

## CLAIM SUMMARY / DETERMINATION FORM

Date	: 3/23/2009
Claim Number	: 907080-002
Claimant	: State of Washington
Type of Claimant	: State
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$3,190,826.47

### **FACTS:**

**1. Oil Spill Incident:** On April 12, 2006, USCG Sector Portland Incident Management Personnel responded to the *S/S Catala* shipwreck located in Ocean Shores, Washington. This location is within the Federal On Scene Coordinator (FOSC) Sector Portland jurisdiction. The shipwreck is on shore and buried in approximately 10-30 feet of sand. The initial response by Coast Guard personnel to the shipwreck revealed a hole in the decking of the shipwreck exposing an oil tank containing an undetermined amount of heavy black oil. The vessel has been in its current location for a number of years and has not previously posed an emergent threat to the environment or navigation.

Based on the information provided, the product was contained and the only apparent breach of the hull was through the hole made by a beachcomber and his walking stick. Coast Guard responders inspected the exterior of the hull and found no other indications of product discharge. Coast Guard responders recommended opening a Federal Project utilizing Oil Spill Liability Trust Fund (OSLTF) money to hire a salvage contractor to conduct an examination and inspection of the hull using non-destructive methods to determine if the hull was intact under the sand. Global Diving and Salvage (GDS) was hired by Sector Portland to conduct the test and provide a report for FOSC review. The contractor completed its inspection and provided materials and labor to seal the hole caused by the beachcomber.

After the hole was patched by the contractor, USCG Sector Portland determined that the incident no longer posed a substantial threat of discharge and ceased further response actions. Attached is a copy of Global Diving and Salvage's assessment of the condition of the vessel, estimated volume of the void, and the feasibility of removal of the product. This report was provided to Sector Portland dated April 14, 2006.

**2. USCG's determination not to perform further removal actions:** When Global Diving performed the initial assessment as to the condition of the vessel at the request of Sector Portland, their findings and recommendations were as follows:

**Findings:** The vessel was buried up to approximately the main deck level in sand. Most of the port and some of the starboard sides in the area of the shear was exposed. Various bulkheads, storage tanks, and piping are sticking out of the hull through the sand. Six transverse bulkheads were counted throughout the length of the vessel. The aft compartment is missing from the stern and may be buried aft and to the starboard side of the hull. It is unclear whether this missing compartment held the steering components.

The steel of the hull and bulkheads appear to be degrading normally given the conditions in which it lies. Rust covers all surfaces and some evidence exists indicating delamination and leaching of the carbon from the steel. A Cygnus 1 Ultrasonic

Thickness Gauge with a 2.25 MHz ½” remote probe #84465, calibrated February 9, 2006, was used to determine the thickness of the plating surrounding the void with the product. Measurements were taken both above and below the sand. Areas of average degradation were chosen for the measurement locations. Hull thickness above the sand level is - .160”. Hull thickness below the sand level is - .140”.

What looked like product was observed around mid-ships on the starboard side against the hull in the sand, and leaching out of the inside of the hull through a low spot in the hull in the form of a light intermittent sheen. The hull in this location appeared to hold water as water was running from the low spot in the hull.

**Recommendations for action:** Global indicated they felt the best course of action to reduce the imminent threat to the environment would be to complete removal of the oil product from within the vessel. They further indicated there were two possible solutions for doing this: (1) In situ cleaning of the compartment containing the oil. The viscosity of the product would require it to be heated in order to pump it out and the compartment could then be properly cleaned. Further access to the compartment would have to be created in order to facilitate proper access. This option could also be accomplished by creating better access into the compartment and mechanically removing the product without heating it; (2) Removal of the tank completely from vessel. This option would require some excavation forward of the forward transverse bulkhead and cutting the hull to separate the tank from the rest of the vessel. It is important to note that these options only considered the compartment with the known product in it. Global further stated in their initial assessment that an investigative assessment was recommended to determine the existence and quantity of any other pollutants on board.

These findings and recommendations were provided to the USCG Sector Portland. Upon receipt of this report on or about April 14, 2006, Sector Portland made the determination that the substantial threat of discharge was abated with the installation of the patch and that no further response actions were warranted.

**3. The Claimant’s determination to have a limited survey done on the S/S Catala:** On May 31, 2006 through June 1, 2006, Global Diving & Salvage, Inc. (GDS) completed a limited survey of the S/S Catala for the State of Washington Department of Ecology (claimant). The limited survey produced the following summarized results:

- That a significant amount of heavy oil was found in the Forward Deep Oil Fuel Tank and the No. 1 Oil Fuel Tank;
- That a significant amount of contaminated sand was found above the No. 1 Oil Fuel Tank and the No. 2 Oil Fuel Tank (it appeared as though the contamination was released through open hatches in the tank tops);
- Perimeter boring and groundwater samples around the vessel indicate that very little oil has remained localized in the surrounding sediment;
- That a significant amount of asbestos was found in the bulkhead insulation, wiring harnesses, and terrazzo flooring aboard the vessel at various locations;
- A computerized generated three dimensional model was created from what could be observed of the vessel and used to overlay tidal information as well as the findings of this report;
- The estimated tank capacities of the various Oil Fuel Tanks on board are as follows:

Fwd Deep O.F. Tank:	5,984-6,358 gallons
No. 1 O.F. Tank:	14,961-22,442 gallons
No. 2 O.F. Tank:	8,977-13,465 gallons

No. 3 O.F. Tank:	7,481-11,221 gallons
No. 4 O.F. Tank:	3,740-5,984 gallons
Total max. possible gallons at risk:	59,470 gallons

Based on the limited survey performed by GDS, the claimant decided that there was in fact in their opinion, a substantial threat of discharge to navigable waters. The claimant determined that a maximum spill potential of 59,470 gallons of oil existed vice to the original estimate of 500 gallons of black oil referenced by the USCG via MISLE Activity # 2627218.

**4. Description of removal actions taken:** The actions that were performed associated with this claim submission covered the time period of May 2007 through August 2007. Work included containment, removal of sand and water, pressure washing of residual oil products, sheet pile removal, and demobilization. The primary response contractor for this incident was Philips Services Corporation with Global Diving and Salvage, Inc. as a subcontractor. In summary, as of September 2007, the SS Catala was completely removed and the beach at Damon Point State Park near Ocean Shores, Washington was on its way to full restoration as a result of a 17-month multi-agency effort to protect this sensitive area from the threat of a major oil spill. By the end of August 2007, all of the oil, asbestos-containing materials, oil-contaminated sand, and the remaining hull of the SS Catala had been completely removed from the beach and sent offsite for recycling, treatment, or disposal.

Overall project accomplishments to date were:

- Heavy fuel oil removed and recycled = 34,500 gallons
- Oily water collected and transported offsite for treatment = 360,000 gallons
- Oil-contaminated sand removed and disposed = 2,585 tons
- Asbestos-containing materials removed and disposed = 33 cubic yards
- Scrap steel removed and sent for recycling = 345 tons
- Worker hours with no reportable injuries = 36,000 hours
- Amount of oil spilled as a result of site operations = none
- Total project cost for removing oil and restoring beach = \$6.5M
- Cost of removing ship's hull = \$0.5M

**5. Initial Determination and Reconsideration Request:** NPFC's original determination of \$1,180,201.58 was completed and emailed to the claimant on 18 November 2008, with disallowances for costs that were missing supporting documentation or unsubstantiated, costs that were determined to be non-OPA compensable, and some costs were denied because the claimant failed to meet their burden in substantiating costs.

The NPFC received the Claimant's request for reconsideration letter on 14 January 2009 via Federal Express. The Claimant's assertions in support of reconsideration consist of the following:

1. Invoice # 551526(a) Philip Services in the amount of \$62,001.27 for the period of 7/8/07 through 7/17/07, was for services related to gaining access to sections of the hull specifically to identify and to remove the remaining oil and oiled debris. Lab analysis confirms the presence of oil removed thereby substantiating the work as removal related vice salvage.
2. Invoice # 549717 Philip Services in the amount of \$504,051.83 for the period of 5/31/07 through 7/7/07, was for operations to expose and manage the hull in

order to gain access to the areas of the stern that had been previously unexposed which were integral to the project's purpose; between decks and tanks 3, 4, and 5.

3. Invoice # 544731 Philip Services in the amount of \$524,405.04 which was for oil removal work on and within the hull which continued through June 28, 2007 with the cleaning of the contaminated tanks.

4. Invoice # 55152(b) Philip Services in the amount of \$178,192.98 was originally denied as no supporting documentation. The claimant provided a copy of the warrant issuing payment, the invoice, and all supporting documentation which shows removal actions for the time period of 7/8/07 through 7/17/07.

### **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.

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].

Under 33 CFR 136.115(d), the Director, NPFC, will, upon written request of the claimant or the claimant's representative, reconsider any claim denied. This is a de novo review. The request for reconsideration must be in writing and include the factual or legal grounds for the relief requested, providing any additional support for the claim. The request for reconsideration must be received by the NPFC within 60 days after the date the denial was mailed to the claimant or within 30 days after receipt of the denial by the claimant, whichever date is earlier.

### **DETERMINATION OF LOSS:**

#### **A. Findings:**

1. The NPFC has determined that the actions undertaken by the claimant are deemed consistent with the NCP. This determination is made in accordance with the Delegation of Authority for Determination of Consistency with the National Contingency Plan (NCP) for the payment of uncompensated removal cost claims under section 1012(a)(4), Oil Pollution Act of 1990. (See, Delegation of Authority from COMDT ltr 5402 of 19 March 1992).
2. The incident involved the substantial threat of discharge of “oil” as defined in OPA 90, 33 USC § 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. (See, NPFC Claim Form).
4. In accordance with 33 CFR §136.103(b)(3), presentation to the RP was not made preceding the submission of this claim to the NPFC, which is not required of state’s under OPA.
5. The claim was submitted on time.
6. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim. The NPFC finds that the efforts undertaken by the claimant meet the OPA definition of “removal” as defined in OPA which specifically states that “(30) ‘remove’ or ‘removal’ means containment and removal of oil or a hazardous substance

from water and shorelines or the taking of other actions as may be necessary to minimize or mitigate damage to the health or welfare, including but not limited to, fish shellfish, wildlife, and public and private property, shorelines and beaches". The NPFC has determined that all removal costs presented that include cleanup, trench work, vacuuming of gasoline and water, and disposal were actions in accordance with the NCP and the costs for these actions were reasonable, necessary, and allowable under OPA and 33 CFR § 136.205.

**B. *Reconsideration Analysis:***

NPFC CA has reviewed the documentation provided by the claimant on reconsideration under cover dated 14 January 2009. The NPFC has performed a *de novo* review upon reconsideration. The NPFC has determined that the new arguments and documentation presented on reconsideration for invoice # 551526(a), 551526(b), 549717, and 544731 provided by the claimant, is reasonable, appropriate under the circumstances, properly documented, and in the best interest of the spill response and workers on site. The NPFC has determined \$2,448,796.63 is compensable under reconsideration. (See, Enclosure 1 – Summary of Vendors spreadsheet of costs).

The NPFC has carefully weighed all the evidence submitted by the claimant along with its new arguments in support of a total payment on reconsideration of \$2,448,796.63 for response costs during the incident. In summary, the claimant provided that Season 2 started with the mobilization on April 30, 2007, which was a continuation effort to gain entry into the stern tanks of the hull to which access had not yet been gained during Season 1's response efforts. Season 2 was planned and executed as an integrated project in order to identify and remove the remaining oil from the environment. The overriding objective for the claimant, as executed by their contractors, was to safely access the deeply buried stern of the vessel, and collect and recover the remaining heavy fuel oil, oily water, and oil-contaminated sand and debris.

Global Diving & Salvage and Mason Construction worked primarily on the removal of the steel decks and side shells, manipulation of the buoyant hull within the four-sided steel wall contracted to serve as a containment and dewatering vault, and to aid in personal safety. Philip Services' employees removed oil, contaminated water, sand and debris, and provided tank cleaning. The ability of Philip Services to conduct the removal of oil, etc., was predicated on the work performed by both Global Diving & Salvage and the work of Mason Construction in order to provide safe access to areas between the decks and inside the tanks.

During Season 2, an additional 1,170 gallons of heavy fuel oil were removed from the vessel hull that would have undoubtedly entered the environment without this containment and removal action. Following the cleaning of contaminated surfaces and the removal of sections of the hull for recycling, oil contamination was discovered in the sand in an area previously covered by the hull. The contaminated sand was excavated and disposed and sampling was conducted throughout the sheet pile cell in order to confirm that no additional oil contamination existed. Demobilization was completed.

On that basis, the Claims Manager hereby determines that the claimant did in fact incur \$2,448,796.63 of uncompensated removal costs and that the amount is properly payable by the OSLTF as full compensation for the reimbursable removal costs incurred by the claimant and submitted to the NPFC under claim # 907080-002. The claimant states that all costs claimed are for uncompensated removal costs incurred by the claimant for

this incident. The claimant represents that all costs paid by the claimant are compensable removal costs, payable by the OSLTF as presented by the claimant.

***C. Determined Amount:***

The NPFC hereby determines that the OSLTF may pay \$2,448,796.63 as full compensation for the reimbursable removal costs incurred by the claimant and submitted to the NPFC under claim # 907080-002. All costs deemed compensable are for oil removal services provided by the claimant and its contractors from April 30, 2007 through August 2007. These costs are compensable removal costs, payable by the OSLTF as presented by the claimant.

**AMOUNT: \$2,448,796.63**

Claim Supervisor: [REDACTED]

Date of Supervisor's review:

Supervisor Action:

Supervisor's Comments:

U. S. Department  
of Homeland  
Security

**United States  
Coast Guard**



Director  
United States Coast Guard  
National Pollution Funds Center

4200 Wilson Blvd. Suite 1000  
Arlington, VA 20598-7100  
Staff Symbol: (CA)  
Phone: [REDACTED]  
E-mail: [REDACTED]  
Fax: 202-493-6937

5890  
4/8/2009

VIA EMAIL:

[REDACTED]@ecy.wa.gov

State of Washington  
ATTN: Mr. David Byers  
PO Box 47600  
Olympia, WA 98504-7600

Re: Claim Number 907080-002

Dear Mr. David Byers:

The National Pollution Funds Center (NPFC) in accordance with the Oil Pollution Act (OPA) (33 U.S.C. 2701 et seq.), has determined that \$2,448,796.63 is compensable for OPA claim number 907080-002.

This reconsideration determination is based on an analysis of information submitted.

All costs that are not determined to be compensable are denied. Disposition of this reconsideration constitutes final agency action.

If you accept this determination, please sign the enclosed Acceptance/Release Form where indicated and return to:

Director (ca)  
U.S. Coast Guard  
National Pollution Funds Center  
4200 Wilson Boulevard, Suite 1000  
Arlington, VA 20598-7100

If we do not receive the signed original Acceptance/Release Form within 60 days of the date of this letter, the determination is void. If the determination is accepted, your payment will be mailed within 30 days of receipt of the Release Form.

If you have any questions or would like to discuss the matter, you may contact me at the above address or by phone at [REDACTED]

Sincerely,

Donna Hellberg  
Program Analyst

ENCL: Claim Summary / Determination  
Acceptance/Release Form  
(1) Summary of Vendors spreadsheet of costs



U.S. Department of  
Homeland Security

**United States  
Coast Guard**



Director  
United States Coast Guard  
National Pollution Funds  
Center

NPFC CA MS 7100  
US COAST GUARD  
4200 Wilson Blvd. Suite 1000  
Arlington, VA 20598-7100  
Staff Symbol: (CA)  
Phone: [REDACTED]  
E-mail: [REDACTED]  
Fax: 202-493-6937

Claim Number: 907080-002	Claimant Name: State of Washington ATTN: Mr. David Byers PO Box 47600 Olympia, WA 98504-7600
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I, the undersigned, ACCEPT the determination of \$2,448,796.63 as full compensation for all removal costs incurred by Claimant for services provided by the various vendors listed in the S/S Catala Season 2 Summary of Vendors and Detailed Summary by Vendor (attached hereto and incorporated by reference as if fully set forth herein), and claimed to the Oil Spill Liability Trust Fund (Fund) under Claim Number 907080-002.

This acceptance and the determination and offer on which it is based, is for the payment of uncompensated amounts claimed by the Claimant against the Fund under Claim Number 907080-002 and the Oil Pollution Act of 1990, at 33 U.S.C. § 2708, 2712 (a)(4) and 2713, and is a full and final release and satisfaction of the amounts so claimed. This determination is not an admission of liability by any party. I hereby assign, transfer, and subrogate to the United States all rights, claims, interest and rights of action, that I may have against any party, person, firm or corporation that may be liable for the loss. I authorize the United States to sue, compromise or settle in my name and the United States fully substituted for me and subrogated to all of my rights arising from the incident. I warrant that no legal action has been brought regarding this matter and no settlement has been or will be made by me or any person on my behalf with any other party for costs which are the subject of the claim against the Oil Spill Liability Trust Fund (Fund).

I, the undersigned, agree that, upon acceptance of any compensation from the Fund, I will cooperate fully with the United States in any claim and/or action by the United States against any person or party to recover the compensation. The cooperation shall include, but is not limited to, immediately reimbursing the Fund any compensation received from any other source for the same claim, providing any documentation, evidence, testimony, and other support, as may be necessary for the United States to recover from any other person or party.

I, the undersigned, certify that to the best of my knowledge and belief the information contained in this claim represents all material facts and is true. I understand that misrepresentation of facts is subject to prosecution under federal law (including, but not limited to 18 U.S.C. 287 and 1001).

_____	_____
Title of Person Signing	Date of Signature
_____	_____
Typed or Printed Name of Claimant or Name of Authorized Representative	Signature

_____	_____
Title of Witness	Date of Signature
_____	_____
Typed or Printed Name of Witness	Signature

_____	_____	_____
DUNS #	Bank Routing Number	Bank Account Number