

CLAIM SUMMARY / DETERMINATION

Claim Number:	918022-0001
Claimant:	California OSPR
Type of Claimant:	STATE
Type of Claim:	Removal Costs
Claim Manager:	██████████
Amount Requested:	\$1,546.16

FACTS:

Oil Spill Incident: On October 5, 2016, the State of California's Office of Spill Prevention and Response (OSPR) was notified of "a sinking 27-foot motor vessel in Morro Bay State Park Marina."¹ The Morro Bay State Park Marina is located on Morro Bay, a navigable waterway of the United States. Morro Bay Harbor Patrol responded to the incident, reporting a 27-foot motor vessel, the MISS KIMMY, had submerged near its slip at the marina.² The M/V MISS KIMMY reportedly released a teaspoon of fuel into Morro Bay, creating a sheen around the sunken vessel. The USCG Federal On-Scene Coordinator's Representative (FOSCR), MST2 ██████████ (MST2 ██████████), made contact with the owner of the MISS KIMMY, Mr. ██████████ (Mr. ██████████), on October 5, 2016. Mr. ██████████ indicated that "there was approximately 75 gallons of gasoline in the vessel's fuel tank."³

Description of Removal Activities for this Claimant: OSPR Fish and Game Warden, Mr. ██████████ (Mr. ██████████), responded to the oil spill site on October 5, 2016, observing the M/V MISS KIMMY submerged at the dock with its bow and stern lines still attached. The harbor patrol responded to the oil spill incident by placing absorbent boom around the vessel. The following morning, Mr. ██████████ again responded to the incident site, assisting in the supervision of the contracted Oil Spill Removal Organization (OSRO), Global Diving Service (Global), that planned to attach lift bags to the sunken vessel for the purpose of removing it from the water. Subsequent to the vessel being lifted to the surface, Global pumped out the bilge and fuel tank by utilizing a 120-barrel vacuum truck. "Pumping operations were completed by 1550hrs and approximately 120 gallons of fuel/oily water mixture was removed."⁴ The MISS KIMMY was completely removed from the water and towed later that afternoon.

Presentment to the Responsible Party: By letter dated October 5, 2016, the USCG Marine Safety Detachment (MSD) Santa Barbara issued Mr. ██████████ a Notice of Federal Interest (NOFI) for an Oil Pollution Incident, identifying Mr. ██████████ as a potential responsible party for the oil spill incident. Subsequently, the State of California OSPR presented Mr. ██████████ with its incurred costs in the amount of \$1,605.69 which includes all amounts presented to the National Pollution Funds Center (NPFC) for personnel and vehicle usage, as well as an administrative cost not requested of the NPFC in the amount of \$36.24. OSPR alleges that this amount is directly related to personnel and transportation costs resulting from their response to this incident.

¹ See page 2 of the State of California Department of Fish and Wildlife Narrative/Supplemental form WPD 6a dated October 5, 2016.

² *Id.*

³ See page 3 of the State of California Department of Fish and Wildlife Narrative/Supplemental form WPD 6a dated October 5, 2016.

⁴ *Id.*

The Claim and Reconsideration: On January 24, 2018, OSPR submitted a removal cost claim to the National Pollution Funds Center (NPFC) for reimbursement of its uncompensated removal costs for state personnel and equipment costs in the amount of \$1,546.16.⁵ This amount excludes the original \$36.24 in administration costs and \$23.29 in additional personnel costs originally presented to the RP. Specifically, OSPR is claiming \$1,434.80 in personnel costs and \$111.36 in vehicle usage costs.

On February 8, 2018, the NPFC issued an offer to the Claimant in the full amount requested and it was not until after the offer was issued, that the NPFC realized that the claim consisted of \$328.44 in “Federal ICRP 29.68%” markup that was applied to personnel labor costs in this claim. Upon the realization of indirect costs claimed and included, the NPFC called the Claimant and left a voice message for Ms. [REDACTED] and also followed the call up with an email advising that the offer extended inadvertently included the approval of unsubstantiated indirect rates and as such, the NPFC asked the Claimant to respond if it agreed to a reconsideration so that the NPFC could issue a proper offer for compensation.⁶⁷

DETERMINATION OF LOSS:

A. Overview:

1. MST2 [REDACTED] provided FOSC coordination⁸ 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. Reconsideration 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 by the FOSC, to be consistent with the NCP or directed by the FOSC, and (4) whether the costs were adequately documented and reasonable.

⁵ See, California Department of Fish and Wildlife OSPR Incident Billing form dated January 10, 2018.

⁶ See, Email dated February 8, 2018 from [REDACTED], NPFC to [REDACTED], CA OSPR.

⁷ See, Email dated February 12, 2018 from [REDACTED], CA OSPR to [REDACTED], NPFC

⁸ See, USCG Notice of Federal Interest for an Oil Pollution Incident dated October 5, 2016.

The NPFC has confirmed that the rates charged by the Claimant are in accordance with the state's published rates at the time services were rendered but also included unsubstantiated indirect rates for overhead on personnel hours. The NPFC has denied the indirect rates in the total amount of \$328.44 as they are unsubstantiated and therefore not an OPA compensable cost. All other claimed costs however are supported by the record and based on the Federal On Scene Coordinator's direction and oversight, the response was determined to be reasonable, necessary and performed in accordance with the NCP and as such, is approved.

The NPFC hereby determines that the OSLTF will pay \$1,217.72 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 918022-0001. 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: \$1,217.72

Claim Supervisor [REDACTED]

Date of Supervisor's review: *2/14/18*

Supervisor Action: *Reconsideration Approved*

Supervisor's Comments: