CLAIM SUMMARY / DETERMINATION[1]

Claim Number:	UCGPA23021-URC001
Claimant:	Department of Fish and Wildlife: Office of Spill Prevention and Response ("OSPR")
Type of Claimant:	STATE
Type of Claim:	REMOVAL COSTS
Claim Manager:	[redacted]
Amount Requested:	$3,702.32
Action Taken:	Offer in the amount of $3,702.32

EXECUTIVE SUMMARY:

On August 17, 2023 at 7:06pm local time, the United States Coast Guard ("USCG") National Response Center ("NRC") received a report of a potential discharge from a sunken vessel that was taking on water near Huntington Beach, a navigable waterway of the United States.[2] California Department of Fish & Wildlife, Office of Spill Prevention and Response ("OSPR" or "SOSC") responded to the scene in its capacity as the State On Scene Coordinator along with the USCG's Incident Management Division ("IMD") of Sector Los Angeles - Long Beach as the Federal On Scene Coordinator's Representative ("FOSCR") and witnessed the vessel completely submerged and actively sheening fuel into the waterway.[3] The FOSCR requested the oil trajectory from the National Oceanic Atmospheric Administration ("NOAA") which indicated that the oil would move away from sensitive site # 5-325 where migratory birds were located.[4]

The FOSC identified [redacted] as the owner and operator of the vessel at the time of the incident, and is identified as the responsible party ("RP")[5] for this incident as defined by the Oil Pollution Act of 1990 ("OPA").[6] The following day, the FOSCR accessed the Oil Spill Liability Trust Fund ("OSLTF") and opened Federal Project Number (FPN) # A23021 in order to hire a response contractor since the RP was unable to respond to the incident in a timely fashion.[7]

On August 27, 2025, OSPR presented its uncompensated removal cost claim to the National Pollution Funds Center (NPFC) for $3,702.32.[8] The NPFC has thoroughly reviewed all

[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 Report #1376522 dated August 17, 2023.
[3] United States Coast Guard Situation Report (SITREP-POL ONE and FINAL) dated August 21, 2023.
[4] USCG Situation Report (SITREP-POL ONE and FINAL), section 1A, dated August 21, 2023.
[5] *See,* USCG Notice of Federal Interest issued to [redacted] dated August 17, 2023.
[6] 33 U.S.C. § 2701(32).
[7] *See,* USCG Notice of Federal Assumption issued to [redacted] dated August 18, 2023.
[8] OSPR's Original claim submission dated August 26, 2025.

documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration has determined that $3,702.32 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).[9] 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.[10] The NPFC may rely upon, but is not bound by the findings of fact, opinions, or conclusions reached by other entities.[11] 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 August 17, 2023 at 7:06pm local time, the United States Coast Guard ("USCG") National Response Center ("NRC") received a report of a potential discharge from a sunken vessel that was taking on water near Huntington Beach, a navigable waterway of the United States.[12] California Department of Fish & Wildlife, Office of Spill Prevention and Response ("OSPR" or "SOSC") responded to the scene in its capacity as the State On Scene Coordinator along with the USCG's Incident Management Division ("IMD") of Sector Los Angeles - Long Beach as the Federal On Scene Coordinator's Representative ("FOSCR") and witnessed the vessel completely submerged and actively sheening fuel into the waterway.[13]

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.[14] On August 17, 2023, a Notice of Federal Interest (NOFI) was issued to [redacted]; owner/operator of the P/C

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[9] 33 CFR Part 136.
[10] *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)).
[11] *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).
[12] National Response Center Report #1376522 dated August 17, 2023.
[13] United States Coast Guard Situation Report (SITREP-POL ONE and FINAL) dated August 21, 2023.
[14] 33 U.S.C. § 2701(32).

SEABISCUIT.[15] On August 18, 2023, the FOSC issued a Notice of Federal Assumption because the RP did not initiate response actions in a timely fashion.[16]

Recovery Operations

Patriot Environmental ("Patriot") was hired by USCG for booming around the vessel.[17] On August 19, 2023, Patriot observed slight sheening emanating from the vessel and a subcontract was approved by the FOSCR to hire Myers Marine for fuel removal operations.[18] Divers found the port fuel tank empty and emptied the starboard tank.[19] Divers removed approximately 440 gallons of fuel and water mixture.[20] OSPR found oiled wildlife, took feather samples and turned them over to the Wetlands and Wildlife Care Center in Huntington Beach.[21]

<u>III. CLAIMANT AND NPFC:</u>

On August 27, 2025, the NPFC received OSPR's removal cost claim for $3,702.32.[22] OSPR provided the NPFC with an OSLTF claim form, OSPRS Incident Billing, DFW Timesheets, Vehicles Monthly Travel Log, OSPR's Response Cost Transmittal, OSPR's Laboratory Report, CDFW Chain of Custody Record, Oiled Bird Intake Form; OSPR Laboratory Program Cost Sheet for FY2023 to 2024, OSPR's Activity Logs, OSPR's Daily Activity Report (ICS 214), OSPR's Spill Memo, Hazardous Material Spill Report and Personnel Hourly Rates.[23]

<u>IV. DISCUSSION:</u>

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.[24] An RP's liability is strict, joint, and several.[25] 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."[26] 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

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[15] *See,* USCG Notice of Federal Interest issued to [redacted] dated August 17, 2023.
[16] *See,* USCG Notice of Federal Assumption issued to [redacted] dated August 18, 2023.
[17] United States Coast Guard Situation Report (SITREP-POL ONE and FINAL) dated August 21, 2023.
[18] United States Coast Guard Situation Report (SITREP-POL ONE and FINAL) dated August 21, 2023.
[19] United States Coast Guard Situation Report (SITREP-POL ONE and FINAL) dated August 21, 2023.
[20] United States Coast Guard Situation Report (SITREP-POL ONE and FINAL) dated August 21, 2023.
[21] State of California Department of Fish and Wildlife Small Spill Memo dated August 21, 2023, included in Original Claim submission dated August 26, 2025.
[22] OSPR Original Claim Submission dated August 26, 2025.
[23] *Id.*
[24] 33 U.S.C. § 2702(a).
[25] *See,* H.R. Rep. No 101-653, at 102 (1990), *reprinted in* 1990 U.S.C.C.A.N. 779, 780.
[26] *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).

threat of a discharge of oil, the costs to prevent, minimize, or mitigate oil pollution from an incident."[27] 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."[28]

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).[29] The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.[30] 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.[31]

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;[32]
(d) That the removal costs were uncompensated and reasonable.[33]

The NPFC analyzed each of these factors and determined that all 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 State of California Department of Fish and Wildlife published rates and all approved costs were supported by adequate documentation and were determined by the FOSCR to be consistent with the National Contingency Plan (NCP).[34]

Based on the location of this incident, the FOSCR for this incident is USCG Sector Los Angeles – Long Beach.[35] The administrative record demonstrates that OSPR responded jointly to the incident with the FOSCR and ongoing removal operations performed by OSPR were under the direction of the FOSC.[36]

After a complete review of all documentation, the NPFC has determined that the invoiced costs were billed in accordance with the state rates in place at the time services were rendered.

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[27] 33 U.S.C. § 2701(31).
[28] 33 U.S.C. § 2701(30).
[29] *See generally,* 33 U.S.C. § 2712 (a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.
[30] 33 CFR Part 136.
[31] 33 CFR 136.105.
[32] United States Coast Guard Situation Report (SITREP-POL ONE and FINAL) dated August 21, 2023.
[33] 33 CFR 136.203; 33 CFR 136.205.
[34] United States Coast Guard Situation Report (SITREP-POL ONE and FINAL) dated August 21, 2023.
[35] United States Coast Guard Situation Report (SITREP-POL ONE and FINAL) dated August 21, 2023.
[36] *Id.*

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 a matter of fact that the sunken vessel SEABISCUIT discharged diesel, which is an OPA oil, into the Pacific Ocean, a navigable waterway of the United States.[37] OSPR responded jointly with the Coast Guard in the Unified Command to oversee the cleanup and assist with mitigating the effects of the spill. All removal costs approved for payment to the claimant were determined to be reasonable and uncompensated and were determined by the FOSC to be consistent with the NCP.[38]

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, Department of Fish and Wildlife: Office of Spill Prevention and Response request for uncompensated removal costs is approved in the amount of $3,702.32.

This determination is a settlement offer,[39] the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.[40] The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.[41] Moreover, this settlement offer is based upon the unique facts giving rise to this claim and is not precedential.

[redacted]

Claim Supervisor: [redacted]

Date of Supervisor's review: 9*/30/2025*

Supervisor Action: ***Approved***

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[37] United States Coast Guard Situation Report (SITREP-POL ONE and FINAL) dated August 21, 2023.

[38] *Id.*

[39] 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).

[40] 33 CFR 136.115(b).

[41] 33 CFR 136.115(b).