

CLAIM SUMMARY / DETERMINATION¹

Claim Number:	UCGP924034-URC001
Claimant:	CA Department of Fish and Wildlife, Office of Spill Prevention and Response
Type of Claimant:	State
Type of Claim:	Removal Costs
Claim Manager:	(b) (6)
Amount Requested:	\$2,810.62
Action Taken:	Offer in the amount of \$1,532.44

EXECUTIVE SUMMARY:

On May 7, 2022, the CA Department of Fish and Wildlife Warden on call, alerted the California Department of Fish and Wildlife, Office of Spill Prevention and Response (“OSPR” or “Claimant”) that there was a spill incident south of Ventura Harbor at Surfer’s Knoll, a tributary of the Pacific Ocean, a navigable waterway of the United States.² OSPR in its capacity as the State On Scene Coordinator (SOSC) for the incident, responded to the incident and provided response oversight.³ The Oil Spill Prevention Specialist arrived on the scene at 1015 local time, joining a Fish and Wildlife Warden and an Environmental Specialist already on scene.⁴ The SOSC noted that the commercial fishing vessel Sea Dragon was beached along the surf line.⁵ The United States Coast Guard (USCG) Marine Safety Detachment (MSD) Santa Barbara is the Federal On Scene Coordinator (FOSC) for the incident based on the incident location.⁶

Mr. (b) (6) and Mr. (b) (6) (“RPs”), are identified as the owner and operator of the vessel at the time of the incident, and identified as the responsible parties (RPs), as defined by the Oil Pollution Act of 1990.⁷ Mr. (b) (6) confirmed the Sea Dragon held

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 OSPR claim submission dated March 28, 2024 and received April 3, 2024; *See also*, OSPR Daily Activity Report, page 11.

³ OSPR claim submission dated March 28, 2024 and received April 3, 2024; *See also*, OSPR Daily Activity Report, page 11; *See also*, Department of Fish and Wildlife Arrest/Investigation Report, pages 21-31.

⁴ OSPR claim submission dated March 28, 2024 and received April 3, 2024; *See also*, OSPR Daily Activity Report, page 11; *See also*, Department of Fish and Wildlife Arrest/Investigation Report, pages 21-31.

⁵ OSPR claim submission dated March 28, 2024 and received April 3, 2024; *See also*, Department of Fish and Wildlife Arrest/Investigation Report, pages 21-31.

⁶ FOSC coordination statement, dated June 26, 2024.

⁷ 33 U.S.C. § 2701 (32).

approximately 250 gallons of red dye diesel, 50 gallons of hydraulic fluid, and 10 gallons of engine oil.⁸

On June 26, 2024, the FOSC confirmed that the actions taken by the SOSC were both necessary and consistent with the National Contingency Plan.⁹

On April 3, 2024, CA DFW presented its removal costs claim to the National Pollution Funds Center (NPFC) for \$2,810.62.¹⁰ The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration has determined that \$1,532.44 is compensable and offers this amount as full and final compensation of this claim.

I. INCIDENT, RESPONSIBLE PARTY AND RECOVERY OPERATIONS:

Incident

On May 7, 2022, the CA Department of Fish and Wildlife Warden on call, alerted the California Department of Fish and Wildlife, Office of Spill Prevention and Response (“OSPR” or “Claimant”) that there was a spill incident south of Ventura Harbor at Surfer’s Knoll, a tributary of the Pacific Ocean, a navigable waterway of the United States.¹¹ OSPR in its capacity as the State On Scene Coordinator (SOSC) for the incident, responded to the incident and provided response oversight.¹² The Oil Spill Prevention Specialist arrived on the scene at 1015 local time, joining a Fish and Wildlife Warden and an Environmental Specialist already on scene.¹³ The SOSC noted that the commercial fishing vessel Sea Dragon was beached along the surf line.¹⁴ The United States Coast Guard (USCG) Marine Safety Detachment (MSD) Santa Barbara is the Federal On Scene Coordinator (FOSC) for the incident based on the incident location.¹⁵

Responsible Party

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.¹⁶ Mr. (b) (6) and Mr. (b) (6) (b) (6) (“RPs”) are identified as the owner and operator of the vessel at the time of the incident, and identified as the responsible parties (RPs), as defined by the Oil Pollution Act of 1990.¹⁷

⁸ OSPR claim submission dated March 28, 2024 and received April 3, 2024; *See also*, Department of Fish and Wildlife Arrest/Investigation Report, pages 21-31.

⁹ FOSC statement received via email on June 26, 2024.

¹⁰ OSPR claim submission dated March 28, 2024 and received April 3, 2024.

¹¹ OSPR claim submission dated March 28, 2024 and received April 3, 2024; *See also*, OSPR Daily Activity Report, page 11.

¹² OSPR claim submission dated March 28, 2024 and received April 3, 2024; *See also*, OSPR Daily Activity Report, page 11; *See also*, Department of Fish and Wildlife Arrest/Investigation Report, pages 21-31.

¹³ OSPR claim submission dated March 28, 2024 and received April 3, 2024; *See also*, OSPR Daily Activity Report, page 11; *See also*, Department of Fish and Wildlife Arrest/Investigation Report, pages 21-31.

¹⁴ OSPR claim submission dated March 28, 2024 and received April 3, 2024; *See also*, Department of Fish and Wildlife Arrest/Investigation Report, pages 21-31.

¹⁵ FOSC coordination statement dated June 26, 2024.

¹⁶ 33 U.S.C. § 2701(32).

¹⁷ 33 U.S.C. § 2701 (32).

Recovery Operations

On May 7, 2024, OSPR arrived on scene and met with Vessel Assist, the Venture County Sheriff's Department and Venture County Fire. OSPR determined that due to the high surf and the location of the vessel that the only feasible way to safely mitigate the situation would be to use heavy equipment on the beach to destroy the vessel.¹⁸

Channel Marine arrived to recover the vessel and Patriot Marine was tasked with cleaning up the beach.¹⁹ SOSC staff supervised the recovery. At 11:43 local time, the vessel began to break up at the surf line, where it was grounded.²⁰ At 15:30, the fuel tank was seen on the beach and due to the high surf, it was decided it would be hazardous to attempt to retrieve it.²¹ The petroleum products were left to naturally dissipate.²²

II. CLAIMANT AND NPFC:

On April 3, 2024, CA DFW presented its removal costs claim to the National Pollution Funds Center (NPFC) for \$2,810.62.²³ When the claim was received, it included OSPR's OSTLF form, invoice details, salary rate sheets for the staff involved in the response, staff time sheets, and the investigative report for the incident.²⁴ On May 13, 2024, the NPFC requested additional information, including an accounting of tasks taken by staff on the days in question and how the administrative costs were calculated.²⁵ OSPR responded with information on May 31, 2024, stating that the staff who responded to the oil spill incident were no longer with the agency and thus they were unable to provide the tasks completed by Mr. (b) (6), whose actions were not memorialized via contemporaneous reports.²⁶

The NPFC issued RP Notification letters to both Mr. (b) (6) and Mr. (b) (6) dated April 10, 2024.²⁷ A RP Notification letter notifies the RP that a claim was presented to the NPFC that is seeking reimbursement of uncompensated removal costs or damages incurred as result of the incident in which the recipient is the identified or suspected RP.²⁸ As of the date of this determination, neither RP responded to the RP Notification Letters.

¹⁸ OSPR claim submission dated March 28, 2024 and received April 3, 2024; *See also*, Department of Fish and Wildlife Arrest/Investigation Report, pages 21-31.

¹⁹ OSPR claim submission dated March 28, 2024 and received April 3, 2024; *See also*, OSPR Daily Activity Report, page 11.

²⁰ OSPR claim submission dated March 28, 2024 and received April 3, 2024; *See also*, OSPR Daily Activity Report, page 11.

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²² OSPR claim submission dated March 28, 2024 and received April 3, 2024; *See also*, Department of Fish and Wildlife Arrest/Investigation Report, pages 21-31.

²³ OSPR claim submission dated March 28, 2024 and received April 3, 2024.

²⁴ OSPR claim submission dated March 28, 2024 and received April 3, 2024.

²⁵ *See*, Request for additional information to OSPR dated May 13, 2024.

²⁶ Email from OSPR to NPFC dated May 31, 2024, providing additional information.

²⁷ NPFC letter to Mr. (b) (6) and Mr. (b) (6) dated April 10, 2024, respectively.

²⁸ *See*, RP Notification Letter dated November 3, 2023.

III. DETERMINATION PROCESS:

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).²⁹ 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.³⁰ The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.³¹ 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.³² An RP's liability is strict, joint, and several.³³ 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."³⁴ 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."³⁵ 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."³⁶

²⁹ 33 CFR Part 136.

³⁰ 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)).

³¹ 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).

³² 33 U.S.C. § 2702(a).

³³ See, H.R. Rep. No 101-653, at 102 (1990), reprinted in 1990 U.S.C.C.A.N. 779, 780.

³⁴ *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).

³⁵ 33 U.S.C. § 2701(31).

³⁶ 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).³⁷ The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.³⁸ 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.³⁹

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.⁴⁰

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 state payroll rates and all costs were supported by adequate documentation which included invoices.

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”).⁴¹ All approved costs were supported by adequate documentation and were determined by the FOSC to be consistent with the National Contingency Plan (NCP).⁴²

Upon adjudication of the costs, the NPFC has determined that \$1,532.44 in costs submitted by OSPR are compensable, however \$1,287.18 in costs associated with Mr. (b) (6) and his vehicle mileage, and admin costs are denied as not supported by contemporaneous documentation.⁴³

Overall Denied Costs: \$1,287.18

V. CONCLUSION:

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, OSPR’s request for uncompensated removal costs is approved in the amount of **\$1,532.44**.

³⁷ See generally, 33 U.S.C. § 2712 (a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

³⁸ 33 CFR Part 136.

³⁹ 33 CFR 136.105.

⁴⁰ 33 CFR 136.203; 33 CFR 136.205.

⁴¹ 40 CFR 300.120(a)(2).

⁴² Email from FOSC to the NPFC dated June 26, 2024.

⁴³ See, Enclosure 3, Tab 1, lines 3,4,9, and 13.

This determination is a settlement offer,⁴⁴ the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.⁴⁵ The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.⁴⁶ 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: 06/26/24

Supervisor Action: *Offer Approved*

⁴⁴ 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).

⁴⁵ 33 CFR § 136.115(b).

⁴⁶ 33 CFR § 136.115(b).