

CLAIM SUMMARY / DETERMINATION¹

Claim Number:	UCGP924003-URC001
Claimant:	CA Department of Fish and Wildlife: Oil Spill Prevention and Response
Type of Claimant:	State
Type of Claim:	Removal Costs
Claim Manager:	(b) (6)
Amount Requested:	\$741.97
Action Taken:	Offer in the amount of \$741.97

EXECUTIVE SUMMARY:

On February 19, 2022, high winds caused the recreational fishing vessel, S/V DESTINY to break anchorage and drift onto the Ventura Harbor breakwall where it sank; causing an actual discharge of diesel fuel into the Ventura Harbor; a navigable waterway of the United States.² On this same date, the United States Coast Guard's ("USCG") National Response Center ("NRC") received notification that the S/V DESTINY owned by Mr. (b) (6), broke its anchor and hit the rocks.³ United States Coast Guard (USCG) Marine Safety Detachment (MSD) Santa Barbara ("MSD Santa Barbara" or "FOSC") was the Federal On Scene Coordinator (FOSC) for the incident.⁴

Mr. (b) (6) ("Mr. (b) (6)" or "RP"), as the owner, and operator of the vessel at the time of the incident, was identified as the responsible party (RP), as defined by the Oil Pollution Act of 1990.⁵ Mr. (b) (6) confirmed S/V DESTINY held approximately 200 gallons of diesel fuel onboard at the time of sinkage into the Ventura Harbor.⁶

On February 20, 2020, the California Department of Fish and Wildlife: Oil Spill Prevention and Response ("CA DFW" or "Claimant") arrived on scene to assess the spill situation.⁷ CA DFW determined that both salvage of the vessel and recovery of the fuel were unsafe.⁸ Approximately 1 week after the incident, CA-DFW's Case Officer spoke with representatives from the USCG, Ventura Harbor Patrol (VHP) and CA DFW's Field Response Team. The group determined that the 200 gallons of diesel fuel had been lost to the environment and would not be recoverable.⁹

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 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.

² CA DFW claim submission received November 2, 2023, pg. 1 of 4.

³ National Response Center Report #1329286 dated February 19, 2022, pg. 2 of 5.

⁴ Email from USCG MSD Santa Barbara to NPFC dated December 4, 2023.

⁵ 33 U.S.C. § 2701 (32).

⁶ CA DFW claim submission received November 2, 2023. *See*, SV DESTINY OES 22-0979 Fed Claim Supporting Docs, Arrest/Investigation Report, pg. 5 of 31.

⁷ *Id.* pg. 6 of 31.

⁸ *Id.*

⁹ Email from USCG MSD Santa Barbara to NPFC dated December 4, 2023.

On October 1, 2022, a dive team was secured through Tow Boat US,¹⁰ but no dive was ever conducted due to severe weather and continued unsafe conditions.¹¹

On November 2, 2023, CA DFW presented its removal costs claim to the National Pollution Funds Center (NPFC) for \$741.97.¹² The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration has determined that all costs requested for \$741.97 are compensable and offers this amount as full and final compensation of this claim.

I. INCIDENT, RESPONSIBLE PARTY AND RECOVERY OPERATIONS:

Incident

On February 19, 2022, at 1615 hours, the NRC received notification of a substantial threat of diesel fuel discharge associated with a sunken vessel that broke anchor and hit the rocks at the entrance to Ventura Harbor, in Ventura, California.¹³ The vessel was identified as the recreational sailing vessel S/V DESTINY; owned and operated by Mr. (b) (6).^{14,15}

MSD Santa Barbara, in its capacity as the FOSC, conducted phone investigations with both VHP and Mr. (b) (6).¹⁶ It was reported that Mr. (b) (6) had anchored illegally outside the Ventura Harbor for approximately 1 year prior to the incident.¹⁷ Mr. (b) (6) had been warned by VHP numerous times of the unsafe anchorage where S/V DESTINY was located.¹⁸ On February 19, 2022, high winds caused the S/V DESTINY to break anchorage and drift into Ventura Harbor breakwall, where the vessel broke apart and sunk.¹⁹

RP confirmed S/V DESTINY held approximately 200 gallons of diesel fuel onboard at the time of sinkage into the Ventura Harbor; a navigable waterway of the United States that flows into the Pacific Ocean.²⁰

Responsible Party

¹⁰ CA DFW claim submission received November 2, 2023. *See*, SV DESTINY OES 22-0979 Fed Claim Supporting Docs, Arrest/Investigation Report, pg. 11 of 31.

¹¹ Email from CA DFW to NPFC dated November 8, 2023.

¹² CA DFW claim submission received November 2, 2023.

¹³ National Response Center Report #1329286 dated February 19, 2022, pg. 2 of 5.

¹⁴ CA DFW claim submission received November 2, 2023. *See*, SV DESTINY OES 22-0979 Fed Claim Supporting Docs, Arrest/Investigation Report found on pages 1-12 of 31.

¹⁵ USCG Vessel Critical Profile, pg. 1 of 1.

¹⁶ CA DFW claim submission received November 2, 2023. *See*, SV DESTINY OES 22-0979 Fed Claim Supporting Docs, Arrest/Investigation Report found on pages 1-12 of 31; *See*, Email from USCG MSD Santa Barbara to NPFC dated December 4, 2023.

¹⁷ CA DFW claim submission received November 2, 2023. *See*, SV DESTINY OES 22-0979 Fed Claim Supporting Docs, Arrest/Investigation Report, pg. 3 of 31.

¹⁸ *Id.*

¹⁹ CA DFW claim submission received November 2, 2023, pg. 1 of 4.

²⁰ CA DFW claim submission received November 2, 2023. *See*, SV DESTINY OES 22-0979 Fed Claim Supporting Docs, Arrest/Investigation Report, pg. 5 of 31.

In accordance with the Oil Pollution Act of 1990, the owner of the source which caused the oil spill is the Responsible Party (RP) for the incident.²¹ Mr. (b) (6) is the confirmed owner of the S/V DESTINY at the time when the spill incident occurred.²² As such, Mr. (b) (6) is identified as the responsible party (RP), as defined by the Oil Pollution Act of 1990.²³

Recovery Operations

On February 19, 2022, CA DFW was notified of the incident. Due to hazardous swell conditions, CA DFW decided to hold off on assessment until the following day.²⁴ On February 20, 2020, CA DFW arrived on scene and upon evaluation of the spill location, they determined that salvage of the vessel was not feasible and recovery of the fuel was unsafe.²⁵ Approximately 1 week after the incident, CA-DFW's Case Officer spoke with members from USCG, VHP and CA DFW's Field Response Team. The group determined that the 200 gallons of diesel fuel had been lost to the environment and would not be recoverable.²⁶

On October 1, 2022, a dive team was secured through Tow Boat US,²⁷ but no dive was ever conducted due to severe weather and unsafe conditions.²⁸ CA DFW recommended legal charges be brought against the RP by the Ventura County District Attorney's Office ("Ventura DA"), however without the dive data, the Ventura DA was unable to file charges against the RP and the case was closed.²⁹

II. CLAIMANT AND NPFC:

On November 2, 2023, CA DFW presented its removal costs claim to the National Pollution Funds Center (NPFC) for \$741.97.³⁰ When the claim was received, it included CA DFW's signed OSLTF form, a claim request letter, the CA DFW's arrest/investigation report, Invoice 45470 depicting the costs claimed, CA DFW time sheet records, an official document noting CA-DFW's hourly rates for 2022, and the letters with invoices sent by CA-DFW to the RP on June 15, 2022, and November 9, 2022.³¹

On November 7, 2023, the NPFC requested additional information from CA DFW.³² On November 8, 2023, CA DFW explained why particular costs sent to the RP were not included in their claim, and why costs for June 24, 2022, were excluded from their original invoice.³³ On November 27, 2023, CA DFW submitted activity logs in additional support of the costs claimed.³⁴

The NPFC issued a RP Notification letter to Mr. (b) (6) dated November 3, 2023.³⁵ A RP Notification letter notifies the RP that a claim was presented to the NPFC that is seeking reimbursement

²¹ 33 U.S.C. § 2701(32).

²² Vessel Critical Profile, pg. 1 of 1.

²³ 33 U.S.C. § 2701(32).

²⁴ CA DFW claim submission received November 2, 2023. *See*, SV DESTINY OES 22-0979 Fed Claim Supporting Docs, Arrest/Investigation Report, pg. 6 of 31.

²⁵ *Id.*

²⁶ *Id.* pg. 7 of 31.

²⁷ *Id.* pg. 11 of 31.

²⁸ Email from CA DFW to NPFC dated November 8, 2023.

²⁹ *Id.*

³⁰ CA DFW claim submission received November 2, 2023.

³¹ CA DFW claim submission received November 2, 2023, with Attachments.

³² Email from NPFC to CA DFW dated November 7, 2023.

³³ Email from CA DFW to NPFC dated November 8, 2023.

³⁴ Email from CA DFW to NPFC dated November 27, 2023. *See*, Van Epps 214 2-19-22 and Van Epps 214 6-24-22.

³⁵ NPFC letter to (b) (6) mailed on November 8, 2023.

of uncompensated removal costs or damages incurred as result of the incident in which the recipient is the identified or suspected RP.³⁶ As of the date of this determination, Mr. (b) (6) has not responded to the RP Notification Letter.

III. DETERMINATION PROCESS:

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).³⁷ 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.³⁸ The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.³⁹ 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:

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.⁴⁰ An RP's liability is strict, joint, and several.⁴¹ 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."⁴² 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."⁴³ 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."⁴⁴

³⁶ See, RP Notification Letter dated November 3, 2023.

³⁷ 33 CFR Part 136.

³⁸ 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)).

³⁹ 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).

⁴⁰ 33 U.S.C. § 2702(a).

⁴¹ See, H.R. Rep. No 101-653, at 102 (1990), reprinted in 1990 U.S.C.C.A.N. 779, 780.

⁴² *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).

⁴³ 33 U.S.C. § 2701(31).

⁴⁴ 33 U.S.C. § 2701(30).

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).⁴⁵ The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.⁴⁶ 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.⁴⁷

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.⁴⁸
- (d) That the removal costs were uncompensated and reasonable.⁴⁹

The NPFC analyzed each of these factors and determined that the costs incurred and submitted by CA DFW herein are compensable removal costs based on the supporting documentation provided. All costs approved for payment were verified as being invoiced at the appropriate state payroll rates and all costs were supported by adequate documentation which included invoices and/or proof of payment where applicable.

Based on the location of this incident, the FOSC is the United States Coast Guard Marine Safety Detachment Santa Barbara (“MSD Santa Barbara” or “FOSC”).⁵⁰ All approved costs were supported by adequate documentation and were determined by the FOSC to be consistent with the National Contingency Plan (NCP).⁵¹

Upon adjudication of the costs, the NPFC has determined that all costs submitted by CA DFW in the amount of \$741.97 are compensable, and as such, all removal costs claimed are approved.

V. CONCLUSION:

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, CA DFW’s request for uncompensated removal costs is approved in the amount of \$741.97.

⁴⁵ See generally, 33 U.S.C. § 2712 (a)(4); 33 U.S.C. § 2713; and 33 CFR Part 136.

⁴⁶ 33 CFR Part 136.

⁴⁷ 33 CFR 136.105.

⁴⁸ After analyzing the incident and the actions taken by CA DFW, the FOSC opined that the response actions undertaken by CA DFW were consistent with the National Contingency Plan. See, Email from USCG MSD Santa Barbara to the NPFC dated December 4, 2023.

⁴⁹ 33 CFR 136.203; 33 CFR 136.205.

⁵⁰ 40 CFR 300.120(a)(2).

⁵¹ Email from USCG MSD Santa Barbara to the NPFC dated December 4, 2023.

This determination is a settlement offer,⁵² the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.⁵³ The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.⁵⁴ Moreover, this settlement offer is based upon the unique facts giving rise to this claim and is not precedential.

(b) (6)

Claim Supervisor: (b) (6)

Date of Supervisor's review: 12/13/23

Supervisor Action: *Approved*

⁵² 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).

⁵³ 33 CFR 136.115(b).

⁵⁴ *Id.*