

CLAIM SUMMARY / DETERMINATION¹

Claim Number:	UCGP924037-URC001
Claimant:	Department of Fish and Wildlife: OSPR
Type of Claimant:	State
Type of Claim:	Removal Costs
Claim Manager:	(b) (6)
Amount Requested:	\$977.76
Action Taken:	Offer in the amount of \$977.76

EXECUTIVE SUMMARY:

On September 15, 2021, the F/V BARBARA MARIE discharged approximately 75 gallons of diesel fuel into Bodega Bay, a navigable waterway of the United States, during a tank-to-tank fuel transfer that took place on the vessel.² At the time of the discharge, the vessel Captain, (b) (6), started the fuel transfer on the 64-foot commercial fishing vessel; then he and the crew left the transfer unattended. While unattended, the tank overfilled and discharged into Spud Point Marina, where the vessel was moored.³ Contemporaneous reports were made to the United States Coast Guard (“USCG”) National Response Center (“NRC”) describing a diesel fuel discharge into the Pacific Ocean⁴

The vessel’s operator, Captain (b) (6), and the vessel owner, (b) (6) Trust⁵ were identified as a responsible party (“RP”)⁶ as defined by the Oil Pollution Act of 1990 (“OPA”).⁷

USCG Sector San Francisco, Incident Management Division (“IMD”) was the Federal On-Scene Coordinator (“FOSC”) for the incident. In accordance with

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, USCG Sector San Francisco Pollution Responder (PR) Statement Form dated September 22, 2021. *Also see*, Governor’s Office Emergency Services Hazardous Materials Spill Report dated September 15, 2021. P. 15/23 of claim submission.

³ See, U.S. Coast Guard Witness Statement Form dated September 16, 2021. *See Also*, USCG PR Statement Form, dated September 22, 2021, and OSPR’s Supplemental Environmental Impact Report for F/V BARBARA MARIE dated September 15, 2021. P. 10/23 of claim submission.

⁴ National Response Center (NRC) Report # 1316920 dated September 15, 2021.

⁵ See, USCG PR Statement Form dated September 22, 2021. *Also see*, United States Coast Guard Notice of Violation Ticket # 00323285 issued to (b) (6) Trust on September 23, 2021.

⁶ Department of Homeland Security, U.S. Coast Guard Notice of Federal Interest (NOFI) issued to (b) (6) dated September 16, 2021.

⁷ 33 U.S.C. § 2701(32).

the Area Contingency Plan (“ACP”), Volume II, USCG Sector San Francisco verified that the incident was within the vicinity of an ACP sensitive site.^{8 9} Department of Fish and Wildlife: Oil Spill Prevention and Response (“OSPR”) was the State On Scene Coordinator (“SOSC”) for this incident.¹⁰

On May 17, 2024, OSPR presented its removal costs to the National Pollution Funds Center (“NPFC”) for \$977.76.¹¹ The NPFC thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration has determined that \$977.76 of the claimed costs are compensable and offers this amount as full and final compensation.

I. DETERMINATION PROCESS:

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).¹² 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.¹³ The NPFC may rely upon, but is not bound by the findings of fact, opinions, or conclusions reached by other entities.¹⁴ 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.

II. INCIDENT, RESPONSIBLE PARTY AND RECOVERY OPERATIONS:

Incident

On September 15, 2021, USCG Sector San Francisco received notification from the National Response Center (“NRC”) via NRC case # 1316920 regarding the M/V BARBARA MARIE discharging approximately 150 gallons of diesel fuel into Bodega Bay, a navigable waterway of the United States, causing a visible sheen on the surface of the water. USCG Sector San

⁸ USCG PR Statement Form dated September 22, 2021.

⁹ Bodega Bay Harbor is adjacent to the Greater Farallones National Marine Sanctuary (“GFNMS”) which begins at the mouth of the harbor and is rich in natural resources. See, OSPR’s Supplemental Environmental Impact Report for F/V BARBARA MARIE dated September 15, 2021. P. 11/23 of the Claim Submission.

¹⁰ See, OSPR’s Supplemental Environmental Impact Report for F/V BARBARA MARIE dated September 15, 2021. P. 10 through 23 of the Claim Submission.

¹¹ Original Claim Submission received May 17, 2024.

¹² 33 CFR Part 136.

¹³ 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)).

¹⁴ 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).

San Francisco verified in accordance with Area Contingency Plan (ACP) VOL II that the incident was within the vicinity of an ACP sensitive site.¹⁵

Responsible Party

USCG Sector San Francisco issued a Notice of Federal Interest (“NOFI”) to the vessel’s operator, Captain (b) (6).¹⁶ The USCG Pollution Responder (“PR”) investigated and determined that the vessel owner, (b) (6) Trust, is also an RP and issued the vessel owner a Notice of Violation (“NOV”).¹⁷

Recovery Operations

On September 15, 2021, Captain (b) (6) hired NRC/US Ecology to place boom around the affected area of the Spud Point Harbor.¹⁸ On September 16, 2021, NRC/US Ecology arrived on scene and deployed harbor boom and absorbent materials around the vessel and at the mouth of the harbor.¹⁹ NRC/US Ecology collected pockets of diesel fuel from the adjacent vessel slips using absorbent pads. An unknown amount of diesel was released beyond the confined area and lost to the water surface and into the water column.²⁰ Remaining pockets of diesel fuel were addressed by marina staff by passive collection using absorbent pads.²¹

Both USCG Sector San Francisco IMD and California Fish & Wildlife OSPR Pollution Responders directed the OSRO, monitored the marina, and inspected adjacent shorelines, and southerly saltmarshes.²²

III. CLAIMANT AND RP:

OSPR presented its invoice # 44903 on January 27, 2022 to the RP, and received payment in full by way of check on March 10, 2022.²³ However, a second invoice in the amount of \$999.09 was generated from OSPR for the State costs that were incurred for its Senior Environmental Specialists’ time to generate OSPR’s Supplemental Environmental Impact Report.²⁴ OSPR’s

¹⁵ See, USCG PR Statement Form dated September 22, 2021. See Also, NRC Report # 1316920 dated September 15, 2021.

¹⁶ See, Department of Homeland Security, U.S. Coast Guard Notice of Federal Interest (NOFI) issued to (b) (6) (b) (6) dated September 16, 2021.

¹⁷ USCG PR Statement Form dated September 22, 2021, and United States Coast Guard Notice of Violation ticket # 00323285 issued to (b) (6) Trust on September 23, 2021.

¹⁸ See, USCG PR Statement Form dated September 22, 2021. Also see, OSPR’s Supplemental Environmental Impact Report for F/V BARBARA MARIE dated September 15, 2021. P. 10/23 of claim submission.

¹⁹ OSPR’s Supplemental Environmental Impact Report for F/V BARBARA MARIE dated September 15, 2021. P. 13/23 of Claim Submission.

²⁰ Id.

²¹ Id.

²² See, Email from USCG Sector San Francisco Pollution Responder to NPFC, dated July 22, 2024. Also see, OSPR Supplemental Environmental Impact Report for F/V BARBARA MARIE dated September 15, 2021. P. 13/23 of claim submission.

²³ See, OSPR’s Demand Letter to (b) (6) dated January 27, 2022. Also see, (b) (6) Check # 6151 dated March 10, 2022.

²⁴ OSPR’s Supplemental Environmental Impact Report for F/V BARBARA MARIE dated September 15, 2021.

invoice # 45473 was sent to (b) (6) on November 3, 2022²⁵ and on April 5, 2023.²⁶ After not receiving payment for OSPR's invoice # 45473, OSPR submitted its costs to the NPFC on May 17, 2024 for the personnel costs in the amount of \$977.76.²⁷

IV. CLAIMANT AND NPFC:

On May 17, 2024, OSPR presented its removal costs claim to the National Pollution Funds Center (NPFC) for \$977.76.²⁸ The claim included OSPR's signed OSLTF form, State of California Invoice # 45473, OSPR Incident Billing for Billing Period 10/21 through 11/21, Department of Fish and Wildlife time Sheet, OSPR Daily Time and Leave, Hourly Rates by Classification (Federal ICRP) Effective July 1, 2021, Supplemental Environmental Impact Report for F/V BARBARA MARIE, Federal Claim Request Letter, and Department of Treasury ITRM 2-2500.

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.²⁹ An RP's liability is strict, joint, and several.³⁰ 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."³¹ 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."³² 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."³³

²⁵ OSPR's Demand Letter to (b) (6) dated November 3, 2022. *Also see*, State of California Invoice # 45473, dated June 13, 2022.

²⁶ OSPR's Demand Letter to (b) (6) dated April 5, 2023. *Also see*, State of California Invoice # 45473, dated June 13, 2022.

²⁷ *See*, the signed OSLTF Claim Form dated May 1, 2024. *Also see* OSPR's Incident Billing Invoice # 45473 dated June 13, 2022. P. 2 and 3 /23 of Original Claim Submission dated May 1, 2024.

²⁸ Original Claim Submission received May 17, 2024.

²⁹ 33 U.S.C. § 2702(a).

³⁰ *See*, H.R. Rep. No 101-653, at 102 (1990), *reprinted in* 1990 U.S.C.C.A.N. 779, 780.

³¹ *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).

³² 33 U.S.C. § 2701(31).

³³ 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).³⁴ The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.³⁵ 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.³⁶

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.³⁷

The NPFC analyzed each of these factors and determined that all 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)³⁸

During review and adjudication of the claim submission, the NPFC made several requests for additional information summarized and broken down as follows:

- Information request to the claimant on May 30, 2024, and July 22, 2024:
 - (a) The invoice in which the RP paid in full;
 - (b) RP Payment Documents;
 - (c) RP Denial Letter;
 - (d) Civil Action Number;
 - (e) Entire State's Filings involving this claim; and
 - (f) Support Documentation Proving Hours Worked.
- Information request to Sonoma County District Attorney on June 6, 2024:
 - (a) Copy of the Court Action/Complaint taken Against RP.

In support of the claim submission, the NPFC received the following information resulting from its requests for additional information:

³⁴ See generally, 33 U.S.C. § 2712 (a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

³⁵ 33 CFR Part 136.

³⁶ 33 CFR 136.105.

³⁷ 33 CFR 136.203; 33 CFR 136.205.

³⁸ See, USCG PR Statement Form dated September 22, 2021, and Email from PR to NPFC dated July 22, 2024.

- Information provided by the claimant between June 5, 2024, and July 25, 2024:
 - (a) OSPR's 120-Day Demand Letters;
 - (b) The claim number for the Sonoma County Court filing;
 - (c) Paid Invoice # 44903 dated January 27, 2021;
 - (d) RP Check # 6151 for \$4,228.04;
 - (e) OSPR Daily Activity Report dated November 15, 2021;
 - (f) OSPR Daily Activity Report dated November 23, 2021;
 - (g) OSPR Timesheet dated November 2, 2021 – December 1, 2021; and
 - (h) OSPR Time and Leave Record for November 15, 2021, and November 23, 2021.
- Information provided by the Sonoma County District Attorney on June 6, 2024:
 - (a) Sonoma County District Attorney Case # 1018717 dated August 30, 2022.

In support of the claimed costs and response activities performed between November 15, 2021, and November 23, 2021, the NPFC relied heavily on the additional support documentation that was provided by the claimant and Sonoma County DA. The FOSCR found OSPR's actions during the incident to be consistent with the National Contingency Plan (NCP). It is also reasonable to allow for the creation of OSPR's Supplemental Environmental Impact Report for the F/V BARBARA MARIE incident which provides a plethora of information about the oil spill, the product that was spilled, and the sensitive environment in which the incident occurred and the impacts to the environment.³⁹

Upon completion of its adjudication, the NPFC has determined that all the removal costs incurred by OSPR and submitted herein are compensable removal costs based on the supporting documentation provided by various entities and that the actions taken were properly coordinated with the FOSC and the actions taken were determined to be reasonable, necessary, and consistent with the NCP.

The amount of compensable costs is **\$977.76**.

VI. CONCLUSION:

After careful analysis of all the supporting documentation provided by the claimant and the entire administrative record, the NPFC determines and finds as a matter of fact that on September 15, 2021, the F/V BARBARA MARIE discharged approximately 75 gallons of diesel fuel into Bodega Harbor, a navigable waterway of the United States, during an unattended tank-to-tank fuel transfer that took place on the vessel.⁴⁰ While left unattended, the tank overfilled and discharged into Spud Point Marina.⁴¹ The discharge was from an unattended hose on the vessel during the tank-to-tank fuel transfer.⁴²

³⁹ OSPR's Supplemental Environmental Impact Report for F/V BARBARA MARIE dated September 15, 2021. Pgs. 10 – 23/23 of the claim submission.

⁴⁰ See, USCG PR Statement Form dated September 22, 2021. *Also see*, Governor's Office Emergency Services Hazardous Materials Spill Report dated September 15, 2021. P. 15/23 of claim submission.

⁴¹ See, U.S. Coast Guard Witness Statement Form dated September 16, 2021, USCG Sector San Francisco PR Statement Form, dated September 22, 2021, and OSPR's Supplemental Environmental Impact Report for F/V BARBARA Marie. P. 10/23 of claim submission.

⁴² See, NRC Case # 1316920 dated September 15, 2021.

OSPR directed the OSRO, monitored the marina, and inspected adjacent shorelines, and southerly saltmarshes.

As such, the NPFC finds the claimant's costs were the result of a discharge of oil as defined by OPA and, therefore, the OSLT is available to pay this claim based on the administrative record and applicable law and regulations.

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 **\$977.76**.

This determination is a settlement offer,⁴³ the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.⁴⁴ The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.⁴⁵ Moreover, this settlement offer is based upon the unique facts giving rise to this claim and is not precedential.

Claim Supervisor:

(b) (6)

Date of Supervisor's review: 8/14/2024

Supervisor Action: *Offer Approved*

⁴³ 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).

⁴⁴ 33 CFR § 136.115(b).

⁴⁵ *Id.*