

## CLAIM SUMMARY / DETERMINATION

<b>Claim Number:</b>	915105-0001
<b>Claimant:</b>	Global Diving & Salvage, Inc.
<b>Type of Claimant:</b>	Corporate
<b>Type of Claim:</b>	Removal Costs
<b>Claim Manager:</b>	██████████
<b>Amount Requested:</b>	\$15,577.74

### FACTS:

#### Incident:

On November 28, 2014 a 40-foot wood, trawler took on water and sank at its berth in Glen Cove Marina in Vallejo, California discharging an oil sheen into harbor waters. Glen Cove Marina flows into the Carquinez Strait that flows into San Pablo Bay, a navigable waterway of the U.S.

#### Responsible Party:

The Responsible Party (RP) for the oil spill is ██████████ of ██████████, CA 94590. ██████████ was identified by the USCG Federal On-Scene Coordinator's Representative (FOSC-R) as the owner of the 40-foot trawler (hillside CF 1466 BL) that discharged oil into Glenn Cove Marina. Mr. ██████████ hired Global Diving and Salvage to remediate the oil spill on November 28, 2013.

#### Claimant and Claim:

On September 2, 2015 the NPFC received an Optional OSLTF Claim Form for Global Diving and Salvage's (Global) uncompensated removal costs claim in the amount of \$15,577.74.

Claimant submitted a copy of its notification letter addressed to Mr. ██████████ dated April 20, 2015. The letter informed Mr. ██████████ that he was the RP and as such, he has financial liability under the Oil Pollution Act of 1990 for removal costs. Claimant included a copy of a US Postal Service certified mail receipt signed and stamped April 23, 2015. Mr. ██████████ failed to pay the invoice or respond to the Claimant within the 90-day period provided under the OPA90 for the RP to respond therefore Global presented its claim to the Oil Spill Liability Trust Fund (Fund).

#### Federal On-Scene Coordination:

The Federal On-Scene Coordinator – Representative (FOSC-R) was LT. ██████████, of Coast Guard Sector San Francisco.

#### Scope of Removal Activities:

<sup>1</sup> See Global Diving and Salvage Project Agreement signed by Mr. ██████████ on December 1, 2014

Claimant deployed up to five Hazmat response personnel, a response truck and trailer to the incident location. Claimant's personnel deployed containment boom around the vessel and used absorbent pads and boom to clean up the oil. Fresh absorbents were exchanged during the five days from November 28, 29, 30 and, 31, 2014. Claimant's personnel monitored the vessel during this time and recovered oily debris prior to the commencement of salvage operations. The Claimant defueled the fuel tanks after the vessel was raised.

**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. Findings of Facts***

1. Coast Guard Sector San Francisco in its capacity as the Federal On-Scene Coordinator (FOSC) for this incident, oversaw the removal actions and determined that the actions undertaken by Global Diving were consistent with the NCP. 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4);
2. The incident involved a substantial threat of a discharge of “oil” as defined in OPA 90,33 U.S.C. § 2701(23), to navigable waters;
3. The claim was properly presented to the responsible party, who denied the claim;
4. 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;
5. The claim was submitted within the six year period of limitations for removal costs claims. 33 U.S.C. § 2712(h)(1);;
6. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that the majority of 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 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 costs were adequately documented and reasonable.

#### FOSC Coordination:

The NPFC Claims Manager contacted the acting FOSC-R who was on Permanent Change of Station from Sector San Francisco. Additionally, the Claims Manager followed up in an email with the MST3 who was on-scene. When the Claims Manager asked about the scope of the removal activities, the MST3 deferred to the acting FOSC-R.<sup>2</sup> On September 24, 2015, the acting FOSC-R emailed the Claims Manager stating that he approved all activities to remove the oil and threat of further contamination and specifically stated that he did not authorize towing or removing the vessel from the water.<sup>3</sup>

#### Late Fees:

After the RP failed to pay Claimant's invoices, the Claimant submitted its claim to the NPFC for uncompensated removal costs seeking \$15,577.74. Claimant submitted two invoices. The first # 12544 for \$6,801.15 and the second is for \$7,500.00 for a total of \$14,301.15. Because the RP failed to pay Claimant's invoice timely, the Claimant then added \$1,276.59 in late fees which increased the RP's reimbursement request to \$15,577.74 (\$14,301.15 + \$1,276.59 = \$15,577.74).<sup>4</sup> Finance charges or interest added to an invoice are not OPA compensable because these charges are not in response to an oil spill or deemed OPA compensable; therefore, the NPFC denies \$1,276.59 in late fees as a non-OPA compensable expense.

#### Claimant's Invoices:

The Claims Manager created a spreadsheet of Claimant's invoice #125414 to compare invoice to Claimant's published rates and with its daily activity logs (dailies). Invoice #125414 dated November 28, 2014 through December 1, 2015 for \$6,801.15 represented five days of labor, equipment and material. All rates charged on invoice match with Global's published rates. Claimant submitted daily activity logs (dailies) showing labor, equipment and materials deployed each day.

Global charged two employees, four hours at its Premium Time rate of \$78 per hour for a total of \$624. Claimant's rate sheet explains, "Once a worker has accrued four hours of overtime during a Monday through Friday shift, Premium Time will be charged for each additional hour worked outside of 0700 and 1530 hours."<sup>5</sup> Review of Claimant's dailies show that the two employees clocked in at 1630 hours and worked till 2030 hours, which is within the time period specified on Claimant's rate sheet.

Daily entries match with Claimant's labor, material and items as charged on invoice #125414 with the exception of three items that the Claims Manager could not identify on the rate

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<sup>2</sup> See email from MST3 dated September 4, 2015

<sup>3</sup> See FOSC-R Additional Information received email dated September 24, 2015

<sup>4</sup> See Claimant's rate sheet finance costs

<sup>5</sup> See Claimant's rate sheet under "Notes"

sheet.<sup>6</sup> The NPFC denies three items totaling \$290 therefore see the itemized spreadsheet for details pertaining to these line items.

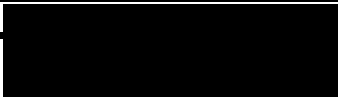
Additionally, the Claims Manager requested a copy of Global's 2014 published rates and evidence that Claimant paid the waste disposal invoice. Claimant provided a copy of its published rates and a copy of its cancelled check from Fremouw Environmental Services.<sup>7</sup> Claimant noted on its invoice a waste disposal fee of 1.11% for a total of \$117.15.

Invoice #125414 includes labor and equipment costs relating to towing the vessel and hauling it from the water on December 1, 2014. Claimant charged for three Environmental Techs at its overtime rate of \$60 per hour for 1.5 hours of overtime for a total of \$270 (1.5 x \$60 = \$90 x 3 = \$270). Additionally, Claimant charged one supervisor overtime at \$86 per hour for 1.5 hours for a total of \$129. All overtime charges on December 1, 2014 total \$399. The FOOSC-R specifically did not approve the towing and hauling of the vessel from the water since the fuel had been removed.<sup>8</sup> Therefore, the NPFC denies \$399 in overtime.

Claimant informed us that its second invoice #125294 totaling \$7,500 relates to daily activities on December 1, 2014. The Claims Manager could not identify \$7,500 of removal activities on Claimant's daily for December 1, 2014. Claimant related in a follow-up phone conversation with the Claims Manager that the second invoice was for salvage costs.<sup>9</sup> The Claims Manager finds that invoice #125294 was for salvage costs and is not considered as compensable removal costs as defined under OPA and its guiding regulations. Additionally, the FOOSC-R did not approve of towing and hauling the vessel from the water. The NPFC denies payment of Claimant's invoice #12529 for \$7,500.

**C. Determined Amount:**

The NPFC determines that the OSLTF will pay \$6,112.15 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim 915105-0001. All costs claimed are for charges incurred 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 Claimant.

Claim Supervisor:	
Date of Supervisor's review:	<i>10/23/15</i>
Supervisor Action:	<i>Approved</i>
Supervisor's Comments:	

<sup>6</sup> See NPFC Cost Summary spreadsheet attached

<sup>7</sup> See Claimant's emails dated September 4 and September 14, 2015 and September 30, 2015 replying to Additional Information requested

<sup>8</sup> See FOOSC-R Additional Information received email dated September 24, 2015

<sup>9</sup> See Claimant's email dated September 30, 2015