

## CLAIM SUMMARY / DETERMINATION

<b>Claim Number:</b>	913029-0001
<b>Claimant:</b>	Pacific Marine Salvage Inc.
<b>Type of Claimant:</b>	Corporation
<b>Type of Claim:</b>	Removal Costs
<b>Claim Manager:</b>	██████████
<b>Amount Requested:</b>	\$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.<sup>1</sup> 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.<sup>2</sup> 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. ██████████, 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.<sup>3</sup> 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.<sup>4</sup>

<sup>1</sup> USCG MISLE Case Report Number 575683.

<sup>2</sup> FOSCR Witness Statement, MST1 ██████████.

<sup>3</sup> Pacific Marine Salvage Inc. Contract.

<sup>4</sup> 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.<sup>5</sup>

***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 \$19,781.75<sup>6</sup>

**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.

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<sup>5</sup> Hazardous Waste Manifest Number 001449760.

<sup>6</sup> 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 \$5,323.50<sup>7</sup> incurred on the initial date of response based on the eight-hour minimum call out time in accordance with the contract for services.<sup>8</sup>

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.<sup>9</sup> 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)<sup>10</sup> 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.<sup>11</sup> 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 \$250.00<sup>12</sup> are approved and the remaining \$780.00 is denied.

PSI requested \$207.00 for personal protective equipment (PPE)<sup>13</sup> 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

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<sup>7</sup> PSI Invoice Number 72 dated November 8, 2011.

<sup>8</sup> PSI Rate Schedule signed by RP.

<sup>9</sup> PSI Invoice Number 73 dated November 9, 2011.

<sup>10</sup> Documented in PSI Time Log.

<sup>11</sup> PSI Invoice Number 73 dated November 9, 2011.

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

<sup>13</sup> Gloves Outer, Posi Wear Disposable Suit, and Ear Plugs.

cost of the Posi Wear Disposable Suits at \$38.00<sup>14</sup> 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.<sup>15</sup> 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.<sup>16</sup> 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.<sup>17</sup> 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.<sup>18</sup> 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.<sup>19</sup>

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<sup>14</sup> PSI Invoice Number 73 dated November 9, 2011.

<sup>15</sup> Manifest Number 001449760.

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

<sup>17</sup> PSI Invoice Number 74 dated November 10, 2011.

<sup>18</sup> PSI Invoice Number 75 dated November 11, 2011.

<sup>19</sup> 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 \$3,053.00<sup>20</sup> 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: [REDACTED]

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

Supervisor Action: *Approved*

Supervisor's Comments:

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<sup>20</sup> \$9,353.00 minus \$6,300.00 equals \$3,053.00.