR to assist with the response.² The F/V DENISE owner, Responsible Party (RP) [REDACTED], was notified by IMD of his liability and signed a Notice of Violation on May 30, 2015.

Description of Removal Activities for this claimant: OSPR personnel performing on-site investigation confirmed the F/V DENISE as the source of the petroleum oil spill. The USCG IMD hired Parker Diving Services, who used several large totes to pump off the remaining 395 gallons of diesel from the F/V DENISE fuel tank.³

The National Oceanic and Atmospheric Administration (NOAA) was involved in post-emergency cleanup efforts and funded the additional hiring of Parker Diving Services to remove the F/V DENISE from the Half Moon Bay. Cleanup of the spill was reported complete on June 12, 2015.

The Claim: On May 12, 2017, the State of California Department of Fish and Wildlife submitted a removal cost claim to the National Pollution Fund Center (NPFC) for reimbursement of their uncompensated removal costs in the amount of \$860.75.⁴

The NPFC notified the RP of his responsibility to pay removal costs associated with the incident on May 30, 2015,⁵ but the RP did not respond to NPFC. The NPFC sent an RP Notification Letter to the RP dated May 12, 2017.⁶ The RP did not pay any costs associated with the claimants removal costs, nor have they responded to NPFC.

¹ See FPN A15019 POLREP 2 dated June 15, 2015.

² See State of California Department of Fish and Wildlife Claim Package dated May 12, 2017.

³ See Quantification Report from OSPS [REDACTED]

⁴ See State of California Department of Fish and Wildlife Claim Package dated May 12, 2017.

⁵ See Bill #A15019-0001.

⁶ See the RP Notification Letter dated May 12, 2017.

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".

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. USCG Sector San Francisco provided FOSC coordination. 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 CFR § 136.105(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 the removal costs presented were for actions in accordance with the NCP and that the costs for these actions were indeed reasonable and allowable under OPA and 33 CFR § 136.205.

B. 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 to be consistent with the NCP in accordance with the NPFC delegation of authority for determination of consistency, and (4) whether the costs were adequately documented and reasonable.

The NPFC has determined that all of the costs incurred by the Claimant for this incident were reasonable and necessary. Upon review of the information provided by the Claimant, the NPFC has determined that the payable costs were billed in accordance with the state’s current personnel rates in place at the time the services were rendered and were determined by the FOSC to be consistent with the NCP.

The NPFC hereby determines that the OSLTF will pay \$860.75 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # A15019-0001. All costs claimed are for charges paid for 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.

AMOUNT: \$860.75

<p>[REDACTED]</p> <p>Claim Supervisor: [REDACTED]</p> <p>Date of Supervisor's review: <i>5/16/17</i></p> <p>Supervisor Action: <i>Approved</i></p>
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