

## CLAIM SUMMARY / RECONSIDERATION FORM

<b>Claim Number:</b>	A12019-0001
<b>Claimant:</b>	Pacific Marine Salvage Inc. (PMS)
<b>Type of Claimant:</b>	Corporate
<b>Type of Claim:</b>	Removal Costs
<b>Claim Manager:</b>	██████████
<b>Amount Requested:</b>	\$78,387.92

### **FACTS:**

#### ***Oil Spill Incident:***

On March 28, 2012 at 7:15AM, the 70-foot, recreational motor vessel, LOYAL II, sank in its slip and discharged diesel oil onto the surface waters of Moss Landing Harbor, a tributary to Monterey Bay and a navigable waterway of the United States.

Coast Guard Sector San Francisco responded to the incident as the Federal On-Scene Coordinator Representative (FOSCR) overseeing the removal of an estimated 40 gallons of diesel fuel from the vessel.

The Coast Guard issued a Notice of Federal Interest (NOFI) to the owner of the vessel; Mr. ██████████ as the responsible party (RP) for the discharge. Mr. ██████████ hired Pacific Marine Salvage (PMS or Claimant) of Santa Cruz, CA to remove the oil and raise the vessel. On April 13, 2012, PMS presented its invoicing to Mr. ██████████ for services totaling \$78,387.92. PMS states that Mr. ██████████ was unable to compensate PMS for its service.

#### ***Initial Claim:***

On November 29, 2012, PMS presented its claim for uncompensated removal costs to the NPFC seeking \$78,387.92 from the Oil Spill Liability Trust Fund (Fund). Claimant deployed sorbent pads around the vessel and its diver plugged the vents and removed fuel oil from the vessel's aft tanks. After reviewing all the documentation presented, the NPFC requested that the Claimant submit a legible waste manifest. PMS submitted a second copy of the waste manifest which was again illegible.

In an email dated April 21, 2013, PMS argued that it followed the directions from the FOSCR and properly disposed of the waste oil. Claimant specifically cited several regulations stating that the oil was a non-hazardous waste and that PMS could transport 400 pounds of non-hazardous waste.<sup>1</sup>

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<sup>1</sup> See Claimant's email to the NPFC dated April 21, 2013.

At the request of the NPFC, the FOSCR agreed to review the claim administrative record for the validity of the statements made by Claimant. On January 22, 2013, the NPFC received a memorandum and event summary from Captain Stowe, the FOSC. The memorandum documented specific activities that the Claimant failed to coordinate with the FOSCR therefore violating federal and state laws regarding the storage, transportation, and disposal of oil waste material.

On April 1, 2013, the NPFC denied the claim because the Claimant failed to meet its burden in accordance with the governing claims regulations (33 CFR 136.203 and 205), to prove that its activities were reasonable, necessary and consistent with the National Contingency Plan. The NPFC also denied the claim because the activities undertaken by the Claimant were not directed by the FOSC.<sup>2</sup>

**REQUEST FOR RECONSIDERATION:**

In an email dated April 22, 2013, PMS requested reconsideration of its claim. Claimant asserted that it had video and correspondences from state and federal agencies showing that it complied with state and federal regulations regarding the labeling, storage, transportation and disposal of oil.<sup>3</sup> Additionally, the Claimant requested that the NPFC grant additional time so that the Claimant could obtain necessary documentation from the FOSC. On May 22, 2013, Claimant requested documentation under the Freedom of Information Act (FOIA) from Coast Guard Sector San Francisco.

Because the Claimant could not determine when it would receive information under the FOIA request therefore the NPFC granted the Claimant a 90 day extension until July 22, 2013.<sup>4</sup> Upon expiration of the original deadline to provide information to the NPFC in support of the reconsideration; the NPFC advised the Claimant that she needed to provide an email status update every 30 days on the status of her pending FOIA request for documentation. The Claimant provided at least two updates to the NPFC.<sup>5</sup> On September 30, 2013, the FOSC submitted a Memorandum of Record to the NPFC stating the actions undertaken by the Claimant were not consistent with the NCP and as such, the NPFC has moved forward to conclude this reconsideration determination.

**DETERMINATION:**

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. The NPFC considered all the documentation submitted by the Claimant. 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. 33 CFR 136.115(d).

The NPFC performed a *de novo* review of the entire claim submission upon reconsideration.

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<sup>2</sup> See Memorandum of Capt. [REDACTED] FOSC dated January 15, 2013.

<sup>3</sup> See Claimant's email to the NPFC dated April 21, 2013.

<sup>4</sup> See NPFC's email to the Claimant dated April 23, 2013.

<sup>5</sup> See NPFC's email to the Claimant dated July 1, 2013.

Upon reconsideration, the NPFC focused on: (1) whether the actions taken by Pacific Marine Salvage 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 actions taken were determined by the FOSC to be consistent with the NCP or directed by the FOSC. It is important to note that the Claimant did *not* coordinate its removal activities with the FOSC as stated by the United States Coast Guard Sector San Francisco in accordance with 33 CFR § 136.203 and 205. The FOSC determined that the removal costs presented were *not* in accordance with the NCP.

In a memorandum dated September 30, 2013<sup>6</sup>, Captain [REDACTED], the FOSC for Sector San Francisco, determined that the evidence as it relates to this oil spill incident evidenced that PMS failed to properly store, manifest, and dispose of all hazardous waste and materials recovered from the spill site in accordance with the applicable federal, state and local regulations and statutes. The FOSC finds that the actions taken by Pacific Marine Salvage were not in accordance with the National Contingency Plan (NCP).

Based on the foregoing, this claim is again denied on reconsideration because the Claimant has again failed to meet its burden to demonstrate that the actions undertaken by the Claimant were determined by the FOSC to be reasonable, necessary and consistent with the NCP pursuant to 33 CFR 136.203 and 205.

Claim Supervisor: [REDACTED]

Date of Supervisor's review: *10/16/13*

Supervisor Action: *Denial on reconsideration approved*

Supervisor's Comments:

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<sup>6</sup> See Memorandum from FOSC to NPFC dated 30 Sep 2013.