

CLAIM SUMMARY / DETERMINATION

Claim Number:	917007-0002
Claimant:	International Bird Rescue
Type of Claimant:	OSRO
Type of Claim:	Removal Costs
Claim Manager:	[REDACTED]
Amount Requested:	\$124,234.11 ¹
Action Taken:	Denied

EXECUTIVE SUMMARY:

On January 16, 2015 at approximately 0900 hours, the State of California Department of Fish and Wildlife's Office of Spill Prevention and Response (OSPR), in its capacity as the State On Scene Coordinator (SOSC), was notified by East Bay Regional Park's (EBRP) Supervisor [REDACTED] of a wildlife incident caused by an unknown substance found along Hayward Shoreline Park in Hayward, California.² The oil-like substance washed in via the San Francisco Bay, a navigable waterway of the United States. The SOSC and Claimant responded to the Hayward incident location during the morning hours, recovering a large amount of oiled birds by an unknown oil-like substance. Emergency samples were taken and sent for quick analysis.³

At approximately 12:30 hours, the SOSC received notification via National Response Center (NRC) report # 1105833 that was made by a member of Sector San Francisco Bay.⁴ The SOSC arranged an overflight following the reporting of an additional wildlife event in the San Leandro area location. The SOSC coordinated with the Federal On Scene Coordinator (FOSC). Lab results ultimately revealed the product to be palm oil⁵ and no Responsible Party (RP) was determined.⁶

International Bird Rescue, ("IBR" or Claimant) became involved when EBRP personnel contacted the IBR hospital advising that they were bringing sixty-nine (69) contaminated animals to their facility for care and rehabilitation.⁷ The NPFC has thoroughly reviewed all documentation obtained and submitted with the claim, analyzed the applicable law and regulations, and after careful consideration has determined that the claim is denied on the basis that the Claimant failed to meet its burden in supporting the costs claimed.

¹ The Claimant amended its sum certain for a third time via an OSLTF claim form dated January 13, 2020 when it provided its final additional documentation. The original sum certain was \$101,560.45 via OSLTF claim form dated August 21, 2019. The claimant changed its sum certain a second time in the amount of \$122,539.41 dated January 6, 2020 while providing additional information.

² State of California Department of Fish and Wildlife Narrative/Supplemental Report dated January 15, 2015, in Second Additional Information Request, Attachment 1d.

³ State of California Department of Fish and Wildlife Narrative/Supplemental Report dated January 15, 2015, in Second Additional Information Request, Attachment 1d.

⁴ National Response Center (NRC) Report # 1105833 dated January 16, 2015 reporting a sheen affecting hundreds of birds along the shoreline of San Francisco Bay, a navigable waterway of the United States.

⁵ USEPA National Enforcement Investigation Center (NEIC) Analytical Results Memorandum dated April 15, 2015.

⁶ State of California Department of Fish and Wildlife Narrative/Supplemental Report dated January 15, 2015, in Second Additional Information Request, Attachment 1d.

⁷ IBR additional information letter to NPFC dated September 24, 2019.

I. INCIDENT AND RECOVERY OPERATIONS:

Incident

On January 16, 2015, at approximately 0900 hours, the State of California Department of Fish and Wildlife's Office of Spill Prevention and Response (OSPR), in its capacity as the State On Scene Coordinator (SOSC), was notified by East Bay Regional Park's (EBRP), Supervisor [REDACTED] of a wildlife incident caused by an unknown substance found along Hayward Shoreline Park in Hayward, California.⁸ The SOSC and Claimant responded to the Hayward incident location during the morning hours, recovering a large amount of oiled birds by an unknown oil-like substance. Emergency samples were taken and sent for quick analysis.⁹

At approximately 12:30 hours, the SOSC received notification via National Response Center (NRC) report # 1105833 that was made by a member of Sector San Francisco Bay.¹⁰ The SOSC arranged an overflight following the reporting of an additional wildlife event in the San Leandro area location. The United States Coast Guard (USCG) Sector San Francisco, in its capacity as the Federal On Scene Coordinator (FOSC) for the incident, coordinated with SOSC and handed off the jurisdictional lead to them to oversee the response due to the incident's substantial wildlife impact.¹¹ OSPR [REDACTED] was the SOSC for this incident. The SOSC and EBRP personnel activated the Oiled Wildlife Care Network (OWCN) due to the discovery of hundreds of live and dead birds in various locations throughout the San Francisco Bay shoreline.

IBR captured, washed and cared for oiled birds according to the US Fish and Wildlife guidelines and regulations.¹² Shoreline assessment teams, on water boat crews, and helicopter flights over the Bay were all unable to find a source for the spill.¹³

Recovery Operations

On January 16, 2015, IBR commenced activities related to the intake, stabilization, washing and conditioning of birds rescued from locations along the San Francisco Bay shoreline in Hayward and San Leandro, California, affected by the oil spill. The process of removing oil from birds could not be completed without first stabilizing the bird in the field.¹⁴ After the bird was stabilized, it was moved to IBR's Rehabilitation Center for further rehabilitative medical procedures and release into their natural habitat.¹⁵

⁸ State of California Department of Fish and Wildlife Narrative/Supplemental Report dated January 15, 2015, in Second Additional Information Request, Attachment 1d.

⁹ State of California Department of Fish and Wildlife Narrative/Supplemental Report dated January 15, 2015, in Second Additional Information Request, Attachment 1d.

¹⁰ National Response Center (NRC) Report # 1105833 dated January 16, 2015 reporting a sheen affecting hundreds of birds along the shoreline of San Francisco Bay, a navigable waterway of the United States.

¹¹ Email from FOSC to NPFC RE: NCP actions, dated February 28, 2017 from claim # 917007-0001.

¹² Best Practices for Migratory Bird Care during Oil Spill Response dated November 2003 prepared by the US Fish and Wildlife Service.

¹³ State of California Department of Fish and Wildlife Arrest/Investigation Report dated January 15, 2015, page 4 of 5.

¹⁴ 2015 East Bay Mystery Goo Event International Bird Rescue Event Summary, in Second Additional Information Request, Attachment 1c.

¹⁵ Best Practices for Migratory Bird Care During Oil Spill Response dated November 2003 prepared by the US Fish and Wildlife Service, Stabilization and Rehabilitation.

The rehabilitation process begins by stabilizing the oiled bird(s) and in this situation, the birds were transported to a rehabilitation facility in order to be stabilized and rehabilitated, when practicable, then released back to the environment. IBR mobilized out of state response personnel to assist in the recovery and rehabilitation activities, therefore, IBR authorized travel and third party expenses to out of state personnel reporting to the incident.¹⁶ IBR operations were completed on April 10, 2015, when the last bird was released.¹⁷

II. CLAIMANT A/ND NPFC:

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).¹⁸ A claim for removal costs may be presented by any claimant.¹⁹ On August 27, 2019, the NPFC received a claim for uncompensated removal costs from International Bird Rescue dated August 21, 2019 in the amount of \$101,560.45. The claim included an OSLTF Claim Form, an additional continuation page with answers to questions #9 through #11 of the OSLTF claim form, credit card statements for employees who worked at the incident, Salaries and Wages excel document used as Personnel Time sheets, subcontractor invoices, and Bird Intake Report.²⁰

III. DETERMINATION PROCESS:

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).²¹ As a result, 5 U.S.C. § 555(e) requires the NPFC to provide a brief statement explaining its decision. This determination is issued to satisfy that requirement.

When adjudicating claims against the OSLTF, the NPFC acts as the finder of fact. In this role, the NPFC considers all relevant evidence, including evidence provided by claimants and evidence obtained independently by the NPFC, and weighs its probative value when determining the facts of the claim.²² The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.²³ If there is conflicting evidence in the record, the NPFC makes a determination as to what evidence is more credible or deserves greater weight, and makes its determination based on the preponderance of the credible evidence.

IV. DISCUSSION:

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).²⁴ The NPFC has promulgated a comprehensive set

¹⁶ Cost Center Descriptions in Second Additional Information Request, Attachment 1e.

¹⁷ Patients in Care by Day in Second Additional Information Request, Attachment 5b.

¹⁸ 33 CFR Part 136.

¹⁹ 33 CFR Part 136.201.

²⁰ International Bird Rescue Original submission dated August 27, 2019.

²¹ 33 CFR Part 136.

²² See, e.g., *Boquet Oyster House, Inc. v. United States*, 74 ERC 2004, 2011 WL 5187292, (E.D. La. 2011), “[T]he Fifth Circuit specifically recognized that an agency has discretion to credit one expert's report over another when experts express conflicting views.” (Citing, *Medina County v. Surface Transp. Bd.*, 602 F.3d 687, 699 (5th Cir. 2010)).

²³ See, e.g., *Use of Reports of Marine Casualty in Claims Process by National Pollution Funds Center*, 71 Fed. Reg. 60553 (October 13, 2006) and *Use of Reports of Marine Casualty in Claims Process by National Pollution Funds Center* 72 Fed. Reg. 17574 (concluding that NPFC may consider marine casualty reports but is not bound by them).

²⁴ See generally, 33 U.S.C. §2712 (a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.²⁵ The claimant bears the burden of providing all evidence, information, and documentation deemed relevant and necessary by the Director of the NPFC, to support and properly process the claim.²⁶ 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.”²⁷ The term “remove” or “removal” means “containment and removal of oil [...] from water and shorelines or the taking of other actions as may be necessary to minimize or mitigate damage to the public health or welfare, including, but not limited to fish, shellfish, wildlife, and public and private property, shorelines, and beaches.”²⁸

Before reimbursement can be authorized for uncompensated removal costs, the claimant must demonstrate by a preponderance of the evidence:

- (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 directed by the FOSC or determined by the FOSC to be consistent with the National Contingency Plan.²⁹
- (d) That the removal costs were uncompensated and reasonable.³⁰

The NPFC analyzed each of these factors and determined the costs incurred by Claimant and submitted herein are not compensable removal costs based on the supporting documentation provided. The NPFC determined that removal costs claimed in the amount of \$124,234.11 are denied because the supporting documentation provided is insufficient in supporting the claimed costs. Before addressing the documentary deficiencies of this claim submission, the NPFC will provide a historical summary of actions taken in order to obtain the satisfactory level of documentation needed to properly adjudicate this claim.

On September 13, 2019, the NPFC requested additional information from the SOSC regarding the activities performed by the SOSC [REDACTED] and regarding IBR operations during the incident. The NPFC also requested information from IBR clarifying facts about specific activities and costs claimed. In response to the NPFC’s requests for information, the SOSC’s response included an email from the SOSC to NPFC explaining [REDACTED] role and an explanation of bird rescue operations in general.³¹

The claimant’s supplemental documentation provided with its September 24, 2019 additional information response letter are identified as follows: (1) OSPR’s SOSC Incident Report, (2) OSPR’s Memorandum of Understanding to rehabilitate wildlife in California, (3) Rehabilitation Permit to rehabilitate injured, orphaned, and contaminated wildlife, (4) OSPR’s, Best Practices for Migratory Bird Care during Oil Spill Response, (5) an Excel spreadsheet identified as a bird log with capture locations, (6) a Word document with a general description of daily activities

²⁵ 33 CFR Part 136

²⁶ 33 CFR 136.105.

²⁷ 33 U.S.C. § 2701(31).

²⁸ 33 U.S.C. § 2701(30).

²⁹ Email from FOSC to NPFC RE: NCP Actions, dated February 28, 2017 from claim # 917007-0001.

³⁰ 33 CFR 136.203; 33 CFR 136.205.

³¹ IBR additional information letter to NPFC dated September 24, 2019, with attachments.

performed by position, (7) credit card receipts for certain employees that worked at the incident and expenses claimed, and finally, IBR provided their rate sheets and resubmitted invoicing for subcontractors with a word document providing answers to specific questions.³²

Upon review of the information submitted by IBR, the NPFC found it remained insufficient to fully understand and correlate claimed costs from birds to employee daily activities. As such, on October 18, 2019, the NPFC again requested additional information from the claimant to support the claim. The claimant requested additional time to gather and submit the additional information and therefore, entered in a tolling agreement.³³

On December 23, 2019, IBR submitted the second additional information package which included the following: (1) paystubs for paid employees, (2) credit card receipts for various employee expenses, (4) resubmission of invoices from subcontractors which included invoices from subcontractors that were not included in the initial claim submission (e.g., Allied Propane invoices were not included in the initial submission), (5) Patient Records for other birds in care not related to the incident vice only providing the patient records for the bird related cases only, (6) a Claim Reimbursement Summary breaking down the total for each expense category claimed which resulted in a new sum certain, (7) an Incident Summary, Cost Center Description with categories, classification and description of costs claimed, (8) Personnel Duties and Descriptions including specific personnel by name and the date range of general activities performed, (9) Credit Card Expenses document breaking down specific expenses claimed with a description of purpose, and volunteer hours through Jan 31, (10) Invoice Breakdown with Description of Use, (11) Utilities Summary which explains how the percentage amount claimed was calculated, (12) Expanded Case Log which included record of medicine and actions taken specific to a given bird, (13) a copy of the Fish and Wildlife and Sensitive Environments Plan Summary, (14) the California Wildlife Response Plan 2016, and (15) a Patients in Care by Day Excel spreadsheet identifying all birds within the facility by date, further identifying which bird is included as part of this incident.³⁴

Upon the NPFC's review of all of the additional information provided by IBR, the medical records provided do not support, in all instances, the original list of birds provided and the additional information bird listing information contradicts the original submission. The disparity in information undermines the validity of the overall claimed costs. Two instances of major discrepancies are outlined below:

1. IBR provided a CD containing several documents in support of its original claim submission. One of the documents provided is identified as "Mystery Goo 2015 Bird Intake Report". That report is an individual bird listing of 323 birds. Each line item in the report provides the following information:
 - a. a case number for each bird;
 - b. the species of the bird;
 - c. the capture date of the bird;
 - d. the date of admission or the bird into the IBR facility;
 - e. the disposition date of the bird's status;

³² First AI received via a letter dated September 24, 2019.

³³ International Bird Rescue Tolling Agreement dated October 24, 2019.

³⁴ Second AI received via an email dated December 23, 2019.

- f. a federal band number that was assigned to a released bird;
- g. the total number of days the bird was in care;
- h. the first wash date for the bird;
- i. the second wash date for the bird;
- j. age of the bird;
- k. capture location of the bird; and
- l. disposition location of the bird.

Upon review of the above referenced document, the NPFC took this document and examined the information in detail. In order to provide an example, the NPFC took Case # SFME-2015-0050 (line 52 of the excel spreadsheet provided by the claimant). The document identifies the species as a “Horned Grebe” with an intake date of 1/16/2015 and a disposition date of 1/28/2015. The report indicates that the bird was euthanized. With that said, it is important to note that this listing of birds was the alleged list of all birds associated with this incident at the time the claim was submitted to the NPFC.³⁵

On December 23, 2019, the Claimant provided additional documentation. One of the documents provided is identified as “5b. Patients in Care by Day”. The NPFC performed a comparison of that spreadsheet to the original bird intake report. Column “C” of the supplemental spreadsheet indicates whether the bird listed on a given line is related to the incident at hand or not.

Upon cross checking the “5b. Patients in Care by Day” spreadsheet against the “Mystery Goo 2015 Bird Intake Report” spreadsheet, the data does not match. Case # SFME-2015-0050 (line 533 of the supplemental excel spreadsheet provided by the claimant), indicates the species is a Canada Goose with an intake date of 3/25/2015 and a disposition date of 4/4/2015. The spreadsheet also indicates in column “C” that this bird was not associated with the incident. This new information contradicts the validity of the information initially presented in the “Mystery Goo 2015 Bird Intake Report” for this bird which indicates the bird was in fact associated with the incident.³⁶

Additionally, for this particular bird case, the information contained in the Patient Records provided by the claimant indicates an intake date of 1/16/2015 with a release date of 1/31/2015. The release date in the Patient Record does not match either bird listing previously referenced.³⁷ The Patient Record also does not match the original “Mystery Goo 2015 Bird Intake Report” for the release date or species, nor does it match the supplemental spreadsheet identified as “5b. Patients in care by day”. In summary, the dates do not match, the species does not match, and the disposition status of the bird does not match. As such, the data cannot be correlated to the incident and any costs attached would be denied as not properly supported by the record.

Finally, the employee shown in the Patient Record for this bird was [REDACTED] but is not an employee the claimant presented into evidence as part of the staff present at the facility or

³⁵ Exhibit 1, Mystery Goo 2015 Bird Intake Report: Submitted by claimant with the initial claim submission. Included all birds involved in the “Mystery Goo” spill.

³⁶ Exhibit 2, Patients in Care by Day: Submitted by claimant under the second additional information request by NPFC on December 23, 2019. Case example: SF-2015-0050

³⁷ Exhibit 3, Patient Records: Submitted by claimant under the second additional information request by NPFC on December 23, 2019. Case example: SF-2015-0050.

actively working this incident.³⁸ A visual of the claim documentation referred to for this example is as follows:

Exhibit 1 - Mystery Goo 2015 Bird Intake Report

	A	B	C	D	E	F	G	H
	Event Case Number	Species	Capture Date	Date of Admission	Disposition Date	Disposition Status	Federal Band	days in care (disp-ca)
0	SFME-2015-0049	Surf Scoter	1/16/2015	1/16/2015	1/28/2015	Released	2047-51688	12
1	SFME-2015-0050	Horned Grebe	1/16/2015	1/16/2015	1/28/2015	Euthanized		12
2	SFME-2015-0051	Surf Scoter	1/16/2015	1/16/2015	3/10/2015	Euthanized		53
3	SFME-2015-0052	Surf Scoter	1/16/2015	1/16/2015	3/6/2015	Released	1527-58393	49

Exhibit 2 - Patients in Care by Day

	A	B	C	D	E	F	G	H	I	J
	Case #	Species	Goo?	Intake Date	Disposition Date	1/16/2015	1/17/2015	1/18/2015	1/19/2015	1/20/2015
2	SF-2015-0376	Rock Pigeon	N	3/24/2015	3/24/2015					
3	SF-2015-0050	Canada Goose	N	3/25/2015	4/4/2015					
4	SF-2015-4350	Common Murre	N	3/25/2015	3/25/2015					

³⁸ Exhibit 4, Summary of Wages and Hours dated January 13, 2020 submitted with second additional information request on December 23, 2019, Case example: SF-2015-0050.

Exhibit 3 - Patient Records

SS ~~DB~~

Spill Name: MEDS		Spill Log Number: L-01	
Capture Date/Time: 1/16/2015 Time:		SFBay Oiled Bird Case Number: SF-2015-0050	
Field Band:		Capture Location: Hayward	
Transferring Center:		Collector:	
Transferring Center Case #:		Intake Date/Time: Time:	
Species: SUSC		Temp. Band: P50	
Samples: <input checked="" type="checkbox"/> feather <input type="checkbox"/> swab <input type="checkbox"/> photo		REPORTED?	
Processor (print name):		Procassor (print name):	
Oiling Signs: <input type="checkbox"/> Visible <input type="checkbox"/> Skin burns <input type="checkbox"/> Feather Problems <input type="checkbox"/> Smell			
% Oiled: <input type="checkbox"/> <2% <input type="checkbox"/> 2-25% <input type="checkbox"/> 26-50% <input type="checkbox"/> 51-75% <input type="checkbox"/> 76-100% <input type="checkbox"/> Unk			
Oil Color: <input type="checkbox"/> Black <input type="checkbox"/> Brown <input type="checkbox"/> Clear <input type="checkbox"/> Other		Area Oiled: <input type="checkbox"/> Head <input checked="" type="checkbox"/> Body <input type="checkbox"/> Waterline <input type="checkbox"/> Multi	
Depth of Oiling: <input type="checkbox"/> Deep <input type="checkbox"/> Moderate <input type="checkbox"/> Surface			
Temperature	106.5	F	Age: <input type="checkbox"/> Chick <input type="checkbox"/> Sub-adult <input checked="" type="checkbox"/> Adult <input type="checkbox"/> Unknown
Weight	902	gram	Sex: <input checked="" type="checkbox"/> Male <input type="checkbox"/> Female <input type="checkbox"/> Unknown
Body Condition	<input type="checkbox"/> Normal <input checked="" type="checkbox"/> Thin <input type="checkbox"/> Emaciated	Attitude: <input checked="" type="checkbox"/> BAR <input type="checkbox"/> QAR <input type="checkbox"/> Nonresponsive	
Dehydration	<input type="checkbox"/> None <input checked="" type="checkbox"/> Mild <input type="checkbox"/> Moderate <input type="checkbox"/> Severe	Mucous Memb.: <input type="checkbox"/> Pink <input type="checkbox"/> Pale <input type="checkbox"/> Pigmented <input type="checkbox"/> Tacky <input type="checkbox"/> Moist	
Neurologic	NSF NE NSF NE		
Eyes/Noses/Mouth	NSF NE NSF Other:		
Cardiovascular/HR	NSF NE NSF Other:	beats/min.	
Respiratory/RR	NSF NE NSL Other:	breaths/min.	
GI/Vent	NSF NE NSL Other:		
Musculo-skeletal	NSF NE NSL Other:		
Integument	NSF NE NSL Other:		
Hocks/Legs/Feet	NSF NE WNL		
Comments	gave intrasural, 50/50		
Examiner (print)			
PCV: 53	TS: 6.4	Other: BCT	Add'l Blood: <input type="checkbox"/> LIT <input type="checkbox"/> RTT <input type="checkbox"/> GTT <input type="checkbox"/> Slides
Date Washed: 1/19/15	Date(s) Re-washed:		
Disposition Status: <input checked="" type="checkbox"/> Released <input type="checkbox"/> Died <input type="checkbox"/> Euthanized <input type="checkbox"/> Placed	Transferred: Location: Date:		
Disposition Location: FA Baker	Federal Band #: 1527-583 45		
Disposition Date: 1/31/15	Age Code: <input type="checkbox"/> HY <input checked="" type="checkbox"/> AHY <input type="checkbox"/> SY <input type="checkbox"/> TY <input type="checkbox"/> ATY		
More forms may be found at www.vetmed.ucdavis.edu/owcn		Days in Care: 15	Record/photo/swab sent to OWCN: <input type="checkbox"/>

VLM

Exhibit 4 - Summary of Wages and Hours dated January 13, 2020

2b. Summary of Wages and Hours K's 1.13.20 - Excel

	A	B	C	D	E	F	G	H	I
4		SUMMARY OF SALARIES WAGES AND PAYROLL TAX FOR MYSTERY GOO EVENT 2015							
5									
6		Salaried Employees							
7				Total Hours	Individual Total				
8				120.00	\$4,625.00				
9				259.00	\$3,913.41				
10				364.00	\$8,861.88				
11				299.75	\$5,223.98				
12				SALARIED EMPLOYEE TOTAL:		\$22,624.26			
13		Flat Rate Employees							
14				Total Days	Individual Total				
15				11.00	\$2,750.00				
16				13.00	\$3,250.00				
17				11.00	\$2,750.00				
18				FLAT RATE EMPLOYEE TOTAL:		\$8,750.00			
19		Hourly Employees							
20				Total Hours	Individual Total				
21				634.00	\$10,006.88				
22				455.75	\$5,826.00				
23				314.25	\$4,062.00				
24				90.50	\$1,198.50				
25				72.50	\$1,143.75				
26				9.50	\$123.50				
27				317.00	\$5,704.00				
28				HOURLY EMPLOYEE TOTAL:		\$28,064.63			
29									
30				Staff pay total:		\$59,438.88			
31				Employer Payroll Tax Loan		\$5,547.64			
32									
33				GRAND TOTAL		\$64,986.52			

2. Another case that demonstrates the inconsistency of information provided in support of this claim is identified as case # SF-2015-4025 shown as involved in the incident with an intake date of 1/16/2015 and disposition of 2/21/2015.³⁹ This surf scoter bird does not show in the Patient Records nor in the initial bird intake report provided to the NPFC.⁴⁰ The case numbers for the birds involved in the “Mystery Goo” spill according to the claimant ranged from SF-2015-4024 to SF-2015-4344, distinguished by red lettering, yet the evidence lacks to prove the labor and activities performed by IBR.⁴¹

Exhibit 2 was the document used by IBR to demonstrate the birds that were part of the incident by choosing to letter the cases in red. After reviewing the patient records, none of the records provided supports that IBR cleaned, stabilized, rehabilitated or released the birds in question and are for other birds cared for in the facility. In addition, the document used to calculate the amount of utilities is missing these other patients shown to the NPFC in the Patient

³⁹ Refer to Exhibit 5, Patients in Care by Day: Submitted by claimant under the second additional information request by NPFC on December 23, 2019. Case example: SF-2015-4025.

⁴⁰ Exhibit 6, Mystery Goo 2015 Bird Intake Report: Submitted by claimant with the initial claim submission. Included all birds involved in the “Mystery Goo” spill, case example: SF-2015-4025.

⁴¹ Patients in Care by Day: Submitted by claimant under the second additional information request by NPFC on December 23, 2019.

Records.⁴² The claimant’s information provided initially and afterwards is deficient and the lack of corroboration between documents makes the claimed amount questionable. The evidence contradicts the presence of a bird and its involvement in the spill. Based on the foregoing, the NPFC is unable to validate the facts and costs presented by the claimant.

The present evidence from intake and disposal dates do not match between the documents, the same bird being euthanized in one listing and released back into the wild in another, makes the claims submission evidence deficient to justify payment. The NPFC has attempted to obtain information from the claimant on numerous occasions and has also executed a tolling agreement in order to provide the claimant with sufficient time to gather all relevant evidence to support the amount requested.

Exhibit 5 – Patients in Care by Day

Case #	Species	Goo?	Intake Date	Disposition Date	1/16/2015	1/17/2015	1/18/2015	1/19/2015	1/20/2015	1/21/2015
SF-2015-0049	California Gull	N	1/16/2015	1/16/2015	X					
SF-2015-4024	Surf Scoter	Y	1/16/2015	1/31/2015	X	X	X	X	X	X
SF-2015-4025	Surf Scoter	Y	1/16/2015	2/21/2015	X	X	X	X	X	X
SF-2015-4026	Surf Scoter	Y	1/16/2015	1/16/2015	X					

Exhibit 6 – Mystery Goo 2015 Bird Intake Report

Event Case Number	Species	Capture Date	Date of Admission	Disposition Date	Disposition Status	Federal Band
SFME-2015-0001	Surf Scoter	1/16/2015			sed	1527-58345
SFME-2015-0002	Surf Scoter	1/16/2015			sed	1527-58364
SFME-2015-0003	Surf Scoter	1/16/2015			ized	
SFME-2015-0004	Surf Scoter	1/16/2015			sed	1527-58312
SFME-2015-0005	Surf Scoter	1/16/2015			sed	2047-51680
SFME-2015-0006	Bufflehead	1/16/2015				
SFME-2015-0007	Greater Scaup	1/16/2015				
SFME-2015-0008	Surf Scoter	1/16/2015				1527-58357
SFME-2015-0009	Surf Scoter	1/16/2015				1527-58368
SFME-2015-0010	Surf Scoter	1/16/2015				1527-58395
SFME-2015-0011	Horned Grebe	1/16/2015				
SFME-2015-0012	Horned Grebe	1/16/2015	1/16/2015	3/27/2015	Euthanized	
SFME-2015-0013	Horned Grebe	1/16/2015	1/16/2015	2/1/2015	Released	1046-18901
SFME-2015-0014	Horned Grebe	1/16/2015	1/16/2015	1/21/2015	Died	
SFME-2015-0015	Surf Scoter	1/16/2015	1/17/2015	1/31/2015	Released	1527-58342
SFME-2015-0016	Surf Scoter	1/16/2015	1/16/2015	2/4/2015	Euthanized	
SFME-2015-0017	Surf Scoter	1/16/2015	1/16/2015	1/28/2015	Released	2047-51698

Lastly, the NPFC went to IBR’s website on February 6, 2020 in order to see what information was available for viewing and related to the incident in question.⁴³ The website data

⁴² Patient Records: Submitted by claimant under the second additional information request by NPFC on December 23, 2019.

⁴³ See IBR webpage screenshot of information on the 2015 East Bay Mystery Good incident.

indicates 423 birds treated and 375 birds released. It is important to note that this information does not match the evidence provided and claimed and only adds to the inability to validate the claimed costs based on the evidence provided.

[Home](#) | [Our Work](#) | [Oil Spill Response and Preparedness](#) | [History of Response](#)

History of Response

More than 225 Wildlife Emergency Responses since 1971

Since 1971, our International Bird Rescue ("Bird Rescue") team of highly-trained specialists has led wildlife rescue efforts in over 225 oil spills in 11 states, two U.S. territories, and 12 different countries.

Below is list of most of the major oil spill responses to which Bird Rescue has lent its expertise.

Major Wildlife Responses

Date	Spill Name	Location	Birds Treated	Mortality	Released	Release Rate
2010s						
Jan 2018	Shuyak Island Bunker C Spill	Alaska	NA	NA	NA	NA
2018	Ventura Oil Seep Incident	Ventura, CA	NA	NA	NA	NA
2016	Istra Ace Spill	Southern CA	NA	NA	NA	NA
January 2015	East Bay Mystery Goo	Alameda, CA	423	NA	375	89%
Oct. 2011-Feb. 2012	Rana2	Tauranga, New Zealand	420	45	NA	NA
April-Sept. 2010	BP Deepwater Horizon2	Louisiana	NA	NA	375	89%
2000s						
2008	Patagonia Mystery	Argentina	500	NA	NA	NA
November 2007	Cosco Busan	San Francisco, CA	1,084	1,858	421	40%
2006	Estonia	Tallinn, Estonia	156	NA	61	39%
January 2005	Westin Spill	CA	38	9	29	77%
Feb. 2005-April 2005	Ventura Mystery #2	Ventura, CA	76	1	19	25%

<https://www.bird-rescue.org/our-work/oil-spill-response-and-preparedness/history-of-respon...> 2/6/2020

Overall Denied Costs = \$124,234.11⁴⁴

V. CONCLUSION:

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, IBR’s claim is denied. Because the NPFC has determined that the claim is not compensable for legal reasons, it is unable to adjudicate the claimed removal costs.

Should IBR request reconsideration, it will need to provide the appropriate records for the birds involved in this incident. Additionally, the claimant will need to ensure that a cross walk of all information is clear, concise and supported by the record, including but not limited to, personnel costs claimed being properly cross walked to the bird claimed, identify all credit card expenses to both the bird and the person incurring the charge (including date, amount, reason for the expense, etc.), and the document provided that the utility percentage is derived from must be corrected, recalculated, and accurate. The current document indicates that an alleged 78% of utilities incurred pertain to the birds associated with the incident although the bird listing does

⁴⁴ See the latest OSLTF Claim Form submitted via the additional information process and dated January 13, 2020.

not cross walk to other documents provided making the percentage claimed inaccurate as presented.

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, the claim is denied.

Claim Supervisor:

██████████ ██████████

Date of Supervisor's review: *02/14/2020*

Supervisor Action: *Denial approved*