

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: M12041-0001
Claimant	: Island Tranquility, Inc., d.b.a. Garrison Bight Marina
Type of Claimant	: Corporate
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$1,877.84

FACTS:

- A. Oil Spill Incident:** The United States Coast Guard (USCG) Sector Key West reports¹ that on July 5, 2012 an oil spill was discovered in Garrison Bight, a nexus to the Gulf of Mexico located Key West, FL. Two members of the USCG responded to the spill on July 6, 2012, deeming it an unrecoverable sheen; however, due to a storm that came through, the oil was splashed up onto a number of boats within the bight. The Fund was opened under Federal Project Number M12041 to wipe these vessels down to prevent further sheening.²
- B. Description of removal actions performed:** On July 5, 2012, the Claimant, Island Tranquility, Inc., d.b.a. Garrison Bight Marina ("Marina"), responded on-scene. As the oil on the surface of the water contaminated vessels docked in the bight, it had to be removed. Removal actions included using sorbent pads to remove oil from the water and solvent to remove the oil from the docked vessels.³ The hazardous materials were then compiled and picked up for disposal by Coffin Marine.⁴
- C. The Claim:** On August 8, 2012, Island Tranquility submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of removal costs in the amount of \$1,877.84 for the services provided on July 5, 2012. These are for costs incurred at the spill site before the FPN M12041 was opened by the Coast Guard.

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:

"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

¹ See USCG Sector Key West Report # 601949, opened 7/05/2012.

² See POLREP # 1 for FPN M12041, dated 7/06/2012.

³ See invoice from [REDACTED] to Garrison Bight Marina, dated 7/5/2012.

⁴ See Disposal Manifest for this incident, submitted to the NPFC by the claimant via email on 8/16/2012.

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. FOSC Coordination has been established via USCG Sector Key West.⁵
2. The incident involved the report of a discharge of "oil" as defined in OPA 90, 33 U.S.C. § 2701(23), to navigable waters.

⁵ See USCG Sector Key West Report # 601949, dated 7/05/2012.

3. The claim was submitted within the six year statute of limitations. 33 U.S.C. § 2712(h)(2)
4. A Responsible Party was not determined. 33 U.S.C. § 2701(32).
5. 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.
6. 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.

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. The Claims Manager validated the costs incurred and determined they were reasonable and necessary and performed in accordance with the National Contingency Plan (NCP).

The marina presented a well-documented claim, providing the claims manager sufficient means to determine whether or not the marina incurred the costs and, of the costs incurred, what were considered compensable. After a review of the file, it was determined, through the preponderance of the evidence, that Island Tranquility did incur \$1,877.84 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 #M12041-0001. The Claimant states that all costs claimed are for uncompensated removal costs incurred by the claimant for this incident on July 5, 2012. The Claimant represents that all costs paid by the marina are compensable removal costs, payable by the OSLTF as presented.

C. Determined Amount:

The NPFC hereby determines that the OSLTF will pay \$1,877.84 as full compensation for the reimbursable removal costs incurred by the claimant and submitted to the NPFC under claim M12041-0001. 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: \$1,877.84

Claim Supervisor:

Date of Supervisor's review: 8/27/12

Supervisor Action: *Approved*

Supervisor's Comments: