

CLAIM SUMMARY / DETERMINATION¹

Claim Number:	UCGPA19024-URC001
Claimant:	California Department of Fish and Wildlife: Oil Spill Prevention and Response (OSPR)
Type of Claimant:	State
Type of Claim:	Removal Costs
Claim Manager:	(b) (6)(b) (6)
Amount Requested:	\$6,838.38
Action Taken:	Denial

EXECUTIVE SUMMARY:

On August 20, 2019 at 10:30 local time, the United States Coast Guard (“USCG”) National Response Center (“NRC”) received a report of a sunken vessel in the Oakland estuary within the San Francisco Bay, a navigable waterway of the United States, that was releasing an unknown amount of diesel.² California Dept. of Fish & Wildlife, OSPR (“OSPR” or “SOSC”) responded to the scene in its capacity as the State On Scene Coordinator along with the USCG Sector San Francisco Incident Management Division (“IMD”) along with the Oakland Fire Department and witnessed the vessel partially submerged and actively sheening fuel into the waterway.³

USCG Sector San Francisco is the Federal On Scene Coordinator (“FOSC”) for the incident.⁴ No responsible Party (“RP”) has been identified for this incident as the vessel that sank was an abandoned 45ft wooden hull vessel without a registration number.⁵

On August 11, 2025, OSPR presented its claim to the National Pollution Funds Center (“NPFC”) for \$6,838.38.⁶ The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration has determined that the claim must be denied for lack of sufficient evidence to support compensation of the costs claimed.

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 See, National Response Center Report #1255795 dated August 20, 2019. See also, United States Coast Guard (“USCG”) Authorization to Proceed message dated August 20, 2019.

³ United States Coast Guard Situation Report (SITREP) One and Final dated August 21, 2019.

⁴ United States Coast Guard Situation Report (SITREP) One and Final dated August 21, 2019.

⁵ United States Coast Guard Situation Report (SITREP) One and Final, section 1A, dated August 21, 2019.

⁶ OSPR Original claim submission dated August 7, 2019.

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:

On August 20, 2019 at 10:30 local time, the United States Coast Guard (“USCG”) National Response Center (“NRC”) received a report of a sunken vessel in the Oakland estuary within the San Francisco Bay, a navigable waterway of the United States, that was releasing an unknown amount of diesel.¹⁰ California Dept. of Fish & Wildlife, OSPR (“OSPR” or “SOSC”) responded to the scene in its capacity as the State On Scene Coordinator along with the USCG Sector San Francisco Incident Management Division (“IMD”) along with the Oakland Fire Department and witnessed the vessel partially submerged and actively sheening fuel into the waterway.¹¹

USCG Sector San Francisco is the Federal On Scene Coordinator (“FOSC”) for the incident.¹² No responsible Party (“RP”) has been identified for this incident as the vessel that sank was an abandoned 45ft wooden hull vessel without a registration number.¹³

III. CLAIMANT AND NPFC:

On August 11, 2025, OSPR submitted its claim to the NPFC with a sum certain in the amount of \$6,838.38.¹⁴ OSPR submitted their Fed Claim Request Letter, OSLTF Claim Form, SF1081Claims Voucher Request, (b) (6) Abandoned Vessel Investigative Report, and a (b) (6) Vessel Cost Package via e-mail.¹⁵

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 See, National Response Center Report #1255795 dated August 20, 2019. See also, United States Coast Guard (“USCG”) Authorization to Proceed message dated August 20, 2019.

¹¹ United States Coast Guard Situation Report (SITREP) One and Final dated August 21, 2019.

¹² United States Coast Guard Situation Report (SITREP) One and Final dated August 21, 2019.

¹³ United States Coast Guard Situation Report (SITREP) One and Final, section1A, dated August 21, 2019.

¹⁴ OSPR Original claim submission dated August 7, 2019.

¹⁵ OSPR Original claim submission dated August 7, 2019.

On August 19, 2025, the NPFC formally requested the following documentation from OSPR in order to properly adjudicate the costs:¹⁶

1. According to OSPR's Daily Activity Report, NRC/US Ecology arrived on the scene at 1530 on August 20, 2019. The CADFW Investigative Report indicates that NRC conducted "mop-up of recoverable product." Please provide a detailed description of NRC/US Ecology's scope of work during the response period from 1530 to 1700.
2. Additionally, please provide NRC's daily work summary that would validate the use of the personnel and equipment listed on their invoice.
3. Provide a detailed description of OSPR's work during this incident that is supported by what is in the Investigative Report and the Daily Activity Report.
4. Provide evidence that OSPR's actions were directed by the Federal On-Scene Coordinator (FOSC) as required by 33 CFR 136.203 and 205.
5. Please provide any communications with the USCG regarding OSPR's response to this incident.
6. Provide NRC/US Ecology's Rate Schedule applicable to the date of the incident and the costs invoiced.
7. Submit valid proof of payment to NRC/US Ecology, such as confirmation from the CADFW accounting system, a copy of the canceled check issued to NRC/US Ecology, or other evidence of an Electronic Funds Transfer used to pay the NRC/US Ecology invoice.

On September 5, 2025, OSPR responded to the NPFC's request for additional information and confirmed that it is unable to respond to the request for information as no additional information is available to substantiate the claim submission.¹⁷

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.¹⁸ An RP's liability is strict, joint, and several.¹⁹ 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."²⁰ 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

¹⁶ NPFC email request for additional information to OSPR dated August 19, 2025.

¹⁷ Email from OSPR to NPFC dated September 5, 2025.

¹⁸ 33 U.S.C. § 2702(a).

¹⁹ See, H.R. Rep. No 101-653, at 102 (1990), *reprinted in* 1990 U.S.C.C.A.N. 779, 780.

²⁰ *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).

incident.”²¹ 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.”²²

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).²³ The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.²⁴ 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.²⁵

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;²⁶
- (d) That the removal costs were uncompensated and reasonable.²⁷

The NPFC analyzed each of these factors and determined the costs incurred by OSPR and submitted herein are not compensable removal costs based on the supporting documentation Provided in OSPR’s original claim submission. The NPFC determined that removal costs claimed in the amount of \$6,838.38 are denied based on the following:

- 1. Per 33 C.F.R. §136.205 Compensation allowable** – The amount of compensation allowable are the total uncompensated 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.

The NPFC contacted OSPR and asked if their actions were directed by the FOSC and to please provide any communications they had with the USCG regarding their response to the incident.²⁸ OSPR responded, stating they are unable to respond to the request for information as no additional information is available;²⁹ and

²¹ 33 U.S.C. § 2701(31).

²² 33 U.S.C. § 2701(30).

²³ *See generally*, 33 U.S.C. § 2712 (a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

²⁴ 33 CFR Part 136.

²⁵ 33 CFR 136.105.

²⁶ 33 CFR 136.203.

²⁷ 33 CFR 136.203; 33 CFR 136.205.

²⁸ NPFC email request for additional information to OSPR dated August 19, 2025.

²⁹ Email from OSPR to NPFC dated September 5, 2025.

2. **Per 33 C.F.R. §136.105(a) General requirements for a claim** – The claimant bears the burden of providing all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim.

The NPFC contacted OSPR and requested supporting documentation to substantiate the costs claimed³⁰ however OSPR responded stating they are unable to respond to the NPFC's request for additional information as they have provided all information available.³¹

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 OSPR's actions were not directed by the FOSC or determined by the FOSC to be consistent with the National Contingency Plan and OSPR has failed to properly substantiate the costs claimed with the specific evidence requested.

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 denied.

	(b) (6)
Claim Supervisor:	(b) (6)(b) (6)
Date of Supervisor's review:	9/17/25
Supervisor Action:	<i>Denial Approved</i>
Supervisor's Comments:	

³⁰ NPFC email request for additional information to OSPR dated August 19, 2025.

³¹ Email from OSPR to NPFC dated September 5, 2025.