

CLAIM SUMMARY / DETERMINATION

Claim Number:	A13008-0001
Claimant:	State of California Dept. Fish & Wildlife, OSPR
Type of Claimant:	State
Type of Claim:	Removal Costs
Claim Manager:	[REDACTED]
Amount Requested:	\$2,515.05

FACTS:

Oil Spill Incident

On March 18, 2013, CA Fish and Wildlife was notified of an abandoned Panga Boat on Monterey Beach, CA, that had been used to smuggle 600 pounds of marijuana illegally into the United States of America. The smugglers had been spotted by CA Highway Patrol and had fled the scene, leaving the vessel adrift and presenting a substantial threat of discharging gasoline into Monterey Bay, a navigable waterway of the United States. CA Fish & Wildlife responded with CG Sector San Francisco personnel, who federalized the removal activities and hired Global Diving to pump down the 150 gallons of gasoline from the fuel tanks on the vessel. CA Fish and Wildlife personnel stayed on-scene with CG personnel during the removal of gasoline from the abandoned vessel.¹

Claim

On February 25, 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 \$2,515.05.²

Responsible Party

As the operators of the Panga Boat were illegally trying to smuggle drugs into the United States and fled the scene of the crime, a responsible party could not be identified.

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

¹ See NPFC Standard Claim Form submitted by CA Fish & Wildlife dated February 25, 2015.

² Id.

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. MST2 [REDACTED] of Coast Guard Sector San Francisco provided FOSC coordination, ensuring all removal activities were conducted in accordance with 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. 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 period of limitations for removal cost claims;
5. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that the 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.

The FOSCR in this incident documents that the vessel was beached with several drums full of fuel that posed a substantial threat of release. The FOSCR contacted the State of California, who also responded to the scene to oversee removal actions.

After a review of the documentation³, the State of California was able to demonstrate that due to this oil spill incident, the State incurred \$1,273.05 in personnel costs. The NPFC determines 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 8 response hours for Fish & Game Warden [REDACTED] and 12 response hours for Fish & Game Warden [REDACTED] for services provided on March 18, 2013.⁴ However, an email from MST2 [REDACTED] CG Sector San Francisco Federal On-Scene Coordinator Representative disputes their time on-scene at the spill location and states that the only CA Fish & Wildlife Game Warden on-scene during the removal activities was Game Warden [REDACTED]⁵ Therefore, the costs incurred by Fish and Game Wardens [REDACTED] and [REDACTED] totaling \$1,242.00 are denied as unsubstantiated OPA compensable response activities.

C. Determined Amount:

The NPFC determines that the OSLTF will pay \$1,273.05 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim

³See NPFC Standard Claim Form submitted by CA Fish & Wildlife dated February 25, 2015.

⁴Id.

⁵See USCG Sector New York Pollution Witness Statement from MST2 [REDACTED] dated March 14, 2015.

#A13008-0001. 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: *3/19/2015*

Supervisor Action: *Approved*

Supervisor's Comments: