

CLAIM SUMMARY / DETERMINATION¹

Claim Number:	UCGPE20902-URC001
Claimant:	State of CA, Dept of Fish & Wildlife, OSPR
Type of Claimant:	State
Type of Claim:	Removal Costs
Claim Manager:	(b) (6)
Amount Requested:	\$3,005.03
Action Taken:	Offer in the amount of \$2,925.32.

EXECUTIVE SUMMARY:

On December 19, 2019, the United States Coast Guard (“USCG”) National Response Center (“NRC”) received notification that a sheen was coming from a vessel that sank at 210 Landing Way, Petaluma, CA into the Petaluma River, a navigable waterway of the United States.² State of CA, Dept of Fish & Wildlife (“OSPR” or “Claimant”)³ received a report of the incident.⁴

OSPR, in its capacity as the SOSC, responded to the incident scene along with the Petaluma Fire Inspector.⁵ The United States Environmental Protection Agency (“USEPA”) was the Federal On Scene Coordinator (“FOSC”) for the incident.⁶ Mr. (b) (6) (“Mr. (b) (6)” or “RP”) was identified as the Responsible Party (RP),⁷ as defined by the Oil Pollution Act of 1990.⁸ The FOSC opened the Oil Spill Liability Trust Fund via Federal Project Number E20902 in order to hire the local fire department, for their response efforts to contain the spilled oil using boom and boats.⁹

OSPR submitted its uncompensated removal cost claim to the National Pollution Funds Center (NPFC) in the amount of \$3,005.03 on April 3, 2024.¹⁰ The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable laws and regulations, and after careful consideration has determined that \$2,925.32 is compensable and offers this amount as full and final compensation of this claim.

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 National Response Center Report #1266834 dated December 19, 2019.

³ OSPR was the State On-Scene Coordinator (SOSC).

⁴ See, CA OSPR Arrest/Investigation Report, Narrative section, dated January 14, 2020, pages 24-26 of 31 of the OSPR Original Claim Submission dated March 28, 2024.

⁵ *Id.*

⁶ USEPA POLREP #1 and Final dated December 23, 2019.

⁷ See, USEPA POLREP #1 and Final, section 2.1.3 Enforcement Activities, Identity of Potentially Responsible Parties (PRPs), dated December 23, 2019.

⁸ 33 U.S.C. § 2701(32).

⁹ See, USEPA POLREP #1 and Final, section 2.4.1 Narrative, dated December 23, 2019.

¹⁰ CA OSPR Original Claim Submission dated March 28, 2024

I. INCIDENT, RESPONSIBLE PARTY AND RECOVERY OPERATIONS:

Incident

On December 19, 2019, the United States Coast Guard (“USCG”) National Response Center (“NRC”) received notification that a sheen was coming from a vessel that sank at 210 Landing Way, Petaluma, CA into the Petaluma River, a navigable waterway of the United States.¹¹ State of CA, Dept of Fish & Wildlife (“OSPR” or “Claimant”)¹² received a report of the incident.¹³

OSPR, in its capacity as the SOSC, responded to the incident scene along with the Petaluma Fire Inspector.¹⁴ The United States Environmental Protection Agency (“USEPA”) was the Federal On Scene Coordinator (“FOSC”) for the incident.¹⁵ On December 19, 2019, OSPR received notification of the incident through the California Emergency Management Agency – Emergency Services and Warden (b) (6) responded to the scene. Mr. (b) (6) arrived on the scene and found the Commercial Fishing Vessel SAXON had sunk while tied to the dock. The vessel was actively leaking petroleum, and a large sheen was visible across the width of the river in both directions as far as he could see.¹⁶

Responsible Party

The Oil Pollution Act identifies the owner and/or operator of a vessel resulting in an OPA incident to be the Responsible Party (RP) for that incident.¹⁷ The FOSC and SOSC both identified Mr. (b) (6) as the owner of the vessel, SAXON, that discharged the oil.¹⁸ The NPFC issued a Responsible Party (RP) Notification letter dated April 10, 2024 to Mr. (b) (6).¹⁹ A RP Notification letter notifies the RP that a claim was presented to the National Pollution Funds Center (NPFC) seeking reimbursement of uncompensated removal costs or damages incurred as a result of the incident in which the recipient is the identified or suspected RP.

Recovery Operations

On December 19, 2019, OSPR directed the placement of booming owned by the Gold Ridge Fire Protection District. The booming was placed entirely around the vessel. OSPR’s Environmental Scientist conducted shoreline assessment upstream and downstream of the vessel and did not observe sheening along the shoreline and there was no additional observable release from the vessel. The FOSC, Gold Ridge Fire Protection District, and OSPR demobilized from the site and the RP demobilized from the site to obtain additional pumps to float the vessel.²⁰

As of December 21, 2019, the RP was able to float the vessel. The booming remained around the vessel and the Gold Ridge Fire Protection District will remove the boom not that the vessel is no longer

¹¹ National Response Center Report #1266834 dated December 19, 2019.

¹² OSPR was the State On-Scene Coordinator (SOSC).

¹³ See, CA OSPR Arrest/Investigation Report, Narrative section, dated January 14, 2020, pages 24-26 of 31 of the OSPR Original Claim Submission dated March 28, 2024.

¹⁴ *Id.*

¹⁵ USEPA POLREP #1 and Final dated December 23, 2019.

¹⁶ See, CA OSPR Arrest/Investigation Report, Narrative section, dated January 14, 2020, pages 24-26 of 31 of the OSPR Original Claim Submission dated March 28, 2024.

¹⁷ 33 U.S.C. § 2701(32).

¹⁸ See, USEPA POLREP #1 and Final, section 2.1.3 Enforcement Activities, Identity of Potentially Responsible Parties (PRPs), dated December 23, 2019; See also, CA OSPR Arrest/Investigation Report, Suspect Information section, dated January 14, 2020, page 23 of 31 of the OSPR Original Claim Submission dated March 28, 2024.

¹⁹ See, 33 U.S.C. § 2701. See also, Responsible Party (RP) Notification Letter dated April 10, 2024.

²⁰ See, USEPA POLREP #1 and Final, section 2.1.2 Response Actions to Date, dated December 23, 2019

submerged. OSPR planned to dispatch an oil spill prevention specialist to the vessel to determine if any fuel remains in the vessel that continued to pose a threat of release.²¹

It was noted that the maximum fuel capacity of the vessel was 748.1 gallons. The quantity in the tanks when it sank remains unknown. It was also unknown if other petroleum or hazardous materials were on the vessel when it sank, and there is no sample data available.

II. CLAIMANT AND NPFC:

On April 3, 2024, presented its removal costs claim to the National Pollution Funds Center (NPFC) in the amount of \$3,005.03.²² OSPR provided the NPFC with an OSLTF claim form, SF 1081, Incident billing which includes the invoice and support documentation, hourly rate schedule, Arrest/Investigation Report, California Emergency Management Agency Emergency Services Hazardous Materials Spill Report, and RP notification letter.²³

On April 9, 2024, and April 19, 2024, the NPFC requested additional support documentation via e-mail from OSPR relative to the incident.²⁴²⁵ On April 26, 2024, OSPR replied to the NPFC's request, providing partial response which included additional support.²⁶

III. DETERMINATION PROCESS:

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).²⁷ 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.²⁸ The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.²⁹ 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:

Under OPA, 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.³⁰ An RP's liability is

²¹ *Id.*

²² CA OSPR Original Claim Submission dated March 28, 2024.

²³ *Id.*

²⁴ See, NPFC e-mail to OSPR dated April 9, 2024, requesting additional information.

²⁵ See, NPFC e-mail to OSPR dated April 19, 2024, requesting additional information.

²⁶ See, OSPR e-mail to NPFC dated April 26, 2024.

²⁷ 33 CFR Part 136.

²⁸ 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)).

²⁹ 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).

³⁰ 33 U.S.C. § 2702(a).

strict, joint, and several.³¹ 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.”³² 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.”³³ 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.”³⁴

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).³⁵ The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.³⁶ 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.³⁷

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.³⁸
- (d) That the removal costs were uncompensated and reasonable.³⁹

The NPFC analyzed each of these factors and determined that most 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 rate sheet pricing and all costs were supported by adequate documentation which included invoices and/or proof of payment where applicable.

³¹ See, H.R. Rep. No 101-653, at 102 (1990), reprinted in 1990 U.S.C.C.A.N. 779, 780.

³² *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).

³³ 33 U.S.C. § 2701(31).

³⁴ 33 U.S.C. § 2701(30).

³⁵ See generally, 33 U.S.C. § 2712 (a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

³⁶ 33 CFR Part 136.

³⁷ 33 CFR 136.105.

³⁸ The FOSC opined that the response actions undertaken by OSPR were consistent with the National Contingency Plan based on the FOSC’s articulation of response actions to date in USEPA POLREP #1 and Final dated December 23, 2019.

³⁹ 33 CFR 136.203; 33 CFR 136.205.

All approved costs were supported by adequate documentation and were determined by the FOSC to be consistent with the National Contingency Plan (NCP).⁴⁰

Upon adjudication of the costs, the NPFC has determined that the amount of compensable removal costs is \$2,925.32 while \$79.71 is denied for the following reasons:⁴¹

The Personnel costs were supported by timesheets except for hours for (b) (6), (b) (6) on December 19, 2024. On this day, OSPR invoiced 5.5 overtime hours⁴², when the timesheet support provided showed 4.5 regular hours and 1.0 overtime hour.⁴³ The NPFC allowed for 4.5 regular hours and 1.0 overtime hours as recorded on the timesheet resulting in a \$25.65 reduction in the claim.

OSPR claimed \$54.06 for Administrative Costs⁴⁴, however, the administrative costs were not outlined in the OSPR rate structure documentation. The NPFC questioned OSPR about this charge and their response was that the charge was for “the cost recovery position to collect the costs.”⁴⁵ 33 CFR 136.105 (e)(8) states that “the reasonable costs incurred by the claimant in assessing the damages claimed. This includes the reasonable costs of estimating the damages claimed, but not attorney’s fees or other administrative costs associated with preparation of the claim.”⁴⁶ Based on this, we denied the \$54.06 Administrative Cost as part of this claim.

Overall Denied Costs: \$79.71

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 for the amount of **\$2,925.32**.

This determination is a settlement offer,⁴⁷ the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.⁴⁸ The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.⁴⁹ Moreover, this settlement offer is based upon the unique facts giving rise to this claim and is not precedential.

⁴⁰ The FOSC opined that the response actions undertaken by OSPR were consistent with the National Contingency Plan based on the FOSC’s articulation of response actions to date in POLREP One and Final dated December 23, 2019.

⁴¹ Enclosure 3 provides a detailed analysis of the amounts approved by the NPFC.

⁴² CA OSPR Original Claim Submission submitted March 28, 2024, page 8 of 31

⁴³ CA OSPR Original Claim Submission submitted March 28, 2024, page 13 of 31

⁴⁴ CA OSPR Original Claim Submission submitted March 28, 2024, page 7 of 31

⁴⁵ See, OSPR e-mail to NPFC dated April 26, 2024

⁴⁶ 33 CFR 136.105 (e)(8)

⁴⁷ 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).

⁴⁸ 33 CFR 136.115(b).

⁴⁹ *Id.*

(b) (6)

Claim Supervisor: (b) (6)

Date of Supervisor's review: 6/21/2024

Supervisor Action: *Offer Approved*