

## CLAIM SUMMARY / DETERMINATION

<b>Claim Number:</b>	J18001-0001
<b>Claimant:</b>	City of Unalaska
<b>Type of Claimant:</b>	Local Government
<b>Type of Claim:</b>	Removal Costs
<b>Claim Manager:</b>	██████████
<b>Amount Requested:</b>	\$2,680.00

### FACTS:

**Oil Spill Incident:** On October 05, 2017, the Derelict vessel, F/V AKUTAN, which was abandoned in Captains Bay, AK broke free from its moorings due to heavy weather and was dragging anchor. The City of Unalaska Harbor Master dispatched a tug to secure the F/V AKUTAN which was then towed farther into Captains Bay. The Coast Guard, Marine Safety Detachment (MSD) Dutch Harbor, in its capacity as the Federerl On Scene Coordinator (FOSC), opened FPN J18001 to address the substantial threat of oil discharge into Captains Bay, a US navigable waterway.<sup>1</sup>

**Description of Removal Activities for this claimant:** The City of Unalaska Harbor Master dispatched the Tug SARATOGA to retrieve the F/V AKUTAN which had broken free from its moorings due to high winds and was dragging anchor in Captains Bay, AK. The Tug SARATOGA took the F/V AKUTAN undertow and towed it back to its original moorage and anchored it preventing the substantial threat of an oil discharge.<sup>2</sup>

**Responsible Party:** The Responsible Party (RP) is Klawock Oceanside Inc. The Claimant has asserted that they submitted the invoice to the RP on October 26, 2017 and did not receive a response.<sup>3</sup> The NPFC issued an RP Notification Letter dated August 30, 2017. To date no response has been received as of yet.<sup>5</sup>

**The Claim:** On February 08, 2017, the NPFC received a removal cost claim from the City Of Unalaska for reimbursement of their uncompensated removal costs in the amount of \$2,680.00.<sup>6</sup> The claim is based on invoice #254325 from Dunlap Towing Co. in the amount of \$2,680.00.<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

<sup>1</sup> See, POLREP # ONE J18001 dated October 07, 2017.

<sup>2</sup> See, City of Unalaska, Department of Prts and Harbors Incident Report dated October 5, 2017.

<sup>3</sup> See, NPFC OSLTF Claim Form, question # 5, dated January 26, 2018.

<sup>4</sup> See, City of Unalaska Invoice # 10262017 dated October 26, 2017 invoiced to RP, Klawock Oceanside, Inc.

<sup>5</sup> See, NPFC RP Notification Letter dated February 08, 2018.

<sup>6</sup> See, Claimant's OSLTF claim submission received by NPFC on February 08, 2018.

<sup>7</sup> See, City of Unalaska Payment Authorization #27449 as part of claim submission received on February 08, 2017.

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. MSTC [REDACTED], Marine Safety Detachment Duth Harbor, was the Federal On-Scene Coordinator’s Representative (FOSCR) for this incident and has determined that the actions undertaken by the City of Unalaska were consistent with the NCP for the payment of uncompensated removal costs claims and is consistent with the provisions of sections 1002(b)(1)(B) and 1012(a)(4) of OPA, 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4);<sup>8</sup>
2. The incident involved the substantial threat of 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 to the Fund within the six year period of limitations for removal costs claims. 33 U.S.C. §2712(h)(1);
5. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined which of 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 the actual cost invoices 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.

In reviewing the claim, the NPFC considered the Claimant’s evidence which consisted of the City of Unalaska’s Payment Authorization form #27449 in the amount of \$2,680.00, City of Unalaska Incident Report, copy of check payable to Dunlap Towing for its invoice # 254325, and invoice #10262017 from the City of Unalaska issued to the to the RP on October 26,

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<sup>8</sup> See, Email from MSTC [REDACTED] dated February 14, 2018.

2017. The NPFC obtained a copy of Dunlap Towing's rate schedule from the claimant via a request for additional information.<sup>9</sup>

Based on its review, the NPFC has determined that the costs incurred by Claimant are compensable under the OPA. The costs were reasonable and necessary to mitigate the effects of the incident and were determined by the NPFC to be consistent with the NCP. The NPFC confirmed that Dunlap Towing rates were billed in accordance with the rate schedule provided by the Claimant.

Upon review of the information provided by the Claimant, the NPFC has determined that the payable costs were billed in accordance with the cost of materials used at the time the services were rendered and were determined by the NPFC to be consistent with the NCP.

The NPFC hereby determines that the OSLTF will pay \$2,680.00 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # J18001-0001. All costs claimed are for charges incurred 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: \$2,680.00**

Claim Supervisor: [REDACTED]

Date of Supervisor's review: *2/22/18*

Supervisor Action: *Approved*

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<sup>9</sup> See, Addition Information email request from NPFC to the Claimant dated February 14, 2018 and a response was received that same date by the Claimant, Mr. [REDACTED], Harbor Master.