

U.S. Department of
Homeland Security

United States
Coast Guard



Director
National Pollution Funds Center

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5890
April 04, 2013

VIA EMAIL: [REDACTED]@gmail.com

Pacific Salvage Inc.
ATTN: Chelsea Wagner
624 Windham Street
Santa Cruz, CA 94062

RE: 913029-0001

Dear Ms. Wagner:

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act (OPA) (33 U.S.C. 2701 et seq.), has determined that \$3,053.00 is full compensation for OPA claim number 913029-0001.

This determination is based on an analysis of the information submitted. Please see the attached determination for further details regarding the rationale for this decision.

All costs that are not determined as compensable are considered denied. You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claims. Reconsideration will be based upon the information provided and a claim may be reconsidered only once. Disposition of the reconsideration will constitute final agency action. Failure of the NPFC to issue a written decision within 90 days after receipt of a timely request for reconsideration shall, at the option of the claimant, be deemed final agency action. All correspondence should include corresponding claim number.

Mail reconsideration request to:

Director
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Boulevard, Suite 1000
Arlington, VA 20598-7100

If you accept this determination, please sign the enclosed Acceptance / Release Agreement where indicated and return to the above address.

If we do not receive the signed original Acceptance / Release Agreement within 60 days of the date of this letter, the determination is void. If the determination is accepted, an original signature and a valid tax identification number (EIN or SSN) are required for payment. If you are a Claimant that has submitted other claims to the National Pollution Funds Center, you are

required to have a valid Contractor Registration record prior to payment. If you do not, you may register free of charge at www.SAM.gov. Your payment will be mailed or electronically deposited in your account within 60 days of receipt of the Release Agreement.

If you have any questions or would like to discuss the matter, you may contact me at the above address or by phone at 1-800-280-7118.

Sincerely,

Galen Wetzel
Claims Manager
U.S. Coast Guard
By direction

Enclosures: Claim Summary / Determination
Acceptance / Release Agreement

CLAIM SUMMARY / DETERMINATION

Claim Number:	913029-0001
Claimant:	Pacific Marine Salvage Inc.
Type of Claimant:	Corporation
Type of Claim:	Removal Costs
Claim Manager:	Galen Wetzel
Amount Requested:	\$19,781.75

FACTS:

Oil Spill Incident: On November 8, 2011, the 28.6 foot, commercial fishing vessel ANDIAMO (CF9863AM) sank at its mooring in Moss Landing Harbor, CA. The sinking of the vessel created an oil sheen on the water's surface. Initially, estimates indicated that the vessel had approximately 30 gallons or less of fuel on board. The Federal On Scene Coordinator (FOSC) then met with the vessel owner and the estimate of fuel was determined to actually be less than 1 gallon.¹ The FOSC consulted with on scene personnel from California Department of Fish and Game, the State On Scene Coordinator (SOSC), and it was determined that the vessel did not present a significant threat to the environment and the SOSC remained on scene to observe the salvage procedures of the vessel.² The sheen was contained with boom and any residual product was collected utilizing absorbent pads.

Moss Landing Harbor is a tributary to Monterrey Bay, a navigable waterway of the United States.

Responsible Party: Mr. Jerid Rold, the Responsible Party (RP), owned the F/V ANDIAMO at the time of the incident and is determined to be the responsible party under the Oil Pollution Act. The National Pollution Funds Center (NPFC) sent a RP Notification letter to the RP on January 29, 2013.

Description of Removal Activities for this Claimant: Pacific Marine Salvage Inc. (PSI) responded to the scene and entered into a contract with the vessel owner to "...relieve the property from its present difficulties and PSI agrees to use their best efforts to salvage the items, her cargo and/or other property and to deliver them afloat or ashore at..." on November 8, 2011.³ PSI mobilized a response crew and deployed 200 feet of containment boom around the sunken vessel and made preparations for salvage operations.

On November 9, 2011, PSI personnel commenced raising the vessel utilizing lift bags. The vessel was refloated and made fast to the dock where dewatering pumps were used to remove the remaining water from the vessel. The F/V ANDIAMO was then moved to shore and placed in the boat yard where all remaining contaminants were removed. Demobilization of personnel and equipment were completed.⁴

¹ USCG MISLE Case Report Number 575683.

² FOSCR Witness Statement, MST1 Robinson.

³ Pacific Marine Salvage Inc. Contract.

⁴ Details acquired from Pacific Marine Salvage Inc. Time Log for this incident.

On November 11, 2009, PSI disposed of two drums, one each of solids and liquids, of contaminated waste to Clean Harbors of San Jose LLC.⁵

The Claim: On January 29, 2013, Pacific Marine Salvage Inc. (PSI), presented a removal cost claim to the National Pollution Funds Center (NDFC) for reimbursement of their alleged uncompensated removal costs in the amount of \$19,781.75⁶

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.

⁵ Hazardous Waste Manifest Number 001449760.

⁶ NPFC Standard Claim Form dated January 17, 2013.

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. Overview:

1. FOSC coordination has been provided by U.S. Coast Guard Sector San Francisco for response actions undertaken on day one only. The coordination is not applicable to salvage operations which were undertaken beginning on day two.
2. The incident involved the discharge of “oil” as defined in OPA 90, 33 U.S.C. §2701 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 costs.
4. In accordance with 33 U.S.C. § 2712(h)(1), the claim was submitted within the six year statute of limitations for removal costs.
5. The NPFC Claims Manager thoroughly reviewed all documentation submitted with the claim and determined which of the costs presented were for actions in accordance with the NCP and that the costs for these actions were reasonable and allowable under OPA and 33 CFR § 136.205.

B. Analysis:

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 NCP or directed by the FOSC, and (4) whether the costs were adequately documented and reasonable.

PSI and the RP agreed to the terms of a contract for the salvage of the vessel on November 8, 2011. Despite the fact that the contract was for the primary purpose of the vessel's salvage, PSI did deploy boom and mobilized other removal equipment to the scene for the purpose of oil removal actions. The NPFC approves all invoiced costs of \$5,323.50⁷ incurred on the initial date of response based on the eight-hour minimum call out time in accordance with the contract for services.⁸

PSI is also requesting \$11,752.50 for personnel costs incurred for a Salvage/HAZMAT Master, two Environmental Technicians, three Dive Masters, and a Diver for field operations that occurred on November 9, 2011.⁹ All operations that occurred on November 9, 2011 supported vessel salvage operations with exception of the hours of 1:45pm - 5:15pm (3.5 hours)¹⁰ when removal activities were performed after the vessel was removed from the water. These activities included the removal of absorbent pads (diapers) and boom from the water and the demobilization of removal equipment. Therefore, the NPFC has determined that 3.5 hours are compensable for the Salvage/HAZMAT Master and the two Environmental Technicians totaling \$1,347.50 and the remaining \$10,405.00 are denied as salvage and not OPA compensable.

PSI requested \$3,167.00 for the following equipment used on November 9, 2011: lift bags, ratchet loop strap, shackles, compressor, air manifold, air hoses, 3" pacer pump, explosion proof pump, VHS radios, underwater comms system, and polypropylene line.¹¹ The NPFC has determined that this equipment was utilized for the salvage operation and as such is not an OPA compensable cost. One hundred feet of the polypropylene line was approved to maintain the boom established around the spill site. Therefore, the equipment cost of \$50.00 is approved and the remaining \$3,117.00 is denied.

PSI requested \$1,030.00 for vessel costs which consisted of a 24 foot response boat and an 18 foot inflatable boat for field operations that occurred on November 9, 2011. All operations that occurred on this date supported vessel salvage operations with the exception of the 3.5 hours of removal activities performed after the vessel was removed from the water, as stated previously in this determination. The NPFC has determined that two hours of operational time is reasonable to support the removal of the boom and absorbent pads (diapers) from the water. Therefore, vessel costs of \$250.00¹² are approved and the remaining \$780.00 is denied.

PSI requested \$207.00 for personal protective equipment (PPE)¹³ for field operations that occurred on November 9, 2011. The NPFC has approved PPE for the Salvage/HAZMAT Master and the two Environmental Technicians. PSI invoiced the

⁷ PSI Invoice Number 72 dated November 8, 2011.

⁸ PSI Rate Schedule signed by RP.

⁹ PSI Invoice Number 73 dated November 9, 2011.

¹⁰ Documented in PSI Time Log.

¹¹ PSI Invoice Number 73 dated November 9, 2011.

¹² 18' inflatable boat used to set boom so the same vessel used to calculate compensation, 2 hrs @ \$125 = \$250.

¹³ Gloves Outer, Posi Wear Disposable Suit, and Ear Plugs.

cost of the Posi Wear Disposable Suits at \$38.00¹⁴ each but the rate schedule lists each suit cost at \$32.00. Therefore, the PPE costs of \$147.00 are approved and the remaining \$60.00 is denied as exceeding the agreed upon rate schedule pricing and for the reduction of three sets of gloves which the NPFC determines to be associated with salvage operations.

PSI requested \$1,479.00 for three HAZMAT drums, labels and their disposal at Clean Harbors of San Jose, Inc. PSI provided a Uniform Hazardous Waste Manifest that only lists two drums for disposal, one with solid waste and one with liquid waste.¹⁵ PSI did not provide any documentation that any oily/water waste was collected from the water's surface and that the only oily/water recovered was from the vessel after it was removed from the water. Once the vessel was placed on shore, with the vessel's hull and tank(s) intact, there was no substantial threat of discharge to the waterway and as such, any liquids removed from the vessel at this point in time are not deemed OPA compensable. The NPFC has approved the cost of one documented drum which contained solid waste material and has disapproved all disposal costs because there is no evidence that PSI has incurred the disposal costs by way of proof of payment to the disposal facility or that the liquid waste disposed of was generated from the water's surface as opposed to coming from the vessel once it was removed from the waterway as opposed to being generated from the salvage operations. Therefore, one drum of solids and affiliated label costs in the amount of \$108 are approved and the remaining \$1,371.00 in disposal costs are denied.

PSI requested \$104.50 for lunch cost on November 9, 2011. In order for meals (per diem) to be compensable, the incident location must be greater than 50 miles from the base location. The NPFC calculated this distance to be less than 25 miles therefore allowance for meals is not authorized.¹⁶ Also, PSI did not provide proof that it actually incurred the meal cost. Therefore, the lunch costs of \$104.50 are denied.

PSI requested \$522.50 for personnel costs for an Environmental Technician to clean and restock equipment on November 10, 2011.¹⁷ The NPFC has approved half of these costs since this response included both salvage and removal actions. As such, personnel costs of \$261.25 are approved and the remaining \$261.25 are denied.

PSI requested \$500.00 for personnel costs associated with administrative time for the Salvage/HAZMAT Master on November 11, 2011.¹⁸ The NPFC has approved half of the administrative costs since this response included both salvage and removal actions. Personnel costs of \$250.00 are approved and the remaining \$250.00 is denied.

PSI requested \$760.00 for personnel costs for an Environmental Technician to transport waste material to Clean Harbors of San Jose, Inc. on November 11, 2011.¹⁹

¹⁴ PSI Invoice Number 73 dated November 9, 2011.

¹⁵ Manifest Number 001449760.

¹⁶ Based on Google Maps, 624 Windham Street, Santa Cruz, CA to Moss Landing Harbor, CA is 23.7 miles.

¹⁷ PSI Invoice Number 74 dated November 10, 2011.

¹⁸ PSI Invoice Number 75 dated November 11, 2011.

¹⁹ PSI Invoice Number 75 dated November 11, 2011.

PSI invoiced for eight hours of time but the PSI Daily Check List records four hours of time expended. Based on the contemporaneous field record, personnel costs of \$380.00 are approved and the remaining \$380.00 is denied.

All other costs were validated and the NPFC has determined the costs were reasonable, necessary and performed in accordance with the National Contingency Plan (NCP).

On that basis, the Claims Manager hereby determines that the Claimant did in fact incur a total of \$9,353.00 in OPA compensable removal costs and that amount is payable by the OSLTF as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #913029-0001.

Furthermore, PSI provided documentation that the RP made a down payment of \$5,000.00 and two additional payments totaling \$1,300.00 for a grand total of \$6,300.00 in payments by the RP and as such, the NPFC has deducted the amount paid by the RP to the PSI from the OPA determined removal costs and the balance is what the NPFC will offer to PSI. The Claimant states that all costs claimed are for uncompensated removal costs incurred by the Claimant for this incident on November 8-9, 2011. The Claimant represents that all costs paid by the Claimant are compensable removal costs, payable by the OSLTF as presented by the Claimant.

C. Determined Amount:

The NPFC hereby determines that the OSLTF will pay \$3,053.00²⁰ as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #913029-0001. 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 the Claimant.

AMOUNT: \$3,053.00

Claim Supervisor: ***Donna Hellberg***

Date of Supervisor's review: ***4/4/13***

Supervisor Action: ***Approved***

Supervisor's Comments:

²⁰ \$9,353.00 minus \$6,300.00 equals \$3,053.00.

ACCEPTANCE / RELEASE AGREEMENT

Claim Number: 913029-0001	Claimant Name: Pacific Marine Salvage Inc.
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I, the undersigned, ACCEPT this settlement offer of \$3,053.00 as full and final compensation for removal costs arising from the specific claim number identified above. With my signature, I also acknowledge that I accept as final agency action all costs submitted with subject claim that were denied in the determination and for which I received no compensation.

This settlement represents full and final release and satisfaction of the amounts paid from the Oil Spill Liability Trust Fund under the Oil Pollution Act of 1990 for this claim. I hereby assign, transfer, and subrogate to the United States all rights, claims, interest and rights of action, that I may have against any party, person, firm or corporation that may be liable for the amounts paid for which I have been compensated under this claim. I authorize the United States to sue, compromise or settle in my name and the United States fully substituted for me and subrogated to all of my rights arising from and associated with those amounts paid for which I am compensated for with this settlement offer. I warrant that no legal action has been brought regarding this matter and no settlement has been or will be made by me or any person on my behalf with any other party for amounts paid which is the subject of this claim against the Oil Spill Liability Trust Fund (Fund).

This settlement is not an admission of liability by any party.

With my signature, I acknowledge that I accept as final agency action all amounts paid for this claim and amounts denied in the determination for which I received no compensation.

I, the undersigned, agree that, upon acceptance of any compensation from the Fund, I will cooperate fully with the United States in any claim and/or action by the United States against any person or party to recover the compensation. The cooperation shall include, but is not limited to, immediately reimbursing the Fund for any compensation received from any other source for those amounts paid for which the Fund has provided compensation, by providing any documentation, evidence, testimony, and other support, as may be necessary for the United States to recover from any other person or party.

I, the undersigned, certify that to the best of my knowledge and belief the information contained in this claim represents all material facts and is true. I understand that misrepresentation of facts is subject to prosecution under federal law (including, but not limited to 18 U.S.C. §§ 287 and 1001).

_____	_____
Title of Person Signing	Date of Signature
_____	_____
Printed Name of Claimant or Authorized Representative	Signature

_____	_____
Title of Witness	Date of Signature
_____	_____
Printed Name of Witness	Signature

_____	_____	_____
*DUNS/EIN/SSN		
*Required for Payment	Bank Routing Number	Bank Account Number