

CLAIM SUMMARY / DETERMINATION

Claim Number:	A13005-0001
Claimant:	State of California Dept. Fish & Wildlife, OSPR
Type of Claimant:	State
Type of Claim:	Removal Costs
Claim Manager:	[REDACTED]
Amount Requested:	\$3,350.64

FACTS:

Incident: On January 10, 2013, at approximately 2148 hours, Warden [REDACTED] with the California Department of Fish and Game (DFW), Division of Oil Spill Prevention and Response (OSPR) was contacted by U.S. Coast Guard Marine Safety Detachment Humboldt Bay and told that Commercial Passenger Vessel (CPV) JEANNE that was carrying an estimated 120 gallons of diesel fuel onboard had sunk in the Noyo Harbor channel.¹ Noyo Harbor flows into the Noyo River, which is a navigable waterway of the U.S.

On January 11, 2013 Warden [REDACTED] arrived on scene and observed the 48 foot vessel was moored along the river bank and containment boom had been deployed around it to prevent the discharge of oil from entering the Noyo River. Coast Guard personnel informed Warden [REDACTED] that they had federalized this incident because the vessel's owner failed to respond to the sinking and the discharging of oil into the water.

The Claim and Claimant: On September 23, 2015 the NPFC received a claim from DFW-OSPR (Claimant) for uncompensated removal costs. These costs included the use of personnel, mileage costs and vehicle usage and legal fees for cost recovery expenses totaling \$3,350.64.²

Responsible Party: Mr. [REDACTED] was identified as the owner of the CPV JEANNE (vessel) by the USCG FOSC-R and is the responsible party for this pollution incident.

Removal Actions Taken by the Claimant: DFW-OSPR personnel responded to the sinking and acted as the State On Scene Coordinator overseeing the state's interest in the cleanup and removal of the vessel from the Noyo River. OSPR personnel tracked down the responsible party and informed Mr. [REDACTED] of his duties and liabilities for the sunken vessel that discharged oil into the Noyo River. Additionally, the Claimant allowed the oil spill removal contractor to use its facility and dock in Noyo Harbor to moor the JEANNE to remove the oil.

DFW-OSPR submitted copies of the following: a signed copy of the NPFC Standard Claim Form with cover letter from DFW OSPR, dated September 16, 2015. A copy of DFW's Voucher and Schedule of Withdrawals and Credits (invoice), Incident Billing statement showing Summary of Costs from January 10, through May 13, 2013 totaling \$3,350.64. There is a copy of DFW-

¹ See DFW-OSPR Investigation Report Narrative page 2, by Warden [REDACTED]

² Id.

OSPR's Attendance and Labor Distribution Reports with hours for three Wardens and one staff attorney. There is a copy of DFW-OSPR's 2013 Hourly Rate schedule and Investigation Report with narrative and photos along with a copy of the California Office of Emergency Services Hazardous Materials Spill Report 13-0219 that has the National Response Center report 1035392.

The NPFC finds that Claimant has obtained a judgment against Mr. [REDACTED]. Claimant submits a copy of its Order for Restitution and Abstract of Judgment filed against Mr. [REDACTED] on April 17, 2014. Claimant submitted a copy of its letter dated August 26, 2014 addressed to Mr. [REDACTED] and requesting that he pay restitution. Claimant submitted copies of four certified mail receipts to Mr. [REDACTED] requesting that he pay the court ordered restitution plus fees and interest. Last, Claimant submitted a copy of a letter dated May 20, 2014 from.

The review of the actual cost invoicing and dailies 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 actions taken were consistent with the NCP or directed by the FOSC, and (4) whether the costs were adequately documented.

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. Sector Humboldt Bay, as the FOSC for this incident, determined that the removal actions undertaken by the Claimant were consistent with the NCP. 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4);
2. The incident involved the discharge of “oil” as defined in OPA 90, 33 U.S.C. § 2701(23), to navigable waters. 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. Ca Department of Fish & Wildlife was awarded an order For Restitution and Abstract of Judgment in the Superior Court of California, County of Mendocino³; in the amount of \$3,137.30.
5. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined which of the 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 CA 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 actions taken were determined by the FOSC, to be consistent with the National Contingency Plan or directed by the FOSC, and (4) whether the costs were adequately documented and reasonable.

Order for Restitution and Abstract Judgment:

Upon review and adjudication of this claim, the Claimant provided a copy of an Order of Restitution and Abstract of Judgment it obtained against the RP, Mr. [REDACTED] filed on April 17, 2013 whereby the Superior Court of California, County of Mendocino ordered Mr. [REDACTED] to pay the Claimant the sum of \$3,137.30 plus interest and an administrative fee. Based on that order, the NPFC requests that Claimant provide or seek advice from its legal counsel for the controlling California authorities and must execute the appropriate instrument to assign its judgment to the NPFC should the Claimant decide it is going to accept the NPFC's determination to make payment in the amount of \$3,084.40, the required documentation will need to be provided BEFORE the NPFC will execute payment of this claim. In responding, please provide the California statutes that govern assignments and any notices required.

Once an assignment has been completed in accordance with California law the NPFC will execute payment of this claim upon receipt of the executed release and Assignment of Judgment in accordance with California law.

Legal Cost Recovery:

Claimant includes the one hour at \$121.80 for one of its staff attorneys to pursue the responsible party for cost recovery of its court ordered restitution. The NPFC finds that the cost for the staff attorney is not an OPA compensable removal cost, as defined under OPA and therefore denies this portion of the claim.

Review of Removal Costs:

³ See Order for Restitution and Abstract of Judgment, case # MCTM-CRNT-13-71495-002 filed by Clerk of Mendocino County Superior Court dated April 17, 2013.

Claimant asserts that it incurred uncompensated removal costs totaling \$3,350.64 for removal activities. The NPFC reviewed DFW-OSPR's invoices and weekly/daily records and confirmed that the Wardens invoiced hours match with dailies activity reports and finds that the pay rates are within the amount stated on the rate sheet. The NPFC finds that Claimant incurred its stated Warden costs of \$2,670.30 and that these costs are compensable removal costs under OPA.

The NPFC confirms DFW's Travel Expense at a daily rate of \$52 for the use of one of its 4x4 vehicles and finds it listed on DFW's rate sheet for 2013 and billed appropriately. Also, the NPFC confirms that DFW's documents show 426 miles at a rate of .85 cents per mile which totals \$362.10 is also billed appropriately and as such, the NPFC finds these costs to be compensable under OPA.

The NPFC finds Claimant's Incident Billing requests reimbursement for administrative costs at 34.88% for a total of \$144.44. The NPFC finds this cost is not compensable because the costs are unsubstantiated and therefore denied. Based on the foregoing, the NPFC hereby denies a total of \$266.24.

C. Determined Amount:

The NPFC determines that the OSLTF will pay \$3,084.40 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim A13005-0001. All costs claimed are for charges incurred by the Claimant for removal actions as defined in OPA and, are compensable removal costs payable by the OSLTF as presented by Claimant.

AMOUNT: \$3,084.40

Claim Supervisor:

Date of Supervisor's review: *10/8/15*

Supervisor Action: *Approved*

Supervisor's Comments: