

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
Staff Symbol: (CA)
Phone: [REDACTED]
E-mail: [REDACTED]@uscg.mil
Fax: 703-872-6113

5890
10/18/2012

Sent Via E-mail: [REDACTED]@ecy.wa.gov

State of Washington
Department of Ecology
HQ Spill Response
P.O. Box 47775
Olympia, WA 98504-7775

Re: Claim Number S07025-0001

Dear Mr. Byers:

The National Pollution Funds Center (NPFC) in accordance with the Oil Pollution Act (OPA) (33 U.S.C. 2701 et seq.), has determined that \$5,054.04 is compensable for OPA claim number S07025-0001.

This reconsideration determination is based on an analysis of information submitted.

All costs that are not determined as compensable are considered denied. Disposition of this reconsideration constitutes final agency action.

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

DIRECTOR
NATIONAL POLLUTION FUNDS CENTER
US COAST GUARD STOP 7100
4200 WILSON BLVD STE 1000
ARLINGTON VA 20598-7100

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, your payment will be mailed within 30 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 [REDACTED]

[REDACTED]
Chief, Claims Adjudication Division

ENCL: Claim Summary/Determination
Acceptance/Release Form
Spreadsheet of costs

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Homeland Security

United States
Coast Guard



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ARLINGTON VA 20598-7100
Staff Symbol: (CA)
Phone: [REDACTED]
E-mail: [REDACTED]@uscg.mil
Fax: 703-672-8113

Claim Number: S07025-0001	Claimant Name: State of Washington
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I, the undersigned, ACCEPT this settlement offer of \$5,054.04 as full and final compensation for the removal costs arising from the specific claim number identified above. With my signature, I also acknowledge that I accept as final agency action all costs submitted with subject claim that were denied in the Determination and for which I received no compensation.

This settlement represents full and final release and satisfaction of the amounts paid from the Oil Spill Liability Trust Fund under the Oil Pollution Act of 1990 for this claim. 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 amounts paid for which I have been compensated under this claim. 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 and associated with those amounts paid for which I am compensated for this settlement offer. 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 amounts paid which is the subject of this claim against the Oil Spill Liability Trust Fund (Fund).

This settlement is not an admission of liability by any party.

With my signature, I acknowledge that I accept as final agency action all amounts paid for this claim and amounts denied in the Determination for which I received no compensation.

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 those amounts paid for which the Fund has provided compensation, by 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

_____	_____	_____
EIN/SSN Required for Payment	Bank Routing Number	Bank Account Number

CLAIM SUMMARY / DETERMINATION FORM

Claim Number : S07025-0001
Claimant : State of Washington
Type of Claimant : State
Type of Claim : Removal Costs
Claim Manager : Felita Jackson
Amount Requested : \$5,317.79

FACTS:

1. ***Oil Spill Incident:*** On January 23, 2007, the Washington State Department of Ecology (Ecology) received a report of a sunken skiff at the Blaine Harbor Marina of Drayton Harbor, in Blaine, Washington. The incident was reported to the National Response Center (NRC) on two separate occasions.¹ The first report was received at 17:47 and was reported by Tony Flaherty of the Port of Bellingham and the second report was received at 20:08 as reported by Marc Oreiro for Boundary Fish Company, Incorporated (Boundary Fish).

Ecology observed the unnamed 20 foot aluminum skiff, still tied to the dock, submerged underwater. The skiff was identified as a support vessel for the *Fishing Vessel Cape Ulitka (F/V Cape Ulitka)*. The marina staff had already deployed hard boom around the skiff. Ecology observed a rainbow sheen around the vessel and determined that a cumulative 40 gallons of diesel fuel and motor oil had been released into the Semiahmoo Bay, a navigable waterway of the United States. However, the amount of oil still onboard the vessel was not determined. Ecology observed a steady release of fuel and motor oil from the skiff and deployed absorbent pads to collect the oil. They made several attempts by phone to contact Mark Oreiro, identified as the owner, but were not successful. Ecology contacted the United States Coast Guard Sector Seattle (Sector Seattle) to discuss a response plan. Ecology hired Global Diving and Salvage, Incorporated (Global). They deployed sorbent sweep and pads that night. Upon their arrival to the incident site on January 24, 2007, Sector Seattle opened the Fund and hired Global for clean-up and response.

2. ***Description of Removal Activities for this Claim:*** On January 23, 2007, the Claimant hired Global for the clean-up and response. They deployed sorbent sweep and pads overnight. Upon their arrival to the incident site on January 24, 2007, Sector Seattle opened the Fund and hired Global for clean-up and response under Federal Project Number (FPN) S07025. Under FPN S07025, Global pumped 150 gallons of diesel fuel from the skiff's fuel tanks and continued to collect more fuel and motor oil on sorbent pads and sweep. The skiff was lifted on January 25, 2007 by a contractor hired by the marina.
3. ***The Claim:*** On February 23, 2012, Ecology submitted a removal cost claim to the NPFCA, for reimbursement of their uncompensated removal costs in the amount of \$5,317.79. They are seeking reimbursement for the costs of personnel for both January 23, 2007 and

¹ See NRC Reports 824466 and 824477.

January 24, 2007, as well as the clean-up services provided by Global on January 23, 2007.

The Claimant determined that Mr. Oreiro was the owner of the skiff by obtaining the July 22, 2005 Boundary Fish sales agreement between Mr. Oreiro and Henry Yuki, President of Boundary Fish.² The Claimant made several attempts to contact Mr. Oreiro from August 10, 2007 to July 1, 2010. After the Claimant sent the case to collections on May 28, 2009, Mr. Oreiro contacted them on July 17, 2010 regarding the outstanding penalty. On June 18, 2010, the Claimant sent Mr. Oreiro an e-mail informing him that based on the information in their database, they did “not intend to take further action” on the case, but would confirm that with the inspector.³ After that e-mail, the Claimant notes that Bellingham Field Office Responder Carl Anderson made two additional attempts to contact Mr. Oreiro by phone on June 25, 2010 and July 1, 2010 and left messages each time (no description of message provided).⁴

4. ***The Request for Reconsideration:*** On September 11, 2012, via e-mail, the Claimant made a written request for Reconsideration to the NPFC, after requesting and then receiving additional information and cost documentation for the invoiced items from Global. The Reconsideration is for \$5,033.74 of costs previously denied in the original Settlement Offer.

DETERMINATION OF LOSS:

A. Overview:

1. Federal On-Scene Coordination was provided by FOSCR MST1 Daniel Ferrell of the United States Coast Guard Sector Seattle.
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 statute of limitations for claims. 33 U.S.C. § 2712 (h)(2).
5. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that some 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 as set forth below.
6. The review of the actual costs, invoices and dailies focused on the evaluation of whether such costs qualify as “Compensation Allowable” under 33 CFR§ 136.205.

B. Reconsideration Analysis and Determined Amount:

The NPFC Claims Manager has reviewed the actual cost invoices and dailies to confirm that the Claimant had incurred all costs claimed. The review focused on: (1) whether the

² See 07/22/05 Agreement between Boundary Fish Company, Inc. and Marc Oreiro (Tab V).

³ See 06/18/10 e-mail from Dick Walker, Dept. of Ecology Spill Response NWRO to Marc Oreiro re Penalty for Sunken Skiff in Blaine (Tab W).

⁴ See Washington State Department of Ecology Oil Spill Liability Trust Fund Modified Claim Form, pg. 3.

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, and (4) whether the costs were adequately documented and reasonable.

The Claimant seeks reimbursement of their uncompensated costs associated with personnel and the clean-up services provided by Global. The uncompensated costs consist of \$250.05 for the salary and benefits for Spill Responder Carl Anderson; \$34.00 for travel expenses of Mr. Anderson; and \$5,033.74 for the services provided by Global as a subcontractor via the Claimant’s emergency response contract with Phillip Services Corporation (PSC).

The NPFC will reimburse the Claimant for the employee’s direct salary at his hourly rate of \$13.42 per hour, as noted on Mr. Anderson’s timesheet.⁵ The Claimant’s e-mail reply of July 12, 2012 explained that they account for staff time expenses based on actual costs with “AA” indicating Direct Salary on the timesheet; whereas Disability (BA), Retire/Pension (BB), Medical Aid/Industrial Insurance (BC), Health/Life Insurance (BD), and Medicare (BH) are the “employer’s share” of the employee’s benefits; and verified that all of Mr. Anderson’s time claimed were overtime hours, and that although he worked the incident longer during the week, his regular work-day time was not charged as a part of this claim.⁶ The NPFC will not reimburse the Claimant for the benefits of their employee, but will pay the direct salary of \$13.42 per hour for 15 hours for a total of \$201.30; denying \$48.75.

The Claimant’s billing for Mr. Anderson’s per diem for dinner for both January 23, 2007 and January 24, 2007 for \$17.00 each day, totaling \$34.00, will also be reimbursed by the NPFC. In the same e-mail noted above, the Claimant explained that being assigned to work away from the assigned work station; working three or more hours outside of the normal work day; and being in a travel status during the entire designated meal period entitles their employees to a meal.

On July 11, 2012, via e-mail, the NPFC requested the Claimant provide the answers to several questions regarding Carl Anderson’s time and billing of time; meal entitlement for the Claimant’s employees; and requesting Global’s/PSC’s daily worksheet and billing.⁷ That night, the Claimant responded that a reply would be received “in the next day or so.”⁸ On July 12, 2012, the Claimant responded via e-mail (as previously noted) and provided answers to the questions asked and noted that PSC and Global’s “daily” for the expenses is the Global invoice dated January 23, 2007 is located in Tab J of the claim submission. That same day, the NPFC responded to the Claimant’s e-mail and informed the Claimant that Global’s actual daily worksheet that shows the start and stop times of each worker and the equipment used by the workers was still needed to verify the

⁵ Carl Anderson’s timesheet for the Month Jan 07 (Tab C).

⁶ See 07/12/12 e-mail from David Byers, Washington State Department of Ecology to Felita Jackson.

⁷ See 07/11/12 e-mail from Felita Jackson to David Byers.

⁸ See 07/11/12 e-mail from David Byers to Felita Jackson.

personnel time and items billed.⁹ The Claimant replied that he would request the information from Global.¹⁰

On July 19, 2012, the NPFC contacted the Claimant via e-mail asking if the requested information from Global would be sent to the NPFC by July 23, 2012.¹¹ The NPFC did not receive a response from the Claimant. By August 9, 2012, the NPFC has not received the requested information and issued a determination denying \$5,033.74 of Global's costs, pursuant to 33 CFR 136.105(a) and 136.105(e)(6).

On September 12, 2012 the NPFC received a written request for reconsideration from the Claimant, dated September 4, 2012.¹² Claimant provided the daily worksheets and related cost documentation for the work performed and billed by Global as a subcontractor for PSC. The claims manager determined that there were discrepancies based on Global's cost documentation and the PSC's rate schedule.

The Claimant requested reimbursement for diver Ric Pottier's travel and demobilization at the premium pay rate of \$75.00 per hour for 3.5 hours, for a total amount claimed of \$262.50. The daily worksheet documented that 3.0 hours were spent by diver Pottier for travel and demobilization. The Claimant will be reimbursed for 3.0 hours at the rate of \$75.00 per hour for a total of \$225.00. Claimant billed the same for stand-by diver Jesse Kandoll for travel and demobilization, but will be reimbursed for 3.0 hours noted on the daily worksheet at the rate of \$75.00 per hour, for a total of \$225.00 for the stand-by diver.

Tender Mike Bradshaw was billed for 2.5 hours for mobilization and travel at the overtime rate of \$65.00 per hour, for a total billed for \$162.50. The daily worksheet noted 2.0 hours was used for the task. The Claimant will be reimbursed \$130.00 for Mr. Bradshaw's mobilization and travel at the overtime rate of \$65.00 per hour. Claimant billed Mike Bradshaw's travel and demobilization at the premium pay rate of \$75.00 per hour for 3.50 hours, for \$262.50. The daily worksheet documented 3.0 hours for the work. The Claimant will be reimbursed for the 3.0 hours at the premium pay rate for a total of \$225.00.

Claimant billed \$320.00 for the use of a 19-foot aluminum vessel for 4.0 hours, at the rate of \$80.00 per hour. The rate schedule listed the hourly rate of \$75.00 per hour. Claimant will be reimbursed for 3.0 hours use of the vessel at \$75.00 per hour for \$300.00 total. Claimant also billed \$50.00 per day for one damage control kit, but the item was not found on the rate schedule. Therefore, the Claimant will not be reimbursed for the damage control kit.

The NPFC denies a total of \$263.75 in DOE and Global Diving costs submitted for reimbursement by the Claimant.

Based on NPFC's denial of \$263.75 for reimbursement of the invoice items submitted for Reconsideration, the NPFC determines that the OSLTF will pay \$5,054.04 as full

⁹ See 07/12/12 3:45 PM e-mail from Felita Jackson to David Byers.

¹⁰ See 07/12/12 3:48PM e-mail from David Byers to Felita Jackson.

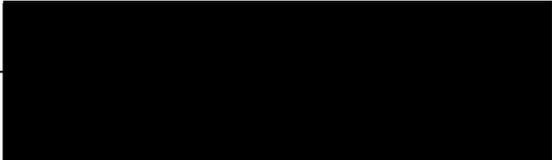
¹¹ See 07/19/12 e-mail from Felita Jackson to David Byers.

¹² See 09/04/12 letter from David Byers to Director, National Pollution Funds Center.

compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #S07025-0001. This amount of \$5,054.04 consists of the original settlement offer of \$235.30 and \$4,818.74 approved reimbursement costs of \$5,033.74 costs submitted for Reconsideration.

DETERMINED AMOUNT: \$5,054.04

Claim Supervisor:



Date of Supervisor's review: *10/18/12*

Supervisor Action: *Reconsideration approved as stated above*

Supervisor's Comments: