CLAIM SUMMARY / DETERMINATION FORM

Date	:	3/25/2010
Claim Number	:	N09006-001
Claimant	:	Marine Salvage & Service, Inc
Type of Claimant	:	Corporate (US)
Type of Claim	:	Removal Costs
Claim Manager	:	[redacted]
Amount Requested	:	$4,376.00

FACTS:

1. ***Oil Spill Incident:*** On November 22, 2008, the National Response Center (NRC) received a call from Coast Guard MSD Brownsville reporting that bad weather had caused the fishing vessel *Miss Rhianna* to run aground into jetties and discharged a large amount of fuel. The incident occurred at the jetties near the Brazos Santiago Pass, discharging diesel fuel, per the NRC Incident Report #890716.[1] The Brazos Santiago Pass, located in South Padre Island, Texas, is on the Gulf of Mexico. The Gulf of Mexico is a navigable waterway of the United States. It was determined that the vessel was in a hazardous location at the end of the jetty tip and 2,700 gallons of fuel was discharged at the site.

2. ***Description of removal actions:*** The Coast Guard informed the Texas General Land Office (TGLO) of the incident and met to form an action plan. TGLO called in the claimant, Marine Salvage and Service, Incorporated (Marine Salvage) to begin clean up efforts. The responsible party (RP), [redacted], took responsibility for the incident and then hired claimant to clean up the discharge and salvage of the vessel, under the oversight of TGLO. After the clean up began, the RP declared that he did not have the money or insurance to continue the clean up efforts due to the complexity of the salvage. Due to the RP's inability to pay for the clean up and salvage, the Federal On-Scene Coordinator Representative (FOSCR), MST1 [redacted] of Coast Guard Sector Corpus Christi/MSD Brownsville, federalized the incident on November 25, 2008. On November 27, 2008 T & T Marine Salvage, Incorporated (T & T Marine) began working under a Basic Ordering Agreement (BOA) to conduct the clean up and salvage activities. T&T Marine hired the claimant as a subcontractor on November 28, 2008.

3. ***The Claim:*** On January 19, 2010, the Claimant submitted a removal cost claim in the amount of $4,376.00 to the National Pollution Funds Center (NPFC) for reimbursement of their uncompensated response costs for services provided for on 11/26/08 and 11/27/08. The claim consists of billing summary for services from 11/22/08 to 11/27/08, invoices addressed to T & T Marine for the work performed by the claimant on 11/28/08 and 11/29/08, and claim related documentation gathered by the Claims Manager.

   On December 11, 2008, the claimant made presentment of the claim to the RP for $21,186.75 for removal costs accrued from 11/22/08 to 11/27/08. On February 11, 2009, claimant submitted the claim to TGLO for compensation. TGLO made the

[1] See NRC Report #890716 dated November 22, 2008.

claimant an offer for compensation of their removal costs for their services from 11/22/08 to 11/25/08. Claimant has requested a hearing with TGLO regarding the compensation offer. Claimant presented invoices to T&T Marine for removal costs accrued from 11/28/08 to 12/05/08 in the amount of $75,091.67. Claimant accepted compensation from T&T Marine in the amount of $69,992.42.

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].

DETERMINATION OF LOSS:

A. Overview:

1. The Federal On-Scene Coordination was provided by MST1[redacted] of Coast Guard Sector Corpus Christi/MSD Brownsville.
2. The incident involved a 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 on time.
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 costs for these actions were indeed reasonable and allowable under OPA and 33 CFR § 136.205 as set forth below.

B. Analysis:

The NPFC Claims Manager has 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, and (4) whether the costs were adequately documented and reasonable.

The claimant was compensated by TGLO for 11/22/08 – 11/25/08 and the claimant was also compensated by T & T Marine from 11/28/08 – 12/5/08. The claimant was not compensated for 11/26/08-11/27/08 although the CG has confirmed they were there and the work performed was overseen by them. The reason the USCG did not compensate the claimant under the federal project number (FPN) is because the claimant is not contracted with the USCG which resulted in their need to get compensated by the NPFC under the claims program since the RP has no money to pay for the services provided. The claimant states that all costs claimed are for uncompensated removal costs incurred by the claimant for this incident on November 26 - 27, 2008. The Claimant represents that all costs paid by the Claimant are compensable removal costs, payable by the OSLTF as presented by Claimant. The NPFC confirmed the rates charged were in accordance with the rate schedule in place at the time the services were rendered and that the FOSCR has confirmed that the actions taken were reasonable, necessary and consistent with the NCP.

C. ***Determined Amount:***

The NPFC determines that the OSLTF will pay $ 4,376.00 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim# N09006-001.

AMOUNT: $4,376.00

Claim Supervisor: [redacted]

Date of Supervisor's review: ***3/29/10***

Supervisor Action: ***Approved***

Supervisor's Comments: