

CLAIM SUMMARY / DETERMINATION

Claim Number:	A11045-0001
Claimant:	State of California Dept. Fish & Wildlife, OSPR
Type of Claimant:	State
Type of Claim:	Removal Costs
Claim Manager:	██████████
Amount Requested:	\$2,484.38

Facts

Oil Spill Incident

On August 23, 2011, the California Department Fish & Wildlife (OSPR) was notified of a spill at Terminal Island in Fish Harbor located at Berth 268 in the Port of Los Angeles. At approximately 9:15 AM the Federal On-Scene Coordinator Representative (FOSCR), U.S. Coast Guard (USCG) Auxiliarist ██████████, Sector Los Angeles Long Beach, advised that the fishing vessel (F/V) Sea Hawk sank at its slip and released fuel oil into the water. The FO SCR confirmed that the USCG had contracted for the clean up of the spill and the subsequent raising of the F/V Sea Hawk. Clean up and recovery operations began at approximately 5:45 AM on August 23, 2011 and were completed on August 25, 2011. It was estimated that 125 gallons of petroleum product was spilled. The owner of the F/V Sea Hawk was identified as Mr. ██████████.

Claim

On February 20, 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 \$2,484.38.

OSPR is claiming Personnel Costs in the amount of \$2,484.38².

Description of Removal Activities

Ocean Blue Environmental Services and Warren Diving Services were hired to respond to the incident. The cleanup and recovery operations were completed August 25, 2011. It is important to note that the environmental contractor invoices are not part of this claim.

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 OSPR Investigation report dated August 23, 2011.

² OSPR OSLTF dated February 20, 2015.

"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 Sector Los Angeles Long Beach provided coordination for the incident.
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 documentation³, the NPFC determined that the State of California was able to demonstrate that due to this oil spill incident, the State incurred \$2,484.38 in personnel costs. The NPFC has 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 at the time services were rendered.

C. Determined Amount:

The NPFC determines that the OSLTF will pay \$2,484.38 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # A11045-0001. 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.

³ OSPR OSLTF submission package to the NPFC.

Claim Supervisor



Date of Supervisor's review: *3/12/15*

Supervisor Action: *Approved*

Supervisor's Comments: