

U.S. Department of  
Homeland Security

United States  
Coast Guard



Director  
United States Coast Guard  
National Pollution Funds Center

US COAST GUARD STOP 7100  
4200 WILSON BLVD STE 1000  
ARLINGTON VA 20598-7100  
E-mail: [REDACTED]@uscg.mil  
Fax: 202-493-6937

5890  
7/14/2011

Sent Via Email: [REDACTED]@gmail.com

Pacific Marine Salvage, Inc.  
Attn: Ms. Chelsea Wagner  
624 Windham Street  
Santa Cruz, CA 95062

Re: Claim Number 911095-0001

Dear Ms. Wagner:

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act (OPA) (33 U.S.C. 2701 et seq.), has determined that \$14,593.75 is full compensation for OPA claim number 911095-0001.

This determination is based on an analysis of the information submitted. Please see the attached determination for further details regarding the rationale for this decision.

If you accept this determination, please sign the enclosed Acceptance/Release Form where indicated and return to the above address.

If we do not receive the signed original Acceptance/Release Form within 60 days of the date of this letter, the determination is void. If the determination is accepted, an original signature and a valid tax identification number (EIN or SSN) are required for payment. If you are a Claimant that has submitted other claims to the National Pollution Funds Center, you are required to have a valid Central Contractor Registration (CCR) record prior to payment. If you do not, you may register free of charge at [www.ccr.gov](http://www.ccr.gov). Your payment will be mailed or electronically deposited in your account within 60 days of receipt of the Release Form.

If you have any questions or would like to discuss the matter, you may contact me at the above address or by phone at 202-493-6883.

Sincerely,

A large black rectangular redaction box covering the signature of the sender.

Assyssa Lombardi  
Claims Manager

ENCL: Claim Summary / Determination Form  
Acceptance/Release Form

U.S. Department of  
Homeland Security

United States  
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Claim Number: 911095-0001	Claimant Name: Pacific Marine Salvage, Inc. Attn: Ms. Chelsea Wagner 624 Windham Street Santa Cruz, CA 95062
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I, the undersigned, ACCEPT the determination of \$14,593.75 as full compensation for the claim listed above.

This determination represents full and final release and satisfaction of all removal cost claims under the Oil Pollution Act of 1990 (33 U.S.C. 2712(a)(4)), associated with the above referenced claim. This determination is not an admission of liability by any party. I hereby assign, transfer, and subrogate to the United States all rights, claims, interest and rights of action, that I may have against any party, person, firm or corporation that may be liable for the loss. I authorize the United States to sue, compromise or settle in my name and the United States fully substituted for me and subrogated to all of my rights arising from the incident. I warrant that no legal action has been brought regarding this matter and no settlement has been or will be made by me or any person on my behalf with any other party for costs which are the subject of the claim against the Oil Spill Liability Trust Fund (Fund).

I, the undersigned, agree that, upon acceptance of any compensation from the Fund, I will cooperate fully with the United States in any claim and/or action by the United States against any person or party to recover the compensation. The cooperation shall include, but is not limited to, immediately reimbursing the Fund any compensation received from any other source for the same claim, providing any documentation, evidence, testimony, and other support, as may be necessary for the United States to recover from any other person or party.

I, the undersigned, certify that to the best of my knowledge and belief the information contained in this claim represents all material facts and is true. I understand that misrepresentation of facts is subject to prosecution under federal law (including, but not limited to 18 U.S.C. 287 and 1001).

_____	_____
Title of Person Signing	Date of Signature
_____	_____
Typed or Printed Name of Claimant or Name of Authorized Representative	Signature

_____	_____
Title of Witness	Date of Signature
_____	_____
Typed or Printed Name of Witness	Signature

_____	_____	_____
DUNS #	Bank Routing Number	Bank Account Number

## CLAIM SUMMARY / DETERMINATION FORM

Date	: 7/14/2011
Claim Number	: 911095-0001
Claimant	: Pacific Marine Salvage, Inc.
Type of Claimant	: Corporate
Type of Claim	: Removal Costs
Claim Manager	: Alyssa Lombardi
Amount Requested	: \$14,593.75

### FACTS:

- 1. Oil Spill Incident:** The United States Coast Guard Sector San Francisco reports that on October 1, 2010, the grounding of the 35-foot P/V Desert Gem on Andrew Molara State Beach was reported to the National Response Center (NRC) via case # 955819. The vessel threatened to release gasoline fuel and oil into the Pacific Ocean, a navigable waterway in the territorial boundaries of the United States.<sup>1</sup> The incident was reported at approximately 2252 local time via report # 955819 by PO Jared Buchmiller, USCG Sector San Francisco.

The owner of the vessel, Mr. Steve Gallagher (the Responsible Party (RP)), was in transit to San Francisco when his anchor became entangled in sea kelp and the engines overheated. He then grounded the P/V Desert Gem. As the vessel's bottom was grinding into the shore, necessary action was warranted to remove the oil from the vessel as soon as possible. The RP contracted with the claimant, but did not have proof of insurance or means to make payment in full.<sup>2</sup>

- 2. Description of removal actions performed:** The claimant, PMS, arrived on-scene, working with Mr. Matt Khalar, State of California Department of Parks and Recreation--Big Sur Sector/Monterey District, as well as Mr. Bob Urania, NOAA enforcement officer.

Actions performed by PMS crews include: clearing onboard debris, water and sand from the open engine compartment to access fuel tanks; pumping out the fuel tanks into drums for disposal; repositioning the vessel from the rear in order to be able to pump the fuel out properly and to lessen the risk of spilling; and coordinating the disposal of the drums containing oily water and spent absorbents.

- 3. The Claim:** On July 7, 2011, Pacific Marine Salvage, Inc. (PMS) submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of removal costs in the amount of \$14,593.75 for the services provided on October 1, 2010. This claim is for removal costs based on the rate schedule in place at the time services were provided.

This claim consists of copies of: USCG NRC Report # 955819; a memo from CAPT C.L. Stowe, FOSC, Sector San Francisco; copies of correspondence between PMS and the FOSC; a copy of the CEMA Spill Report; copies of PMS billing comps; a copy of the

<sup>1</sup> See NRC Report # 955819, dated 10/01/2010.

<sup>2</sup> See Memorandum from CAPT C.L. Stowe, FOSC, to the NPFC, dated 6/21/2011.

signed contract; a copy of the PMS dailies/"Time Track" for this incident; copies of the PMS Daily Logs; a copy of the PMS Safety Standards; a copy of the PMS Site Safety Plan for this Incident; a copy of the HAZWOPER training certificates; copies of the disposal manifests for this incident; copies of maps and photos for this incident; and internal email correspondence.

The review of the actual cost invoicing and dailies 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 consistent with the NCP or directed by the FOSC, and (4) whether the costs were adequately documented.

### 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 FOSC coordination has been established via a memo from CAPT C.L. Stowe, USCG Sector San Francisco, to the NPFC, dated June 21, 2011.<sup>3</sup> 33 U.S.C. § 1321(d)(2)(K).
2. The incident involved the report of a threat of discharge of "oil" as defined in OPA 90, 33 U.S.C. § 2701(23), to navigable waters.
3. The claim was submitted within the six year statute of limitations. 33 U.S.C. § 2712(h)(2)
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 NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined what removal costs presented were for actions in accordance with the NCP, and if the costs for these actions were indeed reasonable and allowable under OPA and 33 CFR § 136.205.
6. The Responsible Party was notified but, to date, the NPFC has received no response. 33 U.S.C. § 2701(32).

#### **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 FOSC, to be consistent with the National Contingency Plan (NCP) or directed by the FOSC, and (4) whether the costs were adequately documented and reasonable.

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<sup>3</sup> See Memorandum from CAPT C.L. Stowe, FOSC, to the NPFC, dated 6/21/2011.

The Claims Manager hereby determines that the claimant did in fact incur \$14,593.75 of 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 under claim #911095-0001. The claimant states that all costs claimed are for uncompensated removal costs incurred by the claimant for this incident on October 1, 2010.

**C. Determined Amount:**

The NPFC hereby determines that the OSLTF will pay \$14,593.75 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #911095-0001. 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: \$14

Claim Supervisor:  *TOM MORRISON*

Date of Supervisor's review: *7/15/11*

Supervisor Action: *OFFER APPROVED*

Supervisor's Comments: