

CLAIM SUMMARY / DETERMINATION¹

Claim Number:	UCGPA25011-URC001
Claimant:	DM Diving Inc. dba Monterey Bay Diving
Type of Claimant:	Corporate
Type of Claim:	Removal Cost
Claim Manager:	(b) (6)
Amount Requested:	\$31,894.00
Action Taken:	Denial

EXECUTIVE SUMMARY:

On March 26, 2025, United States Coast Guard (“USCG”) Sector San Francisco received a hail over the radio from a 54ft boat with three people on board. The vessel had run aground on the rocks at Stillwater Cove and was taking on water.² USCG Sector San Francisco Incident Management Division (“IMD”) responded on scene and opened the Oil Spill Liability Trust Fund (“OSLTF” or “Fund”) to conduct pollution-removal operations.³ The IMD hired Global Diving and Salvage to perform removal operations that involved removing oil from the vessel. Oil-removal actions were complete on March 27, 2025.⁴ Approximately 1300 gallons of product were successfully removed from the vessel.⁵ On April 12, 2025, contractors completed wreck removal of the vessel.⁶ The Federal On Scene Coordinator’s Representative (“FOSCR”) confirmed no oil was discharged from the vessel.⁷

The Claimant seeks alleged costs to clean up debris after each high tide until a contractor was hired to cut up and dispose of the vessel.⁸ Claimant’s invoiced costs extend from March 26, 2025 through April 7, 2025.⁹

The Sector IMD personnel provided information to the National Pollution Funds Center (“NPFC”) stating that the Coast Guard FOSCR did not hire the claimant, and did not direct the claimant’s actions.¹⁰ Because the claimant’s actions were not coordinated with the FOSC, the

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 # 1426895 dated March 26, 2025.

³ United States Coast Guard Situation Report (SITREP-POL) Two and Final dated May 28, 2025.

⁴ USCG SITREP-POL Two and Final dated May 28, section 2E, dated May 28, 2025.

⁵ USCG SITREP-POL Two and Final dated May 28, 2025.

⁶ USCG SITREP-POL Two and Final dated May 28, 2025.

⁷ Email from FOSCR to NPFC dated July 25, 2025.

⁸ Optional OSLTF Claim Form dated June 27, 2025.

⁹ Invoice 16314 dated April 3, 2025, provided with initial claim submission.

¹⁰ Email from FOSCR to NPFC dated July 10, 2025.

alleged costs are not compensable removal costs as defined by the Oil Pollution Act of 1990 (“OPA”) and are denied.

I. DETERMINATION PROCESS:

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).¹¹ 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.¹² The NPFC may rely upon, but is not bound by the findings of fact, opinions, or conclusions reached by other entities.¹³ 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 26, 2025, USCG Sector San Francisco received a hail over the radio from a 54ft boat with three people on board. The vessel had run aground on the rocks at Stillwater Cove and was taking on water.¹⁴ The FOSCR confirmed no oil was discharged from the vessel.¹⁵

Responsible Party

The responsible parties for this incident are the vessel’s managing owner, Mulroy Bay LLC¹⁶ and (b) (6) and (b) (6).¹⁷ The NPFC notified the RPs that it had received a claim from

¹¹ 33 CFR Part 136.

¹² 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)).

¹³ 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).

¹⁴ See, National Response Center (NRC) report # 1426895 dated March 26, 2025; See also, USCG SITREP-POL Two and Final dated May 28, 2025.

¹⁵ Email from FOSCR to NPFC dated July 25, 2025

¹⁶ See, USCG Certificate of Documentation Information; See also, USCG Vessel Critical Profile dated March 27, 2025.

¹⁷ Implied ownership by these two people based on an email from Shane Law to NPFC dated July 14, 2025; and Letter of Representation from Shane Law to Monterey Bay Diving dated June 26, 2025, provided with initial claim submission.

Monterey Bay Diving via letter dated July 1, 2025.¹⁸ NPFC received a response from the RP's attorney, Mr. (b) (6), attempting to place responsibility on Stillwater Cove.¹⁹

Recovery Operations

On March 26, 2025, the USCG Sector IMD responded on scene and opened the Fund to conduct pollution-removal operations. USCG Sector San Francisco Incident Management Division ("IMD") responded on scene and opened the Fund to conduct pollution-removal operations. The IMD hired Global Diving and Salvage to perform removal operations that involved removing oil from the vessel. Oil-removal actions were complete on March 27, 2025.²⁰ Approximately 1300 gallons of product were successfully removed from the vessel.²¹ On April 12, 2025, contractors completed wreck removal of the vessel.²²

III. CLAIMANT AND RP:

Absent limited circumstances, the federal regulations implementing the Oil Pollution Act of 1990 (OPA)²³ require all claims for removal costs must be presented to the responsible party before seeking compensation from the NPFC.²⁴

The claimant is DM Diving Inc. dba Monterey Bay Diving ("Monterey Bay Diving"). The claimant has satisfied its presentment requirements under OPA, when it submitted its claim to (b) (6) on May 21, 2025.²⁵ Presentment to the RP is implicitly verified by the response from Mr. (b) (6), through his attorney, where the RP is denying payment of the claimant's costs.²⁶

IV. CLAIMANT AND NPFC:

When an RP denies a claim or has not settled a claim after ninety-days of receipt, a claimant may elect to present its claim to the NPFC.²⁷ After its claim was denied, the claimant submitted its claim to the NPFC.²⁸ The claim is properly presented to the NPFC because the RP denied payment on the claim via letter from its attorney dated June 26, 2025.²⁹ The claim included the following documentation:

¹⁸ Email from NPFC to Shane Law dated July 1, 2025, with RP Notification Letter dated July 1, 2025.

¹⁹ Email from Shane Law to NPFC dated July 15, 2025.

²⁰ USCG SITREP-POL Two and Final, section 2E dated May 28, 2025.

²¹ USCG SITREP-POL Two and Final dated May 28, 2025.

²² USCG SITREP-POL Two and Final, section 1A, dated May 28, 2025.

²³ 33 U.S.C. § 2701 *et seq.*

²⁴ 33 CFR 136.103.

²⁵ OSLTF Optional Claim Form dated June 27, 2025.

²⁶ Letter from Shane Law to Monterey Bay Diving dated June 26, 2025, provided to NPFC with initial claim submission.

²⁷ 33 CFR 136.103.

²⁸ Monterey Bay Diving Original Claim submission dated June 27, 2025, and received by the NPFC on June 30, 2025.

²⁹ Letter from Shane Law to Monterey Bay Diving dated June 26, 2025, provided to NPFC with initial claim submission.

1. Optional OSLTF Claim Form;
2. Claimant's invoice #16314 addressed to (b) (6);
3. Letter from Shane Law (attorney for (b) (6));
4. Email from Todd & Associates to Monterey Bay Diving dated April 7, 2025, acknowledging receipt of an invoice;
5. Email from Todd & Associates to Monterey Bay Diving dated May 21, 2025, instructing Monterey Bay Diving to forward the invoice to (b) (6); and
6. Monterey Bay Diving Rate Sheet for Salvage Job, addressed to Todd & Associates.

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.³⁰ An RP's liability is 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

³⁰ 33 U.S.C. § 2702(a).

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.

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

The OPA regulations state that “the amount of compensation allowable is the total of uncompensated reasonable removal costs of actions taken that were determined by the FOSC to be consistent with the National Contingency Plan or were directed by the FOSC. Except in exceptional circumstances, removal activities for which costs are being claimed must have been coordinated with the FOSC.”⁴⁰

The claimant provided no records showing that its actions were directed by the FOSC or that the FOSC determined that the actions were consistent with the NCP. Because the claimant provided no indication of FOSC coordination in its submission, the NPFC reached out to the FOSCR to obtain a statement regarding the claimant’s actions.⁴¹ The FOSCR stated that the Coast Guard did not hire the claimant and the claimant actually left the scene shortly after the Coast Guard’s arrival and hiring of Global Diving and Salvage to perform the pollution response.⁴² Further, exceptional circumstances did not occur here, especially when the FOSC had representatives on site, and they did not find it necessary to have the claimant there. Therefore, the claimant has not demonstrated FOSC coordination of its actions and thus has not satisfied the legal requirements for a compensable removal cost claim under OPA.

Additionally, the record provided by the claimant shows that its actions were likely not related to oil-spill removal. The submission states that the claimant’s actions were for vessel salvage. The initial invoice provided to the NPFC by the claimant included charges for “Salvage of Vessel – Emerald C” starting on March 26, 2025 and extending through April 7, 2025.⁴³ Monterey Bay Diving also provided a rate sheet with its claim that was initially addressed to Todd & Associates, Marine Surveyors. This rate sheet states that it was for “Salvage Job” and was provided to the marine surveyors in response to their request for a rate sheet for salvage services.⁴⁴

In addition to the NPFC’s finding that the claimant has not shown that its actions were coordinated with the FOSC or that they were even removal actions as defined by OPA, the submission raises questions about the amount of time invoiced. The claimant alleges that it

³⁸ 33 CFR 136.203.

³⁹ 33 CFR 136.203; 33 CFR 136.205.

⁴⁰ 33 CFR 136.205.

⁴¹ Telephone call between NPFC and Sector San Francisco IMD, April 9, 2025, memorialized by email from NPFC to Sector San Francisco dated April 9, 2025.

⁴² Email from Sector San Francisco IMD to NPFC dated July 10, 2025.

⁴³ Invoice 16314 dated April 3, 2025, provided with initial claim submission. It is not clear why costs extend past the date of the invoice.

⁴⁴ Monterey Bay Diving letter to Todd & Associates dated March 26, 2025.

incurred costs from March 26, 2025 through April 7, 2025,⁴⁵ after which a contractor came in to remove the wrecked vessel.⁴⁶ The FOSCR stated that the claimant left the scene on the first day, March 26, 2025, shortly after the Coast Guard's arrival.⁴⁷ This is further evidence that the claimed costs were not for oil-removal actions.

Based on the foregoing, the NPFC must deny the claim for lack of FOSC coordination as required in accordance with the applicable regulations.⁴⁸ The claimant has failed to provide evidence that the claimed costs for the actions performed were at the direction of the FOSC or were determined by the FOSC to be consistent with the NCP,⁴⁹ and the claimant has not shown that its costs were for oil-pollution removal actions.

The NPFC has not specifically adjudicated the underlying claimed costs because it has denied the claim on the jurisdictional grounds of not being compensable under OPA.⁵⁰

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 the actions of the claimant were not performed at the direction of the FOSC, were not determined by the FOSC to have been performed in accordance with the NCP, and the circumstances do not warrant exceptional circumstances where FOSC coordination would not be necessary.

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, Monterey Bay Diving's request for uncompensated removal costs is denied.

(b) (6)

Claim Supervisor:

(b) (6)

Date of Supervisor's review: *8/4/25*

Supervisor Action: *Denial Approved*

Supervisor's Comments:

⁴⁵ Invoice 16314 dated April 3, 2025.

⁴⁶ Optional OSLTF Claim Form dated June 27, 2025.

⁴⁷ Email from Sector San Francisco IMD to NPFC dated July 10, 2025.

⁴⁸ 33 CFR 136.203; 33 CFR 136.205.

⁴⁹ 33 CFR §§136.203(c) & 205.

⁵⁰ Because NPFC has determined that the claimant is not entitled to compensation, NPFC did not adjudicate whether these claimed expenses met the other regulatory requirements outlined in 33 CFR Part 136.