

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: 915069-0001
Claimant	: BP Exploration & Production, Inc.
Type of Claimant	: Corporate
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$130,081.66

FACTS:

A. Oil Spill Incident:

On June 20, 2014, the Coast Guard's (CG) National Response Center (NRC) received notification of a large tar mat in Pensacola Beach, FL, located on the Gulf of Mexico, a navigable waterway of the United States.¹ The CG Gulf Coast Incident Management Team (CG GCIMT) was notified and responded to the report and found the tar mat with associated surface residual tar balls (SRBs) both in the water and on the beach in Segment FLES2-005 of Fort Pickens Beach, FL. As the tar mat and SRBs were in a quantity that exceeded the CG's capacity to mitigate, an email directive was issued to BP Exploration & Production (BP) to activate two oil spill response organization (OSRO) teams to conduct removal actions at Fort Pickens Beach, FL, as directed.²

B. Description of removal actions performed:

On June 20, 2014, two teams of Danos & Curole Marine Contractors (BP's OSRO), Mr. [REDACTED] of Swift Technical Services, LLC, and Shoreline Cleanup Assessment Team (SCAT) operations liaison, Polaris Applied Sciences, Inc. (mapping and data support) and an archaeologist from HDR Environmental Operations responded to the CG's directive of response and met with 2 CG active duty personnel on-scene. The reported tar mat was approximately 20' long x 4' wide and was located approximately 10 feet off the beach.³ Because Fort Pickens is a National Park, the use of heavy equipment, such as excavators or dump trucks would have damaged the ecosystem so a decision was made for the contractors to use shovels to dig up the tar mat and remove it in pieces from the water. According to CG personnel on-scene, established BP safety protocol didn't allow BP contractors to enter the water past their knees in order to conduct removal actions so BP amended their protocol to allow their contractors to enter the water, up to their waist, in an effort to collect the tar mat and associated SRBs. The tar mat and associated SRBs were determined to be visually consistent with MC252 oil.⁴

Removal of the tar mat proved to be difficult as sand washed over the tar mat during tidal changes and workers had to dig through 12" to 18" of sand in order to uncover the tar mat from the previous days' response efforts.⁵ The entire cleanup involved 13 site visits over 41 calendar days and approximately 1,824.5 lbs of tar mat and associated SRBs were recovered and properly disposed of at Magnolia Landfill, Summerdale, AL.⁶

¹ See, NRC Report # 1086493 dated June 20, 2014.

² See, Email directive to BP dated June 20, 2014.

³ See, NPFC Optional OSLTF Form submitted by BP dated March 12, 2015.

⁴ See, Email between Mr. [REDACTED], NPFC and MST1 [REDACTED], CGIMT dated March 31, 2015.

⁵ See, Email between Mr. [REDACTED], NPFC and MST1 [REDACTED], CGIMT dated April 1, 2015.

⁶ See, NPFC Optional OSLTF Form submitted by BP dated March 12, 2015.

The location of the tar mat which was 10 feet off the beach prevented CG personnel from collecting samples directly from the tar mat. Instead, CG personnel were forced to sample pieces of the tar mat or associated SRBs recovered by the OSRO and brought back to the beach by shovel for disposal.⁷ A total of three samples were collected by CG personnel,⁸ two of which BP either took a similar sample or split the sample with CG personnel.⁹ Coast Guard personnel forwarded two of the samples to the Coast Guard Marine Safety Laboratory (MSL) on July 14, 2014 (MSL Case Number 14-187). It's unclear to the NPFC why the third sample collected by CG personnel was never split with BP personnel or submitted to the CG MSL for analysis.

THE CLAIMANT AND THE CLAIM:

On March 12, 2015, BP submitted a removal cost claim associated with the cleanup of the tar mat and associated SRBs to the Oil Spill Liability Trust Fund (OSLTF or the Fund), asserting that the oil collected was not Deepwater Horizon oil. Claimant sought reimbursement of its uncompensated removal costs in the amount of \$130,081.66¹⁰ for services provided from June 20, 2014 through July 31, 2014, which included OSRO personnel and vehicle use, Swift Technical Services personnel cost, Polaris Applied Sciences personnel cost, and HDR Environmental Operations personnel cost. The claimed removal costs are based on the rate schedules in place at the time services were provided.¹¹

APPLICABLE LAW:

Under OPA 90, 33 USC § 2702(a), each responsible party for a vessel or facility from which oil is discharged, or which poses the substantial threat of a discharge of oil, into or upon the navigable waters or adjoining shorelines is liable for the removal costs and damages described in 33 USC § 2702(b) that result from the incident. The responsible party's liability includes the "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, at 33 USC § 2701(31), 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 such 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

⁷ See, Email between Mr. [REDACTED], NPFC and MST1 [REDACTED], CGIMT dated April 15, 2015.

⁸ The first sample was obtained on June 20, 2014. The second sample was obtained on June 21, 2014. The third sample was obtained on July 8, 2014. See NPFC Optional OSLTF Form submitted by BP dated March 12, 2015, Attachment C.

⁹ See, NPFC Optional OSLTF Form submitted by BP dated March 12, 2015, Attachment F1.

¹⁰ See, Email from Mr. [REDACTED], BP to [REDACTED], NPFC, dated April 1, 2015 requesting their sum certain be changed from \$130,081.66 to \$130,027.16 due to a duplicate charge.

¹¹ See, NPFC Optional OSLTF Form submitted by BP dated March 12, 2015, Attachment G.

that are the subject of the claim. See also, 33 USC §2713(c) and 33 CFR 136.103(c)(2) [claimant election].

Under 33 USC §2713(a), all claims for removal costs or damages must (with certain exceptions not applicable here) be presented first to the responsible party or guarantor of the designated source of the incident. Then, as provided in 33 U.S.C. §2713(d), “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 Director, 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.”

In addition, 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 Fact:

1. CG GCIMT, MST1 [REDACTED] as the Federal On-Scene Coordinator Representative (FOSCR) for this incident, oversaw the removal actions and determined that the actions undertaken by BP’s contracted OSRO were consistent with the NCP as reported in NRC Report # 1086493; 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4);¹²
2. The incident involved the discharge of “oil” as defined in OPA 90, 33 U.S.C. §2701 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 costs;
4. The claim was submitted within the six year period of limitations for claims. 33 U.S.C. §2712(h)(1);

B. Sample Analysis and other Tar Mats:

¹² See, NPFC Optional OSLTF Form submitted by BP dated March 12, 2015.

MSL Oil Sample Analysis Report 14-187 concludes that the comparison of samples 14-187-1 and 14-187-2 (representative of spill samples obtained from Fort Pickens Beach) to samples 10-095-QC and 10-220-2 (representative as source samples of MC 252 oil) results in a non match conclusion. However, it's important to note it is not possible based exclusively on MSL analysis to determine if the differences noted between the samples are the result of petroleum mixing in the environment or if they are real differences indicating the samples are unrelated.¹³ Regardless, BP seeks reimbursement of their uncompensated removal costs based upon the results of this sample analysis. The Claimant states that all costs claimed are for uncompensated removal costs incurred for the incident from June 20 – July 31, 2014. BP represents that all costs paid by it are compensable removal costs, payable by the OSLTF as presented by the Claimant.¹⁴

The MSL Oil Sample Analysis Report 14-187 states that samples 14-187-1 and 14-187-2 contain heavy petroleum oil with characteristics somewhat similar to those of Deepwater Horizon oil. There are differences between the polycyclic aromatic hydrocarbons (PAHs) that are not attributable to known weathering or non-petroleum contamination. As such, the conclusion was a non-match. This does not mean, however, that samples 14-187-1 and 14-187-2 do not come from the same source samples as the Deepwater Horizon oil. In fact, the biomarker profiles are the same. Mixing of petroleum oil results in a new fingerprint that cannot be correlated to a single source based on chemical analysis alone. The biomarker profiles very strongly suggest a relationship between samples 14-187-1 and 14-187-2 and the Deepwater Horizon oil.¹⁵

The NPFC has previously paid BP removal claims that were based solely on MSL sample analysis of SRBs that had a result of a non-match with similar biomarkers but different PAHs when compared to Deepwater Horizon oil. The rationale behind the NPFC's decision to approve those claims was based upon communications between the NPFC and the CG MSL in which the CG MSL stated that they could not say with greater than a 50% certainty that the SRB samples with similar biomarkers but different PAHs were of a common source to Deepwater Horizon oil.¹⁶ The NPFC determined that the preponderance of credible evidence (CG MSL Lab Results) supplied by BP established that the samples were not Deepwater Horizon oil and subsequently paid the claim(s) accordingly.

However, when reviewing the information associated with this claim and talking with CG personnel who were members of the CG GCIMT and responsible for responding to the reports of SRBs along the Gulf Coast, the NPFC became aware of other tar mats, both on Fort Pickens Beach, FL, and in other areas on the Gulf of Mexico, where sampling conducted by CG personnel revealed similar tar mats to be derived from Deepwater Horizon oil.

Specifically, a large tar mat was discovered on Fort Pickens Beach, FL, in February 2014 approximately 500 yards west¹⁷ of the tar mat discovered on the same beach on June 20, 2014. The February 2014, tar mat was approximately 20' long x 4' wide¹⁸ and was removed by BP contractors under the supervision of CG personnel. A sample of that tar mat was submitted to the CG MSL on March 3, 2014, (MSL Case Number 14-097) and the results revealed that sample obtained from the tar mat was in fact derived from Deepwater Horizon oil.¹⁹

¹³ See, CG MSL Oil Sample Analysis Report 14-187 dated 3 Nov 2014.

¹⁴ See, NPFC Optional OSLTF Form submitted by BP dated March 12, 2015.

¹⁵ See, CG MSL Oil Sample Analysis Report 14-187 dated 3 Nov 2014.

¹⁶ See, Email between Ms. [REDACTED], CG MSL and Mr. [REDACTED], NPFC dated February 10, 2015.

¹⁷ See, Email between Mr. [REDACTED], NPFC and MST1 [REDACTED], CGIMT dated March 31, 2015.

¹⁸ See Email between Mr. [REDACTED], NPFC and MST1 [REDACTED], CGIMT dated April 1, 2015.

¹⁹ See, MSL Results Case Number 14-097 dated March 4, 2014.

Additionally, a tar mat was discovered at Grand Isle State Park, Wild Beach, LA, in October 2014. That tar mat was described as being 1” – 3” thick and consisting of residual oil material intermixed with an “eroding marsh platform.” To date, CG personnel have attended this site on numerous occasions and recovered approximately 719 lbs of tar mat.²⁰ CG personnel collected a total of ten samples for analysis from the Wild Beach tar mat or associated SRBs over the period of multiple responses and submitted them to the CG MSL for analysis. Of the ten samples collected by CG personnel and submitted for analysis, four of the samples were determined by the CG MSL to be of a common source to Deepwater Horizon oil.²¹ The remaining six samples were determined to be either a non-match to Deepwater Horizon oil²² or to have no similarities to Deepwater Horizon oil.²³

MST1 [REDACTED], who was on-scene during this response and responsible for the collection of samples for submission to the CG MSL was questioned about the differences in sample results (match to Deepwater Horizon oil vs. non match to Deepwater Horizon oil). He stated that three of the samples obtained directly from the main tar mat on Wild Beach were tested and proven to have similarities to Deepwater Horizon oil.²⁴ However, samples not obtained from the main tar mat but instead collected from associated SRBs in the vicinity of the main tar mat came back as either a non-match or having no similarities to Deepwater Horizon oil.^{25 26}

A tar mat was also discovered on Grand Terre II Island, LA, on December 14, 2014. BP contractors, under the supervision of CG personnel, responded and recovered approximately 254 lbs of tar mat.²⁷ Three samples of the tar mat and associated SRBs were submitted to the CG MSL on February 19, 2015, (MSL Case Number 15-076). The first sample collected during this response was from an SRB located approximately 10-15 feet away from the main tar mat and was determined to have no similarities to Deepwater Horizon oil. The remaining two samples collected during the response were

²⁰ See, CGIMT NRC1110800 16 Mar 2015 Ops Summary provided by MST1 [REDACTED] on April 1, 2015.

²¹ Sample 15-022-1 (MSL Case Number 15-022) collected on October 15, 2014; sample 15-024-1 (MSL Case Number 15-024) collected on October 29, 2014; sample 15-023-1 (MSL Case Number 15-023) collected on November 12, 2014 and sample 15-080-1 (MSL Case Number 15-080) collected on December 18, 2014, were all tested by the CG MSL and were determined to be of a common source to Deepwater Horizon oil. See also See MSL Case Number 15-022 dated November 25, 2014; MSL Case Number 15-024 dated November 26, 2014; MSL Case Number 15-023 dated November 26, 2014 and MSL Case Number 15-080 dated February 25, 2015.

²² Sample 15-023-2 (MSL Case Number 15-023) collected on November 12, 2014; samples 15-075-1 and 15-075-2 (MSL Case Number 15-075) collected on January 21, 2015 and samples 15-078-1 and 15-078-2 (MSL Case Number 15-078) collected on February 3-4, 2015 were tested by the CG MSL and were determined to be a non-match to Deepwater Horizon oil. See also MSL Case Number 15-023 dated November 26, 2014; MSL Case Number 15-075 dated February 25, 2015 and MSL Case Number 15-078 dated February 25, 2015.

²³ See, MSL Case Number 15-023 dated November 26, 2014.

²⁴ Sample 15-022-1 (MSL Case Number 15-022) collected on October 15, 2014; sample 15-024-1 (MSL Case Number 15-024) collected on October 29, 2014 and sample 15-023-1 (MSL Case Number 15-023) collected on November 12, 2014 were all tested by the CG MSL and were determined to be of a common source to Deepwater Horizon oil. See also See MSL Case Number 15-022 dated November 25, 2014; MSL Case Number 15-024 dated November 26, 2014; and MSL Case Number 15-023 dated November 26, 2014.

²⁵ Sample 15-023-2 (MSL Case Number 15-023) collected on November 12, 2014; samples 15-075-1 and 15-075-2 (MSL Case Number 15-075) collected on January 21, 2015 and samples 15-078-1 and 15-078-2 (MSL Case Number 15-078) collected on February 3-4, 2015 were tested by the CG MSL and were determined to be a non-match to Deepwater Horizon oil. See also MSL Case Number 15-023 dated November 26, 2014; MSL Case Number 15-075 dated February 25, 2015 and MSL Case Number 15-078 dated February 25, 2015.

²⁶ See, Email between Mr. [REDACTED], NPFC and MST1 [REDACTED], CGIMT dated April 6, 2015.

²⁷ See, MISLE Activity #4806924.

obtained directly from the tar mat and determined to be of a common source to Deepwater Horizon oil.²⁸

Lastly, there was a 2nd tar mat reported to the CG on Grand Terre II Island, LA on March 13, 2015. That tar mat was approximately 1.5 to 2 miles east of the tar mat discovered on Grand Terre II Island in December, 2014.²⁹ This response extended over 16 site visits and to date includes the recovery of approximately 29,000 lbs of tar mat.³⁰ Three samples of the tar mat and associated SRBs were submitted to the CG MSL on March 23, 2015, (MSL Case Number 15-107). According to the MSL report, sample one was obtained from SRBs in the zone within 10 feet of the tar mat and was a non-match to Deepwater Horizon oil. Sample two was obtained from the inshore tar mat and was determined to be of a common source to Deepwater Horizon oil. Sample three was obtained to the offshore tar mat and was determined to be of a common source to Deepwater Horizon oil.³¹

C. NPFC Conclusion

BP presented this removal cost claim associated with their response to a tar mat and associated SRBs discovered on Fort Pickens Beach, FL, in June 2014. That response represents one of five large tar mat responses undertaken by BP under the supervision of the CG since February, 2014. As discussed previously, BP originally responded to a tar mat on Fort Pickens Beach, FL, in February, 2014 which is especially relevant to this claim as that tar mat was located approximately 500 yards west of the tar mat recovered on Fort Pickens Beach, FL, by BP in June 2014, which is subject of this claim and was identical in both size and appearance to the June 2014 tar mat.³² The sample submitted by CG personnel for the February 2014 tar mat (14-097-1) was determined to be a match and common source to Deepwater Horizon oil, therefore a reasonable person would investigate the validity of the non match results from the June 2014 tar mat (14-187-1 and 14-187-2).

Based upon the credible evidence available to the NPFC, the June 2014 tar mat samples were obtained second hand from a contractor's shovel as the tar mat was physically located 10 feet off the beach and CG personnel were unable to sample the tar mat directly.³³ And as documented by the CG response to tar mats on Fort Pickens Beach, FL, in Feb 2014, Grand Isle State Park, Wild Beach, LA, in October 2014, and Grande Terre Island in both December 2014 and March 2015, samples obtained from the actual tar mats were a better representation of Deepwater Horizon oil while the associated SRBs obtained from the perimeter of the tar mat tended to be non match or questionable. As such, the NPFC is unable to ascertain whether samples 14-187-1 and 14-187-2 collected by CG personnel off the end of a contractor's shovels were obtained from the tar mat or associated SRBs surrounding the perimeter of the tar mat and calls into question the reliability of the testing results.

The CG MSL was asked to comment on the similarities between the sample taken from the Feb 2014 tar mat (14-097-1) and the 2 samples obtained from the June 2014 tar mat (samples 14-187-1 and 14-187-2). The MSL responded by stating that sample 14-097-1 is the same as MC252 oil in all parameters evaluated (with the exception of weathering and non-petroleum contamination) and samples 14-187-1 and 14-187-2 are the same as MC252 oil in all parameters except C1- and C2-

²⁸ See, MSL Case Number 15-076 dated February 25, 2015. See also email from MST1 [REDACTED], CG GCIMT to Mr. [REDACTED], NPFC dated 7 Apr 2015 with attached CG GCIMT Concurrence/Field Input forms.

²⁹ See, Email between Mr. [REDACTED], NPFC and MST1 [REDACTED], CGIMT dated April 7, 2015.

³⁰ See, Email between Mr. [REDACTED], NPFC and MST1 [REDACTED], CG Sector New Orleans dated March 31, 2015.

³¹ See, MSL Case Number 15-107 dated March 25, 2015

³² See, Email between Mr. [REDACTED], NPFC and MST1 [REDACTED], CGIMT dated April 15, 2015.

³³ See, Email between Mr. [REDACTED], NPFC and MST1 [REDACTED], CGIMT dated April 15, 2015.

phenanthrenes. As such, one can deduce that samples 14-097-1, 14-187-1 and 14-187-2 are the same as each other in all parameters evaluated except C1- and C2-phenanthrenes.³⁴

The tar mats removed by BP from Fort Pickens Beach, FL (Feb 2014 response), Grand Isle State Park, LA and Grand Terre II, LA, all shared numerous similarities. Specifically, they were all large in size, visually consistent with Deepwater Horizon oil and the associated CG MSL sample analysis concluded that samples obtained from the tar mats were of a common source to Deepwater Horizon oil.

Based on the foregoing, one can conclude that a large release of oil was the source of the five tar mats removed by BP throughout the Gulf of Mexico from February 2014 through the present and currents within the Gulf of Mexico transported that large release of oil following the catastrophic release of oil from the Deepwater Horizon event, re-depositing the oil on the Louisiana and Florida coasts, only to be covered and uncovered by sand during certain tidal fluctuations.

Based upon the claim submission and available data, the NPFC has determined that the preponderance of the credible evidence establishes that samples 14-187-1 and 14-187-2 obtained from Fort Pickens beach in June 2014 were Deepwater Horizon oil. In making this determination, the NPFC finds the MSL Oil Sample Analysis Report (14-187) and the MSL's opinion that they cannot say with more than 50% certainty that those samples were or were not of a common source to Deepwater Horizon oil combined with the CG MSL's re-evaluation and identification of similarities between samples 14-187-1 and 14-187-2 to 14-097-1 (with the exception C1- and C2- phenanthrenes) all to be very credible evidence.

The fact that four of the tar mats tested in part were a match to Deepwater Horizon oil further strengthens the NPFC's opinion that if the CG responders had been able to obtain samples directly from the June 2014 Fort Pickens Beach, FL, tar mat, CG MSL report 14-187 results would have been a match to Deepwater Horizon oil. Finally, the five tar mats themselves, all displaying physical characteristics of Deepwater Horizon oil, believed to have been deposited by a large oil spill event and then carried and deposited by currents within the Gulf of Mexico onto the coast lines of Louisiana and Florida, to remain hidden and subject to discovery by the tides, is found to be strong circumstantial evidence that samples 14-187-1 and 14-187-2 were Deepwater Horizon oil.

The Claimant provided no credible evidence aside from the results of CG MSL report 14-187 to support its argument that samples 14-187-1 and 14-187-2 were not Deepwater Horizon oil. Based on a preponderance of the credible evidence, the tar mat removed and for which costs are being claimed, is more likely than not from the Deepwater Horizon oil. Because Claimant is the responsible party liable for Deepwater Horizon oil, it may not recover these removal costs. Should the Claimant seek reconsideration of this claim, it must provide supplemental documented evidence that the tar mat removed was not Deepwater Horizon oil.

D. Determined Amount: \$0.00

The NPFC hereby determines that the OSLTF will offer to pay \$0.00 as full compensation for the claimed removal costs incurred by the Claimant and submitted to the NPFC under claim 915069-0001.

For these reasons, this claim is denied in its entirety.

³⁴ See, Email between Mr. [REDACTED], NPFC and Ms. [REDACTED], CG MSL dated April 1, 2015.

[REDACTED]

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Claim Supervisor: [REDACTED]

Date of Supervisor's Review: *April 20, 2016*

Supervisor Action: *Denial approved*

Supervisor's Comments: