

## CLAIM SUMMARY / DETERMINATION<sup>1</sup>

<b>Claim Number:</b>	UCGPE22905-URC001
<b>Claimant:</b>	Department of Fish and Wildlife: Oil Spill Prevention and Response
<b>Type of Claimant:</b>	State
<b>Type of Claim:</b>	Removal Costs
<b>Claim Manager:</b>	(b) (6)
<b>Amount Requested:</b>	\$16,109.28
<b>Action Taken:</b>	Offer in the amount of \$6,953.24

### **EXECUTIVE SUMMARY:**

On June 21, 2022 at 2150 local time, United States Coast Guard (“USCG”) National Response Center (“NRC”) received notification of a vessel that caught fire and sank causing a sheen on the Sacramento River, a navigable waterway of the United States.<sup>2</sup> It was estimated that 130 gallons of diesel fuel was onboard at the time of the incident.<sup>3</sup> The M/V ALL AMERICAN is reportedly an 85-foot decommissioned U. S. Air Force vessel<sup>4</sup> that was located on the east bank of the Sacramento River just north of the I-80 overpass.<sup>5</sup>

United States Environmental Protection Agency Region IX (“USEPA” or “FOSC”) is the Federal On-Scene Coordinator (“FOSC”) for the incident.<sup>6</sup> The FOSC opened Federal Project Number (“FPN”) UCGPE22905<sup>7</sup> in response to the incident and issued a Notice of Federal Interest (“NOFI”) to the property owner, (b) (6), where the boat was moored.<sup>8</sup>

California Department of Fish and Wildlife, Oil Spill Prevention and Response Office (“Claimant”, “OSPR” or “SOSC”) was the State On Scene Coordinator (“SOSC”) for the incident and responded with the Sacramento County Sheriff’s office in support of USEPA’s

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<sup>1</sup> 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.

<sup>2</sup> National Response Center (NRC) Report # 1339528 dated June 21, 2022.

<sup>3</sup> *Id.*

<sup>4</sup> U.S. EPA Region IX POLREP # 1, section 1.1.2, dated June 24, 2022.

<sup>5</sup> U.S. EPA Region IX POLREP # 1, section 1.1.2.1, dated June 24, 2022.

<sup>6</sup> *See*, Notice of Federal Interest (NOFI) issued to Mr. (b) (6) on June 23, 2022. *See also*, U.S. EPA Region IX POLREP # 1, section 2.1.3, dated June 24, 2022. The USEPA Polrep reports that a Notice of Federal Interest was issued to the property owner where the vessel was moored on June 23, 2022.

<sup>7</sup> U.S. EPA Region IX POLREP #1 dated June 24, 2022.

<sup>8</sup> Notice of Federal Interest to (b) (6) dated June 23, 2022 via hand delivery.

response efforts.<sup>9</sup> The California State Lands Commission and Sacramento County conducted the final removal and demolition of the damaged hull.<sup>10</sup>

In accordance with the Oil Pollution Act of 1990 (“OPA”),<sup>11</sup> Mr. (b) (6) was initially identified by the FOSC as the Responsible Party (“RP”) because the M/V ALL AMERICAN was moored on his property. However, based on the NPFC’s research, there is no evidence demonstrating that Mr. (b) (6) owns the M/V ALL AMERICAN.<sup>12</sup>

On September 11, 2024, Department of Fish and Wildlife: Oil Spill Prevention and Response (OSPR) presented its removal costs claim submission to the National Pollution Funds Center (“NPFC”) for \$16,109.28.<sup>13</sup> The NPFC thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration has determined that \$6,953.24 of the claimed costs are compensable and offers this amount as full and final compensation.

### **I. DETERMINATION PROCESS:**

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).<sup>14</sup> 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.<sup>15</sup> The NPFC may rely upon, but is not bound by the findings of fact, opinions, or conclusions reached by other entities.<sup>16</sup> 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:**

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<sup>9</sup> U.S. EPA Region IX POLREP #2, section 3.2, dated September 30, 2022.

<sup>10</sup> U.S. EPA Region IX POLREP # 2, section 2.1.2 regarding actions performed on August 3, 2022, dated September 30, 2022.

<sup>11</sup> 33 U.S.C. § 2701(32).

<sup>12</sup> On September 9, 2024, the NPFC requested the National Vessel Documentation Center (NVDC) provide a certificate of documentation, abstract of title, and any bills of sale for the vessel. On September 30, 2024, the NVDC called the NPFC to advise that the NVDC does not possess records for a vessel by the name of ALL AMERICAN owned by (b) (6).

<sup>13</sup> Claimant’s Original Claim Submission received September 11, 2024.

<sup>14</sup> 33 CFR Part 136.

<sup>15</sup> 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)).

<sup>16</sup> 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).

## ***Incident***

On June 21, 2022 at 2150 local time, United States Coast Guard (“USCG”) National Response Center (“NRC”) received notification of a fishing vessel that caught fire and sank causing a sheen on the Sacramento River, a navigable waterway of the United States.<sup>17</sup> It was estimated that 130 gallons of diesel fuel were onboard at the time of the incident.<sup>18</sup> The M/V ALL AMERICAN is reportedly an 85-foot decommissioned U. S. Air Force vessel<sup>19</sup> that was located on the east bank of the Sacramento River just north of the I-80 overpass.<sup>20</sup>

## ***Responsible Party***

In accordance with the Oil Pollution Act of 1990 (“OPA”),<sup>21</sup> Mr. (b) (6) was initially identified by the FOSSC as the RP because the M/V ALL AMERICAN was moored on his property.<sup>22</sup> However, based on the NPFC’s research, there is no evidence demonstrating that Mr. (b) (6) owns the M/V ALL AMERICAN.<sup>23</sup>

## ***Recovery Operations***

On June 21, 2022, Sacramento City Fire Department (SCFD) responded to the vessel fire but was met with limited access to the river due to a steep driveway and a heavily wooded levee, with no hydrants in the immediate vicinity.<sup>24</sup> Using a 3-inch stretch and RAM to the dock adjacent to the vessel, SCFD was able to attack the fire.<sup>25</sup> In fighting the fire, SCFD breached the hull in several locations in order to get firefighting water below deck.<sup>26</sup> SCFD boats and a water tender were used to extinguish the fire.<sup>27</sup> SCFD deployed hard boom around the vessel to prevent migration of any petroleum products downriver.<sup>28</sup> Light sheening was observed within the boomed area.<sup>29</sup>

California Department of Fish and Wildlife, Oil Spill Prevention and Response Office (“Claimant”, “OSPR”, or “SOSC”) is the State On Scene Coordinator and responded with the Sacramento County Sheriff’s office in support of USEPA’s response efforts.<sup>30</sup> The California State Lands Commission and Sacramento County conducted the final removal and demolition of the damaged hull.<sup>31</sup>

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<sup>17</sup> National Response Center (NRC) Report # 1339528 dated June 21, 2022.

<sup>18</sup> *Id.*

<sup>19</sup> U.S. EPA Region IX POLREP # 1, section 1.1.2, dated June 24, 2022.

<sup>20</sup> U.S. EPA Region IX POLREP # 1, section 1.1.2.1, dated June 24, 2022.

<sup>21</sup> 33 U.S.C. § 2701(32).

<sup>22</sup> Notice of Federal Interest to (b) (6) dated June 23, 2022 via hand delivery.

<sup>23</sup> On September 9, 2024, the NPFC requested the National Vessel Documentation Center (NVDC) provide a certificate of documentation, abstract of title, and bill of sale for the vessel. On September 30, 2024 the NVDC called the NPFC to advise that the NVDC does not possess records for a vessel by the name of ALL AMERICAN owned by (b) (6).

<sup>24</sup> Sacramento City Fire Report, NFIR’s Narrative, P. 2/7, printed October 14, 2024.

<sup>25</sup> *Id.*

<sup>26</sup> U.S. EPA Region IX POLREP # 2 dated June 24, 2022.

<sup>27</sup> Sacramento City Fire Report, NFIR’s Narrative, P. 2/7, printed October 14, 2024.

<sup>28</sup> U.S. EPA Region IX POLREP # 1, section 1.1.2.2, dated June 24, 2022.

<sup>29</sup> *Id.*

<sup>30</sup> U.S. EPA Region IX POLREP #2, section 3.2, dated September 30, 2022.

<sup>31</sup> *Id.*

On June 23, 2022, the FOSC and contractor support conducted an assessment of the vessel. Due to firefighting water flooding the lower deck, access to the fuel tanks was impossible.<sup>32</sup> On June 24, 2022, the FOSC, contractor support, and the subcontractor Global Diving Services, returned to the site to repair the hull breaches, pump out the water into containment and then access and evaluate the fuel tanks for possible offloading of the fuel.<sup>33</sup> Patches were placed on as many hull breaches as could be accessed by a diver and trash pumps were used to remove as much water as possible to refloat the vessel.<sup>34</sup> The vessel was refloated and plans were made to remove the remaining fuel from the tanks.<sup>35</sup>

When the crew arrived on Monday, June 27, 2022, the vessel had sunk again. Trash pumps were used to refloat the vessel and an electric float actuated sump pump was placed in the hull and ran all night to keep the vessel afloat.<sup>36</sup> On June 28, 2022, operations began to remove fuel from four fuel tanks which had previously been underwater. Fuel removal was performed by using a shoreside vacuum system which had multiple mechanical failures, therefore not all fuel removal was completed.<sup>37</sup>

On June 29, 2022, the crew returned with a compressor driven diaphragm pump which allowed for the removal of all remaining fuel in the four fuel tanks onboard the vessel. Absorbent pads were used in the engine room to absorb the remaining residual fuel floating on the water in the hold, which could not be collected with the vacuum system due to difficult access. All fluids were pumped into two 250 gallon totes. Equipment and totes were demobilized from the site on June 29, 2022. One electric float actuated sump pump was left in place to keep the vessel afloat. Absorbent boom was placed around the stern of the vessel to capture any residual fuel released in the river. The FOSC demobilized from the scene and SCFD's hard boom was left in place.<sup>38</sup> Active response actions were completed on June 29, 2022. Any activities performed after this date were for the removal and demolition of the damaged and burned hull.<sup>39</sup>

On August 1, 2022, California Department of Toxic Control removed seven fire extinguishers, four marine/car batteries, two small batteries, oil filters, 1 – 5 gallons lubricating oil, two aerosol paint cans, one quart of oil, several containers of paints, thinners, strippers, a battery charger, strobe light with battery and several fluorescent lights.<sup>40</sup>

### **III. CLAIMANT AND NPFC:**

On September 11, 2024, OSPR presented its removal costs claim to the NPFC for \$16,109.28.<sup>41</sup> The claim sought compensation for costs incurred by OSPR for their response to the vessel fire and for its environmental contractor.<sup>42</sup>

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<sup>32</sup> U.S. EPA Region IX POLREP # 1, section 1.1.3, dated June 24, 2022.

<sup>33</sup> U.S. EPA Region IX POLREP # 2, section 2.1.2, dated September 30, 2022.

<sup>34</sup> *Id.*

<sup>35</sup> U.S. EPA Region IX POLREP # 2, section 2.1.2, dated September 30, 2022.

<sup>36</sup> *Id.*

<sup>37</sup> U.S. EPA Region IX POLREP # 2, section 2.1.2, dated September 30, 2022.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> U.S. EPA Region IX POLREP # 2, section 2.1.2, dated September 30, 2022.

<sup>41</sup> OSPR Original Claim submission received on September 11, 2024.

<sup>42</sup> OSPR Original Claim Submission received on September 11, 2024.

OSPR's claim included the optional OSLTF Claim Form, OSPR's cover letter dated September 10, 2024, OSPR Invoice # Fed Claim 56798 for billing period June 2022 through August 2022, Cost Summary of Costs Incurred in the Response, Containment and Clean Up of the Incident Invoice # Fed Claim 56798, various Department of Fish and Wildlife Timesheets, Amendment 1 to Time Sheet, Fremouw Environmental Services, Invoice # 418859 dated July 31, 2022, Fremouw Environmental Services Invoice # 418861 dated July 11, 2022, various Monthly Travel logs, various Daily Activity Reports (ICS 214a), Spill Response Report, Department of Fish and Wildlife Invoice # INV280 dated October 10, 2022, Department of Fish and Wildlife Invoice # INV794 dated February 21, 2023, Hourly Rates by Classification Effective January 1, 2022, Hourly Rates by Classification Effective July 1, 2022, and Voucher and Schedule of Withdrawal and Credits, Standard Form 1081 dated September 10, 2024.

#### **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.<sup>43</sup> An RP's liability is strict, joint, and several.<sup>44</sup> 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."<sup>45</sup> 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."<sup>46</sup> 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."<sup>47</sup>

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).<sup>48</sup> The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.<sup>49</sup> 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.<sup>50</sup>

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<sup>43</sup> 33 U.S.C. § 2702(a).

<sup>44</sup> See, H.R. Rep. No 101-653, at 102 (1990), *reprinted in* 1990 U.S.C.C.A.N. 779, 780.

<sup>45</sup> *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).

<sup>46</sup> 33 U.S.C. § 2701(31).

<sup>47</sup> 33 U.S.C. § 2701(30).

<sup>48</sup> See generally, 33 U.S.C. § 2712 (a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

<sup>49</sup> 33 CFR Part 136.

<sup>50</sup> 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;
- (d) That the removal costs were uncompensated and reasonable.<sup>51</sup>

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<sup>52</sup> and all costs were supported by adequate documentation and have been determined by the FOSC to be consistent with the National Contingency Plan (NCP).<sup>53</sup>

Upon adjudication of the costs, the NPFC has determined that the amount of compensable removal costs is \$6,953.24 while \$9,156.04 are for removal costs that were incurred after the equipment and fuel totes were demobilized from the site on June 29, 2022. USEPA Region IX POLREP # 2 explains that on June 29, 2022 all of the fuel and water was pumped into two 250 gallon totes. The equipment and totes were demobilized from the site on that same day.<sup>54</sup> Costs incurred after June 29, 2022, involved the demolition of the vessel and were not directed by the FOSC, nor determined by the FOSC to be consistent with the NCP. Therefore, these costs are not compensable under the OPA<sup>55</sup> and are denied as specified below:<sup>56</sup>

#### OSPR Personnel Costs<sup>57</sup>

OSPR is seeking \$8,695.80 for personnel costs from June 22, 2022 through August 22, 2022. The NPFC approved \$6,170.31 while \$2,525.49 is denied because the costs were incurred after the oil spill response was deemed complete and are denied without further analysis.

#### OSPR Operation Costs<sup>58</sup>

OSPR is seeking \$874.14 for operating expenses that are related to the CDFW-Owned vehicle usage for FY21/22 and FY22/23. The NPFC approved \$112.21 while \$761.93 is denied

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<sup>51</sup> 33 CFR 136.203; 33 CFR 136.205.

<sup>52</sup> OSPR Original Claims submission received September 11, 2024 with attachments.

<sup>53</sup> U.S. EPA Region IX POLREP # 2 dated September 30, 2022.

<sup>54</sup> U.S. EPA Region IX POLREP # 2, section 2.1.2, dated September 30, 2022.

<sup>55</sup> See, 33 CFR 136.203. See also, *Gatlin Oil Co. v. United States*, 169 F.3d 207 (4<sup>th</sup> Cir. 1999) (“Moreover, Gatlin’s theory that the federal coordinator is deemed to have directed all state and federal removal costs is contrary to 33 CFR § 136.205. The federal coordinator did not determine that the cleanup ordered by North Carolina authorities was consistent with the National Contingency Plan, and he did not direct Gatlin Oil to comply with North Carolina’s directives. We conclude that the Fund is not liable for Gatlin’s expenditures that were directed by North Carolina authorities.” *Id.* at 213.

<sup>56</sup> Enclosure Three Provides a detailed analysis of the amounts approved and denied by the NPFC.

<sup>57</sup> Enclosure Three, tab 2.

<sup>58</sup> Enclosure Three, tab 3.

because the costs were incurred after the oil spill response was deemed complete and are denied without further analysis.

Fremouw Environmental Services INV # 418859<sup>59</sup>

OSPR is seeking \$2,852.46 in response costs that took place on July 8, 2022. The costs were incurred after the oil spill response was deemed complete and are denied without further analysis.

Fremouw Environmental Services INV # 418861<sup>60</sup>

OSPR is seeking \$2,826.72 in response costs that took place on July 11, 2022. The costs were incurred after the oil spill response was deemed complete and are denied without further analysis.

CDFW Vehicle Costs

OSPR is seeking \$860.16 in costs pertaining to the use of CDFW-Owned vehicles. The NPFC approved \$670.72 while \$189.44 is denied because the costs were incurred after the oil spill response response was deemed complete and are denied without further analysis.

**Overall Denied Costs: \$9,156.04<sup>61</sup>**

**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 on June 21, 2022, the motor vessel ALL AMERICAN caught fire and sank in shallow water on the east bank of the Sacramento River, a navigable waterway of the United States, causing a visible sheen on the surface of the water. OSPR responded in its capacity as the State On Scene Coordinator (“SOSC”) and provided personnel, vehicles, and Fremouw Environmental Services to respond to the incident. 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.

As to OSPR and its contractor’s actions performed after June 29, 2022 when the FOSC demobilized from the scene and having deemed the response complete, the NPFC finds as a matter of fact, that these actions were associated with the demolition and removal of the burned hull and not at the direction of the FOSC.

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, the Claimant’s request for uncompensated removal costs is approved in the amount of **\$6,5953.24**.

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<sup>59</sup> Enclosure Three, tab 4.

<sup>60</sup> Enclosure Three, tab 5.

<sup>61</sup> Enclosure Three provides a detailed analysis of the amounts approved and denied by the NPFC.

This determination is a settlement offer,<sup>62</sup> the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.<sup>63</sup> The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.<sup>64</sup> 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: *1/15/2025*

Supervisor Action: *Offer Approved*

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<sup>62</sup> 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).

<sup>63</sup> 33 CFR 136.115(b).

<sup>64</sup> 33 CFR 136.115(b).