

CLAIM SUMMARY / DETERMINATION¹

Claim Number:	UCGP925012-URC001
Claimant:	CA DEPARTMENT OF FISH AND WILDLIFE: OSPR
Type of Claimant:	STATE
Type of Claim:	REMOVAL COSTS
Claim Manager:	(b) (6)
Amount Requested:	\$2,584.97
Action Taken:	Offer in the amount of \$2,124.82

EXECUTIVE SUMMARY:

On March 4, 2019, at 1130 local time, the United States Coast Guard (“USCG”) National Response Center (“NRC”) received a report of diesel fuel that had discharged from a sunken vessel causing a rainbow sheen in East Bay which is a tributary of the San Francisco Bay, a navigable waterway of the United States.² A subsequent report was also made to the NRC the following day at 0800 local time, stating an unmanned moored vessel sank in the East Bay due to unknown causes resulting in a sheen around the vessel.³ The State of California Department of Fish & Wildlife, Office of Spill Prevention and Response (“Claimant” or “OSPR”) responded as the State On Scene Coordinator (“Claimant” or “SOSC”).⁴

On March 4, 2019, Coast Guard Pollution Investigators arrived on scene and observed an active discharge from the pleasure craft REDEEMED, (b) (6) registered to (b) (6) d/b/a The Herbert Enterprise [sic] Group LLC (hereinafter “T/H/E”).⁵ USCG Sector San Francisco is the Federal On-Scene Coordinator (“FOSC”) for the incident.⁶ The FOSC issued a Notice of Federal Interest (“NOFI”) to (b) (6) on March 6, 2019.⁷

In accordance with the Oil Pollution Act of 1990 (“OPA”), the owner and operator of the vessel, Mr. (b) (6) (“T/H/E”), is identified as the Responsible Party (“RP”) as defined by OPA.⁸

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 National Response Center (NRC) Report # 1239220 dated March 4, 2019.

³ National Response Center (NRC) Report # 1239277 dated March 5, 2019.

⁴ State of California – Department of Fish and Wildlife Arrest/Investigation Report, pages 10-30 of 36 dated June 6, 2019.

⁵ See, USCG Administrative Order issued by USCG Sector San Francisco dated March 5, 2019. See also, DMV undocumented documentation for the pleasure craft REDEEMED dated February 1, 2019 (hereinafter “T/H/E”).

⁶ See, USCG Administrative Order issued by USCG Sector San Francisco dated March 5, 2019.

⁷ USCG NOFI issued to (b) (6) dated March 6, 2019.

⁸ See, USCG NOFI issued to (b) (6) dated March 6, 2019; See also, 33 U.S.C. §2701(32).

On March 6, 2025, OSPR presented its removal cost claim to the National Pollution Funds Center (“NPFC”) for \$2,584.97.⁹ The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration has determined that \$2,124.82 of the claimed costs are compensable and offers this amount as full and final compensation of this claim.

I. DETERMINATION PROCESS:

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).¹⁰ 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.¹¹ The NPFC may rely upon, but is not bound by the findings of fact, opinions, or conclusions reached by other entities.¹² 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 March 4, 2019, at 1130 local time, the United States Coast Guard (“USCG”) National Response Center (“NRC”) received a report of diesel fuel that had discharged from a sunken vessel causing a rainbow sheen in East Bay which is a tributary of the San Francisco Bay, a navigable waterway of the United States.¹³ A subsequent report was also made to the NRC the following day at 0800 local time, stating an unmanned moored vessel sank in the East Bay due to unknown causes resulting in a sheen around the vessel.¹⁴

Responsible Party

Mr. (b) (6) d/b/a The Herbert Enterprise [sic]¹⁵ is the owner and operator of the pleasure craft REDEEMED and identified as the RP as defined by the Oil Pollution Act of 1990

⁹ OSPR Original Claim submission received March 6, 2025.

¹⁰ 33 CFR Part 136.

¹¹ 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)).

¹² 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).

¹³ National Response Center (NRC) Report # 1239220 dated March 4, 2019.

¹⁴ National Response Center (NRC) Report # 1239277 dated March 5, 2019.

¹⁵ See, DMV documentation for the pleasure craft REDEEMED dated February 1, 2019 (hereinafter “T/H/E”).

(OPA).¹⁶ On March 11, 2025, the NPFC issued an RP Notification Letter to Mr. (b) (6) via United States Parcel Service (“USPS”).¹⁷

Recovery Operations

According to the Narrative section of the OSPR Arrest/Investigative Report¹⁸. Per the CalOES report # 19-1539, there was diesel fuel that discharged from the sunken vessel with approximately 75’x75’ petroleum sheen on the marina water. The RP hired Parker Diving Service to raise, stabilize and remove all remaining petroleum that was left on the vessel.

III. CLAIMANT AND NPFC:

On March 6, 2025, the NPFC received OSPR’s claim submission seeking reimbursement of its removal costs totaling \$2,584.97.¹⁹ OSPR submitted the Optional OSLTF Claim Form,²⁰ CA OSPR Investigation Report,²¹ and Redeemed Federal Claim Cost Package.²²

On March 19, 2025, the NPFC requested that OSPR provide clarifying information/support documentation that details exactly what the OSPR attorney was used for and to break down the details by date and service provided; provide clarifying information/support documentation that details exactly what the legal program analyst was used for and to break down the details by date and service provided; and the NPFC states that OSPR’s claim included Oil Spill Prevention Specialist (OSPS) (b) (6) costs in the amount of \$1,003.08 however OSPR’s daily activity report indicates that on March 6, 2019. OSPS (b) (6) arrived on scene and surveyed the vessel and there is no mention of OSPR (b) (6). The NPFC further stated that the timesheet and activity report also do not align and that the NPFC needs (b) (6) (b) (6)’s timesheet and/or documentation showing that OSPS (b) (6) was on scene.²³

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.²⁴ An RP’s liability is strict, joint, and several.²⁵ 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

¹⁶ See, USCG NOFI issued to (b) (6) dated March 6, 2019; See also, 33 U.S.C. §2701(32).

¹⁷ See, RP Notification letter to Mr. (b) (6) dated March 11, 2025.

¹⁸ State of California – Department of Fish and Wildlife Arrest/Investigation Report, Narrative section, pages 20-21 of 30 dated June 6, 2019.

¹⁹ OSPR Original Claim submission received March 6, 2025.

²⁰ *Id.*

²¹ State of California – Department of Fish and Wildlife Arrest/Investigation Report, Narrative section, pages 20-21 of 30 dated June 6, 2019.

²² Redeemed Federal Claim Cost Packet, pages 1-30

²³ Email from NPFC to OSPR dated March 19, 2025.

²⁴ 33 U.S.C. § 2702(a).

²⁵ See, H.R. Rep. No 101-653, at 102 (1990), *reprinted in* 1990 U.S.C.C.A.N. 779, 780.

favoring those responsible for the spills.”²⁶ 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.”²⁷ 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.”²⁸

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).²⁹ The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.³⁰ 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.³¹

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;³²
- (d) That the removal costs were uncompensated and reasonable.³³

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 pricing and all costs were supported by adequate documentation and have been determined by the FOSC to be consistent with the National Contingency Plan (NCP).³⁴

Upon adjudication of the costs, the NPFC has determined that the amount of compensable removal costs is \$2,124.82 while \$460.15 are costs that were incurred to set up a case file and to

²⁶ *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).

²⁷ 33 U.S.C. § 2701(31).

²⁸ 33 U.S.C. § 2701(30).

²⁹ See generally, 33 U.S.C. § 2712 (a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

³⁰ 33 CFR Part 136.

³¹ 33 CFR 136.105.

³² The NPFC received FOSC coordination for the dates of service of March 4-7, 2019, via an email dated March 18, 2025.

³³ 33 CFR 136.203; 33 CFR 136.205.

³⁴ USCG Sector San Francisco Pollution Responder Statement Form dated April 8, 2019.

provide legal counsel to the SOSC regarding the RP. Setting up a case file is not an OPA compensable removal cost and not affiliated with a response action mitigating the spill. Providing legal counsel about the RP to the SOSC is not an OPA compensable removal cost.

Associate Govt. Program Analyst Legal

This line item is denied because setting up a case file is not an OPA compensable removal cost and not affiliated with a response action mitigating the spill.

Attorney, Legal

This line item is denied because providing legal counsel to the SOSC about the RP is not an OPA compensable removal costs.

Overall Denied Costs: \$460.15³⁵

V. 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 March 4, 2019 the M/V REDEEMED partially sunk at the Emeryville Marina, on the East Bay, a tributary of San Francisco Bay, a navigable waterway of the United States, causing a visible sheen.³⁶ OSPR responded in its capacity as the State On Scene Coordinator (“SOSC”) and provided personnel and vehicles. As such, the NPFC finds that a portion of the claimant’s costs are OPA compensable costs and the OSLTF is available to pay those costs. The NPFC finds that most of the costs relating to the state’s employees working in their capacity as SOSCs, and Oil Spill Prevention Specialists are compensable as OPA removal costs. The detailed actions of those personnel on the incident report, demonstrate that their primary purpose was related to oil spill response and recovery efforts.

Where the state’s employees’ activities were not clearly identifiable as removal costs, the NPFC noted the insufficiency on the attached spreadsheet.³⁷ Specifically, the hours for the legal personnel are denied as not for the primary purpose of removing oil and denied in the total amount of \$460.15.

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 **\$2,124.82.**

³⁵ Enclosure 3 Summary of Costs spreadsheet.

³⁶ National Response (NRC) Report # 1239220 dated March 4, 2019.

³⁷ Enclosure 3 provides a detailed analysis of the amounts approved and denied by the NPFC.

This determination is a settlement offer,³⁸ the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.³⁹ The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.⁴⁰ 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: 6/26/25

Supervisor Action: *Offer Approved*

Supervisor's Comments:

³⁸ 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).

³⁹ 33 CFR 136.115(b).

⁴⁰ 33 CFR 136.115(b).