

CLAIM SUMMARY / DETERMINATION FORM

Date	: 9/22/2008
Claim Number	: 907080-002
Claimant	: State of Washington
Type of Claimant	: State
Type of Claim	: Removal Costs
Claim Manager	: (b) (6)
Amount Requested	: \$3,190,826.47

FACTS:

1. Oil Spill Incident: On April 12, 2006, USCG Sector Portland Incident Management Personnel responded to the *S/S Catala* shipwreck located in Ocean Shores, Washington. This location is within the Federal On Scene Coordinator (FOSC) Sector Portland jurisdiction. The shipwreck is on shore and buried in approximately 10-30 feet of sand. The initial response by Coast Guard personnel to the shipwreck revealed a hole in the decking of the shipwreck exposing an oil tank containing an undetermined amount of heavy black oil. The vessel has been in its current location for a number of years and has not previously posed an emergent threat to the environment or navigation.

Based on the information provided, the product was contained and the only apparent breach of the hull was through the hole made by a beachcomber and his walking stick. Coast Guard responders inspected the exterior of the hull and found no other indications of product discharge. Coast Guard responders recommended opening a Federal Project utilizing Oil Spill Liability Trust Fund (OSLTF) money to hire a salvage contractor to conduct an examination and inspection of the hull using non-destructive methods to determine if the hull was intact under the sand. Global Diving and Salvage (GDS) was hired by Sector Portland to conduct the test and provide a report for FOSC review. The contractor completed its inspection and provided materials and labor to seal the hole caused by the beachcomber.

After the hole was patched by the contractor, USCG Sector Portland determined that the incident no longer posed a substantial threat of discharge and ceased further response actions. Attached is a copy of Global Diving and Salvage's assessment of the condition of the vessel, estimated volume of the void, and the feasibility of removal of the product. This report was provided to Sector Portland dated April 14, 2006. (See Enclosure 1 – GDS Assessment report dated April 14, 2006).

2. USCG's determination not to perform further removal actions: When Global Diving performed the initial assessment as to the condition of the vessel at the request of Sector Portland, their findings and recommendations were as follows:

Findings: The vessel was buried up to approximately the main deck level in sand. Most of the port and some of the starboard sides in the area of the shear was exposed. Various bulkheads, storage tanks, and piping are sticking out of the hull through the sand. Six transverse bulkheads were counted throughout the length of the vessel. The aft

compartment is missing from the stern and may be buried aft and to the starboard side of the hull. It is unclear whether this missing compartment held the steering components.

The steel of the hull and bulkheads appear to be degrading normally given the conditions in which it lies. Rust covers all surfaces and some evidence exists indicating delamination and leaching of the carbon from the steel. A Cygnus 1 Ultrasonic Thickness Gauge with a 2.25 MHz ½” remote probe #84465, calibrated February 9, 2006, was used to determine the thickness of the plating surrounding the void with the product. Measurements were taken both above and below the sand. Areas of average degradation were chosen for the measurement locations. Hull thickness above the sand level is - .160”. Hull thickness below the sand level is - .140”.

What looked like product was observed around mid-ships on the starboard side against the hull in the sand, and leaching out of the inside of the hull through a low spot in the hull in the form of a light intermittent sheen. The hull in this location appeared to hold water as water was running from the low spot in the hull.

Recommendations for action: Global indicated they felt the best course of action to reduce the imminent threat to the environment would be to complete removal of the oil product from within the vessel. They further indicated there were two possible solutions for doing this: (1) In situ cleaning of the compartment containing the oil. The viscosity of the product would require it to be heated in order to pump it out and the compartment could then be properly cleaned. Further access to the compartment would have to be created in order to facilitate proper access. This option could also be accomplished by creating better access into the compartment and mechanically removing the product without heating it; (2) Removal of the tank completely from vessel. This option would require some excavation forward of the forward transverse bulkhead and cutting the hull to separate the tank from the rest of the vessel. It is important to note that these options only considered the compartment with the known product in it. Global further stated in their initial assessment that an investigative assessment was recommended to determine the existence and quantity of any other pollutants on board.

These findings and recommendations were provided to the USCG Sector Portland. Upon receipt of this report on or about April 14, 2006, Sector Portland made the determination that the substantial threat of discharge was abated with the installation of the patch and that no further response actions were warranted. (See Enclosure 2 – USCG letter dated April 16, 2007).

3. The Claimant's determination to have a limited survey done on the S/S Catala: On May 31, 2006 through June 1, 2006, Global Diving & Salvage, Inc. (GDS) completed a limited survey of the *S/S Catala* for the State of Washington Department of Ecology (claimant). (See, Enclosure 3 – GDS Limited Survey Report of the SS Catala). The limited survey produced the following summarized results:

- That a significant amount of heavy oil was found in the Forward Deep Oil Fuel Tank and the No. 1 Oil Fuel Tank;
- That a significant amount of contaminated sand was found above the No. 1 Oil Fuel Tank and the No. 2 Oil Fuel Tank (it appeared as though the contamination was released through open hatches in the tank tops);
- Perimeter boring and groundwater samples around the vessel indicate that very little oil has remained localized in the surrounding sediment;

- That a significant amount of asbestos was found in the bulkhead insulation, wiring harnesses, and terrazzo flooring aboard the vessel at various locations;
- A computerized generated three dimensional model was created from what could be observed of the vessel and used to overlay tidal information as well as the findings of this report;
- The estimated tank capacities of the various Oil Fuel Tanks on board are as follows:

Fwd Deep O.F. Tank:	5,984-6,358 gallons
No. 1 O.F. Tank:	14,961-22,442 gallons
No. 2 O.F. Tank:	8,977-13,465 gallons
No. 3 O.F. Tank:	7,481-11,221 gallons
No. 4 O.F. Tank:	3,740-5,984 gallons
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Total max. possible gallons at risk:	59,470 gallons

Based on the limited survey performed by GDS, the claimant decided that there was in fact in their opinion, a substantial threat of discharge to navigable waters. The claimant determined that a maximum spill potential of 59,470 gallons of oil existed vice to the original estimate of 500 gallons of black oil referenced by the USCG via MISLE Activity # 2627218. (See Enclosure 4 – USCG Pollution Notification Message).

4. Description of removal actions taken: The actions that were performed associated with this claim submission covered the time period of May 2007 through August 2007. Work included containment, removal of sand and water, pressure washing of residual oil products, sheet pile removal, and demobilization. The primary response contractor for this incident was Philips Services Corporation with Global Diving and Salvage, Inc. as a subcontractor. In summary, as of September 2007, the SS Catala was completely removed and the beach at Damon Point State Park near Ocean Shores, Washington was on its way to full restoration as a result of a 17-month multi-agency effort to protect this sensitive area from the threat of a major oil spill. By the end of August 2007, all of the oil, asbestos-containing materials, oil-contaminated sand, and the remaining hull of the SS Catala had been completely removed from the beach and sent offsite for recycling, treatment, or disposal.

Overall project accomplishments to date were:

- Heavy fuel oil removed and recycled = 34,500 gallons
- Oily water collected and transported offsite for treatment = 360,000 gallons
- Oil-contaminated sand removed and disposed = 2,585 tons
- Asbestos-containing materials removed and disposed = 33 cubic yards
- Scrap steel removed and sent for recycling = 345 tons
- Worker hours with no reportable injuries = 36,000 hours
- Amount of oil spilled as a result of site operations = none
- Total project cost for removing oil and restoring beach = \$6.5M
- Cost of removing ship's hull = \$0.5M

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].

Under 33 CFR 136.115(d), the Director, NPFC, will, upon written request of the claimant or the claimant's representative, reconsider any claim denied. This is a de novo review. The request for reconsideration must be in writing and include the factual or legal grounds for the relief requested, providing any additional support for the claim. The request for reconsideration must be received by the NPFC within 60 days after the date the denial was mailed to the claimant or within 30 days after receipt of the denial by the claimant, whichever date is earlier.

DETERMINATION OF LOSS:

A. Findings:

1. The NPFC has determined that the actions undertaken by the claimant are deemed consistent with the NCP. This determination is made in accordance with the Delegation of Authority for Determination of Consistency with the National Contingency Plan (NCP) for the payment of uncompensated removal cost claims under section 1012(a)(4), Oil Pollution Act of 1990. (See, Delegation of Authority from COMDT ltr 5402 of 19 March 1992).
2. The incident involved the substantial threat of discharge of “oil” as defined in OPA 90, 33 USC § 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. (See, NPFC Claim Form).
4. In accordance with 33 CFR §136.103(b)(3), presentation to the RP was not made preceding the submission of this claim to the NPFC, which is not required of state’s under OPA.
5. The claim was submitted on time.
6. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim. The NPFC finds that the efforts undertaken by the claimant meet the OPA definition of “removal” as defined in OPA which specifically states that “(30) ‘remove’ or ‘removal’ means containment and removal of oil or a hazardous substance from water and shorelines or the taking of other actions as may be necessary to minimize or mitigate damage to the health or welfare, including but not limited to, fish shellfish, wildlife, and public and private property, shorelines and beaches”. The NPFC has determined that all removal costs presented that include cleanup, trench work, vacuuming of gasoline and water, and disposal were actions in accordance with the NCP and the costs for these actions were reasonable, necessary, and allowable under OPA and 33 CFR § 136.205.

B. Analysis:

NPFC CA reviewed the documentation provided by the claimant under cover dated 6 February 2008. This claim submission is considered Season 2 of the SS Catala spill response therefore the information provided for in the Season 1 claim is mentioned under this analysis section due to the relevance of the Limited Survey that was performed early on. NPFC CA reviewed the documentation provided by the claimant under cover dated 20 July 2007. The information submitted entitled “*Limited Survey Report of the SS Catala*”, prepared by Global Diving and Salvage, Inc. provides extensive detailed information demonstrating that a significant amount of heavy oil was in the Forward Deep Oil Fuel Tank and the No. 1 Oil Fuel Tank of the SS Catala; a significant amount of contaminated sand was found above the No. 1 Oil Fuel Tank and the No. 2 Oil Fuel Tank along with evidence that the contamination was released through open hatches in the tank tops; perimeter boring and groundwater samples taken around the vessel indicated that very little oil has remained localized in the surrounding sediment thereby confirming oil releases had been occurring. When reviewing the soil boring and groundwater results performed, three of the twelve perimeter boring samples revealed (1) the sample taken directly above the No. 1 Oil Fuel Tank (HS-90) resulted in 95,000 ppm of oil whereby the target compliance level for the State is 500 ppb; (2) the sample taken directly above the No. 2 Oil Fuel Tank (HS-115) resulted in 6,100 ppm and (3) another sample taken directly above the No. 2 Oil Fuel Tank (HS-125) resulted in 18,000 ppm. Clearly a substantial threat of discharge existed when considering some of the sample results combined with considerations for the vessel location buried at the waters edge in Damon Point, Ocean Shores, Washington and with the known environmental wildlife vulnerabilities that exist for that area combined with severe winter weather conditions.

Finally, it is important to note that the findings of the initial assessment performed by Global at the request of the United States Coast Guard dated 14 April 2006, on page two, paragraph two, Global clearly references that what appeared to be product was observed around midships on the starboard side of the vessel against the hull in the sand and the product was leaching out of the inside of the hull through a low spot in the hull in the form of a light intermittent sheen. The hull in this particular location appeared to hold water as water was running from the low spot in the hull. The Coast Guard authorized a patch to be constructed over the exposed oil tank although no action was taken to address the known product that was observed around midships.

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 to be consistent with the NCP or directed by the FOOSC, and (4) whether the costs were adequately documented and reasonable.

In accordance with the National Contingency Plan (NCP), Sec. 300.305 states in part “.....(a) Defensive actions shall begin as soon as possible to prevent, minimize, or mitigate threat(s) to the public health or welfare of the United States or the environment. Actions may include but are not limited to: Analyzing water samples to determine the source and spread of the oil; controlling the source of discharge; measuring and sampling; source and spread control or salvage operations; placement of physical barriers to deter the spread of the oil and to protect natural resources and sensitive ecosystems; control of the water discharged from upstream impoundment; and

the use of chemicals and other materials in accordance with subpart J of this part to restrain the spread of the oil and mitigate its effects.” The actions performed by the claimant and the claimant’s contractors as described herein, clearly meet the requirements of the NCP.

On that basis, the Claims Manager hereby determines that the claimant did in fact incur \$1,180,201.58 of uncompensated removal costs and that that amount is properly payable by the OSLTF as full compensation for the reimbursable removal costs incurred by the claimant and submitted to the NPFC under claim# 907080-002. The claimant states that all costs claimed are for uncompensated removal costs incurred by the claimant for this incident for the time period of May 2007 through August 2007. The NPFC has denied \$2,010,624.89 in costs claimed as outlined below:

1. Dept. of Printing invoices for May 2007 and July 2007 in the combined amount of \$433.00 is denied as non-OPA compensable;
2. PSC Invoice # 543469 - \$6,185.52 is denied for work performed on 5/27/07 & 5/28/07 (hull removal work) non-OPA compensable. At this point, all oil had been removed and no further threat of discharge existed;
3. PSC Invoice # 551526 (part a) - \$61,945.20 is denied for hull removal; non-OPA compensable. At this point, all oil had been removed and no further threat of discharge existed;
4. PSC Invoice # 549717 - \$504,051.83 is denied for hull removal; non-OPA compensable. At this point, all oil had been removed and no further threat of discharge existed;
5. PSC Invoice # 544731 - \$528,405.04 is denied for hull removal; non-OPA compensable. At this point, all oil had been removed and no further threat of discharge existed;
6. PSC Invoice # 551526 (part B) - \$178,192.98 is denied because there were no supporting invoices, daily field notes, etc;
7. PSC Invoice (# unknown) - \$7,236.32 – is denied because there were no supporting invoices, daily field notes, etc;
8. PSC Invoice # 564365 - \$250,641.85 is denied because the threat of oil discharged was abated therefore this work is not OPA compensable;
9. PSC Invoice # 568022 - \$400,974.89 is denied because the threat of oil discharged was abated therefore this work is not OPA compensable;
10. State of Wash DOE indirect costs - \$811.94 is denied as unsubstantiated;
11. Fish & Wildlife Service - \$1,910.05 is denied because there were no supporting invoices, daily field notes, etc;
12. PSC Invoice (# unknown) - \$69,590.65 is denied because there were no supporting invoices, daily field notes, etc;
13. State of Wash DOE Lab Costs - \$188.00 is denied because there were no supporting invoices, daily field notes, etc;

C. Determined Amount:

The NPFC hereby determines that the OSLTF may pay \$1,180,201.58 as full compensation for the reimbursable removal costs incurred by the claimant and submitted to the NPFC under claim # 907080-002. All costs deemed compensable are for oil removal services provided by the claimant and its contractors from May 2007 through

August 2007. These costs are compensable removal costs, payable by the OSLTF as presented by the claimant.

AMOUNT: \$1,180,201.58

Claim Supervisor: *Thomas Morrison*

Date of Supervisor's review: *11/18/08*

Supervisor Action: *Determination approved*

Supervisor's Comments: