CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: 912026-0001
Claimant	: State of Texas
Type of Claimant	: State
Type of Claim	: Removal Costs
Claim Manager	: Stephen Coode
Amount Requested	: $2,684.82

FACTS:

Oil Spill Incident: On June 20, 2011, the Texas General Land Office (TGLO) responded to the abandoned fishing vessel *Sea Joker*, in the Brownsville Shrimp Basin, Cameron County, Texas, a navigable waterway of the US. TGLO coordinated with the Coast Guard (CG) while conducting initial response. CG FOSC P.O. Cooper became the Federal On Scene Coordinator's representative (FOSCR) point of contact. An estimated three-hundred and ninety gallons of oil was threatening to leak from the abandoned fishing vessel.

Description of Removal Activities for this claimant: TGLO conducted initial and follow up response. Invoices include personnel and equipment (vehicle use), and invoices from contractor RM Walsdorf and the disposal facility, Chemsol, Inc.

The Claim: On September 15, 2008, TGLO submitted a removal cost claim to the National Pollution Fund Center (NPFC) for reimbursement of their uncompensated removal costs in the amount of $2,684.62.

TGLO is claiming personnel expenses of $259.82, State equipment expenses of $420.00, and contractor/disposal expenses of $2,005.00.

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. LT Dallas Smith of USCG Marine Safety Detachment Brownsville provided FOSC coordination via a signed letter.
2. The incident involved the substantial threat of 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 statute of limitations for 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 whether the costs for these actions were 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 FOSC, to be consistent with the NCP or directed by the FOSC, and (4) whether the costs were adequately documented and reasonable.

Upon review of the claim submission documents, the NPFC has determined that the rates charged by the contractor were in accordance with the rate schedule at the time services were rendered. The USCG confirmed that the response actions were directed by the FOSC and determined to be consistent with the NCP. The NPFC has denied $90.00, which is associated with one (1) unused 55 gallon drum, as it was never utilized for the cleanup. TGLO confirms, via email, only one of two billed drums was used for disposal.

On that basis, the Claims Manager hereby determines that the claimant did in fact incur $2,594.82 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 #912026-0001. The claimant states that all costs claimed are for uncompensated removal costs incurred by the claimant for this incident on June 20, 2011. The claimant represents that all costs paid by the claimant are compensable removal costs, payable by the OSLTF as presented by the claimant.

C. *Determined Amount:*

The NPFC hereby determines that the OSLTF will pay $2,594.82 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 912026-0001. 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: $2,594.82

Claim Supervisor: ***Don*** [redacted]

Date of Supervisor's review: ***2/9/12***

Supervisor Action: ***Approved***

Supervisor's Comments:

U.S. Department of Homeland Security

United States Coast Guard

Director
United States Coast Guard
National Pollution Funds Center

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US COAST GUARD
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Staff Symbol: (CA)
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5890
2/9/2012

VIA EMAIL [redacted]@glo.texas.state.us

State of Texas
General Land Office
Attn: Peggy Spies
1700 N. Congress Avenue
Austin, TX 78701-1495

Re: Claim Number 912026-0001
TGLO #2011-1826

Dear Ms. Spies:

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act (OPA) (33 U.S.C. 2701 et seq.), has determined that $2,594.82 is full compensation for OPA claim number 912026-0001.

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. 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 202-493-1026.

Sincerely,

[redacted]

Stephen Coode
Claims Manager

ENCL: Claim Summary / Determination Form
Acceptance/Release Form

U.S. Department of Homeland Security

United States Coast Guard

Director
United States Coast Guard
National Pollution Funds Center

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US COAST GUARD
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Staff Symbol: (CA)
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E-mail: [redacted]@uscg.mil
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Claim Number: 912026-0001 TGLO #2011-1826	Claimant Name: State of Texas General Land Office Attn: Peggy Spies 1700 N. Congress Avenue Austin, TX 78701-1495

I, the undersigned, ACCEPT the determination of $2,594.82 as full compensation for the Removal Costs incurred.

This determination represents full and final release and satisfaction of all Removal Costs incurred 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

TIN Required for Payment	Bank Routing Number	Bank Account Number