

## CLAIM SUMMARY / DETERMINATION

<b>Claim Number:</b>	A10017-0001
<b>Claimant:</b>	State of California
<b>Type of Claimant:</b>	State
<b>Type of Claim:</b>	Removal Costs
<b>Claim Manager:</b>	[REDACTED]
<b>Amount Requested:</b>	\$1,603.96

### **FACTS:**

**Oil Spill Incident:** On March 2, 2010, the vessel GYPSY, Official Number 654650, sank at anchor in the Pillar Point Harbor in Half Moon Bay California. During initial investigation, the vessel was not leaking and posed no immediate threat to the environment. The owner assured the Federal on Scene Coordinator (FOSC) that he would have the vessel raised and the fuel removed.

On May 27, 2010, the GYPSY began discharging diesel fuel into Pillar Point Harbor posing a significant threat to local fishing grounds and environmentally sensitive sites. USCG Sector San Francisco contracted Parker Diving and Salvage to remove all fuel and hazardous material from the vessel.

On May 29, 2010, Parker Diving and Salvage finished removing all oil and hazardous material from the vessel to eliminate any further substantial threat of discharge. The vessel was floated on May 28 and relocated to shallow water first.<sup>1</sup>

Half Moon Bay is a navigable waterway of the United States.

**Responsible Party:** Mr. [REDACTED] the Responsible Party (RP), owned the vessel GYPSY 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 June 7, 2013.

**Description of Removal Activities for this Claimant:** State of California Department of Fish and Game, Office of Spill Prevention and Response (DFG OSPR) acted as the State on Scene Coordinator for the Unified Command (UC) for the duration of the spill. DFG OSPR also provided an Environmental Scientist to carry out duties as the Environmental Unit Leader (EUL).

**The Claim:** On June 4, 2013, DFG OSPR presented a removal cost claim to the National Pollution Funds Center (NPFC) for reimbursement of their uncompensated removal costs in the amount of \$1,603.96.<sup>2</sup>

DFG OSPR is claiming personnel costs of \$1,603.96.<sup>3</sup>

<sup>1</sup> Incident description obtained from USCG POLREP 1 and 2.

<sup>2</sup> NPFC Standard Claim Form dated May 24, 2013.

<sup>3</sup> Standard Form 1081, Voucher and Schedule of Withdrawal and Credits, Document Number 6600 56264.

**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. Overview:***

1. FOSC coordination was provided by USCG Sector San Francisco
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 what 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.

The Claimant is requesting \$837.04 for personnel costs associated with [REDACTED] (F&G Warden) and [REDACTED] (Environmental Scientist) for their response to the incident on May 27, 2010. The Claimant failed to provide supporting documentation, as requested<sup>4</sup>, to account for these response hours invoiced. The NPFC attempted to use the FOSC reports to validate the hours but the FOSC records do not state that any OSPR personnel were on scene. Therefore these personnel costs of \$837.04 are denied as unsubstantiated.

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).

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<sup>4</sup> Email sent and acknowledged by Claimant on June 14, 2013.

On that basis, the Claims Manager hereby determines that the Claimant did in fact incur \$766.92 of uncompensated 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 #A10017-0001. The Claimant states that all costs claimed are for uncompensated removal costs incurred by the Claimant for this incident on May 27, 2010. 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 \$766.92 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #A10017-0001. 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 Claimants.

**AMOUNT: \$766.92**

Claim Supervisor:

Date of Supervisor's review: 7/1/13

Supervisor Action: *Approved*

Supervisor's Comments: