

CLAIM SUMMARY / DETERMINATION¹

Claim Number:	UCGPA24005-URC001
Claimant:	CA DEPARTMENT OF FISH AND WILDLIFE: OSPR
Type of Claimant:	STATE
Type of Claim:	REMOVAL COSTS
Claim Manager:	(b) (6)
Amount Requested:	\$39,293.70
Action Taken:	Offer in the amount of \$34,861.16

EXECUTIVE SUMMARY:

On March 7, 2024, at 2136 Eastern Time, the United States Coast Guard's (USCG) National Response Center (NRC) received a report of an unknown oil sheen off the coast of Huntington Beach, California in the Pacific Ocean, a navigable waterway of the United States.²

The Orange County Sheriff's Department performed an initial response and noticed a 30' x 30' patch of oil in the water, but given the late hour, further observations would not occur until the following day.³ Throughout the night, Coast Guard Pollution Responders and the State On Scene Coordinator ("SOSC"), the California Department of Fish and Wildlife Office of Spill Prevention and Response ("Claimant", or "OSPR"), began their investigative work.⁴ The next day, at first light, tar balls were found along the shorelines,⁵ and oil impacted wildlife was discovered.⁶ An overflight confirmed a large crude oil slick, about 1.5 miles x 2.5 miles in size, approximately 2.8 miles off the coast of Huntington Beach.⁷

USCG Sector Los Angeles Long Beach (LA-LB) is the Federal On-Scene Coordinator ("FOSC") for the incident.⁸ With no obvious responsible party ("RP") or source, the FOSC opened Federal Project Number (FPN) UCGPA24005 in response to the incident and hired the Oil Spill Removal Organization (OSRO) U.S. Ecology for onshore and offshore cleanup

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 # 1393321 dated March 7, 2024.

³ United States Coast Guard (USCG) Situation Report-Pollution (SITREP-POL) One dated March 9, 2024.

⁴ USCG Initial Press Release dated March 8, 2024.

⁵ USCG SITREP-POL Two, section 2B, dated March 9, 2024.

⁶ USCG Press Release Update One dated March 8, 2024.

⁷ USCG SITREP-POL One dated March 9, 2024.

⁸ *Id.*

operations over the next several days.⁹ A Unified Command (UC), with representatives from the USCG, OSPR, and Orange County Sheriff's Department was established.¹⁰

With hopes of identifying a potential source, samples were collected from the offshore sheen and the tar balls along the shoreline. However, the analyses by OSPR's Petroleum Chemistry Lab were unable to definitively determine the source of the spill, and no responsible party was ever identified.¹¹ In total, 8 oiled birds were identified and captured throughout the response and cleanup operations which were concluded on March 15, 2024.¹²

On September 11, 2024, OSPR presented its claim to the National Pollution Funds Center (NPFC) for \$39,293.70.¹³ The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration has determined that \$34,861.16 of the requested \$39,293.70 is 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).¹⁴ 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.¹⁵ The NPFC may rely upon, but is not bound by the findings of fact, opinions, or conclusions reached by other entities.¹⁶ 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

⁹ USCG SITREP-POL One dated March 9, 2024.

¹⁰ USCG Initial Press Release dated March 8, 2024.

¹¹ See, USCG Liaison Update Six and Final which contains a Source Investigation Supplemental Information report from the OSPR Petroleum Chemistry Laboratory; See also, NRC Report # 1393321 dated March 7, 2024, and USCG SITREP-POL One dated March 9, 2024.

¹² See, USCG SITREP-POL Four and Final; See also, email from FOSCR dated December 18, 2024, stating the actions taken by the California Department of Fish and Wildlife after March 15, 2024, were not directed by him.

¹³ OSPR Original claim submission received September 11, 2024.

¹⁴ 33 CFR Part 136.

¹⁵ 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)).

¹⁶ 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).

On March 7, 2024, at 2136 Eastern Time, the United States Coast Guard's (USCG) National Response Center (NRC) received a report of an unknown oil sheen off the coast of Huntington Beach, California in the Pacific Ocean, a navigable waterway of the United States.¹⁷

The Orange County Sheriff's Department performed an initial response and noticed a 30' x 30' patch of oil in the water, but given the late hour, further observations would not occur until the following day.¹⁸ Throughout the night, Coast Guard Pollution Responders and the State On Scene Coordinator ("SOSC"), the California Department of Fish and Wildlife Office of Spill Prevention and Response ("Claimant", or "OSPR"), began their investigative work.¹⁹ The next day, at first light, tar balls were found along the shorelines,²⁰ and oil impacted wildlife was discovered.²¹ An overflight confirmed a large crude oil slick, about 1.5 miles x 2.5 miles in size, approximately 2.8 miles off the coast of Huntington Beach.²²

With no obvious responsible party (RP) or source, the FOSC opened Federal Project Number (FPN) UCGPA24005 in response to the incident and hired the Oil Spill Removal Organization (OSRO) U.S. Ecology for onshore and offshore cleanup operations over the next several days.²³

Responsible Party

In accordance with the Oil Pollution Act of 1990, the owner/operator of the source which caused the oil spill is the Responsible Party (RP) for the incident.²⁴ In an attempt to identify a possible source, samples were collected from the offshore sheen and the tar balls along the shoreline. However, the analyses by OSPR's Petroleum Chemistry Lab were unable to definitively determine the source and, thus, a Responsible Party (RP) was never identified.²⁵

Recovery Operations

On March 9, 2024, multiple overflights did not observe any remaining recoverable sheen on the water, but tar balls were observed along the shoreline.²⁶ Onshore recovery teams were deployed to assess and remove them, as needed. Huntington beach lifeguards assisted by dividing up into three teams and conducting shoreline assessments of the beach.²⁷ A broadcast Notice to Mariners was issued and a safety zone was established 1,000 yards around all response vessels.²⁸

The Oiled Wildlife Care Network was activated, and the crews surveyed the shoreline and responded to reports of oiled wildlife. As of 10 a.m., on March 9, 2024, four live birds were

¹⁷ NRC Report # 1393321 dated March 7, 2024.

¹⁸ USCG SITREP-POL One dated March 9, 2024.

¹⁹ USCG Initial Press Release dated March 8, 2024.

²⁰ USCG SITREP-POL Two, section 2B, dated March 9, 2024.

²¹ USCG Press Release Update One dated March 8, 2024.

²² USCG SITREP-POL One dated March 9, 2024.

²³ *Id.*

²⁴ *See*, 33 U.S.C. § 2701(32).

²⁵ *See*, USCG Liaison Update Six and Final dated March 11, 2024; *See also*, USCG SITREP-POL Four and Final, section D, dated March 16, 2024.

²⁶ USCG SITREP-POL Two dated March 9, 2024.

²⁷ *See*, USCG SITREP-POL Two; *See also*, USCG Press Release Update 2 dated March 9, 2024.

²⁸ USCG Press Release Update 2 dated March 9, 2024.

taken in for care; three of the birds were visibly oiled (a cormorant, loon, and grebe), and the fourth was an injured unoiled snowy plover.²⁹

On March 10, 2024, after the results of another overflight concluded that no remaining oil was in the water, all offshore recovery assets were demobilized, and OSRO decontamination operations began. However, beach cleanups would continue throughout the day because shoreline cleanup teams were still finding and removing tar balls.³⁰

OSRO decontamination operations continued over the next several days until March 15, 2024, when the response was determined to be concluded.³¹ In total, eight oiled birds were identified and captured.³² The official quantification of oil collected throughout the response is currently unknown, however, the estimate provided towards the end of the response indicated that approximately 85 gallons of oil was recovered offshore and approximately 1,050 pounds of oily waste and tar balls were recovered from the shoreline.³³

III. CLAIMANT AND NPFC:

On September 11, 2024, the claimant presented its removal costs claim to the NPFC for \$39,293.70.³⁴ Their claim was for the personnel labor and equipment costs they incurred while working within the Unified Command throughout the response. On October 9, 2024, and again on October 17, 2024, the NPFC requested additional information from the claimant to support their claimed costs. The claimant promptly provided all requested information.³⁵

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.³⁶ An RP's liability is strict, joint, and several.³⁷ 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."³⁸ OPA was intended to cure these deficiencies in the law.

²⁹ USCG Press Release Update 2 dated March 9, 2024.

³⁰ See, USCG Press Release Update 3 dated March 10, 2024; See also, USCG SITREP-POL Three dated March 11, 2024, and USCG Liaison Update Five dated March 10, 2024.

³¹ USCG SITREP-POL Four and Final dated March 16, 2024.

³² *Id.*

³³ USCG Liaison Update Six and Final dated March 11, 2024.

³⁴ OSPR Original claim submission received September 11, 2024.

³⁵ Additional information included: 2023-2024 Vehicle Rates; ICS-214 Activity Logs; 2023-2024 ICRP Overhead Rate Memo; Email from claimant dated October 8, 2024, providing some of the AI; Emails from claimant dated October 9, 2024, providing remaining AI; Email from claimant dated October 17, 2024, providing second round of AI.

³⁶ 33 U.S.C. § 2702(a).

³⁷ See, H.R. Rep. No 101-653, at 102 (1990), *reprinted in* 1990 U.S.C.C.A.N. 779, 780.

³⁸ *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).

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.”³⁹ 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.”⁴⁰

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).⁴¹ The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.⁴² 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.⁴³

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;⁴⁴
- (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;⁴⁵
- (d) That the removal costs were uncompensated and reasonable.⁴⁶

The NPFC analyzed each of these factors and determined that most of the costs incurred and submitted by OSPR are compensable removal costs based on the supporting documentation provided. All costs approved for payment were verified as being invoiced at the appropriate rates for personnel labor and equipment.

The FOSC approved costs through March 15, 2024. All approved costs were supported by adequate documentation and were determined by the FOSC to be consistent with the National Contingency Plan (NCP).⁴⁷

³⁹ 33 U.S.C. § 2701(31).

⁴⁰ 33 U.S.C. § 2701(30).

⁴¹ *See generally*, 33 U.S.C. § 2712 (a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

⁴² 33 CFR Part 136.

⁴³ 33 CFR 136.105.

⁴⁴ *See*, email from FOSCR dated December 18, 2024, stating the actions taken by OSPR after March 15, 2024, were not necessary to mitigate /recover the spilled oil and they were not directed by him.

⁴⁵ *See*, USCG SITREP-POLs One – Four and Final; *See also*, email from FOSCR dated December 18, 2024, stating the actions taken by OSPR after March 15, 2024, were not directed by him.

⁴⁶ 33 CFR 136.203; 33 CFR 136.205.

⁴⁷ *See*, OSPR Original claim submission received September 11, 2024, including all additional information outlined above and referenced in footnote # 35; *See also*, USCG SITREP-POLs One – Four and Final; *See also*, email from FOSCR dated December 18, 2024, stating the actions taken by OSPR after March 15, 2024, were not necessary to mitigate /recover the spilled oil and they were not directed by him.

Upon adjudication of the costs, the NPFC has determined that the amount of compensable removal costs is \$34,861.16 while \$4,432.54 are deemed non-compensable for the following reasons:⁴⁸

1. The NPFC denies \$134.76 of the \$3,908.04 claimed for the hours worked by (b) (6) during the response. The hours claimed were reduced from 29 to 28 to align with what was recorded on the ICS-214.⁴⁹
2. The NPFC denies \$466.86 of the \$5,437.58 claimed for the hours worked by (b) (6) during the response. The hours claimed were reduced from 49.5 to 45.25 to cover the period worked from March 8, 2024, through March 15, 2024. The remaining hours are denied because they were not coordinated by the FOSC and they occurred after March 15, 2024, which was the date the FOSC determined the response was concluded.⁵⁰
3. The NPFC denies \$927.54 of the \$1,700.49 claimed for the hours worked by (b) (6) during the response. The hours claimed were reduced from 11 to 5 to cover the period worked from March 14, 2024, through March 15, 2024. The remaining hours are denied because they were not coordinated by the FOSC and they occurred after March 15, 2024, which was the date the FOSC determined the response was concluded.⁵¹
4. The NPFC denies \$1,430.08 of the \$6,256.60 claimed for the hours worked by (b) (6) during the response. The hours claimed were reduced from 35 to 27 to align with what was recorded on the ICS-214.⁵²
5. The NPFC denies \$763.20 of the \$763.20 claimed for the hours worked by (b) (6) on April 2, 2024, April 4, 2024, and April 10, 2024. The NPFC denies this expense because the work being done was not coordinated by the FOSC and it occurred after March 15, 2024, which was the date the FOSC determined the response was concluded.⁵³
6. The NPFC denies \$572.40 of the \$572.40 claimed for the hours worked by (b) (6) on May 8, 2024, and May 22, 2024. The NPFC denies this expense because the work being done was not coordinated by the FOSC and it occurred after March 15, 2024, which was the date the FOSC determined the response was concluded.⁵⁴
7. The NPFC denies \$0.01 of the \$38,493.32 claimed for total labor costs. The amount indicated on the claimant's invoice adds up to \$38,493.31 not \$38,493.32, as claimed.⁵⁵
8. The NPFC denies \$98.56 of the \$98.56 claimed for the vehicle miles driven by (b) (6) on April 2, 2024. The NPFC denies this expense because the work being done was

⁴⁸ Enclosure 3 to this determination which provides a detailed analysis of the amounts approved and denied by the NPFC.

⁴⁹ Enclosure 3, sheet 2, line 6.

⁵⁰ Enclosure 3, sheet 2, line 8.

⁵¹ Enclosure 3, sheet 2, line 10.

⁵² Enclosure 3, sheet 2, line 12.

⁵³ Enclosure 3, sheet 2, line 20.

⁵⁴ Enclosure 3, sheet 2, line 21.

⁵⁵ Enclosure 3, sheet 2, line 22.

not coordinated by the FOOSC and it occurred after March 15, 2024, which was the date the FOOSC determined the response was concluded.⁵⁶

9. The NPFC denies \$21.12 of the \$21.12 claimed for the vehicle miles driven by (b) (6) on May 8, 2024, and May 22, 2024. The NPFC denies this expense because the work being done was not coordinated by the FOOSC and it occurred after March 15, 2024, which was the date the FOOSC determined the response was concluded.⁵⁷
10. The NPFC denies \$18.01 of the \$104.70 claimed for the “administration costs.” This cost is based on 15.05% of the total vehicle mileage expenses claimed, and since the total amount of vehicle mileage expenses being approved for payment was reduced from \$695.68 to \$576.00, the amount of administrative costs approved by the NPFC was also reduced accordingly.⁵⁸

Overall Denied Costs = \$4,432.54⁵⁹

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 there was an unknown amount of crude oil, which is an OPA oil, in the Pacific Ocean, a navigable waterway of the United States.⁶⁰ The oil came from an unknown source, on March 7, 2024, and OSPR responded and worked with the Coast Guard in the Unified Command to oversee the cleanup and assist with mitigating the effects of the spill.⁶¹ All removal costs approved for payment to the claimant were determined to be reasonable and uncompensated and were determined by the FOOSC to be consistent with the NCP.

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 \$34,861.16.

⁵⁶ Enclosure 3, sheet 2, line 32.

⁵⁷ Enclosure 3, sheet 2, line 33.

⁵⁸ Enclosure 3, sheet 2, line 36.

⁵⁹ Enclosure 3 to this determination which provides a detailed analysis of the amounts approved and denied by the NPFC.

⁶⁰ See, USCG SITREP-POL One dated March 9, 2024; See also, NRC Report # 1393321 dated March 7, 2024.

⁶¹ See, USCG Liaison Update Six and Final dated March 11, 2024; See also, NRC Report # 1393321 dated March 7, 2024; See also, USCG SITREP-POL One dated March 9, 2024; See also, USCG Initial Press Release dated March 8, 2024.

This determination is a settlement offer,⁶² the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.⁶³ The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.⁶⁴ Moreover, this settlement offer is based upon the unique facts giving rise to this claim and is not precedential.

<p>(b) (6)</p> <p>Claim Supervisor: (b) (6)</p> <p>Date of Supervisor's review: <i>1/7/2025</i></p> <p>Supervisor Action: <i>Offer Approved</i></p> <p>Supervisor's Comments:</p>

⁶² 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).

⁶³ 33 CFR § 136.115(b).

⁶⁴ 33 CFR § 136.115(b).