

CLAIM SUMMARY / DETERMINATION

Claim Number:	915053-0001
Claimant:	State of California Dept. Fish & Wildlife, OSPR
Type of Claimant:	State
Type of Claim:	Removal Costs
Claim Manager:	[REDACTED]
Amount Requested:	\$25,334.39

FACTS:

Oil Spill Incident

On December 16, 2010, California Department of Fish & Wildlife (OSPR) was notified of an oil sheen on the Old River in the vicinity of Coney Island in Byron, CA. An investigation conducted by Fish & Wildlife personnel revealed that two barges in a lagoon located on the east side of Coney Island that had been tied to the shore along with two abandon recreational vessels that were tied to the barges. The source of the sheen appeared to be from one of the abandon recreational vessels; specifically, a partially submerged 35' pleasure craft, State Registration CF 8702 CU which had petroleum product in its fuel tanks and in its bilges. As there was no one in the vicinity of the barges or recreational vessels and the partially submerged recreational vessel was actively sheening oil into the Old River, Parker Diving Services was contracted to boom the vessel and remove the fuel from the partially submerged vessel.¹

Description of Removal Activities

On December 17, 2010, Parker Diving Services responded to the partially submerged recreational vessel, boomed it and pumped down the bilges and fuel tanks into four (4) 55 gallon drums.² All of the oil absorbent material was placed into a 55 gallon drum and was properly disposed of with the four (4) 55 gallons of liquid waste at A & S Environmental Services, LaGrange, CA.³

Responsible Party

State records indicated that Mr. [REDACTED] was the last known owner of the partially submerged 35' please craft CF 8702 CU. Attempts to contact Mr. [REDACTED] were unsuccessful as the state registration on the vessel had expired and the address listed for Mr. [REDACTED] led to an undeveloped area in Redwood City, CA. The owner of the barges was also questioned by Fish & Wildlife personnel but stated that he had found both abandon recreation vessels floating down river and had tied the vessels to his barges so they would not collide with a bridge located down river.⁴

¹ See Fish and Wildlife Narrative Supplement submitted by Game [REDACTED] dated March 29, 2012.

² Id.

³ See A & S Environmental Services Bill of Lading dated March 10, 2011 and Uniform Hazardous Waste Manifests.

⁴ See Fish and Wildlife Narrative Supplement submitted by Game [REDACTED] dated March 29, 2012.

Claim

On February 13, 2015, CA Fish & Wildlife submitted a removal cost claim to the National Pollution Funds Center (NPFC) for reimbursement of its uncompensated removal costs in the amount of \$25,334.39.⁵

APPLICABLE LAW:

"Oil" is defined in relevant part, at 33 USC § 2701(23), to mean "oil of any kind or in any form, including petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil".

The Oil Spill Liability Trust Fund (OSLTF), which is administered by the NPFC, is available, pursuant to 33 USC §§ 2712(a)(4) and 2713 and the OSLTF claims adjudication regulations at 33 CFR Part 136, to pay claims for uncompensated removal costs that are determined to be consistent with the National Contingency Plan and uncompensated damages. 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".

Under 33 USC §2713(b)(2) and 33 CFR 136.103(d) no claim against the OSLTF may be approved or certified for payment during the pendency of an action by the claimant in court to recover the same costs that are the subject of the claim. See also, 33 USC §2713(c) and 33 CFR 136.103(c)(2) [claimant election].

33 U.S.C. §2713(d) provides that "If a claim is presented in accordance with this section, including a claim for interim, short-term damages representing less than the full amount of damages to which the claimant ultimately may be entitled, and full and adequate compensation is unavailable, a claim for the uncompensated damages and removal costs may be presented to the Fund."

Under 33 CFR 136.105(a) and 136.105(e)(6), the claimant bears the burden of providing to the NPFC, all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim.

Under 33 CFR 136.105(b) each claim must be in writing, for a sum certain for each category of uncompensated damages or removal costs resulting from an incident. In addition, under 33 CFR 136, the claimant bears the burden to prove the removal actions were reasonable in response to the scope of the oil spill incident, and the NPFC has the authority and responsibility to perform a reasonableness determination. Specifically, under 33 CFR 136.203, "a claimant must establish -

(a) That the actions taken were necessary to prevent, minimize, or mitigate the effects of the incident;

⁵ See NPFC Standard Claim Form submitted by CA Fish & Wildlife dated February 13, 2015.

- (b) That the removal costs were incurred as a result of these actions;
- (c) That the actions taken were determined by the FOSC to be consistent with the National Contingency Plan or were directed by the FOSC.”

Under 33 CFR 136.205 “the amount of compensation allowable is the total of uncompensated *reasonable* 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.” [Emphasis added].

Determination of Loss:

A. Findings of Facts

1. The NPFC has determined that the actions undertaken by the Claimant are deemed consistent with the NCP. This determination is made in accordance with the Delegation of Authority for Determination of Consistency with the NCP for the payment of uncompensated removal cost claims and is consistent with the provisions of sections 1002(b)(1)(B) and 1012(a)(4) of OPA, 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4) ;
2. The incident involved a discharge of “oil” as defined in OPA 90,33 U.S.C. § 2701(23), to navigable waters;
3. In accordance with 33 CFR § 136.105(e)(12), the claimant has certified no suit has been filed in court for the claimed uncompensated removal costs;
4. The claim was submitted within the six year statute of limitations for removal cost claims;
5. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that the majority of removal costs presented were for actions in accordance with the NCP and that costs for these actions were indeed reasonable and allowable under OPA and 33 CFR § 136.205 as set forth below.

B. Analysis

The NPFC Claims Manager has reviewed the actual cost invoices and dailies to confirm that the claimant had incurred all costs claimed. The review focused on: (1) whether the actions taken were compensable “removal actions” under OPA and the claims regulations at 33 CFR 136 (e.g., actions to prevent, minimize, mitigate the effects of the incident); (2) whether the costs were incurred as a result of these actions; (3) whether the costs were adequately documented and reasonable.

After a review of the documentation⁶, the NPFC has determined that the State of California was able to demonstrate that due to this oil spill incident, the State incurred \$22,037.92 in personnel and contractor costs. The NPFC determine that these costs are reasonable and necessary in order to mitigate the threat to the environment and are payable by the OSLTF. All rates were charged in accordance with the state’s salary and equipment schedule.

⁶See NPFC Standard Claim Form submitted by CA Fish & Wildlife dated February 13, 2015.

As listed on the Claimant's Incident Billing, CA Fish & Wildlife requested reimbursement of \$3,296.47 in Administrative costs regarding uncompensated removal costs incurred for this incident. The NPFC will not reimburse the administrative costs with regard to the Federal Indirect Cost Rates as the costs are unsubstantiated. Therefore, the administrative costs of \$3,296.47 are denied.

C. Determined Amount:

The NPFC determines that the OSLTF will pay \$22,037.92 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #915053-0001. All costs claimed are for charges incurred by the Claimant for removal actions as that term is defined in OPA and, are compensable removal costs payable by the OSLTF as presented by Claimant.

Claim Supervisor: 

Date of Supervisor's review: *3/12/2015*

Supervisor Action: *Approved*

Supervisor's Comments: