

CLAIM SUMMARY / DETERMINATION¹

Claim Number:	UCGPA23022-URC001
Claimant:	Department of Fish and Wildlife: OSPR
Type of Claimant:	State
Type of Claim:	Removal Costs
Claim Manager:	(b) (6)
Amount Requested:	\$3,709.88
Action Taken:	Offer in the amount of \$1,385.02

EXECUTIVE SUMMARY:

On September 4, 2023 at 0730 local time, the M/V MAZAPETA, a 100' World War II era tugboat,² sunk while tied alongside moored ship, AURORA, on the Little Potato Slough, a tributary of the San Joaquin River, a navigable waterway of the United States, causing a visible sheen on the surface of the water.³ At the time of its sinking, the vessel had an estimated potential of 1600 gallons of petroleum products that were actively discharging into the water.⁴ Contemporaneous reports were made to the United States Coast Guard ("USCG") National Response Center ("NRC") describing a sinking tug boat that was 95% submerged at the time of the call.⁵

Mr. (b) (6) and Mr. (b) (6) are identified as the owner and operator of the vessel at the time of the incident, and are identified as the responsible parties ("RPs")⁶ as defined by the Oil Pollution Act of 1990 ("OPA")⁷

United States Coast Guard (USCG) Sector San Francisco, Incident Management Division "IMD") was the Federal On-Scene Coordinator ("FOSC") for the incident. Due to the petroleum products that were discharging into the water, the FOSC determined the vessel posed a substantial threat to the environment and authorized the Oil Spill Liability Trust Fund (OSLTF) to be opened via Federal Project Number UCGPA23022. The FOSC then hired Basic Ordering

¹ 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 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.

² See, SITREP-POL One, section 1C, dated September 6, 2023.

³ See, SITREP-POL One through Seven and Final. See also, Department of Fish and Wildlife OSPR New PCA Set-up – Oil Spill Reporting Structure: 36006600. P. 21/22 of Original Claim Submission.

⁴ See, FOSCR Statement Form, signed and dated April 25, 2024.

⁵ See, NRC Case # 1378109 dated September 4, 2023; See also, SITREP-POL ONE dated September 6, 2023.

⁶ See, USCG Notice of Federal Assumption (NOFA) issued to Mr. (b) (6) on September 5, 2023. See also, USCG Notice of Federal Interest (NOFI) issued to Mr. (b) (6) dated September 26, 2023.

⁷ 33 U.S.C. § 2701(32).

Agreement (BOA) contractors to respond and perform response actions.⁸ A Unified Command (“UC”) was established between USCG, California Department of Fish and Wildlife: Office of Spill Prevention and Response (“OSPR” or “Claimant”), and San Joaquin County Sheriff’s Department – who represented the City of Stockton.⁹

On May 17, 2024, OSPR presented its removal costs submission to the National Pollution Funds Center (“NPFC”) for \$3,709.88.¹⁰ The NPFC thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration has determined that \$1,385.02 of the claimed costs are compensable and offers this amount as full and final compensation.

I. INCIDENT, RESPONSIBLE PARTY AND RECOVERY OPERATIONS:

Incident

On September 4, 2023, at 0730 local time, USCG Sector San Francisco (“USCG” or “FOSC”) received notification from San Joaquin County Department of Environmental Health (“SJC DEH”) regarding a tug that sunk in Little Potato Slough, a tributary of the San Joaquin River, a navigable waterway of the United States, causing visible sheen on the surface of the water. Contemporaneous reports were made to the NRC that were described as sheening on the water and a strong odor fuel.¹¹

Responsible Party

Initially, the FOSC was unable to reach the vessel owners and was unable to issue an Administrative Order to the suspected RPs.¹² As such, on September 5, 2023, the FOSC issued a USCG Notice of Federal Assumption (“NOFA”) to Mr. (b) (6).¹³ Upon discovery of videos that were posted to YouTube of Mr. (b) (6) making repairs to the MAZAPETA, the UC decided to issue a USCG Notice of Federal Interest (“NOFI”) to Mr. (b) (6) as the suspected operator.¹⁴ Mr. (b) (6) was invited to join the UC as the RP, but declined. Mr. (b) (6) remains the most likely RP for the vessel MAZAPETA, although this has not been confirmed.¹⁵

Recovery Operations

On September 4, 2023, the FOSC activated Global Diving and Salvage to place absorbent and hard boom around the affected area.¹⁶ The FOSC authorized the OSLTF to be opened and

⁸ See, FOSCR Statement Form dated April 25, 2024.

⁹ *Id.*

¹⁰ OSPR’s Original Claim Submission received May 17, 2024.

¹¹ See, SITREP POL One dated September 6, 2023; See also, NRC Case # 1378109 dated September 4, 2023, and FOSCR Statement Form dated April 25, 2024.

¹² See, FOSCR Statement Form dated April 25, 2024.

¹³ See, USCG NOFA issued to Mr. (b) (6) on September 5, 2023.

¹⁴ See, USCG NOFI issued to Mr. (b) (6) on September 26, 2023.

¹⁵ See, FOSCR Statement Form, signed and dated May 29, 2024.

¹⁶ SITREP-POL One dated September 6, 2023.

under a BOA contract, hired Parker Diving to aid in the removal of the diesel and oil from the tug and for boom maintenance.¹⁷

Weekly drone flights were conducted by San Joaquin County OES to monitor the discharge that was coming from the MAZAPETA was being contained within the boom that was placed in the surrounding area.¹⁸ The City of Stockton closed a nearby public drinking water intake as a safety precaution for residents of the City of Stockton.¹⁹ National Oceanic and Atmospheric Administration (NOAA) Scientific Support Coordinator provided additional sheen modeling and impacts on the City of Stockton water intake.²⁰

On December 31, 2023, T&T Marine Salvage, Inc., was hired to provide personnel, equipment, and materials for hydrographic survey in support of removing the MAZAPETA from the water.²¹

Site monitoring and absorbent maintenance was performed until mid-January 2024.²² Approximately 600 gallons of product was discharged into the waterway and approximately 26,000 gallons of oily water was removed from the vessel.²³ On January 13, 2024, raising of the MAZAPETA began by pumping out water from the vessel while applying righting pressure from the crane.²⁴ On January 14, 2024, the vessel was refloated and kept stabilized with onboard pumps and pollution removal via vac trucks which were conducted through January 16, 2024.²⁵

On January 17, 2024, control of the MAZAPETA was transferred to the City of Stockton who initiated a dead ship tow of the MAZAPETA to a Shipyard in Vallejo, California for final disposition.²⁶ On, January 18, 2024, all recoverable product was deemed removed²⁷ and the MAZAPETA arrived safely in Vallejo, California.²⁸

III. CLAIMANT AND NPFC:

On May 17, 2024, OSPR presented its removal costs claim to the National Pollution Funds Center (NPFC) for \$3,709.88.²⁹ The claim included OSPR's signed OSLTF form, Voucher and Schedule of Withdrawal and Credits – Standard Form 1081, Department of the Treasury ITFRM 2-2500, Federal Claim Request Letter, Summary of Costs Incurred in the Response, Containment and Cleanup of the Incident, Department of Fish and Wildlife Timesheets, Hourly Rates by

¹⁷ See, SITREP-POL One, dated September 6, 2023. See also, FOSCR Statement Form dated April 25, 2024.

¹⁸ SITREP/POL Three dated September 22, 2023.

¹⁹ See, SITREP/POL Three dated September 22, 2023. See also, FOSCR Statement Form dated April 25, 2024.

²⁰ SITREP/POL Five dated 29, 2023

²¹ FOSCR Statement Form signed and dated May 29, 2024. See also, T&T Marine Salvage, Inc., Invoice # INV3351-TTMS2.

²² See, SITREP/POL Seven and Final dated April 23, 2024.

²³ FOSCR Statement Form signed and dated May 29, 2024.

²⁴ See, SITREP/POL Seven and Final dated April 23, 2024. See also, FOSCR Statement Form dated May 29, 2024.

²⁵ See, SITREP/POL Seven and Final dated April 23, 2024.

²⁶ See SITREP/POL Seven and Final dated April 23, 2024. See, also, FOSCR Statement Form dated May 29, 2024.

²⁷ See, FOSCR Statement Form signed May 29, 2024.

²⁸ See, SITREP/POL Seven and Final dated April 23, 2024.

²⁹ Original Claim Submission received May 17, 2024.

classification (Federal ICRP), OSPR Daily Activity Report (ICS 214a), OSPR New PCA Set-up – Oil Spill, and Governor’s Office Emergency Services Hazardous Materials Spill Report.³⁰

IV. DETERMINATION PROCESS:

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).³¹ 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.³² The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.³³ 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.

V. DISCUSSION:

An RP is liable for all removal costs and damages resulting from either an oil discharge or a substantial threat of oil discharge into a navigable water of the United States.³⁴ An RP’s liability is strict, joint, and several.³⁵ When enacting OPA, Congress “explicitly recognized that the existing federal and states laws provided inadequate cleanup and damage remedies, required large taxpayer subsidies for costly cleanup activities and presented substantial burdens to victim’s recoveries such as legal defenses, corporate forms, and burdens of proof unfairly favoring those responsible for the spills.”³⁶ OPA was intended to cure these deficiencies in the law.

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.”³⁷ 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

³⁰ Signed claim submission received May 17, 2024.

³¹ 33 CFR Part 136.

³² 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)).

³³ 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).

³⁴ 33 U.S.C. § 2702(a).

³⁵ See, H.R. Rep. No 101-653, at 102 (1990), reprinted in 1990 U.S.C.C.A.N. 779, 780.

³⁶ *Apex Oil Co., Inc. v United States*, 208 F. Supp. 2d 642, 651-52 (E.D. La. 2002) (citing S. Rep. No. 101-94 (1989), reprinted in 1990 U.S.C.C.A.N. 722).

³⁷ 33 U.S.C. § 2701(31).

damage to the public health or welfare, including, but not limited to fish, shellfish, wildlife, and public and private property, shorelines, and beaches.”³⁸

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).³⁹ The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.⁴⁰ 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.⁴¹

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.⁴²

The NPFC analyzed each of these factors and determined that some of the costs incurred and submitted by OSPR herein are compensable removal costs based on the supporting documentation provided. All costs approved for payment were verified as being invoiced at the appropriate OSPR published rates and were supported by adequate documentation which included invoices.

All approved costs were supported by adequate documentation and were determined by the FOSC to be consistent with the National Contingency Plan (NCP)⁴³

Upon adjudication of the costs, the NPFC has determined that the amount of compensable removal costs is \$1,385.02 while \$2,324.86 is denied for the following reasons:⁴⁴

OSPR Invoice PPD 09/23

OSPR is seeking \$2,127.00 for 21.50 hours of investigative work led by F&G Warden (b) (6) on September 7, 2023, September 21, 2023, and September 22, 202. Based on the documentation that OSPR provided with their claim submission, the NPFC finds a total of 14 hours of work performed by Warden (b) (6) is OPA compensable and the difference of 7.5 hours is denied on the following bases:

³⁸ 33 U.S.C. § 2701(30).

³⁹ See generally, 33 U.S.C. § 2712 (a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

⁴⁰ 33 CFR Part 136.

⁴¹ 33 CFR 136.105.

⁴² 33 CFR 136.203; 33 CFR 136.205.

⁴³ See SITREP/POLs One through Seven and Final.

⁴⁴ Enclosure 3 provides a detailed analysis of the amounts approved and denied by the NPFC.

September 7, 2023 – The NPFC approves eight hours of time this day in the amount of \$791.44 as actions associated with the incident response. However, the NPFC denies two hours of time this day in the amount of \$197.86 as those actions are associated with online investigation into the case and are not oil removal related activities in nature.

September 21, 2023 – The NPFC approves two hours of time this day in the amount of \$197.86 as actions associated with incident response activities. The NPFC denies three and a half hours of time this day in the amount of \$346.26 as time associated with researching cell towers in the area and for work associated with specific information relating to an arrest warrant.

September 22, 2023 – The NPFC approves four hours of time this day in the amount of \$395.72 as actions associated with incident response activities. The NPFC denies two hours of time this day in the amount of \$197.86 as time associated with work gathering evidence online unrelated to oil spill response.

OSPR Invoice PPD 10/23

OSPR is seeking \$1,582.88 for 16 hours of investigative services that took place on October 17, 2024, and October 19, 2023, which were performed by OSPR Investigator (b) (6). Based on the supporting documentation, the NPFC denies \$1,582.88 in claimed costs associated with obtaining a Geofence Warrant is not oil removal activities and as such are denied.

Overall Denied Costs: \$2,324.86⁴⁵

VI. CONCLUSION:

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, Department of Fish and Wildlife: Oil Spill Prevention and Response's request for uncompensated removal costs is approved in the amount of **\$1,385.02**.

This determination is a settlement offer,⁴⁶ the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.⁴⁷ The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.⁴⁸ Moreover, this settlement offer is based upon the unique facts giving rise to this claim and is not precedential.

⁴⁵ See, Enclosure 3 that provides a detailed analysis of the amounts approved and denied by the NPFC.

⁴⁶ 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).

⁴⁷ 33 CFR 136.115(b).

⁴⁸ *Id.*

(b) (6)

Claim Supervisor: (b) (6)

Date of Supervisor's review: *7/18/24*

Supervisor Action: *Offer Approved*