

## CLAIM SUMMARY / DETERMINATION

<b>Claim Number:</b>	914079-0001
<b>Claimant:</b>	San Francisco Marina
<b>Type of Claimant:</b>	Local Government
<b>Type of Claim:</b>	Removal Costs
<b>Claim Manager:</b>	[REDACTED]
<b>Amount Requested:</b>	\$6,865.00

### FACTS:

#### Oil Spill Incident

On March 02, 2014, the 30' pleasure craft, WISHES II, sank inside the San Francisco Marina (Claimant, SF Marina) causing a 100' x 30' gasoline sheen. The Harbor Master, Mr. [REDACTED] immediately deployed boom. Mr. [REDACTED] determined that the vessel could not be pumped out by the Marina staff and that a professional salvor would need to be contacted so the Harbor Master contacted Parker Diving Service.

The Harbor Master was unable to reach the RP and left several voice messages on the vessel owner's phone explaining that their boat had sunk and directed the RP to contact the San Francisco Marina.<sup>1</sup> The Harbor Master had no choice but to move forward with mitigating the threat to the San Francisco Bay, a navigable waterway of the United States, and proceeded to make salvage arrangements with Parker Diving Service.<sup>2</sup>

The Harbor Master contacted Sector San Francisco, Command Center/IMD, regarding the sinking vessel. The Coast Guard investigation provided that an open exhaust manifold had been removed and left open which allowed the heavy rain, from the night before, to accumulate within the engine compartment. The rain water reached a point where it had exceeded the height of the open exhaust manifold, causing water from the bay to enter the engine room, flooding the entire vessel. The vessel listed until it reached the water line, which inevitably, caused the vessel to sink.<sup>3 4</sup>

Sector San Francisco IMD, provided the National Pollution Funds Center, (NPFC) with an email stating that the vessel had 200 gallons of gasoline onboard while in the Harbor and that the Harbor Master took appropriate action to mitigate the environmental damage by having the vessel moved in order to mitigate the threat.<sup>5</sup> The email also stated that the actions taken by the Harbor Master were in accordance with the National Contingency Plan (NCP) Phase III Actions, Controlling the Source of Discharge and Source Control via Salvage Operations.<sup>6</sup>

Additionally, the Department of Fish and Game in its capacity as the State On Scene Coordinator (SOSC) was called and also provided a report of the incident by the Harbor Master.<sup>7</sup>

<sup>1</sup> See, Harbor Master, [REDACTED]'s, notes in claim file.

<sup>2</sup> MISLE Case Report 673088

<sup>3</sup> MISLE Case Report 673088 and Harbor Master notes.

<sup>4</sup> MISLE Case Pictures

<sup>5</sup> 2014 06 03 Email from MST2 [REDACTED], Sector San Francisco/IMD

<sup>6</sup> *Id*

<sup>7</sup> Mr. [REDACTED] was called from the Department of Fish and Game. See, Harbor Master notes in claim file.

Responsible Party

The Responsible Parties (RPs) are Mr. and Mrs. [REDACTED] of Santa Rosa, California. When the RPs were notified of their sunken vessel, Mr. [REDACTED] offered to pay Parker Diving \$1,000.00 cash and requested that they be placed on a monthly payment plan. Parker Diving Services said that they would take the \$1,000.00 in agreement that the RPs would have the bill paid off in two months. The RPs declined Parker Diving's offer citing that they did not have the resources to pay the bill in full within two months time, and as such, the RPs walked away from the negotiation. No money was exchanged between the [REDACTED] and Parker Diving Services.<sup>8</sup>

On April 08, 2014, Parker Diving Service sent the RPs a letter advising that there was no agreement in place between [REDACTED] and Parker Diving Service for the raising of the [REDACTED]'s vessel, WISHES II, nor was there an agreement for the towing and disposal of the vessel. The letter also stated that Parker Diving Service cannot accept payments for the work performed. The letter noted that Parker Diving Service received no funds from the [REDACTED]. Parker Diving Service provided the letter to the RPs because the Claimant, San Francisco Marina, paid Parker Diving Service's invoice in full on April 09, 2014.<sup>10</sup>

On March 24, 2014, SF Marina sent the RPs the Parker Dive Service invoice for charges related to the salvage of their vessel. The letter requested that the RPs make full payment to the San Francisco Marina within 10 days of the date of the letter. The letter also advised that any unpaid balance not received by April 04, 2014 would be considered delinquent and would be turned over to the San Francisco Bureau of Delinquent Revenue for collections.

Mrs. [REDACTED] sent the Claimant's letter back to SF Marina with hand written notes on it stating the Claimant was wrong and that there was no invoice due and that she already resolved the matter.<sup>11</sup>

Claim and Claimant

On May 28, 2014, SF Marina presented a removal cost claim to the National Pollution Funds Center (NPFC) for reimbursement of their uncompensated removal costs in the amount of \$6,865.00. The sum certain is comprised of invoice #I-121 for Labor and Equipment.<sup>12</sup>

Description of Removal Activities

Parker Diving Service arrived at the SF Marina at 0935 on March 2, 2014. At 1047, a diver was in the water and the crew rigged five "come-a-longs" under the vessel. At 1115, the crew attached and filled two 1-ton lift bags.<sup>13</sup>

The vessel was lifted out of the water by 1242 and Parker Diving Service immediately began pumping water off the vessel, using a 3" pump and two stripper pumps.<sup>14</sup> Parker Diving secured all openings on the vessel with a foam product.<sup>15</sup>

<sup>8</sup> This information was provided to the NPFC on May 29, 2014 via a telephone conference between [REDACTED] from Parker Diving Services and the NPFC Claims Manager [REDACTED]. See Email 2014 05 29 to [REDACTED] from [REDACTED].

<sup>9</sup> 2014 04 08 Letter to [REDACTED] from Parker Diving Service.

<sup>10</sup> This was confirmed during the May 29, 2014 telephone conference between Parker Dive Service and the NPFC Claims Manager [REDACTED].

<sup>11</sup> See Claimants letter to RPs dated 2014 03 24 with RPs hand written notes on it.

<sup>12</sup> Proof of payment was provided by claimant. Claimant provided [REDACTED] dated 4/17/2014.

<sup>13</sup> Parker Diving Invoice

(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. Findings of Fact***

1. FOSC coordination was made by the United States Coast Guard, Sector San Francisco, who determined that the removal actions were consistent with the NCP; 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4);<sup>17</sup>
2. The incident involved 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 period of limitations for claims. 33 U.S.C. § 2712(h)(1);
5. Claimant properly presented the claim to the Responsible Party, who has denied payment.<sup>18</sup>
6. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that the removal costs presented were for actions accordance with the NCP and that the costs for these actions were indeed reasonable and allowable under OPA and 33 CFR § 136.205 as set forth below.

### ***B. Analysis***

The NPFC Claims Manager 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 costs were adequately documented and reasonable.

#### **Invoice #I-121**

This invoice is for Labor and Equipment in the amount of \$6,865.00. The NPFC has approved this invoice in its entirety based on the published rate schedule of costs<sup>19</sup> in place at the time services were rendered and based on the FOSC’s coordination of the actions performed by the contractor as reasonable, necessary and in accordance with the NCP.

On behalf of the vessel owner, the Harbor Master determined that the safest and most effective way to mitigate the environmental damage was for Parker Dive Service to raise the vessel and move it to a safe location, in the event the vessel sank again. The Responsible Party has denied the invoice that resulted from response to their sunken vessel, WISHES II. As such, the Claimant, SF Marina, took immediate action to mitigate the threat to the environment and paid for the services provided by Parker Diving

<sup>17</sup> See, 2014 06 03 Email from Sector San Francisco/IMD

<sup>18</sup> See, Claimant’s letter to RPs with RPs hand written notes on it, dated 2014 03 24

<sup>19</sup> See, Parker Diving Service, a d.b.a. for Redwood Shore Diving, Inc. Labor Rate Schedule dated, January 1, 2013.

Services. Coast Guard, Sector San Francisco/IMD office provided FOSC coordination for actions undertaken by all parties involved.

**C. Determined Amount:**

The NPFC hereby determines that the OSLTF will offer **\$6,865.00** as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #914079-0001. 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.

Claim Supervisor:



Date of Supervisor's review: *6/12/14*

Supervisor Action: *Approved*

Supervisor's Comments: