

## CLAIM SUMMARY / DETERMINATION

<b>Claim Number:</b>	915061-0001
<b>Claimant:</b>	State of California Dept. of Fish & Wildlife, OSPR
<b>Type of Claimant:</b>	State
<b>Type of Claim:</b>	Removal Costs
<b>Claim Manager:</b>	[REDACTED]
<b>Amount Requested:</b>	\$9,526.73

### Facts

#### Oil Spill Incident

The United States Coast Guard Sector San Francisco reports<sup>1</sup> that, on the morning of November 02, 2010, the tug WAKE ISLAND was discovered to have sunk while tied up in Broad Slough in Contra Costa County. Broad Slough flows directly into several bays that eventually drain into the Pacific Ocean, all of which are navigable waterways of the US. It rested in approximately 7' of water at low tide. The tug had two tanks with a capacity of approximately 500 to 700 gallons each (1,000 to 1,400 gallons capacity). Salt River Construction (the Responsible Party (RP)) alleged that the starboard fuel tank was out of service and empty, and all remaining diesel fuel was located in the port side fuel tank. It was estimated that the port side fuel tank held approximately 300-400 gallons of red diesel at the time of its sinking.

When Claimant response personnel arrived on scene, sorbent boom had been deployed around the sunken vessel, and red-dyed diesel and lubricating oils were clearly visible within the contained area. Red-dyed diesel was also observed rising intermittently from the stern section of the sunken vessel. A small amount of residual petroleum sheen *was* observed outside the boomed area up to 200' feet away.

#### Description of Removal Activities

Global Diving was hired by the Responsible Party (RP) to provide containment boom, sorbent boom and pads, personnel, and diving equipment. In addition, personnel employed by the RP also assisted in the response. Global Diving maintained the containment boom and lined it with sorbent boom, pads, and sweep to recover the oil and minimize any sheen entraining under the containment boom.

Several 55-gallon drums were found aboard the vessel. At least one was opened and found to contain motor oil. A large amount of dark oil was visible inside the vessel's compartments. As the vessel was de-watered in order to raise it, Global Diving recovered 222.25 gallons of mixed petroleum products from the tug's compartments. These free-floating liquids were recovered and stored in a nearby portable tank.

Once the vessel was raised and the petroleum products removed, the Claimant's representatives demobilized its assets and personnel. The RP assumed all costs related to the cleanup of this spill.

<sup>1</sup> See USCG NRC Report # 958786, opened 11/02/2010.

### Claim

On March 4, 2015, OSPR submitted a removal cost claim to the National Pollution Funds Center (NPFC) for reimbursement of their uncompensated removal costs in the amount of \$9,526.73.

OSPR is claiming Personnel Costs in the amount of \$8,972.94, Operating Expenses (CDFW Vehicle) in the amount of \$458.28, and Administration Costs in the amount of \$95.51.

### 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).

"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. FOSC Coordination has been established via United States Coast Guard Sector San Francisco.<sup>2</sup>
2. 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.
3. The claim was submitted within the six year statute of limitations. 33 U.S.C. § 2712(h)(1).
4. A Responsible Party has been identified. 33 U.S.C. § 2701(32).
5. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that all removal costs presented were for actions in accordance with the NCP and that the costs for these actions were indeed reasonable and allowable under OPA and 33 CFR § 136.205.

#### ***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 claim documentation, the NPFC has determined that the Claimant was able to demonstrate that, as a result of this incident, that they incurred \$9,431.22 in personnel

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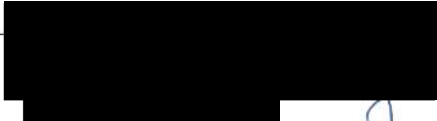
<sup>2</sup> See USCG NRC Report # 958786, opened 11/02/2010.

costs. USCG FOSC documentation provided support and corroboration for the Claimant's response actions in this incident. The NPFC has determined that the 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 listed on the Claimant's Incident Billing, the Claimant requested reimbursement of \$95.51 in Administration Costs regarding uncompensated removal costs incurred for this incident. The NPFC denies the administrative costs with regards to the Federal Indirect Cost Rate as the costs are unsubstantiated. Therefore, the administrative costs of \$95.51 are denied.

**C. Determined Amount:**

The NPFC determines that the OSLTF will pay \$9,431.22 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 915061-0001. All costs claimed are for charges paid for 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: *3/12/15*

Supervisor Action: *Approved*

Supervisor's Comments: