CLAIM SUMMARY / DETERMINATION

Claim Number:	918016-0001
Claimant:	State of California Dept. of Fish & Wildlife, OSPR
Type of Claimant:	STATE
Type of Claim:	Removal Costs
Claim Manager:	[redacted]
Amount Requested:	$19,252.82

FACTS:

On November 3, 2012, at approximately 1715 hours, a California Department of Fish and Wildlife Lieutanant received notice of an oil sheen resulting from a broken pipeline that was dripping into the water at Berth 164 of the Valero Marine Terminal in the Port of Los Angeles. U.S. Coast Guard Sector Los Angeles/Long Beach sent a pollution team to the area to assess the situation. They determined that the pipeline support structure failed. About 35 gallons of crude oil leaked from the broken pipeline. A Unified Command (UC) was set up. Valero Marine Terminals initially took responsibility for the hiring of an Oil Spill Response Organization. Valero did not claim ownership of the pipeline. The response continued until November 15, 2012, when no more recoverable oil could be found.[1] The UC determined that all cleanup endpoints had been met as of that date.[2] No responsible party has been designated at this point, although it appears that there are several potential viable responsible parties.

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 and vehicle costs that it expended in order to respond to the incident. The Claimant requests reimbursement in the total amount of $19,252.82.

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

[1] Cal-OES report #12-6657, Narrative p. 3 of 4.
[2] Attachment B to Cal-OES report #12-6657, UC signoff of cleanup endpoints being met

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 NPFC has determined that the actions undertaken by the Claimant were coordinated with the USCG FOSC (Sector Los Angeles/Long Beach) and are consistent with the NCP. This determination is made in accordance with the provisions of sections 1002(b)(1)(B) and 1012(a)(4) of OPA, 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. 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.
5. 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 consistent with the NCP or directed by the FOSC, and (4) whether the costs were adequately documented, and were reasonable and necessary.

The NPFC hereby determines that $13,522.44 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.

The NPFC denies the Claimant's "Fed ICRP 38.44%" markup applied to personnel in this claim, because this is an indirect cost for which the Claimant has not provided actual cost documentation detailing the itemized costs associated with this percentage. Therefore, the NPFC took the claimant's 2012 rate schedule hourly rate without the Indirect Cost Rate Proposal (ICRP) percentage ($50.93/hour for the Fish and Game Lieutenant (Supv), $53.77/hour for the Oil Spill Prevention Specialist, $45.64/hour for the Fish and Game Warden), and $72.54/hour for the Environmental Specialist, and approved the documented hours provided in the claim with that rate. The total amount approved for the Fish and Game Lieutenant is $6.366.25, $967.86 for the Oil Spill Prevention Specialist, $638.96 for the Fish and Game Warden, and $5,189.77 for the Environmental Scientist. The remaining ICRP percentage costs are unsubstantiated costs and are denied because the NPFC is unable to adjudicate the merits of the indirect cost by way of actual documentation. Additionally, the personnel costs for the Fish and Game Lieutenant on January 24, 2013 and November 25, 2014, are denied because there are no daily activity reports or other documents to support the hours charged or show the activities performed. Further, the Cal-OES incident report and Unified Command's Endpoint Signoffs provided by the Claimant reflect that the incident response ended on November 15, 2012. The charges for these two days are too remote in time to be compensable for this incident.

The vehicle mileage costs totaling $359.60 are payable as presented.

The NPFC hereby determines that the OSLTF will pay **$13,522.44** as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #918016-0001. 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 **$5,730.38** are denied.

DETERMINED AMOUNT: $13,522.44

[redacted]

Claim Supervisor: [redacted]

Date of Supervisor's review: *3/5/18*

Supervisor Action: *Approved*