

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: 914133-0001
Claimant	: State of Washington Department of Ecology
Type of Claimant	: State
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$4,156.05

**FACTS:**

***A. Oil Spill Incident:***

On September 6, 2010, the State of Washington Department of Ecology (Ecology) received notification that a vessel had sunk in Mats Mats Bay near Port Ludlow, WA. Mats Mats Bay is a navigable waterway of the US. The vessel was the F/V HUSSAR, a possible derelict vessel with a fuel capacity of 1000 to 2000 gallons. Ecology could not determine how the vessel sank. There were citizen reports of pollution coming from the vessel. While on-scene, Ecology responders observed pockets of oil rising to the surface. Ecology coordinated with USCG Sector Puget Sound that evening with an understanding that the United States Coast Guard (USCG) Puget Sound would respond the next morning.

On September 7, 2010, Ecology responders deployed to Mats Mats Bay observed a mast (only) approximately 150 feet from shore. Once on-scene where the vessel was positioned in the water, sporadic pockets of oil were observed surfacing and spreading out into rainbow/blackish sheens. It was undetermined how much fuel was on board the vessel. The owner of the vessel was not immediately identified or present. Ecology consulted with the USCG and learned that a USCG response would not occur due to staffing issues related to the Deep Water Horizon response. It was agreed that Ecology would take the lead and hire contractors to assess the vessel and take measures to contain oil.

The Washington State Department of Natural Resources (WDNR) Derelict Vessel Program posted the vessel to take legal custody on October 12, 2010. On October 12, 2010, WDNR was notified by a citizen that the vessel was gone from Mats Mats Bay. It was not removed by WDNR, but presumably by the owner.

A Responsible Party (RP), Mr. [REDACTED] was identified for this spill but, to date, has not remitted payment. The USCG Sector Puget Sound was made aware of this event and activities surrounding the eventual removal of the vessel from the waterway.

***B. Description of removal actions performed:***

Ecology hired Global Diving and Salvage, Seattle, WA to minimize the potential for release of oil. Global Diving plugged the tank vents, filled ports and hoses on the vessel. Ecology also required Global to place a buoy on the mast of the sunken vessel as a navigational warning for nearby boaters.

Ecology did not recover any oil from the vessel and though no samples were taken by Ecology, Global Diving did take them.

**C. The Claim:** On September 9, 2014, Ecology submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of its uncompensated removal costs in the amount of \$4,156.05 for the services provided on September 7, 2010. 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), a responsible party for a vessel or facility from which oil is discharged or which poses a substantial threat of a discharge of oil, into or upon the navigable waters or adjoining shorelines is liable for removal costs and damages resulting from such incident.

"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”.

“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”. 33 USC § 2701(31).

Removal costs referred to in 33 USC 2702(a) include any removal costs incurred by any person for acts taken by that person which are consistent with the National Contingency Plan. 33 USC 2702(b)(1)(B).

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.

With certain exceptions all claims for removal costs or damages shall be presented first to the responsible party of the source designated under 2714(a). 33 U.S.C. § 2713(a). If the claim is not settled by any person by payment within 90 days after the date the claim was presented, the claimant may elect to commence an action in court against the responsible party or present the claim to the Fund. 33 U.S.C. §2713(c)(2).

“Claimant” means “any person or government who presents a claim for compensation under this subchapter.” 33 USC § 2701(4).

33 USC § 2712(f), which is entitled “Rights of Subrogation,” provides that payment of any claim or obligation by the Fund under this Act shall be subject to the United States

Government acquiring by subrogation all rights of the claimant or State to recover from the responsible party.

Any person, including the Fund, who pays compensation pursuant to this Act to any claimant for removal costs or damages shall be subrogated to all rights, claims, and causes of action the claimant has under any other law. 33 USC § 2715(a).

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 136.203, the claimant bears the burden to prove the removal costs 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 United States Coast Guard Sector Puget Sound.
2. 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.
3. The claim was submitted within the six year statute of limitations. 33 U.S.C. § 2712(h)(1).
4. A Responsible Party has been identified. 33 U.S.C. § 2701(32).
5. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that all 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:**

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 Claims Manager validated the costs incurred and determined they were reasonable and necessary and performed in accordance with the National Contingency Plan (NCP).

The USCG Sector Portland Puget Sound was made aware of the incident and the actions Ecology performed. It provided third-party dailies, invoicing and lab analysis of the work performed, including its own personnel costs. These were deemed reasonable to accomplish the response objective. The contractor rate schedule (for Global Diving) in place at the time services were rendered was reviewed as well. Oversight was performed by USCG Sector Puget Sound. Therefore, the work performed has been deemed reasonable, necessary and in accordance with the NCP in order to mitigate the effects of the spill.

Based on the evidence in this claim submission for the actions undertaken by Ecology, the Claims Manager hereby determines that the claimant incurred \$4,156.05 of uncompensated removal costs and that that amount is payable by the OSLTF as full compensation for the reimbursable removal costs incurred by Ecology and submitted to the NPFC under claim #914133-0001. The Claimant states that all costs claimed are for uncompensated removal costs incurred by the Claimant for this incident on September 7, 2010. Ecology represents that all costs paid by it are compensable removal costs, payable by the OSLTF as presented by the claimant.

**C. Determined Amount: \$4,156.05**

The NPFC hereby determines that the OSLTF will pay \$4,156.05 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim 914133-0001. 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: 9/17/2014

Supervisor Action: Offer Approved.

Supervisor's Comments: