

CLAIM SUMMARY / DETERMINATION

Claim Number:	915060-0001
Claimant:	State of California Dept. Fish & Wildlife, OSPR
Type of Claimant:	State
Type of Claim:	Removal Costs
Claim Manager:	[REDACTED]
Amount Requested:	\$6,309.74

FACTS:

Oil Spill Incident

On February 2, 2010, a barge located on land at the McAvoy Harbor Yacht Club caught fire while being disassembled. At the time of the fire, the barge contained fuel oil in two of its compartments. CA Fish & Wildlife personnel responded and oversaw the removal activities funded by the owners of the barge which included the booming of the barge to prevent oil or oil run-off from the firefighting efforts from entering McAvoy Harbor, a navigable waterway of the United States. The fire was eventually extinguished and approximately 8,140 gallons of fuel oil was removed from the compartments of the barge with no report of oil entering McAvoy Harbor.¹

Claim

On February 10, 2015, CA Fish & Wildlife (claimant) submitted a removal cost claim to the National Pollution Funds Center (NPFC) for reimbursement of their uncompensated removal costs in the amount of \$6,309.74.²

Responsible Party

The Claimant identifies [REDACTED], the [REDACTED] Family and McAvoy Harbor as the owners of the barge. They also state that presentment of this claim was made to the owner(s) of the barge but they denied responsibility and refused to pay for the Claimant's removal costs.³ As the Claimant didn't provide an address for any of the owners, an RP identification letter was not mailed to the owners by the NPFC.

APPLICABLE LAW:

Under OPA 90, at 33 USC § 2702(a), responsible parties are liable for removal costs and damages resulting from the discharge of oil into navigable waters and adjoining shorelines, as described in Section 2702(b) of OPA 90. A responsible party's liability will include "removal costs incurred by any person for acts taken by the person which are consistent with the National Contingency Plan". 33 USC § 2702(b)(1)(B).

¹ See NPFC Standard Claim Form submitted by CA Fish & Wildlife dated February 10, 2015.

² Id.

³ Id.

"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;
- (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 substantial threat of a discharge of “oil” as defined in OPA 90,33 U.S.C. § 2701(23), to navigable waters;
3. The claim was properly presented to the responsible party, who denied the claim;
4. 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;
5. The claim was submitted within the six year statute of limitations for removal cost claims;
6. 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 documentation⁴, the NPFC has determined that the State of California was able to demonstrate that due to this oil spill incident, the State incurred \$2,922.56 in personnel costs. The NPFC determined 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.

As detailed on the NPFC Cost Summary Spreadsheet, CA Fish & Wildlife billed a total of 52 hours for Oil Spill Prevention Specialist [REDACTED] for services provided well after the completion date of the removal activities. However, it’s unclear how these costs are related to the removal activities conducted by CA Fish & Wildlife during the response and investigation of the barge fire in McAvoy Harbor on February 2, 2010. Therefore, the costs incurred by Oil Spill Prevention Specialist [REDACTED] in the amount of \$3,363.22 are denied as unsubstantiated for work billed months after the end date of the response as it remains unclear if in fact these costs are OPA compensable response activities.

⁴See NPFC Standard Claim Form submitted by CA Fish & Wildlife dated February 10, 2015.

In addition, as listed on the Claimant's Incident Billing, CA Fish & Wildlife requested reimbursement of 23.96 in Administrative costs regarding uncompensated removal costs incurred for this incident which the NPFC denies as the administrative costs with regard to the Federal Indirect Cost Rates as the costs are unsubstantiated.

C. Determined Amount:

The NPFC determines that the OSLTF will pay \$2,922.56 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #915060-0001. 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: