

## 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 : [REDACTED]  
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. [REDACTED] (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. [REDACTED] State of California Department of Parks and Recreation--Big Sur Sector/Monterey District, as well as Mr. [REDACTED] 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 [REDACTED] 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 [REDACTED] 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 [REDACTED] 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.

<sup>3</sup> See Memorandum from CAPT [REDACTED] 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: \$14,593.75

Claim Supervisor: 

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

Supervisor Action: OFFER APPROVED

Supervisor's Comments: