

CLAIM SUMMARY / DETERMINATION

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| Claim Number: | A12021-0001 |
| Claimant: | State of California Dept. Fish & Wildlife, OSPR |
| Type of Claimant: | State |
| Type of Claim: | Removal Costs |
| Claim Manager: | ██████████ |
| Amount Requested: | \$2,635.46 |

Facts

On May 15, 2012, the Fishing Vessel (F/V) Barbara Faye was reported aground on Limantour Beach within the Point Reyes National Seashore. The owner of the F/V Barbara Faye, ██████████ stated that he had snagged fishing lines from a string of crab pots and had sought calmer waters near Limantour Beach to free the lines from his vessel. After falling asleep at approximately 2 AM on May 15, 2012, the F/V Barbara Faye ran aground and ██████████ used a survival raft to go ashore and report the incident. At 11:30 AM, U.S. Coast Guard (USCG) Sector San Francisco Incident Management Division (IMD), Northern Field Response Team, and State of California Department of Fish and Wildlife's Office of Spill Prevention and Response (OSPR) met at the scene of the grounded vessel. USCG contracted Parker Dive Service to complete the removal of the F/V Barbara Faye's diesel fuel, approximately 300 gallons. Removal of fuel was completed May 15, 2012, and no fuel was spilled during removal operations¹. The National Park Service was responsible for the removal of the F/V Barbara Faye from Limantour Beach.

Claim

On February 23, 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 \$2,635.46.

OSPR is claiming Personnel Costs in the amount of \$2,635.46².

Description of Removal Activities

Parker Dive Service completed cleanup and recovery operations on May 15, 2012. It is important to note that the environmental contractor invoices are not part of this claim but rather were covered under the Federal Project Number opened by the Federal On Scene Coordinator (FOSC).

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

¹ OSPR Incident Report dated July 12, 2012

² OSPR OSLTF dated February 23, 2015.

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 Sector San Francisco provided coordination for the incident.
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 statute of limitations. 33 U.S.C. § 2712(h)(1).
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 State of California was able to demonstrate that due to this oil spill incident, the State incurred \$2,635.46 in personnel costs that were billed in accordance with their governing state rates at the time services were provided. The NPFC has determined that these costs were 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.

C. Determined Amount:

The NPFC determines that the OSLTF will offer \$2,635.46 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # A12021-0001. 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: