

CLAIM SUMMARY / DETERMINATION

Claim Number:	918031-0001
Claimant:	Redwood Shore Diving, Inc., dba Parker Diving Service
Type of Claimant:	Corporate
Type of Claim:	Removal Costs
Claim Manager:	██████████ ██████████
Amount Requested:	\$17,386.25

FACTS:

A. Oil Spill Incident: On December 10, 2017, United States Coast Guard (USCG) Sector San Francisco Command Center (SECSF) received notification of a “sunken recreation vessel in San Leandro Marina.”¹ At 0900 on December 11, 2017, United States Coast Guard personnel, LT ██████████ and MST1 ██████████ MST1 ██████████ responded to reports of the sunken vessel near the San Leandro Marina, located in San Leandro, CA. Subsequent to MST1 ██████████ arrival on scene, he discovered the GUILIKIN, a 1970 57’ recreational vessel, sunk in the waters surrounding the marina. The vessel was reportedly discharging red dye diesel oil into the San Francisco Bay, a navigable waterway of the United States.²

³ LT ██████████ the Federal on Scene Coordinator’s Representative (FOSCR) for Sector San Francisco, issued the owner of the GUILIKIN, ██████████ (Ms. ██████████), a Notice of Federal Interest (NOFI) “explaining to her the responsibilities of a vessel owner when a discharge occurs.” Subsequently, Ms. ██████████, as the responsible party (RP), hired Redwood Shore Diving Inc., dba Parker Diving Service (Claimant) to conduct pollution removal actions to mitigate the threat of discharge.

By letter dated June 14, 2018, the NPFC notified Ms. ██████████ of its receipt of the claim from Redwood Shore Diving Inc., dba Parker Diving Service, identifying her as the owner and party responsible for the removal costs associated with the oil spill incident. To date, the NPFC has received no correspondence from the RP.⁴

B. Description of removal actions performed: Redwood Shore Diving Inc., doing business as Parker Diving Service (Parker Diving), was hired to conduct pollution removal activities, including the removal of oil. From December 11, 2017, through December 14, 2017, removal activities involved placing and removing containment boom, raising the vessel, pumping out oil remaining inside the vessel, removing containment and absorbent boom, and properly disposing of all collected liquid and solid non-hazardous waste.⁵ Upon successful completion of removal actions, Parker Diving hired A&S Environmental for the purpose of conducting disposal actions. A&S Environmental properly disposed of 2 bins of solid waste and 100 gallons of liquid waste.⁶

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¹ See, USCG MISLE Incident Investigation Report for 18-006 M/V L-SEAS dated December 18, 2017.

² See, email from USCG FOSC MST3 ██████████ to Mr. ██████████, NPFC, dated June 26, 2018.

³ *Id.*

⁴ See, NPFC RP Notification Letter dated June 14, 2018.

⁵ See, Parker Diving Service Invoice #L-243 dated January 3, 2018.

⁶ *Id.*

⁷ See, Uniform Hazardous Waste Manifest Tracking Numbers 016674443 and 016674447.

CLAIM:

This claim for uncompensated removal costs was presented to the NPFC on June 13, 2018, by Ms. [REDACTED], on behalf of Redwood Shore Diving Inc., dba Parker Diving Service. The Claimant specifically seeks uncompensated removal costs in the total amount of \$17,386.25 for costs associated with the described oil removal actions.⁸

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).

"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.

⁸ See, NPFC Optional OSLTF Claim Form dated June 13, 2018.

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. Findings of Fact:

1. MST3 [REDACTED], USCG Sector San Francisco, provided FOSC coordination 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

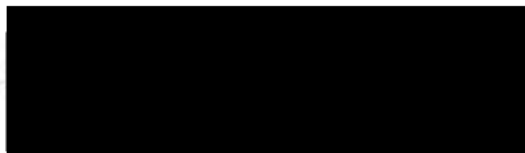
B. NPFC Analysis:

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.

Upon adjudication of the claim, the NPFC Claims Manager requested additional information to support the costs claimed, including but not limited to, daily field logs describing the names and dates of personnel on-scene, equipment and mileage. Upon receipt of the information from the Claimant as well as information from the FOSCR, the NPFC has determined that the majority of the claimed costs are reimbursable from the Fund, and were for actions taken to minimize and mitigate the effects of the incident, and were reasonable, necessary, and were at the direction of the FOSC. The NPFC denies \$1.00 associated with the removal actions conducted on December 13, 2017, of which the NPFC believes to be a rounding error. Upon review of the information provided by the Claimant, the NPFC has determined that the payable costs were billed in accordance with the rate schedule and/or contractual agreements in place at the time the services were rendered, with the exception of the \$1.00 rounding error stated previously, and were determined by the FOSC to be consistent with the National Contingency Plan (NCP).

The NPFC therefore determines that the OSLTF will offer \$17,385.25 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 918031-0001.

Determined Amount: \$17,385.25



Claim Supervisor: [Redacted]

Date of Supervisor's review: *7/12/18*

Supervisor Action: *Approved*