

CLAIM SUMMARY / DETERMINATION¹

Claim Number:	UCGP924046-URC001
Claimant:	CA Dept of Fish & Wildlife, OSPR
Type of Claimant:	State
Type of Claim:	Removal costs
Claim Manager:	(b) (6)
Amount Requested:	\$3,961.42
Action Taken:	Offer in the amount of \$3,919.19

EXECUTIVE SUMMARY:

On September 18, 2020, at 9:30 a.m. local time, United States Coast Guard (“USCG”) Sector San Francisco notified the Coast Guard’s National Response Center (“NRC”) that a three-story houseboat sunk causing a release of fuel into the east side of the San Joaquin River, a navigable waterway of the United States.² USCG Sector San Francisco is the Federal On-Scene Coordinator (“FOSC”) for the incident. 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”).³ The SOSC determined that the vessel discharged oil into San Joaquin River, a navigable waterway of the United States.⁴ In accordance with the Oil Pollution Act of 1990 (“OPA”), the owner and operator of the vessel, Mr. (b) (6) of Isleton, CA, is identified as the Responsible Party (“RP”) as defined by OPA.⁵

On September 12, 2024, OSPR presented its removal cost claim to the National Pollution Funds Center (“NPFC”) for \$3,961.42.⁶ The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration has determined that \$3,919.19 of the claimed costs are compensable and offers this amount as full and final compensation of this claim.

I. DETERMINATION PROCESS:

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) # 1287754 dated September 18, 2020.

³ State of California – Department of Fish and Wildlife Arrest/Investigation Report, Narrative section, pages 2-3 of 15 dated January 12, 2021.

⁴ *Id.*

⁵ *See*, State of California – Department of Fish and Wildlife Arrest/Investigation Report, Suspect Information section, page 1 of 15 dated September 18, 2020; *See also*, 33 U.S.C. §2701(32).

⁶ OSPR Original Claim submission received September 12, 2024.

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).⁷ 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.⁸ The NPFC may rely upon, but is not bound by the findings of fact, opinions, or conclusions reached by other entities.⁹ 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 18, 2020, at 9:30 a.m. local time, USCG Sector San Francisco notified the NRC that a three-story houseboat sunk causing a release of fuel into the east side of the San Joaquin River, a navigable waterway of the United States.¹⁰

USCG Sector San Francisco is the FOSC for the incident. OSPR responded as the SOSC and oversaw response actions.¹¹ The SOSC determined that the vessel, *NICKELSNATCHER*, had been underwater for several days before an unrelated party reported the incident.¹²

Responsible Party

Mr. (b) (6) is the owner and operator of the M/V *NICKELSNATCHER* and identified as the RP as defined by the Oil Pollution Act of 1990 (OPA).¹³ On September 16, 2024, the NPFC issued an RP Notification Letter to Mr. (b) (6) via regular mail.¹⁴

⁷ 33 CFR Part 136.

⁸ 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)).

⁹ 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).

¹⁰ National Response Center (NRC) # 1287754 dated September 18, 2020.

¹¹ State of California – Department of Fish and Wildlife Arrest/Investigation Report, Narrative section, pages 2-3 of 15 dated January 12, 2021.

¹² *Id.*

¹³ See, State of California – Department of Fish and Wildlife Arrest/Investigation Report, Narrative section, pages 2-3 of 15 dated January 12, 2021; See also, 33 U.S.C. §2701(32).

¹⁴ See, RP Notification letter to Mr. (b) (6) dated September 16, 2024.

Recovery Operations

According to the Narrative section of the OSPR Arrest/Investigative Report¹⁵, the RP and his wife used the vessel as a primary living space at the time of the incident. Initial response actions were performed by the harbormaster, (b) (6), who placed a small amount of absorbent boom in the water, but it was not enough to encompass the vessel. The RP engaged with a local diver in an attempt to salvage the vessel.¹⁶ The diver set up two small pumps and began efforts to remove water from the vessel.¹⁷ Water removal efforts were unsuccessful, and the vessel would eventually be demolished and lifted by a crane mounted on a barge.

The SOSC was able to access an OSPR funded boom grant trailer for additional resources to assist with containment and recovery of the product. With the assistance of the local fire company, absorbent boom was deployed to extend the protection around the vessel.¹⁸

Parker Diving was hired by the RP to conduct the salvage efforts of the vessel. Containment boom was deployed to completely surround the vessel, and the fuel tank vents were plugged in an effort to mitigate further pollution. The contractor removed the remaining fuel from the vessel and placed it into five, steel 55-gallon drums for disposal. Parker Diving also filled approximately 2/3 of a 325-gallon plastic tote with red-dyed diesel.¹⁹

On October 13, 2020, the demolition and removal of the vessel had commenced and was completed the same day. Using a crane, the vessel was lifted in pieces and placed on the deck of a barge. All booms and absorbents had been removed and there was no visible sheen or other evidence of environmental impacts visible.²⁰

The FOOSC reviewed the claim submission and determined that the actions performed and claimed by OSPR are consistent with the National Contingency Plan (NCP).²¹

III. CLAIMANT AND NPFC:

On September 12, 2024, the NPFC received OSPR's claim submission seeking reimbursement of its removal costs totaling \$3,961.42.²² The claimant submitted the Optional

¹⁵ State of California – Department of Fish and Wildlife Arrest/Investigation Report, Narrative section, pages 2-3 of 15 dated January 12, 2021.

¹⁶ State of California – Department of Fish and Wildlife Arrest/Investigation Report, Narrative section, page 8 of 15 dated January 12, 2021.

¹⁷ *Id.*

¹⁸ State of California – Department of Fish and Wildlife Arrest/Investigation Report, Narrative section, page 9 of 15 dated January 12, 2021.

¹⁹ State of California – Department of Fish and Wildlife Arrest/Investigation Report, Narrative section, pages 10-11 of 15 dated January 12, 2021.

²⁰ State of California – Department of Fish and Wildlife Arrest/Investigation Report, Narrative section, pages 12-14 of 15 dated January 12, 2021.

²¹ Email from FOOSC to NPFC providing after-the-fact FOOSC coordination dated November 18, 2024.

²² OSPR Original Claim submission received September 12, 2024.

OSLTF Claim Form²³; CA OSPR Investigation Report²⁴, Nickelsnatcher Federal Claim Cost Packet²⁵; and SF1081 Claims Voucher Request.²⁶

On September 19, 2024, the NPFC requested that OSPR provide documentation that demonstrates the FOSC determined the actions undertaken by OSPR were determined to be consistent with the NCP or were directed by the FOSC; provide any daily reports, or ICS 214s, associated with the costs cited in the cost packet; and provide an explanation of the administrative costs in the amount of \$64.84.²⁷

On October 11, 2024, the NPFC sent a reminder to OSPR regarding the outstanding FOSC coordination request.²⁸ On November 5, 2024, the NPFC sent an email to the FOSC point of contact seeking after-the-fact FOSC coordination for the actions undertaken by OSPR.²⁹

On November 15, 2024, the NPFC received an email from the FOSC point of contact providing after-the-fact FOSC coordination based on the details of the OSPR claim submission to the NPFC.³⁰

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.³¹ An RP's liability is strict, joint, and several.³² 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."³³ 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."³⁴ 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

²³ *Id.*

²⁴ State of California – Department of Fish and Wildlife Arrest/Investigation Report dated January 12, 2021, pages 1-15.

²⁵ Nickelsnatcher Federal Claim Cost Packet, pages 1-19.

²⁶ SF 1081 Claims Voucher Request dated September 11, 2024.

²⁷ Email from NPFC to OSPR dated September 19, 2024.

²⁸ Email from NPFC to OSPR dated October 11, 2024.

²⁹ Email from NPFC to FOSC point of contact dated November 5, 2024.

³⁰ Email from the FOSC point of contact to NPFC dated November 15, 2024.

³¹ 33 U.S.C. § 2702(a).

³² *See*, H.R. Rep. No 101-653, at 102 (1990), *reprinted in* 1990 U.S.C.C.A.N. 779, 780.

³³ *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).

³⁴ 33 U.S.C. § 2701(31).

damage to the public health or welfare, including, but not limited to fish, shellfish, wildlife, and public and private property, shorelines, and beaches.”³⁵

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).³⁶ The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.³⁷ 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.³⁸

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.³⁹

OSPR seeks reimbursement of \$3,961.42 for labor, vehicle and administration expenses incurred for deployment to the vessel Nickelsnatcher incident at Delta Bay Marina in Isleton, CA in September 2020.⁴⁰ OSPR personnel responded in their capacity as the State On Scene Coordinator for the incident to oversee the response and recovery. While there were some initial communications with the local USCG, the FOSC at Sector San Francisco provided some “after-the-fact” coordination of OSPR’s actions and determined that OSPR’s actions were in accordance with the National Contingency Plan (NCP).⁴¹

After analyzing the documentation provided by OSPR, 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 working on the 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.⁴² Specifically, the hours for the legal associate are denied as not for the primary purpose of removing oil. Additionally, the hours claimed were recorded over a month after the response and recovery efforts ended and could not

³⁵ 33 U.S.C. § 2701(30).

³⁶ *See generally*, 33 U.S.C. § 2712 (a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

³⁷ 33 CFR Part 136.

³⁸ 33 CFR 136.105.

³⁹ 33 CFR 136.203; 33 CFR 136.205.

⁴⁰ State of California – Department of Fish and Wildlife Arrest/Investigation Report, pages 1-15, dated January 12, 2021.

⁴¹ Email from FOSC to NPFC dated November 18, 2024

⁴² Enclosure 3 provides a detailed analysis of the amounts approved and denied by the NPFC.

be directly identified as oil-removal actions or related to response oversight. Total denied for costs associated with legal personnel time is \$42.23.

Upon adjudication of the costs, the NPFC has determined that the amount of compensable removal costs is \$3,919.19 while \$42.23 is denied.

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 the claimant has demonstrated entitlement to payment for certain compensable removal costs.

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, the California Department of Fish and Wildlife – Office of Spill Prevention and Response’s request for uncompensated removal costs is approved in the amount of \$3,919.19.

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.

<p style="text-align: center;">(b) (6)</p> <p>Claim Supervisor: (b) (6)</p> <p>Date of Supervisor’s review: <i>12/2/24</i></p> <p>Supervisor Action: <i>Offer approved</i></p> <p>Supervisor’s Comments:</p>
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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.*