

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: A13006-0001
Claimant	: Redwood Shore Diving, Inc., d.b.a. Parker Diving Service
Type of Claimant	: Corporate
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$20,300.00

FACTS:

- 1. Oil Spill Incident:** USCG Sector San Francisco reports¹ that on March 1, 2013, the F/V Yardbird was found sunk and capsized approximately a half mile outside of Bodega Bay, CA. The bay itself flows into the Pacific Ocean, both of which are navigable waterways of the US. The vessel owner and one other person were rescued from the water by USCG Station Bodega Bay personnel. The owner was deemed intoxicated by the station and local law enforcement, and was subsequently arrested.

The USCG opened the Oil Spill Liability Trust Fund (OSLTF) under FPN A13006 and hired Global Diving and Salvage to secure the vessel for the night. The next day, the Responsible Party (RP) for this incident, Mr. [REDACTED] hired Redwood Shore Diving Inc., d.b.a. Parker Diving Service (Parker) to complete the raising and salvage of his vessel to the Marina due to fuel remaining on board.

- 2. Description of removal actions performed:** The Claimant, Parker Diving, responded to the incident on March 2, 2013. Parker Diving crew initially plugged the fuel vents, but as one of the fuel lines was broken and leaking, oil continued to seep out of the vessel. The crew then partially raised and righted the vessel, towing it into the harbor. Once there, the vessel was boomed and Parker finished raising it.
- 3. The Claim:** On May 21, 2013, Parker submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of their uncompensated removal costs in the amount of \$20,300.00 for the services provided from March 2 through March 5, 2013. This claim is for removal costs based on the rate schedule in place at the time services were provided. A copy of the vendor rate schedule is provided in the claim file.

The review of the actual cost invoicing and dailies 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 consistent with the NCP or directed by the FOOSC, and (4) whether the costs were adequately documented.

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,

¹ See USCG Sector San Francisco POLREP ONE, dated 3/13/2013.

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 has been established via USCG Sector San Francisco POLREP ONE.²
2. The incident involved the report of a discharge of “oil” as defined in OPA 90, 33 U.S.C. § 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.
4. The claim was submitted within the six year statute of limitations. 33 U.S.C. § 2712(h)(1).
5. The claimant sought and was denied payment by the RP. The NPFCA also sent notification, but, as of this date, it has received no response from the RP. 33 U.S.C. § 2701(32).
6. The NPFCA Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined which removal costs presented were for actions in accordance with the NCP and that the costs for these actions were indeed reasonable and allowable under OPA and 33 CFR § 136.205.

B. Analysis:

NPFCA 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 Claims Manager validated the costs incurred and determined what, of these costs, were reasonable, necessary and performed in accordance with the National Contingency Plan (NCP). The Claimant states that all costs claimed are for uncompensated removal costs incurred by the Claimant for this incident from March 2 through March 5, 2013. The Claimant represents that the costs it paid are compensable removal costs, payable by the OSLTF as presented by the Claimant.

After a review of the file and speaking with USCG personnel on scene for this incident, the response by Parker Diving has been determined reasonable and justified to mitigate any further damage to the environment. According to the USCG, the vessel was half submerged, with its bow pointing toward the sky, and bobbing in the waves in the open ocean. Had the

² See USCG Sector San Francisco POLREP ONE, dated 3/13/2013.

vessel been left unattended, it likely would have been washed ashore and broken apart in the surf. There was believed to be over two hundred gallons of fuel on board the vessel when it began taking on water. The vessel required being removed from the open ocean to safely remove the fuel.

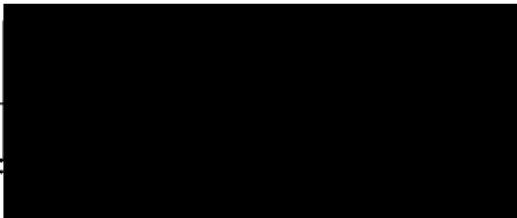
An audit of the presented costs was performed, weighing the requested amounts against the rate sheets in place. It appears that there are \$300.00 in interest fees applied to the claim total. Interest fees are not OPA compensable removal costs and are therefore denied.

On that basis, the Claims Manager hereby determines that the Claimant incurred \$20,000.00 of uncompensated removal costs and that 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 #A13006-0001.

C. Determined Amount:

The NPFC hereby determines that the OSLTF will pay \$20,000.00 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim A13006-0001. 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. \$300.00 in claimed costs are denied.

AMOUNT: \$20,000.00

Claim Supervisor: 

Date of Supervisor's review: *6/10/13*

Supervisor Action: *Approved*

Supervisor's Comments: