

## CLAIM SUMMARY / DETERMINATION

<b>Claim Number:</b>	915027-0001
<b>Claimant:</b>	Ballard Marine Construction Inc.
<b>Type of Claimant:</b>	OSRO
<b>Type of Claim:</b>	Removal Costs
<b>Claim Manager:</b>	[REDACTED]
<b>Amount Requested:</b>	\$12,879.70

### **FACTS:**

**Oil Spill Incident:** On 12 January 2013, Sector Puget Sound received a call from the Washington State Department of Ecology reporting that the tug GILLSPRAY sank on Lake Union in the vicinity of Fremont, WA. Lake Union is a navigable waterway of the U.S. The Responsible Party hired Ballard Marine to raise the vessel and remove the oil on board in order to comply with the Federal On Scene Coordinator's (FOSC) direction. Ballard removed an estimated 50-60 gallons of oil from the vessel.

On 19 February 2013, Sector Puget Sound received report of a sheen on the Lake Washington Ship Canal, a U.S. navigable waterway connected to Lake Union. Response investigation determined that the tug GILLSPRAY sank a second time and discharged an estimated three gallons of mixed petroleum products into the waterway. Ballard Marine responded to the second sinking, raised the vessel and performed oil spill response operations in accordance with Coast Guard instructions.

### **The Claim:**

On February 12, 2015, Ballard Marine Construction Inc. (Ballard) submitted a removal costs claim to the National Pollution Funds Center (NPFC) for reimbursement of their uncompensated removal costs for personnel, equipment and materials, and subcontractor services. The claim consists of one invoice #1456 for which Ballard only received partial payment from the responsible party. The balance of the invoice is claimed in the amount of \$12,879.70.

### **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. LTJG [REDACTED] of Coast Guard Sector Puget Sound provided FOSC coordination and determined that the actions undertaken by Ballard were performed in accordance with the FOSC directives and are deemed consistent with the NCP. 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4);
2. The incident involved the 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 within the six-year period of limitations for 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 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 FOOSC, to be consistent with the NCP or directed by the FOOSC, and (4) whether the costs were adequately documented and reasonable.

The NPFC confirmed that the actions undertaken by the Claimant were reasonable and necessary and that the services were billed in accordance with Ballard's rates for reimbursement at the time the services were provided. On that basis, the Claims Manager hereby determines that the Claimant did in fact incur \$12,777.30 in uncompensated removal costs and that that amount is payable by the OSLTF as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC.

The Claimant states that all costs claimed are for uncompensated removal costs incurred by the Claimant for this incident. The NPFC has determined that \$102.40 of the amount claimed has not been proven compensable. The overtime rate charged for the Technician II on March 8, 2013, has been reduced to \$55 an hour in accordance with Ballard's rate sheet. This resulted in an \$8.00 reduction for this line item. Additionally on March 8, 2013, a \$94.40 gasoline charge has been denied because the Claimant did not provide a receipt for the expense that exceeds \$75.00. Based on the foregoing, \$102.40 is denied and the Claimant should be paid the remaining balance of \$12,777.30.

***C. Determined Amount:***

The NPFC hereby determines that the OSLTF will pay \$12,777.30 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 915027-0001. The determined amount covers charges incurred and paid 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.

Claim Supervisor

Date of Supervisor's review: *3/13/15*

Supervisor Action: *Approved*