

CLAIM SUMMARY / DETERMINATION

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| Claim Number: | 921009-0001 |
| Claimant: | Redwood Shore Diving, Inc. dba Parker Diving Service |
| Type of Claimant: | OSRO |
| Type of Claim: | Removal Costs |
| Claim Manager: | (b), (b) (6) |
| Amount Requested: | \$4,758.44 |
| Action Taken: | Offer in the amount of \$4,758.44 |

EXECUTIVE SUMMARY:

On 29 October 2018 at approximately 0805 local time, the United States Coast Guard (USCG) Sector San Francisco was notified by the National Response Center (NRC) via report # 128831 of an unknown amount of bilge slops that were discharged into Pillar Point Harbor, a navigable waterway of the United States located in Half Moon Bay, CA.¹ The USCG Sector San Francisco Incident Management Division personnel, in the capacity as the Federal On Scene Coordinator (FOSC) for the spill, arrived on scene and witnessed the discharge of fuel into the harbor.²

In accordance with the Oil Pollution Act of 1990, the owner of the F/V Mandy was identified as the Responsible Party (RP) for the incident.³ The FOSC also issued a second NOFI to Mr. (b), (b) (6) on October 29, 2018.⁴ The FOSC issued a verbal Admin Order to Ms. (b), (b) (6) as the RP.⁵ The RP hired Redwood Shore Diving Inc. dba Parker Diving Service (“Parker” or “Claimant”) to perform oil pollution response and remove the fuel from the vessel.⁶

The claimant presented its uncompensated removal costs claim to the National Pollution Funds Center (NPFC) for \$4,758.44 on November 24, 2020.⁷ The NPFC informed the claimant that they failed to make proper presentation of costs to the RP identified by the FOSC as being the owner of the vessel, Ms. (b), (b) (6). The claimant presented the invoicing to Ms. (b), (b) (6) via certified mail on December 1, 2020.⁸ Having not received payment from either RP within the 90 day time period identified in the regulations, the NPFC moved forward with its adjudication of the claim. The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration, has determined that \$4,758.44 is compensable and offers this amount as full and final compensation of this claim.

¹ NRC Report #1228831 dated October 29, 2018.

² FOSC email statement dated December 8, 2020.

³ USCG Notice of Federal Interest (NOFI) was issued to Ms. (b), (b) (6) on October 29, 2018. Ms. (b), (b) (6) signed the NOFI on November 1, 2018 and USCG Certificate of Documentation for F/V Mandy issued February 28, 2020.

⁴ USCG Notice of Federal Interest (NOFI) was issued to Mr. (b), (b) (6) on October 29, 2018. Mr. (b), (b) (6) never signed for the NOFI.

⁵ FOSC email statement dated December 8, 2020.

⁶ *Id.*

⁷ Redwood Shore Diving, Inc. dba Parker Diving Service claim dated 24 November 2020.

⁸ Certified mail receipt and copy of green card dated December 1, 2020.

As stated in the Acknowledgment Letter sent November 25, 2020, the claim submission was placed into a pre-claim status because no evidence of RP presentment was provided. The claimant presented its invoice to Mr. (b), (b) (6), but was not presented to Ms. (b), (b) (6).⁹ The NPFC issued an RP Notification Letter to Ms. (b), (b) (6) dated December 2, 2020.¹⁰ The claimant also presented its invoice to Ms. (b), (b) (6) on December 1, 2020 per direction of the NPFC.¹¹ On March 1, 2021, this pre-claim was converted to a claim and determination was rendered.

I. INCIDENT, RESPONSIBLE PARTY AND RECOVERY OPERATIONS:

Incident

On 29 October 2018 at approximately 0805 local time, the United States Coast Guard (USCG) Sector San Francisco was notified by the National Response Center (NRC) via report # 128831 of an unknown amount of bilge slops that were discharged into Pillar Point Harbor, a navigable waterway of the United States located in Half Moon Bay, CA.¹² The USCG Sector San Francisco Incident Management Division personnel, in the capacity as the Federal On Scene Coordinator (FOSC) for the spill, arrived on scene and witnessed the discharge of fuel into the harbor.¹³

Pillar Point Harbor Patrol placed hard and sorbent boom around the F/V MANDY in an attempt to prevent the spread of the spill.¹⁴ The FOSC reported witnessing the spill occurring until the bilge pump was secured.¹⁵ The FOSC issued a NOFI to the responsible party/parties.¹⁶ As a result of a verbal admin order to hire a contractor, Parker was hired by the responsible party/parties to remove the diesel, pump the bilge, remove hazardous waste, and empty the remaining diesel from the fuel tank because it posed a significant threat to the environment.¹⁷

Responsible Party

In accordance with the Oil Pollution Act of 1990, the owner of the F/V Mandy is identified as one of the Responsible Parties (RPs) for the incident.¹⁸ The FOSC also issued a NOFI to Mr. (b), (b) (6) as the Operator of the vessel at the time of the incident.¹⁹ On December 2, 2020, the NPFC issued a Responsible Party Notification Letter to Ms. (b), (b) (6) via

⁹ 33 U.S.C. § 2713 of the Oil Pollution Act of 1990 (OPA 90) and 33 CFR 136.103.

¹⁰ Claimant Rebill sent via Certified Mail Dated December 1, 2020; RP Notification Letter to Ms. (b), (b) (6) dated December 2, 2020.

¹¹ Certified mail receipt and copy of green card dated December 1, 2020.

¹² NRC Report #1228831 dated October 29, 2018.

¹³ FOSC email statement dated December 8, 2020.

¹⁴ USCG MISLE Case # 1152128 dated November 1, 2018.

¹⁵ FOSC email statement dated December 8, 2020.

¹⁶ 33 U.S.C. § 2701(32), NOFI issued to (b), (b) (6) dated 29 October 2018, and NOFI Issued to (b), (b) (6) dated October 29, 2018.

¹⁷ FOSC email statement dated December 8, 2020.

¹⁸ USCG Notice of Federal Interest (NOFI) was issued to Ms. (b), (b) (6) on October 29, 2018. Ms. (b), (b) (6) signed the NOFI on November 1, 2018.

¹⁹ USCG Notice of Federal Interest (NOFI) was issued to Mr. (b), (b) (6) on October 29, 2018.

both certified mail and electronic mail.²⁰ Additionally, on December 22, 2020, the NPFC issued a Responsible Party Notification Letter to Mr. (b), (b) (6) via certified mail.²¹

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.

In response to the RP notifications made, both parties stated that they entered into a Bareboat Charter Agreement on October 22, 2018. Upon receipt and review of the Bareboat Charter Agreement, it divides the Charter Fees into 4 equal payments spanning from March 1, 2019 to August 25, 2020 and states that upon full payment the Charter Hire (Owner) will execute a U.S. Coast Guard Bill of Sale of F/V MANDY to Charterer.²² The last Bill of Sale on file with the United States Coast Guard's National Vessel Documentation Center (NVDC) was from (b), (b) (6) to (b), (b) (6) on November 8, 2016. Additionally, the last payment due on August 25, 2020 did not occur prior to this incident since it was reported on October 29, 2018.

Recovery Operations

On October 29, 2018, Redwood Shore Diving, Inc. dba Parker Diving Service was hired to handle the cleanup and removal of the diesel fuel release into Pillar Point Harbor.²³

Redwood Shore Diving, Inc. dba Parker Diving Service's cleanup operations entailed pumping out the remaining fuel from the damaged fuel tank and pumping out the dirty bilge area. The contaminated sorbent pads used around the impacted areas were recovered and all contaminated solid waste was sent for disposal.²⁴

II. CLAIMANT AND RP:

Absent limited circumstances, the Federal Regulations implementing the Oil Pollution Act of 1990 (OPA)²⁵ require all claims for removal costs or damages must be presented to the RP before seeking compensation from the NPFC.²⁶ When an RP denies a claim or has not settled a claim after 90 days of receipt, a claimant may elect to present its claim to the NPFC.²⁷

Ms. (b), (b) (6) has stated that she is not the RP due to the Bareboat Charter Agreement dated October 22, 2018 that was executed between herself and Mr. (b), (b) (6).²⁸ In a

²⁰ NPFC RP Notification Letter sent to Ms. (b), (b) (6) via certified mail and email dated December 2, 2020.

²¹ NPFC RP Notification Letter sent to Mr. (b), (b) (6) via certified mail and dated December 22, 2020.

²² Bareboat Charter Agreement dated October 22, 2018.

²³ Redwood Shore Diving, Inc. dba Parker Diving Service claim submission dated November 24, 2020.

²⁴ A&S Environmental Disposal Invoice # 30376 dated November 21, 2018.

²⁵ 33 U.S.C. § 2701 *et seq.*

²⁶ 33 CFR 136.103.

²⁷ *Id.*

²⁸ Email from Ms. (b), (b) (6) dated December 17, 2020.

conversation with the NPFC, Mr. (b), (b) (6) stated that he did sign the Bareboat Charter Agreement dated October 22, 2018 which makes him an RP but that he believes the claim is excessive for the work completed by the claimant.²⁹ To date, the invoice remains unpaid.

III. CLAIMANT AND NPFC

At the time Parker initially submitted its claim to the NPFC, the NPFC determined that Parker had yet to establish proper presentation of costs to one of the RPs, Ms. (b), (b) (6). On November 27, 2020, the NPFC provided Parker the mailing address for the RP and informed Parker that proper presentation of all costs must be made before NPFC could adjudicate the claim.³⁰ In December 2020, Parker presented its claim via an invoice containing a date of November 30, 2020.³¹ After ninety days had elapsed without a response from the RP, the NPFC began to adjudicate the claim for \$4,758.44.³²

Parker submitted a description of the costs and subtracted out the interest charged to the RP:³³

1. \$4,758.44 for Parker personnel, equipment and material costs; and
2. \$428.28 in interest based on non-payment

Subtotal: \$5,186.72

Less \$428.28 (Interest charged to the RP)

Total claimed costs: \$4,758.44

When an RP denies payment on a claim, or fails to respond within the 90 day response time period, a claimant may elect to present its claim to the NPFC.³⁴ On November 24, 2020, the NPFC received a claim for \$4,758.44 from Parker dated November 24, 2020.³⁵

IV. DETERMINATION PROCESS:

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).³⁶ 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.

²⁹ Phone Conversation with Mr. (b), (b) re RP Ltr on December 16, 2020.

³⁰ NPFC email dated November 27, 2020 to Parker regarding proper presentation of costs to the RP.

³¹ USPS Certified Mail Receipt dated December 1, 2020. Note that the invoice totaled \$5,186.72; however, Parker did not request the interest billed to the RP in the amount of \$428.28 from the NPFC when it presented its claim. Ms. (b), (b) (6) indicated that she believed she is not the RP in light of a Bareboat Charter she executed between herself and Mr. (b), (b) (6) dated October 22, 2018. See, email from (b), (b) (6) dated December 8, 2020, The NPFC also spoke with Mr. (b), (b) (6) on December 16, 2020, who stated he is in possession of the vessel and he believes the invoicing is outrageous. Thus, the NPFC is adjudicating the claim for \$4,758.44, accordingly.

³² 33 CFR 136.103.

³³ Parker Diving invoice Rebill to the RP dated November 30, 2020.

³⁴ 33 CFR 136.103.

³⁵ Redwood Shore Diving, Inc. dba Parker Diving Service claim dated November 24, 2020.

³⁶ 33 CFR Part 136.

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.³⁷ The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.³⁸ 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.

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.³⁹ An RP's liability is strict, joint, and several.⁴⁰ 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."⁴¹ 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."⁴² 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."⁴³

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).⁴⁴ The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.⁴⁵ The claimant bears the burden of providing all evidence, information, and

³⁷ 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)).

³⁸ 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).

³⁹ 33 U.S.C. § 2702(a).

⁴⁰ See, H.R. Rep. No 101-653, at 102 (1990), reprinted in 1990 U.S.C.C.A.N. 779, 780.

⁴¹ *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).

⁴² 33 U.S.C. § 2701(31).

⁴³ 33 U.S.C. § 2701(30).

⁴⁴ See generally, 33 U.S.C. §2712 (a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

⁴⁵ 33 CFR Part 136.

documentation deemed relevant and necessary by the Director of the NPFC, to support and properly process the claim.⁴⁶

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.⁴⁷
- (d) That the removal costs were uncompensated and reasonable.⁴⁸

The NPFC analyzed each of these factors and determined the costs incurred by Parker and submitted herein are compensable removal costs based on the supporting documentation provided. The NPFC determined all approved costs invoiced at the appropriate rate sheet pricing were billed in accordance with the rate schedule provided.⁴⁹ All approved costs were supported by adequate documentation which included invoices, proofs of payment, and an FOSCR statement dated December 8, 2020⁵⁰ that confirms that actions performed by Parker were both reasonable and consistent with the National Contingency Plan (NCP).

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. dba Parker Diving Service request for uncompensated removal costs is approved in the amount of \$ 4,758.44.

This determination is a settlement offer,⁵¹ the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.⁵² The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.⁵³ Moreover, this settlement offer is based upon the unique facts giving rise to this claim and is not precedential.

⁴⁶ 33 CFR 136.105.

⁴⁷ FOSC email statement dated December 8, 2020.

⁴⁸ 33 CFR 136.203; 33 CFR 136.205.

⁴⁹ Parker Rate Sheet.

⁵⁰ FOSC email statement dated December 8, 2020.

⁵¹ 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.

⁵² 33 CFR § 136.115(a).

⁵³ 33 CFR § 136.115(b).

(b), (b) (6)

Claim Supervisor:

(b), (b) (6)

Date of Supervisor's review: *March 2, 2021*

Supervisor Action: *Offer Approved*