CLAIM SUMMARY / DETERMINATION

Claim Number:	C15029-0001
Claimant:	Texas General Land Office (SOSC)
Type of Claimant:	State
Type of Claim:	Removal Costs
Claim Manager:	[redacted]
Amount Requested:	$337.23

FACTS:

Oil Spill Incident

On March 3, 2015, Marine Safety Detachment (MSD) Brownsville received a report of an unknown substance impacting a large area of the South Point Marina and its surrounding areas. Coast Guard personnel that responded were unable to identify the substance or locate a Responsible Party (RP). Coast Guard personnel from MSD Brownsville notified Sector Corpus Christi and requested they federalize the spill and hire an Oil Spill Response Organization (OSRO) to conduct cleanup and disposal.[1]

Description of Removal Activities for this Claimant

TGLO reports that on March 3, 2015, a spill of oil was discovered in the Port Isabel shrimp Basin, a navigable waterway of the US. State On Scene Coordinator (SOSC) [redacted] responded to the report and found approximately 20 gallons of oil in the waterway. TGLO further reports that its response officer coordinated with the Federal On Scene Coordinator's Representative (FOSCR), Petty Officer [redacted] who federalized the response under Federal Project Number (FPN) C15029. TGLO response officer assisted and monitored the response actions performed by RM [redacted]

The Claim

On June 15, 2015, TGLO submitted a removal cost claim to the National Pollution Fund Center (NPFC) for reimbursement of their uncompensated removal costs of State personnel and equipment costs in the amount of $337.23.[2]

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".

[1] See TGLO Claim Submission form dated June 15, 2015.
[2] Personnel Total: $197.23, Equipment Total: $140.00. See TGLO Incident Response Cost Invoice.

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. Sector Corpus Christi provided FOSC coordination 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 that 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, and mitigate the effects of the incident); (2) whether the costs were incurred as a result of these actions; (3) wether the actions taken were determined by the FOSC, to be consistent with the NCP or directed by the FOSC, and (4) wether the costs were adequately documented and reasonable.

The NPFC has confirmed that the rates charged by the Claimant are in accordance with the published state rates at the time services were rendered and were coordinated with the FOSC and determined to be consistent with the NCP.

The NPFC hereby determines that the OSLTF will pay $337.23 as full compensation for the reimbursable removal costs incurred by TGLO and submitted to the NPFC under claim # C15029-0001. All costs claimed are for charges paid for 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.

AMOUNT: $337.23

Claim Supervisor: [redacted]

Date of Supervisor's review: ***6/23/15***

Supervisor Action: ***Approved***

Supervisor's Comments: