

CLAIM SUMMARY / DETERMINATION¹

Claim Number:	UCGPA22015-URC001
Claimant:	State of CA Department of Fish and Wildlife, OSPR
Type of Claimant:	State
Type of Claim:	Removal Costs
Claim Manager:	(b) (6)
Amount Requested:	\$765.63
Action Taken:	Offer in the amount of \$602.32

EXECUTIVE SUMMARY:

On December 22, 2021 at 08:00 local time, a private citizen made notification to the United States Coast Guard (“USCG”) National Response Center (“NRC”) that an unknown oil discharged from a vessel due to unknown causes.² Sector San Francisco Command Center received the notification from the NRC of a sinking pleasure craft in Suison Slough, a navigable waterway of the United States.³ The State of CA Department of Fish and Wildlife (“Claimant” or “SOSC”) responded to the incident in its capacity as the State on Scene Coordinator (SOSC) and performed a joint assessment with the FOSC.

USCG Sector San Francisco is the Federal On Scene Coordinator (“FOSC”) for the incident based on the incident location. The Sector’s Incident Management Division (“IMD”) was notified that the vessel sunk at a private dock so they conducted a phone interview with the Harbor Patrol who confirmed that the vessel sunk and was sheening.⁴ Because the FOSC was unable to verify the owner and/or operator, it opened Federal Project Number UCGPA22015 in order to hire a response contractor to mitigate the discharge and respond to the oil spill.⁵

In accordance with the Oil Pollution Act of 1990 (OPA),⁶ (b) (6) has been identified as the responsible party (“RP”) for the 40 ft pleasure craft that sunk and released oil into the Suison Slough.⁷

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, National Response Center (NRC) report # 1325101 dated December 22, 2021.

³ See, USCG SITREP-POL One dated December 22, 2021.

⁴ *Id.*, section 2A.

⁵ See, USCG NPN Notification message dated December 22, 2021.

⁶ 33 U.S.C. § 2701(32).

⁷ USCG Notice of Federal Interest (NOFI) dated December 23, 2021.

On March 27, 2024, the National Pollution Funds Center (NPFC) received State of California's claim submission for \$765.63.⁸ The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations and after careful consideration, has determined that **\$602.32** is compensable and offers this amount as full and final compensation of this claim..

I. INCIDENT, RESPONSIBLE PARTY AND RECOVERY OPERATIONS:

Incident

On December 22, 2021 at 08:00 local time, a private citizen made notification to the United States Coast Guard ("USCG") National Response Center ("NRC") that an unknown oil discharged from a vessel due to unknown causes.⁹ Sector San Francisco Command Center received the notification from the NRC of a sinking pleasure craft in Suisun Slough, a navigable waterway of the United States.¹⁰ The State of CA Department of Fish and Wildlife ("Claimant" or "SOSC") responded to the incident in its capacity as the State on Scene Coordinator (SOSC) and performed a joint assessment with the FOSC.

USCG Sector San Francisco is the Federal On Scene Coordinator ("FOSC") for the incident based on the incident location. The Sector's Incident Management Division ("IMD") was notified that the vessel sunk at a private dock so they conducted a phone interview with the Harbor Patrol who confirmed that the vessel sunk and was sheening.¹¹ Because the FOSC was unable to verify the owner and/or operator, it opened Federal Project Number UCGPA22015 in order to hire a response contractor to mitigate the discharge and respond to the oil spill.¹²

Responsible Party

OPA defines the Responsible Party (RP) for a discharge from a vessel as "any person owning, operating, or demise chartering the vessel."¹³ [REDACTED] has been identified as the responsible party ("RP") for the 40 ft pleasure craft that sunk and released oil into the Suisun Slough.¹⁴

Recovery Operations

On December 22, 2021, Sector San Francisco's Incident Management Division (IMD) in its capacity as the FOSC, conducted an initial phone investigation with the reporting party¹⁵ who was on scene assisting the vessel, and determined that the vessel had sunk at a private mooring and was creating a sheen and had an unknown amount of fuel

⁸ State of California original claim submission received March 27, 2024.

⁹ See, National Response Center (NRC) report # 1325101 dated December 22, 2021.

¹⁰ See, USCG SITREP-POL One dated December 22, 2021.

¹¹ *Id.*, section 2A.

¹² See, USCG NPN Notification message dated December 22, 2021.

¹³ 33 U.S.C. § 2701(32).

¹⁴ USCG Notice of Federal Interest (NOFI) dated December 23, 2021.

¹⁵ See, Harbor Patrol is identified in USCG SITREP-POL One, section 2A ACTION TAKEN, dated December 22, 2021

onboard.¹⁶ Harbor Patrol deployed sorbent and hard boom.¹⁷ The claimant arrived on scene to conduct an assessment of the vessel and speak with Harbor Patrol. The owner and/or operator of the vessel could not be contacted so the FOSC hired a response contractor, US Ecology to perform response actions, remove fuel onboard and perform disposal.¹⁸

On December 30, 2021, all response operations have concluded which consisted of petroleum product removal and tank pumping. Removal of all substances and also remove the containment hard boom and all absorbents and absorbent boom inside of the containment. A walkthrough was conducted by the FOSC and the incident case was closed.¹⁹

II. CLAIMANT AND NPFC:

On March 27, 2024, the NPFC received State of California's claim submission for \$765.63 in uncompensated removal costs.²⁰ The claim included a cover letter dated March 27, 2024, a signed OSLTF Claim Form, Standard Form 1081, State of CA Incident Billing Summary, State of CA Cost Summary or Invoice # FED CLAIM 56773 and associated timesheets for (b) (6) and (b) (6), State of CA Investigation Report, and State of CA ICRP Hourly Rates broken down by labor.²¹

III. DETERMINATION PROCESS:

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).²² 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.²³ The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.²⁴ 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.

¹⁶ See, USCG SITREP-POL One, section 1A OVERVIEW, dated December 22, 2021.

¹⁷ USCG SITREP-POL One, section 2A ACTION TAKEN, dated December 22, 2021

¹⁸ USCG SITREP-POL Two dated December 29, 2021

¹⁹ USCG SITREP-POL Four dated December 31, 2021

²⁰ See, State of California's original claim submission received March 27, 2021.

²¹ *Id.*

²² 33 CFR Part 136.

²³ 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)).

²⁴ 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).

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.²⁵ An RP's liability is strict, joint, and several.²⁶ 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."²⁷ 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."²⁸ 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."²⁹

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).³⁰ The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.³¹ 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.³²

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.³³
- (d) That the removal costs were uncompensated and reasonable.³⁴

²⁵ 33 U.S.C. § 2702(a).

²⁶ See, H.R. Rep. No 101-653, at 102 (1990), *reprinted in* 1990 U.S.C.C.A.N. 779, 780.

²⁷ *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).

²⁸ 33 U.S.C. § 2701(31).

²⁹ 33 U.S.C. § 2701(30).

³⁰ See generally, 33 U.S.C. § 2712 (a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

³¹ 33 CFR Part 136.

³² 33 CFR 136.105.

³³ See, USCG SITREP-POL One through Four and Final coordinating actions performed between December 22, 2021 through December 30, 2021.

³⁴ 33 CFR 136.203; 33 CFR 136.205.

Upon review and adjudication of the claim, the NPFC confirmed that the majority of the actions performed by the claimant in its capacity as the SOSC for this incident is supported by the FOSC's Situation Reports One through Four which corroborate the actions performed by the claimant in assessing, interviewing and overseeing actions performed between December 22 and 27, 2021.³⁵ The NPFC also confirmed the labor rates listed and paid for the responding Warden was billed in accordance with the ICRP labor hourly rate assigned and claimed for the SOSC and claimed.³⁶ The NPFC has also determined that one hour of time billed for an Attorney is not supported by the record as a removal cost and is therefore denied.

V. CONCLUSION:

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, the State of California's request for uncompensated removal costs is approved in the amount of **\$602.32**.

This determination is a settlement offer,³⁷ the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.³⁸ The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.³⁹ 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:	6/6/24
Supervisor Action:	Offer Approved

³⁵ See, USCG SITREP-POL One through Four and Final coordinating actions performed between December 22, 2021 through December 30, 2021.

³⁶ See, State of California's original claim submission received March 27, 2021, page 17 of 21.

³⁷ 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).

³⁸ 33 CFR § 136.115(b).

³⁹ 33 CFR § 136.115(b).