

CLAIM SUMMARY / DETERMINATION

<b>Claim Number:</b>	918020-0001
<b>Claimant:</b>	Hyak Tongue Point LLC
<b>Type of Claimant:</b>	Corporate (US)
<b>Type of Claim:</b>	Removal Costs
<b>Claim Manager:</b>	[REDACTED]
<b>Amount Requested:</b>	\$4,225.00

**FACTS:**

***Oil Spill Incident:***

On December 27, 2017, United States Coast Guard, Sector Portland, Incident Management Division (USCG, Portland IMD) received a phone call from USCG, Sector Columbia River, IMD, stating that a Ford F-150 pickup truck had been driven off of Pier Two, at Tongue Point, in Astoria, Oregon. The truck was driven by Mr [REDACTED], who at that time, was fleeing from Astoria Law Enforcement for a parole violation.

After the pickup truck went into the Columbia River, a navigable waterway of the United States, it became an immediate threat to the environment and began to create a sheen in the river. USCG, Portland IMD worked with Astoria Law Enforcement only to learn that the Astoria Police Department did not have the resources to tow the vehicle out of the water, nor did the driver of the truck, Mr. [REDACTED]. However, the Claimant, Hyak Tongue Point, LLC. (Hyak) offered its immediate services of removing the truck from the water to mitigate the affects of the oil spill.

USCG, Portland IMD agreed to use Hyak's services and Hyak immediately went to work to pull the truck from the Columbia River. Hyak hired WCT Marine & Construction, Inc. & J & H Boatworks (WCT)<sup>1</sup> for the use of its large equipment and contracted Dive Service, Salvage Dive.<sup>2</sup>

The diver was able to locate the truck, which had shifted from its original location, with the current, by 100 feet from its original position. WCT used its 65 ton crane to lift the truck safely out of the water and prevented any further damages to the environment. At this point, the Astoria Police Department took custody of the vehicle and took it to a local impound lot.

The FOOSC stated that actions that were taken by the Claimant and WCT were the best course of action, because the closest Coast Guard contractor would have taken additional hours for transit, staging, as well as locating the vehicle. All of which, would have caused the vehicle to remain in the water an extra day and would have caused more harm to the environment, to include, making the vehicle more difficult to locate, as the tide changes.<sup>3</sup>

<sup>1</sup> See WCT Marine & Construction, Inc., & J&H Boatworks invoice # 514A

<sup>2</sup> See WCT Marine & Construction, Inc., & J&H Boatworks invoice # 514 A, for further information.

<sup>3</sup> See U.S. Coast Guard, Witness / Investigator Statement Form, dated December 28, 2017, and signed by the FOOSCR, MST2 [REDACTED].

***Description of Removal Activities for this incident:*** .

On December 28, 2017, Mr. [REDACTED], owner of Hyak, acted as a Good Samaritan and offered his company's immediate service to retrieve the truck from the Columbia River and to mitigate further damages. As mentioned above, Hyak hired WCT for the use of its large equipment. WCT responded to the incident immediately with its 65 ton crane and operator, 20 ton crane with two riggers, and personnel on its skiff. WCT contracted with Salvage Dive, for a diver as well. Hyak and WCT worked under the direction of the United States Coast Guard Federal on Scene Coordinator's Representative (USCG, FOSCR). Hyak and WCT coordinated efforts, and took one day to fully recover the truck from the Columbia River.

Once the truck was lifted from the water by WCT, it was then towed to a local impound lot by the Astoria Police Department. Federal on Scene Coordination (FOSC) was made with Coast Guard Sector Portland, IMD. The Sector's FOSCR responded to conduct oversight of the pollution removal activities.<sup>4</sup>

***Responsible Party and Presentment:*** The Responsible Party (RP) is Mr. [REDACTED], from Scott Mills, Oregon. Mr. [REDACTED] was wanted for a parole violation in Deschutes County, Oregon. While attempting to escape from the police, Mr. [REDACTED] drove his Ford F-150 at a high rate of speed into the Columbia River. After Mr. [REDACTED] was rescued, by WCT, from the freezing waters, he was placed in custody and taken to the hospital to be treated for mild injuries and hypothermia.

As of February 01, 2018, Mr. [REDACTED] is currently in custody in Deschutes County, Oregon. Also, Mr. [REDACTED] will face charges in Clackamas and Clatsop Counties as well, and will remain in custody due to potential prison time.<sup>5</sup> It appears that Mr. [REDACTED] will be incarcerated for an undetermined amount of time and as such, the NPFC Director authorized a Direct Advertisement for claims in regards to this incident. The NPFC accepted the claim submission based on its direct notification and communication with the Claimant on February 5, 2018.<sup>6</sup>

***The Claim and Claimant:*** On January 23, 2018, the Claimant, Hyak Tongue Point, LLC., submitted a pollution removal cost claim to the NPFC for reimbursement of its uncompensated pollution removal costs totaling, \$4,225.00.<sup>7</sup>

**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).

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<sup>4</sup> See U.S. Coast Guard, Witness / Investigator Statement Form, dated December 28, 2017, and signed by the FOSCR, MST2 [REDACTED]

<sup>5</sup> See [REDACTED] email to [REDACTED] dated February 01, 2018.

<sup>6</sup> See Email from Ms. [REDACTED], NPFC, to Mr. [REDACTED] dated February 5, 2018.

<sup>7</sup> See Optional OSLTF Claim Form from CGA to the NPFC, dated January 21, 2018.

"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. MST2 [REDACTED] of USCG Sector Portland, acted as the FOSCR for this incident and determined that the actions that were taken by the Claimant are deemed consistent with the NCP. 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4);
2. The incident involved the 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 NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that the 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 WCT’s invoiced costs to confirm that the claimant had incurred all costs claimed.<sup>8</sup> 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 to be consistent with the NCP, and (4) whether the costs were adequately documented and reasonable.

Upon adjudication of the claim, the NPFC sought verification of payment made to WCT.<sup>9</sup> The NPFC requested a published rate schedule from WCT and was advised that they do not typically have one. The NPFC requested that WCT provide a written statement verifying its costs that were billed to the Claimant.<sup>10</sup>

Claimant is a Good Samaritan and did not have a contract to do the work that is claimed. The NPFC, Claims Manager, compared the invoiced costs by WCT that were submitted by the Claimant to similar response companies that do salvage and dive work. The NPFC found that WCT’s invoiced costs were invoiced to Hyak at a consistent rate for the equipment and services provided as other companies providing a like service in the industry.

Upon receipt of all requested information, the NPFC has determined that the costs that were incurred by the Claimant were reasonable and necessary to mitigate the affects of the incident. The NPFC has determined that the payable costs were billed in accordance with or equitable to industry standard and were determined by the FOSCR to be consistent with the NCP.

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<sup>8</sup> See [REDACTED] email to Claims Manager, Ms [REDACTED], dated 2/6/2018

<sup>9</sup> See [REDACTED] Email dated 2/2/2018 with proof of payment attached.

<sup>10</sup> See [REDACTED] email to Claims Manager, Ms [REDACTED], dated 2/6/2018.

Based on the foregoing, the NPFC determines that the OSLTF will pay **\$4,225.00** as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 918020-0001. 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.

**AMOUNT: \$4,225.00**

Claim Supervisor:



Date of Supervisor's review: *2/9/18*

Supervisor Action: *Approved*