

CLAIM SUMMARY / DETERMINATION

Claim Number:	920002-0001
Claimant:	Redwood Shore Diving Inc. d.b.a. Parker Diving Service
Type of Claimant:	OSRO
Type of Claim:	Removal Costs
Claim Manager:	[REDACTED]
Amount Requested:	\$9,090.50
Action Taken:	Offer in the amount of \$9,090.50

EXECUTIVE SUMMARY:

On January 22, 2019, a commercial fishing vessel, *ALADDIN*, sank and discharged oil at Pier 45 in Slip 26 west of San Francisco Bay, a navigable waterway of the US.¹ [REDACTED] (“RP”), is the owner and operator of the vessel and is the responsible party (RP) as defined by the Oil Pollution Act of 1990.² Parker Diving Services (“Parker Diving” or “claimant”), commenced cleanup operations on the water after being hired by the RP. On January 29, 2019³ and July 25, 2019⁴, Parker Diving presented its uncompensated removal costs to the RP. Having not received payment from the RP after ninety days, Parker Diving presented its uncompensated removal cost claim to the National Pollution Funds Center (NPFC) for \$9,090.50 on November 19, 2019.⁵ The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration has determined that \$9,090.50 of the requested \$9,090.50 is compensable and offers this amount as full and final compensation of this claim.

I. INCIDENT, RESPONSIBLE PARTY AND RECOVERY OPERATIONS:

Incident

On January 22, 2019, the fishing vessel *ALADDIN* was berthed at Pier 45 slip 26 west at Fisherman’s Wharf. As a result of major water movement caused by a sinkhole in the Pier 45 basin and due to the vessel having a thru-hull port hole approximately ¾”, caused the vessel to take on water and spill motor oil into San Francisco Bay.⁶ Approximately 1 quart of motor oil was released from the vessel while it was moored at the Pier overnight.⁷ Parker Diving was hired on January 22, 2019 by the RP to boom, raise and tow the vessel to Bayside Boatworks in Sausalito to have the vessel repaired.⁸

¹ USCG 201 SITREP dated November 20, 2019.

² USCG 201 SITREP, part D. Involved Parties, dated November 20, 2019.

³ Attachment A to Claim Submission, Parker Diving Service Invoice # N-112 in the amount of \$9,090.50 dated January 29, 2019.

⁴ Parker Diving Service Rebill Invoice # N-112 including interest in the amount of \$9,772.30 dated July 25, 2019.

⁵ NPFC OSLTF Claim Form dated October 21, 2019 and received November 19, 2019.

⁶ Attachment A to Claim Submission, Parker Diving Service Invoice #N-112, Note.

⁷ USCG 201 SITREP dated November 20, 2019.

⁸ Attachment B to Claim Submission, Parker Diving Service Contract for Salvage, Towing and/or Pollution Abatement Services dated January 22, 2019..

Responsible Party

██████████ is the owner and operator of the fishing vessel *ALADDIN* and was designated the responsible party (RP) for the oil spill incident.⁹

The NPFC issued a Responsible Party (RP) Notification letter dated November 25, 2019 to Mr. ██████████.¹⁰ A Responsible Party Notification letter notifies the owners and/or operators that a claim was presented to the National Pollution Funds Center (NPFC) seeking reimbursement of uncompensated removal costs incurred as a result of response services performed that resulted from a vessel or facility that was identified as the source of a discharge or substantial threat of a discharge of oil to navigable waters of the United States.

The NPFC used the last known address provided by the claimant.¹¹ The notification was sent through the US Postal Service certified mail and the NPFC has not received confirmation of receipt of the letter as of November 27, 2019.

Recovery Operations

The RP took action to mitigate the incident by hiring Parker Diving.¹² On January 22, 2019, the Parker Diving crew placed 100 feet of containment boom around the vessel to absorb the sheen caused by the spilled motor oil and planned to raise the vessel and tow to Bayside Boatworks in Sausalito, California the following day.¹³ On January 23, 2019 the vessel was pumped out of sea water to allow it to float with the assistance of lift bags under the stern. Fuel was still in the tanks while the vessel was towed from Fisherman's Wharf to the repair yard.¹⁴ Parker Diving towed the vessel to the requested location by the RP and the vessel was placed onto a boat trailer from the repair yard and then was towed by land by Bayside Boatworks personnel.¹⁵

II. CLAIMANT AND RP:

Absent limited circumstances, the Federal Regulations implementing the Oil Pollution Act of 1990 (OPA)¹⁶ require all claims for removal costs or damages must be presented to the RP before seeking compensation from the NPFC.¹⁷

The claimant initially presented its claim in the form of an invoice to Mr. ██████████ on January 29, 2019. The claimant sent Rebill Invoice #N 112 to Mr ██████████ dated June 4,

⁹ USCG 201 SITREP, part D. Involved Parties, dated November 20, 2019.

¹⁰ NPFC RP Notification Letter dated November 25, 2019.

¹¹ NPFC Claim # 920002-0001 dated October 21, 2019 and received November 19, 2019..

¹² Attachment B to Claim Submission, Parker Diving Service Contract for Salvage, Towing and/or Pollution Abatement Services dated January 22, 2019.

¹³ Attachment A to Claim Submission, Parker Diving Service Invoice #N-112

¹⁴ Email from Parker Diving Service to NPFC dated December 3, 2019, , Re: 920002-0001 Aladdin Vessel Tow / Pollution Clarification.

¹⁵ Attachment A to Claim Submission, Parker Diving Service Invoice #N-112.

¹⁶ 33 U.S.C. § 2701 *et seq.*

¹⁷ 33 CFR 136.103.

2019¹⁸ and again sent a final invoice to Mr. [REDACTED] dated July 15, 2019.¹⁹ Having not receive payment from the RP in over five (5) months, the claimant filed a Small Claims Court Action against the RP on August 26, 2019.²⁰ On the court date, November 1, 2019, the RP did not appear in court and the court dismissed the case without prejudice.²¹ Having not received payment from the RP after ninety days, Parker Diving presented its uncompensated removal cost claim to the National Pollution Funds Center (NPFC) for \$9,090.50 on November 19, 2019.²²

III. CLAIMANT AND NPFC:

When an RP has not settled a claim after 90 days of receipt, a claimant may elect to present its claim to the NPFC.²³ On November 19, 2019, the NPFC received a claim for uncompensated removal costs from Redwood Shore Diving Inc. d.b.a. Parker Diving Service dated October 21, 2019. The claim included the OSLFT form, initial invoice, contract between RP and Claimant, certified mail receipt confirming presentment of claim, and small claims court file documentation. Additional information provided by the claimant to the NPFC includes Parker Diving Services rate schedule sheet, sum certain change request, small claims court dismissal without prejudice register of actions, and the final (third) invoice to claimant dated July 15, 2019.

IV. DETERMINATION PROCESS:

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).²⁴ As a result, 5 U.S.C. § 555(e) requires the NPFC to provide a brief statement explaining its decision. This determination is issued to satisfy that requirement.

When adjudicating claims against the OSLTF, the NPFC acts as the finder of fact. In this role, the NPFC considers all relevant evidence, including evidence provided by claimants and evidence obtained independently by the NPFC, and weighs its probative value when determining the facts of the claim.²⁵ The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.²⁶ If there is conflicting evidence in the record, the NPFC makes a determination as to what evidence is more credible or deserves greater weight, and makes its determination based on the preponderance of the credible evidence.

¹⁸ Attachment C of Claim Submission dated June 4, 2019.

¹⁹ Parker Diving Service Rebill Invoice # N 112 dated July 15, 2019.

²⁰ Attachment D to the Claim Submission, Plaintiff's Claims and Order to go to Small Claims Court Marin County Superior Court of California, Case Number SMC1910556 with a file date of August 26, 2019.

²¹ Register of Actions Superior Court of California, County of Marin Case Number SMC1910556 dated November 20, 2019 available as a public document on Marin County Court website.

²² NPFC OSLTF Claim Form dated October 21, 2019 and received November 19, 2019.

²³ 33 CFR 136.103.

²⁴ 33 CFR Part 136.

²⁵ See, e.g., *Boquet Oyster House, Inc. v. United States*, 74 ERC 2004, 2011 WL 5187292, (E.D. La. 2011), "[T]he Fifth Circuit specifically recognized that an agency has discretion to credit one expert's report over another when experts express conflicting views." (Citing, *Medina County v. Surface Transp. Bd.*, 602 F.3d 687, 699 (5th Cir. 2010)).

²⁶ See, e.g., *Use of Reports of Marine Casualty in Claims Process by National Pollution Funds Center*, 71 Fed. Reg. 60553 (October 13, 2006) and *Use of Reports of Marine Casualty in Claims Process by National Pollution Funds Center* 72 Fed. Reg. 17574 (concluding that NPFC may consider marine casualty reports but is not bound by them).

V. DISCUSSION:

An RP is liable for all removal costs and damages resulting from either an oil discharge or a substantial threat of oil discharge into a navigable water of the United States.²⁷ An RP's liability is strict, joint, and several.²⁸ When enacting OPA, Congress "explicitly recognized that the existing federal and states laws provided inadequate cleanup and damage remedies, required large taxpayer subsidies for costly cleanup activities and presented substantial burdens to victim's recoveries such as legal defenses, corporate forms, and burdens of proof unfairly favoring those responsible for the spills."²⁹ OPA was intended to cure these deficiencies in the law.

OPA provides a mechanism for compensating parties who have incurred removal costs where the responsible party has failed to do so. 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."³⁰ The term "remove" or "removal" means "containment and removal of oil [...] from water and shorelines or the taking of other actions as may be necessary to minimize or mitigate damage to the public health or welfare, including, but not limited to fish, shellfish, wildlife, and public and private property, shorelines, and beaches."³¹

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).³² The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.³³ The claimant bears the burden of providing all evidence, information, and documentation deemed relevant and necessary by the Director of the NPFC, to support and properly process the claim.³⁴

Before reimbursement can be authorized for uncompensated removal costs, the claimant must demonstrate by a preponderance of the evidence:

- (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 directed by the FOSC or determined by the FOSC to be consistent with the National Contingency Plan.³⁵
- (d) That the removal costs were uncompensated and reasonable.³⁶

²⁷ 33 U.S.C. § 2702(a).

²⁸ See, H.R. Rep. No 101-653, at 102 (1990), *reprinted in* 1990 U.S.C.C.A.N. 779, 780.

²⁹ *Apex Oil Co., Inc. v United States*, 208 F. Supp. 2d 642, 651-52 (E.D. La. 2002) (*citing* S. Rep. No. 101-94 (1989), *reprinted in* 1990 U.S.C.C.A.N. 722).

³⁰ 33 U.S.C. § 2701(31).

³¹ 33 U.S.C. § 2701(30).

³² See generally, 33 U.S.C. § (a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

³³ 33 CFR Part 136.

³⁴ 33 CFR 136.105.

³⁵ USCG 201 SITREP dated November 20, 2019.

³⁶ 33 CFR 136.203; 33 CFR 136.205.

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Upon receipt of the claim submission, the NPFC requested additional information and clarification from the Claimant on November 20, 2019 when the Acknowledgment letter was issued and again on December 3, 2019 via email. The claimant provided a revised sum certain via a letter dated November 25, 2019 whereby they requested a revised amount of \$9,090.50 and they provided all supporting documentation on December 3 and 4, 2019 via email.

After a complete review of all documentation and after obtaining a copy of the FOSC's SITREP corroborating the actions undertaken by the claimant and determining those actions to be properly coordinated, the NPFC has determined that the invoiced costs were billed in accordance with the contract and rate schedule in place at the time services were rendered, the NPFC determined that the claimant demonstrated a proper presentment of costs to the claimant and has provided small claims court documentation indicating that the case was dismissed without prejudice, allowing the claimant to request reimbursement from the NPFC Claims Program.

VI. CONCLUSION:

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, Redwood Shore Diving Inc. d.b.a. Parker Diving Service request for uncompensated removal costs is approved in the amount of **\$9,090.50**.

This determination is a settlement offer,³⁷ the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.³⁸ The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.³⁹ Moreover, this settlement offer is based upon the unique facts giving rise to this claim and is not precedential.

<p>Claim Supervisor: [REDACTED]</p> <p>Date of Supervisor's review: <i>12/10/19</i></p> <p>Supervisor Action: <i>Approved</i></p>

³⁷ Payment in full, or acceptance by the claimant of an offer of settlement by the Fund, is final and conclusive for all purposes and, upon payment, constitutes a release of the Fund for the claim. In addition, acceptance of any compensation from the Fund precludes the claimant from filing any subsequent action against any person to recover costs or damages which are the subject of the uncompensated claim. Acceptance of any compensation also constitutes an agreement by the claimant to assign to the Fund any rights, claims, and causes of action the claimant has against any person for the costs and damages which are the subject of the compensated claims and to cooperate reasonably with the Fund in any claim or action by the Fund against any person to recover the amounts paid by the Fund. The cooperation shall include, but is not limited to, immediately reimbursing the Fund for any compensation received from any other source for the same costs and damages and providing any documentation, evidence, testimony, and other support, as may be necessary for the Fund to recover from any person. 33 CFR § 136.115(a).

³⁸ 33 CFR § 136.115(b).

³⁹ 33 CFR § 136.115(b).