

## CLAIM SUMMARY / DETERMINATION<sup>1</sup>

<b>Claim Number:</b>	UCGP923008-URC001
<b>Claimant:</b>	State of Louisiana
<b>Type of Claimant:</b>	State
<b>Type of Claim:</b>	Removal Costs
<b>Claim Manager:</b>	(b) (6)
<b>Amount Requested:</b>	\$1,355.01
<b>Action Taken:</b>	Offer in the amount of \$1,355.01

### **EXECUTIVE SUMMARY:**

On March 24, 2021, the National Response Center (NRC) received a report from the St. Tammany Parish Fire Department that there was a half-mile rainbow sheen on Bayou Bonfouca, a navigable waterway of the United States.<sup>2</sup> The United States Coast Guard (USCG) Sector New Orleans, as the Federal On Scene Coordinators (FOOSC) alerted the Louisiana Department of Public Safety about the spill.

Staff from the Louisiana Oil Spill Coordinator's Office (LOSCO) and from the Louisiana Department of Environmental Quality (LDEQ), as the State On Scene Coordinators (SOSC) responded to the scene on March 25, 2021. The SOSCs were unable to find the source of the sheen or a responsible party.<sup>3</sup>

The state of Louisiana submitted its uncompensated removal cost claim to the National Pollution Funds Center (NPFC) in the amount of \$1,355.01 on March 30, 2023. The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable laws and regulations, and after careful consideration has determined that \$1,355.01 is compensable and offers this amount as full and final compensation of this claim.

### **I. INCIDENT, RESPONSIBLE PARTY AND RECOVERY OPERATIONS:**

#### ***Incident***

On March 24, 2021, at 16:35 local time, a boater saw a sheen on Bayou Bonfouca, a navigable waterway of the United States. The local fire department called the incident into the

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<sup>1</sup> This determination is written for the sole purpose of adjudicating a claim against the Oil Spill Liability Trust Fund (OSLTF). This determination adjudicates whether the claimant is entitled to OSLTF reimbursement of claimed removal costs or damages under the Oil Pollution Act of 1990. This determination does not adjudicate any rights or defenses any Responsible Party or Guarantor may have or may otherwise be able to raise in any future litigation or administrative actions, to include a lawsuit or other action initiated by the United States to recover the costs associated with this incident. After a claim has been paid, the OSLTF becomes subrogated to all of the claimant's rights under 33 U.S.C. § 2715. When seeking to recover from a Responsible Party or a Guarantor any amounts paid to reimburse a claim, the OSLTF relies on the claimant's rights to establish liability. If a Responsible Party or Guarantor has any right to a defense to liability, those rights can be asserted against the OSLTF. Thus, this determination does not affect any rights held by a Responsible Party or a Guarantor.

<sup>2</sup> NRC Report #1301186 dated March 24, 2021

<sup>3</sup> See, State of Louisiana OSLTF Claim Form, question 6, dated April 24, 2023

National Response Center (NRC) at 17:46 local time.<sup>4</sup> The United States Coast Guard (USCG) Sector New Orleans, serving as the Federal On Scene Coordinators (FOSC), alerted the Louisiana State Police about the incident.<sup>5</sup> Staff from the Louisiana Oil Spill Coordinator's Office (LOSCO) and the Louisiana Department of Environmental Quality (LDEQ), serving as State On Scene Coordinators (SOSCs), arrived on scene the following day to assess the spill and search for the Responsible Party (RP).<sup>6</sup>

### ***Responsible Party***

In accordance with the Oil Pollution Act of 1990, the owner/operator of the source which caused the oil spill is the Responsible Party (RP) for the incident.<sup>7</sup> The source of the spill could not be identified by LOSCO, LDEQ, or USCG Sector New Orleans.<sup>8</sup>

### ***Recovery Operations***

On March 25, 2021, staff from LOSCO and LDEQ arrived on scene at Bayou Bonfouca. They noted a rainbow sheen near the Bayou Liberty Road Bridge, after searching the Bayou further north, they confirmed that the sheen was confined to the vicinity near the bridge. They searched for a potential RP and took photos of the incident.<sup>9</sup> No recovery operations were required as they determined that the sheen would dissipate naturally.

## **II. CLAIMANT AND NPFC:**

The Claimant submitted their claim on March 30, 2023. The submission included the OSTLF form, NRC Report Number 1301186, LSP Incident Report # 21-01192, photos of the spill, and cost documentation from both LOSCO and LDEQ accounting for staff time and equipment costs related to the spill response.<sup>10</sup>

As a state claiming removal costs, the state of Louisiana may first present its claim to the OSTLF without first presenting it to an RP. In this case, there is no RP, so presentment is also not an issue

## **III. DETERMINATION PROCESS:**

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).<sup>11</sup> 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.

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<sup>4</sup> NRC Report #1301186 dated March 24, 2021

<sup>5</sup> See, Louisiana State Police email dated March 25, 2021, with LSP Hazardous Material Incident Report # 21-01192.

<sup>6</sup> Original Claim Submission dated March 30, 2023

<sup>7</sup> 33 U.S.C. § 2701(32).

<sup>8</sup> See, USCG SITREP dated August 11, 2023.

<sup>9</sup> Original Claim Submission dated March 30, 2023

<sup>10</sup> Original Claim Submission dated March 30, 2023

<sup>11</sup> 33 CFR Part 136.

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.<sup>12</sup> The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.<sup>13</sup> 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:**

OPA provides a mechanism for compensating parties who have incurred removal costs where the responsible party has failed to do so. 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.”<sup>14</sup> 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.”<sup>15</sup>

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).<sup>16</sup> The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.<sup>17</sup> 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.<sup>18</sup>

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.
- (d) That the removal costs were uncompensated and reasonable.<sup>19</sup>

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<sup>12</sup> 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)).

<sup>13</sup> 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).

<sup>14</sup> 33 U.S.C. § 2701(31).

<sup>15</sup> 33 U.S.C. § 2701(30).

<sup>16</sup> See generally, 33 U.S.C. § 2712 (a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

<sup>17</sup> 33 CFR Part 136.

<sup>18</sup> 33 CFR 136.105.

<sup>19</sup> 33 CFR 136.203; 33 CFR 136.205.

The FOSCR, from the United States Coast Guard, Sector New Orleans, directed the response and determined that the actions of the Louisiana state agencies were consistent with the National Contingency Plan (NCP).<sup>20</sup> The NPFC analyzed each of the factors above, in conjunction with the state's documentation of personnel and equipment costs incurred. The NPFC determined that all of the costs incurred and submitted by the State of Louisiana are compensable removal costs based on the supporting documentation provided. The Claimant provided thorough incident information through both NRC and LSP incident reports, and cost documentation including billable staff time, the employee rate schedule, indirect costs, and equipment costs.<sup>21</sup>

## **VI. CONCLUSION:**

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, the State of Louisiana's request for uncompensated removal costs is approved in the amount of \$1,355.01.

This determination is a settlement offer,<sup>22</sup> the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.<sup>23</sup> The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.<sup>24</sup> Moreover, this settlement offer is based upon the unique facts giving rise to this claim and is not precedential.

<p style="text-align: center;"><b>(b) (6)</b></p> <p>Claim Supervisor: <b>(b) (6)</b></p> <p>Date of Supervisor's review: <i>8/11/23</i></p> <p>Supervisor Action: <i>Offer Approved</i></p>
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<sup>20</sup> See, USCG MISLE Case # 1254217 opened March 21, 2021.

<sup>21</sup> Original Claim Submission dated March 30, 2023

<sup>22</sup> Payment in full, or acceptance by the claimant of an offer of settlement by the Fund, is final and conclusive for all purposes and, upon payment, constitutes a release of the Fund for the claim. In addition, acceptance of any compensation from the Fund precludes the claimant from filing any subsequent action against any person to recover costs or damages which are the subject of the uncompensated claim. Acceptance of any compensation also constitutes an agreement by the claimant to assign to the Fund any rights, claims, and causes of action the claimant has against any person for the costs and damages which are the subject of the compensated claims and to cooperate reasonably with the Fund in any claim or action by the Fund against any person to recover the amounts paid by the Fund. The cooperation shall include, but is not limited to, immediately reimbursing the Fund for any compensation received from any other source for the same costs and damages and providing any documentation, evidence, testimony, and other support, as may be necessary for the Fund to recover from any person. 33 CFR § 136.115(a).

<sup>23</sup> 33 CFR § 136.115(b).

<sup>24</sup> 33 CFR § 136.115(b).